IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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ARSENIO R. AKINS,

OPINION AND ORDER

Plaintiff,

15-cv-118-bbc

v.

WARDEN DITMAN, HSU SUPERVISOR
MEREDITH MASHAK, RN DEGAGER,
DR. MAIER PSYCHOLOGIST, SERGEANT KRASOVIC,
CORRECTIONS OFFICER RIBBKE, SERGEANT BENNINGNER,
CORRECTIONS OFFICER MAIER DYLAN S.,
CORRECTIONS OFFICER GERRY,

Defendants.

- -

Pro se prisoner Arsenio Akins has filed a proposed complaint under 42 U.S.C. § 1983 in which he contends that prison officials were negligent and deliberately indifferent to his serious medical needs and that they retaliated against him for filing grievances, in violation of the First Amendment. Plaintiff has paid a partial filing fee so the next step is to screen his proposed complaint and dismiss any claim that is frivolous, malicious, fails to state a claim for which relief can be granted or seeks monetary damages from an immune party. 28 U.S.C. § 1915A.

After reviewing plaintiff's proposed complaint, I conclude that his allegations are sufficient to state claims (1) against defendants Dr. Maier, Sergeant Krasovic and Correctional Officer Ribbke for deliberate indifference to plaintiff's serious medical needs

in violation of the Eighth Amendment ; (2) against defendant Dr. Maier for negligence; and (3) against defendants Krasovic and Ribbke for retaliation in violation of the First Amendment. I am dismissing the complaint as to defendants Warden Ditman, Health Services Supervisor Meredith Mashak, Sergeant Benningner and Correctional Officer Gerry because plaintiff has failed to state a claim against them. Further, I am dismissing plaintiff's claim under Wis. Stat. § 940.29 because the statute does not provide a private right of action.

Plaintiff alleges the following facts in his proposed complaint.

ALLEGATIONS OF FACT

A. Withdrawal

Plaintiff is a prisoner at the Columbia Correctional Institution, where all defendants are employed. On June 24, 2014, staff psychologist Dr. Maier abruptly stopped distributing plaintiff's medicine (poroxetine) to him, rather than tapering him off the medicine while waiting for his new prescription to arrive. The abrupt stop of the medicine caused plaintiff to experience withdrawal symptoms, including chest pains, stomach cramps, memory loss, dizziness, nausea and migraine headaches.

On June 29, 2014, plaintiff asked defendant Ribbke and defendant Krasovic to inform the health services unit about the withdrawal symptoms he was experiencing. They ignored his request, and defendant Krasovic threatened plaintiff with a conduct report. After some time, defendant Krasovic called the health services unit, but falsely told the nurse that

plaintiff had gone to recreation. Because the nurse thought plaintiff had been in recreation, she assumed that his symptoms were related to dehydration. Later that day, corrections officer Babcock told the nurse on duty that plaintiff had never actually gone to recreation. The nurse then checked on plaintiff again, noticing that he was ill, but determining that there was nothing that could be done except to wait for plaintiff's withdrawal symptoms to dissipate.

B. Retaliation

Plaintiff states he "wrote them up" for the incident on June 29, 2014 in which defendant Krasovic told the nurse that plaintiff was in recreation. Plt.'s Cpt., dkt #1, 5. (I interpret this to mean that plaintiff filed a grievance against Krasovic and Ribbke.) Defendant Krasovic then retaliated against plaintiff by writing a false conduct report. (Plaintiff does not say what the conduct report alleged or how it was handled.)

On July 16, 2014, defendant Ribbke conducted a cell search during which he broke plaintiff's electric razor and poured out his prayer oil. After the search, defendant Ribbke stopped plaintiff on the way back to the housing unit and "ask[ed him] what [his] problem was and why was [he] filing an ICI against him." Id. at 6. Defendant Ribbke told plaintiff he was "getting on [S]ergeant Krasovic['s] bad side" by using the inmate complaint system to file grievances. Id.

C. Distribution of Medicine

On July 6, 2014, defendant Correctional Officer Dylan Maier was administering medicine on plaintiff's housing unit. (Plaintiff alternately calls this defendant "Dylan Maier" and "Maier Dylan." In the interest of clarity, I will refer to him as Dylan Maier from this point forward.) Defendant Dylan Maier gave plaintiff a different inmate's medication. Plaintiff ingested the medicine and it "caused him to feel very sick and very dizzy, weakness, increased his anxiety and panic disorders, depression and made him have unusual thoughts and physical pain with emotional distress." Id. at 5. (Plaintiff does not specify what kind of pain.) Defendant Dylan Maier notified Sergeant Benningner, who in turn notified a supervisor. The supervisor instructed defendant Benningner to notify the nurse on call. Defendant Benningner called defendant Nurse Degager. The nurse told the staff to check on plaintiff "ever[y] so often." Id.

On July 7, 2014, plaintiff was feeling dizzy and asked defendant Ribbke to contact the health services unit, but Ribbke ignored him. Plaintiff then told defendant Krasovic that he was feeling weak and dizzy and needed to be seen by medical staff. Defendants Krasovic and Ribbke refused to assist plaintiff in obtaining medical attention.

On July 30, 2014, health services staff forgot to give plaintiff diphenhydramine. Plaintiff says this happened again "4 Days later on 10/01/2014." Id. at 7. "Not having the medication cause[d] [plaintiff] to have sleepless nights and emotional distress, dizziness and headaches. . . . " Id. at 7.

On August 11, 2014, defendant Gerry was delivering medicine on plaintiff's housing

unit and handed plaintiff another inmate's medication. Plaintiff noticed that the medication was not his, so he notified defendants Gerry and Benningner of the incident.

OPINION

A. Eighth Amendment

A prison official violates the Eighth Amendment if the official is "deliberately indifferent" to a "serious medical need." Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). A "serious medical need" is a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a layperson. Johnson v. Snyder, 444 F.3d 579, 584-85 (7th Cir. 2006). A medical need may be serious if it "significantly affects an individual's daily activities," Guiterrez v. Peters, 111 F.3d 1364, 1373 (7th Cir. 1997), if it causes significant pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or if it otherwise subjects the prisoner to a substantial risk of harm, Farmer v. Brennan, 511 U.S. 825 (1994). "Deliberate indifference" means that officials are aware that the prisoner needs medical treatment, but are disregarding the risk by consciously failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997).

1. Withdrawal

Plaintiff's allegations are sufficient to state an Eighth Amendment claim against defendant Dr. Maier for causing plaintiff to experience withdrawal after stopping his medicine abruptly and against defendants Krasovic and Ribbke for failing to assist him with

those symptoms. At this stage, I may assume that plaintiff's withdrawal symptoms "significantly affect[ed]" his daily activities and thus qualify as a serious medical need. Guiterrez, 111 F.3d at 1373. Because plaintiff alleges that defendant Dr. Maier is a psychologist, I may also assume that he was aware that plaintiff would experience withdrawal symptoms. (I note that as a psychologist Dr. Maier might not have the authority to prescribe medicine, but at this point, I will assume that he could have done so.) Moreover, plaintiff alleges that defendant Dr. Maier disregarded that risk by stopping plaintiff's medicine abruptly. At the pleading stage, it is reasonable to infer that tapering the medication was a reasonable measure that defendant Dr. Maier consciously refused to take. Further, plaintiff alleges that he complained to defendants Krasovic and Ribbke multiple times about his withdrawal symptoms, yet they both ignored his pleas to be taken to the health services unit and defendant Krasovic intentionally gave the medical staff incorrect information about plaintiff's health. This is sufficient to allege that defendants Krasovic and Ribbke were deliberately indifferent to plaintiff's serious medical need.

2. Distribution of medicine

Plaintiff says that he was handed the wrong medicine on July 6, 2014 by defendant Dylan Maier and on August 11, 2014 by defendant Gerry. On August 11, 2014, plaintiff noticed that the medicine was not his and he does not allege that he ingested it, so I cannot infer that plaintiff experienced a serious medical need on that occasion. On July 6, 2014, plaintiff did ingest the medicine, and he says he experienced pain, dizziness, weakness,

depression and anxiety, but he has alleged no facts from which I can infer that defendant Dylan Maier had a sufficiently culpable mental state. Deliberate indifference requires that defendant knowingly disregard the risks associated with a serious medical need, but plaintiff does not allege that defendant Dylan Maier knowingly gave him the wrong medicine or that defendant Dylan Maier must have known that he gave plaintiff the wrong medicine. Snipes v. DeTella, 95 F.3d 586, 591 (7th Cir. 1996) ("To raise an Eighth Amendment issue, '[t]he infliction [of punishment' must be deliberate or otherwise reckless in the criminal law sense, which means that the defendant must have committed an act so dangerous that his knowledge of the risk can be inferred or that the defendant actually knew of an impending harm easily preventable.' . . . Mere negligence or even gross negligence does not constitute deliberate indifference.") (quoting Antonelli v. Sheahan, 81 F.3d 1422, 1427 (7th Cir.1996)) (alterations in original).

Further, plaintiff does not allege that defendants Dylan Maier or defendant Benningner disregarded the risks after plaintiff ingested the medicine. Plaintiff alleges that defendant Dylan Maier notified his superior, defendant Benningner, of the situation, who, in turn, notified defendant Degager, a nurse on staff. Defendant Degager told the correctional officers to "check in" on plaintiff. In light of the fact that he did not appear to be in urgent danger, I cannot assume that those steps were unreasonable in this case. Plaintiff believes that defendant Degager should have checked on him personally, but that is not enough to show that she was deliberately indifferent. Id. ("'[A] mere disagreement with the course of [the inmate's] medical treatment [does not constitute] an Eighth

Amendment claim of deliberate indifference.'") (quoting Warren v. Fanning, 950 F.2d 500, 502 (8th Cir. 1990)) (alterations in original).

Plaintiff says that on July 7, 2014, he complained to defendants Ribbke and Krasovic about feeling weak and dizzy, but they ignored him. Given the vagueness of plaintiff's complaints and the lack of any allegation that plaintiff told them about the wrong medicine, I cannot infer from plaintiff's allegations that either defendant Ribbke or defendant Krasovic had a sufficiently culpable state of mind when he did not send plaintiff to health services. Accordingly, I conclude that these allegations do not state a claim.

Next, plaintiff alleges that "HSU staff" twice forgot to give him diphenhydramine. Plt.'s Cpt., dkt. #1, at 6. Plaintiff does not say why he was taking this medicine, but he says that he experienced sleeplessness, distress, dizziness and headaches as a result of not receiving it. For the purposes of pleading, I may assume that failure to receive this medicine constituted a serious medical need in plaintiff's case. However, at summary judgment or trial, plaintiff will have to show that failing to receive diphenhydramine disrupted his ability to conduct daily activities, caused him significant pain or resulted in a substantial risk of serious harm. Farmer, 511 U.S. 825; Guiterrez, 111 F.3d at 1373; Cooper, 97 F.3d at 916-17.

Even assuming that plaintiff had a serious medical need, he has failed to connect this claim to any defendant. He says that "HSU staff" are responsible, but he does not name the person who took the medicine off the unit. If he does not know the person responsible, he may name a "John Doe" defendant, but defendant Mashak is not liable merely for

supervising health services. Burks v. Raemisch, 555 F.3d 592, 593–94 (7th Cir. 2009). Moreover, defendant Dr. Maier, a psychologist, is not liable merely because plaintiff notified him about this problem with diphenhydramine, a medicine prescribed for allergies, motion sickness and related symptoms. American Medical Association, Complete Medical Encyclopedia 468 (Jerrold B. Leikin and Martin S. Lipsky, eds., 2003). I will give plaintiff an opportunity to name the responsible defendant. If he chooses to supplement his complaint and name this defendant, plaintiff should be sure to explain exactly what the defendant did or did not do with respect to the diphenhydramine, and plaintiff should say what that defendant knew about plaintiff's condition and plaintiff's need for diphenhydramine, to the extent plaintiff is aware of those facts. If plaintiff does not supplement his complaint, this claim will be dismissed.

Plaintiff should understand that, going forward, he will not be permitted to amend his complaint by supplement. Rather, in the future, if plaintiff wishes to amend his complaint, he will have to file a new complaint that completely replaces the previous one by listing all defendants in the caption and by alleging all the relevant facts for each of his claims. Moreover, plaintiff should take note of the fact that his complaint may be limited by Fed. R. Civ. P. 20, which provides that plaintiff may proceed only on those claims that arise from the same set of facts or that are raised against the same defendants. Because plaintiff has not named anyone as being responsible for the diphenhydramine, it is impossible to know now whether he can proceed on the claim.

B. Negligence

In the damages section of his proposed complaint, plaintiff says that he is seeking damages for negligence against all defendants, which I will construe as a claim for negligence under state law. Federal courts may exercise supplemental jurisdiction over a state law claim that is "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). Plaintiff's state law claims arise from the same set of facts as his federal Eighth Amendment claims, so I may exercise jurisdiction over the state law claims.

1. Withdrawal

To prevail on a claim for negligence in Wisconsin, plaintiff must show that defendants breached their duty of care and that plaintiff suffered injury as a result of that breach. Paul v. Skemp, 2001 WI 42, ¶ 17, 242 Wis. 2d 507, 520, 625 N.W.2d 860, 865. It is reasonable to infer at this stage that defendant Dr. Maier was negligent for failing to take reasonable measures with respect to plaintiff's withdrawal from his medicine. Plaintiff alleges that defendant Dr. Maier breached his duty of care by halting the administration of plaintiff's medicine abruptly, which caused plaintiff to suffer withdrawal symptoms including chest pains, stomach cramps, nausea, dizziness and headaches.

However, I conclude that plaintiff cannot proceed with a negligence claim against defendants Krasovic and Ribbke at this time. For state law claims that are brought against

a state employee, Wisconsin law requires that plaintiff serve a written notice of the circumstances of the claim on the employee within 120 days of the occurrence giving rise to the claim. Wis. Stat. § 893.80(1d)(a). Filing a proper notice of claim is an act that must occur before the plaintiff may file a suit. Snopek v. Lakeland Medical Center, 223 Wis. 2d 288, 295, 588 N.W.2d 19, 23 (1999). Plaintiff has not alleged that he filed the appropriate notice of claim under Wis. Stat. § 893.80, which he must do in order to proceed. The statute does not apply to medical malpractice claims, which is why plaintiff may proceed against defendant Dr. Maier. Medical malpractice claims are cognizable against "health care providers" only. Wis. Stat. § 893.55. Defendants Ribbke and Krasovic are not health care providers, even if they are responsible for some aspects of plaintiff's health. Wisconsin courts have defined "health care provider" under Wis. Stat. § 893.55 to mean only those "individuals who are: (1) involved in the diagnosis, treatment or care of the patient, and (2) licensed by a state examining board to provide such care." Arenz v. Bronston, 224 Wis. 2d 507, 514, 592 N.W.2d 295, 298 (Ct. App. 1999). Defendants Ribbke and Krasovic are not licensed medical professionals; they are correctional officers charged with helping plaintiff receive medical care when necessary. Because plaintiff has not alleged that he filed a notice of claim with respect to these defendants, he cannot proceed against them at this time. Plaintiff is free to supplement his complaint to allege that he has filed the proper notice and that the state has disallowed his claim. Wis. Stat. § 893.80. If plaintiff fails to do so, these claims will be dismissed.

2. Distribution of medicine

Plaintiff cannot proceed on negligence claims related to the distribution of medicine against defendants Ribbke, Krasovic, Dylan Maier, Benningner and Gerry, all of whom are correctional officers, for the same reasons that he cannot proceed against defendants Ribbke and Krasovic for claims related to his withdrawal symptoms. With respect to defendants Benningner and Gerry, plaintiff would not be granted leave to proceed even if he had filed an appropriate notice of claim because defendant Benningner took reasonable steps by notifying a nurse that plaintiff had ingested the wrong medicine. Further, plaintiff did not ingest the medicine (and thus suffered no injury) when defendant Gerry gave him the wrong medicine. Accordingly, plaintiff cannot proceed against defendants Benningner and Gerry on a negligence theory. With respect to defendants Ribbke, Krasovic and Dylan Maier, plaintiff is free to supplement his complaint to allege that he has filed the proper notice and that the state has disallowed his claim. Wis. Stat. § 893.80. If plaintiff fails to do so, these claims will be dismissed.

Defendant Nurse Degager is a health care provider under Wis. Stat. § 893.55, so plaintiff avoids the notice of claim problem. Nevertheless, I conclude that plaintiff's allegations are insufficient to state a malpractice claim against defendant Degager. Plaintiff alleges that after being informed by defendant Benningner that plaintiff ingested the wrong medicine, defendant Degager instructed the correctional officers to monitor plaintiff's symptoms (feeling sick, dizzy, weak, depressed and anxious). Although plaintiff believes she ought to have personally observed him, I cannot infer from these allegations that defendant

Degager's inaction breached her duty of care in light of the vagueness of plaintiff's symptoms, especially because plaintiff does not say what medicine he ingested or whether that medicine has risks for serious side effects. Furthermore, plaintiff has not alleged that he suffered any prolonged or intensified symptoms as a result of Degager's inaction, so plaintiff has failed to allege that he suffered an injury. I will give plaintiff an opportunity to file a supplement to his complaint that states a claim by providing further facts about the medicine he ingested and any injury he may have suffered. If plaintiff fails to do so, his claim will be dismissed.

Finally, plaintiff's allegations with respect to the missed diphenhydramine doses are insufficient to state a claim for negligence for the same reason that plaintiff fails to state a claim under the Eighth Amendment: plaintiff fails to identify a responsible defendant. Although plaintiff says "HSU staff" is responsible, he does explain what defendant Mashak, health services supervisor, failed to do or that defendant Dr. Maier, a psychologist, had a duty of care with respect to this medical problem. If plaintiff amends his complaint to name a defendant responsible for the missed doses, he should be sure to explain how the defendant breached his or her duty of care to plaintiff. In addition, plaintiff should take note that his claims against defendants Dylan Maier, Nurse Degager and the defendant or defendants responsible for failing to give him diphenhydramine may face problems under Fed. R. Civ. P. 20, which limits plaintiff's complaint to claims that arise under the same set of facts or that arise against the same defendant. In this case, it appears likely that plaintiff's claims about withdrawal are not sufficiently related to his claims about receiving incorrect medicine

and about not receiving doses of his own medicine. If plaintiff wishes to pursue these claims, he may have to do so in different lawsuits.

C. Wisconsin Abuse of Residents of Penal Facilities Statute

Plaintiff seeks "[d]amages for violation of § 940.29, Wis. Stat., Abuse, Ill-Treatment and/or Neglect of an Inmate in the amount of $40,000.00[] for each defendant." Wisconsin Statute § 940.29, entitled "Abuse of Residents of Penal Facilities," is a criminal statute. Only the state may prosecute crimes and the statute does not create a private cause of action or a remedy for private citizens. Irby v. Sumnicht, No. 09-cv-136-bbc, 2009 WL 803307, at *4 (W.D. Wis. Mar. 20, 2009). Consequently, plaintiff cannot state a claim under this statute upon which relief may be granted.

D. Retaliation

Plaintiff asserts retaliation claims against defendants Ribbke and Krasovic. To prevail on a retaliation claim, plaintiff must prove three elements: 1) he engaged in activity protected by the Constitution; 2) defendants' conduct was sufficiently adverse to deter a person of "ordinary firmness" from engaging in the protected activity in the future; and 3) defendants subjected plaintiff to the adverse treatment because of his protected activity. Gomez v. Randle, 680 F.3d 859, 866-67 (7th Cir. 2012).

Plaintiff alleges that defendants Ribbke and Krasovic refused to allow him to obtain medical attention on July 7, 2014, because he "wrote them up" on June 29, 2014, which I

understand to mean that plaintiff filed a grievance against Ribbke and Krasovic on that date. Plt.'s Cpt., dkt #1, at 5. Plaintiff alleges that on July 7, 2014, defendant Krasovic also "retaliated against [him] by writing [him] a false conduct report, for utilizing the inmate complaint system." Id. at 6. Furthermore, plaintiff alleges that defendant Ribbke broke plaintiff's electric razor and poured out his prayer oil during a cell search, afterwards asking plaintiff why he was "filing an ICI against him," which I understand to mean that plaintiff filed a grievance against Ribbke. Id.

Prisoners have a right to file grievances under the First Amendment. Powers v. Snyder, 484 F.3d 929, 932 (7th Cir. 2007). Plaintiff says that defendants Krasovic and Ribbke refused to allow him to get medical treatment, issued him a false conduct report, destroyed his property and made threatening statements to him after he filed the grievances. It is reasonable to infer at this stage of the proceedings that these actions were sufficiently adverse to deter a person of ordinary firmness from filing grievances and that defendants undertook these actions as a result of plaintiff's protected activity. Accordingly, plaintiff will be granted leave to proceed on his retaliation claim against defendants Ribbke and Krasovic.

Plaintiff is cautioned, however, that a claim for retaliation presents a classic example of a claim that is easy to allege but hard to prove. Many prisoners make the mistake of believing that they have nothing left to do after filing the complaint, but that is far from accurate. A plaintiff may not prove his claim with the allegations in his complaint, Sparing v. Village of Olympia Fields, 266 F.3d 684, 692 (7th Cir. 2001), or his personal beliefs, Fane v. Locke Reynolds, LLP, 480 F.3d 534, 539 (7th Cir. 2007). Plaintiff will have to produce

evidence that defendants Ribbke and Krasovic performed these actions because plaintiff filed a grievance and not for "legitimate penological reasons." Babcock v. White, 102 F.3d 267, 275 (7th Cir. 1996). Plaintiff may prove the defendants' retaliatory intent in a variety of ways. He may show evidence suggesting a retaliatory motive, such as suspicious timing (though suspicious timing alone is rarely enough to prove retaliation) or statements by defendants that they were bothered by plaintiff's grievances. Mullin v. Gettinger, 450 F.2d 280, 285 (7th Cir. 2006); Culver v. Gorman & Co., 416 F.3d 540, 545-47 (7th Cir. 2005). He may also present evidence that defendant Krasovic lied about plaintiff's actions in the conduct report.

E. Defendants Ditman and Mashak

Plaintiff lists Warden Ditman and Health Services Supervisor Meredith Mashak as defendants, but he does not allege that they had any personal involvement in any incidents that are part of plaintiff's complaint. Accordingly, I am dismissing the complaint as to these defendants.

F. Request for Assistance in Recruiting Counsel

In one section of his complaint, plaintiff asks the court to appoint counsel for him, which I will construe as a motion for assistance in recruiting counsel because I do not have the authority to appoint counsel in a civil case like this one. Plaintiff's motion will be denied for two reasons.

First, it is too early to determine whether the complexity of the case or plaintiff's skills in litigating it will warrant the assistance of a lawyer. Pruitt v. Mote, 503 F.3d 647, 663 (7th Cir. 2007). Thus far, I have only plaintiff's complaint, which shows that he is competent to explain himself and tell his story. Plaintiff says that he suffers from a learning disability and that he has received the assistance of another prisoner in completing his complaint. Nevertheless, plaintiff's complaint is logical and coherent and contains appropriate information. Further, he has not submitted any medical records or other evidence showing how any problem he has prevents him from litigating this case.

Second, plaintiff must make reasonable efforts to find a lawyer on his own before the court will intervene, and he has not provided any evidence that he has made these efforts. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). It is the general practice of this court to require plaintiff to submit letters from at least three lawyers who have declined to represent him as proof of his efforts. Plaintiff's motion will be denied without prejudice to his refiling it at a later stage in the proceedings.

ORDER

IT IS ORDERED that

1. Plaintiff Arsenio R. Akins is GRANTED leave to proceed with respect to the following claims:

1) Defendant Dr. Maier was deliberately indifferent to plaintiff's serious medical need in violation of the Eighth Amendment when he halted the administration of plaintiff's medicine abruptly;

2) Defendant Dr. Maier breached his duty of care under negligence law when he

halted the administration of plaintiff's medicine abruptly;

3) Defendants Sergeant Krasovic and Correctional Officer Ribbke were deliberately indifferent to plaintiff's serious medical need in violation of the Eighth Amendment when they ignored plaintiff's requests for medical assistance for his withdrawal symptoms;

4) Defendants Krasovic and Ribbke retaliated against plaintiff for filing grievances against them when they refused to assist him in obtaining medical assistance, filed a false conduct report against him and destroyed his property while searching his cell.

2. Plaintiff's complaint is DISMISSED with respect to his Eighth Amendment medical care and negligence claims against defendants Correctional Officer Gerry and Sergeant Benninger for plaintiff's failure to state a claim upon which relief may be granted. Plaintiff's complaint is DISMISSED with respect to his Eighth Amendment claim against defendant Dylan Maier and with respect to his claim under Wis. Stat. § 940.29 for plaintiff's failure to state a claim upon which relief may be granted.

3. With respect to plaintiff's claims that "HSU staff" failed to give him diphenhydramine and that defendant Nurse Degager was negligent in treating him when he ingested the wrong medicine, plaintiff may have until June 8, 2015, to file a supplement to his complaint in which he alleges sufficient facts to state these claims, as outlined in this order. Plaintiff may also supplement his complaint by June 8, 2015 with information on whether he filed a notice of claim for negligence under Wis. Stat. § 893.80 that was disallowed against defendants Ribbke, Krasovic and Dylan Maier. If plaintiff fails to respond by that date, these claims will be dismissed.

4. Plaintiff's complaint is DISMISSED as to defendants Warden Ditman, Health Services Specialist Meredith Mashak, Sergeant Benningner and Correctional Officer Gerry

for plaintiff's failure to state a claim upon which relief may be granted against them.

5. 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 the defendants.

6. For the time being, plaintiff must send the defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing the defendants, he should serve the lawyer directly rather than the 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 defendants' attorney.

7. 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.

8. 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). 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.

9. If plaintiff is transferred or released while this case is pending, it is his obligatin to inform the court of his new address. If he fails to do this and defendants or the court are

unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 13th day of May, 2015.

BY THE COURT:
/s/

_____
BARBARA B. CRABB
District Judge