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

MICHAEL SMITH, # K-57543,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 17-cv-189-MJR**
	)	
KIMBERLY BUTLER,	)	
JOHN DOE (Lt., West House),	)	
C/O MACDONOUGH,	)	
MENARD HCU,	)	
GAIL WALLS,	)	
DR. J. TROST,	)	
DR. RITZ,	)	
CYNTHIA L. MEYER,	)	
C/O LARRY,	)	
and WARDEN LASHBROOK,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

REAGAN, Chief District Judge:

Plaintiff, currently incarcerated at Menard Correctional Center ("Menard"), has brought this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims that several Defendants were deliberately indifferent to his medical needs after he injured his hand. Later, he was subjected to excessive force when officers refused to loosen his handcuffs, further injuring the same hand. This case is now before the Court for a preliminary review of the Complaint pursuant to 28 U.S.C. § 1915A.

Under § 1915A, the Court is required to screen prisoner complaints to filter out non-meritorious claims. *See* 28 U.S.C. § 1915A(a). The Court must dismiss any portion of the 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).

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). Frivolousness is an objective standard that refers to a claim that "no reasonable person could suppose to have any merit." *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). 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*, 550 U.S. 544, 570 (2007). The claim of entitlement to relief must cross "the line between possibility and plausibility." *Id*. at 557. Conversely, 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*, 556 U.S. 662, 678 (2009). Although the Court is obligated to accept factual allegations as true, *see Smith v. Peters*, 631 F.3d 418, 419 (7th Cir. 2011), 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. *See Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011); *Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 821 (7th Cir. 2009).

Applying these standards, the Court finds that some of Plaintiff's claims survive threshold review under § 1915A.

The Complaint

On May 30, 2016, Plaintiff severely injured his right hand while on the yard. He sought help from Officers Doe and Macdonough, but because it was nearly time for a shift change (2:20

p.m.), these officers refused to call medical staff or take Plaintiff to the health care unit. (Doc. 1, pp. 2, 9). Later on, at around 4:15 p.m., Plaintiff was taken to the health care unit, where an examination noted the hand was swollen and the pinky finger was at an awkward angle, out of its normal position. (Doc. 1-1, pp. 16-17). The delay in medical attention caused Plaintiff to suffer unnecessary pain.

Dr. Trost is a physician at Menard who saw Plaintiff on various occasions. It is not clear when Plaintiff first consulted Dr. Trost for examination or treatment of his hand injury. Trost cancelled Plaintiff's sick call pass for June 8, 2016, further delaying treatment. Plaintiff was again unable to see the doctor on June 9, 2016. (Doc. 1, p. 11; Doc. 1-1, p. 15). A nurse ordered x-rays and put a splint on Plaintiff's hand. The x-rays were to have been sent to an outside consultant, but it appears this was not done. (Doc. 1-1, p. 15). Plaintiff filed a grievance on June 19, 2016, complaining about the lack of treatment. (Doc. 1-1, pp. 14-17).

According to Plaintiff's letter complaining about officials' failure to address his grievances, Trost examined him on June 22, 2016, and noted there was still extensive swelling of the right finger, discoloration, and lack of mobility. Trost ordered more x-rays. On July 12, 2016, Trost saw him again and noted the swelling had still not subsided, and the finger was still at an awkward angle. He again ordered x-rays. (Doc. 1-1, p. 22).

Dr. Trost reviewed the x-ray results, and in a report dated July 21, 2016, concluded that the radiology results showed the hand was "normal or stable." (Doc. 1, p. 11; Doc. 1-1, p. 19). However, Plaintiff says the hand was not "normal" at that time. Dr. Trost's "misdiagnoses" delayed treatment for Plaintiff's injury. (Doc. 1, pp. 11, 20).

On July 13, 2016, Dr. Trost sought an orthopedic consult for Plaintiff, but Dr. Ritz (a doctor with Wexford Health Sources, Inc.) denied the referral request. (Doc. 1, p. 12; Doc. 1-1,

p. 21). Dr. Ritz asked for more information so the referral could be reconsidered on July 29, 2016, but failed to expedite that request. (Doc. 1, pp. 12, 20; Doc. 1-1, p. 21). Plaintiff's pain and restricted movement continued and treatment was further delayed.

Plaintiff was eventually sent for a consultation with an orthopedic specialist on September 8, 2016, and again on September 13, 2016. (Doc. 1, p. 10). The specialist concluded that the injury was serious enough to require surgical repair, but that even with surgery, his pinky finger could remain immobile or permanently disfigured. *Id.* Plaintiff states that the recommendation for surgery and other care was ignored. (Doc. 1, p. 10).

Plaintiff submitted several requests for a medical permit to allow his hands to be cuffed in the front because of his injury. However, on October 18, 2016, Dr. Trost denied Plaintiff's request for a front cuff permit. Plaintiff asserts that this permit denial was in retaliation for Plaintiff having filed a grievance against Dr. Trost.[1] (Doc. 1, p. 11; Doc. 1-1, p. 27).

On December 23, 2016, C/O Larry was on duty when Plaintiff was placed in handcuffs behind his back for a 4-hour period. (Doc. 1, p. 15). Plaintiff told Larry about his pre-existing hand injury and the fact that he had a medical permit for a finger spring/ACU-spring extension assist device (granted to him after a November 28, 2016, orthopedic consultation). (Doc. 1, pp. 15; Doc. 1-1, p. 40). Plaintiff asked Larry to loosen the restraints, or call the Health Care Unit because his fingers were becoming numb and his shoulder was burning. However, Larry refused to notify medical staff or to loosen the cuffs. As a result, Plaintiff suffered pain, swelling, and welts that persisted for several days, and the incident set back Plaintiff's physical therapy for the injured right hand. (Doc. 1, p. 16).

Meyer (Plaintiff's counselor) allegedly retaliated against Plaintiff by failing to process his

[1] Although the Complaint does not reference a specific grievance as having triggered the alleged retaliation, Plaintiff's attachments include a June 19, 2016 grievance in which he complained about Dr. Trost's failure to treat his injury. (Doc. 1-1, pp. 16-17).

grievances over the delays and lack of medical care for Plaintiff's injured hand. This retaliation was prompted by Plaintiff's actions of filing grievances and bringing a lawsuit (Case No. 15-cv-770-NJR-DGW) against Meyer's co-workers. (Doc. 1, p. 13).

Butler, the former Menard Warden, ruled that Plaintiff's "emergency" grievance filed June 17, 2016, over the lack of treatment for his hand injury, did not qualify as an emergency matter. (Doc. 1, p. 16; Doc. 1-1, pp. 16-17). As a result, Plaintiff's suffering was prolonged when treatment was further delayed. She also deemed his earlier "emergency" grievance of January 12, 2016, a non-emergency matter.

Lashbrook was the acting warden at the time Plaintiff filed the instant action and the grievances of December 2016 and January 2017. (Doc. 1, pp. 17-18). Lashbrook deemed those grievances to be non-emergencies.

Plaintiff names "Menard HCU" and Gail Walls (the Health Care Unit Administrator) as Defendants. He complains that they failed to act on his December 31, 2015, request for medical treatment for a variety of issues unrelated to the later hand injury. (Doc. 1, p. 9; Doc. 1-1, pp. 11-13). They similarly ignored two sick call requests in February 2016. As a result, Plaintiff was denied his annual physical. Later, after Plaintiff sustained the hand injury, Walls and the HCU failed to send records to the orthopedic specialist. (Doc. 1, p. 9).

Plaintiff seeks compensatory and punitive damages, as well as other non-monetary punishment of the Defendants. (Doc. 1, p. 24).

Merits Review Pursuant to 28 U.S.C. § 1915A

Based on the allegations of the Complaint, the Court finds it convenient to divide the *pro se* action into the following counts. The parties and the Court will use these designations in all future pleadings and orders, unless otherwise directed by a judicial officer of this Court. The

designation of these counts does not constitute an opinion as to their merit. Any other claim that is mentioned in the Complaint but not addressed in this Order should be considered dismissed without prejudice.

> **Count 1:** Eighth Amendment deliberate indifference claim against Macdonough and the John Doe Lieutenant, for refusing to summon medical staff after Plaintiff's hand was injured on May 30, 2016;
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> **Count 2:** Eighth Amendment deliberate indifference claim against Dr. Trost and Dr. Ritz for denying and delaying medical attention for Plaintiff's injured hand;
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> **Count 3:** Eighth Amendment deliberate indifference claim against unnamed Defendants for ignoring the orthopedic specialist's recommendations for surgery and other treatment for Plaintiff's hand injury;
>
> **Count 4:** First Amendment retaliation claim against Dr. Trost for denying Plaintiff a medical front-cuff permit after Plaintiff filed grievances against him;
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> **Count 5:** Eighth Amendment claims against C/O Larry for deliberate indifference and excessive force, for refusing to loosen Plaintiff's handcuffs or consult medical staff on December 23, 2016;
>
> **Count 6:** First Amendment retaliation claim against Meyer, for refusing to process Plaintiff's grievances after he sued her co-workers and filed grievances against her;
>
> **Count 7:** Eighth Amendment deliberate indifference claim against Butler for failing to act on Plaintiff's grievances complaining about lack of medical care after the May 30, 2016, hand injury;
>
> **Count 8:** Eighth Amendment deliberate indifference claim against Lashbrook, for failing to treat his December 2016 and January 2017 grievances as emergencies;
>
> **Count 9:** Eighth Amendment deliberate indifference claim against Menard HCU and Walls, for failing to act on Plaintiff's December 2015 and February 2016 requests for medical treatment, and failing to send records of the May 2016 hand injury to the specialist.

Portions of Counts 1, 2, 4, 5, and 7 will receive further review. However, Counts 3, 6, 8, and 9 shall be dismissed for failure to state a claim upon which relief may be granted.

Count 1 – Deliberate Indifference – Doe and Macdonough

In order to state a claim for deliberate indifference to a serious medical need, an inmate must show that he (1) suffered from an objectively serious medical condition; and (2) that the defendant was deliberately indifferent to a risk of serious harm from that condition. "A 'serious' medical need is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Gutierrez v. Peters*, 111 F.3d 1364, 1371 (7th Cir. 1997). "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. Delaying treatment may constitute deliberate indifference if such delay exacerbated the injury or unnecessarily prolonged an inmate's pain." *Gomez v. Randle*, 680 F.3d 859, 865 (7th Cir. 2012) (internal citations and quotations omitted). *See also Farmer v. Brennan*, 511 U.S. 825, 842 (1994); *Perez v. Fenoglio*, 792 F.3d 768, 777-78 (7th Cir. 2015).

Plaintiff's hand injury was immediately painful, and his description of the displaced pinky finger indicates that his condition should have been obvious to a lay person. Rather than assist Plaintiff in getting prompt medical care, Macdonough and the John Doe Lieutenant chose to take no action because of the upcoming shift change. The delay allegedly prolonged Plaintiff's suffering. At this stage of the litigation, these facts support a claim for deliberate indifference that merits further review. **Count 1** against Macdonough and the John Doe Lieutenant shall therefore proceed.

Count 2 – Drs. Trost and Ritz

As with the lay person Defendants, a deliberate indifference claim against medical professionals has both an objective and a subjective component. The Seventh Circuit considers

the following to be indications of a serious medical need: (1) where failure to treat the condition could "result in further significant injury or the unnecessary and wanton infliction of pain"; (2) "[e]xistence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment"; (3) "presence of a medical condition that significantly affects an individual's daily activities"; or (4) "the existence of chronic and substantial pain." *Gutierrez v. Peters*, 111 F.3d 1364, 1373 (7th Cir. 1997). Plaintiff's initial hand injury, and the ongoing symptoms (restricted range of movement, displacement of the finger, and pain) demonstrate that he suffered from an objectively serious condition.

Turning to the subjective factor, the Eighth Amendment does not give prisoners entitlement to "demand specific care" or "the best care possible," but only requires "reasonable measures to meet a substantial risk of serious harm." *Forbes v. Edgar*, 112 F.3d 262, 267 (7th Cir. 1997). Further, a defendant's inadvertent error, negligence or even ordinary malpractice is insufficient to rise to the level of an Eighth Amendment constitutional violation. *See Duckworth v. Ahmad*, 532 F.3d 675, 679 (7th Cir. 2008).

Plaintiff's chief complaints against Dr. Trost are that he delayed his initial examination of Plaintiff's injured hand and misdiagnosed the condition as "normal or stable." This misdiagnosis apparently undermined the attempt to obtain an orthopedic referral for Plaintiff. While the injury occurred on May 30, 2016, Plaintiff did not see a specialist until September 2016.

Immediately following Plaintiff's injury, Dr. Trost canceled a sick call pass and caused Plaintiff to miss a second appointment. Plaintiff did see a nurse, but apparently did not see Dr. Trost until June 22, 2016. Thereafter, Dr. Trost ordered several rounds of x-rays. It is not clear whether he provided any treatment for the condition. Notably, a "misdiagnosis" of a medical condition does not constitute deliberate indifference – so Dr. Trost's conclusion that Plaintiff's x-

ray results were "normal or stable" is not a violation of Plaintiff's Eighth Amendment rights. *See Duckworth*, 532 F.3d at 679. Dr. Trost's attempt to get approval for Plaintiff to see an orthopedic specialist in July 2016 also does not demonstrate deliberate indifference to his condition; just the opposite. Later on, in October 2016, Dr. Trost denied Plaintiff's request for a medical permit to have his hands cuffed in front of his body to avoid further discomfort to the injured hand. At that point, Plaintiff had seen the specialist and been given a recommendation for surgery, and apparently was still experiencing pain and other symptoms from the hand injury.

Of all these events described in Plaintiff's statement of claim, only the initial delay in Dr. Trost's examination of the injury (of approximately 3 weeks), and possibly the denial of the front-cuff permit may support a deliberate indifference claim. Accordingly, Plaintiff may proceed with his deliberate indifference claim in **Count 2** against Dr. Trost, limited to two matters: the initial delay in examination/treatment of the injury in May/June 2016, and the October 2016 denial of the front-cuff permit.

Turning to Dr. Ritz, Plaintiff states that in his capacity as a Wexford Health Sources, Inc., physician, Dr. Ritz denied the request for Plaintiff to have a consultation with an orthopedic specialist in July 2016. As of July 12, the swelling of Plaintiff's hand had still not gone down and his finger was still displaced, some 6 weeks after the injury. After further delay, the consultation was eventually approved (by whom, Plaintiff does not say). Depending on what information Dr. Ritz had regarding Plaintiff's condition, it is possible that the July 2016 refusal to refer him to a specialist could amount to deliberate indifference. Further factual development will be necessary in order to evaluate this claim. Plaintiff may therefore also proceed with his deliberate indifference claim against Dr. Ritz in **Count 2**.

Dismissal of Count 3 – Failure to Follow Specialist Recommendations

Early in his statement of claim, Plaintiff states that "Defendants ignored and disregarded the alternative care recommended by the orthopedic specialist," including the recommended surgery. (Doc. 1, p. 10). Elsewhere on that page, Plaintiff indicates that he listed the names of the individuals who violated his rights in a September 30, 2016, grievance – but that document was not included with the Complaint. Due to this omission and Plaintiff's frequent collective references to "Defendants," the Court is unable to discern which individual(s) were responsible for the decision to deny surgery and/or disregard any other recommendations made by the orthopedic specialist.

The failure to implement a specialist's recommendations may support a claim of deliberate indifference. *See Perez v. Fenoglio*, 792 F.3d 768, 777-79 (7th Cir. 2015) (prison doctor's refusal to follow treatment recommendations of outside medical specialist may constitute deliberate indifference) (7th Cir. 2015); *Gil v. Reed*, 381 F.3d 649, 662-64 (7th Cir. 2004) (prison doctor prescribed Tylenol despite surgeon's express warning to avoid that medication); *Jones v. Simek*, 193 F.3d 485, 490 (7th Cir. 1999) (prison doctor refused to follow specialists' instructions regarding inmate's treatment). However, in Plaintiff's case, the Complaint fails to state a claim upon which relief can be granted for ignoring the specialist's instructions, because it does not disclose who was at fault. Section 1983 creates a cause of action based on personal liability and predicated upon fault; thus, "to be liable under § 1983, the individual defendant must have caused or participated in a constitutional deprivation." *Pepper v. Village of Oak Park*, 430 F.3d 805, 810 (7th Cir. 2005) (internal quotations and citations omitted). In order to state a claim against a defendant, a plaintiff must describe what each named defendant did (or failed to do), that violated the plaintiff's constitutional rights.

Plaintiff may be able to cure this pleading defect in an amended complaint. However, at this juncture, **Count 3** for ignoring the specialist's recommended treatment must be dismissed without prejudice for failure to state a claim upon which relief may be granted.

Count 4 – Retaliation by Dr. Trost

As noted in the discussion of the claims in Count 2, in October 2016, Dr. Trost denied Plaintiff's request for a front-cuff medical permit. In addition to demonstrating possible deliberate indifference to a medical need, Plaintiff alleges that Dr. Trost's denial of the permit was motivated by retaliation. Plaintiff filed at least one grievance (in June 2016) over Dr. Trost's alleged failure to treat the injured hand.

Prison officials may not retaliate against inmates for filing grievances or otherwise complaining about their conditions of confinement. *See, e.g.*, *Gomez v. Randle*, 680 F.3d 859, 866 (7th Cir. 2012); *Walker v. Thompson*, 288 F.3d 1005 (7th Cir. 2002); *DeWalt v. Carter*, 224 F.3d 607 (7th Cir. 2000); *Babcock v. White*, 102 F.3d 267 (7th Cir. 1996); *Cain v. Lane*, 857 F.2d 1139 (7th Cir. 1988). Furthermore, "[a]ll that need be specified is the bare minimum facts necessary to put the defendant on notice of the claim so that he can file an answer." *Higgs v. Carver*, 286 F.3d 437, 439 (7th Cir. 2002). Naming the suit and the act of retaliation is all that is necessary to state a claim of improper retaliation. *Id.*

At issue here is whether Plaintiff experienced an adverse action that would likely deter First Amendment activity in the future, and if the First Amendment activity was "at least a motivating factor" in the Defendant's decision to take the retaliatory action. *Bridges v. Gilbert*, 557 F.3d 541, 551 (7th Cir. 2009). At this stage, Plaintiff has sufficiently pled a retaliation claim against Dr. Trost, for denying the medical permit after Plaintiff filed a grievance against this Defendant. **Count 4** may therefore proceed for further consideration against Dr. Trost.

Count 5 – Eighth Amendment Claims – C/O Larry

The incident that gave rise to the claims against C/O Larry occurred on December 23, 2016. By that time, Plaintiff had obtained a medical permit for a device (finger spring/ACU-spring extension assist) apparently designed to provide some relief for his injured hand when he was placed in handcuffs. However, it appears that this device was not used when Plaintiff was cuffed with his hands behind his back for a 4-hour period. Plaintiff told Larry of the numbness and pain he was having, and asked Larry to loosen the cuffs or contact the Health Care Unit. Larry refused both these requests. As a result, Plaintiff suffered pain and a worsening of his symptoms.

These allegations may support a claim for deliberate indifference to Plaintiff's medical condition, particularly due to the fact Plaintiff told Larry about his special permit to prevent additional harm to his injured hand. Larry, however, took no action to mitigate the risk of harm to Plaintiff from remaining in the tight handcuffs.

Additionally, the Eighth Amendment prohibits the use of excessive force against prisoners. *See Wilkins v. Gaddy*, 559 U.S. 34 (2010); *DeWalt v. Carter*, 224 F.3d 607, 619 (7th Cir. 2000). An inmate must show that the use of force "was carried out 'maliciously and sadistically' rather than as part of 'a good-faith effort to maintain or restore discipline.'" *Wilkins*, 559 U.S. at 40 (citing *Hudson v. McMillian*, 503 U.S. 1, 6 (1992)). Larry's refusal to alleviate Plaintiff's suffering caused by the prolonged restraint in handcuffs could also support a claim that he subjected Plaintiff to unconstitutional excessive force.

Plaintiff may thus proceed with his Eighth Amendment claims against Larry in **Count 5**.

Dismissal of Count 6 – Retaliation by Meyer

For this claim, Plaintiff asserts that Counselor Meyer refused to process his grievances

because he had filed grievances against her, and because he had filed a lawsuit in 2015 against other prison employees (not Meyer). The only specific grievance Plaintiff references as having triggered the "retaliation" is a grievance he filed against Meyer on January 3, 2017. (Doc. 1, p. 13). He complains that "by failing to respond to and forward/process" his grievances, she "rendered the grievance process unavailable" to him. *Id.*

This chronology of events does not plausibly support a claim that Meyer's failure to process Plaintiff's grievances was motivated by retaliation. *See Murphy v. Lane*, 833 F.2d 106, 108-09 (7th Cir. 1987) (plaintiff's complaint must "set forth a chronology of events from which retaliatory animus on the part of defendants could arguably be inferred" sufficient to overcome a motion to dismiss). The January 2017 grievance against Meyer could not have motivated her to mishandle the grievances he filed against others in 2016. Further, the Complaint makes no showing that Meyer was aware of his 2015 lawsuit against other parties, or that the 2015 suit caused Meyer to fail to process his grievances filed in June 2016 and thereafter.

Furthermore, Meyer's failure to properly process Plaintiff's grievances does not amount to the type of action that would be likely to deter Plaintiff from engaging in protected First Amendment activity in the future – which is a necessary component of a retaliation claim. *See Bridges v. Gilbert*, 557 F.3d 541, 551 (7th Cir. 2009). Plaintiff's pleading demonstrates that he is aware of the requirement to exhaust the institutional grievance procedure before he may maintain a lawsuit over the alleged violation of his constitutional rights. *See* 42 U.S.C. § 1997e(a). A prisoner must initiate a grievance and pursue it through the appeal process as far as he is able to do so in order to exhaust his administrative remedies before filing suit. Plaintiff's efforts to exhaust remedies may be relevant in the event that a Defendant raises a challenge to Plaintiff's ability to maintain a § 1983 suit over the substantive matters raised in the grievances.

See 42 U.S.C. § 1997e(a); *Pavey v. Conley*, 544 F.3d 739, 740 (7th Cir. 2008). If the process is rendered unavailable to a prisoner due to the action or inaction of prison officials, then the prisoner may be found to have complied with the exhaustion requirement. Meyer's alleged failure to process Plaintiff's grievances does not rise to the level of an "adverse action" that will support a claim for unconstitutional retaliation.

Notably, a prison official's mishandling or failure to respond to grievances does not support an independent constitutional claim. "[A] state's inmate grievance procedures do not give rise to a liberty interest protected by the Due Process Clause." *Antonelli v. Sheahan*, 81 F.3d 1422, 1430 (7th Cir. 1996). The Constitution requires no procedure at all, and the failure of state prison officials to follow their own procedures does not, of itself, violate the Constitution. *Maust v. Headley*, 959 F.2d 644, 648 (7th Cir. 1992); *Shango v. Jurich*, 681 F.2d 1091, 1100-01 (7th Cir. 1982). Thus, to the extent Plaintiff alleges that Meyer violated his due process rights by failing to properly handle his grievances, such a claim must fail.

For these reasons, the claims in **Count 6** against Meyer shall be dismissed without prejudice for failure to state a claim upon which relief may be granted.

Count 7 – Deliberate Indifference – Butler

After Plaintiff suffered the hand injury, he filed an emergency grievance on June 17, 2016, to then-Warden Butler. In the grievance, he described the injury, his symptoms, his efforts to obtain medical care, and the delays he had experienced in obtaining x-rays and an examination by the prison doctor. (Doc. 1-1, pp. 16-17). At the time the grievance was submitted, Plaintiff had not yet seen the doctor about his hand injury. Butler concluded that the grievance was not an emergency, and took no action to intervene on Plaintiff's behalf. Plaintiff asserts that Butler's failure to act on his grievance amounted to deliberate indifference to his serious medical

condition. (Doc. 1, pp. 14, 16-17).

Plaintiff also includes an earlier matter, where Butler ruled that Plaintiff's January 12, 2016, grievance was not an emergency. (Doc. 1, p. 17). That grievance had nothing to do with the hand injury, which had not yet occurred. Instead, Plaintiff raised complaints about medical staff's lack of response to his sick call requests in December 2015. The only harm Plaintiff alleges in connection with those dates is that he was denied his annual physical examination. (Doc. 1, p. 9). Plaintiff makes no allegations to indicate he suffered from an objectively serious medical condition when he filed the January 2016 grievance.

Ordinarily, when a prisoner is under the care of prison medical professionals, a non-medical prison official "will generally be justified in believing that the prisoner is in capable hands." *Arnett v. Webster*, 658 F.3d 742, 755 (7th Cir. 2011) (quoting *Spruill v. Gillis*, 372 F.3d 218, 236 (3d Cir. 2004)). As such, a non-medical official who reviews a routine grievance, but is not personally involved in providing medical care to prisoners may not be held liable for the action or inaction of the medical provider who is the subject of the complaint. However, if the content of a prisoner's grievances is sufficient to inform an administrative official of a serious medical need that medical providers are failing to address, an administrator who does not take appropriate action opens herself to potential liability for deliberate indifference. *See Perez v. Fenoglio*, 792 F.3d 768, 782 (7th Cir. 2015) (prisoner could proceed with deliberate indifference claim against non-medical prison officials who failed to intervene despite their knowledge of his serious medical condition and inadequate medical care, as explained in his "coherent and highly detailed grievances and other correspondences").

At this early stage in the suit, Plaintiff's deliberate indifference claim against Butler regarding the lack of treatment for his hand injury survives review under § 1915A, based on

Plaintiff's description of his efforts to obtain care in the June 2016 emergency grievance. However, Butler's denial of emergency review for the general medical complaints raised in Plaintiff's January 2016 grievance does not support a deliberate indifference claim. **Count 7** shall therefore proceed for further consideration, with respect to the hand injury issue only.

Dismissal of Count 8 – Deliberate Indifference – Lashbrook

Plaintiff alleges that Lashbrook was the acting warden at the time he filed the instant action, as well as when he filed his December 2016 and January 2017 grievances. The December 2016 grievance complained about Plaintiff's treatment during the 4- hour handcuffing incident on December 23, 2016. It is not clear what was included in the January 2017 grievance, as Plaintiff did not include that document with his pleading.

The Complaint does not support a deliberate indifference claim against Lashbrook on the basis of her failure to treat these grievances as emergency matters. By the time Plaintiff filed his December 2016 grievance over the excessive restraint in handcuffs, the incident was over, and there was no indication that Plaintiff's medical needs arising from the incident would not be addressed in due course. As to the January 2017 grievance, the Complaint does not include enough information for the Court to determine whether Lashbrook's action or inaction amounted to deliberate indifference.

Further, Lashbrook's position as warden or acting warden is not enough to impose liability on her for the alleged unconstitutional actions of other employees under her authority. The doctrine of *respondeat superior* (supervisory liability) is not applicable to § 1983 actions. *Sanville v. McCaughtry*, 266 F.3d 724, 740 (7th Cir. 2001) (citations omitted). Nothing in the Complaint suggests that Lashbrook was "personally responsible for the deprivation of a constitutional right" in connection with Plaintiff's December 2016 and January 2017 complaints.

See Sanville, 266 F.3d at 740.

For these reasons, **Count 8** against Lashbrook shall be dismissed for failure to state a claim upon which relief may be granted.

Dismissal of Count 9 – Deliberate Indifference – Menard HCU and Walls

Plaintiff's claims against Health Care Unit Administrator Walls and the Menard HCU are based on their failure to take action in December 2015 when Plaintiff requested treatment for his asthma, joint pain, and concerns about his prostate and colon polyp, and their failure to respond to two sick call requests in February 2016. (Doc. 1, p. 9; Doc. 1-1, pp. 11-12). He claims their inaction caused him to be denied his annual physical examination. Later, after Plaintiff's hand was injured, these Defendants failed to send records to the orthopedic specialist.

First of all, the "Menard HCU" is not amenable to suit in a civil rights action, and shall be dismissed with prejudice. The Illinois Department of Corrections is a state government agency. The Supreme Court has held that "neither a State nor its officials acting in their official capacities are 'persons' under § 1983." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989). *See also Wynn v. Southward*, 251 F.3d 588, 592 (7th Cir. 2001) (Eleventh Amendment bars suits against states in federal court for money damages); *Billman v. Ind. Dep't of Corr.*, 56 F.3d 785, 788 (7th Cir. 1995) (state Department of Corrections is immune from suit by virtue of Eleventh Amendment); *Hughes v. Joliet Corr. Ctr.*, 931 F.2d 425, 427 (7th Cir. 1991) (same). Likewise, the Menard Correctional Center and its Health Care Unit are divisions of the Illinois Department of Corrections, and are not "persons" within the meaning of the Civil Rights Act. Thus, these entities are not subject to a § 1983 suit for damages. *See Will*, 491 U.S. at 71.

As to Plaintiff's complaints against Walls based on the December 2015 and February 2016 requests for care, nothing in Plaintiff's pleadings indicates that he suffered from an

objectively serious medical condition at those times. Instead, he sought treatment for what appear to be routine medical issues that do not implicate constitutional concerns. Because the Complaint does not present any facts to suggest that Plaintiff had a medical condition in December 2015 or February 2016 which placed him at substantial risk to his health, it fails to meet the first (objective) component of an Eighth Amendment deliberate indifference claim against Walls.

Turning to the allegation that Walls did not forward medical records to the orthopedic specialist after Plaintiff's May 2016 hand injury, the Complaint similarly fails to state a constitutional claim. Plaintiff does not include any factual allegations to show that Walls' inaction caused any detriment to the process of referring him to the specialist, or affected his treatment in any way.

For these reasons, the claims in **Count 9** against Walls shall be dismissed without prejudice for failure to state a claim upon which relief may be granted. The Menard HCU shall be dismissed with prejudice as a party to this action.

Pending Motions

Plaintiff's motion for recruitment of counsel (Doc. 3) shall be referred to the United States Magistrate Judge for further consideration.

The motion for service of process at government expense (Doc. 4) is **GRANTED IN PART AND DENIED IN PART.** Service shall be ordered below on those Defendants who remain in the action. No service shall be made on the dismissed Defendants.

Disposition

COUNTS 3, 6, 8, and 9 are **DISMISSED** without prejudice for failure to state a claim upon which relief may be granted.

Defendants **WALLS, MEYER,** and **LASHBROOK** are **DISMISSED** from this action without prejudice. Defendant **MENARD HCU** is **DISMISSED** from this action with prejudice.

The Clerk of Court shall prepare for Defendants **BUTLER, MACDONOUGH, TROST, RITZ,** and **LARRY**: (1) Form 5 (Notice of a Lawsuit and Request to Waive Service of a Summons), and (2) Form 6 (Waiver of Service of Summons). The Clerk is **DIRECTED** to mail these forms, a copy of the Complaint, and this Memorandum and Order to each Defendant's place of employment as identified by Plaintiff. If a Defendant fails to sign and return the Waiver of Service of Summons (Form 6) to the Clerk within 30 days from the date the forms were sent, the Clerk shall take appropriate steps to effect formal service on that Defendant, and the Court will require that Defendant to pay the full costs of formal service, to the extent authorized by the Federal Rules of Civil Procedure.

Service shall not be made on the Unknown (John Doe Lieutenant) Defendant until such time as Plaintiff has identified him by name in a properly filed amended complaint. Plaintiff is **ADVISED** that it is Plaintiff's responsibility to provide the Court with the name and service address for this individual.

With respect to a Defendant who no longer can be found at the work address provided by Plaintiff, the employer shall furnish the Clerk with the Defendant's current work address, or, if not known, the Defendant's last-known address. This information shall be used only for sending the forms as directed above or for formally effecting service. Any documentation of the address shall be retained only by the Clerk. Address information shall not be maintained in the court file

or disclosed by the Clerk.

Plaintiff shall serve upon Defendants (or upon defense counsel once an appearance is entered), a copy of every pleading or other document submitted for consideration by the Court. Plaintiff shall include with the original paper to be filed a certificate stating the date on which a true and correct copy of the document was served on Defendants or counsel. Any paper received by a district judge or magistrate judge that has not been filed with the Clerk or that 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 action is **REFERRED** to **United States Magistrate Judge Stephen C. Williams** for further pre-trial proceedings, which shall include a determination on the pending motion for recruitment of counsel (Doc. 3).

Further, this entire matter shall be **REFERRED** to United States Magistrate Judge Williams for disposition, pursuant to Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *if all parties consent to such a referral.*

If judgment is rendered against Plaintiff, and the judgment includes the payment of costs under § 1915, Plaintiff will be required to pay the full amount of the costs, notwithstanding that his application to proceed *in forma pauperis* has been granted. *See* 28 U.S.C. § 1915(f)(2)(A).

Finally, Plaintiff is **ADVISED** that he is under a continuing obligation to keep the Clerk of Court and each opposing party informed of any change in his address; the Court will not independently investigate his whereabouts. This shall be done in writing and not later than **7 days** after a transfer or other change in address occurs. Failure to comply with this order will cause a delay in the transmission of court documents and may result in dismissal of this action

for want of prosecution. *See* FED. R. CIV. P. 41(b).

IT IS SO ORDERED.

DATED: April 10, 2017

s/ MICHAEL J. REAGAN
Chief Judge
United States District Court