

I. BACKGROUND

A. The Complaint

This action was originally filed in Rhode Island Superior Court and removed to this Court. Plaintiffs Jerry Adams and his common law spouse Cira Gonzalez allege that Mr. Adams received inadequate medical care from Defendants while incarcerated at the Adult Correctional Institutions (“ACI”). They contend that, from October 7 to October 8, 2010, Mr. Adams suffered from a serious adverse side effect caused by a medication he had been prescribed, and that RIDOC, its nurses and doctor delayed necessary treatment for hours until he was finally transported to the Rhode Island Hospital emergency department on the morning of October 8. As a result of the delay in treatment, Mr. Adams claims that he sustained permanent injuries, including impotence, disfigurement, scarring and difficulty urinating; he seeks money damages from the ACI physician, Dr. Melnick, RIDOC, Director Wall and various Doe defendants, described as nurses, doctors and correctional officers. Ms. Gonzalez claims loss of consortium.

Twenty of Plaintiffs’ twenty-one counts are based on medical malpractice. The remaining count invokes the Eighth Amendment of the United States Constitution and Article I, Section 8, of the Rhode Island Constitution;¹ it alleges that Defendants acted with deliberate indifference to substantial risk of harm, pain and injury to Mr. Adams, thereby inflicting cruel and unusual punishment. Plaintiffs assert seven counts against the Defendants who are the target of this motion (Director Wall and RIDOC): in addition to cruel and unusual punishment (Count XIX), each are sued for negligence (Counts III and V), lack of informed consent (Counts IV and VI), punitive damages (Count XX) and (as to Ms. Gonzalez only) loss of consortium (Count XXI), while RIDOC only is sued for corporate liability (Count VII) and vicarious liability

¹ The Eighth Amendment claim is presumptively based on 42 U.S.C. § 1983, although Plaintiffs do not invoke § 1983 in their complaint.

(Count VIII). The complaint specifies that Director Wall is sued based on his statutory responsibility² for the management, administration and supervision of the Rhode Island prison system, including that he is “responsible, by law, for enforcing the policies, procedures and protocols of the [RIDOC] . . . and for ensuring that employees of the RIDOC . . . would adhere to same.” Compl. ¶ 8.

Plaintiffs seek only money damages. Their complaint does not include a prayer for injunctive relief nor does it include factual (as opposed to conclusory) allegations that Mr. Adams’s injuries were the result of an unconstitutional pattern or practice of indifference to the medical needs of prisoners. Rather, it alleges that RIDOC and Director Wall were negligent, careless and reckless in the way that Mr. Adams’s medical emergency was handled by RIDOC employees, resulting in permanent injury.

B. The Challenged Orders

Plaintiffs’ motion seeks reconsideration or clarification of two text orders that I issued on November 17, 2014, (the “November 17 Order”) and January 14, 2015, (the “January 14 Order”).

² The complaint relies on R.I. Gen. Laws § 42-56-10, which states that “the director of the department of corrections shall:

- . . .
- (3) Establish and enforce standards for all state correctional facilities;
- (4) Supervise and/or approve the administration by the assistant directors of the department;
- (5) Manage, direct, and supervise the operations of the department;
- (6) Direct employees in the performance of their official duties;
- . . .
- (9) Determine the methods, means, and personnel by which those operations of the department are to be conducted;
- . . .
- (14) Establish training programs for employees of the department;
- (15) Investigate grievances and inquire into alleged misconduct within the department;
- . . .
- (22) Make and promulgate necessary rules and regulations incident to the exercise of his or her powers and the performance of his or her duties, including . . . care, and custody for all persons committed to correctional facilities.”

The November 17 Order arose out of Director Wall's Motion to Quash and for Protective Order as to Subpoena and Notice of Deposition of A.T. Wall (ECF No. 32). Citing Bogan v. City of Boston, 489 F.3d 417, 423 (1st Cir. 2007), and other cases establishing the well-settled principle that a high-ranking official should not be deposed unless he has direct personal information pertaining to material issues in the action, which is not available from another source, Director Wall argued that he should not be subject to an oral deposition notwithstanding his duty to establish and enforce standards and to supervise the operation of the facility pursuant to R.I. Gen. Laws § 42-56-10. The motion to quash emphasized that the RIDOC Defendants have been and are continuing to respond to Plaintiffs' requests for production and that other RIDOC employees (such as the nurses and a doctor) are being deposed. Instead of evidence permitting the inference that Director Wall was personally involved either in the decisions about Mr. Adams's medical care or in setting, or failing to set, medical policies about when to refer an inmate out of the facility for treatment, Plaintiffs sought the deposition based solely on Director Wall's status as the "captain of the ship." ECF No. 36-1 at 2-3.

On November 17, 2014, this Court granted Director Wall's motion by text order. To ensure that Plaintiffs would not be foreclosed from developing evidence that might form the foundation for deposing Director Wall, the Court qualified the text order, giving Plaintiffs leave to "propound written deposition questions pursuant to Fed. R. Civ. P. 31 as to matters within Director Wall's personal knowledge." No limits were placed on the number of written questions; further, the Order made clear that Plaintiffs retained the right to renotice Director Wall for an oral deposition if they establish the Bogan predicates, either through the responses to their written questions or through other discovery (such as produced documents or other depositions). Thus, the November 17 Order left Plaintiffs free to seek to depose Director Wall upon a showing

that he has direct personal knowledge regarding a matter relevant to the claims or defenses at issue in this case and that other discovery regarding that subject matter has been exhausted.

The January 14 Order arose from the Motion of Defendants RIDOC and Director Wall To Quash and for Protective Order as to Subpoena and Notice of Deposition Served upon the Department of Corrections (ECF No. 43) as well as from Plaintiffs' Motion to Take Deposition of Defendant Ashbel T. Wall (ECF No. 51). The resulting Order addressed two discrete issues.

First, adding the new facts that Director Wall attended Yale Law School and has participated on panels focused on the Supreme Court's seminal Eighth Amendment decisions in Estelle v. Gamble, 429 U.S. 97 (1976), and Brown v. Plata, 131 S. Ct. 1910 (2011), Plaintiffs restated their request for leave to take his oral deposition. At the time of this second request, Plaintiffs had initiated the written deposition permitted by the November 17 Order, but had not completed it; their renewed motion to take the deposition presented no information suggesting that Director Wall has personal knowledge pertinent to the claims and defenses in the case or otherwise attempted to comply with Bogan. Defendants replayed their prior argument that Director Wall's statutory duty to enforce policies pursuant to R.I. Gen. Laws § 42-56-10 is not enough to subject him to oral deposition. Treating Plaintiff's motion to take Director Wall's oral deposition as a motion for reconsideration of its November 17 Order, and after hearing extensive argument, the Court denied Plaintiffs' motion to take Director Wall's deposition "for the reasons set out in this Court's text order of November 17, 2014." Text Order of Jan. 14, 2015.

The second issue addressed by the January 14 Order arose from Plaintiffs' Fed. R. Civ. P. 30(b)(6) deposition notice served pursuant to Fed. R. Civ. P. 45 on RIDOC;³ it listed ten deposition topics and twelve document requests. Defendants objected to both the topics and the

³ The parties did not attach a copy of the RIDOC subpoena; the substance of the deposition topics and document requests are set out in Defendants' motion to quash. See ECF No. 44 at 4-6.

document requests as overbroad, irrelevant and duplicative of discovery to which they had already responded. For example, the notice purported to call for the designation of a witness to testify about such vague topics as RIDOC's "understanding" of the Eighth Amendment. Defendants also argued that the notice was procedurally troubling in that, for example, despite the absence of urgency, Plaintiffs served a Fed. R. Civ. P. 45 subpoena to shorten the usual thirty days allowed for RIDOC to respond to the document requests. See Fed. R. Civ. P. 34(b)(2).

Following extensive argument, the Court ruled that some of the Rule 30(b)(6) deposition topics were so vague and overbroad that RIDOC's motion to quash should be granted, while others should be narrowed to bring them into the bounds of relevancy.⁴ The Court also ruled that some of the document requests were so overbroad that they should be quashed.⁵ Making clear that Plaintiffs are entitled to discovery regarding RIDOC's relevant policies, procedures and practices (that is, those that relate to whether and when to send prisoners out for medical treatment), including any changes to any such policy or the failure to establish such a policy, the Court directed the parties to meet and confer to focus Plaintiffs' Rule 30(b)(6) topics and ordered RIDOC either to confirm that it had already produced all documents responsive to the requests for production that sought relevant documents or to make reasonable efforts to produce additional documents within a week. Based on the argument at the hearing, the January 14 Order granted RIDOC's motion to quash and for protective order (ECF No. 43), but also "provided that

⁴ To illustrate, Plaintiffs' notice required RIDOC to designate and prepare a witness to testify about which RIDOC employees carry personal insurance of any sort; as framed, the topic broadly included personal automobile and homeowner's insurance. The Court directed the parties to meet and confer to narrow such topics to what is relevant, including to explore whether an interrogatory answer might be a more proportional way to get a relevant response.

⁵ Generally, the requests that were quashed required the production of any document related in any way to the Eighth Amendment. Since the function of a prison is to carry out the punishments imposed by courts, virtually every aspect of the ACI's operations arguably are implicated by these broad and vague requests.

Plaintiff may seek relevant discovery with respect to some of the topics and document requests as stated at the hearing.” Text Order of Jan. 14, 2015.

C. Motion to Clarify/Reconsider/Or Compel

The instant “emergency”⁶ motion to clarify/reconsider/or compel seeks leave to take Director Wall’s oral deposition, as well as production of “policy, procedures, and training information of [RIDOC] regarding 42 U.S.C. 1983 as set forth by the Eighth Amendment, Estelle v Gamble, 429 U.S. 97 (1976), and its progeny.” ECF No. 61-1 at 2. In support of the motion to reconsider whether they may take Director Wall’s oral deposition, Plaintiffs rely on the same factual foundation – that Director Wall can be held liable pursuant to his statutory powers in R.I. Gen. Laws § 42-56-10 and based on his knowledge of the law interpreting the Eighth Amendment. ECF No. 61-1 at 1-2. As with their earlier effort, Plaintiffs filed the motion without waiting for Director Wall’s answers to the 102 written deposition questions that had been propounded pursuant to the November 17 Order and without attempting to comply with Bogan. The motion makes no effort to present any evidence establishing either that Director Wall has direct personal knowledge regarding a matter relevant to the claims or defenses in the case or that other sources of discovery regarding that topic have been exhausted. Similarly, Plaintiffs’ request for “policies, procedures, and training information” continues to focus broadly and vaguely on any policy “regarding 42 U.S.C. 1983 as set forth by the Eighth Amendment, Estelle v Gamble, 429 U.S. 97 (1976), and its progeny.” ECF No. 61-1 at 2. Plaintiffs provide no more information beyond what is quoted about what they are looking for – the motion refers

⁶ Initially and based on the designation of it as an “emergency,” this Court set the motion down for an immediate phone conference. That was cancelled at Plaintiffs’ request. At a hearing held a few days after the filing of the motion, Plaintiffs’ counsel conceded that this motion is not an “emergency.” Rather, he advised that it was designated as an emergency in the hope that it would be heard at that hearing, which was well before Defendants’ time to object. The Court did not take up the motion at the hearing and allowed Defendants the usual time to object.

neither to what Defendants had by then produced nor to what relevant information Plaintiffs still need based on the claims and defenses at issue in the case.

As grounds for both legs of their motion, Plaintiffs ask this Court to focus on a long line of well-settled authority in this Circuit holding that § 1983 supervisory liability may be imposed only based on the supervisor's own acts or omissions. See, e.g., Maldonado-Denis v. Castillo Rodriquez, 23 F.3d 576, 581 (1st Cir. 1994); Miranda v. Munoz, 770 F.2d 255, 260 (1st Cir. 1985); DiMarzo v. Cahill, 575 F.2d 15, 17-18 (1st Cir. 1978).

II. STANDARD OF REVIEW

It is well-established that “[t]he granting of a motion for reconsideration is an extraordinary remedy which should be used sparingly,” which is readily apparent “from the fact that the Federal Rules of Civil Procedure do not provide for a motion to reconsider; instead, a court’s inherent power gives it the ability to re-examine its interlocutory orders.” Palmer v. Champion Mortg., 465 F.3d 24, 30 (1st Cir. 2006); Luckerman v. Narragansett Indian Tribe, 965 F. Supp. 2d 224, 232 (D.R.I. 2013). “Unless the court has misapprehended some material fact or point of law, such a motion is normally not a promising vehicle for revisiting a party’s case and rearguing theories previously advanced and rejected.” Palmer, 465 F.3d at 30; see also Waters v. Walt Disney World Co., 237 F. Supp. 2d 162, 167 (D.R.I. 2002) (denying motion for reconsideration on the grounds that it simply restated arguments already made). To succeed, a movant must demonstrate “newly discovered evidence, ‘a manifest error of law,’ or that the court ‘patently misunderstood’ a party’s argument.” In re Loestrin 24 Fe Antitrust Litig., No. 1:13-MD-2472-S-PAS, 2014 WL 7883527, at *1 (D.R.I. Feb. 17, 2014) (quoting Ruiz Rivera v. Pfizer Pharm., LLC, 521 F.3d 76, 81–82 (1st Cir. 2008)).

III. ANALYSIS

Plaintiffs ground their motion to reconsider in their argument that this Court has made “a manifest error of law,” or “that the court ‘patently misunderstood’ a party’s argument.” In re Loestrin 24 Fe Antitrust Litig., 2014 WL 7883527, at *1. In support, they now rely on a line of cases that they contend stands for the proposition that, under § 1983, a plaintiff can establish deliberate indifference to medical needs when a high-ranking prison official has statutory obligations and fails to craft policies that would have prevented the unconstitutional conduct. See Maldonado-Denis, 23 F.3d at 581-83; Miranda, 770 F.2d at 260-62; DiMarzo, 575 F.2d at 17-18; Ferola v. Moran, 622 F. Supp. 814, 823 (D.R.I. 1985).

These cases simply do not support Plaintiffs’ contention that Director Wall may be liable under § 1983 solely based on his statutory responsibilities, supplemented by his legal education. See Ramirez-Lliveras v. Rivera-Merced, 759 F.3d 10, 19 (1st Cir. 2014) (§ 1983 liability cannot rest solely on defendant’s position of authority). Rather, they consistently confirm that vicarious liability is legally insufficient under § 1983 and that a claim cannot rest solely on the duties of the supervisor; rather, there must be an affirmative link between the supervisor and the unconstitutional conduct, for example by proving a known history of widespread abuse sufficient to alert a supervisor to ongoing violations, or by the supervisor having actual knowledge of the alleged abuse and approving or acquiescing to the conduct. See, e.g., Maldonado-Denis, 23 F.3d at 581-83; Ferola, 622 F. Supp. at 823; see also Ramirez-Lliveras, 759 F.3d at 19 (“The showing of causation must be a strong one, as that requirement contemplates proof that the supervisor’s conduct led inexorably to the constitutional violation.”). These cases provide no support for Plaintiffs’ claim that Director Wall’s understanding of Eighth Amendment case law constitutes “first-hand knowledge related to the claim being litigated,” which is the predicate to an oral

deposition of a high-ranking official. Bogan, 489 F.3d 423. Accordingly, they do not alter the Bogan analysis applicable to whether he may be exposed to an oral deposition. Based on the foregoing, neither the November 17 Order nor the January 14 Order was tainted by a mistake of law based on the failure to consider these cases.

Also important is that neither the November 17 Order nor the January 14 Order foreclosed Plaintiffs from taking an oral deposition of Director Wall. Rather, Plaintiffs were free to propound written deposition questions, which they have done, and come back if they can lay the factual foundation for an oral deposition. Plaintiffs have made no effort to explain why they should not be required to comply with the legal principle established in Bogan, which limits discovery access to a high-ranking government official like Director Wall. 489 F.3d at 423 (practice of calling high-ranking government officials as witnesses should be discouraged; absent extraordinary circumstances); Rivera-Freytes v. Puerto Rico, 286 F.R.D. 201, 204 (D.P.R. 2012) (depositions of high-ranking officials can go forward only if official has first-hand knowledge of claim and other persons cannot provide necessary information). It was and is clear that Plaintiffs remain free to proceed with the deposition they seek upon the showing required by Bogan.

Under these circumstances, I decline to employ an “extraordinary remedy which should be used sparingly” of what already was an “extraordinary” request for reconsideration. Palmer, 465 F.3d at 30. The motion for reconsideration of the Orders quashing the subpoena directed to Director Wall is denied. Further, finding no ambiguity in the clarity of the Orders with respect to Director Wall’s deposition, that aspect of the motion for clarification is also denied.

Plaintiffs’ request for reconsideration or clarification of the partial quashing of their Rule 30(b)(6) topics and related requests for documents is a horse of a slightly different color. Plaintiffs may not conduct a fishing expedition into all of RIDOC’s policies that somehow relate

to or are based on the Eighth Amendment, particularly with a complaint based on a single medical incident that neither alleges facts constituting an unconstitutional pattern or practice⁷ nor seeks injunctive relief. Therefore, reconsideration of the Orders' ban on such a fishing expedition is denied. See Penalbert-Rosa v. Fortuno-Burset, 631 F.3d 592, 596 (1st Cir. 2011) (to pursue discovery in § 1983 action to buttress speculation that defendant knowingly participated in wrongdoing requires minimum showing; fishing expedition not permitted); Brook v. Carey, 352 F. App'x 184, 185-86 (9th Cir. 2009) (per curiam) (in deliberate indifference to medical needs case, motion to compel discovery of "[a]ny and all grievances, complaints, or other documents received by the defendants . . . concerning mistreatment of inmates" is overbroad, immaterial to plaintiff's particular circumstance, and overly burdensome).

Nevertheless, inside the bounds of the wide net cast by Plaintiffs' Rule 30(b)(6) topics and document requests is a core set that are squarely relevant to which Defendants must respond if they have not already done so. This was made plain at the hearing and, to the extent that there is lingering doubt, the November 17 and January 14 Orders are hereby clarified to eliminate any remaining ambiguity: Plaintiffs are entitled to take comprehensive discovery on the RIDOC policies, procedures and practices that deal with the movement of a prisoner like Mr. Adams to the hospital for medical treatment, including those that relate to why he was not moved sooner.⁸

⁷ With respect to policy and practice, Plaintiffs allege in conclusory terms that Director Wall is "responsible, by law, for enforcing the policies, procedures and protocols of the [RIDOC]"; that Dr. Melnick's "conduct . . . executes or implements an official policy of the RIDOC . . . [which] can be found . . . in a pattern or persistent practice sufficiently known to and approved by RIDOC"; and that "RIDOC . . . negligently disregarded its duty as aforesaid and/or failed to promulgate and enforce policies and procedures to ensure the delivery of ordinary medical care." See Compl. at 2-3 ¶¶ 8, 11 (factual allegations section); at 9-10 ¶ 3 (Count VII). Further, even if Plaintiffs' complaint plausibly alleged a pervasive practice of noncompliance with the Eighth Amendment's constraints on the provision of medical care, it would not support an overbroad document request that vaguely calls for the production of all documents that relate to the Eighth Amendment.

⁸ Similarly, the first subpoena addressed to Director Wall asked him to produce documents. The focus of the motion to quash was on his objection to an oral deposition and not on the documents requested to be produced. Accordingly, the November 17 Order did not, and does not, bar Plaintiffs from propounding the three requests appended to the Wall subpoena as document requests directed to the RIDOC Defendants. See ECF No. 32-1 at 6.

If Defendants resist discovery on these plainly relevant topics, Plaintiffs may seek to compel with an appropriately crafted motion, after complying with their duty to meet and confer.

Because Plaintiffs did not incorporate such a motion to compel into the instant motion, their motion to compel is denied without prejudice.⁹

IV. CONCLUSION

Based on the foregoing, because Plaintiffs have not raised new and colorable reasons to reconsider the rulings of November 17, 2014, and January 14, 2015, to that extent Plaintiffs' Emergency Motion to Clarify/Reconsider/or Compel (ECF No. 61) is denied. To the extent that Plaintiffs' motion seeks clarification about the Court's rulings permitting them to obtain discovery regarding relevant RIDOC policies, procedures and practices, it is granted as set forth in this Memorandum and Order. To the extent that the motion seeks to compel, it is denied without prejudice to being restated in a motion that complies with Fed. R. Civ. P. 37(a)(1) and DRI LR Cv 37(a).

So ordered.

ENTER:

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
May 26, 2015

⁹ It is important to emphasize that Plaintiffs have not suggested any failure by Defendants to produce relevant documents. As far as the Court is aware, Defendants may well already have complied with the discovery obligations clarified by this Memorandum and Order