DAVENPORT v. POTTSTOWN HOSPITAL COMPANY LLC et al Doc. 20

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

RAYMOND SAMUEL DAVENPORT, III	:	**CIVIL ACTION**
	:	
v.	:	**NO. 17-1616**
	:	
POTTSTOWN HOSPITAL COMPANY LLC, *et al.*	:	

KEARNEY, J. **July 18, 2017**

MEMORANDUM

The police involuntarily committed a confused and disoriented citizen to a hospital which did not honor his request for kosher meals on Shabbat during Passover. The citizen now *pro se* sues the hospital for violating his First and Second Amendments by depriving him of his free exercise of religion and right to bear arms and for negligence and intentional infliction of emotional distress. The citizen also alleges the hospital is liable for its employees' violations of his First, Second, Fourth, and Fourteenth Amendments under *Monell.*

The hospital moves to dismiss his First and Second Amendment, supervisory liability and state law claims against it. The hospital is not the party under § 1983 allegedly violating the citizen's First and Second Amendment claims. The citizen's *pro se* complaint does not come close to pleading the hospital is a state actor with supervisory civil rights liability. Absent a timely certificate of merit, there is no basis for corporate or medical negligence claims. In the accompanying Order, we grant the Hospital's motion as to the citizen's First and Second Amendment, supervisory liability and negligence claims with leave to amend if possible but deny the Hospital's motion as to the intentional infliction of emotional distress claim.

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I. Plead facts

Raymond Davenport alleges he began experiencing "disorientation of thoughts and confusion" on April 3, 2015. He continued to work and practice his Jewish religion.[1] Over the next six days, Mr. Davenport became "increasingly sensitive to humanitarian issues in the world and maintained a positive and peaceful demeanor."[2] On April 9, 2015, Mr. Davenport's physician deemed him "not a harm to himself or others."[3]

The next morning, Mr. Davenport drove his car to the grocery store to purchase food for Shabbat.[4] While grocery shopping, Mr. Davenport became "increasingly confused and did not properly use the self-checkout machine in the store."[5] Mr. Davenport then left the grocery store but could not locate his vehicle in the parking lot.[6] A store employee approached Mr. Davenport in the parking lot and asked him to return to the grocery store.[7]

The grocery store called North Coventry Township Police regarding possible theft because of Mr. Davenport's "incorrect checkout procedure and subsequent walk out to the parking lot."[8] Mr. Davenport attempted to pay for the groceries "to make it right."[9] The police officers found Mr. Davenport to be severely confused but he did not intend to commit theft based on his confusion and subsequent cooperation.[10] The grocery store declined to pursue theft charges against Mr. Davenport due to his confusion.[11]

For an unknown reason, at approximately 12:30 P.M., the Police placed Mr. Davenport into custody.[12] They handcuffed Mr. Davenport and then searched him.[13] The officers then drove him to the police station and kept him handcuffed in the holding area.[14] The Police requested Ebony Willis from Valley Creek Crisis evaluate Mr. Davenport's mental state.[15] She evaluated him while he remained handcuffed in the Police's holding area.[16]

After Ms. Willis evaluated him, the Police told Mr. Davenport to sign a "201 for voluntary treatment or be faced with criminal charges and incarceration."[17] They also told Mr. Davenport "life would be more difficult" if he refused to sign the "201."[18] Mr. Davenport signed the "201."[19]

Officer Hipple then drove Mr. Davenport to Pottstown Memorial Hospital for drug and alcohol screening and medical clearance.[20] Officer Hipple gave Mr. Davenport's signed 201 paperwork to a Hospital crisis worker named Lauren.[21] Mr. Davenport does not know what other instructions or information Officer Hipple provided Lauren and the Hospital.[22] Lauren communicated with the Police and Ms. Willis during Mr. Davenport's time at the Hospital.[23]

Mr. Davenport then "signed himself in to [the Hospital] with disoriented thoughts, confusion, and reduced physical awareness under threats of incarceration and criminal prosecution if he did not sign himself in at" the Hospital.[24] When the Hospital admitted Mr. Davenport, it assessed him as "confused and disoriented, but not a harm to himself or others."[25]

During his evaluation, Mr. Davenport explained he kept kosher for Passover and required kosher food.[26] The Hospital noted his mention of religious dietary restrictions but interpreted Mr. Davenport to be on a "fasting strike" and described his mention of Passover as "rambl[ing] a little bit about Passover."[27] Mr. Davenport alleges Hospital employee Mr. Coyne is responsible for the medical records describing Mr. Davenport's supposed fasting strike.[28]

When admitting Mr. Davenport, the Hospital erroneously combined his medical records with another patient's medical records and included the other patient's history of self-mutilation, suicide attempts, and suicidal statements.[29] The Hospital staff placed Mr. Davenport in a room without furniture and left him without supervision for over an hour in the emergency room area.[30] During this hour or so, Mr. Davenport grew even more confused and disoriented and his

condition deteriorated from the sight and sounds of others' trauma.[31] Sometime later, while still admitted at the Hospital, Mr. Davenport "fell to the floor and became unresponsive and unconscious for an extended period of time."[32] The Hospital staff attempted to revive Mr. Davenport by "scraping the sternum and trapezius muscle pinching which caused intense pain" and long-scarring to his sternum.[33] His fall caused his "condition immediately and significantly worsened" changing his mental state and behavior.[34] Because of his fall, Mr. Davenport also needed extended treatment at other facilities and suffered "extreme long-term pain and suffering."[35]

At some point during Mr. Davenport's day, Hospital employee Jose Ortiz contacted the North Coventry Police because Ms. Willis, the crisis center worker, signed the paperwork in the incorrect place.[36] Mr. Ortiz spoke with Police officer Jesse Smith who is a K-9 Drug Specialist.[37] Officer Smith told Mr. Ortiz if Mr. Davenport refused to sign another 201 then Officer Smith "would incarcerate [Mr. Davenport] and complete a criminal complaint."[38] "The police report states [the Hospital] attempted to get new 201 forms signed" from Mr. Davenport for the Police.[39]

Officer Smith arrived at the Hospital at approximately 11 P.M. on April 10th to evaluate Mr. Davenport and "determine if behavior of [Mr. Davenport] had changed from earlier in the day" and work with Mr. Ortiz to force Mr. Davenport to sign a new 201.[40] Mr. Davenport alleges the Hospital pressured him to sign the paperwork on Shabbat in disregard, intolerance and deprivation of his First Amendment freedom of religion rights.[41] Upon arrival at the Hospital, Officer Smith described himself as "frustrated" stating Mr. Davenport "is on drugs" and "should be locked up."[42] Officer Smith also stated Mr. Davenport "'was full of drugs' or 'definitely on

drugs.'"[43] Mr. Davenport had no drugs or alcohol in his system according to the Hospital's lab blood tests.[44]

Officer Smith then went to Mr. Davenport's hospital room while Mr. Davenport was in a period of "forced and short moment of consciousness."[45] Mr. Davenport was in pain and disoriented and asked someone to close the door to his room to reduce the stressful environment.[46] No one would shut the door so Mr. Davenport got out of bed and attempted to shut the door.[47] When he began walking, Officer Smith grabbed Mr. Davenport "by the arm then proceeded to do a "left arm bar" driving [him] into the wall and handcuffed [him] behind his back."[48] Officer Smith also grabbed Mr. Davenport by the throat area when pinning him against the wall and asked "2 questions regarding harm to self or others" and Mr. Davenport responded no to both questions.[49] Officer Smith then rephrased his first question to ask if Mr. Davenport was suicidal "at which point Office[r] Smith claims [Mr. Davenport] responded 'yes.' "[50] Mr. Davenport's "alleged 'yes' is in response to the significant trauma, stress, assault, and battery experienced over the past few hours."[51] Officer Smith then called hospital security and together they applied additional restraints to Mr. Davenport to secure him in the hospital bed.[52]

Officer Smith used Mr. Davenport's "yes" to the suicide question to complete a 302 involuntary commitment form.[53] The 302 involuntary commitment form overrode Mr. Davenport's 201 voluntary commitment paperwork. Mr. Ortiz stated he would do the contact work for Mr. Davenport's 302 involuntary commitment and "further processing to have the 302 petition by Officer Smith approved."

Feeling under "significant scrutiny" and not wanting to support the fasting strike claim, Mr. Davenport ate the oatmeal, not Kosher for Passover, the Hospital served to him on April 11th.[54]

II. Analysis

Mr. Davenport *pro se* sued the Hospital, among other yet-unserved defendants, alleging § 1983 civil rights liability for violating his First Amendment rights, Second Amendment rights, and *Monell* municipal liability based on failure to train/supervise. Mr. Davenport alleges state law claims of negligent medical treatment and care, corporate negligence, and intentional infliction of emotional distress. While he pleads separate claims against the Police, the only plead civil rights claims against the Hospital arise under the First Amendment because of failing to serve him Kosher on Shabbat during Passover, under the Second Amendment for completely undisclosed reasons and under *Monell* for a failure to train/supervise its employees. The Hospital moves to dismiss.[55] While *pro se* pleadings, "must be held to less stringent standards than formal pleadings drafted by lawyers," they must "still allege sufficient facts in their complaints to support a claim."[56]

A. Mr. Davenport's § 1983 claims against the Hospital.

Mr. Davenport claims the Hospital deprived him of his civil rights under the First Amendment by failing to serve Kosher on Shabbat during Passover despite his request and also an undefined claim under the Second Amendment. He fails to plead the Hospital is the actor causing harm under § 1983 for these two constitutional claims. The Hospital is not the entity engaging in this conduct. Instead, Mr. Davenport identifies Hospital employees. As the Hospital did not cause harm, it cannot be liable under § 1983 unless, as addressed below, Mr. Davenport can show the Hospital is a state actor with supervisory failings.

To successfully plead a "basic cause of action" in a § 1983 claim, Mr. Davenport must allege facts showing "(1) ... the conduct complained of was committed by a person acting under

color of state law; and (2) ... the conduct deprived the plaintiff of rights, privileges, or immunities secured by the Constitution or laws of the United States."[57]

Only the actor who "played an 'affirmative part' in the alleged misconduct, either through personal direction of or actual knowledge and acquiescence in the deprivation" commits the violation under § 1983.[58] We cannot find liability against an entity, deemed acting under the color of state law, "premised on a theory of respondeat superior."[59]

Mr. Davenport cannot state a § 1983 violation of his First and Second Amendment rights because the Hospital is not the actor who violated Mr. Davenport's rights; if anyone, its employees are the alleged actors. Mr. Davenport can only assert those claims directly against the Hospital employees who allegedly violated his First and Second Amendment rights while acting under color of state law.

B. Mr. Davenport does not state a *Monell* claim.

Alternatively, Mr. Davenport claims the Hospital is liable for failure to train, failure to supervise, establish a system to identify or report improper conduct, and adequately sanction and discipline its employees. He alleges the Hospital deprived him of his constitutional rights under the First, Second, Fourth, and Fourteenth Amendments. He also attributes actions of the Police Officers Hipple and Smith to the Hospital.

Even if not the actor directly causing a constitutional claim, a municipality may be liable under § 1983 when its policy or custom causes the constitutional violation.[60] Section 1983 and *Monell* claims may be brought against private entities when they are acting under color of state law.[61]

We apply a two-part test to determine whether a private actor can be subject to constitutional constraints: first, we ask "whether the claimed constitutional deprivation resulted

from the exercise of a right or privilege having its source in state authority."[62] Second, we inquire "whether the private party charged with the deprivation could be described in all fairness as a state actor."[63]

Our court of appeals cautions no "'simple line' between state and private actors" exists.[64] "[T]he principal question at stake is whether there is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself."[65] We use "three broad tests" to determine whether state action exists: (1) whether the private entity exercised powers traditionally within the "exclusive" prerogative of the state; (2) whether the private party acted with the help of or in concert with state officials; and (3) whether the state sufficiently insinuated itself into a position of interdependence with the acting party rendering it a joint participant in the alleged misconduct, also known as the symbiotic relationship test.[66] Our "inquiry is fact-specific.'"[67] We "remain focused on the heart of the state action inquiry" ... "to discern if the defendant exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law."[68]

