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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

NICHOLAS BANNING,	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 21-3100
	)	
COUNTY OF SHELBY, et.al.,	)	
Defendants	)	

CASE MANAGEMENT ORDER

JAMES SHADID, U.S. District Judge:

This cause is before the Court for consideration of Defendant Advanced Healthcare's Motion to Dismiss, [59], and Defendants Don Koonce and Brian McReynolds' Motion to Dismiss Counts I and III. [61]. For the following reasons, the Motions to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) are both DENIED. [59, 61].

I. BACKGROUND

Plaintiff claims several Defendants violated his constitutional rights during his stay at the Shelby County Jail from March 6 to March 10, 2020. (Third Amd. Comp., [56]). Plaintiff informed the arresting deputies and correctional staff he would be going through opioid withdrawal, and he anticipated it would be severe. During the next few days, Plaintiff says he displayed classic withdrawal symptoms including lethargy, vomiting, and an altered mental state. Plaintiff further maintains he was having difficulty breathing.

The medical provider, Advanced Healthcare (ACH), did not have an onsite provider and correctional staff did not request medical care during Plaintiff's stay. Instead, Plaintiff maintains his condition severely deteriorated, and he was released into his own recognizance on March 10, 2020. Plaintiff claims emergency medical providers transported him from the jail to the hospital noting Plaintiff was found unresponsive, face down on his bed, with diminished right lung breathing sounds. Plaintiff spent five weeks in an intensive care unit and a total of two months in the hospital. (Third Amd. Comp., [56]).

Plaintiff's Third Amended Complaint identifies three counts, but the Defendants' Motions to Dismiss are limited to Count I which alleges former Sheriff Koonce was deliberately indifferent to Plaintiff's serious medical needs; and Count III alleging a *Monell* claim against current Sheriff Brian McReynolds and ACH. *See Monell v. Dep't of Social Servs. of the City of New York*, 436 U.S. 658, 694–95 (1978)

II. LEGAL STANDARD

"The purpose of a Rule 12(b)(6) motion is to decide the adequacy of the complaint, not the merits of the case." *Russell v. Connor,* 2022 WL 523663, at *1 (S.D.Ill. Feb. 22, 2022), *citing Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990). The Court must accept all factual allegations as true and draw all reasonable inferences in the plaintiff's favor. *Degroot v. Client Servs., Inc.*, 977 F.3d 656, 659 (7th Cir. 2020).

"Notwithstanding that deference, '[t]o survive a motion to dismiss, a plaintiff must allege enough facts to state a claim to relief that is plausible on its face.'" *Id., quoting Boucher v. Fin. Sys. of Green Bay, Inc.*, 880 F.3d 362, 365-66 (7th Cir. 2018)(internal

quotation omitted). Federal Rule of Civil Procedure 8 does not require detailed factual allegations. *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555 (2007). However, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), *citing Twombly*, 550 U.S. at 555.

III. ANALYSIS

A. DEFENDANT MCREYNOLDS' MOTION TO DIMISS *MONELL* CLAIM

Defendant McReynolds argues the Court must dismiss Plaintiff's *Monell* claim because his Amended Complaint contains only conclusory allegations and does not allege the Sheriff's Office had notice its policies resulted in inadequate medical care for detainees experiencing withdrawal. Plaintiff' *Monell* claim is based on both a failure to develop policies and a failure to train jail staff.

To hold a government entity such as a county liable under 42 U.S.C. §1983, a plaintiff must allege the constitutional violation was caused by: "(1) an express policy that caused a constitutional deprivation when enforced; (2) a widespread practice that was so permanent and well-settled that it constituted a custom or practice; or (3) a person with final policymaking authority." *Ridgeway v. Wexford Health Sources*, Inc., 2022 WL 124447, at *5 (S.D.Ill. Jan 13, 2022); *citing Dean v. Wexford Health Sources, Inc.*, 18 F.4th 214, 235 (7th Cir. 2021).

Defendant says Plaintiff's claim alleging the Sheriff failed to provide sufficient policies alleges a widespread custom, but Plaintiff has failed to allege sufficient, similar incidents to demonstrate a pattern or practice. *See i.e. Hildreth v. Butler*, 960 F.3d 420, 427 (7th Cir. 2020)("the frequency of conduct necessary to impose *Monell* liability must be

more than three."); *Doe v. Vigo Cty.*, 905 F.3d 1038, 1045 (7th Cir. 2018)(holding a "handful of incidents of misconduct … is not enough to establish a custom or practice"); *Shields v. Ill. Dep't of Corr.*, 746 F.3d 782 at 796 (7th Cir. 2014) ("isolated incidents do not add up to a pattern of bad behavior that would support an inference of a custom or policy."). In addition, Defendant McReynolds maintains the Third Amended Complaint fails to allege how the Sheriff's office knew its policies were deficient.

Instead, Plaintiff refers only to his own allegation of inadequate medical care. *See Copeland v. Johnson*, 2019 WL 4694786, at *6 (N.D.Ill. Sept 26, 2019)(conclusory allegations and "isolated incidents are insufficient to establish a practice or custom" fail to state a *Monell* claim); *Collier v. Ledbetter*, 2016 WL 5796765, at *5–6 (C.D.Ill. Sept. 30, 2016)(conclusory allegations and isolated incidents fail to allege official capacity claim).

Plaintiff's other theory of *Monell* liability is based on a failure to train jail staff, but Defendant McReynolds again says Plaintiff has not alleged "[a] pattern of similar constitutional violations by untrained employees." *Connick v. Thompson*, 563 U.S. 51, 62 (2011). Plaintiff instead relies on an "extremely limited class of *Monell* liability" based on a single incident. *Terry v. County of Milwaukee*, 2018 WL 2567721, at *6 (E.D.Wis. June 4, 2018).

In response to the dispositive motion, Plaintiff says his *Monell* allegations do not require more at this stage of the litigation. The Seventh Circuit has "indicated that at the motion to dismiss stage, a plaintiff may rely solely on his own experience to state a *Monell* claim rather than having to plead examples of other individuals' experiences.

Zavala v. Damon, 2018 WL 3438945, at *3 (N.D.Ill. July 17, 2018), *citing White v. City of Chicago*, 829 F.3d 837, 844 (7th Cir. 2016)(plaintiff "was not required to identify every other or even one other individual who had been arrested pursuant to a warrant obtained through the complained-of process"). Unlike the cases cited by Defendants, Plaintiff's *Monell* claims are not conclusory, but provide the basis for an allegation stemming from inadequate to nonexistent policies and failure to provide any medical training to deal with detainees suffering from withdrawal despite limited onsite medical care.

Plaintiff further notes the Supreme Court has held a single violation is sufficient where the constitutional injury is the "highly predictable consequence" of the failure to train or implement a policy. *Connick*, 563 U.S. at 63-64*, quoting Board of County Commissioners of Bryan County v. Brown,* 520 U.S. 397, 409 (1997). This "theory of *Monell* liability roots itself in inaction—in gaps" in both the County's "policy and its failure to properly train the jailers in the face of obvious and known risks…" *J.K.J. v. Polk County,* 960 F.3d 367, 378 (7th Cir. 2020). "Put another way, a risk of constitutional violations can be so high and the need for training so obvious that the municipality's failure to act can reflect deliberate indifference and allow an inference of institutional culpability, even in the absence of a similar prior constitutional violation." *Id.* at 380.

In this case, Plaintiff claims the only relevant policy directs jail staff to provide immediate care to a detainee who needs immediate medical attention. (Third Amd. Comp., [56], para. 70). There are no other guidelines, protocols, or instructions concerning medical care. Plaintiff says, "the need for proper training and policies

regarding how to monitor, respond and treat detained individuals experiencing opioid dependency and withdrawal is obvious." (Plain. Resp., [63], p. 9). Particularly at an institution which has limited medical staff on site and relies on jail staff to determine when medical care is needed. *See i.e. Glisson v. Indiana Department of Corrections*, 849 F.3d 372, 382 (7th Cir. 2017)(a factfinder could find prison "knew for certain that its health providers would be confronted with patients with chronic illnesses, and that the need to establish protocols for the coordinated care of chronic illnesses is obvious.")(internal quotation omitted).*al Medical Services of Illinois, Inc*., 368 F.3d 917, 929 (7th Cir. 2004).

Defendant McReynolds next contends the Court should still dismiss Plaintiff's failure to train claim, because his Third Amended Complaint also states Plaintiff's medical condition was obvious to anyone, "including individuals with no medical training." (Third Amd. Comp., [56], para. 65). Therefore, Defendant argues Plaintiff is simply alleging his injuries are the result of individual employee misconduct, not a failure to train.

Plaintiff says Defendant has latched on to one line in the Third Amended Complaint, and the failure to provide obviously needed medical care only underscores the need for appropriate training and policies.

The Seventh Circuit has reminded courts not to apply a heightened pleading standard to *Monell* claims. *White,* 829 F.3d at 844. Instead, Plaintiff is only required to state a plausible claim for relief. *Zavala,* 2018 WL 3438945, at *3 ("Discovery will uncover whether (plaintiff) can establish or prove his *Monell* claim, but at the pleading stage, he only need state a plausible claim for relief.). The Court finds Plaintiff has

articulated a plausible *Monell* claim against Sheriff McReynolds/Shelby County and the Motion to Dismiss this claim is denied. [61].

B. ADVANCED CORRECTIONAL HEALTHCARE'S MOTION TO DISMISS *MONELL* CLAIM

Medical provider ACH argues it is entitled to summary judgment on Plaintiff's *Monell* claim because it is based on vague, boilerplate conclusions without factual support and it fails to adequately allege ACH was responsible for the claimed constitutional violation. "A private company performing a state function, such as Advanced Correctional Healthcare Corporation (ACH), can be held liable to the same extent as a municipal entity under *Monell*." *Swisher v. Porter County Sheriff's Department*, 2018 WL 1400889, at *11 (N.D.Ind. March 20, 2018). Again, Plaintiff must allege a policy, custom, or practice which was the "moving force" behind the alleged injury. *J.K.J.*, 960 F.3d at 377.

Defendant ACH argues Plaintiff has failed to allege an "express policy" or "a person with final policymaking authority" caused his constitutional violation, and his pleading fails to adequately identify a widespread practice or custom. *Ridgeway,* 2022 WL 124447, at *5.

Plaintiff says his Third Amended Complaint alleges ACH has both "an inadequate medical services *policy* and widespread *practice* of compromising the health and well-being of inmates under its care to make profits, and this policy and practice cause a failure to provide proper responses to detainee's medical needs, including opioid withdrawal." (Plain. Resp., [64], p. 5)(emphasis in original). Plaintiff's complaint

specifically alleges ACH markets itself as a cost cutting alternative for medical care. As a result of its cost-cutting practices, it provides inadequate medical staffing, polices, and training. Plaintiff has further alleged the dangers of withdrawal are obvious and many jails follow standard protocols for monitoring detainees and providing treatment, but ACH has ignored these standards.

Plaintiff maintains ACH was aware it had an inmate suffering from opioid withdrawal because an ACH doctor approved the use of medication previously prescribed for this purpose which his family provided to the arresting officers. (Plain. Resp., [64], p. 2). Nonetheless, no additional monitoring was ordered and ACH had no relevant procedures or protocols or staffing to address a detainee experiencing withdrawal and no training to prepare medical or jail staff to address the issue. *See Marsillett v. Kosciusko County Sheriff,* 2020 WL 5096059, at *1–2 (N.D.Ind. Aug. 28, 2020)("Liability can arise from a municipality's inaction if it effectively becomes a policy."); *Simmons v. Godinez*, 2017 WL 3568408, at *4 (N.D.Ill. Aug. 16, 2017)(collecting cases allowing *Monell* claim alleging medical providers cost-cutting policy lead to inadequate medical treatment); *Piercy v. Warkins*, 2017 WL 1477959, at *15 (N.D.Ill. April 25, 2017)("courts in this district have allowed a private corporation (medical provider) to be liable for failing to train correctional officers on matters relating to the private corporation's responsibilities).

Defendant ACH argues Plaintiff's Third Amended Complaint has failed to allege a widespread practice since he relies only on his own experience. Plaintiff cites to two lawsuits involving ACH's care to inmates to illustrate the Defendant was aware of the

dangers of its costs cutting policies, but Defendants note neither lawsuit involves Shelby County or the relevant time frame.

Regardless, as the Court has noted above, a single violation is sufficient for notice pleading where the constitutional injury is the "highly predictable consequence" of the failure to train or implement a policy. *Connick,* 563 U.S. at 63-64.; *see also Irvin v. Wexford Health Source, Inc.,* 2018 WL 3491277, at *5 (N.D.Ill. July 20, 2018)(plaintiff's alleged his injury was result of Wexford cost-cutting policy/practice when it failed to train how to process and treat inmates with serious medical needs, refused to provide surgery, and "[t]hese allegations, at least at this stage, are sufficient to proceed…").

Defendant ACH next argues Plaintiff has alleged the corporation had a policy of improperly releasing inmates from the jail to avoid paying for their care, and there is no constitutional right in requiring a detainee to bear the cost of medical care, as long as they are not denied necessary care. *See i.e. Poole v. Isaacs*, 703 F.3d 1024, 1027 (7th Cir. 2012)(required medical co-pay not unconstitutional if needed care provided).

Plaintiff says the Defendant has misstated his claim. Plaintiff was instead alleging that due to ACH's failure to provide medical care prior to his release, the Plaintiff was forced to suffer physical and financial harm.

The Court finds Plaintiff's Third Amended Complaint goes beyond bare legal conclusions and provided fair notice of the basis of his claims. Therefore, the Motion to Dismiss is Denied. [59].

C. DEFENDANT KOONCE'S MOTION TO DISMISS INDIVIDUAL CAPACITY CLAIM.

Defendant Koonce argues the Court should dismiss Count I of the Amended Complaint because Plaintiff has failed to allege the former Sheriff had any personal involvement in his claims. "[I]n order to hold an individual defendant liable under §1983 for a violation of an inmate's constitutional rights, the inmate must show that the defendant was personally responsible for that violation." *Rasho v. Elyea*, 856 F.3d 469, 478 (7th Cir. 2017). "A defendant will be deemed to have sufficient personal responsibility if he directed the conduct causing the constitutional violation, or if it occurred with his knowledge or consent." *Sanville v. McCaughtry*, 266 F.3d 724, 740 (7th Cir. 2001)(internal quotation marks omitted). "While the defendant need not have participated directly in the deprivation of the plaintiff's constitutional right to be held liable, he or she must nonetheless have known about the conduct, facilitated it, approved it, condoned it, or turned a blind eye for fear of what they might see." *Rasho,* 856 F.3d at 478 (internal quotation omitted).

Defendant Koonce says Plaintiff does not allege he was personally involved in monitoring the Plaintiff or otherwise involved in the day-to-day operation of the jail. Instead, Plaintiff includes a conclusory allegation that the Defendant knew Plaintiff was experiencing severe opioid withdrawal.

Plaintiff first notes the Shelby County Jail has a capacity of 27 detainees and therefore "is on the other end of the spectrum" from a warden who oversees a facility with thousands of inmates. (Plain. Resp., [63], p. 14). Plaintiff's Amended Complaint specifically alleges the Defendant received emails or other shift briefs from jail staff informing him Plaintiff was suffering from withdrawal symptoms and his condition

was deteriorating. (Third Amd. Comp., [56], para. [77]). The Defendant further knew there was insufficient medical staff to provide healthcare to Plaintiff and Plaintiff was not receiving care. Nonetheless, the Defendant did not direct his staff to notify medical staff, nor did he ask medical staff to monitor Plaintiff's condition.

Whether or not Plaintiff can demonstrate Defendant Koonce was personally involved in his claims is not at issue, but Plaintiff has sufficiently alleged the Defendant knew no medical care was provided for Plaintiff's serious medical condition and failed to take any action. *Rasho,* 856 F.3d at 478. The Motion to Dismiss Count I against Defendant Koonce is denied. [61].

IT IS THEREFORE ORDERED:

1) Defendant Advanced Correctional Healthcare's Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is DENIED. [59].

2) Defendants Koonce and McReynold's Motion to Dismiss Counts I and III pursuant to Federal Rule of Civil Procedure 12(b)(6) is DENIED. [61].

ENTERED this 10th day of May, 2022.

s/ James E. Shadid

JAMES E. SHADID
UNITED STATES DISTRICT JUDGE