IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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PHILIP PATRICK SHEAHAN,

Plaintiff,

v.

DR. SULIENE, NURSE WHITE,
PAUL KETARKUS, and DR. SPRINGS,

Defendants.

OPINION AND ORDER

12-cv-433-bbc

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In this civil action for monetary relief under 42 U.S.C. § 1983, plaintiff Philip Patrick Sheahan is proceeding pro se on claims of retaliation, medical negligence and Eighth Amendment deliberate indifference, stemming from defendants' alleged failure to properly treat his hand injury. Before the court is defendants' motion for partial summary judgment, in which defendants argue that plaintiff failed to exhaust his administrative remedies with respect to the retaliation claim. Defendants argue that plaintiff's inmate complaint regarding his hand injury alleges only improper removal of his stitches, and does not give notice that the removal was retaliatory.

After considering the undisputed facts and the parties' arguments, I will deny defendants' motion. Although the inmate complaint does not specifically state the word "retaliation," it does fulfill the minimal requirements for this allegation by identifying the protected conduct that provoked the retaliation and the retaliatory act.

From the record, I find the following facts to be material and undisputed.

FACTS

On July 25, 2011, plaintiff suffered two hand injuries. He was taken to Divine Savior Hospital and given stitches. The doctor told him that the stitches were to remain in for ten days. A doctor at the prison health services unit removed the stitches eight days later.

On August 9, 2011, plaintiff submitted an inmate complaint regarding the early removal of the stitches. The complaint states, "My entire complaint is outlined in the 3 pgs that are attached to the complaint, which were sent to the Health Services Manager . . . ." Offender Complaint, Cpt., Dkt.# 1-1, Ex. 1, p.1 (attached to complaint). The three pages are a copy of an August 3, 2011, letter sent to the prison health services manager. The letter states:

> When I arrived at HSU I was seen by a Dr. filling in for Dr. Saliene. I explained my problem that I was going through and asked if I could receive something for the pain at which time the Dr. made a statement that she wasn't going to argue with me about narcotics. I never once argued with the Dr. about narcotics or anything for that matter . . . When I returned back to HSU I was told that the stitches were coming out. I said the Dr. @ Divine Savior that put the stitches in told me they would come out in 10 days. The Dr. [at HSU] told me she talked to a surgeon. She never told me what the surgeon said or why she determined to override the Dr. instructions @ Divine Savior about removing the stitches in 10 days. A nurse then removed the stitches . . . .

Id. at 3.

Both plaintiff's complaint and his subsequent appeal were dismissed.

OPINION

A prisoner must exhaust all available administrative remedies before filing a lawsuit in federal court. 42 U.S.C. § 1977e(a). This means that "if a prison has an internal administrative grievance system through which a prisoner can seek to correct a problem, then the prisoner must utilize that administrative system before filing a claim." Massey v. Helman, 196 F.3d 727, 733 (7th Cir. 1999). This requirement applies to all claims about prison life, Porter v. Nuss, 534 U.S. 516, 532 (2002), including retaliation claims, see, e.g., Smith v. Zachary, 255 F.3d 446, 452 (7th Cir. 2001). The purpose of administrative exhaustion is to give prison officials a chance to resolve the complaint without judicial intervention. Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532, 537-38 (7th Cir. 1999) (exhaustion serves purposes of "narrow[ing] a dispute [and] avoid[ing] the need for litigation"). Because exhaustion is an affirmative defense, defendants bear the burden of establishing failure to exhaust. Dole v. Chandler, 438 F.3d 804, 809 (7th Cir. 2006).

In considering which facts or pleadings an inmate complaint should contain, the court must look to the appropriate administrative requirements. Strong v. David, 297 F.3d 646, 649 (7th Cir. 2002). When the administrative requirements are silent, as are those in Wisconsin Administrative Code Chapter DOC 310, "a grievance suffices if it alerts the prison to the nature of the wrong for which redress is sought . . . the grievant need not lay out the facts, articulate legal theories, or demand particular relief. All the grievance need do is object intelligibly to some asserted shortcoming." Id. at 650. If the grievance concerns alleged retaliation, then at a minimum it must identify two things: the protected conduct

that provoked the retaliation and the retaliatory act. Wine v. Pollard, No. 08-cv-173-bbc, 2008 WL 4379236, at *3 (W.D. Wis. Sept. 23, 2008); Henderson v. Frank, No. 06-C-12-C, 2006 WL 850660, at *2 (W.D. Wis. Mar. 21, 2006).

Plaintiff's inmate complaint satisfies this standard. It identifies protected conduct: plaintiff asked for medical care, to which he is constitutionally entitled. It identifies the retaliatory act: early removal of plaintiff's stitches. The complaint does not include the word "retaliation," but under Strong, the complaint does not need to put forth a legal theory; plaintiff explains that the early removal of the stitches came immediately after the argument concerning pain medication. Compare Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002) (for retaliation claims brought in federal court, allegations identifying retaliatory act and protected activity meet notice pleading requirements).

It is true that defendants could have overlooked the retaliation claim. Nonetheless, when considering a motion regarding failure to exhaust, the Court of Appeals for the Seventh Circuit gives a liberal construction to the necessary contents of the inmate grievance. In Riccardo v. Rausch, 375 F.3d 521 (7th Cir. 2004), the plaintiff alleged that problems in prison administration contributed to a guard's raping the plaintiff. The court held that the grievance was sufficient where it "hinted" at the federal claim:

> [Plaintiff] wrote: "[T]he administration don't [sic] do there [sic] job. [A sexual assault] should've never [sic] happen again." This language is ambiguous . . . The document that Riccardo filed is at the border of intelligibility; it is hard to imagine much less that a prisoner could do and still alert the prison; yet this grievance did complain that Garcia had committed a rape and that "the administration don't do there job." A generous construction of this grievance would have induced the prison to consider the possibility that the guards could have prevented this assault.

Id. at 524. In Westefer v. Snyder, 422 F.3d 570, 581-82 (7th Cir. 2005), the plaintiff alleged that he had been transferred unconstitutionally to Tamms prison. The court held that the grievances were sufficient because they "expressed concern about not being told the reason for [] transfer to Tamms or listed something to the effect of "Transfer from Tamms" as the requested remedy . . . even though the grievance officers in each case addressed the prison condition complaints without mentioning the transfers to Tamms." See also Charles v. Reichel, 67 Fed. Appx. 950, 952 (7th Cir. 2003) (unpublished) (where federal claim alleged retaliation, grievance was sufficient where it alerted prison to the alleged wrongdoing, even though it did not specifically allege the retaliatory motive).

Construed generously, plaintiff's inmate complaint alleges retaliation. Plaintiff followed the proper administrative procedures for submitting this complaint and appealing the denial of his complaint. Therefore, I find that plaintiff has exhausted his administrative remedies with respect to his retaliation claim.

ORDER

IT IS ORDERED that defendants' motion for partial summary judgment is DENIED.

Entered this 24th day of May, 2013.

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