

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

KENNETH KIPP,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:24-cv-01568-JRS-TAB
	)	
CENTURION OF INDIANA L.L.C., et al.,	)	
	)	
Defendants.	)	

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

Plaintiff Kenneth Kipp, who is incarcerated by the Indiana Department of Correction, alleges in this case that the defendants exhibited deliberate indifference to his need for dental care in violation of his Eighth Amendment rights when he was confined at Wabash Valley Correctional Facility ("WVCF"). The defendants have moved for summary judgment. For the reasons below, that motion is **granted in part and denied in part**.

**I.
Summary Judgment Standard**

A motion for summary judgment asks the Court to find that a trial is unnecessary because there is no genuine dispute as to any material fact and, instead, the movant is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). When reviewing a motion for summary judgment, the Court views the record and draws all reasonable inferences from it in the light most favorable to the nonmoving party. *Khungar v. Access Cmty. Health Network*, 985 F.3d 565, 572–73 (7th Cir. 2021). It cannot weigh evidence or make credibility determinations on summary judgment because those tasks are left to the fact-finder. *Miller v. Gonzalez*, 761 F.3d 822, 827 (7th Cir. 2014). A court only has to consider the materials cited by the parties, *see* Fed. R. Civ. P. 56(c)(3); it need

not "scour the record" for evidence that might be relevant. *Grant v. Trs. of Ind. Univ.*, 870 F.3d 562, 573–74 (7th Cir. 2017) (cleaned up).

A party seeking summary judgment must inform the district court of the basis for its motion and identify the record evidence it contends demonstrates the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Whether a party asserts that a fact is undisputed or genuinely disputed, the party must support the asserted fact by citing to particular parts of the record, including depositions, documents, or affidavits. Fed. R. Civ. P. 56(c)(1)(A). Failure to properly support a fact in opposition to a movant's factual assertion can result in the movant's fact being considered undisputed, and potentially in the grant of summary judgment. Fed. R. Civ. P. 56(e).

II. Factual Background

Because Defendants have moved for summary judgment under Rule 56(a), the Court views and recites the evidence in the light most favorable to the non-moving party and draws all reasonable inferences in that party's favor. *Khungar*, 985 F.3d at 572–73.

A. Mr. Kipp's Dental Care

1. September 2023 Visits

On April 18, 2022, Mr. Kipp submitted a Health Care Request Form ("HCRF"), reporting that his teeth hurt and needed extraction. Dkt. 63-1 at 5.¹ That request stated, "I can't sleep or eat in the last week, my teeth hurt bad. I need to get them pulled (ASAP). I've tried to deal with the pain, but its got too bad....." *Id.* According to IDOC records, Mr. Kipp was scheduled for a tooth

¹ The Court's Order Setting Pretrial Schedule and Discussion Discovery in Prisoner Litigation provides: "References to exhibits submitted in support of the motion for summary judgment must not be to the BATES label, but should be to the page number (or paragraph number, as appropriate). Dkt. 25 at 4-5. **Counsel is reminded of this requirement and should cite the page number of the filing in the Court's ECF system in future motions.**"

extraction but refused the appointment on June 29, 2022. *Id.* Mr. Kipp contends that officers refused to take him to this appointment because he was sick. Mr. Kipp submitted another HCRF on July 28. Dkt. 68-1 at 2. The response states that he was on the list to be seen, but they had no working dental chairs. *Id.* Mr. Kipp states that he submitted additional HCRFs during this time and did not receive a response or was told he was put on the list to be seen but was not seen. *See* dkt. 98 at 7; dkt. 68-1 at 3.

Mr. Kipp asserts that he submitted HCRFs asking for dental care in early 2023, June 2023 and July 2023 but the IDOC does not have records of these requests. Dkt. 2 at 1; dkt. 68 at 6. Mr. Kipp submitted an HCRF on August 13, 2023, requesting extraction of two teeth, stating that he had put in a request two months before and that he couldn't eat or sleep. Dkt. 63-1 at 3. On August 15, dental staff noted he was on the waitlist. *Id.* Mr. Kipp submitted another HCRF on September 1, 2023, requesting the same dental treatment. *Id.* at 2. The response, dated September 5, was noted to be a duplicate and stated that Mr. Kipp was on the list to be seen. *Id.*

On September 8, 2023, custody staff reported that Mr. Kipp had nausea and vomiting and he was taken to the medical unit. *Id.* at 6-7.² When he arrived at medical, he denied those symptoms and requested pain medication for a toothache. *Id.* Nurse Berg assessed him and noted normal respiration and skin condition, no acute distress, and no emergent findings. *Id.* She advised him to complete a new HCRF for evaluation that day. *Id.* Mr. Kipp refused to complete the HCRF, became verbally aggressive, and was asked to leave the medical area. *Id.* After Mr. Kipp had left the immediate area, Nurse Berg noticed him outside of the medical unit speaking with another nurse.

² Mr. Kipp argues in response to the motion for summary judgment that he was never seen for the HCRFs he submitted and the defendants argue that this is disputed because Mr. Kipp saw Nurses Berg and Luken on September 8, 2023. Dkt. 63-1 at 6-7. But the designated evidence reflects that Mr. Kipp was not seen on this day in response to an HCRF, but was taken to the medical unit by custody staff. So this visit does not dispute Mr. Kipp's statement that he was not seen in response to his HCRFs.

Dkt. 63-4 ¶ 13. She told the other nurse that Mr. Kipp was not experiencing an urgent medical issue, and that he must submit a HCRF to be seen. *Id.* She offered Mr. Kipp the HCRF to fill out once again, but Mr. Kipp continued to refuse and again became verbally aggressive. *Id.* At this point Nurse Berg notified the prison custody staff of the situation and Mr. Kipp voluntarily left once they became involved. *Id.* ¶ 14.

Nurse Luken was intermittently present during this encounter but was not directly involved with Mr. Kipp or the nursing care that he received or requested. Dkt. 63-6 ¶ 9. Neither Nurse Berg nor Nurse Luken was aware of any dental concerns or requests for dental care from Mr. Kipp before this visit. Dkt. 63-4 ¶ 15; dkt. 63-6 ¶ 13. They both confirmed that Mr. Kipp was not experiencing a medical emergency at that time. Dkt. 63-4 ¶ 9-11; dkt. 63-6 ¶ 8-10. Mr. Kipp submitted another HCRF the next day, requesting copies of all dental HCRFs from June 1 through September 9, 2023. Dkt. 63-1 at 4.

Mr. Kipp saw dentist Dr. Monica Vance on September 14, and x-rays were taken of his teeth. Dkt. 63-2 at 1. Dr. Vance extracted two of Mr. Kipp's teeth on September 26 without complication. Dkt. 63-1 at 1.

2. Interaction with Nurse Riggs

Mr. Kipp asserts that sometime in 2022 and 2023 he saw Nurse Riggs in the hallway where they had a conversation in which she told him there was no dentist but one would be filling in, that she did not know when a full-time dentist would be hired, and that he should use over the counter pain medication to manage his symptoms. Dkt. 1 at 11-12. Nurse Riggs testifies that she was not made aware of any serious medical needs related to Mr. Kipp's dental care at any time relevant to the Complaint. Dkt. 63-5 ¶ 9. She has no specific memory of Mr. Kipp reporting his medical or dental condition to her, but it is her standard practice to advise patients to submit a HCRF for non-

emergency medical conditions so they can be scheduled for evaluation by medical or dental staff in accordance with IDOC policy. *Id.* ¶ 7-9. If Mr. Kipp told her of his tooth pain, she would have instructed him to fill out a HCRF to be seen. *Id.*

B. Centurion's Pandemic Response

The COVID-19 pandemic significantly affected the practice of dentistry. Dkt. 63-3 ¶ 5. During and after the pandemic, the American Dental Association ("ADA") issued guidance recommending that dentists close their practices to all but emergency care, which was defined as potentially life-threatening conditions requiring immediate treatment to stop bleeding, alleviate severe infection, or address airway-compromising trauma. *Id.* ¶ 5-6. The ADA advised that urgent dental conditions should be treated as minimally invasively as possible to reduce aerosolization risks. *Id.* ¶ 7.

Because of the ADA guidance, a substantial statewide backlog of healthcare requests, including dental requests, developed across all IDOC facilities. *Id.* ¶ 8. This also led to repeat and duplicate healthcare requests from inmates whose non-urgent dental issues could not yet be addressed. *Id.* ¶ 10. Dr. Whitney Moore, who is the Statewide Dental Director for Centurion, testifies that she attempted to provide and maintain dental treatment coverage across IDOC facilities, including WVCF. *Id.* ¶ 4. In November 2021, January 2022, and February 2022, WVCF was largely quarantined because of the COVID-19 pandemic. Urgent dental care was provided with minimally invasive measures, including cell-side treatment when necessary. *Id.* ¶ 11. On September 4, 2021, Dr. Moore initiated a statewide rotation of Centurion dental staff to assist with the WVCF backlog and personally began the rotation by providing coverage herself. *Id.* ¶ 14.

C. Staff Shortages and Attempts to Recruit Dentists

The COVID-19 pandemic also caused widespread staffing shortages and difficulties in placing dentists in IDOC facilities, including WVCF. *Id.* ¶ 12.

Between October 8, 2021, and June 17, 2022, Dr. Moore oversaw the recruitment of dentists for IDOC facilities, coordinating with the Indiana Dentistry Board to send 9,702 text messages and 7,844 emails to approximately 18,479 dentist contacts, receiving no responses. *Id.* ¶ 46. This included 6,001 emails and texts sent using the Internet Collaborative Information Management System ("iCIMS") platform in January of 2022. *Id.* ¶ 15-16. About 13,000 emails and texts were sent during February of 2022. *Id.* ¶ 17-18. Posts were also made at Indiana University and Indiana Wesleyan University advertising Centurion's open dental positions. *Id.* ¶ 19. At the end of February, Centurion began planning a virtual dentist recruitment event. *Id.* ¶ 20.

Centurion sent 129 emails and texts and 417 emails and texts in June and September of 2022. *Id.* ¶ 21-22. Centurion sent 1,492 emails and texts in December. *Id.* ¶ 23. In early February, Centurion finalized preparations for its virtual dentist recruitment event and began a national advertising campaign. *Id.* ¶ 24. Centurion also sent about 83,000 recruitment emails in February of 2023. *Id.* ¶ 25-26. In March of 2023, Centurion sent about 80,000 messages advertising its open dental positions. *Id.* ¶ 27. Centurion also held its virtual recruiting event, which drew 13 attendees. *Id.*

Centurion sent 556 recruitment messages and posted 60 job postings with the Indiana Dental Associations in early April 3, 2023. *Id.* ¶ 23. In mid-April, Centurion sent 795 mailers to dental facilities within 50 miles of IDOC sites, sent 1,651 recruitment messages, and sent 78,000 recruitment fliers. *Id.* ¶ 29. Centurion then expanded its search into Illinois and Michigan, posting

listings with the Illinois State Dental Society, the Michigan Dental Association, and the American Dental Association. *Id.* ¶ 30.

In early May of 2023, Centurion sent 301 recruitment messages and asked the Indiana University School of Dentistry to circulate its spring flier advertising open positions. *Id.* ¶ 31. At the end of May, Centurion distributed its spring flier to all attendees of the Hinman Dental Meeting, one of the largest dental conferences in the United States advertising Centurion's open dental positions. *Id.* ¶ 32. At the end of May, Centurion renewed its postings with the ADA and listed new postings with the Indiana Dental Association. *Id.*

In June of 2023, Centurion sent its summer flier to 82,000 recipients and sent 242 messages to targeted recipients within 50 miles of IDOC facilities. *Id.* ¶ 34. In July, Centurion expanded its target radius around WVCF to 100 miles and sent 1,000 more recruitment messages to dentists in that area. *Id.* ¶ 35. At the end of August, Centurion sent another 239 recruitment messages. *Id.* ¶ 36.

Near the end of September 2023, Centurion renewed its listings with the American Dental Association, Indiana Dental Association, and Illinois State Dental Society advertising Centurion's open dental positions. *Id.* ¶ 37. In early October, Centurion sent representatives to the American Dental Association Conference in Orlando, Florida to advertise and promote its open positions. *Id.* ¶ 38. At the end of October, Centurion contacted all of the dental schools in Indiana, Ohio, Illinois, and Kentucky. *Id.* ¶ 39. At the beginning of November, Centurion sent about 1,200 recruitment messages. *Id.* ¶ 40. In late November, Centurion sent about 1,800 more messages. *Id.* ¶ 41. Centurion also sent more messages in January and February of 2024. *Id.* ¶ 43-44. On March 4, 2024, Centurion hired a full-time dentist for WVCF. *Id.* ¶ 45.

III. Discussion

The Eighth Amendment's prohibition against cruel and unusual punishment imposes a duty on the states, through the Fourteenth Amendment, "to provide adequate medical care to incarcerated individuals." *Boyce v. Moore*, 314 F.3d 884, 889 (7th Cir. 2002) (citing *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). "Prison officials can be liable for violating the Eighth Amendment when they display deliberate indifference towards an objectively serious medical need." *Thomas v. Blackard*, 2 F.4th 716, 721–22 (7th Cir. 2021). "Thus, to prevail on a deliberate indifference claim, a plaintiff must show '(1) an objectively serious medical condition to which (2) a state official was deliberately, that is subjectively, indifferent.'" *Johnson v. Dominguez*, 5 F.4th 818, 824 (7th Cir. 2021) (quoting *Whiting v. Wexford Health Sources, Inc.*, 839 F.3d 658, 662 (7th Cir. 2016)).

The defendants do not dispute for purposes of the summary judgment motion that Mr. Kipp's dental issues were objectively serious. To avoid summary judgment, then, the record must allow a reasonable jury to conclude that the defendants acted with deliberate indifference—that is, that they "consciously disregarded a serious risk to [Mr. Kipp]'s health." *Dean v. Wexford Health Sources, Inc.*, 18 F.4th 214, 241 (7th Cir. 2021) (cleaned up).

Deliberate indifference requires more than negligence or even objective recklessness. *Id.* Rather, Mr. Kipp "must provide evidence that an official actually knew of and disregarded a substantial risk of harm." *Petties v. Carter*, 836 F.3d 722, 728 (7th Cir. 2016). "Of course, medical professionals rarely admit that they deliberately opted against the best course of treatment. So in many cases, deliberate indifference must be inferred from the propriety of their actions." *Dean*, 18 F.4th at 241 (internal citations omitted). The Seventh Circuit has held that deliberate indifference occurs when the defendant renders a treatment decision that departs substantially from accepted

professional judgment, refuses to take instructions from a specialist, knowingly persists in an ineffective treatment, or inexplicably delays medical treatment. *Petties*, 836 F.3d at 729–30.

A. Centurion

Private corporations acting under color of state law are treated as municipalities for purposes of § 1983. *Dean*, 18 F.4th at 235. Section 1983 generally does not allow a municipality or corporation to be held liable for the actions of its agents or employees. As the Seventh Circuit has explained:

There are at least three types of municipal action that may give rise to municipal liability under § 1983: (1) an express policy that causes a constitutional deprivation when enforced; (2) a widespread practice that is so permanent and well-settled that it constitutes a custom or practice; or (3) an allegation that the constitutional injury was caused by a person with final policymaking authority. Inaction, too, can give rise to liability in some instances if it reflects a conscious decision not to take action.

Id. "[I]f institutional policies are themselves deliberately indifferent to the quality of care provided, institutional liability is possible." *Glisson v. Ind. Dep't. of Corr.*, 849 F.3d 372, 378 (7th Cir. 2017) (en banc). To establish *Monell* liability here, a reasonable jury must be able to find from the designated evidence that WVCF's dental care system suffered from "systemic and gross deficiencies in staffing, facilities, equipment, or procedures." *Daniel v. Cook County*, 833 F.3d 728, 735 (7th Cir. 2016). Mr. Kipp must then "show that a policymaker or official knew about these deficiencies and failed to correct them." *Id.*; see also *Glisson*, 849 F.3d at 381–82.

In support of its motion for summary judgment on Mr. Kipp's *Monell* claim, Centurion argues that it maintained access to dental care at IDOC facilities during the pandemic but, during that time, dental care was limited to minimally invasive treatment for urgent issues and this created statewide backlogs. Centurion specifically explains that in November 2021, January 2022, and February 2022, WVCF was largely quarantined because of the COVID-19 pandemic. Centurion goes on to argue that it undertook efforts to recruit dentists to work at WVCF from late 2021

through early 2024. Finally, Centurion argues that any delay in Mr. Kipp's care was because of the pandemic and related backlog, and staffing shortages. Urgent dental care was provided with minimally invasive measures, including cell-side treatment when necessary. Dkt. 63-3 ¶ 11.

Mr. Kipp has designated evidence that he began experiencing dental pain in early 2022 and started submitting HCRFs, many of which garnered no response. He also submitted a request in April of 2022, complaining of pain that hindered his ability to eat and sleep. Dkt. 63-1 at 5. But he was not scheduled for treatment until late June. *Id.* He missed this appointment, but the parties dispute whether he refused it. Mr. Kipp submitted another request in August of 2023 again complaining of extreme dental pain and was told he was on the list to be seen. *Id.* at 3. But there is no evidence he was seen in response to this request. In other words, although Centurion contends that the pandemic impacted its ability to provide dental services through early 2022, it provides no explanation for the extensive delays Mr. Kipp experienced in receiving care in 2022 and 2023. Centurion, indeed, does not dispute that it suffered from a shortage in dental staff between 2021 and 2024. A reasonable jury could conclude that Centurion's failure to have a dentist at WVCF resulted from "systemic and gross deficiencies in staffing [and] procedures." *Daniel*, 833 F.3d at 735.

In addition, a reasonable jury could conclude that "a policymaker or official knew about these deficiencies and failed to correct them." *Id.* at 735. Indeed, Dr. Moore has testified that she identified WVCF as the facility with the most critical staffing need. Dkt. 63-3 ¶ 13. Centurion argues, however, that it undertook extensive efforts to attempt to recruit a full-time dentist at WVCF and rotated dentists into WVCF. But a reasonable jury could conclude that those efforts were not sufficient. Centurion's recruitment efforts largely included sending texts and emails and submitting job postings. Centurion took these efforts from October of 2021 through March of

2024. *See generally* dkt. 63-3 ¶ 15-45. Although Centurion argues that it expanded its efforts and held job fairs, a reasonable jury could conclude that Centurion was aware sometime during this two-and-a-half-year period that these recruitment efforts were insufficient but failed to take any different measures to alleviate its staffing shortages. For example, Centurion contends that dentists rotated through WVCF, but Centurion does not provide specific detail about how often dentists were available. Indeed, the designated evidence reflects that Mr. Kipp waited months to see a dentist and that Nurse Riggs told him no dentist was available and she did not know when WVCF would have a dentist. Further, there is no evidence that Centurion made any other efforts to ensure that inmates with serious dental needs were seen in a timely manner, such as by sending inmates who need urgent care out for treatment. Again, based on the designated evidence, a jury could conclude that Centurion was aware that WVCF did not have enough dentists, but failed to take enough measures to make sure dental care was available to inmates at WVCF from 2021 through 2024. Centurion is therefore not entitled to summary judgment on Mr. Kipp's *Monell* claim.

B. Nurses Berg and Luken

Mr. Kipp alleges that Nurses Berg and Luken acted with deliberate indifference when they saw him on September 8, 2023. They argue that because Mr. Kipp did not present with a serious medical need, they properly instructed him to fill out an HCRF. Mr. Kipp argues that they should have treated him the time he saw them.

Mr. Kipp was taken to the medical unit on September 8, and the custody officers reported that he was complaining of nausea and vomiting. Mr. Kipp denies these symptoms but states that he told Nurse Berg about his serious dental pain. Nurse Berg concluded that, because Mr. Kipp's condition was not emergent, he needed to fill out an HCRF to receive treatment at that time. Dkt. 63-1 at 6-7. Mr. Kipp then became aggressive and was directed to leave the area. *Id.* Nurse Luken

did not evaluate Mr. Kipp at this time and testifies that she was not aware that Mr. Kipp had any dental concerns before this visit. Dkt. 63-6 ¶ 13. Mr. Kipp has not designated evidence to show that either Nurse Berg or Nurse Luken was aware of his condition before September 8 or knew that his condition was emergent on that date, and he has not disputed that he refused to fill out an HCRF. To the contrary, he agrees that he would not fill out a HCRF but suggests that these defendants denied him care on September 8 because of a previous lawsuit he had filed against them. Dkt. 68 at 8. But Mr. Kipp is not pursuing a retaliation claim in this case and, regardless, he has not designated evidence that would allow a reasonable jury to conclude that either Nurse Berg or Nurse Luken took any action because he filed a lawsuit. Moreover, Nurses Berg and Luken have designated evidence that, if Mr. Kipp had agreed to fill out a request form, he would have been evaluated. Dkt. 63-1 at 6-7. No reasonable jury could find that either Nurse Berg or Nurse Luken exhibited deliberate indifference. *Williams v. Stauchie*, No. 14-CV-1078-PP, 2015 WL 3542811, at *4 (E.D. Wis. June 4, 2015) (a medical professional is not deliberately indifferent solely because she requires an inmate to follow procedure).

C. Nurse Riggs

Mr. Kipp alleges that he saw Nurse Riggs in the hallway and reported his pain to her, and she told him that WVCF did not have a dentist, and she did not know when one would be available. Nurse Riggs argues that she followed IDOC policy and exercised her professional judgment and that Mr. Kipp should have used over-the-counter medications until he could see a dentist. To the extent Mr. Kipp contends that Nurse Riggs did not provide immediate care in response to his complaint, as discussed above, it is not deliberate indifference to direct an inmate to follow procedures to request care. No reasonable jury could conclude that Nurse Riggs was deliberately indifferent to Mr. Kipp's serious medical condition and she is entitled to summary judgment.

**IV.
Conclusion**

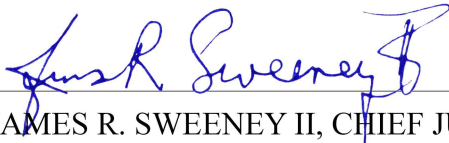
The defendants' motion for summary judgment is **granted in part and denied in part**. The motion is denied as to Mr. Kipp's claims against Centurion and granted as to his claims against Nurses Riggs, Berg, and Luken. The **clerk shall terminate** the nursing defendants on the docket.

Mr. Kipp's motion for status report, dkt. [83], is **granted** consistent with this Order.

The Court prefers that Mr. Kipp be represented by counsel for the remainder of this action. Thus, the Court reconsiders its previous order denying Mr. Kipp's motion for counsel, dkt. [37], and finds it should be granted. The Court will attempt to recruit counsel to assist Mr. Kipp through final judgment.

IT IS SO ORDERED.

Date: 09/08/2026



JAMES R. SWEENEY II, CHIEF JUDGE
United States District Court
Southern District of Indiana

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