

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

DANA E. LOPES,
Plaintiff

v.

**CIVIL ACTION
NO: 14-10679-NMG**

GERALDINE RIENDEAU, RN, BARBARA BERG,
LPN, UMASS CORRECTIONAL HEALTH, PROGRAM
SERVICES, DYANA NICKL, SENIOR DIRECTOR OF
PROGRAM UMASS CORR. HEALTH, LAWRENCE
WEINER, ASSISTANT DEPUTY COMMISSIONER OF
CLINICAL SERVICES, SHAWNA NASUTI, NP, PAUL
CRATAZZOLA, LICSW, ADMINISTRATOR OF
HEALTH SERVICES, PAT-DAVENPORT MELLO,
HSA OF NURSING, MASSACHUSETTS
PARTNERSHIP OF CORRECTIONAL HEALTHCARE,
Defendants

**LEAVE TO FILE
GRANTED
ON APRIL 20, 2016**

**DEFENDANTS', DYANA NICKL AND GERALDINE RIENDEAU, STATEMENT OF
UNDISPUTED FACTS IN SUPPORT OF THEIR RENEWED MOTION FOR
SUMMARY JUDGMENT**

The Defendants, Dyana Nickl and Geraldine Riendeau,¹ submit the following Statement of Material Facts, which are not in dispute, in support of their Renewed Motion for Summary Judgment:

PARTIES

1. The Plaintiff, Dana Lopes ("Mr. Lopes"), is a *pro se* inmate, incarcerated with the Department of Corrections during the events alleged in the Complaint. See Exhibit 1, Complaint at ¶1.

¹ UMass Correctional Health was dismissed from this case on March 26, 2015 pursuant to the Motion to Dismiss, Docket #26.

2. The Defendant, Geraldine Riendeau, R.N. (“Ms. Riendeau”), was formerly the Health Service Administrator, working for UMass Medical Correctional Health during the events alleged in the Complaint. See Exhibit 1, Complaint at ¶2.

3. The Defendant, Dyana Nickl (“Ms. Nickl”), was formerly the UMass Correctional Health Services Grievance and Appeals Coordinator at all relevant times. See Exhibit 1, Complaint at ¶2.

PROCEDURAL HISTORY

4. Plaintiff filed his Complaint against UMCH and other UMCH Defendants as well as Massachusetts Partnership for Correctional Health (“MPCH”) and other MPCH Defendants on February 24, 2014. See Exhibit 2, Docket #1.

5. UMCH filed its Motion to Dismiss on July 15, 2014. See Exhibit 2, Docket #26.

6. On March 2, 2015, Magistrate Judge Marianne B. Bowler recommended allowing UMCH’s Motion to Dismiss. See Exhibit 2, Docket #60.

7. Judge Nathaniel M. Gorton adopted Magistrate Judge Bowler’s recommendation. See Exhibit 2, Docket #67.

8. On June 18, 2015, the Defendants, Dyana Nickl and Geraldine Riendeau, R.N., filed their Motion for Summary Judgment with accompanying documents. See Exhibit 2, Docket #99.

9. On March 3, 2016, Magistrate Judge Marianne B. Bowler issued a Report and Recommendation, recommending that the section 1983 claims and retaliation claims be dismissed,² but found a “fail[ure] to establish the absence of genuine issue of material fact” as to

² The Court stated that it would not be necessary to address Ms. Nickl and Ms. Riendeau’s PLRA exhaustion claims in light of these recommended dismissals.

Massachusetts Tort Claims Act (“MTCA”). See Exhibit 11, Report and Recommendations, dated March 3, 2016, pgs. 57-58.

10. On March 17, 2016, Plaintiff’s filed an Objection to this Report and Recommendation, arguing there is no issue of genuine material fact as to Ms. Nickl’s and Ms. Riendeau’s immunity. See Exhibit 13, Defendants’ Objection to Magistrate Judge Marianne B. Bowler’s Report and Recommendation.

11. On March 30, 2016, District Judge Gorton adopted the Report and Recommendation and overruled Ms. Nickl’s and Ms. Riendeau’s objections, solely as the objections raised arguments not presented to the Magistrate Judge. See Exhibit 14, Judge Gorton’s Order, dated March 30, 2016.

12. On April 20, 2016, Judge Gorton allowed Defendant’s Motion for Leave to file a Renewed Motion for Summary Judgment and subsequently allowed the Defendants to file until July 6, 2016. See Exhibit 2, Docket #131 and #135.

RELEVANT FACTS

13. Geraldine Riendeau, R.N.’s salary was paid by UMass Medical School (“UMMS”) and was not dependent on the number of inmates she treated. See Exhibit 3, Affidavit of Geraldine Riendeau.

14. UMass Correctional Health (“UMCH”) set Ms. Riendeau’s hours, determined which unit she worked on a given shift, and determined what patients she saw. See Exhibit 3, Affidavit of Geraldine Riendeau.

15. As an employee of UMMS, Ms. Riendeau was also able to participate in benefits programs only offered to state employees, such as the state retirement program open only to state employees. See Exhibit 3, Affidavit of Geraldine Riendeau.

16. As an employee of UMMS and as a registered nurse, Ms. Riendeau was bound by the UMCH policies and procedures it has developed concerning the care provided to inmates. See Exhibit 3, Affidavit of Geraldine Riendeau.

17. Any caring Ms. Riendeau provided to Mr. Lopes was provided according to the UMCH policies and procedures. See Exhibit 3, Affidavit of Geraldine Riendeau.

18. As a nurse, Ms. Riendeau's treatment of inmates was subject to oversight by the supervising physician. See Exhibit 3, Affidavit of Geraldine Riendeau.

19. All treatment decisions were subject to the final approval of the UMCH-appointed Site Medical Director and the UMCH Program Medical Director. See Exhibit 3, Affidavit of Geraldine Riendeau.

20. As the Health Services Administrator ("HSA"), Ms. Riendeau was required to follow the UMCH policies and procedures when handling medical grievances. See Exhibit 3, Affidavit of Geraldine Riendeau.

21. Dyana Nickl, the UMass Correctional Health Services Senior Director of Operations, was under the control and direction of UMCH in handling the Inmate Medical Service Grievance Mechanism. See Exhibit 4, Affidavit of Dyana Nickl.

22. Ms. Nickl followed UMCH policies and procedures in handling Medical Service Grievances. See Exhibit 4, Affidavit of Dyana Nickl.

23. Ms. Nickl was employed by the UMass Medical School ("UMMS") and received a salary from UMMS for the services I provided through UMCH. See Exhibit 4, Affidavit of Dyana Nickl.

24. UMCH determined Ms. Nickl's schedule. See Exhibit 4, Affidavit of Dyana Nickl.

25. As an employee of UMMS, Ms. Nickl was also able to participate in benefits programs only offered to state employees, such as the state retirement program that is open only to state employees. See Exhibit 4, Affidavit of Dyana Nickl.

Respectfully submitted,
Defendants,
GERALDINE RIENDEAU AND DYANA
NICKL

By their attorneys,

/s/ Caroline M. Kelly

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I hereby certify that on this 6th day of July 2016, a copy of the above pleading was filed with the ECF System and sent electronically to the registered participants as identified on the Notice of Electronic Filing, with paper copies being sent to those indicated as non-registered participants.

/s/ Caroline M. Kelly
