

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

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IVAN JOHNSON,

Plaintiff,

v.

OPINION & ORDER

BELINDA SCHRUBBE,  
NANCY GARCIA, and  
DONNA LARSON,

17-cv-332-jdp

Defendants.

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Pro se plaintiff Ivan Johnson, a Wisconsin prisoner incarcerated at the Columbia Correctional Institution (CCI), brings Eighth Amendment deliberate indifference and First Amendment retaliation claims against nurses at his previous prison, the Waupun Correctional Institution (WCI). Johnson alleges that defendants Belinda Schrubbe, Nancy Garcia, and Donna Larson denied him pain medicine because he had filed a lawsuit against Schrubbe.

Johnson has made an initial partial payment of the filing fee under 28 U.S.C. § 1915(b)(1). The next step is for me to screen his complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief can be granted, or asks for monetary damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 and 1915A. I must read Johnson's pro se complaint generously. *See Haines v. Kerner*, 404 U.S. 519, 521 (1972) (per curiam). With these principles in mind, I will allow Johnson to proceed on his Eighth Amendment deliberate indifference and First Amendment retaliation claims against all defendants.

## ALLEGATIONS OF FACT

I draw the following facts from Johnson's complaint, Dkt. 1, and accept them as true.

On August 15, 2014, Johnson underwent his second nissen fundoplication (a stomach surgery) for an unidentified condition. Several doctors at the University of Wisconsin treated Johnson, and some were specialists. One doctor warned Johnson that he would most likely develop muscle spasms, bowel spasms, and nerve damage that could cause pain and discomfort. Johnson later developed dysphagia (difficulty in swallowing), abdominal spasms, and bowel spasms that caused severe pain. On September 30, Johnson went to see the surgeon who performed the surgery. To address Johnson's pain, the surgeon conferred with another doctor and decided to prescribe Diazepam for 10 days, and Johnson returned to WCI.

From September 30 to October 3, Johnson wrote to the WCI Health Services Unit (HSU) on daily basis asking for his medicine. On October 3, Larson, a registered nurse, responded by stating that a nurse practitioner needed to approve the medicine's distribution. On October 6, Schrubbe, a nurse practitioner, wrote to Johnson stating that he would see a nurse practitioner within a week. While waiting to see a nurse practitioner, Johnson suffered constant pain and could not control his bowel movements. He soiled and urinated in his pants and on his bed, and people laughed at him. Garcia, a nurse practitioner, saw Johnson on October 9. Johnson begged Garcia to "do something, anything," but Garcia "got mad and told [Johnson] to leave." *Id.* ¶ 23. Johnson did not receive any treatment until he was transferred to CCI on an unidentified date.

According to Johnson, defendants denied him medical care to retaliate in response to another lawsuit he filed against Schrubbe, *Johnson v. Tuckwell*, No. 12-cv-891 (W.D. Wis. filed Dec. 6, 2012). Johnson states that denying him medical care was a way to intimidate him into

settling Case No. 12-cv-891. He alleges that “[a]ccording to HSU records and things,” Larson and “the practitioners” reviewed the orders from the doctors on October 2 and decided not to give Johnson any medicine at all. Dkt. 1, ¶ 15. Johnson also spoke to another nurse about how he was treated; Johnson says, “[S]he told me that[']s what happens when you sue people and I haven’t seen nothing yet!” *Id.* ¶ 26.

### ANALYSIS

Johnson may proceed on Eighth Amendment deliberate indifference claims and First Amendment retaliation claims against all three defendants.

#### **A. Deliberate indifference claims**

To state a deliberate indifference claim under the Eighth Amendment for failure to provide medical care, a prisoner must allege that he had a serious medical need and that a defendant was deliberately indifferent to that need. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). A serious medical need may be a condition that a doctor recognizes 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). Deliberate indifference means that the defendant was aware that the prisoner needed medical treatment but disregarded the risk by failing to take reasonable measures. *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997).

Here, Johnson states Eighth Amendment deliberate indifference claims against all three defendants for denying him his medicine on October 2. Johnson plausibly alleges that he suffered from serious conditions: after his surgery, he developed various conditions that resulted in severe, unnecessary pain. Johnson also plausibly alleges that defendants were deliberately indifferent to Johnson's conditions: despite the doctors' prescriptions and Johnson's complaints of severe pain, defendants denied him his medicine.

Johnson states a separate deliberate indifference claim against Garcia for denying Johnson medical care on October 9. According to Johnson, he begged Garcia to take some measure to address his pain, but she decided not to treat him.

#### **B. Retaliation claims**

To state a First Amendment retaliation claim, a plaintiff must identify: (1) the constitutionally protected activity in which he engaged; (2) one or more retaliatory actions taken by the defendant that would deter a person of "ordinary firmness" from engaging in the protected activity; and (3) sufficient facts to make it plausible to infer that the plaintiff's protected activity was one of the reasons defendants took the action they did against him. *Bridges v. Gilbert*, 557 F.3d 541, 553-55 (7th Cir. 2009).

Here, Johnson states retaliation claims against all three defendants for denying Johnson his medicine on October 2. Johnson's theory is that defendants denied him the medicine to intimidate him into settling Case No. 12-cv-891. An inmate has the First Amendment right to petition government for the redress of grievances, and that right includes filing a lawsuit. *See Dobbey v. Ill. Dep't of Corr.*, 574 F.3d 443, 446 (7th Cir. 2009). Causing unnecessary pain by denying medicine could deter a person of ordinary firmness from engaging in litigating a case.

Johnson also plausibly alleges that defendants denied him the medicine because he filed a lawsuit against Schrubbe: that is what a nurse from the HSU told Johnson.

Johnson may proceed on his retaliation claims against Garcia and Larson, even though he did not name them as defendants in Case No. 12-cv-891. Johnson alleges that these nurses participated in retaliating against him for suing Schrubbe. Johnson will need to provide further details later in this case, but for now, he alleges enough to proceed beyond screening.

Johnson states a separate retaliation claim against Garcia for denying him medical care on October 9. Denying a patient medical care while he begs for it could deter a person of ordinary firmness from engaging in litigating a case. As noted above, Johnson plausibly alleges that he was denied medical care because he filed a lawsuit against Schrubbe, who appears to be Garcia's colleague.

One last thing. Johnson listed Garcia and Larson in his complaint as "Nancy Garcia (John Doe)" and "Donna Larson (John Doe)." Dkt. 1, at 1. I take Johnson to mean that he is not sure about the real names of these defendants. At the preliminary pretrial conference that will be held at a later date, Magistrate Judge Crocker will explain the process for identifying the real names of these defendants, if they are not correctly identified already.

ORDER

IT IS ORDERED that:

1. Plaintiff Ivan Johnson is GRANTED leave to proceed against defendants Belinda Schrubbe, Nancy Garcia, and Donna Larson on Eighth Amendment deliberate indifference and First Amendment retaliation claims.
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 defendants. Plaintiff should not attempt to serve defendants on his own at this time. 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 defendants.
3. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer or lawyers who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.
4. Plaintiff should keep a copy of all documents for his own files. If he is unable to use 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 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 them.

Entered August 24, 2017.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge