Eric J. Neiman, OSB #823513
Eric.Neiman@lewisbrisbois.com
Jacqueline E. Houser, OSB #153539
Jacqueline.Houser@lewisbrisbois.com
Tessan Wess, OSB #122087
Tessa.Wess@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800
Facsimile: 971.712.2801

Attorneys for 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, LLC; 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

RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT BY DEFENDANTS CORRECT CARE SOLUTIONS, LLC AND STEVEN BLUM, M.D.

RESPONSE TO PLAINTIFFS' MOTION

Defendants Correct Care Solutions, LLC ("CCS") and Steven Blum, M.D. ("Dr. Blum") (collectively "defendants") respond to plaintiff's motion for summary judgment, as follows:

/ / / /

INTRODUCTION

This action involves an inmate in the Douglas County jail who was caught hoarding prescription medication and the medication was discontinued. Though plaintiff insists that the hoarding charge was the result of a misunderstanding, plaintiff never communicated that to Dr. Blum or CCS and otherwise refused to be seen or treated by Dr. Blum of CCS for alternative treatment options or to discuss the misunderstanding. There is no evidence that the conduct by Dr. Blum was deliberately indifferent or that the CCS policy amounted to deliberate indifference to plaintiff's constitutional rights.

UNDISPUTED FACTS

The Statement of Facts in plaintiff's motion for summary judgment provides superfluous and irrelevant facts, many of which are disputed. However, the material facts are undisputed.

Plaintiff knew that it was impermissible to hoard medication:[1]

Q. You understood medication was not to be saved up?
A. Yes.
Q. You understood that medication was not to be held by you without using it?
A. Yes.
Q. And did you understand that holding medication without using it, or saving it up, was considered to be hoarding?
A. Yes, with the exception of taking my medication on work crew with me.
Q. And did you understand that hoarding could result in consequences to you?
A. Yes.

/ / / /

/ / / /

/ / / /

/ / / /

[1] Wess Decl., Ex. A (*Carlisle Dep*., 35:2-15).

Lewis Brisbois Bisgaard & Smith LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800 • Fax 971.712.2801

Plaintiff knew that hoarding medication presented a risk in the correctional setting to both herself and to other inmates:[2]

Q. If someone is hoarding medication, that medication can be used for trading for things?
A. Yes.
Q. If someone is hoarding medication, that is contraband by definition?
A. Yes.
Q. If someone's hoarding medication and is in a bad place, that medication can be used for a suicide attempt?
A. Yes. However, again, I did not give that consideration.
Q. All of those things are legitimate concerns for jail authorities. Right?
A. Yes.

Plaintiff knew that she had an obligation to take her medications as and when they were prescribed:[3]

Q. Did you know it was your responsibility to only take your medication when it was given to you?
A. Yes.
Q. Did you know that you were not permitted to hoard medication?
A. Yes.

Plaintiff's cell was searched by jail authorities on May 31 and authorities located gabapentin tablets among other "contraband."[4]

Q. Did you have contraband in your cell on May 31, 2015?
A. Yes.
Q. Did that include a pencil sharpener, a pair of fingernail clippers, salt?
A. That sounds accurate, yes.

…

Q. Did you have a gabapentin tablet in your cell and in your possession when the deputies searched your cell?
A. Yes.

/ / / /

[2] *Id*. at 36:24 – 37:14.
[3] *Id*. at 62:15-20.
[4] *Id*. at 63:11-64:6; *see also* Dkt.51, p.8 of 29.

Lewis Brisbois Bisgaard & Smith LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800 • Fax 971.712.2801

Dr. Blum discontinued plaintiff's prescription for Neurontin after being provided information that the medication was being hoarded.[5]

Q. Do you remember having your Neurontin discontinued while you were in jail?
A. Yes, sir.

…

Q. And do you remember the medication was discontinued by June 1, 2015?
A. It was discontinued the evening of May 31st.

…

Q. On May 31, 2015, were you accused of hoarding medication?
A. Yes.

…

Q. Okay. So -- so this is a physician's order sheet. Can you explain the order dated June 1st, 2015?
Dr. Blum. So we stopped the Motrin and the Neurontin, and it was due to hoarding.

Plaintiff states that she simply forgot to take her midday dose of Neurontin and that the charge for hoarding was just a big misunderstanding. However, plaintiff never communicated that to Dr. Blum or to CCS.[6]

Q. And from your point of view, this whole thing about the gabapentin was a big misunderstanding?
A. Yes.
Q. And did you put that in writing?
A. No.
Q. You actually wrote a kite saying you wanted your Neurontin started again?
A. Yes.

/ / / /

[5] *Id*. at 44:3-19 and 59:12-14; *see also* Dkt. 50-6, p. 4 of 8 (79:20-24); *see also* Dkt.51, p. 11 of 29, fn. 51.
[6] *Id*. at 65:9-20 and 71:3 to 72:22.

Lewis Brisbois Bisgaard & Smith LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800 • Fax 971.712.2801

Q. When you wrote that kite did you say, "This whole thing is a Mistake"?
A. No, I did not.

…

Q. You were writing this kite explaining that you had pain from neuropathy and asking for your Neurontin to be restarted?
A. Correct.

…

Q. Did you write anything in this kite at all about the medication having been discontinued because of a misunderstanding?
A. No.

…

Q. How did you find out that your request to have the Neurontin restarted had been denied?
A. When I got this kite.
Q. It came back to you a few days later and said, We cannot restart that because of hoarding?
A. Yes.
Q. And at that point did you write back and explain that this was a misunderstanding?
A. No, I did not.

Plaintiff knew how to communicate with CCS and Dr. Blum. Not only did plaintiff choose not to communicate that the hoarding charge was based on a mistake or misunderstanding, she refused to be seen by Dr. Blum for treatment of her neuropathy.[7]

Q. Can you see, looking at Exhibit 61, that there were multiple times when you asked for medical help and you got it while you were in jail?
A. Yes.

…

A. What happened is medical came to get me one night, took me down to medical, and I -- I think it was Shandall [Dicke, RN] that came and got me, but it was her that I spoke with once I was there. I think it

[7] *Id*. at 77:6-9, 79:9-80:2, and 82:7-11.

Lewis Brisbois Bisgaard & Smith LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800 • Fax 971.712.2801

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."

…

Q. Weren't you interested in what kind of treatment could be offered to you that might make you feel better?
A. No.

…

Q. So please confirm for us that you -- as of July 9, 2015, you were unwilling to have a conversation with Dr. Blum about what he might be able to do to help you.
A. Correct.

POINTS AND AUTHORITIES

I. Summary judgment should be granted in defendants' favor on plaintiff's §1983 claim against Dr. Blum because there is no evidence that Blum was deliberately indifferent to plaintiff's medical needs.

Plaintiff's first motion seeks summary judgment on her §1983 against Dr. Blum. To prevail on her §1983 claim, plaintiff must establish that a state actor was deliberately indifferent to her serious medical needs. *Taplet v. Brooks*, 432 F App'x 697, 697-98 (9th Cir 2011). Plaintiff need not show that her harm was substantial; however, this evidence would provide additional support for her claim that defendants were deliberately indifferent to her needs. *Jett v. Penner*, 439 F3d 1091, 1096 (9th Cir 2006).

There is no dispute that Dr. Blum, while working at the Douglas County Jail for CCS, was acting under the color of state law. While a dispute exists as to whether plaintiff had a serious medical need, plaintiff's §1983 claim fails as matter of law because there is no evidence of deliberate indifference.

Lewis Brisbois Bisgaard & Smith LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800 • Fax 971.712.2801

A. There is no evidence of deliberate indifference.

To support her §1983 claim, plaintiff argues that there were four instances of deliberate indifference by Dr. Blum to plaintiff's alleged serious medical need:

(1) when Dr. Blum discontinued plaintiff's Neurontin;

(2) when Dr. Blum allegedly "ignored" plaintiff's June kite requesting that her Neurontin be reinstated;

(3) when Dr. Blum allegedly "ignored" the correspondence from Dr. Jorgenson requesting that Neurontin be reinstated; and

(4) when Dr. Blum allegedly "failed to provide any alternative treatment."[8]

The undisputed record provides that Dr. Blum discontinued plaintiff's Neurontin following information that the medication was being hoarded. It was not an arbitrary or deliberately indifferent action, but rather a medical decision based on available information that has been routinely upheld as constitutional.

Additionally, the undisputed record provides that Dr. Blum did not "ignore" but rather received, reviewed and considered both plaintiff's kite and the correspondence from Dr. Jorgenson requesting to reinstate plaintiff's Neurontin prescription.[9] Based upon the information that plaintiff had been hoarding the medication and in consideration of the risks presented by diverted prescription pain medications, Dr. Blum made a medical judgment not to reinstate the prescription.[10]

/ / / /

/ / / /

[8] Dkt. 51, p. 21 of 29.
[9] Dkt. 50-6, p. 5-6 of 8.
[10] *Id*.

Lewis Brisbois Bisgaard & Smith LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800 • Fax 971.712.2801

Finally, contrary to her argument that Dr. Blum "failed to provide" alternative treatment, the undisputed record provides that plaintiff actively refused alternative treatment.[11]

B. <u>There is no evidence that the standard of care was not met</u>.

There is no evidence that Dr. Blum's treatment or medical decisions fell below the standard of care, much less that such conduct was deliberately indifferent. *See Billings v. Gates*, 323 Or 167, 179 n 14, 916 P2d 291, 299 (1996)("Recklessness with respect to the standard of care may constitute 'deliberate indifference' to a prisoner's medical needs under the Eighth Amendment."). In *Morgan*, the Ninth Circuit affirmed a district court's order granting summary judgment where there was "no evidence that Dr. Vargo provided inadequate medical care, much less that the quality of care he provided was so dismally beneath the prevailing standard of care that it supports an inference that Dr. Vargo acted with deliberate indifference." *Morgan v. Maass*, No. 94-35834, 1995 U.S. App. LEXIS 38206, at *11 (9th Cir Dec. 26, 1995). Here, the unrebutted evidence provides that Dr. Blum's conduct with regards to plaintiff met the standard of care.

Noticeably absent from plaintiff's motion for summary judgment are the reports generated by or the sworn testimony of her standard of care expert Dr. Stern. Plaintiff has identified Marc Stern, MD, MPH, as an expert regarding the standard of care for discontinuation of a medically necessary medication while in custody. Neither Dr. Stern's preliminary report nor the rebuttal report indicate that Dr. Blum's care for plaintiff fell below the standard of care. The reports explicitly do not offer an opinion on the care related to plaintiff nor do they indicate that the standard of care was violated in *this* case. The only evidence to support plaintiff's deliberate indifference argument are plaintiff's own allegations and conclusory statements.

[11] Dkt. 50-5; *see also* Dkt. 50-1, p. 6 of 7.

Lewis Brisbois Bisgaard & Smith LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800 • Fax 971.712.2801

In *Taplet*, the court expressly held that such evidence was not sufficient to support plaintiff's claim for deliberate indifference. *Taplet v. Brooks*, 432 F App'x 697 (9th Cir 2011). There, the court noted that while the plaintiff's "preliminary expert report outlines the proper standard of care owed prisoners by prison officials, it explicitly did not 'offer an opinion on the diagnosis or prognosis of the plaintiff,' nor did it claim that the standard of care was violated in this case." *Id.* at 698. The court noted that the only evidence to support the plaintiff's deliberate indifference claim were the plaintiff's own allegations and such conclusory assertions are insufficient. *Id*.

Courts routinely grant summary judgment in favor of defendants on §1983 deliberate indifference claims where there is no evidence that the medical professional violated the standard of care. *See e.g. Turner v. Multnomah Cty*., No. 3:12-cv-01851-KI, 2015 US Dist LEXIS 71492, at *36 (D Or June 3, 2015)("As there is no material issue of fact indicating [the nurse] provided negligent treatment, [plaintiff] cannot meet the much higher standard demonstrating she was deliberately indifferent to his medical needs."); *Peters v. Figuerroa*, No. 96-15758, 1997 U.S. App. LEXIS 4920, at *2 (9th Cir Mar. 13, 1997)(affirming district court's summary judgment on §1983 claim where unrebutted evidence provided that the treatment given to the plaintiff met or exceeded the community standard of care).

Because there is no evidence that Dr. Blum's treatment relating to plaintiff violated the standard of care, plaintiff cannot meet the more stringent "deliberately indifferent" standard to support her §1983 claim. Accordingly, summary judgment on plaintiff's §1983 claim against Dr. Blum should be entered in defendants' favor.

/ / / /

/ / / /

Lewis Brisbois Bisgaard & Smith LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800 • Fax 971.712.2801

C. Discontinuing an inmate's prescription pain medications following instances of hoarding has been routinely held as constitutional.

Not only is there no evidence that Dr. Blum's conduct was afield from the standard of care, courts have held that there is no deliberate indifference in cases with analogous factual circumstances.

Neurontin has a potential for abuse and diversion in correctional settings. *Barnes v. Norton*, No. 2:15-CV-157-TC, 2018 US Dist LEXIS 55020, at *15-16 (D Utah Mar. 29, 2018). In *Barnes*, the court held that there was no evidence of deliberate indifference where an inmate's Neurontin was discontinued after an accusation had been made that the plaintiff was "cheeking" the Neurontin. *Id.* at *18.

Discontinuation of prescription pain medication after allegations that an inmate was hoarding medication does not violate the Eighth Amendment. *Id*., *see also Todd v. Bigelow*, 497 F App'x 839 (10th Cir 2012). In *Todd*, the plaintiff was prescribed Neurontin due to pain related to a degenerative disorder. *Id.* at 841. Prison officials discontinued his Neurontin medication after he was caught cheeking his medication. *Id*. The plaintiff alleged that he did not mean to abuse or divert his medication and that denial of his Neurontin violated the Eighth Amendment. *Id*. The Tenth Circuit rejected his claim, noting that even if the medical staff incorrectly concluded he meant to abuse his medication, the withholding of his Neurontin prescription was not deliberate indifference. *Id*. Like here, the plaintiff in *Todd* insisted that he be provided Neurontin over the other medications which were offered to him. *Id*. at 841-842. The court held that such evidence was not sufficient to give rise to an Eighth Amendment violation, as "a difference of opinion with the medical staff as to the optimal pain-management regimen does not amount to deliberate indifference." *Id*.

/ / / /

Lewis Brisbois Bisgaard & Smith LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800 • Fax 971.712.2801

Courts have consistently determined that prison medical doctors have not been deliberately indifferent to a prisoner's medical needs by terminating certain medications after discovering that the prisoner has been hoarding, cheeking, stowing, or otherwise abusing their prescribed medications. *See, e.g., Shockley v. Fox*, 444 F. App'x 36, 38 (5th Cir. 2011) (rejecting prisoner's claim that the medical staff's refusal to administer narcotic pain medication violated his Eighth Amendment rights); *Reed v. Sapp*, No. 99-5752, 2000 U.S. App. LEXIS 9900, at *5, 211 F.3d 1270 (6th Cir May 5, 2000) (finding that defendants were not deliberately indifferent to prisoner's medical needs where the prisoner had salvaged his pain medication for prohibited use).

