IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

LYDON MCCANN-MCCALPINE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 23-1052-CFC
	:	
BAYHEALTH, INC., et al.,	:	
	:	
Defendants.	:	

Lydon McCann-McCalpine, Dover, Delaware. Pro Se Plaintiff.

MEMORANDUM OPINION

May 7, 2024
Wilmington, Delaware

CONNOLLY, Chief Judge:

On September 26, 2023, Plaintiff Lyndon McCann-McCalpine filed his *pro se* Complaint in this matter. (D.I. 2) He has been granted leave to proceed *in forma pauperis*. (D.I. 7) Plaintiff's Amended Complaint (D.I. 5) is the operative pleading. The Court proceeds to screen the Amended Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B).

I. BACKGROUND

Plaintiff brings this case under 42 U.S.C. § 1983, alleging that the treatment he received as a patient at Kent General Hospital in Dover, Delaware, constituted cruel and unusual punishment in contravention of the Eighth Amendment of the Constitution. Plaintiff names two Defendants: Bayhealth, Inc., which he describes as a "full-service, nonprofit healthcare system serving the central and southern portion of Delaware" including operating Kent General Hospital, and Robert S. Fumento, a medical doctor employed by Bayhealth. Plaintiff seeks damages and declaratory relief.

II. LEGAL STANDARDS

A federal court may properly dismiss an action *sua sponte* under the screening provisions of 28 U.S.C. § 1915(e)(2)(B) if "the action 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." *Ball v.*

Famiglio, 726 F.3d 448, 452 (3d Cir. 2013) (quotation marks omitted); *see also* 28 U.S.C. § 1915(e)(2) (*in forma pauperis* actions). The Court must accept all factual allegations in a complaint as true and take them in the light most favorable to a *pro se* plaintiff. *See Phillips v. County of Allegheny*, 515 F.3d 224, 229 (3d Cir. 2008). Because Plaintiff proceeds *pro se*, his pleading is liberally construed and his Amended Complaint, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

A complaint is not automatically frivolous because it fails to state a claim. *See Dooley v. Wetzel*, 957 F.3d. 366, 374 (3d Cir. 2020). Rather, a claim is deemed frivolous only where it relies on an "'indisputably meritless legal theory' or a 'clearly baseless' or 'fantastic or delusional' factual scenario.'" *Id.*

The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B)(ii) is identical to the legal standard used when ruling on Rule 12(b)(6) motions. *Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999). A well-pleaded complaint must contain more than mere labels and conclusions. *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). A plaintiff must plead facts sufficient to show that a claim has substantive plausibility. *See Johnson v. City of Shelby*, 574 U.S. 10, 12

(2014) (per curiam). A complaint may not dismissed, however, for imperfect statements of the legal theory supporting the claim asserted. *See id.* at 11.

A court reviewing the sufficiency of a complaint must take three steps: (1) take note of the elements the plaintiff must plead to state a claim; (2) identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth; and (3) when there are well-pleaded factual allegations, assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. *Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 787 (3d Cir. 2016). Elements are sufficiently alleged when the facts in the complaint "show" that the plaintiff is entitled to relief. *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)). Deciding whether a claim is plausible will be a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.*

III. DISCUSSION

To state a claim under § 1983, a plaintiff must allege "the violation of a right secured by the Constitution or laws of the United States and must show that the alleged deprivation was committed by a person acting under color of state law." *West v. Atkins*, 487 U.S. 42, 48 (1988). To act under "color of state law" a defendant must be "clothed with the authority of state law." *West*, 487 U.S. at 49.

Given that neither Defendant is a state actor, the Amended Complaint must be dismissed. Amendment is futile.

IV. CONCLUSION

For the above reasons, the Court will dismiss the Amended Complaint. Amendment is futile.

This Court will issue an Order consistent with this Memorandum Opinion.

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BAYHEALTH, INC., et al.,	:	
	:	
Defendants.	:	

ORDER

At Wilmington on this 7th day of May in 2024, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS ORDERED that:

1. The Amended Complaint is **DISMISSED**. Amendment is futile.

2. Plaintiff's pending motions (D.I. 6, 7, 12) are **DENIED as moot.**

3. The Clerk of Court is directed to mark this case **CLOSED**.

Chief Judge