IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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THOMAS W. REIMANN,

Plaintiff,

v.

DAVID ROCK, ELIZABETH TEGELS, CATHERINE FARREY, JOHN PAQUIN, and NANCY TIERNEY,

Defendants.

OPINION and ORDER

05-C-501-C

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In this civil action for declaratory, injunctive and monetary relief, brought under 42 U.S.C. § 1983, plaintiff Thomas Reimann contends that (1) defendants Catherine Farrey and Elizabeth Tegels ordered plaintiff transferred from the New Lisbon Correctional Institution to the Jackson Correctional Institution in November 2004 in retaliation for plaintiff's threat to file a lawsuit regarding non-delivery of his mail; (2) defendants John Paquin and Nancy Tierney transferred plaintiff from the Jackson Correctional Institution to the Stanley Correctional Institution in retaliation for plaintiff's filing numerous inmate complaints; (3) defendant David Rock violated plaintiff's Eighth Amendment protection against cruel and unusual punishment when he required plaintiff to wear standard restraints

instead of leather restraints when plaintiff was transported outside of the prison; and (4) defendant Rock violated plaintiff's Eighth Amendment protection against cruel and unusual punishment when he reduced plaintiff's pain medication. The case is before the court on defendants' motion for summary judgment.

Because plaintiff has not adduced facts that would allow a reasonable jury to conclude that (1) defendants Farrey and Tegels transferred plaintiff from the New Lisbon Correctional Institution in retaliation for his threat to file a lawsuit; (2) defendants Paquin and Tierney transferred plaintiff from the Jackson Correctional Institution in retaliation for his filing numerous inmate complaints and threatening to file a lawsuit; or (3) defendant Rock acted with deliberate indifference when he changed medical orders to require plaintiff to wear standard restraints, defendants' motion for summary judgment will be granted with respect to these claims. Defendants' motion for summary judgment will be denied with respect to plaintiff's claim that defendant Rock violated plaintiff's Eighth Amendment protection against cruel and unusual punishment when he reduced plaintiff's pain medication. There is a genuine issue of material fact with respect to whether defendant Rock acted with deliberate indifference when he continued to reduce plaintiff's pain medication after plaintiff told him that he was suffering from severe pain.

Before turning to the undisputed facts, I must note a number of problems with both defendants' and plaintiff's proposed findings of fact. First, plaintiff submitted a voluminous

record to the court, but cited only a fraction of those documents in support of his Proposed Findings of Fact, despite his apparent reliance on some of the documents to support his factual assertions. This court's Procedures to be Followed on Motions for Summary Judgment, which plaintiff received in the Pretrial Conference Order dated January 18th, 2006, dkt. #27, advises that "[a]ll facts necessary to sustain the parties' positions on summary judgment must be explicitly proposed as findings of fact." Procedure to be Followed on Motions for Summary Judgment, Introduction. Therefore, I have not considered facts that plaintiff alleged in his complaint or that are included in medical reports or affidavits unless they were included in plaintiff's proposed findings of fact and supported by a citation to the record.

Finally, defendants dispute many of the facts proposed by plaintiff on the grounds that they are immaterial and lack foundation. See, e.g., Response to PPFOF, dkt. #114 at 7-9. In those instances in which I found that this objection was not a valid one, I have found the facts plaintiff proposed undisputed.

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

UNDISPUTED FACTS

A. Parties

Plaintiff Thomas W. Reimann is an inmate who is presently confined at the Oshkosh Correctional Institution in Oshkosh, Wisconsin. He is awaiting transfer to another institution.

Since March 2004 defendant David Rock has been employed by the Wisconsin Department of Corrections, Bureau of Health Services, as a licensed Nurse Practitioner at the Stanley Correctional Institution Health Services Unit and at the Flambeau and Gordon Correctional Camps. As a nurse practitioner, defendant Rock is assigned duties that include managing the healthcare of incarcerated individuals in collaboration with the Medical Director, treating incarcerated individuals, and planning, directing and evaluating patient care.

Defendant Elizabeth Tegels is Deputy Warden of the New Lisbon Correctional Institution, a position she has held since February 2004. One of her job duties is to participate in the development and implementation of security policies and procedures for the New Lisbon Correctional Institution.

Defendant Catherine Farrey has been Warden of the New Lisbon Correctional Institution since June 2000. As warden, she has been responsible for overseeing all aspects of design, construction, staffing and activation of the facility.

Defendant John Paquin is Deputy Warden at the Jackson Correctional Institution. Defendant Paquin was Security Director of the Jackson Correctional Institution from July

25, 2004 until October 2, 2004, when he was appointed to his current position of deputy warden. In addition, he continued to perform the duties of Security Director until April 17, 2005. As deputy warden, defendant Paquin's job responsibilities include assisting in the development, implementation and administration of security and treatment at the facility.

On April 17, 2005, defendant Nancy Tierney was appointed Security Director of the Jackson Correctional Institution. Defendant Tierney's job duties as security director include the development, implementation and modification of the security program. She is responsible for day-to-day security operations, which include disciplinary actions.

