IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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STEVEN D. STEWART,

Plaintiff,

OPINION AND ORDER

v.

05-C-293-C

C.O. BARR, C.O. MCDANIEL, C.O. STOWELL, BURTON COX, JR., CINDY SAWINSKI and C.O. GOVIER (Male),

Defendants.

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In this civil action for declaratory, injunctive and monetary relief, plaintiff Steven D. Stewart, an inmate at the Wisconsin Secure Program Facility in Boscobel, Wisconsin, contends that his rights under the First and Eighth Amendments of the United States Constitution were violated when defendants Rickie Govier, Douglas Stowell and Mike McDaniel refused to transport him outside the prison unless he combed out his dreadlocks; defendants Burton Cox and Cindy Sawinski acted with deliberate indifference to his serious medical needs; and defendant Jared Barr maliciously confiscated his prescription medication.

The case is before the court on defendants' motion for summary judgment. Because defendants have articulated a legitimate penological interest for requiring plaintiff to remove

his dreadlocks before they would transport him outside the prison, their motion will be granted with respect to plaintiff's First Amendment claim. Defendant's motion will be granted also with respect to plaintiff's claim that defendants Cox and Sawinski exhibited deliberate indifference to his need for surgery because the undisputed facts show that these defendants provided plaintiff with constitutionally-adequate medical care. However, because material facts remain in dispute, defendant's motion will be denied with respect to plaintiff's claim that defendant Barr confiscated his medication on January 13, 2005 in violation of the Eighth Amendment.

From the parties' proposed findings of fact, I find the following to be material and undisputed.

UNDISPUTED FACTS

A. Parties

Plaintiff Steven Stewart is a prisoner at the Wisconsin Secure Program Facility in Boscobel, Wisconsin, where he has been incarcerated since December 9, 1999.

Defendant Burton Cox is employed by the Wisconsin Department of Corrections as a physician at the Wisconsin Secure Program Facility. His job responsibilities include diagnosing and treating inmates and arranging for outside medical consultations when appropriate.

Defendant Cindy Sawinski is employed by the Wisconsin Department of Corrections as manager of the Wisconsin Secure Program Facility's Health Services Unit. Her job responsibilities include managing health care services at the prison, developing procedures, monitoring care plans, preparing reports, and serving as a liaison to community health care providers. Defendant Sawinski works with the primary physician, dentist, psychiatrist and other specialists who serve as consultants to the Bureau of Health Services to insure that health care is provided in an efficient and effective manner. In her role as health services manager, defendant Sawinski is responsible for providing administrative support to the health services unit.

Defendants Rickie Govier, Mike McDaniel, Douglas Stowell and Jared Barr are employed by the Department of Corrections as correctional officers at the Wisconsin Secure Program Facility. Defendants Govier's, McDaniel's and Stowell's job responsibilities include supervising, escorting and transporting inmates and maintaining institutional order and control. Defendant Barr's job responsibilities include supporting unit staff, maintaining institutional security and performing general tasks within the prison housing units.

B. Plaintiff's Rectal Prolapse

When prisoners at the Wisconsin Secure Program Facility need medical attention, they are required to complete a health services request form. When they need immediate

treatment, they are required to inform prison staff of their medical needs.

On July 26, 2004, plaintiff submitted a health services request form, in which he alleged that he was "bleeding every time [he] use[d] the toilet" and that his "hemorrhoids [we]re outta [sic] control." The following day, defendant Cox examined plaintiff and determined that he had been experiencing rectal bleeding for two weeks. Defendant Cox attributed the bleeding to a probable prolapsing internal hemorrhoid. Defendant Cox prescribed Metamucil, a hemorrhoid cream suppository and Dibucaine ointment.

On August 12, 2004, defendant Cox submitted a copy of form DOC 3436, Prior Authorization for Non-urgent Care, requesting a surgical consultation at the University of Wisconsin Hospital to discuss a possible sigmoidoscopy (inspection of the colon using a "sigmoidoscope") and internal hemorrhoid banding. Instead, a November 9, 2004 consultation was scheduled for plaintiff with Dr. Roger Rademacher at the Boscobel Hospital.

Dr. Rademacher examined plaintiff. Although plaintiff was not bleeding at the time of the examination, the doctor was able to feel a "very heavy piece of tissue compatible with internal hemorrhoids." Dr. Rademacher recommended a colonoscopy.

On November 22, 2004, Dr. Rademacher performed a colonoscopy on plaintiff at the Boscobel Area Healthcare clinic. Although plaintiff's pre-operative diagnosis was "prolapsing internal hemorrhoids," after completing the procedure, Dr. Rademacher determined that

plaintiff was suffering from an "obvious prolapse of the rectal mucosa." Dr. Rademacher reported that plaintiff would probably require a "sleeve resection of the rectum" and recommended that the surgery be performed at the University of Wisconsin Hospital. Dr. Rademacher did not indicate that plaintiff's condition required immediate surgery or was life-threatening.

On November 22, 2004, health services unit staff called the University of Wisconsin Hospital and left a message asking the surgical coordinator to schedule an appointment for plaintiff. That same day, plaintiff submitted a health service request form asking for a "no kneel" restriction because kneeling increased the pain of his rectal prolapse.

On November 24, 2004, defendant Sawinski responded to plaintiff's request form by issuing him a "no kneel" restriction and sending him Ibuprofen. That same day, plaintiff was seen by health services unit staff who learned that plaintiff was complaining of bloody stools. An inspection of plaintiff's toilet confirmed the presence of blood. Although plaintiff was concerned about his bleeding, he was able to walk normally, his vital signs were normal and he did not complain of pain. Plaintiff was directed to contact staff if he experienced further bleeding. Again health services unit staff called the surgical coordinator at the University of Wisconsin Hospital and were told that the coordinator was gone.

On November 25, 2004, plaintiff was seen by health services staff at his cell front. Plaintiff was told that efforts were being made to schedule a surgical appointment. Plaintiff

was directed to inform health services staff of any further bleeding.

On November 29, 2004, health service unit staff left a third message for the hospital surgical coordinator, identified in plaintiff's medical chart as "Deanne." On December 1, 2004, Deanne spoke directly with health service unit staff and informed them that the earliest available appointment was in June 2005. Prison staff insisted that plaintiff needed to be seen at an earlier time and faxed copies of plaintiff's medical records to the coordinator for review by the hospital's triage staff.

On December 2, 2004, plaintiff was seen by defendant Cox. Plaintiff reported that he had experienced "a lot" of bright red bleeding the previous week, but was doing "better" at the time of his appointment.

On December 6, 2004, Deanne called the health services unit staff with the results of the triage review. She reiterated that the first available appointment for plaintiff was in June 2005. When health service unit staff asked what they could do to insure that plaintiff was seen at an earlier time, the coordinator suggested that they contact the director of the Department of Corrections, though she indicated that contacting him was unlikely to help.

On December 14, 2004, Deanne scheduled a September 13, 2005 surgical consultation for plaintiff. (The parties have not explained why a June appointment was not made.) For reasons related to prison security, plaintiff was not told the exact date of his scheduled appointment.

On January 3, 2005, plaintiff submitted a health service request form, alleging that his condition was life-threatening, that he was in constant pain and was losing weight and blood. Defendant Sawinski responded to plaintiff the following day, informing him that his condition was not life-threatening. (Plaintiff questions defendant Sawinski's knowledge of the severity of his medical condition because she has never examined him.)

On January 14, 2005, plaintiff saw defendant Cox. Although plaintiff was bleeding in front of him, defendant Cox did not perform a physical examination of plaintiff. Instead, defendant Cox ordered hemorrhoid ointment for plaintiff.

On March 29, 2005, plaintiff was seen at the front of his cell by a health services nurse after he experienced serious bleeding. Although plaintiff explained that had been suffering from a rectal prolapse since November 2004, the nurse insisted that he was bleeding from hemorrhoids. Later that same day, plaintiff was seen again by health service unit staff. Plaintiff complained of flank pain, ongoing urinary retention and blood in his toilet. Plaintiff was told that urinalysis would be performed.

Plaintiff had contact with the prison health services staff on June 15, June 16 and June 30, 2005. He continued to express concern over the medical treatment he was receiving and reported ongoing pain. On July 17, 2005, plaintiff wrote a letter to Wisconsin Department of Corrections Secretary Matthew Frank regarding his medical concerns. On July 18, 2005, plaintiff wrote a letter to the prison warden, stating that his life was in danger.

On July 27, 2005, defendant Sawinski responded to plaintiff's letter to the warden, stating that Dr. Waterman, a urologist who had treated plaintiff for his urinary problems, had not reported that plaintiff's life was in danger. Defendant Sawinksi indicated that a surgical appointment was pending.

On September 13, 2005, plaintiff was seen by Dr. Calcutt, a general surgeon at the University of Wisconsin Hospital. Although Calcutt was unable to "reproduce" plaintiff's prolapse, he noted that plaintiff's symptoms were consistent with rectal prolapse. Calcutt recommended defecography (the making of rapid-sequence radiographs during defecation following the insertion of barium into the rectum), which plaintiff underwent on November 17, 2005. Calcutt did not indicate that plaintiff's rectal prolapse was life-threatening or required immediate surgery.

On October 5, 2005, plaintiff was seen by University of Wisconsin Hospital neurologist Dr. Brooks, who indicated that plaintiff was suffering from symptoms consistent with multiple sclerosis. Brooks ordered a number of medical tests.

From the time plaintiff first complained of blood in his stool on July 26, 2004 until September 15, 2005, plaintiff was seen by health services staff on 77 occasions.

C. Dreadlocks

Wisconsin inmates who wish to participate in group religious services through a

prison's "Umbrella Religion Group" must complete a form designating their religious preference. Plaintiff has never completed a religious preference form.

Plaintiff wears his hair in dreadlocks. (It is unclear whether plaintiff has braids in addition to dreadlocks.) According to prison policy, inmates cannot have their hair in "braids" when they are being transported outside the prison because braids can hide drugs, homemade knives, razor blades and other contraband. (It is unclear whether the term "braids" as used in the policy is meant to include dreadlocks.) Prisoners are permitted to wear "braids" while in the prison.

Plaintiff suffers from bladder problems in addition to his rectal prolapse. On December 15, 2004, plaintiff submitted a health services request form, in which he complained of stomach problems and an injury caused by the insertion of a urinary catheter. On December 17, 2004, plaintiff was scheduled to attend a urology appointment at the University of Wisconsin Urology Clinic. Although plaintiff had attended medical appointments outside the prison on previous occasions without removing his dreadlocks and has been permitted to attend medical appointments without removing his dreadlocks since December 17, 2004, on December 17, 2004, he was told by prison officials that he could not attend his medical appointment unless he first removed his "braids." Plaintiff insisted that he did not have "braids"; he had "dreadlocks," which could not be removed. Because plaintiff would not comply with the order to remove his "braids," Lieutenant Brudos, a

prison supervisor, was asked to determine whether plaintiff's hair complied with prison policy regarding the transportation of inmates outside the prison. Brudos determined that plaintiff would not be allowed to leave the institution until his "braids" were removed.

From approximately 8:00 a.m. to 11:30 a.m., plaintiff was held in a strip cell where he refused to remove his dreadlocks. Because standing in the cell exacerbated the pain of his rectal prolapse, plaintiff eventually asked defendants Govier, Stowell and McDaniel to return him to his cell if they would not take him to the hospital.

Plaintiff's urology appointment was later rescheduled.

D. Confiscation of Prescription Medication

On January 5, 2005, plaintiff had three teeth removed. On January 12, 2005, two more teeth were pulled. Plaintiff had gum disease and was prescribed vicodin for pain.

On January 13, 2005, defendant Barr searched plaintiff's cell. Afterward, defendant Barr completed a "Search of Offender Quarters" form, on which he indicated that he had confiscated pages from an altered magazine from plaintiff's cell.

OPINION

A. Denial of Religious Rights

The First Amendment protects "the observation of central religious belief[s] or

practice[s]." Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 760 (7th Cir. 2003). In order to show that his First Amendment rights have been violated, plaintiff must demonstrate that (1) he has a sincerely held religious belief and (2) he was prevented from engaging in a central expression of that belief through the actions of defendants Govier, Stowell and McDaniel.

In his responses to defendants' proposed findings of fact and in his brief in opposition to his motion for summary judgment, plaintiff alleges that he is a Rastafarian.

> The Rastafarians are a religious sect that originated among black people in Jamaica but that has adherents among American blacks as well. Its tenets . . . most of which are derived by interpretation of passages in the Bible, are that Haile Selassie, the deposed emperor of Ethiopia who died in 1975, is God and that Marcus Garvey (the Pan-African leader of Jamaican extraction) is his Prophet; that Ethiopia is heaven, and Jamaica hell; that the Rastafarians are the reincarnation of the ancient Israelites, and are the chosen people; that men should not shave, cut, or comb their hair . . .; that black people are superior to white people and are destined eventually to rule the earth; that marijuana is a holy herb; and that meat should not be eaten.

Reed v. Faulkner, 842 F.2d 960, 962 (7th Cir. 1988) (citing Note, Soul Rebels: The Rastafarians and the Free Exercise Clause, 72 Geo. L. J. 1605, 1608 (1984)). Because Rastafarians do not comb or cut their hair, over time their hair forms "long, ropy, matted, woolly strands" called dreadlocks. Id. Plaintiff avers that he has dreadlocks and defendants have not disputed that fact. (More on that in a moment.)

The fact that plaintiff wears dreadlocks is not conclusive proof that he is a

Rastafarian. Defendants challenge the sincerity of plaintiff's religious beliefs by pointing out that he has never completed a Department of Corrections "religious preference form" identifying himself as a Rastafarian. It is undisputed that prisoners must complete religious preference forms before they can participate in group worship services offered by the prison.

Although plaintiff's failure to complete a religious preference form might be relevant if he adhered to Catholicism, Islam or Judaism — all faiths that emphasize the importance of group prayer — defendants have not proposed that Rastafarians engage in congregate services and plaintiff denies that such services exist. Under these circumstances, plaintiff's failure to complete a religious preference form is not probative of the sincerity of his beliefs. At most, defendants have shown only that the sincerity of plaintiff's religious conviction is disputed.

Assuming that plaintiff's religious conviction is sincere, the next question is whether defendants have impinged on plaintiff's ability to engage in a central expression of his religious belief. As discussed above, Rastafarians believe that men should not comb or cut their hair; dreadlocks are the natural result of the failure to do so. Therefore, by insisting that plaintiff "remove" his dreadlocks before leaving the prison to attend a medical appointment, defendants placed a substantial burden on the free exercise of plaintiff's religious beliefs.

When a prison regulation impinges on inmates' constitutional rights, the regulation

is valid if it is reasonably related to legitimate penological interests. Turner v. Safley, 482 U.S. 78, 89 (1987). Defendants contend that they required plaintiff to remove his "braids" out of concern that he might be hiding contraband in his hair. Plaintiff appears to concede that defendants have a legitimate interest in the policy that requires prisoners to remove braids before leaving the prison. However, he contends that he does not wear braids; he wears dreadlocks. Unlike braids, which can be done and undone with relative ease, dreadlocks can be removed only by cutting. And defendants insist that they did not ask plaintiff to cut his dreadlocks:

> Stewart was able to wear his hair in braids while in [the] W[isconsin] S[ecure] P[rogram] F[acility]. He was not asked to cut his hair or cut off his braids. He was simply required to remove his braids for the short time he was being transported outside of the prison to his urology appointment. He was free to braid his hair again when he returned to the prison.

Dfts.' Br., dkt. # 36, at 8. Plaintiff contends that he could not "undo" his dreadlocks and was therefore incapable of complying with defendants' orders.

Ultimately, the semantic battle between plaintiff and defendants is much ado about nothing. As I noted in the order granting plaintiff leave to proceed on his free exercise claim, courts have repeatedly held that prisons have a legitimate interest in imposing hair length and hair style requirements on prisoners. See, e.g., Hamilton v. Schriro, 74 F.3d 1545, 1555 (8th Cir.1996) ("It is more than merely 'eminently reasonable' for a maximum security prison to prohibit inmates from having long hair in which they could conceal contraband

and weapons."); Hines v. South Carolina Dept. of Corrections, 148 F.3d 353, 358 (4th Cir. 1998) (policy forbidding beards and dreadlocks advances compelling interests in maintaining institutional security); Wilson v. Schillinger, 761 F.2d 921, 926 (3d Cir.1985) (contraband can be hidden in long hair). Under the First Amendment, so long as a prison "regulation limiting the length of male inmates' hair strikes a reasonable balance between the interest in religious liberty and the needs of prison safety and security, [a plaintiff] must lose on his free exercise claim." Reed v. Faulkner, 842 F.2d 960, 962 (7th Cir.1988). (Because the only claim at issue in this case is whether defendants' actions violated plaintiff's rights under the First Amendment, I need not address whether defendants' actions would pass muster under the more stringent requirements of 42 U.S.C. § 2000cc-1, the Religious Land Use and Institutionalized Persons Act.)

Whether plaintiff wears braids or dreadlocks; whether he could remove his hair or needed to cut it in order to comply with defendants' orders, under the First Amendment his rights had to yield to defendants' legitimate penological interests. Turner, 482 U.S. at 89. Because defendants have shown a legitimate penological reason for their requirement that plaintiff remove his dreadlocks before leaving the prison, their motion for summary judgment will be granted with respect to plaintiff's free exercise claim.

B. Deliberate Indifference to Serious Medical Needs

"[T]he 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) (quoting Estelle v. Gamble, 429 U.S. 97, 103 (1976)). In order to succeed on a claim of deliberate indifference, a plaintiff must establish facts from which it can be inferred that he had a serious medical need and that prison officials were deliberately indifferent to that need. Id. at 104; see also Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997). The Court of Appeals for the Seventh Circuit has held that "serious medical needs" are not only conditions that are life threatening or that carry risks of permanent, serious impairment if left untreated, but also those in which the withholding of medical care results in needless pain and suffering. Gutierrez, 111 F.3d at 1371.

1. Delay in treatment for rectal prolapse

Plaintiff was given leave to proceed on his claim that defendants Sawinski and Cox exhibited deliberate indifference to his serious medical needs when they refused to provide plaintiff with surgery after Dr. Rademacher informed them that plaintiff needed surgery "immediately." Inexplicably, defendants contend that plaintiff's rectal prolapse is not a serious medical condition. In fact, defendants repeatedly characterize his rectal prolapse as "hemorrhoids" even though the undisputed facts demonstrate that plaintiff's colonoscopy ruled out the initial diagnosis of hemorrhoids and revealed the plaintiff was suffering from

an "obvious prolapse of the rectal mucosa" that required surgical treatment. See, e.g., Defs.' Br., dkt. # 36, at 17 ("Hemorrhoids are not a serious medical condition."). Moreover, it is undisputed that plaintiff experiences rectal bleeding and pain as a result of his prolapse, that defendants have prescribed medication and made special accommodations for plaintiff as a result of the pain from which he suffers and that plaintiff regularly sees prison health services staff and outside care providers to address his rectal prolapse. In the face of these facts (most of which are supported by materials *defendants* have submitted), the contention that plaintiff's medical condition is not serious is beyond meritless.

The real question is not whether plaintiff's condition is serious but whether defendants Cox and Sawinksi exhibited deliberate indifference to plaintiff's medical condition. Prison officials exhibit sufficiently culpable states of mind when they "kn[o]w of a substantial risk of harm to the inmate and act[] or fail[] to act in disregard of that risk." Walker v. Benjamin, 293 F.3d 1030, 1037 (7th Cir. 2002). Negligence does not constitute deliberate indifference; therefore, even admitted medical malpractice does not give rise to a constitutional violation. Id. To infer deliberate indifference on the basis of a physician's treatment decision, the decision must be so far afield of accepted professional standards as to raise the inference that it was not actually based on a medical judgment. Estate of Cole by Pardue v. Fromm, 94 F.3d 254, 262 (7th Cir.1996).

In this case, plaintiff has not proposed facts from which it can be inferred that

defendants were anything more than negligent, at worst. Contrary to plaintiff's assertion, there is no evidence that Dr. Rademacher ever indicated that plaintiff needed "immediate" surgery. It is undisputed that plaintiff needs surgery; however, it is also undisputed that defendants did what they could to set up a quick appointment. It was the University of Wisconsin Hospital that delayed plaintiff's initial surgical consultation; not defendants. The undisputed facts reveal that defendants provided plaintiff with medication, consultations and responses to his many complaints.

Although it is understandable that plaintiff wanted to have surgery sooner rather than later, the Constitution does not require prison officials to provide prisoners with the medical care they believe to be appropriate; it requires officials to rely upon medical judgment to provide prisoners with care that is reasonable in light of their knowledge of each prisoner's problems. See, e.g., Estelle, 429 U.S. at 107 (plaintiff's objection to prison physician's failure to order back X-ray failed to state claim under Eighth Amendment when prison physicians provided minimal treatment). Because the undisputed facts show that defendants did not respond to plaintiff's medical needs with deliberate indifference, defendants' motion will be granted with respect to plaintiff's claim that defendants Cox and Sawinski violated his rights under the Eighth Amendment.

2. Confiscation of prescription medication

Plaintiff contends that defendant Barr exhibited deliberate indifference when Barr confiscated plaintiff's validly prescribed prescription medication during a cell search. According to the affidavits of plaintiff and several other prisoners, on January 13, 2005, plaintiff made comments accusing prison staff members of treating another inmate unfairly. Plaintiff alleges that defendant Barr retaliated by conducting a search of plaintiff's cell and confiscating plaintiff's prescription medication, falsely stating that the medication had expired. Plaintiff avers that he told defendant Barr the medication was valid, asked Barr to contact the health services unit to verify that the medication was authorized and indicated that he needed the medication to control the pain from his gum disease and pulled teeth. Defendant Barr avers that he has no memory of the cell search, but alleges that if he had confiscated plaintiff's medication, he would have noted his decision to do so on the "Search of Offender Quarters" form, which makes no reference to any confiscated medication.

In Gil v. Reed, 381 F.3d 649, 662 (7th Cir. 2004), the Court of Appeals for the Seventh Circuit addressed the question whether a prison official exhibited deliberate indifference by denying an inmate a single dose of a prescription medication. The court held:

> We have noted that it is difficult to generalize about the civilized minimum of public concern necessary for the health of prisoners except to observe that this civilized minimum is a function both of objective need and cost. The lower the cost, the less need has to be shown, but the need must still be shown to be substantial. Here the cost of handing over the prescribed antibiotic was

> zero. The drug had been prescribed and dispensed into a bottle labeled for [the plaintiff] and was in [the defendant's] hand when he refused to hand it over.

Id. Citing Zentmyer v. Kendall County, Illinois, 220 F.3d 805, 810 (7th Cir. 2000), the court stated that the Eighth Amendment "prohibit[s] jail personnel from intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed." Gil, 381 F.3d at 662.

It is undisputed that plaintiff was prescribed medication following the extraction of five teeth on January 5 and 12, 2005. Because the cost of preventing plaintiff's pain was "zero" and the determination that he needed medication had already been made, plaintiff has established that he had a need for his medication. At issue is whether defendant Barr exhibited deliberate indifference to that need when he allegedly confiscated plaintiff's prescription medication on January 13, 2005.

Deliberate indifference requires that a prison official "be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists" and actually "draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994). Deliberate indifference in the denial or delay of medical care can be shown by a defendant's actual intent or reckless disregard. Benson v. Cady, 761 F.2d 335, 339 (7th Cir. 1985). Reckless disregard is highly unreasonable conduct or a gross departure from ordinary care in a situation in which a high degree of danger is readily apparent. Id.

If defendant Barr maliciously confiscated plaintiff's prescription medication, knowing that it was validly prescribed and that plaintiff would suffer unnecessary pain without the medication, then his actions would violate the Eighth Amendment. Because the parties dispute the essential facts that make or break plaintiff's claim, defendants' motion for summary judgment will be denied with respect to plaintiff's claim that defendant Barr exhibited deliberate indifference to his serious medical needs.

ORDER

IT IS ORDERED that defendants' motion for summary judgment is

1. GRANTED with respect to plaintiff's claim that defendants Govier, Stowell and McDaniel violated his rights under the First Amendment; and

2. GRANTED with respect to plaintiff's claim that defendants Cox and Sawinski were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment; and

3. DENIED with respect to plaintiff's claim that defendant Barr acted with deliberate indifference to his serious medical needs when he confiscated plaintiff's prescription

medication for no valid reason.

Entered this 17th day of March, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge