No. 21-___

IN THE

Supreme Court of the United States

MICHELLE MUNGER, FREDRICK COVILLO, APRIL HELSEL, ANN SLAGLE,

Petitioners,

v.

BRENDA DAVIS, FREDERICK STUFFLEBEAN,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Can an employee of a private contractor providing constitutionally-required services to inmates in a county jail or state prison facility assert qualified immunity in response to an inmate's claim in a suit under 42 U.S.C. § 1983 that the employee violated the inmate's federal rights in providing those services?

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(Not petitioning this Court)

Advanced Correctional Healthcare, Inc.

Buchanan County, Missouri

Corizon Health, Inc.

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TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS BELOW	ii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION	1
STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
1. *Facts*	2
A. *The County Jail*	2
B. *The State Facility*	3
2. *The Section 1983 Suit and District Court Decisions Denying Qualified Immunity*	4
A. *The County Jail Petitioners*	4
B. *The State Facility Petitioners*	5
3. *Eighth Circuit Decision*	7
A. *Common Law Principles / Filarsky / Richardson*	8
B. *Policy Reasons for Affording Qualified Immunity*	9
REASONS FOR GRANTING THE WRIT	11
I. This Court's Only Two Decisions Addressing When a Private Actor Performing a Government Function May Assert Qualified Immunity are Inherently Dissonant and Fail to Provide Lower Courts the Necessary Guidance to Resolve Such Claims	11

TABLE OF CONTENTS—Continued

Page

A. *Richardson v. McKnight* and *Filarsky v. Delia* Involved Vastly Different Situations, The Court Itself Described *Richardson* as "Self-Consciously Narrow," and the Two Decisions Adopt Inconsistent Analytical Approaches in Key Respects, Resulting in a Lack of Guidance for the Many Contexts Lower Courts Have Confronted 12

B. The Circuits' Diversity of Rulings and Reasoning on When Private Actors Can or Cannot Assert Qualified Immunity Fail to Articulate Principled Distinctions that Reflect the Inherent Dissonance Between *Richardson* and *Filarsky* 18

II. The Eighth Circuit's Decision Raises More Questions than it Answers..... 24

III. Privatization of State and Local Government Services Is Not New, as This Court Emphasized in *Filarsky v. Delia*. In Fact, the Privatization of Essential Government Services Is a Widespread and Beneficial Feature of Modern Life, Meaning These Issues Will Continue to Arise, and the Issue Presented Merits the Court's Plenary Review..... 26

CONCLUSION 28

TABLE OF CONTENTS—Continued

APPENDIX Page

APPENDIX A: OPINION, Court of Appeals for the Eighth Circuit (August 24, 2021) 1a

APPENDIX B: ORDER, District Court for the Western District of Missouri (December 23, 2019) 49a

APPENDIX C: ORDER, District Court for the Western District of Missouri (December 23, 2019) 136a

APPENDIX D: ORDER, District Court for the Western District of Missouri (December 23, 2019) 176a

APPENDIX E: ORDER, District Court for the Western District of Missouri (December 23, 2019) 184a

TABLE OF AUTHORITIES

CASES Page(s)

Bartell v. Lohiser,
215 F.3d 550 (6th Cir. 2000)..... 23

Briscoe v. LaHue,
460 U.S. 325 (1983)..... 19

Davis, et al. v. Buchanan County, et al.,
11 F.4th 604 (8th Cir. 2021) .....*passim*

Davis, et al. v. Buchanan County, et al.,
No. 5:17-cv-06058-NKL,
2019 WL 7116360 (Dec. 23, 2019)..... 1, 4, 5, 6

Davis, et al. v. Buchanan County, et al.,
No. 5:17-cv-06058-NKL,
2019 WL 7116361 (Dec. 23, 2019) 1, 4, 7

Davis, et al. v. Buchanan County, et al.,
No. 5:17-cv-06058-NKL,
2019 WL 7116362 (Dec. 23, 2019)..... 1, 5

Davis, et al. v. Buchanan County, et al.,
No. 5:17-cv-06058-NKL,
2019 WL 7172200 (Dec. 23, 2019)..... 1, 4, 5

Estate of Clark v. Walker,
865 F.3d 544 (7th Cir. 2017)..... 19

Estate of Jensen v. Clyde,
989 F.3d 848 (10th Cir. 2021), *cert. denied*, ___ U.S. ___, 2021 WL 4733347 (No. 21-152) (Oct. 12, 2021)..... 20, 21, 22

Estate of Lockett v. Fallin,
841 F.3d 1098 (10th Cir. 2016)..... 21

Filarsky v. Delia,
566 U.S. 377 (2021).....*passim*

TABLE OF AUTHORITIES—Continued

Page(s)

Halvorsen v. Baird,
146 F. 3d 680 (9th Cir. 1998)..... 19, 23

Harlow v. Fitzgerald,
457 U.S. 800 (1982)..... 15

Harrison v. Ash,
539 F.3d 510 (6th Cir. 2008)..... 19

Hinson v. Edmond,
192 F.3d 1342 (11th Cir. 1999)..... 19

Jensen v. Lane County,
222 F.3d 570 (9th Cir. 2000)..... 19

McCullum v. Tepe,
693 F.3d 696 (6th Cir. 2012)..... 19, 21

Perniciaro v. Lea,
901 F.3d 241 (5th Cir. 2018)..... 20, 22

Procunier v. Navarette,
434 U.S. 555 (1978)..... 13

Rehberg v. Paulk,
566 U.S. 356 (2012)..... 15, 16, 19

Richardson v. McKnight,
521 U.S. 399 (1997).....*passim*

Sanchez v. Oliver,
995 F.3d 461 (5th Cir. 2021)..... 20, 22, 23

Tanner v. McMurray,
989 F.3d 860 (10th Cir. 2021)..... 19, 22

Tower v. Glover,
467 U.S. 914 (1984)..... 8

West v. Atkins,
487 U.S. 42 (1988)..... 7

TABLE OF AUTHORITIES—Continued

CONSTITUTION Page(s)

U.S. Const. amend. VIII 1, 4, 8

STATUTES

28 U.S.C. § 1254(l) 1

42 U.S.C. § 1983 ..... *passim*

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William Brooks, *The Privatization of the Civil Commitment Process: Have the Mentally Ill Been Systematically Stripped of Their Fourteenth Amendment Rights*?, 40 Duquesne L. Rev. 1 (2001) 26

PETITION FOR WRIT OF CERTIORARI

Michelle Munger, Fredrick Covillo, April Helsel, and Ann Slagle respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit which denied them the opportunity to assert qualified immunity in this action under 42 U.S.C. § 1983.

OPINIONS BELOW

The Eighth Circuit's opinion denying petitioners' request to assert qualified immunity in this Section 1983 action is reported, *Davis, et al. v. Buchanan County, et al*., 11 F.4th 604 (8th Cir. 2021) and reprinted at Pet. App. 1a-48a. The decisions of the District Court for the Western District of Missouri denying petitioners' motions for summary judgment and their motions to dismiss based on Eighth Amendment violations and/or qualified immunity are not reported, but available at 2019 WL 7172200 (Dec. 23, 2019) (summary judgment – Slagle & Helsel), Pet. App. 49a-135a; at 2019 WL 7116360 (Dec. 23, 2019) (summary judgment – Munger & Covillo), Pet. App. 136a-175a; at 2019 WL 7116361 (Dec. 23, 2019) (motion to dismiss – Covillo), Pet. App. 176a-183a; and at 2019 WL 7116362 (Dec. 23, 2019) (motion to dismiss – Slagle & Helsel), Pet. App. 184a-192a.

JURISDICTION

The Eighth Circuit issued its decision on August 24, 2021. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The respondents' filed suit pursuant to 42 U.S.C. §1983 which provides in relevant part "[e]very person

who under color of any statute, ordinance, regulation, custom, or usage, of any State … subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law ….”

STATEMENT OF THE CASE

1. *Facts*. On October 26, 2015, Justin Stufflebean was sentenced to 15 years in prison by a state court in Buchanan County, Missouri. Pet App. 7a. Stufflebean’s doctor testified at sentencing about Stufflebean’s endocrine disorders of Addison’s disease and hypoparathyroidism, which required cortisol and medication; otherwise, Stufflebean could suffer significant consequences including death. *Id*. at 7a-8a. Sheriff’s deputies transported Stufflebean from the courtroom to the county jail for intake, where two deputies completed medical questions on an intake form and Stufflebean was placed in a holding cell. *Id*. at 8a-9a.

A. *The County Jail*. Advanced Correctional Healthcare (ACH), an Illinois corporation that provides medical services for jails, was contracted to provide medical care at the Buchanan County jail. Pet. App. 9a. Nurse Slagle, an employee of ACH, was on duty when Stufflebean arrived and was referred to the nursing staff by a deputy for care. *Id*. The day Stufflebean was booked, Stufflebean’s mother brought his medications to the jail. *Id*. at 9a-10a. Stufflebean was not given his medications that day, October 26. *Id*. at 10a. The following day, October 27, Stufflebean requested his medications and they were ordered to be given the following day, October 28. *Id*.

The next day, October 28, Nurse Helsel, also an ACH employee, was on duty. It is not clear whether she gave Stufflebean his medications that day because it was not documented. Pet. App. 10a. The following day Stufflebean was transferred from the county jail. *Id*. at 11a.

B. *The State Facility*. On October 29 Stufflebean was transferred from the Buchanan County jail to the Western Reception Diagnostic and Correctional Center, a receiving center for the Missouri Department of Corrections (MDOC) which contracted with Corizon, LLC to provide medical services to inmates. Pet. App. 11a.

On October 30, Dr. Fredrick Covillo, an employee of Corizon, performed a classification examination of Stufflebean mandated by MDOC policy. Dr. Covillo wrote that Stufflebean "seemed very stable" and was not showing symptoms reported the day before. Pet. App. 12a. Stufflebean did not receive any medications that day. *Id*.

On October 31, Stufflebean's health deteriorated, resulting in two early morning "Code 16" medical emergency calls, the second because he was found on the floor of his cell after falling. Pet. App. 12a. He told a nurse he was nauseated and had not eaten. *Id*. at 12a-13a. Shortly afterwards, Stufflebean was brought to the Center's infirmary, where Michelle Munger, a nurse and Corizon employee, was working. He told her of his Addison's disease, that he was experiencing a flareup, he had not eaten in three days, and in the past, he had been treated with IV fluids in a hospital for this situation. *Id*. at 13a. Nurse Munger gave him liquids and an anti-nausea medication, told him to eat, sent a service request to mental health regarding his stress, and told Stufflebean to make a service request

if he thought he needed to see a doctor again. She then released Stufflebean to his cell. *Id*.

Less than three hours later, Stufflebean was found motionless on the floor of his cell. Pet. App. 13a. He was brought to the infirmary but became unresponsive. Medical staff performed CPR and an ambulance was summoned to transport him to a hospital. He died in the hospital on November 16, 2015 from cause of death determined by the medical examiner to be "complications of polyglander endocrinopathy." *Id*. at 13a-14a.

2. *The Section 1983 Suit and District Court Decisions Denying Qualified Immunity*. Stufflebean's parents, Brenda Davis and Frederick Stufflebean, filed this 42 U.S.C. §1983 action against numerous defendants, including Nurse Slagle, Nurse Helsel, Dr. Covillo and Nurse Munger, the petitioners here, asserting Eighth Amendment violations. Pet. App. 14a. After discovery, the individual defendants who are petitioners here moved for summary judgment, with Nurse Munger asserting qualified immunity. Pet App. 136a; see also Pet. App. 49a. Around this time the plaintiffs also filed an amended complaint, to which petitioners Covillo, Slagle, and Helsel responded by filing motions to dismiss, asserting qualified immunity. Pet. App. 176a, 184a. The District Court took up all these motions at the same time and effectively combined the qualified immunity questions in the summary judgment and dismissal motions.

A. *The County Jail Petitioners.* In its summary judgment ruling addressing the jail defendants, Pet. App. 49a-135a, the Court expressly noted that the "ACH Defendants raised qualified immunity only in their motion to dismiss … which the Court does not address here." *Id*. at 79a n.13. That said, in the

summary judgment motion, the Court concluded that there were disputed facts as to whether Nurse Slagle was deliberately indifferent to Stufflebean's serious medical needs. *Id*. at 94a-104a. Interestingly, and perhaps logically inconsistent, the Court concluded that no reasonable jury could conclude Nurse Helsel was deliberately indifferent based on her one day on duty (October 28), *Id*. at 104a-105a, but because she was Slagle's supervisor, she could be potentially found liable for not properly supervising and training Slagle. *Id*. at 117a-119a.

On petitioners' motion to dismiss on the ground of qualified immunity, the Court assumed that private employees of a business that contracts with a governmental entity to provide medical services are entitled to assert qualified immunity. Pet. App. 186a n.3. But the Court concluded that the complaint adequately pleaded deliberate indifference on their part. *Id*. at 190a-191a. And to the extent the petitioners may have been arguing the plaintiffs were required to plead facts showing "the constitutional right alleged was clearly established," the Court held that "is inherently a legal issue based on the facts that form the basis of a claim for deliberate indifference." *Id*. at 191a. The Court denied qualified immunity to nurses Slagle and Helsel.

B. *The State Facility Petitioners*. In the summary judgment motion, the District Court observed that because the case involved "a private medical services provider and its employees, the Court first must consider whether these defendants are entitled to invoke qualified immunity." Pet. App. 153a. The Court noted that the "Eighth Circuit has not decided whether employees of a business which provides contractual services for or on behalf of a government

is entitled to qualified immunity, and there is no consensus among the federal appellate courts which have addressed the issue." *Id*. at 153a-155a. (citing and quoting cases from numerous Circuits). The District Court handled this by assuming, "without deciding" that such employees "of a private entity providing medical services for prisoners" are entitled to assert qualified immunity. *Id*. at 155a.

The Court then looked to the first step of the qualified immunity analysis, whether a defendant has violated a constitutional right, and determined that there was sufficient evidence that Dr. Covillo was deliberately indifferent to the serious medical needs of Stufflebean for that issue to go to a jury. Pet. App. 161a-166a. The Court did not address the second step, whether the law was clearly established.

As to Nurse Munger, the Court made the same step one finding regarding deliberate indifference. Pet. App. 169a-172a. As to the second step, the Court declared that it "was clearly established when Stufflebean was incarcerated that a medical provider in a prison violates a prisoner's constitutional rights when the provider is deliberately indifferent to the prisoner's serious medical need." *Id*. at 172a. Relying essentially on its previous discussion regarding step one, and simply citing two Eighth Circuit cases with parentheticals, the Court concluded that "it cannot be seriously debated that Nurse Munger was on notice" that her actions violated Stufflebean's constitutional rights because he had symptoms "that even a lay person would know needed to be urgently addressed." *Id*. at 173a. The Court denied "Nurse Munger's request for summary judgment … based on qualified immunity and the merits of Plaintiff's claim." *Id*.

In a separate decision issued the same day, the Court denied Dr. Covillo's motion to dismiss on qualified immunity grounds. Pet. App. 176a-183a. The Court arguably relied somewhat on its simultaneous summary judgment ruling, almost summarily concluding the complaint sufficiently alleged Dr. Covillo was deliberately indifferent to Stufflebean's serious medical needs. *Id*. at 181a-183a. The Court also rejected any notion that the complaint needed to plead facts showing any constitutional violation was clearly established because that "is inherently a legal issue based on the facts that form the basis of a claim for deliberate indifference," which the complaint already had plausibly pleaded. *Id*. at 183a.

3. *Eighth Circuit Decision*. The Eighth Circuit described the "threshold issue" as "whether employees of private medical-services-providers are entitled to assert the defense of qualified immunity." Pet. App. 15a. The Circuit ultimately held that they could not.

Acknowledging that petitioners "are considered state actors for purposes of the parents' section 1983 claim," Pet. App. 15a (citing *West v. Atkins*, 487 U.S. 42, 57 (1988) and other cases), the court observed that "private individuals, as state actors, are not necessarily entitled to assert the defense of qualified immunity in defending section 1983 actions." *Id*. Rather, "to determine whether these medical defendants are entitled to assert qualified immunity, this court applies the factors outlined by the Supreme Court in *Richardson v. McKnight*, 521 U.S. 399 (1997) and *Filarsky v. Delia*, 566 U.S. 377 (2021)." *Id*. at 16a. Those factors are "'the general principles of tort immunities and defenses applicable at common law, and the reasons we have afforded protection from suit

under § 1983.'" *Id*. (quoting and citing *Filarsky*, 566 U.S. at 384).

A. *Common Law Principles / Filarsky / Richardson*. The Eighth Circuit began its analysis by declaring that the historical availability of immunity did not support allowing petitioners to assert qualified immunity, relying on *Richardson* and several decisions from other Circuits that it cited for the proposition that there was no immunity at common law for the employees of private, systematically organized medical providers performing services for governments. Pet. App. 16a-17a.

The Court rejected two arguments petitioners made to counter those cases and lack of common law history. First, petitioners pointed to language in *Richardson* where this Court acknowledged that there was some immunity for doctors or lawyers who performed services at the behest of the sovereign when their actions involved only simple negligence or want of skill, but the immunity was lost if the practitioner was criminally guilty of malpractice. Pet. App. 17a (discussing *Richardson*, 521 U.S. at 406 (citing *Tower v. Glover*, 467 U.S. 914, 921 (1984), and J. Bishop, *Commentaries on Non-Contract Law* §§ 704, 708, 710 (1889)). The Eighth Circuit dismissed this argument, opining that even if such immunity existed at common law, it would not apply here because the Eighth Amendment violations alleged require proof of deliberate indifference which would be akin to "criminal malpractice" for which doctors would not have been immune according to the discussion in *Richardson*. Pet. App. 18a.

Second, petitioners argued *Filarsky*, unlike *Richardson*, directs courts to focus on the nature of the work being performed by the private actor rather than

the employment relationship. Pet. App. 18a. The Eighth Circuit rejected this argument by relying on "*Filarsky*'s context," *id*. at 19a, to make an important distinction—essentially a test, and one that several other Circuits have utilized—that draws a line between those private actors who may assert qualified immunity and those who may not. The Court engaged in a discussion that contrasted *Richardson* and *Filarsky* as follows: *Richardson* involved (1) a private firm, (2) organized to assume a major lengthy administrative task, (3) with limited direct supervision by government, (4) undertaken for profit, and (5) in competition with other firms. *Filarsky* and subsequent Circuit cases cited by the Court, however, involved (1) an individual, (2) not employed by a private firm, and (3) hired for a specific, limited, discrete task. Pet. App. 19a-20a.

According to the Eighth Circuit, petitioners "are employees of [a] systematically organized private firm[], tasked with assuming a major lengthy administrative task." Pet. App. 20a-21a. As such, they fell on the *Richardson* side of the line, not the *Filarsky* side.

B. *Policy Reasons for Affording Qualified Immunity*. The Eighth Circuit declared that the Supreme Court considers three policy factors in determining whether qualified immunity should be available to private actors: (1) avoiding unwarranted timidity in the performance of public duties; (2) ensuring that talented candidates are not deterred from public service; and (3) avoiding the harmful distractions that can accompany lawsuits. Pet. App. 21a.

The Court observed that avoiding timidity is the most important factor, but also less likely present when a private company is subject to market pressures, relying on the rationale of *Richardson*. Pet. App.

21a. Noting that marketplace pressures were present here for Corizon and ACH, that any government oversight in this case was not in any meaningful way distinguishable from the situation in *Richardson*, that ACH and Corizon had extensive policies for employees to follow regarding patient treatment protocol, and that ACH and Corizon faced competition from other firms, the Court concluded there was no special concern regarding unwarranted timidity in the absence of qualified immunity for petitioners. Pet. App. 21a-23a.

Likewise, the Court concluded that concerns about deterring qualified candidates did not favor allowing the assertion of qualified immunity. Rather, the Court observed that ACH and Corizon could insure themselves to cover claims against their employees and recruit quality employees by offering higher pay or extra benefits without any civil service system constraints. Pet. App. 24a-25a.

Only with respect to the factor of harmful distractions cause by lawsuits did the Court find any potential traction for permitting the assertion of qualified immunity. The Court recognized litigation is distracting for anyone but argued that medical personnel "may be uniquely equipped to handle" such distractions because they face a constant threat of medical malpractice litigation in any setting in which they choose to work. Pet. App. 25a.

Thus, on balance, "the policy considerations support the conclusion that these medical defendants are not entitled to assert the defense of qualified immunity." Pet. App. 26a.

REASONS FOR GRANTING THE WRIT

I. This Court's Only Two Decisions Addressing When a Private Actor Performing a Government Function May Assert Qualified Immunity are Inherently Dissonant and Fail to Provide Lower Courts the Necessary Guidance to Resolve Such Claims.

Section 1983 creates a cause of action for individuals whose federal rights have been violated by a person acting under color of state law. Section 1983 says nothing about potential individual immunities for defendants, but the Court long has read Section 1983 as not displacing immunities existing at common law when it was enacted, and the Court also has adopted a modern form of objective "qualified immunity" using a clearly established law test to protect government officials so that they may effectively perform their duties without undue fear of litigation and potential civil liability. Nothing in Section 1983 itself or any other federal statute, however, governs or defines such immunity, only decisions of this Court.

The Court has only twice addressed whether private actors may assert qualified immunity when performing government functions. The analyses in those two cases are inherently inconsistent in fundamental respects, and the two cases presented situations at opposite ends of the factual spectrum. The result has been confusion, disagreement, and unprincipled "tests" and distinctions in the lower courts as they have been confronted with the multitude of private actor immunity situations that have arisen in now almost twenty-five years of litigation. The lower courts, the many private actors who perform government functions, the governments that contract with them, and potential Section 1983 plaintiffs all would benefit

from a single analysis for and a clear answer to the question presented.

Plenary review is warranted in this case.

A. *Richardson v. McKnight* and *Filarsky v. Delia* Involved Vastly Different Situations, The Court Itself Described *Richardson* as "Self-Consciously Narrow," and the Two Decisions Adopt Inconsistent Analytical Approaches in Key Respects, Resulting in a Lack of Guidance for the Many Contexts Lower Courts Have Confronted.

The court in *Richardson v. McKnight*, 521 U.S. 399 (1997), addressed the question whether guards employed by a private company a state had contracted with to run an entire prison facility could assert qualified immunity when sued under Section 1983 by an inmate who accused them of using restraints on him that caused serious injury. The Court divided five-to-four, with the majority ruling against allowing the guards to assert qualified immunity for two primary reasons. First, the majority found no common law history of granting immunity to privately employed prison guards. *Id*. at 404-407. Second, the majority engaged in a policy analysis that reasoned market forces would ensure a sufficient but not overly-aggressive level of discipline by private prison guards, that the freedom of private employers to offer higher wages and benefits (compared to a public civil services system) and to purchase insurance to protect employees against liability would permit companies to hire quality guards and that these factors outweighed the risks of the potential distractions of litigation against private prison guards. *Id*. at 407-412.

The four dissenting Justices argued that modern qualified immunity has become something different than traditional common law counterparts, with its objective focus on clearly established law and that the test should be the government function the private actor is performing, not the person's status as an employee of a private entity. 521 U.S. at 414-423. The dissent noted that in deciding that publicly employed prison guards can assert qualified immunity the Court "did not trouble itself with history." *Id*. at 415 (citing *Procunier v. Navarette*, 434 U.S. 555 (1978)). Moreover, privatization can be in the public's and the inmates' interests: the dissent pointed out that states privatizing prison services had reported "the overall caliber of the services provided to prisoners has actually improved in scope and quality." 521 U.S. at 422.

Adding to the limited guidance *Richardson* provides is that the *Richardson* majority emphasized "we have answered the immunity question narrowly, in the context in which it arose." 521 U.S. at 413. *Richardson* on its own terms only purported to answer the qualified immunity question for the precise situation presented—an employee of a private entity that was contracted to take over the *entirety* of the governmental function of operating a state prison.

In *Filarsky v. Delia*, 566 U.S, 377 (2012), in sharp contrast, the Court essentially applied the *Richardson* dissent's functional test without acknowledging it was doing so and on facts that could not be more different than those in *Richardson*. In *Filarsky*, a city hired a single lawyer for a single, discrete matter involving a single employee in an isolated employment dispute. The lawyer advised the fire department chief to order the firefighter at issue to take certain actions, the

firefighter's lawyer threatened to sue everyone involved on the city's side if they did, but the fire chief followed through. The firefighter then sued under Section 1983 and the lower courts held that all the city employees could assert and were protected by qualified immunity but private lawyer Filarsky could not assert qualified immunity.

Every member of the Court concluded that private lawyer Filarsky could assert qualified immunity. The contrast in result and reasoning between *Filarsky* and *Richardson* is striking. The Court in *Filarsky* focused on Filarsky's function for the government and our history of many actors wearing more than one hat, sometimes carrying out private activities and sometimes performing part-time public *functions*. 566 U.S. at 384-389. The *Filarsky* court notably and pointedly did *not* focus on whether the common law would have granted immunity to a lawyer performing the specific task Filarsky was performing—investigating a public employee. The traditional mantra, "function, not status," just like the dissent in *Richardson*. This difference in focus has been lost on many Circuits, but not all. See Section I.B. below.

The Court also emphasized that many talented individuals in the private sector might be deterred from providing their expertise and services to governments if they cannot receive the same immunities as their public counterparts. 566 U.S. at 390. And the Court observed that even though the city employees had qualified immunity, they would still be distracted from their duties if Filarsky could not assert qualified immunity "because it is highly likely [they—the city employees involved] will all be required to testify…." *Id*. at 391. The *Filarsky* opinion also goes out of its way to pigeonhole *Richardson* as a "self-consciously

'narrow' decision," *id*. at 393, in an apparent effort to further cabin *Richardson* to its particular facts.

Filarsky thus represents the opposite extreme of *Richardson* in at least two ways. *First*, on the facts: the case involves a single, individual private actor performing a one-time, particularized government function while surrounded by state actors. *Second*, without perhaps acknowledging it, the Court returned to its oft-used "function, not status" approach to immunity and appeared to recognize the nature of modern qualified immunity (the *Harlow v. Fitzgerald*, 457 U.S. 800 (1982) and subsequent cases formulation of the objective, clearly established law test) should apply rather than a strict historical common law analysis to determine the scope and nature of qualified immunity.

In that respect, *Filarsky* is consistent with other more recent decisions of the Court, while *Richardson* becomes ever more the outlier. For example, in *Rehberg v. Paulk*, 566 U.S. 356 (2012), decided by a unanimous Court only two weeks before *Filarsky*, the Court held that a private actor who was a grand jury witness was protected by absolute immunity. But the Court disavowed relying upon a strict historical analysis to make that determination. The Court cautioned that it has not suggested that § 1983 is simply a federalized amalgamation of pre-existing common-law claims, an all-in-one federal claim encompassing" traditional torts. *Id*. at 366. Instead, the "new federal claim created by § 1983 differs in important ways from those pre-existing torts" which the Court concluded necessarily means the "immunity available in § 1983 [may] differ in some respects from the common law." *Id*. In concluding private grand jury witnesses should receive absolute immunity, the Court did not rely on historical analysis but on policy considerations such as

the difficulties of identifying *the* "complaining witness" when multiple witnesses often appear before the grand jury and the prosecutor's role, as well as protecting the secrecy of grand juries. *Id*. at 373, 374.

There are two other aspects of the gulf between *Richardson* and *Filarsky* that merit some discussion before turning to the years of litigation these decisions, *Richardson* especially, have spawned in the lower courts.

First, consider the questions raised by the *Richardson* characterization of what factors disqualify a private actor from asserting qualified immunity when compared to the *Filarsky* situation. (These come from the *Filarsky* description of *Richardson*, 566 U.S. at 393)

"A private firm": What if Filarsky had been a member of a law *firm*? Would that have disqualified him from asserting qualified immunity? Would it matter how small or large the law firm was?

"systematically organized to assume a major lengthy administrative task": What if Filarsky (and his law firm) had been retained by the City to handle all employment matters for the City? Or all litigation for the City? Or all legal matters for the City period? Is there a line here? What exactly is a "major" and "administrative" task?

"with limited direct supervision by the government": How much supervision is enough or not enough? And what about services that inherently require independence, such as exercise of medical or professional judgment? Mental health care? Legal services?

"undertaking that task for profit and potentially in competition with other firms": Is qualified immunity available if the person is employed by a non-profit entity but not a for-profit entity? What about Filarsky—there is no suggestion he was working pro bono. Nor is there any suggestion in the numerous examples the Court gave in the *Filarsky* decision that those part-time public servants were uncompensated. How exactly does "profit" factor into the analysis? State Attorneys General, Counties and Cities frequently put out requests for proposals or bids for legal services for a wide variety of needs—are not the law firms and lawyers who respond, "in competition with other firms"? If so, are they automatically denied the ability to assert qualified immunity when they ultimately perform government functions for the governments who contract with them?

Second, these challenging issues raise the question whether something is seriously amiss here. Petitioners respectfully suggest that, although it is not necessary for them to prevail in this case,[1] one option would be for the Court to reconsider the soundness and validity of its reasoning and holding in *Richardson v. McKnight* that a strict historical analysis must be applied when private actors seek to assert qualified immunity. Petitioners believe their question presented fairly encompasses the argument that *Richardson* should be overruled. In the event the Court were

[1] The Court could limit *Richardson*, for example, by defining a "major administrative task" that makes private actors ineligible for qualified immunity to be conducting the *entire* operation of an otherwise governmental entity, such as privatizing the entire prison at issue in that case, rather than providing some services to an otherwise governmental entity, such as legal counsel, mental health, dental services, or medical care generally.

to grant the writ here, petitioners intend to make an argument for overruling *Richardson*. But if the Court believes that would warrant adding an additional question to a grant of certiorari, petitioners request that the Court do so.

B. The Circuits' Diversity of Rulings and Reasoning on When Private Actors Can or Cannot Assert Qualified Immunity Fail to Articulate Principled Distinctions that Reflect the Inherent Dissonance Between *Richardson* and *Filarsky*.

The Court's decisions in *Richardson* and *Filarsky* have focused the lower courts on two inquiries, but with sometimes differing understandings of those inquiries and certainly with different applications. The first inquiry is the "common law" consideration. *Richardson* inquired whether private jailers received immunity at common law and concluded they did not; *Filarsky* did not ask whether private lawyers performing a government function received immunity at common law but only whether private actors traditionally wore two hats—sometimes pursuing their private activities and sometimes serving the public. The two inquiries are not the same and have dramatically different consequences in determining whether private actors performing government functions are entitled to assert immunity. There appear to be *no* private actors entitled to assert qualified immunity under the *Richardson* historical approach (and no Circuit has found such a situation). Rather, the *only* private actors entitled to assert immunity under even a quasi-*Richardson* approach

involve claims to absolute immunity.[2] *Every* other private actor will *always* be denied immunity under the *Richardson* historical approach.

In fact, every Court of Appeals to use the *Richardson* approach has denied qualified immunity to private actors seeking to assert it. *See, e.g.*, *Halvorsen v. Baird*, 146 F. 3d 680 (9th Cir. 1998) (private detoxification center not entitled to assert qualified immunity); *Hinson v. Edmond*, 192 F.3d 1342 (11th Cir. 1999) (doctor employed by private company providing medical services to county jail not entitled to assert qualified immunity); *Jensen v. Lane County*, 222 F.3d 570 (9th Cir. 2000) (psychiatrist employed by private hospital and who consulted with public psychiatrist about plaintiff's detention for evaluation not entitled to assert qualified immunity); *Harrison v. Ash*, 539 F.3d 510 (6th Cir. 2008) (nurses employed by private contractor providing medical services at county jail not entitled to assert qualified immunity); *McCullum v. Tepe*, 693 F.3d 696 (6th Cir. 2012) (psychiatrist formerly paid by county jail but currently employed by private non-profit entity to provide services at jail not entitled to assert qualified immunity); *Estate of Clark v. Walker*, 865 F.3d 544, 550 (7th Cir. 2017) ("private medical personnel in prisons are not entitled to the protection of qualified immunity"); *Tanner v. McMurray*, 989 F.3d 860 (10th Cir. 2021) (doctor and

[2] *E.g.*, *Briscoe v. LaHue*, 460 U.S. 325 (1983) (testifying witnesses). Perhaps also a private actor serving part-time as, for example, a justice of the peace might be accorded absolute judicial immunity. But as *Rehberg v. Paulk*, 566 U.S. 356 (2012), discusses, at common law private special prosecutors would not have received today's absolute prosecutorial immunity, *id*. at 364-366, nor did testifying witnesses receive the same breadth of immunity they receive under § 1983. *Id*. at 366-367.

nurses employed full-time by for-profit company providing medical services to metropolitan detention facility not entitled to assert qualified immunity); *Sanchez v. Oliver*, 995 F.3d 461 (5th Cir. 2021) (social worker employed by private company providing mental health services to county jail not entitled to assert qualified immunity).

At least two Circuit panels, however, have explicitly recognized that *Filarsky*'s approach is different, and does not follow the strict historical approach. Thus, in *Perniciaro v. Lea*, 901 F.3d 241 (5th Cir. 2018), a Fifth Circuit panel allowed private mental health providers working with a state-run mental health facility to assert qualified immunity. In part, the Court did so because, "[w]ith respect for our sister circuit's [the Sixth] deep historical analysis of whether doctors had any special immunity at common law, we read *Filarsky* to require a different focus." *Id*. at 252 (internal citation omitted).

Similarly, a Tenth Circuit panel recently permitted a private doctor who worked part-time at a county jail to raise a qualified immunity defense, following *Perniciaro*'s lead in rejecting *Richardson*'s historical inquiry and following *Filarsky*'s functional approach. *Estate of Jensen v. Clyde*, 989 F.3d 848 (10th Cir. 2021), *cert. denied*, ___ U.S. ___, 2021 WL 4733347 (No. 21-152) (Oct. 12, 2021). Acknowledging that the plaintiff relied heavily on decisions from other Circuits employing the *Richardson* common law analysis to conclude private doctors could not claim qualified immunity, the Tenth Circuit panel disagreed, concluding "[w]e also question whether [such] historical anal-

ysis fully comports with the Supreme Court's analysis in *Filarsky*." *Id*. at 857.[3]

Even the Sixth Circuit decision whose historical common law analysis the previous two decisions were distancing themselves from acknowledged a certain irony in its decision denying the doctor there the ability to assert qualified immunity. In *McCullum v. Tepe*, 693 F.3d 696 (6th Cir. 2012), the court faced a claim by an inmate against a psychiatrist who had provided services to a county prison for many years. For years the doctor was paid directly by the county, but at the time of the events leading to the lawsuit, he was working for a non-profit entity that had contracted with the prison to provide services. The Sixth Circuit engaged in the *Richardson* common law analysis and concluded it had to deny the doctor's request to assert qualified immunity. *Id*. at 704. The court declared, however:

> We acknowledge that it is somewhat odd for a government actor to lose the right to assert qualified immunity, not because his job changed, but because a private entity, rather than the government, issued his paycheck.

Id. Such distinctions directly conflict with *Filarsky's* direction that immunity under §1983 "should not vary depending on whether an individual working for the

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[3] The Tenth Circuit also followed *Filarsky* in *Estate of Lockett v. Fallin*, 841 F.3d 1098 (10th Cir. 2016). In *Estate of Lockett*, suit was brought against a private doctor who assisted with an execution at a prison in Oklahoma. The Tenth Circuit upheld his request to assert qualified immunity, avoiding *Richardson* (though it was a prison setting) and invoking *Filarsky* because the doctor was assisting in "carrying out criminal penalties," which are "unquestionably a traditional function of government …." *Id*. at 1108.

government does so as a permanent or full-time employee, or on some other basis." 566 U.S. at 378.

Even within the Tenth and Fifth Circuits there is confusion and disagreement. The same day the Tenth Circuit issued its *Estate of Jensen* decision a different panel decided *Tanner v. McMurray*, 989 F.3d 860 (10th Cir. 2021), denying employees of a private contractor providing medical services in a detention center the ability to assert qualified immunity. The district court had applied *Filarsky*'s approach and determined the defendants could assert qualified immunity because they were performing a governmental function, but this Tenth Circuit panel reversed, instead applying *Richardson*'s strict historical analysis.

The *Tanner* panel opined that any private company providing services could not be "the noble part-time public servant envisioned by *Filarsky*," and that the district court had established "a *de facto* functional test for qualified immunity." 989 F.3d at 871. The Court observed that [t]his simple functional test could have appeal," *id*., but a "broad reading of *Filarsky* would necessarily overrule *Richardson*." *Id*. at n. 9. Understanding itself to be constrained by *Richardson*'s historical analysis, the court denied the defendants' request to assert qualified immunity. *Id*. at 874.

And a later panel of the Fifth Circuit purported to distinguish and limit *Perniciaro*'s analysis of *Filarsky*. In *Sanchez v. Oliver*, 995 F.3d 461 (5th Cir. 2021), the family of an inmate who committed suicide in a county facility sued a licensed clinical social worker who was employed by a private contractor providing services to the jail. The *Sanchez* court denied the defendant's request to assert qualified immunity, applying *Richardson*'s strict historical common law analysis and distinguishing *Perniciaro* as a case involving a

private entity (Tulane University) whose employees had other duties besides providing services to the jail, so *Filarsky* did not apply. *Id*. at 467-469.

Another question that has arisen and resulted in different answers is whether the private provider's status as a for-profit or non-profit organization makes a difference. In *Halvorsen v. Baird*, 146 F.3d 680 (9th Cir. 1998), the Ninth Circuit held that such status is irrelevant to the qualified immunity determination. In *Halvorsen* a man was arrested and taken to a non-profit detoxification center which held him several hours before releasing him. He sued the center itself which attempted to assert qualified immunity. The Ninth Circuit rejected that attempt, relying on *Richardson*. The court concluded that the center was a "firm systematically organized to assume a major administrative task" and that the only significant difference between it and the private prison in Richardson was its non-profit status. But that "difference is not material, because both profit and non-profit firms compete for municipal contracts, and both have incentives to display effective performance." *Id*. at 686.

In contrast, in *Bartell v. Lohiser*, 215 F.3d 550 (6th Cir. 2000), the Sixth Circuit held that social workers employed by a private foster care contractor could assert qualified immunity, in part because their employer was a non-profit entity. The Sixth Circuit pointed out that *Richardson* "emphasized the prison was operated for-profit" and here the "defendants operated a non-profit operation …." *Id*. at 557.

Richardson versus *Filarsky* is the determinative factor in the outcome of these Circuit decisions. But there does not appear to be a principled basis for choosing which analysis to apply, other than perhaps a simplistic assessment of whether the case involves a

single private individual or a private entity employing private individuals. Or perhaps a clear choice between two starkly different analyses and the results they will reach.

One commentator observed the irony not long after *Richardson* was decided, pointing out that "the Court uses a functional approach to justify turning private parties into state actors subject to constitutional restraints, but then the Court shuns that same functional approach when determining the level of immunity these private parties should have." Paul H. Morris, Note, *The Impact of Constitutional Liability on the Privatization Movement After "Richardson v. McKnight*," 52 Vand. L. Rev. 489, 516 (1999). Among the potentially interesting consequences of this doctrinal approach is that "a prisoner held in a privately-run prison may be able to recover damages in a § 1983 action, when under the exact same facts a prisoner held in a state-run prison would not even be able to proceed to discovery." *Id*. at 514.

II. The Eighth Circuit's Decision Raises More Questions than it Answers.

The Eighth Circuit, and it is not alone, suggests the ability of private actors to assert qualified immunity is limited to those situations where the government hires (1) an individual, (2) not employed by a firm (3) for a discrete and specific task. But if government hires a *firm or entity* for any sort of an *ongoing or continuing* task *for profit* qualified immunity appears to be off the table automatically.

The Eighth Circuit's decision in this case strongly suggests that had lawyer Filarsky been employed by a law firm this Court would have denied his request to assert qualified immunity. Or that if the City had

hired Filarsky and perhaps an associate or a partner of his, *i.e.*, more than an "individual," the Court would have denied a request to assert qualified immunity. Is hiring an individual versus hiring two people, three people, or a "firm" truly a distinguishing factor?

Or if the city in that case had hired Filarsky to handle *multiple* employment matters the Eighth Circuit's decisions strongly suggests this Court would have denied his request to assert qualified immunity. Is the number of "matters" or "duties" or "items" performed or taken care of for government truly a dispostive and distinguishing factor?

Further, did Filarsky lack a *profit* motive? There is no indication in the opinion that Filarsky was working pro bono. He presumably was being paid and, just as in this case, had a profit motive. And attorneys, just like medical care providers who offer services to jails and prisons, *compete for business*, including the business of cities, counties, and state attorneys general offices, as well as numerous state agencies and entities. Profit motive is not a distinguishing factor.

Another unanswered, and perhaps unanswerable question, is what it even means to say a private entity is taking on a "major administrative task"? Is providing health care to a small county jail a "major administrative task"? Is providing health care an "administrative task" at all? Is providing legal counsel and representation to a local government body an "administrative task"? This notion perhaps made sense in the unique context before the Court in *Richardson*, where a private entity had taken on the *entire* operation of a previously state institution – a prison. But to describe the private provision of many other far more limited services to governments as "major administrative tasks" is a strange analysis that

does not fit the traditional framework the Court has used to determine what actors can assert qualified immunity.

The *Richardson* versus *Filarsky* contortions and distinctions in which the Eighth Circuit and others have engaged do not result in tests based on legal principle, nor do they make practical sense.

III. Privatization of State and Local Government Services Is Not New, as This Court Emphasized in *Filarsky v. Delia*. In Fact, the Privatization of Essential Government Services Is a Widespread and Beneficial Feature of Modern Life, Meaning These Issues Will Continue to Arise, and the Issue Presented Merits the Court's Plenary Review.

The issue in this case arises in the context of medical services being provided to county jails and state prison facilities. But privatization of government functions extends to other important areas, including essential legal services provided to state Attorneys General offices, state agencies, counties, and cities. Other possibilities include tax collections, administration of Medicaid and welfare programs, fire prevention services, and community mental health services, to name just a few. Morris, 52 Vand. L. Rev. at 492-494; William Brooks, *The Privatization of the Civil Commitment Process: Have the Mentally Ill Been Systematically Stripped of Their Fourteenth Amendment Rights*?, 40 Duquesne L. Rev. 1, 4 (2001).

An October 2017 report of the Pew Charitable Trusts revealed that as of 2015 at least twenty States provided *all* medical services to inmates using private providers and well over half the States used private providers for at least *some* medical services in their

prisons. See *Prison Health Care: Costs and Quality* at 10-11, 96-97 (The Pew Charitable Trusts Oct. 2017).[4] Only a minority of States maintained systems whereby state employees provided all medical care to inmates. *Id*.

When it comes to county jails, there is no comprehensive analysis or survey, but another Pew report in January 2018 found that 84% of jails in New York contracted with outside providers for medical care, and 90% of jails in Virginia did so. See *Jails: Inadvertent Health Care Providers*, at 10 (The Pew Charitable Trusts Jan. 2018).[5] If anything, with more than 3,000 counties in the United States, it seems very likely that counties contract with outside providers at an even higher rate than the States.

And with good reason. Privatization can offer significant benefits to those being directly served by the providers governments have contracted with for services. A professional and well-staffed firm may have significant advantages over a small county jail trying to attract a handful of local public employees to provide services. Many private providers offer expertise and experience that simply will not be available if governments must rely solely on public employees to provide the same services.

Denying the employees of private service providers the ability to assert qualified immunity when they are performing essential government functions not only distracts those employees from providing important services but, as this Court recognized explicitly in

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[4] *Available at* https://www.pewtrusts.org/-/media/assets/2017/10/sfh_prison_health_care_costs_and_quality_final.pdf.

[5] *Available at* https://www.pewtrusts.org/-/media/assets/2018/01/sfh_jails_inadvertent_health_care_providers.pdf.

Filarsky, 566 U.S. at 391, and as this case demonstrates, often will involve as many or more public employees and entities than private employees in the "distractions" of the litigation. Here, Sheriffs (current and former), numerous deputies, and the County itself are all involved in the litigation, not just private actors.

Denying qualified immunity to private actors performing required governmental functions also may discourage innovative and beneficial privatization by increasing the costs to state and local governments. None of these detrimental consequences are required by the law nor are they in the public interest.

The question presented in this petition has significant and recurring consequences for a variety of actors, public and private, and well as individuals who are served by the privatization of government functions.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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November 19, 2021

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

[Filed August 24, 2021]

No. 20-1842

BRENDA DAVIS; FREDERICK STUFFLEBEAN

Plaintiffs-Appellees

v.

BUCHANAN COUNTY, MISSOURI; HARRY ROBERTS; DAN HAUSMAN; RON HOOK; MIKE STRONG; JODY HOVEY; BRIAN GROSS; NATALIE A. BRANSFIELD; DUSTIN NAUMAN; ADVANCED CORRECTIONAL HEALTHCARE, INC.; CATHERINE VAN VOORN, MD; ANN MARIE SLAGLE, LPN; RYAN CREWS, WARDEN; CORIZON HEALTH, INC., Dft. terminated on 5/7/2018. Dft added back on 9/4/2018, Amended Complaint, Doc. 78.; DONNA EULER, RN; APRIL POWERS, also known as APRIL GRIFFIN, also known as APRIL HELSEL; AMY MOWRY; ALICE BERGMAN; FREDRICK COVILLO

*Defendant*s

MICHELLE MUNGER

Defendant-Appellant

KAREN S. WILLIAMS

Defendant

No. 20-1843

BRENDA DAVIS; FREDERICK STUFFLEBEAN

Plaintiffs-Appellees

v.

BUCHANAN COUNTY, MISSOURI; HARRY ROBERTS; DAN HAUSMAN; RON HOOK; MIKE STRONG; JODY HOVEY; BRIAN GROSS; NATALIE A. BRANSFIELD; DUSTIN NAUMAN; ADVANCED CORRECTIONAL HEALTHCARE, INC.; CATHERINE VAN VOORN, MD; ANN MARIE SLAGLE, LPN; RYAN CREWS, WARDEN; CORIZON HEALTH, INC., Dft. terminated on 5/7/2018. Dft added back on 9/4/2018, Amended Complaint, Doc. 78.; DONNA EULER, RN; APRIL POWERS, also known as APRIL GRIFFIN, also known as APRIL HELSEL; AMY MOWRY; ALICE BERGMAN

*Defendant*s

FREDRICK COVILLO

Defendant-Appellant

MICHELLE MUNGER; KAREN S. WILLIAMS

*Defendant*s

No. 20-1845

BRENDA DAVIS; FREDERICK STUFFLEBEAN

Plaintiffs-Appellees

v.

BUCHANAN COUNTY, MISSOURI; HARRY ROBERTS; DAN HAUSMAN; RON HOOK; MIKE STRONG; JODY HOVEY; BRIAN GROSS; NATALIE A. BRANSFIELD; DUSTIN NAUMAN; ADVANCED CORRECTIONAL HEALTHCARE, INC.; CATHERINE VAN VOORN, MD; ANN MARIE SLAGLE, LPN; RYAN CREWS, WARDEN

*Defendant*s

CORIZON HEALTH, INC.

Defendant-Appellant

DONNA EULER, RN; APRIL POWERS, also known as APRIL GRIFFIN, also known as APRIL HELSEL; AMY MOWRY; ALICE BERGMAN; FREDRICK COVILLO; MICHELLE MUNGER; KAREN S. WILLIAMS

*Defendant*s

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No. 20-1846

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BRENDA DAVIS; FREDERICK STUFFLEBEAN

Plaintiffs-Appellees

v.

BUCHANAN COUNTY, MISSOURI; HARRY ROBERTS; DAN HAUSMAN; RON HOOK; MIKE STRONG; JODY HOVEY; BRIAN GROSS; NATALIE A. BRANSFIELD; DUSTIN NAUMAN

*Defendant*s

ADVANCED CORRECTIONAL HEALTHCARE, INC.

Defendant-Appellant

CATHERINE VAN VOORN, MD

Defendant

ANN MARIE SLAGLE, LPN

Defendant-Appellant

RYAN CREWS, WARDEN; CORIZON HEALTH, INC., Dft. terminated on 5/7/2018. Dft added back on 9/4/2018, Amended Complaint, Doc. 78.; DONNA EULER, RN

*Defendant*s

APRIL POWERS, also known as APRIL GRIFFIN, also known as APRIL HELSEL

Defendant-Appellant

AMY MOWRY; ALICE BERGMAN; FREDRICK COVILLO; MICHELLE MUNGER; KAREN S.WILLIAMS

*Defendant*s

No. 20-2075

BRENDA DAVIS; FREDERICK STUFFLEBEAN

Plaintiffs-Appellees

v.

BUCHANAN COUNTY, MISSOURI; HARRY ROBERTS; DAN HAUSMAN; RON HOOK

*Defendant*s

MIKE STRONG; JODY HOVEY

Defendants-Appellants

BRIAN GROSS; NATALIE A. BRANSFIELD; DUSTIN NAUMAN; ADVANCED CORRECTIONAL HEALTHCARE, INC.; CATHERINE VAN VOORN, MD; ANN MARIE SLAGLE, LPN; RYAN CREWS, WARDEN; CORIZON HEALTH, INC., Dft. terminated on 5/7/2018. Dft added back on 9/4/2018, Amended Complaint, Doc. 78.; DONNA EULER, RN; APRIL POWERS, also known as APRIL GRIFFIN, also known as APRIL HELSEL; AMY MOWRY; ALICE BERGMAN; FREDRICK COVILLO; MICHELLE MUNGER; KAREN S. WILLIAMS

*Defendant*s

No. 20-2076

———

BRENDA DAVIS; FREDERICK STUFFLEBEAN

Plaintiffs-Appellees

v.

BUCHANAN COUNTY, MISSOURI; HARRY ROBERTS; DAN HAUSMAN; RON HOOK; MIKE STRONG; JODY HOVEY

*Defendant*s

BRIAN GROSS

Defendant-Appellant

NATALIE A. BRANSFIELD; DUSTIN NAUMAN; ADVANCED CORRECTIONAL HEALTHCARE, INC.; CATHERINE VAN VOORN, MD; ANN MARIE SLAGLE, LPN; RYAN CREWS, WARDEN; CORIZON HEALTH, INC., Dft. terminated on 5/7/2018. Dft added back on 9/4/2018, Amended Complaint, Doc. 78.; DONNA EULER, RN; APRIL POWERS, also known as APRIL GRIFFIN, also known as APRIL HELSEL; AMY MOWRY; ALICE BERGMAN; FREDRICK COVILLO; MICHELLE MUNGER; KAREN S. WILLIAMS

*Defendant*s

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No. 20-2292

———

BRENDA DAVIS; FREDERICK STUFFLEBEAN

Plaintiffs-Appellees

v.

BUCHANAN COUNTY, MISSOURI; HARRY ROBERTS; DAN HAUSMAN; RON HOOK; MIKE STRONG; JODY HOVEY

*Defendant*s

BRIAN GROSS

Defendant-Appellant

NATALIE A. BRANSFIELD

Defendant

DUSTIN NAUMAN

Defendant-Appellant

ADVANCED CORRECTIONAL HEALTHCARE, INC.; CATHERINE VAN VOORN, MD; ANN MARIE SLAGLE, LPN; RYAN CREWS, WARDEN; CORIZON HEALTH, INC., Dft. terminated on 5/7/2018. Dft added back on 9/4/2018, Amended Complaint, Doc. 78.; DONNA EULER, RN; APRIL POWERS, also known as APRIL GRIFFIN, also known as APRIL HELSEL; AMY MOWRY; ALICE BERGMAN; FREDRICK COVILLO; MICHELLE MUNGER; KAREN S. WILLIAMS

*Defendant*s

Appeal from United States District Court
for the Western District of Missouri - St. Joseph

Submitted: June 17, 2021
Filed: August 24, 2021

Before GRUENDER, BENTON, and STRAS,
Circuit Judges.

BENTON, Circuit Judge.

Justin A. Stufflebean died after allegedly being denied necessary medication while incarcerated at the Buchanan County Jail and the Western Reception Diagnostic and Correctional Center. His parents,

Brenda Davis and Frederick Stufflebean, asserted 42 U.S.C. § 1983 and wrongful death claims against, among others: Jerry Michael Strong, Jody W. Hovey, Brian M. Gross, Dustin R. Nauman, Dr. Frederick V. Covillo, Michelle L. Munger, Ann Marie Slagle, April L. Helsel, Advanced Correctional Healthcare, Inc, and Corizon, LLC. The district court denied the defendants' motions to dismiss and motions for summary judgment, ruling they are not entitled to qualified or official immunity.[1] They appeal. Having jurisdiction under 28 U.S.C. § 1291, this court affirms in part, reverses in part, and remands for proceedings consistent with this opinion.

I.

On October 26, 2015, Justin Stufflebean was sentenced to 15 years in prison by the Circuit Court of Buchanan County, Missouri. That day, during his sentencing hearing, Stufflebean's longtime doctor testified on the severity of his Addison's disease and hypoparathyroidism—both endocrine disorders. Addison's disease is characterized by the adrenal glands' failure to produce enough cortisol, an essential hormone that helps the body cope with stress and is critical to maintaining normal blood pressure and cardiovascular function. The disease also causes the adrenal glands to insufficiently control the body's calcium levels. Hypoparathyroidism causes decreased function of the parathyroid glands, which can lead to low levels of calcium.

Stufflebean's doctor testified he was "dependent upon the cortisol to be given to him exogenously,"

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[1] *See*, *e.g.*, *Davis v. Buchanan Cty., Mo.*, 2019 WL 7172200 (W.D. Mo. Dec. 23, 2019); *Davis v. Buchanan Cty., Mo.*, 2019 WL 7116360 (W.D. Mo. Dec. 23, 2019); *Davis v. Buchanan Cty., Mo.*, 2020 WL 1527164 (W.D. Mo. Mar. 30, 2020).

especially during times of stress. He testified, "Stufflebean suffers from one of the lowest calcium levels that any of us doctors have ever seen in the hospital and that can make him quite—makes him quite ill and very badly damaging to a body and can be life-threatening in and of itself also and has to be controlled." He testified that without medication, Stufflebean's Addison's disease would "flare up," resulting in "fatigue, malaise that's followed by severe nausea, vomiting, [and] dehydration." He testified that "if not intervened upon in the hospital . . . , it can be death within 24 to 48 hours." He testified that in the past calendar year, Stufflebean was hospitalized 16 times for treatment, not counting numerous emergency room and doctor visits. He also testified that Stufflebean was taken to the emergency room the week before his sentencing.

Sheriff's Deputy Brian Gross was assigned to the courtroom during Stufflebean's sentencing hearing, including during the doctor's medical testimony. His duties included maintaining courtroom order and transporting those sentenced from the courthouse to the Buchanan County Jail. As the transporting officer, he was expected to tell the jail booking officer if he believed a new inmate was a medical, mental health or suicide risk when brought to the jail.

After sentencing, Gross took Stufflebean into custody and walked him across the street to the jail. Per the jail's Medical Intake Screening questionnaire, the booking officer, Sheriff's Deputy Dustin Nauman, asked Gross if he "believe[s] that inmate is a medical, mental health or suicide risk now?" Gross did not report Stufflebean's medical conditions or treatments to Nauman. Nauman recorded "No" to the question on Stufflebean's intake form.

Nauman completed the remaining intake questions with Stufflebean. Stufflebean was previously booked by the jail in 2014 and was labeled on his previous intake form as having a "Special Conditions—Medical." Nauman answered "No" to the question "Was inmate a medical, mental health or suicide risk during any prior contact or confinement with department?" In response to the question "Are you currently under a physician's care? If yes, explain," Nauman answered "No." In response to the question "Are you currently taking any medications? If yes, list types, dosage, and frequency," Nauman listed Stufflebean's various medications, but not their dosages or frequencies. He recorded Stufflebean's various ailments, including abdominal pain, asthma, ulcers, runny nose, nasal congestion, unexplained weight loss, loss of appetite, night sweats, and fatigue. He answered "Yes" to the question "Did you refer the inmate to medical?" He did not classify Stufflebean as "High Risks—Medical" or "Special Conditions—Medical." He testified that the day Stufflebean was booked, he contacted a nurse to let them know he "booked in somebody that has medical issues."

Advanced Correctional Healthcare, an Illinois corporation providing healthcare at jails, provided on-site licensed practical nursing coverage to the jail. Nurse Ann Slagle, an ACH employee, was on duty when Nauman referred Stufflebean to the nurses for medical treatment. It is alleged she was the nurse contacted by Nauman. Stufflebean was not visited by a nurse during his 11 hours in the holding cell booking area immediately after intake.

The day of Stufflebean's booking, Slagle received his medications, brought to the jail by his mother,

Brenda Davis—NATPARA[2], melatonin, hydrocodone, ondansetron, fludrocortisone, paroxetine, Calcitriol, prednisone, and Vitamin D. Slagle did not contact a doctor for an order to administer Stufflebean's medications that day. She also did not enter the medications into the jail's system before 7 a.m. the following day, October 27. Because medications must be entered by 7 a.m. to be administered that same day, Stufflebean received no medications on October 27. That day, Stufflebean filed a formal request for his medication, stating: "I called to have my medicine brought in. I have Addison's and hypoparathyroid disease. Medications brought to jail." Slagle entered the medications into the jail's system after 7 a.m. on October 27, but did not contact a doctor for approval to administer them that day.

Nurse April Helsel, an ACH employee, was on duty the morning of October 28. It is disputed whether Helsel administered Stufflebean's medications on October 28 after the medical director approved it. While she testified she did, she had no recollection of giving them and could not point to supporting medical records. Having not received his medication daily, Stufflebean's condition deteriorated during his three days at the jail—he was not eating, getting weaker, and vomited at least once.

ACH's policies and its contract with the County established a system to oversee ACH's operations at the jail. Per the contract, Sheriff Mike Strong, the final decisionmaker for policies and procedures at the jail, was to attend Continuing Quality Improvement

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[2] Davis brought specialized injection tips, necessary to administer Stufflebean's NATPARA, to the jail the following day, on October 27.

meetings with ACH to review its healthcare reports on the operation of its healthcare services and the general health of inmates at the jail. Strong testified, however, that he had no system in place to monitor the accuracy of ACH's healthcare reports, trusting ACH was providing proper care. He also testified he never compared prisoners' medical grievances to ACH's reports to verify the accuracy of ACH's claimed "zero medical grievances" reporting from 2014 to 2015.

Captain Jody Hovey, the Jail Administrator and Responsible Health Authority, was responsible to oversee the medical operations of the jail, including arranging and ensuring the quality and accessibility of all health services to inmates. He was also responsible for monitoring to ensure all aspects of inmate care for the treatment of illnesses classified as "serious." Although Strong expected Hovey was exercising "constant oversight" over ACH, Hovey did not implement a "formal process or analysis" to systemically monitor inmates' medical grievances.

On October 29, Stufflebean was transferred from the jail to the Western Reception Diagnostic and Correctional Center, a receiving center for the Missouri Department of Corrections. The Department contracted with Corizon, LLC to provide medical services, including nurses and doctors, at the Center.

During intake, Stufflebean told the on-duty nurse he had Addison's disease and hypoparathyroidism, had current symptoms of vomiting, weakness, and tachycardia (a heart rate over 100 beats per minute), and had been to the hospital to see a physician 16 times in the last year for complications from Addison's disease. The nurse recorded his blood pressure at 121/89. The nurse noted that Stufflebean was "carrying or taking" various medications, including fludro-

cortisone, NATPARA (including injection tips for administration), vitamin D, paroxetine, and prednisone. The nurse did not ask when he last took his medications. The nurse also recorded that Stufflebean was lethargic with a weak gait, but also that he did not show signs of "obvious pain, bleeding, injuries, illness or other symptoms suggesting need for immediate referral."

On October 30, Dr. Frederick Covillo, a Corizon employee, performed a physical examination on Stufflebean. During the examination, Dr. Covillo charted Stufflebean's Addison's disease and hypoparathyroidism. Dr. Covillo testified Stufflebean "seemed very stable," not showing symptoms of the nausea, vomiting, dizziness, and tachycardia that were reported the day before. He admitted that Stufflebean's blood pressure was not taken on the day of his exam, and that he had access only to Stufflebean's blood pressure taken by the nurse the day before. It is disputed whether Dr. Covillo ordered medications to treat Stufflebean. Dr. Covillo did not attempt to determine when Stufflebean last took his medications. It is not disputed, however, that Stufflebean did not receive his medications at the Correctional Center.

Stufflebean's health significantly deteriorated while at the Center. In the early hours of October 31, two separate "Code 16" medical emergency calls were made on his behalf. The nurses on duty did not document the reason for the first call. For the second call, a nurse documented the next day that Stufflebean was found lying on his abdomen on the floor of his cell after falling due to feeling weak. A towel with greenish liquid on it was close to his bunk. A nurse reported asking Stufflebean whether he had recently eaten. He responded that he "took a few bites of corn a couple

days ago, because I don't like food." He also told the nurse he was nauseated.

On the morning of October 31, shortly after the second Code 16 call, Stufflebean was brought to the Center's infirmary, delivered to the care of Nurse Michelle Munger, a Corizon employee. He told her that he had Addison's disease, had been experiencing a flare up since he was sentenced, had not eaten in three days, and that when ill like this in the past, he would go to the hospital and receive intravenous fluids. Munger gave him Promethazine (an anti-nausea medication) and milk. She told him that he needed to eat, sent a medical service request to mental health to help with his stress, and told him to make a service request to Dr. Covillo if he needed to see him again. She did not contact a doctor or report his condition to the oncoming nurse.

Munger released Stufflebean to his cell. The officer who escorted Stufflebean back to his cell reported he was "weak and incoherent" and looked "dazed like he was sick." He also recalled that Stufflebean stumbled and fell down after ten to twenty steps, falling first down to his knees and then slowly down to his face. The officer said that Stufflebean didn't say anything and only "made grunting noises." The officer then got a wheelchair and wheeled the slumped-over Stufflebean to his cell and helped him into his bunk.

Less than three hours after returning to his cell, a third Code 16 was called on Stufflebean's behalf after he was found not moving on the floor of his cell. He was brought to the infirmary. He soon became "unresponsive." A fourth Code 16 was called. The medical staff performed CPR until an ambulance arrived. Stufflebean died in the hospital two weeks later on November 16, 2015. A Jackson County medical exam-

iner declared his cause of death as "complications of polyglandular endocrinopathy."

Stufflebean's parents, Brenda Davis and Frederick Stufflebean, asserted 42 U.S.C. § 1983 and wrongful death claims against, among others: Strong, Hovey, Gross, Nauman, Dr. Covillo, Munger, Slagle, Helsel, ACH, and Corizon. On summary judgment, the district court ruled that Gross, Dr. Covillo, Munger, Slagle, and Helsel are not entitled to qualified immunity from the section 1983 deliberate indifference claim. The court concluded that the *Monell* claim against ACH survives, and that Corizon cannot assert qualified immunity. The court determined that Sheriff Strong and Captain Hovey are not entitled to qualified immunity from supervisor liability under section 1983. The court also ruled that Gross and Nauman are not entitled to official immunity under Missouri law for the wrongful death claim. Ten of the defendants appeal.

II.

This court reviews de novo the denial of summary judgment based on a rejection of claims of qualified immunity and official immunity. *McLean v. Gordon*, 548 F.3d 613, 616 (8th Cir. 2008). On appeal, this court considers the evidence most favorably to the nonmoving party, including all reasonable inferences. *Id.* Summary judgment is appropriate where 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).

III.

According to Dr. Covillo and nurses Munger, Slagle, and Helsel, the district court erred in denying them

qualified immunity from the parents' section 1983 deliberate indifference claim.

A threshold issue is whether these medical defendants, employees of private medical-services-providers, may assert the defense of qualified immunity in response to the parents' section 1983 claim. This court has not directly addressed whether employees of private medical-services-providers are entitled to assert the defense of qualified immunity. *See Langford v. Norris*, 614 F.3d 445, 457 (8th Cir. 2010) (recognizing, but not directly holding, that employees of Correctional Medical Services, Inc., a medical services provider and direct predecessor to Corizon, "cannot claim qualified immunity").

Although private employees, these medical defendants are considered state actors for purposes of the parents' section 1983 claim. *See West v. Atkins*, 487 U.S. 42, 57 (1988) (because the provision of medical services to inmates is "state action fairly attributable to the State," medical personnel acts "under color of state law for purposes of § 1983."); *Montano v. Hedgepeth*, 120 F.3d 844, 849–50 (8th Cir. 1997) ("physicians working in state prisons, who help to fulfill the state's Eighth Amendment obligation to inmates and who typically are the only health professionals available to care for incarcerated persons, are persons who may fairly be said to be state actors."). *See also Filarsky v. Delia*, 566 U.S. 377, 383 (2012) ("Anyone whose conduct is fairly attributable to the State can be sued as a state actor under § 1983." (internal quotations and citation omitted)).

But private individuals, as state actors, are not necessarily entitled to assert the defense of qualified immunity in defending section 1983 claims. *Domina v. Van Pelt*, 235 F.3d 1091, 1096 (8th Cir. 2000) (private

individuals acting under the color of state law "are not necessarily shielded from liability under § 1983 by the immunity afforded public officials." (citation omitted)).

To determine whether these medical defendants are entitled to assert qualified immunity, this court applies the factors outlined by the Supreme Court in *Richardson v. McKnight*, 521 U.S. 399 (1997) and *Filarsky v. Delia*, 566 U.S. 377 (2012). According to the Court, the availability of qualified immunity to state actors depends on two factors: the "general principles of tort immunities and defenses applicable at common law, and the reasons we have afforded protection from suit under § 1983." *Filarsky*, 566 U.S. at 384 (internal quotations and citation omitted), *applying the general principles of Richardson*, 521 U.S. at 403–04. Applying these factors, this court concludes that these medical defendants are not entitled to assert the defense of qualified immunity.

A.

The first factor—the historical availability of immunity—does not support these medical defendants asserting qualified immunity.

Historical analysis does not reveal a firmly rooted tradition of qualified immunity for employees of private, systematically organized medical providers like ACH and Corizon. *See Richardson*, 521 U.S. at 406 (finding "no evidence that the law gave purely private companies or their employees any special immunity from such suits." (citation omitted)). These medical defendants have not identified a tradition of immunity, and this court has not independently identified one.

All other circuits have not found a firmly rooted tradition of immunity for similarly situated privately-employed medical professionals defending claims like

those of the parents. *See Sanchez v. Oliver*, 995 F.3d 461, 468 (5th Cir. 2021) ("all of our sister circuits to have considered the issue have found no compelling history of immunity for private medical providers in a correctional setting." (citations omitted)); *Tanner v. McMurray*, 989 F.3d 860, 867 (10th Cir. 2021) ("No circuit that has considered this issue has uncovered a common law tradition of immunity for full-time private medical staff working under the color of state law."). *See also Est. of Clark v. Walker*, 865 F.3d 544, 550–51 (7th Cir. 2017) (agreeing with the Sixth Circuit that there "was no common-law tradition of immunity for a private doctor working for a public institution at the time that Congress passed § 1983" (citation omitted)), *cert. denied*, 138 S. Ct. 1285 (2018); *McCullum v. Tepe*, 693 F.3d 696, 703 (6th Cir. 2012) ("the precedents that do exist point in one direction: there was no special immunity for a doctor working for the state."); *Jensen v. Lane Cty.*, 222 F.3d 570, 577 (9th Cir. 2000) ("We have been unable to uncover even a suggestion that Oregon has a 'firmly rooted tradition' of immunity"); *Hinson v. Edmond*, 192 F.3d 1342, 1345 (11th Cir. 1999) ("Under common law, no 'firmly rooted' tradition of immunity applicable to privately employed prison physicians exists under circumstances such as these.").

These medical defendants cite dicta from *Richardson*, where the Supreme Court noted, "Apparently the law *did* provide a kind of immunity for certain private defendants, such as doctors or lawyers who performed services at the behest of the sovereign." *Richardson*, 52 U.S. at 406 (emphasis in original), *citing Tower v. Glover*, 467 U.S. 914, 921 (1984), *and* J. Bishop, Commentaries on Non–Contract Law §§ 704, 710 (1889). But the "kind of immunity" for doctors at common law would not apply to the types of claims made by the

parents here. The historical treatise cited by the *Richardson* Court states that publicly and privately employed physicians had some level of immunity from "simple negligence or want of skill," but were "indictable" when "criminally guilty of malpractice." Commentaries on Non–Contract Law § 708. *See Sanchez*, 995 F.3d at 468 ("both private and public physicians . . . could be sued or even criminally prosecuted for acts amounting to recklessness" (alteration added)); *McCullum*, 693 F.3d at 701. This court has likened the "level of culpability required to demonstrate deliberate indifference on the part of prison officials" to "criminal recklessness." *Johnson v. Leonard*, 929 F.3d 569, 576 (8th Cir. 2019) (citation omitted); *Gregoire v. Class*, 236 F.3d 413, 418 (8th Cir. 2000) ("the official is entitled to qualified immunity if he could reasonably believe that his response to the risk was not deliberately indifferent (or reckless) to that risk." (citations omitted)); *Sanchez*, 995 F.3d at 469 (same). Even if private physicians had some immunity from tort claims under common law, the deliberate indifference claims here (akin to criminal recklessness) are outside its scope.

These medical defendants also argue that, in analyzing a history of immunity, this court's focus should be on the nature of the work itself, not the nature of employment. *Cf. Fourte v. Faulkner Cty., Ark.*, 746 F.3d 384, 390 (8th Cir. 2014) (government-employed doctor and nurse were not deliberately indifferent to an inmate's serious medical needs after unintentionally delaying the administration of medications). They point to *Filarsky*, where the Supreme Court held that "immunity under § 1983 should not vary depending on whether an individual working for the government does so as a full-time employee, or on some other basis." *Filarsky*, 566 U.S. at 389. In its historical anal-

ysis, the *Filarsky* Court did say, "Private citizens were actively involved in government work, especially where the work most directly touched the lives of the people." *Id.* at 385. It came as "no surprise" to the Court that "the common law did not draw a distinction between public servants and private individuals engaged in public service in according protection to those carrying out government responsibilities." *Id.* at 387.

But *Filarsky*'s context is relevant here. The Supreme Court's historical analysis centered on whether an independent attorney retained by the government could raise the defense of qualified immunity. *See Sanchez*, 995 F.3d at 468. The *Filarsky* Court expressly distinguished that case from *Richardson*, where the employees of a private prison—"a private firm, systematically organized to assume a major lengthy administrative task (managing an institution) with limited direct supervision by the government, undertak[ing] that task for profit and potentially in competition with other firms"—could not assert qualified immunity. *Filarsky*, 566 U.S. at 393 (alteration in original), *citing Richardson*, 521 U.S. at 413. Unlike the approach of these medical defendants, the *Filarsky* Court did not abandon the need for particularized historical analysis. Rather, it held there is a deep history of immunity for "an individual" like Filarsky—an attorney not employed by a private firm, systematically organized to assume a major lengthy administrative task, like in *Richardson*. *Id.* at 389. *Filarsky*'s particular historical analysis is not applicable here, where these medical defendants are more similar to the employees in *Richardson* than the individual attorney in *Filarsky*. *See Sanchez*, 995 F.3d at 469.

In a similar vein, these medical defendants assert that this court's holding in *Lawyer* supports their

position that this court's focus should be on the nature of the employee's work. *See Lawyer v. Kernodle*, 721 F.2d 632 (8th Cir. 1983). There, this court held that a private-physician who performed an autopsy for Pettis County was entitled to assert the defense of qualified immunity. *Id.* at 635. *See* §§ 58.451, 70.220, RSMo 1978. This court explicitly rejected the argument that the physician could not assert qualified immunity because he "was not a public official." *Lawyer*, 721 F.2d at 635. According to this court, "[w]hether [the physician] was a public official or not we find immaterial under § 1983." *Id.* (alterations added). Because the physician was "engaged under the statute to perform official duties, he was performing those duties under color of state law and he clearly enjoyed the same immunity privilege the coroner could assert." *Id.*

This court's holding in *Lawyer* does not control here. Like in *Filarsky*, the individual physician was tasked with performing a limited and discrete task for the state. *See Filarsky*, 566 U.S. at 381. *See also Est. of Jensen by Jensen v. Clyde*, 989 F.3d 848, 855–57 (10th Cir. 2021) (individual physician working part time with a county jail could assert qualified immunity); *Perniciaro v. Lea*, 901 F.3d 241, 254 (5th Cir. 2018) (psychiatrist-employees of Tulane University—an employer "not 'systematically organized' to perform the 'major administrative task' of providing mental-health care at state facilities"—could assert qualified immunity from claims arising from their work at a state mental health facility); *Est. of Lockett ex rel. Lockett v. Fallin*, 841 F.3d 1098, 1109 (10th Cir. 2016) (private physician engaged by a prison to administer an execution could assert qualified immunity). These medical defendants are employees of systematically organized private firms, tasked with assuming a major

lengthy administrative task. They are factually dissimilar to the individuals entitled to assert qualified immunity in *Filarsky* and *Lawyer*, but like those not entitled to assert qualified immunity in *Richardson*.

B.

The second factor—the weight of the policy reasons for affording protection from suit under section 1983—does not support permitting these medical defendants to assert qualified immunity.

The Supreme Court applies three policy considerations to determine whether private individuals, as state actors, may assert qualified immunity: "avoid [ing] 'unwarranted timidity' in performance of public duties, ensuring that talented candidates are not deterred from public service, and preventing the harmful distractions from carrying out the work of government that can often accompany damages suits." *Filarsky*, 566 U.S. at 389–90 (alteration added), *citing Richardson*, 521 U.S. at 409–11. On balance, these factors weigh against affording immunity here.

1.

The first policy consideration—unwarranted timidity—is the "most important." *Richardson*, 521 U.S. at 409. "Ensuring that those who serve the government do so with the decisiveness and the judgment required by the public good, is of vital importance regardless whether the individual sued as a state actor works full time or on some other basis." *Filarsky*, 566 U.S. at 390 (internal quotations and citation omitted).

This concern is "less likely present, or at least is not special, when a private company subject to competitive market pressures" works as a state actor. *Richardson*, 521 U.S. at 409 ("Competitive pressures mean not only that a firm whose guards are too aggressive will face

damages that raise costs, thereby threatening its replacement, but also that a firm whose guards are too timid will face threats of replacement by other firms with records that demonstrate their ability to do both a safer and a more effective job."). The *Richardson* Court emphasized that various "marketplace pressures" give private firms "strong incentives to avoid overly timid, insufficiently vigorous, unduly fearful, or 'nonarduous' employee job performance." *Id.* at 410. Those marketplace pressures include being "systematically organized to perform a major administrative task for profit," performing that task "independently, with relatively less ongoing direct state supervision," being insured to cover tort claims, and being pressured by "potentially competing firms." *Id.* at 409–10.

Like *Richardson*, various marketplace pressures are present here, sufficiently reducing the risk of unwarranted timidity. ACH and Corizon are for profit entities that contracted with the County and the Department of Corrections respectively to provide medical care for inmates. They were both insured, and there is no indication their insurance would not cover the types of claims made by the parents.

While these medical defendants, ACH, and Corizon were supervised by County and state officials, there is no indication the oversight "in any meaningful way distinguishes this case from *Richardson*." *Sanchez*, 995 F.3d at 470 (determining that contract language between the county and medical provider, stating the county "retained authority to set the 'policies and procedures related to healthcare [or] mental healthcare,' " did not support the conclusion that the provider did not perform its administrative task independently, with relatively less ongoing direct state supervision (alteration in original)). *See Tanner*, 989 F.3d at 873

("The mere existence of a contract does not establish close supervision").

ACH and Corizon had their own procedures and policies for their medical personnel to follow. While ACH's contract with the County dictated its performance was reviewed by the County, in practice, Strong and Hovey's oversight was apparently negligible. Strong testified he had no system in place to monitor the accuracy of ACH's healthcare reports, simply trusting they were properly caring for prisoners. He also testified he never verified the accuracy of ACH's "zero medical grievances" reports. And while Strong testified he expected Hovey was exercising "constant oversight" of ACH, Hovey testified he had "no formal process or analysis done" to review prisoner's medical grievances. Corizon also had its own extensive internal policies for patient treatment protocol, outlining procedures for various medical situations. Like the County and ACH, there is no indication that the Department of Corrections had significant oversight over Corizon's medical operations.

Last, ACH and Corizon are presumably pressured by potential competitors that provide similar services. ACH's contract with the County covered a three-year period, allowing competition at the expiration of its contract. *See Richardson*, 521 U.S. at 410 ("since the firm's first contract expires after three years, its performance is disciplined, not only by state review, but also by pressure from potentially competing firms who can try to take its place."). Corizon also faced competition from other firms, losing at least two state contracts in the years before Stufflebean's death.

Together, these marketplace pressures support the conclusion that unwarranted timidity is less likely present, or at least not special, here. *See id.* at 409.

2.

The second policy consideration—attracting talented candidates to public service—does not favor allowing these medical defendants to assert qualified immunity.

Generally, private individuals "have freedom to select other work—work that will not expose them to liability for government actions." *Filarsky*, 566 U.S. at 390. "Because government employees will often be protected from suit by some form of immunity, those working alongside them could be left holding the bag—facing full liability for actions taken in conjunction with government employees who enjoy immunity for the same activity." *Id.* at 391. These factors make it "more likely that the most talented candidates will decline public engagements if they do not receive the same immunity enjoyed by their public employee counterparts." *Id.* at 390. *See Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 167 (2016) ("Qualified immunity reduces the risk that contractors will shy away from government work.").

But private firms have the ability to remedy these concerns. The *Richardson* Court recognized that " 'privatization' helps to meet the immunity-related need 'to ensure that talented candidates' are 'not deterred by the threat of damages suits from entering public service.' " *Richardson*, 521 U.S. at 411 (citations omitted), *quoting Wyatt v. Cole*, 504 U.S. 158, 167 (1992). Generally, private firms insure themselves to cover claims against themselves and their employees, are not subject to various "civil service law restraints," and, unlike the government, may "offset any increased employee liability risk with higher pay or extra benefits." *Id.*

This second policy consideration similarly does not favor allowing these medical defendants to assert qualified immunity. ACH and Corizon "can operate like other private firms; [they] need not operate like a typical government department." *Id.* (alteration added). *See Tanner*, 989 F.3d at 869 ("Because CCS is a private firm, it has the capacity, unlike a government department, to offset any increased employee liability risk with higher pay or extra benefits." (internal quotations and citation omitted)). ACH and Corizon have various tools available to attract and retain talented employees, even if their employees can seek alternative, non-government employment.

3.

The third policy consideration—preventing harmful distractions caused by lawsuits—slightly favors allowing these medical defendants to assert qualified immunity.

Lawsuits "may well distrac[t] these employees from their . . . duties . . . ." *Richardson*, 521 U.S. at 411 (third alteration added) (internal quotations and citations omitted). Even "routine lawsuits" can distract employees, affecting private employees' "performance of any ongoing government responsibilities" and "embroiling" public employees with whom they work in litigation. *Filarsky*, 566 U.S. at 391.

Private medical personnel, though, may be uniquely equipped to handle these litigation distractions. Doctors and nurses in private practice generally "face a constant threat of claims leading to litigation." *Tanner*, 989 F.3d at 870. "Facing constitutional tort claims with a higher burden of proof is not any more daunting or distracting than dealing with the medical malpractice claims with which they are familiar." *Id.* Additionally, ACH and Corizon's legal teams may

"mitigate the impact of litigation" by bearing the brunt of legal work. *Sanchez*, 995 F.3d at 472.

Even if these medical defendants may be distracted by litigation, the "risk of distraction alone cannot be sufficient grounds for an immunity." *Richardson*, 521 U.S. at 411 ("Our qualified immunity cases do not contemplate the complete elimination of lawsuit-based distractions.") (internal quotations and citation omitted). Because the other policy considerations—including preventing unwarranted timidity, the most important consideration—do not favor immunity, this factor does not necessitate the conclusion that qualified immunity is favored here. On balance, the policy considerations support the conclusion that these medical defendants are not entitled to assert the defense of qualified immunity.

C.

Because this court has found no firmly rooted history of immunity, and the purposes of qualified immunity, on balance, do not favor extending immunity, these medical defendants, as employees of large firms "systematically organized to perform a major administrative task for profit," are not entitled to assert the defense of qualified immunity. *Id.* at 409. *See Sanchez*, 995 F.3d at 472; *Tanner*, 989 F.3d at 874; *Clark*, 865 F.3d at 551; *Petties v. Carter*, 836 F.3d 722, 734 (7th Cir. 2016) (en banc), *cert. denied*, 137 S. Ct. 1578 (2017); *McCullum*, 693 F.3d at 704; *Harrison v. Ash*, 539 F.3d 510, 525 (6th Cir. 2008); *Jensen*, 222 F.3d at 580; *Hinson*, 192 F.3d at 1347.

Lacking the ability to assert qualified immunity, these medical defendants are unable to immediately appeal the district courts' denials of motions to dismiss and motions for summary judgment. *See Payne v. Britten*, 749 F.3d 697, 700 (8th Cir. 2014) ("Ordi-

narily, our court lacks jurisdiction to review denials of motions to dismiss and motions for summary judgment because neither is a final decision. When a denial turns on qualified immunity, however, our court has appellate jurisdiction to decide whether, as a purely legal matter, the denial was erroneous." (citations omitted)). This court expresses no opinion on the ultimate validity of the parents' underlying section 1983 claim against these medical defendants.

This holding similarly precludes immediate appellate review of ACH and Corizon's appeals here. Neither asserts its own right to qualified immunity. Rather, they assert they are not liable because there is no underlying constitutional violation by their employees. *See Webb v. City of Maplewood*, 889 F.3d 483, 487 (8th Cir.), *cert. denied*, 139 S. Ct. 389 (2018). They argue this court has pendent jurisdiction to hear their appeals because resolution of their appeal is inextricably intertwined with these medical defendants' assertion of qualified immunity. *See Muir v. Decatur Cty., Iowa*, 917 F.3d 1050, 1053 (8th Cir. 2019). But because these medical defendants are not entitled to assert qualified immunity, ACH and Corizon's appeals are not inextricably intertwined to an immediately appealable assertion of qualified immunity.[3] The appeals of Dr. Covillo; nurses Munger, Slagle, and Helsel; and ACH and Corizon are dismissed for lack of jurisdiction.

IV.

According to Strong, Hovey, and Gross, the district

[3] ACH and Corizon do not claim that their appeals are closely related or inextricably intertwined with the appeals of Strong, Hovey, Gross, and Nauman. *See Nebraska Beef, Ltd. v. Greening*, 398 F.3d 1080, 1083 (8th Cir. 2005).

court erred in denying them qualified immunity from the parents' section 1983 deliberate indifference claim.

A public official is entitled to qualified immunity unless: (1) their conduct violated a constitutional right, *and* (2) that right was clearly established. *Williams v. Mannis*, 889 F.3d 926, 931 (8th Cir. 2018) (citations omitted). A right is "clearly established" when "[t]he contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Id.* (alterations in original) (citations omitted). Qualified immunity is "appropriate where no reasonable fact finder could conclude that the facts when viewed in a light most favorable to the plaintiff show that the officers' conduct violated a clearly established constitutional right." *Id.* (citations omitted).

It is "well established that [d]eliberate indifference to a prisoner's serious medical needs is cruel and unusual punishment in violation of the Eighth Amendment." *Langford*, 614 F.3d at 459 (alteration in original) (internal quotations and citations omitted). To establish a constitutional violation based on deliberate indifference, the parents must show that Stufflebean "suffered from an objectively serious medical need" and that County officials had "actual knowledge of that need but deliberately disregarded it." *Barton v. Taber*, 908 F.3d 1119, 1124 (8th Cir. 2018) (citations omitted). *See Thompson v. King*, 730 F.3d 742, 746 (8th Cir. 2013) ("A plaintiff claiming deliberate indifference must establish objective and subjective components." (citation omitted)).

This court has defined a "serious medical need" as "one that has been diagnosed by a physician as requiring treatment, or one that is so obvious that even a layperson would easily recognize the necessity for a

doctor's attention." *Camberos v. Branstad*, 73 F.3d 174, 176 (8th Cir. 1995). On appeal, Strong, Hovey, and Gross do not dispute that Stufflebean suffered from a serious medical need.

Under the subjective prong, to show deliberate indifference, the official "must know[] of and disregard[]" the inmate's serious medical need. *Letterman v. Does*, 789 F.3d 856, 862 (8th Cir. 2015) (alterations in original) (internal quotations omitted), *quoting Farmer v. Brennan*, 511 U.S. 825, 837 (1994). *See Barton*, 908 F.3d at 1124 ("the plaintiff must establish a mental state akin to criminal recklessness: disregarding a known risk to the [arrestee's] health." (alteration in original) (citations omitted)). In other words, the "evidence must show that the [official] recognized that a substantial risk of harm existed *and* knew that their conduct was inappropriate in light of that risk." *Letterman*, 789 F.3d at 862 (alteration added) (emphasis in original), *quoting Krout v. Goemmer*, 583 F.3d 557, 567 (8th Cir. 2009). "Generally, the actor manifests deliberate indifference by intentionally denying or delaying access to medical care, or intentionally interfering with treatment or medication that has been prescribed." *Id.* (internal quotations and citations omitted). When considering whether an official deliberately disregarded a risk, this court "must avoid determining the question with hindsight's perfect vision." *Id.* (internal quotations and citation omitted).

A.

Strong and Hovey seek qualified immunity from the parents' section 1983 deliberate indifference claim. They assert the supervisor liability allegation fails because they did not directly participate in Stufflebean's treatment and were not put on notice of a pattern of constitutional violations.

A supervisor may be liable under section 1983 if their "failure to properly supervise and train the offending employee caused a deprivation of constitutional rights." *Andrews v. Fowler*, 98 F.3d 1069, 1078 (8th Cir. 1996) (citation omitted). When a "supervising official who had no direct participation in an alleged constitutional violation is sued for failure to train or supervise the offending actor, the supervisor is entitled to qualified immunity unless plaintiff proves that the supervisor (1) received notice of a pattern of unconstitutional acts committed by a subordinate, and (2) was deliberately indifferent to or authorized those acts." *S.M. v. Krigbaum*, 808 F.3d 335, 340 (8th Cir. 2015), *citing Livers v. Schenck*, 700 F.3d 340, 355 (8th Cir. 2012); *Andrews*, 98 F.3d at 1078 (same).

This "rigorous standard" requires proof that the "supervisor had notice of a pattern of conduct by the subordinate that violated a clearly established constitutional right." *Krigbaum*, 808 F.3d at 340. "Notice is the touchstone of deliberate indifference in the context of § 1983 municipal liability." *Atkinson v. City of Mtn. View, Mo.*, 709 F.3d 1201, 1216 (8th Cir. 2013). "Allegations of generalized notice are insufficient." *Krigbaum*, 808 F.3d at 340. "To impose supervisory liability, other misconduct must be very similar to the conduct giving rise to liability." *Id.* (citation omitted). In other words, the supervisor must have "notice of a pattern of conduct that was sufficiently egregious in nature." *Id.* A "single incident, or a series of isolated incidents, is usually insufficient to infer a pattern." *Brewington v. Keener*, 902 F.3d 796, 803 (8th Cir. 2018), *citing Howard v. Adkison*, 887 F.2d 134, 138 (8th Cir. 1989). *See Mick v. Raines*, 883 F.3d 1075, 1080 (8th Cir. 2018) ("affidavits of three detainees describing alleged constitutional violations are not sufficient to establish a genuine issue of material fact

regarding whether there was a widespread custom or practice of unconstitutional misconduct, known to and unaddressed by policymaking officials."). Similarly, a "number of individual and isolated incidences of medical malpractice or negligence do not amount to deliberate indifference without some specific threat of harm from a related system wide deficiency . . . ." *Dulany v. Carnahan*, 132 F.3d 1234, 1245 (8th Cir. 1997) (alteration added). A supervisor's "mere negligence in failing to detect and prevent a subordinate's conduct is not enough for liability under Section 1983." *Ripson v. Alles*, 21 F.3d 805, 809 (8th Cir. 1994) (citation omitted).

In denying qualified immunity to Strong and Hovey, the district court ruled they received notice of a pattern of constitutional violations and were deliberately indifferent to them. The district court emphasized that Strong and Hovey were named as defendants in two lawsuits—*Wilkerson v. Turner*, *et al*., No. 5:12-cv-00618 (W.D. Mo. 2015) and *Fee v. Buchanan Cty., et al.*, No. 5:15-cv-06130 (W.D. Mo. 2016). In each, former inmates alleged ACH's medical personnel failed to provide medications, and that Strong and Hovey were deliberately indifferent as supervisors for failing to supervise and train.

According to the district court, these cases put Strong and Hovey on notice of constitutional violations like the one alleged by the parents. The court determined that, despite the allegations in the lawsuits, neither Strong nor Hovey took any effort to oversee ACH's medical personnel to ensure adequate treatment. The district court concluded that, having notice, their inaction could be construed as deliberate indifference. *See generally Ripson*, 21 F.3d at 809 ("The supervisor must know about the conduct and

facilitate it, approve it, condone it, or turn a blind eye for fear of what [he] might see." (alteration in original) (citation omitted)).

This court has not held that two separate lawsuits, like those here, meet the rigorous standard for putting supervisors on notice of a pattern of constitutional violations. It is unlikely that two allegations of inadequate care by two inmates can put a supervisor on notice of systematic failures. *See Brewington*, 902 F.3d at 803 (a single incident or series of isolated incidents is usually insufficient to infer systematic failures); *Dulany*, 132 F.3d at 1245 (there must be notice of "system wide deficiency," not just a number of individual and isolated incidents of malpractice or negligence).

The *Wilkerson* and *Fee* lawsuits are insufficient to put Strong and Hovey on notice of a pattern of constitutional violations in the jail. While each plaintiff claimed deliberate indifference by failing to provide medications, their allegations alone do not give notice. Strong and Hovey denied the allegations, one case was dismissed by the district court, and the other was settled by the parties. They do not meet the rigorous standard to give notice.

In *Wilkerson*, plaintiff filed a federal complaint, claiming an ACH employed physician and County officials were deliberately indifferent to his serious medical needs while incarcerated at the jail. Second Amended Complaint at ¶ 44, *Wilkerson*, No. 5:12-cv-00618 (Doc. No. 41). He alleged he was denied his medications for schizophrenia, causing him to fall from his bed. *Id.* at ¶ 29. He alleged he broke his back from the fall, but was not treated for his injury. *Id.* The plaintiff named Strong and Hovey as defendants, claiming they were liable under section 1983 for failure to supervise and train. *Id.* at ¶¶ 5, 7.

This lawsuit is insufficient to put Strong and Hovey on notice of a pattern of constitutional violations. Strong and Hovey, as well as the other state and medical defendants, denied the allegations. *See* Answer to Amended Complaint, *Wilkerson*, No. 5:12-cv-00618 (Doc. No. 46, 66). The district court dismissed the suit on summary judgment, ruling that Strong was not liable as a supervisor because he did not have notice of improper training and there was no underlying violation of plaintiff's constitutional rights. Order Granting Summary Judgment at 17, *Wilkerson*, No. 5:12-cv-00618 (Doc. No. 192). The court also ruled that Hovey was incorrectly named as a defendant in the case, because at the time of the suit, he was not a captain or Jail Administrator, and was not involved in supervising the medical professionals at the jail or contracting with ACH. *Id.* at 18.

After the district court dismissed the federal lawsuit, Wilkerson sued in Missouri state court, alleging medical malpractice, medical negligence, and negligent supervision against an ACH employed doctor and ACH itself. *See Wilkerson v. Van Voorn*, No. 14BU-CV2595 (Mo. Cir. Ct. Buchanan Cty. 2016). The state complaint did not name Strong, Hovey, or any other County official as defendants, and did not allege constitutional violations. *See Dulany*, 132 F.3d at 1245. The lawsuit was settled by the plaintiff and ACH in 2016, after Stufflebean's death.

In *Fee*, the plaintiff sued in Missouri state court, claiming Strong and Hovey were deliberately indifferent as supervisors to their serious medical needs under section 1983. Petition at ¶ 8–9, *Fee v. Buchanan Cty., et al.*, No. 15BU-CV02918 (Mo. Cir. Ct. Buchanan Cty. 2015). The plaintiff alleged that jail officials and ACH medical personnel failed to administer their

medications for their seizure disorder, depression, muscle spasms, and severe anxiety attacks, causing him to suffer a seizure and strike his head. *Id.* at ¶¶ 32, 45. The plaintiff alleged that Strong and Hovey failed to supervise and train the medical personnel, resulting in the inadequate treatment. *Id.* at ¶ 8–9.

The *Fee* lawsuit is similarly insufficient to put Strong and Hovey on notice of a pattern of constitutional violations. After removal to federal district court, Strong, Hovey, and the other defendants denied the allegations of constitutional violations. Answer to Amended Complaint, *Fee*, No. 5:15-cv-06130 (Doc. No. 5, 6). After Stufflebean's death, the plaintiff settled the lawsuit with Strong, Hovey, and the other state defendants, leaving only the ACH defendants. Order Dismissing County Defendants, *Fee*, No. 5:15-cv-06130 (Doc. No. 36). With no federal questions remaining, the district court remanded the case to Missouri state court. *See* Order Granting Remand, *Fee*, No. 5:15-cv-06130 (Doc. No. 43). The state lawsuit was settled by the plaintiff and the ACH defendants in 2017. Even if Strong and Hovey accepted responsibility in their settlement, this individual complaint is insufficient to establish a "pattern" of constitutional violations. *See Krigbaum*, 808 F.3d at 340.

The parents counter that Strong and Hovey had the duty to investigate complaints, and their failure to do so shows deliberate indifference. *See Mettler v. Whitledge*, 165 F.3d 1197, 1205 (8th Cir. 1999) ("Evidence that a police department has failed to investigate previous incidents similar to the incident in question may support a finding that a municipal custom exists, and that such a custom encourages or allows officers to use excessive force without concern for punishment." (citations omitted)). *See also Mick*,

883 F.3d at 1080 (supervisors may be liable where plaintiffs have "produced evidence of prior complaints sufficient to demonstrate that the municipalities and their officials ignored" misconduct (citations omitted)). But answering the *Wilkerson* and *Fee* complaints and denying the allegations necessarily required an investigation into the claims and the determination that they were false. The investigation in *Wilkerson* went even further, completing discovery for the unsuccessful lawsuit. Strong and Hovey did not fail to investigate the claims. *Cf. Mettler*, 165 F.3d at 1205 (an investigation into complaints, even if "flawed," does not amount to a failure to investigate that supports a finding of ignoring misconduct).

The parents also argue that Strong and Hovey's failure to review the accuracy of ACH's "zero medical grievances" reports makes them liable as supervisors under section 1983. *See Farmer*, 511 U.S. at 843 n.8 (a supervisor "would not escape liability if the evidence showed that he merely refused to verify underlying facts that he strongly suspected to be true, or declined to confirm inferences of risk that he strongly suspected to exist"); *Walton v. Dawson*, 752 F.3d 1109, 1119 (8th Cir. 2014) ("*Farmer*'s subjective standard does not invite prison supervisors to bury their heads in the sand." (citation omitted)). The parents' expert identified about 250 medication errors and 26 medical grievances that were not included in ACH's reports. The expert concluded that Strong and Hovey's lack of oversight "breaches the administrative standard of care." But this lack of oversight and breach of the standard of care, while arguably negligent, does not meet the rigorous standard to show deliberate indifference. Strong and Hovey did not know about ACH's systematic failures because ACH presented inaccurate reporting. This is not an instance of supervisors

ignoring obvious signs of constitutionally inadequate medical care.

Like the *Wilkerson* and *Fee* lawsuits, Strong and Hovey's failure to verify the accuracy of ACH's reporting is insufficient to create liability under section 1983.

B.

Gross seeks qualified immunity from the parents' section 1983 deliberate indifference claim.

The district court ruled that a reasonable juror could find that Gross was deliberately indifferent to Stufflebean's serious medical needs because he knew that Stufflebean was in need of special medical attention when he took him to the jail, yet consciously chose not to report that information to the jail booking officer.

In determining that a reasonable juror could find that Gross actually heard the doctor's medical testimony, the district court relied on the dramatic nature of the testimony about Stufflebean's dire, life-threatening condition. Gross admitted it was "rare" for doctors to testify at sentencing hearings, that he could typically hear witnesses when they testified, and that he had a duty to report known medical conditions to the jail booking officer when answering the medical intake. The district court also relied on a photo and measurements of the empty courtroom, showing Gross's usual seat about 30 feet from the witness chair.[4]

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[4] The district court footnoted that a reasonable juror could draw the inference that, after hearing the medical testimony, Gross deliberately chose not to report Stufflebean's medical conditions because Stufflebean had been found guilty of a sex offense. Because there is no evidentiary support for this footnote, this

It is disputed whether Gross paid attention to the testimony or even the nature of the offense. Viewing the evidence most favorably to the parents, Gross had the potential to hear the doctor's testimony. It is undisputed that Gross had several duties in the courtroom and that his primary job was the security of the courtroom and supervising inmates. For any given hearing, in Gross's uncontradicted words: "There could be tons of things going on to where I will not listen to testimony because, quite frankly, my job is security, not to listen to testimony."

Regardless, Gross did not violate Stufflebean's constitutional right to receive medical care for his serious medical needs. Officials are entitled to qualified immunity if they act without the "subjective intent to cause harm." *Newman v. Holmes*, 122 F.3d 650, 653 (8th Cir. 1997) ("[d]eliberate indifference, *i.e.*, the subjective intent to cause harm, cannot be inferred from a prison guard's failure to act reasonably" (alteration in original) (citation omitted)). *See Wilson v. Seiter*, 501 U.S. 294, 300 (1991) (characterizing Eighth Amendment violations as a "deliberate act intended to chastise or deter" or "punishment [that] has been deliberately administered for a penal or disciplinary purpose" (alteration added) (internal quotations and citations omitted)). Officials are also entitled to qualified immunity if they "could reasonably believe" that their "response to the risk was not

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court on de novo review will disregard this speculation. *See Reed v. City of St. Charles, Mo.*, 561 F.3d 788, 790–91 (8th Cir. 2009) ("A plaintiff may not merely point to unsupported self-serving allegations, but must substantiate his allegations with sufficient probative evidence that would permit a finding in his favor, without resort to speculation, conjecture, or fantasy." (internal quotations and citations omitted)).

deliberately indifferent (or reckless) to that risk." *Gregoire*, 236 F.3d at 418 (citations omitted).

Here, the parents have not shown that Gross had the subjective intent to cause harm, or that he could not reasonably believe that his response was not deliberately indifferent or reckless. Before Stufflebean's death, Gross had been a transporting officer for about one to two years, and previously was a booking officer for about ten years (which included medical intake screening for the jail). Due to this work experience, Gross knew that Stufflebean would complete the medical intake form during booking. Per the form, Gross knew that Stufflebean would be asked whether he was under a physician's care, if he was currently taking any medications, if he currently needed medical attention, and if he had any physical ailments, among other questions. Gross testified he had no training on spotting or reporting medical issues when bringing an inmate to booking. The parents did not contradict Gross's testimony that the inmates are "best at explaining their medical [problems] than a transporting officer" because inmates "know all their medical than we do." Gross also knew that if Stufflebean reported certain conditions (as he did here), the booking officer was required to report him to medical, where he would meet with ACH medical staff who specialized in treating inmates. In contrast, even if the transporting officer reported they believed an inmate was a medical risk, the intake form had no express requirement for the booking officer to refer that inmate to medical. From Gross's knowledge, there was ample opportunity for Stufflebean to be referred to medical and meet with medical professionals to address his health issues. *Cf. id.* at 419 ("The question is not whether the jailers did all they could have, but

whether they did all the Constitution requires." (citation omitted)).

The parents counter that, under the jail's policies, Gross was supposed to listen to courtroom testimony and report known medical conditions. But, Gross's "[fJailure to follow written procedures does not constitute *per se* deliberate indifference." *Luckert v. Dodge Cty.*, 684 F.3d 808, 819 (8th Cir. 2012) (alteration added). This court's focus is instead on whether his acts violated Stufflebean's constitutional rights. *Perry v. Adams*, 993 F.3d 584, 587 (8th Cir. 2021) ("the issue is whether the government official violated the Constitution or federal law, not whether he violated the policies of a state agency"), *quoting Cole v. Bone*, 993 F.2d 1328, 1334 (8th Cir. 1993). Because there is no constitutional violation, Gross is entitled to qualified immunity.

V.

According to Gross and Nauman, the district court erroneously denied them official immunity from the parents' state-law wrongful death claim. *See N.S. v. Kansas City Bd. of Police Comm'rs*, 933 F.3d 967, 970 (8th Cir. 2019) ("Official immunity, like qualified immunity, is a threshold issue and subject to interlocutory appellate review."), *citing Div. of Emp't Sec. v. Bd. of Police Comm'rs*, 864 F.3d 974, 978 (8th Cir. 2017), *State ex rel. Barthelette v. Sanders*, 756 S.W.2d 536, 539 (Mo. banc 1988), and *State ex rel. Mo. Dep't of Agric. v. McHenry*, 687 S.W.2d 178, 181 (Mo. banc 1985).

Under Missouri law, official immunity "protects public officials sued in their individual capacities from liability for alleged acts of negligence committed during the course of their official duties for the performance of discretionary acts." *State ex rel. Helms*

v. Rathert, 624 S.W.3d 159, 163 (Mo. banc 2021), *quoting State ex rel. Alsup v. Kanatzar*, 588 S.W.3d 187, 190 (Mo. banc 2019).

The purpose of official immunity is "to allow public officials to make judgments affecting the public safety and welfare without [t]he fear of personal liability." *Alsup*, 588 S.W.3d at 190 (alteration in original) (internal quotations and citations omitted). In line with that purpose, official immunity is broadly applied. *See id.* at 191. "Courts applying the doctrine of official immunity must be cautious not to construe it too narrowly lest they frustrate the need for relieving public servants of the threat of burdensome litigation." *Id.* (internal quotations and citation omitted).

There is a "narrow exception to the application of the official immunity doctrine—i.e., when a public officer fails to perform a *ministerial* duty required of him by law, he may be personally liable for the damages caused." *Helms*, 624 S.W.3d at 163 (emphasis in original), *quoting Alsup*, 588 S.W.3d at 191. This exception "focuses on the nature of a ministerial act." *Alsup*, 588 S.W.3d at 191. A ministerial act is an act that is "merely clerical." *Id.* (internal quotations and citation omitted). It "compels a task of such a routine and mundane nature that it is likely to be delegated to subordinate officials." *Id.* (citations omitted). It is "to be performed upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority, and without regard to [the public official's] judgment or opinion concerning the propriety or impropriety of the act to be performed." *Helms*, 624 S.W.3d at 163 (alteration in original), *quoting Alsup*, 588 S.W.3d at 191.

An act is discretionary, conversely, where "there is any room whatsoever for variation in when and how

a particular task can be done." *Id.* (internal quotations and citation omitted). *See Davis v. Lambert-St. Louis Int'l Airport*, 193 S.W.3d 760, 763 (Mo. banc 2006) ("Whether an act is discretionary or ministerial depends on the degree of reason and judgment required to perform the act." (internal quotations and citation omitted)). "That an official might exercise poor judgment in a given case does not remove the conduct from the category of discretionary acts." *K.B. v. Waddle*, 764 F.3d 821, 825 (8th Cir. 2014).

An act is not ministerial simply because the official was commanded to perform the act. That a policy or supervisor conveys authority or a duty to "act in a given situation says nothing about whether the act authorized or compelled is the sort of ministerial or clerical act to which official immunity does not extend." *Helms*, 624 S.W.3d at 163 (citation omitted). Official immunity still applies if "the official retains authority to decide when and how that act is to be done." *Id.* (citation omitted).

The determination of whether an act is discretionary or ministerial is made on a "case-by-case basis," considering: "(1) the nature of the public employee's duties; (2) the extent to which the act involves policymaking or exercise of professional judgment; and (3) the consequences of not applying official immunity." *Waddle*, 764 F.3d at 825, *quoting Southers v. City of Farmington*, 263 S.W.3d 603, 610 (Mo. banc 2008).

A.

Gross seeks official immunity from the parents' wrongful death claim, asserting that his duty to report Stufflebean's medical conditions to the booking officer was discretionary.

After walking Stufflebean to the jail, Gross discussed with Nauman whether he, as the transporting

officer, "believe[s] that inmate is a medical, mental health or suicide risk now." Gross reported that he did not believe Stufflebean was a risk now.

The district court determined that Gross was not entitled to official immunity because he failed to perform his ministerial duty to report known special medical conditions to the booking officer. The court concluded that a reasonable factfinder could find that Gross heard Stufflebean's doctor testify on his dire medical conditions and need for medication. According to the court, although Gross understood that Stufflebean could die without his medication, he did not report the information to jail officials.

The parents point to County policies and deposition testimony to assert that Gross had the clear and unequivocal duty to report medical needs. They assert this duty was ministerial, with no room for Gross's judgment. The County Sheriff's Department policies state: "When a detainee requiring special needs care is identified, the facts surrounding the case shall be relayed to the jail commander (or designee) and the medical staff." Additionally, Sheriff Strong testified:

> Q. Yeah, you're saying that if the deputies at the sentencing hearing have information of a special medical condition, they are supposed to report it when they bring the prisoner over to the jail for booking, correct?
>
> A. Correct.
>
> Q. Okay. And so they're supposed to be watching out for that information during the sentencing hearings, correct?
>
> A. I can't answer yes to that. They have several duties . . . to do right then.
>
> . . . .

> Q. Okay. So it's the transporting deputy's responsibility to report a special medical condition upon transporting the prisoner over to booking, correct?
>
> A. If they are aware of it, yes.
>
> Q. And — and the question for you is this, because the booking officer asks that question of the transporting officer, did you expect your transporting officer to be aware of and paying attention for any special medical conditions or other medical risks to be able to answer the question in the medical intake screening questionnaire?
>
> A. If he is aware of that information, yes.
>
> Q. Right. And I understood that, but was — because the question is here, there was an expectation that the transporting officer would be paying attention, fair?
>
> A. Correct.

The jail's policy that officers must report if they believe an inmate is a medical risk does not speak to the nature of the duty for official immunity purposes. *See Helms*, 624 S.W.3d at 163; *Alsup*, 588 S.W.3d at 191. Rather, this court must look to the nature of the duty itself, and whether Gross needed a sufficient degree of reason and judgment to perform the act, to determine whether it is ministerial or discretionary. *See Waddle*, 764 F.3d at 825.

The *Waddle* case is instructive about whether an official's duty to report in this context is ministerial or discretionary. There, plaintiff, a minor, argued that officials had knowledge that another individual would sexually assault her, but failed to report that infor-

mation to her parents before she was assaulted. *Id.* at 822–23. This court held that Missouri's child-abuse reporting statute—"any . . . person with responsibility for the care of children has reasonable cause to suspect that a child has been or may be subjected to abuse . . . , that person shall immediately report to the division"—creates a discretionary duty because it "requires an exercise of discretion and personal judgment." *Id.* at 825 (alterations in original), *citing* § 210.115.1, RSMo Supp. 2002. A "reasonable cause determination," according to this court, "requires an exercise of discretion and personal judgment, which takes the matter out of the realm of a ministerial act." *Id.* (internal quotations omitted), *quoting Larson v. Miller*, 76 F.3d 1446, 1457 (8th Cir. 1996) (en banc).

Notably, the *Waddle* court also rejected the argument that Missouri's common law creates the ministerial duty for a health care professional to warn an intended victim when they "know[]" or "should have known" that a patient presents a "serious danger of future violence to a readily identifiable victim." *Id.* (alteration added), *quoting Bradley v. Ray*, 904 S.W.2d 302, 312 (Mo. Ct. App. 1995). Even with this duty and knowledge requirement—the professional must know or should have known—the officials' duty was "discretionary under Missouri law, because it required an exercise of discretion and personal judgment." *Id.* at 826.

Like the duty to report a danger of future violence to a readily identifiable victim, Gross's response to whether he "*believe[s]*" Stufflebean was a "medical risk" "*now*" required an exercise of discretion and personal judgment. Even if Gross heard the testimony, he was still required to use his judgment to determine whether he *believed* Stufflebean was a "medical risk,"

per the jail's standards, *now*, that is, at the time of booking. *See Helms*, 624 S.W.3d at 163; *Davis*, 193 S.W.3d at 763. That his determination was incorrect or poor judgment does not bring the duty into the realm of being ministerial. *See Waddle*, 764 F.3d at 825. He is thus entitled to official immunity.

The parents argue that this court's holding in *Letterman* directs a different result. *See Letterman v. Does*, 859 F.3d 1120, 1126 (8th Cir. 2017). There, this court held that a prison's "close observation policy" created a ministerial duty to report a medical emergency when one of the policy's "criteria is met." *Id.* at 1123, 1126. The policy required an officer to "check on the inmate every fifteen minutes and report as a medical emergency any instance when they cannot observe movement or obtain a verbal response or when it appears that the inmate is not breathing." *Id.* at 1126. The officer's duty to report a medical emergency was "mandatory" and did "not depend on the officer's assessment of whether a medical emergency actually exists." *Id.* Here, unlike *Letterman*, there are not specific circumstances that a transporting officer must report to the booking officer. Per the medical intake, Gross was asked whether he believed Stufflebean was a medical risk now. Because Gross's duty was discretionary, he is entitled to official immunity.

B.

Nauman seeks official immunity from the parents' wrongful death claim, asserting that his responses to the questions on Stufflebean's intake form were discretionary.

The district court denied Nauman official immunity, determining he did not accurately complete the intake form, a ministerial duty.

Nauman's duty, per the County's medical policies and procedures, was to "review and be familiar with those policies and procedures." This required him to "conduct the Medical Intake Screening carefully and with an eye towards identifying prisoners with chronic conditions or special needs so they would be addressed properly throughout their incarceration and not fall through the cracks." This duty "inherently required him to be attentive to the questioning and the answers."

The first question on the intake form asked if the inmate was a "medical, mental health or suicide risk during any prior contact or confinement with the department." Stufflebean was previously booked by the jail eleven months prior, in 2014. He was classified as "Special Conditions—Medical" on his intake form during that booking. The prior form asked "Do you currently need medical attention? If yes, why?" The booking officer responded "Yes. BECAUSE OF A CALCIUM DEFICIENCY." However, when booked days before Stufflebean died, Nauman answered "No" to the question on whether Stufflebean was a medical risk during prior contact or confinement with the department.

If Nauman had access to the prior form, his duty to correctly answer whether Stufflebean was a medical risk during his prior contact with the department was ministerial. He would have to view the prior form, see Stufflebean was reported as "Special Condition—Medical," and answer "Yes" to the question "Was inmate a medical, mental health or suicide risk during any prior contact with the department[.]" Answering that particular question was clerical, not requiring him to exercise his own judgment. *See Helms*, 624 S.W.3d at 163; *Alsup*, 588 S.W.3d at 191. It addition-

ally did not require any explanation on Stufflebean's past intake. *See Letterman*, 859 F.3d at 1126 (prison's "close observation policy" was ministerial, as the "duty to report a medical emergency" when officers could not observe an inmate's movement or obtain a verbal response, or it appeared the inmate was not breathing, was "mandatory and [did] not depend on the officer's assessment of whether a medical emergency actually exists." (alteration added) (applying Missouri law)); *Jungerman v. City of Raytown*, 925 S.W.2d 202, 206 (Mo. banc 1996) (a booking officer's "inventorying, recording and storing" an inmate's property is ministerial), *abrogated on other grounds by Southers*, 263 S.W.3d 603. *See also Jungerman*, 925 S.W.2d at 206 ("The fact that written procedures cannot anticipate every circumstance does not transform a ministerial activity into a discretionary function.").

Nauman argues his duty to accurately report Stufflebean's prior status as a medical risk was not ministerial because he did not have access to Stufflebean's 2014 intake form. He asserts that without it, he could not answer the question in a routine or mundane way. *See Alsup*, 588 S.W.3d at 191. From his deposition testimony, it is unclear whether he had access to Stufflebean's prior intake form. He gave inconclusive testimony on the question, stating:

> Q. Was this December 23, 2014, medical intake screening form available to you when you were booking Mr. Stufflebean in October of 2015?
>
> A. No.
>
> Q. Where would you have been able to access it, or could you have accessed it if you wanted to?

A. I'm not sure.

Nauman's inconclusive testimony on accessing Stufflebean's prior records precludes summary judgment on this issue. *See Wealot v. Brooks*, 865 F.3d 1119, 1128 (8th Cir. 2017) (on summary judgment, "Disputed factual issues and conflicting testimony should not be resolved by the district court." (citations omitted)); *Hutson v. Walker*, 688 F.3d 477, 486 (8th Cir. 2012) (on summary judgment, official immunity is appropriate "if no genuine issue of material fact remains as to whether the ministerial obligations . . . were completed" (alteration added)). If, as discussed, he had access to the form, his duty to answer the particular question is ministerial.[5]

* * *

The judgment is affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

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[5] In an affidavit filed months after his deposition, Nauman declared: "While booking Justin Stufflebean into the jail on October 26, 2015, I did not have access to the medical information from his prior detention in 2014." This declaration, being "inconsistent" with his deposition testimony that he was "not sure" about his ability to access the prior form, and giving no explanation for that inconsistency, does not resolve the genuine issue of material fact. *Camfield Tires, Inc. v. Michelin Tire Corp.*, 719 F.2d 1361, 1365 (8th Cir. 1983) ("If testimony under oath, however, can be abandoned many months later by the filing of an affidavit, probably no cases would be appropriate for summary judgment."). *See McLean*, 548 F.3d at 616 (on summary judgment, considering the evidence most favorably to the nonmoving party, including all reasonable inferences).

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

[Filed December 23, 2019]

Case No. 5:17-cv-06058-NKL

BRENDA DAVIS, *et al.*,

Plaintiffs,

v.

BUCHANAN COUNTY MISSOURI, *et al.*,

Defendants.

ORDER

Pending before the Court is a motion for summary judgment by defendants Mike Strong (former Buchanan County Sheriff), Captain Jody Hovey (Buchanan County Jail Administrator), Buchanan County Sheriff's Deputies Brian Gross and Dustin Nauman, and Buchanan County (collectively, the "Buchanan County Defendants"). Doc. 350. Also pending is a motion for summary judgment by Defendants April Helsel, Catherine Van Voorn, M.D., Ann Slagle, and Advanced Correctional Healthcare ("ACH") (with Helsel, Dr. Van Voorn, and Slagle, the "ACH Defendants"). Doc. 370. The Buchanan County Defendants and ACH Defendants seek summary judgment on Count IV of Plaintiffs' complaint, which asserts civil rights claims against them in their individual capaci-

ties and, insofar as the Buchanan County employees are concerned, in their official capacities as well.[1]

For the reasons discussed below, the Court (1) grants the individual Buchanan County Defendants' motions for summary judgment on the official-capacity claims against them; (2) grants Defendant Nauman's motion for summary judgment on Count IV on the basis of qualified immunity, (3) grants the motion by Defendant Van Voorn for summary judgment on Count IV, (4) denies the motions by Gross, Strong, Hovey, and Buchanan County for summary judgment on Count IV, and (5) denies in part the motions by Slagle, Helsel, and ACH for summary judgment on Count IV.

I. Background

a. Stufflebean's Medical Conditions

Justin Stufflebean ("Stufflebean"), the son of plaintiffs Brenda Davis and Frederick Stufflebean, had two endocrine disorders: Addison's disease and hypoparathyroidism. Addison's disease is a disorder that occurs when the adrenal glands fail to produce sufficient amounts of cortisol, an essential hormone that helps the body cope with stress and is critical to maintaining blood pressure and cardiovascular function. Adrenal insufficiency is life-threatening. Stress

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[1] The Buchanan County Defendants and ACH Defendants also seek summary judgment on Plaintiffs' wrongful-death claims (Count I against the Buchanan County Defendants, and Count II against the ACH Defendants), and the ACH Defendants seek summary judgment on Plaintiffs' claims for punitive damages. Plaintiffs' wrongful-death claims against these Defendants and punitive damages claims against the ACH Defendants will be addressed in a separate order.

can trigger Addisonian crises. However, progression into adrenal crisis is not instantaneous, but gradual.

Stufflebean's longtime treating physician, who canceled a trip in order to testify at Stufflebean's sentencing hearing regarding Stufflebean's fragile condition, explained that "Mr. Stufflebean suffers from one of the lowest calcium levels that any of us doctors have ever seen in the hospital and that can make him quite – makes him quite ill and very badly damaging to a body and can be life-threatening in and of itself also and has to be controlled." Doc. 447-18 (Transcript from Stufflebean's October 26, 2015 sentencing hearing, Testimony of Dr. Alan Brewer), 8:2-9:16. Dr. Brewer explained that when Stufflebean's Addison's disease—which is exacerbated by stress—flares up, Stufflebean experiences "[f]atigue, malaise that's followed by severe nausea, vomiting, dehydration" and that, "if not intervened upon in the hospital, in a hospital setting, it can be death within 24 to 48 hours." *Id.*, 9:17-24. The doctor noted that Stufflebean's Addison's was "light years worse" in the prior year than it had been in the years past, perhaps because of the stress from his having been charged with the crime at issue. *Id.*, 11:1-18. Stufflebean had been hospitalized 16 times in the prior year, not counting all of the out-patient emergency room visits that didn't involve in-patient care, and that he had been hospitalized just the prior week. *Id.*, 9:23-10:9. The doctor emphasized that "to someone with Addison's who is as brittle as he is and with his electrolyte disturbances, not being able to have access to the hospital would be—or delayed access could—it kills people." *Id.*, 10:20-25.

On October 26, 2015 (the same day that his treating physician testified), Stufflebean was sentenced to a

term in prison and transferred to the Buchanan County Jail. Although Stufflebean's mother brought several of his prescription drugs to the jail on the day that he was booked in, Stufflebean did not receive any medications the next day or the day after (October 27 and 28, 2015).[2] On October 29, 2015, Stufflebean was transferred from the Buchanan County Jail to the Western Reception Diagnostic and Correctional Center ("WRDCC"). The nurse performing intake at the prison noted that Stufflebean complained of vomiting, weakness, and tachycardia (elevated heart rate). ACH AF,[3] ¶ 69. She observed that Stufflebean appeared "lethargic" and had an "unsteady gait," apparently from "weakness." *Id.*, ¶ 70. Stufflebean told a nurse at the prison that he had been having "this flare-up" of his Addison's disease since he was sentenced. *Id.*, ¶ 71. Stufflebean did not receive any

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[2] Insofar as any facts are in dispute, the Court views the evidence in the light most favorable to Plaintiffs. *See, e.g., Johnson v. McCarver*, 942 F.3d 405, 2019 U.S. App. LEXIS 32772, at *1 (8th Cir. 2019) ("Because this appeal arises from the denial of a motion for summary judgment, we recite any disputed facts in the light most favorable to the [non-movant].").

[3] "ACH AF" refers to Plaintiffs' Statement of Additional Material Facts in Doc. 474 (Plaintiffs' Suggestions in Opposition to the ACH Defendants' Motion for Partial Summary Judgment on Count IV of Plaintiffs' Complaint and Accompanying Request for Punitive Damages) as well as Defendants' Response to Plaintiffs' Additional Facts in Doc. 549 (Reply in Support of Partial Summary Judgment on Count IV of Plaintiffs' Complaint and Accompanying Request for Punitive Damages). The Court cites the statements of fact only insofar as they were substantively uncontested.

medications at the WRDCC from October 29-31, 2015. BC AF,[4] ¶ 46.

On October 31, 2015, Stufflebean arrived by ambulance at a medical center, unresponsive and in cardiac and respiratory arrest. On November 16, 2015, he was pronounced dead.

b. Sheriff's Deputy Gross

Brian Gross is a Buchanan County Sheriff's Deputy. At all relevant times, he was assigned to courtroom security at the Buchanan County Courthouse. His duties included maintaining order in the courtroom and transferring those sentenced from the courthouse to the jail. BC SF,[5] ¶ 6; BC SF Reply,[6] ¶ 6. Strong, the Buchanan County Sheriff at the time, testified that the transporting officer was expected to advise the booking officer of any medical conditions of which the transporting officer was aware, and therefore, "there was an expectation that the transporting officer would be paying attention" to courtroom proceedings. Doc. 447-1 (Deposition of Sheriff Jerry Michael Strong), 55:11-15 (Q. . . . [T]he question is here, there was an expectation that the transporting officer would be paying attention, fair? A. Correct.); BC AF, ¶ 6 (noting that, as transporting officer, Gross was responsible for

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[4] "BC AF" refers to Defendants' Response to Plaintiffs' Statement of Additional Material Facts in Doc. 564 (Reply Suggestions in Support of Buchanan County Defendants' Motion for Summary Judgment).

[5] "BC SF" refers to Plaintiff's Response to the Buchanan County Defendants' Statement of Uncontroverted Facts in Doc. 447 (Suggestions in Opposition to Buchanan County Defendants' Motion for Summary Judgment).

[6] "BC SF Reply" refers to Defendants' Reply to Plaintiffs' Response to Defendants' Statement of Facts in Doc. 564.

answering the booking officer's standard question on the Medical Intake Screening Questionnaire of whether "the arresting or transporting officer believe[s] the inmate is a medical, mental health, or suicide risk now"). The Buchanan County Sheriff's Department policies state that, "[w]hen a detainee requiring special needs care is identified, the facts surrounding the case shall be relayed to the jail commander (or designee) and the medical staff . . . ." BC AF, ¶ 53.

Gross was on duty in the courtroom during Stufflebean's sentencing hearing on October 26, 2015. He was sitting approximately 30 feet from the witness chair when Stufflebean's long-time treating physician, Dr. Brewer, discussed Stufflebean's uniquely fragile condition. Doc. 447-3 (Moden Affidavit), ¶ 5. Gross admits that he normally can hear testimony in the courtroom. BC SF, ¶¶ 8, 10. Gross also acknowledged that it is "rare" for doctors to testify at sentencing hearings. Doc. 447-4 (Deposition of Brian M. Gross), 10:14-16. Dr. Brewer's testimony was made all the more unusual by the fact that he claimed he had canceled a trip "so [he] could be [t]here for Justin and to say what [he] – to help clarify his medical condition." Doc. 477-18, 12:4-7.

Dr. Brewer explained that Stufflebean's extraordinarily low calcium-levels could become "life-threatening," that an Addison's flare-up could manifest as "[f]atigue, malaise that's followed by severe nausea, vomiting, dehydration" and that, "if not intervened upon in the hospital, in a hospital setting, it can be death within 24 to 48 hours." *Id.*, ¶¶ 3-4; Doc. 447-18, 8:2-10:9. The doctor emphasized that "to someone with Addison's who is as brittle as he is and with his electrolyte disturbances, not being able to have access to the hospital would be—or delayed access could—it

kills people." *Id.*, 10:20-25. Dr. Brewer testified that Stufflebean had been hospitalized 16 times in the prior year, not counting all of the out-patient emergency room visits that didn't involve in-patient care, and indeed, Stufflebean had been hospitalized just the prior week. *Id.*, 9:23-10:9.

After Stufflebean was sentenced, Gross took him into custody and transported him to the jail. Despite Stufflebean's doctor's detailed and unusual testimony that Stufflebean's medical conditions would endanger his life if they were not properly controlled, Gross provided no information about Stufflebean's medical condition to the booking officer. BC SF, ¶ 19.

c. Sheriff's Deputy Nauman

Nauman is and at all relevant times was a Buchanan County Sheriff's Deputy assigned to the booking desk at the Buchanan County Jail. BC SF, ¶ 17. Nauman's job per Buchanan County's medical policies and procedures was to review and be familiar with those policies and procedures requiring him to conduct the "BCSD Medical Intake Screening" carefully, with an eye towards identifying prisoners with chronic conditions or special needs so that their needs would be addressed properly throughout their incarceration. BC AF, ¶ 17. This required Nauman to be attentive to the questioning and the answers. *Id.* Strong, who was Sheriff at the time, testified that he expected that the medical history for a prisoner like Stufflebean would be obtained "[a]t the booking process." *Id.*, ¶ 92.

The first question on the jail's Medical Intake Screening form is, "Was inmate a medical, mental health or suicide risk during any prior contact or confinement within the department?" *Id.*, ¶ 10. Nauman

stated that he was not certain if Stufflebean's prior Medical Intake Screening form, from 2014, was available to him. *Id.*, ¶ 16. Stufflebean's prior booking records showed that he had been classified as "Special Condition – Medical," and that Stufflebean needed medical attention due to his calcium deficiency." *Id.*, ¶ 18.

The second question on the form is: "Does the arresting or transporting officer believe that the inmate is a medical, mental health or suicide risk now?" *Id.*, ¶ 11. However, Gross did not report Stufflebean's medical conditions to Nauman.

The information that Nauman entered in the medical questionnaire when he booked Stufflebean into the Buchanan County Jail on October 26, 2015 indicates that Stufflebean reported abdominal pain, unexplained weight loss, loss of appetite, night sweats, and fatigue,[7] and that he was taking several prescribed

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[7] Defendants claim that these complaints were historical, rather than reports of conditions Stufflebean was experiencing at the time of the booking. Defendants cite a portion of the medical intake screening questionnaire titled "Questionnaire: Ebola" to support their claim. Stufflebean's form indicates that he denied having "abdominal (stomach) pain." The fact that Stufflebean apparently denied having abdominal pain on an Ebola questionnaire that begins with questions concerning travel to and contact with people from West Africa at best raises a disputed issue as to whether Stufflebean's symptoms of abdominal pain reported to Nauman were supposed to be historical rather than a description of his condition at that time. The intake form, which appears to be describing Stufflebean's present general medical condition rather than his exposure to Ebola, already lists abdominal pain among other symptoms. Construing the facts in the light most favorable to Plaintiffs, the Court finds for the purpose of this motion that Stufflebean reported to Nauman conditions he was experiencing at that time.

medications, including prednisone, fludrocortisone, NATPARA, Calcitriol, magnesium, E, and potassium. *Id.*, ¶ 27. Although the Medical Intake Screening Form asks for the "dosage, and frequency" of medications, Nauman did not document that information. BC AF, ¶ 12.

Despite the facts that Stufflebean had been hospitalized just the prior week (in addition to fifteen other in-patient hospitalizations), and his longtime treating physician had testified at his sentencing hearing that same day, the medical intake screening questionnaire indicates that Stufflebean was not under the care of a physician. *Id.*, ¶ 8. Nauman also recorded that Stufflebean did not "currently" need medical attention. BC SF, ¶ 23. In contrast, Stufflebean's medical intake screening questionnaire from his prior booking, in December 2014, stated that Stufflebean was in need of medical attention "BECAUSE OF A CALCIUM DEFICIENCY." Doc. 447-9. Had Nauman recorded that Stufflebean currently needed medical attention, Stufflebean would have been classified as "Special Condition—Medical," as he was the first time he was booked into the jail, and both the medical staff and jail commander would have been notified of his condition. BC SF, ¶ 24; Doc. 631 (transcript of November 18, 2019 teleconference), 7:2-8:19.

After completing the medical questionnaire for Stufflebean upon booking him into the jail, Nauman printed a copy of the completed questionnaire and placed it in the nurse's box, and then contacted a nurse by telephone to advise her that he had booked an inmate who needed to be seen for medical issues. BC AF, ¶ 28. Stufflebean was placed in a separate cell from other inmates being booked into the jail, but

Nauman could not recall the reason for it. Doc. 447-8 (Deposition of Dustin R. Nauman), 20:3-11.

When Nauman's shift ended at 5 p.m., Stufflebean still was in a holding cell. BC SF, ¶ 29. Nauman could not recall following up with the nurse as to Stufflebean's care. BC AF, ¶ 95. Nauman did not know whether, or when, a nurse came to check on Stufflebean. BC SF, ¶ 30. Stufflebean was in the holding cell in the booking area for 12 hours and was never seen by a nurse while in the holding cell. BC AF, ¶ 96.

Nauman had no further contact with Stufflebean during his stay in the Buchanan County Jail in October 2015. BC SF, ¶ 31.

d. Medical Providers—ACH and Its Employees

Ann Slagle is a Licensed Practical Nurse employed by ACH and assigned to the Buchanan County Jail. ACH AF, ¶ 14. Slagle was on duty on October 26, 2015 from 2 p.m. until 10:29 p.m.; October 27, 2015 from 12:07 p.m. until 10:28 p.m.; and October 28, 2015 from 1:55 p.m. until 10:24 p.m. *Id*.

April Helsel (also called April Powers) is a Licensed Practical Nurse employed by ACH as the site manager for the Buchanan County Jail. *Id.*, ¶ 16. As site manager, Helsel was responsible for supervising and training the nursing staff at the jail. *Id.*, ¶ 17. She was on duty October 26, 2015 from 6:00 a.m. until 2:20 p.m.; October 27, 2015 from 12:14 p.m. until 10:30 p.m.; October 28, 2015 from 6:03 a.m. until 2:01 p.m.; and October 29, 2015 from 6:00 a.m. until 11:15 a.m. *Id.*, ¶ 16.

Dr. Catherine Van Voorn was the medical director covering the Buchanan County Jail. Doc. 447-22, 20:7-13.

e. Stufflebean's Medical Treatment at the Buchanan County Jail

i. Nurse Slagle's Intake

Nauman claims that, on October 26, 2015, the day that Stufflebean was booked into the jail, Nauman contacted a nurse by telephone to let her know that he had "booked in an inmate who needed to be seen due to medical issues." *Id.*, ¶ 23. A reasonable juror could find, based on the 14:03PM print time shown on the questionnaire (Doc. 447-5, p. 19) and Slagle's documented arrival time of 2pm on October 26, 2015 (ACH AF, ¶ 14) that Slagle was the nurse that Nauman contacted. During the nearly 11 hours that Stufflebean was in the holding cell in the booking area, no nurse came to see him. *Id.*, ¶ 29; *see also* Doc. 474-21 (Deposition of Ann Marie Slagle, Vol. II), 30:22-31:17 (testifying that she "did not see him" on the 26th), Doc. 474-1 (Inmate Activity Log showing that Stufflebean was admitted to the facility at 13:54 on October 26 and was sent to housing at 00:47 on October 27, 2015).

On October 26, 2015, the day that Stufflebean was brought to the Buchanan County Jail, his mother, Brenda Davis, delivered to the jail what she could find of Justin's medications, including NATPARA, melatonin, hydrocodone, ondansetron, fludrocortisone, paroxetine, Calcitriol, prednisone, and Vitamin D, as well as specialized injection tips for the NATPARA, *id.*, ¶ 24; BC AF, ¶ 19, and Slagle retrieved the medications, *id.*, ¶ 26.[8] Stufflebean was supposed to take his medications daily, and indeed, he was supposed to take

[8] Dr. Van Voorn later suggested that the medications "didn't wind up with medical with the nurse," and that what happened to the medications was "a mystery." 474-24 (Deposition of Catherine Van Voorn, MD), 214:19-216:2.

some of his medications more than once a day. *See* Doc. 447-15 (records from October 19, 2015 emergency-room visit).

Once-a-day medications were passed to inmates at 7 a.m. Any once-daily medication that was not entered in the jail's system before 7 a.m. on a given day would not be administered. Doc. 474-21, 33:9-17, 35:6-17, 48:5-6; *see also id.*, 49:13-21 ("Q. So the medications were to be given at 7:00 a.m.? A. That's correct. Q. Was this per Dr. Van Voorn's orders? A. It's the per setup in the MAR system. Q. Because it was after 7:00 a.m. when you got the order from Dr. Van Voorn when you put it into the system, it just bumped it to the next day? A. Correct."). Thus, for Stufflebean to receive his daily medications on October 27, they needed to be entered in the system before 7 a.m. that day. *Id.*, 33:9-17, 35:6-17, 48:5-6. Yet, despite having picked up at least nine medications as well as specialized injection tips prescribed for Stufflebean, and although she worked for more than eight hours on October 26 after Nauman advised her to evaluate Stufflebean, Slagle did not call a doctor to ask for an order to administer his prescription medications on that day. Slagle knew that meant that Stufflebean would not receive the nine prescription medications in her custody for more than 24 hours. *See* Doc. 474-29, 50:6-9 ("Q. . . . But in your medication verification form, you recognize that the medications were to be given daily? A. Yes.")

On October 27, 2015, Stufflebean filed a formal request for his medications, stating, "I called to have my medicine brought in. I have Addison's and hypo-parathyroid disease. Medications brought to jail." Doc. 474-6 (Medical Progress Notes for Stufflebean prepared at 1:16 p.m. on October 27, 2015). Slagle made note of Stufflebean's request, and apparently in

response, called Dr. Van Voorn that afternoon and received oral orders for some of the prescriptions. *See id.* (repeating Justin's medication request and writing under "PLAN" "1300 Contacted Dr. Van Voorn and received verbal orders."); ACH AF, ¶¶ 28, 37. As discussed above, because Slagle entered the order after 7 a.m. on the 27th, the soonest Stufflebean could have received his medication was October 28, 2015.

Thus, despite his formal request on October 27 for the medications that had been brought to the jail, and although Stufflebean told a fellow inmate that he had requested his medications repeatedly, and that fellow inmate witnessed him requesting his medications in person at least twice, Doc. 474-23 (Deposition of Ross Ellis), 82:16-83:10, there is no dispute that Stufflebean was not given his medications on either October 26 or 27, 2015. ACH AF, ¶ 48; BC AF, ¶¶ 35- 36.

Slagle claims that she saw Stufflebean on October 27, 2015 in the infirmary before she called Dr. Van Voorn. *See* Doc. 474-21, 13:4-18. However, the jail's inmate activity log, which tracks the movements of inmates within the facility, shows that once Stufflebean was moved from the holding cell (where he was never seen by medical staff) to the cell pod, he did not leave the cell pod (to go to the infirmary or elsewhere) until he was transferred to prison. AF for ACH, ¶¶ 35-36; Ex. 474-1 (inmate activity log for Stufflebean).

The only evidence that ACH points to in arguing that Slagle saw Stufflebean on October 27, 2015 are the progress note and the medication verification form that Slagle created. *See* Doc. 631, 23:15-19. The Medical Progress Notes contains just two sections. In the section titled "SOA" is Stufflebean's request for his medication, written in the first person, as though transcribing Stufflebean's formal request ("I called to

have my medicine brought in. I have Addison's and hypoparathyroid disease."), and on the next line, the statement, "Medications brought to jail." Doc. 474-6. The second section, titled "Plan," states only "10/27/15 1300 Contacted Dr. Van Voorn and received verbal orders." *Id.* The only indication on the medical verification form that Slagle saw a patient are vital signs (B/P, Temp, Resp, Pulse), Doc. 474-5, which, Plaintiffs point out, could have been fabricated. Neither of the two documents that ACH cites contains any notes from Slagle concerning Stufflebean's appearance, any indication that he complained about symptoms, or even, conversely, that he felt fine. Docs. 474-5, 474-6. Nor did she tell Dr. Van Voorn about these factors.

Slagle testified that her list of medications on the medication verification form was based on the bag of medications Stufflebean's mother brought to the jail. Doc. 447-21, 16:21-25. Thus, the list of medications itself does not indicate that Slagle spoke with Stufflebean. In fact, to the contrary, the list of medications suggests that Slagle did not see Stufflebean. During her deposition, Slagle testified as follows about her usual procedure for identifying discrepancies between the medication verification form and other documentation:

> Q. So you would not reconcile back to the intake screening form or the property form that the corrections officer fills out . . . when you were completing the medication verification form?
>
> A. Not usually, unless there was a discrepancy.
>
> Q. Well –

A. And that would be after I spoke to the patient, and then I would compare it to see if maybe it got placed in his property or was, you know, being sent back home.

Q. Okay. Well, I mean what we know in this case is there's medications listed on the intake screening form and the property intake form . . . that don't show up on your medication verification report; and so the question is did you reconcile it in this case or not?

A. No, I didn't.

Q. Is there a reason why not?

MR. HICKS: Object to the form. I feel like she just explained everything.

A. I would talk to the patient, which I would have the medications that were there, and I would ask him at that time if there were other medications that he was taking, and I would go from there. I would then look back and go, "Okay, well, it's got Vitamin D." "Yeah, I took that sometimes." You know, I don't know if that's what he said at that point, but that's what I would go for.

(By Mr. Bird) Are you suggesting that Mr. Stufflebean told you not to include certain medications on his medication verification form?

A. He possibly could, yes.

Q. What is your evidence for that that's in his chart?

A. Nothing in — in his chart.

> Q. Then you're speculating, correct?
>
> A. Yes, sir, I would be speculating.
>
> Q. Okay. And the point being that you rec-recognize now that if you had done a recon-cilement with the intake screening form and the property form, that you would have seen medications that were identified but not listed in your verification form?
>
> A. Yes, I would have seen that there were medications that were not on my form.

Slagle's list of medications omits at least two of the medications that Stufflebean told Nauman he takes. *Compare* 474-8 (Questionnaire: BCSD Medical Intake screening listing, *inter alia*, "MAGNISIUME and POTASIUME [*sic*]") *with* 474-5 (Slagle's Medication Verification Form, mentioning neither magnesium nor potassium). It is reasonable to infer that, if given the opportunity to speak with a nurse about the medications he had already formally requested, Stufflebean would report to the nurse the same medications he reported to the booking officer of the jail. The fact that Stufflebean did not tell Slagle about at least two of his medications reasonably suggests that Slagle never spoke with Stufflebean.

Slagle also omitted Stufflebean's Calcitriol from her medications list, even though that was among the medications that Davis brought to the jail. In addition, although Stufflebean's mother had brought both NATPARA and the special injection tips needed to administer it, Slagle wrote, "Pt. must supply."

ii. Dr. Van Voorn's Orders

On October 27, 2015, Dr. Van Voorn ordered continuation of some of Stufflebean's medications:

NATPARA, Vitamin D Ergo, Paxil, Prednisone and Fludrocortisone. ACH AF, ¶ 40. Dr. Van Voorn denied Stufflebean one of the medications from Slagle's list: Zofran/ondansetron, a medication used to control severe nausea and vomiting that Stufflebean had been prescribed during an emergency room visit nine days earlier related to an Addisonian crisis. *Id.*, ¶¶ 41, 44.

Dr. Van Voorn admitted that if a patient with hypoparathyroidism or Addison's disease reported "fatigue or . . . abdominal pain or tingling, those could all be symptoms of a crisis coming on for that condition," and indeed "[c]ertainly" were "red flags." ACH AF, ¶ 87. She acknowledged that in such a situation, she would "know that [she] need[s] to take a closer look to make a determination as to their state of health," because otherwise "it could become a crisis" and "could lead to serious injury or death." *Id.* She stated that she understood that "somebody having Addison's disease and hypoparathyroidism could be at risk if they didn't get their medication; so [she] would take extra actions to make sure [she] had the list correct and [she was] following the right course." *Id.* She admitted that she had this knowledge in October 2015. *Id.* She further acknowledged at her deposition that it is critical for a brittle patient with Addison's and hypoparathyroidism to receive medications daily. *Id.*, ¶ 80. Yet, when she ordered on October 27, 2015 that some of Stufflebean's prescribed medications be administered, she understood that Stufflebean would not receive the medications until October 28 or 29, 2015. Doc. No. 474-24, 123:25-124:7.

Dr. Van Voorn visited the Buchanan County Jail once a week. ACH SF,[9] ¶ 11. Despite knowing that Stufflebean had Addison's Disease and hypoparathyroidism, Slagle did not put Stufflebean on the list of patients that Dr. Van Voorn would see on her October 28, 2015 visit. ACH AF, ¶ 49. Helsel, too, did not put Stufflebean on the list of patients that Dr. Van Voorn would see on October 28, 2015. *Id.*, ¶ 50. However, Helsel testified that the responsibility for first identifying a prisoner with a chronic condition who warranted being placed on the doctor's "list" belonged to the doctor herself. Doc. 474-21, 8-25. (Q: "[E]ssentially, as the nurse, you're reliant on that first phone call with the physician to instruct you . . . 'I want to follow up. Let me see that patient when I come in this week'? A. Yes."). Consequently, although Dr. Van Voorn was on site at the jail on October 28, 2015, she did not see Stufflebean. ACH AF, ¶ 51. Dr. Van Voorn admitted that, as a patient with Addison's disease and hypoparathyroidism and a long list of medications to treat those conditions, Stufflebean should have been "on her list" for proper evaluation. *Id.*, ¶ 52.

iii. Helsel's Failure to Administer Medication

There is no evidence that anyone gave Stufflebean his medications on October 28, 2015. Helsel was on duty the morning of October 28, 2015—during the time when once-a-day medications were supposed to be administered. ACH AF ¶ 17. Helsel, like Slagle, was aware at that time that Stufflebean needed

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[9] "ACH SF" refers to Doc. 371 (Suggestions in Support of Partial Summary Judgment on Count IV of Plaintiffs' Complaint and Accompanying Request for Punitive Damages), Statement of Uncontroverted Facts

medications daily. Doc. 447-21 (Deposition of April (Powers) Helsel), 45:6-9. Helsel testified that, on that day, she gave Stufflebean the medication that Dr. Van Voorn had ordered. *Id.*, 7:8-15. However, when pressed, she admitted that she had no recollection of having given Stufflebean his medications, and she could point to no records supporting her statement that she had given him medications: her statement that she had administered his medications was mere conjecture based on the fact that there was no notation in the record indicating that Stufflebean had refused his medications. *Id.*, 7:8-23:13, 24:20-25:5. Helsel theorized that the lack of any indication that she gave Stufflebean his medications was just a computer error, but she could point to no evidence supporting this theory. *Id.*, 29:12-17.[10]

Some evidence suggests that Stufflebean received some medication, from a third ACH nurse, on October 29, 2015, the day that he was transferred to the prison. Doc. 549-2 (Deposition of Carrie Reindollar), 113:9-118:13; ACH SF, ¶ 32; *see also* Doc. 474-5.

iv. Failure to Take Vitals

There is no evidence that Slagle, Helsel, or anyone else checked Stufflebean's vital signs on October 28 or 29, 2015, despite the fact that Dr. Van Voorn had ordered that his vitals be taken for three consecutive days. ACH AF, ¶¶ 39, 56, 59. Indeed, Helsel admitted that nothing in Stufflebean's record indicates that she provided any care to him at all. *Id.*, ¶ 60. Plaintiffs' counsel represented that the vitals were supposed to

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[10] There is no dispute that Slagle did not give Stufflebean any medications on October 28, 2015. *Id.*, ¶¶ 53, 57.

be taken in the afternoons, and Slagle was on duty the afternoon of October 28, 2015. Doc. 631, 19:16-20-15.

v. Stufflebean's Deteriorating Condition

During his incarceration at the Buchanan County Jail, Stufflebean was not eating, and he was getting noticeably weaker. ACH AF, ¶ 61. He had difficulty getting down stairs such that he had to lean on the rail for assistance. *Id.*, ¶ 62. He also vomited at least one time at the jail—a sign of Addison's crisis. ACH SF, ¶ 30; *see* Doc. 447-18, 9:17-24 (Stufflebean's treating physician testifying that Stufflebean's Addison's flare-up is marked by "[f]atigue, malaise that's followed by severe nausea, vomiting, dehydration" and that, "if not intervened upon in the hospital, in a hospital setting, it can be death within 24 to 48 hours").

f. Transfer to Prison

On October 29, 2015, at 12:35 p.m., Stufflebean was transferred from the Buchanan County Jail to the Western Reception Diagnostic and Correctional Center ("WRDCC"). ACH AF, ¶ 64. During the transfer, Stufflebean "struggl[ed]" to walk in his shackles. *Id.*, ¶ 63.

The transfer from the Buchanan County Jail to the prison was effectuated in just nine minutes. *Id.*, ¶ 68. The nurse performing intake at the prison noted that Stufflebean complained of vomiting, weakness, and tachycardia (elevated heart rate), and that Stufflebean appeared "lethargic" and had an "unsteady gait," apparently from "weakness." *Id.*, ¶¶ 69, 70. Stufflebean told a nurse at the prison that he had been having "this flare-up" of his Addison's disease since he was sentenced. *Id.*, ¶ 71.

Stufflebean did not receive any medications at the WRDCC from October 29-31, 2015. BC AF, ¶ 46.

On October 31, 2015, Stufflebean arrived by ambulance at a medical center, unresponsive and in cardiac and respiratory arrest. On November 16, 2015, Stufflebean was pronounced dead. *Id.*, ¶ 47; ACH AF, ¶ 72. Dr. Marius C. Tarau, M.D., from the Jackson County Medical Examiner's office, declared the cause of Stufflebean's death to be "[c]omplications of polyglandular endocrinopathy." *Id.* Plaintiffs' expert, Dr. Bilezikian, opined that, had Justin received proper care for his Addison's disease, he would not have died. *Id.*, ¶ 73.

g. ACH and Buchanan County Policies and Procedures

During discovery, ACH initially denied that it had any medical policies or procedures for its operations at the Buchanan County Jail. *Id.*, ¶ 88. Buchanan County relied on ACH's production, and therefore in effect initially denied having any medical policies or procedures. BC AF, ¶ 67 (arguing that Buchanan County did not itself deny having relevant policies, but instead simply referred Plaintiffs to ACH's policies). However, ACH later produced policies and procedures that it had provided to Buchanan County to adopt. ACH AF, ¶ 90. Among the policies that ACH and Buchanan County implemented is the following: "It is the policy of the ____ County Jail to provide access to appropriate care for serious medical . . . needs . . . . Access to care—means in a timely manner, a detainee can be seen by a clinician, to be given professional clinical judgment, and receive care that is ordered." *Id.*, ¶ 91. The policies further provide: "Prescribed medications are reviewed and appropriately maintained according to the medication schedule the inmate was following before admission." *Id.*, ¶ 96.

The policies require "regularly scheduled administrative meetings" with the health care team and Buchanan County. *Id.*, ¶ 92. The jail was supposed to arrange regular meetings with the responsible physician and jail administrative staff to review "the effectiveness of the healthcare system, healthcare issues that need improvement, changes implemented since last reporting period and any recommended changes to improve the healthcare provided." *Id.*, ¶ 93.

h. Oversight by ACH

ACH has not presented admissible evidence that it had a real system in place to monitor the accuracy of its Continuous Quality Improvement ("CQI") reporting—which covered medication errors and prisoner grievances. *Id.*, ¶ 101 (stating only that "ACH clearly had a system in place," without further explanation, and citing for support only the ACH deposition transcript without page or line references). ACH left it up to the local nurses to provide "monthly contact logs" for the Regional Nurse Manager to prepare the CQI reports. *Id*. Regional Nurse Managers were supposed to "try" to walk through the facility every couple of months and "spot check" some files. *Id.* There was no policy governing how many files were to be reviewed or how they were supposed to review them. *Id.* Only the most recent version of the records was kept, preventing review of historical trends. *Id*., ¶¶ 101-102.

i. Oversight of ACH

Sheriff Strong was the final decision-maker with regard to policies and procedures at the Buchanan County Jail prior to and at the time of Stufflebean's incarceration in October 2015. BC AF, ¶ 69. Strong understood at that time that inmates had a consti-

tutional right to receive medical care for their serious medical needs, and that he was responsible for making sure they received it. *Id.*, ¶ 71. Nonetheless, Strong had no system in place to monitor the accuracy of ACH's Continuous Quality Improvement ("CQI") reporting. *Id.*, ¶ 76. Strong never compared prisoners' medical grievances with ACH's CQI reports to verify that ACH's "zero" grievance reporting was accurate. *Id.*, ¶ 77. He simply trusted that ACH was providing proper care to the Buchanan County prisoners. *Id.*, ¶ 76.

BCSD Medical policies appoint the Jail Administrator, Captain Hovey, as the Responsible Health Authority to "oversee the medical operations of the jail," including "arranging for all levels of healthcare and ensuring the quality and accessibility of all health services provided to the detainee population" and monitoring "to assure all aspects of detainee care occurs for the treatment of illnesses classified as 'serious' by the practitioner." *Id.*, ¶ 49. Strong expected that Hovey was exercising "constant oversight" over ACH. *Id.*, ¶ 75. However, Hovey's immediate supervisor, Undersheriff Bill Puett had "no specific steps" in place to ensure that Hovey was overseeing the provision of health care to detainees. *Id.*, ¶ 88.

As part of Buchanan County's oversight of medical care, Hovey (and other jail officers) were supposed to review medical grievances and attend CQI meetings and report to Strong. *Id.*, ¶ 79. There was no formal process for reviewing medical grievances from a systemic viewpoint. *Id.*, ¶ 80. Puett testified that, while he was undersheriff through December 2015, Buchanan County did not review prisoner medical grievances and did not look at any documentation

outside of CQI reports to determine whether prisoners were being provided their medications. *Id.*, ¶ 98.

To Puett's knowledge, there was no discussion at the Sheriff's Department in 2015 or earlier about how to monitor ACH's performance. *Id.*, ¶ 85. Puett testified that routine monitoring of the basic CQI program involved attending the CQI meetings and reviewing ACH's CQI reports. *Id.*, ¶ 83. In reality, however, ACH essentially was left to self-report issues or problems with the medical care it was providing to prisoners. *Id.*, ¶ 81. Outside of ACH's self-reporting, Hovey had no system in place to analyze or review the care being provided to prisoners. *Id*.

j. Medical Care Discrepancies and Purported Deficiencies

Prior to October 2015, there were discrepancies in ACH's self-reporting. For example, the January 2015 report showed ten prisoner grievances in 2014, while the May 2015 report showed zero prisoner grievances in 2014. BC AF, ¶¶ 103-104; ACH AF, ¶¶ 109-10. CQI reports for 2014 and 2015 both indicated that there were zero medication errors or prisoner grievances. BC AF, ¶ 110, ACH AF, ¶¶ 105. However, after reviewing "a summary of the dates and prisoners . . . that . . . didn't get their medications" in that timeframe prepared by Plaintiffs' expert, Strong was "astonished" by the number of errors and agreed that the medication errors were "extensive," BC AF, ¶ 111, ACH AF, ¶¶ 106, and that in fact, there were "dozens of prisoner grievances in 2014 [and] 2015." *Id*.; *see also* Doc. 474-34 (Roscoe Supplemental Report), at 1 (Plaintiffs' expert opining that she found "over 250 medication errors" after reviewing 18 months' of data, including evidence that "[c]ritical medications for anticoagulation, diabetes and cardiovascular disease

were not administered to patients, even though they were ordered by a physician").[11]

Puett agreed, based on Plaintiffs' expert's report, that there were "some obvious problems with the system in place for monitoring ACH and its performance in providing prisoners with medical care that they were entitled to back in 2015." *Id.*, ¶ 106. Puett acknowledged that medication errors indicated that "we weren't obviously provided with information that we should have had." BC AF, ¶ 101. Puett also agreed that "if CQI reports were repeatedly inaccurate regarding prisoner grievances and medication errors that would be a serious systemic problem with meeting the County's constitutional duties to prisoners" and that a "continuing widespread pattern of inmates not getting their medications" would have indicated a "serious systemic problem at the Buchanan County Jail." *Id.*, ¶ 99. Strong too agreed that there was a serious systemic problem at the Buchanan County Jail in 2015 affecting prisoners' ability to

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[11] Around the time of Stufflebean's incarceration at the jail, the nurses worked long hours. In the 7-week period from September 13, 2015 through November 7, 2015, the two full-time nurses employed by ACH at the Buchanan County Jail worked more than 161 hours of overtime, combined. Id., ¶ 124. Still, there were several days during which no nurse was at the facility at all. Plaintiffs' expert, Dr. Lori Roscoe, found that "there were days when no healthcare personnel were onsite [at the jail] to administer medications, a critical function that must be done daily in a correctional facility. This also meant there was no health staff available for intakes or to conduct nursing sick call or to respond to emergency calls." *Id*. On October 27, 2015, when no nurse was onsite at the jail in the morning, the Medication Administration Record review indicates that at least four people, including Stufflebean, did not get the medication that was ordered for them. *Id*.

obtain their medications. Doc. 447-1, 131:3-21, 132:9-133:9.

Strong acknowledged that he might have been able to prevent the circumstances that led to Stufflebean's not receiving his medications had there been an accurate CQI system in place showing that prisoners were not getting their medications and had complained about the deprivation. BC AF, ¶ 115.

Moreover, prior to Justin's death in November 2015, ACH had been sued multiple times in Missouri by prisoners alleging that necessary medical treatment was withheld. ACH AF, ¶ 119. ACH settled all of them. *Id.*

On June 11, 2014, a Buchanan County Jail prisoner, Craig Wilkerson, sued ACH and Dr. Van Voorn, alleging that she and ACH nurses failed to examine him, to monitor him, to obtain his complete medical history, and to provide medication for his serious medical condition, including by refusing to continue medications a physician had prescribed him. *Id.*, ¶ 120; *see also* BC AF, ¶ 112; *see also* Doc. 474-33. Specifically, the plaintiff alleged that he fell from his bunk in his cell, breaking his back, after jail medical personnel deprived him of his schizophrenia medication. Doc. 474-33, ¶ 3. Although he was not named in the suit, Strong acknowledged that the facts of that action against Dr. Van Voorn and ACH, in which Wilkerson claimed that he fell and broke his back while having a seizure, "sound[ed] familiar." Doc. 447-1, 115:22-116:11. ACH took no action to review or investigate the merits of the Wilkerson lawsuit. ACH AF, ¶ 122. Yet, ACH settled the case. *See* Order Approving Settlement dated November 15, 2016 in *Wilkerson v. Van Voorn*, No. 14BU-CV2595.

On August 27, 2015, another Buchanan County Jail prisoner, Tyler Fee, sued Nurse Slagle, Sheriff Strong, and Captain Hovey, alleging that Slagle and others failed to examine him, to monitor him, to obtain his complete medical history, and to administer medication for his serious medical conditions, including by refusing to continue medications his physician had prescribed. *Id.*, ¶ 121; *see also* Doc. 474-17. The petition alleged that, upon incarceration at the jail, Fee, who previously had suffered a traumatic brain injury, was not given his prescribed medications, despite the fact that his father twice called jail officials to notify them of his son's condition and also had brought his son's medications to the jail. Doc. 447-32, pp. 11-12. Fee suffered either a panic attack or seizure and hit his head, suffering a skull fracture that was not diagnosed for days because he was not sent to a hospital. *Id.*, pp. 13-21. Fee allegedly suffered near-total paralysis on his right side as a result of the lack of attention and continued to require therapy. *Id.*, p. 21. The Buchanan County Defendants acknowledge that they had been served with process in the Fee suit by the time Stufflebean was incarcerated. Doc. 564, pp. 86-87.[12]

Despite the fact that Defendants had notice of these lawsuits alleging serious injuries due to ACH's failure to provide medication for serious medical conditions before Stufflebean's October 2015 incarceration, and despite the discrepancies in ACH's CQI reports, neither Strong nor Hovey undertook any effort to test

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[12] The *Fee* case was voluntarily dismissed without prejudice on motion by the Plaintiff on March 22, 2017 (*see* March 22, 2017 judgment in *Fee v. Advanced Correctional Healthcare, Inc.*, No. 15BU-CV02918), presumably because of ACH's settlement (ACH AF, ¶ 119 ("ACH settled all of them.")).

or verify the accuracy of ACH's CQI reporting or otherwise oversee ACH's administration of medications. BC AF, ¶ 113. ACH apparently took no action to review or investigate whether there were systemic problems that led to these lawsuits involving allegations similar to those at issue in this case. ACH AF, ¶ 123.

II. Legal Standards

a. Summary Judgment Standard

"Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Anderson v. Durham D &M, LLC*, 606 F.3d 513, 518 (8th Cir. 2010) (citing *Johnson v. Ready Mixed Concrete Co.*, 424 F.3d 806, 810 (8th Cir. 2005)); Fed. R. Civ. P. 56(a). The Court must enter summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Robert Johnson Grain Co. v. Chemical Interchange Co.*, 541 F.2d 207, 210 (8th Cir. 1976); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). While the moving party bears the burden of establishing a lack of any genuine issues of material fact, *Brunsting v. Lutsen Mountains Corp.*, 601 F.3d 813, 820 (8th Cir. 2010), the party opposing summary judgment "must set forth specific facts showing that there is a genuine issue of material fact for trial." *Thomas v. Corwin*, 483 F.3d 516, 527 (8th Cir. 2007). "Mere allegations, unsupported by specific facts or evidence beyond the nonmoving party's own conclusions, are insufficient to withstand a motion for summary judgment." *Id*. "Summary judgment is proper if, after viewing the evidence and drawing all reasonable inferences in the light most favorable to the nonmovant, no

genuine issue of material fact exists and the movant is entitled to judgment as a matter of law." *Higgins v. Union Pac. R.R. Co.*, 931 F.3d 664, 669 (8th Cir. 2019) (quotation marks and citation omitted).

b. Deliberate Indifference to a Serious Medical Need

"It is well established that deliberate indifference to a prisoner's serious medical needs is cruel and unusual punishment in violation of the Eighth Amendment." *Langford v. Norris*, 614 F.3d 445, 459 (8th Cir. 2010) (quotation marks and citation omitted).

An objectively serious medical need is "one that has been diagnosed by a physician as requiring treatment, or one that is so obvious that even a layperson would easily recognize the necessity for a doctor's attention." *Camberos v. Branstad,* 73 F.3d 174, 176 (8th Cir. 1995) (quotation marks and citation omitted). The Buchanan County Defendants do not dispute that a physician testified that Stufflebean required treatment for his medical conditions. *See* Doc. 564, p. 80 ("[A]s Plaintiffs state, a serious medical need is one that has been diagnosed by a physician as requiring treatment, or one that is so obvious that even a layperson would easily recognize the necessity for a doctor's attention. Defendants agree with Plaintiffs that Justin Stufflebean's physician did testify at his sentencing hearing concerning Stufflebean's medical condition.") The ACH Defendants, too, effectively concede that Stufflebean's medical needs were serious. *See* Doc. 371, p. 11.

At issue is whether each defendant knew of and was deliberately indifferent to Stufflebean's serious medical needs. *See, e.g.,* Doc. 564 (Buchanan County Reply), p. 80 ("Plaintiffs' contention that the Buchanan

County Defendants knew of Stufflebean's condition, and were deliberately indifferent to that condition, is simply not supported by any evidence in this case."); Doc. 371 (ACH Suggestions in Support), p. 1 ("There is no genuine issue of fact and plaintiffs have failed to prove defendants were deliberately indifferent with respect to their care and treatment of Stufflebean.").

To be found "deliberately indifferent," an official must "'know[] of and disregard[]' a serious medical need or a substantial risk to an inmate's health or safety." *Saylor v. Nebraska*, 812 F.3d 637, 644 (8th Cir. 2016) (citations omitted). Thus, "[f]irst, [Plaintiffs] must . . . demonstrate that [each defendant] knew of the substantial risk of serious harm to [Stufflebean]." *Blair v. Bowersox*, 929 F.3d 981, 987-88 (8th Cir. 2019) (quotation marks and citations omitted). "Plaintiffs do not have to prove that [each defendant] had actual knowledge of the risk of harm; [they] can instead demonstrate that the risk was obvious enough to support the inference that [the defendant] knew the risk existed." *Id.* Constructive knowledge is not sufficient; instead, Plaintiffs ultimately must "show that [each defendant] had been exposed to information concerning the risk and thus must have known about it." *Id.*

Deliberate indifference also requires Plaintiffs to "prove that [each defendant] deliberately disregarded that risk by showing that [he or she] knew that his [or her] conduct was inappropriate in light of the risk." *Id.* (quotation marks and citation omitted). However, "a total deprivation of care is not a necessary condition for finding a constitutional violation: [g]rossly incompetent or inadequate care can also constitute deliberate indifference, as can a doctor's decision to take an easier and less efficacious course of treatment."

Langford, 614 F.3d at 460 (quotation marks omitted, citing *Smith v. Jenkins*, 919 F.2d 90, 93 (8th Cir. 1990)). To prove deliberate indifference to a medical need, a plaintiff must show more than negligence, more even than gross negligence . . . ." *Langford*, 614 F.3d at 460 (quotation marks and citation omitted). "The subjective standard is akin to that of criminal recklessness: the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference before acting—or failing to act—with a conscious disregard for the risk." *Blair*, 929 F.3d at 987-88 (quotation marks and citation omitted). The Court must "measure the official's state of mind according to his knowledge at the time of the incident, without the benefit of hindsight." *Id.*, at 988 (quotation marks and citation omitted).

c. Qualified Immunity

The individual Buchanan County Defendants have asserted in their motions for summary judgment the defense of qualified immunity.[13] "In § 1983 actions, qualified immunity shields government officials from liability [in their individual capacities] unless their conduct violated a clearly established constitutional or statutory right of which a reasonable official would have known." *Bishop v. Glazier*, 723 F.3d 957, 961 (8th Cir. 2013) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982))). Qualified immunity is available only with respect to federal claims. *D'Aguanno v. Gallagher*, 50 F.3d 877, 879 (11th Cir. 1995); *see also, e.g., Westerfield v. Lucas*,

[13] The ACH Defendants raised qualified immunity only in their motion to dismiss, Doc. 372, which the Court does not address here.

No. 07-3518, 2011 U.S. Dist. LEXIS 51148, at *40 n.20 (N.D. Ohio May 12, 2011) (holding that "qualified immunity does not apply to [a] state law claim").

The Court must consider two factors in analyzing qualified immunity: (1) whether the facts alleged show that the public official's conduct violated a constitutional right; and (2) whether the constitutional right was clearly established at the time of the alleged misconduct. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). "Qualified immunity is applicable unless the official's conduct violated a clearly established constitutional right." *Id.*; *see also Hess v. Ables*, 714 F.3d 1048, 1051 (8th Cir. 2013) ("Qualified immunity is appropriate only if no reasonable fact-finder could answer yes to both of these questions." (quotation marks and citation omitted)). "The 'clearly established' standard . . . requires that the legal principle . . . be so well defined that it is 'clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Dist. of Columbia v. Wesby*, ___ U.S. ___, 138 S. Ct. 577, 590, 199 L. Ed. 2d 453 (2018) (citations omitted).

Upon a defendant's raising the qualified immunity defense in a summary judgment motion, "the plaintiff must produce evidence sufficient to create a genuine issue of fact regarding whether the defendant violated a clearly established right." *Bishop*, 723 F.3d at 961 (citation omitted). The "plaintiff bears the burden of proving that the law was clearly established." *Hess*, 714 F.3d 1051.

III. Discussion

a. Official-Capacity Claims

As an initial matter, the Buchanan County Defendants move for dismissal of the official-capacity claims

against the individual Buchanan County Defendants, arguing that the official-capacity claims are redundant of the claim against Buchanan County. Because "a suit against a government officer in his official capacity is functionally equivalent to a suit against the employing governmental entity," official-capacity claims against the government should be dismissed. *King v. City of Crestwood*, 899 F.3d 643, 650 (8th Cir. 2018) (quotation marks and citation omitted). Accordingly, the Court dismisses the official-capacity claims against Gross, Nauman, Strong, and Hovey.

b. Individual-Capacity Claims

i. Deputy Sheriff Gross

A. Whether a Reasonable Fact-Finder Could Conclude that Gross Was Deliberately Indifferent to Stufflebean's Serious Medical Needs

Plaintiffs' claims against Gross are based on the fact that he did not summon a nurse or advise any jail personnel of Stufflebean's medical condition. Doc. 447, p. 48. There is no dispute that if Gross knew that Stufflebean was ill or in need of special medical attention when Gross took Stufflebean into custody, Gross would have been obligated to pass that information to the booking desk staff at the jail or to call a nurse to attend to Stufflebean. BC SF, ¶¶ 13-14; *see also* Doc. 564 (Buchanan County Reply), p. 5 (acknowledging that Sheriff Strong testified that "deputies at sentencing hearings are supposed to report special medical conditions when they bring a prisoner over from court to the jail, if they have such information"); *id.*, p. 74 ("[B]oth Gross and Sheriff Strong testified that, although deputies at sentencing hearings are supposed to report special medical conditions when

they bring a prisoner over from court to the jail, if they have such information, those deputies are not necessarily 'supposed to be watching out for that information during the sentencing hearings' because 'they have several duties to do right then.'"). The question is whether Gross was aware of the life-threatening nature of Stufflebean's medical conditions.

Gross was on courtroom-security duty in the courtroom during Stufflebean's sentencing hearing on October 26, 2015. BC SF, ¶¶ 5-6. In addition to maintaining order in the courtroom, he was responsible for transferring those sentenced from the courthouse to the jail. *Id.*; BC SF Reply, ¶ 6. Strong, who was the Buchanan County Sheriff at the time, testified that, because the transporting officer was expected to advise the booking officer of any medical conditions of which the transporting officer was aware, "there was an expectation that the transporting officer would be paying attention" to courtroom proceedings. Doc. 447-1, 55:11-15 (Q. . . . the question is here, there was an expectation that the transporting officer would be paying attention, fair? A. Correct.); BC AF, ¶ 6 (noting that, as transporting officer, Gross was responsible for answering the booking officer's standard question on the Medical Intake Screening Questionnaire of whether "the arresting or transporting officer believe[s] the inmate is a medical, mental health, or suicide risk now"). Moreover, the Buchanan County Sheriff's Department policies state that, "[w]hen a detainee requiring special needs care is identified, the facts surrounding the case shall be relayed to the jail commander (or designee) and the medical staff . . . ." BC AF, ¶ 53.

Gross normally can hear testimony in the courtroom. BC SF, ¶¶ 8, 10. He was seated approximately

30 feet from the witness chair when Stufflebean's long-time treating physician discussed Stufflebean's unusual and fragile condition. *Id.*, ¶¶ 3, 10; Doc. 447-3, ¶ 5. Gross acknowledged that it is "rare" for doctors to testify at sentencing hearings. Doc. 447-4, 10:14-16. Dr. Brewer's testimony was all the more unusual because he explained that he had canceled a trip "so [he] could be [t]here for Justin and . . . to help clarify his medical condition." Doc. 477-18, 12:4-7.

More notably still, Stufflebean's treating physician described multiple times the risk of death that would arise from any lapse in treatment for Stufflebean. Dr. Brewer explained that "Mr. Stufflebean suffers from one of the lowest calcium levels that any of us doctors have ever seen in the hospital and that can make him quite – makes him quite ill and very badly damaging to a body and can be life-threatening in and of itself also and has to be controlled." Doc. 447-18, 8:2-10:9. The doctor noted that Stufflebean's Addison's disease had been "light years worse" in the prior year than it had been in the years past, perhaps because of the stress from his having been charged with the crime at issue. *Id.*, 11:1-18. The doctor testified that an Addison's flare-up could manifest as "[f]atigue, malaise that's followed by severe nausea, vomiting, dehydration" and that, "if not intervened upon in the hospital, in a hospital setting, it can be death within 24 to 48 hours." *Id.*, 8:2-10:9. The doctor testified that Stufflebean had been hospitalized 16 times in the prior year, not counting all of the out-patient emergency room visits that didn't involve in-patient care. *Id.*, 9:23-10:9. Indeed, Stufflebean had been hospitalized just the prior week. *Id.* Dr. Brewer emphasized that "to someone with Addison's who is as brittle as he is and with his electrolyte disturbances, not being

able to have access to the hospital would be—or delayed access could—it kills people." *Id.* 10:20-25.

Based on these undisputed facts, a reasonable juror could infer that Gross heard Stufflebean's treating physician's extraordinary testimony and knew that Stufflebean would face serious harm or death if there were any lapse in his medical treatment. *See Jones v. Minn. Dep't of Corr.*, 512 F.3d 478, 481-82 (8th Cir. 2008) ("The determination that prison officials had actual knowledge of a serious medical need may be inferred from circumstantial evidence or from the very fact that the risk was obvious."). Gross claims that he does not recall hearing Stufflebean's doctor's testimony, but such a credibility determination is the province not of the Court at the summary judgment stage but of the factfinder at trial. *See United States v. Dico, Inc.*, 136 F.3d 572, 579 (8th Cir. 1998) ("Assessing the credibility of witnesses and evaluating the weight to assign to their testimony is the job of the fact-finder, and is not a function for the court on a motion for summary judgment."); *see also Snow v. City of Citronelle*, 420 F.3d 1262, 1270 (11th Cir. 2005) (holding, where defendant officer denied facts that suggested that he knew of detainee's suicide risk, "the conflicting testimony creates an issue of fact for a jury to decide about [the officer's] knowledge," as "[v]iewing the facts in the light most favorable to [plaintiff], a jury could find that [the officer] subjectively believed that there was a strong risk that [decedent detainee] would attempt suicide and deliberately did not take any action to prevent her suicide").

After Stufflebean was sentenced, Gross took him into custody and transported him to the jail. BC AF, ¶ 4. Gross was responsible for answering the booking officer's standard question on the Medical Intake

Screening Questionnaire of whether "the arresting or transporting officer believe[s] the inmate is a medical, mental health, or suicide risk now." BC AF, ¶ 6. Yet, despite Stufflebean's doctor's detailed and remarkable testimony that Stufflebean's medical conditions would endanger his life if they were not properly controlled, Gross provided no information about Stufflebean's medical condition to the booking officer or any other jail staff or medical care providers. BC SF, ¶ 19; BC SF Reply, ¶ 13; *see* Doc. 447-4, 31:7-21.

From the facts in the record, a reasonable fact-finder could find that Gross was obligated to pay attention to the doctor's testimony, that he heard the doctor's testimony that Stufflebean was at serious risk of death if he were not given prompt medical attention, that he had an obligation to convey that information to the medical providers at the jail and the intake officer, and that his failure to do so was knowing and deliberate. The doctor's testimony concerning the extreme consequences that would attend failure to give Stufflebean his medications or to recognize and promptly address an Addisonian crisis was so extraordinary and so dire that a reasonable factfinder could conclude that the risk of not conveying that information to those at the jail who had the power to see that Stufflebean received the treatment he needed was obvious.[14] *See Snow*, 420 F.3d at 1270 (finding that where "a jury could find that [officer] had subjective knowledge that there was a strong risk that [detainee] would attempt suicide and deliberately did not take any action to prevent that suicide"—including such

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[14] A reasonable fact-finder could also draw the inference that Gross deliberately chose not to help Stufflebean because Stufflebean had been found guilty of a sex offense.

actions as advising another officer to check on the detainee or sending detainee to medical center for treatment and observation—the officer was not entitled to summary judgment on Fourteenth Amendment claim).

Further, a jury reasonably could infer that, had Gross communicated the substance of Stufflebean's testifying physician's testimony to Nauman or a nurse at the jail, the jail's medical staff "would have been more vigilant" (*id.*) and would administer his prescribed medications daily, would have monitored his vitals as per Dr. Van Voorn's orders, would have examined him in person, and would have monitored him while he was incarcerated, which would have alerted them to signs of an impending Addisonian crisis.

B. Whether the Right Was Clearly Established

Having determined that a reasonable fact-finder could conclude that Gross violated Stufflebean's rights, the Court turns to the question of whether the right was clearly established at the time.

"For a constitutional right to be clearly established, its contours must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful . . . ." *Hope v. Pelzer*, 536 U.S. 730, 739 (2002) (quotation marks and citation omitted). "[G]eneral statements of the law are not inherently incapable of giving fair and clear warning to officers, but in the light of pre-existing law the unlawfulness must be

apparent." *White v. Pauly*, 137 S. Ct. 548, 552 (2017) (quotation marks and citations omitted).

Since well before October 2015, courts have repeatedly concluded that a jail or prison official who was aware of a prisoner's serious medical need but did nothing to try to abate the risk of harm to the inmate violated the prisoner's constitutional rights. Where an officer asked for permission to have a detainee evaluated by a nurse instead of hospitalizing him, but failed to tell the nurse that the detainee had ingested drugs, and the officer later observed the detainee sleeping in his cell for several hours without moving, the Eighth Circuit affirmed the district court's conclusion that the officer was not entitled to qualified immunity. *McRaven v. Sanders*, 577 F.3d 974, 981-82 (8th Cir. 2009). Where an officer delayed in procuring medical attention for an inmate who had stated that he was a heart patient and displayed "obvious[]" symptoms of having a heart attack, the Eighth Circuit concluded that "a reasonable fact finder could conclude the Defendants violated his clearly established constitutional rights [under the Eighth Amendment] by disregarding his need for medical care . . . ." *Plemmons v. Roberts*, 439 F.3d 818, 825 (8th Cir. 2006). Similarly, where a factfinder could infer that an official "had actual knowledge of at least some of [two inmates'] medical problems and how those problems had been dealt with, the Eighth Circuit found that "a reasonable official standing in [the official]'s shoes would have understood that ignoring [the inmates'] complaints about receiving deficient medical care contravened clearly established principles of Eighth Amendment jurisprudence." *Langford*, 614 F.3d at 462.

In *Matis v. Johnson*, 262 F. App'x 671 (5th Cir. 2008), the Fifth Circuit affirmed the district court's

conclusion that a jury could find that a defendant had been deliberately indifferent to a deceased pretrial detainee's serious medical need where defendant allegedly knew of the decedent's suicide risk but did not alert anyone. *Id.*, at 673. The Fifth Circuit noted that there were issues of fact as to defendant's knowledge of the decedent's "demeanor, physical condition, and prior suicide attempt" and defendant's "reasons for failing to complete the intake form required by the policy manual." *Id.; see also Snow*, 420 F.3d at 1270 (11th Cir. 2005) (reversing grant of summary judgment to officer who, some evidence showed, was aware of inmate's suicide risk and yet did nothing to mitigate the risk). Similarly, the Eleventh Circuit concluded in 2010 that a jail official "who is aware of but ignores the dangers of acute alcohol withdrawal and waits for a manifest emergency before obtaining medical care [for a pretrial detainee] is deliberately indifferent to the inmate's constitutional rights." *Harper v. Lawrence Cty.*, 592 F.3d 1227, 1235 (11th Cir. 2010) (quotation marks and citation omitted)); *see also Fisher v. Glanz*, No. 14- 678, 2016 U.S. Dist. LEXIS 38466, at **21-22 (N.D. Okla. Mar. 24, 2016) (finding that failure by official "aware of repeated notifications by the detainee's family of his mental health condition and need for anti-seizure medication in order to prevent life-threatening injuries" to "provide a life-saving medication to a mentally handicapped individual within 48 hours upon booking" into jail "falls under *clearly established law* prohibiting deliberate indifference to serious medical needs") (emphasis added).

The Court accordingly concludes that, when Stufflebean was incarcerated at the Buchanan County Jail, it was clearly established that an officer who was aware that an inmate had a life-threatening medical

condition such that he would face a serious risk of harm if not timely provided prescribed medical treatment and prompt access to a hospital in the event of deterioration was required to take steps to abate the risk by communicating that information to those in a position to provide the requisite care. Thus, if Gross heard Stufflebean's treating physician's testimony about Stufflebean's risk of death, his failure to communicate that information to Nauman or a nurse at the jail cannot be protected by qualified immunity. Even a lay person in a similar situation with a custodial obligation with respect to Stufflebean would understand the necessity of communicating information of that significance and magnitude to those into whose custody Stufflebean was being delivered.

* * *

Because a reasonable factfinder could conclude that Gross violated a clearly established right, the Court must conclude that Gross, in his individual capacity, is not entitled to assert qualified immunity. For the same reason, Gross's motion for summary judgment in his individual capacity on the Section 1983 claim is denied.

ii. Deputy Sheriff Nauman

Plaintiffs' claims against Nauman are based on his processing of Stufflebean at the booking desk. There is no dispute that Buchanan County's medical policies and procedures required Nauman to conduct the "BCSD Medical Intake Screening" carefully, with the goal of identifying prisoners with chronic conditions or special needs so that their needs would be addressed properly during their incarceration. BC AF, ¶ 17. Despite this obligation, Nauman did not identify Stufflebean's serious medical conditions.

Plaintiffs argue that one reason for Nauman's failure in this regard is his deviation from the Medical Intake Screening form procedure. The first question on the jail's Medical Intake Screening form is, "Was inmate a medical, mental health or suicide risk during any prior contact or confinement within the department?" *Id.*, ¶ 10. Strong, who was Sheriff at the time, testified that he expected that the medical history for a prisoner like Stufflebean would be obtained "[a]t the booking process." *Id.*, ¶ 92. Nonetheless, Nauman did not note that Stufflebean's prior Medical Intake Screening form from 2014 designated Stufflebean as "Special Condition – Medical" and showed that Stufflebean needed medical attention due to his calcium deficiency. *Id.*, ¶ 18. Nauman stated that he was not certain if Stufflebean's prior Medical Intake Screening form was available to him (although he later claimed that it was not available). *Id.*, ¶ 16. Nauman's statement suggests that the prior form might have been available to him, but he made no effort to review it.

Despite the fact that the Medical Intake Screening Form asks for the "dosage, and frequency" of medications, in addition to "types," Nauman did not document the dosage and frequency of Stufflebean's medications. *Id.*, ¶ 12. Nauman claims that he asked Stufflebean for the information, but Stufflebean did not provide it. *Id*. A reasonable factfinder could conclude that Stufflebean provided at least some dosage information, and that Nauman simply did not record it.

Nauman's screening form for Stufflebean also incorrectly indicates that Stufflebean was not under the care of a physician. *Id.*, ¶ 8. Whether Stufflebean represented that he was not under a doctor's care, as

Nauman claims, or Nauman input the wrong answer is a disputed fact. A reasonable factfinder could infer from the fact that Stufflebean's longtime physician had just testified at his sentencing hearing as to Stufflebean's serious medical conditions, including the fact that Stufflebean had been hospitalized just the week before, and the fact that Nauman noted that Stufflebean was taking multiple medications, that Stufflebean would have told Nauman that he was under a physician's care.

Similarly, although Nauman recorded that Stufflebean was not "currently" in need of medical attention (Doc. 447-2), a reasonable factfinder could infer from the record, including Stufflebean's intake form from his prior booking at the jail in December 2014 (Doc. 447-9), which indicated that he did need medical attention "because of a calcium deficiency," that Nauman did not accurately record Stufflebean's response.

On the other hand, Nauman noted that Stufflebean reported abdominal pain, a runny nose, nasal congestion, unexplained weight loss, loss of appetite, night sweats, and fatigue. BC SF, ¶ 26. Nauman also noted that Stufflebean was taking several prescribed medications, including prednisone, fludrocortisone, NATPARA, Calcitriol, magnesium, E, and potassium. *Id*., ¶ 27. Nauman claims that, after booking Stufflebean into jail, he printed a copy of the completed questionnaire and placed it in the nurse's box and then contacted the nurse by telephone to advise her that he had booked an inmate who needed to be seen for medical issues. *Id.*, ¶ 28.

Plaintiffs argue that Nauman may never have put the questionnaire in the nurse's box and may not have called a nurse about Stufflebean upon booking him,

but Plaintiffs expressly stated that the following statement is not controverted: "After completing the medical questionnaire for Stufflebean on October 26, 2015, Defendant Nauman then printed out a copy of that questionnaire and placed it in the nurse's box, and he then contacted the nurse by telephone and let her know that he had booked in an inmate who needed to be seen due to medical issues." *Id*. Even if this concession were merely the result of a clerical error or oversight, contemporaneous documentary evidence corroborates Nauman's statement: the medical questionnaire in the record displays a "Print Date/Time" of October 26, 2015 at 14:03, which is approximately two hours after the "Arrest Datetime [*sic*]" reflected on that form and just minutes after the time at which the intake was recorded as being "Given By" Nauman. Doc. 447-5, p. 19. On the other hand, Plaintiffs have not suggested that there is evidence that Nauman did not print the form and call the nurse. For example, there is no suggestion that there would have been a call log or other written evidence had Nauman in fact called the nurse. There is no suggestion that the "Print Date/Time" is the time at which the questionnaire was electronically logged into the system rather than a time at which a hard copy of the questionnaire was printed. In the face of evidence supporting Nauman's claim that he arranged for Stufflebean to receive medical evaluation or attention, Plaintiffs have presented no evidence to the contrary.

Nauman did not follow up with medical staff to ensure that Stufflebean was seen. Doc. 447-9, 40:3-11.

In short, construing all factual disputes in Plaintiffs' favor, the salient facts concerning Nauman are as follows: (1) Nauman failed to note that Stufflebean's prior booking records showed that he had special

medical conditions, (2) Nauman failed to record the dosage and frequency for the drugs that he noted Stufflebean was taking, (3) Nauman failed to record the fact that Stufflebean was under the care of a physician, and (4) Nauman did not follow up to ensure that a nurse saw Stufflebean. Even accepting, for the purpose of this summary judgment motion, that these acts and omissions were deliberate, the unrebutted evidence showing that Nauman arranged for medical attention or evaluation for Stufflebean precludes a finding that Nauman was deliberately indifferent to Stufflebean's medical needs. *See Greeno v. Daley*, 414 F.3d 645, 655-56 (7th Cir. 2005) ("We do not think Miller's failure to take further action once he had referred the matter to the medical providers can be viewed as deliberate indifference."); *Spruill v. Gillis*, 372 F.3d 218, 236 (3d Cir. 2004) ("If a prisoner is under the care of medical experts . . . , a non-medical prison official will generally be justified in believing that the prisoner is in capable hands."); *Daniels v. Ferguson*, 321 F. App'x 531, 532 (8th Cir. 2009) (finding that officer's having administered the wrong medication to inmate was "at most" negligent, particularly in light of fact that "defendants' unrebutted evidence shows that after [inmate's] fall, they contacted a jail nurse and placed [the inmate] under observation pursuant to her instructions"). Nauman's situation also is distinguishable from that of Gross because nothing in the record suggests that Nauman knew that failure to promptly monitor and treat Stufflebean could result in imminent death.

Because Nauman cannot be said to have violated a clearly established constitutional right, he is entitled to qualified immunity with respect to Plaintiffs' claims against him in his individual capacity.

iii. Nurse Slagle

On October 26, 2015, the day that Stufflebean was booked into the jail, Nauman contacted a nurse by telephone, after printing Stufflebean's medical intake questionnaire and placing it in the nurse's box, to let her know that he had "booked in an inmate who needed to be seen due to medical issues." *Id.*, ¶ 23. The questionnaire was printed at 14:03PM. Doc. 447-5, p. 19. Given that Slagle began working at 2pm (ACH AF, ¶ 14), it is reasonable to infer that Slagle was the nurse that was charged with seeing Stufflebean.[15]

During the nearly 11 hours that Stufflebean was in a separate holding cell in the booking area, no nurse came to see him. *Id.*, ¶ 29; *see also* Doc. 474-21, 30:22-31:17 (Slagle testifying that she "did not see him" on the 26th), Doc. 474-1 (Inmate Activity Log showing that Stufflebean was admitted to the facility at 13:54 on October 26 and was sent to housing at 00:47 on October 27, 2015).

On October 26, 2015, the date of Stufflebean's sentencing and arrival at the jail, Stufflebean's mother, Brenda Davis, delivered to the jail what she could find of Justin's medications, including NATPARA, melatonin, hydrocodone, ondansetron, fludrocortisone, paroxetine, Calcitriol, prednisone, and Vitamin D, as well as specialized injection tips for the NATPARA. *Id.*,

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[15] Helsel and Slagle overlapped for 20 minutes, from 2:00 to 2:20 p.m., on October 26, 2015. *See* ACH AF, ¶ 16. However, given that Slagle was the nurse who continued working into that evening after Helsel left at 2:20 p.m., and that Helsel was Slagle's supervisor (*see id.*, ¶ 17), a reasonable juror could find that Slagle alone bore responsibility for seeing Stufflebean at Nauman's request. At the very least, it is a disputed issue of fact.

¶ 24; BC AF, ¶ 19. Slagle retrieved the medications that same day. *Id.*, ¶ 26.

When she picked up Stufflebean's medication, Slagle also would have retrieved the intake screening forms that the booking officer left for the nurses. Doc. 474-21, 23:9-21. Stufflebean's medical questionnaire reflected that he had reported abdominal pain, fatigue, unexplained weight loss, loss of appetite, and night sweats, and of course, that he was taking several prescription medications. ACH AF, ¶¶ 19, 21.

Stufflebean was supposed to take each of his medications at least daily, and indeed, he was supposed to take several of his medications more than once a day. *See* Doc. 447-15 (records from October 19, 2015 emergency-room visit showing that two medications were to be taken thee times a day and two medications were to be taken twice a day). Yet, Slagle did not administer Stufflebean any medications on October 26, 2015. Doc. 474-21, 32:3-33:3.

Because any once-a-day medications were passed to inmates at 7 a.m., once-daily medications that were not entered in the jail's system before 7 a.m. on a given day would not be administered. Doc. 474-29, 33:9-17, 35:6-17, 48:5-6; *see also id.* 49:13-21. Thus, Stufflebean would not receive his daily medications on October 27 unless the medications were entered in the system before 7 a.m. that day. *Id.*, 33:9-17, 35:6-17, 48:5-6. Slagle knew that Stufflebean's medications were to be administered at least once a day. *Id.*, 50:6-9. Yet, despite having picked up at least nine medications as well as specialized injection tips prescribed for Stufflebean, and although she worked for more than eight hours on October 26 after Nauman advised her that Stufflebean needed to be seen for medical issues, Slagle did not call a doctor on October 26 to ask for an

order to administer Stufflebean's prescription medications. *See* ACH SF, ¶ 6. Slagle knew that not seeking an order on the 26th meant that Stufflebean would not receive the nine prescription medications in her custody for more than 40 hours after his booking.

Stufflebean told a fellow inmate that he had requested his medications repeatedly, and that inmate witnessed Stufflebean requesting his medications in person at least twice, and also through the speaker. Doc. 474-23, 16:18-20:2, 82:16-83:10. Stufflebean also asked at every mealtime to see a doctor. *Id*., 22:10-15.

On October 27, 2015, Stufflebean filed a formal request for his medications, stating, "I called to have my medicine brought in. I have Addison's and hypoparathyroid disease. Medications brought to jail." Doc. 474-6.

Slagle made note of Stufflebean's request, and apparently in response, called Dr. Van Voorn that afternoon and received oral orders for some of the prescriptions she had in her custody. *See id.* (repeating Justin's medication request and writing under "PLAN" "1300 Contacted Dr. Van Voorn and received verbal orders."). *See id.*; ACH AF, ¶¶ 28, 37. Slagle omitted Stufflebean's Calcitriol from her medications list, even though that was among the medications that Davis brought to the jail. *See* BC AF, ¶ 34; *compare* ACH SF, ¶ 4, *with* ACH AF, ¶ 44. Slagle also did not request the magnesium and potassium that were listed in the medical intake questionnaire that Nauman prepared. BC AF, ¶ 31. As discussed above, because Slagle entered the order after 7 a.m. on the 27th, she precluded Stufflebean's receiving any of his medication on October 27, 2015. *See* ACH AF, ¶ 48 and BC AF, ¶¶ 36 (no dispute that Stufflebean received no medication at the jail on October 27, 2015).

Slagle claims that she "would have seen" Stufflebean on October 27, 2015 in the infirmary. *See* Doc. 474-21, 13:4-18. However, the jail's inmate activity log, which tracks the movements of inmates within the facility, shows that once Stufflebean was moved from the holding cell (where he was never seen by medical staff) to the cell pod, he did not leave the cell pod, to go to the infirmary or elsewhere, until he was transferred to prison. AF for ACH, ¶¶ 35-36; Ex. 474-1.[16]

To Stufflebean's cellmate's knowledge, Stufflebean never saw a medical provider. *See* Doc. 474-23, 22:16-23. Indeed, while being transferred to the prison, Stufflebean expressed hope to his jail cellmate that he would finally see a doctor. *See id.*, 23:25-24:15.

The only evidence that ACH points to in arguing that Slagle saw Stufflebean on October 27, 2015 are the progress note and the medication verification form that Slagle created. *See* Doc. 631, 23:15-19. The Medical Progress Notes contains just two sections. In the section titled "SOA" is Stufflebean's request for his medication, written in the first person, as though transcribing Stufflebean's formal request ("I called to have my medicine brought in. I have Addison's and hypoparathyroid disease."), and on the next line, the statement, "Medications brought to jail." The second section, titled "Plan," states only "10/27/15 1300 Contacted Dr. Van Voorn and received verbal orders." Doc. 474-6. The only indication on the medical verification form that Slagle saw a patient are vital

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[16] Slagle explained that "Custody," usually two guards, would have brought Stufflebean to the medical unit for her examination. Doc. 474-21, 13:19-24. She could not recall any situation in which an inmate was permitted to go from the housing unit to the infirmary without a guard escort. *Id.*, 13:25-14:4.

signs (B/P, Temp, Resp, Pulse). Doc. 474-5.[17] Neither document contains notes concerning Stufflebean's appearance, or his symptoms, physical complaints, or lack thereof—a peculiar omission in what is supposed to be a contemporaneous medical record. *Id.*; Doc. 474-6.

Slagle testified that her list of medications on the medication verification form was based on the bag of medications Stufflebean's mother brought to the jail. Doc. 447-21, 16:21-25. Thus, the list of medications does not indicate that Slagle spoke with Stufflebean. In fact, to the contrary, the list of medications suggests that Slagle did *not* see Stufflebean. During her deposition, Slagle testified as follows about her usual procedure for identifying discrepancies between the medication verification form and other documentation:

> Q. So you would not reconcile back to the intake screening form or the property form that the corrections officer fills out . . . when you were completing the medication verification form?
>
> A. Not usually, unless there was a discrepancy.
>
> Q. Well –
>
> A. And that would be after I spoke to the patient, and then I would compare it to see if maybe it got placed in his property or was, you know, being sent back home.

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[17] The fact that, as discussed further below, Slagle did not take Stufflebean's vital signs after Dr. Van Voorn ordered that they be taken raises the inference that she did not take Stufflebean's vital signs on the October 27, 2015, and instead just fabricated them on the form.

Q. Okay. Well, I mean what we know in this case is there's medications listed on the intake screening form and the property intake form . . . that don't show up on your medication verification report; and so the question is did you reconcile it in this case or not?

A. No, I didn't.

Q. Is there a reason why not?

MR. HICKS: Object to the form. I feel like she just explained everything.

A. I would talk to the patient, which I would have the medications that were there, and I would ask him at that time if there were other medications that he was taking, and I would go from there. I would then look back and go, "Okay, well, it's got Vitamin D." "Yeah, I took that sometimes." You know, I don't know if that's what he said at that point, but that's what I would go for.

(By Mr. Bird) Are you suggesting that Mr. Stufflebean told you not to include certain medications on his medication verification form?

A. He possibly could, yes.

Q. What is your evidence for that that's in his chart?

A. Nothing in — in his chart.

Q. Then you're speculating, correct?

A. Yes, sir, I would be speculating.

> Q. Okay. And the point being that you rec- — recognize now that if you had done a reconcilement with the intake screening form and the property form, that you would have seen medications that were identified but not listed in your verification form?
>
> A. Yes, I would have seen that there were medications that were not on my form.

Slagle's list of medications omits at least two of the medications that Stufflebean told Nauman he takes. *Compare* 474-8 *with* 474-5. It is reasonable to infer that, if Stufflebean had been given the opportunity to speak with a nurse about the medications he had already formally requested, he would have reported to the nurse the same medications he reported to the booking officer of the jail. The fact that Slagle's notes do not reflect those two medications reasonably suggests that Slagle never spoke with Stufflebean.

At her deposition, Dr. Van Voorn admitted that if a patient with hypoparathyroidism or Addison's disease reported "fatigue or . . . abdominal pain or tingling, those could all be symptoms of a crisis coming on for that condition," and indeed "[c]ertainly" were "red flags." ACH AF, ¶ 87. She acknowledged that in such a situation, she would "know that [she] need[s] to take a closer look to make a determination as to their state of health," because otherwise "it could become a crisis" and "could lead to serious injury or death." *Id.* She stated that she understood that "somebody having Addison's disease and hypoparathyroidism could be at risk if they didn't get their medication; so [she] would take extra actions to make sure [she] had the list correct and [she was] following the right course." *Id.* Nothing in the medical records indicates that Slagle told Dr. Van Voorn that Stufflebean was

suffering from abdominal pain, fatigue, or nausea, and indeed, the fact that Dr. Van Voorn did not order the anti-nausea medication ondansetron that had been prescribed for Stufflebean suggests that Slagle did not tell Dr. Van Voorn that Stufflebean had reported nausea.

Although she knew (from Stufflebean's formal request for his medications) that Stufflebean had Addison's Disease and Hypoparathyroidism and (from the medical questionnaire Nauman completed) that Stufflebean reported abdominal pain, fatigue, unexplained weight loss, loss of appetite, and night sweats (ACH AF, ¶¶ 19, 21), and (from the bag of medications she picked up) that Stufflebean was taking at least nine different prescription medications, Slagle did not put Stufflebean on the list of patients that Dr. Van Voorn would see the next morning. *Id.*, ¶ 49. As such, although Dr. Van Voorn was on site at the jail on October 28, 2015, she did not see Stufflebean. *Id.*, ¶ 51.

Despite the fact that Dr. Van Voorn had ordered on October 27 that his vitals be taken for three consecutive days, Slagle did not check Stufflebean's vital signs on October 28 or 29, 2015. ACH AF, ¶¶ 39, 56, 59.

In sum, construing the evidence in the light most favorable to Plaintiffs, Slagle (A) knew on October 26, 2015 at around 2 p.m. that Stufflebean was in a holding cell awaiting medical examination, (B) knew on October 26, 2015 that Stufflebean had at least nine different prescription medications that needed to be taken at least once daily, (C) knew that if she did not call a doctor on October 26, 2015, Stufflebean would not receive his nine prescription medications on October 27, 2015, (D) knew that Stufflebean had reported at intake abdominal pain, fatigue, unexplained weight loss, loss of appetite, and night sweats,

(E) did not call a doctor for an order permitting administration of Stufflebean's prescriptions on October 26, 2015, (F) did not see Stufflebean on October 26, 2015, (F) did not see Stufflebean on October 27, 2015, and instead, falsified vital sign information purporting to be for Stufflebean for October 27, 2015, [18](G) after Stufflebean formally requested his medications on October 27, 2015, called Dr. Van Voorn for an order

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[18] If Slagle had seen Stufflebean on October 27, 2015, it is reasonable to infer that he would have told her that he was experiencing weakness, nausea and vomiting, that he urgently needed his medications, and that he had been hospitalized frequently in the prior year, including once in just the past week, because of his medical conditions. *See* Doc. 474-26 (October 29, 2015 intake form from prison showing that Stufflebean mentioned "vomiting, weakness, tachycardia" as "medical problems [they] need to know about," noting that he had been hospitalized 16 times in the last year for Addison's complications, and describing Stufflebean as lethargic and weak). He might have told her that, just the previous day, his doctor had testified that, if not promptly treated, he might die. *See* Doc. 447-18, 8:2-10:25. Even if Slagle was not familiar with Addison's disease and hypothyroidism, under the circumstances, it would have been obvious to even a lay person that failure to advise Dr. Van Voorn of the seriousness of Stufflebean's condition and his current symptoms placed Stufflebean's health and life at serious risk. *See Pearson v. Prison Health Serv.*, 850 F.3d 526, 537 (3d Cir. 2017) (reinstating deliberate indifference claim against nurse where "[a] layperson is capable of concluding that" the alleged violation "violates professional standards of care"). A reasonable factfinder could conclude that, had Dr. Van Voorn known that Stufflebean was experiencing symptoms of Addisonian flare-up, she may well have ordered that Stufflebean receive medications at the jail forthwith, or even that he be sent to an emergency facility for evaluation or intravenous medication, or at the very least, that Stufflebean be placed on her list of patients to see the next day. Thus, under either scenario, a reasonable juror could find Slagle to have been deliberately indifferent to Stufflebean's serious medical needs.

permitting administration of some (but not all) of Stufflebean's prescribed medications, omitting at least one medication that Stufflebean's mother brought to the jail and at least two medications that Stufflebean mentioned to Nauman at intake; (H) failed to place Stufflebean on Dr. Van Voorn's list of patients to see the following day; and (I) failed to take any vital signs for Stufflebean, despite Dr. Van Voorn's order that they be taken for three consecutive days.

On the record before the Court, a reasonable factfinder could conclude that Slagle was deliberately indifferent to Stufflebean's serious medical needs. *See, e.g., Phillips v. Jasper Cty. Jail*, 437 F.3d 791, 796 (8th Cir. 2006) (noting that "the knowing failure to administer prescribed medicine can itself constitute deliberate indifference" and finding that testimony that inmate was "not given the prescribed amount of anti-seizure medication" and that he filed grievance regarding this failure, to no effect, "create[d] a genuine issue of material fact on the question of whether the jail employees were deliberately indifferent"); *Foulks v. Cole Cty.*, 991 F.2d 454, 457 (8th Cir. 1993) (holding, in Eighth Amendment case, that "if a reasonable official would have known that observation and treatment was necessary, the refusal to provide access [to] the treatment would constitute deliberate indifference to [inmate's] constitutional rights"); *Torres v. Trombly*, No. 03-0696, 2004 U.S. Dist. LEXIS 12192, at **21-23 (D. Conn. June 29, 2004) (finding that allegation that defendants failed to provide blood-pressure medication on a single day could amount to "clearly established" Eighth Amendment violation if defendant were able to establish that one day without the medication would carry "a substantial risk of serious harm"). Therefore, the Court denies her

motion for summary judgment on the Section 1983 claim.

iv. Nurse Helsel

Helsel was the only nurse on duty on the morning of October 28, 2015, when Stufflebean was first scheduled to receive medication at the Buchanan County Jail. *Id.*, ¶ 17. Helsel was aware at that time that Stufflebean needed medications daily. Doc. 447-21, 45:6-9. Yet, there is no evidence that Stufflebean received his medication that morning. Helsel claimed in her deposition that she gave Stufflebean the medication on that day. Doc. 447-21, 7:8-15. However, when pressed, she admitted that she had no recollection of having given him his medications. *Id.*, 22:24-23:4. She could point to no records supporting her statement that she had given him medications; her statement that she had administered his medications was mere conjecture based on the fact that there was no notation in the record indicating that Stufflebean had refused his medications. *Id.*, 7:16-23:13, 24:20-30:3. Helsel theorized that the lack of any indication that she gave Stufflebean his medications was just a computer error, but she could point to no evidence supporting this theory. *Id.*, 29:12-30:3. Helsel in fact admitted that nothing in Stufflebean's record indicates that she provided any care to him at all. *Id.*, ¶ 60.

Plaintiffs' claim against Helsel for her personal actions hinges on her failure to administer Stufflebean's medications on October 28, 2015. However, Plaintiffs have not put forth evidence that Helsel knew that failure to dispense Stufflebean's prescribed medications on a single day would put him at serious risk of harm. Indeed, there is no indication that Helsel knew that Stufflebean had Addison's disease or hypoparathyroidism. *See* Doc. 631, 72:16-73:2 (Plaintiffs citing

Helsel's claim that she gave Stufflebean medications on the 28th as evidence that she knew or strongly suspected that he had an adrenal disease that required follow-up).[19]

On the record presented, the Court finds that a reasonable factfinder could not conclude that Helsel's failure to administer medication constituted deliberate indifference to Stufflebean's serious medical needs. *See, e.g., Long v. Thomas*, No. 89-0759, 1990 U.S. Dist. LEXIS 16839, at *3 (W.D. Mo. Dec. 8, 1990) (finding that contention "that the prison withheld plaintiff's medication for one day" did "not rise to a level of deliberate indifference to serious medical need"); *see also Champion v. Kelley*, 495 F. App'x 769, 770 (8th Cir. 2012) (affirming grant of summary judgment to nurse who failed to provide two of three daily doses of pain medication, noting that "inadvertent or negligent failure to provide adequate medical care cannot be said to constitute 'unnecessary and wanton infliction of pain'").

v. Doctor Van Voorn

At 1 p.m. on October 27, 2015, Slagle requested a verbal order from Dr. Van Voorn for some of Stufflebean's medications. ACH AF, ¶¶ 37; BC AF, ¶ 30. That same day, Dr. Van Voorn ordered continuation of some of Stufflebean's medications: NATPARA, Vitamin D Ergo, Paxil, Prednisone and Fludrocortisone. ACH AF, ¶ 40. However, she did not order that

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[19] The evidence could show either that Helsel did not give Stufflebean his medication, in which case she presumably did not review the chart and could not, on the record presented, reasonably have been known of Stufflebean's medical condition, or that she actually gave Stufflebean his medication, in which case she did not fail in her duties.

Stufflebean be provided Zofran/ondansetron, a medication used to control severe nausea and vomiting that Stufflebean had been prescribed during an emergency room visit nine days earlier for an Addisonian crisis. *Id.*, ¶ 41.

Dr. Van Voorn admitted that if a patient with hypoparathyroidism or Addison's disease reported "fatigue or . . . abdominal pain or tingling, those could all be symptoms of a crisis coming on for that condition," and indeed "[c]ertainly" were "red flags." ACH AF, ¶ 87. She acknowledged that in such a situation, she would "know that [she] need[s] to take a closer look to make a determination as to their state of health," because otherwise "it could become a crisis" and "could lead to serious injury or death." *Id.* She stated that she understood that "somebody having Addison's disease and hypoparathyroidism could be at risk if they didn't get their medication; so [she] would take extra actions to make sure [she] had the list correct and [she was] following the right course." *Id.* She admitted that she had this knowledge in October 2015. *Id.* She further acknowledged at her deposition that it is critical for a brittle patient with Addison's and hypoparathyroidism to receive medications daily. ACH AF, ¶ 80. Yet, on October 27, 2015, when she ordered that some of Stufflebean's prescribed medications be administered, she knew that Stufflebean would not receive the medications until October 28 or 29, 2015. Doc. No. 447-22, 123:25-124:7.

Although Dr. Van Voorn was on site at the jail on October 28, 2015 for her once-a-week visit, and although she reviewed Stufflebean's chart, she did not see Stufflebean. ACH AF, ¶ 51. Dr. Van Voorn admitted that, as a patient with Addison's disease and hypoparathyroidism and a long list of medications to

treat those conditions, Stufflebean should have been "on her list" for proper evaluation. *Id.*, ¶ 52. There is evidence that it was at least in part the doctor's responsibility to identify a prisoner with a chronic condition who warranted being placed on the "list" for the doctor to evaluate. Doc. 474-10, 100:13-101:7 (Helsel testifying that "[t]he physician normally would request too to be placed on the list, that 'I want to see this person in doctor clinic"); Doc. 474-21 (Slagle testifying that "If Dr. Van Voorn says 'Put him down for me to see on my next visit,' then I would put them [sic] down. Per the documentation, if the nurse felt like the vital signs were out of order, something did not appear right with the patient, then we would have put him on the list to see the doctor on the next visit.").

In short, despite later acknowledging that Stufflebean's conditions were sufficiently serious to warrant an in-person evaluation, Dr. Van Voorn made no effort to personally evaluate Stufflebean the one time she was at the jail that week. In addition, despite knowing at the time that it was "critical" for a patient with both Addison's disease and hypoparathyroidism to take his medications on a daily basis, and despite knowing that Stufflebean had been taking numerous medications prescribed for his conditions, Dr. Van Voorn ordered Stufflebean's medications in such a way that there was to be at least a two-day gap between his doses.

On the other hand, Dr. Van Voorn ordered that all but one of the medications that Slagle requested be provided, and she ordered that Stufflebean's vitals be taken for three days in a row. Thus, she ordered both treatment and regular monitoring for his condition. The record presented does not suggest that Dr. Van Voorn was aware of Stufflebean's abdominal pain,

nausea, or fatigue, or the fact that he had been hospitalized 16 times in the prior year, including once just the preceding week. On this record, although it is a close question, the Court finds that Dr. Van Voorn's actions cannot be deemed to have been more than merely negligent. *See Dulany v. Carnahan*, 132 F.3d 1234, 1240 (8th Cir. 1997) (holding that evidence indicating merely "possible negligence . . . is insufficient to supply an inference of deliberate indifference"). Therefore, Dr. Van Voorn is entitled to summary judgment on the deliberate indifference claim against her.

c. Supervisory Liability for Buchanan County Employees' Conduct

Plaintiffs argue that they have sufficient evidence for a factfinder to reasonably conclude that Sheriff Strong and jail administrator Captain Hovey are liable for failure to train and supervise personnel and failure to supervise the provision of medical services to inmates. Doc. 447, p. 53.

i. Failure to Train or Supervise Nauman

The Eighth Circuit's "general rule" is that, "in order for [supervisory] liability to attach, individual liability first must be found on an underlying substantive claim," and "a plaintiff must show the failure to train or supervise caused the injury." *Johnson v. City of Ferguson*, 926 F.3d 504, 506 (8th Cir. 2019) (quotation marks and citation omitted). Because the Court has concluded that Nauman was not deliberately indifferent to Stufflebean's serious medical need, Plaintiffs cannot hold Strong or Hovey liable in connection with Nauman's conduct. Strong and Hovey thus are entitled to qualified immunity insofar as the Section 1983 claims against them concern their supervision or

training of Nauman. *See City of Ferguson*, 926 F.3d at 506 (8th Cir. 2019) (holding that police chief could not be liable where no constitutional violation occurred).

ii. Failure to Train or Supervise Gross

The Court has found that a reasonable factfinder could conclude that Gross was aware of the serious nature of Stufflebean's medical conditions but nonetheless did not communicate the risk or need for medical attention to either the booking officer or medical staff, despite his acknowledged obligation to do so. For supervisory liability to attach, Gross's failure to communicate with jail staff about the seriousness of Stufflebean's medical condition would need to represent a failure in Strong's training or supervision of Gross.[20]

"[T]he inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." *City of Canton v. Harris*, 489 U.S. 378, 388-89, 109 S. Ct. 1197, 1204-05 (1989). In other words, to hold a supervisor liable for failure to supervise or train over his assertion of the qualified immunity defense, Plaintiffs must show that the supervisor "himself violated a well-established constitutional right . . . ." *Jane Doe A. v. Special Sch. Dist. of St. Louis Cty.*, 901 F.2d 642, 645 (8th Cir. 1990). The question then is whether a reasonable fact-finder could conclude that Strong and Hovey showed deliberate indifference or

[20] Plaintiffs do not argue and have not presented facts or evidence suggesting that Hovey should be liable for failure to train or supervise Gross. *See, generally*, Doc. 447. The Court therefore considers only whether Strong might be held liable in connection with Gross's conduct.

"violate[d] clearly established statutory or constitutional rights of which a reasonable person would have known . . . ." *Id.*

To establish that an official violated a constitutional right by failing to supervise, Plaintiffs must show that (1) the supervising official "[r]eceived notice of a pattern of unconstitutional acts committed by subordinates; (2) the supervising official "[d]emonstrated deliberate indifference or tacit authorization of the offensive acts; (3) the supervising official "[f]ailed to take sufficient remedial action;" and (4) such failure proximately caused injury to" the plaintiff. *Id.* Similarly, "[t]o be individually liable for failing to train his subordinates, [an official] must have received notice of a pattern of unconstitutional acts committed by subordinates, demonstrated deliberate indifference to or tacit authorization of the offensive acts, and failed to take sufficient remedial action—and the failure must have proximately caused [plaintiff's] injury." *Audio Odyssey, Ltd. v. Brenton First Nat'l Bank*, 245 F.3d 721, 742 (8th Cir. 2001) (quotation marks and citation omitted). Notice of a pattern of unconstitutional acts thus is critical to a claim for supervisory liability in this context.[21] *See Vaughn v.*

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[21] In some circumstances, a Court might find "that in light of the duties assigned to specific officers or employees the need for more or different training [wa]s so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *City of Canton*, 489 U.S. at 390. However, this case does not present such circumstances. The risk that a transporting officer would deliberately fail to convey a prisoner's serious medical needs to jail staff cannot be said to have been obvious to a supervisor under ordinary circumstances. *Cf. id.*, n. 10 (citing the following as an example: "[C]ity policymakers know to a moral certainty that their police officers will be

Greene Cty., 438 F.3d 845, 851 (8th Cir. 2006) (reversing denial of qualified immunity where "there is no indication from the record Sheriff . . . had notice his policies, training procedures, or supervision were inadequate and likely to result in a constitutional violation," noting that "such a showing is required to impose individual liability on a supervisor") (quotation marks and citations omitted).

There is no indication in the record before the Court that Strong had notice of a pattern of unconstitutional acts committed by Gross, let alone a pattern of Gross deliberately withholding information concerning a prisoner's serious medical conditions. Indeed, at oral argument, counsel for Plaintiffs conceded that he could point to no such facts. "Without such notice, [Strong] cannot be liable for [Gross]'s alleged constitutional violations." *Audio Odyssey*, 245 F.3d at 742.

Strong and Hovey therefore are entitled, in their individual capacities, to qualified immunity with respect to Plaintiffs' allegations concerning Gross's alleged constitutional violations. *See Otey v. Marshall*, 121 F.3d 1150, 1156 (8th Cir. 1997) (finding that police chief who did not have sufficient notice of excessive force violations was "entitled to qualified immunity" because he "did not violate any well-established constitutional right").

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required to arrest fleeing felons. The city has armed its officers with firearms, in part to allow them to accomplish this task. Thus, the need to train officers in the constitutional limitations on the use of deadly force can be said to be 'so obvious,' that failure to do so could properly be characterized as 'deliberate indifference' to constitutional rights." (citing *Tennessee* v. *Garner*, 471 U.S. 1 (1985))).

d. Liability for ACH Employees' Conduct

Plaintiffs seek to hold site manager Nurse Helsel, site medical director Dr. Van Voorn, Sheriff Strong, jail administrator Captain Hovey, ACH, and Buchanan County liable in connection with the conduct of the ACH employees.

i. Policies, Procedures, and Customs for Medical Care and Oversight

ACH and Buchanan County employees' supervision must be considered in the context of the entities' policies, procedures, and customs.[22] The formal policies include statements that a detainee "can be seen by a clinician, to be given professional clinical judgment, and receive care that is ordered" and that "[p]rescribed medications are reviewed and appropriately maintained according to the medication schedule the inmate was following before admission." *Id.*, ¶¶ 91, 96.

The policies required "regularly scheduled administrative meetings" with the health care team and Buchanan County. *Id.*, ¶ 92. The jail was supposed to arrange regular meetings with the responsible physician and jail administrative staff to review "the effectiveness of the healthcare system, healthcare issues that need improvement, changes implemented since last reporting period and any recommended changes to improve the healthcare provided." *Id.*, ¶ 93.

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[22] ACH and Buchanan County initially denied that they had any medical policies or procedures for operations at the Buchanan County Jail. ACH AF, ¶¶ 88-89. However, ACH subsequently produced policies and procedures that it had provided to Buchanan County for adoption. *Id.*, ¶ 90.

ACH and its employees did not have a formal system for monitoring the accuracy of ACH's CQI reporting—which covered medication errors and prisoner grievances. *Id.*, ¶ 101. ACH left it up to the local nurses to provide "monthly contact logs" for the Regional Nurse Manager to prepare the CQI reports. *Id*. Regional Nurse Managers were supposed to "try" to walk through the facility every couple of months and "spot check" some files. *Id.* There was no policy governing how many files they were to review or how they were to review them. *Id.* Only the most recent version of the records was kept, precluding review of historic trends. *Id*., ¶¶ 101-102.

Even before October 2015, there were discrepancies in ACH's self-reporting. For example, the January 2015 report showed ten prisoner grievances in 2014, while the May 2015 report showed zero prisoner grievances in 2014. BC AF, ¶¶ 103-104; ACH AF, ¶¶ 109-10. CQI reports for 2014 and 2015 both indicated that there were zero medication errors or prisoner grievances. BC AF, ¶ 110, ACH AF, ¶¶ 105. However, after reviewing "a summary of the dates and prisoners . . . that . . . didn't get their medications" in that timeframe prepared by Plaintiffs' expert, Strong agreed that the medication errors were "extensive," and that, in fact, there were "dozens of prisoner grievances in 2014 [and] 2015." BC AF, ¶ 111; *see also* Doc. 474-34, at 1 (plaintiff's expert's opinion that 18 months of data showed "over 250 medication errors" at the Buchanan County Jail that were not included in the CQI reports, including failure to administer "[c]ritical medications for anticoagulation, diabetes and cardiovascular disease").

Prior to Justin's death in November 2015, ACH had been sued multiple times in Missouri by prisoners

alleging that necessary medical treatment had been withheld. ACH AF, ¶ 119. ACH settled all of those suits. *Id.*

On June 11, 2014, a Buchanan County Jail prisoner, Craig Wilkerson, sued ACH and Dr. Van Voorn, alleging that Van Voorn and ACH nurses failed to examine him, to monitor him, to obtain his complete medical history, and to provide medication for his serious medical condition, including by refusing to continue medications a physician had prescribed him. *Id.*, ¶ 120; BC AF, ¶ 112. Specifically, the plaintiff alleged that he fell from his bunk in his cell, breaking his back, after jail medical personnel deprived him of his schizophrenia medication. Doc. 447-33, p. 2. ACH took no action to review or investigate the merits of the Wilkerson lawsuit. ACH AF, ¶ 122.

At oral argument, counsel for Buchanan County suggested that because Buchanan County and its employees were not parties to the state court proceeding, the Wilkerson lawsuit did not put it on notice of any potential healthcare problems. However, the Court takes judicial notice of the federal action *Wilkerson v. Turner*, No. 12-0618-GAF, in which Wilkerson sued Sheriff Strong, Captain Hovey, and Dr. Van Voorn, among others. The Buchanan County Defendants observed that summary judgment was granted to the defendants in that case. *See Wilkerson*, W.D. Mo. No. 12-0618, Doc. 120 (November 4, 2014). Indeed, summary judgment was entered in Defendants' favor nearly a year before Stufflebean's October 2015 incarceration. However, Wilkerson's state court proceeding continued against Dr. Van Voorn and ACH until ACH settled the case in November 2016. *See* Order Approving Settlement dated November 15, 2016 in *Wilkerson v. Van Voorn*, No. 14BU-CV2595. Strong

acknowledged that the facts of the action against Dr. Van Voorn and ACH "sound[ed] familiar." Doc. 447-1, 115:22-116:11. On the evidence before the Court, a reasonable factfinder could conclude that Strong and Hovey had notice of a plausible allegation against ACH and Dr. Van Voorn involving failure to administer critical medications that resulted in severe injuries.

On August 27, 2015, another Buchanan County Jail prisoner, Tyler Fee, sued Nurse Slagle, Sheriff Strong, and Captain Hovey, alleging that Slagle and others failed to examine him, to monitor him, to obtain his complete medical history, and to administer medication for his serious medical conditions, including by refusing to continue medications his physician had prescribed. *Id.*, ¶ 121; *see also* Doc. 474-17. The petition alleged that, upon incarceration at the jail, Fee, who previously had suffered a traumatic brain injury, was not given his prescribed medications, despite the fact that his father twice called jail officials to notify them of his son's condition and also had brought his son's medications to the jail. Doc. 447-32, pp. 11-12. Fee suffered either a panic attack or seizure and hit his head, suffering a skull fracture that was not diagnosed for days because he was not sent to a hospital. *Id.*, pp. 13-21. Fee allegedly suffered near-total paralysis on his right side as a result of the lack of attention and continued to require therapy. *Id.*, p. 21. The Buchanan County Defendants acknowledge that they had been served with process in the Fee suit by the time Stufflebean was incarcerated. Doc. 564, pp. 86-87.[23]

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[23] The *Fee* case was voluntarily dismissed without prejudice on motion by the Plaintiff on March 22, 2017 (*see* March 22, 2017

ii. Liability for Failure to Train or Supervise Helsel or Van Voorn

As discussed above, individual liability is a prerequisite for supervisory liability. *See Johnson,* 926 F.3d 504, 506 ("in order for [supervisory] liability to attach, individual liability first must be found on an underlying substantive claim," and "a plaintiff must show the failure to train or supervise caused the injury") (quotation marks and citation omitted). Because the Court has concluded that neither Helsel nor Dr. Van Voorn can be held liable for deliberate indifference to Stufflebean's serious medical needs, Plaintiffs cannot hold any supervisors liable for their conduct.

iii. ACH Employees' Failure to Train or Supervise Slagle

Because the Court has found that Slagle is not entitled to summary judgment on Plaintiffs' deliberate-indifference claim, it must consider whether her failure to examine Stufflebean, to arrange for prompt administration of his medications, to monitor him, or to convey salient facts concerning his condition to Dr. Van Voorn arose from any failure in her training or supervision.

As discussed above, to establish that an official violated a constitutional right by failing to supervise, Plaintiffs must show that (1) the supervising official "[r]eceived notice of a pattern of unconstitutional acts committed by subordinates; (2) the supervising official "[d]emonstrated deliberate indifference or tacit authorization of the offensive acts; (3) the supervising

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judgment in *Fee v. Advanced Correctional Healthcare, Inc.*, No. 15BU-CV02918), presumably because of ACH's settlement (ACH AF, ¶ 119 (not contesting that "ACH settled all of them.")).

official "[f]ailed to take sufficient remedial action;" and (4) such failure proximately caused injury to" the plaintiff. *Jane Doe A.*, 901 F.2d at 645. Similarly, "[t]o be individually liable for failing to train his subordinates, [an official] must have received notice of a pattern of unconstitutional acts committed by subordinates, demonstrated deliberate indifference to or tacit authorization of the offensive acts, and failed to take sufficient remedial action—and the failure must have proximately caused [plaintiff's] injury." *Audio Odyssey*, 245 F.3d at 742 (quotation marks and citation omitted). "Notice of a pattern of unconstitutional acts" thus is critical to a claim for supervisory liability in this context.

The Court will consider separately whether any supervisors of Nurse Slagle can be held liable for a failure to train or supervise.

A. Nurse Helsel

As site manager, Helsel was responsible for supervising and training the nursing staff at the jail. *Id.*, ¶ 17. Plaintiffs argue that Helsel's supervisory performance was marked by several hallmarks of "reckless indifference to the health and safety of the prisoners": (1) CQI reports, which were based on the site nurse's (*i.e.*, Helsel's) reporting, falsely reflected no medication errors or prisoner grievances when in fact, according to Plaintiffs' expert, there were hundreds of medication errors and dozens of prisoner grievances over the 18 months leading up to Stufflebean's incarceration; (2) the lack of nursing staff on multiple shifts at the jail, which resulted in prisoners not receiving medications during that window; (3) excessive overtime for the two full-time nurses in the time surrounding Stufflebean's incarceration at the jail; (4) a history of false records, as

alleged by former ACH nurse Carlos Marte; and (5) staff failure to follow policies requiring prisoners with chronic conditions to receive priority assessment and classification. Doc. 474, pp. 42-43.

Plaintiffs' expert Lori Roscoe found "over 250 medication errors" at the Buchanan County Jail in 18 months' worth of data that were not included in the CQI reports. Doc. 474-34 (Roscoe Supplemental Report), at 1. She found that "[c]ritical medications for anticoagulation, diabetes and cardiovascular disease were not administered to patients, even though they were ordered by a physician." *Id.* These failures were contrary to ACH policies. *See* ACH AF, ¶¶ 91, 96 (stating that ACH will "provide access to appropriate care for serious medical . . . needs," where "[a]ccess to care—means in a timely manner, a detainee can be seen by a clinician, to be given professional clinical judgment, and receive care that is ordered" and that "[p]rescribed medications are reviewed and appropriately maintained according to the medication schedule the inmate was following before admission").

Because the responsibility for preparing the CQI reports was Helsel's alone, a reasonable factfinder could conclude that Helsel was aware of multiple failures to provide patients at the jail with time-sensitive medications—a pattern of medication errors—despite prescriptions and doctor's orders, yet deliberately ignored, and indeed, concealed, those problems. Helsel's failure to supervise Slagle with respect to timely administration of medications thus could form the basis of a deliberate indifference claim against Helsel. *See Jackson v. United States*, No. 15-153, 2018 U.S. Dist. LEXIS 46186, at *8 (W.D. Pa. Mar. 21, 2018) (denying motion to dismiss where plaintiff alleged that jail "had a policy of denying

incoming inmates prescribed medication and that this policy was pursued with deliberate indifference to Plaintiff's medical condition" and "each of the identified supervisors had notice of the policy and yet was deliberately indifferent to the risks associated with the delays in providing Plaintiff his prescribed medication"); *cf. Mpaka v. Migoya*, No. 18-22178-CV-WILLIAMS, 2019 U.S. Dist. LEXIS 10039, at *22-23 (S.D. Fla. Jan. 18, 2019) (finding that plaintiff had not alleged sufficient facts showing a history of widespread abuse that would have put Defendants on notice that inmates' medications were "being unlawfully changed or denied" where plaintiff provided only "one instance where the change in another inmate's medication adversely affected that individual" because "a random act or isolated incident is insufficient to make the requisite showing to hold an unconstitutional custom or policy purportedly attributable to a supervisory official" (citing *City of Oklahoma v. Tuttle*, 471 U.S. 808, 823-24, 105 S. Ct. 2427, 85 L. Ed. 2d 791 (1985) (plurality); *Depew v. City of St. Marys*, 787 F.2d 1496 (11th Cir. 1986))).[24]

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[24] Insofar as Helsel argues that the pleadings did not give notice of Plaintiffs' claim against her for failure to supervise, the Court finds that the argument is without merit. *See* Doc. 414 (Second Amended Complaint), ¶ 15 ("At all relevant times Powers was the Nursing Supervisor for ACH at the Buchanan County Law Enforcement Center in St. Joseph, Missouri. She was responsible for training, supervising and/or monitoring ACH's nursing employees, including Defendant Ann Marie Slagle, in providing for detainees', including Justin Stufflebean, medical needs at the Buchanan County Law Enforcement Center in St. Joseph, Missouri."); ¶ 83 (alleging that Powers failed to "communicate, supervise, provide necessities, [and] implement appropriate policies and procedures").

B. Doctor Van Voorn

Plaintiffs also seek to hold Dr. Van Voorn, as the site medical director at the Buchanan County Jail, liable for the conduct of the other ACH medical staff. However, Plaintiffs have not presented any evidence that Dr. Van Voorn was aware of the discrepancies in CQI reporting, the lawsuit against Slagle alleging failure to administer necessary medications, or even grievances concerning lack of medication.

Plaintiffs argue that Dr. Van Voorn "should have educated the nurses that Justin was a Medical Special Need patient whose conditions could become critical and that he required daily monitoring and medication—making sure the nurses understood the critical importance of the situation . . . ." However, Dr. Van Voorn did order that Stufflebean's vitals be taken for three consecutive days, and without evidence that she had notice that the nurses might fail to carry out her orders, she cannot be found to have been deliberately indifferent to the risk that they would not follow through. Thus, any claim against Dr. Van Voorn for the conduct of other ACH employees cannot withstand summary judgment.

iv. Failure by Strong and Hovey to Train or Supervise ACH Employees

A. Whether a Reasonable Factfinder Could Conclude that Either Strong or Hovey Was Deliberately Indifferent to a Serious Medical Need

Strong and Hovey had oversight responsibilities over the provision of medical services at the jail. Strong was the final decision-maker with regard to policies and procedures at the jail prior to and at the time of Stufflebean's October 2015 incarceration. BC

AF, ¶ 69. Strong understood at that time that inmates had a constitutional right to receive medical care for their serious medical needs, and there is no dispute that he was responsible for making sure inmates received such care. *Id.*, ¶ 71; *see also Crooks v. Nix*, 872 F.2d 800, 804 (8th Cir. 1989) ("Where a prisoner needs medical treatment prison officials are under a constitutional duty to see that it is furnished." (citing *Estelle v. Gamble*, 429 U.S. 97, 103 (1976))). Strong believed that it was his responsibility to make sure he had systems in place to get prisoners their medical care and to follow up as appropriate. BC AF, ¶ 72.

As Jail Administrator, Hovey was to "oversee the medical operations of the jail," including "arranging for all levels of healthcare and ensuring the quality and accessibility of all health services provided to the detainee population" and monitoring "to assure all aspects of detainee care occurs for the treatment of illnesses classified as 'serious' by the practitioner." *Id.*, ¶ 49. Strong expected that Hovey was exercising "constant oversight" over ACH. *Id.*, ¶ 75. However, Hovey's immediate supervisor, Undersheriff Bill Puett, said that there were "no specific steps" in place to ensure that Hovey was overseeing the provision of health care to detainees. *Id.*, ¶ 88.

Strong and Hovey both appear to have relied entirely on their subordinates to perform the oversight function. Strong admitted that he had no system in place to monitor the accuracy of ACH's CQI reporting. *Id.*, ¶ 76. Strong never compared prisoners' medical grievances with ACH's CQI reports to verify that ACH's "zero" grievance reporting was accurate. *Id.*, ¶ 77. He simply trusted that ACH was providing proper care to the Buchanan County prisoners. *Id.*, ¶ 76.

To Puett's knowledge, there was no discussion at the Sheriff's Department in 2015 or earlier about how to monitor ACH's performance. *Id.*, ¶ 85. Puett testified that routine monitoring of the basic CQI program involved attending the CQI meetings and reviewing ACH's CQI reports. *Id.*, ¶ 83. As part of Buchanan County's oversight of medical care, Hovey (and other jail officers) were supposed to review medical grievances and attend CQI meetings and report to Strong. *Id.*, ¶ 79. There was no formal process for reviewing medical grievances from a systemic viewpoint; instead, Hovey claims to have had officers he supervised deal with the grievances case by case. *Id.*, ¶ 80. However, this claim is contradicted by Puett's testimony that while he was undersheriff through December 2015, Buchanan County did not review prisoner medical grievances and did not look at any documentation outside of CQI reports to determine whether prisoners were being provided their medications. *Id.*, ¶¶ 97-98.

In essence, ACH was left to self-report issues or problems with the medical care it was providing to prisoners. *Id.*, ¶ 81. Outside of ACH's self-reporting, Hovey had no system in place to analyze or review the care that was being provided to prisoners. *Id*.

Puett agreed that the inconsistency between the January 2015 report, which showed ten prisoner grievances for 2014, and the May 2015 report, which showed *no* prisoner grievances for 2014, suggested that ACH's reporting was inaccurate. *Id.*, ¶¶ 103-105. Similarly, although CQI reports for 2014 and 2015 both indicated that there were zero medication errors or prisoner grievances, *id.*, ¶ 110, after reviewing "a summary of the dates and prisoners . . . that they didn't get their medications like we've been discuss-

ing," Strong was "astonished" by the number of errors and agreed that such instances in fact were "extensive"—indeed, they numbered in the hundreds and prompted dozens of prisoner grievances. *Id.*, ¶ 117 (not disputing Plaintiff's statement that "in 2014 & 2015 there were actually HUNDREDS of instances where prisoners did not get their medications for serious medical conditions (medication errors) and dozens of prisoner grievances in 2014 & 2015"). The grievances themselves, which purportedly were reviewed on a "case-by-case" basis under Hovey's supervision, might also have alerted the jail officials to the medication errors.

Strong, Hovey, and Slagle were all named as defendants in the Fee lawsuit filed on August 27, 2015, prior to Stufflebean's October 2015 incarceration, alleging deliberate indifference to a medical need—specifically, failure to provide prescribed medications to a prisoner with a serious medical condition, which allegedly led to Fee's falling, sustaining a skull fracture, and ultimately becoming nearly totally paralyzed on one side. *Id.*, ¶ 112; Doc. 447-32, pp. 13-21.[25] Strong also described as "familiar" the facts of another suit by an inmate, Wilkerson, initiated in June 2014 in state court against ACH and Dr. Van Voorn, alleging that, because jail medical personnel deprived him of his schizophrenia medication, he fell

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[25] The Buchanan County Defendants argue that, because the case was in its initial stages, they did not have notice of the medication errors. However, the Buchanan County Defendants acknowledge that they had been served with process in advance of Stufflebean's incarceration. They did not need a final judgment to put be on notice that inmates were complaining of serious problems with the jail's administration of medications, or lack thereof.

from his bunk in his cell, breaking his back. BC AF, ¶ 112; Doc. 447-33, p. 2; Doc. 447-1, 115:22-116:11.[26] ACH settled both the Fee and Wilkerson state court actions. ACH AF, ¶ 119.

Despite these lawsuits alleging that inmates with serious medical conditions were deprived of critically important medications, each of which was filed before Stufflebean's October 2015 incarceration, and one of which named Slagle herself as a defendant, and despite the discrepancies in ACH's CQI reports and between the CQI reports and prisoner grievances, and despite the grievances themselves, neither Strong nor Hovey undertook any effort to oversee ACH's administration of medications. BC AF, ¶ 113.

Puett agreed that there were "some obvious problems with the system in place for monitoring ACH and its performance in providing prisoners with medical care that they were entitled to back in 2015." *Id.*, ¶ 106. Puett acknowledged that medication errors indicated that "we weren't obviously provided with information that we should have had." *Id.*, ¶ 101. Puett also agreed that "if CQI reports were repeatedly inaccurate regarding prisoner grievances and medication errors that would be a serious systemic problem with meeting the County's constitutional duties to prisoners" and that a "continuing widespread pattern of inmates not getting their medications" would have indicated a "serious systemic problem at the Buchanan County Jail." *Id.*, ¶ 99.

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[26] In Wilkerson's federal suit against Strong, Hovey, Dr. Van Voorn, and others, summary judgment was entered in favor of the defendants prior to Stufflebean's incarceration. *Wilkerson*, W.D.Mo. No. 12-0618, Doc. 120 (November 4, 2014).

Strong too agreed that there was a serious systemic problem at the Buchanan County Jail in 2015 affecting prisoners' ability to obtain their medications. Doc. 447-1, 131:3-21, 132:9-133:9 ("I would say we definitely had a problem looking back prior to this. I'm not sure what happened with Mr. Stufflebean, but it's obvious it was a problem back then.").

Strong acknowledged that, had there been an accurate CQI system in place showing that prisoners were not getting their medications and had complained about that deprivation, he might have been able to prevent the circumstances that led to Stufflebean's not receiving his medications. BC AF, ¶ 115.

A reasonable fact-finder could find that the two lawsuits alleging failure to provide medication filed before Stufflebean was sentenced in October 2015 and the discrepancies in the CQI reports and the medication errors in the grievances warranted at a minimum more scrutiny or oversight. *Id.*, at 1119 (noting that a "prison official . . . would not escape liability if the evidence showed that he merely refused to verify underlying facts that he strongly suspected to be true, or declined to confirm inferences of risk that he strongly suspected to exist" (omission in original, quoting *Farmer v. Brennan*, 511 U.S. 825, 843 n.8 (1994))). Even if Strong and Hovey did not have direct control over Slagle's conduct, they had the authority and responsibility to require ACH and ACH supervisors to address the known problem of medication errors. They knew that failing to get prisoners their prescribed medications posed a substantial risk of harm to the prisoners and they knew some prisoners had in fact been severely injured as a result of medication errors. They were also aware of allegations

that Slagle had made medication errors with severe consequences.

Strong's and Hovey's inaction in the face of these red flags could be construed as condoning or turning a blind eye to ACH's unconstitutional conduct, which itself is a constitutional violation. *See Meloy v. Bachmeier*, 302 F.3d 845, 849 (8th Cir. 2002) ("We have held a supervisor is . . . liable for an Eighth Amendment violation . . . when the supervisor's corrective inaction constitutes deliberate indifference toward the violation. The supervisor must know about the conduct and facilitate it, approve it, condone it, or turn a blind eye to it. Likewise, other courts have stated supervisory officials are liable under § 1983 . . . if . . . they tacitly authorize or are indifferent to the prison doctors' constitutional violations." (quotation marks and citation omitted)).

Given Strong's statements that he might have been able to help Stufflebean had the CQI reporting systems worked as he had expected (BC AF, ¶ 115), there can be no doubt that there is a plausible causal link between the purported lack of oversight over the administration of medication and the jail's failure to administer Stufflebean's prescribed medications.

The Buchanan County Defendants argue that they cannot be held responsible for allegations involving medical treatment because they lack medical expertise and relied on ACH's medical staff's superior knowledge. Defendants cite *Meloy* in support of their position, but that case involved a doctor's order that a prison need not provide a CPAP to an inmate—a diagnostic decision. *Meloy*, 302 F.3d at 849. Here, at issue are not any medical decisions, but rather, the administrative tasks of getting a prison doctor to order prescriptions approved by the prisoner's treating

physician and administering prescribed medications. There is no medical discretion or judgment involved in dispensing a prescription medicine or getting an order for a prescription as required by Buchanan County policies. *Meloy* thus is distinguishable. As *Meloy* notes, courts have held supervisory officials liable under Section 1983 when they "are indifferent to the prison doctors' constitutional violations." *Id.* In this case, unlike in *Meloy*, construing the facts in the light most favorable to Plaintiffs, the supervisors had actual notice that the institution's medical service providers had deprived seriously ill inmates of critical medications and that the deprivation had caused severe injuries, and nonetheless the supervisors took no steps to investigate or prevent such deprivations in the future and a prisoner was injured once again. Under these facts, neither Strong nor Hovey can rely on the ACH employees' medical expertise to escape liability.

The fact that ACH contracted with Buchanan County to provide medical services at the jail does not insulate Strong and Hovey from liability for deliberate indifference towards ACH's failure to provide medically necessary treatment to inmates. *See Williams v. York*, 891 F.3d 701, 707 (8th Cir. 2018) ("If Defendants were deliberately indifferent to Williams's serious dental condition, they may be held personally liable, notwithstanding [Arkansas Department of Corrections]'s contract with [private medical provider] Corizon."); *Langford*, 614 F.3d at 460 (8th Cir. 2010) (noting that "where the duty to furnish treatment is unfulfilled, the mere contracting of services with an independent contractor does not immunize the State from liability for damages in failing to provide a prisoner with the opportunity for such treatment," and holding, despite the fact that prison had contracted with private medical services provider, that if the

supervisor "knew that [inmate]'s serious medical needs were not being adequately treated yet remained indifferent, he may be held personally liable").

On the record presented, the Court finds that a reasonable factfinder could conclude that Strong's and Hovey's failure to oversee ACH's administration of medications constituted deliberate indifferent to serious medical needs.

B. Whether the Right Was Clearly Established

The Court next must consider whether the right at issue was clearly established. "A precedential case need not be on all fours to clearly establish a constitutional violation, but it must be sufficiently analogous to put a reasonable officer on notice that his conduct was unconstitutional." *Hope*, 536 U.S. at 739.

The Eighth Circuit has long made clear that withholding "necessary medical attention" is a constitutional violation. *Campbell v. Cauthron*, 623 F.2d 503, 508 (8th Cir. 1980) ("It is much too late in the day for states and prison authorities to think that they may withhold from prisoners the basic necessities of life, which include . . . necessary medical attention." (quotation marks and citation omitted)). In 1991, the Eighth Circuit concluded that a pharmacist was not entitled to summary judgment based on qualified immunity where he refused to fill an inmate's prescription for anti-seizure medication, despite the fact that the pharmacist purported to have reasonable doubts about whether the medication was "medically appropriate." *Johnson v. Hay*, 931 F.2d 456, 463 (8th Cir. 1991). In 1999, the Eighth Circuit held that a deputy sheriff accused of denying an inmate diabetes medication or a special diet without a doctor's pre-

scription was not entitled to summary judgment on a claim for an Eighth Amendment violation. *Roberson v. Bradshaw*, 198 F.3d 645, 648 (8th Cir. 1999). Soon after Stufflebean was incarcerated in October 2015, a sister court within the Eighth Circuit held that a delay in administering drugs prescribed before incarceration at the beginning of a prisoner's incarceration could amount to violation of a clearly established right. *Ingram v. Helder*, No. 15-5068, 2015 U.S. Dist. LEXIS 175898, at **18-19 (W.D. Ark. Dec. 21, 2015); *also see Monmouth County Correctional Institutional Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir. 1987) (stating that "deliberate indifference is demonstrated when prison authorities prevent an inmate from receiving recommended treatment for serious medical needs"); *Torres*, 2004 U.S. Dist. LEXIS 12192, at **21-23 (finding, on motion to dismiss, that allegation that defendants failed to provide blood-pressure medication on a single day could amount to Eighth Amendment violation if defendant were able to establish that one day without the medication would carry "a substantial risk of serious harm"); *Baker v. Cty. of Sonoma*, No. 08-03433, 2010 U.S. Dist. LEXIS 26035, at **59-60 (N.D. Cal. Mar. 19, 2010) (denying officer's motion for summary judgment on qualified immunity grounds in Eighth Amendment case where "a reasonable inference c[ould] be drawn that [the officer] knew of Plaintiff's medical condition and that a refusal to provide Tylenol or otherwise assist in obtaining pain and other prescription medication . . . would cause unnecessary and wanton infliction of pain in violation of the Constitution").

It has been clear for decades that these constitutional principles apply in the supervisory-liability context as well. As early as 1980, it was clear that a supervisor who took no action in the face of actual

notice of constitutional violations within his purview could be held liable for a constitutional violation. *See Cummings v. Roberts*, 628 F.2d 1065, 1067-68 (8th Cir. 1980) (holding that deliberate denial of medical care and failure to carry out treatment prescribed by doctors is an Eighth Amendment violation). In 2004, the Eighth Circuit found that an allegation that a sheriff had been aware of two prior suicides at a jail—only one of which occurred while he was sheriff—had sufficient notice that his training and supervision of his employees was inadequate. *Wever v. Lincoln Cty.*, 388 F.3d 601, 607 (8th Cir. 2004). In 2010, the Eighth Circuit held that a supervisor who "knew that [an inmate]'s serious medical needs were not being adequately treated yet remained indifferent, . . . may be held personally liable." *Langford*, 614 F.3d at 461. *See also Johnson v. Turner*, No. 08-06063, 2010 U.S. Dist. LEXIS 85609, at **13-14 (W.D. Ark. Aug. 2, 2010) (noting that, "[w]hile supervisors cannot be held liable on a theory of *respondeat superior*, they may be held liable if they knew the prisoner's 'serious medical needs were not being adequately treated yet remain indifferent,'" (quoting *Langford*, 614 F.3d at 445), and finding that supervisor who had booking information "had knowledge of [prisoner's] medical condition and medications" and that "there [we]re issues of fact as to whether the County's policies, or lack thereof, caused, or contributed to, the alleged delays in the provision of medical care and prescription medications"); *cf. Lindsay v. Hunter*, No. 04-460, 2008 U.S. Dist. LEXIS 38565, at **26-27 (M.D. Fla. May 12, 2008) (noting that "[s]upervisory liability can be imposed under § 1983 when there are facts supporting an inference that the supervisor knew that subordinates would act unlawfully and failed to stop them,"

but finding that defendants did not have notice of plaintiff's need for blood pressure medication).

That supervisory liability can attach for deliberate indifference to serious medical needs even where a governmental entity contracts with a private entity for the provision of medical services has been established for at least three decades. In 1989, the Eighth Circuit expressly held that contracting with a private entity for the provision of medical services "does not provide absolute immunity against a prisoner's claim where prison policies are alleged to contribute to the denial of proper medical and dental care." *Crooks*, 872 F.2d at 804. The Eighth Circuit held in *Crooks* that the "named defendants," the warden and the director of corrections, had a "nondelegable duty to provide medical care when needed," and that the plaintiff had sufficiently alleged "inadequate prison policies or medical supervision which, if true, would result in these defendants being held liable" for the conduct of employees of an independent contractor providing care and treatment for prisoners "as if the[warden and director of prisoners] had refused to deliver those [medical] services themselves." *Id.* The Eighth Circuit also has held, in a case in which a prison contracted with a private medical services provider, that if a prison administrator "knew that [a particular inmate]'s serious medical needs were not being adequately treated yet remained indifferent, he may be held personally liable." *Langford*, 614 F.3d at 460-61. *See also Burke v. Regalado*, 935 F.3d 960 n.17 (10th Cir. 2019) (upholding jury finding that sheriff was liable for constitutional violations perpetrated by employees of a health care contractor, noting that "[f]or supervisory liability, a supervisor may be liable even if the person who committed the underlying constitutional violation was not an employee").

The Court finds that the particular right at issue—a right to timely receive critical prescription medication for a serious medical need—was clearly established when Stufflebean was booked into the Buchanan County Jail. It also was clear at the time that county supervising officials had an obligation to take steps to ensure that constitutional violations by employees of private contractors providing medical services for the county were addressed to abate the risk of future violations. Because a reasonable factfinder could conclude that Strong's and Hovey's failure to oversee ACH's administration of medications constituted deliberate indifference to Stufflebean's serious medical needs, the Court must deny Strong and Hovey, in their individual capacities, summary judgment on the issue of qualified immunity as to their supervision of ACH, and similarly must deny their motions for summary judgment on the merits of Plaintiffs' Section 1983 claims in connection with their supervision of ACH.

v. Monell Liability

1. ACH

ACH's sole argument as to why it is not liable under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978), is that *Monell* liability cannot attach where there is no individual liability. Doc. 371, p. 18. Because the Court now has found that Plaintiffs' claims against Slagle and the supervisory claim against Helsel may proceed, there is no basis on the instant motion for granting ACH summary judgment on the *Monell* claim.[27]

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[27] In any event, ACH's failure to take any action to ensure that or determine whether those held at the Buchanan County Jail were receiving critical prescribed medications in a timely fashion, in the face of two lawsuits alleging serious harm because of ACH

2. Buchanan County

Under *Monell*, "a municipality cannot be held liable solely because it employs a tortfeasor—or in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." *Monell*, 436 U.S. at 691. "[M]unicipal liability under § 1983 attaches where—and only where—a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986). As discussed above, a reasonable factfinder could conclude on the record before the Court that Strong, the official responsible for establishing final policy for the jail (*see* BC AF, ¶ 69), made a deliberate choice to turn a blind eye to ACH employees', and particularly, Slagle's, failures to provide critical medications to inmates with serious medical conditions, leaving the inmates at serious risk of substantial harm. *See Mettler*, 165 F.3d at 1204-05 ("Evidence that a police department has failed to investigate previous incidents similar to the incident in question may support a finding that a municipal custom exists, and that such a custom encourages or allows officers to use excessive force without concern for punishment.").

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employees' refusal to provide critical medications, could lead a reasonable factfinder to conclude that ACH was deliberately indifferent to inmates' serious medical needs. *See, e.g., Mettler v. Whitledge*, 165 F.3d 1197, 1205 (8th Cir. 1999) (noting that evidence of failure "to investigate previous incidents similar to the incident in question may support a finding that a municipal custom exists, and that such a custom encourages or allows officers to use excessive force without concern for punishment").

A reasonable factfinder also could conclude that the failure by multiple Buchanan County employees to oversee ACH in any manner demonstrates the County's willful disregard to inmates' serious medical needs. *See Ridgell v. City of Pine Bluff*, 935 F.3d 633, 637 (8th Cir. 2019) ("[A] plaintiff's theory of municipal liability need not always hinge on the actions of a single official or employee . . . . Situations may arise where the combined actions of multiple officials or employees may give rise to a . . . violation, supporting municipal liability, but where no one individual's actions are sufficient to establish personal liability for the violation.") (quotation marks and citations omitted).

The Court therefore denies Buchanan County's motion for summary judgment on the Section 1983 claim. *See King v. Kramer*, 680 F.3d 1013, 1021 (7th Cir. 2012) (holding that county can be held liable for deliberate indifference if "it was on notice that [the contractor]'s physician- and medication-related policies" had "violated inmates' constitutional rights" at jail where plaintiff presented sufficient evidence that the County's policy requiring that medications come from the formulary, which caused plaintiff to come off of his medication at booking, had caused "severe seizures that ultimately contributed to his death"); *Layton v. Bd. of Cty. Comm'rs*, 512 F. App'x 861, 872 (10th Cir. 2013) (holding that county and sheriff in his official capacity—the only type of claim against the sheriff that was at issue on appeal—could be held liable for allegedly turning a blind eye to problems with the jail's medical care system despite the fact that a contractor provided the medical services for the jail).

IV. Conclusion

For the reasons set forth above, (1) the motion by the individual Buchanan County Defendants for summary judgment on the Section 1983 claims against them in their official capacities is GRANTED and those official-capacity claims are DISMISSED; (2) Nauman's motion for summary judgment on the basis of qualified immunity (Doc. 350) is GRANTED and the Section 1983 claim against him (Count IV) is DISMISSED; (3) Dr. Van Voorn's motion for summary judgment on the Section 1983 claim against her is GRANTED and that claim is DISMISSED; and (4) the motions for summary judgment by Gross, Strong, Hovey, and Buchanan County (Doc. 350) and Slagle, Helsel (for failure to supervise), and ACH (Doc. 370) on the Section 1983 claims (Count IV) are DENIED except as to the punitive damages issue raised in Doc. 370, which is taken under advisement.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: December 23, 2019
Jefferson City, Missouri

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

[Filed December 23, 2019]

Case No. 5:17-cv-06058-NKL

BRENDA DAVIS, *et al.*,

Plaintiffs,

v.

BUCHANAN COUNTY MISSOURi, *et al.*,

Defendants.

ORDER

Before the Court is a motion for summary judgment by defendants Amy Mowry, LPN, Alice Bergman, NP, and Karen Williams, LPN (Doc. 392), Frederick Covillo, D.O. (Doc. 382), Michelle Munger, R.N. (Doc. 399), and their employer, Corizon, LLC (Doc. 394), seeking, *inter alia*, summary judgment on Count IV of Plaintiffs' complaint, which asserts civil rights claims against them.[1] For the reasons discussed below,

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[1] The Defendants also seek summary judgment on Count III, Plaintiffs' wrongful-death claim. The Court will address Plaintiffs' wrongful-death claim against these Defendants in a separate order. In addition, the Court has only found here that Corizon is not entitled to assert the affirmative defense of qualified immunity. The Court has not addressed whether a reasonable jury could find against Corizon on the merits of Count IV.

the Court grants Mowry's, Bergman's and Williams' motion for summary judgment on Count IV, but denies in part the motions by Covillo and Munger for summary judgment on Count IV.[2] The Court also finds that Corizon cannot assert the defense of qualified immunity to Count IV.

I. Background[3]

On October 26, 2015, Justin Stufflebean, son of plaintiffs Brenda Davis and Frederick Stufflebean, was sentenced for a sex crime. Immediately following his sentencing, Stufflebean was held at the Buchanan County Jail until he was transferred on October 29, 2017 to the Western Reception Diagnostic and Correctional Center ("WRDCC"), a receiving center in St. Joseph, Missouri, for the Missouri Department of Corrections ("MODOC").

a. Intake

Amy Mowry, LPN, was working in receiving at the WRDCC on the date of Stufflebean's transfer from the jail. She was the intake LPN responsible for performing the intake assessment for Stufflebean. She received Stufflebean at the WRDCC and completed his Initial Receiving Screening. She was responsible for gathering subjective current medical information. Stufflebean told Mowry that he had Addison's disease and hypoparathyroidism; Doc. 492-22 (Deposition of Amy Mowry), 51:16-18; that he was experiencing vomiting, weakness, and tachycardia (fast heart rate),

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[2] The denial is partial because the Court does not address punitive damages in this order.

[3] The facts are viewed in the light most favorable to the Plaintiffs based on admissible evidence. *Johnson v. McCarver*, 942 F.3d 405, 2019 U.S. App. LEXIS 32772, at *1 (8th Cir. 2019).

id., 51:8-15; that he had been hospitalized 16 times in the last year for Addison's complications; and that he was on various medications: fludrocortisone, NATPARA, vitamin D, paroxetine, and prednisone. Doc. 492-1(Complete Medical Record History), p. 1. Prednisone and fludrocortisone are used to treat Addison's disease. Defendant Mowry's "objective" assessment included Stufflebean's being lethargic and having an unsteady gait from weakness. *Id.*, p. 3. Nonetheless, and despite the fact that the records sent from the jail did not indicate when Stufflebean last took his medications, Mowry did not inquire of Stufflebean when he last received his medications. *See, generally, id*. At intake, Stufflebean's blood pressure was 121/89 and his pulse rate was 124. *Id.*, p. 3.

Mowry called Alice Bergman, APRN, the on-call provider, with regard to Stufflebean. At 2:30 p.m. on October 29, 2015, Defendant Mowry obtained a "verbal" order from Defendant Bergman, Nurse Practitioner (NP), for a promethazine 50 mg injection. Nurses' AF,[4] ¶ 30; Doc. 492-1, p. 5. Promethazine is used for nausea and vomiting. Bergman claims that Mowry did not tell her that Stufflebean was weak and tachycardic, or that Stufflebean had been hospitalized

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[4] "Nurses' AF" refers to Plaintiffs' Additional Facts in Doc. 487 (Plaintiffs Brenda Davis's Suggestions in Opposition to Defendants Amy Mowry, Alice Bergman, and Karen Williams' Motion for Summary Judgment) and the Corizon Nurses' responses in Doc. 577 (Defendants Amy Mowry, Alice Bergman, and Karen Williams' Reply to Plaintiff Brenda Davis's Response to Their Statement of Facts in Support of Motion for Summary Judgment and Response to Plaintiff Brenda Davis's Additional Facts in Opposition to their Motion for Summary Judgment). The Court cites statements of fact only insofar as they were substantively uncontested.

16 times in the prior year. *Id.*, ¶¶ 33, 35. Bergman could not recall whether Mowry told her that Stufflebean had Addison's disease and hypoparathyroidism. *Id.*, ¶ 34. Bergman ordered that Stufflebean be admitted to the Transitional Care Unit ("TCU") for observation and for evaluation by Dr. Covillo. Doc. 492-1, pp. 5-6.

b. Initial TCU Visit

Mowry took Stufflebean to the infirmary, known as the Transitional Care Unit ("TCU"). There, still on October 29, 2015, at approximately 4:00 p.m., Stufflebean advised Nurse Sybert that he had Addison's disease. *Id.*, p. 8. Stufflebean informed Sybert that he began vomiting that morning while at the jail. Stufflebean told Sybert, "I have Addison's and when I am stressed out I start throwing up and hurting" (*id.*)—an indication of an "impending Addisonian crisis" (Doc. 492-19 (Report of John P. Bilezikian, MD, PhD), p. 27). Sybert charted that the reason for TCU admission was "Observation for Addison's and Hypoparathyroidism." Doc. 492-1, p. 8. Sybert noted, "Offender states that due to stress his Addison's disease is 'acting up' and causing 'abd. pain and vomiting.'" Doc. 492-1, p. 8.

Nurse Sybert took Stufflebean's vitals at 3:19 p.m. on October 29, 2015, charting a blood pressure of 121/89 and a heartrate of 116 beats per minute. *Id*. The Corizon protocol for Nausea/Vomiting states in bold, "Refer to Practitioner Immediately" in the event of, *inter alia,* "Signs of dehydration-dry mucus membranes, poor skin turgor, skin cool to touch, recent 5% weight loss, BP less than 100 systolic, pulse >90." Doc. 487-4, p. 2. Nonetheless, Stufflebean was "escorted out of TCU" and "sent back to wing . . . ." Doc. 492-1, p. 9.

Bergman, the nurse who prescribed the promethazine, ordered a KUB abdominal film for Stufflebean, noting "upper abdominal pain x 1 day, nausea and vomiting, Addison's disease, hypoparathyroidism." *Id.* The results showed "abundant stool." *Id*. Stufflebean was given a laxative, but none of the medications that his treating physician had prescribed before his incarceration, including those needed for his Addison's disease. *Id*. Bergman did not review Stufflebean's medications before prescribing new medications for him. Nurses' AF, ¶ 49. Bergman ordered Stufflebean's release to the wing, and she never saw him in person. *Id.*, ¶¶ 46, 48.

c. In the Wing

Trent Millsap, an inmate whose bunk was located in the common area into which Stufflebean's cell opened, could see Stufflebean's cell from his bunk in the days leading up to Stufflebean's cardiac arrest. Millsap testified that Stufflebean was brought in to his cell "on a wheelchair" and described his appearance as follows:

> [T]here was, like, a lot of things wrong with him. We could tell he was really shrunk. Like you could see cheekbones real prominent. It looked like he had been, like, either really, like, strung out at one point or he had some sort of, like, condition like he had, like, cancer or AIDS or we didn't know. At first we kind of made fun of him because of his name and then we started to realize something was really wrong with this guy, you know, because he kind of looked weird, you know. . . . [W]e really didn't know how bad it was until we went up to him. He wasn't going out to eat, and we were trying to see if he was okay, and he wasn't.

Doc. 492-17 (Deposition of Trent Millsap), 16:3-25. Stufflebean, according to Millsap, "was really sick"—his hair "looked like it was falling out . . . ." 17:16-24. Stufflebean was "just slouching over . . . in the wheelchair when they brought him in," and "was really skinny." *Id.*, 18:1-4. Millsap never saw Stufflebean standing or even sitting erect. *Id.*, 36:23-24. Millsap thought perhaps Stufflebean was "deaf or maybe mute or something because he wasn't responding to anything anybody was saying, but he looked like he was trying to, but nothing was making — he couldn't vocalize anything." *Id.*, 35:20-24; *see also id.*, 35:13-19 (stating that Stufflebean "would open his mouth like he was trying to vocalize – verbalize something, but he wouldn't — no words would come out").

During meal times, Millsap and other inmates noticed that Stufflebean would not emerge from his open cell. Millsap said, "And then we looked in the window and he's just laying [*sic*] on his bed. We were like, hey, man. You going to come eat? We kept on knocking on the window. He wouldn't roll over. He looked like he was already gone." *Id.*, 20:21-25; *see also id.*, 19:24-20:6 ("We were — we were making fun at first and then we're like, okay, why is he not coming out to do anything, eat, shower, nothing. And we would look in there and we were like, oh, my God. Is he — is he alive? We were joking. Oh, somebody go check his pulse. But then after a while, we're like, no, really. Somebody needs to go in there and probably check on him."). Millsap claimed that he told corrections officers more than once that Stufflebean "was not looking good," and he heard others ask for help for Stufflebean as well. *Id.*, 36:11-22.

Millsap observed nurses checking on Stufflebean occasionally, but "[t]hey weren't in there for more than

two minutes. It seems like they took his blood pressure and then just left, and that was it." *Id.*, 23:10-24:4. Millsap also remembered Stufflebean being taken in a wheelchair "to medical, . . . but . . . it didn't take them ten minutes to bring him right back down." *Id.*, 32:25-33:3.

Millsap was "dumbstruck" by how Stufflebean was treated. *Id.*, 21:19-22:4. Millsap suspected from the way prison guards were treating Stufflebean that he might have been a sex offender. *See id.*, 44:25-45:6 ("When a person comes in, the first thing they do is they want to check their face sheets. . . . And what that will do is it will say whether or not you're a registered sex offender."); *id.*, 46:16-48:9 ("[T]hen there was the ones that didn't do anything and they, like, stayed to themselves all the time, and certain COs would, you know, say degrading things at certain times. And we're like, why did he deserve that? And then we'd start thinking somebody probably should go check that guy's paperwork. Because if he was just minding his own business and the cops do that, you know, then, okay, maybe there's a reason behind it. And that's what would tip us off, and most of the time it was because the person had that — that charge. And that was one of the things we thought maybe Justin had. We were like, okay, so this guy is getting treated really poorly. He hasn't done anything that we saw to deserve that . . . . We never checked his paperwork. We didn't really care because he was so bad that we didn't — what were we going to do, you know. There was — we just knew that, okay, something is off here. Either he's really faking it, he's got one of those charges, or they just really don't care.").

d. Doctor's Examination

Dr. Covillo alleges that he performed a physical exam of Stufflebean on October 30, 2015 at 9:00 a.m. Doc. 492-16 (Deposition of Frederick V. Covillo, D.O.), 76:5-77:6.

At his deposition, Dr. Covillo claimed that Stufflebean "seemed very stable." *Id.*, 72:16-25. He insisted that Stufflebean's reports of nausea, vomiting, dizziness, and tachycardia (from just the previous day) were from "the past" and did not represent his condition at the time of the examination. *Id.*, 73:1-11. When asked where Stufflebean's condition at the time of the examination was noted, Dr. Covillo stated simply, "I examined him," and then claimed he "would have written it in there if [Stufflebean] had a problem." *Id.*, 73:12-16. Dr. Covillo noted that Stufflebean's blood pressure was 121 over 89, commenting, "That's pretty stable." *Id*., 73:20-74:6. Covillo then admitted that the blood pressure listed in the record in connection with his examination of Stufflebean in fact was taken by Nurse Mowry, probably the day before Covillo purportedly examined Stufflebean, and that Covillo did not actually know what Stufflebean's blood pressure was on the day of the examination. *Id*., 74:15-75:7.

Dr. Covillo did not try to determine when Stufflebean was last given his medications, even though Dr. Covillo knew that Stufflebean's condition was serious enough that he needed his medication that day. *Id.*, 71:19-72:6; 147:4-17. Dr. Covillo purportedly called his supervisor to request approval of medications from outside the formulary. *Id.*, 27:10-28:5. Dr. Covillo recalled Stufflebean arriving with a bag of medications (although Covillo acknowledged that the documentary evidence does not indicate that Stufflebean arrived with medications), and with the approval of his super-

visor, Dr. Covillo ordered that Stufflebean receive some of those medications that day itself. *Id.*, 79:14-82:13. However, Dr. Covillo could not recall to whom he gave the verbal order regarding medications, there is no record indicating that the medications were dispensed, and there is no documentation of Dr. Covillo's asking for permission to dispense non-formulary medications or ordering that Stufflebean be given the medications that accompanied him. *Id.* Dr. Covillo maintains that he ordered calcium citrate, fludrocortisone and Vitamin D for Stufflebean on October 30, 2015, but the time-stamp in the record shows that the medications were not approved until October 31, 2015 at 5 a.m., after an emergency call had been placed with regard to Stufflebean. Doc. 492-1, p. 6. Dr. Covillo acknowledged that Stufflebean "did not get any medication . . . like he was supposed to," but he claimed that the nurses had "[a]pparently" not followed his order in that regard. Doc. 492-16, 148:7-14.

e. First Code 16 – October 31, 2015 – 1:15 a.m.– No Documentation

On October 31, 2015, at 1:15 a.m., the medical record shows that somebody called a "Code 16," a medical emergency, with respect to Stufflebean. Doc. 492-1, p. 13 ("10/31/2015 01:15 A ACCIDENT/CODE 16."). However, no one, including the nurses on duty, Munger and Williams, documented why that Code 16 was called or what was done at that time. *Id.*

f. Second Code 16 – October 31, 2015 – 4:30 a.m. – No Documentation Until Nearly 24 Hours Later

A second Code 16 was called at 4:30 a.m. that same day. *Id.* The medical record entry, created "late," on

November 1, 2015, at 1:07 a.m., notes that Nurse Williams found Stufflebean lying on his abdomen on the floor of his cell. *Id.* Stufflebean indicated that he had fallen when he got up to get a drink because he felt weak. *Id.* The notes reflect that "Sgt. Brown mentioned that there was a towel with greenish liquid on it close to his bunk and offender was asked if he was nauseated." *Id*. Stufflebean was placed in a wheelchair and was taken to the TCU. *Id*. Williams noted that, when asked about his diet, Stufflebean stated, "I took a few bites of corn a couple days ago, because I don't like the food." *Id*. Stufflebean was then given a carton of milk, which he "tolerated well," and he "asked for another milk at this time and stated that he was a little nauseated." *Id*.

Defendant Williams charted Stufflebean's blood pressure of 96/62 and heart rate of 96 beats per minute. *Id.* The Corizon protocol for Nausea/Vomiting states in bold, "Refer to Practitioner Immediately" in the event of, *inter alia,* "Signs of dehydration-dry mucus membranes, poor skin turgor, skin cool to touch, recent 5% weight loss, BP less than 100 systolic, pulse >90." Doc. 487-4, p. 2.

g. Return to TCU – October 31, 2015 – Before 5:30 a.m.

Before 5:30 a.m. on October 31, 2015, Williams delivered Stufflebean into Munger's care in the TCU for further observation. His blood pressure was 100/64 and his heart rate was 91 beats per minute. Doc. 492-1, p. 14. As soon as he was brought to the TCU, Stufflebean stated that he needed to lie down. *Id.* He advised Munger that he had "not eaten in 3 days." *Id.* Munger provided Stufflebean with Promethazine at 5:30 a.m., after he had been given milk. *Id.* Stufflebean advised Munger that he had Addison's disease and

had "been having this flare up since he was sentenced to prison." *Id*. He also stated that "when this has happened before he would just go to the hospital and he would receive IV fluids." *Id.* In her note, which was written after Stufflebean was taken to the hospital, Munger wrote, "He fully understands how and what is causing his condition to flare up and gets worse by not eating. . . . Encouraged offender that he needed to drink and eat, put an MSR [(medical service request)] into mental health to help with his stress, and if he felt he needed to see Dr. Covillo again to put in an MSR for the doctor." *Id.* Munger released Stufflebean to his cell without ever contacting a doctor. *See id.*

h. Stufflebean Returned to His Cell – October 31, 2015 – Approximately 7 a.m.

Munger's "Late Entry"[5] in Stufflebean's chart says the following about Stufflebean's return to his cell on the morning of October 31, 2015:

> When offender was released from TCU at 7AM with CO1 Huddleston, offender got as far as the telephone and the offender became wobbly and layed [*sic*] on to the floor. This was during shift change and witnessed by several of the day shift nurses as well as the night shift nurses and CO1 Huddleston and CO1 Williams. My self and CO1 Huddleston helped offender walk back to his room and he walked fine with assistance. SGT Brown was called and notified. SGT Brown, CO1

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[5] This note was not created at the time of the incident described. Rather, it was created on November 1, 2015 at 1:36 a.m., after Stufflebean had been transported by ambulance from the prison to the hospital. *Id*.

> Huddleston, and CO1 Green came to TCU to escort offender back to cell.

Id., pp. 14-15.

However, CO Huddleston described Stufflebean during this incident as "weak and incoherent." Munger AF,[6] ¶ 91. He looked "dazed like he was sick." *Id.* Huddleston recalled Stufflebean "stumbling" and then falling down after ten to twenty steps. *Id.* He described Stufflebean's falling as "kind of slow. He fell down on his knees, and then he just kind of fell over. I mean it wasn't — it didn't seem like it was that hard. He fell really slow to the ground." Stufflebean fell on his face. *Id.* Huddleston said Stufflebean did not say anything, instead, "[h]e just made grunting noises . . . ." *Id.* Huddleston believes he then got a wheelchair, and they placed Stufflebean in it. *Id.* Stufflebean was slumped over. *Id.* Huddleston wheeled Stufflebean to his cell and helped him to his bunk. *Id.*[7]

After reading Munger's description of Stufflebean's becoming "wobbly" and lying down on the floor, Dr. Covillo said, "Now that's a true Addison crisis," and he agreed that proper procedure would "definitely" have been for the nurse to immediately call the on-call

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[6] "Munger AF" refers to Munger's response in Doc. 579 (Reply Suggestions in Support of Michelle Munger, R.N.'s Motion for Partial Summary Judgment) to Plaintiffs' Additional Facts.

[7] Although Munger noted that Stufflebean fell once, TCU guard CO Jacqueline Williams contemporaneously noted that Stufflebean fell twice on his way back to his cell. *Id.*, ¶ 94 (noting at 7:00 a.m. that Stufflebean "g[o]t as far as the telephone and the offender sat down on the floor," and noting at 7:11 a.m. that "Stufflebean got as far as the telephone again and layed [*sic*] on the floor").

physician. Doc. 492-16, 125:7-128:8. Dr. Covillo also thought Stufflebean should have remained in the TCU for monitoring. He said, "I don't know why they're in such a rush to kick him out of TCU. It doesn't make any sense." *Id.*, 127:4-10. He thought sending Stufflebean to his cell after his collapse on his way out of the TCU was "crazy." *Id.*, 127:11-15.

Munger did not report Stufflebean's condition to the oncoming nurse, Nurse Euler, or call for a doctor. 493-13 (Deposition of Michelle L. Munger), 36:9-21.

i. Third Code 16 – October 31, 2015 – 10:45 a.m.

At 10:45 a.m. on October 31, 2015, less than three hours after Munger sent Stufflebean back to his cell, a third Code 16 was called. Doc. 492-1, p. 16. Stufflebean's fellow inmate Millsap testified that when officers came to Stufflebean's cell, they found Stufflebean on the ground, unmoving. Doc. 492-17, 25:1-3. Stufflebean was wrapped in his sheets, as though he had fallen out of bed. *Id.*, 25:16-23. Millsap, who later moved into the cell Stufflebean was in, testified that there was roughly 16 ounces of green vomit on the floor and sheets after Stufflebean was removed. *Id.*, 91:11-92:16.

Nurse Baker Smith[8] was the medical nurse working in the area next to the TCU at the time of the third Code 16. Baker Smith went to Stufflebean's cell. She noted later that Stufflebean's skin was "warm and dry" and "a little greenish in color" at that time. Doc. 492-1, p. 16. Although she did not make note of it in the medical record, at her deposition, Smith testified that Stufflebean vomited green liquid when they

[8] Baker Smith is not named as a defendant in this lawsuit.

started CPR. Doc. 493-31 (Deposition of Janet Baker Smith), 17:8-19. Despite Stufflebean's condition, during the eight or ten minutes it took for a wheelchair to arrive, Baker Smith did not attempt to take Stufflebean's vitals. *Id.*, 35:4-5.

Millsap testified that when Baker Smith and a correctional officer took Stufflebean out, they dragged him out instead of bringing a wheelchair to him, despite the fact that the cell was meant for handicapped inmates and therefore was wide enough to accommodate a wheelchair. Doc. 492-17, 25:24-26:13; *see also id.*, 29:9-14 (identifying the nurse at issue as Baker Smith).

Outside of the cell, the corrections officer put Stufflebean into the wheelchair roughly, and Baker Smith walked with him to the TCU at a "[l]eisurely" pace. *Id.*, 30:4-32:23. According to Baker Smith, "on the way to TCU, offender had his head back, went limp." Doc. 492-1, p. 16.

Baker Smith could not recall receiving any report from Nurse Williams, and she testified that, had she been told to monitor Stufflebean, she would have included that direction in her chart documentation. Doc. 493-31, Doc. 15:6-18:16. Baker Smith could not recall—and she did not document—anyone telling her that Stufflebean was having an Addison's flare-up, or that he had two serious medical issues. *Id.*, 20:1-9.

j. Fourth Code 16 – October 31, 2015 – 11:30 p.m.

At the TCU, Stufflebean's pulse was 67 and Baker Smith was unable to get his blood pressure. Doc. 492-1, p. 16. Stufflebean became "unresponsive." *Id.* A fourth Code 16 was called in relation to Stufflebean. *Id.* Baker Smith wrote that "CRP [*sic*] was performed

till the ambulance crew arrived." *Id.* Corizon noted an assessment of widespread anoxic injury with a poor outcome predicted. *Id.*, p. 15.

k. Stufflebean's Death – November 16, 2015 – 12:43 p.m.

On November 16, 2015, at 12:43 p.m., Stufflebean died. Doc. 493-34 (Report of the Medical Examiner), p. 3. Dr. Marius C. Tarau, M.D., Deputy Medical Examiner from the Jackson County Medical Examiner's office, declared Stufflebean's cause of death as "Complications of polyglandular endocrinopathy." *Id.*, pp. 1-2.

Plaintiffs' expert, Dr. John Bilezikian, opined that, had Stufflebean received proper care for his Addison's disease, he would not have died. Doc. 492-19, p. 7. Dr. Bilezikian opined that Stufflebean was symptomatic from the outset of his incarceration, and he stated that "[e]nsuring continuity of care by getting a proper history and verification of medications is one of the most basic actions in the field of medicine. The failure, on the part of all the defendants, was a serious breach of such standards [of care] and caused, or at the very least, contributed in a major way to[,] Mr. Stufflebean's death." *Id.*, p. 22. In light of Stufflebean's Addison's disease and his complaints and symptoms, the "standard of care," according to Dr. Bilezikian, would have been to administer "stress intravenous doses of cortisol or equivalent steroid medication . . . ." *Id.*, p. 28. Lack of steroids in such a situation results in death. *Id*. Dr. Bilezikian testified that:

a. a man with Addison's disease does not get his life-sustaining adrenal medications and even had he received them orally, they more likely than not would not have absorbed due to upper gastrointestinal symptoms;

b. a man with Addison's disease does not eat for three days and thus is dehydrated;

c. a man with Addison's disease has ominous blood test results that if ordered STAT would have provided Dr. Covillo with objective data for developing an appropriate plan of care;

d. a man with Addison's disease who tells the staff that when such a thing happens, he typically goes to the hospital for intravenous fluids. It is more likely than not that had staff not disregarded Mr. Stufflebean's experiences he would have responded to emergency treatment;

e. a man with Addison's disease presenting with a very low blood pressure is not recognized as symptomatic.

f. a man with Addison's disease who was likely hypoglycemic and had a blood sugar of 70 mg/dL only after consuming two servings of milk.

g. a man with Addison's disease in crisis is not given stress parenteral doses of lifesaving glucocorticoids.

Id., pp. 47-48. Dr. Bilezikian opined that the cause of Stufflebean's death was the "[a]bject failure of the system and the caregivers . . . ." *Id.*

l. Corizon

At all relevant times, Corizon was the healthcare provider for MODOC.

One of Plaintiffs' experts, Dr. Lori Roscoe, opined, on the basis of irregularities in and lack of documenta-

tion of training, evaluation, and peer review, that "Corizon failed to monitor the care provided by its staff at the WRDCC" and that "the training program conducted by Corizon for staff at the WRDCC fell below the administrative standard of care, due, in part, to the programmatic lack of supervision and monitoring." Doc. 493-20 (Lori E. Roscoe letter), p. 5; *see also* Doc. 493-21 (Expert Witness Report of Lori E. Roscoe), p. 20.

CO Jacqueline Williams observed Corizon nurses frequently having to work two shifts, 20 hours together, with no help. Doc. 493-23 (Deposition of Jacqueline Williams), 18:25-20:22. Dr. Covillo, too, was "really busy," seeing approximately 50 to 70 patients a day around October 2015. Doc. 492-16, 15:2-21. He described himself as being "almost overbook[ed] . . . ." *Id.*

II. Summary Judgment Standard

"Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Anderson v. Durham D & M, LLC*, 606 F.3d 513, 518 (8th Cir. 2010) (citing *Johnson v. Ready Mixed Concrete Co.*, 424 F.3d 806, 810 (8th Cir. 2005)); Fed. R. Civ. P. 56(a). The Court must enter summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Robert Johnson Grain Co. v. Chemical Interchange Co.*, 541 F.2d 207, 210 (8th Cir. 1976); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). While the moving party bears the burden of establishing a lack of any genuine issues of material fact, *Brunsting v. Lutsen Mountains Corp.*, 601 F.3d 813, 820 (8th Cir. 2010), the party opposing summary

judgment "must set forth specific facts showing that there is a genuine issue of material fact for trial," *Thomas v. Corwin*, 483 F.3d 516, 527 (8th Cir. 2007). "Mere allegations, unsupported by specific facts or evidence beyond the nonmoving party's own conclusions, are insufficient to withstand a motion for summary judgment." *Id*.

"Summary judgment is proper if, after viewing the evidence and drawing all reasonable inferences in the light most favorable to the nonmovant, no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law." *Higgins v. Union Pac. R.R. Co.*, 931 F.3d 664, 669 (8th Cir. 2019) (quotation marks and citation omitted).

III. Discussion

a. Whether the Corizon Employees Are Entitled to Assert Qualified Immunity

"In § 1983 actions, qualified immunity shields government officials from liability [in their individual capacities] unless their conduct violated a clearly established constitutional or statutory right of which a reasonable official would have known." *Bishop v. Glazier*, 723 F.3d 957, 961 (8th Cir. 2013) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982))). Because the motions at bar involve a private medical services provider and its employees, the Court first must consider whether these defendants are entitled to invoke qualified immunity, which shields government officials from liability in certain circumstances.

The Eighth Circuit has not decided whether employees of a business which provides contractual services for or on behalf of a government is entitled to qualified immunity, and there is no consensus among

the federal appellate courts which have addressed the issue. *See Perniciaro v. Lea*, 901 F.3d 241, 251 (5th Cir. 2018) (finding that two private doctors who contract to provide medical services for government are entitled to qualified immunity but noting that "Circuits are divided on whether privately employed doctors who provide services at prisons or public hospitals pursuant to state contracts are entitled to assert qualified immunity," citing cases from the Sixth, Ninth, and Eleventh Circuits holding that such practitioners are not entitled to qualified immunity and a case from the Tenth Circuit holding that such practitioners are entitled qualified immunity); *Estate of Lockett v. Fallin*, 841 F.3d 1098, 1108-09 (10th Cir. 2016) (finding that private doctor "hired to do a job for which a permanent government employee would have received qualified immunity" was entitled to assert qualified immunity defense); *see also Miranda v. Cty. of Lake*, 900 F.3d 335, 346-47 (7th Cir. 2018) (holding that, although doctors employed by private company that contracted with county to provide detainees' medical care were "state actors amenable to suit under section 1983," they "are not . . . entitled to qualified immunity"); *Petties v. Carter*, 836 F.3d 722, 734 (7th Cir. 2016) (*en banc*) (holding that "qualified immunity does not apply to private medical personnel in prisons"); *McCullum v. Tepe*, 693 F.3d 696, 704 (6th Cir. 2012) (holding that private doctor working for government "is not entitled to assert qualified immunity"); *Jensen v. Lane Cty.*, 222 F.3d 570, 580 (9th Cir. 2000) (finding that private psychiatrist providing service to government pursuant to contract is not entitled to assert qualified immunity); *Hinson v. Edmond*, 192 F.3d 1342, 1345 (11th Cir. 1999) (holding that privately employed prison physician was "not entitled to advance the defense of qualified immunity"); *c.f.*,

Filarsky v. Delia, 566 U.S. 377, 132 S. Ct. 1657, 182 L. Ed. 2d 662 (2012); *Richardson v. McKnight,* 521 U.S. 399, 117 S. Ct. 2100, 138 L.Ed.2d 540 (1997).

For purposes of this motion, the Court assumes, without deciding, that employees of a private entity providing medical services for prisoners on behalf of the Missouri Department of Corrections and sued pursuant to Section 1983 are entitled to raise the defense of qualified immunity.

b. Analyzing Qualified Immunity

The Court must consider two factors in analyzing qualified immunity: (1) whether the facts alleged show that the public official's conduct violated a constitutional right; and (2) whether the constitutional right was clearly established at the time of the alleged misconduct. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). "Qualified immunity is applicable unless the official's conduct violated a clearly established constitutional right." *Id.*; *see also Hess v. Ables*, 714 F.3d 1048, 1051 (8th Cir. 2013) ("Qualified immunity is appropriate only if no reasonable factfinder could answer yes to both of these questions." (quotation marks and citation omitted)). "The 'clearly established' standard . . . requires that the legal principle . . . be so well defined that it is 'clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Dist. of Columbia v. Wesby*, ___ U.S. ___, 138 S. Ct. 577, 590, 199 L. Ed. 2d 453 (2018) (citations omitted)

Upon a defendant's raising the qualified immunity defense in a summary judgment motion, "the plaintiff must produce evidence sufficient to create a genuine issue of fact regarding whether the defendant violated a clearly established right." *Bishop*, 723 F.3d at 961

(citation omitted). The "plaintiff bears the burden of proving that the law was clearly established." *Hess*, 714 F.3d at 1051.

c. What is Deliberate Indifference to a Serious Medical Need

"It is well established that deliberate indifference to a prisoner's serious medical needs is cruel and unusual punishment in violation of the Eighth Amendment." *Langford v. Norris*, 614 F.3d 445, 459 (8th Cir. 2010) (quotation marks and citation omitted). An objectively serious medical need is "one that has been diagnosed by a physician as requiring treatment, or one that is so obvious that even a layperson would easily recognize the necessity for a doctor's attention." *Camberos v. Branstad,* 73 F.3d 174, 176 (8th Cir. 1995) (quotation marks and citation omitted).

Deliberate indifference is equivalent to criminal recklessness. *Schaub v. YonWald*, 638 F.3d 905, 919 (8th Cir. 2011). It is more than negligence but less than "purposefully causing or knowingly bringing about a substantial risk of serious harm." *Id.* at 914-915. Thus, a mere disagreement with the professional judgment of a medical provider is not sufficient. *Popoalii v. Corr. Med. Servs.*, 512 F.3d 488, 499 (8th Cir. 2008). Nothing in the Eighth Amendment prevents a medical provider from exercising their independent medical judgment. *White v. Farerier,* 849 F.2d 322, 327 (8th Cir. 1988).

An official must "'know[] of and disregard[]' a serious medical need or a substantial risk to an inmate's health or safety." *Saylor v. Nebraska*, 812 F.3d 637, 644 (8th Cir. 2016) (citations omitted). "[T]he failure to treat a medical condition does not constitute punishment within the meaning of the Eighth Amendment

unless [the medical provider] knew that the condition created an excessive risk to the inmate's health and then failed to act on that knowledge." *Long v. Nix,* 86 F.3d 761, 765 (8th Cir. 1996) (citation omitted). *See also Manual of Model Civil Jury Instructions for the District Courts of the Eighth Circuit* (2019), Section 4.23 (Definition: Deliberate Indifference) and 4.43 (Verdict Director for Denial of Medical Care).

"Prisoners may prove deliberate indifference by showing that the total deprivation of medical care resulted in 'pain and suffering' or 'a lingering death.'" *Langford*, 614 F.3d at 459-60 (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). However, "a total deprivation of care is not a necessary condition for finding a constitutional violation: [g]rossly incompetent or inadequate care can also constitute deliberate indifference, as can a doctor's decision to take an easier and less efficacious course of treatment." *Langford*, 614 F.3d at 460 (quotation marks omitted, citing *Smith v. Jenkins*, 919 F.2d 90, 93 (8th Cir. 1990)).

The Court considers the facts in the light most favorable to the Plaintiffs and addresses each defendant separately to determine whether a reasonable factfinder could conclude that she or he was deliberately indifferent to Stufflebean's serious medical needs.

d. Nurse Mowry

i. Whether a Reasonable Fact-Finder Could Conclude that Mowry Was Deliberately Indifferent to Stufflebean's Serious Medical Needs

Defendants argue that there is no evidence that Mowry was aware that Stufflebean had a serious

medical need, Doc. 393 (Suggestions in Support of Defendants Amy Mowry, Alice Bergman, and Karen Williams' Motion for Summary Judgment), pp. 16, 17.

Plaintiffs point to the following evidence to show otherwise: Mowry was aware that Stufflebean had Addison's disease and hypoparathyroidism, Doc. 492-22, 51:16-18; that he was experiencing vomiting, weakness, and tachycardia, *id.*, 51:8-15; and that he had been hospitalized 16 times in the last year for Addison's complications. Doc. 492-1, p. 1. Mowry observed that Stufflebean was lethargic and weak and had an unsteady gait. *Id.*, p. 3. She noted that Stufflebean was on at least fludrocortisone, NATPARA, vitamin D, paroxetine, and prednisone. *Id.*, p. 1. Despite the fact that the jail did not provide any documentation indicating when Stufflebean last took his medications, and despite the fact that the Corizon form directs the person performing intake to "List medications and date/time of last dose," Mowry did not ask Stufflebean when he was last administered the five medications he listed. *Id.*, p. 3.

Mowry did call Nurse Bergman to discuss how to treat Stufflebean and she followed Bergman's instruction to place Stufflebean in the TCU. Nurses' AF, ¶¶ 29, 14. Mowry did not tell Bergman that Stufflebean had Addison's disease and hypoparathyroidism. *Id.*, ¶ 34.[9] Mowry did not tell Bergman that Stufflebean was weak and tachycardic, or that he had been hospitalized 16 times in the prior year. *Id.*, ¶¶ 33, 35.

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[9] On Defendants' summary judgment motions, disputed issues of fact are resolved in favor of the Plaintiffs.

The Court has carefully considered these facts and based on this record, concludes that no reasonable jury could find that Nurse Mowry was deliberately indifferent to Stufflebean's serious medical needs. Mowry may have failed to comply with Corizon's directions, and she may have breached the standard of care by not communicating all relevant information to Nurse Bergman, but such conduct cannot be characterized as criminal recklessness under these circumstances. *See Manual of Model Civil Jury Instructions for the District Courts of the Eighth Circuit* (2019), Section 4.23 (Definition: Deliberate Indifference). She called Nurse Bergman and followed her instructions to take Stufflebean to the TCU for monitoring and examination by Dr. Covillo. Doc. 492-1, p. 6. Stufflebean's physical appearance and conduct was not yet sufficiently unusual or alarming as to require additional actions, and there is no evidence that communicating more thoroughly with Bergman would have altered Bergman's approach to Stufflebean's care.

Mowry's motion for summary judgment on Count IV, the Section 1983 claim, therefore is granted.

e. Nurse Bergman

i. Whether a Reasonable Fact-Finder Could Conclude that Bergman Was Deliberately Indifferent to Stufflebean's Serious Medical Needs

Bergman became involved in Stufflebean's treatment when Mowry called her. Mowry told Bergman that Stufflebean had Addison's disease and hypoparathyroidism,[10] but did not advise Bergman that

[10] The Court resolves disputed issues of fact in favor of Plaintiffs.

Stufflebean was weak and tachycardic or that he had been hospitalized 16 times in the prior year. Nurses' AF, ¶¶ 33-35.

In response to Mowry's call, Bergman issued a verbal order for a dose of promethazine, which is used for nausea and vomiting, and directed Mowry to take Stufflebean to the TCU. Doc. 492-1, p. 5.

On that same day, October 29, 2015, Bergman ordered a KUB abdominal film for Stufflebean. *Id*., p. 9. The medical record shows the stated "purpose of exam" as "upper abdominal pain x 1 day, nausea and vomiting, Addison's disease, hypoparathyroidism." *Id*. The abdominal film showed "abundant stool." *Id.* Stufflebean was given a laxative, but none of the medications that his treating physician had prescribed before his incarceration, including for his Addison's disease. *Id.*, p. 7. Bergman did not review Stufflebean's medications before prescribing new medications for him. Nurses' AF, ¶ 49. Without ever seeing Stufflebean herself, Bergman ordered his release to the wing. *Id.,* ¶ 46, 48.

Bergman knew that Stufflebean was suffering from vomiting and nausea and had Addison's disease and hypoparathyroidism, but there is no evidence or any inference that she knew that Stufflebean would be at risk of an Addison's crisis if she did not examine him in person or review his medications before addressing his symptoms. Nor is there evidence that she knew he was suffering an Addison's crisis at that time. Importantly, there is no evidence that she intentionally refused or failed to act knowing that she was exposing him to a serious risk of harm. Bergman ordered anti-nausea medication, additional testing (in the form of the KUB), and admission to the TCU not only for observation, but also for examination by

Dr. Covillo. *See Daniels v. Ferguson*, 321 F. App'x 531, 532 (8th Cir. 2009) (finding that officer's having administered the wrong medication to inmate was "at most" negligent, particularly in light of fact that "defendants' unrebutted evidence shows that after the fall, they contacted a jail nurse and placed [the inmate] under observation pursuant to her instructions, and there is no evidence that . . . defendant was involved thereafter in the alleged deprivation of food or medical care"). The Court therefore grants summary judgment to Nurse Bergman on Count IV, the Section 1983 claim.

f. Doctor Covillo

Dr. Covillo contends he did a complete physical examination of Stufflebean on October 30, 2015 at 9:00 a.m. and documented the results of that exam. *See* Doc. 383-6 (Physical Examination Report). However, the Physical Examination Report is dated October 29, 2015, one day *before* Dr. Covillo allegedly conducted the physical examination. *Id.*

By the time Dr. Covillo examined Stufflebean, Stufflebean's condition was noticeably deteriorating. Millsap, one of Stufflebean's fellow inmates, testified that when Stufflebean was first brought into his cell (before Dr. Covillo's examination), he was "on a wheelchair," "just slouching over," and "there was, like, a lot of things wrong with him. We could tell he was really shrunk. Like you could see cheekbones real prominent. It looked like he had been, like, either really, like, strung out at one point or he had some sort of, like, condition like he had, like, cancer or AIDS or we didn't know." Doc. 492-17, 16:3-25, 18:1-4. Millsap thought perhaps Stufflebean was "deaf or maybe mute or something because he wasn't responding to anything anybody was saying, but he looked like he

was trying to, but nothing was making — he couldn't vocalize anything." *Id.*, 35:20-24. Moreover, prior to Dr. Covillo's purported physical examination of Stufflebean, other medical staff had observed that Stufflebean was experiencing nausea and vomiting, tachycardia, and weakness, and that he appeared lethargic and weak. Doc. 492-1, pp. 1, 3.

In contrast with these observations by medical staff and prisoners, Dr. Covillo's testimony was that Stufflebean "seemed very stable," Doc. 492-16, 72:16-25, and was erect, Doc. 383-6, p. 2.

Dr. Covillo stated in his deposition that Stufflebean's reports of nausea, vomiting, dizziness, and tachycardia were from "the past" and did not represent his condition at the time of the examination. Doc. 492-16, 73:1-11. However, weakness, dizziness, nausea, and vomiting are listed not in the "History" section of the Physical Examination Report, but in the "Interim Inventory by System" section, without any time frame. Doc. 383-6. The Physical Examination Report is dated October 29, 2015, one day before Dr. Covillo's purported physical exam. This might explain why Dr. Covillo thought these symptoms were from the past, but a reasonable fact-finder could find on this basis that Dr. Covillo did not conduct a physical examination of Stufflebean on October 30, 2015. Dr. Covillo was seeing 50 to 70 patients per day and felt overbooked. Doc. 492-16, 15:2-21. If he did not conduct a physical examination of Stufflebean, that—given Stufflebean's symptoms, appearance and the information that Dr. Covillo admits he had—would be evidence of deliberate indifference. At a minimum, there is a disputed issue of fact that precludes summary judgment.

Dr. Covillo volunteered in his deposition that Stufflebean's blood pressure was 121 over 89, commenting, "That's pretty stable." *Id.*, 73:20-74:6. However, Covillo then admitted that the blood pressure shown on the date of his purported examination in fact was taken by Nurse Mowry the day before, and that Covillo did not actually know what Stufflebean's blood pressure was on the day of his examination. *Id.*, 74:15-75:7.

When asked where Stufflebean's condition at the time of the examination was reflected in the medical record, Dr. Covillo stated simply, "I examined him," and then claimed that he "would have written it in there if [Stufflebean] had a problem." *Id.*, 73:12-16. However, a reasonable juror could find that, if Dr. Covillo had examined Stufflebean, Stufflebean at a minimum would have mentioned his immediate need for medication, as well as his abdominal pain, weakness, fatigue and nausea. Stufflebean had heard his treating physician's testimony at his sentencing; he knew that he had not gotten his medication for several days; he knew the risk of not taking his medicine; and he knew what an Addisonian flare-up felt like, having been hospitalized 16 times in the previous year. He consistently reported, at a minimum, his physical symptoms, both at the Buchanan County Jail and upon admission to the prison. Further, if Dr. Covillo actually examined Stufflebean, he was the first doctor to see Stufflebean after his incarceration. A reasonable juror could conclude that, when he finally was seen by a doctor, Stufflebean would not remain mute about his urgent need for medication.

Dr. Covillo admits that he knew Stufflebean had both Addison's disease and hypoparathyroidism, and that Stufflebean's condition was serious enough that

he needed his medication on a daily basis. *Id.*, 147:4-17. Dr. Covillo testified that he called his supervisor to request approval of medications from outside the formulary. *Id.*, 27:10-28:5. Dr. Covillo recalled Stufflebean arriving with a bag of medications (although the documentary evidence does not so indicate), and Dr. Covillo claimed that, with the approval of his supervisor, he ordered that Stufflebean receive some of those medications that day itself. Doc. 492-16, 79:14-82:13. However, Dr. Covillo could not recall to whom he purportedly gave the verbal order regarding medications, and no one has said that they received such an order. *Id.* Dr. Covillo could identify no records documenting his asking for permission to dispense non-formulary medications or ordering that Stufflebean be given the medications that purportedly accompanied him. *Id.* Dr. Covillo maintains that he ordered calcium citrate, fludrocortisone and Vitamin D for Stufflebean on October 30, 2015, but the only documentary evidence of these prescriptions is a time-stamp that shows the medications were approved at 5 a.m. on October 31, 2015, after an emergency call had been placed with regard to Stufflebean. Doc. 492-1, p. 6. There is no evidence that would explain the delay, if it was Dr. Covillo who actually tried to rush Stufflebean's medication. It is also undisputed that no medication for Stufflebean's Addison's disease or hypoparathyroidism was dispensed at the prison. Dr. Covillo acknowledged that Stufflebean "did not get any medication . . . like he was supposed to," but he claimed that the unidentified nurses had "[a]pparently" not followed his order in that regard. Doc. 492-16, 148:7-14.

Based on this record, a reasonable juror could conclude that Dr. Covillo acted with deliberate indifference to Stufflebean's serious medical needs by failing

to order the immediate administration of medication for Stufflebean's conditions. He knew that Stufflebean needed his medication for his Addison's disease that day. He knew that Stufflebean was suffering from syncope, *i.e.*, passing out or fainting, chest pain, nausea, vomiting, low blood pressure and dizziness—all symptoms of Addison's disease and potential crisis. Nonetheless, he did not order medication to be administered immediately. In short, there is evidence that Dr. Covillo knew of the risk of not getting Stufflebean medication that day, and he intentionally refused or failed to provide it. *See Letterman v. Does*, 789 F.3d 856, 862 (8th Cir. 2015) ("Generally, the actor manifests deliberate indifference by intentionally denying or delaying access to medical care, or intentionally interfering with treatment or medication that has been prescribed. Further, the obvious inadequacy of a response to a risk may support an inference that the officer recognized the inappropriateness of his conduct."); *Ingram v. Helder*, No. 15-5068, 2015 U.S. Dist. LEXIS 175898, at **18-19 (W.D. Ark. Dec. 21, 2015) (finding that delay at the beginning of a prisoner's incarceration in administering drugs prescribed before incarceration could amount to violation of a clearly established right); *Torres v. Trombly*, No. 03-0696, 2004 U.S. Dist. LEXIS 12192, at **21-23 (D. Conn. June 29, 2004) (finding that allegation that defendants failed to provide blood-pressure medication on a single day could amount to "clearly established" Eighth Amendment violation if defendant were able to establish that one day without the medication would carry "a substantial risk of serious harm").[11]

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[11] Dr. Covillo did not raise the defense of qualified immunity in his summary judgment motion. Accordingly, the Court need not determine whether the right at issue was clearly established,

The Court denies summary judgment to Dr. Covillo on Count IV, the Section 1983 claim.

g. Nurse Williams

i. Whether a Reasonable Fact-Finder Could Conclude that Williams Was Deliberately Indifferent to Stufflebean's Serious Medical Needs

The medical record shows that, on October 31, 2015, at 1:15 a.m., somebody called a "Code 16" with respect to Stufflebean. Doc. 492-1, p. 13. Neither Williams nor the other nurse on duty documented why the Code 16 was called or what was done in response. *Id.*

A second Code 16 was called at 4:30 a.m. that same day. *Id.* The medical record for the second Code 16 was made "late," on November 1, 2015, at 1:07 a.m., after Stufflebean had been rushed by ambulance to the hospital. It states that Williams found Stufflebean lying on his abdomen on the floor of his cell. *Id.* Stufflebean indicated that he had fallen when he got up to get a drink because he felt weak. *Id.* The notes reflect that "Sgt. Brown mentioned that there was a towel with greenish liquid on it close to his bunk and offender was asked if he was nauseated." *Id.*

Williams noted that, when asked about his diet, Stufflebean stated, "I took a few bites of corn a couple days ago, because I don't like the food." *Id*. Stufflebean was then given a carton of milk, which he "tolerated

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although, the Court is confident that if the issue had been raised in a timely fashion, the Court would have found that the right was clearly established given Dr. Covillo's knowledge and the risk of injury to which he subjected Stufflebean.

well," and he "asked for another milk at this time and stated that he was a little nauseated." *Id*.

Defendant Williams did not communicate with anyone about Stufflebean's appearance, his blood pressure (even though the systolic pressure was less than 100), his symptoms or his request for help. Instead, by her account, she gave him milk, although Corizon's protocol is to not give milk if the patient is nauseous. Williams did not ask Stufflebean why he was so weak that he fell and couldn't get up, or why he was vomiting. She just assumed it was because he was not eating and drinking enough because he didn't like the prison food.

Williams' notes and her affidavit indicate that she was unaware that Stufflebean was at serious risk of harm due to a medical condition. Williams stated that Stufflebean's intake form was available to her, but she claims that she did not review it. Doc. 492-14 (Deposition of Karen Williams), 47:21-48:1. But in light of the fact that Stufflebean told nurse Munger shortly thereafter that he was experiencing an Addisonian flare-up, Doc. 492-1, p. 14, a reasonable fact-finder might infer that Williams' testimony is not credible with regard to her knowledge of the seriousness of Stufflebean's condition, and that in fact she was aware that Stufflebean had Addison's disease. Further, even a lay person would understand that Stufflebean's symptoms are unlikely to be the result of not eating anything because of a dislike of prison food and additional questions were required to see why Stufflebean was vomiting green liquid and so weak that he would fall and not be able to get up on his own. Plaintiffs' expert also described William's behavior as a substantial deviation from the standard of care.

Williams claims that, at the end of her shift, she gave a report concerning Stufflebean to the oncoming nurse, Nurse Baker Smith. Doc. 492-14, 24:4-11. However, Baker Smith could not recall receiving any report from Nurse Williams, and she testified that, had she been told to monitor Stufflebean, she would have included that direction in her chart documentation. Doc. 493-31, Doc. 15:6-18:16. Nor is there evidence that Williams verbally told Nurse Munger of the incident.

Nonetheless, Williams took Stufflebean to the TCU for observation. She turned his care over to a registered nurse and there is no evidence that her failure to communicate his condition to Nurse Munger prevented Nurse Munger from observing Stufflebean firsthand and having a conversation with Stufflebean about his condition. *See Greeno v. Daley*, 414 F.3d 645, 655-56 (7th Cir. 2005) ("We do not think Miller's failure to take further action once he had referred the matter to the medical providers can be viewed as deliberate indifference.").

Thus, although it is a close question, the Court concludes that there is insufficient evidence for a jury to conclude that Nurse Williams intentionally failed to take reasonable measures to address Stufflebean's serious medical needs. The Court therefore grants summary judgment to Nurse Williams on Count IV, the Section 1983 claim.

h. Nurse Munger

i. Whether a Reasonable Fact-Finder Could Conclude that Munger Was Deliberately Indifferent to Stufflebean's Serious Medical Needs

Although the medical record shows that somebody called a "Code 16" for Stufflebean at 1:15 a.m. on October 31, 2015, neither Munger nor the other nurse then working at the prison documented why the Code 16 was called or what happened. Doc. 492-1, p. 13.

After the second documented Code 16, Williams, having given Stufflebean two cartons of milk, delivered Stufflebean into Munger's care in the TCU for further observation. *Id.* Stufflebean's blood pressure then was 100/64 and his heart rate was 91 beats per minute. *Id.*, p. 14.

"As soon as he was brought to TCU," Stufflebean stated that he needed to lie down. *Id.* He advised Munger that he had "not eaten in three days" and that he had Addison's disease and had "been having this flare up since he was sentenced to prison." *Id*. He also explained that "when this has happened before he would just go to the hospital and he would receive IV fluids." *Id.* Munger wrote, "He fully understands how and what is causing his condition to flare up and get worse by not eating. . . . Encouraged offender that he needed to drink and eat, put an MSR [(medical service request)] into mental health to help with his stress, and if he felt he needed to see Dr. Covillo again to put in an MSR for the doctor." *Id.* Munger provided Stufflebean with Promethazine at 5:30 a.m., after he had been given milk. *Id.* Munger then released Stufflebean to his cell. *Id.*

On November 1, 2015 at 1:36 a.m., after Stufflebean had been taken from the prison to the hospital, Defendant Munger made a "Late Entry" in Stufflebean's chart as follows:

> When offender was released from TCU at 7AM with CO1 Huddleston, offender got as far as the telephone and the offender became wobbly and layed [*sic*] on to the floor. This was during shift change and witnessed by several of the day shift nurses as well as the night shift nurses and CO1 Huddleston and CO1 Williams. My self and CO1 Huddleston helped offender walk back to his room and he walked fine with assistance. SGT Brown was called and notified. SGT Brown, CO1 Huddleston, and CO1 Green came to TCU to escort offender back to cell.

Id., pp. 14-15.

CO Huddleston described Stufflebean during this incident as "dazed like he was sick" and "weak and incoherent." Munger AF, ¶ 91. Huddleston recalled Stufflebean "stumbling" and then falling down after 10-20 steps. *Id.* He described Stufflebean's falling as "kind of slow. He fell down on his knees, and then he just kind of fell over. I mean it wasn't — it didn't seem like it was that hard. He fell really slow to the ground." *Id.* Stufflebean fell on his face. *Id.* Huddleston said Stufflebean did not say anything, instead, "[h]e just made grunting noises . . . ." *Id.* Huddleston believes that he then got a wheelchair, and they placed Stufflebean in it. *Id.* Stufflebean was slumped over. *Id.*

Huddleston wheeled Stufflebean to his cell and helped him to his bunk. *Id.*[12]

After reading Munger's description of Stufflebean's becoming "wobbly" and lying down on the floor, Dr. Covillo said, "Now that's a true Addison crisis," and he agreed that proper procedure would "definitely" have been for the nurse to immediately call the on-call physician. Doc. 492-16, 125:7-128:8. Dr. Covillo also thought that Stufflebean should have remained in the TCU for monitoring, and he thought the nurse's "rush to kick him out of TCU . . . d[id]n't make any sense." *Id.*, 127:4-10. He characterized sending Stufflebean to his cell after his collapse on his way out of the TCU as "crazy." *Id.*, 127:11-15.

There is no evidence that Munger reported Stufflebean's condition to the incoming nurse and she did not contact a physician for advice.

Three hours after Munger returned Stufflebean to his cell, a third Code 16 was called for Stufflebean. Doc. 492-1, p. 15. Soon after, an ambulance was called to rush Stufflebean to the hospital. *Id.*, p. 16.

On this record a reasonable juror could conclude that Munger was deliberately indifferent because she knew that Stufflebean was experiencing an Addison's flare-up, she knew he was supposed to receive intravenous fluids when in such a state, she knew that he had been nauseated, that his blood sugar was very low, and

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[12] Although Munger noted the next day that Stufflebean fell once, TCU guard CO Jacqueline Williams contemporaneously noted that Stufflebean fell twice on his way back to his phone. *Id.*, ¶ 94 (noting at 7:00 a.m. that Stufflebean "g[o]t as far as the telephone and the offender sat down on the floor," and noting at 7:11 a.m. that "Stufflebean got as far as the telephone again and layed [*sic*] on the floor").

that he was incoherent and weak, and yet she did not contact the on-call physician for guidance or even keep him in the TCU. She instead released Stufflebean back to his cell, even as he fell twice on his way back due to weakness. *See Wynn v. Southward*, 251 F.3d 588, 594 (7th Cir. 2001) (finding that inmate's allegation that "he repeatedly told prison officials that he needed his heart medication 'immediately,' that the officials did not respond to his requests, that he made two written requests . . . for his medication, that his heart had been 'fluttering' due to the lapse in medication, and that he risked 'heavy chest pains' if he did not resume taking his medication" "adequately state[d] an Eighth Amendment claim that the officers were deliberately indifferent to [inmate]'s serious medical need for his heart medication"). The circumstances here are even more egregious because Munger is a registered nurse and the visibly compromised patient actually advised her of what specific treatment he needed, and yet she did nothing other than counsel him to eat and tell him to formally request to see the doctor if he felt it necessary.

ii. Whether the Right Was Clearly Established

It was clearly established when Stufflebean was incarcerated that a medical provider in a prison violates a prisoner's constitutional rights when the provider is deliberately indifferent to the prisoner's serious medical need. *See Campbell v. Cauthron*, 623 F.2d 503, 508 (8th Circuit 1980) ("It is much too late in the day for states and prison authorities to think that they may withhold from prisoners the basic necessities of life which include . . . . necessary medical attention."); *Foulks v. Cole Cty.,* 991 F.2d 454, 457 (8th Cir. 1993) (holding, in Eighth Amendment case, that

"if a reasonable official would have known that observation and treatment was necessary, the refusal to provide access [to] the treatment would constitute deliberate indifference to [the inmate's] constitutional rights"). Therefore, it cannot be seriously debated that Nurse Munger was on notice that deliberate indifference to Stufflebean's need for treatment and continued observation was a violation of his constitutional rights.

Despite Stufflebean's quickly deteriorating condition and several symptoms that even a lay person would know needed to be urgently addressed, Munger did nothing to treat or monitor Stufflebean. Nor did she call anyone for guidance. She simply returned Stufflebean to his cell, unmoved by his falling twice on his way back. Whether Nurse Munger was deliberately indifferent to Stufflebean's serious medical needs is a contested issue of fact that only a jury can decide. The Court therefore denies Nurse Munger's request for summary judgment on Count IV based on qualified immunity and the merits of the Plaintiffs' claim.

i. Whether Corizon is entitled to qualified immunity

Corizon argues that it performs a government function because under Missouri law, "the director of the department of corrections or his designee" "shall arrange for necessary health care services for offenders confined in correctional care centers." Doc. 395 (Suggestions in Support of Defendant Corizon, LLC's Motion for Summary Judgment), p. 9. Plaintiffs contend that, as a private entity, Corizon is not entitled to assert the defense of qualified immunity.

Corizon states that it "is essentially a government actor contractually performing the discretionary duties

required to provide healthcare through its agents to inmates and other persons being held at the MODOC . . . ." *Id.*, p. 12. However, a government entity is not entitled to qualified immunity. *See Johnson v. Outboard Marine Corp.*, 172 F.3d 531, 535 (8th Cir. 1999) ("Qualified immunity is not a defense available to governmental entities, but only to government employees sued in their individual capacity."); *see also Moore v. MEnD Corr. Care*, No. 15-2848, 2017 U.S. Dist. LEXIS 99595, at **7-8 (D. Minn. Feb. 28, 2017) ("MEnD additionally argues that it is entitled to qualified immunity, but qualified immunity 'is not a defense available to governmental entities.' Therefore by analogy, qualified immunity is not available to a private entity, such as MEnD, that is sued under § 1983 for its actions pursuant to a contract to perform traditional public functions.") (citing, *inter alia*, *Johnson*, 172 F.3d at 535).[13]

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[13] Even if Corizon is entitled to assert qualified immunity, given the facts and arguments Plaintiffs presented (*see* Doc. 493 and attachments thereto), the Court would find that Corizon is not entitled to qualified immunity in this case. A reasonable juror could conclude that Corizon was deliberately indifferent to the serious medical needs of Stufflebean based on its knowledge that its employees generally, and Munger and Covillo specifically, were in need of additional training and supervision. On the record before the Court, a reasonable juror could also conclude that Corizon knew that Stufflebean would be placed at a substantial risk of harm as a result of Corizon's systematic failure to train and supervise Munger and Covillo. Further, Corizon disregarded that risk by failing to take any reasonable measures to address the well documented and persistent deficiencies in its training and supervision of medical personnel it placed in the Missouri Department of Corrections and other prisons and jails around the country.

It was well established by the time Stufflebean was transferred to the MDOC that individual medical providers were sub-

Accordingly, the Court denies Corizon's motion for summary judgment on the basis of qualified immunity.

IV. Conclusion

For the reasons set forth above, the motions for summary judgment by Mowry, Bergman, and Williams on the civil rights claim (Doc. 392) are GRANTED. The motions for summary judgment on the civil rights claim against Corizon (Doc. 394) and its employees Munger (Doc. 399) and Dr. Covillo (Doc. 382) are DENIED except as to the punitive damages issues, which are taken under advisement.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: December 23, 2019
Jefferson City, Missouri

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ject to liability for deliberate indifference to a known medical risk if they failed to take measures to reasonably address the risk, including reasonable supervision and training. Thus, to the extent that Corizon is an individual entitled to qualified immunity, the fact that it was on notice that its conduct violated the U.S. Constitution renders it ineligible for qualified immunity.

The Court takes no position on whether a business can simultaneously assert qualified immunity and lack of liability for the actions of its employees under *respondeat superior*, given that a corporation acts through its employees and agents.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

[Filed December 23, 2019]

Case No. 5:17-cv-06058-NKL

BRENDA DAVIS, *et al.*,

Plaintiffs,

v.

BUCHANAN COUNTY MISSOURI, *et al.*,

Defendants.

ORDER

Pending before the Court is Dr. Covillo's Motion to Dismiss Based on Qualified Immunity. Doc. 360. In it, he seeks to dismiss Count IV of Plaintiffs' Complaint,[1]

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[1] Dr. Covillo refers in his motion to the First Amended Complaint (Doc. 78) as the amended complaint he seeks to dismiss. That complaint has been amended since Defendants' motion to dismiss was filed. *See* Doc. 414 (Plaintiffs' Second Amended Complaint). However, the amended complaint did not change any allegations against Dr. Covillo. Therefore, the Court did not require Dr. Covillo to resubmit his previously filed motion to dismiss, Doc. 360, and his summary judgment motion, Doc. 382, which were pending at the time of the amendment. Doc. 416. In accordance with the Court's prior orders stating that Defendants are not required to refile or reassert any motion then pending for dismissal or for summary judgment (Doc. 416) and the Court's prior order on Dr. Covillo's motion to dismiss the first amended complaint (Doc. 598), the Court treats Dr. Covillo's motion to

which asserts a civil-rights claim against him, specifically deliberate indifference to a known serious medical need. After careful review of the record, the Court denies Dr. Covillo's motion to dismiss. Plaintiffs pleaded sufficient facts to state a plausible constitutional violation against Dr. Covillo.

I. Background

On October 26, 2015, Justin Stufflebean, son of plaintiffs Brenda Davis and Frederick Stufflebean, was sentenced for a sex crime. Immediately following his sentencing, Stufflebean was held at the Buchanan County Jail until he was transferred on October 29, 2017 to the Western Reception Diagnostic and Correctional Center ("WRDCC"). Prior to and during his incarceration, he suffered from two endocrine disorders: Addison's disease and hypoparathyroidism. Addison's disease is a disorder that occurs when the adrenal glands fail to produce sufficient amounts of cortisol, an essential hormone that helps the body cope with stress and is critical to maintaining blood pressure and cardiovascular function. Without his medication for the disease, Stufflebean was at risk of dying in a short time.

Plaintiffs' Amended Complaint, Doc. 78, alleges in Count IV that Dr. Covillo was an employee of Corizon and that his job was to provide medical services to prisoners at WRDCC. It also alleges that Dr. Covillo was deliberately indifferent to Stufflebean's known medical need for daily medication to treat his chronic diseases and that, as a result, Stufflebean died. Dr. Covillo now contends that these allegations are not

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dismiss the First Amended Complaint as though it were directed to the Second Amended Complaint.

enough to state a plausible claim against him because there are insufficient facts pointing to specific acts he did or did not do, and therefore, Dr. Covillo contends, he is entitled to qualified immunity.

Dr. Covillo did not file this motion to dismiss until trial was imminent, after discovery was completed, and after extensive briefing on numerous other issues. Indeed, he filed the motion to dismiss, raising qualified immunity for the first time, contemporaneously with the filing of his motion for summary judgment.

The Court now has denied summary judgment to Dr. Covillo, finding that there is a contested issue of fact about whether he knew Justin Stufflebean had a serious medical need and with that knowledge intentionally failed to reasonably address the need. Doc. 633.

II. Applicable Law

Rule 8 of the Federal Rules of Civil Procedure requires "a short and plain statement of the claim showing that the pleader is entitled to relief," which places defendants on "fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007). Rule 8 does not require "detailed factual allegations," but it "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id*. at 555 (citations omitted).

In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Supreme Court found that, absent a plausible constitutional claim, a public official entitled to qualified immunity should not be subjected to discovery. The Supreme Court recognized that "in [the] pleading context, . . . we are impelled to give real content to the concept of qualified immunity for high-level officials

who must be neither deterred nor detracted from the vigorous performance of their duties. *Id.* at 686.

However, "*Twombly* and *Iqbal* did not abrogate the notice pleading standard of Rule 8(a)(2)." *Hamilton v. Palm*, 621 F.3d 816, 817 (8th Cir. 2010). A claim is sufficiently plausible when it sets forth "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Gomez v. Wells Fargo Bank, N.A.*, 676 F.3d 655, 660 (8th Cir. 2012) (quoting *Ashcroft*, 556 U.S. at 678).

Public officials "are protected from §1983 suits by the affirmative defense of qualified immunity." *Water v. Madson*, 921 F.3d 725, 734 (8th Cir. 2019) (internal citations omitted).[2] Qualified immunity shields public officials from liability for civil damages if "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). There are two factors a court must consider in analyzing the issue of qualified immunity pursuant to § 1983: (1) whether the facts alleged show that the public official's conduct violated a constitutional right; and (2) whether the constitutional right was clearly established at the time of the alleged misconduct. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). "Qualified immunity is appropriate only if no reasonable factfinder could answer yes to both of these questions." *Hess v. Ables*, 714 F.3d 1048, 1051 (8th Cir. 2013) (quoting *Nelson v. Corr. Med. Servs.*, 583 F.3d 522, 528 (8th Cir. 2009)).

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[2] The Court assumes here, as it did in its Summary Judgment Order (Doc. 633, p. 16), that private employees of a business that contracts with a governmental entity to provide medical services are entitled to assert qualified immunity as a defense.

At the dismissal stage, defendants "must show that they are entitled to qualified immunity on the face of the complaint." *Dadd v. Anoka Cty.*, 827 F.3d 749, 754. (8th Cir. 2016) (internal quotation marks omitted) (quoting *Bradford v. Huckabee*, 394 F.3d 1012, 1015 (8th Cir. 2005)). Courts addressing qualified immunity in a motion to dismiss "must consider 'whether the plaintiff has stated a plausible claim for violation of a constitutional or statutory right and whether the right was clearly established at the time of the alleged infraction.'" *Id.* at 754–55 (quoting *Hager v. Ark. Dep't of Health*, 735 F.3d 1009, 1013 (8th Cir. 2013)). "On the merits, to defeat a qualified immunity defense, plaintiff has the burden of proving that defendant's conduct violated a clearly established constitutional right," but at the dismissal stage, "the issue is whether plaintiff 'pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Stanley v. Finnegan*, 899 F.3d 623, 626 n.2 (8th Cir. 2018) (quoting *Iqbal*, 556 U.S. at 678) (citing *Hess v. Ables*, 714 F.3d 1048, 1051 (8th Cir. 2013)).

To state a claim for deliberate indifference, a plaintiff must show that he was suffering from an objectively serious medical need, and that prison officials knew of the need but deliberately disregarded it. *Saylor v. Nebraska*, 812 F.3d 637, 637–44 (8th Cir. 2016). An objectively serious medical need is "one that has been diagnosed by a physician as requiring treatment, or one that is so obvious that even a layperson would easily recognize the necessity for a doctor's attention." *Camberos v. Branstad*, 73 F.3d 174, 176 (8th Cir. 1995) (quoting *Johnson v. Busby*, 953 F.2d 349, 351 (8th Cir. 1991)).

Qualified immunity is an affirmative defense that must be pled by the defendant. *Gomez v. Toledo*,

446 U.S. 635, 640 (1980). Failure to plead qualified immunity as an affirmative defense results in waiver. *Dollar v. Smithway Motor Xpress, Inc.*, 710 F.3d 798, 807–08 (8th Cir. 2013).

III. Analysis

First, Plaintiffs' complaint does state a plausible constitutional claim against Dr. Covillo and fairly gave him notice of the claim. The latter is amply illustrated by the fact that Dr. Covillo filed an answer addressing Count IV, conducted extensive discovery on Count IV, challenged Plaintiffs' experts' testimony, and filed a Motion for Summary Judgment. Yet until now he did not contend that Plaintiffs' complaint failed to state a claim or give any other indication that he did not understand what he was defending against.

As for the plausibility of the claim against Dr. Covillo, it is true that Plaintiffs' complaint does not plead specific details of Dr. Covillo's deliberate indifference. However, it does plead that Justin Stufflebean was placed in the care of Dr. Covillo and other defendants, that these defendants, including Dr. Covillo, failed to properly medicate Stufflebean, and that, as a result, Stufflebean died. Plaintiffs identified the time period when defendants' deliberate indifference occurred[3] and what medicine was required to be administered which was not administered. Plaintiffs also identified Dr. Covillo as the doctor at WRDCC who was required to provide care to Stufflebean during his incarceration. It described Stufflebean's dis-

[3] Dr. Covillo suggests that there is nothing to show the time period involved, but Plaintiffs' complaint identifies the dates when Stufflebean was in the WRDCC—a short time span. This is sufficient notice of the time period during which Dr. Covillo allegedly was deliberately indifferent.

ease and why the administration of his medicine was critical. It also described documents that were available to Dr. Covillo which showed Stufflebean's diseases, medications and symptoms. As Judge Hays stated in an earlier order in this case, "[o]ne may infer that defendants . . . were aware of decedent's diagnoses and, as medical professionals, were aware of the seriousness of his condition and that any failure to properly manage his condition could be fatal." Doc. 60 at 8–9. While Judge Hays did not address Dr. Covillo in her order, Judge Hays' analysis is equally applicable here. Plaintiffs' allegations are far from mere conclusions and labels and clearly put Dr. Covillo on notice of a plausible deliberate-indifference claim.

Dr. Covillo's primary argument in favor of his motion is that all the defendants were lumped together and their specific role in Stufflebean's demise was not identified. But a fair reading of the complaint is that each defendant, including Dr. Covillo, had knowledge of Stufflebean's needs given his or her access to his medical and intake records; that with that knowledge, each defendant including Dr. Covillo failed or refused to address Stufflebean's need for medication and treatment for his chronic diseases; and that as a result of each defendant's conduct Stufflebean died. The time period when this all occurred is set out in the complaint and covers just a few days. Each defendant is separately identified and tied to one of two institutions involved. Of course, Plaintiffs could have stated each allegation separately against each defendant but there would be no substantive difference. The complaint would have been much longer, but it would not have been more or less plausible.

To the extent that Dr. Covillo is arguing that Plaintiffs needed to identify the specific day and time

when Dr. Covillo was in contact with Stufflebean and what he specifically did or did not do for Stufflebean, the Court finds that this is not required. In a notice-pleading jurisdiction, discovery is where these details are fleshed out, particularly in a case such as this where Dr. Covillo and the other defendants are the ones who have the information already and only through discovery will Plaintiffs be able to find that information.

Defendants also seem to argue that Plaintiffs were required to plead facts to show that the Constitutional right being alleged was clearly established at the time of the alleged violation. This is inherently a legal issue based on the facts that form the basis of a claim for deliberate indifference. As discussed above, Plaintiffs have pleaded a plausible claim for deliberate indifference to Stufflebean's known medical need.

IV. Conclusion

For the foregoing reasons, the Court denies Dr. Covillo's Motion to Dismiss on the Basis of Qualified Immunity, Doc. 360.[4]

/s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: December 23, 2019
Jefferson City, Missouri

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[4] Plaintiffs also argue that Dr. Covillo waived the defense of qualified immunity because he did not assert it in any pleading prior to filing the motion to dismiss. The Court need not address the issue because it finds that Plaintiffs' first complaint against Dr. Covillo (Doc. 78), as well as the Second Amended Complaint (Doc. 414), put Dr. Covillo on notice that a plausible deliberate indifference claim was being asserted against him.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

[Filed December 23, 2019]

Case No. 5:17-cv-06058-NKL

BRENDA DAVIS, *et al.*,

Plaintiffs,

v.

BUCHANAN COUNTY MISSOURi, *et al.*,

Defendants.

ORDER

Pending before the Court is the Motion to Dismiss Based on Qualified Immunity. Doc. 372. In it, defendants Dr. Catherine Van Voorn, Ann Slagle, and April Helsel[1] seek to dismiss Count IV of Plaintiffs' Complaint[2] which asserts a civil-rights claim against them,

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[1] During this litigation, April Helsel has also been referred to as April Powers.

[2] In the defendants' motion, they refer to the First Amended Complaint (Doc. 78) as the amended complaint they seek to dismiss. That complaint has been amended since Defendants' motion to dismiss was filed. *See* Doc. 414 (Plaintiffs' Second Amended Complaint). However, the substantive allegations against the ACH defendants did not change. Therefore, the Court did not require Van Voorn, Slagle, or Helsel to resubmit their previously filed motion to dismiss, Doc. 372, or their summary judgment motion, Doc. 370, which were pending at the time of

specifically deliberate indifference to a known serious medical need.

As for Dr. Catherine Van Voorn, the Court has already granted summary judgment to Dr. Van Voorn on Count IV. Doc. 632. Therefore, it denies Dr. Van Voorn's Motion to Dismiss as moot.

As for defendants Slagle and Helsel, the Motion to Dismiss is denied because the law of the case controls Slagle's request, and in addition, Plaintiffs pleaded sufficient facts to state a plausible constitutional violation against Slagle and Helsel.

I. Background

On October 26, 2015, Justin Stufflebean, son of plaintiffs Brenda Davis and Frederick Stufflebean, was sentenced for a sex crime. Immediately following his sentencing, Stufflebean was held at the Buchanan County Jail until he was transferred on October 29, 2017 to the Western Reception Diagnostic and Correctional Center ("WRDCC"). Prior to and during his incarceration, he suffered from two endocrine disorders: Addison's disease and hypoparathyroidism. Addison's disease is a disorder that occurs when the adrenal glands fail to produce sufficient amounts of cortisol, an essential hormone that helps the body cope with stress and is critical to maintaining blood pressure and cardiovascular function. Without his medication for the disease, Stufflebean was at risk of dying.

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the amendment. *See* Doc. 416. In accordance with the Court's prior orders stating that Defendants are not required to refile or reassert any motion then pending for dismissal or for summary judgment (Doc. 416), the Court treats the motion by Van Voorn, Slagle, and Helsel to dismiss the First Amended Complaint as though it were directed to the Second Amended Complaint.

Plaintiffs' Amended Complaint, Doc. 78, alleged in Count IV that the defendants were employees of Advanced Correctional Health Care (ACH) and their job was to provide medical services to prisoners at the Buchanan County Jail. Justin Stufflebean was incarcerated there for four days and during that time, it is alleged that the defendants were deliberately indifferent to Stufflebean's known medical need for daily medication to treat his chronic diseases. Helsel and Slagle contend that Plaintiffs did not adequately plead a deliberate indifference claim against them because there are insufficient facts alleged and therefore Count IV should be dismissed as to them.

Defendants did not raise the sufficiency of Plaintiffs' pleadings until trial was imminent, after discovery was completed, and after extensive briefing on numerous other issues including motions for summary judgment. Contemporaneously with the filing of their Motion for Summary Judgement, Slagle and Helsel filed this Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), claiming that Slagle and Helsel are entitled to qualified immunity and the case must be dismissed regardless of the evidence that was developed during the prelitigation phase of the case.

The Court has now denied summary judgment to Slagle and Helsel finding that there was a contested issue of fact as to whether these defendants knew Justin Stufflebean had a serious medical need and with that knowledge intentionally failed to reasonably address the need. The Court now turns to Slagle's and Helsel's Motion to Dismiss Based on Qualified Immunity.[3]

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[3] The Court assumes here, as it did in its Summary Judgment Order for the Corizon defendants (Doc. 633, p. 16), that private

II. Applicable Law

Rule 8 of the Federal Rules of Civil Procedure requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," which places defendants on "fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007). Rule 8 does not require "detailed factual allegations," but it "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id*. at 555 (citations omitted).

In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Supreme Court found that, absent a plausible constitutional claim, a public official entitled to qualified immunity should not be subjected to discovery. The Supreme Court recognized that "in [the] pleading context, . . . we are impelled to give real content to the concept of qualified immunity for high-level officials who must be neither deterred nor detracted from the vigorous performance of their duties. *Id.* at 686.

However, "*Twombly* and *Iqbal* did not abrogate the notice pleading standard of Rule 8(a)(2)." *Hamilton v. Palm*, 621 F.3d 816, 817 (8th Cir. 2010). A claim is sufficiently plausible when it sets forth "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Gomez v. Wells Fargo Bank, N.A.*, 676 F.3d 655, 660 (8th Cir. 2012) (quoting *Ashcroft*, 556 U.S. at 678).

Public officials "are protected from § 1983 suits by the affirmative defense of qualified immunity." *Water*

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employees of a business that contracts with a governmental entity to provide medical services are entitled to assert qualified immunity as a defense.

v. Madson, 921 F.3d 725, 734 (8th Cir. 2019) (internal citations omitted). Qualified immunity shields public officials from liability for civil damages if "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). There are two factors a court must consider in analyzing the issue of qualified immunity pursuant to § 1983: (1) whether the facts alleged show that the public official's conduct violated a constitutional right; and (2) whether the constitutional right was clearly established at the time of the alleged misconduct. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). "Qualified immunity is appropriate only if no reasonable factfinder could answer yes to both of these questions." *Hess v. Ables*, 714 F.3d 1048, 1051 (8th Cir. 2013) (quoting *Nelson v. Corr. Med. Servs.*, 583 F.3d 522, 528 (8th Cir. 2009)).

At the dismissal stage, defendants "must show that they are entitled to qualified immunity on the face of the complaint." *Dadd v. Anoka Cty.*, 827 F.3d 749, 754. (8th Cir. 2016) (internal quotation marks omitted) (quoting *Bradford v. Huckabee*, 394 F.3d 1012, 1015 (8th Cir. 2005)). Courts addressing qualified immunity in a motion to dismiss "must consider 'whether the plaintiff has stated a plausible claim for violation of a constitutional or statutory right and whether the right was clearly established at the time of the alleged infraction.'" *Id.* at 754–55 (quoting *Hager v. Ark. Dep't of Health*, 735 F.3d 1009, 1013 (8th Cir. 2013)). "On the merits, to defeat a qualified immunity defense, plaintiff has the burden of proving that defendant's conduct violated a clearly established constitutional right," but at the dismissal stage "the issue is whether plaintiff 'pleads factual content that allows the court to draw the reasonable inference that the defend-

ant is liable for the misconduct alleged.'" *Stanley v. Finnegan*, 899 F.3d 623, 626 n.2 (8th Cir. 2018) (quoting *Iqbal*, 556 U.S. at 678) (citing *Hess v. Ables*, 714 F.3d 1048, 1051 (8th Cir. 2013)).

To state a claim for deliberate indifference, a plaintiff must show that he was suffering from an objectively serious medical need, and that prison officials knew of the need but deliberately disregarded it. *See Saylor v. Nebraska*, 812 F.3d 637, 637–44 (8th Cir. 2016). An objectively serious medical need is "one that has been diagnosed by a physician as requiring treatment, or one that is so obvious that even a layperson would easily recognize the necessity for a doctor's attention." *Camberos v. Branstad*, 73 F.3d 174, 176 (8th Cir. 1995) (quoting *Johnson v. Busby*, 953 F.2d 349, 351 (8th Cir. 1991)).

Qualified immunity is an affirmative defense that must be pled by the defendant. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). Failure to plead qualified immunity as an affirmative defense results in waiver. *Dollar v. Smithway Motor Xpress, Inc.*, 710 F.3d 798, 807–8 (8th Cir. 2013).

The law-of-the-case doctrine "posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *United States v. Carter*, 490 F.3d 641, 644 (8th Cir. 2007) (quoting *Arizona v. California*, 460 U.S. 605, 618 (1983)).

In this case, the sufficiency of Plaintiffs' complaint regarding deliberate indifference was previously addressed. Judge Hays concluded that "the individual defendants' failure to inquire further into decedent's medical condition and/or failure to provide the necessary care may be sufficient for an Eighth Amendment

violation." Doc. 60, at 9 (citing *Sanchez v. Taggart*, 144 F.3d 1154, 1156 (8th Cir. 1998) (finding that the failure of a nurse who had been told of an inmate's medical restrictions to make further inquiries into the inmate's medical condition was sufficient to survive summary judgment)); *see also Johnson-El v. Schoemehl*, 878 F.2d 1043, 1055 (8th Cir. 1989) (holding that "[d]elay in the provision of treatment or in providing examinations can violate inmate's rights when the inmates' ailments are medically serious or painful in nature").

III. Analysis

As an initial matter, Defendants' motion is not the first motion to dismiss filed in this case. Slagle previously sought to dismiss the first complaint filed by Plaintiffs, Docs. 12, 54, and Judge Hays denied the motions to dismiss. Docs. 58, 65. The current complaint reflects technical changes and additions, but is substantially the same as the complaint that Judge Hays found sufficient. The law of the case requires the Court to deny Slagle's Motion to Dismiss.

In addition, the Court finds that Plaintiffs have put both Slagle and Helsel on notice of a plausible constitutional violation asserted against them. This is amply illustrated by the fact that these defendants filed an answer addressing Count IV, conducted extensive discovery on it, challenged Plaintiffs' experts' testimony, and filed a Motion for Summary Judgment.

While Plaintiffs' complaint does not plead specific details of Defendants' deliberate indifference, they did plead that Jason Stufflebean was placed in the care of the defendants, that they failed to properly medicate him, and that, as a result, he died. Plaintiffs identified the time period when Defendants' deliberate

indifference occurred and what medicine was required to be administered and was not administered. Plaintiffs also identified Slagle and Helsel as nurses who were required to provide care to Stufflebean during his incarceration and Helsel's obligation to supervise the nurses providing care to Stufflebean at the Buchanan County Jail. The complaint described Stufflebean's disease and why the administration of his medicine was critical. It also described a Medical Intake Form that was available to the defendants providing care to Stufflebean that showed his diseases, medications and symptoms. As Judge Hays stated in an earlier order in this case, "[o]ne may infer that defendants . . . were aware of decedent's diagnoses and, as medical professionals, were aware of the seriousness of his condition and that any failure to properly manage his condition could be fatal." Doc. 60 at 8–9. While Judge Hays did not address Helsel in her order, Judge Hays' analysis is equally applicable to Helsel. Plaintiffs' allegations are far from mere conclusions and labels and clearly put Defendants on notice of a plausible deliberate indifference claim.

Defendants' also seem to argue that Plaintiffs were required to plead facts to show that the constitutional right alleged was clearly established at the time of the violation. This is inherently a legal issue based on the facts that form the basis of a claim for deliberate indifference. As discussed above, Plaintiffs have pleaded a plausible claim for deliberate indifference to Stufflebean's known medical need.

IV. Conclusion

For the foregoing reasons, the Court denies Slagle and Helsel's Motion to Dismiss, Doc. 372, on its

merits.[4] The Court also denies Dr. Van Voorn's Motion to Dismiss as moot.

/s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: December 23, 2019
Jefferson City, Missouri

[4] Plaintiffs also argue that defendants waived the defense of qualified immunity because they did not assert it in any pleading prior to filing the motion to dismiss. The Court need not address the issue because it finds that Plaintiffs' earlier complaint against these defendants (Doc. 78), as well as the Second Amended Complaint (Doc. 414), put the defendants on notice that a plausible deliberate indifference claim was being asserted against them.