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

ROBERT J. ARTIS,

Plaintiff,

v.

CAPTAIN T. ANDERSON, C/O WEN, C/O WOODRUFF, C/O ANDERSON, C/O HABECK, C/O TURNER, C/O OLSON, NURSE VALERIUS, and JANE DOE NURSE,

Defendants.

OPINION AND ORDER

18-cv-493-wmc

Pro se plaintiff Robert J. Artis, a prisoner at the Wisconsin Secure Program Facility ("WSPF"), filed this lawsuit pursuant to 42 U.S.C. § 1983. While previously housed at Columbia Correctional Institution ("Columbia"), Artis claims that certain employees of the Wisconsin Department of Corrections ("DOC") violated his constitutional and state law rights by failing to respond adequately to his need for prescribed pain medication following a dental procedure. After screening his complaint as required by 28 U.S.C. § 1915A, Artis will be allowed to proceed against only certain of the named defendants, for the reasons that follow.

ALLEGATIONS OF FACT[1]

While plaintiff Artis is currently incarcerated at WSPF, the facts alleged in his complaint took place at Columbia, where each of the nine defendants were working and Artis was then an inmate. Defendants include Captain T. Anderson; Correctional Officers

[1] In addressing any *pro se* litigant's complaint, the court must read the allegations generously, drawing all reasonable inferences and resolving any ambiguities in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

("COs") Wen, Woodruff, S. Anderson, Habeck, Turner, and Olson; and nurses Valerius and Jane Doe.

On April 17, 2018, Artis had a tooth removed, and on April 26, 2018, he underwent an emergency, follow-up procedure to correct a very painful dry socket. After the dry socket correction, Artis was prescribed 800 mg of ibuprofen and 325 mg of Tylenol for the pain.

On April 27, 2018, CO Habeck was handling the bedtime medication pass in Columbia's segregation unit where Artis was then housed. In passing Artis his ibuprofen, Habeck allegedly dropped all of the pills. Even though Habeck told Artis he would contact the Health Services Unit ("HSU") for replacement pills, Habeck never returned. As a result, Artis claims he went without pain medication for the three days. During this time, Artis claims the pain was so severe that he could not eat.

On April 30, 2018, when CO Turner was handling the noon medication pass where Artis was housed, he took the opportunity to report what happened on April 27, including that he was in a lot of pain and had not eaten since. Even though Turner responded that he "heard about that," Turner chose not to contact HSU either, at least not immediately. Rather, at about 2:00 p.m., Turner stopped by Artis's cell to ask if he wanted a shower. After Artis reminded him about his medication and how much pain he was in, Turner responded that he had forgotten to contact HSU, but "would do it later." Although Artis warned Turner that he would refuse to leave to shower until he received some help, it appears that Turner called Lieutenant Olson, who told Artis he was "already" aware of the issue through Turner and "would look into it," asked him to leave to shower, and then left

the Unit. Afterward, Artis was again left in his cell "in pain with no help."

While Artis apparently received his pain medication the next day, May 1, CO Woodruff was handling the morning medication pass the following day, May 2, and again all the pills allegedly fell on the floor. After Woodruff picked up the pills off the floor, she told Artis those pills could not be distributed. Once again, Artis described his need for those pills to address his ongoing pain, and Woodruff said she would call HSU, but she, too, did not come back. That same day, CO S. Anderson came by with the noon medication pass, and allegedly again dropped the pills that "Woodruff put back in the [bin]." At that point, Artis claims he told Anderson what happened during Woodruff's earlier pass, and Anderson stated that "Woodruff should have reported it and [filled out an] incident report." Artis then told CO Anderson that he was in pain, and CO Anderson said she "would call [Captain] Boodry." Still, Artis allegedly received no help for the rest of first shift.

When CO Anderson, who was doing a double shift, came by later, Artis asked again "what was doing on with my medication," and she allegedly stated, "I did all that I can." Then, "[a]round 4:00 p.m." that day, *Captain* T. Anderson also came to Artis's cell, and Artis asked about his medication. Captain Anderson allegedly responded, "Ain't shit I can do," and "just walk[ed] away, leaving [Artis] in pain."

Finally, CO Wen handled the bedtime medication pass on May 2. Artis once more explained to him "what was going on," prompting Wen to respond that he saw "some pills in the bubble with your name on it in a bag." Artis replied that those pills were supposed to go to the HSU for replacement. Wen assured Artis he would call HSU, and a short

while later, Wen returned and told Artis that a nurse said he could take the pills. When Artis objected, saying that those pills had been on the floor, Wen left, at which point Artis appears not to have been given replacement pills that night.

On May 4, 2018, Artis submitted a Health Services Request ("HSR"), reporting that his pills had been dropped on the floor. Nurse Valerius allegedly responded that she did not see a reason why he could not take those same pills, and she refused to replace the pills. On May 10, Artis contacted HSU Manager Schueler about Valerius's refusal to provide replacement pills, and Nurse Jane Doe responded that he would be seen. Even then, Artis was not seen for another week, during which time he alleges that his pain continued.

OPINION

Plaintiff seeks leave to proceed against all of the defendants on Eighth Amendment deliberate indifference and Wisconsin negligence claims related to defendants' handling of his reports of pain and need for medication.

I. Deliberate Indifference

A prison official who violates the Eighth Amendment in the context of a prisoner's medical treatment demonstrates "deliberate indifference" to a "serious medical need." *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976); *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997). "Serious medical needs" include: (1) life-threatening conditions or those carrying a 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). "Deliberate indifference" encompasses two elements: (1) awareness on the part of officials that the prisoner needs medical treatment and (2) disregard of this risk by conscious failure to take reasonable measures.

Allegations of delayed care, even a delay of a just a few days, may violate the Eighth Amendment if the alleged delayed caused the inmate's condition to worsen or unnecessarily prolonged his pain. *See Estelle*, 429 U.S. at 104–05; *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010); *Petties v. Carter* 836 F.3d 722, 730-31 (7th Cir. 2016) (holding that inexplicable delay in medical treatment for a prisoner, which serves no penological interest, can support an inference of deliberate indifference, as element for a prisoner's Eighth Amendment claim); *Grieveson v. Anderson*, 538 F.3d 763, 779 (7th Cir. 2008) (guards could be liable under the Eighth Amendment for delaying treatment of broken nose for a day and half); *Edwards v. Snyder*, 478 F.3d 827, 830–31 (7th Cir. 2007) (a plaintiff who painfully dislocated his finger and was needlessly denied treatment for two days stated a claim for deliberate indifference). Thus, a plaintiff's deliberate indifference claim will succeed if the answer to the following three questions is "yes."

1. Did plaintiff objectively need medical treatment?
2. Did defendants know that plaintiff needed treatment?
3. Despite their awareness of the need, did defendants consciously fail to take reasonable measures to provide the necessary treatment?

As an initial matter, the court will accept for purposes of screening that plaintiff's severe pain following the dry socket procedure constitutes a serious medical need.

Accordingly, the remaining inquiries are whether each defendant knew of plaintiff's ongoing need for pain pills and, if the answer is yes, whether his or her response demonstrate a conscious failure to take reasonable measures to respond?

Reading plaintiff's allegations generously, the answer is "yes" as to both questions for defendants T. Anderson, Woodruff, S. Anderson, Habeck, Turner and Olson, but "no" as to one or both questions for defendants Wen, Valerius and Doe. To start, whether the improper administration of prescribed medication supports an inference of deliberate indifference depends on the circumstances, since inadvertent error, negligence and gross negligence are not cruel and unusual punishments within the meaning of the Eighth Amendment. *See Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996). Here, some of the defendants are alleged to have *intentionally* failed to take any step to rectify the mistake of the dropped pills specifically prescribed to address plaintiff's ongoing pain, which can support a claim of deliberate indifference. Indeed, plaintiff alleges that defendants Habeck, Turner, Olson, Woodruff and S. Anderson assured him that they would either follow up with HSU about the dropped pain pills or take some other action to address his ongoing pain, but then the plaintiff did not receive his pills or any other relief, sometimes for days or even weeks, permitting a reasonable inference that each of those defendants failed to take any steps to ensure that plaintiff received his prescribed medication or otherwise received medical attention. Worse yet, Captain T. Anderson allegedly responded to plaintiff's credible claims of pain, in colorful language suggesting utter indifference to his pain, to the effect that he could do *nothing* for him. Accordingly, all of these defendants' alleged failure to take *any* action to address plaintiff's ongoing, credible reports of pain

support an inference of deliberate indifference. Accordingly, the court will allow plaintiff to proceed on deliberate indifference claims against S. Anderson, Woodruff, Habeck, Turner, Olson, and T. Anderson

In contrast, plaintiff alleges that CO Wen *did* follow up in a manner that absolves him from Eighth Amendment liability here. Specifically, Artis alleges that Wen followed up with HSU about the bag of pills held in the security bubble, but Artis refused to take the pills that had dropped on the floor. While Artis's objection to the HSU staff member's opinion that the pills would be fine for him to take, defendant Wen, a non-medical professional, was entitled to defer to the judgment call of HSU staff about whether Artis could take those pills. *Holloway v. Delaware Cty. Sheriff's Office*, 700 F.3d 1063, 1075 (7th Cir. 2012) ("[N]urses may generally defer to instructions given by physicians" unless "it is apparent that the physician's order will likely harm the patient."); *Berry v. Peterman*, 604 F.3d 435, 443 (7th Cir. 2010) (nurse had an obligation to follow up with appropriate personnel when presented with problematic treatment decision). Moreover, plaintiff's refusal to take pain pills, even if having dropped on the floor, might reasonably cause Wen to question whether Artis was even in serious pain. Regardless, absent something more, therefore, no reasonable jury could fault Officer Wen's response (or at least could not infer deliberate indifference on his part), and the court must dismiss Wen.

Similarly, defendants Valerius and Jane Doe, who each allegedly made judgment calls that plaintiff could safely take the pain pills that had fallen on the floor, might reasonably be found negligent, or even grossly negligent, but not deliberately indifferent to plaintiff's pain. While requiring plaintiff to take dirty pills may not be desired, and

certainly not an example of exemplary care, the Eighth Amendment does not guarantee prisoners "the best possible care." *Forbes v. Edgar*, 112 F.3d 262, 267 (7th Cir. 1999). Plaintiff has not alleged that the dropped pills fell into water, were visibly damaged or were otherwise contaminated in a manner that made them patently unusable or ineffective. As such, Valerius's and Doe's decision to decline to give him replacement ibuprofen does not support an inference of deliberate indifference, at least by itself. Accordingly, these defendants must also be dismissed.

II. Wisconsin Negligence

Finally, plaintiff seeks to proceed on Wisconsin negligence claims against the same defendants. The court may exercise supplemental jurisdiction over these claims. 28 U.S.C. § 1367(a) ("[D]istrict courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."). As an initial matter, the court will decline to exercise jurisdiction over the state law tort claims against Wen, Valerius and Jane Doe, since the Eighth Amendment claims against them have been dismissed. *See Williams v. Rodriguez*, 509 F.3d 392, 404 (7th Cir. 2007) (affirming trial court's dismissal of plaintiff's state law claims for lack of jurisdiction after parallel federal claims had been dismissed).

However, having screened the remaining Eighth Amendment claims to proceed, the court will also exercise its supplemental jurisdiction over plaintiff's negligence claims against defendants Woodruff, S. Anderson, Habeck, Turner, Olson and T. Anderson. Under Wisconsin law, the elements of a cause of action in negligence are: (1) a duty of

care or a voluntary assumption of a duty on the part of the defendant; (2) a breach of the duty, which involves a failure to exercise ordinary care in making a representation or in ascertaining the facts; (3) a causal connection between the conduct and the injury; and (4) an actual loss or damage as a result of the injury. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 307 (1987). At least for screening purposes, plaintiff's allegations outlined above also support a reasonable inference that the remaining defendants' failure to take *any* follow-up steps to provide plaintiff his prescribed pain medication constituted a breach of their respective duty of care *and* caused him prolonged, unnecessary pain (if not further injury). Accordingly, the court will grant plaintiff leave to proceed on negligence claims against these defendants as well.

ORDER

IT IS ORDERED that:

1. Plaintiff Robert J. Artis is GRANTED leave to proceed on Eighth Amendment deliberate indifference and Wisconsin negligence claims against defendants T. Anderson, Woodruff, S. Anderson, Habeck, Turner and Olson.

2. Plaintiff is DENIED leave to proceed on any other claims, and defendants Wen, Valerius and Jane Doe are DISMISSED from this lawsuit.

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 the plaintiff's complaint if it accepts service for the defendants.

4. For the time being, plaintiff must send the defendants 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 the 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.

6. If plaintiff is transferred or released while this case is pending, it is plaintiff's 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 claims may be dismissed for his failure to prosecute him.

Entered this 28th day of April, 2021.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge