IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CATHY WEHRLI, Adminstratix of the Estate of JACQULYN WEHRLI, Deceased,	)	
Plaintiff,	)	Civil Action No. 16-977
v.	)	
	)	United States Magistrate Judge Cynthia Reed Eddy
ALLEGHENY COUNTY; ORLANDO HARPER, individually; CORIZON HEALTH, INC.; CORIZON, INC.; and NORBERTO RODRIGUEZ, MD, individually,	)	
Defendants.	)	

MEMORANDUM ORDER[1]

Cynthia Reed Eddy, United States Magistrate Judge.

Plaintiff Cathy Wehrli brings this civil rights, wrongful death, and survival action as Adminstratix of the Estate of her deceased daughter, Jacqulyn Wehrli, ("Jacqulyn"), who died as a result of receiving improper medical care at the Allegheny County Jail ("ACJ" or "the jail"). There are currently three pending motions to dismiss the complaint filed by the above-captioned Defendants. For the reasons that follow, the Court will deny the motion filed by Corizon Health, Inc. and Corizon, Inc. (collectively "Corizon") (ECF No. 8), deny the motion filed by Dr. Norberto Rodriguez, M.D. (ECF No. 21), grant the motion filed by Allegheny County and Orlando Harper (ECF No. 16 errata 18), and will allow Plaintiff to file an amended complaint to

[1] Because all of the parties have voluntarily consented to have the undersigned conduct any and all proceedings in this matter, the undersigned has authority to enter this Memorandum Order on the pending dispositive motions. (ECF Nos. 30-34); 28 U.S.C. § 636(c); Fed.R.Civ.P. 73.

add factual allegations against the County and Harper.

I. Factual Background

Before Jacqulyn's death, she had a medical history that included bipolar disorder, intermittent explosive disorder, mental retardation, and neuroleptic malignant syndrome ("NMS"). On May 19, 2014, Jacqulyn sought treatment for her intermittent explosive disorder (a behavioral disorder characterized by explosive outbursts of anger and violence) as a voluntary outpatient at Western Psychiatric Institute and Clinic ("WPIC"). During this treatment, an incident occurred in which Jacqulyn allegedly struck and injured a nurse, resulting in Jacqulyn being discharged in shackles and remanded into the custody of ACJ.

When Jacqulyn was placed in the jail's custody, WPIC staff provided the jail with a discharge summary that listed her allergies, medications, and prior medical history. WPIC staff also faxed the jail a separate "internal" and/or "institution-to-institution" discharge summary that listed with more specificity Jacqulyn's allergies, medications, and medical history.

On or about May 20, 2014 at 10:45 a.m., Jacqulyn was examined by Defendant Dr. Rodriguez, a psychiatrist employed by the jail's medical contractor, Corizon. The complaint alleges that Dr. Rodriguez's assessment of Jacqulyn was incomplete, as he recorded minimal notes during his evaluation, ordered that Haldol be administered to Jacqulyn, and did not order close monitoring of Jacqulyn. In light of WPIC's discharge summaries, Plaintiff alleges that Dr. Rodriguez knew of Jacqulyn's history of NMS, which can be triggered from the administration of Haldol. According to the complaint, NMS is a rare, but life-threatening, idiosyncratic reaction to neuroleptic treatment that often occurs shortly after the initiation of the treatment, or after dose increases. The complaint asserts that if a patient has a history of NMS, other sedative/treating agents should be considered before administering Haldol, but if Haldol is required or

administered, the patient should be closely monitored in order to detect and prevent an onset of NMS.

The next day, May 21, 2014 at 9:55 p.m., Jacqulyn displayed a change in behavior that included cessation of agitation, but at the request of Dr. Rodriguez, the administration of Haldol continued. Jacqulyn's vital signs remained unmonitored for the next twenty hours, until May 22, 2014 at 5:30 p.m., which was three days after she was transferred to the jail and two days after the administration of Haldol began. Jacqulyn displayed symptoms of an onset of NMS but the administration of Haldol, with a lack of sufficient monitoring, continued. On May 24, 2014, Jacqulyn continued to manifest symptoms of NMS. Despite these symptoms, her chart made no mention of possible causes.

On May 25, 2014, Jacqulyn was non-verbal, unable to take fluids, unable to squeeze a nurse's hand on command and was transferred to the University of Pittsburgh Medical Center Mercy. When she arrived at UPMC Mercy, she was in a catatonic state.

