

CASE NO. 1:11-CV-21118-FAM

wrong. Let me take a look at that.” Then he said, “who done this?” I said, “they done it at the institution.” He said, “I hate to say this, but they did not know what they was doing. The number is not right.”

ANSWER: Defendant lacks information sufficient to form a knowledge or belief as to the truth or falsity of the allegations contained at paragraph 52 and, therefore, neither admits nor denies same.

53. He rejujst the number and pushed down and the urine start flowing out. Three and one half liters come out of me. Arthur and the rest of the R.N. that was there was astonish and said, “Johnson, you are a lucky man. I do not know how that you made it.”

ANSWER: Defendant lacks information sufficient to form a knowledge or belief as to the truth or falsity of the allegations contained at paragraph 53 and, therefore, neither admits nor denies same.

54. About an hour or so, a Doctor came in with a ultra sound machine and went over my lower body and left. The next morning Doctor Razdan came and said, “Elbert, your liver has been damage. I will write a prescription for that, by the way, you biopsy test result came back negative” and he walked out.

ANSWER: Defendants denies the allegations and characterizations contained at paragraph 54.

55. I was there in the hospital for three days and was transferred back to the institution. I had a urine bag which I wore for twenty-two days and it was taken off at the institution medical nurse.

ANSWER: Defendant lacks information sufficient to form a knowledge or belief as to the truth or falsity of the allegations contained at paragraph 55 and, therefore, neither admits nor denies same.

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56. Three days after the bag was remove, my urine stop again and I was rushed back to medical. I was going through unbearable pains no one in the informary would give me anything for pains until about two or three hours later.

ANSWER: Defendant lacks information sufficient to form a knowledge or belief as to the truth or falsity of the allegations contained at paragraph 57 and, therefore, neither admits nor denies same.

57. I was final put into a van and taking back to Kendall Medical Center. I was in unbearable pains. My testis was swollen and paining so bad! I could urinate a little. I did not have any control over it. It just run a little and stop. I just knew that I was going to die!

ANSWER: Defendant lacks information sufficient to form a knowledge or belief as to the truth or falsity of the allegations contained at paragraph 57 and, therefore, neither admits nor denies same.

58. My prostate had swollen so severely until no one at the hospital could another urine tube into my bladder. The next morning Doctor Razdan came and tried to put a tube into my bladder and I felt liquid running over my body. Doctor Razdan had cut a hole into my bladder, put the tube into it, and sewed it up and said, "clean him up" and walked out.

ANSWER: Defendant lacks information sufficient to form a knowledge or belief as to the truth or falsity of the allegations contained at paragraph 58 and, therefore, neither admits nor denies same.

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59. In about thirty minutes, two nurses come with a form and said, "Johnson, sign this." I read it and refused to sign it.

ANSWER: Defendant lacks information sufficient to form a knowledge or belief as to the truth or falsity of the allegations contained at paragraph 59 and, therefore, neither admits nor denies same.

60. After I was there three days, I was given a cat-scan and taking back to my room. In about an hour, two specialist come into my room and said, "Elbert both of your kidneys have been damage and also your liver but we are going to fix you up O.K." I said, "O.K. doc."

ANSWER: Defendant lacks information sufficient to form a knowledge or belief as to the truth or falsity of the allegations contained at paragraph 60 and, therefore, neither admits nor denies same.

61. In three more days, I was taking to a specialist to do ultra-sound test of my right testis and as he was testing, he was looking as something was badly wrong. He just kept going over and over the same spot. I could tell that something was wrong, so I said, "Doc, whats going on? Whats wrong?" He said, "Johnson, it is bad."

ANSWER: Defendant lacks information sufficient to form a knowledge or belief as to the truth or falsity of the allegations contained at paragraph 61 and, therefore, neither admits nor denies same.

62. I was taking back to my room. In about an hour those two specialist who said that they was going to fix me up come to my room with a ultra-sound machine and tested my right testis again over and over and they was looking at each other and from their body language and hearing bits and pieces of their conversation, I knew

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something was wrong and Doctor Razdan had something to do with it. They left and I never saw either again.

ANSWER: Defendant lacks information sufficient to form a knowledge or belief as to the truth or falsity of the allegations contained at paragraph 62 and, therefore, neither admits nor denies same.

63. On my ninth day, Doctor Razdan showed up for the first time with his head down looking as if he knew that he had did something wrong during the procedure of the prostate biopsy to cause me my life. He walk up to my bed and said, "Elbert" in a sad voice "how are you doing?" I did not say a word. I just looked at him, because I knew that he had dome something wrong to me.

ANSWER: Defendant lacks information sufficient to form a knowledge or belief as to the truth or falsity of the allegations contained at paragraph 63 and, therefore, neither admits nor denies same.

64. Then he said, "Elbert, I am going to have to do surgery on you." I said, "what!" He said, I am not going to cut you, it will be laser surgery and it will not hurt you. I want to go up in there and trim around the edge of your prostate so that you can peen out of your penis. I am going to send you back to the institution and I will see you in my office in about two weeks O.K."

ANSWER: Defendant admits recommending that Johnson undergo HoLEAP. Defendant denies the remaining allegations and characterizations contained at paragraph 64.

65. Around Sept. 2010, I was taking to Kendall Medical Center to have surgery. After the surgery, I had to have a urine bag for two weeks and it was remove. I can not urinate normal and my right testis is still swollen with knots on it and my penis will not erect proper.

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ANSWER: Defendant admits performing HoLEAP at Kendall Medical Center on September 17, 2010. Defendant denies the remaining allegations and characterizations contained at paragraph 65.

66. Its obvious that during the prostate biopsy something was done wrong to cause my testis to swelled as it did and cause my urine to stop which almost took my life and has damage my life forever. My health was good until Doctor performed the prostate biopsy on me and my medical record will reveal that I did not have any kind of health problem.

ANSWER: Defendant denies the allegations, characterizations and legal conclusions contained at paragraph 66.

WHEREFORE, Defendant, Sanjay Razdan, M.D., denies that the Plaintiff is entitled to any relief whatsoever and respectfully requests that his Court enter judgment in his favor and against the Plaintiff, Elbert Johnson or for whatever other relief this Court deems just and proper.

AFFIRMATIVE DEFENSES

In the alternative, without prejudice to his previous denials and without waiving Plaintiff's obligation to put on evidence regarding the elements necessary to sustain his claim, Sanjay Razdan, M.D., states by way of his Affirmative Defenses, as follows:

FIRST AFFIRMATIVE DEFENSE

1. To the extent that the allegations contained in the complaint constitute the basis for any claim, it is only one for medical negligence.

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2. Johnson did not, prior to filing suit, comply with the Florida requirements for maintaining such a claim.

3. As the 11th Circuit has observed, “Florida law requires that before filing any claim for personal injury or wrongful death arising from medical malpractice, the claimant conduct an investigation of the claim and send the defendant(s) a notice of intent to sue, along with a corroborating opinion by a medical expert.” *Johnson v. McNeil*, 278 Fed.Appx. 866, 871 (11th Cir. 2008); citing Fla.Stat. Ann. §766.203(2).

4. The failure to comply with Florida’s pre-suit requirements in a medical negligence action is grounds for dismissal. “Florida law mandates the dismissal of a claim for medical malpractice when the pre-suit requirements have not been fulfilled.” *Johnson*, 278 Fed.Appx. at 872; citing Fla.Stat. Ann. §766.206(2).

SECOND AFFIRMATIVE DEFENSE

5. Dr. Razdan asserts that this Court lacks subject matter jurisdiction over this action by the Plaintiff’s failure to comply with the conditions precedent prior to the filing of this action pursuant to Florida Statute §766.106 and §766.203.

THIRD AFFIRMATIVE DEFENSE

6. Dr. Razdan states that at all material times, he conducted himself within the prevailing professional standard of care and therefore the Plaintiff may not recover against this him.

FOURTH AFFIRMATIVE DEFENSE

7. Dr. Razdan states that Hutchinson has failed to mitigate his damages as and any such recovery should be proportionately reduced as a result of this failure.

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JURY DEMAND

Defendant, Sanjay Razdan, M.D., demands a trial by jury of all issues so triable as of right by a jury.

I HEREBY CERTIFY that on November 7, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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69181-7

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:11-CV-21118-FAM
Magistrate Judge: Patrick White

ELBERT JOHNSON,

Plaintiff,

vs.

SANJAY RAZDAN, M.D.,

Defendant.

_____ /

**DEFENDANT'S FIRST MOTION FOR EXTENSION
OF TIME TO COMPLETE DISCOVERY**

Defendant, Sanjay Razdan, M.D. ("Dr. Razdan"), by and through his attorneys, Wicker, Smith, O'Hara, McCoy & Ford, P.A., moves this Court for the entry of an Order enlarging the time within which to complete fact discovery. In support thereof, Dr. Razdan states as follows:

1. The present action involves a claim by an inmate, Elbert Johnson ("Johnson"), in which he alleges that the medical care and treatment he received from Dr. Razdan constituted cruel and unusual punishment in violation of his constitutional rights.

2. On November 3, 2011, Magistrate Judge Patrick A. White entered an Order pursuant to which all discovery in this action was to be completed by February 21, 2012. (DE 29, p. 1.)

3. Dr. Razdan's counsel has diligently attempted to obtain information, documents and all the relevant materials sufficient to prepare a defense to this action. That has included subpoenaing medical records from various third party healthcare

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providers involved in Johnson's treatment. However, due to the fact that Mr. Johnson is not represented by counsel and is proceeding pro se, the identification of the appropriate healthcare providers and the compilation of all these materials to ensure that they are complete has been rendered more difficult. This is not a criticism of Mr. Johnson. Rather, it is simply an acknowledgement of the circumstances involving pro se inmate litigation.

4. In addition, due to the delay in receiving certain records, Defendant has not proceeded with Mr. Johnson's deposition due to restrictions in place at Dade Correctional concerning time allotted for the completion of deposition. In order to completely and effectively examine Mr. Johnson within the time periods allotted at Dade Correctional, it requires significant advance preparation so that the examination can be completed.

5. The completion of Johnson's deposition likely will not be completed prior to the present date for the closure of discovery, February 21, 2012, due to an additional complication.

6. In addition, Robert E. Paradela, one of the attorneys primarily responsible for handling this matter, has been begun a four (4) week trial in the matter of *Robert Rhodes, individually and Robert and Karen Rhodes, as Husband and Wife vs. Michael J. Rush, M.D., et al.*, CACE 08-001102 (26), pending in the 17th Judicial Circuit, in and for Broward County, Florida, before Judge Henning. That case is presently scheduled to take approximately four (4) weeks to try. This will render Mr. Paradela unavailable to depose Mr. Johnson within the remaining time for discovery.

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7. Accordingly, Dr. Razdan respectfully requests this Court for the entry of an Order granting the parties an additional forty-five (45) days within which to complete discovery. Similarly, Dr. Razdan would request the extension of the remaining discovery deadlines by a similar forty-five (45) day period.

WHEREFORE, Defendant, Sanjay Razdan, M.D., respectfully requests that this Court enter an Order extending the deadline set forth in its November 3, 2011 Order (DE 29) by forty-five (45) days, or for whatever other relief this Court deems just and proper.

I HEREBY CERTIFY that on February 3, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF FLORIDA

ELBERT JOHNSON,

CIRCUIT CIVIL DIVISION

Plaintiff,

CASE NO. 1:11-CV-21118-FAM

vs.

SANJAY RAZDAN, M.D.,

Defendant.

**ORDER ON DEFENDANT'S FIRST MOTION FOR EXTENSION
OF TIME TO COMPLETE DISCOVERY**

This matter coming to be heard on Defendant, Dr. Sanjay Razdan, M.D.'s First Motion for Extension of Time to Complete Discovery, all parties having been given due notice and the Court having been fully advised on the premises;

IT IS HEREBY ORDERED THAT:

1. Defendant's Motion is Granted;
2. The deadlines set forth in the Court's November 3, 2011 Order (DE 29)

are modified as follows:

a. All discovery methods listed in Rule 26(a), Federal Rules of Civil Procedure, shall be completed by **April 6, 2012**. This shall include all motions relating to discovery.

b. All motions to join additional parties or amend the pleadings shall be filed by **April 20, 2012**.

c. All motions to dismiss and/or for summary judgment shall be filed by **May 11, 2012**.

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d. On or before May 25, 2012, the plaintiff shall file with the Court and serve upon counsel for the defendant a document called "Pretrial Statement." Said Pretrial Statement shall contain all information set forth in DE 29, ¶4(a)-(f).

e. On or before June 8, 2012, defendants shall file and serve upon plaintiff a "Pretrial Statement," which shall comply with DE 29, ¶4(a)-(f).

3. All other terms and conditions set forth in the Court's November 3, 2011 Order, DE 29, remain in full force and effect.

DONE AND ORDERED at Miami-Dade County, Florida, this _____ day of _____, 20____.

Hon. Patrick A. White
United States Magistrate Judge

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UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:11-CV-21118-FAM
Magistrate Judge: Patrick White

ELBERT JOHNSON,

Plaintiff,

vs.

SANJAY RAZDAN, M.D.,

Defendant.

**DEFENDANT'S SECOND MOTION FOR
EXTENSION OF TIME TO COMPLETE DISCOVERY**

Defendant, Sanjay Razdan, M.D. ("Dr. Razdan"), by and through his attorneys, Wicker, Smith, O'Hara, McCoy & Ford, P.A., moves this Court for the entry of an Order enlarging the time within which to complete fact discovery. In support thereof, Dr. Razdan states as follows:

1. The present action involves a claim by an inmate, Elbert Johnson ("Johnson"), in which he alleges that the medical care and treatment he received from Dr. Razdan constituted cruel and unusual punishment in violation of his constitutional rights.

2. On November 3, 2011, Magistrate Judge Patrick A. White entered an Order pursuant to which all discovery in this action was to be completed by February 21, 2012. (DE 29, p. 1.)

3. On February 14, 2012, Magistrate Judge Patrick A. White entered an Order pursuant to which the pre-trial and discovery deadlines were extended by 45 days; thereby extending discovery until April 6, 2012. (DE 35.)

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4. Dr. Razdan's counsel has diligently attempted to obtain information, documents and all the relevant materials sufficient to prepare a defense to this action. In addition, Dr. Razdan's counsel is also involved in the representation of Dr. Razdan in connection with another matter pending before this Court involving another inmate incarcerated at Dade Correctional ("Dade CI"). That action is styled *Hutchinson v. Razdan*, Case No. 1:11-CV-20159-JIC, pending in the United States District Court for the Southern District of Florida.

5. As part of an effort to minimize unnecessary expenses, including repeated trips to Dade Correctional to conduct depositions, counsel for Dr. Razdan has been able to secure time to complete the depositions of both Mr. Johnson and Mr. Hutchinson on the same date. Those depositions can be completed on April 12, 2012.

6. Accordingly, Dr. Razdan would respectfully request that this Court enter an Order enlarging the time within which to complete discovery by twenty-one (21) days, so that the deposition can be completed, and shared with the appropriate experts and that those witnesses can be timely disclosed in accordance with the Court's Order.

WHEREFORE, Defendant, Sanjay Razdan, M.D., respectfully requests that this Court enter an Order extending the time for the completion of discovery up to and including May 6, 2012.

I HEREBY CERTIFY that on April 3, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of

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69181-7

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF FLORIDA

ELBERT JOHNSON,

CIRCUIT CIVIL DIVISION

Plaintiff,

CASE NO. 1:11-CV-21118-FAM

vs.

SANJAY RAZDAN, M.D.,

Defendant.

_____/

**ORDER ON DEFENDANT'S SECOND MOTION FOR EXTENSION OF
TIME TO COMPLETE DISCOVERY**

This matter coming to be heard on Defendant, Sanjay Razdan, M.D.'s "Second Motion for Extension of Time to Complete Discovery," all parties having been given due notice and the Court having been fully advised in the premises, IT IS HEREBY

ORDERED AND ADJUDGED as follows:

1. Defendant's Motion is granted;
2. All deadlines set forth in DE 35 are extended by an additional 21 days.

DONE AND ORDERED at Miami-Dade County, Florida, this _____ day of

_____, 20_____.

HON. PATRICK A. WHITE
MAGISTRATE JUDGE

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69181-7

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:11-CV-21118-FAM
Magistrate Judge: Patrick White

ELBERT JOHNSON,

Plaintiff,

vs.

SANJAY RAZDAN, M.D.,

Defendant.

_____ /

DR. RAZDAN'S MOTION FOR SUMMARY JUDGMENT

Defendant, Sanjay Razdan, M.D. ("Dr. Razdan"), by and through his attorneys, Wicker, Smith, O'Hara, McCoy & Ford, P.A., and pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the Local Rules of the United States District Court for the Southern District of Florida, moves this Court for the entry of summary judgment in his favor and against the plaintiff, Elbert Johnson ("Johnson"). In support thereof, Dr. Razdan states as follows:

MOTION FOR SUMMARY JUDGMENT

1. Johnson, an inmate at the Dade Correctional Institute ("Dade C.I."), filed the instant action against Dr. Razdan pursuant 42 U.S.C. §1983 in which he claims medical care and treatment he received from Dr. Razdan amounted to a violation of his constitutional rights. (DE 1; DE 9.) In particular, Johnson has alleged that certain treatment was either unnecessary or improperly performed. (DE 1; DE 9.)

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2. Summary judgment is appropriate when 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); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

3. If the party seeking summary judgment meets the initial burden of demonstrating the absence of a genuine issue of material fact, the burden then shifts to the non-moving party, to come forward with sufficient evidence to rebut this showing with affidavits or other relevant and admissible evidence. *Avirgan v. Hull*, 932 F.2d 1572, 1577 (11th Cir. 1991).

4. Johnson must establish he suffered from a serious medical need, that Dr. Razdan was deliberately indifferent to that need; and his purported injury was caused by Dr. Razdan's deliberate indifference. *Townsend v. Jefferson County*, 601 F.3d 1152, 1158 (11th Cir. 2010); citing *Goebert v. Lee County*, 510 F.3d 1312, 1326 (11th Cir. 2007).

5. In order to prove that Dr. Razdan was deliberately indifferent to his serious medical need, Johnson must produce competent evidence establishing: (i) subjective knowledge (by Dr. Razdan) of a risk of serious harm (relating to that underlying medical need); (ii) that Dr. Razdan disregarded that risk; and (iii) conduct by Dr. Razdan that is "more than gross negligence." *Townsend*, 601 F.3d at 1158; citing *Bozeman v. Orum*, 442 F.3d 1265, 1272 (11th Cir. 2005); *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999); and *Cottrell v. Caldwell*, 85 F.3d 1480 (11th Cir. 1996).

6. In this case, Johnson cannot sustain this burden. Based upon the record, Dr. Razdan is entitled to judgment as a matter of law because: (i) there is no competent

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evidence to suggest that Dr. Razdan acted with the requisite deliberate indifference; and (iii) there is no competent evidence causally linking the purported injury sustained by Johnson to Dr. Razdan's deliberate indifference.

7. Dr. Razdan adopts and incorporates by reference the arguments and authorities set forth in the contemporaneously filed Memorandum in Support of Dr. Razdan's Motion for Summary Judgment.

8. Dr. Razdan would note that he has also caused to be filed the required "Statement of Facts" in accordance with Rule 56.1 of the Local Rules for the Southern District of Florida.

WHEREFORE, Defendant, Sanjay Razdan, M.D., respectfully requests that this Court enter an order: (i) granting this Motion; (ii) entering judgment in his favor and against the plaintiff, Elbert Johnson; and/or (iii) for whatever other relief this Court deems just and proper.

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I HEREBY CERTIFY that on June 29, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:11-CV-21118-FAM
Magistrate Judge: Patrick White

ELBERT JOHNSON,

Plaintiff,

vs.

SANJAY RAZDAN, M.D.,

Defendant.

_____ /

**MEMORANDUM IN SUPPORT OF DR. RAZDAN'S
MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

In 2008, Elbert Johnson (“Johnson”), an inmate serving a 130 year sentence for multiple felonies, was transferred to the Dade Correctional Institution (Dade C.I.). Upon his transfer, health care providers at Dade C.I. noticed that Johnson’s Prostate Specific Antigen (“PSA”) values were significantly elevated and recommended that he undergo a prostate biopsy to determine whether he suffered from, among other things, prostate cancer. Twenty-months later, after repeatedly refusing the recommendations of numerous health care providers (including the Defendant, Sanjay Razdan, M.D. (“Dr. Razdan”)), Johnson agreed to and underwent the biopsy.

Dr. Razdan performed the biopsy on May 17, 2010. Following the biopsy, Johnson experienced several episodes of severe urinary dysfunction manifested by urinary retention and an inability to void urine. Dr. Razdan was contacted to consult and, ultimately, successfully treated and resolved Johnson’s subsequent urinary issues. Now,

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however, Johnson has sued Dr. Razdan claiming that the treatment he received was either unnecessary or performed improperly.

Johnson filed this §1983 action in which he contends that the medical care and treatment that Dr. Razdan provided was improper and/or inadequate and amounted to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. (DE 9.) Stated differently, Johnson has filed a complaint in which he claims that Dr. Razdan: (i) performed an unnecessary prostate biopsy; (ii) performed that prostate biopsy improperly; and/or (iii) failed to treat him appropriately following the biopsy. (DE 9.) But, these contentions are neither factually accurate nor will they support even the inference that Dr. Razdan deprived Johnson of his constitutionally protected rights.

The undisputed competent evidence reflects that:

- Dr. Razdan's decision to perform the biopsy was appropriate; the biopsy was recommended by numerous health care providers, was medically indicated, and there is no evidence to suggest that Dr. Razdan acted with the requisite intent;
- Dr. Razdan performed the prostate biopsy properly; and
- Dr. Razdan's post-biopsy treatment was timely, appropriate and medically indicated based upon Johnson's symptoms and presentation.

Johnson has not and cannot produce any competent evidence to rebut these facts. He has not disclosed any expert to testify concerning these issues and he is not qualified to opine concerning these matters. Put simply, the un-rebuttable evidence in this case reflects that summary judgment is both appropriate and should be entered in favor of Dr. Razdan and against Johnson.

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BACKGROUND¹

A. Elbert Johnson

Johnson is a 69 year old man who has spent the vast majority of his adult life incarcerated. (SoF ¶¶1-2.) Johnson is not a doctor; he has no medical training and he has never performed any of the medical procedures that are the subject of this action. (SoF ¶4.)

In 1980, Hutchinson was convicted for armed robbery and second degree attempted murder and sentenced to serve 130 years in prison. (SoF ¶3.) This was his third conviction. (SoF ¶¶2-3.) Since his conviction in 1980, Johnson has served his sentence at various Florida correctional facilities. (SoF ¶4.) In the fall of 2008, Johnson was transferred to Dade C.I. (SoF ¶5.)

B. Johnson's Original Presentation and Evaluation by Health Care Professionals at Dade C.I.

Prior to his arrival at Dade C.I., Johnson had received certain medical care and treatment at the Century Correctional Institution in Century, Florida. (SoF ¶7.) As part of that treatment, Johnson had undergone a PSA test that revealed a significantly elevated PSA level of 27.5 ng/ml. (SoF ¶8.) Elevated PSA levels are a potential indicator of various serious medical conditions including prostate cancer. (SoF ¶59.) Following his arrival at Dade C.I., numerous Dade C.I. healthcare providers recommended that Johnson undergo a prostate biopsy to determine whether he suffered from a significant medical

¹ Dr. Razdan has separately filed his "Statement of Facts" as required by Rule 56.1 of the Local Rules of the Southern District of Florida. Citations in the form "SoF ¶_" refer to the corresponding paragraph of Dr. Razdan's Statement of Facts.

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condition such as prostate cancer. (SoF ¶9.) These recommendations ultimately lead to Johnson being referred to Dr. Razdan for evaluation. (SoF ¶10.)

C. Dr. Razdan's Care and Treatment

1. Dr. Razdan's Initial Diagnosis and Treatment Plan – Pre-Biopsy

Dr. Razdan first saw Johnson on October 27, 2008. (SoF ¶11.) At that time, Johnson had been referred to Dr. Razdan by healthcare providers at Dade Correctional Dade C.I. (including Dr. Julio Proveda and ARNP J. Dwares) to rule out a suspected diagnosis of prostate cancer. (SoF ¶12.) As part of his October 27, 2008 examination, Dr. Razdan performed a digital rectal examination. (SoF ¶13.) That examination revealed that Johnson had a “firm prostate” measuring approximately 40g. (SoF ¶13.) This was a significant finding which, in conjunction with the prior reported elevated PSA levels and Johnson's age (66 years old), warranted further evaluation in the form of a biopsy to confirm or eliminate prostate cancer from the differential diagnosis. (SoF ¶61.) Dr. Razdan subsequently discussed his desire to perform the prostate biopsy with Johnson. (SoF ¶14.) Johnson refused to undergo the procedure at that time. (SoF ¶15.)

Dr. Razdan saw Johnson again on June 15, 2009. (SoF ¶16.) At that time, Johnson had been referred by Dade C.I. physician Dr. Julio Proveda for a urological consult and prostate biopsy to determine whether Johnson had prostate cancer. (SoF ¶17.) Johnson again refused the biopsy. (SoF ¶18.)

Dr. Razdan saw Johnson for a third time on March 17, 2010. (SoF ¶19.) At this time, Johnson was again referred to Dr. Razdan by Dr. Proveda for evaluation in connection with continued elevated PSA levels and suspected prostate cancer and

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prostatic involvement. (SoF ¶20.) At this time, the biopsy was again discussed and the procedure was subsequently scheduled to be performed in May 2010. (SoF ¶21.)

Between 2008 and May 2010, no less than three separate health care providers (besides Dr. Razdan) had recommended that Johnson undergo a biopsy in light of his clinical presentation. (SoF ¶22.) Despite this, Johnson, an individual with no medical training or expertise, contends that the biopsy should not have been performed. (DE 9; SoF ¶6.)

2. The May 17, 2010 TRUS Biopsy

On May 17, 2010, Dr. Razdan performed a Transrectal Ultrasound Guided Biopsy (“TRUS”) on Johnson. (SoF ¶23.) The procedure was performed in an office setting. (SoF ¶24.) Dr. Razdan had Johnson lay down on his side, assuming a position commonly referred to as the “left lateral decubitus” position. (SoF ¶25.) Dr. Razdan introduced a probe into the rectum to the base of the bladder until the seminal vesicles were visualized via ultrasound. (SoF ¶25.) Dr. Razdan moved the probe back from the prostate base to the prostate apex. (SoF ¶25.) Core samples of the prostatic tissue were then taken utilizing a biopsy needle. (SoF ¶25.) The procedure was completed without complications, appropriate core samples were obtained, and Johnson was returned to Dade C.I. without incident. (SoF ¶25.)²

² At the time of discharge, Johnson claims that he was experiencing episodes of bloody urine. (SoF ¶23.) That is neither unusual nor indicative of any serious medical condition. (SoF ¶65.) As noted below, that condition resolved within three or four days following the procedure. (SoF ¶65.) But, admittedly, Johnson did not have any other symptoms at the time of discharge. The swollen testicles did not present until some point after his return to Dade C.I. The urinary retention did not present until 10 to 11 days after the procedure, at the earliest. (SoF ¶29.)

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3. Post Biopsy Involvement

(a) The Resolution of Hematuria

Following the biopsy, Johnson returned to Dade C.I. (SoF ¶26.) He remained in the Dade C.I. infirmary for approximately one night until he was discharged the following day (June 18, 2010). (SoF ¶26.) Following his discharge from the infirmary, Johnson allegedly had episodes of bloody urine for two or three more days. (SoF ¶27.) However, that condition subsequently resolved after Johnson began receiving treatment at Dade C.I. (SoF ¶28.)

(b) Dr. Razdans' Subsequent Involvement to Treat Urinary Dysfunction

Approximately ten to eleven days after the biopsy, and while he was still at Dade C.I., Johnson began experiencing difficulty urinating. (SoF ¶29.) According to Johnson, he simply could not urinate. (SoF ¶29.) Johnson was treated for this new condition by health care providers at Dade C.I. (SoF ¶30.) As acknowledged by Johnson, Dr. Razdan was neither notified nor contacted about these new symptoms until the day before Johnson was sent from Dade C.I. to Kendall Hospital on June 23, 2010, at the earliest.³

After being contacted, Dr. Razdan promptly implemented a plan to diagnose and treat Johnson's conditions. (SoF ¶32.) Dr. Razdan, had been advised that a foley catheter had been placed and Johnson's condition was stabilizing. (SoF ¶33.) On June 23, 2012, the first day of Johnson's admission, he ordered a renal/bladder ultrasound. (SoF ¶34.) On June 24, 2012, Dr. Razdan examined Johnson at Kendall. (SoF ¶35.) At

³ Johnson has testified that Dr. Razdan was contacted on June 22, 2010 – the day before he was admitted to Kendall. Dr. Razdan affidavit reflects that he was not contacted until the following day, June 23, 2010

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that time, the voiding/ retention issues had resolved significantly through the use of the Foley catheter. (SoF ¶35.) Dr. Razdan entered an order reflecting that the Foley should remain in place until the Bun/Creatinine levels stabilized and ordered further studies to confirm that the condition was and remained improving. (SoF ¶36.) On June 25, 2012, Dr. Razdan consulted with Dr. Barros, the Kendall Regional Medical Center admitting physician, at which time it was determined that Johnson could be discharged with the Foley catheter in place to avoid further urinary blockages. (SoF ¶37.)

(c) Subsequent Urinary Retention And Response

Following his discharge from Kendall Regional Medical Center on June 25, 2010, Mr. Johnson returned to Dade C.I., but he was not taken back to see Dr. Razdan (although he had requested that Johnson be seen for a follow-up one week after discharge). (SoF ¶38.) During this period, Mr. Johnson's Foley catheter was in place and he was progressing. (SoF ¶39.) However, approximately three weeks after returning to Dade C.I., Johnson's Foley was removed and he began experiencing urinary issues again. (SoF ¶40.) Again, Dr. Razdan was not advised or consulted by Dade C.I. personnel concerning: (i) the removal of the Foley catheter; or (ii) Johnson's development of new urinary symptoms. (SoF ¶41.)

By July 16, 2010, Johnson had apparently experienced a significant episode of urinary retention and he was again taken to Kendall Regional Medical Center for treatment. (SoF ¶42.) Dr. Razdan was again consulted and responded. (SoF ¶43.) On July 16, 2010, Dr. Razdan initiated a plan to obtain CT scans, ultrasounds, and initiated

after Johnson had been admitted. This one day difference is, essentially of no consequence as there are no allegations or claims that this delay of hours caused, contributed or resulted in any purported injury.

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medications. (SoF ¶44.) By July 17, 2010, attempts to re-insert a Foley catheter had proven unsuccessful. (SoF ¶44.) On July 17, 2010, Dr. Razdan successfully placed a suprapubic catheter in order to allow Johnson to void urine. (SoF ¶45.) Dr. Razdan remained actively involved in Mr. Johnson's treatment during this period as reflected in the Kendall Records before Mr. Johnson was ultimately discharged on July 24, 2010. (SoF ¶45.)

(d) Continued Treatment

Following the July admission, Dr. Razdan neither stopped treating nor deprived Johnson of medical care and treatment. Rather, after having treated Johnson during two separate episodes of urinary retention, Dr. Razdan identified and implemented a potential solution, one that Johnson agreed with and one which eventually resolved the persistent and serious problems. (SoF ¶46.)

Following discharge in July 24, 2010, Johnson returned to Dade C.I. with the suprapubic catheter in place. (SoF ¶47.) On August 26, 2010, Johnson was seen by Dr. Razdan and he noted that Johnson was unable to void through his urethra due to a constriction of the urethra and prostate around the bladder. (SoF ¶48.) Dr. Razdan determined that the most appropriate treatment to resolve this condition was to remove a portion of the prostate and to eliminate the stricture preventing urine flow. (SoF ¶¶48-49.)

On September 17, 2010 Dr. Razdan performed a Holmium Laser Enucleation and Ablation of the Prostate ("HoLEAP") and Johnson's urinary problems resolved. (SoF ¶50.)

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D. Johnson's Subsequent Complaints and the Present Action

Following either the biopsy or subsequent treatment, Johnson contends that he sustained some form of injury. In particular, Johnson contends that he suffered injuries in the form of: (i) an inability to obtain an erection; (ii) pain; (iii) urinary difficulties; swollen testicle; (iv) liver damage, (v) bloody urine. (DE 9.) It is significant to note, however, that the vast majority of these symptoms promptly resolved after treatment. Potentially more significantly, no a single person has ever told Johnson that anything Dr. Razdan did or failed to do caused or contributed to these purported injuries.

On June 13, 2011, Hutchison filed his *pro se* §1983 Amended Complaint in the United States District Court for the Southern District of Florida ("Complaint"). (DE 9.) In the Amended Complaint, Johnson attempted to characterize the medical care and treatment he received as cruel and unusual punishment in violation of the Eighth Amendments to the United States Constitution. (DE 9.) Armed with only his unqualified opinions, Johnson contends that the decision to proceed with the biopsy, the performance of the biopsy, and the post-biopsy treatment he received from Dr. Razdan amounted to deliberate indifference of a serious medical need. But, neither the facts nor existing precedent support such a conclusion.

ARGUMENT

I. THE APPLICABLE SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when 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); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Summary

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judgment should be entered against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and no which that party will bear the burden of proof at trial.⁴ If the party seeking summary judgment meets the initial burden of demonstrating the absence of a genuine issue of material fact, the burden then shifts to the non-moving party, to come forward with sufficient evidence to rebut this showing with affidavits or other relevant and admissible evidence. *Avirgan v. Hull*, 932 F.2d 1572, 1577 (11th Cir. 1991). If the evidence presented by the nonmoving party is merely colorable, or is not significantly probative, summary judgment may be granted. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1985).

In this case, there is simply no evidence that can be presented to create a disputed issue of fact sufficient to withstand the present motion. The undisputed competent evidence reflects that Johnson cannot establish essential elements of his claim.

II. IN ORDER TO WITHSTAND SUMMARY JUDGMENT, JOHNSON MUST PRODUCE COMPOTENT EVIDENCE OF DR. RAZDAN'S ALLEGED DELIBERATE INDIFFERENCE AND THAT SUCH INDIFFERENCE CAUSED HIS INJURY

The Supreme Court has interpreted the Eighth Amendment to include "deliberate indifference to serious medical needs of prisoners." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). But, as the Eleventh Circuit has recognized, "every claim by a prisoner that he did not receive adequate medical treatment, however, does not state a violation of the Eight Amendment." *Granada v. Schulman*, 372 Fed.Appx. 79, 82 (11th Cir. 2010); citing *Estelle*, 429 U.S. at 105. To state a claim of inadequate medical treatment, a prisoner

⁴ In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the non-moving party's case essentially renders all other facts

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must allege facts that setting forth an objectively serious deprivation and a subjective intent to punish. *Granada*, 372 Fed.Appx. at 82; citing *Taylor v. Adamis*, 221 F.3d 1254, 1258 (11th Cir. 2000) (emphasis added).

In order rebut the present motion, Johnson must establish he suffered from a serious medical need, that Dr. Razdan was deliberately indifferent to that need; and his purported injury was caused by Dr. Razdan's deliberate indifference. *Townsend v. Jefferson County*, 601 F.3d 1152, 1158 (11th Cir. 2010); citing *Goebert v. Lee County*, 510 F.3d 1312, 1326 (11th Cir. 2007). In order to prove that Dr. Razdan was deliberately indifferent to his serious medical need, Johnson must produce competent evidence establishing: (i) subjective knowledge (by Dr. Razdan) of a risk of serious harm (relating to that underlying medical need); (ii) that Dr. Razdan disregarded that risk; and (iii) conduct by Dr. Razdan that is "more than gross negligence." *Townsend*, 601 F.3d at 1158; citing *Bozeman v. Orum*, 442 F.3d 1265, 1272 (11th Cir. 2005); *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999); and *Cottrell v. Caldwell*, 85 F.3d 1480 (11th Cir. 1996).

Johnson cannot sustain this burden; there is simply no evidence to suggest that Dr. Razdan acted with the requisite deliberate indifference or that such actions caused or contributed to his claimed injury. In particular:

- There is no evidence to suggest that Dr. Razdan's decision to perform the biopsy was inappropriate; the biopsy was recommended by numerous health care providers, was medically indicated, and there is no evidence to suggest that Dr. Razdan acted with the requisite intent;

immaterial. *Davis v. Pastrana*, 10-20402-CIV, 2010 WL 6102888, n. 2 (S.D. Fla. Dec. 15, 2010) report and recommendation adopted, 10-20402-CIV, 2011 WL 915735 (S.D. Fla. Mar. 16, 2011).

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- There is no evidence to suggest Dr. Razdan performed the TRUS biopsy improperly – two separate physicians have opined that the biopsy was performed properly;
- There is no competent evidence to suggest that Dr. Razdan failed to act or treated Johnson improperly after the biopsy – the undisputed testimony is that Dr. Razdan treated Johnson’s subsequent symptoms timely and appropriately when he was advised of any condition; and
- There is absolutely no competent evidence causally linking any action or inaction by Dr. Razdan to any injuries purportedly sustained by Johnson.

Put simply, no factual questions exist that would preclude entry of summary judgment in favor of Dr. Razdan against Johnson.

III. SUMMARY JUDGMENT IS APPROPRIATE WITH RESPECT TO ALL CLAIMS INVOLVING THE DECISION TO PERFORM THE BIOPSY – JOHNSON HAS NOT AND CANNOT SHOW THAT DR. RAZDAN WAS DELIBERATELY INDIFFERENT

According to Johnson, Dr. Razdan’s decision to perform the prostate biopsy in May 2010 was improper. (DE 9.) Not surprisingly, there is no competent evidence to support this contention, let alone competent testimony to support the elements necessary to sustain the present §1983 claim.

A. There is Absolutely No Evidence In the Record To Suggest that Dr. Razdan Acted With the Requisite Subjective Intent To Cause Harm With Respect to the Biopsy

In order withstand the present motion, Johnson must demonstrate that Dr. Razdan acted wantonly, with deliberate indifference to his serious medical needs. *Farmer v. Brennan*, 511 U.S. 294, 298-99 (1991). Deliberate indifference is the reckless disregard of a substantial risk of serious harm; mere negligence will not suffice. *Id.* at 835-36. Allegations of medical malpractice or negligent diagnosis and treatment fail to state an Eighth Amendment claim of cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S.

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97, 106 (1976); *Harris v. Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991) (“mere incidents of negligence or malpractice do not rise to the level of constitutional violations”); *Pintado v. Dora*, 2011 WL 794607, at 10 (S.D.Fla. 2011). The subjective or deliberate indifference element requires Johnson to demonstrate, among other things, that Dr. Razdan knew of a substantial risk to Johnson and that Dr. Razdan ignored that risk. *Brown v. Johnson*, 387 F.3d 1344, 1351 (11th Cir. 2004).

In the present action there is absolutely no evidence suggesting that Dr. Razdan’s decision to perform the prostate biopsy was motivated by anything other than medical purposes. Although Dr. Razdan has not been deposed, his affidavit reflects that the decision to proceed with the biopsy was medically indicated based upon Johnson’s clinical presentation. (SoF ¶¶57-61.) Another qualified physician, Dr. Marshall Kaplan, has reviewed this matter and has reached the same conclusion – the biopsy was indicated. (SoF ¶¶57-61.) Johnson has not and cannot refute this. As such, a basic element of Johnson’s claim is noticeably lacking.

B. The Undisputed Evidence Reflects that the Decision to Proceed With The Biopsy Was Medically Indicated and Appropriate – It Therefore Could Rise to the Level Necessary to Support a §1983 Claim

In order to withstand the present motion, Johnson must introduce evidence not only of Dr. Razdan’s subjective mental state (in deciding to recommend and perform the TRUS biopsy), but he must establish that Dr. Razdan’s conduct amounted to something more than “gross negligence.” *Townsend*, 601 F.3d at 1158; citing *Bozeman v. Orum*, 442 F.3d 1265, 1272 (11th Cir. 2005). Put simply, there is absolutely no evidence in the record to support such a conclusion. In fact, the undisputed competent evidence in the

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record reflects that the decision to proceed with the biopsy was entirely appropriate and medically indicated.

Johnson has neither disclosed nor offered any expert testimony in connection with this case. There is not a single deposition, witness, or other qualified individual identified by Johnson that is capable of offering testimony to suggest that Dr. Razdan's decision to recommend and proceed with the TRUS biopsy rose to the level of being something more than "gross negligence." As a result, Johnson is left with only himself to sustain his evidentiary burden. But, Johnson is neither qualified to nor capable of presenting evidence in this regard Johnson is not a medical doctor and he has no medical training whatsoever, let alone sufficient training to opine concerning these medical issues. (SoF ¶6.)

In the instant case, two urologists have concluded that decision to proceed with a biopsy Johnson received appropriate.⁵ (SoF ¶¶57-61.) Each has opined that the medical decision to perform a biopsy was appropriate, medically indicated, and in accordance with the applicable standard of care. (SoF ¶¶57-61.) In particular, those physicians opine that the TRUS biopsy was medically indicated in light of, among other factors, Johnson's age, race, history of a significantly elevated PSA level in December 2007, subsequent PSA tests that reflected that Johnson's PSA levels remained elevated, his incarcerated status⁶, a digital rectal examination that reflected a "firm" prostate. (SoF ¶¶60-61.) In light of this un-contested testimony, no factual question exists – the decision to proceed

⁵ Admittedly, one of the physicians is Dr. Razdan.

⁶ As reflected in the affidavits of Dr. Razdan and Dr. Kaplan, Johnson's incarcerated status essentially precluded conservative monitoring as the ability to independently follow a particular patient would be limited.

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with and recommend the biopsy was appropriate and will not support a deliberate indifference claim. See *Wingster v. Head*, 318 Fed.Appx. 809, 815 (11th Cir. 2009) (recognizing that a party could not create a triable issue of fact by disregarding the uncontradicted and unimpeached testimony of an expert witness, a witness whose testimony bears on technical medical questions.)

If this was not enough, Johnson himself has admitted that numerous other health care providers at Dade C.I. each also recommended that he undergo a biopsy. Put simply, the overwhelming competent evidence establishes that Dr. Razdan's decision to recommend and perform the TRUS biopsy was not "grossly negligent" as required to sustain a deliberate indifference claim. The undisputed evidence is that Dr. Razdan's treatment complied with the standard of care; it certainly was not something more than "gross negligence" as required by applicable precedent.

IV. SUMMARY JUDGMENT IS APPROPRIATE WITH RESPECT TO ALL CLAIMS INVOLVING THE PERFORMANCE OF THE BIOPSY – THE UNDISPUTED COMPETENT EVIDENCE REFLECTS THAT THE BIOPSY WAS PROPERLY PERFORMED

Johnson's second "deliberate indifference" theory is predicated upon his unsupported belief that Dr. Johnson somehow performed the prostate biopsy improperly. But, in order to present this theory to a jury, Johnson must present some evidence suggesting that the biopsy was performed in a manner suggesting that Dr. Razdan's conduct amount to "more than gross negligence." *Townsend*, 601 F.3d at 1158; citing *Bozeman v. Orum*, 442 F.3d 1265, 1272 (11th Cir. 2005); *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999); and *Cottrell v. Caldwell*, 85 F.3d 1480 (11th Cir. 1996). Again, the only evidence Johnson has to support this contention is his unqualified

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opinions. But, the undisputed competent evidence reflects that the biopsy was appropriately performed.

In this case, two separate physicians have opined that the biopsy was performed appropriately. In fact, each has concluded that the biopsy was performed appropriately and in accordance with the applicable standard of care. (SoF ¶¶62-66.) Johnson's unqualified assertions to the effect that the biopsy was performed improperly are, quite simply, irrelevant. As reflected in Mr. Johnson's deposition testimony and the complaint, he experienced discomfort during the prostate biopsy and subsequently experienced hematuria (bloody urine).⁷ As noted by qualified experts, discomfort is common with the TRUS procedure, typically resolves soon after the procedure, and, in this case, did resolve within three to four days. (SoF ¶65.) Discomfort can occur and cannot be predicted based upon the sensitivity of the individual patient. (SoF ¶65.) Dr. Razdan's decision to proceed with and complete the biopsy was neither inappropriate nor intended to cause any pain. (SoF ¶65.)

V. SUMMARY JUDGMENT IS APPROPRIATE WITH RESPECT TO ALL CLAIMS ARISING FROM DR. RAZDAN'S POST-BIOPSY CARE AND TREATMENT - THE UNDISPUTED EVIDENCE REFLECTS THAT DR. RAZDAN RESPONDED TIMELY AND APPROPRIATELY TO TREAT JOHNSON WHEN ADVISED OF HIS CONDITION

According to one court,

Where the claim turns on the quality of treatment provided, there is not constitutional violation as long as the medical care provided to the inmate is "minimally adequate." (citations omitted.) Rather, the response made by the public officials to that need must be poor enough to constitute unnecessary and wanton infliction of pain, and

⁷ See Complaint; Deposition of E. Johnson, May 3, 2012.

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not merely accidental inadequacy, negligence in diagnosis or treatment, or medical malpractice actionable under state law.

Cantres v. Bailey, 2010 WL 3294348, 4 (M.D.Fla. 2010) (emphasis added.) According to the Eleventh Circuit, the conduct must be so grossly incompetent, inadequate, or excessive so as to shock the conscience or to be intolerable to fundamental fairness.” *Harris v. Thigpen*, 941 F.3d 1495, 1505 (11th Cir. 1991). In order to maintain his claim, Johnson must present some evidence to suggest that Dr. Razdan’s post-biopsy conduct and treatment constituted something more than “gross negligence.” *Townsend*, 601 F.3d at 1158; citing *Bozeman v. Orum*, 442 F.3d 1265, 1272 (11th Cir. 2005). Put simply, Hutchinson has no such evidence.

As noted above, Johnson’s claims, generally, suffer from a fundamental problem – there is absolutely no evidence in the record to suggest that Dr. Razdan acted improperly or, more importantly, that his actions or inactions rose to a level beyond “gross negligence” as required by existing precedent. This is equally true with respect to any purported claims Johnson has tried to assert with respect to Dr. Razdan’s post-biopsy care and treatment. The undisputed evidence reflects that: (i) Dr. Razdan responded to and treated Johnson’s condition; (ii) Dr. Razdan’s treatment was timely in light of when he was advised of the condition; and (iii) the treatment was appropriate, medically indicated, and rendered properly.

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A. The Undisputed Evidence Reflects That Dr. Razdan's Purported Failure to Respond to or Treat Johnson's Complaint's of Bloody Urine are Irrelevant – Those Symptoms All Subsequently Resolved

Johnson's Amended Complaint places significant emphasis upon the fact that he purportedly continued to experience episodes of blood in his urine following the procedure. (DE 9.) Put simply, such a symptom neither suggests that Dr. Razdan treated Johnson inappropriately or that Dr. Razdan was deliberately indifferent to Johnson's purported serious medical needs.

As noted by two separate qualified physicians, Johnson's hematuria was neither unexpected nor did it cause any significant continuing problems. (SoF ¶65.) More to the point, even Johnson himself testified that his bloody urine resolved within three to four days following the procedure. (SoF ¶28.) Accordingly, the suggestion that Dr. Razdan was somehow deliberately indifferent to a serious medical need – Johnson's reported bloody urine - is neither factually accurate nor relevant. That condition had resolved and required no further care or treatment.

B. The Undisputed Evidence Reflects That Continued To Treat Johnson

From the record, one cannot claim that Dr. Razdan was actively treating Johnson's post-biopsy condition or than he somehow disregarded Johnson's problems. In fact, Dr. Razdan treated Johnson on several occasions following the biopsy. This very fact alone suggests that summary judgment is appropriate. See Thomas v. Pichardo, 08-22333-CIV, 2010 WL 3119623 (S.D. Fla. June 2, 2010) report and recommendation adopted, 08-22333-CIV, 2010 WL 3119544 (S.D. Fla. Aug. 3, 2010) ("once an inmate has received medical care, courts are hesitant to find that a constitutional violation has

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occurred.” citing *Hamm v. DeKalb County*, 774 F.2d 1567, (11 Cir.), *cert. denied*, 475 U.S. 1096, 106 S.Ct. 1492, 89 L.Ed.2d 894 (1986.)

The undisputed evidence and expert conclusions in this case establishes that:

- Following the original biopsy, Johnson experienced two separate subsequent episodes of urinary retention (SoF ¶¶26-50; 68-79);
- Both those episodes occurred at Dade C.I., and Dr. Razdan was not immediately notified of either episode (SoF ¶¶26-50; 68-79);
- When notified, Dr. Razdan promptly responded in such a manner so as to both identify and treat the underlying condition but, to identify and treat the underlying cause as well (SoF ¶¶26-50; 68-79).

The uncontroverted affidavits from Dr. Kaplan and Dr. Razdan establish that Dr. Razdan acted both appropriately and timely to address Johnson’s conditions. The response was medically indicated, appropriate, and warranted by the Johnson’s clinical presentation. Put simply, there is absolutely no evidence in the record before this Court to suggest that Dr. Razdan’s post biopsy course of treatment was anything other than exemplary.

IV. SUMMARY JUDGMENT SHOULD BE GRANTED BECAUSE THERE IS NO EVIDENCE IN THE RECORD TO CAUSALLY LINK DR. RAZDAN’S CONDUCT TO ANY COMPLAINED OF INJURY

If the above identified issues were not enough, all of Johnson’s claims suffer from an additional (and final) flaw – there is absolutely no evidence causally linking the symptoms experienced by Johnson to anything Dr. Razdan did or failed to do. In order to maintain his claims, Hutchinson is required to, at a minimum; produce some evidence linking his purported injury to Dr. Razdan’s conduct. See *Townsend v. Jefferson County*, 601 F.3d 1152, 1158 (11th Cir. 2010) (element of claim requires that purported conduct

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be linked to alleged deliberate indifference.) It is recognized that the mere fact that a purported harm occurred is insufficient to satisfy this causal connection. See *Roberso v. Goodman*, 296 F.Supp.2d 1051 (D.N.D. 2003); citing *Rellegert v. Rellegert v. Cape Girardeau County Mo.*, 925 F.2d 794, 796 (8th Cir. 1991) (“courts must reject the conclusion that the fact the harm occurred is proof itself of deliberate indifference.”)

In the present matter, at most, plaintiff suggests that he developed certain symptoms and conditions following the original biopsy and subsequent treatment. According to Johnson, this temporal connection, standing alone, is sufficient to allow this case to proceed. But, Johnson is not a doctor. Even he admitted that: (i) he cannot identify anything that was done wrong in the biopsy; (ii) no one told him that his urinary problems were caused by the biopsy; or (iii) that any of his problems were related to anything that Dr. Razdan did or failed to do.

CONCLUSION

The record establishes that Dr. Razdan appropriately cared for and treated Johnson. There is, quite simply, no competent evidence to the contrary. The theories advocated by Johnson suffer from legal and factual problems almost too numerous to count. In the end, Johnson is not entitled to proceed to trial and summary judgment should be granted.

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I HEREBY CERTIFY that on June 29, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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69181-7

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:11-CV-21118-FAM
Magistrate Judge: Patrick White

ELBERT JOHNSON,

Plaintiff,

vs.

SANJAY RAZDAN, M.D.,

Defendant.

_____ /

**STATEMENT OF FACTS IN SUPPORT OF DR. RAZDAN'S
MOTION FOR SUMMARY JUDGMENT**

Defendant, Sanjay Razdan, M.D., by and through his attorneys, Wicker, Smith, O'Hara, McCoy & Ford, P.A., submits this "Statement of Facts" in support of his Motion for Summary Judgment, in accordance with Rule 56.1(a) of the Local Rules for the Southern District of Florida.

STATEMENT OF FACTS

I. Factual Background

A. Elbert Johnson

1. The Plaintiff, Elbert Johnson was born on October 23, 1942.
2. Johnson has spent the majority of his adult life incarcerated. (Ex. A, E. Johnson Dep. 5-8, April 25, 2012.) He was convicted in 1960 for uttering a forged document. (Ex. A, 7:7-19.) He received a thirty year sentence for robbery in connection with a subsequent 1972 conviction. (Ex. A, 7:20-25.) He was released in 1979 before being convicted again in 1980. (Ex. A, 8:5-11.)

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3. In 1980, Johnson was convicted for armed robbery and second degree attempted murder. In addition, he was convicted of “escape.” In total, he is presently serving a 130 year sentence in connection with that conviction. (Ex. A, 8:9-25; Ex. A, 9:1-2.)

4. Since his conviction in 1980, Johnson has served his sentence at various Florida correctional facilities. (Ex. A, 15: 23-25; 16: 1-25; 17:1-17.)

5. In the fall of 2008, Johnson was transferred to Dade C.I. (Ex. A, 4:10-15.)

6. Johnson has no medical training what so-ever. (Ex. A, 19:1-3.) He has never practiced medicine in any state. (Ex. B, E. Johnson Dep. 147:17-19, May 3, 2012.) He has never performed a transurethral ultrasound biopsy. (Ex. A, 19:4-6; Ex. B, 147:12-14.) He is not a urologist. (Ex. A, 19:14-18; Ex. B, 147:15-16.)

B. Johnson’s Original Presentation and Evaluation by Health Care Professionals at Dade C.I.

7. Prior to his arrival at Dade C.I., Johnson had received certain medical care and treatment at the Century Correctional Institution in Century, Florida. (Ex. A, p. 21-25.)

8. As part of that treatment, Johnson had undergone a PSA test that revealed a significantly elevated PSA level of 27.5 ng/ml. (Ex. A, 21:6-9; Ex. C, December 30, 2007 PSA Test.)

9. Following his arrival at Dade C.I., numerous Dade C.I. healthcare providers recommended that Johnson undergo a prostate biopsy to determine whether he suffered from a significant medical condition such as prostate cancer. (Ex. A, 45:20-25;

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Ex. D, September 26, 2008 Consultation Request/ Consultant's Report Signed by Dr. Proveda)

10. These recommendations ultimately lead to Johnson being referred to Dr. Razdan for evaluation. (Ex. D; Ex. E, S. Razdan Aff., ¶¶11-12.)

C. Dr. Razdan's Care and Treatment

11. Dr. Razdan first saw Johnson on October 27, 2008. (Ex. E, ¶10; Ex. F, October 27, 2008 Note.)

12. At that time, Johnson had been referred to Dr. Razdan by healthcare providers at Dade Correctional Dade C.I. (including Dr. Julio Proveda and ARNP J. Dwares) to rule out a suspected diagnosis of prostate cancer. (Ex. E, ¶¶11-12; Ex. D.)

13. As part of his October 27, 2008 examination, Dr. Razdan performed a digital rectal examination. (Ex. E, ¶13; Ex. F.) That examination revealed that Johnson had a "firm prostate" measuring approximately 40g. (Ex. E, ¶13; Ex. F.)

14. Dr. Razdan subsequently discussed his desire to perform the prostate biopsy with Johnson. (Ex. E, ¶15; Ex. F.)

15. Johnson refused to undergo the procedure at that time. (Ex. E, ¶15; Ex. F.)

16. Dr. Razdan saw Johnson again on June 15, 2009. (DE 9, p. 5; Ex. A, 41:20-22; Ex. E, ¶16; Ex. G, June 15, 2009 Note.)

17. At that time, Johnson had been referred by Dade C.I. physician Dr. Julio Proveda for a urological consult and prostate biopsy to determine whether Johnson had

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prostate cancer. (Ex A, 42:7-12; Ex. E, ¶16; Ex. H, April 28, 2009 Consultation Request.)

18. Johnson again refused the biopsy. (DE 9, p. 6; Ex. E, ¶16; Ex. G.)

19. Dr. Razdan saw Johnson for a third time on March 17, 2010. (DE 9, p. 8; Ex. A, 48:15-21; Ex. E, ¶17; Ex. I, March 17, 2010 Consultation Report.)

20. At this time, Johnson was again referred to Dr. Razdan by Dr. Proveda for evaluation in connection with continued elevated PSA levels and suspected prostate cancer and prostatic involvement. (Ex. E, ¶17; Ex. J, December 7, 2009 Consultation Request.)

21. At this time, the biopsy was again discussed and the procedure was subsequently scheduled to be performed in May 2010. (Ex. A, 48:15-21; Ex. E, ¶17; Ex. I.)

22. Between 2008 and May 2010, no less than three separate health care providers (besides Dr. Razdan) had recommended that Johnson undergo a biopsy in light of his clinical presentation. (Ex. A, 45:20-25; Ex. D)

2. The May 17, 2010 TRUS Biopsy

23. On May 17, 2010, Dr. Razdan performed a Transrectal Ultrasound Guided Biopsy (“TRUS”) on Johnson. (Ex. E, ¶19; Ex. K, May 17, 2010 Consultation Report.)

24. The procedure was performed in an office setting. (Ex. A, 53; Ex. E, ¶19.)

25. Dr. Razdan had Johnson lay down on his side, assuming a position commonly referred to as the “left lateral decubitus” position. (Ex. E, ¶19.) Dr. Razdan introduced a probe into the rectum to the base of the bladder until the seminal vesicles

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were visualized via ultrasound. (Ex. E, ¶19.) Dr. Razdan moved the probe back from the prostate base to the prostate apex. (Ex. E, ¶19.) Core samples of the prostatic tissue were then taken utilizing a biopsy needle. (Ex. E, ¶19.) The procedure was completed without complications, appropriate core samples were obtained, and Johnson was returned to Dade C.I. without incident. (Ex. E, ¶19.)

3. Post Biopsy Involvement

(a) The Resolution of Hematuria

26. Following the biopsy, Johnson returned to Dade C.I. (Ex. B, 83:16-19; Ex. E, ¶19.) He remained in the Dade C.I. infirmary for approximately one night until he was discharged the following day (June 18, 2010). (Ex. B, 86:12-15.)

27. Following his discharge from the infirmary, Johnson allegedly had episodes of bloody urine for two or three more days. (Ex. B, 87-88.)

28. However, that condition subsequently resolved within approximately three to four days after Johnson began receiving treatment at Dade C.I. (Ex. B, 98-99; Ex. B, 100-101.)

(b) Dr. Razdans' Subsequent Involvement to Treat Urinary Dysfunction

29. Approximately ten to eleven days after the biopsy, and while he was still at Dade C.I., Johnson began experiencing difficulty urinating. (Ex. B, 102:16-25; 103:1-24.)

30. Johnson was initially treated for this new condition by health care providers at Dade C.I. (Ex. B, 103-109)

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31. Johnson was transferred to Kendall Regional Medical Center on June 23, 2010 and Dr. Razdan was called in to consult. (Ex. E, ¶¶21-22.)

32. After being contacted, Dr. Razdan promptly implemented a plan to diagnose and treat Johnson's conditions. (Ex. E, ¶22.)

33. Dr. Razdan, had been advised that a Foley catheter had been placed and Johnson's condition was stabilizing. (Ex. E, ¶22.)

34. On June 23, 2012, the first day of Johnson's admission, he ordered a renal/bladder ultrasound. (Ex. E, ¶22; Ex. L, June 23, 2010 Kendall Order.)

35. On June 24, 2012, Dr. Razdan examined Johnson at Kendall. At that time, the voiding/ retention issues had resolved significantly through the use of the Foley catheter. (Ex. E, ¶23; Ex. M, June 24, 2010 Order; Ex. N, June 24, 2010 Physician Note.)

36. Dr. Razdan entered an order reflecting that the Foley should remain in place until the Bun/Creatinine levels stabilized and ordered further studies to confirm that the condition was and remained improving. (Ex. E, ¶23; Ex. M.)

37. On June 25, 2012, Dr. Razdan consulted with Dr. Barros, the Kendall Regional Medical Center admitting physician, at which time it was determined that Johnson could be discharged with the Foley catheter in place to avoid further urinary blockages. (Ex. E, ¶24; Ex. O, June 25, 2010 Discharge Summary.)

(c) **Subsequent Urinary Retention And Response**

38. Following his discharge from Kendall Regional Medical Center on June 25, 2010, Mr. Johnson returned to Dade C.I., but he was not taken back to see Dr. Razdan

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(although he had requested that Johnson be seen for a follow-up one week after discharge). (Ex. E, ¶25; Ex. N, Note; Ex. B, 121:17-20.)

39. During this period, Mr. Johnson's Foley catheter was in place and he was progressing. (Ex. B, 122:2-25.)

40. However, approximately three weeks after returning to Dade C.I., Johnson's Foley was removed and he began experiencing urinary issues again. (Ex. B, 124-126.)

41. Again, Dr. Razdan was not advised or consulted by Dade C.I. personnel concerning: (i) the removal of the Foley catheter; or (ii) Johnson's development of new urinary symptoms. (Ex. B, 125:1-19; Ex. E, ¶26.)

42. By July 16, 2010, Johnson had apparently experienced a significant episode of urinary retention and he was again taken to Kendall Regional Medical Center for treatment. (Ex. B, 126:3-23.)

43. Dr. Razdan was again consulted and responded. (Ex. E, ¶27.) Dr. Razdan initiated a plan to obtain CT scans, ultrasounds, and initiating medications as reflected by his notes and orders. (Ex. E, ¶27; Ex. P, July 16, 2010 Orders.)

44. By July 17, 2010, attempts to re-insert a Foley catheter had proven unsuccessful.

45. On July 17, 2010, Dr. Razdan successfully placed a suprapubic catheter in order to allow Johnson to void urine. (Ex. E, ¶27; Ex. B, 135-136) Dr. Razdan remained actively involved in Mr. Johnson's treatment during this period as reflected in the

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Kendall Records before Mr. Johnson was ultimately discharged on July 24, 2010. (Ex. E, ¶27; Composite Ex. Q, Dr. Razdan Notes and Orders.)

(d) Continued Treatment

46. Following the July admission, Dr. Razdan neither stopped treating nor deprived Johnson of medical care and treatment. Rather, after having treated Johnson during two separate episodes of urinary retention, Dr. Razdan identified and implemented a potential solution, one that Johnson agreed with and one which eventually resolved the persistent and serious problems. (Ex. E, ¶28.)

47. Following discharge in July 24, 2010, Johnson returned to Dade C.I. with the suprapubic catheter in place. (Ex. E, ¶29; Ex. B, 140:5-18.)

48. On August 26, 2010, Johnson was seen by Dr. Razdan and he noted that Johnson was unable to void through his urethra due to a constriction of the urethra and prostate around the bladder. (Ex. E, ¶29; Ex. R, August 26, 2010 Consultant Report.)

49. Dr. Razdan determined that the most appropriate treatment to resolve this condition was to remove a portion of the prostate and to eliminate the stricture preventing urine flow. (Ex. E, ¶29.)

50. On September 17, 2010 Dr. Razdan performed a Holmium Laser Enucleation and Ablation of the Prostate (“HoLEAP”) and Johnson’s urinary problems resolved. (Ex. E, ¶30; Ex. S, September 17, 2010 Consultation Report.)

II. Qualifications and Opinions of Dr. Kaplan and Dr. Razdan

A. Dr. Kaplan

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51. Dr. Kaplan is medical doctor licensed to practice medicine in the State of Florida. He is a board certified Urologist and a Fellow of the American College of Surgeons. (Ex. T, M. Kaplan Aff., ¶¶4-5.)

52. In his career, Dr. Kaplan has treated thousands of patients suffering from and enlarged prostate and hundreds patients suffering from urinary retention and associated symptoms. In addition, he has performed hundreds of prostate biopsies. (Ex. T, ¶7.)

53. Dr. Kaplan has reviewed all of the pertinent medical records, pleadings and discovery in connection with this action. These materials are of a type commonly utilized by members of Dr. Kaplan's filed in evaluating care and treatment provided to patients. (Ex. T, ¶¶8-9.)

B. Dr. Razdan

54. Dr. Razdan is medical doctor licensed to practice medicine in the State of Florida. He is a board certified Urologist and a Fellow of the American College of Surgeons. (Ex. E, ¶¶4-5.)

55. In his career, Dr. Razdan has treated thousands of patients suffering from and enlarged prostate and hundreds patients suffering from urinary retention and associated symptoms. In addition, he has performed hundreds of prostate biopsies. (Ex. E, ¶7.)

56. Dr. Razdan has reviewed all of the pertinent medical records, pleadings and discovery in connection with this action. These materials are of a type commonly

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utilized by members of Dr. Razdan's filed in evaluating care and treatment provided to patients. (Ex. E, ¶¶8-9.)

C. Opinions

57. Based upon their respective education, training and experience coupled with their evaluation of the pertinent materials, the care and treatment rendered by Dr. Razdan complied with the standard of care. (Ex. T, ¶¶10-35; Ex. E, ¶¶31-49.)

58. The TRUS Biopsy ultimately performed by Dr. Razdan on May 17, 2010, was medically indicated. (Ex. T, ¶12-16; Ex. E, ¶¶33-37.)

59. The TRUS biopsy itself is a procedure designed to obtain tissue samples of the prostate gland for subsequent pathologic examination to confirm the presence or absence of, among other things, prostate cancer, an enlarged or inflamed prostate, necrosis, or other serious medical conditions. Prostate biopsy is medically indicated where certain factors are present such as an elevated prostate specific antigen (PSA) levels. The recognized normal range for a PSA test is zero to four (4) ng/ml. A PSA is considered elevated if it is over four (4) ng/ ml. An elevated PSA level (defined as being in excess of four (4) ng/ml, is a significant finding as it is an indicator of the potential for prostate cancer if the patient does not have an active infection and has not engaged in sexual activity within approximately 48 hours before the test if performed. (Ex. T, ¶13; Ex. E, ¶34)

60. Although an elevated prostate level, in and of itself, may not be an indication for an immediate prostate biopsy, the presence of an elevated PSA coupled with other relevant factors such as: (i) a firm prostate identified by digital rectal

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examination; (ii) the patient's age (the older a patient, the higher chance of developing certain conditions, including prostate cancer); (iii) race; and (iv) the ability adequately follow and monitor the progression of a patient influence the decision as to whether to perform a biopsy. (Ex. E, ¶14; Ex. T, ¶35.)

61. In the present case, Mr. Johnson was a 60 plus year old African American male when he was initially referred to Dr. Razdan in October of 2008. Mr. Johnson was initially referred to Dr. Razdan after several other health care providers had recommended that he undergo a prostate biopsy to rule out the potential for prostate cancer. Mr. Johnson's prior laboratory studies reflected a significantly elevated PSA of 27.5 ng/ml in December of 2007. Subsequent PSA tests reflected the continued presence of elevated PSA levels ranging between the high of 27.5 ng/ml in 2007 to 5.4 ng/ml in February 2010. Dr. Razdan's records reflect that he performed a digital rectal examination in October 2009 and found the prostate gland to feel "firm." As Mr. Johnson's PSA remained elevated through February 2010, he had now reached 67 years of age (and was almost three years removed from a previously reported biopsy), it was appropriate to continue to recommend a prostate biopsy to determine whether Mr. Johnson was suffering from any significant medical conditions including the potential for prostate cancer. Therefore, based upon this presentation, the lab tests, and recommendations from other healthcare providers, Dr. Razdan's decision to recommend that Mr. Johnson undergo a subsequent prostate biopsy was entirely appropriate, medically indicated, and within the applicable standard of care. (Ex. T, ¶15; Ex. E, ¶36.)

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62. There is nothing contained within the records to suggest or imply that either Dr. Razdan's performance or subsequent post-TRUS Biopsy monitoring of Mr. Johnson was inappropriate, constituted a deviation from the applicable standard of care, or was designed to deliberately inflict pain upon Mr. Johnson. (Ex. T, ¶17; Ex. E, ¶38.)

63. A TRUS Biopsy is typically performed by having a patient lay down on his side, and assuming a position commonly referred to as the "left lateral decubitus" position. The physician will then introduce a probe into the rectum to the base of the bladder until the seminal vesicles are visualized. Images are then obtained as the probe is moved back from the prostate base to the prostate apex. Core samples of the prostatic tissue are taken utilizing a biopsy needle for subsequent testing. This procedure has traditionally been performed without the use of anesthesia and has been relatively well tolerated although discomfort and potential pain (mainly in connection with the needle penetrating the prostate) is common although the pain is generally temporary and resolves quickly. Following a TRUS biopsy, a patient may experience blood in bloody urine and/or blood from rectum with bowel movements. These conditions are common and can last for a little as a few days or a few weeks and its mere presence is not indicative of any problem, complication, or improper performance of the biopsy itself. Prior to the performance of the TRUS biopsy, it is impossible to determine whether an individual or particular patient will be susceptible to temporary hematuria. (Ex. T, ¶18; Ex. E, ¶39.)

64. There is nothing to suggest that Dr. Razdan's performance of the TRUS Biopsy on May 17, 2010, was either inappropriate or performed in such a manner so as to

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cause unnecessary pain or discomfort to Mr. Johnson. The records reflect that Dr. Razdan performed the TRUS biopsy using ultrasound guidance on May 17, 2010. Ultrasound pictures taken during the procedure reflect that the probe was appropriately positioned. Twelve core samples were obtained and submitted for pathologic evaluation. Although Mr. Johnson claims that he was not given any analgesic agents or “cleaned out” prior to the procedure, the applicable standard of care neither requires the usage of analgesic agents or any form of enema in connection with the performance of the procedure. Therefore, there is nothing to suggest that the procedure was performed improperly or in such a manner so as to cause unnecessary pain to Johnson. (Ex. T, ¶18; Ex. E, ¶39.)

65. As reflected in Mr. Johnson’s deposition testimony and the complaint, he experienced discomfort during the prostate biopsy and subsequent experienced hematuria (bloody urine). Discomfort is common with the TRUS procedure and typically resolves after the procedure. Discomfort can occur and cannot be predicted based upon the sensitivity of the individual patient. Dr. Razdan’s decision to proceed with and complete the biopsy was neither inappropriate nor intended to cause any pain. In addition, and as reflected in the Mr. Johnson’s deposition testimony, the hematuria resolved shortly after the procedure as would normally be expected. (Ex. T, ¶19; Ex. E, ¶39; Ex. B, 98-99; Ex. B, 100-101)

66. Dr. Razdan’s performance of the TRUS biopsy on May 17, 2010, was done appropriately and in accordance with the standard of care. (Ex. T, ¶21; Ex. E, ¶42.)

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67. Although the interrogatory answers provided by Mr. Johnson suggests that Dr. Razdan performed the TRUS biopsy using what he characterizes as “improper technique” and/or taking a “less efficient” course of treatment, such assertions are not accurate. The TRUS biopsy described above is the most efficient and represents the current standard for obtaining biopsy samples of protostatic tissue. (Ex. T, ¶22)

68. Based upon the subsequent presentation, after the biopsy Dr. Razdan acted timely and appropriately to respond to Mr. Johnson’s medical conditions when he was advised of those conditions. (Ex. T, ¶¶23-31; Ex. E, ¶¶43-45.)

69. According to the records and testimony, following the TRUS biopsy, and following Mr. Johnson’s return to Dade Correctional, Mr. Johnson developed urinary dysfunction. There is nothing in the record to suggest that Dr. Razdan was ever advised of these developments or even involved in Mr. Johnson’s medical care and treatment prior to June 22, 2012. There is nothing in the records to suggest that anyone at Dade C.I. notified Dr. Razdan of this condition until, potentially, June 22, 2010 when Mr. Johnson believed that Dr. Razdan was called. Dade personnel responded by attempting to insert a Foley catheter to relieve the urinary blockage. However, that insertion was apparently placed in such a manner so as to attempt to relieve the blockage and the next day he was taken to the Kendall Regional Medical Center (“Kendall”) where the Foley was repositioned and urine was drained. (Ex. T, ¶24; Ex. E, ¶¶25-26; 44.)

70. The Kendall Regional Medical Records reflect that Dr. Razdan was actively involved in Mr. Johnson’s care and that such involvement was appropriate and medically indicated. He was called into consult on June 23, 2010. That same day he

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ordered a renal/ bladder ultrasound and that Mr. Johnson be started on medications. The Kendall records reflect that Dr. Razdan examined Mr. Johnson on June 24, 2010 and then subsequently ordered that the Foley catheter remain in place until Mr. Johnson's BUN and creatinine levels stabilized. Dr. Barros, the Kendall Regional Medical Center admitting physician again consulted with Dr. Razdan on the 25th, at which time it was determined that Mr. Johnson could be discharged with the Foley catheter in place to avoid further urinary blockages. (Ex. T, ¶¶26-27; Ex. E, ¶¶22-24; 45.)

71. Mr. Johnson presented with urinary retention and elevated lab values indicating that the urinary retention had developed to the point of impairing kidney function. Urinary retention is a serious medical condition that can cause pain, kidney failure, sepsis, and a myriad of other conditions. The prudent and appropriate course of treatment for a patient suffering from urinary retention is to eliminate the retained urine, most commonly and appropriately through the usage of a Foley catheter. In patients where the retention has progressed to the point of impacting kidney function, the catheter will remain until laboratory values stabilize. Based upon the available records, this was done timely and appropriately. Although the Foley was placed at Dade C.I. on the 22nd, Dr. Razdan appropriately continued its usage and kept Mr. Johnson at Kendall until his creatinine levels began to stabilize before authorizing Mr. Johnson's discharge back to Dade C.I. with the Foley in place to allow for the kidney condition stabilize, the urinary retention to resolve, before the Foley would be removed to determine whether Mr. Johnson's urinary issue was a singular event or a signal of a more substantial issue. This