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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION

DRAKE L. SANDERS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	20-2160
	)	
SHERIFF MICHAEL DOWNEY, *et al.*,	)	
	)	
Defendants.	)	

SUMMARY JUDGMENT ORDER

Plaintiff, proceeding pro se, brought the present lawsuit pursuant to 42 U.S.C. § 1983 alleging that Defendants Michael Downey and Chad Kolitwenzew failed to protect Plaintiff and that Defendants Shannon Haggard and Nick Cannataro failed to provide Plaintiff medical care. The matter comes before this Court for ruling on Defendants' Motion for Summary Judgment. (Doc. 22).

PROCEDURAL HISTORY

Following merit review of Plaintiff's complaint, Plaintiff was allowed to proceed with a failure to protect claim against Defendants Downey and Kolitwenzew and denial of medical care claims against Defendants Haggard and Cannataro. On June 21, 2021, Defendants filed the Motion for Summary Judgment now before the Court. Defendants move for summary judgment in their favor on all claims. Following the filing of the summary judgment motion, a Federal Rule of Civil Procedure 56 notice was docketed and mailed to Plaintiff. (Doc. 23). The notice explained how to respond to Defendants' Motion for Summary Judgment and Statement of Material Facts and cautioned Plaintiff that the Court would deem Defendants' factual contentions admitted if Plaintiff failed to follow the procedures delineated in Rule 56.

In response to Defendant's motion, Plaintiff has filed two affidavits. (Docs. 24, 25). In the first affidavit, dated July 6, 2021, Plaintiff—perhaps in response to the Rule 56 Notice—states that he "has no idea what the defendants[']] lawyers submitted" because he had not received a copy and "it's not upload[ed] on any computer." But in the second affidavit, dated July 8, 2021, just two days later, Plaintiff represents that he received a copy of Defendants' Motion for Summary Judgment the day before, on July 7, 2021. The two affidavits appear to contain Plaintiff's response to Defendants' Motion for Summary Judgment, although neither affidavit addresses Defendants' Statement of Undisputed Material Facts nor offers a list of additional material facts.

LEGAL STANDARD

Summary judgment should be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). All facts must be construed in the light most favorable to the non-moving party, and all reasonable inferences must be drawn in his favor. *Ogden v. Atterholt*, 606 F.3d 355, 358 (7th Cir. 2010). The party moving for summary judgment must show the lack of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In order to be a "genuine" issue, there must be more than "some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

FACTS

The following facts are drawn largely verbatim from Defendants' Statement of Undisputed Material Facts as Plaintiff has not properly responded to Defendants' Statement of

Undisputed Material Facts, and, where Plaintiff appears to dispute certain facts, he has not provided citations to evidence in the record as required by Federal Rule of Civil Procedure 56(c)(1)(A) and Local Rule 7.1(D)(2)(b). To the extent that Plaintiff asserts that a fact is disputed, the Court addresses any such disputes in its analysis.

Plaintiff Drake Sanders has been detained at the Jerome Combs Detention Center (JCDC) since December 11, 2018 while awaiting trial on federal bank robbery charges. UMF ¶ 1. Defendant Michael Downey was at all relevant times the elected sheriff of Kankakee County, Illinois and acting within the scope of his employment. *Id.* ¶ 2. Defendant Chad Kolitwenzew was at all relevant times the Chief of Corrections at the JCDC and acting within the scope of his employment. *Id.* ¶ 3. Defendant Shannon Haggard was at all relevant times a Nurse Practitioner working at the JCDC and acting within the scope of her employment. *Id.* ¶ 4. Defendant Nick Cannataro was at all relevant times a Physicians' Assistant working at the JCDC and acting within the scope of his employment. *Id.* ¶ 5.

1. Plaintiff's Failure to Protect Claim

Plaintiff was playing cards in the "dayroom" of block "Max D" in the JCDC with other detainees on December 16, 2019. *Id.* ¶ 6. Plaintiff knows three of these detainees only as "Crud," "Little T," and "Millie," and, before this fight, had no issues with any of them and never told anyone he was afraid of, or needed protection from, them. *Id.* ¶ 7. One of the three stood up from the table, walked around to Plaintiff, and began arguing with Plaintiff. *Id.* ¶ 8. Two other detainees stood up and also verbally confronted Plaintiff. *Id.* ¶ 9. Over the next few seconds several punches were exchanged, and Plaintiff was hit in the left eye. *Id.* ¶ 10. Plaintiff then deescalated by not fighting further, and, less than a minute later, was back playing cards with fellow detainees, including two of the three who had just fought with him. *Id.* ¶ 11.

Plaintiff was "surprise[d]" he got "sucker-punched," and thought the fight was an "isolated incident," and unrelated to gang membership. *Id.* ¶ 12. Plaintiff had to wear an eye patch for "a short period of time," but his eye "healed pretty well" from the unexpected punch. *Id.* ¶ 13. None of the individual defendants—Downey, Kolitwenzew, Cannataro, or Haggard—personally saw the fight. *Id.* ¶ 14. Plaintiff faults Defendant Downey and Kolitwenzew for allowing the fight to occur because they "are at the top of the pyramid." *Id.* ¶ 15. JCDC policy requires that for the safety of all involved, correctional officers must wait and gather in sufficient numbers such that the number of officers equals, or preferably exceeds, the number of combatants before seeking to break up a fight between detainees. *Id.* ¶ 16. This is for the safety of all involved. *Id.* No correctional officer intervened in the fight between Plaintiff and the other detainees. *Id.* ¶ 17. This was consistent with JCDC policy, because this "short scuffle," as Plaintiff called it, was over before officers could have gathered in sufficient numbers to respond. *Id.*

2. Plaintiff's Medical Care Claims

Defendant Downey does not participate in the day-to-day management of the JCDC, but delegates that responsibility to Defendant Kolitwenzew. *Id.* ¶ 18. Defendant Kolitwenzew has never met Plaintiff. *Id.* Defendant Kolitwenzew does not personally participate in decisions regarding detainee medical care, but leaves those decisions to medical professionals, and he played no role in the medical care given to Plaintiff. *Id.* ¶ 19. Plaintiff has been detained at the JCDC since December 11, 2018, and during that time he has been seen by JCDC medical personnel for treatment over fifty times, and he has been sent to outside medical providers about fifteen times. *Id.* ¶ 20. Plaintiff is "sort of kind of hypochondriac," meaning someone "that think[s] they're sick all the time or who think[s] they're sick and can make theirself [sic] sick by

thinking that they're sick." *Id.* ¶ 21. Plaintiff is a federal detainee, formally in custody of the U.S. Marshals. *Id.* ¶ 22. The U.S. Marshals Service must approve all prescriptions, medical devices, and outside medical visits for federal detainees such as Plaintiff, because the Marshals must cover some or all of the associated costs. *Id.*

A. Medication

When Plaintiff was transferred into the JCDC, he was taking several medications: Remeron (antidepressant) at 45 mg twice a day, Gabapentin (anxiety and pain) at 1200 mg twice a day, Buspar (antianxiety), Prazosin (blood pressure) and Ibuprofen (pain). *Id.* ¶ 23. Shortly after Plaintiff was transferred into the JCDC, Defendant Cannataro reduced Plaintiff's dose of Gabapentin to 800 mg twice a day, because in Defendant Cannataro's medical judgment, doses above that level provide minimal additional benefit but carry a significant risk of increased negative side effects. *Id.* ¶ 24. Plaintiff disagrees with Defendant Cannataro's judgment and thinks that because he is a larger person, his body can handle a higher dose, a belief Plaintiff bases on the statement of another doctor who treated Plaintiff six or seven years ago. *Id.* ¶ 25.

Before being transferred into the JCDC, Plaintiff had also been taking the antidepressant Seroquel. *Id.* ¶ 26. Seroquel is not on the U.S. Marshals "formulary," or list of approved medications for federal detainees, so Defendant Cannataro was unable to continue that prescription for Plaintiff. *Id.* ¶ 27. Defendant Cannataro gave Plaintiff Risperdal, an antidepressant in the same class of medications as Seroquel, and the closest drug to Seroquel that was on the Marshals' "formulary," in lieu of Seroquel. *Id.* ¶ 28. Plaintiff complained repeatedly to Defendants Cannataro and Haggard and other JCDC personnel about not getting Seroquel, and each time was told this was due to the U.S. Marshals' policy. *Id.* ¶ 29. Plaintiff asked to stop taking Buspar, Risperdal, Prazosin, and Ibuprofen in April 2019 but he continued to be

prescribed Remeron and Gabapentin. *Id.* ¶ 30. Plaintiff has been caught hoarding medication rather than taking it when directed. *Id.* ¶ 31.

B. Gastrointestinal Issues

Plaintiff complained about constipation to Defendant Cannataro on February 4, 2019, and Defendant Cannataro prescribed Colace, a stool softener. *Id.* ¶ 32. Plaintiff complained about continued constipation to Defendant Haggard on March 13, 2019, and she gave him Milk of Magnesia, a laxative. *Id.* ¶ 33. Colace and Milk of Magnesia are standard treatments for constipation. *Id.* ¶ 34. In July 2019, Plaintiff was advised about "improving his diet and his exercise routine," and about his "weight gain" while in custody. *Id.* ¶ 35. Plaintiff did not follow the advice as to diet and exercise in 2019 and 2020, as he "ordered all the bad stuff" off jail commissary and "got real lazy" with exercise. *Id.* ¶ 36. Plaintiff was only beginning to improve his habits at the time of his deposition in April 2021. *Id.*

In October 2019, Plaintiff complained about heartburn to Defendant Haggard, and she prescribed Pepcid, a standard heartburn medication. *Id.* ¶ 37. On November 19, 2019, Plaintiff complained to Defendant Cannataro of chronic rectal bleeding, hemorrhoids, and constipation. *Id.* ¶ 38. Defendant Cannataro directed Plaintiff to start taking the Colace again (Plaintiff had stopped), prescribed hemorrhoid medication, and later that same day requested federal approval to refer Plaintiff to an outside GI specialist. *Id.* Defendant Cannataro did not think Plaintiff was experiencing a medical emergency but judged that Plaintiff's new complaint of chronic rectal bleeding, combined with Plaintiff's age and weight, called for a specialist to evaluate Plaintiff for potentially more serious conditions. *Id.* ¶ 39. The Marshals approved the GI consult, and it took place on February 20, 2020. *Id.* ¶ 40. The specialist recommended Metamucil and a colonoscopy. *Id.* Defendant Cannataro sought approval from the Marshals for the colonoscopy.

Id. ¶ 41. The Marshals initially denied approval and recommended other medications, but Defendant Cannataro responded to the Marshals that these other treatments had been tried and reiterated that the specialist recommended a colonoscopy. *Id.* The Marshals then approved the colonoscopy. *Id.*

In early March of 2020, the colonoscopy was set for April 30, 2020. *Id.* ¶ 42. But this appointment had to be postponed due to the COVID-19 pandemic. *Id.* ¶ 42. The colonoscopy was reset and took place at Riverside Hospital on July 16, 2020. *Id.* ¶ 43. The physician removed one benign polyp and reported that Plaintiff did not need another colonoscopy for ten years. *Id.* ¶ 44.

