

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA**

DOUGLAS BREINER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO. 2:15-CV-136-TLS
	)	
STEVEN KLOSOWSKI, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**OPINION AND ORDER**

Douglas Breiner, a *pro se* prisoner, filed a Complaint [ECF No. 1] attempting to join three distinct groups of claims and sixteen defendants in a single case. His first set of claims are related to his inmate job and its connected time-cut program. His second set of claims are related to the charges, proceedings, and sanctions imposed during a prison disciplinary hearing. His third set of claims are related to his medical treatment. Though it is possible to join more than one claim and more than one defendant in a single lawsuit, “[u]nrelated claims against different defendants belong in different suits.” *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). “A buckshot complaint . . . say, a suit complaining that A defrauded the plaintiff, B defamed him, C punched him, D failed to pay a debt, and E infringed his copyright, all in different transactions—should be rejected . . .” *Id.*

Breiner argues that the three groups of claims are related because his health has suffered as a result of the stress caused by losing his job, not getting a time-cut, and being disciplined. However, because almost every event giving rise to a lawsuit is stressful, if this were the standard for determining whether claims were related, then it would be hard to imagine any claim that could not be joined with a medical claim. Though certainly some medical claims are proximately

related to other claims (*e.g.*, the denial of medical treatment for injuries sustained in an assault), here, Breiner has not presented any plausible explanation for how his employment and disciplinary claims are in any way related to his claim that he is being denied medical treatment for a renal stone in his left kidney. Therefore, Breiner cannot proceed on these three separate groups of claims in a single lawsuit.

When a prisoner files a case containing unrelated claims, it is the usual practice of this Court to afford the inmate time to file an amended complaint containing only the related claims that he wants to bring in that case. He is then provided with additional Prisoner Complaint packets so that he can file other lawsuits if he wants to pursue his other unrelated claims. However, in this case, Breiner has filed a Motion for a Preliminary Injunction [ECF No. 3] seeking pain medication and the surgical removal of his renal stones. As such, it is clear that he wants to proceed on his medical claims in this case. Therefore, the non-medical claims will be dismissed and the Clerk will send Breiner two Prisoner Complaint packets so that he can pursue those claims in separate lawsuits if he chooses to do so.

Though Breiner states that he earned a Juris Doctor degree from the University of Arkansas at Little Rock in June 2002, he makes no mention of currently (or previously) being licensed to practice law. Therefore, despite his high level of legal education, the Court will review the Complaint as one filed by a *pro se* prisoner. “A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal quotation marks and citations omitted). However, pursuant to 28 U.S.C. § 1915A, the Court must review the merits of a prisoner complaint and dismiss it if the action is frivolous or

malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief.

Breiner alleges that he has a renal stone in his left kidney. He alleges that it—and the treatment he has received for it—cause him intense pain. He alleges that sometime in 2014, he was prescribed a supply of sixty (60) low-level pain killers, but that it has not been renewed. He alleges that he has purchased aspirin and non-aspirin pain killers from the commissary, but that they are ineffective. He is suing Dr. Timothy Barth, Dr. Liaw, and Nurse Practitioner Kathryn Wallace for having denied him pain medication in violation of the Eighth Amendment.

“For a medical professional to be liable for deliberate indifference to an inmate’s medical needs, he must make a decision that represents such a substantial departure from accepted professional judgment, practice, or standards, as to demonstrate that the person responsible actually did not base the decision on such a judgment.” *Jackson v. Kotter*, 541 F.3d 688, 697 (7th Cir. 2008) (internal quotation marks and citations omitted). Prisoners are “not entitled to demand specific care[, nor are they] entitled to the best care possible.” *Forbes v. Edgar*, 112 F.3d 262, 267 (7th Cir.1997). Mere disagreement with a medical professional does not state a claim, *Ciarpaglini v. Saini*, 352 F.3d 328, 331 (7th Cir. 2003), and even medical malpractice does not state a claim of deliberate indifference. *Walker v. Peters*, 233 F.3d 494 (7th Cir. 2000). “Whether and how pain associated with medical treatment should be mitigated is for doctors to decide free from judicial interference, except in the most extreme situations.” *Snipes v. DeTella*, 95 F.3d 586, 592 (7th Cir. 1996). Though it is unclear whether Breiner’s circumstances are one of the rare, extreme cases where the decision of medical professionals in regard to his pain medications

warrants judicial intervention, giving him the benefit of the inferences to which he is entitled at this stage of the proceeding, he has plausibly made such an allegation.

Next, Breiner alleges that Dr. Ransone's treatment of his renal stones did not comply with the medical standard of care. He is suing Dr. Ransone for medical malpractice. However, before filing a medical malpractice lawsuit, the claim must first have been reviewed by a Medical Review Panel as required by Indiana Code 34-18-8-4. Here, Breiner has not plausibly alleged that his claim against Dr. Ransone has been reviewed by a Medical Review Panel. Therefore, it will be dismissed.

Breiner alleges that on March 12, 2015, he was seen by Dr. Thomas Gardner (an outside physician) who told him he would be scheduled for follow up treatment. He alleges that Health Services Director Rose Vaisvilas and Medical Contract Monitor Anthony Hobbs are responsible for scheduling medical appointments and contracting with outside medical providers. Because he has not yet had a follow up visit, Breiner speculates that Vaisvilas and Hobbs have delayed the surgical extraction of his renal stone. However, neither of them work for Dr. Gardner and Breiner gives no indication that any doctor at the prison has referred him for additional outside treatment. A complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility 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) (citing *Twombly*, 550 U.S. at 556). "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Twombly*, 550 U.S. at 555 (internal quotation

marks, citations, and footnote omitted). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not shown—that the pleader is entitled to relief.” *Iqbal*, 556 U.S. at 679 (quotation marks and brackets omitted). Such is the case here. Breiner has not alleged that any of the medical providers at the prison have authorized surgery at an outside facility and authorized Vaisvilas or Hobbs to schedule it. Thus, the Plaintiff’s claims that Vaisvilas and Hobbs are delaying his medical treatment are mere speculation and will be dismissed. Nevertheless, based on a liberal reading of the complaint, it is reasonable to infer that he is alleging that Dr. Timothy Barth, Dr. Liaw, and Nurse Practitioner Kathryn Wallace are denying him medical treatment by not authorizing necessary surgery. Therefore, he will be granted leave to proceed against those three medical providers based on that claim.

Breiner also sues Corizon Medical Services. He alleges that it employs unqualified staff. However, “a private corporation is not vicariously liable under § 1983 for its employees’ deprivations of others’ civil rights.” *Johnson v. Dossey*, 515 F.3d 778, 782 (7th Cir. 2008) (internal quotation marks omitted). He speculates that it has policies that interfere with adequate medical care, but he has not identified, described, or explained any of those policies. “[A] plaintiff must do better than putting a few words on paper that, in the hands of an imaginative reader, *might* suggest that something has happened to her that *might* be redressed by the law.” *Swanson v. Citibank, N.A.*, 614 F.3d 400, 403 (7th Cir. 2010) (emphasis in original). Here, Breiner has not plausibly stated a claim against Corizon Medical Services.

After he filed his complaint, Breiner filed a motion for a preliminary injunction asking for the removal of his renal stones and for pain medication. “[A] preliminary injunction is an

extraordinary and drastic remedy; it is never awarded as of right.” *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008) (internal quotation marks and citations omitted). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). Moreover, [a]n injunction, like any “enforcement action,” may be entered only against a litigant, that is, a party that has been served and is under the jurisdiction of the district court. *Lake Shore Asset Mgmt., Ltd. v. Commodity Futures Trading Comm’n*, 511 F.3d 762, 767 (7th Cir. 2007); see also *Audio Enters., Inc. v. B & W Loudspeakers*, 957 F.2d 406, 410 (7th Cir. 1992) (vacating preliminary injunction because defendant had not been served); *Maddox v. Wexford Health Sources, Inc.*, 528 Fed. Appx. 669 (7th Cir. 2013).

Here, though Breiner’s allegations state a claim for injunctive relief, he has not provided the court with sufficient documentation to warrant a preliminary injunction. Additionally, until the Defendants are served, there is no one against whom to issue an injunction.

For the foregoing reasons, the Court:

(1) **GRANTS** Douglas Breiner leave to proceed against Dr. Timothy Barth, Dr. Liaw, and Nurse Practitioner Kathryn Wallace in their individual capacities for compensatory and punitive damages for denying him authorization for the surgical removal of his renal stones, as well as pain medication for the same condition, in violation of the Eighth Amendment;

(2) **GRANTS** Douglas Breiner, leave to proceed against Dr. Timothy Barth, Dr. Liaw, and Nurse Practitioner Kathryn Wallace for injunctive relief to obtain authorization for the removal of his renal stones and for pain medication for the same condition;

(3) **DISMISSES** all other claims without prejudice;

(4) **DISMISSES** co-Defendants Steven Klosowski, Charles Whelan, Kristen Kearby, Christina Vorrier, Mark Sevier, Dr. Ransone, Rose Vaisvilas, Anthony Hobbs, Robert Bugher, Bruce Lemmon, John Nally, Grace College Inc., and Corizon Medical Services from the case;

(5) **DIRECTS** the Clerk to send Douglas Breiner two blank Prisoner Complaint packets;

(6) **DENIES** the motion for preliminary injunction [ECF No. 3];

(7) **DIRECTS** the Clerk to transmit the summons and USM-285 for Dr. Timothy Barth, Dr. Liaw, and Nurse Practitioner Kathryn Wallace to the United States Marshals Service along with a copy of the Complaint and this Order;

(8) **DIRECTS** the United States Marshals Service, pursuant to 28 U.S.C. § 1915(d), to effect service of process on Dr. Timothy Barth, Dr. Liaw, and Nurse Practitioner Kathryn Wallace by June 8, 2015;

(9) **ORDERS**, pursuant to 42 U.S.C. § 1997e(g)(2), that Dr. Timothy Barth, Dr. Liaw, and Nurse Practitioner Kathryn Wallace respond, as provided for in the Federal Rules of Civil Procedure and N.D. Ind. L.R. 10-1(b), only to the claims for which the plaintiff has been granted leave to proceed in this screening order; and

(10) **ORDERS** Dr. Timothy Barth, Dr. Liaw, and Nurse Practitioner Kathryn Wallace to serve on Douglas Breiner and file under seal a statement, by June 30, 2015, describing Douglas Breiner's medical condition and what treatment he is receiving along with copies of his pertinent medical records. If Douglas Breiner is scheduled for future medical treatment, for security reasons, that information may be filed with the Court under seal without serving Douglas Breiner with a copy.

SO ORDERED on May 1, 2015.

s/ Theresa L. Springmann  
THERESA L. SPRINGMANN  
UNITED STATES DISTRICT COURT  
FORT WAYNE DIVISION