

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

MARK BROWN,

Plaintiff,

v.

WILLIAM POLLARD, DR. J. MANLOVE,
MS. NANCY GARCIA, NURSE WALTZ,
NURSE HOWELL,
CORRECTIONAL OFFICER BIKOWSKI,
CORRECTIONAL OFFICER MATTHEIS,
MR. LUDVEGSON, and MS. SCARPITA,

Defendants.

OPINION & ORDER

16-cv-76-jdp

Pro se plaintiff Mark Brown is a prisoner in the custody of the Indiana Department of Corrections, formerly a prisoner in the custody of the Wisconsin Department of Corrections. Plaintiff has filed a complaint alleging that while he was incarcerated at the Waupun Correctional Institution (WCI), prison personnel were deliberately indifferent to his serious medical need by failing to adequately treat his broken hand. The court determined that plaintiff qualifies for *in forma pauperis* status, and plaintiff paid the initial partial filing fee set by the court. Dkt. 5.

The next step is for the court to screen the complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief can be granted, or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915. When screening a pro se litigant's complaint, the court construes the allegations liberally and in the plaintiff's favor. *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010). I will grant plaintiff leave to proceed against defendants Dr. J. Manlove, Nancy Garcia, Nurse Waltz, Nurse Howell, and Scarpita. But I will dismiss his claims against defendants William

Pollard, Bikowski, Mattheis, and Ludvegson for failure to comply with Federal Rule of Civil Procedure 8. I will allow plaintiff to file an amended complaint that addresses the issues I identify in this order.

ALLEGATIONS OF FACT

I draw the following facts from plaintiff's complaint. Dkt. 1.

On October 20, 2015, while incarcerated at WCI, plaintiff broke his left hand. Medical personnel with WCI's Health Services Unit (HSU) ordered x-rays of plaintiff's hand, determined it was broken, but declined to give him appropriate medical attention (namely, pain medication or a trip to the hospital). Medical records indicate that after imaging revealed an "[a]cute left hand fifth metacarpal head/neck fracture," HSU personnel placed a splint on plaintiff's hand and wrapped it with an Ace bandage. Dkt. 1-1, at 2.

Plaintiff sues the named defendants because they allegedly knew about his injury and did not get him appropriate treatment. Defendant Dr. J. Manlove, a WCI physician, knew that plaintiff's x-rays showed that his hand was broken and did not adequately treat him. Defendant Scarpita, the HSU manager, did not give plaintiff pain medication or send him to a hospital even after x-rays confirmed his that his hand was broken. Defendant Nancy Garcia, another WCI physician, apparently also knew about plaintiff's broken hand.

Defendant Nurse Waltz, a WCI nurse, recorded plaintiff's broken hand in his medical records but only wrapped his hand and gave him an ice bag. Defendant Nurse Howell, another WCI nurse, recommended that plaintiff receive an Ace bandage and sent him back to his cell.

Defendants Bikowski and Mattheis, WCI correctional officers, were aware that plaintiff was suffering from a broken hand because he pleaded with them to call HSU and get him medical attention. They told him he would need to fill out a medical request form. Defendant Ludvegson, a WCI segregation unit manager, and defendant William Pollard, WCI warden, apparently also knew that plaintiff was suffering from an untreated broken hand, but refused to intervene to get him medical attention and did nothing to protect or help him.

I can infer that plaintiff was in on-going pain despite the treatment that medical personnel provided.

ANALYSIS

Plaintiff brings an Eighth Amendment deliberate indifference claim for failure to provide adequate medical care, pursuant to 42 U.S.C. § 1983. The Eighth Amendment prohibits prison officials from acting with deliberate indifference toward prisoners' serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976). 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 medical need may be serious if it is life threatening, carries risks of permanent serious impairment if left untreated, results in needless pain and suffering, significantly affects an individual's daily activities, *Gutierrez v. Peters*, 111 F.3d 1364, 1371-73 (7th Cir. 1997), or otherwise subjects the prisoner to a substantial risk of serious harm. *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). For a defendant to be deliberately indifferent to such a need, he or she must know of the need and disregard it. *Id.* at 834. But "the Eighth

Amendment is not a vehicle for bringing claims for medical malpractice.” *Snipes v. DeTella*, 95 F.3d 586, 590 (7th Cir. 1996). A plaintiff must demonstrate more than mere negligence by a defendant. *Farmer*, 511 U.S. at 835. “To demonstrate deliberate indifference, a plaintiff must show that [each] defendant acted with a sufficiently culpable state of mind, something akin to recklessness.” *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011) (citation and internal quotation marks omitted).

Although plaintiff has alleged that he suffered from a serious medical need—namely, a broken hand—his allegations concerning a few of the defendants’ deliberate indifference leave something to be desired. To state an Eighth Amendment deliberate indifference claim against each of the individual defendants, plaintiff must specifically explain how each defendant knew about his serious medical need and then purposefully ignored or disregarded it. At this point, I can assume that defendants Manlove, Scarpita, and Garcia were aware that plaintiff had a broken hand—they viewed his x-rays—and then failed to provide adequate treatment (although I will not decide at this point whether the treatment that plaintiff received was actually adequate). The same may be said of defendants Waltz and Howell: plaintiff alleges that they noted his broken hand and did not provide adequate treatment. I will grant plaintiff leave to proceed against these defendants. But going forward, plaintiff should keep in mind that he will eventually have to prove that the treatment he received was “so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate his condition.” *Id.* (citation and internal quotation marks omitted). It will not be enough that plaintiff desired treatment different than he received.

Plaintiff’s deliberate indifference allegations fall short of stating a claim against the remaining defendants. Plaintiff alleges that defendants Bikowski and Mattheis knew that

plaintiff had a broken hand—he told them himself—but he does not explain how the correctional officers purposefully disregarded his needs. In response to plaintiff’s complaints, defendants Bikowski and Mattheis told him how to obtain medical attention: he would need to fill out a medical request form. Defendants Bikowski and Mattheis did not ignore plaintiff or otherwise prevent him from getting the medical attention he claimed he needed. And plaintiff does not say that he required emergency attention or that filling out the form was somehow insufficient to get him the attention he requested. With respect to defendants Pollard and Ludvegson, plaintiff summarily states that they knew that he had a broken hand and failed to use their positions of authority to intervene on his behalf. But plaintiff does not explain how these supervisory defendants actually knew about plaintiff’s serious medical need and then purposefully disregarded it.

Federal Rule of Civil Procedure 8(a)(2) requires a complaint to include “a short and plain statement of the claim showing that the pleader is entitled to relief.” A complaint “must be presented with intelligibility sufficient for a court or opposing party to understand whether a valid claim is alleged and if so what it is.” *Vicom, Inc. v. Harbridge Merchant Servs., Inc.*, 20 F.3d 771, 775 (7th Cir. 1994). At this point, plaintiff has not stated an Eighth Amendment deliberate indifference claim against defendants Bikowski, Mattheis, Pollard, or Ludvegson, and I will dismiss his claims against them for failing to satisfy Rule 8’s pleading standard. I will allow plaintiff to file an amended complaint that specifically states what defendants Bikowski, Mattheis, Pollard, and Ludvegson knew about his serious medical condition and what each did to deliberately disregard it. He must include specific factual allegations that identify what each individual defendant did to rise to the level of deliberate indifference.

ORDER

IT IS ORDERED that:

1. Plaintiff Mark Brown is GRANTED leave to proceed on Eighth Amendment deliberate indifference claims against defendants Dr. J. Manlove, Nancy Garcia, Nurse Waltz, Nurse Howell, and Scarpita.
2. Plaintiff's claims against defendants Bikowski, Mattheis, William Pollard, and Ludvegson are DISMISSED for failure to comply with Federal Rule of Civil Procedure 8. Plaintiff may have until August 11, 2016, to file an amended complaint that addresses the Rule 8 problems articulated in this opinion.
3. 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 Dr. J. Manlove, Nancy Garcia, Nurse Waltz, Nurse Howell, and Scarpita. 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 amended complaint if it accepts service for 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 learns the name of the lawyer 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.
5. 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.
6. If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for his failure to prosecute it.

Entered July 21, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge