

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

TIMOTHY ERIC GIBSON,

Plaintiff,

v.

D. BONNET, NP,

Defendant.

OPINION AND ORDER

17-cv-711-wmc

Pro se plaintiff Timothy Gibson, formerly an inmate at Fox Lake Correctional Institution, brings suit alleging that Nurse Practitioner D. Bonnett¹ at Fox Lake violated his due process rights and was deliberately indifferent to his health and safety by prescribing him Tamsulosin 0.4 mg without informing him about the drug's potentially serious side effects. Gibson's complaint is before the court for screening pursuant to 28 U.S.C. §§ 1915(e)(2), 1915A. For the following reasons, the court will grant Gibson leave to proceed against Bonnett on Fourteenth and Eighth Amendment claims.

ALLEGATIONS OF FACT²

On March 15, 2017, Nurse Bonnett examined Gibson and performed a prostate exam. Before the exam, Gibson asked if "she knew what she was doing?" He alleges that Bonnett answered that "this was not [her] first rodeo" and that she was a "doctor."

¹ Plaintiff identifies the defendant as both "Bonnett D. NP" and as "Dr. Bonnett." As will become clear shortly, plaintiff alleges that Bonnett is a nurse practitioner.

² In addressing any *pro se* litigant's complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this order, unless otherwise noted, the court assumes the following facts based on the allegations in the complaint viewed in a light most favorable to plaintiff and drawing all reasonable inferences in his favor.

(Compl. (dkt. #1) 5.) Bonnett is, in fact, a nurse practitioner. (Health Service Request Form (dkt. #1-1) 25.) During this visit, Bonnet prescribed Tamsulosin 0.4 mg for Gibson's prostate condition.

Sixty-one days later, Gibson decided to stop taking this medication because he felt bad. Around that same time, Gibson began "experiencing severe pain in [his] penis and testicles." (Compl. (dkt. #1) 4.) The pain continued for approximately thirty minutes, then came and went over the next five days. On May 19, he asked Fox Lake's health services to provide him with information about the possible side effects of Tamsulosin.³ Gibson alleges that the information health services provided "substantiate[d] and support[ed] the cause and reasons [he] was in fact experiencing the pain and suffering side-effects." (*Id.*) In particular, the drug information sheet provided by HSU warns of "[p]ainful, prolonged erection of your penis" as a possible side effect that warrants contacting "your doctor right away." (Drug Fact Sheet (dkt. #1-1) 4-5.) It also warns of "[p]roblems with ejaculation" as a "less serious side effect[]" that warrants a discussion with "your doctor." (*Id.* at 5.)

Gibson contends that Bonnett knew but "failed to explain" the side effects of Tamsulosin to him when it was prescribed and that this failure denied him the opportunity to make an informed decision about the prescription. He also complains that she did not tell him how to learn about the potential side effects.

³ Plaintiff alleges in his complaint that he made this request on May 25, 2017, although the health service request form attached to the complaint is dated May 19 and HSU's response is dated May 20, 2017. (Health Service Request Form (dkt. #1-1) 3.)

OPINION

Gibson seeks to proceed on two claims: (1) Bonnett denied him due process and “the opportunity to accept or reject” Tamsulosin by failing to inform him of the significant possible side effects; and (2) she was “deliberately indifferent to [his] health and safety in violation of the Eighth Amendment.” (Compl. (dkt. #1) 4, 7.) For the reasons explained below, plaintiff will be able to proceed only on the deliberate indifference claim.

I. Due Process

Plaintiff may proceed on a due process claim against Bonnett for her failure to provide him basic information about the side effects of Tamsulosin. The Due Process Clause of the Fourteenth Amendment prohibits states from “depriv[ing] any person of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV, § 1. The Supreme Court has held that “a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment.” *Cruzan v. Dir., Mo. Dep’t of Health*, 497 U.S. 261, 278 (1990). The Court also has held that prisoners retain a liberty interest in refusing forced medical treatment while they are incarcerated. *See Washington v. Harper*, 494 U.S. 210, 221-22 (1990). Recently, in *Knight v. Grossman*, 942 F.3d 336 (7th Cir. 2019), *pet. for certiorari docketed Knight v. Grossman*, No. 19-1138 (U.S. Mar. 18, 2020), the Court of Appeals for the Seventh Circuit concluded that prisoners could articulate a Fourteenth Amendment claim related to the right to informed consent. *Id.* at 342. The court set forth a two-step inquiry for prisoners to prove such a claim:

The prisoner must first establish that his right to informed consent was violated. To do this, the prisoner must prove that (1) he was deprived of information that a reasonable patient would deem necessary to make an

informed decision about his medical treatment, (2) the defendant acted with deliberate indifference to the prisoner's right to refuse treatment, and (3) if the prisoner had received the information, he would have refused the treatment. If the prisoner establishes that his right to informed consent has been violated, we then take the second and final step of balancing the prisoner's right to informed consent against countervailing state interests. Liability arises only if, in the end, the prisoner's right outweighs the state interests.

Id. at 343-44.

Plaintiff's allegations satisfy the first step of the inquiry: (1) a reasonable person likely would want to know if a medication will cause extreme penile pain; (2) it is reasonable to infer that Bonnett's failure to explain the few potential side effects of Tamsulosin exhibited deliberate indifference to his right to decline that medication; and (3) plaintiff claims he would not have taken the medication had he known about the potential side effects.

The second step of the analysis requires balancing plaintiff's right to information against state interests, and it is reasonable to infer that the burden on Bonnett to provide basic information about the potential side effects of Tamsulosin was minimal. *Cf. Phillips v. Wexford Sources, Inc.*, 522 F. App'x 364, 367 (7th Cir. 2013) (doctor need not "provide each prisoner-patient with an exhaustive list of all the possible adverse effects of each aspect of his treatment. Instead, a doctor simply must provide a prisoner with such information as a reasonable patient would find necessary.") (quoting *Pabon v. Wright*, 459 F.3d 241, 250 (2d Cir. 2006)). Accordingly, the court will grant plaintiff leave to proceed on a Fourteenth Amendment claim against Bonnett.

II. Deliberate Indifference

Plaintiff also claims that defendant was “deliberate[ly] indifferent to [his] health and safety” because she “knew of [the] substantial risk of harm to plaintiff and disregarded the risk” by failing to inform him about the Tamsulosin’s side effects. (Compl. (dkt. #1) 4, 7.) The Eighth Amendment imposes a duty on prison officials to take reasonable measures to guarantee an inmate’s safety and to ensure that inmates receive adequate medical care. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). A prison official’s “deliberate indifference” to a prisoner’s medical needs or to a substantial risk of serious harm violates the Eighth Amendment. *Id.* at 828; *Estelle v. Gamble*, 429 U.S. 104-05 (1976.). “Serious medical needs” include (1) life-threatening conditions or those carrying a risk of permanent serious impairment if left untreated, (2) withholding of medical care that results in needless pain and suffering, or (3) conditions that have been “diagnosed by a physician as mandating treatment.” *Gutierrez v. Peters*, 111 F.3d 1364, 1371 (7th Cir. 1997). “Deliberate indifference” means that the official is aware that the prisoner needs medical treatment, but disregards this need by consciously failing to take reasonable measures in response. *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997).

Plaintiff’s proposed deliberate indifference claim appears to be subsumed into his Fourteenth Amendment claim, since he claims only that Bonnett was deliberately indifferent to his right to information about Tamsulosin, not any other risk of harm. However, plaintiff is entitled to pursue the theories of relief upon which he would like to proceed. *See Soldal v. Cook Cty., Illinois*, 506 U.S. 56, 70-71 (1992). Furthermore, beyond alleging that Bonnett failed to inform him about the potential adverse effects of taking

Tamsulosin, she also failed to provide plaintiff with any directions on what to do if he was feeling adverse effects. These alleged failures by Bonnett suggest that she acted with deliberate indifference to the risk that plaintiff would be harmed and left untreated. Accordingly, the court will grant plaintiff leave to proceed against Bonnett on an Eighth Amendment deliberate indifference claim as well.

ORDER

IT IS ORDERED that:

- 1) Plaintiff Timothy Gibson is GRANTED leave to proceed on his Eighth Amendment deliberate indifference and Fourteenth Amendment right to informed consent claims against defendant Bonnett.
- 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 state defendants. Under the agreement, the Department of Justice will have 60 days from the date of the Notice of Electronic Filing in this order to answer or otherwise plead to plaintiff's complaint if it accepts service for the 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 defendant, he should serve the lawyer directly rather than defendant. 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 the defendant's 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) 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 defendant or the court is unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 7th day of April, 2020.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge