

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 2, 2024*

Decided December 16, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 24-2362

JOSHUA BEAN,
Plaintiff-Appellant,

v.

NANCY MARTHAKIS, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Northern District of Indiana,
South Bend Division.

No. 3:24-CV-142-DRL-MGG

Damon R. Leichty,
Judge.

ORDER

Joshua Bean, a prisoner at the Indiana State Prison, suffers from persistent chest pain and other symptoms for which, he alleges, he has received virtually no medical

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

treatment despite multiple complaints. He sued several medical providers employed by Centurion Health, the medical-services contractor for the Indiana Department of Correction. He alleged that, in violation of his rights under the Eighth and First Amendments, *see* 42 U.S.C. § 1983, the providers acted with deliberate indifference to his serious medical needs and punished him for persistently requesting treatment and complaining about their indifference. The district court dismissed the complaint at screening under 28 U.S.C. § 1915A. We agree with the court that Bean’s complaint does not state any plausible claim for relief, and so, we affirm the judgment.

When reviewing a dismissal at screening for failure to state a claim, we accept the factual allegations in the complaint as true and view them in the light most favorable to the plaintiff. *Santiago v. Walls*, 599 F.3d 749, 756 (7th Cir. 2010). In July 2022, Bean began experiencing chest pain, which worsened over several months. On October 11, he reported his pain to Dr. Nancy Marthakis, and she prescribed a steroid, prednisone. On December 29, when Bean again reported “severe heart pain,” Marthakis prescribed cholesterol-lowering medication.

On January 13, 2023, Kimberly Pflughaupt, an advanced practice registered nurse, submitted a specialty referral for Bean to see a cardiologist outside the prison. But on January 30, Dr. Wilks (whose first name is not in the record), a member of Centurion’s advisory review committee, denied the referral and instead recommended a stress echocardiogram for Bean. On March 24, Bean sent letters to Wilks and Centurion’s medical director, who Bean believes was Dr. Stephanie Riley. The letters explained that he was suffering from heart pain and needed to see a cardiologist. Bean received no response.

On May 4, Bean consulted with Diane Thews, another advanced practice registered nurse, and reported his persistent chest pain. Thews responded that if Bean continued to request treatment, she would discontinue his antidepressant prescription. On July 18, after Bean reported dizziness and chest pain, Dr. Marthakis considered that his symptoms were attributable to his antidepressants, and shortly thereafter, ordered his psychiatrist to suspend that prescription for a month. Ultimately, the psychiatrist determined that the symptoms were not attributable to that prescription. Later, on September 27, Thews asked the psychiatrist to withdraw that medication again, although Bean does not allege that his psychiatrist acted on this.

Because she considered his symptoms to be potentially attributable to his antidepressants and his tests indicated he lacked a cardiac condition, Marthakis instructed the nursing staff including Teagan Nelson, Tiffany Turner, and Roxanne

Liston, as well as Diane Thews, not to provide additional treatment when he presented with purported cardiac symptoms. Acting on those instructions on several occasions, these nurses declined to provide treatment, although Nelson took his vital signs on July 18, and Liston performed an electrocardiogram on August 9. After several of these encounters, these nurses placed Bean in a “filthy, urine-smelling and un-monitored” holding cell in the medical unit to await the return to his housing unit.

On July 7, when Bean requested that Pflughaupt refer him to a cardiologist, she declined and instead “reduced” his anti-cholesterol medication prescription. When he reported his chest pain to Pflughaupt again, on July 21, she prescribed a nonsteroidal anti-inflammatory drug. On July 17, Bean reported chest pain to registered nurse Jacqueline Monaco. She provided no treatment and placed him in the dirty holding cell. On July 27, he reported his pain to registered nurse Betty Boggs. She administered two electrocardiograms, which showed “sinus bradycardia and sinus arrhythmia,” but she took no further action to treat him. On August 1, nurse practitioner Karen Fagan ordered an echocardiogram in response to Bean’s complaints.

On August 25, Pflughaupt told Bean that the medical staff had consulted with a cardiologist, outside of Bean’s presence, and that the cardiologist recommended a CT scan. Bean believes that this consultation never happened. But according to records attached to the complaint, Bean received an offsite CT scan on Marthakis’s order on September 21, which reported mild emphysema.

On September 11, Bean was found unconscious in his cell and brought to see Liston. An electrocardiogram taken that day reported “sinus tachycardia” and irregular heart rhythm. Liston provided no further treatment and placed Bean in the holding cell. And although his symptoms became “unbearable” later that night, Bean did not seek medical treatment out of fear of being placed in the cell again. On September 14, Bean visited Dr. Marthakis and complained that his pain and cholesterol medications were worsening his breathing, but she did not alter the course of treatment.

On September 29, Pflughaupt referred Bean for an offsite pulmonary function test. Upon review, Dr. Riley denied the referral, and noting that there was image evidence of chronic obstructive pulmonary disease, recommended he be treated for that condition. And when Bean visited Pflughaupt on October 9 complaining of respiratory symptoms, she provided him with a prescription for an albuterol inhaler.

Throughout this time, Bean filed “several grievances and grievance appeals concerning” what he perceived to be a lack of treatment for a painful heart condition. In

February 2024, Bean sued the full panoply of medical providers who saw him for his cardiac or breathing symptoms, plus Dr. Wilks and Dr. Riley of the review committee. He alleged that all of them were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. He also alleged that those who placed him in a holding cell and interfered with his antidepressant prescription had retaliated against him for repeatedly requesting treatment and filing grievances, actions protected by the First Amendment. Simultaneously, he moved for a temporary restraining order and a preliminary injunction that would mandate the prison to send him to a cardiologist and follow that doctor's treatment recommendations.

The district court screened the complaint under 28 U.S.C. § 1915A. After considering medical records that Bean had attached and performing internet research into Bean's diagnoses, medications, and symptoms, the court determined that Bean did not state a plausible claim for relief. And because it concluded Bean had no likelihood of success on the merits, the court denied the motion for injunctive relief. Before dismissing the complaint, the court gave Bean the opportunity to amend. He declined to do so, and instead moved for reconsideration, arguing that the court should not have considered the medical records as part of the complaint, and that the court did not properly construe his pleadings. The court denied the motion and dismissed the case with prejudice.

On appeal, Bean argues that his allegations state claims under the Eighth and First Amendments. We review the screening dismissal *de novo*. *Balle v. Kennedy*, 73 F.4th 545, 557 (7th Cir. 2023). A complaint must plead a claim for relief that is plausible. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 563 (2007). This notice-pleading standard does not require a plaintiff to "narrate facts corresponding to elements" of a legal claim or provide details and proof. *Thomas v. JBS Green Bay, Inc.*, 120 F.4th 1335, 1338 (7th Cir. 2024).

Bean first contends that he stated a claim of deliberate indifference against each defendant. "In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Peterson v. Wexford Health Sources, Inc.*, 986 F.3d 746, 751 (7th Cir. 2021).

Because Bean has not alleged any facts supporting an inference that the medical providers failed to exercise professional judgment, his complaint does not state a plausible claim of deliberate indifference. A medical provider can only be deliberately indifferent if she knew of a substantial risk of harm to the prisoner's health and

disregarded it. *Petties v. Carter*, 836 F.3d 722, 728 (7th Cir. 2016). The course of testing and treatment that Bean received here, by his own telling, is not consistent with a conscious disregard of a serious risk to his health.

When medical professionals provide some level of care to a prisoner, we defer to their medical judgment “unless no minimally competent professional would have so responded under those circumstances.” *Lockett v. Bonson*, 937 F.3d 1016, 1023 (7th Cir. 2019) (cleaned up). Here, nothing in the record suggests that the medical staff failed to exercise medical judgment in responding to Bean’s complaints. To the contrary, Bean received continuous medical care in the form of physical examinations, diagnostic testing, and prescription medication. *See id.* at 1025. Bean believes that that the medical staff failed to give him a conclusive diagnosis and establish a long-term treatment plan. But prisoners do not have a constitutional right to specific medical treatment. *See Walker v. Wexford Health Sources, Inc.*, 940 F.3d 954, 965 (7th Cir. 2019).

The complaint makes plain that Dr. Marthakis, who was in charge of Bean’s care, did not believe that he had a cardiac condition. A medical provider is deliberately indifferent when her treatment decisions are so below acceptable professional standards that they create an inference that she did not exercise professional medical judgment. *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011). According to the complaint, Dr. Marthakis examined Bean early on and prescribed a steroid and a cholesterol-lowering medication. Because his symptoms continued, Bean faults her for not referring him to a cardiologist or ordering more tests, for discontinuing his antidepressant, and for repeatedly telling nurses not to provide treatment. But Dr. Marthakis had access to the results of chest x-rays, electrocardiograms, echocardiograms, a CT scan, and other tests, and she ruled out a cardiac condition. Instead, she attributed Bean’s frequent instances of chest pain and dizziness to his anxiety and antidepressant medication. She also feared he was taking too high a dose of his psychiatric medication, which she believed caused the occasional loss of consciousness. And after the CT scan, she diagnosed mild emphysema as the source of Bean’s breathing troubles. Bean disagrees with any diagnosis other than a cardiac condition, but that disagreement does not allow for a reasonable inference that Dr. Marthakis was deliberately indifferent. *See Cesal v. Moats*, 851 F.3d 714, 722 (7th Cir. 2017).

We next examine Bean’s allegations against Dr. Wilks and Dr. Riley, the Centurion administrators responsible for approving referrals to outside specialists. Bean’s allegations that these administrators interfered with referral requests and did not respond to his letters of complaint do not support a claim of deliberate indifference.

See *Perez v. Fenoglio*, 792 F.3d 768, 780–81 (7th Cir. 2015). These doctors recommended alternatives to the referrals they reviewed, and therefore used medical judgment, so Bean cannot plausibly claim that the treatment decision was deliberately indifferent. See *Petties*, 836 F.3d at 729. And neither Wilks nor Riley can be liable for any underlying deliberate indifference by virtue of having received complaints from Bean. See *Perez*, 792 F.3d at 781–82.

As to the nine defendant nurses and nurse practitioners, Bean’s allegations, taken as true, do not permit a reasonable inference that any of them acted with a culpable state of mind. Generally, nurses must defer to a physician’s orders. *Holloway v. Delaware County Sheriff*, 700 F.3d 1063, 1075 (7th Cir. 2012). Although their professional duty sometimes requires them to take further action when confronted with those orders, *Perez*, 792 F.3d at 779, this occurs only when the orders pose “obvious risks to an inmate’s health,” *Holloway*, 700 F.3d at 1075 (citation omitted). Here, the instances of alleged non-treatment by the nursing staff stem from Dr. Markakis’s instructions that Bean did not have a cardiac condition. Concerning Liston, Nelson, and Turner, Bean alleges that on multiple occasions he reported his chest pain to them, but Bean does not allege that the nurses were aware that not providing cardiac care posed an obvious risk to his health, such that they were not entitled to defer to Dr. Marthakis. As to Boggs, Fagan, and Monaco, who saw Bean only once or twice, it is not clear whether Dr. Marthakis specifically guided their decisions. But Bean does not plausibly allege that their failure to relieve his pain stemmed from a failure to use professional judgment. *Peterson*, 986 F.3d at 754. Again, he is demanding specific treatment—for an unsubstantiated condition—that the Eighth Amendment does not require. And as to Thews, Bean sees deliberate indifference in her “threat” to withdraw his antidepressants, but he never alleges that she had the power to act on that. See *Arnett*, 658 F.3d at 753. Moreover, it was Dr. Marthakis’s judgment that the psychiatric medication was contributing to Bean’s symptoms.

Pflughaupt, as advanced care practitioner, had the authority to make a referral to a cardiologist, and she did so. But nothing suggests that she had the power to overrule Dr. Wilks when he reviewed the request and denied the referral; by nature of their relative positions, it is not reasonable to infer that Pflughaupt had any recourse. Bean also does not plausibly allege that any risk of harm from Wilks’s alternative plan, a “stress echo,” was so obvious that Pflughaupt needed to take further action. The same is true with respect to Bean’s allegations that Pflughaupt failed to act when Dr. Riley reviewed and denied Pflughaupt’s referral for a pulmonary function test.

Bean next argues that the district court erred by concluding that he failed to state a First Amendment claim against Thews and Marthakis for interfering with his antidepressant medication and against Thews, Hernandez, Liston, and Monaco for placing him in the filthy holding cell. The Constitution prohibits government actors from penalizing, or attaching a price to, speech that is protected by the First Amendment. *Hartman v. Moore*, 547 U.S. 250, 256, (2006); *Fairley v. Andrews*, 578 F.3d 518, 525 (7th Cir. 2009). Therefore, we look to whether Bean’s allegations add up to a plausible claim that he engaged in protected activity that caused the defendants to penalize him. *Fairley*, 578 F.3d at 525–26; *Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009) (listing elements of claim).

Bean alleged that Thews threatened to withdraw his antidepressant medication and that Marthakis directed the psychiatrist to do so for 30 days because he repeatedly complained about his pain and filed grievances about medical staff conduct. Bean describes various activities that he argues were protected under the First Amendment. The only such conduct, though, that is clearly protected under our precedent is filing non-frivolous grievances. *See Perez*, 792 F.3d at 783. Denying necessary medical treatment is sufficiently punitive to be a reprisal for protected speech. *Id.* But Bean’s claim falters when it comes to any causal link.

The complaint and attachments make clear that Dr. Marthakis believed that Bean’s medications were responsible for some of the symptoms that he attributed to heart problems.⁺ Bean insists that “it is self evident that” Dr. Marthakis interfered with his medication because of his frequent medical complaints, but he never alleges that she was aware of his formal grievances, so there is no plausible inference that her diagnostic decisions were motivated by protected activity. Even if she had been aware of the grievances, we cannot impute a retaliatory motive without more than Bean’s

⁺ The district court concluded that terminating the antidepressant medication was medically justified based in part on drug information from Medline Plus, an online health information resource run by the National Library of Medicine. According to the court, many of the symptoms Bean was reporting are consistent with side effects of, or overdose on, his antidepressant medication. But a district court cannot resolve factual disputes at the pleading stage, let alone by performing independent research. *See, e.g., Denton v. Hernandez*, 504 U.S. 25 (1992); *United States v. Newton*, 996 F.3d 485, 490 (7th Cir. 2021); *Felton v. City of Chicago*, 827 F.3d 632 (7th Cir. 2016). Nevertheless, no corroboration was needed here: The pleadings alone make clear that Dr. Marthakis’s medical judgment was that the medication was causing problems.

speculation. See *Jones v. Van Lanen*, 27 F.4th 1280, 1284 (7th Cir. 2022); *Brockett v. Effingham County, Illinois*, 116 F.4th 680, 685 (7th Cir. 2024). Bean likewise fails to draw a plausible connection between his grievances and his allegation that Thews threatened to withdraw his medication.

We are also not convinced with respect to the allegations that a slew of nurses placed Bean in a filthy holding cell for hours after his medical appointments *because* he complained about cardiac pain. The complaint provides no factual basis for a reasonable inference that any defendant had a punitive motive. Bean again states “it is self evident that” the defendants would not have placed him in the cell if not for his complaints. As with Marthakis, Bean never alleges that the nurses were aware of his grievances, so he cannot connect their conduct to any protected activity, and his speculation about their motive is insufficient. And even if we consider the allegation in Bean’s motion to reconsider—that clean cells were consistently available when the defendants placed him in a dirty cell—there is still nothing to link their actions to an intent to punish him for his medical complaints.

Bean also appeals the district court’s denial of his motion for a preliminary injunction. But the district court was correct that Bean did not establish a likelihood of success of the merits, so denying injunctive relief was not an abuse of discretion.

AFFIRMED