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# [***Probst v. SCI Greene Med. Dep’t***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5RRR-0CS1-JK4W-M357-00000-00&context=)

United States District Court for the Western District of Pennsylvania

February 23, 2018, Decided; February 23, 2018, Filed

Civil Action No. 2: 17-cv-1014

**Reporter**

2018 U.S. Dist. LEXIS 30768 \*

DAVID PROBST, Plaintiff, v. SCI GREENE MEDICAL DEPT and DOCTOR JYN,[[1]](#footnote-0)1 Defendants.

**Subsequent History:** Adopted by, Summary judgment granted by, Dismissed by [*Probst v. SCI Greene Med. Dept., 2018 U.S. Dist. LEXIS 73845 (W.D. Pa., Apr. 27, 2018)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5S72-BYY1-JWXF-2256-00000-00&context=)

**Core Terms**

grievance, inmate, recommended, exhaust, motion to dismiss, prison, allegations, summary judgment motion, required to exhaust, plaintiff's claim, prostate cancer, failure to exhaust, medication, procedures, medical malpractice claim, administrative remedy, allopurinol, documents, genuine, parties, futile, exam

**Counsel:** **[\*1]**DAVID PROBST, Plaintiff, Pro se, Waynesburg, PA.

For SCI GREENE MEDICAL DEPT, Defendant: Mary Lynch Friedline, LEAD ATTORNEY, Office of Attorney General, Fifth Floor, Manor Complex, Pittsburgh, PA.

For DOCTOR JYN, Medical Dept, Defendant: Benjamin M. Lombard, Weber Gallagher Simpson Stapleton Fires & Newby LLP, Pittsburgh, PA; Samuel H. Foreman, Weber Gallagher Simpson Stapleton Fires & Newby, Pittsburgh, PA.

**Judges:** Cynthia Reed Eddy, United States Magistrate Judge. United States District Judge David S. Cercone.

**Opinion by:** Cynthia Reed Eddy

**Opinion**

**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

**I. RECOMMENDATION**

It is respectfully recommended that the motions to dismiss filed by Defendant SCI Greene Medical Dept (ECF No 14) and Defendant Dr. Jin (ECF No. 16) be granted and this case be dismissed with prejudice. It is further recommended that leave to amend be denied as futile.

**II. REPORT**

A. Relevant Background

Plaintiff, David Probst, is a prisoner in the custody of the Pennsylvania Department of Corrections ("DOC"). On July 31, 2017,[[2]](#footnote-1)2 Probst initiated this lawsuit by filing a motion for leave to proceed *in forma pauperis*, with a civil rights complaint attached. (ECF No. 1). Because the motion was not accompanied by the**[\*2]** requisite financial information, the motion was denied on August 4, 2017. (ECF No. 2). On September 6, 2017, Plaintiff resubmitted his motion with the required financial documentation. (ECF No. 3). The motion was granted (ECF No. 4) and the complaint filed on September 7, 2017. (ECF No. 5).

In his complaint, Plaintiff claims that in approximately 2011, Dr. Jin diagnosed him as having prostate cancer and told him the condition could be controlled by use of medications and periodic blood work. (*Id.* at 5). On February 3, 2017, Plaintiff had an annual physical examination. He alleges that during that exam, the nurse refused to do a prostate exam, his prescription for allopurinol, a medication he had been taking for his prostate cancer, was discontinued, and he was not given the results of his blood work. Named as defendants are the "SCI-Greene Medical Dept" and "Dr. Jyn Medical Dept." He is suing for "medical malpractice violation of the *8th* and *14th Amendment*." (*Id.* at 2).

Defendant SCI-Greene Medical Dept filed a motion to dismiss arguing that all claims against it should be dismissed because the [*Eleventh Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP01-NRF4-44G4-00000-00&context=) bars Plaintiff's claims against it and that the "Medical Department" is not an entity capable of being sued nor is it a "person"**[\*3]** within the meaning of *42 U.S.C. § 1983*. Defendant Jin filed a separate motion to dismiss, alleging, *inter alia*, that Plaintiff failed to exhaust his administrative remedies with respect to any claim brought in this lawsuit as he is required to do pursuant to the Prison Litigation Reform Act ("PLRA") and, therefore, Plaintiff's claims against Dr. Jin should be dismissed. Because Defendant Jin presented material outside of the complaint, the Court converted his motion to dismiss into a motion for summary judgment on the issue of exhaustion, and allowed the parties time to submit additional briefing and evidence. Plaintiff filed an omnibus response to the motions (ECF No. 24), to which Dr. Jin filed a Reply and a Supplement to his Reply (ECF Nos. 26 and 28). The issues now have been fully briefed and the matter is ripe for disposition.

B. Standard of Review

1. *Motion to Dismiss for Failure to State a Claim*

A motion to dismiss pursuant [*Rule 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=) challenges the legal sufficiently of the complaint. When reviewing a motion to dismiss, the Court must accept all well-pleaded facts and allegations, and must draw all reasonable inferences therefrom in favor of the plaintiff. [*Burtch v. Milberg Factors, Inc., 662 F.3d 212, 220 (3d Cir. 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:83GH-R631-652R-11NP-00000-00&context=), *cert. denied*, *566 U.S. 921, 132 S. Ct. 1861, 182 L. Ed. 2d 644 (2012)* (citing [*In re Ins. Brokerage* ***Antitrust*** *Litig., 618 F.3d 300, 314 (3d Cir. 2010))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:50T0-1R51-652R-1015-00000-00&context=). However, as the Supreme**[\*4]** Court of the United States made clear in *Bell Atlantic Corp. v. Twombly*, such "[f]actual allegations must be enough to raise a right to relief above the speculative level." [*550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NSN-8840-004C-002M-00000-00&context=). *See also* [*Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=) (holding that, while the Complaint need not contain detailed factual allegations, it must contain more than a "formulaic recitation of the elements" of a constitutional claim and must state a claim that is plausible on its face) (quoting *Twombly*, and providing further guidance on the standard set forth therein).

To determine the legal sufficiency of a complaint after *Twombly* and *Iqbal*, the United States Court of Appeals for the Third Circuit instructs that a district court must make a three-step approach when presented with a motion to dismiss for failure to state a claim. [*Santiago v. Warminster Twp., 629 F.3d 121, 130 n.7 (3d Cir. 2010)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:51PJ-8WH1-652R-1000-00000-00&context=) (noting that although *Iqbal* describes the process as a "two-pronged approach," it views the case as outlining three steps) (citing [*Iqbal, 556 U.S. at 675*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=)). First, "the court must 'tak[e] note of the elements a plaintiff must plead to state a claim." [*Id. at 130*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:51PJ-8WH1-652R-1000-00000-00&context=) (quoting [*Iqbal, 556 U.S. at 675*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=)) (alteration in original). Second, the court "should identify allegations that, 'because they are no more than conclusions, are not entitled to the assumption of truth.'" *Id.* (quoting [*Iqbal, 556 U.S. at 679*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=)). Third, '"where**[\*5]** there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief.'" *Id.* (quoting [*Iqbal, 556 U.S. at 679*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=)).

Courts generally consider the allegations of the complaint, attached exhibits, and matters of public record in deciding motions to dismiss. [*Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-FFY0-003B-P1RJ-00000-00&context=). Factual allegations within documents described or identified in the complaint also may be considered if the plaintiff's claims are based upon those documents. *Id.* (citations omitted). In addition, a district court may consider indisputably authentic documents without converting a motion to dismiss into a motion for summary judgment. [*Spruill v. Gillis, 372 F.3d 218, 223 (3d Cir. 2004)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4CN6-8PP0-0038-X3B9-00000-00&context=); [*Lum v. Bank of America, 361 F.3d 217, 222 (3d Cir. 2004)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4BX3-6180-0038-X19D-00000-00&context=) (in resolving a motion to dismiss pursuant to [*Rule 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=), a court generally should consider "the allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim.").

Moreover, the United States Court of Appeals for the Third Circuit has held that, in civil rights cases, a court must give a plaintiff the opportunity to amend a deficient complaint - regardless of whether the plaintiff requests to do so - when dismissing a case for failure to state a claim, unless doing so would**[\*6]** be inequitable or futile. *See* [*Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc., 482 F.3d 247, 251 (3d Cir. 2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NDX-HJ00-0038-X3MX-00000-00&context=).

Finally, a court must employ a less stringent standard when considering pro se pleadings than when judging the work product of an attorney. [*Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DB70-003B-S53V-00000-00&context=). When presented with a pro se complaint, the court should construe the complaint liberally and draw fair inferences from what is not alleged as well as from what is alleged. [*Dluhos v. Strasberg, 321 F.3d 365, 369 (3d Cir. 2003)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4800-B3P0-0038-X31N-00000-00&context=). Notwithstanding this liberality, pro se litigants are not relieved of their obligation to allege sufficient facts to support a cognizable legal claim. *See, e.g.,* [*Taylor v. Books A Million, Inc., 296 F.3d 376, 378 (5th Cir. 2002)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4692-S0P0-0038-X3YW-00000-00&context=); [*Riddle v. Mondragon, 83 F.3d 1197, 1202 (10th Cir. 1996)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RVK-BDS0-006F-M3NW-00000-00&context=).

2. *Motion for Summary Judgment*

Summary judgment is appropriate if, drawing all inferences in favor of the non-moving party, the record indicates that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." [*Fed.R.Civ.P. 56(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2421-6N19-F165-00000-00&context=). Summary judgment may be granted against a party who fails to adduce facts sufficient to establish the existence of any element to that party's case and for which that party will bear the burden of proof at trial. [*Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6HC0-0039-N37R-00000-00&context=). The moving party bears the initial burden of identifying evidence or the lack thereof that demonstrates the absence of a genuine issue of material fact. [*National State Bank v. Federal Reserve Bank of New York, 979 F.2d 1579, 1582 (3d Cir. 1992)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-YYY0-008H-V52C-00000-00&context=). Once that burden has been met, the non-moving party must**[\*7]** set forth "specific facts showing that there is a genuine issue for trial" or the factual record will be taken as presented by the moving party and judgment will be entered as a matter of law. [*Matsushita Elec. Ind. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-7P90-0039-N51W-00000-00&context=). An issue is genuine only if the evidence is such that a reasonable jury could return a verdict for the non-moving party. [*Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6H80-0039-N37M-00000-00&context=). The inquiry, then, involves determining "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." [*Brown v. Grabowski, 922 F.2d 1097, 1111 (3d Cir. 1990)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-0H40-003B-51F4-00000-00&context=) (quoting [*Anderson, 477 U.S. at 251-52*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6H80-0039-N37M-00000-00&context=)). If a court, having reviewed the evidence with this standard in mind, concludes that "the evidence is merely colorable . . . or is not significantly probative," then summary judgment may be granted. [*Anderson, 477 U.S. at 249-50*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6H80-0039-N37M-00000-00&context=). Finally, while any evidence used to support a motion for summary judgment must be admissible, it is not necessary for it to be in admissible form. See [*Fed.R.Civ.P. 56(c)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2421-6N19-F165-00000-00&context=); [*Celotex, 477 U.S. at 324*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6HC0-0039-N37R-00000-00&context=); [*J.F. Feeser, Inc., v. Serv—Portion, Inc., 909 F.2d 1524, 1542 (3d Cir. 1990)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3GS0-003B-547H-00000-00&context=).

C. Discussion

1. *SCI-Greene Medical Dept*

Defendant SCI-Greene Medical Dept has filed the instant motion to dismiss seeking to have Plaintiff's claims against it dismissed. The [*Eleventh Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP01-NRF4-44G4-00000-00&context=) provides that each state is a sovereign entity and a sovereign is not amenable to suit unless it consents.**[\*8]** [*Kentucky v. Graham, 473 U.S. 159, 165-67, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-B0B0-0039-N4CK-00000-00&context=). It is well established that the Commonwealth of Pennsylvania has not consented to actions against it in federal court and thus has not waived its [*Eleventh Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP01-NRF4-44G4-00000-00&context=) immunity from lawsuits by its citizens. And, it is also well established that the DOC is an agency or arm of the state, and therefore, the DOC and/or its institutions such as SCI-Greene are entitled to the same [*Eleventh Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP01-NRF4-44G4-00000-00&context=) immunity which the Commonwealth enjoys. Further, SCI-Greene Medical Department is not a "person" subject to suit under *42 U.S.C. § 1983*. [*Will v. Michigan Dep't of State Police, 491 U.S. 58, 71, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9Y90-003B-419C-00000-00&context=).

Plaintiff does not seem to dispute these principles. ("It was brought to the attention of the plaintiff that a civil suit cannot be brought against SCI Greene's Medical Department as SCI Green Medical Department is an Entity, not a person.") Response at 2 (ECF No. 24).

Accordingly, it is recommended that the motion to dismiss filed by SCI-Greene Medical Dept be granted and SCI-Greene Medical Dept be dismissed with prejudice. Further, it is recommended that leave to amend be denied as futile.

2. *Dr. Jin*

a. Federal Claims

Dr. Jin seeks to have the federal claims against him dismissed but on different grounds than that which applied to SCI-Greene Medical Dept. Defendant Jin argues that the claims against him should**[\*9]** be dismissed because Plaintiff has failed to fully exhaust his administrative remedies. As the parties were advised, the motion to dismiss was converted to a motion for summary judgment on this issue.

A prisoner is required to pursue all avenues of relief available to him within the prison's grievance system before bringing a federal civil rights action. [*42 U.S.C. § 1997e(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GS51-NRF4-4540-00000-00&context=); [*Booth v. Churner, 206 F.3d 289, 291 (3d Cir. 2000)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3YRV-XK20-0038-X45P-00000-00&context=), *aff'd*, [*532 U.S. 731, 121 S. Ct. 1819, 149 L. Ed. 2d 958 (2001)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4354-R9X0-004C-002Y-00000-00&context=). Failure to exhaust administrative remedies under the PLRA is an affirmative defense that must be pleaded and proven by defendants. [*Ray v. Kertes, 285 F.3d 287, 295 (3d Cir. 2002)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:45H8-16P0-0038-X3V1-00000-00&context=).

Moreover, the PLRA also requires "proper exhaustion" meaning that a prisoner must complete the administrative review process in accordance with the applicable procedural rules of that grievance / appeal system and a procedurally defective administrative grievance or appeal precludes action in federal court. [*Fennell v. Cambria County Prison, 607 F. App'x 145, 149 (3d Cir. 2015)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5FPD-RHF1-F04K-K03C-00000-00&context=) (citing [*Woodford v. Ngo, 548 U.S. 81, 84, 90-91, 126 S. Ct. 2378, 165 L. Ed. 2d 368 (2006)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4K7M-VFH0-004B-Y03S-00000-00&context=) and [*Spruill v. Gillis, 372 F.3d 218, 230 (3d Cir. 2008))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4CN6-8PP0-0038-X3B9-00000-00&context=).

The exhaustion requirement is a "bright-line rule" and "it is beyond the power of this court — or any other - to excuse compliance with the exhaustion requirement, whether on the ground of futility, inadequacy, or any other basis." [*Nyhuis v. Reno, 204 F.3d 65, 73 (3d Cir. 2000)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3YKG-VKK0-0038-X10D-00000-00&context=). Likewise, as previously stated, our appellate court has been very clear that all available remedies must be exhausted prior to filing suit. [*Oriakhi v. United States, 165 F. App'x 991, 993 (3d Cir. 2006)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4J84-V4K0-0038-X419-00000-00&context=)**[\*10]**.

No analysis of exhaustion may be made absent an understanding of the administrative process available to state inmates. [*Jones v. Bock, 549 U.S. 199, 218, 127 S. Ct. 910, 166 L. Ed. 2d 798 (2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4MW8-VPD0-004C-101D-00000-00&context=). The DOC maintains three separate policies that prisoners can use to present grievances administratively: (i) the Inmate Discipline Policy, DC-ADM 801; (ii) the Administrative Custody Policy, DC-ADM 802; and (iii) the Inmate Grievance System Policy, DC-ADM 804. Both DC-ADM 802 and DC-ADM 804 "are built around multi-tier processes; DC-ADM 804 provides for an initial grievance at the institutional level, an appeal to the Facility Manager, and an appeal to SOIGA; and DC-ADM 802 provides that an inmate may raise their concerns initially with the Program Review Committee, then to the Facility Manager, and then, finally, to the Chief Hearing Examiner." [*Booze v. Wetzel, No. 1:12-cv-01307, 2017 U.S. Dist. LEXIS 81247, 2017 WL 2991801 at \*5 (M.D.Pa. May 25, 2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5NMW-22D1-F04F-42DX-00000-00&context=), *report and recommendation adopted*, [*No. 1:12-cv-01307, 2017 U.S. Dist. LEXIS 108492, 2017 WL 2985108 (M.D.Pa. July 13, 2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5P10-V371-F04F-403N-00000-00&context=).

In this case, Plaintiff's claims are governed by the DOC's grievance policy DC-ADM 804. To initiate a claim under DC-ADM 804, a prisoner must file an initial grievance within 15 working days of an incident. The grievance is submitted to the Facility Grievance Coordinator (Step 1). If the grievance is denied, the prisoner may appeal**[\*11]** to the Superintendent. (Step 2). Once a prisoner has received a disposition of his Appeal to the Superintendent, the prisoner may appeal a second time to the Secretary's Office of Inmate Grievances and Appeals ("SOIGA") and seek Final Review (Step 3). SOIGA then must respond with a final resolution. [*Robinson v. Superintendent Rockview SCI, 831 F.3d 148, 151 (3d Cir. 2016)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5KB4-96F1-F04K-K1T3-00000-00&context=).

The broad rule favoring full exhaustion allows for a narrowly defined exception. If the actions of prison officials directly caused the inmate's procedural default on a grievance, the inmate will not be held to strict compliance with this exhaustion requirement. *See* [*Camp v. Brennan, 219 F.3d 279 (3d Cir. 2000)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:40S6-7SS0-0038-X3MY-00000-00&context=). However, case law recognizes a clear "reluctance to invoke equitable reasons to excuse [an inmate's] failure to exhaust as the statute requires." [*Davis v. Warman, 49 F. App'x 365, 368 (3d Cir. 2002)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:46WX-F610-0038-X16J-00000-00&context=).

Thus, an inmate's failure to exhaust will only be excused "under certain limited circumstances," [*Harris v. Armstrong, 149 F. App'x 58, 59 (3d Cir. 2005)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4GY7-WTB0-0038-X2X1-00000-00&context=), and an inmate can defeat a claim of failure to exhaust only by showing "he was misled or that there was some extraordinary reason he was prevented from complying with the statutory mandate." [*Warman, 49 F. App'x at 368*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:46WX-F610-0038-X16J-00000-00&context=).

In the absence of competent proof that an inmate was misled by corrections officials, or some other extraordinary circumstances, inmate requests to excuse a failure to exhaust are frequently**[\*12]** rebuffed by the courts. Thus, an inmate cannot excuse a failure to timely comply with these grievance procedures by simply claiming that his efforts constituted "substantial compliance" with this statutory exhaustion requirement. [*Harris v. Armstrong, 149 F. App'x 58, 59 (3d Cir. 2005)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4GY7-WTB0-0038-X2X1-00000-00&context=). Nor can an inmate avoid this exhaustion requirement by merely alleging that the DOC policies were not clearly explained to him. [*Warman, 49 F. App'x at 368*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:46WX-F610-0038-X16J-00000-00&context=). Thus, an inmate's confusion regarding these grievances procedures does not, standing alone, excuse a failure to exhaust. [*Casey v. Smith, 71 F. App'x 916 (3d Cir. 2003)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4968-R0K0-0038-X2RR-00000-00&context=).

In support of his motion, Defendant Jin has attached Grievance No. 667113, the only grievance filed by Plaintiff relating to his medical treatment at SCI Greene, and the Declaration of William Nicholson, the Correctional Health Care Administrator (CHCA) at SCI-Greene.

In his grievance, No. 667113 dated March 2, 2017, Plaintiff states that he was given an annual physical examination on February 23, 2017, and although he previously had been diagnosed with prostate cancer, during this annual examination he was not given a prostate exam, his prescription for allopurinol (a medication which he previously was told was used in the treatment of prostate cancer) was discontinued, and no blood work was taken. ECF No.**[\*13]** 17-2. On March 23, 2017, Plaintiff's grievance was denied upon initial review. In the decision, the grievance officer noted as follows:

(1) Plaintiff's annual exam included a prostate exam;

(2) appropriate lab work was ordered;

(3) the allopurinol medication was discontinued because that is a gout medication, and Plaintiff does not have gout; however, during Plaintiff's follow-up appointment on March 17, 2017, the allopurinol was reordered to help with overall bone aches; and

(4) the results of his lab work were discussed with Plaintiff during his follow-up appointment on March 17, 2017.

*Id.* Plaintiff did not appeal the Initial Review Response as required by DC-ADM 804.

The Court notes that in Plaintiff's response to the summary judgment motion, he does not dispute that he did not appeal the Initial Review Response. Rather, he claims that he sent inquiries to both his Unit Manager and the Superintendent of the facility seeking information about "who to contact about his grievance receiving an unfavorable answer," which inquiries went unanswered, and that he had his sister call the prison in an attempt to speak to the Superintendent to ask about what Plaintiff should do. Response at 3 (ECF**[\*14]** No. 24).

In their Reply, Defendants provide refuting evidence by way of the Declaration of William Nicholson. According to Nicholson, all inmates coming into the DOC system are provided a copy of the Inmate Handbook and given instructions regarding it. The DOC records reflect that Plaintiff received "new inmate orientation" at SCI-Camp Hill on March 14, 2011, which would have included instruction on the grievance system. Further, any inmate who has lost or needs a copy of the Inmate Handbook can obtain a new copy by making a request of appropriate staff including their Counselor Unit Manager. Moreover, copies of the Inmate Handbook are maintained in the prison's libraries.

The Court finds that Dr. Jin has satisfied his burden under [*Rule 56 of the Federal Rules of Civil Procedure*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2421-6N19-F165-00000-00&context=) in identifying evidence which demonstrates the absence of a genuine issue of material fact. The record and evidence demonstrate that Plaintiff has failed to properly exhaust his administrative remedies. Claiming confusion or ignorance of the grievance system does not exempt Plaintiff from the exhaustion requirements. *See* [*Warman, 49 F. App'x at 368*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:46WX-F610-0038-X16J-00000-00&context=) (an inmate cannot avoid the exhaustion requirement by merely alleging that the DOC policies were not clearly explained to him); [*Smith, 71 F. App'x 916*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4968-R0K0-0038-X2RR-00000-00&context=) (An inmate's**[\*15]** confusion regarding grievances procedures does not, standing alone, excuse a failure to exhaust). The record is void of any evidence which demonstrates that the actions of the prison officials directly caused Plaintiff to fail to properly exhaust his grievance. Therefore, it is recommended that Defendant Jin's motion for summary judgment be granted.

Further, to the extent that Plaintiff is complaining that he was prescribed the wrong medication to treat his prostate cancer, allopurinol, or that he experienced a prolonged delay in treating his prostate cancer, Plaintiff did not fairly grieve these claims. The primary purpose of the PLRA's exhaustion requirement is to allow prison officials "a fair opportunity" to address grievances on the merits, to correct prison errors that can and should be corrected, and to create an administrative record for those disputes that eventually end up in court. [*Woodford v. Ngo, 548 U.S. 81, 94-95, 126 S. Ct. 2378, 165 L. Ed. 2d 368 (2006)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4K7M-VFH0-004B-Y03S-00000-00&context=). "The level of detail necessary in a grievance to comply with the grievance procedures will vary from system to system and claim to claim, but it is the prison's requirements, and not the PLRA, that define the boundaries of proper exhaustion." [*Jones v. Bock, 549 U.S. 199, 218, 127 S. Ct. 910, 166 L. Ed. 2d 798 (2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4MW8-VPD0-004C-101D-00000-00&context=).

The DC-ADM 804, Inmate Grievance System Procedures**[\*16]** Manual, provides that the grievance must "include a statement of the facts relevant to the claim," including "the date, approximate time, and location of the event(s) that gave raise to the grievance." The inmate must also "identify individuals directly involved in the event(s)," and "specifically state any claims he/she wishes to make concerning violations of Department directives, ***regulations***, court orders, or other law." (emphasis added). Policy Statement, Policy Number: DC-ADM 804, effective date May 1, 2015. *See* http://www.cor.pa.gov/About%20Us/Pages/DOC-Policies.aspx (last visited 2/22/2018). In his March 2, 2017 grievance, Plaintiff exclusively challenges the medical treatment he received on February 23, 2017. The grievance did not specifically reference any of the 2013 or 2014 conduct complained of in the complaint. As a result, prison officials were not on notice that Plaintiff was complaining about his lack of treatment for his prostate cancer during these years. Thus, these claims also were not properly exhausted.[[3]](#footnote-2)3

b. State Law - Medical Malpractice Claims

Because it is recommended that Plaintiff's federal claims be dismissed, to the extent that Plaintiff is bringing separate**[\*17]** negligence / medical malpractice claims against Dr. Jin, it is recommended that the Court decline to exercise supplemental jurisdiction over such claims. [*28 U.S.C. § 1367(c)(3)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GSN1-NRF4-44MM-00000-00&context=). Although declining to exercise jurisdiction is within the discretion of the district court, the United States Court of Appeals for the Third Circuit has held that, absent extraordinary circumstances, "pendent jurisdiction should be declined where the federal claims are no longer viable." *Shaffer v. Bd. of Sch. Dir. Albert Gallatin Area Sch. Dist., 730 F.2d 910, 912 (3d Cir. 1984)* (citations omitted). Finding no extraordinary circumstances that warrant the exercise of supplemental jurisdiction over Plaintiff's state law negligence / medical malpractice claim, it is recommended that the Court decline to exercise its supplemental jurisdiction and instead dismiss Plaintiff's negligence / medical malpractice claims without prejudice to Plaintiff's ability to refile it in state court.

**III. CONCLUSION**

For all the foregoing reasons, it is recommended that the Motion to Dismiss filed by Defendant SCI-Greene Medical Dept (ECF No. 14) be granted for failure to state a claim and that the Motion to Dismiss filed by Dr. Jin, which has been converted into a motion for summary judgment (ECF No. 16), be granted as Plaintiff failed to exhaust**[\*18]** his administrative remedies as required by the Prison Litigation Reform Act. It is further recommended that the Court decline to exercise supplemental jurisdiction over any state law negligence / medical malpractice claim alleged in this lawsuit. Additionally, it is recommended that leave to amend be denied as futile.

Any party is permitted to file Objections to this Report and Recommendation to the assigned United States District Judge. In accordance with *28 U.S.C. § 636(b)*, [*Fed.R.Civ.P. 6(d)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8K0V-7CS2-8T6X-7257-00000-00&context=) and [*72(b)(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-25Y1-FG36-104X-00000-00&context=), and LCvR 72.D.2, Plaintiff, because he is a non-electronically registered party, must file objections to this Report and Recommendation **March 12, 2018**, and Defendants, because they are electronically registered parties, must file objections, if any, by **March 9, 2018**. The parties are cautioned that failure to file Objections within this timeframe "will waive the right to appeal." [*Brightwell v. Lehman, 637 F.3d 187, 193 n. 7 (3d Cir. 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:527P-JWR1-JCNH-W009-00000-00&context=).

/s/ Cynthia Reed Eddy

Cynthia Reed Eddy

United States Magistrate Judge

Dated: February 23, 2018

**End of Document**

1. 1Defendant's surname is incorrectly spelled in the complaint; the correct spelling is "Jin"; to avoid confusion, the Court will use the correct spelling of the Defendant's surname. [↑](#footnote-ref-0)
2. 2The Complaint was signed July 31, 2017, and received by the Court on August 2, 2017. Pursuant to the prisoner mailbox rule, the Court will treat July 31, 2017, as the relevant filing date. [↑](#footnote-ref-1)
3. 3Dr. Jin also argues that Plaintiff's claims should be dismissed as time-barred. However, the Court need not address that issue, because, as discussed, Plaintiff's claims were not properly exhausted and, as a result, dismissal of the complaint is proper. [*Stone v. Johnson, 713 Fed. Appx. 103, 2017 U.S. App. LEXIS 22884, 2017 WL 5479469, \*2 (2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5PYM-MCP1-F04K-K181-00000-00&context=) (unpublished opinion). [↑](#footnote-ref-2)