"Unlike the symbiotic relationship test, which looks at the overall relationship among the parties, the close nexus approach attempts to determine whether the state can be deemed responsible for the specific conduct of which the plaintiff complains."[69] The existence of a "close nexus" depends on whether the state "exercised coercive power or has provided such significant encouragement, either overt or covert" to the private actor to allow the private actor's choice to be "deemed . . . that of the State."[70] "Action taken by private entities with the mere approval or acquiescence of the State is not state action."[71]

A district court in the Middle District found a hospital did not act under the color of state law when it admitted an involuntarily committed patient brought in under police authority.[72] In

Janicsko v. Pellman, police transported Mrs. Janicsko to the hospital where a physician examined her and concluded she should be involuntarily committed under § 302 of the emergency procedures of Pennsylvania's Mental Health Procedures Act (the "Act").[73] Section 303 of the Act required a hearing be held to extend her commitment, which the hospital did and determined she should be released and discharged her.[74] Mrs. Janicsko alleged the hospital and its employees violated her Fourth, Fifth and Fourteenth Amendment rights under § 1983.[75] Mrs. Janicsko alleged § 302(b) of the Mental Health Procedures Act established the necessary nexus between the actions of the doctors and the Holy Spirit Hospital and the state.[76] The hospital moved for summary judgment arguing it did not act under color of state law.

The district court examined *Blum v. Yaretsky* to determine whether the hospital's activity can be attributed to the state under the close nexus test or the public function test.[77] The court then "follow[ed] the lead of [the] Supreme Court in *Blum* and *Rendell–Baker*," to "examine the language of the relevant sections to determine if it replaces private physician or facility discretion with state mandated standards and to determine whether the state compels or encourages a facility's or physician's actions with regard to involuntary commitment."[78]

The court compared the Pennsylvania statute to an Illinois statute in a factually similar court of appeals case, *Spencer v. Lee.*[79] In *Spencer*, the court of appeals held a private hospital's involuntary commitment of individuals is "not the type of action which was exclusively in the province of the state."[80] The court then reviewed the Illinois statute and found it did not compel or encourage hospitals to private commit individuals because it only stated a hospital *may* admit individuals. The court found the hospital was not a state actor and dismissed the § 1983 claims.[81] The court did note the plaintiff's allegation the local police were involved with one of

his commitments gave them "some pause," but plaintiff did not name police as defendants and did plaintiff not allege the hospital "conspired" with the police to commit him.[82]

In *Janicscko*, the court agreed with the court of appeals in *Spencer* holding the involuntary commitment of individuals is not a traditional public function. The court then compared the Pennsylvania statute to the Illinois statute and found the Pennsylvania statute had a higher degree of coercion and less discretion for hospitals to admit individuals because it states a hospital *shall* examine the individual and, in some cases, *shall* begin treatment immediately.[83] Despite this language, the court "[could not] hold that the standards set by the [Act] rise to the level of coercion."[84] The court could not say "the involuntary commitment of the mentally ill by private physicians and hospitals is, under the [Act], a function compelled by or sufficiently connected to state directives to attribute those actions to the state."[85] Our court of appeals affirmed the district court without an opinion and in *Benn v. Universal Health Systems, Inc.* cited to *Janicsko* approvingly in holding the Act's standards do not "rise to the level of coercion" for hospitals to be state actors.[86]

Mr. Davenport alleges the Hospital failed to train/supervise its employees causing violations of his First, Second, Fourth, and Fourteenth Amendment rights. Mr. Davenport alleges the Police brought him to the Hospital under his coerced voluntary commitment which later became an involuntary commitment, as in *Janiscko*, where the police forcibly removed the Mrs. Janicsko from her car and brought her to the hospital for involuntary commitment.[87] Also as in *Janiscko*, Mr. Davenport also alleges the Hospital confined him and treated him under the Act. Mr. Davenport does not allege the Hospital acted under color of state law when it allegedly failed to train/supervise its employees because the Act does not coerce the Hospital to train or

supervise its employees. Mr. Davenport fails to state a *Monell* claim against the Hospital because we have no facts showing the Hospital is a state actor.

Even if he could show the Hospital is a state actor, his *Monell* claim still fails. To plead a *Monell* claim, Mr. Davenport must allege he: "(1) possessed a constitutional right of which he was deprived; (2) the municipality had a policy [or custom]; (3) the policy [or custom] 'amounted to deliberate indifference' to his constitutional right; and (4) the policy [or custom] was the 'moving force' behind the constitutional violation."[88]

Liability for failure to train subordinate officers lies only where a constitutional violation results from "deliberate indifference to the constitutional rights of [the municipality's] inhabitants."[89] "A single incident of unconstitutional activity is not sufficient to impose liability under *Monell*, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker."[90] Mr. Davenport alleges a failure to train and supervise because the Hospital's failure to adequately hire, train, supervise or otherwise direct its employees about the rights of citizens, its failure to establish a system to investigate, identify or report employee misconduct, and its failure to sanction or discipline its employees or Officer Smith caused actions leading to Mr. Davenport's injuries and damages. To succeed on a failure to train claim, Mr. Davenport must plead the Hospital, the policymaker, made a "deliberate" or "conscious" decision to not train or supervise.[91] "A pattern of similar constitutional violations by untrained employees is 'ordinarily necessary' to demonstrate deliberate indifference for . . . failure to train."[92]

Alternatively, Mr. Davenport may prove deliberate indifference by showing: "(1) municipal policymakers know that employees will confront a particular situation; (2) the situation involves a difficult choice or a history of employees mishandling; and (3) the wrong choice by an employee will frequently cause deprivation of constitutional rights."[93]

Mr. Davenport failed to plead facts demonstrating the Hospital supervisors had contemporaneous knowledge of constitutional violations or facts to indicate a pattern of similar violations. He does not satisfy the pleading standard because he does not plead the Hospital's "policy [or custom] 'amounted to deliberate indifference'" by demonstrating a pattern of violations beyond the violation of his constitutional rights.[94] He also fails to plead Hospital employees acted under a policy which "was the 'moving force' behind the constitutional violations."[95] We grant the Hospital's motion to dismiss Mr. Davenport's *Monell* claim.

C. Mr. Davenport's medical negligence claim and corporate negligence claims fail because he did not timely file a certificate of merit.

Mr. Davenport alleges failure to manage his confusion and disorientation, failure to sufficiently supervise or monitor him, failure to maintain proper medical records, and other allegations for negligence against the Hospital employees Dr. Franz, Nurse Andrews and other staff providing care to him. He alleges the Hospital failed to retain and select competent nursing staff, use reasonable care in maintaining facilities and equipment used for patient care, failed to formulate, adopt, and enforce adequate rules and policies for nursing and medical care to ensure fall prevention care, and other allegations for corporate negligence. Mr. Davenport's claims require a certificate of merit under Pennsylvania law.[96]

Mr. Davenport sued on April 10, 2017. The law requires he file a certificate of merit within sixty (60) days of filing his complaint. A certificate of merit is required in cases "based upon an allegation that a licensed professional deviated from an acceptable professional standard."[97] The Pennsylvania Supreme Court adopted the certificate of merit requirement in 2003 as "an orderly procedure that would serve to identify and weed non-meritorious malpractice claims from the judicial system efficiently and promptly."[98]

Mr. Davenport's claims relate to medical negligence and require a certificate of merit.[99] Mr. Davenport did not file a certificate of merit within 60 days of his first complaint.[100] Mr. Davenport's amended complaint does not restart the 60 day time period.[101]

Mr. Davenport failed to timely file the required certificate of merit and failed to provide reasons why he failed to comply with the certificate of merit requirement. Equitable considerations may excuse noncompliance.[102] In *Womer*, the Pennsylvania Supreme Court directed courts to give a noncompliant party the opportunity to present a reasonable explanation or legitimate excuse for his noncompliance.[103] Mr. Davenport presents no reasonable explanation or legitimate excuse for his noncompliance with the requirement sufficient for us to find equitable considerations excuse his noncompliance. Mr. Davenport may seek reinstatement of his medical and corporate negligence claims by presenting further evidence sufficient to establish a reasonable explanation or legitimate excuse for his noncompliance with the certificate of merit requirement. We caution *Womer* "dictates a very strict interpretation of the [certificate of merit] Rule and sets a high bar for establishing a reasonable excuse" for failing to timely comply with the [certificate of merit] requirement.[104]

D. Mr. Davenport states a claim for intentional infliction of emotional distress.

To plead an intentional infliction of emotional distress claim under Pennsylvania law, Mr. Davenport must allege the Hospital's conduct (1) was intentional or reckless; (2) was extreme and outrageous; (3) actually caused the distress; and (4) caused distress that was severe.[105] "In Pennsylvania, '[l]iability on an intentional infliction of emotional distress claim has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'"[106]

Under Pennsylvania law, we determine whether the Hospital's conduct can be reasonably regarded as so extreme and outrageous to permit recovery.[107] To maintain his claim for intentional infliction of emotional distress, Mr. Davenport must allege that he suffered "severe" emotional distress resulting from the Hospital's conduct.[108] "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry and nausea" all indicate "severe" emotional distress.[109] His allegations of physical injury must accompany alleged emotional distress.[110] In *Lane*, the party alleged she "continue[d] to suffer 'fear, anxiety, stress, anger, headaches, nightmares, humiliation, embarrassment, emotional distress [and] mental anguish'" which the court found sufficient to raise an inference of severe emotional distress."[111]

Accepting all of Mr. Davenport's fact allegations as true and construing his amended complaint in the light most favorable to him, he states an intentional infliction of emotional distress claim. Mr. Davenport describes conduct as "extreme, and outrageous" and "designed to cause physical harm, grief, shame, humiliation, embarrassment, anger." He alleges the "intentional inflictions" caused him "further disorientation and confusion." He claims he required therapy from a psychologist to process and heal from the damages inflicted upon him and suffered "physical injury and pain." Mr. Davenport sufficiently pleads physical harm or injury for necessary infliction of emotional distress. We deny the Hospital's motion to dismiss this claim.

III. Conclusion

We grant in part and deny in part the Hospital's motion to dismiss Mr. Davenport's amended complaint against it, and grant Mr. Davenport leave to amend his Complaint only if he can do so in good faith.[112] We grant the Hospital's motion to dismiss Mr. Davenport's First and Second Amendment claims because Mr. Davenport fails to plead facts showing the Hospital

engaged in the alleged conduct necessary for direct liability under §1983. We dismiss Mr. Davenport's *Monell* claim because he did not plead facts demonstrating the Hospital acted under color of state law, and even if he had, he did not plead supervisors had contemporaneous knowledge of constitutional violations or facts to indicate a pattern of similar violations. We dismiss Mr. Davenport's medical and corporate negligence claims because he failed to timely file a required certificate of merit. Given his *pro se* status, we provide Mr. Davenport with leave to amend if he can do so in good faith. We do not dismiss Mr. Davenport's claim for intentional infliction of emotional distress against the Hospital.

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[1] Amended Complaint, ECF Doc. No. 13, ¶ 13.

[2] *Id.* ¶ 14.

[3] *Id.* ¶ 15.

[4] *Id.* ¶ 16.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.* ¶ 17.

[9] *Id.* ¶ 18.

[10] *Id.*

[11] *Id.*

[12] *Id.* ¶ 19. It is unclear if the North Coventry Township Police are Officer Hipple and Detective Prouty and if they took him into custody from the grocery store.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.* ¶ 20.

[18] *Id.*

[19] *Id.*

[20] *Id.* ¶ 21.

[21] *Id.* ¶ 22.

[22] *Id.* ¶ 23.

[23] *Id.* ¶ 26.

[24] *Id.* ¶ 24.

[25] *Id.* ¶ 25.

[26] *Id.* ¶ 57.

[27] *Id.* ¶ 58.

[28] *Id.* ¶ 61.

[29] *Id.* ¶ 27.

[30] *Id.* ¶ 28.

[31] *Id.* ¶ 29.

[32] *Id.* ¶ 30.

[33] *Id.* ¶ 35.

[34] *Id.* ¶ 31.

[35] *Id.*

[36] *Id.*

[37] *Id.* ¶ 36, 44.

[38] *Id.*

[39] *Id.* ¶ 37.

[40] *Id.* ¶ 38.

[41] *Id.* ¶¶ 63-64, 67.

[42] *Id.* ¶ 38-39.

[43] *Id.* ¶ 42.

[44] *Id.* ¶ 45.

[45] *Id.* ¶ 40.

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.* ¶ 41.

[50] *Id.*

[51] *Id.* ¶ 42.

[52] *Id.* ¶ 40.

[53] *Id.* ¶ 42.

[54] *Id.* ¶ 59-60.

[55] "In reviewing a dismissal under Federal Rule of Civil Procedure 12(b)(6), we accept all factual allegations as true, construing the complaint in the light most favorable to the plaintiff." *Warren Gen. Hosp. v. Amgen Inc.*, 643 F.3d 77, 84 (3d Cir. 2011). We grant a motion to dismiss "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." *Id.*

[56] *See id.* at 146 (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972) and *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013)). Our court of appeals instructs: "Our policy of liberally construing pro se submissions is driven by the understanding that [i]mplicit in the right of self-representation is an obligation on the part of the court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of

legal training." *Higgs v. Atty. Gen. of the US.*, 655 F.3d 333, 339 (3d Cir.2011) (quoting *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 475 (2d Cir.2006)) (internal quotation marks omitted).

Our court of appeals consistently demands a civil rights complaint contain "a modicum of factual specificity, identifying the particular conduct of defendants that is alleged to have harmed the plaintiffs" but does not consider this requirement inconsistent with *Haines. Ross v. Meagan*, 638 F.2d 646, 650 (3d Cir. 1981). "Our case law requires dismissal of complaints which 'contain only vague and conclusory allegations.'" *Id* (citing *Rotolo v. Borough of Charleroi*, 532 F.2d 920, 922-23 (3d Cir. 1976); *Kauffman v. Moss*, 420 F.2d 1270, 1275-76 & n.15 (3d Cir.), *cert. denied*, 400 U.S. 846 (1970); *Negrich v. Hohn*, 379 F.2d 213 (3d Cir. 1967)).

[57] *Schneyder v. Smith*, 653 F.3d 313, 319 (3d Cir. 2011).

[58] *Gannaway v. Prime Care Medical, Inc.*, 150 F. Supp. 3d 511, 526 (3d Cir. 2015) (internal citations omitted).

[59] *Id.* (citing *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1998)).

[60] *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 694 (1978); see also *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385 (1989).

[61] *Becker v. City U. of Seattle*, 723 F. Supp. 2d 807, 810 (E.D. Pa. 2010) See also *Leshko*, 423 F.3d at 339 ("[T]o state a claim of liability under § 1983, [a plaintiff] must allege that she was deprived of a federal constitutional or statutory right by a state actor.")

[62] *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 620 (1991).

[63] *Id.*

[64] *Kach v. Hose*, 589 F.3d 626, 646 (3d Cir. 2009) (quoting *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n,* 531 U.S. 288, 295 (2001)).

[65] *Leshko v. Servis*, 423 F.3d 337, 339 (3d Cir.2005).

[66] *Kach*, 589 F.3d at 646 (quoting *Leshko*, 423 F.3d at 339).

[67] *Groman v. Twp. of Manalapan*, 47 F.3d 628, 638 (3d Cir.1995); *see also Crissman v. Dover Downs Entm't Inc.*, 289 F.3d 231, 234 (3d Cir.2002) (en banc) (noting that "the facts are crucial").

[68] *Id.* (citing *West,* 487 U.S. at 49, 108 S.Ct. 2250) (internal quotation marks omitted).

[69] *Community Med. Ctr. v. Emerg. Med. Services of N.E. Pennsylvania, Inc.*, 712 F.2d 878, 881 (3d Cir. 1983) (citing *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982)).

[70] *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 52 (1999).

[71] *Id.*

[72] *Janicsko v. Pellman*, 774 F. Supp. 331, 335 (M.D. Pa. 1991), aff'd, 970 F.2d 899 (3d Cir. 1992).

[73] 50 Pa. Stat. § 7302(b)

[74] *Janicsko*, 774 F. Supp. at 335.

[75] *Id.*

[76] *Id.* at 336. (citing *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982)).

[77] *Id.* at 335.

[78] *Id.*

[79] *Id.* at 337 (citing *Spencer v. Lee*, 864 F.2d 1376 (7th Cir.1989), *cert. denied*, 494 U.S. 1016 (1990)).

[80] *Id.* (citing *Spencer*, 864 F.2d at 1381).

[81] *Spencer*, 864 F.2d at 1381.

[82] *Id.* at 1381-82.

[83] *Janicsko*, 774 F. Supp. at 338.

[84] *Id.*

[85] *Id.* at 339.

[86] *Benn v. Universal Health Sys., Inc.*, 371 F.3d 165, 171 (3d Cir. 2004) (citing *Janicsko*, 774 F. Supp. at 338-339).

[87] *See Janicsko*, 774 F. Supp. at 335.

[88] *Vargas v. City of Philadelphia*, 783 F.3d 962, 974 (3d Cir. 2015) (quoting *City of Canton*, 489 U.S. at 389–91)).

[89] *City of Canton*, 489 U.S. at 392.

[90] *Oklahoma City v. Tuttle,* 471 U.S. 808, 823–24 (1985).

[91] *See City of Canton*, 489 U.S. at 389.

[92] *Simpson v. Ferry*, 202 F. Supp. 3d 444, 455 (E.D. Pa. 2016) (quoting *Connick v. Thompson*, 563 U.S. 51, 61 (2011) and *Bd. of Cnty. Commrs of Bryan Cnty., Okl. v. Brown*, 520 U.S. 397, 409, (1997)).

[93] *Simpson*, 202 F. Supp. 3d at 455 (citing *Ancherani v. City of Scranton*, No. 13-2595, 2015 WL 5924366 at *4 (M.D. Pa. Oct. 9, 2015) and *Carter v. City of Philadelphia*, 181 F.3d 339, 357 (3d Cir. 1999)).

[94] *Vargas*, 783 F.3d at 974 (quoting *City of Canton*, 489 U.S. at 389–91)).

[95] *Id.*

[96] Pa. R. Civ. P. 1042.3(a) provides a plaintiff must file a COM signed by the attorney or party certifying that: "(1) an appropriate licensed professional has supplied a written statement that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside the acceptable professional standards and that such conduct was a cause in bringing about the harm; (2) the claim that the defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard; or (3) expert testimony of an appropriate licensed professional is unnecessary for the prosecution of the claim."

[97] *Id.*

[98] *Stroud v. Abington Meml. Hosp.*, 546 F. Supp. 2d 238, 247 (E.D. Pa. 2008) (quoting *Womer v. Hilliker*, 908 A.2d 269, 279 (Pa. 2006)).

[99] *See Koukos v. Chester Cty.*, No. 16-4602, 2017 WL 549150 at *3 (E.D. Pa. Feb. 7, 2017) (The certificate of merit requirement "applies to *pro se* and represented plaintiffs alike and constitutes a rule of substantive state law with which plaintiffs in federal court must comply.").

[100] *See* Pa. R. Civ. P. 1042.3(a).

[101] *See Stroud*, 546 F. Supp. 2d at 249.

[102] *Womer*, 908 A.2d at 279.

[103] *Id.*

[104] *Stroud*, 546 F.Supp.2d at 253 (quoting *Walsh v. Consolidated Design & Eng'g, Inc.*, No. 05–2001, 2007 WL 2844829 at *8 (E.D. Pa. Sept. 28, 2007)).

[105] *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D. Pa. 1999).

[106] *Kasper v. Cnty. of Bucks,* 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted)

[107] *Cox. v. Keystone Carbon Co.,* 861 F.2d 390, 395 (3d Cir. 1988).

[108] *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

[109] *Id.* (quoting *Kazatsky v. King David Memorial Park, Inc.*, 527 A.2d 988, 991 (Pa. 1987) (quoting Restatement (Second) of Torts § 46 cmt. d)).

[110] *Id.*; *See also Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) (symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

[111] *Id.*

[112] *Shane v. Fauver*, 213 F.3d 113, 117 (3d Cir. 2000) ("dismissal without leave to amend is justified only on the grounds of bad faith, undue delay, prejudice, or futility.").