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Attorneys for Defendants Correct Care Solutions, LLC and Steven Blum, M.D.

Honorable Judge Anne Aiken

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

TERRI CARLISLE,

Plaintiff,

v.

DOUGLAS COUNTY, Oregon; CORRECT CARE SOLUTIONS, LCC; JOHN HANLIN; MIKE ROOT; STEVEN BLUM, M.D.; NURSE DOE; MEDICAL ASSISTANT DOE; CORRECTIONAL OFFICER DOE(S),

Defendants.

Case No. 6:17-cv-00837-AA

MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS CORRECT CARE SOLUTIONS, LLC AND STEVEN BLUM, M.D.

ORAL ARGUMENT REQUESTED

LR 7-1(A) CERTIFICATION

Counsel for defendants Correct Care Solutions ("CCS") and Steven Blum, M.D. ("Dr. Blum") certify that they have conferred with plaintiff's counsel concerning each issue in this motion and plaintiff's counsel opposes these motions.

INTRODUCTION

This civil rights and negligence action arises out of plaintiff's six month incarceration in the Douglas County Jail. Plaintiff alleges that she was denied her neuropathy medications as punishment for hoarding while she was incarcerated. She has asserted claims against CCS and Dr. Blum alleging that they were deliberately indifferent to her serious medical needs and negligent in their discontinuation of her neuropathy medication.

Based on the undisputed material facts, summary judgment is appropriate. Neurontin is widely known in the correctional setting as a drug with a potential for abuse and barter, and as such, presents a safety issue in jails. Where an inmate is not taking the medication as prescribed, or hoarding, those medications are discontinued. There is no dispute that plaintiff was caught with a variety of contraband in her cell, including loose pills and her neuropathy medication. As a result, her prescription was discontinued in consideration for her safety as well as the safety of the other Douglas County Jail inmates.

Because there is no evidence of negligence or deliberate indifference, summary judgment should be granted.

MOTIONS

Pursuant to FRCP 56, CCS and Dr. Blum request summary judgment as follows:

Motion 1: For summary judgment on plaintiff's first claim for relief against Dr. Blum for failure to provide medically necessary care in violation of 42 USC. § 1983 because there is no evidence that Dr. Blum was deliberately indifferent to serious medical needs of the plaintiff.

Motion 2: For summary judgment on plaintiff's third claim for relief against CCS for *Monell* liability because there is no evidence of any underlying constitutional deprivation

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and because there is no evidence of any CCS policies or customs that are deliberately indifferent to the constitutional rights in inmates.

Motion 3: For summary judgment on plaintiff's fifth claim for relief against CCS for respondeat superior liability on plaintiff's Eighth Amendment claims against Dr. Blum because the claim is not supported by law.

Motion 4: For summary judgment on plaintiff's sixth and seventh claims for relief against CCS and Dr. Blum because there is no evidence of negligence.

These motions are supported by the record before the court, the following points and authorities and the declaration of Tessan Wess and supporting exhibits.

STATEMENT OF FACTS

I. BACKGROUND FACTS

A. Douglas County and CCS

CCS is a medical service provider that contracts with Douglas County to provide medical care for the Douglas County jail inmates.[1] During plaintiff's incarceration, Dr. Blum was the medical director at Douglas County Jail, and provided medical care and services to the jail inmates in the course and scope of his employment with CCS.[2]

Douglas County manages all other aspects of the jail operation, specifically including disciplinary matters.[3]

B. Plaintiff's incarceration

Plaintiff was incarcerated in the Douglas County Jail from February 9, 2015 to August 4, 2015, serving a six month sentence following multiple driving under the influence convictions.[4]

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[1] Dkt. 1, p.4, ¶11.
[2] *Id*. at ¶14; *see also* Wess Decl., Ex. F (*Blum Dep.*, 18:16-25).
[3] Wess Decl., Ex. G (*Shaver Dep.*, 35:1-4); Ex. H (*Dean Dep.*, 30:9-18; 31:11-24); Ex. J (*Root Dep.*, 96:16-21).
[4] Dkt. 1, p. 2, ¶2, p. 5, ¶19; *see also* Wess Decl. Ex. A (*Carlisle Dep*., 21:5-22).

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During her intake screening with CCS, it was noted that plaintiff was medicating for her neuropathy and had a prescription for gabapentin (a.k.a Neurontin).[5] Dr. Blum approved the Neurontin prescription.[6]

II. NEURONTIN[7] AND HOARDING

A. Neurontin is a drug that presents a safety issue in the correctional setting

Neurontin is widely known in the correctional medical practice to be a drug that presents a safety concern.[8] It is a medication that is known for its potential for abuse and value as an item for barter.[9]

In order to prevent against the potential for abuse and barter, professionals in the correctional setting undertake certain precautions, including measures to ensure that medications are being taken as prescribed, and not hoarded.[10] If medication is being hoarded, a physician in the correctional setting can discontinue the medication without necessitating direct contact with the inmate.[11]

Plaintiff understood that medication was not to be saved up and that holding medication without using it was considered to be hoarding. [12] Plaintiff acknowledged that it was her responsibility to only take her medication when it was given to her and that she was not permitted to hoard medication.[13]

/ / /

[5] *Id*. at ¶ 20; *see also* Wess Decl., Ex. B (*Carlisle Dep,* Ex. 59).
[6] Wess Decl., Ex. C (*Carlisle Dep.*, Ex. 62, p. 4).
[7] Gabapentin is the generic of Neurontin; the two medications can be referenced interchangeably. *See* Wess Decl., Ex. K (*Puerini Dep*., 20:21-22).
[8] Wess Decl., Ex. L (*Stern Dep.*, 34:16 - 35:1); Ex. K (*Puerini Dep*., 49:20 - 50:17); Ex. M (*Puerini Dep.*, Ex. 78); and Ex. F (*Blum Dep.*, 89:21 - 91:3).
[9] *Id*.
[10] Wess Decl., Ex. L (*Stern Dep.,* 35:14-15); Ex. M (Puerini Dep., Ex. 78); Ex. F (*Blum Dep*., 43:14 - 44:16).
[11] Wess Decl., Ex. L (Stern Dep., 36:1-37:3); Ex. M (Puerini Dep., Ex. 78).
[12] Wess Decl., Ex. A (*Carlilse Dep.*, 35:2-15).
[13] *Id.*, p. 62:15-20.

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B. Hoarding Incident

On May 31, 2015, Sergeant Case and Officer Shaver conducted a sweep of plaintiff's cell.[14] During the sweep, Officer Shaver located "a pencil sharpener, fingernail clippers, salt in the finger of a glove, and several ibuprofen, DSS, and gabapentin tablets."[15]

There is no dispute that plaintiff had contraband in her cell on May 31.[16] Douglas County jail staff noted several rule violations for possession of unauthorized clothing, misuse of authorized medication, possession of contraband and conduct that disrupts orderly jail function.[17] As a disciplinary measure, Douglas County placed plaintiff in holding for three days, restricted her access to commissary and visitors for one week, and took plaintiff off the work crew for the remainder of her incarceration.[18]

Based upon information that plaintiff had been hoarding her medications, Dr. Blum discontinued plaintiff's prescriptions for Motrin and Neurontin.[19]

C. Plaintiff's Neurontin

Following the discontinuation of plaintiff's Neurontin prescription, plaintiff generally insisted that "her" Neurontin be re-issued and was not interested in being seen by Dr. Blum without an assurance that she would be provided Neurontin. On June 4, plaintiff submitted a healthcare request form demanding that her Neurontin be re-issued: "For four days I have been miserable with stabbing burning foot neuropathy. I am asking you to please re-issue my Neurontin. Thank you."[20] Dr. Blum reviewed the request and noted "We cannot restart that

[14] Wess Decl., Ex. A (*Carlisle Dep*., Ex. 60); *See also* Wess Decl., Ex. H (*Dean Dep.*, 45:2-16)
[15] Wess Decl., Ex. G (*Shaver Dep*, 30:1-8).
[16] Wess Decl., Ex. A (*Carlisle Dep.*, 63:11- 64:6).
[17] Wess Decl., Ex. I (*Case Dep.*, Ex. 29 at 2).
[18] Wess Decl., Ex. G (*Shaver Dep*., 39:23-40:5).
[19] Wess Decl., Ex. F (*Blum Dep.*, 80:10-12); Ex. C (*Carlisle Dep.*, Ex. 62, p.1).
[20] Wess Decl., Ex. D (*Carlisle Dep.*, Ex. 61, p.2).

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because of hoarding."[21] For the following three weeks, plaintiff did not submit any further healthcare request forms seeking medical attention related to her neuropathy and did not request to be seen my medical staff.

On June 30, Dr. Blum received correspondence from plaintiff's private doctor Dr. Layne Jorgensen, dated June 22, simply stating: "For Medical reasons, the above named patient needs to take her Neurontin medication as directed."[22] Upon review of this correspondence and the generic communication – "for medical reasons" – Dr. Blum did not reinstate plaintiff's prescription for Neurontin.[23] Dr. Blum noted that "the risk of restarting it outweighed the benefit of restarting it."[24] Specifically, "with hoarding medication, the risk that they trade the medication or keep enough stockpiled to overdose on it or give it to other inmates."[25]

On July 9, plaintiff refused to be seen at medical call if her Neurontin was not going to be re-prescribed.[26] Plaintiff testified:

> What happened is medical came to get me one night, took me down to medical, and I—I think it was Shandall [Dicke, R.N.]that came and got me, but it was her that I spoke with once I was there. I think it was her that came and got me. I didn't know what for. She took me down. And I said, "why am I here," or something to that effect.
>
> And she said, "we want to talk about your neuropathy," or something to that effect. And I said, "Are you going to put me back on my Neurontin?"
>
> And she said, "No."
>
> And I said, "This conversation's over."[27]

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[21] *Id.*
[22] Wess Decl., Ex. N (*Dicke Dep.*, Ex. 47); Ex. F (*Blum Dep.*, 86:23-.87:25).
[23] Wess Decl., Ex. F (*Blum Dep.*, 89:8-19).
[24] *Id.* at 89:24-90:1.
[25] *Id.* at 90:3-6.
[26] Wess Decl., Ex. C (*Carlisle Dep.*, Ex. 62 at 5).
[27] Wess Decl., Ex. A (*Carlisle Dep.*, 79:9-21).

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Plaintiff was not interested in learning what alternative treatments may be available or even considering any kind of alternate treatment. [28] Plaintiff testified:

> "Because I've been tried on every kind of medication under the sun for neuropathy. I know what works. Neurontin works."[29]

In a letter plaintiff sent to her friend from jail, she communicated:

> "Yeah, like I'm going to start on some new drug under these idiots' supervision …Fat chance. These people can't find their ass with both hands and a flashlight."[30]

Had plaintiff been willing to meet with Dr. Blum, they could have discussed other ways to help with her symptoms.[31] Dr. Blum testified that there are other treatment options that are a less risky as far as hoarding concerns go, so there could have been other treatment plans to make her more comfortable that she could have discussed with Dr. Blum had plaintiff not refused to meet with him. [32]

POINTS & AUTHORITIES

MOTION 1

I. SUMMARY JUDGMENT SHOULD BE GRANTED ON PLAINTIFF'S FIRST CLAIM FOR RELIEF AGAINST DR. BLUM BECAUSE THERE IS NO EVIDENCE THAT DR. BLUM WAS DELIBERATELY INDIFFERENT TO PLAINTIFF'S SERIOUS MEDICAL NEED

Plaintiff's first claim for relief against Dr. Blum alleging that Dr. Blum failed to provide medically necessary care in violation of the Eighth Amendment and 42 USC . § 1983 fails as a matter of law. To maintain an Eighth Amendment claim based on medical treatment, a prisoner must show: 1) the existence of "a serious medical need" such that the "failure to treat [the] prisoner's condition could result in further significant injury or the unnecessary and wanton infliction of pain"; and 2) "the defendant's response to the need was deliberately indifferent."

[28] *Id*. at. 80:5-8.
[29] *Id.* at. 80:10-12.
[30] *Id.* at. 88:5-14, *see also* Wess Decl., Ex. E (*Carlilse Dep.*, Ex. 63).
[31] Wess Decl., Ex. F (*Blum Dep.*, 92:9 to 93:8).
[32] *Id*.

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Goldman v. Fed. Bureau of Prisons, No. 3:17-cv-01763-JR, 2018 US Dist LEXIS 80755, at *3-4 (D Or May 14, 2018); *citing Jett v. Penner*, 439 F3d 1091, 1096 (9th Cir 2006) and *Estelle v. Gamble*, 429 US 97, 104 (1976).

Plaintiff claims that Dr. Blum discontinued and withheld necessary medical treatment for plaintiff's neuropathy for disciplinary reasons, as punishment for hoarding.[33] There is no genuine issue of material fact that Dr. Blum was deliberate to any serious medical need.

A. Plaintiff cannot satisfy the stringent "deliberate indifference" standard

"A prison official acts with deliberate indifference...only if the [prison official] knows of and disregards an excessive risk to inmate health and safety." *Toguchi v. Chung*, 391 F3d 1051, 1057 (9th Cir 2004)." Deliberate indifference is a "high standard," and requires more than mere medical negligence. *Id*. at 1060. In order to meet this standard, a plaintiff must show that the course of treatment undertaken was medically unacceptable under the circumstances and that the defendant chose the course in conscious disregard of an excessive risk to the plaintiff's health. *Jackson v. McIntosh*, 90 F3d 330, 332 (9th Cir. 1996). Deliberate indifference requires, at a minimum, that the defendant thought about the matter (deliberated) and chose to ignore it. *Delker v. Maass*, 843 F Supp 1390, 1400 (D Or 1994).

B. There is no evidence that the discontinuation of plaintiff's Neurontin was deliberately indifferent to plaintiff's medical needs.

Where there is undisputed evidence that an inmate is observed diverting or hoarding restricted medications, discontinuation is appropriate. *Sunnergren*, 2014 US Dist. LEXIS 8561 at *19 (N.D. Cal. 2014). The plaintiff in *Sunnergren* alleged that Dr. Grant discontinued his narcotic prescription as punishment for alleged diversion of the medication. *Id.* at *18. It was noted that Dr. Grant "did not believe that discontinuation would cause a substantial risk of

[33] Dkt. 1, p.11, ¶45.

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serious harm [and] the risks of misuse were more serious than the risk of discomfort plaintiff would suffer with discontinuance." *Id.* at *18. In granting summary judgment in favor of Dr. Grant, the court concluded that there was no genuine issue of material fact that Dr. Grant's decision to discontinue the plaintiff's narcotic medication was medically unacceptable under the circumstances. *Id.* at *19-20, *citing Toghuci*, 391 F3d at 1058.

Similarly here, plaintiff alleges that Dr. Blum discontinued her gabapentin as "punishment for…hoarding." [34] Gabapentin is known by correctional professionals as a medication which may present safety issues in correctional settings.[35] During a sweep of plaintiff's cell, gabapentin and other medications were located among other contraband. As a result, plaintiff's prescription for gabapentin was discontinued. Like *Sunnergren*, it is undisputed that plaintiff had been caught hoarding her gabapentin. Like the doctor in *Sunnergren*, Dr. Blum reasoned that the discontinuation of plaintiff's gabapentin was appropriate because the risk of misuse was potentially more serious than the risk of discontinuance, particularly in light of the fact that plaintiff refused any alternative treatment or medication for her neuropathy. Like *Sunnergren*, plaintiff's belief that Gabapentin was the most effective medication for neuropathy pain is insufficient to defeat summary judgment. And finally, like *Sunnergren*, there is no evidence that Dr. Blum's decision to discontinue plaintiff's gabapentin was medically unacceptable under the circumstances or that Dr. Blum chose that course in conscious disregard of an excessive risk to plaintiff's health.

Because there is no evidence that Dr. Blum consciously disregarded a serious medical need, plaintiff's first claim for relief against Dr. Blum fails as a matter of law.

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[34] Dkt. 1, p. 11 ¶ 45.
[35] Wess Decl., Ex. L (*Stern Dep.*, 34:16 - 35:1); Ex. K (*Puerini Dep.*, 49:20 - 50:17) and Ex. F (*Blum Dep.*, 89:21 - 91:3).

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MOTION 2

II. THERE IS NO EVIDENCE TO SUPPORT PLAINTIFF'S THIRD CLAIM FOR RELIEF AGAINST CCS FOR *MONELL* LIABILITY.

Plaintiff's third claim for relief against CCS alleging that plaintiff's Eighth Amendment rights were deprived as a result of the policies or customs of CCS fails as a matter of law. Plaintiff alleges that CCS maintained a policy, practice or custom of denying medically necessary medications to detainees and prisoners as a form of punishment.[36] Additionally, plaintiff alleges that CCS had a policy, custom or practice of not considering prisoners medical needs when making decisions about the providing prescribed drugs or other medically necessary care.[37]

The seminal case of *Monell v. Department of Social Services* held that there can be no liability for a § 1983 violation under a theory of *respondeat superior* for the actions of its subordinates.436 US 658, 98 S Ct 2018 (1978). Rather, in order to show the liability of a municipality or entity, the plaintiff must show that a "policy or custom" led to the plaintiff's injury. *Id*. at 694. To maintain her § 1983 *Monell* claim, there must be evidence: (1) that plaintiff was deprived of a constitutional right, (2) that CCS had a policy or custom, (3) the policy or custom amounted to deliberate indifference to plaintiff's constitutional rights, and (4) the policy or custom was the moving force behind the constitutional violation that she sustained. *See Funez v. Guzman*, 687 F Supp 2d 1214, 1224 (D Or 2009).

A. There is no Evidence of an Official Policy or Custom that Caused the alleged Constitutional Injury.

Under *Monell*, an "official policy" means a formal policy, rule, or regulation adopted by defendant, resulting from a deliberate choice to follow a course of action made from among

[36] Dkt. 1, p. 14, ¶57a.
[37] *Id.* at ¶57b.

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various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question. *Pembaur v. City of Cincinnati*, 475 US 469, 483 (1986); *see also Connick v. Thompson*, 563 US 51, 62 (2011). If a plaintiff cannot establish the existence of a formal government policy, she may instead show a "longstanding practice or custom which constitutes the standard operating procedure of the local governmental entity." *Trevino v. Gates*, 99 F3d 911, 918 (9th Cir. 1996). A plaintiff must produce sufficient evidence showing that the custom or practice is "so 'persistent and widespread' that it constitutes a 'permanent and well settled city policy.'" *Id*. (*quoting Monell*, 436 US at 691).

Here, plaintiff alleges that CCS employed a policy, custom or practice of denying medically necessary medication to detainees and prisoners as a form of punishment.[38] However, there is no evidence of any such policy, custom or practice. The evidence demonstrates that CCS is not involved with disciplinary action or disciplinary decisions in the Douglas County jail. Disciplinary policies and customs related to punishment are handled by Douglas County. Moreover, the evidence demonstrates that CCS makes medical treatment decisions based on all available information, separate and independent from any disciplinary measures undertaken by Douglas County. Here, Dr. Blum discontinued plaintiff's prescription for Neurontin after a cell sweep yielded hoarded medications, following CCS policy to discontinue medications when an inmate is caught hoarding as a means to prevent against the risk of abuse and barter. There is no evidence that CCS maintained any policy to withhold or deny medically necessary medication as a form of punishment.

Additionally, there is no evidence that CCS had a policy, custom or practice of not considering the medical needs of inmates when providing prescription drugs to them. The record provides that CCS takes all available information, including the inmates' medical needs, into

[38] Dkt. 1, p.13, ¶57.

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account when making treatment decisions. Here, plaintiff's Neurontin was discontinued due to hoarding and rather than seek an appointment with Dr. Blum to discuss her medical needs, plaintiff unequivocally refused to be seen by Dr. Blum unless she her Neurontin was reissued. Based on the potential for risk to the plaintiff, combined with plaintiff's refusal to meet with Dr. Blum considered the plaintiff's medical needs in his decision regarding plaintiff's Neurontin. There is no genuine issue of material fact.

B. *Monell* liability requires evidence of deliberate indifference

Plaintiff must demonstrate that the CCS maintained a policy or custom that "reflects deliberate indifference to the constitutional rights of its inhabitants." *City of Canton v. Harris*, 489 US 378, 392, 109 SCt 1197 (1989). Deliberate indifference "is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of its action." *Keyes v. Wash. Cty.*, No. 3:15-cv-1987-AC, 2017 US Dist LEXIS 127029, at *17 (D Or Aug. 10, 2017), *citing Connick v. Thompson*, 563 US 51, 61, 131 S Ct 1350, 179 L Ed 2d 417 (2011) (citation omitted). There is no evidence that CCS was deliberately indifferent to the medical care of the Douglas County inmates.

Because plaintiff's *Monell* claims fail on each element, the court should grant summary judgment in favor of CCS on plaintiff's third claim for relief.

MOTION 3

III. THERE IS NO EVIDENCE TO SUPPORT PLAINTIFF'S FIFTH CLAIM FOR RELIEF AGAINST CCS FOR RESPONDEAT SUPERIOR LIABILITY.

Plaintiff's fifth claim for relief is against CCS for respondeat superior liability for plaintiff's §1983 claims against Dr. Blum. Plaintiff alleges that Dr. Blum's conduct, in the course

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and scope and his employment with CCS, was a violation of plaintiff's rights to be free from cruel and unusual punishment.[39] This claim for relief is not supported by law.

There are two basic principles of § 1983 jurisprudence: (1) there is no respondeat superior liability under section 1983 and (2) a plaintiff must show that a private entity acted under the color of state law to state a claim under § 1983. *Rodriguez v. Plymouth Ambulance Serv.*, 577 F3d 816, 822 (7th Cir 2009); *see also City of Canton v. Harris*, 489 US 378, 380, 109 S Ct 1197, 1200, 103 LEd2d 412, 421 (1989) ("Respondeat superior or vicarious liability will not attach under § 1983. It is only when the execution of the government's policy or custom …inflicts the injury that the municipality may be held liable under § 1983.") Although this principle typically surfaces in the context of municipal corporations, the same principle has been applied in situations where the employer is a private corporation. *Rodriguez*, 577 F3d at 822; *see also Tsao v. Desert Palace, Inc.*, 698 F3d 1128, 1139 (9th Cir 2012)("[a] municipality cannot be held liable solely because it employs a tortfeasor - or, in other words.. on a respondeat superior theory…. It would be odd indeed to suggest that this interpretation has less force in the context of a suit against a private entity.")

CCS is a private entity and cannot be subject to respondeat superior or vicarious liability under § 1983.

Additionally, and as discussed in Motion 1, above, there is no evidence that Dr. Blum was deliberately indifferent to any serious medical need of plaintiff. Accordingly, even if vicarious liability for a §1983 claim were supported by the law, there can be no vicarious liability where there is no underlying wrongful conduct.

[39] Dkt. 1, p.17, ¶70-74.

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Because respondeat superior liability for §1983 claims is not supported by the law and because there is no underlying constitutional violation by Dr. Blum, summary judgment should be granted on plaintiff's fifth claim for relief against CCS.

MOTION 4

IV. THERE IS NO EVIDENCE OF NEGLIGENCE BY CCS OR DR. BLUM.

To prove medical negligence, plaintiff must establish: (1) a duty that runs from the defendant to the plaintiff; (2) a breach of that duty; (3) a resulting harm to the plaintiff; and (4) causation. *Zehr v. Haugen*, 318 Or 647, 653, 871 P2d 1006 (1994), *citing Stevens v. Bispham*, 316 Or 221, 851 P2d 556 (1993). At the summary judgment stage, plaintiff must present admissible evidence from a qualified expert establishing: (1) Dr. Blum failed to meet the applicable standard of care exercised by a reasonably careful doctor with comparable training and expertise, and (2) that such negligence caused plaintiff's injuries and damages. Absent expert support, plaintiff cannot prove negligence or causation, since these issues are not within the ordinary knowledge of the usual jury. *Getchell v. Mansfield*, 260 Or 175, 179, 489 P2d 953 (1971); *Tiedemann v. Radiation Therapy Consultants, P.C.*, 299 Or 238, 246-247, 701 P2d 440 (1985).

Plaintiff bears the burden of showing that a genuine issue of material fact exists as to each element on which she would bear the burden of persuasion at trial. *Celotex v. Catrett*, 477 US 317, 324, 106 S Ct 2548 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 US 242, 248, 91 L Ed 2d. 202 (1986). In opposing this motion, plaintiff may not rest upon the mere` allegations or denials of her pleading, but must set forth facts showing a genuine issue of material fact. To create a genuine issue of fact, plaintiff must produce admissible evidence in the form of qualified

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expert opinion. *See O'Dee v. Tri-County Metropolitan Transp. Dist. of Oregon*, 212 Or App. 456, 460-61, 463, 157 P.3d 1272 (2007).

To create a genuine issue of material fact and survive this motion, plaintiff has the burden of producing qualified expert evidence that would be admitted at trial to establish each element of his claim—that Dr. Blum failed to meet the standard of care exercised by reasonably careful doctors, and such negligence caused injuries and damages. Plaintiff may not rest upon the mere allegations of her complaint. Specifically, any violation of the standard of care must be established by qualified expert testimony in order to refute Dr. Blum's testimony. *Tiedemann,* 299 Or 246-247.

Plaintiff alleges that Dr. Blum and CCS were negligent by not administering her Neurontin following the hoarding incident.[40] Plaintiff's standard of care expert, Dr. Marc Stern, has opined that if an inmate is hoarding medication, that information can play into a doctor's determination or evaluation as to whether a medication is medically necessary and that the decision to discontinue an inmate's medication does not necessarily require direct patient contact. [41] There is no evidence that Dr. Blum or CCS were negligent in the care or treatment of plaintiff during her incarnation at the Douglas County Jail.

CONCLUSION

No reasonable juror could find that CCS or Dr. Blum were deliberately indifferent to the serious medical needs of plaintiff or otherwise negligent. Because there are no genuine issues

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[40] Dkt. 1, p. 18, ¶79.
[41] Wess Decl., Ex. L (Stern Dep., 31:22 – 33:7, 36:1 to 36:9, 36:18 to 37:2).

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of material fact, defendants CCS and Dr. Blum respectfully request that the Court grant summary judgment and dismiss plaintiff's claims against them with prejudice.

DATED this 12th day of December, 2018.

s/ Tessan Wess, OSB #122087
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CERTIFICATE OF SERVICE

I certify that I served the foregoing **MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS CORRECT CARE SOLUTIONS, LLC AND STEVEN BLUM, M.D** on the following attorneys by the method indicated below on the 12th day of December, 2018:

Attorneys for Plaintiff:

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