C. Sleep Apnea and Sleep Study

Plaintiff had a sleep study for his sleep apnea done at the Veterans Administration (VA) hospital sometime in the summer of 2016. *Id.* ¶ 44. Plaintiff does not know if the VA Hospital recommended a CPAP machine as a result of that sleep study. *Id.* ¶ 45. In January 2019, Plaintiff told Defendant Cannataro about the VA sleep study and the alleged sleep apnea diagnosis. *Id.* ¶ 46. Defendant Cannataro had Plaintiff sign a release for the VA records and sent it to the VA Hospital. *Id.* The VA Hospital was uncooperative. *Id.* ¶ 47. It did not send Plaintiff's records. *Id.* Defendant Cannataro sent a second request for the records on or about April 19, 2020, but the VA still did not provide them as requested. *Id.*

Defendant Cannataro did not send Plaintiff for a sleep study in 2019 and 2020 because he was waiting on the VA, and, once it appeared the VA was not going to provide the older records, he was waiting on federal approval, and, while waiting, the COVID-19 pandemic shut down all nonessential medical procedures, and these procedures were then reset in order of priority. *Id.* ¶ 48. Defendant Cannataro chose to continue waiting on, and following up with, the VA for the old

records because he judged it more efficient to get these previous test results than schedule a new sleep study, which was not easy to conduct in a prison environment, and because Plaintiff did not appear to be suffering any ill effects of the alleged sleep apnea. *Id.* ¶ 49. Plaintiff renewed his request for a sleep study on October 5, 2020. *Id.* ¶ 50. Defendant Cannataro saw Plaintiff for sleep apnea on December 14, 2020, and shortly thereafter sought approval from the Marshals for a new sleep study. *Id.* ¶ 51. Federal approval was granted, and Plaintiff had a take-home sleep study done on March 18, 2021, and this study recommended a CPAP machine for Plaintiff. *Id.* ¶ 52.

As of the time of his deposition on April 16, 2021, Plaintiff was still waiting on a CPAP machine, because he had not received federal approval. *Id.* ¶ 53. Defendant Cannataro has continued to follow-up with the Marshals on the study's recommendation, and, as of the time of the filing of Defendants' Motion for Summary Judgment, the Marshals have approved a CPAP machine for Plaintiff, but he has not yet received the machine, in part due to some type of payment dispute between the Marshals and the machine's manufacturer. *Id.* ¶ 54. No doctor has ever told Plaintiff that his various health problems are due to sleep apnea, but a dentist told Plaintiff this might be the case. *Id.* ¶ 55.

D. Temporary Loss of Vision

On the evening of May 18, 2020, Plaintiff suddenly lost vision in his right eye, without feeling pain and complained to a correctional officer. *Id.* ¶ 56. Plaintiff was told that a medical professional would see him first thing in the morning. *Id.* A nurse saw Plaintiff shortly after 10:30 a.m. the next morning, May 19, and reported her findings to Defendant Cannataro. *Id.* ¶ 57. Defendant Cannataro physically examined Plaintiff, observed that Plaintiff's pupils were not reacting normally, and immediately directed that Plaintiff be sent to the emergency room. *Id.*

Plaintiff was sent to Riverside Hospital and underwent "all sorts of testing" including a chest x-ray and CT and MRI brain scans. *Id.* ¶ 58. These tests were looking for potential causes of the vision loss, such as a stroke or pulmonary disease, and were all negative. *Id.* ¶ 59. A neurologist examined Plaintiff but could not determine what was wrong with Plaintiff's vision. *Id.* ¶ 60. An ophthalmology exam was conducted. *Id.* ¶ 61. The exam showed that Plaintiff had a "central retinal arterial occlusion" on his right eye, and the ophthalmologist discussed this with Plaintiff. *Id.* A "retinal arterial occlusion" is the blockage of the retinal artery and is associated with sudden and painless loss of vision. *Id.* ¶ 62. A retinal arterial occlusion is usually caused by a tiny piece of cholesterol or clotted blood, and it often resolves itself over time. *Id.* Plaintiff was discharged the next day, May 20, by which time he had regained a small amount of vision in his right eye and was told that he should follow up with a cardiologist and an ophthalmologist. *Id.* ¶ 63. Plaintiff saw a cardiologist on June 17, 2020, and the cardiologist recommended a transesophageal echocardiogram (a camera down the throat) to rule out any cardiac source of the occlusion, that Plaintiff continue taking aspirin, and that he return in six months. *Id.* ¶ 64. Plaintiff underwent the recommended transesophageal echocardiogram on July 28, 2020 and it showed basically normal functioning. *Id.* ¶ 65. The cardiologist also warned Plaintiff to improve his diet and exercise habits. *Id.* ¶ 66.

Plaintiff saw an ophthalmologist, Dr. Gandhi, on June 23, 2020. *Id.* ¶ 67. The ophthalmologist agreed that Plaintiff had a partial retinal occlusion but concluded that Plaintiff did not need treatment at this time. *Id.* By the time of this ophthalmologist visit, Plaintiff's vision had improved such that although there was "a veil" in the center of his vision, he could see around it clearly, with "occasionally flashes and floaters." *Id.* ¶ 68. The ophthalmologist's plan was to continue watching the condition (especially for signs of glaucoma) and follow up later. *Id.*

¶ 69. Plaintiff returned to Dr. Gandhi on August 20, 2020. She examined his eye again, found it relatively normal, and approved him for glasses. *Id.* ¶ 70.

Medical professionals "ran a million tests" on Plaintiff's eye, and "a cardiologist," a "neurologist," and an "ophthalmologist," all tried to "figure out what's going on with [his] eye." *Id.* ¶ 71. Even though he admits that Defendant Cannataro and Haggard "tried their hardest to get [him] back to seeing normal," Plaintiff still believes their medical care was deficient because "it happened here at their jail" and "still don't nobody know what happened to my eye." *Id.* ¶ 72. Defendants Cannataro and Haggard are mid-level generalists. *Id.* ¶ 73. They are not doctors, let alone specialist doctors focusing on vision loss. *Id.* They relied entirely on the outside specialists in responding to Plaintiff's complaints regarding loss of vision, and followed the direction of those specialists, especially Dr. Gandhi, the ophthalmologist, at all times. *Id.* Defendants Cannataro and Haggard did not personally participate in the scheduling of Plaintiff's outside appointments. *Id.* ¶ 74. Once federal approval has been obtained for an outside visit, scheduling is done by the nursing staff, and is largely dependent on the availability of the outside provider to whom Plaintiff is being sent for treatment. *Id.*

ANALYSIS

1. Defendants are Entitled to Summary Judgment on Plaintiff's Failure to Protect Claim

Corrections officials must "take reasonable measures to guarantee the safety of the inmates." *Hudson v. Palmer*, 468 U.S. 517, 526–27 (1984). However, not "every injury suffered by one prisoner at the hands of another . . . translates into constitutional liability for prison officials responsible for the victim's safety." *Pinkston v. Madry*, 440 F.3d 879, 889 (7th Cir. 2006) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). Failure to protect claims brought

by pretrial detainees are subject to an objective unreasonableness standard. *See Miranda v. Cty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018).

Under *Miranda*, a court must conduct two separate inquiries. The first inquiry asks whether the "defendants acted purposefully, knowingly, or perhaps even recklessly when they considered the consequences of their handling of [an inmate's] case." *Id.* at 353. "[I]t will not be enough [for a plaintiff] to show negligence or gross negligence." *Id.* The second inquiry asks whether the defendants' acts were objectively unreasonable. *Id.* at 354. The latter inquiry is case-specific and must be made from the perspective of a reasonable official present at the time the relevant decisions were made, including what the official "knew at the time, not with the 20/20 vision of hindsight." *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015) (citing *Graham v. Connor*, 490 U.S. 386, 396 (1989)).

Corrections officials must respond reasonably to a known risk of harm. *Giles v. Tobeck*, 895 F.3d 510, 513 (7th Cir. 2018). "In failure to protect cases, '[a] prisoner normally proves actual knowledge of impending harm by showing that he complained to prison officials about a specific threat to his safety.'" *Gevas v. McLaughlin*, 798 F.3d 475, 480 (7th Cir. 2015) (quoting *Pope v. Shafer*, 86 F.3d 90, 92 (7th Cir. 1996)).

Defendants Downey and Kolitwenzew did not act in reckless disregard of Plaintiff's safety. Plaintiff had not previously expressed any concerns regarding his safety to any of the Defendants. Plaintiff has not presented any evidence that he previously complained to JCDC officials about a specific risk of harm. Indeed, Plaintiff testified that he had no issues with any of the assailants and never told anyone he was afraid of his attackers or needed protection from them. Plaintiff further testified that the attack took him by surprise, and he considered it to be an

isolated incident. None of the Defendants witnessed the fight and the fight ended as quickly as it started, and Plaintiff returned to playing cards with two of the attackers.

In his affidavit in response to Defendants' summary judgment motion, Plaintiff contends that the attack was not an isolated incident because he claims to have subsequently been attacked again. But the fact that a second, later attack may have occurred does not make it any more likely the Defendants were aware of a specific risk to Plaintiff prior to the first attack.

Likewise, Defendants' response was also not objectively unreasonable. Plaintiff faults Defendants Downey and Kolitwenzew for allowing the fight to occur simply because they are in charge of the JCDC. But that is not the law. The doctrine of respondeat superior does not apply to claims under 42 U.S.C. § 1983, meaning an individual cannot be held liable merely because he is the supervisor of someone who may have engaged in unconstitutional conduct. *See Perkins v. Lawson*, 312 F.3d 872, 875 (7th Cir. 2002). Plaintiff also takes issue with the fact that no guards broke up the fight, but the guards here acted in conformance with JCDC policy. Under the old deliberate indifference standard, an officer's delay in arriving on the scene to break up a fight, standing alone, was insufficient to constitute deliberate indifference, *see Shields v. Dart*, 664 F.3d 178, 182 (7th Cir. 2011), and in this case the fight ended before the JCDC guards could even amass sufficient numbers to quell the fight per facility policy.

Finally, Plaintiff argues in his affidavit that the JCDC fails to protect detainees because it does not separate state and federal inmates or ICE detainees. Plaintiff also states that the JCDC does not "separate and protect old and infirm inmates from youthful, wild, and violent inmates." Doc. 24. But to succeed on a claim that a "security classification policy . . . does not do enough to separate violent from nonviolent inmates," a plaintiff must present evidence that "this feature in the classification policy create[d] a serious risk of physical harm to inmates . . . [and] that the

[corrections officials] knew of it and did nothing." *Smith v. Sangamon Cty. Sheriff's Dep't*, 715 F.3d 188, 192 (7th Cir. 2013) (affirming summary judgment in favor of Sheriff's Department where the plaintiff "presented no evidence that the Department had notice of a particular threat of harm to him, that the classification system exposed him to a serious risk of harm, or even that the Department knew of a more generalized risk and ignored it"). Here, as in *Smith*, Plaintiff has presented no evidence that the JCDC had notice of a particular threat of harm to Plaintiff or that allowing the intermingling of different classifications of detainees and inmates exposed Plaintiff to a serious risk of harm.

Nothing in the record evidence shows that Defendants Downey or Kolitwenzew acted in reckless disregard for Plaintiff's safety or that their response was objectively unreasonable. On these facts, Defendants Downey and Kolitwenzew are entitled to summary judgment as a matter of law on Plaintiff's failure to protect claim.

2. Defendants are Entitled to Summary Judgment on Plaintiff's Denial of Medical Care Claims

Pretrial detainees have a right to adequate medical care, but unlike convicted prisoners whose right to medical care arises under the Eighth Amendment, the Due Process Clause of the Fourteenth Amendment provides the basis for relief. *Burton v. Downey*, 805 F.3d 776, 784 (7th Cir. 2015) (citing *Pittman v. Cty. of Madison*, 746 F.3d 766, 775 (7th Cir. 2014)); *see also Smith v. Dart*, 803 F.3d 304, 309 (7th Cir. 2015) (stating that a pretrial detainee's constitutional rights are derived from the Due Process Clause of the Fourteenth Amendment rather than the Eighth Amendment's proscription against cruel and unusual punishment, which applies to convicted prisoners).

Medical care claims brought by pretrial detainees under the Fourteenth Amendment are subject to the same objective unreasonableness standard discussed above. *See Miranda*, 900 F.3d

at 352. Under *Miranda*, then, "the controlling inquiry for assessing a due process challenge to a pretrial detainee's medical care proceeds in two steps." *McCann v. Ogle Cty.*, 909 F.3d 881, 886 (7th Cir. 2018). "The first step, which focuses on the intentionality of the individual defendant's conduct, remains unchanged and 'asks whether the medical defendants acted purposefully, knowingly, or perhaps even recklessly when they considered the consequences of their handling of [plaintiff's] case.'" *Id.* (quoting *Miranda*, 900 F.3d at 353). Once again, "[a] showing of negligence or even gross negligence will not suffice." *Id.* "At the second step, . . . [courts] ask whether the challenged conduct was objectively reasonable." *Id.* "This standard requires courts to focus on the totality of facts and circumstances faced by the individual alleged to have provided inadequate medical care and to gauge objectively—without regard to any subjective belief held by the individual—whether the response was reasonable." *Id.* To recover on a due process claim for delay in treatment, a plaintiff must "present 'verifying medical evidence that the delay' in medical care 'caused some degree of harm.'" *Miranda*, 900 F.3d at 347 (quoting *Williams v. Liefer*, 491 F.3d 710, 715 (7th Cir. 2007)).

On the record before the Court, Plaintiff is unable to show that Defendants Haggard and Cannataro acted purposefully, knowingly, or recklessly when considering the consequences of Plaintiff's case or that the Defendants' actions with regards to Plaintiff's medical care were objectively unreasonable.

A. Medication

Treatment decisions made by medical professionals are presumptively valid. *Collignon v. Milwaukee Cty.*, 163 F.3d 982, 988 (7th Cir. 1998) (applying professional judgment standard articulated in *Youngberg v. Romeo*, 457 U.S. 307, (1982), a Fourteenth Amendment case, to medical professionals' treatment decisions involving detainee's medical needs).

While Plaintiff complains that Defendant Cannataro's decision to reduce Plaintiff's Gabapentin dosage was unreasonable, Defendant Cannataro exercised precisely the sort of professional judgment expected in making the decision. Defendant Cannataro testified that he believed the risk of serious side effects at the higher dosage outweighed any negligible benefit Plaintiff may have received from the higher dosage. Defendant Cannataro likewise considered and rejected Plaintiff's lay impression based on the opinion of a former treating physician that he required a higher dosage because of his weight.

As for Plaintiff's complaints concerning Seroquel, Plaintiff is likewise not entitled to relief. The decision not to prescribe Seroquel was out of Defendant Cannataro's hands due to Plaintiff's status as a federal detainee and the Marshals' formulary of approved prescriptions. Again, Defendant Cannataro addressed the unavailability of Seroquel by prescribing the next closest medication in the same class of drugs from among those approved by the Marshals—Risperdal.

B. Gastrointestinal Issues

Defendants Haggard and Cannataro's handling of Plaintiff's GI issues was also objectively reasonable. In response to Plaintiff's complaints of constipation, Defendants prescribed milk of magnesia and stool softeners—both first line medications for treatment of that condition. When Plaintiff's complaints of constipation recurred and progressed to include rectal bleeding and hemorrhoids, Defendant Cannataro told Plaintiff to resume the medications that Plaintiff had stopped taking and immediately sought a referral to a gastroenterologist. Then when the GI specialist recommended a colonoscopy and the Marshals initially denied approval, Defendant Cannarado was able to make the Marshals reconsider and approve the procedure, which ultimately resulted in the removal of a benign polyp. From the time that the GI consult

was made until the time when the colonoscopy appointment was scheduled was just a matter of weeks. And even when the COVID-19 pandemic delayed the procedure, the delay was only several months, which would not have been unreasonable even under normal circumstances. But in light of the COVID pandemic, when nearly all non-essential medical procedures were delayed, the delay was not unreasonable, particularly when Defendant Cannataro did not consider Plaintiff's condition to be a medical emergency. Moreover, Plaintiff cannot show that the delay worsened his condition in any way and once the colonoscopy was performed Plaintiff was informed that he would not need another for ten years.

C. Sleep Apnea and Sleep Study

Defendants Cannataro and Haggard's handling of Plaintiff's sleep apnea concerns was also objectively reasonable. When Plaintiff informed Defendants about the VA sleep study—the results of which Plaintiff was unsure of—Defendant Cannataro first attempted to obtain the medical records from the VA. But when the VA proved to be nonresponsive to Defendant Canantaro's multiple requests, Defendant Cannataro sought and received approval for a new sleep study. Though there was some delay in arranging the new study, that delay was attributable to the significant disruptions caused by the COVID-19 pandemic and not to the Defendants. The same goes for the delay in securing a CPAP machine for Plaintiff which was caused by the Marshals Service's dispute with the medical device manufacturer. And again, Plaintiff is unable to show that any of his medical ailments are due to sleep apnea, much less that the delay resulted in any worsening of Plaintiff's condition.

D. Temporary Loss of Vision

Finally, Defendants' actions with respect to Plaintiff's temporary loss of vision in his right eye were objectively reasonable. Plaintiff was able to be seen the morning after he

experienced the loss of vision and immediately upon observing that Plaintiff's pupils were not responding normally, Defendant Cannataro sent Plaintiff to the emergency room. Plaintiff was quickly subjected to a battery of tests including an x-ray, a CT scan, and an MRI. And again, Defendant Cannataro, recognizing the limitations of his medical expertise as a general practitioner, enlisted the aid of multiple specialists to diagnose the problem. While Plaintiff's frustration at the lack of a good explanation for his loss of vision is understandable, Plaintiff offers only speculation about possible causes such as changes in medication or the lack of a CPAP machine. But there is no evidence in the record to support Plaintiff's speculation. And as mentioned previously, both of those speculative causes were due to forces beyond the Defendants' control.

Because the Court finds that Defendants are entitled to summary judgment on Plaintiff's failure to protect and failure to provide medical care claims based on the evidence in the record, the Court declines to reach Defendants' argument in the alternative that they are entitled to qualified immunity.

IT IS THEREFORE ORDERED:

1) **Defendants' Motion for Summary Judgment (Doc. 22) is GRANTED. The Clerk of the Court is directed to enter judgment in favor of Defendants and against Plaintiff. All pending motions not addressed below are denied as moot, and this case is terminated. Plaintiff remains responsible for the $350 filing fee.**

2) **If Plaintiff wishes to appeal this judgment, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a)(4). A motion for leave to appeal in forma pauperis MUST identify the issues Plaintiff will present on appeal to assist the court in determining whether the appeal is taken in good faith. *See* Fed. R. App. P. 24(a)(1)(c); *see also Celske v. Edwards*, 164 F.3d 396, 398 (7th Cir. 1999) (an appellant should be given an opportunity to submit a statement of his grounds for appealing so that the district judge "can make a reasonable assessment of the issue of good faith"); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000) (providing that a good faith appeal is an appeal that "a reasonable person could suppose . . . has some merit" from a legal perspective). If Plaintiff does choose to**

appeal, he will be liable for the $505.00 appellate filing fee regardless of the outcome of the appeal.

Entered this 21st day of January, 2022.

s/Sara Darrow
SARA DARROW
CHIEF U.S. DISTRICT JUDGE