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

ROBERT J. ARTIS,

Plaintiff,

v.

MICHAEL MEISNER, NANCY WHITE
JOANNE LANE, MARY LEISER,
EDWIN TETZLAFF, JILL OSTRANDER,
JEFFREY MURPHY, and JOE REDA,

Defendants.

OPINION AND ORDER

12-cv-589-wmc

Plaintiff Robert J. Artis brings this action under 42 U.S.C. § 1983 and state tort law against various staff and administrators at the Columbia Correctional Institution ("CCI"). Artis is an inmate at CCI and asks for leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915. From the financial affidavit Artis has provided, the court has concluded that he is unable to prepay the full fee for filing this lawsuit. He also made the initial payment of $1.01 required of him under § 1915(b).

Before allowing Artis to proceed, the court must now determine whether Artis's proposed action (1) is frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Artis's complaint arises out of an alleged refusal to treat excruciating stomach pain. He claims that (1) various nurses, guards, inmate complaint examiners, and even the warden at CCI exhibited deliberate indifference to his serious medical needs; and (2) a nurse and three guards committed acts of negligence and/or

medical malpractice. After examining the complaint, the court concludes that Artis may proceed on his Eighth Amendment and state law malpractice and negligence claims against defendants Tettzlaff, Ostrander, Murphy and Reda.

ALLEGATIONS OF FACT

In addressing any pro se litigant's complaint, the court must read the allegations generously, and hold the complaint "to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Artis alleges, and the court assumes for purposes of this screening order, the following facts:

- *Parties.* Plaintiff Robert Artis is presently confined at CCI, located in Portage, Wisconsin, and was confined there during the events described in his complaint. Defendants are all employed at CCI as well: Michael Meisner is the Warden; Edwin Tettzlaff is a corrections lieutenant; Jill Ostrander and Jeffrey Murphy are correctional officers; Nancy White is a registered nurse, nursing supervisor, and the acting manager of the Health Services Department; Joe Reda is a nurse clinician; and Joanne Lane and Mary Leiser are institution complaint examiners.

- *Initial Denial of Medical Care.* On July 9, 2011, Robert Artis was housed in a disciplinary segregation unit with cellmate Eric Conery. Artis began to experience severe stomach pain, so Conery told Officer Murphy, who was passing by on his rounds, that Artis needed to see a nurse. Some time later, Officer Tettzlaff appeared at the cell door and asked Artis to approach and explain his problem. Artis replied that his stomach hurt so badly he could not move. After conferring with Nurse Reda, Tettzlaff told Artis that he would not be receiving a visit from a nurse, but offered to provide him with some Maalox, a stomach antacid medicine. Artis pleaded for additional medical assistance, but Tettzlaff refused. Fifteen minutes later, as Officer Murphy passed by again, Conery reiterated Artis's request for medical assistance, explaining that Artis was convulsing in pain and spitting up blood. Murphy declined to help and walked away. Half an hour later, Conery repeated the request to Officer Ostrander, who was then doing rounds. Ostrander also declined to help.

- *Suicide Attempt.* Shortly thereafter, Artis attempted suicide by swallowing Mr. Conery's blood pressure medication -- sixty pills of Lisinopril and thirty pills of Atenolol. Artis was rushed to Divine Savior Hospital where he was treated for a

drug overdose, and given Protonix and Omeprazole (gastroesophageal reflux disease medication) for his stomach pain. On July 11, 2011, Artis was released from the hospital with a prescription for Omeprazole. Following the suicide attempt, Officer Ostrander wrote Artis up in a disciplinary conduct report for disobeying orders, disruptive conduct, misuse of prescription medication and theft.

- *Informal Complaint.* On July 14, 2011, Artis complained to Nurse White that Nurse Reda had denied him adequate medical treatment by refusing to treat him on July 9. Artis requested that Nurse Reda receive punishment for his denial of care, but Nurse White declined to take disciplinary action against Reda.

- *Formal Complaint.* On July 18, 2011, Artis filed a formal complaint about his medical treatment. Institution Complaint Examiners Lane and Leiser allegedly conspired to cover up Artis's denial of medical care and refused to process his complaint. Artis then contacted Warden Meisner with his complaint about denial of medical care and the refusal of the ICE office to process his complaint. Meisner declined to assist Artis.

OPINION

I. Eighth Amendment Deliberate Indifference Claim

The Eighth Amendment requires that the government "provide medical care for those whom it is punishing by incarceration." *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). Prison officials who do not provide adequate medical care to prisoners may violate the Eighth Amendment, because pain, suffering and injury serve no penological purpose. *Id.* However, "society does not expect that prisoners will have unqualified access to health care." *Hudson v. McMillian*, 503 U.S. 1, 9 (1992). Therefore, to prove an Eighth Amendment medical care claim, a prisoner must demonstrate that (1) he had an objectively "serious medical need" and (2) prison officials were deliberately indifferent to this need. *Id.* at 8-9.

On the evening of July 9, Artis allegedly complained of severe pain to correctional officers Murphy, Ostrander and Tettzlaff. For purposes of screening, this allegation is enough to demonstrate a serious medical issue warranting medical attention. *See Cooper v. Casey*, 97 F.3d 914, 917 (7th Cir. 1996) (severe pain by itself can be a serious medical need, even in the absence of an obvious injury or medical condition). Initially, Officers Murphy and Tettzlaff responded to the complaint by bringing the issue to the attention of Nurse Reda. After Reda was apprised of the situation and had issued orders for Artis's care, the officers complied with those orders by offering Maalox and no other treatment. Under normal circumstances, even if Reda's orders were medically erroneous none of the officers would be liable for deliberate indifference, because the Eighth Amendment does not require a non-medical prison worker to second-guess the treatment decisions of a medical expert. *Greeno v. Daley*, 414 F.3d 645, 656 (7th Cir. 2005).

There is, however, an exception to this rule when the medical expert's treatment is plainly insufficient. *Id.*; *Bond v. Aguinaldo*, 228 F. Supp. 2d 918, 920 (N.D. Ill. 2002) ("Except in the unusual case where it would be evident to a layperson that a prisoner is receiving inadequate or inappropriate treatment, prison officials may reasonably rely on the judgment of medical professionals."). At least as alleged for screening purposes, a reasonable person might infer Nurse Reda's treatment response to Artis's claims of severe stomach pain was insufficient even to a layperson. Reda simply offered Artis some over-the-counter antacid medication, failing to perform even a perfunctory examination, failing to inquire into the possible cause of the pain, and failing to monitor his condition. Even if this response may have struck Tetzlaff as reasonable initially, Artis's subsequent

plea to be seen may be found to be gross indifference. In any event, the cellmate's description of vomiting and spitting up blood to Ostrander and Murphy could reasonably be seen as deliberate indifference on Reda's part, even to a play person. *See Walker v. Benjamin*, 293 F.3d 1030, 1040 (7th Cir. 2002) (doctor's refusal to give prescription pain medication on belief that plaintiff was malingering could give rise to finding of deliberate indifference); *Tillery v. Owens*, 719 F. Supp. 1256, 1308 (W.D. Pa. 1989) ("cursory" sick call inquiries and physical examinations that were not "thorough" supported claims of deliberate indifference). Arguably, therefore, all of the prison guards present seemed to ignore the fact that Reda was not providing even basic medical care, which could be reasonably characterized as deliberate indifference. Accordingly, Artis has stated a viable claim of deliberate indifference not only as to Nurse Reda, but also as to Officers Murphy, Ostrander and Tettzlaff.

Several days later, Artis unsuccessfully attempted to convince Nurse White to punish Nurse Reda for failing to provide adequate treatment. Artis also filed a formal complaint against Nurse Reda, which was deliberately ignored by institution complaint examiners Lane and Leiser. Artis's complaint was apparently rejected by Warden Meisner. Although certainly not commendable, if true, none of these actions contributed to the physical harm suffered by Artis.

An individual cannot be held liable in a 42 U.S.C. § 1983 action unless he or she caused or participated in an alleged unconstitutional deprivation of rights. *Zentmyer v. Kendall County*, 220 F.3d 805, 811 (7th Cir. 2000). Moreover, 42 U.S.C. § 1983 will not support a claim based upon a *respondeat superior* theory of liability. *Polk County v. Dodson*,

454 U.S. 312, 325 (1981). Without a showing of direct responsibility for prolonging Artis's pain and suffering, therefore, his claims will not lie against defendants White, Lane, Leiser and Meisner.

II. State Law Medical Malpractice and Negligence Claims

Artis also alleges that defendant Reda committed medical malpractice by failing to provide him with proper medical care, and that defendants Murphy, Ostrander and Tettzlaff committed acts of tortious negligence by failing to provide lay assistance in the face of a medical emergency. These claims arise under Wisconsin state law. Generally, federal courts may exercise supplemental jurisdiction over state law causes of action "that are so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). Artis's malpractice and negligence claims are certainly intertwined with his claim that defendants were deliberately indifferent to his need for medical care, and thus permit this court to exercise supplemental jurisdiction.

To prevail on a claim for medical malpractice or negligence in Wisconsin, a plaintiff must prove the following four elements: (1) a breach of (2) a duty owed (3) that results in (4) injury or injuries, or damages. *Paul v. Skemp*, 242 Wis. 2d 507, 520, 625 N.W.2d 860, 865 (2001) (*citing Nieuwendorp v. Am. Family Ins. Co.*, 191 Wis. 2d 462, 475, 529 N.W.2d 594 (1995)). Therefore, every claim for medical malpractice and negligence requires a negligent act or omission that causes an injury. *Id.* Artis alleges just such an act when he claims that (1) defendant Reda provided grossly inadequate

treatment for his health care needs and (2) that the prison guard defendants failed to discharge with reasonable care their duty to ensure basic protection for inmates. *See* Restatement (Second) of Torts § 314A(4) ("One who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection is under a similar duty to the other.").

While the court will allow Artis to proceed on his general negligence claims, the court notes that these claims are subject to timing restrictions imposed by statute. In particular, Wisconsin Statutes require a plaintiff pursuing a claim against a state employee to serve written notice on the Attorney General within "120 days after discovery of the injury or the date on which, in the exercise of reasonable diligence, the injury should have been discovered." Wis. Stat. § 893.82(3). Adequate notice of claim must be sworn to by the claimant, served on the Attorney General by certified mail at his office in the capitol, and must state the "time, date, location and the circumstances of the event giving rise to the claim for the injury, damage or death and the names of persons involved, including the name of the state officer, employee or agent involved." *Id.* Wisconsin Statutes § 893.82(3m) further requires claimants who are prisoners to file a notice of claim and either wait for the Attorney General to deny the claim or wait 120 days after the notice was filed before beginning a civil action against a state employee. These same restrictions do not apply to Artis's malpractice claims. Wis. Stat. § 893.82(5m).

Unless the notice of claim requirement has been satisfied, this court lacks discretion to decide a general negligence claims on its merits. Therefore, if Artis has

failed to file timely notice with respect to his general negligence claim, this court will have to dismiss it.

ORDER

IT IS ORDERED that:

(1) Plaintiff Robert Artis's motion for leave to proceed on his claim for damages is GRANTED with respect to his Eighth Amendment and state law malpractice and negligence claims against defendants Tettzlaff, Ostrander, Murphy and Reda in their individual capacity, and DENIED in all other respects;

(2) Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.

(3) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

(4) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

(5) Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at his institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

Entered this 20th day of May, 2014.

BY THE COURT:
/s/
WILLIAM M. CONLEY
District Judge