No. _____

IN THE

Supreme Court of the United States

DIANA SNOW, RN AND CHRISTINA WATSON, LPN,

Petitioners,

v.

DENNIS WIERTELLA, AS FATHER AND ADMINISTRATOR OF THE ESTATE OF RANDY WIERTELLA, DECEASED

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Constitution protects incarcerated persons from deliberate indifference to their serious medical needs, but this Court has made clear that liability arises only when a defendant actually knows of and disregards a substantial risk of serious harm. *Farmer v. Brennan*, 511 U.S. 825 (1994). As this Court recognized in *Farmer*, "prison officials who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted," and courts must consider the "difficult problems of prison administration" and the need for deference to officials making medical and custodial judgments in that environment. Consistent with those principles, most circuits require proof that jail medical staff had subjective awareness of an imminent risk—and that their response was objectively unreasonable—before denying qualified immunity.

In this case, an inmate was booked into the Lake County, Ohio jail and reported taking several medications, though he identified only one by name (Metformin, a medication used to treat diabetes). Petitioner Nurse Watson reviewed the intake form, ordered Metformin, arranged a diabetic diet, and scheduled a follow-up appointment for the following week to address the inmate's other concerns. Petitioner Nurse Snow never interacted with or even knew of the inmate, yet the courts below inferred—without evidentiary support and contrary to her sworn testimony—that she must have reviewed his screening form. Days later, the inmate died from issues allegedly related to hypertension. The Court of Appeals for the Sixth Circuit nevertheless held that both nurses could be personally liable under § 1983 for not acting on information that merely suggested the inmate would need additional medication at some point in the future, and further concluded that their actions—ordering medication,

providing dietary accommodations, and scheduling follow-up care—were themselves constitutionally unreasonable.

In so holding, the court departed from *Farmer's* subjective and reasonableness standards and applied clearly established law at too high a level of generality, contrary to this Court's decisions in *Kisela v. Hughes*, 584 U.S. 100 (2018), and *Mullenix v. Luna*, 577 U.S. 7 (2015).

1. Did the Sixth Circuit depart from this Court's decision in *Farmer v. Brennan*, 511 U.S. 825 (1994) in denying qualified immunity to Petitioners, despite the lack of evidence that Petitioners had actual knowledge of the substantial risk of serious harm, because they failed to act on information suggesting the need for medication at some point in the future?

2. Did the Sixth Circuit depart from this Court's decision in *Farmer v. Brennan*, 511 U.S. 825 (1994) in denying qualified immunity to Petitioners, by finding that a medical response that creates a brief deprivation of a commonplace medication unnecessary to staving off any apparently imminent patient risk is unreasonable and runs afoul of the Constitution?

3. Did the Sixth Circuit depart from this Court's decisions in *Taylor v. Barkes*, 575 U.S. 822 (2018) and *Mullenix v. Luna*, 577 U.S. 7 (2015) and numerous other cases by considering clearly established law at too high a level of generality rather than giving particularized consideration to the facts and circumstances of this case?

RELATED CASES

This case arises from and is related to the following proceedings:

- *Wiertella v. Lake County, et al.*, No. 1:20-cv-02739-BMB, U.S. District Court for the Northern District of Ohio. Judgment entered Mar. 26, 2024.

- *Wiertella v. Lake County, et al.,* No. 24-3311, U.S. Court of Appeals for the Sixth Circuit. Judgment entered Jun. 24, 2025; rehearing en banc denied Jul. 31, 2025.

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

Treatises

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit that gave rise to this petition is published at *Wiertella v. Lake County, et al.*, 141 F.4th 775 (6th Cir. 2025) and is reproduced in the Appendix filed herewith ("App.") at App. 1a. The opinion of the District Court, denying Petitioners the benefit of qualified immunity upon their motion for summary judgment, is reproduced at App. 35b, and is unreported but available at *Wiertella v. Lake County,* No. 1:20-cv-02739-BMB, 2024 LEXIS 53247 (ND Ohio). The Court of Appeals for the Sixth Circuit's order denying Petitioners' motion for rehearing en banc is reproduced at App. 85c, and is unreported but available at *Wiertella v. Lake County,* 2025 U.S. App. LEXIS 19395 (6th Cir. 2025).

BASIS FOR JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on June 24, 2025. App. 1a. The Sixth Circuit denied a petition for rehearing on July 31, 2025. App. 1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

42 U.S.C. § 1983 states in relevant part

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, 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, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The Fourteenth Amendment to the United States Constitution provides, in relevant part,

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
> U.S. Const. amend. XIV, § 1.

The Eighth Amendment to the United States Constitution provides "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII, § 1.

STATEMENT OF THE CASE

I. RELEVANT FACTS

A. Wiertella's Medical Screening at Booking

In the early morning hours of Sunday, December 2, 2018, Randy Wiertella was booked into the Lake County

Jail following his arrest for possession of cocaine and improper transport of a firearm.

During intake, a corrections officer recorded observations and completed a medical screening form while questioning Wiertella about his medical history. The officer noted no signs of pain, bleeding, trauma, or illness requiring physician care. Wiertella reported taking medications for diabetes, heart disease, hypertension, and psychiatric conditions. He denied using insulin but confirmed following a diabetic diet. He also indicated that he was prescribed medications requiring continuous administration, though he identified only one by name (Metformin, a drug used to treat diabetes), and provided no information about dosages or prescribing physicians. The officer marked "No" in response to questions about the last time Wiertella had seen a doctor and the doctor's contact information. Wiertella further noted that he had sleep apnea and "no immune/MRSA." Both he and the booking officer signed the completed form, which was placed in the medical file for nursing review.

B. Nurse Watson Reviews the Medical Screening Form on December 2, 2018 and Responds to Wiertella's First Inmate Request Form on December 3, 2018.

At the Lake County Jail, nursing staff retrieve and review completed medical screening forms throughout each shift. Petitioner Christina Watson, LPN (incorrectly identified in the proceedings below as "RN") reviewed and signed Wiertella's screening form on December 2, 2018.

Her chart entry the next day, December 3, reflects: "Inmate states he is diabetic and takes Metformin 1000 mg BID." She ordered a diabetic diet with evening blood sugar checks and prescribed Metformin 1000 mg twice daily. That same day, the dispensary received an inmate request form from Wiertella asking for "diabetic, and other meds." Nurse Watson responded, "Diabetic diet and Metformin ordered," and scheduled a follow-up ("sick call")

appointment for the following week to review his blood pressure, discuss medications, and obtain a medical release form.

This represented the full extent of Nurse Watson's involvement with Wiertella. She never examined him, was not informed of any urgent medical need, and had no reason to suspect an imminent hypertensive crisis.

C. Wiertella Submits a Second Request Form on December 3, 2018 and a Third and Final Request Form on December 5, 2018.

Because Wiertella's pharmacy would not verify prescriptions without a signed release, Wiertella submitted a second request form on December 3 seeking "Prilosec 20 m, Saralitrlean 200 m, Lasics, Efonefaron, Simicoton"—described as "blood presher meds."

On December 5, 2018, Wiertella was arraigned, convicted, and sentenced to 27 days in jail. That same day, he filed a third and final request listing several medications—Metformin, Prilosec, Saralitolen, Eforneferon, Lasices, and Semecota—again describing some as "blood presher and water pills." He added, "Call Wasau VA to get full list of meds or my meds ship."

These requests were routed through the jail's administrative channels, but it was undisputed that Nurse Watson never received them, and no evidence identified who, if anyone, did.

D. Wiertella Is Found Dead of Natural Causes in the Early Hours of December 10, 2018.

On the evening of December 9, 2018, Wiertella appeared in good spirits. He played cards with other inmates and told friends by phone, "I got everything I need; everything is going good." He appeared at headcount at 11:00 p.m.

At approximately 2:00 a.m. on December 10, an officer saw Wiertella lying in bed. Twenty minutes later, a cellmate heard him use the toilet. At 2:43 a.m., another officer found him motionless on the floor of his cell. Despite immediate resuscitation efforts, Wiertella was pronounced dead at 3:12 a.m.

The County Medical Examiner determined that "atherosclerotic and hypertensive cardiovascular disease" caused his death. Respondent's expert later opined that the hypertensive component was the principal cause and that, "[b]ut for the failure to provide [Mr. Wiertella's] medications and a CPAP machine, … he would not have died how and when he did."

E. Nurse Snow's lack of involvement

Petitioner Diane Snow, RN never interacted with Wiertella. She did not evaluate him clinically, she was not asked for input about his medical condition, she never reviewed his chart, and she did not even know that he was an inmate. She directly testified that she never saw Wiertella's booking form and that she does not review all inmate screening forms. There is no evidence suggesting that Nurse Snow did see the booking form or any of Wiertella's requests for medication.

II. Respondent files suit

Respondent filed this case in the U.S. District Court of the Northern District of Ohio against Petitioners, Lake County, Ohio, the Lake County Sheriff, the Lake County Jail physician, and several other employees of the Lake County Sheriff's Office, asserting state law claims for negligence and wrongful death alongside claims brought under 42 U.S.C. §1983 for alleged violations of Wiertella's Fourteenth and Eighth Amendment rights. Thus, the District Court had original jurisdiction over the claims

under the provisions of 28 U.S.C. § 1343(a)(3) and/or 28 U.S.C. § 1331.

As to Nurses Snow and Watson, Respondent contended that they were deliberately indifferent to Wiertella's serious medical need because they failed to provide him with prescription hypertension medication while he was detained and later incarcerated by the Lake County, Ohio jail between December 2, 2018 and December 10, 2018. Nurses Snow and Watson raised qualified immunity as an affirmative defense and moved for summary judgment, in part based on qualified immunity.

The district court issued its decision on summary judgment on March 26, 2024, dismissing all claims except for those asserted against Petitioners.

Denying Petitioners the benefit of qualified immunity, the district court determined that *Richmond v. Huq*, 885 F.3d 928 (6th Cir. 2018) placed the relevant constitutional question beyond debate at the time of Wiertella's detention in December 2018 because it provided "notice that when a medical employee at a jail becomes aware that an inmate is on medication for a serious medical condition, a defendant violates the constitution if she fails to promptly take steps to ensure that the inmate's medication is obtained."

The district court's conclusion was unfounded for at least two reasons. First, neither Nurse Snow nor Nurse Watson was similarly-situated to the defendants in *Richmond*. Second, no reasonable jail official would have viewed *Richmond* as fair and clear warning that an inmate's request for prescriptions requires immediate action.

III. Petitioners Appeal

Petitioners timely appealed the district court's order denying them the benefit of qualified immunity under 28 U.S.C. § 1291 on April 17, 2024. Although it was an interlocutory appeal, "a district court's denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an appealable 'final decision' within the meaning of 28 U.S.C. § 1291 notwithstanding the absence of a final judgment." *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985).

On appeal, Petitioners argued that:

A. The district court erred in finding *Richmond* clearly established a right to immediate action in response to a request for prescription medication; and

B. Neither nurse acted with deliberate indifference, as neither had subjective awareness of a substantial risk of serious harm nor responded unreasonably.

On June 24, 2025, the court of appeals affirmed. The majority concluded that Nurse Watson knew Wiertella had been booked without essential medications and, despite recognizing their importance, failed to ensure he received them promptly—conduct the court deemed potentially unreasonable under *Farmer v. Brennan*, 511 U.S. 825 (1994).

As to Nurse Snow, the panel emphasized her supervisory duties and inferred, viewing the evidence in the light most favorable to the estate, that she could have known of the missing medications. Relying on *Richmond*, the court held that prior precedent gave Petitioners "fair and clear warning" that failure to secure timely medication could violate clearly established constitutional rights.

Petitioners moved the court of appeals for rehearing en banc, which the court denied on July 31, 2025. In so doing, the Sixth Circuit effectively adopted a rule that even

a brief deprivation of a commonplace medication, unnecessary to preventing any apparent, imminent medical risk, can constitute a constitutional violation.

REASONS THAT CERTIORARI IS WARRANTED

This Court has repeatedly recognized the importance of qualified immunity in assuring that those tasked with enforcing and upholding the law may perform their duty to protect public safety, without fear of entanglement in litigation and potential liability. It has long established that to overcome qualified immunity, a plaintiff must provide existing precedent showing "beyond debate" that each individual defendant violated the law. *Kisela v. Hughes*, 584 U.S. 100, 104 (2018). This Court has also recognized the deference owed to officials confronting "the difficult problems of prison administration" and that liability does not attach where officials reasonably respond to a known medical risk, even if harm occurs. *Farmer v. Brennan*, 511 U.S. 825, 844–45 (1994).

Though the facts surrounding this case are no doubt tragic, the Sixth Circuit has far digressed from these principles. As explained by Judge Readler in his dissenting opinion, "all too often, we define 'clearly established' rights in such broad fashion that notions of predictability become little more than an afterthought. See *Colson v. City of Alcoa,* No. 20-6084, 2021 U.S. App. LEXIS 26532, 2021 WL 3913040, at *8, *10 (6th Cir. Sept. 1, 2021) (Readler, J., dissenting)." Moreover, it has now created dangerous precedent that would allow inmates to bring suit just because they experienced some delay in receiving routine medications, allowing them the benefit of hindsight and allowing them, and the judiciary, to second-guess medical professionals who usually must made their treatment decisions with limited information and resources.

Review is necessary to ensure compliance with the standards set forth by this Court in *Farmer* and *Kiesela* and its progeny.

The competent, credible evidence in this case reflects that Nurse Christina Watson was aware of only the following information about Wiertella:

- The booking officer observed no obvious pain, bleeding or other symptoms that suggested Wiertella's need for emergency medical services;

- The booking officer observed no visible signs of trauma or illness;

- Wiertella suffered from sleep apnea and prior potential issues with his immune system and MRSA;

- Wiertella followed a diabetic diet, but did not take insulin;

- Wiertella reported that he was taking medications for diabetes, heart disease, high blood pressure and psychiatric disorder(s);

- Wiertella also reported that he was on medication that should be continuously administered or available, but did not specify which medications at booking;

- Wiertella reported specifically to her that he is diabetic and takes Metformin 1000 mg; and

- Wiertella requested "diabetic and other meds" from the dispensary.

Upon learning this information, Nurse Watson ordered Metformin for Wiertella, and scheduled him for a follow-up sick call, at which time blood pressure would be discussed. She observed no indication that Wiertella suffered any imminent risk.

Nurse Diane Snow never interacted with Wiertella. She did not evaluate him clinically, she was not asked for input about his medical condition, she never reviewed his chart and she did not even know that he was an inmate. She testified that she never reviewed Wiertella's booking form, and that she does not review booking forms for all inmates, and the record contains no evidence suggesting that she did.

Nevertheless, Nurse Watson and Nurse Snow – and countless other medical professionals working within jails located in the Sixth Circuit – face liability for constitutional violations despite the fact that they were not subjectively aware of any risk to Wiertella, that they responded reasonably with the information they possessed at the time, and that there was no clearly established precedent putting them on notice that their acts or omissions violated the Constitution.

Additionally, the Sixth Circuit's decision cannot be reconciled with case law in other Circuits which recognize that liability may be imposed only when the deprivation of blood pressure medication is repeated, prolonged, intentional, or accompanied by overt signs of an impending and serious hypertensive crisis.

This Court has made it clear that qualified immunity "protects all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986); *Messerschmidt v. Millender,* 565 U.S. 535, 546 (2012); *Ashcroft v. al-Kidd,* 563 U.S. 731, 743 (2011). a plaintiff must provide existing precedent showing "beyond

debate" that each individual defendant violated the law. *Kisela v. Hughes*, 584 U.S. 100, 104 (2018).

Here, the panel majority failed to cite any case that remotely meets that rigorous standard. The facts of the only case cited, *Richmond v. Huq*, 885 F.3d 928 (6th Cir. 2018), are wholly different than those of the instant case, as discussed in detail below.

Petitioners were entitled to summary judgment on the Eighth Amendment claims and review is necessary to secure adherence to the decisions of this Court and to resolve the circuit split in order to create clear standards for medical professionals to follow in jail settings.

I. REVIEW IS NECESSARY TO CLARIFY AND COMPEL COMPLIANCE WITH THE *FARMER V. BRENNAN* STANDARD REQUIRING PROOF THAT NURSES WATSON AND SNOW KNEW OF AND DISREGARDED AN EXCESSIVE RISK TO WIERTELLA'S HEALTH AND SAFETY, THAT THEY WERE AWARE OF THE FACTS FROM WHICH THE INFERENCE COULD BE DRAWN THAT A SUBSTANTIAL RISK OF HARM EXISTS, AND THAT THEY DREW THE INFERENCE

In December 2018, in the Sixth Circuit, all deliberate indifference claims were evaluated under the test articulated in *Farmer v. Brennan,* 511 U.S. 825 (1994). It did not matter whether the claim was asserted by a pre-trial detainee under the Fourteenth Amendment or by a convicted prisoner asserting a claim under the Eighth Amendment. *Helphenstine v. Lewis Cty., Kentucky*, 60 F.4th 305, 315 (6th Cir. 2023) (quoting *Brawner v. Scott Cty.*, 14 F.4th 585, 596 (6th Cir. 2021)) ("Until recently, [the Sixth Circuit] analyzed both pretrial detainees' and prisoners' claims of deliberate indifference 'under the same rubric.'")

In *Farmer,* this Court held that deliberate indifference claims are comprised of objective and subjective components. First, the plaintiff must show that

the inmate had an objectively serious medical need. *Id.* at 834. Second, the plaintiff must show that the defendant "**subjectively perceived facts from which to infer substantial risk to the prisoner, that he did in fact draw the inference, and that he then disregarded that risk**." Id. at 837 (bold added). "Emphasizing the subjective nature of the inquiry, this Court cautioned that 'an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment.'" *Id.* at 838).

The requirement that the official have subjectively perceived a risk of harm and then disregarded it is meant to prevent the constitutionalization of medical malpractice claims; thus, a plaintiff alleging deliberate indifference must show more than negligence. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976) ("[A] complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment."); *Farmer*, 511 U.S. at 835 (noting that deliberate indifference "describes a state of mind more blameworthy than negligence").

Under *Farmer*, Wiertella was required to produce evidence that Nurses Snow and Watson subjectively perceived and disregarded a "substantial risk" to Wiertella. Wiertella could not meet that standard.

Wiertella was asymptomatic at booking and at all times during his detention. His sudden death on December 10, 2018 was not presaged by a single medical complaint. No medical expert opined that Wiertella's death was foreseeable. More importantly, there was no medical testimony offered to prove that Wiertella risked serious medical consequences if he did not receive hypertension medication within eight (8) days of detention.

Whether Nurse Watson could or should have done more on December 2-3, 2018 to identify Wiertella's other "essential" prescription needs is not the point. The point is that she did not perceive a substantial risk of harm to Wiertella if he did not receive hypertension medications before his December 10, 2018 sick call. And, she did schedule him for sick call on December 10, 2018, so she was not deliberately indifferent to a substantial risk of serious harm.

The appellate court's opinion criticized Nurse Watson because she knew that Wiertella was on medication that needed to be continuously administered, yet was booked without all of his medications. But knowing Wiertella needed some medication to be continuously administered does not show that Watson thought any medications besides Metformin fit in this category. The screening form does not state which medications were needed continuously. And according to Watson, she interpreted this entry to refer only to Metformin. None of this indicates that Watson "must have known" Wiertella might suffer harm within the week if other medications were not administered immediately. *Farmer,* 511 U.S. at 842. Moreover, to the extent that Nurse Watson knew that Wiertella might suffer serious harm in the future if he did not receive his blood pressure medications, she responded reasonably by scheduling him for a sick call.

Nurse Snow did not appreciate a substantial risk of harm to Wiertella either. The undisputed evidence shows that Nurse Snow had no knowledge of or involvement with Wiertella at any time during his detention. She did not even know that he was an inmate, much less that he had a serious medical need. The lower courts only inferred that she had reviewed Wiertella's booking form because she was in a supervisory role.

Again, ever since *Farmer v. Brennan,* 511 U.S. 825 (1994), this Court has required a plaintiff to prove that a

defendant "subjectively perceived facts from which to infer substantial risk to the prisoner, that he did in fact draw the inference, and that he then disregarded that risk" before the defendant can be liable under the Eighth Amendment. The Court of Appeals of the Sixth Circuit has disregarded this standard.

II. THE SIXTH CIRCUIT'S DECISION CONFLICTS WITH THE DECISIONS OF OTHER CIRCUITS THAT RECOGNIZE THAT A BRIEF DEPRIVATION OF A COMMONPLACE MEDICATION UNNECESSARY TO STAVING OFF ANY APPARENTLY IMMINENT RISK DOES NOT VIOLATE THE CONSTITUTION.

The Court of Appeals for the Sixth Circuit has essentially approved a rule allowing an inmate to sue for Constitutional violations based on any brief deprivation of medication if the deprivation could, in theory, result in some ill effect to the inmate. It does not matter if the inmate showed no sign of imminent distress or sickness. This rule directly contradicts the standing rules established by other circuit courts:

- *Lindwurm v. Wexford Health Sources, Inc.*, 84 F. App'x 46, 48 (10th Cir. 2003) (order) (no liability for "isolated and brief" "lapses in [providing blood pressure] medication");

- *Pandey v. Freedman*, 66 F.3d 306 (5th Cir. 1995) (unpublished table decision) (per curiam) (no liability for providing wrong blood pressure medication four days late);

- *Duncan v. Corr. Med. Servs.*, 451 F. App'x 901, 905 (11th Cir. 2012) (per curiam) (noting that "an isolated instance where [the inmate] had not received proper [blood pressure] medication and then suffered a medical emergency" would "clearly" support "no showing of deliberate indifference");

- *Fourte v. Faulkner County*, *746 F.3d 384, 386-87* (8th Cir. 2014) (in which an inmate "submitted a medical form complaining of high blood pressure and asking jail staff to call two family members who could get his 'meds,'" yet did not receive any treatment until his blood pressure reached the "emergency level" of "180/121" 27 days later. Even then, the jail nurse who provided the emergency medication waited another week to schedule the inmate for an appointment—despite the fact he now also complained of vision loss and would eventually go blind—at which point he finally received a blood pressure prescription. In evaluating these treatment decisions, the Eighth Circuit Court of Appeals concluded that the providers at most "should have known they were committing malpractice," but were not deliberately indifferent.

This Court should intervene in this case to resolve the split and provide direction to those serving inmates in medical-related positions within jails.

III. THE COURT SHOULD GRANT REVIEW TO COMPEL COMPLIANCE WITH KISELA AND OTHER DECISIONS REQUIRING COURTS TO GRANT QUALIFIED IMMUNITY WHERE THE LAW IS NOT CLEARLY ESTABLISHED.

This Court has recognized that qualified immunity is important to order in society. *City and County of San Francisco v. Sheehan*, 575 U.S. 600, 611 n.3 (2015); *White v. Pauly*, 580 U.S. 73 (2017). It observed in *Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982) that the failure to apply qualified immunity inflicts "social costs," which "include the expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public office," as well as "the danger that fear of being sued will 'dampen the ardor of all but the most resolute, or the most irresponsible

[public officials], in the unflinching discharge of their duties.'"

Congress has also signaled the importance of qualified immunity by implicitly incorporating the common law defense into 42 U.S.C. § 1983. *Wyatt v. Cole*, 504 U.S. 158, 163-64 (1992); *Scott Keller, Qualified and Absolute Immunity at Common Law,* 73 Stan. L. Rev. 1337, 1342 & n.19, 1358 (2021). At common law, history suggests, that defense required "clear evidence of subjective improper purpose." *Keller, supra*, at 1377; cf. *Baxter v. Bracey,* 140 S. Ct. 1862, 1864 (2020) (Thomas, J., dissenting from the denial of certiorari) (advocating return to common law basis for qualified immunity).

A government employee is entitled to qualified immunity when her conduct "'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Mullenix v. Luna*, 577 U.S. 7, 11 (2015). While this Court's case law " 'do[es] not require a case directly on point'" for a right to be clearly established, "'existing precedent must have placed the statutory or constitutional question beyond debate.'" *Id.*

The same issues justify this Court's certiorari in this case. When qualified immunity is improperly denied, the costs outlined in *Harlow* fall disproportionately on those tasked with the important and difficult job of providing medical care with limited information and resources. As Judge Readler explained in his measured dissent:

> After unearthing a constitutional violation from a factual record that supports none, the majority opinion finds a clearly established right in precedent that supplies little more than debate. Employing such loose legal standards is problematic enough for defendants Christina Watson and Diane Snow. But it is especially worrisome when viewed across the medical profession. In 2019, ten million detainees

> (like Randy Wiertella) were housed in jails. Zeng & Minton, supra, at 41 As roughly one-fifth of those jails provide on-site medical treatment, id. at 43, jail-based medical personnel likely encounter about two million detainees annually. With each interaction giving rise to the risk of constitutional liability, it becomes all the more critical that judges articulate concrete standards for those medical professionals to follow. Nor may we impose liability when those clear markers have not been crossed. Today, we fall well short of honoring those settled obligations.

It is necessary for the Court to grant review because the Sixth Circuit's rejection of qualified immunity was improper, departed from the controlling decisions of this Court, and will have serious implications for those tasked with providing medical care in jails within the Sixth Circuit.

Richmond v. Huq, 885 F.3d 928 (6th Cir. 2018) did not provide fair and clear warning to Nurses Watson and Snow that their conduct violated the constitution.

At issue in *Richmond* were the Eighth Amendment claims of an inmate who, after lighting her own seat belt on fire when arrested and placed in a police cruiser, complained that she received constitutionally inadequate burn care and no psychiatric medications for three weeks. The Court reversed summary judgment for a doctor, a psychiatric social worker and two nurses, all of whom knew of Richmond's need for psychiatric medications and failed to take reasonable steps to ensure that the medication was acquired.

The first nurse (Fowler) examined Richmond on December 26, 2012 after he had been arraigned. Nurse Fowler noted Richmond's claim that she took Prozac and Xanax, that her last dose had been taken the day before, and that she was being treated by a specific provider. *Id.* at

942, 946. The court held that Nurse Fowler may have violated Richmond's constitutional rights because Nurse Fowler was aware that Richmond might needlessly suffer by going without her psychiatric medication, yet she failed to verify Richmond's prescriptions with an outside pharmacy or medical provider, which was "less than [her] training indicated was necessary." *Id.* at 946.

As for the second nurse (Hawk), the court found a question of fact as to whether she was aware of Richmond's prescription history and criticized that Nurse Fowler "had extensive interactions with Richmond between December 27, 2012 and January 4, 2013 and "never attempted to verify Richmond's claims [that he needed psychiatric prescriptions], [or] requested that another nurse attempt to do so." *Id.* at 946. The court also reversed summary judgment in favor of the psychiatric social worker because the social worker admitted that unmedicated inmates will experience symptoms of mental illness within 10-14 days and the social worker placed Richmond in outpatient mental health clinic that could not see her for 17 days.

Nurse Watson's conduct was nothing like the conduct of the *Richmond* defendants. On December 2, 2018, Nurse Watson reviewed Wiertella's completed screening form and knew that he had been booked without unspecified medications, at least some of which were required to be continuously administered. On December 3, 2018, she ordered a diabetic diet, evening blood sugar checks and twice daily metformin. That same day, she received Wiertella's first inmate request form asking for "diabetic, and other meds." Nurse Watson replied: "Diabetic diet and metformin ordered." At some point, Nurse Watson also scheduled Wiertella for a nurse sick call on December 10, 2018, the purpose of which was described as "BP check/sign [VA] release." She had no involvement with Wiertella or his medical care after December 3, 2018.

These facts differ from those in *Richmond* in at least four material ways. First, Nurse Fowler saw Richmond after his arraignment, whereas Nurse Watson reviewed Wiertella's chart before he was arraigned. That matters because bond is set at arraignment. If a detainee posts bond, he is released and he has no need for the jail to provide prescription medication. From a practical perspective, it is costly and wasteful for the jail to order prescription medications that may not be needed.

Second, unlike the evidence elicited in *Richmond*, the practice of the Lake County Jail is to ask new inmates to have their prescriptions brought in or sent to the jail by a friend or family member. Jail medical staff "usually will give that a couple days" and if no medication is received, the jail will either contact the inmate's pharmacy or physician or schedule the inmate for sick call. Unlike Nurse Fowler, Nurse Watson did schedule Wiertella for sick call on December 10, 2018, which was a reasonable response under the circumstances.

Third, unlike Nurse Hawk who had "extensive interactions" with Richmond over eight (8) days, Nurse Watson had no involvement with Wiertella after December 3, 2018.

Fourth, and in contrast to *Richmond*, there is no evidence to suggest that Nurse Watson or any defendant knew that Wiertella was at substantial risk of serious harm if he did not receive prescription hypertension medication by December 10, 2018. In *Richmond*, a psychiatric social worker admitted that Richmond would experience symptoms of psychiatric illness (depression, mood oscillations, racing thoughts, restlessness and pressured speech) within 10 days to 2 weeks after stopping medication, but she admittedly did nothing to obtain medication for Richmond before the symptoms would appear. Here, there was no medical evidence from which to conclude that Nurse Watson (or any defendant) understood

that a 1-week delay in obtaining Wiertella's prescription hypertension medication put him at substantial risk of serious harm.

Nurse Snow's actions were not comparable to any *Richmond* defendant because she never interacted with Wiertella, directly or indirectly. She never visited him or evaluated him from a clinical perspective. She did not review his chart or medical file. She was never asked for input or advice on his medical needs or care. She did not even know that Wiertella was an inmate at the jail. She was on vacation when he died. Nevertheless, the district court concluded, and the appellate court agreed, with no evidentiary justification, that a jury could find that Nurse Snow reviewed Wiertella's medical screening form, making her subjectively aware that Wiertella was "booked without medications that needed to be continuously administered to treat his serious medical needs" and required her to act.

In short, there are no similarities between Nurses Watson and Snow and the defendants in *Richmond*. Yet, the lower courts held that *Richmond* put Nurses Watson and Snow on notice that their actions violated the Constitution. What is worse, however, is the fact that the district court concluded in its opinion that "*Richmond* provided notice that when a medical employee at a jail becomes aware than an inmate is on medication for a serious medical condition, a defendant violates the constitution if she fails to promptly take steps to ensure that the inmate's medication is obtained." The Court of Appeals for the Sixth Circuit affirmed this holding.

That was not *Richmond*'s express holding; rather, that is how the district court interpreted *Richmond* in light of the facts presented and the Sixth Circuit's decision to reverse qualified immunity granted to specific defendants. This is an important distinction because "[t]he relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable

officer that his conduct was unlawful in the situation he confronted." *Saucier v. Katz,* 533 U.S. 194, 202 (2001). No reasonable jail officer would have understood Richmond to have established the broad rule intuited by the district court.

Indeed, the lower courts' interpretation of *Richmond* is so broad that it precludes even negligent defendants from establishing qualified immunity in a prescription case. That is an anomalous result. Qualified immunity exists to protect otherwise liable defendants from suit (i.e., those who are deliberately indifferent to an inmate's serious medical need). The doctrine is meaningless if only blameless defendants qualify. As articulated by Judge Readler in his dissent,

> the ramifications will be widespread. Consider treatment involving blood pressure medication alone. With one-quarter of adults in the United States taking blood pressure medication, approximately 500,000 such patients are seen by local jail medical staff each year. See Fryar et al., supra, at 1, 3; Zeng & Minton, supra, at 41, 43. Now, in our circuit at least, each of those jailed patients has at his disposal a § 1983 claim if the jail delays in supplying his medication. Bad facts make bad law, indeed.

For this reason alone, this Court's intervention is necessary.

CONCLUSION

For the foregoing reasons, this Court should grant the petition.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED JUNE 24, 2025

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 24-3311

DENNIS WIERTELLA, AS FATHER AND ADMINISTRATOR OF THE ESTATE OF RANDY WIERTELLA, DECEASED,

Plaintiff-Appellee,

v.

LAKE COUNTY, OHIO,

Defendant,

DIANA SNOW, RN AND CHRISTINA WATSON, RN IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES,

Defendants-Appellants

Judges: BEFORE: RONALD LEE GILMAN, CHAD A. READLER, and RACHEL S. BLOOMEKATZ, Circuit Judges.

RONALD LEE GILMAN, Circuit Judge. Randy Wiertella died in the Lake County Adult Detention Facility (the Jail) on the morning of December 10, 2018. Dennis Wiertella, as the Administrator of the Estate of Randy Wiertella (the Estate), filed suit on behalf of the Estate. The Estate brought several claims, including a 42 U.S.C. § 1983 claim that Wiertella's constitutional rights under the Eighth

and Fourteenth Amendments were violated by Jail staff Diane Snow, RN, and Christina Watson, LPN.

Snow and Watson filed a motion for summary judgment, seeking dismissal on the basis of qualified immunity. The district court denied their motion. For the reasons set forth below, we **AFFIRM** the decision of the district court and **REMAND** the case for further proceedings on the Estate's § 1983 claim.

I. BACKGROUND

Wiertella was charged in Willoughby Municipal Court with the illegal possession of drugs and the improper transport of a firearm. He was sentenced to 27 days in the Jail. Wiertella was booked at the Jail on December 2, 2018 and underwent a medical screening as part of the booking process. He entered the Jail without any of his medications, but a corrections officer recorded that Wiertella was taking medications for heart disease, diabetes, high blood pressure, and a psychiatric disorder. These were "essential medications" under the Jail's policies and procedures. The medical-screening form states that Wiertella's medications needed to be continuously administered. Snow was the medical coordinator responsible for making sure that all inmate medical screens were reviewed.

Watson reviewed and signed Wiertella's medical-screening form on December 2, 2018. She was aware that Wiertella was booked without any medications and that Wiertella had been taking "essential medications" that needed to be continuously administered. She initially testified that she was "sure" that she would have ordered diabetes medication and a diabetic diet immediately after reviewing the medical-screening form. But she did not in fact order any medications on that date.

On December 3, Wiertella sent in an inmate-request form that asked for "diabetic, and other meds." Watson received this request. She wrote down that "Inmate states he

is diabetic and takes Metformin 1000 mg BID." Watson testified that she had likely asked a booking officer to ask Wiertella how many milligrams of Metformin he took and how often. She said that Wiertella "had to have probably stated that he was on a thousand milligrams twice a day in order for me to order it such as that." The Jail doctor then signed off on Watson's order for diabetes medication and a diabetic diet.

Later that same day, Wiertella submitted another inmate-request form for five other medications, including blood-pressure medication. Wiertella made yet another request for blood-pressure medications two days after that. He also reminded the medical staff to call the Veterans Administration (VA) pharmacy in Wasau, Wisconsin to get his medication records.

Watson testified that she did not recall receiving any inmate-request forms from Wiertella. No one contacted the VA pharmacy or ordered any blood-pressure medication. Watson also testified that she prioritized Wiertella's "most important" medical condition, which was "him being a diabetic," and did not treat his other medical conditions. She said that this is what she was trained to do by Snow. But Watson conceded that there was nothing that prevented her from addressing Wiertella's other medical conditions. She testified that the Jail, however, preferred for inmates to get a friend or family member to bring in their medications because medications could be expensive for the Jail to order through the pharmacy.

Wiertella was eventually scheduled to have a sick call on December 10, 2018. But the record does not indicate when Wiertella was added to the sick-call log or which nurse added him. The sick-call log states that Wiertella needed to be seen for "BP check, no meds." Snow testified that this meant that Wiertella "need[ed] his blood pressure checked because he's got some sort of history of high blood pressure and he brought no meds in with him." There was also a scheduling book for sick calls that was set up by whichever nurse was

working the evening before. In the scheduling book, Watson wrote Wiertella's name and "BP check and sign release."

There is no explanation in the record for why Wiertella was not scheduled for a sick call until December 10. Nurse sick call was available every day of the week, including weekends, and doctor sick call was available on Mondays through Fridays. The medical-release form could be signed by an inmate during a nurse sick call, and nurses could usually verify medications with a pharmacy in less than ten minutes. Nurses were also able to "check anybody's blood pressure at any time" to determine if they had high blood pressure and needed medication.

Watson testified that if an inmate said he was on blood-pressure medication, she could decide that she did not need to verify the prescription with his pharmacy and could order the medication herself. She chose to do this with Wiertella's diabetes medication, but not with any of his other medications.

If an inmate was unable to provide his own medications, nurses could also put that inmate on the sick-call log to be evaluated by the doctor. Wiertella was never scheduled for a physical exam or for a review of his medical history. Nor was he ever seen by anyone who could prescribe medications.

Wiertella was found in his cell nonresponsive and pronounced dead at 3:12 a.m. on December 10, 2018. The Estate's expert, Dr. Jonathan Arden, concluded that Wiertella's cause of death was hypertensive cardiovascular disease. Dr. Arden testified that "the discontinuance and failure to provide medications contributed to [Wiertella's] blood pressure spiking and his risk of sudden death." He concluded in his report that "[b]ut for the failure to provide those medications and a CPAP machine, in my opinion, Mr. Wiertella would not have died how and when he did."

On appeal, Snow and Watson argue that the district court erred by denying their motion for summary judgment.

They contend that they are entitled to qualified immunity because the caselaw has not "clearly established" that a medical employee at a jail violates an inmate's constitutional rights if she becomes aware that an inmate is on medication for a serious medical condition and then fails to ensure that the medication is timely obtained. In addition, Snow and Watson argue that the court erred in finding that they subjectively appreciated a substantial risk of harm to Wiertella and that they failed to reasonably respond.

II. ANALYSIS

A. Standard of review

"We review de novo a district court's denial of a defendant's motion for summary judgment on qualified immunity grounds." *Raimey v. City of Niles*, 77 F.4th 441, 446-47 (6th Cir. 2023) (quoting *Stoudemire v. Mich. Dep't of Corr.*, 705 F.3d 560, 565 (6th Cir. 2013)). "Qualified immunity shields government officials performing discretionary functions from civil liability unless their conduct violates clearly established rights." *Id.* at 447 (quoting *Quigley v. Tuong Vinh Thai*, 707 F.3d 675, 680 (6th Cir. 2013)). "At summary judgment, a government official is entitled to qualified immunity unless the evidence, viewed in the light most favorable to the plaintiff, would permit a reasonable juror to find that '(1) the defendant violated a constitutional right; and (2) the right was clearly established.'" *Id.* (quoting *Quigley*, 707 F.3d at 680-81). "We view the evidence in the light most favorable to the nonmovant and draw all reasonable inferences in his favor." *Id.*

B. Jurisdiction

We have jurisdiction over appeals from final decisions of the district courts. 28 U.S.C. § 1291. Interlocutory appeals from the denial of qualified immunity at the summary-judgment stage are considered "final decision[s]" within the meaning of 28 U.S.C. § 1291. *Mitchell v. Forsyth*, 472 U.S.

511, 530, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985). "This jurisdiction, however, is limited: circuit courts can review a denial of qualified immunity only 'to the extent that it turns on an issue of law'—the appeal cannot be from a district court's determination that there is a genuine dispute of material fact." *Brown v. Chapman*, 814 F.3d 436, 444 (6th Cir. 2016) (quoting *Mitchell,* 472 U.S. at 530). "The effect of this limitation is that the defendant appealing a denial of qualified immunity must concede the plaintiff's facts." *Id.* We may "decide the legal question of whether qualified immunity is warranted based on the facts as found by the district court, taken in the light most favorable to [the Estate]." *Raimey,* 77 F.4th at 448.

C. Qualified immunity

To overcome Snow's and Watson's qualified-immunity defense, the Estate must establish (1) that Snow and Watson violated Wiertella's constitutional rights, and (2) that the governing caselaw "clearly established" the violation. *See Lawler ex rel. Lawler v. Hardeman County*, 93 F.4th 919, 925 (6th Cir. 2024).

In *Lawler*, this court recognized that an Eighth Amendment failure-to-protect claim arising from conduct occurring before 2021 is governed by *Farmer v. Brennan*, 511 U.S. 825, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994). *Id.* at 927-28. *Farmer*'s first element is satisfied if the plaintiff proves that the inmate had an objectively "serious medical need[]." *Id.* at 928 (quoting *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976)). Snow and Watson do not dispute that the Estate satisfied this element. Wiertella had several conditions that had been "diagnosed by a physician as mandating treatment." *See Harrison v. Ash*, 539 F.3d 510, 518 (6th Cir. 2008) (quoting *Blackmore v. Kalamazoo County*, 390 F.3d 890, 897 (6th Cir. 2004)). The first requirement of *Farmer* has therefore been met.

Farmer next requires the plaintiff to prove that "[the] officer knew of the facts creating the substantial risk of

serious harm," that "the officer believed that this substantial risk existed," and that "the officer 'responded' to the risk in an unreasonable way." *See Lawler*, 93 F.4th at 929 (quoting *Farmer*, 511 U.S. at 844).

Watson testified that she was aware that Wiertella had been booked without his medications, that he was on medications that needed to be continuously administered, and that these medications were classified as "essential" under the Jail's policies. She stated that heart disease, high blood pressure, diabetes, severe sleep apnea, and depression are all serious medical conditions. Watson also considered medications for diabetes, heart disease, high blood pressure, and psychiatric disorders to all be essential medications. She further acknowledged the importance of taking medications for serious medical conditions because the failure to take those medications could lead to serious harm or even death.

Finally, Watson recognized the general principle that the medical staff should intervene sooner rather than later. She expressly said that she had sometimes been concerned that inmates at the Jail were not getting their blood-pressure medicine in a timely manner.

In light of the above testimony, the district court properly concluded that Watson was aware of a substantial risk to Wiertella if he did not timely receive his essential medications. Yet Watson did nothing to ensure that Wiertella received his blood-pressure medications—or any medication other than for his diabetes—in a timely manner. This was unreasonable.

With regard to Snow, she was responsible as the medical coordinator for making sure that every inmate's medical-screening form was reviewed. She was also responsible for making sure that all the sick calls were set up correctly. Snow was not merely an administrator; she also performed the same duties as the other nurses, such as addressing the daily medical needs of inmates. Further, Watson testified that she believed that Snow had seen Wiertella. Snow

disputed this fact, but we must view the evidence in the light most favorable to the Estate.

A jury could thus find that Snow was aware that Wiertella had been booked without "essential medications" that needed to be continuously administered. Snow testified that untreated high blood pressure can cause a substantial risk of harm to patients and that, if an inmate identified a need for high-blood-pressure medication, "it would be something that would need to be addressed as soon as possible." Based on the above evidence, a jury could find that Snow was aware of the substantial risk that Wiertella faced, and that she unreasonably failed to ensure that Wiertella timely received all his essential medications.

To prove that Wiertella faced a "substantial risk of serious harm," the Estate does not have to establish that Wiertella faced a substantial risk of dying within one week. The dissent argues that, since "less than 0.5% of those with high blood pressure suffer an associated death . . .[, i]t follows that even a three-week deprivation of blood-pressure medication does not pose an objectively serious risk of harm, absent further evidence of another serious underlying medical condition." Dissenting Op. at 14-15. But Wiertella informed the prison staff that he had several serious underlying medical conditions besides high blood pressure, including heart disease, diabetes, sleep apnea, and depression.

Moreover, a plaintiff can suffer serious harm without dying. For example, if the medical staff refuses to clean a prisoner's wound, this can constitute serious harm even if the wound later heals. *See Boretti v. Wiscomb*, 930 F.2d 1150, 1154 (6th Cir. 1991). If an inmate experiences symptoms of depression because he is not timely receiving his psychiatric medication, this can constitute serious harm. *See Richmond v. Huq*, 885 F.3d 928, 942-43 (6th Cir. 2018). An inmate who "suffers pain needlessly" has suffered serious harm. *Boretti*, 930 F.2d at 1154-55. And the "interruption of a prescribed plan of treatment could constitute a constitutional violation."

Id. at 1154. Wiertella suffered the symptoms of untreated high blood pressure, heart disease, sleep apnea, and depression because his prescribed plan of treatment for all these conditions was unnecessarily interrupted.

In establishing its § 1983 claim, the Estate concedes that it is required to "identify a case with a similar fact pattern that would have given 'fair and clear warning to officers' about what the law requires." *See Arrington-Bey v. City of Bedford Heights*, 858 F.3d 988, 993 (6th Cir. 2017) (quoting *White v. Pauly*, 580 U.S. 73, 79, 137 S. Ct. 548, 196 L. Ed. 2d 463 (2017) (per curiam)). The Estate cited, and the district court extensively analyzed, similarities between this case and *Richmond*. Richmond's medical records indicated that she had been taking psychiatric medications before she arrived at the Wayne County Jail. *Richmond*, 858 F.3d at 935-36. This court held that her treating doctor at the jail had an obligation to take reasonable steps to ensure that Richmond timely received her medications. *Id.* at 942. These steps could have included the doctor prescribing the medications herself or requesting that a nurse verify Richmond's prior prescriptions. *Id.* Waiting for Richmond to have her psychiatric conditions addressed at an upcoming psychiatrist appointment scheduled 14 days later was not deemed sufficient to address her serious medical needs. See *Id.* at 935, 941-43.

The dissent argues that Watson's conduct was not "so cursory as to amount to no medical treatment at all" because she scheduled Wiertella for a sick call. Dissenting Op. at 15 (citing *Helphenstine v. Lewis County*, 60 F.4th 305, 322 (6th Cir. 2023)). But there is no evidence that Watson was the nurse who initially added Wiertella to the sick-call log. And even if she was, having Wiertella wait a full week to have several serious medical conditions addressed was unreasonable.

This case is distinguishable from cases like *Jones v. Martin*, 9 F. App'x 360 (6th Cir. 2001) (order), relied on by the dissent. Dissenting Op. at 18. Jones suffered blackouts

after running out of his blood-pressure medication, but he was unable to establish that the doctor intentionally denied him the medication or unreasonably delayed treatment. *Id.* at 362. Snow and Watson, in contrast, were aware that Wiertella had been taking several essential medications for serious medical conditions, and they knew that he did not have access to these medications in the Jail. Yet they intentionally chose not to provide those medications in a timely manner.

This court in *Richmond*, moreover, held that prior caselaw had clearly established that "neglecting to provide a prisoner with needed medication" could "constitute a constitutional violation." *Id.* at 948. *Richmond* thus presents a "similar fact pattern" that gave Snow and Watson a "fair and clear warning" that failing to ensure that Wiertella timely received his essential medications was a violation of his constitutional rights under the Eighth and Fourteenth Amendments. *See Arrington-Bey*, 858 F.3d at 993. The district court therefore did not err in concluding that Snow and Watson were not entitled to qualified immunity as a matter of law.

III. CONCLUSION

For all of the reasons set forth above, we **AFFIRM** the decision of the district court and **REMAND** the case for further proceedings on the Estate's § 1983 claim.

Dissent by: CHAD A. READLER

DISSENT

CHAD A. READLER, Circuit Judge, dissenting. Treating incarcerated patients presents unique challenges for medical professionals. Especially so in the jail setting, where rapid turnover of detainees further complicates the effort to address medical needs. *See* Zhen Zeng & Todd D.

Minton, Bureau of Just. Stats., *Census of Jails 2015-2019 - Statistical Tables* 31 (Oct. 2021) (noting that the average detainee spends just 23 days in jail). As a legal matter, the Constitution's due process guarantee is a poor fit for setting appropriate boundaries for treating these detainees. *See Brawner v. Scott County*, 14 F.4th 585, 610 (6th Cir. 2021) (Readler, J., concurring in part and dissenting in part); *Helphenstine v. Lewis County*, 65 F.4th 794, 801 (6th Cir. 2023) (order) (Readler, J., statement respecting denial of rehearing en banc). But if we must deploy due process notions here, we owe it to medical professionals to articulate clear guideposts governing their conduct.

Congress has signaled as much by implicitly incorporating the common law defense of qualified immunity into 42 U.S.C. § 1983. *Wyatt v. Cole*, 504 U.S. 158, 163-64, 112 S. Ct. 1827, 118 L. Ed. 2d 504 (1992); Scott Keller, *Qualified and Absolute Immunity at Common Law*, 73 Stan. L. Rev. 1337, 1342 & n.19, 1358 (2021). At common law, history suggests, that defense required "clear evidence of subjective improper purpose." Keller, *supra*, at 1377; cf. *Baxter v. Bracey*, 140 S. Ct. 1862, 1864, 207 L. Ed. 2d 1069 (2020) (Thomas, J., dissenting from the denial of certiorari) (advocating return to common law basis for qualified immunity). Our modern qualified immunity test, although perhaps less rigorous in comparison, still adheres to similar notice principles. Before a plaintiff may overcome an assertion of qualified immunity, he must show that a defendant violated "clearly established" constitutional law. *Wyatt*, 504 U.S. at 166; *see also Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5, 142 S. Ct. 4, 211 L. Ed. 2d 164 (2021) (per curiam) (explaining that liability arises only where "existing precedent" places the "constitutional question beyond debate") (citation omitted)). By requiring that the rule at issue be clearly established, we ensure that a defendant may be sued only for conduct that "every reasonable official would have understood" to violate legal boundaries, thus limiting liability to the "plainly incompetent or those who knowingly violate the law." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741, 743, 131 S. Ct. 2074, 179 L. Ed. 2d 1149 (2011) (citations omitted).

Yet all too often, we define "clearly established" rights in such broad fashion that notions of predictability become little more than an afterthought. *See Colson v. City of Alcoa*, No. 20-6084, 2021 U.S. App. LEXIS 26532, 2021 WL 3913040, at *8, *10 (6th Cir. Sept. 1, 2021) (Readler, J., dissenting). This case is a good example. After unearthing a constitutional violation from a factual record that supports none, the majority opinion finds a clearly established right in precedent that supplies little more than debate. Employing such loose legal standards is problematic enough for defendants Christina Watson and Diane Snow. But it is especially worrisome when viewed across the medical profession. In 2019, ten million detainees (like Randy Wiertella) were housed in jails. Zeng & Minton, *supra*, at 41 As roughly one-fifth of those jails provide on-site medical treatment, *id.* at 43, jail-based medical personnel likely encounter about two million detainees annually. With each interaction giving rise to the risk of constitutional liability, it becomes all the more critical that judges articulate concrete standards for those medical professionals to follow. Nor may we impose liability when those clear markers have not been crossed. Today, we fall well short of honoring those settled obligations.

I.

The facts tell an admittedly tragic tale. At the start of what was scheduled to be a nearly month-long period of detention in jail, Randy Wiertella completed a medical screening form indicating that he was "on medication which should be continuously administered," and that his conditions requiring medication included diabetes, heart disease, high blood pressure, and psychiatric disorders. The form, however, did not identify Wiertella's specific prescriptions. Nurse Christina Watson reviewed and signed the form.

The next day, following Wiertella's request for "diabetic, and other meds," Watson ordered a diabetes medication called metformin, which Wiertella received. At

some point, she also made Wiertella an appointment with another nurse (dubbed "sick call") in about a week's time for the purposes of checking blood pressure, discussing his lack of "meds," and "sign[ing a] release." R. 64, PageID 2835, 2873-74. Regarding the last notation, Wiertella's pharmacy would not verify his prescription information without a release form signed by Wiertella. Wiertella made two subsequent written requests through the jail's administrative channels. In those materials, he for the first time listed the names of his other medications. Watson, all agree, never received those requests. Nor did she ever examine Wiertella or receive any other information indicating a risk of a looming hypertensive crisis.

The morning Wiertella was supposed to be seen for his sick call, he was found dead, having died from a heart attack caused in part by his lack of medication. His estate sued Watson and nurse Diane Snow, Watson's supervisor, for deliberate indifference under the Eighth and Fourteenth Amendments. The district court denied the two qualified immunity, a decision they now appeal.

II.

To overcome the nurses' assertion of qualified immunity, Wiertella must show both that the two violated the Constitution and that the violation was clearly established. *Fisher v. Jordan*, 91 F.4th 419, 424 (6th Cir. 2024). At step one, this case is governed by *Farmer v. Brennan*, 511 U.S. 825, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994). Thus, Wiertella must demonstrate that he suffered from an objectively serious risk of harm which the nurses, at the very least, consciously disregarded. *Lawler ex rel. Lawler v. Hardeman County*, 93 F.4th 919, 928-30 (6th Cir. 2024). At step two, he must provide existing precedent showing "beyond debate" that each nurse violated the law. *Kisela v. Hughes*, 584 U.S. 100, 104, 138 S. Ct. 1148, 200 L. Ed. 2d 449 (2018) (per curiam). Doing so demands that he cite "a case with facts similar enough that it squarely governs this one, what amounts to on-point caselaw that would bind a panel

of this court." *Moore v. Oakland County*, 126 F.4th 1163, 1167 (6th Cir. 2025) (citation modified). Wiertella has met neither burden.

The interlocutory posture of this appeal, I recognize, typically limits us from reaching purely fact-bound issues the nurses might raise in an ordinary summary judgment appeal. *Id.* But "legal questions"—such as what conduct violates the Eighth and Fourteenth Amendments and which violations have been clearly established—are fair game. *Id.* So is the question "whether a reasonable jury could believe an assertion of fact blatantly contradicted by the record." *Id.* (cleaned up). Wiertella's failure to satisfy each qualified immunity hurdle falls easily within these categories.

A. Take first the absence of any constitutional violation. This case, like so many in this setting, hinges on the nurses' state of mind. *See Lawler*, 93 F.4th at 929. Even accepting the facts in his favor, Wiertella fails to show that either nurse consciously disregarded any risk he faced. *See Farmer*, 511 U.S. at 839. The overarching question of "conscious disregard" breaks down into three smaller ones: (1) Did the nurses know the facts that created the risk to Wiertella? (2) If so, did they also interpret those facts to conclude for themselves that the risk existed? And (3) if so, was their response to this known risk reasonable? *Lawler*, 93 F.4th at 929-30. We must be careful not to dilute this standard. That warning bears emphasis, as our Court has all too often premised liability on what an official should have known rather than what she did know. *See Brawner v. Scott County*, 18 F.4th 551, 554 (6th Cir. 2021) (order) (Readler, J., dissenting from the denial of rehearing en banc) (canvassing cases). *Farmer*, however, was unequivocal: Wiertella needs evidence that the nurses had "actual knowledge of [his] risk[]" and still proceeded to disregard it. 511 U.S. at 842. He has no such evidence.

1. Begin with Watson. To the majority opinion's eye, "Watson was aware of a substantial risk to Wiertella if he did not timely receive his essential medications." Maj. Op. 7.

But what does "timely" mean to those in the majority? In other words, did Watson fail to respond to a risk of immediate harm during the week between when she reviewed Wiertella's information and when he was scheduled for sick call? Or was it instead a risk of harm at some later point? The majority opinion does not say. Either way, Watson did not consciously disregard any risk to Wiertella.

a. There is no evidence that Watson was aware of the risk of immediate harm to Wiertella. The district court, for its part, made no findings to that end. *See DiLuzio v. Village of Yorkville*, 796 F.3d 604, 609 (6th Cir. 2015). The majority opinion's circumstantial evidence of Watson's knowledge fares no better, especially when measured against *Farmer*'s yardstick for when circumstantial evidence "could be sufficient" to prove actual knowledge—namely, when the risks were "longstanding, pervasive, well-documented, or expressly noted by prison officials in the past" and the defendant "had been exposed to information concerning the risk" such that she "must have known of it." 511 U.S. at 842.

The majority opinion first emphasizes that Watson knew Wiertella was on medication that needed to be continuously administered, yet was booked without all of his medications. Maj. Op. 6-7. But knowing Wiertella needed some medication to be continuously administered does not show that Watson thought any medications besides metformin (his diabetes drug) fit in this category. The screening form does not state which medications were needed continuously. And according to Watson, she interpreted this entry to refer only to metformin. R. 59, PageID 1268 (Watson identifying diabetes medication as the only concern needing to be taken care of "at that time"). None of this indicates that Watson "must have known" Wiertella might suffer harm within the week if other medications were not administered immediately. *Farmer*, 511 U.S. at 842.

True, as the majority opinion notes, see Maj. Op. 6, Watson acknowledged that it is "important to be compliant

with [essential] medications" because "there can be serious medical consequences" otherwise, sometimes including serious harm or death. R. 59, PageID 1252-53. Those points are unassailable. But so is the fact that a general awareness of risk "[i]n some situations," *Id.*, falls far short of showing Watson subjectively concluded that an immediate, within-the-week risk existed here with respect to Wiertella's heart condition. *See Buetenmiller v. Macomb Cnty. Jail*, 53 F.4th 939, 944 (6th Cir. 2022) (noting that general "knowledge of something 'suspicious' is not akin to demonstrating awareness of a specific risk").

That high blood pressure, Wiertella's primary non-diabetes complaint, is both highly prevalent and relatively benign in most cases only bolsters the point. Roughly half of adults in America—120 million—suffer from high blood pressure, and about half of them treat it with medication. Cheryl D. Fryar et al., U.S. Ctrs. for Disease Control & Prevention, *Hypertension Prevalence, Awareness, Treatment, and Control Among Adults Age 18 and Older: United States August 2021-August 2023*, at 1, 3 (2024). Yet on an annual basis, than 0.5% of those with high blood pressure suffer an associated death. *High Blood Pressure*, CDC (Jan. 3, 2025), https://perma.cc/5QGA-FLPD. It follows that even a three-week deprivation of blood-pressure medication does not pose an objectively serious risk of harm, absent further evidence of another serious underlying medical condition. *See Jackson v. Pollion*, 733 F.3d 786, 787-90 (7th Cir. 2013) (Posner, J.) (surveying a large amount of medical research). While the nurses do not contest the objective element, what is true there applies with greater force in determining what risk they could have perceived from reviewing the skeletal information on Wiertella's screening form. In doing so, Watson had little reason to conclude that Wiertella would be the rare hypertensive patient to suffer serious harm. And, more to the point, she had absolutely no basis to conclude he might suffer such harm within a week.

The majority opinion responds that "a plaintiff can suffer serious harm without dying." Maj. Op. 7. Very true.

Perhaps, as the majority opinion suggests, "the symptoms of untreated high blood pressure, heart disease, sleep apnea, and depression" qualify as "serious harm." *Id.* And perhaps "Wiertella suffered the[se] symptoms" prior to the fatal event, although the majority opinion's conclusion to that effect includes no record citation, and thus is pure speculation. *Id.* Even so, the question on the subjective prong is not what we know happened to Wiertella in hindsight but whether Watson concluded that he faced these "specific risk[s]" within a week. As just explained, she did not.

b. As to whether Wiertella might suffer serious harm at a future point if he did not receive his medication, all agree that Watson was aware of this risk. And she responded reasonably by scheduling Wiertella for sick call. In evaluating Watson's response, we may not "second guess medical judgments" she made regarding Wiertella's "treatment," even if that treatment was "inadequate." *Richmond v. Huq*, 885 F.3d 928, 939 (6th Cir. 2018) (citation omitted). It follows that in cases that do not involve "a complete denial of medical care," *id.*, we will not hold a medical professional liable unless she acted in a way "so grossly incompetent . . . as to shock the conscience," or offered treatment "so cursory as to amount to no medical treatment at all." *Helphenstine v. Lewis County*, 60 F.4th 305, 322 (6th Cir. 2023) (citations omitted).

That does not describe Watson's actions. Again, she scheduled Wiertella for sick call. The majority opinion, I note, concludes that "there is no evidence" of Watson taking that step. Maj. Op. 8. But Snow testified that the "writing" in the sick-call log "is Christina [Watson]'s," R. 64, PageID 2860, a fact Wiertella concedes, Appellee Br. 22 ("Watson . . . scheduled a sick visit eight days after Wiertella was booked.").

Watson's handwritten notes identified three purposes for the appointment: check "BP" (that is, blood pressure), "[no] meds," and "sign [pharmacy] release." R. 64, PageID 2835, 2873-74. These notations show that Watson scheduled

the sick call specifically in response to Wiertella's lack of medication—especially blood pressure medication. Doing so neither "shock[s] the conscience" nor "amount[s] to no medical treatment at all." *Helphenstine*, 60 F.4th at 322 (citations omitted).

That is especially true when one considers that Watson, like all medical personnel, is subject to "the unhappy truth that, when vital resources are limited, some will not get what they need, at least not right away." Ken Kipnis, *Triage and Ethics*, 4 Am. Med. Ass'n J. Ethics 19, 19 (2002). That well describes the jail setting, where detainees come and go, often in unpredictable ways. *See generally* Zeng & Minton, *supra*. As a result, when faced with a patient who, like Wiertella, presents a constellation of potential issues, Watson had to "perform a preliminary assessment . . . to determine the nature and degree of urgency of treatment required," a process otherwise known as "triage." *Triage*, Oxford English Dictionary, https://perma.cc/MX6L-C8EJ. Doing so involves balancing the urgency of intervention with the resources needed to treat relevant conditions. *See* Emergency Nurses Ass'n, *Emergency Severity Index Handbook 5* (5th ed. 2023); Rhonda Gay Hartman, *Tripartite Triage Concerns: Issues for Law and Ethics*, 31 Critical Care Med. S358, S358 (Supp. 2003) (noting that triage decisions necessarily require "human judgment").

As lay people, we judges may not "second guess [these] medical judgments," even if we believe they led to "inadequate . . . treatment." *Richmond*, 885 F.3d at 939 (citation omitted). That includes Watson's medical judgments underlying her triage decisions. After reviewing Wiertella's screening form and related requests, she determined a course of action. She began by doing "what [she] was trained to do," namely "to pull out the . . . most important" condition. R. 70-8, PageID 4025. For Wiertella, that was his "diabet[es]." *Id.* With respect to other conditions noted on the screening form, Watson "personally ma[d]e [the] decision[]" to "have [Wiertella] come for sick call." *See id.*, PageID 3995. In doing so, she relied on her medical

training, which taught her to "mak[e] the judgment calls [regarding] who needs to be seen" in "sick call." *Id.*, PageID 3986.

Given the circumstances, what more could Watson have done? Wiertella's screening form did not provide medicine names or doses. Watson never received the forms that did identify that information. And calling Wiertella's pharmacy would have been met with a request for his signed release form, which Watson did not possess. As a result, her lone option for addressing those omissions was to schedule Wiertella for sick call, where he could give needed information to a nurse or sign the release allowing his pharmacy to do so. *Cf. Mullins v. Kalns,* 234 F.3d 1269, 2000 WL 1679511 (6th Cir. 2000) (unpublished table decision) (order) (nurses responded reasonably to risk from one-weekend-long lack of blood pressure medication when they took all steps possible to obtain it). Perhaps Watson could have scheduled that appointment sooner, although limited jail resources may have dictated otherwise. Either way, that fact alone does not make Watson's decision grossly incompetent, or so cursory as to amount to no treatment at all. *Helphenstine*, 60 F.4th at 322. Especially so, again, when Watson perceived no risk of immediate harm to Wiertella. At worst, Watson acted "carelessly or inefficaciously" by not scheduling Wiertella sooner, a "degree of incompetence which does not rise to the level of a constitutional violation." *Comstock v. McCrary*, 273 F.3d 693, 703 (6th Cir. 2001).

Our precedent bears this out. We consistently refuse to hold medical personnel liable for triage decisions regarding treatment even if a different decision would have prevented some ill effect. Consider, for example, *Griffith v. Franklin County*. There, two nurses received urinalysis results indicating that an inmate had an acute kidney injury, which typically dictates hospitalization. 975 F.3d 554, 563 (6th Cir. 2020). Deploying their independent medical judgment, however, the nurses "weren't that alarmed" by the data but "did want it reviewed." *Id.* As a result, they forewent hospitalization and instead scheduled the inmate

to be seen by another nurse during her next weekly visit. Before being seen, the inmate suffered multiple seizures tied to acute renal failure. *Id.* at 564-65. In awarding the nurses qualified immunity, we honored their "independent evaluation as to whether to place the inmate on medical observation" or take other action—in other words, their triage judgment. *Id.* at 572. So too here, where Watson determined that Wiertella's need for medication besides metformin could wait for consultation days later.

Griffith does not stand alone. Circuit decisions refusing to second-guess a medical professional choosing one treatment over an earlier or different treatment abound. *See Rouster v. County of Saginaw*, 749 F.3d 437, 443-44, 449 (6th Cir. 2014) (decision not to notify on-call physician of vomiting and bizarre behavior by inmate and instead to place the inmate under medical observation); *Jackson v. Gibson*, 779 F. App'x 343, 344, 348 (6th Cir. 2019) (decision not to treat or medicate inmate's foot injury and instead to schedule for an appointment with a prison doctor); *Vannortwick v. Stewart*, No. 21-2739, 2022 U.S. App. LEXIS 12957, 2022 WL 1494538, at *2-3 (6th Cir. May 12, 2022) (decision not to hospitalize inmate and instead to arrange for further testing and later follow up by a colleague); *Britt v. Hamilton Cnty.*, No. 21-3424, 2022 U.S. App. LEXIS 3852, 2022 WL 405847, at * 4 (6th Cir. Feb. 10, 2022) (decision not to take inmate's vital signs and instead to await physician's instructions); *Bowles v. Bourbon County*, No. 21-5012, 2021 U.S. App. LEXIS 21292, 2021 WL 3028128, at *9 (6th Cir. July 19, 2021) (decision not to hospitalize inmate who was "in obvious pain, beating his head with his fists, and throwing up in a bucket" and instead to await superior's instructions). Like each of these medical professionals, Watson used her medical judgment to make a reasonable treatment decision, leaving us little basis to conclude that she wholly disregarded Wiertella's risk of harm from not having his medications.

On a more granular level, allegations that jail staff "failed to provide [an inmate] with . . . blood pressure

medicine during the first few days of his stay in the county jail" are by no means novel in our circuit. *Reed v. Gill*, 205 F.3d 1341, 2000 WL 194146, at *1 (6th Cir. 2000) (unpublished table decision) (order). Yet we routinely refuse to hold medical providers liable for that delay, even if it results in harm. *Id.*; *Jones v. Martin*, 9 F. App'x 360, 362 (6th Cir. 2001) (order) (holding that "lapse in [blood pressure] medication" through failure to refill prescriptions twice was not deliberate indifference, even though inmate suffered black-outs as a result); *Carpenter v. Wilkinson*, 205 F.3d 1339, 2000 WL 190054, at *1 (6th Cir. 2000) (unpublished table decision) (describing the allegation that prison officials "violated [the inmate's] Eighth Amendment rights by not timely providing him with medication for high blood pressure" as mere "difference of opinion regarding treatment").

Ours is not a minority view. When our sister circuits face similar lack-of-blood-pressure-medicine claims, they too bless treatment decisions like Watson's, to say nothing of treatment decisions that are even less comprehensive. *See*, *e.g.*, *Jackson*, 733 F.3d at 787 (no liability for three-week delay); *Lindwurm v. Wexford Health Sources, Inc.*, 84 F. App'x 46, 48 (10th Cir. 2003) (order) (no liability for "isolated and brief" "lapses in [providing blood pressure] medication"); *Pandey v. Freedman*, 66 F.3d 306, 1995 WL 568490, at *2 (5th Cir. 1995) (unpublished table decision) (per curiam) (no liability for providing wrong blood pressure medication four days late); *see also Duncan v. Corr. Med. Servs.*, 451 F. App'x 901, 905 (11th Cir. 2012) (per curiam) (noting that "an isolated instance where [the inmate] had not received proper [blood pressure] medication and then suffered a medical emergency" would "clearly" support "no showing of deliberate indifference"). Reflective of this seemingly uniform approach is the Eighth Circuit's decision in *Fourte v. Faulkner County*. There, an inmate "submitted a medical form complaining of high blood pressure and asking jail staff to call two family members who could get his 'meds,'" yet did not receive any treatment (besides monitoring of his ever-increasing blood pressure) until his blood pressure reached

the "emergency level" of "180/121" 27 days later. 746 F.3d 384, 386-87 (8th Cir. 2014). Even then, the jail nurse who provided the emergency medication waited another week to schedule the inmate for an appointment—despite the fact he now also complained of vision loss and would eventually go blind—at which point he finally received a blood pressure prescription. *Id.* In evaluating these treatment decisions, the Eighth Circuit concluded that the providers at most "should have known they were committing malpractice," but were not deliberately indifferent. *Id.* at 389. Watson's conduct pales in comparison.

Eschewing this long line of authority, the majority opinion instead creates a circuit split. Indeed, deeming Watson's purported mistreatment as anything more than mere negligence is out of step with circuits across the land. At most, those courts find liability only when the deprivation of blood pressure medication is, unlike here, repeated, prolonged, intentional, or accompanied by overt signs of an impending and serious hypertensive crisis. *See Duncan*, 451 F. App'x at 903-05 (liability for depriving inmate of three different heart medications for periods totaling 22 days, 210 days, and 46 days respectively, despite his repeated requests and trips to the emergency room with chest pain); *Carter v. Broward Cnty. Sheriff's Off.*, 710 F. App'x 387, 392 (11th Cir. 2017) (per curiam) (liability for "regularly" denying medication for five months, despite inmate complaints and symptoms); *King v. Busby*, 162 F. App'x 669, 671 (8th Cir. 2006) (per curiam) (liability for depriving inmate of medication "half the time," including at least 26 identified occasions, over seven months); *Haltiwanger v. Mobley*, 230 F.3d 1363, 2000 WL 1371098, at *1 (8th Cir. 2000) (unpublished table decision) (per curiam) (liability for "periodically" refusing to give inmate blood pressure medication in retaliation for spurning nurse's sexual advance).

The majority opinion, regrettably, stands alone. As we have held in *Reed*, *Jones*, and *Carpenter*, and as other

circuits agree, Watson did not consciously disregard any risk to Wiertella.

2.a. As for Snow, she never perceived any risk to Wiertella whatsoever, similarly absolving her of liability. All that Wiertella has mustered on this point is the possibility, identified by the district court, that his screening form was placed on a shelf for Snow to review. But the district court's assumption "blatantly contradict[s] . . . the record, so that no reasonable jury could believe it." *DiLuzio*, 796 F.3d at 609 (citation omitted).

We "are able to fix obvious factual errors" as part of our interlocutory review. *Bey v. Falk*, 946 F.3d 304, 322 (6th Cir. 2019). That is the case here, where the district court blatantly erred in concluding that Wiertella's screening form could have been presented to Snow. *See id.* As an initial flaw, the district court appeared to invert the burden of production at summary judgment. It faulted Snow for "not provid[ing] any evidence that Mr. W[ie]rtella's file was not placed on [her] shelf for review." *Wiertella v. Lake Cnty.*, No. 20-CV-2739, 2024 U.S. Dist. LEXIS 53247, 2024 WL 1282715, at *13 (N.D. Ohio Mar. 26, 2024). But it was Wiertella's duty to provide evidence demonstrating Snow did review the form. *See Burwell v. City of Lansing*, 7 F.4th 456, 467-69 (6th Cir. 2021) (affirming summary judgment for nurse who "did nothing to assess" inmate she saw "lying motionless on the ground" because "the record [wa]s insufficient" to show she "had [any] reason to suspect" the inmate was suffering from a drug overdose).

In any event, on that issue, the record says otherwise. Watson testified that standard protocol dictated that a screening nurse (like Watson) would review the form to look for "issue[s] that the medical . . . department needs to deal with," including "diabetics need[ing] to have their insulin or their medication." R. 59, PageID 1205-07. Only if this nurse "determined that there were not medical issues" would the form be placed "into a bin" or "wooden shelf." *Id.*, PageID 1206-07. Snow then "reviewed [the] med screens that" the

screening nurses "put into the wooden folder" to determine whether the inmate needed his once-yearly physical. *Id.*, PageID 1208-09. But if a form was not placed there, it customarily was not reviewed by Snow. One jail lieutenant, I recognize, described Snow as "responsible [for] mak[ing] sure that all of the inmate medical screens are reviewed." R. 60, PageID 2100. As Watson explained, however, that responsibility was fulfilled by Snow assigning a screening nurse to "look over and sign" each form. R. 59, PageID 1204.

Read together, this testimony confirms that a screening nurse would not place a form like Wiertella's—which indicated that he had significant medical issues like diabetes—on Snow's shelf. The district court's conclusion to the contrary is an "obvious factual error" that deserves correction. *Bey*, 946 F.3d at 322.

b. Even if Snow did see Wiertella's form, she would not have perceived any risk to him. Once again, any attempt to charge Snow with actual knowledge of Wiertella's risk of a cardiac event relies on circumstantial evidence that she "must have known" about the risk. *Farmer*, 511 U.S. at 842. With respect to the risk of harm in the near term, the majority opinion cites Snow's testimony that "there are medical situations in which untreated high blood pressure can cause substantial risk of harm to a patient," and that an inmate's need for blood pressure medication "would need to be addressed as soon as possible" seemingly to conclude that Snow was aware of an immediate risk to Wiertella. R. 63, PageID 2730, 2764.A risk, perhaps. But an immediate one? Snow's statement conspicuously lacks any timeframe as to when a "medical situation[]" could pose a risk. *Id.*, PageID 2730. What is more, Snow prefaced her statement by clarifying that she "wouldn't call [the lack of blood pressure medication] emergent," and added that it should be addressed by "[s]peaking to the individual again, to find out what medication he's on and, if at all possible, a pharmacy we can contact[,] . . . the quickest way to find out what the[] [medications] are." *Id.*, PageID 2764. In other words, Snow saw no risk in waiting to provide blood pressure

medicine until medical staff verified the prescription by seeing the inmate in sick call or contacting his pharmacy with a signed release.

Nor is there evidence that Snow knew Wiertella might suffer harm in the future. Again, assuming (contrary to the record) that Wiertella's screening form was placed on her shelf, Snow reviewed those forms only to determine whether the inmate needed a "history and physical" exam—not to determine a course of treatment. R. 59, PageID 1208. Nothing in the record indicates that the shelf had any other purpose or that Snow ever had a role in making treatment decisions based on the forms on her shelf. The screening nurses, not Snow, were responsible for identifying any "issue[s] that the medical . . . department needs to deal with." *Id.*, PageID 1205-07. In short, Snow had no reason to believe that a medical condition listed on a screening form was not being addressed by the screening nurse. Nor was she aware of the fact that Watson had not obtained Wiertella's medications. So Snow never "knew of the facts creating the substantial risk" to Wiertella, and thus could not have subjectively "believed" the "risk existed." *Lawler*, 93 F.4th at 929; cf. Jackson, 733 F.3d at 787 (summary judgment on deliberate indifference claim was "so clearly correct as not to require elaboration" where a "nurse practitioner didn't know the plaintiff wasn't receiving his [blood pressure] medication" for a period of three weeks).

Snow's reliance on screening nurses places her in good company. We routinely allow providers to rely on colleagues to provide inmate care without risking liability if the other provider falls short in some respect. *See Rouster*, 749 F.3d at 449 (nurse's reliance on others to observe and supervise inmate); *Griffith*, 975 F.3d at 576 (nurses' reliance on jailers to submit sick slip if inmate needed further attention); *Burwell*, 7 F.4th at 467-69 (nurse's reliance on jailers to perform "cell checks" that would have discovered overdosing inmate); *Est. of Majors v. Gerlach*, 821 F. App'x 533, 547 (6th Cir. 2020) (nurses' reliance on physician orders in lieu of "exercis[ing] their own independent medical judgment");

VanNortwick, 2022 U.S. App. LEXIS 12957, 2022 WL 1494538, at *3 (doctor's reliance on colleague to check lab results); cf. *Graham ex rel. Est. of Graham v. County of Washtenaw*, 358 F.3d 377, 384 (6th Cir. 2004) (county's reliance on medical professionals to whom it delegated inmate care); *Dudley v. Streeval*, No. 20-5291, 2021 U.S. App. LEXIS 3492, 2021 WL 1054390, at *2 (6th Cir. Feb. 8, 2021) (order) (reliance by administrator with no active role in patient care on medical colleagues). Like each of these medical professionals, Snow was not at fault for relying on other staff to address the conditions listed in the screening forms later placed on her shelf, forms that she reviewed merely for scheduling physicals. All things considered, Snow fairly perceived no risk to Wiertella.

B.1. Assuming the nurses did violate Wiertella's constitutional rights, he fails to show that those acts transgressed clearly established constitutional markers. *Kisela*, 584 U.S. at 104. His effort to do so is tied entirely to our *Richmond* opinion. Yet its value is deeply suspect.

Let's consider the source. *Richmond* authorized a pretrial detainee to sue a doctor, social worker, and two nurses for failing to obtain the detainee's prescribed medication for a period of 17 days. 885 F.3d at 935-36, 940-47. To overcome those defendants' assertion of qualified immunity, Richmond had to show that their actions violated her clearly established rights. Regrettably, our opinion failed to honor that command. *Id.* at 947-48. We began by observing that the right to be free from "deliberate indifference to a prisoner's medical needs" has existed since 1976. *Id.* (citation omitted). This surface-level observation comes nowhere close to resolving all debate over the illegality of the defendants' actions there. Cf. *City & County of San Francisco v. Sheehan*, 575 U.S. 600, 613, 135 S. Ct. 1765, 191 L. Ed. 2d 856 (2015) ("Qualified immunity is no immunity at all if 'clearly established' law can simply be defined as the right to be free from unreasonable searches and seizures."). Nor, for many of the same reasons, does our spacious observation "that [this] right . . . extends to

psychological needs." *Richmond*, 885 F.3d at 947. That leaves one final instruction, that "neglecting a . . . medical need" and "interrupting a prescribed plan of treatment can constitute a constitutional violation." *Id.* at 948. This statement is problematic too. In particular, it offers no "specific context" for when a violation in fact occurs, and thus falls short of extinguishing all "debate" over the constitutional question. *See Rivas-Villegas*, 595 U.S. at 5. After all, merely because something "can" violate the Constitution does not mean that it does so in a given scenario. *Richmond*, 885 F.3d at 948.

Nor do the cases cited by *Richmond* end that debate. Fairly read, the facts of those cases never pass within *Richmond*'s orbit. *See Estelle v. Gamble*, 429 U.S. 97, 99-100, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976) (discipline of inmate with severe back pain for not joining prison workforce); *Comstock*, 273 F.3d at 704-05 (release of inmate from suicide watch with knowledge he was still at risk of self-harm); *Terrance v. Northville Reg'l Psychiatric Hosp.*, 286 F.3d 834, 844 (6th Cir. 2002) (prescription of heat-stroke-inducing medication to obese-hypertensive inmate during severe heatwave); *Boretti v. Wiscomb*, 930 F.2d 1150, 1151-52 (6th Cir. 1991) (refusal to follow instructions to change inmate's bandage daily). True, *Richmond* did not have to identify a case that was "directly on point." *Kisela*, 584 U.S. at 104 (emphasis added). But it did need to cite case law "squarely govern[ing]" the facts, *Moore*, 126 F.4th at 1167, such that it was "beyond debate" that waiting two weeks to verify a prescription runs afoul of the Constitution, *Kisela*, 584 U.S. at 104. It failed to do so.

Adding all of this together, *Richmond*'s deep flaws give it little precedential value. Especially so when "intervening Supreme Court decision[s]" provide contrary "legal reasoning" that is "directly applicable" to those shortcomings—a situation that "gives us the right to revisit [the] question" *Richmond* decided. *Ne. Ohio Coal. for the Homeless v. Husted*, 831 F.3d 686, 720 (6th Cir. 2016*); see, e.g., Kisela*, 584 U.S. at 104-05 (rebuking court of appeals for

"defin[ing] clearly established law at a high level of generality" without making "the right's contours . . . sufficiently definite" in a case decided one month after Richmond); *see also Colson v. City of Alcoa*, 37 F.4th 1182, 1190 (6th Cir. 2022) (granting qualified immunity because previous, flawed "clearly established" analysis was supplanted by subsequent Supreme Court decisions).

2. Even accepting *Richmond* as controlling, the decision does not "place[] the . . . constitutional question" here—whether the nurses consciously disregarded Wiertella's risk of serious harm—"beyond debate . . . in light of [*Richmond*'s] specific context." *Rivas-Villegas*, 595 U.S. at 5. Back to today's majority opinion. It draws on *Richmond*'s holding that "neglecting to provide a prisoner with needed medication" could amount to a constitutional violation. Maj. Op. 9 (quoting *Richmond*, 885 F.3d at 948). Yet this "broad general proposition" leaves medical personnel with little guidance as to what specific actions violate the law, and thus serves as a poor guide here in assessing what right was clearly established. It likewise ignores *Richmond*'s "specific context," as neither nurse's actions align with anything deemed illegal there. *Rivas-Villegas*, 595 U.S. at 5.

a. Turn first to Watson. Scheduling Wiertella for sick call is unlike any unlawful act in *Richmond*, which, as our Court has noted, "involved allegations that medical professionals deliberately provided no treatment in the face of a known medical issue." *Whyde v. Sigsworth*, No. 22-3581, 2024 U.S. App. LEXIS 28501, 2024 WL 4719649, at *5 (6th Cir. Nov. 8, 2024). In *Richmond*, a doctor took no "steps to ensure that Richmond received her medication," thereby violating the doctor's "obligation to offer medical care." 885 F.3d at 942. Nor did the nurses in that case make "any attempt" to get Richmond medication, whether by contacting Richmond's pharmacy or psychiatrist or by "request[ing] that another nurse attempt to do so." *Id.* at 946. The social worker likewise did not act even though he perceived an immediate risk of harm to Richmond, as he knew bipolar, depressed patients like Richmond could "expect the

symptoms to return within ten days" of stopping medication. *Id.* at 943. Yet he merely scheduled Richmond to see a psychiatrist 17 days later, failing to address the inherent risk that Richmond's symptoms could return much sooner. *Id.* None of these treaters is like Watson, who responded to the risk she perceived by scheduling Wiertella for sick call within a week.

Any analogy to *Richmond* wanes even further when we consider what Watson knew about Wiertella's medications. Take, for comparison's sake, the social worker. *Richmond* highlighted that the social worker knew the exact medications Richmond was taking (even down to the date of her last dose) and could have obtained those medications immediately after evaluating her. *Id.* at 942. Watson, again, knew none of this, as the forms she received did not indicate the names or doses of Wiertella's other medications. As a result, her delay in the face of this obstacle, especially when she had no reason to fear imminent harm to Wiertella, was not indisputably prohibited by *Richmond*'s censure of a professional who, while alert to the oncoming danger to the inmate and armed with both knowledge of her medications and the ability to acquire them at any time, still failed to act. Put differently, accepting that it is unconstitutional to take no action when an official knows an inmate is missing a specific prescribed medication nonetheless leaves it open for debate whether a nurse can fairly address an inmate's lack of unknown medications by setting an appointment to discuss those medications in a week's time.

b. As to Snow, even if we assume that she reviewed the screening form and perceived a risk to Wiertella after doing so, her non-treating role with respect to those forms negates any comparison to *Richmond*, where each defendant provided Richmond with medical care. *See id.* at 941 ("Dr. Huq treated Richmond . . . ."); *id.* at 942 ("Myftari diagnosed Richmond . . . ."); *id.* at 946 ("Nurse Fowler examined Richmond . . . ."); *id.* ("Nurse Hawk also had extensive interactions with Richmond . . . ."). Each, in short, was a "medical professional[] responsible for prisoner care."

Graham, 358 F.3d at 384. But not Snow, who was not responsible for providing day-to-day treatment tied to the forms on her shelf, other than reviewing those forms to assess whether an inmate like Wiertella was due for his yearly physical. In that narrow role, Snow was effectively "an administrator who worked with [Wiertella's] medical providers" but was "not personally involved in making decisions about [his] medical care." *Dudley*, 2021 U.S. App. LEXIS 3492, 2021 WL 1054390, at *2. Given this key difference from the Richmond defendants, that case does not clearly establish Snow's liability for "rely[ing] on medical judgments made by [the] medical professionals [who were] responsible for prisoner care." *Graham*, 358 F.3d at 384.

If anything, *Richmond* squarely confirms the absence of liability here. In finding no constitutional violation by a second social worker, *Richmond* honored the social worker's "medically reasonable" decision to rely on another provider instead of "personally mak[ing] an effort to verify or secure Richmond's medications." 885 F.3d at 943-44. Like this social worker, Snow was allowed to rely on other medical professionals—including a screening nurse like Watson—to provide Wiertella with appropriate treatment.

Seeing things otherwise, the majority opinion discerns a jury issue as to whether Snow personally provided Wiertella with medical treatment. Maj. Op. 7. That is an unusual point to emphasize when Wiertella himself has never done so. Before the district court, it bears reminding, Wiertella argued that Snow was liable based on (1) reviewing his screening form, (2) playing an "oversight" role "over the sick call process," and (3) serving "as Watson's supervisor." R. 71, PageID 4946-47. And he abandoned all but the first theory on appeal. Appellee Br. 24-25. Nor did he ever cite the evidence the majority opinion relies on here. *See generally* R. 71 (never citing R. 59, PageID 1243); Appellee Br. (same).

Even if we tread where Wiertella did not ask us to go, this evidence creates no jury "disput[e]." Maj. Op. 7. The majority opinion asks us to believe that Watson "testified

that she believed Snow had seen Wiertella." *Id.* Not so. Look to the record. In answering whether she had any conversations about Wiertella after his death, Watson gave a rambling answer she summed up by saying, "I honestly don't know":

> No. I mean, there wasn't—no. I mean, I, I can't, I mean, I don't, I don't really believe so, nothing that would jog my memory. So no, I don't, no, I don't think so. It was, I mean, it just was, I remember Diane [Snow], I think, I think she had seen him, but that was about it. I mean, I don't know if I was on, I don't remember what shift I was on at that point in time, so I don't, I honestly don't know.

It is difficult to draw any conclusion from that testimony, let alone the one forcefully drawn by the majority opinion. In the end, no reasonable jury could find that Snow treated Wiertella, and thus knew about his lack of medication, based solely on such "inconclusive" testimony. *See Wooler v. Hickman County*, 377 F. App'x 502, 507 (6th Cir. 2010).

And, even were that not the case, Wiertella is still no closer to showing that Snow transgressed clearly established constitutional limits. If Snow did treat Wiertella, then she would have learned from his chart that he was scheduled for sick call at the end of the week to check his blood pressure and obtain prescription information. This keeps her squarely in line with the second social worker from *Richmond*, who "saw Richmond" in person but still "responded reasonably" by "referring" her to another professional for evaluation. 885 F.3d at 943-44.

* * * *

Wiertella's tragic death inevitably tends to color any after-the-fact assessment of the underlying events. But whether a circumstance is tragic is a far different question from whether the facts give rise to a constitutional violation. The rule invented here—that a brief deprivation of a

commonplace medication unnecessary to staving off any apparently imminent patient risk runs afoul of the Constitution—diverges wildly from the document's original public meaning, from circuit precedent, and from Supreme Court precedent as well. And the ramifications will be widespread. Consider treatment involving blood pressure medication alone. With one-quarter of adults in the United States taking blood pressure medication, approximately 500,000 such patients are seen by local jail medical staff each year. *See* Fryar et al., *supra*, at 1, 3; Zeng & Minton, *supra*, at 41, 43. Now, in our circuit at least, each of those jailed patients has at his disposal a § 1983 claim if the jail delays in supplying his medication. Bad facts make bad law, indeed.

More to the point, we do not judge medical treaters with the benefit of hindsight. Watson and Snow made their treatment decisions with limited information and resources, a reality faced by many jail medical professionals. Qualified immunity demands that we assess their actions in light of what they knew then, not what we know after the relevant events played out. In a case like this, that means Wiertella needs a record reflecting conscious disregard of a risk to his health and a precedent that stamps out any debate on the question. With both elements absent here, Watson and Snow are entitled to judgment in their favor.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 24-3311

DENNIS WIERTELLA, AS FATHER AND ADMINISTRATOR OF THE ESTATE OF RANDY WIERTELLA, DECEASED,

Plaintiff-Appellee,

v.

LAKE COUNTY, OHIO,

Defendant,

DIANA SNOW, RN AND CHRISTINA WATSON, RN IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES,

Defendants-Appellants

Judges: BEFORE: RONALD LEE GILMAN, CHAD A. READLER, and RACHEL S. BLOOMEKATZ, Circuit Judges.

JUDGMENT

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED, and the case is REMANDED for further proceedings with regard to the estate's § 1983 claim consistent with the opinion of this court.

ENTERED BY ORDER OF THE COURT

s/Kelly L. Stephens

Kelly L. Stephens, Clerk

APPENDIX B — MEMORANDUM OF ORDER AND OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, FILED MARCH 26, 2024

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

1:20-cv-02739-BMB

DENNIS WIERTELLA, AS FATHER AND ADMINISTRATOR OF THE ESTATE OF RANDY WIERTELLA, DECEASED,

Plaintiff-Appellee,

v.

LAKE COUNTY, OHIO, et al.

Defendants

Judges: BEFORE: BRIDGET MEEHAN BRENNAN

I. Introduction

Randy Wiertella ("Mr. Wiertella") died while in the custody of the Lake County Adult Detention Facility (the "Jail"). Dennis Wiertella ("Plaintiff"), as the administrator of Mr. Wiertella's estate, claims that Jail personnel failed to provide Mr. Wiertella with the medical care, prescriptions, and equipment his serious medical conditions required. Plaintiff claims that the Jail's inadequate medical care resulted in Mr. Wiertella's death.

Plaintiff brought this suit under 42 U.S.C. § 1983 against certain Jail employees and other personnel alleging violation of Mr. Wiertella's rights under the Eighth and

Fourteenth Amendments (Count One); a *Monell* claim against Lake County (Count Two); negligence against Lake County and certain Jail employees (Count Three); a wrongful death claim against Lake County and certain Jail employees (Count Four). Defendant Dr. Karim Razmjouei, M.D. ("Dr. Raz")[1] and Defendants Lake County, Captain Cynthia Brooks, Lieutenant Benjamin Longbons,[2] Diane Snow, RN, and Christina Watson, RN (the "Lake County Defendants") moved for summary judgment on Plaintiff's claims. (Doc. Nos. 48, 57.) These motions are fully briefed. (*See* Doc. Nos. 71, 72, 73.) For the reasons below, Dr. Raz's motion is GRANTED, and the Lake County Defendants' motion is GRANTED in part and DENIED in part.

II. Factual Background

A. Mr. Wiertella's Arrest

Early on Sunday, December 2, 2018, Mr. Wiertella, a resident of Wisconsin, was pulled over for speeding on I-90 West in Willoughby Hills, Ohio. (Doc. No. 57-2 at 1095.)[3] He was found to be in possession of a loaded firearm and approximately one gram of cocaine. (Doc. No. 71-3 at 5595-96.)[4] On December 5, 2018, Mr. Wiertella was arraigned on one charge of possession of drugs and one charge of improper transport of a firearm. (*Id.* at 5597.) On that same day, Mr. Wiertella was sentenced to 27 days at the Jail. (*Id.* at 5654.)

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[1] Both Plaintiff's Complaint and Amended Complaint (Doc. Nos. 1, 7) use the name "Dr. Karim Razmjouei." Dr. Raz legally changed his last name from Razmjouei to Raz. (Doc. No. 70-5 at 3505.) The Court will refer to Dr. Raz by his legal name.

[2] Since December 2018, Benjamin Longbons was promoted from Sergeant to Lieutenant. (Doc. No. 70-4 at 3321.) The Court will refer to Lieutenant Longbons by his current title unless quoting a supporting document.

[3] For ease and consistency, record citations are to the electronically stamped CM/ECF document and PageID# rather than any internal pagination.

[4] Mr. Wiertella had a concealed carry permit. (*See* Doc. No. 71-3 at 5595.)

B. Medical Screening

On December 2, 2018, Mr. Wiertella was booked at the Jail as a pretrial detainee. Lieutenant Longbons initiated the booking process. (Doc. No. 70-4 at 3378.) This process required medical screening, which included a series of 58 questions listed on a particular screening form. (Doc. No. 71-4 at 5662-63 (medical screening form listing questions).) Mr. Wiertella's form noted that he took medication for diabetes, heart disease, high blood pressure, and psychiatric disorders. (*Id.*) It also noted that Mr. Wiertella was allergic to Lisinopril, required a diabetic diet, suffered from sleep apnea, and had concerns about his immune system. (*Id.* at 5663.) The form also reflected that Mr. Wiertella took medications that required continuous administration. (*Id.* at 5662.)[5] Though the form prompted Lieutenant Longbons to document the names of Mr. Wiertella's medications, the last time he took these medications, and the timing of his next doses, these sections were left blank. (*See id.* at 5663.) Lieutenant Longbons also filled out a separate form indicating that Mr. Wiertella did not have any diagnosed food allergies. (*Id.* at 5664.)

After the medical screening, but within forty-eight hours of the inmate's arraignment, the Jail "classified" inmates into three groups: minimum security, medium security, or maximum security. (Doc. No. 70-4 at 3399-3401.) The Jail used another form to aid in this process. (See *id.*) On December 2, 2018, Lieutenant Longbons filled out the cover sheet of the Jail's classification form. (Doc. No. 71-3 at

---

[5] On the medical screening form, question 17 is posed as a compound question: "Is the prisoner carrying medications or does the prisoner report being on medication which should be continuously administered or available." (Doc. No. 71-4 at 5662.) Lieutenant Longbons circled "yes" in response to this question and clarified in his deposition testimony that he understood Mr. Wiertella to be on medications that should be continuously administered or available. Lieutenant Longbons further testified that he believed that Mr. Wiertella "did not bring any medications with him to our facility." (Doc. No. 70-4 at 3381-82.)

5639 (showing Lieutenant Longbons' signature).) Officer Deanna Hill completed the remaining pages on the same day. (*Id.* at 5639-47; Doc. No. 70-4 at 3405.) After completing the booking process and initiating the classification paperwork, Lieutenant Longbons had no further interaction with Mr. Wiertella.

The classification form included questions that are not covered by the medical screening form, such as an inmate's history of education, employment, and military service. (*See* Doc. No. 71-3 at 5645.) Some questions on the classification form overlapped with questions posed to the inmate during medical screening. These included, "are you taking any psychiatric medications?"; which psychiatric medications an inmate takes; and "did you bring in your medication?" (*Id.* at 5642.) Unlike the medical screening form, this classification form noted that Mr. Wiertella took Zoloft for depression. (*Id.*) It also indicated that Mr. Wiertella typically received his medications through the Veterans Affairs Department ("VA"). (*Id.* at 5643.) Mr. Wiertella was classified as minimum security. (*Id.* at 5647.)

Nurse Christina Watson reviewed Mr. Wiertella's medical screening form on December 2, 2018, the day Mr. Wiertella was booked. (*See* Doc. No. 70-8 at 4021-22.) The classification form that Lieutenant Longbons and Officer Hill completed was not part of Mr. Wiertella's medical file, and therefore was not sent to the Jail's medical staff. (*See id.* at 4036-37; Doc. No. 70-6 at 3803.) Nurse Watson signed the medical screening form and testified that she was aware that Mr. Wiertella was "on medications that needed to be continuously administered" for diabetes, heart disease, high blood pressure, and psychiatric disorders. She was also aware that he was booked without medications. (Doc. No. 70-8 at 4018-19, 4027; Doc. No. 70-14 at 4899.)

The Jail's policies set out a procedure for inmates who are booked without medications. Policy 254A identified certain examples of essential medications that included "antihypertensives (BP); cardiac medications, seizure

medications, diabetic medications, blood thinners and antibiotics." (Doc. No. 70-12 at 4701.) This policy further stated that:

> If the inmate does not have any essential medications with him/her upon arrival, but states to the staff that he/she is on medications, the medical staff will contact the inmate's physician or pharmacy to confirm the essential medications, and make arrangements for its delivery to the facility.

(*Id.* at 4702.)[6]

> If the inmate does not have medications, but states that he/she is on medications, the inmate will be required to write down what the medication(s) are that they have been prescribed, who (what doctor) prescribed them, what pharmacy the medications were purchased from, and when was the last date and time they took the prescribed medications. Officers will [e]nsure that they note on the form the addresses and/or phone numbers associated with the doctor and pharmacy.
>
> If the inmate cannot remember any of this information the inmate will be required to write down specifically that they do not have any information regarding the medications, and the statement will be witnessed by the officer.
>
> If the medical staff is not on duty, and if there is no medical staff scheduled to be on duty within the next 15 hour period of the receipt of any medications by arriving inmates, then the medical staff will be contacted either at 0800 hrs or at 2200 hrs (which ever time comes first that particular day) to review medication provided by inmates, during that particular shift, to make an evaluation concerning:

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[6] Excerpts from the Jail's policies retain the original headings, sections, subsections and formatting.

> If any of those medications are essential medications
>
> a. [*sic*] To make arrangements for the passing of any medications they determine to be essential to the individual inmate when the inmate has the medication present in the facility
>
> b. To make arrangements with the on-call physician to order the essential medications for delivery to the inmate

(*Id.*)

Nurse Watson and Nurse Diane Snow, the nursing coordinator, testified to the medical staff's practices when an inmate stated that he or she was on medications but did not have them upon entering the Jail. The medical staff's preference was that inmates ask their family or friends to bring their medications to the Jail, where the medications could be screened and administered. (Doc. No. 70-6 at 3721, 3766, 3770.)

If an inmate was unable to arrange a delivery, the medical staff's practice was to issue a prescription itself. (*Id.* at 3771.) The process of issuing a prescription depended on the information the inmate could provide. If the inmate could provide contact information for his doctor or pharmacy, the medical staff would obtain the necessary information to verify the prescription from with the pharmacy or physician. (*Id.* at 3777.) If the medical staff could not obtain information from the inmate's pharmacy or physician, Nurse Snow testified that the inmate would be scheduled for physician "sick call." (*Id.* at 3793-94.)

According to Nurse Watson, if an inmate could not provide a physician or pharmacy for the Jail to contact, the medical staff was not required to take further steps to identify and contact pharmacies or physicians, but might do so anyway. (Doc. No. 70-8 at 4012.)

Lieutenant Longbons testified that if an inmate did not know information about his medications or prescribing physicians, he was not required to have the inmate write down this information. (Doc. No. 70-4 at 3376-77.)

Based on Mr. Wiertella's in-custody communications, he was capable of writing down his medications. (*See* Doc. No. 71-4 at 5665-66 (listing medications).) Mr. Wiertella also identified the Wassau VA as the pharmacy he typically used. (*See id.* at 5665.) However, Mr. Wiertella's medical screening form did not contain this information. (*See id.* at 5662-63.) Despite the lack of prescription details, Mr. Wiertella was not asked to write down the information he had nor "write down specifically that [he did] not have any information regarding the medications" while being "witnessed by the officer" pursuant to the Jail's policies and procedures. (Doc. No. 70-12 at 4702.) There is no evidence that a nurse or any member of the medical staff attempted to verify Mr. Wiertella's medications.

C. Requests for Medications

On December 3, 2018, two of Mr. Wiertella's friends, Kurt Anthony Anton and Anthony Joseph Spatol, visited him at the Jail. (Doc. No. 71-3 at 5656.) Mr. Wiertella also made recorded calls to friends, family, and his public defender. (*See* Doc. Nos. 57-3, 57-4, 57-5, 57-6.) In these recordings, Mr. Wiertella requested help contacting the VA for a list of his prescriptions. (*See* Doc. Nos. 57-5, 57-3.) Specifically on December 5, 2018, Mr. Wiertella asked an unidentified male

> Can you get with Jess and have her call the VA and get a list of all my prescriptions, because they're still having a hard time doing that down here, and I haven't been on any meds now for like four days, blood pressure or diabetes, nothing. And they're saying it could be another week unless I get them that list, or get them sent in to me.

(Doc. No. 57-3 at 1099.) Mr. Wiertella provided the unknown male with the name and contact information for his public defender. (*See id.* at 1100.) The next day, Mr. Wiertella spoke with an unidentified female and confirmed that the VA would have a list of his medications. (*See* Doc. No. 57-6 at 1132-33.) He instructed her to coordinate with his public defender regarding his medical needs. (*See id.*)

Between December 3 and December 5, Mr. Wiertella sent a series of inmate request forms to Jail staff, colloquially referred to as "kites," asking for medication. (*See* Doc. No. 70-14 at 4903-05.)

According to its policies, the Jail

> uses Inmate Request Forms for inmates to correspond, ask questions or make request from various personnel in the detention facilities. These forms are available by request from the Correction Officers assigned to your housing area. These forms are to be used to make request or communicate with the medical staff, mental health services, Jail Administrator, inmate programming, etc.
>
> Once the Inmate Request Form is received by personnel it will be answered by the proper authorities and returned to you with a reply. Please limit each Inmate Request Form to having only one request. Profanity on Inmate Request Forms is prohibited and will be subject to disciplinary action accordingly. Frivolous request or those without your name will not be accepted.

(Doc. No. 70-12, at 4396.)

Policy 210C detailed a procedure for inmate request forms. The relevant portions are excerpted below:

> **PROCEDURE**:

1. Anytime an inmate requests an inmate request form, the officer will attempt to provide the inmate with one in a reasonable amount of time.

2. The officer providing the inmate request form should ask the inmate what his/her concern or request may be. This should be done to ensure the request is not an emergency.

3. If the issue is an emergency the officer should assess the issue and contact the appropriate personnel.

4. Non-emergency requests should be handled when the officer can reasonably provide the inmate a form.

CONTROL:

1. All inmate request forms given to officers by inmates should be handled as quickly as possible.

2. The form provides an area for the name of inmate making the request, and where the inmate is located.

3. The form provides an area for the officer handling the inmate request form to sign the form
. . .

ROUTING:

1. Once the officer receives the completed Inmate request form, the officer will sign the form, and will give the inmate the pink copy of the initial request.
. . .

3. Any personnel or department that receives a forwarded inmate request form shall take the necessary steps to handle the request or issue and reply in the space provided. The responding person will then sign and date

their reply and return the inmate request form to the appropriate floor and inmate.

. . .

TRACKING:

1. Completed inmate request forms will be taken to Central Control and filed alphabetically in the records folder. These forms will then be forwarded to the records department once per shift, unless otherwise requested, where they will be placed into the inmates personnel file.

2. This is done to ensure the requests, issues and concerns of the inmates housed in the facility are recorded, and a written document can be called upon to prove or explain an action taken by corrections officers or other personnel of this facility.

(*Id.* at 4482-84.)

Policy 251 applied to kites raising an illness or injury:

1. Inmates with claims of an illness or injury will be provided with an Inmate Request Form and will be advised to fill it out completely, including date and range.

. . .

b. The correction officer will sign the form and add the inmate's range and cell number. The officer will review the form to ensure that the request is clear.

2. If the correction[s] officer receiving the medical complaint feels it is necessary, medical staff should be notified immediately.

3. For non-emergencies, the forms will be provided to the medical staff and the inmate scheduled to be examined.

> a. The medical staff will execute the remainder of the form as it pertains to diagnosis, initial treatment and on-going treatment.
>
> • All inmate medical Inmate Request Forms will be kept filed in the inmate's medical record and kept on file.
>
> b. Medical forms will be reviewed daily. This will be done by the physician or allied medical personnel in her absence.
>
> . . .
>
> 6. The physician will report to the facility a minimum of four (4) days a week to examine inmates who have medical complaints filed, to examine inmates who are otherwise in need of medical care and to complete inmate physicals. The nursing staff will run sick call an additional 2 days per week. This will provide 6 days of coverage for inmate medical sick call.

(*Id.* at 4688-90.)

According to Nurse Snow, corrections officers typically collected kites during their shift work. The corrections officers then delivered them to any one of four places: the medical staff at central booking, the medical staff's mailbox, the sergeant's office, or the clinic. (Doc. No. 70-6 at 3734, 3774.) She also recalled medical staff receiving kites directly from inmates. (*Id.* at 3735-36.) The nursing staff would check the sergeant's office and mailbox four to five times a shift. (*Id.* at 3769.) She also stated that the medical staff "really attempted to try and get a response to those requests within 24 hours if at all possible." (*Id.* at 3739.) Nurse Snow was unaware of any Jail policy mandating that the medical staff review an inmate's requests for medical care daily. (*Id.* at 3738-39.)

On December 3, 2018, Mr. Wiertella sent his first kite. (Doc. No. 70-14 at 4905.) He requested "diabetic and other meds" as well as an extra mattress. (*Id.*) That same day,

though not necessarily in response to Mr. Wiertella's kite, Nurse Watson ordered a diabetic diet, metformin, and daily glucose checks. (*Id.* (showing signatures for both the responder and the officer giving reply to inmate); *id.* at 4899 (showing progress notes from medical staff); *id.* at 4907 (showing daily glucose checks from December 4-9, 2018); Doc. No. 70-8 at 4030-31.) During a recorded call, Mr. Wiertella mentioned receiving extra mattresses from Jail staff. (Doc. No. 57-5 at 1129.)

Nurse Watson did not order any other medications for Mr. Wiertella on December 3, 2018, or at any other point during Mr. Wiertella's detention. Nurse Watson testified that she treated Mr. Wiertella's diabetes, but she did not treat his other medical conditions. (Doc No. 70-8 at 4025-26 ("I did what I was trained to do, was pulled out the [] most important which was [] him being a diabetic.").) To her, she was trained to prioritize conditions like diabetes over other conditions like heart disease. (*Id.*) In contrast, Nurse Snow testified that she did not train Nurse Watson to treat diabetes to the exclusion of an inmate's other medical needs. (Doc. No. 70-6 at 3815.) Nurse Snow also testified that the Jail had no such policy regarding prioritization of medical conditions. (*Id.*)

Also on December 3, Mr. Wiertella made a second request for "Prilosec, Saralitralen [sic], Lasics [sic], Efomefrion [sic] and, Simocoton [sic]," and indicated that the final three prescriptions were for blood pressure. (Doc. No. 70-14 at 4904.) Dr. Raz testified that Sertraline is an antidepressant like Zoloft and that Lasix is a diuretic used to treat high blood pressure. (Doc. No. 70-5 at 3640-41.) The kite was collected, but Mr. Wiertella did not receive a response. (*See* Doc. No. 70-14 at 4904 (showing signature "of person receiving the request" but no signatures for responder or officer giving reply to inmate).)

On December 5, Mr. Wiertella made a third request, this time for an additional mattress and medications. (*Id.* at 4903.) Mr. Wiertella listed "Metformin, Prilosec, Saralitolen,

Efomefrion, Lasices, Semecolon and water pills." (*Id.*) He also wrote "call Wausau VA to get full list of meds or my meds sheet." (*Id.*) Again, this kite was collected, but Mr. Wiertella did not receive a response. (*See id.* (showing signature "of person receiving the request" but no signatures for responder or officer giving reply to inmate).) Nurse Watson testified that she did not receive Mr. Wiertella's last two kites and did not deliberately ignore them. (Doc. No. 70-8 at 4034.) According to Nurse Watson, the medical staff "answer[ed] as many [kites] as we are capable of doing and sometimes, yes they do get backed up." (*Id.*) There is no record evidence that any member of the Jail's medical staff received, reviewed, or responded to either of Mr. Wiertella's final two kites.

Nurse Snow testified that the Jail scheduled medical sick calls for inmates with medical conditions or complaints. (Doc. No. 70-7 at 3850-51.) The medical staff operated two types of sick calls: physician sick calls and nurse sick calls. (*Id.* at 3851.) Physician sick calls included either Dr. Raz or the Jail's physician's assistant, who also had the authority to write prescriptions. (*See id.* at 3929, 3954.) In general, the nurses who managed nurse sick calls could not prescribe medications. (Doc. No. 70-6 at 3750; Doc. No. 70-5 at 3566 (explaining only MDs, nurse practitioners, or physician assistants can prescribe medications).) Nurse sick calls occurred every day of the week, while physician sick calls occurred Monday through Friday. (Doc. No. 70-7 at 3852.) Mr. Wiertella was scheduled for a nurse sick call on December 10, 2018, for a blood pressure check. (Doc. No. 71-1 at 4960.)

D. Mr. Wiertella's Death

On the evening of December 9, Mr. Wiertella played cards with other inmates. (Doc. No. 71-3 at 5569.) He spoke with several friends on the phone, stating that "everything is good." (Doc. No. 57-5 at 1116.) Mr. Wiertella appeared for 11:00 p.m. headcount. (Doc. No. 71-3 at 5567.) On December

10, around 2:00 a.m., a corrections officer observed Mr. Wiertella in his bed. (*Id.* at 5558.) At 2:20 a.m., an inmate in a nearby cell reported hearing him use the bathroom. (*Id.*) Around 2:43 a.m., another officer observed Mr. Wiertella lying on his back on the floor, motionless. (*See id.* at 5566, 5573, 5574.) Corrections officers opened Mr. Wiertella's cell, checked for a pulse, and began chest compressions. (*Id.* at 5566.) At 2:55 a.m., paramedics arrived and took over CPR. (*Id.*) Mr. Wiertella was pronounced dead at 3:12 a.m. on December 10, 2018. (*Id.*)

The county Medical Examiner concluded that "atherosclerotic and hypertensive cardiovascular disease was the cause of Mr. Wiertella's death." (Doc. No. 70-1 at 3015; Doc. No. 70-16 at 4912.) Plaintiff's expert, Dr. Jonathan Arden, opined that atherosclerotic disease was likely very mild, and that hypertensive disease was a more significant cause of death. (Doc. No. 70-1 at 3015; Doc. No. 70-16 at 4912.) Specifically, Dr. Arden concluded that "[b]ut for the failure to provide [Mr. Wiertella's] medications and a CPAP machine, in my opinion, Mr. Wiertella would not have died how and when he did." (Doc. No. 70-16 at 4914.)[7]

E. Lake County's Death Investigation

Sergeant John Kelley of the Lake County Sheriff's Department was assigned to investigate Mr. Wiertella's manner of death. (Doc. No. 70-3 at 3207.)[8] Sergeant Kelley

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[7] Defendants do not cite expert testimony in their motions for summary judgment or replies. Plaintiff cited and attached the deposition testimony of Dr. Ilan S. Wittstein in his opposition to Defendants' motions for summary judgment. (*See* Doc. No. 71 at 4938-39; *see also* Doc. No. 71-13.) This opposition also challenges Dr. Wittstein's credentials as an expert. (Doc. No. 71 at 4939.) However, Plaintiff did not file a *Daubert* motion to disqualify Dr. Wittstein.

[8] Sergeant Kelley testified that Captain Walters assigned him to investigate Mr. Wiertella's death. (Doc. No. 70-3 at 3207.) Plaintiff alleged Captain Brooks assigned Sergeant Kelley to this investigation. (Doc No. 71 at 4940.)

investigated whether there was evidence of criminal conduct and/or possible violations of the Jail's policies and procedures. (*Id.* at 3207, 3213-14.) Sergeant Kelley testified that "Captain Brooks [the Jail Administrator] would be the one to look over any policy and procedure violations." (*Id.* at 3209.)

Sergeant Kelley did not interview the Jail's corrections officers but instead relied on their written reports. (*Id.* at 3211; see Doc. No. 71-3 at 5566-87.) Sergeant Kelley did not interview the Jail's nurses or members of the medical staff. (Doc. No. 70-3 at 3278.)[9] Sergeant Kelley interviewed inmates who observed Mr. Wiertella on the night of his death. (*Id.* at 3211.)[10] He had access to Mr. Wiertella's medical file. (*Id.* at 3245-47.) But Sergeant Kelley

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[9] Nurse Snow testified that she believed she was on vacation around December 9, 2018, and heard about Mr. Wiertella's death upon her return to the Jail. (Doc. No. 70-6 at 3796.) She further testified that she did not have formal discussions with Detective Kelley or Captain Brooks. (*Id.*)

[10] Sergeant Kelley testified that one of the inmates he interviewed, Kevin Cole, informed Sergeant Kelley that he "heard Mr. Wiertella's blood pressure being checked two days before" Mr. Wiertella's death. (Doc. No. 70-3 at 3251.) Sergeant Kelley testified that Mr. Cole told him Mr. Wiertella's blood pressure was "through the roof." (*Id.*) However, Sergeant Kelley testified that he felt Mr. Cole had conflated blood pressure and blood sugar and noted that Mr. Cole could not tell him who took Mr. Wiertella's blood pressure or where that check took place. (*Id.* at 3267-68.) After receiving this information from Mr. Cole, Sergeant Kelley did not conduct further investigation into Mr. Wiertella's blood pressure because he reasoned that considering Mr. Wiertella's daily glucose checks, "if he did have real high blood pressure, then it should have been annotated in his chart . . . ." (*Id.* at 3269.)

Plaintiff cites this testimony only in relation to the Lake County Sherriff Department's allegedly deficient investigation into Mr. Wiertella's death. (*See* Doc. No. 71 at 4941). Plaintiff does not rely on this testimony to support his claims of deliberate indifference to a serious medical need. Accordingly, the Court will not consider this testimony for anything beyond the facts it is cited to support, nor examine whether Mr. Cole's statement would be admissible.

did not review certain pages of Mr. Wiertella's medical file from the Jail, including the second and third kites. (*Id.*) According to Sergeant Kelley, the fact that these kites were "received by a corrections officer, but nobody ever responded to them" was "problematic." (*Id.* at 3250.)

On February 21, 2019, Sergeant Kelley issued his report. He concluded "based on the evidence and coroner's report, Mr. Wiertella was found to have die[d] from natural causes" and recommended the matter be closed. (Doc. No. 71-3 at 5571.) The report did not state any conclusions of violations of the Jail's or Sheriff's policies, and Sergeant Kelley did not deliver his report to Captain Brooks directly. (*See id.*; Doc. No. 70-3 at 3251.)

F. Captain Brooks

Captain Brooks worked for the Lake County Sheriff's Office for nearly forty years. (Doc. No. 70-2 at 3108.) Since 2011, Captain Brooks served as the Jail Administrator for the Jail. (*Id.* at 3108-09.) The Jail Administrator's responsibilities included hiring, training, overseeing the daily duties of the Jail's staff and conducting inspections. (*Id.* at 3110.)

Another function of the Jail Administrator was to ensure that the Jail's policies are up to date. (*Id.*) Captain Brooks, along with a team of officers and supervisors, conducted an annual review of the Jail's policies. (*Id.* at 3120-21.) Additionally, every employee was asked to read and review the Jail's policies. (*Id.* at 3121.) For the Jail's medical policies, the Jail Physician, Dr. Raz, was tasked with reviewing these policies and, when necessary, suggesting revisions. (*Id.* at 3119-20.)

Captain Brooks testified that the Jail had a standard policy of conducting investigations when inmates passed away while in custody. (*Id.* at 3134.) To Captain Brooks, the purpose of Sergeant Kelley's investigation was to determine whether Mr. Wiertella's death was "natural or suicide or some other suspicious reason that needed further

investigation." (*Id.* at 3135.) There was no specific investigation into the medications Mr. Wiertella received, the communications between the nursing staff and Dr. Raz, or the medical care Mr. Wiertella received while at the Jail, though she believed Sergeant Kelley's investigation may have touched on these issues. (*Id.* at 3139-42.)

G. Dr. Raz

Dr. Raz worked as a full-time physician at University Hospitals. (Doc. No. 70-5 at 3507.) Starting in 2017 or 2018, Dr. Raz also assumed the position of Jail Physician. (Doc. No. 71 at 4948; Doc. No. 70-5 at 3520; Doc. No. 70-2 at 3118.) Dr. Raz stated that his duties as Jail Physician included seeing patients two times a week for four hours each and answering nurses' calls. (Doc. No. 70-5 at 3521, 3602.) Dr. Raz further explained that while he did not create the Jail's policies and procedures, he did "look at it every year." (*Id.* at 3524.) During his deposition, he did not recall reviewing some of the Jail's policies presented to him. (*Id.* at 3531.)

Dr. Raz thought the Jail nurses and/or a nursing coordinator, were in charge of medical care. (*Id.* at 3535.) To his understanding, the nurses identified which patients he would see when he was present at the Jail. (*Id.* at 3537.) Dr. Raz relied on the information the nurses relayed to him. (*Id.* at 3538; 3544; *see also* Doc. No. 70-6 at 3787.) Dr. Raz could ask to see any patient about whom he had questions. (Doc. No. 70-5 at 3537.) He did not review medical screening forms or order sheets unless prompted by the nurses. (*Id.* at 3538-40.) Dr. Raz testified that if he reviewed an order sheet for a medication and nothing seemed out of the ordinary, it was not his practice to review the inmate's entire medical file. (*Id.* at 3553.)

Dr. Raz was not responsible for training the Jail's medical staff. (*Id.* at 3605-06.) At most, Dr. Raz showed the medical staff certain procedures so that they could work alongside him comfortably. (*Id.* at 3606.)

At no point during Mr. Wiertella's time at the Jail did Dr. Raz treat, see, or meet Mr. Wiertella. (*Id.* at 3517.) Instead, Dr. Raz had only indirect contact with Mr. Wiertella when he countersigned an order to fill a prescription for metformin for Mr. Wiertella on December 4, 2018. (*Id.* at 3552; Doc. No. 70-14 at 4899 (showing Dr. Raz's signature on order for metformin).) Dr. Raz likewise did not review Mr. Wiertella's medical screening form, the kites Mr. Wiertella sent, or any other documentation relating to Mr. Wiertella. (Doc. No. 70-5 at 3617, 3605, 3549.)

III. Procedural Background

On December 9, 2020, Plaintiff filed this lawsuit naming Lake County Ohio, Sheriff Dan Dunlap, Captain Cynthia Brooks, Lieutenant Michelle Prather, Lieutenant Benjamin Longbons, Lieutenant Scott Simpson, Lieutenant Mark Soeder, Lieutenant Eric Vanjo, Sergeant Martin Bontrager, Sergeant Matthew Darone, Sergeant Diana Marino, Sergeant Michael Nohorniak, Sergeant Matthew Paul, Sergeant Terry Tarone, Dr. Karim Razmouei [sic], Nurse Diana [sic] Snow, Nurse Erin Boyle, Nurse Patty Hammers, Nurse Sabrina Watson, Nurse Christina Watson and various Doe Defendants. (Doc. No. 1.)

On February 10, 2021, Plaintiff filed an Amended Complaint and a joint motion to dismiss Defendant Erin Boyle. (Doc. No. 7.) On February 11, 2021, the Court granted the joint motion to dismiss. (Doc. No. 9.) That same day, Defendants Bontrager, Brooks, Darone, Dunlap, Hammers, Longbons, Marino, Mahorniak, Paul, Prather, Simpson, Snow, Soeder, Tarone, Vanjo, Christina Watson, and Sabrina Watson answered. (Doc. No. 11.) Dr. Raz answered on March 17, 2021. (Doc. No. 16.) Following a case management conference on April 20, 2021 (Doc. No. 23), the parties engaged in discovery.

On April 4, 2022, Dr. Raz filed a motion for summary judgment. (Doc. No. 48.) On June 13, 2022, Plaintiff moved to dismiss Defendants Dunlap, Prather, Simpson, Soeder,

Vanjo, Bontrager, Darone, Tarone, Marino, Nahorniak, Paul, Hammers, Sabrina Watson, and the Doe Defendants, which the Court granted on June 15, 2022. (Doc. No. 56.) On June 14, 2022, the remaining Lake County Defendants (Lake County, Captain Brooks, Lieutenant Longbons, Nurse Snow, and Nurse Watson) moved for summary judgment. (Doc. No. 57.) Plaintiff filed a consolidated opposition on July 14, 2022 (Doc. No. 71), and Defendants replied on July 28, 2022. (Doc. Nos. 72, 73.)

IV. Standard of Review

"A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought." Fed. R. Civ. P. 56(a). "Summary judgment is appropriate only if the pleadings, depositions, answers to interrogatories, and affidavits show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The moving party bears the burden of showing that no genuine issues of material fact exist." *Williams v. Maurer*, 9 F.4th 416, 430 (6th Cir. 2021) (citations and quotations omitted); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

A "material" fact is one that "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). And a genuine dispute of material fact exists if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Abu-Joudeh v. Schneider,* 954 F.3d 842, 849-50 (6th Cir. 2020) (additional citations and quotations omitted).

"Once the moving party satisfies its burden, the burden shifts to the nonmoving party to set forth specific facts showing a triable issue of material fact." *Queen v. City of Bowling Green, Ky.*, 956 F.3d 893, 898 (6th Cir. 2020) (quotation and citations omitted). "[O]n summary judgment the inferences to be drawn from the underlying facts . . . must

be viewed in the light most favorable to the party opposing the motion." *United States v. Diebold*, 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1962); *see also Kalamazoo Acquisitions, L.L.C. v. Westfield Ins. Co.*, 395 F.3d 338, 342 (6th Cir. 2005).

A party asserting (or disputing) a fact must cite evidence in the record or show that the record establishes the absence or the presence of a genuine dispute. *See* Fed. R. Civ. P. 56(c) and (e). Rule 56 further provides that "[t]he court need consider only" the materials cited in the parties' briefs. Fed. R. Civ. P. 56(c)(2); *see also Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479-80 (6th Cir. 1989) ("The trial court no longer has the duty to search the entire record to establish that it is bereft of a genuine issue of material fact.").

"Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). However, the Court's role is not to make credibility determinations or 'weigh' conflicting evidence. *Payne v. Novartis Pharms. Corp.*, 767 F.3d 526, 530 (6th Cir. 2014); *Arban v. W. Pub. Corp.*, 345 F.3d 390, 400 (6th Cir. 2003). "The ultimate question is whether the evidence presents a sufficient factual disagreement to require submission of the case to the jury, or whether the evidence is so one-sided that the moving parties should prevail as a matter of law." *Payne*, 767 F.3d at 530.

V. Analysis

A. Count One

1. Overview of Claim

Plaintiff alleged he is entitled to relief against all individual Defendants under 42 U.S.C. § 1983. (Doc. No. 7 at

136.)[11] "To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States and must show that the alleged deprivation was committed by a person acting under the color of state law." *West v. Atkins*, 487 U.S. 42, 48, 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988). Here, there is no dispute that Defendants were acting under color of state law.

The right at issue in Count One is the state's "constitutional obligation to provide medical care to those whom it detains." *Griffith v. Franklin Cnty., Ky.*, 975 F.3d 554, 566 (6th Cir. 2020). The constitutional right to adequate medical care is rooted in the Fourteenth Amendment for pretrial detainees and the Eighth Amendment for convicted prisoners. *Johnson v. Karnes*, 398 F.3d 868, 873 (6th Cir. 2005) ("The right to adequate medical care is guaranteed to convicted federal prisoners by the Cruel and Unusual Punishment Clause of the Eighth Amendment, and is made applicable to convicted state prisoners and to pretrial detainees (both federal and state) by the Due Process Clause of the Fourteenth Amendment."). It is undisputed that the Eighth and Fourteenth Amendments are implicated here because Mr. Wiertella was a pretrial detainee and a convicted prisoner during his time at the Jail. (Doc. No. 48 at 340; Doc. No. 57-1 at 1079; Doc. No. 71 at 4929.)

Defendants raised the defense of qualified immunity. (*See* Doc. No. 48 at 339-342; Doc. No. 57-1 at 1086-87.) "Qualified immunity protects state officers against section 1983 claims unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time of the offense.

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[11] Plaintiff alleged Count One "[a]gainst [a]ll Defendants." (Doc. No. 7 at 135.) Yet, Plaintiff only discussed Lake County in the context of his *Monell* claim (Count Two). (*See* Doc. No. 71 at 4953.) This makes sense because claims against local governing bodies are governed by *Monell*. *See Johnson v. Hardin Cnty., Ky.*, 908 F.2d 1280, 1285 (6th Cir. 1990). In line with Plaintiff's opposition brief, the Court therefore construes Count One as against all Defendants besides Lake County.

And the burden lies with the plaintiff to show each prong." *Novak v. City of Parma, Ohio*, 33 F.4th 296, 303 (6th Cir. 2022) (quotations and citations omitted), cert. denied, 143 S. Ct. 773 (2023). Courts are permitted to "exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson v. Callahan*, 555 U.S. 223, 236, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009).

Lawler v. Hardeman County, Tennessee, 93 F.4th 919 (6th Cir. 2024) instructs district courts to start with the second qualified immunity prong. In *Lawler*, the court recognized that the Sixth Circuit clarified that Fourteenth Amendment and Eighth Amendment claims concerning the adequacy of medical care are governed by different standards. *Id.* at 927-28. But the court noted that this change did not occur until 2021, at the earliest. *Id.* at 927. Before 2021, both Eighth and Fourteenth Amendment claims were governed by F*armer v. Brennan*, 511 U.S. 825, 834, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994). Because the challenged conduct in *Lawler* occurred in 2018, the court held that, under the second prong qualified immunity prong, *Farmer's* standard governed the Fourteenth Amendment claims. *Id.* at 927-28. The court reasoned that qualified immunity "seeks to give officials 'fair notice' about when their actions will subject them to liability[,] [a]nd officers will obviously lack notice of future rules that a court has yet to adopt." *Id.* at 926 (citations omitted).

Count One alleged that Defendants' 2018 conduct violated Mr. Wiertella's constitutional right to adequate medical care. (Doc. No. 7 at 129-30, 135-36.) Thus, under Lawler, Farmer governs Count One's Eighth and Fourteenth Amendment components. *Lawler*, 93 F.4th at 927-28. In *Farmer*, the Supreme Court held that "a prison official violates the Eighth Amendment only when two requirements are met." 511 U.S. at 834. First, "the deprivation alleged must be, objectively, sufficiently serious," which requires that an inmate show "he is

incarcerated under conditions posing a substantial risk of serious harm." *Id.* (internal citations and quotations omitted). Second, an inmate must show that a prison official had a "sufficiently culpable state of mind." *Id.* Specifically, this state of mind must be "'deliberate indifference' to inmate health or safety." *Id.*

The first *Farmer* prong, the objective component, requires the plaintiff to demonstrate that the inmate had an "objectively serious medical need." *Grote v. Kenton Cnty.*, Ky., 85 F.4th 397, 405 (6th Cir. 2023). An objectively serious medical need includes "conditions that have been diagnosed by a physician as mandating treatment" or are "so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Harrison v. Ash*, 539 F.3d 510, 518 (6th Cir. 2008) (quoting *Blackmore v. Kalamazoo Cnty.*, 390 F.3d 890, 897 (6th Cir. 2004)).

The second *Farmer* prong, the subjective component, mandates the plaintiff "prove that an officer knew of the facts creating the substantial risk of serious harm" and "that the officer believed that this substantial risk existed." *Lawler*, 93 F.4th at 929 (citing *Farmer*, 511 U.S. at 837.) Moreover, "even if the officer knows of a substantial risk, the inmate must lastly show that the officer 'responded' to the risk in an unreasonable way." *Id.* (citing *Farmer*, 511 U.S. at 844 and *Beck v. Hamblen Cnty.*, 969 F.3d 592, 601-02 (6th Cir. 2020)). Because the Court "cannot 'impute knowledge from one defendant to another,'" the Court "must 'evaluate each defendant individually.'" *Greene v. Crawford Cnty.*, Mich., 22 F.4th 593, 607 (6th Cir. 2022) (quoting *Speers v. Cnty. of Berrien*, 196 F. App'x 390, 394 (6th Cir. 2006)).

As a final point, Plaintiff must do more than simply apply *Farmer* to overcome the second prong of qualified immunity:

> Clearly established law may not be defined at such a high level of generality. It must be more particularized than that. The Supreme Court recently

> reminded us that a plaintiff must identify a case with a similar fact pattern that would have given fair and clear warning to officers about what the law requires. Immunity protects all but the plainly incompetent or those who knowingly violate the law. The dispositive inquiry is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.

Arrington-Bey v. City of Bedford Heights, 858 F.3d 988, 992-93 (6th Cir. 2017). In other words, Plaintiff must identify a case that provided notice to Defendants that their conduct would not pass muster under *Farmer*. *See Id.*

2. Objective Component

There is no dispute here that Plaintiff established the objective component for all Defendants. The Lake County Defendants did not dispute that Mr. Wiertella had an objectively serious medical need. (Doc. No. 57-1 at 1079.) Dr. Raz likewise did not dispute that Mr. Wiertella had an objectively serious medical need. (*See* Doc. No. 48 at 341-45 (challenging the subjective component of Plaintiff's claim, but not the objective component).)

At the time of his death, Mr. Wiertella had several conditions that had been diagnosed by a physician as mandating treatment, including type 2 diabetes mellitus, hypertension, hyperlipidemia, obstructive sleep apnea, morbid obesity, orthopedic issues, chronic pain syndrome, anxiety, depression, attention deficit disorder and post-traumatic stress disorder. (Doc. No. 70-16 at 4911; *see* Doc. No. 70-18.)

Accordingly, the Court finds that it was clearly established that Mr. Wiertella's medical conditions were objectively serious. Next, the Court considers whether there is a triable issue of fact on the subjective component for each Defendant. *See Greene*, 22 F.4th at 607.

3. Captain Brooks and Dr. Raz

Plaintiff's Section 1983 claims against Captain Brooks and Dr. Raz fail because there is no evidence that they were subjectively aware that Mr. Wiertella's serious medical needs went untreated. *See, e.g., North v. Cuyahoga Cnty.*, 754 F. App'x 380, 388-89 (6th Cir. 2018); *Rouster v. Cnty. of Saginaw*, 749 F.3d 437, 453 (6th Cir. 2014); *Cesal v. Moats*, 851 F.3d 714, 723 (7th Cir. 2017).

Captain Brooks testified that she "supervised" the Jail's medical staff and ensured the medical policies were updated. (Doc. No. 70-2 at 3112.) She stated that she was not privy to any conversations concerning Mr. Wiertella's medical needs. (*Id.* at 3141.) Plaintiff did not dispute this testimony. (*See* Doc. No. 71 at 4951-52.) In short, there is no evidence that Captain Brooks was aware of Mr. Wiertella's medical conditions — let alone that these conditions were serious and not being treated.

Dr. Raz testified that he had a single instance of indirect contact with Mr. Wiertella: he reviewed and countersigned an order for a prescription for metformin and ordered a diabetic diet and daily glucose checks on December 4, 2018. (*See* Doc. No. 70-14 at 4899.) Dr. Raz did not review any inmate medical screening forms and was, therefore, unaware that Mr. Wiertella had any conditions besides diabetes. (*See* Doc. No. 70-5 at 3552.) Again, Plaintiff did not dispute this testimony. (*See* Doc. No. 71 at 4948-51.) Dr. Raz's testimony is also corroborated by Nurse Snow's testimony that she did not give Dr. Raz medical screening forms. (Doc. No. 70-6 at 3787.)

To the extent that Plaintiff seeks to hold Captain Brooks or Dr. Raz liable under a theory of supervisory liability, he must show that they "either encouraged the specific incident of misconduct or in some other way directly participated in it." *Heyerman v. Cnty. of Calhoun*, 680 F.3d 642, 647 (6th Cir. 2012) (quotation marks omitted). He may

also prevail if he shows that Defendants "abandon[ed] the specific duties of his position in the face of actual knowledge of a breakdown in the proper workings of the department." *Winkler v. Madison Cnty.*, 893 F.3d 877, 898 (6th Cir. 2018) (cleaned up). As shown above, Plaintiff has not established that either Captain Brooks or Dr. Raz had sufficient involvement with Mr. Wiertella to "encourage" or "directly participate" with his medical treatment. *Heyerman*, 680 F.3d at 647. Nor has Plaintiff established that these Defendants had "actual knowledge of a breakdown in the proper workings of the [medical] department" to sustain an abandonment claim. *Winkler*, 893 F.3d at 898.

Accordingly, Count One is dismissed against Captain Brooks and Dr. Raz.

4. Lieutenant Longbons, Nurse Watson, and Nurse Snow

Unlike the other individual Defendants, Lieutenant Longbons, Nurse Watson, and Nurse Snow knew of Mr. Wiertella's serious medical needs.

To start, it is undisputed that Lieutenant Longbons completed Mr. Wiertella's medical screening form. (Doc. No. 70-4 at 3378.) Lieutenant Longbons, therefore, understood that Mr. Wiertella was taking medications for heart disease, high blood pressure, and psychiatric disorders. (*See* Doc. No. 71-4 at 5662-63.)

It is also undisputed that Nurse Watson reviewed and signed Mr. Wiertella's medical screening form on December 2, 2018. (Doc. No. 70-8 at 4018-19, 4027; Doc. No. 70-14 at 4899.) Nurse Watson knew that Mr. Wiertella was booked without the medications discussed on the screening form. (Doc. No. 70-8 at 4027; Doc. No. 70-14 at 4899.) A jury could reasonably find that Nurse Watson reviewed Mr. Wiertella's first kite. (Doc. No. 70-14 at 4899, 4905; Doc. No. 70-8 at 4031.) Thus, for summary judgment purposes, not only was Nurse Watson aware that Mr. Wiertella was booked without his heart disease, high blood pressure, and psychiatric

disorder medications, but she was also aware of his explicit request for "diabetic and other meds." (Doc. No. 70-14 at 4905.)

A jury could find that Nurse Snow also reviewed Mr. Wiertella's medical screening form. Plaintiff cites Nurse Watson's testimony that the nursing staff would review and sign medical screening forms and place them on a shelf "for Diane [Snow] to review when she came in." (Doc. No. 70-8 at 3965.) The Lake County Defendants respond that Nurse Watson only stated that Nurse Snow reviewed some of the medical screening forms. (Doc. No. 73 at 5945.) But they did not provide any evidence that Mr. Weirtella's file was not placed on Nurse Snow's shelf for review. (*See id.*) Absent such evidence, the Court must draw the reasonable inference that Mr. Wiertella's form was one of the forms placed on the shelf for Nurse Snow's review. *See Richmond v. Huq*, 885 F.3d 928, 942-43 (6th Cir. 2018) (concluding, for summary judgment purposes, a doctor reviewed the inmate's medical history even though it was "not clear from the record whether [the doctor] actually reviewed that particular document"). [12] Consequently, for summary judgment purposes, Nurse Snow was subjectively aware that Mr. Wiertella was booked without medications that needed to be continuously administered to treat his serious medical needs.

Being aware of a serious medical need is not enough, though. Plaintiff must also show that these Defendants "responded in an unreasonable way" after learning of Mr. Wiertella's medical conditions. *Lawler*, 93 F.4th at 929.

To be sure, Lieutenant Longbons did not provide the medical staff with the names of Mr. Wiertella's medications.

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[12] A reasonable reading of Nurse Watson's testimony is that she placed screening forms on the shelf to determine whether an inmate needed a physical. (*See* Doc. No. 70-8 at 3965-68.) Based on this testimony and the length of Mr. Wiertella's detention, Mr. Wiertella would have needed a physical. (*Id.* at 3967.)

(Doc. No. 71-4 at 5662-63.) This question was listed on the medical screening form and was also required by the Jail's policies and procedures. (*Id.*; Doc. No. 70-12 at 4702.) But the Sixth Circuit has already recognized that Lieutenant Longbons' conduct was not constitutionally unreasonable. *See Brawner v. Scott Cnty., Tennessee*, 14 F.4th 585, 600 (6th Cir. 2021) (holding that "to the extent the booking officer incorrectly recorded answers or failed to contact the medical staff, that at most reflects negligent conduct"); *see also Graham ex rel. Estate of Graham v. Cnty. of Washtenaw*, 358 F.3d 377, 384 (6th Cir. 2004) (holding it is not "unconstitutional for municipalities and their employees to rely on medical judgments made by medical professionals responsible for prisoner care" (quotations omitted)).[13] Here, Lieutenant Longbons was reasonable in his expectation that medical personnel would follow up. At most, his conduct was negligent. (Doc. No. 70-4 at 3371-73.) Accordingly, Count One is dismissed against Lieutenant Longbons.

Given their specialized training and knowledge of Mr. Wiertella's medical needs, Plaintiff asserted that Nurse Watson and Nurse Snow unreasonably failed to ensure Mr. Wiertella obtained medications other than metformin. (*See* Doc. No. 71 at 4944-46.) Defendants countered that Plaintiff cannot prevail because there is not "a single case inside or outside the Sixth Circuit in which a defendant was found liable for being deliberately indifferent to an inmate who did not first exhibit or complain of symptoms." (Doc. No. 57-1 at 1082.) Thus, to Defendants, because Nurse Watson and Nurse Snow neither met Mr. Wiertella nor heard him complain of physical symptoms, Plaintiff cannot show that

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[13] *Brawner* was decided in 2021, several years after the events in this case. However, in *Brawner*, the Sixth Circuit applied the Fourteenth Amendment's "reckless disregard" standard for the officer's subjective intent. *See* 14 F.4th at 596-97. Because the Sixth Circuit has held that a booking officer's failure to accurately record answers or contact medical staff is merely negligent, these actions cannot meet the higher standard for deliberate indifference applicable to this case.

they violated a clearly established right. (*See id.* at 1082, 1086-87.)[14]

Richmond v. Huq, 885 F.3d 928 (6th Cir. 2018) — which was cited in Plaintiff's opposition brief — provides that a jury could find that Nurse Watson's and Nurse Snow's failure to take steps to obtain Mr. Wiertella's medications violated Mr. Wiertella's constitutional right to adequate medical care under *Farmer*. (Doc. No. 71 at 4943.) And, as explained below, *Richmond* is a "similar fact pattern that would have given [Nurse Watson and Nurse Snow] a fair and clear warning" that they had to do more to ensure that Mr. Wiertella obtained the essential medications that they knew Mr. Wiertella was taking. *Arrington-Bey*, 858 F.3d at 993. Thus, a jury could find that Nurse Watson and Nurse Snow violated Mr. Wiertella's clearly established rights. *See id.*[15]

The plaintiff in *Richmond* was arrested on December 25, 2012, but was immediately taken to the hospital for a self-inflicted burn wound. 885 F.3d at 934. On December 26, 2012, the plaintiff arrived at the jail. *Id.* One of the defendant nurses noted that the plaintiff was on Prozac and Xanax and that her last dose of these medications was on December 25, 2012. *Id.* at 934-35, 941. The plaintiff informed the nurse that she was being treated at a mental health facility. *Id.* at 946. The nurse recommended that a psychiatric social worker meet with the plaintiff. *Id.* On December 28, 2012, one of the doctor defendants saw the plaintiff. *Id.* at 935. The doctor treated her burn and

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[14] Defendants assert that Nurse Snow is not liable in her supervisory capacity. (Doc. No. 57-1 at 1083-84.) Because this Court has determined that there are material issues of fact surrounding Nurse Snow's knowledge of Mr. Wiertella's medical needs and that these fact issues preclude a grant of summary judgment on Count One as it relates to Nurse Snow, the Court declines to consider the viability of the supervisory liability aspect of Count One against Nurse Snow.

[15] The *Richmond* defendants' motion for rehearing *en banc* was denied on May 17, 2018. *Richmond* was stablished law before the events that gave rise to this action.

scheduled a follow-up appointment on January 10, 2013. *Id.* at 935, 942. Also on December 28, 2012, a social worker defendant spoke with the plaintiff. *Id.* at 935. During this appointment, the social worker learned about the plaintiff's "prior history of bipolar disorder and her then-current medications[,] which included Prozac and Xanax." *Id.* The social worker scheduled the plaintiff to see a psychiatrist on January 11, 2013. *Id.* The social worker also determined that the plaintiff was stable enough to be without her psychiatric medications until her appointment. *Id.*

The plaintiff did not receive psychiatric medication until January 14, 2013, twenty days after her confinement began. *Id.* at 943. Because of this delay, the court held that the nurse's, the doctor's, and the social worker's conduct constituted deliberate indifference under Farmer. *Id.* at 937-38, 941-43, 946.

Regarding the nurse, the court held that simply recommending that the plaintiff meet with a psychiatric social worker was insufficient. *Id.* at 946. Instead, she should have attempted to verify the plaintiff's statements about her medications and mental health treatment by contacting the pharmacy or the mental health facility. *Id.* The court rejected the nurse's assertion that these facilities might have been closed when she met with the plaintiff because the nurse did not contact one of these places when they were open or recommend that another nurse reach out to them later. *Id.*

As to the doctor, the court held that because the plaintiff's medical file indicated that she was taking psychiatric medications, the doctor had an affirmative duty "to ensure that [the plaintiff] received her medication, such as prescribing them herself or even simply requesting that a nurse check with [the plaintiff's] outside doctor or pharmacy to verify her prior prescriptions." *Id.* at 942. Because the doctor's appointment with the plaintiff was on December 28, 2022, simply waiting for the plaintiff to have her psychiatric

mediations addressed at the January 11, 2013 psychiatrist appointment was not enough. *See id.* at 935, 941-42.

Lastly, the court found that the social worker's determination that the plaintiff was stable enough to be without medications was constitutionally unreasonable. *Id.* at 942. In support of this finding, the court noted that the social worker testified that if a person taking the plaintiff's medications suddenly stopped taking them, they would place themselves at immediate risk of experiencing depression and mood oscillations. *Id.* With this testimony, the court held that on December 28, 2012, the social worker had to do more than schedule the plaintiff to see a psychiatrist on January 11, 2013. *Id.* at 943.

All in all, *Richmond* provided notice that when a medical employee at a jail becomes aware that an inmate is on medication for a serious medical condition, a defendant violates the constitution if she fails to promptly take steps to ensure that the inmate's medication is obtained. *See id.* at 935-44. Notably, the court in *Richmond* determined that the doctor had sufficient awareness of the plaintiff's medications because she had access to the plaintiff's medical records and an opportunity to review them. *Id.* at 935, 941-42. The *Richmond* opinion does not state that the plaintiff alerted the doctor of her need for medications or exhibited symptoms. *See id.* Instead, the appointment only concerned the plaintiff's burn wound. *See id.* at 935.

Moreover, the only defendants the court found were not deliberately indifferent to the plaintiff's need for medications were those who acted immediately or knew that immediate action would be taken. Specifically, one defendant social worker who heard the plaintiff's complaints about not receiving her medications referred the plaintiff for a mental health screening, which seemingly occurred on the same day. *Id.* at 935, 943-44. The court also found that another doctor who met with the plaintiff on the day of her psychiatric appointment was not deliberately indifferent because there was no evidence he could have provided the

plaintiff with medication any sooner than the facility's psychiatrist. *Id.* at 941.

The Court compares Nurse Watson's and Nurse Snow's conduct to that of the Richmond defendants.

Nurse Watson. On December 2, 2018, after reviewing Mr. Wiertella's medical screening form, Nurse Watson became aware that Mr. Wiertella was booked without his heart disease, high blood pressure, and psychiatric disorder medications and that these medicines "needed to be continuously administered." (Doc. No. 70-8 at 4018-19, 4027; Doc. No. 70-14 at 4899.) There is no evidence that Nurse Watson did anything to obtain these medications that day. On December 3, 2018, Nurse Watson learned that Mr. Wiertella requested "diabetic and other meds." (Doc. No. 70-14 at 4899, 4905; Doc. No. 70-8 at 4031.) The only action Nurse Watson took on this day was to order Mr. Wiertella a diabetic diet, the diabetes medication metformin, and daily glucose checks. (Doc. No. 70-8 at 4031.) Otherwise, she took no steps to obtain the heart disease, blood pressure, or psychiatric medications stated on the medical screening form. She did not attempt by to locate Mr. Wiertella's outside doctor or pharmacy to verify his prior prescriptions. Nor did she attempt to determine what "other meds" referred to in Mr. Wiertella's first kite. Finally, there is no evidence that Nurse Watson was ever aware that Mr. Wiertella was scheduled for a sick call and blood pressure check on December 10, 2018 — let alone that she was the employee who scheduled him for this appointment. (*See* Doc. No. 71-1 at 4960; Doc. No. 70-7 at 3865.)

Nurse Watson's conduct was clearly insufficient under *Richmond*. To start, Nurse Watson became aware that Mr. Wiertella's need for medications in the same manner as the doctor in Richmond: from a medical file. (Doc. No. 70-14 at 4901.) But, unlike the *Richmond* doctor, Nurse Watson was reminded again that Mr. Wiertella was on medications after she reviewed his first kite. (Doc. No. 70-14 at 4899, 4905,4907; Doc. No. 70-8 at 4031.) Further, like the social

worker in *Richmond*, Nurse Watson cannot claim that she was unaware that going without medications for blood pressure and heart disease would put Mr. Wiertella at risk, as she testified that she knew that they were essential medications. (Doc. No. 70-8 at 4008-09; *see also id.* at 4041-42 (stating it concerned her that inmates were not obtaining blood pressure promptly).)[16] She also understood these medications to be essential medications from her review of the Jail's policies. (*Id.* at 3987; Doc. No. 70-12 at 4701.) Despite this knowledge, Nurse Watson failed to take any steps to ensure that Mr. Wiertella obtained these medications. The failure to take any action regarding Mr. Wiertella's medications — without knowing that Mr. Wiertella would eventually see a medical professional — is more severe than the nurse's doctor's, and social worker's unconstitutional conduct in *Richmond*. *See* 885 F.3d at 935-44.

Nurse Snow. For summary judgment purposes, Nurse Snow became aware that Mr. Wiertella was booked without medications as early as December 2, 2018. (Doc. No. 70-14 at 4901.) Nurse Snow, like Nurse Watson, knew that Mr. Wiertella's medications were essential under the Jail's policies. (Doc. No. 70-6 at 3728.) In fact, Nurse Snow testified that Nurse Watson was incorrect to prioritize Mr. Wiertella's diabetes medication over those for heart disease and blood pressure. (*Id.* at 3815.) Yet, the record indicates she did nothing to secure Mr. Wiertella's non-diabetes medications. Thus, under *Richmond*, a jury could thus find her liable.

As a final point, even if the Court assumed that either Nurse Snow or Nurse Watson scheduled Mr. Wiertella for the nurse sick call or that they were aware of this appointment, a jury could still find their actions deliberately indifferent. As an initial matter, this appointment was scheduled eight days after Mr. Wiertella was booked without

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[16] More to the point, Defendants conceded that the medical conditions that Plaintiff claims caused Mr. Wiertella's death, *i.e.*, his hypertension, was an objectively serious medical need. (Doc. No. 57-1 at 1079.)

his medications. A jury could find that this appointment was not the prompt response required by *Richmond*. Moreover, a jury could scrutinize the decision to schedule Mr. Wiertella for a nurse sick call rather than a physician sick call, which could have occurred as early as December 3, 2018. (*See* Doc. No. 70-7 at 3852-53.) According to the record, determinations regarding the types of medications an inmate would receive could only occur at physician sick calls. (Doc. No. 70-6 at 3750; Doc. No. 70-5 at 3566.) Thus, it is unclear that Mr. Wiertella would have obtained his medications at his sick call on December 10, 2018. Notably, Nurse Snow testified that when an inmate could not provide the names of his medications or pharmacy, that inmate should be for a physician sick call, not a nurse sick call. (Doc. No. 70-6 at 3793-94; see also Doc. No. 70-12 at 4702.)

For these reasons, a jury could reasonably conclude that Nurse Watson's and Nurse Snow's conduct constituted deliberate indifference. Summary judgment on Count One as it relates to Nurse Watson and Nurse Snow is denied.

5. Causation

The Lake County Defendants challenge Plaintiff's ability to establish the causation component of a Section 1983 claim. (*E.g.*, Doc. No. 73 at 5941-42.) As stated above, the Court has determined that a jury could find that Nurse Watson and Nurse Snow violated Mr. Wiertella's constitutional right to adequate medical care by failing to take steps to secure his continued access to necessary medications. The Court must now determine whether a jury could reasonably conclude that this failure caused Mr. Wiertella's death.

To succeed on a Section 1983 claim, a "plaintiff must establish that the defendant's constitutional violation was the proximate cause of his injury." *Hickerson v. Koepp*, 107 F.3d 11 (Table), [published in full-text format at 1997 U.S. App. LEXIS 2489], 1997 WL 56591, at *3 (6th Cir. Feb. 10, 1997); *see Horn by Parks v. Madison Cnty Fiscal Court*, 22

F.3d 653, 659 (6th Cir. 1994) ("[P]roximate cause is an essential element of a § 1983 claim for damages.") (citing *Doe v. Sullivan Cnty, Tenn.*, 956 F.2d 545, 550 (6th Cir. 1992), cert denied, 506 U.S. 864, 113 S. Ct. 187, 121 L. Ed. 2d 131 (1992)); *see also Deaton v. Montgomery Cnty, Ohio*, 989 F.2d 885, 889 (6th Cir. 1993) ("Congress did not intend § 1983 liability to attach where causation is absent.").

"[T]o establish causation in the § 1983 context, a plaintiff 'need only demonstrate a link between each defendant's misconduct and [the plaintiff's] injury.'" *Roberts v. Coffee Cnty., Tenn.*, 826 F. App'x 549, 554 (6th Cir. 2020) (quoting *Clark Murphy v. Foreback*, 439 F.3d 280, 292-93 (6th Cir. 2006)). Thus, courts in this circuit have "framed 'the §1983 proximate-cause question as a matter of foreseeability, asking whether it was reasonably foreseeable that the complained of harm would befall the 1983 plaintiff as a result of the defendant's conduct.'" *Id.* (quoting *Powers v. Hamilton Cnty. Pub. Def. Comm'n*, 501 F.3d 592, 609 (6th Cir. 2017)). "[P]roximate causation, or the lack of it, is generally a question of fact to be decided by a jury, unless the evidence is such that a reasonable person could reach only one conclusion." *Id.* (alterations and internal citations omitted) (citing *Toth v. Yoder Co.*, 749 F.2d 1190, 1196 (6th Cir. 1984) and *Pierce v. United States*, 718 F.2d 825, 829 (6th Cir. 1983)).

Here, Plaintiff introduced expert testimony from Dr. Arden regarding Mr. Wiertella's cause of death. (See Doc. No. 70-16.) Dr. Arden opined that because Mr. Wiertella did not receive medications to treat his blood pressure, psychological conditions, chronic pain, obstructive sleep apnea, or hypertension, "his blood pressure would have increased" and "he would have experienced multiple events of decreased or absent breathing, with lowered oxygen saturation, during sleep." (*Id.* at 4913.) Dr. Arden opined that "[i]ncreased blood pressure and diminished oxygenation increase the risk of having a sudden cardiac event, including sudden death." (*Id.*) In sum, Dr. Arden concluded that "but for the failure to provide those medications and a CPAP

machine, in my opinion, Mr. Wiertella would not have died how and when he d*Id.*" (*Id.*)

The Lake County Defendants assert that Dr. Arden's report is insufficient to establish causation for two reasons.

First, the Lake County Defendants argue, without evidence, that Plaintiff has not shown that Mr. Wiertella was taking his medications prior to his incarceration. The them, that renders Dr. Arden's opinions regarding discontinuation of medication "speculative and inadmissible." (Doc. No. 57-1 at 1077.) But evidence of Mr. Wiertella's pre-detention reliance on medications was provided. Plaintiff directs the Court to the medical screening form. As the summary judgment movant, the Lake County Defendants have not met their burden.

Second, the Lake County Defendants assert that Dr. Arden's report does not state that "*Defendants'* acts and omissions were a proximate cause of [Mr.] Wiertella's death." (*Id.* (emphasis in original).) Not so. If a jury accepted Dr. Arden's opinion that not having his essential medications led to increased blood pressure and decreased oxygen levels, which in turn increased the likelihood of a cardiac event and sudden death, a jury could reasonably conclude there is a sufficient "link between each defendant's misconduct and [the plaintiff's] injury." *Roberts*, 826 F. App'x at 554. (Doc. No. 70-16 at 4913.)

At this stage, Plaintiff has met his burden of establishing a fact question as to whether Nurse Watson's and Nurse Snow's conduct proximately caused Mr. Wiertella's death.

B. Count Two

Claims against Lake County, along with the claims against Defendants in their official capacities, are analyzed under *Monell v. New York City Department of Social Services*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). *Kentucky v. Graham*, 473 U.S. 159, 166, 105 S. Ct.

3099, 87 L. Ed. 2d 114 (1985) ("As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity.").

Monell provides that a county can be liable for a constitutional violation under Section 1983 in limited circumstances. 436 U.S. at 690-91. A county is only liable when its policy or custom caused the plaintiff's injury. *Id.* at 694. "A plaintiff . . . must identify the policy, connect the policy to the County itself and show that the particular injury 'was incurred because of the execution of that policy.'" *Graham ex rel. Est. of Graham*, 358 F.3d at 382 (quoting *Garner v. Memphis Police Dep't*, 8 F.3d 358, 364 (6th Cir. 1993)) (brackets removed). There are four primary paths to establish *Monell* liability: "(1) the existence of an illegal official policy or legislative enactment; (2) that an official with final decision making authority ratified illegal actions; (3) the existence of a policy of inadequate training or supervision; or (4) the existence of a custom of tolerance [of] or acquiescence [to] federal rights violations." *D'Ambrosio v. Marino*, 747 F.3d 378, 386 (6th Cir. 2014).

Plaintiff presents four theories of *Monell* liability in opposition to summary judgment. (*See* Doc. No. 71 at 4953-57.) The Court addresses each theory.

1. Inadequate Training and Supervision

A county's "culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to supervise or train." *Connick v. Thompson*, 563 U.S. 51, 61 131 S. Ct. 1350, 179 L. Ed. 2d 417 (2011). To meet this demanding standard, the plaintiff must establish either: "(1) a pattern of similar constitutional violations by untrained employees or (2) a single violation of federal rights, accompanied by a showing that [the county] has failed to train its employees to handle recurring situations presenting an obvious potential for a constitutional violation."

Helphenstine v. Lewis Cnty. Ky., 60 F.4th 305, 323 (6th Cir. 2023) (quotations omitted).

Here, Plaintiff did not attempt to prove a pattern of similar constitutional violations by untrained Lake County employees. (*See* Doc. No. 71 at 4955.) He must therefore establish that this case fits within the "narrow range of circumstances[] where a federal rights violation" is "a highly predictable consequence of a failure to equip [employees] with specific tools to handle recurring situations." *Bd. of Cnty. Comm'rs of Bryan Cnty., Okl. v. Brown*, 520 U.S. 397, 409, 117 S. Ct. 1382, 137 L. Ed. 2d 626 (1997). In *Arrington-Bey*, the court made clear that this burden can only be met if the plaintiff can show that it was "clearly established" that the county's training and supervision was constitutionally inadequate when the alleged violation occurred. 858 F.3d at 994-95. This is so because the plaintiff's burden is to show that the county was deliberately indifferent to his constitutional right, and a county cannot "deliberately shirk a constitutional duty unless that duty is clear." *Id.* at 995 (emphasis in original).

The clearly established inquiry requires the Court to consider whether a previously-decided case provided Lake County with a "clear and fair warning" that its training and supervision created an obvious potential for Mr. Wiertella to experience a deprivation of a constitutional right. *Id.* at 993 (quoting *White v. Pauly*, 580 U.S. 73, 79, 137 S. Ct. 548, 196 L. Ed. 2d 463 (2017)). Thus, the Court considers Sixth Circuit cases finding a *Monell* defendant's training and supervision at a jail was patently inadequate, subjecting it to liability without a pattern of similar constitutional violations.

Shadrick v. Hopkins County, Kentucky, 805 F.3d 724 (6th Cir. 2015) explains the minimum medical training and supervision a county must provide to ensure inmates' constitutional rights are protected. In *Shadrick*, the court held that numerous employees' failures to treat an inmate's MRSA infection, ultimately causing the inmate's death, created a triable issue as to whether the corporation

operating the jail was liable under *Monell*. *Id.* at 728-29. The court highlighted three inadequate areas in the jail's operations, which, considered collectively, a jury could find amounted to deliberate indifference to inmates' serious medical needs. *See id.* at 740-41.

First, the jail's medical staff consisted of LPNs with minimal medical training and limited medical skills. *Id.* at 740. The plaintiff's expert testified that "LPN nurses lack[ed] any authority to diagnose medical conditions."[17] *Id.* The only other medical professionals remotely associated with the jail were a doctor and an RN. *Id.* at 733-35. Despite serving as the jail's "Medical Director," the doctor "denied any responsibility for training or supervising" the LPNs and "characterized himself as a consultant." *Id.* at 733. The RN visited the jail "once every two to three months for four hours or less and sometimes conducted audits." *Id.* at 734. She did not "ordinarily" train nurses and was unfamiliar with the jail's policies and procedures. *Id.*

Second, the LPNs received virtually no on-the-job training. *Id.* at 740. The court found that there was "no proof of a training program that was designed to guide LPN nurses in assessing and documenting medical conditions of inmates, obtaining physician orders, providing ordered treatments to inmates, monitoring patient progress, or providing necessary emergency care to inmates within the jail environment in order to avoid constitutional violations." *Id.* The only training the LPNs received was "some limited on-the-job training when beginning their employment, such as learning where supplies were kept . . . ." *Id.*

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[17] Plaintiff's expert report offered no opinion on the training and supervision of the medical employees at the Jail. (*See* Doc. No. 48-9.) The Sixth Circuit has suggested that expert testimony may be necessary to sustain a failure to train and supervise claim. *Griffith v. Franklin Cnty.*, Ky., 975 F.3d 554, 580 (6th Cir. 2020); *Russo v. City of Cincinnati*, 953 F.2d 1036, 1047 (6th Cir. 1992).

Third, the LPNs were unaware of and did not follow the jail's policies and procedures. "The nurses professed ignorance of written medical treatment protocols and policies purportedly drafted by [the *Monell* defendant] to guide their conduct." *Id.* Nor did the LPNs receive supervision or feedback on whether their conduct comported with the jail's policies. *Id.* In fact, the LPNs "followed an undocumented policy and custom of providing medical assistance only if an inmate asked for it, despite the existence of written policies, procedures, and treatment protocols mandating that nurses take particular actions at particular times." *Id.* at 741.

Building off *Shadrick*, the Sixth Circuit recently found that there was a triable failure to train and supervise *Monell* claim against a county despite the plaintiff not providing other instances of similar constitutional violations. *Helphenstine*, 60 F.4th at 326. The jail in *Helphenstine* had no medical staff present besides a doctor who, at most, visited the jail once a week. *Id.* at 312. Viewed in a light favorable to the plaintiff, the court found that jail employees had no medical training beyond first aid and CPR. *Id.* Despite this lack of training, the county "effectively asked the [employees] to make determinations about what constituted a medical emergency." *Id.* at 325. And the only medical professional involved with the jail was unaware of any of the jail's policies and procedures, including policies ensuring that jail staff tended to the inmate's medical emergencies. *Id.*

Neither *Shadrick* nor *Helphenstine* clearly establish that Lake County's training and supervision was so "obviously" inadequate in 2018 as to amount to deliberate indifference. See *Arrington-Bey*, 858 F.3d at 995.

Start with the Jail's staffing. The medical team consisted of multiple RNs and LPNs who attended to inmates' medical needs seven days a week. (Doc. No. 70-8 at 3926, 3934; Doc. No. 70-6 at 3749-50.) Five days a week, the jail would also have a doctor or a physician assistant present.

(Doc. No. 70-7 at 3852-53.) The Jail did not lack medically trained personnel like in *Shadrick* and *Helphenstine*.

Looking next at the Jail's training of medical staff, Nurse Snow testified that it was her responsibility to train new nurses. (Doc. No. 70-6 at 3779-80.) Nurse Watson testified that she trained with Nurse Snow for several weeks when she began working at the Jail. (Doc. No. 70-8 at 3985.) This training included setting up and performing inmate sick calls, ordering medications, attending medical calls, and inspecting and processing medications. (*Id.* at 3985-86.) Again, this undisputed testimony does not establish that the Jail's medical staff was essentially untrained as in *Shadrick* and *Helphenstine*. *See Winkler*, 893 F.3d at 904-05 (finding that a jail's initial one-on-one training of medical staff and group training sessions several times a year was significantly more substantial than the training the LPNs received in *Shadrick*).

Finally, consider the Jail's policies and procedures. Nurse Watson testified that she received a copy of the Jail's policies when she began working. (Doc. No. 70-8 at 3987.) Nurse Watson was aware of changes to the Jail's policies and procedures. (*Id.* at 3988-98.) Nurse Snow testified that all nurses were expected to understand the Jail's policies and procedures. (Doc. No. 70-6 at 3780-81.) Lieutenant Longbons testified that corrections officers and supervisors were expected to understand and follow the Jail's policies and procedures. (Doc. No. 70-4 at 3344.) He also stated that employees were periodically required to review the policies and answer questions to test their comprehension. (*Id.* at 3339-40.) Although the record does not establish that Dr. Raz reviewed all the Jail's medical policies and procedures, it does indicate they were reviewed by other medical professionals. (*See, e.g.*, Doc. No. 70-5 at 3531; Doc. No. 70-2 at 3112.) Nurse Snow also testified that she would suggest changes to the Jail's medical policies and procedures to Captain Brooks. (Doc. No. 70-6 at 3731-32.) Put simply, unlike *Shadrick* and *Helphenstine*, there is undisputed record evidence that the Jail's employees were aware of and

expected to follow the Jail's governing policies and that medical professional reviewed the medical policies.

The Court finds that Lake County's training and supervision was not so insufficient in December 2018 as to constitute deliberate indifference. But this finding should not be read as an endorsement of Lake County's training and supervision. Troublingly, Lake County appeared to have policies and procedures in place that, if followed, might have saved Mr. Wiertella's life. Had a Jail employee made arrangements with the physician to review Mr. Wiertella's need for medications, he would have had an opportunity to obtain his medications well before he passed away. (*See* Doc. No. 70-6 at 3793-94; *see also* Doc. No. 70-12 at 4702.) The same is true if Mr. Wiertella's last two kites had been promptly delivered to and reviewed by a medical professional.[18] (*See* Doc. No. 70-12 at 4688-90.) Finally, had Nurse Watson and Nurse Snow treated Mr. Wiertella's blood pressure medicine as an essential medication, as required by the Jail's policies, these medications might have been delivered promptly with his diabetes medication. (*See id.* at 4701.) These actions were unfortunately not taken. This case has elucidated a clear need for additional training on and review of the Jail's policies and procedures — especially as they relate to essential medications.[19] All the Court has found is that the training, supervision, and policies in 2018 were not so insufficient as to "present[] an obvious potential for a constitutional violation." *See Helphenstine*, 60 F.4th at 323 (quotations omitted).

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[18] Notably, Ohio Admin. Code § 5120:1-8-09(H)(4) demands that medical kites be "[r]eviewed daily by qualified health care personnel . . . ."

[19] Dr. Raz's acknowledged failure to review all the Jail's medical policies and procedures may have violated Ohio law. *See* Ohio Admin. Code § 5120:1-8-09(A)(1)-(5). Dr. Raz's failure to determine the appropriateness of clinical care and ascertain whether corrective action in the Jail's policies, procedures, or practices is warranted in light of Mr. Wiertella's death may have also violated Ohio law. *See* Ohio Admin. Code § 5120:1-8-09(AA).

2. Final Policymaking Authority

Plaintiff argues that Nurse Snow and Nurse Watson had final policymaking authority over the Jail's medical policies, subjecting Lake County to liability for their actions. (Doc. No. 71 at 4954.) Regarding Nurse Watson, Plaintiff asserts that her decision not to order all Mr. Wiertella's medications and timely schedule him for an appointment with a physician constitutes official municipal policy. (*Id.*) Plaintiff also asserts that Nurse Snow's direction to Nurse Watson to prioritize Mr. Wiertella's diabetes over his other illnesses (including his high blood pressure) can also be attributed to Lake County. (*See id.* at 4954-55.)

A county is generally not liable under Section 1983 for the decisions of its officers. *See Pembaur v. City of Cincinnati*, 475 U.S. 469, 478, 106 S. Ct. 1292, 89 L. Ed. 2d 452 (1986). But when an allegedly unconstitutional decision is made by an official with "final policy making authority," the county may be held liable for that official's decision if the decision was made by "the official or officials responsible under state law for making policy in that area of the [county's] business." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 123, 108 S. Ct. 915, 99 L. Ed. 2d 107 (1988) (emphasis in original).

"Although it is true that final policymaking authority may be delegated, it is equally true that 'mere authority to exercise discretion while performing particular functions does not make a municipal employee a final policymaker unless the official's decisions are final and unreviewable and are not constrained by the official policies of superior officials.'" *Miller v. Calhoun Cnty.*, 408 F.3d 803, 814 (6th Cir. 2005) (quoting *Feliciano v. City of Cleveland*, 988 F.2d 649, 655 (6th Cir. 1993)) (citation omitted). In other words, for a county to be liable for an employee's actions under *Monell*, the employee must have been delegated with the unconstrained ability to make unreviewable decisions regarding a subject matter. *See, e.g.*, *Perrino v. City of*

Newton Falls, 972 F.2d 348 (Table), [published in full-text format at 1992 U.S. App. LEXIS 19417], 1992 WL 197328, at *5 (6th Cir. Aug. 14, 1992). This means that a county is not liable for its employee's actions if the employee only has discretion to make decisions within the confines of a superior's policies or supervision. *See, e.g.*, *id.*

Plaintiff has not shown that a jury could reasonably find that Nurse Watson and Nurse Snow had final policymaking authority. Specifically, Captain Brooks testified that her role was to review the Jail's policies. (Doc. No. 70-2 at 3110.) Concerning the Jail's medical policies, Captain Brooks stated that she would only establish or alter existing medical policies with approval from Dr. Raz and the Sheriff. (*Id.* at 3126.) To the extent that this testimony established Captain Brooks had final policymaking authority over the Jail's medical policies, there is no evidence that she delegated this authority to Nurse Snow or Nurse Watson.[20] Nurse Snow testified that she made "suggestions" regarding the Jail's policies and procedures, which either Dr. Raz or Captain Brooks considered. (Doc. No. 70-6 at 3730-31.) Nurse Snow did not testify, however, that she had final authority over the Jail's medical policies or that her adherence to them was optional. (*See id.*) Nothing in Nurse Watson's testimony established that she had final policymaking authority. In fact, her discretionary authority was cabined by Nurse Snow's orders. (Doc. No. 70-8 at 4029.)

At most, Plaintiff has established that Nurse Watson and Nurse Snow had considerable discretion to make initial

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[20] Although the Court need not decide this issue because Plaintiff has not alleged that Captain Brooks' actions directly caused any injury, the Court is doubtful that Captain Brooks had final decision-making authority. Her testimony indicates that the Sheriff had to approve all changes to the Jail's existing policies and procedures. (Doc. No. 70-2 at 3126.) This suggests that her authority to set and review the Jail's policies was not "unreviewable" and unconstrained by superior officials. *Adair v. Charter Cnty. of Wayne*, 452 F.3d 482, 493 (6th Cir. 2006) (quoting *Waters v. City of Morristown*, 242 F.3d 353, 362 (6th Cir. 2001)).

determinations on the type of care inmates received, such as when inmates' conditions warranted a physician sick call. (E.g., Doc. No. 70-8 at 3995; Doc. No. 70-6 at 3782.) But granting employees the ability to exercise this type of professional discretion was not a delegation of final policymaking authority over the Jail's medical policies. *See, e.g.*, *Miller*, 408 F.3d at 818 (holding that a doctor's actions could not be attributed to the municipality because the doctor merely possessed discretionary power to make decisions concerning specific inmates' medical needs); *Jorg v. City of Cincinnati*, 145 F. App'x 143, 147 (6th Cir. 2005) (coroner's authority to make determinations on causes of death was not final policymaking authority).

3. Inaction

Plaintiff also attempts to establish *Monell* liability based on Dr. Raz's and Captain Brooks' inaction. (Doc. No. 71 at 4954.) Specifically, he faults both for

> fail[ing] or refus[ing] to develop and enforce multiple policies, including those to (1) identify serious medical issues and needs with the Jail; (2) adequately and timely communicate information related to serious medical needs; (3) objectively investigate incidents of in-custody death; (4) comply with the statutory guidelines for protecting individuals in Jail custody; (5) respond to health complaints on a timely basis as required by law.

(Doc. No. 71 at 4954.)

To establish *Monell* liability for inaction, the plaintiff must show:

> (1) a "clear and persistent" pattern of unconstitutional conduct by municipal employees; (2) the municipality's "notice or constructive notice" of the unconstitutional

> conduct; (3) the municipality's "tacit approval of the unconstitutional conduct, such that [its] deliberate indifference in [its] failure to act can be said to amount to an official policy of inaction"; and (4) that the policy of inaction was the "moving force" of the constitutional deprivation, such that the plaintiff's constitutional injury was directly caused by the conduct of the municipality rather than simply by the conduct of the municipal employee.

D'Ambrosio, 747 F.3d at 387-88 (quoting *Doe v. Claiborne Cnty.*, 103 F.3d 495, 508 (6th Cir. 1996)); *see also Stewart v. City of Memphis, Tenn.*, 788 F. App'x 341, 346-47 (6th Cir. 2019).

Here, Plaintiff has not met his burden. He has put forth no evidence establishing the first element, namely that there was a "clear and persistent" pattern of unconstitutional conduct by Jail employees. (*See* Doc. No. 71 at 4955 (plaintiff choosing not to prove his failure to train and supervise claim based on the occurrence of other constitutional violations in the Jail).) As such, Lake County cannot be held liable for its inaction. *See Stewart*, 788 F. App'x at 347 (noting that failing to prove one element causes an inaction *Monell* claim to fail).

4. Custom

Plaintiff did not identify any illegal policy that caused Mr. Wiertella's death. (*See* Doc. No. 71 at 4953-56.) He does, however, suggest that there are customs that can be imputed to Lake County, such as the failure to properly address medical kites and the prioritization of diabetes medications. (*See* Doc. No. 71 at 4953 (asserting that Lake County's "Customs Deprived Wiertella of His Constitutional Rights"); *id.* at 4955 (arguing that the Jail ignored Mr. Wiertella's

kites for blood pressure medication and, in doing so, violated the Ohio Rev. Code).)[21]

Under Section 1983, a custom "is a legal institution that is permanent and established[] but is not authorized by written law." *Feliciano*, 988 F.2d at 655. For a custom to give rise to *Monell* liability, the custom "must 'be so permanent and well settled as to constitute a custom or usage with the force of law.'" *Miller*, 408 F.3d at 815 (quoting *Claiborne Cnty.*, 103 F.3d at 507).

Here, Plaintiff has not established the existence of any unwritten Jail practice or policy that is "so permanent and well settled as to constitute a custom or usage with the force of law." *Id.* (quotations omitted). Accordingly, Plaintiff's final theory of *Monell* liability fails. *See Gregory v. Shelby Cnty.*, Tenn., 220 F.3d 433, 442 (6th Cir. 2000) (rejecting a *Monell* illegal custom claim because the plaintiff did not provide evidence that the practice frequently occurred outside of the events giving rise to his claim).

C. Counts Three and Four

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[21] Plaintiff also seems to suggest that the Jail's policy of not providing inmates with CPAP machines can be imputed to Lake County. (*See* Doc. No. 71 at 4936-37, 4956-57.) It is undisputed that Mr. Wiertella did not receive a CPAP machine while he was at the Jail. (*See* Doc. No. 70-8 at 3955 (testifying the Jail typically did not issue CPAP machines); *see also* Doc. No. 57-6 at 1134 (December 6, 2018 Transcript of call between Mr. Wiertella and unknown female stating "I do not have my CPAP machines").) However, Plaintiff has not introduced evidence showing that Mr. Wiertella requested a CPAP machine from the Jail or anyone else. (*See* Doc. No. 57-6 at 1334 (discussing CPAP machines and stating "I'm not going to go there"); *see also* Doc. No. 70-14 at 4903-05 (not requesting CPAP machines).) Nor has Plaintiff argued that refusing to provide a CPAP machine — absent an explicit request — is a facially illegal policy or custom. For that reason, the Court will not analyze whether Lake County's policy or custom towards CPAP machines gives rise to a *Monell* policy or custom claim.

Plaintiff also brought state law claims for negligence and wrongful death against Defendants Lake County, Captain Brooks, and Lieutenant Longbons. (Doc. No. 7 at 141, PP 56-67.) In their motion for summary judgment, the Lake County Defendants moved for summary judgment solely on state law statutory immunity grounds. (Doc. No. 57-1 at 1089-91.) In his opposition, Plaintiff did not contest that Lake County and Captain Brooks are statutorily immune. (Doc. No. 71 at 4957 n.8.) As such, summary judgment is warranted on Counts Three and Four of the Amended Complaint with respect to Lake County and Captain Brooks.

Consequently, the only remaining contested issue is whether Lieutenant Longbons is entitled to statutory immunity under Ohio law for the state tort claims brought against him. Plaintiff argues that for the same reasons a jury could conclude that Lieutenant Longbons was deliberately indifferent, "a jury could reasonably conclude that [Lieutenant] Longbons acted recklessly in failing to record essential medication information for [Mr.] Wiertella." (*Id.* at 4957-58.) Plaintiff argues that because Lieutenant Longbons knew that Mr. Wiertella's health conditions constituted serious medical conditions under the Jail's policies and procedures and that serious medical harm or death could occur if Mr. Wiertella's medications were not administered, Lieutenant Longbons' mental state "meets the definitions of wanton and reckless conduct under Ohio law and immunity should not apply." (*Id.* at 4958.)

On the other hand, the Lake County Defendants argue that "[f]or the same reasons [Lieutenant] Longbons was not deliberately indifferent to [Mr.] Wiertella's serious medical need," he is statutorily immune from liability under Ohio Rev. Code § 2744.03(A)(6). (Doc. No. 73 at 5950.) The Lake County Defendants emphasize that Lieutenant Longbons "did not act or fail to act with malicious purpose, in bad faith, or in a wanton or reckless manner." (*Id.* (quoting *Est. of Overbey v. Licking Cnty., Ohio*, No. 2:13-cv-0671, 2015 U.S. Dist. LEXIS 47199, 2015 WL 1611163, at *12 (S.D. Ohio

Apr. 10, 2015).) The Lake County Defendants also cite case law suggesting that even if the Court were to find Lieutenant Longbons liable for deliberate indifference, he would still be entitled to statutory immunity for these claims because "the threshold for liability appears to be slightly higher under Ohio law than the deliberate indifference threshold for liability under § 1983." (*Id.*)

Ohio law immunizes the conduct of an employee of a political subdivision unless that conduct is "outside the scope of [their] employment or official responsibilities" or "[with] malicious purpose, in bad faith, or in a wanton or reckless manner." Ohio Rev. Code § 2744.03(A)(6).[22]

Here, the Court has already determined that Lieutenant Longbons' failure to completely fill out Mr. Wiertella's medical intake form and alert medical staff to his conditions, knowing the form would be reviewed by a nurse, was, "at most[,] negligent conduct." *Brawner*, 14 F.4th at 600; *Graham ex rel. Est. of Graham*, 358 F.3d at 384. Accordingly, Plaintiff has offered no argument that Lieutenant Longbons' acts or omissions rise to the level of "malicious purpose, in bad faith or in a wanton or reckless manner." Ohio Rev. Code § 2744.03(A)(6). *Cf. Stefan v. Olson*, 497 F. App'x 568, 580-81 (6th Cir. 2012) (noting similarities between the Eighth Amendment "deliberate indifference"

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[22] "Malice" is the "willful and intentional design to injure or harm another, usually seriously, through conduct that is unlawful or unjustified." *Otero v. Wood*, 316 F. Supp. 2d 612, 629 (S.D. Ohio 2004) (quotations and citations omitted). "Bad Faith includes a dishonest purpose, conscious wrongdoing, or breach of a known duty through some ulterior motive." *Id.* (quotations and citations omitted). "[R]ecklessness is conduct characterized by the conscious disregard of or indifference to a known or obvious risk of harm to another that is unreasonable under the circumstances and is substantially greater than negligent conduct." *Hopper v. Phil Plummer*, 887 F.3d 744, 759 (6th Cir. 2018) (quotations and citations omitted). "Wanton misconduct is the failure to exercise any care toward those to who a duty of care is owed in circumstances in which there is great probability that harm will result." *Anderson v. Massillon*, 134 Ohio St. 3d 380, 2012- Ohio 5711, 983 N.E.2d 266, 273 (Ohio 2012).

standard and Ohio's "wanton or reckless manner" standard). Nor has Plaintiff contended that Lieutenant Longbons was acting "outside the scope of [his] employment or official responsibilities." Ohio Rev. Code § 2744.03(A)(6).

Accordingly, summary judgment in favor of the Lake County Defendants on the state law claims for negligence and wrongful death is warranted.

VI. Conclusion

For the reasons stated above, Dr. Raz's motion for summary judgment (Doc. No. 48) is GRANTED. The Lake County Defendants' motion for summary judgment (Doc. No. 57) is GRANTED IN PART and DENIED IN PART.

IT IS SO ORDERED.

Date: March 26, 2024

s/ Bridget Meehan Brennan

BRIDGET MEEHAN BRENNAN

UNITED STATES DISTRICT JUDGE

APPENDIX C — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED JULY 31, 2025

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 24-3311

DENNIS WIERTELLA, AS FATHER AND ADMINISTRATOR OF THE ESTATE OF RANDY WIERTELLA, DECEASED,

Plaintiff-Appellee,

v.

LAKE COUNTY, OHIO,

Defendant,

DIANA SNOW, RN AND CHRISTINA WATSON, RN IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES,

Defendants-Appellants

Judges: BEFORE: RONALD LEE GILMAN, CHAD A. READLER, and RACHEL S. BLOOMEKATZ, Circuit Judges.

ORDER

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full

court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied. Judge Readler would grant rehearing for the reasons stated in his dissent.

ENTERED BY ORDER OF THE COURT

s/Kelly L. Stephens
Kelly L. Stephens, Clerk