

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

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WAYNE ERICH SURA, JR.,

Plaintiff,

v.

OPINION & ORDER

14-cv-360-jdp

WARDEN KEMPER, DEPUTY WARDEN MALONE,  
SECURITY DIRECTOR J. ALDANA,  
H.S.U. MANAGER NYGEN, and  
I.C.E. EXAMINER NANCY PAGENT,

Defendants.

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Pro se plaintiff Wayne Erich Sura, Jr. is currently a prisoner at Dodge Correctional Institution. He has filed a proposed complaint alleging that defendants violated his Eighth Amendment right to medical treatment during his incarceration.<sup>1</sup> At the time of the violations, plaintiff was located at the Racine Correctional Institution, located in Sturtevant, Wisconsin, and he has named defendants who are employed there in management and supervisory roles.

Plaintiff seeks leave to proceed *in forma pauperis* and has made an initial partial payment of the filing fee as directed by the court. As a next step, I must screen his complaint and dismiss any portion that is legally frivolous, malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915 and 1915A. In addressing any pro se litigant's complaint, I must read the allegations of the complaint generously. *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010). After considering plaintiff's allegations, I will allow him to proceed on Eighth Amendment claims of deliberate indifference against some, but not all, of the defendants.

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<sup>1</sup> Plaintiff attached notes to his complaint that mention other issues that he has had while incarcerated, but I do not understand plaintiff's complaint to allege constitutional violations other than for the denial or delay of medical treatment.

## ALLEGATIONS OF FACT

In his complaint, plaintiff alleges the following facts:

Plaintiff suffers from chronic anxiety with paranoid traits and depression. He requires treatment and medication for his condition, which is documented in his medical records. Plaintiff alleges that defendants have delayed his treatment without reason. Plaintiff filed forms requesting medical appointments with the psychiatrist and psychologist between February and March 2014, but he then had to wait over two months and file a complaint before he was seen. When plaintiff did get an appointment in early May, the time he was allowed with the doctor was too short to meet his needs. Plaintiff's prescribed medication was also delayed in getting to him following the appointment.

Plaintiff has complained about his inadequate medical treatment to defendants Warden Kemper, Deputy Warden Malone, Security Director Aldana, Health Services Unit Manager Nygen, but they did not respond to him. He also filed the complaint mentioned above with Institution Complaint Examiner Nancy Pagent, and he alleges that she failed to conduct "a proper examination." But defendant Pagent contacted the medical staff about plaintiff's treatment at least once before his May appointment.

Plaintiff is also allergic to bees and has requested an EpiPen, but he has not received one from the Health Services Unit. Lastly, plaintiff alleges that non-party Lt. Mikells has been harassing him by searching plaintiff's room every few days and by taking plaintiff's mail without returning it.

## ANALYSIS

I understand plaintiff to be bringing claims against defendants under 42 U.S.C. § 1983 for their various roles in failing to provide him adequate medical treatment in violation of his

constitutional rights. The Eighth Amendment affords prisoners a constitutional right to medical care. *Snipes v. DeTella*, 95 F.3d 586, 590 (7th Cir. 1996) (citing *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). Accordingly, deliberate indifference to a prisoner's serious medical needs violates the Eighth Amendment. *Snipes*, 95 F.3d at 590. To prove his claim, plaintiff must allege facts from which a jury may reasonably infer that he had a serious medical need, and that prison officials were deliberately indifferent to that need. See *Gutierrez v. Peters*, 111 F.3d 1364, 1369 (7th Cir. 1997).

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). Delay in treatment, even for a condition that is not life-threatening, can support a claim under the Eighth Amendment. *Gutierrez*, 111 F.3d at 1371. For defendants to be deliberately indifferent to such a need, they must know of the need and disregard it. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). But "the Eighth Amendment is not a vehicle for bringing claims for medical malpractice." *Snipes*, 95 F.3d at 590.

Plaintiff may not proceed on claims of vicarious liability; he must allege sufficient facts to show that each defendant personally caused or participated in the alleged constitutional deprivation. See *Palmer v. Marion County*, 327 F.3d 588, 594 (7th Cir. 2003); *Zimmerman v. Tribble*, 226 F.3d 568, 574 (7th Cir. 2000) ("[Section] 1983 does not allow actions against individuals merely for their supervisory role of others."). Plaintiff's conclusory allegations that defendants Warden Kemper, Deputy Warden Malone, and Security Director J. Aldana each failed to "do his job" by failing to have his staff do their jobs do not meet that standard. However, a supervisor can be found personally responsible for a constitutional violation if he knows about the actions causing the violation and facilitates them, approves them, condones them, or turns a blind eye to them. *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995).

Plaintiff indicates that he complained to all of the defendants that he was not receiving adequate medical treatment, but despite his complaints, he did not receive a direct response or improved treatment. Plaintiff also alleges that Health Services Unit Manager Nygen failed to make appointments for him when he requested them. Thus, plaintiff has adequately alleged that defendants Kemper, Malone, Aldana, and Nygen either personally acted in violation of his constitutional rights or knew that plaintiff's rights were being violated and turned a blind eye. He will be allowed to proceed on his claims against each of these defendants.

Plaintiff alleges that defendant Institution Complaint Examiner Pagent failed to conduct a proper examination. But plaintiff does not allege any facts about Pagent's actions to support his accusation. *See* Fed. R. Civ. P. 8. To the contrary, the complaint states that Pagent scheduled him the appointments that he requested, so it is unclear how she has violated his constitutional rights. Accordingly, plaintiff's claims against Pagent have not been adequately plead and will be dismissed.

Plaintiff alleges that "the H.S.U. staff" denied him an EpiPen despite his documented allergy, but his complaint fails to identify a specific defendant who acted wrongly. *Id.* Lastly, plaintiff alleges that Lt. Mikells harassed him, but plaintiff did not name Mikells as a defendant in this case, *see* Fed. R. Civ. P. 10, and the potential claim against him seems unrelated to plaintiff's medical treatment claims. *See* Fed R. Civ. P. 20. Therefore, I will deny plaintiff leave to proceed on both of these claims.

## ORDER

IT IS ORDERED that:

1. Plaintiff Wayne Erich Sura, Jr. is GRANTED leave to proceed on an Eighth Amendment deliberate indifference claim against defendants Warden Kemper, Deputy Warden Malone, Security Director Aldana, and H.S.U. Manager Nygen.

2. Plaintiff is DENIED leave to proceed on an Eighth Amendment deliberate indifference claim against defendant I.C.E. Examiner Nancy Pagent.
3. Plaintiff is DENIED leave to proceed on a claim relating to the denial of an EpiPen.
4. Plaintiff is DENIED leave to proceed on a harassment claim against non-party Lt. Mikells.
5. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer or lawyers who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.
6. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.
7. Pursuant to 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 defendants. Plaintiff should not attempt to serve defendants on his own at this time. 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 defendants.
8. 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). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under *Lucien v. DeTella*, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund accounts until the filing fee has been paid in full.

Entered April 15, 2015.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge