

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,
LIEUTENANT BREDEMAN, DR. NICHOLAS BUHR,
DR. SONNETTE COLDWELL-BARR,
OFFICER CONROY, JEFF HEISE, DR. JOHNSON,
OFFICER JULSON, DR. KUMKE, DR. McLARIN,
MICHAEL MEISNER, OFFICER MILLONIG,
CAPTAIN D. MORGAN, DR. NELSON, JANEL NICKEL,
CAPTAIN SEAN SALTER, OFFICER SCHNEIDER,
OFFICER WILEY, and OFFICER WITTERHOLT,

Defendants.

In this action, plaintiff Christopher Goodvine is suing various administrators, guards and nurses at Columbia Correctional Institution (CCI) for subjecting him to cruel and unusual punishment. In an earlier screening, this court allowed plaintiff to proceed against certain defendants who allegedly knew he was about to harm himself, yet did nothing to intervene. The court also allowed plaintiff to proceed against CCI administrators who allegedly have knowingly refused to implement practices adequate to protect plaintiff from himself. Plaintiff has now moved to supplement his complaint to plead additional instances of deliberate indifference that occurred since he filed his complaint. Since the court has granted this request, it will now screen the supplemental claims just as it screened plaintiff's initial complaint. 28 U.S.C. § 1915(e)(2)(B).

After examining the complaint, the court concludes that plaintiff may proceed on his Eighth Amendment claims against defendants Boodry, Breedeman, Buhr, Coldwell-

Barr, Meisner, Morgan, Nickel and Salter. The court will also take this opportunity to amend its previous screening order to allow plaintiff to proceed on medical malpractice claims asserted in his original complaint against defendants Johnson, Kumke, McLarin, and Nelson.

ALLEGATIONS OF FACT

In addressing any pro se litigant's complaint, the court must read the allegations generously, and hold the complaint "to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this screening, the court incorporates the facts pled in plaintiff's original complaint, as set forth in the court's screening order at dkt. #21. Plaintiff now alleges, and the court assumes for purposes of this screening order, the following additional or cumulative facts.

- Gary Ankarlo is the psychological services director for the Wisconsin Department of Corrections.
- Michael Meisner is the warden at Columbia Correctional Institution (CCI).
- Janel Nickel is the security director at CCI.
- Captain D. Morgan is a security supervisor at CCI and the disciplinary segregation (DS-1) unit manager.
- Dr. Nicholas Buhr is the DS-1 unit psychologist.
- Dr. Sonnette Coldwell-Barr was, at all times relevant, a psychologist at CCI.
- Lieutenants Breedeman and Boodry, and Captain Sean Salter, are security supervisors at CCI.
- On July 15, 2012, plaintiff Christopher Goodvine began to feel the urge to harm himself. He told prison guards about this and was placed on observation status in

the DS-1 unit.

- The next day, July 16, 2012, Goodvine told Dr. Buhr that he was feeling the urge to cut himself. Buhr asked if Goodvine had the means to do so, and Goodvine replied that he had obtained a sharpened pen, but had earlier flushed it down the toilet. Buhr asked if Goodvine was suicidal, and Goodvine said no, but that he still wanted to cut himself.
- Although Dr. Buhr knew that Goodvine regularly engaged in self harm, and was not always honest with prison staff when asked about possession of contraband, he did not follow up on Goodvine's threats, search Goodvine or his cell for the sharpened pen that Goodvine mentioned, or mention Goodvine's threats to the guards in the unit.
- Some hours later, another inmate in the DS-1 unit, Isaiah Bell, cut himself, causing prison staff to enter the unit to provide Bell with medical attention. Goodvine felt over-stimulated by the scene outside his cell.
- Goodvine then told Lieutenants Breedeman and Boodry, who were both aware of his history of cutting, that he was feeling a strong urge to cut himself. Goodvine pleaded with these guards to place him in physical restraints. Both refused to do so, and did not take any other steps to prevent Goodvine from cutting himself.
- Dr. Sonnette Coldwell-Barr, who was already in the unit to consult with Isaiah Bell, then spoke to Goodvine about his urges to cut himself. After their conversation, Dr. Coldwell-Barr did nothing other than to ask another inmate to try to calm Goodvine down.
- Goodvine then cut himself on his left forearm, which bled profusely.
- Defendants Buhr, Coldwell-Barr, Meisner, Nickel and Morgan are aware that hectic activity causes Goodvine to feel stressed and triggers a self-harming urge. They also know that Goodvine will want to cut himself if he is around others who exhibit the same behavior. However, they never informed staff in PS-1 of Goodvine's susceptibilities.
- Defendants Ankarlo, Meisner, Nickel and Morgan are and were aware that the Wisconsin Department of Corrections and CCI have no policy of alerting staff and guards of prisoners with self-harming tendencies. These defendants also know that CCI has no therapeutic restraints to use on suicidal or self-harming prisoners. The inadequacies in CCI policy and procedure allowed plaintiff to injure himself on July 16, 2012.

