

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

TONY DIXON, B-15894,)
)
 Plaintiff,)
)
 vs.)
)
 ILLINOIS DEPARTMENT OF)
 CORRECTIONS,)
 WEXFORD HEALTH CARE SOURCES,)
 INC.,)
 DANIEL CONN,)
 MR. SHAH,)
 CHRISTINE BROWN,)
 MARY BETH,)
 MS. KENDRA,)
 MS. VERGINIA,)
 EBONY TONYA,)
 MS. ANDERS,)
 MS. KELLY,)
 MS. VALARIE,)
 MS. MAXENE,)
 MR. BLADES, and)
 JOHN DOE,)
)
 Defendants.)

Case No. 16-cv-1222-NJR

MEMORANDUM AND ORDER

ROSENSTENGEL, District Judge:

Plaintiff Tony Dixon, an inmate in Dixon Correctional Center, brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983. Given inconsistencies between Plaintiff’s original Complaint (Doc. 1) and the record, making it unclear whether the events giving rise to Plaintiff’s Complaint occurred in the Southern District of Illinois in Pinckneyville Correctional Center (“Pinckneyville”) or the Northern District of Illinois in Stateville Correctional Center (“Stateville”), this Court ordered Plaintiff to file an Amended

Complaint focusing on his claims arising from Pinckneyville or, in the alternative, file a notice with the Court that he intended to rely on the claims in the original Complaint. (Doc. 22). Plaintiff filed a First Amended Complaint on March 3, 2017. (Doc. 23). In his First Amended Complaint, Plaintiff claims the defendants, from both Stateville and Pinckneyville, have been deliberately indifferent to his various serious medical issues in violation of the Eighth Amendment. *Id.*

Instead of immediately conducting a preliminary review of the First Amended Complaint pursuant to 28 U.S.C. § 1915A, under which the Court is required to promptly screen prisoner complaints to filter out nonmeritorious claims, this Court will take up Plaintiff's Motion for Recruitment of Counsel (Doc. 27), as Plaintiff appears to require counsel to effectively and efficiently litigate this matter given the content of the First Amended Complaint.

The First Amended Complaint

According to the First Amended Complaint, Plaintiff has "Apnea" and is a "Hyperkalemia adult." (Doc. 23, p. 9). "He is on psychotropic medication and a regiment of medicines for a significant number of health problems." *Id.* Prison officials and/or the prison's health care provider, Wexford Health Sources, Inc. ("Wexford"), along with Wexford's Executive Vice President and Chief Operations Officer Daniel Conn, "have refused or failed to provide Plaintiff a complete copy of his medical records as requested." *Id.* Plaintiff has historically slept, and continues to sleep, with the aid of a C-PAP machine. *Id.* Plaintiff was also given a heart transplant at the University of Chicago Hospital in 2005. *Id.* Plaintiff appears to have been transferred between Stateville and Pinckneyville several times during the relevant time period in the First Amended Complaint. *See* (Doc. 23, pp. 10, 16, 17). He is now incarcerated at Dixon Correctional Center. (Doc. 23, p. 1). His allegations are divided below, based upon the

correctional center he was allegedly housed in during the relevant time.

A. Stateville Correctional Center

During appearances before Judge Love and Judge Geary Kull, Plaintiff was seriously ill, and the court ordered Stateville Northern Receiving and Classification Center (“NRC”) officials to provide him adequate medical attention and also his medications. (Doc. 23, p. 10). The NRC staff ignored these orders. *Id.* While at the NRC, Plaintiff was not provided his Taciolimus capsule and Mycophenolate tablet anti-rejection drugs for six days, from January 24, 2014, to January 30, 2014. *Id.* NRC staff also did not give him his psyche medication on January 27, 2014, and “usually delivered some of his medicine 5 days late.” *Id.*

Plaintiff did not receive medication refills he submitted between July 16 and July 21 until August 5, 2014. (Doc. 23, p. 12).

The NRC doctor put stitches in Plaintiff’s hand for an injury sustained to his thumb on July 18, 2014. *Id.* Dr. Diane told Plaintiff she would remove the stitches on July 28, 2014 or sometime after that, but she never called him to have them removed. (Doc. 23-1, p. 21). As a result of the delay in having his stitches removed, Plaintiff’s hand swelled, pus oozed from the stitches, it stunk, it was painful, and Plaintiff could not bend his thumb. (Doc. 23, p. 12).

On approximately July 24, 2014, Plaintiff began a hunger strike “for multiple reason[s].” (Doc. 23-1, p. 23). When a John Doe corrections officer opened the cell door slot to serve breakfast, Plaintiff thrust his hand through the door slot. (Doc. 23, p. 12). The officer attempted to close the slot using “the chuckhole swivel design as a battering ram to beat his hand.” (Doc. 23, pp. 13). When that was not effective, the officer used large keys and a heavy ring of keys to hammer Plaintiff’s hand back into the cell. *Id.* Plaintiff sustained a “hairline fracture to his right hand and wrist from the assault by the staff.” (Doc. 23, p. 19).

Between May 21 and August 20, 2014, Plaintiff sent approximately fourteen grievances regarding staff conduct at NRC. (Doc. 23, pp. 13). These grievances concerned: “1) Past complaints of his given to the staff member [to] whom he complained; 2) His not ever having . . . been given any janitorial supplies to clean the filthy cell; 3) the cell’s emergency call button was out of service; 4) the light illuminated 24 hours daily and couldn’t be turned off; 5) . . . ; 6) no laundry service provided; 7) excessive force by lieutenant [who] maced him on June 16, 2014, without justification.” *Id.*

In October 2014, Plaintiff was taken to Barnes Jewish Hospital, where it was discovered that he had 88% blockage of two arteries. (Doc. 23, pp. 14-15). Stints were inserted into the arteries. (Doc. 23, p. 15). On October 29-30, 2014, NRC staff did not provide all of Plaintiff’s medication. *Id.* He communicated to NRC Nurse Verginia that he was not provided with certain medication, and she did not do anything to resolve the issue. *Id.* On November 19, 2014, Plaintiff was forced to go twenty-two days without three medications while he was at the NRC. *Id.* The NRC pharmacy repeatedly delayed giving Plaintiff Prograf, which Plaintiff claims is medication to prevent his body from rejecting his transplanted heart. *Id.*; (Doc. 23-1, p. 41).

On November 12, 2014, Plaintiff requested a copy of his medical records from January 24, 2014 to the present, but his requests were ignored by NRC staff. (Doc. 23, p. 15).

On November 7, 2014, Nurse Verginia told Plaintiff she would “check into” Plaintiff not being provided medication in a timely manner. (Doc. 23, p. 16). On November 11, 2014, Nurse Tonya told Plaintiff that the doctor said he was given all of the medicine they were going to give him. *Id.* The next day, Nurse Tonya told him that Dr. Diane would look into his not getting his medication, and Nurse Anders provided a partial portion of his medicine. *Id.* The following day, Nurse Kelly told Plaintiff that she would check on his medication. *Id.* The next day, Nurse

Valerie made a note of all the medications Plaintiff said were missing, and she told him that she would check on it. *Id.* On November 15, 2014, Nurse Valerie told him that she ordered his medication, but that he would not receive it until November 17 or 18. *Id.* The following day, Nurse Tonya told Plaintiff he would receive the medicine the next day. *Id.* On November 17, 2014, Nurse Maxene provided some of Plaintiff's medicine and told him that she would speak to Dr. Diane about the medicines he said were missing. *Id.*

In September 2016, Plaintiff was taken to Stateville infirmary with a recommendation by Barnes Jewish Hospital Physician Dr. Vador that Plaintiff receive follow-up treatment at the University of Chicago Hospital after he experienced kidney failure and a heart attack on August 23. (Doc. 23, p. 18). This recommendation was ignored by Stateville medical staff. *Id.*

From September 2016 to January 18, 2017, Plaintiff was an inpatient of Stateville infirmary. *Id.* On several occasions, he asked Counselor Winters for a grievance form, and though she said she would mail it to Plaintiff, he never received it. *Id.*

"NRC Staff confiscate[ed] his antibiotic medication and pain medication and refused to replace it or treat his oral health problem." (Doc. 23, p. 19).

B. Pinckneyville Correctional Center

In February 2014, Plaintiff requested a C-PAP machine after having been transferred to Pinckneyville. (Doc. 23, p. 11). "Dr. Shah and/or Health Care Unit Administrator Christine Brown failed to order the C-PAP for several months, and he didn't receive it until August or September." *Id.*

Members of Pinckneyville staff failed to provide Plaintiff certain medication to control his potassium and "creatnum" levels in a continuous and timely manner. *Id.* Plaintiff repeatedly asked what his levels were, and the medical staff told him they were "fine." *Id.*

Members of Pinckneyville staff only sporadically complied with the instructions of Plaintiff's physician regarding his kidney problems. *Id.* Nurse Mary Beth also told Plaintiff's physician that Pinckneyville did not "do special diets" when the physician ordered a low cholesterol diet for Plaintiff. *Id.* Along with Plaintiff's physician, a doctor in the town of Pinckneyville and a Barnes Jewish Hospital doctor recommended a low cholesterol diet for Plaintiff. *Id.*

Plaintiff came to Pinckneyville on August 20, 2014, and immediately "told everyone [he saw]" he needed stitches in his hand removed. (Doc. 23-1, p. 21). Plaintiff filled out two emergency sick call slips to see Dr. Shah for his thumb, but was still waiting for treatment when he filed a grievance on August 29, 2014. *Id.* Plaintiff had the stitches removed on September 3, 2014. (Doc. 23, p. 12).

On September 7, 2014, Nurse Kendra dropped Plaintiff's Clonidine pill, which Plaintiff was on for his blood pressure. (Doc. 23, p. 13). Kendra told him she would bring him another pill at a later hour, but she never brought it. (Doc. 23, p. 14). Kendra did not provide him with his medicine three times. *Id.*

Members of Pinckneyville staff failed to order refills of medications needed by Plaintiff, including "Aspirin, Allopurinol, Verapamil, Omegapazole, and Benadryle," rendering staff days late in providing Plaintiff with these medications at least three times. *Id.* At least one of these late refills occurred after Christine Brown assured both Plaintiff and his wife that there would be no more late refills. *Id.*; (Doc. 23-1, p. 32).

Dr. Shah prescribed Plaintiff a single dose of medicine daily to help lower and control Plaintiff's potassium level, despite Plaintiff's acclimation to six times more medicine. (Doc. 23, p. 14). When Plaintiff implored Shah to consult with his doctor at the University of Chicago,

Shah responded that he was not going to order Plaintiff's requested amount. *Id.*

Plaintiff could not walk on the prison yard because he could not be "exposed to sun rays for an extended time without the sun [having] an adverse affect [*sic*] on him related to other health issues." (Doc. 23, p. 17). When he began gaining weight, Dr. Thatcher and Dr. Shah told him rapid weight gain could cause his heart to overwork and advised him to become active. *Id.* NP A. Rector authorized ADA access to the prison gym effective June 25, 2015. *Id.* Lieutenant Blades disregarded the medical permit and denied him ADA access to the gym for three months. *Id.*

On June 26, 2015, and on other dates, Plaintiff had shortness of breath, headaches, and chest tightening, and when he complained or sought help, Dr. Shah ordered him into a medical observation room under the pretext that it was to monitor Plaintiff's condition on 23-hour watch. *Id.* In fact, Plaintiff was "abandoned in a room with none of his personal property and rare interaction with a staff member." *Id.*

Staff members at Pinckneyville failed to provide Plaintiff with his diabetes medicine on January 30-31, 2016. (Doc. 23, p. 18). They also did not provide his fiber tablets on February 4, 2016, or give him the medication he was prescribed to induce a bowel movement on February 11-15, 2016. *Id.*

Plaintiff "had to be rushed to Barnes Jewish Hospital and was hospitalized for two weeks because Pinckneyville medical staff delayed his Plavix medicine," which "is used to prevent plates from building up around his stints," for 3 days. (Doc. 23, p. 19).

C. Dixon Correctional Center

Plaintiff currently has a port inserted in and out of his chest for the dialysis process used in treating kidney disease. (Doc. 23, p. 19). The port, which moves causing Plaintiff pain and

shortness of breath, was supposed to be only temporary and “ought to be removed.” *Id.*

Recruitment of Counsel

Plaintiff is clearly attempting to bring several distinct sets of claims against different, sometimes unspecified, defendants. These claims, which span across three prisons and at least three years, do not belong together in a single action. Instead of immediately exercising its discretion and severing the many unrelated, potentially deficient¹ claims against different defendants into separate cases,² resulting in a surplus of filing fees and potential strikes under 28 U.S.C. § 1915(g) for Plaintiff, this Court will appoint counsel and grant Plaintiff leave to file another amended complaint.

This Court has determined that counsel is necessary to investigate and adequately articulate a claim in this case, if there is one to be made. *See Childress v. Walker*, 787 F.3d 433, 443 (7th Cir. 2015). Section 1915(e)(1) provides that “[t]he district court may request an attorney to represent any person unable to afford counsel.” 28 U.S.C. § 1915(e)(1). In *Childress*, the Seventh Circuit reiterated the analysis set forth in *Pruitt v. Mote*, 503 F.3d 647 (7th Cir. 2007) when considering whether to appoint counsel to represent an indigent litigant:

[A] court must examine “whether the difficulty of the case—factually and legally—exceeds the particular plaintiff’s capacity as a layperson to coherently present it.” *Pruitt*, 503 F.3d at 655. This inquiry does not focus solely on the plaintiff’s ability to *try* his case—it also includes other “tasks that normally attend litigation” such as “evidence gathering” and “preparing and responding to motions.” *Id.* When ruling on a motion to recruit counsel, the court should take account of all evidence in the record relevant to the plaintiff’s capacity to litigate.

¹ The Court is required to dismiss any portion of the First Amended Complaint that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for money damages from a defendant who by law is immune from such relief. 28 U.S.C. § 1915A(b).

² As a part of screening, the Court is allowed to sever unrelated claims against different defendants into separate lawsuits. *See George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). In *George*, the Seventh Circuit emphasized that the practice of severance is important, “not only to prevent the sort of morass” produced by multi-claim, multi-defendant suits “but also to ensure that prisoners pay the required filing fees” under the Prison Litigation Reform Act. *Id.* In fact, the Seventh Circuit in *Owens v. Godinez*, No. 15-3892, 2017 WL 2655424 (7th Cir. June 20, 2017), recently issued strong encouragement to district courts to enforce the directive of *George*.

Childress, 787 F.3d at 443 (quoting *Navejar v. Iyiola*, 718 F.3d 692, 696 (7th Cir. 2013) (*per curiam*)). Such evidence “may include any physical, intellectual, or psychological limitations the plaintiff may have, as well as the practical problems the plaintiff may encounter in gathering evidence from individuals employed by an institution in which he is no longer housed.” *Id.* (internal citations omitted).

Here, Plaintiff has been granted leave to proceed *in forma pauperis*, thus establishing that he is unable to afford counsel. Further, the United States District Court for the Northern District of Illinois appointed Plaintiff counsel prior to his case being transferred to this District, citing Plaintiff’s allegations of deliberate indifference to a serious, ongoing medical condition. (Doc. 5). This Court has no reason to disagree with the Northern District that the “guiding hand of counsel” is necessary to assist Plaintiff with determining whether he has any meritorious claims, and, if so, determining who would be a proper defendant and adequately articulating these claims in an amended complaint. *Childress*, 787 F.3d at 443. The Court is well aware of the many challenges that *pro se* prisoner litigants face when attempting to secure counsel on their own, and this Court has no reason to question the Northern District’s determination that Plaintiff would be unable to do so. (*See* Doc. 3). Further, Plaintiff claims that he has been unable to recover all of his medical records that remain in his previous appointed counsel’s possession. (Doc. 27, p. 1). In light of these considerations, the Court has decided to grant Plaintiff’s Motion (Doc. 27) and assign counsel, randomly selected through the CM-ECF system, to represent Plaintiff in this matter.

Disposition

It is **ORDERED** that Plaintiff’s Motion for Recruitment of Counsel (Doc. 27) is **GRANTED**.

It is further **ORDERED** that, for the reasons stated above, and in accordance with 28 U.S.C. § 1915(e)(1) and Local Rule(s) 83.1(i) and 83.9(b), attorney Joel S. Feldman of Sidley, Austin et al., located at One South Dearborn, Chicago, Illinois, 60603, is **ASSIGNED** to represent Plaintiff in this civil rights case. On or before **July 28, 2017**, assigned counsel shall enter his appearance in this case. Attorney Joel S. Feldman is free to share responsibilities with an associate who is also admitted to practice in this district court. Assigned counsel, however, must enter the case and shall make first contact with Plaintiff, explaining that an associate may also work on the case. Plaintiff should wait for his attorney to contact him in order to allow counsel an opportunity to review the court file.

The Clerk of Court is **DIRECTED** to transmit this Order, a copy of the docket sheet, and Doc. 23 to attorney Joel S. Feldman. The electronic case file is available through the CM-ECF system.

Now that counsel has been assigned, Plaintiff **shall not** personally file anything in this case, except a pleading that asks that he be allowed to have counsel withdraw from representation. If counsel is allowed to withdraw at the request of Plaintiff, there is no guarantee the Court will appoint other counsel to represent Plaintiff.

IT IS FURTHER ORDERED that Plaintiff, by and through counsel, has leave to file a Second Amended Complaint on or before **September 28, 2017**. The Second Amended Complaint will supersede and replace the First Amended Complaint, rendering it void. *See Flannery v. Recording Indus. Ass'n of Am.*, 354 F.3d 632, 638 n. 1 (7th Cir. 2004). *Only related claims* should be included in the new complaint. Claims found to be unrelated to one another will be severed into new cases, new case numbers will be assigned, and additional filing fees will be assessed. The Second Amended Complaint will be subject to preliminary review pursuant to 28

U.S.C. § 1915A.

IT IS FURTHER ORDERED that all pending motions filed by Plaintiff *pro se* are **DENIED** without prejudice so that assigned counsel can evaluate how to proceed.

Counsel is **ADVISED** to consult Local Rules 83.8-83.14 regarding pro bono case procedures.

Plaintiff and his counsel are **ADVISED** that, because Plaintiff is proceeding *in forma pauperis*, if there is a monetary recovery in this case (either by verdict or settlement), any unpaid out-of-pocket costs must be paid from the proceeds. *See* SDIL-LR 3.1(c)(1). If there is no recovery in the case (or the costs exceed any recovery), the Court has the discretion to reimburse expenses.

Section 2.6 of this Court's Plan for the Administration of the District Court Fund provides for a degree of reimbursement of *pro bono* counsel's out-of-pocket expenses, as funds are available. The Plan can be found on the Court's website, as well as the form motion for out-of-pocket expenses and an Authorization/Certification for Reimbursement. Any motion for reimbursement must be made within **30 days** from the entry of judgment, or reimbursement will be waived. *See* SDIL-LR 83.13. The funds available for this purpose are limited, however, and counsel should use the utmost care when incurring out-of-pocket costs. In no event will funds be reimbursed if the expenditure is found to be without a proper basis. The Court has no authority to pay attorney's fees in this case. No portion of a partial filing fee assessed pursuant to 28 U.S.C. § 1915 will be reimbursed. Assigned counsel may move for an exemption from PACER fees for this case.

The district court has entered into an agreement with attorney James P. Chapman and the Illinois Institute for Community Law to consult with lawyers on issues in these cases, including

substantive and procedural questions (both legal and practical) and dealing with the client. Mr. Chapman can be reached by phone at (312) 593-6998 or email at JamesPChapman@aol.com. His services are available to counsel free of charge, as long as counsel is representing a prisoner *pro bono* on a case in the district. Counsel is also encouraged to view online lectures presented by Mr. Chapman at www.illinoislegaladvocate.org (under “Legal Resources” then “Prisoners’ Rights”). In addition, the Court’s website, www.ilsd.uscourts.gov, includes a Prison Litigation handbook which is available as a resource. It is listed under “Forms” as “Attorney Information Prisoner Litigation Handbook.” The Court encourages appointed counsel to consult it and Mr. Chapman as needed.

As of this date, Plaintiff’s contact information is:

TONY A. DIXON, No. B-15894
Dixon Correctional Center
2600 North Brinton Ave.
Dixon, IL 61021

IT IS SO ORDERED.

DATED: July 13, 2017



NANCY J. ROSENSTENGEL
United States District Judge