

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DAWN CORBIER, as Administrator of the  
ESTATE OF JOSHUA B. JURCICH,

Plaintiff,

vs.

ST. CLAIR COUNTY SHERIFF RICHARD  
WATSON, *et al.*,

Defendants.

Case No. 16-cv-0257-SMY-SCW

**MEMORANDUM AND ORDER**

This matter comes before the Court on Defendants Wexford Health Sources, Inc. (“Wexford”), Doctor Muddasani Reddy, Nurse Sandra Thurman, Nurse Jana Reuter, and Nurse Brandy Nichols (collectively, the “individual Defendants”) motions to dismiss Counts I, II, and VI of Plaintiff’s Complaint pursuant to *F.R.C.P.* 12(b)(6) (Docs. 122, 124, 126, 128, 130, 132). The individual defendants move to dismiss Count I on the grounds that Plaintiff failed to plead facts necessary to state a claim. The individual defendants also move to dismiss Count VI on the grounds that Plaintiff failed to attach the requisite affidavit for medical malpractice claims in Illinois. Wexford moves to dismiss Count II on the grounds that Plaintiff failed to plead facts that allege that Wexford employees violated Plaintiff’s decedent’s constitutional rights. Plaintiff opposes the motions (Doc. 153). For the following reasons, the motions are **GRANTED**.

***Background***

Plaintiff’s Complaint alleges the following facts. Plaintiff’s decedent, Joshua Jurcich, was arrested for possession of a controlled substance and taken to the St. Clair County Jail on March 6, 2014. Jurcich had been detained at the St. Clair County jail many times over a 16 year period. On at least seven occasions, Jurcich had informed the jail staff that he suffered from

mental health problems. On at least one of those occasions, an unspecified booking officer noted that Jurcich was suicidal.

During the most recent detention, Defendant Officer Steven J. Frierdich gave Jurcich a mental health screening and referred him for further mental health evaluation. Jurcich informed Defendant Nurse Thurman that he was “dope sick” and had been diagnosed with scabies. Nurse Thurman placed Jurcich in medical segregation.

On March 11, 2014, Defendant Officers James D. Wagner, Mark J. Harris, Dante S. Beattie, Thomas Meseey and Eric L. Walter beat Jurcich for refusing to return to his medical segregation cell. Jurcich was then examined by Defendant Nurse Reuter who cleared him to be placed in general population. Jurcich was placed in a maximum security cell where he verbalized suicidal thoughts to fellow detainees. On the evening of March 11, 2014, jail staff found Jurcich unconscious in his cell from a suicide attempt. He succumbed to his injuries and died two days later.

Among others, Plaintiff asserts the following claims as the Administrator of Mr. Jurcich’s estate: Count I, brought under 42 U.S.C. § 1983, alleges that the individual defendants violated Jurcich’s constitutional rights by knowingly disregarding the risk that he would commit suicide; Count II, brought under 42 U.S.C. § 1983, alleges that Wexford is liable for the actions alleged in Count I because Wexford’s policies allow its employees to routinely deny detainees with mental health issues access to proper treatment; and Count VI asserts a wrongful death claim under Illinois state law based on the aforementioned actions of Wexford employees.

### ***Discussion***

When reviewing a Rule 12(b)(6) motion to dismiss, the Court must accept all allegations in the Complaint as true. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citing *Bell Atl. Corp. v.*

*Twombly*, 550 U.S. 544, 555 (2007)). In order to state a claim for which relief can be granted, a plaintiff need only provide a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). However, the allegations must be “more than labels and conclusions.” *Pugh v. Tribune Co.*, 521 F.3d 686, 699 (7th Cir. 2008). The requirements of Rule 8 are satisfied if the Complaint (1) describes the claim in sufficient detail to give the defendant fair notice of what the claim is and the grounds upon which it rests and (2) plausibly suggests that the plaintiff has a right to relief above a speculative level. *Twombly*, 550 U.S. at 555; see *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009); *EEOC v. Concentra Health Servs.*, 496 F.3d 773, 776 (7th Cir. 2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 556).

### ***Count I***

To properly plead a failure to protect claim under 42 U.S.C. § 1983, Plaintiff must allege facts showing that (1) Mr. Jurcich was “incarcerated under conditions posing substantial risk of serious harm” and (2) “the defendants acted with deliberate indifference to his health or safety.” *Santiago v. Walls*, 599 F.3d 749, 756 (7th Cir. 2010) (internal quotations omitted). Deliberate indifference means “actual knowledge . . . of the existence of the substantial risk and that the [defendant] considered the possibility that the risk could cause serious harm.” *Washington v. LaPorte Cty. Sheriff's Dep't*, 306 F.3d 515, 518 (7th Cir. 2002).

### ***Brandy Nichols***

Plaintiff alleges that Brandy Nichols was “responsible for the medical care, treatment, and welfare of Mr. Jurcich while he was detailed at the Jail, and failed in that responsibility.” (Doc. 118, p. 5). Plaintiff further alleges that Brandy Nichols was “working at the Jail that night

and responded to Officer Knyff's request for assistance after he found Mr. Jurcich hanging in the cell[.]" and that she "had knowledge of the fact that Mr. Jurcich was a suicide risk and failed to take any measures to monitor and protect him." (Doc. 118, p. 11).

Defendant Nichols argues that Plaintiff alleges only the vague legal conclusion that she knew Jurcich was a suicide risk. She further argues that Plaintiff fails to allege that Nichols had any interaction with Jurcich, that she knew he had been in an altercation or that she knew that he had been placed in a maximum security cell. Plaintiff maintains that it is reasonable to infer that Nichols had access to Jurcich's mental health records and "therefore must have known about his mental health issues." (Doc. 153, p. 5). Plaintiff also maintains that Nichols did not provide Jurcich with the necessary mental health care to abate his suicide risk. *Id.*

Notwithstanding the arguments Plaintiff advances in her response, she has not pled sufficient facts to support her claim against Nichols. The only facts contained in the Complaint specific to this defendant are that she was working in the jail the night Jurcich died and that she responded to Officer Knyff's request for assistance after he found Jurcich injured in his cell. Those facts alone do not state a viable deliberate indifference claim – they merely establish that Nichols was on duty the night of the incident and responded when Jurcich was found. The Complaint contains no facts from which an inference can be drawn that Nichols had access to Jurcich's medical records or that she knew he was a suicide risk. Accordingly, **Count I is DISMISSED without prejudice as to Defendant Brandy Nichols.**

***Sandra Thurman***

The allegations surrounding Defendant Thurman's involvement are identical to those regarding Brandy Nichols with the exception of one interaction. The day after Jurcich arrived at the jail, he informed Thurman, a nurse at the jail, that he was "dope sick" and had been

diagnosed with scabies while at St. Louis University Hospital. He was then placed in medical segregation where he was alone in his cell for almost 24 hours a day. Jurcich remained in segregation for approximately four days before the alleged beating.

The question is whether the facts relating to Thurman's one interaction with Jurcich is sufficient to suggest that Thurman had actual knowledge of the risk that Mr. Jurcich would commit suicide. They are not. As Thurman notes, "Plaintiff alleges no facts to suggest that through this encounter, Nurse Thurman saw, heard of, or found any indication that Jurcich was having suicidal thoughts." (Doc. 127, p. 3). Without such facts, Plaintiff's claim against Thurman cannot survive dismissal for failure to state a claim. Accordingly, **Count I is DISMISSED without prejudice as to Defendant Sandra Thurman.**

***Jana Reuter***

According to the Complaint, after the alleged beating, Nurse Reuter "examined Mr. Jurcich and cleared him for placement back in general population. Upon information and belief, despite having knowledge of Mr. Jurcich's mental health status, Defendant Nurse Reuter failed to screen Mr. Jurcich for suicidal ideation." (Doc. 118, p. 7). As was the case with respect to Defendants Nichols, a conclusion that Nurse Reuter had knowledge of Jurcich's mental status requires an unsupported inference that she had access to and actually looked at his mental health records. Although Plaintiff alleges that Reuter examined Jurcich, there are no facts pled that suggest or infer Reuter gained actual knowledge of Jurcich's risk of suicide during the examination. Accordingly, **Count I is DISMISSED without prejudice as to Defendant Jana Reuter.**

***Dr. Muddasani Reddy***

The Complaint asserts that Dr. Reddy is a psychiatrist and the Mental Health Director at the jail and was employed by Wexford during the relevant time period. The Complaint further alleges that Dr. Reddy was responsible for the Jurcich's mental health treatment and failed in that responsibility. (Doc. 118, p. 5). There are no other factual allegations involving Dr. Reddy. However, Plaintiff argues that it is reasonable to infer that as the Mental Health Director, Dr. Reddy knew about Jurcich's mental health issues. (Doc. 153, p. 5). Again, there are insufficient facts pled to permit such an inference. Although the Complaint alleges Dr. Reddy had access to information that likely suggested Jurcich had mental health issues, there are no facts that suggest that Dr. Reddy was "exposed to information concerning the risk and thus 'must have known' about it[.]" *Sanville v. McCaughry*, 266 F.3d 724, 737 (7th Cir. 2001). Accordingly, **Count I is DISMISSED without prejudice as to Defendant Dr. Muddasani Reddy.**

### *Count II*

In Count II, Plaintiff alleges that Wexford is liable for the policy, practice and custom of providing inadequate mental health care to detainees, or in the alternative, that Wexford is liable in *respondeat superior* for the actions of its employees and/or agents. (Doc. 118, p. 13). Plaintiff's *respondeat superior* claim fails because the doctrine cannot be the basis for holding government contractors liable under § 1983 for the constitutional torts of its employees. *Sanville v. McCaughry*, 266 F.3d 724, 740 (7th Cir. 2001). Rather, to hold Wexford liable, Plaintiff must show that Wexford employees violated Jurcich's constitutional rights due to a policy, practice or custom of Wexford.

As previously discussed, Plaintiff has not alleged facts that suggest Defendants Brandy Nichols, Sandra Thurman, Jana Reuter and Dr. Reddy had actual knowledge of Jurcich's suicide risk. The only other Wexford employees are identified as John Doe 1, John Doe 2, John Doe 3,

and John Doe 4. Plaintiff alleges that John Doe 1 was the mental health professional and/or psychiatrist who screened and evaluated Jurcich when he entered the jail. John Does 2, 3 and 4 are additional mental health professionals and/or psychiatrists who worked at the jail. The Complaint contains no facts alleging or suggesting that any of the John Doe defendants had actual knowledge of Jurcich's suicide risk. Despite the allegation that John Doe 1 screened Jurcich upon his arrival at the jail, nothing suggests that this defendant gained actual knowledge of the suicide risk during this screening. All four John Does' alleged knowledge of the suicide risk appears to be based on an assumption – not facts – that they had access to Jurcich's mental health records. Once again, this is insufficient to state a viable claim. Because Plaintiff fails to properly allege that any of the Wexford employees violated Mr. Jurcich's constitutional rights, Wexford cannot be held liable and **Count II is DISMISSED without prejudice.**

#### *Count VI*

Count VI asserts a state law claim for wrongful death under 740 ILCS 180/1. Specifically, Plaintiff alleges that Defendants “breached their duty to provide for Mr. Jurcich’s health and safety[.]” (Doc. 118, p. 17). “In any action, whether in tort, contract or otherwise, in which the plaintiff seeks damages for injuries or death by reason of medical, hospital, or other healing art malpractice, the plaintiff’s attorney . . . shall file an affidavit, attached to the original and all copies of the complaint, declaring . . . that the affiant has consulted and reviewed the facts of the case with a health professional . . . that the reviewing health professional has determined in a written report, after a review of the medical record . . . that there is a reasonable and meritorious case for the filing of such action.” 735 Ill. Comp. Stst. Ann. 5/2-622.

Defendants contend that this count must be dismissed because Plaintiff failed to attach the required affidavit. Plaintiff argues this is not a claim for medical malpractice, but rather a wrongful death claim based on negligent or willful and wanton conduct. There are three factors to consider in determining whether a claim is one for medical malpractice or ordinary negligence: (1) whether determining the standard of care requires applying distinctively medical knowledge or principles, however basic; (2) whether the activity that resulted in the alleged injury was inherently one of medical judgment; and (3) the evidence that will be necessary to establish the standard of care at trial. *Bommersbach v. Ruiz*, 461 F. Supp. 2d 743, 753 (S.D. Ill. 2006). Deciding whether or not to place someone on suicide watch is a matter of mental health evaluation which requires the application of distinctively medical knowledge. As such, establishing the standard of care at trial will require expert testimony. Therefore, as to the claim asserted in Count VI, Plaintiff must comply with the affidavit requirement of 735 ILCS 5/2-622. Accordingly, **Count VI is DISMISSED without prejudice.**

**IT IS SO ORDERED.**

**DATE: July 21, 2017**

s/ Staci M. Yandle  
**STACI M. YANDLE**  
**DISTRICT JUDGE**