

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Leticia Vargas, Administrator of)
the Estate of Angel Cruz,)
) 18-cv-1865
 Plaintiff,)
) *(Judge Seeger)*
-vs-)
)
County of Cook, et al.,)
)
 Defendants.)

JOINT STATEMENT REGARDING SUMMARY JUDGMENT

The parties, by counsel, submit the following pursuant to the Court's Order of June 22, 2021:

1. As directed by the Court, the parties have exchanged the attached letters about summary judgment motions and have conferred about the letters. The conference was held by telephone on July 12, 2021 at about 1:45 p.m. between attorney Joel Flaxman for plaintiff and Attorney William Ragen for the remaining defendants.

2. Through the process required by the Court's Order of June 22, 2021, the parties have narrowed the issues in the case and plaintiff has agreed to dismiss five defendants. The Court dismissed one defendant on July 1, 2021, ECF No. 142, and dismissed four others on July 15, 2021. ECF No. 144.

3. The parties do not unanimously seek another settlement conference.

4. The remaining defendants are Cook County and seven of its employees, Dr. Paschos, Dr. Lassen, Nurse Kanel, Nurse Chatman, Nurse Manalastas, Nurse Alabi, and Nurse Krzyzowski.

5. The remaining claims are for objectively unreasonable health care in violation of the Fourteenth Amendment against the individual defendants and medical malpractice against Cook County for the conduct of its employees.

6. As explained more fully below, plaintiff will seek summary judgment as to liability on her federal constitutional claims against five of the individual defendants: Dr. Paschos, Nurse Kanel, Nurse Chatman, Nurse Manalastas, and Nurse Krzyzowski. Plaintiff will also seek summary judgment on the medical malpractice claims against defendant Cook County based on the same conduct.

7. Defendants will seek summary judgment on all claims about the conduct of the five nurses. Defendants may seek summary judgment on the 1983 claims against the psychiatrists, Dr. Paschos and Dr. Lassen.

I. Plaintiff's Statement

8. This case arises from the death of plaintiff's decedent Angel Cruz a few days after his admission to the Cook County Jail. Mr. Cruz was

a 20-year-old male who was morbidly obese and experiencing a psychotic episode. The cause of death was pulmonary embolism caused by deep vein thromboses (a blood clot in the leg that traveled to his heart). Mr. Cruz had been held immobile at the Jail in five-point restraints in a bed for 17.5 hours the day before his death.

9. The actions and inactions of defendants were captured on surveillance video. On summary judgment, the Court must view “the facts in the light depicted by the videotape.” *Scott v. Harris*, 550 U.S. 372, 378–81 (2007); *Horton v. Pobjecky*, 883 F.3d 941, 944 (7th Cir. 2018).

10. The video evidence shows that Dr. Paschos, the physician who was responsible for Mr. Cruz’s care, falsely claimed to have performed an assessment of Mr. Cruz before he ordered restraints. There is also no dispute that Dr. Paschos took no action in response to a report of labored breathing a few hours before Mr. Cruz’s death.

11. Plaintiff’s experts opine that the conduct of Dr. Paschos was unreasonable, did not meet the standard of care, and was a cause of Mr. Cruz’s death. The defense experts do not rebut these opinions.

12. Plaintiff’s claims against Nurses Kanel, Chatman, and Manalastas are also based on the video evidence. The standard of care, which is consistent with Cook County’s written policy, required that an

immobilized patient who, like Mr. Cruz was not receiving anti-coagulation medication, must be provided with ten minutes of limb exercise every two hours to avoid deep vein thromboses. The video evidence shows that the nurses did not follow this standard and created false records to disguise their wrongdoing.

13. Defendants do not have any evidence to rebut the opinion of plaintiff's expert that the failure of the nurses to have followed the standard of care and Cook County's written policy was a cause of death.

14. Plaintiff also asserts state and federal claims against Nurse Krzyzowski because she turned a blind eye to the distress of Mr. Cruz shortly before he collapsed and died. Defendant Cook County disciplined Nurse Krzyzowski for her indifference, finding that she had "failed to appropriately respond to the patient's medical condition," a finding echoed by plaintiff's expert. Again, plaintiff's expert opinion that this conduct injured plaintiff is unrebutted.

15. In response to defendants' statement: plaintiff will urge the Court to treat the failure by Dr. Lassen and Dr. Paschos to comply with the Court's procedure as a waiver of any summary judgment motion these defendants may file.

16. Defendants' only other theory for summary judgment is that plaintiff's physician experts are not qualified to offer expert testimony about the conduct of nurses. The Seventh Circuit followed a different rule in *Gayton v. McCoy*, 593 F.3d 610 (7th Cir. 2010), holding that a physician expert on prison healthcare was qualified to offer opinion testimony about the conduct of nurses. *Id.* at 618.

17. Defendants have stated that they will rely on an Illinois rule that generally bars a physician from testifying about the standard of care that applies to nurses, but this rule does not apply in federal court because the "standards for admitting expert evidence or evaluating the sufficiency of that evidence" are "evidentiary matters that fall on the procedural side of the Erie divide." *Wallace v. McGlothan*, 606 F.3d 410, 419 (7th Cir. 2010).

18. The Illinois rule is also inapplicable because the opinions of plaintiff's experts "do not concern an area of medicine about which there would be a different standard between [a] physician and another school of medicine." *Wingo by Wingo v. Rockford Mem'l Hosp.*, 686 N.E.2d 722, 729 (Ill. App. Ct. 1997). In addition to the opinion of plaintiff's experts, plaintiff also relies on Cook County's own written policies, which are admissible evidence of the standard of care. *Jones v. Chicago HMO Ltd.*, 191 Ill. 2d 278, 298-99 (2000).

II. Defendants' Statement

19. Nurse Kanel, Nurse Chatman, Nurse Manalastas, Nurse Alibi, and Nurse Krzyzowski will move for summary judgment on the medical malpractice claims against them as there is no competent expert testimony against them to indicate that they deviated from the standard of care. Plaintiff's experts are physicians and are not licensed as nurses, have not obtained a nursing degree, do not get continuing education as nurses, and are not authorized to practice as nurses. Thus, there is no competent testimony that establishes the nursing standard of care or that it was ever breached.

20. Nurse Kanel, Nurse Chatman, Nurse Manalastas, Nurse Alibi, and Nurse Krzyzowski will move for summary judgment on the 1983 claims against them. In order to meet the second element for 14th Amendment 1983 claims, a Plaintiff must show that the defendant acted objectively unreasonable. As a lay person does not possess the knowledge to determine whether a highly trained professional was acting reasonable *Snyder v. George Wash. Univ.*, 890 A.2d 237, 244 (D.C. Ct. App. 2006), a plaintiff must provide expert testimony to establish that a professional's care was reasonable. As Plaintiff has no competent testimony to provide the opinion that these nurses were acting unreasonably, they are entitled to summary judgment.

21. Dr. Paschos and Dr Lassen may move for summary judgment on the 1983 claims against them. There may be insufficient evidence to

establish the first element of 14th Amendment 1983 claims against them that they acted purposefully, knowingly or recklessly in regards to Mr. Cruz's medical condition. It will take an exhaustive and thorough look at the evidence to determine whether that has been met or not. Thus, that is why Dr. Paschos and Dr Lassen are not sure whether they will be able to move for summary judgment on the 1983 claims against them.

22. In response to Plaintiff's statement, these defendants will show how the evidence and their experts' opinions directly rebut Plaintiff's claims that acted unreasonably. Moreover, Plaintiff's own expert, Dr. Glindmeyer, creates an issue of fact on Plaintiff's own summary judgment motion as she testified that the care rendered to Mr. Cruz at Hinsdale Hospital could have caused the clot that traveled to his lungs which caused his death.

Respectfully submitted,

/s/ Joel A. Flaxman
Joel A. Flaxman
ARDC No. 6292818
Kenneth N. Flaxman
200 S Michigan Ave, Ste 201
Chicago, IL 60604
(312) 427-3200
Attorneys for Plaintiff

/s/ William R. Ragen (with consent)
William R. Ragen
Assistant State's Attorney
Civil Rights Section
500 Richard J. Daley Center
Chicago, Illinois 60602
(312) 603-7944
*Attorney for Cook County and
Individually Named Cook
County Employees*