

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

QUINTIN D. L'MINGGIO,

Plaintiff,

ORDER

v.

01-C-0559-C

PAMELA BARTELS, SHIRLEY OLSON,
DR. BOSTON and JANE DOES RNs/LPNs,

Defendants.

On June 20, 2002, I granted plaintiff Quintin D. L'Minggio's request for leave to proceed in forma pauperis on a claim that defendants were deliberately indifferent to his serious dental needs in violation of the Eighth Amendment.

Presently before the court is plaintiff's first motion to amend his complaint, in which he wishes to name Patty Boebel, Jolene Millin, Suzane Watters and Prison Health Services as defendants in lieu of defendants Jane Does RNs/LPNs that were named originally in his complaint. Plaintiff alleges that nurses Boebel, Millin and Watters were responsible for the distribution of inmate medication and were required to respond immediately to emergency calls for the period in question. Accordingly, Boebel, Millin and Watters will be added as

defendants in this lawsuit. Plaintiff may have until November 15, 2002, in which to complete the enclosed Marshals Service and summons forms and return them to the court so that his complaint may be served on defendants Patty Boebel, Jolene Millin and Suzane Watters. If plaintiff fails to complete the forms and return them to the court, I will assume that he is unable to locate these defendants and they will be dismissed from this case without prejudice.

As to naming Prison Health Services, a private entity, plaintiff has not alleged that there was a policy or practice in which Prison Health Services was deliberately indifferent to dental needs. See Baxter by Baxter v. Vigo County School Corp., 26 F.3d 728, 735 (7th Cir. 1994) (citing cases). Rather, he contends that Prison Health Services failed to abide by a contract with the state to provide adequate dental care. This does not establish the requisite policy or custom necessary to extend § 1983 liability to that entity. Accordingly, Prison Health Services will not be added as a defendant.

Apparently unaware that the court must screen all complaints filed by prisoners pursuant to 28 U.S.C. § 1915A, counsel for the original defendants filed an answer to the amended complaint on behalf of all defendants, including those defendants plaintiff proposed as a substitution for the Jane Doe defendants. In their answer to the amended complaint, the proposed defendants assert lack of personal jurisdiction as an affirmative defense, contending that they were not served properly with plaintiff's complaint. However,

if plaintiff complies with this order and provides the necessary Marshals Service and summons forms for defendants Boebel, Millin and Watters, defendants' premature affirmative defense may no longer be valid. In any event, because I have denied plaintiff leave to proceed in forma pauperis on his amended complaint against Prison Health Services, defendants will have to file an amended answer and affirmative defenses to the amended complaint. However, defendants need not file their amended answer until after defendants Boebel, Millin and Watters have been served with plaintiff's amended complaint.

ORDER

IT IS ORDERED that

1. Plaintiff Quintin D. L'Minggio's motion to amend his complaint is GRANTED in part and DENIED in part: It is GRANTED as to adding Patty Boebel, Jolene Millin and Suzane Watters as defendants in lieu of defendants Jane Does RNs/LPNs; it is DENIED as to adding Prison Health Services as a defendant;

2. Plaintiff may have until November 15, 2002, in which to complete the enclosed Marshals Service and summons forms and return them to the court so that his complaint may be served on defendants Patty Boebel, Jolene Millin and Suzane Watters. If, by November 15, 2002, plaintiff fails to complete the forms and return them to the court, I will assume that he is unable to locate these defendants and they will be dismissed from this case

without prejudice; and

3. Defendants may have 20 days from the last date on which plaintiff serves defendants Bobel, Millin and Watters with his amended complaint in which to file and amended answer to the amended complaint.

Entered this 30th day of October, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge