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

ENNIS LEE BROWN,

Plaintiff,

v.

WISCONSIN DEPARTMENT OF CORRECTIONS, ARMOUR CORRECTION HEALTH CARE, GARY BOUGHTON, DR. EILEEN GAVIN, NURSE PRACITIONER McARDLE, DR. JANE DOE #1, DR. LORENZ, NURSE PRACITIONER JANET COCHRAN, NURSE KINYON, HEALTH SERVICES MANAGER ADAMS, NURSE JOHN DOE #2, NURSE JANE DOE #2, NURSE JANE DOE #3, NURSE JANE DOE #4, NURSE JANE DOE #5, NURSE JANE DOE #6, CHEF IAN MALATJI, FOOD SERVICE MANAGER SAMANTHA BROWN, FOOD SERVICE ADMINISTRATOR MARY HANSON, LAUREN NEUROTH,CAPT. JAMES BOISON, CO BROCKNY, CO TIMOTHY, BROMELAND, WARDEN SECRETARY JOHN DOE #3, COMPLAINT EXAMINER J. PAYNE, COMP. EXAM. JANE DOE #7, COMP. EXAM. E. RAY, BRADE HOMPE, CINDY O'DONNELL, HALLEY GUNDERSON and EMILY DAVIDSON,

Defendants.

OPINION AND ORDER

19-cv-870-wmc

Pro se plaintiff Ennis Lee Brown, a prisoner currently incarcerated at the Wisconsin Secure Program Facility ("WSPF"), filed this proposed action under 42 U.S.C. § 1983, claiming that the Wisconsin Department of Corrections ("DOC"), Armour Correction Health Care and numerous DOC employees have been violating his constitutional rights, as well as his rights under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132. Previously in this lawsuit, the court denied Brown leave to proceed *in forma pauperis* under 28 U.S.C. § 1915(g), instructing Brown that he could either amend his complaint to include allegations that he was in imminent danger of serious bodily harm, or pay the full $400 filing fee. (Dkt. #14.) Brown has since paid the $400 filing fee and filed two

amended complaints and multiple motions. (*See* dkt. ##16, 17, 18, 20, 25, 27, 30.) Because Brown was incarcerated at the time he filed his complaint, regardless of his payment of the filing fee, the court must screen his amended complaint under 28 U.S.C. § 1915A. Having reviewed Brown's amended complaint and motions, the court: (1) grants Brown leave to proceed on Eight Amendment deliberate indifference claims against two physicians, and a First Amendment retaliation claim against three WSPF employees; and (2) denies Brown's various motions without prejudice.

ALLEGATIONS OF FACT[1]

A. Parties

Plaintiff Ennis Lee Brown is incarcerated at WSPF, and he alleges that he suffers from Type 2 Diabetes. Brown names over 30 defendants, the DOC, Armour Correction Health Care ("Armour"), and the following WSPF or DOC employees: Gary Boughton; Dr. Eileen Gavin; Dr. Jane Doe (an optometrist); Nurse Kinyon; Nurse Practitioner McArdle; Nurse Practitioner Janet Cochran; Dr. Lorenz; Timothy Bromeland; James Boison; Chef Ian Malatji; Chef Mary Hanson; Lauren Neuroth; Samantha Brown; Health Services Unit ("HSU") Manager Adams; Nurse John Doe #2; six Jane Doe Nurses[2]; Captain James Boison; Correctional Officers Boison, Brockny and Timothy Bromeland;

[1] Courts must read allegations in *pro se* complaints generously, resolving ambiguities and drawing all reasonable inferences in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

[2] Although Brown did not include Jane Doe #6 in his list of defendants, he referenced Doe #6 as a defendant in the body of the complaint with sufficient clarify that the court has included her as a defendant.

John Doe #3, the warden's secretary; Inmates Complaint Examiners ("ICE") Jane Doe #7 and Ellen Ray; Brad Hompe; Cindi O'Donnell; Halley Gunderson; and Emily Davidson.

B. Brown's Diabetes Diagnosis and Management Generally

Brown claims that DOC and Armour staff are aware that inmates at WSPF receive inadequate medical care due to lack of training and staff shortages but fail to take corrective action. Brown claims that he suffers from GERD, Type 2 diabetes, and high blood pressure, all of which have been left untreated. He further claims that when he complained about the inadequate treatment through the Inmate Complaint Review System ("ICRS"), WSPF staff retaliated against him.

C. Interaction with Dr. Jane Doe Regarding Eye Care

On April 24, 2019, Brown had an eye examination with Dr. Jane Doe, and he reported that he had a degenerative eye disease and feared he would go blind. In addition, he told her that his vision was blurry at times. Dr. Doe provided him new glasses and scheduled him for an annual exam. After Brown received his glasses, he noticed his vision was actually worse, so he wrote to HSU to have the prescription checked. Dr. Doe re-examined him On July 25, 2019, and ordered a new prescription, which Brown claims was worse than the first. Dr. Doe examined him a third time in September of 2019. Before writing him yet another prescription, Dr. Doe reviewed his medical records and noticed the A1C readings from an April 2019 blood draw. Dr. Doe noted that his reading was extremely high, and she told Brown that his glucose levels could be causing his blurred vision. Brown claims that Dr. Doe refused to see him again for his eye issues until his A1C

was under control, setting him for another appointment in April of 2020. Brown claims that Dr. Doe failed to evaluate his symptoms properly, missing that he was suffering from symptoms associated with his diabetes and high blood pressure.

D. Brown's Diabetes Diagnosis and Treatment and High Blood Pressure

On April 23, 2019, Brown was examined by defendant Dr. Eileen Gavin. During that appointment, Brown discussed his GERD, raising a concern about side effects of the medication he took for that condition. Brown also informed Gavin that he was experiencing blurred vision, shaking, sweating, confusion and headaches, and reporting that he had a family history of diabetes. Gavin scheduled Brown for an A1C blood check, as well as a blood pressure check for the following week. Gavin observed that his blood pressure was high, but said it was okay.

Brown waited for his results over the next few weeks but did not receive them. He reached out to the HSU, and received a response from defendant Nurse Doe #2, that his provider would go over the results with him the following day. However, Brown claims he did not have an appointment for six weeks, at which point he reached out to HSU again, this time receiving a response from defendant Nurse Doe #3 that he had an appointment scheduled for the beginning of August.

Brown met with Dr. Gavin on August 6, 2019, who told him that he had Type 2 Diabetes. Gavin apologized for the wait and told Brown that she would order him a medication (Medformin) to be started the next day. However, Brown did not receive his medication, so after three days Brown wrote to the HSU two times. Brown received one response from Nurse Doe #2 that Gavin had not ordered the medication, and one response

from defendant Nurse John Doe #2 that his concern had been forwarded to the provider. Then, on August 11, Brown wrote to defendant HSU Manager Adams about needing the medication. Brown received a response on August 14, 2019, apologizing for the delay. (It appears that Brown started receiving Medformin that day.) This response prompted Brown to submit an inmate complaint about the delay in treatment.

Brown continued to request information about his recent diabetes diagnosis, and HSU provided him a pamphlet about diabetes. On August 20, 2019, Brown was called to the HSU, and while he was waiting to meet with Dr. Gavin, defendant Nurse Kinyon took his glucose level with an Accu-check. The first reading was 535, the second was 524, and the third was 462. Nurse Kinyon immediately talked to Nurse Practitioner McArdle, who took another reading, which exceeded 500. McArdle ordered fast acting insulin and injected Brown. HSU staff required Brown to remain in the HSU for another hour before he was allowed to return to his job in the kitchen.

That day McArdle also issued Brown an Accu-check machine, increased his Medformin dosage, and put him on a regiment of insulin, one which was fast-acting that he would take three to four times a day, and a long-acting insulin that he would use once a day. Despite those measures, Brown says he still was not educated about how diet and exercise could help control his condition.

Later that same day, Brown checked his blood sugar level, and it was over 500. Correctional Officer Munn called an HSU nurse to examine him, and Nurse Jane Doe #6 confirmed his blood sugar level was over 500 and called McArdle. About 20 minutes later, and apparently at McArdle's instruction, Doe #6 and Munn gave Brown an insulin shot.

After Doe #6 and Munn left, no one checked on Brown, and he did not wake up until the next day.

After August 20, Brown continued to seek education about diabetes management from the HSU, but Brown was not called for an appointment until September 1, 2019. That day, Brown received a new blood sugar chart that listed the units of insulin and when he should take his daily dosages. The chart was different than Brown's previous chart; it instructed him to take his fast-acting insulin if his readings were 100, not 200, as his first chart had directed. This difference caused Brown to take an improper amount of his fast-acting insulin starting September 1, which caused him to fall asleep and wake up shaking and sweating. Brown wrote to HSU about this issue, and he was called to the HSU on September 18, 2019, at which point Dr. Gavin explained that he was taking a dangerous amount of insulin and acknowledged that whoever provided him the chart on September 1 had violated protocol.

In November of 2019, Brown was seen by a different provider, Dr. Lorenz, who told Brown that his September blood draw level was good. Dr. Lorenz also told him that he should continue taking his 4:00 p.m. injection, and that he had been getting good readings (less than 100) with the Accu-check. Dr. Lorenz took his blood pressure, and it was high, which Dr. Lorenz attributed to Brown's coffee drinking. However, Dr. Lorenz said he would schedule Brown for blood pressure monitoring. Brown asked about whether he should lower his insulin because he had been getting low readings (under 80 or 90) after his glucose check. Dr. Lorenz told him to keep doing what he was doing. Brown filed an inmate complaint about Dr. Lorenz's decision related to his injections. Brown claims that Nurse Kinyon, who was interviewed for purposes of resolving the complaint, provided false

information suggesting that Brown had refused treatment. Brown claims that Cochran also provided ICE Payne wrong information in responding to his inmate complaint. Brown also alleges that ICE Payne did not provide him a decision in a timely manner and appealed on that ground. However, the reviewing authority affirmed Payne's decision. Brown appealed that decision, which was denied.

After talking to other inmates and family members, Brown believed that he did not need the daily injections, and that they were actually putting him at risk, so he stopped taking them on January 31, 2020. After he stopped taking the injections, his readings ranged between 89 and 120.

Two weeks later, Brown wrote to HSU that he had stopped taking the daily injections. He was scheduled for an A1C check on February 19, 2020, and met with defendant Nurse Practitioner Cochran, who agreed that Brown should stop taking the injections and should just do one Accu-check in the morning with 1000 mg of Medformin. Although Cochran also allegedly told Brown she would schedule him for a blood draw for the following week, she did not place the order. However, Brown was able to have his blood drawn.

On April 1, 2020, Brown was called to the HSU for a Tuberculosis test. Nurse Jane Doe #6 asked Brown if he had night sweats or felt dizzy, and he responded yes. Doe #6 also asked him if he had ever been diagnosed with Tuberculosis, and he responded yes. Doe #6 then checked his blood pressure and told him that he should return the next day for a blood pressure re-check because it was high. Also that day, defendant Nurse Doe #4 took his blood pressure, and it was high, but she said he should not worry about it. The next day defendant Nurse Doe #5 took his blood pressure, and it was high again. Plaintiff

alleges that between April 1 and 5, his blood pressure ranged between 139 over 90 and 145 over 100.

On April 2, Brown had a tele-visit with Dr. Lorenz, who told him his glucose level was 5, and that he no longer needed to take the injections or use the Accu-check. Dr. Lorenz also reduced his Medformin from 1000 mg daily to 500 mg daily and ended the tele-visit. Brown says that the blood reading was from March 4, 2020. Brown claims that he is now taking Medformin twice a day and is not exercising or dieting and his blood pressure remains high.

On May 20, 2020, Brown had his blood pressure checked by defendant Nurse Doe #3. She told him that his blood pressure would be monitored on a regular basis going forward. She also scheduled him to see the doctor the following week. Brown claims he has not been prescribed medication for his blood pressure and continues to have headaches as a result.

E. Retaliatory Loss of Prison Job

Brown had been recruited to work in the kitchen in March of 2019, and he was promoted to cook in May of 2019 and had good reviews. However, in September of 2019, after Brown complained about the delays he experienced in obtaining treatment and education about diabetes, he started experiencing problems that led to his termination.

On the morning of September 4, 2019, he asked defendant CO Brockny if he could go to the Echo Unit to take one of his five daily insulin injections. Brockny permitted him to go, but as Brown was about to leave, defendant Chef Malatji told him to wait. When Brown insisted he needed to take his medicine, Malatji warned him that if he left, he would

be fired. Brown ended up having to wait another 15 minutes to leave, and he started getting dizzy and having vision problems.

When Brown was finally allowed to leave, he was directed to go to a unit far from his own with other inmates to make a cart delivery. As Brown was leaving, another inmate was returning from a delivery to Brown's unit and asked Brown if he was okay. The inmate volunteered to handle Brown's delivery, so Brown went to his cell, took his injection and returned to work.

Back in the kitchen, Brown found Chef Malatji to reiterate how important it was for him to do his glucose check and take his insulin injection on time. Malatji yelled at him in response, again threatening to fire him. Brown yelled back, and the altercation ended in Brown being sent back to his unit. CO Brockny was in charge of searching Brown as he left, and during the search Malatji approached Brown again, apparently pointing at him and getting very close to him. Brown claims he was still dizzy from the delayed injection, and he ended up standing toe-to-toe with Malatji, telling him to leave him alone. Apparently Brockny did not try to stop Malatji from yelling at Brown.

As Brown was leaving the kitchen, defendant Neuroth, the Food Service Administrator, stopped Brown, and Brown told her that Malatji prevented him from going back to his cell to take his insulin injection. Neuroth agreed that Malatji should not have done that, but Malatji approached and explained that he had sent Brown back to his cell for the day. Neuroth deferred to Malatji, sending Brown back to his cell and saying she would look into what had happened between them.

Brown went back to his cell and asked defendant CO Bromeland for an inmate complaint. Brown also complained to Bromeland about what happened with Malatji. Apparently Bromeland just shook his head and walked out.

That afternoon, at about 2:30 p.m., when Brown was in his cell, Correctional Officer Bromeland brought Brown a conduct report for being in an unauthorized area, written up by Malatji. (*See* dkt. #12-1, at 20.) Brown wrote his side of the story on the conduct report form, but Bromeland told him to erase it because it would not work in his favor. Bromeland continued to refuse to write down Brown's side of the story, and eventually Bromeland walked away. According to Brown, the allegations in the conduct report did not include the fact that CO Brockny had given him permission to leave his cell. However, the version of the conduct report Brown attached to his amended complaint shows that, in his defense, Brown stated "I talked with the officer after to go [to] Echo unit to get my medication." (*Id.*)

Ten minutes later, Bromeland returned with a decision on the conduct report. Brown was found guilty of being in an unassigned area and disrespect. Brown received a punishment of five days of cell restriction.

The next morning, September 5, 2019, Brown did not have to work. As he was returning to the Echo Unit from breakfast, he saw defendant Captain James Boison, and asked about the conduct report. Boison responded that he reviewed it and observed that no one had given him permission to go to his unit for his injection. Boison also told him to appeal the conduct report disposition, and that he would let the warden know that he permitted him to appeal. Although Boison said he would find an appeal form from Brown, Brown says he did not receive one, so that evening he wrote an appeal on paper.

As Brown was walking to dinner service, he saw Warden Boughton and complained about the conduct report, and Boughton told Brown that he could appeal the results of the conduct report to him. Brown complained that Boughton would not be able to review it in time to avoid him having to serve the punishment, so Boughton told him to file his appeal that night. Brown says he submitted his appeal that night, but Boughton did not review it in time, and he served the entire five-day sentence.

Brown submitted an inmate complaint about Malatji's behavior on September 6, 2019. The inmate complaint was rejected, apparently without a review of Brown's allegations because it was related toa conduct report. Brown claims he repeatedly tried to file inmate complaints about the incident and was told that he had to wait for the conduct report process to be completed before he could use the ICRS. Brown tried to appeal the dismissal, and defendants Emily Davidson and Cindy O'Donnell affirmed the dismissal. Once Warden Boughton resolved Brown's appeal, Brown attempted to file a new inmate complaint about the conduct report, which defendant ICE Ray dismissed as untimely. Brown appealed the dismissal to Warden Boughton, who affirmed the dismissal.

After he filed the inmate complaint, Brown continued to have problems working in the kitchen. On September 10, 2019, when Brown was cleaning kettles, defendant Chef Mary Hanson yelled at him to help another kitchen worker, but when Brown tried to help the other worker, that worker told him he was not ready for help, so Brown walked away. When Hanson saw that Brown went back to cleaning, she yelled "what the f--k are you doing," and when Brown tried to explain himself, she continued to yell at him, repeatedly using the "F" word. Brown responded at one point, "are you talking dirty to me," and because Hanson continued to harass him in front of the other workers, Brown responded,

"I am not going to put up with the harassment" (Am. Compl. (dkt. #21) 14), and reported her behavior to Neuroth. Brown told Neuroth that he felt he was being retaliated against for filing the inmate complaint, threatening to quit if it was going to be continuing problem. Neuroth assured him it would not be a problem and told him to go back to work. It also appears Brown sought assurance that he would not receive a conduct report for yelling at Hanson, and Neuroth said he would not be punished for their argument. However, the Food Service Manager, defendant Samantha Brown came into the office, complaining that Brown *should* get a conduct report. At the end of his workday, Brown apologized to Hanson, and she apologized as well.

The next day, defendant Brown had Brown removed from the kitchen schedule for the following day, and Brown received a conduct report *and* was not allowed to return to work. Brown was found guilty of disrespect and disobeying orders. He was punished with 10 days of cell confinement. During that time, defendants Brown and Neuroth terminated Brown from his job in the kitchen.

OPINION

The court begins by screening plaintiff's proposed amended complaint and then resolves his motions.

I. Screen of Amended Complaint

Plaintiff claims that defendants violated his Eighth and First Amendment rights, in responding to his diabetes and high blood pressure with deliberate indifference, and in retaliating against him for filing inmate complaints. Plaintiff further claims that his rights

under the ADA were violated because he was only terminated due to his need to return to his cell for his injection. Finally, plaintiff claims that he was denied access to the ICRS.

A. Dismissal for lack of personal involvement

The court will address the potential merit of these proposed claims in turn, but first must dismiss certain defendants for lack of personal involvement. Plaintiff has not alleged facts involving defendants John Doe #3 (the warden's secretary) or Hompe, but "individual liability under § 1983 requires personal involvement in the alleged constitutional violation." *Minix v. Canarecci*, 597 F.3d 824, 833-34 (7th Cir. 2010). Because each defendant must be personally involved in the constitutional violation, these two defendants will be dismissed.

B. The DOC and Armour

As for the DOC and Armour Correction Healthcare, plaintiff is attempting to pursue municipal liability claims against them under *Monell v. Department of Soc. Servs.*, 436 U.S. 658 (1978), in which the Supreme Court held that a local government could be sued as a "person" under § 1983 if that government's custom, practice or policy caused a constitutional violation. Such a claim is not cognizable against either defendant based on plaintiff's allegations. Beyond plaintiff's conclusory assertion that both the DOC and Armour "has had full knowledge of inadequate care and lack of training, along with the shortage of staff," and failed to correct those deficiencies, plaintiff's allegations omit Armour completely and he has not alleged facts suggesting that any DOC supervisory or administrative official was responsible (much less knew about) any staffing inadequacies

within WSPF's HSU. Critically, plaintiff does link such deficiencies to the experiences outlined in his amended complaint. In fact, plaintiff's allegations suggest that he was scheduled to be seen and was seen by HSU staff on a fairly regular basis.

As for Armour, the *Monell* standard can apply to private entities that contract with the government to provide government services, with the caveat that the private entity "cannot be held liable under § 1983 unless the constitutional violation was caused by an unconstitutional policy or custom of the corporation itself." *Shields v. Illinois Dept of Corr.*, 746 F.3d 782, 789, 796 (7th Cir. 2014); *Glisson v. Indiana Dep't of Corr.*, 849 F.3d 372 (7th Cir. 2017). However, for the same reason that plaintiff has failed to allege facts supporting a challenge to an unconstitutional policy, custom or practice, plaintiff's allegations do not support a *Monell* claim against Armour either. Accordingly, these two defendants will be dismissed.

C. Deliberate Indifference

The court understands plaintiff to be pursuing Eighth Amendment deliberate indifference claims against all of the medical professionals involved in his care between April 2019 and May 2020. 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. *Forbes*, 112 F.3d at 266.

The court accepts for purposes of screening that plaintiff's Type 2 diabetes and high blood pressure were serious medical conditions during the relevant time period. Therefore, the operative question for screening purposes is whether the proposed defendants failed to take reasonable measures in response to those conditions.

Starting with Dr. Jane Doe #1, plaintiff appears to fault her for failing to identify a potential issue with his health related to his vision. However, plaintiff has not alleged that Dr. Doe #1, an optometrist, was in a position to act with respect to plaintiff's possible diabetes and blood pressure. Indeed, in September 2019, Dr. Doe #1 observed that plaintiff had undergone blood checks to assess him for diabetes, and so Dr. Doe #1 was not obliged to do any more at that point. Further, plaintiff has not specifically alleged that Dr. Doe #1 left his degenerative eye condition untreated after their last encounter in September of 2019. To the extent plaintiff is intending to pursue a claim against Dr. Doe #1 for her treatment of his eye condition, including such a claim in this lawsuit would violate Federal Rule of Civil Procedure 20, since it involves a separate medical condition and Dr. Doe #1 was not otherwise involved in plaintiff's medical care. *See* Fed. R. Civ. P. 20(a)(1)(2)(A) (permitting plaintiffs to join claims in one lawsuit if "they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences"). Accordingly, the court will dismiss Dr. Doe #1 from this lawsuit, but the dismissal will be without prejudice to

plaintiff's ability to pursue a claim related to the treatment of his degenerative eye condition in a separate lawsuit.

Dr. Gavin appears to have been responsible for plaintiff's initial diabetes diagnosis, but it appears that although Gavin ordered an A1C blood check on April 23, 2019, Dr. Gavin did not actually treat plaintiff for diabetes until more than three months later, in August of 2019. At this stage, the court will assume that there was no legitimate basis for the delay in treatment, which may support an inference of deliberate indifference. *See McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010) (delays in treatment may constitute deliberate indifference if the delay "exacerbated the injury or unnecessarily prolonged an inmate's pain"). Further, plaintiff alleges that Dr. Gavin disregarded his high blood pressure and failed to enter the order for Medformin. "[E]ven brief, unexplained delays in treatment may constitute deliberate indifference," *Lewis v. McLean*, 864 F.3d 556, 563 (7th Cir. 2017) (citation omitted), and "the length of delay that is tolerable depends on the seriousness of the conditions and the ease of providing treatment." *McGowan*, 612 F.3d at 640. Given that plaintiff had already waited four months to start treating his diabetes, the court will also allow plaintiff to proceed against Gavin for the failure to timely submit the order. Finally, plaintiff claims that Dr. Gavin disregarded his high blood pressure, leaving it wholly unaddressed. Each of these apparent failures may support an inference of deliberate indifference, so the court will grant plaintiff leave to proceed against Dr. Gavin for her treatment decisions between April and August of 2019.

The court will also grant plaintiff leave to proceed against Dr. Lorenz, for his handling of plaintiff's diabetes and blood pressure in November 2019. Plaintiff alleges that Dr. Lorenz mishandled his diabetes during his appointment in telling plaintiff to

continue with his injections, even though his Accu-check readings were consistently low. Although Dr. Lorenz's judgment may have been within an acceptable range, plaintiff's allegation that he was soon thereafter advised to stop the injections and felt better, may support an inference of deliberate indifference.

As for his blood pressure, by November 2019, plaintiff's high blood pressure had been noted since April. Plaintiff does not specify exactly what his blood pressure readings were, so it may be that plaintiff's blood pressure was slightly high but not so obviously problematic that intervention was appropriate. However, in resolving this ambiguity in plaintiff's favor, one might infer that as of November 2019, it is possible that Dr. Lorenz had sufficient information to infer that plaintiff's blood pressure required more intervention than monitoring. That said, in April of 2020, plaintiff had a tele-visit with Dr. Lorenz, who advised plaintiff to stop taking his insulin injections and reduced his Medformin. Plaintiff's allegations do not suggest that Dr. Lorenz's judgment at that point was incorrect. Accordingly, the court will grant plaintiff leave to proceed against Dr. Lorenz, to develop the facts related to whether Dr. Lorenz failed to exercise medical judgment during their November 2019 appointment, but not the April 2020 appointment.

As for McArdle and Kinyon, it appears plaintiff faults these defendants for their handling of his dangerously high glucose level on August 20, 2019. Yet plaintiff alleges that, in response to his high readings that day, Kinyon not only confirmed the high numbers by taking another reading, she also immediately called upon Nurse Practitioner McArdle, who ordered a fast-acting insulin injection. Plaintiff alleged that he remained in the HSU for an hour before he was allowed to leave, and that McArdle provided him an Accu-check, increased his Medformin and put him on an insulin schedule. Kinyon's and

McArdle's actions did not amount to deliberate indifference even if, as plaintiff alleges, they failed to provide him more detailed instructions about diet and exercise at that appointment.

As for Nurse Practitioner Cochran, she reviewed plaintiff's September 2019 blood draw results, agreeing with plaintiff in February of 2020, that he no longer needed to take his injections, could do one Accu-check a day and take Medformin. Plaintiff faults Cochran for failing to schedule him for a follow-up blood draw, but plaintiff was able to have his blood drawn on the scheduled day. In short, Cochran's handling of plaintiff's care does not support an inference of deliberate indifference.

The court will not grant plaintiff leave to proceed against the six Doe nurses, John Doe #2, or HSU Manager Adams. To start, Nurse Jane Doe#1, #2 and #3, and John Doe #2 responded to plaintiff's inquiries about when he would see Dr. Gavin again and when he would receive the Medformin Dr. Gavin said she would order. In their capacity as nurses, they were entitled to defer to the medical judgment of advanced care providers such as Dr. Gavin, so long as they did not ignore plaintiff's condition. *Holloway v. Delaware Cty. Sheriff*, 700 F.3d 1063, 1075-76 (7th Cir. 2012) (nurse is entitled to rely on a doctor's instruction unless it's obvious that the doctor's advice will harm the prisoner); *Berry v. Peterman*, 604 F.3d 435, 443 (7th Cir. 2010) (a nurse's "deference may not be blind or unthinking, particularly if it is apparent that the physician's order will likely harm the patient"). Plaintiff alleges that these nurses: forwarded his concern that he did not yet have his Medformin to his provider; indicated that Brown had an upcoming appointment and that Gavin had not yet placed the order for Medformin; and responded that he had an appointment in August. Given that plaintiff was asking for follow up with Dr. Gavin,

and for medication that a doctor would need to prescribe that had not actually been ordered, these nurses cannot be faulted for not providing a medication that was not prescribed, and then for forwarding plaintiff's concern to Dr. Gavin. As for plaintiff's concern that Dr. Gavin had not followed up with him about the results of his blood test, plaintiff has not alleged that any of these defendants knew that Dr. Gavin would not see plaintiff until August and lied in responding that he was scheduled to be seen. Because these allegations do not suggest a conscious disregard of plaintiff's need for medical attention, they will be dismissed.

Plaintiff also alleges that Nurse #3 took his blood pressure on May 20, 2020, and then told plaintiff that his blood pressure would be monitored on a regular basis going forward. Because plaintiff has not alleged that Nurse #3 mishandled his blood pressure reading or ignored any problematic symptoms during their encounter, these allegations do not suggest deliberate indifference to a serious medical need.

The result is the same with respect to defendants Nurse Doe #4 and #5, who both took his blood pressure in the first week of April, noted that it was high, but did not take further action. Although the court accepts that plaintiff's blood pressure during that time period -- ranging between 139/90 to 145/100 -- indicate a consistently high blood pressure, plaintiff alleges that Dr. Lorenz had ordered his blood pressure monitored, and it appears that these nurses were following this directive. To be fair, if plaintiff was presenting with symptoms suggesting that he required immediate treatment, it would have been incumbent upon Nurse Doe #4 and #5 to take additional action to ensure that his blood pressure was not a symptom of a more dangerous condition. However, plaintiff has not alleged that he alerted these nurses to additional symptoms during those blood pressure checks in April of

2020. Further, plaintiff does not allege that these nurses failed to note his blood pressure could be problematic; his allegations suggest that they were monitoring it regularly but had not taken any particular action in terms of medication.

Nurse Doe #6 was involved in responding to plaintiff's report that his blood sugar level was over 500 later on August 20, 2019, and plaintiff appears to fault her for failing to check in on him after she and an officer provided plaintiff an insulin shot. Doe #6 also was responsible for checking his blood pressure on April 1, 2020, and sending him back to his cell even though it was high. However, with respect to both interactions, plaintiff has not alleged that he presented to Doe #6 in need of immediate care that she did not provide. For example, he has not alleged that he continued to be in distress after the August 20, 2019, insulin injection, nor that his blood pressure was so high on April 1, 2020, that he required additional care or attention from an advanced care provider. Accordingly, the court will not grant plaintiff leave to proceed against defendant Doe #6. Therefore, plaintiff may not proceed against Nurse Does #1 through #6, who will be dismissed.

Finally, the court is dismissing HSU Manager Adams. Plaintiff alleged that Adams responded specifically to his August 11, 2019, concern that he was not receiving his medication as prescribed, ensuring that plaintiff started on Medformin on August 14, 2019. Plaintiff started receiving his medication that day, so it appears that Adams acted appropriately, and not with deliberate indifference.

In summary, the court will grant plaintiff leave to proceed on deliberate indifference claims against Dr. Gavin and Dr. Lorenz, but not McArdle, Kinyon, Cochran, Nurses Doe #1-#6, or HSU manager Adams, who will be dismissed.

D. Retaliation

The court understands plaintiff to be pursuing First Amendment retaliation claims against defendants Malatji, Brockny, Neuroth, Bromeland, Boison, Hanson, and Samantha Brown, for the mistreatment he endured after he filed his inmate complaint about his delayed medical care in September 2019. To state a claim for retaliation, a plaintiff must allege that: (1) he engaged in activity protected by the Constitution; (2) the defendant subjected the plaintiff to adverse treatment because of the plaintiff's constitutionally protected activity; and (3) the treatment was sufficiently adverse to deter a person of "ordinary firmness" from engaging in the protected activity in the future. *Gomez v. Randle*, 680 F.3d 859, 866-67 (7th Cir. 2012); *Bridges v. Gilbert*, 557 F.3d 541, 555-56 (7th Cir. 2009).

As an initial matter, plaintiff's inmate complaints were constitutionally protected activity. *Powers v. Snyder*, 484 F.3d 929, 932 (7th Cir. 2007); *Pearson v. Welborn*, 471 F.3d 732, 738 (7th Cir. 2006). So the question for purposes of screening is whether plaintiff's allegations support a reasonable inference that defendants Malatji, Brockny, Neuroth, Bromeland, Boison, Hanson, and Samantha Brown took an adverse action against him that was motivated by a desire to punish him for pursuing inmate complaints.

Starting with the September 4 conduct report, the defendants involved were Malatji, Brockny, Neuroth, Bromeland, Boison and Boughton. However, plaintiff has not alleged that, as of September 4, 2019, when plaintiff had his dispute with Malatji about returning to his unit to take his insulin injection, any of these defendants knew that plaintiff had filed the inmate complaint. Therefore, it would be unreasonable to infer that any of these defendant's actions (Malatji's refusal to allow him to go back to his cell,

Brockny's failure to let Malatji know that she had given him permission, Neuroth's apparent inaction and Boison and Boughton's handling of the conduct report), were motivated by a desire to punish plaintiff for filing his inmate complaint. *Morfin v. City of Chi*, 349 F.3d 989, 1005 (7th Cir. 2003) ("The protected conduct cannot be proven to motivate retaliation if there is no evidence that the defendants knew of the protected activity.") (quotation marks and brackets omitted) (quoting *Stagman v. Ryan*, 176 F.3d 986, 999-1000 (7th Cir. 1999)).

In fairness, it is possible that Bromeland was aware that plaintiff *intended* to submit an inmate complaint about his argument with Malatji, since plaintiff asked him for an inmate complaint form. Still, plaintiff's allegations do not support an inference of retaliation because plaintiff alleges that Bromeland was responsible only for delivering plaintiff the conduct report and taking his statement. Plaintiff has not alleged Bromeland was responsible for writing the conduct report, evaluating the charges and plaintiff's defense, finding him guilty or meting out the punishment. Accordingly, plaintiff has not alleged sufficient facts to proceed on a retaliation claim against Bromeland.

Defendants Chef Hanson, Neuroth and Brown were involved in plaintiff's second conduct report that led to his termination from his kitchen job. It is reasonable to infer that each defendant knew about plaintiff's inmate complaint complaining about Malatji because plaintiff claims he told Neuroth that Hanson was punishing him for filing that inmate complaint on September 6, 2019. Despite Neuroth's alleged assurance that she would not punish plaintiff, Brown and Neuroth charged him in a conduct report and terminated him from his prison job. Although the actual dispute between plaintiff and Hanson may have actually prompted the conduct report, in this circuit a conclusory

allegation that defendants acted adversely because of protected conduct is sufficient to state a claim for retaliation. *Higgs v. Carver*, 286 F.3d 437, 439 (7th Cir. 2002); *see also Henderson v. Wilcoxen*, 802 F.3d 930, 933 (7th Cir. 2015) (reaffirming *Higgs* standard). And because plaintiff claims he was terminated from his job as a cook, it is reasonable to infer that he suffered a sufficiently adverse consequence to support a retaliation claim. *See McElroy v. Lopac*, 403 F.3d 855, 858 (7th Cir. 2005) (taking away a prisoner's job may support a constitutional violation); *DeWalt v. Carter*, 224 F.3d 607, 618-19 (7th Cir. 2000) (prisoner's removal from job support a retaliation claim). Accordingly, the court will grant plaintiff leave to proceed on a retaliation claim against defendants Hanson, Neuroth and Brown.[3]

The court notes that this particular claim barely passes screening. As plaintiff proceeds, he should be aware that proving this claim will be challenging, especially because he admits that he engaged with Hanson in an argument. It is well established that timing alone is not enough to prevail on a retaliation claim. *See Andonissamy v. Hewlett-Packard Co.,* 547 F.3d 841, 851 (7th Cir. 2008). Plaintiff will not be able to prove his claim solely with the allegations in his complaint, *Sparing v. Village of Olympia Fields*, 266 F.3d 684, 692 (7th Cir. 2001), or his personal beliefs, *Fane v. Locke Reynolds, LLP*, 480 F.3d 534, 539 (7th Cir. 2007). Furthermore, the adverse action taken against him -- the conduct report with minimal punishment and loss of prison job -- may not be sufficiently adverse if plaintiff was placed in another position with similar benefits. *See Douglas v. Reeves*, 964 F.3d 643,

[3] Plaintiff also refers to his termination being "without Due Process" (Am. Comp. (dkt. #21) 15), but prisoners do not have a liberty interest protected by due process in their prison jobs. *See Dewalt*, 224 F.3d at 613 (due process does not afford prisoners a liberty or property interest in their jobs). Accordingly, plaintiff may not proceed on a separate due process claim related to his termination.

648 (7th Cir. 2020) (finding that a move to a different prison job was not sufficiently adverse to chill the speech of a prisoner of ordinary firmness, since the evidence of record did not show a loss of opportunity or money).

E. ADA

Plaintiff also seeks to frame his termination as a violation of his rights under the ADA. Title I of the ADA requires employers to provide persons with disabilities reasonable accommodations. 42 U.S.C. § 12112(a). However, the ADA does not apply to employment of prisoners. *Starry v. Oshkosh Corr. Inst.*, 731 F. App'x 517, 519 (7th Cir. 2018) (citing *Murdock v. Washington*, 193 F.3d 510, 512 (7th Cir. 1999) (finding that Title I of the ADA did not apply because plaintiff was "an inmate of the prison, not an employee or job applicant"). Furthermore, "Title I of the ADA is the exclusive remedy under the ADA for claims of disability discrimination in employment." *Neisler v. Tuckwell*, 807 F.3d 225, 228 (7th Cir. 2015) (citing *Brumfield v. City of Chicago*, 735 F.3d 619, 630 (7th Cir. 2013)).

Nor is plaintiff's claim viable under Title II of the ADA, which prohibits exclusion from "services, programs, or activities." 42 U.S.C. § 12132. In particular, the Seventh Circuit has declined to equate prison employment with a vocational program covered by the ADA. *Id.* ("[I]mportant differences exist between a vocational program and paid employment," in particular that prison work is done for the purpose of conducting regular business within the prison, not to provide instruction). Accordingly, the court will not grant plaintiff leave to proceed against the DOC on a claim under the ADA.

F. Access to Inmate Complaint Review System

Finally, plaintiff seeks to proceed on claims related to his claimed inability to access the ICRS, which implicates defendants Kinyon, Cochran, Boughton, ICE J. Payne; ICE Jane Doe #7, ICE Ray, O'Donnell, Gunderson, and Davidson. Yet ruling against a prisoner on an inmate complaint does not qualify as personal involvement in a constitutional violation, and it is not sufficient to state a claim. *McGee v. Adams*, 721 F.3d 474, 485 (7th Cir. 2013); *George v. Smith*, 507 F.3d 605, 609-10 (7th Cir. 2007) ("Ruling against a prisoner on an administrative complaint does not cause or contribute to the violation."); *see also Owns v. Hinsley*, 635 F.3d 950, 953 (7th Cir. 2011) ("Prison grievances procedures are not mandated by the First Amendment and do not by their very existence create interests protected by the Due Process Clause, and so the alleged mishandling of Owen's grievances by persons who otherwise did not cause or participate in the underlying conduct states no claim."). Accordingly, the court will not grant plaintiff leave to proceed against these defendants. Furthermore, since the court is not otherwise granting plaintiff leave to proceed against defendants Kinyon, Cochran, Boughton, ICE J. Payne; ICE Jane Doe #7, ICE Ray, O'Donnell, Gunderson, and Davidson, they will be dismissed.

II. Brown's motions (dkt. ##16, 18, 25, 27, 30)

In two of his motions, plaintiff objects to the court's prior order finding that he did not allege facts suggesting that he was in imminent danger of serious bodily harm. (Dkt. ##16, 25.) Construing these motions as a request for reconsideration of that order, the court denies them. Although plaintiff's allegations are sufficient for him to proceed on claims against Drs. Gavin and Lorenz related to the treatment of his diabetes, plaintiff has

not pleaded facts in either motion or his amended complaint supporting a reasonable inference that his medical conditions currently are being disregarded. The closest that plaintiff comes to alleging that he is in imminent danger of serious physical injury relates to his allegations about blood pressure: he claims that he consistently has elevated blood pressure and related headaches. However, as detailed above, although the court accepts as true that plaintiff has high blood pressure, plaintiff *also* alleges that his blood pressure is being monitored and that medical professionals have not yet seen a need to place him on a medication for that condition. Plaintiff has not provided any more specific details about more recent blood pressure readings to permit an inference that he is at risk of injury. In any event, plaintiff has paid the full $400 filing fee, and so the court need not find that plaintiff had alleged "imminent danger of serious physical injury," *see* § 1915(g), for him to proceed in this lawsuit. Accordingly, these motions are denied as unnecessary.

Plaintiff filed a notice to the court and parties, writing that he was called to the HSU and told his headaches could be the result of his high blood pressure, which had been untreated. (Dkt. #18.) Plaintiff wishes the court to be aware of these developments because, in the event he dies, he would like the court to distribute the proceeds of this case in accordance with his last will and testament, which he also attaches. This motion is denied. If plaintiff believes that his health issues currently are not being treated and that he is entitled to relief from the court, he may file a motion for a preliminary injunction, detailing *exactly* what the health care professionals at WSPF have informed him about his condition and how he believes his condition is not being adequately treated. If plaintiff submits such a motion, he must follow this court's procedures for obtaining preliminary injunctive relief, a copy of which will be mailed to him along with this order.

Finally, in three of his motions, plaintiff asks that the court initiate a federal investigation into his ability to file electronic documents. (Dkt. ##27, 30, 33.) Based on the manner in which the court construed his claims, and the fact that he has been waiting multiple months to have his case screened, he believes that WSPF staff are not properly submitting his filings to the court. Plaintiff also takes issue with the fact that former Magistrate Judge Oppeneer has issued preliminary orders in his habeas action before this court, Case No. 20-cv-398-wmc. It was standard practice for Judge Oppeneer to issue orders related to the filing fee owed in civil proceedings, and the court has received many filings from plaintiff, without any indication of alteration. Initiating a federal investigation is neither necessary nor within this court's authority. Therefore, these motions will be denied, but for plaintiff's reference, the court will ask that the clerk of court provide him a copy of the up-to-date docket along with this order.

ORDER

IT IS ORDERED that:

1. Plaintiff Ennis Lee Brown's motion to reopen (dkt. #20) is GRANTED, and he may proceed on:

   (a) Eighth Amendment deliberate indifference claims against defendants Dr. Eileen Gavin and Dr. Lorenz; and

   (b) First Amendment retaliation claims against defendants Mary Hanson, Lauren Neuroth and Samantha Brown.

2. Plaintiff is DENIED leave to proceed on any other claims, and defendants Wisconsin Department of Corrections, Armour Correction Health Care, Gary Boughton, Nurse Practitioner McArdle, Dr. Jane Doe #1, Janet Cochran, Kinyon, Health Services Manager Adams, Nurse John Doe #2, Nurses Jane Doe ##1-6, Chef Ian Malatji, Capt. James Boison, CO Brockny, CO Timothy

Bromeland, Warden Secretary John Doe #3, J. Payne, Jane Doe #7, E. Ray, Brad Hompe, Cindy O'Donnell, Halley Gunderson and Emily Davidson 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 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.

7. Plaintiff's remaining motions (dkt. ##16, 18, 25, 27, 30, 33) are DENIED, as set forth above.

8. The clerk of court is directed to provide plaintiff an up-to-date copy of the docket of this case, as well as a copy of the court's procedures for obtaining preliminary injunctive relief.

Entered this 1st day of August, 2022.

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