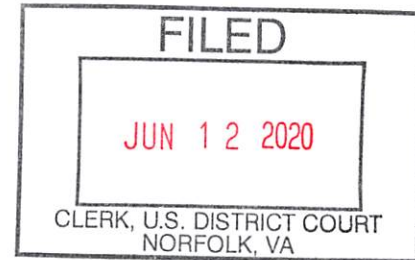


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



BLANCHE ELIZABETH HECKER,
ADMINISTRATOR OF THE ESTATE OF
MICHAEL STEWARD HOFFLER,
DECEASED,

Plaintiff,

v.

CIVIL ACTION NO. 2:19-cv-373

WESTERN TIDEWATER REGIONAL
JAIL AUTHORITY,

ALEX P. TAYLOR,

TIFFANY D. HARRELL,

FREIDA R. THOMAS,

NATALYA E. MOORE, and

INDIA DELOATCH,

Defendants.

MEMORANDUM OPINION AND ORDER

Before the Court are Motions to Dismiss from Defendants Tiffany D. Harrell (“Nurse Harrell”), Alex P. Taylor (“Dr. Taylor”), Freida R. Thomas (“Nurse Thomas”), Western Tidewater Regional Jail Authority (“WTRJA”) (ECF Nos. 9–10), Natalya E. Moore (“Nurse Moore”) (ECF Nos. 19–20), and India Deloatch (“Nurse Deloatch”) (ECF Nos. 49–50). Defendants have also requested hearing on their Motions to Dismiss. *See* ECF Nos. 12, 21, 50. After reviewing the relevant filings, the Court has determined that hearings on the Motions to Dismiss are not necessary. Accordingly, the Defendants’ request for hearings are **DENIED**. For the following reasons, Defendants’ Motions to Dismiss are **GRANTED**.

I. FACTUAL AND PROCEDURAL HISTORY

The Amended Complaint details a series of events that culminated in Michael Steward Hoeffler's ("Mr. Hoeffler") tragic death while he was in the custody of the WTRJA. ECF No. 37. The following allegations are accepted as true from the Amended Complaint set forth by Blanche Elizabeth Hecker ("Ms. Hecker"), the administrator of Mr. Hoeffler's estate. *Id.* On October 15, 2018, Mr. Hoeffler was arrested in connection with a probation violation and transported to the Western Tidewater Regional Jail. Nurse Thomas completed Mr. Hoeffler's intake assessment. She recorded no sign of acute physical illness and documented his use of methadone for addiction treatment. Nurse Thomas deemed Mr. Hoeffler's body systems normal, his vital signs normal, and he was cleared for general population.

On October 17, 2018, Mr. Hoeffler began to feel sick. At first, he stated that he was cold, but then began to complain that "his insides were burning." His complaints persisted until he was transported to WTRJA's medical department in the early evening of October 17, 2018. At the medical department, Mr. Hoeffler was evaluated by Nurse Harrell using the Clinical Opioid Withdrawal Scale ("COWS"). Mr. Hoeffler expressed his desire to be transported to the emergency room, but was placed in a camera cell at the regional jail and the COWS detox protocol was initiated, as ordered by Dr. Taylor. While in the camera cell, Mr. Hoeffler was observed sticking his fingers down his throat. By the morning of October 18, 2019, he was discovered with a bedsheet tied around his neck and was placed on suicide precautions. At some point between 5:35 p.m. on October 17, 2018 and 7:15 a.m. the next morning, Nurse Thomas also saw Mr. Hoeffler in connection with the COWS protocol and recorded his vital signs, but did not calculate a COWS score.

Nurse Harrell created another COWS protocol record on the morning of October 18, 2018, which documented that Mr. Hoeffler was irritable and had an extremely high pulse of 143, a sweaty forehead, and pain in his testicles, but refused to have his temperature taken. However, Mr. Hoeffler's COWS score decreased from 20 on the evening of October 17, 2018 to 12 on the morning of October 18, 2018. By 12:30 p.m., Mr. Hoeffler's pulse was still elevated, but had lowered to 111. Later that evening at 7:20 p.m., Nurse Harrell assessed Mr. Hoeffler for his persistent complaints of pain and contacted Dr. Taylor, who stated Mr. Hoeffler would be seen later that evening. After being evaluated by Dr. Taylor, Mr. Hoeffler was given an Albuterol breathing treatment and sent back to his cell.

At 11:00 p.m. on October 18, 2018, the Amended Complaint alleges that Defendant Deloatch incorrectly completed a COWS report by failing to record Mr. Hoeffler's blood pressure and pulse. By 12:14 a.m. on October 19, 2018, Dr. Taylor was unable to record Mr. Hoeffler's pulse and observed that he "appear[ed] dry and volume contracted." The Amended Complaint also alleges that Dr. Taylor had knowledge of Mr. Hoeffler's previous episode of renal stones. After seeing Mr. Hoeffler for the second time, Dr. Taylor sent him back to his cell after ordering fluids and ongoing monitoring. At 2:47 a.m., Nurse Moore attempted to start an IV in Mr. Hoeffler's forearm, but was unsuccessful and he was returned to his cell. At the time Mr. Hoeffler was sent back to his cell, Nurse Moore did not notify Dr. Taylor that she had failed to start an IV in Mr. Hoeffler's arm and reported that he had "no complaints." The Amended Complaint challenges the legitimacy of Nurse Moore's recording of her early morning encounter with Mr. Hoeffler based on the timeline of his demise, proffering that "it is implausible that Hoeffler would have had no complaints at this time."

At 6:36 a.m. on October 19, 2018, Mr. Hoeffler was found on the floor of his cell. He was pronounced dead at 6:50 a.m. An autopsy revealed the cause of death to be a perforated gastric ulcer, meaning that Mr. Hoeffler had been suffering from untreated peritonitis before his death. The Amended Complaint concedes that Mr. Hoeffler did not overdose and his suicide attempt was not relevant in his death. There is also no allegation that Mr. Hoeffler died as a result of opioid withdrawal.

Ms. Hecker filed the initial complaint in her role as the administrator of Mr. Hoeffler's estate on July 16, 2019. ECF No. 1. On September 9, 2019, Nurse Harrell, Dr. Taylor, Nurse Thomas, and WTRJA filed their Motion to Dismiss. ECF Nos. 9–10. On September 23, 2019, Nurse Moore filed her Motion to Dismiss. ECF Nos. 19–20. These Motions became ripe after responses in opposition and replies. *See* ECF Nos. 13, 14, 24, 25. On February 20, 2020, Ms. Hecker was granted leave to file the Amended Complaint, but the previously filed Motions to Dismiss were permitted to survive without re-briefing. ECF No. 35. On February 21, 2020, Ms. Hecker filed the Amended Complaint, consistent with the Court's order. ECF No. 37. On March 16, 2020, Nurse Deloatch filed her Motion to Dismiss. ECF Nos. 49–50. This Motion became ripe after full briefing. *See* ECF Nos. 58, 59. Accordingly, each of the Defendants' Motions to Dismiss are ripe for disposition.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal of actions that fail to state a claim upon which relief can be granted. The United States Supreme Court ("Supreme Court") has stated that in order "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,

570 (2007)). Specifically, “[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. Moreover, at the motion to dismiss stage, the court is bound to accept all of the factual allegations in the complaint as true, but is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Id.* However, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* Assessing the claim is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.

III. DISCUSSION

Supplemental jurisdiction over state claims exists when the state claims in question are related to the same case or controversy as claims made under the original jurisdiction of the district court. 28 U.S.C. § 1367. A district court should decline to exercise supplemental jurisdiction when all claims over which it has original jurisdiction have been dismissed. *Id.* § 1367(c)(3). Plaintiff’s Amended Complaint contains the following claims: Count I, Wrongful Death based on the Defendants’ alleged negligence pursuant to Virginia state law; Count II, Wrongful Death based on the Defendants’ alleged gross negligence pursuant to Virginia state law; Count III, Wrongful Death based on the Defendants’ alleged willful and wanton negligence pursuant to Virginia state law; and Count IV, based on Defendants Taylor, Harrell, Thomas, Moore, and Deloatch’s alleged denial, delay, and withholding of medical care to Mr. Hoeffler. ECF No. 37 at 29–36. Accordingly, the Court has original jurisdiction over Count IV, but lacks independent jurisdiction over Counts I–III. Therefore, the Court must evaluate the sufficiency of the allegations presented relevant to Count IV before addressing Counts I–III.

A. The Deliberate Indifference Standard and Count IV

Officials violate the Eighth Amendment when they are deliberately indifferent to the serious medical needs of individuals imprisoned in their facilities. *Estelle v. Gamble*, 429 U.S. 97, 97 (1976). This standard results in liability when officials have knowledge of and disregard an objectively serious condition, medical need, or risk of harm. *Farmer v. Brennan*, 511 U.S. 825, 834, 837 (1994). Detained individuals are entitled to at least the same protection under the Fourteenth Amendment as are convicted persons under the Eighth Amendment. *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 243–44 (1983). Therefore, deliberate indifference to the serious medical needs of a detained individual violates the due process clause. *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 850 (1998). Deliberate indifference has two components: (1) the objective component and (2) the subjective component. *Farmer v. Brennan*, 511 U.S. 825, 834, 845 (1994) (“objectively, the deprivation alleged must be sufficiently serious...the subjective factor deliberate indifference should be determined in light of the prison authorities’ current attitudes and conduct”).

The objective component requires the plaintiff to show a sufficiently serious medical need. *Id.* at 834. However, a purely objective test for determining liability—whether the risks posed by the serious health condition were known or should have been known by the officials—has been explicitly rejected by the Supreme Court. *Farmer*, 511 U.S. at 826.

A plaintiff may satisfy the subjective component by showing the following: (1) the relevant officials were aware of facts from which the inference could be drawn that a substantial risk of serious harm existed; and (2) the officials inferred from the facts known to them that there was a substantial risk of serious harm. *Id.* at 837. However, “officials may not be held liable if they prove that they were unaware of even an obvious risk or if they responded reasonably to a

known risk, even if the harm ultimately was not averted.” *Id.* at 826.

The Amended Complaint sets forth facts clearly indicating that Mr. Hoeffler was suffering from opioid addiction prior to his death. *See* ECF No. 37 at ¶¶ 45, 110 (detailing that Mr. Hoeffler was being treated with methadone prior to his admission to WTRJA and had the substance in his body at the time his autopsy was performed). The allegations also make clear that the Defendants treated Mr. Hoeffler for opioid withdrawal symptoms after his complaints of discomfort began on October 17, 2018. *See e.g. id.* at ¶ 87 (“Dr. Taylor assessed Hoeffler as clinically dehydrated and detoxifying from methadone”); *id.* at ¶¶ 37, 41, 42, 48, 57, 60, 61, 75, 77 (detailing allegations relative to Hoeffler’s monitoring with COWS, a system designed to assist medical professionals in evaluating the symptoms of opioid withdrawal). Treating Mr. Hoeffler for opioid withdrawal symptoms was appropriate under the circumstances, as withdrawal from alcohol or drugs is a dangerous and unpleasant process that may constitute a serious medical need, satisfying the objective component. *Gonzalez v. Cecil Cty., Md.*, 221 F. Supp. 2d 611, 616 (D. Md. June 4, 2002).

Notwithstanding the serious medical need that may be presented by opioid withdrawal symptoms in general and Mr. Hoeffler’s use of methadone, his cause of death was a perforated gastric ulcer, a separate and distinct serious medical need. *See* ECF No. 37 at ¶ 107. Accordingly, the Court must evaluate whether the Amended Complaint contains sufficient allegations that the Defendants violated the subjective component relative to Mr. Hoeffler’s perforated gastric ulcer—not the quality of their treatment of Mr. Hoeffler’s potential withdrawal symptoms, the Defendants’ monitoring efforts after his failed suicide attempt, or the overall quality of the medical care he received as defined by a traditional medical malpractice negligence tort. *See Farmer*, 511 U.S. at 836 (“deliberate indifference [lies] somewhere between

the poles of negligence at one end and purpose or knowledge at the other”).

Upon examination of the Amended Complaint, there are insufficient facts to conclude that the Defendants inferred Mr. Hoeffler had a potentially fatal perforated gastric ulcer and simply disregarded the risks posed by that particular condition. The allegations indicate the Defendants treated Mr. Hoeffler for opioid withdrawals from the time he first complained to Nurse Harrell on October 17, 2018 until Dr. Taylor and Nurse Moore attempted to treat his dehydration in the early morning hours of October 19, 2018. Moreover, all of Mr. Hoeffler’s symptoms were consistent with opioid withdrawal and his ingestion of methadone prior to his admission to WTRJA. Specifically, Mr. Hoeffler was sweating, had an elevated pulse, and complained that his insides were “burning.”¹ Based on these symptoms, the Defendants evaluated Mr. Hoeffler at least five different times within 72 hours for opioid withdrawal. Although the Amended Complaint alleges that Dr. Taylor knew of a previous episode of renal stones, there is no indication that any Defendant knew Mr. Hoeffler had a perforated gastric ulcer. Further, there is no allegation that any Defendant drew an inference that Mr. Hoeffler had a perforated gastric ulcer and disregarded that risk to continue improperly monitoring and treating him for opioid withdrawal symptoms. Accordingly, the Amended Complaint fails to state a claim of deliberate indifference against Dr. Taylor, Nurse Harrell, Nurse Thomas, Nurse Moore, and Nurse Deloatch. Therefore, Count IV of the Amended Complaint is dismissed with prejudice.

¹ The Amended Complaint repeatedly refers to the Clinical Opiate Withdrawal Scale in outlining the relevant allegations. Accordingly, COWS is incorporated by reference into the Amended Complaint. *See Phillips v. LCI Int’l Inc.*, 190 F.3d 609, 618 (4th Cir. 1999) (holding that courts may consider evidence outside of the complaint when the evidence at issue is integral to the claims asserted, is explicitly relied on in the complaint, and is of unchallenged authenticity). COWS lists Resting Pulse Rate, Sweating, Restlessness, Pupil Size, Bone or Joint Aches, Runny Nose or Tearing, GI Upset, Tremor, Yawning, Anxiety or Irritability, and Gooseflesh Skin as key metrics in evaluating the severity of opioid withdrawal symptoms. CLINICAL OPIATE WITHDRAWAL SCALE, <https://www.drugabuse.gov/sites/default/files/files/ClinicalOpiateWithdrawalScale.pdf>. Mr. Hoeffler was experiencing most, if not all, of these symptoms to varying degrees from October 17, 2018 to the morning of October 19, 2018.

B. Claims I–III

Title 28, United States Code, Section 1376(c)(3) allows district courts to decline supplemental jurisdiction after dismissing all claims over which it has original jurisdiction. *See also United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725–26 (1966) (holding that the existence of a federal question under Article III, § 2 of the Constitution is a matter of discretion for the district court). Having dismissed all claims arising under federal question jurisdiction, the Court declines to exercise jurisdiction over the remaining claims arising under Virginia law. Therefore, Counts I–III are dismissed without prejudice.


IV. CONCLUSION

For the foregoing reasons, the Defendants’ Motions to Dismiss (ECF Nos. 9, 19, 49) are **GRANTED**. Count IV of the Amended Complaint is **DISMISSED WITH PREJUDICE**. Counts I–III of the Amended Complaint are **DISMISSED WITHOUT PREJUDICE**.

The Court **DIRECTS** the Clerk to provide a copy of this Order to the parties.

IT IS SO ORDERED.

Norfolk, Virginia
June 2, 2020



Raymond A. Jackson
United States District Judge