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

ROBERT STEED,

Plaintiff,

v. OPINION & ORDER

DR. SYED, WARDEN DOUMA, EDWARD F. WALL, and RN WARNER,[1] 15-cv-55-jdp

Defendants.

Plaintiff Robert Steed is a prisoner in the custody of the Wisconsin Department of Corrections at the Columbia Correctional Institution. He filed a civil complaint under 42 U.S.C. § 1983 about the provision of medication at the New Lisbon Correctional Institution, where he was previously incarcerated. Plaintiff alleged that he received the wrong pain medication, which was ineffective and gave him an allergic reaction. In a July 16, 2015, order, I dismissed plaintiff's complaint for failure to comply with Federal Rule of Civil Procedure 8, and gave him a chance to submit an amended complaint setting out his claims for relief in more detail.

Now plaintiff has filed a motion for leave to file an amended complaint along with a proposed amended complaint. I will grant plaintiff's motion and screen his amended complaint under 28 U.S.C. §§ 1915 & 1915A. I must dismiss any portion of the complaint 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. In

---

[1] I have amended the caption to reflect the parties named in plaintiff's amended complaint. Defendants Nurse Johnson and Warden Thomas will be dismissed because they are not named as defendants in the amended complaint.

screening any pro se litigant's complaint, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). After review of the complaint with this principle in mind, I will allow plaintiff to proceed on deliberate indifference and negligence claims that prison officials have maintained a medication policy prone to error. But I will deny plaintiff leave to proceed on claims that his prison doctor intentionally switched his medications.

ANALYSIS

All of plaintiff's claims in his amended complaint stem from his allegations that in October 2014, his previous prescription for ibuprofen to treat his chronic neck and back pain was discontinued, and he started receiving acetaminophen instead. He alleged that the acetaminophen was ineffective to treat his pain and he also had an allergic reaction to it; his mouth went numb, and he suffered severe cramps and diarrhea. But plaintiff failed to plead facts that would show that any of the prison officials named as defendants acted with deliberate indifference to a serious medical need. After considering plaintiff's new allegations, I conclude that he has pleaded facts sufficient to state a claim based on the NLCI medication administration system.

A. Dr. Syed

Plaintiff alleges that defendant Dr. Syed changed his prescription from ibuprofen to acetaminophen. He attempted to bring First Amendment retaliation and Eighth Amendment deliberate indifference claims against Syed, alleging that he had changed the medication in response to a grievance that plaintiff filed against him previously. In the previous screening order, I stated that "there is nothing in plaintiff's allegations that plausibly connects the

medication change to plaintiff's previous grievance, nor is there any reason to think that Syed knew that the ibuprofen would cause an allergic reaction or would be ineffective." Dkt. 9, at 5.

Plaintiff now amends his complaint to include an allegation that Syed "knew [the acetaminophen] would be ineffective and/or cause an allergic reaction." Dkt. 11, at 3. But this is a conclusory allegation that I do not have to credit at screening; it is far from obvious that the new medication would be ineffective or cause plaintiff's side effects, and plaintiff does not explain how Syed would have known that these problems were going to occur. Notably, plaintiff still does not allege that he ever alerted Syed to the problems the acetaminophen caused him and that Syed persisted with the less effective medication. At most, plaintiff continues to state only a potential state-law medical malpractice claim against Syed, which he cannot bring by itself in this federal lawsuit.[2]

B. Medication system

Plaintiff brings claims based on an alternate theory: that the medication administration system at the DOC in general and NLCI in particular is so haphazard that it leads to inmates being given the wrong medications. I dismissed any such claim in the July 16, 2015, order, *see* Dkt. 9, at 5-6, but now plaintiff fleshes out this claim in more detail. Plaintiff states that prescriptions are handwritten and faxed to the central pharmacy, which "results in delays and errors." The orders are difficult to read and result in confusion, which

[2] As discussed further below, I will allow plaintiff to proceed against Syed and other defendants on deliberate indifference and negligence claims having to do with his alternate theory, that his medications were switched due to flaws in NLCI's medication system. However, I cannot conceive of a scenario in which his claims under that theory would be consistent with his claims that Syed intentionally switched his medications, so I will not allow plaintiff to join his malpractice claim against Syed in this lawsuit under Federal Rule of Civil Procedure Rule 18.

delays the provision of medication or results in the wrong medication being administered. Plaintiff states that defendants Syed, Warner (the NLCI health services manager), Douma (the NLCI warden), and Wall (former secretary of the DOC) are all aware of these problems. Plaintiff wants the current system of faxing orders to be replaced with a "computerized prescriber order entry system."

Federal Rule of Civil Procedure 8(d) permits plaintiffs to plead alternative theories of relief, even if the theories are inconsistent. Plaintiff's alternate theory is that prison officials maintain a medication administration policy that they know is riddled with potential sources of error, and that they continue to use this flawed policy even though they are aware of other litigation in which a federal court has intervened in DOC's medication system. *See Flynn v. Doyle*, 630 F. Supp. 2d 987, 993-94 (E.D. Wis. 2009) (directing DOC to implement computerized prescriber order entry system). It is unlikely that injunctive relief would be available to plaintiff because his claims are limited to NLCI, an institution at which is he no longer incarcerated. But I conclude that plaintiff has stated both deliberate indifference and negligence claims for damages against defendant prison officials for recklessly maintaining a medication system that resulted in an error harmful to him.

In allowing plaintiff to proceed on these claims, I note that plaintiff and several other current or former NLCI inmates have brought a similar case alleging that they have been harmed by NLCI's medication procedures. *See Steed v. A-Unit 3rd Shift Officer*, No. 14-cv-747-jdp (W.D. Wis.). As the two cases progress, I will consider whether they should be consolidated.

ORDER

IT IS ORDERED that:

1. Plaintiff Robert Steed's motion for leave to file an amended complaint, Dkt. 10, is GRANTED. Plaintiff's amended complaint, Dkt. 11, is the operative pleading.

2. Plaintiff is GRANTED leave to proceed on Eighth Amendment deliberate indifference and state-law negligence claims against defendants Dr. Syed, Nurse Warner, Warden Douma, and Edward Wall for maintaining a medication system that resulted in the provision of incorrect medication to plaintiff.

3. Plaintiff is DENIED leave to proceed on any claim against defendant Syed for intentionally switching his medication.

4. Defendants Nurse Johnson and Warden Thomas are DISMISSED from the case.

5. Under 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 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 on behalf of defendants.

6. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve defendants' lawyer directly rather than defendants themselves. The court will disregard any documents submitted by plaintiff unless he shows 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 plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

8. 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 March 23, 2016.

BY THE COURT:
/s/

_____
JAMES D. PETERSON
District Judge