



1 to proceed with a claim against defendant Ward for interference with his right of access to the  
2 grievance process. (Screening Order, ECF No. 3.)

3 In his motion, Plaintiff argues that because of HIPPA, prisoners are not able to obtain their  
4 medical records in litigation. He states that NDOC's Administrative Regulation (AR) 639 provides  
5 that copies of health records shall not be released directly to the inmate, except when an inmate is  
6 involved in a lawsuit that would require use of the medical records, as verified by the Office of the  
7 Attorney General. In addition, the AR prohibits an inmate from possessing any portion of their  
8 medical file on their person, in their cell or on the yard, "unless otherwise permitted by court  
9 order."

10 Plaintiff asserts that he needs to obtain his medical records and possess them in his cell in  
11 order to prepare for summary judgment, and for the duration of this litigation.

12 Defendants' response argues that while prison regulations preclude an inmate from  
13 possessing medical records, they may review their medical records under direct supervision of  
14 medical staff. When an inmate is involved in litigation, the inmate is required to send a request to  
15 review the records by filing a kite. The regulations also allow inmates to make copies of their  
16 medical records for legal purposes.

17 As the parties point out, AR 639 prohibits inmates from possessing medical records in their  
18 cells. When an inmate is involved in a lawsuit, he may request to review his medical records and  
19 make copies of pertinent records for use in litigation. Courts generally defer to the judgment of  
20 prison officials in matters of security. *See Bell v. Wolfish*, 441 U.S. 520, 546-47 (1979).  
21 "[M]aintaining institutional security and preserving internal order and discipline are essential goals  
22 that may require limitation or retraction of the retained constitutional rights of both convicted  
23 prisoners and pretrial detainees." *Id.* "[T]he problems that arise in the day-to-day operation of a

1 corrections facility are not susceptible of easy solutions. Prison administrators therefore should be  
2 accorded wide-ranging deference in the adoption and execution of policies and practices that in  
3 their judgment are needed to preserve internal order and discipline and to maintain institutional  
4 security." *Id.* at 547 (citations omitted). "Such considerations are peculiarly within the province  
5 and professional expertise of correctional officials, and, in the absence of substantial evidence in  
6 the record to indicate that the officials have exaggerated their response to these considerations,  
7 courts should ordinarily defer to their expert judgment in these matters." *Id.* at 548 (citation and  
8 quotation marks omitted).

9         While the court has on occasion, and on a showing of extraordinary circumstances, issued  
10 orders allowing prisoners to possess medical records, Plaintiff has not set forth anything in his  
11 motion that presents such extraordinary circumstances. The procedure of kiting to request a review  
12 of medical records and copying pertinent records applies to all inmates asserting medical care  
13 claims in litigation. Plaintiff has not demonstrated this procedure is insufficient in his case. His  
14 medical care claims are not unduly complex. Nor has he represented that something about his  
15 condition makes it unduly difficult to proceed in this fashion. He does not state whether he  
16 requested to review his medical records and make copies in accordance with AR 639.

17         Finally, the court notes that Plaintiff has already filed his motion for summary judgment.  
18 (ECF No. 48.) He attaches as exhibits to his motion 21 medical kites filed from January 31, 2019  
19 to June 5, 2019; 15 medical kites from August 3, 2018 to December 26, 2018, emergency  
20 grievances and grievances. Nowhere in his motion for summary judgment does he state that he  
21 requested and was denied an opportunity to review and copy pertinent medical records to prepare  
22 his motion for summary judgment.

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