UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

THE UNITED STATES OF AMERICA and the STATE OF INDIANA *ex rel.* DION SNIDER,	)	
Plaintiffs,	)	
v.	)	Case No. 2:18-cv-210
CENTERS FOR PAIN CONTROL, INC. and CHETAN PURANIK, M.D.,	)	
Defendants.	)	

OPINION AND ORDER

This matter is before the court on the Motion to Dismiss [DE 29] filed by the defendants, Centers for Pain Clinic, Inc. and Chetan Puranik, M.D., on May 31, 2019. For the following reasons, the motion is **DENIED.**

Background

On May 31, 2019, the plaintiff, Dr. Dion Snider, on behalf of the United States of America and the State of Indiana, filed this action against the defendants, Centers for Pain Clinic, Inc. (CPC) and Chetan Puranik, M.D., alleging that they violated the False Claims Act, 31 U.S.C. § 3729 (FCA), and the Indiana False Claims and Whistleblower Protection Act, Ind. Code. § 5-11-5.5-1 (IFCA), when they engaged in illegal inducement under the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b (AKS). Additionally, Snider has asserted a claim for retaliation under the FCA and IFCA against the defendants.

Dr. Dion Snider is a board-certified Chiropractor in the State of Indiana. In March 2016, Dr. Snider alleges that Dr. Puranik, founder and CEO of CPC, approached him and proposed that he become affiliated with CPC to provide chiropractic services, rehabilitation services, and

monitor and advise CPC's business systems, marketing efforts, and regulatory compliance at all of CPC's locations. Beginning in April 2016, Dr. Snider worked for CPC, first as an independent contractor and then as an employee. In fulfilling his role as a member of CPC's marketing group, Dr. Snider alleges that he noticed that CPC had created flyers for prospective patients which advertised "free massages" with the purchase of trigger point therapy. Dr. Snider claims that he informed CPC that the flyer should include a disclaimer that the "free massages" did not apply to Medicaid or Medicare beneficiaries but that his comments were ignored.

Dr. Snider claims that 90% of CPC's patients received Medicaid or Medicare. Dr. Snider alleges that CPC's billing claims confirmed that CPC was not billing Medicare or Medicaid patients for massage therapy sessions, where the patients were also receiving, and the respective Government payer was being billed for, trigger point injections on the same date of service. As a result, Dr. Snider claims that the defendants illegally induced Medicare and Medicaid patients into purchasing trigger point therapy with the incentive of a free massage, thereby violating the AKS, the FCA, and the IFCA.

Additionally, Dr. Snider claims that the defendants retaliated against him by first refusing to pay him and then terminating him on March 23, 2018 because he objected to their practice and pattern of violating the AKS.

In lieu of filing an answer to Dr. Snider's complaint, the defendants filed the instant motion to dismiss on March 31, 2019 pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b). Dr. Snider responded in opposition on June 21, 2019, and the defendants filed their reply on July 3, 2019. On December 14, 2020, Dr. Snider filed a motion requesting a hearing on this motion. On April 23, 2021, the parties consented to the magistrate judge.

Discussion

Federal Rule of Civil Procedure 12(b)(6) allows for a complaint to be dismissed if if it fails to "state a claim upon which relief can be granted." Allegations other than those of fraud and mistake are governed by the pleading standard outlined in Rule 8(a), which requires a "short and plain statement" to show that a pleader is entitled to relief. **Federal Rule of Civil Procedure 8(a)(2)**. *See* ***Cincinnati Life Insurance Co. v. Beyrer***, 722 F.3d 939, 946 (7th Cir. 2013). The Supreme Court clarified its interpretation of the Rule 8(a)(2) pleading standard in a decision issued in May 2009. While Rule 8(a)(2) does not require the pleading of detailed allegations, it nevertheless demands something more "than an un-adorned, the-defendant-unlawfully-harmed-me accusation." ***Ashcroft v. Iqbal***, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L.Ed.2d 868 (2009). In order to survive a Rule 12(b)(6) motion, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " ***Iqbal***, 556 U.S. at 678 (quoting ***Bell Atlantic Corp. v. Twombly***, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007)); ***Cincinnati Life Insurance***, 722 F.3d at 946 ("The primary purpose of [Fed.R.Civ.P. 8 and 10(b)] is to give defendants fair notice of the claims against them and the grounds supporting the claims")(quoting ***Stanard v. Nygren***, 658 F.3d 792, 797 (7th Cir. 2011)); ***Peele v. Clifford Burch***, 722 F.3d 956, 959 (7th Cir. 2013) (explaining that one sentence of facts combined with boilerplate language did not satisfy the requirements of Rule 8); ***Joren v. Napolitano***, 633 F.3d. 1144, 1146 (7th Cir. 2011); ***United States ex rel. Berkowitz v. Automation Aids, Inc.***, 896 F.3d 834, 839 (7th Cir. 2018). This pleading standard applies to all civil matters. ***Iqbal***, 556 U.S. at 684.

The decision in ***Iqbal*** discussed two principles that underscored the Rule 8(a)(2) pleading standard announced by ***Twombly***. *See* ***Twombly,*** 550 U.S. at 555 (discussing Rule 8(a)(2)'s

requirement that factual allegations in a complaint must "raise a right to relief above the speculative level"). First, a court must accept as true only *factual* allegations pled in a complaint; "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." ***Automation Aids, Inc.***, 896 F.3d 834, 839 (internal citations omitted). Next, only complaints that state "plausible" claims for relief will survive a motion to dismiss: if the pleaded facts do not permit the inference of more than a "mere possibility of misconduct," then the complaint has not met the pleading standard outlined in Rule 8(a)(2). ***Iqbal***, 556 U.S. at 678–79; *see also* ***Brown v. JP Morgan Chase Bank***, 2009 WL 1761101, *1 (7th Cir. June 23, 2009) (defining "facially plausible" claim as a set of facts that allows for a reasonable inference of liability). The Supreme Court has suggested a two-step process for a court to follow when considering a motion to dismiss. First, any "well-pleaded factual allegations" should be assumed to be true by the court. Next, these allegations can be reviewed to determine if they "plausibly" give rise to a claim that would entitle the complainant to relief. ***Iqbal***, 129 S. Ct. at 1949-50; ***Bonte v. U.S. Bank, N.A.***, 624 F.3d 461, 465 (7th Cir. 2010). Reasonable inferences from well-pled facts must be construed in favor of the plaintiff. ***Murphy v. Walker***, 51 F.3d 714, 717 (7th Cir. 1995); ***Maxie v. Wal-Mart Store***, 2009 WL 1766686, *2 (N.D. Ind. June 19, 2009)(same); ***Banks v. Montgomery***, 2009 WL 1657465, *1 (N.D. Ind. June 11, 2009)(same).

Allegations of fraud or mistake "are subject to the heightened pleading requirements of Rule 9(b). ***Automation Aids, Inc.***, 896 F.3d at 839. The plaintiff must state the circumstances surrounding the fraud or mistake "with particularity," although these allegations are still bound by the standards of Rule 8(a)(2). **Fed. R. Civ. P. 9(b)**; *see* ***Iqbal***, 129 S. Ct. at 1954 (explaining that the heightened pleading standard of Rule 9(b) does not grant a "license to evade" the

constraints of Rule 8). However, what constitutes sufficient particularity may "depend on the facets of a given case." ***Automation Aids, Inc.***, 896 F.3d at 839.

To plead fraud with the required particularity, "the complaint must state the identity of the person making the misrepresentation, the time, the place, and content of the misrepresentation, and the method by which the misrepresentation was communicated to the plaintiff." ***U.S. ex rel. Grenadyor v. Ukrainian Village Pharmacy, Inc.***, 772 F.3d 1102, 1106 (7th Cir. 2014); *see* ***Automation Aids***, 896 F.3d at 840 (*quoting* ***Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. Walgreens Co.***, 631 F.3d 436, 442 (7th Cir. 2011)) (finding that the plaintiff must describe the "who, what, when, where, and how of the fraud – the first paragraph of any newspaper story"). Although the misrepresentation that a plaintiff claims was fraudulent must be stated in his complaint, Rule 9(b) does not demand that the plaintiff's "theory of the case" be explained; the sufficiency of this portion of a claim is tested under Rule 12(b)(6). ***Midwest Commerce Banking Co. v. Elkhart City Ctr.***, 4 F.3d 521, 523-24 (7th Cir. 1993); ***Trustees of Teamsters Union No. 142 Pension Trust v. Cathie's Cartage, Inc.***, 2014 WL 1117447, at *4 (N.D. Ind. Mar. 20, 2014).

In ***Elkhart***, the court found that the plaintiff's complaint, which alleged that a law firm fraudulently failed to inform the plaintiff that a loan agreement remained unsigned, satisfied Rule 9(b) because it "set forth the date and content of the statements. . . that it claimed to be fraudulent." 4 F.3d at 524. Importantly, it is in the *complaint*, and not in a party's subsequent *brief*, where the "requisite particularity" must first be pled. ***Kennedy***, 348 F.3d at 593.

As to count I of the complaint, the violation of the FCA and IFCA, the defendants argue that Dr. Snider has failed to plead with particularity the requisite elements of his claim. A violation of the AKS occurs when a person "knowingly and willfully offers or pays any

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