

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

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DAVID J. CLARK,

Petitioner,

v.

LAURENS D. YOUNG,

Respondent.  
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OPINION and ORDER

06-C-716-C

This is a proposed civil action for monetary relief, brought under 42 U.S.C. § 1983. Petitioner David Clark is detained as a patient at the Wisconsin Resource Center in Winnebago, Wisconsin, awaiting trial to determine whether he will be civilly committed as a sexually violent person under Wis. Stat. Ch. 980. Petitioner contends that respondent Laurens Young, a physician with the Wisconsin Department of Corrections violated his rights under the Eighth Amendment by prescribing him the wrong medication from 1999 through his release from prison in 2005.

Petitioner seeks leave to proceed without prepayment of fees and costs, pursuant to 28 U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the full fees and costs of instituting

this lawsuit. Because he is a patient and not a prisoner, petitioner is not subject to the 1996 Prison Litigation Reform Act.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, when a litigant is requesting leave to proceed in forma pauperis, the court must deny leave to proceed if the action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages from a respondent who is immune from such relief. 28 U.S.C. § 1915(e).

From petitioner's complaint, the documents attached to it and Wisconsin circuit court records information publicly available on the Internet, I draw the following facts.

## FACTUAL ALLEGATIONS

### A. Parties

\_\_\_\_\_ Petitioner David Clark is a patient at the Wisconsin Resource Center in Winnebago, Wisconsin.

Respondent Laurens D. Young is a physician employed by the Wisconsin Department of Corrections.

### B. Petitioner's Conduct at the Wisconsin Resource Center

At some time, petitioner suffered a "near-fatal head injury and resulting brain

damage” that left him with impaired attention, concentration and memory. The same injury caused petitioner to become disinhibited and hypersexualized.

In 1997, petitioner was sentenced to five years’ imprisonment for two counts of first degree sexual assault of a child in Waukesha County Case No. 90CF383. During the first several years petitioner was incarcerated, he did not receive any medication for his behavioral problems.

In 1998, petitioner filed Case No. 98-C-130-C in this court, alleging that prison officials violated his rights under the Eighth Amendment by failing to provide him with treatment for his hypersexuality and impulsivity. While his lawsuit was pending, petitioner was examined by a medical specialist, Dr. Fred Berlin of the Johns Hopkins University Institute for the Study, Prevention and Treatment of Sexual Trauma, who recommended that petitioner be prescribed the antiandrogen leuprolide. Shortly after Berlin issued his recommendation, petitioner settled his lawsuit in exchange for a promise that the Department of Corrections would provide him with antiandrogen therapy.

On February 16, 2000, respondent Young issued petitioner a prescription for the antiandrogen progesterone. Young did not prescribe leuprolide.

After completing his prison sentence, petitioner was taken to the Wisconsin Resource Center to await trial to determine whether he would be civilly committed as a sexually

dangerous person. In April 2006, Dr. Berlin “reminded” petitioner that he had recommended petitioner receive leuprolide, not progesterone. Petitioner’s “freedom, sanity—yea, his very life—depends on obtaining leuprolide treatment.”

In July 2006, petitioner succeeded in obtaining leuprolide. The medication suppresses his testosterone and has eliminated his “aberrant impulses” completely.

## DISCUSSION

In this lawsuit, petitioner appears to be alleging that the Wisconsin Department of Corrections violated rights under the Eighth Amendment by failing to provide him with leuprolide from the time it was recommended by Dr. Berlin in 1999 until the time petitioner was released from prison in April 2005. The Eighth Amendment protects prison inmates from cruel and unusual punishment and has been interpreted to require the government to provide for inmates’ basic human needs such as food, clothing, shelter and medical care. Higgason v. Farley, 83 F.3d 807, 809 (7th Cir. 1996). With respect to medical care, the Supreme Court has held that “a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs” to state an Eighth Amendment claim. Estelle v. Gamble, 429 U.S. 97, 106 (1976).

This standard contains objective and subjective components. First, an inmate’s medical need must be objectively serious. A condition meets this standard if it is “one that

has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor's attention." Greeno v. Daley, 414 F.3d 645, 653 (7th Cir. 2005). In addition, the Court of Appeals for the Seventh Circuit has held that the phrase "serious medical needs" encompasses 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 v. Peters, 111 F.3d 1364, 1371 (7th Cir. 1997).

The subjective element of a denial of medical care claim requires that the prison official act with a sufficiently culpable state of mind. Id. at 1369. This state of mind, known as deliberate indifference, requires at a minimum that a prison official be aware of and disregard a substantial risk to the inmate's health. Greeno, 414 F.3d at 653. In other words, the official "must 'both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists' and 'must also draw the inference.'" Id. (quoting Farmer v. Brennan, 511 U.S. 825, 837 (1994)). However, "a prisoner claiming deliberate indifference need not prove that the prison officials intended, hoped for, or desired the harm that transpired." Haley v. Gross, 86 F.3d 630, 641 (7th Cir. 1996). On the other hand, inadvertent error, negligence, gross negligence and ordinary malpractice do not constitute deliberate indifference. Vance v. Peters, 97 F.3d 987, 992 (7th Cir. 1996); see also Snipes v. DeTella, 95 F.3d 586, 590-91 (7th Cir. 1996).

In this case, petitioner alleges that a physician recommended that he receive the antiandrogen leuprolide. (An antiandrogen is “a substance that tends to inhibit the production, activity, or effects of a male sex hormone.” Merriam-Webster’s Medical Dictionary (2002)). Instead, respondent Young prescribed another antiandrogen, progesterone. Both medications are recognized treatments for sexual deviance. See, e.g., Linda S. Grossman, Brian Martis & Christopher G. Fichtner, “Are Sex Offenders Treatable? A Research Overview,” *Psychiatric Services*, 50:3 349, 351-53 (Mar. 1999) (cataloging research on the effectiveness of various antiandrogen therapies); Fabian M. Saleh & Fred S. Berlin, “Sex Hormones, Neurotransmitters, and Psychopharmacological Treatments in Men with Paraphilic Disorders,” *J. Child Sexual Abuse*, 12:3-4 233, 243-244 (2003).

It is not clear whether petitioner’s sexual impulsivity constitutes a serious medical need for which the Eighth Amendment mandates pharmacological treatment. Even if it does, nothing in petitioner’s complaint suggests that respondent Young was deliberately indifferent to petitioner’s need for such medication. In fact, all evidence points to the opposite conclusion: respondent Young prescribed petitioner an antiandrogen medication as Berlin had recommended. Although petitioner alleges that leuprolide is more effective at reducing his sexual impulsivity than is progesterone, this allegation alone is insufficient to permit the inference that respondent Young exhibited deliberate indifference to petitioner’s medical needs by prescribing one drug rather than the other. Petitioner has not stated a

claim against respondent Young under the Eighth Amendment; consequently, his request for leave to proceed in forma pauperis will be denied.

ORDER

IT IS ORDERED that petitioner David J. Clark's request to proceed in forma pauperis is DENIED and this case is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) on the ground that the complaint fails to state a claim on which relief may be granted. The clerk of court is directed to close this file.

Entered this 19th day of December, 2006.

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