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

DAVID KREZINSKI,

Plaintiff,

v.

OPINION AND ORDER

16-cv-298-wmc

KAREN BUTLER,
ADVANCE MEDICAL SERVICES,
THOMAS REICHERT,
MELISSA SIMCAKOWSKI, and
SUSANNA KNAPP,

Defendants.

Plaintiff David Krezinski brings this action *pro* se under 42 U.S.C. § 1983, alleging that the defendants violated his constitutional rights during his incarceration at the Wood County Jail. In particular, plaintiff claims that he was denied access to medical care for his mental health issues and privacy in his cell while using the bathroom, as well as that defendants retaliated against him for filing this lawsuit (dkt. #11). Plaintiff further requests preliminary injunctive relief. (*Id*.) Having been permitted to proceed *in forma pauperis*, Krezinski's complaint requires screening. 28 U.S.C. § 1915A. After considering Krezinski's original and amended complaints, he will be allowed to proceed with some, but not all, of his claims and his request for preliminary injunctive relief will be denied as moot.

ALLEGATIONS OF FACT[1]

Krezinski is currently in the custody of the Waupaca County, but the allegations in

[1] Courts must read allegations in *pro se* complaints generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Some of Krezinski's allegations in his amended complaint appear to contradict others in

the original and amended complaints took place while he was housed at the Wood County Jail. Defendant Thomas Reichert is the Wood County Sheriff and ultimately responsible for jail operations. Defendant Karen Butler is a physician who provides medical services at the jail through her employer, defendant Advance Medical Services ("AMS"), a private contractor hired by Wood County to provide medical and mental health services; Lieutenant Susana Knapp and Administrative Lead Programs Officer Melissa Simcakowski work for Wood County at the jail. Because the order of events described in the complaint and the amended complaint is not always clear, the court will attempt to set out its understanding of Krezinski's allegations as they pertain to each defendant, rather than chronologically.

A. Dr. Karen Butler

On March 3, 2016, Krezinski arrived at Wood County Jail. At the time, Krezinski was taking four different medications to address his mental health issues, which included severe panic disorder, major depression disorder, and borderline personality disorder. Krezinski was placed in a holding cell, where he suffered a "major panic attack" and passed out. Upon awakening, Krezinski found blood on his face, head and hands, which he believes to be the result of hitting his head. When a nurse came to check on Krezinski, she saw the blood and asked him what was going on. He told the nurse that he did not know and that he was hearing his deceased brother's voice.

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his original complaint. For purposes of screening, the court has construed these inconsistencies in Krezinski's favor and viewed the facts in a light most favorable to him, including drawing all reasonable inferences in his favor.

The next day, Dr. Butler asked Krezinski to sign a release form allowing the jail to obtain his medical records. Dr. Butler subsequently denied Krezinski access to two of his four medications and changed some of his doses, even though other detainees have received the same medications he was denied. Krezinski alleges that on one occasion, Dr. Butler also tried to prescribe him two medications that he was already taking, and the nurse had to correct her, although he does not provide any details about this incident, including when it occurred. Krezinski also felt that Dr. Butler's demeanor while treating him was inappropriate.

Later on March 4, a Wood County Human Services Clinic employee saw Krezinski for "about five minutes." Krezinski told the employee that he was hearing voices, was confused about what was happening, and wanted to see a psychiatrist. While Krezinski's request was denied, Dr. Butler placed him on suicide watch. After this, Krezinski repeatedly asked to see a qualified psychiatrist to evaluate his mental health because he felt that the jail's mental health staff were not spending an adequate amount of time with him, apparently due to a month-long backlog of intake evaluations at the jail. Dr. Butler denied his requests.

At some point, Krezinski also saw jail staff remove the body of an inmate who committed suicide. This event triggered additional mental distress, Krezinski's brother having committed suicide in a jail ten years before. For four hours after that incident, Krezinski attempted to speak with Wood County Jail staff, but was unsuccessful. Instead, Dr. Butler ordered medication to "shut him up." Although Krezinski started receiving all four of his medications beginning on May 20, some two and a half months after requested,

even then he only received a half dose of each medication.

B. Lieutenant Susana Knapp

Krezinski alleges that Lieutenant Knapp also denied his requests to see a qualified psychiatrist to evaluate his mental health. When Krezinski requested to see his medical record, Lieutenant Knapp would not allow him to review his complete file, although she did provide Krezinski copies of some of his medical records.[2]

After he filed his original and amended § 1983 complaints, Krezinski was transferred to Waupaca County Jail where he stopped receiving his medications. Krezinski claims that Lieutenant Knapp knew that Waupaca County Jail would stop giving him his medications when transferred and did nothing about it. Krezinski experienced severe physical withdrawal symptoms as a result of being taken off of his medications.

C. Sheriff Thomas Reichert

After Dr. Butler and Lieutenant Knapp denied Krezinski's requests to see a qualified psychiatrist, Krezinski wrote to Sheriff Reichert directly to inform him of his "serious medical need" and to ask for help. Sheriff Reichert never responded.

D. Melissa Simcakowski

At some point during his time in Wood County Jail, Officer Simcakowski told Krezinski to take down a sheet he had hung up to shield himself from the waist down while

[2] As reflected in his amended complaint, Krezinski is plainly frustrated that he could not review his full medical file to investigate the merits of his legal claims. As Krezinski will now be allowed to proceed with some of his claims, he will be able to submit discovery requests to defendants in accordance with the Federal Rules of Civil Procedure. In particular, he will have the ability to serve defendants' counsel by mail with a request for production of documents under Federal Rule of Civil Procedure 34, which should aid in his investigation.

he used the bathroom. Krezinski asked if he could finish using the bathroom before taking the sheet down, but Simcakowski told him to take the sheet down immediately or he would be "locked in holding." Krezinski then stood up, fully exposing his genitals, took down the sheet, and asked Simcakowski to leave so he could finish using the bathroom. Simcakowski allegedly responded by "screaming" at Krezinski.

E. AMS

More generally, Krezinski claims that AMS has policies and procedures in place to cut financial costs, which led to inadequate mental and medical healthcare at Wood County Jail. In particular, Krezinski alleges that AMS only provides an approved list of medications and one nurse who is present for "a few hours" each day, excluding weekends and holidays. As a result, sometimes the guards are responsible for conducting arrestees' medical and mental health screenings using only a brief checklist. Due to the minimal medical staff at the jail, Krezinski further alleges that the guards pass out all of the detainees' medication, resulting in Krezinski receiving incorrect medications and doses.

OPINION

Plaintiff claims that his mental health has significantly deteriorated because inadequate medications and mental health counseling afforded at the Wood County Jail amount to violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution. He also claims that Officer Simcakowski violated his Fourth Amendment right to protection from unreasonable searches and that Lieutenant Knapp retaliated against him for exercising his First Amendment right to access the judicial

system. In addition, Krezinski requests a preliminary injunction denying defendants from treating him for his mental health conditions, requiring defendants to permit him to receive all of his necessary medications, and allowing his family doctor to treat him instead. For the following reasons, the court will permit plaintiff to proceed on his deliberate indifference and First Amendment retaliation claims, but will deny him leave to proceed on his Equal Protection Clause and Fourth Amendment claims for failure to state a viable claim.

Regardless, the court will deny plaintiff's request for injunctive relief. Specifically, plaintiff requests a preliminary injunction against defendants and a temporary restraining order against Dr. Butler. If an inmate is transferred to another prison, however, that inmate's request for injunctive relief against defendants based on conduct at the first prison is moot, unless the inmate can demonstrate that he is likely to be retransferred. *Higgason v. Farley*, 83 F.3d 807, 811 (7th Cir. 1996) (citing *Moore v. Thieret*, 862 F.2d 148, 150 (7th Cir. 1988)). Because plaintiff was transferred from Wood County Jail to Waupaca County Jail, and his filings do not suggest that he is likely to be transferred back, plaintiff's request for injunctive relief is moot.

I. Deliberate Indifference

Plaintiff first claims that defendants' failure to provide him with all of his medications and adequate mental healthcare amounted to deliberate indifference. As it appears plaintiff was a pretrial detainee at the time of the events at issue, his claim falls under the Due Process Clause of the Fourteenth Amendment, which provides that "a

pretrial detainee may not be punished." *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979). Like claims alleging denial of adequate medical care brought by convicted prisoners, the Eighth Amendment standard for deliberate indifference applies.[3] *Smith v. Dart*, 803 F.3d 304, 310 (7th Cir. 2015).

Prison officials violate a detainee's right to medical and mental healthcare when they act with deliberate indifference toward a serious mental health need. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). A "serious medical need" may be a condition that a doctor has recognized requires 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). The condition does not have to be life-threatening. *Id.* A medical need may be serious if it: "significantly affects an individual's daily activities," *Gutierrez v. Peters*, 111 F.3d 1364, 1373 (7th Cir. 1997); causes significant pain, *Cooper v. Casey*, 97 F.3d 914, 916-17 (7th Cir. 1996); or otherwise subjects the prisoner to a substantial risk of serious harm, *Farmer v. Brennan*, 511 U.S. 825 (1994). "Deliberate indifference" means that the officials are aware the prisoner needs medical treatment, but are disregarding the risk of withholding reasonable measures by consciously failing to act. *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997).

Under this standard, therefore, the plaintiff's claim has three elements:

1) He needed medical treatment;

2) Defendants knew that he needed medical treatment; and

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[3] After *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015), there remains a question whether a "cruel and unusual punishment" under the Eighth Amendment applies to a pretrial detainee's conditions of confinement claim under the Fourteenth Amendment Due Process, but the Seventh Circuit continues to treat "the protection afforded under [the Due Process Clause] [a]s functionally indistinguishable from the Eighth Amendment's protection for convicted prisoners." *Smith*, 803 F.3d at 310. Accordingly, the court applies this standard for screening purposes.

3) Despite their awareness of the need, defendants consciously failed to take reasonable measures to provide the necessary treatment.

As an initial matter, plaintiff's allegation that he has been previously diagnosed with a number of mental health disorders requiring him to take four medications is sufficient to permit an inference that he has a serious medical need that requires medical treatment. *Meriwether v. Faulkner*, 821 F.2d 408, 413 (7th Cir. 1987) ("Courts have repeatedly held that treatment of a psychiatric or psychological condition may present a 'serious medical need' under the *Estelle* formulation."). Moreover, at least as to Dr. Butler, plaintiff included several allegations that permit an inference of her deliberate indifference. In particular, plaintiff alleges that Dr. Butler knew that he had previously taken four different medications, but refused to give plaintiff two of those four while placing him on suicide watch, are sufficient to permit an inference that Dr. Butler was crediting his mental health disorders but refusing the prescribed treatment.[4] Similarly, plaintiff's allegation that his mental health has declined since being denied access to these two medications permits an inference that Dr. Butler either failed to properly follow up with plaintiff to assess how he reacted to the change in medications or disregarded the serious negative effects of the change. The same is true as to plaintiff's allegation that Dr. Butler denied his request to see a psychiatrist despite knowing about his mental health deterioration.

Additionally, plaintiff's allegation that he wrote to Sheriff Reichert to inform him

[4] Of course, Dr. Butler may have an explanation for this, including possible dangers in introducing certain drugs into the institution or belief in her superior knowledge of the continued combination of those drugs in the jail context. But that inquiry is for another day, especially given plaintiff's allegation that Butler allowed prescriptions of the same medication for other inmates.

of his condition is sufficient to permit an inference that Sheriff Reichert had knowledge of plaintiff's mental health disorders. Sheriff Reichert's alleged failure to respond in *any* manner to plaintiff's letter is sufficient to permit an inference that he did not take measures to provide plaintiff with necessary treatment. This is the case even though non-medical personnel often may defer to the decisions of medical personnel. *See Dobbey v. Mitchell-Lawshea,* 806 F.3d 938, 941 (7th Cir. 2015) ("If a prisoner is writhing in agony, the guard cannot ignore him on the ground of not being a doctor; he has to make an effort to find a doctor, or in this case a dentist, or a technician, or a pharmacist—some medical professional."); *Smego v. Mitchell*, 723 F.3d 752, 758 (7th Cir. 2013) ("[E]ven non-medical personnel cannot stand by and ignore a detainee's complaints of serious medical issues."). At this point, it is unclear why Reichert failed to respond to plaintiff's letter, and so, in viewing plaintiff's allegations in his favor, it is reasonable to infer that Reichert's failure to act was not the result of deference to medical personnel, but deliberate indifference.

As to defendant AMS, reading the amended complaint generously, plaintiff has included sufficient allegations to create an inference of deliberate indifference. First, plaintiff's allegation that the jail contracts with AMS to provide mental and medical health care suggests that AMS was acting under color of state law. *See Shields v. Ill. Dep't of Corr.*, 746 F.3d 782, 789 (7th Cir. 2014). As such, AMS can be held liable for policies and practices that implicate plaintiff's constitutional rights. Second, plaintiff alleges that AMS had policies and practices in place that prevented him from receiving the necessary mental health treatment. *See King v. Frank,* 328 F. Supp. 2d 940, 948 (W.D. Wis. 2004). Accordingly, he will be permitted to proceed against AMS.

Moving forward, however, plaintiff should understand the significant burden he will have to overcome to prevail on this claim. Plaintiff will be required to garner evidence establishing that AMS had institutional knowledge that its policies and procedures violated his Fourteenth Amendment right to receive medical care *and* that AMS failed to take action to correct those policies and procedures. For example, if members of the AMS Board of Directors knew, after implementing these policies and procedures, that inmates were not receiving the mental health or medical treatment they needed or were not receiving necessary treatment in a timely manner, and AMS failed to take corrective action, AMS may have been deliberately indifferent.

As for establishing Reichert's and Dr. Butler's liability, it will be plaintiff's 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). It will not be enough for plaintiff to show that he disagrees with defendants' conclusions about the appropriate treatment, *Norfleet v. Webster*, 439 F.3d 392, 396 (7th Cir. 2006), or even that defendants could have provided better treatment. *Lee v. Young*, 533 F.3d 505, 511-12 (7th Cir. 2008). In particular, he will have to show that defendants' conduct was "blatantly inappropriate" and that defendants knew about obvious, reasonable alternatives, but refused to consider them. *Snipes v. DeTella*, 95 F.3d 586, 592 (7th Cir. 1996) (internal quotations omitted).

Finally, as for defendants Simcakowski and Knapp, plaintiff has not alleged that either defendant was aware that he suffered from mental health disorders, nor that they ignored his mental health disorders. Plaintiff only alleges in his original complaint that Knapp denied his request to see a psychiatrist, which is insufficient to state a claim that

she was deliberately indifferent to his actual mental health needs.[5] Accordingly, plaintiff will be permitted to proceed on this claim against Dr. Butler, Sheriff Reichert, and AMS, but not against defendants Simcakowski or Lieutenant Knapp.

II. Equal Protection

Plaintiff also claims that Dr. Butler violated his rights under the Fourteenth Amendment's Equal Protection Clause by refusing to give him two of his medications while permitting other detainees to receive the same medications. To state a claim under the Fourteenth Amendment's Equal Protection Clause, a plaintiff must show "intentional discrimination against him because of his membership in a particular class." *Huebschen v. Dep't of Health and Soc. Servs.*, 716 F.2d 1167, 1171 (7th Cir. 1983). Even assuming Dr. Butler's discrimination was intentional, plaintiff fails to allege that he is a member of a protected class, much more that Butler discriminated because of his membership in the class. Accordingly, he has no class-based Equal Protection Clause claim.

Plaintiff's allegations also fail to state a claim under a "class of one" analysis. The standard in the Seventh Circuit for "class of one" discrimination requires plaintiff to "plead and prove intentional discriminatory treatment that lacks any justification based on public duties and that there be some improper personal motive for the discriminatory treatment."

[5] Plaintiff's amended complaint similarly fails to describe the specific content of his request to see a psychiatrist, nor even to whom these requests were made. If plaintiff made this request to Knapp, as alleged in the original complaint, or to Simcakowski, and if the request contained more information than just his desire to see a psychologist, such as facts about the severity of his mental health condition, he may have claims against Lieutenant Knapp and Ms. Simcakowski. Plaintiff can seek leave to amend his complaint to include more details, and if he does, the court will reevaluate whether he may proceed on his Fourteenth Amendment claim against Knapp and Simcakowski.

Marcelle v. Brown Cnty. Corp., 680 F.3d 887, 899 (7th Cir. 2012). Again assuming that Dr. Butler's discrimination was intentional, plaintiff has not alleged that she had an improper motive in denying him two of his medications or refusing to allow him to see a psychiatrist. Accordingly, plaintiff's Equal Protection Clause claim may not proceed.

III. Fourth Amendment Claim

Plaintiff next alleges that Deputy Simcakowski violated his Fourth Amendment protection from unreasonable searches when she required him to take down the sheet he had hung in his cell to shield himself from the waist down while he was using the bathroom. While plaintiff's desire for privacy is understandable, the United States Supreme Court has held that the Fourth Amendment's protection from unreasonable searches and seizures does *not* extend to a prisoner's living quarters. *Hudson v. Palmer*, 468 U.S. 517, 525-26 (1984). The Seventh Circuit reiterated this holding in finding that cross-sex monitoring of nude inmates is permissible. *Johnson v. Phelan*, 69 F.3d 144, 149 (7th Cir. 1995).

After its ruling in *Hudson*, however, the United States Supreme Court held that prisoners can use the Eighth Amendment to supplement their Fourth Amendment protections. *Id.* at 147 (citing *Graham v. Connor*, 490 U.S. 386, 392, 394 (1989)). Because plaintiff is a pretrial detainee and cannot be punished before he is convicted, however, this claim must be analyzed under the Fourteenth Amendment's Due Process Clause. *Bell*, 441 U.S. at 535-36. Substantive due process is implicated when the government exercises power without reasonable justification, and it is most often described as an abuse of government power that "shocks the conscience." *Tun v. Whitticker*, 398 F.3d 899, 900 (7th Cir. 2005).

Unfortunately, plaintiff's allegations do not support a finding that he suffered from such an abuse of power, at least in an actionable sense. While plaintiff alleges that the incident left him feeling "humiliated and embarrassed," he does not allege that Simcakowski's actions were intended to harass him, nor does he allege that Simcakowski's actions were unrelated to the jail's needs. On the contrary, Exhibit D in the amended complaint, a news article providing details about the March 2016 inmate suicide at Wood County Jail, indicates that the jail had a policy prohibiting inmates from hanging items in their cells and over their cell bars. (Ex. D. (dkt. #10) at 1.) Although the article suggests that the policy was not strictly enforced, it is a common one among prisons for both the safety of detainees and guards. Absent some allegation that Simcakowski was enforcing this policy as a power play, there is no basis to proceed, particularly where an inmate's recent suicide provides a ready explanation for Simcakowski strictly enforcing this policy. Regardless, Simcakowski's behavior cannot be said "to shock the conscience," and plaintiff's Fourth Amendment claim cannot proceed.

IV. First Amendment Retaliation

Finally, in his amended complaint, plaintiff claims that Lieutenant Knapp retaliated against him for exercising his First Amendment right to access the judicial system when she transferred him from Wood County to Waupaca County Jail. Retaliation claims are usually filed separately from actions brought under 42 U.S.C. § 1983, but because defendants have not filed answers to plaintiff's amended complaint and because plaintiff's retaliation claim is so closely related to his § 1983 claims, the court will address plaintiff's

retaliation claim here.

To successfully state a First Amendment retaliation claim, plaintiff must show the following:

1) he was engaged in an activity protected by the First Amendment;

2) he suffered an adverse action that would likely deter a person of ordinary firmness from engaging in the protected activity in the future; and

3) the protected activity was a motivating factor in defendant's decision to take retaliatory action.

See Kidwell v. Eisenhauer, 679 F.3d 957, 964-65 (7th Cir. 2012); *Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009).

Here, plaintiff was plainly engaged in an activity protected by the First Amendment. Moreover, plaintiff's allegations that his mental health condition deteriorated and that he experienced painful physical withdrawal symptoms after transfer without his medications also supports the conclusion that he suffered an adverse action likely to deter an ordinary person. Based on the timeline of events, it is further possible that plaintiff's initiation of his § 1983 lawsuit was a motivating factor in defendant Knapp's decision to transfer him to another facility. Accordingly, plaintiff will be permitted to proceed on this claim against Knapp.

Again, however, plaintiff is reminded of his significant burden moving forward. Inferences that can be drawn based on the timeline of events will not be enough to prevail on this claim. For example, plaintiff is responsible for gathering and submitting admissible evidence that Lieutenant Knapp transferred him without ensuring he would receive his medications, at least in part, *because* he filed this lawsuit.

ORDER

1) Plaintiff David Krezinski is GRANTED leave to proceed on his Fourteenth Amendment Due Process claim for deliberate indifference to a medical need against Dr. Karen Butler, Sheriff Thomas Reichert, and Advance Medical Services (AMS).

2) Plaintiff is GRANTED leave to proceed on his First Amendment retaliation claim against Lieutenant Susanna Knapp.

3) Plaintiff is DENIED leave to proceed on all other claims and defendant Melissa Simcakowski is DISMISSED.

4) Plaintiff's Motion for Emergency Injunctive Relief (dkt. #11) is DENIED without prejudice.

5) For the time being, plaintiff must send defendants copies of every paper or document he files with the court. Once plaintiff has learned what lawyers will be representing defendants, he should serve each defendant's 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' attorneys.

6) 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.

7) The clerk's office will prepare a summons and the U.S. Marshal Service shall effect service upon these defendants.

8) 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 failure to prosecute.

Entered this 22nd day of November, 2017.

BY THE COURT:
/s/
WILLIAM M. CONLEY
District Judge