B. Plaintiff's Transfer from the New Lisbon Correctional Institution to the Jackson Correctional Institution

Plaintiff was housed at the New Lisbon Correctional Institution for approximately one month beginning in October 2004. On November 10, 2004, plaintiff sent defendant Farrey a memorandum regarding her policy banning from New Lisbon publications that included "guns, alcohol or 'gang signs.'"

On November 11, 2004 inmates at the New Lisbon Correctional Institution rioted and assaulted staff. Immediately, the staff began to move inmates who were involved with the riot to other institutions in order to maintain security. The New Lisbon Correctional

Institution remained in "full lockdown" until December 1, 2004.

After the inmates who were suspected of involvement in the riot had been transferred to other institutions, defendants Farrey and Tegels and other New Lisbon Correctional Institution staff, together with Department of Corrections and Department of Adult Institutions staff, identified additional inmates at the New Lisbon Correctional Institution who could be transferred to other medium security institutions. They considered transfer for inmates who were "problematic in terms of attitude, level of sophistication, intimidation of staff and/or other inmates," and their relationships with other inmates. Defendants Farrey and Tegels asked the four New Lisbon Correctional Institution unit managers for names of inmates in their units whom they would recommend for transfer to other medium security prisons. Before inmates were transferred, defendants Farrey and Tegels checked the lists, on one of which plaintiff's name appeared. Plaintiff was not involved in the riot on November 11, 2004. He was not housed in the unit where the riot took place or involved with a gang.

Between November 11, 2004 and November 19, 2004, 122 inmates, including plaintiff, were transferred from the New Lisbon Correctional Institution to other institutions. Transfer of inmates is an involved process that takes planning and is not accomplished within a few hours. Prison officials must review inmates' special placement needs, make contact with other institutions to see whether they can accept additional inmate

transfers, arrange transportation, gather inmate files and medications, inventory and pack inmate property and process inmates out of their housing unit and the prison under staff escort.

On November 17, 2004, plaintiff received notice of non-delivery of a magazine, Tattoo, to which he subscribed. On November 19, 2004, plaintiff told Captain Warren Dohms that he would file a lawsuit regarding the non-delivery of Tattoo. Hours later, plaintiff was transferred to the Jackson Correctional Institution. Plaintiff was transferred to the Jackson Correctional Institution as a result of a "security request from New Lisbon Correctional Institution" and an agreement between security directors. Captain Dohms informed defendant Tegels that plaintiff disagreed with staff about denial of the delivery of a magazine; defendant Tegels does not recall being told that plaintiff planned to file a lawsuit.

After plaintiff was moved to the Jackson Correctional Institution, he filed a complaint in which he alleged that his Tattoo magazine had been confiscated by staff at the New Lisbon Correctional Institution and that he had been transferred to the Jackson Correctional Institution within hours of making threats to sue New Lisbon Correctional Institution staff. This complaint was reviewed by an Inmate Complaint Officer who recommended that the complaint be dismissed. Defendant Farrey accepted this recommendation. Plaintiff appealed the decision. Ultimately, his appeal was dismissed by the secretary-designee of the

Department of Corrections.

On December 16, 2004, a program review committee hearing was held to re-evaluate plaintiff's transfer to the Jackson Correctional Institution. The committee affirmed plaintiff's assignment to the Jackson Correctional Institution. Defendants Farrey and Tegels had no personal involvement with the program review hearing.

C. Plaintiff's Transfer from the Jackson Correctional Institution to the Stanley Correctional Institution

Plaintiff arrived at the Jackson Correctional Institution on November 19, 2004. Soon after his arrival at the institution, plaintiff had numerous altercations with a number of prison staff members. At one point, plaintiff contacted the Jackson County District Attorney about one of his altercations with Officer Guadalupe Morales, which led the sheriff's department to send a deputy to speak with plaintiff. In addition, plaintiff had altercations with unnamed mail room staff regarding the non-delivery of magazines and mail. He filed complaints at the Jackson Correctional Institution about these altercations as well as other grievances. Plaintiff showed the some of the complaint forms to defendant Paquin.

When plaintiff was placed in the Neillsville Unit at the Jackson Correctional Institution, he began to have frequent altercations with Unit Manager Melinda Derus. Plaintiff confronted defendants Paquin and Tierney when they stopped at the Neillsville

Unit and told them that he planned to commence legal proceedings against Derus if she did not comply with a state court order.

Sometime before May 11, 2005, Stanley Correctional Institution Security Director Brian Miller contacted Jackson Correctional Institution Captain Philip Schultz to determine whether the Jackson Correctional Institution could exchange a general population inmate for an inmate from the Stanley Correctional Institution. Captain Schultz and defendant Paquin discussed the inmates who could be transferred and selected plaintiff. An early program review was scheduled for plaintiff on May 11, 2005. On May 10, 2005, Derus told plaintiff that he was going to have an "emergency" program review hearing on May 11, 2005 and that he would be transferred to the Stanley Correctional Institution because the Stanley Correctional Institution had "a real pain in the ass" whom it wanted to transfer.

The members of the Program Review Committee were Tami Waldera, Jeffery Schefelker and Schultz. The Program Review Committee recommended that plaintiff be transferred to the Stanley Correctional Institution. After the program review hearing, Derus told plaintiff that she thought he had filed too many complaints and was unhappy that plaintiff helped other inmates prepare legal complaints. Derus said that she wished that she could just "hook[] [plaintiff] up" for filing complaints, but that the new warden treated inmates too well. She concluded by saying that plaintiff was being sent to the Stanley Correctional Institution, and if he filed as many complaints there as he had at the Jackson

Correctional Institution, he would be sent to the Wisconsin Secure Program Facility.

Plaintiff's transfer was approved by Lynn Nicolai, Offender Classification Specialist at the Bureau of Classification and Movement Central Office as a "security trade arranged between JCI/SCI security directors." On or about May 12, 2005, plaintiff was transferred to the Stanley Correctional Institution.

D. Plaintiff's Medical Care by Defendant Rock at the Stanley Correctional Institution

Plaintiff arrived at the Stanley Correctional Institution on May 12, 2005. At that time, plaintiff's medical records were sent to the health services unit. The nursing staff reviewed plaintiff's medical records and administrative support personnel assigned him to defendant Rock.

Shortly after plaintiff's arrival at the Stanley Correctional Institution, defendant Rock reviewed plaintiff's medical records, including his diagnoses, medications and treatment. In addition, defendant Rock consulted a number of doctors, including Dr. Fern Springs, the physician who had cared for plaintiff at the Jackson Correctional Institution; Dr. Tom Williams, defendant Rock's collaborating physician at the Stanley Correctional Institution; Dr. Dave Burnett, the medical director for the Department of Corrections, Dr. Charles Vanderheide and Dr. Betsy Luxford, attending psychiatrists at the Stanley Correctional Institution; and Dr. Nathan Rudin, Director of the Pain Clinic at the University Hospital

and Clinics in Madison, Wisconsin.

Plaintiff was receiving several medications when he arrived at the Stanley Correctional Institution, including methadone and carisoprodol. After consulting with the doctors, defendant Rock approved plaintiff's medications and did not alter the dosages. Defendant Rock reviewed plaintiff's medical records, which included a progress note from October 1, 2004, written by Dr. Bridgewater, a senior physician at Columbia Correctional Facility. Bridgewater stated that "Security thinks [plaintiff] is a security risk at University Hospital. He has chronic left cuff neuropathy . . . and normal mobility. I recommend regular cuffing this visit and follow-up . . . ." Plaintiff's file also included an April 29, 2005 report from Dr. Springs in which she wrote "humane leather restraints" in the "Special Needs" section of the form.

Defendant Rock first met with plaintiff on May 25, 2005. He did not examine plaintiff, but did discuss plaintiff's medical conditions, in particular his knee and back pain. Defendant Rock suggested that plaintiff see Rudin at the University Hospital Pain Management Clinic. Defendant Rock referred plaintiff to Rudin and requested that Rudin evaluate plaintiff and make recommendations regarding plaintiff's knee and back pain.

On July 20, 2005, Rudin examined plaintiff. His diagnoses was "1) patellofemeral arthritis (mild) with knee pain bilateral; 2) very tight hamstrings, hip flexors; 3) flat feet; 4) muscular low back pain; 5) right femoral neuropathy, largely resolved; and 6) left sup. radial

neuropathy." Rudin's recommendations were

> 1) [plaintiff] should do hamstring stretches, knee extension, quad stretches and the [physical therapy] exercises he learned last year. Work out in recreation area.
> 2) off-shelf arch supports for shoes.
> 3) restore leather restraint restriction for wrists.
> 4) Medications: If he does the other things listed above, expect you could taper him off methadone within 6 months. Change Carisoprodol to noon and HS (bedtime)
> 5) There's no need for knee braces at present. Refer back to me if needed.

Defendant Rock's progress notes indicate that he called Dr. Williams on July 21, 2005 to consult with him regarding Rudin's recommendations for plaintiff's treatment. In their conversation, defendant Rock and Williams agreed to gradually reduce the amount of methadone plaintiff received. Later that day, defendant Rock wrote an order and tapering schedule that called for a reduction and eventual discontinuation of plaintiff's methadone over a period of 90 days. Plaintiff's dose of methadone was reduced immediately from 40 mg daily to 30 mg daily. Although Rudin recommended only a change in the times at which plaintiff received carisoprodol, plaintiff's dose of carisoprodol was decreased immediately by 50 percent. Defendant Rock advised plaintiff of these decisions by letter, which was delivered to plaintiff the same day.

Plaintiff experienced "excruciating pain" and was unable to move on July 25, 2005. On July 26, 2005, his leg "went out on him." On August 3, 2005, plaintiff and defendant

Rock had a confrontation in the gym at the Stanley Correctional Institution. Plaintiff asked defendant Rock why he had not responded to plaintiff's Health Services Requests (instruments that inmates use to discuss health care questions with staff at the Department of Corrections) and defendant Rock responded that he did not review the health services requests. The dispute escalated, leading defendant Rock to say that plaintiff was starting to "piss him off."

On August 4, 2005, Rudin prepared a detailed, written report of his recommendations for plaintiff that provided more information than his handwritten recommendations. In this report, he stated that plaintiff "probably will be able to go off methadone or at least tolerate a lower dose. Methadone should be continued at present. I would expect the methadone could be tapered and discontinued gradually over a period of 3 to 6 months." He noted also that the "[l]eather restraint restriction for his wrists is appropriate and should be reinstated." Finally, Rudin wrote that "[w]hile we do not normally like to use carisoprodol, he is taking a very modest dose, and this can be continued."

On August 8, 2005, although he had not examined plaintiff's wrists, defendant Rock wrote an order in plaintiff's medical record to "[i]nstitute large cuffs in lieu of leather restraints for patient's comfort on transports." "Large cuffs" are metal handcuffs that are larger than standard handcuffs and therefore afford greater freedom of movement and produce less irritation. Defendant Rock implemented this policy because he had heard

concerns from others that plaintiff was a security risk and had read a note to the same effect in Dr. Bridgewater's report.

On August 11, 2005, plaintiff met with defendant Rock in the Health Services Unit and discussed the changes in plaintiff's medication and the cuffing policy that defendant Rock had recommended. Plaintiff said he had been suffering from severe pain since defendant Rock began reducing his medications. In addition, plaintiff told defendant Rock that he would not go to future medical appointments unless defendant Rock implemented the "plastic/leather restraint restriction." Defendant Rock responded by saying, "I don't care. I don't care if you're in pain. I don't care if you suffer. I don't care if you sue me. That's why I work here, because I don't care. Go cry to Dressler, but guess what? She doesn't care either." After this meeting, defendant Rock wrote a new order approving leather restraints for plaintiff.

After his appointment with plaintiff on August 11, 2005, defendant Rock wrote in the physician order section of plaintiff's medical record that plaintiff's case was "becoming a difficult case to manage and I feel is exceeding the scope of my [nurse practitioner] practice. I therefore ask that you transfer him to the Medical Director's panel." It is not clear how or when this message was conveyed to anyone else at the prison. Plaintiff's care was transferred to Dr. Bruce Gerlinger, Medical Director at the Stanley Correctional Institution, on August 30, 2005. On August 25, 2005, Rudin wrote a letter to plaintiff,

which was also sent to defendant Rock, in which he stated that plaintiff's "treatment plan is being carried out essentially according to [Rudin's] recommendations." Rudin cautioned plaintiff that methadone was not a long-term treatment for the type of knee pain plaintiff experienced and that plaintiff "should be able to establish reasonable pain relief if [he] work[ed] on the exercise program we discussed at our visit."

OPINION

A. Retaliatory Transfer Claims

Generally, prisoners do not have a constitutional right to placement in a particular institution. Meachum v. Fano, 427 U.S. 215 (1976) (due process clause does not limit interprison transfer even when new institution is much more disagreeable). Prisoners can be moved from institution to institution without any procedural formalities, such as hearings, so long as the transfer does not amount to an "atypical, significant deprivation." Sandin v. Conner, 515 U.S. 472, 486 (1995). The situation is different, however, when an inmate contends that the defendant prison officials transferred him as a way of retaliating against him for his exercise of a constitutional right. Such a contention states a federal claim. Higgason v. Farley, 83 F.3d 807, 810 (7th Cir. 1996) (prisoner transferred for exercising his right of access to courts stated claim under 42 U.S.C. § 1983); Pratt v. Rowland, 65 F.3d 802, 807 (9th Cir. 1995) (retaliation claim survives Sandin).

To prevail on a retaliation claim, a prisoner must prove that his constitutionally protected conduct was a substantial or motivating factor in a defendant's actions, that is, that the prisoner's protected conduct was one of the reasons a defendant took adverse action against him. Mt. Healthy Board of Education v. Doyle, 429 U.S. 274, 287 (1977). "Once the plaintiff proves that an improper purpose was a motivating factor, the burden shifts to the defendant . . . to prove by a preponderance of the evidence that the same actions would have occurred in the absence of the protected conduct." Spiegla v. Hull, 371 F.3d 928, 943 (7th Cir. 2004).

Pursuant to the First Amendment, inmates are entitled to file grievances and lawsuits. E.g., DeWalt v. Carter, 224 F.3d 607, 618 (7th Cir. 2000) (citing Babcock v. White, 102 F.3d 267, 274-75 (7th Cir. 1996) (prisoner may not be transferred in retaliation for filing inmate grievances); Higgason v. Farley, 83 F.3d 807, 810 (7th Cir. 1996) (prisoner may not be transferred in retaliation for filing lawsuit)). Prison officials may not restrict the exercise of this right except to the extent necessary for security or efficient administration. Buise v. Hudkins, 584 F.2d 223, 231 (7th Cir. 1978). It is well established that prison officials violate the Constitution when they retaliate against a prisoner for filing grievances or initiating lawsuits. DeWalt, 224 F.3d at 618.

To succeed on his retaliation claim, plaintiff must adduce sufficient evidence that would allow a jury to find that defendants were motivated by a desire to retaliate against

him. Plaintiff is "under an obligation to respond to [defendants'] motion in a timely fashion and to place before the court all materials [he] wishes to have considered when the court rules on the motion." Cowgill v. Raymark Industries, Inc., 780 F.2d 324, 329 (3d Cir. 1985). He must "show through *specific evidence* that a triable issue of fact remains." Liu v. T & H Machine, Inc., 191 F.3d 790, 796 (7th Cir. 1999) (citations omitted and emphasis added). At this stage, it is not enough for plaintiff to state his subjective belief that he was the subject of retaliation. Vukadinovich v. Board of School Trustees of North Newton School Corporation, 278 F.3d 693, 700 (7th Cir. 2002) (citing Johnson v. University of Wisconsin-Eau Claire, 70 F.3d 469, 480 (7th Cir. 1995)). If he cannot make a showing of retaliation, the court may grant summary judgment to the moving party. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986) (when party moving for summary judgment does not bear burden of proof, he need not produce evidence showing absence of genuine issue of material fact to succeed on motion).

1. Plaintiff's transfer from the New Lisbon Correctional Institution to the Jackson Correctional Institution

Plaintiff contends that he was transferred from the New Lisbon Correctional Institution to the Jackson Correctional Institution in retaliation for threatening to file a lawsuit regarding the non-delivery of his Tattoo magazine. Plaintiff has produced evidence

sufficient to show that he was engaged in a constitutionally protected activity when he threatened to file a lawsuit, filed a grievance form and sent defendant Farrey a memorandum regarding the policy prohibiting publications that included "guns, alcohol or 'gang signs.'" As noted above, state officials may not take retaliatory action against an individual designed either to punish him for having exercised his constitutional right to seek judicial relief or to intimidate or chill his exercise of that right in the future. DeWalt, 224 F.3d at 618. However, plaintiff has not adduced evidence that any of these actions was a "substantial or motivating factor" in defendants Farrey's and Tegels's decision to transfer him from the New Lisbon Correctional Institution to the Jackson Correctional Institution. As a result, his retaliation claim regarding his transfer from the New Lisbon Correctional Institution to the Jackson Correctional Institution fails.

Plaintiff appears to rely exclusively on the timing of his transfer and the fact that he was not engaged in the riot as evidence that his transfer was motivated by his threat to file a lawsuit. As plaintiff himself pointed out, he was transferred to the Jackson Correctional Institution only a few hours after telling Dohms that he would file a lawsuit challenging the non-delivery of his Tattoo magazine. However, plaintiff has adduced no evidence that defendants Tegels and Farrey knew about this threat to file a lawsuit, much less that it constituted a motivating or substantial factor in their decision to transfer him. The timing of plaintiff's transfer mere hours after he threatened to file a lawsuit actually further

undermines his claim that his transfer was retaliatory. Even if all inferences are drawn in plaintiff's favor, it is simply not credible that Dohms reported plaintiff's threat to Farrey and Tegels and they accomplished all of the numerous steps necessary to carry out plaintiff's transfer to the Jackson Correctional Institution within a few hours.

In addition, defendants Farrey and Tegels have adduced evidence that there was a powerful non-retaliatory reason for plaintiff's transfer from the New Lisbon Correctional Institution. The facility was handling an emergency and needed to manage its inmate population for security reasons.

Plaintiff has presented no evidence that his transfer had anything at all to do with his memorandum regarding Farrey's policy, his threat to file a lawsuit or his filing of a grievance form for the non-delivery of his mail. It is undisputed that plaintiff was not engaged in the riot or involved in a gang, but it does not follow that he was transferred in retaliation for his constitutionally protected activities. Prison officials are free to transfer inmates as needed, as long as their reasons for doing so are not retaliatory. Sandin, 515 U.S. at 486. Although all reasonable inferences must be drawn for the non-moving party on summary judgment, "it is not enough for plaintiff to state his subjective belief that he was the subject of retaliation." Vukadinovich, 278 F.3d at 700 (internal citations omitted). Plaintiff has offered only his own assessment that his transfer must have been retaliatory because he was not engaged in the riot at the New Lisbon Correctional Institution. That is not enough to

withstand summary judgment.

2. Plaintiff's transfer from the Jackson Correctional Institution to the Stanley Correctional Institution

Plaintiff contends that defendants Paquin and Tierney were responsible for the decision to transfer him to the Stanley Correctional Institution and the motive for his transfer was the number of complaints he had filed against the Jackson Correctional Institution staff. Plaintiff was engaged in constitutionally protected activities when he filed complaints regarding the conditions at the Jackson Correctional Institution. However, there is no evidence that retaliation for these actions was a "substantial or motivating factor" in the decision to transfer plaintiff from the Jackson Correctional Institution. Therefore, defendant's motion for summary judgment will be granted with respect to this claim as well.

While housed at the Jackson Correctional Institution from November 19, 2004 to May 12, 2005, plaintiff was involved in numerous altercations with the staff and filed many complaints about these altercations. Defendant Paquin and Captain Philip Schultz identified plaintiff for transfer to the Stanley Correctional Institution when there was a request from Stanley to exchange prisoners. Paquin was aware that plaintiff had filed complaints while at the Jackson Correctional Institution. Schultz was part of plaintiff's Program Review Committee. After the Program Review Committee agreed to plaintiff's

transfer, plaintiff's unit manager, Melinda Derus, told plaintiff that he was being transferred for filing so many complaints. There is no indication that Derus communicated at any time with defendant Paquin, defendant Tierney or Schultz about the reason for plaintiff's transfer to the Stanley Correctional Institution.

It is undisputed that the original impetus behind plaintiff's transfer to the Stanley Correctional Institution was a request by security staff at the Stanley Correctional Institution to exchange inmates. However, if the decision to exchange and transfer plaintiff (as opposed to some other inmate) was made for retaliatory purposes because he had engaged in constitutionally protected activity, it would be prohibited. As noted above, the burden lies with plaintiff to produce evidence from which a jury could reasonably conclude that defendants caused his transfer for retaliatory reasons. Spiegla, 371 F.3d at 943.

The facts differ slightly with respect to defendants Tierney and Paquin, so I will discuss the claims against them separately. I turn first to the claim against defendant Tierney. The Program Review Committee's report makes passing reference to the fact that plaintiff's transfer was the result of a "security trade . . . between two security directors," but does not identify the responsible directors. Although defendant Tierney was the security director at the Jackson Correctional Institution at the time of plaintiff's transfer, defendant Paquin was responsible in recommending plaintiff for transfer. Plaintiff has produced no evidence that defendant Tierney was actually engaged in the decision making process that

led to plaintiff's transfer. Further, plaintiff has adduced no evidence that defendant Tierney even knew of any of the complaints that he filed while at the Jackson Correctional Institution. Thus, plaintiff's claim against defendant Tierney will not withstand summary judgment because no jury could reasonably infer that she acted at all, much less acted in retaliation for his filing numerous complaints.

Plaintiff's claim regarding defendant Paquin requires somewhat more discussion. First, Paquin recommended plaintiff for transfer. It is undisputed that, prior to plaintiff's Program Review Committee hearing, defendant Paquin discussed with Schultz the possibility of trading plaintiff for the inmate at the Stanley Correctional Institution and that Schultz was a member of plaintiff's Program Review Committee, which recommended plaintiff's transfer.

Next, defendant Paquin knew of at least one threat by plaintiff to file a lawsuit against a Jackson Correctional Institution staff member and knew about at least some of the complaints that plaintiff filed while at the Jackson Correctional Institution. However, plaintiff cannot rest on proof of defendant Paquin's awareness of complaints that plaintiff had filed and his recommendation of plaintiff for transfer to the Stanley Correctional Institution to prove unconstitutional transfer. Plaintiff would have to adduce evidence that retaliation was a substantial or motivating factor in defendant Paquin's decision to recommend plaintiff for transfer. He has failed to do so. Without any evidence that

defendant Paquin acted with a retaliatory motive when he recommended plaintiff for transfer to the Stanley Correctional Institution, no reasonable jury could find that defendant Paquin acted unconstitutionally in transferring plaintiff.

Finally, plaintiff has adduced evidence from which it appears that Unit Manager Derus was unhappy with the number of complaints that plaintiff had filed and that she drew a clear connection between plaintiff's transfer and these activities. However, because plaintiff has provided no evidence of a connection between Derus's statements and defendant Paquin's actions, her statements cannot be used to attribute a retaliatory motive to defendant Paquin. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995) (holding that "some causal connection or affirmative link between the action complained about and the official sued is necessary for § 1983 recovery") (citation omitted).

Because plaintiff has not produced any evidence from which a reasonable jury could conclude that defendants Tierney and Paquin chose to transfer him from the Jackson Correctional Institution to the Stanley Correctional Institution for retaliatory reasons, defendants' motion for summary judgment will be granted with respect to this claim.

B. Medical Claims

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)

(quoting Estelle v. Gamble, 429 U.S. 97, 103 (1976)). To prevail on an Eighth Amendment claim, a prisoner must show that prison officials were deliberately indifferent to his serious medical needs. Estelle, 429 U.S. at 106. Therefore, to withstand summary judgment, plaintiff must adduce facts from which a reasonable jury could infer that he had a serious medical need (objective component) and that prison officials were deliberately indifferent to this need (subjective component). 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" encompass not only conditions that are life-threatening or that carry risks of permanent, serious impairment if left untreated, but also those in which the deliberately indifferent withholding of medical care results in needless pain and suffering. Gutierrez, 111 F.3d at 1371.

As for the Eighth Amendment's subjective component, the Supreme Court has held that deliberate indifference requires that "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994). Inadvertent error, negligence, gross negligence or even ordinary malpractice are insufficient grounds 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. Deliberate indifference in the denial or delay of medical care is evidenced by a defendant's actual intent or reckless disregard. A prison official has a

sufficiently culpable state of mind when the official "knew of a substantial risk of harm to the inmate and acted or failed to act in disregard of that risk." Norfleet v. Webster, 439 F.3d 392, 396 (7th Cir. 2006) (citing 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 imply 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).

1. Defendant Rock's decision to discontinue use of humane leather or plastic restraints

Plaintiff alleges that defendant Rock exhibited deliberate indifference by changing the instructions regarding the type of handcuffs plaintiff had to wear when he was transported outside the prison. Plaintiff has adduced facts sufficient to permit a reasonable inference that he has a serious medical condition, that is, nerve damage in his wrists that causes him pain when he is placed in traditional metal handcuffs. Plaintiff has been diagnosed with neurological damage, which at least two doctors have found to be sufficiently severe and painful to require humane leather restraints.

However, plaintiff's claim cannot withstand summary judgment on the subjective element of deliberate indifference. When plaintiff arrived at the Stanley Correctional

Institution and was assigned to defendant Rock's care, defendant Rock reviewed plaintiff's medical history and consulted with other medical professionals, including plaintiff's former physician. Plaintiff's medical history contained two notations regarding the use of restraints. The first, written on October 1, 2004, by Dr. Bridgewater, stated that plaintiff should be "cuffed per DOC policy," despite his wrist injury, because staff believed that he was a security risk at University Hospital. The other instruction, written by Dr. Springs on April 29, 2005, stated only "humane leather restraints" should be used, with no further information. Thus, defendant Rock was presented with conflicting medical reports that were made within eight months of each other. Bridgewater's report was more detailed and cited a security reason for the decision; Springs's report simply said that humane leather restraints should be used. This is similar to the question presented in Norfleet, 439 F.3d at 396, where the Court of Appeals for the Seventh Circuit held that a doctor was not deliberately indifferent when he chose not to approve an inmate's use of soft-soled shoes after he was presented with conflicting medical reports regarding the extent of the inmate's rheumatoid arthritis and associated need for soft-soled shoes. Although perhaps it would have been more prudent for defendant Rock to have examined plaintiff personally before instituting a new policy regarding handcuffs, the fact that he did not is not "such a substantial departure from accepted professional judgement, practice or standards" as to amount to "a complete abandonment of medical judgment." Id. at 396 (citing Estate of Cole, 94 F.3d at 262

(quotations and citation omitted)).

Plaintiff's argument is further undermined by the fact that defendant Rock did not continue to require plaintiff to wear standard handcuffs after learning that they caused plaintiff pain. Instead, when presented with Dr. Rudin's August 4, 2005 report, defendant Rock changed his order to require more comfortable handcuffs. Then, only three days later, after plaintiff met with him and expressed displeasure with defendant Rock's prior order, defendant Rock revised his order again to require "humane leather restraints." Defendant Rock's behavior does not suggest that he had a sufficiently culpable state of mind, that is, that he "knew of a substantial risk of harm to the inmate and acted . . . in disregard of this risk." Instead, defendant Rock changed his orders to avoid harm to plaintiff when he learned of that risk.

Plaintiff has not proposed evidence from which it can be inferred that defendant Rock was anything more than negligent in changing the instructions regarding the type of handcuffs that plaintiff was required to wear. Therefore, because plaintiff has not adduced evidence that defendant Rock acted with deliberate indifference when he ordered plaintiff to wear standard handcuffs when he was transported out of prison, defendants' motion for summary judgment on this claim will be granted.

2. Defendant Rock's reduction of plaintiff's pain medication

When plaintiff arrived at the Stanley Correctional Institution, defendant Rock reviewed plaintiff's medical record and consulted with numerous doctors regarding the best course of treatment for plaintiff. For the first two months plaintiff was at Stanley, defendant Rock prescribed full doses of both methadone and carisprodol to plaintiff and then sent plaintiff to Rudin, a pain specialist, for evaluation. Rudin examined plaintiff and initially recommended that plaintiff's dosage of methadone could be tapered over six months and eventually discontinued if plaintiff worked to rehabilitate his leg. He did not recommend any change to plaintiff's dose of carisprodol. The day after plaintiff saw Rudin, defendant Rock chose to reduce plaintiff's methadone by 25 percent (which represented the beginning of a 90-day taper) and reduced plaintiff's carisoprodol by 50 percent. Plaintiff met with defendant Rock three weeks later and told him that he was in severe pain. Defendant Rock did not change the taper schedule, told plaintiff that he did not care if he suffered and then wrote in plaintiff's progress notes that he wanted to plaintiff's care to be transferred to Dr. Gerlanger. Plaintiff was not seen by defendant Rock or transferred to Gerlanger's care for another two and a half weeks.

To prevail on this claim, plaintiff must show that defendant Rock was deliberately indifferent to plaintiff's serious medical condition. As the Court of Appeals for the Seventh Circuit has pointed out, "serious medical needs" include conditions in which the deliberately indifferent withholding of medical care results in needless pain and suffering. Gutierrez, 111

F.3d at 1371. Plaintiff had been diagnosed and treated by at least two doctors for his leg and back pain. Plaintiff was in severe pain after his medications were reduced and told defendant Rock about his pain. Thus, plaintiff has adduced evidence from which a reasonable jury could find that he had a serious medical need.

The remaining question is whether a reasonable jury could infer that defendant Rock acted with deliberate indifference to plaintiff's serious medical needs when he reduced plaintiff's pain medications. Defendant Rock chose to begin reducing plaintiff's pain medication immediately after plaintiff's appointment with Rudin and then did nothing to alleviate plaintiff's resulting severe pain when plaintiff told him about it. Instead, defendant Rock told plaintiff that he "didn't care if plaintiff suffered." Further, defendant Rock did not explain why he had chosen the particular course of treatment or offer alternative treatment for plaintiff's pain. After this encounter, defendant Rock wrote in plaintiff's medical progress report that he could no longer handle his treatment. It is not clear how or when defendant Rock actually conveyed this decision to prison officials; plaintiff was transferred to Dr. Gerlanger's care two and a half weeks later.

Defendant Rock argues that, because he consulted with other medical professionals about his treatment of plaintiff, a jury could not infer deliberate indifference from his treatment decisions. "To support an inference of deliberate indifference based on medical treatment, a defendant's 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." Norfleet, 439 F.3d at 396. The only facts defendants have provided the court regarding accepted professional standards relate to defendant Rock's consultation with Rudin and Williams. Although defendant Rock acted generally within the parameters of Rudin's advice regarding plaintiff's treatment, he retained discretion to taper plaintiff's methadone more or less quickly. Also, defendant Rock chose to reduce plaintiff's carisoprodol, which Rudin had not recommended. Although defendant Rock consulted with Williams about his initial treatment decision for plaintiff, defendant Rock has not shown that he followed up after he became aware that plaintiff was in severe pain.

There is no evidence that defendant Rock's *initial* decision was so far afield from medical standards that it constituted deliberate indifference. However, after plaintiff told defendant Rock that his chosen tapering schedule was causing severe pain, defendant Rock did nothing to alleviate this pain. Instead, according to plaintiff, defendant Rock yelled at him. In addition, he made a notation in plaintiff's medical record that he wished to discontinue his medical care of plaintiff.

Defendant Rock has not provided information regarding whether reduction of methadone and carisoprodol is always excruciatingly painful or whether alternative, less painful courses of treatment could have achieved the same goal of reducing and eventually discontinuing plaintiff's use of these drugs. Plaintiff argues that a slower taper would have

caused him less pain because he would have had time to rehabilitate his leg before his medications were reduced. Assuming that there was an alternative course of treatment available that would have achieved the same results and caused less pain, defendant Rock's adherence to his initial tapering schedule after becoming aware that plaintiff was in severe pain, his telling plaintiff that he did not care "if plaintiff suffered" and his transfer of plaintiff from his care could support a jury finding that defendant Rock's actions and statements were evidence of a state of mind "sufficiently culpable" to constitute deliberate indifference. Norfleet 439 F.3d at 396.

It is possible that defendant Rock can show that no less painful course of treatment was available or that his decision to maintain the tapering schedule despite his awareness of plaintiff's pain was entirely reasonable given relevant medical standards. However, because this question is before the court on defendants' motion for summary judgment, all reasonable inferences must be drawn in favor of plaintiff, the non-moving party. Because plaintiff has adduced evidence from which a reasonable jury could infer that defendant Rock acted with deliberate indifference when he continued his reduction of plaintiff's pain medications after he knew that quick reduction was causing plaintiff severe pain, defendants' motion for summary judgment for this claim will be denied.

ORDER

IT IS ORDERED that the motion for summary judgment of defendants Rock, Tegels, Farrey, Paquin and Tierney is DENIED with respect to plaintiff's claim that defendant Rock violated plaintiff's Eighth Amendment protection against cruel and unusual punishment when he reduced plaintiff's pain medication. Plaintiff's complaint is DISMISSED with respect to defendants Tegels, Farrey, Paquin and Tierney.

Entered this 3d day of October, 2006.

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