

who had sleep apnea but was denied a CPAP machine.¹⁹⁷ However, beyond conclusory allegations that MCCF consistently refused to provide CPAP machines to pretrial detainees, Yoast has not alleged that any policymakers were aware of similar conduct.¹⁹⁸ Therefore, this claim will be dismissed.

b. Failure to train

As explained above, when municipal liability is based on a failure to train, “liability under section 1983 requires a showing that the failure amounts to ‘deliberate indifference’ to the rights of persons with whom those employees will come into contact.”¹⁹⁹ “[D]eliberate indifference’ is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action.”²⁰⁰

However, Yoast has not “identif[ied] any facts detailing specific deficiencies in any training programs.”²⁰¹ Rather, he has merely stated a conclusory allegation that MCCF failed to train prison guards properly. Moreover, Yoast “has also failed to allege any facts showing that a [MCCF] policymaker knew or should have known that the [MCCF’s] current training policies would” lead to a

¹⁹⁷ Doc. No. 90 at 6–7.

¹⁹⁸ See *Saleem*, 2013 WL 5763206, at *2.

¹⁹⁹ *Thomas*, 749 F.3d at 222 (quoting *Carter*, 181 F.3d at 357).

²⁰⁰ *Id.* at 224 (quoting *Brown*, 520 U.S. at 410).

²⁰¹ *Niblack*, 2013 WL 4432081, at *9.

violation of Yoast's rights.²⁰² Therefore because Yoast "made conclusory and general claims of failure to . . . train," this claim will be dismissed.²⁰³

c. Failure to adopt policies

As explained above, an entity can be liable when a "policymaker has failed to act affirmatively at all, [though] the need to take some action to control the agents of the government is so obvious, and the inadequacy of existing practice so likely to result in the violation of constitutional rights, that the policymaker can reasonably be said to have been deliberately indifferent to the need."²⁰⁴ "Such failures to act, however, 'can ordinarily be considered deliberate indifference only where the failure has caused a pattern of violations.'"²⁰⁵

However, beyond conclusory allegations, Yoast has failed to sufficiently allege a pattern of violations that would have made the need to take action obvious. Moreover, he has also "failed to identify any policymaker or

²⁰² *Fitzgerald*, 2017 WL 3310676, at *19; see also *Robinson v. Fair Acres Geriatric Ctr.*, 722 F. App'x 194, 198 (3d Cir. 2018) ("Nor did Hope allege that her injuries were caused by affirmative actions on the part of a particular policymaker.").

²⁰³ *Wood*, 568 F. App'x at 104.

²⁰⁴ *Natale*, 318 F.3d at 584 (3d Cir. 2003) (citations omitted).

²⁰⁵ *Marvel v. Delaware Cty.*, No. 07-5054, 2009 WL 1544928, at *21 (E.D. Pa. June 2, 2009), *aff'd sub nom. Marvel v. Cty. of Delaware*, 397 F. App'x 785 (3d Cir. 2010) (quoting *Berg v. County of Allegheny*, 219 F.3d 261, 276 (3d Cir. 2000)).

decisionmaker responsible for the unlawful conduct alleged.”²⁰⁶ Therefore, this claim will also be dismissed.

4. PrimeCare

Liberally construing Yoast’s Complaint, he alleges a failure-to-adopt a policy claim against PrimeCare based on a single-incident theory.²⁰⁷ Although, as explained above, generally a plaintiff must plead a pattern of violations, “[t]o find deliberate indifference from a single incident violation, the risk of [Yoast’s] injury must be a ‘highly predictable consequence’ of [PrimeCare’s] failure to” adopt a policy.²⁰⁸ The “burden on the plaintiff in such a case is high.”²⁰⁹

Yoast’s claim fails because his allegation that PrimeCare does not have a policy “to address the medical needs of inmates with serious medical conditions” is a conclusory allegation which the Court does not credit.²¹⁰ Moreover, to the extent that Yoast alleges that PrimeCare failed to adopt a policy specifically requiring that CPAP machines be provided to all prisoners with sleep apnea, “[i]t is not obvious that the existing policies of [PrimeCare] would have been insufficient to address the serious medical

²⁰⁶ *Wood*, 568 F. App’x at 104.

²⁰⁷ Doc. No. 90 at 9.

²⁰⁸ *Thomas*, 749 F.3d at 222 (quoting *Connick*, 563 U.S. at 64).

²⁰⁹ *Berg*, 219 F.3d at 276 (citation omitted).

²¹⁰ Doc. No. 90 at 72.

needs of prisoners' including plaintiff."²¹¹ Therefore, the claims against PrimeCare will be dismissed as well.

IV. CONCLUSION

For the foregoing reasons, the Court grants Defendants Justin O'Donoghue and Wisler Pearlstine's Motion to Dismiss, Defendants Edward Forbes and Jeanne Forbes's Motion to Dismiss, Defendants Donald Cheetham and Legal Aid of Southeastern Pennsylvania's Motion to Dismiss, the Pottstown Defendants' Motion to Dismiss, and Defendants Montgomery County, Kevin Steele, Timothy Stein, and Ryan VanDorick's Motion to Dismiss. The Court grants in part and denies in part Defendants Anthony Hoch and PrimeCare Medical's Motion to Dismiss.

In civil rights cases, "district courts must offer amendment – irrespective of whether it is requested – when dismissing a case for failure to state a claim unless doing so would be inequitable or futile."²¹² Plaintiff has already had the opportunity to file an Amended Complaint in response to the first round of motions to dismiss, and in the Amended Complaint, Plaintiff has set forth his claims in exhaustive detail, the Defendants have painstakingly

²¹¹ *Simonds v. Delaware Cty.*, No. 13-7565, 2015 WL 1954364, at *5 (E.D. Pa. Apr. 30, 2015) (quoting *Dickson v. Cnty. of Gloucester N.J.*, No. 05-1444, 2007 WL 928477, at *5 (D.N.J. Mar. 27, 2007)).

²¹² *Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 251 (3d Cir. 2007).

responded, and the Court has comprehensively ruled on each claim. Because Yoast has stated a claim against Hoch for deliberate indifference to serious medical needs, the Court will allow him to file a Second Amended Complaint against VanDorick, Stein, Montgomery County, and PrimeCare, with regard to the deliberate indifference claims only, if he is able to do so in accordance with the Memorandum Opinion. Despite spanning hundreds of pages, his allegations against the other defendants fail to state any viable claims stemming from his arrests and prosecutions. Therefore, the Court determines that amendment as to the rest of the claims would be futile and inequitable.

No.

In the Supreme Court of the United States

TERRENCE R. YOAST,
Petitioner

v.

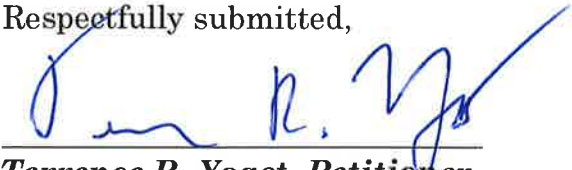
POTTSTOWN BOROUGH, Et. al.
Respondents

CERTIFICATE OF SERVICE

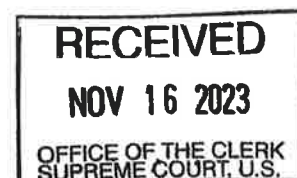
I, Terrence R. Yoast, Petitioner, hereby certify that (3) copies of the enclosed **Petition for Writ of Certiorari** were served upon counsel of record that appeared for Respondents in the Third Circuit Court of Appeals. Service was perfected on **November 12th, 2023**, by way of Federal Express and upon:

Sheryl L. Brown, Esquire
Siana Law
941 Pottstown Pike, Suite 200
Chester Springs, PA 19425
Counsel for the Respondents
(slbrown@sianalaw.com)

Respectfully submitted,


Terrence R. Yoast, Petitioner
(267) 718-6034, Tyost97@AOL.COM

Dated: November 12th, 2023



No.

In the Supreme Court of the United States

TERRENCE R. YOAST,
Petitioner

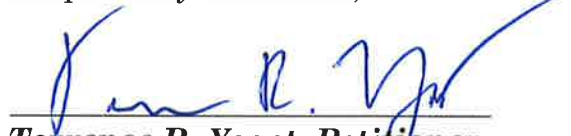
v.

POTTSTOWN BOROUGH, Et. al.
Respondents

CERTIFICATE OF WORD-COUNT LIMITATIONS

Petitioner, Terrence R. Yoast, hereby pledges that the foregoing Petition for Writ of Certiorari comports to the word-count limitations prescribed and contains 6,506 words, excluding exemptions, as calculated by Microsoft Word software.

Respectfully submitted,


Terrence R. Yoast, Petitioner
(267) 718-6034, Tyost97@AOL.COM

Dated: November 12th, 2023