

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

TIMOTHY KIRK FRYE,)
Plaintiff,)
vs.)
INDIANA DEPARTMENT OF)
CORRECTION,)
CORIZON HEALTH, INC.,)
STANLEY KNIGHT Superintendent)
Putnamville Correction Facility,)
BRIAN SMITH Superintendent Putnamville)
Correction Facility,)
TIM PHEGLEY Assistant Superintendent)
Correction Facility,)
MIKE RAINES Assistant Superintendent)
Correction Facility,)
DR. MICHAEL ALUKER Corizon Health)
Staff,)
Dr. CARL KUENZLI Corizon Health Staff,)
Dr. BRYAN BULLER Corizon Health Staff,)
Dr. RICHARD HINCHMAN Corizon Health)
Staff,)
Defendants.)

Entry Discussing Complaint, Dismissing Insufficient Claims, and Directing Service of Process

I. Screening

The complaint filed by plaintiff Timothy Kirk Frye on January 27, 2017, is subject to screening under 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. *Id.*

Mr. Frye is an inmate at the Putnamville Industrial Facility (“Putnamville”), an Indiana prison. He brings this civil rights action pursuant to 42 U.S.C. § 1983. He names ten defendants:

1) Indiana Department of Correction (“IDOC”); 2) Corizon Health, Inc. (“Corizon”); 3) Superintendent Stanley Knight; 4) Superintendent Brian Smith; 5) Assistant Superintendent Tim Phegley; 6) Assistant Superintendent Mike Raines; 7) Dr. Richard L. Hinchman; 8) Dr. Michael Aluker; 9) Dr. Carl Kuenzli; and 10) Dr. Bryan Buller. He seeks compensatory damages and injunctive relief.

Any claim for damages against the IDOC is **dismissed for failure to state a claim upon which relief can be granted** because the State or a state agency is not a “person” under § 1983 and cannot be sued in federal court due to Indiana’s Eleventh Amendment immunity. *See Kentucky v. Graham*, 473 U.S. 159, 166 (1985); *Omosegbon v. Wells*, 335 F.3d 668, 673 (7th Cir. 2003); *Billman v. Indiana Dept. of Corrections*, 56 F.3d 785, 788 (7th Cir. 1995).

Mr. Frye alleges that the former and current superintendents, Stanley Knight and Brian Smith, were responsible for overseeing all departments at Putnamville, but they failed to make sure Corizon was doing what it should have been doing. Mr. Frye alleges that these defendants failed to reverse/oversee the denial of an MRI of his brain. These claims are brought based on these defendants’ supervisory positions. “Liability depends on each defendant’s knowledge and actions, not on the knowledge or actions of persons they supervise.” *Burks v. Raemsich*, 555 F.3d 592, 594 (7th Cir. 2009). Merely naming supervisors or high level officials as defendants who did not participate in or direct or consent to the constitutional violation does not state a viable claim because *respondeat superior* is not sufficient to support a § 1983 claim. *See Childress v. Walker*, 787 F.3d 433, 439-40 (7th Cir. 2015); *Gayton v. McCoy*, 593 F.3d 610, 622 (7th Cir. 2010) (“It is well established that there is no *respondeat superior* liability under § 1983.”); *Harper v. Albert*, 400 F.3d 1052, 1065 (7th Cir. 2005). The medical defendants will be proper defendants against whom Mr. Frye can bring any deliberate indifference claims in this action.

The claim against Superintendent Stanley Knight and Superintendent Brian Smith are **dismissed for failure to state a claim upon which relief can be granted.**

The claims against former and current assistant superintendents, Tim Phegley and Mike Raines, are alleged to have done “inappropriate actions on purpose” to prevent offenders from submitting grievances. If a prison official ignores, mishandles, or denies a prisoner’s grievance, but did not cause or otherwise participate in the underlying conduct, that does not state a claim under § 1983. *Owens v. Hinsley*, 635 F.3d 950, 953 (7th Cir. 2011); *see also George v. Smith*, 507 F.3d 605, 609 (7th Cir. 2007) (“Only persons who cause or participate in the [Constitutional] violations are responsible. Ruling against a prisoner on an administrative complaint does not cause or contribute to the violation.”) (internal citations omitted). The claims against Assistant Superintendent Tim Phegley and Assistant Superintendent Mike Raines are **dismissed for failure to state a claim upon which relief can be granted.**

Mr. Frye’s allegations are construed as a policy and practice claim against Corizon. He alleges that although he has a number of serious medical conditions, Corizon denies or delays treatment because of costs. The claim against Corizon falls within the scope of the Eighth Amendment to the United States Constitution and shall proceed.

Mr. Frye alleges that during his incarceration at Putnamville he suffered from impairments of the pancreas, liver, spleen, lungs and lymph node systems. Defendants Dr. Richard L. Hinchman, Dr. Michael Aluker, Dr. Carl Kuenzli, and Dr. Bryan Buller all were responsible for Mr. Frye’s treatment at various times. This screening Entry does not set forth all of the specifics set forth in Mr. Frye’s detailed 15-page complaint, but the Court concludes that the claims against the medical defendants shall proceed. Dr. Hinchman allegedly failed to follow up on CT and Pet scans. Dr. Aluker allegedly failed to allow Mr. Frye to see a specialist for

follow up treatment. Dr. Kuenzli allegedly stopped Mr. Frye from receiving prescribed medications. Dr. Buller allegedly denied Mr. Frye any pain medication after surgeries. Mr. Frye alleges that although he did have some surgeries, other diagnostic testing and treatments were denied and delayed, thus resulting in worsening conditions. In sum, the complaint states a claim of deliberate indifference to serious medical needs against Corizon employee defendants Dr. Richard L. Hinchman, Dr. Michael Aluker, Dr. Carl Kuenzli, and Dr. Bryan Buller.

No partial final judgment shall issue regarding the claims dismissed in this Entry.

II. Service of Process

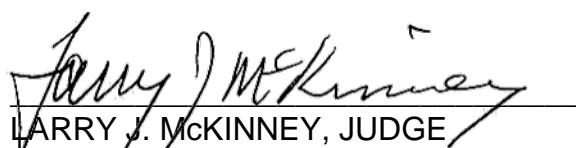
The clerk is designated pursuant to *Fed. R. Civ. P.* 4(c) to issue process to defendants Corizon Health, Inc., Dr. Richard L. Hinchman, Dr. Michael Aluker, Dr. Carl Kuenzli, and Dr. Bryan Buller in the manner specified by Rule 4(d). Process shall consist of the complaint filed on January 27, 2017 (docket 2), applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of Service of Summons), and this Entry.

The plaintiff shall report any changes of address within seven (7) days. He also continues to have **through March 3, 2017**, in which to pay to the Clerk the initial partial filing fee of \$30.93.

The clerk shall **update the docket** to reflect the **dismissal** of the claims against the Indiana Department of Correction, Superintendent Stanley Knight, Superintendent Brian Smith, Assistant Superintendent Tim Phegley, and Assistant Superintendent Mike Raines

IT IS SO ORDERED.

Date: 2/1/2017



LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

NOTE TO CLERK: PROCESSING THIS DOCUMENT REQUIRES ACTIONS IN ADDITION TO DOCKETING AND DISTRIBUTION.

Distribution:

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