

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

PRINCE D. KEY,

Plaintiff,

v.

OPINION & ORDER

MEREDITH MASHAK, KARL HOFFMAN,
and KEISHA PERRENOUD,

15-cv-673-jdp

Defendants.

Plaintiff Prince D. Key, a prisoner at the Columbia Correctional Institution, has filed this proposed lawsuit in which he alleges that prison officials have violated his Eighth Amendment right against cruel and unusual punishment by failing to treat his injured knee.

Plaintiff filed this case in the circuit court for Dane County. Defendants removed the case to this court and have paid the \$400 filing fee for this action. Nonetheless, because plaintiff is a prisoner, the next step is screening the complaint and dismissing any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. Because plaintiff is a pro se litigant, I must read his allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972) (per curiam).

After reviewing plaintiff's complaint with these principles in mind, I conclude that he may proceed on Eighth Amendment claims against defendants in their individual capacities but not in their official capacities.

ALLEGATIONS OF FACT

Plaintiff Prince Key is a prisoner at the Columbia Correctional Institution. In November 2014, plaintiff's right knee was injured as the result of a "high impact blow" during a basketball game. Plaintiff's knee grinds, pops, swells, stiffens, locks, "even buckles under moderate pressure," and causes him pain. Dkt. 1-2, at 3.

Plaintiff was seen by Health Services Unit (HSU) staff within a couple of days. A nurse told plaintiff to ice his knee, keep it elevated, and brace it. But another nurse denied plaintiff a brace and told him he needed to order one from the canteen. He was scheduled to see a doctor.

Before seeing the doctor, plaintiff continued to suffer pain. He asked to see the doctor as soon as possible, but his requests were denied, and he waited 51 days to see the doctor. He was seen by defendant Dr. Karl Hoffman in late January 2015. Hoffman examined plaintiff and concluded that he had torn his meniscus and may need surgery. Hoffman ordered physical therapy to see if it would help, and ordered Naproxen 500 mg to treat plaintiff's pain.

Plaintiff saw the physical therapist in early February 2015. The therapist thought plaintiff's knee was "no longer lining up as it should" *Id.* at 6. Plaintiff followed the therapist's instructions to perform various stretches, but they only exacerbated his pain. Plaintiff again asked for a brace but was denied. Plaintiff addressed a health request to defendant Hoffman, stating that the therapy was not working and asking for a brace or sleeve and an MRI. Plaintiff saw a nurse, who stated that he was scheduled to see a doctor.

Plaintiff continues to suffer pain strong enough to wake him up and he can feel that his knee is not stable. His pain medication is ineffective. Yet he has not been given new

medication, a knee brace, or other treatment. Plaintiff filed an inmate grievance, but defendant Keisha Perrenoud denied it. Plaintiff states that he has also made defendant Meredith Mashak, the HSU manager at the prison, aware of his problems, but she has not helped him get treatment.

ANALYSIS

Plaintiff attempts to bring claims that his Eighth Amendment right against cruel and unusual punishment was violated by defendants' failure to properly treat his knee injury. The Eighth Amendment prohibits prison officials from acting with deliberate indifference to prisoners' serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976). A "serious medical need" may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. *Johnson v. Snyder*, 444 F.3d 579, 584-85 (7th Cir. 2006). A medical need may be serious if it is life-threatening, carries risks of permanent serious impairment if left untreated, results in needless pain and suffering, significantly affects an individual's daily activities, *Gutierrez v. Peters*, 111 F.3d 1364, 1371-73 (7th Cir. 1997), or otherwise subjects the prisoner to a substantial risk of serious harm, *Farmer v. Brennan*, 511 U.S. 825, 847 (1994).

Plaintiff's allegations about his knee problems are sufficient to show a serious medical need. He also alleges that there have been significant delays in his medical appointments, his knee is not healing, he continues to suffer pain, and he has made defendants aware of these problems but they have failed to take any action to provide new treatment. I conclude that plaintiff may proceed on Eighth Amendment deliberate indifference claims against each of the named defendants. *See Gonzalez v. Feinerman*, 663 F.3d 311, 314 (7th Cir. 2011)

(physicians are “obligated not to persist in ineffective treatment”). I warn plaintiff that to prevail on his claims at summary judgment or trial, it will not be enough to show that he disagrees with the course of treatment authorized by defendants. Rather, he will have to show that each of them was aware of the ineffectiveness of his treatment and yet failed to take action to help him.

Plaintiff also states that he seeks leave to proceed on claims against defendants in their official capacities for adopting a “constitutionally unsound policy and/or practice.” *Id.* at 10. But I will not allow him to proceed on such a claim because he has failed to show any policy or practice beyond his own course of treatment.

ORDER

IT IS ORDERED that:

1. Plaintiff Prince D. Key is GRANTED leave to proceed on Eighth Amendment medical care claims against defendants Dr. Karl Hoffman, Meredith Mashak, and Keisha Perrenoud.
2. Plaintiff is DENIED leave to proceed on official capacity claims against defendants.
3. For the time being, plaintiff must send defendants’ attorney a copy of every paper or document that he files with the court.
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. If plaintiff is transferred or released while this case is pending, it is his obligation 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 his failure to prosecute it.

Entered June 2, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge