IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS—EASTERN DIVISION

JOSEPH KEELING, Plaintiff, v. SHERIFF OF LAKE COUNTY, ILL., LAKE COUNTY, ILL., and LAKE COUNTY CORRECTIONAL OFFICER DOE, Defendants.	Case No. 23 CV 3442 Judge Steven C. Seeger Magistrate Judge Young B. Kim

MOTION TO DISMISS

Plaintiff's Complaint (Dkt # 1) should be dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. Plaintiff cannot maintain both an ADA and a § 1983 claim based upon the same set of facts. Plaintiff fails to meet the procedural requirements of his supplemental state law medical malpractice claim. Finally, Plaintiff fails to meet minimal notice pleading standards.

Factual Background

According to the *Complaint*, the Plaintiff entered the Lake County Jail on **June 8**, 2022. (¶ 6.)[1] He left on **June 9**. (¶ 18.) On intake, a nurse noted that the Plaintiff had the medical condition "recurrent hypertensive crisis," and that this "required" that he be housed on a lower tier and in a lower bunk. (¶ 7.)

A correctional officer—"Defendant Doe"—assigned the Plaintiff to a top bunk. (¶ 12.) He did this even though he knew from the "Identification of Special Needs" form, which the nurse had completed, that the Plaintiff required a bottom bunk due to his condition. (¶¶ 10–13.) When the Plaintiff protested the assignment, the officer allegedly "refused to follow the health care provider's order" and told the Plaintiff "that the Jail was

[1] All paragraph references are to the *Complaint*, Dkt #1.

not a hotel." (¶ 13.) Plaintiff became ill while assigned to the top bunk and had a "grand mal seizure that required emergency treatment at the Vista East Hospital" (¶ 16); Plaintiff does not allege that he was injured by any fall from the top bunk, but rather only that he had the seizure while on the top bunk.

The Plaintiff returned from the hospital to the Lake County Jail, but was transferred to the McHenry County Jail the following day. (¶ 18.) This transfer occurred without the Plaintiff's "records" showing that the Plaintiff suffered from "recurrent hypertensive crisis" and "had had a grand mal seizure on June 8, 2022." (¶ 19.) The Plaintiff remained at the McHenry County Jail until August 5, 2022, where he alleges that the jail's medical providers "misdiagnosed [him] as experiencing symptoms of detoxification and did not provide the appropriate treatment for these symptoms of 'recurrent hypertensive crisis.'" (¶¶ 20–22.) He suffered "nervousness, anxiety, restlessness, sweating, heat intolerance, tremor, weight loss, palpitations, and tachycardia." (¶ 21.)

Standard

A motion to dismiss under Rule 12(b)(6) takes the well-pled facts as true but contests that those facts entitle the pleader to the relief he seeks. *McCauley v. Chicago*, 671 F.3d 611, 616 (7th Cir. 2011). Unlike the facts, a complaint's "legal conclusions and conclusory allegations merely reciting the elements of the claim are not entitled to this presumption of truth." *Id.*

A complaint must contain enough factual matter to both entitle the plaintiff to relief, but also to state a claim that is plausible on its face. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007). A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To meet the

plausibility standard, the allegations in a complaint must be sufficient to raise the possibility of relief above the "speculative level." *Bell Atlantic*, 550 U.S. at 554.

I. The Plaintiff's ADA claim operates to preclude his § 1983 claim.

To state a viable claim under § 1983, a plaintiff must allege that (1) he was deprived of a right secured by the Constitution or laws of the United States, and (2) the deprivation stemmed from individuals acting under color of state law. *Buchanan-Moore v. County of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009). Under the ADA, a prima facie case under Title II requires a pleading that addresses (1) that the plaintiff is a qualified individual with a disability, (2) that the plaintiff was denied the benefits of the services, programs, or activities of a public entity, and (3) that the denial was "by reason of" the disability. *Lacy v. Cook County*, 897 F.3d 847, 853 (7th Cir. 2018). So too under the Rehabilitation Act. *Shaw v. Kemper*, 52 F.4th 331, 334 (7th Cir. 2022) ("For all practical purposes here, the two statutes are the same.").

The *Complaint* appears to assert parallel ADA and § 1983 claims based on the same core facts about the correctional officer's actions. The weight of authority in the Northern District is that violations of the ADA may not be enforced through § 1983 because of the ADA's comprehensive enforcement scheme, which acts to preclude other such claims.[2] Judges in the Northern District routinely dismiss ADA claims brought under Section 1983 (*id.*), lest a plaintiff be provided "with two bites at precisely the same apple." *Jones v. Reg'l Transport. Auth.*, 2012 WL 2905797, at *6 (N.D. Ill. July 16, 2012) (quoting *Holbrook v.*

[2] *Silk v. Chicago*, 1996 WL 312074, at *19, (N.D. Ill. June 7, 1996) (Judge Coar); *Dargis v. Sheahan*, 2005 WL 946909, * 9 (N.D. Ill. Mar. 25, 2005) (Judge Pallmeyer); *Hale v. Pace, CDT*, 2011 WL 1303369, *9 (N.D. Ill. Mar. 31, 2011) (Judge Guzman); *Jones v. RTA*, 2012 WL 2905797, *6 (N.D. Ill. 2012) (Judge Chang); *Thomas v. Dart*, 2018 WL 4016315, *5–6 (N.D. Ill. 2018) (Judge Kendall); *but see River Forest Sch. Dist. No. 90 v. Ill. State Bd. of Educ.*, 1996 WL 89055, at *6 (N.D. Ill. Feb. 28, 1996) (Judge Conlon).

Alpharetta, Ga., 112 F.3d 1522, 1531 (11th Cir. 1997) and citing three other Circuit Courts[3]).

The Seventh Circuit has not directly addressed the issue, but has written that when the "violation is of a statutory right, a plaintiff runs the risk that a court might decide that the statutory scheme in one way or another forecloses § 1983 relief"—and noted that other Circuit Courts have held that the ADA is such a statute. *Discovery House, Inc. v. Consolidated City of Indianapolis*, 319 F.3d 277, 281 (7th Cir. 2003); *see also Holmes v. Godinez*, 311 F.R.D. 177, 230 (N.D. Ill. 2015) ("Consistent with this authority, we find it exceedingly likely that plaintiffs may not employ § 1983 to assert statutory violations of the ADA or Rehabilitation Act" and citing *Discovery House*.).

Here, the *Complaint* appears to assert that the correctional officer's refusal "to follow the health care provider's order" caused the Plaintiff harm. (¶ 13.) That refusal might constitute a failure to accommodate the Plaintiff's disability under the ADA; as such, that ADA claim, which appears to be the gravamen of the Complaint, precludes the Complaint's § 1983 claim based on the authority cited above.

II. The Plaintiff fails to meet procedural requirements for a state-law medical malpractice claim.

Plaintiff purports to bring an "Illinois common law claim." (¶ 1.) Although not laying out any specific state law counts, the Plaintiff alleges that Lake County is responsible for "medical malpractice" committed by McHenry County jail personnel. (¶¶ 23–24.)

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[3] *Vinson v. Thomas*, 288 F.3d 1145 (9th Cir. 2002); *Lollar v. Baker*, 196 F.3d 603 (5th Cir. 1999); *Alsbrook v. City of Maumelle*, 184 F.3d 999 (8th Cir. 1999).

For medical malpractice, a plaintiff must allege "(1) the proper standard of care applicable to measure the medical professional's conduct, (2) a deviation from the standard, and (3) an injury that was proximately caused by the deviation." *Gapinski v. Gujrati*, 2017 IL App (3d) 150502, ¶ 57. Where the question turns on whether a claim is for medical malpractice, Illinois courts analyze "(1) whether the standard of care involves procedures not within the grasp of the ordinary lay juror; (2) whether the activity is inherently one of medical judgment; and (3) the type of evidence that will be necessary to establish [the plaintiff's] case." *Jackson v. Chicago Classic Janitorial & Cleaning Serv., Inc.*, 355 Ill. App. 3d 906, 909 (1st Dist. 2005). Here, the Plaintiff claims that medical providers at McHenry County "failed to meet the standard of care" and that Lake County was a proximate cause of this failure. (¶¶23-24).

Under Illinois law, a party bringing a claim for medical malpractice or any other "healing arts malpractice" is required to attach two documents to his or her complaint: "(1) an affidavit certifying she had consulted with a qualified healthcare professional in whose opinion there is a reasonable and meritorious cause for the filing of the action, and (2) a copy of that health professional's written report setting forth the reasons for his determination." *Walsh v. Cheruku*, 2016 IL App (4th) 160194-U, 2016 WL 7338701 at *3 (citing 735 ILCS 5/2-622(a))."To minimize frivolous malpractice suits, Illinois law requires the plaintiff to file a physician's certificate of merit and accompanying report with every malpractice complaint." *Sherrod v.* Lingle, 223 F.3d 605, 613 (7th Cir. 2000).

A complaint does not have to allege medical malpractice on its face to trigger section 2-622's certificate requirement. *See Thomas ex rel. Smith v. Cook Cty. Sheriff*, 401 F. Supp. 2d 867, 877 (N.D. Ill. 2005); *Johnson v. Frain*, 2018 WL 2087448,

at *5 (N.D. Ill. May 4, 2018) (No. 17 CV 2000). Because Illinois courts construe "healing art malpractice" broadly, even a complaint cast as an action for ordinary negligence must include a certificate if the applicable standard of care involves "distinctively medical knowledge or principles, however basic[.]" *Woodard v. Krans*, 234 Ill. App. 3d 690, 705 (2d Dist. 1992). Here, the Plaintiff alleges that his injury was brought about by a deviation of "the standard of care" by McHenry, and that that deviation from the standard of care was proximately caused by Lake County employees (¶¶ 23–24.)

Northern District judges have required the filing of a § 2-622 affidavit on similar facts. In *Palmer v. Franz*, the plaintiff complained of a correctional institution's failure to assign him a lower bunk and failing to notify correctional staff of a need for a low bunk assignment. 2017 WL 4122741 at *10 (N.D. Ill. Sept. 18, 2017) (*rev'd on other grounds*, 928 F.3d 560 (7th Cir. 2019)). In requiring a § 2-622 affidavit, the court noted "the character of the conduct involved is medical, i.e., assessment and reporting of the medical needs of a patients." *Id*. Therefore, Plaintiff's "Illinois common law" claim should be dismissed because it fails to threshold requirements under Illinois law.

III. The Complaint should be dismissed for failure to meet the notice pleading standard.

Notice pleading requires only "a short and plain statement of the claim showing that the pleader is entitled to relief,"[4] and it represents "the starting point of a simplified pleading system, which was adopted to focus litigation on the merits of a claim." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002). **But**: notice pleading also requires

[4] Fed. R. Civ. P. 8(a)(2).

that a plaintiff "give the defendant fair notice of what claim the plaintiff is making and what the basis for that claim is." *McCray v. Wilkie*, 966 F.3d 616, 620 (7th Cir. 2020).

The Complaint references (1) the ADA, (2) the Rehabilitation Act, (3) 42 U.S.C. 1983, without further articulation, (4) medical malpractice, and (5) "Illinois common law." Plaintiff fails to state what claim he is asserting against each defendant. Plaintiff's complaint also fails to elucidate what substantive rights he seeks to vindicate under § 1983.

The Plaintiff might respond to this motion with answers to the questions posed above, but **the pleading** should provide them, not a response brief.

Conclusion

For the reasons stated above, the Plaintiff's complaint should be dismissed, and the Plaintiff should replead his complaint with a pleading that (a) makes clear what claims he is pursuing and (b) is supported by the necessary § 2-622 affidavit and doctor's report.

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