

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

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HARRISON FRANKLIN,

Plaintiff,

v.

GARY R. McCAUGHTRY, Warden of
Waupun Correctional Institution, PAULINE
BELGGADO, Doctor of Waupun
Correctional Inst. HSU, BETH
DITHMANN, SGT. SIEDOSCHLAG, JANE
DOE nurse and JOHN DOE nurse,

Defendants.

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ORDER

00-C-157-C

In an order entered June 9, 2000, I granted plaintiff Harrison Franklin leave to proceed in forma pauperis on his claim that he received inadequate medical care in violation of the Eighth Amendment. The claim involved a sore on plaintiff's finger that later required partial amputation of the finger. Plaintiff was allowed to proceed against defendant McCaughtry for the sole purpose of uncovering the names of defendants Jane and John Doe. Plaintiff has filed a proposed amended complaint in which he attempts to add two additional defendants, three paragraphs of facts alleging information that occurred after he filed his first complaint and

additional facts as to defendant McCaughtry's knowledge that plaintiff was being denied prescribed medication. The majority of facts in the proposed amended complaint are the same as in plaintiff's original complaint and are described in the June 9 order. I list new allegations below.

ALLEGATIONS OF FACT

Respondent G. Waltz is a nurse in the health services unit at Waupun Correctional Institution. Respondent Jim Wegner was the treatment director and assistant warden at Waupun Correctional Institution on July 22, 1999.

On July 22, 1999 and on earlier occasions, plaintiff wrote defendant McCaughtry, asking him to insure that plaintiff received the medication that was prescribed for him by doctors at the University of Wisconsin hospital and that the other defendants were refusing to provide. On earlier occasions, defendant McCaughtry had refused to intervene and protect plaintiff from defendants Belgado and Dithmann. Therefore, plaintiff also wrote to respondent Jim Wegner on July 22, 1999, asking for his help and protection.

On August 3, 2000, plaintiff saw respondent Waltz. Plaintiff told her that defendant Belgado had ordered saline spray to stop plaintiff's recurring nose bleeds and to help plaintiff breathe. Respondent Waltz determined that plaintiff did not need this prescription by looking

at him through a window in a door. On August 3, 2000, respondent Waltz misled plaintiff, telling him that his saline spray had been destroyed. On August 9, 2000, defendant McCaughtry justified respondent Waltz's actions, saying that the saline spray was nothing more than a canteen purchase and that it was therefore all right to deny plaintiff the medication.

DISCUSSION

A. Eighth Amendment Claim Involving Finger

To recover damages under § 1983, a plaintiff must establish that a defendant was personally responsible for the deprivation of a constitutional right. . . . An official satisfies the personal responsibility requirement of section 1983 . . . if the conduct causing the constitutional deprivation occurs at his direction or with his knowledge and consent. That is, he must know about the conduct and facilitate it, approve it, condone it, or turn blind eye.

Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995) (internal citations and quotations omitted). Plaintiff's allegations that he told defendant McCaughtry and respondent Wegner that he was being denied medication and asked for their help in obtaining his medication suggest that McCaughtry and Wegner may have condoned a deprivation of plaintiff's rights under the Eighth Amendment. See Vance v. Peters, 97 F.3d 987 (7th Cir. 1996) ("Gentry thus allows the possibility that an inmate's letters to prison administrators may establish a basis for § 1983 liability."). Plaintiff's motion to amend his complaint will be granted and plaintiff will

be allowed to proceed against respondent Wegner and defendant McCaughtry on his claim under the Eighth Amendment. For the reasons discussed in the June 9 order, plaintiff will also be allowed to proceed against defendants Pauline Belggado, Beth Dithmann and Sgt. Siedoschlag.

B. Eighth Amendment Claim Involving Saline Spray

Plaintiff will not be allowed to proceed against respondent Waltz or defendant McCaughtry for denial of saline spray because he has not alleged facts suggesting that the saline spray was necessary to treat a serious medical need. He has therefore failed to state a claim under the Eighth Amendment against respondent Waltz. See Estelle v. Gamble, 429 U.S. 97, 106 (1976).

C. Failure to Identify John Doe Nurse and Jane Doe Nurse

The extended deadline for filing an amended complaint in this case has passed. In his proposed amended complaint, plaintiff did not name defendants nurses John and Jane Doe and may no longer file an amended pleading to do so. Therefore, I will dismiss John and Jane Doe from the case at this time. (Plaintiff wrote this court on several occasions detailing problems he was having in obtaining discovery. However, it appears that the first time plaintiff asked for

any documents from defendants that might have allowed him to discover the names of John and Jane Doe was in a document titled "Plaintiff's Answer to Defendants response of Requested Documents," dkt. # 10, filed on October 10, 2000, after the original deadline to amend the complaint had passed and over three months after defendants were served with the complaint in this case. Plaintiff has had sufficient time to discover the names of John and Jane Doe and has failed to do so.)

ORDER

IT IS ORDERED that

1. Plaintiff Harrison Franklin's motion to amend his complaint is GRANTED and plaintiff is GRANTED leave to proceed in forma pauperis against defendants Gary R. McCaughtry, Pauline Belggado, Beth Dithmann, Sgt. Siedoschlag and Jim Wegner on his claim that he received inadequate medical care in violation of the Eighth Amendment;

2. Defendants John Doe nurse, Jane Doe nurse and G. Waltz are DISMISSED from this case;

3. Service of this complaint on newly-added defendant Jim Wegner will be made promptly after petitioner submits to the clerk of court one (1) copy of his "proposed amended complaint," one (1) completed marshals service form and two (2) completed summonses, one

for respondent Wegner and one for the court. Enclosed with a copy of this order are sets of the necessary forms. If petitioner fails to submit the completed marshals service and summons forms before December 4, 2000, or explain why he cannot do so, his complaint against defendant Wegner will be subject to dismissal for failure to prosecute;

4. The amended complaint will be considered as having been filed this date. Defendants McCaughtry, Belggado, Dithmann and Siedoschlag may have until the date on which defendant Wegner's answer to the complaint is due to file their response to the amended complaint.

Entered this 17th day of November, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge