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

Leticia Vargas, Administrator of the Estate of Angel Cruz, Plaintiff, v. Sheriff of Cook County, County of Cook, Anita Johnson, Helen Kanel, Cherri Krzyzowski, Elizabeth P. Lassen, Manuel Manalastas, Dr. Steve Paschos, Jason Sprague, and Jaruwan Supasanguan, Defendants.	)	No. 18-cv-1865 Judge Steven Seeger JURY DEMANDED

DEFENDANT NURSES' - HELEN KANEL, MANUEL MANALASTAS, AUGUSTUS ALABI, CHERRI KRZYZOWSKI, AND LORRAINE CHATMAN – MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

HELEN KANEL, MANUEL MANALASTAS, AUGUSTUS ALABI, CHERRI KRZYZOWSKI, and LORRAINE CHATMAN, by their attorney KIMBERLY M. FOXX, Cook County State's Attorney, through her Assistant State's Attorney, William R. Ragen, and present the foregoing Memorandum of Law in support of their Motion for Summary Judgment pursuant to Fed R. Civ. P. 56:

INTRODUCTION

All five defendant nurses are entitled to summary judgment on Plaintiff's claims of medical malpractice against them because Plaintiff has not met the foundational element of providing expert testimony from a licensed nurse that any of these five defendants breached the standard of care. All five defendant nurses are entitled to summary judgment on Plaintiff's claims for violations of the 14th amendment of the U.S. Constitution as expert testimony is

required to satisfy the element that the conduct of these defendants was objectively unreasonable and Plaintiff has no competent testimony that these Defendants acted objectively unreasonably. Finally, as no expert has even mentioned that Augustus Alabi deviated from the standard of care, he has additional grounds for summary judgment.

STANDARD OF REVIEW

Summary judgment is proper "if the pleadings, deposition, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FRCP Rule 56(c)(2); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The court must view all facts and reasonable inferences in favor of the nonmoving party, *Samuelson v. LaPorte Cnty. Sch. Corp.*, 526 F.3d 1046, 1051 (7th Cir. 2008), but those inferences must be both reasonable and find support in the record. *See Singer v. Raemisch*, 593 F.3d 529, 533 (7th Cir. 2010); *see also Stachowski v. Town of Cicero*, 425 F.3d 1075, 1078 (7th Cir. 2005) (the court is not required to accept unreasonable factual inferences). The court is not required to draw "[i]nferences that are supported by only speculation or conjecture." *Fischer v. Avanade, Inc.*, 519 F.3d 393, 401 (7th Cir. 2008) (*quoting McDonald v. Vill. of Winnetka*, 371 F.3d 992, 1001 (7th Cir. 2004)). A motion for summary judgment "requires the responding party to come forward with the evidence that it has – it is the 'put up or shut up' moment in a lawsuit." *Eberts v. Goderstad*, 569 F.3d 757, 767 (7th Cir. 2009).

Summary judgment must be entered against the non-moving party where that party "fails to make a sufficient showing to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322. A party who bears the burden of proof at trial may not rest on the pleadings, but must affirmatively

demonstrate, that there is a genuine issue of material fact that requires trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 n. 11 (1986) (citing FRCP Rule 56(e)); see *Keri v. Bd. of Trs. of Purdue Univ.*, 458 F.3d 620, 626 (7th Cir. 2006). A factual dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Davis v. Kariya*, Whiting, 938 F.3d 910, 916 (7th Cir. 2016)

I. Defendant Nurses are Entitled to Summary Judgment on the Medical Malpractice Claims because Plaintiff Failed to Provide Expert Testimony from a Licensed Nurse to Establish the Nursing Standard of Care or any Breach of the Nursing Standard of Care.

In order to prevail in a medical malpractice claim under Illinois law, a plaintiff has the burden of establishing, through expert testimony, (1) the applicable standard of care against which the professional's conduct must be measured; (2) an unskilled or negligent deviation from the standard; and (3) an injury proximately caused by the deviation. *Barnes v. Anyanwu*, 391 F. App'x 549, 551 (7th Cir. 2010); *Lash v. Motwani*, 2021 U.S. Dist. LEXIS 62249. Under Illinois law a professional malpractice claim requires expert testimony about the appropriate standard of care "[u]nless the professional's negligence is so grossly apparent or the treatment so common as to be within the everyday knowledge of a layperson." *Davis v. Kayira*, 938 F.3d 910, 916 (7th Cir. 2016) citing *Sullivan v. Edward Hosp.*, 806 N.E.2d 645, 653, (Ill. 2004)

Courts within the Northern, Central and Southern District of Illinois have universally held that plaintiffs must satisfy the foundational requirements in order to prevail on a medical malpractice claim under Illinois law. *Davis v. Kayira*, 938 F.3d 910, 916 (7th Cir. 2016) The first foundational element is that "the health-care expert witness must be a licensed member of the school of medicine about which the expert proposes to testify". *Davis v. Kayira*, 938 F.3d at 916; *Almond v. Wexford Health Source, Inc.*, 2020 U.S. Dist. LEXIS 3392, at *25 (N.D. Ill. 2020) *Clanton v. United States*, 241 F. Supp. 3d 857, 874 (S.D. Ill. 2017) (all citing the

following Illinois case law (*Sullivan*, 209 Ill.2d at 114-15; *Jones v. O'Young*, 607 N.E.2d 224, (1992), and *Purtill v. Hess*, 111 Ill.2d at 242-43)

The purpose of requirement of testimony from a member of the same "school of medicine" is to prevent a higher standard of care being imposed upon the defendant and to ensure that the testifying expert has expertise in dealing with the patient's medical problem and treatment and that the allegations of negligence are within the expert's knowledge and observation. *Piercy v. Warkins*, 2017 U.S. Dist. LEXIS 62552, at *55 (N.D. Ill. Apr. 25, 2017) To take a malpractice claim to trial, "[t]he proponent of an expert's testimony must lay a foundation which affirmatively establishes the expert's qualifications and competency to testify." *Davis v. Kariya*, 938 F.3d at 917 (*citing Weekly v. Solomon*, 510 N.E. 2d 152, 155 (Ill. App. Ct. 1987).

In *Piercy v. Warkins*, the Northern District of Illinois held that, in a medical malpractice case under Illinois law, a physician cannot testify to the standard of care as a physician's assistant even though physician's assistants are directly supervised by physicians. *Piercy v. Warkins*, 2017 U.S. Dist. LEXIS 62552, at *56. The Court, in *Piercy*, specifically held that Illinois law has expressly rejected the theory that a physician can testify to the standard of care of the profession of a different license even if the physician supervises the other licensure. Id. (citing *Smith v. Pavlovich*, 914 N.E.2d 1258, 1262 (5th Dist. 2009)

Likewise, the Southern District of Illinois held that a podiatrist could not lay the foundation of a physician in a medical malpractice case under Illinois law because the podiatrist held a different license than the physician. *Lange v. Kaveney*, 2008 U.S. Dist. LEXIS 98118, at *7 (S.D. Ill. 2008)

In this case, the following defendants are all licensed registered nurses: Helen Kanel RN, Lorraine Chatman RN, Manuel Manalastas RN, August Alabi RN, and Cherri Krzyzowski RN. (SOF ¶ 63) Plaintiff disclosed three witnesses pursuant to Fed. R. Civ. P. 26(a)(2). (SOF ¶ 2) None of the three witnesses are licensed as a nurse. Two witnesses – Dr. Glindmeyer and Dr. Marcolini – are licensed physicians and the third is a video technician. (SOF ¶ 2)

As Plaintiff has no expert testimony from a licensed nurse that any of the defendant nurses deviated from the standard of care, Plaintiff cannot prevail in a medical malpractice action against these nurses and her medical malpractice claims against Helen Kanel RN, Lorraine Chatman RN, Manuael Manalastas RN, August Alabi RN, and Cherri Krzyzowski RN must fail as a matter of law. *Davis v. Kayira*, 938 F.3d 910, 916 (7th Cir. 2016)

II. The Defendant Nurses are Entitled to Summary Judgment on Plaintiff's 42 U.S.C. § 1983 Claims as There is No Competent Expert Testimony to show that the Nurses Acted Objectively Unreasonablly.

In order to prevail on a violation of a 14th Amendment claim, a plaintiff must show that (1) the defendant acted purposefully, knowingly, or recklessly; and (2) the defendant's conduct was objectively unreasonable. *Miranda v. County of Lake*, 900 F.3d 335, 353,54 (7th Cir. 2018). In cases alleging a breach of medical care in violation of the 14th Amendment, plaintiffs must provide expert testimony to establish that a medical professional's care was reasonable because a layperson does not possess the knowledge to determine whether a highly trained professional's care was reasonable. *See Snyder v. George Wash. Univ.*, 890 A.2d 237, 244 (D.C. Ct. App. 2006); *District of Columbia v. Barriteau*, 399 A.2d 563, 569 (D.C.1979)).

Although plaintiffs bringing constitutional claims for inadequate medical care were not required to support their claims through expert testimony for a long time, that was when Plaintiff's had to prove a higher standard – that the state actor acted with deliberate indifference.

*King v. Krame*r, 680 F.3d 1013, 1018 (7th Cir. 2012); *Knight v. Shah*, 2008 U.S. Dist. LEXIS 7915, at *9 (S.D. Ill. 2008) Previously, a plaintiff could not show a violation of constitutional rights under that the 14th Amendment with mere negligence or even gross negligence, but the plaintiff was required to meet a standard akin to criminal recklessness. *King v. Kramer*, 680 F.3d at 1018. The 7th Circuit has now adopted a standard that a violation of the 14th Amendment can occur when a state actor acts objectively unreasonably. *Miranda v. County of Lake*, 900 F.3d 335, 353,54 (7th Cir. 2018) As a layperson cannot tell if a professional is acting reasonably or not without expert testimony, the new elements for violation of the 14th Amendment require expert testimony if the action in question is performed by a professional standard outside the ken of a layperson. *Snyder v. George Wash. Univ.*, 890 A.2d at 244.

The 7th Circuit does not have a substantial body of law regarding how a plaintiff claiming a nurse, physician, or profession must prove that the professional acted unreasonably under federal common law. Until now, the vast majority of occasions for which courts in the 7th circuit adjudicated the reasonableness of a professional were governed by state law. In determining what is necessary to prove reasonable conduct for a professional, this Court must examine how a plaintiff proves a professional is unreasonable under federal common law. As the D.C. Circuit has been addressing the type of testimony necessary to prove reasonableness or unreasonableness of a professional under federal common law, this Court should rely on the body of federal common law within the D.C. Circuit.

Federal common law provides that expert testimony is required to show that a professional did not act reasonably in professional negligence cases. *Wise v. United States*, 145 F. Supp. 3d 53, 62 (D.D.C. 2015); *Crawford v. Signet Bank*, 179 F.3d 926, 929 (D.C. 1999);

Harbor Insurance Co. v. Schnabel Foundation Co., 992 F. Supp. 419, 423 (D.C. 1997) "The applicable standard of care for all health care professionals and facilities is the 'course of action that a reasonably prudent doctor with the defendant's specialty would have taken under the same or similar circumstances.'" *Rhodes v. United States*, 967 F. Supp. 2d 246, 289 (D.D.C. 2013) (*quoting Strickland v. Pinder*, 899 A.2d 770, 773 (D.C. 2006)).

Thus, in claims brought by detainees under the 14th Amendment against health care professionals acting under the color of state law, plaintiffs must have expert testimony to establish that the professional state actor acted unreasonably. To establish reasonability of a professional, "the use of expert testimony is required since the subject is 'not likely to be within the common knowledge of the average layman.'" Id. (*citing District of Columbia v. Barriteau*, 399 A.2d at 569); see also *Pannu v. Jacobson*, 909 A.2d 178, 192 (D.C. 2006); *Allen v Hill*, 626 A.2d 875, 877 (D.C.1993).

In explaining the evidentiary need for the requirement that a physician's reasonableness in a particular situation be established through expert testimony, courts have consistently found that "[b]ecause these issues are distinctly related to some science, profession, or occupation, expert testimony is usually required to establish each of the elements, except where the proof is so obvious as to lie within the ken of the average lay juror." *Cardenas v. Muangman*, 998 A.2d 303, 306 (D.C. 2010); *Washington v. Washington Hosp. Ctr.*, 579 A.2d 177, 181 (D.C.1990); *Travers v. Dist. of Columbia*, 672 A.2d 566, 568 (D.C. 1996).

In this case, Plaintiff's 14th Amendment claims against Nurse Kanel, Nurse Chatman, Nurse Manalatas, Nurse Alabi, and Nurse Krzyzowski fail because she has no competent testimony that any of these nurses acted in deviation from what a reasonably careful nurse would act in the same or similar circumstances. *Rhodes v. United States*, 967 F. Supp. 2d at 289.

Plaintiff has disclosed two professionals to opine that these nurses acted unreasonably. (SOF ¶ 2) As these professionals are unaware of the knowledge, skill, experience, training, or education required to become a nurse and as these professionals do not support their opinions with peer review literature or other reliable sources, they are incompetent to lay the foundation as to what constitutes reasonable care for Nurse Kanel, Nurse Chatman, Nurse Manalatas, Nurse Alabi, or Nurse Krzyzowski.

A. Drs. Glidnmeyer and Marcolini lack the training, education, and experience to lay the foundation as to what a reasonable nurse would do in performing range of motion exercises in the same or similar circumstances.

Under *Daubert*, Drs. Glindmeyer and Marcolini lack the training, education, and expertise to opine that the nursing standard of care requires that a nurse to perform range of motion exercises for over 10 minutes. In order to provide expert testimony, the expert must be qualified by knowledge, skill, experience, training, or education. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589 (1993); *Mitchell v. Iowa Interstate RR Ltd.*, No. 07-1351, 2010 U.S. Dist. LEXIS 52086, at *2 (C.D. Ill. 2010) The question that is relevant is whether the expert has "qualifications that provide a foundation for [him] to answer a specific question." *Gayton v. McCoy*, 593 F.3d 610, 617 (7th Cir. 2010)

In this case, Drs. Marcolini and Glindmeyer are opining that the nurses at Cermak Hospital failed to properly perform range of motion exercises. (SOF ¶ 65, 67, 72) The testimony, medical records, and opinions expressed in this case reveal that the performance of range of motion exercises is a nursing task. When asked who performs range of motion exercises, Dr. Glindmeyer acknowledged that nurses perform this function. (SOF ¶ 64) A review of the medical records from Cermak Services and Hinsdale Hospital reveal that range of motion exercises were solely done by nurses. (SOF ¶ 43, 44, 47, 49, 52, 53, 55) Nurse Kanel

performed or assessed the need for exercises charted on or around 8:34 p.m. and 10:14 p.m. on March 18, 2016. (SOF ¶ 43, 44) Nurse Chatman performed the exercises done around 12:39 a.m., 2:06 a.m. and 5:16 a.m. on March 19, 2016. (SOF ¶ 47, 49, 52) Nurse Manalastas performed the exercises done around 7:55 a.m. and 9:55 a.m. on March 19, 2016. (SOF ¶ 53, 54) Although no nurse at Hinsdale Hospital ever charted that range of motion exercises were ever performed at Hinsdale Hospital, Nurse Barkuaskaite assessed the need for the performance of range of motion between 3 a.m. and 7 a.m. on March 13, 2016 illustrating that this would be a nursing function. (SOF ¶ 10) Most importantly, a review of the testimony of a physician who is unbiased in this case – Dr. Yalamanchi of Hinsdale Hospital – and who ordered Mr. Cruz placed into restraints conclusively shows that the performance of range of motion exercises are outside the purview of physicians. Dr. Yalamanchi testified that he has no expectation that range of motion exercises be performed on a patient. (SOF ¶ 7)

As the performance of range of motion exercises is solely a nursing function, this Court should focus on the education, training, and experience Plaintiff's experts have had in nursing to determine if they are to render an opinion as to what a reasonable nurse would do in the same or slimier circumstance in the performance of range of motion exercises. As shown below, none of Plaintiff's experts have any education, experience, or training in what a reasonable nurse would do in the same or similar circumstances in performing range of motion exercises. Accordingly, Plaintiff cannot prevail on the first two elements of her medical malpractice claims against these nurses and they are entitled to summary judgment.

Education

Neither Dr, Glindmeyer or Dr. Marcolini have received education as a nurse. (SOF ¶ 14, 15, 20) Dr. Glidnmeyer attended Louisiana State University, University of New Orleans,

Mississippi Gulf Coast College, and Loyola University and never studied or received a degree in nursing. (SOF ¶ 14) She takes continuing medical education, but does not take continuing education for nursing and is not aware what the requirements are for continuing nursing education. (SOF ¶ 18) She is not even aware what courses are required to become a nurse. (SOF ¶ 18)

Similarly, Dr. Marcolini has received no nursing education. (SOF ¶ 20) She attended Wheaton College and the University of Vermont and did not obtain a nursing degree and did not take any courses in nursing. (SOF ¶ 20) She was unable to describe the type of courses that a nurse must take to keep up with continuing nursing education beyond simply knowing they must participate in continuing nursing education and that there was a pharmacological component to the continuing education. (SOF ¶ 23)

Additionally, both of Plaintiff's experts described the journals to which they subscribe to keep up with developments in their professional lives. Both physicians listed a number of journals that were germane to their particular medical field. Dr. Glindmeyer testified that she subscribes to the American Psychiatric Association, the Journal of Child and Adolescent Psychiatry, and a journal by the American Psychiatric Association. (SOF ¶ 16) She did not list any nursing journals in describing how she stays current on developments in her practice. (SOF ¶ 16) Dr. Marcolini subscribes only to Emergency Medicine Journals and not any nursing journals. (SOF ¶ 25)

Experience

Both Drs. Glindmeyer and Marcolini have zero experience practicing as nurses. Both physicians testified that they have no experience practicing as a nurse. (SOF ¶ 17, 22) Both physicians testified that - if they wanted to practice as nurses at the hospitals at which they

practice or have practiced - they could not. (SOF ¶ 17, 22) Both physicians have extensive and impressive experience practicing as physicians, but none as nurses. (SOF ¶ 14, 15, 20)

Training

Drs. Glindmeyer and Marcolini went through all the training they both received and have listed the training on their respective CVs. Dr. Glindmeyer was trained through a psychiatric residency at the Louisana State University, a child psychiatry fellowship at the Louisiana State University, and a forensic psychiatry fellowship at the Louisiana State University. (SOF ¶ 14) Dr. Glindmeyer admits that the training she received is different than what a nurse would receive. (SOF ¶ 15) Dr. Glindmeyer admits that the training exceeds the training that a nurse would receive. (SOF ¶ 15)

Dr. Marcolini admits that she has received zero training as a nurse. (SOF ¶ 20) She received no nursing training in medical school. (SOF ¶ 20) She received no training as a nurse during her residency. S(SOF ¶ 20) he received no training as a nurse in her fellowship. (SOF ¶ 20) She admitted that she has obtained more and different training than a nurse. (SOF ¶ 20, 21)

Perhaps the strongest indication as to what professional standards Drs. Marcolini and Glindmeyer are qualified to testify upon comes from their own reports which are backed by the testimony in their depositions. In Dr. Glindmeyer's report, she opines that "please note that the above opinions are provided to a reasonable degree of psychiatric certainty." (SOF ¶19) So noted. When Dr. Glindmeyer was asked an open-ended question about what the standard of care means to her, she responded "[t]he standard of care is that which any appropriate reasonable physician would perform for care for an individual. What is prevalent in the community, dictated by our boards, our education, our training, research." (SOF ¶ 19) Likewise, Dr. Marcolini similarly defined the standard of care as a physician standard and not a nursing

standard. In her report, Dr. Marcolini indicated that "[a]ll my opinions are made with a reasonable degree of medical certainty." (SOF ¶ 26) During her deposition, Dr. Marcolini was asked a general question as to how she would define the standard of care and she testified that the standard of care is the standard by which a physician provides evaluation, assessment and care for a patient that is accepted by the general medical community and medical experts. (SOF ¶ 26)

The defense in this case acknowledges that Drs. Glindmeyer and Marcolini are perfectly qualified to render the medical opinions they express in their report and depositions. Dr. Glidnmeyer is certainly qualified to opine that Dr. Paschos deviated from the standard of care in (a) failing to appreciate the amount of prior anti-psychotic medication Mr. Cruz received, (b) in failing to properly assess his obesity in determining anticoagulant management of this patient during restraints, and (c) the failure of Dr. Paschos to provide documentation as to why he continued restraints. Dr. Glindmeyer's CV and deposition support that she has the necessary knowledge, skill, experience, training, or education to render these opinions. (SOF ¶ 14) The defense will attack these opinions at trial pointing out that Dr. Glindmeyer has not ordered a patient be placed in restraints from 2016-2011 and can't say whether she has ordered a patient be placed in restraints from 2011 – 2016. (SOF ¶ 39) Moreover, the defense concedes that Dr. Marcolini is qualified to render opinions concerning what would reasonably required of Dr. Paschos. Although she is not board certified in psychiatry as Dr. Paschos, she does order patient to be placed in restraints ten to twenty times a year. (SOF ¶ 39) As such, she is qualified to testify concerning the standard of care of a physician in ordering a patient be restrained. Neither expert, however, is qualified to testify as to what a reasonably careful nurse must do in the same or similar circumstances. Perhaps the best question asked in any deposition concerning the

nursing standard of care was not answered. (SOF ¶ 75) When defense counsel asked Dr. Glindmeyer whether she discussed the need to obtain a nursing expert with Plaintiff's counsel, Plaintiff's counsel instructed her not to answer. (SOF ¶ 75)

B. Drs. Glindmeyer and Marolini offer no peer-review literature, citations from medical texts, or other empirically sourced material for their opinions that failing to perform range of motions exercises is a deviation from the standard of care.

An expert's testimony must be based on reliable methods. *Gayton v. McCoy*, 593 F.3d at 616. Daubert provided a non-exhaustive list of "guideposts" for the court to consult in assessing the reliability of expert testimony: (1) whether the scientific theory can be or has been tested; (2) whether the theory has been subjected to peer review and publication; (3) the theory's known or potential error rate when applied; and (4) whether the theory has been generally accepted in the relevant scientific, technical, or professional community. *Id*.

In this case, Drs. Glidnmeyer and Marcolini offer no testimony or additional basis regarding (1) whether the efficacy of range of motion exercises has been tested to avoid the development of thrombi, (2) that their range of motion opinions are subject to peer review of publication, (3) concerning the error or acceptance rate of range of motion exercises, or whether the theory has been generally accepted in their professional community. The only basis they have for their opinions concerning range of motion comes from Cook County's policy. (SOF ¶ 65) Dr. Glindmeyer did not think reviewing Hinsdale's similar policy would necessarily be relevant to her opinion. (SOF ¶ 65) Dr. Marcolini admitted that she was unaware as to what the policies and procedures from where she practiced at the time of the occurrence said concerning the restraints. (SOF ¶ 65) As one hospital's policy is not dispositive as to what would be a national standard of care, Plaintiff's experts failure to base their opinions concerning the nursing standard of care concerning range of motion exercises on anything but that one policy illustrates

that Plaintiff's experts are not basing their range of motion nursing opinions on reliable literature or methodology.

III. **Nurse Alabi is entitled to summary judgment on all claims because there is no evidence he acted unreasonably.**

As shown above, expert testimony is required to prove a Plaintiff's medical malpractice claim under Illinois law and is required to show a nurse acted unreasonably in violation or a detainee's 14th Amendment rights. *Davis v. Kayira*, 938 F.3d at 916; *Miranda v. County of Lake*, 900 F.3d at 353,54; *Rhodes v. United States*, 967 F. Supp. 2d at 289.

In this case, neither Dr. Glindmeyer or Dr Marcolini offered criticisms of Nurse Alabi's care. Dr. Glindmeyer was specifically asked about whether she had any opinions about Nurse Alabi's care. Dr. Glindmeyer indicated that she did not by testifying as follows: "I believe that Mr. Alabi was the nurse who documented that Mr. Cruz was having labored breathing earlier in the morning. But I don't believe I had any opinion regarding that." (SOF ¶ 70) Additionally, Dr. Marcolini was asked which individuals deviated from the standard of care and she did not mention Nurse Alabi. (SOF ¶ 72) Accordingly, Nurse Augustus Alabi is entitled to summary judgment as a matter of law.

CONCLUSION

In order to state a claim for professional negligence under Illinois law, a plaintiff must present testimony from an expert of the same licensure. *Davis v. Kayira*, 938 F.3d 910, 916 (7th Cir. 2016) As Plaintiff has failed to satisfy this foundational requirement to Nurses Kanel, Chatman, Manalastas, Alabi, and Krzyzowski, these nurses are entitled to summary judgment on the medical malpractice claims against them. *Davis v. Kayira*, 938 F.3d 910, 916 (7th Cir. 2016) As a Fourteenth claim for deprivation of constitutional rights requires proof that a nurse acted unreasonably, Plaintiff's failure to obtain competent testimony as to what is reasonable care for a

nurse is fatal to the 14th Amendment claims against these nurses. *Miranda v. County of Lake*, 900 F.3d at 353,54; *Rhodes v. United States*, 967 F. Supp. 2d at 289. Finally, as no expert has offered testimony that Augustus Alabi acted unreasonably, the medical malpractice and 14th Amendment claims against him fail.

WHEREFORE Defendants HELEN KANEL, MANUEL MANALASTAS, AUGUSTUS ALABI, CHERRI KRZYZOWSKI, and LORRAINE CHATMAN, for all of the foregoing reasons, respectfully request that this Honorable Court grant their motion for summary judgment along with fees and costs, and further, that this Court dismiss Plaintiff's Complaint for failing to state a claim on which relief may be granted.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, William R. Ragen, Assistant State's Attorney, hereby certify that the above and foregoing was served upon the Plaintiff on August 31, 2021, electronically via the ECF-CM system.

/s/ *William R. Ragen*
William R. Ragen