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.	)	

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff's son Angel Cruz died of a pulmonary embolism after five days of psychiatric care at the Cook County Jail. A blood clot traveled from Angel's legs to his lungs and killed him.

Angel's treatment at the jail included about 17.5 hours of being immobilized in restraints that held down Angel's arms, legs, and chest as he lay on his back in bed. Plaintiff contends this treatment caused Angel's death and brings federal claims against defendant Paschos, the psychiatrist who ordered the restraints, and five nurses who were responsible for the care afforded to Angel.[1] Plaintiff also brings state law medical malpractice claims against defendant Cook County under *respondeat superior*.

[1] Plaintiff has concluded that his claims against two of the nurses—defendants Alabi and Krzyzowski—turn on disputed question of fact; plaintiff is therefore not moving for summary judgment against those defendants.

I. Summary Judgment Standard

The Court recently summarized the legal standards for summary judgment in *Odom v. Lakeside Community Committee*, No. 17-CV-877, 2021 WL 3773289 (N.D. Ill. Aug. 25, 2021):

> The Court construes all facts and reasonable inferences in the light most favorable to the nonmoving party. *See Chaib v. Geo Grp., Inc.*, 819 F.3d 337, 341 (7th Cir. 2016). The Court does not weigh the evidence, judge credibility, or determine the truth of the matter, but rather determines only whether a genuine issue of triable fact exists. *See Nat'l Athletic Sportswear, Inc. v. Westfield Ins. Co.*, 528 F.3d 508, 512 (7th Cir. 2008). Summary judgment is appropriate if, on the evidence provided, no reasonable jury could return a verdict in favor of the non-movant. See *Celotex Corp.*, 477 U.S. at 322; *Gordon v. FedEx Freight, Inc.*, 674 F.3d 769, 772– 73 (7th Cir. 2012).

Id. at *4. Plaintiff applies these standards below.

II. The Video Evidence

Plaintiff's claims revolve around the physical interactions between Angel and defendants Kanel, Chatman, and Manalastas: whether these defendants properly assessed Angel while he was held in restraints for about 17.5 hours and whether these defendants were in Angel's cell for enough time to provide range of motion" exercises required to avoid the pulmonary embolism that caused Angel's death.

The historical facts about these interactions are captured on surveillance video maintained by the Sheriff of Cook County in the regular course of business. Plaintiff is mindful of the rule that "[t]he Court can trust what

it sees with its own eyes," *Jones v. Williams*, 2021 WL 3408508, at *17 (N.D.Ill. Aug. 4, 2021), and includes in the summary judgment record 4 unedited video files (Video Exhibits 1-4) that show everything visible from a surveillance camera for the 24 hour period from noon on March 18, 2016 through noon on March 19, 2016.

Plaintiff also includes as Video Exhibit 5 a compilation that is intended to make the video more accessible in the same way that a transcript is used as an aid to listen to an audio recording. The creation of video compilation is explained in Exhibit 21, the Rule 26 report from plaintiff's presentation expert.

Plaintiff relies on the unedited video evidence in his local Rule 56.1 statement and identifies each cited portion of the video by its video exhibit number and the start and stop times.

III. Experts

Plaintiff supports her claims with expert opinions from physicians Dr. Daphne Glindmeyer and Dr. Evadne Marcolini. (Rule 56.1 Statement, ¶¶ 65.)

Defendants counter with opinions from physicians Dr. Lisa Boggio, Dr. Eric Gluck, Dr. Melissa Piasecki and Nancy Zarse, Ph.D., a clinical psychologist. (Rule 56.1 Statement, ¶ 67.)

Plaintiff relies on Dr. Marcolini for her opinions that Dr. Paschos should have administered an anti-coagulant when placing Angel in restraints. (Exhibit 17 at 6.) Defendants' experts, Drs. Boggio, Gluck, and Piasecki, disagree. (Dr. Boggio, Exhibit 29 at 2-3; Dr. Gluck, Exhibit 30 at 3; Dr. Piasecki, Exhibit 31 at 3.) Plaintiff recognizes that, as in *Wilda v. JLG Industries, Inc.*, 2021 WL 392705 (N.D.Ill., 2/3/2021), this dispute is for the jury.

The experts also disagree about whether the pulmonary embolism that resulted in Angel's death was caused by his treatment at the Jail. Defendants' experts contend that events which preceded Angel's entry to the Jail caused the embolism. Plaintiff's expert, Dr. Marcolini, offers the opinion with a reasonable degree of medical certainty that the conduct of defendants Paschos, Kanel, Chatman, and Manalastas caused Angel's death. (Rule 56.1 Statement, 66.) The defense experts disagree. (Dr. Boggio, Exhibit 29 at 3; Dr. Gluck, Exhibit 30 at 2.) Plaintiff shows below that the defense opinions are pure speculation that is not admissible under *Daubert*.

Plaintiff also relies on Dr. Marcolini and Dr. Glindmeyer for their opinions that the following aspects of Angel's medical care were objectively unreasonable and failed to meet the standard of case:

1. Defendants Kanel, Chatman, and Manalastas failed to provide Angel with range of motions exercises while he was restrained. (Rule 56.1 Statement, ¶ 58.)

2. Defendants Kanel, Chatman, Manalastas, and Paschos failed to monitor Angel while he was restrained, thereby causing him to be immobilized for a longer time than required. (Rule 56.1 Statement, ¶ 59.)

Defendants' experts fail to address either of these issues. (Rule 56.1 Statement, ¶ 59.) This failure to present evidence is the basis of plaintiff's motion for summary judgment.

IV. The Undisputed Facts Establish Each Element of Plaintiff's Constitutional Claim

Plaintiff's decedent was a pretrial detainee and his constitutional medical care claims are governed by the Fourteenth Amendment. *Miranda v. County of Lake*, 900 F.3d 335, 350 (7th Cir. 2018). This Court has identified three steps to assess this type of claim: First, whether the claim is about an "objectively serious medical condition." *McClendon v. Lochard*, 2021 WL 3172982, at *7 (N.D.Ill., July 27, 2021). Second, "whether the medical defendants acted purposefully, knowingly, or perhaps even recklessly when they considered the consequences of their handling of [plaintiff's] case.'" *Id.*, quoting *Miranda*, 900 F.3d at 353. Third, whether the totality of the circumstances show that the response to the serious medical need "was reasonable." *Id.*, quoting *McCann v. Ogle County*, 909 F.3d 881, 886 (7th Cir. 2018). The undisputed facts establish each element of this claim.

A. Objectively Serious Medical Condition

Angel's diagnosed mental illness, including schizophrenia, (Rule 56.1 Statement ¶ 7), and the self-destructive behavior he exhibited at the Jail—covering his room in feces, urine, and trash and acting violently, including jumping off his bed and attempting to hit his head against the wall (Rule 56.1 Statement ¶ 10)—are serious medical conditions. *Miranda v. County of Lake*, 900 F.3d 335, 349 (7th Cir. 2018).

B. Each Defendant Acted Purposefully and Knowingly

The Jail's written policy about restraints, (Local Rule 56.1 Statement ¶¶ 12, 19, 21) and its training module (Local Rule 56.1 Statement, ¶¶ 13-16) leave no doubt that each defendant was aware of the need to provide range of motion exercises for a patient like plaintiff's decedent, who was in restraints. That each defendant acted purposefully is apparent from their willingness to create false records claiming that they had provided range of motion exercises. (Local Rule 56.1 Statement ¶¶ 36, 44, 54.)

Nor may defendants plausibly maintain that each was unaware of the need to make periodic and complete assessments of a restrained patient. Each of the nurse defendants entered orders extending the restraint order without having made a proper assessment or having conferred with Dr. Paschos, the on-duty psychiatrist (Local Rule 56.1 Statement ¶¶ 31,40, 47.) Defendant Dr. Paschos, who made the initial order for restraints, also knew

that the nurse defendants were not conferring with him every four hours about continuing the restraint order. (Local Rule 56.1 Statement ¶ 57.)

In the deliberate indifference context that applies to Eighth Amendment claims, consciousness of a risk of harm can be shown where a healthcare provider "fails to follow an existing protocol." *Petties v. Carter*, 836 F.3d 722, 729 (7th Cir. 2016), as amended (Aug. 25, 2016). The same evidentiary rule should apply to the Fourteenth Amendment claim in this case: because defendants violated a written policy and created false records, they should not be heard to argue that their conduct was something other than purposeful and knowing.

C. The Response of Each Defendant to Angel's Serious Medical Condition Was Not Reasonable

Plaintiff's experts provide the unrebutted opinions that the failure to provide regular limb release and proper assessments failed to meet the standard of care "and was medically unreasonable." (Rule 56.1 Statement, ¶60.) Plaintiff's experts also state, again without contradiction by the defense experts, that "Defendants Kanel, Chatman, Manalastas, and Paschos failed to monitor Angel while he was restrained, thereby causing him to be immobilized for longer than necessary." (Rule 56.1 Statement, ¶ 59.)

Defendants' physician experts are unable to defend keeping Angel in restraints for 17.5 hours. Instead, the defense physician experts assert that

something else caused Angel's death. Dr. Boggio asserts, without any reasoning, that emboli "typically form 10-14 days from the culprit event." (Local Rule 56.1 Statement, ¶ 66.) Similarly, Dr. Gluck states his unadorned conclusory opinion that the emboli "originated from the trauma of the events in the morning of March 23, 2016." (Local Rule 56.1 Statement, ¶ 69.) These unsupported opinions fail to meet the reliability standard of *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and Rule 702 of the Federal Rules of Evidence.

To be reliable, an opinion must be "grounded in reliable scientific methodology." *Dhillon v. Crown Controls Corp.*, 269 F.3d 865, 869 (7th Cir. 2001). Neither of the defense experts explains the methodology for the opinion that something other the 17.5 hours of restraints caused the pulmonary embolism.

Dr. Boggio does not cite any studies or text for his claim that emboli "typically form 10-14 days from the culprit event." Plaintiff's expert, Dr. Marcolini, states that she is "not aware of any facts or data that support this assertion." (Local Rule 56.1 Statement, ¶ 68.)

Dr. Gluck offers even less explanation for his opinion—he states only the pure *ipse dixit* that "I hold the opinion that it was more likely that the clots that Mr. Cruz incurred first as deep vein thrombi that later became

pulmonary emboli originated from the trauma of the events on the morning of March 12, 2016." (Local Rule 56.1 Statement, ¶ 69.)

The "ipse dixit of the expert," *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146, (1997) does not pass muster under Rule 702. The is true for the opinion that something is "more likely." The unreasonable conduct of defendants resulted in 17.5 hours in restraints and caused the death of plaintiff's decedent.

V. Medical Malpractice

Plaintiff also brings a medical malpractice claim, under the Court's supplemental jurisdiction, against defendant Cook County, which is liable for the medical negligence of its employees. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163–64, 862 N.E.2d 985, 991 (2007).

To succeed on her medical malpractice claim, plaintiff must show "'(1) the proper standard of care for the defendant physicians; (2) an unskilled or negligent failure to comply with the appropriate standard; and (3) a resulting injury proximately caused by the physicians' failure of skill or care.'" *Wipf v. Kowalski*, 519 F.3d 380, 384 (7th Cir. 2008) (quoting *Jinkins v. Evangelical Hosps. Corp.*, 336 Ill. App. 3d 377, 783 N.E. 2d 123, 126-27 (2002).)

Plaintiff's experts explain the standard of care, how defendants failed to meet that standard of care, and how this failure resulted in the death of plaintiff's decedent. (Local Rule 56.1 Statement, ¶¶ 58-64.) Defendants do not offer any expert testimony to support their conduct.

The nurse defendants may seek to rely on the Illinois "school of medicine" rule of *Sullivan v. Edward Hospital*, 806 N.E.2d 645, 655 (Ill. 2004). But as another judge in this district recently noted, the "school of medicine rule" does not apply when there is no claim that a different standard of care applies to nurses and physicians. *Vargas v. United States*, 2020 WL 6894666 at *3, (N.D.Ill. 11/24/2020). Here, both physicians and nurses were required to follow the written protocol for restraint; failure to follow the written policy was a departure from the standard of care for both Dr. Paschos and Nurses Defendants Kanel, Chatman, and Manalastas.

VI. Conclusion

For the reasons above stated, the Court should grant summary judgment on liability to plaintiff on the claims discussed above.

Respectfully submitted,

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