Jacqulyn remained in the care of UPMC for the next six months and was then transferred to Kane Hospital in Glenn Hazel, Allegheny County. In a catatonic state and unable to communicate with caregivers or her family, Jacqulyn passed away on December 5, 2014 due to massive organ failure.

The autopsy report produced by the Office of the Medical Examiner of the Allegheny County performed on December 16, 2014 states that "Jacqulyn Wehrli, a 31 year old white female, died as a result of [NMS]/malignant catatonia due to Haldol administration."

II. Procedural Background

Plaintiff initiated this action on June 29, 2016 against Defendants Allegheny County, Orlando Harper (the warden), Corizon (the medical contractor), and Dr. Rodriguez (the

psychiatrist). All of these Defendants responded to the complaint by filing Rule 12(b)(6) motions to dismiss in September 2016. (ECF Nos. 8, 16 errata 18, 21). Corizon and Dr. Rodriguez requested in their motions that the Court convert their motions to dismiss into motions for summary judgment based on a statute of limitations defense, relying on numerous medical records and other documents not attached to or referenced in the complaint. All of the pending motions have been briefed extensively, (ECF Nos. 9, 17, 22, 38-40, 43, 45, 46, 50-52), and they became ripe on December 30, 2016. The Court has carefully reviewed all of these submissions.

III. Legal Standard

"Under Rule 12(b)(6), a motion to dismiss will be granted only if, accepting all well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, a court finds that plaintiff's claims lack facial plausibility." Warren Gen. Hosp. v. Amgen Inc., 643 F.3d 77, 88 (3d Cir. 2011). "In deciding a Rule 12(b)(6) motion, a court must consider only the complaint, exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents if the complainant's claims are based upon these documents." Mayer v. Belichick, 605 F.3d 223, 230 (3d Cir. 2010).

When matters outside of the pleadings are presented to the Court on a Rule 12(b)(6) motion, the Court has the discretion to exclude such matters from consideration. Fed.R.Civ.P. 12(d); Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 905 n. 3 (3d Cir. 1997). "This discretion generally will be exercised on the basis of the district court's determination of whether or not the proffered material … is likely to facilitate the disposition of the action." 5C Charles A. Wright & Arthur R. Miller, Fed. Prac. & Proc. Civ: § 1366 (3d ed.). If the Court decides to consider matters outside of the pleadings, then the motion must be treated as a Rule 56 motion for summary judgment, and all parties must be given a reasonable opportunity to present all the

material that is pertinent to the motion. Fed.R.Civ.P. 12(d).

IV. Discussion

Because Corizon and Dr. Rodriguez make similar arguments in support of their motions to dismiss, the Court will address their arguments together. The Court will then separately address the motion filed by the County and Warden Harper.

A. Corizon and Dr. Rodriguez

Corizon and Dr. Rodriguez move to dismiss the § 1983 claims and state law survival claims by arguing in their respective briefs that the complaint was not filed within the applicable statute of limitations period, which is two years for all of Plaintiff's claims.[2] See 42 Pa.C.S. § 5524(2); Kach v. Hose, 589 F.3d 626, 634 (3d Cir. 2009) (§ 1983 claims); Miller v. Philadelphia Geriatric Ctr., 463 F.3d 266, 275-77 (3d Cir. 2006) (state law survival actions). These Defendants have attached medical records to their motions to dismiss, which they claim show that Plaintiff knew of the cause of Jacqulyn's injury (during the time in which Jacqulyn was in a catatonic state) more than two years before the lawsuit was initiated, and, as such, request that the Court convert their motions into motions for summary judgment. Aside from the fact that the medical records submitted by Corizon and Dr. Rodriguez are incomplete, see note 3 infra, even if the Court were to consider the records at this stage, it would not facilitate the disposition of the action because the position advanced by these Defendants (that we should focus on Plaintiff's knowledge rather than Jacqulyn's) is not supported by the law. Accordingly, the Court declines to consider these outside materials and will assess the motions under the ordinary Rule 12(b)(6) standard.

As the Court of Appeals has explained:

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[2] These Defendants do not challenge whether the state law wrongful death claims were filed within the limitations period. See (ECF Nos. 9 at 9, 23 at 8 n. 1).

> Technically, the Federal Rules of Civil Procedure require a defendant to plead an affirmative defense, like a statute of limitations defense, in the answer, not in a motion to dismiss. In this circuit, however, we permit a limitations defense to be raised by a motion under Rule 12(b)(6) only if the time alleged in the statement of a claim shows that the cause of action has not been brought within the statute of limitations. However, if the bar is not apparent on the face of the complaint, then it may not afford the basis for a dismissal of the complaint under Rule 12(b)(6).

Schmidt v. Skolas, 770 F.3d 241, 249 (3d Cir. 2014) (internal citations and marks omitted).

While federal law governs a § 1983 claim's accrual without reference to state law, Wallace v. Kato, 549 U.S. 384, 388 (2007), "[w]e must also incorporate any relevant state tolling rules," unless they "contradict federal law or policy." Lake v. Arnold, 232 F.3d 360, 368, 370 (3d Cir. 2000). In the § 1983 context, application of federal tolling is the exception, not the rule, and we must not "allow the exception (federal tolling) to swallow the rule (state tolling)." Kach, 589 F.3d at 643 & n. 19 (rejecting a categorical proposition that a litigant only needs to invoke generic interests to avail herself of federal tolling in the § 1983 context); see also Pearson v. *Sec'y Dep't* of Corr., 775 F.3d 598, 603-04 & n. 6 (3d Cir. 2015) (finding that the statute of limitations was tolled based on Pennsylvania law instead of federal law). Plaintiff argues that Pennsylvania's discovery rule operates to toll the statute of limitations in this case.

Corizon and Dr. Rodriguez do not assert that Pennsylvania's discovery rule contradicts federal law or policy. Nevertheless, in countering that the statute of limitations should not be tolled via the discovery rule, they rely heavily on some decisions by federal courts that applied the federal discovery rule in the context of the Federal Tort Claims Act ("FTCA"). See Barren by Barren v. United States, 839 F.2d 987, 991 (3d Cir. 1988); United States v. Kubrick, 444 U.S. 111 (1979); Miller, 463 F.3d at 271-75. But the federal discovery rule has no bearing on whether Plaintiff's § 1983 or state-law survival claims are tolled under Pennsylvania's discovery rule. See Santos ex rel. Beato v. United States, 559 F.3d 189, 193 (3d Cir. 2009) ("state-law

tolling statutes do not apply to the FTCA's limitations period, and thus the Pennsylvania tolling statute … is inapplicable" to FTCA claims). This is perhaps best illustrated by the Court of Appeals' decisions in Miller and Kach. In Miller, the Court analyzed whether the federal discovery rule tolled the plaintiff's FTCA claims, but analyzed whether Pennsylvania's discovery rule tolled the state law survival claims, 463 F.3d at 271-276, and in Kach, the Court analyzed whether Pennsylvania's discovery rule tolled the plaintiff's § 1983 claims. 589 F.3d at 642-43. As these Defendants offer no basis for this Court to employ federal tolling regarding Plaintiff's § 1983 or survival claims, the Court will not consider their reliance on cases that applied federal tolling and will instead analyze the tolling issue under Pennsylvania's discovery rule.

Pennsylvania's discovery rule "applies to toll the statute of limitations in any case where a party neither knows nor reasonably should have known of [her] injury and its cause at the time his right to institute suit arises." Fine v. Checcio, 870 A.2d 850, 859 (Pa. 2005). "[T]he salient point giving rise to its application is the inability of the **injured**, despite the exercise of reasonable diligence, to know that [s]he is injured and by what cause." Id.at 858 (emphasis added). "[I]n this context, reasonable diligence is not an absolute standard, but is what is expected from a party who has been given reason to inform [her]self of the facts upon which his right to recovery is premised." Id. "Under this test, a party's actions are evaluated to determine whether [s]he exhibited those qualities of attention, knowledge, intelligence and judgment which society requires of its members for the protection of their own interest and the interest of others." Id.

In this regard, "although the pertinent inquiry is characterized as objective, it is to be applied with reference to individual characteristics." Wilson v. El-Daief, 964 A.2d 354, 366 (Pa.

2009) (internal citation omitted). "Since this question involves a factual determination as to whether a party was able, in the exercise of reasonable diligence, to know of his injury and its cause, ordinarily, a jury is to decide it." Fine, 870 A.2d at 858. Notwithstanding that "the awareness of the injury and its cause is fact intensive," "courts may resolve the matter at the summary judgment stage where reasonable could not differ on the subject. Wilson, 964 A.2d at 362 (emphasis added).

Relying on extrinsic medical records, Corizon and Dr. Rodriguez argue that Plaintiff (Jacqulyn's mother and adminstratix of Jacqulyn's estate) knew of Jacqulyn's injury no later than June 25, 2014, and therefore, this action, which was initiated more than two years after that date on June 29, 2016, is untimely. However, given that the § 1983 claims and state law survival claims are being pursued by Plaintiff solely in her capacity as the adminstratix of Jacqulyn's estate, we do not look to what Plaintiff knew. Instead, we must look at what Jacqulyn, the injured individual, knew or what a reasonable person with Jacqulyn's knowledge should have known. Fine, 870 A.2d at 858; Wilson, 964 A.2d at 361-62; Miller, 463 F.3d at 275. Therefore, even if the Court were to consider these outside medical records, Defendants' arguments relating to Plaintiff's knowledge are nonetheless appropriately disregarded.[3] This does not end our

[3] While the Court is not basing its decision on the medical records at this stage of the proceedings, the Court nevertheless feels compelled to comment that after reviewing the parties' briefing in connection with the pending motions, it appears that Defendants presented the medical records out of context and omitted subsequent records that do not support their theory. They vigorously argue that Plaintiff must have known of Jacqulyn's NMS diagnosis no later than June 25, 2014, and mention no medical records past that date. However, Plaintiff, in her sur-reply briefs, directs the Court to numerous medical records from July 2014 where the medical professionals were questioning whether Jacqulyn even had NMS. See, e.g., Addendum from Dr. Margaret Conroy on July 7, 2014, (ECF No. 51-3 at 3) ("Another factor that is concerning to me is the fact that the NMS dx is uncertain, and it is unclear whether NMS or catatonia could cause patient to be as ill-appearing/unstable as she is. Also, NMS (esp in patient this ill) is not typically managed on medicine floor in my experience."). According to Plaintiff, Jacqulyn was not affirmatively diagnosed with NMS until the autopsy in December 2014. Despite these

analysis, however, because Defendants also seem to argue that Jacqulyn knew or should have known of her injuries more than two years before the limitations period expired.

Based on incomplete medical records from the hospital, Dr. Rodriguez asserts that "it cannot be legitimately argued that" prior to June 25, 2014 (when Jacqulyn was unresponsive and catatonic), she was "unaware that a physically objective and ascertainable injury had been sustained." See (ECF No. 22 at 11). Similarly, Corizon argues that "[a]ll of the claimed failures occurred in May 2014," when Jacqulyn was harmed by taking the medication and began to display symptoms of NMS. (ECF No. 43 at 2). When construing the complaint in the light most favorable to Plaintiff, these arguments, which would require the Court to inappropriately make factual determinations in favor of Defendants, are meritless.

Corizon and Dr. Rodriguez essentially seek to have the Court throw out the Plaintiff's case at the pleading stage by making unreasonable inferences as to the ability of Jacqulyn, who was allegedly mentally retarded with various other mental conditions, to be self-aware of her symptoms (decreased urine output and incontinence, lethargy, tremors, loss of muscle control, inability to speak, and inability to take fluids), self-diagnose those symptoms as being indicative of a rare condition, and know that the condition was caused by a specific medication, despite the fact that none of the medical professionals at the jail could apparently do so before she entered a catatonic state and had to be sent to the hospital. In light of Jacqulyn's specific mental characteristics and the circumstances leading up to and surrounding her catatonic state, where it is unclear whether, based on her symptoms, she even knew she was injured, the Court cannot conclude that Jacqulyn objectively failed to exercise reasonable diligence in discovering her

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apparent significant factual discrepancies and the difficulty that the medical professionals at the hospital had in diagnosing Jacqulyn's condition, these Defendants move to dismiss Plaintiff's claims at the pleading stage by inappropriately offering incomplete extrinsic medical records.

injury or its cause. See Fine, 870 A.2d at 858 (reasonable diligence is an objective test, sufficiently flexible to take into account the differences between persons and their capacity to meet certain situations and the circumstances confronting them at the time in question, including an inquiry into whether the injured person exhibited those qualities of attention, knowledge, intelligence and judgment which society requires of its members for the protection of their own interest and the interest of others.); Miller, 463 F.3d at 276 (finding that the decedent's intelligence must be considered in determining "whether the decedent knew, or more accurately, was even capable of knowing, that he was injured and the cause of his injury"); Wilson, 964 A.2d at 366 (Pennsylvania's objective discovery rule is to be applied with reference to individual characteristics).[4] Further, these arguments are, at best, premature because they involve factual issues that must be developed through discovery and likely decided by a jury; but will not be considered by the Court, at the very earliest, until there is a full summary judgment record, as opposed to the abbreviated, expedited procedure that Defendants have requested in their submissions in support of their motions. See Wilson, 964 A.2d at 362.

The Court likewise rejects Corizon's and Dr. Rodriguez's arguments that the state law survival and wrongful death claims are barred by the immunity provisions of the Mental Health

[4] Defendants direct the Court to outdated Pennsylvania case law for the proposition that we cannot consider Jacqulyn's mental incompetence or incapacity in this objective analysis. More than ten years ago, however, our Court of Appeals explained in Miller that in light of the Pennsylvania Supreme Court's decision in Fine, the previous decisions in Pennsylvania that made no adjustments to the objective analysis to account for mental illness or capacity are no longer controlling. 463 F.3d at 276 (citing Lake, 232 F.3d at 371; Walker v. Mummert, 146 A.2d 289, 291 (Pa. 1958); Pearce v. Salvation Army, 674 A.2d 1123, 1126 (Pa. 1958)). In 2009, the Pennsylvania Supreme Court applied *Fine's* holding in Wilson to confirm that we are to consider an individuals' specific characteristics in this objective test. As such, Defendants' contention that we should apply Pearce and other similar pre-Fine cases is disingenuous and completely lacks merit.

and Mental Retardation Act ("MHMRA"), 50 P.S. § 4603.[5] As noted, the complaint alleges that Jacqulyn had several medical conditions, including bipolar disorder, intermittent explosive disorder, mental retardation, and NMS. While the complaint generally references all of these medical conditions, it specifically alleges that Defendants gave Jacqulyn the Haldol (a first generation antipsychotic drug and neuroleptic medication) for her intermittent explosive disorder and/or bipolar disorder. There are no allegations that Jacqulyn was seeking or receiving any treatment whatsoever for her mental retardation.

Nevertheless, these Defendants contend that because Defendants treated Jacqulyn for a behavioral condition unrelated to her mental retardation, they are immune under the MHMRA. As Plaintiff properly notes, this argument is without merit. See Potts v. Step By Step, Inc., 26 A.3d 1115, 1123 n. 3 (Pa. Super. 2011) (noting that the definitions of "mental disability" in the original MHMRA were subsequently repealed "except in so far as they relate to mental retardation or to persons who are mentally retarded") (citing 50 P.S. § 7502).[6] The Court also agrees with Plaintiff that even if the MHMRA applied to the treatment of Jacqulyn, it would be premature to dismiss these claims at this time because we can infer gross negligence and incompetence from the allegations of the complaint. Id. at 1119. Moreover, when considering the complaint's averments stating that Jacqulyn was transferred from WPIC to the jail in shackles and remained in the custody of the jail for more than five days, it is difficult to

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[5] **§ 4603. Immunities**:

> No person and no governmental or recognized nonprofit health or welfare organization or agency shall be held civilly or criminally liable for any diagnosis, opinion, report or any thing [sic] done pursuant to the provisions of this act if he acted in good faith and not falsely, corruptly, maliciously or without reasonable cause; provided, however, that causes of action based upon gross negligence or incompetence shall not be affected by the immunities granted by this section.

50 P.S. § 4603.

[6] Section 7502 explicitly narrowed the definition of "mental disability" in § 4102 that Defendants seek to invoke in this case. 50 P.S. §7502 n. 1.

comprehend how we could accept Defendants' argument that the mental health services Jacqulyn received while involuntarily detained at the jail should be considered outpatient services under the MHMRA.[7] For all of these reasons, the Court rejects Corizon's and Dr. Rodriguez's argument that they are entitled to immunity under the MHMRA.[8]

As Corizon and Dr. Rodriguez make no other arguments as to why their motions to dismiss should be granted, both of their motions are denied.

B. Allegheny County and Warden Harper

The motion to dismiss filed by Allegheny County and Warden Harper will be granted. As a preliminary matter, Plaintiff concedes that her state law wrongful death and survival claims against Allegheny County and Warden Harper are barred by Pennsylvania's Political Subdivision Tort Claims Act, 42 Pa.C.S § 8501, et seq. See (ECF No. 40 at 2, 12). Accordingly, those claims will also be dismissed.

Turning to the § 1983 claims, these Defendants correctly argue that the complaint does not contain sufficient factual allegations against either of them to state a plausible claim for relief. Contrary to Plaintiff's assertion that she pled numerous factual allegations against both of these Defendants, the complaint only contains legal conclusions couched as factual allegations. See Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). "While legal conclusions can provide the complaint's framework, they must be supported by factual allegations" to state a plausible claim for relief. Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). "The clearest indication that an allegation is conclusory and unworthy of weight … is that it embodies a legal point."

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[7] See 50 P.S. § 4102 ("outpatient services" means that the mentally disabled person was not admitted or committed to the facility, whereas "inpatient services" means that she was admitted or committed for a continuous period of twenty-four hours or longer).

[8] Additionally, Defendants' arguments that the state law claims should be dismissed for failure to file certificates of merit are moot because Plaintiff subsequently filed certificates of merit against them within the applicable time period. See (ECF Nos. 26-28).

Connelly v. Lane Const. Corp., 809 F.3d 780, 790 (3d Cir. 2016). Thus, allegations that merely "paraphrase in one way or another the … elements of the claims in question" without any supporting facts are "disentitled to any presumption of truth." Id.

Supervisors may not be held liable under § 1983 for the unconstitutional conduct of their subordinates under a theory of respondeat superior. Iqbal, 556 U.S. at 676. The Court of Appeals has outlined the following two theories for establishing supervisory liability under § 1983: (1) when the supervisor, with deliberate indifference to the consequences, "established and maintained a policy, practice or custom which directly caused [the] harm;" or (2) when the supervisor "participated in violating the plaintiff's rights, directed others to violate them, or as the person in charge, had knowledge of and acquiesced in his subordinates' violations." Santiago v. Warminster Twp., 629 F.3d 121, 128-29 & n. 5 (3d Cir. 2010) (quoting A.M. ex rel. J.M.K. v. Luzerne Cty Juvenile Det. Ctr., 372 F.3d 572, 586 (3d Cir. 2004)). "'Failure to' claims – failure to train, failure to discipline, or … failure to supervise – are generally considered a subcategory of [the first theory,] policy or practice liability." Barkes v. First Corr. Med., Inc., 766 F.3d 307, 316 (3d Cir. 2014), *rev'd on other ground sub nom. Taylor v. Barkes*, 135 S. Ct. 2042 (2015).

Similarly, municipalities and other local governmental units "can be sued directly under § 1983 for monetary, declaratory, or injunctive relief." *Monell v. Dep't o*f Social Servs., 436 U.S. 658, 690 (1978). "But, under § 1983, local governments are responsible only for 'their own illegal acts," and, like supervisors, "are not vicariously liable under § 1983 for their employees' actions." Connick v. Thompson, 563 U.S. 51, 60 (2011) (citations omitted, emphasis in original). To state a plausible § 1983 claim against a municipality, the complaint must contain factual

allegations showing that a municipal custom or policy caused the constitutional violation.[9] Monell, 436 U.S. at 694; McTernan v. City of York, Pa., 564 F.3d 636, 658 (3d Cir. 2009) (the plaintiff must "identify a custom or policy, and specify what that custom or policy was"). "Where the policy concerns a failure to train or supervise municipal employees, liability under section 1983 requires a showing that the failure amounts to deliberate indifference to the rights of persons with whom the employees will come into contact." Thomas v. Cumberland Cty., 749 F.3d 217, 222 (3d Cir. 2014) (citations and internal marks omitted). "Once a § 1983 plaintiff identifies a municipal policy or custom, he must 'demonstrate that, through its deliberate conduct, the municipality was the 'moving force' behind the injury alleged.'" Berg v. Cty. of Allegheny, 219 F.3d 261, 276 (3d Cir. 2000) (quoting *Bd. of Cty. Com'rs of Bryan Cty. v. Brown*, 520 U.S. 397, 404 (1997)). Where the policy or custom does not facially violate federal law, causation can be established only by demonstrating that the municipal action was taken with deliberate indifference as to its known or obvious consequences. Id.

The Court agrees with Warden Harper and Allegheny County that the complaint only contains conclusory allegations against them. With regard to Warden Harper, the complaint contains no factual allegations to support the several vague "failure to" allegations. The complaint's general allegations that Warden Harper "was a policy maker for the Allegheny County Jail," was ultimately "responsibl[e] for [Jacqulyn's] safety and general well-being," and

[9] "A course of conduct is considered to be a 'custom' when, though not authorized by law, 'such practices of state officials [are] so permanent and well settled' as to virtually constitute law." Andrews v. City of Phila., 895 F.2d 1469, 1480 (3d Cir. 1990) (quoting Monell, 436 U.S. at 690). Custom may also be established by evidence of knowledge and acquiescence. Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996). "Policy is made when a 'decisionmaker possess[ing] final authority to establish a municipal policy with respect to the action' issues an official proclamation, policy, or edict." Andrews, 895 F.2d at 1480 (quoting Pembaur v. City of Cincinnati, 475 U.S. 469, 481 (1986)). State law determines whether an individual is a policymaker, i.e., an official who has final, unreviewable discretion to make a decision or take an action. Id. at 1481 (citing City of St. Louis v. Praprotnik, 485 U.S. 112, 142 (1988)).

failed to adequately train, supervise, monitor, discipline, investigate, and/or correct deficiencies, do not, without supporting factual detail, state a plausible claim for relief against a supervisor under § 1983. The complaint contains no factual allegations suggesting that Warden Harper actually knew or had reason to believe that prison doctors or their assistants were mistreating Jacqulyn, that he was in any way involved or aware of her specific medical treatment, or that he, as a high-ranking prison official, knew that there were serious system-wide deficiencies in the provision of medical care at ACJ being administered to similarly situated inmates. See Barkes, 766 F.3d at 324; Sample v. Dieks, 885 F.2d 1099, 1118 (3d Cir. 1989).

It appears that Plaintiff may be attempting to hold Warden Harper liable based on the fact that WPIC sent other medical professionals at the jail, including Dr. Rodriguez, summaries of Jacqulyn's medical conditions. Based on these summaries, the complaint asserts that members of the jail knew that the administration of Haldol would likely trigger an onset of NMS. However, supervisory liability may not be premised on a theory of respondeat superior, and there are no allegations that Warden Harper was ever made aware of these summaries or that he was even capable, as a non-medical official, of realizing the risk that Haldol posed to Jacqulyn's rare condition. See Spruill v. Gillis, 372 F.3d 218, 236 (3d Cir. 2004) ("[A]bsent a reason to believe (or actual knowledge) that prison doctors or their assistants are mistreating (or not treating) a prisoner, a non-medical prison official … will not be chargeable with the Eighth Amendment scienter requirement of deliberate indifference."); Farmer v. Brennan, 511 U.S. 825, 837 (1994) (to exhibit deliberate indifference, "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference").[10] Because there are insufficient factual allegations to trace any of the

[10] Based on the allegations of the complaint, it appears that Jacqulyn was a detainee, not a

purported mistreatment of Jacqulyn's medical conditions to Warden Harper – either through (1) the establishment of a policy or custom (including the subcategory of "failure to" claims) or (2) his personal involvement, direction, knowledge, or acquiescence in his subordinates' wrongdoing – the complaint fails to state a claim under § 1983 against Warden Harper.

There are likewise no factual allegations supporting the complaint's general assertions that Allegheny County, through the ACJ, had some policy or custom involving medical assessment, treatment, and/or monitoring that caused Jacqulyn's injuries. Similar to Warden Harper, the County cannot be held liable under § 1983 merely because the medical contractors at ACJ improperly prescribed Jacqulyn medication and failed to treat and monitor her symptoms thereafter, absent an unlawful policy or custom that caused her injuries. See Monell, 436 U.S. at 694. There are no well-pleaded facts in the complaint that allow us to infer that the County itself took any unlawful actions through established policy or custom regarding the alleged mistreatment of Jacqulyn by the medical contractors at the jail. Nor are there factual allegations suggesting that the County failed to train or supervise the medical contractors in the face of a pattern of similar constitutional violations, or that the need for such training and supervision of diagnosing and monitoring rare conditions like Jacqulyn's was so obvious and highly predicable that said failure was the cause Jacqulyn's injuries. See Connick, 563 U.S. at 61-64; cf. Thomas, 749 F.3d at 225-226 (finding that the inmate's injury could be viewed as a highly predictable consequence of the jail's failure to provide corrections officers with de-escalation and

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convicted prisoner. If so, the Due Process Clause of the Fourteenth Amendment, rather than the Eighth Amendment, would govern this claim for inadequate medical care. Natale v. Camden Cty. Corr. Facility, 318 F.3d 575, 581 (3d Cir. 2003). Nevertheless, such Fourteenth Amendment claims are evaluated under the same standard used to evaluate medical needs claims brought under the Eighth Amendment. Id. Accordingly, cases discussing Eighth Amendment medical needs claims and deliberate indifference in that context, such as Spruill and Farmer, apply to this case. Dinsmore v. Cty. of Butler, 2017 WL 413072, *2-3 & n. 4 (W.D. Pa. 2017); Estate of Thomas v. Fayette Cty., 194 F.Supp.3d 358, 369, 376 & n. 9 (W.D. Pa. 2016).

intervention training in light of the frequency of fights and the volatile nature of the prison). Because there are no facts in the complaint that allow us to infer that Allegheny County had in place an unconstitutional policy or custom that caused Jacqulyn's injuries, the complaint fails to state a claim for municipal liability under § 1983.

Therefore, the Court will grant the motion to dismiss filed by Warden Harper and Allegheny County. In Plaintiff's submissions in opposition to the pending motions, she alternatively requests that she be given the opportunity to file an amended complaint if the Court grants their motion. "[A]mendment must be permitted in this context unless it would be inequitable or futile." See Grayson v. Mayview State Hosp., 293 F.3d 103, 108-09 (3d Cir. 2002). It is futile to allow amendment when "the complaint, as amended, would fail to state a claim" under Rule 12(b)(6). Shane v. Fauver, 213 F.3d 113, 115 (3d Cir. 2000).

Here, the Court concludes that under the circumstances, allowing Plaintiff to file an amended complaint would not be inequitable or futile, although the Court acknowledges that since Plaintiff has not yet had the benefit of discovery, there is a very real possibility that she may not be able to allege the requisite factual detail to correct the existing pleading deficiencies when she amends. In Santiago, the Court of Appeals recognized this dilemma, explaining that:

> … plaintiffs may face challenges in drafting claims despite an information asymmetry between plaintiffs and defendants. Given that reality, reasonable minds may take issue with Iqbal and urge a different balance between ensuring, on the one hand, access to the courts so that victims are able to obtain recompense and, on the other, ensuring that municipalities and [government] officers are not unnecessarily subjected to the burdens of litigation. See Arthur R. Miller, From Conley to Twombly to Iqbal: A Double Play on the Federal Rules of Civil Procedure, 60 Duke L.J. 1, 2 (2010) (arguing that Twombly and Iqbal give "too much attention to claims ... of expense and possible abuse and too little on citizen access, a level litigation playing field, and the other values of civil litigation"). The Supreme Court has struck the balance, however, and we abide by it.

Santiago, 629 F.3d at 134 n. 10. Despite these pleading challenges, the Court concludes that Plaintiff must at least be given the chance to amend her complaint against Warden Harper and Allegheny County, which must be filed within the timeframe set forth below.

However, given that Warden Harper and Allegheny County will likely respond to the amended complaint with a similar renewed motion to dismiss, if Plaintiff reflects upon her situation and instead determines that she does not wish to proceed against these Defendants at this time, the Court will dismiss them from this case without prejudice. Then, if Plaintiff comes across information in the ordinary course of her discovery with Corizon and Dr. Rodriguez that she believes supports claims against Warden Harper and/or Allegheny County, she could seek leave to amend her complaint to add them as parties at that time, subject to any applicable procedural rules.

V. Conclusion

AND NOW, this 4th day of April, 2017, upon consideration of all of the arguments and submission made by the parties in connection with the pending motions to dismiss, and in accordance with the foregoing analysis, it is hereby **ORDERED** as follows:

1. The motion to dismiss for failure to state a claim, or in the alternative, motion for summary judgment filed by Defendants Corizon Health, Inc. and Corizon, Inc. (ECF No. 8) is **DENIED**.
2. The motion to dismiss, or in the alternative, motion for summary judgment filed by Defendant Dr. Norberto Rodriguez, M.D. (ECF No. 21) is **DENIED**.
3. The motion to dismiss filed by Defendants Orlando Harper and Allegheny County (ECF No. 16 errata 18) is **GRANTED**, but Plaintiff is granted leave to amend her complaint against these Defendants.

4. Plaintiff may file an amended complaint on or before **April 25, 2017**.

5. If Plaintiff does not file the amended complaint within the timeframe in the preceding paragraph, Defendants Harper and Allegheny County will be dismissed from this action without prejudice by separate Order, and Plaintiff will only be able to pursue claims against them in the future if she obtains leave of court. Any motion for leave shall have an attached proposed amended complaint.

Dated: April 4, 2017.

By the Court:

s/ Cynthia Reed Eddy
Cynthia Reed Eddy
United States Magistrate Judge

cc: all registered users of CM-ECF