

**UNITED STATES DISTRICT COURT  
 FOR THE CENTRAL DISTRICT OF ILLINOIS**

<b>LUIS VILLAVICENCO SERNA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
<b>v.</b>	)	<b>No.: 17-cv-1038-MMM</b>
	)	
<b>DR. TILDEN, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**MERIT REVIEW ORDER**

Plaintiff, proceeding pro se, pursues a § 1983 action for deliberate indifference to his serious medical needs while he was incarcerated at the Pontiac Correctional Center (“Pontiac”). The case is before the Court for a merit review pursuant to 28 U.S.C. § 1915A. In reviewing the Complaint, the Court accepts the factual allegations as true, liberally construing them in Plaintiff’s favor. *Turley v. Rednour*, 729 F.3d 645, 649-51 (7th Cir. 2013). However, conclusory statements and labels are insufficient. Enough facts must be provided to “state a claim for relief that is plausible on its face.” *Alexander v. United States*, 721 F.3d 418, 422 (7th Cir. 2013)(citation and internal quotation marks omitted). While the pleading standard does not require “detailed factual allegations”, it requires “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Wilson v. Ryker*, 451 Fed. Appx. 588, 589 (7th Cir. 2011) quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Plaintiff claims that he has been subjected to deliberate indifference to his hip pain on a continuing basis from March or April 2013, to the present. Plaintiff apparently suffered a gunshot wound to the hip and leg, prior to his incarceration. He underwent surgery on an undisclosed date and had a metal rod placed in his leg. In March or April 2013, Plaintiff began

experiencing pain at the surgical site. He describes the pain as “excruciating” and indicates that it has restricted his activities of daily living.

Plaintiff alleges that he has complained to medical director Dr. Tilden, Dr. Ojelade and Nurse Hansen since 2013. He claims that he has only been prescribed pain medication which has been ineffective and which has caused him stomach problems. On March 10, 2016, Plaintiff’s leg was x-rayed and a fracture in the implanted metal rod was found. He attaches a copy of the x-ray report which notes “... possibility of infection cannot be excluded. A follow-up study is recommended.” [ECF 1-1 p. 1]. Plaintiff alleges that despite this recommendation, he has received no follow-up care.

Plaintiff alleges all three Defendants have been deliberately indifferent in not adequately treating his pain, failing to discover the source of the pain and failing to provide a referral to a specialist. He claims compensatory and punitive damages and requests injunctive relief, that he undergo corrective surgery.

It is well established that deliberate indifference to a serious medical need is actionable as a violation of the Eighth Amendment. *Hayes v. Snyder*, 546 F.3d 516, 522 (7th Cir. 2008). A deliberate indifference must establish “(1) an objectively serious medical condition; and (2) an official's deliberate indifference to that condition.” *Arnett v. Webster*, 658 F.3d 742, 750 (7th Cir. 2011). Deliberate indifference is proven by demonstrating that a prison official knows of a substantial risk of harm to an inmate and “either acts or fails to act in disregard of that risk.” *Id.* at 751. Plaintiff states enough at this juncture to proceed on claims of deliberate indifference against Defendants Tilden, Ojelade and Hansen. Is unclear at this point, however, whether Nurse Hansen would have had the authority to refer Plaintiff to a specialist. This can be more particularly determined as the case proceeds.

**IT IS THEREFORE ORDERED:**

1. This case shall proceed solely on the deliberate indifference claims against Dr. Tilden, Dr. Ojelade and Nurse Hansen, identified herein. Any claims not identified will not be included in the case, except in the Court's discretion upon motion by a party for good cause shown, or by leave of court pursuant to Federal Rule of Civil Procedure 15.

2. Plaintiff files [4] a motion for recruitment of *pro bono* counsel but does not indicate that he attempted to secure counsel on his own. *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007) more. [4] is DENIED at this time. In the event that Plaintiff renews his motion for appointment of counsel, he is to provide copies of the letters sent to, and received from, prospective counsel.

3. The Clerk is directed to send to each Defendant pursuant to this District's internal procedures: 1) a Notice of Lawsuit and Request for Waiver of Service; 2) a Waiver of Service; 3) a copy of the Complaint; and 4) a copy of this Order.

4. If a Defendant fails to sign and return a Waiver of Service to the Clerk within 30 days after the Waiver is sent, the Court will take appropriate steps to effect formal service on that Defendant and will require that Defendant pay the full costs of formal service pursuant to Federal Rule of Civil Procedure 4(d)(2). If a Defendant no longer works at the address provided by Plaintiff, the entity for which Defendant worked at the time identified in the Complaint shall provide to the Clerk Defendant's current work address, or, if not known, Defendant's forwarding address. This information will be used only for purposes of effecting service. Documentation of forwarding addresses will be maintained only by the Clerk and shall not be maintained in the public docket nor disclosed by the Clerk.

5. Defendants shall file an answer within the prescribed by Local Rule. A Motion to Dismiss is not an answer. The answer it to include all defenses appropriate under the Federal Rules. The answer and subsequent pleadings are to address the issues and claims identified in this Order.

6. Plaintiff shall serve upon any Defendant who has been served, but who is not represented by counsel, a copy of every filing submitted by Plaintiff for consideration by the Court, and shall also file a certificate of service stating the date on which the copy was mailed. Any paper received by a District Judge or Magistrate Judge that has not been filed with the Clerk or that fails to include a required certificate of service will be stricken by the Court.

7. Once counsel has appeared for a Defendant, Plaintiff need not send copies of filings to that Defendant or to that Defendant's counsel. Instead, the Clerk will file Plaintiff's document electronically and send notice of electronic filing to defense counsel. The notice of electronic filing shall constitute notice to Defendant pursuant to Local Rule 5.3. If electronic service on Defendants is not available, Plaintiff will be notified and instructed accordingly.

8. Counsel for Defendants is hereby granted leave to depose Plaintiff at Plaintiff's place of confinement. Counsel for Defendants shall arrange the time for the depositions.

9. Plaintiff shall immediately notice the Court of any change in mailing address or phone number. The Clerk is directed to set an internal court deadline 60 days from the entry of this Order for the Court to check on the status of service and enter scheduling deadlines.

**IT IS FURTHER ORDERED THAT THE CLERK IS DIRECTED TO:**

1) ATTEMPT SERVICE ON DEFENDANTS PURSUANT TO THE STANDARD PROCEDURES; AND,

2) SET AN INTERNAL COURT DEADLINE 60 DAYS FROM THE ENTRY OF THIS ORDER FOR THE COURT TO CHECK ON THE STATUS OF SERVICE AND ENTER SCHEDULING DEADLINES.

LASTLY, IT IS ORDERED THAT IF A DEFENDANT FAILS TO SIGN AND RETURN A WAIVER OF SERVICE TO THE CLERK WITHIN 30 DAYS AFTER THE WAIVER IS SENT, THE COURT WILL TAKE APPROPRIATE STEPS TO EFFECT FORMAL SERVICE THROUGH THE U.S. MARSHAL'S SERVICE ON THAT DEFENDANT AND WILL REQUIRE THAT DEFENDANT TO PAY THE FULL COSTS OF FORMAL SERVICE PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 4(d)(2).

ENTERED: 6/22/2017

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s/Michael M. Mihm  
MICHAEL M. MIHM  
UNITED STATES DISTRICT JUDGE