IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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VINCENT L. AMMONS,

OPINION and ORDER

Plaintiff,

06-C-20-C

v.

BRUCE GERLINGER, RENEE ANDERSON, BECKY DRESSLER and RITA ERICSON,

Defendants.

- -

In this civil action brought under 42 U.S.C. § 1983, plaintiff Vincent Ammons is proceeding on his claims that his Eighth Amendment rights were violated when (1) defendants Renee Anderson and Becky Dressler concealed plaintiff's June 29, 2005 medical request concerning his wrist injury from Dr. Debb Lemke; (2) defendants Anderson and Dressler concealed plaintiff's June 29, 2005 medical request concerning his rectal prolapse from Dr. Debb Lemke; (3) defendant Bruce Gerlinger provided inadequate treatment for plaintiff's wrist injury; and (4) defendant Rita Ericson refused to diagnose or treat plaintiff's rectal bleeding and protruding colon on June 18, 2005.

Now before the court are five motions: (1) defendants' motion to dismiss plaintiff's

claims against defendants Anderson, Dressler and Gerlinger; (2) plaintiff's motion for enlargement of time to respond to defendants' motion; (3) plaintiff's motion to stay a decision on defendants' motion; (4) plaintiff's motion for Rule 11 sanctions against defendants' counsel; and (5) plaintiff's motion for entry of default. Plaintiff's motion for enlargement of time will be granted. Although plaintiff's responsive materials were submitted late, considering them will not delay consideration of defendants' motion to dismiss or prejudice defendants in any other way. Plaintiff's motion for a stay and motion for Rule 11 sanctions will be denied because plaintiff did not provide defendants' counsel timely notice before filing his Rule 11 motion. Plaintiff's motion for entry of default will be denied because defendants served their answer within the timeframe provided by the federal rules. Finally, defendants' motion to dismiss will be granted in part and denied in part. Defendants' motion will be denied with respect to plaintiff's claim against defendant Gerlinger and his claim that defendants Renee Anderson and Becky Dressler concealed plaintiff's June 29, 2005 medical request concerning his wrist injury from Dr. Debb Lemke because plaintiff exhausted all administrative remedies available to him through the prison grievance system with respect to those claims. Defendants' motion will be granted, however, with respect to plaintiff's claim that defendants Anderson and Dressler concealed plaintiff's June 29, 2005 medical request concerning his rectal prolapse from Dr. Debb Lemke because that claim was not exhausted.

Before turning to the facts and law relevant to defendants' motion to dismiss, I begin by addressing plaintiff's motions.

PLAINTIFF'S MOTION FOR ENLARGEMENT OF TIME

In what has become a troubling pattern, plaintiff has written to the court repeatedly throughout this lawsuit, hinting that his mail is being diverted by prison officials. Notably, each of plaintiff's letters alleging interference has reached the court in a timely fashion. Only one document appears not to have reached the court, and that was plaintiff's brief in response to defendants' motion to dismiss. Given the circumstances surrounding plaintiff's filing of his response brief, it appears highly unlikely that the late arrival of plaintiff's brief is attributable to anything other than plaintiff's negligence.

Defendants filed their motion to dismiss on December 18, 2006. Plaintiff's response was due originally on January 9, 2007. In a motion dated January 7, 2007, plaintiff requested an extension of time and asked to file his response brief by January 22, 2007. In his motion he explained that he had been busy "researching and drafting" a motion for reconsideration of the court's December 14 order, which prevented him from addressing defendants' motion to dismiss. Plaintiff alleged that in light of the limited time the institution provided him "for research and analysis of case law [he] could not respond to but one pleading at a time." After finding plaintiff's excuse for failing to meet his deadline was

"feeble," I granted him a brief extension, and ordered that his response be filed by January 16, 2006.

January 16 came and went, and although plaintiff's motion for reconsideration arrived on January 18, there was no sign of plaintiff's response brief. However, during a preliminary pretrial telephone conference with the magistrate judge held January 18, 2007, plaintiff stated that he had mailed his response brief on January 16. Neither defendants' counsel nor this court ever received that brief.

On January 26, 2007, plaintiff sent a three page single-spaced letter to the court, in which he accused prison officials of having intercepted his response brief. Plaintiff did not enclose a copy of the brief, but instead "summarized" the arguments it allegedly contained. On February 1, 2007, the court received plaintiff's response brief, dated January 28, 2007. Enclosed with that brief was plaintiff's motion for an enlargement of time in which to file it.

As I stated above, plaintiff's allegations of interference with his mail are highly suspect, particularly given the fact that the only document this court has not received from him was the one document he requested more time to file. Normally, I would not consider plaintiff's untimely submission both because defendants have not had an opportunity to reply to it and because it is untimely. However, in this case, I will make an exception because considering plaintiff's submission will expedite ruling on defendants' motion to

dismiss without changing the outcome. Plaintiff has submitted no new exhaustion materials or affidavits; he has, however, asserted that four of the six inmate complaints defendants address in their motion are not relevant to this lawsuit and do not provide evidence of his alleged non-exhaustion. Therefore, in order to focus on the matters truly in dispute between the parties with regard to exhaustion, I will consider plaintiff's response insofar as it narrows the materials the court must consider in determining whether defendants' motion to dismiss should be granted.

PLAINTIFF'S MOTION TO STAY AND MOTION FOR RULE 11 SANCTIONS

Because he believes defendants' motion to dismiss was brought in bad faith, plaintiff has moved for sanctions under Fed. R. Civ. P. 11, which requires parties to conduct "an inquiry reasonable under the circumstances" before presenting a claim or bringing a motion to the court. Rule 11 also requires parties to certify that any factual representations they make "are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery." Id. If a court finds that a party has violated Rule 11, it may impose a sanction that includes directives of a non-monetary nature and an order to pay some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation. Fed. R. Civ. P. 11(c)(2).

Fed. R. Civ. P. 11(c)(1)(A) contains a 21-day "safe harbor" period, which provides

that a Rule 11 motion for sanctions "shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected." The safe harbor provision was added to Rule 11 in part to make the rule fairer by giving a potential violator notice and an opportunity to correct. Fed. R. Civ. P. 11, Advisory Committee Notes, 1993 amendment (provision intended "to provide a type of 'safe harbor' against motions under Rule 11 in that a party will not be subject to sanctions unless, after receiving the motion, it refuses to withdraw that position or to acknowledge candidly that it does not currently have evidence to support a specified allegation."); see also Corley v. Rosewood Care Center, Inc., 142 F.3d 1041, 1058 (7th Cir. 1998).

Instead of providing defendants' counsel with the requisite notice of his Rule 11 motion, plaintiff filed his motion in this court and moved the court to "stay ruling on defendants' motion to dismiss" in order to permit defendants' counsel to withdraw her motion within the 21-day safe harbor period. That is not the procedure Rule 11 contemplates. Because plaintiff did not provide defendants' counsel with the proper notice of his Rule 11 motion before filing it in this court, his motion for sanctions will be denied, as will his motion for a stay in the proceedings.

PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT

On November 29, 2006, plaintiff served his complaint on defendants. Under Fed. R. Civ. P. 12(a)(1)(A) and 6(a), defendants had 20 calendar days to serve their answer on plaintiff, not counting the date of service. Therefore, defendants' answer was due to be served no later than December 20, 2006. According to plaintiff, although defendants posted their answer December 18, 2006, the mailing did not reach him until December 23, 2006. Mistakenly believing that timeliness of service is measured by the date on which a filing is received (rather than the date on which it is posted), plaintiff has moved for entry of default against defendants on the ground that their answer was untimely.

Rule 5(b)(2)(B) of the Federal Rules of Civil Procedure provides that service may be accomplished by "mailing a copy [of a pleading] to the last known address of the person served. Service by mail is complete on mailing." Defendants had until December 20, 2006 in which to serve their answer on plaintiff. They posted the answer to plaintiff at his prison address on December 18, 2006. Consequently, defendants' answer was served early, not late. Plaintiff's motion for entry of default will be denied.

DEFENDANTS' MOTION TO DISMISS

Defendants have moved to dismiss plaintiff's claims against defendants Anderson, Dressler and Gerlinger, contending that plaintiff failed to exhaust his administrative

remedies with respect to each of these defendants. (Defendants request also that the court dismiss former defendant Lemke from this lawsuit because plaintiff failed to serve her. Because Lemke was dismissed in an order dated December 15, 2006, I need not address the portion of defendants' motion relating to Lemke.) In support of their motion, defendants have submitted copies of six inmate complaints plaintiff filed or attempted to file between June 2005 and November 2005. However, plaintiff contends that only two of these complaints are "germane" to his case: inmate complaints SCI-2005-19608 and SCI-2005-27005. One of these complaints, SCI-2005-19608, relates only to plaintiff's claim that defendant Ericson failed to treat his alleged rectal prolapse. Because defendants have not moved to dismiss plaintiff's claims against defendant Ericson for failure to exhaust, I need not consider inmate complaint SCI-2005-19608 at all. Because plaintiff concedes that the only complaint in which he may have exhausted his administrative remedies with respect to defendants Anderson, Dressler and Gerlinger is SCI-2005-27005, that is the only complaint I have considered in ruling on defendants' motion to dismiss.

Normally, a court may not consider matters outside the pleadings in the context of a motion to dismiss. Fed. R. Civ. P. 12(b); Fleischfresser v. Directors of School District 200, 15 F.3d 680, 684 (7th Cir. 1994). However, it is unnecessary to convert defendants' motion to dismiss into one for summary judgment because plaintiff does not deny that the record defendants have submitted accurately reflects his use of the inmate grievance system.

Therefore, the only question whether he exhausted his administrative remedies is legal, rather than factual. Because converting defendants' motion would accomplish nothing but a delay in the resolution of the case, the court is not obliged to do so. Cf. Loeb Industries, Inc. v. Sumitomo Corp., 306 F.3d 469, 480 (7th Cir. 2002) (failing to convert motion not reversible error when "there are no potential disputed material issues of fact").

The following facts are drawn from the allegations of plaintiff's complaint and the relevant exhaustion documents defendants have submitted in connection with their pending motion.

A. Factual Allegations

1. Parties

Plaintiff Vincent Ammons is a prisoner incarcerated at the Stanley Correctional Institution in Stanley, Wisconsin. Defendant Bruce Gerlinger is a physician employed by the Bureau of Health Services at the Stanley Correctional Institution. Defendants Renee Anderson and Rita Ericson are nurses employed by the Bureau of Health Services at the Stanley Correctional Institution. Defendant Becky Dressler is employed by the Bureau as a nurse supervisor at the institution.

2. Inmate complaint SCI-2005-19608

On June 27, 2005, plaintiff submitted an inmate complaint numbered SCI-2005-19608, which read:

> On June 16, 2005, at approximately 11:20 p.m., while using the toilet to excrete waste, I discovered that I was bleeding profusely from the rectum area. As I cleaned myself, I discovered that the source of the bleeding was due to colon protrusion. At that time, I requested to be taken to [the] H[ealth] S[ervices] U[nit]. The C[orrectional] O[fficer] called HSU and other officials for approval, and I was taken to HSU by another CO. Once there, I explained ot the nurse that I was using the "bathroom," cleaned myself and discovered blood (I took the towel to HSU to demonstrate the amount of blood that was evident.) After the nurse examined the outside of my anus, she informed me that she would submit the report to the visiting doctor for her review. I did not hear from HSU.
>
> As my condition has remained the same, on June 21, 2005, I submitted a Health Service Request to HSU seeking medical treatment and care for my malady (see attached, a copy of the HSR dated June 21, 2005, seeking medical treatment and care). I have [sic] heard anything from HSU regarding when I will see a doctor concerning my illness.
>
> Every time that I use the bathroom, I am bleeding and I have to push my colon back into my rectum cavity. This is a serious condition known as rectal prolapse, this has no relationship to my hemorrhoids, and if left untreated could lead to very serious problems. I need to see a doctor who can seek the proper diagnosis and provide the appropriate medical treatment and care. This is a very serious matter! I am bleeding on the inside of my rectum and I am not being given the care needed to determine what the problem is and/or if it is getting worse. I need to see a doctor now!!

Attached to plaintiff's inmate complaint was a copy of the health service request form he had submitted to the health services unit on June 21, 2005, along with a response from the health services unit, which stated:

> If this has been going on for several months as you say, you are not "hemorrhaging." Your description is typical of hemorrhoids and can be checked at your follow-up visit. A nurse would have noticed if you had "rectal prolapse." You were seen on June 1 and made no mention of this ongoing problem. We can check this at your next follow up, which should be next week.

On June 29, 2005, inmate complaint examiner Dawn Koeppen recommended that plaintiff's inmate complaint be dismissed, for the following reasons:

> Though the complainant is concerned that he is not being treated for his concerns over an alleged medical condition he calls "rectal prolapse" he has been evaluated and treated at HSU. The Inmate was seen at HSU to evaluate his condition and there is no indication that he has the diagnosis listed above.
>
> The Inmate wrote to HSU and received a response on 6/27/06. It is clear from the record that the Inmate is being provided care and treatment, He has and continues to be seen by medical staff concerning his problems, and there is no reason to believe his needs are not being met. The complainant has made it clear that he is not satisfied with the care being offered to date, but what type of specific care he must be offered is a matter of professional medical judgment. Those judgements have been made as they relate to the complainant's concerns and through the filing of this complaint, they have also been reviewed by others in the Bureau of Health Services. . . .

On June 30, 2005, Sharon Zunker dismissed the complaint.

On July 7, 2006, plaintiff appealed the dismissal of his complaint. In his appeal, plaintiff made no mention of staff members concealing his June 29, 2005 health service request form from Dr. Lemke. Corrections Complaint Examiner John Ray recommended that the appeal be dismissed, and on July 11, 2005, Richard Raemisch dismissed plaintiff's appeal.

3. Inmate complaint SCI-2005-27005

On September 1, 2005, plaintiff filed an inmate complaint numbered SCI-2005-27005, which read in relevant part:

> NOTE: This complaint represents a continuation of denial of medical treatment and care for an extended period of time.
>
> On June 2, 2005, I was called to the Health Services Unit (HSU) for treatment of diabetes and its complications. While being examined and evaluated by the visiting physician, Dr. Debb Lemke (Dr. Lemke), she asked me whether I had any other problems of a medical nature. I immediately informed Dr. Lemke that I took a nasty fall in my cell on May 28, 2005, as a result of my arms flailing, my left arm hit the metal railing of the bed ending in extreme pain which affected me as I sat before her. Moreover, I showed Dr. Lemke my left wrist to demonstrate that it was the size of a golf ball, and quite painful. Dr. Lemke, without performing an examination nor ordering an x-ray informed me that it was only sore and that it would heal. I informed Dr. Lemke that the pain emanating from my wrist represented more than just soreness, and that I was in extreme pain. Dr. Lemke ignored my pleas for treatment of my left-wrist injury and released me without providing any recognized form of medical treatment and care for my injury, nor providing any amelioration for the excruciating pain.
>
> Daily I was experiencing excruciating pain associated with any left-hand wrist injury. At times a shooting pain in nature would occur; at times a dull maddening pain in nature would develop pulsating throughout my wrist As time went by-days; weeks- the pain became more and more unbearable. On June 29, 2005, I submitted a Health Services Request (HSR) designated specifically to Dr. Lemke, in part, seeking treatment and care for my wrist injury. This June 29, 2005, HSR did not reach Dr. Lemke. Instead, it was intercepted and confiscated by Becky Dressler (HSUM) and Renee Anderson R.N. In the "Written Response" section of the returned June 29, 2005 HSR, Dressler and Anderson stated:
>
> MR. AMMONS, YOU HAVE AN UPCOMING

APPOINTMENT WITH THE PRACTITIONER, IN THE NEAR FUTURE TO DISCUSS THIS ISSUE - IF YOU WISH TO FILE AN INMATE COMPLAINT. PLEASE USE THE APPROPRIATE INMATE COMPLAINT FORM. THE HSU REQUEST IS NOT THE APPROPRIATE FORM.

