UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

VICTOR L. BERGERON,

Plaintiff,

v.

Case Number 02-10298-BC
Honorable David M. Lawson

MICHAEL FISCHER, COUNTY OF IOSCO, HOWARD HANFT, and COUNTY OF OGEMAW,

Defendants.
_____ /

OPINION AND ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING IN PART AND DENYING IN PART DEFENDANTS FISCHER AND IOSCO COUNTY'S MOTION FOR JUDGMENT ON THE PLEADINGS AND FOR SUMMARY JUDGMENT, AND GRANTING DEFENDANTS HANFT AND OGEMAW COUNTY'S MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

The plaintiff, Victor Bergeron, has filed a *pro se* complaint against the defendants alleging a violation of the Fourteenth Amendment, via 42 U.S.C. § 1983, on the basis that the defendants were deliberately indifferent to the plaintiff's serious medical needs. Now before the Court is the report of Magistrate Judge Charles E. Binder, operating under an order of reference to conduct all pretrial proceedings, recommending that the motion for judgment on the pleadings and for summary judgment by defendants Fischer and Iosco County be granted in part and denied in part and the motion to dismiss and for summary judgment by defendants Hanft and Ogemaw County be granted. Both the plaintiff and defendant Iosco County objected to the recommendation.

After conducting a *de novo* review of the motion papers, the Report and Recommendation, and the parties' responses thereto, the Court finds that the plaintiff has failed to demonstrate a material fact dispute that requires a resolution by trial on the question of whether defendants Fischer, Hanft, and Ogemaw County treated the plaintiff's medical needs with deliberate indifference.

However, accepting all of the plaintiff's well-pleaded allegations as true, as the Court must at this stage of the proceedings, the Court finds that the plaintiff has stated a claim against Iosco County for deliberate indifference in failing to train its jail officials to adequately respond to the needs of diabetic inmates, which resulted in an alleged violation of the plaintiff's constitutional rights. The Court also finds that Iosco County has failed to meet its initial burden of demonstrating the absence of a genuine dispute over material facts. The Court will therefore adopt the Report and Recommendation, grant the motion to dismiss and for summary judgment by defendants Hanft and Ogemaw County, and grant in part and deny in part the motion for judgment on the pleadings and for summary judgment by defendants Fischer and Iosco County.

I.

This cases arises out of the plaintiff's incarceration in two Michigan county jails in late 2000 and early 2001. The complaint lists as defendants Michael Fischer, the Iosco County Sheriff, and Howard Hanft, the Ogemaw County Sheriff, who are named in the plaintiff's complaint in both their official and individual capacities, as well as Iosco and Ogemaw Counties. In his complaint, the plaintiff states that he was arrested on December 27, 2000 pursuant to a warrant from Ogemaw County for failure to pay child support. The plaintiff was taken first to the Iosco County Jail where he alleges that he informed the booking officer that he is an insulin-dependent diabetic, and he asked to see the medical staff about his needs. Compl. at ¶ 10. The plaintiff claims that the booking officer deliberately ignored his medical needs and requests, and as a result on December 29, 2000 he was "rushed to a local hospital in a condition that amounts to a state of diabetic coma, where he was found with a sugar level of 425 and a white blood count level of 13,000." *Id*. at ¶ 12. After

spending two days in the hospital, the plaintiff claims that he was returned to the Iosco County Jail and was "still not given treatment in compliance with doctor's order." *Ibid*.

The plaintiff alleges that his "keeper and his keeper's jail staff" violated his constitutional rights by treating his life-threatening medical needs with deliberate indifference, and that he experienced pain and suffering and "almost died as a result thereof because of the acts and omission of the jail Booking Officer, and indirectly as a result of [Sheriff] Fischer's inaction. Fischer had reason to know what the law and constitution require of him as the sheriff and keeper of prisoners, and that he could have taken action to prevent what happened to Bergeron, but failed to do so." *Ibid*. The plaintiff also alleges that "Fischer is both directly and indirectly liable for what happened to him because[] Fischer had failed to enforce his own policies for prisoner medical treatment[] and because Fischer failed to properly supervise his jail staff and the treatment of prisoners in his jail." *Ibid*.

Iosco County transferred the plaintiff to the Ogemaw County jail in February 2001. The plaintiff alleges he informed the booking officer at the Ogemaw County jail of his condition, including the amount and type of insulin he needed, but again the plaintiff "was denied his insulin and other diabetic needs, but instead was given insulin that was designated community property so to speak, and not prescribed for him or his personal condition." *Id*. at ¶ 15. The plaintiff claims he became "very ill" as a result and asserts that Sheriff Hanft and Ogemaw County are liable for deliberate indifference to his medical needs and for their failure and refusal to abide by the "long-standing law" regarding prisoner's rights. *Id*. at ¶ 16.

Defendants Fischer and Iosco County filed a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) and for summary judgment. Iosco County argues that the

plaintiff's complaint does not allege that an Iosco County policy or custom caused his alleged injuries and therefore the complaint against it must be dismissed. Fischer argues that he was not even the Iosco County Sheriff at the time of the plaintiff's incarceration and hospitalization, and also that the complaint does not contain any allegation that he directly participated in the denial of the plaintiff's medical needs. Fischer also raises the defense of qualified immunity.

Defendants Ogemaw County and Hanft also filed a motion to dismiss pursuant to Rule 12(c) and for summary judgment asserting that the complaint does not allege that an Ogemaw County policy or custom caused the plaintiff's injuries, and does not allege that Hanft directly participated in the denial of the plaintiff's medical care while the plaintiff was incarcerated in the Ogemaw County Jail. Hanft also raises the defense of qualified immunity.

In his Report and Recommendation, the magistrate judge suggested that although the plaintiff did not specifically allege in his complaint that an Iosco County policy or custom caused a violation of his constitutional rights, the Court should read the plaintiff's complaint against Iosco County as containing a claim that the county failed to properly supervise and train its jail staff because *pro se* complaints must be construed liberally and the plaintiff has made general allegations in his complaint regarding the training and practices of staff at the Iosco County Jail. The magistrate judge also suggested that because at this stage of the proceedings the Court must accept all of the plaintiff's well-pleaded allegations in the complaint as true, and because Iosco County has not put forth any evidence regarding the training which occurred at the Iosco County Jail, the claims against Iosco County for deliberate indifference in failing to train its jail officers to adequately respond to the needs of diabetic inmates should not be dismissed and Iosco County is not entitled to a judgment as a matter of law. However, the magistrate judge recommended that the Court grant the remaining

defendants' motions for summary judgment on the grounds that there is no evidence that these defendants treated the plaintiff's medical needs with deliberate indifference.

In its objections to the recommendation, Iosco County argues that because the plaintiff did not specify that liability was being premised on a "failure to train" theory, it was in no way provided with fair notice that the plaintiff was alleging that it failed to properly train jail staff handling inmates with diabetes. Iosco County also argues that as a matter of law, the plaintiff cannot show that it acted with deliberate indifference to the plaintiff's medical needs or establish the requisite causal nexus between the county's conduct and the plaintiff's alleged injury.

In the plaintiff's objections to the recommendation, the plaintiff states that Ogemaw County records "clearly show a deliberate intent to punish even though medication of insulin was provided and taken by patient Victor Bergeron." The plaintiff also assails the methods by which he received medical treatment while in the custody of Ogemaw County officials and claims that defendant Hanft was notified of his diabetic condition by jail personnel.

II.

A motion for judgment on the pleadings by a defendant pursuant to Rule 12(c) of the Federal Rules of Civil Procedure is equivalent to a motion to dismiss under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. *Games Galore of Ohio, Inc. v. Masminster*, 154 F. Supp. 2d 1292, 1297 (S.D. Ohio 2001). To survive a motion to dismiss, the plaintiff must allege facts that if proved would result in the requested relief. *Helfrich v. PNC Bank, Kentucky, Inc.,* 267 F.3d 477, 480 (6th Cir. 2001). The complaint "must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under *some* viable legal theory." *Scheid v. Fanny Farmer Candy Shops, Inc.,* 859 F.2d 434, 436 (6th Cir. 1988). Where the plaintiff offers multiple

factual scenarios for a particular claim, only one need be sufficient. *Briggs v. Ohio Elections Comm'n*, 61 F.3d 487, 494 (6th Cir. 1995).

When considering a motion under Rule 12(b)(6), the district court must construe the plaintiff's well-pleaded allegations in the light most favorable to the plaintiff and accept the allegations as true. *Ruffin-Steinback v. dePasse,* 267 F.3d 457, 461 (6th Cir. 2001). However, the district court need not accept legal conclusions unsupported by the facts pleaded. *Lillard v. Shelby County Bd. of Educ.,* 76 F.3d 716, 726 (6th Cir. 1996). More is ordinarily required to satisfy the federal notice pleading requirements. *Scheid,* 859 F.2d at 436 (citing 5A C. Wright & A. Miller, Federal Practice & Procedure § 1357, at 596 (1969)). Although it is generally improper to consider matters outside of the pleadings on a motion to dismiss, that rule does not apply to documents referenced by the pleadings themselves that are central to the plaintiff's claim. *Greenberg v. Life Ins. Co. of Va.*, 177 F.3d 507, 514 (6th Cir. 1999).

A motion for summary judgment under Federal Rule Civil Procedure 56 presumes the absence of a genuine issue of material fact for trial. The Court must view the evidence and draw all reasonable inferences in favor of the non-moving party, and determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby*, *Inc.*, 477 U.S. 242, 251-52 (1986). The "[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (internal quotes omitted).

A fact is "material" if its resolution affects the outcome of the lawsuit. *Lenning v. Commercial Union Ins. Co.*, 260 F.3d 574, 581 (6th Cir. 2001). "Materiality" is determined by the substantive law claim. *Boyd v. Baeppler*, 215 F.3d 594, 599 (6th Cir. 2000). An issue is "genuine" if a "reasonable jury could return a verdict for the nonmoving party." *Henson v. Nat'l Aeronautics & Space Admin.*, 14 F.3d 1143, 1148 (6th Cir. 1994) (quoting *Anderson*, 477 U.S. at 248). Irrelevant or unnecessary factual disputes do not create genuine issues of material fact. *St. Francis Health Care Ctr. v. Shalala*, 205 F.3d 937, 943 (6th Cir. 2000). When the "record taken as a whole could not lead a rational trier of fact to find for the nonmoving party," there is no genuine issue of material fact. *Simmons-Harris v. Zelman*, 234 F.3d 945, 951 (6th Cir. 2000). Thus a factual dispute which "is merely colorable or is not significantly probative" will not defeat a motion for summary judgment which is properly supported. *Kraft v. United States*, 991 F.2d 292, 296 (6th Cir. 1993); *see also Int'l Union, United Auto., Aerospace and Agric. Implement Workers of Am. v. BVR Liquidating, Inc.*, 190 F.3d 768, 772 (6th Cir. 1999).

The party bringing the summary judgment motion has the initial burden of informing the district court of the basis for its motion and identifying portions of the record which demonstrate the absence of a genuine dispute over material facts. *Mt. Lebanon Pers. Care Home, Inc. v. Hoover Universal, Inc.*, 276 F.3d 845, 848 (6th Cir. 2002). The party opposing the motion then may not "rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact" but must make an affirmative showing with proper evidence in order to defeat the motion. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479 (6th Cir. 1989). A party opposing a motion for summary judgment must designate specific facts in affidavits, depositions, or other factual material showing "evidence on which the jury could reasonably find for the plaintiff." *Anderson,* 477 U.S. at 252. If

the non-moving party, after sufficient opportunity for discovery, is unable to meet his or her burden of proof, summary judgment is clearly proper. *Celotex Corp.*, 477 U.S. at 322-23; *Napier v. Madison County, Ky.*, 238 F.3d 739, 741-42 (6th Cir. 2001).

