

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

CHRISTOPHER GOODVINE,

Plaintiff,

v.

OPINION AND ORDER

12-cv-134-wmc

GARY ANKARLO, LIEUTENANT BOODRY,
OFFICER CONROY, JEFF HEISE, DR. JOHNSON,
OFFICER JULSON, DR. KUMKE, DR. McLARIN,
MICHAEL MEISNER, OFFICER MILLONIG,
CAPTAIN MORGAN, DR. NELSON, JANEL NICKEL,
OFFICER SCHNEIDER, OFFICER WILEY,
and OFFICER WITTERHOLT,

Defendants.

On April 5, 2013, defendants filed a motion for summary judgment, and the court stayed briefing on the motion pending production of a report from the court-appointed neutral expert in psychiatry. During the stay, plaintiff Christopher Goodvine filed a “motion to compel discovery” (dkt. #98), a “motion to stay summary judgment and appoint counsel” (dkt. #99), and a “motion to strike” (dkt. #106). For the reasons explained below, these motions will be denied, except for the motion to compel discovery, which will be granted in part.

MOTION TO STAY SUMMARY JUDGMENT AND APPOINT COUNSEL

Plaintiff has asked to stay briefing on defendants’ summary judgment motion pursuant to Federal Rule of Civil Procedure 56(d), which allows this court to extend the time to respond to a summary judgment motion upon a showing that the moving party

“cannot present facts essential to justify its opposition.” In light of the existing stay until production of the neutral expert’s report (*see* dkt. #97), plaintiff’s motion in this respect will be denied as moot.

Plaintiff has also asked for the court’s assistance recruiting counsel. The court previously denied two motions to the same effect without prejudice, explaining that plaintiff “undoubtedly has the ability to prosecute his legal claims with skill.” (Dkt. #21 at 11-12; #60 at 4.) The instant motion will be denied for the same reasons. Plaintiff’s performance in litigation thus far has shown that he possesses intelligence, written fluency an understanding of the legal system that equals that of some practicing lawyers. Accordingly, he has the basic skills necessary to prosecute a legal case. While plaintiff argues that this is no ordinary case, in part because of the difficulty in producing expert testimony on complicated medical questions relevant to his “failure to treat” and “failure to protect” claims against prison psychiatrists; (and in part because defendants have taken advantage of his incarceration to deny him access to critical discovery) plaintiff will have access to the report of the court’s appointed, neutral psychiatrist before responding to defendants’ motion for summary judgment. Plaintiff’s understanding of his own psychiatric history and of the law puts him in an adequate position to determine how best to use that report at summary judgment.

As to the second point, plaintiff contends that in order to prove deliberate indifference he must delve into the process that his psychiatrists and psychologists went through in diagnosing his mental illness and deciding on an appropriate treatment. Plaintiff complains that much of this information lies in the possession or knowledge of

non-party witnesses beyond the reach of discovery interrogatories directed at defendants. Moreover, plaintiff cannot depose these non-party witnesses because he lacks the money to pay them. *See* 28 U.S.C. § 1821; Fed. R. Civ. P. 26(b)(4)(E). But recruitment of a lawyer for plaintiff will not solve this problem, as he, too, would likely be unable or unwilling to pay for the depositions that plaintiff says are necessary. If plaintiff believes there are treatment providers not presently named as defendants whose diagnoses or treatment decisions exhibit malpractice or deliberate indifference to his risk of suicide, he should immediately seek leave to amend his complaint to add them. Otherwise, the reasoning behind the decisions of non-parties is largely irrelevant except to the extent defendants were made aware of them (something plaintiff can discover directly from defendants themselves). The court will only judge whether the *existing* parties have committed malpractice and have been or continue to be deliberately indifferent.

Finally, plaintiff claims that he lacks time to conduct adequate discovery and to prepare responsive briefs. This is not a compelling argument under the circumstances of this case. The daunting size of this case -- and the corresponding size of the summary judgment briefings and evidentiary submissions -- owes largely to plaintiff himself having pleaded several incidents and numerous defendants together in one action. In addition, by the time the expert report is in, plaintiff will have had at least six months to conduct discovery and at least two months to prepare a responsive brief, which is far longer than most parties receive under the court's usual summary judgment briefing schedule. The court remains confident that plaintiff has the ability, time and resources necessary to defend any meritorious claims he has against these defendants.

MOTION TO STRIKE

Pursuant to the court's order appointing a neutral expert, defendants submitted a CD to the court for forwarding to the expert containing (1) plaintiff's Psychological Services Unit file (613 pages); (2) plaintiff's Health Services Unit file (2368 pages); (3) plaintiff's legal file (178 pages); (4) plaintiff's observation logs (222 pages); (5) plaintiff's incident reports (187 pages); (6) plaintiff's conduct record (6 pages); (7) plaintiff's HARE psychopathy checklist and supporting materials (53 pages); and (8) copies of DOC policies and procedures (31 pages). Plaintiff then filed a motion to strike this evidence because he had not been provided with a copy of the CD, and stated that he had reason to believe that he had not been given hard copies of all the documents contained on the CD. Defendants have since mailed a copy of the CD to plaintiff and submitted an affidavit that all of the files included on the CD have been supplied to plaintiff in paper form. Absent reason to believe otherwise, the court will deny plaintiff's motion to strike.

MOTION TO COMPEL DISCOVERY

Plaintiff's motion to compel discovery is extensive. The motion comprises three general objections to defendants' approach to discovery, as well as numerous specific objections to defendants' responses to interrogatories, requests for production and requests to admit. These are addressed in turn below.

PLAINTIFF'S GENERAL OBJECTIONS

1. **Plaintiff's Objection:** Defendants have failed to sign their answers to the interrogatories under oath and defense counsel have failed to sign objections and all discovery responses, as required by Fed. R. Civ. P. 33(b)(5) and 26(g)(1).

Court Ruling: Plaintiff is correct. Attorney and defendant signatures are missing from the responsive discovery documents provided to plaintiff. The signature requirements are set out in the federal rules. Defendants and their counsel will be required to provide plaintiff with signed copies of all previously sent discovery responses, and to provide timely the necessary signatures on all future responses.

2. **Plaintiff's Objection:** Rather than produce copies of prison records, defendants have directed plaintiff to access the records himself in the files on site at CCI.

Court Ruling: Plaintiff's objection is rejected. Defendants represent that with respect to numerous document requests, the responsive records are readily accessible to plaintiff through normal institutional channels. On this representation, the court finds that defendants have complied with their duty under the Federal Rules -- there is no duty to produce copies of records that are fully accessible to an opposing party. The court expects, however, that defendants will encourage *prompt* assistance from all of the institutional sub-units to whom they have now directed plaintiff. If plaintiff is not able to access the documents that defendants say are available on a timely basis, the court will entertain further requests to compel from plaintiff and as sanction will consider making defendants bear the costs of photocopying documents, should he so choose.

3. **Plaintiff's Objection:** The records come with a \$0.15/page photocopy charge, which plaintiff is unable to pay.

Court Ruling: Plaintiff's motion is rejected. Plaintiff's regular spending account is enough to copy approximately 530 pages. Since he does not need to copy every page of his files, but rather only the ones with relevant evidence, this amount should be ample. If plaintiff needs additional funds, he should apply for a litigation loan. *See* Wis. Stats. § 301.328; Wis. Admin Code DOC § 309.51.

FIRST SET OF INTERROGATORIES

1. Interrogatory #1

- a. **Plaintiff's Complaint:** Defendants erroneously object that the interrogatory is "overly broad, burdensome and requires speculation."
- b. **Court Ruling:** Plaintiff's motion is granted in part. Although the requested information is all indisputably relevant to plaintiff's claim, asking defendants to recall each of the conversations they have had about his self-harm incidents over the past three years is impossibly burdensome. Each defendant should make a good-faith effort to describe any significant conversations (and certainly all investigations) to the best of their ability or to refer plaintiff to specific documents summarizing those conversations.

2. Interrogatory #2:

- a. **Plaintiff's Complaint:** Defendants erroneously object that the interrogatory is "overly broad, burdensome and requires speculation."
- b. **Court Ruling:** Plaintiff's motion is granted in part. While it appears overly burdensome to make defendants review and redact all shift reports and log books, defendants do not explain why it would be burdensome to review reports generated pursuant to DAI Policy #309.03.01 for "serious incidents."

3. Interrogatory #3

- a. **Plaintiff's Complaint:** Defendants erroneously object that the interrogatory is "overly broad, burdensome and requires speculation."
- b. **Court Ruling:** Plaintiff's motion is denied. The interrogatory is general, having been directed at the entire inmate population housed in DS-1. Defendants' general response is consistent with the broad scope of the question.

4. Interrogatory #4

- a. **Plaintiff's Complaint:** Defendants erroneously object that the interrogatory is "overly broad, burdensome and requires speculation."
- b. **Court Ruling:** Plaintiff's motion is granted. Defendants' answer is not responsive to the specific, non-burdensome question, which asks about the general procedures or protocol in the event that an inmate announces an intent to commit *imminent* self harm in observation status. If CCI does not have a policy for this situation, or if the general response is to do nothing, the defendants should say that.

5. Interrogatory #5

- a. **Plaintiff's Complaint:** Defendants' response does not adequately answer the question. Plaintiff believes that defendants have the information to answer.

- b. **Court Ruling:** Plaintiff's motion is granted in part. As to the first part of the interrogatory, which poses a hypothetical question, defendants' answer is insufficient. Although more information might be helpful, it is still possible to answer on the basic hypothetical facts provided whether BOP's usual practice in such a situation is to apply restraints, or at least to estimate the approximate percentage of the time in such situations that restraints are applied. As to the second part of the interrogatory, defendants implicitly admit that they cannot recall any time when plaintiff has been placed in bed restraints upon his request. Beyond this, plaintiff cannot ask them to state with certainty whether this event has actually happened or not.

6. Interrogatory #6

- a. **Plaintiff's Complaint:** Defendants do not produce documents that are in their possession.
- b. **Court Ruling:** Plaintiff's motion to compel is denied. The documents referenced have been made available for his inspection. See the court's discussion of plaintiff's general objection, above.

7. Interrogatory #7

- a. **Plaintiff's Complaint:** Defendants' response does not adequately answer the question and is contradicted by the evidence.
- b. **Court Ruling:** Plaintiff's motion is granted in part. Plaintiff has asked Drs. Kumke and McLaren to list their recollections of the conversations in question. Simply stating that the treatment notes speak for themselves is insufficient because these doctors' recollections may go beyond the information listed in the treatment notes. If they cannot recall doing or saying *anything* beyond what is in the notes, they should explain this and swear by the truth of their answer. As for the other part of the question, defendants have already adequately addressed plaintiff's complaint regarding the non-production of records from his visit with Dr. Nelson.

8. Interrogatory #8

- a. **Plaintiff's Complaint:** Defendants' response is contradicted by the evidence.
- b. **Court Ruling:** Plaintiff's motion is denied. Defendants' initial response was incorrect, as they now admit. They have supplemented the record to reflect notes that a consultation did occur, which is consistent with their admission in the Answer to the Complaint. Otherwise, their statement that they have no recollection of the incident in question is an adequate response.

9. Interrogatory #13

- a. **Plaintiff's Complaint:** Defendants erroneously object that the interrogatory is "overly broad, and unspecific."

- b. **Court Ruling:** Plaintiff's motion is granted. The question is relevant to plaintiff's "failure to treat" claim. Asking defendants to try to recreate from memory all conversations they had about referring plaintiff to WRC is an open-ended request, but defendants should do their best. If they do not recall anything beyond the emails already provided, they should so answer.

FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

1. Document Request ##1, 2, 7, 13-17, 25-27 & 32

- a. **Plaintiff's Complaint:** See plaintiff's general objections, above.
- b. **Court Ruling:** See court's ruling of plaintiff's general objections, above.

2. Document Request #5

- a. **Plaintiff's Complaint:** Defendants erroneously object that the interrogatory is "overly broad, unspecific and requires speculation."
- b. **Court Ruling:** Plaintiff's motion is granted in part. Defendants contend that all of the *general* policy guidance governing their conduct (except for secured policies) is available to plaintiff in the prison library. This is adequate. As for *specific* instructions from DOC administrators on how to deal with plaintiff's case in particular, defendants should explain whether any paper files in this category exist, and if so why it would be hard to search through those files. Specific instructions may also exist in defendants' email. It should not be burdensome for defendants to produce all relevant emails concerning plaintiff's acts of self-harm -- a simple keyword search in the email system will retrieve these.

3. Document Request #6

- a. **Plaintiff's Complaint:** Defendants erroneously object that the interrogatory is "overly broad, unspecific and requires speculation."
- b. **Court Ruling:** Plaintiff's motion is granted. The request is very specific in terms of what it is asking for. Defendants may be able to plausibly claim that it is unduly burdensome to sort through their existing paper files to find such memos, but they have not said this. As for emails and electronic files, a simple keyword search for "strip search" is likely to produce relevant documents. If no documents exist that fall within the scope of the request, defendants should so state in their signed answer.

4. Document Request #9

- a. **Plaintiff's Complaint:** Defendants' answer is contradicted by the evidence.
- b. **Court Ruling:** Plaintiff's motion is denied. While investigations may have taken place, defendants represent that outside of the security file available to

plaintiff, no additional documents (including emails and written correspondence) exist documenting the investigations.

5. Document Request #10

- a. **Plaintiff's Complaint:** Defendants' response only partially addresses plaintiff's request.
- b. **Court Ruling:** Plaintiff's motion is denied. Defendants represent that all incident reports are available for inspection and copying in plaintiff's security file.

6. Document Request #11

- a. **Plaintiff's Complaint:** Defendants erroneously object that the interrogatory is "overly broad, burdensome and not reasonably calculated to lead to relevant information."
- b. **Court Ruling:** Plaintiff's motion is granted in part. Defendants need not produce all of the requested log book entries, but are directed to produce the log book entries for the dates on which plaintiff committed the acts of self harm that form the basis for his complaint. Defendants may redact appropriate information provided they provide the court with an explanation for any redactions.

7. Document Request #12

- a. **Plaintiff's Complaint:** Defendants erroneously object that the interrogatory is "overly broad, burdensome and not reasonably calculated to lead to relevant information."
- b. **Court Ruling:** Plaintiff's motion is granted in part. Defendants are being asked to comb through several thousand pages of documents for information that is largely of questionable relevance. To hone in on a smaller set of more relevant information, defendants are directed to produce the log book entries for the dates on which plaintiff committed the acts of self harm that form the basis for his complaint. Defendants may redact appropriate information, provided they provide the court with an explanation for any redactions.

8. Document Request #22

- a. **Plaintiff's Complaint:** Defendants erroneously object that the interrogatory is "overly broad, burdensome and requires speculation."
- b. **Court Ruling:** Plaintiff's motion is granted. Plaintiff asks for all treatment plans and security protocols in place to prevent him from overdosing and cutting. This request is not vague. If documents potentially fitting this description exist outside plaintiff's health and psychological records, defendants should say so and explain why it is burdensome to produce them. If all relevant documents may be found in the records available to plaintiff, defendants should say so.

9. Document Request #31

- a. **Plaintiff's Complaint:** Defendants erroneously object that the interrogatory is "overly broad, burdensome, unspecific and not calculated to lead to relevant information."
- b. **Court Ruling:** Plaintiff's motion is denied. Plaintiff asks for the full disciplinary history of every defendant. Although a history of disregarding prisoners' needs could be relevant to the likelihood that they were deliberately indifferent to plaintiff, the scope of this request sweeps far too broadly. As for a more narrow request pertaining to whether any defendant has been disciplined for failure to care for or monitor plaintiff, defendants state that no such discipline has occurred.

SECOND SET OF INTERROGATORIES

1. Interrogatory #1

- a. **Plaintiff's Complaint:** Defendants' response to the question is incomplete. Instead of providing plaintiff with the full range of dates when he was in observation status, the defendants only provide each date he entered observation status, and do not say what cell he was in while on observation status.
- b. **Court Ruling:** Plaintiff's motion is denied. Defendants attest that they have no additional information to add other than what is in his records.

2. Interrogatory #2

- a. **Plaintiff's Complaint:** Defendants erroneously object that the interrogatory is "overly broad and burdensome" but don't state how.
- b. **Court Ruling:** Plaintiff's motion is denied. Defendants indicate that the requested information is in records available to plaintiff.

3. Interrogatory #3

- a. **Plaintiff's Complaint:** Defendants refuse to respond to the question.
- b. **Court Ruling:** Plaintiff's motion is denied. Defendants indicate that the requested information is in records available to plaintiff.

SECOND REQUEST FOR DOCUMENTS

1. Document Request ##1-3

- a. **Plaintiff's Complaint:** See plaintiff's general objections above.
- b. **Court Ruling:** See court's ruling of plaintiff's general objections above.

FIRST REQUEST FOR ADMISSIONS

1. Request #1

- a. **Plaintiff's Complaint:** Defendant's answer is not responsive to his request.
- b. **Court Ruling:** Plaintiff's motion is granted. If defendants feel that certain words are ambiguous they can provide qualifying language, but the thrust of plaintiff's question is quite clear and defendants should still give a detailed and *good faith* explanation of their answer if they cannot simply say "yes" or "no."

2. Request #2

- a. **Plaintiff's Complaint:** Defendants' response is contrary to the law.
- b. **Court Ruling:** Plaintiff's motion is denied. Defendants have now admitted that a shift supervisor has the authority to use restraints to "protect an inmate who poses an immediate threat of physical to self unless restrained."

3. Request #3

- a. **Plaintiff's Complaint:** Defendants erroneously object that the request is "overly broad, ambiguous and requires speculation" without explanation.
- b. **Court Ruling:** Plaintiff's motion is granted. The question is not overly broad or ambiguous, as it refers to situations similar to the ones plaintiff is complaining about. It does not require undue speculation – defendants can access their own memory of similar events and can ask others who may have such memory. They should answer whether the usual practice in such a situation is to apply restraints and if "usually" is too vague for them, they can estimate the approximate percentage of the time in such situations that restraints are applied.

4. Request #5

- a. **Plaintiff's Complaint:** Defendants erroneously object that the requests are "overly broad, burdensome and require speculation."
- b. **Court Ruling:** Plaintiff's request is granted. Defendants are in a position to know generally whether this is true, and to conduct an investigation to supplement their lack of knowledge. If uncertainty remains as to the definition of "many," rather than object to the form of the question defendants should make a good faith effort to answer and use qualifiers as necessary. *See* Fed. R. Civ. P. 36(a)(4).

5. Request #7

- a. **Plaintiff's Complaint:** Defendants object that they cannot admit or deny plaintiff's contention because they lack documents that would reflect the truth of the contention.
- b. **Court Ruling:** Plaintiff's motion is granted. Defendants' duty of reasonable inquiry means reviewing all potentially-corroborating conduct reports or

incident reports in his file. If they have reason to know that he has additional reports located at other institution that may support the contention, it is not unreasonable to ask that they inquire with this institution.

6. Request #23

- a. **Plaintiff's Complaint:** Defendants object that they cannot admit or deny plaintiff's contention because they lack documents that would reflect the truth of the contention.
- b. **Court Ruling:** Plaintiff's motion is granted. It is implausible that defendants could not find out, upon reasonable inquiry, whether cell No. 43 now has a camera and had a camera on February 27, 2011.

7. Request ##51, 53, 74, 77, 79

- a. **Plaintiff's Complaint:** Defendants object that they cannot admit or deny plaintiff's contention because they lack documents that would reflect the truth of the contention.
- b. **Court Ruling:** Plaintiff's motion is granted. From defendants' answers, it is impossible to tell what documents defendants considered and whether they did any investigation other than look at the incident reports from the date in question. The responses fail defendants' duty under Rule 36(a)(4) ("If a matter is not admitted, the answer must specifically deny it or *state in detail* why the answering party cannot truthfully admit or deny it.)

8. Request #72

- a. **Plaintiff's Complaint:** Defendants object that they cannot admit or deny plaintiff's contention because they lack documents that would reflect the truth of the contention.
- b. **Court Ruling:** Plaintiff's motion is granted. Plaintiff's attempt to compare question 72 to question 73 is not convincing, as the two are distinguishable. However, from defendants' answers, it is impossible to tell what documents defendants considered and whether they did any investigation other than look at the incident reports from the date in question. The responses fail defendants' duty under Rule 36(a)(4) ("If a matter is not admitted, the answer must specifically deny it or *state in detail* why the answering party cannot truthfully admit or deny it.)

9. Request #81, 83, 84, 85, 86

- a. **Plaintiff's Complaint:** Defendants object that they cannot admit or deny plaintiff's contention because they lack documents that would reflect the truth of the contention.
- b. **Court Ruling:** Plaintiff's motion is granted. From defendants' answers, it is impossible to tell what documents defendants considered and whether they did any investigation other than look at the incident reports from the date in question. The responses fail defendants' duty under Rule 36(a)(4) ("If a

matter is not admitted, the answer must specifically deny it or *state in detail* why the answering party cannot truthfully admit or deny it.)

10. Request #100, 101, 115

- a. **Plaintiff's Complaint:** Defendants erroneously object that the requests are "overly broad, burdensome and require speculation."
- b. **Court Ruling:** Plaintiff's request is granted. None of these requests can plausibly be characterized as broad. If defendants have evidence that directly contradicts plaintiff, they should deny the requests to admit. If, after conducting the reasonable investigation that is required of them under 36(a)(4) they have no reasonable basis to dispute the contentions, they should admit them or explain in detail why they think they don't have enough information to answer.

11. Request #102-103

- a. **Plaintiff's Complaint:** Defendants erroneously object that the request asks for information that is confidential and protected by law.
- b. **Court Ruling:** Plaintiff's motion is granted. While defendants' initial objection was well founded, a health care provider may disclose protected medical information under HIPAA if required to do so by a court order. *See* 45 C.F.R. § 164.512(e)(1)(I). Defendants should consider this the necessary order provided that any publicly filed copy of questions ## 102 and 103 are to reference the subject inmate as "I.B.," rather than his actual name as appears in the original question.

12. Request #106

- a. **Plaintiff's Complaint:** Defendants erroneously object that the request is "irrelevant, harassing and not calculated to lead to admissible evidence."
- b. **Court Ruling:** Plaintiff's motion is granted. The question is relevant to plaintiff's theory of the case and is not harassing.

13. Request #109

- a. **Plaintiff's Complaint:** Defendants erroneously object that, as non-physicians, they cannot tell from the medical records whether plaintiff received sutures or antibiotics.
- b. **Court Ruling:** Plaintiff's motion is granted. To a certain extent, it is within the power of a lay person to read a medical record and determine if sutures and antibiotics were prescribed. Defendants are instructed to review the medical records and then either admit this or explain in detail why they feel unable to do so.

ORDER

IT IS ORDERED that:

- (1) Plaintiff's motion to compel (dkt. #98) is GRANTED IN PART AND DENIED IN PART as explained above.
- (2) Defendants are ordered to file *signed* copies of all discovery responses to plaintiff.
- (3) Plaintiff's motion to stay summary judgment and for assistance in recruiting counsel (dkt. #99) is DENIED.
- (4) Plaintiff's motion to strike (dkt. #106) is DENIED.

Entered this 16th day of May, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge