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

BRIAN DEBLASIO,
B56068,

Plaintiff,

Case No. 17-cv-773-DRH

vs.

JOHN R. BALDWIN,
STEVEN DUNCAN,
JOHN COE,
WEXFORD HEALTH SOURCES,
INC., and
LAURIE CUNNINGHAM,

Defendants.

MEMORANDUM AND ORDER

HERNDON, District Judge:

Plaintiff Brian DeBlasio, currently incarcerated in Lawrence Correctional Center ("Lawrence"), brings this *pro se* action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983. According to the Complaint, Defendants have been deliberately indifferent to Plaintiff's serious medical conditions. Plaintiff names John R. Baldwin (IDOC Director), Steven Duncan (former Warden), John Coe (Treating Physician), Wexford Health Sources Inc. (Private Corporation), and Laurie Cunningham (H.C.U.A.). Plaintiff seeks monetary damages, declaratory relief, and injunctive relief. Plaintiff's request for injunctive relief includes a Motion for Preliminary Injunction (*se* Docs. 1, 2, 3).

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.

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 any reasonable person would find meritless. *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. At this juncture, the factual allegations of the *pro se* complaint are to be liberally construed. *See Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 821 (7th Cir. 2009).

Plaintiff's Complaint survives preliminary review.

The Complaint

Overview

In September of 2015, Plaintiff began experiencing chronic abdominal pain and constipation, as well as severe back pain and hypertension. (Doc. 1, p. 3). Between September

2015 and July 2016, Plaintiff's primary physician was Dr. Coe. (Doc. 1, p. 12). Plaintiff was seen by Dr. Coe on approximately 14 occasions during this time period. *Id.* The alleged constitutional violations in the Complaint arise from Dr. Coe's failure to treat and/or delayed treatment of Plaintiff's medical conditions during this time period.

Elevated Blood Pressure

On November 30, 2015, Plaintiff became dizzy and lost consciousness as a result of severe abdominal pain. (Doc. 1, p. 4). At the time of the incident, Plaintiff was examined by a nurse who observed that Plaintiff was vomiting blood and had an elevated blood pressure level of 157/108. (Doc. 1, p. 4; Doc. 1-1, pp. 3-4). Plaintiff was then transported to the emergency room at Lawrence County Memorial Hospital. (Doc. 1, p. 4; Doc. 1-1, p. 5). Plaintiff's emergency room admission papers indicate that Plaintiff was experiencing shortness of breath, bloody sputum, and abdominal pain. (Doc. 1, p. 4; Doc. 1-1, p. 5). After being admitted to the emergency department, Plaintiff was examined and treated by Dr. Andrew West. (Doc. 1, p. 4). During the examination, Dr. West ordered medication to reduce Plaintiff's elevated blood pressure. (Doc. 1, p. 4; Doc. 1-1, p. 6). Prior to discharge, Dr. West met with Plaintiff to discuss his medical condition. (Doc. 1, p. 4). Dr. West attributed Plaintiff's elevated blood pressure to Plaintiff's chronic abdominal pain and educated Plaintiff about the serious health risks associated with high blood pressure (heart attack, stroke, and kidney disease). *Id.* Dr. West discharged Plaintiff with specific orders, including two written prescriptions. *Id.* Dr. West was adamant in stressing the importance of Plaintiff reducing his blood pressure. *Id.*

On December 1, 2015, Plaintiff followed-up with Dr. Coe. (Doc. 1, p. 5). At the time of the examination, Plaintiff's blood pressure was normal. (Doc. 1, p. 5). Dr. Coe told Plaintiff that his blood pressure was normal and refused to prescribe the blood pressure medication ordered by

Dr. West. (Doc. 1, p. 5). Plaintiff told Dr. Coe his blood pressure was in the normal range because he had received intravenous blood pressure medication just 12 hours earlier when he was at the emergency room. (Doc. 1, p. 5). Dr. Coe rejected Plaintiff's explanation, threw away a copy of Dr. West's prescriptions, and told Plaintiff he would not be receiving any blood pressure medication. (Doc. 1, p. 5).

Dr. Coe continued to treat plaintiff for the next 11 months. *Id.* During this time period, Plaintiff repeatedly complained of lightheadedness and had at least 16 elevated blood pressure readings. (Doc. 1, pp. 5-7). Dr. Coe, however, refused to provide Plaintiff with blood pressure medication. (Doc. 1, pp. 5-6).

In February of 2016, Dr. Coe acknowledged that Plaintiff's blood pressure readings had been elevated since October and indicated that if the high readings continued, Plaintiff should receive medication. (Doc. 1, p. 7).

In August 2016, Plaintiff was examined by a physician's assistant, Dr. Blanchard. (Doc. 1, p. 8). Upon observing Plaintiff's blood pressure reading (150/100), Dr. Blanchard reviewed Plaintiff's medical records. *Id.* Dr. Blanchard then prescribed blood pressure medication for Plaintiff (Toprol XL, prescription issued by Dr. Blanchard for a full year and approved by Dr. Shah). *Id.* Dr. Blanchard also placed Plaintiff in the hypertension clinic. *Id.*

Severe Back Pain

On September 18, 2015, due to Plaintiff's complaints regarding severe back and abdominal pain, physician's assistant Travis James, ordered x-rays. (Doc. 1, p. 8). Dr. James suspected Plaintiff was suffering from kidney stones. *Id.* On September 21, 2015, a radiologist ("Ms. Judge") and Dr. James reviewed Plaintiff's x-rays. *Id.* The x-rays indicated that Plaintiff was suffering from a fractured thoracic vertebra. (Doc. 1, pp. 8-9). Dr. James told Plaintiff that

fracturing a vertebra would be equivalent to being struck with a baseball bat. (Doc. 1, p. 8). Dr. James ordered a back brace, Motrin 800 mg, low bunk/low gallery permit (x 3 months), and referred Plaintiff to Dr. Coe. *Id.* Additionally, Dr. James indicated that Dr. Coe would be sending Plaintiff's x-rays to an outside specialist for further review. *Id.*

During a subsequent examination, Dr. Coe told Plaintiff that his x-rays were normal and that he did not have a fracture. (Doc. 1, pp. 8-9). He told Plaintiff that the radiologist and Dr. James were wrong and should mind their own business. (Doc. 1, p. 9). Plaintiff begged Dr. Coe to review the x-ray again. (Doc. 1, p. 10). Dr. Coe stepped out of the room and returned approximately two minutes later. *Id.* At that time, he told Plaintiff the x-rays had been lost and there was nothing for Dr. Coe to review. *Id.*

Plaintiff's x-rays were sent to an outside specialist. *Id.* However, the request for review only asked the outside specialist to examine the abdominal portion of the x-ray. *Id.* It did not ask for a review of the x-ray of Plaintiff's thoracic vertebrae. *Id.*

Eventually, Dr. Coe reluctantly agreed to order additional x-rays. (Doc. 1, p. 10). However, he only ordered additional x-rays of Plaintiff's "Lumbar Spine and Right Hip." *Id.* According to Plaintiff, these x-rays would not reveal a fracture in the thoracic vertebrae. (Doc. 1, pp. 10-11).

Plaintiff had a follow-up appointment with Dr. Coe on October 26, 2015. (Doc. 1, p. 11). At that appointment, Dr. Coe refused to discuss Plaintiff's x-rays and told Plaintiff to "shut-up" about his "imaginary fracture." *Id.*

Plaintiff was treated by Dr. Coe for the following 11 months and did not receive treatment, from Dr. Coe, for his fracture. *Id.* On December 31, 2015, Dr. Coe refused to renew the back brace prescription and low bunk/low gallery permit issued by Dr. James. (Doc. 1, p. 12).

As of the filing of the instant action, other than the treatment provided by Dr. James, Plaintiff had not received treatment for his fracture. *Id.*

Chronic Abdominal Pain and Constipation

Between September 2015 and July 2016, Plaintiff was seen by Dr. Coe on approximately 14 occasions. (Doc. 1, p. 12). Plaintiff continuously complained about chronic abdominal pain. *Id.* Despite repeated promises to "investigate" Plaintiff's chronic abdominal pain, Plaintiff did not receive treatment for his condition. *Id.*

On November 14, 2015, Dr. Coe prescribed Plaintiff "Milk of Magnesia" to treat his chronic constipation. (Doc. 1, p. 14). This treatment continued for over a year. (Doc. 1, pp. 14, 16). On January 22, 2017, Dr. Lochard examined Plaintiff and discovered that Plaintiff had been ingesting "Milk of Magnesia" for over a year. (Doc. 1, p. 16). Dr. Lochard immediately discontinued the prescription, indicating that Milk of Magnesia should only be taken for a few weeks at a time because it can weaken an individual's intestinal area. *Id.* Instead, Dr. Lochard prescribed Lactulose. *Id.*

On November 19, 2015, Plaintiff was taken to the healthcare unit, via wheelchair, for severe abdominal pain. (Doc. 1, p. 13). The nurse that examined Plaintiff observed Plaintiff had a distended abdominal area and referred Plaintiff for treatment with Dr. Coe. *Id.* Dr. Coe examined Plaintiff on November 20, 2015. (Doc. 1, p. 14). Dr. Coe diagnosed Plaintiff with "abdominal pain" but failed to provide any treatment. *Id.* Dr. Coe returned Plaintiff to his housing unit with a blood pressure of 155/101. *Id.*

As noted above, on November 30, 2015, Plaintiff became dizzy and lost consciousness as a result of severe abdominal pain. (Doc. 1, p. 4). Plaintiff was treated by emergency physician,

Dr. West. *Id.* Dr. West concluded Plaintiff's abdominal pain and elevated blood pressure were connected and prescribed medication for both conditions. *Id.*

After returning from the emergency room, Plaintiff complained about his continuing abdominal pain and requested the medication Dr. West prescribed for the same. (Doc. 1, pp. 12-13). Dr. Coe refused to provide Plaintiff with the prescribed medication. *Id.* Plaintiff also informed Dr. Coe on approximately four occasions that he was passing blood in his stool. (Doc. 1, p. 14). Dr. Coe did not order any tests or provide any treatment with regard to this complaint. (Doc. 1, pp. 14-15). On December 17, 2016, Dr. Coe's predecessor tested Plaintiff's stool. (Doc. 1, p. 14). The testing revealed blood in Plaintiff's feces. *Id.*

Several members of the medical staff at Lawrence have indicated that Plaintiff needs a CT-Scan in order to properly assess his symptoms. (Doc. 1, pp. 15-16). Dr. Coe never ordered the test. *Id.* To date, Plaintiff has not received a CT-scan.

Plaintiff has also been diagnosed with an enlarged prostate and Dr. Coe has opined that Plaintiff's prostatitis could be the cause of his ongoing abdominal cramping. (Doc. 1, p. 16). In connection with this diagnosis, Plaintiff asked Dr. Coe to test for prostate cancer. *Id.* Dr. Coe refused to perform the test indicating that such a request needs to be approved by the collegial review board, is expensive, and is not within the prison's budgetary constraints. *Id.*

Claims as to Wexford and the Supervisory Defendants

Plaintiff contends that Wexford has a policy, custom, and practice of denying follow-up care and denying or delaying referrals to outside specialists. (Doc. 1, p. 17). Plaintiff contends that Defendants Baldwin, Duncan, and Cunningham were made aware of his ongoing medical issues and lack of treatment via the inmate grievance process, a direct letter writing campaign,

and phone calls from relatives. (Doc. 1, pp. 18-22). To date, Plaintiff's requests for intervention have been ignored or denied. *Id.*

Discussion

Based on the allegations of the Complaint and Plaintiff's articulation of his claims, the Court finds it convenient to divide the *pro se* action into a single count. Any other claim that is mentioned in the Complaint but not addressed in this Order should be considered dismissed without prejudice as inadequately pled under the *Twombly* pleading standard.

COUNT 1 – Defendants responded to Plaintiff's serious medical needs (chronic back and abdominal pain, chronic constipation, fractured vertebrae, and elevated blood pressure) with deliberate indifference, in violation of the Eighth Amendment.

Count 1

Elements of a Deliberate Indifference Claim

The Eighth Amendment of the United States Constitution bars the cruel and unusual punishment of prisoners, and prison officials violate this proscription "when they display deliberate indifference to serious medical needs of prisoners." *Greeno v. Daley*, 414 F.3d 645, 652-53 (7th Cir. 2005). To bring an Eighth Amendment claim, a prisoner has two hurdles to clear: he must first show that his medical condition is "objectively" serious, and he must then allege that the defendant acted with the requisite state of mind. *Jackson v. Ill. Medi-Car, Inc.*, 300 F.3d 760, 765 (7th Cir. 2002).

Objectively Serious Condition

An objectively serious condition 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." *Wynn v. Southward*, 251 F.3d 588, 593 (7th Cir. 2001). A medical condition need not be life-threatening to be serious; rather, it can be a condition that would result in further significant injury or unnecessary and wanton infliction of pain if not treated. *Gayton v. McCoy*, 593 F.3d 610, 620 (7th Cir. 2010).

Plaintiff describes numerous ongoing and painful medical conditions, including elevated blood pressure, abdominal pain, back pain, and constipation. Plaintiff's conditions have caused him to lose consciousness and vomit blood, requiring emergency treatment. Additionally, Plaintiff contends that he has blood in his stool and that x-rays indicate Plaintiff is suffering from a fractured vertebra. There is no question that Plaintiff has sufficiently alleged the existence of a serious medical condition.

Dr. Coe

"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). Deliberate indifference can also be manifested by "blatantly inappropriate" treatment, *Greeno v. Daley*, 414 F.3d 645, 654 (7th Cir. 2005), or by "woefully inadequate

action," *Cavalieri v. Shepherd*, 321 F.3d 616, 624 (7th Cir. 2003), as well as by no action at all. Finally, as is relevant here, allegations that a prison official refused to follow the advice of a medical specialist for a non-medical reason may at times constitute deliberate indifference. P*erez v. Fenoglio*, 792 F.3d 768, 778 (7th Cir. 2015).

In the instant case, the allegations suggest that Dr. Coe delayed medical treatment, provided woefully inadequate treatment, and – at times – provided no treatment at all. Additionally, the Complaint suggests that Dr. Coe may have refused recommended medical treatment for non-medical reasons. These allegations are sufficient to allow Plaintiff to proceed as to Dr. Coe.

Wexford

Wexford is a private corporation that serves as the healthcare provider for Lawrence. In the Seventh Circuit, a private corporation generally cannot be held liable under § 1983, unless it maintained an unconstitutional policy or custom. *Perez*, 792 F.3d at 780 (citing *Woodward v. Corr. Med. Servs*. of Ill., Inc., 368 F.3d 917, 927 (7th Cir. 2014)).

Here, Plaintiff contends that he was denied necessary medical care because of official cost-saving policies espoused by Wexford. Taking Plaintiff's allegations as true, Plaintiff's claim against Wexford cannot be dismissed at this time and will be subject to further review.

Baldwin, Duncan, and Cunningham

Generally, the denial of a grievance – standing alone - is not enough to violate the United States Constitution. *See George v. Abdullah*, 507 F.3d 605, 609 (7th Cir. 2007); *Owens v. Hinsley*, 635 F.3d 950, 953 (7th Cir. 2011); *Estate of Miller by Chassie v. Marberry*, 847 F.3d 425, 428-29 (7th Cir. 2017). *See also Aguilar v. Gaston-Camara,* 2017 WL 2784561, *4 (7th Cir. 2017) (the Seventh Circuit has "rejected the notion that 'everyone who knows about a prisoner's problems' will incur § 1983 liability," citing *Burks v. Raemisch,* 555 F.3d 592, 595 (7th Cir. 2009)). Further, prison officials may reasonably rely on the judgment of medical professionals. *Johnson v. Doughty*, 433 F.3d 1001, 1011 (7th Cir. 2006). *See also Berry v. Peterman,* 604 F.3d 435, 440 (7th Cir. 2010).

On the other hand, the Seventh Circuit has made it clear that "a prison official's knowledge of prison conditions learned from an inmate's communications can, under some circumstances, constitute sufficient knowledge of the conditions to require the officer to exercise his or her authority and to take the needed action to investigate and, if necessary, to rectify the offending condition." *Perez v. Fenoglio*, 792 F.3d 768, 781-82 (citing *Vance v. Peters*, 97 F.3d 987, 993 (7th Cir. 1996)). In *Perez,* the complaint, which was dismissed at screening, alleged that prison officials (1) obtained actual knowledge of the plaintiff's "objectively serious medical condition and inadequate medical care through [the plaintiff's] coherent and highly detailed grievances and other correspondences" and (2) failed "to exercise [their] authority to intervene on [the

plaintiff's] behalf to rectify the situation, suggesting they either approved of or turned a blind eye to [the plaintiff's] allegedly unconstitutional treatment." *Perez,* 792 F.3d at 782. The Appellate Court concluded that such allegations warranted further review and should not have been dismissed at screening. *Id.*

In the instant case, the Court cannot say with certainty that Baldwin, Duncan, and Cunningham are not subject to liability. Plaintiff alleges that he and his family directed numerous communications to these Defendants regarding his unconstitutional treatment, but each Defendant failed to exercise his or her authority to intervene on Plaintiff's behalf. These allegations warrant further review. As the Appellate Court noted in *Perez,* discovery may reveal that these Defendants took "took the needed action to investigate [Plaintiff's] grievances, and reasonably relied on the judgment of medical professionals." *Id.* (internal citations and quotations removed). But, "these are questions of fact that simply cannot be resolved in the absence of a record."

Accordingly, at this early stage, Count 1 shall proceed against Baldwin, Duncan, and Cunningham.

Injunctive Relief

As previously noted, Plaintiff is seeking injunctive relief. With respect to Plaintiff's request for injunctive relief, the warden is the appropriate party. *Gonzales v. Feinerman*, 663 F.3d 311, 315 (7th Cir. 2011). Accordingly, the Clerk will be directed to add Nicholas Lamb, the current warden of Lawrence, in his official capacity, for purposes of carrying out any injunctive relief that is ordered.

As to all other Defendants, to the extent that any claims have been allowed to proceed, they go forward against these Defendants in their individual capacities only.

Pending Motions

Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* (Doc. 4) shall be addressed in a separate Order of this Court.

For purposes of determining how service of process shall proceed, however, the Court observes that Plaintiff appears to qualify for pauper status. Accordingly, service of summons and the Complaint will be effected at government expense. *See* 28 U.S.C. § 1915(d). The Clerk shall be directed to **TERMINATE** Plaintiff's Motion for Service of Process at Government Expense (Doc. 6) as **MOOT**.

Plaintiff's Motion for Preliminary Injunction (Docs. 2, 3) shall be **REFERRED** to a United States Magistrate Judge for prompt disposition.

Plaintiff's Motion for Recruitment of Counsel (Doc. 5) shall be **REFERRED** to a United States Magistrate Judge for disposition.

Disposition

The **Clerk** is **DIRECTED** to add **NICHOLAS LAMB, the warden of LAWRENCE**, in his official capacity, for purposes of carrying out any injunctive relief that is ordered.

IT IS HEREBY ORDERED that the Complaint shall receive further review.

The Clerk of the Court shall prepare for Defendants **BALDWIN, DUNCAN, COE, WEXFORD, CUNNINGHAM,** and **LAMB:** (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.

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.

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 a **United States Magistrate** for further pre-trial proceedings, including Plaintiff's Motion for a Preliminary Injunction (Docs. 1, 2, and 3) and Plaintiff's Motion for Recruitment of Counsel (Doc. 5). Further, this entire matter shall be **REFERRED**

to a **United States Magistrate** 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, regardless of the fact that his application to proceed *in forma pauperis* has been granted. *See* 28 U.S.C. § 1915(f)(2)(A).

Plaintiff is **ADVISED** that at the time application was made under 28 U.S.C. § 1915 for leave to commence this civil action without being required to prepay fees and costs or give security for the same, the applicant and his or her attorney were deemed to have entered into a stipulation that the recovery, if any, secured in the action shall be paid to the Clerk of the Court, who shall pay therefrom all unpaid costs taxed against Plaintiff and remit the balance to Plaintiff. Local Rule 3.1(c)(1).

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: July 27, 2017

Digitally signed by Judge David R. Herndon
Date: 2017.07.27 14:19:29 -05'00'

United States District Judge