IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JONATHAN WILLIAM NAWROCKI,

OPINION and ORDER

Petitioner,

v.

08-cv-14-bbc

AMANDA LINDER, Health Service Nurse,
HSU DEPARTMENT, RACINE YOUTHFUL
OFFENDER CORR. FACILITY, WISCONSIN
DEPARTMENT OF CORRECTIONS,

Respondents.

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This is a proposed civil action brought under 42 U.S.C. § 1983. Petitioner Jonathan Nawrocki, a prisoner housed at the Racine Youthful Offender Correctional Facility in Racine, Wisconsin, requests leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. In his complaint, petitioner contends that respondent Amanda Linder violated his Eighth Amendment rights when she poked him with a needle causing him to have a seizure and fall. In addition, he contends that the remaining respondents failed to provide staff with appropriate training; placed him in segregation for "lying about staff," which he did not do; and removed the restriction on mushrooms in his diet in disregard for his severe allergy to them.

Petitioner has made his initial partial payment in accordance with 28 U.S.C. § 1915. However, because petitioner is a prisoner, I am required under the 1996 Prison Litigation Reform Act to screen his complaint and dismiss any claims that are legally frivolous, malicious, fail to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 and 1915A.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner Jonathan Nawrocki is a prisoner housed at the Racine Correctional Institution in Racine, Wisconsin. Respondent Amanda Linder is a nurse at the same institution.

On December 14, 2005, petitioner was in the health service unit to have blood taken for an evaluation of his mushroom allergy. Seconds after respondent Lindner had inserted a needle into petitioner's arm, she wiggled the needle around in the arm, apparently in an effort to find a vein. When petitioner complained that the movement hurt, respondent Linder said "I know."

Petitioner lost consciousness. When he came to, respondent Linder and another nurse were putting him back in his chair. His mouth was bleeding and had three loose teeth. When he asked the nurse what had happened, she told him he had had a seizure. He asked to see a dentist, who recommended that petitioner have the teeth removed and "partials" put in. When the dentist told petitioner that it would cost $4,000 to have the work done "on the street," petitioner said that he would wait until his release to have the work done.

Petitioner called his family to discuss what had happened. His sister said that the nurse had put an air bubble in his vein and that he could have died. She recommended that he write to a prison official about the incident, which he did. A captain came to discuss the incident with petitioner and asked him to write a statement, which the captain took away with him. Shortly thereafter, another captain arrived at petitioner's cell and took him to segregation on the ground that he had been lying about staff. He was given three hundred and sixty days in segregation. He appealed the decision to the warden, who did not overturn it. After petitioner's family called the institution repeatedly, his time in segregation was reduced to two hundred and seventy days.

Respondent Linder was not disciplined for her actions. In her progress notes, respondent Linder wrote that when she had tried to draw blood from petitioner, he "jumped up passed out hit front face/teeth on floor assisted pt. to chair . . . am[m]onia bomb to nose pt. pail [sic] Pt. roused . . . compress to face/ice water pt. sitting in chair." This is consistent

with what petitioner told prison officials.

Ever since this incident, petitioner has been afraid of needles. He would not allow respondent Linder to take blood from him a month later. As a result of his refusal to have a blood sample taken, officials at the institution took petitioner off his "no mushroom" restriction, which means that they could serve him food to which he is allergic.

DISCUSSION

A. Proper Parties

Petitioner brought this complaint under 42 U.S.C. § 1983. Liability under § 1983 attaches to persons who "under color of any statute, ordinance, regulation, custom, or usage" of state power deprive a citizen of any right under the Constitution or federal law. Respondents HSU Department, Racine Youthful Offender Correctional Facility and Wisconsin Department of Corrections are not "persons" that may be sued under § 1983. Will v. Michigan Department of State Police, 491 U.S. 58, 66-67 (1989); Witte v. Wisconsin Department of Corrections, 434 F.3d 1031, 1036 (7th Cir. 2006).

B. Medical Care

With the dismissal of the institutional defendants, petitioner's claim against respondent Linder is the only remaining claim. I understand petitioner to contend that

Linder violated his right to be free from cruel and unusual punishment under the Eighth Amendment when, after inserting a needle to draw petitioner's blood, she wiggled it to find his vein, knowing the movement would cause petitioner pain and a possible seizure. In addition, he appears to contend that Linder knew of and ignored an excessive risk to his safety by wiggling the needle to find his vein.

The Eighth Amendment's prohibition on "cruel and unusual punishment" establishes the minimum standard for the treatment of prisoners by prison officials. "Cruel and unusual punishment," is demonstrated by the "unnecessary and wanton inflictions of pain," including pain that is inflicted "totally without penological justification." Hope v. Pelzer, 536 U.S. 730, 737 (2001). For claims involving the adequacy of medical care, the question is whether petitioner suffered from a serious medical need, to which prison officials were deliberately indifferent. Estelle v. Gamble, 429 U.S. 97 (1976).

Petitioner asserts that it hurt more than it should have when respondent Linder took his blood. However, put simply, this incident does not trigger the protections of the Eighth Amendment. Having blood drawn can be painful, especially if the needle is not placed properly. Thus, the fact that respondent Linder told petitioner that she knew that it hurt to have a needle placed in his arm is not evidence that she intended to cause him to experience pain unnecessarily.

Next, petitioner speculates that he had a seizure that was caused by respondent

Linder's improper placement of the needle in his arm. A prison health official may be found liable for violating an inmate's rights under the Eighth Amendment if the official knows of and disregards an excessive risk to inmate health or safety. Walker v. Benjamin, 293 F.3d 1030, 1037 (7th Cir. 2002). There are two components to this inquiry. First, was the allegedly dangerous condition "sufficiently serious" that it would "offend contemporary standards of decency"? Christopher v. Buss, 384 F.3d 879, 882 (7th Cir. 2004) (citing Helling v. McKinney, 509 U.S. 25, 36 (1993). Second, were prison officials deliberately indifferent to the risks the condition posed to the prisoner's health or safety? Farmer v. Brennan, 511 U.S. 825, 835 (1994).

Deliberate indifference requires that a prison official "be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists" and actually "draw the inference." Id. at 837. Deliberate indifference is evidenced by a respondent's actual intent or reckless disregard for a prisoner's health or safety, and must amount to 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). With that high standard in mind, I turn to petitioner's allegations regarding his alleged seizure.

As a matter of common sense, it is implausible that petitioner suffered a seizure from having a needle inserted in his arm, no matter how ineptly it was done. On any given day,

millions of people have needles inserted in their arms without suffering seizures. If it were otherwise, the Red Cross would be hard pressed to recruit blood donors. It is telling that, the Red Cross warns blood donors that a "small number of donors *may* experience upset stomachs, faintness or pain where the needle was placed." http//www.redcross.org/services/biomed/0.l082.html (last visited on March 7, 2008). If the risk of seizure were substantial, one would expect the attendant warnings to be equally substantial and well-known. Instead, as the Red Cross warns, some donors do feel faint after giving blood and no doubt, many of these actually do faint. Petitioner does not appear to understand that a seizure and fainting are two entirely different things. (He admits that the nurse's notes explaining that he fainted and was revived with smelling salts are "consistent" with what he believes happened.)

More important, for petitioner to prevail on a constitutional claim based on the needle incident, he would have to show not just that he suffered a seizure but that respondent Linder intended that result by her handling of the needle or, alternatively, that she knew such a consequence was highly likely and proceeded in the face of her knowledge. On that score, petitioner undermines his own claim with his allegation that respondent Racine Correctional Institution is responsible for his injuries because it hired an inexperienced nurse such as Linder. It is almost impossible to square the allegation that respondent Linder was so inexperienced that she caused his injury with an allegation that

she knew of the serious risk her acts posed to petitioner's safety and intentionally engaged in them nevertheless.

It cannot be inferred from petitioner's allegations that respondent Linder *must* have known she was putting petitioner at serious risk of harm because the risk was so apparent. Knowledge of a risk of harm can be inferred by facts suggesting that the risk is longstanding, pervasive, well-documented, or expressly noted by the medical field in the past, and circumstances suggest that the respondent being sued has been exposed to information concerning the risk. Farmer, 511 U.S. at 837 (1994). As discussed above, it is wholly improbable that there is a "longstanding, pervasive" or "well-documented" risk of seizure if blood is drawn incorrectly. For these reasons, petitioner will be denied leave to proceed on this claim against respondent Linder.

ORDER

IT IS ORDERED that:

1. Petitioner Jonathan Nawrocki's request for leave to proceed in forma pauperis on his Eighth Amendment claims against respondents Amanda Linder, HSU Department, Racine Youthful Offender Correctional Facility and Wisconsin Department of Corrections is DENIED and this case is DISMISSED with prejudice for petitioner's failure to state a claim upon which relief may be granted;

2. The unpaid balance of petitioner's filing fee is $337.33; this amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2);

3. A strike will be recorded against petitioner pursuant to § 1915(g); and

4. The clerk of court is directed to close the file.

Entered this 7th day of March, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB
District Judge