IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

STEVEN D. WALKER, #1927071	§	
	§	
VS.	§	CIVIL ACTION NO. 4:16cv99
	§	
IMRAN RAJWANI, Medical Director,	§	
UTMB c/o Buster Cole State Jail	§	

MEMORANDUM OPINION AND ORDER

Pro se Plaintiff Steven D. Walker, previously an inmate confined at the Buster Cole Unit in Bonham, Texas, filed the above-styled and numbered lawsuit pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1973(a). In response, Dr. Imran Rajwani filed a motion to dismiss pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, to which Plaintiff filed a reply. This opinion concerns Dr. Rjwani's motion to dismiss (Dkt. #21).

BACKGROUND

Plaintiff filed a civil rights complaint pursuant to §1983 against Dr. Imran Rajwani, and also included a claim pursuant to 42 U.S.C. § 1997e(a), the Health Insurance Portability and Accountability Act (HIPAA). He seeks equitable relief and compensatory and punitive damages totaling $1 million. Plaintiff sues Dr. Rajwani in both his official and individual capacities.

STATEMENT OF THE FACTS

In his civil rights complaint, Plaintiff asserts Dr. Rajwani refused to lower his dosage of insulin for treatment of diabetes, after initially agreeing to do so. He claims Dr Rajwani refused to switch Plaintiff from insulin to metformin, a pill-based diabetes medication. Plaintiff further claims that he was not treated for diabetes for a week, between October 7 and October 14, 2015. Finally, Plaintiff

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alleges Dr. Rajwani refused to speak to him in private regarding his diabetes treatment, in violation of HIPAA. Plaintiff seeks equitable relief in the form of a full investigation and hearing, as well as compensatory and punitive damages.

REQUIREMENT TO EXHAUST REMEDIES

The Prison Litigation Reform Act provides that prisoners are required to exhaust their administrative remedies before filing suit. *Jones v. Bock*, 549 U.S. 199, 202 (2007). Section §1997e(a) of 42 U.S.C. provides that "no action shall be brought with respect to prison conditions under Section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." The grievance must give the correctional authorities "fair notice" of the problem being complained of, such that these authorities have a fair opportunity to address the problem that will later form the basis of the lawsuit. *Johnson v. Johnson*, 385 F.3d 503, 516-17 (5th Cir. 2004). The Supreme Court stated that correctional authorities will not have a "fair opportunity" to consider the grievance unless the prisoner complies with the procedural rules – meaning that "proper" exhaustion, within the procedural rules laid out by the grievance system, is required. *Woodford v. Ngo*, 548 U.S. 81, 94 (2006); *Johnson v. Ford*, 261 F.App'x 752 (5th Cir. 2008).

Texas state prisons use a two-step formal grievance process. *Johnson*, 385 F.3d at 515. A Texas Department of Criminal Justice (TDCJ) prisoner must file a Step One Grievance within fifteen (15) days of the incident being grieved. *Id.*, TDCJ Offender Orientation Handbook 74 (Jan. 2015), *available at* http://www.tdcj.state.tx.us/documents/Offender_Orientation_Handbook_English.pdf. After receiving an adverse response from Step One grievance, the prisoner may then appeal via Step Two grievance within fifteen (15) days. *Johnson*, 385 F.3dd at 515. A prisoner must strictly adhere

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to TDCJ grievance procedures to properly exhaust a claim. *Id*. Inmates may not present new issues at the Step Two level, but must present their claims at both Step One and Step Two levels. *Randle v. Woods*, 299 F. App'x 466 (5th Cir. 2008). Prisoners are limited to pursuing a single issue per grievance. *Id*., at 467 (noting that "Randle's complaint against Woods is raised for the first time in Randle's Step Two grievance, in violation of TDCJ requirements that only one issue per grievance be presented, and that each issue have been filed at Step One").

In this case, the record shows the response from prison officials to Step Two grievance:

> A review of the Step 1 grievance and documentation was completed *regarding your request not to be seen by the provider* you saw on 10-7-15. An appellate review of the medical grievances and clinical records indicates you were given appropriate information in the Step 1 Response. Additionally, although you stated the date of your complaint[,] there is no evidence to support your complaint against the provider who saw you on that date. Documentation indicates you were seen in accordance with Correctional Managed Health Care Policy E-44.1 [pertains to the effort to ensure continuity of care upon the transfer of a prisoner from facility to facility]. No further action is warranted through the grievance process.

Dkt. #1-1 (emphasis added). Plaintiff's one issue in his grievance No. 2016022748 was that he wanted to be seen by a different doctor. Thus, Plaintiff failed to administratively exhaust the claims brought in this civil action, which were related, but separate from his desire to be seen by a different doctor. TDCJ instructs inmates that they must present only one issue per grievance. *Randle*, 299 F. App'x at 467. Because each of the four (4) claims Plaintiff makes herein were never processed through the prison grievance system as required, the complaint should be dismissed for failure to exhaust administrative remedies. 42 U.S.C. § 1997e(a).

MOTION TO DISMISS PURSUANT TO RULE 12(b)(1) and (6)

Even if Plaintiff had properly exhausted his administrative remedies, motions filed under Rule 12(b)(1) allow a party to challenge the subject matter jurisdiction of the district court to hear a case.

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Fed. R. Civ. P. 12(b)(1). Lack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. *Barrerra-Montenegro v. United States*, 74 F.3d 657, 659 (5th Cir. 1996). The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction; thus, the plaintiff constantly bears the burden of proof that jurisdiction does, in fact, exist. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). When a Rule 12b)(1) motion is filed in conjunction with other Rule 12 motions, as in this case, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits. *Id*.

Furthermore, Rule 12(b)(6) allows dismissal if a plaintiff fails "to state a claim upon which relief may be granted." Fed. R. Civ. P. 12(b)(6). "To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead 'enough facts to state a claim to relief that is plausible on its face.'" *Severance v. Patterson*, 566 F.3d 490, 501 (5th Cir. 2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)). The Supreme Court stated that Rule 12(b)(6) must be read in conjunction with Rule 8(a), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." *Twombly*, 550 U.S. at 555.

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). Rule 8 does not require "detailed factual allegations but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id*. A pleading offering "labels and conclusions" or a "formulaic recitation of the elements of a cause of action" will not suffice, nor does a complaint suffice if it provides naked assertions that are devoid of further factual enhancement.

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Id. Thus, a complaint will survive a motion to dismiss if it contains "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. A plaintiff meets this standard when he "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. A complaint may be dismissed if a plaintiff fails to "nudge [his] claims across the line from conceivable to plausible." *Id.* The distinction between merely being possible and plausible was reiterated by the Supreme Court in *Iqbal*, 556 U.S. at 678. A complaint that pleads facts "merely consistent with" a defendant's liability "stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.*

If the facts alleged in a complaint "do not permit the court to infer more than the mere possibility of misconduct," a plaintiff has not shown entitlement to relief. *Id.* (citing Fed. R. Civ. P. 8(a)(2)). A factual allegation "merely creating a suspicion" that a plaintiff might have a right of action is insufficient. *Rios v. City of Del Rio, Tex.*, 444 F.3d 417, 421 (5th Cir. 2006). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678. If the facts alleged in a complaint fail to permit the court to infer more than the mere possibility of misconduct, a plaintiff has not shown entitlement to relief. *Id.* (citing Fed. R. Civ. P. 8(a)(2)). Dismissal is proper if a complaint lacks a factual allegation regarding any required element necessary to obtain relief. *Rios*, 44 F.3d at 421.

In *Twombly*, the Supreme Court noted, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

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