PROOF OF SERVICE

I Benjamin H. Beach, am a State of Michigan Prisoner and submitting this filing under the protection of the Federal Right for Prisoners to have the protection and benefit of the Mailbox Rule, under the U.S. Supreme Court case Houston v. Lack, and the penalty of perjury, pursuant 28 U.S.C. § 1746. That I'm mailing the said documents using first-class prepaid postage and a MDOC Legal Mail Form as proof, that I have placed the said documents into the hands of MDOC staff member to be placed in the U.S. Mail on April 25, 2025. I'm sending the following documents: One copy of Beach's Administrative Claim Holder's Request for Payment of Administrative Claims Against Tehum Care Services, Inc., the Debtor with a copy this Proof of Service and supporting exhibits to the United States Bankruptcy Court for the Southern District of Texas Houston Division, 515 Rusk Street, Houston, TX 77002, and to Gray Reed Counsel to the Debtor and Debtor in Possession, located at 1300 Post Oak Boulevard, Suite 2000, Houston, Texas 77056, and to Stinson, Nicholas Zluticky or to Zachary Hemenway, located at 1201 Walnut, Suite 2900, Kansas City, MO 64106, who is the Official Committee of Unsecured Creditors and to In re Tehum Care Serices, Inc.-140341-2, c/o dba Verita, 222 N. Pacific Coast Hwy., Ste 300, EL Segundo, CA 90245.

Respectfully submitted by,

Benjamin H. Beach

Benjamin H. Beach 498111

April 25, 2025

23900862504300000000000008

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re: Chapter 11

TEHUM CARE SERVICES, INC. Case no.23-90086(CML)
Debtor.

In re Tehum Care Services, Inc. -140341-2
c/o KCC dba Verita
222 N. Pacific Coast Hwy. Ste 300
EI Segundo, CA. 90245

BENJAMIN H. BEACH 498111,
Administrator Claim Holder

Thumb Correctional Facility
3225 John Conley Drive
Lapeer, MI 48446

---/

BENJAMIN BEACH'S ADMINISTRATIVE CLAIM HOLDER REQUEST FOR PAYMENT OF ADMINISTRATIVE CLAIMS AGAINST TEHUM CARE SERVICES, INC., DEBTER

NOW COMES, Administrative Claim Holder, Benjamin H. Beach in accordance with Articles II states the following in support requirement (a) the name of the Holder of the Administrative Claim: I, Benjamin H. Beach 498111, am in custody of Michigan Department of Corrections and housed at Thumb Correctional Facility, 3225 John Conley Drive, Lapeer, MI. 48446. I filed a pro se 42 U.S.C. § 1983 civil rights action in the Federal District Court of Michigan, Eastern District, Southern Division case no 22-cv-12105, against Corizon Health Care Services, who is now the Debtor Tehum Care Services for violating my constitutional rights to -- not be subjected to cruel and unusual punishment, under the Eighth Amendment. This Clause is applicable to a state prisoner by way of the Fourteenth Amendment granting prisoners a constitutional right to medical care. Estelle v. Gamble, 429 US 97, at 104-105 (1976).

Article II section (b) the amount of the Administrative Claim and (C) a detailed basis for the Administrative Claim:

In this Administrative Claim against Debtor Corizon/Tehum Services Inc., I will establish and prove Debtor did use internal policies and/or had a custom to deny Claim Holder, his right to timely and adequate medical treatment for cancer. In Monell v. Department of Social Services, 436 US 658 (1978), the Supreme Court held that municipalities could be subject to Section 1983 actions for alleged constitutional violations, albeit in a narrow set of circumstances. Debtor's used their Utilization Management Members to save money as the premise when acting with deliberate indifference to my serious medical needs for treatment of colon-rectal-cancer. Utilization knew I had cancer and that it needed to be stagged, so Oncologist Dr. Erin Schwab could develop a treatment plan then prescribe chemo therapy and radiation treatments. These treatments would have shrunk the tumor and it could have been removed. Then and an ostomy bag installed for a few months while healing took place. I know this because in March, April, and May of 2021, I went through chemo and radiation treatments, then had the tumor removed. I went through more chemo and the ostomy bag was taken off in January of 2022.

In 2020 and January of 2021, Corizon's own employe Nurse Practitioner Michelle Bray was my medical provider at Brooks Correctional Facility in Muskegon Heights, MI. Ms. Bray submitted 407 requests to Corizon's Utilization Management Team for two of Oncologist Dr. Erin Schwab's orders: One for Endoscopic Ultrasound (EUS) Testing to stage the cancer, and: Second one was for Chemo Port Placement on 9/10/2020. Both 407 requests were denied on 9/11/2020, by Utilization Management Ms. Connie Whipple. Ms. Bray then appealed those two denials and Ms. Whipple denied them on 9/22/2020. Ms. Whipple is not a doctor and only a clerical assistant. See (Exhibit 1, at p.3

where Ms. Whipple states "...acting in the role of 1st Level Review on 9/11/2020. She then states "ATP by Whipple, Connie [CW13] acting in the role of 2nd Level Review on 9/22/2020). This documentation establishes Ms. Whipple did deny Ms. Bray's 407 request. Furthermore, I am now providing actual proof that Ms. Whipple stated in an affidavit in the U.S. District Court of Michigan, she is only a clerical assistance and does not participate in medical decisions and were not involved in decisions regarding Plaintiff's, or any other prisoner's medical care. See Calhoun v. Corizon Health, 2021 US Dist. Lexis 229969 at page 5 of 7, highlighted area).

The Debtor uses Ms. Whipple as a custom or policy to circumvent Dr. Keith Papendick's liability under the respondent superior theory in Monell 436 US at 691. Simply put by way of design Whipple is a "legal escape goat". Corizon and Dr. Papendick have been sued over a hundred times in Michigan by prisoners for being deliberate indifference to their medical needs. The irony to this the Chapman Law Group used to represent Corizon, now the Debtor doesn't want to pay them neither.

Debtor's denials are the causation of the Claim Holder's injuries. Debtor had specific knowledge of the serious of my case, thus giving them the state of mind to injure and deliberately prevented Dr. Schwab from timely stagging the cancer. Therefore, she could not develop a treatment plan and prescribe chemo therapy and radiation treatments, allowing the tumor to grow to a point I could no longer defecate. Ultimately leading to Dr. Dougal Zwemer's surgical intervention installing an ostomy bag on 12/22/2020. I have just identified Debtor's custom or policy connected to the causation the particular injury of having an ostomy bag installed before I went through chemo and radiation. This injury did happen because of the Debtor's execution of that policy. See Turner v. City of Taylor, 412 F.3d 629, at 639 (6th Cir. 2003). In Pembaur v. City of

Cincinnati, 475 US 469 (1986), the Supreme Court issue a holding [T]hat a decision by Municipal policy makers on a single occasion satisfied the requirement for municipal liability for deprivation of federal protected rights pursuant to official municipal policy." I have proven that legal requirement.

Debtor's Utilization Management Member Ms. Kimberly Williams works out of Corporate Headquarter at 205 Powell Place, Suite 104, Brentwood, TN 37027. Federal tax identification number is 8853. Utilization Management Director Dr. Keith Papendick, Ms. Whipple and Ms. Kimberly Williams all have a special role to play in the deciding whether a prisoner's medical provider's 407 request gets approved meaning granted, denied, or alternative treatment is needed. Dr. Papendick makes sure any death or life or limb lost is address solely by him due to liability factor involved. He then reviews normal 407 request whether to grant them or deny it or alternative treatment plan. See provided case Kelly v. Corizon US Dist. Lexis 26576, on page 4, highlighted area. Ms. Williams conducts a cost analysis review whether to approve, denial or an alternative treatment plan may be applied. Ms. Williams also keeps track of all the medical providers request and how many they have submitted 407 request. She then informs upper management at Corizon. When a medical provider is making too many request Corizon's own "medical necessary" or "medical necessity" requirement are adjusted accordingly. See Kelly at page 4-5 highlight. This is proves my allegations in the highlighed fact section. If, I can't meet those standards for having deadly colon rectal cancer staged. No one may! In the Kelly case the Defendant was Corizon, they filed a Motion for Sanctions against Kelly's attorney for violating the rules of discovery. The District ruled in favor of Kelly that there was no violation. The point being made here is that Kelly's case facts show and tell how Corizon's inter

department policies are being used to deny claims and how they monitor medical provider's 407 request and keep score, if a provider is asserting that adequate medical is needed to many times, then they are fired. That is the reality of their business plan.

In 2020, the Covid-19 pandemic forced Debtor to send numerous Michigan prisoners to the hospital, and blowout the MDOC's contractual month payments to the Debtor. They get paid on the basis of price per prisoner per month for providing medical service. Their payments from the MDOC, were way down that year. No way was I going to get timely and adequately Medical treatment for my cancer in the last quarter of 2020. Covid-19 destroyed their budget for 2020.

This claim against Debtor starts on 9/11/2020 when they first denied the 407 request for EUS testing to stage the cancer, and goes on until when the tumor was actually removed on 6/28/21. A total of 291 days, I suffered having a serious medical condition of colon-rectal-cancer, but also forced to have an ostomy bag installed prior to receiving the proper medical treatment by Henry Ford Hospital in Jackson, MI, their Oncology team along with Dr. Shawn Obi saved my life. From 2/19/2021 when the chemo port was installed through 6/28/2021, I received chemo treatment five days a week, along radiation treatment five days a week, and then had surgery to remove the tumor and change the ostomy location. Under this proper medical procedure process, it only took 129 days for all of this to happen. I would have gone through all those steps then had the ostomy bag installed. The Debtor's causation for injury is proven to start on 9/11/2020, and carries on until 6/28/2021, when the tumor was removed. From 6/26/2020, when the cancer was discovered up to when I had the ostomy bag installed it took 179 days. I went through Henry Ford's treatment plan and the tumor actually removed in 129 days. 50 days shorter than it took them to deny me the treatment. There is no way a jury

would buy Corizon's excuses why they didn't approve the EUS testing and chemo port placement. Not with those facts and being restored 50 quicker.

WHEREFORE, I, Benjamin H. Beach is respectfully requesting one-thousand dollars per day for (291 days) two-hundred and ninety-one days to be paid to the Claim Holder for Compensatory damages from the undue pain and suffering I went through totaling 291,000 dollars.

OFFERS OF PROOF TO SUBSTANTIATE THE CLAIM

¶1. On 6/25/2020, Muskegon Mercy Hospital, treating physician Dr. Dougals Zwemer performed a colonoscopy on me. He diagNosed me with colon-rectal-cancer and took a biopsy on 6/25/2020. On 7/1/2020, the biopsy results confirmed his diagNoses. I had colon-rectal cancer called "adenocarcinoma", which is an invasive type of lesion that grows quickly once established. This cancer is potentially fatal if not timely treated, and considered "objectively serious medical condition", requiring specialized medical treatment. See Reilly v. Vadlamudi, 680 F.3d 617, 624 (6th Cir.2012). At this point, my medical condition was so obvious that even a lay person would easily recognize the "necessity" for a doctor's attention. See Harrison v. Ash, 539 F3d 510, 518 (6th Cir.2008). The objective component requirement of Estelle supra., has been met.

As previously stated, Corizon/Tehum's employees Dr. Papendick, Ms. Whipple, and Ms. Williams all played their role in denying me the constitutional right to receive adequate medical treatment in a timely manner for a serious medical condition. Their violations were so serious it violated my the Eighth Amendment Rights, which requires meeting the subjective component. See Rhinehart v. Scutt, 894 F3d 721 at 737 (6th Cir. 2018). The Debtor's employees willful state of mind in when not granting the first 407 request for EUS testing and chemo port placement when claiming "medical necessity not demonstrated as this time." The documentation states Dr. Papendick review my

medical records in (Exhibit), highlighted area). The EUS testing was to stage the cancer in a timely fashion and treatment plan made and chemo applied. Having cancer is a serious medical condition, therefore the Debtor's Utilization Management Member's had the requisite knowledge of my serious medical condition and that need was a "medical necessity". Utilization members arbitrarily denied their own medical provider Ms. Bray's 407 request and subsequent appeal for the EUS testing and the chemo port placement. Therefore, they knowingly prevented Dr. Schwab from timely stagging the cancer and developing a treatment plan to fight the cancer and shrink the tumor before Dr. Zwemer's attempt to remove the cancerous lesion.

¶12. On 7/1/2020, the pathology results confirmed the mass was cancerous. I had an invasive type of colon-rectal-cancer called "adenocarinoma". See (Exhibit ∂).

¶13. On 7/27/2020, I was seen by Dr. Zwemer, he explained my condition and how it should be treated, stating "The tumor is 7cm above the anal verge at the most. I believe the only option for you to not have an ostomy bag for rest of life is to shrink the tumor with radiation and kill the cancer cells with chemo then remove the tumor. You will temporarily have an ostomy bag while that area heals." He then made a referral for me to see an oncologist. Later that day, Ms. Bray reviewed Dr. Zwemer's consult notes and considered this case to be an "urgent priority" to consult with an oncologist. Her 407 request was approved by the Debtor employees of the Corizon Utilization Management Team, Director Dr. Keith Papendick, his clerical assistance Ms. Connie Whipple. Their office is located in Lansing, MI, near the MDOC Bureau of Health Care Services. Another Corizon employe Ms. Kimberly Williams worked out of Brentwood, TN..

¶14. On 8/5/2020, I was seen by Oncologist Ms. Erin Schwab, we discussed

some of options available for treatment involving radiation and chemo. Dr. Schwab could not stage the cancer because no CT scan had been done. Ms. Bray immediately submitted a 407 request for the CT scan and it was approved by the utilization team.

¶5. On 8/26/2020, I had a CT done a Mercy Hospital. See (Exhibit 3).

¶6. On 9/3/2020, I was seen by Dr. Schwab for another consult. She reviewed the CT scan results and said there was no sigvs of metastatic disease of the chest, abdomen, or pelvis and explained why she could not stage my cancer:

> "We still do not know what size the lesion is? This usually decides what type of treatment options may be possible. Given that I do not have you fully stage, I spoke with Dr. Zwemer, the plan is to send you for an EUS [Endoscopic Ultrasound] to futher stage the cancer and have a port placed. I will place chemotherapy orders with the intention to move forward to shrink the tumor pending the findings of the EUS." See (Exhibit 4, 9/3/2020 Dr. Schwab's report).

¶7. On 9/10/2020, Ms. Bray submitted two 407 request to the Utilization Management Team members Dr. Papendick, Ms. Connie Whipple and Corizon's Kimberly Williams. The 407 request was denied for the EUS test and chemo port placement. See (Exhibit 5).

¶8. On 9/15/2020, Ms. Bray addressed my kite written about feeling a blockage. Ms. Bray put in a request for non-formulary request for Miralax. It was approved.

¶9. Ms. Bray then appealed her 407 request that Utilization Management denied. See (Exhibit 1 her appeal).

¶10. On 9/23/2020, Ms. Bray submits another 407 request and Utilization Management approves this request for MRI testing at McLaren Hospital in Lansing, MI. On 10/14/2020, I had a MRI conducted and the results were produced in a report. See (Exhibit 6 MRI Report).

¶11. In November of 2020, I caught covid-19 and surgery date was postponed. On 12/22/2020, I underwent surgery to have the tumor removed, but Dr. Zwemer installed an ostomy bag instead because the lesion had progressed to far. He

knew I didn't want to have an ostomy bag the rest of my life. See (Exhibit 7, highlighter areas).

¶12. On 1/29/2021, I was transferred down State to a prison medical center called Duane Waters in Jackson, MI.

¶13. On 2/19/2021, Henry Ford Hospital, Dr. Shawn Obi installed a chemo port, and from that point, I underwent another CT scan, MRI, chemo and radiation treatments and finally the tumor was removed on 6/28/2021, by Dr. Obi. See (Exhibit 8, Henry Ford Hospital Records for treatment history). The question is why didn't the Debtor just approve the EUS testing and chemo port to get installed the first time. It was all line-up with Dr. Anderson. Corizon can't blame the MDOC, because they control prisoner scheduling and transport for custody reasons. Because Corizon is all about making money and saving it trumps over a prisoner's right to receive adequate and timely medical care. Corizon does a cost analysis whether to timely treat a prisoner -verses- can the prisoner sue us and win? They know there is a good chance he won't win by of default under the MDOC grievance procedure and policy requirements or the Prisoner Litigation Reform Act Statutory requirements, under 28 USCS § 1915A and/or 42 USCS § 1997e. The Debtor lost too much money in the last quarter of 2020 and faced numerous law suits for there past actions of deliberate indiffence. Hence, it time to file bankruptcy.

VERIFICATION

I Benjamin H. Beach the Claim Holder do swear under the penalty of perjury, pursuant 28 USC § 1746, and to my Lord and Savior Jesus Christ that the facts in this pleading are true to the best of my knowledge, understanding, and belief.

Respectfully by Claim Holder Ben Beach.

Benjamin H. Beach 4/25/2025

Benjamin H. Beach 491111
Thumb Correctional Facility
3225 John Conley Drive
Lapeer, Michigan 48446

Date April 25, 2025 mailed out on this date also.

EXHIBIT I

Michigan Department of Corrections

Consultation Request

Offender Name: Beach, Benjamin Houghton **Off #:** 0498111 **Location:** LRF
Date of Birth: 02/26/1966 **Sex:** M

Consultation/Procedure Requested: General Surgery - Surgery
Subtype: Muskegon Surgical Associates
231-739-9461
1316 Mercy Drive - Muskegon - 49444

Reason for Request:
EUS with Dr. Anderson to further stage metastatic rectal adenocarcinoma

Provisional Diagnosis:
Endoscopic ultrasound is being requested , the previous scans were negative. Per RAD ONC doc the staging is incomplete at this point and is requesting an EUS. I will have maria fax over notes

Medications (As of 12/10/2020)
BISACODYL (UD) 5 MG TBEC Exp: 12/24/2020 SIG: TAKE 4 TABS BY MOUTH AT 12 P.M. ON 12/21/20 AS PRE-OP PREP.
DOCUSATE SOD 100 MG CAPS Exp: 06/20/2021 SIG: TAKE 1 CAP (100MG) BY MOUTH TWICE DAILY FOR 228 DAYS
ERYTHROMYCIN BASE 250 MG CAPS Exp: 12/22/2020 SIG: PROFILE ONLY - DO NOT SEND PREVIOUS STILL ON HAND TAKE 2 CAPS BY MOUTH AT 9 P.M. AND AT 10 P.M. ON 12/21/20 AND TAKE 2 TABS AT 0300 ON 12/22/20 - 6 HOURS PRIOR TO SURGERY. ACMO EXP DATE 12/9/20
LISINOPRIL 20 MG TABS Exp: 07/03/2021 SIG: TAKE 1 TAB (20MG) BY MOUTH TWICE DAILY FOR 228 DAYS
MELOXICAM 7.5 MG TABS Exp: 04/05/2021 SIG: 7.5 mg By Mouth two times daily as needed
NEOMYCIN SULFATE 500 MG TABS Exp: 12/22/2020 SIG: PROFILE ONLY - DO NOT SEND PREVIOUS STILL ON HAND TAKE 4 TABS BY MOUTH AT 9 P.M. AND 10 P.M. ON 12/21/20 AND 4 TABS AT 0300 ON 12/22/20 - 6 HRS PRIOR TO SURGERY. ACMO EXP DATE 12/9/20
PANTOPRAZOLE SOD 20 MG TBEC Exp: 04/05/2021 SIG: 20 mg By Mouth daily
POLYETHYLENE GLYCOL 3350 (238) 3350 POWD Exp: 12/22/2020 SIG: PRE-OP BOWEL PREP ORDER- AT 6 P.M. MIX ENTIRE BOTTLE WITH 64 OZ OF SPORTS DRINK. DRINK 8 OZ. EVERY 10-15 MINUTES UNTIL GONE. IF YOU BECOME NAUSEATED, STOP DRINKING FOR 30-45 MINUTES AND THEN RESUME
POLYETHYLENE GLYCOL 3350 (527) POWD Exp: 09/14/2021 SIG: TAKE 34 GRAMS BY MOUTH TWO TIMES DAILY X 309 DAY(S) - THIS IS AN INCREASE ACMO 9/15/2021
TERAZOSIN HCL 5 MG CAPS Exp: 04/05/2021 SIG: TAKE 1 CAP BY MOUTH AT BEDTIME
Thera-M Oral Tablet Exp: 12/28/2020 SIG: TAKE 1 TAB BY MOUTH DAILY X 30 DAY(S)
Thera-M Oral Tablet Exp: 06/26/2021 SIG: TAKE 1 TABLET BY MOUTH DAILY X 180 DAY(S) - KITE FOR REFILLS--#5REFILLS

Allergies (As of 12/10/2020)
No Known Allergies

Health Problems (As of 12/10/2020)
Essential (primary) hypertension, Hyperlipidemia, unspecified, Enlarged prostate without lower urinary tract symptoms, Pain in unspecified joint, Melena, Malignant neoplasm of rectum, Risk Score Low - 6 to 12 Months, Gastro-esophageal reflux disease without esophagitis, Other constipation, Contact w and exposure to oth viral communicable diseases, COVID-19

Offender Requires Translator: No **Language:**
Additional Records Required:

Comments:
ref 00899113

Requested By: Bray, Michelle [MB12] NP **Auth#:** 00899113
Ordered Date: 09/10/2020 17:58
Priority: Routine (review within 14 days)

EXHIBIT I CONSULTATION FORM

Michigan Department of Corrections
Consultation Request

Offender Name:	Beach, Benjamin Houghton	**Off #:**	0498111	**Location:**	LRF
Date of Birth:	02/26/1966	**Sex:**	M		

Consultant Findings

Offender Name: Beach, Benjamin Houghton **Off #:** 0498111
Date of Birth: 02/26/1966 **Sex:** M
Institution: EARNEST C. BROOKS CORRECTIONAL FACILITY
2500 S. Sheridan Rd.
Muskegon Heights,Michigan 49444
231 - 7739200

Completed By:

Report may be hand-written or (preferably) typed on this form. If dictated on office or hospital letterhead to follow, please indicate essential findings or recommendations to be acted upon pending final report.

Follow-up services and primary responsibility for offender health care remains with MDOC staff. While discussion of diagnostic/treatment options with the offender may be appropriate, they are subject to review by the offender's primary care provider, the institution utilitzation review committee and/or the MDOC Formulary.

Please notify institution prior to scheduling surgery dates or follow-up appointments.

Offender not to be informed of appointment dates.

Michigan Department of Corrections
Consultation Request

Offender Name:	Beach, Benjamin Houghton	**Off #:**	0498111	**Location:**	LRF
Date of Birth:	02/26/1966	**Sex:**	M		

Request Approval Actions:

Refer up by Whipple, Connie [CW13] acting in the role of 1st Level Review on 09/11/2020.
Comments: ref 00899113
ATP by Whipple, Connie [CW13] acting in the role of 2nd Level Review on 09/16/2020.
Comments: ATP: Medical necessity not demonstrated at this time. Consider MRI pelvis at McLaren Lansing.
Papendick, Keith, MD-*This is the reviewing physician ONLY, specialists should not be contacting them directly. Any further communication, documents, or questions should be directed to the Site Medical Provider listed above.* 09/16/2020
Please provide addt'l info: what is being requested? Have never needed this procedure for staging in the past.
Please send info to Kimberly.Williams@Corizonhealth.com

Please provide addt'l info: Provider to contact specialist as a normal CT scan does not support metastatic disease.
Please send info to Kimberly.Williams@Corizonhealth.com

EXHIBIT 2

Beach, Benjamin (MRN 109542420) # 498111

Tissue exam

Order 128647777

Status: Final result Visible to patient: No (not released) Dx: Other fecal abnormalities

Component	6d ago
Surg Path Final Report	

SURGICAL PATHOLOGY
Collected: 06/25/20
Accession: WS-20-004233
Physician: Zwemer,Douglas A.

PROCEDURE
Colonoscopy.
SPECIMEN:
A. Sigmoid colon polyp.
B. Proximal rectal polyp.
C. Rectal mass bx.
HISTORY
Other fecal abnormalities (R19.5).
GROSS
A. Received in formalin in a container labeled "sigmoid colon polyp" is a 2 mm tissue fragment. INS
B. Received in formalin in a container labeled "proximal rectal polyp" is a 0.8 cm soft tan pedunculated polyp with a mucosal stalk (1 cm long, 0.3 cm in diameter). The specimen is bisected and submitted in its entirety in 1 cassette.
C. Received in formalin in a container labeled "rectal mass bx." are multiple tissue fragments measuring from 1.5 to 2 mm. Bits. INS
JEM/ral
MICROSCOPIC
See diagnosis.
DIAGNOSIS
A. Sigmoid colon polyp, biopsy:
Serrated polyp consistent with hyperplastic polyp.
B. Proximal rectal polyp, biopsy:
Tubulovillous adenoma.
C. Rectal mass, biopsy:
Invasive adenocarcinoma (see comment). OBG/ral
CPT 88305 x3
COMMENT
Part C was reviewed with Drs. Zhang and Darnell who agree with the diagnosis.
Immunohistochemical studies on part C for loss of MMR protein expression are in progress and the results will be reported in an addendum. OBG/ral
Octavia Graur, MD, PhD (Electronic Signature) 06/29/20
RAL/OBG

Resulting Agency	MCMU
Specimen Collected: 06/25/20 12:31	Last Resulted: 06/29/20 13:03

Order Details View Encounter Lab and Collection Details Routing Result History

All Reviewers List

Douglas A Zwemer, MD on 6/30/2020 12:10

EXHIBIT 3

MERCY HEALTH

#498111

CT ABDOMEN PELVIS W CONTRAST, CT CHEST W CONTRAST

Beach, Benjamin
MRN: 109542420, Gender Identity: Male, 2/26/1966 (54 yrs), Outpatient
Accession #: CT2000844448, CT2000844505

Final Result

CT ABDOMEN PELVIS W CONTRAST, CT CHEST W CONTRAST

CLINICAL: This is a Male of 54 years who presents for CT restaging of malignancy. Patient diagnosed with colon cancer in February.

COMPARISON: None.

TECHNIQUE:
Multiple contiguous axial CT images were obtained of the chest, abdomen, and pelvis after the uneventful intravenous administration of 80 mL of Isovue-370. Oral contrast was also utilized Two-dimensional multiplanar image reconstruction performed.

DLP: 2817 mGy*cm

FINDINGS:

Chest:
Heart is normal in size. No pericardial effusion. Scattered coronary vascular calcifications. The thoracic aorta is normal in caliber with mild vascular calcifications at the arch. No mediastinal fluid collection. No mediastinal, hilar, or axillary adenopathy.

No confluent airspace opacity. No suspicious pulmonary nodule or pulmonary mass. No pleural effusion or pneumothorax.

Abdomen/pelvis:
Diffuse nonuniform hepatic steatosis. Small area of low-density in the left hepatic lobe near the falciform ligament favors focal fatty infiltration as opposed to a hepatic lesion. There are no calcified gallstones and gallbladder appears unremarkable. Bile ducts are within normal limits. Spleen and pancreas are unremarkable. Bilateral adrenal glands are not nodular.

Bilateral kidneys are unremarkable. There is no hydronephrosis. Urinary bladder is unremarkable.

Bowel loops are not dilated to suggest obstruction. Appendix is visualized and appears normal. The distal rectosigmoid colon are underdistended, limiting assessment. Areas of mucosal undulation may relate to under distention, retained stool, or the known malignancy.

No pneumoperitoneum or ascites. No lymphadenopathy.

Abdominal aorta is normal in caliber.

Musculoskeletal:
No acute osseous abnormality. No suspicious osseous lesion. Mild multilevel degenerative changes of the spine.

Appointment Info

Exam Date
8/26/2020

Department
Mercy Health Pavilion CT Scan
231-672-7123
1150 E Sherman Blvd
Muskegon MI 49444-1870

Reasons for Exam

STAGING OF INVASIVE MALIGNANT NEOPLASM OF RECTOSIGMOID JUNCTION
STAGING OF MALIGNANT NEOPLASM OF RECTOSIGMOID JUNCTION

Diagnosis

Malignant neoplasm of rectosigmoid (colon) (CMS/HCC)

Providers

Ordering Provider
Michelle J Bray, NP
231-799-3300
5933 Grand Haven Rd
Muskegon MI 49441

#498111

IMPRESSION:
Chest, abdomen, or pelvis IMPRESSION:

1. No evidence of metastatic disease in the chest, abdomen, or pelvis.
2. Underdistention of the distal rectosigmoid colon limits assessment of the known primary malignancy.
3. Diffuse nonuniform hepatic steatosis. Small area of hypodensity in the left hepatic lobe near the falciform ligament favors focal fatty infiltration given its location.

——— FINAL REPORT ———
Dictated By: Rummel, Tyler
Dictated Date: 08/26/2020 15:40
Assigned Physician: Rummel, Tyler
Reviewed and Electronically Signed By: Rummel, Tyler
Signed Date: 08/26/2020 15:50
Workstation ID: MSHSNWKSR03
Transcribed By: Self Edit
Transcribed Date: 08/26/2020 15:40

Signed by Tyler Rummel, DO on 8/26/2020 3:50 PM

Printed by LANORE, MARIA [12243]

EXHIBIT 4

CANCER & HEMATOLOGY
CENTERS OF WESTERN MICHIGAN

250 Cherry Street SE
Grand Rapids, MI 49503
Phone: 616-685-5600
Fax: 616-685-6745

#498111

Patient Name: **BEACH, BENJAMIN**
Patient Number: **000154031**

Date: **9/3/2020**
Date Of Birth: **2/26/1966**

INITIAL CONSULTATION

BENJAMIN BEACH was seen today at Cancer & Hematology Centers of Western Michigan for evaluation regarding regarding rectal cancer.

Reason for Visit / Chief Complaint
Patient is being seen for a follow up regarding rectal cancer.

(A. Bailey, RMA 9/3/2020 10:08:30 AM)

Primary Diagnosis
Current Oncology Problems/Diagnoses: 'Malignant neoplasm of rectosigmoid junction(154.0/C19)'.

History of Present Illness
Patient is a 54-year-old male With a history of GERD, hyperlipidemia, hypertension, BPH who had presented to swimmer outpatient surgery for blood in his stool off and on for approximately 1 year. He presented for an outpatient colonoscopy.

8/25/2020- Pathology found rectal mass, consistent with invasive adenocarcinoma
9/7/2020- Report from corrections notes states that mass is located 7 cm from the anal verge
9/27/2020- Follows with Dr. Zwemer, plan for LAR

Interval History
Patient presents for establishment of care for newly diagnosed rectal adenocarcinoma.
Since last visit, patient has obtained a CT chest abdomen pelvis which shows no signs of metastatic disease.
I did speak to the patient that we still do not know what size the lesion is. This usually decides what treatment options may be possible.
As mentioned previously, patient has a mass that is located 7 cm from the anal verge.
Patient continues to not want an ostomy based on his current situation in the prison system.
Patient would prefer to have problems with leakage as opposed to having an APR.
Given that I do not have him fully stage, I spoke with surgery.
Plan is to send him for an EUS to further stage this cancer and have a port placed pending size.
I will place chemotherapy orders with the intention to move forward with chemotherapy to shrink the tumor pending the findings of EUS.
Of note, patient obtain the Merck Manual and read about his cancer and asked many good educated questions related to it.

Patient states that the pain in his rectum is worsening. He continues to have blood in his stool.
He does not have any weight loss or appetite changes. His energy does remain decreased.
He has no problems with constipation, but stools are thin.
He denies any abdominal pain , shortness of breath, fever, chills, vision changes.

Ongoing Treatment Events

No on-going treatment events have been entered for this patient.

Allergies
No Known Drug Allergies

Medications

ntinued medications: lisinopril 10 mg tablet, meloxicam 7.5 mg tablet, pantoprazole 20 mg tabletdelayed release, terazosin 5 mg psule.

dication Reconciliation: Medications were updated and reviewed and reconciliation for allergies and drug interactions was carried out this visit. A copy of the updated medication list was provided to the patient.

edical and Surgical History

ew Problems/Diagnoses: 'Essential (primary) hypertension(401.0/I10)', 'Benign prostatic hyperplasia without lower urinary tract mptoms(600.00/N40.0)'.

Date	Type	Details	Outcome	Comment
6/25/2020	Surgery	Colonoscopy		

#498111

ocial History

he patient is single. Patient has no children.

obacco Use and Cessation Counseling

lever smoker. Cessation - Not applicable.

lcohol

Patient was not asked about alcohol consumption.

Illicit Drug

Denies any illicit drug use.

Military Service History

No

Transfusion History

Patient has no history of transfusions.

Occupation

Current occupation: n/a.

Occupational Exposure

Patient denies occupational exposure to toxic substances.

Family History

Health Maintenance

Patient's most recent colonoscopy was: 6/25/2020 Patient's most recent prostate exam was: n/a Patient's most recent PSA test was: n/a Patient has never had a esophagogastroduodenoscopy. Patient has never had a bone density.

Review Of Systems

Constitutional Symptoms: Patient reports: Appetite is good. No weakness. No altered taste. No weight loss. No fever. No chills. No night sweats. No hot flashes. No mouth tenderness.
Allergic/Immunologic: Patient reports: No frequent or severe infections.
Hematologic: Patient reports: No excessive or spontaneous, bleeding or bruising.
Lymphatics: Patient reports: No enlarged lymph nodes.
Eyes: Patient reports: No blurred vision. No double vision.
Ears, Nose, Mouth, Throat: Patient reports: No hearing loss. No tinnitus. No sinus drainage. No mouth sores. No dry mouth.
Cardiovascular: Patient reports: No chest pain. No chest pressure. No palpitations. No edema.
Respiratory: Patient reports: No difficulty breathing. No pain with inspiration. No cough.
Gastrointestinal: Patient reports: No nausea. No vomiting. No dysphagia. No heartburn. No abdominal pain. No diarrhea. No constipation. No melena. Blood in stool.
Genitourinary: Patient reports: No dysuria. No urgency. No incontinence. No hematuria. Polyuria. Nocturia. Hesitancy.
Musculoskeletal: Patient reports: No myalgia. No arthralgia. No back pain. No joint swelling. No limited range of motion. Bone pain.
ntegumentary: Patient reports: No rash. No pruritis. No skin lesions. No dry skin.

urological: Patient reports: No headache. No peripheral neuropathy. No focal weakness. No paralysis. No tremor. No altered
nsciousness. No seizures. No speech impairment. No dizziness.
ychiatric: Patient reports: No Anxiety. No stress. No depression. No memory loss. No confusion. No hallucinations. No emotional
ncerns. No trouble sleeping.

al Signs
als on 9/3/2020 10:07:00 AM: Height=72in, Weight=278.0lb, Temp=98.6f, Pulse=64, SystolicBP=156, DiastolicBP=89

ade Scales

#498111

COG 0: Fully active, able to carry on all pre-disease performance without restriction
in: 0-1: No pain

ysical Exam
eneral: Patient appears: In no apparent distress. Well developed and well nourished. Stated age.
ead: Atraumatic and normocephalic.
yes: No scleral icterus. Conjunctiva clear. EOM intact. Pupils equal and reactive to light.
ars, Nose, Throat & Neck: Neck supple. No lymphadenopathy.
ral: Moist and pink. No thrush.
ardiovascular: Heart with regular rate and rhythm. Normal S1 and S2. No murmur. No gallop. No rub.
hest: Clear to auscultation. No dullness to percussion. No wheezing. Chest wall expansion normal.
bdomen: Abdomen soft. Nontender. Nondistended. No palpable mass. No ascites.
kin: No rash. No lesion.
xtremities: No edema. No cyanosis. No clubbing.
lusculoskeletal: Normal gait and station. Range of motion normal. Strength and tone normal.
leurologic: Alert and oriented. Normal speech. Cranial nerves intact.
ienitourinary: Examination deferred.

aboratory Results
ab results on 8/5/2020: WBC=6.3 K/uL, ANC=3.7 K/uL, RBC=4.86 M/uL, HGB=14.9 g/dL, HCT=41.9 %, MCV=86.2 fL, MCH=30.7 pg,
ICHC=35.6 g/dL, Plat=209 K/uL, Neut%=58.4 %, Lymph%=28.5 %, MONO%=9.5 %, EOS%=2.4 %, BASO%=0.6 %, Immature Gran
6=0.6 %, Nucleated RBC %=0.0 %, Lymph#=1.8 K/uL, MONO#=0.6 K/uL, EOS#=0.2 K/uL, BASO#=0.0 K/uL, Immature Gran=0.0 K/uL,
IPV=10.9 fL, RDW=12.9 %, Sodium=140 mmol/L, Potassium=4.5 mmol/L, Chloride=107 mmol/L, CO2=22 mmol/L, Glucose=95 mg/dL,
3UN=11 mg/dL, Creat=1.0 mg/dL, Calcium=9.2 mg/dL, Albumin=4.4 g/dL, Total Bili=0.4 mg/dL, Alk Phos=52 U/L, AST=19 U/L, ALT=24
J/L, Total Protein=7.0 g/dL, Estimated GFR=79 ml/min, CEA=2.2 ng/mL, CA19_9=11 U/ml, AFP=7.2 ng/ml

maging Results
Radiology results were reviewed and discussed with the patient, including Reviewed CT scan from 08/26/2020.

Print? ☐	Date of Doc.	Name	MD Interpretation	Comment
☑	8/26/2020	CT Scan Multi		

mpression

1. Invasive rectal adenocarcinoma, staging incomplete
2. Hypertension
3. Arthritis

Primary Dx:
5/25/2020: Malignant neoplasm of rectum
Stage:

Recommendation/Plan
Patient is a 54 yo male with a PMHx of who presents for the management of his rectal CA, MSI stable. patient is not a stage IV rectal cancer. Will finish staging in this next following week.

- CT Chest/Abd/Pelv- Negative for metastatic disease
- CEA was 2.2

- plan for EUS and port placement next week
  - this should complete placement
- return to clinic for possible chemotherapy start pending findings on EUS

#498111

ounseling/Coordination of Care
me spent in coordination in care for the patient 20minutes, greater than 50% in face to face consultation.

igned
Erin Schwab MD on 9/4/2020 at 3:51 PM

CANCER & HEMATOLOGY
CENTERS OF WESTERN MICHIGAN

6425 S. Harvey Street
Norton Shores, MI 49444
Phone: 231-737-3469
Fax: 231-737-4548

#498111

Orders

Patient Name: **BEACH, BENJAMIN**
Patient Number: **000154031**

DOB: **2/26/1966 (54 yrs, 6 mos)**
Gender: **Male**

Order Date: **9/3/2020**
Date Printed: **9/9/2020**

BSA: 2.45 (last wt on 9/3/2020) SrCr: 1 mg/dL (8/5/2020) CrCl: 115.86 mL/min Wt: 278 lb (126.1 kg), Ht: 72 in (182.9 cm)

Diagnoses: 6/25/2020 Primary C20 Malignant neoplasm of rectum

Allergies: No Known Drug Allergies

Workflow	Value	Instructions	Status
Consult	Port/PICC Placement	Place port after EUS pending size of tumor, pt seen pt Dr Zwimmer 9/9/20 Faxed to Brooks to be scheduled. (B. Hanson, Scheduler 9/9/2020 11:36:03 AM)	Approved
Refer to	Sent/BH	ASAP EUS with Dr. Joel Anderson, discussed with Dr. Gaunt. Will try to get him for EUS next Wednesday 9/9/2020. 9/9/20 Faxed to Brooks to be scheduled. (B. Hanson, Scheduler 9/9/2020 11:36:19 AM)	Approved

Signed By: _____
Erin Schwab MD on 9/9/2020 at 11:36 AM

EXHIBIT 5

Michigan Department of Corrections
Clinical Encounter - Administrative Note

Offender Name:	Beach, Benjamin Houghton			Off #:	0498111
Date of Birth:	02/26/1966	Sex:	M	Facility:	LRF
Note Date:	09/10/2020 17:58	Provider:	Bray, Michelle [MB12] NP	Unit:	A Unit

Review Note encounter performed at Non Patient Contact.

Administrative Notes:

ADMINISTRATIVE NOTE 1 Provider: Bray, Michelle [MB12] NP

RAD ONC consult note reviewed, submit 407 for PICC line and ESU to prepare for surgery/ chemo, and further staging.

New Consultation Requests:

Consultation/Procedure	Due Date	Priority	Translator	Language
General Surgery - Surgery		Routine (review within 14 days)	No	

Subtype:

Zwemer Surgical

Reason for Request:

PICC line placement for chemotherapy treatment of rectal adenocarcinoma

General Surgery - Surgery		Routine (review within 14 days)	No

Subtype:

Muskegon Surgical Associates

Reason for Request:

EUS with Dr. Anderson to further stage metastatic rectal adenocarcinoma

Co-Pay Required: No **Cosign Required:** No

Telephone/Verbal Order: No

Standing Order: No

Completed by Bray, Michelle [MB12] NP on 09/10/2020 18:06

Michigan Department of Corrections
Clinical Encounter - Administrative Note

Ex 5

Offender Name:	Beach, Benjamin Houghton			Off #:	0498111
Date of Birth:	02/26/1966	Sex:	M	Facility:	LRF
Note Date:	09/15/2020 12:12	Provider:	Bray, Michelle [MB12] NP	Unit:	A Unit

Chart Review/Update encounter performed at Non Patient Contact.

Administrative Notes:

ADMINISTRATIVE NOTE **1** Provider: Bray, Michelle [MB12] NP

CR - Pt awaiting surgery/chemo for treatment of cancerous mass, is now reporting feeling like BM is partially being blocked by tumor and feels like he is getting backed up and bloated, requesting medication to help until treatment.

COLACE BID X 30 DAYS AND NON FORMULARY SUBMISSION FOR MIRALAX , WILL ORDER IF APPROVED.

ASSESSMENTS:

Other constipation, K59.09 - Current, Temporary/Acute, Initial

New Medication Orders:

Rx#	Medication	Order Date	Start Date	Quantity	Prescriber Order
	DOCUSATE SOD (UD) 100 MG CAPS	09/15/2020 12:12	09/15/2020		100 mg By Mouth two times daily x 30 day(s)

Indication: Other constipation, Malignant neoplasm of rectum

Co-Pay Required: No **Cosign Required:** No

Telephone/Verbal Order: No

Standing Order: No

Completed by Bray, Michelle [MB12] NP on 09/15/2020 12:18

Michigan Department of Corrections
Clinical Encounter - Administrative Note

Offender Name:	Beach, Benjamin Houghton			Off #:	0498111
Date of Birth:	02/26/1966	Sex:	M	Facility:	LRF
Note Date:	09/15/2020 16:56	Provider:	Bray, Michelle [MB12] NP	Unit:	A Unit

Administrative encounter performed at Non Patient Contact.

Administrative Notes:

ADMINISTRATIVE NOTE **1** Provider: Bray, Michelle [MB12] NP

Non formulary med request approval

New Medication Orders:

Rx#	Medication	Order Date	Start Date	Quantity	Prescriber Order
	POLYETHYLENE GLYCOL 3350 (238) 3350 POWD	09/15/2020 16:56	09/15/2020		17 grams By Mouth every other day x 365 day(s) -- ACMO approved EXP 9/15/21

Indication: Other constipation, Malignant neoplasm of rectum

Co-Pay Required: No **Cosign Required:** No

Telephone/Verbal Order: No

Standing Order: No

Completed by Bray, Michelle [MB12] NP on 09/15/2020 16:58

Ex 5

Michigan Department of Corrections
Clinical Encounter - Administrative Note

Offender Name:	Beach, Benjamin Houghton			Off #:	0498111
Date of Birth:	02/26/1966	Sex:	M	Facility:	LRF
Note Date:	09/18/2020 11:02	Provider:	Bray, Michelle [MB12] NP	Unit:	A Unit

ATP Appeal encounter performed at Non Patient Contact.

Administrative Notes:

ADMINISTRATIVE NOTE **1** Provider: Bray, Michelle [MB12] NP

ATP APPEAL REF # 00899113 rectal EUS for staging purposes for rectal adenocarcinoma

Staging needs to be completed to be able to devise a treatment plan. EUS can be done quickly with general surgeon. MRI has to be specifically rectal cancer protocol is NOT done in Muskegon. Per RAD ONC-Dr Schwab, EUS is not wrong and It is actually in the NCCN guidelines.
Accurate staging of rectal cancer is essential for selecting patients who can undergo sphincter-preserving surgery. It may also identify patients who could benefit from neoadjuvant therapy. Clinical staging is usually accomplished using a combination of physical examination, CT scanning, MRI and endoscopic ultrasound (EUS). Transrectal EUS is increasingly being used for locoregional staging of rectal cancer. The accuracy of EUS for the T staging of rectal carcinoma ranges from 80-95% compared with CT (65-75%) and MR imaging (75-85%).

Co-Pay Required: No **Cosign Required:** Yes

Telephone/Verbal Order: No

Standing Order: No

Completed by Bray, Michelle [MB12] NP on 09/18/2020 11:09

Requested to be cosigned by Schmidt, Patricia [PS] DO.

Cosign documentation will be displayed on the following page.

Requested to be reviewed by Whipple, Connie [CW13].

Review documentation will be displayed on the following page.

Michigan Department of Corrections
Clinical Encounter - Administrative Note

Offender Name:	Beach, Benjamin Houghton			Off #:	0498111
Date of Birth:	02/26/1966	Sex:	M	Facility:	LRF
Note Date:	09/21/2020 13:24	Provider:	Schmidt, Patricia [PS]	Unit:	A Unit

Cosign Note encounter performed at Non Patient Contact.

Administrative Notes:

ADMINISTRATIVE NOTE **1** Provider: Schmidt, Patricia [PS] DO

to review, provider wants to appeal ATP received for EUS, vs MRI

case reviewed in detail with Utilization management. In the request of the general surgeon was a specific MRI, that was not done in Muskegon, so the EUS was requested. would support the use of MRI and would request schedule of the MRI for staging to be completed at McLaren Greater Lansing. Oncology Services at McLaren General Lansing, preferred due to the secure unit for follow up care, especially post op.

The 407 was upheld with the recommendations above.

Co-Pay Required: No **Cosign Required:** No

Telephone/Verbal Order: No

Standing Order: No

Completed by Schmidt, Patricia [PS] DO on 09/22/2020 09:01

Michigan Department of Corrections
Clinical Encounter - Administrative Note

Offender Name:	Beach, Benjamin Houghton			Off #:	0498111
Date of Birth:	02/26/1966	Sex:	M	Facility:	LRF
Note Date:	09/23/2020 11:16	Provider:	Bray, Michelle [MB12] NP	Unit:	A Unit

Administrative encounter performed at Non Patient Contact.

Administrative Notes:

ADMINISTRATIVE NOTE **1** Provider: Bray, Michelle [MB12] NP

Submit 407 for MRI rectal cancer protocol for staging

New Consultation Requests:

Consultation/Procedure	Due Date	Priority	Translator	Language
Radiology - MRI		Routine (review within 14 days)	No	

Subtype:

McLaren Radiation Oncology

Reason for Request:

MRI rectal cancer protocol for staging of rectal adenocarcinoma

Co-Pay Required: No **Cosign Required:** No

Telephone/Verbal Order: No

Standing Order: No

Completed by Bray, Michelle [MB12] NP on 09/23/2020 11:19

EXHIBIT G

McLaren
HEALTH CARE

McLaren Greater Lansing
401 W Greenlawn
Lansing, MI 48910-
(517)975-7600

#498111

Patient:	BEACH, BENJAMIN HOUGHTON	Admit:	10/14/2020
MRN:	300001801059	Disch:	10/14/2020
FIN:	70000001539001	Admitting:	Unavailable,Physician
DOB/Age/Sex:	2/26/1966 54 years Male	Ordering:	Unavailable,Physician
Location:	LAN MRI		

Magnetic Resonance Imaging

Exam	Accession	Exam Date/Time	Patient Age at Exam
MRI Pelvis w/ + w/o Contrast	MR-20-0005013	10/14/2020 10:17 EDT	54 years

Reason for Exam
(MRI Pelvis w/ + w/o Contrast) rectal cancer

Report
EXAMINATION: MRI Pelvis without and with Contrast
EXAM DATE: 10/14/2020 10:17 AM

TECHNIQUE: Routine multiplanar multiecho MR imaging of the pelvis was performed before and after administration of IV contrast.
CONTRAST: The amount and type of contrast are recorded in the medical record.

INDICATION: rectal cancer
COMPARISON: None

ENCOUNTER: Not applicable

FINDINGS:

There is near circumferential wall thickening of the mid and low rectum with maximal wall thickening of 15 mm. This is present 4.7 cm from the anorectal junction and 8.6 cm from the anal verge. The tumor extends approximately 6 cm craniocaudal. No regional adenopathy. There is disruption of the lamina propria at the 2 to 3:00 position with 4 mm extension past the lamina propria (series 1001 image 25). This is 9 mm from the mesorectal fascia. No high T2 weighted signal to suggest significant mucinous content.

No bone lesions demonstrated. Urinary bladder and prostate are unremarkable.

IMPRESSION:

1. Rectal tumor as described above.

Dictated by: Joel VanderLugt MD on 10/15/2020 8:24 AM.
Electronically signed by: Joel VanderLugt MD on 10/15/2020 8:36 AM.

Ordering Physician: Physician Unavailable

#498111

Patient Name:	BEACH, BENJAMIN HOUGHTON	Admit:	10/14/2020
MRN:	300001801059	Disch:	10/14/2020
FIN:	70000001539001	Admitting:	Unavailable,Physician
DOB/Age/Sex:	2/26/1966 54 years Male	Ordering:	Unavailable,Physician

Magnetic Resonance Imaging

Report
***** Final *****

Dictated by: VanderLugt, MD, Joel
Dictated DT/TM: 10/15/2020 8:24 am
Signed by: VanderLugt, MD, Joel
Signed (Electronic Signature): 10/15/2020 8:36 am

EXHIBIT 7

Beach, Benjamin (MRN 109542420) DOB: 02/26/1966 Encounter Date: 12/09/2020

Beach, Benjamin # 498111

MRN: 109542420

Douglas Zwemer, MD
Physician
General Surgery

Op Note
Signed

Date of Service: 12/22/2020 8:15 AM

Procedure: INCIDENTAL APPENDECTOMY, EXPLORATORY LAPAROTOMY, MOBILIZATION OF DESCENDING COLON, END COLOSTOMY WITH HARTMANS POUCH

Case Time: 12/22/2020 8:15 AM

Surgeon: Douglas Zwemer, MD

Signed

ZWEMER SURGICAL PLC

Operative Report

Date: 12/22/2020 **Location:** MCMU OR

Name: Benjamin Beach, **DOB:** 2/26/1966, **MRN:** 109542420

Preoperative Diagnosis:
Pre-op Diagnosis
* Colon cancer (CMS/HCC) [C18.9] -rectal cancer

Postoperative Diagnosis:
Post-op Diagnosis
* Colon cancer (CMS/HCC) [C18.9] -rectal cancer

Procedures:
* INCIDENTAL APPENDECTOMY, EXPLORATORY LAPORATOMY, MOBILIZATION OF DESCENDING COLON, END COLOSTOMY WITH HARTMANS POUCH

Surgeon(s) & Assistant(s):
* Douglas Zwemer, MD - Primary
* Theodore Vanderkooi, MD - Assisting

Anesthesia: general **ASA:** III

Estimated Blood Loss: 50 mL

Drains:

Colostomy LLQ (Active)		
Stomal Appliance	Clean	12/22/20 1010
Stoma Assessment	Clean;Intact	12/22/20 1010
Peristomal Assessment	Clean;Pink;Moist	12/22/20 1010

Specimen: Appendix

Implants: None

Indications: Benjamin Beach is an 54 y.o. male who is having surgery for Colon cancer (CMS/HCC) [C18.9].

Procedure Description: After informed consent was obtained from the patient, he was brought back to the operative suite by the surgical team. The patient was hooked up to cardiopulmonary monitoring by the anesthesia team. Preoperative antibiotics, TED hose and SCDs were in place prior to induction. The anesthesia team then gave the patient a general anesthetic. A Foley catheter and orogastric tube were placed. Anesthesia performed a bilateral TAP block using BMK (bupivacaine, morphine, and ketorolac). Patient was then placed in a lithotomy position. A rectal exam was undertaken. Previously, the tumor was greater than 6 cm from the verge. On today's exam the tumor seems to have progressed to within 4 cm of the anal verge. The colon felt very narrowed, almost obstructed, to the digital exam. The patient was then prepped and draped in standard sterile fashion. A timeout, identifying the patient the procedure and all pertinent information, was performed, and the procedure was started.

A midline incision was made and carried down through the skin and subcutaneous tissues. The fascia was incised and the peritoneum was grasped and sharply entered. Exploration of the abdomen was undertaken. Stomach was palpated and found to be grossly unremarkable as was the liver and gallbladder. Small bowel was run in its entirety and was unremarkable. Patient was found to have a retrocecal appendix that was wrapped up and under the cecum. There were some adhesions anchoring the appendix in this position. I was concerned that if the patient rapidly developed appendicitis this would be in a very difficult place to reach. I decided to perform an appendectomy. The adhesions were lysed and the appendix was mobilized. The mesoappendix was taken down using the LigaSure device. A TA stapling device was fired across the base of the appendix, amputating the appendix which was then removed from the field. This will be sent as specimen. The mucosal stump was then cauterized. The exploration was then continued. The ascending, transverse, descending, and sigmoid colon were all grossly unremarkable. The sigmoid colon was followed down to the rectum and to the peritoneal reflection. Unfortunately, the mass was not palpable at this time. The left colon was then mobilized by incising the white line of Toldt, bringing the colon from lateral to medial. This dissection was taken down to the peritoneal reflection, but the lesion was still not palpable. It was felt that the best option for the patient would be to divert the colon away from the nearly obstructing lesion with an end colostomy and Hartman's pouch,, attempt chemo/radiation to shrink the lesion, and then possibly bring the patient back at another time for resection with coloanal anastomosis. A site was selected in the distal sigmoid for the transection. This was accomplished with a TA stapling device. A 3-0 Prolene suture was placed on the staple line of the Hartman's pouch for later identification. The mesentery of the sigmoid was dissected down to

mobilize the sigmoid enough to bring this out as a colostomy. A site was selected on the left side of the abdomen for stomal placement. A circular incision was made in the skin and a tunnel of subcutaneous fat was dissected down to the fascia. Patient had a very thick and deep abdominal wall. The fascia was opened in a cruciate fashion. The mobilized sigmoid colon was then brought out through this fenestration to mature as the stoma. A methodical wound examination was undertaken and all sponges and instruments were accounted for. The abdominal contents were returned to normal anatomical position. The omentum was placed over top of the bowel in a protective fashion. Midline fascia was then reapproximated using strata fix absorbable suture. The skin was closed using a combination of skin sutures and staples. The colostomy was then matured in a typical Brooke fashion. Due to the thick nature of the patient's abdominal wall, it was challenging to mobilize enough of the sigmoid up through this tissue to mature the stoma. At the end of the procedure, the stoma was dusky but viable. A colostomy bag was placed and clean dressing applied.

Patient tolerated the procedure well. There were no immediate apparent complications. The patient was awakened, extubated, and taken to PACU in a stable condition.

Theodore Vanderkooi, MD, was utilized as a first assistant. He was instrumental in the dissection, identification of key structures retraction, decision-making and closure in order to accomplish a safe surgery.

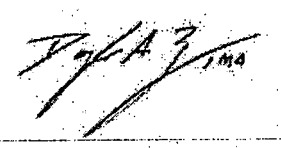
Findings: Retrocecal appendix, tumor had enlarged and was now 4 cm from the anal verge, tumor was not palpable from within the abdominal cavity.

Count: Sponge, Instrument and needle counts were correct # 2

Complications: Not able to mobilize the rectum to get around the tumor.

Disposition: PACU - hemodynamically stable.

Condition: stable



Douglas A. Zwemer, MD
General / Trauma Surgeon
(231)747-9902

12/22/20
10:54 AM EST

Note: This report was dictated with the use of voice recognition software. It may contain inadvertent spelling or grammatical errors which were not detected in the editing process. Should you have any questions or concerns, please do not hesitate to contact me directly. Pager 339-0808 or via Haiku

Electronically signed by Douglas Zwemer, MD at 12/22/2020 10:54 AM

Beach, Benjamin (MRN 109542420) DOB: 02/26/1966 Encounter Date: 12/09/2020

Admission
(Discharged) on
12/22/2020

Beach, Benjamin (MRN 109542420) DOB: 02/26/1966 Encounter Date: 12/09/2020

SCANNED

498111

Tissue exam

Order: 180023650

Status: Final result Visible to patient: No (inaccessible in MyChart) Dx: Colon cancer (CMS/HCC)

Component: Surg Path Final Report — 2wk ago

SURGICAL PATHOLOGY
Collected: 12/22/20
Accession: WS-20-011763
Physician: Zwemer,Douglas A

PROCEDURE
Low anterior resection, possible abdominal perineal resection with
end colostomy.
SPECIMEN:
Appendix.
HISTORY
Colon cancer (CMS/HCC) (C18.9).
GROSS
Received in formalin in a container labeled "appendix" is an appendix (6.3 cm long, 0.7 cm in diameter) with attacheo mesoappendix up to 1.5 cm thick. The serosa is mildly congested and
has rare delicate fibrous adhesions. The intact wall is 2 mm thick.
The inconspicuous lumen is lined by tan mucosa. The proximal margin
is marked with black ink. Representative sections are submitted in
1 cassette. JEM/jmd
MICROSCOPIC
See diagnosis.
DIAGNOSIS
Appendix:
Appendix negative for appendicitis. Fibrovascular serosal adhesions present. PKS/kmc

CPT 88304

Peter K.Shireman, M.D. (Electronic Signature) 12/23/20
KC1/PKS

Resulting Agency: MCMU

Specimen Collected: 12/22/20 13:49 | Last Resulted: 12/23/20 13:13 | Order Details View Encounter Lab and Collection Details Routing Result History

Collection Information

Specimen ID: WS20011763 Other — Collected: 12/22/2020 1349 Received: 12/22/2020 1349 — Resulting Agency: MERCY CAMPUS MUSKEGON MI (MCMU) HOSPITAL LAB
1500 E Sherman Blvd
Muskegon MI 49444

Official CAP/CLIA/Joint Commission Regulatory Result Report

Tissue exam (Order #180023650) on 12/22/20

Lab Component SmartPhrase Guide

Tissue exam (Order #180023650) on 12/22/20

HFAH ALLEGIANCE HOSPITAL
HENRY FORD ALLEGIANCE
7-EAST SECURE UNIT
205 N EAST AVE
JACKSON MI 49201
Dept: 517-205-4711

Beach, Benjamin
MRN: **63697989**
DOB: 2/26/1966 , Sex: male
Enc. Date: 8/11/21

Progress Notes by Jarzynka, Megan, CNP at 08/12/21 1224

Author: Jarzynka, Megan, CNP | Service: Hematology and Oncology | Author Type: Nurse Practitioner

Filed: 08/12/21 1228 | Status: Cosign Needed

Editor: Jarzynka, Megan, CNP (Nurse Practitioner) | Cosign Required: Yes

HENRY FORD ALLEGIANCE HEMATOLOGY ONCOLOGY

Reason for admission: Rectal adenocarcinoma; C2 FOLFOX

HPI: Patient is a 55 y.o. male who was admitted on 8/11/2021 for C2 FOLFOX. He had a positive FOBT in January 2020 and he started noticing an increase in the frequency of bowel movements. Colonoscopy performed on 6/25/20 revealed hyperplastic polyp, tubulovillous adenoma, invasive adenocarcinoma; MS Stable.
In the fall he started having thin caliber stool, ribbon like and pain with bowel movements. He developed COVID19 in November 2020. He was seeing an oncologist but her request for a rectal US was denied. S/p Incidental appendectomy, exploratory laporatomy, mobilization of descending colon, end colostomy with hartman's pouch (12/22/21); Resection was attempted however the lesion was not palpable. It was felt that the option would be to divert the colon away from the nearly obstructing lesion with an end colotomy and Hartman's pouch. Attempt chem/radiation to shrink the lesion and then possibly bring the pt back at another time. Please reference oncology history below for details.

He was admitted on 08/11 to receive C2 FOLFOX.

Chemo/Cycle: C2D2 FOLFOX
ECOG Performance Status: 1

Interval history:

No acute events overnight. States imodium as needed is assisting in decreasing his ostomy output.

Oncology History
Adenocarcinoma of rectum (CMS-hcc)

6/25/2020	**Initial Diagnosis** Adenocarcinoma of rectum (CMS-hcc)
6/25/2020	**Biopsy**

Colonoscopy
Operation/Specimen: A: Rectum, biopsy, Mercy Health
CONSULTATION PATHOLOGICAL DIAGNOSIS:
A. Sigmoid colon polyp
Hyperplastic polyp.
A. Proximal rectal polyp
Tubulovillous adenoma.
C. Rectum mass biopsy
Invasive adenocarcinoma, see comment.

8/26/2020 - **Imaging**
CT AP with contrast-
No evidence of metastatic disease in the chest, abdomen or Pelvis. Under distention of the distal rectosigmoid colon limits assessment of the known primary malignancy.

10/14/2020 - **Imaging**
MRI Pelvis-
There is near circumferential wall thickening of the mid and low rectum with maximal wall thickening of 15 mm. This is present from the anorectal junction and 8.6cm from the anal verge. The tumor extends approximately 6 cm craniocaudal. No regional adenopathy. There is disruption of the lamina propria at the 2 to 3:00 position with 4 mm extension past the lamina propria. This is 9 mm from the mesometa fascia. No high T2 weighted signal to suggest significant mucinous content.
No bone lesions demonstrated. Urinary bladder and prostate are unremarkable. 1. Rectal tumor as described above

12/22/2020 - **Surgery**
Incidental appendectomy, exploratory laporatomy, mobilization of descending colon, end colostomy with hartman's pouch
Resection was attempted however the lesion was not palpable. If was felt that the option would be to divert the colon away from the nearly obstructing lesion with an end colotomy and Hartman's pouch. Attempt chem/radiation to shrink the lesion and then possibly bring the pt back at another time.

3/3/2021 - **Imaging**

CT CAP
IMPRESSION:
1. No acute intrathoracic, intra-abdominal or pelvic abnormality.
2. Mild diffuse fatty infiltration of the liver.
3. Area surrounded circumferential fat stranding about the mid ileostomy loop of the colon may be inflammatory in nature however there is no evidence to suggest abscess.
4. Incisional hernia superior abdomen containing fat only.

3/29/2021 - 5/5/2021 **Anti-Cancer Treatment**
Xeloda/RT
2000mg twice per day.

3/29/2021 - 5/5/2021 **Radiation**

Neoadjuvant CRT including 50Gy in 25 fractions-Dr. Annette Kretzler

6/28/2021 - **Surgery**
LAR

7/28/2021 - **Anti-Cancer Treatment**
OPD GI mFOLFOX6
Plan Provider: Eiran Avraham Warner, MD
Treatment goal: Curative
Line of treatment: Adjuvant

Rectal cancer (CMS-hcc)

7/1/2021 - **Cancer Staged**
Staging form: Colon And Rectum, AJCC 8th Edition
- Pathologic stage from 7/1/2021: Stage I (ypT2, pN0, cM0)

Past Medical History:

Diagnosis	Date
• Colon neoplasm	
• COVID-19	11/2020
Lost taste and smell. Aches and pains. Sx lasted for 14 days.	
• Gastro-esophageal reflux	
• Hyperlipidemia	
• Hypertension	

Past Surgical History:

Procedure	Laterality	Date
• APPENDECTOMY		12/22/2020
• ELBOW SURGERY	Left	
• EXPLORATORY LAPAROTOMY W/ PULL-THROUGH		12/22/2020
• HAND SURGERY	Left	
• KNEE ARTHROSCOPY	Bilateral	

No Known Allergies

Family History

Adopted: Yes

Social History

Tobacco Use	
• Smoking status:	Never Smoker
• Smokeless tobacco:	Never Used
Substance Use Topics	
• Alcohol use:	Not Currently

Current Medications:

• enoxaparin (LOVENOX) injection	40 mg	Subcutaneous	Daily

• fluorouracil (ADRUCIL) chemo infusion	2,400 mg/m2 (Treatment Plan Recorded)	Intravenous	over 46 hr
• lisinopriL	20 mg	Oral	BID
• morphine	15 mg	Oral	BID
• multivitamin w/ minerals	1 tablet	Oral	Daily
• pantoprazole	40 mg	Oral	before breakfast
• proCHLORPERAzine	10 mg	Oral	TID
• tamsulosin	0.8 mg	Oral	Daily with dinner

ROS:
Constitutional: Negative for fever, chills, weight loss and malaise/fatigue.
ENMT: Negative for dizziness, nosebleeds and sore throat.
Cardiovascular: Negative for chest pain, and palpitations.
Respiratory: Negative for cough, hemoptysis, shortness of breath and wheezing.
Gastrointestinal: Negative for nausea, vomiting, abdominal pain, diarrhea, and constipation.
Genitourinary: Negative for flank pain or hematuria.
Musculoskeletal: Negative for back pain and joint pain.
Skin: Negative for rash or wounds.
Neurological: Negative for headaches, loss of consciousness. Positive for right hand numbness (improving).
Psychiatric/Behavioral: Negative for depression and memory loss.

Physical Exam:

Temp (24hrs), Avg:36.6 °C (97.9 °F), Min:36.2 °C (97.2 °F), Max:36.8 °C (98.2 °F)

Visit Vitals

BP	**(!) 115/51 (BP Location: Right upper arm)**
Pulse	75
Temp	36.8 °C (98.2 °F) (Oral)
Resp	18
Ht	1.829 m (6')
Wt	114.4 kg (252 lb 1.6 oz)
SpO2	96%
BMI	34.19 kg/m²
Smoking Status	Never Smoker
BSA	2.35 m²

Constitutional: Awake and alert. No distress.
Head: Normocephalic and atraumatic.
Mouth/Throat: Oropharynx is clear and moist.
Eyes: EOM are normal. Pupils are equal, round, and reactive to light.
Neck: Neck supple. No JVD present.
Cardiovascular: Normal rate, regular rhythm and normal heart sounds. No murmur.
Pulmonary/Chest: Lungs sounds clear to auscultation bilaterally. No respiratory distress. No wheezes or rales.

Abdominal: Soft. Bowel sounds are normal. Exhibits no distension. No tenderness to palpation. Colostomy present.
Musculoskeletal: Normal range of motion. No obvious bone or joint deformities.
Lymphadenopathy: No cervical adenopathy.
Neurological: Alert and oriented to person, place, and time. No cranial nerve deficit.
Skin: Skin is warm and dry. No rash or erythema noted.
Psychiatric: Normal mood and affect. Behavior is normal.

Labs/Imaging:

Lab Results

Component	Value	Date
NAS	132 (L)	08/12/2021
POTASS	4.4	08/12/2021
CHLOR	101	08/12/2021
CO2	18 (L)	08/12/2021
CALCIUM	9.5	08/12/2021
ALBUMIN	3.8	08/12/2021
PROTOTSE	7.4	08/12/2021
BUN	17	08/12/2021
CREATININE	0.87	08/12/2021
GFRAA	113	08/12/2021
GFRNONAA	97	08/12/2021
GLUCOSE	120	08/12/2021
BILIT	0.3	08/12/2021
ALKPHOS	102	08/12/2021
AST	19	08/12/2021
ALT	32	08/12/2021

Lab Results

Component	Value	Date
WBC	5.6	08/12/2021
HGB	11.9 (L)	08/12/2021
HCT	33.8 (L)	08/12/2021
MCV	86.0	08/12/2021
PLT	248	08/12/2021

Diarrhea

Assessment & Plan - Edited by Jarzynka, Megan, CNP at 8/12/2021 12:28 PM

Frequent changes of ostomy bag reported on 08/11. Imodium as needed. Reports decreased output this morning.

Vitamin D deficiency

Assessment & Plan - Edited by Jarzynka, Megan, CNP at 8/12/2021 12:28 PM

Vitamin D level fro 4/5/21 was 12. Recommended Vitamin D 50K unit weekly x 8 weeks; previously ordered.

Adenocarcinoma of rectum (CMS-hcc)

Assessment & Plan - Edited by Jarzynka, Megan, CNP at 8/12/2021 12:27 PM

Clinically cT2M0N0. Diagnosed on 6/25/20 with colonoscopy, he states that he had increased frequency with bowel movements. Per pt he had a positive FOB in January 2020. Colonoscopy done on 6/25/20 revealed hyperplastic polyp, tubulovillous adenoma, invasive adenocarcinoma; MS Stable.S/p Incidental appendectomy, exploratory laporatomy, mobilization of descending colon, end colostomy with hartman's pouch (12/22/21); Resection was attempted a outside hospital, however the lesion was not palpable. It was felt that the option would be to divert the colon away from the nearly obstructing lesion with an end colotomy and Hartman's pouch. Attempt chem/radiation to shrink the lesion and then possibly bring the pt back at another time was discussed.

S/p concurrent chemo/RT (50 Gy in 25 Fractions) 1st with xeloda (825mg/m2 twice per day Mon-Fri x 5 weeks, dose comes out to 2000mg twice per day) from 3/29/21 to 5/5/21.

5/28/21 CT CAP showed no active disease. S/P robot-assisted laparoscopic low anterior resection with total mesorectal excision, reversal of colostomy, colorectal anastomosis, creation of diverting loop ostomy on6/28/21 by Dr. Obi with pathology showing almost CR. Discussed on tumor board on 7/14/21 and plan for four months of adjuvant FOLFOX.

Patient saw Dr. Obi on 7/14/2021. Dr. Obi noted he tolerated surgery well. He suffered worsening urinary retention post-op (has pre-existing urinary retention from prostate disease, on flomax 0.4mg per day, recently increased to 0.8mg/day). Instructions to follow up with Urology were recommended, but have not been arranged via the Department of Corrections as yet.

Treatment Plan: FOLFOX x4 months.

He was admitted on 8/11 to receive C2 FOLFOX. Overall, he is tolerating treatment well thus far. Denies complaints. Anticipate discharge tomorrow following completion of chemotherapy.

RV 2 weeks on 8/25/2021 in scheduled care clinical eval, count check, review of labs, and C2 FOLFOX. Labs CBC'd, CMP, and Vitamin D levels to be drawn in the secure unit on 8/24/2021.

MEGAN JARZYNKA, CNP

Date of Service: 8/12/2021
Primary Care Physician: Hospital, Duane Waters

Electronically signed by Jarzynka, Megan, CNP at 08/12/21 1228

Calhoun v. Corizon Health, Inc.

United States District Court for the Western District of Michigan, Southern Division

November 1, 2021, Decided; November 1, 2021, Filed

Case No. 1:20-cv-697

Reporter
2021 U.S. Dist. LEXIS 229969 *

SAMUEL CALHOUN #379175, Plaintiff, v. CORIZON HEALTH, INC., et al., Defendants.

Subsequent History: Adopted by, Summary judgment granted by, Objection overruled by, Dismissed by *Calhoun v. Corizon Health, Inc., 2021 U.S. Dist. LEXIS 228783, 2021 WL 5577934 (W.D. Mich., Nov. 30, 2021)*

Magistrate's recommendation at *Calhoun v. Health Inc., 2022 U.S. Dist. LEXIS 70844, 2022 WL 1137879 (W.D. Mich., Mar. 29, 2022)*

Motion denied by *Calhoun v. Corizon Health, Inc., 2023 U.S. App. LEXIS 8970 (6th Cir., Apr. 13, 2023)*

Decision reached on appeal by, Request denied by *Calhoun v. Corizon Health, Inc., 2024 U.S. App. LEXIS 1779 (6th Cir. Mich., Jan. 25, 2024)*

Core Terms

pain, left shoulder, recommend, shoulder, orthopedic, chronic, summary judgment, x-ray, range of motion, medical care, provider, changes, plaintiff's claim, physical therapy, serious medical needs, arthritic, deliberate indifference, pain medication, medical record, decisions, medical treatment, no evidence, contractor, exercises, scheduled, requests, inmate, chart, arm

Counsel: [*1] Samuel Eugene Calhoun #379175, plaintiff, Pro se, Muskegon Heights, MI.

For Corizon Health Inc., Keith Papendick, Doctor, Sylvie Stacy, Doctor, Kaelynn Pfeil, Connie McCool, defendants: Wedad Suleiman, Chapman Law Group, Troy, MI.

Judges: SALLY J. BERENS, United States Magistrate Judge. Hon. Robert J. Jonker.

Opinion by: SALLY J. BERENS

Opinion

REPORT AND RECOMMENDATION

Now before the Court is the Motion for Summary Judgment of Defendants Corizon Health Inc., Keith Papendick, M.D., Sylvie Stacy, M.D., Kaelynn Pfeil, and Connie (McCool) Whipple. (ECF No. 42.) The motion is fully briefed and ready for decision. Pursuant to *28 U.S.C. § 636(b)(1)(B)*, I recommend that the motion be **GRANTED.**

I. Background

Plaintiff, a prisoner incarcerated with the Michigan Department of Corrections (MDOC), sued Defendants Corizon Health, Inc., Keith Papendick, M.D., Sylvie Stacy, M.D., Kaelynn Pfeil, and Connie Whipple, pursuant to *42 U.S.C. § 1983*, alleging that they violated his rights under the *Eighth* and *Fourteenth Amendments* by failing to treat his serious medical need, that is, failing to arrange an MRI and schedule him for an orthopedic consult for evaluation of his shoulder pain and failing to provide him prescription medication to alleviate the pain associated with his chronic arthritic condition. [*2] The events at issue in this case occurred while Plaintiff was incarcerated at his present facility, Muskegon Correctional Facility (MCF).

Corizon is a private corporation under contract with the MDOC to provide medical services to inmates. (ECF No. 1 at PageID.1.) Defendant Dr. Papendick is the Utilization Management Outpatient Medical Director for Corizon. (ECF No. 43 at PageID.391.) In that position, Dr. Papendick is not involved with the day-to-day medical care of inmates. Instead, his duties include evaluation of provider requests for offsite medical

services that cannot be provided at MDOC facilities. (*Id.* at PageID.392.) When considering a provider's request, he reviews the associated prisoner medical records that are either identified by the medical provider or are determined to be associated with the outpatient healthcare request based on the information provided by the medical provider. Dr. Papendick then recommends an appropriate course of treatment, which may involve the treatment requested or an alternative treatment plan (ATP). (*Id.*) Defendant Dr. Stacy is a Utilization Management Outpatient Physician for Corizon. (ECF No. 42-4 at PageID.327.) She performs essentially the [*3] same duties as Dr. Papendick—reviewing provider requests for offsite medical treatment and recommending an appropriate course of treatment, either as requested or an ATP. (*Id.* at PageID.328.) Defendants Pfeil and Whipple are utilization management clerical assistants. (ECF No. 42-5 at PageID.331; ECF No. 42-6 at PageID.333.) They are not involved in medical decisions, are not medical personnel, and are limited to performing administrative tasks involved in processing consultation requests. (ECF No. 42-5 at PageID.332; ECF No. 42-6 at PageID.334.)

Plaintiff has a history of chronic pain and decreased range of motion in his left shoulder as a result of an injury he sustained in 2010 while housed at the Richard A. Handlon Correctional Facility. In July 2012, Lyle Mindlin, D.O., noted that an x-ray image showed "degenerative changes with possible Bankhart deformity of the glenoid." (ECF No. 1 at PageID.3-4.) Plaintiff was transferred to MCF in early February 2013. (*Id.* at PageID.4.)

Several years later, in late 2018, Plaintiff again sought treatment for pain and reduced range of motion in his left shoulder. His MDOC medical records reflect the treatment he received during this time. On November [*4] 1, 2018, Plaintiff sent a "kite," or a note, to healthcare complaining of "excruciating pain and joint stiffness" in his left arm and shoulder caused by a preexisting condition of "chronic degenerative arthritis." Plaintiff said that the pain and stiffness and resulting loss of range of motion was affecting his ability to get down from his assigned top bunk, and he inquired about surgery. RN Mitteer responded that Plaintiff had been scheduled for a nursing evaluation. (ECF No. 42-2 at PageID.254.)

On November 2, 2018, RN Brunsting examined Plaintiff regarding his shoulder pain. Plaintiff reported that he had experienced increased pain in the last six weeks to two months and had broken his clavicle when he was 11 years old. Plaintiff said that he began to experience "frozen shoulder and limited movement" in 2010 and had refused a cortisone shot that had been offered at that time. He requested x-rays of his shoulder, possible surgery, and a bottom-bunk detail. RN Brunsting noted no tenderness, bruising, swelling, or pain with palpation of the shoulder, but Plaintiff demonstrated a limited range of motion. RN Brunsting gave Plaintiff 15 packets of Ibuprofen and a temporary bottom-bunk [*5] detail. Plaintiff was to contact healthcare if he experienced any new symptoms. Plaintiff was referred to the medical provider. (*Id.* at PageID.256-58.)

On November 29, 2018, Dr. Asche examined Plaintiff for his shoulder pain. Dr. Asche noted that Plaintiff had longstanding left shoulder dysfunction that had recently worsened due to increased pain and reduced range of motion. Plaintiff was unable to abduct his left arm to horizontal but was able to adduct it "reasonably normally." His left arm internal rotation was "fair," but he was unable to perform external rotation. He performed clockwise and counterclockwise windmilling "poorly." Dr. Asche ordered an x-ray of the left shoulder and a bottom-bunk detail. (*Id.* at PageID.259-61.)

An x-ray was taken on December 5, 2018. The impression revealed markedly advanced arthritic changes of the glenohumeral joint articulating surface, which appeared to be osteoarthritic changes, and mild arthritic changes at the acromioclavicular joint. Dr. Asche performed a chart review on December 7, 2018, and noted that the radiologist had identified far-advanced osteoarthritis from the December 5, 2018 x-rays. (*Id.* at PageID.264, 266.)

On December 14, 2018, [*6] Dr. Asche submitted an off-site consultation request (407) for an initial orthopedic consult. Dr. Asche noted that Plaintiff had progressive left shoulder dysfunction and could not get his left arm to horizontal and above, and that x-rays of the left shoulder had revealed markedly arthritic changes that were believed to be osteoarthritic changes. (*Id.* at PageID.267.) Dr. Asche noted that he had discussed the x-ray findings with Plaintiff and discussed the treatment options, and that Plaintiff was in favor of a 407-submission seeking an orthopedic consult. Dr. Asche also noted that he discussed the process with Plaintiff for the consult being authorized versus being not authorized. (*Id.* at PageID.269.)

On December 17, 2018, Dr. Papendick reviewed the 407 request and determined that medical necessity for the consult had not been demonstrated. Instead, Dr.

Papendick provided an ATP for a physical therapy evaluation prior to an orthopedic consult. (*Id.* at PageID.271.) On December 20, 2018, Dr. Asche met with Plaintiff to discuss the ATP. Plaintiff expressed his understanding of the recommendation for a physical therapy evaluation first, with a possible subsequent resubmission of a 407 request **[*7]** for an orthopedic consult. Dr. Asche noted that he submitted a 407 request for a physical therapy consult at Duane Waters Hospital (DWH). (*Id.* at PageID.273-75.) Dr. Papendick approved the request the same day, noting that the physical therapy evaluation was to include training for a home exercise program directed toward Plaintiff's symptoms. (*Id.* at PageID.277.)

On March 7, 2019, Scott Weaver, PT, evaluated Plaintiff's left shoulder at DWH. PT Weaver assessed that Plaintiff minimally had adhesive capsulitis (frozen shoulder), most likely had underlying rotator cuff issues over many years, and had decreased range of motion, strength, and joint mobility. PT Weaver assessed Plaintiff's rehab potential as "poor." PT Weaver instructed Plaintiff in range of motion exercises and indicated that Plaintiff should follow up for an MRI to rule out pathology. PT Weaver set a goal that Plaintiff would be independent with a progressive home exercise program within one week. (*Id.* at PageID.281.)

On March 12, 2019, Dr. Asche updated Plaintiff's chart and noted that PT Weaver had taught Plaintiff a home exercise program and had estimated Plaintiff's rehab potential as poor. (*Id.* at PageID.285.)

Plaintiff **[*8]** apparently did not seek services from healthcare regarding his shoulder again until October 28, 2019, when he sent a kite complaining of continued inflammation and pain in his left shoulder and arm, as well as increasingly limited range of motion, and swelling and pain in his left eye. (*Id.* at PageID.286.) Plaintiff was seen by RN Mitteer on October 30, 2019 regarding his complaints. RN Mitteer noted that Plaintiff was sent to physical therapy earlier in the year, but Plaintiff stated that nothing had helped. RN Mitteer contacted the physician for same day treatment of his eye and shoulder pain. (*Id.* at PageID.288-89.) PA LaNore provided Plaintiff Ibuprofen, instructed him to not engage in activity that might aggravate his shoulder, and scheduled him for a follow-up appointment. (*Id.* at PageID.291.)

On November 21, 2019, PA Rohrs saw Plaintiff for a scheduled provider visit regarding his chronic left shoulder pain, which Plaintiff reported was now developing in the right shoulder in the area of the bicep tendon. PA Rohrs noted that Plaintiff had been doing range of motion exercises, but they had not helped. PA Rohrs discussed pain medication with Plaintiff, but Plaintiff declined because **[*9]** he does not like to take medication. An x-ray of the right shoulder was ordered. PA Rohrs also noted that she had originally discussed an "ortho" referral, but after reviewing the physical therapy note, she completed a 407 request for an MRI of the left shoulder. (*Id.* at PageID.292-295.) On November 25, 2019, Dr. Stacy reviewed PA Rohrs' 407 request and determined that the criteria for an MRI were not met. Instead, Dr. Stacy provided an ATP, noting that Plaintiff's symptoms had been chronic since 2010, and had not shown acute changes or deterioration that would require advanced imaging at that time. Dr. Stacy observed that Plaintiff was known to have arthritic changes, per x-ray studies. She recommended ongoing management based on history, exam, and x-ray findings. (*Id.* at PageID.301-02.)

On November 27, 2019, Plaintiff met with PA Rohrs for a scheduled provider visit to discuss the ATP for his left shoulder. PA Rohrs noted that the pain had become progressively worse since 2010 despite treatment with Mobic, Tylenol, Toradol IM (injection), and Ibuprofen. Plaintiff agreed with PA Rohrs's plan to submit an appeal and to follow up the next month. (*Id.* at PageID.306-07.)

On December 4, **[*10]** 2019, PA Rohrs updated Plaintiff's chart, noting that she had received an email indicating that the ATP had gone through the ATP appeal process, and the committee had decided to uphold the ATP and place it in final ATP status. (*Id.* at PageID.308.) On December 30, 2019, PA Rohrs saw Plaintiff for a scheduled provider visit for chronic left shoulder pain and right shoulder pain that had started two-to-three months earlier. During the visit, Plaintiff declined pain medication and agreed with a plan of submitting a 407 for an orthopedic surgery consult for further recommendations following an electronic medical record system change. (*Id.* at PageID.314-16.)

On January 21, 2020, PA Rohrs completed a chart review/update noting that a 407 was completed for an orthopedic consult. (*Id.* at PageID.319-20.) On January 29, 2020, PA Rohrs completed a chart review/update, noting that the orthopedic consult request was given an ATP, as medical necessity had not been demonstrated at that time. The reviewer recommended that Plaintiff continue with range of motion exercises per Physical Therapy. (*Id.* at PageID.321.)

On January 31, 2020, Dr. Asche saw Plaintiff for a provider visit and was advised of the **[*11]** ATP for the orthopedic consult and recommendation for range of motion exercises. (*Id.* at PageID.322-23.)

II. Motion Standard

Summary judgment is appropriate if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *Fed. R. Civ. P. 56(a)*. Material facts are facts that are defined by substantive law and are necessary to apply the law. *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)*. A dispute is genuine if a reasonable jury could return judgment for the non-moving party. *Id.*

The court must draw all inferences in a light most favorable to the non-moving party, but may grant summary judgment when "the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Agristor Fin. Corp. v. Van Sickle, 967 F.2d 233, 236 (6th Cir. 1992)* (quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)*).

III. Discussion

Plaintiff alleges that Defendants, who were members of Corizon's Institution Utilization Review Committee, were deliberately indifferent to Plaintiff's serious medical need regarding his left shoulder pain caused by his degenerative arthritic condition when they deferred his treating physicians' requests for an outside orthopedic consult and an MRI in order to rule out pathology in his left shoulder joint. (ECF No. 50 at PageID.435.) Plaintiff further argues that Defendants **[*12]** were deliberately indifferent by deferring his provider's request to enroll Plaintiff into chronic care for his degenerative arthritic condition and by failing to provide him pain medication to help mitigate the debilitating chronic pain from his left shoulder.

A. *Eighth Amendment* Claim[1]

The *Eighth Amendment's* prohibition against cruel and unusual punishment applies not only to punishment imposed by the state, but also to deprivations that occur during imprisonment and are not part of the sentence imposed. *See Farmer v. Brennan, 511 U.S. 825, 834, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994)*; *Estelle v. Gamble, 429 U.S. 97, 101-02, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976)*. Punishment that is without penological justification or involves the unnecessary and wanton infliction of pain also violates the *Eighth Amendment's* proscriptions. *See Rhodes v. Chapman, 452 U.S. 337, 346, 101 S. Ct. 2392, 69 L. Ed. 2d 59 (1981)*. In other words, the *Eighth Amendment* prohibits "the gratuitous infliction of suffering." *Gregg v. Georgia, 428 U.S. 153, 183, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976)*.

The unnecessary and wanton infliction of pain encompasses "deliberate indifference" to an inmate's "serious medical needs." *Estelle, 429 U.S. at 104-06*; *Napier v. Madison Cnty., 238 F.3d 739, 742 (6th Cir. 2001)*. Determining whether denial of medical care amounts to an *Eighth Amendment* violation involves two steps. First, the court must determine, objectively, whether the alleged deprivation was sufficiently serious. A "serious medical need" sufficient to implicate the *Eighth Amendment* is "one that has been diagnosed by a physician as mandating treatment or one that **[*13]** is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Harrison v. Ash, 539 F.3d 510, 518 (6th Cir. 2008)*. Thus, the objective component is satisfied where a prisoner receives no treatment for a serious medical need. *See Rhinehart v. Scutt, 894 F.3d 721, 737 (6th Cir. 2018)*. If the plaintiff's claim, however, is based on "the prison's failure to treat a condition adequately, or where the prisoner's affliction is seemingly minor or nonobvious," *Blackmore v. Kalamazoo Cnty., 390 F.3d 890, 898 (6th Cir. 2004)*, the plaintiff must "place verifying medical evidence in the record to establish the detrimental effect of the delay in medical treatment." *Napier, 238 F.3d at 742* (internal quotation marks omitted). When a plaintiff claims that care he received was inadequate, he must demonstrate that his doctor rendered grossly incompetent treatment. *Rhinehart, 894 F.3d at 737*. To meet this standard, the plaintiff must "present expert medical evidence describing what a competent doctor would have done and why the chosen

[1] As an alternative ground for summary judgment, Defendants contend that Plaintiff failed to exhaust his administrative remedies prior to filing this action. Because Plaintiff's claims against all Defendants fail on the merits, the Court need not address Defendants' exhaustion argument. *See Weatherspoon v. Lnu, No. 14-12789, 2015 U.S. Dist. LEXIS 177298, 2015 WL 13741824, at *2 n.2 (E.D. Mich. Dec. 23, 2015), report and recommendation adopted, 2016 U.S. Dist. LEXIS 41795, 2016 WL 1237661 (E.D. Mich. Mar. 30, 2016)*; *Gonzalez v. Rushing, No. 4:11CV178, 2012 U.S. Dist. LEXIS 20992, 2012 WL 529823, at *2 (N.D. Ohio Feb. 17, 2012)*.

course was not just incompetent but grossly so." *Phillips v. Tangilag, 14 F.4th 524, 536 (6th Cir. 2021)* (citing *Jones v. Muskegon Cnty., 625 F.3d 935, 945-46 (6th Cir. 2010)*).

If the plaintiff satisfies the objective component, he must then demonstrate that the defendant possessed a sufficiently culpable state of mind:

> a prison official cannot be found liable under the *Eighth Amendment* for denying an inmate humane conditions of confinement unless the official knows of and disregards [*14] an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.

Farmer, 511 U.S. at 837. In other words, the plaintiff "must present evidence from which a trier of fact could conclude 'that the official was subjectively aware of the risk' and 'disregard[ed] that risk by failing to take reasonable measures to abate it.'" *Greene v. Bowles, 361 F.3d 290, 294 (6th Cir. 2004)* (citing *Farmer, 511 U.S. at 829, 847*). To satisfy this part of the analysis, the plaintiff must demonstrate that the defendant acted with "deliberateness tantamount to intent to punish." *Miller v. Calhoun Cnty., 408 F.3d 803, 813 (6th Cir. 2005)*.

"A doctor is not liable under the *Eighth Amendment* if he or she provides reasonable treatment, even if the outcome of the treatment is insufficient or even harmful." *Rhinehart, 894 F.3d at 738* (citing *Farmer, 511 U.S. at 844*). So long as a doctor does not knowingly expose a prisoner to an excessive risk of serious harm and exercises reasonable medical judgment, the Sixth Circuit will defer to the doctor's judgment. *Id.* "Where a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgments and to constitutionalize claims which sound in state [*15] tort law." *Westlake v. Lucas, 537 F.2d 857, 860 n.5 (6th Cir. 1976)*. Moreover, where the plaintiff's claim amounts to disagreement with the medical provider's judgment or approach to medical treatment, the claim against the defendant-provider fails. *See White v. Corr. Med. Servs. Inc., 94 F. App'x 262, 264 (6th Cir. 2004)*.

1. Defendants Pfeil and Whipple

In support of their contention that they are entitled to summary judgment, Defendants Pfeil and Whipple have presented affidavits stating that they are clerical assistants who perform administrative tasks and are not medical personnel. They further state that they do not make or participate in medical decisions and were not involved in decisions regarding Plaintiff's, or any other prisoner's, medical care. (ECF No. 42-5 at PageID.331-32; ECF No. 42-6 at PageID.333-34.) These assertions are consistent with Plaintiff's medical records, which show that Drs. Papendick and Stacy reviewed Dr. Asche's and PA Rohr's 407 requests and provided ATPs after finding the criteria not met. (ECF No. 42-2 at PageID.270-71, 301-02.)

Plaintiff presents no evidence in response to these affidavits that creates a genuine issue of material fact regarding Defendants Pfeil's and Whipple's involvement in decisions regarding Plaintiff's medical care. The evidence before the Court shows [*16] that they did not participate in medical decisions in any manner. Accordingly, I recommend that Defendants Pfeil and Whipple be granted summary judgment. *See Farr v. Centurion of Tenn., No. 3:16-CV-387, 2020 U.S. Dist. LEXIS 55250, 2020 WL 1547067, at *5 (E.D. Tenn. Mar. 31, 2020)* (concluding that defendant was entitled to summary judgment on the Plaintiff's claim of deliberate indifference where her uncontradicted affidavit established that she was not involved in the plaintiff's medical care and did not make any decision regarding that care); *Martin v. Buchanan, No. 1:14 CV 2812, 2015 U.S. Dist. LEXIS 75087, 2015 WL 3646094, at *4 (N.D. Ohio June 9, 2015)* ("Because Judge Buchanan and Prosecutor Tiffany Hill were not involved in making medical decisions for Plaintiff while he was in jail, he cannot sustain a claim against them for deliberate indifference to serious medical needs.").

2. Dr. Papendick

Plaintiff's medical records show that Dr. Papendick was minimally involved in Plaintiff's medical care. He reviewed the orthopedic consultation request that Dr. Asche submitted on December 14, 2018, and issued an ATP for a physical therapy evaluation prior to an orthopedic consult. (ECF No. 42-2 at PageID.271.) There is no indication in the record that Dr. Papendick was involved in Plaintiff's treatment at any point thereafter.

Plaintiff fails to present any evidence that suggests [*17] that Dr. Papendick ignored Plaintiff's serious medical needs or disregarded a substantial risk to Plaintiff's health. *Comstock v. McCrary, 273 F.3d 693, 703 (6th Cir. 2001)*. His claim against Dr. Papendick—that he should have approved the request for an orthopedic consult instead of requiring physical therapy—amounts only to disagreement with Dr. Papendick's exercise of medical judgment, not a deliberate indifference claim. "[A] difference in opinion between a prisoner and the medical staff about treatment does not state a cause of action." *Kirkham v. Wilkinson, 101 F. App'x 628, 630 (6th Cir. 2004)* (citing *Estelle, 429 U.S. at 107*); *see also Owens v. Hutchinson, 79 F. App'x 159, 161 (6th Cir. 2003)* (stating that "[a] patient's disagreement with his physicians over the proper medical treatment alleges no more than a medical malpractice claim, which is a tort actionable in state court, but is not cognizable as a federal constitutional claim"). As stated in *Mitchell v. Hininger, 553 F. App'x 602, 605 (6th Cir. 2014)*, "a desire for additional or different treatment does not suffice by itself to support an *Eighth Amendment* claim."

In short, Plaintiff fails to present evidence that Dr. Papendick's decision amounted to medical care that was "so woefully inadequate as to amount to no treatment at all." *Alspaugh v. McConnell, 643 F.3d 162, 169 (6th Cir. 2011)* (quoting *Westlake, 537 F.2d at 860 n.5*). Moreover, Plaintiff fails to show that Dr. Papendick ignored a substantial risk of serious harm to Plaintiff, i.e., that he with a "sufficiently [*18] culpable state of mind." *Farmer, 511 U.S. at 834*.

As noted above, Plaintiff appears to claim that Dr. Papendick also denied him pain medication and failed to enroll Plaintiff in the chronic care clinic. There is no evidence to support these allegations. As set forth above, Dr. Papendick was not involved in Plaintiff's ongoing care, and there is no evidence that Dr. Papendick made any decision regarding Plaintiff's request for pain medication. Moreover, the medical record shows that Plaintiff declined pain medication on several occasions. (ECF No. 42-2 at PageID.294, 316.) Likewise, there is no indication that Dr. Papendick failed to enroll Plaintiff in the chronic care clinic. In fact, the 407 request that Dr. Asche submitted indicated that Plaintiff was already enrolled in the chronic care clinic when Dr. Asche submitted the request. (ECF No. 42-2 at PageID.267.) In any event, there is no evidence that Dr. Papendick was responsible for this issue. Accordingly, I recommend that the Court grant Dr. Papendick summary judgment on Plaintiff's claim.

3. Dr. Stacy

Like Dr. Papendick, Dr. Stacy played an extremely limited role in Plaintiff's medical care. Her sole involvement was reviewing PA Rohrs's 407 request for [*19] an MRI and providing an ATP because acute changes or deterioration in Plaintiff's left shoulder justifying advanced imaging had not been shown. (ECF No. 42-2 at PageID.302.) For the same reasons discussed above as to the claim against Dr. Papendick, Plaintiff's claim against Dr. Stacy simply amounts to a difference of opinion regarding medical treatment. Perhaps Dr. Stacy was negligent in denying the request for an MRI, but such failure cannot provide a basis for a deliberate indifference claim. *See Comstock, 273 F.3d at 703* ("The requirement that the official have subjectively perceived a risk of harm and then disregarded it is meant to prevent the constitutionalization of medical malpractice claims; thus, a plaintiff alleging deliberate indifference must show more than negligence or the misdiagnosis of an ailment."). Moreover, Plaintiff provides no evidence that Dr. Stacy provided "grossly or woefully inadequate care," such that her conduct rises to the level of cruel and unusual punishment. *Phillips, 14 F.4th at 535*.

Accordingly, I recommend that the Court grant summary judgment on this claim as well.

4. Corizon

A private provider of health care services to prisoners, such as Corizon, cannot be held liable under *Section 1983* on a theory of respondeat [*20] superior or vicarious liability. *Perry v. Corizon Health, Inc., No. 17-2489, 2018 U.S. App. LEXIS 15621, 2018 WL 3006334, at *1 (6th Cir. June 8, 2018)* (citing *Rouster v. Cnty. of Saginaw, 749 F.3d 437, 453 (6th Cir. 2014)*). To state a claim for relief against a private contractor, a plaintiff must allege that his injuries resulted from the contractor's unconstitutional policy or custom. *Matthews v. Jones, 35 F.3d 1046, 1049 (6th Cir. 1994)*. Therefore, to impose liability on a private contractor, a plaintiff must identify the contractor's policy or custom, connect it to the contractor, and show that the policy caused the injury or deprivation. *Turner v. City of Taylor, 412 F.3d 629, 639 (6th Cir. 2005)*; *Alkire v. Irving, 330 F.3d 802, 815 (6th Cir. 2003)*. Moreover, a Plaintiff suing an entity such as Corizon must also establish an underlying violation of his constitutional rights. *See Collins v. City of Harker Heights, 503 U.S. 115, 120, 112 S. Ct. 1061, 117 L. Ed. 2d 261 (1992)* (explaining that "proper analysis requires us to separate two different issues when a *§ 1983* claim is asserted against a municipality:

(1) whether plaintiff's harm was caused by a constitutional violation, and (2) if so, whether the city is responsible for that violation."); *City of Los Angeles v. Heller, 475 U.S. 796, 799, 106 S. Ct. 1571, 89 L. Ed. 2d 806 (1986)* (per curiam) ("If a person has suffered no constitutional injury at the hands of the individual police officer, the fact that the departmental regulations might have authorized the use of constitutionally excessive force is quite beside the point.").

Plaintiff's claim against Corizon fails on two fronts. First, for the reasons set forth above, Plaintiff fails to demonstrate [*21] a constitutional violation by any Defendant. Accordingly, there is no basis for a claim under *Section 1983* against Corizon. Second, even if Plaintiff had established a violation, he fails to present any evidence showing that any Defendant acted pursuant to an unconstitutional policy or custom of Corizon that caused the violation.

Accordingly, Plaintiff's claim against Corizon is subject to summary judgment as well.

B. *Fourteenth Amendment* Claim

Plaintiff also alleged in his complaint that Defendants deprived him of reasonable access to specialized medical care in violation of his right to due process under the *Fourteenth Amendment*. To the extent Plaintiff intended to assert a separate due process claim, it is subject to dismissal because it is the *Eighth Amendment*, rather than the *Fourteenth Amendment*, that applies to medical-care claims brought by convicted prisoners. *See Watkins v. City of Battle Creek, 273 F.3d 682, 685-86 (6th Cir. 2001)*.

IV. Conclusion

For the reasons set forth above, I recommend that the Court **grant** Defendants' motion for summary judgment (ECF No. 42) and dismiss Plaintiff's complaint with prejudice.

I further recommend that an appeal of this matter would not be taken in good faith. *See McGore v. Wrigglesworth, 114 F.3d 601, 611 (6th Cir. 1997)*; *28 U.S.C. § 1915(a)(3)*.

Dated: November 1, 2021

/s/ Sally J. Berens

SALLY J. BERENS

U.S. Magistrate Judge

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Kelly v. Corizon Health Inc.

United States District Court for the Eastern District of Michigan, Southern Division

February 16, 2023, Decided; February 16, 2023, Filed

Case No. 22-10589

Reporter
2023 U.S. Dist. LEXIS 26576 *; 2023 WL 2058644

WILLIAM KELLY, Plaintiff, vs. CORIZON HEALTH INC., et al., Defendants.

Core Terms

referrals, medical provider, sanctions, manual, alleges, protective order, requests, documents, providers, deposition, discovery, specialty, publicly, cases

Counsel: [*1] For william Kelly, Plaintiff: Laurence H Margolis, Margolis Law Firm, Ann Arbor, MI; Ian T. Cross, Laurence H. Margolis PC, Ann Arbor, MI.

For Corizon Health Inc., Quality Correctional Care of Michigan, P.C., joshua kocha, leila ghasemi, PA Danielle S. Alford, Ravi D. Yarid, Richard A Bohjanen, Defendants: Jonathan C. Lanesky, Nicholas Pillow, Chapman Law Group, Troy, MI.

For Todd K. Bostwick, Defendant: Paul J. Dwaihy, Tanoury Nauts McKinney & Dwaihy PLLC, Livonia, MI.

Judges: HON. MARK A. GOLDSMITH, United States District Judge.

Opinion by: MARK A. GOLDSMITH

Opinion

OPINION & ORDER DENYING DEFENDANT CORIZON HEALTH INC.'S MOTION FOR SANCTIONS (DKT. 14)

This matter is before the Court on Defendant Corizon Health Inc.'s (Corizon's) motion for sanctions (Dkt. 14). For the reasons set forth below, the Court denies the motion.[1]

I. BACKGROUND

Plaintiff William Kelly brings this action against Corizon, which contracts with state and municipal governments to provide healthcare to incarcerated individuals, and various medical professionals, some of whom are employed by Corizon, alleging that he received constitutionally inadequate healthcare while he was incarcerated. Compl. (Dkt. 1). Specifically, he alleges that, due to a [*2] "compounding series" of acts and omissions by Defendants, the diagnosis and treatment of his renal cell carcinoma (kidney cancer) was "repeatedly postponed, deferred, and delayed," allowing his cancer to grow and spread. Id. ¶ 33. Kelly brings an *Eighth Amendment* claim pursuant to *42 U.S.C § 1983*, asserting that Defendants violated his right to be free from cruel and unusual punishment, and claims of common-law negligence and medical malpractice. Id. ¶¶ 198-266.

Corizon has filed a motion for sanctions under *Federal Rule of Civil Procedure 37* and the Court's inherent powers based on an alleged violation of a stipulated protective order (Dkt. 14). Corizon states that it and Plaintiff's counsel agreed to a stipulated protective order in another *§ 1983* case in this district: 19-13382, Jackson v. Corizon Health, Inc., et al. Mot. at 1. The protective order provides that any party that receives through the discovery process confidential information about Corizon will use that information only for the purposes of the Jackson litigation, will keep the information confidential, and will not disclose or disseminate the information. Stipulated Protective Order at 3 (Dkt. 14-2). According to Corizon, in response to a discovery request in Jackson, it produced confidential [*3] information on its internal policies and procedures, including its 2017 Utilization Management (UM) manual. Mot. at 2. Corizon contends that, in violation of the protective order, Kelly's counsel used information from the manual to form the basis of the complaint in this action. Id. at 4. In particular, Corizon states that paragraphs 83, 87, and 90 of the complaint contain information that could have been derived only from the information in the manual produced in Jackson.[2] Reply at 2 (Dkt. 18).

These paragraphs set forth facts about Corizon's internal policies for Corizon medical providers' referrals to specialists. The paragraphs allege that Corizon medical providers at Michigan prisons could order a prisoner to be transported to the emergency room (ER) in the case of a medical emergency without pre-approval, but they could not make any referrals to specialists without pre-approval from Corizon's UM department. Compl. ¶ 83. The paragraphs also allege that Corizon monitored the number of specialist referrals that medical providers requested, that medical providers were expected to request such referrals only when absolutely necessary, and that a high number of referral requests [*4] indicated poor performance. Id. ¶¶ 87, 90. This process for specialist referrals is relevant to Kelly's *Eighth Amendment* claim: he alleges that Corizon's methods for monitoring and evaluating the performance of medical providers caused the medical providers who treated him—and who were aware that his symptoms possibly indicated kidney or bladder cancer—to hesitate to request a urology referral. Id. ¶ 90. According to Kelly, this hesitation caused at least a two-month delay in the diagnosis of his cancer. Id. ¶ 96. The allegations in paragraphs 83, 87, and 90 form the basis of Monell liability: Kelly asserts that Corizon had a "policy or custom . . . of discouraging providers from requesting specialty-care consultations unless absolutely necessary," which was the moving force behind the defendant medical providers' decision to wait two months before making a referral request. Id. ¶¶ 206-207.

Corizon requests that the Court hold Kelly's counsel in contempt; strike the complaint; require Kelly to refile the complaint without the improperly obtained information; preclude him from using in this action any information produced under the protective order in Jackson; and award such costs, attorney fees, or [*5] other monetary sanctions that the Court deems appropriate. Mot. at 9.

II. DISCUSSION

Corizon seeks sanctions pursuant to *Rule 37*, which authorizes courts to impose sanctions for failure to comply with a discovery order, see *Fed. R. Civ. P. 37(b)(2)(A)*, and the Court's inherent powers. Mot. at vii. "The party seeking sanctions under *Rule 37* bears the burden to show that an opposing party failed to comply with discovery-related obligation[s] under the federal rules or a court order." *Middlebrooks v. Equifax, Inc., No. 1:20-cv-1825-SCJ-JSA, 2021 U.S. Dist. LEXIS 257512, 2021 WL 8268127, at *3 (N.D. Ga. Dec. 14, 2021)*. "If the party can establish that a discovery violation occurred, that party then has the burden of establishing the appropriateness of a requested sanction at least by a preponderance of the evidence." *DeepGulf Inc. v. Moszkowski, 333 F.R.D. 249, 253 (N.D. Fla. 2019)*. For certain sanctions, such as civil contempt sanctions, the moving party "must demonstrate by clear and convincing evidence that the opposing party knowingly violated a definite and specific order of the court." *Gascho v. Global Fitness Holdings, LLC, 875 F.3d 795, 800 (6th Cir. 2017)* (punctuation modified).

The Court finds that Corizon has not carried its initial burden of showing that Kelly's counsel violated the protective order in Jackson. Because the evidence is insufficient to demonstrate any misconduct by Kelly's counsel, no sanctions are warranted.

A. Alleged Violation of the Protective Order in Jackson

Corizon [*6] asserts that the information in paragraphs 83, 87, and 90 of the complaint was derived from the UM manual produced in Jackson. Reply at 2. Kelly compares the paragraphs of the complaint with the amended complaint in Jackson, which was filed before the parties exchanged any discovery in that case, asserting that the similarities show that his counsel

[1] Because oral argument will not aid the Court's decisional process, the motion will be decided based on the parties' briefing. See *E.D. Mich. LR 7.1(f)(2)*; *Fed. R. Civ. P. 78(b)*. In addition to the motion, the briefing includes Plaintiff William Kelly's response (Dkt. 16) and Corizon's reply (Dkt. 18).

[2] Corizon initially argued the paragraphs 83 through 90 contained information from the manual. Mot. at 4. In its reply, however, it concedes that the information contained in paragraphs 84 through 86 and paragraphs 88 through 89 could have come from sources that were not subject to the protective order in Jackson. Reply at 2. Therefore, the Court discusses only the three paragraphs that Corizon maintains rely on the manual.

knew of and pled the information at issue in this case before Corizon produced documents in Jackson. Resp. at 1-6.[3] He also points to various documents filed in other cases in this district, contending that these reveal that information about Corizon's UM policies and procedures has long been publicly available. Id. at 8-14.

The Court discusses in turn each paragraph of the complaint at issue.

1. Paragraph 83

Paragraph 83 of the complaint in this case alleges the following:

> At all times relevant to this action, Defendant Corizon's medical providers at Michigan prisons were allowed to order a prisoner transported to the ER in the case of a medical emergency. But they were not allowed to make any referrals to specialists without seeking and obtaining prior authorization from Defendant Corizon's Utilization Management department.

Compl. ¶ 83.

The [*7] amended complaint in Jackson alleges the following:

> The MPs [medical providers] employed by Corizon are typically Physician's Assistants or Nurse Practitioners. Corizon's MPs cannot refer a prisoner for any off-site care, such as appointments with specialists, MRIs, surgeries, etc. without obtaining prior approval from Corizon's Utilization Management office in Lansing, Michigan.
>
> When a Corizon MP wants to refer a prisoner to a specialist or surgeon, the MP fills out a "407 request" detailing the MP's clinical findings and reasons for requesting the referral.

Am. Compl. ¶¶ 30-31 (No. 19-13382, Dkt. 12).

Both complaints allege that medical providers at Corizon could not make referrals to specialists without obtaining prior approval from Corizon's UM department. The complaint in Jackson does not reference transportation to the ER. Corizon contends that the other publicly available documents attached to and cited in Kelly's response refer only to an incarcerated individual's need for outpatient specialty care, rather than other types of care such as emergent or inpatient. Reply at 3. Therefore, it states, while Kelly's counsel "may have been able to derive Corizon's review and alternative [*8] treatment plan process for approval of outpatient specialty referrals based on publicly available information, the dichotomy between that process and the process for ER visits comes directly from the documents produced in [Jackson]." Id.

But, as Kelly notes, documents describing Corizon's UM process for emergent medical needs have been filed in other cases in this district. A document titled "Michigan DOC and Quality Correctional Care of Michigan, PC Specialty Consultation (407) Standard Operating Protocol" was attached to a deposition in case number 16-13587, Estate of Franklin v. Heyns, et al. (E.D. Mich. 2016) (No. 16-13597, Dkt. 86-16). In a section that defines "emergent need," the document states that "[t]he patient's medical condition may require they be sent to the Emergency Department after notification of the on-call practitioner for evaluation and treatment." Michigan DOC and Quality Correctional Care of Michigan, PC Specialty Consultation (407) Standard Operating Protocol at PageID.12661 (Dkt. 16-15). In addition, a document titled "Introduction to Utilization Management," which was filed in case number 16-13587 (No. 16-13597, Dkt. 86-16) and case number 17-13581, Lashuay v. DeLine, et. al. (E.D. Mich. 2017) (No. 17-13581, Dkt. 113-11), states that "[i]npatient hospitalizations are pre-approved by the OMD [Outpatient Medical Director] prior to admission for all non-emergent admissions." Introduction to Utilization [*9] Management at PageID.3593 (Dkt. 16-16) (emphasis in original). Information about Corizon's policies for emergent care is publicly available, and one could infer from this information that pre-approval is not required for emergent care admissions.

Further, the manual produced in Jackson, which contains a section on policies for emergency services, see UM Manual at PageID.288-289 (Dkt. 15), does not explicitly state that prior approval is unnecessary to transport an individual to the ER. Rather, it states that "[i]n the event of an emergency, the patient should be sent to an emergency department without undue delay" and that it is the responsibility of the medical provider to discuss the case with the hospital ER physician to determine whether to admit the patient or send the patient back to the facility. Id. at PageID.288. It is not apparent that the contrast between Corizon's process for outpatient specialty referrals and the process for ER visits could have come only from the UM manual.

[3] Kelly's counsel filed the amended complaint in Jackson on January 3, 2020 (No. 19-13382, Dkt. 12). Corizon produced the UM manual to Kelly's counsel on November 13, 2020. Mot. at 3.

2. Paragraph 87

Paragraph 87 of the complaint alleges the following:

> Corizon employees at Corizon's Brentwood, Tennessee headquarters monitored specialist-referral activity for the individual primary-care [*10] providers working in Michigan prisons, including the number of specialist referrals requested by each medical provider, and the percentage of each provider's requests that were "ATP'd" [resulted in an Alternative Treatment Plan].

Compl. ¶ 87.

The amended complaint in Jackson alleges the following:

> Corizon's Utilization Management Office for Michigan submits reports to corporate management detailing the number of 407 requests that are approved vs. ATP'd, with breakdowns by facility and by requesting [medical provider]. Dr. Papendick's supervisors base their assessments of his performance, at least in part, on the percentage of 407 requests that he approves.

Am. Compl. ¶¶ 38 (No. 19-13382, Dkt. 12).

The allegations in the two complaints—both of which state fundamentally that Corizon's corporate employees track individual medical providers' referrals and the percentage of those referrals that are approved or result in an ATP—are extremely similar.

In addition to pointing to the similarities between the two complaints, Kelly states that the fact that Corizon tracks ATP rates for individual providers has been available since the filing of the Corizon regional medical director's deposition transcript [*11] in 2020. Resp. at 8. That deposition was filed in a case in the Western District of Michigan, Case No. 19-00533, Spiller v. Stieve, et al. (W.D. Mich. 2019). In the deposition, the regional medical director stated the following:

> [W]e track to see what percentages people are getting of approvals and denials, because we want people to achieve something like a . . . 90 percent approval rate, so if they are getting, like, a 50 percent approval rate, then they are not doing something right. Either they are not filling it out right with the information that we need or they are asking for too many things that are just, you know, unnecessary, they are not doing the steps that could be done in the right order, so in that case, we would go back and try to retrain that person.

Lacey Dep. at PageID.542-543 (Dkt. 16-9). Thus, the fact that Corizon tracks and assigns importance to its individual medical providers' referrals and the percentage of referrals that result in an ATP is contained in publicly available documents. The difference in framing that Corizon points out—that the complaint in Jackson focuses on an individual provider, while the complaint in this case describes a global policy—may [*12] be attributed to differences in context between the two cases. As with paragraph 83, Corizon has not established that the allegations in paragraph 87 could have come only from the manual.

3. Paragraph 90

Paragraph 90 alleges the following:

> Both a high ATP rate and a high number of referral requests were indicators of poor job performance for medical providers working in Michigan prisons. Corizon's providers, such as Defendants Bohjanen and Kocha, were expected to request specialist referrals sparingly, and only when absolutely necessary.

Compl. ¶ 90.

The fact that a high ATP rate reflects poorly on the performance of a Corizon medical provider is evident from the Corizon regional medical director's testimony in Spiller, which stated that a 90% approval-of-referral rate is the goal and that 50% would indicate a problem. The allegation that Corizon providers were expected to request specialist referrals only when absolutely necessary is evident in the testimony of Dr. Papendick, Corizon's UM director, in case number 16-12113, Wright v. Sperling, et. al. (E.D. Mich. 2016) (No. 16-12113, Dkt. 77-7). In that case, Dr. Papendick was asked whether he had any criteria for determining whether some cases are referred to a specialist or given an alternative treatment [*13] plan. Papendick Dep. at PageID.2286 (Dkt. 16-10). He responded, "medical necessity," which he defined as "difficulty with activities of daily living, risks to life or limb." Id. These depositions indicate that the relevant information—that a high ATP rate and number of referrals indicate an issue with an individual medical provider and that referrals were to be used in cases of medical necessity—was available before the parties exchanged documents in the Jackson litigation. Further, while Corizon identifies sections in the manual that show that medical providers were evaluated on the number of referrals, number of ATPs, and percentage of ATPs, it does not point to a place in the manual that states that a high ATP rate is an indicator of poor

performance. Therefore, Corizon has not shown that these allegations must have come from the manual.

The Court finds that Corizon has not shown that Kelly's counsel violated the stipulated protective order in Jackson by using the UM manual to form the basis of his complaint in this action.

B. Sanctions

Because the evidence does not establish that Kelly's counsel violated the stipulated protective order in Jackson, sanctions are not warranted.

III. [*14] CONCLUSION

For the reasons set forth above, the Court denies Corizon's motion for sanctions (Dkt. 14).

SO ORDERED.

Dated: February 16, 2023

Detroit, Michigan

/s/ Mark A. Goldsmith

MARK A. GOLDSMITH

United States District Judge

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