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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Jacquelyn Harrelson,

Plaintiff,

vs.

Clarence Dupnik, et al.,

Defendants.

) No. CV 11-411-TUC-FRZ (BPV)

) **ORDER**

_____)
Pending before the Court is a Report and Recommendation (“R & R”) issued by United States Magistrate Judge Velasco that addresses numerous motions in limine.¹ As the limited objections do not undermine the vast majority of the analysis and proper conclusions reached by the R & R, the parties’ objections are rejected and the Report and Recommendation is fully adopted except as specifically noted below in this Order.

Bifurcation

The R & R recommends denying Plaintiff’s motions in limine seeking to exclude M.J.H.’s prior bad acts, juvenile record, and the nature and circumstances of his sentenced crimes as this evidence is clearly relevant to the damages in this case. See R & R at pp. 24-31.

¹The Court reviews de novo the objected-to portions of the Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Court reviews for clear error the unobjected-to portions of the Report and Recommendation. *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); see also *Conley v. Crabtree*, 14 F. Supp. 2d 1203, 1204 (D. Or. 1998).

1 However, the R & R also recommends bifurcating the trial between liability and damages as
2 it was apparently unclear that the evidence at issue was pertinent to any liability issues based
3 on the state of the record before Judge Velasco. *See* R & R at pp. 29-31. The
4 recommendation as to bifurcation is rejected as proceeding in this manner would be
5 impractical and inefficient. As Defendants correctly argue, M.J.H.’s criminal history and
6 various juvenile problems may be linked to his mental health problems which Defendants
7 were attempting to address while he was incarcerated. Furthermore, some of those issues,
8 such as his history of drug and alcohol use, may also be connected to the cause of death.
9 Thus, damages and liability could not be neatly separated into two separate trials as the issues
10 are overlapping, and witnesses and documentation could not be efficiently presented to the
11 jury without allowing reference to M.J.H.’s prior bad acts, juvenile record, and the nature and
12 circumstances of his sentenced crimes.²

13 **Advisory Letter**

14 On pages 22 to 24 of the R & R, Judge Velasco discusses the Conmed Defendants’ motion
15 to exclude the Advisory Letter issued by the Arizona Medical Board related to their
16 investigation of Dr. Bishop. However, the motion was denied as moot as Plaintiff stipulated
17 that they did not foresee using the letter in the case in chief. To avoid any confusion at trial,
18 the Court will grant the motion to exclude the Advisory Letter with leave for Plaintiff to
19 move to introduce the letter at trial if they believe it becomes necessary for some reason; any
20 discussion as to introducing the letter shall take place outside the presence of the jury.

21 **Miscellaneous Matters**

22 In the County’s objections, they state in part: “[T]he County Defendants’ Motion in
23

24
25 ²The Court notes that County Defendants submit “clarifications and objections” to the R &
26 R. As to the clarifications appearing at p. 1, line 18 to p. 2, line 4 in Doc. 179, the County
27 Defendants note a typo in the R & R and also note that they addressed an argument in the motion
28 in limine briefing contrary to what the R & R stated. While the Court does not believe that
clarification is necessary as to those issues as it has no impact on the trial or the Court’s substantive
rulings herein, the Court agrees with the County Defendants’ stated clarifications at p. 1, line 18 to
p. 2, line 4 in Doc. 179.

1 Limine (Doc. #144) also sought an Order precluding Plaintiff from using Dr. Don's testimony
2 to establish that the assault and protective-custody status were a proximate cause of MJH's
3 death. The County Defendants are unclear as to whether the Report adopts that request. Thus,
4 they respectfully request that the Court clarify this point by adding language that Plaintiff
5 cannot use Dr. Don to establish that the assault and protective-custody status were a
6 proximate cause of MJH's death." *See* Doc. 179 at p. 2, lines 12-25. As to these issues, the
7 R & R states in part: "[T]he Magistrate Judge recommends that the Court deny the motion
8 as to Dr. Don in part, to allow testimony from Dr. Don concerning her opinion that the
9 physical and emotional consequences of the assault and head injury, and protective custody
10 status, as a causal factors in the deterioration of M.J.H.'s psychiatric condition but grant the
11 motion as to any testimony regarding standard of care of the County Defendants." *See* R &
12 R (Doc. 175 at p. 9, lines 3-11). The R & R does not need clarification. To the extent the
13 County objects to the R & R, the objection is rejected.

14 On a related note, Plaintiff's objections state in part: "Plaintiff also objects to the extent
15 that the recommendation might be read that a 'custodial expert' is required for the claims
16 made in this case. The concept that corrections officers must follow 'keep separate'
17 directives in order to protect a juvenile inmate from attack is not beyond the experience or
18 competence of the jury to understand." *See* Doc. 178 at p. 2, lines 11-15. The Court finds
19 that the R & R does not make any such suggestion and no objection is warranted.
20 Regardless, the Court agrees with Plaintiff's position as to this issue.

21 Lastly, Plaintiff's objections state in part: "Plaintiff objects to the recommendation
22 regarding medical experts to the extent that A.R.S. § 12-2604 is applied to claims made
23 under 42 U.S.C. § 1983. Plaintiff's medical experts are well-qualified to provide the
24 testimony required to establish claims against the individual Conmed defendants under
25 federal law. *See* Doc. 175, p. 17 (on qualifications of Dr. Don and Dr. Wax)." *See* Doc. 178
26 at p. 2, lines 20-25. Again, the Court finds that the R & R does not make any such
27 suggestion and no objection is warranted. Regardless, the Court agrees with Plaintiff's
28 position as to this issue.

1 To the extent the Court has not specifically addressed any other objections or requests for
2 “clarifications”, the Court rejects the objections and finds that any request for “clarification”
3 is unwarranted.

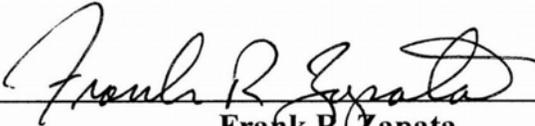
4 **Conclusion**

5 Accordingly, IT IS HEREBY ORDERED as follows:

6 (1) The Report and Recommendation (Doc. 175) is fully adopted except as specifically noted
7 in the text of this Order.

8 (2) The parties’ motions in limine (Docs. 143, 144, 146, 147, 148, 149, 150, 151, 152, 153,
9 154, 155) are granted in part and denied in part as discussed in the text of the R & R and this
10 Order.

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12 DATED this 3rd day of June, 2014.

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15 Frank R. Zapata
16 Senior United States District Judge
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