

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MICHAEL OWENS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:23-cv-00244-RLY-CSW
	)	
JOHN MERSHON, et al.,	)	
	)	
Defendants.	)	

**Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment
and Granting Plaintiff's Motion to Assist in Recruiting Counsel**

Plaintiff Michael Owens filed his complaint alleging defendants violated his Eighth Amendment rights by failing to provide timely and adequate medical care to treat his back pain following a fall and utilized policies, practices, and customs that prevented him from receiving necessary medical care, including but not limited to an MRI. Defendants have moved for summary judgment. Dkt. [59]. For the reasons below, the motion is **granted in part** and **denied in part**.

**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).

Although Mr. Owens was granted a 30-day extension of time in which to file a response to defendants' motion for summary judgment, dkt. 65, he failed to do so. Accordingly, facts alleged in the motion are "admitted without controversy" so long as support for them exists in the record. S.D. Ind. L.R. 56-1(f); *see* S.D. Ind. L.R. 56-1(b) (party opposing judgment must file response brief and identify disputed facts). "Even where a non-movant fails to respond to a motion for summary judgment, the movant still has to show that summary judgment is proper given the undisputed facts." *Robinson v. Waterman*, 1 F.4th 480, 483 (7th Cir. 2021) (cleaned up).

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.

Mr. Owens was incarcerated under IDOC custody at Pendleton Correctional Facility between January 2022 and September 2023. Prior to May 31, 2022, he received regular medical

treatment for back pain caused by bulging discs in his back. Dkt. 60-1 at 174-209; dkt. 60- 2 at 1. On May 31, 2022, Mr. Owens fell after a chair in which he was sitting broke, resulting in injuries to his sacrum and coccyx at the base of his spine. Dkt. 60-1 at 182-183; Dkt. 60-2 at 2. Mr. Owens received medical treatment from a Centurion nurse immediately after his fall. Dkt. 60-1 at 182-183. Mr. Owens described his back pain as a 4/10 in intensity and was given pain medications. *Id.* at 183. The nursing staff told Mr. Owens to "come back for review if [his] symptoms persist." *Id.* at 182.

On June 7, 2022, Mr. Owens submitted a Request for Health Care form, requesting medical treatment for pain in his tailbone resulting from his fall. *Id.* at 13. Nursing staff again saw Mr. Owens on June 10, 2022, and he described his pain as a 9/10 in intensity and stated that back exercises, ice, and warm compresses were not helpful in relieving his symptoms. *Id.* at 184-186. The nurse treating Mr. Owens referred him to a physician for further evaluation and management. *Id.* at 186. On June 14, Dr. Mershon examined Mr. Owens to assess his condition and symptoms. *Id.* at 190- 191; dkt. 60-2 at 2. Mr. Owens described his back pain as "mild," and Dr. Mershon ordered an x-ray of Mr. Owens' sacrum and coccyx the same day. Dkt. 60-1 at 190; dkt. 60-2 at 2. Dr. Mershon also issued a seven-day no work order to facilitate healing of Mr. Owens' injury. Dkt. 60-1 at 188; dkt. 60-2 at 2. Dr. Mershon understood that Mr. Owens was already receiving pain medications to alleviate his symptoms at the time of the June 14 examination. Dkt. 60-2 at 2.

Dr. Mershon testified that, at Pendleton, once a provider orders an x-ray for an inmate, the provider does not have any control over when that x-ray is scheduled. *Id.* Unless the situation presents an emergency, the x-ray would typically be taken when the x-ray technician would next return to Pendleton. *Id.* On average, it would take two to three weeks after an x-ray is ordered for the x-ray to be taken in non-emergent situations. *Id.* In Dr. Mershon's judgment, based on Mr.

Owens' description of his back pain being mild and his preexisting history of back pain, his injury did not present an emergency situation that would justify expediting the x-ray. *Id.* at 3.

Just over two weeks later, on June 30, 2022, x-rays were taken and revealed that his sacrum and coccyx were within normal limits and did not demonstrate any fracture or abnormality. Dkt. 60-1 at 376; Dkt. 60-2 at 3. Dr. Mershon testified that doctors at IDOC facilities do not have authority to order an MRI, which must be taken by an offsite medical provider. Dkt. 60-2 at 3. Rather, a doctor may submit an Offsite Provider Request ("OPR") to obtain an MRI, which would then be reviewed and evaluated by the Centurion Health of Indiana, LLC Regional Medical Director for approval. *Id.* Dr. Mershon testified that based on Mr. Owens' x-ray results, which revealed the sacrum and coccyx were normal, an MRI was not warranted, and it was appropriate within the expected standard of care for Dr. Mershon to treat Mr. Owens' back pain conservatively. Dkt. 60-1 at 376; dkt. 60-2 at 3.

As part of this back pain treatment, Mr. Owens received numerous pain medications, including nerve medications, both before and after his fall, through December 2022. Dkt. 60-1 at 173-177, 214-215, 231. After his injury, Mr. Owens continued to receive pain medication and also received a referral to physical therapy. Dkt. 60-2 at 3. Dr. Mershon testified that once a doctor prescribes a medication to an inmate, the doctor has no authority or control over the later distribution of that medication. Dkt. 60-2 at 4.

Although Mr. Owens requested the results of his x-ray, between June 30 and August 31, 2022, he did not submit any Request for Health Care forms seeking further examination of his back in connection with his fall. Mr. Owens, however, did submit Requests for Health Care forms in July and August 2022 complaining that he had not received his prescribed medications to help with his back and tailbone pain, Dkt. 60-1 at 16, 19-21. Dr. Mershon testified that any delay in

receiving the prescribed medications would have been the result of an unintentional logistical miscommunication among other medical personnel. Dkt. 60-2 at 4. On at least one occasion, Mr. Owens was not fully compliant with his prescribed medication, leading Dr. Mershon to stop his treatment with nortriptyline on August 2, 2022. Dkt. 60-1 at 212.

On August 31, 2022, Mr. Owens submitted a Request for Health Care and was seen by Dr. Mershon on September 7, at which time Dr. Mershon prescribed additional pain medications and encouraged Mr. Owens to lose weight to better treat his back pain. Dkt. 60-1 at 21, 214-216. On October 25, Dr. Mershon again examined Mr. Owens for his chronic medical conditions and noted that his back condition was "stable" and that Mr. Owens wished to continue on his pain medications. Dkt. 60-1 at 218-220. Mr. Owens also received a back brace and was referred to a physical therapist on December 29 for further evaluation and treatment for his back pain, largely related to his pre-existing back condition. Dkt. 60-1 at 226, 230-232.

On January 20, 2023, Mr. Owens saw Registered Nurse Eunice A. Adetoro, and reported "extreme pain with numbness in my legs, back and feet. I also have a burning sensation in my lower back. It feels like I have" *Id.* at 248 (truncated patient comments in original).

On February 7, 2023, Mr. Owens filed his complaint against defendants. Dkt. 1. On July 6, Mr. Owens saw LPN Cheyenne Holliday, and again reported a "burning sensation with numbness. I am in extreme pain." *Id.* at 264. He was referred to see a doctor. *Id.* On August 16, pursuant to an earlier referral from nursing staff, Mr. Owens was examined by a nurse practitioner regarding back pain and complaints that he was experiencing pinching, burning, and numbness sensations from his lower back down to his left foot and sometimes on his right side, as well. Dkt. 60-1 at 278-279. The nurse practitioner prescribed additional pain medications and submitted an OPR for an MRI. Dkt. 60-1 at 274-279. The MRI was approved on August 23, and taken on

September 8. Dkt. 60-1 at 390, 394. The MRI showed disc desiccation bulges in his L3-4 and L4-5 vertebrae. Dkt. 60-1 at 285, 394. On September 12, 2023, based on the results of his MRI, an OPR was submitted for Owens to receive a neurosurgery consult for further evaluation of his disc problems. Dkt. 60-1 at 284-285.

III. Discussion

A. Deliberate Indifference Claims against Dr. Mershon

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 parties do not dispute that Mr. Owens' condition was objectively serious. To avoid summary judgment, then, the record must allow a reasonable jury to conclude that Dr. Mershon acted with deliberate indifference—that is, that he "consciously disregarded a serious risk to Mr. Owen'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. Owens "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 so substantially "from accepted professional judgment, practice, or standards as to demonstrate that" it is not based on judgment at all. *Petties*, 836 F.3d at 729 (quoting *Cole v. Fromm*, 94 F.3d 254, 260 (7th Cir. 1996)).
- refuses "to take instructions from a specialist." *Id.*
- persists "in a course of treatment known to be ineffective." *Id.* at 729–30.
- chooses "an 'easier and less efficacious treatment' without exercising professional judgment." *Id.* at 730 (quoting *Estelle*, 429 U.S. at 104 n.10).
- effects "an inexplicable delay in treatment which serves no penological interest." *Id.*

Prior to January 20, 2023, there is no evidence in the record to show that Dr. Mershon was deliberately indifferent to Mr. Owens' medical needs. The uncontradicted evidence shows that, following Mr. Owens' fall, Dr. Mershon gave him prompt and adequate medical care within the expected standard of care. *See* dkt. 60-1 at 186, 188-191; dkt. 60-2 at 2-3. There is no evidence in the record that Mr. Owens' condition amounted to a medical emergency. *See* dkt. 60-1 at 183 (rating his back pain at 4/10 and presenting no other physical injury). It is also uncontradicted that Dr. Mershon had no control over the time of non-emergent x-rays or the distribution of prescribed medications. Dkt. 60-2 at 2-4.

Mr. Owens' symptoms were generally consistent after his fall on May 31, 2022, until January 2023. *See, e.g.*, dkt. 60-1 at 220 (Mr. Owens' back pain "[c]ondition is stable" on October 25, 2022, and he wants to continue his current medications.). On January 20, 2023, however, Mr. Owens reported "extreme pain with numbness in my legs, back and feet. I also have a burning sensation in my lower back. " *Id.* at 248. Mr. Owens' report indicates a significant change in his condition, which he continued to report for the next seven months until he finally received an MRI on September 8, which revealed disc desiccation bulges in his L3-4 and L4-5 vertebrae. *Id.* at 264, 278-279, 285, 394. On January 31, Mr. Owens complained to Dr. Mershon about his chronic back pain. *Id.* at 252. Dr. Mershon saw Mr. Owens again on April 20 for a chronic care visit. *Id.* at 256-258. Mr. Owens reported that physical therapy was not helping, and Dr. Mershon noted that x-rays showed mild degenerative disc disease. *Id.* at 256. Dr. Mershon advised Mr. Owens to lose weight and prescribed ibuprofen. *Id.* at 258. On July 6, Mr. Owens had a nurse visit where he reported, "I have been having muscle spasms in my lower back and my legs mainly on my left side. Also burning sensation with numbness. I am in extreme pain." *Id.* at 264. The nurse referred him to a doctor. *Id.* at 265. On August 16, Dr. Mershon referred Mr. Owens for an MRI. *Id.* at 274-276. On September 12, 2023, based on the results of his MRI, an OPR was submitted for Owens to receive a neurosurgery consult for further evaluation of his disc problems. *Id.* at 284-285.

A reasonable jury could find that, following Mr. Owens' change in condition in January 2023, Dr. Mershon was deliberately indifferent when he failed to appropriately adjust his conservative treatment plan. *Thomas v. Martija*, 991 F.3d 763, 772 (7th Cir. 2021) ("Persisting in treatment known to be ineffective can constitute deliberate medical indifference, provided that the

doctor was subjectively aware that the treatment plan was ineffective."). Accordingly, Dr. Mershon is not entitled to summary judgment.¹

B. *Monell* Claims against Centurion

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)). Evidence that a defendant responded reasonably to a risk of harm to a serious medical need, even if he was ultimately unsuccessful in preventing the harm, negates an assertion of deliberate indifference under the subjective prong. *Rasho v. Jeffreys*, 22 F.4th 703, 710 (7th Cir. 2022).

Mr. Owens alleges that he suffered a constitutional injury because of Centurion's customs or practices of delaying necessary medical care by persisting in ineffective conservative treatments. Thus, his claim against Centurion may only proceed under the theory of liability outlined in *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978).

¹ Defendants failed to include the January and July 2023 nurse visits in his statement of material facts or otherwise discuss them in his memorandum in support of their motion for summary judgment. Under Federal Rule of Civil Procedure 11(b), "[b]y presenting to the court a written pleading, written motion, or other paper . . . an attorney . . . certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . [that] the factual contentions have evidentiary support[.]" Defendants seemingly moved for summary judgment hoping that this court would not "take the time to check the record. Litigants who take this approach often . . . find that they have misjudged the court." *Malin v. Hospira, Inc.*, 762 F.3d 552, 564 (7th Cir. 2014).

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 Section 1983. *Dean v. Wexford Health Sources, Inc.*, 18 F.4th 214, 235 (7th Cir. 2021). Centurion cannot be held liable under the common-law theory of respondeat superior for its employees' actions. *Howell v. Wexford Health Sources, Inc.*, 987 F.3d 647, 653 (7th Cir. 2021).

To prevail on a claim against Centurion, Mr. Owens must first show that he was deprived of a federal right, and then he must show that the deprivation was caused by a Centurion custom or policy or failure to implement a needed policy. *Dean*, 18 F.4th at 235. 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. Because Mr. Owens does not allege that an express policy is unconstitutional or that his injury was caused by a policymaker, his claim falls under category two.

Further, a "pivotal requirement" for any practice or custom claim is a showing of widespread constitutional violations. *See Hildreth v. Butler*, 960 F.3d 420, 426 (7th Cir. 2020). While it is not "impossible" for a plaintiff to demonstrate a widespread practice or custom with evidence limited to personal experience, "it is necessarily more difficult . . . because 'what is needed is evidence that there is a true municipal policy at issue, not a random event.'" *Id.* at 426–27 (quoting *Calhoun v. Ramsey*, 408 F.3d 375, 380 (7th Cir. 2005)). "If a municipality's action is not facially unconstitutional, the plaintiff 'must prove that it was obvious that the municipality's action would lead to constitutional violations and that the municipality consciously disregarded those

consequences." *Dean*, 18 F.4th at 235. "[C]onsiderably more proof than the single incident will be necessary in every case to establish both the requisite fault on the part of the municipality, and the causal connection between the policy and the constitutional deprivation." *Id.* (cleaned up) (emphasis in *Dean*).

As explained above, there is no dispute that Mr. Owens' condition was serious and there is a material dispute of fact regarding whether appropriate treatment was unnecessarily delayed after Mr. Owens reported his changed condition in January 2023. The question, rather, is whether evidence in the record allows an inference that a causal connection exists between the delay in his care and a Centurion policy or practice. It does not.

Mr. Owens failed to designate any evidence showing that other inmates suffered similar unnecessary delays. *Hildreth*, 960 F.3d at 426–27. Thus, his *Monell* claim could fail due to this evidentiary gap alone. Additionally, however, there is no evidence that any delay in Mr. Owens' care was the result of anything other than Dr. Mershon's individual persistence in conservative treatment. When he did request an MRI in August 2023, Mr. Owens received one, and a neurosurgery consultation soon followed on September 12. Accordingly, Centurion is entitled to summary judgment.

IV. Conclusion

Defendants' motion for summary judgment, dkt. [59], is **granted in part** and **denied in part**. Defendant Centurion's motion for summary judgment is **granted**. Defendant Dr. Mershon's motion for summary judgment is **denied**. Partial final judgment will not issue at this time. The magistrate judge is asked to hold a settlement conference.

The court prefers that Mr. Owens be represented by counsel for the remainder of this action. Accordingly, his motion for assistance with recruiting counsel, dkt. [66], is **granted**. The court will attempt to recruit counsel to represent him for the remainder of this case.

IT IS SO ORDERED.

Date: 9/04/2025



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

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