IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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KENNETH PAUL SARAUER,

Plaintiff,

v.

MATTHEW FRANK, JON LITSCHER, SM PUCKETT, SHARON ZUNKER, SANDRA HAUTAMAKI, JOHN RAY, CINDY O'DONNELL, WARDEN VERHAGEN, JAMES PARISI, DENNIS CLARK, DEBBIE LANCE, JOE MUSACCHIO, JAN MINK, JOANN ARNDT, LT. SCANLON, VIJOYA DASGUPTA, JAMES THORPE, TODD CRONIN, ELAINE WHEELER, NICOLE BELK and PAULA ARMENTROUT,

Defendants.

OPINION AND ORDER

04-C-273-C

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In this civil action for monetary relief, plaintiff Kenneth Paul Sarauer is suing defendants Matthew Frank, Jon Litscher, SM Puckett, Sharon Zunker, Sandra Hautamaki, John Ray, Cindy O'Donnell, Warden Verhagen, James Parisi, Dennis Clark, Debbie Lance, Joe Musacchio, Jan Mink, Joann Arndt, Lt. Scanlon, Vijoya Dasgupta, James Thorpe, Todd Cronin, Elaine Wheeler, Nicole Belk and Paula Armentrout for violations of his rights under the Fifth, Eighth and Fourteenth Amendments during the time he was incarcerated at the

Oakhill Correctional Institution. Jurisdiction is present. 28 U.S.C. § 1331.

Presently before the court are defendants' motion to dismiss all of plaintiff's claims for failure to state a claim upon which relief may be granted under Fed. R. Civ. P. 12(b)(6) and their motion to stay discovery.

As an initial matter, I note from defendants' assertions of the defense of sovereign immunity that defendants assume that plaintiff is suing them in their official capacities. I do not understand this to be the case. If it is, the Eleventh Amendment would bar that part of the suit. Marie O. v. Edgar, 131 F.3d 610, 615 (7th Cir. 1997) (Eleventh Amendment bars suits against state employees acting in their official capacity). The bar does not apply if the plaintiff seeks only prospective injunctive relief against the state official, id.; Ex parte Young, 209 U. S. 123, 159-160 (1908), but in this case, plaintiff is seeking monetary relief only. Therefore, I view the case as one brought against defendants in their personal capacities.

I will grant defendants' motion to dismiss in part and deny it in part. Plaintiff has not identified any defendant who was allegedly involved personally in 1) putting a mixture of bacteriocide, fungicide, virocide and a perfume into the ventilation system and failing to remove plaintiff to a single cell for medical reasons; 2) ignoring plaintiff's pleas for help with regard to his exposure to perfumed substances; 3) waxing the prison floor, causing plaintiff to become sick; 4) causing plaintiff to slip off the sidewalk and injure his rotator cuff; 5)

causing plaintiff to fall and split his head open in the chapel and taking him to his cell rather than to a hospital or doctor; 6) refusing to bring plaintiff water, high blood pressure medication and a bed pan while plaintiff was confined to his cell bed; 7) refusing to empty plaintiff's urinal; 8) refusing to treat plaintiff's injury from slipping on the shower floor; 9) not giving plaintiff permission to wear low cut shoes; 10) not allowing plaintiff to go to school, work or participate in the hobby room; and 11) refusing to give plaintiff a medical slip for an extra pair of gloves. I will grant defendants' motion to dismiss those claims without prejudice to plaintiff's amendment of his complaint to name the persons allegedly responsible for these acts and omissions.

In addition, I will grant defendants' motion to dismiss plaintiff's Eighth Amendment claims against defendants Frank, Litscher, Puckett, Zunker, Hautamaki, Ray, O'Donnell, Verhagen, Parisi, Lance, Mink, Arndt, Scanlon, Wheeler and Arementrout. Other than mentioning the names of these defendants, plaintiff fails to state any facts about specific actions that these defendants took in violation of his constitutional rights.

I will grant defendants' motion to dismiss plaintiff's claims against defendants Belk and Musacchio. Because plaintiff was free to act on his own behalf once he was released from prison, plaintiff has no viable claim against defendant Belk. Moreover, because the Constitution does not require prison staff to insure plaintiff's comfort upon release from prison, plaintiff has no federal claim against defendant Musacchio.

Finally, I will grant defendants' motion to dismiss plaintiff's Eighth Amendment claims that 1) defendant Clark ordered the radiators to be painted with an exterior, solvent-based paint that caused plaintiff to become ill; 2) defendant Dasgupta ordered plaintiff to get off his bed to get water; 3) defendant Clark refused to order anti-slip strips for the shower floor, with the result that plaintiff fell and pulled the muscles in his groin area and hurt his ankle; 4) defendants Thorpe and Dasgupta refused to provide plaintiff with sufficient pain medication and instead told him to purchase pain relievers from the canteen; 5) upon plaintiff's release from prison, defendant Belk failed to check plaintiff's home, pick him up at the bus station, take him home and help him get his car started; and 6) defendant Musacchio failed to provide plaintiff with warmer clothes and cash upon plaintiff's release from prison. Finally, because plaintiff has not alleged any facts supporting his conclusory allegation that his Fifth Amendment claim against self-incrimination was violated when he was asked to sign a release of his psychological assessment, I will grant defendants' motion to dismiss plaintiff's Fifth Amendment claim against defendant Belk.

However, I will deny defendants' motion as it relates to plaintiff's Eighth Amendment claims that 1) defendant Dasgupta took an x-ray of plaintiff's elbow rather than his shoulder; 2) defendant Clark maliciously and sadistically required plaintiff to sit at a 45 degree angle in the TV room simply to cause plaintiff pain; 3) defendant Clark used excessive force when he hit plaintiff with a chair; 4) defendant Dasgupta refused plaintiff's request to be

handcuffed in a manner that would reduce the pain of his rotator cuff injury; 5) defendant Clark refused to allow plaintiff to wear socks over his gloves; 6) defendant Thorpe provided poor dental treatment; and 7) defendant Cronin provided poor treatment while examining plaintiff's ears.

In addition, I will deny defendants' motion to dismiss plaintiff's Fourteenth Amendment claims that defendant Clark 1) required plaintiff to sit at a 45 degree angle in the TV room but did not require other inmates to sit that way; 2) ordered plaintiff to shower and wash his clothes and cell daily when other inmates did not receive such orders; 3) conducted extensive searches of plaintiff's room for contraband but only superficial searches of the rooms of inmates who had "true contraband"; 4) allowed others to talk, laugh and congregate in the halls but would yell at plaintiff and give him "warnings" if plaintiff waved at a friend as he passed by his cell; and 5) was deliberately indifferent to plaintiff's safety on June 10, 2002. Finally, I will deny defendants' motion to dismiss plaintiff's Fourteenth Amendment claim that defendant Thorpe refused to grant plaintiff's request for a root canal and partial denture but provided that type of dental work for other inmates.

As for defendants' motion to stay discovery, the motion will be denied as unnecessary because I do not need to reach the issue of qualified immunity.

For the sole purpose of deciding this motion, I find that the well-pleaded allegations of plaintiff's complaint and its attachments fairly state the following.

ALLEGATIONS OF FACT

A. The Parties

Plaintiff is a disabled veterinarian who hurt himself on the job 30 years ago. Plaintiff suffers from various illnesses, such as neurotoxic hypersensitivity to perfumed substances such as deodorant, body lotion and aftershave. In addition, plaintiff suffers from Raynaud's disease (a condition in which the arteries carrying blood to the fingers or toes constrict on exposure to cold or during emotional upset. American Medical Association's Complete Medical Encyclopedia 1053 (Jerrold B. Leikin & Martin S. Lipsky, ed. 2003)).

Plaintiff was incarcerated at the Oakhill Correctional Institution in Oregon, Wisconsin for two years after his conviction of battery. He was released on parole on December 16, 2003.

Defendant Matthew Frank succeeded defendant Jon Litscher as Secretary of the Wisconsin Department of Corrections. Defendants SM Puckett, Sandra Hautamaki, John Ray and Cindy O'Donnell are employed at the Wisconsin Department of Corrections. Defendant Sharon Zunker is the supervisor of health services for the Wisconsin Department of Corrections. Defendant Nicole Belk is a parole agent and defendant Paula Arementrout is her supervisor. The following defendants work in the following capacities at the Oakhill Correctional Institution: 1) defendant Verhagen is the warden; 2) James Parisi is Security

Director; 3) Dennis Clark, former guard; 4) Debbie Lance is an inmate complaint investigator; 5) Joe Musacchio is plaintiff's social worker; 6) Jan Mink serves on the parole review committee and is responsible for transfers within the prison, 7) Joann Arndt serves as head of the parole review committee; 8) Lt. Scanlon is an officer on the parole review committee; 9) defendant Vijoya Dasgupta is a physician; 10) defendant James Thorpe is a dentist; 11) Todd Cronin is a nurse; and 12) Elaine Wheeler is the health services unit supervisor.

B. Exposure to Scents

During January 2002, while plaintiff was confined at the Dodge Correctional Institution, he became violently ill when maintenance workers put a mixture of bacteriocide, fungicide, virocide into the ventilation system, along with a perfume to cover the smell. Plaintiff gagged, retched, coughed, cried and pounded and kicked his cell door until staff let him out. Once out, plaintiff collapsed onto a table. Staff put him in a wheelchair and took him to the infirmary where he was hospitalized for five days. For three of those days he was given oxygen. Staff should have removed plaintiff when they sanitized the ventilation system. They knew or should have known about his severe reaction to perfumed substances. Despite their knowledge, institution staff refused to give plaintiff a medical permit for a single cell.

Plaintiff requested a single cell for medical reasons. Defendants Dasgupta, Cronin, Parisi, Verhagen, Clark, Lance, Litscher, Frank, Hautamki, Ray, O'Donnell, Musacchio, Mink, Arndt, Scanlon, Puckett, Zunker, and Wheeler knew about plaintiff's inability to tolerate perfumed substances and knew that plaintiff's cellmates were using such substances. However, multiple Department of Corrections personnel ignored plaintiff's pleas for help and refused to grant his request for a single cell for medical reasons. Ultimately, plaintiff was assigned to a single cell by rotation, not for medical reasons.

On July 18, 2002, defendant Clark ordered the radiators to be painted with an exterior, solvent-based paint. Plaintiff became very ill and experienced coughing, vomiting, gagging, headache, nausea and dizziness. Staff called the health services unit, which advised plaintiff to drink more water. On July 23, 2002, plaintiff became very sick because prison staff waxed the floor.

C. Falling Incidents

On March 16, 2002, plaintiff fell at Oakhill Correctional Institution when his cane slipped off the sidewalk because of a 3-5 inch depression along the sidewalk caused by erosion. Plaintiff hurt the rotator cuff in his shoulder. Plaintiff was given an arm sling. Plaintiff requested x-rays of his shoulder. After a week or two, plaintiff was called to the health services unit for x-rays of his elbow. When plaintiff explained to the x-ray technician

that it was his shoulder that was injured, the technician contacted defendant Dasgupta to relay plaintiff's concern. Defendant Dasgupta confirmed the order for x-rays of plaintiff's elbow. The eroded depressions in the sidewalk were filled in with dirt within a month after plaintiff's fall.

On May 18, 2002, plaintiff fell and split his head open when a pamphlet laden table obstructed his view of some steps in a dimly lit sanctuary at the Oakhill Correctional Institution chapel. Plaintiff was taken to his cell rather than to a hospital or doctor. Although plaintiff could feel his limbs, he had severe head, neck and back pain, blurred vision and dizziness and was unable to move for the first one or two days after the fall.

While plaintiff was confined to his cell bed, staff refused to bring him water, high blood pressure medication or a bed pan. Sergeant O'Neal told plaintiff that defendant Dasgupta believed that if plaintiff wanted water, he would have to get off his bed to get it. Staff gave plaintiff a urinal, but no one would empty it and his cellmate tipped it over. The urine ran down the hot radiator pipes causing the cell to smell terrible. Staff provided plaintiff with meals, but he could not eat because of pain and nausea and for fear of messing his bed because he had no bed pan.

Three days after the fall, defendant Dasgupta examined plaintiff by taking his blood pressure and temperature. Dasgupta promised plaintiff a single cell in C-7, the same unit in which he was located, if he would get up and go to the bathroom. By then, the pain had

subsided enough that plaintiff was able to walk to the bathroom with the aid of a walker.

Dasgupta ordered plaintiff to a cell in C-6, the unit for the sick and elderly, rather than C-7 as she had promised. In C-6, plaintiff met defendant Clark and Sgt. Holton, two of the harshest guards in the prison system.

On November 3, 2002, plaintiff fell in the shower because defendant Clark had refused to order anti-slip strips for the floor, despite repeated requests. Prior to plaintiff's fall, five inmates had slipped on the floor and hurt themselves. As a result of the fall, plaintiff pulled the muscles in his groin area and hurt his ankle. The health services unit refused to treat plaintiff's injury. Plaintiff had open sores on his ankle for months because his hightop boots rubbed the area. The health services unit would not give plaintiff permission to wear low cut shoes that would have prevented the lesions. Instead, the unit ordered plaintiff to walk on the grass to lessen the shock to his feet. In January 2004, plaintiff's "street doctor" examined plaintiff's ankle and noted scarring from the incident.

D. Treatment by Defendant Clark

After defendant Dasgupta ordered plaintiff to transfer to cell block C-6, plaintiff shared a cell with a very loud and abusive inmate, who attacked him. On June 10, 2002, plaintiff asked for protective custody and refused to return to his cell. Instead of providing plaintiff with protective custody, defendant Clark gave plaintiff two major and two minor

tickets for disruption and disobedience and sent him to the "hole," where he spent 18 days in isolation. In addition, Clark gave plaintiff 10 days' room confinement as punishment. Plaintiff's cellmate did not receive any punishment. After 18 days, plaintiff returned to C-6 and staff assigned him to another cell with a more tolerable cellmate.

On July 5, 2002, plaintiff was sick and still suffering from headaches and neck and back pain from the chapel fall. Plaintiff told defendant Clark that he was very sick. While plaintiff was lying on his bed, face down, Clark came into the cell and in a fit of rage kicked plaintiff's bed and foot locker and hit his table with chairs, making as much noise as possible. Clark commented that plaintiff was faking his sickness and accused him of being lazy. Then, Clark hit plaintiff on his shoulder and collar bone area with a chair, causing bruising and pain and making it difficult for plaintiff to use his walker. Plaintiff did not provoke Clark's attack and has been very respectful to all prison staff. Plaintiff received no medical treatment for the incident.

Plaintiff's cellmate advised plaintiff to report the chair incident to defendant Lance, an institution complaint investigator, which plaintiff did. Lance called plaintiff to her office and plaintiff wrote the complaint in front of her. Lance notarized the complaint and told plaintiff that there was nothing plaintiff could do about being hit by Clark until he got out of prison. Lance stated that plaintiff could not know what disciplinary action, if any, would be taken against Clark because it was now in the hands of "security" and "the union."

Defendant Clark reminded plaintiff how easy it would be for him to put him back in the "hole."

On April 9, 2003, Clark ordered plaintiff to sit in the television room bent forward at a 45 degree angle so that his back would not touch the back of his chair. Clark knew that plaintiff had a back injury and that sitting at such an angle was the most painful position in which to sit. Plaintiff was the only inmate required to sit at an angle. As a result, plaintiff was effectively excluded from using the television room because Clark would not allow him to stand in the room. Other inmates were allowed to stand in the TV room.

Defendant Clark ordered plaintiff to wash his cell on a daily basis. Plaintiff was the only inmate required to do this. In addition, plaintiff was the only inmate required to shower and wash his clothes every day. Prison regulations require inmates to shower two times each week. Some inmates rarely showered and smelled so bad that plaintiff could hardly eat when they would pass his table. Clark told plaintiff to shower daily because plaintiff had nothing else to do. Plaintiff was not allowed to go to school or do any kind of work. For most of the two years he was imprisoned, he stayed in bed. He could not go to the hobby room because of the use of solvents that made plaintiff sick.

On December 17, 2002, Clark directed plaintiff not to walk on the recreation area grass because "walking is not recreation." Plaintiff was the only inmate to whom Clark gave this order. The health services unit had ordered plaintiff to walk on the grass ever since he

had fallen in the shower and hurt his groin and ankle.

Defendant Clark conducted extensive searches of plaintiff's room and issued him tickets for minor infractions such as having a paper clip or rubber band in his room. Clark labeled these items contraband. Clark conducted superficial room searches of inmates who had true contraband. In addition, Clark would allow others to talk, laugh and congregate in the halls but would yell at plaintiff and give him "warnings" if plaintiff waved at a friend as he passed by his cell. Clark stated that plaintiff's use of his hands to wave was a form of "talking." Sometimes Clark would lunge at plaintiff as he passed him in the hall just to incite him so that Clark could give him major tickets.

On November 20, 2002, Clark ordered plaintiff to sweep the rear area of C-6 even though it was cold and plaintiff had only a thin pair of summer gloves. Plaintiff suffered from cold and very painful hands and needed to keep his hands warm because of his Raynaud's disease. Defendant Clark and the health services unit knew that plaintiff had Raynaud's disease. The health services unit refused to give plaintiff a medical slip for an extra pair of gloves, so plaintiff wore socks over his gloves when he went for a walk. Clark ordered plaintiff to stop putting socks on like that. Plaintiff appealed the issue and eventually was allowed an extra pair of gloves.

E. Inappropriate Medical Response

Oakhill Correctional Institution staff require inmates assigned to the "hole" to put their hands behind their backs to be handcuffed every time the cell is opened. When plaintiff was in the hole, he asked to be handcuffed with his hands to the front because rear handcuffing caused plaintiff extreme shoulder pain. Security called defendant Dasgupta concerning plaintiff's request. Dasgupta refused plaintiff's request because plaintiff's x-rays showed no shoulder injury. However, Dasgupta had refused to take x-rays of plaintiff's shoulder after he fell in the chapel, taking x-rays of his elbow instead.

In August or September 2003, defendant Thorpe, a dentist at Oakhill Correctional Institution, pulled several of plaintiff's good teeth along with bad ones, in order to make a full upper plate, which is easier to make than a partial plate. In addition, Thorpe cut a large piece of plaintiff's right front gum. The plate did not fit plaintiff's mouth and he has not chewed with the affected teeth at all. Plaintiff's left gum protrudes farther than the right, causing plaintiff's bottom teeth to hit one spot frequently, causing him pain. Defendant Thorpe refused to provide a gum protector for relief or adjust the upper plate so that it would fit, saying that plaintiff could get a new plate when he was released from prison. Defendants Thorpe and Dasgupta refused to provide plaintiff with sufficient pain medication and instead told him to purchase pain relievers from the canteen. Moreover, defendant Thorpe filled two bottom teeth that promptly became abscessed. Thorpe responded by pulling both teeth. Plaintiff asked Thorpe to perform a root canal or make

partial plates for him. Thorpe stated that Oakhill Correctional Institution does not perform root canals or make partial plates. Plaintiff learned from several inmates that Thorpe had provided that type of dental work for them. Plaintiff requires extensive dental work to correct Thorpe's malpractice.

On February 15, 2003, plaintiff went to the health services unit because of severe fatigue, headaches, chest pains and dizziness. Defendant Todd Cronin examined plaintiff's ears with an otoscope without first putting a protective, disposable covering on it, as required to prevent infection from one inmate to another. Soon after, plaintiff developed raging bilateral ear infections. The health services unit staff would not give plaintiff ear drops or treat the infection, but instructed him to buy whatever he could from the canteen, which he did. Plaintiff returned to the health services unit and saw Dr. Springer, who diagnosed him with middle ear abscess. As a result of defendant Cronin's examination, plaintiff suffers from noises such as hums, buzzes or ringing in his ear and head and has lost some hearing (especially in his right ear) as well as his balance. Plaintiff still needs medical treatment for infection in both ears.

F. Plaintiff's Release from Prison

Before plaintiff's release from prison, defendant Musacchio assured him that he would have plenty of warm clothes to wear on release. Plaintiff was concerned about having

adequate clothing because of his Raynaud's Disease. However, when plaintiff was released from prison on December 16, 2003, prison staff provided him with only underwear, a sweatshirt, thin summer dress pants, socks and tennis shoes. They did not give him a cap, coat, gloves, belt and boots. In addition, prison staff failed to give plaintiff cash. The weather was cold, snowy and somewhat windy. Plaintiff's hands and feet were extremely cold, numb, and painful and would not warm up even in the bus station. Plaintiff suffered from angst and frustration because of this incident.

Before plaintiff was released from prison, he wrote to defendant Belk to tell her that he had no one to meet him at the bus station and take him to his home which was 20 miles into the country or to check on his home to determine whether it was habitable and whether any wood was available to provide plaintiff's sole source of heat. Defendant Belk failed to check plaintiff's home, which had been empty for two years. She did not agree to pick him up at the bus station but insisted instead that he come directly to her office once he got off the bus. She refused to take plaintiff to his home and failed to help him get his car started. As a result, plaintiff was stranded with two big boxes of legal papers ($2,000 worth of transcripts alone) and one other box that he could not carry. Plaintiff had no cash to make a phone call and worried that the police might pick him up for vagrancy and send him back to prison. Plaintiff survived this ordeal because he remembered an "800" number of a businessman in Iowa. This man drove plaintiff to defendant Belk's office. Plaintiff's early

parole reports contain information about this incident and he sent these reports to defendant Armentrout and the Department of Corrections.

G. Fifth Amendment Claim

When plaintiff's parole agent, defendant Belk, ordered plaintiff to undergo a psychological assessment, she made plaintiff sign a release of information, telling him that if he did not sign the release, he could be sent back to prison for disobeying orders.

DISCUSSION

A. Personal Involvement

It is well established that liability under § 1983 must be based on a defendant's personal involvement in the alleged constitutional violation. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995); Del Raine v. Williford, 32 F.3d 1024, 1047 (7th Cir. 1994); Morales v. Cadena, 825 F.2d 1095, 1101 (7th Cir. 1987); Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983). "A causal connection, or an affirmative link, between the misconduct complained of and the official sued is necessary." Wolf-Lillie, 699 F.2d at 869. It is not necessary that a defendant participate directly in the deprivation; the official is sufficiently involved "if she acts or fails to act with a deliberate or reckless disregard of plaintiff's constitutional rights, or if the conduct causing the constitutional deprivation

occurs at her direction or with her knowledge and consent." Smith v. Rowe, 761 F.2d 360, 369 (7th Cir. 1985).

Plaintiff alleges the following constitutional violations without linking the violation to any named defendant: 1) putting a mixture of bacteriocide, fungicide, virocide and a perfume into the ventilation system and failing to remove him to a single cell; 2) ignoring plaintiff's pleas for help with regard to perfumed substance exposure and refusing to give plaintiff a single cell for medical reasons; 3) waxing the prison floor, causing plaintiff to become sick; 4) failing to maintain a sidewalk, causing plaintiff to fall and injure his rotator cuff; 5) failing to insure good visibility in the chapel, causing plaintiff to fall and split his head open in the chapel and failing to take him to a hospital or doctor rather than his cell; 6) refusing to bring plaintiff water, high blood pressure medication or a bed pan while he was confined to his cell bed; 7) refusing to empty his urinal; 8) refusing to treat plaintiff's injury from slipping on the shower floor and not giving him permission to wear low cut shoes; 9) refusing to allow plaintiff to go to school, work or participate in the hobby room; and 10) refusing to give plaintiff a medical restriction for an extra pair of gloves.

Instead of identifying a specific defendant for each of these alleged constitutional violations, plaintiff uses generic terms like "prison staff," "maintenance" or "the health services unit" to describe the individuals who allegedly violated his rights. These descriptions are not specific enough to link one or more of the named defendants to the constitutional

violation. See, e.g., Patton v. Przybylski, 822 F.2d 697, 701 (7th Cir. 1987) (plaintiff's boilerplate allegation falls far short of alleging defendant's personal involvement in constitutional violation). Therefore, I will grant defendants' motion to dismiss those claims.

At this time, it is unnecessary to consider defendants' qualified immunity defense as to plaintiff's claims of exposure to perfumed substances. Therefore, I will deny defendants' motion to stay discovery as unnecessary. If plaintiff amends his complaint to cure his failure to name the particular defendants who took the allegedly unconstitutional actions against him, defendants can renew their motion for a stay of discovery.

B. Eighth Amendment

In order to state a claim under the Eighth Amendment, plaintiff's allegations about prison conditions must satisfy a test that involves both an objective and subjective component. Farmer v. Brennan, 511 U.S. 825, 834 (1994). He must show that the conditions to which he was subjected were "sufficiently serious" (objective component) and that defendants were deliberately indifferent to his health or safety (subjective component). Id. In determining deliberate indifference, if the facts show that a risk is so obvious that a jury may reasonably infer actual knowledge on the part of the defendants, the subjective component of the deliberate indifference standard is satisfied. Id. at 842. Deliberate indifference entails more than "mere negligence." Id. at 836.

As an initial matter, I note that plaintiff fails to connect defendants Frank, Litscher, Puckett, Zunker, Hautamaki, Ray, O'Donnell, Verhagen, Parisi, Lance, Mink, Arndt, Scanlon, Wheeler and Armentrout to any Eighth Amendment violation. Other than mentioning their names, plaintiff fails to state any facts about specific actions that these defendants took to violate his constitutional rights. Therefore, I will grant defendants' motion to dismiss plaintiff's Eighth Amendment claims against these defendants.

Plaintiff argues that defendant Clark violated his Eighth Amendment rights when Clark ordered the radiators to be painted with an exterior, solvent-based paint, causing plaintiff to become very ill. Assuming plaintiff's illness was "sufficiently serious," plaintiff fails to allege any facts that Clark knew that plaintiff was hypersensitive to certain smells, that solvent-based paint was a type of chemical to which plaintiff was sensitive, that plaintiff would be able to smell the paint from the radiators or that plaintiff would become ill from the paint smell. No jury could find from plaintiff's sparse factual allegations that defendant Clark had knowledge of plaintiff's sensitivity and acted deliberately to cause plaintiff to become ill. Therefore, I will grant defendants' motion to dismiss as to this claim.

Next, plaintiff argues that defendant Dasgupta was deliberately indifferent to plaintiff's serious medical needs when she ordered an x-ray of his elbow instead of his shoulder. The Eighth Amendment requires the government "to provide medical care for those whom it is punishing by incarceration," Snipes v. DeTella, 95 F.3d 586, 590 (7th Cir.

1996) (citing Estelle v. Gamble, 429 U.S. 97, 103 (1976)), but this does not mean that prisoners are entitled to whatever medical treatment they desire. To state an Eighth Amendment claim of cruel an unusual punishment, a prisoner must show that 1) he had a serious medical need and 2) the defendants were deliberately indifferent to it. Garvin v. Armstrong, 236 F.3d 896, 898 (7th Cir. 2001); see also Estelle, 429 U.S. at 106 ("a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs"). The Court of Appeals for the Seventh Circuit has defined "serious medical needs" as encompassing not only conditions that are life-threatening or that carry risks of permanent, serious impairment if left untreated, but also those in which the deliberately indifferent withholding of medical care results in needless pain and suffering. Gutierrez v. Peters, 111 F.3d 1364, 1371 (7th Cir. 1997). Deliberate indifference in the denial or delay of medical care is evidenced by a defendant's actual intent or reckless disregard. Reckless disregard is characterized by highly unreasonable conduct or a gross departure from ordinary care in a situation in which a high degree of danger is readily apparent. Benson v. Cady, 761 F.2d 335, 339 (7th Cir. 1985).

The x-ray technician informed Dasgupta that plaintiff injured his shoulder, but Dasgupta ordered x-rays of plaintiff's elbow. A reasonable jury could infer that an untreated shoulder injury could result in needless pain and suffering and that defendant Dasgupta knew plaintiff injured his shoulder but chose to treat a different area of his arm. Thus, I find

that plaintiff has stated a claim that defendant Dasgupta was deliberately indifferent to plaintiff's serious medical needs when she ordered an x-ray of plaintiff's elbow instead of his shoulder. I will deny defendants' motion to dismiss this claim.

Plaintiff asserts that defendant Dasgupta violated his Eighth Amendment rights when she determined that he could get out of bed to get water after his fall in the prison chapel, despite the fact that plaintiff experienced pain in his head, neck and back as well as blurred vision and dizziness. However, plaintiff does not allege facts from which a jury could find that Dasgupta knew that her decision to encourage plaintiff to get up and move about would subject him to serious risks to his health and that she was deliberately indifferent to those risks. Rather, plaintiff's allegations appear to be nothing more than an expression of his disagreement with Dasgupta's medical judgment. A difference of opinion about the type of care provided does not constitute deliberate indifference. Abdul-Wadood v. Nathan, 91 F.3d 1023, 1025 (7th Cir. 1996); Walsh v. Mellas, 837 F.2d 789(7th Cir. 1988). Therefore, I will grant defendants' motion as to this claim.

According to plaintiff, defendant Clark violated plaintiff's Eighth Amendment rights when he refused to order anti-slip strips for the shower floor, causing plaintiff to fall and pull the muscles in his groin area and hurt his ankle. At most, these allegations make out a claim of negligence, which is not actionable under the Eighth Amendment. Snipes, 95 F.3d at 590-91 (inadvertent error, negligence, gross negligence or even ordinary malpractice are

insufficient grounds for invoking Eighth Amendment). A reasonable jury could not infer from plaintiff's allegations that Clark knew with certainty that plaintiff would fall and hurt himself in the shower in the absence of anti-slip strips. Therefore, I will grant defendants' motion as to plaintiff's slip and fall claim against Clark.

Plaintiff alleges that defendant Clark was deliberately indifferent to a risk of serious harm when he sent plaintiff to the "hole" instead of taking him into protective custody as plaintiff requested. The only allegations of fact that plaintiff alleges in support of this claim is that his cellmate attacked him at some unknown time and that on June 10, 2002, plaintiff asked for protective custody and refused to return to his cell, at which time Clark charged him with misconduct and put him in segregation.

The failure of a prison official to protect an inmate from an assault by another inmate may violate the Eighth Amendment if the official acted with reckless disregard or with deliberate indifference to the prisoner's safety. Farmer v. Brennan, 511 U.S. 825, 836 (1994); Jelinek v. Greer, 90 F.3d 242, 244 (7th Cir. 1996). Plaintiff's allegations do not make it clear that his assault and his request for protective custody are somehow linked. He alleges first that he was assaulted, but he does not identify when that incident occurred. He then alleges that he asked Clark for protective custody and Clark directed him back to his cell. Plaintiff does not say how soon he went to Clark or what he told Clark. Despite these gaps in plaintiff's story, I must deny defendants' motion to dismiss this claim.

In the Seventh Circuit a complaint does not need to contain "all of the facts that will be necessary to prevail." Hoskins v. Poelstra, 320 F. 3d 761, 764 (7th Cir. 2003). A plaintiff is allowed to describe his claim "briefly and simply." Fed. R. Civ. P. 8; Shah v. Inter-Continental Hotel Chicago Operating Corp., 314 F.3d 278, 282 (7th Cir. 2002); see also Walker v. Thompson, 288 F.3d 1005, 1007 (7th Cir. 2002) ("[T]here is no requirement in federal suits of pleading the facts or the elements of a claim."). So long as the complaint gives the defendant sufficient notice of the claim to file an answer, it "cannot be dismissed on the ground that it is conclusory or fails to allege facts." Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002).

Plaintiff's complaint gives defendant Clark notice of his claim of deliberate indifference to his safety. Thus, I am constrained by Seventh Circuit law to find that plaintiff has stated a claim against defendant Clark even though plaintiff has not clarified at this early stage the facts upon which he bases his claim.

Plaintiff alleges that defendant Clark used excessive force in violation of the Eighth Amendment when Clark hit him with a chair. The Eighth Amendment protects inmates from the "the unnecessary and wanton infliction of pain." Hudson v. McMillian, 503 U.S. 1, 5 (1992) (citations omitted). In deciding whether plaintiff has alleged an arguable basis for his Eighth Amendment claim of excessive force by prison officials, it is necessary to determine whether the facts alleged in plaintiff's complaint support an inference that the

alleged force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically to cause harm. Id. at 6-7 (1992). The court may consider factual allegations revealing the need for the application of force, the relationship between that need and the amount of force used, the threat reasonably perceived by the officers, and any efforts made to mitigate the severity of the officers' response. Id.; Whitley v. Albers, 475 U.S. 312, 321 (1986). Information about the severity of the inmate's injury is relevant to the resolution of the claim, but the absence of allegations of serious injury is not conclusive. Hudson, 503 U.S. at 7. Even insignificant injury can violate the Eighth Amendment's prohibition against cruel and unusual punishment if it results from force carried out maliciously and sadistically. Id. at 9. However, "not every malevolent touch by a prison guard gives rise to a federal cause of action." Id. The standard for determining which malevolent touches are protected under the Eighth Amendment is whether the touching is "repugnant to the conscience of mankind." Id. at 9-10 (citations omitted).

According to plaintiff's allegations, Clark hit plaintiff with a chair while plaintiff was lying in his bed. Assuming plaintiff's allegations are true, defendant Clark's action against plaintiff appears malicious. It would be hard to imagine a situation in which using a chair to hit an inmate would be classified as a reasonable use of force. A reasonable jury could infer that such a use of force is "repugnant to the conscience of mankind." Therefore, I will deny defendants' motion to dismiss as it relates to plaintiff's claim that defendant Clark

violated the Eighth Amendment when he hit plaintiff with a chair.

In addition, plaintiff asserts that defendant Clark was deliberately indifferent when he required plaintiff to sit at a 45 degree angle in the television room. Plaintiff states that defendant Clark knew that plaintiff had a back injury and that sitting at such an angle was painful to him. Requiring an inmate with a known back injury to sit in an uncomfortable position creates an obvious risk of causing needless pain and suffering. Hence, plaintiff has alleged sufficient facts to state an Eighth Amendment claim against defendant Clark.

I will not grant defendants' motion to dismiss plaintiff's claim that defendant Clark was deliberately indifferent to plaintiff's serious condition when Clark refused to allow plaintiff to wear socks over his gloves. Plaintiff alleges that defendant Clark and the health services unit knew that plaintiff suffered from Raynaud's disease. He does not allege that defendant Clark knew that Raynaud's disease caused plaintiff to suffer from cold and very painful hands and that to cure the effects of the disease, plaintiff needed to wear extra gloves, but it is not unreasonable to think that a person who knew of Raynaud's disease would know that cold would affect plaintiff's hands adversely. At this stage, I am not prepared to find that plaintiff has failed to state a claim upon which relief can be granted that Clark violated the Eighth Amendment when he refused to allow plaintiff to wear socks over his gloves.

Plaintiff alleges that defendant Dasgupta was deliberately indifferent to plaintiff's serious medical needs when she refused plaintiff's request to be handcuffed in front of his

body rather than in the back. According to plaintiff, Dasgupta refused to grant plaintiff's request because plaintiff's x-rays had not shown any shoulder injury. Plaintiff notes, however, that Dasgupta had refused to take x-rays of plaintiff's shoulder after plaintiff fell in the chapel. Because this allegation is connected to Dasgupta's alleged deliberate indifference to the x-ray of plaintiff's shoulder, I will deny defendants' motion to dismiss this claim. A reasonable jury could infer that defendant Dasgupta knew that plaintiff had injured his shoulder and that refusing plaintiff's request to be handcuffed in front created an obvious risk of causing needless pain and suffering.

Plaintiff alleges that he has a number of dental problems as a result of defendant Thorpe's treatment of him. At this stage of the proceedings, it is difficult to determine whether these dental conditions qualify as serious medical needs and whether defendant Thorpe's treatment of plaintiff's teeth is more than mere negligence. As noted earlier, inadvertent error, negligence, gross negligence or even ordinary malpractice are insufficient grounds for invoking the Eighth Amendment. Snipes, 95 F.3d at 590-91. However, from plaintiff's factual allegations, a reasonable jury could infer that defendant Thorpe intended to injure plaintiff or that his treatment of plaintiff was a gross departure from ordinary dental care. Therefore, I will deny defendants' motion to dismiss plaintiff's claim that defendant Thorpe provided inadequate dental treatment.

I reach a similar conclusion with respect to plaintiff's claim against defendant Cronin.

Plaintiff alleges that because defendant Cronin failed to put a protective covering on the otoscope, plaintiff developed a bilateral ear infection that he treats to this day. A reasonable jury could infer from plaintiff's allegations that defendant Cronin intended plaintiff's ears to become infected or that failing to put a protective covering on the otoscope is a gross departure from the ordinary care in a situation in which a high degree of danger is readily apparent. Because plaintiff alleges sufficient facts to infer deliberate indifference on the part of defendant Cronin, I will deny defendants' motion to dismiss this claim.

I will grant defendants' motion to dismiss plaintiff's claim that defendants Thorpe and Dasgupta refused to provide plaintiff with sufficient pain medication, instead referring plaintiff to the canteen. Plaintiff alleges nothing more than a difference of opinion as to what constitutes sufficient pain medication. Plaintiff's disagreement with the medical judgments of the defendants is not enough to state an Eighth Amendment claim of medical mistreatment. See, e.g., Walsh v. Mellas, 837 F.2d at 794 ("[A] prison doctor's failure to order an X ray of plaintiff's lower back did not violate the Eighth Amendment even though it might have amounted to an act of medical malpractice.").

C. Violations Upon Release from Prison

Plaintiff asserts that defendant Belk, plaintiff's parole agent, violated his Eighth Amendment rights when she failed to check plaintiff's home, pick him up at the bus station,

take plaintiff home and help him get his car started upon plaintiff's release from prison. Although plaintiff might have wanted defendant Belk to provide him these services, her failure to do so does not rise to the level of a constitutional violation. According to DeShaney v. Winnebago County Social Services Dept., 489 U.S. 189, 200 (1988), "when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs – *e.g.*, food clothing, shelter, medical care, and reasonable safety – it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause." This duty to protect imposed on the state does not derive from the state's intent to help an inmate, but from the inmate's inability to act on his own behalf. Id.

Once plaintiff was released from prison, he had the ability to act on his own behalf. If his home was not habitable, he was free to seek shelter elsewhere (provided he kept his parole agent aware of his place of residence). Indeed, plaintiff found alternative transportation from the bus station by calling a friend in Iowa. "[T]he State does not become the permanent guarantor of an individual's safety by having once offered him shelter." Id. at 201. Because plaintiff was free to act on his own behalf upon release from prison, plaintiff has no viable Eighth Amendment claim against defendant Belk.

For the same reasons, I will grant defendants' motion to dismiss plaintiff's claims against defendant Musacchio, plaintiff's social worker, for failing to follow through on his

promise to provide him with warmer clothes upon plaintiff's release from prison. Again, plaintiff may have preferred that the prison provide him with a cap, coat, gloves, belt and boots, but the Eighth Amendment does not require prison staff to insure plaintiff's comfort once they release him from prison. Defendant Musacchio may have breached an agreement by promising plaintiff warm clothes to wear upon release from prison and then failing to follow through on that promise, but a breach of contract is not the same thing as a constitutional violation. Id. at 202 (not all common law duties owed by government actors were constitutionalized by the Fourteenth Amendment). If plaintiff so desires, he is free to pursue a breach of contract claim against defendant Musacchio in state court. He cannot pursue his claim against defendant Musacchio in federal court.

B. Equal Protection Violations

The equal protection clause of the Fourteenth Amendment guarantees that "all persons similarly situated should be treated alike." City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439 (1985). "[A]n individual may state a 'class of one' equal protection claim if she has 'been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.'" Martin v. Shawano-Gresham School District, 295 F.3d 701, 712 (7th Cir. 2002); see also Shango v. Jurich, 681 F.2d 1091, 1104 (7th Cir. 1982) (to show equal protection violation and

establish liability under § 1983, plaintiff must demonstrate intentional or purposeful discrimination); Nabozny v. Podlesny, 92 F.3d 446, 453-54 (7th Cir. 1996) (to establish liability under § 1983, plaintiff must show that defendant acted with nefarious discriminatory purpose or deliberate indifference and discriminated against him based on his membership in definable class). A showing of negligence is insufficient.

Plaintiff has alleged sufficient facts to state an equal protection claim under the minimum pleading requirements of Fed. R. Civ. P 8(a). Shah v. Inter-Continental Hotel Chicago Operating Corp., 314 F.3d at 282; Walker v. Thompson, 288 F.3d at 1007 ("[T]here is no requirement in federal suits of pleading the facts or the elements of a claim."). So long as the complaint gives the defendant sufficient notice of the claim to file an answer, it "cannot be dismissed on the ground that it is conclusory or fails to allege facts." Higgs v. Carver, 286 F.3d at 439.

In this case, plaintiff has identified the discriminatory acts by defendants Clark and Thorpe and has asserted that no other inmates received the same treatment. Specifically, plaintiff alleges that defendant Clark violated his equal protection rights when he: 1) required plaintiff to sit at a 45 degree angle in the TV room but did not require other inmates to sit that way; 2) ordered plaintiff to shower and wash his clothes and cell daily; 3) conducted extensive searches of plaintiff's room for contraband but made only superficial searches of the cells of inmates who had true contraband; and 4) allowed others to talk,

laugh and congregate in the halls but would yell at plaintiff and give him "warnings" if plaintiff waved at a friend as he passed by his cell. In addition, plaintiff alleges that defendant Thorpe violated his equal protection rights when he refused to grant plaintiff's request for a root canal and partial but provided that type of dental work for other inmates. These allegations are sufficient to state equal protection claims against defendants Clark and Thorpe. Antonelli v. Sheahan, 81 F.3d 1422, 1433 (7th Cir. 1996) (because plaintiff suggests that discriminatory motives impelled discriminatory treatment of him, he has stated an equal protection claim."). However, I emphasize that in order to succeed on these claims, plaintiff will have to prove that Clark treated other similarly situated inmates differently. For example, plaintiff will have to prove that Clark failed to order other inmates with plaintiff's odor sensitivity to shower daily or that Thorpe provided root canals or partial dentures to other inmates who had dental problems similar to plaintiff's. At this stage of the proceedings, however, I will deny defendants' motion to dismiss plaintiff's equal protection claims against defendants Clark and Thorpe.

C. Fifth Amendment

Plaintiff asserts that defendant Belk, his parole agent, violated his right to remain silent when she ordered him to sign a release of information concerning a psychological assessment. Plaintiff's allegation is vague and conclusory. He fails to allege any facts to

suggest how the released assessment might lead to the disclosure of self-incriminating information that could subject him to criminal prosecution. Lefkowitz v. Cunningham, 431 U.S. 801, 805 (1977). In the absence of such allegations, plaintiff fails to state a claim upon which relief may be granted that defendant Belk violated his Fifth Amendment rights.

ORDER

IT IS ORDERED that

1. The motion of defendants Matthew Frank, Jon Litscher, SM Puckett, Sharon Zunker, Sandra Hautamaki, John Ray, Cindy O'Donnell, Warden Verhagen, James Parisi, Dennis Clark, Debbie Lance, Joe Musacchio, Jan Mink, Joann Arndt, Lt. Scanlon, Vijoya Dasgupta, James Thorpe, Todd Cronin, Elaine Wheeler, Nicole Belk and Paula Armentrout to dismiss plaintiff Kenneth Paul Sarauer's claims that defendants violated his constitutional rights by 1) putting a mixture of bacteriocide, fungicide, virocide and a perfume into the ventilation system and failing to remove plaintiff to a single cell for medical reasons; 2) ignoring plaintiff's pleas for help with regard to his exposure to perfumed substances; 3) waxing the prison floor, causing plaintiff to become sick; 4) causing plaintiff to slip off the sidewalk and injure his rotator cuff; 5) causing plaintiff to fall and split his head open in the chapel and taking him to his cell rather than to a hospital or doctor; 6) refusing to bring

plaintiff water, high blood pressure medication and a bed pan while plaintiff was confined to his cell bed; 7) refusing to empty plaintiff's urinal; 8) refusing to treat plaintiff's injury from slipping on the shower floor; 9) not giving plaintiff permission to wear low cut shoes; 10) not allowing plaintiff to go to school, work or participate in the hobby room; and 11) refusing to give plaintiff a medical slip for an extra pair of gloves is GRANTED without prejudice to plaintiff's amendment of his complaint to name persons allegedly responsible for these acts and omissions;

2. Defendants motion is GRANTED as to plaintiff's Eighth Amendment claims against defendants Frank, Litscher, Puckett, Zunker, Hautamaki, Ray, O'Donnell, Verhagen, Parisi, Lance, Mink, Arndt, Scanlon, Wheeler and Aremntrout for plaintiff's failure to state a claim against them;

3. Defendants' motion is GRANTED as to plaintiff's Eighth Amendment claim against defendant Belk for failing to check plaintiff's home, pick him up at the bus station, take plaintiff home and help him get his car started upon plaintiff's release from prison;

4. Defendants' motion is GRANTED as to plaintiff's claim against defendant Musacchio for failing to follow through on his promise to provide him with warmer clothes upon plaintiff's release from prison;

5. Defendants' motion is DENIED as it relates to plaintiff's Eighth Amendment claims that defendant Dasgupta ordered an x-ray of plaintiff's elbow instead of his shoulder;

6. Defendants' motion to dismiss is DENIED as it relates to defendant Clark's use of excessive force when he hit plaintiff with a chair;

7. Defendants' motion to dismiss plaintiff's claim that defendant Clark violated plaintiff's Eighth Amendment rights when he required plaintiff to sit at a 45 degree angle in a chair in the TV room is DENIED;

8. Defendants' motion to dismiss plaintiff's claim that defendant Clark was deliberately indifferent to plaintiff's safety is DENIED;

9. Defendants' motion to dismiss plaintiff's claim that defendant Clark was deliberately indifferent to plaintiff's serious condition when Clark refused to allow plaintiff to wear socks over his gloves is DENIED;

10. Defendants' motion to dismiss is DENIED as it relates to plaintiff's Eighth Amendment claim that defendant Dasgupta refused to allow plaintiff to be handcuffed in the front of his body;

11. Defendants' motion to dismiss is DENIED as it relates to plaintiff's Eighth Amendment claim that defendant Thorpe was deliberately indifferent to plaintiff's serious dental needs;

12. Defendants' motion to dismiss plaintiff's claim that defendant Cronin was deliberately indifferent to plaintiff's serious medical needs is DENIED;

13. Defendants' motion to dismiss plaintiff's equal protection claims that defendant

Clark: 1) required plaintiff to sit at a 45 degree angle in the TV room but did not require other inmates to sit that way; 2) ordered plaintiff to shower and wash his clothes and cell daily; 3) conducted extensive searches of plaintiff's room but only superficial room searches of inmates who had true contraband; and 4) allowed others to talk, laugh and congregate in the halls but would yell at plaintiff and give him "warnings" if plaintiff waved at a friend as he passed by his cell is DENIED;

14. Defendants' motion to dismiss plaintiff's equal protection claim that defendant Thorpe refused to grant plaintiff's request for a root canal and partial but provided that type of dental work for other inmates is DENIED;

15. Defendants' motion to dismiss plaintiff's Fifth Amendment claim against defendant Belk is GRANTED;

16. Defendants' motion to stay discover is DENIED as unnecessary. However, should plaintiff amend his complaint to cure his failure to name the particular defendants who took the allegedly unconstitutional actions against him, defendants can renew their motion for stay of discovery;

17. Defendants Frank, Litscher, Puckett, Zunker, Hautamaki, Ray, O'Donnell, Verhagen, Parisi, Lance, Musacchio, Mink, Arndt, Scanlon, Wheeler, Belk and Armentrout

are DISMISSED from this case.

Entered this 6th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge