

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
District Judge Gordon P. Gallagher

Civil Action No. 25-cv-00975-GPG-MDB

THE ESTATE OF MICHAEL BURCH, by and through personal representative LINDA
MCMILLAN,

Plaintiff,

v.

THE BOARD OF COUNTY COMMISSIONERS FOR THE COUNTY OF HUERFANO, a
municipality,
HUERFANO COUNTY SHERIFF'S OFFICE, a governmental entity,
SHERIFF BRUCE NEWMAN, in his official capacity as Huerfano County Sheriff,
DETENTION OFFICER STUART PINO, in his official capacity,
CAPTAIN LEA VIGIL, in her individual capacity,
CAPTAIN BILLY LAPORTE, in his individual capacity,
HUERFANO COUNTY HOSPITAL DISTRICT d/b/a SPANISH PEAKS REGIONAL HEALTH
CENTER, a governmental entity,
PARAMEDIC SAM TRUJILLO, in his individual capacity,
PARAMEDIC GABRIEL MARTINEZ, in his individual capacity,
HEALTH CARE PARTNERS FOUNDATION, INC., a corporation,
CERTIFIED NURSE AID SHANENE SANDERS, in her individual capacity,
REGISTERED NURSE RACHAEL SIMPSON, in her individual capacity, and
NURSE PRACTITIONER JENNIFER GREEN, in her individual capacity,

Defendants.

ORDER

Before the Court are Sam Trujillo and Gabriel Martinez's Motion to Dismiss Plaintiff's Thirteenth Claim for Relief (Paramedic Motion) (D. 38) and Defendants, Health Care Partners Foundation, Inc.'s, Shanene Sanders', Rachael Simpson's, and Jennifer Green's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) (Nurse Motion) (D. 49). The Court GRANTS the Paramedic Motion and DENIES the Nurse Motion for the following reasons.

I. BACKGROUND

This civil action arises from the death of Michael Burch while in custody.¹ Defendant Detention Officer Stuart Pino tackled Burch onto a metal bench, breaking six of Burch's ribs. Defendants Paramedic Sam Trujillo And Paramedic Gabriel Martinez (the Paramedics) saw Burch shortly after he was tackled. Certified Nurse Aid Shanene Sanders was also present at that time.

Several days later, Defendant Registered Nurse Rachael Simpson and Defendant Nurse Practitioner Jennifer Green held a telehealth visit with Burch. Simpson was present on site while Green was in Georgia. Sanders, Simpson, and Green were employees of Defendants Health Care Partners Foundation, Inc. (HCPF, and collectively with its employees, the Nurses).

Several days later, Burch died from his injuries.

The present Motions are brought by the medical personnel that encountered Burch after he sustained his injuries. The Paramedics seek dismissal of Claim Thirteen, the sole claim against them (D. 38). The Nurses seek dismissal of the Ninth through Twelfth Claims (D. 49).

II. LEGAL STANDARD

A. Dismissal for Failure to State a Claim

Under Rule 12(b)(6), a court may dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true and interpreted in the light most favorable to the non-moving party, to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Additionally, the complaint must sufficiently allege facts supporting all the elements necessary to establish an

¹ The Court draws the operative facts as set forth in the Complaint and Jury Demand (D. 1).

entitlement to relief under the legal theory proposed; however, a complaint may be dismissed because it asserts a legal theory not cognizable as a matter of law. *Forest Guardians v. Forsgren*, 478 F.3d 1149, 1160 (10th Cir. 2007); *Golan v. Ashcroft*, 310 F. Supp. 2d 1215, 1217 (D. Colo. 2004). A claim is not plausible on its face “if [the allegations] are so general that they encompass a wide swath of conduct, much of it innocent,” and the plaintiff has failed to “nudge[the] claims across the line from conceivable to plausible.” *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008) (quoting *Twombly*, 550 U.S. at 570). In assessing a claim’s plausibility, legal conclusions contained in the complaint are not entitled to the assumption of truth. *See Kansas Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1214 (10th Cir. 2011). The standard, however, remains a liberal pleading standard, and “a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely.” *Dias v. City & Cty. of Denver*, 567 F.3d 1169, 1178 (10th Cir. 2009) (internal quotations and citation omitted).

B. Deliberate Indifference to Serious Medical Need

Claims that pre-trial detainees died from a lack of medical care are considered under the deliberate indifference to serious medical needs test. *Barrie v. Grand Cty.*, 119 F.3d 862, 866 (10th Cir. 1997); *Cox v. Glanz*, 800 F.3d 1231, 1248 (10th Cir. 2015).² Under this test, a constitutional violation occurs when a prison official or prison medical provider acts with deliberate indifference to a substantial risk of harm to inmate health or safety. *See Farmer v. Brennan*, 511 U.S. 825, 834

² This test was originally created in the context of the Eighth Amendment, which applies after conviction; however, the same test applies under the Fourteenth Amendment to pre-trial detainees, such as in this case. *See Garcia v. Salt Lake Cnty.*, 768 F.2d 303, 307 (10th Cir. 1985) (“Nevertheless, pretrial detainees are in any event entitled to the degree of protection against denial of medical attention which applies to convicted inmates.”).

(1994); *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). “A claim of deliberate indifference includes both an objective and a subjective component.” *Al-Turki v. Robinson*, 762 F.3d 1188, 1192 (10th Cir. 2014). A plaintiff must satisfy both components. *Rife v. Oklahoma Dept. of Pub. Safety*, 854 F.3d 637, 647 (10th Cir. 2017).

Under the objective prong, “prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must ‘take reasonable measures to guarantee the safety of the inmates.’” *Farmer*, 511 U.S. at 832 (quoting *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984)). “[E]xtreme deprivations” are required to make out a conditions-of-confinement claim. *Hudson v. McMillian*, 503 U.S. 1, 8-9 (1992). The Eighth Amendment is not implicated unless the conditions deprive a prisoner of the “‘minimal civilized measure of life’s necessities.’” *Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)). Moreover, the “Eighth Amendment ‘does not mandate comfortable prisons,’ and conditions imposed may be ‘restrictive and even harsh.’” *Barney v. Pulsipher*, 143 F.3d 1299, 1311 (10th Cir. 1998) (citation omitted).

Death in custody satisfies the objective component. *See Martinez v. Beggs*, 563 F.3d 1082, 1088 (10th Cir. 2009) (observing that death, “without doubt,” is “sufficiently serious to meet the objective component” (citation omitted)).

To satisfy the subjective component, a plaintiff must show that a prison official knew of and disregarded an “excessive risk” to his health or safety by failing to take reasonable measures to abate it. *Self v. Crum*, 439 F.3d 1227, 1231 (10th Cir. 2006) (quotations omitted). “[T]he 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.” *Mata v. Saiz*, 427 F.3d 745, 751 (10th

Cir. 2005) (brackets omitted) (quoting *Farmer*, 511 U.S. at 837). A factfinder may conclude a prison official knew of a substantial risk when the risk was obvious. *See Prince v. Sheriff of Carter Cnty.*, 28 F.4th 1033, 1045 (10th Cir. 2022).

III. ANALYSIS

A. Paramedic Motion

The Paramedic Motion challenges only the subjective element of the claim for deliberate indifference to serious medical need.

Plaintiff alleges the Paramedics were told Burch was tackled and that there was a conversation between the Paramedics and Burch during which he told them variously that he was in pain and that his rib cage hurt and was “crushed” (D. 1 at 22–23). When Trujillo asked if Burch wanted to go to the hospital, he said that he wanted to go (*id.* at 23). However, the Paramedics then told others present their “diagnosis” that it “was ‘absolutely not’ a medical emergency and that Mr. Burch was ‘fine’” (*id.* at 23–24). Defendant Captain LaPorte then told the Paramedics that Sanders could assess Burch and that “if she makes a decision that we have to take him to the hospital, we’ll let her do that” (*id.* at 25).³

In relation to these allegations, the Parties dispute what is shown by body-worn cameras present at the scene and whether the Court should consider the videos.⁴ The Paramedics assert that it shows them respond to Burch’s complaints:

³ Because this allegation shows that the Paramedics did not deliberately keep Burch from receiving medical care through Sanders (who was present), the Court need not address the gatekeeper theory of liability. *See Sealock v. Colorado*, 218 F.3d 1205, 1211 (10th Cir. 2000).

⁴ Courts may consider matters outside the pleadings without converting a motion to dismiss into a motion for summary judgment if the document is (1) referred to in the complaint, (2) central to the plaintiff’s claim, and (3) the parties do

After obtaining permission, Mr. Martinez lifted Mr. Burch's shirt and examined the back and front of Mr. Burch's trunk visually, and palpated his ribs while inquiring of Mr. Burch about his pain. Ex. B at 3:56-4:04. Meanwhile, Paramedic Trujillo confirmed with Officer Pino that Mr. Burch did not experience any loss of consciousness before the Paramedics arrived. Ex. A at 16:05-16:09; Ex. B at 4:04- 4:07. * * * Burch communicated that he did not feel pain in his right ribcage when it was palpated, had no bruising, and was not cut in the area (Ex. B at 3:56-4:04).

(D. 38 at 4, 11). Plaintiff disputes that the video show Martinez palpate Burch's back and, regardless, suggests that Burch did not respond that he was not in pain and instead only stated that he was not cut on his back.

The Court concludes that it would be proper to consider the videos without converting the motion into one for summary judgment. *GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384 (10th Cir. 1997) (“[I]f a plaintiff does not incorporate by reference or attach a document to its complaint, but the document is referred to in the complaint and is central to the plaintiff's claim, a defendant may submit an indisputably authentic copy to the court to be considered on a motion to dismiss.”). The videos are heavily excerpted in the Complaint and central to Plaintiff's claims. Plaintiff does not dispute their authenticity. Indeed, Plaintiff unambiguously intends to use them to show the relevant course of events they record.

Nonetheless, the footage is equivocal on some points. Because of the angle, the video cannot show whether Martinez touches⁵ Burch's back. The audio is not entirely clear, although it does favor Plaintiff's position. However, the videos undisputably show that, after Burch

not dispute its authenticity. See *Gee v. Pacheco*, 627 F.3d 1178, 1186 (10th Cir. 2010); *Smith v. United States*, 561 F.3d 1090, 1098 (10th Cir. 2009).

⁵ Although both Parties use the term “palpate,” there is no indication that Martinez examined Burch by touch to feel anything about his body directly. Rather, the video may show Martinez pressing on the back and seeking a response from Burch regarding pain.

complained of rib injuries and pain, Martinez lifted Burch's shirt and looked at Burch's back. It also shows that the Paramedics asked the officers present if the officers wanted the Paramedics to take Burch to the hospital or if the officers wanted to take him.

In most cases, deliberate indifference requires that the defendant "draw the inference" of a substantial risk of serious harm. *Mata*, 427 F.3d at 751. Plaintiff cannot meet this standard. The allegations here show that the Paramedics never drew the inference that Burch had a serious medical need. Instead, they diagnosed him as fine and not in a medical emergency. In such circumstances, the plaintiff "undoubtedly fails to satisfy the test's subjective prong" because the negative diagnosis shows the medical provider was not "*consciously* aware of a serious medical risk to [the patient] and disregarded that risk." *Id.* at 760.

This is, however, not dispositive of this claim. Substantial authority provides that a defendant "would not escape liability if the evidence showed that he merely refused to verify underlying facts that he strongly suspected to be true, or declined to confirm inferences of risk that he strongly suspected to exist." *Farmer*, 511 U.S. at 843 n.8; *see also Lucas v. Turn Key Health Clinics, LLC*, 58 F.4th 1127, 1141 (10th Cir. 2023) (quoting *Farmer*). At this stage in the case, the allegations and videos must be viewed in the "light most favorable to Plaintiff." *See Kennedy v. Taylor*, 2021 WL 6050279, at *3 (D. Colo. Dec. 21, 2021). Taken together, the combined allegations and video viewed in the light most favorable to Plaintiff show that the Paramedics responded to Burch's claims of pain and injury by inspecting his back. Further, the Paramedics indicated a willingness to take him to the hospital in a manner that suggested someone should take Burch to the hospital. Thus, the Paramedics were aware of relevant facts and made inferences that Burch was potentially at risk. But nothing in the allegations or video suggests the Paramedics

strongly suspected Burch was seriously injured and refused to examine the related circumstances. After Burch complained of pain, Martinez provided some limited examination followed by the negative diagnosis. Even though this diagnosis proved incorrect and the examination techniques used may fall far short of ideal, this does not show deliberate indifference. *Mata*, 427 F.3d at 761 (finding no deliberate indifference where a nurse misdiagnosed a patient as not having a heart attack and failed to follow protocol requiring the nurse to call a doctor in cases of chest pain). Accordingly, the Court grants the Paramedic Motion.

B. Nurse Motion

The Nurse Motion begins with a cursory single-paragraph argument that the “allegations in Plaintiff’s Complaint and the facts presented in the annexed exhibits do not support the conclusion Defendant Sanders, Defendant Simpson, and Defendant Green knew Burch faced a substantial risk of harm, yet disregarded that risk based upon all of the information known to them, because his condition was not obvious, as demonstrated by the surveillance video or not complained of to them by Burch. *See* Exhibit B, D, E, and H.” (D. 49 at 8). The Nurses provide little to no analysis of any of the allegations or evidence⁶ and the Court finds their insufficiently developed arguments that the Nurses were not subjectively aware of the risk to Burch waived. *See Becker v. Kroll*, 494 F.3d 904, 913 n.6 (10th Cir. 2007) (“An issue or argument insufficiently raised in the opening brief is deemed waived.”) (citing *Headrick v. Rockwell Int’l Corp.*, 24 F.3d 1272, 1277–78 (10th Cir. 1994)).

⁶ By way of example, the Nurses’ assertions that “there is no evidence” are misplaced at this stage and that certain allegations are “contradicted” by the medical records, wholly without explanation, serve no purpose and do not warrant discussion (*see* D. 49 at 2, 11). The Complaint contains allegations suggesting each of the Nurses was aware that Burch was tackled shortly before he began complaining of crushed ribs and related pain and that he continued to complain of persistent rib pain for days afterward before dying from those injuries.

1. Certified Nurse Assistant Shanene Sanders

The Nurses argue that Sanders must be dismissed because Burch did not consent to an intake examination and, after his ribs were broken, she was not asked to carry out an assessment and could not do so due to her limited medical training (D. 49 at 8–11, 14).

The Court rejects the argument that Plaintiff has not sufficiently pled deliberate indifference with respect to Sanders’ actions after Burch was injured. When the allegations and evidence are viewed in the light most favorable to Plaintiff, during the dismissal of the Paramedics, Sanders was placed in the gatekeeper role. “If [a] medical professional knows that his role in a particular medical emergency is solely to serve as a gatekeeper for other medical personnel capable of treating the condition, and if he delays or refuses to fulfill that gatekeeper role due to deliberate indifference, it stands to reason that he also may be liable for deliberate indifference from denying access to medical care.” *Sealock*, 218 F.3d at 1211. Burch only had access to further evaluation and treatment through Sanders who, even if she was unable to perform an assessment herself, was part of the medical staff referenced as capable and responsible for providing an assessment and potential hospital transport. That Sanders argues she was not asked to provide an assessment by the officers present is of no moment; she was then the gatekeeper. It is reasonable to infer from the allegations in the Complaint that Sanders inaction delayed access to medical care. *Mata*, 427 F.3d at 755 (“Even a brief delay may be unconstitutional.”).

2. Registered Nurse Rachael Simpson and Nurse Practitioner Jennifer Green

After Burch continued to complain of pain for days after his injury, Simpson accompanied Burch in person during a telehealth visit with Green. Plaintiff faults Simpson and Green for failing to examine Burch or provide treatment. Plaintiff argues that, taking the factual allegations in the

Complaint as true, “[a]mong other things, NP Green failed to perform a physical examination, choosing instead to conduct only a teleconference visit that was obviously inadequate to assess Mr. Burch’s reported injuries and symptoms; failed to auscultate Mr. Burch’s lungs to check for diminished breath sounds; failed to monitor Mr. Burch’s vital signs to detect signs of internal bleeding or respiratory compromise; failed to perform an adequate visual examination of Mr. Burch’s torso or back through the video camera; and failed to order appropriate imaging, such as an x-ray” (D. 64 at 16–17). Plaintiff faults Simpson for sitting by while no examination was provided despite her own independent ability to examine and treat Burch’s injuries or seek further treatment for him (*id.* at 14).

The Nurses’ arguments that the related allegations are insufficient to state a claim against Simpson and Green are not persuasive. The Tenth Circuit has held that, “doing nothing in the face of serious medical needs is obviously sufficient to state a claim under both [primary and gatekeeper] theories” of liability. *Lucas*, 58 F.4th at 1139 (citing *Mata*, 427 F.3d at 758). As the Nurses themselves argue, “there are no allegations contained in the Complaint establishing [Simpson] did anything affirmatively” to help Burch, and they do not attempt to present, for example, video evidence that she did (D. 49 at 12).

Likewise, “merely doing something (with no reference to the underlying condition) does not necessarily insulate one from liability.” *Lucas*, 58 F.4th at 1139. “Instead, a court may need to determine whether there was the functional equivalent of a complete denial of care in light of the specific circumstances.” *Id.* The allegations here are sufficient that a reasonable jury could infer that the care provided by Simpson and Green was functionally equivalent to a complete denial of care for a preexisting internal injury that continued to cause pain. *Oxendine v. Kaplan*, 241 F.3d

1272, 1277 & n.7, 1278–79 (10th Cir. 2001) (holding that a doctor who only prescribed Tylenol with codeine and ordered daily infirmary visits for gangrenous black hand tissue for two weeks was deliberately indifferent). Thus, Plaintiff has sufficiently stated a claim against them.

3. Health Care Partners Foundation, Inc.

The Nurses make borderline frivolous arguments for the dismissal of HCPF. First, they seek dismissal of the *Monell* claim by simply asserting that the numerous related factual allegations are “conclusory” without any substantive discussion of those allegations (D. 65 at 11; *see also* D. 48 at 15; D. 1 at ¶¶ 402–420). This argument is also waived. *Becker*, 494 F.3d at 913 n.6. Second, they argue that telehealth is authorized by law (D. 15). Electroshock therapy is also legal; that does not make a policy of using it even where inappropriate per se lawful. The issue presented here, wholly unaddressed in the Nurses’ briefing, is whether an alleged policy of using remote video to “examine” and “treat” even patients asserting significant internal injuries constitutes deliberate indifference as essentially denial of care. In these circumstances, it may. *See Lucas*, 58 F.4th at 1139. The Court denies the Nurse Motion.

IV. CONCLUSION

Accordingly, the Court GRANTS Sam Trujillo and Gabriel Martinez’s Motion to Dismiss Plaintiff’s Thirteenth Claim for Relief (D. 38) and DENIES Defendants, Health Care Partners Foundation, Inc.’s, Shanene Sanders’, Rachael Simpson’s, and Jennifer Green’s Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) (D. 49). It is FURTHER ORDERED that Claim Thirteen is DISMISSED.

DATED January 28, 2026.

BY THE COURT:

A handwritten signature in black ink, consisting of a series of fluid, connected strokes that form a stylized representation of the name Gordon P. Gallagher.

Gordon P. Gallagher
United States District Judge