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

CHRISTOPHER JACOB,

Plaintiff, OPINION AND ORDER

v.

17-cv-196-wmc

GARY HAMBLIN,
EDWARD WALLS,
MICHAEL MEISNER,[1]
KAREN ANDERSON,
DR. SULIENE,

Defendants.

Pro se plaintiff Christopher Jacob filed this lawsuit under 42 U.S.C. § 1983, claiming that various Wisconsin Department of Corrections officials and health care providers acted with deliberate indifference to his medical needs in violation of the Eighth Amendment. Because Jacob is currently in custody and proceeding in forma pauperis, the court must screen Jacob's complaint before allowing it to proceed. 28 U.S.C. §§ 1915(e)(2), 1915A. After reviewing the complaint, the court concludes that Jacob may proceed with his Eighth Amendment deliberate indifference claim against defendants Karen Anderson and Dr. Suliene in their individual capacities, but may not proceed againt any other defendants.

ALLEGATIONS OF FACT[2]

Christopher Jacob is currently located at Oshkosh Correctional Institution ("OCI"),

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[1] Plaintiff misspells the name of the warden at Columbia Correctional Institution. Based on publicly available information, the court has amended the caption to reflect the proper spelling.

[2] The court must construe pro se litigants' pleadings liberally. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For the purposes of this order, the court assumes the following facts based on the

but at all times relevant to his claims, he was located at Columbia Correctional Institution ("CCI"). Jacob names five defendants: Gary Hamblin, the former secretary of the Wisconsin Department of Corrections ("DOC"); Edward Wall, also a former secretary of the DOC; Michael Meisner, CCI's warden; Karen Anderson, CCI's Health Services Unit ("HSU") manager; and Dr. Suliene, a physician at CCI.

I. Jacob's Initial Communications with HSU

When he arrived at CCI, Jacob told HSU staff that he had allergies to certain medicines, including salsalate and other nonsteroidal anti-inflammatory drugs ("NSAIDs"). On April 19, 2012, HSU issued Jacob a prescription for salsalate for his back pain. Jacob reminded staff that he had an allergy or intolerance to NSAIDs, including salsalate. On May 7, 2012, Jacob wrote a letter to HSU manager, Anderson, in which he stated that he was allergic to NSAIDs. (Dkt. # 1-7, at 1.) In particular, Jacob stated that the last time he took salsalate he vomited blood, felt dizzy and disoriented, experienced "a massive amount" of stomach pain, and had to go to the emergency room. (*Id.*) Jacob further stated he would nevertheless begin taking the medication if Anderson told him to take it, but requested in the alternative a doctor's appointment to receive a different prescription. (*Id.*) Between April 19 and June 15, 2012, Jacob did not take any salsalate. (Dkt. #1-6, at 8.)

On June 15, 2012, Jacob alleges that he was told to take the salsalate for his back pain. As prescribed, Jacob then took two 500 mg pills and became ill, vomiting blood and

allegations in Jacob's complaint and supporting documents.

experiencing dizziness and stomach pain for the next eight to ten hours. He continued to experience pain for several days. Jacob alleges that HSU did not contact or see him either during or even shortly after this incident.

II. Inmate Complaint CCI-2012-13041

On June 24, 2012, Jacob filed inmate complaint number CCI-2012-13041 with the inmate complaint examiner ("ICE") at CCI, Joanne Lane. (Dkt. #1-6, at 2.) In his complaint, Jacob alleged that Dr. Suliene prescribed him salsalate knowing that Jacob was allergic to it. (*Id.*) Jacob further alleged that during his June 15, 2012, adverse reaction to salsalate, he contacted Officer Rhode but did not receive medical attention from HSU. (*Id.*)

On June 29, 2012, Lane recommended dismissal of Jacob's complaint based on her discussion with HSU manager Anderson and review of the Housing Unit Record Log. (Dkt. #1-6, at 2, 6.) Lane noted that according to Anderson, Jacobs had been prescribed salsalate as an alternative because of Jacob's sensitivity to other medications and intolerance to NSAIDs. (*Id.* at 6.) She also noted that there was no written record of Jacob vomiting or experiencing pain other than his written complaint. Finally, Lane suggested that if Jacob still required alternative treatment, he should contact HSU. (*Id.*)

On July 12, 2012, however, CCI's reviewing authority, Lon Becher, recommended that Jacob's complaint be affirmed. (*Id.* at 7.) Becher noted that Jacob had a documented intolerance -- not allergy -- to NSAIDs. (*Id.*) Becher also noted that "on the day in question, the patient asked verbally to be seen and was instructed to submit a health services request. He reported that he was vomiting and had pain." (*Id.*) While Becher

acknowledged that it was unfortunate Jacob did not proceed to submit an HSR, Becher faulted the nursing staff for failing to see Jacob when notified that he was suffering side effects from a medication that he was known not to tolerate. (*Id.*) Becher further faulted the nursing staff for not documenting receipt of a telephone call from Officer Rhode reporting Jacob's complaint of side effects on June15th. (*Id.*)

On August 16, 2012, the Inmate Complaint Review Examiner Charles Facktor ("CCE") also recommended affirming the complaint. (*Id.* at 3.) Facktor stated that he "share[d] the concerns of both the inmate and the Reviewing Authority," and that it appeared "that a staff mistake was made, which has been corrected." (*Id.*) On August 28, 2012, DOC Deputy Secretary Charles Cole affirmed the complaint as well. (*Id.* at 4.)

Jacob also attaches several other complaints that he submitted in 2016, each referring back to the original incident, documented in CCI-2012-13041, and Jacob's subsequent attempts to get an alternative medication. (*See* dkts. ##1-1, 1-2, 1-3, 1-4, 1-5.) ICE rejected each complaint for being outside of the 14-day time limit.[3]

III. Jacob's Subsequent HSRs and HSU Responses

Between July 2012 and February 2015, Jacob continued to seek alternative medication and treatment by submitting HSRs as needed. Below is a timeline of Jacob's HSRs and the corresponding responses from HSU staff:

[3] For the purposes of this screening order, the 2016 complaints are irrelevant.

- July 2012

    - **July 1, 2012:** Jacob submitted a Health Service Request ("HSR") indicating he was allergic to NSAIDs and requesting an alternative to salsalate for his back pain. (Dkt. #1-8, at 1.) On July 3, 2012, HSU responded, stating that Jacob could have APAP[4] in addition to the salsalate, and that he would be prescribed gabapentin. (*Id.*)

    - **July 7, 2012:** Jacob responded by filing another HSR, stating that he was already taking the maximum dose of APAP and that HSU had taken him off gabapentin the previous year due to symptoms of diarrhea, kidney problems, and blood in his urine. (*Id.* at 2.) In light of his past symptoms and current APAP dose, Jacob requested that HSU consider prescribing a different medication. (*Id.* at 3.) On July 9, 2012, HSU responded by stating that Jacob was already on salsalate for the back pain.[5] (*Id.* at 2.) HSU further noted that diarrhea, kidney problems, and blood in urine were not side effects of gabapentin. (*Id.* at 3.)

    - **July 15, 2012:** Jacob wrote to Anderson specifically to express concerns about the responses to his HSRs. (Dkt. #1-9, at 1.) Jacob wrote about his back pain symptoms, his adverse reactions to salsalate and gabapentin, and his desire to get a second mattress to help with the back pain. (*Id.*) Anderson responded with a note on July 24, 2012, indicating that HSU had issued medication and changed Jacob's treatment to APAP three times daily. (Dkt. #1-10, at 1.)

- August 2012

    - **August 12, 2012:** Jacob again filed an HSR, complaining that his back pain continued and APAP was not helping, and requesting to see a doctor. (*Id.*) HSU Nurse Valerius responded that Jacob had not renewed his salsalate prescription, and that salsalate, if taken in conjunction with APAP, would help Jacob's back pain. (*Id.*) Nurse Valerius also scheduled Jacob to see a doctor. (*Id.*)

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[4] The complaint and supporting documentation appear to use "APAP" and "mapap" fairly interchangeably. "APAP is short for N-acetyl-para-aminophenol, better known as acetaminophen or paracetamol." www.dictionary.com › tech-science › apap. Mapap is a "combination product containing 2 medications, acetaminophen and an antihistamine. Acetaminophen helps to reduce fever and/or mild to moderate pain (such as headache, backache, aches/pains due to muscle strain, cold, or flu). The antihistamine in this product may cause drowsiness, and therefore it can also be used as a nighttime sleep aid." https://www.webmd.com/drugs/2/drug-15456/mapap-pm-oral/details. For consistency, this opinion uses APAP, although recognizing that the distinction may be relevant as this case proceeds.

[5] Part of HSU's response about gabapentin is illegible. (*See* dkt. #1-8, at 2.)

- September 2012

  - **September 14, 2012:** Some 43 days after Jacobs had requested an appointment in his August 12 HSR, he finally saw Dr. Suliene. (Dkt. #1-12, at 1.) At the appointment, Dr. Suliene told Jacob that he "didn't have that bad of a reaction" to salsalate and that "people were lying for [him]." (*Id.*) Dr. Suliene also told Jacob that there was nothing wrong with his back and that he should exercise more and continue to take APAP. (*Id.*) Jacob documented this encounter in another letter to Anderson. (*Id.*)

  - **September 27, 2012:** Jacob wrote to Anderson again. (Dkt. #1-13, at 4.) At that point, HSU had scheduled a physical therapy ("PT") evaluation for Jacob, and he had been prescribed amitriptyline. (*Id.*) However, Jacob wrote to Anderson that he had an adverse reaction to amitriptyline while he was located at Dodge Correctional Institution ("DCI"). (*Id.*) HSU responded by asking whether Jacob wished to go back on gabapentin instead of amitriptyline.[6] (*Id.* at 6.) Jacob wrote back to Anderson, stating that both gabapentin and amitriptyline had caused adverse reactions and that he wished to try an alternative. (*Id.* at 7.) Jacob further asked why HSU repeatedly prescribed the same medications to him despite having documentation of his intolerance to those medications. (*Id.*)

- October 2012

  - **October 1, 2012:** HSU responded to Jacob's September 27 letter and advised him to try taking amitriptyline again, because previously he had taken amitriptyline in combination with a psychiatric prescription, and it was unclear which prescription had caused the adverse reaction.[7] (*Id.*)

  - **October 14, 2012:** Jacob filed an HSR about his amitriptyline prescription, stating that when he took it he felt dizzy when walking. (*Id.* at 9) In fact, Jacob wrote that he slipped down some steps during one of his dizzy spells. (*Id.*) Accordingly, Jacob again requested an alternative medication. (*Id.*) HSU responded on October 15, 2012, advising Jacob to lower his dose and

[6] Whether Anderson or another member of the HSU staff wrote the response is unclear because the initials are illegible. (Dkt. #1-13, at 6-7.) Nevertheless, because the person who responded wrote part of the response to plaintiff's letter, the court will infer that Anderson was aware of plaintiff's letter to him dated September 27, 2012, and its contents.

[7] Again, whether Anderson wrote the response is unclear, but the court will infer that she was aware of plaintiff's letter to him dated October 1, 2012, and its contents.

see if the dizziness abated.[8] (*Id.*)

- November 2012
  - **November 8, 2012**: Jacob filed another HSR related to amitriptyline, once again asking for an alternative medication. (*Id.* at 10.) Jacob stated that he had waited to take amitriptyline again to give HSU time to change his prescription. (*Id.*) However, he wrote that he "took one again the other night" and again experienced dizziness. (*Id.*) On November 12, 2012, Dr. Suliene wrote that all Jacob needed was additional physical activity and again scheduled him for a PT evaluation while discontinuing the amitriptyline.[9] (*Id.*)
  - **November 14, 2012**: Jacob again wrote to Anderson, stating that he had continued to experience dizziness and disagreeing with the physician's initial decision to lower the dosage. (*Id.* at 11.) Jacob wrote that while he would attempt to increase his physical activity, he continued to experience severe back pain and could barely get out of bed on some days. (*Id.*) As with his other requests, Jacob asked for an alternative medication. (*Id.*) Jacob's complaint and attachments do not indicate whether Anderson or any other member of HSU staff ever responded to this request.

- 2013
  - **May 23, 2013**: Despite seeing a nurse three months before who told him that he would see a doctor in a few weeks, Jacob wrote HSU to report he was still in pain and wanted to see the doctor as soon as possible. (*Id.* at 12.) On May 28, 2013, HSU scheduled Jacob to see a doctor. (*Id.*) A note at the bottom of that HSR states that a doctor finally saw Jacob on July 30, 2013. (*Id.*)

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[8] Unlike with Jacob's letters addressed directly to Anderson, the court cannot infer that she was aware of each HSR that Jacob filed. In particular, as will be explained in the opinion below, the court cannot infer that Anderson was aware of the minutiae of every HSR filed simply by virtue of her role as HSU manager, even if (as Jacob alleges) Anderson "was responsible for the operation and staff actions and the healthcare and safety of every prisoner at CCI as well as the wellbeing of all the prisoners." (Compl. (dkt. #1) 2.)

[9] Although it is not clear that Dr. Suliene wrote this response, Jacob's letter to Anderson dated November 14 indicates that Dr. Suliene "feels all I need is more physical activity and physical therapy," which corresponds to the response on the HSR. (Dkt. #1-13, at 11.)

- **October 15, 2013**: Jacob submitted an HSR complaining of intense and worsening back pain, stating that the APAP was not helping and he was waking up at night because of the back pain. (*Id.* at 13.) HSU responded on October 16, 2013, by scheduling an appointment for Jacob, but it is unclear whether a doctor actually saw him.

- **December 8, 2013**: Jacob filed an HSR, again complaining that his back pain was worsening. (*Id.* at 14) At that point, Jacob reported feeling a "numb/tingling sensation" in his right arm and three of his fingers, as well as pain radiating from a spot on his back. (*Id.*) HSU responded on December 9, 2013, by scheduling another appointment for Jacob, although the record again does not show whether a doctor actually saw Jacob after this complaint.

- 2014

  - **May 15, 2014**: The special needs committee denied Jacob's request for an extra blanket and pillow to help his back pain, noting that he did not meet the required medical criteria. (*Id.* at 15.)

  - **August 28, 2014:** Jacob received a memo from an HSU nurse noting that Dr. Hoffman wanted to evaluate Jacob before ordering any additional treatment. (Dkt. #1-13, at 16.) A nurse then scheduled Jacob for an appointment with Dr. Hoffman the following week and advised Jacob to stay active to the best of his ability in the meantime. (*Id.*)

  - **September 22, 2014**: Jacob filed another HSR. (*Id.* at 17.) He stated that he still had not seen Dr. Hoffman, despite being scheduled to see him nearly a month prior. (*Id.*) HSU responded on September 24, 2014, by rescheduling the appointment for the following week. (*Id.*)

  - **November 12, 2014:** Jacob filed another HSR requesting that HSU "do something to fix the pain in [his] back." (*Id.* at 18.) HSU scheduled another appointment.

  - **February 28, 2015:** Jacob filed an HSR complaining of headaches, dizzy spells, and stomach pain that "come and go ever since I got sick from the salsalate I was prescribed." (*Id.* at 19.) That same day, HSU noted that Jacob had not taken salsalate recently, and that he would have an appointment to discuss the problem. (*Id.*)

OPINION

Plaintiff is seeking to proceed on Eighth Amendment deliberate indifference claims against each of the named defendants in both their official and individual capacities. For the reasons that follow, plaintiff may not sue any of the defendants in their official capacities, and defendants Hamblin, Walls and Meisner cannot be held personally liable on the facts alleged. However, the court will permit plaintiff to proceed on his deliberate indifference claims against the remaining defendants, HSU Manager Anderson and Dr. Suliene.

I. Liability Under § 1983

As an initial matter, plaintiff's claims against Hamblin, Wall and Meisner -- both in their official and individual capacities -- cannot proceed. "Official capacity suits are actions against the government entity of which the official is a part." *Sanville v. McCaughtry*, 266 F.3d 724, 732 (7th Cir. 2001). "[S]ection 1983 does not authorize suits against states." *Power v. Summers*, 226 F.3d 815, 818 (7th Cir. 2000). Rather, to recover money damages under § 1983, the plaintiff "must establish that a defendant was personally responsible for the deprivation of a constitutional right." *Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996); *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995).

Plaintiff is seeking only monetary relief from defendants Hamblin and Wall as former secretaries of DOC, alleging that each is "legally responsible for the overall operations of all the state prisons and each prisoner in those prison[s] safety and wellbeing." (Compl. (dkt #1) 2.) Similarly, plaintiff seeks monetary relief from defendant Meisner, the warden of CCI, because he "is legally responsible for the operations of that

prison and all departments and staff actions and the wellbeing and safety of all the prisoners in that prison." (*Id.*) Because § 1983 does not authorize suits against states and each of these defendants are named as a state official, all of plaintiff's official capacity claims seeking money damages will be dismissed.

Furthermore, even construing plaintiff's complaint liberally, plaintiff has also not pled sufficient facts sufficient to hold Hamblin, Wall and Meisner liable in their individual capacities for money damages under § 1983. Generally speaking, supervisors cannot be held liable on a theory of *respondeat superior*, although there are exceptions. For example, a supervisor may be liable if he knew about unconstitutional "conduct and facilitate[d] it, approve[d] it, condone[d] it, or turn[ed] a blind eye for fear of what [she] might see." *Matthews v. City of East St. Louis*, 675 F.3d 703, 708 (7th Cir. 2012) (citation omitted). Additionally, a supervisor might be liable for flawed policies or deficient training over which the supervisor had control, if the policies or training amount to deliberate indifference to the rights of the persons affected by the policies or inadequate training. *See City of Canton, Ohio v. Harris*, 489 U.S. 378, 388 (1989).

However, plaintiff has not pleaded that Hamblin, Wall or Meisner were aware of his condition nor "that the alleged violations by treating medical staff were caused by any policy [the defendants] put in place." *Keller v. Elyea*, 496 F. App'x 665, 667 (7th Cir. 2012). Indeed, although plaintiff lists Hamblin, Wall and Meisner as defendants, neither plaintiff's complaint nor the attachments even mention them.

As such, there is simply no factual basis that would permit an inference that Hamblin, Wall or Meisner were personally responsible for (or even aware of) the alleged

indifference to plaintiff's medical needs. Therefore, the court will dismiss Hamblin, Wall and Meisner from this suit. Similarly, the court will dismiss plaintiff's official capacity claims against Anderson and Dr. Suliene.

II. Eighth Amendment Deliberate Indifference to Medical Needs

With regard to plaintiff's claims against defendants Anderson and Dr. Suliene in their individual capacities, several alleged facts indicate that both defendants were personally involved in plaintiff's treatment. Accordingly, the court turns to whether plaintiff may proceed on an Eighth Amendment claim against each.

A prison official violates the Eighth Amendment by acting with "deliberate indifference" to a "serious medical need." *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976). "The burden is on the prisoner to demonstrate that prison officials violated the Eighth Amendment, and that burden is a heavy one." *Pyles v. Fahim*, 771 F.3d 403, 408–09 (7th Cir. 2014). To prevail, the plaintiff must first demonstrate that he suffers from an objectively serious medical condition. *Arnett v. Webster*, 658 F.3d 742, 750 (7th Cir. 2011). "Serious medical needs" include (1) conditions that are life-threatening or that carry risk of permanent serious impairment if left untreated, (2) withholding of medical care that results in needless pain and suffering, or (3) conditions that have been "diagnosed by a physician as mandating treatment." *Gutierrez v. Peters*, 111 F.3d 1364, 1371 (7th Cir. 1997). The plaintiff must then demonstrate that the defendant knew about the plaintiff's condition and the risk it posed, but disregarded the risk by consciously failing to take reasonable measures. *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997).

"Deliberate indifference is conduct that is intentional or reckless and not simply negligent." *Thompson v. Godinez*, 561 F. App'x 515, 518 (7th Cir. 2014). Allegations of delayed care, even a delay of just a few days, may violate the Eighth Amendment if the delay caused the inmate's condition to worsen or unnecessarily prolonged his pain. "Whether the length of delay is tolerable depends upon the seriousness of the condition and the ease of providing treatment." *Perez v. Fenoglio*, 792 F.3d 768, 778 (7th Cir. 2015).

Additionally, a prisoner may establish deliberate indifference by demonstrating that the treatment he received was "blatantly inappropriate." *Madden v. Luy*, 637 F. App'x 945, 947 (7th Cir. 2016). For example, "a doctor's choice of the 'easier and less efficacious treatment' for an objectively serious medical condition can still amount to deliberate indifference for purposes of the Eighth Amendment." *Berry v. Peterman*, 604 F.3d 435, 441 (7th Cir. 2010) (citations omitted). However, "[n]either medical malpractice nor mere disagreement with a doctor's medical judgment is enough to prove deliberate indifference in violation of the Eighth Amendment." *Berry*, 604 F.3d at 441.

For purposes of this screening order, the court will accept that plaintiff's allegations about his worsening back pain and his intolerance to various medications, including salsalate and other NSAIDs, constitute objectively serious medical conditions. The court will similarly accept plaintiff's allegations that both HSU Manager Anderson and Dr. Suliene knew about his back pain and intolerance to various medications. Therefore, the question at the screening stage is whether plaintiff's allegations permit an inference that Anderson and Dr. Suliene consciously failed to take reasonable measures in response to his requests for treatment.

As for defendant Anderson, construing plaintiff's allegations generously permits the inference that she knew his course of treatment was both ineffective and repeatedly delayed, but did not seek to intervene. This is sufficient to infer deliberate indifference on her part. *See Greeno v. Daley*, 414 F.3d 645, 655 (7th Cir. 2005) ("dogged[] persiste[nce] in a course of treatment known to be ineffective" may violate the Eighth Amendment).

For example, in September 2012, it appears that Anderson accepted Dr. Suliene's statement that plaintiff's condition was not particularly serious, despite having ample reason to know that plaintiff's condition was, indeed, quite serious and debilitating. As a nurse, Anderson can typically defer to the decisions of a treating physician, but Anderson arguably had reason to doubt Dr. Suliene's conclusions and was in a position as HSU Manager to follow up and explain to Dr. Suliene the severity of plaintiff's reaction to salsalate. *See Berry*, 604 F.3d at 443 ("As an ethical matter, a nurse confronted with an 'inappropriate or questionable practice' should not simply defer to that practice, but rather has a professional obligation to the patient to 'take appropriate action,' whether by discussing the nurse's concerns with the treating physician or by contacting a responsible administrator or higher authority.") (citation omitted). Anderson's alleged awareness of plaintiff's ongoing pain and the ineffectiveness of the prescribed medications and her apparent failure to consult with Dr. Suliene about alternatives provide a sufficient factual basis from which to infer deliberate indifference.

Moreover, plaintiff's allegations suggest that many of his HSRs resulted in unexplained delay in treatment. The court will infer at this stage Anderson as HSU Manager would (or should) have been aware of his HSRs, even if she did not play a direct

role in specific treatment delays that plaintiff alleges.[10] Accordingly, the court will permit plaintiff to proceed against Anderson for her apparent failure to consult with Dr. Suliene about the inefficacy of the course of treatment and egregious delays in treating his pain.

As for defendant Dr. Suliene, plaintiff's allegations permit an inference that while Dr. Suliene examined plaintiff and proceeded with a course of treatment, the course of treatment was wholly ineffective. For example, Dr. Suliene's determinations in September 2012 that plaintiff's back pain was not serious and that all plaintiff needed was to take APAP and get physical activity -- in spite of plaintiff's repeated complaints of pain and alleged inability to perform physical activity -- permit an inference that Dr. Suliene's treatment decisions were blatantly inappropriate. *See Berry*, 604 F.3d at 441 ("[A] doctor's choice of the 'easier and less efficacious treatment' for an objectively serious medical condition can still amount to deliberate indifference for purposes of the Eighth Amendment."). As with Anderson, the court will also infer at this stage that Dr. Suliene was responsible for apparent, repeated delays in treatment.[11]

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[10] Of course, plaintiff may have difficulty proving this allegation. For example, the letters plaintiff sent to Anderson in 2012 do not mention wanting to see a doctor and being unable to, with only one exception -- when HSU scheduled an appointment on August 12, 2012, but the appointment did not occur until September 14, 2012. Yet it was HSU nurse Valerius, not Anderson, who responded to plaintiff's August 12 HSR and scheduled the appointment. Plaintiff's after-the-fact letter to Anderson demonstrates only that she would have known about the delay *after* plaintiff finally saw Dr. Suliene on September 14. As noted above, Anderson may not be held liable for the alleged delays under a theory of *respondeat superior*.

[11] Again, this may be difficult for plaintiff to actually prove unless he can show that Dr. Suliene was responsible for scheduling appointments with patients, refused to see him at scheduled times, or was generally aware of the HSU's apparent, ongoing delays in getting plaintiff seen by a physician or evaluated for physical therapy. Accordingly, the court will permit plaintiff to proceed against Dr. Suliene as well.

The court hastens to warn plaintiff that the claims he is proceeding upon relate only to *disagreements* with treatment decisions and delays, not the failure to treat him altogether. As noted, clearing the low screening threshold does not relieve plaintiff of the burden to come forward with concrete evidence as the case progresses. To the contrary, at summary judgment or at trial, plaintiff will bear the burden to show that a reasonable jury could find in his favor on each element of his claim. *Henderson v. Sheahan*, 196 F.3d 839, 848 (7th Cir. 1999). To meet that burden, plaintiff will need to show more than that he disagreed with the defendants' treatment decisions, *Norfleet v. Webster*, 439 F.3d 392, 396 (7th Cir. 2006), or even that the defendants could have provided better treatment, *Lee v. Young*, 533 F.3d 505, 511-12 (7th Cir. 2008). In particular, plaintiff will have to show that each defendant's conduct was "blatantly inappropriate." *Madden*, 637 F. App'x at 947. Making this showing may even require the plaintiff to introduce expert opinions that only a medical doctor can provide. *See Ledford v. Sullivan*, 105 F.3d 354, 358-59 (7th Cir. 1997) (distinguishing between deliberate indifference cases where an expert is unnecessary and those where the jury must consider "complex questions concerning medical diagnosis and judgment.").

ORDER

IT IS ORDERED that:

1) Plaintiff Christopher Jacob is GRANTED leave to proceed on an Eighth Amendment deliberate indifference claim against defendants Anderson and Dr. Suliene in their individual capacities as described in the opinion.

2) Plaintiff is DENIED leave to proceed on claims against defendants Hamblin, Walls, and Meisner, who are DISMISSED.

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 the defendants. Under the agreement, the Department of Justice will have 60 days from the date of the Notice of Electronic Filing in this order to answer or otherwise plead to plaintiff's complaint if it accepts service for the defendants.

4) For the time being, plaintiff must send the defendant a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing the defendants, he should serve the lawyer directly rather than the 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 the defendants or to defendants' attorney.

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

6) If plaintiff is transferred or released from custody while this case is pending, it is his obligation to inform the court of his new address. If he fails to do so and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 3rd day of December, 2019.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge