

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JAMES GILMAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:23-cv-00082-MPB-MKK
	)	
SAMUEL BYRD Dr. MD,	)	
CHELSEA PEARSON Nurse RN,	)	
BARBARA RIGGS Nurse RN Nursing Sup.,	)	
LEANN MURRY Nurse RN,	)	
SAMANTHA Nurse RN,	)	
	)	
Defendants.	)	

Order Screening Amended Complaint and Directing Further Proceedings

Plaintiff James Gilman is a prisoner currently incarcerated at Wabash Valley Correctional Facility ("Wabash Valley"). He filed this civil action alleging that the defendants were deliberately indifferent to his serious medical needs when they delayed treatment for an abdominal abscess. Because Mr. Gilman is incarcerated, this Court must screen the complaint before service on the defendants. 28 U.S.C. § 1915A(a), (c). Before the Court had the opportunity to screen Mr. Gilman's complaint, Mr. Gilman filed an amended complaint, dkt. [7]. The amended complaint is now the operative pleading in this action.

I. 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).

II. The Amended Complaint

Mr. Gilman names five defendants in his amended complaint: (1) Dr. Samuel Byrd; (2) Nurse Chelsea Pearson; (3) Nurse Barbara Riggs; (4) Nurse Leann Murry; and (5) Nurse Emily Enriquez. Mr. Gilman's amended complaint focuses on the delayed treatment of an abdomen abscess that resulted in emergency surgery.

Mr. Gilman submitted a healthcare request form on November 22, 2022, because he could tell something was wrong with him. He was seen by nursing staff on November 24, who provided him IV fluids for dehydration and contacted Dr. Byrd, who ordered a blood draw. Nurse Pearson, who was assigned to the lab, did not do the blood draw that day or in the following days.

Mr. Gilman became so sick that he was unable to get out of bed by November 25. Between November 25 and December 11, he had to be transported to the infirmary by wheelchair. He lost nearly 40 pounds in this timeframe.

On December 2, Mr. Gilman had a video chronic care meeting with a nurse practitioner, who immediately contacted on-site medical staff and asked that they have Dr. Byrd assess Mr. Gilman. Dr. Byrd ordered an x-ray of Mr. Gilman's stomach, which was immediately taken. Mr. Gilman believes that Dr. Byrd should have ordered a doppler scan, using a portable machine

available at the prison, because he should have known that an abscess and bowel issues would not have been visible on an x-ray. Dr. Byrd had Mr. Gilman lay on an exam table and started roughly pushing on his abdomen. Dr. Byrd ordered lactulose and MiraLAX to treat constipation and reordered blood labs. Dr. Byrd later admitted to Mr. Gilman that if the abscess had ruptured before Mr. Gilman was sent to the hospital, Mr. Gilman would have died.

On December 6, a correctional officer called to the infirmary to ask that Mr. Gilman be admitted, but Nurse Murry refused to allow him to be escorted there. On December 10, another officer called the infirmary asking for Mr. Gilman to be admitted, but Nurse Enriquez refused and told Mr. Gilman to give himself another enema. On December 11, two officers called the infirmary, the second explaining her belief that Mr. Gilman would die if he wasn't attended to by medical staff. Nurse Murry refused to allow them to escort Mr. Gilman to the infirmary. A correctional officer then called Nurse Riggs, the nursing supervisor, and told her that Mr. Gilman would die without medical attention, but Nurse Riggs refused to allow his transport to the infirmary.

In the evening of December 11, after a shift change, a correctional officer was able to convince a night shift nurse to have Mr. Gilman admitted. At the infirmary, the nurse couldn't get Mr. Gilman's blood pressure, so she called Dr. Byrd. Dr. Byrd looked up Mr. Gilman's blood test results (which Nurse Pearson had taken on December 6). The test results showed a 15+ white blood count, which indicated a serious infection. Dr. Byrd ordered that Mr. Gilman be taken to an area hospital by ambulance.

At the hospital, Mr. Gilman was diagnosed with a 15.5 cm. abscess. The abscess was too large to be drained, and on December 25, 2022, a surgeon removed the abscess and dissected 2 centimeters of Mr. Gilman's bowel.

Mr. Gilman returned to Wabash Valley a few days later. He had follow-up care with the surgeon who removed the staples and ordered that he wear a compression belt for 30 days.

Mr. Gilman seeks compensatory and punitive damages from the defendants.

III. Discussion of Claims and Pending Motions

Applying the screening standard to the factual allegations in the complaint, Mr. Gilman's Eighth Amendment deliberate indifference claims **shall proceed as submitted** against the defendants in their individual capacities. These were the only claims identified by the Court. If Mr. Gilman believes that additional claims were alleged in the complaint, but not identified by the Court, he shall have **through May 23, 2023**, in which to identify those claims.

Mr. Gilman's motion to change defendant's name, dkt. [9], is **granted to the extent** that the **clerk is directed** to update the docket and replace "Samantha Nurse RN" with "Nurse Emily Enriquez, RN."

Mr. Gilman's motion for subpoenas, dkt. [8], is **denied as premature**. After the defendants have appeared and answered the amended complaint, the Court will issue a pretrial schedule that discusses discovery. Mr. Gilman may renew his motion at that time.

IV. Service of Process

The **clerk is directed** pursuant to *Fed. R. Civ. P.* 4(c)(3) to issue process to defendants (1) Dr. Samuel Byrd; (2) Nurse Chelsea Pearson; (3) Nurse Barbara Riggs; (4) Nurse Leann Murry; and (5) Nurse Emily Enriquez in the manner specified by Rule 4(d). Process shall consist of the amended complaint filed on March 9, 2023, dkt [7], applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of Service of Summons), and this Order.

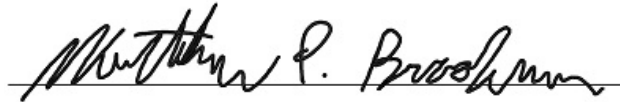
The **clerk is directed** to serve the Centurion employees electronically.

The defendants are identified as employees of Centurion. A copy of this Order and the process documents shall also be served on Centurion electronically. Centurion is **ordered** to provide the full name and last known home address of any defendant who does 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: May 3, 2023

A handwritten signature in black ink, reading "Matthew P. Brookman", written over a horizontal line.

Matthew P. Brookman, Judge
United States District Court
Southern District of Indiana

Distribution:

JAMES GILMAN
110906
WABASH VALLEY - CF
WABASH VALLEY CORRECTIONAL FACILITY - Inmate Mail/Parcels
Electronic Service Participant – Court Only

Electronic service to Centurion
Dr. Samuel Byrd
Nurse Chelsea Pearson
Nurse Barbara Riggs
Nurse Leann Murry
Nurse Emily Enriquez