

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Manuel M. Cabral, III, :
Petitioner :
v. :
Jeffrey A. Beard, P.H.D., :
Department of Corrections, : No. 622 M.D. 2010
Respondent : Submitted: February 11, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: April 14, 2011

Before this Court are the preliminary objections of Jeffrey A. Beard, Ph.D. and the Department of Corrections (collectively, DOC) to Manuel M. Cabral, III's (Cabral) petition for review in this Court's original jurisdiction.

Cabral is incarcerated at the State Correctional Institution at Graterford (SCI-Graterford). Cabral alleges that DOC refuses to allow him copies of his medical¹ and mental health records and to keep those records in his cell. Cabral also alleges that DOC refuses to allow him to obtain a copy of DC-ADM 003 (Release of Information) Confidential Procedures Manual (DC-ADM 003).

I. Access to Medical and Mental Health Records.

¹ In his brief Cabral states "Since the filing of this Petition, Petitioner [Cabral] wrote the medical department and informed them of this legal action and since then has been placed on the call out sheet to review his medical record." Petitioner's Brief at 7.

A. Background.

On April 19, 2010, Cabral wrote an “Inmate to Staff Request” to the medical department at SCI-Graterford and requested a copy of his medical records. Joan Scott, Director of Medical Records at SCI-Graterford denied the request because “copies of records cannot be given to inmates unless they are representing themselves [sic] in court.” Inmate’s Request to Staff Member, Response by Joan Scott, April 30, 2010.

On May 6, 2010, Cabral filed a grievance with DOC at SCI-Graterford and requested that he be provided with a copy of his psychiatric file and copies of certain blood work. On May 13, 2010, Joseph C. Korszniak, Corrections Health Care Administrator at SCI-Graterford, denied the grievance because DOC policy does not allow inmates to receive copies of their medical records, although an inmate has the right to review the chart with a medical records person, if requested.

On May 23, 2010, Cabral filed a first level appeal of his grievance. On June 8, 2010, M. Wenerowicz, Superintendent of SCI-Graterford, ruled, “As long as you can show you are in actual litigation and meet the rest of the DC-ADM 003 requirements, you will be permitted copies of the information you requested in your initial grievance. I am overturning the initial response and consider this grievance RESOLVED.” Response to Official Inmate Grievance #317283, June 8, 2010, at 1. On June 13, 2010, Cabral filed an appeal with the Secretary’s Office of Inmate Grievances and Appeals of DOC. Cabral requested his whole medical

file/records, his whole mental health file/records, his drug and alcohol file/records, and his dental file/records.

On June 30, 2010, Dorina Varner, the chief grievance officer for DOC, issued a final appeal decision and upheld the June 8, 2010, response.

B. Petition before this Court- Medical and Mental Health Records.

On July 27, 2010, Cabral petitioned for review in this Court's original jurisdiction and alleged the following:

20. The denial of Petitioner's [Cabral] request for his Medical records and Mental Health Records are in willful and deliberate violation of DC-ADM 003.

21. DC-ADM 003 Specifically states Petitioner [Cabral] only has to send a request to staff for the records he wants and pay for the costs of reproduction of the requested records.

22. DC-ADM 003 policy does not state that Petitioner [Cabral] must be in litigation to receive copies of his medical and Mental Health records.

.....

26. The denial of Petitioner's [Cabral] request for his medical and mental health records are [sic] in willful and deliberate violation of the Medical Care Act.

.....

28. In Richardson v. Beard, 942 A.2d 991 (Pa. Cmwlth. 2008), this Court held that the Petitioner has a right to copies of his medical records at a cost which is reasonably related to the costs

Petition for Review, July 30, 2010, (Petition), Paragraph Nos. 20-22, 26, and 28 at 4-5.

Cabral requests the following relief with respect to his medical and mental health records:

- a. Declaratory Judgment declaring Respondents [sic] [DOC] interpretation of DC-ADM 003 illegal;
- b. Order the DOC to provide Petitioner [Cabral] with a copy of his Medical Records and Mental Health Records, once the fee is determined and paid and personally call Petitioner [Cabral] down to the Medical Department at SCI-Graterford to pick up said copies;
- c. Order the DOC to provide any further request for copies of his medical and/or mental health records;
. . . .
- f. All costs/legal fees associated with grievance #317283 and this Petition for Review;
- g. Any other relief this Court would consider just and proper under the circumstances.

Petition at 6.

C. Preliminary Objection by DOC.

DOC preliminarily objects in the nature of a demurrer:

19. . . . [T]he Court should not grant his request because he has not established a clear right to the requested relief.

20. Petitioner [Cabral] cannot show that he has any right, in the prison setting, to obtain copies of medical and mental health records and a Confidential Procedures Manual in his cell.

21. DC-ADM 003 established the mechanism for obtaining said records, but specifically states ‘[t]his policy does not create rights in any person nor should it be interpreted or applied in such a manner as abridge the rights of any individual.’ . . .

22. Petitioner [Cabral] appears to base his entitlement to the records with the fact that there is a mechanism to obtain his medical records through Department Policy.

23. Petitioner [Cabral] is mistaken in this argument, as DC-ADM 003 explicitly states, that ‘the furnishing of an appropriate release is a prerequisite to consideration of the request and does not determine whether the Department will actually release the information.’ . . .

24. Petitioner [Cabral] is not alleging he was denied *access* to said records; rather simply that he has been denied copies of said records.

25. Petitioner [Cabral] has failed to establish or cite to any known legal authority that he has any right to copies of his medical records. . . .

26. Contrary to the Petitioner’s [Cabral] mistaken assertion, nowhere in *Richardson v. Beard*, 942 A.2d 911 (Pa. Cmwlth. 2008), does [sic] this Court hold that inmates have any ‘right’ to copies of their medical records. . . . (Citation and Footnote omitted).

Respondents’ Preliminary Objection, August 12, 2010, (Preliminary Objection), Paragraph Nos. 19-26 at 4-5.

D. Analysis.

When considering preliminary objections this Court must consider as true all well-pleaded material facts set forth in the petitioner’s petition and all reasonable inferences that may be drawn from those facts. Mulholland v. Pittsburgh National Bank, 405 Pa. 268, 271-272, 174 A.2d 861, 863 (1961). Preliminary objections should be sustained only in cases clear and free from doubt that the facts pleaded are legally insufficient to establish a right to relief. Werner v. Zazyczny, 545 Pa. 570, 681 A.2d 1331 (1996).

Mandamus is an extraordinary writ designed to compel performance of a ministerial act or mandatory duty where there exists a clear legal right in the plaintiff, a corresponding duty in the defendant and want of any other adequate and appropriate remedy. Princeton Sportswear Corp. v. Redevelopment Authority, 460 Pa. 274, 333 A.2d 473 (1975).

Initially, DOC asserts that Cabral fails to show that he has any right to maintain copies of medical and mental health records in his cell. DC-ADM 003 establishes how a prisoner may obtain the records but states that the “policy does not create rights in any person nor should it be interpreted or applied in such a manner as to abridge the rights of any individual.” DC-ADM 003 at 11. DC-ADM 003 states that “the furnishing of an appropriate release is a prerequisite to consideration of the request and does not determine whether the Department will actually release the information.” DC-ADM 003 at 4.

This Court agrees with DOC that DC-ADM 003 does not establish any right for an inmate to possess copies of his medical records in his cell.

In his petition Cabral alleges that the “medical care act” provides for the release of copies of an inmate’s medical records. It is unclear to which act Cabral refers. In his brief he refers to the Health Care Facilities Act (Act)² and the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §1320d-2 note. This Court notes that on January 27, 2011, this Court granted in part DOC’s Application for Relief in the nature of a Motion to Strike Petitioner’s Brief and

² Act of July 19, 1979, P.L. 130, *as amended*, 35 P.S. §§448.101- 448.904b.

noted that this Court will not consider factual averments in Cabral's brief or exhibits that were not part of his petition for review. To the extent that the references to the Act and to HIPAA are factual averments not contained in the petition for review, this Court will not consider them. Assuming *arguendo* that these references were subsumed in the petition for review by reference to the "medical care act," this Court will address them. Cabral fails to specify how the Act and HIPAA afford him a clear legal right to possess copies of his medical records. Simply, these statutes do not create a requirement for DOC to authorize Cabral to keep copies of his medical records in his cell.

Cabral also cites Richardson v. Beard, 942 A.2d 911 (Pa. Cmwlth.), *affirmed*, 600 Pa. 102, 963 A.2d 904 (2008) to support his argument that he is entitled to copies of his records. In Richardson, David Richardson (Richardson), an inmate in a state correctional institution, challenged DC-ADM 003 as it pertained to costs for copying medical records. Richardson asserted in his petition for review in this Court's original jurisdiction that he had a right to copies of his medical records at a cost which was reasonably related to the cost of making the copies and that under DC-ADM 003 the costs of copying were inflated and unjustified. Richardson, 942 A.2d at 912. Jeffrey A. Beard, Secretary of the Department of Corrections, preliminarily objected. Richardson, 942 A.2d at 913. This Court ruled that Richardson failed to state a claim concerning the price of copies because the facts pleaded were legally insufficient to establish a right to relief. Richardson failed to allege that he was charged fees that were not reasonably related to the cost of making copies. Richardson, 942 A.2d at 914-915.

Clearly, Richardson does not support Cabral's position concerning his right to the copies as that issue was not addressed in Richardson.

DOC also asserts that Cabral erroneously relies on DC-ADM 815, which regulates the amount and type of personal property an inmate is permitted to keep in his cell because DC-ADM 815 does not state that an inmate has a right to keep copies of his medical records in his cell. This Court agrees.

II. Request to Obtain DC-ADM 003.

A. Background.

After he filed this Petition, Cabral attempted to obtain the Manual under the Right to Know Law.³ DOC's Right to Know Office denied the request. Cabral appealed to the Pennsylvania Office of Open Records which denied his appeal. Manuel Cabral, III v. PA Department of Corrections, Office of Open Records, AP No. AP 2010-0636, Issued August 10, 2010.

B. Petition before this Court- Medical and Mental Health Records.

In his petition for review, Cabral alleged the following:

23. The DOC is trying to 'hide' behind attorney client privilege [sic]/attorney work product by not providing Petitioner [Cabral] a copy of the DC-ADM 0003 [sic] procedures manual, which it relies on to deny Petitioner's [Cabral] request for his records.

24. The DOC has released several other procedures manuals. . . .

³ Act of February 14, 2008, P.L. 6, 65 P.S. §§67.101 – 67.3104.

25. Under the explicit provisions of policy number DC-ADM 003, the policy and procedure manual is applicable to all DOC inmates and employees and directs the employee's [sic] on how to perform their mandatory duties as a result, in light of the Lavallo Opinion (Lavallo v. Office of General Counsel of Comm., 769 A.2d 449 (Pa. 2001) the manual should be deemed to be a public record under the provisions of the law. . . .

Petition, Paragraph Nos. 23-25 at 4-5.

Cabral requests this Court to “[o]rder the DOC to provide Petitioner [Cabral] with a copy of the DC-ADM 003 Procedures Manual once the costs have been determined and paid.” Petition at 6.

C. Preliminary Objection by DOC.

DOC preliminarily objects in the nature of a demurrer:

28. Petitioner [Cabral] has also failed to cite any applicable legal authority establishing his ‘right’ to obtain copies of confidential Department of Corrections Procedures Manuals, as the cases he cites in his Petition do not stand for this proposition.

29. The Department of Corrections is charged with the safe operation of State Correctional Institutions. . . . Inherent in the functioning of secure prison facilities is the ability to have internal procedures that are protected from public disclosure. Knowledge of the inner workings of even seemingly innocuous prison procedures can be manipulated by prisoners at the cost of the safety and security of an institution’s residents and employees. . . .

30. Moreover, Petitioner’s [Cabral] claim involving access to this particular Procedures Manual is disingenuous in light of the fact that Superintendent

Wenerowicz quoted the relevant section to the Petitioner [Cabral] in a grievance response. (Citations omitted).

IV. Analysis.

With respect to Cabral's request to obtain DC-ADM 003, DOC asserts that Cabral has failed to cite any applicable legal authority to establish his right to obtain a copy of the Manual. DOC has the authority under Section 901-B of the Administrative Code of 1929⁴ to administer, manage, and supervise penal and correctional facilities. Given that DOC has the authority to administer SCI-Graterford and has deemed this manual confidential and that the Office of Open Records determined that Cabral had no right to obtain the document under the Right to Know Law, this Court agrees that Cabral has not established a clear right to DC-ADM 003.

Accordingly, this Court agrees that Cabral fails to state a claim upon which relief may be granted, sustains DOC's preliminary objection, and dismisses Cabral's petition with prejudice.

BERNARD L. McGINLEY, Judge

⁴ Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. §310-1. This Section was added by the Act of December 30, 1984, P.L. 1299.

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ORDER

AND NOW, this 14th day of April, 2011, this Court sustains the preliminary objection of Jeffrey A. Beard, Ph.D. and the Department of Corrections that Manuel M. Cabral, III fails to state a claim upon which relief may be granted and dismisses Cabral’s petition with prejudice.

BERNARD L. MCGINLEY, Judge