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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

\* \* \*

STEVEN ROWE

Case No. 2:18-cv-00568-RFB-DJA

Plaintiff,

**ORDER**

v.

NAPHCARE, INC. et al.,

Defendants.

**I. INTRODUCTION**

Before the Court is Defendant’s Motion for Summary Judgment. ECF No. 47. For the following reasons, the Court grants Defendants’ motion in part and denies it in part.

**II. PROCEDURAL BACKGROUND**

Plaintiff commenced this action by filing a complaint on March 29, 2017. ECF No. 1. On March 5, 2019, Defendants filed an answer. ECF No. 26. On July 3, 2018, Defendants filed a motion to dismiss which this Court denied. ECF Nos. 20, 24. On March 3, 2020, Defendants filed a motion for summary judgment. Plaintiff responded on March 24, 2020 and Defendants replied

1 on April 7, 2020. ECF Nos. 49, 51. This Court held a hearing regarding Defendants’ motion for  
2 summary judgment on March 3, 2021. ECF No. 54. This written order now follows.  
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5 **III. FACTUAL FINDINGS**

6 The Court makes the following findings of undisputed and disputed facts:

7 **a. Undisputed Facts**

8 The Court finds the following facts to be undisputed. On April 15, 2016, Plaintiff Rowe  
9 was booked into Clark County Detention Center (“CCDC”). At his initial screening assessment,  
10 Plaintiff informed Defendant Trinidad Drozeski, EMT that he had a genetic skin condition, Hailey-  
11 Hailey disease, a genetic disorder rendering Plaintiff susceptible to a risk of infection if exposed  
12 and Plaintiff warned Defendant that he had one small lesion under his armpit. Defendant Drozeski  
13 failed to include this information in Plaintiff’s Rowe assessment and instead wrote in the screening  
14 notes that Plaintiff had “no injuries or infections.” Despite knowing of Plaintiff’s risk to unsanitary  
15 conditions, he ordered Plaintiff to put on a CCDC shirt. After putting on the shirt, Plaintiff’s armpit  
16 lesion started to grow substantially. Plaintiff Rowe was then placed in the 4L CCDC medical unit  
17 for detoxification. Later that day, Defendant Kristin Pagaduan, RN examined Plaintiff. Rowe  
18 informed her of his skin condition that is highly subject to exacerbation because of unsanitary  
19 conditions. In the medical notes, Defendant Pagaduan identified that Plaintiff had a rash in his  
20 armpit and Hailey-Hailey disease. Later that evening, Defendant Andrea Balogh, PA, created  
21 Plaintiff’s medical treatment plan and prescribed medication: topical corticosteroid and antifungal  
22 treatments for Hailey-Hailey disease; Tylenol and x-ray for his arm. Defendant also designated  
23 Plaintiff for “standard booking and housing procedures.”  
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1 Over the course of the day on April 16, 2016, Plaintiff's skin condition continued to  
2 worsen. On April 17, 2016, Defendant Hong Ye Huang, NP examined Plaintiff and noted "no  
3 lesions or rashes," and ordered that Plaintiff be transferred to general population. While in general  
4 population, Plaintiff's skin condition was exacerbated, and he developed more skin lesions.  
5

6 On April 18, 2016, Defendant Dr. Harry Duran, MD examined Plaintiff and determined  
7 that he had an exacerbation of Hailey-Hailey syndrome with multiple areas of plaque and skin  
8 breakdown and discharge. Defendant Duran changed topical medications to treat this condition.  
9

10 On April 19, 2016, Plaintiff submitted a medical kite regarding his skin condition and the  
11 risk of further infection. Also on this day, Defendant Mylissa Peck, LPN took Plaintiff's blood  
12 pressure and noted it in Plaintiff's medical file.

13 Over the next 48 hours while in general population, Plaintiff's skin condition continued to  
14 worsen. On April 21, 2016, Defendant Valeri Gibson, LPN, took Plaintiff's blood pressure and  
15 updated his medical file. On April 23, 2016, Defendant Eileen Murillo, RN noted in Plaintiff's  
16 chart that his rashes were exacerbated, and she administered medication. On April 24, 2016,  
17 Defendant Daniel Navarro, NP also examined Plaintiff and noted that Rowe had chronic  
18 intermittent skin rash. Later that day, Defendant Ray Montenegro, NP examined Plaintiff and  
19 noted that he had lesions on his chest and body. On April 25, 2016, Plaintiff submitted another  
20 medical kite requesting an emergency visit from a doctor. Later that day, Defendant Duran  
21 requested that Plaintiff be transferred to 4L for medical observation. Defendant Duran also  
22 examined Rowe, noting improvement of some lesions, but groin lesions were irritated. Defendant  
23 Duran also indicated that Plaintiff needed to be transferred to 4L for continued care.  
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25 On April 26, 2016, Defendant Olga, LPN, noted that Plaintiff's medication had been  
26 ordered. Later that day, Defendant Duran examined Plaintiff and noted that antifungal medicine  
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1 be administered for the lesions on Plaintiff's body. On April 27, 2016, Defendant Kelly Woodring,  
2 LPN administered the antifungal medicine. Over the following days Defendant Duran examined  
3 Plaintiff, noting his lesions were improving.  
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5 Plaintiff was released from CCDC on May 3, 2016, and he was able to receive additional  
6 treatment.

7 **b. Disputed Facts**

8 The parties dispute the degree to which Rowe's condition may have worsened and then  
9 improved.  
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11 **IV. LEGAL STANDARD**

12 Summary judgment is appropriate when the pleadings, depositions, answers to  
13 interrogatories, and admissions on file, together with the affidavits, if any, show "that there is no  
14 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."  
15 Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322(1986).  
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17 When considering the propriety of summary judgment, the court views all facts and draws  
18 all inferences in the light most favorable to the nonmoving party. Gonzalez v. City of Anaheim,  
19 747 F.3d 789, 793 (9th Cir. 2014). If the movant has carried its burden, the nonmoving party "must  
20 do more than simply show that there is some metaphysical doubt as to the material facts .... Where  
21 the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party,  
22 there is no genuine issue for trial." Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original)  
23 (internal quotation marks omitted). It is improper for the Court to resolve genuine factual disputes  
24 or make credibility determinations at the summary judgment stage. Zetwick v. Cty. of Yolo, 850  
25 F.3d 436, 441 (9th Cir. 2017) (citations omitted).  
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2 **V. DISCUSSION**

3 **a. NaphCare's Liability under §1983**

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5 Defendant NaphCare argues that it cannot be held liable under Section 1983 under a theory  
6 of municipal liability because it has not been established that it has a policy, practice, or custom  
7 violating Plaintiff's constitutional rights. This Court disagrees. To state a claim under §1983, a  
8 plaintiff must allege two essential elements: (1) the defendant was acting under color of state law;  
9 and (2) the defendant deprived the plaintiff of rights secured by the Constitution or federal statutes.  
10 West v. Atkins, 487 U.S. 42, 48 (1988). The sole manner in which a government entity can be held  
11 liable under §1983 is under a theory of municipal liability, namely, by alleging the government  
12 entity had in place a policy, practice, or custom that was the moving force behind the Constitutional  
13 violation. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694 (1978)

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15 Here, NaphCare does not dispute that its staff were acting under color of state law, but it  
16 vigorously disputes that it deprived Plaintiff of constitutional rights. Defendants argue that  
17 NaphCare did not have a policy or practice violating Plaintiff's Eighth Amendment rights. This  
18 Court disagrees. Based on undisputed and disputed facts findings, Plaintiff made Defendants aware  
19 on numerous occasions of his volatile medical condition and despite his warnings as well as  
20 requests for treatment, Defendants improperly placed Rowe in an environment that exacerbated  
21 his medical condition. The Court finds that Rowe has sufficiently alleged and established a pattern  
22 and practice of disregarding his stated and documented medical needs. Moreover, Plaintiff's  
23 medical experts, Dr. Rowan and Resneck opined that upon being aware of Rowe's rare medical  
24 condition, NaphCare medical staff had numerous opportunities to mitigate the exacerbation but  
25 instead there was minimal escalation to address Rowe's serious medical need. The Court finds that  
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1 there is a genuine issue of disputed fact as to whether or not NaphCare in fact had a custom or  
2 practice of ignoring Plaintiff's serious medical needs and therefore NaphCare can be subject to  
3 liability under §1983 for its practice violating Plaintiff's Eighth Amendment.  
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5 **b. Eight Amendment Claims**

6 The Eighth Amendment's prohibition against cruel and unusual punishment requires states  
7 to provide medical care to prisoners because they cannot secure medical care for themselves. See  
8 Estelle v. Gamble, 429 U.S. 97, 103 (1976). A prisoner asserting an Eighth Amendment claim for  
9 denial of medical care must show "acts or omissions sufficiently harmful to evidence deliberate  
10 indifference to serious medical needs." Estelle, 429 U.S. at 106. There is both an objective and a  
11 subjective component to an Eighth Amendment violation. LeMaire v. Maass, 12 F.3d 1444, 1451  
12 (9th Cir. 1993). The Ninth Circuit has established a two-part test for deliberate indifference to a  
13 serious medical need: First, the plaintiff must establish a serious medical need, meaning that failure  
14 to treat the condition could result in "significant injury or the unnecessary and wanton infliction  
15 of pain." Peralta v. Dillard, 744 F.3d 1076, 1081 (9th Cir. 2014) (citing Jett v. Penner, 439 F.3d  
16 1091, 1096 (9th Cir. 2006)). Second, the plaintiff must demonstrate the defendant's deliberate  
17 indifference to the need, meaning that the prison official "knows of and disregards an excessive  
18 risk to inmate health." Id. The defendant's indifference must be intentional. Jett, 439 F.3d at 1096.  
19 Further, the plaintiff must show that harm resulted from the defendant's indifference. Id.  
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23 **i. Defendants Peck, Gibson, Kubla, Woodring, Murillo, Navarro, and**  
24 **Montenegro**

25 The Court finds that Plaintiff has not presented evidence to establish genuine issues of  
26 disputed material fact as to whether Defendants Peck, Gibson, Woodring, Murillo, Navarro, and  
27 Montenegro were deliberately indifferent to Plaintiff's serious medical needs. These Defendants  
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1 interacted with Plaintiff once when they conducted routine checkups and administered anti-fungal  
2 medications. These Defendants also updated Plaintiff's chart with what was observed during the  
3 checkup. Plaintiff assertions that because Defendants did not do more, they were deliberately  
4 indifferent to his medical needs is incorrect and in fact the undisputed facts reflect otherwise. These  
5 Defendants monitored Plaintiff's medical condition and administered medications, which does not  
6 demonstrate deliberate indifference. Therefore, this Court grants summary judgment to Defendants  
7 Peck, Gibson, Kubla, Woodring, Murillo, Navarro, and Montenegro.  
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10 **ii. Defendant Drozeski**

11 Defendants argue that Plaintiff fails to show that Defendant Drozeski was deliberately  
12 indifferent about his Hailey-Hailey disease. This Court disagrees. Based on Plaintiff's testimony,  
13 he stated numerous times to NaphCare medical staff, including Defendant Drozeski that he was at  
14 substantial risk for infections due to his medical condition. Additionally, Defendant Drozeski was  
15 responsible for Rowe's initial screening which included general medical history and mental health  
16 assessments. Despite, Plaintiff informing Defendant Drozeski that he had a small lesion under his  
17 armpit, and his substantial risk if exposed to unsanitary conditions due to Hailey-Hailey disease,  
18 Defendant Drozeski failed to include those notes in Plaintiff's medical chart. Immediately upon  
19 wearing CCDC shirt and entering the unsanitary conditions of 4L CCDC medical unit, Plaintiff's  
20 lesion started to grow. Therefore, based on the record, the Court finds that Plaintiff has  
21 demonstrated genuine issues of disputed fact as to whether that Defendant Drozeski was  
22 deliberately indifferent to Plaintiff's serious medical needs. The Court denies summary judgment  
23 to Defendant Drozeski.  
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26 **iii. Defendant Pagaduan**

27 The Court finds that Plaintiffs fails to show a genuine issue of disputed material fact as to  
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1 whether Defendant Pagaduan was deliberately indifferent to Plaintiff's serious medical need.  
2 Unlike Defendant Drozeski, when Plaintiff informed Pagaduan of his medical condition, she  
3 notated it in his medical chart as well as the small lesion under his armpit. Plaintiff argues that  
4 because Defendant Pagaduan did not do more than update his chart, she was deliberately  
5 indifferent to his medical needs. This Court disagrees. The record reflects that Defendants  
6 Pagaduan took appropriate steps updating Plaintiff's history regarding his Hailey-Hailey disease.  
7 Therefore, the Court grants summary judgment to Defendant Pagaduan.  
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10 **iv. Defendant Balogh**

11 The Court finds that Plaintiff failed to show a genuine issue of disputed material fact as to  
12 whether Defendant Balogh was deliberately indifferent to his serious medical need. Balogh  
13 documented Plaintiff's Hailey-Hailey disease and prescribed topical corticosteroid and antifungal  
14 treatments. Although Balogh designated Plaintiff to standard booking and housing procedures,  
15 based on the record Balogh was treating Plaintiff for his serious medical need. While the record is  
16 not clear that Balogh suggested treatment was regularly implemented, the Court does not find there  
17 to be any disputed facts establishing Balogh's deliberate indifference. Therefore, the Court grants  
18 summary judgment to Defendant Balogh.  
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20 **v. Defendant Huang**

21 Defendants argue that Plaintiff fails to show that Defendant Huang was deliberately  
22 indifferent to Plaintiff medical needs. This Court disagrees. Based on the record, by the time  
23 Defendant Huang examined Plaintiff on April 17, 2016, other NaphCare medical staff already  
24 noted and found that Rowe had Hailey-Hailey disease and lesions. Rowe also reiterated to Huang  
25 that he had Hailey-Hailey disease and a lesion. Despite all this medical information and statements,  
26 Huang noted in Rowe's medical chart that he had no lesions or rashes, and Huang transferred  
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1 Plaintiff to general population where his lesions and rash worsened and spread throughout his  
2 body. Defendant Huang's actions demonstrate that he deliberately ignored Rowe's serious medical  
3 condition and made decisions, such as the transfer of Plaintiff to general population, that  
4 exacerbated Rowe's medical condition. Based on the record a jury could conclude that Huang was  
5 deliberately indifferent to Rowe's medical condition by ignoring medical information and  
6 statements and by directing that Rowe be placed in general population. Therefore, the Court finds  
7 that Plaintiff has shown a genuine issue of disputed material fact as to whether Defendant Huang  
8 was deliberately indifferent to his medical needs and denies summary judgment to Defendant  
9 Huang.  
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12 **vi. Defendant Duran**

13 The Court finds that Plaintiff fails to demonstrate genuine issue of disputed material fact  
14 as to whether Defendant Duran was deliberately indifferent to Plaintiff's medical needs. The  
15 record reflects that Defendant Duran examined Plaintiff numerous times, adjusted his treatment,  
16 transferred him out of general population, and monitored Plaintiff's improvements. Rowe wanted  
17 Defendant Duran and other NaphCare staff to expedite treatment and although there was a slight  
18 delay before Defendant Duran was able to adjust treatment and remove Plaintiff from general  
19 population, the Court finds that this does not create a genuine issue of disputed fact that Defendant  
20 Duran was deliberately indifferent. Therefore, the Court grants summary judgment to Defendant  
21 Duran.  
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24 **c. State-law Claims**

25 The Court finds that Plaintiff's state-law claims sound in professional negligence;  
26 therefore, such claims must be supported by an affidavit of a medical expert pursuant to NRS  
27 41A.071. See Banner v. Las Vegas Metropolitan Police Department, No. 16-cv-01717-RFB-  
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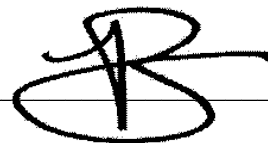
1 CWH, 2017 WL 4819102, at\*2 (Nev. Oct 24, 2017) (noting that when the state claim contains  
2 providers of healthcare as defined by NRS 41A.017, the cause of action is one of professional  
3 negligence and requires a medical expert affidavit). Here, Plaintiff's medical expert Dr. Rowan  
4 and Resneck only opine that Defendants' actions constitute deliberate indifference. Both expert  
5 affidavits fail address whether Defendants' actions were negligent. Therefore, the Court dismisses  
6 all of Plaintiff's state law claims.  
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9 **VI. CONCLUSION**

10 **IT IS THEREFORE ORDERED** that Defendants' Motion for Summary Judgment (ECF  
11 No. 47) is GRANTED in part. The Court grants summary judgment to Defendants Peck, Gibson,  
12 Kubla, Woodring, Murillo, Navarro, Montenegro, Pagaduan, Duran, and Balogh.  
13

14 **IT IS FURHTER ORDERED** that all of Plaintiff's state law negligence claims are  
15 DISMISSED. The parties shall file a joint pretrial order by August 21, 2021, with proposed trial  
16 dates beginning January 2022.  
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18 DATED July 26, 2021.  
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23 **RICHARD F. BOULWARE, II**  
24 **UNITED STATES DISTRICT JUDGE**  
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