APPENIDX

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2669

JOSE MONTANEZ,
Appellant

v.

PAULA PRICE, Health Care Administrator SCI-Huntingdon; RAJINDER MAHLI, SCI-Huntingdon; GABRIELLE NALLEY, Physician's Assistant SCI-Huntingdon; NURSE MEL; DR. VERNON PRESTON, SCI-Rockview; RICHARD ELLERS, Healthcare Administrator SCI-Rockview; DR. DAVID EDWARDS, SCI-Smithfield; MARY PATTON, SCI-Smithfield; C. WAKEFIELD, Superintendent SCI-Smithfield; N. DAVIS, Registered Nursing Supervisor SCI-Huntingdon; JOHN RIVELLO; WELLPATH CARE; STATE OF PENNSYLVANIA

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. No. 3:22-cv-01267)
District Judge: Honorable Robert D. Mariani

Argued on September 24, 2024

Before: KRAUSE, BIBAS, and AMBRO, *Circuit Judges*

(Opinion filed: October 8, 2025)

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OPINION OF THE COURT

KRAUSE, *Circuit Judge*.

The protections afforded by the Eighth Amendment, the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*, and the Rehabilitation Act (RA), 29 U.S.C. § 701 *et seq.*, do not stop at the prison gates. So when an inmate, whether counseled or pro se, claims that prison officials ignored his serious medical needs and failed to accommodate his disability, the courthouse doors must be open for a fair hearing. That was not the case for Appellant Jose Montanez, whose claims were dismissed with prejudice even though his complaint, liberally construed, states an Eighth Amendment claim against several defendants in their individual capacities, a claim under the RA against Wellpath Care LLC, and a claim under both the ADA and RA against the Commonwealth of Pennsylvania. As to his other claims, Montanez's pleading was insufficient, but his briefs in opposition to the defendants' motions to dismiss make clear that amendment would not have

been futile, so the District Court erred by not granting him leave to amend. We will therefore affirm the District Court in part, reverse in part, and remand with instructions to allow Montanez to amend his complaint in accordance with this opinion.

I. Factual and Procedural History[1]

On August 28, 2021, Jose Montanez stood up in his cell at SCI-Huntingdon and suddenly collapsed, his body numb from the chest down. Lying on the cell floor, Montanez alerted a nearby guard to his condition, and the guard soon returned with another prison officer. Montanez was then forced to "drag his body over to the cell door" before he was eventually taken to the medical unit in a wheelchair by Appellee Nurse Melanie Wagman. App. 37.

Once in the medical unit, Nurse Wagman took Montanez's vitals and felt around his legs. She then phoned Appellee Dr. Rajinder Mahli, who instructed her to move Montanez from his third-floor cell to a cell on the first floor and said he would evaluate Montanez the next day. When Montanez—still paralyzed from the waist down—learned that he would not be evaluated or treated until the next day, he

[1] Evidence adduced in discovery may not support or may affirmatively disprove the allegations in Montanez's complaint. In reviewing the dismissal of a complaint, however, we must accept the allegations as true. *Stringer v. Cnty. of Bucks*, 141 F.4th 76, 84, 90 (3d Cir. 2025). We therefore recount the facts below as set forth in the complaint, drawing all reasonable inferences in Montanez's favor, as required at this stage. *Id.*

asked to be taken to the hospital, but Nurse Wagman responded, "you're not going to the hospital," and laughed at the request. App. 38. Nurse Wagman then wheeled Montanez to the door of his new cell, where she ordered him to "get out of the wheelchair," offering him no assistance, forcing him to drag his limp body "across [his] cell to the bed," and leaving him "exhausted and in so much pain." App. 38.

The next day, Dr. Mahli came to examine Montanez, but he, too, did not enter the cell, and ordered Montanez to "walk for him." App. 38. Montanez was still unable to stand, let alone walk, so he again dragged his paralyzed body across the cell floor as Dr. Mahli watched. And when Montanez informed Dr. Mahli that he was also involuntarily urinating on himself, Dr. Mahli simply "nodded" and "walked off," doing nothing to help Montanez with his sudden paralysis or incontinence. App 38-39.

Montanez was then left alone in his cell in this condition—paralyzed from his chest to his feet and uncontrollably urinating on himself—for another three days before receiving medical attention. At that point, Montanez was finally given an MRI that revealed spinal cord stenosis and spinal cord edema, requiring expedited back surgery in September 2021. Following surgery, Montanez was transferred to a private rehabilitation facility.

A mere two weeks into rehabilitation and still unable to stand, Montanez was returned to detention, this time to the infirmary of a different Pennsylvania state prison, SCI-Rockview. There, he continued his recovery until he took a serious fall that caused him intense pain in his spine. Nonetheless, the doctor on staff, Appellee Dr. Vernon Preston,

refused to give him adequate pain medication. An x-ray revealed that Montanez had herniated a disc in his back in the fall, but SCI-Rockview's Healthcare Administrator, Appellee Richard Ellers, "lied" to his doctor "about the results of the x-ray" to delay his treatment. App. 39.

Two months later, Montanez was transferred back to SCI-Huntingdon, where he continued to suffer mobility issues and intense discomfort from his recent spinal surgery and subsequent spinal injury. So he requested certain accommodations, including a double mattress to control his back pain while sleeping, a cane or crutches to facilitate walking, stronger medication for pain management, and access to physical therapy. Those requests were repeatedly denied by prison personnel.

Eventually, Montanez looked to the courts for relief, filing a pro se complaint[2] in the United States District Court for the Middle District of Pennsylvania that sought compensatory and injunctive relief. The Complaint asserted claims under the Eighth Amendment, Title II of the ADA (Title II), 42 U.S.C. § 12132, and Section 504 of the RA (Section 504), 29 U.S.C. § 794. The defendants fell into two categories: (1) the Commonwealth of Pennsylvania and seven of its employees (collectively, the Commonwealth Defendants),[3] and

[2] Montanez filed an initial complaint in August 2022 and an amended complaint, removing one defendant and adding another, in January 2023. For ease of reference, we will refer to the second filing as the "Complaint."

[3] The Commonwealth Defendants include the Pennsylvania Department of Corrections (Commonwealth) and (1) Paula

(2) Wellpath Care LLC (Wellpath), a private company contracted by the Commonwealth to provide medical services in its prisons, and four Wellpath employees (collectively, the Medical Defendants).[4]

What Montanez was permitted to say about these defendants and the facts supporting his claims, however, was

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Price, the Health Care Administrator at SCI-Huntingdon; (2) Melanie Wagman, a nurse at SCI-Huntingdon; (3) SCI-Rockview Healthcare Administrator Richard Ellers; (4) Mary Patton, an employee at SCI-Smithfield; (5) SCI-Smithfield Superintendent C. Wakefield; (6) N. Davis, the registered nurse supervisor at SCI-Huntingdon; and (7) SCI-Huntingdon Superintendent John Rivello (collectively, the Individual Commonwealth Defendants).

[4] The Medical Defendants include Wellpath and (1) Dr. Rajinder Mahli; (2) Physician Assistant (PA) Gabrielle Nalley; (3) Dr. Vernon Preston; and (4) Dr. David Edwards (collectively, the Individual Medical Defendants). Although the Individual Medical Defendants are private contractors employed by a large, for-profit company, their work within the state prison system makes them state actors subject to suit under 42 U.S.C. § 1983. *See West v. Atkins*, 487 U.S. 42, 55 (1988). Unlike the Individual Commonwealth Defendants, however, the Individual Medical Defendants cannot assert qualified immunity. *Sanchez v. Oliver*, 995 F.3d 461, 467 & n.1 (5th Cir. 2021) (holding that Wellpath employees working in state facilities are "categorically ineligible for qualified immunity"); *Tanner v. McMurray*, 989 F.3d 860, 862 n.1, 870 (10th Cir. 2021) (same); *Davis v. Buchanan Cnty.*, 11 F.4th 604, 622 (8th Cir. 2021) (similar); *Clark v. Walker*, 865 F.3d 544, 550-51 (7th Cir. 2017) (similar).

strictly limited. At the time, the Middle District required pro se prisoners bringing civil rights claims to file their actions using a specific, court-issued complaint form. That document, entitled "FORM TO BE USED BY A PRISONER IN FILING A CIVIL RIGHTS COMPLAINT IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA," directed the filer, under the "statement of claim" section, to "[d]escribe how each defendant is involved, including dates and places," and to do so "as briefly as possible." App. 33, 36. And by "briefly," it meant within the twelve lines provided, or, if prisoners needed to say more, they could "[a]ttach no more than three extra sheets." *Id.* at 36. Montanez complied, filling out all twelve lines and writing out exactly three additional pages of allegations.

Not surprisingly, both the Commonwealth Defendants and the Medical Defendants then moved to dismiss the Complaint, arguing the allegations were insufficient to state a claim. Montanez's briefs in opposition to those motions included over 50 pages with new factual allegations about the ordeal he allegedly endured at SCI-Huntingdon, SCI-Rockview, and SCI-Smithfield since becoming paralyzed in 2021. But to no avail. The District Court granted the Commonwealth and Medical Defendants' motions to dismiss in full. Limiting its consideration to the "facts . . . expressly set forth in the . . . [C]omplaint," the Court concluded that Montanez failed to state an Eighth Amendment claim because he did not "allege facts from which it can reasonably be inferred that" any defendant "exhibited a deliberate indifference to his medical needs." App. 8 n.3, 22. It also dismissed Montanez's disability law claims on the grounds that Montanez failed to plausibly allege (1) that he was denied access to a covered program, service, or activity, as required to

state a claim under Title II or Section 504, *see* 42 U.S.C. § 12132; 29 U.S.C. § 794; or (2) that any defendant acted with deliberate indifference toward his right to be free from disability discrimination, as required to claim compensatory damages under those statutes. Finally, the District Court denied Montanez's request for leave to amend, concluding that amendment "would be futile based on the factual and legal defects identified in" the Complaint. App. 29.

Montanez timely appealed and is now represented by counsel.

II. Jurisdiction and Standard of Review

The District Court had jurisdiction under 28 U.S.C. § 1331 and this Court has jurisdiction under 28 U.S.C. § 1291. We review an order granting a motion to dismiss de novo, meaning we "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Kedra v. Schroeter*, 876 F.3d 424, 440-41 (3d Cir. 2017) (quoting *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008)). Because Montanez's Complaint was filed pro se, we also must construe it "liberally" and hold it to "less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). Finally, we review a district court's denial of leave to amend for abuse of discretion and its determination of futility de novo. *U.S. ex rel. Schumann v. Astrazeneca Pharms. L.P.*, 769 F.3d 837, 849 (3d Cir. 2014).

III. Discussion

Montanez raises three claims on appeal. He contends that the District Court erred by: (1) dismissing his Eighth Amendment claims; (2) dismissing his disability law claims under Title II and Section 504; and (3) dismissing the Complaint with prejudice rather than granting him leave to amend. We address each claim in turn.

A. Eighth Amendment

The Eighth Amendment requires prisons to provide humane conditions of confinement, including adequate food, shelter, clothing, and—as relevant to this appeal—medical care. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994); *Estelle*, 429 U.S. at 104. An Eighth Amendment claim for inadequate medical care has both objective and subjective elements: A prisoner "must show (i) a serious medical need, and (ii) acts or omissions by prison officials that indicate deliberate indifference to that need." *Natale v. Camden Cnty. Corr. Facility*, 318 F.3d 575, 582 (3d Cir. 2003).

As for the first element, a medical need is sufficiently serious if it is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." *Monmouth Cnty. Corr. Institutional Inmates v. Lanzaro* (*MCCII*), 834 F.2d 326, 347 (3d Cir. 1987) (internal quotation omitted). As for the second, a prison official acts with "deliberate indifference" if he knows of the serious medical need yet disregards it by failing to act reasonably. *Farmer*, 511 U.S. at 837. That knowledge can be inferred from circumstantial evidence, including the obviousness of the

serious health need, *id.* at 842, and we have found deliberate indifference in various contexts, "including where (1) prison authorities deny reasonable requests for medical treatment, (2) knowledge of the need for medical care is accompanied by the intentional refusal to provide it, (3) necessary medical treatment is delayed for non-medical reasons, and (4) prison authorities prevent an inmate from receiving recommended treatment for serious medical needs," *Pearson v. Prison Health Serv.*, 850 F.3d 526, 538 (3d Cir. 2017).

Mere negligence, however—even if it constitutes medical malpractice—falls short of deliberate indifference. *Rouse v. Plantier*, 182 F.3d 192, 197 (3d Cir. 1999). So does mere disagreement between the prisoner and medical personnel over the proper course of treatment. *Spruill v. Gillis*, 372 F.3d 218, 235 (3d Cir. 2004).

Here, Montanez's spinal cord stenosis and edema (which caused paralysis requiring surgery), his sudden incontinence, and the herniated disc he suffered after falling at SCI-Rockview easily qualify as serious medical needs. *See, e.g.*, *Durham v. Kelley*, 82 F.4th 217, 222, 229 (3d Cir. 2023) (lumbar stenosis is a serious medical need); *Spruill*, 372 F.3d at 236 (back condition that caused both "excruciating pain" and multiple falls was serious medical need); *McDaniel v. Syed*, 115 F.4th 805, 816, 832-33 (7th Cir. 2024) (prisoner with "spine and incontinence issues, resulting in significant back pain and difficulty controlling urination," had serious medical needs). Thus, Montanez's ability to state a claim for inadequate medical care turns on whether he has sufficiently pleaded deliberate indifference to any of these serious medical needs.

i. The Medical Defendants

a) *The Individual Medical Defendants*

The District Court concluded that Montanez did not plausibly allege that any Individual Medical Defendant was deliberately indifferent to his health needs. That determination, at least as it pertains to Dr. Mahli, was simply incorrect.

According to the Complaint, Dr. Mahli, despite knowing that Montanez was suddenly paralyzed and uncontrollably urinating on himself, provided *no* medical treatment and instead abandoned Montanez in this state for three days. Taken as true, these allegations do not represent mere disagreement with Dr. Mahli's "medical judgment" or a particular "course of treatment." *Montanez v. Price*, No. 3:22-CV-1267, 2023 WL 5435616, at *9-*10 (M.D. Pa. Aug. 23, 2023). Rather, where "knowledge of the need for medical care is accompanied by the intentional refusal to provide that care," as alleged here, "the deliberate indifference standard has been met." *MCCII*, 834 F.2d at 346 (citation modified). That standard can also be met by a defendant abandoning a prisoner in a condition that unreasonably exposes him to "the threat of tangible residual injury," as may be inferred from the allegations in the Complaint against Dr. Mahli. *Spruill*, 372 F.3d at 235 (quoting *MCCII*, 834 F.2d at 346).

On top of stating an Eighth Amendment claim against Dr. Mahli for inadequate medical care, the Complaint adequately pleads a second type of Eighth Amendment violation. Construing Montanez's pro se Complaint "liberally,

as we must," *Durham*, 82 F.4th at 230, the facts alleged against Dr. Mahli—deserting Montanez in his cell with nothing to do but drag his urine-soaked, paralyzed body around his cell floor for three days before help arrived—are also sufficient to make out an unsanitary conditions-of-confinement claim, *see Taylor v. Riojas*, 592 U.S. 7, 8 (2020) (per curiam) (forcing prisoner to live in his excrement for six days obviously violated the Eighth Amendment); *Young v. Quinlan*, 960 F.2d 351, 365 (3d Cir. 1992) ("It would be an abomination of the Constitution to force a prisoner to live in his own excrement for four days . . . .").

Yet while the Complaint states an Eighth Amendment claim against Mahli, it fails to state such a claim, even when liberally construed, against the remaining Individual Medical Defendants—namely, Dr. Preston, Dr. Edwards, and PA Nalley. As to these defendants, the Complaint alleges (1) that Dr. Preston denied Montanez "proper or adequate pain medication" after he fell and herniated his disc; (2) that PA Nalley refused to give him a double mattress (which Montanez believed would help his back pain), denied him "stronger pain medication," "lied to [him]" about being referred to physical therapy, and allowed him to "walk around without a cane or crutches"; and (3) that Dr. Edwards denied his requests for "stronger pain medication and a double mattress," and refused to order an MRI for Montanez's left hip. App. 39-40. But those allegations reflect differences in judgment between Montanez and these medical personnel about appropriate medical treatment, or at most amount to medical malpractice, neither of which is cognizable under the Eighth Amendment. *Estelle*, 429 U.S. at 106; *Spruill*, 372 F.3d at 235.

b) *Wellpath*

The District Court correctly determined that Montanez failed to state a claim under § 1983 against Wellpath. The Complaint mentions Wellpath once, alleging merely that it is the "entity contracting the medical staff who is also in this case." App. 40. But Wellpath cannot be held vicariously liable for the acts of its employees—Dr. Mahli, Dr. Preston, Dr. Edwards, and PA Nalley—under a theory of respondeat superior. *See Natale*, 318 F.3d at 583-84. Rather, like municipalities, private corporations under contract to provide prison health services are liable only if their policies or customs caused the constitutional violation. *See id.*; *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). Because Montanez does not tie any of the alleged Eighth Amendment violations back to Wellpath's policies or customs, he has failed to state a claim against that entity.

* * *

In sum, the District Court erred by dismissing Montanez's Eighth Amendment claim against Dr. Mahli. While it correctly determined that Montanez's three-and-a-half-page, handwritten Complaint failed to state Eighth Amendment claims against Dr. Preston, Dr. Edwards, PA Nalley, and Wellpath, the District Court erred in dismissing those claims with prejudice. Instead, as discussed further below, Montanez should have been granted an opportunity to amend. *See infra* Section III.C.

ii. The Commonwealth Defendants

The District Court properly dismissed Montanez's Eighth Amendment claims insofar as Montanez sought damages against the Commonwealth and the Individual Commonwealth Defendants in their official capacities. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989); *Edelman v. Jordan*, 415 U.S. 651, 663 (1974). It erred, however, in its treatment of the Individual Commonwealth Defendants in their personal capacities.

a) *Nurse Wagman*

The District Court dismissed Montanez's Eighth Amendment claim against Nurse Wagman, reasoning that the allegations against her "amount[] to a mere disagreement with [the] medical treatment" she provided. *Montanez*, 2023 WL 5435616, at *7. Not so.

After Montanez collapsed and lost sensation from the chest down, Nurse Wagman allegedly provided no medical treatment other than briefly feeling around Montanez's legs. Nor did she try to diagnose Montanez's sudden paralysis. Instead, according to the Complaint, she laughed at his request to go to the hospital and, after transporting him to his new first-floor cell, did not help him into his cell and bed. As even the Commonwealth acknowledged at oral argument, assuming the truth of Montanez's allegations, Nurse Wagman simply "dumped him in [his] cell," leaving Montanez to drag his limp body as he crawled across his cell floor. Oral Arg. Transcript 35:18. The Commonwealth itself "[could]n't defend [that] decision to make him crawl," Oral Arg. Transcript 37:3-4, which unnecessarily exposed Montanez "to the possible risks

of a permanent disability or . . . serious injury," *Spruill*, 372 F.3d at 237.

That is textbook deliberate indifference. Such conduct, as described, "entails the obduracy and wantonness that is proscribed by the Eighth Amendment" and is thus sufficient to state a claim against Nurse Wagman. *Pearson*, 850 F.3d at 537, 541 (holding that a prisoner's claim that a nurse forced him "to crawl to a wheelchair despite indicating that he was unable to walk" created a genuine issue of fact as to whether the nurse "acted with deliberate indifference" to the prisoner's serious medical needs).

b) *Non-Medical Prison Officials*

Non-medical personnel generally will not be found deliberately indifferent for purposes of an Eighth Amendment inadequate-medical-care claim unless they have "a reason to believe (or actual knowledge) that prison doctors or their assistants are mistreating (or not treating) a prisoner." *Spruill*, 372 F.3d at 236. Put differently, when a "prisoner is under the care of medical experts . . . , a non-medical prison official will generally be justified in believing that the prisoner is in capable hands." *Id.*

Here, it is undisputed that Ellers, Price, Rivello, Wakefield, and Patton are not medical personnel, and that Montanez was under the care of medical professionals during his time at FCI-Huntingdon and FCI-Rockview. So to sustain his Eighth Amendment claims against those five individuals, Montanez had to allege that they had "reason to believe or (actual knowledge)" that the medical staff were "mistreating (or not treating)" him. *Id.* Even Montanez concedes that he

failed to make such allegations as to four of the five, namely, Price, Rivello, Patton, and Wakefield.[5]

Ellers is a different story. According to the Complaint, although Montanez's x-ray after the fall showed that he had herniated a disc in his back, Ellers knew and "lied about the results of the x-ray," misinforming Montanez's doctors that the results were negative and thus preventing Montanez from receiving timely treatment. App. 39. Those allegations, taken as true, are sufficient to show that Ellers had "actual knowledge . . . that prison doctors or their assistants [were] mistreating (or not treating)" Montanez's serious medical need. *Spruill*, 372 F.3d at 236; *see also Rouse*, 182 F.3d at 197 (deliberate indifference sufficiently pleaded where defendant knew of plaintiff-prisoner's "need for medical treatment" and prevented him "from receiving [that] treatment" for "a non-medical reason").

The District Court thus erred in dismissing the Eighth Amendment claims against Wagman and Ellers. And although it correctly determined that Montanez had failed to state claims against the other Individual Commonwealth Defendants, those claims, too, should not have been dismissed with prejudice. *See infra* Section III.C.

B. Disability Law Claims

For decades, the ADA and the RA have served as "twin pillars of federal disability discrimination law," working in

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[5] Similarly, although Davis is a medical professional at SCI-Huntingdon, Montanez concedes that he failed to include any specific allegations as to Davis in the Complaint.

tandem to "secure the rights of individuals with disabilities to independence and full inclusion in American society." *Berardelli v. Allied Servs. Inst. of Rehab. Med.*, 900 F.3d 104, 109-10 (3d Cir. 2018). Functionally, the ADA and the RA impose the "same prohibition," but they cover different entities. *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 159 (2017). Along with proscribing discriminatory animus, both statutes also impose on covered entities an affirmative obligation to make "reasonable accommodations" for persons with disabilities so that they can meaningfully access their programs, services, and activities. *Alexander v. Choate*, 469 U.S. 287, 301 (1985); *see Tennessee v. Lane*, 541 U.S. 509, 532-33 (2004). As then-Judge Jackson has observed, this duty is at its apex in the prison context "because inmates necessarily rely totally upon [prisons] for all of their needs while in custody and do not have the freedom to obtain such services (or the accommodations that permit them to access those services) elsewhere." *Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 269 (D.D.C. 2015).

i. Who Can Be Sued Under Title II and Section 504

Here, the District Court dismissed Montanez's Title II and Section 504 claims against all of the defendants—the Individual Commonwealth Defendants, the Individual Medical Defendants, the Commonwealth, and Wellpath. In reviewing that decision, we consider first which defendants, if any, are subject to suit under either statute.

As relevant here, Title II of the ADA prohibits a "public entity" from discriminating against disabled people, including by denying them equal access to their "services, programs, or

activities." 42 U.S.C. § 12132. "Public entity" includes "(A) any State or local government; (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and (C) the National Railroad Passenger Corporation, and any commuter authority." *Id.* § 12131(1).

Section 504, in contrast, reaches only recipients of "[f]ederal financial assistance." 29 U.S.C. § 794(a). This "covers those who receive the aid" directly from the federal government or indirectly through another recipient of that aid. *U.S. Dep't of Transp. v. Paralyzed Veterans of Am.*, 477 U.S. 597, 606-07 (1986); *see* 28 C.F.R. § 42.540(e) ("Recipient means any . . . public or private entity . . . to which Federal financial assistance is extended directly or through another recipient . . . ."). "[F]ederal financial assistance," in turn, includes federal grants, loans, non-procurement contracts, and "reimbursement through Medicare and Medicaid." *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 217 (2022); *see* 28 C.F.R. § 42.540(f) (defining "Federal financial assistance" as "any grant, cooperative agreement, loan, contract (other than a direct Federal procurement contract or a contract of insurance or guaranty), . . . or any other arrangement by which" the recipient receives federal funds, services, or property); 34 C.F.R. § 104.3(h) (similar); 45 C.F.R. § 84.10 (similar). And the purpose for which that financial assistance was intended is irrelevant because a recipient of federal financial assistance must comply with Section 504 in "*all* of [their] operations," not just the program or activity receiving the funding. 29 U.S.C. § 794(b) (emphasis added); *see* Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, § 4, 102 Stat. 28, 29-30 (1988).

Given these limitations, the Individual Commonwealth and Individual Medical Defendants are not subject to suit in their personal capacities.[6] Neither state employees nor contractors are "public entities," so they cannot be sued under Title II. *See Emerson v. Thiel Coll.*, 296 F.3d 184, 189 (3d Cir. 2002) (per curiam) (dicta); *see also Stanek v. St. Charles Cmty. Unit Sch. Dist. No. 303*, 783 F.3d 634, 644 (7th Cir. 2015); *Garcia v. S.U.N.Y. Health Scis. Ctr.*, 280 F.3d 98, 107 (2d Cir. 2001). And because "the individual defendants do not receive federal aid," they also cannot be liable under Section 504. *Emerson*, 296 F.3d at 190.

The Commonwealth, on the other hand, is a public entity and receives federal funds, so it is a proper defendant under both Title II and Section 504. *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998) ("State prisons fall squarely within the statutory definition of 'public entity.'"); *Furgess v. Pa. Dep't of Corr.*, 933 F.3d 285, 288-93 (3d Cir. 2019) (allowing Title II and Section 504 claims against the Commonwealth to proceed).

As for Wellpath, the results are mixed. There is no question that it cannot be sued under Title II. Even though Wellpath contracts with the Commonwealth to perform a traditional government function—providing medical services to state prisoners—that alone is not enough to transform a private corporation into an "instrumentality of a State." 42

[6] Although individuals can be sued for damages in their official capacities under Section 504 and Title II, these claims are simply treated as if they are against the public entity or recipient of federal funds that employs the individual. *Durham v. Kelley*, 82 F.4th 217, 224 n.11, 227 & n.33 (3d Cir. 2023).

U.S.C. § 12131(1); *see Edison v. Douberly*, 604 F.3d 1307, 1309-10 (11th Cir. 2010) (concluding that a private prison management corporation operating a state prison is not a public entity); *Green v. City of New York*, 465 F.3d 65, 78-79 (2d Cir. 2006) (holding that a private hospital providing services pursuant to a municipal contract is not a public entity). So the ADA claim against Wellpath was properly dismissed.

But unless and until discovery establishes otherwise, Wellpath remains a proper defendant on the Section 504 claim. Montanez's Complaint alleges that, on "information and belief, SCI-Huntingdon [and the] Pennsylvania Department of Corrections receive[] federal funding," App. 44, and that Wellpath is the "Medical Contractor at SCI-Huntingdon," App. 35. Thus, liberally construed, the Complaint alleges that Wellpath is an indirect recipient of federal funds. *See Smith v. Nat'l Collegiate Athletic Ass'n*, 266 F.3d 152, 161 & n.7 (3d Cir. 2001) (explaining that "an entity may receive federal financial assistance indirectly and still be considered a recipient for purposes of Title IX," which "prohibits discrimination based on disability in substantially the same terms" as Section 504). Wellpath disputes this point, but that cannot be resolved at the motion-to-dismiss stage, where we

must accept the allegations as true.[7] *See Stringer v. Cnty. of Bucks*, 141 F.4th 76, 84, 90 (3d Cir. 2025). As it currently stands, Wellpath is a proper defendant under Section 504. *See* 29 U.S.C. § 794(b)(3)(A)(ii) (requiring a "corporation . . . or other private organization . . . which is principally engaged in the business of providing . . . health care" to refrain from disability discrimination in "all of [its] operations" if it directly or indirectly receives any "Federal financial assistance").

[7] On the one hand, in its answering brief, Wellpath represented that it does not "receive federal funds." Medical Appellees' Answering Br. 20 n.2. On the other hand, that statement conflicts with court filings and government websites that indicate Wellpath directly receives federal financial assistance. *See, e.g.*, U.S. Dep't of Agric., *Distance Learning & Telemedicine Grants FY 2023*, at 4, https://perma.cc/5Y5S-54A5 (awarding "Wellpath, LLC" a federal grant); *see also Vanderklok v. United States*, 868 F.3d 189, 205 n.16 (3d Cir. 2017) (explaining that we can take judicial notice of "publicly available [information] on government websites"). In advance of oral argument, this Court advised the parties to be prepared to address this issue. But oral argument did not bring clarity. Instead, Wellpath's counsel, after initially representing that Wellpath has never directly or indirectly received federal funds of any kind, then acknowledged that she could not explain the public documents to the contrary and that she had not, in fact, investigated the matter. And after representing that she would follow up with her client and submit supplemental briefing, she failed to do so, requiring us, two weeks later, to formally order Wellpath to submit that briefing. What Wellpath then provided also failed to engage, much less resolve, the conflict between its blanket denials and the public records.

ii. Montanez States Disability Law Claims Against the Commonwealth and Wellpath

Except for causation, the substantive standards for determining liability under Section 504 and Title II are identical, and the same remedies are available under both Acts.[8] *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 275 (3d Cir. 2014); 29 U.S.C. § 794a (authorizing injunctive relief and money damages) 42 U.S.C. § 12133 (same). To state a claim for disability-based discrimination, a plaintiff must show that: (1) he is a qualified individual; (2) with a disability; (3) who was excluded from participation in or denied the benefits of the services, programs, or other activities for which a public entity is responsible, or was otherwise subjected to discrimination by a public entity; (4) by reason of his disability. *Harberle v. Troxell*, 885 F.3d 170, 178 (3d Cir. 2018). In this case, the District Court erred in dismissing the disability law claims against the Commonwealth and Wellpath because the Complaint establishes a prima facie case of disability discrimination.

We agree with the District Court that the first two elements are satisfied. Montanez, like all state prisoners, is a qualified individual covered by Title II and Section 504. *Durham*, 82 F.4th at 225. And a "disability" is any "physical or mental impairment that substantially limits one or more major life activities," 42 U.S.C. § 12102(1)(A), which

[8] "[U]nder the RA, the disability must be the sole cause of the discriminatory action, while the ADA only requires but-for causation." *Durham*, 82 F.4th at 226. This distinction is irrelevant here, however, because the Complaint establishes causation under either standard.

includes, among other things, "caring for oneself, . . . sleeping, walking, standing," *id.* § 12102(2)(A), and "the operation of a major bodily function," such as "functions of the . . . bladder," *id.* § 12102(2)(B). So Montanez's spinal cord stenosis, spinal edema, incontinence, and herniated disc undoubtedly qualify as disabilities. *See Durham*, 82 F.4th at 225 ("lumbar stenosis" is a disability).

As to the third element, however, we cannot agree with the District Court's conclusion that Montanez "wholly fails to allege that he was denied or excluded from any services, programs, or activities." *Montanez*, 2023 WL 5435616, at *11. The phrases "service, program, or activity" under Title II and "program or activity" under Section 504 are "extremely broad in scope and include[] anything a public entity does." *Furgess*, 933 F.3d at 289 (quoting *Disability Rts. N.J., Inc. v. Comm'r, N.J. Dep't of Hum. Servs.*, 796 F.3d 293, 301 (3d Cir. 2015)); *see also* 29 U.S.C. § 794(b)(1)(A) (defining "program or activity" under Section 504 as "all of the operations of . . . a department, agency, . . . or other instrumentality of a State"). Under this "all-encompassing" definition, *Yeskey v. Com. of Pa. Dep't of Corr.*, 118 F.3d 168, 170 (3d Cir. 1997), *aff'd sub nom. Yeskey*, 524 U.S. 206, the Complaint plausibly alleges that Montanez was denied equal access to at least three different programs or services.

First, health care is a quintessential service prisons must provide to prisoners. *See Yeskey*, 524 U.S. at 210. True, as the Commonwealth points out, failure to provide adequate medical care to a disabled inmate does not, on its own, give rise to

liability under the ADA or RA.[9] *Bryant v. Madigan*, 84 F.3d 246, 249 (7th Cir. 1996) ("[T]he [ADA] would not be violated by a prison's simply failing to attend to the medical needs of its disabled prisoners. . . . The ADA does not create a remedy for medical malpractice."). But Montanez alleges not merely that he was denied specific medical care *for his disabilities*. Rather, according to the Complaint, Montanez had to drag his paralyzed body on two different occasions to get access to medical care—once to get access to the medical unit on the day he became paralyzed, and again the next day to reach Dr. Mahli, who refused to enter his cell to examine him. Put differently, Montanez alleges he was denied meaningful access to "medical care" *because of his disabilities*, which is cognizable under Section 504 and Title II. *See United States v. Georgia*, 546 U.S. 151, 157 (2006).

Second, the necessities for hygiene, including, showers, sinks, and toilets, are basic services prisons must provide. *See id.* at 155, 157; *Furgess*, 933 F.3d at 289-90. According to Montanez's Complaint, he was abandoned in his cell for at least three days, paralyzed and urinating on himself, neither able to reach a toilet nor given an alternative way to relieve himself with dignity. This is a textbook example of a disabled prisoner being denied access to fundamental prison service.

[9] Of course, because Title II gives disabled individuals a cause of action whenever they are denied equal access to "the services, programs, or activities of a public entity" because of their disability *or* "subjected to discrimination by any such entity," if a prison's failure to provide treatment was fueled by discriminatory animus toward a prisoner's disability, that would give rise to liability under the ADA. 42 U.S.C. § 12132.

See McDaniel, 115 F.4th at 823 ("In a prison, qualifying programs and activities include meals, medical care, showers, toilets, and the like."); *Shaw v. Kemper*, 52 F.4th 331, 334 (7th Cir. 2022) ("We have no difficulty concluding that a handicapped-accessible toilet for disabled prisoners amounts to a service, the denial of which could establish a claim under either statute.").

Third, given that all people need sleep, providing prisoners with accessible beds and "appropriate and adequate bedding . . . are 'services' of" a prison. *Pierce v. Cnty. of Orange*, 526 F.3d 1190, 1224 n.44 (9th Cir. 2008); *see Hall v. Higgins*, 77 F.4th 1171, 1181 (8th Cir. 2023) ("[A j]ail's toilets, beds, and medical care are a 'service' under the ADA."). Here, Montanez alleges that, on the first day of his paralysis, Nurse Wagman, rather than helping him to his bed or providing him with a handicap-accessible sleeping arrangement, simply dumped him in his cell and forced him to drag his paralyzed body across the floor and into his bed. And when he returned to SCI-Huntingdon after herniating a disc while recovering from major back surgery, his back condition—coupled with the lack of adequate pain medication—caused significant pain whenever he lay on his single mattress. That, in turn, interfered with his ability to sleep. But his requests for an accommodation, such as a double mattress, were repeatedly denied. So construing the Complaint liberally, Montanez adequately pleaded that he could not access a bed on the same basis as "able-bodied inmates" and was denied a reasonable accommodation necessary for him to sleep without significant pain—"just like able-bodied inmates" could. *Furgess*, 933 F.3d at 291.

A plaintiff can meet the fourth element of a prima facie case—discrimination "by reason of his disability"—by showing invidious discrimination or a failure to provide reasonable accommodations. *Harberle*, 885 F.3d at 179-80. Montanez proceeds down the second path, arguing persuasively that the Commonwealth and Wellpath had an obligation to reasonably accommodate his disabilities and that its repeated failure to do so was the reason he could not meaningfully access various prison services.

The duty to accommodate is triggered when a disabled person's need for an accommodation becomes known, either because (1) he requests an accommodation or (2) his disability and concomitant need for an accommodation are open and apparent. *See Chisolm v. McManimon*, 275 F.3d 315, 330 (3d Cir. 2001); *Robertson v. Las Animas Cnty. Sheriff's Dep't*, 500 F.3d 1185, 1197-98 (10th Cir. 2007) (collecting cases). Here, once Montanez suddenly became paralyzed, his disability and resulting limitations were obvious to prison staff, including Dr. Mahli and Nurse Wagman. And during his second stint at FCI-Huntingdon, his accommodation requests, including for mobility aids and a double mattress or other bedding accommodations, "were repeatedly refused." *Durham*, 82 F.4th at 226. So the Commonwealth and Wellpath had an affirmative duty to accommodate Montanez, and its failure to do so was "tantamount to denying [him] access" to those prison services "on the same basis as other inmates." *Id.*

In sum, a prison's "toilets, beds, and medical care are a 'service'" or program under Title II and Section 504, and Montanez has adequately pleaded that he was denied access to all three by reason of his disability. *Hall*, 77 F.4th at 1181. The Complaint therefore states a Title II and Section 504 claim

against the Commonwealth and a Section 504 claim against Wellpath, and the dismissal of those claims was error.

iii. Montanez Has Pleaded Entitlement to Compensatory Damages

To recover compensatory damages for a Section 504 or Title II violation, a plaintiff must plead, in addition to the elements of a prima facie case, that the discrimination was "intentional" in the sense that it was more than mere disparate impact. *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 261-62 (3d Cir. 2013). Deliberate indifference satisfies this requirement, which, in the disability law context, consists of (1) knowledge that the plaintiff's federally protected right to be free from disability discrimination was likely to be violated, and (2) "failure to act despite that knowledge." *Id.* at 263-65 (emphasis omitted); *see also Furgess*, 933 F.3d at 292.

Montanez's Complaint sufficiently pleads that various prison and medical staff had the requisite knowledge yet failed to act. According to the Complaint, for instance, Nurse Wagman knew Montanez was paralyzed but abandoned him on the floor of his cell, and Dr. Mahli—despite knowing that Montanez could neither stand nor walk and was involuntarily urinating on himself—took no steps to assist or accommodate Montanez. Likewise, Price, PA Nalley, and Dr. Edwards allegedly knew of Montanez's disabilities but denied his requests for accommodations and did not provide him with any alternatives. These allegations, if proven, amount to deliberate indifference. *See Durham*, 82 F.4th at 226 (prisoner with "lumbar stenosis" pleaded deliberate indifference by alleging that "[h]e made numerous prison officials aware that he . . .

needed a cane to walk[] and was in severe pain without it" but "was continuously denied his cane and shower accommodations"); *Furgess*, 933 F.3d at 292 (prisoner successfully pleaded Commonwealth was deliberately indifferent by alleging medical and prison staff "knew that [he] required a handicapped-accessible shower" and they "did not provide him with any accommodation that would allow him to shower" for months).

The Commonwealth contends that it cannot be liable for any Title II and Section 504 violations of the Medical Defendants because they are contractors, not government employees. But that misapprehends the reach of those remedial statutes. As our sister circuits have consistently recognized and as we hold today,[10] both their text and purpose confirm the Commonwealth's obligation to ensure compliance

[10] *See, e.g.*, *Marks v. Colo. Dep't of Corr.*, 976 F.3d 1087, 1097-98 (10th Cir. 2020) (explaining that the state prison "farm[ing] out operations to others . . . would not prevent liability" under the ADA or RA); *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1065-67, 1074 (9th Cir. 2010) (concluding that "even in the absence of a regulation explicitly saying so," the "fairest reading" of Title II and Section 504 required state defendants to ensure private and local prison operators complied with both statutes because "a State cannot avoid its obligations under [either Act] by contracting with a third party to perform its functions"); *Henrietta D. v. Bloomberg*, 331 F.3d 261, 286-87 (2d Cir. 2003) (holding that Section 504 imposes "supervisory liability" on states accepting federal funds to "guarantee that those it delegates to carry out its programs . . . compl[y] with" the RA).

with Title II and Section 504 even when it contracts out the operation of their programs, services, or activities to third parties.

We start with the text.[11] Title II's and Section 504's broad language—covering all public-entity "services, programs, or activities" and "any" federally funded "program or activity"—contains no exception when such programs, services, or activities are administered through contractors. Said differently, Congress wanted to give people with disabilities an affirmative right to access *all* covered programs and services no matter *how* or *through whom* the government or federally funded entity elects to deliver them. Regardless of the medium of delivery, those programs and services must be accessible to people with disabilities.

Congress's use of the "passive voice ('no qualified individual with a disability shall, by reason of such disability, be excluded . . .') only reinforces that conclusion." *A. J. T. v. Osseo Area Schs., Indep. Sch. Dist. No. 279*, 605 U.S. 335, 358 (2025) (Sotomayor, J., concurring) (quoting 42 U.S.C.

[11] Title II states: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Section 504 likewise provides, in relevant part: "No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ." 29 U.S.C. § 794(a).

§ 12132). Here, both statutes "focus[] on an event" that constitutes a type of prohibited disability discrimination—a disabled person being excluded from participating in or being denied the benefits of a covered program, service, or activity because of their disability—"without respect to a specific actor." *Dean v. United States*, 556 U.S. 568, 572 (2009). This linguistic choice to "pull[] the actor off the stage" reflects Congress's "agnosticism" as to who does the excluding or denial of benefits—be they government employees or government contractors. *Bartenwerfer v. Buckley*, 598 U.S. 69, 75-76 (2023).

The second clause of Title II, which goes on to separately protect people from being "subjected to [disability] discrimination by any" public entity, 42 U.S.C. § 12132, demonstrates that "Congress knew how to write . . . a law" that cabined liability in the way the Commonwealth proposes and deliberately "did not do so" in the first clause of Title II. *Marietta Mem'l Hosp. Emp. Health Benefit Plan v. DaVita Inc.*, 596 U.S. 880, 887 (2022). Thus, as we recently observed as to Title II, covered entities "may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of . . . discriminating on the basis of disability." *Williams v. Sec'y Pa. Dep't of Corr.*, 117 F.4th 503, 548 (3d Cir. 2024) (citation modified); *see also* 28 C.F.R. § 35.130(b)(1) (prohibiting a public entity under Title II from discriminating on the basis of disability "directly or through contractual, licensing, or other arrangements"); 28 C.F.R. §§ 41.51(b)(1), 42.503(b)(1) (same for federal funding recipients under Section 504).

Finally, the Commonwealth's attempt to evade the language of the statutes would also undermine their goals. As

"a remedial statute, meant to bring an end to discrimination against individuals with disabilities in all aspects of American life," the ADA "must be construed with all the liberality necessary to achieve [its] purpose[]." *Disabled in Action of Pa. v. Se. Pa. Transp. Auth.*, 635 F.3d 87, 94 (3d Cir. 2011).[12] Section 504, which we interpret in lockstep, must likewise be broadly construed to effectuate its remedial purpose of eliminating disability discrimination wherever federal funds are involved. 29 U.S.C. § 701(a)-(c); *see Yeskey*, 118 F.3d at 170 ("Congress has *directed* that Title II of the ADA be interpreted in a manner consistent with Section 504 . . . ."). And state prisons are quintessential covered entities under both statues: only the states—public entities that receive federal funds—have the power to incarcerate people in prisons within their borders.

Yet, as this case illustrates, states often contract with private companies to provide prison services and programs, including medical and mental health care, pharmaceutical services, drug treatment and substance abuse programs, transportation services, facility operations, vocational programs, food services, and security. *See* 28 C.F.R. pt. 35, App. A (effective Mar. 11, 2011). So if states could evade their statutory duties merely by outsourcing the operation of such programs, Title II and Section 504 would become dead letter within state prisons—an outcome antithetical to Congress's "unmistakabl[e]" intent to "include[] State prisons and prisoners within" the statutes' coverage. *Yeskey*, 524 U.S. at

[12] *See also* 42 U.S.C. § 12101(b)(1) (explaining that the ADA's "purpose" is to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities").

209. And the Commonwealth's interpretation is not limited to the prison context. Under the Commonwealth's reading, a state could avoid complying with either statute and simultaneously insulate itself from liability simply by contracting out the operation of all its programs, services, and activities and burying its head in the sand. But as the statutory text and case law make clear, "Congress did not design the ADA or the RA so that a public entity could forever prevent a qualified individual with a disability from utilizing a service, program, or activity." *Hamer v. City of Trinidad*, 924 F.3d 1093, 1107 (10th Cir. 2019).

* * *

In short, whether or not they use contractors, states remain responsible for ensuring that disabled prisoners can access their prisons' services, programs, and activities on the same basis as non-disabled prisoners. *See Williams*, 117 F.4th at 548.[13] And as applied here, that means the Commonwealth was "obligated to ensure that [Wellpath and its employees]—like all other State contractors—complie[d] with federal laws prohibiting discrimination on the basis of disability." *Castle v. Eurofresh, Inc.*, 731 F.3d 901, 910 (9th Cir. 2013). It was therefore error for the District Court to dismiss the ADA and

[13] *See also* 28 C.F.R. § 35.152(a) (Title II applies to "public entities that are responsible for the operation or management of . . . correctional facilities . . . either directly or through contractual, licensing, or other arrangements with public or private entities, in whole or in part . . . ."); 28 C.F.R. pt. 35, App. A ("If a prison is occupied by State prisoners and is inaccessible, the State is responsible under title II of the ADA.").

RA claims against the Commonwealth and the RA claim against Wellpath. Those claims, including Montanez's request for compensatory damages, survive the motions to dismiss.

C. Leave to Amend

Federal Rule of Civil Procedure 15(a)(2) directs courts to grant motions for leave to amend "when justice so requires." So leave to amend should be liberally given unless amendment would be inequitable or futile. *Long v. Wilson*, 393 F.3d 390, 400 (3d Cir. 2004); *Phillips*, 515 F.3d at 245. And because courts have a special obligation to be "more forgiving of *pro se* litigants," *Garrett v. Wexford Health*, 938 F.3d 69, 92 (3d Cir. 2019), this Circuit has a "longstanding policy of allowing *pro se* plaintiffs to amend their complaints before the court rules upon defendants' motions to dismiss," *Roman v. Jeffes*, 904 F.2d 192, 196 n.8 (3d Cir. 1990) (collecting cases).

Despite correctly reciting this standard, the District Court nonetheless denied Montanez's request for leave to amend, concluding that amendment "would be futile based on the factual and legal defects" in Montanez's Complaint. *Montanez*, 2023 WL 5435616, at *11. This was an abuse of discretion for two reasons.

First, the inadequacies in Montanez's pleading largely stemmed from the Middle District's own procedures. Montanez was required to file his complaint on the "FORM TO BE USED BY A PRISONER IN FILING A CIVIL RIGHTS COMPLAINT IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA." App. 33. And at the time, that form instructed pro se prisoners to state "as briefly as possible the

facts of your case," provided twelve lines on the form in which to do so, and warned that the prisoner could "[a]ttach no more than three extra sheets if necessary" to detail his allegations. App. 36-37. That constraint was particularly problematic for plaintiffs like Montanez, who were attempting to assert complex constitutional and statutory civil rights claims against numerous defendants based on conduct that occurred in different facilities.

Perhaps recognizing the due process implications of such a restriction, the Middle District has since eliminated the page limit.[14] But that change was too little, too late, for Montanez. By forcing him to state his claims in under four handwritten pages, the Court itself set him up for failure at the motion-to-dismiss stage, so Montanez should have the chance to amend as to any potentially viable claims. *See* Fed. R. Civ. Pro. 15(a)(2).

Second, this is not a situation where amendment would be futile.[15] Leave to amend is futile if "the complaint, as amended, would fail to state a claim upon which relief could be granted." *Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir. 2000). But as we explained above, even Montanez's

[14] The form now instructs prisoners to include "all the facts you consider important" and permits them to attach as many "additional pages [as] needed." U.S. Dist. Ct. for the Middle Dist. Pa., *Instructions for Filing a Complaint Pro Se*, at 8, https://perma.cc/3T8W-DWTQ.

[15] The District Court's failure to provide any substantive analysis supporting its futility conclusion also borders on an abuse of discretion. *See Cureton v. Nat'l Collegiate Athletic Ass'n*, 252 F.3d 267, 276 (3d Cir. 2001).

artificially truncated Complaint stated cognizable claims under Title II, Section 504, and the Eighth Amendment against some defendants. Thus, granting him leave to amend to bolster these claims would not have been futile. *See Geness v. Cox*, 902 F.3d 344, 361 (3d Cir. 2018) (no futility if plaintiff has already stated a claim).

Plus, Montanez's briefs in opposition to the motions to dismiss included over 50 pages with additional factual allegations in support of his claims against all named defendants, including those defendants whom Montanez could not adequately discuss in his Complaint due to the page limit. Although these briefs cannot amend the Complaint directly, *see McArdle v. Tronetti*, 961 F.2d 1083, 1089 (3d Cir. 1992), they function, in effect, as a proffer of the additional allegations Montanez could make if permitted, *see Gordon v. Kartri Sales Co.*, No. 3:17-CV-00320, 2018 WL 1123704, at *3 (M.D. Pa. Mar. 1, 2018) (collecting cases where courts "granted leave to amend a pro se plaintiff's complaint whe[n] the plaintiff has introduced new facts in his opposition papers" that might be helpful for stating a claim). And that proffer makes clear that amendment would not be futile. *Weaver v. Wilcox*, 650 F.2d 22, 27 (3d Cir. 1981) ("Pro se plaintiffs should be given an opportunity to amend their complaints unless it clearly appears that the deficiency cannot be overcome by amendment.").

Accordingly, denying Montanez leave to amend was an abuse of discretion and should be corrected on remand.

IV. Conclusion

Pro se complaints—however inartfully pleaded—must be carefully considered, for while prisoners surrender many

liberties upon conviction, the right to access the courts and seek redress for constitutional and statutory violations is not one of them. We will therefore (1) reverse the District Court's dismissal of Montanez's Eighth Amendment claims against Dr. Mahli, Nurse Wagman, and Administrator Ellers, the Title II and Section 504 claims against the Commonwealth, and the Section 504 claim against Wellpath; (2) affirm the District Court's dismissal of the Eighth Amendment claims against the Commonwealth and Individual Commonwealth Defendants in their official capacities, the disability law claims against the Individual Commonwealth and Medical Defendants, and the ADA claim against Wellpath; and (3) remand with instructions to permit Montanez to amend his Complaint.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2669

JOSE MONTANEZ,
Appellant

v.

PAULA PRICE, Health Care Administrator SCI-Huntingdon; RAJINDER MAHLI, SCI-Huntingdon; GABRIELLE NALLEY, Physician's Assistant SCI-Huntingdon; NURSE MEL; DR. VERNON PRESTON, SCI-Rockview; RICHARD ELLERS, Healthcare Administrator SCI-Rockview; DR. DAVID EDWARDS, SCI-Smithfield; MARY PATTON, SCI-Smithfield; C. WAKEFIELD, Superintendent SCI-Smithfield; N. DAVIS, Registered Nursing Supervisor SCI-Huntingdon; JOHN RIVELLO; WELLPATH CARE; STATE OF PENNSYLVANIA

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. No. 3:22-cv-01267)
District Judge: Honorable Robert D. Mariani

Argued on September 24, 2024

Before: KRAUSE, BIBAS, and AMBRO, *Circuit Judges*

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was argued on September 24, 2024.

On consideration whereof, it is now hereby **ORDERED** and **ADJUDGED** by this Court that the order of the District Court entered on August 23, 2023, be and the same is hereby **AFFIRMED IN PART**, **REVERSED IN PART**, and **REMANDED**. Costs shall be taxed against Appellees.

All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATE: October 8, 2025

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK

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RE: Jose Montanez v. Paula Price, et al
Case Number: 23-2669
District Court Case Number: 3:22-cv-01267

ENTRY OF JUDGMENT

Today, **October 08, 2025,** the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:
14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:
3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).
15 pages if hand or type written.

Attachments:
A copy of the panel's opinion and judgment only.
Certificate of service, unless the petition is filed and served through the Court's electronic-filing system.
Certificate of compliance if petition is produced by a computer.
No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. A party seeking both forms of rehearing must file the petitions as a single document. Fed. R. App. P. 40(a).

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed. R. App. P. 41.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: s/ James King
Case Manager
267-299-4958

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSE MONTANEZ,	:	Civil No. 3:22-cv-1267
Plaintiff	:	(Judge Mariani)
v.	:	
PAULA PRICE, *et al.*,	:	
Defendants	:	

MEMORANDUM

Plaintiff Jose Montanez ("Montanez"), an inmate confined at the State Correctional Institution, Huntingdon, Pennsylvania ("SCI-Huntingdon"), initiated this action pursuant to 42 U.S.C. § 1983. (Doc. 1). The matter is proceeding via an amended complaint. (Doc. 24). Named as Defendants are Healthcare Administrator Paula Price, Nurse Melanie Wagman, Registered Nurse Supervisor Davis, Healthcare Administrator R. Ellers, Superintendent Wakefield, Superintendent John Riviello, and Mary Patton (collectively, the "Commonwealth Defendants"), and WellPath, LLC, Dr. Preston, Dr. Rajinder Mahli, Dr. David Edwards, and Gabrielle Nalley, P.A.-C (collectively, the "Medical Defendants"). Presently pending before the Court are Defendants' motions to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(6). (Docs. 27, 29). For the reasons set forth below, the Court will grant Defendants' motions.

I. Allegations of the Amended Complaint

On August 28, 2021, Montanez was in his cell when he attempted to stand up to use the bathroom. (Doc. 24, p. 4). Montanez alleges that his legs gave out when he stood up, and he realized his body was numb. (*Id.* at pp. 4-5). Montanez notified an unidentified correctional officer who was walking by the cell. (*Id.* at p. 5). The correctional officer and Sergeant Bullick[1] then helped Montanez walk down the stairs. (*Id.*). Nurse Wagman was waiting with a wheelchair and wheeled Montanez to the medical department. (*Id.*). Once in the medical department, Montanez's vitals were checked, and Nurse Wagman examined his legs. (*Id.*). Nurse Wagman then called Dr. Malhi, who stated that Montanez should be moved to the first tier, and he would examine Montanez the next day. (*Id.* at pp. 5-6). Montanez alleges that he told Nurse Wagman he "needed to be taken to a hospital," but she denied his request. (*Id.* at p. 6). Nurse Wagman then wheeled Montanez to a cell, where he requested a grievance form from Sergeant Bullick. (*Id.*).

The following day, August 29, 2021, Dr. Malhi examined Montanez at his cell. (*Id.*). Montanez alleges that he was unable to walk, and he told Dr. Malhi that he was urinating on

[1] Montanez does not list Sergeant Bullick as a Defendant in this action. Montanez's scant claims against Sergeant Bullick suffer from the same defects against the named Defendants, as articulated below. As such, to the extent that Montanez intended to name Sergeant Bullick as a Defendant, he is entitled to dismissal from this action. *See, e.g.*, *Ryle v. Fuh*, 820 F. App'x 121, 123-24 (3d Cir. 2020) (affirming District Court's granting of defendant's motion to dismiss, and dismissal against some defendants *sua sponte*, where the Court dismissed the complaint with prejudice); *Coulter v. Unknown Prob. Officer*, 562 F. App'x 87, 89 (3d Cir. 2014) (affirming district court's *sua sponte* dismissal of non-moving defendant where the grounds raised by the moving defendants were common to all defendants and the plaintiff had an opportunity to respond to the moving defendants' arguments).

himself, but Dr. Mahli only nodded and walked off. (*Id.*). Montanez claims that he remained in his cell for three (3) days. (*Id.* at pp. 6-7).

On August 31, 2021, Montanez was transported to an outside hospital, University of Pittsburgh Medical Center ("UPMC") Altoona. (*Id.* at p. 7). While at the hospital, Montanez underwent an MRI which revealed he had spinal cord stenosis and spinal cord edema. (*Id.*). Thereafter, on September 10, 2021, Montanez underwent surgery. (*Id.*). On September 15, 2021, he was transferred to Encompass Health for physical therapy. (*Id.*).

On October 1, 2021, Montanez was transferred to the infirmary at the State Correctional Institution, Rockview, Pennsylvania ("SCI-Rockview"), and treated by Dr. Preston. (*Id.*). Montanez alleges that Dr. Preston "denied [him] proper or adequate pain medication even after falling and causing a herniated disk." (*Id.*) He alleges that Corrections Health Care Administrator Ellers "lied about the results of the X-ray taken after the fall," which he claims resulted in a delay of treatment. (*Id.*).

Montanez asserts that he returned to SCI-Huntingdon on November 12, 2021. (*Id.*). He alleges that Corrections Health Care Administrator Price "created a policy that I could not get access to her until a grievance was filed," which allegedly delayed his treatment. (*Id.*). Montanez then submitted a sick call slip. (*Id.*). Physician's Assistant Nalley purportedly replied to the sick call slip and denied Montanez's request for a double mattress and stronger pain medication, lied to him about his treatment, and allowed him to walk without a cane or crutches. (*Id.* at pp. 7-8).

On December 14, 2021, Dr. Edwards treated Montanez in the infirmary at SCI-Huntingdon. (*Id.* at p. 8). Montanez alleges that Dr. Edwards refused to prescribe stronger pain medication, refused a request for a double mattress, and should have ordered an MRI of his left hip. (*Id.*). He then asserts that Superintendent Wakefield "allowed the actions by Dr. Edwards," and "allow[ed] cold air to continue to blow into [his] cell during a snowy winter." (*Id.*).

Montanez alleges that WellPath "is being sued as a public entity contracting the medical staff" in this case. (*Id.*). Lastly, Montanez asserts that the Commonwealth of Pennsylvania "is being sued in accordance with the type of claims in this lawsuit[]."[2] (*Id.*).

Montanez alleges that Defendants did not render adequate medical care for his back pain in violation of his rights under the Eighth Amendment. He also brings claims under the Title II of the Americans with Disabilities Act ("ADA") and section 504 of the Rehabilitation Act ("RA") for the alleged denial of his post-surgery physical therapy. (*Id.* at pp. 11-12). For relief, Montanez requests a permanent single cell, to be moved to a facility that is closer to

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[2] By Order dated February 14, 2023, the Commonwealth of Pennsylvania was dismissed from this action because it is not a "person" subject to suit under § 1983. (Doc. 32). In response, Montanez argues that he is suing the Commonwealth of Pennsylvania for violating Title II of the Americans with Disabilities Act and section 504 of the Rehabilitation Act. (Docs. 37, 38). Montanez must plead four elements under Title II of the Americans with Disabilities Act against the Commonwealth: "(1) he is a qualified individual; (2) with a disability; (3) who was excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or was subjected to discrimination by any such entity; (4) by reason of his disability." *Geness v. Cox*, 902 F.3d 344, 361 (3d Cir. 2018). As set forth herein, the Court finds that Montanez has not satisfied these elements. Thus, granting Montanez leave to amend his claims against the Commonwealth of Pennsylvania would be futile and cause undue delay.

Philadelphia and that offers physical therapy for his legs, and $5,000,000 as compensation. (*Id.* at p. 13).

Defendants move to dismiss all claims pursuant to Rule 12(b)(6). The motions are fully briefed and ripe for resolution.[3]

II. Legal Standard

A complaint must be dismissed under Federal Rule of Civil Procedure 12(b)(6) if it does not allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). The plaintiff must aver "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009).

"Though a complaint 'does not need detailed factual allegations, . . . a formulaic recitation of the elements of a cause of action will not do.'" *DelRio-Mocci v. Connolly Prop. Inc.*, 672 F.3d 241, 245 (3d Cir. 2012) (citing *Twombly*, 550 U.S. at 555). In other words, "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Covington v. Int'l Ass'n of Approved Basketball Officials*, 710 F.3d 114, 118 (3d Cir. 2013) (internal citations and quotation marks omitted). A court "take[s] as true all the factual

[3] Montanez's briefs in opposition to Defendants' motions to dismiss contains facts that are not expressly set forth in the amended complaint. The Court may not consider such allegations because a complaint cannot be amended by way of an opposition brief. *See Pennsylvania ex rel. Zimmerman v. PepsiCo, Inc.*, 836 F.2d 173, 181 (3d Cir. 1988) ("[I]t is axiomatic that the complaint may not be amended by the briefs in opposition to a motion to dismiss.").

allegations in the Complaint and the reasonable inferences that can be drawn from those facts, but . . . disregard[s] legal conclusions and threadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Ethypharm S.A. France v. Abbott Laboratories*, 707 F.3d 223, 231, n.14 (3d Cir. 2013) (internal citations and quotation marks omitted).

> *Twombly* and *Iqbal* require [a district court] to take the following three steps to determine the sufficiency of a complaint: First, the court must take note of the elements a plaintiff must plead to state a claim. Second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. Finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief.

Connelly v. Steel Valley Sch. Dist., 706 F.3d 209, 212 (3d Cir. 2013).

"[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - but it has not show[n] - that the pleader is entitled to relief." *Iqbal*, 556 U.S. at 679 (internal citations and quotation marks omitted). This "plausibility" determination will be a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.*

However, even "if a complaint is subject to Rule 12(b)(6) dismissal, a district court must permit a curative amendment unless such an amendment would be inequitable or futile." *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 245 (3d Cir. 2008).

> [E]ven when plaintiff does not seek leave to amend his complaint after a defendant moves to dismiss it, unless the district court finds that amendment would be inequitable or futile, the court must inform the plaintiff that he or she has leave to amend the complaint within a set period of time.

Id.

III. The Commonwealth Defendants' Rule 12(b) Motion

A. Deliberate Indifference to Medical Needs

In the context of medical care, the Eighth Amendment "requires prison officials to provide basic medical treatment to those whom it has incarcerated." *Rouse v. Plantier*, 182 F.3d 192, 197 (3d Cir. 1999). To establish an Eighth Amendment deliberate indifference claim, a claimant must demonstrate "(i) a serious medical need, and (ii) acts or omissions by prison officials that indicate deliberate indifference to that need." *Natale v. Camden Cnty. Corr. Facility*, 318 F.3d 575, 582 (3d Cir. 2003).

Deliberate indifference has been found "where the prison official (1) knows of a prisoner's need for medical treatment but intentionally refuses to provide it; (2) delays necessary medical treatment based on a non-medical reason; or (3) prevents a prisoner from receiving needed or recommended medical treatment." *Rouse*, 182 F.3d at 197. The "deliberate indifference" prong of the Eighth Amendment test requires that the defendant actually know of and disregard "an excessive risk to inmate health or safety." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Circumstantial evidence can establish subjective knowledge if it shows that the excessive risk was so obvious that the official must have known about it. *See Beers-Capitol v. Whetzel*, 256 F.3d 120, 133 (3d Cir. 2001) (citing *Farmer*, 511 U.S. at 842). Moreover, "[i]f a prisoner is under the care of medical experts…a non-medical prison official will generally be justified in believing that the prisoner is in

capable hands." *Spruill v. Gillis*, 372 F.3d 218, 236 (3d Cir. 2004). Accordingly, "absent a reason to believe (or actual knowledge) that prison doctors or their assistants are mistreating (or not treating) a prisoner, a non-medical prison official…will not be chargeable with the Eighth Amendment scienter requirement of deliberate indifference." *Id.*

The second prong of the Eighth Amendment inquiry is whether the plaintiff's medical needs were serious. A serious medical need is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." *Monmouth Cnty. Corr. Inst. Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir. 1987). Not every condition is a serious medical need; instead, the serious medical need element contemplates a condition of urgency, namely, one that may produce death, degeneration, or extreme pain. *See id.* Moreover, because only egregious acts or omissions can violate this standard, mere medical malpractice cannot result in an Eighth Amendment violation. *See White v. Napoleon*, 897 F.2d 103, 108-10 (3d Cir. 1990); *see also Estelle v. Gamble*, 429 U.S. 97, 106 (1976) ("medical malpractice does not become a constitutional violation merely because the victim is a prisoner").

Additionally, prison medical authorities are given considerable latitude in the diagnosis and treatment of inmate patients, *see Young v. Kazmerski*, 266 F. App'x 191, 194 (3d Cir. 2008), and a doctor's disagreement with the professional judgment of another doctor is not actionable under the Eighth Amendment. *See White*, 897 F.2d at 108-10.

Furthermore, it is well settled that an inmate's dissatisfaction with a course of medical treatment, standing alone, does not give rise to a viable Eighth Amendment claim. *See Brown v. Borough of Chambersburg*, 903 F.2d 274, 278 (3d Cir. 1990) ("[A]s long as a physician exercises professional judgment his behavior will not violate a prisoner's constitutional rights."); *see also Pearson v. Prison Health Servs.*, 850 F.3d 526, 535 (3d Cir. 2017) ("[W]hen medical care is provided, we presume that the treatment of a prisoner is proper absent evidence that it violates professional standards of care.").

In the instant case, Defendants do not appear to challenge whether Montanez had a serious medical need. Rather, they assert that Defendants Patton, Davis, Wakefield, Ellers, and Price are entitled to dismissal because they were not personally involved in the alleged violations of Montanez's constitutional rights. (Doc. 28, pp. 7-10). They maintain further that all Commonwealth Defendants are entitled to dismissal because they did not demonstrate deliberate indifference to Montanez's medical needs. (*Id.* at pp. 10-12). The Court considers each argument in turn below.

1. Defendants Patton, Davis, Wakefield, Ellers, and Price

Under § 1983, individual liability may be imposed only if the state actor played an "affirmative part" in the alleged misconduct. *Evancho v. Fisher*, 423 F.3d 347, 353 (3d Cir. 2005) (quoting *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1998)). Liability "cannot be predicated solely on the operation of *respondeat superior*." *Id.* In other words, defendants "must have personal involvement in the alleged wrongs…shown through

allegations of personal direction or of actual knowledge and acquiescence." *Atkinson v. Taylor*, 316 F.3d 257, 271 (3d Cir. 2003); *Rode*, 845 F.2d at 1208. Moreover, the filing of a grievance, participation in "after-the-fact" review of a grievance, or dissatisfaction with the response to an inmate's grievance, does not establish the involvement of officials and administrators in any underlying constitutional deprivation. *See Pressley v. Beard*, 266 F. App'x 216, 218 (3d Cir. 2008) ("The District Court properly dismissed these defendants and any additional defendants who were sued based on their failure to take corrective action when grievances or investigations were referred to them."); *Brooks v. Beard*, 167 F. App'x 923, 925 (3d Cir. 2006) (holding that allegations that prison officials responded inappropriately to inmate's later-filed grievances do not establish the involvement of those officials and administrators in the underlying constitutional deprivation); *Ramos v. Pa. Dep't of Corr.*, No. 06-1444, 2006 WL 2129148, at *3 (M.D. Pa. July 27, 2006) ("[C]ontentions that certain correctional officials violated an inmate's constitutional rights by failing to follow proper procedure or take corrective action following his submission of an institutional grievance are generally without merit."); *Wilson v. Horn*, 971 F. Supp. 943, 947 (E.D. Pa. 1997) (noting that a complaint alleging that prison officials failed to respond to the inmate-plaintiff's grievance does not state a constitutional claim), *aff'd*, 142 F.3d 430 (3d Cir. 1998); *see also Rode*, 845 F.2d at 1207 (concluding that where a defendant, after being informed of the violation through the filing of grievances, reports, or appeals, failed to take action to remedy the alleged wrong is not enough to show that the defendant had the necessary

personal involvement); *Ayers v. Coughlin*, 780 F.2d 205, 210 (2d Cir. 1985) (concluding that a mere "linkage in the prison chain of command" is not sufficient to demonstrate personal involvement for purposes of a civil rights action).

With respect to supervisory liability, there are two theories: "one under which supervisors can be liable if they established and maintained a policy, practice or custom which directly caused the constitutional harm, and another under which they can be liable if they participated in violating plaintiff's rights, directed others to violate them, or, as the persons in charge, had knowledge of and acquiesced in their subordinates' violations." *Santiago v. Warminster Twp.*, 629 F.3d 121, 129 n.5 (3d Cir. 2010 (quotation and alteration marks omitted)). As to the second theory, a plaintiff must show that each defendant personally participated in the alleged constitutional violation or approved of it. *See C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 173 (3d Cir. 2005); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). With respect to the first, "the plaintiff must establish that: (1) existing policy or practice creates an unreasonable risk of constitutional injury; (2) the supervisor was aware that the unreasonable risk was created; (3) the supervisor was indifferent to that risk; and (4) the injury resulted from the policy or practice." *Merring v. City of Carbondale*, 558 F. Supp. 2d 540, 547 (M.D. Pa. 2008) (citing *Sample v. Diecks*, 885 F.2d 1099, 1118 (3d Cir. 1989)).

As an initial matter, the Court notes that Montanez appears to have withdrawn his claims against Defendants Patton and Davis. The amended complaint does not identify

Patton and Davis as Defendants and does not contain any factual averments against them. Accordingly, Defendants Patton and Davis will be dismissed from this action.

With respect to Defendant Riviello, the amended complaint lists him as a Defendant, but does not specify what role, if any, Superintendent Riviello played in the alleged denial of Montanez's rights. Under the most liberal construction, Montanez's amended complaint fails to state a claim for relief against Defendant Riviello. Based upon the above legal standards, it is clear that any claims against Defendant Riviello are subject to dismissal based on Montanez's failure to set forth any factual allegations against him in the amended complaint. Without such factual allegations, it is impossible to conclude that Defendant Riviello deprived Montanez of any constitutional rights. *See Hudson v. City of McKeesport*, 244 F. App'x 519, 522 (3d Cir. 2007) (affirming dismissal of defendant because complaint did not provide any basis for a claim against him).

Montanez alleges that Defendant Wakefield, in his role as Superintendent, "allowed the actions by Dr. Edwards. Therefore, allowing the policy of medical treatment being denied by medical staff…" (Doc. 24, p. 8). As noted above, a plaintiff may establish supervisory liability if he demonstrates that a supervisor established and maintained a policy, practice, or custom that directly caused the constitutional harm. *Santiago*, 629 F.3d at 129 n.5. Montanez, however, has not demonstrated that Defendant Wakefield knew of any unreasonable risk and was indifferent to that risk by failing to implement such a policy. *See Merring*, 558 F. Supp. 2d at 547. The allegations of the amended complaint amount to

a blanket invocation of vicarious liability. Moreover, Montanez failed to establish that Defendant Wakefield personally participated in any alleged constitutional violation or approved of it. *See C.N.*, 430 F.3d at 173.

Finally, Montanez seeks to hold Defendants Ellers and Price liable based upon their responses to his grievances. As noted above, these Defendants' participation in review of Montanez's grievances does not establish personal involvement in the alleged constitutional violations. *See Pressley*, 266 F. App'x at 218. For all the foregoing reasons, the Court will grant the Commonwealth Defendants' motion to dismiss.

2. The Commonwealth Defendants

Montanez next alleges that the Commonwealth Defendants demonstrated deliberate indifference to his medical needs. Defendants Price, Ellers, Wakefield, Riviello, and Bullick are not medical personnel. *See Thomas v. Dragovich*, 142 F. App'x 33, 39 (3d Cir. 2005) (noting that Health Care Administrators, such as Defendants Price and Ellers, "are undisputably administrators, not doctors"). The amended complaint confirms that Montanez was under the care of medical personnel. Because Defendants Price, Ellers, Wakefield, Riviello, and Bullick are not physicians, they cannot be considered deliberately indifferent "simply because they failed to respond directly to the medical complaints of a prisoner who was already being treated by the prison doctor." *Durmer v. O'Carroll*, 991 F.2d 64, 69 (3d Cir. 1991); *see also Foreman v. Bureau of Prisons*, No. 06-1274, 2007 WL 108457, at *4-5 (3d Cir. Jan. 16, 2007) (concluding that non-medical personnel were entitled to qualified

immunity regarding inmate's Eighth Amendment claim that he was deprived of a specific shower chair). Montanez has not alleged that these Defendants had reason to believe or actual knowledge that his medical providers were mistreating or failing to treat him. *See Spruill*, 372 F.3d at 236.

With respect to Commonwealth Defendant Nurse Wagman, Montanez's inadequate medical care claim against her is subject to dismissal because it amounts to a mere disagreement with medical treatment. Montanez alleges that Wagman took him to the medical department in a wheelchair immediately after the August 28, 2021 incident. (Doc. 24, p. 6). Once in the medical department, Defendant Wagman examined Montanez and called Dr. Mahli. (*Id.* at pp. 5-6). Montanez contends that Dr. Mahli directed Defendant Wagman to move Montanez to the first tier and that he needed to be taken to the hospital. (*Id.* at p. 6). Montanez alleges that Defendant Wagman denied his request to be taken to the hospital, returned him to the housing unit, and placed him on the lower tier. (*Id.*). The following day, Dr. Mahli treated Montanez, and on August 31, 2021, he was transported to an outside hospital for further treatment. (*Id.* at pp. 6-7). Construing the allegations in the light most favorable to Montanez, the Court concludes that Montanez has failed to allege an Eighth Amendment medical care claim against Defendant Wagman. *See Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 330 (3d Cir. 2020) (noting that "a failure to eliminate all risk [does not] establish that the Government [has been] deliberately indifferent to [inmates'] serious medical needs"). The amended complaint demonstrates that Defendant Wagman

had limited interaction with Montanez and immediately provided medical care to him. Montanez's belief that he should have received different treatment and should have been transported to an outside hospital constitutes a "mere disagreement as to the proper medical treatment," and is not an actionable Eighth Amendment claim. *Monmouth Cnty. Corr. Institutional Inmates*, 834 F.2d at 346.

Accordingly, the Court will grant the Commonwealth Defendants' motion to dismiss with respect to Montanez's Eighth Amendment claim.

B. Claims under the Americans with Disability Act and Rehabilitation Act

Montanez also alleges that Defendants violated Title II of the ADA as well as the Rehabilitation Act by failing to provide proper medical treatment. (Doc. 24, pp. 10-11). Title II of the ADA, "which prohibits a 'public entity' from discriminating against a 'qualified individual with a disability' on account of that individual's disability…covers inmates in state prisons." *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 208 (1998) (quoting 42 U.S.C. §§ 12131, 12132). The Rehabilitation Act provides that "[n]o otherwise qualified individual with a disability in the United States ... shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). The Third Circuit has explained that "[t]he substantive standards for determining liability under the Rehabilitation Act and the ADA are the same." *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 275 (3d Cir. 2014) (quoting *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 282-83 (3d

Cir. 2012)). Therefore, to maintain a claim under either the ADA or the Rehabilitation Act, Montanez must demonstrate "that he is a qualified individual with a disability, who was precluded from participating in a program, service, or activity, or otherwise was subject to discrimination, by reason of his disability." *Furgess v. Pa. Dep't of Corr.*, 933 F.3d 285, 289 (3d Cir. 2019).

While the Third Circuit has not addressed the issue precedentially, most courts "have held that Title II does not authorize suits against government officers in their individual capacities." *Williams v. Hayman*, 657 F. Supp. 2d 488. 502 (D.N.J. 2008); *see also Bowens v. Wetzel*, 674 F. App'x 133, 136 (3d Cir. 2017) (noting that "the District Court could have properly followed the holdings of those circuits which have concluded that there is no individual damages liability under Title II of the ADA, which provides an additional basis to affirm the dismissal of this claim"); *Matthews v. Pa. Dep't of Corr.*, 613 F. App'x 163, 169-70 (3d Cir. 2015) (agreeing with the Second and Eighth Circuits that "Title II of the ADA does not provide for suits against state officers in their individual capacities"). Likewise, individuals who are employees of entities who receive federal funds are not subject to individual liability under the Rehabilitation Act. *See Olschefski v. Red Lion Area Sch. Dist.*, No. 1:12-cv-871, 2012 WL 6003620, at *8 (M.D. Pa. Nov. 30, 2012). Montanez, therefore, cannot maintain his ADA and Rehabilitation Act claims against the individual Defendants in their individual capacities.

The Court must next consider Montanez's claims against the individual Defendants in their official capacities. The official capacity claims for damages against the Commonwealth Defendants are treated as claims against the Department of Corrections ("DOC") because the real party in interest is the DOC. *See Rogers v. NJDOC*, No. 15-7005, 2021 WL 1050233, at *15 (D.N.J. Mar. 19, 2021).

Montanez seeks $5,000,000 as compensation. Punitive damages, however, are not available under Title II of the ADA and section 504 of the Rehabilitation Act. *See Bowers v. Nat'l Collegiate Athletic Ass'n*, 346 F.3d 402, 429 (3d Cir. 2003) (citing *Barnes v. Gorman*, 536 U.S. 181, 187 (2002)). To receive compensatory damages, Montanez must demonstrate "intentional discrimination under a deliberate indifference standard." *Furgess*, 933 F.3d at 288-89. The "definition of deliberate indifference in the…ADA context is consistent with [the] standard of deliberate indifference in the context of § 1983 suits by prison inmates." *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 263 (3d Cir. 2013). Thus, to show deliberate indifference, Montanez must show that the DOC "(1) had 'knowledge that a federal protected right is substantially likely to be violated,' and (2) failed 'to act despite that knowledge.'" *Snider v. Pa. DOC*, 500 F. Supp. 3d 360, 2020 WL 7229817, at *19 (M.D. Pa. Dec. 8, 2020) (quoting *Geness v. Admin. Office of Pa. Courts*, 974 F.3d 263, 274 (3d Cir. 2020)). Montanez can show such a right was "substantially likely to be violated" by either "(1) alleging 'a failure to adequately respond to a pattern of past occurrences of injuries like [his]"; or (2) alleging facts that 'prove that the risk of…cognizable

harm was so great and so obvious that the risk and the failure…to respond will alone support finding deliberate indifference." *Matthews v. Pa. Dep't of Corr.*, 827 F. App'x 184, 187 (3d Cir. 2020) (quoting *Haberle v. Troxell*, 885 F.3d 170, 181 (3d Cir. 2018)).

As an initial matter, Montanez does not assert that he was excluded from participating in any programs, services, or activities. To the extent Montanez claims that his rights under the ADA and Rehabilitation Act were violated because he was denied medical treatment for his disabilities, such a claim "is not encompassed by the ADA's prohibitions." *Iseley v. Beard*, 200 F. App'x 137, 142 (3d Cir. 2006); *see also Bryant v. Madigan*, 84 F.3d 246, 248 (7th Cir. 1996) (concluding that the ADA "would not be violated by a prison's simply failing to attend to the medical needs of its disabled prisoners [because the] ADA does not create a remedy for medical malpractice").

As stated *supra*, in analyzing Montanez's Eighth Amendment claims, the Court concluded that Montanez had not met a similar deliberate indifference standard. Specifically, the Court noted that the Commonwealth Defendants, who are not medical personnel, were justified in relying on the expertise and care provided to Montanez by his medical providers. The Court concluded further that Montanez had not demonstrated that the Commonwealth Defendants had reason to believe or actual knowledge that his medical providers were mistreating or failing to treat him. Likewise, as the Court has concluded *supra*, Defendant Wagman did not demonstrate deliberate indifference to Montanez's medical needs. Thus, given the Court's previous conclusion, and because the "definition of

deliberate indifference in the RA and the ADA context is consistent with [the] standard of deliberate indifference in the context of § 1983 suits by prison inmates," the Court reaches the same conclusion here. *Matthews*, 827 F. App'x at 188. The Court, therefore, will grant the Commonwealth Defendants' motion to dismiss with respect to Montanez's official capacity claims for compensatory damages pursuant to the ADA and the Rehabilitation Act.

IV. The Medical Defendants' Motion

A. Deliberate Indifference to Medical Needs

Montanez's amended complaint asserts a claim under § 1983, alleging violations of the Eighth Amendment's Cruel and Unusual Punishments Clause based upon allegations that he received inadequate medical care. (Doc. 24).

In the context of prison medical care, the Eighth Amendment "requires prison officials to provide basic medical treatment to those whom it has incarcerated." *Rouse*, 182 F.3d at 197). Prison officials violate the Eighth Amendment "when they are deliberately indifferent to an inmate's serious medical need." *Dooley v. Wetzel*, 957 F.3d 366, 374 (3d Cir. 2020) (citing *Estelle*, 429 U.S. at 106). "[T]he concept of a serious medical need, as developed in *Estelle*, has two components, one relating to the consequences of a failure to treat and one relating to the obviousness of those consequences." *Colburn v. Upper Darby Twp.*, 946 F.2d 1017, 1023 (3d Cir. 1991). The "condition must be such that a failure to treat can be expected to lead to substantial and unnecessary suffering, injury, or death[,]" and "the condition must be one that has been diagnosed by a physician as requiring

treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." *Id.* (citation and internal quotation marks omitted).

The concept of "deliberate indifference" requires that the prison official actually knew of and disregarded "an excessive risk to inmate health or safety[.]" *Farmer*, 511 U.S. at 837). The United States Court of Appeals for the Third Circuit has found deliberate indifference when a "prison official: (1) knows of a prisoner's need for medical treatment and intentionally refuses to provide it; (2) delays necessary medical treatment based on a non-medical reason; or (3) prevents a prisoner from receiving needed or recommended medical treatment." *Rouse*, 182 F.3d at 197 (citation omitted).

The Court concludes that, even if it were assumed that the amended complaint has alleged a serious medical need concerning Montanez's issues, the Court would still find that the amended complaint has not plausibly alleged that the Medical Defendants were deliberately indifferent to that need.

Montanez alleges that Dr. Mahli examined him the day after the incident and failed to respond to his complaints that he was urinating on himself. (Doc. 24, pp. 6-7). He alleges that Dr. Preston "denied [him] proper or adequate pain medication." (*Id.* at p. 7). Montanez alleges that Physician's Assistant Nalley refused to order a double mattress, which he believed he would help his back pain, denied him stronger pain medication, "lied to him" about being referred back to physical therapy, and allowed him to walk around without a cane or crutches. (*Id.* at pp. 7-8). He similarly alleges that Dr. Edwards failed to provide

stronger pain medication, failed to order a double mattress, and failed to order an MRI of his left hip. (*Id.*).

Based on the allegations of the amended complaint, the Medical Defendants did not exhibit a wanton disregard of Montanez's medical needs, did not fail to provide any medical treatment, and did not deny any requests for medication.[4] Montanez simply disagrees with the Medical Defendants' medical judgment and prescription of certain medication. Such disagreement does not give rise to a constitutional claim given the considerable latitude afforded prison authorities in the treatment of prisoners. *See Spruill*, 372 F.3d at 235 (holding that "mere disagreement as to the proper medical treatment" is insufficient to state a constitutional violation); *White v. Napoleon*, 897 F.2d 103, 110 (3d Cir. 1990) (doctor's choice of one drug over another is not actionable); *Gause v. Diguglielmo*, 339 F. App'x 132 (3d Cir. 2009) (dispute over choice of medication does not rise to the level of an Eighth Amendment violation). Rather, where there has been medical care, "we presume that the treatment of a prisoner is proper absent evidence that it violates professional standards of care." *Pearson*, 850 F.3d at 535.

Additionally, as case law indicates, a delay in a surgical procedure does not automatically rise to the threshold of deliberate indifference. In *Davis v. First Corr. Medical*, 589 F.Supp.2d 464 (3d Cir. 2008), where the plaintiff alleged that a delay in treatment constituted deliberate indifference, the Court held that while there may have been a delay in

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[4] Montanez does not allege that he failed to receive any medication. (*See* Doc. 24).

surgery due to diagnostic testing and scheduling, such a delay does not constitute deliberate indifference to the inmate's medical condition without a more serious allegation that the delay was due to non-medical reasons. Similarly, in the case at bar, while Montanez may aver that his surgery was delayed for approximately ten days, he fails to plead that the delay was "deliberate" or for "non-medical reasons." *See Durmer*, 991 F.2d at 68-69. Montanez's disagreement with the course of treatment is, as stated *supra*, an improper basis for a deliberate indifference claim.

In sum, Montanez fails to allege facts from which it can reasonably be inferred that the Medical Defendants exhibited a deliberate indifference to his medical needs. Therefore, the Court will dismiss Montanez's Eighth Amendment claims against the Medical Defendants for failure to state a claim upon which relief can be granted.

B. Claims against WellPath

Montanez also names as a Defendant, WellPath, a private company that contracts with correctional institutions to provide medical care to inmates. A private corporation such as WellPath, which is under contract to provide prison health services, may be liable under § 1983 only if that entity's policies or customs caused the alleged constitutional violation. *See Monell v. N.Y.C. Dept. of Soc. Servs.*, 436 U.S. 658, 694 (1978); *Natale*, 318 F.3d at 583-84. For such a claim to be plausible, the plaintiff "must identify [the] custom or policy, and specify what exactly that custom or policy was." *McTernan v. City of York*, 564 F.3d 636, 658 (3d Cir. 2009).

A plaintiff may also state a plausible basis for liability against an entity like WellPath by "alleging failure-to-supervise, train, or discipline… [and alleging facts showing] that said failure amounts to deliberate indifference to the constitutional rights of those affected." *Forrest v. Parry*, 930 F.3d 93, 106 (3d Cir. 2019). In the context of a contract medical provider, the provider's "failure to train or supervise must amount to a policy or custom in disregard of an obvious risk that its employees or agents would commit constitutional violations." *Ponzini v. PrimeCare Med.*, Inc., 269 F. Supp. 3d 444, 526 (M.D. Pa. 2017), *aff'd in part, vacated in part on other grounds sub nom. Ponzini v. Monroe Cnty.*, 789 F. App'x 313 (3d Cir. 2019). Only in the narrowest of circumstances can a failure to train or supervise "said to be so obvious, that failure to do so could properly be characterized as deliberate indifference to constitutional rights even without a pattern of constitutional violations." *Id.* (quoting *Thomas v. Cumberland Cnty.*, 749 F.3d 217, 223 (3d Cir. 2014) (internal citation and quotation marks omitted)). In the amended complaint, Montanez broadly alleges that WellPath is a "medical contractor" and "a public entity contracting the medical staff." (Doc. 24, pp. 3, 8). Montanez does not tie any of the claimed violations of his constitutional rights to a WellPath policy or custom or to WellPath's failure to train, supervise, or discipline its staff. Accordingly, the amended complaint does not state a claim against WellPath and the official capacity claims against Wellpath will be dismissed.

C. Claims under the Americans with Disability Act and Rehabilitation Act

The Medical Defendants next argue that Montanez's ADA and Rehabilitation Act claims concerning their alleged failure to provide proper medical care is not cognizable against them because they are not proper defendants for a private cause of action under Title II of the ADA of the Rehabilitation Act. (Doc. 30, pp. 18-21). As such, the Medical Defendants contend that they should be dismissed from this action. (*Id.*)

As stated, Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Thus, in order "[t]o successfully state a claim under Title II of the ADA, a person 'must demonstrate: (1) he is a qualified individual; (2) with a disability; (3) [who] was excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or was subjected to discrimination by any such entity; (4) by reason of his disability.'" *Haberle*, 885 F.3d at 178-79 (quoting *Bowers v. Nat'l Collegiate Athletic Ass'n*, 475 F.3d 524, 553 n.32 (3d Cir. 2007)).

Particularly relevant here is the third element—whether Montanez has alleged that he was excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or was subjected to discrimination by any such entity. Montanez wholly fails to allege that he was denied or excluded from any services, programs, or activities. Additionally, Title II of the ADA defines "public entity" as follows: "(A) any State or

local government; (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and (C) the National Railroad Passenger Corporation, and any commuter authority[.]" 42 U.S.C. § 12131(1).

While a state prison falls within the statutory definition of a "public entity" as understood by Title II of the ADA, *see Yeskey*, 524 U.S. at 210, a private corporation contracting with that prison does not. *See Matthews*, 613 F. App'x at 170 (concluding, that for purposes of the ADA, "a private corporation is not a public entity merely because it contracts with a public entity to provide some service" (citation and internal quotation marks omitted)).

Additionally, an individual defendant, who is sued in his or her individual capacity, is not a "public entity" under Title II of the ADA. *See Bowens*, 674 F. App'x at 136 (affirming district court's dismissal of plaintiff's claim brought under Title II of the ADA, where plaintiff's amended complaint "sued state employees in their individual capacities" and "not any 'public entity' as the statute requires" (quoting 42 U.S.C. § 12132); *Matthews*, 613 F. App'x at 170 (finding that "Title II of the ADA does not provide for suits against state officers in their individual capacities").

Applying these principles here, the Court finds that Montanez's ADA and Rehabilitation Act claims against the Medical Defendants fail to state a claim upon which relief can be granted. The individual Medical Defendants—i.e., Defendants Preston, Mahli,

Edwards, and Nalley—do not constitute public entities within the meaning of Title II of the ADA and, thus, are not subject to suit.

In addition, WellPath, the private corporation providing medical services to inmates, also does not constitute a public entity, even if WellPath contracts with the prison to provide such services. *See generally City & Cnty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600, 610 (2015) (explaining that "[o]nly public entities are subject to Title II" of the ADA). Accordingly, for all of these reasons, the Court will grant the Medical Defendants' motion to dismiss to the extent that they argue that Montanez's amended complaint fails to state an ADA or Rehabilitation Act claim upon which relief can be granted.

V. Leave to Amend

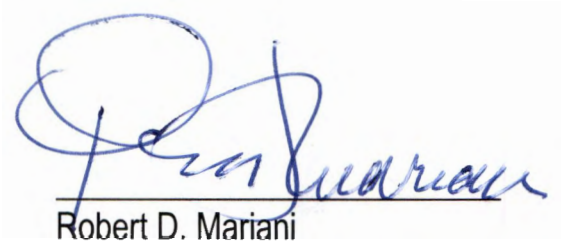
When a complaint fails to present a *prima facie* case of liability, district courts must generally grant leave to amend before dismissing the complaint. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002); *Shane v. Fauver*, 213 F.3d 113, 116-17 (3d Cir. 2000). Specifically, the Third Circuit Court of Appeals has admonished that when a complaint is subject to dismissal for failure to state a claim, courts should liberally grant leave to amend "unless such an amendment would be inequitable or futile." *Phillips*, 515 F.3d at 245 (citing *Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004)). The Court finds that granting further leave to amend would be futile based on the factual and legal defects identified in Montanez's amended complaint. *See Jones v. Unknown D.O.C. Bus Driver &*

Transp. Crew, 944 F.3d 478, 483 (3d Cir. 2019) (where inmate plaintiff "has already had two chances to tell his story . . . giving him further leave to amend would be futile.").

VI. Conclusion

Based on the foregoing, the Court will grant Defendants' motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (Docs. 27, 29).

A separate Order shall issue.



Robert D. Mariani
United States District Judge

Dated: August 23, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSE MONTANEZ,	:	Civil No. 3:22-cv-1267
Plaintiff	:	(Judge Mariani)
v.	:	
PAULA PRICE, *et al.*,	:	
Defendants	:	

ORDER

AND NOW, this 23rd day of August, 2023, upon consideration of Defendants' motions (Docs. 27, 29) to dismiss, and the parties' respective briefs in support of and in opposition to said motions, and for the reasons set forth in the accompanying Memorandum, **IT IS HEREBY ORDERED THAT**:

1. The motions (Docs. 27, 29) are **GRANTED**. The amended complaint (Doc. 24) is **DISMISSED**.

2. Plaintiff's motion (Doc. 37) to alter judgment is **DISMISSED**.

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

4. Any appeal from this Order is **DEEMED** frivolous and not in good faith. *See* 28 U.S.C. § 1915(a)(3).

Robert D. Mariani
United States District Judge

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK

UNITED STATES COURT OF APPEALS
21400 UNITED STATES COURTHOUSE
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September 19, 2024

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RE: Jose Montanez v. Paula Price, et al
Case Number: 23-2669
District Court Case Number: 3-22-cv-01267

Dear Counsel:

At oral argument in this matter, the parties should be prepared to discuss, among other things:

1. Whether the Medical or Commonwealth Defendants are subject to suit in their individual capacities under Title II of the ADA. *See Emerson v. Thiel Coll.*, 296 F.3d 184 (3d Cir. 2002); *Garcia v. S.U.N.Y. Health Scis. Ctr. of Brooklyn*, 280 F.3d 98 (2d Cir. 2001); *Alsbrook v. City of Maumelle*, 184 F.3d 999 (8th Cir.1999) (en banc).

2. Whether Wellpath LLC, as a private corporation that contracts with the Commonwealth to provide medical services in state prisons, is subject to suit under Title II of the ADA or the Rehabilitation Act. Also, whether individual medical providers working with Wellpath are subject to suit under these statutes. *See Edison v. Douberly*, 604 F.3d 1307 (11th Cir. 2010); *Green v. City of New York*, 465 F.3d 65 (2d Cir. 2006); *Matthews v. Pennsylvania Dep't of Corr.*, 613 F. App'x 163 (3d Cir. 2015); *Wilkins-Jones v. County of Alameda*, 859 F. Supp. 2d 1039 (N.D. Cal. 2012).

3. Whether Wellpath LLC is a recipient of federal funds.

4. The extent to which the Commonwealth remains liable under Title II of the ADA and the Rehabilitation Act for the actions of private contractors providing medical services to inmates within state prisons. *See Armstrong v. Schwarzenegger*, 622 F.3d 1058 (9th Cir. 2010); *Henrietta D. v. Bloomberg*, 331 F.3d 261 (2d Cir. 2003); 28 C.F.R. §§ 35.130, 35.152, 41.51.

5. Whether individual Medical Defendants were acting under color of state law for purposes of § 1983. *See West v. Atkins*, 487 U.S. 42 (1988); *Leshko v. Servis*, 423 F.3d 337 (3d Cir. 2005).

Very truly yours,

Patricia A. Dodszuweit

PATRICIA S. DODSZUWEIT
Clerk

By: Patrick A. McCauley Jr.
Patrick A. McCauley, Jr.,
Calendar Clerk
267-299-4932

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 23-2669

JOSE MONTANEZ,
Appellant

v.

PAULA PRICE, Health Care
Administrator SCI-Huntingdon; et al.

(M.D. Pa. No. 3-22-cv-01267)

O R D E R

At the direction of the Court, the parties shall submit supplemental letter briefs of no more than five single-spaced pages by Wednesday, October 30, 2024, addressing:

1. Whether the Commonwealth is liable for violations of the Rehabilitation Act or Title II of the ADA caused by private contractors providing medical services to inmates within state prisons. *See Armstrong v. Schwarzenegger*, 622 F.3d 1058 (9th Cir. 2010); *Henrietta D. v. Bloomberg*, 331 F.3d 261 (2d Cir. 2003).

The parties may, but need not, address:

2. The relevance, if any, of federal regulations for determining the extent of the Commonwealth's derivative liability under Title II of the ADA and the Rehabilitation Act. See Loper Bright Enterprises v. Raimondo, 144 S. Ct. 2244 (2024); Yeskey v. Com. of Pa. Dep't of Corr., 118 F.3d 168 (3d Cir. 1997); 28 C.F.R. §§ 35.130, 35.152, 41.51; 28 C.F.R. § Pt. 35, App. A.

For the Court,

s/Patricia S. Dodszuweit
Clerk

Dated: 10/17/2024

PM/cc: All counsel of record

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

MICHELLE A. HENRY
ATTORNEY GENERAL

October 30, 2024

Appellate Section
15th Floor, Strawberry Square
Harrisburg, PA 17120
Phone 717-783-7560
jfrasch@attorneygeneral.gov

Via ECF

Clerk of Court
United States Court Of Appeals
21400 United States Courthouse
601 Market Street
Philadelphia, Pa 19106-179

Re: ***Montanez, Jose v. Price, et al.***
U.S. 3rd Circuit Court of Appeals No. 23-2669

To the Clerk of Court:

The Commonwealth Defendants respectfully submit this letter brief in response to this Court's October 17, 2024 order requiring the parties to address "[w]hether the Commonwealth is liable for violations of the Rehabilitation Act or Title II of the ADA caused by private contractors providing medical services to inmates within state prisons." ECF No. 75.

The Court should not opine on this issue.

The Commonwealth Defendants first respectfully urge the Court not to opine on this issue.

Plaintiff Jose Montanez did not pursue this theory of liability below and so the District Court did not rule on its validity. That fact alone precludes this Court's consideration of it now. This Court, after all, is a "court of review, not of first view," and "will analyze a legal issue without the district court's having done so first only in extraordinary circumstances." *O'Hanlon v. Uber Techs., Inc.*, 990 F.3d 757, 762 n.3 (3d Cir. 2021). And no extraordinary circumstances exist here. To the contrary, if this Court determines either that Mr. Montanez's Amended Complaint states a claim under Title II or Section 504, or that he should be given another opportunity to state such a claim, the Court can—and therefore should—simply remand on that basis, and let the District Court, in the first instance (and of course only if Mr. Montanez asks it to), determine whether liability for any such claim can flow to the Commonwealth.

Perhaps more importantly, Mr. Montanez did not independently pursue this theory of liability on appeal. In fact, despite acquiring representation from experienced and adept counsel, Mr. Montanez did not even gesture at this theory in either of his briefs. In these circumstances, the Court would normally consider this theory waived. *Cf. Holland v. Warden Canaan USP*, 2024 WL 4512074, at *1 (3d Cir. Oct. 17, 2024) ("[I]t is well-settled in this court that an appellant's failure to identify or argue an issue in his opening brief constitutes waiver of that issue on appeal."). Or the Court might not even address this theory at all. *Cf. Matthews v. Pennsylvania Dep't of Corr.*, 613 F. App'x 163, 169 (3d Cir. 2015) (dismissing claims against private medical contractors because "they [were] not public entities subject to suit under" the ADA or RA without deciding whether the Commonwealth could be liable for those purported violations).

No mention of this theory was made at all until five days before oral argument, when this Court ordered the parties to "be prepared to discuss [at that argument] . . . [t]he extent to which the Commonwealth remains liable under Title II of the ADA and the Rehabilitation Act for the actions of private contractors providing medical services to inmates within state prisons." ECF No. 69. Unsurprisingly, Mr. Montanez's counsel latched onto this new theory of liability within the first few seconds of her argument before this Court. *See* ECF No. 74 at 4 ("[F]or [Mr. Montanez's] ADA and Rehabilitation Act claims for the failure to accommodate his disability, he correctly and sufficiently proceeds against the State of Pennsylvania."). And, based on the Court's October 17, 2024 order, the Court now seems poised to rule on this theory.

But it should not. The Supreme Court recently admonished precisely this sort of "interject[ion]" of issues by the Circuit Courts, and has indicated its willingness to vacate and remand when that occurs. *United States v. Sineneng-Smith*, 590 U.S. 371, 380 (2020).

Sineneng-Smith involved a constitutional challenge to a federal criminal statute. *Id.* at 373. In the District Court and Ninth Circuit, the criminal defendant argued that her own conduct was protected by the First Amendment. *Id.* at 374. But in neither the District Court nor the Ninth Circuit "did she so much as hint that the statute [was] infirm . . . because it trenches on the First Amendment sheltered expression of others." *Id.* at 377.

The Ninth Circuit was apparently unsatisfied with the defendant's arguments. So, after oral argument, "[i]nstead of adjudicating the case presented by the parties," it "moved [the case] onto a different track." *Id.* at 374. "[A]ssign[ing] a secondary role" to "counsel for the parties," the Ninth Circuit asked for briefing and then additional oral argument on a number of issues "framed by the panel" itself, including whether the statute was invalid because it infringed others' First Amendment rights. *Id.* at 374–75. "[I]n the redone appeal," the defendant "adopted" and "rode with" the overbreadth argument "suggested by the" Ninth Circuit. *Id.* at 379. Perhaps not surprisingly, the Ninth Circuit found its own argument persuasive; held that the statute was unconstitutionally overbroad; and vacated the defendant's conviction under it. *Id.* at 375.

The Supreme Court believed the defendant's change of direction after the Ninth Circuit's "suggest[ion]" was perfectly "[u]nderstandabl[e]"—indeed, the Supreme Court questioned "[h]ow [the defendant] could . . . do otherwise" in light of that guidance. *Id.* at 397. After all, it was clear that the defendant's "own arguments, differently directed, fell by the wayside, [and] did not mesh with the panel's overbreadth theory of the case." *Id.*

But the Supreme Court found issue with the Ninth Circuit's *sua sponte* "interject[ion]" of the overbreadth issue into the case. *Id.* at 380. And it held that the Ninth Circuit's conduct "departed so drastically from the principle of party presentation as to constitute an abuse of discretion." *Id.* at 375. It therefore vacated the Ninth Circuit's judgment and "remand[ed] the case for reconsideration shorn of the overbreadth inquiry . . . and bearing a fair resemblance to the case shaped by the parties." *Id.* at 380.

Sineneng-Smith rested on a foundational principle of the United States Constitution: Federal "courts are essentially passive instruments of government" that "should not[] sally forth each day looking for wrongs to right" but should instead "wait for cases to come to them" and then "decide only questions presented by the parties" in those cases. *Id.* at 376. That principle, in turn, means that "as a general rule, our system is designed around the premise that parties represented by competent counsel know what is best for them, and are responsible for advancing the facts and argument entitling them to relief." *Id.*

Respectfully, this Court's attempted "interject[ion] of the derivative-liability issue into this case runs afoul of these foundational principles. Just as in *Sineneng-Smith*, no party raised this issue until the Court "suggested" it via an order. Also just as in *Sineneng-Smith*, Mr. Montanez's counsel "understandably" "rode with" that issue, bringing it up at the very outset of her oral argument. But again just as in *Sineneng-Smith*, the Court's attempt to "move[this case] onto a different track" represents such a "drastic[]" "depart[ure] . . . from the principle of party presentation as to constitute an abuse of discretion."

Mr. Montanez did not independently make the derivative liability argument to this Court, even with the benefit of pro bono counsel. So, respectfully, this Court should not make it for him, via "suggestion" or otherwise. Instead, it should address only the two issues raised by the parties on appeal—namely, whether Mr. Montanez's First Amended Complaint states a claim, or, if not, whether Mr. Montanez should be permitted to amend that pleading.

There is no vicarious liability under Title II or Section 504.

If this Court nevertheless chooses to address this issue—which, as just noted, it should not—it should first clarify that there is no vicarious liability under Title II or Section 504, and thus that the Commonwealth cannot, without more, be derivatively liable for Title II or Section 504 violations allegedly committed by the Medical Defendants.

Under Title II, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity[.]" 42 U.S.C. § 12132. Similarly, under Section 504, "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance[.]" 29 U.S.C. § 794a(a). Plaintiffs seeking to enforce either of these provisions, however, are limited to the "remedies, procedures, and rights" available under Title VI of the Civil Rights Act of 1964. 42 U.S.C. § 12133; 29 U.S.C. § 794a(a)(2); *see Barnes v. Gorman*, 536 U.S. 181, 185 (2002).

But Title VI is enforceable only through a judicially created cause of action, so the Supreme Court has been careful to circumscribe the remedies available under it. *See Guardians Ass'n v. Civ. Serv. Comm'n of City of New York*, 463 U.S. 582, 597 (1983). Among other things, the Supreme Court has held that compensatory damages are available under Title VI only if a plaintiff shows intentional discrimination. *Id.*

The Supreme Court has also been careful to circumscribe the remedies available under Title IX of the Education Amendments of 1972, which also has only a judicially created cause of action, and which was "modeled after Title VI." *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998). Among other things, the Supreme Court has held that vicarious liability is unavailable under Title IX. *Id.* at 288.

Consequently, based on the principles announced in *Gebser*, it appears that all Circuit Courts addressing the issue have held that vicarious liability is unavailable under Title VI as well. *See Foster v. Michigan*, 573 F. App'x 377, 389 (6th Cir. 2014); *United States v. Cnty. of Maricopa, Arizona*, 889 F.3d 648, 652 (9th Cir. 2018); *Rodgers v. Smith*, 842 F. App'x 929 (5th Cir. 2021). And, based on Title II's and Section 504's use of Title VI's remedies, most Circuit Courts addressing the issue have held that vicarious liability is likewise unavailable under Title II and Section 504. *See, e.g.*, *Ingram v. Kubik*, 30 F.4th 1241, 1258 (11th Cir. 2022); *Jones v. City of Detroit, Michigan*, 20 F.4th 1117, 1121 (6th Cir. 2021).

There is no sound reason for this Court to depart from *Ingram* and *Jones*. As noted in *Jones*, the few cases to the contrary fail to consider *Gebser*, and thus fail to consider the Supreme Court's

cabining of remedies available under Title IX, which affects the remedies available under Title VI, which in turn affects the remedies available under Title II and Section 504. This Court, then—if it chooses to addresses this issue at all—should hold that the Commonwealth cannot be vicariously liable for others' violations of Title II or Section 504.

> *To hold the Commonwealth liable for Title II or Section 504 violations caused by the Medical Defendants, Mr. Montanez must (but did not) allege that prison officials knew or had reason to believe that the Medical Defendants were mistreating or not treating him.*

If any form of derivative liability is available, Mr. Montanez must allege that prison officials knew or had reason to believe that the Medical Defendants were mistreating or not treating him. But Mr. Montanez has not done so, either in his Amended Complaint or in his briefs below.

As noted above, compensatory damages may be recovered under Title VI if—but only if—a plaintiff shows intentional discrimination. *See Guardians Ass'n*, 463 U.S. at 597. And because Title II and Section 504 rely on Title VI's remedies, this Court has correctly concluded that this same limitation applies to compensatory-damages claims under Title II and Section 504. *See S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 261 (3d Cir. 2013).

Showing intentional discrimination requires a plaintiff to show, at a minimum, a defendant's deliberate indifference—i.e., that a defendant knew that Title II or Section 504 were "substantially likely to be violated" but "fail[ed] to act despite that knowledge." *Id.* at 265. Under this principle, this Court has held that employers are not automatically liable for Title II or Section 504 violations committed by their employees, but instead are liable only if the employer is deliberately indifferent to those violations. *See Haberle v. Troxell*, 885 F.3d 170, 181–83 (3d Cir. 2018).[1] There is no reason to depart from this principle when dealing with private contractors.

Furthermore, because these "private contractors" are "providing medical services to inmates within state prisons," ECF No. 75, there is no reason to depart from the principle, announced by this Court in numerous decisions, that non-medical defendants (such as the Commonwealth) "will not be chargeable with the . . . scienter requirement of deliberate indifference" "absent a reason to believe (or actual knowledge) that [such private contractors] are mistreating (or not treating) a prisoner." *Spruill v. Gillis*, 372 F.3d 218, 236 (3d Cir. 2004). This principle arose in the Eighth Amendment context, but its rationale—that a "non-medical prison official will generally be justified in believing that the prisoner is in capable hands" if he "is under the care of medical experts," *id.* at 236—applies with equal force in the Title II and Section 504 context.

So to recover against the Commonwealth under Title II or Section 504 for the acts of the Medical Defendants, Mr. Montanez must allege (*see Spruill*, 372 F.3d at 236 (noting that this is a pleading requirement)) that someone at the prison knew, or had reason to believe, that the Medical Defendants were mistreating or not treating him. But as explained elsewhere by the

[1] Arguably, *Haberle* establishes the same principle as do *Ingram* and *Jones*—i.e., that vicarious liability is unavailable under Title II and Section 504.

Commonwealth Defendants in connection with Mr. Montanez's Eighth Amendment claims, Mr. Montanez has not done so.

The regulations cannot affect the scope of the Commonwealth's liability.

In its order, the Court said the Commonwealth Defendant could address "[t]he relevance, if any, of federal regulations for determining the extent of the Commonwealth's derivative liability under Title II of the ADA and the Rehabilitation Act." ECF No. 75. Those regulations do not affect the above analysis, however, because they cannot expand the scope of liability available under Title II or Section 504.

The Supreme Court has held that private plaintiffs have no right to enforce Title VI regulations that attempt to outlaw anything other than intentional discrimination. *See Alexander v. Sandoval*, 532 U.S. 275 (2001); *cf. Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 173 (1994) ("[A] private plaintiff may not bring a [suit based on a regulation] for acts not prohibited by the text of the [statute itself]."). The Supreme Court has also held that the "remedies, procedures, and rights" available to Title II and Section 504 private plaintiffs are "coextensive" with those available to Title VI plaintiffs. *Barnes*, 536 U.S. 185. It necessarily follows, then, that private plaintiffs have no "right" to recover damages under Title II or Section 504 regulations that attempt to outlaw anything other than intentional discrimination, as well. In fact, this Court has already suggested as much when it held that private plaintiffs have no right to enforce Section 504 regulations that create rights not created by Section 504 itself. *Three Rivers Ctr. for Indep. Living v. Hous. Auth. of City of Pittsburgh*, 382 F.3d 412, 425 (3d Cir. 2004). *Three Rivers*'s holding was premised on the fact that "Section 504's private right of action is contiguous with Title VI's—for which an implied, not express, right of action exists." *Id.* Title II's private of action is also "contiguous with Title VI's," so it necessarily follows that private plaintiffs have no right to enforce Title II regulations that create rights not created by Title II itself.

* * *

This Court should not address the scope of the Commonwealth's derivative liability because this issue was not addressed below or independently raised by the parties on appeal. But if the Court does address this issue, it should hold that vicarious liability is unavailable under Title II and Section 504, and that the Commonwealth may be liable for the acts of its medical contractors only if its prison officials failed to act after learning that those medical contractors were mistreating or not treating an inmate.

Sincerely,

/s/ Jacob Frasch
Jacob Frasch
Deputy Attorney General