

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

MICHAEL W. KLINE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:23-cv-01171-RLY-KMB
	)	
M. HACKER, et al.,	)	
	)	
Defendants.	)	

**ORDER GRANTING DEFENDANT HACKER'S MOTION FOR SUMMARY  
JUDGMENT AND DIRECTING FURTHER PROCEEDINGS**

Plaintiff Michael Kline is an Indiana Department of Correction ("IDOC") inmate who was once incarcerated at the New Castle Correctional Facility ("New Castle"). In this action, Mr. Kline alleges that Defendants Hacker and Smith violated his constitutional rights by failing to remove him from the top bunk because he had a seizure, fell out of his bed, and suffered a head injury. *See* dkt. 16 at 2-3. He proceeds on Eighth Amendment deliberate indifference to medical need claims against both Defendants. Dkt. 15 at 3.

Defendant Hacker moved for summary judgment. Dkt. 58. Mr. Kline filed a response in opposition. Dkt. 63. Defendant Hacker filed a reply in support of his motion for summary judgment. Dkt. 65. Mr. Kline filed a surreply. Dkt. 66. Defendant Smith did not move for summary judgment, *see* dkt., and the time to do so has passed. Dkt. 41 at 5. The claims against her shall proceed to settlement conference or trial.

Mr. Kline did not file a motion for leave to file a surreply, but the court nevertheless considered the surreply as part of Mr. Kline's summary judgment response. For the reasons explained below, Defendant Hacker's motion for summary judgment, dkt. [58], is **granted**.

**I.  
Standard of Review**

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 Defendant has moved for summary judgment under Rule 56(a), the court views and recites the evidence in the light most favorable to Mr. Kline and draws all reasonable inferences in his favor. *Khungar*, 985 F.3d at 572–73.

### **A. The Parties**

Plaintiff, Mr. Kline, was an inmate housed in the medical unit ("M Unit") at New Castle. Dkt. 16 at 1.

Defendant, Ms. Hacker, was a counselor located in the M-Unit. Dkt. 60-1 at 1. Ms. Hacker is not a medical staff person nor is she medically trained. *Id.* Ms. Hacker was trained to contact medical when an inmate seeks to be seen by medical staff, complains about a medical condition, or requires medical accommodation. *Id.*

### **B. Mr. Kline's request for a bottom bunk pass and bottom-tier cell**

Mr. Kline reported his desire to Ms. Hacker for both a bottom bunk pass and a bottom-tier cell upon arrival to M-Unit. *Id.* at 2. Ms. Hacker recalls Mr. Kline having a bottom bunk pass from a prior IDOC facility. *Id.* However, that pass would not be automatically applied at New Castle, as medical providers from outside facilities cannot issue valid accommodations such as bottom bunk or bottom-tier passes at New Castle. *Id.* Rather, only on-site medical providers can issue such passes. *Id.*

When Ms. Hacker learned about Mr. Kline's seizure condition and his accommodations at other IDOC facilities, she contacted the medical department personnel and alerted them as to Mr. Kline's potential need for a bottom bunk and bottom-tier pass.<sup>1</sup> *Id.* Mr. Kline suffered a seizure on

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<sup>1</sup> There is no evidence in the record as to when Mr. Kline was transferred to the M-Unit, or when he had this conversation with Ms. Hacker.

December 16, 2021. Dkt. 60-2. The medical department approved Mr. Kline's bottom bunk pass the day after his seizure. *Id.*

Two months later, Mr. Kline filed a grievance regarding his December 16 fall from the top bunk, which indicated that he "told Ms. M. Hacker . . . that [he has] seizures and am not supposed to be on the top bunk." Dkt. 60-2.

### **C. IDOC's contract with GEO Group, Inc.**

IDOC contracts with a company called GEO Group, Inc. ("GEO") and its subcontractors to operate New Castle. *See* dkt. 59 at 2. Pursuant to a contract between IDOC and GEO, it is noted that GEO "will not be responsible for the provision of food service, medical service, mental health service, and/or dental service." Dkt. 60-1 at 2-3; dkt. 60-3 at 2. Neither GEO, nor its employees or subcontractors have any control over decision-making regarding medical care, treatment, or accommodations for inmates. Dkt. 60-1 at 3.

## **III. Discussion**

Mr. Kline proceeds on an Eighth Amendment deliberate indifference claim against Ms. Hacker. Dkt. 15 at 3.

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)).

Deliberate indifference requires more than negligence or even objective recklessness. *Id.* Rather, Mr. Kline "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).

The court assumes for purposes of the summary judgment motion that Mr. Nichols' medical condition was objectively serious.

To avoid summary judgment, then, the record must allow a reasonable jury to conclude that Ms. Hacker acted with deliberate indifference—that is, that she "consciously disregarded a serious risk to [Mr. Kline's] health." *Dean*, 18 F.4th at 241. Deliberate indifference requires more than negligence or even objective recklessness. *Id.* Rather, Mr. Kline "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).

Ms. Hacker is entitled to summary judgment on the Eighth Amendment claim against her because she lacked the authority to issue a bottom bunk pass to Mr. Kline, and the undisputed evidence reflects that she contacted the medical department to inquire about him receiving a bottom bunk pass.

First, Ms. Hacker is a counselor, not a medical staff person or medically trained. Dkt. 60-1 at 1. She was trained to contact medical when an inmate seeks to be seen by medical staff, complains about a medical condition, or requires medical accommodation. *Id.* In that same vein, only the on-site medical providers at New Castle can issue accommodations such as bottom bunk or bottom tier passes. *Id.* at 2. While Ms. Hacker did recall that Mr. Kline had a bottom-bunk pass from a prior IDOC facility, that pass would not be automatically applied at New Castle because

medical providers from outside facilities cannot issue valid accommodations within New Castle. *Id.*

Indeed, IDOC's contract with GEO forbids a counselor such as Ms. Hacker to fulfill such a request. GEO and its employees are not responsible for medical services at New Castle. Dkt. 60-1 at 2-3; dkt. 60-3 at 2. Ms. Hacker does not have any control over decision-making regarding medical care, treatment, or accommodations for inmates. Dkt. 60-1 at 3.

Mr. Kline's response in opposition contends that Ms. Hacker ignored his requests for bottom bunk or bottom-tier status. Dkt. 63 at 4. But that contention is wholly unsupported by the record. The only evidence in the record is that Mr. Kline informed Ms. Hacker of his seizure disorder and his need for a bottom bunk and bottom tier pass, and she contacted the medical department to inform them of this need. Dkt. 60-1 at 2. From then on, it was out of her control if and when the medical unit decided to issue a bottom bunk or bottom-tier pass. *See id.* There is no evidence that Mr. Kline told Ms. Hacker that the medical department was ignoring the request. And the evidence designated illustrates that the medical department approved Mr. Kline's request for a bottom bunk pass the day after his seizure. *Id.* at 2.

The "division of labor within a prison necessitates that non-medical officials may reasonably defer to the judgment of medical professionals regarding inmate treatment." *Giles v. Godinez*, 914 F.3d 1040, 1049 (7th Cir. 2019). "If a prisoner is under the care of medical experts . . . a non-medical prison official will generally be justified in believing that the prisoner is in capable hands . . . absent a reason to believe (or actual knowledge) that prison doctors or their assistants are mistreating (or not treating) a prisoner." *Id.* (internal quotations omitted).

Mr. Kline has pointed to no evidence from which a jury could conclude that Ms. Hacker could have issued any sort of medical accommodation, including a bottom bunk or bottom-tier

pass. *See Hill v. Meyer*, No. 21-2884, 2022 WL 1078871, at \*4 (7th Cir. Apr. 11, 2022) (summary judgment for Health Services Administrator was appropriate where plaintiff did not produce evidence that she had the authority to order specific care or reason to question the adequacy of the care the plaintiff was receiving). Moreover, no rational jury could find that Ms. Hacker was deliberately indifferent for failing to follow up with the medical department, because there is no evidence that Mr. Kline told her his request for the passes was being ignored. Accordingly, Ms. Hacker is entitled to summary judgment.

#### **IV. Conclusion**

Defendant Hacker's motion for summary judgment, dkt. [58], is **granted**. The **clerk is directed to** terminate Ms. Hacker as a defendant on the docket. No partial final judgment shall issue at this time.


Defendant Smith has not moved for summary judgment, and the claims against her must be resolved by settlement or trial.

The court *sua sponte* reconsiders and **grants** Mr. Kline's motion for assistance with recruiting counsel, dkt. [33]. The court will attempt to recruit counsel to assist Mr. Kline for the remainder of this action. The court likewise prefers that Defendant Smith be represented by counsel for the remainder of this action. The **clerk is directed** to send Ms. Smith (1) a financial disclosure form for pro se defendants, and (2) a motion for assistance recruiting counsel with her copy of this Order. Ms. Smith has **21 days** from the issuance of this Order to file her financial disclosure form and a motion for counsel using the forms the clerk provides her. Once Ms. Smith files the requisite forms, the counsel motion has been ruled on and counsel has been recruited, the

magistrate judge is asked to schedule a telephonic status conference to discuss further proceedings.

**IT IS SO ORDERED.**

Date: 8/28/2025

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

Distribution:

MICHAEL W. KLINE  
197970  
INDIANA STATE PRISON  
INDIANA STATE PRISON  
Inmate Mail/Parcels  
One Park Row  
MICHIGAN CITY, IN 46360

K. SMITH  
3219 S. Vine Street  
Muncie, IN 47302

Joseph Thomas Lipps  
BBFCS ATTORNEYS  
jlipps@bbfcslaw.com

Magistrate Judge Barr



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**PRO SE DEFENDANT FINANCIAL DISCLOSURE IN SUPPORT OF  
MOTION FOR APPOINTMENT OF COUNSEL**

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Answer the following questions to the best of your ability.

**Note:** If you do not tell the truth, the court may decline to appoint you counsel.

**I. Personal Information**

- 1) Are you employed? ☐ Yes ☐ No
- 2) Are you married? ☐ Yes ☐ No  
If "Yes," is your spouse employed? ☐ Yes ☐ No
- 3) Do you have any dependents that you are responsible for supporting?  
☐ Yes ☐ No  
If "Yes," list them below:

<u>Name or initials (for minor children only)</u>	<u>Relationship to You</u>	<u>Age</u>	<u>Amount of Support Provided per Month</u>
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

II. **Income** - If you are married, your answers *must include your spouse's income*. (When calculating income, include any wages, salary, rent, child support, public assistance, unemployment compensation, disability payments, life insurance payments, pensions, annuities, workers' compensation, stock dividends and interest, gifts and inheritance, or other money you receive from any source.)

1) State your total *monthly* wages or salary? \$ \_\_\_\_\_

2) Provide the name and address of your employer(s):

\_\_\_\_\_

3) State your spouse's total *monthly* wages or salary? \$ \_\_\_\_\_

State the amount of money you have received from any other source in the last twelve months, such as the sources listed above. Please attach an additional sheet if necessary.

Source of income

Amount

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

III. **Expenses** - If you are married or have dependents, *your expenses should also include your household's expenses*.

(When calculating household expenses, you may include groceries, clothing, medical costs, utilities that are not included in your rental payments, transportation, and insurance.)

1) Identify the following amounts that you pay per month:

☐ Rent or ☐ Mortgage \$ \_\_\_\_\_

Car payment(s) \$ \_\_\_\_\_

Alimony or court-ordered child support \$ \_\_\_\_\_

Credit card payment(s) \$ \_\_\_\_\_

- 2) Do you have any other *monthly* expenses that you have not already listed?  
☐ Yes ☐ No

If "Yes," list them below:

<u>Expense</u>	<u>Amount</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____

- 3) What are your total *monthly* expenses? \$ \_\_\_\_\_

**IV. Property** - If you are married, your answers must *include your spouse's property*.

- 1) Do you own a car? ☐ Yes ☐ No If "Yes," list car(s) below:

<u>Make and Model</u>	<u>Year</u>	<u>Approximate Current Value</u>
_____	_____	\$ _____
_____	_____	\$ _____

- 2) Do you own your home(s)? ☐ Yes ☐ No

If "Yes," state the approximate value(s). \$ \_\_\_\_\_

What is the amount of equity (assessed value of residence minus outstanding mortgage balance) in the home(s)? \$ \_\_\_\_\_

- 3) Do you have any cash or checking, savings, or other similar accounts?  
☐ Yes ☐ No

If "Yes," state the total of such sums. \$ \_\_\_\_\_

- 4) Do you own any other property of value, such as real estate, stocks, bonds, trusts, or individual retirement accounts (e.g., IRA, 401 k), artwork or jewelry?

☐ Yes ☐ No

If "Yes," describe the property and the approximate value(s).

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- V. **Other Circumstances** - Describe any other financial circumstance(s) that you would like the court to consider when reviewing this petition.

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I, \_\_\_\_\_, declare that I am a defendant in this action. I declare that I am unable to afford an attorney and accordingly request that the Court appoint one for me.

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**Signature - Signed Under Penalty of Perjury**

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**Date**

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA**

---

Full name of plaintiff(s)

v.

Case No. \_\_\_\_\_

---

Full name of defendant(s)

---

**MOTION FOR ASSISTANCE WITH RECRUITING COUNSEL**

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I request the court's assistance recruiting counsel to represent me in this action.

(Note: You may attach additional pages to this motion.)

**I. Financial Status**

Have you previously filed a "Request to Proceed in Forma Pauperis" (an IFP application)? Please check the appropriate box below:

- ☐ I have previously filed an IFP application in this case, and it is a true and correct representation of my current financial status.
- ☐ I have not previously filed an IFP application in this case and now attach an original IFP application showing my financial status.
- ☐ I have previously filed an IFP application in this case, but my financial status has changed. I have attached a new IFP application showing my current financial status.

**II. Attempts to Obtain Counsel**

The law requires persons requesting assistance with recruiting counsel to first make a reasonable attempt to obtain counsel on their own or demonstrate that they have been effectively precluded from doing so. List all attorneys and/or law firms you have contacted to represent you in this case and their responses to your requests. If you have limited access to the telephone, mail, or other communication methods, or if you otherwise have had difficulty contacting attorneys, please explain.

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**III. Ability to Litigate the Case**

1) Do you have any difficulty reading or writing English?

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2) What is your educational background (including how far you went in school)?

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- 3) Do you have any physical or mental health issues that you believe affect your ability to litigate this case on your own? If so, what are they?

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- 4) Have you received any assistance with this case from others, including other inmates? If so, describe the assistance you have received and whether you will continue to receive it.

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- 5) List any other cases you have filed without counsel, and note whether the Court recruited counsel to assist you in any of those cases.

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- 6) Describe any other factors you believe are relevant to your ability to litigate this case on your own.

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**IV. Requirements for the Recruitment of Counsel**

By filing this motion, I agree to the following conditions:

- While I set the objectives of the litigation, I acknowledge it is usually counsel's choice as to the strategies used to accomplish that objective.
- I will fully cooperate with recruited counsel. If I do not do so, I understand that recruited counsel may withdraw.
- I understand that counsel is not responsible for paying the costs associated with my lawsuit.
- I understand that I am not entitled to free legal counsel and that recruited counsel may require me to enter into a contingency fee agreement in order to represent me in this action.
- I understand that a portion of any monetary recovery (not to exceed 25%) may be used to satisfy the amount of attorney's fees awarded under 42 U.S.C. § 1988. This requirement is imposed by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(d).
- I understand that even if the Court grants this motion, I will receive counsel only if an attorney volunteers to take my case and that there is no guarantee that an attorney will volunteer to represent me.
- I understand that if my answers in this motion or in my IFP application are false, I may be subject to sanctions, including the dismissal of my case.

I declare under penalties for perjury that the above statements are true and correct:

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Date

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**Signature - Signed Under Penalty for Perjury**