The party who bears the burden of proof must present a jury question as to each element of the claim. *Davis v. McCourt*, 226 F.3d 506, 511 (6th Cir. 2000). Failure to prove an essential element of a claim renders all other facts immaterial for summary judgment purposes. *Elvis Presley Enters., Inc. v. Elvisly Yours, Inc.*, 936 F.2d 889, 895 (6th Cir. 1991).

The Supreme Court has held that the Eighth Amendment imposes upon prison officials the duty to "provide humane conditions of confinement," and that among the obligations attendant to the discharge of that duty is to "ensure that inmates receive adequate food, clothing, shelter, and medical care." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). **However, "Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions. . . . [T]he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law." *Ingraham v. Wright*, 430 U.S. 651, 671-672, n. 40 (1977). Because the plaintiff in this case was being detained prior to trial and therefore had not received a formal adjudication of guilt at the time he required medical care, the Eighth Amendment has no application. *City of Revere v. Massachusetts General Hosp.*, 463 U.S. 239, 244 (1983); *Watkins v. City of Battle Creek*, 273 F.3d 682, 685 (6th Cir. 2001).**

"Under the Fourteenth Amendment Due Process Clause, however, pretrial detainees have a right to adequate medical treatment that is analogous to the Eighth Amendment rights

of prisoners." *Watkins*, 273 F.3d at 685-86; *see City of Revere*, 463 U.S. at 244 (holding that the due process rights of a pretiral detainee "are at least as great as the Eighth Amendment protections available to a convicted prisoner"). To sustain a cause of action under the Due Process Clause of the Fourteenth Amendment, via Section 1983, for failure to provide medical treatment, the plaintiff must establish that the defendants acted with "deliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

A claim that the a prison official was deliberately indifferent to a prisoner's adequate medical care has both an objective and a subjective component. To satisfy the objective component, the plaintiff must allege that the medical need asserted is "sufficiently serious." *Farmer*, 511 U.S. at 834. "To satisfy the subjective component, the plaintiff must allege facts which, if true, would show that the official being sued subjectively perceived facts from which to infer substantial risk to the prisoner, that he did in fact draw the inference, and that he then disregarded that risk." *Comstock v. McCrary*, 273 F.3d 693, 703 (6th Cir. 2001) (citing *Farmer*, 511 U.S. at 837).

A.

The plaintiff here alleges that defendant Fischer, in his official capacity as sheriff of Iosco County and in his individual capacity, was deliberately indifferent to his needs as a diabetic, and that he "almost died as a result thereof because of the acts and omissions of the jail Booking Officer, and indirectly as the result of Fischer's inaction." Compl. at ¶ 12. **The plaintiff also alleges that Fischer failed to enforce county jail policies regarding medical treatment for prisoners and failed to properly supervise his jail staff. *Ibid.***

As the magistrate judge **correctly stated, in an official-capacity suit against a local governmental official, the real party in interest is not the named official but the local**

government entity of which the official is an agent. *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). Therefore, the claims asserted against Fischer in his official capacity are duplicative of the claims asserted against Iosco County and these claims will be dismissed.

The Court also agrees with the magistrate judge **that** Fischer is entitled to summary judgment on the claims brought against him in his individual capacity. Fischer has submitted an affidavit in which he avers that not only was he not present at the Iosco County Jail on December 27, 2000, the day the plaintiff arrived, he was not even the county sheriff on that date. *See* Fischer & Iosco County Mot. to Dismiss and for Summ. J. Ex. B., aff. of Michael Fischer at ¶¶ 3-5. The plaintiff has failed to come forward with any evidence to rebut this affidavit or to show that although Fischer did not become the county sheriff until after the plaintiff was booked into the Iosco County jail, he was in a supervisory position over the jail staff, or was otherwise responsible for the training of staff workers at the jail during the relevant time period. Nor has the plaintiff shown that Fischer acquiesced to or encouraged any unconstitutional conduct on the part of the jail workers. The plaintiff has not designated specific facts showing evidence on which a jury could reasonably find that Fischer subjectively disregarded the plaintiff's serious medical needs, *see Anderson*, 477 U.S. at 252; therefore, Fischer is entitled to a judgment as a matter of law.

B.

The plaintiff also alleges that Iosco County violated his constitutional right to receive adequate medical care. The magistrate judge suggested that the plaintiff's *pro se* complaint against Iosco County be construed as a "failure to train" claim. Iosco County contends that the complaint failed to state a claim for municipal liability because the plaintiff did not allege in his complaint that a government policy or custom caused a constitutional violation.

The Court finds that the complaint, properly construed, contains a "failure to train" allegation against defendant Iosco County. A *pro se* litigant's complaint is to be construed liberally, *Middleton v. McGinnis,* 860 F. Supp. 391, 392 (E.D. Mich. 1994)(citing *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)); that is, it is held to a "less stringent standard" than those drafted by attorneys. *Haines v. Kerner*, 404 U.S. 519 (1972). In his complaint, the plaintiff alleges that his "keeper and his keeper's jail staff" treated his life-threatening medical needs with deliberate indifference. Compl. at ¶ 12. The plaintiff also alleges that Fischer, as the sheriff of Iosco County, "failed to enforce his own policies for prisoner medical treatment" and "failed to properly supervise his jail staff and the treatment of prisoners in his jail." *Ibid*. Recognizing that Federal Rule of Civil Procedure 8 only requires that a complaint include "a short and plain statement of the claim showing that the pleader is entitled to relief," and considering that the plaintiff is a *pro se* plaintiff whose pleadings must be construed with generosity, the Court finds that the complaint gives fair notice to Iosco County that it, through its agent Sheriff Fischer, failed to properly train its employees and could be subject to municipal liability. The motion to dismiss by defendants Iosco County and Fischer, therefore, will be denied.

Iosco County argues that even if the complaint is construed to include a "failure to train" claim against it, the claim should be dismissed on summary judgment because it has no merit. As previously noted, the plaintiff's federal cause of action is based on 42 U.S.C. § 1983, under which the plaintiff must establish that a person acting under color of state law deprived him of a right secured by the Constitution or laws of the United States. *Berger v. City of Mayfield Heights*, 265 F.3d 399, 405 (6th Cir. 2001). Local governmental institutions are considered "persons" for the purpose of Section 1983, but municipalities cannot be held responsible for a constitutional

deprivation unless there is a direct causal link between a county policy or custom and the alleged constitutional deprivation. The plaintiff "must identify the policy, connect the policy to the city itself and show that the particular injury was incurred because of the execution of that policy." *Garner v. Memphis Police Dep't*, 8 F.3d 358, 363-64 (6th Cir. 1993). Proof of a single incident of unconstitutional activity may be sufficient to impose liability, but not unless the evidence includes proof that it was caused by an existing, unconstitutional municipal policy. *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823-24 (1985); *see Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978) (holding that a municipality is accountable for a violation of a plaintiff's rights only if it is caused by a policy, practice, or custom that was the "moving force" behind the plaintiff's injury).

Under some circumstances, a municipality or local county may be held liable under Section 1983 **"for constitutional violations resulting from its failure to train municipal employees."** ***City of Canton, Ohio v. Harris*, 489 U.S. 378, 380 (1989).** In *City of Canton*, a detainee brought suit against the City of Canton alleging, among other claims, that jail officials were inadequately trained to deal with her medical needs. *Id.* at 381. The Supreme Court held that a municipality can be held liable for inadequate police training under Section 1983 "only where [the] failure to train amounts to deliberate indifference to rights of persons with whom police come into contact." *Id.* at 388. The mere fact that a few officers may be inadequately trained is not sufficient to demonstrate liability, as the shortcomings could be caused by officer inattention or poor administration. *Id.* at 390-91. Allegations that the officers in question could have been better trained are also insufficient. *Ibid.* Rather, the "failure to train [must] reflect[] a deliberate or conscious choice by a municipality." *Id.* at 389. The Court recognized two fact patterns in which a citizen could state a

claim for failure to train. First, the nature of the officers' duties could be such that "the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need" in not providing training. *Id.* at 390. Second, the police may have so often violated constitutional rights that the need for further training must have been "plainly obvious to the city policymakers, who, nevertheless, are 'deliberately indifferent' to the need." *Ibid.*

The Sixth Circuit applied this standard in *Walker v. Norris*, 917 F.2d 1449 (6th Cir. 1990). In *Walker*, an inmate's estate brought suit against prison guards and their supervisors for failure to prevent his stabbing death. *Id.* at 1452. There, prison guards refused to open a prison door to assist an inmate who was being stabbed to death on the other side. *Id.* at 1451-52. The plaintiff alleged that the guards' supervisors had failed to give them proper training in opening the prison doors. *Id.* at 1456. Rejecting the plaintiff's claim, the Court found that corrections officers received three weeks of training upon hiring, and 40 hours per year of refresher training after that. In effect, the plaintiff alleged only that the guards could have been better trained, which is insufficient under *City of Canton*. *Ibid*. There was no other evidence of deliberate indifference toward training in the record, and the district court's decision to dismiss plaintiff's claim was affirmed. *Ibid.*

The issue of poor training came before the Sixth Circuit again in *Berry v. City of Detroit*, 25 F.3d 1342 (6th Cir. 1994). There, the plaintiff estate brought suit for the fatal shooting of its decedent by a police officer alleging two failure to train theories: inadequate training *per se* and failure to discipline officers who had previously committed constitutional violations. *Id.* at 1344. The Sixth Circuit gave the plaintiff's first theory short shrift. Undisputed testimony established that candidates at the Detroit Police Academy underwent over 600 hours of training, including 60 hours

of firearms training. *Id.* at 1347. The Academy's training on use of fatal force exceeded state minimum requirements, and candidates were required to score 100 percent on the written fatal force policy examination. *Ibid.* The officers also had annual refresher training concerning the use of deadly force, received frequent bulletins on the issue, and had to requalify themselves each year in firearms usage. *Ibid.* The officer in question had completed all of these programs. The plaintiff's expert himself admitted that he had no problem with the department's training programs. *Ibid*. As such, the plaintiff's claim that the City of Detroit's policymakers were deliberately indifferent to the need for training was rejected.

Thus, in order to prevail on a Section 1983 "failure to train" claim, the plaintiff must show that the "training program is inadequate to the tasks that the officers must perform; that the inadequacy is the result of the city's deliberate indifference; and that the inadequacy is closely related to or actually caused the plaintiff's injury." *Hill v. McIntyre*, 884 F.2d 271, 275 (6th Cir. 1989) (citations omitted).

In this case, the Court agrees with the magistrate judge that the plaintiff has alleged sufficient facts that if proved would result in the requested relief on his deliberate indifference claim against Iosco County. *See Helfrich*, 267 F.3d at 480. As mentioned, the plaintiff has made general allegations against Iosco County that it, through its sheriff, did not adequately train jail workers to handle an inmate with diabetes, and that as a result the county was deliberately indifferent to the plaintiff's medical needs. With respect to causation, the plaintiff alleges in his complaint that he informed the booking officer at the county jail about his diabetic condition, that the booking officer ignored his requests to see medical personnel, and that two days later he was rushed to the hospital in a state of a "diabetic coma." This account is confirmed to some degree by a "discharge summary"

from the Tawas St. Joseph Hospital in Tawas City, Michigan, which the plaintiff attached to his complaint. In the summary, an attending physician at the hospital, Dr. C. David Wright, states that the plaintiff was admitted to the hospital with "diabetic ketoacidosis" after he was "incarcerated in the Iosco County Jail for approximately twelve hours, became ill and presented to the Emergency Room where he was found to have an elevated blood sugar, acetone in his blood and low bicarbonate." Compl. Ex. 1. Although the plaintiff claims that he was taken to the hospital on December 29, 2000, the discharge summary indicates that he was admitted to the hospital on December 27, 2000, the day he was taken to the Iosco County Jail, and was discharged on December 29, 2000. Regardless of this discrepancy, the Court finds that in light of the plaintiff's allegations, and the fact that he was apparently taken to the hospital twelve hours after being booked into the Iosco County Jail, there is a direct relationship between the alleged failure to train the workers at the jail on the needs of diabetic inmates and the plaintiff's injury.

The Court also agrees with the magistrate judge that Iosco County has failed to meet its initial burden in a summary judgment proceeding of identifying evidence that demonstrates the absence of a genuine dispute over material facts. *See Mt. Lebanon*, 276 F.3d at 848. Unlike the defendants in *Walker* and *Berry*, Iosco County has not provided the Court with any information regarding the training of its personnel at the Iosco County Jail. Faced with only the plaintiff's allegations, liberally construed, and the discharge summary from the hospital indicating that the plaintiff was admitted with diabetic ketoacidosis, the Court must conclude at this stage that the record taken as a whole could lead a rational trier of fact to find for the plaintiff, as the non-moving party. *See Simmons-Harris*, 234 F.3d at 951. Therefore, Iosco County is not entitled to summary judgment.

C.

Lastly, the plaintiff has alleged that defendant Hanft, the sheriff in Ogemaw County, and defendant Ogemaw County were deliberately indifferent to his medical needs while he was incarcerated at the Ogemaw County Jail. As with Sheriff Fischer, any claims against Sheriff Hanft in his official capacity are subsumed in his claims against Ogemaw County and will be dismissed as duplicative. Defendant Hanft has addressed the individual capacity claims against him by submitting an affidavit in which he avers that he had no involvement with the plaintiff's incarceration at the Iosco County Jail, and that he "did not authorize, approve or knowingly acquiesce in the withholding of medical care from the Plaintiff at any time while he was incarcerated in the Ogemaw County Jail from January 4, 2001, thru March 18, 2001." Hanft & Ogemaw County Mot. to Dismiss and for Summ. J. Ex. 3, aff. of Howie S. Hanft at ¶¶ 2-6.

Hanft and Ogemaw County have also attached to their motion and to their reply brief two different affidavits of Gary Cowdrey, the Ogemaw County Jail Administrator. In one of the affidavits, Cowdrey avers that he had no involvement with the plaintiff's incarceration in Iosco County. *See id*. Ex. 4, aff. of Gary Cowdrey at ¶ 6. In the other, he states the following:

> 3. Mr. Bergeron was kept by himself in an observation cell the first 24 hours that he was lodged at the Ogemaw County Jail due to his report of hospitalization for his diabetes.
>
> 6. Mr. Bergeron was placed on a diabetic diet the day he entered the Ogemaw County Jail pursuant to his request and the instructions of a physician; he was maintained on that diet until the date of his discharge.
>
> 7. Mr. Bergeron was seen by a physician on the date of his arrival at the jail and was seen subsequently by a physician at the physician's office the only time that Mr. Bergeron formally requested to see a physician. (See attached grievance form).

8. The physician prescribed the insulin to be provided to Mr. Bergeron and the same was provided to him.

9. Mr. Bergeron was responsible for his own blood sugar testing and the administration of insulin which the previously provided medication log fully documents. (See Exhibit # 5).

10. To my knowledge, Mr. Bergeron was never denied an opportunity to test his blood sugar or to administer insulin during his stay at the Ogemaw County Jail.

Hanft & Ogemaw County Br. in Reply Ex. 1, aff. of Gary Cowdrey at ¶¶ 3, 6-10.

Additionally, Hanft and Ogemaw County have attached to their motion numerous forms pertaining to the plaintiff's incarceration at the county jail including the following: a two-page "Medical Receiving Screening Form" that noted that the plaintiff had uncontrolled diabetes, recently had been hospitalized, and required insulin; a special diet form instructing jail workers that the plaintiff be placed on a 2,200 calorie diabetic diet; three pages of handwritten notes by Dr. Clark Pritts, a doctor at the Ogemaw County Jail who saw the plaintiff when he first arrived, giving specific instructions to jail staff on insulin doses, diet, and blood sugar checks; and a four-page medical log showing that the Ogemaw County jail tested the plaintiff's blood sugar level four times each day (breakfast, lunch, supper, and snack), recorded the level in the log, and recorded the amount and type of insulin administered after each blood test. *See* Hanft & Ogemaw County Mot. to Dismiss Ex. 5. Finally, the defendants attached to their reply brief a copy of the Ogemaw County "Jail Policy Directive" that includes a section on providing health care to inmates. The policy provides instructions for staff at the jail on topics such as procedures for health screening upon booking, emergency medical care, completion of an inmate medical card, and administration of

prescribed controlled and non-controlled substances, injections, and other medications. *See* Hanft & Ogemaw County Br. in Reply Ex. 3.

The Court finds that the evidence provided by defendants Hanft and Ogemaw County, which is uncontradicted by the plaintiff, demonstrates that the plaintiff's serious medical needs were neither subjectively nor objectively treated with deliberate indifference by either Sheriff Hanft or Ogemaw County. Moreover, Ogemaw County, unlike Iosco County, has submitted evidence to show that the plaintiff received ongoing medical treatment during his incarceration at the county jail and the county provides extensive training to workers at its jail regarding the medical treatment of prisoners. Because the evidence is so one-side in favor of defendants Hanft and Ogemaw County, these two defendants are entitled to summary judgment. *See Anderson*, 477 U.S. at 251-252.

The plaintiff argues in his objections to the magistrate judge's recommendation that although Ogemaw County provided him with insulin, the methods by which he received treatment while incarcerated in the Ogemaw County Jail were improper. However, the plaintiff's personal opinion that his care was substandard, or that he was not given the treatment he requested, may raise claims of state-law medical malpractice, but falls short of advancing claims of constitutionally defective medical care indifferent to the plaintiff's serious medical needs.

III.

The plaintiff has failed to show that defendants Fischer, Hanft, and Ogemaw County's actions violated his constitutionally protected rights. Therefore, these defendants are entitled to a judgment as a matter of law. However, the plaintiff has come forward with sufficient proof to establish a claim against Iosco County for a violation of his constitutional rights, and Iosco County has failed to identify a genuine dispute over material facts on this claim.

Accordingly, it is **ORDERED** that the magistrate judge's Report and Recommendation [dkt # 27] is **ADOPTED**.

It is further **ORDERED** that defendants Fischer and Iosco County's Motion for Judgment on the Pleadings and for Summary Judgment [dkt # 19] is **GRANTED IN PART** and **DENIED IN PART**.

It is further **ORDERED** that defendants Hanft and Ogemaw County's Motion to Dismiss and for Summary Judgment [dkt # 21] is **GRANTED**.

It is further **ORDERED** that the complaint is **DISMISSED WITH PREJUDICE** as to defendants Fischer, Hanft, and Ogemaw County.

It is further **ORDERED** that the plaintiff's Motion to Extend Time to File Objections [dkt # 28] is **DENIED** as moot.

The reference order remains in effect, and the Magistrate Judge shall conduct further proceedings consistent with this opinion and the order for full case management [dkt # 2] previously filed.

_____/s/_____
DAVID M. LAWSON
United States District Judge

Dated: February 19, 2004

Copies sent to: Victor L. Bergeron
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Magistrate Judge Charles E. Binder