IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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LARRY HOLMON,

OPINION AND ORDER

Plaintiff,

11-cv-234-bbc

v.

DR. LOYDA LORIA, JAN KRUEGER, DAVID BARNEY, PAT MCCULLOUGH, MARIO CANZIANI, CAROLYN CADA and DONNA DUNNET,[1]

Defendants.

- -

In this civil action for monetary relief, plaintiff Larry Holmon is proceeding pro se on claims that various defendants working at the Wisconsin Resource Center, located in Winnebago, Wisconsin, failed to treat his serious medical needs, prescribed medications contraindicated for his various illnesses and violated his right to privacy by disclosing his medical records to non-medical staff. Plaintiff filed this action originally in state court and defendants removed it to this court under 28 U.S.C. § 1441. Because plaintiff is a civilly

[1] Although plaintiff named "Loria Loyda" in his caption and complaint, defendants refer to Loria consistently as "Loyda Loria." I have amended the caption accordingly.

committed patient and defendants paid the filing fee when they removed the case, the court did not screen plaintiff's complaint to determine whether plaintiff stated a claim upon which relief may be granted.

Now before the court are the parties' cross motions for summary judgment. Plaintiff has moved for summary judgment on his claims that defendants violated his constitutional rights to medical care and privacy. Dkt. #43. Defendants have moved for summary judgment on plaintiff's constitutional claims, contending that plaintiff cannot produce evidence to support his claims that defendants failed to provide him adequate medical treatment or violated his right to privacy. Dkt. #51.

After reviewing the parties' summary judgment materials, I conclude that plaintiff's motion must be denied and defendants' motion must be granted. As an initial matter, plaintiff failed to follow this court's summary judgment procedures by failing to support his own motion for summary judgment with any proposed findings of fact. Additionally, plaintiff filed no response to defendants' proposed findings of fact. Although plaintiff's brief contains a section titled "proposed findings of fact," dkt. #64, this section contains primarily argument, not specific factual allegations with citations to admissible evidence in the record. Plaintiff was instructed during the preliminary pretrial conference that under this court's summary judgment procedures, "[a]ll facts necessary to sustain a party's position on a motion for summary judgment must be explicitly proposed as findings of fact." Helpful Tips

for Filing A Summary Judgment Motion #1, attached to Preliminary Pretrial Conference Order, dkt. #33. Additionally, plaintiff was warned that "[t]he court will not search the record for factual evidence," id. #2; "[a] fact properly proposed by one side will be accepted by the court as undisputed unless the other side properly responds to the proposed fact and establishes that it is in dispute," id. #3; and "[t]he court will not consider facts contained only in a brief." Procedure to be Followed on Motions for Summary Judgment I.B.4. See also Hedrich v. Board of Regents of the University of Wisconsin, 274 F.3d 1174 , 1178 (7th Cir. 2001) (upholding this court's summary judgment procedures). Because plaintiff failed to dispute properly any of defendants' proposed findings of fact, defendants' facts will be accepted as undisputed. (Even if I were to consider the facts contained in plaintiff's brief, affidavits and exhibits, plaintiff's evidence does not create a genuine dispute about defendants' alleged violation of plaintiff's rights. Therefore, I will grant defendants' motion for summary judgment. Additionally, I will decline to exercise supplemental jurisdiction over plaintiff's state law claims and will dismiss them without prejudice.

From defendants' proposed findings of fact and the record, I find the following to be material and undisputed.

UNDISPUTED FACTS

A. The Parties

Plaintiff Larry Holmon was a patient at the Wisconsin Resource Center, a secure treatment facility of the State of Wisconsin Department of Health Services for mentally ill patients, from April 22, 2008 until March 11, 2009. At times relevant to plaintiff's complaint, defendant Loyda Loria was a physician at the Wisconsin Resource Center and defendants Pat McCullough, Janet Krueger and Donna Dunnett worked as registered nurses there. Defendant Carolyn Cada was the nursing supervisor, defendant David Barney was the director of nursing and defendant Mario Canziani was the security director.

B. Defendant Dr. Loria's Treatment of Plaintiff

While plaintiff was housed at the Wisconsin Resource Center, defendant Dr. Loria was plaintiff's primary treating physician and treated him for a variety of chronic illnesses, including asthma, chronic liver disease and peptic ulcer disease. She also treated plaintiff for urinary problems, high blood pressure, high cholesterol and left shoulder and elbow pain.

Approximately two weeks after plaintiff was admitted to the Wisconsin Resource Center, defendant Loria saw plaintiff for complaints of left shoulder pain. Loria ordered for an MRI of plaintiff's shoulder. Loria also noted plaintiff's history of Hepatitis C and that he had had a liver biopsy done at the University of Wisconsin, Madison. Loria told plaintiff that she would review his records and would schedule a visit for him with the chronic disease clinic.

On May 16, 2008, defendant Loria saw plaintiff to check on his Hepatitis C and asthma. Testing showed that plaintiff's Hepatitis C might have progressed, so Loria ordered a "repeat liver function test," to be conducted in two months. Loria noted that she would refer plaintiff to a liver specialist at UW-Madison if plaintiff's repeat liver enzymes were still high. However, the results of the repeat liver function test taken in July 2008 showed that plaintiff's liver function had improved and was almost normal. Loria scheduled another repeat liver function test for September 2008.

On May 22, 2008, defendant Loria saw plaintiff about a fungal infection of his toenails. Because he was not having pain, tenderness or swelling on his toes, Loria advised plaintiff against treatment with Lamisil, an antifungal medication. Lamisil can cause problems with the liver. Loria also discussed the high recurrence rate of fungal toenail infection despite treatment.

On June 4, 2008, plaintiff had an MRI of his left shoulder, which showed a rotator cuff injury. On June 16, 2008, defendant Loria discussed plaintiff's MRI findings with him and ordered an orthopedic consultation. She also recommended physical therapy, but plaintiff refused physical therapy services. Plaintiff saw an orthopedist a few weeks later who gave plaintiff an injection in his shoulder.

On July 3, 2008, defendant Loria saw plaintiff for a physical exam. Plaintiff's blood pressure was elevated and Loria ordered Dyazide to help control it. Loria scheduled plaintiff

for follow-up blood tests in 10 days to check the side effects of Dyazide and another appointment with her in two weeks to discuss the results of the laboratory tests. On July 17, 2008, Loria saw plaintiff for follow-up of his blood pressure and to discuss lab results. Plaintiff's blood pressure was better but his cholesterol levels were not. Loria ordered a low cholesterol diet, daily exercise and a medication to help reduce cholesterol. Loria discussed the side effects of the cholesterol medication with plaintiff and ordered repeat blood tests to be taken in two months.

On August 25, 2008, defendant Loria saw plaintiff for back and elbow pain. Loria ordered x-rays of his lower back and left elbow, which showed degenerative changes and no fractures. Loria prescribed Relafen, a pain medication. On August 27, plaintiff was seen by defendant Nurse McCullough for complaints that the pain medicine he was taking was not working for his back and elbow pain. McCullough gave plaintiff Tylenol and told him to take it at the prescribed levels as needed. She told him to alternate hot and cold packs to the affected areas. On August 29, plaintiff was seen by another nurse for complaints of pain and because the medications he was prescribed was not helping. The nurse suggested that plaintiff use a muscle rub and keep taking Tylenol. Plaintiff wrote to the health service unit that it was difficult for him to sleep and that he could not lie down because of back pain. A sleep log was ordered for plaintiff for four nights to determine whether he was sleeping. The sleep log showed that plaintiff appeared to sleep through the night.

On August 30, 2008, plaintiff was seen by a nurse for complaints of severe back pain. The on-call physician ordered Darvocet, a narcotic pain medication. On September 1, plaintiff submitted a health service request, asking for a second opinion about his back and elbow pain because he "can't lay down; can't sit on the toilet and isn't getting any rest." Defendant Loria responded to the request on September 2, discontinued plaintiff's prescription for Relafen and told him to continue taking Darvocet for five days. He was also give a Medrol Dosepack, which is a cortisone medication that can relieve pain by decreasing inflammation.

On September 9, 2008, defendant Loria saw plaintiff for a follow-up appointment regarding his back and elbow pain. Plaintiff reported some improvement with the Medrol Dosepack. Loria told plaintiff to continue taking Darvocet for two weeks as needed for severe pain and also prescribed Flexeril, hot and cold compresses and Relafen for two weeks. On September 19, Loria saw plaintiff for a follow-up visit regarding his back and elbow pain. Plaintiff reported some improvement and decreased pain and swelling. Loria discontinued plaintiff's prescription for Darvocet and continued plaintiff's Relafen prescription.

On September 26, 2008, plaintiff submitted a health service request asking to be taken off his low cholesterol diet. His total cholesterol tests had improved, his blood pressure was down and his liver function tests were within normal range.

On October 3, 2008, defendant Loria saw plaintiff again for his shoulder and elbow

pain. Loria ordered an x-ray and prescribed Relafen to plaintiff. On October 16, plaintiff complained to a nurse that he had hip and back pain. The information was relayed to defendant Loria and she canceled plaintiff's prescription for Relafen and ordered Celebrex, another pain medication.

On November 18, 2008, plaintiff was seen by defendant Loria for a follow-up visit regarding his chronic liver and asthma conditions. Both conditions were stable.

On January 20, 2009, plaintiff submitted a health service request in which he complained of coughing up blood. The next day, plaintiff was seen by a nurse for the problem. He reported a history of peptic ulcer disease and was concerned about bleeding internally. Defendant Loria ordered a complete blood count, a chest x-ray and a stool sample to test for blood in the stool. Loria increased plaintiff's prescription for Omeprazole, the medicine plaintiff was taking for his ulcer. The results of plaintiff's complete blood count test and chest x-ray were normal.

On January 23, 2009, plaintiff saw defendant Loria for complaints of blood in his stool and coughing up blood. The test for blood in his stool was positive, so Loria discontinued Celebrex, prescribed Tylenol for pain and ordered a gastrointestinal consultation. Plaintiff's blood pressure was high, so Loria prescribed a blood pressure medication. She also scheduled complete blood count and blood chemistry panel tests to determine whether plaintiff had anemia or any side effects from the blood pressure

medication. The results of the complete blood count and anemia tests were normal.

On February 3, 2009, defendant Loria saw plaintiff for complaints of abdominal pain. Loria ordered an abdominal ultrasound, complete blood count test and a blood test for liver problems. Loria also decreased plaintiff's Tylenol prescription. On February 9, Loria saw plaintiff for his complaint that his medications were causing him "liver pain." Loria discontinued plaintiff's prescription for Tylenol and Simvastatin and ordered a repeat liver function test and lipid panel.

On February 26, 2009, plaintiff received an abdominal ultrasound, which showed no abnormalities of the liver. He was also seen by a gastroenterologist, who examined his gastrointestinal tract for bleeding or ulcers. The examination showed that plaintiff's gastrointestinal tract was normal except for hemorrhoids.

On March 6, 2009, defendant Loria met with plaintiff to discuss the results of the abdominal ultrasound with him.

C. Defendant McCullough's Distribution of the Wrong Medicine to Plaintiff

On January 10, 2009, defendant Nurse McCullough gave plaintiff blood pressure medication intended for another patient; plaintiff took the medication. McCullough realized her error immediately, reported it to the physician on call and filed a medication error report. McCullough checked plaintiff's blood pressure one-half hour and one hour after he

took the medication. Plaintiff did not develop any adverse side effects from the medication.

D. Defendant Dunnet's Distribution of the Wrong Medicine to Plaintiff

On February 24, 2009, defendant Nurse Dunnet gave plaintiff another patient's over-the-counter cold medication (an antihistamine). After realizing what had happened, Dunnet told the on-call physician and filed a medication error report. The physician discussed the incident with plaintiff. Plaintiff suffered no adverse medical side effects from the cold tablet.

E. Defendant Krueger's Alleged Distribution of Wrong Medicine to Plaintiff

On March 6, 2009, defendant Nurse Krueger distributed medications to plaintiff during the regularly scheduled morning medication pass. Approximately five minutes later, plaintiff told Krueger that she had given him a little yellow pill with an "L" on it that did not belong to him and that he had taken the medication. Krueger checked the medication drawer to see whether there were any discrepancies to support plaintiff's allegation. Krueger found no evidence of any medication error and no other patient reported any problems with the morning medication distribution. After Krueger told plaintiff that there were no discrepancies in the medication drawer, he told her that she had actually given him three pills that did not belong to him. Krueger told defendant Dr. Loria about plaintiff's allegations and said that she had not found evidence of any medication discrepancies. Loria

told plaintiff that even if his allegation were true, the amount of medication at issue would not cause him any harm. Krueger documented plaintiff's allegations and her response in his medical records.

F. Plaintiff's Request for a Urinal

At some point while he was a patient at Wisconsin Resource Center, plaintiff asked defendant Nurse Krueger to prescribe him a urinal for his personal use because his urinary problems caused him to urinate on himself. Krueger denied plaintiff's request after the staff in plaintiff's housing unit told Krueger that they would allow plaintiff to access the restroom at any time. Plaintiff also asked for a urinal to use in the lunch room. Krueger denied this request because urinals are not permitted in the lunch room for sanitary reasons.

In February 2009, plaintiff received a urinal to use during the night for a two-week period while he was being treated for urinary problems.

G. Medical Privacy at the Wisconsin Resource Center

The Wisconsin Resource Center is a secure mental health treatment facility that also operates as a prison. All patients are escorted to and from appointments by either correctional officers or psychiatric care technicians. Although the health service unit has some barriers in place and uses frosted glass in windows in some areas to protect privacy,

security staff are able to observe patients in the treatment room. Sometimes, female staff may see male nudity.

Patients at the Wisconsin Resource Center can file health service request forms when they have medical concerns. The requests are sent to the nursing staff who triage them. If the matter appears urgent, the nurse will call the patient's attending physician, who is a psychiatrist. The attending physician will then call for a medical consultation by an internist or a family practice physician if necessary. As part of their regular job duties on the housing units, psychiatric care technicians are permitted to open and review patient health service requests. The technicians are considered part of each patient's care team. If a patient does not wish to have psychiatric care technicians see a health service request, the patent may give the request directly to the nurse during medication distribution.

OPINION

A. Medical Care Claims

Plaintiff brings claims against defendants Dr. Loyda Loria, Jan Krueger, David Barney, Pat McCullough, Carolyn Cada, Donna Dunnett and Mario Canziani for failing to provide him adequate medical care in violation of the constitution. As a civilly committed patient, plaintiff is protected by the due process clause of the Fourteenth Amendment, rather than by the Eighth Amendment, which applies to criminally committed inmates. Sain v.

Wood, 512 F.3d 886, 893 (7th Cir. 2008) (civilly committed detainee protected by Fourteenth Amendment). However, the Court of Appeals for the Seventh Circuit has used the Eighth Amendment standard in analyzing a detainee's claim for violation of the prohibition against cruel and unusual punishment. Id. ("[The Fourteenth Amendment's] protection against cruel and inhuman treatment has been defined as at least as extensive as that afforded to prisoners by the Eighth Amendment."); Williams v. Rodriguez, 509 F.3d 392, 401 (7th Cir. 2007) ("Although the Eighth Amendment only applies to convicted prisoners, this court has previously stated that the same standard applies to pretrial detainees under the Fourteenth Amendment's due process clause."); Brown v. Budz, 398 F.3d 904, 909 (7th Cir. 2005) (applying Eighth Amendment analysis to § 1983 claim brought by resident awaiting civil commitment trial).

To survive summary judgment on an Eighth Amendment (or Fourteenth Amendment) medical care claim, a plaintiff must submit evidence showing that he had a "serious medical need" and that state officials were "deliberately indifferent" to this need. Estelle v. Gamble, 429 U.S. 97, 104 (1976); Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997).

Defendants do not deny that plaintiff has serious medical needs, including chronic liver and kidney problems, asthma, ulcers and pain. However, defendants contend that there is no evidence that they were deliberately indifferent to those needs. To establish that defendants were "deliberately indifferent," plaintiff must adduce evidence showing that

defendants were aware that he needed medical treatment, but disregarded plaintiff's risk of harm by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997). Any deliberate indifference analysis requires the court to consider the totality of the care provided. Dunigan v. Winnebago County, 165 F. 3d 587, 591 (7th Cir. 1999). When a doctor has provided a prisoner or detainee some treatment, the question is whether that treatment is constitutionally adequate, that is, whether the doctor acted with such blatant inappropriateness as to imply that his actions or omissions were not actually based on medical judgment. Duckworth v. Ahmad, 532 F.3d 675, 679 (7th Cir. 2008). Unless medical care evidences "intentional mistreatment likely to seriously aggravate the [patient's] condition," a patient's dissatisfaction with a doctor's prescribed course of treatment does not give rise to a constitutional claim. Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir. 1996).

1. Claim against defendant Dr. Loria

Plaintiff contends that defendant Loria violated his rights under the Fourteenth Amendment by failing to treat his chronic health problems properly. In particular, plaintiff contends that although Loria knew about plaintiff's numerous chronic health conditions, she did not provide him sufficient treatment and prescribed him medications that exacerbated his stomach and liver problems, weakened him and caused him to cough up blood, bleed internally and urinate on himself.

Plaintiff has failed to provide any evidentiary support for his claims against defendant Loria. Contrary to plaintiff's claims, the evidence in the record shows that Loria provided plaintiff with multiple medical appointments and evaluations, laboratory and diagnostic testing and referrals for outside specialist evaluations. Specifically, Loria saw plaintiff personally for medical evaluations 16 times during the 11 months that plaintiff was held at the Wisconsin Resource Center. With respect to plaintiff's liver problems, complaints of abdominal pain and reports of coughing up blood, Loria ordered liver function tests, arranged for examinations and medical testing and ordered various laboratory tests, abdominal ultrasounds and arranged for specialist consultation and testing by a gastroenterologist. To address plaintiff's shoulder and elbow pain, Loria took x-rays, ordered an MRI, arranged for an orthopedic consultation and treated his symptoms with various pain relievers and muscle relaxants.

Although plaintiff contends that defendant Loria gave him medication that exacerbated his medical conditions and that Loria should have provided him with different treatments, he points to no evidence in the record that could establish that Loria gave him improper medication or that Loria's failure to do more for plaintiff's medical conditions was blatantly inappropriate or far below the standard of care. Plaintiff's own opinion about what qualifies as appropriate medical treatment is not enough. Therefore, defendant Loria is entitled to summary judgment with respect to plaintiff's claim that she failed to provide him

adequate medical treatment in violation of the Fourteenth Amendment.

2. Claims against defendants Krueger, McCullough and Dunnett for medication errors

Plaintiff contends that defendants Krueger, McCullough and Dunnett violated his rights under the Fourteenth Amendment by giving him the wrong medication. Defendants do not deny that defendant McCullough gave plaintiff a blood pressure medication intended for another patient on January 10, 2009, or that defendant Dunnett gave plaintiff a cold tablet intended for another patient on February 24, 2009. The parties dispute whether defendant Krueger ever gave plaintiff the wrong medication. However, even assuming that all three nurses gave plaintiff the wrong medication on the days identified by plaintiff, there is no evidence to support plaintiff's claims that these defendants' actions were taken in reckless disregard for plaintiff's health care needs. The undisputed factual record shows that defendants McCullough and Dunnett recognized their errors immediately and took prompt steps to rectify them and protect plaintiff from any adverse effects by notifying a physician, asking for directions and documenting the errors. The evidence shows that plaintiff suffered no adverse side effects from receiving the incorrect medication. Additionally, although defendant Krueger did not believe that she gave plaintiff an incorrect medication, she notified a physician and reported plaintiff's allegations. The one-time errors made by these nurses do not rise to the level of a constitutional violation, particularly where the nurses took

actions to correct the mistakes immediately. Under these circumstances, no reasonable jury could draw an inference that these defendants were deliberately indifferent to plaintiff's medical needs.

3. Claim against defendant Krueger for her refusal to provide plaintiff with a urinal

Plaintiff also contends that defendant Krueger was deliberately indifferent to his medical needs by failing to provide him with a urinal despite knowing he had urinary problems. However, the evidence in the record shows that Krueger was responsive to plaintiff's request. She checked with the unit staff where plaintiff resided and they assured her that he would be given access to a bathroom on the unit should he need one. She declined to give him access to use a urinal in the cafeteria for sanitary reasons. There is no evidence in the record that would support drawing of an inference that Krueger's refusal to give plaintiff a personal urinal was blatantly inappropriate, fell below the standard of care or amounted to a reckless disregard to a serious risk of harm to plaintiff. Thus, no reasonable jury could conclude that defendant Krueger's refusal to give plaintiff a urinal exhibited deliberate indifference to plaintiff's serious medical needs.

4. Medical care claims against the remaining defendants

Plaintiff has also raised medical care claims against defendant David Barney, the

director of nursing, defendant Carolyn Cada, the nursing supervisor, and Mario Canziani, the security director at the Wisconsin Resource Center. However, there is no evidence in the record showing that these three defendants provided plaintiff any medical care or treatment that is the subject of this lawsuit or that they committed any medical errors at all. It is well established that liability under 42 U.S.C. § 1983 must be based on a defendant's personal involvement in the constitutional violation. Palmer v. Marion County, 327 F.3d 588, 594 (7th Cir. 2003); Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995). Moreover, these defendants cannot be held liable for the actions of others solely because of their supervisory status. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Therefore, defendants are entitled to summary judgment with respect to plaintiff's claims that defendants Barney, Cada and Canziani failed to provide him with adequate medical treatment.

B. Violation of Right to Privacy

Plaintiff contends that defendants Barney and Canziani violated his constitutional rights by instituting policies that failed to protect his medical privacy. In particular, plaintiff contends that policies at the Wisconsin Resource Center are unconstitutional because they allow psychiatric care technicians to review his health service requests, they fail to provide completely private examination rooms and they allow security staff to remain present during

examinations that involve nudity.

The Supreme Court has recognized a constitutional right to information privacy under the Fourteenth Amendment, Whalen v. Roe, 429 U.S. 589, 599-600 (1977), and the Court of Appeals for the Seventh Circuit has held that this right to privacy covers medical records and communications. Denius v. Dunlap, 209 F.3d 944, 956 (7th Cir. 2000). However, the court of appeals has not held decisively whether prisoners or civilly committed patients retain a right to informational privacy regarding their medical records and treatment. Massey v. Helman, 196 F.3d 727, 742 n.8 (7th Cir. 1999) ("Whether prisoners have any privacy rights in their medical records and treatment appears to be an open question.") (citing Anderson v. Romero, 72 F.3d 518, 522-23 (7th Cir. 1995)). The court of appeals has stated that certain purposeful disclosures could violate the Eighth Amendment if the disclosure was intended to humiliate the prisoner. Anderson, 72 F.3d at 523.

Courts in the Second and Third Circuits have found that prison staff violated an inmate's privacy right by purposefully disseminating intensely private medical information. Doe v. Delie, 257 F.3d 309, 317 (3d Cir. 2001) (involving HIV-positive status); Powell v. Schriver, 175 F.3d 107, 112 (2d Cir. 1999) (involving HIV-positive status and transsexualism). Additionally, this court has concluded in previous cases that prisoners retain a constitutional right to keep some matters private. Salas v. Grams, 2010 WL 2757322, *3-4 (W.D. Wis. July 13, 2010); Woods v. White, 689 F. Supp. 874, 876 (W.D.

Wis. 1988).

Assuming that civilly committed patients retain at least as much right as prisoners to keep some medical matters private, the question is what standard of review applies to plaintiff's claim. Like the privacy rights of prisoners and pretrial detainees, the privacy rights of civilly committed patients are severely curtailed by the fact of their detention and the security concerns inherent in operating a secure treatment facility. Thielman v. Leean, 282 F.3d 478, 483-84 (7th Cir. 2002) ("even though [civilly committed patient] is not formally a prisoner, his confinement has deprived him (legally) of a substantial measure of his physical liberty"); see also Bell v. Wolfish, 441 U.S. 530, 555-56 (1979) ("given the realities of institutional confinement, any reasonable expectation of privacy that a detainee retained necessarily would be of a diminished scope"); Hudson v. Palmer, 468 U.S. 517, 527 (1984) (prisoner's privacy rights are severely curtailed).

