

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

LYLE TRAXLER,

Plaintiff,

v.

Case No. 22C0760

BRIAN SHERTZ, et al.,

Defendants.

**STATE DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION FOR
SUMMARY JUDGMENT**

INTRODUCTION

This case is about the unfortunate trajectory a medical condition can take despite rigorous care and attention paid. Plaintiff Lyle Traxler is proceeding on Eighth Amendment deliberate indifference claims against State Defendants APNP Mary Moore and Health Services Manager Robert Weinman for their alleged failure in 2020 and 2021 to properly treat his leg wound which resulted in an amputation of his right leg below the knee. The seriousness of amputation was not lost on Traxler, who had time to consider his options, nor on his health care team which included over ten providers at four different locations. Including nursing visits, Traxler was seen for his wound care issues over one hundred times, meaning hundreds of hours were spent caring for and trying to heal his wound that was complicated by Traxler's multiple co-morbidities.

When Lyle Traxler first raised concerns about wound issues on his right leg, he was a 60-year-old man suffering from, diabetes, morbid obesity, hypertension, a history of diabetic ulcers, and cancer diagnoses. In early December 2020, Traxler notified the nursing staff that a wound on his right leg had formed. Traxler was prescribed antibiotics, but Health Services Unit staff were concerned with possible infection. So APNP Moore referred Traxler to an outside wound care specialist in late December 2020, and he had the first of many appointments with off-site specialists on January 6, 2021.

Over the next eleven months Traxler's right leg wound would improve and worsen multiple times. APNP Moore referred Traxler to outside specialists and sought more intensive care measures for him when his wound was unresponsive to certain courses of treatment. APNP Moore recommended that Traxler be transferred to the Dodge Correctional Institution Infirmary to have round the clock medical care. And she ensured that Traxler's pain concerns were addressed by prescribing various pain relievers and getting Traxler a long-term approval for opioid use, which is uncommon for people in custody.

While Health Services Manager Weinman's duties were exclusively administrative, he was aware of Traxler's non-healing wound issue. Defendant Weinman's administrative role allowed him to assist Traxler with ordering specialized wound care supplies and coordinating Traxler's transfer to, from, and eventually back to Dodge Correctional Institution Infirmary.

Traxler's claims against the Defendants fail as a matter of law because there is no evidence that either APNP Moore or Health Services Manager Weinman ignored Traxler's medical condition or provided inappropriate care. There is also no evidence that Traxler's condition worsened or that he suffered increased pain due to Defendants' actions. In addition to summary judgment on the merits, Defendants are also entitled to summary judgment on the basis of qualified immunity.

Accordingly, for the reasons set forth herein, Defendants respectfully request that this Court grant their motion for summary judgment and dismiss Plaintiff's claims with prejudice.

STATEMENT OF THE CASE

For the sake of brevity, below is an overview of Traxler's medical care, but a full recitation of the facts can be found in the Defendants' Proposed Findings of Facts.

Defendant Robert Weinman was the Nursing Supervisor/Health Service Unit Manager at Waupun at times relevant to this lawsuit. (DPFOF ¶ 1.) The Health Services Manager (HSM) is primarily an administrative position under the general supervision of the Warden. (DPFOF ¶ 2.) As the HSM, Weinman did not evaluate, diagnose, determine a course of treatment for, prescribe medications for, or typically have any direct patient care contact with inmates. (DPFOF ¶¶ 3,4.)

Mary Moore was employed by the Wisconsin Department of Corrections as an Advanced Practice Nurse Prescriber (APNP) at Waupun Correctional Institution (Waupun) at times relevant to this lawsuit. (DPFOF ¶ 5.) As an APNP, Moore worked under the general supervision with administrative direction from the Medical

Director and in collaboration with the institution Physician to provide medical services. (DPFOF ¶ 6.) Moore demonstrated a high degree of clinical expertise in providing preventive and primary care in the correctional setting. (DPFOF ¶ 6.) As an APNP, Moore had the authority to make diagnoses, prescribe medications, and schedule off-site appointments for inmates which required hospital care. (DPFOF ¶¶ 7,8.)

I. Health Services Requests procedures and Traxler's requests.

Inmates are informed that if they have a medical concern and wish to communicate with or be seen by medical staff, they fill out a Health Service Request (HSR) form and submit it to the Health Services Unit. (DPFOF ¶¶ 9,10.) HSRs are triaged by the nursing staff once daily and forwarded to the appropriate person. (DPFOF ¶¶ 10,12.)

As the HSM, Weinman typically did not see HSRs, but if he did receive one, Weinman would review the complaint and any further details such as Electronic Medical Records and respond with findings or forward to another staff if they are better suited to address the concern. (DPFOF ¶¶ 11, 12.)

After reviewing Traxler's medical records, Traxler did not send a HSR directed to Weinman complaining of APNP Moore not following discharge instructions or about not receiving pain medication prior to wound dressing changes. (DPFOF ¶¶ 13-14.) Throughout the timeframe of this case, HSM Weinman did not provide any direct care to Traxler for his right leg wound. (DPFOF ¶ 16.)

II. Traxler's medical care.

APNP Moore provided care for Traxler while he was incarcerated at Waupun Correctional Institution (Waupun) at times relevant to this lawsuit, September 2020 to November 2021. (DPFOF ¶ 15.) However, due to his wound care needs, Traxler spent significant time outside of Waupun. (*Id.*) He was sent to:

- St. Agnes Hospital – Fond du Lac (St. Agnes) for outpatient care,
- Waupun Memorial Hospital (WMH) for outpatient care and inpatient care from
 - March 31 – April 1, 2021,
 - May 5 – May 15, 2021, and
 - September 27 – September 28, 2021,
- Dodge Correctional Institution Infirmary (Dodge Infirmary) from
 - June 10 – July 14, 2021, and
 - October 8, 2021 – February 18, 2022,
- Mercy Hospital in Oshkosh from
 - September 28 - October 8, 2021.

(*Id.*)

Traxler's wound care needs began October 2020 and spanned over a year. (DPFOF ¶ 17.) Health staff at Waupun, Dodge Infirmary, and off-site providers attempted to heal Traxler's wound; however, he had a number of complicating diagnoses including: diabetes, obesity, hypertension, a history of diabetic ulcers, and a past cancer survivor. (DPFOF ¶¶ 17,18.) Traxler was seen over one hundred times by health care staff at Waupun, Dodge Infirmary, and off-site throughout the course of his wound care. (DPFOF ¶ 19.)

A. Traxler's right leg wound care from December 2020 to January 2021.

According to the electronic medical records, December 7, 2020, was the first report of Traxler's right lower leg concern. (DPFOF ¶ 20.) Prior to Traxler's first

complaint about his right leg, Traxler received wound care on October 15 and 27 and November 11, 16, and 30, 2020 for wound issues with his lower *left* leg. (DPFOF ¶ 21.)

On December 7, 2020, Traxler was seen by Health Services Unit (HSU) nurses, and he mentioned that his right lower leg hurt, and he thought it was infected. (DPFOF ¶ 22.) The nurse called and consulted the Associate Medical Director, and APNP Moore ordered Augmentin, an antibiotic. (*Id.*)

HSU nurses assessed his wound and changed his dressing on December 9, 2020. (DPFOF ¶ 23.) He was given wound care supplies at that visit and at other visits. (*Id.*) Thereafter, he was seen as needed for monitoring and wound care. (*Id.*) HSU nurses would ask Traxler about his pain and if he was taking his pain medication during those visits. (*Id.*) Throughout his time at Waupun, Traxler had orders for and would submit weekly refill requests for medications used to treat pain including: NSAIDS, Tylenol, Tramadol, Norco, Duloxetine, Celecoxib, and Oxycodone. (DPFOF ¶¶ 24, 25.)

HSU nursing staff cleaned and assessed Traxler's wound on December 9, 17, 20, 21, 24, and 29, 2020. (DPFOF ¶¶ 26-29, 31, 36.)

On December 23, 2020, APNP Moore saw Traxler to evaluate his right leg wound. (DPFOF ¶ 30.) Due to the condition of his wound, Moore ordered a lab culture and referred Traxler to St. Agnes for further evaluation and treatment. (*Id.*)

The results of the lab culture came back on December 26, 2020, showing that Traxler had Moderate growth staphylococcus aureus methicillin-susceptible (MSSA).

(DPFOF ¶ 32.) There are different types of staphylococcus infections one can contract. (DPFOF ¶ 34.) MSSA is a type of bacteria which lives harmlessly on the skin, and is treated with oral antibiotics. (*Id.*) Methicillin-Resistant Staphylococcus Aureus (MRSA) is one cause of staph infections that is difficult to treat because it is resistant to some antibiotics. (*Id.*) As of December 26, 2020, there was no MRSA detected in Traxler's culture. (*Id.*)

The on-call doctor ordered another course of antibiotics for Traxler in response to the December 26, 2020 lab results. (DPFOF ¶ 35.) This medication was "KOP" (keep on person) which meant that Traxler had the medication with him and was responsible for taking the medication as prescribed. (*Id.*)

HSU nursing staff cleaned, assessed, and dressed Traxler's wound on January 1, 4, and 5, 2021 prior to his first off-site appointment with St. Agnes. (DPFOF ¶ 38.)

B. St. Agnes took over Traxler's right leg care from January 6, 2021 to March 31, 2021.

On January 6, 2021, Traxler was sent off-site to see APNP Jessogne at St. Agnes for wound care including a debridement. (DPFOF ¶ 43.) Debridement is a surgical or non-surgical procedure that involves removing the damaged tissue from the wound. (*Id.*) APNP Jessogne's discharge instructions focused on how to dress the wound, and she did not mention pain medication. (*Id.*)

The off-site reports from St. Agnes mention Traxler reporting pain and tenderness to the wound area during their assessments; however, they did not recommend anything for pain control. (DPFOF ¶ 40.)

APNP Jessogne took note that Traxler was a Type 2 diabetic. (DPFOF ¶41.) Diabetes can reduce the ability of the skin to heal itself, if at all. (DPFOF ¶ 42.) Even small cuts can develop into diabetic ulcers (open sore or wound), and chronic, non-healing wounds are vulnerable to infection. (DPFOF ¶ 42.) Diabetes can further inhibit healing because patients may have an impaired immune system and are at greater risk of small vessel disease. (*Id.*)

On January 15, 2021, Traxler was seen off-site at St. Agnes by APNP Jessogne for a follow up. (DPFOF ¶ 45.) She gave wound dressing instructions, but there was no mention of pain medication in the providers orders. (*Id.*) HSU nursing notes from January 7, 16, 17, and 25, discussed changing the wound dressing and securing with a tube stocking, in accordance with the off-site recommendations. (DPFOF ¶ 44, 46.)

HSU nursing staff cleaned, assessed, and dressed Traxler's wound per the off-site providers' recommendations on February 1, 2, 4, 8, 11, 15, 18, 22, and 25 of 2021, (DPFOF ¶ 50.) On February 1, 9, and 19, 2021, Traxler was seen off-site at St. Agnes by either Dr. Robert Mikkelsen with the General Surgery unit or APNP Jessogne for wound care. (DPFOF ¶¶ 51, 54, 57.) Dr. Mikkelsen performed Traxler's second debridement on February 1, 2021, and the providers' discharge instructions from each appointment did not include recommendations for pain medications. (*Id.*)

HSU nursing staff cleaned, assessed, and dressed Traxler's wound per the off-site providers' recommendations on March 1, 4, 8, 11, 15, 16, 19, 22, and 25-30 of 2021. (DPFOF ¶ 59.) On March 1, 2021, Traxler was seen off-site at St. Agnes by APNP Jessogne. (DPFOF ¶ 60.) She ordered a biopsy because of the longevity of the

wound, and because she observed abnormal looking tissue. (*Id.*) APNP Jessogne debrided the wound and noted that there did not appear to be any infection. (*Id.*) APNP Jessogne gave wound care discharge instructions and again, did not mention pain medication. (*Id.*)

Because HSU staff were concerned with Traxler's wound worsening despite receiving regular off-site care, he had a consult with Nurse Holly Gunderson, Health Services Nursing Coordinator on March 11, 2021. (DPFOF ¶ 62.) Nurse Gunderson discussed her recommendations with Moore, and Moore ordered a vascular surgery consult. (*Id.*) This test would allow HSU to determine the degree of venous insufficiency providing more information about another possible issue preventing Traxler's wound from healing. (*Id.*) On March 16, 2021, Traxler had a venous insufficiency ultrasound. (DPFOF ¶ 63.) The findings reported that there was no evidence of right lower extremity deep or superficial venous thrombosis, meaning there were no blood clots in his right lower leg preventing his wound from healing. (*Id.*)

C. Traxler was referred to a general surgeon at Waupun Memorial Hospital for more aggressive care because his wound was not improving.

On March 31, 2021, Traxler was examined by Dr. Karen Reynolds at WMH, and she performed a more intensive debridement. (DPFOF ¶ 69.) Traxler was discharged from WMH on April 1 with recommendations to start an antibiotic, wound dressing instructions, and a recommendation that Traxler receive Norco, a combination opioid medication of hydrocodone and acetaminophen used to treat pain.

(DPFOF ¶¶ 70, 71.) This was the first time an off-site provider recommended pain medication. On March 31, 2021, Moore submitted an authorization for Norco. (DPFOF ¶ 71.)

HSU nursing staff cleaned, assessed, and dressed Traxler's wound per the off-site providers' recommendations twice every day in April except for April 1st. (DPFOF ¶ 73.) On April 19, 2021, Traxler was seen off-site at WMH by Dr. Reynolds for a 2 week follow up. (DPFOF ¶ 76.) Dr. Reynolds' discharge instructions were to continue with wound care, 10 days of appropriate antibiotics (stating Bactrim DS would be the best oral option), and if the wound worsened on oral antibiotics, Dr. Reynolds recommended IV antibiotics for treatment. (*Id.*) On April 22, 2021, Moore ordered a 10-day course of Bactrim DS. (DPFOF ¶ 77.) If Traxler's wound required IV antibiotic treatment he would have needed to be sent to the Dodge Infirmary for round the clock care. (DPFOF ¶ 78.) Waupun did not have the facility capabilities to provide that treatment. (*Id.*)

HSU nursing staff cleaned, assessed, and dressed Traxler's wound per the off-site providers' recommendations on May 1-4, 6-8, 12-15, 17, 19, 21, 26, 28, and 30 of 2021. (DPFOF ¶ 79.) On May 5, 2021, Moore sent Traxler off-site to WMH to have his wound evaluated. (DPFOF ¶ 80.) He was admitted and WMH elected to keep him in-patient after undergoing a surgical debridement of his leg wound. (*Id.*) A wound vac was placed, and he was treated with IV and oral antibiotics. (*Id.*) A wound vac is a vacuum-assisted closure of a wound. (DPFOF ¶ 86.) The device decreases air pressure on the wound and can help a wound heal more quickly. (*Id.*) A wound vacuum system

has several parts. (*Id.*) A foam or gauze dressing is put directly on the wound. (*Id.*) An adhesive film covers and seals the dressing and the wound, and a drainage tube leads from under the adhesive film and connects to a portable vacuum pump. (*Id.*) Traxler remained at the hospital from May 5 to May 14, 2021. (DPFOF ¶ 81.)

On discharge from WMH, Dr. Reynolds recommended Traxler receive Oxycodone, which was ordered. (DPFOF ¶¶ 82, 84.) Traxler was approved to continue receiving Oxycodone 5 mg from May 21, 2021, to June 4, 2021. (DPFOF ¶¶ 87, 89.)

Over the course of two weeks, Traxler had multiple problems keeping the wound vac working properly and failing to inform HSU of the problems. (DPFOF ¶¶ 90, 91, 94, 96.) Traxler was repeatedly informed that he had to notify staff, because if the wound vac was not working it could lead to infection. (*Id.*) Because of Traxler's continued non-compliance of reporting issues with the wound vac, Moore stated a referral would be made to Dodge Infirmary. (DPFOF ¶ 97.) Traxler would frequently be seen by nursing there and his wound vac and dressing would be monitored more frequently than was able to be done at Waupun. (*Id.*)

HSU nursing staff cleaned, assessed, and dressed Traxler's wound per the off-site providers' recommendations on June 1, 4, 7, 8, and 9 of 2021. (DPFOF ¶ 93.)

D. Traxler was transferred from Waupun to Dodge Infirmary for round the clock care.

From June 10, 2021, to July 14, 2021, Traxler was under the custody and care of the Dodge Infirmary. (DPFOF ¶ 105.) While at the Dodge Infirmary, Traxler continued to receive off-site wound care, and he saw Dr. Karen Reynolds at WMH on

June 16, and July 7, 2021. (DPFOF ¶ 106.) On July 4, 2021, Nurse Ashley Haseleu became the assistant HSM/Nursing Supervisor. (DPFOF ¶ 107.)

E. Traxler returned to Waupun on July 14, 2021

When Traxler returned from the Dodge Infirmary, HSU Nurse Larson noted that Traxler was now using a wheelchair for distance and a cane to walk with. (DPFOF ¶ 108.) HSU nursing staff cleaned, assessed, and dressed Traxler's wound per the off-site providers' recommendations on July 14, 16, 18, 20, 22, 24, 26, and 28, and every other day in August beginning on the 1st. (DPFOF ¶¶ 109, 112.)

On August 5, 2021, Traxler was seen by Nurse Berres who stated the wound was healing, however the tissue around the wound continued to be more and more red and irritated with every wound change. (DPFOF ¶ 113.) APNP Moore was consulted, and she requested a culture be obtained from the wound. (*Id.*) This lab culture showed positive for MRSA. (DPFOF ¶ 114.) Moore ordered a 10-day course of Bactrim and Clindamycin, KOP (keep on person). (DPFOF ¶ 115.) Over the next two weeks, nursing staff noted that his wound was improving. (DPFOF ¶ 116.) However, Moore referred Traxler off-site when his wound began to deteriorate in late August. (DPFOF ¶¶ 117, 120.) Traxler was seen off-site by APNP Smits at WMH on September 14 and 23, 2021. (DPFOF ¶¶ 121, 124.)

On September 26 and 27, 2021, HSU staff saw Traxler three times over growing concern of infection possibly spreading. (DPFOF ¶¶ 125-27.) HSU staff determined that he would be sent to the hospital. (*Id.*)

F. Traxler was sent to WMH on September 27, 2021, after his care team at Waupun was concerned about the increased swelling and redness surrounding the wound that could be signs of sepsis – a life threatening complication.

Traxler was transported to WMH on September 27, 2021 where he was assessed with a right lower extremity wound with infection associated with MRSA and mild sepsis. (DPFOF ¶ 128.) Traxler was transferred and admitted to Mercy Hospital in Oshkosh on September 28, 2021, where he underwent a debridement of his right lower extremity wound. (*Id.*) He remained there from September 28, 2021 – October 8, 2021, when he was discharged to the Dodge Infirmary. (DPFOF ¶ 129.)

On October 7, 2021, while at Mercy Hospital, Traxler's provider noted that there was a possible bone infection in the right leg, and he recommended Traxler follow up with Dr. Karen Reynolds at WMH. (DPFOF ¶ 130.) On October 8, 2021, Traxler was transferred to Dodge Infirmary. (DPFOF ¶ 131.) On October 11, 2021, Dr. Reynolds discussed amputation with Traxler during the visit. (DPFOF ¶ 132.) On October 18, 2021, Dr. Nelson had a telephone call with Traxler in which Traxler decided that he wanted to move forward with a below the knee amputation on his right side. (DPFOF ¶ 133.) Traxler's right leg was amputated below the knee on November 17, 2021. (DPFOF ¶ 134.)

III. Assessment of totality of Traxler's healthcare.

Based on Moore's professional opinion, Traxler was appropriately treated, and his plans of care were in accordance with the community health care standards and protocols of the Department of Corrections. (DPFOF ¶ 141.) Based on Weinman's personal knowledge and review of Traxler's records, the care Traxler received was

reasonable and met community health standards. (DPFOF ¶ 142.) And there were no occasions where Weinman should have intervened in Traxler's care. (DPFOF ¶ 143.)

SUMMARY JUDGMENT STANDARD

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Summary judgment is an “integral part of the Federal rules,” and its purpose “is to isolate and dispose of factually unsupported claims or defenses.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24, 327 (1986). A court's decision to grant summary judgment “is not discretionary”—when “a moving party shows that the opposing party lacks evidence to support each element of a claim, summary judgment must be granted in favor of the movant.” *Baron v. Frederickson*, 419 F. Supp. 2d 1056, 1063 (W.D. Wis. 2006) (citation omitted).

“By its very terms,” the summary judgment standard “provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986) (emphasis in original). A “material” fact is one that, under the applicable substantive law, “might affect the outcome of the suit.” *Anderson*, 477 U.S. at 248. The “materiality determination rests on the substantive law” because it identifies “which facts are critical and which facts are irrelevant.” *Id.* A dispute over a material fact is “genuine” “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*

“The party moving for summary judgment has the initial burden of demonstrating there is no genuine dispute of material fact: ‘it may discharge this responsibility by showing “that there is an absence of evidence to support the nonmoving party’s case.”’” *Bunn v. Fed. Deposit Ins. Corp.*, [908 F.3d 290, 295](#) (7th Cir. 2018) (citations omitted). Once the movant satisfies his initial responsibility, the burden then shifts to the nonmovant, who must “come forward with specific facts demonstrating that there is a genuine issue for trial.” *Id.* (citation omitted); *see also Celotex*, [477 U.S. at 324](#) (“Rule 56(e) therefore requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the ‘depositions, answers to interrogatories, and admissions on file,’ designate ‘specific facts showing that there is a genuine issue for trial.’”). A nonmovant is “entitled to all reasonable inferences in his favor, but ‘inferences that are supported by only speculation or conjecture will not defeat a summary judgment motion.’” *Lavite v. Dunstan*, [932 F.3d 1020, 1029](#) (7th Cir. 2019) (citation omitted).

ARGUMENT

IV. Moore and Weinman are entitled to summary judgment because Traxler cannot produce evidence supporting his claims that they acted with deliberate indifference.

A. The Eighth Amendment protects against prison officials who are deliberately indifferent to an inmate’s serious medical need.

The Eighth Amendment, made applicable to the states by the Fourteenth Amendment, prohibits “cruel and unusual punishments.” [U.S. Const. amend. VIII](#); *Estelle v. Gamble*, [429 U.S. 97, 101–02](#) (1976). Accordingly, the Amendment imposes a duty on prison officials to “provide humane conditions of confinement,” which

includes ensuring that inmates “receive adequate food, clothing, shelter, and medical care.” *Farmer v. Brennan*, [511 U.S. 825, 832](#) (1994). To succeed on a claim that a prison official provided constitutionally deficient medical care, an inmate must prove two things, (1) “that he ‘suffered from an objectively serious medical condition’ and [(2) that] the defendant was ‘deliberately indifferent to that condition.’” *Davis v. Kayira*, [938 F.3d 910, 914](#) (7th Cir. 2019) (citation omitted).

1. Prong one: an objectively serious medical condition.

“An objectively serious medical condition is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor’s attention.” *Palmer v. Franz*, [928 F.3d 560, 563–64](#) (7th Cir. 2019) (citation omitted). The condition “need not be life-threatening to be serious; rather it could be a condition that would result in further significant injury or unnecessary and wanton infliction of pain if not treated.” *Id.* at 564 (citation omitted).

Defendants concede that Traxler’s wound care qualifies as an objectively serious medical need.

2. Prong two: deliberate indifference.

To satisfy the deliberate indifference prong, an inmate must show that the prison official knew of and disregarded “an excessive risk to inmate health or safety.” *Davis*, [938 F.3d at 914](#) (citation omitted). A plaintiff faces an uphill battle when raising a deliberate indifference claim, as “[l]iability under [that] standard requires more than negligence, gross negligence or even recklessness; rather, it is satisfied

only by conduct that approaches intentional wrongdoing, *i.e.*, ‘something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result.’” *Goodvine v. Ankarlo*, [9 F. Supp. 3d 899, 934](#) (W.D. Wis. 2014) (quoting *Farmer*, [511 U.S. at 835](#)). Because the standard is subjective, it is “not enough that there was a danger of which a prison official objectively should have been aware.” *Estate of Novack ex rel. Turbin v. Cnty. of Wood*, [226 F.3d 525, 529](#) (7th Cir. 2000). Instead, “the official must both be aware of facts from which the inference could be drawn that a substantial risk of harm exists, and he must also draw the inference.” *Farmer*, [511 U.S. at 837](#); *see also Davis*, [938 F.3d at 915](#).

B. Moore did not act with deliberate indifference because she provided Traxler with adequate and consistent medical care.

When a prisoner alleges that he received some treatment for his medical condition, but it was inadequate, the relevant question is whether the medical provider’s actions were “such a substantial departure from accepted professional judgment, practice, or standard, as to demonstrate that the person responsible actually did not base the decision on such a judgment.” *Estate of Cole by Pardue v. Fromm*, [94 F.3d 254, 261-62](#) (7th Cir. 1996). Courts defer to a medical professional’s treatment decision unless no minimally competent professional would have chosen the same course of treatment under the circumstances. *See Pyles v. Fahim*, [771 F.3d 403, 409](#) (7th Cir. 2014).

Traxler cannot satisfy the second prong of an Eighth Amendment claim because he cannot prove that Moore showed “total unconcern” for him. *See Rosario*, [670 F.3d 816, 821](#) (7th Cir. 2012). On the contrary, Moore saw Traxler repeatedly

over the course of his wound care treatment and recommended care in alignment with the discharge instructions offered by the off-site providers. (DPFOF ¶¶ 39-104.) Additionally, Moore escalated Traxler's care when need: first, she referred him to St. Agnes for regular wound care appointments at the end of December 2020 (DPFOF ¶ 30); second, she referred him to a general surgeon at WMH (DPFOF ¶ 68); third, she referred him to Dodge Infirmary (DPFOF ¶ 97); and fourth, she referred him back to general surgery when his wound began to deteriorate again. (DPFOF ¶ 121.) Moore was responsive to Traxler's continuing needs.

There are no known expert medical opinions that criticize or fault any of the defendants for Traxler's amputation, nor any medical opinion that the defendants' care for Traxler failed to meet community standards – let alone the deliberate indifference standard. His entire case is supported only by his own lay speculation.

1. **Moore provided Traxler with consistent and responsive medical care, and she did not delay providing Traxler treatment nor delay in a way that exacerbated Traxler's injury or caused prolonged suffering.**

“A delay in treatment may show deliberate indifference if it exacerbated [the plaintiff's] injury or unnecessarily prolonged his pain.” *Perez v. Fenoglio*, 792 F.3d 768, 777-78 (7th Cir. 2015) (citations omitted). Moreover, “in cases where prison officials delayed rather than denied medical assistance to an inmate, courts have required the plaintiff to offer ‘verifying medical evidence’ that the delay (rather than the inmate's underlying condition) caused some degree of harm.” *Jackson v. Pollion*, 733 F.3d 786, 790 (7th Cir. 2013) (citation omitted).

Here, Traxler claims that he was delayed care at the end of 2020; however, Traxler first raised the issue of his right leg wound on December 7, 2020. (DPFOF ¶¶ 20, 22). In response, he received antibiotics, wound care dressing changes, a lab culture test, and a referral to an off-site specialist. (DPFOF ¶¶ 22, 30). Within one month of notifying HSU staff of his issue with his right leg, he was seen by an off-site specialist at St. Agnes. (DPFOF ¶ 41.)

Traxler claims that his medical care was again delayed in July 2021. However, Traxler had just returned to Waupun on July 14, 2021, after being under the custody and control of the Dodge Infirmary from June 10 – July 14, 2021. (DPFOF ¶105.) Traxler's Dodge Infirmary stay was recommended by an outside provider, ordered by APNP Moore, and coordinated by HSM Weinman. (DPFOF ¶¶ 99, 100.) Upon his arrival back to Waupun on July 14, 2021, APNP Moore placed wound care and medication orders. (DPFOF ¶108.) Traxler received pain relieving medication, wound care dressing changes, and lab culture tests as needed. At no point in July 2021, did Traxler submit a HSR request or inmate complaint alerting APNP Moore that he believed his medical care was not being addressed or was being delayed.

Additionally, Traxler alleges in his complaint that Moore refused Nurse Haseleu's recommendation that Traxler be sent to an off-site provider as soon as possible. (Dkt. 1:6) But, Nurse Haseleu was the assistant HSM at that time, and Moore stated that Nurse Haseleu did not make this recommendation in July 2021. (DPFOF ¶ 111.)

On August 5, 2021, Traxler's culture report came back positive for MRSA – this was the first time Traxler's culture reports indicated positive for MRSA. (DPFOF ¶114.) In response, APNP Moore ordered treatment in line with medical standards for treating MRSA, she ordered a course of antibiotics the same day she received notice of the lab results. (DPFOF ¶115.) Traxler was instructed to take the medication as prescribed. (DPFOF ¶115.) His wound care continued every other day, and he was again sent to a specialist at APNP Moore's request on September 14, 2021, over concerns that his wound was increasing in size. (DPFOF ¶ 121.)

Even if Traxler's off-site care was delayed – which it was not – the delay did not cause harm to his condition. “To show that a delay in providing treatment is actionable under the Eighth Amendment, a plaintiff must also provide independent evidence that the delay exacerbated the injury or unnecessarily prolonged pain.” *Petties v. Carter*, [836 F.3d 722, 730–31](#) (7th Cir. 2016). Traxler cannot show that any alleged delay in treatment caused him harm absent an expert medical opinion, which he does not have. His wound improved and worsened throughout the eleven months, despite almost daily wound care management and many different medications, treatments, and visits with off-site providers.

Because Moore did not delay Traxler's treatment, (and even if she did, the delay did not worsen his condition) Moore did not act with deliberate indifference to Traxler's medical condition.

2. APNP Moore followed the off-site providers' discharge instructions in accordance with the capabilities of Waupun Correction Institution even though she did not have to.

“There is no single “proper” way to practice medicine in a prison, but rather a range of acceptable courses based on prevailing standards in the field.” *Lockett v. Bonson*, [937 F.3d 1016, 1023](#) (7th Cir. 2019) (citation omitted).

To succeed on his claims, Traxler would have to show that Moore's treatment decisions were “so inadequate” that “no minimally competent professional would have so responded under those circumstances.” *Arnett v. Webster*, [658 F.3d 742, 751](#) (7th Cir. 2011) (citations omitted). Traxler's disagreement with Moore's treatment does not show that she acted with deliberate indifference. *See Snipes v. DeTella*, [95 F.3d 586, 591](#) (7th Cir. 1996) (“[A] mere disagreement with the course of [the inmate's] medical treatment [does not constitute] an Eighth Amendment claim of deliberate indifference.” (quotation marks and citations omitted) (second and third alterations in original)).

APNP Moore, as a diagnosing and prescribing provider, did not need to follow the off-site providers' recommendations, but she did anyways. Over and over Traxler was seen by an off-site provider, returned with discharge recommendations, and APNP Moore placed orders for HSU staff to follow the recommendations.

Traxler claims that Moore deviated from the April 19, 2019, off-site providers recommendations by not ordering an IV-drip antibiotic. ([Dkt. 1: 7](#).) However, the off-site provider recommended IV antibiotics, only if his wound worsened on a 10-day course of oral antibiotics. (DPFOF ¶ 76). The off-site provider stated that Bactrim DS

would be the best oral antibiotic option, and APNP Moore ordered a 10-day course of Bactrim DS for Traxler on April 22, 2021. (DPFOF ¶ 77.) Traxler was seen twice a day in April 2021, and there was no indication in the medical records that his wound was worsening. (DPFOF ¶ 73). Had APNP Moore determined that an IV antibiotic was necessary, the treatment would have required a facility transfer to the Dodge Infirmary because Waupun did not have the institutional capacity to provide that care. (DPFOF ¶ 78.) But Moore approved and sent Traxler off-site to be seen at WMH on May 5, 2021 where he was treated with IV antibiotics. (DPFOF 80). Moore sent Traxler to a location where he could receive IV antibiotics just 13 days after he began the oral antibiotic prescribed by the off-site provider.

Traxler further claims that HSU staff did not provide him with pain medication that was recommended by off-site providers. From January – March 2021, the discharge instructions from his St. Agnes providers did not include pain medication recommendations. (DPFOF ¶¶ 43,45, 54, 57, 60.) However, Traxler had ongoing prescriptions for pain medications, and APNP Moore had prescribed medication in accordance with him reporting pain to HSU staff. (DPFOF ¶¶ 24, 25). When off-site providers recommended Traxler be prescribed oxycodone (a tightly controlled medication in the prison setting), APNP Moore requested a prescription for him which was approved. (DPFOF ¶ 88.) And when Traxler complained of worsening pain, APNP Moore requested a higher dose and authorization for chronic opioid use, which was granted. (DPFOF ¶¶ 100, 103.)

Moore was responsive to Traxler's pain needs and the recommendations of various off-site providers; therefore, she was not deliberately indifferent to Traxler's medical needs.

C. Weinman did not act with deliberate indifference because as the Health Services Manager he was not informed of Traxler's discharge instructions and day-to-day wound care.

Traxler argues that HSM Weinman knew HSU staff were not complying with the discharge instructions provided by off-site providers, and he should have intervened on Traxler's behalf. First, Traxler is not entitled to demand specific care. *Walker v. Wexford Health Sources, Inc.*, [940 F.3d 954, 965](#) (7th Cir. 2019) (citations omitted). And second, HSM Weinman was aware that Traxler was receiving extensive treatment from his HSU and off-site providers and his medical needs were being addressed.

Traxler's claim also fails because he did not inform HSM Weinman of the alleged non-compliance with the discharge instructions. (DPFOF ¶ 13.) To make HSM Weinman aware of his complaint, Traxler would have needed to file an HSR alleging as so. However, HSM Weinman did not receive a HSR from Traxler. (DPFOF ¶¶ 13, 14). If HSM Weinman had received a request to address his care, Weinman would have brought the concern to Traxler's care team. (DPFOF ¶ 12.)

D. Moore and Weinman are entitled to summary judgment because Traxler's medical records show that he received consistent and responsive medical care.

A court should examine the totality of an inmate's medical care when considering whether that care demonstrates deliberate indifference to a serious

medical need. *Gutierrez v. Peters*, [111 F.3d 1364, 1375](#) (7th Cir. 1997). “A finding that a defendant’s neglect of a prisoner’s condition was an ‘isolated occurrence,’ . . . or an ‘isolated exception’ . . . to the defendant’s overall treatment of the prisoner ordinarily militates against a finding of deliberate indifference.” *Id.* (citations omitted). “To establish deliberate indifference, [plaintiff] must meet essentially a criminal recklessness standard, that is, ignoring a known risk.” *McGee v. Adams*, [721 F.3d 474, 481](#) (7th Cir. 2014).

At no point did Moore ignore Traxler’s care: pain medication orders were placed, narcotic pain relievers were ordered repeatedly, antibiotics and corresponding medications were ordered, dressing changes were increased and decreased as needed, he was sent to specialists, surgeons, and the emergency room as needed, and he was transferred within Department of Corrections facilities to allow him to receive constant care at the Dodge Infirmary for over a month.

Given his treatment history, no reasonable juror could find that Traxler’s providers’ chosen course of treatment departed so far from the standards of the medical profession to conclude he received constitutionally deficient care. Accordingly, the claims against APNP Moore and HSM Weinman fail because Traxler’s medical care was not constitutionally deficient. *See Franklin v. Bowens*, [777 F. App’x 168, 169–70](#) (7th Cir. 2019) (citing *Mitchell v. Kallas*, [895 F.3d 492, 498](#) (7th Cir. 2018); *Arnett v. Webster*, [658 F.3d 742, 758–59](#) (7th Cir. 2011)).

V. Moore and Weinman are entitled to qualified immunity because Traxler cannot show they violated a constitutional right that was clearly established at the time of the alleged violation.

Even if this Court were to decline summary judgment on the grounds argued above, Moore and Weinman are entitled to qualified immunity.

A. Qualified immunity protects all but the plainly incompetent or those who knowingly violate the law.

“Qualified immunity protects government officials from damages liability ‘insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’” *Campbell v. Kallas*, [936 F.3d 536, 545](#) (7th Cir. 2019) (citation omitted). The test for qualified immunity “balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distractions, and liability when they perform their duties reasonably.” *Kemp v. Liebel*, [877 F.3d 346, 350](#) (7th Cir. 2017) (citation omitted).

Although qualified immunity is “an affirmative defense,” once it’s raised, “the burden shifts to the plaintiff to defeat it.” *Leiser v. Kloth*, [933 F.3d 696, 701](#) (7th Cir. 2019). To do so, a “plaintiff must show two elements: first, that the facts show ‘a violation of a constitutional right,’ and second, that the ‘constitutional right was clearly established at the time of the alleged violation.’” *Id.* A court has “discretion to choose which of the elements to address first.” *Id.*

The “clearly established” requirement is based on the “principle of fair notice.” *Campbell*, [936 F.3d at 545](#). Clearly established thus “means that, at the time of the [official’s] conduct, the law was “‘sufficiently clear’ that every ‘reasonable official

would understand that what he is doing” is unlawful.” *Dist. of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018) (citation omitted). “In other words, existing law must have placed the constitutionality of the [official’s] conduct ‘beyond debate.’” *Id.* (citation omitted).

A legal principle is beyond debate only when it has a “sufficiently clear foundation in then-existing precedent.” *Wesby*, 138 S. Ct. at 589 (citation omitted). That means the “rule must be ‘settled law,’” *i.e.*, “dictated by ‘controlling authority’ or ‘a robust “consensus of cases of persuasive authority.”” *Id.* at 589–90 (citation omitted).

Given the “emphasis on notice, clearly established law cannot be framed at a ‘high level of generality.’” *Campbell*, 936 F.3d at 545. To avoid generality, a court “must determine whether a right is clearly established ‘in light of the specific context of the case, not as a broad general proposition.’” *Leiser*, 933 F.3d at 702. That requires a court to consider whether the law clearly prohibited “the [official’s] conduct in the particular circumstances before him.” *Wesby*, 138 S. Ct. at 590. Although a plaintiff need not point to a “a case ‘on all fours’ with the facts” presented, he must “show some settled authority that would have shown a reasonable” official in the same position that his or her “actions violated the Constitution.” *Leiser*, 933 F.3d at 702; *see also Campbell*, 936 F.3d at 546 (noting that qualified immunity attaches when the legal principles have not “been applied in a factual context specific enough to provide fair notice to the defendants that their conduct was unconstitutional,” regardless of whether the “broad principles” otherwise have “support in [the] caselaw”).

In sum, the “demanding” qualified immunity standard “protects ‘all but the plainly incompetent or those who knowingly violate the law.’” *Wesby*, [138 S. Ct. at 589](#) (citation omitted); *see also Campbell*, [936 F.3d at 546](#) (“The Supreme Court’s message is unmistakable: Frame the constitutional right in terms granular enough to provide fair notice because qualified immunity ‘protects all but the plainly incompetent or those who knowingly violate the law.’” (citation omitted)).

B. Traxler cannot point to a case showing Moore and Weinman violated a clearly established constitutional right.

Here, Traxler cannot overcome qualified immunity because he cannot point to a case showing APNP Moore and HSM Weinman violated a clearly established constitutional right. For Traxler’s claims, he must show that it was beyond debate to someone in APNP Moore’s and HSM Weinman’s positions that they would violate Traxler’s constitutional rights by acting as they did.

Traxler is not competent to diagnose and treat himself, he is not entitled to dictate his care, and there is no one “right” way to practice medicine. *Lockett*, [937 F.3d at 1023](#). The Sixth Circuit affirmed summary judgment on behalf of medical professionals who treated an inmate whose post-surgical infection resulted in a below the knee amputation. *See Raper v. Cotroneo*, [2021 WL 1537821](#) (6th Cir. Jan. 5, 2021) (unpublished). The panel agreed with the district court that evidence of over a month of “regularly, monitor[ing the plaintiff’s] progress, order[ing] lab reports, and adjust[ing the plaintiff’s] medication,” was sufficient to demonstrate that there was no conscious disregard to the plaintiff’s condition. *Id.* Here, Traxler’s medical team took similar steps for almost a year with no gap in care. HSU staff complied with off-

site provider discharge instructions for almost eleven months, he received almost daily wound care, and he was sent to multiple specialists – his wound simply was not going to improve.

Because Traxler will not be able to point to a case saying APNP Moore and HSM Weinman had to order HSU staff to treat his non-healing wound in the exact way he wished, they are entitled to qualified immunity.

CONCLUSION

Based on the facts and argument set forth above, Defendants request that the Court grant their motion for summary judgment and dismiss Plaintiff's claims with prejudice.

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Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

s/Mary Kathlin Sickel
MARY KATHLIN SICKEL
Assistant Attorney General
State Bar #1122612

MICHAEL A. EMER
Assistant Attorney General
State Bar #1056632

Attorneys for Defendants.

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-3539 (Emer)
(608) 266-7326 (Sickel)

(608) 294-2907 (Fax)
emerma@doj.state.wi.us
sickelmk@doj.state.wi.us