

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

TONY TOOMBS,)	
)	
Plaintiff,)	
)	
vs.)	No. 1:17-cv-03359-WTL-MJD
)	
PAUL TALBOT Dr.,)	
WEXFORD HEALTH SOURCE INC,)	
)	
Defendants.)	

Entry Screening Complaint and Directing Further Proceedings

I. Screening Standard

Plaintiff Tony Toombs is a prisoner currently incarcerated at the Pendleton Correctional Facility. Because the plaintiff is a “prisoner” as defined by 28 U.S.C. § 1915(h), this Court has an obligation under 28 U.S.C. § 1915A(b) to screen his complaint before service on the defendants. Pursuant to 28 U.S.C. § 1915A(b), the Court must dismiss the complaint if it is frivolous or malicious, fails to state a claim for relief, or seeks monetary relief against a defendant who is immune from such relief. In determining whether the complaint states a claim, the Court applies the same standard as when addressing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Lagerstrom v. Kingston*, 463 F.3d 621, 624 (7th Cir. 2006). To survive dismissal,

[the] complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. 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). Pro se complaints such as that filed by the plaintiff are construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. *Obrieht v. Raemisch*, 517 F.3d 489, 491 n.2 (7th Cir. 2008).

II. The Complaint

Toombs alleges in the complaint that the defendants have denied him testing, pain medication, and necessary treatment for kidney stones.

III. Discussion of Claims

Applying the screening standard to the factual allegations in the complaint certain claims are dismissed while other claims shall proceed as submitted.

First, Toombs's claims against Wexford Health Sources, Inc. must be **dismissed** because this defendants is not vicariously liable under 42 U.S.C. § 1983 for the alleged misdeeds of its employees, but if the injury alleged is the result of a policy or practice. *Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816 (7th Cir. 2009). No assertion of that nature is present in the compendious second amended complaint.

The claims that Paul Talbot has failed to test or treat Toombs's kidney stones and failed to provide him with adequate pain medication **shall proceed** as a claim that Dr. Talbot has exhibited deliberate indifference to Toombs's serious medical needs in violation of his Eighth Amendment rights.

This summary of remaining claims includes all of the viable claims identified by the Court. All other claims have been dismissed. If the plaintiff believes that additional claims were alleged in the complaint, but not identified by the Court he shall have **through December 29, 2017**, in which to identify those claims.

IV. Duty to Update Address

The pro se plaintiff shall report any change of address within ten (10) days of any change. The Court must be able to locate the plaintiff to communicate with him. If the plaintiff fails to keep the Court informed of his or her current address, the action may be subject to dismissal for failure to comply with Court orders and failure to prosecute.

V. Service of Process

The **clerk is designated** pursuant to *Fed. R. Civ. P. 4(c)(3)* to issue process to defendant Dr. Paul Talbot in the manner specified by Rule 4(d). Wexford Health Sources is **terminated** as a defendant. Process shall consist of the complaint, applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of Service of Summons), and this Entry.

IT IS SO ORDERED.

Date: 11/28/17

Distribution

Tony Toombs
913171
Pendleton Correctional Facility
4490 West Reformatory Road
PENDLETON, IN 46064

Dr. Paul Talbot
MEDICAL EMPLOYEE
Pendleton Correctional Facility
4490 West Reformatory Road
PENDLETON, IN 46064

Courtesy Copy to:

Douglass Bitner
Katz, Korin, Cunningham
334 North Senate Avenue
Indianapolis, IN 46204-1708



Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana