CASREF,PAW

U.S. District Court
Southern District of Florida (Miami)
CIVIL DOCKET FOR CASE #: 1:11−cv−24003−UU

Trias v. Florida Department of Corrections et al
Assigned to: Judge Ursula Ungaro
Referred to: Magistrate Judge Patrick A. White
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 11/07/2011
Jury Demand: Defendant
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

Humberto Trias
Prisoner ID: 616199
also known as
Humberto Toras

represented by **Humberto Trias**
616199
Reception and Medical Center
Post Office Box 628
Inmate Mail/Parcels
Lake Butler, FL 32054
PRO SE

V.

Defendant

Florida Department of Corrections
Ken Tucker, Seccretary
TERMINATED: 08/16/2012

represented by **Kathleen Mary Savor**
Office of the Attorney General
110 SE 6 Street
10th Floor
Fort Lauderdale, FL 33301
(954) 712−4600
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Nurse Bernice Terrell
Individual

represented by **Kathleen Mary Savor**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/07/2011	1	COMPLAINT under the Civil Rights Act, 42 U.S.C. 1983 against Florida Department of Corrections, Bernice Terrell. Filing fee $ 350.00, No fee paid, No IFP, filed by Humberto Trias. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit)(cbr) (Entered: 11/07/2011)
11/07/2011	2	Judge Assignment to Judge Ursula Ungaro (cbr) (Entered: 11/07/2011)
11/07/2011	3	Clerks Notice of Magistrate Judge Assignment to Magistrate Judge Patrick A. White. Pursuant to Administrative Order 2003−19 for a ruling on all pre−trial, non−dispositive matters and for a Report and Recommendation on any dispositive matters. (cbr) (Entered: 11/07/2011)
11/09/2011	4	ORDER REQUIRING PAYMENT OF FILING FEE OR FILING OF MOTION TO PROCEED IFP WITH DETAILED AFFIDAVIT. Filing Fee due by 12/2/2011. Motions due by 12/2/2011.. Signed by Magistrate Judge Patrick A. White on 11/9/2011. (Attachments: # 1 Affidavit IFP) (tw) (Entered: 11/09/2011)
11/09/2011	5	ORDER OF INSTRUCTIONS TO PRO SE LITIGANT. Signed by Magistrate Judge Patrick A. White on 11/9/2011. (tw) (Entered: 11/09/2011)

11/29/2011	6	Clerks Notice of Receipt of Filing Fee received on 11/29/2011 in the amount of $ 350.00, receipt number FLS100029065 (jua) (Entered: 11/29/2011)
12/29/2011	7	ORDER Re: Service When Pro Se Plaintiff has paid filing Fee. Signed by Magistrate Judge Patrick A. White on 12/29/2011. (br) (Entered: 12/29/2011)
01/11/2012	8	MOTION to Make Arrangements to Pay for the Process of Service by the U.S. Marshal and Request for Instructions Re: 7 ORDER Re: Service When Pro Se Plaintiff has paid filing Fee by Humberto Trias. (ar2) (Entered: 01/11/2012)
01/17/2012	9	ORDER denying 8 Motion motion to make arrangements for process of service, the plaintiff must contact the Marshal for this information.. Signed by Magistrate Judge Patrick A. White on 1/17/2012. (cz) (Entered: 01/17/2012)
02/15/2012	10	MOTION for Extension of Time For Service Of Process by Humberto Trias. Responses due by 3/5/2012 (cbr) (Entered: 02/15/2012)
02/15/2012	11	NOTICE to the Court by Humberto Trias (cbr) (Entered: 02/15/2012)
03/26/2012	12	NOTICE to the Courts by Humberto Trias (ral) (Entered: 03/27/2012)
04/19/2012	13	ORDER granting 10 Motion for Extension of Time to serve the defendants to on or before 6/15/12.. Signed by Magistrate Judge Patrick A. White on 4/19/2012. (cz) (Entered: 04/19/2012)
06/01/2012	14	Summons Issued as to Florida Department of Corrections, Bernice Terrell. (ral) (Entered: 06/01/2012)
06/04/2012	15	Instant Motion to verify if Court has received receipts for summons upon both defendants and copies of amended motion; MOTION for Extension of Time to Serve Summons and Amended Complaint; re 14 Summons Issued, 1 Complaint, by Humberto Trias. Responses due by 6/21/2012. NOTE: Courtesy copy of docket sheet mailed.(ral) (Entered: 06/05/2012)
06/06/2012	16	ORDER granting 15 Motion fto verify court received receipts for summonses, the Court send a copy of the docket.. Signed by Magistrate Judge Patrick A. White on 6/6/2012. (cz) (Entered: 06/06/2012)
06/19/2012	17	Defendant's MOTION TO DISMISS 1 Complaint, FOR FAILURE TO STATE A CLAIM by Florida Department of Corrections. Responses due by 7/6/2012 (Savor, Kathleen) (Entered: 06/19/2012)
06/22/2012	18	SUMMONS (Affidavit) Returned Executed on 1 Complaint, by Humberto Trias. Bernice Terrell served on 6/6/2012, answer due 6/27/2012. (ral) (Entered: 06/22/2012)
06/22/2012	19	SUMMONS (Affidavit) Returned Executed by Humberto Trias. Florida Department of Corrections served on 6/5/2012, answer due 8/6/2012. (ral) (Entered: 06/22/2012)
06/24/2012	20	Defendant's MOTION TO DISMISS 1 Complaint, FOR FAILURE TO STATE A CLAIM *Fourth Cause of Action* by Florida Department of Corrections, Bernice Terrell. Responses due by 7/12/2012 (Savor, Kathleen) (Entered: 06/24/2012)
06/24/2012	21	Defendant's MOTION to Dismiss 1 Complaint, by Bernice Terrell. Responses due by 7/12/2012 (Savor, Kathleen) (Entered: 06/24/2012)
06/24/2012	22	ANSWER and Affirmative Defenses to Complaint with Jury Demand by Bernice Terrell.(Savor, Kathleen) (Entered: 06/24/2012)
06/27/2012	23	SCHEDULING ORDER: Amended Pleadings due by 10/25/2012. Discovery due by 10/11/2012. Joinder of Parties due by 10/25/2012. Motions due by 11/16/2012. Signed by Magistrate Judge Patrick A. White on 6/25/2012. (tw) (Entered: 06/27/2012)
07/13/2012	24	MOTION/REQUEST for Production of Documents and Discovery (Responses due by 7/30/2012) by Humberto Trias. (ral) (Entered: 07/16/2012)
07/13/2012	25	NOTICE by Humberto Trias re 23 Scheduling Order. (ral) (Entered: 07/16/2012)

07/13/2012	26	RESPONSE to 20 Defendant's Motion to Dismiss Fourth Cause of Action and Affirmative Defenses Including Response to Permit Suit in Official Capacity filed by Humberto Trias. Replies due by 7/23/2012. (ral) (Entered: 07/16/2012)
07/17/2012	27	ORDER denying 24 Motion to Produce; denying 24 Motion for Discovery, without prejudice. All discovery requests should be sent directly to the defendants. Signed by Magistrate Judge Patrick A. White on 7/17/2012. (cz) (Entered: 07/17/2012)
07/27/2012	28	REPORT AND RECOMMENDATIONS on 42 USC 1983 case. Granting 17 Defendant's MOTION TO DISMISS 1 Complaint, FOR FAILURE TO STATE A CLAIM filed by Florida Department of Corrections, Granting 20 Defendant's MOTION TO DISMISS 1 Complaint, FOR FAILURE TO STATE A CLAIM *Fourth Cause of Action* filed by Florida Department of Corrections, Bernice Terrell, and Granting 21 Defendant's MOTION to Dismiss 1 Complaint, filed by Bernice Terrell. Objections to RRdue by 8/13/2012 Signed by Magistrate Judge Patrick A. White on 7/27/2012. (tw) (Entered: 07/27/2012)
08/16/2012	29	ORDER Affirming Magistrate Judge's Report; granting 17 Motion to Dismiss for Failure to State a Claim; granting in part 20 Motion to Dismiss for Failure to State a Claim; granting 21 Motion to Dismiss; adopting 28 Report and Recommendations. Certificate of Appealability: No Ruling. Signed by Judge Ursula Ungaro on 8/16/2012. (ral) (Entered: 08/16/2012)
08/16/2012	30	MOTION to Take Deposition from Humberto Trias by Bernice Terrell. (Savor, Kathleen) (Entered: 08/16/2012)
08/20/2012	31	ORDER granting 30 Motion to Take Deposition from Humberto Trias, this is a pro se plaintiff and the defendant shall govern himself accordingly. Signed by Magistrate Judge Patrick A. White on 8/20/2012. (cz) (Entered: 08/20/2012)
09/17/2012	32	RULE 45 (b)(1) NOTICE of Intent to Issue Subpoena for the Production of Documents, by Humberto Trias. (ral) (Entered: 09/18/2012)
09/18/2012	33	MOTION to Compel *Defendant to Produce Requested Documents* by Humberto Trias. Responses due by 10/5/2012 (ral) (Entered: 09/18/2012)
09/18/2012	34	*Count IV* ANSWER and Affirmative Defenses to Complaint with Jury Demand by Bernice Terrell.(Savor, Kathleen) (Entered: 09/18/2012)
09/18/2012	35	RESPONSE in Opposition re 33 MOTION to Compel *Defendant to Produce Requested Documents* filed by Bernice Terrell. (Savor, Kathleen) (Entered: 09/18/2012)
09/19/2012	36	ORDER denying 33 Motion to Compel for the reasons stated in defendant Terrell's response (DE#35). Signed by Magistrate Judge Patrick A. White on 9/19/2012. (cz) (Entered: 09/19/2012)
10/09/2012	37	OBJECTION to Defendant Terrell's Belated 34 Answer and Affirmative Defenses to Plaintiff's Fourth Cause of Action by Humberto Trias. (ral) (Entered: 10/10/2012)
10/18/2012	38	NOTICE of Temporary Change of Address by Humberto Trias. NOTE: Address updated. (ral) (Entered: 10/19/2012)
10/25/2012	39	AMENDED COMPLAINT against All Defendants, filed by Humberto Trias.(cbr) (Entered: 10/26/2012)
11/07/2012	40	NOTICE of Newly Discovered Evidence and MOTION for Extension of Discovery, MOTION to Produce Requested Grievances, MOTION for Extension of Time to Process Newly Discovered Evidence (Responses due by 11/26/2012) by Humberto Trias. (ls) (Entered: 11/08/2012)
11/07/2012	41	NOTICE of Change of Address by Humberto Trias (ls)[System Updated] (Entered: 11/08/2012)
11/08/2012	42	RESPONSE in Opposition re 40 MOTION for Extension of Time to Complete Discovery MOTION to Produce MOTION for Extension of Time process newly discovered evidence filed by Bernice Terrell. (Savor, Kathleen) (Entered: 11/08/2012)

11/08/2012	43	MOTION for Summary Judgment by Bernice Terrell. Responses due by 11/26/2012 (Attachments: # 1 Exhibit Exhibits)(Savor, Kathleen) (Entered: 11/08/2012)
11/13/2012	44	ORDER denying 40 Motion for Extension of Time to Complete Discovery; denying 40 Motion to Produce; denying 40 Motion for Extension of Time, for the reasons stated in defendants response. Signed by Magistrate Judge Patrick A. White on 11/13/2012. (cz) (Entered: 11/13/2012)
11/15/2012	45	ORDER INSTRUCTING PRO SE PLAINTIFF CONCERNING RESPONSE to 43 MOTION for Summary Judgment .(Responses due by 12/14/2012) Signed by Magistrate Judge Patrick A. White on 11/15/2012. (tw) Modified on 11/15/2012: image restricted − see DE# 46 for correct image (wc). (Entered: 11/15/2012)
11/15/2012	46	Clerks Notice of Docket Correction re 45 Order of Instructions to Pro Se Litigant. **Document Restricted Due to Error**; The correct document has been attached to this notice. (wc) (Entered: 11/15/2012)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-24003-CIV-UNGARO
MAGISTRATE JUDGE P.A. WHITE

HUMBERTO TRIAS, :

Plaintiff, :

v. : REPORT OF MAGISTRATE JUDGE

KENNETH TUCKER, et al., : (DE#S 17, 20 & 21)

Defendants. :

I. Introduction

The plaintiff, Humberto Trias filed a pro se civil rights complaint pursuant to 42 U.S.C. §1983. [DE #1]. The plaintiff has paid the full filing fee and served the defendants before screening.

This Cause is before the Court upon the motions to dismiss of Kenneth Tucker (DE#17), Joint Motion of Tucker and Terrell to dismiss the plaintiff's Fourth Cause of action (DE#20), and Defendant Bernice Terrell's motion to dismiss. (DE#21)

II. Analysis

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a defendant may move to dismiss a complaint because the plaintiff has failed to state a claim upon which relief may be granted. See Fed.R.Civ.P. 12(b)(6). The complaint may be dismissed if the plaintiff does not plead facts that do not state a claim to relief that is plausible on its face. See Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955 (2007)(retiring the oft-criticized "no set of facts" language previously used to describe the motion to

dismiss standard and determining that because plaintiffs had "not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed" for failure to state a claim); Watts v. FIU, 495 F.3d 1289 (11 Cir. 2007). While a complaint attacked for failure to state a claim upon which relief can be granted does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 127 S.Ct. at 1964-65. The rules of pleading do "not require heightened fact pleading of specifics . . . ." The Court's inquiry at this stage focuses on whether the challenged pleadings "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007)(quoting Twombly, 127 S.Ct. at 1964).

The complaint

The plaintiff names as defendants Nurse Terrell, South Florida Reception Center, and Kenneth Tucker, Secretary of the Department of Corrections. He alleges the following causes of action:

The First, Second, and Third Causes are violations of the Eighth Amendment in the deliberate indifference to his pain and suffering. The Fourth Cause of action is brought pursuant to Florida Statute 768.28. The Fifth Cause of action alleges overdosing him with insulin resulting in loss of consciousness and excessive blood loss and stitches. He seeks monetary damages. [1]

[1] The issue of punitive damages must be determined once the facts are fully developed.

He states he was born with a very severe case of Type 1 Brittle Juvenile Diabetes and is sensitive to insulin, upon which he is dependent. This disease caused him to lose sight in his left eye. He arrived in January of 2010 at the South Florida Reception Center. The plaintiff was told to check his blood sugar, and this would be monitored. It registered 155, and the Nurse injected him with 10 units of 70/30 insulin, slow and fast acting pre mixed. The nurse failed to check his numbers or ask him to repeat the test. She administered the injection, causing an overdose of the insulin. He claims she gave him insulin for a blood sugar of 255, not 155. The plaintiff told her he was going to crash, and asked for blood glucose or sugar cubes, and she denied it. He eventually passed out, hitting his head on a steel locker causing a long gash which bled profusely. He then was transported to Kendal Memorial Hospital where he received 12 stitches, and was released. He filed grievances for which he received no response. He was then transferred. The plaintiff stated a claim for denial of adequate medical treatment. [2]

[2]The Eighth Amendment prohibits any punishment which violates civilized standards of decency or "involve[s] the unnecessary and wanton infliction of pain." Estelle v. Gamble, 429 U.S. 97, 102-03 (1976) (quoting Gregg v. Georgia, 428 U.S. 153, 173(1976)); see also Campbell v. Sikes, 169 F.3d 1353, 1363 (11 Cir. 1999). "However, not 'every claim by a prisoner that he has not received adequate medical treatment states a violation of the Eighth Amendment.'" McElligott v. Foley, 182 F.3d 1248, 1254 (11 Cir. 1999) (citation omitted). An Eighth Amendment claim contains both an objective and a subjective component. Taylor v. Adams, 221 F.3d 1254, 1257 (11 Cir. 2000); Adams v. Poag, 61 F.3d 1537, 1543 (11 Cir. 1995). First, a plaintiff must set forth evidence of an objectively serious medical need. Taylor, 221 F.3d at 1258; Adams, 61 F.3d at 1543. Second, a plaintiff must prove that the prison official acted with an attitude of "deliberate indifference" to that serious medical need. Farmer, 511 U.S. at 834; McElligott, 182 F.3d at 1254; Campbell, 169 F.3d at 1363. The objective component requires the plaintiff to demonstrate that he has been subjected to specific deprivations that are so serious that they deny him "the minimal civilized measure of life's necessities." Rhodes v. Chapman, 452 U.S. 337, 347 (1981); see also Hudson v. McMillian, 503 U.S. 1, 8-9 (1992).

Kennth Tucker's Motion to dismiss (DE#17)

Defendant Tucker has filed a motion to dismiss correctly arguing that a) he may not be named in his official capacity, b) there is no cause of action against this defendant, and c) the plaintiff may not rely upon the doctrine of respondeat superior as a basis for liability.

The plaintiff has specified that he intended to sue the defendant in his individual and official capacity. A §1983 suit against the defendant in his official capacity is tantamount to a suit against the State, and thus the defendant would be immune from monetary damages based upon the Eleventh Amendment. Gamble v. Fla. Dept. of Health and Rehabilitative Services, 779 F.2d 1509, 1512-13 (11 Cir. 1986); Zatler v Wainwright, 802 F.2d 397, 400 (11 Cir. 1986).

Secondly, the defendant Kenneth Tucker is Secretary for the Department of Corrections. The plaintiff has failed to demonstrate any direct actions by Tucker resulting in his constitutional violation. The defendant cannot be sued for liability merely for an improper or even unconstitutional act of his employees under a theory of respondeat superior. If a plaintiff sues a supervisor, there must be proof that the alleged injuries resulted from an official custom, policy, or practice. Monell v. Department of Social Services, 436 U.S. 658, 694 (1978); Mandel v. Doe, 888 F.2d 782 (11 Cir. 1989). The plaintiff bears the burden of establishing a causal link between a government policy or custom and the injury which is alleged. Byrd v. Clark, 783 F.3d 1002, 1008 (11 Cir. 1986)(citing Monell, supra). See also; Ashcroft v Iqbal, supra. (Heightened pleading standard for supervisory liability) The plaintiff has not satisfied these requirements, and failed to state

a Monell claim. It is therefore recommended that Defendant Kenneth Tucker be dismissed from this case.

Joint Motion of Defendant Tucker and Terrel to Dismiss (DE#20)

The defendants argue that the plaintiff's Fourth Course of Action, negligence may not continue because the plaintiff has failed to comply with the Fla. Stat §768.28 (6) and (7). In order to state a cause of action in tort against the State of Florida and its agencies the plaintiff must comply with the conditions precedent for the waiver of sovereign immunity as set for in the statute. The plaintiff must present the claim in writing to both the appropriate agency and the Department of Financial Services within three years of the accrual of the claim. Once notice has been provided he must wait 6 months for the department or agency to decline in writing before filing suite. See 768.28(6)(b). Compliance with the notice requirements has been declared is a condition precedent by the Florida Supreme Court. Commercial Carrier Corp. v Indian River County, 371 So.2d 1010 (Fla 1979). The plaintiff has failed to give notice as a condition precedent. Further he has failed to serve the head of the agency concerned and the Department of Social Services. Fla. Stat. 768.28(7).

However, the plaintiff's state tort against the Nurse for negligence in her individual capacity should continue. The defendant argues there has been no negligence, however, once the nurse was made aware she may have given the plaintiff the wrong dose of insulin, and refused to take any measures to relieve his discomfort she may have acted negligently. It is recommended that this claim continue against Nurse Terrell.

Terrell's Motion to Dismiss (DE#21).

Defendant Terrell has filed a motion to dismiss, correctly contending that she may not be sued in her official capacity. The plaintiff has specified that he intended to sue the defendant in her individual and official capacity. A §1983 suit against the defendant in her official capacity is tantamount to a suit against the State, and thus the defendant would be immune from monetary damages based upon the Eleventh Amendment. Gamble v. Fla. Dept. of Health and Rehabilitative Services, 779 F.2d 1509, 1512-13 (11 Cir. 1986); Zatler v Wainwright, 802 F.2d 397, 400 (11 Cir. 1986).. The allegations of the complaint, however, state a classic case of an official acting outside the scope of her duties and in an arbitrary manner. Scheuer v. Rhodes, 416 U.S. 232, 238 (1974). Under this construction of the complaint, this Court has jurisdiction over the defendant in her individual capacity. It is therefore recommended that Defendant Terrells Motion to Dismiss the plaintiff's claims against her in her official capacity are dismissed, and the case may continue against her solely in her individual capacity. (DE#21)

III. Recommendation

Upon review of the motions, it is thereupon recommended as follows:

1. Defendant Tucker's Motion to Dismiss be granted (DE#17).

2. The Joint Motion of Defendant Tucker and Terrell to dismiss the Fourth Cause of action be granted, with the exception that the claim of negligence shall continue against Nurse Terrell in her individual capacity. (DE#20).

3. Defendant Terrell's Motion to dismiss her in her official capacity be granted, and the case proceed against her in her individual capacity. (DE#21).

Objections to this report may be filed with the District Judge within fourteen days of receipt of a copy of the report.

Dated at Miami, Florida, this 27th day of July, 2012.

UNITED STATES MAGISTRATE JUDGE

cc: Hunberto Trias, Pro Se
606199
Liberty CI.
Address of record

Attorneys of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 11-24003-CV-UNGARO
MAGISTRATE WHITE

HUMBERTO TRIAS,
a/k/a HUMBERTO TORAS,

Plaintiff,

v.

KENNETH TUCKER, et. al.,

Defendants,

_____/

DEFENDANT TERRELL'S
MOTION FOR SUMMARY JUDGMENT

Defendant, BERNICE TERRELL (hereinafter referred to as "TERRELL") by and through undersigned counsel, and pursuant to Fed.R.Civ.P. 56 and S.D.L.R. 7.1, hereby moves this court for the entry of summary judgment in favor of the Defendant and denying Plaintiff HUMERTO TRIAS'[1] requested relief and, in support thereof, state the following:

I. Plaintiff has failed to state a claim of deliberate indifference to his serious medical need in violation of the Eighth Amendment;

II. Plaintiff cannot establish a causal connection;

III. Plaintiff has failed to exhaust his remedies pursuant to Florida Prison Litigation Reform Act 42 U.S.C § 1997e(a);

IV. Plaintiff cannot base liability of the Defendants under 42 U.S.C. §1983 on a

1 Inmate Humberto Trias name with the Florida Department of Corrections is Humberto Toras. All records from the Florida Department of Corrections will refer to Plaintiff as Inmate Humberto Toras, DC#616199.

theory of negligence;

V. Plaintiff fails to state a claim for negligence;

VI. Defendant is entitled to qualified immunity;

VII. Plaintiff is not entitled to punitive damages.

I. INTRODUCTION

Plaintiff, Humberto Trias, is an inmate in the custody of the Florida Department of Corrections ("FDOC"). Plaintiff has commenced this suit against Defendants TERRELL, who is a registered nurse working at South Florida Reception Center. The Magistrate Judge issued his recommendation on July 27, 2012 allowing the case to move forward against Defendant Terrell in her individual capacity for negligence pursuant to Fla. Stat. §768.28 in providing improper medication and refusing to take any measures to relieve his discomfort and 42 U.S.C. §1983 violations of Plaintiff's Eighth Amendment in deliberate indifference to his pain and suffering. (See. D.E. # 28.) The Court accepted and adopted the Magistrate Report on August 16, 2012 (D.E. #29.)

Plaintiff alleges that on February 18, 2010 he was in the medical department at South Florida Reception Center to receive his morning insulin injection and was given an overdose of insulin by Defendant TERRELL. (See. D. E. #1 ¶16-25.) Plaintiff alleges that inmates check their own blood sugar and then let the nurse know what the level is, and the nurses then inject the insulin required by the doctor. (See. D. E. #1 ¶16-25.) Plaintiff alleges that he advised Defendant TERRELL that he was going to "crash" and asked for some blood glucose tubes or sugar cubes to be used when his blood sugar dropped, but that Defendant TERRELL said no. (See. D. E. #1 ¶27-29.) Plaintiff alleges that Defendant TERRELL advised Plaintiff that the extra insulin is not going to kill you. (See. D. E. #1 ¶31.) Plaintiff alleges around 11:00a.m. Plaintiff passed out in his cell and was injured. (See. D.E. #1 ¶32-33.) Plaintiff alleges he was transported to Kendall Memorial Hospital

where he received stitches to his head. (See. D.E. #1 ¶37.) Plaintiff is seeking both compensatory and punitive damages.

II. STATEMENT OF UNCONTESTED FACTS

1. Plaintiff HUMBERTO TRIAS ("TRIAS") is an inmate currently incarcerated by the Department of Corrections. ("DOC")

2. Plaintiff TRIAS arrived in DOC custody on January 21, 2010 and was housed at South Florida Reception Center ("S.F.R.C."). (*See* Exhibit "A" ¶ 2.)

3. Defendant BERNICE TERRELL is a Registered Nurse at South Florida Reception Center. (*See* Exhibit "A" ¶1.)

4. Plaintiff is a diabetic which requires daily insulin checks and medication. (See Exhibit "B" pg. 9 ln .5-7 Deposition of Plaintiff.)

5. Plaintiff lost his eye sight in his left eye in 1999 and shortly thereafter sight in his right eye. (See Exhibit "B" pg. 9 ln. 5-7.)

6. Upon his arrival at S.F.R.C. on January 21, 2010, Dr. Martha Castillo prescribed 10 units of NPH in the morning and 5 units of NPH in the afternoon along with a sliding scale depending on the Inmate's blood sugar level of additional regular insulin. (See Exhibit "C" ¶5 Affidavit of Martha Castillo.)

7. On February 1, 2010, Dr. Castillo changed the insulin order to 20 units of 70/30 insulin in the morning and 10 units of 70/30 insulin in the afternoon along with a sliding scale of regular insulin. (See Exhibit "C" ¶6.)

8. On February 9, 2010, Dr. Castillo changed the insulin order to 25 units of 70/30 insulin in the morning and 15 units of 70/30 insulin in the afternoon along with the sliding scale of regular insulin. (See Exhibit "C" ¶7.)

9. Regular insulin is a fast acting insulin with an onset of 10-30 minutes, a peak at 15-30 minutes, and a duration of no more than an hour. (See Exhibit "C" ¶8.)

10. On February 18, 2010 at around 5 a.m. Plaintiff was in the medical department at South Florida Reception Center to check his insulin level and receive an insulin injection. (See Exhibit "A".)

11. At 1:40pm in the afternoon Plaintiff was found in his cell unresponsive and a laceration to his forehead. (See Exhibit "A" ¶21.)

III. MEMORANDUM OF LAW

Standard for Summary Judgment

Defendants submit that they are entitled to summary judgment pursuant to the standard established in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). In *Celotex* the United States Supreme Court discussed the standard for granting summary judgment, and held:

> Under Rule 56(c), "summary judgment is proper if the pleadings, deposition, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In our view, the plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. 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 nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof.

Id., 477 U.S. at 322-23 (1986).

"A mere 'scintilla' of evidence supporting the opposing party's position will not suffice; there

must be enough of a showing that the jury could reasonably find for that party." *Walker v. Darby*, 911 F.2d 1573, 1577 (11th Cir. 1990). If after the movant makes its showing, the nonmoving party brings forth evidence in support of its position on an issue for which it bears the burden of proof at trial that "is merely colorable, or is not significantly probative, summary judgment may be granted." *Anderson v. Liberty Lobby*, 477 U.S. 242, 249-250 (1986).

Applying the standard of *Celotex* to the instant case, Defendant submits that Plaintiff has failed to demonstrate, nor can he demonstrate a sufficient showing of the essential elements of his case on which he would bear the burden of proof at trial. Plaintiff alleges that the Defendant Terrell was negligent pursuant to Fla. Stat. 768.28, once she became aware that she had given the plaintiff the wrong does of insulin. (D.E. #1.) Plaintiff also alleges pursuant to 42 U.S.C. §1983 that Defendant Terrell was deliberately indifferent in overdosing the Plaintiff with insulin. (See D.E. #1.) However, mere verifications of a party's own conclusory allegations are not sufficient to oppose a motion for summary judgment. Fed. R. Civ. P. 56(e). More importantly, summary judgment is not only proper but required when a party's response to the court's notice consists of nothing "[m]ore than a repetition of his conclusory allegation." *Morris v. Ross*, 663 F.2d 1032, 1034 (11th Cir. 1981), *cert. denied*, 456 U.S. 1010 (1982). Accordingly, Defendant would submit that summary judgment should be granted in her favor.

IV. ARGUMENT

A. The Plaintiff fails to Prove a Constitutional Violation.

In order to state a claim for relief under title 42 U.S.C. §1983, the Plaintiff must demonstrate that the Defendant deprived him of a right, privilege, or immunity secured by the Constitution or laws of the United States, and that the Defendant acted under color of state law. *See Whitehorn v. Harrelson*, 758 F.2d 1416, 1419 (11th Cir. 1985). Moreover, it is now well settled that "[i]n civil

rights... actions... more than the mere conclusory notice pleading is required." *Fullman v. Graddick*, 739 F.2d 553 (11th Cir. 1984)(citations omitted). Furthermore, civil rights actions require an affirmative causal connection between the Defendants and the claimed deprivation of constitutional rights. *See e.g. Williams v. Bennett*, 689 F.2d 1370 (11th Cir. 1982); *McLaughlin v. City of LaGrange*, 662 F.2d 1385 (11th Cir. 1981).

In *Farmer v. Brennan*, 511 U.S. 825, (1994), the Supreme Court reiterated that a violation of the Eighth Amendment will only be found when two requirements are met:

> First, the deprivation alleged must be, objectively, "sufficiently serious,"... a prison official's act or omission must result in the denial of "the minimal civilized measure of life's necessities..."
>
> The second requirement follows from the principle that "only the unnecessary and wanton infliction of pain implicates the Eighth Amendment."... To violate the cruel and unusual punishments clause, a prison official must have a "sufficiently culpable state of mind." ... In prison condition cases that state of mind is one of "deliberate indifference" to inmate health or safety...

Plaintiff has failed to meet either of these criteria set forth by the Supreme Court.

1. <u>Plaintiff Has Failed to State a Claim of Deliberate Indifference to His Serious Medical Need in violation of the Eighth Amendment</u>

Deliberate indifference to serious medical needs of prisoners constitutes the "unnecessary and wanton infliction of pain proscribed by the Eighth Amendment." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. *Id*. 104-105.

To show that a prison official acted with deliberate indifference to serious medical needs, a plaintiff must satisfy both an objective and a subjective inquiry. *Brown v. Johnson*, 387 F. 3d 1344, 1351 (11th Cir. 2004)(citation omitted). First, the plaintiff must prove an objectively serious medical

need and second, the plaintiff must prove that the prison official acted with deliberate indifference to that need. *Id*. A serious medical need is considered one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention. *Id*. (citation omitted). To establish deliberate indifference to the serious medical need, the plaintiff must show that the prison official had (1) a subjective knowledge of a risk of serious harm, (2) disregard of that risk, and (3) by conduct that is more than negligence. *Id*. (citation omitted). In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. *Id*.

In the case at bar, Plaintiff cannot show that Defendant TERRELL was indifferent to his medical needs. Plaintiff alleges that Defendant TERREL was deliberately indifferent in overdosing the Plaintiff with insulin. Plaintiff in his complaint alleges that on February 18, 2010 in the early morning Plaintiff was to receive ten (10) units of 70/30 insulin and fast acting insulin already pre-mixed. (See D.E. #1 ¶19.) Plaintiff also confirmed in his deposition that when he came to South Florida Reception Center, the doctor changed his prescription for insulin from what he was receiving at the county jail. (See. Exhibit "B" pg. 34 ln. 5-12.) Plaintiff testified that the prescription was to be ten (10) units of 70/30 in the morning and the evening along with the regular insulin. (See. Exhibit "B" pg. 34 ln. 14-18.) Plaintiff also testified in his deposition that he has been blind in his left eye since 1999 and shortly thereafter in his right eye due to diabetes. (See Exhibit "B" pg. 9 ln.5-7.) In his complaint Plaintiff testified that "he looked at the syringe and noticed that it contained more insulin than it should have. (D.E. #1 ¶22.) More specifically, Plaintiff testified in his deposition that he knew Defendant Terrell put too much insulin into the shot because when she injected the syringe into my arm, I looked at the vial, which is a clear plastic tube, and it looked to me that it had more insulin than what it should have had. (See. Exhibit "B" pg. 36 ln. 8-11.) Plaintiff alleges that

Defendant Terrell told him that it had a total of sixteen (16) units of insulin in the injection and Plaintiff believed it should have been a total of twelve (12) units of insulin. (See Exhibit "B" pg. 36 ln. 13-25.) Bottom line, Plaintiff believed he received 4 units more than he should have received. Notwithstanding the fact that Plaintiff is legally blind and claiming to have seen the amount of insulin in a syringe, the evidence shows that Plaintiff's perception on what his actual insulin prescription on February 18, 2010 is incorrect. The evidence is clear that Plaintiff was prescribed twenty-five (25) units of 70/30 along with regular insulin. (See Exhibits "A" and "C".) Plaintiff is claiming to have seen sixteen (16) units of insulin in the clear plastic tube, when in actuality, if Defendant TERRELL had given only sixteen (16) units of insulin to Plaintiff, then she did not overdose Plaintiff, she under dosed Plaintiff. Additionally, had Plaintiff in fact been overdosed on too much regular insulin, the effects would have taken place within the hour, not seven hours later. (See Exhibit "C".) Dr. Castillo affidavit states that the regular insulin, which is what Plaintiff claims he received too much of, is a fast acting insulin in which the onset is within 15-30 minutes, it peaks at 15-30 minutes, and the duration is one hour. (See. Exhibit "C".) The Exhibits attached hereto show that Plaintiff cannot prove that (1) Defendant TERRELL had subjective knowledge of a risk of serious harm, (2) Defendant TERRELL disregarded that risk, or (3) Defendant TERRELL's conduct was even more than negligent. In all actuality, Plaintiff very allegations show that Plaintiff is mistaken on the very amount of insulin Plaintiff was prescribed. Plaintiff then accuses Defendant TERRELL of giving Plaintiff too much insulin and causing him to fall and suffer a laceration over his eye some seven and half hours later. Plaintiff continues the accusation against the Defendant that due to the fact that Plaintiff's Medication and Treatment Records (MARS) is missing for February 18, 2010-February 28, 2010 that Defendant TERRELL is somehow trying to hide something. The fact is, the MARS record found or not is irrelevant, since the facts are clear that Dr.

Castillo ordered twenty-five (25) units of 70/30 along with regular insulin to Plaintiff on February 9, 2010. (See Exhibit "C".) Plaintiff alleges that he saw a syringe with sixteen (16) units of insulin go into his arm and what he believed was an "overdose" of medication. Defendant could not have overdosed Plaintiff with insulin had she given Plaintiff 16 units. Additionally, any overdose of regular insulin would have affected Plaintiff within the hour, of which it did not. From the evidence it is impossible to allege and show that Defendant disregard a serious risk of harm to the Plaintiff.

There is simply no evidence to support the Plaintiff's claims that Defendant TERRELL was deliberately indifferent to Plaintiff's treatment and summary judgment should be entered in Defendant favor.

2. Plaintiff fails to establish a causal connection between the named defendants and a violation of Plaintiff's Eighth Amendment Constitutional Rights

The Plaintiff cannot claim a causal connection between the Defendant's actions and an alleged constitutional injury when the Defendant acted reasonably and in accordance with established procedure. The Plaintiff has not met the prerequisite causal connection necessary to state a claim under 42 U.S. C. §1983. *Williams v. Bennett*, 669 F.2d 1370 (11th Cir. 1982), *cert denied*, 464 U.S. 932 (1983); *McLaughlin v. City of LaGrange*, 662 F.2d 1385 (11th Cir. 1981).

There are no facts that can be substantiated by the Plaintiff showing that Defendant TERRELL in anyway overdosed the Plaintiff and was deliberately indifferent to Plaintiff's medical needs. All Plaintiff's allegations are not only conclusory but false and nothing connects the actions of the Defendant with a constitutional injury. As such Defendant is entitled to judgment as a matter of law.

B. Plaintiff Has Failed To Exhaust His Administrative Remedies Required By The Prison Litigation Reform Act, 42 U.S.C § 1997e(A)

Plaintiff has failed to exhaust his administrative remedies, therefore summary judgment should be granted in favor of the Defendant. "Exhaustion of the administrative remedies provision of the Prison Litigation Reform Act (PLRA) applies to both federal and state prisoners." *Alexander v. Hawk*, 159 F.3d 1321 (11th Cir. 1998); Prison Litigation Reform Act of 1995, §7(a), 42 U.S.C. §1997e(a). 42 U.S.C. §1997e(a) provides for dismissal of lawsuits involving claims with respect to the conditions of an inmate's confinement. It reads in pertinent part as follows:

> (a) Applicability of administrative remedies
>
> No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. §1997e(a).

In *Leal v. Georgia Department of Corrections*, the Eleventh Circuit recognized that "the plain language of this statute makes exhaustion a precondition to filing an action in federal court." 254 F.3d 1276 (11th Cir. 2001)(*citing Higginbottom v. Carter*, 223 F.3d 1259, 1261 (11th Cir. 2000))(*quoting Freeman v. Francis*, 196 F.3d 641, 643-44 (6th Cir. 1999)). *See also Harris v. Garner*, 190 F.3d 1279, 1286 (11th Cir. 1999)(reaffirming that §1997e(a) imposes a mandatory requirement on prisoners seeking judicial relief to exhaust their remedies before filing suit in federal court)(en banc); *Miller v. Tanner*, 196 F.3d 1190, 1193 (11th Cir.1999)(holding that under the PLRA, "an inmate incarcerated in a state prison. . . must first comply with the grievance procedures established by the state department of corrections before filing a federal lawsuit under section 1983"); *Harper v. Jenkin*, 179 F.3d 1311, 1312 (11th Cir.1999)(affirming the dismissal of a prisoner's civil right suit for failure to satisfy the mandatory exhaustion requirements of §1997e(a) of the

PLRA)).

"Judicially recognized futility and inadequacy exceptions do not survive the new mandatory exhaustion requirement of the PLRA," *Alexander v. Hawk*, 159 F.3d at 1325-26; *Harris v. Garner*, 190 F.3d 1279, 1286 (11th Cir. 1999). Exhaustion is now a precondition to suit, therefore "the courts cannot simply waive those requirements where they determine they are futile or inadequate." "Such interpretation would impose an enormous loophole in the PLRA which Congress clearly did not intend." *Id.* at 1326 (*citing Weinberger v. Salfi*, 422 U.S. 749, 766 (1975)(holding that where exhaustion is a statutorily specified jurisdictional prerequisite, "the requirement. . . may not be dispensed with merely by a judicial conclusion of futility.")). Further, a prisoner must exhaust <u>all</u> administrative remedies that are available before filing suit, regardless of their adequacy. *Id.* at 1325-26; *Harris v. Garner*, 190 F.3d at 1286.

The PLRA does not condition the applicability of the exhaustion requirement on the effectiveness of an administrative remedy. *Massey v. Helman,* 196 F.3d 727 (7th Cir. 1999). The United States Supreme Court upheld the PLRA exhaustion requirement and found it to be applicable to all suits by prisoners. *Porter v. Nussle*, 534 U.S. 516(2002)(ruling on a case involving an alleged excessive use of force by corrections officers). The Supreme Court stated that

> Once within the discretion of the district court, exhaustion in cases covered by 1997e(a) is now mandatory. See *Booth v. Churner*, 532 U.S. 731, 121 S.Ct. 1819, 149 L.Ed.2d 958 (2001). All 'available' remedies must now be exhausted; those remedies need not meet federal standards, nor must they be 'plain, speedy, and effective.' [citations omitted]. Even when the prisoner seeks relief not available in grievance proceedings, notably money damages, exhaustion is a prerequisite to suit. [citations omitted].

Porter, 122 S.Ct. at 988.

For inmates making claims against corrections officials, or correctional employees, the

administrative remedies consist of proper use of the correctional system grievance process. In exhausting administrative remedies, an inmate must not only commence the grievance procedure but must perfect his appeal to the highest administrative level in the grievance process. *See Maulick v. Central Classification Board*, 659 F.Supp. 24 (E.D.Va. 1986). The Florida Administrative Code Chapter 33-103.001 sets forth the grievance procedure for inmates confined by the Florida Department of Corrections. Pursuant to 42 U.S.C. 1997e(a) and the aforementioned case law, the exhaustion of an inmate's administrative remedies is a condition precedent to filing a Complaint for damages.

In the Plaintiff's case Plaintiff readily admits in his deposition that he did not file a grievance to the medical department regarding the incident of February 18, 2010 (See. Exhibit "B" pg.52 ln. 2-7 and 15-21.) Rebecca Padgham is the Correctional Services Assistant Consultant by the Florida Department of Corrections, Bureau of Policy Management and Inmate Appeals in Tallahassee, Florida. (See Exhibit "D" ¶1.) Ms. Padgham is the records custodian of all inmate grievance appeals to the Secretary. Upon review of the records Ms. Padgham found no Appeals to the Secretary regarding the incident of February 18, 2010. (See Exhibit "D".)

Plaintiff attaches numerous grievances to his Complaint. The first is an Inmate Greivance dated February 20, 2010 to Defendant Terrell, asking for her full name, of which has no response. (See D.E. #1 Exh. A.) The next grievance was written on July 12, 2010 and sent to South Florida Reception Center, while Plaintiff was housed at Calhoun Correctional. The Grievance was returned for failure to follow the Rules of Florida Administrative Code 33-103.014(1)(j) and allowing the inmate to re-file properly. (See. D.E. #1 Exh.A.) The next grievance is an informal grievance written on August 24, 2010 regarding the incident on February 18, 2010. The grievance was responded to on August 27, 2010 and stated that " the medical records were reviewed and there is no documentation

that Nurse "B" administered a medication over dose to you on 2/18/10" (See D.E. #1 Exh. A.) the remaining grievances attached to Plaintiff's complaint deal with his request for medical documentation. The final grievance appears to be a formal grievance to the Assistant Warden. There is no date and the copy is incomplete with no response. (See. D. E. #1 Exh. A.)

Plaintiff alleges in his complaint that he filed numerous grievances that were never answered. This does not allow the Plaintiff to stop or bypass the grievance procedure and file suit. Florida Administrative Code 33-103.011(4) allows for the following:

> The time limit for responding to grievances and appeals may be extended for a reasonable period agreeable to both parties if the extension is agreed to in writing by the inmate. Unless the grievant has agreed in writing to an extension, expiration of a time limit at any step in the process shall entitle the complainant to proceed to the next step of the grievance process. If this occurs, the complainant must clearly indicate this fact when filing at the next step. If the inmate does not agree to an extension of time at the central office level of review, he shall be entitled to proceed with judicial remedies as he would have exhausted his administrative remedies. The Bureau of Policy Management and Inmate Appeals will nevertheless ensure that the grievance is investigated and responded to even though an extension has not been agreed to by the inmate.

Any grievance that was not answered, the inmate had the ability to go to the next step. Additionally, Plaintiff filed an informal grievance on August 24, 2010 which was responded to on August 27, 2010, stating that they had reviewed the medical records and could not find any medical overdose. (See D.E. #1 Exh. A.) Plaintiff at that time had the ability to file his formal grievance and his Appeal to the Secretary had he not agreed with the answer received. Instead as Plaintiff stated in his Complaint and Deposition, I did not file a grievance. Thus, under the Prison Litigation Reform Act, the Plaintiff's claim against Defendant TERRELL is barred for failure to exhaust administrative remedies and he entitled to judgment as a matter of law.

C. Plaintiff Cannot Recover Under 42 U.S.C. §1983 On A Theory Of Negligence.

In order to state a §1983 cause of action against prison officials based on a constitutional deprivation resulting from cruel and unusual punishment, there must be at least some allegation of a conscious or callous indifference to a prisoner's right, thus raising the tort to constitutional statute. *Estelle v. Gamble*, 429 U.S. 97, 106, (1976); *Byrd v. Clark*, 783 F.2d 1002, 1006 (11th Cir. 1986); *Williams v. Bennett*, 689 F.2d 1370, 1380 (11th Cir. 1982). A showing of negligence does not provide a basis for recovery under §1983. The Supreme Court has found that:

> [A] Complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner.
>
> *Estelle*, at 429 U.S. 106, 97 S.Ct. 292.

Plaintiff cannot show the high standard necessary for a §1983 of deliberate indifference by the Defendant. Nor can Plaintiff revert to the lower standard of negligence while pleading a §1983 violation. Plaintiff thereby fails to state a cause of action to the extent he sues in negligence under §1983, and summary judgment, therefore, should be granted.

D. Count IV of the Complaint for Negligence Must Fail

In Count Four of Plaintiff Complaint, Plaintiff claims that Defendant TERRELL was negligent in the fact that once she was made aware she may have given the plaintiff the wrong dose of insulin, she refused to take any measures to relieve Plaintiff of his discomfort. (D.E. #1 and D.E. 28 Report of the Magistrate Judge.) Plaintiff is suing the Defendant in her individual capacity pursuant to Fla. Stat. §768.28(9). Fla. Stat. §768.28(9) immunizes Defendant, a state employee, from suit and liability in tort as long as she acted within the scope of her employment, and did not act in bad faith, with malicious purpose, or in a manner exhibiting wanton disregard of human rights.

See also Willingham v. City of Orlando, 929 So. 2d 43, 48 (Fla. 5th DCA 2006) ("Importantly, the immunity provided by section 768.28(9)(a) is both an immunity from liability and an immunity from suit. . . "). The evidence already presented above, show that Defendant TERRELL was acting within the scope of her job duty when she administered Plaintiff's medication on February 18, 2010. Plaintiff's allegations both in his Complaint and deposition are flat out wrong. Plaintiff has incorrectly assumed that due to the fact that he fell in his cell, someone is to blame and the easiest person to point the finger at was Defendant TERRELL. Plaintiff has testified to an alleged "overdose" that has even been disputed by the very doctor who ordered his prescription. Plaintiff's own deposition shows that Plaintiff had uncontrollable diabetes, that he did not adhere to doctor's instructions regarding his intake of candies and cookies and that he suffered numerous times from both hypoglycemia and hyperglycemia and has been carried to medical many times. (See Exhibit "B" pg. 9 ln. 5; pg . 21 ln. 7-18; pg. 23 ln 5-22; pg. pg. 24 ln. 6-16; pg. 26 ln. 11-13.) Plaintiff incorrectly has alleged and testified to the amount of insulin he believes Defendant TERRELL administered to him on February 18, 2010 and there is no information whatsoever that Defendant TERRELL overdosed Plaintiff on insulin. There is no evidence that Defendant TERRELL gave Plaintiff his insulin shot and ignored any type of overdose, since the incident never happened. Dr. Castillo even testified had Plaintiff been given an overdose of regular insulin, any reaction would have occurred within the hour. (See Exhibit "C".) Additionally, Plaintiff continues to assume that a missing page from his medical file is somehow the "smoking gun", however Plaintiff's own assumption that he was to be given only ten (10) units of 70/30 along with regular insulin, obliterates his own argument. Defendant is therefore immune from personal liability on the state law claim and summary judgment should be granted.

E. Defendant Is Entitled To Qualified Immunity

Defendant TERRELL's qualified immunity bars Plaintiff's civil rights claims. "Qualified immunity offers complete protection for government officials sued in their individual capacities if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Walker v. Prieto*, 414 F. Supp. 2d 1148 (S.D. Fla. 2006); *citing Vinyard v. Wilson*, 311 F.3d 1340, 1346 (11th Cir. 2002)).

In *Lassiter v. Alabama A & M University*, 28 F.3d 1146 (11th Cir. 1994), the court set forth the breadth of the qualified immunity defense as follows:

> That qualified immunity protects governmental actors is the usual rule; only in exceptional cases will government actors have no shield against claims made against them in their *individual capacities*. (emphasis in original) (citation omitted). Unless a government agent's act is so obviously wrong, in the light of pre-existing case law, that only a plainly incompetent officer or one who was knowingly violating the law would have done such a thing, the government actor has immunity from suit. *See Malley v. Briggs*, 475 U.S. 335, 341-43, 106 S.Ct. 1092, 1096-97, 89 L.Ed.2d 271 (1986). Because qualified immunity shields governmental actors in all but *exceptional cases*, courts should think long and hard before stripping defendants of immunity.

Id. at 1149. (emphasis added).

The Defendant first establishes that he was acting within his discretionary authority, "the burden then shifts to the plaintiff to show that qualified immunity is not appropriate." *Pearson v. Callaha*n, 555 U.S. 223 (2009). When evaluating a claim for qualified immunity, a court must determine (1) whether the facts alleged, viewed in the light most favorable to the plaintiff, show that the officer's conduct violated a constitutional right, and (2) whether, under the facts alleged, there was a violation of "clearly established law." *Id.* Courts are no longer required to address the two prongs of this test in any particular order. *Id.*

Whatever order the two prong test is taken in; the Defendant is entitled to qualified

immunity. In the instant case, Defendant TERREL is a registered nurse at South Florida Reception Center. (See Exhibits "A"¶1 .) Because the facts demonstrate that the Defendant was acting within their discretionary authority as a registered nurse, the burden now shifts to plaintiff to demonstrate that the Defendant violated clearly established law. *Zeifler v. Jackson*, 716 F.2d 847, 849 (1983). Defendant submits that the Plaintiff cannot meet that burden.

In the case at bar, it is abundantly clear, based on the authorities cited above and the exhibits attached in support of this motion, that the Defendant was acting within their discretionary authority while treating Plaintiff, and Defendant TERRELL did not violate any clearly established statutory or constitutional right belonging to the Plaintiff. The records attached show that Defendant TERRELL was given twenty five (25) units of 70/30 insulin along with regular insulin on February 18, 2010. (See Exhibit "A" and "C".) Plaintiff alleges both in his complaint and deposition that he was overdosed by Defendant TERRELL because he saw Defendant give him sixteen (16) units of insulin when he believes it should have been twelve (12) (See D.E. #1.) In essence, from the medical records, and Plaintiff's allegations, it was impossible for Defendant TERRELL to have overdosed the Plaintiff. Additionally, from Plaintiff's own testimony, he has uncontrolled diabetes, he does not adhere to doctor's orders regarding food intake, and numerous times has suffered from both low and high sugar levels. There is no evidence that Defendant TERRELL did anything wrong on February 18, 2010.

Because there is no genuine issue of material facts as to whether Defendant TERRELL is entitled to qualified immunity, summary judgment is appropriate and final judgment should be entered in her favor.

The Defendant is being sued in their individual capacity and is entitled to qualified immunity. As a general rule, government officials performing discretionary functions are shielded by qualified

immunity from civil liability as long as their actions are reasonably consistent with the rights alleged to have been violated. *Anderson v. Creighton*, 483 U.S. 635, 637 (1987). Thus, the court, in assessing claims against prison officials, must balance the right of state officials to be free from frivolous suits against the rights of individuals to be heard. *Jacquez v. Procunier*, 801 F.2d 789, 791 (5th Cir. 1986). Qualified immunity shields state officials from liability unless their conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.*; *see also Harlow*, 457 U.S. 800 (1982); *Davis v. Scherer*, 468 U.S. 1983(1984), *reh. denied*, 468 U.S. 1226.

Whether such an official will be held personally liable for an alleged unlawful violation of inmate's rights will turn on the "'objective reasonableness' of the action, assessed in light of the legal rules that were 'clearly established' at the time." The alleged unlawful action was taken. *Anderson v. Creighton*, 483 U.S. at 637 (1987) (*quoting Harlow at 819*). The evidence submitted to this Court through this motion demonstrates unequivocally that Defendant TERRELL's followed doctor's orders and according to Plaintiff's own allegations could not have overdosed plaintiff on insulin. Therefore, Defendant is entitled to the protection of qualified immunity.