Ultimately, the general standards for claims under the Eighth and Fourteenth Amendments are similar. In order to succeed on a claim under the Eighth Amendment's cruel and unusual punishment clause, a prisoner "must show that the state has created risk or inflicted pain pointlessly." Johnson v. Phelan, 69 F.3d 144, 147 (7th Cir. 1995); see also Whitman v. Nesic, 368 F.3d 931, 934-35 (7th Cir. 2004) (question is whether any legitimate penological reason for privacy invasion); Calhoun v. DeTella, 319 F.3d 936, 939 (7th Cir. 2003) (applying same standard in strip search case); Mays v. Springborn, 575 F.3d

643, 649 (7th Cir. 2009 (to prevail on strip search claim, plaintiff must "show that the searches were conducted in a harassing manner intended to humiliate and cause psychological pain."). Under the Fourteenth Amendment, an inmate's constitutional right to privacy is not violated if the policy or practice at issue is "reasonably related to legitimate penological interests." Delie, 257 F.3d at 317 (citing Turner v. Safley, 482 U.S. 78, 89 (1987)). Thus, so long as the Wisconsin Resource Center policies at issue exist for legitimate institutional purposes and not to humiliate or harm the patients and prisoners, these policies are constitutional.

Applying these standards, I conclude that plaintiff has not adduced evidence showing that the policies at issue are unconstitutional. The Wisconsin Resource Center is a secure mental health treatment facility that also operates as a prison. It is reasonable for institution officials to believe that there may be safety concerns during medical examinations. Thus, all patients are escorted to and from appointments by either correctional officers or psychiatric care technicians. Additionally, although the health service unit has some barriers in place and uses frosted glass in windows in some areas to protect privacy, security staff must be able to observe a patient in the treatment room for both patient and staff safety. Plaintiff has adduced no evidence suggesting that medical examinations are conducted in a manner intended to punish, harass, harm or humiliate him or other patients.

Also, I conclude that plaintiff's privacy rights were not violated when psychiatric care

technicians reviewed his health service requests. The technicians are considered part of each patient's care team. It is reasonable for institutional officials to believe that a patient's care team should be aware of the patient's medical needs. Additionally, if a patient does not wish to have a particular psychiatric care technician see a health service request, the patent may give the request directly to a nurse during medication distribution. No reasonable jury could draw an inference from the undisputed factual record that plaintiff's medical privacy rights have been violated. Therefore, I will grant defendants' motion for summary judgment on this claim.

C. State Law Claims

The final question is what to do with plaintiff's state law claims. Plaintiff contends that he is raising claims under Wisconsin's patient's rights statute, Wis. Stat. § 51.61, and Wisconsin's Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act, Wis. Stat. § 51.30. When all the federal claims in a case have been dismissed, the general rule is that a district court should decline to exercise jurisdiction over any remaining state law claims under 28 U.S.C. § 1367(c)(3). Redwood v. Dobson, 476 F.3d 462, 467 (7th Cir. 2007). Although exceptions to this general rule exist, neither plaintiff nor defendants have asked that the court retain jurisdiction over plaintiff's state law claims in the event plaintiff's federal claims are dismissed. (Defendants note in their brief supporting their motion for

summary judgment that they do not believe plaintiff has stated a claim upon which relief may be granted under state law. Dkt. #52 at 21.) I conclude that retaining jurisdiction would be inappropriate in this case. At this stage, neither the court nor the parties have expended resources that would be wasted by dismissing these state law claims. Because neither side has shown that it would be an efficient use of judicial resources to resolve the state law claims, I am declining to exercise jurisdiction over them.

ORDER

IT IS ORDERED that

1. Plaintiff Larry Holman's motion for summary judgment, dkt. #43, is DENIED.

2. The motion for summary judgment filed by defendants Loyda Loria, Jan Krueger, David Barney, Pat McCullough, Mario Canziani, Carolyn Cada and Donna Dunnet, dkt. #51, is GRANTED with respect to plaintiff's claims that defendants violated his constitutional rights by failing to provide him adequate medical treatment and failing to keep his medical issues private.

3. The court declines to exercise supplemental jurisdiction over plaintiff's state law claims. Those claims are DISMISSED WITHOUT PREJUDICE to plaintiff's refiling them in state court.

4. The clerk of court is directed to enter judgment accordingly and close this case.

Entered this 3d day of January, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge