Supreme Court of the United States

William Joshua Alston, Petitioner

v.

Beth Lawson, et al, Respondents

No. 25-6835

August 31, 2026

Joint Appendix

1

contents

- Court of Appeals Rehearing Denial
- Court of Appeals Opinion
- District Courts Judgement
- Magistrate Courts Report and Recommendation

RECEIVED

SEP - 9 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-6835

WILLIAM JOSHUA ALSTON,

Plaintiff - Appellant,

v.

BETH LAWSON, Medical Director; DR. GARMAN; SALLY BLAKE, Nurse Practitioner; ADRIANE SMALL, Nurse Practitioner; DANIELLE WINNS; RACHEL BROWN; KATRINA KRYSTONOWICZ; DANIELLE, Nurse; JAMIE WILSON, Nurse; MIKE; SHAWNETTE; K. JONES; KATRINA, Nurse; KELSEY LEDFORD, a/k/a Nurse Chelsea; SQUIRES, Nurse; KAREN JONES; CARRIE, Nurse; MELISSA, Nurse; CHELSEA, Nurse; NURSE PRACTITIONER ALEX; NURSE BRIELLE; DAVID SIEKLICKI, Nurse; NURSE CHASITY; SCHINITRA SWINNEY, Nurse Practitioner; JENNIFER, Nurse,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Sherri A. Lydon, District Judge. (2:23-cv-03252-SAL)

Submitted: May 28, 2026 Decided: June 1, 2026

Before WYNN, QUATTLEBAUM, and HEYTENS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

William Joshua Alston, Appellant Pro Se. Taylor Denslow Brewer, MORAN REEVES & CONN, PC, Richmond, Virginia; Elizabeth Fulton Morrison, WHELAN MELLEN &

NORRIS, LLC, Charleston, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

William Joshua Alston appeals the district court's order adopting the magistrate judge's report and recommendation and granting summary judgment to Defendants on Alston's 42 U.S.C. § 1983 action alleging deliberate indifference to his medical needs. Alston also moves to exceed the length limitations for his informal brief and to appoint counsel. We have reviewed the record and discern no reversible error. Accordingly, we grant the motion to exceed the length limitations for his informal brief, deny the motion to appoint counsel, and affirm the district court's order. *Alston v. Lawson*, No. 2:23-cv-03252-SAL (D.S.C., Aug. 25, 2025). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

William Joshua Alston, Plaintiff, v. Beth Lawson, et al., Defendants.	Case No.: 2:23-cv-03252-SAL **ORDER**

William Joshua Alston ("Alston"), proceeding *pro se* and *in forma pauperis*, brings this civil action pursuant to 42 U.S.C. § 1983. Before the court are Alston's motion for partial summary judgment, ECF No. 219, and Defendants'[1] motion for summary judgment, ECF No. 230. Also before the court is Defendants' motion for entry of judgment under Federal Rule of Civil Procedure 54(b), ECF No. 236.

I. Background

This case arises from the medical care Alston received as a pretrial detainee between August 2022 and April 2024. His conditions included: an infected gunshot wound on his ankle, a spider bite on his nose, damage to his ear, a suspicious lump on his chest, concerns of skin cancer, general depression, and anxiety. *See generally* ECF Nos. 1, 131. According to Alston, Defendants

[1] Defendants are: Dr. Garman, the medical director of the J. Reuben Long Detention Center (the "Detention Center"); Elizabeth Lawson, RN and Health Services Administrator at the Detention Center; Nurse Danielle Winns; Nurse Rachel Brown; Nurse Katrina Krystanowicz; Nurse Danielle Winn; Nurse Jamie Wilson; Nurse Mike Minette; Nurse Jennifer Brown; Nurse Michele Squires; Nurse Melissa McLean; Nurse Practitioner Sally Blake; Nurse Carrie Yost; Nurse Adrian Small; Nurse Shawnette Attaway; Nurse Kelsey Ledford; Nurse Karen Jones; Nurse Practitioner Alex Petkovsek; Nurse Brielle Buis; Nurse David Sieklicki; Nurse Chasidy Queen; and Nurse Practitioner Schinitra Swinney (collectively "Defendants"). [ECF No. 269.]

failed to timely respond to his requests for medical treatment; failed to provide necessary items and medications; improperly subjected him to temporary isolation; and failed to provide necessary referrals to medical specialists, all in violation of his constitutional rights.

United States Magistrate Judge Mary Gordon Baker, pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(4) (D.S.C.), issued a Report and Recommendation ("Report"), recommending Defendants' motion for summary judgment be granted.[2] [ECF No. 269.] Alston objects. [ECF No. 271.]

II. Legal Standards

A. Review of a Magistrate Judge's Report

The magistrate judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). In response to a recommendation, any party may serve and file written objections. *See Elijah v. Dunbar*, 66 F.4th 454, 459 (4th Cir. 2023) (citing 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3)). The district court then makes a de novo determination of those portions of the Report to which an objection is made. *Id.* To trigger de novo review, an objecting party must object with sufficient specificity to reasonably alert the district court of the true ground for the objection. *Id.* (quoting *United States v. Midgette*, 478 F.3d 616, 622 (4th Cir. 2007)). If a litigant objects only generally, the court need not explain adopting the Report and must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Diamond v. Colonial Life & Accident Ins.*, 416 F.3d 310, 315 (4th Cir. 2005) (citing Fed. R. Civ. P. 72 advisory committee's note).

[2] Judge Baker also issued a Report and Recommendation on Defendants' motion for entry of judgment under Rule 54(b). [ECF No. 268.] But the court need not reach that motion since it agrees dismissal is warranted under Rule 56(a).

An objection is specific so long as it alerts the district court that the litigant believes the magistrate judge erred in recommending dismissal of that claim. *Elijah*, 66 F.4th at 460. Objections need not be novel to be sufficiently specific. *Id.* In the absence of *specific* objections this court is not required to give any explanation for adopting the recommendation. *Field v. McMaster*, 663 F. Supp. 2d 449, 451–52 (D.S.C. 2009). That said, the Fourth Circuit has instructed district courts that *pro se* filings, "however unskillfully pleaded, must be liberally construed." *Noble v. Barnet*, 24 F.3d 582, 587 (4th Cir. 1994).

B. Summary Judgment

Summary judgment is appropriate if a party "shows that there is no genuine dispute as to any material fact" and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). "In determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities in favor of the nonmoving party." *HealthSouth Rehab. Hosp. v. Am. Nat'l Red Cross*, 101 F.3d 1005, 1008 (4th Cir. 1996). The party seeking summary judgment shoulders the initial burden of proving to the court that there is no genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A fact is "material" if it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute of material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.*

A party asserting that a fact is genuinely disputed must support the assertion by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A).

III. Analysis

In their motion for summary judgment, Defendants argue Alston's constitutional claims fail as a matter of law. [ECF No. 230-1.][3]

A. Deliberate Indifference Standard

Because Alston was a pretrial detainee at the time of the alleged constitutional violations, his deliberate indifference claims are properly brought under the Due Process Clause of the Fourteenth Amendment, which protects the rights of pretrial detainees to receive adequate medical care. *Brown v. Harris*, 240 F.3d 383, 388 (4th Cir. 2001).

To establish deliberate indifference to a serious medical need, a pretrial detainee must show:

(1) he had a medical condition or injury that posed a substantial risk of serious harm;

(2) the defendant intentionally, knowingly, or recklessly acted or failed to act to appropriately address the risk that the condition posed;

(3) the defendant knew or should have known:
   (a) that he had that condition and
   (b) that the defendant's action or inaction posed an unjustifiably high risk of harm; and

(4) as a result, the detainee was harmed.

Short v. Hartman, 87 F.4th 593, 611 (4th Cir. 2023), *cert. denied*, 144 S. Ct. 2631 (2024).

Under this standard, a plaintiff need not show "that the defendant had actual knowledge of the detainee's serious medical condition and consciously disregarded the risk that their action or failure to act would result in harm." *Id.* Instead, it is sufficient to show that the defendant's action

[3] Alston likewise moves for summary judgment against Defendants Lawson, Garman, Swinney, Blake, and Petkovsek. [ECF No. 219-2.]

or inaction was "objectively unreasonable." *Id.* (citing *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015)).

It is not enough to allege a defendant "negligently or accidentally failed to do right by the detainee." *Id.* at 611–12; *see also Grayson v. Peed*, 195 F.3d 692, 695 (4th Cir. 1999) ("Deliberate indifference is a very high standard—showing of mere negligence will not meet it."). And differences of opinion between an inmate patient and medical staff over the course of medical treatment are insufficient to state a claim of deliberate indifference. *Wright v. Collins*, 766 F.2d 841, 849 (4th Cir. 1985) (finding inadequate treatment due to negligence, inadvertence, or differences in judgment between an inmate and the medical personnel does not rise to the level of a constitutional violation). Likewise, "[m]ere delay" in medical treatment, without more, is not deliberate inference to a serious medical need. *Moskos v. Hardee*, 24 F. 4th 289, 298 (4th Cir. 2022).

B. Basis for § 1983 Claims

In his motion for partial summary judgment, Alston alleges Defendants were deliberately indifferent to his serious medical needs by delaying his medical treatment in the following ways:

- failing to treat his gunshot wound with antibiotics;
- waiting three days to treat his spider bite with antibiotics;
- delaying treatment for his ear and shoulder pain;
- delaying treatment of his mental health issues;
- delaying treatment for his painful skin;
- delaying authorization for his footwear to reduce ankle pain;
- delaying treatment for his ear infections; and
- waiting six days to provide his hearing aid batteries that were readily available.

[ECF No. 219-1; 219-2 at 5–7, 16–18.]

He further claims that Defendants denied him access to medical specialists for financial reasons. [ECF No. 219-2 at 8.] Alston also attempts to assert a supervisory liability claim against these Defendants, as well as a claim based on the "ineffective medical system for communicating and treating." *Id.* at 10–16.

In his response to Defendants' motion for summary judgment, Alston identifies the following additional events as deliberate indifference under § 1983:

- Defendant Minette refused to provide him extra gauze on October 6, 2022;
- Defendant Sielicki denied him access to medical personnel capable of treating his cracked skin on his foot in March 2024;
- Defendant Jennifer Brown refused to substitute his prescribed medication;
- Defendant Winns refused to provide him ibuprofen;
- Defendant Squires refused medicine for pain in his nose from a spider bite;
- Defendant Wilson refused wound care on his bullet wound;
- Defendant Queen failed to document his ear issues;
- Defendant Ledford denied him medicine for the pain due to the "severe infection in his bullet wound" on September 28, 2022, and did not help him with the pain from his spider bite;
- Defendant Rachel Brown refused him medicine for his ear infection;
- Defendant Blake chose to medically isolate him;
- Defendant Lawson deliberately interfered with medical treatment.

[ECF No. 257 at 23–41.]

While not developed in his briefing, Alston's amended complaint appears to assert a § 1983 claim against Nurse Lawson because for making him wait seven days for a new wheelchair. [ECF No. 1 at 45–48.]

IV. Objections

This matter was referred to a magistrate judge for preliminary administration. After the parties fully briefed the pending motions for summary judgment, the magistrate judge issued a Report recommending summary judgment for Defendants. Alston objects and identifies fourteen grounds that support his argument. [ECF No. 271.] His filing The court addresses these in kind.

A. Objection One: Bullet Wound

Alston arrived at the Detention Center on July 21, 2022, with an open gunshot wound to his left ankle, which had been treated at a hospital. [ECF No. 230-2 at 114–18.] Medical staff screened him, noted hospital discharge orders for antibiotics and wound care, cleaned and dressed the wound, and scheduled Alston for a physician follow up. *Id.* Over the following months, Alston met with medical personnel more than a dozen times to address this wound. Alston was also temporarily quarantined, ostensibly to protect him from infection. These visits are meticulously detailed in the Report, ECF No. 269 at 3–13, and are summarized in a table attached to this order. *Supra* app. 1. Alston now claims that he has no feeling in or use of his fourth or fifth toes, nor any feeling along the left side of his foot. [ECF No. 271 at 11.]

The magistrate judge found that Alston's deliberate indifference claim failed because he had not demonstrated a substantial injury due to any delay in care. [ECF No. 269 at 32–33.]

In his objections, Alston recites the treatment history of his gunshot wound and asserts that "[he] has shown deliberate indifference towards his bullet wound. There is no argument to be made upon review of the record and documentation." [ECF No. 271 at 11.] But he relies primarily on out-of-circuit opinions and conclusory statements, without identifying any specific error in the Report. Even liberally construing Alston's objections, the court reaches the same conclusion as the magistrate judge.

The record reflects Alston met with medical personnel over twelve times in five months concerning the gunshot wound to his ankle. *See* app. 1. Although he disagrees with the course of treatment he received, Alston has failed to show he suffered substantial harm from any delay or that any Defendant acted in an objectively unreasonable manner regarding his treatment. *See* ECF No. 269 at 33, 35, 51. The record shows that each time Alston was seen for this issue, medical personnel tracked how his wound was healing. They noted when there was improvement, and when there was not, they either prescribed additional treatment or scheduled a consult.[4] *Id.* Those measures were effective. Indeed, the most recent records show the wound was "healing well" with normal color, no warmth, no discharge, no redness, no foul smell and with good granulation tissue covering the entire wound. At most, the court could infer negligence, but mere negligence falls below the constitutional threshold. *Short*, 87 F.4th at 611–12. And again, Alston has also failed to point to any substantial harm. Accordingly, this objection is overruled.[5]

B. Objections Two, Three, and Four: Ear Pain and Subsequent Infections

[4] Alston, citing *Ruffin v. Deperio*, 97 F. Supp. 2d 346 (W.D.N.Y.), asserts that his claims should proceed because his medical treatment for his gunshot wound merely documented his condition and continued ineffective treatment. [ECF No. 271 at 4.] In *Ruffin* the court found a reasonable jury could find treatment to be deliberately indifferent to an inmate's medical needs where "treatment" consisted of "little more than documenting his worsening condition." *Ruffin* 97 F. Supp. 2d at 353. Here, however, Alston's treatment *was* effective. The medical records illustrate that his gunshot wound, while once concerning, was later "healing well" with swelling decreasing "markedly" over time. Thus, *Ruffin* is distinguishable.

[5] Alston mentions that the magistrate judge "did not see" a medical request submitted on October 11, 2022, which demonstrated Lawson's failure to provide solutions for medical concerns. *See* ECF No. 271 at 9. If he is disagreeing with the magistrate judge's factual recitation, the court finds the magistrate judge accurately described the facts as they appear in the record. The cited medical request is one discrete document and was submitted to the magistrate judge for consideration in the current summary judgment motion. [ECF No. 230-2 at 146.] To the extent that document was omitted from the magistrate judge's review, this court considers the medical record request and reaches the same conclusion as the magistrate judge.

When Alston arrived at the Detention Facility in August 2022, he already wore a hearing aid because he was fully deaf in his left ear and nearly deaf in his right. [ECF No. 230-2 at 116, 120.] Following an assault in November 2022, Alston complained of pain in his left ear. [ECF. No. 271 at 12.] He was seen by medical personnel who documented Alston's complaints of pain and redness and swelling of the ear. [ECF No. 219-4 at 83.] Otherwise, those records note, "Ear canal was good just some ear wax. [Alston] stated he was okay and did not need anything further from medical." [ECF No. 219-4 at 83.][6] Alston now claims he lost hearing due to untimely treatment of his ear infections and ruptured eardrum after the assault. *See* ECF No. 271 at 16. The magistrate judge again found that Alston failed to demonstrate the required "substantial injury" resulting from delays in medical care necessary to survive summary judgment. [ECF No. 269 at 34.]

Objections Two, Three, and Four relate to Alston's injury to his ear and the treatment he received afterward. [ECF No. 271 at 12–18.] As with his other objections, Alston largely recites the facts cited in the Report then claims he "has shown through the documentation and records how ineffective the sick-call procedures are at [the Detention Center.]" *Id.* at 18. He continues, "documentation and records [] show how the delay in treatment allowed Plaintiff's pain and symptoms to exacerbate because of the delay in treatment." *Id.*

His only reference to the Report is that "Your honor points that 'detainees have no federal constitutional rights to any inmate grievance system.' Though that may be true its moot in this case." [ECF No. 271 at 15 (quoting ECF No. 269 at 52).] He claims that the requirement that all

[6] As with Alston's gunshot wound, the treatment for his ear injuries warrants additional summary and is contained in the table attached to this order. *See supra* app. 2.

medical requests be submitted via the Detention Facility grievance system creates a "sick-call procedure[,]" which he maintains a constitutional right to access. *See* ECF No. 271 at 16.

The court agrees with the Report's analysis. No genuine issue of material fact exists that any Defendant acted in an objectively unreasonable manner regarding Alston's ear care. *See Short*, 87 F.4th at 611 (explaining a pretrial detainee need only show "that the defendant's action or inaction was . . . objectively unreasonable").

Alston complained of ear pain in November and December 2022 and was seen twice by medical personnel. *See supra* app. 2. And on January 5, 2023, medical personnel noted Alston's ear discomfort had resolved without treatment. *Id.* In December 2023, Alston complained of pain from an ear infection. *Id.* He was examined two days after submitting a complaint and was initially given anti-inflammatories to treat his pain. *Id.* When a more serious infection was identified, he was prescribed antibiotics. *Id.* Although Alston characterizes these encounters as delay, the records show timely examinations and improvement with treatment. The court agrees with the magistrate judge that Alston fails to show how such delay caused him substantial harm. *Smith v. Walker*, 845 F. Supp. 2d 673, 677 (W.D.N.C.) ("Delay in medical care, without showing substantial harm, does not violate the [Constitution]."). This objection is overruled.

C. Objections Five, Eight, and Nine: Foot-Related Issues

In May 2023, Alston requested information about permissible shoes because his "bullet wound" hurt when walking. [ECF No. 219-4 at 111.][7]

The next month Alston received approval from Dr. Garman for "inserts." *Id.* at 131. Alston continued to request padded footwear through September 2023 and Nurse Sieklicki then advised

[7] Nurse Lawson responded on September 5, 2023, that "the only shoes available are for purchase on commissary." *Id.*

him:

> If you have someone that can bring you new insoles in the package, that is allowed. They can drop it off at the front desk, it will be checked by security and you are allowed to have this. Again they must be new and in the package. Other than that, there are some slip on shoes on the commissary list.

Id. at 115–30.

Soon after, Alston complained that his shoes pressed directly on the side of his bone pain. *Id.* at 127. Nurse Sieklicki responded that certain orthopedic shoes were allowed if they met certain requirements and passed a security inspection.

Nurse Sieklicki reiterated the same information via a medical encounter on September 22, 2023—"ok for inserts/ortho shoes per provider. Must pass security." *Id.* at 132. Alston subsequently had shoes delivered, but security rejected them. *Id.* at 128–30, 134–36.

Alston submitted an email he received with Defendants' discovery responses. *Id.* at 140. On October 6, 2023, Nurse Lawson emailed Captain Susan Safford, stating:

> No one in medical approved his shoes. He originally asked the provider if he could have orthotic inserts for his shoes. He was told that if they were in the original package and were approved by security then he might be able to have them. Those particular shoes showed up here. They were ordered by his family and sent in his name which I didn't think the jail would accept. They were not addressed to medical. I had Schomp look at them and he said he could not have them. Michael Jernigan called me later that day or the next day and asked me about them and why he couldn't have them, and I said, Schomp said he couldn't have them and I thought they would just cause problems as they are not medically necessary and other people will want to have their own shoes. So medical didn't approve them and neither did security that I am aware of.

Id.

Over the next several months, there was much back and forth over Alston's shoes, but eventually, the shoes he ordered were approved, and he received them on February 14, 2024. *Id.* at 134–39. Affidavits from Nurse Lawson and NP Petkovsek confirm that no medical provider ever prescribed orthotic shoes for Alston, but they approved them after Alston's repeated requests.

See ECF No. 230-3 at 4; ECF No. 230-6 at 1.

Alston also claims deliberate indifference concerning treatment for cracked skin on his foot.[8] [ECF No. 257 at 24.] A February 2, 2024, medical record references Alston's complaint of "edema to the top of the foot for a week." [ECF No. 230-2 at 323.] Medical personnel encouraged elevation, and within a few days Alston had "no edema" and "intact" range of motion. *Id.* at 322.

On March 17, 2024, Alston submitted a kiosk request to Defendant Lawson seeking a "stronger medical cream" than what was available "on canteen" for his "skin issues." [ECF No. 230-2 at 362.] Defendant Sieklicki responded to this request on March 19, 2024, stating:

> The medical department is here to treat serious medical needs. Dry skin is not considered a serious medical need. Your feet were assessed 2/6/24 by Nurse Practitioner and they were not bleeding or cracked. There was no sign of infection. There was nothing observed that would require any kind of medicated cream. A&D ointment is being added to the canteen list and could be an option for you.

Id.

The magistrate judge rejected Alston's deliberate indifference claim based on delay, finding no evidence of substantial harm and concluding that any delay was not objectively unreasonable. [ECF No. 269 at 40, 43.]

Alston's Fifth, Eighth, and Ninth objections challenge this conclusion. *See* ECF No. 271 at 18–27, 35–19. Citing the *Short* test, he argues that:

> Lawson knew Plaintiff had a medical condition that posed a risk of serious harm; Lawson intentionally, knowingly, or recklessly acted or failed to act to appropriately address the risk that the condition posed; Lawson knew or should have known that he had the condition and that Lawson's action or inaction posed an unjustifiably high risk of harm; and as a result, Plaintiff was harmed.

[8] This claim is not in the Amended Complaint, but the court addresses it here out of an abundance of caution.

[ECF No. 271 at 23.][9]

His conclusory argument is unavailing. Even under his framing, Alston concedes that he must show that Lawson's actions were objectively unreasonable. *Id.* He provides no such evidence. The record and the Report both show Alston regularly communicated with medical staff regarding receiving orthopedic shoes as well as accommodations for his cracked skin. [ECF No. 269 at 22–25.] At bottom, he has failed to provide evidence that any named defendant acted below an objective standard of reasonableness. His allegations amount to disagreements with medical personnel regarding the best course for his medical care. While sincere, they fall below the constitutional threshold. *See Hardee v. Walz*, No. 3:20-cv-729, 2023 WL 5673952, at *16 (E.D. Va. Sept. 1, 2023) ("Absent exceptional circumstances, an inmate's disagreement with medical personnel with respect to a course of treatment is insufficient to state a cognizable constitutional claim, much less to demonstrate deliberate indifference."). Accordingly, these objections are overruled.

D. Objections Seven and Thirteen: Skin Cancer and Denial of Specialist Treatment

On March 21, 2023, Alston reported to medical personnel that "two spots" on his left leg which had "been there for years" had both changed colors, which he found concerning due to a family history of skin cancer. [ECF No. 230-2 at 533.] Alston saw Nurse Rachel Brown on March 27, but failed to mention the spots. *Id.* at 28. Instead, he complained of red, itchy skin on his right

[9]Alston alleges that because he has provided proof he "was treated as a 'nuisance' and [Defendants] were 'insufficiently interested in his health,'" his claims should proceed. *See* ECF No. 271 at 27 (quoting *Hughes v. Joliet Corr. Ctr.*, 931 F.2d 425, 428 (7th Cir. 1991)). He also requests that Lawson's affidavit be "struck from the case" due to several misrepresentations. [ECF No. 271 at 38.] However, even disregarding Lawson's affidavit and considering Alston's evidence in the light most favorable to him, the court still concludes that Alston's treatment was not objectively unreasonable.

arm, and was given cream to use for fourteen days and told to return to the clinic with any worsening symptoms. *Id.*

On November 1, 2023, Alston submitted a medical request asking whether medical staff could identify skin cancer for three "spots" that had changed over the last year. *Id.* at 537. NP Petkovsek examined Alston on November 9, 2023, diagnosing a skin tag on the back of his right shin and a red mole on the left back. *Id.* at 17. Petkovsek later stated, "these conditions are not medical emergencies and usually require no treatment, much less urgent treatment." *Id.* In his affidavit, Petkovsek explained he did not refer Alston to a dermatologist because he "had no concerns for skin cancer" and recommended that Alston see a dermatologist post incarceration if he still had concerns. *Id.*

Alston disagreed, and submitted a medical request complaining that medical staff dismissed his spots as "skin tags." [ECF. No. 230-2 at 184.] He further claims that after he told staff that one spot had been previously diagnosed as skin cancer, they "backpedaled and said [he] may have cancer, but the policy at [the Detention Center] is to leave it untreated and recommend [he] seek treatment upon release." *Id.*

Alston received an official, albeit delayed, response to that complaint on February 2, 2024, when Nurse Lawson advised Alston that he could request outside medical care at any time but that that he would be financially responsible for the cost of such care. *Id.* Lawson also asked for documentation regarding Alston's cancer diagnosis so that medical staff could better assist him. *Id.* Finally, Lawson assured him that if staff had misdiagnosed his "spots" as skin tags, they could be reassessed, and a revised recommendation could be made. *Id.*

On January 20, 2024, Alston was again seen for complaints of "red, itchy area lower left leg." *Id.* at 325. A new order for hydrocortisone cream was entered. *Id.* NP Petkovsek later saw

Alston for "multiple concerns," including skin cancer. *Id.* at 321. In his affidavit, NP Petkovsek stated he "examined the areas of concern and assured [Alston] there was no evidence of skin cancer." [ECF No. 230-6 at 1.]

The magistrate judge concluded that Defendants' treatment of Alston's skin concerns was not objectively unreasonable, and that Alston failed to demonstrate substantial harm arising from any delay in treatment. [ECF No. 269 at 38.] The magistrate judge further found that Defendants used their medical expertise in concluding Alston's skin conditions could be adequately treated at the Detention Center, eliminating the need for an outside referral. *Id.* at 48.

Alston's objects. [ECF No. 271 at 33–35.] Broadly construed, Alston reargues that Defendants erroneously dismissed his spots as "skin tags" and wrongfully denied him outside medical care for this and other issues. [ECF No. 271 at 34.] Alston also claims the Detention Center's policy requiring detainees to pre-pay for outside medical care violates his constitutional rights. [ECF No. 271 at 45–46.]

The magistrate judge considered and rejected these same arguments. [ECF No. 269 at 49–50.] The law supports that conclusion. Although pre-trial detainees have a constitutional right to receive medically necessary care, they are not entitled to the care of their choice. *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 245 (1983); *Jackson v. Fair,* 846 F.2d 811, 817 (1st Cir. 1988). Here, outside care was never found medically necessary for Alston's ailments, including his alleged skin cancer, and he failed to demonstrate any genuine issue of material fact.[10] Because no necessary medical care was withheld, this objection is overruled.

[10] Although he is correct that a wound care consultation was approved at one time for his gunshot wound, ECF No. 230-2 at 92, this consult was found to no longer be medically necessary once his wound began to substantially heal. *See* ECF No. 230-5 ¶ 11. ("Because there were no signs of infection and no tissue necrosis, there was no longer a need for a wound care specialist."); ECF No. 230-2 at 64.

E. Objection Ten: Mental Health and Isolation

On August 15, 2022, Alston submitted a medical request complaining of extreme anxiety, night sweats, and a racing heart. [ECF No. 230-2 at 384.] The next week, he saw a mental health counselor, who did not recommend medication management. *Id.* at 99, 100. A month later, a Qualified Mental Health Professional ("QMHP") saw Alston and assessed his anxiety as "within normal limits of situation." *Id.* at 95. The QMHP "recommended brief therapy intervention and informed patient at this time he was not recommended for medical management." *Id.*

In October 2022, Alston told Dr. Garman that his anxiety persisted. *Id.* at 79. Dr. Garman prescribed Vistaril (an antihistamine often used for anxiety) until Alston could be seen by another mental health professional. *Id.* The next month, psychiatrist Dr. Elizabeth Leonard diagnosed Alston with depressive and anxiety disorders and prescribed mirtazapine. *Id.* at 275–76. In January 2023, Dr. Leonard adjusted the medications. *Id.* at 277–78. Then in February 2023, Alston refused a follow-up visit with Dr. Leonard, who noted he was non-compliant with morning medications. *Id.* at 279.

Alston was medically quarantined in October 2022.[11] [ECF No. 269 at 45.] He claims this worsened his anxiety and therefore violated his constitutional rights. [ECF No. 271 at 39–43.]

The magistrate judge found no violation, noting that Alston failed to produce evidence of a significant physical or emotional injury. [ECF No. 269 at 46–47.]

In his tenth objection, Alston challenges the conditions of his medical isolation. [ECF No. 271 at 39–43.] Citing the Supreme Court's opinion in *Rhodes v. Chapman*,[12] Alston argues his

[11] Alston was medically quarantined twice in October 2022—first from October 11th through the 14th, then again from October 25th to the 31st. *See* ECF No. 269 at 45. Although medical records indicate Alston was removed from this second medical isolation on October 29th, the court assumes a longer period of isolation in Alston's favor.

[12] *Rhodes v. Chapman*, 452 U.S. 337 (1981).

claims should proceed since he has shown conditions constituting "unnecessary and wanton infliction of pain" which are "totally without penological justification." [ECF No. 271 at 42–43.] As evidence, Alston claims that before going into medical isolation, a medical professional noted his anxiety was "within normal limits." *Id.* Afterward, a mental health professional noted he was "experiencing situational depression," and that "medication would be a helpful intervention." *Id.* This, he claims, is proof that he experienced severe mental anguish due to isolation and thus he claims should proceed. The court disagrees.

Conditions of confinement claims by pretrial detainees are governed by the Due Process Clause of the Fourteenth Amendment, which provides protections co-extensive with those of the Eighth Amendment. *Slade v. Hampton Roads Reg'l Jail*, 407 F.3d 243, 250 (4th Cir. 2005); *see Bell v. Wolfish,* 441 U.S. 520, 535 (1979); *see also Patten v. Nichols*, 274 F.3d 829, 834 (4th Cir. 2001) (noting that "the Fourteenth Amendment rights of pre-trial detainees 'are at least as great as the Eighth Amendment protections available to a convicted prisoner'" (quoting *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983))).

Evaluating conditions of confinement claims in the context of pretrial detainees, the Fourth Circuit applies a two-prong test, considering: (1) "whether the conditions of confinement objectively inflict harm that is sufficiently serious to deprive a prisoner of minimal civilized necessities," and (2) "whether prison officials subjectively acted with 'deliberate indifference to inmate health or safety,' meaning that they actually knew of and disregarded the inhumane nature of confinement."[13] *Sleeper v. City of Richmond, Va.*, No. 3:12CV441-HEH, 2012 WL 3555412, at 6 (E.D. Va. Aug. 16, 2012) (citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)); *see also Roberts*

[13] Both parties and the magistrate judge focus the inquiry to the second prong, whether officials acted with deliberate indifference to Alston's health or safety when placing him in medical isolation. *See* ECF No. 235 at 13; ECF No. 269 at 31. The court does the same.

v. Taniguchi, No. CIV.A. JKB-12-1187, 2012 WL 5252288, at *5 (D. Md. Oct. 23, 2012) (describing two-prong test). Further, a plaintiff asserting unconstitutional conditions of confinement must show that he suffered a serious or significant physical or mental injury because of the challenged condition or a substantial risk of such serious harm resulting from the plaintiff's unwilling exposure to the challenged conditions. *Shakka v. Smith*, 71 F.3d 162, 166 (4th Cir. 1995).

Even assuming Alston meets the first two prongs, his evidence of anxiety and depression does not establish a significant injury. Courts have held that symptoms such as depression, anxiety, or mental stress fall below the threshold for conditions-of-confinement claim. *See Lopez v. Robinson*, 914 F.2d 486, 491 (4th Cir. 1990) (finding claims of "mental stress as a result of being confined in a cell that lacks adequate ventilation" to fall below the "serious medical and emotional deterioration" standard); *Field v. W. Virginia*, No. CV 2:20-00147, 2020 WL 8085176, * (S.D.W. Va. Dec. 16, 2020) ("A depressed mental state, without more, does not rise to the level of 'serious or significant physical or emotional injury' that must be shown to withstand summary judgment[.]"). The record shows Alston received treatment, including medication, which he later discontinued on his own. He has failed to identify any genuine issue of material fact. Accordingly, his objection is overruled.

F. Objection Eleven: Delay in Receiving Medications

Alston raises a general objection related to the delayed treatment he received with respect to several conditions. He argues these claims of unnecessary or wanton infliction of pain are actionable under § 1983 and further asserts that a delay in treatment may constitute deliberate indifference depending on the seriousness of the condition and the ease of providing treatment. [ECF No. 271 at 43–44.] He claims that because he provided several examples of medical personnel providing immediate treatment, his claims should proceed because "nurses who choose

not to provide medical treatment are knowingly and intentionally causing [him] unnecessary pain." *Id.* Essentially, he argues that the immediate treatment he received in some instances demonstrates that any delayed treatment he received violated his constitutional rights.

But Alston's logic is flawed. Nothing in *Short* suggests that some immediate treatment requires all treatment to be immediate. Instead, the standard is whether officials "intentionally, knowingly, or recklessly acted or failed to act to appropriately address the risk that the condition posed[.]" *Short v. Hartman*, 87 F.4th 593, 611 (4th Cir. 2023).[14] This objection is overruled.

G. Objections Six, Twelve, and Fourteen: Ineffective Sick Call System and Delayed Treatment

Alston also objects to delays in treatment generally. The magistrate judge rejected these claims, finding no evidence of substantial harm. *See* ECF No. 269 at 51. Alston disputes this conclusion. [ECF No. 271 at 44.] He points to the following evidence in support of his objections:

- The delay in response to ear infection in December 2023 led to a ruptured tympanic membrane and further permanent loss of hearing.
- The ear infection of April 2024 resulted in an abscess that progressed to a ruptured abscess.
- The delay in providing footwear led to increased swelling in his right foot.

Id.

But delayed access to medical care only rises to deliberate indifference if it causes substantial harm. *Webb v. Hamidullah*, 281 F. App'x 159, 166 (4th Cir. 2008). Alston has failed to make this showing.

[14] Alston claims that the Fourth Circuit's holding in *Sharpe* also supports his conclusion. In that case, the Fourth Circuit noted that "a delay in treatment may constitute deliberate indifference if the delay exacerbated the injury or unnecessarily prolonged an inmate's pain." *Sharpe v. S.C. Dep't of Corr.*, 621 F. App'x 732 (4th Cir. 2015) (unpublished). But it does not follow that immediate treatment is required by the constitutions for all medical needs.

1. Ear Infections

In December 2023, Alston reported an ear infection on December 2 and was treated with antibiotics on December 6. ECF No. 269 at 14–15. No evidence shows the four-day delay caused substantial harm. *See Smith*, 845 F. Supp. 2d at 677.

Similarly, in March 2024, Alston developed another ear infection, was seen on April 2, and was prescribed antibiotics. *Id.* at 17. Again, no substantial harm is shown.

2. Orthopedic Shoes

The record does not indicate that any medical provider prescribed Alston orthopedic inserts or special shoes as treatment for a medical condition. Delays appear to have been based on security concerns. [ECF No. 219-4 at 136; ECF No. 230-3 at 4.] Alston has not shown substantial harm. At most, the record suggests negligence, which is not deliberate indifference. *Short*, 87 F.4th at 611–12.

3. Spider Bite

Alston claims he was bitten on the nose by a venomous spider while in medical isolation on October 12, 2022. [ECF No. 219-1 at 4–5.] Four days later, Nurse Rachel Brown examined Alston and prescribed him an antibiotic for ten days due to a "red swollen nose." [ECF No. 230-2 at 77.] He claims medical personnel denied him pain medication and that follow-up did not occur. [ECF No. 1 at 70–71.] But he has not shown substantial harm, and thus this claim also fails.

4. Lump

On February 17, 2024, Alston reported pain under his left nipple. [ECF No. 230-2 at 349.] He claimed the pain started January 27, 2024, but he initially thought it was possibly caused by "sleeping on it wrong." *Id.* Alston was examined by medical personnel on February 19, 2024, who conferred with NP Petkovsek. *Id.* at 318. NP Petkovsek, suspecting a pulled muscle, ordered

ibuprofen. *Id.*

On February 23, 2024, Alston submitted another medical request where he mentioned a "lump," found "last night," which was partly under his nipple and below. *Id.* at 347. On March 4, 2024, NP Petkovsek diagnosed a lipoma and ordered an ultrasound. *See* ECF. No. 230-6 at 2; ECF. No. 230-2 at 317. The ultrasound revealed no masses or fluid. [ECF No. 230-2 at 284.] Because Alston continued to feel pain from the lump, he was given ibuprofen. *Id.* at 316.

Alston saw NP Petkovsek again on April 2, 2024, and continued to complain of pain and was prescribed amitriptyline. ECF No. 131 at 70; *see also* ECF No. 230-2 at 329. Alston confirms that he still has a painful lump. [ECF No. 271 at 33.]

The magistrate judge concluded that Defendants' treatment of Alston's lump was not objectively unreasonable and that he failed to demonstrate substantial harm arising from any delay in treatment. [ECF No. 269 at 37.]

Alston objects to that conclusion. *Id.* at 27–33. But the record confirms that he received repeated examinations and diagnostic testing within a short period. *See* ECF No. 269 at 36–37. Alston fails to evidence how, during this one-month timeframe, any delays in treatment were objectively unreasonable or caused him substantial harm sufficient to satisfy the requirements for his constitutional claims. Accordingly, this objection is overruled.

V. Conclusion

After a thorough review of the Report, the applicable law, and the record of this case, the court finds no clear error in the Report. Additionally, the court reviewed de novo the parts of the Report to which Alston objected. The court hereby **ADOPTS** the Report and Recommendation, ECF No. 269. As a result, Defendants' motion for summary judgment, ECF No. 230 is **GRANTED**. Alston's constitutional claims fail as a matter of law and are therefore dismissed

WITH PREJUDICE. For these same reasons, Alston's motion for partial summary judgment, ECF No. 219, is **DENIED**.

Because the court grants Defendants' motion for summary judgment, the court **TERMINATES AS MOOT** the magistrate judge's Report and Recommendation, ECF No. 268, regarding Defendants' motion for judgment under 54(b), ECF No. 236. That motion is also **TERMINATED AS MOOT** since all of Alston's claims are dismissed under Rule 56(a).

IT IS SO ORDERED.

August 25, 2025
Columbia, South Carolina

Sherri A. Lydon
United States District Judge

Appendix 1: Treatment for Gunshot Wound

Date	**Relevant Information:**
July 21, 2022 ECF No. 230-2 at 114–18.	Alston arrives at the Detention Center with an open gunshot wound to his left ankle. Nurse Rachel Brown changed the dressing over the wound, cleaned it, and covered it with gauze.
July 27, 2022 ECF No. 230-2 at 109–11.	Alston was examined by Defendant NP Schinitra Swinney. During this examination, Alston rated his pain as 8/10, describing it as "pulsing." His vital signs were stable, with no signs of fever. NP Swinney examined the wound, which was beefy and dark red. There was no odor or drainage, but the edges were concerning for early necrosis (tissue death), so NP Swinney recommended a "wound care consult" to ensure against tissue loss.
August 3, 2022 ECF No. 230-2 at 108.	Defendant Nurse Kelsey Ledford redressed Alston's wound, noting no infection.
August 12, 2022 ECF No. 230-2 at 107.	Defendant Nurse Danielle Winns cleaned and redressed Alston's wound.
August 13, 2022 ECF No. 230-2 at 126.	Alston submitted a medical request seeking a left footrest for his wheelchair. He claimed, "improper bandage material got caught in the wheel again and ran over [his] foot."
August 17, 2022 ECF No. 230-2 at 103	NP Swinney examined Alston. NP Swinney noted the wound's dimensions had not changed from her prior examination. She also noted, "wound bed red, edges concern for early necrosis, moderate drainage," documented ongoing efforts to schedule a wound care consult, and prescribed amitriptyline (a nerve pain medication) for thirty days. *Id.*; ECF No. 230-5 at 2.
September 14, 2022 ECF No. 230-2 at 92.	NP Swinney reassessed Alston. She documented that the dimensions of Alston's "non healing wound" had not changed since her last examination, and she also noted, "wound bed red with yellow tissue present, moderate drainage, dry flakey skin present to bilateral plantar aspect of both feet, left worse than right." She prescribed a topical to apply "to affected areas of dry skin" for thirty days.
September 16, 2022 ECF No. 230-5 at 3.	Dr. Steve Garman examined Alston and noted "the wound is healing nicely without evidence of infection" or "inflammation." Dr. Garman further noted "marginal granulation," which he describes in his affidavit as "new tissue and blood vessels forming in the wound bed." [ECF. No. 230-4 at 2.] Dr. Garman advised Alston to continue cleansing the wound daily with soap and water, and he ordered dressing changes be continued. His notes also state, "No ointment. Weight bearing with walker as tolerated." Dr. Garman notes "some concern about referral for wound management." *Id.*
September 27, 2022	NP Swinney again examined Alston. Her notes state, "Did not remove dressing, per patient request. No drainage noted . . . [w]ill have walker for ambulation." She noted the plan to

ECF No. 230-2 at 86.	continue cleansing the wound daily with soap and water along with dressing changes. In her affidavit, NP Swinney claims that during this examination, "there were no signs or symptoms of infection[,]" and there "were no longer signs of tissue necrosis on the edges or anywhere. There was a scant amount of green drainage and [she] advised [Alston] to continue wound care." [ECF No. 230-5 at 3.]
September 30, 2022 ECF No. 230-2 at 85	Dr. Garman examined Alston, noting "Pleasant male in no distress. He ambulates with a walker. There is granulation tissue with wound margin healing but some erythema with some purulence. Heel is swollen and tender to light touch." In his affidavit, Dr. Garman claims that at this visit: [T]he heel had become swollen with dark drainage, purulence (pus), and increased pain with weight bearing. I attributed the decline to the patient's recent transition from using a wheelchair (non-weight bearing) to ambulating with a walker (weightbearing), which could have impacted the circulation and healing process. I ordered an antibiotic and continued daily wet/dry dressings. I also ordered bloodwork to rule out any systemic infection, and an x-ray to rule out fractures. As well, I increased the dosage of the Amitriptyline for neuropathic pain. [ECF No. 230-4 ¶ 7.]
October 4, 2022. ECF No. 230-2 at 328.	Alston's blood tests reveal a white blood cell count within normal limits. Dr. Garman claims these results assured him Alston did not have an infection and that antibiotics were the appropriate treatment. [ECF No. 230-4 at 2.] He further claimed that based on his assessments of the wound and expertise, he did not believe Alston needed care from an outside wound specialist. *See id.*at 3.
October 10, 2022. ECF No. 230-2 at 81.	Defendant NP Sally Blake examined Alston after he complained of pain in his left heel. Alston noted the swelling had decreased "markedly since the wound was infected" and that Alston was "unable to move 4th and 5th toe[.]" NP Blake measured the wound, which had decreased in size from the initial measurements, and scheduled a follow-up appointment with Dr. Garman.
October 13, 2022 ECF No. 219-4 at 67	Dr. Garman examined Alston, who had complained of being "moved into a cell with others with wound infections." Dr. Garman noted that "the open wound to the inner left ankle has no evidence of infection," and stated, "I see no reason to isolate him and recommend he be free to move around with general jail population." In his declaration, Alston states he was "removed from quarantine" the next day. ECF No. 219-1 at 4; ECF No. 131 at 3.
November 10, 2022 ECF No. 230-2 at 64	Alston was examined by another physician who reported the gunshot wound had improved over time and was "healing well." Specific to his wound, the notes for this visit document: [G]ood granulation tissue covering the entire wound, slightly extending out, some dead tissue surrounding the wound, skin around it normal color, no warmth, no discharge, nor redness, not foul smelling . . . good granulation tissue covering the entire wound.

Appendix 2: Treatment for Ear Injuries

Date:	**Relevant Information:**
November 20, 2022 ECF. No. 219-4 at 85.	Alston complained his "ear is extremely painful to touch from last weekend's assault." The response to this request states, "Placed on sick call list."
December 2, 2022 ECF. No. 219-4 at 87.	Alston again complained of pain in his ear "from an assault that happened 4 weeks ago."
January 5, 2023 ECF No. 219-4 at 93	Alston met with a physician, reporting "his left ear discomfort has improved and he has chronic hearing loss—which is unchanged on the left" he also reported "partial hearing loss of the right as well."
December 3, 2023 ECF No. 131 at 36.	Alston alleges Defendant Rachel Brown refused to provide him Tylenol for his ear pain and "said to put it on kiosk again."
December 4, 2023 ECF No. 131 at 397	Alston submitted a medical request stating he has only "one functional ear and it only has about 30 percent hearing without aid. It currently has an extremely painful infection. My ENT Dr. McKracken has warned me of ear infections damaging what little hearing I have left."
December 5, 2023 ECF No. 131 at 37, 69.	Alston complained of "yellow fluid and pain down to [his] jaw." Alston claims medical personnel told him his "ear was not ruptured and probably just leaked around, and they would try to see [him] on [December 6]." He alleges that Nurse Rachel took his vitals that same day, gave him ibuprofen for the pain, and said he would be seen "first thing in the morning." [ECF No. 230-2 at 15.]
December 6, 2023 ECF No. 230-2 at 13.	NP Petkovsek saw Alston for his complaints of right ear pain, difficulty hearing for a few days, and left ear hearing loss. NP Petkovsek claims that he "initially observed redness and swelling to the right eustachian tube, and a questionable ruptured tympanic membrane. To ensure a thorough examination, [he] viewed the ear a second time and concluded that the tympanic membrane was ruptured." [ECF No. 230-6 at 2.] He prescribed antibiotics that day. *Id.*
December 19, 2023 ECF No. 230-2 at 9.	Dr. Garman saw Alston in a follow up. Alston reported that "since right ear infection, he has less hearing, even with his hearing aid." But reported no ear pain. Dr. Garman examined Alston's right ear and observed a clear canal and a healed tympanic membrane. *Id.* Dr. Garman's affidavit and the medical record state there was flaky debris on the membrane and in the canal suggestive of a fungal infection. *Id.*; ECF No. 230-4 at 3. Dr. Garman prescribed ear drops and Flonase. [ECF No. 230-2 at 9.] Dr. Garman claims that during this appointment, Alston "questioned whether the ear infection had exacerbated his pre-existing hearing loss." [ECF No. 230-4 at 3.]

	Dr. Garman explained that he had no concerns about the ear infection exacerbating the hearing loss and advised Alston that an ear, nose, and throat specialist could assess the status of the hearing loss, and that he could coordinate care post-incarceration or ask his family to do so during incarceration. *Id.* at 3–4. According to Dr. Garman, "there was no urgent need for a [] referral, and [he] did not order one." *Id.* at 4.
December 19, 2023 ECF No. 230-2 at 191; *see also* ECF No. 131 at 69.	Alston submitted a medical request stating: > Dr. Garman confirmed that he cannot determine the extent of the damage done to my ear . . . and said I need an ear nose and throat Dr to truly determine the extent of damage . . . He prescribed a fungal drop for my ears and flonase. When will those start?
December 27, 2023 ECF No. 230-2 at 192	Alston submitted a medical request stating that the Flonase was helping to clear his sinuses and asking to "stay on it." He complained that his "hearing has not improved [] with the ear drops" and asked for "the next option."
January 2, 2024 ECF No. 230-2 at 193.	Alston submitted a medical request stating he was "still waiting to hear a response as to the next option for trying to fix the damage to [his] hearing due to Mediko providing poor and untimely medical care which allowed an ear infection to get so bad it ruptured."
February 2, 2024 ECF No. 230-2 at 192	Nurse Lawson approved Alston's continued use of Flonase stating, "There has been no provider order for an outside ENT visit. . . . If you or your family can arrange payment for an outside ENT visit, we will do our part to arrange transport."
March 28, 2024 ECF No. 131 at 69	Alston alleges he "developed an infection on [his] inner ear lobe," and he "began showing nurses and documenting on the kiosk immediately."
April 2, 2024 ECF No. 230-2 at 329.	Alston submitted a medical request stating he met with medical personnel who examined his "ear lobe and inner ear" and "confirmed the infection and prescribed anti-biotics to take care of both." Alston's medical record shows an order was placed for him to receive antibiotics two times per day from April 2, 2024, through April 9, 2024, and he received this medication during this time. *Id.* at 288–90.
July 24, 2024 ECF No. 230-2 at 478, 480, 482, 483.	Alston was hospitalized for a noncancerous tumor. An ENT who consulted Alston noted "decreased hearing on right [ear] since December when he had [active otitis media] and [tympanic membrane] rupture." Alston reported that he wore a hearing aid and "does well" with it. Upon examination, the ENT noted crusting to the tympanic membrane but no "visible perforation, no effusion, no drainage." The ENT did not recommend any treatment related to Alston's right ear and/or hearing loss.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

William Joshua Alston Plaintiff, v. Beth Lawson, et. al., Defendants.	Civil Action No. 2:23-03252-SAL-MGB **REPORT AND RECOMMENDATION**

William Joshua Alston ("Plaintiff"), a state prisoner proceeding *pro se* and *in forma pauperis*, brings this civil action pursuant to 42 U.S.C. § 1983 challenging the medical treatment he received as a pretrial detainee. Before the Court are Plaintiff's Motion for Partial Summary Judgment (Dkt. No. 219) and Defendants' Motion for Summary Judgment (Dkt. No. 230). Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1) and Local Rule 73.02(B)(2)(e), D.S.C., all pretrial matters in cases involving *pro se* litigants are referred to a United States Magistrate Judge for consideration. For the reasons set forth herein, the undersigned recommends denying Plaintiff's motion and granting Defendants' motion.

BACKGROUND

In this action, Plaintiff alleges that Defendants Dr. Garman, the medical director of the Detention Center; Elizabeth Lawson, RN and Health Services Administrator at the Detention Center; Nurse Danielle Winns; Nurse Rachel Brown; Nurse Katrina Krystanowicz; Nurse Danielle Winn; Nurse Jamie Wilson; Nurse Mike Minette; Nurse Jennifer Brown; Nurse Michele Squires; Nurse Melissa McLean; Nurse Practitioner Sally Blake; Nurse Carrie Yost; Nurse Adrian Small;

Nurse Shawnette Attaway; Nurse Kelsey Ledford;[1] Nurse Karen Jones; Nurse Practitioner Alex Petkovsek; Nurse Brielle Buis; Nurse David Sieklicki; Nurse Chasidy Queen;[2] and Nurse Practitioner Schinitra Swinney[3] ("Defendants") were deliberately indifferent to the following medical conditions Plaintiff experienced at the J. Reuben Long Detention Center (the "Detention Center') from August 2022 through April 2024: an infected gunshot wound on his ankle and resulting numbness in his foot, a spider bite on his nose, pain and hearing damage to his ear, suspected skin cancer spots, a suspicious lump on his chest, and general depression/anxiety.[4] (*See generally* Dkt. Nos. 1; 131.) Plaintiff alleges these Defendants failed to timely respond to Plaintiff's requests for medical treatment; failed to provide certain necessary items and medications for Plaintiff's medical conditions; improperly subjected Plaintiff to temporary isolation; and failed to provide necessary referrals to medical specialists in violation of his constitutional rights under § 1983.

Plaintiff filed this action on July 10, 2023, and he filed a verified Amended Complaint[5] on May 21, 2024. (Dkt. No. 1; 131; 131-1.) Plaintiff seeks compensatory and punitive damages for the alleged constitutional violations as well as injunctive relief. (*Id.*) Plaintiff filed a Motion for Partial Summary Judgment on December 17, 2024, seeking summary judgment on his claims against Defendants Lawson, Garman, Swinney, Blake, and Petkovsek. (Dkt. No. 219.) Defendants filed a Motion for Summary Judgment on January 6, 2025. (Dkt. No. 230.) The next day, this Court

[1] Plaintiff refers to this Defendant as "Nurse Chelsea" in the Amended Complaint. For clarity, the undersigned uses her correct name, Kelsey Ledford, in this Report and Recommendation ("R&R").
[2] Plaintiff refers to this Defendant as both Nurse Chasidy and Nurse Chastidy in the Amended Complaint. For clarity, the undersigned uses her correct name, Chasidy Queen, in this R&R.
[3] Plaintiff differentiates between the positions of nurse and nurse practitioner by stating that nurse practitioners "examine, diagnose, and create treatment plans for the nursing personnel." (Dkt. No. 219-2 at 11.)
[4] While the Complaint also alleged § 1983 claims against twenty-four Correctional Officer Defendants, those claims were dismissed with prejudice on December 23, 2024. (Dkt. No. 223.)
[5] "A complaint is 'verified' if it is 'signed, sworn, and submitted under penalty of perjury.'" *Goodman v. Diggs*, 986 F.3d 493, 495 (4th Cir. 2021) (quoting *James v. Hale*, 959 F.3d 307, 314 (7th Cir. 2020)).

issued an Order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the dismissal procedure and the possible consequences if he failed to adequately respond to the motion. (Dkt. No. 231.) Defendants filed a response in opposition to Plaintiff's Motion on January 15, 2025 (Dkt. No. 235), to which Plaintiff filed a reply brief on March 11, 2025 (Dkt. No. 254). Plaintiff filed a response in opposition to Defendants' Motion on March 14, 2025 (Dkt. No. 257). In his response, Plaintiff states that he "voluntarily withdraws his claims" against Defendants Winn, McLean, Buis, Yost, Krystanowicz, Jones, Attaway, Small. (*Id.* at 24, 26, 29.) Defendants filed a reply brief on March 21, 2025 (Dkt. No. 258), and Plaintiff filed a sur-reply brief on May 27, 2025 (Dkt. No. 267). The parties' Motions have been fully briefed and are ready for review.

B. Evidentiary Record

In support of their Motion for Summary Judgment, Defendants rely on their personal sworn affidavits and Plaintiff's medical record. In support of his Motion for Partial Summary Judgment and opposition brief, Plaintiff relies on the allegations in his verified Amended Complaint, his declarations submitted under penalty of perjury, his submitted kiosk requests, his medical record, and discovery responses from certain Defendants. The below summary is taken from the aforementioned evidence, including the facts that the parties have clarified are undisputed. For ease of reference, the undersigned summarizes the evidence specific to each of Plaintiff's alleged medical conditions at issue.

Bullet Wound, Spider Bite, and Temporary Move to Isolation

The record shows that when Plaintiff was booked at the Detention Center on July 21, 2022, he had an open gunshot wound to his left ankle. (Dkt. No. 230-2 at 114–18.) Defendant Nurse Rachel Brown conducted his receiving screening and noted the hospital discharge orders for antibiotics and wound care. (*Id.* at 114.) Plaintiff's medical record documents that Nurse Rachel

Brown changed the dressing over the wound, cleaned the wound, and covered it with gauze and wrap. (*Id.*) Nurse Rachel Brown placed Plaintiff on the list for physician follow up. (*Id.*)

Defendant NP Schinitra Swinney examined Plaintiff on July 27, 2022. (*Id.* at 109–11; Dkt. No. 230-5 at 2.) During this examination, Plaintiff was in a wheelchair. (Dkt. No. 230-2 at 109–11.) Plaintiff rated his pain as 8/10 and described it as "pulsing." (*Id.*) His vital signs were stable, and he was afebrile. (*Id.*) NP Swinney examined the wound, which was beefy and dark red in color. (*Id.*) There was no odor or drainage, but the edges were concerning for early necrosis (tissue death), so NP Swinney recommended a "wound care consult" to ensure against tissue loss. (*Id.*) In her affidavit, NP Swinney avers that she "explained to [Plaintiff] that he would be expected to pay for any non-emergent visit with an outside specialist, and [she] estimated it would cost roughly $1,000 to be seen by the wound care specialist." (Dkt. No. 230-5 at 2.) According to NP Swinney, Plaintiff "pushed back against this information, and claims [she] became angry and yelled at him." (*Id.*) NP Swinney denies yelling at Plaintiff. (*Id.*) Plaintiff does not dispute NP Swinney's testimony that she had no role in scheduling or arranging transportation for an inmate to receive medical care from an outside provider. Rather, NP Swinney would place an order referring an inmate patient to an outside provider and the "administrative team worked with security personnel at the jail" to handle the rest. (Dkt. No. 230-1 at 4; 230-5 at 2; 257 at 3.) On August 3, 2022, Defendant Nurse Kelsey Ledford redressed Plaintiff's wound and noted there was no infection. (Dkt. No. 230-2 at 108.) On August 12, 2022, Defendant Nurse Danielle Winns cleaned and re-dressed the wound. (*Id.* at 107.)

The record shows Plaintiff submitted kiosk requests complaining about the lack of gauze wrap for his wound dressings in August of 2022 and the lack of "saline-sterile water" to clean his wound in October of 2022. (Dkt. No. 219-4 at 8–11, 58–59; Dkt. No. 230-2 at 124–25.) In response

to these requests, nursing staff, including Defendant Nurse Elizabeth Lawson, advised Plaintiff that as long as the wound was cleaned and covered with sterile dressing, the material holding it in place was simply for stabilization and coverage. (Dkt. No. 230-2 at 125.) Nurse Lawson informed Plaintiff that "we would not re-use a bandage that is actually touching the wound." (*Id.* at 124.) In reference to Plaintiff's request for saline-sterile water, Nurse Lawson responded that "saline has been ordered. It is on back order and that is out of our control. Your wound can still be cleaned with sterile water and wound care should be performed." (Dkt. No. 219-4 at 58.) In her affidavit, Nurse Lawson avers, "When wound care supplies are backordered, I work quickly to re-order them, which I did here. In the meantime, I instruct the nurses to use other materials as alternatives." (Dkt. No. 230-3 at 3.)

In his verified Amended Complaint, Plaintiff alleges that he "placed a medical request" on August 9, 2022, stating "I need a left wheelchair footrest. . . ." (Dkt. No. 1 at 45.) According to Plaintiff, Nurse Lawson responded on August 10, 2022 stating, "Sorry the one presented did not work. Will try another." (*Id.*) Plaintiff alleges he submitted more kiosk requests for a left footrest on August 10, 2022, and August 12, 2022. (*Id.* at 46.) These requests are not in the record, however. The record includes Plaintiff's August 13, 2022 kiosk request seeking a "left foot rest" for his wheelchair because the "improper bandage material got caught in the wheel again and ran over [his] foot." (Dkt. No. 230-2 at 126.) Plaintiff submitted another kiosk request on August 15, 2022, again seeking a wheelchair with a left footrest, and Nurse Lawson responded that there were none available at the time. (*Id.* at 128.) In her response, Nurse Lawson further "suggest[ed] . . . for [Plaintiff] to prop your foot up on a chair or the bed whenever you have an opportunity." (*Id.*) Nurse Lawson avers that although "no provider had ordered a new wheelchair or footrest" for Plaintiff, she "still worked to accommodate his request" and ordered a new footrest. (Dkt. No. 230-

3 at 2.) Plaintiff received his new footrest on August 17, 2022. (Dkt. No. 230-2 at 132.) In his verified Amended Complaint, Plaintiff alleges that the "medical department" provided this footrest from "a closet full of them." (Dkt. No. 1 at 48.) In her affidavit, Nurse Lawson denies that there has ever been a closet full of wheelchairs and/or footrests at the Detention Center. (Dkt. No. 230-3 at 2.)

Plaintiff's medical record shows that he saw NP Swinney again on August 17, 2022. (Dkt. No. 230-2 at 103.) During this examination, NP Swinney noted the wound's dimensions, which had not changed from her prior examination. (*Id.*) NP Swinney further noted, "wound bed red, edges concern for early necrosis, moderate drainage." (*Id.*) NP Swinney documented the ongoing efforts to schedule a wound care consult, and prescribed amitriptyline (a nerve pain medication) for 30 days. (*Id.*; Dkt. No. 230-5 at 2.)

In her affidavit, NP Swinney avers that her "examination of the wound revealed it had not changed in size or quality since July 27, 2022, which indicated the nurses and the patient had been vigilant with the wound care." (Dkt. No. 230-5 at 2.) On September 2, 2022, Plaintiff submitted a kiosk request stating that Defendant Nurse Jamie Wilson told Plaintiff that he is "no longer on wound care list" and so Plaintiff "did not receive wound care." (Dkt. No. 230-2 at 135; *see also* Dkt. No. 1 at 50.) In subsequent kiosk requests in September of 2022, Plaintiff claims that Defendant Wilson changed his bandage and he and other nurses stated Plaintiff needed to see the doctor because the wound appeared infected. (Dkt. No. 230-2 at 136, 387, 531.)

Per Plaintiff's medical record, NP Swinney reassessed Plaintiff on September 14, 2022. (Dkt. No. 230-2 at 92.) She documented that the dimensions of Plaintiff's "non healing wound" had not changed since her last examination, and she further noted, "wound bed red with yellow tissue present, moderate drainage, dry flakey skin present to bilateral plantar aspect of both feet,

left worse than right." (*Id.*) NP Swinney noted the wound care consult had been approved and that the Health Services Administrator would discuss with Plaintiff the process for payment. (*Id.*) She also prescribed a topical to apply "to affected areas of dry skin" for 30 days. (*Id.*) In her affidavit, NP Swinney avers that Plaintiff's "wound remained unchanged, which was reassuring." (Dkt. No. 230-5 at 3.)

On September 16, 2022, Dr. Steve Garman examined Plaintiff and noted "the wound is healing nicely without evidence of infection" or "inflammation." (Dkt. No. 230-2 at 89.) Dr. Garman further noted "marginal granulation," which he describes in his affidavit as "new tissue and blood vessels forming in the wound bed." (*Id.*; Dkt. No. 230-4 at 2.) According to Dr. Garman, "[g]ranulation indicates the wound healing process is progressing as expected." (Dkt. No. 230-4 at 2.) The medical record documents that Dr. Garman advised Plaintiff to continue cleansing the wound daily with soap and water and he ordered continued dressing changes. (Dkt. No. 230-2 at 89.) His notes further state, "No ointment. Weight bearing with walker as tolerated." (*Id.*) Under this "encounter," Dr. Garman notes "some concern about referral for wound management." (*Id.*)

On September 17, 2022, Nurse Winns notified NP Swinney of the need for a refill of Plaintiff's prescription for amitriptyline. (*Id.* at 88.) NP Swinney provided a verbal order. (*Id.*) On September 27, 2022, NP Swinney again examined Plaintiff. (*Id.* at 86.) Her notes state, "Did not remove dressing, per patient request.[6] No drainage noted. Toes visible, cap refill < 3 second, pedal pulse palpable. Will have walker for ambulation. . . ." (*Id.*) NP Swinney documents the "healing bullet wound" in Plaintiff's left foot and states that plan is to continue cleansing the wound daily with soap and water along with dressing changes. (*Id.*) In her affidavit, NP Swinney avers that during this examination, "there were no signs or symptoms of infection" and there "were no longer

[6] In his response brief, Plaintiff denies that he ever "asked anyone not to remove dressing prior to medical isolation" in October of 2022. (Dkt. No. 257 at 6.)

signs of tissue necrosis on the edges or anywhere. There was a scant amount of green drainage and [she] advised [Plaintiff] to continue wound care." (Dkt. No. 230-5 at 3.) NP Swinney further avers, "Because there were no signs of infection and no tissue necrosis, there was no longer a need for a wound care specialist." (*Id.*) This was NP Swinney's last interaction with Plaintiff—she stopped treating inmates at the Detention Center in October of 2022. (*Id.* at 1, 3.) In his verified Amended Complaint, Plaintiff alleges that during this September 27, 2022 examination, NP Swinney told him "Mediko staff had done all they could do for [his] wound and that [he] needed to be seen by a wound care specialist." (Dkt. No. 131-1 at 3, 8.). Plaintiff alleges NP Swinney "was not interested in looking at the wound at all" after he told her his "foot was infected." (*Id.* at 8.) In her affidavit, Nurse Lawson avers that "during the time it took to arrange an appointment with a wound specialist, [Plaintiff's] wound improved, and he did not need outside care." (Dkt. No. 230-3 at 2.)

In his verified Amended Complaint, Plaintiff alleges that on September 28, 2022, Defendant Nurse Kelsey Ledford refused to provide Plaintiff tylenol "for the pain . . . because it wasn't on the chart." (Dkt. No. 1 at 54.) On September 30, 2022, Dr. Garman examined Plaintiff in a follow-up visit. (Dkt. No. 230-2 at 85.) His notes state, "Pleasant male in no distress. He ambulates with a walker. There is granulation tissue with wound margin healing but some erythema with some purulence. Heel is swollen and tender to light touch." (*Id.*) In his affidavit, Dr. Garman avers that at this visit

> the heel had become swollen with dark drainage, purulence (pus), and increased pain with weight bearing. I attributed the decline to the patient's recent transition from using a wheelchair (non-weight bearing) to ambulating with a walker (weight-bearing), which could have impacted the circulation and healing process. I ordered an antibiotic and continued daily wet/dry dressings. I also ordered bloodwork to rule out any systemic infection, and an x-ray to rule out fractures. As well, I increased the dosage of the Amitriptyline for neuropathic pain.

(Dkt. No. 230-4 at 2; *see also* Dkt. No. 230-2 at 85.)

In his response brief, Plaintiff claims he had not used a walker prior to this September 30, 2022 appointment, and he asserts he received the walker from Defendant Carrie Yost[7] "while waiting to leave medical after" this appointment. (Dkt. No. 257 at 7.) The x-ray of Plaintiff's left ankle was performed on October 1, 2022, and showed mild arthritic changes with no acute ankle fracture and "no evidence of osteomyelitis." (Dkt. No. 230-2 at 328.) On October 4, 2022, the results of Plaintiff's bloodwork revealed a white blood cell count and neutrophils within normal limits. (*Id.* at 326–27.) In his affidavit, Dr. Garman avers, "These results reassured me that [Plaintiff] did not have osteomyelitis (a bone infection) or sepsis and that antibiotics were the appropriate treatment, as there likely was a bacterial component to the inflammation." (Dkt. No. 230-4 at 2.) Dr. Garman further avers, "based on my assessments of the wound and my clinical training and expertise, I did not believe the patient needed care from an outside wound specialist. Had the wound worsened, I would have referred him to an outside wound specialist, but fortunately, the wound improved." (*Id.* at 3.)

In his verified Amended Complaint, Plaintiff alleges that on October 6, 2022, he asked Defendant Nurse Mike Minette "for some extra gauze as the one [he] had soaked through." (Dkt. No. 1 at 61.) According to Plaintiff, Nurse Minette "refused and said [Plaintiff] would have to wait until wound care." (*Id.*) Plaintiff claims that he did not "receive a new dressing for at least 12 more hours." (Dkt. No. 257 at 23.) The record indicates Nurse Minette provided Plaintiff with his prescribed antibiotics during this encounter. (Dkt. No. 230-2 at 258.)

On October 10, 2022, Defendant NP Sally Blake examined Plaintiff for complaints of pain in his left heel. (Dkt. No. 230-2 at 81.) The medical record documents that at this visit, Plaintiff stated the swelling had decreased "markedly since the wound was infected" and that he is "unable

[7] As noted *supra*, Plaintiff has voluntarily withdrawn his claims against Yost.

to move 4th and 5th toe and has no feeling since the surgery on July 22nd, 2022." (*Id.*) In his response brief, Plaintiff notes that he did not have any surgery on his foot. (Dkt. No. 257 at 8.) The medical record documents that at this October 10, 2022 visit, NP Blake measured Plaintiff's wound, which had decreased in size from the initial measurements. (Dkt. No. 230-2 at 81.) NP Blake scheduled a follow-up appointment with Dr. Garman. (*Id.*) Defendant Michele Squires documented this visit. (*Id.* at 82.)

In his December 4, 2024 sworn declaration, Plaintiff claims that on October 11, 2022, NP Blake and Nurse Lawson "had [Plaintiff] quarantined in a room with [an] inmate . . . who had an open wound on his finger which was osteomyelitis." (Dkt. No. 219-1 at 4; *see also* Dkt. No. 131-1 at 3.) In his verified Amended Complaint, Plaintiff alleges that he filed a "grievance" on October 13, 2022 complaining of his move to isolation and stating that he has been at the Detention Center for three months with no previous issues of being in C-1 with an open wound. (Dkt. No. 1 at 65.) He alleges he was moved "from C-1 to C-2." (Dkt. No. 131-1 at 3.) According to Plaintiff, this grievance also complained about being "thrown into a room with active osteomyelitis" and that the isolation "stripped" away the "privileges" that "in some ways helped [Plaintiff] with [his] anxiety." (Dkt. No. 1 at 65.) The referenced grievance is not in the record, however.

Plaintiff has submitted a medical record showing Dr. Garman examined him on October 13, 2022, wherein Dr. Garman noted Plaintiff's complaint of being "moved into a cell with others with wound infections." (Dkt. No. 219-4 at 67.) Dr. Garman noted that "the open wound to the inner left ankle has no evidence of infection," and stated, "I see no reason to isolate him and recommend he be free to move around with general jail population." (*Id.*) In his declaration, Plaintiff states he was "removed from quarantine" on October 14, 2022. (Dkt. No. 219-1 at 4; *see also* Dkt. No. 131 at 3.) Plaintiff claims that before leaving quarantine, he was "bit on the nose by

a venomous spider" on October 12, 2022. (Dkt. No. 219-1 at 4–5.) The medical record documents that on October 16, 2022, Defendant Rachel Brown prescribed Plaintiff an antibiotic for 10 days when Plaintiff presented with a "nose red swollen" and claimed it was from a "spider bite." (Dkt. No. 230-2 at 77; *see also* id. at 257–64.)

Plaintiff has submitted his October 17, 2022 kiosk request, complaining about a "venomous spider bite . . . due to moving" out of C-1. (Dkt. No. 219-4 at 70.) In his verified Amended Complaint, Plaintiff claims that Defendant Melissa Squires refused to provide Plaintiff ibuprofen for his pain from the spider bite on October 18, 2022 and October 19, 2022. (Dkt. No. 1 at 70–71.) He alleges that when Defendant Nurse Kelsey Ledford was called to "come evaluate [Plaintiff's] nose" on October 18, 2022, she "said to give it two more days on meds" and that "she would come back on Sunday to follow up." (*Id.* at 70.) Plaintiff alleges she failed to follow up. (*Id.*) He similarly alleges that on October 19, 2022, Defendant Winns "would not give [Plaintiff] ibuprofen without an order." (*Id.* at 71.) Plaintiff's medical record shows an order was placed for Plaintiff to receive ibuprofen two times per day from October 21, 2022 through November 4, 2022, and he received this medication during this time. (Dkt. No. 230-2 at 247–49, 262–65.)

Plaintiff has submitted a medical record showing that NP Blake examined Plaintiff on October 24, 2022, wherein she documented a "5.5 cm x 2.0 mm elliptical shaped lesion with beefy red tissue noted to lateral aspect of left foot. App 1 cm circumferential pink tissue noted at site of wound." (Dkt. No. 219-4 at 74.) In her notes, NP Blake further states, "Left foot wound/Granulation tissue?" and "Refer to wound clinic for continue care." (*Id.*; *see also* Dkt. No. 230-2 at 75–76.)

In his verified Amended Complaint, Plaintiff alleges that NP Blake and Nurse Lawson "again placed an order to have [him] quarantined" and on October 25, 2022, he was moved "from

C-1 to A-2 in solitary confinement in a unit that houses the seriously mentally ill inmates at [the Detention Center]." (Dkt. No. 131-1 at 3–4.) While there, Plaintiff lived in a "cell where there was excrement smeared on the wall next to [his] bed, rodent droppings on the floor and bed, clumps of hair on the floor, and a pungent odor of urine in the air and [he] was constantly subjected, 24 hours a day to the screaming and shouting of severely mentally ill inmates who smear feces on their faces and urinate on the floor." (Dkt. No. 1 at 20–21; *see also* Dkt. No. 131 at 5–6; 131-1 at 4.) Plaintiff alleges he remained there until "officers came to move [him] back to C-1 [on] October 31, 2022." (*Id.*)

Plaintiff's medical record documents a late entry by Defendant Katrina Krystanowicz,[8] from October 26, 2022. (Dkt. No. 219-4 at 76.) This note states,

> Pod officer called medical to see why this pt was in A2. This nurse then went to speak to pt. Pt was advised that he was placed on med iso due to the wound on his foot. Pt stated that Dr. Garman cleared him from med iso a week ago. This nurse stated that she understood but could not undue the order as it was the APRN, HSA, and Jail officers that had made the discussion. Pt asked for Beth L HSA, to talk to. He was advised that she was not here and should place a grievance. Pt stated that he is going to refuse wound care as there is not a big opening. This nurse said that he need [sic] to do what was best for him. Pt stated he was. This nurse left pod.

(*Id.*)

The record includes Plaintiff's kiosk requests dated October 25, 2022 and October 26, 2022, in which Plaintiff complains of being moved to isolation. (Dkt. No. 230-2 at 151–52.) In her response to Plaintiff's October 25, 2022 request, Nurse Lawson states,

> This move was not per medical staff[;] it was per a meeting of a large group of people within the jail who determined that patients with open, draining wounds should be housed separately in order to promote healing in an environment that did not provide a place of cross contamination from other individuals. This was intended to protect you and your wound. It was not a decision that was made solely by medical.

[8] As noted *supra*, Plaintiff has voluntarily withdrawn his claims against Krystanowicz.

(*Id.* at 151.) In her affidavit, Nurse Lawson avers that "jail staff decided to move [Plaintiff] to medical isolation" when Plaintiff "complained that a spider bite on his nose was oozing." (Dkt. No. 230-3 at 3.) She averse that this "move was not a form of punishment." (*Id.*) In his declaration, Plaintiff states that he was "removed from quarantine after" it was reported to Nurse Lawson on October 31, 2022, that Plaintiff's "nose looked fine upon arrival." (Dkt. No. 219-1 at 5.) The medical record documents that Plaintiff was removed from medical isolation on October 29, 2022, "per NP." (Dkt. No. 230-2 at 70.) This entry further states, "wound none draining. Refused wound care." (*Id.*)

On November 10, 2022, Plaintiff met with a jail physician and reported the gunshot wound had improved over time and was "healing well." (Dkt. No. 230-2 at 64.) Specific to his wound, the notes for this visit document,

> approximately 5 cm lesion length x 2.5 cm lesion with good granulation tissue covering the entire wound, slightly extending out, some dead tissue surrounding the wound, skin around it normal color, no warmth, no discharge, nor redness, not foul smelling. No generalized edema or swelling around or on the feet. . . . S/P GSW of the left leg - noted to have a healing wound on the lateral aspect just lateral to the heel - healing wound, no s/s of infection, good granulation tissue covering the entire wound. Advised to keep wound clean with wound cleaner, and cover with non-adherent dressing. Patient educated to keep wound clean and dry, and patient in agreement. Goal resolution of the wound and prevention of any complications such as infections.

(*Id.* at 64.) On November 28, 2022, Michele Squires documented that Plaintiff refused wound care. (*Id.* at 252.) On November 30, 2022, Nurse Winns documented that Plaintiff refused wound care, and he "requested non adherent pads." (*Id.* at 253.) On January 5, 2023, Plaintiff met with a jail physician and reported that "his left ankle is healing very well, and there is only a slight draining area." (Dkt. No. 219-4 at 93.) The physician stated, "left ankle noted to have great granulation tissue of small lateral wound" and stated, "3 cm lateral lesion healing well—continue with current wound care." (*Id.*)

Ear Issues

At his receiving screening on July 21, 2022, Plaintiff reported a history of a brain tumor which had caused deafness in the left ear and 28% hearing in the right ear. (Dkt. No. 230-2 at 116.) Plaintiff wore a hearing aid in the right ear. (*Id.* at 120.) In his December 4, 2024 declaration, Plaintiff states that he was assaulted in his cell on November 12, 2022, and "as a result [he] had a painful left ear." (Dkt. No. 219-1 at 5.) Plaintiff has submitted a medical record dated November 13, 2022, stating, "Pt was hit on the left side of his head. Ear red and swollen. Pt complained of pain in the ear. Ear canal was good just some ear wax. Pt stated he was okay and did not need anything further from medical." (Dkt. No. 219-4 at 83.) On November 20, 2022, Plaintiff submitted a kiosk request complaining that his "ear is extremely painful to touch from last weekend's assault." (Dkt. No. 219-4 at 85.) The response to this request states "Placed on sick call list." (*Id.*) On December 2, 2022, Plaintiff submitted a kiosk request complaining about the pain in his ear "from an assault that happened 4 weeks ago." (*Id.* at 87.) On January 5, 2023, Plaintiff met with a jail physician and reported that "his left ear discomfort has improved and he has chronic hearing loss—which is unchanged on the left" and he reported "partial hearing loss of the right as well." (Dkt. No. 219-4 at 93.)

On December 3, 2023, Plaintiff submitted a kiosk request complaining of "an ear infection in right ear." (Dkt. No. 230-2 at 396.) In his April 2, 2024 declaration, Plaintiff claims that he told Defendant Nurse Jamie Wilson about his "ear infection" on December 2, 2023. (Dkt. No. 131 at 68.) On December 4, 2023, Plaintiff submitted a kiosk request stating he has only "one functional ear and it only has about 30 percent hearing without aid. It currently has an extremely painful infection. My ENT Dr. McKracken has warned me of ear infections damaging what little hearing I have left." (*Id.* at 397.) In his verified Amended Complaint, Plaintiff alleges that on December

3, 2023, and December 4, 2023, Defendant Rachel Brown refused to provide Plaintiff tylenol for his ear pain and "said to put it on kiosk again." (Dkt. No. 131 at 36.) Plaintiff further alleges that at 1:50pm on December 5, 2023, he "approached Officer Picone and asked her to call medical and tell Nurse Cassidy about the yellow fluid and pain down to my jaw." (*Id.* at 37; *see also id.* at 69.) According to Plaintiff, when Officer Picone returned, she said Nurse Cassidy told her the Plaintiff's "ear was not ruptured and probably just leaked around, and they would try to see [Plaintiff] on [December 6]." (*Id.*) Plaintiff alleges that Nurse Rachel took his vitals at 7:35pm that same day, gave him ibuprofen for the pain, and said he would be seen "first thing in the morning." (Id. at 38.) Brown documented this encounter in the medical record. (Dkt. No. 230-2 at 15.)

On December 6, 2023, Defendant NP Alexander Petkovsek saw Plaintiff for his complaints of "right ear pain," "difficulty hearing for a few days," "serous drainage since yesterday," and "left ear chronic hearing loss." (Dkt. No. 230-2 at 13.) In his affidavit, NP Petkovsek avers that he "initially observed redness and swelling to the right eustachian tube, and a questionable ruptured tympanic membrane. To ensure a thorough examination, [he] viewed the ear a second time and concluded that the tympanic membrane was ruptured." (Dkt. No. 230-6 at 2.) He prescribed antibiotics that day. (*Id.*; *see also* Dkt. No. 230-2 at 13–14, 208–11.)

On December 19, 2023, Dr. Garman saw Plaintiff in a follow up, wherein Plaintiff reported that "since right ear infection, he has less hearing, even with his hearing aid." (Dkt. No. 230-2 at 9.) Plaintiff reported "no otalgia."[9] (*Id.*) Dr. Garman examined the right ear and observed a clear canal and a healed tympanic membrane. (*Id.*) As stated in the medical record and in Dr. Garman's affidavit, there was flaky debris on the membrane and in the canal suggestive of mycotic otitis (a fungal infection). (*Id.*; Dkt. No. 230-4 at 3.) Dr. Garman prescribed ear drops and Flonase. (Dkt.

[9] "'Otalgia' . . . is the medical name for ear pain." *Ear Pain*, Cleveland Clinic, https://my.clevelandclinic.org/health/symptoms/earache-ear-pain (last visited April 8, 2025).

No. 230-2 at 9.) In his affidavit, Dr. Garman avers that during this appointment, Plaintiff "questioned whether the ear infection had exacerbated his pre-existing hearing loss." (Dkt. No. 230-4 at 3.) Dr. Garman "explained that [he] had no concerns about the ear infection exacerbating the hearing loss" and "advised [Plaintiff] that an ear, nose, and throat (ENT) specialist would be able to assess the status of the hearing loss, and that he could coordinate care post-incarceration or ask his family to do so during incarceration." (*Id.* at 3–4.) According to Dr. Garman, "there was no urgent need for an ENT referral, and [he] did not order one." (*Id.* at 4.) Plaintiff submitted a kiosk request on December 19, 2023, stating that during his appointment,

> Dr. Garman confirmed that he cannot determine the extent of the damage done to my ear . . . and said I need an ear nose and throat Dr to truly determine the extent of damage. He also confirmed that Mediko and [the Detention Center] would not be sending me to an ENT Dr. That I should [go] upon release. I'm under Mediko and [Detention Center] care and you are required by law to provide proper adequate medical care. He prescribed a fungal drop for my ears and flonase. When will those start?

(Dkt. No. 230-2 at 191; *see also* Dkt. No. 131 at 69.)

Plaintiff submitted another kiosk request on December 27, 2023, stating that the flonase was helping to clear his sinuses and asking to "stay on it." (Dkt. No. 230-2 at 192.) Plaintiff further complained that his "hearing has not improved [ ] with the ear drops" and asked for "the next option." (*Id.* at 192.) Nurse Lawson responded to this kiosk on February 2, 2024 stating "this medication has been continued." (*Id.*)

On January 2, 2024, Plaintiff submitted a kiosk request stating he was "still waiting to hear a response as to the next option for trying to fix the damage to [his] hearing due to Mediko providing poor and untimely medical care which allowed an ear infection to get so bad it ruptured." (*Id.* at 193.) Nurse Lawson responded to this request on February 2, 2024, stating "There has been no provider order for an outside ENT visit. . . . If you or your family can arrange payment for an

outside ENT visit, we will do our part to arrange transport." (*Id.*) In his April 2, 2024 declaration, Plaintiff alleges he "developed an infection on [his] inner ear lobe" on March 28, 2024, and he "began showing nurses and documenting on the kiosk immediately." (Dkt. No. 131 at 69.) Plaintiff submitted a kiosk request on April 2, 2024 stating that he met with "NP Alex and David. S" that day, and NP Alex examined Plaintiff's "ear lobe and inner ear" and "confirmed the infection and prescribed anti-biotics to take care of both." (Dkt. No. 230-2 at 329.) Plaintiff's medical record shows an order was placed for Plaintiff to receive antibiotics two times per day from April 2, 2024 through April 9, 2024, and he received this medication during this time. (*Id.* at 288–90.)

Relatedly, in his April 10, 2024 declaration, Plaintiff states that he saw "NP Alex and David Sieklicki" at medical on April 2, 2024. (Dkt. No. 219-4 at 223.) According to Plaintiff, during that appointment, he discussed his "hearing and battery situation with him." (*Id.*) "The first box of batteries [Plaintiff's] parents sent in, were mistakenly sent back by [Detention Center] security." (*Id.*) Plaintiff told Nurse Sieklicki that his "family had already ordered another box" and after confirming what "size battery" was needed, Sieklicki said "he would look into getting some." (*Id.*) Plaintiff states that his hearing aid died on April 4, 2024 and the batteries his parents ordered "arrived the same morning." (*Id.*) Plaintiff subsequently submitted several kiosk requests complaining that his hearing aid had died, and he needed the batteries his family had ordered. (*Id.* at 223–25.) According to Plaintiff, Captain Jernigan came to C-1 to speak to Plaintiff "about the batteries" on April 10, 2024. (*Id.* at 225.) That same afternoon, "Nurse Chasidy and Paige finally brought [Plaintiff] a hearing aid battery and Chasidy stated that the batteries were in medical's mail room box all along." (*Id.*)

When Plaintiff was hospitalized for a "vestibular schwannoma"[10] on July 24, 2024, an ENT consulted on Plaintiff, who reported "decreased hearing on right [ear] since December when he had [active otitis media] and [tympanic membrane] rupture." (Dkt. No. 230-2 at 478, 483.) Plaintiff further reported that he wore a hearing aid and "does well" with it. (*Id.*) Upon examination, the ENT noted crusting to the tympanic membrane but no "visible perforation, no effusion, no drainage." (*Id.* at 480.) The ENT did not recommend any treatment related to Plaintiff's right ear and/or hearing loss. (*Id.* at 482.)

Plaintiff has submitted an undated one-page document describing "key points about improper care" of ruptured eardrums and potential complications that can arise with this condition.[11] (Dkt. No. 257-1.) The document recommends "see[ing] a doctor immediately" when "you suspect a ruptured eardrum," stating "consult an . . . . ENT specialist to confirm the diagnosis and receive proper treatment." (*Id.*) The document further states that a ruptured eardrum, "while usually not causing permanent damage if treated properly, can lead to long-term hearing loss or other complications if not cared for correctly, particularly if improper care allows for infection to develop in the middle ear." (*Id.*)

Skin Cancer

On March 21, 2023, Plaintiff submitted a kiosk request reporting "two spots" on his left leg that had "been there for years" and had "both changed colors." (Dkt. No. 230-2 at 533.) Plaintiff stated that skin cancer was "extremely common" in his family. (*Id.*) Nurse Krystanowicz replied that Plaintiff was on the sick call list to be seen. (*Id.*) Nurse Rachel Brown saw Plaintiff on March

[10] Vestibular schwannoma is another name for an acoustic neuroma. *Acoustic Neuroma*, Mayo Clinic, https://www.mayoclinic.org/diseases-conditions/acoustic-neuroma/symptoms-causes/syc-20356127 (last visited April 8, 2025). "An acoustic neuroma is a noncancerous tumor that develops on the main nerve leading from the inner ear to the brain." *Id.*

[11] Defendants assert that this document "lacks foundation, contains hearsay, and serves no apparent purpose." (Dkt. No. 258 at 4.) In his sur-reply, Plaintiff states that this document "is a google AI search for 'potential complications if improper care allows for infection to develop in the middle ear.'" (Dkt. No. 267 at 4.)

27, 2023. (*Id.* at 28.) At this visit, Plaintiff did not complain of "spots" that were concerning for skin cancer, but he did complain of red, itchy skin on the right arm. (*Id.*) Nurse Rachel Brown advised Plaintiff to use clotrimazole cream for 14 days and to return to the clinic with any worsening symptoms. (*Id.*) On November 1, 2023, Plaintiff submitted a kiosk request asking whether "anyone on staff" was "capable of identifying skin cancer" for three "spots" that had changed over the last year. (*Id.* at 537.) Nurse Krystanowicz replied that Plaintiff was on the sick call list to be seen. (*Id.*)

NP Petkovsek examined Plaintiff on November 9, 2023, and diagnosed him with a skin tag on the right posterior shin and a red mole on the left back. (*Id.* at 17.) In his affidavit, Petkovsek avers that a "skin tag is a small, harmless, painless growth that can appear anywhere on the skin. A red mole, also known as a cherry angioma, is a small, raised, or flat, benign growth caused by a cluster of small blood vessels under the skin." (Dkt. No. 230-6 at 1.) According to Petkovsek, "these conditions are not medical emergencies and usually require no treatment, much less urgent treatment." (*Id.*) Petkovsek avers that he did not refer Plaintiff to a dermatologist because he "had no concerns for skin cancer" and he "recommended that [Plaintiff] see a dermatologist post-incarceration if he still had concerns." (*Id.*)

That same day, Plaintiff submitted a kiosk request stating that "NP Alex and Danielle Winns viewed spots on my skin, and immediately dismissed them as 'skin tags.'" (Dkt. No. 230-2 at 184.) In this kiosk request, Plaintiff asserts that when he told "NP Alex . . . that one spot has already been diagnosed as squamacell [sic] skin cancer," he "backpedaled and said [Plaintiff] may have cancer, but the policy at [the Detention Center] is to leave it untreated and recommend [Plaintiff] seek treatment upon release." (*Id.*) Plaintiff asks to be "advise[d] [ ] of the [Detention

Center] policy that trumps [his] constitutional right to adequate medical care." (*Id.*) Nurse Lawson responded to this request on February 2, 2024, stating

> As a pre-trial inmate you can request outside medical care at any time. In order for us to send you to an outside appointment that is at your request you can have your family reach out to the provider that you wish to see and set up payment with them. Once that has been arranged, and we are notified by the doctors office, we will schedule the appointment and we will arrange for transport for you. All pre-trial inmates are financially responsible for outside medical care. It would also be helpful if we could get your medical records where you received a diagnosis of squamous cell skin cancer so that we can better assist with your care. If the NP initially said it was a skin tag then we will have him assess it again and make a recommendation from there.

(*Id.*)

On January 20, 2024, Plaintiff was "seen at [medical] pass" with complaints of "red, itchy area lower left leg." (*Id.* at 325.) A new order for hydrocortisone cream was entered. (*Id.*) On February 6, 2024, NP Petkovsek saw Plaintiff for "multiple concerns," one of which was "skin cancer." (*Id.* at 321.) In his affidavit, NP Petkovsek avers that he "examined the areas of concern and assured [Plaintiff] there was no evidence of skin cancer." (Dkt. No. 230-6 at 1.) Plaintiff does not dispute Dr. Garman's averment that he "had no involvement in treating [Plaintiff] for concerns of skin cancer." (Dkt. No. 230-4 at 3; Dkt. No. 257 at 17.)

Lipoma

On February 17, 2024, Plaintiff submitted a kiosk request stating, "I have a pain under my left nipple deep in the tissue that started [January 27] but I thought it was possibly from sleeping on it wrong." (Dkt. No. 230-2 at 349.) Plaintiff was added to the sick call list, and he saw Defendant Chasidy Queen on February 19, 2024, who conferred with NP Petkovsek. (*Id.* at 318.) NP Petkovsek ordered ibuprofen for a suspected pulled muscle. (*Id.*) On February 23, 2024, Plaintiff submitted another kiosk request. (*Id.* at 347.) For the first time, Plaintiff referenced a "lump" he

had found "last night," "partly under [the] nipple and below." (*Id.*) Plaintiff was added to "the list" to be examined. (*Id.*)

During the next ten days, Plaintiff placed several kiosk requests, asking to know when he would be seen for the lump on his chest. (*Id.* at 345, 368–72.) NP Petkovsek examined Plaintiff on March 4, 2024. (*Id.* at 317.) At this visit, Plaintiff was unsure whether the lump had increased in size since he noticed it. (*Id.*) In his affidavit, NP Petkovsek avers that he "examined the area to rule out hematoma (a collection of blood that pools outside a blood vessel) and [he] diagnosed [Plaintiff] with a lipoma (a slow-growing, non-cancerous tumor made of fat cells)." (Dkt. No. 230-6 at 2.) To rule out any acute issues, NP Petkovsek ordered an ultrasound of the chest wall. (*Id.*; *see also* Dkt. No. 230-2 at 317.)

A chest ultrasound was performed on March 11, 2024, and revealed no soft tissue masses or localized fluid collection. (Dkt. No. 230-2 at 284.) Because Plaintiff could still feel pain from the lump, on March 18, 2024, Defendant Queen ordered him ibuprofen. (*Id.* at 316.) In his April 2, 2024 declaration, Plaintiff alleges that he was taken to medical to see NP Petkovsek on April 2, 2024, and he asked him "what to do next about the painful lump on [his] chest." (Dkt. No. 131 at 70; *see also* Dkt. No. 230-2 at 329.) Plaintiff states that NP Petkovsek "referred back to the ultrasound and said that 'it would go away on its own.'" (Dkt. No. 131 at 70.) When Plaintiff asked him "what it was," NP Petkovsek "told [Plaintiff] he did not know, . . . [and] he would prescribe amitriptyline for the pain until the lump goes away." (*Id.*) In his April 28, 2024 declaration, Plaintiff claims that he "still [has] a painful physical lump on [his] left breast right by [his] nipple that nobody will help diagnose." (*Id.* at 83.)

Orthopedic shoes/Inserts and Dry Skin

On May 11, 2023, Plaintiff submitted a kiosk request asking "what kind of shoes are allowed" because his "bullet wound" hurts when walking. (Dkt. No. 219-4 at 111.) In this kiosk request, Plaintiff states that he is stuffing his socks with tissue for cushion. (*Id.*) Nurse Lawson responded to this request on September 5, 2023, stating "the only shoes available are for purchase on commissary." (*Id.*) Plaintiff submitted a similar kiosk request on May 12, 2023, to which Nurse Lawson responded on May 16, 2023, stating "shoes can be purchased from the canteen." (*Id.* at 116.) On May 17, 2023, Plaintiff submitted a kiosk request stating that he has "the shoes from the canteen," but "there is no cushion whatsoever." (*Id.* at 119.) Plaintiff's medical record dated June 2, 2023, documents Dr. Garman's "approval for inserts." (*Id.* at 131.) The entry contains no other information and provides no context for this "approval."

Plaintiff continued to place kiosk requests seeking padded footwear through September 2023. (*Id.* at 115–30.) On September 14, 2023, Defendant Nurse Sieklicki responded to a kiosk request stating,

> If you have someone that can bring you new insoles in the package, that is allowed. They can drop it off at the front desk, it will be checked by security and you are allowed to have this. Again they must be new and in the package. Other than that, there are some slip on shoes on the commissary list.

(*Id.* at 125.) On September 15, 2023, Plaintiff placed a kiosk request complaining that the "slip on shoes from the kiosk [sic] . . . have direct contact on the location of the bone pain from [his] bullet wound." (*Id.* at 127.) Plaintiff states that his "parents spoke to a podiatrist who recommended a few different slip on ortho approved shoes." (*Id.*) Nurse Sieklicki responded to this request on September 19, 2023, stating "There are certain orthopedic shoes that would be allowed" and "they must pass security inspections." (*Id.*) He further stated, "They cannot have a hard sole, and can't have laces. In addition, either the insoles or shoes would need to pass a security check." (*Id.*)

Nurse Sieklicki entered a medical encounter on September 22, 2023, stating "ok for inserts/ortho shoes per provider. Must pass security." (*Id.* at 132.) Plaintiff subsequently submitted kiosk requests stating that his parents ordered a pair of orthopedic shoes, and they were delivered. (*Id.* at 128–30, 134–36.) Nurse Sieklicki responded to one such kiosk request on October 2, 2023, stating, "I was told the shoes from amazon did not pass security checks. This was reviewed with custody staff and the HSA on Friday." (*Id.* at 136.)

Plaintiff has submitted an email he received with Defendants' discovery responses. (*Id.* at 140.) Specifically, on October 6, 2023, Nurse Lawson emailed Captain Susan Safford, stating,

> No one in medical approved his shoes. He originally asked the provider if he could have orthotic inserts for his shoes. He was told that if they were in the original package and were approved by security then he might be able to have them. Those particular shoes showed up here. They were ordered by his family and sent in his name which I didn't think the jail would accept. They were not addressed to medical. I had Schomp look at them and he said he could not have them. Michael Jernigan called me later that day or the next day and asked me about them and why he couldn't have them, and I said, Schomp said he couldn't have them and I thought they would just cause problems as they are not medically necessary and other people will want to have their own shoes. So medical didn't approve them and neither did security that I am aware of.

(*Id.*)

Plaintiff submitted several kiosk requests through November 10, 2023 about the delivered shoes and his pain. (*Id.* at 134–39.) Beginning January 22, 2024, Plaintiff submitted more kiosk requests complaining of the pain in his ankle. (*Id.* at 146–52.) On February 6, 2024, NP Petkovsek saw Plaintiff for "multiple concerns," one of which was "ortho shoes." (Dkt. No. 230-2 at 321.) Nurse Sieklicki documented this visit, stating, "[r]egarding ortho shoes, these have been approved. Captain Jernigan made aware, he stated he will give patient the shoes." (*Id.*) Nurse Seiklicki documented his conversation with Capt. Jernigan on February 7, 2024 "regarding patient's ortho shoes that arrived from Amazon previously. These shoes are approved. . . . Capt. Jernigan stated

that he will get the shoes to the patient." (*Id.* at 319.) Plaintiff states that Capt. Jernigan delivered Plaintiff's shoes to him on February 14, 2024. (Dkt. No. 219-1 at 8.)

In her affidavit, Nurse Lawson avers that

> Generally, footwear is not a medical issue unless a provider has prescribed a certain kind. Even then, all footwear, including orthotic shoes and inserts, must be approved by jail security. Here, no provider prescribed orthotic shoes and inserts for [Plaintiff], but after his repeated complaints and requests, Nurse Sieklicki confirmed with a provider that the patient could use orthotic shoes or inserts. Nevertheless, the shoes still had to pass security checks, which, on a few occasions, [Plaintiff's] did not.

(Dkt. No. 230-3 at 4.) Likewise, Nurse Petkovsek avers in his affidavit that "neither I nor any other provider that I can see from my review of the records, prescribed orthotic shoes for [Plaintiff] out of medical necessity. However, after his repeated complaints and requests, Nurse Sieklicki confirmed with me that the patient could use orthotic shoes or inserts." (Dkt. No. 230-6 at 1.)

Although not mentioned in his Amended Complaint, Plaintiff's briefing indicates he also brings a claim stemming from the treatment of the "painful cracked skin on [his] foot." (Dkt. No. 257 at 24.) The medical record includes a February 2, 2024 entry, documenting Plaintiff's "state[ment] that he has had edema to the top of the foot for a week." (Dkt. No. 230-2 at 323.) The entry notes the "nurse of sick call . . . encouraged elevation." (*Id.*) In Plaintiff's aforementioned February 6, 2024 appointment, NP Petkovsek documented that Plaintiff had "no edema" and his range of movement was "intact." (*Id.* at 322.)

On March 17, 2024, Plaintiff submitted a kiosk request directed to Defendant Lawson, complaining of needing a "stronger medical cream" than what was available "on canteen" for his "skin issues." (Dkt. No. 230-2 at 362.) Defendant Sieklicki responded to this request on March 19, 2024, stating,

> Mr. Alston. The medical department is here to treat serious medical needs. Dry skin is not considered a serious medical need. Your feet were assessed 2/6/24 by Nurse

> Practitioner and they were not bleeding or cracked. There was no sign of infection. There was nothing observed that would require any kind of medicated cream. A&D ointment is being added to the canteen list and could be an option for you. Thank you.

(*Id.*)

Mental Health

On August 15, 2022, Plaintiff submitted a kiosk request to "speak to Dr about antidepressant" because of "extreme anxiety," night sweats, and a racing heart. (Dkt. No. 230-2 at 384.) Plaintiff was placed on the "mental health list." (*Id.*) Plaintiff's medical record dated August 22, 2022, states "QMHP [Qualified Mental Health Professional] has scheduled patient to meet with WCMH [Waccamah Center Medical Health] counselor" to "address MH sickcall." (*Id.* at 100.) At the August 22, 2022 appointment, the WCMH counselor did not recommend "medication management services due to no clinical indication." (*Id.* at 99.) A QMHP saw Plaintiff on September 12, 2022, and assessed his anxiety as "within normal limits of situation." (*Id.* at 95.) The QMHP "recommended brief therapy intervention and informed patient at this time he was not recommended for medical management." (*Id.*)

At an appointment with Dr. Garman on October 13, 2022, Plaintiff expressed ongoing symptoms of anxiety. (*Id.* at 79.) Dr. Garman prescribed Vistaril (an antihistamine often used for anxiety) "until seen by MH." (*Id.*) On November 9, 2022, Plaintiff was assessed by psychiatrist Dr. Elizabeth Leonard, who diagnosed him with depressive and anxiety disorders and prescribed mirtazapine (for depression). (*Id.* at 275–76.) On January 5, 2023, Dr. Leonard adjusted the medications due to ongoing symptoms. (*Id.* at 277–78.) On February 9, 2023, Plaintiff refused a follow-up visit with Dr. Leonard, who noted he was non-compliant with taking his morning medications. (*Id.* at 279.)

STANDARD

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment "shall" be granted "if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Facts are 'material' when they might affect the outcome of the case, and a 'genuine issue' exists when the evidence would allow a reasonable jury to return a verdict for the nonmoving party." *The News & Observer Publ'g Co. v. Raleigh-Durham Airport Auth.*, 597 F.3d 570, 576 (4th Cir. 2010) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

In ruling on a motion for summary judgment, "'the nonmoving party's evidence is to be believed, and all justifiable inferences are to be drawn in that party's favor.'" *Id.* (quoting *Hunt v. Cromartie*, 526 U.S. 541, 552 (1999)); *see also Sedar v. Reston Town Center Property, LLC*, 988 F.3d 756, 763 (4th Cir. 2021)("The requirement to construe the facts, and all reasonable inferences therefrom, in the light most favorable to the non-moving party does not require [the court] to accept cherry-picked snippets of the testimony divorced from their context."). Conclusory allegations or denials, without more, are insufficient to preclude the granting of the summary judgment motion. *Ross v. Communications Satellite Corp.*, 759 F.2d 355, 365 (4th Cir. 1985). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson*, 477 U.S. at 248.

Because Plaintiff is representing himself, these standards must be applied while liberally construing his filings in this case. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

DISCUSSION

In his Motion for Partial Summary Judgment, Plaintiff asserts that there are no issues of material fact as to his claims against Defendants Lawson, Garman, Swinney, Blake, and Petkovsek, and, therefore, he is entitled to summary judgment on his deliberate indifference claims against these Defendants. (Dkt. No. 219-2.) In their Motion for Summary Judgment, Defendants argue: (1) Plaintiff's § 1983 deliberate indifference claims fail as a matter of law; and (2) Plaintiff's punitive damages claim fails as a matter of law. (Dkt. No. 230-1.)

A. Basis for § 1983 Claims

Plaintiff's briefings clarify the basis for his § 1983 claims. In his Motion for Partial Summary Judgment, Plaintiff alleges that Defendants Nurse Lawson, Dr. Garman, NP Swinney, NP Blake, and NP Petkovsek were deliberately indifferent to Plaintiff's serious medical needs by delaying his medical treatment as follows: (1) failing to treat Plaintiff's gunshot wound with antibiotics from September 5, 2022 through September 30, 2022; (2) waiting three days to treat Plaintiff's "venomous spider bite" with antibiotics; (3) delaying treatment for Plaintiff's "ear and shoulder pain as a result of an assault" for "56 days"; (4) delaying treatment for Plaintiff's mental health issues for "3 months"'; (5) delaying treatment for Plaintiff's "painful skin abnormalities" for "7 months"; (6) delaying authorization for Plaintiff's "footwear . . . for constant ankle pain while walking" for "9 months"; (7) delaying treatment for Plaintiff's "painful ear infection[s]"; and (8) waiting six days to provide Plaintiff hearing aid batteries that were readily available. (Dkt. No. 219-1; 219-2 at 5–7, 16–18.) Plaintiff further alleges these Defendants were deliberately indifferent to Plaintiff's serious medical needs by denying him "access to needed medical specialist[s] for payment reasons and policy, which has subjected him to permanent loss." (Dkt. No. 219-2 at 8.) Plaintiff further purports to bring a supervisory liability claim against these

Defendants, as well as a claim based on the "ineffective medical system for communicating and treating." (*Id.* at 10–16.)

Additionally in his response to Defendants' Motion for Summary Judgment, Plaintiff asserts the following events constitute deliberate indifference under § 1983: (1) Defendant Minette refused to provide Plaintiff "extra gauze" on October 6, 2022; (2) Defendant Sielicki denied Plaintiff "access to medical personnel capable of treating" Plaintiff's "painful cracked skin on [his] foot" in March of 2024; (3) Defendant Jennifer Brown refused to substitute Plaintiff's prescribed medication on October 14, 2022; (4) Defendant Winns refused to provide Plaintiff ibuprofen "without an order" on October 19, 2022; (5) Defendant Squires "refused tylenol or ibuprofen for extreme pain in [Plaintiff's] nose from a spider bite" on October 18, 2022 and October 19, 2022; (6) Defendant Wilson refused wound care on Plaintiff's bullet wound on September 1, 2022: (7) Defendant Queen "did not document anything in the medical records" when an officer reported Plaintiff's ear issues on December 5, 2023; (8) Defendant Ledford "denied Plaintiff tylenol for the extreme pain due to the severe infection in his bullet wound" on September 28, 2022, and she did not help Plaintiff with the pain from his spider bite on October 18, 2022; (9) Defendant Rachel Brown refused Plaintiff "tylenol for bad extremely painful ear infection" on December 3, 2023 and December 4, 2023; (10) Defendant Blake "chose to medically isolate [Plaintiff] and Defendant Lawson used her authority to make it happen"; (11) Defendant Lawson "deliberately interfered with medical treatment [ ] in regards to orthotic footwear that Plaintiff needed for his chronic documented pain when walking." (Dkt. No. 257 at 23–41.)

Also, while not addressed by Plaintiff in his briefings, the Amended Complaint appears to bring a § 1983 claim against Nurse Lawson because she made Plaintiff wait seven days for a new wheelchair footrest when there was "a closet full of them." (Dkt. No. 1 at 45–48.)

B. Fourteenth Amendment Standards

Because Plaintiff was a pretrial detainee at the time of the alleged constitutional violations, his deliberate indifference claims are properly brought under the Due Process Clause of the Fourteenth Amendment, which protects the rights of pretrial detainees to receive adequate medical care. *Brown v. Harris*, 240 F.3d 383, 388 (4th Cir. 2001) ("[T]he Due Process Clause of the Fourteenth Amendment, rather than the Eighth Amendment, 'mandates the provision of medical care to [pretrial] *detainees* who require it.'" (emphasis in original) (quoting *Hill v. Nicodemus*, 979 F.2d 987, 991 (4th Cir. 1992))); *see also Hammock v. Watts*, No. TDC-22-cv-0482, 2023 WL 2457242, at *6 (D. Md. Mar. 10, 2023) (citing *Bell v. Wolfish*, 441 U.S. 520, 535 (1979)). Likewise, the Fourteenth Amendment prohibits conditions of confinement that amount to punishment of a pretrial detainee, because "a detainee may not be punished prior to an adjudication of guilt." *Hammock*, 2023 WL 2457242, at *6. A condition or restriction of confinement is impermissible under the Fourteenth Amendment when it is "(1) imposed with an expressed intent to punish or (2) not reasonably related to a legitimate nonpunitive governmental objective, in which case an intent to punish may be inferred." *Short v. Hartman*, 87 F.4th 593, 606 (4th Cir. 2023) (quoting *Martin v. Gentile*, 849 F.2d 863, 870 (4th Cir. 1988)).

"[F]or prison conditions to rise to the level of unconstitutional punishment, there must be evidence of a serious medical and emotional deterioration attributable to the challenged condition." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). "Compelling a showing of significant physical or emotional harm, or a grave risk of such harm, infuses an element of objectivity into the analysis, lest resolution of the seriousness of the deprivation devolve into an application of the subjective views of the judges deciding the question." *Shakka v. Smith*, 71 F.3d 162, 166 (4th Cir. 1995) (citing *Strickler v. Waters*, 989 F.2d 1375, 1379–80 (4th Cir. 1993)). In addition, "[c]ourts in the

Fourth Circuit have long recognized that the Constitution confers no protected liberty interest upon inmates from being placed in a particular prison or even in administrative segregation." *Johnson v. Ozmint*, 456 F. Supp. 2d 688, 695 (D.S.C. 2006).

To establish deliberate indifference to a serious medical need, a pretrial detainee must show: (1) he had a medical condition or injury that posed a substantial risk of serious harm; (2) the defendant intentionally, knowingly, or recklessly acted or failed to act to appropriately address the risk that the condition posed; (3) the defendant knew or should have known (a) that he had that condition and (b) that the defendant's action or inaction posed an unjustifiably high risk of harm; and (4) as a result, Plaintiff was harmed. *Short*, 87 F.4th at 611. Under this standard, a plaintiff need not show "that the defendant had actual knowledge of the detainee's serious medical condition and consciously disregarded the risk that their action or failure to act would result in harm." *Id.* Instead, it is sufficient to show that the defendant's action or inaction was "objectively unreasonable." *Id.* (citing *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015)).

However, it is still not enough to allege a defendant "negligently or accidentally failed to do right by the detainee." *Id.* at 611-12. Differences of opinion between an inmate patient and medical staff over the course of medical treatment are insufficient to state a claim of deliberate indifference. *Wright v. Collins*, 766 F.2d 841, 849 (4th Cir. 1985) (finding inadequate treatment due to negligence, inadvertence, or differences in judgment between an inmate and the medical personnel does not rise to the level of a constitutional violation). "Deliberate indifference is a very high standard – a showing of mere negligence will not meet it." *Grayson v. Peed*, 195 F.3d 692, 695 (4th Cir. 1999). Likewise, "[m]ere delay" in medical treatment, without more, is not deliberate inference to a serious medical need. *Moskos v. Hardee*, 24 F. 4th 289, 298 (4th Cir. 2022).

C. Analysis

Below, the undersigned considers the merits of Plaintiff's claims in the grouping and order most efficient for discussion. At the outset, the undersigned notes that Defendants "take no position on whether Plaintiff's medical needs" were sufficiently serious to support a constitutional violation. (Dkt. No. 235 at 13.) Rather, they dispute that any action or inaction by Defendants amounted to deliberate indifference to Plaintiff's medical needs. (*Id.* at 16–35.) Accordingly, in the below analysis, the undersigned focuses on whether the evidence demonstrates deliberate indifference by Defendants with respect to Plaintiff's various claims.

Delays in Antibiotics

Plaintiff brings several § 1983 deliberate indifference claims against Defendants Nurse Lawson, Dr. Garman, NP Swinney, NP Blake, and NP Petkovsek based on the alleged delay in treatment of certain medical conditions with antibiotics. Plaintiff first claims he was denied antibiotics while "fighting a bad extremely painful infection on and around [his] gunshot wound" from September 5, 2022 through September 30, 2022 (Dkt. No. 219-1 at 3); however, there is no medical evidence to support this assertion. Rather, as discussed above, the medical record documents that NP Swinney, Nurse Ledford, and Dr. Garman noted that Plaintiff's wound was not infected during periodic examinations from July 27, 2022 through September 27, 2022. (*See* Dkt. No. 230-2 at 86, 89, 92, 103, 108–11; Dkt. No. 230-4 at 2; Dkt. No. 230-5 at 2–3.)

At Plaintiff's next medical encounter of record, with Dr. Garman on September 30, 2022, Dr. Garman noted that Plaintiff's "heel is swollen and tender to touch." (Dkt. No. 230-2 at 85.) At that point, Dr. Garman prescribed Plaintiff antibiotics, "ordered bloodwork to rule out any systemic infection, and an x-ray to rule out fractures, . . . [and] increased the dosage of amitriptyline for neuropathic pain." (Dkt. No. 230-4 at 2; 230-2 at 85.) As attested by Dr. Garman, Plaintiff's

bloodwork and x-ray results "reassured" him that Plaintiff "did not have osteomyelitis (a bone infection) or sepsis and that antibiotics were the appropriate treatment, as there likely was a bacterial component to the inflammation." (Dkt. No. 230-4 at 2; Dkt. No. 230-2 at 326–28.) While the record includes kiosk requests Plaintiff submitted in September of 2022, claiming that the wound is infected (Dkt. No. 230-2 at 136, 387, 531), the medical record belies any claim Plaintiff's wound was infected until shortly before antibiotics were prescribed on September 30, 2022. The record further indicates Plaintiff received subsequent care for his wound, including visits with a jail physician on November 10, 2022 and January 5, 2023, where Plaintiff reported at both visits that the wound was healing well. (Dkt. No. 230-2 at 64; Dkt. No. 219-4 at 93.)

Construed in the light most favorable to Plaintiff, the foregoing evidence does not create a genuine issue of material fact that any Defendant's action or inaction was objectively unreasonable with respect to the failure to prescribe antibiotics for Plaintiff's bullet wound before September 30, 2023. *See Short*, 87 F.4th at 611 (a pretrial detainee need only show "that the defendant's action or inaction was . . . objectively unreasonable"); *Prigg v. Baltimore Cnty. Dep't of Corr.*, No. DLB-23-cv-48, 2024 WL 1012885, at *8 (D. Md. Mar. 8, 2024), (dismissing claim for deliberate indifference to pretrial detainee's medical needs where plaintiff "does not allege that [defendant] did anything 'objectively unreasonable'"). Plaintiff's allegations here amount to a disagreement with medical personnel about the course of treatment for his wound, which is insufficient to state a cognizable constitutional claim. *See Hardee v. Walz*, No. 3:20-cv-729, 2023 WL 5673952, at *16 (E.D. Va. Sept. 1, 2023) ("Absent exceptional circumstances, an inmate's disagreement with medical personnel with respect to a course of treatment is insufficient to state a cognizable constitutional claim, much less to demonstrate deliberate indifference."); *Krug v. Loranth*, No. 1:13-cv-01409-DCN, 2014 WL 4955365, at *4 (D.S.C. Sept. 29, 2014) ("The fact that a prisoner

believed he had a more serious injury or that he required better treatment does not establish a constitutional violation."), *aff'd*, 599 F. App'x 512 (4th Cir. 2015). Moreover, there is no evidence that any delay in the prescription of antibiotics caused Plaintiff substantial harm. *See Nelson v. Caswell*, No. 8:05-cv-874HMH-BHH, 2006 WL 1432084, at *4 (D.S.C. May 23, 2006) ("Critically, an inmate who complains that delay in medical treatment rose to a constitutional violation must place verifying medical evidence in the record to establish the detrimental effect of delay in medical treatment to succeed.") (internal quotations omitted); *Smith v. Walker*, 845 F. Supp. 2d 673, 677 (W.D.N.C.) ("Delay in medical care, without showing substantial harm, does not violate the [Constitution]."), *aff'd*, 476 F. App'x 417 (4th Cir. 2012); *see also Lewis v. Eagleton*, No. 4:08-cv-02800-GRA, 2010 WL 755636, at *8 (D.S.C. Feb. 26, 2010) ("There is no competent evidence in the record to show the delay . . . caused any harm."), *aff'd*, 404 F. App'x 740 (4th Cir. 2010).

Similarly, while Plaintiff complains of a three-day delay in receiving antibiotics for a "painful venomous spider-bite on nose," the evidence does not support finding any constitutional violation on this basis. Here, Plaintiff avers he was bit on October 12, 2022, and the medical record shows that on October 16, 2022, Defendant Rachel Brown prescribed Plaintiff an antibiotic for 10 days when he presented with a "nose red swollen" and claimed it was from a "spider bite." (Dkt. No. 219-1 at 4–5; Dkt. No. 230-2 at 77.) There is no evidence Plaintiff alerted anyone to his spider bite before he saw Defendant Rachel Brown on October 16, 2022, or that his infection should otherwise have been obvious to any Defendant prior to that point. There is no evidence of any deliberate decision to delay treatment for Plaintiff's infected spider bite or that the delay in the prescription of antibiotics caused Plaintiff substantial harm. *See Smith*, 845 F. Supp. 2d at 677.

Relatedly, Plaintiff complains of a four-day delay in receiving antibiotics after he first complained about an ear infection on December 2, 2023, and a five-day delay in receiving antibiotics after he developed another ear infection on March 28, 2024. As discussed above, Plaintiff avers that he told Defendant Nurse Jamie Wilson about his "ear infection" on December 2, 2023, and he submitted kiosk requests about his alleged infection on December 3, 2023, and December 4, 2023. Plaintiff saw Defendant NP Petkovsek on December 6, 2023, and he prescribed Plaintiff antibiotics that day. Specific to his later ear infection, Plaintiff avers he developed another ear infection on March 28, 2024, and the medical record shows Plaintiff met with NP Petkovsek on April 2, 2024, and was placed on antibiotics that day. Even construed in the light most favorable to Plaintiff, the evidence does not show that any delay in treatment of these two ear infections with antibiotics caused Plaintiff substantial harm. *See Smith*, 845 F. Supp. 2d at 677.

In sum, Defendants Nurse Lawson, Dr. Garman, NP Swinney, NP Blake, and NP Petkovsek are entitled to summary judgment as to any § 1983 claims based on the alleged delay in treatment of the foregoing medical conditions with antibiotics.[12] *See Hess v. Hoke*, No. 1:10-cv-192, 2011 WL 4433565, at *12 (N.D.W. Va. Aug. 31, 2011) (dismissing deliberate indifference claim arising from complaint that "the treatment [plaintiff] wanted did not begin as quickly as he would have preferred, and he was unhappy with the type of care provided. It is apparent from a review of the record that the plaintiff received regular medical treatment; the treatment was appropriate because it cured his infection."), *adopted by*, 2011 WL 4433590 (N.D.W. Va. Sept. 21, 2011).

[12] To the extent Plaintiff intends for the remaining Defendants to be held liable under § 1983 based on the same events, they are also entitled to summary judgment for the same reasons stated herein.

Delay in Examination

In addition to Plaintiff's claims concerning the delay in treatment of his ailments with antibiotics, Plaintiff also argues that his delay in being examined in relation to certain conditions constituted deliberate indifference by Defendants Nurse Lawson, Dr. Garman, NP Swinney, NP Blake, and NP Petkovsek. He first complains that he waited "56 days" to be examined by a doctor after he suffered "ear and shoulder pain as a result of an assault." (Dkt. No. 219-2 at 6.) As noted above, Plaintiff avers he "was assaulted in his cell on November 12, 2022, and "as a result [he] had a painful left ear." (Dkt. No. 219-1 at 5.) Here, the medical record shows that Defendant Nurse Katrina Krystanowicz saw Plaintiff the day after his assault, wherein Plaintiff reported being "hit on the left side of his head," it was noted that Plaintiff's "ear canal was good just some ear wax," and Plaintiff "stated he was okay and did not need anything further from medical." (Dkt. No. 219-4 at 83.) After Plaintiff submitted a kiosk request complaining his ear "is extremely painful to touch from last weekend's assault," he was placed on a sick call list. He submitted another kiosk request asking to be seen "about [his] ear" on December 2, 2022. Plaintiff was examined by a jail physician on January 5, 2023, wherein he reported in relevant part that "his left ear discomfort has improved" and his "chronic hearing loss . . . is unchanged on the left." (*Id.* at 93.) Based on this evidence, the undersigned cannot find that any Defendant's action or inaction was objectively unreasonable with respect to the delay in Plaintiff's examination by a jail physician after the assault occurred. Plaintiff was seen by medical personnel shortly after the assault occurred, where no acute issues were noted, and there is no evidence that any delay in his examination by a jail physician caused Plaintiff substantial harm. *See Smith*, 845 F. Supp. 2d at 677.

Turning to Plaintiff's allegation that he waited "3 months to see the mental health Dr.," the evidence belies any claim that Plaintiff's mental health concerns were ignored. (Dkt. No. 219-2 at

6.) As discussed above, Plaintiff saw a mental health counselor seven days after submitting a kiosk request on August 15, 2022 asking to "speak to Dr about antidepressant" because of "extreme anxiety," night sweats, and a racing heart. (Dkt. No. 230-2 at 99–100, 384.) Plaintiff saw another mental health counselor less than one month later, on September 12, 2022. (*Id.* at 95.) At both appointments, "medical management" was not recommended to treat Plaintiff's symptoms. When Plaintiff expressed ongoing symptoms of anxiety to Dr. Garman on October 13, 2022, Dr. Garman prescribed Plaintiff an antihistamine often used for anxiety until Plaintiff could be treated by mental health. (*Id.* at 79.) Plaintiff was assessed by a psychiatrist less that one month later, on November 9, 2022, wherein he was prescribed mirtazapine for depression. (*Id.* at 275–76.) Plaintiff's psychiatrist adjusted Plaintiff's medication on January 5, 2023 due to ongoing symptoms, but Plaintiff refused a follow-up visit on February 9, 2023. (*Id.* at 277–79.) Construed in the light most favorable to Plaintiff, the foregoing evidence does not establish a genuine issue of material fact that any Defendant's action or inaction was objectively unreasonable with respect to Plaintiff's delay in being seen by a psychiatrist. Additionally, there is no evidence that any delay in this examination caused Plaintiff substantial harm, where Plaintiff was being evaluated for his symptoms in the meantime. *See Smith*, 845 F. Supp. 2d at 677.

Plaintiff next claims he waited "16 days to be physically examined for a painful lump in chest." (Dkt. No. 219-2 at 6.) Here, the record shows that after Plaintiff submitted a kiosk request on February 17, 2024 complaining of "pain under [his] left nipple deep in the tissue," he was seen by Nurse Queen two days later. (Dkt. No. 230-2 at 318, 349.) At that time, Nurse Queen consulted with NP Petkovsek, who opined it was "pulled muscle" and ordered ibuprofen for 7 days. (*Id.* at 318.) Six days later, when Plaintiff later complained of a "lump" he had found "last night," "partly under [the] nipple and below," he was added to the sick call list to be examined. (*Id.* at 347.) NP

Petkovsek examined Plaintiff on March 4, 2024, where he diagnosed Plaintiff with "lipoma (a slow-growing, non-cancerous tumor made of fat cells)" and ordered an ultrasound of Plaintiff's chest wall to rule out any acute issues. (*Id.* at 317; Dkt. No. 230-6 at 2.) The ultrasound "revealed no soft tissue masses or localized fluid collection, and Plaintiff was provided ibuprofen and prescribed amitriptyline for the pain. (Dkt. No. 230-2 at 284, 329; Dkt. No. 131 at 70.) While Plaintiff complains he was not seen by NP Petkovsek until March 4, 2024, there is no genuine issue of material fact that any Defendant's action or inaction was objectively unreasonable in failing to procure Plaintiff an earlier physical examination of his "painful lump." Additionally, there is no evidence that any delay in this examination caused Plaintiff substantial harm. *See Smith*, 845 F. Supp. 2d at 677.

Plaintiff further alleges that he waited "7 months to be seen about painful skin abnormalities." (Dkt. No. 219-2 at 6.) Here, the record shows that Nurse Rachel Brown saw Plaintiff six days after he submitted a kiosk request on March 21, 2023 reporting "two spots" on his left leg that had "been there for years" and had "both changed colors." (Dkt. No. 230-2 at 28, 533.) At that visit, Plaintiff did not complain of "spots" that were concerning for skin cancer, but he did complain of red, itchy skin on the right arm. (*Id.* at 28.) Plaintiff was advised to use clotrimazole cream for 14 days and to return to the clinic with any worsening symptoms. (*Id.*) After Plaintiff submitted a kiosk request on November 1, 2023, asking whether "anyone on staff" could "identify[] skin cancer" for three spots, NP Petkovsek examined Plaintiff eight days later. (*Id.* at 17, 537.) At that examination, NP Petkovsek diagnosed Plaintiff with a skin tag on the right posterior shin and a red mole on the left back. (*Id.* at 17.) When Plaintiff continued to complain about this diagnosis, NP Petkovsek examined Plaintiff again on February 6, 2024, and assured Plaintiff there was no evidence of skin cancer. While Plaintiff complains he was not seen by NP

Petkovsek until November 9, 2024, the record shows Plaintiff did not directly raise issues of potential skin cancer until November 1, 2023. Prior to that point, he was treated for complaints of "red, itchy skin." (Dkt. No. 230-2 at 28.) Such evidence does not establish a genuine issue of material fact that any Defendant's action or inaction was objectively unreasonable with respect to Plaintiff's delay in being seen by Petkovsek for his "skin abnormalities." Additionally, there is no evidence that any delay in this examination caused Plaintiff substantial harm. *See Smith*, 845 F. Supp. 2d at 677.

In sum, Defendants Nurse Lawson, Dr. Garman, NP Swinney, NP Blake, and NP Petkovsek are entitled to summary judgment as to any § 1983 claims based on the alleged delay in being examined in relation to the foregoing conditions.[13] *See Krug*, 2014 WL 4955365, at *4 ("The fact that a prisoner believed he had a more serious injury or that he required better treatment does not establish a constitutional violation."); *Lewis*, 2010 WL 755636, at *8 ("There is no competent evidence in the record to show the delay . . . caused any harm.").

Delay in Items

In addition to Plaintiff's foregoing claims of delay, Plaintiff also argues that his delay in receiving certain items necessary for treatment of his medical conditions constituted deliberate indifference by Defendants Nurse Lawson, Dr. Garman, NP Swinney, NP Blake, and NP Petkovsek. Here, Plaintiff first alleges that after his hearing aid battery died, he did not receive new batteries for six days, despite them being readily available. Construed in the light most favorable to Plaintiff, the record indicates Plaintiff's parents ordered him batteries that arrived on April 4, 2024, the same day that his hearing aid died. (Dkt. No. 219-4 at 223.) Plaintiff did not receive a hearing aid battery until April 10, 2024, despite Plaintiff's numerous kiosk requests that

[13] To the extent Plaintiff intends for the remaining Defendants to be held liable under § 1983 based on the same events, they are also entitled to summary judgment for the same reasons stated herein.

he submitted in the interim, and the alleged availability of the batteries in "medical's mail room box." (*Id.* at 225.) While Plaintiff claims that he had difficulty communicating with other inmates and staff during those six days (*id.* at 224), there is no evidence Plaintiff suffered substantial harm due to this delay. In short, the evidence does not establish a genuine issue of material fact that Plaintiff's constitutional rights were violated due to the foregoing delay. *See Treadway v. Mullins*, No. 7:20-cv-00571, 2021 WL 4267519, at *10 (W.D. Va. Sept. 20, 2021) ("Treadway has no actionable constitutional claim against anyone for denying him hearing aid batteries for five days . . . . While being unable to hear announcements and orders during that time may have placed him at some risk of harm, the fact that he did not suffer any significant injury or harm as a result of the lack of batteries precludes him from any recovery of damages now under § 1983 against defendants at Wallens Ridge.")

Plaintiff also alleges a deliberate indifference claim based on his "9 month[]" wait "for footwear to be authorized for constant ankle pain while walking." (Dkt. No. 219-2 at 6.) As discussed above, the record documents that after Plaintiff submitted a kiosk request on May 11, 2023 asking "what kind of shoes are allowed" because his "bullet wound" hurts when walking, Dr. Garman documented his "approval for inserts" on June 2, 2023. (Dkt. No. 219-4 at 111, 131.) Nurse Sieklicki entered a medical encounter on September 22, 2023, stating "ok for inserts/ortho shoes per provider. Must pass security." (*Id.* at 127.) Plaintiff then submitted kiosk requests stating that his parents sent him orthopedic shoes and they were delivered around September 26, 2023; however, those shoes did not pass security checks. (*Id.* at 128–30, 136.) In an October 6, 2023 email to Captain Safford, Nurse Lawson stated that no one in medical or security had approved Plaintiff's shoes that she is "aware of." (*Id.* at 140.) Plaintiff submitted several kiosk requests through November 10, 2023 about the delivered shoes and his pain. (*Id.* at 134–39.) Beginning

January 22, 2024, Plaintiff submitted more kiosk requests complaining of the pain in his ankle. (*Id.* at 146–52.) NP Petkovsek then saw Plaintiff on February 6, 2024, wherein it was noted that Plaintiff's "ortho shoes . . . have been approved," and they were delivered to Plaintiff on February 14, 2024. (Dkt. No. 230-2 at 321; 219-1 at 8.)

Upon review, the record does not indicate any medical provider actually prescribed Plaintiff orthopedic inserts or special shoes as treatment for a medical condition. Rather, Plaintiff sought approval for inserts, and then his parents ordered him orthopedic shoes. After those shoes were delivered to the Detention Center, Plaintiff did not receive them for approximately 4.5 months in part because they did not pass security checks. Plaintiff has not provided any evidence of substantial harm based on the 4.5-month delay in obtaining the delivered orthopedic shoes. Specific to Nurse Lawson, the evidence does not substantiate Plaintiff's claim that she "deliberately interfered with medical treatment" in violation of his constitutional rights. (Dkt. No. 257 at 40–41.) At most, her conduct amounts to negligence, which is not deliberate indifference. *Wright*, 766 F.2d at 849 (finding inadequate treatment due to negligence, inadvertence, or differences in judgment between an inmate and the medical personnel does not rise to the level of a constitutional violation).

Additionally, the Amended Complaint appears to allege a deliberate indifference claim against Nurse Lawson because she made Plaintiff wait seven days for a new wheelchair footrest when there was "a closet full of them." (Dkt. No. 1 at 45–48.) There is no evidence that the seven-day delay in obtaining a new footrest caused Plaintiff substantial harm, however. As discussed above, Plaintiff alleges he first requested a "left wheelchair footrest" on August 9, 2022. (*Id.* at 45.) The record shows that after Plaintiff submitted an August 13, 2022 kiosk request seeking a "left foot rest" for his wheelchair because the "improper bandage material got caught in the wheel

again and ran over [his] foot," Lawson indicated there were no footrests available at that time. Dkt. No. 230-2 at 126, 128.) Plaintiff then obtained a new footrest from the "medical department" on August 17, 2022. In her affidavit, Lawson avers that she ordered a new footrest after Plaintiff requested one, and she denies that there has ever been a closet full of wheelchairs and/or footrests at the Detention Center. (Dkt. No. 230-3 at 2.) Without more, the foregoing evidence does not create a genuine issue of material fact that Lawson violated Plaintiff's constitutional rights. There is no evidence Plaintiff suffered substantial harm due to the delay in obtaining a new wheelchair footrest. *See Smith*, 845 F. Supp. 2d at 677.

In sum, Defendants Nurse Lawson, Dr. Garman, NP Swinney, NP Blake, and NP Petkovsek are entitled to summary judgment as to any § 1983 claims based on the alleged delay in receiving certain items necessary for treatment of the foregoing medical conditions.[14] *See Lewis*, 2010 WL 755636, at *8 ("There is no competent evidence in the record to show the delay . . . caused any harm.").

Failure to Deviate from Ordered Medication

As noted above, Plaintiff also argues that Defendants, Nurses Jennifer Brown, Nurse Danielle Winns, Nurse Michele Squires, and Nurse Kelsey Ledford were deliberately indifferent to his medical needs by failing to provide Plaintiff his desired medication on certain occasions. Even when construed in the light most favorable to Plaintiff, the evidence does not establish a genuine issue of material fact that these Defendants were deliberately indifferent to Plaintiff's serious medical needs. As an initial matter, while Plaintiff argues in his briefing that Defendant Jennifer Brown refused to substitute Plaintiff's prescribed medication on October 14, 2022, the medical record does not include any mention of a Jennifer Brown, and Plaintiff's Amended

[14] To the extent Plaintiff intends for the remaining Defendants to be held liable under § 1983 based on the same events, they are also entitled to summary judgment for the same reasons stated herein.

Complaint does not include any factual allegations referencing this Defendant. As for the other Defendants, the evidence indicates that they refused to deviate from Plaintiff's ordered list of medications on, at most, two occasions each,[15] and there is no evidence that Plaintiff suffered any harm as a result.

Based on the foregoing, Defendants Jennifer Brown, Danielle Winns, Michele Squires, and Kelsey Ledford are entitled to summary judgment of any such § 1983 claims. *See Harvey v. Hobbs*, No. 1:20-cv-605 (TSE/TCB), 2021 WL 3641462, at *5 (E.D. Va. Aug. 17, 2021) ("Plaintiff does not allege any harm or change in either of his underlying conditions (HIV and hypertension) from the delay in receiving his medication. Plaintiff's failure to allege any such harm is fatal to his claim despite the temporary symptoms he alleges."); *Keating v. Meade*, No. 1:20-cv-550 (LO/TCB), 2021 WL 120944, at *5 (E.D. Va. Jan. 12, 2021) ("[C]ourts have repeatedly declined to find that a medical provider was deliberately indifferent to an inmate's medical needs when a plaintiff challenges the type and quantity of pain medication."); *Watson v. Doe*, No. 1:19-cv-1043, 2020 WL 1644346, at *2 (M.D.N.C. Mar. 5, 2020) (Plaintiff's only allegation against Defendant [ ] is that on one occasion he failed to send adequate medication with Plaintiff. . . . This allegation of a single instance of failure to send medication is insufficient to state a claim of deliberate indifference. At most, it would constitute only a showing of mere negligence."), *adopted sub nom. Watson v. Doe #1*, 2020 WL 1640022 (M.D.N.C. Apr. 2, 2020).

Failure to Provide Necessary Care

Relatedly, Plaintiff has clarified that he brings § 1983 deliberate indifference claims against: (1) Defendant Minette for refusing to provide Plaintiff "extra gauze" on October 6, 2022;

[15] Here, the undersigned credits Plaintiff's allegations in his verified Amended Complaint, as there is no medical evidence in the record documenting these alleged interactions between Plaintiff and Defendants Winns, Squires, and Ledford, wherein they purportedly refused to provide Plaintiff his desired medication.

(2) Defendant Sielicki for denying Plaintiff "access to medical personnel capable of treating" Plaintiff's "painful cracked skin on [his] foot" in March of 2024; (3) Defendant Wilson for refusing wound care on Plaintiff's bullet wound on September 1, 2022; and (4) Defendant Queen for failing to "document anything in the medical records" when an officer reported Plaintiff's ear issues to her on December 5, 2023. (Dkt. No. 257.)

Upon careful review, the evidence does not establish a genuine issue of material fact that these Defendants were deliberately indifferent to Plaintiff's serious medical needs based on the foregoing alleged conduct. Specific to Nurse Minette, Plaintiff alleges that he received "new dressing" for his bullet wound approximately 12 hours after Nurse Minette refused to provide him "extra gauze" when his current one had "soaked thru." (Dkt. No. 257 at 23.) There is no evidence that Plaintiff suffered any substantial harm based on this 12-hour delay, and the evidence does not support finding a constitutional violation on this basis.

Turning to Nurse Sielicki, Plaintiff complains that despite medical documentation on February 6, 2024 that Plaintiff had "no edema" on his foot, Nurse Sielicki was deliberately indifferent to Plaintiff's "painful cracking on his foot" when he did not help Plaintiff obtain "stronger medical cream" than what was available "on canteen" on March 19, 2024. (Dkt. No. 257 at 24; 230-2 at 322, 362.) The record shows that in response to Plaintiff's kiosk request on this issue, Nurse Sielicki cited Plaintiff's February 6, 2024 appointment and noted Plaintiff's feet "were not bleeding or cracked" and "[t]here was no sign of infection." (Dkt. No. 230-2 at 362.) Nurse Sielicki stated that "A&D ointment is being added to the canteen list and could be an option for you." (*Id.*) Notably, Plaintiff was seen by NP Petkovsek on April 2, 2024, and there is no indication Plaintiff raised any such issues about his cracked foot at that time. Based on the foregoing, there is no genuine issue of material fact that Nurse Sielicki's conduct was objectively unreasonable.

Finally, Plaintiff alleges that Nurse Wilson and Nurse Queen separately denied Plaintiff necessary treatment on one occasion each. Specifically, Plaintiff alleges Wilson denied Plaintiff wound care on September 2, 2022 because Plaintiff was "no longer on wound care list." (Dkt. No. 230-2 at 135; Dkt. No. 1 at 50.) The medical record shows that Plaintiff was seen by NP Swinney on September 12, 2022 and Dr. Garman on September 16, 2022. Neither medical provider documented any infection at that time, and there is no evidence that Plaintiff suffered substantial harm based on Wilson's single "refus[al] to do wound care" that had not been ordered. (Dkt. No. 257 at 26.) Similarly, while Plaintiff alleges that Nurse Queen failed to properly respond when an officer reported to her Plaintiff's complaints "about the yellow fluid and pain down to [his] jaw," the record shows that Plaintiff was seen by Nurse Brown approximately six hours after that alleged report and given ibuprofen, and he was seen by NP Petkovsek and prescribed antibiotics the very next day. In short, there is no evidence that Plaintiff suffered substantial harm based on Nurse Queen's failure to document Plaintiff's reported symptoms, where he was examined by medical personnel six hours later and prescribed antibiotics the next day for the condition at issue.

Based on the foregoing, Defendants Minette, Sielicki, Wilson, and Queen are entitled to summary judgment as to any § 1983 claims arising from the foregoing alleged events. *See Taylor v. Fleming*, No. 7:15-cv-00653, 2017 WL 888362, at *4 (W.D. Va. Mar. 6, 2017) ("An 'error of judgment' on the part of prison medical staff or 'inadvertent failure to provide adequate medical care,' while perhaps sufficient to support an action for malpractice, is not a constitutional deprivation redressable under § 1983.").

Medical Isolation

Plaintiff also alleges that his constitutional rights were violated when Defendant Blake "chose to medically isolate [Plaintiff] and Defendant Lawson used her authority to make it

happen." (Dkt. No. 257 at 34.) As discussed above, Plaintiff alleges that NP Blake and Nurse Lawson "quarantined [Plaintiff] in a room with [an] inmate . . . who had an open wound on his finger which was osteomyelitis" from October 11, 2022 through October 14, 2022. (Dkt. No. 219-1 at 4; 131-1 at 3.) Plaintiff alleges this isolation "stripped" away the "privileges" that "in some ways helped [Plaintiff] with [his] anxiety." (Dkt. No. 1 at 65.) Plaintiff alleges that NP Blake and Nurse Lawson "again placed an order to have [him] quarantined" and on October 25, 2022, he was moved to "solitary confinement in a unit that houses the seriously mentally ill inmates at [the Detention Center]." (Dkt. No. 131-1 at 3–4.) While there, Plaintiff lived in a "cell where there was excrement smeared on the wall next to [his] bed, rodent droppings on the floor and bed, clumps of hair on the floor, and a pungent odor of urine in the air and [he] was constantly subjected, 24 hours a day to the screaming and shouting of severely mentally ill inmates who smear feces on their faces and urinate on the floor." (Dkt. No. 1 at 20–21; *see also* Dkt. No. 131 at 5–6; 131-1 at 4.) While Plaintiff alleges he remained in isolation until October 31, 2022, the medical record documents that Plaintiff was removed from medical isolation on October 29, 2022, "per NP." (Dkt. No. 230-2 at 70.)

Plaintiff claims he was told both moves occurred pursuant to a policy of separating those inmates with an open wound from the general population, and Plaintiff disputes the existence of any such policy. (Dkt. No. 257 at 34.) The record includes documentation indicating both moves were motivated by a decision from "the APRN, HAS, and Jail officers" to place Plaintiff on medical isolation "due to the wound on his foot," and to "promote healing in an environment that did not provide a place of cross contamination from other individuals." (Dkt. No. 219-4 at 76; Dkt. No. 230-2 at 151.) In her affidavit, Nurse Lawson avers that "jail staff decided to move [Plaintiff]

to medical isolation" when Plaintiff "complained that a spider bite on his nose was oozing." (Dkt. No. 230-3 at 3.)

Upon careful review, the brief periods of isolation at issue and the alleged conditions therein do not amount to a constitutional violation. *See Wilson v. Seiter*, 501 U.S. 294, 298 (1991)) (noting that the Constitution does not mandate comfortable prisons, and only deprivations which deny the minimal civilized measure of life's necessities are sufficiently grave to provide the basis of a § 1983 claim); *Richey v. McBride*, No. 6:24-cv-00176-JDA-KFM, 2024 WL 2263083, at *4 (D.S.C. Apr. 15, 2024) (finding the following "complained of conditions do not rise to the level of constitutional violations"—"that he receives insufficient toilet paper, the cells and showers have black mold, that a lot of detainees use three showerheads, that he has limited recreation time, that the cells are cold and overcrowded, the linens smell bad, and that there are no emergency intercoms"), *adopted by*, 2024 WL 2258385 (D.S.C. May 16, 2024); *Webb v. Nicks*, No. 1:18-cv-2007-HMH-SVH, 2019 WL 2896447, at *1–4 (D.S.C. June 4, 2019), (denying pretrial detainee's conditions-of-confinement claim based on alleged exposure to black mold in the showers and bunks; brown, foul-smelling drinking water from rusty pipes; lead paint peeling from the walls; most of the bathrooms in the bunks not functioning, leading to a bad smell; poor ventilation system; and overcrowding), *adopted by*, 2019 WL 2869626 (D.S.C. July 3, 2019).[16] Further, Plaintiff has

[16] To the extent Plaintiff alleges a due process violation under the Fourteenth Amendment, such a claim fails for similar reasons. More specifically, the evidence does not create a genuine issue of material fact that the conditions of Plaintiff's medical isolation "impose[d] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life," *Prieto v. Clarke*, 780 F.3d 245, 249 (4th. Cir. 2015), and, therefore, the Due Process Clause required no process related to his placement in isolation. *See Cutner v. Dasant*, No. 6:24-cv-01584-RMG-KFM, 2024 WL 3326381, at *3 (D.S.C. June 5, 2024) (finding plaintiff's contention that he has been denied sufficient "'structured' or 'programming' time per SCDC policy" while in RHU "fails to rise to the level of an atypical or significant hardship" sufficient to establish a due process claim), *adopted by*, 2024 WL 3219199 (D.S.C. June 27, 2024); *Barbee v. Anderson*, No. 7:19-CV-306, 2020 WL 1189938, at *5 (W.D. Va. Mar. 12, 2020) ("It is well established that a temporary assignment to segregated confinement—even six months or more, with reduced privileges, few out-of-cell activities or socialization opportunities, and heightened security measures—is *not* atypical or significant hardship" to trigger a protected liberty interest), *aff'd*, 2021 WL 5176464 (4th Cir. Nov. 8, 2021).

not produced any evidence that he sustained any serious or significant physical or emotional injury as a result of the alleged periods of isolation. *See Strickler*, 989 F.2d at 1381 (4th Cir. 1993) (finding that to demonstrate an "extreme deprivation" required for a conditions of confinement claim, a prisoner "must produce evidence of a serious or significant physical or emotional injury resulting from the challenged conditions").

In short, Plaintiff has failed to establish any constitutional violations based on his brief periods of isolation, and Defendants Blake and Lawson are entitled to summary judgment on any such § 1983 claims.

Denial of Specialist Treatment for Payment

Plaintiff also alleges that Defendants Nurse Lawson, Dr. Garman, NP Swinney, NP Blake, and NP Petkovsek were deliberately indifferent to Plaintiff's serious medical needs by denying him "access to needed medical specialist[s] for payment reasons and policy, which has subjected him to permanent loss." (Dkt. No. 219-2 at 8.) Here, Plaintiff focuses on his alleged need to see specialists regarding his gunshot wound, ruptured eardrum, skin abnormalities, and painful lump in chest. (*Id.* at 8–9; Dkt. No. 254 at 21–25.)

Upon careful review, even assuming Plaintiff's various medical conditions presented a serious medical need, there is no genuine issue of material fact that the failure to take Plaintiff to a specialist for treatment and/or diagnosis of those conditions amounted to deliberate indifference. As an initial matter, it is well established that an inmate "is not entitled to his choice of treatment via an appointment with a specialist." *Montgomery v. Galarza*, No. 1:20-cv-3689-MGL-SVH, 2021 WL 3520072, at *13 (D.S.C. Mar. 25, 2021), *adopted sub nom. Montgomery v. Gillespie*, No. 1:20-cv-03689-MGL, 2021 WL 3520718 (D.S.C. Aug. 10, 2021); *Frith v. Smith*, No. 7:22-cv-00389, 2024 WL 4353096, at *6 (W.D. Va. Sept. 30, 2024) ("A prisoner is entitled to reasonable

care, not to the treatment of his choice and not to the doctor or specialist of his choice."), *reconsideration denied*, 2025 WL 952250 (W.D. Va. Mar. 28, 2025). As discussed above, the record evidence and Defendants' affidavit testimony shows that Plaintiff was regularly seen and treated by Detention Center medical personnel for his complaints about the medical conditions at issue. Here, the record indicates that Defendants used their medical expertise and diagnostic tests, including an x-ray, blood work, and an ultrasound, to find that these conditions could be adequately treated at the Detention Center.

Specific to Plaintiff's ruptured eardrum, skin abnormalities, and painful lump in chest, a referral to a specialist was never found necessary by any medical provider, and so a referral was never ordered for treatment of these conditions. Plaintiff's claims that he should have been referred to a specialist for treatment and diagnosis of these conditions amounts to a "[d]isagreement[ ] between an inmate and a physician over the inmate's proper medical care," which the Fourth Circuit has "consistently" found "fall[s] short of showing deliberate indifference." *Jackson v. Lightsey*, 775 F.3d 170, 178 (4th Cir. 2014),; *see also Short*, 87 F.4th at 611–12 ("[I]t is still not enough for the plaintiff to allege that the defendant negligently or accidentally failed to do right by the detainee."); *Wester v. Jones*, 554 F.2d 1285, 1286 (4th Cir. 1977) ("Even if the doctor were negligent in examining [Plaintiff] and in making an incorrect diagnosis, his failure to exercise sound professional judgment would not constitute deliberate indifference to serious medical needs."); *Russell v. Sheffer*, 528 F.2d 318, 319 (4th Cir. 1975) (plaintiff was under "constant medical supervision from the time of his arrival" in state prison and "[q]uestions of medical judgment are not subject to judicial review"); *Boley v. Armor Corr. Health Servs., Inc.*, No. 2:21-cv-197 (RCY), 2022 WL 905219, at *8 (E.D. Va. Mar. 28, 2022) ("Misdiagnosing an inmate's illness is not a sufficient basis for a [§ 1983 deliberate indifference] claim."); *Benninger v. Patel*,

No. 6:00-cv-2812-13-JFA, 2001 WL 34684733, at *4 (D.S.C. Apr. 4, 2001) (holding "[n]ot referring Plaintiff to a cervical spine specialist simply does not rise to the level of deliberate indifference" where defendant presented evidence that the South Carolina Department of Corrections' staff could adequately treat all of the plaintiff's medical complaints).

As for Plaintiff's gunshot wound, while NP Swinney initially referred Plaintiff for a "wound care consult" on July 27, 2022, the evidence shows that Plaintiff's wound eventually healed to the point where a medical determination was made that Plaintiff no longer needed to see a specialist for treatment. "This sort of medical decision is [likewise] beyond the scope of judicial review." *Shabazz v. Prison Health Servs., Inc.*, No. 3:10-cv-190, 2011 WL 3489661, at *9 (E.D. Va. Aug. 9, 2011) (dismissing deliberate indifference claim arising from defendant's "medical determination that Plaintiff no longer needed to visit the neurologist," although defendant initially "recommended . . . that Plaintiff visit a neurologist").

While Plaintiff blames his inability to see a specialist on a purported "policy or custom that requires pretrial detainees to prepay for outside medical care prior to scheduling appointment," there is no evidence that Plaintiff was denied any treatment *deemed medically necessary* based on this alleged policy. (Dkt. No. 254 at 21.) Rather, as discussed above, a referral was never found medically necessary for Plaintiff's ruptured eardrum, skin abnormalities, and painful lump in chest, and Plaintiff's gunshot wound improved to the point where a medical determination was made that a wound specialist was no longer needed. Plaintiff has provided no medical evidence, such as depositions or affidavits from medical experts, attesting that any medical professionals violated the requisite standard of care for Plaintiff's complaints by failing to take him to a specialist for treatment and/or diagnosis. *See Rosenbaum v. Mediko*, No. 9:18-cv-1666-CMC-BM, 2019 WL 4307802, at *15 (D.S.C. June 19, 2019) (granting summary judgment on deliberate indifference

claim arising in part from defendant doctor's failure to refer pre-trial detainee plaintiff to "outside orthopedist or [to] schedule[e] surgeries" where plaintiff attested that defendant "told him he would need surgeries to fix his shoulders, but would have to wait until he was released" and defendant attested that plaintiff presented "non-emergent problems and that, as a result, he did not need a referral to an outside orthopedist"), *adopted by*, 2019 WL 3451136 (D.S.C. July 31, 2019); *see also See Whaley v. Cindy Harris et al.*, No. 4:24-cv-5566-DCC, 2025 WL 1104617, at *3 (D.S.C. Apr. 14, 2025) (dismissing § 1983 claim alleging "a policy or custom prevents doctors from prescribing items they would normally prescribe"; "Plaintiff cannot attempt to impose *Monell* liability for conduct that does not rise to the level of a constitutional violation."); *Mitchell v. Forsyth Cnty.*, No. 1:18-cv-574, 2019 WL 3409983, at *3 (M.D.N.C. July 29, 2019) ("To the extent that he claims a policy or custom led to the decision not to pay for outside physical therapy visits or influenced [defendant doctor's] decision regarding those visits, the inquiry is still subsumed by the question of whether or not the failure to provide the outside sessions amounted to deliberate indifference to Plaintiff's serious medical needs."). While Plaintiff claims he has suffered "permanent loss" due to the failure to see specialists for his conditions, there is no evidence in the record supporting this allegation.

In sum, the evidence supporting this § 1983 claim does not create a genuine issue of material fact that Defendants Nurse Lawson, Dr. Garman, NP Swinney, NP Blake, and NP Petkovsek were deliberately indifferent to Plaintiff's serious medical needs by denying him access to specialists.[17]

[17] To the extent Plaintiff intends for the remaining Defendants to be held liable under § 1983 based on the same events, they are also entitled to summary judgment for the same reasons stated herein.

Ineffective Grievance System

Plaintiff next brings a purported § 1983 claim against Defendants Nurse Lawson, Dr. Garman, NP Swinney, NP Blake, and NP Petkovsek based on the "ineffective medical system for communicating and treating." (Dkt. No. 219-2 at 13.) According to Plaintiff, the evidence "clearly shows the sick-call system at [the Detention Center] is not only deficient for medical emergencies, it also fails to ensure access to care." (*Id.* at 13–14.) Relatedly, Plaintiff alleges that "by Lawson's repeated extremely perverse delays in her responses, the kiosk system is completely ineffective, and as such cannot possibly provide access to adequate medical care." (Dkt. No. 254 at 25.) In the Amended Complaint, Plaintiff alleges that Nurse Lawson fabricated responses to various kiosk requests submitted by Plaintiff regarding his medical care. (*See* Dkt. No. 1 at 82–89; Dkt. No. 131 at 6.) In her affidavit, Nurse Lawson denies Plaintiff's allegation that she back dated the replies to his kiosk requests "to make it seem as though [she] had replied when [she] did not." (Dkt. No. 230-3 at 2.) Lawson avers that "[t]he dates automatically populate in the computer and [she] ha[s] no way of changing the dates." (*Id.*)

As discussed above, the record shows Plaintiff was regularly seen and evaluated for his various medical conditions. To the extent there was a delay in response to Plaintiff's kiosk requests, there is no evidence this delay resulted in any substantial harm to Plaintiff. And other than Plaintiff's conclusory allegations, there is no evidence that Lawson fabricated any responses to Plaintiff's kiosk requests. *See Thompson v. Potomac Elec. Power Co.*, 312 F.3d 645, 649 (4th Cir. 2002) ("Conclusory or speculative allegations do not suffice [for establishing a genuine dispute of material facts], nor does a mere scintilla of evidence in support of [the plaintiff's] case."). In short, the handling of Plaintiff's kiosk requests by Nurse Lawson or any other Defendant does not demonstrate deliberate indifference to Plaintiff's serious medical needs.

To the extent Plaintiff is complaining more generally about an inability to challenge his medical care through the Detention Center's kiosk system, inmates have no federal constitutional right to an inmate grievance system. *See Adams v. Rice*, 40 F.3d 72, 75 (4th Cir. 1994); *see also Taylor v. Lang*, 483 F. App'x 855 (4th Cir. 2012) (finding that an inmate's claim that an officer performed an unsatisfactory investigation and consideration of his various administrative grievances was without merit as his access and participation in the prisoner's grievance process was not constitutionally protected and the officer's alleged malfeasance could not be said to have impeded on the inmate's access to the courts); *Martin v. O'Brien*, No. 6:13-cv-335-TMC-JDA, 2013 WL 1282143 (D.S.C. Feb. 21, 2013), *adopted by*, 2013 WL 1281952 (D.S.C. Mar. 26, 2013) (noting that prison inmates, including pretrial detainees, have no federal constitutional rights to any inmate grievance system); *Smith v. Ray*, 36 F. App'x 99 (4th Cir. 2002) ("[A]ccess to the grievance procedure is not a constitutionally protected right[.]").

Based on the foregoing, Defendants Nurse Lawson, Dr. Garman, NP Swinney, NP Blake, and NP Petkovsek are entitled to summary judgment as to any § 1983 claim arising from the "ineffective medical system for communicating and treating."[18]

Supervisory Liability

Plaintiff has also alleged a supervisory liability claim against Defendants Nurse Lawson, Dr. Garman, NP Swinney, NP Blake, and MP Petkovsek for their alleged supervisory roles related to the above purported constitutional violations. (*See* Dkt. No. 219-2 at 10–13.) Because Plaintiff has failed to sufficiently allege a violation of his constitutional rights, however, any such supervisory liability claim fails as a matter of law. (*See* Dkt. No. 219-2 at 10–13.) *See Shaw v.*

[18] To the extent Plaintiff intends for the remaining Defendants to be held liable under § 1983 based on the same events, they are also entitled to summary judgment for the same reasons stated herein.

Stroud, 13 F.3d 791, 799 (4th Cir. 1994) (a supervisor can be liable where (1) she knew that her subordinate "was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury"; (2) her response showed "deliberate indifference to or tacit authorization of the alleged offensive practices"; and (3) that there was an "affirmative causal link" between her inaction and the constitutional injury.); *Chennault v. Mitchell*, 923 F. Supp. 2d 765, 787 (E.D. Va. 2013) ("A supervisor cannot be held liable absent a constitutional violation by the people she supervised.").

ADA and Rehabilitation Act

Finally, while the Amended Complaint alleges that Defendants violated Plaintiff's rights under the American with Disabilities Act ("ADA") and the Rehabilitation Act ("RA") (Dkt. Nos. 131 at 80), it includes no allegations supporting these claims and does not otherwise mention these statutes. In addition, Plaintiff does not mention these claims in any of his briefings.

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. Section 504 of the RA similarly 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 analysis of these claims is "substantially the same." *Wicomico Nursing Home v. Padilla*, 910 F.3d 739, 750 (4th Cir. 2018) (internal quotation omitted). To establish a violation of either statute, Plaintiff must show that: (1) he has a disability; (2) he is otherwise qualified to receive the benefits of a public service, program, or activity provided by a public entity; and (3) he was denied those benefits or

otherwise discriminated against on the basis of his disability. *Fauconier v. Clarke*, 966 F.3d 265, 276 (4th Cir. 2020).

As discussed above, Plaintiff has made no allegations or submitted any evidence to establish a violation of the ADA or RA. Rather, it appears Plaintiff's ADA and RA claims are based on the same allegations as his deliberate indifference claims. (*See generally* Dkt. No. 1; Dkt. No. 131; Dkt. No. 131-1.) Plaintiff's ADA and RA claims therefore fail as a matter of law. *See Davis v. Keller*, No. 7:23-cv-00593, 2024 WL 4326544, at *8 (W.D. Va. Sept. 27, 2024) ("[T]his court and others in this circuit have held that 'the ADA cannot be used to assert a claim of inadequate medical care.'") (quoting *Baxley v. Jividen*, 508 F. Supp. 3d 28, 62 (S.D.W. Va. 2020) and collecting cases); *McCoy v. Stouffer*, No. WDQ-10-cv-1583, 2013 WL 4451079, at *17 n.10 (D. Md. Aug. 15, 2013) (finding "a prisoner may not state a claim under the ADA or RA for a lack of medical treatment") (collecting cases).

CONCLUSION

For the foregoing reasons, it is RECOMMENDED that Plaintiff's Motion for Partial Summary Judgment (Dkt. No. 219) be DENIED and Defendants' Motion for Summary Judgment (Dkt. No. 230) be GRANTED.

IT IS SO RECOMMENDED.

May 30, 2025

Charleston, South Carolina

MARY GORDON BAKER
UNITED STATES MAGISTRATE JUDGE

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. **Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections.** "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

Additional material from this filing is available in the Clerk's Office.