As a result of my HSR sent to HSU, I was denied access to a physician who could treat my injury, and denied the appointment Dressler and Anderson stated that existed and that I would receive from the practitioner. I waited and waited for the appointment, but I was never called.

After numerous complaints to HSU, on August 11, 2005, I was finally allowed to be examined by Dr. Bruce Gerlinger, in part, concerning my wrist injury. When I told Dr. Gerlinger how it occurred, he examined my wrist and informed me that it was a serious injury and that he wanted an x-ray to determine whether any injury had occurred. After the x-ray was performed, I waited to be returned to HSU for a follow-up visit to treat and care for my wrist injury, but none occurred. On August 24, 2005, I submitted another HSR seeking medical treatment and care for my injury. On August 29, 2005, I received a "Written response" stating that I would be scheduled for a follow-up visit to see Dr. Gerlinger. However, on August 29, 2005, I received a "Test Results memo" allegedly from Dr. Gerlinger, stating: "Your recent x-ray test results were normal (no recent fractures)" and "Your test results were possible old fracture. Not much to do at this point use Ibufrofen."

My contention for this complaint is that I have been, and I am being, denied medical treatment and care for a wrist fracture that is swollen and causing me excruciating pain, but no one at HSU wants to provide me care, and my wrist injury will heal improperly if left untreated.

First, I was denied medical treatment and care by Dr. Lemke who refused to treat my injury; second, Dressler and Anderson interfered with my request for treatment and care by a physician, and lied to me informing me that I would soon see the nurse practitioner, which I never did; and third, once I was finally able to see Dr. Gerlinger regarding my wrist fracture, who ordered an x-ray which returned positive for a wrist fracture, he covers up the actions and inactions of Dr. Lemke, Dressler, and Anderson by falsely stating that my

> injury was the result of an "old fracture," and relying on this deception to deny treatment in aid of further concealing that I was not provided the appropriate medical treatment and care for my wrist injury when I first requested it from Lemke.

On September 23, 2005, inmate complaint examiner Dawn Koeppen rejected plaintiff's complaint, stating:

> Rejected pursuant to DOC 310.11(5)(c), Wis. Adm. Code, because the "inmate does not allege sufficient facts upon which redress may be made."
>
> According to the medical record the following facts are documented:
> 1) The incident in this complaint occurred on 5/28/05, which is past the complaint filing timeline.
> 2) There is no documentation in the medical record from 5/6/05 thru 6/1/05 that there was any mention of your wrist complaint during visits to HSU
> 3) Ms. Dressler informed you on 6/29/05 that you had an upcoming appt. to HSU and you could discuss your concerns at that time
> 4) X-ray test results were normal
> 5) You state in the complaint that you want treatment for your wrist, not "cover-up." You have received treatment for your wrist and the results are in the record.
>
> There are not sufficient facts or evidence upon which redress may be made. No further action will be taken by the I[nmate] C[omplaint] E[xaminer].

Plaintiff appealed the rejection of his complaint to the warden. On appeal, plaintiff divided up his claims against each prison official who he believed had violated his right to medical care. Specifically, with respect to defendants Dressler, Anderson and Gerlinger, plaintiff's appeal stated the following:

> Regarding Anderson and Dressler: (1) I am complaining about the denial of medical treatment and care that Dr. Lemke failed to provide , on June 29,

> 2005, I sent a Health Service Request (HSR) to Dr. Lemke, asking her in part to treat my hand/wrist injury, (2) this HSR stated Dr. Lemke's deficient care and sought realistic care, (3) Anderson and Dressler intercepted the HSP, refused to submit it to Dr. Lemke, and erroneously informed me that I would see a medical professional at HSU, but this assurance never came to past [sic], and (4) Anderson's and Dressler's action and in-action proved detrimental to me in that later tests ultimately proved that I have a wrist fracture injury based on the radiology report of M. David Yoseloff, M.D., which stated that [t]here is an old ununited fracture of the ulnoid styloid process (dated August 15, 2005).
>
> Regarding Dr. Gerlinger: (1) after numerous complaints to HSU seeking medical treatment and care for my wrist injury, on or about August 12, 2005, I was appointed to see Dr. Gerlinger, (2) Dr. Gerlinger was informed of my wrist injury which occurred on May 28, 2005, its cause and effect (3) that I was denied treatment by Dr. Lemke, Anderson and Dressler on June 1, 2005 and June 28, 2005, respectively, (4) Dr. Gerlinger ordered an x-ray of my hand/wrist, which ultimately proved to be a wrist fracture injury based on the radiology report drafted by M. David Yoseloff, M.D., which stated that [t]here is an old ununited fracture of the ulnoid styloid process (dated August 15, 2005), and (5) Dr. Gerlinger covered up action and inaction of Dr. Lemke, Anderson, and Dressler by stating that my wrist fracture injury was unrelated to the May 28, 2005 accident. . . .

On September 30, 2005, Thomas Karlen denied the appeal, stating, "This complaint was appropriately rejected by the ICE in accordance with DOC 310.11(5)."

B. Discussion

The 1996 Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), provides that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility

until such administrative remedies as are available are exhausted." The Court of Appeals for the Seventh Circuit has held that "[e]xhaustion of administrative remedies, as required by § 1997e, is a condition precedent to suit" and that district courts lack discretion to decide claims on the merits unless the exhaustion requirement has been satisfied. Dixon v. Page, 291 F.3d 485, 488 (7th Cir. 2002). Failure to exhaust is an affirmative defense that the defendants have the burden of pleading and proving. Walker v. Thompson, 288 F.3d 1005, 1009 (7th Cir. 2002).

In analyzing plaintiff's exhaustion efforts, the first question is whether plaintiff filed a complaint that adequately raises any of the claims he has raises in this lawsuit. If it appears from the inmate complaints supplied by the parties that plaintiff included a claim raised in this lawsuit with sufficient clarity to allow prison officials an opportunity to resolve the claim and avoid litigation, I must deny defendants' motion to dismiss as to that claim. Woodford, 126 S. Ct. 2378, 2385 (2006) ("The purpose of the exhaustion requirement is to allow prison officials the opportunity to correct their mistakes and resolve prisoners' complaints without judicial intervention."); Perez, 182 F.3d at 537-38 (purpose of exhaustion to narrow dispute and avoid litigation).

In considering what facts or pleadings an inmate's administrative complaint should contain, the court must look to the appropriate administrative system requirements, Wis. Admin. Chapter DOC 310. Strong v. David, 297 F.3d 646, 649 (7th Cir. 2002). When the

administrative requirements are silent as in the Wisconsin Administrative Code, "a grievance suffices if it alerts the prison to the nature of the wrong for which redress is sought." Id. at 650. Plaintiff need not articulate specific legal theories or particular remedies but need only make known an objection to some problem or wrongdoing. Id. Nevertheless, the complaint must be clear enough to allow the inmate complaint examiner to understand the nature of the claim.

In addition to placing prison officials on notice, a complaint must comply with the procedural requirements of the system in which the grievance is filed, Woodford v. Ngo, 126 S. Ct. 2378 (2006); Pozo v. McCaughtry, 286 F.3d 1022, 1023 (7th Cir. 2002) ("unless the prisoner completes the administrative process by following the rules the state has established for that process, exhaustion has not occurred"), even if the prisoner cannot achieve an effective response through the system. Massey v. Helman, 196 F.3d 727, 733 (7th Cir. 1999).

Wisconsin inmates have access to an administrative grievance system governed by the procedures set out in Wis. Admin. Code §§ DOC 310.01-310.18. Under these provisions, prisoners start the complaint process by filing an inmate complaint with the institution complaint examiner. An institution complaint examiner may investigate inmate complaints, reject them for failure to meet filing requirements or recommend to the appropriate reviewing authority that they be granted or dismissed. Wis. Admin. Code § DOC 310.07(2).

However, if the institution complaint examiner makes a recommendation that the complaint be granted or dismissed on its merits, the appropriate reviewing authority has the authority to dismiss, affirm or return the complaint for further investigation. Wis. Admin. Code § DOC 310.12. If an inmate disagrees with the decision of the reviewing authority, he may appeal to a corrections complaint examiner, who is required to conduct additional investigation where appropriate and make a recommendation to the secretary of the Wisconsin Department of Corrections. Wis. Admin. Code § DOC 310.13. Within ten working days following receipt of the corrections complaint examiner's recommendation, the secretary must accept the recommendation in whole or with modifications, reject it and make a new decision or return it for further investigation. Wis. Admin. Code § DOC 310.14.

Under some circumstances, an inmate complaint may be rejected before it is passed along to a reviewing authority. These include instances in which:

> (a) The inmate submitted the complaint solely for the purpose of harassing or causing malicious injury to one or more of the department's employees, agents, independent contractors, or any other person;
>
> (b) The inmate does not raise a significant issue regarding rules, living conditions, or staff actions affecting institution environment;
>
> (c) The inmate does not allege sufficient facts upon which redress may be made;
>
> (d) The inmate submitted the complaint beyond 14 calendar days from the

> date of the occurrence giving rise to the complaint and provides no good cause for the I[nmate] C[omplaint] E[xaminer] to extend the time limits;
>
> (e) The issue raised in the complaint does not personally affect the inmate;
>
> (f) The issue is moot;
>
> (g) The issue has already been addressed through the inmate's prior use of the [inmate complaint system]; and
>
> (h) The issue raised is not within the scope of the [inmate complaint system].

Wis. Admin. Code § DOC 310.11(5). When an inmate's complaint is rejected, the prisoner may appeal the rejection to the appropriate reviewing authority (usually the warden), who may review only "the basis for the rejection of the complaint." Wis. Admin. Code § DOC 310.11(6).

1. Inmate complaint SCI-2005-19608

Inmate complaint SCI-2005-19608 related solely to plaintiff's complaints regarding his alleged rectal prolapse. Because defendants have moved to dismiss plaintiff's claim that defendants Anderson and Dressler concealed his June 29, 2005 health service request form seeking treatment for rectal prolapse, the question here is whether inmate complaint SCI-2005-19608 put prison officials on notice of that claim.

Defendants do not dispute that inmate complaint SCI-2005-19608 complied with all procedural requirements mandated by the administrative code. Plaintiff filed his

complaint in a timely fashion and appealed it to the top of the administrative chain. However, defendants contend that plaintiff's complaint did not adequately exhaust the claims he has raised in this lawsuit because it did not mention any wrongdoing on the part of defendants Anderson or Dressler.

Although Wisconsin's regulations do not require inmates to specify defendants by name in their complaints, the regulations do require inmates to provide enough information in their complaints to alert prison officials to the nature of the wrongs for which they seek redress. Wis. Admin. Code § DOC 310.09; Strong, 297 F.3d at 650. Plaintiff's complaint did not identify defendants Anderson or Dressler either by name or by reference to the acts of wrongdoing in which they were alleged to engaged. In the complaint, plaintiff asked to see a doctor. He did not assert that his request to see the doctor had been "concealed" by any prison staff member. Because complaint number SCI-2005-19608 did not put prison officials on notice of plaintiff's complaints against defendants Anderson or Dressler, plaintiff did not exhaust his administrative remedies with respect to his claim that they concealed his June 29, 2005 health service request seeking treatment for rectal prolapse. Therefore, defendants' motion will be granted with respect to that claim.

2. Inmate complaint SCI-2005-27005

Plaintiff's inmate complaint SCI-2005-27005 was rejected by the inmate complaint

examiner on the ground that it "d[id] not allege sufficient facts upon which redress [could] be made," a ground the reviewing authority reiterated on appeal. Normally, determining whether an inmate complaint has been properly rejected is the responsibility of the reviewing authority designated by Wis. Admin. Code § DOC 310.11(6), and is not a question the federal court is free to revisit. Pozo, 286 F.3d at 1025 ("If the state stands on its time limits and rejects a filing as too late, then state remedies have not been properly invoked."); Freeman v. Page, 208 F.3d 572, 576 (7th Cir. 2000) (if state court dismisses petition for procedural flaws such as untimeliness, then petition was not properly filed); Lindell v. O'Donnell, Case No. 05-C-004-C, Order dated Oct. 21, 2005, dkt #75, at40-41 ("[W]hen the record of an inmate's use of the prison complaint system arrives in federal court, it is what it is."). This is because typically inmate complaints are "rejected," rather than "dismissed," only when they fail to comport with the prison's procedural rules.

Here, however, prison officials did not reject plaintiff's complaint on procedural grounds. (Although the inmate complaint examiner made some mention that plaintiff's complaint may have been untimely, the complaint was not rejected on that ground, nor is it clear that such a rejection would have been appropriate.) Defendants do not contend that plaintiff's complaint was unclear. Nevertheless, the inmate complaint examiner rejected it because it failed to "allege sufficient facts upon which redress [could] be made."

In his complaint, plaintiff explained in excruciating detail how his wrist was injured

and the ways in which he believed each of the defendants named in this lawsuit acted improperly in providing or failing to provide him with medical care for that injury. In response to his complaint, the inmate complaint examiner obtained plaintiff's medical records, reviewed them, and made a number of factual findings, including a finding that (1) plaintiff's x-ray had revealed "normal" results; (2) plaintiff had not complained of his injury during the month of May; and (3) defendant Dressler told plaintiff he had an upcoming appointment (a fact plaintiff admitted, though he challenged the truth of the assertion).

Having understood plaintiff's complaint and having investigated his claims, the inmate complaint examiner rejected the complaint as lacking "sufficient facts upon which redress m[ight] be made." Clearly, the "rejection" was not based on too few facts, a procedural error, but on the inmate complaint examiner's determination that plaintiff was not entitled to redress in light of her investigation of the facts and finding that plaintiff had received appropriate medical attention. Thus, the inmate complaint examiner's decision was a decision on the merits of plaintiff's complaint. When plaintiff appealed the inmate complaint examiner's decision to the warden, the only means by which a prisoner may seek review of a rejected inmate complaint, the warden sustained the rejection on the same ground cited by the inmate complaint examiner. There was nothing further plaintiff could have done to obtain administrative review of his grievance, and it is difficult to imagine how he might have drafted his complaint differently in order to receive a response through the

prison's normal grievance review system. Because prison officials rejected plaintiff's complaint on the basis of its substance rather than its form and because plaintiff took every action available to him to exhaust his complaint under the prison's administrative rules, he exhausted all available administrative remedies, as he was required to do under 42 U.S.C. § 1997e(a). Consequently, defendants' motion to dismiss will be denied with respect to plaintiff's claims that defendants Renee Anderson and Becky Dressler concealed his June 29, 2005 medical request concerning his wrist injury from Dr. Debb Lemke and that defendant Bruce Gerlinger provided inadequate treatment for his wrist injury.

ORDER

IT IS ORDERED that

1. Plaintiff's Motion for Enlargement of Time is GRANTED. Plaintiff's brief in opposition to defendants' motion to dismiss is accepted for consideration in connection with defendants' motion to dismiss;

2. Plaintiff's Motion to Stay is DENIED;

3. Plaintiff's Motion for Rule 11 Sanctions is DENIED;

4. Plaintiff's Motion for Entry of Default is DENIED; and

5. Defendants' "Motion to Dismiss in Part" is

    a) DENIED with respect to plaintiff's claims that

i. defendants Renee Anderson and Becky Dressler concealed plaintiff's June 29, 2005 medical request concerning his wrist injury from Dr. Debb Lemke; and

ii. defendant Bruce Gerlinger provided inadequate treatment for plaintiff's wrist injury; and

b) GRANTED with respect to plaintiff's claim that defendants Anderson and Dressler concealed plaintiff's June 29, 2005 medical request concerning his rectal prolapse from Dr. Debb Lemke.

Entered this 12th day of February, 2007.

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