**NONPRECEDENTIAL DISPOSITION**
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# United States Court of Appeals

**For the Seventh Circuit**
**Chicago, Illinois 60604**

Submitted June 12, 2025*
Decided June 13, 2025

**Before**

DIANE S. SYKES, *Chief Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 24-2635

JOSHUA SCOLMAN,
*Plaintiff-Appellant*,

*v*.

DANIEL LAVOIE, et al.,
*Defendants-Appellees*.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 21-CV-1435

Lynn Adelman,
*Judge*.

**O R D E R**

Joshua Scolman, a state prisoner, sued medical professionals from two Wisconsin prisons, asserting that they were deliberately indifferent to his chronic back pain in

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

violation of the Eighth Amendment. *See* 42 U.S.C. § 1983. The district court granted the defendants' motion for summary judgment, and we affirm.

We consider the facts in the light most favorable to Scolman, the nonmoving party. *See Arce v. Wexford Health Sources, Inc.*, 75 F.4th 673, 678 (7th Cir. 2023). The first set of facts concerns Scolman's time at Green Bay Correctional Institution. Starting in 2019, prison medical staff prescribed Scolman gabapentin to treat chronic back pain. Because gabapentin is a non-formulary drug that is sometimes abused, medical staff required him to sign a document issued by the Wisconsin Department of Corrections (WDOC), in which he agreed to take the medication as prescribed, to not divert his medication, and to submit to random urine and blood tests to measure the concentration of the medication in his body. In 2020, after Scolman refused blood tests, staff members reduced the dosage of gabapentin, noting that they would gradually increase the dose if Scolman complied with the testing requirement. Scolman sent letters to the manager of the Health Services Unit, Hannah Utter, complaining about the lowered dose. Utter responded that medical staff lowered Scolman's gabapentin dosage because he did not submit to the testing required under the agreement.

Shortly thereafter, Dr. Daniel LaVoie, the WDOC medical director (an administrator who supervises correctional medical staff and approves certain procedures recommended by providers), approved Scolman to be referred for an MRI. The MRI results suggested that Scolman had degenerative disc disease.

In early 2021, Scolman started meeting with an advanced practice nurse prescriber, Lori Wachholz. Scolman reported to Wachholz that the gabapentin was not working. In response, Wachholz referred him to a neurosurgeon for further evaluation. But while Scolman was waiting for that appointment, correctional officers discovered Scolman diverting pills (by hoarding them). This violated the agreement, so Wachholz discontinued the gabapentin.

The neurosurgeon confirmed the diagnosis of degenerative disc disease and recommended fusion surgery. Scolman declined that measure, so the neurosurgeon recommended that he take pregabalin (a nerve-pain medication similar to gabapentin) for his chronic pain.

Wachholz reviewed the neurosurgeon's report and declined to prescribe pregabalin because of Scolman's recent diversion of gabapentin. Instead, she prescribed various pain medications on a trial basis, all of which were discontinued after Scolman expressed concerns about side effects or had allergic reactions. One medication,

oxcarbazepine, required LaVoie's approval because treating nerve pain was an "off-label" use for the drug. LaVoie approved the request, but Scolman refused to take the medication because of reported side effects.

A few months later, Scolman had a follow-up appointment with the neurosurgeon, who again recommended pregabalin after Scolman declined surgery. Again, Wachholz refused to prescribe pregabalin; this time she prescribed a topical cream to treat inflammation and pain. When the cream proved ineffective, Wachholz discontinued it and discussed surgery with Scolman. Scolman asked for pregabalin or gabapentin; Wachholz instead referred him back to the neurosurgeon.

Scolman then sent a letter to Utter, LaVoie, and Wachholz about his pain, asserting that they were deliberately indifferent to his condition. Utter informed Scolman that he needed to sign another agreement before starting pregabalin. Wachholz submitted a request to LaVoie for pregabalin, and LaVoie approved it. Scolman then signed the agreement and began taking the medication.

In 2022, Wachholz twice approved Scolman's request for an increase in his pregabalin dosage. Later that year, Scolman underwent lab testing, which showed less than 0.5 micrograms per milliliter (μG/mL) of pregabalin in his system (the normal concentration ranges between 2 and 10 μG/mL). LaVoie stated that these results "strongly suggest[ed] diversion."

The next set of facts concerns Scolman's time at Waupun Correctional Institution, where he was transferred in December 2022. Upon intake, his new advanced practice nurse prescriber, Diana Simmons, discontinued pregabalin after reviewing Scolman's medical records but before examining him. She explained that videos she had seen of Scolman demonstrated that his activity level did not match his reported pain. Further, she believed that Scolman was "not a patient who should receive highly regulated medications such as gabapentin or pregabalin" because of his mental health issues, history of diverting gabapentin, and test results suggesting that he had not taken pregabalin as prescribed. LaVoie agreed with discontinuing pregabalin. Scolman then received a letter summarizing Simmons's rationale for the decision and stating that he would "not qualify for use of any gabapentinoid medication" at Waupun.

Scolman sent several letters to the Health Services Unit asking why his medication was discontinued. Nurses responded to three of his letters and referred him to the written explanation. An assistant manager for the Health Services Unit, Ashley Haseleu, and later Simmons, responded to two letters; they listed the reasons for the

discontinuation, noted that he had an upcoming appointment, and reiterated that the neurosurgeon had recommended surgery instead of continuing medication. A week later, Scolman sent a letter complaining that his medication was discontinued because he had stabbed (and killed) another prisoner. Haseleu responded, "[t]his is your personal opinion, no response needed!"

Scolman filed suit in December 2021 against Utter, Wachholz, and LaVoie under 42 U.S.C. § 1983, alleging that they were deliberately indifferent to his chronic back pain in violation of his Eighth Amendment rights. He also brought a claim of negligence under Wisconsin law against LaVoie and Utter, alleging that they did not properly treat his medical issues. Early in the proceedings, the district judge administratively closed the case because the parties had reached a tentative settlement. No settlement materialized, though, so in June 2023 the judge reopened the case when Scolman filed an amended complaint that added Eighth Amendment and negligence claims against Simmons and Haseleu for discontinuing his pregabalin prescription at Waupun.

After the judge reopened proceedings, Scolman moved for recruitment of counsel to assist him in litigating the case, asserting that his case involved complex legal issues, that he had limited legal knowledge and law library access, and that his mental health issues rendered him incapable of competently litigating the case on his own. The judge denied the motion, explaining that, based on the factors laid out in *Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007) (en banc), Scolman's filings were "significantly more sophisticated than the average pro se prisoner plaintiff," and that he had so far demonstrated a proficient understanding of the legal issues. But the judge informed Scolman that he would consider recruiting counsel at a later stage of the proceedings, should circumstances warrant.

The district judge eventually granted the defendants' motion for summary judgment. As to Utter and Haseleu, the judge determined that their involvement was limited: They only responded to Scolman's letters, and, in doing so, they did not ignore Scolman's concerns about his treatment. As to Wachholz, the judge concluded that no reasonable jury could find that she was deliberately indifferent when she exercised her professional judgment initially to prescribe alternative medications to pregabalin, based on Scolman's history of misusing gabapentin. As to Simmons, the judge observed, Scolman produced no evidence that she was deliberately indifferent to his pain when she decided to discontinue pregabalin. Finally, as to LaVoie, the judge explained that he reasonably relied on the judgment of the medical professionals who treated Scolman

and did not deny any requested care. The judge also relinquished supplemental jurisdiction over the state-law negligence claims. 28 U.S.C. § 1367(c).

Scolman appeals, arguing primarily that the judge erroneously denied his request for counsel. We review that decision for abuse of discretion, *see Ealy v. Watson*, 109 F.4th 958, 967 (7th Cir. 2024), and conclude that none occurred here. Litigants do not have a right to counsel in civil cases, *see Pruitt*, 503 F.3d at 657, but a pro se litigant's request for counsel is entitled to careful consideration, *see Diggs v. Ghosh*, 850 F.3d 905, 911–12 (7th Cir. 2017). As required, the judge applied the correct standard and carefully considered Scolman's request, reasonably concluding that recruiting counsel was unwarranted because Scolman's pro se filings were well-written and demonstrated a sufficient grasp of the law involved in the case. Moreover, the judge explicitly left open the possibility of recruiting counsel at a later stage.

Scolman next argues that he presented sufficient evidence for his Eighth Amendment claims to withstand summary judgment. We review a summary judgment decision de novo. *See Arce*, 75 F.4th at 678.

For his claim to proceed, Scolman needed to put forth evidence that the defendants were deliberately indifferent to an objectively serious medical condition—that they consciously disregarded a substantial risk to his health. *See Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *Lockett v. Bonson*, 937 F.3d 1016, 1022 (7th Cir. 2019). The parties do not dispute that Scolman's back pain is objectively serious. Therefore, Scolman's Eighth Amendment claim turns on whether he produced enough evidence to permit a trier of fact to conclude that the defendants acted with deliberate indifference.

First, Scolman cannot make this showing with his assertions that Utter and Haseleu, the Health Services Unit managers at the two prisons, ignored his letters and allowed providers to continue with an ineffective course of treatment. There is no supervisory liability under § 1983, *see Perez v. Fenoglio*, 792 F.3d 768, 781 (7th Cir. 2015), but managers like Utter and Haseleu can be liable for deliberate indifference if they "turn[] a blind eye" to a prisoner's complaints, *id.* (citation omitted). Here, however, Scolman produced no evidence undermining Utter and Haseleu's testimony that they did not see some of his letters. And as for the letters to which they responded, they reasonably deferred to the medical providers' orders, *see Eagan v. Dempsey*, 987 F.3d 667, 694 (7th Cir. 2021), and pointed Scolman to the reasons that his providers would not prescribe him pregabalin. Utter and Haseleu (administrators who did not treat Scolman) had no authority to act on Scolman's requests for a specific medication, and

the record does not support an inference that either manager ignored an obvious risk to his health by deferring to the providers' judgment. *See id.*

With respect to Utter, Scolman also asserts that she coerced him into signing an unlawful agreement not to divert his medication and to submit to lab testing—and that his supposed noncompliance with the agreement eventually resulted in discontinuation of his medication. But Scolman fails to explain how requiring a medication contract violated his rights under the Eighth Amendment. And preventing the misuse of controlled substances within a prison is the type of penological interest that courts leave to prison officials' discretion. *See, e.g.*, *Overton v. Bazzetta*, 539 U.S. 126, 134 (2003) (recognizing penological interest in deterring substance use).

Second, as to Wachholz and Simmons, Scolman argues that they were deliberately indifferent to his pain when they refused to prescribe pregabalin and persisted in recommending less effective medication. Medical staff can be deliberately indifferent if, for example, they persist with an "easier and less efficacious treatment," *Lockett*, 937 F.3d at 1023–24, they delay necessary treatment and prolong a prisoner's pain, *see Gomez v. Randle*, 680 F.3d 859, 865 (7th Cir. 2012), or their treatment departs radically from accepted professional standards, *see Whiting v. Wexford Health Sources, Inc.*, 839 F.3d 658, 663 (7th Cir. 2016). There is no evidence of any of these circumstances here. Wachholz and Simmons expressed concerns about prescribing pregabalin because of Scolman's past misuse of a related drug, and prescribing other types of pain medication was within the bounds of their professional judgment. *See Burton v. Downey*, 805 F.3d 776, 785–86 (7th Cir. 2015) (no deliberate indifference for prescribing less-addictive medication than one prescribed by outside physician). And although the neurosurgeon recommended pregabalin, disagreement about the proper course of treatment is insufficient on its own to establish an Eighth Amendment violation. *See id.* at 786.

Regardless, neither Wachholz nor Simmons persisted with easier or less efficacious treatment: When Scolman told them that the alternative drugs were ineffective, they tried other medications. The record does not suggest that either Wachholz or Simmons continued prescribing any drug that Scolman did not respond to, and they promptly discontinued medications that caused allergic reactions or other negative side effects. Therefore, the district judge correctly concluded that no reasonable jury could have found that Wachholz or Simmons acted with deliberate indifference in treating Scolman's back pain.

Finally, Scolman asserts that LaVoie ignored Scolman's complaints and therefore allowed providers to persist in an ineffective course of treatment. But nothing in the record suggests that LaVoie, an administrator, ignored Scolman's complaints: He did not remember receiving or reviewing any letters about ineffective treatment. *See Perez*, 792 F.3d at 781–82. Regardless, LaVoie approved the referral and medication requests by Scolman's providers, and nothing suggests that the courses of treatment that Wachholz and Simmons prescribed went against accepted professional standards. *See Whiting*, 839 F.3d at 663. Accordingly, LaVoie's conduct did not amount to deliberate indifference.

AFFIRMED