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

WILLIAM N. LEDFORD,

Plaintiff,

v.

CO MAHAL, CO MATUESKI, CO CONSTINE, NANCY GARCIA, EMILY STADTMUELLER, CRYSTAL MARCHANT, JOAN BOVEE, WILLIAM MCCREEDY, LORI ALSUM, NANCY WHITE, BRIAN FOSTER, ANNA BOATWRIGHT, JAMES LABELLE, CATHY JESS, DR. DAVID BURNET, DR. RYAN HOLZMACHER, ANTHONY MELI, PAUL LUDVIGSON, CPT. KYLE TRITT, EDWARD WALL, JON LITSCHER, and WILLIAM POLLARD,

Defendants.

OPINION AND ORDER

17-cv-959-wmc

Pro se plaintiff William N. Ledford filed this lawsuit pursuant to 42 U.S.C. § 1983, claiming that various Wisconsin Department of Corrections ("DOC") employees at Waupun Correctional Institution ("Waupun") violated his rights under the First and Eighth Amendments, as well as state law, by mishandling his diabetes care and then retaliating against him for complaining about it. Ledford's amended complaint (dkt. #9) is ready for screening as required by 28 U.S.C. § 1915A. For the reasons that follow, the court will allow him to proceed on his claims, but only against some of the named defendants.

ALLEGATIONS OF FACT[1]

A. Parties

Ledford is currently incarcerated at Columbia Correctional Institution ("Columbia"), but his claims arise from events that took place while he was incarcerated at Waupun. He names twenty defendants comprised of DOC employees that interacted with him personally or had supervisory positions at Waupun, as well as several more DOC employees that serve in policy-making roles in Madison, Wisconsin.

The Waupun defendants are: Correctional Officers Mahal, Matueski and Constine; Nurse Practitioner Nancy Garcia; Registered Nurse Emily Stadtmueller and Crystal Marchant; Inmate Complaint Examiner ("ICE") Joan Bovee; Health Services Unit ("HSU") Managers William McCreedy and Nancy White; Warden Brian Foster; Security Director Anthony Meli; Restrictive Housing Unit ("RHU") Supervisor Paul Ludvigson and Security Supervisor Kyle Tritt; and former warden William Pollard.

The Madison defendants are the Bureau of Health Services ("BHS") Nursing Coordinator Lori Alsum; Corrections Complaint Examiner ("CCE") Anna Boatwright; BHS policy-maker James LaBelle; former Division of Adult Institutions ("DAI") Administrator (and former DOC Secretary) Cathy Jess; BHS Directors David Burnet and Ryan Holzmacher; and former DOC Secretaries Edward Wall and Jon Litscher.

[1] In addressing any pro se litigant's complaint, the court must read the allegations generously, drawing all reasonable inferences and resolving ambiguities in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

B. Ledford's Diabetes and Complaints about DOC's Approach to his Care

Ledford suffers from Type II diabetes, and he injects two types of insulin daily, Novolin R and Lantus. Lantus is a 24-hour, long-acting insulin, which Ledford injects at breakfast (50 units) and at bedtime (15 units). Novolin is a short-acting insulin that serves to quickly lower his blood sugar level within 30 minutes of injection. Ledford injects Novolin once before each meal and again at bedtime, for a *minimum* of four injections per day. He further adjusts the units of Novolin he injects each time according to his contemporaneous blood sugar readings.

Among the various protocols that Ledford must follow to keep his blood sugar and insulin levels within a safe range is being sure to eat something within 30 minutes of his Novolin injection. He must do this to avoid hypoglycemia or low blood sugar, otherwise known as an "insulin reaction." Ledford alleges that all of the defendants that he works with have been aware of this requirement.

C. Ledford's March 8, 2016, Incident

During the morning of March 8, 2016, Ledford was being held in segregation, but scheduled for a wound treatment appointment at Agnesian Wound Care Clinic. At 10:03 a.m. that morning, Ledford took his blood sugar level using "Accu check" so that he could determine the appropriate dosage of Novolin for his meal, which he expected to eat between 10:00 and 10:30 a.m. Based on the Accu check reading, and expecting to eat within 30 minutes, Ledford injected 5 units at that time. Unfortunately, Ledford was not allowed to eat. Rather, Officers Mahal and Matueski took him directly from his cell to his

appointment at Agnesian. Even though Ledford informed both officers that he had just taken his short-acting insulin and needed to eat soon, the officer told him he could eat when he was done. Evan after Ledford's repeated request for food, Officers Mahal and Matueski refused him food, as did Officer Constine, who joined them during transport to Agnesian.

Despite Ledford's complaints, Officers Mahal, Matueski and Constine also failed to call HSU to ask whether they should heed his requests for food. Instead, Ledford was taken into his appointment at Agnesian at about 11:20 a.m.; and approximately twenty minutes into his appointment, he had a severe insulin reaction. Specifically, Ledford started shaking, sweating profusely, became dizzy and nauseous, had blurred vision, was disoriented and lethargic, and had difficulty keeping his eyes open. As a result, the nurse practitioner handling his wound care at Agnesian checked his blood sugar, found that it was extremely low, and gave him two containers of apple juice, followed by two glucose tabs. When his blood sugar still did not reach a safe level, Ledford was transferred to the emergency room, where he received treatment for hypoglycemia.

Ledford claims that a group of "Supervisory Defendants" -- comprised of defendants Garcia, Stadtmueller, Marchant, Alsum, White, Foster, LaBelle, Jess, Dr. Burnet, Dr. Holzmacher, Meli, Ludvigson, Tritt, Wall, Litscher and Pollard -- refused to train Waupun and DOC officers to deal with diabetic prisoners. Ledford further claims that these Supervisory Defendants inappropriately allow untrained officers to make medical determinations and to dispense medications to prisoners. Ledford alleges that between February 15, 2014, and June 9, 2016, he wrote to Supervisory Defendants complaining

about the failure to train and the policy allowing officers to make medical determinations.

While Ledford does not allege when he wrote to each Supervisory Defendant, he does allege that he specifically wrote to Nurse Stadtmueller on March 8, 2016, the same day as the incident at Agnesian, requesting that changes be made to officer training and how his trips to clinics would be handled. On March 11, 2016, Nurse Marchant replied on Stadtmueller's behalf, writing that his concerns would be evaluated. According to Ledford, however, nothing was done.

D. Ledford's Grievance and Allegations of Retaliation

On March 16, 2016, Ledford also filed an inmate complaint about the March 8 incident, WCI-2016-5772. Waupun's ICE Bovee spoke with HSU Manager McCreedy about Ledford's claims, and McCreedy reported there was no documentation indicating that he had an insulin reaction on March 8. (Pl. Ex. 7 (dkt. #9-7).) As a result, Bovee recommended dismissal of the claim. Ledford claims that defendants Bovee and McCreedy knowingly and intentionally lied in reaching their conclusions, since his medical records show that he *had* an insulin reaction that day. Ledford further claims that BHS officials LaBelle and Boatwright, as well as DOC Secretary Jess conspired to ignore his claim by affirming Bovee's recommendation to dismiss the complaint.

Finally, Ledford alleges that after defendants Garcia, Stadtmueller and Marchant learned about his inmate complaint, they retaliated against him by cancelling his wound care appointments and treatment at the clinic. Specifically, on March 26, 2016, Nurse Practitioner Garcia cancelled his wound care clinic appointments without any medical

basis. In addition, neither Garcia nor Nurses Marchant or Stadtmueller consulted with or examined Ledford before cancelling his appointments. Ledford alleges that because the wound care treatments stopped, an ulcer on his left big toe worsened to the point that his toes and part of his left foot had to be amputated.

OPINION

Plaintiff seeks leave to proceed on Eighth Amendment claims for deliberate indifference and failure to train and supervise related to the March 8, 2016, incident and the discontinuation of his wound care. He also asserts First Amendment retaliation claims related to the discontinuation of his wound care and dismissal of WCI-2016-5772. Finally, he maintains claims under Wisconsin law for negligence, negligent training, and negligent infliction of emotional distress. The court addresses each of these claims in turn below.

I. Eighth Amendment

A. Deliberate indifference

A prison official who violates the Eighth Amendment in the context of a prisoner's medical treatment demonstrates "deliberate indifference" to a "serious medical need." *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976); *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997). "Deliberate indifference" encompasses two elements: (1) awareness on the part of officials that the prisoner needs medical treatment and (2) disregard of this risk by conscious failure to take reasonable measures. *Estelle*, 429 U.S. at 104. "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).

Allegations of delayed care, even a delay of a just a few days, may violate the Eighth Amendment if the alleged delay caused the inmate's condition to worsen or unnecessarily prolonged his pain. *Estelle*, 429 U.S. at 104–05; *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010); *see also Petties v. Carter* 836 F.3d 722, 730-31 (7th Cir. 2016) (holding that inexplicable delay in medical treatment for a prisoner, which serves no penological interest, can support an inference of deliberate indifference, as element for a prisoner's Eighth Amendment claim); *Grieveson v. Anderson*, 538 F.3d 763, 779 (7th Cir. 2008) (guards could be liable under the Eighth Amendment for delaying treatment of broken nose for a day and half); *Edwards v. Snyder*, 478 F.3d 827, 830–31 (7th Cir. 2007) (a plaintiff who painfully dislocated his finger and was needlessly denied treatment for two days stated a claim for deliberate indifference).

Thus, plaintiff's claim must satisfy three elements:

1. Plaintiff objectively needed medical treatment.
2. Defendants knew that plaintiff needed treatment.
3. Despite their awareness of plaintiff's need, defendants consciously failed to take reasonable measures to provide the necessary treatment.

As an initial matter, the court will accept for purposes of screening that plaintiff's diabetes and foot wound are both serious medical needs. As for Officers Mahal, Matueski and Constine, on March 8 they each were each advised that plaintiff had taken insulin and needed to eat before being transported to his offsite wound care appointment. These

defendants' failure to take *any* steps to avoid an insulin reaction that day supports an inference of deliberate indifference. Accordingly, plaintiff may proceed against each of them on his claim of deliberate indifference. Plaintiff may also proceed against Nurses Garcia, Stadtmueller and Marchant based on claims that each acted with deliberate indifference to the discontinuation of his wound care. Since plaintiff has not alleged that any other defendant was *personally* involved in his insulin reaction or his wound care, he may not proceed against any other defendants.

Plaintiff would also like to proceed on deliberate indifference claims against certain of the so-called supervisory defendants Bovee, McCreedy, LaBelle, Boatwright and Jess for their roles in dismissing WCI-2016-5772. While plaintiff may take issue with *how* they resolved his complaint, he has not pled facts that give rise to a reasonable inference that he was addressing ongoing issues with them as to staff's handling of his diabetes and wound care. Accordingly, their failure to take corrective action in resolving his inmate complaint could not reasonably be found to constitute deliberate indifference to his existing medical needs.

B. Failure to Train

Plaintiff also attempts to assert a claim of failure to train against a larger group of "Supervisory Defendants," including Garcia, Stadtmueller, Marchant, Alsum, White, Foster, LaBelle, Jess, Dr. Burnet, Dr. Holzmacher, Meli, Ludvigson, Tritt, Wall, Litscher and Pollard. A failure to train claim is typically pursued under an official-capacity or municipal-liability theory. *See City of Canton v. Harris*, 489 U.S. 378, 388 (1989) (flawed

policies or training amounts to deliberate indifference only if "the need for more or different [policies or] training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need."). Even so, supervisors may be liable under § 1983 for failing to train their employees, *Kitzman-Kelley v. Warner,* 203 F.3d 454, 459 (7th Cir. 2000), if they are personally involved in the conduct and act with deliberate indifference toward it. *Chavez v. Ill. State Police*, 251 F.3d 612, 651 (7th Cir. 2001). Said another way, the supervisors must know their training is so inadequate that employees are likely to violate the constitution as a result, yet failed to address those inadequacies. *Ghashiyah v. Frank,* No. 07-C-308, 2007 WL 5517455, at *2 (W.D. Wis. Aug. 1, 2007) (citing *Mombourquette ex rel. Mombourquette v. Amundson,* 469 F. Supp. 2d 624, 651 (W.D. Wis. 2007)).

Plaintiff has not alleged sufficient facts to support an inference that any of the Supervisory Defendants were aware Waupun correctional officers were refusing to allow prisoners with diabetes to follow the proper protocols to time insulin medications safely with their meals. Nor has plaintiff alleged that he has actually dealt with similar refusals by officers before or after the March 8, 2016, incident. Instead, the gist of plaintiff's complaint is that he takes issue with the broader policy or practice allowing correctional officers to make judgment calls related to his diabetes treatment, and that the Supervisory Defendants have acted with deliberate indifference to the risks arising out of that policy or practice.

Yet the operative question for purposes of a failure to train claim remains whether any of the Supervisory Defendants had reason to know that the policies and practices in place leading up to the March 8, 2016, incident were constitutionally infirm. *City of Canton*, 498 U.S. at 388. Here, plaintiff has not pled facts supporting an inference that these defendants were aware of other instances in which correctional officers were mishandling the protocols for diabetic prisoners, much less interfering with the timing of access to food following injection of fast-acting insulin. In particular, while plaintiff may have written to certain defendants complaining about the treatment of diabetic prisoners, he has not alleged what his specific complaints concerned. More importantly, he has not alleged that any of the named Supervisory Defendants actually failed to prevent other incidents similar to that on March 8, 2016. Accordingly, plaintiff may not proceed on a failure to train theory against the Supervisory Defendants.

II. First Amendment Retaliation

To state a claim for retaliation, a plaintiff must allege that: (1) he engaged in activity protected by the Constitution; (2) the defendant subjected the plaintiff to adverse treatment because of the plaintiff's constitutionally protected activity; and (3) the treatment was sufficiently adverse to deter a person of "ordinary firmness" from engaging in that protected activity in the future. *Gomez v. Randle*, 680 F.3d 859, 866-67 (7th Cir. 2012); *Bridges v. Gilbert*, 557 F.3d 541, 555-56 (7th Cir. 2009). Here, plaintiff's inmate complaint certainly constitutes constitutionally protected activity. *Powers v. Snyder*, 484 F.3d 929, 932 (7th Cir. 2007); *Pearson v. Welborn*, 471 F.3d 732, 738 (7th Cir. 2006). Plaintiff's allegations involving Nurses Garcia, Stadtmueller and Marchant -- that they each

learned about his grievance and subsequently cancelled his wound care treatments -- also give rise to a reasonable inference that each of them intended to punish him for filing the grievance about the March 8, 2016, incident. Therefore, plaintiff may proceed against defendants Garcia, Stadtmueller and Marchant on a retaliation claim, in addition to the deliberate indifference claim. Again, since plaintiff does not allege that any other individuals were personally involved in his wound care, he may not proceed against any other HSU staff on this retaliation claim.

As for plaintiff's proposed retaliation claims against Supervisory Defendants Bovee, McCreedy, LaBelle, Boatwright and Jess for their part in dismissing WCI-2016-5772, the court will accept plaintiff's conclusory statement that each of these defendants intended to punish him by dismissing his inmate complaint. However, plaintiff's retaliation claim against these individuals flounders at the second element, because a dismissed grievance is not the type of adverse incident that would deter a prisoner of ordinary firmness from engaging in constitutionally protected activity again in the future. *See Brown v. Wexford Health Servs.*, No. 14-cv-1122-NJR, 2014 WL 7014111, at *5 (S.D. Ill. Dec. 11, 2014) (finding that denial of a grievance would not deter a prisoner of reasonable firmness from pursuing grievances in the future). Indeed, plaintiff has not alleged that he was denied access to the grievance system by any of these defendants, just that he disagrees with their *handling* of a specific complaint. Accordingly, while plaintiff may proceed on a retaliation claim against defendants Garcia, Stadtmueller and Marchant, he may not proceed on one against Bovee, McCreedy, LaBelle, Boatwright or Jess.

III. State Law Claims

Finally, plaintiff seeks to proceed on certain claims under Wisconsin law against the same defendants. The court may exercise supplemental jurisdiction over these claims. 28 U.S.C. § 1367(a) ("[D]istrict courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."). As an initial matter, since the Eighth Amendment claims against Alsum, White, Foster, LaBelle, Jess, Dr. Burnet, Dr. Holzmacher, Meli, Ludvigson, Tritt, Wall, Litscher and Pollard have been dismissed, the court will decline to exercise jurisdiction over the state law tort claims against them as well. *See, e.g.*, *Williams v. Rodriguez*, 509 F.3d 392, 404 (7th Cir. 2007) (affirming trail court's dismissal of plaintiff's state law claims for lack of jurisdiction after parallel federal claims had been dismissed).

A. Wisconsin Negligence

In contrast, plaintiff may proceed on a negligence claim against defendants Mahal, Matueski, Constine, Garcia, Stadtmueller and Marchant. Under Wisconsin law, the elements of a cause of action in negligence are: (1) a duty of care or a voluntary assumption of a duty on the part of the defendant; (2) a breach of the duty, which involves a failure to exercise ordinary care in making a representation or in ascertaining the facts; (3) a causal connection between the conduct and the injury; and (4) an actual loss or damage as a result of the injury. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 307 (1987). Each of these defendants owed plaintiff a duty of care, although the duty is more clearly defined for nurses. Here, it is reasonable to infer that Correctional Officers Mahal, Matueski and

Constine's refusal to allow him to eat constituted a breach of their duty of care, which led to plaintiff suffering an insulin reaction. It is likewise reasonable to infer that Nurses Garcia, Stadtmueller and Marchant's decision to discontinue his wound treatment, for no apparent reason, breached their duty of care, which may have led to the amputation. Accordingly, plaintiff may proceed on negligence claims against defendants Mahal, Matueski, Constine, Garcia, Stadtmueller and Marchant, under the court's exercise of supplement jurisdiction.

B. Negligent Supervision

Plaintiff also seeks to proceed on a claim of negligent supervision against the Supervisory Defendants. Since the court denied plaintiff leave to proceed against those defendants on any Eighth Amendment claims, the court also declines to exercise supplemental jurisdiction over this state law claim.

C. Negligent Infliction of Emotional Distress

Finally, plaintiff seeks to proceed against defendants Mahal, Matueski and Constine, as well as the Supervisory Defendants, on claims of negligent infliction of emotional distress. To prove a claim for negligent infliction of emotional distress, a plaintiff must establish only three elements under Wisconsin law: "(1) that the defendant's conduct fell below the applicable standard of care, (2) that the plaintiff suffered an injury, and (3) that the defendant's conduct was a cause-in-fact of the plaintiff's injury." *Bowen v. Lumbermens Mut. Cas. Co.*, 183 Wis.2d 627, 632, 517 N.W.2d 432 (1994). Since plaintiff

is seeking to proceed on this type of claim stemming from an incident in which he *also* is alleging physical injury, however, this claim is duplicative of his Wisconsin negligence claims. Accordingly, the court will not grant him leave to proceed on these claims either.

ORDER

IT IS ORDERED that:

1. Plaintiff William Ledford is GRANTED leave to proceed on:

   (a) Eighth Amendment deliberate indifference and Wisconsin negligence claims against defendants Mahal, Matueski, Constine, Garcia, Stadtmueller and Marchant.

   (b) First Amendment retaliation claims against defendants Garcia, Stadtmueller and Marchant.

2. Plaintiff is DENIED leave to proceed on any other claim. Defendants Bovee, McCreedy, Alsum, White, foster, Boatwright, LaBelle, Jess, Burnet, Holzmacher, Meli, Ludvigson, Tritt, Wall, Litscher and Pollard are DISMISSED.

3. 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 60 days from the date of the Notice of Electronic Filing in this order to answer or otherwise plead to the plaintiff's complaint if it accepts service for the defendants.

4. 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 the defendants or to the defendants' attorney.

5. 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.

6. If plaintiff is transferred or released while this case is pending, it is plaintiff's

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 claims may be dismissed for his failure to prosecute him.

7. Plaintiff's motion for screening (dkt. #17) is DENIED as moot.

Entered this 23rd day of March, 2020.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge