

VERMONT SUPERIOR COURT
Washington Unit
65 State Street
Montpelier VT 05602
802-828-2091
www.vermontjudiciary.org



CIVIL DIVISION
Case No. 25-CV-05739

Michael Page v. Warden Lovett et al

ENTRY REGARDING MOTION

Title: Motion to Dismiss Petitioner's Complaint (Motion: 2)
Filer: Pamela Eaton
Filed Date: March 03, 2026

The motion is DENIED IN PART.

The Department of Corrections filed a motion to dismiss based on Petitioner's original complaint that appeared to take issue with the State moving him from a Vermont facility to a Mississippi facility. Such a decision is normally within the discretion and authority of the Department and does not, in and of itself, create grounds to challenge such a transfer. See *Casey v. Pallito*, No. 5:12-CV-284, 2013 WL 6673623, at *24 (D. Vt. Dec. 18, 2013) (transfer from a desired unit or facility generally does not implicate protected property or liberty interests); see also *Manson v. Thetford Sch. Bd.*, 142 Vt. 495, 498 (1983) ("We have held on many occasions that there is no absolute right to appellate review of administrative decisions.").

In response, Petitioner has filed an amended petition seeking to narrow and focus the scope of the Court's review to the decision of how the medical staff in Mississippi has elected, allegedly, not to treat his diagnosis of keratoconus.

Specifically, Petitioner alleges that he was given a diagnosis of keratoconus in both eyes by his ophthalmologists at Dartmouth Hitchcock. Their diagnosis recommended either hard contact lenses or surgery. Petitioner claims that he cannot tolerate hard contact lenses, which would leave surgery as the sole option. Since his transfer, Petitioner alleges that the medical staff has not followed up on his keratoconus diagnosis or the recommended course of treatment. Petitioner alleges that this complete neglect of his condition this falls below the prevailing medical standard of care in the community and is a violation of 28 V.S.A. § 801(a); see, e.g., *Carter v. Commissioner Vermont Department of Corrections*, Dckt. No. 23-CV-05082, 2025 WL 1309673, at * 1 (Mar. 26, 2025) (Tomasi, J.) (reviewing an amended complaint under Rule 75 under 28 V.S.A. § 801).

This amended petition is sufficient to create a limited Rule 75 review issue under the writ of mandamus. *Mullinnex v. Menard*, 2020 VT 33, ¶¶ 2, 3. The question of the present Rule 75 appeal becomes limited to whether the Department has, in fact, stopped treating Petitioner's Keratoconus and whether such a decision constitutes a violation of the prevailing medical standard. While Petitioner's revised complaint is cursory and conclusory on these points, it is sufficient under Vermont's notice pleading standards. *Bock v. Gold*, 2008 VT 81, ¶ 5 (mem.).

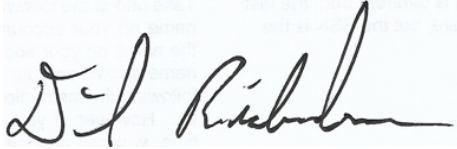
While Petitioner does not include a separate motion, the Court finds that the amendment is timely and permissible under Rule 15(a) and in the interests of justice. *Colby v. Umbrella, Inc.*, 2008 VT 20, ¶ 4. Therefore, the amendment is **Granted**. V.R.C.P. 15(a).

The Court will further note that at least one trial court has expressed some skepticism toward Rule 75 review of medical decisions. *Taylor v. Deml*, Dckt. No. 23-CV-00523, 2026 WL 1662678, at *5–6 (May 1, 2026) (McManus, J.). The Court reserves judgment on this issue as it has not been briefed by the parties. At least on initial review, *Taylor* appears to be factually distinguishable from the present matter in that it sought court review of the efficacy of the Departments’ course of treatment, which go beyond the limited scope of a Rule 75 review. In this case, the issue before the Court is more limited to simply whether there is any treatment occurring. Given the holding of *Mullinnex*, the Court finds that it has limited authority at this time to proceed.

For these reasons, the Court will permit the present matter to go forward under the amended petition. The Court will set this matter for a discovery conference as well as to address next steps in this matter under the limited scope of a Rule 75 review. Therefore, the Motion to Dismiss is **Denied** at this time.

So Ordered.

Electronically signed on 8/3/2026 4:54 PM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", is written over a light blue rectangular background.

Daniel Richardson
Superior Court Judge