

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

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JEROME THEUS,

Plaintiff,

v.

LORA BLASSIUS, WIGANDS, HOWARD,  
MALONE, KEMP, WILLIE LANE, KEVIN WOOD,  
PHILLIP JOHNNY HILL and CHARLES MADISON,

Defendants.  
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OPINION and ORDER

14-cv-224-bbc

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JEROME ANTHONY THEUS,

Plaintiff,

v.

MS. WIGAND, MR. KEMPER and  
MR. HOWARD,

Defendants.  
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OPINION and ORDER

13-cv-681-bbc

In these civil actions, pro se plaintiff Jerome Theus, a prisoner at the Racine Correctional Institution, contends that defendants have violated the Eighth Amendment with respect to his medical needs and conditions of confinement. In case no. 14-cv-224-bbc, I dismissed plaintiff's proposed complaint because his allegations violated Fed. R. Civ. P. 12(b)(6) and Fed. R. Civ. P. 8. I gave plaintiff an opportunity to amend his complaint to

state a claim with respect to the allegations violating Rule 8. He had filed a proposed amended complaint, dkt. #18, along with a motion requesting assistance in recruiting counsel, dkt. #19.

After screening the proposed amended complaint, I conclude that plaintiff cannot proceed on the majority of his claims, but he has stated a claim for failure to receive care for a serious medical need. Because the factual basis for that claim is substantially similar to his claim for medical care in case no. 13-cv-681-bbc, I am consolidating the lawsuits under Fed. R. Civ. P. 42(a)(2), and amending the scheduling order in case no. 13-cv-681-bbc accordingly. Plaintiff added defendants to his proposed amended complaint that he had not listed previously; in addition, there are other defendants named previously against whom plaintiff is not proceeding on any claims. The defendants against whom plaintiff is no longer proceeding will be dismissed from the lawsuit and the caption will be amended to reflect their deletion.

With respect to plaintiff's motion for assistance in recruiting counsel, he has failed to follow the court's requirements for such a motion. His motion will be denied without prejudice to his refiling it at a later date.

## OPINION

### A. Proposed Amended Complaint

#### 1. Claims on which plaintiff may proceed

Plaintiff Jerome Theus says that he drools and vomits blood and acid as a result of his

acid reflux condition. The medicine provided by the prison has not been helping his problem, yet nurses Blassius and Ms. Nygren persist in that course of treatment.

To state a claim under the Eighth Amendment for inadequate medical care, a plaintiff must allege that he has a serious medical need and that the defendants have been deliberately indifferent to it. Zentmyer v. Kendall County, Illinois, 220 F.3d 805, 810 (7th Cir. 2000). It is plausible to infer at this stage in the proceedings that acid reflux disease is a serious medical condition. Further, persistence in an ineffective course of treatment may amount to deliberate indifference. Id. (“An objectively serious medical need is ‘one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor’s attention.’”) (quoting Gutierrez v. Peters, 111 F.3d 1364, 1373 (7th Cir. 1997)); Gonzalez v. Feinerman, 663 F.3d 311, 314 (7th Cir. 2011) (“physicians [are] obligated not to persist in ineffective treatment”). Accordingly, I will allow plaintiff to proceed on this claim against nurses Blassius and Nygren.

In addition to his complaints about acid reflux, plaintiff also says his blood pressure reaches “150/100 or 149/99,” Plt.’s Am. Cpt., dkt. #18, at 2, but nurses Deb and Bakey refuse to give plaintiff the “tab” and instead give him the “capsule.” Id. Although elevated blood pressure is not a serious medical need in and of itself, hypertension is. Jackson v. Pollion, 733 F.3d 786, 789 (7th Cir. 2013) (“Hypertension is a serious condition. Untreated it can result in strokes or heart attacks. But a slight elevation above the normal range in an otherwise healthy young person (like the plaintiff) for three weeks [is not].”).

At this stage of the proceedings, I will infer that plaintiff's elevated blood pressure is sufficiently serious to qualify for protection under the Eighth Amendment and that defendants Deb and Bakey have persisted in a course of ineffective treatment for the condition. Gonzalez, 663 F.3d at 314. Therefore, I will allow plaintiff to proceed on this claim against these two persons. However, I note that at summary judgment or trial, plaintiff will have to do much more than allege that he has experienced elevated blood pressure; rather, he must assert evidence that his high blood pressure subjects him to a substantial risk of serious harm.

I also note that this claim and plaintiff's medical care claim on acid reflux against defendants Blassius and Nygren are very similar to his claim against defendant Kemper in case no. 13-cv-681-bbc in which plaintiff says that defendant Kemper refused to allow him to go to a hospital despite the fact that he was throwing up blood and had high blood pressure. Case no. 13-cv-681-bbc, dkt. #13. Cases involving common questions of fact or law may be consolidated under Fed. R. Civ. P. 42(a)(2). Because plaintiff's allegations in his proposed amended complaint in case no. 14-cv-224-bbc appear to be an expansion of the same issues (failure to receive adequate medical care for acid reflux disease and high blood pressure) and because case no. 13-cv-681-bbc is still in its early stages, I will consolidate the two cases; litigating two cases on nearly identical facts would waste the court's and the parties' time and resources. They will proceed together. The scheduling order in case no. 13-cv-681-bbc will be amended to accommodate for this change. A scheduling conference will be held after defendants answer plaintiff's amended complaint in case no. 14-cv-224-

bbc.

2. Claims on which plaintiff cannot proceed

I am dismissing the remainder of claims in plaintiff's proposed amended complaint in case no. 14-cv-224-bbc for his failure to state a claim upon which relief may be granted. First, plaintiff says that he vomited blood and acid after taking the "TB test," and he warned the nurses that he would do so. Id. at 3. This allegation fails to state a claim because plaintiff has not alleged deliberate indifference or cruel and unusual punishment. Tuberculosis is a serious and contagious disease against which prisons must be diligent. See generally Forbes v. Edgar, 112 F.3d 262 (7th Cir. 1997) (discussing tuberculosis problems and procedures in prisons). On these facts, it was not indifferent or cruel to test plaintiff for the disease, even with the risk that he may have an adverse reaction. Guzman v. Sheahan, 495 F.3d 852, 857 (7th Cir. 2007) ("Prison officials who had actual awareness of a substantial risk to the health or safety of an inmate incur no liability if they 'responded reasonably to the risk, even if the harm ultimately was not averted, because in that case it cannot be said that they were deliberately indifferent.'") (quoting Peate v. McCann, 294 F.3d 879, 882 (7th Cir. 2002)).

Next, plaintiff alleges that he has told "Mr. Kemper, Mr. Malone, Ms. Nygren, Ms. Wiegand [and] Mr. Howard" about his medical care problems, but "they don't care." Id. As discussed above, plaintiff is already proceeding on an Eighth Amendment medical care claims against defendants Kemper and Nygren, so that aspect of his claim is redundant. As

to the remaining defendants, plaintiff has not explained why they are responsible for his medical care. Not all of the persons whom plaintiff informs of his circumstances are responsible for his medical care. Burks v. Raemisch, 555 F.3d 592, 595 (7th Cir. 2009) (“[N]o prisoner is entitled to insist that one employee do another’s job.”). Because plaintiff does not explain who these defendants are or why they would have this responsibility, he cannot proceed against them.

Finally, plaintiff alleges that he sleeps on a towel, sheets and a blanket that are bloody and acidic from his vomit. Plaintiff is already proceeding on an Eighth Amendment claim on the same facts in case no. 13-cv-681-bbc, so this claim is duplicative and he cannot proceed on it in case no. 14-cv-224-bbc.

In sum, plaintiff may proceed on his expanded claims that he is receiving inadequate medical care for acid reflux disease against defendants Blassius and Nygren and high blood pressure against defendants Deb and Bakey. Should the Wisconsin Department of Justice be unable to identify “Deb,” plaintiff will be given a brief opportunity to conduct discovery to ascertain her identity. I am consolidating these claims with plaintiff’s pending lawsuit, case no. 13-cv-681-bbc. I am denying plaintiff leave to proceed on his remaining claims and dismissing all other defendants.

#### B. Motion for Assistance in Recruiting Counsel

Plaintiff has filed a motion titled “Plaintiff’s Motion for Appointment of Counsel,” which I construe as a motion for assistance in recruiting counsel because I do not have the

authority to appoint counsel in this civil case. Plaintiff says he cannot afford a lawyer and lacks the capacity to litigate this complicated matter. However, before I conclude that plaintiff requires assistance in recruiting counsel, I must find that he has made a reasonable effort to find a lawyer on his own and has been unsuccessful. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). Rejection letters from at least three attorneys satisfies this requirement. Plaintiff says that he has “made repeated efforts to obtain a lawyer.” Plt.’s Mot., dkt. #19, at 1. He says that he attached letters from attorneys he has contacted to his motion, but none were attached. Plaintiff must provide the court with evidence that he has tried and failed to recruit counsel before I can grant his motion. Accordingly, I am denying this motion without prejudice.

#### ORDER

IT IS ORDERED that

1. Plaintiff Jerome Theus is GRANTED leave to proceed in his proposed amended complaint in case no. 14-cv-224-bbc, dkt. #18, on his claim that defendants Lora Blassius and Ms. Nygren have failed to provide him adequate medical care for acid reflux disease in violation of the Eighth Amendment and on his claim that defendants Deb and Bakey have failed to provide him adequate medical care for high blood pressure. Plaintiff is DENIED leave to proceed in all other respects.

2. Defendants Wigands, Howard, Kemp, Willie Lane, Kevin Wood, Phillip Johnny Hill and Charles Madison are DISMISSED from case no. 14-cv-224-bbc for plaintiff’s failure

to state a claim against them.

3. Plaintiff's medical care claims on acid reflux disease and high blood pressure in case no. 14-cv-224-bbc are CONSOLIDATED with case no. 13-cv-681-bbc. Plaintiff is proceeding in case no. 13-cv-681-bbc on claims under the Eighth Amendment that (1) defendants Blassius, Nygren, Deb, Bakey and Kemper were deliberately indifferent to plaintiff's serious medical needs and (2) defendants Howard, Wigand and Kemper were deliberately indifferent to the unsanitary conditions of plaintiff's confinement. The operative pleadings are plaintiff's complaint, dkt. #1, and supplement to his complaint, dkt. #10, in case no. 13-cv-681-bbc, and plaintiff's amended complaint in case no. 14-cv-224-bbc, dkt. #18.

4. The scheduling order for case no. 13-cv-681-bbc is STRICKEN. When defendants answer plaintiff's amended complaint in case no. 14-cv-224-bbc, the court will set a scheduling conference for both cases.

5. Plaintiff's motion for assistance in recruiting counsel in case no. 14-cv-224-bbc, dkt. #19, is DENIED without prejudice.

6. For the time being, plaintiff must send defendant a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer or lawyers who will be representing defendants Blassius, Nygren, Deb and Bakey, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.



7. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.

8. 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 defendant. Plaintiff should not attempt to serve defendants on his own at this time. 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.

9. Plaintiff is obligated to pay the unpaid balance of his filing fees in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund accounts until the filing fee has been paid in full.

Entered this 2d day of September, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge