IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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LEIGHTON D. LINDSEY,

Plaintiff,

v.

T. CLARK, DAVID GARDNER, MR. or MRS. HABLE,
MR. HERMANS, STACEY HOEM FINGERSON,
MARY MILLER, SARAH MASON,
SCOTT RUBIN-ASCH, TIM HAINES,
JENNIFER ANDERSON, MR. SWEENEY,
RALPH NAGLE, MRS. THEIN,
MR. or MRS. WALTERS, MR. or MRS. TRIPP,
JEFFREY KNUPPLE, BURTON COX,
SHANNON SHARPE, BRIAN KOOL and
MELANIE HARPER,

Defendants.

ORDER

12-cv-923-bbc

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In this civil action for monetary and injunctive relief brought pursuant to 42 U.S.C. § 1983, plaintiff Leighton Lindsey contends that several doctors and staff members at the Wisconsin Secure Program Facility violated his rights under the Eighth Amendment by refusing to place him on a "no kneel" restriction. Plaintiff is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and has made an initial partial payment of the filing fee.

Because plaintiff is a prisoner, I am required by the 1996 Prison Litigation Reform Act to screen his complaint and dismiss any portion that is legally frivolous, malicious, fails 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. § 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). Having reviewed plaintiff's allegations, I conclude that he has stated a claim upon which relief may be granted under the Eighth Amendment against each of the defendants, with the exception of defendant Tim Haines.

In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff Leighton Lindsey is an inmate at the Wisconsin Secure Program Facility in Boscobel, Wisconsin. Defendant Tim Haines is the warden of the institution and defendant Burton Cox is a doctor there. Defendants T. Clark, David Gardner, Mr. Hermans, Stacey Hoem Fingerson, Mary Miller, Sarah Mason, Dr. Scott Rubin-Asch, Jennifer Anderson, Mr. Sweeney, Ralph Nagle, Mrs. Thein, Dr. Jeffrey Knupple, Brian Kool, Melanie Harper, Shannon Sharpe, Tripp, Walters and Hable are members of the special needs committee at the institution.

In January 2010, plaintiff injured his right knee while he was incarcerated at the Columbia Correctional Institution. He developed patellar tendinitis and a doctor at the prison extracted fluid from his knee, gave him an Ace bandage and prescribed Naproxen for the pain. He was put on a "no kneel" restriction. On March 12, 2010, plaintiff was transferred to the Wisconsin Secure Program Facility. A nurse evaluated him, instructed him

to continue using the Ace bandage and extended his "no kneel" restriction.

On July 7, 2010, defendant Dr. Cox took plaintiff off the "no kneel" order after staff told Cox that plaintiff was jumping and getting up without difficulty. Plaintiff now is required to kneel whenever he leaves his cell and any time his meal trap opens, which occurs several times a day. Plaintiff told Cox that although certain activities did not hurt his knee, the kneeling caused him constant pain and was worsening his knee condition. Plaintiff requested to be put back on the "no kneel" order, but Cox refused and referred plaintiff's subsequent requests to the institution's special needs committee.

The special needs committee denied plaintiff's requests for a "no kneel" order, stating that there was insufficient medical evidence to support it. The committee recommended that plaintiff receive physical therapy. Plaintiff began physical therapy but the frequent kneeling in his cell continues to cause him significant pain and has worsened his knee problems. He has written to defendant Cox, the special needs committee and other staff members several times about the pain caused by kneeling.

DISCUSSION

Plaintiff contends that all of the defendants violated his right to adequate medical treatment under the Eighth Amendment by refusing to put him on a "no kneel" restriction. To state a medical care claim under the Eighth Amendment, a prisoner must allege facts from which it can be inferred that (1) his medical need was objectively serious; and (2) the official acted with "deliberate indifference" to the prisoner's health or safety. Estelle v. Gamble, 429

U.S. 97, 104-05 (1976); Farmer v Brennan, 511 U.S. 825, 834 (1994). 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). A prison official acts with deliberate indifference when "the official knows of and disregards an excessive risk to inmate health or safety." Farmer, 511 U.S. at 837; Jaros v. Illinois Dept. of Corrections, 684 F.3d 667, 671 (7th Cir. 2012).

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

(1) Was plaintiff's health endangered?

(2) Did defendants know that plaintiff's health was endangered?

(3) Despite their awareness of the need, did defendants consciously fail to take reasonable measures to help plaintiff?

Plaintiff has stated a claim upon which relief may be granted under this standard against most of the defendants. Plaintiff alleges that he had patellar tendinitis that caused him significant pain and for which he had been placed on a "no kneel" order by his treating physician. He also alleges that kneeling exacerbated his condition and prevented it from healing. It is reasonable to infer that his patellar tendinitis is a serious medical condition and that failing to place plaintiff on a "no kneel" restriction worsened his condition and caused him substantial pain.

With respect to defendants' awareness of the need, plaintiff alleges that he wrote to defendant Cox and the members of the special needs committee about his knee pain and the problems caused by kneeling repeatedly. Plaintiff alleges that defendants refused to place

him on a "no kneel" restriction, despite acknowledging that plaintiff had a medical need that required physical therapy. Thus, it is reasonable to infer at this stage that defendants consciously failed to take reasonable measures to help plaintiff. At summary judgment or trial, plaintiff will need to come forward with specific evidence proving each of these elements. In particular, plaintiff will have produce evidence proving that each defendant was aware of his knee problem and believed that frequent kneeling worsened the condition or caused plaintiff serious pain, but recommended a course of action that they knew was unreasonable under the circumstances.

I am dismissing plaintiff's complaint as to defendant Tim Haines. Plaintiff's only allegation related to Haines is that he is the warden of the institution. Plaintiff does not allege that Haines had anything to do with plaintiff's request for a "no kneel" restriction. Palmer v. Marion County, 327 F.3d 588, 594 (7th Cir. 2003) (personal liability under 42 U.S.C. § 1983 must be based on defendant's personal involvement in constitutional violation).

ORDER

IT IS ORDERED that

1. Plaintiff Leighton Lindsey is GRANTED leave to proceed on his claim that defendants Burton Cox, T. Clark, David Gardner, Mr. Hermans, Stacey Hoem Fingerson, Mary Miller, Sarah Mason, Dr. Scott Rubin-Asch, Jennifer Anderson, Mr. Sweeney, Ralph Nagle, Mrs. Thein, Dr. Jeffrey Knupple, Brian Kool, Melanie Harper, Shannon Sharpe,

Tripp, Walters and Hable violated his rights under the Eighth Amendment by failing to approve a "no kneel" restriction for plaintiff.

2. Plaintiff is DENIED leave to proceed on his claim that defendant Tim Haines violated his rights under the Eighth Amendment. The complaint is DISMISSED as to Haines.

3. Under an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the state defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service on behalf of the state defendants.

4. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

5. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

6. Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the officials at the

Wisconsin Secure Program Facility of that institution's obligation to deduct payments until the filing fee has been paid in full.

Entered this 21st day of February, 2013.

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