

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

JEFFREY D. LEISER,

Plaintiff,

v.

BELINDA SCHRUBBE, R.N., *et al.*,

Defendants.

OPINION AND ORDER

11-cv-254-slc

The plaintiff, Jeffrey D. Leiser, has filed a civil rights complaint under 42 U.S.C. § 1983. He alleges that several health care providers and correctional officers violated his Eighth Amendment right to receive adequate medical care while he was incarcerated at the Waupun Correctional Institution. After screening the complaint, the court allowed Leiser to proceed with claims that the following defendants were deliberately indifferent to his chronic lower back pain: Belinda Schrubbe, Charles Larson, Debbie Lemke, Paul Sumnicht, Mark Jensen, Sandy Jackson, and Tonia Rozmarynoski (formerly known as Tonia Bristol). On reconsideration of the screening order, the court allowed Leiser to proceed with claims against Cynthia Thorpe and Tammy Giese.

Before the court is a motion for summary judgment that is joined by all defendants except for Thorpe and Giese.¹ *See* dkt. 51. I am granting the motion with respect to two claims: (1) that defendants Larson, Lemke and Sumnicht failed to authorize surgery based on an October 18, 2005 MRI; and (2) that defendant Schrubbe took away Leiser's "medical recreation." I am denying the motion with respect to all remaining claims. Viewing the evidence in the light most favorable to Leiser, I conclude that reasonable jurors could find that defendants

¹ After the court granted Leiser's request to proceed with his claims against Thorpe and Giese, the record shows that the Attorney General's Office accepted service on behalf of both defendants on August 17, 2011. *See* dkt. 22, *Amended Acceptance of Service*. To date, however, it does not appear that these defendants have filed an answer. *See* dkt. 24, *Answer*, and dkt. 29, *Amended Answer*. Likewise, while the summary judgment motion includes an affidavit from Thorpe, the brief in support does not mention or make any argument on the claims against Thorpe or Giese. *See* dkt. 52.

Schrubbe, Larson, Lemke, and Sumnicht's failure to investigate the source of Leiser's pain was deliberate indifference to a serious medical need. Likewise, reasonable jurors also could find that defendants Jensen and Jackson's failure to treat Leiser in the Health Services Unit and defendant Rozmarynoski's failure to ensure that he had access to prescribed medical care constituted deliberate indifference to his complaints of pain.

In light of this outcome and its timing, I am granting in part the defendants' recently-filed motion to stay proceedings, dkt. 80: I am extending the parties' pretrial submission and response deadlines by 10 days, but I am leaving the November 13, 2012 trial date in place.

Before addressing the summary judgment motion, I note that Leiser contests many, if not most, of the defendants' proposed findings of fact. I conclude that certain facts proposed by the defendants are undisputed to the extent that they are supported by admissible evidence. *Doe v. Cunningham*, 30 F.3d 879, 883 (7th Cir. 1994); *Strong v. Wisconsin*, 544 F. Supp. 2d 748, 759-60 (W.D. Wis. 2008). Likewise, I conclude that many of Leiser's proposed findings of fact are just his argumentative contentions, supported only by his own conclusory assertions without citation to admissible evidence in the record. I have disregarded all such proposed facts pursuant to § II.E.2 of the *Procedure to be Followed on Motions for Summary Judgment* (attached to the pretrial conference order) dkt. 36. ("The court will not consider any factual propositions made in response to the moving party's proposed facts that are not supported properly and sufficiently by admissible evidence.").

From the parties' proposed findings and the evidence in the record, I find the following facts to be material for purposes of deciding the summary judgment motion:

FACTS

I. The Parties

Leiser is a 42-year-old inmate who is currently incarcerated in the Wisconsin Department of Corrections (DOC) at the Stanley Correctional Institution. At all times relevant to the complaint (from August 20, 2004 through October 20, 2010), Leiser was in custody at the Waupun Correctional Institution (WCI).

Defendant Belinda Schrubbe is a registered nurse employed as a health services manager of the WCI Health Services Unit (HSU). As health services manager, Schrubbe provides administrative support for the HSU. She does not provide care directly to patients, but she has supervisory responsibilities that relate to the provision of such care, such as the scheduling of appointments, developing procedures and ensuring that health care providers receive medical records or reports that are necessary to provide treatment.

Defendant Charles Larson was employed by DOC as a physician at WCI until the end of 2006, when he transferred to another facility. Defendant Debbie Lemke was employed as a physician at WCI starting in January of 2007. Dr. Lemke treated Leiser temporarily during January and February of 2007, when his primary care was assumed by another physician. Defendant Paul Sumnicht, who is currently employed by DOC as a physician at WCI, treated Leiser from April of 2007 until Leiser was transferred to the Stanley Correctional Institution (SCI) in late October 2010.

Defendant Mark Jensen is a registered nurse at WCI. Defendant Sandy Jackson was employed as a registered nurse at WCI until February of 2012, when she transferred to another facility. Nurses at DOC are expected to “assure quality health care . . . to incarcerated individuals in infirmary and ambulatory care situations” and to provide “emergency care for

major and minor conditions to prevent untimely illness or death.” They perform “nursing assessments,” report their findings to a doctor, and assist the physicians in providing medical services to the inmate population. They also are responsible for “medication management” according to prison policy and procedure.

Defendant Tonia Rozmarynoski (formerly Tonia Bristol) is employed by DOC as a correctional officer at WCI. As an officer with the rank of sergeant, defendant Rozmarynoski’s duties primarily include security, custody, control and rehabilitation of inmates residing at WCI. In addition, defendant Rozmarynoski is responsible at times for delivering or distributing medication to inmates.

II. Leiser’s History of Back Problems

The medical records show that Leiser has a history of chronic low back pain as the result of a work-related injury. Leiser had spinal fusion surgery at St. Mary’s Hospital in Milwaukee in 1996.² The surgery was necessary to correct a “central disc protrusion” with degeneration of the L5-S1 vertebrae, which is in the lower back.³ After Leiser began to experience progressive back pain, the surgery was repeated at St. Mary’s Hospital in 2002 with new “fixation hardware” to correct a pseudoarthrosis (“false union” or failure to heal) at the L5-S1 location.

² Spinal fusion surgery is a “major surgical procedure sometimes considered to treat severe, persistent back pain, such as that caused by a slipped disk.” AMERICAN MEDICAL ASS’N, COMPLETE MEDICAL ENCYCLOPEDIA 1150 (2003). The court notes that the parties and the exhibits use “disk” and “disc” interchangeably to mean the same thing, although the latter appears to be the standard spelling. *See id.* at 470, 1133-34; *see also* DORLAND’S ILLUSTRATED MEDICAL DICTIONARY 526, 546 (32nd ed. 2012).

³ The spine is composed of 33 vertebrae: “seven in the neck (cervical vertebrae), 12 in the upper back (thoracic vertebrae), five below the ribs in the lower back (lumbar vertebrae) five fused into a single unit called the sacrum, and four fused into a single unit called the coccyx (tailbone).” AMERICAN MEDICAL ASS’N, COMPLETE MEDICAL ENCYCLOPEDIA 1151 (2003). The pleadings and medical records in this case refer to vertebrae by abbreviation (C-cervical, T-thoracic, L-lumbar, and S-sacrum).

After Leiser was sentenced to prison in 2004, his back problems worsened until he had a third spinal fusion surgery in June of 2010. The parties present divergent accounts of Leiser's condition. Although the defendants do not dispute that Leiser suffered chronic back pain, they insist that his complaints were treated reasonably. Leiser vehemently disagrees and contends that he fluctuated between moderate and severe pain, particularly after his existing back problems were aggravated or injured anew on October 28, 2005. As the following chronology illustrates, Leiser's complaints of pain were treated but were not always treated promptly and were met with varying degrees of success.

2004

In July 2004, Leiser returned to DOC custody ⁴ with a number of medical problems, including obesity, gastroesophageal reflux disease (GERD), back and knee issues. Because of his spinal fusion surgeries in 1996 and 2002, Leiser arrived with a documented history of chronic low back problems.

Following his assignment to WCI, on September 8, 2004, Leiser was seen by a nurse in the HSU for back pain. Leiser, who requested an appointment with a physician, reported that his back muscles were tightening up and causing spasms. Leiser also reported that he was unable to walk or sit for extended periods of time. The nurse referred Leiser to a physician.

Dr. Larson treated Leiser for the first time for complaints of back pain on September 14, 2004. At that time, Leiser was taking Ibuprofen for pain but he wanted "something more." Dr. Larson continued Leiser's prescription for Ibuprofen and requested copies of Leiser's surgical

⁴ In 1997, Leiser was convicted and sentenced to state prison, released on parole in January 2002, then returned to state prison in 2004 following a new conviction.

records for further evaluation. Dr. Larson reviewed those records and saw Leiser again on September 27, 2004. At that appointment, Dr. Larson restricted Leiser to “light activity” and placed him on a 20 pound lifting limit. Dr. Larson also increased Leiser’s dosage of Ibuprofen from 600 mg to 800 mg three times a day and ordered an extra pillow for Leiser to have in his cell. Later, Dr. Larson approved a “lower bunk restriction” for Leiser.

On November 12, 2004, Dr. Larson treated Leiser for complaints of knee pain. At this appointment, Dr. Larson discussed pain medication alternatives for Leiser’s knees and his back. Dr. Larson prescribed Gabapentin, an anti-seizure medication used to calm nerve pain impulses.

On December 13, 2004, Leiser was treated again in the HSU when he complained of having trouble starting his urinary flow. Leiser reported having painful urination, among other things. Dr. Larson authorized urinalysis to determine if Leiser had a urinary tract infection or prostate problems, and he prescribed a low-dose antibiotic (Cipro) pending the lab results. At a follow-up appointment on December 20, 2004, Leiser reported having less pain and the condition seemed to improve. However, he would continue to have bladder problems, along with other issues, in 2005.

2005

In January of 2005, Leiser was treated for “severe GERD.” On February 11, 2005, he reported having more pain with urination. Dr. Larson ordered a complete urinalysis and urine culture, prescribed Oxycodone (an opiate or narcotic medication) for pain, and submitted a request for a consultation with a urologist. That request was approved and Leiser saw a specialist (Dr. Bishop) in May 2005.

Leiser saw Dr. Larson again on July 11, 2005, for a follow-up appointment regarding the problems he was having with urination. Dr. Larson submitted a request for a neurological consult to determine if Leiser had a “neurogenic bladder,” which typically is caused by a nerve condition.⁵ At that point, Leiser required a catheter on an intermittent basis to control the frequency of his urination.⁶

On September 12, 2005, Leiser was evaluated by a neurologist (Dr. Luzzio) at the University of Wisconsin Hospital and Clinics. Dr. Luzzio diagnosed a neurogenic bladder and recommended a magnetic resonance imaging (MRI) study to determine if Leiser’s problem had a “spinal origin.”

On October 18, 2005, MRIs were completed on Leiser’s head, cervical spine, lumbar spine and thoracic spine. The MRI revealed a “small disc osteophyte complex” at the C3-C4 vertebrae. According to Dr. Sumnicht, this means that the “rubbery disc” between these two vertebrae was “pushed backward” and that Leiser’s nearby neck joints (the “uncovertebral joints”) had bone spurs that were signs of arthritis.⁷ Both the disc osteophyte complex and the bone spurs can cause problems, *i.e.*, by choking the spinal cord (“central canal narrowing”) or by causing a pinched nerve (“foraminal narrowing”). This was not a problem with Leiser’s C3-C4

⁵ A “neurogenic” condition originates or stems from “neurogenesis,” which starts in the nervous system. *STEDMAN’S MEDICAL DICTIONARY* 1310 (28th ed. 2006). A neurogenic bladder functions in a defective manner due to “impaired innervation.” *Id.* at 226. As discussed later in this order, Leiser appears to argue that he developed a neurogenic bladder or that this condition was aggravated as a result of compromised nerves in his spine, which defendants failed or refused to treat.

⁶ It is not entirely clear from the medical records, but it appears that Leiser’s neurogenic bladder was a persistent problem throughout the time he was experiencing chronic back pain at WCI and that he required the use of a catheter to urinate for most or all of the time period relevant to the complaint.

⁷ Although Dr. Larson was treating Leiser at this time, Dr. Sumnicht interprets the results of Leiser’s MRI and explains what those results mean. *See* dkt. 48, Aff. of Paul Sumnicht, M.D., at ¶ 26. Dr. Sumnicht has summarized Leiser’s medical records, which are attached to his affidavit as Exh. A.

vertebrae. However, both of these problems were present to a “mild” degree with Leiser’s C4-C5 vertebrae, which was believed to explain his bladder symptoms.

The October 18, 2005 MRI also showed “mild epidural lipomatosis” or fatty tissue throughout the lower level of Leiser’s surgically repaired lumbar spine (L5-S1). The MRI also revealed a “mild broad-based disk bulge” and enlargement (hypertrophy) of the nearby facet joints. There was “mild epidural lipomatosis that resulted in mild central canal” at L3-L4 and L4-L5. In other words, there was mild narrowing of Leiser’s lower spine and the empty spaces created by his previous surgeries were “filled in with fat.”

The MRI of Leiser’s thoracic spine showed no evidence of significant spinal cord compression or “definite nerve root compromise.” However, the MRI did reveal “broad-based disk bulges” at Leiser’s T6-T7, T7-T8 and T8-T9 vertebrae. This means that the rubbery cushions between these vertebrae were “pushed back into the spinal canal,” causing spinal pressure. Dr. Luzzio, who ordered the tests, was going to decide what further treatment Leiser needed after considering the MRI reports.

While awaiting the results of Leiser’s MRI and Dr. Luzzio’s recommendation, Dr. Larson increased Leiser’s pain medication by prescribing Oxycodone, 20 mg twice a day. Nevertheless, Leiser continued to experience moderate to severe back pain.

On October 31, 2005, Leiser asked WCI security personnel to contact the HSU because he was in great pain. It appears that at that time, defendant Jensen was the only nurse on duty and no physician was available. The parties dispute what occurred next: Jensen states that he saw Leiser in the HSU, Leiser did not report a new injury to his back, so Jensen told Leiser to return to his cell and rest, to continue taking his Oxycodone, and to submit a health services request if his symptoms worsened or there was no improvement in a few days. Leiser contends

that Jensen's entire account of the events on October 31, 2005 is a "lie." Leiser maintains that he told Jensen that his back "popped" on or about October 28, 2005, and that he was in severe pain, but that Jensen initially refused to see him at all. Leiser contends that his wife, Heidi Leiser, had to call the prison and beg officials to provide him with care. After his wife made this phone call, Leiser was taken to the HSU in a wheel chair because he was in so much pain. When he arrived at the clinic, Leiser states that Jensen performed no assessment at all. Instead, Jensen "yelled at him" and gave him some Ibuprofen, but made no meaningful effort to alleviate his severe pain. Leiser presents an affidavit from his cell mate at that time (Lonnie Jackson) in support of his version of the incident.⁸

On November 2, 2005, Leiser was treated in the HSU by another nurse. During this visit, Leiser described how he hurt his back on October 28, 2005, and he was evidently experiencing acute pain (9 on a scale of 1 to 10). When Leiser reported that his back pain was not relieved by Oxycodone and Ibuprofen, this nurse contacted Dr. Larson. That same day, Dr. Larson gave Leiser the option of switching to Methadone for pain control. After Leiser elected to try the Methadone, Dr. Larson discontinued the prescription for Oxycodone. Leiser also was advised that he had an upcoming appointment with the UW Neurology Department to discuss the results of his MRI tests.

⁸ Lonnie Jackson claims to have observed that Leiser was in severe pain on October 31, 2005, and had to call his wife to get help from the HSU. *See* dkt. 71, *Affidavit of Lonnie Jackson*. Jackson states that he was with Leiser on October 28, 2005, when his back popped. He saw that Leiser was in severe pain on October 31, 2005, and could not walk, stand, sit, or lay on his back. When Leiser asked for help from the HSU, Jackson witnessed a correctional officer and a sergeant tell Leiser that Nurse Jensen refused to see him. Jackson also witnessed Leiser call his wife to tell her "what happened to his back" and he heard Leiser ask her to contact the prison to see if she would contact Nurse Jensen on his behalf. Jackson later observed Leiser being taken to the HSU in a wheelchair.

On November 4, 2005, Leiser was seen by Dr. Luzzio at the UW Neurology Clinic. After reviewing the MRIs taken on October 18, 2005, Dr. Luzzio determined that there was no evidence of pressure on nervous tissue, the spinal cord or nerve roots.⁹ Dr. Luzzio concluded that Leiser's bladder problems were not caused by spinal cord problems or "central nervous system disease," but he acknowledged that the condition was attributable to pain. In other words, Leiser was "stalling" or having difficulty urinating due to chronic back pain. As a result, Dr. Luzzio recommended that Leiser have (1) access to good pain control and (2) a referral to the UW Spine Rehab Clinic.

On November 7, 2005, Leiser was seen by a nurse for lower back pain, which had improved somewhat with Methadone. Leiser reports that he still winced with any movement, even when his blood pressure was measured. The nurse issued Leiser a cane because he was limping. The nurse also allowed Leiser to take meals in his cell.

On November 10, 2005, Dr. Larson saw Leiser regarding a proposed treatment plan. Dr. Larson reviewed the MRI results and Dr. Luzzio's recommendations.¹⁰ Dr. Larson replaced Leiser's cane with crutches so that Leiser could better distribute his weight. Dr. Larson also increased Leiser's dosage of Methadone for pain management. Dr. Larson submitted a request for a physical therapy evaluation and treatment on Leiser's behalf and advised that he would consider seeking approval for the UW Spine Rehab or Pain Clinic, if necessary.

⁹ Leiser disputes Dr. Luzzio's interpretation, noting that the MRI showed broad-based disk bulges at T6-T7, T7-T8, and T8-T9, among other problems. Leiser insists that these bulges compromised his spinal cord and caused severe pain in his thoracic spine, leading him to develop a neurogenic bladder or aggravating this condition such that he now has permanent nerve damage. Leiser is entitled to his opinion on this matter, but pursuant to F.R. Ev. 701[c], his opinion is not entitled to any weight.

¹⁰ Leiser disputes that Dr. Larson discussed with him the results of his thoracic spine MRI, which showed broad-based disk bulges at T6-T7, T7-T8, and T8-T9. Leiser argues that he did not learn that the October 18, 2005 MRI showed bulging disks in his thoracic spine until he was transferred to SCI in 2010, because prison officials tried to cover up these results.

From November 16 through December 15, 2005, Leiser participated in physical therapy, as requested by Dr. Larson. Leiser reported pain with the lightest touch to his lower back. He made very little progress and showed no improvement after 12 sessions. The physical therapist found that Leiser was at risk for falls and needed a cane. After discussing Leiser's condition with the physical therapist, Dr. Larson ordered an extra mattress and pillow for Leiser to use for a period of four months.

2006

On January 9, 2006, Dr. Larson saw Leiser again for pain management. During this visit, Leiser asked to discontinue Methadone because of some adverse side effects and asked to switch back to Oxycodone. Dr. Larson agreed and approved a prescription for Oxycodone while weaning Leiser off of Methadone. Dr. Larson also submitted a request to approve treatment for Leiser at the UW Spine Rehab Clinic, as recommended by Dr. Luzzio. That request was approved.

On April 18, 2006, Leiser began treatment at the UW Spine Rehab Clinic, where he was seen by Dr. James Leonard. Dr. Leonard recommended increasing Leiser's dosage of Oxycodone. Dr. Leonard also recommended a lumbar myelogram with a CT scan. This test would feature dye injected into the lumbar space to outline the nerves, which would show any indentation of the nerve root coverings. Dr. Leonard then recommended a follow-up examination with an orthopedic specialist to evaluate the stability of Leiser's previous spinal fusion surgery.

On April 27, 2006, Dr. Larson saw Leiser again for pain management. During this appointment, Dr. Larson discussed Dr. Leonard's recommendations with Leiser. Dr. Larson also extended his previous order to allow Leiser to use an extra mattress and pillow for an additional four months. Dr. Larson increased Leiser's dosage of Oxycodone, as recommended by Dr.

Leonard, and submitted a request for Leiser to undergo the lumbar myelogram with a CT scan. That request was approved the same day.

On May 11, 2006, Leiser had a lumbar myelogram with a CT scan at the UW Spine Rehab Clinic. The findings showed no evidence of the hardware loosening from Leiser's previous fusion surgery and no failure of the bone graft. It did show, however, that Leiser had a mild disk bulge at L4-5, with "mild" central canal narrowing or pinching of the nervous system in that area of Leiser's spine. The narrowing was not considered "critical," meaning that it did not constrict or pinch Leiser's spinal cord.

On May 24, 2006, Dr. Larson saw Leiser again for pain management and renewed his prescription for Oxycodone.

On June 5, 2006, Dr. Larson adjusted the prescription at Leiser's request so that Leiser could receive his medication at noon instead of in the morning. Dr. Larson also approved Leiser's request for "medical ice" to ease his back pain.

On July 13, 2006, Leiser wrote to defendant Schrubbe to ensure that physicians at the UW Spine Rehab Clinic had copies of his MRI reports. He stated that he was in "pain all the time."

On August 7, 2006, Leiser was seen by a nurse for complaints of shoulder pain.

On August 11, 2006, Leiser was seen at the UW Spine Rehab Clinic, where it was recommended that he continue with the non-operative care that he was currently receiving. In other words, the UW Spine Rehab Clinic recommended pain management rather than surgical intervention with respect to Leiser's complaints of back pain.

Leiser continued to see Dr. Larson for complaints of shoulder, knee and back pain. On August 28, 2006, Dr. Larson determined that Leiser had rotator tendinitis in his shoulder. Dr. Larson discontinued Leiser's authorization for crutches and replaced them with a cane. Dr.

Larson extended his authorization for Leiser to have an extra mattress and an extra pillow for up to a year.

On September 8, 2006, Dr. Larson issued an order that allowed Leiser to be fed all meals in his cell for the next year.

On October 4, 2006, Dr. Larson renewed Leiser's prescription for Oxycodone for pain.

On October 15 or 16, 2006, Leiser claims that he was denied his prescribed dosage of pain medication by Sergeant Rozmarynoski. Leiser contends that he told Sergeant Rozmarynoski that he had not received his prescribed dosage of pain medication for 32 to 36 hours, that he was in severe pain, and that he was experiencing symptoms of withdrawal. According to Leiser, Sergeant Rozmarynoski refused to contact the HSU to request the medication from the duty nurse.

On October 17, 2006, Nurse Monroe-Jennings received a call about Leiser at 12:30 a.m. indicating that Leiser was experiencing narcotic withdrawal. Leiser stated that he had not received his prescribed dosage of Oxycodone for 36 hours. At 2:05 a.m., Leiser's vital signs were stable, except that he had an elevated heart rate of 113. Leiser was given his prescribed dosage of Oxycodone at 2:50 a.m. and reported that he was fine at 5:30 a.m.

On October 18, 2006, Leiser wrote a letter to Schrubbe complaining that he was denied pain medication for a period of 33-34 hours because HSU staff refused to refill his prescription and Sergeant Rozmarynoski refused to call the duty nurse on Leiser's behalf.

On November 21, 2006, Schrubbe responded advising that she was implementing a process at the HSU to automatically refill medication for patients such as Leiser, who could not be without pain medication.

On December 13, 2006, Dr. Larson renewed Leiser's prescription for Oxycodone. On December 27, 2006, Leiser was seen by a nurse in the HSU complaining of pain from a bulge in his lower back.

2007

On January 9, 2007, Leiser was seen for the first time by Dr. Lemke, who had temporarily replaced Dr. Larson as the physician at WCI. During that appointment, Leiser complained of testicular pain. The parties disagree about what occurred during this appointment. When Leiser also complained of back pain, Dr. Lemke reportedly determined that Leiser had a spasm in his lower back and advised him to do stretches. Leiser disputes this, noting that he was only given an appointment to address a bulge in his right testicle. Leiser argues that Dr. Lemke refused to look at his back during this examination and refused to address his complaints of back pain.

On January 16, 2007, Leiser wrote to Schrubbe asking to be seen by an orthopedic specialist at the UW Spine Rehab Clinic. Leiser reported having constant, severe pain in his neck and back. He stated that it felt like someone "stabbing [him] in the SPINAL CORD ALL THE TIME." (Emphasis in original). In his letter to Schrubbe, Leiser expressly alleged that he was being denied care for a back injury that he suffered on October 28, 2005, after the MRI study was done on October 18, 2005, and that both Dr. Larson and Dr. Lemke refused to take him seriously and had ignored his complaints.

The parties also disagree about what occurred during the next examination on January 25, 2007. Dr. Lemke claims that she treated Leiser for "various ailments, including chronic back pain." Leiser disputes this, claiming that Dr. Lemke refused to treat him at all that day. The

medical records show that, on January 26, 2007, Dr. Lemke conducted a review of Leiser's medical chart with regard to his complaints of back pain. She was concerned with his prolonged usage of Oxycodone. While reviewing his medical records, Dr. Lemke noted that Leiser's "chart" reflected a history of drug abuse. *See* dkt. 43, at HSU000034. For this reason, Dr. Lemke planned to gradually reduce or taper off Leiser's prescribed dosage of Oxycodone. Leiser maintains that he has no record of drug abuse, that Dr. Lemke had no valid reason to take him off pain medication, and that everything Dr. Lemke says is a "lie."

On February 9, 2007, Dr. Lemke saw Leiser for a back examination. Dr. Lemke determined that Leiser's expression of pain was not consistent with the results of her examination.

On February 15, 2007, Dr. Lemke met with DOC's "Class III Committee" to discuss Leiser's case. (Dr. Sumnicht explains that, from 2004 to 2007, the community standard for pain control was changing due to the "explosive growth in opiate prescriptions for chronic pain."¹¹ As the result of increasing use of prescription opiates for improper (*i.e.*, recreational) purposes, the Joint Commission on Hospital Standards introduced higher standards of pain control. Starting in 2007, DOC formed the Class III Committee, which is "made up of the Medical Director and other institution physicians," for the purpose of helping institution-level physicians decide on appropriate levels of pain management without automatic resort to opiate medication. This committee reviews requests for pain management based on DOC treatment guidelines and the collective experience of the other physicians).

¹¹ Dkt. 43, *Affidavit of Paul Sumnicht, M.D.*, at ¶¶ 122-24.

The Class III Committee determined that there was “no current indication” for Leiser’s pain and approved Dr. Lemke’s proposed plan to taper off his prescription for Oxycodone on February 15, 2007. In its place, Dr. Lemke prescribed Ibuprofen.

On February 24, 2007, Schrubbe responded to Leiser’s January 16, 2007 letter, in which Leiser had asked to see a specialist at the UW Spine Rehab Clinic. Schrubbe informed Leiser that Dr. Lemke would continue to follow-up with his care.

On February 25, 2007, Leiser wrote another letter to Schrubbe complaining about his back pain and the reduction in his dosage of Oxycodone. Leiser reiterated that he was in severe pain in the middle of his back and his neck. He asked to see a specialist to investigate the source of his constant pain, arguing that “no person should ever have to suffer with this kind of pain 24/7.” Schrubbe answered on February 28, 2007, advising that she would forward Leiser’s letter to Dr. Lemke, who would address Leiser’s pain management concerns.

On March 6, 2007, Leiser was seen by Dr. Correll (who is not a defendant) for back pain. Leiser told Dr. Correll that he was in pain and that he believed it was “just wrong” to take him off Oxycodone. Dr. Correll talked to Leiser about non-narcotic alternatives to pain management and prescribed Naproxen, along with a low-dose antidepressant (Amitriptyline) for pain.

On April 2, 2007, Leiser was seen by a nurse in the HSU. Leiser reported that the Amitriptyline was not helping his pain and he requested a transcutaneous electrical nerve stimulator (a TENS unit), which he had used in the past. The nurse scheduled a follow-up appointment for Leiser with a physician.

On April 12, 2007, Leiser saw Dr. Sumnicht for the first time. Dr. Sumnicht prescribed a muscle relaxer (Baclofen) for pain and asked Leiser to return for another appointment within two weeks.

On April 17, 2007, Leiser was seen by Nurse Monroe-Jennings for complaints of swelling in his face. Leiser believed that the swelling was a side effect of the Amitriptyline that he was taking for back pain. Nurse Monroe-Jennings found that his face was “edematous,” but noted no swelling elsewhere. She consulted with Dr. Sumnicht, who discontinued the Amitriptyline and scheduled a follow-up appointment for Leiser.

On April 25, 2007, Leiser saw Dr. Sumnicht for a follow-up examination for the swelling of his face. Leiser reported that the swelling was better since his prescription for Amitriptyline was discontinued. Dr. Sumnicht authorized a TENS unit to help ease Leiser’s back pain, but he discontinued the Baclofen after Leiser reported that it was causing diarrhea.

On April 27, 2007, Dr. Sumnicht ordered a low dose of Oxycodone for Leiser’s back pain until he could obtain a TENS unit. Dr. Sumnicht changed his mind after reviewing Leiser’s chart. After considering the side effects that Leiser previously had with Methadone, and the risk of dependence on narcotics for Leiser, who was age 37 at that time, Dr. Sumnicht canceled any further refills for Oxycodone.

On May 1, 2007, Dr. Sumnicht discussed Leiser’s case with the Class III Committee to formulate a treatment plan. The plan was to use the TENS unit for Leiser’s back pain and to emphasize exercise. On May 10, 2007, Dr. Sumnicht prescribed a low dose of Gabapentin for pain.

On May 17, 2007, Leiser was provided with a TENS unit. At a follow-up examination on June 5, 2007, Leiser told Dr. Sumnicht that the TENS unit and Gabapentin were helping. The treatment notes indicate that Leiser reported a 20% improvement in pain while he was lying down, but he continued to experience difficulty or hesitancy during urination. Dr. Sumnicht

examined Leiser's back and observed a low back spasm. Leiser also had mild stiffness in his neck and the middle portion of his back.

Leiser continued to have problems with his neurogenic bladder. On July 5, 2007, he reported that his bladder was not responding to direct pressure or the TENS unit and he complained of soreness in his lower abdomen. Leiser was treated for a possible urinary tract infection.

On August 2, 2007, Leiser saw Dr. Sumnicht for another follow-up appointment. At this appointment, Leiser reported having difficulty exercising due to back pain. The treatment notes reflect that Dr. Sumnicht considered the possibility that Leiser suffered from "failed back syndrome" or "discogenic pain." Dr. Sumnicht gave Leiser instructions on how to perform certain "chair exercises" to help improve his posture. Dr. Sumnicht also discussed strategies for dealing with "emotion using [a] belief system" and increased Leiser's dosage of Valproic Acid or VPA, which was prescribed previously for unspecified reasons.

At a September 4, 2007 follow-up examination with Dr. Sumnicht, Leiser reported that the chair exercises had improved his "rotation," but that his level of pain was the same. Leiser noted that he felt "calmer" on VPA and was sleeping better. A blood test revealed the presence of streptococcus antibodies, which could cause body aches. Noting that Leiser is allergic to penicillin, Dr. Sumnicht prescribed a different antibiotic (Keflex) to treat the infection.

On October 4, 2007, Leiser saw Dr. Sumnicht again. During this appointment, Leiser reported that he was "tired a lot" but felt better after completing a regimen of antibiotics. He reported having "anger issues" and problems with numbness, pain and weakness in his hands. After conducting some tests, Dr. Sumnicht determined that Leiser was suffering from Atherosclerotic Vascular Disease (ASCVD), meaning that the arteries in both hands were clogged

with cholesterol plaques. Dr. Sumnicht prescribed omega 3 fish oil, niacin and Trental to improve circulation in Leiser's hands. Dr. Sumnicht also increased Leiser's prescribed dosage of Gabapentin for back pain.

At a November 2, 2007 follow-up appointment, Leiser reported some improvement in his left hand. However, Leiser was still experiencing problems with his right hand which interfered with his sleep. Leiser also reported "esophageal burning," which Dr. Sumnicht appeared to diagnose as gastroesophageal reflux disease (GERD). Dr. Sumnicht continued Leiser's medication regimen and instructed Leiser to continue walking with a cane, performing exercises in a chair and using a weight machine during recreation time.

On December 5, 2007 Leiser had his next appointment with Dr. Sumnicht. Leiser reported numbness in his left hand when holding items. Dr. Sumnicht was concerned that the numbness was "positional," which suggested a "nerve pinch." Dr. Sumnicht requested approval for an electromyogram (EMG) and a nerve conduction study (NCS).

On December 11, 2007, Leiser's cervical spine was x-rayed. According to the radiology report, the x-ray showed "mild straightening of the normal lordotic curvature which can be seen in muscle spasm." Dr. Sumnicht explains that the straightening and muscle spasm showed that Leiser's neck was trying to prevent movement, which could have been a sign that Leiser's "previous mild neck disc-osteophyte complex was getting worse."

Leiser received regular sessions of "cervical traction" from December 17, 2007 through January 4, 2008. Leiser tolerated the treatments well, but reported no improvement with his pain or the numbness and tingling in his arms, hands and fingers.

2008

On January 8, 2008, Leiser underwent an EMG/NCS at one of the UW Clinics.

On January 14, 2008 and February 27, 2008, Leiser was seen in the HSU for complaints of neck pain, but the HSU had not yet received the results of his EMG/NCS from the UW.

On March 11, 2008, Leiser reportedly re-injured his back, or he suffered a new injury, when he was moved out of his cell. Leiser told the nurse that he hurt his back because he was forced to move all of his personal property by himself. The nurse scheduled a follow-up appointment with a physician.

On March 12, 2008, Dr. Sumnicht reviewed Leiser's EMG/NCS from the UW. The results showed no evidence of "cervical radiculopathy" or pinched nerves in Leiser's neck and no "brachial plexopathy" or nerve damage in his left upper extremity. There was, however, evidence of "bilateral median neuropathies" or carpal tunnel syndrome at the wrists that was described as "moderately severe." Leiser, remained on medication for pain.

On April 16, 2008, Leiser was given a splint to relieve the carpal tunnel in his left wrist. He also was provided with ice to relieve pain. It is not clear from the record, but it appears that a request for carpal tunnel surgery was submitted to the Class III Committee on May 30, 2008, and approved on July 1, 2008.

On July 11, 2008, Leiser had carpal tunnel surgery on his left wrist. On July 30, 2008, a request for surgery on Leiser's right wrist was submitted.

On July 17, 2008, Leiser saw Dr. Sumnicht for complaints of "fecal incontinence" and decreased sensation at the anal opening. Leiser reported having 6-10 bowel movements per day for the past year and a constant increase in back pain since 2005. Dr. Sumnicht considered that the loss of sensation and anal leakage could represent new nerve damage in Leiser's lower back. After determining that the upper 80% of Leiser's anal canal had normal sensation, however, Dr. Sumnicht determined that there was no new sign of nerve damage. According to the progress

notes, Leiser was concerned about another non-union at the site of his previous spinal fusion surgery. He was told that the fusion was “OK.”

During the remainder of 2008, Leiser was treated in the HSU numerous times for issues related to carpal tunnel syndrome (which he also appears to claim was aggravated by herniated or bulging disks in his spine).

On September 17, 2008, Leiser complained of pain shooting down his left leg to his heel. An EMG study conducted on Leiser’s left leg on October 7, 2008 was “normal.”

2009

On January 29, 2009, Dr. Sumnicht treated Leiser for back pain again. During that appointment, Leiser complained of pain in the thoracic area of his back. Dr. Sumnicht diagnosed a “thoracic strain” and prescribed a muscle relaxant (Cyclobenzoprine). He also ordered an x-ray of Leiser’s thoracic spine. Dr. Sumnicht authorized an extra mattress and pillow for Leiser to have in his cell for another 12 months. Dr. Sumnicht also continued to allow Leiser to take his meals in his cell.

On February 2, 2009, An x-ray was taken of Leiser’s thoracic spine. There was no evidence of fracture or bone destruction and Leiser’s alignment was normal. Likewise, there were no “suspicious lytic or blastic lesions” present. Dr. Sumnicht reviewed the x-ray on February 3, 2009, and concluded that Leiser’s thoracic spine was “normal.”

On March 23, 2009, Dr. Sumnicht saw Leiser for various issues. Dr. Sumnicht noted that post-surgical occupational therapy had eliminated 90% of the pain Leiser had experienced in his left hand. Leiser reported that the pain in his mid-back and neck was constantly present and that his level of pain was worse when twisting, turning and bending. Dr. Sumnicht observed

that the area of pain was located where the spinal cord is widest. He advised Leiser to do some gentle stretching and schedule a follow-up appointment.

On May 15, 2009, Leiser had a follow-up appointment with Dr. Sumnicht. Leiser did not mention back pain at this appointment, focusing instead on the remaining carpal tunnel issues in his right hand. Dr. Sumnicht issued an “extra large wrist splint” for Leiser’s right hand.

On July 10, 2009, Dr. Sumnicht treated Leiser for complaints of back pain and stiffness. Leiser claimed that he was suffering pain in his thoracic spine. Leiser also complained that the Ibuprofen was irritating his stomach. Dr. Sumnicht diagnosed a thoracic strain. He authorized a physical therapy evaluation and prescribed Cyclobenzaprine for pain.

On August 10, 2009, Leiser was evaluated by the physical therapist. The physical therapist recommended treatment with electrical stimulation, ultrasound, therapeutic exercise and manual therapy to treat Leiser’s chronic pain. Leiser participated in physical therapy from October 5, 2009, through the end of December 2009. While participating in physical therapy, Leiser reported at least three incidents of acute back pain “flare-ups” on October 17, 2009, November 11, 2009 and December 10, 2009. Overall, Leiser reported feeling temporary relief while he was receiving physical therapy, but he had no long-term improvement.

On December 10, 2009, Dr. Sumnicht submitted a request to the Class III Committee to approve the use of Cyclobenzaprine for pain on a long-term basis. Noting that Leiser’s pain had failed to improve with physical therapy, Dr. Sumnicht requested an MRI of Leiser’s spine.

At a December 22, 2009 follow-up examination, Dr. Sumnicht increased Leiser’s prescribed dosage of Cyclobenzaprine and observed that Leiser was unable to bend over to tie his boots.

2010

On January 6, 2010, Leiser was approved for an MRI. In preparation for this procedure, Dr. Sumnicht asked for updated x-rays to be taken of Leiser's C-spine. The radiologist who reviewed those x-rays on January 11, 2010, concluded that Leiser had "degenerative changes" at the site of his previous fusion surgery at L5-S1.

On January 20, 2010, an MRI examination of Leiser's spine was completed at Waupun Memorial Hospital. The MRI revealed "mild central disc bulging at the C3-C4 and C4-C5 levels without significant stenosis [or narrowing] noted." There was "[m]oderate subligamentous disc herniation centrally and to the right at the C6-C7 level causing mild impingement upon the right nerve root as well as a mild degree of central canal stenosis." Leiser contends that this means he had herniated discs that were pinching his spine and causing nerve damage. Dr. Sumnicht explains, however, that a subligamentous herniation is not the same thing as a "full disc herniation." Unlike a full disc herniation, a subligamentous herniation does not pinch the spinal cord. Nevertheless, a subligamentous herniation does cause pressure and tightness in the spine, which can be alleviated with surgery.

On February 17, 2010, Dr. Sumnicht met with Leiser to discuss the results of the MRI, which revealed "a cord compression." Leiser complained of pain in his thoracic spine. Dr. Sumnicht advised Leiser that he had subligamentous disc herniation at T7-T8 and T8-T9.¹² Dr.

¹² In his affidavit, Dr. Sumnicht states that the results revealed "central subligamentous disc herniation at the T7-T8 and T8-T9 levels causing mild impingement upon the anterior right aspect of the spinal cord." Dkt. 43, *Affidavit of Paul Sumnicht, M.D.* at ¶ 98. He references Exhibit A, at HSU 000290-000294, but the exhibit does not appear to correspond with Dr. Sumnicht's account. In that respect, the record does not appear to include a report of the MRI for Leiser's thoracic spine. Leiser claims that these reports have been excluded by the defendants to cover up a serious problem for which he has been denied treatment.

Sumnicht ordered an extra pillow for Leiser and submitted a request to the Class III Committee for a neurosurgical consultation. Dr. Sumnicht also prescribed Vicodin for pain.

Leiser contends that, on April 10, 2010, he was experiencing severe pain in his back as well as numbness in his right arm and hand. Leiser alleges that when a correctional officer (Sergeant Lind) contacted the HSU on his behalf, he was told that Nurse Jackson refused to see Leiser because it was a weekend and there were no “sick call appointments” on weekends. Because his condition did not involve a medical emergency, Nurse Jackson instructed the officer to tell Leiser to submit a health service request for an appointment sometime during the week. Leiser submitted a health services request that same day, saying that he wanted to be seen or taken to the hospital because he was in severe pain.

On April 13, 2010, Leiser was seen by Nurse Monroe-Jennings for “severe pain” in the chest and back at the T8-T9 level. He described the pain as constant and worse when he moved or used his right arm. He also complained of numbness and pain radiating down his right arm. Nurse Monroe-Jennings noted that Leiser was already taking Vicodin for pain, as well as Flexaril and Ibuprofen. She also noted that Leiser was scheduled for a neurology consult at UW. The nurse scheduled Leiser to see a physician after he told her that he could not deal with his pain.

On April 18, 2010, Leiser wrote to Schrubbe about Nurse Jackson’s refusal to treat the numbness in his right arm and hand on April 10, 2010. It appears that on April 20, 2010 Dr. Sumnicht increased or adjusted the prescribed dosage of Vicodin to address Leiser’s complaints of back pain. The following day, a neurologist at UW evaluated Leiser for neck and back pain. The neurologist determined that Leiser had a “herniated nucleus pulposus” at C6-C7 and “herniated disks” at T7-T8 and T8-T9. She recommended an “anterior cervical discectomy and

fusion.” She did not recommend surgery for his herniated thoracic disks at T7-T8 and T8-T9 because those discs were not “myelopathic.”

On April 23, 2010, Leiser had a follow-up examination with Dr. Sumnicht to discuss the neurologist’s recommendation. At Dr. Sumnicht’s request, the Class III Committee approved surgery for Leiser’s cervical spine as recommended by the neurologist at UW.

In a letter dated May 12, 2010, Schrubbe responded to Leiser’s April 18, 2010 grievance against Nurse Jackson for refusing to treat him on April 10, 2010. Schrubbe explained that the weekend nurse was assigned to WCI on the weekends for emergencies only. Schrubbe observed further that Leiser’s record of sick call appointments showed that his medical needs were being addressed.

Leiser alleges that on May 17, 2010, he experienced severe muscle spasms and pain in his ribs and that Nurse Jensen once again refused to see him in the HSU.

On May 19, 2010, Leiser had a pre-operative physical at the UW Surgery Clinic.

On June 9, 2010, Leiser underwent cervical spine surgery at UW. He was discharged on June 11, 2010. Leiser was given a neck collar to wear following the surgery and Vicodin for pain.

At a June 16, 2010 follow-up examination with Dr Sumnicht, Leiser reported feeling less pain in his neck and no arm pain. Because Leiser’s pain had lessened, Dr. Sumnicht reduced the prescribed dosage of Vicodin. In Dr. Sumnicht’s opinion, the cervical fusion surgery relieved the tightness in Leiser’s neck, but the disks in his thoracic spine still gave him pain.

Leiser reportedly injured his neck on June 28, 2010, when he went to bed without wearing his neck collar. Leiser told Dr. Sumnicht during a follow-up appointment that he felt a “pop” in his neck. Dr Sumnicht scheduled an appointment with the neurosurgeon.

On July 2, 2010, a post-operative x-ray taken of Leiser's spine confirmed that there were no problems with the fusion surgery at C6-C7 and that all of the hardware was intact. There was some mild degenerative disk disease present, however, at the C5-C6 level.

On July 21, 2010, Leiser had a follow-up examination at UW which determined that his spine was "stable," that he was healing appropriately and that he no longer needed to wear his neck collar.

On October 4, 2010, Leiser submitted a health service request concerning some pain in his left shoulder. He was scheduled to see Dr. Sumnicht. On October 28, 2010, however, Leiser transferred from WCI to SCI.

III. Leiser's Complaint

As this chronology of medical care demonstrates, Leiser has suffered from a variety of ailments and other concerns in addition to chronic back pain. Leiser acknowledges that he has received medical care and that, in June of 2010, he had surgery to relieve pain in his cervical spine. Leiser contends, however, that the treatment that he received ignored his repeated complaints of severe pain in his cervical and thoracic spine, a neurogenic bladder, numbness in his extremities, loss of sleep and recreation time, mental stress, difficulty walking (with and without a cane due to the carpal tunnel damage in his hands) and difficulty sitting or standing for more than 5-10 minutes, among other problems.

Leiser maintains that the MRI study on October 18, 2005, which disclosed problems in his cervical and thoracic spine, was insufficient to diagnose the source of his pain. He claims that Drs. Larson, Lemke and Sumnicht refused to inquire further or to authorize surgery for his back and neck issues after he heard his back "pop" on October 28, 2005, which caused him to

suffer extreme pain. Leiser also alleges that, beginning in February of 2007, Dr. Lemke wrongfully terminated his prescription for narcotic pain medication based on her belief that he was exaggerating his level of pain. Leiser faults Dr. Sumnicht, who began treating Leiser in March of 2007, for disregarding his complaints of pain and delaying another MRI until January 2010, which showed that he needed surgery. Leiser claims that this delay has caused him to suffer needless pain and other issues, such as carpal tunnel syndrome. Leiser claims that now he needs a catheter to urinate because nerve damage in his spinal cord has caused him to develop a neurogenic bladder.

Leiser contends further that he was denied adequate pain medication, or that his prescribed medical care was interfered with, by defendant Jensen on October 30, 2005, and by defendant Rozmarynoski on October 15 or 16, 2006. Leiser also contends that he was denied adequate pain medication or access to medical care by defendant Jackson on April 10, 2010, and that defendant Jensen also refused to treat him for complaints of pain on May 17, 2010.

Leiser alleges that he complained repeatedly to defendant Schrubbe, WCI's health services manager, about the lack of adequate care, but that Schrubbe refused to intervene on his behalf. Leiser contends further that he made repeated requests to Schrubbe and her staff in the HSU to obtain copies of the October 18, 2005 MRI but that they "never bothered" to obtain these records. Leiser insists that the MRI of his thoracic spine was missing from his medical records at the prison. As a result, his treating physicians lacked access to the information contained in that report and they were unable to make effective treatment decisions.

Leiser contends that these acts and omissions by the defendants caused him to suffer needless pain and violated his rights under the Eighth Amendment. Defendants Schrubbe, Larson, Lemke, Sumnicht, Jensen, Jackson and Rozmarynoski have filed a motion for summary judgment on these claims.

ANALYSIS

I. Summary Judgment Standard

The purpose of summary judgment is to determine whether the parties have gathered and can present enough evidence to support a jury verdict in their favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986); *Albiero v. City of Kankakee*, 246 F.3d 927, 932 (7th Cir. 2001). Summary judgment is appropriate if there are no genuinely disputed material facts, and if on the undisputed facts, the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The applicable substantive law will dictate which facts are material. *Darst v. Interstate Brands Corp.*, 512 F.3d 903, 907 (7th Cir. 2008). A factual dispute is “genuine” only if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson*, 477 U.S. at 248; *Roger Whitmore’s Auto. Serv., Inc. v. Lake County, Ill.*, 424 F.3d 659, 667 (7th Cir. 2005).

In determining whether a genuine issue of material fact exists, the court must construe all facts in favor of Leiser, as the nonmoving party. *Schuster v. Lucent Technologies, Inc.*, 327 F.3d 569, 573 (7th Cir. 2003). Even so, Leiser may not simply rest on the allegations in his complaint; rather, he must respond by presenting specific facts that would support a jury’s verdict in his favor on his claims. *Hunter v. Amin*, 583 F.3d 486, 489 (7th Cir. 2009); *Van Diest Supply Co. v. Shelby County State Bank*, 425 F.3d 437, 439 (7th Cir. 2005).

II. Eighth Amendment Standard

The subject matter of this case is governed by the Eighth Amendment, which prohibits cruel and unusual punishment. In particular, prison officials have a duty under the Eighth Amendment “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)). Prison officials violate the Eighth Amendment if they are “deliberately indifferent” to a prisoner’s “serious medical needs.” *Arnett v. Webster*, 658 F.3d 742, 750 (7th Cir. 2011) (citing *Estelle*, 429 U.S. at 104).

The Eighth Amendment’s deliberate indifference standard has both an objective and subjective component. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). To avoid summary judgment against his claims, Leiser must make a sufficient showing as to both elements of this test. *Estelle*, 429 U.S. at 105; *Roe v. Elyea*, 631 F.3d 843, 857 (7th Cir. 2011). To meet the objective prong of this standard, a prisoner must show that he had “a known, objectively serious medical condition” that posed an excessive risk to his health. *Farmer*, 511 U.S. at 837. With respect to the subjective component, a prison official or employee cannot be found liable under the Eighth Amendment unless that official “knows of and disregards an excessive risk to inmate health or safety.” *Id.* 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 he must also draw the inference.” *Id.*

As set forth above, Leiser has a documented history of chronic low back pain that has required multiple surgeries. Defendants do not dispute that chronic low back pain is a serious medical need.¹³ The defendants argue, however, that Leiser cannot satisfy the subjective component of the Eighth Amendment standard by showing that any of them were aware of but disregarded his complaints about a serious medical issue.

¹³ Chronic pain, by definition, lasts more than six months and quite often is impervious to analgesic medicines like acetaminophen or opiates. See *dk. 43, Affidavit of Paul Sumnicht, M.D.*, at ¶ 11. Chronic pain is a serious medical condition that must be addressed by medical providers. See *Hayes v. Snyder*, 546 F.3d 516, 524 (7th Cir. 2008); *Grieverson v. Anderson*, 538 F.3d 763, 779 (7th Cir. 2008).

Deliberate indifference is proven by demonstrating that a prison official knows of a substantial risk of harm to an inmate and “either acts or fails to act in disregard of that risk.” *Gomez v. Randle*, 680 F.3d 859, 865 (7th Cir. 2012) (citing *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011)). Allegations of medical malpractice or negligence — even “gross negligence” — are insufficient to meet the deliberate indifference standard. *Farmer*, 511 U.S. at 836. Likewise, mere disagreement with a doctor’s medical judgment is not enough to prove deliberate indifference in violation of the Eighth Amendment. *Berry v. Peterman*, 604 F.3d 435, 441 (7th Cir. 2010) (citing *Estelle*, 429 U.S. at 106) (citation omitted)); *Ciarpaglini v. Saini*, 352 F.3d 328, 331 (7th Cir. 2003).

A prisoner “need not prove that the prison officials intended, hoped for, or desired the harm that transpired.” *Walker v. Benjamin*, 293 F.3d 1030, 1037 (7th Cir. 2002). Nor does a prisoner need to show that he was literally ignored. *Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005). That the prisoner received some treatment does not foreclose his deliberate indifference claim if the treatment received was “so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate his condition.” *Id.* (quoting *Snipes v. DeTella*, 95 F.3d 586, 592 (7th Cir. 1996) (internal quotations omitted)).

“A jury can infer deliberate indifference on the basis of a physician’s treatment decision [when] the decision [is] so far afield of accepted professional standards as to raise the inference that it was not actually based on a medical judgment.” *Arnett*, 658 F.3d at 751 (quoting *Duckworth v. Ahmad*, 532 F.3d 675, 679 (7th Cir. 2008)). A prisoner can show that a medical professional disregarded a serious need only if the professional’s subjective response was so inadequate that it demonstrated an absence of professional judgment, that is, that “no minimally competent professional would have so responded under those circumstances.” *Id.*

Delays in treatment for a serious medical issue also may constitute deliberate indifference if such delay “exacerbated the injury or unnecessarily prolonged an inmate’s pain.” *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010) (citing *Estelle*, 429 U.S. at 104-05). So long as the medical condition is sufficiently painful, delays in medical treatment that unnecessarily prolong or exacerbate pain are actionable even without a showing that the delay aggravated the underlying condition. *Grieverson v. Anderson*, 538 F.3d 763, 779 (7th Cir. 2008); *see also Jones v. Simek*, 193 F.3d 485, 490 (7th Cir. 1999). “Even a few days’ delay in addressing a severely painful but readily treatable condition suffices to state a claim of deliberate indifference.” *Smith v. Knox County Jail*, 666 F.3d 1037, 1040 (7th Cir. 2012).

I will apply this legal template to the facts found above to determine whether any defendant is entitled to summary judgment in his or her favor:

1. Dr. Larson

Leiser makes two primary claims for denial of medical care against Dr. Larson. First, Leiser alleges that Dr. Larson failed to afford adequate treatment after reviewing the results of the October 18, 2005 MRI because he should have requested authorization for surgery at that time. Second, arguing further that his back popped or “gave out” on October 28, 2005, resulting in a new injury, Leiser maintains that the October 18, 2005 MRI was inadequate to diagnose his problem. Leiser argues, therefore, that Dr. Larson failed to order another MRI to assess the problem and that he was denied adequate medical care or that care was delayed until 2010, when another MRI confirmed that Leiser needed surgery on his cervical spine.

Dr. Larson responds that he treated Leiser with pain medication, including Ibuprofen, Gabapentin, Oxycodone and Methadone. *See* dkt. 45, *Affidavit of Charles Larson, M.D.* Dr.

Larson also referred Leiser to a specialist at the UW Neurology Clinic in 2005. The neurologist (Dr. Luzzio) reviewed Leiser's October 18, 2005 MRI and did not recommend surgery. Instead, Dr. Luzzio recommended pain management and a referral to the Spine Rehab Clinic. Dr. Larson requested authorization for both recommendations and Leiser received the treatment that Dr. Luzzio prescribed.

Leiser does not dispute that Dr. Luzzio reviewed the October 18, 2005 MRI and did not see a need for surgery. Likewise, Leiser does not contest that he received all of the care that Dr. Luzzio recommended, including pain medication and treatment at the Spine Rehab Clinic in 2005 and 2006. It follows, therefore, that Leiser cannot fault Dr. Larson's decision not to authorize surgery after the October 18, 2005 MRI because the treatment recommendations were actually made by Dr. Luzzio. To the extent that Leiser disagrees with the decision made by Dr. Larson (to follow Dr. Luzzio's recommended treatment plan following the October 18, 2005 MRI), his disagreement with the diagnosis and treatment plan does not raise a genuine issue of material fact or demonstrate deliberate indifference to his medical needs. *See Berry*, 604 F.3d at 441. Accordingly, Dr. Larson is entitled to summary judgment on Leiser's claim that Larson denied him medical care by failing to authorize surgery based on the results of the October 18, 2005 MRI study. To the extent that Leiser makes the same claim against defendants Lemke and Sumnicht, they also are entitled to summary judgment on this claim.

As for Leiser's other claim—that Dr. Larson failed to address the injury that Leiser reported on October 28, 2005 or inquire further about the source of Leiser's continued complaints of pain—there is a material fact issue about what response Dr. Larson could have or should have made. Dr. Larson does not address the October 28, 2005 injury in his affidavit. Nor does he explain why nothing was done to follow up on the observation made by Dr. Luzzio,

that Leiser's neurogenic bladder was likely caused by pain (which Leiser argues was caused by undiagnosed problems in his back). Viewing the evidence in the light most favorable to Leiser, there are material questions about whether Dr. Larson failed to respond to Leiser's continued complaints of pain and his claim that he injured or aggravated an injury to his back on October 28, 2005. Therefore, I am denying Larson's motion for summary judgment as to this claim.

2. Dr. Lemke

Leiser alleges that, after evaluating him for five minutes on January 25, 2007, Dr. Lemke decided to reduce his prescription for narcotic pain medication (Oxycodone) and to replace that medication with Ibuprofen for pain relief. Leiser contends that Dr. Lemke cancelled his pain medication without valid justification.

Dr. Lemke explains that she made this decision in an exercise of her medical judgment after she determined that Leiser had a history of drug abuse or was at risk for abusing narcotics. Dr. Lemke emphasizes that she did not make her decision to discontinue Oxycodone lightly, but that she discussed it with the Class III Committee in February of 2007, before tapering off Leiser's prescription for narcotic pain medication.

Leiser takes issue, in particular, with Dr. Lemke's explanation for discontinuing his prescription for narcotic pain medication, arguing that there is no evidence that he has any history of drug abuse.¹⁴ Leiser's general disagreement with Dr. Lemke's determination that his condition did not require narcotic pain medication is a non-starter. As noted above, mere

¹⁴ The defendants do not address this issue and the medical records referenced by Dr. Lemke do not explicitly support her conclusion that Leiser had a history of drug abuse. *See* dkt. 43, Exh. A, HSU 000034-000039 and HSU106. The record does reflect, however, that Leiser was treated for withdrawal-like symptoms on October 17, 2006. *See id.* at HSU 000030-000031. It could be that this is the sign of drug abuse or improper drug use that Dr. Lemke was referencing.

disagreement with a medical decision does not demonstrate deliberate indifference. *See Berry*, 604 F.3d at 441.

However, Leiser's claim against Dr. Lemke appears to present something more. Leiser contends that Dr. Lemke knew that he was in pain but declined to conduct anything more than a cursory examination of his condition and his medical records which showed his history of spinal fusion surgeries, complaints of chronic back pain and a neurogenic or nonfunctioning bladder that required him to use a catheter. At the summary judgment stage, this claim on the evidence of record would allow a reasonable jury to infer that Dr. Lemke failed to do more because she believed that Leiser was exaggerating. Whether this belief was reasonable and whether Lemke had a valid reason to stop Leiser's narcotic pain medication under these circumstances are issues for the jury. *See Berry*, 605 F.3d at 441-42. Accordingly, I am denying Dr. Lemke's motion for summary judgment on this aspect of Leiser's claim.

3. Dr. Sumnicht

Dr. Sumnicht treated Leiser from April of 2007 through the end of October 2010. Leiser acknowledges that Dr. Sumnicht treated him on a regular basis. Leiser insists, however, that Dr. Sumnicht ignored his repeated complaints of pain despite Leiser's repeated reports that the prescribed medication was not helping. Leiser alleges that Dr. Sumnicht simply looked at the October 18, 2005 MRI, which was taken before his back popped or gave out on October 28, 2005, and told Leiser there was "nothing" wrong. Leiser accuses Sumnicht of ignoring his constant pain and refusing to authorize a new MRI until January 2010, which showed that Leiser needed surgery on his cervical spine. Leiser maintains that he was forced to endure years of pain and suffered permanent nerve damage as a result of the delay in surgery.

Dr. Sumnicht responds that he “continued to evaluate, monitor, treat, test, and refer [to specialists] when appropriate in response to Leiser’s requests for medical treatment.”

The medical records show that Leiser expressed repeated complaints about back pain that did not appear to be alleviated by the medication or the treatment that Dr. Sumnicht prescribed. These complaints of back pain were accompanied by other physical problems, including Leiser’s neurogenic bladder, the onset of numbness in his extremities and symptoms associated with carpal tunnel syndrome. Although Leiser eventually had surgery in June of 2010, the question whether Dr. Sumnicht unreasonably delayed an MRI to diagnose a problem with Leiser’s cervical spine presents a question of fact that must be resolved by a jury. *See Berry*, 605 F.3d at 441-42. Accordingly, Dr. Sumnicht’s motion for summary judgment will be denied.

4. Nurse Jensen

Leiser alleges that Nurse Jensen refused to see him or provide any treatment on two occasions, October 31, 2005 and May 17, 2010. Leiser claims that Jensen denied him care even though Leiser was in severe pain. I address these allegations separately:

(a) October 31, 2005

Leiser alleges that he was unable to stand, sit or lay down after his back “gave out” on Saturday, October 31, 2005, but that Nurse Jensen refused to help him. Leiser contends that his wife called the prison and told Nurse Jensen that Leiser was “seriously injured and in severe pain.” When Leiser was taken to see Nurse Jensen in the HSU, Nurse Jensen “yelled” at Leiser and told him to stay in “bed for a week” and if he did not feel, then to submit a health service request. Leiser argues that Nurse Jensen should have transported him to the hospital or given

him proper pain medication because the prescriptions he had (Oxycodone, Ibuprofen) were not affording any relief.

Defendant Jensen responds that, as a registered nurse, his job is to provide “skilled nursing care to incarcerated individuals in infirmary and ambulatory care situations and by providing emergency care for major and minor conditions to prevent untimely illness or death.” Jensen insists that he examined Leiser for complaints of back pain on October 31, 2005, and determined that it was not medically necessary to send him to the hospital. He noted that Leiser already was taking Oxycodone and that he had an appointment to see a neurologist in the next few days. Jensen reports that he told Leiser to rest and to submit a health service request if he did not improve in the next few days. Jensen adds that he gave Leiser some Ibuprofen, but the medical records do not show that he did. *See* dkt. 43, Ex. A, HSU 000021. Even if he did, Leiser maintains that his pain was so severe that the Oxycodone was ineffective to afford relief.

Jensen correctly observes that Leiser already was taking Oxycodone for pain. On the other hand, Leiser claims that he hurt his back and that the Oxycodone he had was not helping. The medical records allow the inference that Leiser’s pain was not adequately addressed. The records show that after his visit with Nurse Jensen on October 31, 2005, Leiser promptly filed a health service request on November 1, 2005, and was seen in the HSU on Monday, November 2, 2005. *See* dkt. 43, Ex. A, HSU 000022, HSU 000092. The records of this visit support Leiser’s account in which he described hurting his back the previous Friday, which would have been October 30, 2005. Those records also show that Leiser was walking with “great difficulty,” was in “acute” pain and was getting no relief from Oxycodone or ice. *See* dkt. 43, Ex. A, HSU 000022. The nurse on duty contacted Dr. Larson, who approved a change from Oxycodone to Methadone. *See id.* Several days later, after beginning to take Methadone, Leiser reported that (on a one to ten scale, with ten being the greatest) his pain was down from nine to seven. *See id.*

Leiser's account also is supported by the affidavit from his cell mate, Lonnie Jackson. *See* *dk.* 71. Jackson describes Leiser's pain as so severe that he was unable to sit, stand or even lay down, but that Nurse Jensen refused to see Leiser until after Leiser telephoned his wife and begged her to contact the medical department on his behalf.

The facts and sworn statements raise a question whether Jensen denied medical care or delayed access to medical treatment for acute pain. This is an issue for the jury. *See Greeno*, 414 F.3d at 655. Viewing the evidence in the light most favorable to Leiser, there are material questions about whether Leiser was denied pain medication by defendant Jensen for arbitrary reasons with deliberate indifference to a serious medical need on October 31, 2005. For this reason, the motion for summary judgment must be denied with respect to this claim against Nurse Jensen.

b. May 17, 2010

Leiser also contends that Nurse Jensen refused to treat him again on May 17, 2010, when Leiser reported having "severe muscle spasms" in his spine and pain in his ribs. Leiser alleges that he took a shower in hopes that it would relieve the pain but it did not. He describes the pain as so severe that he "just laid [t]here and cried." Leiser alleges that he was in severe pain for hours, but that Nurse Jensen refused to see him. Again, Nurse Jensen told Leiser to submit a health services request.

The medical records show that when Leiser was examined at the UW Neurology Clinic on May 19, 2010 for his pre-operative appointment, Leiser reported that he was in pain "100% of the time." *See* *dk.* 43, Ex. A, HSU 000301. The examining surgeon observed that Leiser was in "quite a bit of pain" in his neck, arm and back. *See id.* at HSU000304.

For the same reasons outlined above, summary judgment is not appropriate on this record. A jury will have to decide whether Nurse Jensen's response to Leiser's report constitutes deliberately indifference. Accordingly, I am denying the motion for summary judgment with respect to Leiser's claim that Nurse Jensen denied him adequate medical care on May 17, 2010.

5. Nurse Jackson

Leiser alleges that defendant Jackson refused to see him on April 10, 2010, when she was working as the duty nurse. Leiser claims that he was experiencing severe pain in his back, neck and ribs due to muscle spasms that made it difficult to breathe. Leiser states that Nurse Jackson told Leiser to submit a health service request but did nothing else for him.

Nurse Jackson responds that Leiser's condition was chronic. She noted that Leiser was already taking Vicodin and that he had an upcoming appointment with a neurosurgeon.

The problem with Nurse Jackson's argument is that when a different nurse examined Leiser on April 13, 2010, in response to the health services request that he filed as nurse Jackson instructed on April 10, 2010, that nurse referred Leiser's chart to a physician. HSU 000077-000078. When the neurologist saw Leiser on April 21, 2010, he determined that Leiser needed surgery and increased pain medication. Viewing the evidence in the light most favorable to Leiser, there is a question about whether Nurse Jackson should have at least contacted a physician or scheduled an appointment for him to see a physician at the prison. This is an issue that a jury must decide. *See Greeno*, 414 F.3d at 655. Accordingly, I am denying the motion for summary judgment on Leiser's claim that Nurse Jackson denied him adequate medical care on April 10, 2010.

6. Sergeant Rozmarynoski

Leiser contends that on October 15 and 16, 2006, defendant Rozmarynoski interfered with his medical treatment when he failed to get his Oxycodone. When Leiser advised Rozmarynoski that he had been without pain medication for 32-36 hours, he claims that she told him that it was “not [her] problem” and that he needed to put in a health service request. Leiser maintains that Sergeant Rozmarynoski repeatedly refused to assist him in any way, at one point yelling: “I told you I was not calling HSU for your medication no matter what I don’t care how sick you get!!!!” Leiser alleges that he became dizzy and that he began to shake from narcotic withdrawal symptoms because he was denied his medication.

Defendant Rozmarynoski responds that she does not recall whether she was responsible for distributing medication on the day in question. She explains that the person handing out medication can be different from day to day. Rozmarynoski states further that if Leiser had told her that he did not receive his medication, then she would have contacted the HSU “to let them know he was out and waited for the medication to be brought to the unit.” However, there is no evidence showing that Rozmarynoski (or any other correctional officer) actually contacted the HSU on October 15 or 16, 2010, when Leiser alleges that he was denied access to his medication.¹⁵

Leiser was not seeking expensive or unconventional treatment; he just wanted the pain medicine that the prison doctor had prescribed for him. If a jury were to accept Leiser’s claim about what happened, then “[a] correctional officer’s deliberate refusal of it could be considered

¹⁵ There are records showing that another officer did contact the HSU on October 17, 2006, and Leiser was seen that day for symptoms of “narcotic withdrawal.” *See* dkt. 43, Exh. A, at HSU 000030-000031. There is also a memorandum to Leiser from defendant Schrubbe, referencing some “phone logs” about a call from the “cell hall” on October 16, 2006. *See* dkt. 43, Exh. A, at HSU 000194. There are no logs in the record, however, and no information from the defendants about who placed that call.

“a gratuitous cruelty, and not a trivial one.” *Ralston v. McGovern*, 160 F.3d 1160, 1162 (7th Cir. 1999); *Cooper v. Casey*, 97 F.3d 914, 917 (7th Cir. 1996). For this reason, I must deny the motion for summary judgment with respect to Leiser’s claim that Sergeant Rozmarynoski denied Leiser adequate medical care on October 15 and 16, 2006.

7. Schrubbe

Leiser claims that as health services manager, defendant Schrubbe violated his constitutional rights because she did nothing to intervene on his behalf to correct the failure by other defendants to provide him with adequate care. Leiser alleges further that Schrubbe took away his “medical recreation,” which he considered to be physical therapy. These allegations are addressed separately below, beginning with Leiser’s claim concerning access to medical recreation.

a. Denial of Medical Recreation

Schrubbe reports that Leiser’s medical recreation was discontinued at WCI due to “confidentiality issues.” Schrubbe claims that patients attending medical recreation in the HSU were instructed to request “structured recreation,” which offered a “greater variety for exercise.” Leiser does not allege specific facts showing that he requested structured recreation or that he was denied the opportunity to exercise for arbitrary reasons. The medical records, which show that Dr. Sumnicht authorized physical therapy for Leiser in 2009, confirm that Leiser had access to a therapeutic exercise regimen. Leiser does not establish that he was denied therapeutic exercise with deliberate indifference as the result of any decision made by Schrubbe. Accordingly, the court will grant Schrubbe’s motion for summary judgment on the allegation that she denied him medical recreation.

b. Failure to Intervene in Treatment

Leiser contends that he complained repeatedly to Schrubbe about his treatment but that she ignored his complaints. He complains in particular that his prison medical records were incomplete and did not contain the October 18, 2005 MRI study of his thoracic spine. Leiser complains further that he was denied another MRI after he aggravated or re-injured his back on October 28, 2005.

Schrubbe responds that she did not supervise the physicians and had no authority to instruct them regarding the type of medical care provided. Her role as health services manager was limited to scheduling appointments and ensuring that the physicians had all the medical records that they needed. Schrubbe maintains that she would have ensured that the entire October 18, 2005 MRI report of his thoracic spine was included in Leiser's medical records if it were to have been sent to the prison. That MRI, she notes, was conducted at UW Hospital.

Leiser responds that Schrubbe failed to do her job by failing to ensure that his medical records were complete and that he was provided with care for constant pain.

The record contains letters from Leiser showing that he complained repeatedly of "stabbing pain" in his spinal cord that was constant and not responding to Oxycodone. *See* dkt. 43, Exh. A, HSU 000195-000196, 000198-000199. He contended that he injured himself after the MRI study done on October 18, 2005, and he specifically requested another MRI. Schrubbe continued to refer Leiser to the same treating physicians when the treatment they were providing did not seem to be working.

It is not clear that Schrubbe could have done anything else. As an administrator, Schrubbe was entitled to rely on the judgment of medical professionals with respect to whether a particular treatment was warranted. *See Johnson v. Doughty*, 433 F.3d 1001, 1014-15 (7th Cir.

2006). Nevertheless, there is a question about whether Schrubbe turned a blind eye to Leiser's complaints of pain. Does there come a point where the administrator has a duty to inquire further of the medical care providers to ensure that an inmate actually is receiving the treatment he needs? Because there are fact issues about what more, if anything, Schrubbe could or should have done under these circumstances, I will deny the motion for summary judgment regarding Leiser's claim that Schrubbe failed to intervene in his treatment regimen.

9. Remaining Claims Against Defendants Thorpe and Giese

Similar to the claims against Schrubbe, Leiser alleges that he was denied adequate medical care by another administrative employee, defendant Cynthia Thorpe, who is employed by DOC as a nursing coordinator. Leiser claims that Thorpe failed to investigate and respond to his administrative complaints about his medical needs or to intervene on Leiser's behalf.

In addition, Leiser alleges that defendant Tammy Giese, a correctional officer, took all of his "Medically Approved Special Needs Permission Slips" from his cell while he was gone. She also removed his extra mattress, extra pillow, TENS unit and plastic bags for ice from his cell on more than one occasion. Leiser contends that Officer Giese knew that these items were approved by the HSU and that he needed them for his injured back. Without these items, Leiser contends that he was forced to sleep on a thin (3/16") mattress on a steel bed with no pillow and he suffered "needless pain" as a result.

As noted at the outset of this order, the record shows that the Attorney General's Office accepted service on behalf of both Thorpe and Giese on August 17, 2011. *See* dkt. 22, *Amended Acceptance of Service*. It is not clear that either defendant has filed an answer. *See* dkt. 24, *Answer*, and dkt. 29, *Amended Answer*. Likewise, while the summary judgment motion includes an

affidavit from Thorpe, the brief in support does not address Leiser's allegations against Thorpe or Giese. *See* *dk.* 52. What should the court make of this? To be fair to Thorpe and Giese, I will give the Attorney General's Office an opportunity to clarify: as soon as possible but not later than October 19, 2012, counsel for the other defendants is directed to file an answer on their behalf, or to clarify in writing why no answer is possible.

10. Leiser's Motion to Reconsider Discovery

Leiser previously filed a motion to compel several categories of discovery materials. On August 7, 2012, the court granted several requests made in that motion and denied others. *See* *dk.* 74. Leiser has filed a motion for reconsideration of that ruling and asks for discovery of the following:

- (1) inmate complaints or grievances against the defendants relating to allegations that defendants routinely deny inmates medical care;
- (2) information regarding a private company identified as McKesson and a computer software program entitled "InterQuest Summary Review"; and
- (3) DOC Policy and Procedures 720.01, which pertains to the reporting of inmate health concerns to the HSU and the distribution of controlled medication by security staff.

The requests for information in categories 1 and 2 are denied for reasons outlined previously in the order entered on August 7, 2012. The court will grant plaintiff's request to compel discovery of the information described in category 3, regarding DOC Policy and Procedure 720.01.

ORDER

It is ORDERED that:

- (1) Defendants' motion for summary judgment, dkt. 51, is GRANTED with respect to plaintiff's claim that defendants Larson, Lemke and Sumnicht denied him surgery based on the results of the October 18, 2005 MRI, and the claim that defendant Schrubbe denied Leiser access to medical recreation.
- (2) The motion for summary judgment, dkt. 51, is DENIED with respect to all other claims.
- (3) Counsel for the other defendants is directed to file an answer on behalf of defendants Cynthia Thorpe and Tammy Giese, or clarify in writing why no answer is possible not later than October 19, 2012.
- (4) Plaintiff Jeffrey Leiser's motion to reconsider the ruling on his motion to compel discovery, dkt. 76, is GRANTED as to his request for DOC Policy and Procedures 720.01, which pertains to the reporting of inmate health concerns to the HSU and the distribution of controlled medication by security staff. The defendants shall provide plaintiff with a copy of this policy within ten days of the date of this order.
- (5) Plaintiff's discovery motion, dkt. 76, is DENIED with respect to plaintiff's other requests.
- (6) Defendants' motion to stay proceedings, dkt. 80, is GRANTED IN PART and DENIED in PART: the parties' pretrial submission deadline is moved back ten days to October 19, 2012, with responses due by November 5, 2012. The November 13, 2012 final pretrial conference and jury trial remain in place as scheduled.

Entered this 9th day of October, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge