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**IN THE
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

GILBERTO LAUREANO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 2:14-cv-02144-JES**
	)	
OFFICER LARRY DOE, *et al.*,	)	
	)	
Defendants.	)	

SUMMARY JUDGMENT ORDER

Plaintiff, Gilberto Laureano, proceeding pro se, filed suit under 42 U.S.C. § 1983, claiming deliberate indifference to a serious medical need while he was a federal detainee at the Jerome Combs Detention Center (hereinafter, jail) [1]. Plaintiff alleged that certain nurses failed to provide timely pain medication and medical treatment. Following a merit review, the Court allowed Plaintiff's claim to proceed against the following Defendants: Heather Pasel (formerly, Heather Gill), Charee Sangster, Nicole Brewer, Tom Janca, Matt Hespen, and Dawn O'Dell.

This case concerns Defendants' motion for summary judgment [30], to which Plaintiff has responded [33]. Based on the parties' pleadings, depositions, affidavits, and other supporting documents filed with the Court, Defendants' motion for summary judgment is GRANTED.

I. MATERIAL FACTS[1]

On January 14, 2011, Plaintiff fell from a detainee transport van he was exiting and hit his head on the concrete floor. Later that day, Plaintiff was taken to a local hospital, where a

[1] Because Plaintiff's deliberate indifference claim concern events that occurred between January 2011 and June 2014, the following synopsis provides only the material facts necessary to place Plaintiff's claim in context.

computerized tomography (CT) scan of his neck, face, and brain showed soft-tissue swelling on the right side of his jaw. The hospital gave Plaintiff a prescription for Ultram, a narcotic pain medication. Plaintiff returned to the jail and was provided Tylenol and ice packs.

Defendant Pasel, the head of nursing and the only remaining Defendant employed by the jail, explained that nurses provide "medical care and treatment" to detainees. [30-3, p. 1]. In particular, nurses schedule medical appointments based on referrals provided by contracted physicians, physician assistants (PA), or private physicians. If a federal detainee requires non-emergency medical care from a private specialist, the nurse requests approval from the United States Marshals Service (Marshals) "prior to seeking medical attention." [30-4, p. 35]. Prescription medication is distributed based on its strength. Some common medications are controlled by detainees, but stronger "as needed" medications are controlled by jail staff. [30-3, p.2]. Before January 1, 2014, as needed medication was "kept at the officers' desk within the jail POD" and a detainee would request the medication as needed. [30-3, p. 2]. After January 1, 2014, medication not controlled by detainees was distributed twice a day by the nursing staff. Prescriptions that required dosages at different intervals were altered pursuant to jail policy and instead, delivered twice daily. Nurses did not prescribe medications but could refill valid prescriptions upon request.

On January 20, 2011, a PA addressed Plaintiff's complaints of neck, back, and shoulder pain caused by his fall. The PA annotated in Plaintiff's medical chart that Plaintiff would receive the Ultram the hospital had prescribed. The PA also prescribed a pain reliever (Motrin) and a muscle relaxant (Flexeril) and advised Plaintiff to return in one or two weeks if the pain did not subside. Defendant Pasel ordered the prescribed medication. Plaintiff controlled the

Motrin and Flexeril, but the officer desk controlled the Ultram, which contained the following notation: "1 every 6 hours as needed." [30-4, p. 30].

On February 22, 2011, Plaintiff returned to sick call, complaining of face, arm, head, and leg pain that felt "better when taking the Ultram." [30-4, p. 21]. The PA ordered X-rays of Plaintiff's "lumbar" and "C-spine" and refills of his Motrin, Flexeril, and Ultram prescriptions. That day, Defendant Pasel received the Marshals' approval for Plaintiff's X-rays. The requested X-rays were completed five days later.

On March 29, 2011, the PA informed Plaintiff that the radiological report revealed his "C7 vertebral body was not well demonstrated" but "[n]o obvious acute compression deformity of the cervical spine as visualized." [30-4, p. 43]. The PA ordered refills of Plaintiff's Flexeril and Motrin prescriptions. Defendant Pasel ordered the medication and scheduled a May 2011 follow-up appointment.

On May 9, 2011, Plaintiff returned, complaining of back and neck pain. The PA ordered a magnetic resonance imaging (MRI) test and Penicillin for Plaintiff's abscessed tooth. Defendant Pasel ordered the Penicillin, and Plaintiff confirmed that his Motrin, Flexeril, and Ultram prescriptions were refilled. Defendant Pasel also sought the Marshals' approval for Plaintiff's MRI. On May 24, 2011, the PA increased the frequency of Plaintiff's Penicillin medication and referred him to a dentist for an evaluation of his abscessed tooth, which caused Plaintiff increased pain. On May 27, 2011, Defendant Pasel received the Marshals' approval for Plaintiff's MRI. Plaintiff's June 7, 2011, MRI revealed a "disc protrusion" at the "C5-C6" vertebra. [30-4, p. 59].

On June 27, 2011, the PA informed Plaintiff of his MRI results; referred him to a neurosurgeon; and ordered refills of Plaintiff's Flexeril, Ultram, and Penicillin prescriptions.

Defendant Sangster ordered the medication and scheduled a follow-up appointment. Two weeks later, Defendant Pasel received the Marshals' approval for Plaintiff's neurology referral. At the July 2011 neurological appointment, a physician ordered eight physical therapy sessions and referred Plaintiff to a neurosurgeon.

During August 2011, Plaintiff was evaluated by a dentist, who did not recommend extraction of Plaintiff's abscessed tooth, and a neurosurgeon, who recommended surgery to correct the disk displacement in his spine. In September 2011, Defendant Pasel received approval for Plaintiff's spine surgery. In October 2011, the neurosurgeon performed Plaintiff's surgery and thereafter, prescribed the narcotic pain reliever, Norco, with the following instructions: "1-2 tabs every 4-6 hours as needed for pain." [30-4, p. 126]. Prior to his surgery, Plaintiff acknowledged that he had attended at least 12 physical therapy sessions.

During a November 8, 2011, follow-up appointment, the neurosurgeon referred Plaintiff to an oral surgeon and ordered cervical X-rays. A week later, Defendant Pasel received the Marshals' approval for Plaintiff's referral and X-rays. During this time, Plaintiff began additional physical therapy sessions related to his back surgery. Later in November 2011, the dentist who had previously seen Plaintiff referred him to an oral surgeon.

In December 2011, Plaintiff's neurosurgeon concluded that no further spinal surgery was necessary and referred Plaintiff to an orthopedic surgeon to evaluate his complaints of knee and shoulder pain. In January 2012, Defendant Pasel received the Marshal's approval for the orthopedic referral. In February 2012, an orthopedic surgeon evaluated Plaintiff's knee and determined that surgery was not necessary but continued Plaintiff's Ultram prescription. In April 2012, the PA saw Plaintiff about tooth pain on the right side of his lower jaw. The PA noted that

Plaintiff's current prescriptions included Motrin, Flexeril, and Ultram. Plaintiff confirmed that in May 2012, Defendant Sangster refilled his Ultram prescription as he requested.

In July 2012, Plaintiff informed the PA that his Ultram prescription was not alleviating his pain. The PA discontinued the Ultram and gave Defendant 30 tablets of Naproxen, another pain reliever. Plaintiff was instructed to take one tablet twice a day. Later that month, Defendant Sangster refilled Plaintiff's Naproxen prescription. In September 2012, Plaintiff inquired about his Ultram prescription, and Defendant Sangster responded that Plaintiff did not have a prescription.

In October 2012, Defendant Pasel received the Marshals' approval for a MRI and X-rays in preparation for Plaintiff's follow-up appointment with his neurosurgeon. That same month, Plaintiff requested to restart his Ultram prescription, which he stated "helped more." [30-5, p. 51]. Although Plaintiff's medical records show that the PA prescribed the pain reliever Relafen [30-5, p. 53], Plaintiff stated that he received Ultram instead [30-1, pp. 68-69].

In November 2012, the neurologist reported that Plaintiff had "an excellent appearing post cervical fusion MRI of cervical spine" and concluded that no basis existed "for continued neurological care." [30-5, pp. 142-43]. The neurologist also opined that Plaintiff's jaw and shoulder pain were related to a "dysfunction" of the muscles that move the jaw and "right shoulder pathology." [30-5, p. 142]. The neurologist referred Plaintiff to an oral surgeon for his jaw pain and an orthopedic surgeon for his shoulder pain.

On January 15, 2013, an orthopedic surgeon requested a MRI of plaintiff's right shoulder to explore a "possible right rotator cuff tear." [30-5, p. 258]. The surgeon prescribed Naproxen for Plaintiff's pain. A week later, an oral surgeon drained Plaintiff's tooth abscess but did not recommend any further care. Shortly thereafter, Plaintiff was transferred to the Kankakee

County jail. Defendant Pasel confirmed that after Plaintiff's transfer, he continued to receive Naproxen, which Plaintiff kept in his possession.

On March 28, 2013, Defendant Pasel sent the Marshals a request for a MRI on Plaintiff's right shoulder, which was granted on April 11, 2013, and occurred shortly thereafter. On July 11, 2013, the orthopedic surgeon ordered an arthrogram based on Plaintiff's MRI. The next day, Defendant Pasel received the Marshals' approval for the arthrogram. After a follow-up appointment conducted later that month, the orthopedic surgeon ordered Plaintiff to undergo physical therapy. In October 2013, the orthopedic surgeon ordered Plaintiff to continue physical therapy three times a week for another four to six weeks.

During November 2013, Plaintiff filed two separate requests to see an oral specialist for his jaw pain. In both her responses, Defendant Sangster explained that an oral specialist was not available and Plaintiff should continue to take his prescribed pain medication. Later that month, Plaintiff's orthopedic surgeon ordered a second arthrogram, which was performed in December 2013. In January 2014, the orthopedic surgeon recommended surgery to repair Plaintiff's shoulder. Defendant Pasel explained that in January 2014, the jail transitioned to electronic medical records, which documented that Plaintiff was receiving his prescribed "as needed" medication "twice per day, every day." [30-3, p. 3].

On March 24, 2014, Plaintiff had corrective surgery to repair a partial tear of the rotator cuff tendon in his right shoulder. Plaintiff was prescribed Norco for his pain and transferred from the County jail to the detention center. Plaintiff confirmed that he received his Norco medication twice a day. Plaintiff's orthopedic surgeon referred him to physical therapy, which ended two months later when a therapist determined Plaintiff no longer required the treatment.

In May 2014, Plaintiff complained to a staff physician of pain and swelling in his jaw, which later resulted in a CT scan of Plaintiff's facial bones and an MRI. In June 2014, an oral surgeon determined that the CT scan did not reveal any "bony abnormalities or mandible fractures." [30-6, p. 99).

II. SUMMARY JUDGMENT STANDARD

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A dispute is 'genuine' 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.' " *Zaya v. Sood*, 836 F.3d 800, 804 (7th Cir. 2016) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The moving party has the burden of providing proper documentary evidence to show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Once a properly supported motion for summary judgment is filed, the burden shifts to the non-moving party to demonstrate with specific evidence that a triable issue of fact remains for trial. *Gracia v. Volvo Europa Truck, N.V.*, 112 F.3d 291, 294 (7th Cir. 1997).

The party opposing summary judgment "must present definite, competent evidence in rebuttal." *Butts v. Aurora Health Care, Inc.*, 387 F.3d 921, 924 (7th Cir. 2004). Accordingly, the non-movant cannot rest on the pleadings alone, but must designate specific facts in affidavits, depositions, answers to interrogatories or admissions that establish that there is a genuine dispute. *Anderson*, 477 U.S. at 256. The party opposing summary judgment "must do more than simply show that there is some metaphysical doubt as to the material fact." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Finally, a scintilla of evidence in support of the non-movant's position is not sufficient to oppose successfully a summary

judgment motion; "there must be evidence on which the jury could reasonably find for the [non-movant]." *Anderson*, 477 U.S. at 252.

III. THE EIGHTH AMENDMENT AND THE DELIBERATE INDIFFERENCE STANDARD

Because Plaintiff was a pretrial detainee and not a convicted inmate, his deliberate indifference claim proceeds under the Fourteenth Amendment instead of the Eighth Amendment. See *Smith v. Dart*, 803 F.3d 304, 309 (7th Cir. 2015) ("[C]onstitutional rights as a pretrial detainee are derived from the Due Process Clause of the Fourteenth Amendment.") "Although the Eighth Amendment does not apply to pretrial detainees, pretrial detainees are entitled to *at least* as much protection as the constitution provides convicted prisoners." (Emphasis in original.) *Board v. Farnham*, 394 F.3d 469, 477 (7th Cir. 2005). Thus, "the Seventh Circuit has "found it convenient and entirely appropriate to apply the same standard to claims arising under the Fourteenth Amendment (detainees) and Eighth Amendment (convicted prisoners) 'without differentiation.' " *Id*. at 478 (quoting *Henderson v. Sheahan*, 196 F.3d 839, 845 n.2 (7th Cir. 1999)). The Eighth Amendment's prohibition against cruel and unusual punishments requires that the government " 'provide humane conditions of confinement' and 'ensure that inmates receive adequate food, clothing, shelter, and medical care.' " *Zentmyer v. Kendall County, Illinois*, 220 F.3d 805, 810 (7th Cir. 2000) (quoting *Farmer v. Brennan*, 511 U.S. 825, 832 (1994)).

The deliberate indifference standard requires an inmate to satisfy a substantial threshold to maintain a claim for cruel and unusual punishment under the Eighth Amendment. *Dunigan ex rel. Nyman v. Winnebago County*, 165 F.3d 587, 590 (7th Cir. 1999). This type of claim requires a plaintiff to show an objectively serious risk of harm and a subjectively culpable state of mind. *Farmer*, 511 U.S. at 834. An objectively serious medical condition "is one that has been

diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor's attention." *Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005). To satisfy the subjective component, a plaintiff must show that "the official [knew] of and disregard[ed] an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of harm exists, and he must also draw the inference." *Farmer*, 511 U.S. at 837. The Seventh Circuit has characterized this subjective standard "as imposing a high hurdle on plaintiffs because it requires a showing as something approaching a total unconcern for the prisoner's welfare in the face of serious risks." *Rosario v. Brawn*, 670 F.3d 816, 821 (7th Cir. 2012) (internal quotation marks omitted).

IV. ANALYSIS

Plaintiff's deliberate indifference claim is based on his general allegation that Defendants failed to provide him timely medical treatment in light of his objectively serious medical conditions. In particular, Plaintiff contends that Defendants failure to timely diagnose his medical conditions, schedule timely referrals with medical specialists, and administer pain medication as prescribed demonstrated a conscious disregard sufficient to defeat Defendants' motion for summary judgment. As previously outlined, to succeed on his deliberate indifference claim, Plaintiff must demonstrate that (1) his medical condition is "objectively, sufficiently serious" and (2) Defendants acted with a "sufficiently culpable state of mind." *Farmer*, 511 U.S. at 834.

In their motion for summary judgment, Defendants do not dispute that Plaintiff's medical condition was serious. The Court concludes that based on the evidence presented, Plaintiff has satisfied his burden of demonstrating that his spine and shoulder concerns were objectively

serious medical conditions. The sole issue left unresolved is whether Plaintiff has alleged sufficient evidence to create a genuine dispute as to Defendants' culpable state of mind.

To constitute deliberate indifference in a medical context, a treatment decision must be "such a substantial departure from accepted professional judgment, practice, or standards, as to demonstrate that the person responsible actually did not base the decision on such a judgment." *Petties v. Carter*, 836 F.3d 722, 729 (7th Cir. 2016) (internal quotation marks omitted). In other words, a medical professional is deliberately indifferent only if "'no minimally competent professional would have so responded under those circumstances.'" *Sain v. Wood*, 512 F.3d 886, 894-95 (7th Cir. 2008) (quoting *Collignon v. Milwaukee Cnty.*, 163 F.3d 982, 988 (7th Cir. 1998)).

Several circumstances could lead to an inference that a medical professional failed to exercise the appropriate judgment. These include: persisting in a course of treatment known to be ineffective; failure to follow an existing protocol; inexplicable delays in treatment without penological justification; and, refusal to follow a specialist's recommendations. *Petties*, 836 F.3d at 729-30. Refusal to refer a prisoner to an outside medical specialist "supports a claim of deliberate indifference only if that choice is blatantly inappropriate." *Pyles v. Fahim*, 771 F.3d 403, 411 (7th Cir. 2014).

In his brief in opposition to Defendants' motion for summary judgment, Plaintiff does not allege any such circumstance. Instead, Plaintiff generalizes that Defendants "did very little" to alleviate his condition despite his repeated complaints that his medication was not adequately addressing his pain. In this regard, Plaintiff asserts further that Defendants unnecessarily prolonged his pain and suffering by not diagnosing the primary cause of his pain earlier.

However, "[c]onclusory statements, not grounded in specific facts, are not sufficient to avoid summary judgment." *Lucas v. Chicago Transit Authority*, 367 F.3d 714, 726 (7th Cir. 2004).

In responding to Defendant's motion for summary judgment, Plaintiff was required to show the specific acts or omissions that each Defendant undertook to substantiate a genuine dispute as to each Defendant's culpability to defeat Defendants' motion for summary judgment. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (In response to a summary judgment motion, a plaintiff cannot rest on the mere allegations in a complaint, "but must set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion will be taken as true." (Internal quotation marks omitted.)). "To be considered on summary judgment, evidence must be admissible at trial, though 'the form produced at summary judgment need not be admissible.' " *Cairel v. Alderen*, 821 F.3d 823, 830 (7th Cir. 2016) (quoting *Wragg v. Village of Thornton*, 604 F.3d 464, 466 (7th Cir. 2010)).

As Defendants correctly note, Plaintiff has failed to allege any competent evidence that establishes the specific circumstances under which each named Defendant was deliberately indifferent to his serious medical conditions. *See Miller v. Smith*, 220 F.3d 491, 495 (7th Cir. 2000) (To establish liability under § 1983, "a plaintiff must establish a defendant's personal responsibility for any claimed deprivation of a constitutional right."). The Court notes that, with the exception of Defendants Pasel and Sangster, the record is silent as to the acts or omissions of the remaining defendants aside from Plaintiff's general allegations.

In this case, the evidence before the Court shows that Defendants Pasel and Sangster timely (1) scheduled appointments based on physician referrals, which included contacting the Marshals for approval; (2) coordinated and scheduled Plaintiff's follow-up appointments; and (3) responded to Plaintiff's medical questions and requests for prescription refills. In her affidavit,

Defendant Pasel stated that nurses are not authorized to prescribe medication and conveyed the jail's policy regarding the dispensing of as needed prescription medication prior to January 1, 2014, and the policy changes that occurred thereafter.

Plaintiff claims that Defendants altered the delivery of his prescribed medication from every 4 to 6 hours to every 12 hours, but the Seventh Circuit has considered and rejected Plaintiff's claim under similar circumstances.

In *Zentmyer*, 220 F.3d at 810, the Seventh Circuit considered whether the "failure to administer medication exactly as prescribed constituted deliberate indifference to serious medical needs." In concluding that the "deputies' failure to dispense [the Plaintiff's] medication consistently on schedule does not manifest conscious disregard for [the Plaintiff's] health," the Seventh Circuit noted that the Plaintiff had been receiving the majority of his pain medication "at least twice a day" and had been regularly receiving at least two painkillers in addition to the prescribed medication for over a month. *Id*. at 811. Here, as in *Zentmyer*, Plaintiff regularly received Motrin, a pain reliever, and Flexeril, a muscle relaxant, in addition to Ultram, that he acknowledges he received at least twice daily. In his opposing brief, Plaintiff fails to address, much less distinguish, Defendant's reliance on *Zentmyer*, which the Court finds dispositive.

As previously noted, Plaintiff also takes issue with the time expended to reach a definitive diagnosis, but where delay in receiving medical treatment is at issue, a plaintiff must offer "verifying medical evidence" that the delay, rather than the underlying condition, caused some degree of harm. *Williams v. Liefer*, 491 F.3d 710, 714-15 (7th Cir. 2007); *Jackson v. Pollion*, 733 F.3d 786, 790 (7th Cir. 2013) ("No matter how serious a medical condition is, the sufferer from it cannot prove tortious misconduct (including misconduct constituting a constitutional tort) as a result of failure to treat the condition without providing evidence that the

failure caused injury or a serious risk of injury."). "That is, a plaintiff must offer medical evidence that tends to confirm or corroborate a claim that the delay was detrimental." *Williams*, 491 F.3d at 715. Despite Plaintiff's claims to the contrary, however, the medical evidence in this case represents the antithesis of deliberate indifference. The established facts show that Plaintiff experienced a deliberate, measured course of medical treatment by numerous medical professionals, which included pain management facilitated by Defendants, and culminated in two corrective surgeries.

Moreover, Plaintiff's dissatisfaction or disagreement with a course of treatment is generally insufficient to substantiate a claim for deliberate indifference. *Johnson v. Doughty*, 433 F.3d 1001, 1013 (7th Cir. 2006). Under the Eighth Amendment, plaintiff is not entitled to demand specific medical care or entitled to the best possible care. *Forbes v. Edgar*, 112 F.3d 262, 267 (7th Cir. 1997). Instead, plaintiff is entitled to reasonable measures to meet a substantial risk of serious harm. *Forbes*, 112 F.3d at 267.

On this record, the Court concludes that no jury could reasonably find that Plaintiff has allege sufficient facts that Defendants consciously disregarded a serious risk sufficient to inflict cruel and unusual punishment within the meaning of the Eight Amendment. Accordingly, summary judgment is granted in Defendants' favor.

V. QUALIFIED IMMUNITY

Because the court has found that Defendants were not deliberately indifferent, the court need not address defendants' claims that they are entitled to qualified immunity. *Van den Bosch v. Raemisch*, 658 F.3d 778, 787, n. 9 (7th Cir. 2011).

IT IS THEREFORE ORDERED:

1) Defendants' motion for Summary Judgment [30] is GRANTED pursuant to Fed. R. Civ. P. 56. The Clerk of the Court is directed to enter judgment in favor of

Defendants and against Plaintiff. The case is terminated, with the parties to bear their own costs. All deadlines and internal settings are vacated. All pending motions not addressed in this Order are denied as moot. Plaintiff remains responsible for the $350 filing fee.

2) If Plaintiff wishes to appeal this judgment, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a)(4). A motion for leave to appeal *in forma pauperis* MUST identify the issues the Plaintiff will present on appeal to assist the court in determining whether the appeal is taken in good faith. *See* Fed. R. App. P. 24(a)(1)(c); *See also Celske v Edwards*, 164 F.3d 396, 398 (7th Cir. 1999) (an appellant should be given an opportunity to submit a statement of his grounds for appealing so that the district judge "can make a reasonable assessment of the issue of good faith."); *Walker v O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000) (providing that a good faith appeal is an appeal that "a reasonable person could suppose…has some merit" from a legal perspective). If Plaintiff does choose to appeal, he will be liable for the $505.00 appellate filing fee regardless of the outcome of the appeal.

3) Defendants' Motion to Withdraw Appearance of Anthony G. Becknek [35] is GRANTED. Clerk is directed to terminate Anthony G. Becknek as attorney of record for Defendants Pasel, Sangster, Brewer, Janca, Hespen, and O'Dell.

Entered this 31st day of July, 2017.

s/ James E. Shadid

JAMES E. SHADID
UNITED STATES DISTRICT JUDGE