

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

RAFAEL SOTO,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL NO. 10-cv-260-MJR
)	
OLUKUNLE OBADINA, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

REAGAN, District Judge:

Plaintiff, an inmate at the Pinckneyville Correctional Center, brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983. Plaintiff seeks injunctive and monetary relief for deliberate indifference to his serious medical needs. This case is now before the Court for a preliminary review of the complaint pursuant to 28 U.S.C. § 1915A, which provides:

- (a) **Screening.**— The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
- (b) **Grounds for Dismissal.**— On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—
 - (1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or
 - (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A.

An action or claim is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell*

Atlantic Corp. v. Twombly, 590 U.S. 544, 570 (2007). A complaint is plausible on its face “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). Although the Court is obligated to accept factual allegations as true, some factual allegations may be so sketchy or implausible that they fail to provide sufficient notice of a plaintiff’s claim. *Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009). Additionally, Courts “should not accept as adequate abstract recitations of the elements of a cause of action or conclusory legal statements.” *Id.* At the same time, however, the factual allegations of a *pro se* complaint are to be liberally construed. *Rodriguez v. Plymouth Ambulance Service*, 577 F.3d 816, 821 (7th Cir. 2009).

THE COMPLAINT

Plaintiff states that he only speaks and writes in Spanish. According to affidavits attached to the complaint, the instant complaint was drafted by another inmate with the assistance of a third inmate who could translate Plaintiff’s oral statements into English. According to the complaint, Plaintiff fell from his bunk striking his head on the toilet. As a result, Plaintiff suffered a large cut on his head. Additionally, Plaintiff states that his head and neck snapped back. Plaintiff was taken to a hospital and received stitches to close the cut. Plaintiff, however, contends that he is still experiencing head, neck, and shoulder pain. Although Plaintiff has requested medical attention for his head, neck, and shoulder pain, Plaintiff states that he has been denied medical care by Defendant Obadina because Obadina speaks only English and Plaintiff speaks (and writes) only in Spanish. It appears that Plaintiff asserts that there is no translator available during his visits with Defendant Obadina. Plaintiff claims he is being denied adequate medical care for his head, neck, and shoulder pain in violation of the Eighth Amendment.

DISCUSSION

The Supreme Court has recognized that “deliberate indifference to serious medical needs of prisoners” may constitute cruel and unusual punishment under the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). A deliberate indifference claim requires both an objectively serious risk of harm and a subjectively culpable state of mind. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005). As stated by the Seventh Circuit Court of Appeals:

A deliberate indifference claim premised upon inadequate medical treatment requires, to satisfy the objective element, a medical condition “that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor’s attention.” *Greeno*, 414 F.3d at 653. The subjective component of a deliberate indifference claim requires that the prison official knew of “a substantial risk of harm to the inmate and disregarded the risk.” *Id.*; *Farmer*, 511 U.S. at 834. Mere medical malpractice or a disagreement with a doctor’s medical judgment is not deliberate indifference. *Estelle v. Gamble*, 429 U.S. 97, 107 (1976); *Greeno*, 414 F.3d at 653; *Estate of Cole by Pardue v. Fromm*, 94 F.3d 254, 261 (7th Cir. 1996).

Edwards v. Snyder, 478 F.3d 827, 830-31 (7th Cir. 2007).

At first glance, Plaintiff’s complaint appears to be trying to hold Defendant Obadina liable only for not speaking Spanish. According to the complaint, Defendant Obadina did not initially provide Plaintiff with treatment because he failed to understand the extent of Plaintiff’s injuries and/or pain, not because he *did* understand Plaintiff, but chose not to treat him. A simple failure of Defendant Obadina to understand Plaintiff’s complaint would probably not rise to the level of a constitutional violation. It appears, however, that after the initial meeting with Obadina, Plaintiff (with the possible assistance of other inmates) was able to submit several medical request forms and grievances detailing his pain and contesting his lack of medical treatment for it. As such, Plaintiff’s

complaint suggests something more than a simple one-time failure to communicate. Accordingly, Defendants Obadina and Fenton will be directed to answer the complaint.

Plaintiff's claim against Defendant Schwartz, however, should be dismissed pursuant to 28 U.S.C. § 1915A. Plaintiff, and many other inmates, seem to think that any prison employee who knows (or should know) about his problems has a duty to fix those problems. That theory is in direct conflict with the well-established rule that "public employees are responsible for their own misdeeds but not for anyone else's." *Burks v. Raemisch*, 555 F.3d 592, 596 (7th Cir. 2009). *See also Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Sanville v. McCaughtry*, 266 F.3d 724, 740 (7th Cir. 2001) (doctrine of respondeat superior does not apply to § 1983 actions). As Chief Judge Easterbrook recently stated,

Public officials do not have a free-floating obligation to put things to rights, disregarding rules (such as time limits) along the way. Bureaucracies divide tasks; no prisoner is entitled to insist that one employee do another's job. The division of labor is important not only to bureaucratic organization but also to efficient performance of tasks; people who stay within their roles can get more work done, more effectively, and cannot be hit with damages under § 1983 for not being ombudsmen. Burks's view that everyone who knows about a prisoner's problem must pay damages implies that he could write letters to the Governor of Wisconsin and 999 other public officials, demand that every one of those 1,000 officials drop everything he or she is doing in order to investigate a single prisoner's claims, and then collect damages from all 1,000 recipients if the letter-writing campaign does not lead to better medical care. That can't be right. The Governor, and for that matter the Superintendent of Prisons and the Warden of each prison, is entitled to relegate to the prison's medical staff the provision of good medical care. *See Durmer v. O'Carroll*, 991 F.2d 64 (3^d Cir. 1993).

Burks, 555 F.3d at 595. Applying these principles, Plaintiff's claim against Defendant Schwartz should be dismissed pursuant to 28 U.S.C. § 1915A.

Also before the Court are Plaintiff's motion for appointment of counsel (Doc. 3) and his

motion to have the Illinois Department of Corrections (IDOC) turn over the address of Defendants Obadina and Schwartz (Doc. 4) because they are no longer employed by the IDOC.

With regard to his motion to appoint counsel (Doc. 3), there is no absolute right to appointment of counsel in a civil case. *Cook v. Bounds*, 518 F.2d 779 (4th Cir. 1975); *Santiago v. Walls*, 599 F.3d 749, 760-61 (7th Cir. 2010). When presented with a request to appoint counsel, the Court must make the following inquiries: “(1) has the ... plaintiff made a reasonable attempt to obtain counsel or effectively been precluded from doing so and (2) given the difficulty of the case, does the plaintiff appear competent to litigate it himself.” *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007). With regard to the first step of the inquiry, there is no indication that Plaintiff has attempted to obtain counsel or that he has been effectively prevented from doing so. Admittedly, Plaintiff faces a language barrier in trying to communicate with potential lawyers. But, as this complaint and Plaintiff’s grievances indicate, he has been able to communicate with non-Spanish speaking persons by utilizing the assistance of other inmates. Therefore, the Court will deny Plaintiff’s motion for appointment of counsel (Doc. 3) without prejudice.

With regard to Plaintiff’s motion to turn over addresses (Doc. 4), the Court notes that it is dismissing Plaintiff’s claims against Defendant Schwartz. Additionally, this Court’s standard order (below) already addresses the scenario posited by Plaintiff’s motion. Accordingly, Plaintiff’s motion to turn over addresses (Doc. 4) will be denied as moot.

DISPOSITION

IT IS HEREBY ORDERED that Plaintiff’s claim against Defendant Schwartz is **DISMISSED** pursuant to 28 U.S.C. § 1915A. Defendant Schwartz is also dismissed as a defendant in this case.

IT IS FURTHER ORDERED that Plaintiff's motion for appointment of counsel (Doc. 3) is **DENIED** without prejudice.

IT IS FURTHER ORDERED that Plaintiff's motion to turn over addresses (Doc. 4) is **DENIED** as moot.

The Clerk is **DIRECTED** to prepare Form 1A (Notice of Lawsuit and Request for Waiver of Service of Summons) and Form 1B (Waiver of Service of Summons) for Defendants **Obadina** and **Fenton**. The Clerk shall forward those forms, USM-285 forms submitted by Plaintiff, and sufficient copies of the complaint to the United States Marshal for service.

The United States Marshal is **DIRECTED**, pursuant to Rule 4(c)(2) of the Federal Rules of Civil Procedure, to serve process on Defendants **Obadina** and **Fenton** in the manner specified by Rule 4(d)(2) of the Federal Rules of Civil Procedure. Process in this case shall consist of the complaint, applicable forms 1A and 1B, and this Memorandum and Order. For purposes of computing the passage of time under Rule 4(d)(2), the Court and all parties will compute time as of the date it is mailed by the Marshal, as noted on the USM-285 form.

With respect to former employees of Illinois Department of Corrections who no longer can be found at the work address provided by Plaintiff, the Department of Corrections shall furnish the Marshal with the Defendant's last-known address upon issuance of a court order which states that the information shall be used only for purposes of effectuating service (or for proof of service, should a dispute arise) and any documentation of the address shall be retained only by the Marshal. Address information obtained from Illinois Department of Corrections pursuant to this order shall not be maintained in the court file, nor disclosed by the Marshal.

The United States Marshal shall file returned waivers of service as well as any requests for

waivers of service that are returned as undelivered as soon as they are received. If a waiver of service is not returned by a defendant within **THIRTY (30) DAYS** from the date of mailing the request for waiver, the United States Marshal shall:

- Request that the Clerk prepare a summons for that defendant who has not yet returned a waiver of service; the Clerk shall then prepare such summons as requested.
- Personally serve process and a copy of this Order upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c).
- Within ten days after personal service is effected, the United States Marshal shall file the return of service for the defendant, along with evidence of any attempts to secure a waiver of service of process and of the costs subsequently incurred in effecting service on said defendant. Said costs shall be enumerated on the USM-285 form and shall include the costs incurred by the Marshal's office for photocopying additional copies of the summons and complaint and for preparing new USM-285 forms, if required. Costs of service will be taxed against the personally served defendant in accordance with the provisions of Federal Rule of Civil Procedure 4(d)(2) unless the defendant shows good cause for such failure.

Plaintiff is **ORDERED** to serve upon defendant or, if appearance has been entered by counsel, upon that attorney, a copy of every further pleading or other document submitted for consideration by this Court. He shall include with the original paper to be filed with the Clerk of the Court a certificate stating the date that a true and correct copy of any document was mailed to defendant or his counsel. Any paper received by a district judge or magistrate judge which has not been filed with the Clerk or which fails to include a certificate of service will be disregarded by the Court.

Defendants are **ORDERED** to timely file an appropriate responsive pleading to the complaint, and shall not waive filing a reply pursuant to 42 U.S.C. § 1997e(g).

Pursuant to Local Rule 72.1(a)(2), this cause is **REFERRED** to a United States Magistrate Judge for further pre-trial proceedings.

Further, this entire matter is hereby **REFERRED** to a United States Magistrate Judge for disposition, as contemplated by Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *should all the parties consent to such a referral*.

Plaintiff is under a continuing obligation to keep the Clerk and each opposing party informed of any change in his whereabouts. This shall be done in writing and not later than seven (7) days after a transfer or other change in address occurs.

If Plaintiff does not comply with this Order, this case will be dismissed for failure to comply with an order of this Court. FED.R.CIV.P. 41(b); *see generally Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994).

IT IS SO ORDERED.

DATED this 18th day of October, 2010.

s/ Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge