UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

DOUGLAS J. ELWANGER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:23-cv-00039-RLY-MJD
	)	
JASON FINKELSTEIN,	)	
WENDY KNIGHT,	)	
I. RANDOLPH,	)	
JOHN HEFLIN,	)	
TINA COLLINS,	)	
DAVID GOBBER,	)	
ROBERT STAFFORD, and	)	
VERNON OSBORN,	)	
	)	
Defendants.	)	

Order Granting Motion for Assistance with Recruiting Counsel, Screening Complaint, Dismissing Insufficient Claims, and Directing Further Proceedings

Plaintiff Douglas Elwanger is a prisoner currently incarcerated at Branchville Correctional Facility ("Branchville"). He filed this civil action alleging that he has not been provided with adequate medical care, first at Correctional Industrial Facility ("CIF") and now at Branchville. Because Mr. Elwanger is a "prisoner," this Court has an obligation to screen the complaint before service on the defendants. 28 U.S.C. § 1915A(a), (c). Mr. Elwanger has also filed a motion to assistance with recruiting counsel and two motions for injunctive relief, which the Court addresses in this Order.

I. Motion for Assistance with Recruiting Counsel

Mr. Elwanger's motion for assistance with recruiting counsel, dkt. [14], is **granted** to the extent that the Court will attempt to recruit counsel to represent him. The Court will notify the parties when the recruitment process is complete.

II. Screening Standard

When screening a complaint, the Court must dismiss any portion that is frivolous or malicious, fails to state a claim for relief, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). To determine whether the complaint states a claim, the Court applies the same standard as when addressing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Schillinger v. Kiley*, 954 F.3d 990, 993 (7th Cir. 2020). Under that standard, a complaint must include "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court construes *pro se* complaints liberally and holds them to a "less stringent standard than formal pleadings drafted by lawyers." *Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017).

III. The Complaint

Mr. Elwanger names ten defendants in the complaint: (1) Dr. Jason Finkelstein, MD, who is identified as working at Meridian Radiology; (2) Wendy Knight, the warden of the Correctional Industrial Facility ("CIF"); (3) I. Randolph, an executive grievance specialist at CIF; (4) Dr. John Heflin, a doctor at CIF; (5) Tina Collins, a nurse at CIF; (6) David Gobber, the Health Services Administrator at CIF; (7) Robert Stafford, a grievance specialist at CIF; (8) Vernon Osborn, a nurse practitioner at CIF; (9) Wexford Health of Indiana, LLC ("Wexford"), the contractor that provided medical services for the Indiana Department of Correction ("IDOC") before July 1, 2021;

and (10) Centurion Health Services of Indiana ("Centurion"), the contractor that has provided medical services for the IDOC since July 1, 2021.[1]

The complaint includes a detailed history with highly technical medical information, including information about Mr. Elwanger's serious heart conditions and his need for certain tests and procedures, including surgery. The Court accordingly summarizes Mr. Elwanger's allegations about the various defendants, focusing on the facts necessary to screen the complaint.

For significant periods of time within the two years preceding the filing of Mr. Elwanger's complaint, he complained to Nurse Tina Collins, Nurse Practitioner Vernon Osborn, Dr. John Heflin, and David Gobber (all of whom are identified as working at CIF) that he was having chest pains (and other symptoms) and needed further testing and treatment. They did not help him and, as a result, he had to wait about nine months to follow up with an electrophysiologist, as recommended by a specialist in April 2022. He also suffered from significant chest pains during that time. Warden Knight, Robert Stafford, and I. Randolph were also aware of Mr. Elwanger's conditions because he filed grievances about the medical care he was receiving, but they ignored his complaints. Therefore, Elwanger did not receive needed medical care before being transferred to Branchville, where there is no infirmary and there are no nearby doctors to manage his cardiac issues. In January 2023, a specialist recommended that he have heart surgery, but that has not occurred yet.

As to Dr. Finkelstein, Mr. Elwanger alleges:

> January 24th of 2023-Echocardiogram showed that now aortic valve was tri-leaflet, normal aortic valve structure and function with no aortic insufficiency with now most diagnosis normal as well as now somehow I am tricuspid aortic valve when all of my life have been bicuspid aortic valve since birth, chronological history of

[1] The Court takes judicial notice that Wexford contracted with the IDOC to provide medical services through June 30, 2021, and that Centurion began providing medical services to the IDOC starting on July 1, 2021. *See* https://www.centurionmanagedcare.com/newsroom/centurion-to-partner-with-indiana-doc-to-provide-comprehensive-healthcare-services.html (last visited July 19, 2023).

> MRI and CT-scans prove this as well as recent CT on November 9th at St. Vincent Hostpial by Chad Feldman MD. This is blatantly medical malpractice against Dr. Jason Finkelstein of Meridian Radiology.

Id. at 4.

IV. Discussion of Claims

Mr. Elwanger's complaint indicates that he is pursuing claims of deliberate indifference to serious medical needs (which arise under the Eighth Amendment) and state-law claims of medical malpractice. Where a *pro se* litigant has expressly stated the legal theory he wishes to pursue, the district court is not required to analyze whether the allegations in the complaint might state a claim under a different legal theory. *See Larry v. Goldsmith*, 799 F. App'x 413, 416 (7th Cir. 2016) (citing *Clancy v. Office of Foreign Assets Control of U.S. Dep't of Treasury*, 559 F.3d 595, 606-07 (7th Cir. 2009)). Accordingly, the Court addresses the plausibility of Mr. Elwanger's claims under the Eighth Amendment and Indiana medical malpractice law and no other theories.

Applying the screening standard to the factual allegations in the complaint certain claims are dismissed while other claims shall proceed as submitted.

First, Mr. Elwanger's complaint includes allegations about allegedly inadequate medical care that occurred more than two years before he filed his complaint on March 7, 2023. *See* dkt. 1 at 6 (certifying that Plaintiff placed his complaint in the prison's mail system on March 7, 2023). To the extent that he is trying to recover for such allegedly inadequate medical care, the claims are **dismissed for failure to state a claim upon which relief may be granted** because they are barred by the relevant statute of limitations. *See Richards v. Mitcheff*, 696 F.3d 635, 637 (7th Cir. 2012); Ind. Code § 34–11–2–4; *Koch v. Gregory*, 536 Fed. Appx. 659 (7th Cir. 2013) (stating that when the language of the complaint plainly shows that the statute of limitations bars the suit, dismissal under § 1915A is appropriate).

Second, the claims against Dr. Finkelstein must be **dismissed for failure to state a claim upon which relief may be granted**. Dr. Finkelstein is identified as an employee of Meridian Radiology. There are no factual allegations plausibly suggesting that he is state actor. As such, he cannot be liable under 42 U.S.C. § 1983 for constitutional violations. *Shields v. Ill. Dep't of Corrs.*, 746 F.3d 782, 797–98 (7th Cir. 2014) (outside medical providers who took referrals from Wexford to treat inmates were not state actors for purposes of § 1983 without evidence that they had more than an incidental or transitory relationship with the penal system or Wexford). Mr. Elwanger also alleges that Dr. Finkelstein committed medical malpractice, apparently because he allegedly misread Mr. Elwanger's echocardiogram in January 2023. But Mr. Elwanger does not allege that he suffered any damages as a result of that alleged error, which is necessary for a medical malpractice claim. *Overshiner v. Hendricks Reg'l Health*, 119 N.E.3d 1124, 1131 (Ind. Ct. App. 2019) ("To prevail in a medical malpractice action, the plaintiff must prove three elements: (1) a duty on the part of the defendant in relation to the plaintiff; (2) failure to conform his conduct to the requisite standard of care required by the relationship; and (3) an injury to the plaintiff resulting from that failure." (cleaned up)).

Third, Mr. Elwanger is suing Wexford, which contracted with the IDOC to provide medical services through June 30, 2023. Private corporations acting under color of state law—including those that contract with the state to provide essential services to prisoners—are treated as municipalities for purposes of § 1983 and can be sued when their actions violate the Constitution. *Dean v. Wexford Health Sources, Inc.*, 18 F.4th 214, 235 (7th Cir. 2021) (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978)). To state a *Monell* claim, the plaintiff must identify an action taken by the municipality and allege a causal link between the municipality's action and the deprivation of federal rights. *Dean,* 18 F.4th at 235. "A municipality 'acts' through its written

policies, widespread practices or customs, and the acts of a final decisionmaker." *Levy v. Marion Co. Sheriff*, 940 F.3d 1002, 1010 (7th Cir. 2019). Mr. Elwanger does not explicitly allege that he was damaged by a Wexford policy or widespread custom or by the acts of a Wexford final decisionmaker, and the complaint does not include any factual allegations supporting such an inference, especially given that Wexford provided medical care services to the IDOC for only the first four months of the time within the statute of limitations for this case.

Fourth, Mr. Elwanger alleges that Warden Knight, Mr. Randolph, Dr. Heflin, Nurse Collins, Mr. Gobber, Mr. Stafford, and Nurse Practitioner Osborn knew that he was receiving inadequate care for his heart conditions but failed to take any action to help him. At this early stage of the proceedings, these allegations are sufficient to plausibly suggest that these defendants were deliberately indifferent to his serious medical condition in violation of the Eighth Amendment, and those claims **shall proceed**.

Fifth, Mr. Elwanger indicates that he wishes to pursue medical malpractice claims against these individual defendants. Some of the individual defendants may not be covered by Indiana's Medical Malpractice Act, but, even if they are not, Mr. Elwanger can pursue ordinary negligence claims against them. Based on the allegations supporting his Eighth Amendment claims against them, Mr. Elwanger has also plausibly alleged that Warden Knight, Mr. Randolph, Dr. Heflin, Nurse Collins, Mr. Gobber, Mr. Stafford, and Nurse Practitioner Osborn acted negligently with respect to his heart conditions. His claims against them **shall proceed** as medical malpractice claims to the extent that they are covered by Indiana's Medical Malpractice Act and as ordinary negligence claims to the extent that they are not.

Sixth, Mr. Elwanger indicates that he wishes to pursue medical malpractice claims against Wexford and Centurion. Entities like Wexford and Centurion can be liable for the medical

malpractice of their employees under Indiana's Medical Malpractice Act, so these claims **shall proceed**. *See Sword v. NKD Hospitals, Inc.*, 714 N.E.2d 142, 147–50 (7th Cir. 1999) (discussing vicarious liability in context of medical malpractice claims).

Seventh, although Mr. Elwanger has not stated a *Monell* claim against Wexford, he has stated a *Monell* claim against Centurion. Mr. Elwanger does not explicitly identify a Centurion policy or widespread practice or custom, but he does allege that his heart condition was consistently ignored or inadequately treated over a long period of time by many employees of Centurion and that Centurion does not have adequate health care facilities at Branchville. At this stage of the litigation, and construing Mr. Elwanger's *pro se* complaint liberally, these factual allegations are sufficient to support an inference that a Centurion policy, practice, or custom is causing his injuries. Accordingly, Eighth Amendment claims **shall proceed** against Centurion.

Finally, the Court observes that Mr. Elwanger is seeking injunctive relief in this case. At this point, Wexford is not providing medical care services to the IDOC, and Mr. Elwanger has been transferred to Branchville, so the individual defendants are no longer responsible for his medical care or capable of providing him with relief. Accordingly, the only proper defendant as to his claims for injunctive relief is Centurion, and to the extent that he seeks injunctive relief from any other defendants, those claims are **dismissed**. *See Gonzalez v. Feinerman*, 663 F.3d 311, 315 (7th Cir. 2011) (proper government defendant in an injunctive relief action is the official who would be responsible for ensuring that any injunctive relief is carried out).

In summary, the following claims proceed in this case: (1) Eighth Amendment medical-care claims against Wexford, Centurion, Wendy Knight, I. Randolph, Dr. John Heflin, Tina Collins, David Gobber, Robert Stafford, and Vernon Osborn based on allegations that they were deliberately indifferent to his heart conditions; (2) medical-malpractice claims against Wexford

and Centurion based on allegations that treatment of his heart conditions was mismanaged; and (3) medical-malpractice or negligence claims, under the terms set forth above, against Wendy Knight, I. Randolph, Dr. John Heflin, Tina Collins, David Gobber, Robert Stafford, and Vernon Osborn based on allegations that they were negligent in handling his heart conditions. To the extent that Mr. Elwanger seeks injunctive relief, the only appropriate defendant is Centurion. All other claims are dismissed. If recruited counsel believes that additional claims were alleged in the complaint, but not identified by the Court, counsel shall have **30 days** after the Court enters its appointment order to identify those claims. Alternatively, counsel may file a motion for leave to file an amended complaint.

The **clerk is directed** to **add** Wexford Health of Indiana, LLC, and Centurion Health Services of Indiana as defendants on the docket. The **clerk is directed** to terminate Dr. Jason Finkelstein as a defendant on the docket.

V. Motions for Injunctive Relief

Mr. Elwanger filed a motion for preliminary injunction in which he asks the Court to order an emergency transfer "in regards to being placed, transferred to adequate P.C. medical unit that can reevaluate pain medication control within IDOC with serious 'F' medical code that is required to have close watch, unable in a RHU-Unit at Branchville Correctional Facility." Dkt. 17 at 5 (errors in original). He also asks that he be housed in a "medical, protective care facility within the IDOC within the lines of state policy protective custody status regulations in classification at Central Office per P.C. status and medical issues needing addressed." *Id.* (errors in original). Finally, he asks for an order requiring compliance with state policies or "re-evaluate allowing stronger pain medications while awaiting transfer to P.C.-medical unit where Centurion Health

can give said medications." *Id.* In the motion, he specifically asks that the Court enter an order requiring the Warden of Branchville to take these actions. *Id.* at 2.

Mr. Elwanger also filed a motion asking the Court to require the Warden of Branchville to produce various evidence that would support his motion for preliminary injunction. Dkt. 18.

Mr. Elwanger's motions, dkts. [17] and [18], are **denied without prejudice** to being reasserted by recruited counsel. As currently formulated, Mr. Elwanger is asking the Court to order the Warden of Branchville to take certain actions, but he is not a party to this suit, and the Court cannot enter an injunction against a non-party. *See Maddox v. Wexford Health Sources, Inc.*, 528 F. App'x 669, 672 (7th Cir. 2013) ("An injunction, like any 'enforcement action,' may be entered only against a litigant, that is, a party that has been served and is under the jurisdiction of the district court") (quoting *Lake Shore Asset Mgmt., Ltd. v. Commodity Futures Trading Comm'n*, 511 F.3d 762, 767 (7th Cir. 2007)). And, if Mr. Elwanger seeks discovery from a non-party, the proper way to do so is to serve the non-party with a subpoena, not ask the Court for an order requiring such production. Once counsel is recruited, counsel may file a renewed motion for preliminary injunction if counsel finds it appropriate to do so. In addition, the Court notes that, as currently formulated, the complaint does not include any allegations plausibly suggesting that correctional staff at Branchville are violating Mr. Elwanger's constitutional rights. If Mr. Elwanger wishes to assert such claims, he must include them in an amended complaint, or—if they cannot be joined in this case under Federal Rule of Civil Procedure 20—instituting a new lawsuit after exhausting administrative remedies.

VI. Summary and Service of Process

Mr. Elwanger's motion for assistance with recruiting counsel, dkt. [14], is **granted** to the extent that the Court will attempt to recruit counsel to represent him. His motions for preliminary

injunction and order requiring discovery related to his request for preliminary injunction, dkts. [17] and [18], are **denied without prejudice** to being reasserted by recruited counsel if counsel deems such action to be appropriate.

The **clerk is directed** pursuant to *Fed. R. Civ. P.* 4(c)(3) to issue process to defendants Knight, Randolph, Heflin, Collins, Gobber, Stafford, Osborn, Wexford, and Centurion in the manner specified by Rule 4(d). Process shall consist of the complaint, dkt. [1], applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of Service of Summons), and this Order.

The **clerk is directed** to serve Centurion and its employees electronically. The **clerk is directed** to serve Wexford electronically. The **clerk is directed** to serve IDOC employees electronically.

Defendants Heflin, Collins, Gobber, and Osborn are identified as current employees of Centurion, and the allegations of the complaint suggest that these defendants were employed by Wexford before Centurion began providing medical services for the IDOC. Wexford and Centurion are ORDERED to provide the full name and last known home address of any of these defendants who do not waive service if they have such information. This information may be provided to the Court informally or may be filed ex parte.

Nothing in this Order prohibits the filing of a proper motion pursuant to Rule 12 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Date: 7/25/2023

RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

Distribution:

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BRANCHVILLE CORRECTIONAL FACILITY
Electronic Service Participant – Court Only

Electronic service to Indiana Department of Correction:
Wendy Knight
I. Randolph
Robert Stafford
(All at Correctional Industrial Facility)

Electronic service to Centurion
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John Heflin
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Vernon Osborn

Electronic service to Wexford of Indiana, LLC

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