IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JOHN D. TIGGS, JR.,

OPINION AND ORDER

Plaintiff,

00-C-317-C

v.

GERALD A. BERGE, Warden; JAMES PARISI, Security Director; and LINDA HODDY-TRIPP, Unit Manager, RICHARD VERHAGEN, Administrator,

Defendants.

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In this civil action for declaratory, injunctive, and monetary relief, pro se plaintiff John D. Tiggs, Jr. is suing for violations of his civil rights under 42 U.S.C. § 1983 in connection with his incarceration at the Supermax Correctional Institution in Boscobel, Wisconsin. Plaintiff has been allowed to proceed on his claims that 1) defendants Gerald A. Berge, James Parisi, and Linda Hoddy-Tripp were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment to the United States Constitution; and 2) defendants Gerald A. Berge and Richard Verhagen violated the confidentiality of information in plaintiff's prison records by revealing personal information about plaintiff to

a third party.

The case is before the court on plaintiff's motion for summary judgment and defendants' cross-motion for summary judgment.

Plaintiff's motion for summary judgment will be denied and defendants' cross-motion for summary judgment will be granted. Plaintiff has failed to show that defendants were deliberately indifferent to a serious medical need when they refused to give him medication on one occasion in response to plaintiff's failure to comply with a "back of cell" restriction, or that defendants improperly disclosed information to a third party in violation of plaintiff's privacy rights. Because I am granting defendants' motion for summary judgment on all of plaintiff's claims, I need not address defendants' argument that they are entitled to qualified immunity.

From the findings of fact proposed by the parties and from the record, I find that the following material facts are undisputed.

UNDISPUTED FACTS

A. The "Back of Cell" Restriction

Plaintiff John D. Tiggs is incarcerated at the Supermax Correctional Institution in Boscobel, Wisconsin. Upon his arrival at the facility on December 7, 1999, he was screened by medical personnel. Plaintiff has chronic swelling and pain, primarily in his right arm and

both knees. He was prescribed anti-inflammatory medication for the pain in his right arm and shoulder. He was also given medical authorization to wear thermal underwear. Plaintiff is the only prisoner at Supermax who has thermal underwear.

On February 14, 2000, plaintiff was served with a minor adult conduct report for lying on his bed and ignoring prison staff. Plaintiff returned this conduct report to defendant James Parisi, the Corrections Security Director at Supermax, with "a few choice words."

On the same day, Parisi placed plaintiff on a restriction known as "back of the cell." The restriction is used any time the cell trap must be opened to take items out or place items in a cell. When the officers approach the cell, an officer will direct the inmate to go to the back of the cell, face the back wall, kneel, and place his palms on the wall. The inmate must remain in this position until the trap is secure. If an inmate does not fully comply when on this restriction, the officers are ordered to secure the area and leave it immediately. It will be recorded as a refusal by the inmate for the service attempted. This restriction may be placed on an inmate on a temporary basis in response to an inmate's actions. For example, if an inmate grabs at staff, throws items or threatens staff with these actions, the "back of cell" restriction is imposed.

Also on February 14, 2000, plaintiff complained that his back hurt and he could not kneel and fully comply with the "back of cell" restriction. On that day, plaintiff did not

kneel when staff came to give him one of his medications. Because he did not fully comply with the requirements of the restriction, he was not given his medicine on this occasion, pursuant to security policies and procedures. Plaintiff claimed that he was physically unable to kneel and requested that defendants remove the restriction, find an alternative means to get plaintiff's medication into his cell or modify the restriction.

Parisi contacted the Health Services Unit to determine what, if any, medical restrictions were on plaintiff and whether there was a medical reason why he could not kneel. Pam Bartels, the Health Services Administrator at Supermax, reviewed plaintiff's records and determined that he had never been placed on a medical restriction that would prevent him from kneeling.

On February 21, 2000, plaintiff wrote to defendant Gerald Berge, the Warden of Supermax, regarding his "back of cell" restriction and staff behaviors. On March 1, 2000, Berge wrote to plaintiff informing him that staff was not imposing their personal biases on him. Berge suggested that if plaintiff behaved, the "back of cell" restriction could be lifted.

Plaintiff also wrote to Parisi several times to have the "back of cell" restriction removed. Parisi referred his requests to defendant Linda Hoddy-Tripp, a Unit Manager at Supermax. On March 6, 2000, plaintiff wrote Hoddy-Tripp and informed her that he was being denied his medication. Hoddy-Tripp replied, "You refuse," meaning that plaintiff's inability to kneel constituted a refusal of plaintiff's medication. Additionally Hoddy-Tripp

stated that plaintiff chose to be in pain.

B. The Cell Extraction

On January 25, 2000, plaintiff was reassigned from a less restrictive unit, Foxtrot, to a more restrictive unit, Alpha. Hoddy-Tripp had alleged that plaintiff made suicidal comments warranting his placement on observation. Plaintiff appeared to be upset as a result of this transfer and tried to speak with Hoddy-Tripp about it on that same day. Hoddy-Tripp informed plaintiff that she was tired and would be going home soon, but that she would be able to speak with him when she returned the next morning. Plaintiff then stated in a very calm, peaceful voice as he stared directly at her that, "I won't be here in the morning." Hoddy-Tripp told plaintiff that he would be there in the morning, and that she would be there to talk with him. Plaintiff then said, "You go home, but I won't be here in the morning. I'm going home too." Earlier plaintiff had said that he, "couldn't stand it any more, I just can't take this shit any more." Hoddy-Tripp reported her conversation with plaintiff to a white shirt (a lieutenant or sergeant), as she feared that plaintiff might harm himself.

The Department of Corrections received a letter from Joan Olson, plaintiff's godmother, setting out her concerns about plaintiff's treatment. Olson was prompted to write because of a discussion she had had with plaintiff, who had complained in confidence

to Olson about treatment he had received during a cell extraction on January 25, 2000. Olson did not have plaintiff's permission to request the release to her of any of plaintiff's medical, institutional or clinical information.

In the letter, Olson wrote:

> My friend [Tiggs] is a black jailhouse lawyer. He writes, "On Tuesday morning all the cells opened up and everyone came out. A guy was beat up. No, I had nothing to do with it at all. . . . I was moved to another unit Tuesday night, a restrictive unit pending investigation. One of the guards lied and said that I threatened to kill myself and I was sprayed with gas. He came in the cell and put me on observation status in other words I was in a glass cage, naked and freezing overnight. (If this is true, is this how a mental patient is treated?) The next day I'm moved to A213 unit cage, and they will not give me my legal books and they have prohibited my shower shoes, dictionary, phone book and the legal cases that do not bear solely my name. Everything I'm working on has vanished."

On February 21, 2000, defendant Richard Verhagen, Administrator of the Division of Adult Institutions for the Wisconsin Department of Corrections, responded to Olson's letter, sending copies to the warden and State Representative Scott Walker, who had been sent a copy of Olson's letter. In his response, Verhagen detailed plaintiff's incarceration history and included references to the alleged suicide attempt that had led to plaintiff's placement in clinical observation status. Verhagen wrote:

> " . . . Mr. Tiggs had made statements to the Unit Manager, indicating that he may attempt to harm himself. These statements included, "I won't be here tomorrow . . . I'm going home to be with my mother . . . I'm just tired of all the (censored).' The unit staff also informed the Lieutenant that Mr. Tiggs had been observed fashioning his bed sheet into a noose. . . . The clinician determined that Mr. Tiggs needed to be placed into clinical observation status to ensure his safety."

This same information was contained in a Department of Corrections document marked "Confidential." Verhagen did not use plaintiff's medical records in responding to Olson's inquiry; rather, he based his response on conversations with staff, written reports and audio tapes of the incident. Plaintiff filed a prison grievance alleging the unlawful disclosure of medical information. Verhagen does not have authority to obtain and distribute confidential medical information.

OPINION

To prevail on a motion for summary judgment, the moving party must show that even when all inferences are drawn in the light most favorable to the non-moving party, there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); McGann v. Northeast Illinois Regional Commuter Railroad Corp., 8 F.3d 1174, 1178 (7th Cir. 1993). Summary judgment may be awarded against the non-moving party only if the

court concludes that a reasonable jury could not find for that party on the basis of the facts before it. Hayden v. La-Z-Boy Chair Co., 9 F.3d 617, 618 (7th Cir. 1993), cert. denied, 114 S. Ct. 1371 (1994). If the nonmovant fails to make a showing sufficient to establish the existence of an essential element on which that party will bear the burden of proof at trial, summary judgment for the moving party is proper. Celotex, 477 U.S. at 322.

Plaintiff first contends that defendants' refusal to give him his medication as a result of his failure to comply with the "back of cell" restriction constituted deliberate indifference to a serious medical need under the Eighth Amendment.

The Eighth Amendment requires the government "to provide medical care for those whom it is punishing by incarceration." Snipes v. Detella, 95 F.3d 586, 590 (7th Cir. 1996) (citing Estelle v. Gamble, 429 U.S. 97, 103 (1976)). This does not mean that prisoners are entitled to whatever medical treatment they desire. Prison officials violate their affirmative Eighth Amendment duty to provide adequate medical care only when they are deliberately indifferent to a prisoner's serious medical needs. Estelle v. Gamble, 429 U.S. 97, 104 (1976).

For plaintiff to prevail on his claim, he must show that his condition was serious. Dunigan v. Winnebago County, 165 F.3d 587, 590 (7th Cir. 1999). Whether a condition is serious is measured objectively; the court determines whether denying treatment could result in "significant injury or the unnecessary and wanton infliction of pain." Id. at 590-91.

Because judges are not doctors, it is difficult for them to determine what constitutes an excessive or substantial risk of serious harm. Although the Constitution is not a "charter of protection for hypochondriacs," see Cooper v. Casey, 97 F.3d 914, 916 (7th Cir. 1996), courts should recognize that inmates have serious medical needs if they are suffering from medical conditions generally considered as life-threatening or as carrying risks of permanent, serious impairment if left untreated. Even if inmates are not facing death or permanent harm, prison officials have an obligation to provide medical treatment to inmates suffering such significant pain that denial of assistance would be "uncivilized." Id.; but see Snipes, 95 F.3d at 592 (Eighth Amendment does not require prison doctors to keep an inmate pain-free in the aftermath of proper medical treatment).

Although plaintiff has put in no evidence of the kind of arthritis he has, I will accept for the purpose of these motions that his condition constituted a serious medical condition. However, plaintiff must also establish that a prison official acted with deliberate indifference, a subjective standard. Dunigan, 165 F.3d at 591. An official is deliberately indifferent when he knows of and disregards an excessive risk to an inmate's health or safety. Farmer v. Brennan, 511 U.S. 825, 837 (1994). An official must have actual knowledge of a substantial risk before he can be found deliberately indifferent, but such knowledge may be inferred from the fact that the risk was obvious. Id. at 1981. Inadvertent error, negligence or even ordinary malpractice is an insufficient ground for invoking the Eighth Amendment. Vance

v. Peters, 97 F.3d 987, 992 (7th Cir. 1996); see also Snipes, 95 F.3d at 590-91.

Plaintiff has failed to make the showing of deliberate indifference. Plaintiff has offered evidence that he was prescribed an anti-inflammatory medication and given thermal underwear to ameliorate the condition of his right arm and shoulder. The undisputed facts show that he was denied his medication on one occasion. Even if plaintiff's pain on that occasion was significant, defendants' denial of medication would not rise to the level of deliberate indifference. By denying plaintiff his medication, defendants were following prison security procedures. Plaintiff has not established that defendants had actual knowledge of a substantial risk to plaintiff's health when they denied him his medication. Taking the evidence in the light most favorable to plaintiff, plaintiff has failed to present evidence sufficient to establish that defendants were deliberately indifferent to a serious medical need in violation of the Eighth Amendment.

Plaintiff's second claim is that Gerald Berge, the warden of Supermax, and Richard Verhagen, a Department of Corrections employee, improperly disclosed his confidential records by including details of his alleged suicidal behavior in a letter addressed to Joan Olson, plaintiff's godmother. "Whether prisoners have any privacy rights in their prison medical records and treatment appears to be an open question." Massey v. Helman, 196 F.3d 727, 742 n. 8 (7th Cir. 1999) (citing Anderson v. Romero, 72 F.3d 518, 522-23 (7th Cir.1995)). In Anderson, 72 F.3d at 523, the Court of Appeals for the Seventh Circuit said

that it could not "find any appellate holding that prisoners have a constitutional right to the confidentiality of their medical records."

Even if such a right exists, plaintiff cannot prevail on his claim that Verhagen disclosed confidential information unlawfully, because it is apparent from Olson's letter that plaintiff had already told Olson of the incident and alleged suicide threat. In Olson's letter to the Department of Corrections, she referred to a letter written to her by plaintiff detailing the cell extraction, confinement, and allegations of suicidal behavior. She furthermore referred to plaintiff as a "mental patient." Because plaintiff had already disclosed information regarding this incident, the information contained in Verhagen's letter was not confidential and plaintiff had no reasonable expectation of privacy in the information.

Defendant Verhagen's conduct does not implicate an uncertain right to privacy. Therefore I conclude that defendants are entitled to summary judgment on plaintiff's claim that his privacy rights were violated. Because I am granting defendants' motion for summary judgment on all of plaintiff's claims, I need not address defendants' argument that they are entitled to qualified immunity.

ORDER

IT IS ORDERED that

1. The motion for summary judgment filed by plaintiff John D. Tiggs, Jr. is DENIED;

2. The motion for summary judgment filed by defendants Gerald A. Berge, James Parisi, Linda Hoddy-Tripp, and Richard Verhagen is GRANTED.

The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 21st day of September, 2001.

BY THE COURT:

BARBARA B. CRABB
District Judge