There is no dispute that plaintiff was caught hoarding Neurontin and that hoarding of the medication precipitated the decision to discontinue that medication. These facts do not support a finding of deliberate indifference.

D. There is no evidence that the medical decision to discontinue plaintiff's medication was disciplinary or punitive.

Plaintiff argues that Dr. Blum's decision to discontinue her prescription for Neurontin was punitive and disciplinary. Plaintiff offers no evidence in support of this argument and provides misplaced reliance on *Lavender* to support this argument.

1. There is no evidence that Dr. Blum's decision to discontinue plaintiff's Neurontin was disciplinary.

Disciplinary matters at the Douglas County jail were handled by Douglas County.[12] There is no evidence that Dr. Blum or CCS had any involvement with or say over disciplinary matters at the Douglas County jail. There is also no evidence that Dr. Blum discontinued plaintiff's medication as a form of punishment. Dr. Blum's sworn testimony and all related

[12] *See* Dkt.49, p.3.

Lewis Brisbois Bisgaard & Smith LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800 • Fax 971.712.2801

records indicate that the decision to discontinue plaintiff's Neurontin was based upon information that the medication was being hoarded.[13] While plaintiff argues that the decision to cancel her medication was made without any patient examination, plaintiff offers no evidence that a patient examination was necessary or that the decision not to do so was purely punitive. Dkt. 51, p. 23 of 29. Both standard of care experts in this action have opined that discontinuation of a medication following information that the medication had been hoarded does not necessarily require an in-person, direct patient examination.[14]

2. *Lavender* is distinguishable from this case and does not support plaintiff's §1983 claim against Dr. Blum.

To support her claims, plaintiff places heavy reliance on *Lavender*, a case that is significantly distinguishable from this matter. The plaintiff in *Lavender* suffered from permanent spastic partial paralysis related to a prior gunshot wound to his neck which resulted in a spinal injury that causes him to have an inverted right foot, a clawing deformity in his right toes and chronic pain. *Lavender v. Lampert*, 242 F Supp 2d 821, 842 (D Or 2002). The record in *Lavender* provides that the plaintiff was continually complaining of consistent and chronic pain, and while he had access to medical care and was frequently examined by health care providers, they frequently failed to treat his complaints of pain entirely, often allowed the pain prescriptions to lapse and actively disciplined the plaintiff for sick call abuse. *Id*. at 846.

In support of its holding that there was sufficient evidence of deliberate indifference to defeat summary judgment, the court noted a number of times in the record where medical professionals had identified effective pain management medications, but would then cancel and refuse to renew those prescriptions, or would otherwise allow repeated periods wherein the

[13] *See* Dkt.49, p.4-5.
[14] *See* Dkt.49, p.4.

Lewis Brisbois Bisgaard & Smith LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800 • Fax 971.712.2801

prescription would lapse and the plaintiff would be without any form of relief for days or weeks. *Id*. at 847. During those periods, the plaintiff would make repeated and continuous requests to be seen for his chronic pain and at points would appear in the emergency ward with complaints of pain. *Id*. There were numerous instances where the plaintiff would be seen by a nurse, during which he would complain of chronic pain, and rather than treat the pain, the nurse would refer the plaintiff to see a doctor which would often not occur for several days or weeks. *Id*. There is no such evidence in this case.

In contrast, the evidence in this case is that Dr. Blum treated plaintiff's pain associated with neuropathy consistently and without interruption, and that the prescription was only discontinued following information that plaintiff had been hoarding the medication. The evidence is that Dr. Blum was never provided any information that the charge for hoarding was simply the result of a mistake or misunderstanding as plaintiff now asserts, which could have been accomplished by submitting a kite, or in the correspondence plaintiff arranged to have Dr. Jorgenson send, or during her discussion with Shandall Dicke, RN.

To further distinguish *Lavender* from this case, the plaintiff in *Lavender* was placed in disciplinary segregation for sick call abuse. *Id*. at 847 ("plaintiff was placed in disciplinary segregation for sick call abuse;" "after plaintiff repeatedly complained of pain, he was again sanctioned for sick call abuse, and was placed in disciplinary segregation."). There, the plaintiff was actively punished for his continuous complaints of chronic pain by being placed in disciplinary segregation and by having his pain medications discontinued. *Id*. at 847-848. Here, plaintiff was disciplined by jail authorities for holding contraband in her cell.[15]

[15] To the extent plaintiff offers evidence regarding the disciplinary actions taken by jail authorities (co-defendants Douglas County, John Hamlin and Mike Root)[Dkt. 51, p. 9 of 29],

Lewis Brisbois Bisgaard & Smith LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800 • Fax 971.712.2801

There is no evidence that the discontinuation of plaintiff's medication was punitive or disciplinary in nature. Rather, the evidence shows that plaintiff's Neurontin was discontinued following information that the medication was being hoarded. There is no dispute that hoarding medications, including Neurontin, presents a risk to the inmate and the correctional setting as a whole. Notably, the plaintiff in *Lavender* "apparently attempted suicide by intentionally ingesting an overdose of Neurontin,[16] after which all of his medications were suspended and he was no longer permitted to have them in his cell." *Id*. at 831. Of the portions of the record that the court identifies as evidence of deliberate indifference, the suspension of plaintiff's medications following the Neurontin overdose is not included. This precedent not only enforces the concern that hoarded Neurontin presents a risk to inmates, but also reinforces the fact that a medical decision to discontinue pain prescriptions following evidence of abuse is not evidence of deliberate indifference.

Because there is no evidence that the decision to discontinue plaintiff's Neurontin was disciplinary or punitive, and otherwise no evidence of deliberate indifference, plaintiff's §1983 deliberate indifference claim fails as a matter of law.

E. <u>A difference of opinion regarding the best medication for plaintiff's neuropathy is not evidence of deliberate indifference</u>.

There is no dispute that plaintiff was not interested in alternative medical treatment. All of her communications to Dr. Blum or medical staff expressed that she wanted her Neurontin reinstated and that she was not interested in discussing or trying anything else. A medical

---

defendants assert that such evidence is not admissible against Dr. Blum or CCS as it is not relevant to the claims against Dr. Blum or CCS.

[16] Notably, there were times prior to plaintiff's incarceration in the Douglas County jail where she attempted to harm or kill herself by abusing prescription medications. *See* Carlisle, 41:15-24. Plaintiff testified that she was not forthcoming during her intake with Douglas County regarding the prior suicide attempts. *See* Wess Decl., Ex. A (*Carlisle Dep*., 57:7- 58:17).

Lewis Brisbois Bisgaard & Smith LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800 • Fax 971.712.2801

provider's decision not to give an inmate the medication of their choice is merely a disagreement between the inmate and the treatment providers' medical judgment and does not show deliberate indifference. *See Barnes*, 2018 US Dist LEXIS 55020 at *13 (inmate's preference for Neurontin over the medications did not give rise to an Eighth Amendment violation); *see also Todd*, 497 F App'x at 842 ("a difference of opinion with the medical staff as to the optimal pain-management regimen does not amount to deliberate indifference").

II. Summary judgment should be granted in defendants' favor on plaintiff's *Monell* claim against CCS because there is no evidence that the policies are deliberately indifferent.

Plaintiff's second motion seeks summary judgment on her §1983 *Monell* against CCS. To prevail on her *Monell* claim, plaintiff must establish that she was deprived of a constitutional right and that CCS had a policy or custom that "amounts to deliberate indifference" to plaintiff's constitutional rights. *Funez v. Guzman*, 687 F Supp 2d 1214, 1224 (D Or 2009); *see also Garcia v. City & Cty. of Honolulu*, No. 18-00100 ACK-KSC, 2018 US Dist LEXIS 195818, at *36 (D Haw Nov. 16, 2018). While there is a dispute as to whether plaintiff was deprived of any constitutional rights, plaintiff's *Monell* claim fails as matter of law because there is no evidence that any CCS policy amounted to deliberately indifference to inmates' constitutional rights.

A. The CCS policy is a standard policy that is widely accepted as constitutional.

There is no dispute that CCS has a general practice to discontinue medications when an inmate is found hoarding those medications, and that exceptions are made on a case by case basis if the medication is critical.

The policy at issue serves a legitimate penological goal and has been affirmed as constitutional by courts in this and other Circuits. "It is … self-evident that the … overall regulation of prescription pain medication is a legitimate penological goal." *See Hicks v.*

Lewis Brisbois Bisgaard & Smith LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800 • Fax 971.712.2801

Dotson, 73 F Supp 3d 1296, 1303 (ED Wash 2014), *citing Todd*, 497 F App'x at 841 ("reflects a legitimate penological interest in prevention of drug abuse"). In *Armfield*, the plaintiff's medication was discontinued when it was discovered that plaintiff was not taking his medication as directed, but rather hoarding it. *Armfield v. La. Corr. Servs*., No. 3:10-CV-0175, 2010 US Dist LEXIS 43019, at *7-8 (WD La Mar. 29, 2010). Like here, the plaintiff claimed that the medication should not have been discontinued until such time as he was examined by a mental health physician. *Id.* at *8. The court held that the plaintiff had not shown that "the policy behind the decision -- to discontinue medication for patients who hoard it -- was unsound" and held that such a policy was not evidence of deliberate indifference. *Id*.

Because the policy at issue serves a legitimate penological interest and because it has been upheld as constitutional, the court should grant summary judgment in defendants' favor on plaintiff's *Monell* claim against CCS.

B. Plaintiff's arguments do support a finding of deliberate indifference.

The cases cited by plaintiff to support her *Monell* theory of liability are inapposite to the facts at issue in this action and the arguments are otherwise self-contradictory.

On the one hand, plaintiff argues that Dr. Blum had the ability to make final decisions regarding the implementation of the policy, and that the policy did not mandate the discontinuation of "critical" medications, a decision that was ultimately left to Dr. Blum to determine on a case by case basis.[17] On the other hand, plaintiff argues that the policy was a blanket ban on medically necessary care.[18]

/ / / /

/ / / /

[17] Dkt. 51, p. 25 of 29.
[18] Dkt. 51, p. 27 of 29.

Lewis Brisbois Bisgaard & Smith LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800 • Fax 971.712.2801

Plaintiff references two cases to support the argument that the CCS policy was a blanket ban or "freeze out" policy: *Hicklin* and *Fields*.[19] Both cases relate to state statutes or customs regarding uniform treatment of gender dysmorphia in the correctional setting. In *Hicklin*, the plaintiff argued that the policy or custom of providing hormone therapy only to those transgender inmates who were receiving it prior to incarceration was unconstitutional. *Hicklin v. Precynthe*, No. 4:16-cv-01357-NCC, 2018 US Dist LEXIS 21516, at *3-4 (ED Mo Feb. 9, 2018). The court noted that there did not appear to be any rational relationship between the policy and a legitimate governmental interest or penological purpose especially in light of the evidence indicating that other inmates in the correctional setting received hormone therapy. *Id*. at *47. Similarly, in *Fields*, the court held that a Wisconsin state statute which prohibited the Wisconsin Department of Corrections ("DOC") from providing transgender inmates with certain medical treatments violated the Eighth Amendment's ban on cruel and unusual punishment. *Fields v. Smith*, 653 F3d 550, 552-53 (7th Cir 2011). Like *Hicklin*, the court in *Fields* pointed out that the statute appeared to serve "no legitimate purpose." *Id*. at 558. Unlike the uniform gender dysmorphia policies in *Hicklin* and *Fields* which served no legitimate purpose, policies like the CCS policy at issue have been routinely held by courts to serve legitimate penological interests.

Plaintiff has failed to meet her burden of proof of demonstrating that the CCS policy amounts to deliberate indifference to the constitutional rights of plaintiff.

/ / / /

/ / / /

/ / / /

/ / / /

[19] Dkt. 51, p. 24-25 of 29.

Lewis Brisbois Bisgaard & Smith LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800 • Fax 971.712.2801

CONCLUSION

Based on the foregoing, defendants request that the Court deny plaintiff's motion for summary judgment. To the extent summary judgment is entered, it should be entered in favor of defendants CCS and Dr. Blum as plaintiff has failed to establish her §1983 claims as a matter of law.

DATED this 11th day of January, 2019.

s/ Tessan Wess
Eric J. Neiman, OSB #823513
Jacqueline E. Houser, OSB #153539
Tessan Wess, OSB #122087
LEWIS BRISBOIS BISGAARD & SMITH LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800
Facsimile: 971.712.2801
Eric.Neiman@lewisbrisbois.com
Jacqueline.Houser@lewisbrisbois.com
Tessa.Wess@lewisbrisbois.com
Attorneys for Defendants Correct Care Solutions, LLC and Steven Blum, M.D.

Lewis Brisbois Bisgaard & Smith LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800 • Fax 971.712.2801

CERTIFICATE OF SERVICE

I certify that I served the foregoing **RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT BY DEFENDANTS CORRECT CARE SOLUTIONS, LLC AND STEVEN BLUM, M.D.** on the following attorneys by the method indicated below on the 11th day of January, 2019:

Attorneys for Plaintiff:

Mathew W. dos Santos	____	Via First Class Mail
Kelly K. Simon	____	Via Federal Express
ACLU of Oregon	____	Via Facsimile
PO Box 40585	____	Via Hand-Delivery
Portland, OR 97240	✓	Via CM/ECF Notice
mdossantos@aclu-or.org	____	Via E-Mail
ksimon@aclu-or.org		

Aliza Kaplan, Esq.	____	Via First Class Mail
Criminal Justice Reform Clinic at Lewis	____	Via Federal Express
& Clark Law School	____	Via Facsimile
10015 SW Terwilliger Blvd	____	Via Hand-Delivery
Portland, OR 97219	____	Via CM/ECF Notice
akaplan@lclark.edu	✓	Via E-Mail

Daniel B. Bartz	____	Via First Class Mail
3418 Kinsrow Ave., # 175	____	Via Federal Express
Eugene, OR 97401	____	Via Facsimile
danielbbartz@gmail.com	____	Via Hand-Delivery
	✓	Via CM/ECF Notice
	____	Via E-Mail

Attorneys for Defendants Douglas County, Mike Root & John Hanlin:

Robert S. Wagner, Esq.	____	Via First Class Mail
Stan LeGore, Esq.	____	Via Federal Express
Miller Wagner, LLP	____	Via Facsimile
2210 NW Flanders Street	____	Via Hand-Delivery
Portland, OR 97210	✓	Via CM/ECF Notice
rsw@miller-wagner.com	____	Via E-Mail
sml@miller-wagner.com		
DLS@miller-wagner.com		

LEWIS BRISBOIS BISGAARD & SMITH LLP

s/ Tessan Wess
Eric J. Neiman, OSB #823513
Jacqueline E. Houser, OSB #153539
Tessan Wess, OSB #122087
Attorneys for Defendants Correct Care Solutions, LLC and Steven Blum, M.D.

Lewis Brisbois Bisgaard & Smith LLP
888 SW Fifth Avenue, Suite 900
Portland, Oregon 97204-2025
Telephone: 971.712.2800 • Fax 971.712.2801