

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

MICHAEL MUEHL,

Petitioner,

OPINION AND ORDER

v.

09-cv-16-bbc

MICHAEL THURMER, Warden;
BAUER, Lieutenant;
GARY ANKARLO, Psychological Services Supervisor;
TODD CALLISTER, Psychiatrist;
BELINDA SCHRUBBE, Health Service Manager;
PAUL SUMNIGHT, Doctor;
MARY GORSKE, Registered Nurse Practitioner;
MARY SLINGER, Registered Nurse;
FRAN JENNINGS, Registered Nurse;
GAIL WALTZ, Registered Nurse;
CHARLENE REITZ, Registered Nurse; and
BRUCE DUMONTIER, Dentist;

Respondents.

Petitioner Michael Muehl has responded to this court's January 30, 2009 order in which I concluded that his complaint violated Fed. R. Civ. P. 20 because it contained as many as six separate lawsuits against different sets of respondents:

- Lawsuit #1: respondents Belinda Schrubbe, Mary Slinger, Fran Jennings, Charlene

Reitz and Gail Waltz failed to provide petitioner adequate treatment for a MRSA infection, beginning in October 2007;

- Lawsuit #2: in November and December 2007 respondent Michael Thurmer was aware that petitioner was at risk for suicide but failed to take any action to stop petitioner from harming himself; respondents Reitz, Bauer and Waltz failed to properly dress petitioner's wounds after he cut his wrist in December 2007;
- Lawsuit #3: in March 2008, respondents Gorske and Schrubbe failed to provide petitioner with adequate medication for his chronic shoulder pain;
- Lawsuit #4: on two occasions after petitioner cut himself in October and November 2008, respondent Paul Sumnicht failed to properly suture petitioner's wounds; when petitioner complained to respondent Schrubbe, she did not respond reasonably;
- Lawsuit #5: from October 2007 to January 2008, respondent Bruce DuMontier unreasonably delayed dental care to petitioner;
- Lawsuit #6: in 2008 respondent Todd Callister refused to take petitioner off a medication for Attention Deficit Disorder that caused him to have hallucinations; after petitioner filed a grievance about this, respondent Callister stopped all prescriptions for petitioner's ADD; respondents Gary Ankarlo and Michael Thurmer failed to intervene to insure that petitioner received appropriate medication.

I directed petitioner to identify which lawsuits he wished to pursue.

In his response, petitioner says that he wishes to combine Lawsuit #1, #2 and #4 by dropping respondent Thurmer and Bauer from Lawsuit #2 and Sumnicht from Lawsuit #4, that he wants to proceed with Lawsuit #5 and #6 in separate actions and that he wants to dismiss Lawsuit #3. Accordingly, the following claims will proceed in this lawsuit as case no. 09-cv-16-bbc:

(1) respondents Belinda Schrubbe, Mary Slinger, Fran Jennings, Charlene Reitz and Gail Waltz failed to provide petitioner adequate treatment for a MRSA infection, beginning in October 2007;

(2) respondents Reitz and Waltz failed to properly dress petitioner's wounds after he cut his wrist in December 2007; and

(3) when petitioner complained to respondent Schrubbe in December 2008 that his wounds were not properly sutured, she did not respond reasonably.

These claims will be screened below pursuant to 28 U.S.C. § 1915 to determine whether petitioner has stated a claim upon which relief may be granted with respect to each claim. Because I concluded in the January 20 order, dkt. # 8, that petitioner has no means to make an initial partial payment under § 1915, it is unnecessary to delay screening until petitioner pays part of the filing fee.

Case no. 09-cv-82-bbc will be assigned to petitioner's lawsuit raising the claim that respondent Bruce DuMontier unreasonably delayed dental care to petitioner from October

2007 to January 2008; case no. 09-cv-83-bbc will be assigned to petitioner's lawsuit raising his claims that in 2008 respondent Todd Callister refused to take petitioner off a medication for Attention Deficit Disorder that caused petitioner to have hallucinations, that Callister stopped all prescriptions for petitioner's ADD after petitioner filed a grievance about this and that respondents Gary Ankarlo and Michael Thurmer refused to intervene to insure that petitioner was getting needed medication. These claims will be screened in separate orders.

I will dismiss under Fed. R. Civ. P. 41 petitioner's claims that in November and December 2007 respondent Thurmer was aware that petitioner was at risk for suicide but failed to take any action to stop petitioner from harming himself, that respondent Bauer failed to properly dress petitioner's wounds after he cut his wrist in December 2007, that in March 2008, respondents Gorske and Schrubbe failed to provide petitioner with adequate medication for his chronic shoulder pain and that on two occasions after petitioner cut himself in October and November 2008, respondent Paul Sumnicht failed to properly suture petitioner's wounds. These claims will be dismissed without prejudice to petitioner's refiling them at a later date.

Accompanying petitioner's response is a motion for a preliminary injunction. Most of the allegations in petitioner's motion are not related to the merits of the case. As I explained to him after he filed a similar motion in case no. 08-539-slc, "As a general rule, a court cannot consider a plaintiff's request for preliminary injunctive relief that is sought

against a person who is not a party to his lawsuit and concerns a matter that has no relation to the claim raised in his complaint.” Dkt. #31, at 2. The only exception is when a party shows that he is being physically prevented from litigating his suit, something that petitioner has not shown.

The one matter in the motion for a preliminary injunction that is related to petitioner’s claims is his allegation that he is being denied medication for his Attention Deficit Disorder. However, I cannot consider petitioner’s request for injunctive relief at this time because his motion does not comply with this court’s procedures for obtaining a preliminary injunction. Under these procedures, which I am enclosing to petitioner with a copy of this order, petitioner must file with the court and serve on respondents proposed findings of fact supporting his claim, and submit with his proposed findings of fact any evidence he has to support his request for relief. If petitioner submits such a motion (in case no. 09-cv-83-bbc), I will set a short deadline within which respondents will be required to respond to it. For now, however, I will deny petitioner’s motion for preliminary injunction for petitioner’s failure to comply with this court’s procedures.

In addressing any pro se litigant’s complaint, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). In his complaint, petitioner fairly alleges the following facts.

ALLEGATIONS OF FACT

A. Staph Infection

In October 2007, petitioner was diagnosed with a staph infection called methicillin-resistant *Staphylococcus aureus*, or MRSA and placed in quarantine status. When petitioner wrote to respondent Belinda Schrubbe (the health services manager) to ask for towels “to clean and care for the infectious sores on [his] body,” she failed to provide him with any towels or any other items to keep his sores clean, even though she provided towels to other prisoners. As a result, the infection spread across his body and caused him great pain and suffering.

Petitioner asked respondent Mary Slinger (a nurse at the prison), why he was not being allowed to shower daily. She replied, “Someone in your situation will just shower in a segregated shower and only shower as often as the cell hall showers.” Both respondent Slinger and another nurse, respondent Fran Jennings, refused to allow petitioner to take daily showers while he had a staph infection. Petitioner’s infection spread and caused him great pain and suffering because he was unable to take daily showers.

In late October and early November 2007, petitioner told respondents Schrubbe and Jennings that he did not have his prescribed antibiotics; they had been left in his previous cell. Both of them told petitioner that he would receive the medication once it was sent over to the health services unit, but neither of them took any steps to insure that petitioner

received the medication. The medication never arrived; as a result petitioner broke out with “numerous sores” and his infection persisted.

Petitioner was released from quarantine even though he still had a number of sores. On November 12, 2007, petitioner had one follow up appointment with respondent Charlene Reitz, a nurse. Although petitioner had several sores on his face and requested treatment for them, Reitz did nothing.

As of April 2008, petitioner received no additional treatment despite the continuing existence of sores all over his body. When he wrote to respondent Gail Waltz, a nurse, on April 7, she told him he could discuss any problems he had at a scheduled doctor’s appointment on April 28. When petitioner complained to respondent Schrubbe about the wait, Schrubbe directed Waltz to see petitioner on April 11. During the exam, Waltz “open[ed] a healed a sore on [petitioner’s] right forearm and collect[ed] culture from it” for lab tests. She did the same with respect to sore on his knee.

B. Medical Dressing

In December 2007, petitioner attempted to commit suicide by cutting his wrist. After respondent Waltz dressed his wound, petitioner was “strapped down.” When petitioner noticed that the left restraint was loose, he began “yanking and pulling” at it in an attempt to get free. As a result the gauze pad was ripped off petitioner’s wound, causing it to reopen

and bleed. When petitioner told respondent Reitz what happened, she did nothing to help him despite checking on him several more times.

The following day petitioner was placed in an observation cell. When respondent Waltz came to check on petitioner, she told him that the “wound can no longer be stitched up,” but that she would provide him with “medical dressings.” Waltz never redressed petitioner’s wound as promised.

The wound continued to bleed for several days. In the morning when petitioner woke up, blood was all over his sheets. On December 17, another nurse put a new dressing on petitioner’s wound.

C. Sutures

In late November 2008, petitioner attempted to commit suicide by cutting himself, creating deep wounds on his right arm and his left ankle. The doctor did not properly suture these wounds, which caused petitioner pain immediately. Later, the wound became infected, causing swelling and more pain.

On December 1, petitioner complained to respondent Schrubbe. Petitioner was seen by respondent Waltz, who told the health services staff that petitioner needed to be seen by a doctor. The doctor removed petitioner’s stitches from his arm but did not give him any dressing. On December 7, petitioner wrote Schrubbe again, complaining that his arm was

“hurting and swollen” and that he needed medical dressing. A nurse wrote back, “ordered.” When he did not receive any dressing, he wrote to Schrubbe again on December 8, December 9 and December 10. Nothing was done.

After petitioner complained to a correctional officer, a nurse came and gave petitioner ointment and band aids for his ankle. (Petitioner does not explain the change in the focus of his complaint from the need for a dressing on his arm to problems with the stitching for his ankle wound.) However, the wounds still did not heal. Petitioner wrote to respondent Schrubbe again on December 18 and December 22. In his December 22 letter, he wrote that his ankle wound was not healing properly because of his stitches and that because “no one will see him, he’s left with no choice but try to cut the stitch out hi[m]self.” Later that night, petitioner removed the stitches himself with a sharpened “metal piece off [a] manilla envelope.”

DISCUSSION

All of petitioner’s claims in this case involve respondents’ alleged failures to provide petitioner with adequate medical care. In particular, I understand petitioner to be contending that the following actions by respondents violated his Eighth Amendment rights:

(1) respondent Schrubbe refused to provide him towels or other means of cleaning the sores from his MRSA infection;

(2) respondents Slinger and Jennings refused to allow petitioner to take daily showers, which allowed his infection to spread;

(3) respondents Schrubbe and Jennings failed to provide petitioner with needed antibiotics for his MRSA infection;

(4) in November 2007, respondent Reitz did nothing when petitioner complained that his sores were not healing;

(5) in April 2008, respondent Waltz failed to respond appropriately when petitioner complained to her that his sores were not healing;

(6) in December 2007, after petitioner cut himself, respondents Reitz and Waltz refused to provide him with any treatment when his wounds reopened and began bleeding again;

(7) in December 2008, respondent Schrubbe failed to respond appropriately when petitioner complained to her about the lack of dressing for his arm wound and the stitching in his ankle wound.

Under the Eighth Amendment, a prison official may violate a prisoner's right to medical care if the official is "deliberately indifferent" to a "serious medical need." Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). A "serious medical need" may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. Johnson v. Snyder, 444 F.3d 579, 584 -85 (7th Cir.

2006). The condition does not have to be life threatening. Id. A medical need may be serious if it "significantly affects an individual's daily activities," Chance v. Armstrong, 143 F.3d 698, 702 (2d Cir. 1998), if it causes pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or if otherwise subjects the detainee to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825 (1994). "Deliberate indifference" means that the officials were aware that the detainee needed medical treatment, but disregarded the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997).

Thus, under this standard, petitioner's claim has three elements:

- (1) Did petitioner need medical treatment?
- (2) Did respondents know that petitioner needed treatment?
- (3) Despite their awareness of the need, did respondents fail to take reasonable measures to provide the necessary treatment?

With respect to most of these claims, I conclude that petitioner has alleged the minimum facts necessary to state a claim upon which relief may be granted. For the most part, petitioner alleges that respondents disregarded serious medical needs such as a MRSA infection or bleeding wounds. Although some of petitioner's allegations appear to be highly unlikely, I must accept them as true at the pleading stage. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). However, at summary judgment or at trial, petitioner will have to prove that he needed treatment for each of his conditions, that respondents knew that he needed such

treatment and that there were reasonable steps they could have taken to provide adequate treatment but they chose not to do so without exercising medical judgment.

It will not be enough for petitioner to show that he disagrees with respondents' conclusions about the appropriate treatment, Norfleet v. Webster, 439 F.3d 392, 396 (7th Cir. 2006), or even that respondents could have provided better treatment, Lee v. Young, 533 F.3d 505, 511-12 (7th Cir. 2008). Rather, petitioner will have to show that any decisions by respondents were "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate" his condition. Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir.1996) (internal quotations omitted).

Petitioner may not proceed on his claim that respondent Waltz violated his Eighth Amendment rights by failing to respond adequately after he complained to her in April 2008 about his sores. Petitioner brings up two actions by Waltz: (1) her decision in April 2008 that petitioner could wait for treatment until his next scheduled appointment later in the month; and (2) her decision to take cultures from his sores for lab tests. Neither of these actions provides a basis for liability. Even if I assume that making petitioner wait for three weeks for an exam could violate his right to medical care, petitioner did *not* wait three weeks because respondent Schrubbe directed respondent Waltz to see petitioner right away. Further, Waltz's decision to take cultures cannot be an Eighth Amendment violation because she did this in an effort to *provide* petitioner with treatment that he says he needed. He does

not suggest that he objected to this action or that it caused him any unnecessary pain. Accordingly, this claim will be dismissed for petitioner's failure to state a claim upon which relief may be granted.

ORDER

IT IS ORDERED that

1. This case is SEVERED in accordance with Fed. R. Civ. P. 20. In case no. 09-cv-82-bbc, I will consider petitioner's claim that respondent Bruce DuMontier unreasonably delayed dental care to petitioner from October 2007 to January 2008; in case no. 09-cv-83-bbc, I will consider petitioner's claims that in 2008 respondent Todd Callister refused to take petitioner off a medication for Attention Deficit Disorder that caused petitioner to have hallucinations, that Callister stopped all prescriptions for petitioner's ADD after petitioner filed a grievance about this and that respondents Gary Ankarlo and Michael Thurmer refused to intervene to insure that petitioner received appropriate medication.

2. The following claims are DISMISSED without prejudice to petitioner's refiling them at a later date:

(a) in November and December 2007 respondent Thurmer was aware that petitioner was at risk for suicide but failed to take any action to stop petitioner from harming himself;

(b) respondent Bauer failed to properly dress petitioner's wounds after he cut his wrist

in December 2007;

(c) in March 2008, respondents Gorske and Schrubbe failed to provide petitioner with adequate medication for his chronic shoulder pain;

(d) on two occasions after petitioner cut himself in October and November 2008, respondent Paul Sumnicht failed to properly suture petitioner's wounds.

3. Respondents Wayne Bauer, Bruce DuMontier, Todd Callister, Gary Ankarlo, Michael Thurmer, Mary Gorske and Paul Sumnicht are DISMISSED are from the case.

4. In this case, 09-cv-16-bbc, petitioner is GRANTED leave to proceed on the following claims:

(a) respondent Schrubbe refused to provide petitioner towels or other means of cleaning the sores from his MRSA infection;

(b) respondents Slinger and Jennings refused to allow petitioner to take daily showers, which allowed his infection to spread;

(c) respondents Schrubbe and Jennings failed to provide petitioner needed antibiotics for his MRSA infection;

(d) in November 2007, respondent Reitz did nothing when petitioner complained that his sores were not healing;

(e) in December 2007, after petitioner cut himself, respondents Reitz and Waltz refused to provide him any treatment when his wounds reopened and began bleeding again;

(f) in December 2008, respondent Schrubbe failed to respond appropriately when petitioner complained to her about the lack of dressing for his arm wound and the stitching in his ankle wound.

5. Petitioner is DENIED leave to proceed on his claim that in April 2008, respondent Waltz failed to respond appropriately when petitioner complained to her that his sores were not healing. The complaint is DISMISSED with respect to that claim for petitioner's failure to state a claim upon which relief may be granted.

6. A strike will be recorded in accordance with 28 U.S.C. § 1915(g) and George v. Smith, 507 F.3d 605 (7th Cir. 2007).

7. Petitioner's motions for a preliminary injunction, dkt. ## 4 and 12, are DENIED without prejudice to petitioner's refiling a motion that complies with this court's procedures.

8. For the remainder of this lawsuit, petitioner must send respondents a copy of every paper or document that they file with the court. Once petitioner learns the name of the lawyer that will be representing respondents, he should serve the lawyer directly rather than respondents. The court will disregard documents petitioner submits that do not show on the court's copy that he has sent a copy to respondents or to respondents' attorney.

9. Petitioner should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of their documents.

10. Pursuant to an informal service agreement between the Attorney General and this court, copies of petitioner's complaint and this order are being sent today to the Attorney General for service on respondents.

11. Petitioner is obligated to pay the unpaid balance of his filing fees in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of petitioner's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from petitioner's trust fund account until the filing fees have been paid in full.

12. As petitioner requested in his response to the January 30 order, I am returning to him the exhibits that he attached to his complaint. These documents have been scanned electronically by court staff and included in the official court record.

Entered this 19th day of February, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge