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United States District Court,
S.D. New York.

Louis MILBURN et al., Plaintiff,
v.
Thomas A. COUGHLIN, III et al., Defendants.

No. 79 Civ. 5077(LAP). | Sept. 24, 2007.

Opinion

MEMORANDUM AND ORDER

LORETTA A. PRESKA, U.S.D.J.

***1** Plaintiff William Pabon, an inmate at the Green Haven Correctional Facility ("Green Haven"), brings this complaint *pro se* for a judgment of contempt pursuant to the Modified Final Judgment ("Consent Decree") stipulated to by the parties in *Milburn v. Coughlin,* 79 Civ. 5077 (S.D.N.Y.). Plaintiff alleges that a correctional officer at Green Haven violated the Consent Decree, first, by denying him nutritional supplements, second, by verbally abusing him, and third, by communicating his private medical information to other inmates and security personnel. Defendants move to dismiss the complaint because Plaintiff failed to follow the notification procedures in the Consent Decree and, further, that his allegations fail to state claims under the Consent Decree. For the following reasons, Defendants' motion is granted.

BACKGROUND

A. *The Consent Decree*

This dispute arises out of a class action suit brought by prisoners at Green Haven in 1979 for alleged violations of their rights through denial of necessary medical treatment. The parties entered into a settlement, which was modified several times and ultimately embodied in the Consent Decree on September 27, 1991. *See* Dkt. No. 251.

The Consent Decree sets forth standards for medical care for all persons who are, or will be, incarcerated at Green Haven. It provides, *inter alia,* that Defendants will periodically review inmates' medical records and, if any medical or dental deficiency is noted, or if the records are not properly maintained, that Defendants will timely remedy the problem (¶ XI(B)); that Defendants will maintain a prompt and secure pharmacy system for dispensing medicine and medical supplies (¶ XVIII(A)); that security staff will stay at a distance from meetings between inmates and their health-care providers to prevent eavesdropping on private medical conversations (¶ XXIII(B)); and that Defendants will assure inmates that confidential medical information will not be discussed with other inmates or non-medical personnel, nor will its revelation be compelled by the staff except where emergencies so require, and then only to the extent that the information does not disclose the patient's diagnosis (¶ XXIII (D)).

The Consent Decree also establishes procedures for reviewing compliance. It creates a problem-solving group consisting of the Medical Auditor, the Facility Health Services Director or designee, the Assistant Commissioner of Health Services or designee, the Superintendent, and plaintiff's and Defendants' counsel. (¶ XXIX(E)). This group is responsible for reviewing both systemic and individual problems with health care delivery at Green Haven. *Id.* The Consent Decree further requires the Medical Auditor to report regularly on compliance to the court and counsel for both Defendants and the class of plaintiffs. (¶ XXIX(F)(5)).

Finally, the Consent Decree outlines procedures for resolving complaints of noncompliance. An inmate alleging a violation may not bring a motion for contempt of the Consent Decree before attempting in good faith to resolve the issue with the Defendants. (¶ XXIX(A)). An inmate's counsel who believes the Consent Decree has been violated with respect to that inmate must "bring the facts supporting that belief to the attention of defendants' counsel prior to the filing of any motion to enforce the terms of [the] Modified Final Judgment." (¶ XXIX(D)). Defendants must respond within thirty days either by remedying the situation or by explaining in writing why no action will be taken. *Id.* After this period, if the issue remains unresolved, the inmate acquires the right to seek relief from the Court. *Id.*

B. *William Pabon's Claims*

***2** Plaintiff is currently an inmate at Green Haven and therefore a member of the class covered by the Consent Decree. He claims that on November 12, 2004, he was denied necessary medical treatment and verbally abused in violation of the Consent Decree. Compl., "Statement of Facts," Unnumbered Paragraph 1.[1]

Part of Plaintiff's treatment includes drinking the nutritional supplement known as "Ensure." *Id.* Plaintiff alleges that on the above date, he was told by a

corrections officer ("CO") that he had a medical pick-up. *Id.* Plaintiff responded that he had already made his pick-up and that he had only a clinic call-out to see his medical provider that day. *Id.* However, when Plaintiff arrived at the clinic he saw other inmates receiving Ensure supplements and realized that he had not been given his allotment. *Id.* He went to a CO in the clinic area and asked that he be given the Ensure supplements. *Id.,* Unnumbered Paragraph 2. This CO, in turn, asked CO Kohler if that was permitted. *Id.* Plaintiff claims that at this point CO Kohler became hostile and berated him, saying "who the fuck do you think you are, you think your [sic] special, that you could come at anytime you feel like to pick-up [sic] your [E]nsures." *Id.* Plaintiff alleges that CO Kohler refused to give him his Ensures and that she continued to abuse him, saying, "I give two shits about your law suits, your grievances nor [sic] the affidavits, I will still get your ass." *Id.* Plaintiff then went back into the waiting area and after about two hours saw his provider, but did not receive the Ensure supplements. *Id.*

Plaintiff's provider gave him a new catheter and asked a nurse to bring a new back support and neck brace that Plaintiff had previously requested. *Id.,* Unnumbered Paragraph 3. The provider then asked Plaintiff to step outside the examination area. *Id.* According to Plaintiff, while he was standing outside the examination area, CO Kohler approached him and again cursed him and threatened him, saying "watch your self because if you even think of writing me up, I will not mess-up [sic] this time in setting you up." *Id.* CO Kohler then left, and the nurse returned and assured Plaintiff that she would deliver the Ensure supplements to his cell. *Id.*

Plaintiff communicated his allegations to the Superintendent of Green Haven by letter and sent copies to the Court, the Dutchess County District Attorney's Office, the Chief Inspector of the New York State Police, the Inspector General for the Department of Correctional Services, and the United States Department of Justice Civil Rights Division. The Superintendent sent Plaintiff a letter dated December 7, 2004, acknowledging the claim and assigning its investigation to a deputy superintendent named Guiney. On behalf of Deputy Superintendent Guiney, a Sergeant Wilson wrote Plaintiff a letter dated January 14, 2005, stating that Plaintiff had not followed correct procedure in picking up the Ensure supplements, that CO Kohler denied abusing him, and that no further action would be taken.

DISCUSSION

A. *Legal Standard for Consent Decree Violation*

***3** "Consent decrees, while they are judicial decrees subject to enforcement by the court, nonetheless are agreements between parties to litigation that 'should be construed basically as contracts.' " *United States v. Int'l Bhd. of Teamsters ("IRB"),* 998 F.2d 1101, 1106 (2d Cir.1993) (quoting *United States v. ITT Continental Baking Co.,* 420 U.S. 223, 236-37 (1975)). "When enforcing a consent decree, a court is constrained to read and apply its terms 'within its four corners' and may not look beyond the document to satisfy one of the parties' purposes." *United States v. Int'l Bhd. of Teamsters ("Wilson, Dickens & Weber"),* 978 F.2d 68, 73 (2d Cir.1992) (quoting *United States v. Armour & Co.,* 402 U.S. 673, 682 (1971)). The Court of Appeals has instructed that the explicit language of the decree is to be given great weight, and deference is to be paid to its plain meaning and normal usage. *EEOC v. Local 40, Int'l Ass'n of Bridge, Structural & Ornamental Iron Workers,* 76 F.3d 76, 80 (2d Cir.1996); *Berger v. Heckler,* 771 F.2d 1556, 1568 (2d Cir.1985).

Furthermore, because Plaintiff does not state in his complaint specifically which paragraphs of the Consent Decree he alleges have been violated, this Court is mindful of the instruction from the Court of Appeals to construe the submissions of a *pro se* litigant liberally and to interpret those pleadings "to raise the strongest arguments that they suggest." *McPherson v. Coombe,* 174 F.3d 276, 280 (2d Cir.1999) (quoting *Burgos v. Hopkins,* 14 F.3d 787, 790 (2d Cir.1994)).

B. *Application to Notice of Defendants' Asserted Consent Decree Violations*

As described above, under the Consent Decree, Plaintiff was required to notify Defendants through their counsel of a pending claim before filing a motion in court for contempt. *See supra* at 3-4 (quoting ¶ XXIX(D)). Defendants contend that their counsel did not receive notice of the letter from Plaintiff but, rather, from the Court. Opp'n Mem. at 8.[2]

Although Plaintiff addressed his complaint letter to the Superintendent of Green Haven, nothing in the record before the Court on this motion, examined in the light most favorable to Plaintiff, indicates that notice was sent to Defendants' counsel pursuant to the procedures set forth in the Consent Decree. Thus, Plaintiff's contempt motion is dismissed on this threshold basis.

C. *Application to Defendants' Asserted Consent Decree Violations*

Assuming *arguendo* that Plaintiff had notified Defendants pursuant to the provisions of the Consent Decree, the asserted violations fail to state claims thereunder.[3]

Plaintiff claims that he was denied his Ensure supplements and that CO Kohler verbally abused him. Compl., Unnumbered Paragraph 1. In addition, Plaintiff references the provisions of the New York Public Officers Law prohibiting disclosure of confidential information acquired in the course of official duties. Compl., "Section 3 Confidentiality of Information and Security of Records," Unnumbered Paragraph 1. From the Court's review of all the materials submitted by Plaintiff in connection with this motion, the Court construes these references as an assertion that CO Kohler breached his patient confidentiality by mentioning Plaintiff's Ensure medication during their initial encounter in the clinic waiting area.

***4** As to Plaintiff's first claim, Plaintiff fails to allege that he suffered an actual denial of medical treatment. Plaintiff states that CO Kohler "refused to allow [him] to pick-up [sic][his] [E]nsures" and that two hours after her refusal he "was finally called to see [his] provider and [he] never received [his][E]nsures ." Compl., "Statement of Facts," Unnumbered Paragraph 2. However, Plaintiff also states that after meeting with his provider, the nurse who brought him his neck brace and back support "informed [him] that she [would] deliver the [E]nsures to [his] cell." *Id.,* Unnumbered Paragraph 3. Nowhere does Plaintiff contend that the nurse did not, in fact, deliver his Ensure supplements.

As to Plaintiff's second claim of verbal abuse, it fails because it falls outside the scope of the Consent Decree. No provision of the Consent Decree addresses either physical or verbal abuse that does not result in denial of health care. Consent Decree, *passim*.

Insofar as Plaintiff's allegations may be read to assert a violation of his patient confidentiality, they also fail to state a claim under the Consent Decree. Plaintiff's claims implicate ¶¶ XXIII(B) and (D), which require that security staff remain out of earshot from health care encounters and that providers not discuss confidential medical information with non-medical personnel or inmates, respectively. Plaintiff admits, however, that CO Kohler was not in the area where he was speaking with his medical provider. Compl., "Statement of Facts," Unnumbered Paragraph 3 (alleging that Plaintiff was "told to step outside" of the area in which he met with his provider, at which time CO Kohler "came right to where I was standing"). Viewing the allegations in the light most favorable to Plaintiff, since CO Kohler was not within earshot of Plaintiff's health care encounter, Plaintiff does not state a violation of ¶ XXIII(B).

With respect to ¶ XXIII(D), the Court interprets Plaintiff's submissions as stating a claim that CO Kohler publicly revealed his confidential medical information based in whole or in part on her utterance of the phrase, "who the fuck do you think you are, you think your [sic] special, that you could come at any time you feel like to pick-up [sic] your [E]nsures." *Compl.,* "Statement of Facts," Unnumbered Paragraph 2. However, the record before the Court indicates that the sole aspect of Plaintiff's medical treatment to which CO Kohler referred, the fact that he took Ensure supplements, was not confidential medical information. Plaintiff alleges that these supplements were handed out in plain view of inmates and both medical and non-medical personnel. Compl., "Statement of Facts," Unnumbered Paragraph 1. Moreover, Defendants assert that revelation of the fact that Plaintiff took Ensure supplements could not have revealed his diagnosis and was thus not confidential. Opp'n Mem. at 11 n. 6. Plaintiff never contested this assertion. *See* Reply Mem., *passim.*[4] Neither Plaintiff's complaint nor his supporting affidavits mention any other instance of CO Kohler's discussing Plaintiff's medical condition or treatment with other inmates or personnel. Accordingly, Plaintiff fails to state a claim for violation of ¶ XXIII(D) of the Consent Decree.

D. ***Plaintiff's Pendent State-Law Claims***

***5** Plaintiff references several provisions of New York's Civil Service Law, Correctional Law, Public Officers' Law, and Codes of Rules and Regulations. Compl., Unnumbered Pages 1-3. Because the Court has dismissed Plaintiff's claims based upon the Consent Decree, it declines to exercise pendent jurisdiction over any state law claims asserted by Plaintiff. *See* 28 U.S.C. § 1367(c)(3). Accordingly, the Court need not address whether the aforementioned state statutes, rules or regulations grant Plaintiff any relief thereunder.

CONCLUSION

For the reasons set forth above, Defendants' motion to dismiss William Pabon's complaint for contempt [dkt. no. 281] is granted.

SO ORDERED.

Footnotes

1 "Compl." refers to the Complaint, including the exhibits appended thereto, filed by Plaintiff on November 12, 2004. The case was initially assigned to the late District Judge Richard Conway Casey and was reassigned to this Court on May 21, 2007. *See* Dkt. No.

288.

2 "Opp'n Mem." refers to "Defendants' Memorandum of Law in Support of Their Motion to Dismiss Plaintiff's Complaint," filed on January 31, 2005.

3 Defendants also seek to dismiss Plaintiff's complaint to the extent that it raises either a claim under the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997, or of deliberate indifference to serious medical needs under the Eighth Amendment. To maintain a claim on the first basis, Plaintiff must show physical injury. *See Lipton v. City of* Orange, 315 F.Supp.2d 434, 456 (S.D.N.Y.2004) (citing *Liner v. Goord,* 196 F.3d 132, 135 (2d Cir.1999)). To succeed on the second claim, Plaintiff must show a condition of urgency that may produce death, degeneration or extreme pain. *See Hathaway v. Coughlin,* 37 F.3d 63, 66 (2d Cir.1994). Construing Plaintiff's contempt motion liberally to deem him as having asserted PLRA and Eighth Amendment claims, the Court nevertheless concludes that Plaintiff fails to state such claims.

4 "Reply Mem." refers to "Plaintiff's Reply To Violation Of *Milburn v. Coughlin,"* filed on March 3, 2005.