- Registered Nurse “Trish” examined Goodvine after he cut himself and determined that he needed to be treated in an emergency room. As Goodvine was being readied for transport, he refused to wear a paper gown because it was too small and left his groin and buttocks exposed. In response, Lieutenant Breedeman sent Goodvine back to his cell for refusing medical treatment, and would not change his mind even after Goodvine agreed to wear the paper gown. Afterwards, Lieutenants Boodry and Breedeman and Captain Salter each refused to take Goodvine to the hospital, even though they had all heard Nurse Trish say that he needed immediate treatment. Breedeman refused because he didn’t want to work overtime taking Goodvine to the hospital; the others refused because they did not want to countermand Breedeman, although they had authority to do so.
- Approximately 72 hours later, Goodvine was taken to the hospital, after his wound had begun to fester and bleed profusely.

OPINION

I. Eighth Amendment Claim

The Eighth Amendment’s prohibition of cruel and unusual punishment means that prison officials “must provide humane conditions of confinement . . . [and] must take reasonable measures to guarantee the safety of the inmates.” *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (internal quotations omitted). Accordingly, a prison official violates the Eighth Amendment by acting with “deliberate indifference” in the face of conditions that entail “the unnecessary and wanton infliction of pain,” or that impose a punishment “grossly disproportionate to the severity of the crime.” *Rhoades v. Chapman*, 452 U.S. 337, 346 (1981).

The Eighth Amendment requires that the government “provide medical care for those whom it is punishing by incarceration.” *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). Prison officials who deliberately fail to provide adequate medical care to prisoners violate the Eighth Amendment because such failure may cause pain and suffering, which

“serve[s] no penological purpose.” *Id.* at 103. However, “society does not expect that prisoners will have unqualified access to health care.” *Hudson*, 530 U.S. at 9. Therefore, an inmate’s untreated medical needs must be sufficiently serious. *Id.* at 9-10; *Estelle*, 429 U.S. at 104. In addition, the failure to treat must have been the result of “deliberate indifference” to a known need. *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997).

At least on their face, the allegations would appear to support a finding that defendants Buhr, Breedeman, Boodry and Coldwell-Barr acted with deliberate indifference to plaintiff’s threats of serious self-harm, even though all of these defendants knew of his extensive history of carrying out such threats. The allegations also support a finding that defendants Salter, Breedeman and Boodry deliberately refused to take plaintiff to the hospital after they were informed by a nurse that the cut on his arm needed immediate medical attention. These allegations form the basis for viable claims of deliberate indifference against all of the above-named defendants.

Plaintiff also claims that defendants Ankarlo, Meisner, Nickel and Morgan have long ignored the fact that existing procedures at CCI are wholly inadequate to protect suicidal or self-harming inmates, *and* that he is able to “cut” virtually at will. This echoes a virtually identical claim asserted in plaintiff’s original complaint, and for the reasons discussed in this court’s first screening order (dkt. #21) and its opinion and order granting plaintiff’s motion to reconsider (dkt. #40), plaintiff has an Eighth Amendment claim against defendants Meisner and Nickel, each of whom appears to have policy-making authority at CCI. The allegations do not state claims against defendant Ankarlo, whose role in the chain of command is too far-removed to infer any knowledge of,

responsibility for, or indifference to, plaintiff's particular situation, nor against defendant Morgan, who is only a unit manager.

II. Correction to the Court's Initial Screening

In its screening of plaintiff's original complaint, the court denied plaintiff leave to proceed on his medical malpractice claims against defendants Ankarlo, Baird, Johnson, Kumke, McLarin, and Nelson, all on grounds that Wisconsin state law does not allow medical malpractice actions against state employees. (*See* dkt. #21 at 10.) The court now believes that this was a mistake and, therefore, will -- in addition to allowing plaintiff to proceed on the supplemental claims discussed above -- also allow him to proceed on his originally-pled medical malpractice claims against defendants Johnson, Kumke, McLarin, and Nelson. His asserted malpractice claims against defendants Baird and Ankarlo are still barred, however, because the alleged facts show no breach of a duty by either of these defendants towards plaintiff; neither defendant attended plaintiff during a suicidal episode or otherwise failed to diagnose or treat him.

ORDER

IT IS ORDERED that:

- (1) Plaintiff Christopher Goodvine may PROCEED on his supplemental allegations of Eighth Amendment violations against defendants Boodry, Breedeman, Buhr, Coldwell-Barr, Meisner, Nickel and Salter.

- (2) Plaintiff's request for leave to proceed on medical malpractice claims in his original complaint against defendants Johnson, Kumke, McLarin, and Nelson is belatedly GRANTED.
- (3) Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's supplemental complaint and this order are being sent today to the Attorney General for service on the 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 for defendant.
- (4) For the time being, plaintiff must send defendants a copy of every paper or document 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.

Entered this 7th day of January, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge