

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT OWENSBORO  
CIVIL ACTION NO. 4:20CV-P87-JHM**

**PHILLIP VELASQUEZ**

**PLAINTIFF**

**v.**

**WHITLEY ADAMS**

**DEFENDANT**

**MEMORANDUM OPINION AND ORDER**

Plaintiff Phillip Velasquez filed the instant pro se 42 U.S.C. § 1983 action proceeding in forma pauperis. This matter is before the Court on an initial review of the action pursuant to 28 U.S.C. § 1915A.<sup>1</sup> For the reasons set forth below, the Court will dismiss the official-capacity claim against Defendant and give Plaintiff an opportunity to amend his complaint.

Plaintiff, a convicted inmate at the Hopkins County Jail (HCJ), sues Whitley Adams, a nurse at the HCJ, in his or her official capacity only. Plaintiff alleges that he swallowed a razor blade, has been spitting up blood, and has been denied medical treatment.

“Official-capacity suits . . . ‘generally represent [] another way of pleading an action against an entity of which an officer is an agent.’” *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (quoting *See Monell v. New York City Dep’t of Soc. Servs.*, 436 U.S. 658, 690 n.55 (1978)). Suing employees in their official capacities is the equivalent of suing their employer. *Lambert v. Hartman*, 517 F.3d 433, 439-40 (6th Cir. 2008); *Matthews v. Jones*, 35 F.3d 1046, 1049 (6th Cir. 1994); *Smallwood v. Jefferson Cty. Gov’t*, 743 F. Supp. at 503. Therefore, the

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<sup>1</sup>When a prisoner initiates a civil action seeking redress from a governmental entity, officer, or employee, the trial court must review the complaint and dismiss the complaint, or any portion of it, if the court determines that the complaint is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. See § 1915A(b)(1), (2); *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199 (2007).

Court construes Plaintiff's official-capacity claim against Defendant as a claim against Hopkins County.

When a § 1983 claim is made against a municipality, this Court must analyze two distinct issues: (1) whether Plaintiff's harm was caused by a constitutional violation; and (2) if so, whether the municipality is responsible for that violation. *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 120 (1992). In regards to the second prong, a municipality cannot be held responsible for a constitutional deprivation unless there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation. *Monell*, 436 U.S. at 691; *Deaton v. Montgomery Cty., Ohio*, 989 F.2d 885, 889 (6th Cir. 1993). To demonstrate municipal liability, a plaintiff "must (1) identify the municipal policy or custom, (2) connect the policy to the municipality, and (3) show that his particular injury was incurred due to execution of that policy." *Alkire v. Irving*, 330 F.3d 802, 815 (6th Cir. 2003) (citing *Garner v. Memphis Police Dep't*, 8 F.3d 358, 364 (6th Cir. 1993)). The policy or custom "must be 'the moving force of the constitutional violation' in order to establish the liability of a government body under § 1983." *Searcy v. City of Dayton*, 38 F.3d 282, 286 (6th Cir. 1994) (quoting *Polk Cty. v. Dodson*, 454 U.S. 312, 326 (1981) (citation omitted)).

In the instant case, Plaintiff alleges that he has been denied medical treatment. However, he does not allege that any action or inaction occurred as a result of a policy or custom implemented or endorsed by Hopkins County. Accordingly, Plaintiff's official-capacity claim against Defendant must be dismissed for failure to state a claim upon which relief may be granted.

However, before dismissing the action on this basis, the Court will allow Plaintiff to file an amended complaint suing Defendant in his or her individual capacity. See *LaFountain v.*

Harry, 716 F.3d 944, 951 (6th Cir. 2013) (“[U]nder Rule 15(a) a district court can allow a plaintiff to amend his complaint even when the complaint is subject to dismissal under the PLRA [Prison Litigation Reform Act].”).

For the reasons set forth herein, and the Court being otherwise sufficiently advised,

**IT IS ORDERED** that Plaintiff’s official-capacity claim against Defendant is **DISMISSED** pursuant to 28 U.S.C. § 1915A(b)(1) for failure to state a claim upon which relief may be granted.

**IT IS FURTHER ORDERED** that within **30 days** from the entry date of this Memorandum Opinion and Order, **Plaintiff may file an amended complaint** suing Defendant in his or her individual capacity.

The Clerk of Court is **DIRECTED** to place this case number and word “Amended” on a § 1983 complaint form and send it to Plaintiff for his use.

**Plaintiff is WARNED that should he fail to file an amended complaint within 30 days, the Court will enter an Order dismissing the action for the reasons stated herein.**

Date: June 25, 2020

  
Joseph H. McKinley Jr., Senior Judge  
United States District Court

cc: Plaintiff, pro se  
Defendant  
Hopkins County Jailer Mike Lewis  
Hopkins County Attorney  
4414.010