UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

STEVEN W. PRITT, Plaintiff, v. WEXFORD OF INDIANA, LLC, LORRI DELK, NICOLE DAVIS, NICOLLE COURTNEY, JOHN NWANNUNU, ERICK FALCONER, DIANNA JOHNSON, R. SCHILLING, MICHAEL MITCHEFF, DUAN PIERCE, MICHAELA WINTERS, LAURA BASHAM, LISA HOOD[1], LINDA FRYE, Defendants.	)	Case No. 1:21-cv-01889-TWP-CSW

ORDER ON WEXFORD DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

This matter is before the Court on a Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, (Dkt. 147), filed by Defendants Wexford of Indiana, LLC, Lorri Delk, CNA, Nicole Davis, LPN, Nicolle Courtney, MA, John Nwannunu, M.D., Erick Falconer, M.D., Dianna M. Johnson, NP, Rachel Schilling, Michael A. Mitcheff, D.O., Duan Pierce, M.D., Michaela Winters, Laura Basham, Lisa Hord, and Linda Frye, (collectively, the "Wexford Defendants"). *Pro se* Plaintiff Steven Pritt ("Pritt") brings claims under 42 U.S.C. § 1983 based on allegations that all the Wexford Defendants were deliberately indifferent to his

[1] Defendant has been misidentified by Plaintiff as Lisa Hood; Defendant's name is actually Lisa Hord (*see* Dkt 150-11).

serious medical conditions and that Defendant Lorri Delk ("CNA Delk") retaliated against him for requesting medical care. (Dkt. 92). Also before the Court is Defendant John Nwannunu, M.D.'s ("Dr. Nwannunu") Joinder Motion for Summary Judgment (Dkt. 152).[2] For the reasons stated below, the two Motions are **granted in part and denied in part**.

I. LEGAL 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). "[T]he burden on the moving party may be discharged by 'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325.

[2] Dr. Nwannunu is represented by two lawyers from two firms and presents his arguments in two separate summary judgment motions—the larger motion filed by all the Medical Defendants, Dkt. 147, and a separate supplemental motion of his own, Dkt. 152.

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); *see also* S.D. Ind. Local Rule 56-1 (parties must support facts asserted in summary judgment briefs with citations to admissible evidence, and those citations must "refer to a page or paragraph number or otherwise similarly specify where the relevant information can be found in the supporting evidence"; the court has no duty to search for or consider any part of the record not specifically so cited); Dkts. 140, 151 (informing Pritt of provisions of Local Rule 56-1).

II. SCOPE OF LAWSUIT

Before addressing the merits of the summary judgment motions, the Court must address a preliminary matter: the scope of this lawsuit. After screening the second amended complaint, the Court found that Pritt had stated the following viable claims against the Wexford Defendants:

- Eighth Amendment claims against CNA Delk, Nurse Nicole Davis ("Nurse Davis"), Dr. Nwannunu, Health Service Administrator ("HSA") Rachel Schilling ("Ms. Schilling"), Medical Assistant ("MA") Michaela Winters ("MA Winters"), HSA Laura Basham ("Ms. Basham"), HSA Lisa Hord ("Ms. Hord"), and HSA Linda Frye ("Ms. Frye") based on allegations that they knew Pritt's prescription refills were delayed but took no action;

- Eighth Amendment claims against CNA Delk, Nurse Davis, and MA Nicolle Courtney ("MA Courtney") based on allegations that they denied him emergency medical care when he presented with chest pains and symptoms consistent with a heart attack;

- Eighth Amendment claims against Nurse Davis and Dr. Nwannunu based on allegations that they ignored his complaints about testicular pain and difficulty urinating;

- Eighth Amendment claims against Dr. Nwannunu, Dr. Erick Falconer ("Dr. Falconer"), and Nurse Practitioner ("NP") Dianna Johnson ("NP Johnson") based

on allegations that they failed to provide adequate treatment for his congestive heart failure and chest pains;

- Eighth Amendment claims against Dr. Michael Mitcheff ("Dr. Mitcheff") and Dr. Duan Pierce ("Dr. Pierce") based on allegations that they implemented a collegial review policy designed to cut costs by denying inmates necessary medical treatment;

- First Amendment retaliation claim against CNA Delk based on allegations that she constantly threatened Pritt with disciplinary write-ups if he continued to request medical help; and

- Claim against Wexford of Indiana, LLC ("Wexford") under the theory set forth in *Monell v. Department of Soc. Services*, 436 U.S. 658 (1978).

(Dkt. 92.)

That list of claims in the Screening Order was necessarily summary in nature, and the fact section of the Screening Order expands on the claims. For example, as to Dr. Nwannunu, the fact section states that he would only address either Pritt's chest pain or his testicular pain at any given visit even though both were causing pain, and prescribed medications without a face-to-face visit. *Id.* at 4. And, as to NP Johnson and Dr. Falconer, Pritt alleged that they failed to prescribe life-saving and life-prolonging medications to cut costs and prescribed medications without a face-to-face visit. *Id.* at 4.

In his summary judgment response, Pritt argues that Dr. Nwannunu violated his constitutional rights by failing to prescribe nitroglycerin tablets, limiting the number of symptoms he could address at a visit, prescribing medications without a face-to-face visit, refusing to prescribe non-formulary medications, retaliating against him, and threatening him with segregation if he kept requesting medical care. (Dkt. 161 at 46-73.) He also argues that Dr. Falconer and NP Johnson violated his constitutional rights by prescribing medications without a face-to-face visit and refusing to provide non-formulary medications. *Id.* at 73-80.

In their reply, the Wexford Defendants assert that these claims were not included in the Court's Screening Order and are thus not properly included in this case—apparently because they were not included in the Court's summary list of claims. (Dkt. 164 at 5-6, 10-11.) As to the medical claims—that is, the claims other than those claims that Dr. Nwannunu threatened Pritt and retaliated against him for—that argument is not well taken for two reasons. First, the Court allowed Pritt to proceed on claims that Dr. Nwannunu was deliberately indifferent to his testicular pain, difficulty urinating, congestive heart failure, and chest pains. (Dkt. 92 at 7.) Allegations that Dr. Nwannunu forced Pritt to choose one of those conditions to be treated at appointments, refused to provide nitroglycerin tablets for the heart condition, prescribed medications for those conditions without a face-to-face visit, and refused to prescribe non-formulary medications for these conditions are clearly within the scope of the claims allowed to proceed at screening. Similarly, the Court allowed Pritt to proceed with claims that Dr. Falconer and NP Johnson were deliberately indifferent to his congestive heart failure and chest pains. (Dkt. 92 at 7.) Allegations that they prescribed medications for those conditions without a face-to-face visit and refused to prescribe non-formulary medications for those conditions are clearly within the scope of the claims allowed to proceed at screening.

Second, to state a cognizable claim under the federal notice pleading system, a plaintiff is required to provide a "short and plain statement of the claim showing that [he] is entitled to relief[.]" Fed. R. Civ. P. 8(a)(2). A plaintiff need not plead specific facts, and his statement need only "give the defendant fair notice of what the ... claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)); see *Christopher v. Buss*, 384 F.3d 879, 881 (7th Cir. 2004). By the same logic, the Court was not required to identify every fact that could support Pritt's medical deliberate indifference

claims in its Screening Order. It was enough that the Court allowed Pritt to proceed with deliberate indifference claims pertaining to his congestive failure and chest pains (claims against Dr. Nwannunu, Dr. Falconer, and NP Johnson) and testicular pain and difficulty urinating (claims against Dr. Nwannunu). The Wexford Defendants were clearly on notice of the basis for those claims based on the allegations in the Second Amended Complaint. And to the extent that Pritt did not allege every fact supporting his claims in his Second Amended Complaint, it was their obligation to develop those facts in discovery.

The allegations that Dr. Nwannunu retaliated against Pritt and threatened him if he continued to request medical care present a slightly different situation. Pritt's Second Amended Complaint was 41 pages long and named more than 15 people and entities as defendants. (Dkt. 54). At screening, the Court identified an Eighth Amendment deliberate indifference claim against Dr. Nwannunu but did not discuss a possible First Amendment claim, although—construing the Second Amended Complaint broadly and giving Pritt the benefit of the doubt as a *pro se* litigant—some allegations could be read to suggest such a potential claim. *See, e.g.*, *id.* at 23 ("Once he said, 'further persistance [sic] will get you segregation!' He acted in retaliation, becoming angry with me for expressing my condition and my perspective of my needs . . . . ") (errors in original).

In the Screening Order, the Court gave Pritt an opportunity to identify any claims alleged in his Second Amended Complaint but not identified by the Court. (Dkt. 92 at 8.) Pritt responded with a document titled, "Plaintiff's Identification of Claims for Court," which the Court construed as a motion seeking reconsideration of the Screening Order. (Dkt. 102.) That document is a list of claims against all the defendants, including claims that the Court allowed Pritt to proceed with at screening. *See, e.g.*, *id.* at 2 ("Defendant Nicolle Courtney M.A. . . . failed to provide KOPs [kept on person] and urgent wellness check/emergency care"). Pritt did not explicitly argue that

the Court failed to identify a First Amendment claim against Dr. Nwannunu or explain what facts would support such a claim. He mentioned retaliation as to Dr. Nwannunu only in this cryptic phrase: "Retaliation and threat of excessive force as a policy as reason and Plaintiff's dissatisfaction." *Id.* at 3. The Court denied the motion without prejudice, explaining:

> To the extent he is seeking reconsideration of the Court's screening Order, his motion is denied because he seeks to add additional claims and parties that were not in the Second Amended Complaint. He also has identified claims that *were* properly acknowledged in the screening order. If he wishes to seek reconsideration of the screening order, he should refile his motion and only identify those claims that (1) the Court did not identify and (2) were plausibly alleged based on content in the Second Amended Complaint. To the extent Mr. Pritt is attempting to add new claims and parties to this matter, this motion is not the proper vehicle to do so. Instead, he must seek leave of the Court to file a Third Amended Complaint. If he does file a motion seeking leave to amend, the Court reminds him that he must attach the proposed Third Amended Complaint to the motion, and Defendants will have an opportunity to respond. For these reasons, Mr. Pritt's motion to identify additional claims, dkt. [102], is **denied without prejudice**.

(Dkt. 112 at 3 (emphasis in original).)

Two months later, Pritt moved for leave to amend. (Dkt. 121.) In the motion to amend, he explained that he was seeking to amend because, through discovery, he had identified additional defendants who were responsible for his injuries and he wanted to add them to the case. *Id.* He did not suggest that the Court had missed a First Amendment retaliation claim as to Dr. Nwannunu when it screened his Second Amended Complaint. *Id.* His proposed third amended complaint was 42 pages long. (Dkt. 121-2.) His allegations against Dr. Nwannunu remained largely the same. And, as relevant here, the paragraph that arguably includes First Amendment claims was identical to the corresponding paragraph in the Second Amended Complaint. Indeed, it appears to be a photocopy of that portion of the second amended complaint. *Compare* Dkt. 54 at 22–23 *with* Dkt. 121-2 at 23–24. The Court denied the motion for leave to amend because the proposed third amended complaint did not state viable claims against the new defendants. (Dkt. 129.)

The Wexford Defendants moved for summary judgment and did not make any arguments about First Amendment claims. (Dkts. 147, 152.) Pritt responded with a 106-page brief supported by more than 600 pages of exhibits. (Dkts. 159-2, 161.) Included in Pritt's discussion of his claims against Dr. Nwannunu is a section making it clear that he is attempting to pursue First Amendment claims against Dr. Nwannunu in addition to Eighth Amendment claims. (Dkt. 161 at 64-66.) Pritt's response far exceeded the Southern District of Indiana Local Rule 56-1-page limit and was received more than a month after the deadline for responding. The Wexford Defendants argued that the Court should not consider the response on those grounds and because it included discussion of claims not included in the Second Amended Complaint or the Screening Order, which would require significant resources to address. (Dkt. 162.)

For reasons explained in more detail elsewhere, (Dkt. 163), the Court accepted Pritt's brief and attempted to mitigate the prejudice to the Wexford Defendants by giving them additional pages for their reply brief and stating that they should not need to devote significant resources to briefing claims not included in the Second Amended Complaint or Screening Order beyond noting that fact for the Court. *Id*. at 7. The Wexford Defendants filed a reply and noted that the Court had not allowed Pritt to proceed with a retaliation claim. (Dkt. 164.)

Up until Pritt filed his summary judgment response, his submissions had not clearly alerted the Court that he believed the Court failed to identify a First Amendment claim against Dr. Nwannunu in its Screening Order. But his summary judgment response makes clear that he is seeks to pursue First Amendment claims against Dr. Nwannunu based on allegations that Dr. Nwannunu threatened him with segregation if he persisted with his attempts to get medical care, which led Pritt to leave his appointments with Dr. Nwannunu without receiving care, which in turn prolonged Pritt's suffering. (Dkt. 161 at 64-66.)

These allegations also support Pritt's Eighth Amendment medical-care claims against Dr. Nwannunu which, as explained below, are proceeding beyond the summary judgment stage. For the most part, the injuries Pritt allegedly suffered are the same under either an Eighth Amendment or a First Amendment theory—that he failed to receive timely and appropriate medical care.[3] Pritt is entitled to only one recovery for those injuries even though different constitutional theories could support liability. *Swanigan v. City of Chicago*, 881 F.3d 577, 582 (7th Cir. 2018). Recognizing that Pritt's *pro se* filings must be construed liberally, and "courts generally prefer to base their decisions on the merits of a case, rather than mere technicalities" the Court will allow Pritt's claim to proceed. *See Bewley v. Turpin*, No. 1:20-cv-00386-TWP-DML, 2022 WL 2317426, at *5 (S.D. Ind. June 27, 2022) (cited authority omitted).

Accordingly, in an abundance of caution and giving Pritt every benefit of the doubt as a *pro se* litigant, **Pritt shall be allowed to proceed with First Amendment claims against Dr. Nwannunu as if they had been identified in the Screening Order**.[4] Because Dr. Nwannunu has not had an opportunity to address those claims, Dr. Nwannunu may move for summary judgment as to those claims within **thirty (30) days of the date of this Order**, which deadline **will not be extended**.[5] Any such briefing should specifically address whether seeking health care by way of

[3] The Court recognizes that a First Amendment violation is a free-standing injury that need not be present for an Eighth Amendment claim.

[4] Pritt's allegations could support both a retaliation theory and a "chilling" theory, both of which are cognizable under the First Amendment. *See Adams v. Reagle*, 91 F.4th 880, 887 (7th Cir. 2024) (retaliation); *Surita v. Hyde*, 665 F.3d 860, 878 (7th Cir. 2011) (chilling).

[5] The Court observes that Dr. Nwannunu has had an opportunity to conduct discovery regarding Pritt's claims against him, whether they were classified as First Amendment or Eighth Amendment claims. For example, the portion of the verified Second Amended Complaint discussing Pritt's medical-care claims against Dr. Nwannunu alleges that when Pritt tried to seek treatment for pain related to congestive heart failure, Dr. Nwannunu became angry, accused him of wanting pain killers, and said, "You continue to repeatedly come in here for your testicle pain and chest pain lying and lying Mr. Pritt this will cause you to go to segregation." (Dkt. 54 at 20-21 (errors in original).) Similarly, when counsel asked Pritt why he was suing Dr. Nwannunu at his deposition, he testified, "He retaliated against me for requesting health care …. He threatened to … have me sent to seg several times." (Dkt. 150-14 at 18, p. 68.) Counsel also asked follow-up questions about that testimony. *See id.* at 34, pp. 129-30.

health care request forms or verbal requests to treating providers constitutes protected First Amendment activity for purposes of the First Amendment analysis. Given the overlap between the Eighth Amendment and First Amendment claims against Dr. Nwannunu, Dr. Nwannunu may choose not to move for summary judgment on the First Amendment claims. As a result, rather than move for summary judgment, within **thirty (30) days of the date of this Order**, he may file a notice informing the Court of that decision. **Failure to pursue one of these options will result in the First Amendment claims being resolved at trial, assuming that they are not resolve by settlement.**

With the scope of Pritt's claims so defined, the Court turns to the merits of the Wexford Defendants' summary judgment motion.

III. FACTUAL BACKGROUND

Because the Wexford Defendants have moved for summary judgment under Rule 56(a), the Court views and recites the evidence in the light most favorable to Pritt and draws all reasonable inferences in that party's favor. *Khungar*, 985 F.3d at 572–73.[6]

[6] Pritt filed more than 600 pages of exhibits with his summary judgment response. (Dkt. 159-2.) For the most part, Pritt's summary judgment brief does not comply with Local Rule 56-1 because it cites generally to his exhibits and does not cite to specific pages or otherwise specify where the relevant information can be found in the supporting evidence. *See, e.g.*, Dkt. 161 at 4 ("All defendants' had personal involvement in a part of this claim. *See* Plaintiff's Exhibit(s): #2, #3, #12, #13, #14, #15."), 83 ("Even after care providers was changed, the medication lapses continue. See: Exhibits #1, #3, #4."). The Court need not search these multi-page exhibits—for example, Exhibit 2 alone is more than 150 pages long, *see* Dkt. 159-2 at 28–203; Exhibit 3 is 23 pages long and consists of multiple health care request forms; and Exhibit 4 is a 24-page declaration—to determine which parts, if any, might support Pritt's claims against Randolph. *See Grant*, 870 F.3d 573−74; S.D. Ind. L.R. 56-1(h). Accordingly, the Court has considered the evidence Pritt has submitted only to the extent that he has properly cited to it in accordance with Local Rule 56-1. *See Coleman v. Goodwill Indus. of SE Wisc., Inc.*, 423 F. App'x 642, 643 (7th Cir. 2011) (citing *Schmidt v. Eagle Waste & Recycling, Inc.*, 599 F.3d 626, 630–31 (7th Cir. 2010)) (district court did not abuse its discretion by requiring *pro se* plaintiff to adhere to local rules and contest proposed facts in the manner set forth by the local rule governing summary judgment motions). Pritt also cites to evidence not included in his summary judgment exhibits—for example, he cites to paragraphs in his summary judgment declaration that do not exist (such as Paragraph 31), and he cites to medical records with Bates numbers that are not in his exhibits. Pritt is no longer incarcerated and is responsible for the documents he sent to the Court. It goes without saying that the Court cannot consider evidence that is not before it. Finally, Pritt makes many assertions of fact in his response brief, but the brief is not verified, and Pritt provides no citations to evidence supporting those factual assertions. The Court therefore does not consider those statements as fact.

A. Background Facts Applicable to All Defendants

At all relevant times, Pritt was incarcerated at New Castle Correctional Facility ("New Castle"). He has been diagnosed with multiple medical conditions, including hyperlipidemia, hypertension, congestive heart failure, and benign prostatic hyperplasia ("BPH"). *See, e.g.*, Dkt. 150-15 at 1. During the times relevant to this suit, Wexford was the private company that contracted with the Indiana Department of Correction ("IDOC") to provide medical services to IDOC inmates. Each of the Wexford Defendants was employed by Wexford.

B. Pritt's Allegations and Facts Relevant to Each Defendant

There are 14 Wexford Defendants. The Court summarizes Pritt's allegations and the facts relevant to each of them separately, below.

1. Doctors Mitcheff and Pierce

Pritt alleges that Dr. Mitcheff and Dr. Pierce were deliberately indifferent to his serious medical needs because they maintained a collegial review policy that encouraged on-site providers to save money by not prescribing non-formulary drugs and not referring patients for off-site medical appointments. (Dkt. 92.)

Michael Mitcheff, D.O., was Wexford's Regional Medical Director for the State of Indiana. (Dkt. 150-8 ¶ 2.) Duan Pierce, M.D. was Wexford's Associate Regional Medical Director for the State of Indiana and worked under the direction of Dr. Mitcheff. (Dkt. 150-9 ¶ 2.)

Their job duties were mostly administrative. (Dkt. 150-8 ¶ 3; Dkt. 150-9 ¶ 3.) They oversaw the clinical practice of on-site providers in Indiana, reviewed requests for non-urgent off-site medical treatment and non-formulary medication requests. (Dkt. 150-8 ¶ 3; Dkt. 150-9 ¶ 3.) Dr. Mitcheff also addressed any other issues that might arise in Wexford's provision of medical

services to IDOC inmates, (Dkt. 150-8 ¶ 3), and Dr. Pierce sometimes provided clinical services at IDOC facilities when additional physician services were needed. (Dkt. 150-9 ¶ 3.)

In their summary judgment affidavits, Dr. Mitcheff and Dr. Pierce testify that they had no direct involvement in the care and treatment of Pritt from 2018 through early 2021. (Dkt. 150-8 ¶ 4; Dkt. 150-9 ¶ 4.) They did not review or make any decisions as to any specific requests for off-site medical care for Pritt. (Dkt. 150-8 ¶ 5; Dkt. 150-9 ¶ 5.)

As to non-formulary medication requests, IDOC used a medication formulary that consisted of a list of approved medications. (Dkt. 150-8 ¶ 8; Dkt. 150-9 ¶ 8.) On-site medical providers were not prohibited from prescribing non-formulary medications. (Dkt. 150-8 ¶ 11; Dkt. 150-9 ¶ 11.) Instead, if they wanted to prescribe such a medication, they submitted a request that explained the medication sought, the dosing, and why it was necessary. (Dkt. 150-8 ¶ 11; Dkt. 150-9 ¶ 11.) Most of the time, Dr. Mitcheff and Dr. Pierce agreed with and approved such requests. (Dkt. 150-8 ¶ 11; Dkt. 150-9 ¶ 11.) In nearly all of the instances when Dr. Mitcheff or Dr. Pierce denied such a request, it was because there was an alternative that was a generally accepted safer alternative that should be considered. (Dkt. 150-8 ¶ 11; Dkt. 150-9 ¶ 11.) They never discouraged medical providers from prescribing medications they deemed medically necessary. (Dkt. 150-8 ¶ 12; Dkt. 150-9 ¶ 12.)

2. Health Services Administrators Basham, Frye, and Hord

In his Complaint, Pritt alleged that Ms. Basham, Ms. Frye, and Ms. Hord were aware of systematic failures with inmates not receiving their prescriptions but took no steps to address those failures. He also alleged that they knew that he was not receiving his medications but took no action. *See* Dkt. 92 at 5.

Ms. Basham was the HSA at New Castle from May 2018 through July 2019. (Dkt. 150-10 ¶ 1.) Ms. Hord was the HSA at New Castle from September 2019 to February 2020. (Dkt. 150-11 ¶ 1.) Ms. Frye temporarily served as the HSA at New Castle for a few months in early 2020. (Dkt. 150-12 ¶ 1.) As the facility's HSA, their job duties were mainly administrative in nature, and they had little patient contact. (Dkt. 150-10 ¶ 2; Dkt. 150-11 ¶ 2; Dkt. 150-12 ¶¶ 2, 4.) They were not directly involved in dispensing medications to patients. (Dkt. 150-10 ¶ 7; Dkt. 150-11 ¶ 7; Dkt. 150-12 ¶ 9.)

They had no direct involvement in Pritt's care and treatment, were not involved in responding to his healthcare request forms and were not ever notified that Pritt's medications had lapsed. (Dkt. 150-10 ¶¶ 8, 13; Dkt. 150-11 ¶¶ 8, 13; Dkt.150-12 ¶¶ 10, 15.) In their experience, sometimes some inmates would go a few days without a prescribed medication for various reasons—for example, the inmate did not submit a timely request for a refill, the medication had not been delivered from an off-site pharmacy, or the prescription had expired, and a physician needed to renew it. (Dkt. 150-10 ¶ 11; Dkt. 150-11 ¶ 11; Dkt. 150-12 ¶ 13.) That said, in their experience, the overwhelming majority of inmate prescriptions were refilled and dispensed to patients on time, so long as the inmate let nursing staff know a refill was needed in a timely manner. (Dkt. 150-10 ¶ 12; Dkt. 150-11 ¶ 12; Dkt. 150-12 ¶ 14.)

3. Medical Assistant Winters

MA Winters was a medical assistant at New Castle. (Dkt. 150-7 ¶ 1.) Pritt alleges that MA Winters was responsible for him failing to receive prescription refills. (Dkt. 92.)

MA Winter was not a doctor or nurse and did not hold any medical license, so she did not (and could not) make any decisions about diagnosis, treatment, or assessment of patients. (Dkt.

150-7 *at* ¶ 2). Her job duties were mostly clerical, but she sometimes helped staff with other tasks, including assisting pharmacy staff with ordering medication refills. *Id.* ¶ 3.

MA Winters responded to a written health care request form Pritt submitted that was dated February 14, 2021. (Dkt. 150-15 at 44.) She received and reviewed the form on March 6, 2021. (Dkt. 150-7 ¶¶ 9-10.) In the request, Pritt stated he needed refills of "Coreg[7], Asprin, Terazosin, Isomonosorbide, Actovatsin, or just all my heart medications." (Dkt. 150-15 at 44 (errors in original).) MA Winters confirmed that Pritt had received refills of the medication on February 22, 2021—approximately two weeks prior (and after he submitted the healthcare request form). (Dkt. 150-7 ¶ 10.) Pritt did not need a refill until March 24, 2021, and, under protocol, she could not order his prescription refill 18 days early. *Id.* As a result, she responded to the healthcare request form by stating, "Last fill 2-22-21 next fill due 3-24-21." (Dkt. 150-15 at 44.) She has no memory of any other involvement with Pritt's care or interactions with him. (Dkt. 150-7 ¶ 11.)

4. Health Services Administrator Schilling

Pritt alleges that Ms. Schilling was deliberately indifferent to his serious medical needs because she knew he was not receiving his medications and took no action. Specifically, when he filed a grievance about the issue, she failed to investigate. (Dkt. 92.)

Ms. Schilling was the HSA at New Castle. (Dkt. 150-6 ¶ 1.) Her job duties largely were administrative, and she had very little direct patient contact. *Id.* She had no medical license or ability to order specific care. *Id.* ¶ 3. She was not directly involved in dispensing medications to inmates. *Id.* ¶ 7. She had no direct involvement in Pritt's care. *Id.* ¶ 8.

Ms. Schilling knew inmates at New Castle sometimes ran out of medications for various reasons—for example, an untimely refill request from the inmate, needing to wait for delivery of

[7] Coreg is the brand name for carvedilol. *See* https://www.mayoclinic.org/drugs-supplements/carvedilol-oral-route/side-effects/drg-20067565?p=1 (last visited Mar. 18, 2024).

the medication from the off-site pharmacy, or the prescription expiring and a doctor needing to renew it. *Id.* ¶ 11. Yet in her experience, nearly all of the prescriptions were refilled and dispensed to inmates promptly, so long as the inmate let nursing staff know in a timely manner that he needed a refill. *Id.* ¶ 12.

Ms. Schilling had only one significant involvement in Pritt's care. *Id.* ¶ 13. In April 2021, Pritt submitted a grievance alleging he had been running out of heart medication, cholesterol medication, and prostate medication even though he had active prescriptions and was suffering severe side effects. (Dkt. 150-16 at 2.) IDOC grievance staff forwarded the grievance to Ms. Schilling for a response. (Dkt. 150-6 ¶ 13.) She investigated by reviewing Pritt's medical records, *id.* ¶ 14, which showed that Pritt had just been assessed by NP Johnson during a chronic care visit, where it was noted that he was seen for hyperlipidemia, hypertension, BPH, and congestive heart failure. *Id*. The records also showed that all Pritt's medications had been renewed with active prescriptions, NP Johnson considered his BPH, hypertension, and hyperlipidemia to be stable or controlled, and NP Johnson had set forth a plan for continued treatment of his congestive heart failure. *Id*. at ¶ 15. After the investigation, Ms. Schilling notified pharmacy staff about Pritt's complaints and the need to make sure his requests for medication refills were properly processed. She then drafted a response to the IDOC grievance office stating that Pritt had been seen at a chronic care appointment, he was found to be in stable condition, all his medications had active prescriptions, and she notified pharmacy staff to ensure that refill requests were properly processed. *Id.*; *see also* Dkt. 150-16 at 1.

By the time Ms. Schilling became involved, she believed there was no need for a specific intervention because Pritt already had active prescriptions for all his mediations, and there was no indication he was actively without his medication at that time. (Dkt. 150-6 ¶ 19.)

5. Medical Assistant Courtney

Pritt alleges that MA Courtney was deliberately indifferent to his serious medical needs because she refused to provide him with care when he presented to her with symptoms of a heart attack. (Dkt. 92.)

MA Courtney was a medical assistant at New Castle. (Dkt. 150-13 ¶ 1.) As a medical assistant, she could not diagnose patients, order treatment, or perform nursing assessments, although she has received some limited medical training. *Id.* ¶ 2.

At his deposition, Pritt testified that he was suing MA Courtney because she failed to provide him with medical care on one specific occasion. An officer sent him down to the medical department for emergency care or his medications because he was "deathly ill"—so ill that another person had to walk him to the medical office because he could hardly walk. (Dkt. 150-14 at 18, p. 65.) When he got to the medical department, he encountered MA Courtney, who was at the table where prescription medications are passed out. *Id.* at 18, p. 67. Pritt was having "heart attack symptoms," was "pouring sweat, pale white, flushed," was "hanging on the table and another inmate was holding me up so that I could stand and walk," and "could hardly talk." *Id.* Despite this, MA Courtney told him to "go back to the house" and that "You'll get your medications when you get it. Go back to the house and relax." *Id.* She did not take his vital signs, so the encounter was not documented anywhere, and he never received any treatment. *Id.* MA Courtney understands that Pritt has accused her of ignoring his emergency cardiac symptoms on "an unspecified date in April 2021," but she had no independent recollection of such an interaction. (Dkt. 150-13 ¶ 7.)

6. Dr. Nwannunu

Pritt alleges that Dr. Nwannunu was: (1) deliberately indifferent to his serious medical needs because he knew Pritt was experiencing medication lapses and failed to remedy the problem;

(2) was deliberately indifferent to Pritt's congestive heart failure and chest pains; and (3) was deliberately indifferent to Pritt's complaints of testicular pain. (Dkt. 92.)

During the relevant times, Dr. Nwannunu worked as a physician at New Castle—first for a company called Alumni Staffing (from January 28 through December 30, 2019) and then for Wexford (from February 3, 2020, through June 30, 2021). (Dkt. 150-3 ¶ 2.)

Dr. Nwannunu and Pritt provide different accounts of Dr. Nwannunu's interactions with Pritt, so the Court sets out their designated evidence separately.

a. Dr. Nwannunu's Evidence

Dr. Nwannunu saw Pritt for a regularly scheduled chronic care visit on February 6, 2019. (Dkt. 150-3 ¶ 4; Dkt. 150-15 at 1-4.) He saw Pritt for his chronic conditions of hypertension and BPH, as well as a current onset of musculoskeletal pain. He ordered that Pritt receive a full panel of labs, as well as electrocardiogram ("EKG"). (Dkt. 150-3 ¶ 4.) At the time, Pritt had active prescriptions for Coreg, low-dose aspirin, isosorbide mononitrate, and terazosin. *Id.* He also had a prescription for Zoloft, which had been ordered by mental health staff. *Id.*

Pritt saw Dr. Nwannunu again on October 23, 20219, after he submitted a healthcare request form seeking lab testing. *Id.* ¶ 5; Dkt. 150-15 at 5-8. At that point, Pritt had no current problems but wanted lab testing because Pritt thought he had contracted infectious diseases more than a year prior. (Dkt. 150-3 ¶ 5.) During the visit, they discussed recent lab results, and Pritt agreed to restart a cholesterol medication that had previously been discontinued—atorvastatin. *Id.* The medication was only ordered for a short course. *Id.* Dr. Nwannunu also ordered a complete blood count. *Id.*

Dr. Nwannunu saw Pritt again on November 18, 2019, for his next regularly scheduled chronic care visit. *Id.* ¶ 6; Dkt. 150-15 at 9-12. They discussed Pritt's history of hypertension and

BPH, which dated back to 2011–2012, when he was incarcerated at another IDOC prison. (Dkt. 150-3 ¶ 6.) They also discussed his congestive heart failure diagnosis and his risk factors including his family history of hypertension. *Id.* Dr. Nwannunu added a diagnosis for hyperlipidemia and continued all of Pritt's chronic care medications, including Coreg, aspirin, isosorbide mononitrate, and terazosin, with orders good through May 2020. *Id.*

Pritt next saw Dr. Nwannunu on December 18, 2019. Pritt was requesting diagnostic testing for infectious diseases he believed he had contracted several years ago at another facility. *Id.* ¶ 7; Dkt. 150-15 at 13-15. His routine lab results from October 2019 were reviewed with him. (Dkt. 150-3 ¶ 7.) The results did not show any problems with Pritt's liver, which made Dr. Nwannunu unconcerned about the diseases Pritt was concerned about having. *Id.* He told Pritt that they would continue to monitor his routine labs for abnormalities. *Id.* He also continued Pritt's prescription for avorstatin for two more weeks. *Id.*

On April 17, 2020, Dr. Nwannunu saw Pritt again, this time for a complaint of right testicular pain that had been ongoing for the last 7-8 years. *Id.* ¶ 8; Dkt. 150-15 at 16-18. In his summary judgment affidavit, he testifies that he did a physical examination of Pritt, noting that there were no masses and no hernia. (Dkt. 150-3 ¶ 8.) He testifies that he did not see any objective evidence of an abnormality or a basis to order specific treatment. *Id.*

After April 17, 2020, primary management of Pritt's chronic conditions passed to Defendants Dr. Falconer and NP Johnson. *Id.* ¶ 9. Dr. Nwannunu does, however, recall that NP Johnson contacted him on December 1, 2021, and that he assisted her by assessing Pritt, specifically by reviewing Pritt's EKG, and discussing Pritt's symptoms. He also requested that Pritt receive a chest X-ray. *Id.*

b. Pritt's Evidence

Pritt has designated evidence that he complained to Dr. Nwannunu four or five times about pain in his testicles, but Dr. Nwannunu told him that the pain was caused by masturbation and to stop masturbating. (Dkt. 159-2 at 234.)[8] Pritt told him he could not masturbate because of the pain, and Dr. Nwannunu accused him of lying. *Id.* at 234-35. On September 27, 2021, Pritt saw Nurse Jennifer Green and relayed this information to her. *Id.* She took a urine sample and tested it. *Id.* at 235. She showed the results to Dr. Nwannunu and said that Dr. Nwannunu said Pritt was dehydrated and should drink more water. *Id.* Nurse Green had written "refer to physician" on his healthcare request form, but crossed it out and wrote, "follow up if no improvement." *Id.* at 226. Dr. Nwannunu did not examine him at the April 17, 2020, appointment and, in fact, never examined his testicular area. (Dkt. 150-14 at 40-41, pp. 156-158.)

On multiple occasions, Dr. Nwannunu made Pritt choose between being seen for his heart condition or his testicular pain. (Dkt. 54 at 20.) When Pritt would pick a condition, Dr. Nwannunu would accuse him of seeking narcotics or tell him that his pain was imaginary. *Id.* On one occasion, he chose to be seen for his testicular pain, and Dr. Nwannunu told him he would "not prescribe painkillers for imaginary pain" and that he would not subject himself to "holding and feeling your testicles for your practical jokes and personal kicks." *Id.* He then sent Pritt away. *Id.* On other occasion, Pritt chose his pain from congestive heart failure to discuss and Dr. Nwannunu

[8] Where Pritt has provided pinpoint citations to his summary judgment declaration, the Court has considered the cited portions. In their reply, the Medical Defendants object that the declaration is not signed and contend that the Court should not consider it. (Dkt. 164 at 12.) That argument is not well taken. The declaration starts with a clear affirmation that Pritt is making his statements under penalty of perjury, (Dkt. 159-2 at 229,) and there is a signature page with a date at the end of his 636-page designation of evidence, *id.* at 635. Pritt is *pro se*, and the Court will not ignore the declaration simply because the signature page is not directly adjacent to the allegations in the declaration. It is clear that Pritt intended to make his statements under penalty of perjury, and he has substantially complied with the verification requirement in 28 U.S.C. § 1746, which is all that is required. *See* 28 U.S.C. § 1746(2) (an unsworn declaration must be subscribed as true under penalty of perjury in "substantially" the following form: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)").

again told him his pains were imaginary. *Id.* Pritt told Dr. Nwannunu that he did not want pain killers and instead wanted a diagnosis so he could be treated, but Dr. Nwannunu sent him away. *Id.* at 21.

7. Dr. Falconer and NP Johnson

Dr. Falconer was a physician at New Castle. (Dkt. 150-4 ¶ 2.) Before he ever saw Pritt, Pritt was already enrolled in New Castle's chronic care clinic, where he was monitored for hypertension, BPH, and a previously reported diagnosis of heart failure. *Id.* ¶ 5.

Dr. Falconer first saw Pritt on April 30, 2020, for a chronic care visit. *Id.* ¶ 6; Dkt. 150-15 at 22-25. During the visit, they discussed hypertension and hyperlipidemia. (Dkt. 150-4 ¶ 6.) They also discussed Pritt's prior diagnosis of heart failure, which was then stable. *Id.* Pritt's blood pressure was 123/83 — a good reading given his history of hypertension. *Id.* They discussed tips for a healthy lifestyle. Dr. Falconer examined Pritt. *Id.* He concluded that Pritt's hypertension and hyperlipidemia were well-controlled with medications and continued Pritt's five chronic care medications—atorvastatin, Coreg, low dose aspirin, isosorbide mononitrate, and terazosin. *Id.* He did not discontinue any of Pritt's medications. *Id.* ¶ 9. In his summary judgment affidavit, Dr. Falconer testifies that he did not know that Pritt was complaining about any issues with his medical care. *Id.* ¶¶ 12-13. Dr. Falconer was not involved with dispensing medications and refills, which duties were handled by nursing staff. *Id.* ¶ 11.

NP Johnson was a nurse practitioner at New Castle. (Dkt. 150-5 ¶ 2.) She saw Pritt at a chronic care visit on November 10, 2020. *Id.* ¶ 6; Dkt. 150-15 at 26-30. At the time, he was enrolled in the chronic care clinic for management of hyperlipidemia, hypertension, BPH, and a prior diagnosis of congestive heart failure. (Dkt. 150-5 ¶ 6.) She examined Pritt and checked his vital signs. *Id.* He had slightly elevated blood pressure, which was consistent with his diagnosis

of hypertension. *Id.* She ordered that he receive labs and encouraged a healthy lifestyle. *Id.* She also continued all his chronic care medications—atorvastatin, Coreg, aspirin, Isosorbide Mononitrate, and Terazosin—through May 8, 2021. *Id.*

NP Johnson next saw Pritt for a chronic care visit on May 14, 2021. *Id.* ¶ 7; Dkt. 150-15 at 31-34. Neither his symptoms nor her assessment changed significantly from the previous visit. (Dkt. 150-5 ¶ 7.) She again encouraged a healthy lifestyle and continued his medications. *Id.* She also added HCTZ for further management of his hypertension. *Id.* All those medications were continued through November 9, 2021. *Id.*

The prescriptions NP Johnson wrote on November 10, 2020, would have expired on May 8, 2021, which was consistent with the general practice that chronic care patients were seen at least every six months. *Id.* ¶ 8. She did not see Pritt again until May 14, 2021—after those prescriptions had expired—but she avers that she was not responsible for setting the chronic care appointment. *Id.* Sometimes, chronic care patients could not be seen before their prescriptions expired. *Id.* ¶ 9. Typically, she would be made aware that the medications were about to expire and issue a short-term extension. *Id.* But NP Johnson was never made aware that Pritt's medications had expired before the May 14, 2021, appointment. *Id.*

NP Johnson did not see Pritt again until December 1, 2021, for another chronic care visit. *Id.* ¶ 10; Dkt. 150-15 at 35–38. She again continued all his medications. (Dkt. 150-5 ¶ 10.)

8. Nurse Davis

Nurse Davis was a licensed practical nurse at New Castle. (Dkt. 150-2 ¶ 2.) On April 15, 2020, she saw Pritt for a nurse sick call visit. *Id.* ¶ 5; Dkt. 150-15 at 16-18. He complained of a burning pain when he urinated and pain in his testicles. (Dkt. 150-2 ¶ 5.) Pritt reported that he had Tylenol in his cell, but it was not helping his pain. *Id.* She did a urine dipstick test and ordered

that Pritt be seen by a physician as soon as possible. *Id.* He was seen by Dr. Nwannunu two days later. (Dkt. 150-15 at 19.) At the April 15, 2020 appointment, Nurse Davis ridiculed Pritt and talked loudly about his condition such that other inmates could hear. (Dkt. 150-14 at 17, p. 61.) On some unspecified dates, Nurse Davis refused to schedule him for an appointment for groin pain. *Id.*

On October 20, 2020, Pritt submitted a healthcare request form stating, "Please hurry I've been out of Carvadilol for 16 days[.] I'm getting chest pressure and shortness of breath please refill my pills and don't let me run out any more. Its ruff on my CHF." (Dkt. 150-15 at 49 (errors in original).) Nurse Davis responded on November 2, 2020, stating that the medications had been ordered. *Id.*

Pritt submitted another healthcare request form on October 28, 2020, stating, "I am out of medication for my heart and I have been having sharp chest pains and arm and back for four weeks. I've asked for refills and never got the RHC Back or Meds. Please I need Carvadilol." *Id.* at 50. Nurse Davis responded, "Already filled waiting for it to come in." *Id.*

In November 2020, Pritt submitted a healthcare request seeking a refill of his heart medications. *Id.* at 46. Nurse Davis received and processed the request on November 23, 2020, and refilled his medications. *Id.*

On November 28, 2020, Pritt submitted a healthcare request form stating, "I'm out of Cavadilol heart medication having shortness of breath tiny chest pains. Please could I have a refill?" *Id.* at 48. Nurse Davis received and processed the request on December 7, 2020, but upon review of her notes found that the medication had been refiled on November 24, 2020, and was ineligible for a refill at the time. (Dkt. 150-2 ¶ 9.) She knew the medications had been refilled on November 24, 2020 because she issued the order for the refill in responding to a separate healthcare

request slip for Pritt on November 23, 2020. *Id*. She wrote "Filled 11/24" on the form returned to Pritt. (Dkt. 150-15 at 48.)

Pritt submitted another healthcare request seeking refills of his medications on December 12, 2020. *Id.* at 47. Nurse Davis received and reviewed the request two days later, noting that the request was too early. *Id.* She could not refill the medications for two more days, that is, on December 16, 2020 "pursuant to the facility protocol." (Dkt. 150-2 ¶ 10.) She wrote, "Unable to fill until 12/16 as that is the earliest fill date" on the healthcare request form. (Dkt. 150-15 at 47.)

Nurse Davis avers that she never threw away any of Pritt's healthcare request forms, (Dkt. 150-2 ¶ 14), but Pritt testified at his deposition that she did, (Dkt. 150-14 at 17, p. 61.)

Nurse Davis claims that she is unaware of Pritt ever appearing to suffer a heart attack while she was involved in his care. (Dkt. 150-2 ¶ 15.) Based on her review of the records, there was a period in October and November 2020, when the pharmacy had trouble obtaining Coreg (the brand name for Carvedilol), one of Pritt's medications. *Id.* ¶ 16. The problem was not due to any oversight on her part but rather there was a delivery delay from the pharmacy. *Id.* Nurse Davis explains that New Castle employed a nurse as a pharmacy technician. *Id.* ¶ 17. That technician worked with New Castle's off-site pharmacy and its local pharmacy to obtain medications for inmates. *Id.* Nurse was not involved in this process. Instead, she would submit paperwork for medication refills to the pharmacy and dispense the medications when indicated. She had no control over whether there was a backorder or delay in receiving medication from a pharmacy. *Id.*

9. Certified Nursing Assistant Delk

CNA Delk was a certified nursing assistant at New Castle. (Dkt. 150-1 ¶ 1.) Her job responsibilities included reviewing healthcare request forms, handling requests for medical

records, and working with pharmacy technicians on the refill and disbursement of medications. *Id.* ¶ 2.

At New Castle, some medications are dispensed to inmates as "kept on person" or "KOP" medications. *Id.* ¶ 5. KOP medications are dispensed through blister packs. Inmates are allowed to keep a certain supply—usually 30 days—of KOP medications in their cell. *Id.* CNA Delk often reviewed and processed healthcare request forms seeking refills of KOP medications, but in 2019, 2020, and 2021, she was not the only person who did so. *Id.* ¶¶ 6–7. According to CNA Delk, patients with KOP prescriptions were instructed to submit a written healthcare request approximately 4-5 days before their current supply of medication ran out so that a refill could be processed and dispensed before they ran out of medication. *Id.* ¶ 8. However, CNA Delk told Pritt to request refills 7 to10 days before running out of medication. (Dkt. 150-14 at 26, p. 99.) Pritt's medications lapsed after CNA Delk told him that it was too soon for refills. *Id.*

On July 6, 2020, Pritt submitted a healthcare request form seeking a refill of Carvedilol, indicating that he had only three days of medication left. (Dkt. 150-1 ¶ 9; Dkt. 150-15 at 55.) CNA Delk testifies that, upon review, she found that it was too soon to refill his medication under facility protocol. (Dkt. 150-1 ¶ 9.) On July 9, 2020, she noted in her response to Pritt that the medication would be filled and dispensed on July 11, 2020. (Dkt. 150-15 at 55.)

On August 19, 2020, Pritt submitted a healthcare request form seeking another refill of Carvedilol. *Id.* at 53. NA Delk received the request on August 26, 2020, and refilled his medication the same day. (Dkt. 150-1 ¶ 10.)

Pritt submitted a healthcare request form seeking a refill of Terazosin, aspirin, and Monosorbide on September 1, 2020. (Dkt. 150-15 at 54.) The request was received, and the

medications were refilled on September 3, 2020. CNA Delk signed and dated her response to Pritt the next day. (Dkt. 150-1 ¶ 11.)

On September 12, 2020, Pritt submitted a healthcare request seeking refills of Isosorbide, Carvedilol, and Atorvastatin. (Dkt. 150-15 at 51.) The request was not received until September 17, 2020. (Dkt. 150-1 ¶ 12.) It was processed that day. *Id.* CNA Delk noted that two of the medications were ineligible for refill because they were refilled on September 4, 2020 but that the Carvedilol would be refilled that day. *Id.*

NA Delk received a health care request form from Pritt on January 26, 2021, requesting a refill of his chronic care medications. (Dkt. 150-15 at 45.) The request was received by the medical unit on January 27, 2021. (Dkt. 150-1 ¶ 14.) CNA Delk noted that the prescriptions were refilled on January 29, 2021, and she dated her response to Pritt the next day. *Id.*

CNA Delk recalls face-to-face interactions with Pritt in which he raised concerns about his medications. *Id.* ¶ 15. She told him she was not a nurse or doctor, so her involvement in his health care was limited and all requests should be submitted through written healthcare request forms. *Id.*

CNA Delk testifies that, if any patient had clear and obvious signs of a heart attack, she would either call 911, declare an emergency "Signal 3000," or assess the inmate and notify a medical provider. *Id.* ¶ 16. To her knowledge, Pritt was never diagnosed with heart attacks or similar acute cardiac abnormalities from 2020 to 2021. *Id.* Pritt, however, has designated evidence that, on one occasion, he was sick, having heart problems, and pouring sweat right in front of CNA Delk because he was out of his medications, and she refused to help him. (Dkt. 150-14 at 12, pp. 41-43.)

CNA Delk admits it is possible that—given the number of medications Pritt was receiving—there were times he went without such medications for any number of reasons, whether

it was an expired prescription, a delay in submitting a written healthcare request, a backorder of medication, miscommunication, or other factors. (Dkt. 150-1 ¶ 17.) However, she always addressed Pritt's medical concerns as stated on his healthcare request forms and ensured he received refills of his medications when she could do so. *Id.* ¶ 18. She could not refill medications until the patient was within five days of the applicable refill date and that she told Pritt as much in a face-to-face conversation. *Id.* ¶ 19. During one of those conversations, Pritt became animated and upset, and she told him to calm down or he would receive a disciplinary report. *Id.* ¶ 20. She did not, however, have the ability to unilaterally discipline inmates. *Id.*

When Pritt spoke to CNA Delk face-to-face, she told him to quit asking to speak to her supervisors about his medication lapses because she would get fired and threatened to send him to segregation and take good-time credit from him. (Dkt. 150-14 at 12, pp. 41-43.) CNA Delk told Pritt, "I know who you are. I know you want your medications. You'll get them when I give them to you." *Id.* In the period from November 2020 to February 2021, CNA Delk told Pritt that his prescriptions were in a room in a box and that she would get them when she was ready. *Id.* at 14, p. 50. Eventually, Pritt's case manager went to medical about the medications and returned with them. *Id*.

10. Wexford

Pritt testified that he is suing Wexford because Wexford should have a policy to address situations where prescriptions lapsed without being renewed. (Dkt. 150-14 at 30, p. 115.) He designates evidence that he was told by multiple Wexford employees that he did not need to request renewals of chronic care medications because they would be handled at his chronic care appointment. (Dkt. 159-2 at 231.) And, when he did tell them that his medications were about to expire, he was told to wait for his chronic care visit. *Id.* But, on multiple occasions, his chronic

care appointment was canceled and not rescheduled, and he was told that the scheduling problem "was the cause of some of the lapse in my prescription medications." *Id.* at 230-31. Those lapses caused him to suffer serious symptoms. *Id.* As explained, the Wexford Defendants' evidence also shows that this happened on at least one occasion—when NP Johnson's prescriptions expired before Pritt's next chronic care appointment. (Dkt. 150-5 ¶ 8.)

Multiple Wexford employees told Pritt that it was Wexford's policy that he had to submit separate health care request forms for each medical issue he was experiencing. (Dkt. 159-2 at 233-34.) Because of this he often submitted multiple forms at the same time. *Id.* But when he would be called to the medical department, he was routinely told to pick one issue to address and then the provider ripped up or threw away his other health care request forms without a separate appointment being scheduled for those problems. *Id.* at 233-34. Instead, Pritt was told to submit another health care request form if he wanted to be seen for the other problems. *Id.* Pritt has seen his request forms discarded by multiple members of Wexford's staff based on this custom, including Nurse Lisa Blount, CNA Delk, Nurse Davis, MA Courtney, Nurse Green, and Dr. Nwannunu. *Id.* at 235. Pritt discusses several specific instances in which this pattern occurred. *See, e.g.*, *id.* at 234 (September 17, 2021, appointment with Nurse Green), 236 (July 20, 2020, appointment with Nurse Blount).

IV. DISCUSSION

Pritt pursues both Eighth Amendment claims of deliberate indifference to serious medical needs and First Amendment claims.

A. Eighth Amendment Claims

Pritt alleges that all the Wexford Defendants were deliberately indifferent to his serious medical needs. 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)).

Except where specifically noted, it is undisputed that Pritt's medical conditions were objectively serious. To avoid summary judgment, then, the record must allow a reasonable jury to conclude that the Wexford Defendants acted with deliberate indifference—that is, that they "consciously disregarded a serious risk to [Pritt's]'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, Pritt "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 a medical professional:

- 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.*

In addition, "individual liability under § 1983 . . . requires personal involvement in the alleged constitutional deprivation." *Colbert v. City of Chi.*, 851 F.3d 649, 657 (7th Cir. 2017) (internal quotation omitted) (citing *Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983) ("Section 1983 creates a cause of action based on personal liability and predicated upon fault. An *individual* cannot be held liable in a § 1983 action unless he caused or participated in an alleged constitutional deprivation . . . . A causal connection, or an affirmative link, between the misconduct complained of and the official sued is necessary.")).

The Court discusses the deliberate indifference claims against each of the Wexford Defendants separately, below.

1. Doctors Mitcheff and Pierce

Pritt alleges that Dr. Mitcheff and Dr. Pierce were deliberately indifferent to his serious medical needs because they oversaw a collegial review process that allegedly encouraged the denial of certain medications and off-site referrals to cut costs. (Dkt. 92.) The doctors contend that no record evidence supports an inference that they were personally involved in any constitutional violations that Pritt may have suffered, citing to their testimony that they never participated in his care, did not review any off-site referral requests for him, and did not discourage on-site physicians from prescribing non-formulary medications. (Dkt. 148 at 9-10.)

The Court agrees. While the Court understands that Pritt believes he should have been prescribed non-formulary medications and referred for off-site care, he has designated no evidence that Dr. Mitcheff or Dr. Pierce ever denied a request for non-formulary medications or off-site care for him. Nor has he designated any evidence that they discouraged on-site providers from requesting non-formulary medications or off-site care. Individual liability under § 1983 requires personal involvement in the alleged constitutional violation, and Pritt has designated no evidence that Dr. Mitcheff's or Dr. Pierce's actions caused any constitutional injury that he suffered. *See Colbert*, 851 F.3d at 657.

In the section of his response devoted to his claims against Dr. Mitcheff and Dr. Pierce, Pritt affirms that Dr. Mitcheff did not have a license to practice medicine at the times relevant to this case. (Dkt. 161 at 102.) That assertion is not supported by a citation to admissible evidence and, in any event, does not support a reasonable inference that Dr. Mitcheff was personally involved in Pritt being denied necessary medical care. Pritt also cites to lawsuits in which Dr. Mitcheff and Dr. Pierce were named as defendants, *id.* at 102-103, but those citations do not support a reasonable inference that they were personally involved in his care or that their actions caused any constitutional injury he might have suffered.

Based on the designated evidence, no reasonable jury could conclude that Dr. Mitcheff or Dr. Pierce were personally liable for any constitutional violation Pritt suffered. Therefore, the Wexford Defendants' Motion for Summary Judgment is **granted** as to his claims against them.

2. Health Service Administrators Basham, Hord, and Frye

Pritt seeks to hold HSAs Basham, Hord, and Frye liable for his alleged failure to timely receive prescription refills. At his deposition, he testified that he was suing them based on their roles as supervisors or administrators. (Dkt. 150-14 at 23, p. 86.)

Pritt's claims against Defendants Basham, Hord, and Frye fail for the same reasons as his claims against Drs. Mitcheff and Pierce: he has designated no evidence from which a reasonable jury could conclude that they were personally involved in or caused any of his alleged constitutional injuries. To the contrary, the undisputed designated evidence establishes that they were not involved in his care and were unaware of his problems in getting prescription refills or any widespread problem with inmates getting timely refills.

Unlike with most of the other Wexford Defendants, Pritt does not devote a specific section of his response to these Defendants. Instead, he refers to them by name only in passing in a paragraph discussing his claims against them, as well as four other Defendants. (Dkt. 161 at 85-86.) In that paragraph, he claims, among other things, that these Defendants delayed necessary treatment, had subjective knowledge of his complaints, and "affixed signatures to documents with his complaints of pain and lapses in medication and not receiving treatment for his health problems." *Id.* But he cites no evidence to support those claims. He also asserts that he raised these issues "face to face with defendants verbally," (Dkt. 161 at 86), but he does not cite any admissible evidence showing that he ever talked to Defendants Basham, Hord, or Frye about any issues relevant to this case. The Court is not obliged to scour the record looking for evidence supporting his claims against these Defendants.

Pritt also includes HSAs Basham, Hord, and Frye on a list of people whom he states he believes make up the "Wexford Administrative body," (Dkt. 161 at 100), but he cites no evidence to support this claim. He also cites to a case involving another plaintiff in which HSA Frye was a defendant and summary judgment was denied as to the claims against her. *Id.* at 103 (citing *Robinson v. Hedden*, No. 1:20-cv-00650-SEB-TAB, 2022 WL 600836 (S.D. Ind. Feb. 25, 2022). But the fact that claims against HSA Frye survived summary judgment in another lawsuit does not

mean she violated anyone else's rights, let alone that she personally caused any of Pritt's alleged constitutional injuries.

In summary, Pritt has designated no evidence from which a reasonable jury could conclude that Defendants Basham, Horde, or Frye was personally involved in any constitutional violations. Therefore, the Wexford Defendants' summary judgment motion is **granted** as to his claims against them.

3. Medical Assistant Winters

Pritt's claim against MA Winters is based on allegations that she caused him not to receive prescription refills. She argues that Pritt has no evidence that she was deliberately indifferent to his serious medical conditions. (Dkt. 148 at 14-15.) To the contrary, the only involvement she had in his care was responding to one healthcare request form for prescription refills. *Id.* In responding to that request, she verified that Pritt had already received refills. *Id.* She could not refill his prescriptions again at the time because it was too early. *Id.*

Based on those facts, no reasonable jury could conclude that MA Winters was deliberately indifferent to a serious risk of harm to Pritt. Pritt has designated no evidence raising a question of material fact as to whether MA Winters was deliberately indifferent when she responded to the February 2021 health care request form, nor has he designated any evidence showing any other times that she failed to get prescription refills for him. The only time he mentions MA Winters in his response is in the same paragraph discussing his claims against HSAs Basham, Hord, and Frye. (Dkt. 161 at 85-86.) Those arguments fail as to MA Winters for the same reasons they failed as to HSAs Basham, Hord, and Frye: they are not supported with citations to any admissible evidence.

Accordingly, the Wexford Defendants' summary judgment motion is **granted** as to Pritt's claims against MA Winters.

4. HSA Schilling

Pritt contends that HSA Schilling was deliberately indifferent to his need for prescription refills. Based on the designated evidence, no reasonable jury could conclude that she was. The undisputed record evidence shows that her only involvement with Pritt was her response to his April 2021 grievance and that she investigated the grievance, confirmed that Pritt had recently been seen by a medical provider and his prescriptions were up-to-date, and spoke with pharmacy staff about the importance of properly responding to refill requests.

Pritt does not separately discuss his claims against HSA Schilling in his response brief, but at some points, he complains that she did not fix his problem and that his problems with refills continued after she responded to his grievance. (Dkt. 161 at 80-83.) He has not provided pinpoint citations to any evidence supporting those claims, and the Court is not obliged to search the multi-page exhibits he does cite, *see* Dkt. 161 at 83 ("Even after Care Providers was changed, the medication lapses continue. See: Exhibits #1, #3, #4."), to try to determine which, if any, portions of those exhibits support his claims against HSA Schilling. Regardless, even if he had properly cited evidence to support these arguments, they would fail. HSA Schilling cannot be liable under § 1983 for failing to remedy the condition about which he complained. *See Stankowski v. Carr*, No. 23-2458, 2024 WL 548035 at *2 (7th Cir. Feb. 12, 2024) (affirming dismissal of complaint alleging that defendants denied him an opportunity to use an audio recording as evidence at a disciplinary hearing; stating in relevant part, "And to the extent that Stankowski sued supervisors, grievance counselors, and officials involved in his appeals, these defendants cannot be liable under § 1983 for failing to remedy the condition he complained of or supervising those who allegedly violated his rights. To be liable under § 1983, a defendant must be personally responsible for the violation of a constitutional right. Thus, an official who merely reviews a grievance or appeal

cannot be liable for the conduct forming the basis of the grievance." (internal citations omitted)). The question is whether a reasonable jury could conclude that her response to his grievance amounted to deliberate indifference. Based on the designated evidence, it could not.

Accordingly, the Wexford Defendants' summary judgment motion is **granted** as to Pritt's claims against HSA Schilling.

5. Medical Assistant Courtney

Pritt alleges that MA Courtney was deliberately indifferent to his serious medical needs because she failed to get medical attention for him when he presented with what he describes as "heart attack symptoms." MA Courtney admits that there is a dispute of fact as to whether she turned Pritt away on the occasion described in his deposition. But she argues that the dispute is not material because Pritt has "zero evidence that he actually had an emergent medical condition, … or was in need of any different or additional medical treatment." (Dkt. 148 at 16.) She bases this argument on the fact that Pritt's "medical records do not establish that [he] actually had an emergent medical condition for which care and treatment was necessary" and his medical records do not show that he was "ever diagnosed with any emergent medical condition in or around April 2021." *Id.* at 16-17.

This argument is not well taken. Pritt does have evidence that he needed immediate medical treatment and that MA Courtney knew he did—his own testimony that custody staff sent him to the medical unit to get his medications and that he was "deathly ill," pouring sweat, pale and flushed, could hardly talk, and was too weak to stand or walk on his own while interacting with MA Courtney. The Court must accept that testimony as true for purposes of summary judgment, and MA Courtney has failed to explain her actions—understandably so, because she has no recollection of the event. A reasonable jury could conclude that Pritt's condition was serious

enough that it should have been obvious that he needed immediate medical assistance, if only to relieve his pain, whether by getting him his medication or referring him to a provider. *See Perez v. Fenoglio*, 792 F.3d 768, 778 (7th Cir. 2015) ("A delay in treatment may show deliberate indifference if it exacerbated the inmate's injury *or unnecessarily prolonged his pain.*") (emphasis added).

Finally, MA Courtney complains that Pritt "can … not specify a date for this alleged interaction, but he also cannot even specify a general timeframe, beyond simply stating the alleged month." (Dkt. 148 at 17.) To the extent that this represents an argument about why no genuine dispute of material fact exists as to Pritt's claims against MA Courtney, it fails. For starters, the operative complaint alleges that this interaction took place "[o]n or around about 4/15-28/21"—that is between April 15 and 28, 2021. (Dkt. 54 at 13.) And, while the absence of more specificity about the date might undermine Pritt's credibility, the Court cannot make such determinations at summary judgment. *Miller*, 761 F.3d at 827.

Because genuine issues of material fact remain as to Pritt's claims against MA Courtney, the Wexford Defendants' summary judgment motion is **denied** as to his claims against her.

6. Dr. Nwannunu

Pritt contends that Dr. Nwannunu was deliberately indifferent to his testicular pain and heart issues. Genuine issues of material fact exist such that the Court cannot enter summary judgment in Dr. Nwannunu's favor.

As to the congestive heart failure and chest pains, a reasonable jury believing Dr. Nwannunu's testimony and evidence could conclude that he monitored Pritt's heart conditions, continued him on his heart medications, and treated his conditions according to his medical judgment. But a reasonable jury believing Pritt's designated evidence could conclude that Pritt

complained that he was having chest pains and that Dr. Nwannunu accused him of being a liar and ignored him. Dr. Nwannunu has not designated any evidence explaining how that response amounted to an exercise of medical judgment (which is understandable because Dr. Nwannunu presumably denies that the interaction ever happened), so a reasonable jury could conclude that Dr. Nwannunu simply refused to treat Pritt's chest pains. That is, a reasonable jury could find that Dr. Nwannunu was deliberately indifferent to Pritt's heart problems. Dr. Nwannunu argues that he is entitled to summary judgment because Pritt has no evidence that he ever had a heart attack, which is how Pritt sometimes refers to the chest pains. (Dkt. 164 at 9.) But Pritt's use of the colloquial term "heart attack" to refer to his chest pains is not dispositive. For purposes of summary judgment, the Court must accept as true that he complained to Dr. Nwannunu about chest pains and that Dr. Nwannunu ignored him. A denial or delay in treatment may show deliberate indifference if it unnecessarily prolonged Pritt's pain. *See Perez*, 792 F.3d at 777–78.

As to the testicular pain, a reasonable jury believing Dr. Nwannunu could conclude that he examined Pritt's testicles and concluded that no further treatment was needed. But Pritt disputes that any examination ever took place and has designated evidence that Dr. Nwannunu simply refused to examine his testicles. A reasonable jury believing that testimony could conclude that Dr. Nwannunu's treatment was not based on medical judgment and that he simply refused to treat Pritt's pain, which supports a finding of deliberate indifference.

Because the Court has found genuine issues of material fact as to whether Dr. Nwannunu was deliberately indifferent to Pritt's heart and testicular pain issues, it need not delve further into whether there are genuine issue of material fact about whether Dr. Nwannunu caused lapses in Pritt's medications, prescribed medications without an appointment, and refused to prescribe non-formulary medications. Rather, because courts "must examine the totality of an inmate's medical

care when considering whether that care evidences deliberate indifference to his serious medical needs," *Reed v. McBride*, 178 F.3d 849, 855 (7th Cir. 1999) (cleaned up), disputes about those issues are better resolved at trial, during which the jury will consider the entire course of Dr. Nwannunu's treatment of Pritt.

For these reasons, the Wexford Defendants' summary judgment motions are **denied** as to Pritt's claims against Dr. Nwannunu.

7. Dr. Falconer and NP Johnson

Pritt alleges that Dr. Falconer and NP Johnson were deliberately indifferent to his congestive heart failure and chest pains because they discontinued his medications, cause lapses in his medications or failed to remedy lapses when they knew about them, prescribed medications without a face-to-face or follow-up appointment, and refused to prescribe non-formulary medications. Dr. Falconer and NP Johnson argue that Pritt has not designated evidence supporting any of these claims and that the undisputed designated evidence shows that they treated his conditions appropriately, did not cause any medication lapses, and did not fail to remedy medication lapses about which they knew. (Dkt. 148 at 10-12.) The Court agrees. Most of the citations in the section of Pritt's response brief devoted to his claims against Dr. Falconer and NP Johnson are non-specific citations to entire multi-page documents or citations to evidence that is not actually before the Court, such as Paragraph 35 of his declaration, which does not exist. *See, e.g.*, Dkt. 161 at 73 ("See Plaintiff's Exhibit #3 paragraph 35, Complaint under Oath"); 75 ("See Plaintiff's Exhibit #10 and Complaint Under Oath"); 79 ("See . . . Exhibit #10, #14). The Court is not obliged to scour those records looking for portions that might support his claims. The only specific citations Pritt provides are to portions of certain policies. *See* Dkt. 161 at 73. But policies

alone do not show that Dr. Falconer and NP Johnson were deliberately indifferent to his serious medical needs.

The Wexford Defendants' summary judgment motion is **granted** as to Pritt's claims against Dr. Falconer and NP Johnson.

8. Nurse Davis

Pritt alleges that Nurse Davis was deliberately indifferent to his serious health conditions because she failed to act when she knew he was out of medication, provided no treatment for his testicular pain, and failed to get him care when she knew he was experiencing symptoms consistent with a heart attack. Like MA Courtney, Nurse Davis argues that she is entitled to summary judgment because Pritt has designated no evidence that he was actually suffering from an acute medical emergency or required any specific medical care. (Dkt. 164 at 13-1.)

That argument fails for the same reason it fails as to MA Courtney. Pritt has designated evidence showing that, on at least one occasion, he asked for refills of his heart medication and complained that he had chest pressure and shortness of breath and was having problems with his congestive heart failure. (Dkt. 150-15 at 49.) Nurse Davis responded by stating that his medications had been ordered. *Id.* That is, there is evidence that Pritt needed specific medical care—his missing prescription medication—and that he was having objectively serious symptoms—chest pressure, shortness of breath, and exacerbation of congestive heart failure symptoms. The Court must accept that testimony as true for purposes of summary judgment. While Nurse Davis may not have been responsible for medication backorders, she has failed to explain why she just told Pritt his medications had been ordered and took no action as to his complaints about serious symptoms. Even if there is no evidence that Pritt actually had a heart attack, based on the designated evidence, a reasonable jury could conclude that Pritt's condition

was serious enough that it should have been obvious that he needed immediate medical assistance, if only to relieve his pain. *See Perez*, 792 F.3d at 778.

Because at least one genuine issue of material fact exists as to whether Nurse Davis was deliberately indifferent to Pritt's complaints of chest pain, the Court need not determine whether other issues of fact exist as to his claims about other issues, such as prescription refills and testicular pain. The jury will hear all the evidence and consider it as a whole when deciding whether Nurse Davis was deliberately indifferent to Pritt's serious medical needs. *See Reed*, 178 F.3d at 855.

Accordingly, the Wexford Defendants' summary judgment motion is **denied** as to Pritt's claims against Nurse Davis.

9. CNA Delk

Pritt contends that CNA Delk was deliberately indifferent to his serious medical needs because she caused lapses in his medications, refused to remedy lapses in medications, and failed to assist him when he presented with symptoms resembling a heart attack. Genuine issues of material fact preclude the entry of summary judgment in CNA Delk's favor.

A reasonable jury could believe CNA Delk's testimony that she never knew about Pritt having symptoms of a heart attack or other acute cardiac abnormality. But a reasonable jury could also believe Pritt's testimony that he saw her in person, she knew he was out of his heart medications, and he was sick, pouring sweat, and having heart problems, but she refused to help him. If the jury believed that testimony, it could find that CNA Delk was deliberately indifferent to Pritt's need for medical assistance. CNA Delk contends that she is entitled to summary judgment because there is no evidence that Pritt was having a heart attack or needed any medical treatment. (Dkt. 164 at 13.) But the fact that Pritt sometimes calls the symptoms "heart attack" symptoms is

not dispositive. He has designated evidence that he was suffering and seriously ill in CNA Delk's presence and that she knew he had been without his heart medications for some time. A reasonable jury could conclude that his condition was serious enough that it should have been obvious that he needed immediate medical attention, if only to relieve his pain. *See Perez*, 792 F.3d at 778.

A reasonable jury could also believe CNA Delk's testimony that facility policy prohibited her from filling prescriptions more than 5 days before they were set to run out and that she always refilled Pritt's prescriptions when she could under facility policy, assuming that the medications were not backordered, which was not within her control. A jury believing that testimony could conclude that she was not responsible for any of Pritt's medication lapses. But Pritt has designated evidence that, if believed, could lead a jury to conclude that CNA Delk was responsible for some of his medication lapses and was simply refusing to help him even when she could have, including his testimony that CNA Delk told him to submit refill requests 7 to 10 days before he ran out of his medication, that his medication was in a room in a box and she would get it when she was "ready," and his testimony that CNA Delk told him that she would get fired if Pritt complained to her supervisors about his medication lapses.

Accordingly, the Wexford Defendants' summary judgment motion is **denied** as to Pritt's Eighth Amendment claims against NA Delk.

10. Wexford

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*, 18 F.4th at 235 (citing *Monell v. Dep't of Soc. Servs*., 436 U.S. 658 (1978)). To succeed on a *Monell* claim, Pritt 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). Next, he must show that the municipal action amounts to deliberate indifference. *Dean*, 18 F.4th at 235. "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.'" *Id*. "[*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*). One limited exception to this rule occurs when the "risk of unconstitutional consequences from a municipal policy could be so patently obvious that a municipality could be liable under § 1983 without proof of a pre-existing pattern of violations." *Id.* (cleaned up). Finally, Pritt must show a direct causal link between the municipality's action and the deprivation of federal rights. *Id*.

The Wexford Defendants argue that Pritt has no evidence to support a *Monell* claim and offer various criticisms of Pritt's summary judgment brief. (Dkt. 148 at 25-26; Dkt. 164 at 14-17.) Some of those criticisms may have some force, but the Court disagrees that Pritt's *Monell* claim is completely without evidentiary support. In his summary judgment response, Pritt argues that Wexford's system for handling healthcare request forms was problematic. (Dkt. 161 at 97.) And, as explained, he has designated evidence to support that claim. He has designated evidence that multiple Wexford employees told him that he had to submit separate health care request forms for separate issues but, when he did so, they made him choose one issue per appointment and ripped up or otherwise disposed of his other healthcare request forms, leaving him to start the healthcare request process again. A reasonable jury believing his testimony could conclude that Wexford's

employees were acting this way because they were following a Wexford policy. Having a policy of simply ignoring medical complaints when an inmate submits more than one healthcare request form at a time is arguably facially unconstitutional. And even if it is not facially unconstitutional, the risk that such a policy would cause unconstitutional consequences is so patently obvious that Wexford can be liable even without a pattern of preexisting violations. In addition, Pritt has designated evidence that this policy caused him to go without treatment for his medical conditions, which provides the requisite causal link between the policy and his alleged constitutional injuries.

That is, however, the extent of the policies or customs about which Pritt has identified genuine issues of material fact for purposes of his *Monell* claim. Most of the section of his brief devoted to his *Monell* claims consists of factual statements that are not properly supported and high-level arguments that Wexford has a general policy of "passing the buck" and failing to fill gaps in policies. *See* Dkt. 161 at 87-104. But he does not specify which gaps needed to be filled, let alone properly designate any evidence that, in his case, the failure to fill whatever gaps existed was the source of his constitutional injury, as opposed to the "random" acts of Wexford's employees, which do not amount to municipal actions for purposes of a *Monell* claim. *See, e.g.*, *Grieveson v. Anderson*, 538 F.3d 763, 774 (7th Cir. 2008) (plaintiff must establish that there is a "true municipal policy at issue, not a random event"). He cites to court decisions involving Wexford—many with facts dissimilar to the facts in this case and not involving Wexford of Indiana, LLC (the defendant in this case), but other Wexford entities. But those cases do not help to establish that a Wexford policy or custom caused *his* injuries.

Portions of Pritt's response brief complain about Wexford's system for handling prescription refills. Specifically, he complains that Wexford handled renewals of chronic care medications at chronic care appointments, but lapses could occur if a chronic care appointment

was canceled or delayed. (Dkt. 161 at 16.) Such a policy is not facially unconstitutional, nor is it obvious that the system would lead to constitutional violations. Thus, Pritt needs a pattern of constitutional violations to survive summary judgment. But he has not designated evidence of such a pattern. The record includes one specific example of a time that Pritt's chronic care medications expired before his chronic care appointment happened—the incident described in NP Johnson's declaration. But that one instance is insufficient to support his *Monell* claim. Pritt cites to a portion of his declaration in which he says that Wexford staff told him that "some" of his medication lapses were caused by a similar problem, (Dkt. 195-2 at 230), but "some" is too vague to establish a genuine issue of material fact on this issue, especially given that Pritt's claims cover a period of two years. *See Hildreth v. Butler*, 960 F.3d 420, 427 (7th Cir. 2020) (three instances of prescription delays over 19 months involving solely one inmate fail to qualify as a widespread unconstitutional practice so well-settled that it constitutes a custom or usage with the force of law). Pritt also cites to some of his health care request forms to support his claim about widespread delays, (Dkt. 161 at 16), but he fails to specify which, if any, of those delays resulted from the system for handling renewals of chronic care medications.

Finally, the Court observes Pritt also cites generally to what the Court can only describe as a "multiple choice"-style declaration that he has submitted to support his claims about medication delays. (Dkt. 159-2 at 460-457.) The declaration is signed by tens of inmates. The beginning of the declaration instructs the inmates to check one of four boxes—A, B, C, or D—if they have experienced the issues described in each category. So, as relevant here, an inmate checking "D" represents an attestation that, between 2017 and 2021, the inmate "had substantial lapses or delays in the supply of my prescribed medications for my serious health issues, lasting over TEN (10) days. This happen[e]d multiple times to me due to their policy, practices and customs to how they

process prescriptions and distribute them to the inmate population." *Id.* at 461. Without further explanation or support, the claim that a medication delay occurred because of a policy or practice as to prescription processing is a conclusory legal conclusion that cannot create a genuine issue of material fact for trial. *See Stagman v. Ryan*, 176 F.3d 986, 995 (7th Cir. 1999) ("statements outside the affiant's personal knowledge or statements that are the result of speculation or conjecture or merely conclusory do not meet" the admissibility requirements of Rule 56). And, without that boilerplate language, the declaration amounts to nothing more than an attestation that some inmates experienced medication delays and is not probative of whether the delay was caused by a Wexford policy or custom, as opposed to some other reason—such as an inmate waiting too long to request a refill or a medication being unavailable.

Accordingly, the Wexford Defendants' summary judgment motion is **denied** as to Pritt's *Monell* claims against Wexford based on the alleged policy or custom of forcing inmates to submit separate healthcare requests forms for separate complaints, forcing inmates to choose one complaint per visit, and destroying all other contemporaneously submitted healthcare request forms but otherwise **granted** as to any other alleged policies or customs.

B. First Amendment Claim

Pritt's First Amendment claims against CNA Delk can be divided into two categories: retaliation and "chilling."[9] To succeed on a claim of First Amendment retaliation, Pritt must show that: (1) he engaged in protected First Amendment activity; (2) an adverse action was taken against him; and (3) his protected conduct was a factor that motivate the adverse action. *Adams v. Reagle*, 91 F.4th 880, 887 (7th Cir. 2024). As to the chilling theory, the First Amendment prohibits threats

[9] Portions of Pritt's summary judgment response refer to these claims as "excessive force" claims, *see, e.g.*, Dkt. 161 at 18, apparently because CNA Delk allegedly threatened to send him to segregation. But that is a misnomer. Being sent to segregation is not a use of force, whether excessive or otherwise, and, in any event, Pritt admitted at his deposition that he was never sent to segregation. (Dkt. 150-14 at 41, p. 159.)

of punishment designed to discourage further protected speech. *Surita v. Hyde*, 665 F.3d 860, 878 (7th Cir. 2011). A plaintiff pursuing a chilling claim must show that his potential speech was at least a motivating cause of the threat of punishment. *Id.*

CNA Delk admits that she once told Pritt that he would be disciplined if he did not calm down during an interaction with her. But she contends that she is entitled to summary judgment because she did not have the authority to discipline Pritt, and there is no evidence that she ever had him disciplined or placed in segregation. In addition, she argues, "Plaintiff never stopped requesting medical treatment, and was not denied medical treatment by order of Ms. Delk." (Dkt. 148 at 23.) She also appears to suggest that Pritt's remarks during this conversation did not amount to protected First Amendment speech, *see id.*, but she fails to explain why. In response, Pritt designates evidence that CNA Delk told him to stop asking her supervisors about his medication lapses because she would get fired and threatened to send him to segregation and take good-time credit for him. He also argues that CNA Delk was refusing to give him his medications when she could have done so in retaliation for his complaints. (Dkt. 161 at 24.) In reply, CNA Delk does not address Pritt's argument that she was delaying his access to medications in retaliation for his complaints. Instead, she argues that "Plaintiff does not argue, however, that any specific action was taken to retaliate against Plaintiff, but that there were threats," which she contends cannot sustain a First Amendment claim. (Dkt. 164 at 11.)

At a bare minimum, Pritt has identified at least one form of potentially constitutionally protected speech—complaints to CNA Delk's supervisors about his medication delays. CNA Delk does not argue that such speech is not constitutionally protected. The rest of her arguments as to the First Amendment claims presume that Pritt has failed to identify a sufficiently adverse

allegedly retaliatory action.[10] But he has identified at least one such action—medication delays. And as explained in connection with Pritt's Eighth Amendment claims against CNA Delk, above, there are questions of fact as to whether CNA Delk unjustifiably refused to provide Pritt with his medications when she could have done so. Those questions of fact also preclude summary judgment in CNA Delk's favor as to the First Amendment claims. Because there are genuine issues of fact as to the retaliation theory, the Court need not separately consider whether there are issues of fact as to the chilling theory. The jury will hear all of Pritt's evidence related to his First Amendment claims against CNA Delk at trial and determine whether a First Amendment violation occurred.

Accordingly, the Wexford Defendants' summary judgment motion is **denied** as to Pritt's First Amendment claims against CNA Delk.

V. CONCLUSION

For the reasons explained above, Dr. Nwannunu's stand-alone Motion for Summary Judgment, Dkt. [152], is **DENIED**. The Wexford Defendants Motion for Summary Judgment, Dkt. [147] is **GRANTED in part and DENIED in part.** Summary judgment is **granted** as to Pritt's claims against Defendants Mitcheff, Pierce, Basham, Hord, Frye, Winters, Schilling, Falconer, and Johnson, and those claims are **dismissed with prejudice.** The Motion is **denied** as to Pritt's claims against Defendants Courtney, Davis, and Delk, and his Eighth Amendment claims against Dr. Nwannunu. The Motion is **granted in part and denied in part** as to Pritt's *Monell* claim against Wexford as set forth in Section IV(A)(10), above.

The Court will allow Pritt to proceed with First Amendment claims against Dr. Nwannunu and Dr. Nwannunu may move for summary judgment as to those claims within **thirty (30) days**

[10] CNA Delk does not make any argument about the "motivating factor" prong. *See* Dkt. 148 at 23; Dkt. 164 at 11.

of the date of this Order, which deadline **will not be extended**. Any such briefing should specifically address whether seeking health care by way of health care request forms or verbal requests to treating providers constitutes protected First Amendment activity for purposes of the First Amendment analysis. Given the overlap between the Eighth Amendment and First Amendment claims against Dr. Nwannunu, the Court recognizes that Dr. Nwannunu may choose not to move for summary judgment on the First Amendment claims. As a result, rather than move for summary judgment, within **thirty (30) days of the date of this Order**, Dr. Nwannunu may file a notice informing the Court of that decision. **Failure to pursue one of these options will result in the First Amendment claims being resolved at trial, assuming that they are not resolved by settlement.**

Partial final judgment will not enter at this time.

The **Clerk is directed** to update the docket to reflect that the proper name of the defendant currently identified as "Lisa Hood" is "Lisa Hord" and that the proper name of the defendant currently identified as "R. Schilling" is "Rachel Schilling".

The **Clerk is directed** to then **terminate** the following as defendants on the docket: Erick Falconer, Dianna Johnson, Rachel Schilling, Michael Mitcheff, Duan Pierce, Michaela Winters, Laura Basham, Lisa Hord, and Linda Frye.

Because Some of Pritt's claims have survived summary judgment, they will be resolved by settlement or trial. Accordingly, **the Court *sua sponte* reconsiders** its Order denying Pritt's motion for assistance with recruiting counsel, Dkt. [99], to the extent that it will seek to recruit counsel to represent him. In addition, because Pritt has been released from incarceration, he must provide the Court with updated information about his financial status so that the Court can confirm that he is still eligible for the appointment of counsel. Accordingly, **within thirty (30) days of**

the date of this Order, Pritt must complete and return the attached motion for leave to proceed *in forma pauperis*. If he fails to do so, the Court will cease its efforts to recruit counsel for him, and he will have to pursue this action *pro se* unless he retains counsel on his own. Pritt is reminded that court recruited counsel may require a contingency fee and that counsel's service is not necessarily provided *pro bono*. The Court will inform the parties when the recruitment process is complete. The **Clerk is directed** to enclose a blank form motion for leave to proceed *in forma pauperis* with Pritt's copy of this Order.

SO ORDERED.

Date: 4/8/2024

Hon. Tanya Walton Pratt, Chief Judge
United States District Court
Southern District of Indiana

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