

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**JEREMY CLARK,
Plaintiff,**

v.

Case No. 21-C-832

**MARY MOORE,
LAURA SUKOWATY, and
CHERYL A. JEANPIERRE,
Defendants.**

ORDER

Plaintiff Jeremy Clark, who is confined at the Waupun Correctional Institution (“WCI”), filed a pro se complaint under 42 U.S.C. § 1983 alleging that the defendants violated his rights under federal and state law. ECF No. 1. I screened the complaint and allowed the plaintiff to proceed on an Eighth Amendment claim against the defendants in their individual capacities based on his allegations that they continued to prescribe him Celebrex for his right foot pain, despite knowing that it was ineffective and that his surgeon recommended another pain medication, and that they delayed examining him. ECF No. 7 at 6. I also exercised supplemental jurisdiction over the plaintiff’s state law medical malpractice claims. *Id.* at 7. At screening, I did not allow the plaintiff to proceed on a claim challenging the adequacy of WCI’s healthcare system because such a claim would necessarily be an official capacity claim, and the plaintiff did not sue any defendant in her official capacity. *Id.* at 6-7. The plaintiff has filed a motion for reconsideration of the court’s screening order. ECF No. 8. He has also filed an amended complaint, which is identical to the original complaint except that it sues the defendants in their individual *and* official capacities. ECF No. 9, ¶ 7.

As an initial matter, I will deny as moot the plaintiff's motion for reconsideration. The plaintiff does not seek reconsideration of the court's order screening the original complaint. Rather, he wants the court to consider whether he can proceed on an official capacity claim regarding WCI's inadequate healthcare system based on his amended complaint.

Turning to the plaintiff's amended complaint, the plaintiff correctly states in his motion for reconsideration that he may file an amended complaint "once as a matter of course" at this stage. FED. R. CIV. P. 15(a)(1). Thus, the amended complaint is the operative complaint. However, I am still required to screen the plaintiff's amended complaint. See 28 U.S.C. § 1915A.

A. Standard of Review for Screening Amended Complaint

Under the Prison Litigation Reform Act, I must screen complaints brought by prisoners seeking relief from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). I must dismiss a complaint if the prisoner raises claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

In determining whether the complaint states a claim, I apply the same standard that applies to dismissal under Federal Rule of Civil Procedure 12(b)(6). See *Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017). The complaint must contain enough facts, accepted as true, to "state a claim for relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2007)). A claim is facially plausible when the plaintiff pleads factual content that allow a

court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege that someone deprived him of a right secured by the Constitution or the laws of the United States, and that whoever deprived him of this right was acting under the color of state law. See *D.S. v. E. Porter Cty. Sch. Corp.*, 799 F.3d 792, 798 (7th Cir. 2015). I construe pro se complaints liberally and hold them to a less stringent standard than those drafted by lawyers. See *Cesal*, 851 F.3d at 720.

B. Amended Complaint's Allegations

The plaintiff alleges that he had surgery on his right foot to address a chronic hammertoe deformity and chronic plantar fasciitis on February 11, 2020. ECF No. 9 ¶ 8. Following the surgery, he experienced pain. *Id.*, ¶ 9. According to the surgeon, Dr. Sarika Parikh Bertram, such pain was not uncommon for the procedure. *Id.* By late March 2020, the plaintiff began to experience unbearable pain, which sometimes made it impossible to stand. *Id.*, ¶ 10. At other times, he just experienced terrible pain with little relief. *Id.* That same month, the plaintiff began submitting Health Service Requests to the Health Services Unit about his right foot pain. *Id.*, ¶ 11. On March 18, 2020, the plaintiff was told he was on the list to be seen by medical staff. *Id.*

On June 16, 2020, Mary Moore, an assistant physician and nurse practitioner at WCI, examined the plaintiff. *Id.*, ¶¶ 6, 18. During the exam, the plaintiff told Nurse Moore that his right foot was in extreme pain and that he could not move his toes without the pain intensifying. *Id.*, ¶ 19. At the time, the plaintiff was prescribed Celebrex, but the medication was ineffective in treating his pain. *Id.*, ¶ 20. He told Nurse Moore that Celebrex was not relieving his pain and that he had been complaining of the pain for

about 90 days. *Id.*, ¶ 20. Nurse Moore pushed the plaintiff's toes back without warning and the plaintiff told her it hurt, but then she did it again and the pain was so great that the plaintiff left the exam. *Id.*, ¶ 19.

The plaintiff continued to complain of his pain and of the fact that Celebrex was not relieving it. *Id.*, ¶ 22. Dr. Cheryl Jeanpierre, a physician at WCI, examined the plaintiff in November 2020. *Id.*, ¶ 23. She requested Gabapentin, a nerve pain relief drug, for the plaintiff. *Id.*

On December 1, 2020, Laura Sukowaty, the medical director for the Wisconsin Department of Corrections (DOC), examined the plaintiff. *Id.*, ¶ 25. Because he had an upcoming podiatry appointment, Sukowaty said she would wait for the podiatrist's decision regarding the proper pain medication for the plaintiff's foot. *Id.* In the meantime, the plaintiff's pain continued unabated. *Id.* On December 23, 2020, Dr. Jeanpierre informed the plaintiff that Sukowaty had denied her request for Gabapentin as treatment for his nerve-based foot pain. *Id.*

On December 28, 2020, the podiatrist, Dr. Sarika Parikh Bertram, also recommended Gabapentin. *Id.*, ¶ 27. Dr. Jeanpierre refused the recommendation by stating, "No! Hx of misuse." *Id.*, ¶ 28. Sukowaty also refused the recommendation. *Id.*, ¶ 29. The plaintiff is still prescribed Celebrex, even though it is ineffective in treating his pain. *Id.*, ¶ 30. The plaintiff alleges that defendants Sukowaty, Moore, and Jeanpierre knew when they examined him that Celebrex did not treat nerve-based pain. *Id.*

Dr. Jeanpierre prescribed the plaintiff a foot cream in February 2021, but that was also ineffective. *Id.*, ¶ 37. The plaintiff told the defendants that the foot cream was ineffective. *Id.* Dr. Jeanpierre subsequently put the plaintiff on a list for a steroidal injection

shot, but the plaintiff told her that he previously received the shot for his left foot, which has the same condition as his right foot, and that it was ineffective. *Id.*, ¶ 38.

The plaintiff alleges that the healthcare system at WCI is inadequate because there is only one or two health care providers for more than 1,000 inmates. ECF No. 9, ¶ 17. According to the plaintiff, it is Sukowaty's responsibility as the DOC's medical director to ensure that each DOC institution has enough healthcare providers to ensure that unreasonable delays in treatment do not occur. *Id.*, ¶ 14. The plaintiff also states that it is Nurse Moore's and Dr. Jeanpierre's responsibility as healthcare providers at WCI to ensure that unreasonable delays do not occur and to alert Sukowaty if they do. *Id.*, ¶ 15.

C. Discussion

When I screened the original complaint, I allowed the plaintiff to proceed on an Eighth Amendment claim against the defendants in their individual capacities based on his allegations that they continued to prescribe him Celebrex for his right foot pain, despite knowing that it was ineffective and that his surgeon recommended another pain medication, and that they delayed examining him. *See Perez v. Fenoglio*, 792 F.3d 768, 778-79 (7th Cir. 2015). I also exercised supplemental jurisdiction over his state law medical malpractice claims. The plaintiff's amended complaint is identical to his original complaint except that he now sues the defendants in their official capacities. I need only consider whether the plaintiff can also proceed on his inadequate healthcare system claim now that he has cured the deficiency identified in the original screening order.

The plaintiff claims WCI's healthcare system is inadequate because it has only one or two healthcare providers for over 1,000 inmates, which caused unreasonable delays in his medical treatment, in violation of the Eighth Amendment. In other words, the State's

policies caused “systematic deficiencies in staffing . . . that make unnecessary suffering inevitable.” *Wellman v. Faulkner*, 715 F.2d 269, 272 (7th Cir. 1983). The plaintiff can only challenge the implementation of a state policy through an official capacity suit. *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985). At this early stage, I will allow the plaintiff to proceed on an official capacity claim against Laura Sukowaty, the medical director of the DOC, based on these allegations. A suit against an official in her official capacity is a suit against the government entity of which the official is an agent. See *Graham*, 473 U.S. at 165-67. It would therefore be redundant for the plaintiff to also proceed against Moore and Jean Pierre in their official capacities.

In sum, the plaintiff may proceed on an Eighth Amendment claim against the defendants in their individual capacities based on his allegations that they continued to prescribe him Celebrex for his right foot pain, despite knowing that it was ineffective and that his surgeon recommended another pain medication, and that they delayed examining him; an Eighth Amendment official capacity claim against Sukowaty based on allegations that WCI’s healthcare system is inadequate because it has only one or two healthcare providers for over 1,000 inmates; and state law medical malpractice claims against the defendants.

IT IS THEREFORE ORDERED that the plaintiff’s motion for reconsideration (ECF No. 8) is **DENIED AS MOOT**.

IT IS FURTHER ORDERED that the defendants file a responsive pleading to the amended complaint within twenty-one days of the date of this order.

Dated at Milwaukee, Wisconsin, this 22nd day of December, 2021.

s/Lynn Adelman
LYNN ADELMAN
United States District Judge