



disorder. Id., ¶ 32. From December 22, 2014 until December 27, 2014, Keifer was, for various periods of time, housed in the medical housing unit on a suicide watch and an opioid detox watch and he consistently threatened to commit suicide due to severe emotional distress, narcotic withdrawal symptoms and mental illness. Id., ¶¶ 33-34, 36. Keifer advised Defendant counselors John Wickizer and Denise Sipe and various corrections officers of his intent to commit suicide and that he had wanted the police to shoot him at the time of his arrest. Id., ¶ 37. Defendants Turgeon and Cattell, the prison psychiatrist and physician respectively, never conducted a physical or psychiatric examination of Keifer. Id., ¶¶ 38, 39.

On December 24, 2014, Keifer was removed from suicide watch by Defendant Wickizer, although Keifer continued to threaten to commit suicide and asked other inmates to assist him in committing suicide throughout his five-day incarceration. Id., ¶¶ 42, 43. Defendants Wickizer, Sipe, Turgeon and Cattell were advised of Keifer's continued threats of suicide on December 26, 2014, but failed to conduct an appropriate evaluation and return Keifer to suicide watch status. Id., ¶ 48.

On the morning of December 27, 2014, Defendant Wickizer met with Keifer, discontinued Keifer from medical observation status, and released Keifer from all observation status to the general prison population without approval from a psychiatrist, psychologist, or physician. Id., ¶¶ 51, 52. That same day, Keifer requested a move to a private cell from the cell that he shared with a cellmate. Id., ¶ 53. Despite Keifer's repeated threats to commit suicide, he was transferred to a separate cell where he was housed alone and was not provided with psychiatric care, medication or appropriate monitoring. Id., ¶¶ 54-55. Later on December 27, 2014, Keifer hung himself with a sheet from the bunk of his cell and although initially

resuscitated, he never regained consciousness. *Id.*, ¶¶ 56-57. Keifer was hospitalized at Lancaster General Hospital on December 27, 2014, and he died on January 7, 2015. *Id.*, ¶ 58.

Plaintiff, Kathy Keifer, in her capacity as Administratrix of Zachary Keifer's Estate, initiated this action on December 23, 2016, by filing a seven count Complaint against Lancaster County, PrimeCare Medical, Inc. and nine individual employees of those two entities.<sup>1</sup> In Count I, Plaintiff alleges that the Medical Defendants were deliberately indifferent to Keifer's serious medical needs in violation of his Fourth, Eighth and Fourteenth Amendment rights and the laws of the Commonwealth of Pennsylvania. In Count V, Plaintiff claims that Defendants Lancaster County and PrimeCare Medical, Inc. violated the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101, *et seq.*, by failing to provide Keifer with appropriate medical and psychiatric care and necessary and appropriate housing, services, medications and supervision. The Medical Defendants move to dismiss the Fourth Amendment claims and monetary damages claim under the Pennsylvania Constitution against them and the ADA claims against PrimeCare Medical, Inc.

## **II. STANDARD OF REVIEW.**

On a motion to dismiss for failure to state a claim, courts accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint the plaintiff may be entitled to relief. Phillips v. County of Allegheny, 515 F.3d 224 (3d Cir. 2008). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a

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<sup>1</sup> Only those claims which are the subject of the instant Motion against the Medical Defendants are discussed herein.

plaintiffs obligation to provide grounds for his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Bell Atlantic Corp. v. Twombly, 550 U.S. 554 (2007)(citing Papasan v. Allain, 478 U.S. 265, 268).

In order to survive a motion to dismiss, a complaint “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662 (2009). A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Id. at 668. “Only a complaint that states a plausible claim for relief survives a motion to dismiss.” Id. at 679.

When facing a motion to dismiss for failure to state a claim, district courts are directed to conduct a three-part analysis. Connelly v. Lance Constr. Corp., 809 F.2d 780, 787 (3d Cir. Jan. 11, 2016). First, it must “tak[e] note of the elements [the] plaintiff must plead to state a claim.” Iqbal, 556 U.S. at 675. Second, it should identify allegations that, “because they are no more than conclusions, are not entitled to the assumption of truth.” Id. at 679. See also Burtch v. Milberg Factors, Inc., 662 F .3d 212, 224 (3d Cir. 2011) (“Mere restatements of the elements of a claim are not entitled to the assumption of truth.”)(citations and editorial marks omitted). Finally, “[When] there are well-pleaded factual allegations, [the] court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” Iqbal, 556 U.S. at 679.

### **III. DISCUSSION.**

#### **A. Claims for Violations of the Fourth Amendment and Monetary Damages Under the Pennsylvania Constitution Against the Medical Defendants.**

Plaintiff concedes that her claims pursuant to the Fourth Amendment and her monetary damages claim under the Pennsylvania Constitution should be dismissed. See generally, Ans. & Mem. Law in Opp'n. These claims will be dismissed with prejudice.

#### **B. Claims for Violations of the Americans with Disabilities Act Against PrimeCare Medical, Inc.**

In Count V of the Complaint, Plaintiff claims that PrimeCare Medical, Inc. violated the ADA. PrimeCare Medical, Inc. is a private corporation that contracts with the government to provide health services to correctional facilities. In Matthews v. Pennsylvania Department of Corrections, our Court of Appeals held in a non-precedential opinion that “a private corporation is not a public entity merely because it contracts with a public entity to provide some service.” Matthews v. Pa. Dep’t of Corr., 613 F.App’x 163, 170 (3d Cir. 2015)(citing Edison v. Douberly, 604 F.3d 1307, 1310 (11<sup>th</sup> Cir. 2010); Green v. City of New York, 465 F.3d 65, 79 (2d Cir. 2006) (holding private hospital performing government services by contract is not “instrumentality” of the government) and Cox v. Jackson, 579 F. Supp. 2d 831, 852 (E.D. Mich. 2008)(holding private medical provider with contract to serve prison was not government entity)).

Plaintiff argues, however, that PrimeCare Medical, Inc., “although a private corporation, is the creation of a government entity to perform and carry out exclusive government functions and should rightly be defined as a public entity under the ADA according to the Third Circuit’s interpretation of the term ‘instrumentality of the state’.” See Pl.’s Mem. Law, p. 9.

Plaintiff claims that the Third Circuit’s non-precedential reliance in Matthews on the Eleventh Circuit’s analysis in Edison is flawed because it “conflates government *contracting* with government *function*.” Pl.’s Mem. Law, p. 6 (quoting Edison, 604 F.3d at 1311 (Barkett, J.) (dissenting)(emphasis in original)). Plaintiff argues that PrimeCare Medical, Inc. only contracts with the government and the fact that it provides no other functions outside of medical services to correctional facilities makes it “an instrument of the state” because but for those contracts, PrimeCare Medical, Inc. would have no function. Id., pp. 6-7.

A “public entity” is defined by the ADA as “any State or local government . . . any department, agency, special purpose district, or other instrumentality of a State, or States or local government . . . [or] the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act . . . .” See 42 U.S.C. § 12132. Plaintiff does not cite any legal authority to support its contention that PrimeCare Medical, Inc. is an instrument of the state other than opining that the decision in Matthews which was based on Edison is flawed. Instead, Plaintiff asserts that the dissenting opinion in Edison was correct. As my colleague, Judge Mark A. Kearney recently noted, “[c]ourts reviewing whether an entity is an instrumentality of the state have concluded the term instrumentality “refers to governmental units or units created by them.” MGJ v. Sch. Dist. of Philadelphia, Civ.A. No. 17-318, 2017 WL 2277276, at \*10 n.109 (E.D. Pa. May 25, 2017)(citing Langston v. Milton S. Hershey Med. Ctr., No. 15-02027, 2016 WL 1404190, at \*11, \*31 (M.D. Pa. Apr. 11, 2016)(quoting Edison, 604 F.3d at 1310)).<sup>2</sup> Pursuant to this case law, we find no basis for concluding that PrimeCare

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<sup>2</sup> In MGJ v. Sch. Dist. of Philadelphia, Civ.A. No. 17-318, 2017 WL 2277276, at \*10 n.109 (E.D. Pa. May 25, 2017), Judge Kearney held that there was no basis for concluding that a private agency contracting with the School District of Philadelphia to provide therapeutic support staff services to students was a “public entity” or

Medical, Inc., a private entity contracting to provide health care services to a number of prisons, including Lancaster County Prison in the Commonwealth of Pennsylvania, is an instrumentality of the state or otherwise a public entity. We therefore dismiss the ADA claim against PrimeCare Medical, Inc. with prejudice.

#### **IV. CONCLUSION.**

For the reasons set forth above, the Medical Defendants' Motion to Dismiss will be granted. Plaintiff's claims pursuant to the Fourth Amendment and her monetary damages claim under the Pennsylvania Constitution against the Medical Defendants will be dismissed with prejudice. Plaintiff's claims against PrimeCare Medical, Inc. in Count V of the Complaint under the Americans with Disabilities Act will also be dismissed with prejudice.

Plaintiff's remaining claims against the Medical Defendants include Deliberate Indifference pursuant to 42 U.S.C. § 1983 and the Eighth and Fourteenth Amendments Against Defendants PrimeCare Medical, Inc., Wickizer, Sipe, Turgeon and Cattell (Count I), Negligence Against Defendants PrimeCare Medical, Inc. and Wickizer (Count II), Wrongful Death Against Defendants PrimeCare Medical, Inc., Wickizer, Sipe, Turgeon and Cattell (Count VI), and Punitive Damages Against Defendants Wickizer, Sipe, Turgeon and Cattell (Count VII).<sup>3</sup>

An appropriate Order follows.

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"instrumentality of the state" and he dismissed the Title II ADA claim against the agency. In Langston v. Milton S. Hershey Med. Ctr., No. 15-02027, 2016 WL 1404190, at \*11, \*31 (M.D. Pa. Apr. 11, 2016), the Court dismissed a Title II ADA claim against a hospital because it held the hospital was not a "public entity," and the mere fact that the hospital may have received federal Medicaid funds was insufficient to demonstrate it was an "instrumentality of a State."

<sup>3</sup> Claims against other non-Medical Defendants include Deliberate Indifference (Count III), Monell Claim (Count IV), ADA (Count V), Wrongful Death (Count VI), and Punitive Damages (Count VII).