E. Punitive Damages

Punitive damages may be awarded for a claim under 42 U.S.C. § 1983 "when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." *Smith v. Wade*, 461 U.S. 30, 56 (1983); *see also Davis v. Locke*, 936 F.2d 1208, 1214 (11th Cir. 1991) (approving award of punitive damages when jury found that defendants' actions towards inmate were motivated by racial animus and that defendants pulled plaintiff from a dog cage and then let him fall to the ground); *Anderson v. City of Atlanta*, 778 F.2d 678, 688 (11th Cir.1985).

The Plaintiff in this case has alleged that the Defendant has caused him emotional distress and that he sustained twelve stitches on his forehead above his eye. Plaintiff however, has not alleged the type of conduct that would meet the standard set out by *Smith v. Wade*. Plaintiff does not prove or give any evidence that Defendant acted with an evil motive or intent against the Plaintiff. Plaintiff's claim for punitive damages should fail and judgment should be granted for Defendant.

CONCLUSION

WHEREFORE, based upon the foregoing arguments and authorities, the Defendant, respectfully requests this Honorable Court grant this motion for summary judgment in their favor and against the Plaintiff, and to grant them such other and further relief as the Court deems just and proper.

Respectfully submitted,

PAMELA BONDI
ATTORNEY GENERAL

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Attorney for Defendant Terrell

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served by U.S. mail on 8th Day of November, 2012 on all counsel or parties of record on

the attached service list.

S/ Kathleen M. Savor
Kathleen M. Savor
Assistant Attorney General

SERVICE LIST

CASE NO.: 11-24003-CIV-UNGARO
MAGISTRATE JUDGE WHITE

Inmate Humberto Toras
DC#616199
Reception Medical Center Main Unit
P.O. Box 628
Lake Butler, FL 32054
Pro Se
[sent by U.S. Mail]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 11-24003-CV-UNGARO
MAGISTRATE WHITE

HUMBERTO TRIAS,
a/k/a HUMBERTO TORAS,

Plaintiff,

v.

KENNETH TUCKER, et. al.,

Defendants,

_____/

AFFIDAVIT OF BERNICE TERRELL

STATE OF FLORIDA
COUNTY OF DADE

I BERNICE TERRELL, state that I have personal knowledge of the following information and that the same is true and correct:

1. I am employed with the Florida Department of Corrections at South Florida Reception Center. I have worked for the Department of Corrections since 1993 as a Registered Nurse.

2. I currently work a 12 midnight to 8 in the morning shift and on the date in question, February 18, 2010, was working this shift.

3. Inmates with diabetes that require their blood sugar to be tested come to the medical department twice a day. Once before breakfast and once before dinner.

4. Inmates with diabetes will have an ACCU check- a blood glucose monitoring

EXHIBIT
A

system used to monitor a person's blood sugar level to determine how much insulin, if any, is needed to control the person's blood sugar level.

5. Inmates arrive in the morning between 5:30am and 6:00am to have their blood sugar level checked and before evening dinner between 5:00pm and 6:00pm.

6. Inmates should go directly to breakfast after receiving their morning ACCU check and insulin. The same would hold true in the afternoons, Inmates should have their ACCU check and medication then head straight to dinner.

7. Common practice is for the Inmates to lance their own finger, place some blood on the test strip to be read by the ACCU meter. The ACCU meter will instantly give a numeric score representing the inmate's blood sugar level. The inmate will then show the nurse the results from the machine, and then the proper insulin is given to the inmate pursuant to the Doctor's written order.

8. For the twenty (20) years I have been working at the Department of Corrections, this has been the process used by the Inmates and Nurses at South Florida Reception Center.

9. Medication and Treatment Records ("MARS") are kept for each inmate showing that the inmate was present for his insulin medication. Active "MARS" are kept at the nurses' station and is kept monthly. A new MARS is used when a Doctor changes the prescription or when the month is complete. The MARS is then placed in the Inmate's medical file.

10. Upon Inmate Humberto Toras' arrival to South Florida Reception Center (S.F.R.C.) on January 21, 2010, Dr. Mirander ordered Plaintiff's insulin medication. Dr. Mirander ordered 10 units of NPH in the morning and 5 units of NPH in the afternoon along with a sliding scale depending on the Inmate's blood sugar level of additional regular insulin. (See

Exhibit "1" Physician's Order Sheet.)

11. On February 1, 2010, Dr. Castillo wrote a new order, requesting that Plaintiff be given 20 units of 70/30 insulin in the morning and 10 units of 70/30 insulin in the afternoon along with a sliding scale of regular insulin. (See Exhibit "1".)

12. On February 9, 2010, Dr. Castillo changed the prescription again requesting that Plaintiff be given 25 unit of 70/30 insulin in the morning and 15 units of 70/30 insulin in the afternoon along with the sliding scale of regular insulin. (See Exhibit "1".)

13. 70/30 insulin represents 70% NPH along with 30% regular insulin. Additional regular insulin is given to the inmate depending on the ACCU check reading and the sliding scale ordered by the Doctor.

14. Plaintiff's medical records show that Plaintiff's insulin levels are uncontrollable which is why within the first twenty (20) days of Plaintiff arriving at S.F.R.C. his insulin prescription was changed three times. (See Exhibit "1".)

15. People with diabetes must also exercise and control their diet. Plaintiff's medical record shows that Plaintiff contributed to his uncontrollable diabetes by not properly adhering to a proper diet. (See Exhibit "2".)

16. A review of Plaintiff MARS record in early February show that Plaintiff in the morning had ACCU check readings ranging from 154-481 on any given day. (See Exhibit "3".)

17. On February 1, 2010 Plaintiff ACCU check showed a reading of 450-454 (See Exhibit "2")

18. On February 17, 2010, one day before the alleged incident, Plaintiff walked himself to the medical department at 2:50pm in the afternoon, because he believed his glucose

level was low, the ACCU check showed his glucose level was 39. Plaintiff was provided with an Ensure and waited thirty minutes to be rechecked before being sent back to the dorm. (See. Exhibit "2".)

19. On February 18, 2010 Plaintiff would have received his insulin shot between 5:30am and 6:00am then should have proceeded directly to breakfast.

20. There is no way to confirm that Plaintiff went to breakfast or to lunch on February 18, 2010.

21. The medical records of February 18, 2010 show that Plaintiff was brought to the medical department at 1:40pm after being found in his cell on the floor bleeding from his head, some seven and half hours after receiving his morning insulin injection. (See Exhibit "4".)

22. The medical records also show that Plaintiff's ACCU reading was 53 higher than the reading the day before when he walked himself to medical. (See Exhibit "4".)

23. The insulin given to Plaintiff on the morning of February 18, 2010 was 25 units of 70/30 along with regular insulin. Plaintiff claims that he should have received 10 units of 70/30 2 units of regular and instead was given 10 units of 70/30 and 6 units of regular insulin. (See D.E. #1 ¶19.)

24. Regular Insulin is fast acting insulin, with an onset of 10-30 minutes, a peak at 15-30 minutes, and a duration of about 1 hour.

25. If Plaintiff was given too much insulin, the reaction to the insulin would have taken place and he would have felt the effects within the hour, not over seven hours later.

26. Additionally, Plaintiff claims in his Complaint that he was to receive only 10 units of 70/30 insulin, along with 2 units of regular insulin (D. E. #1 ¶19) which as shown by the

physician's order dated February 9, 2010, is incorrect. Plaintiff was ordered to actually receive 25 units of 70/30 plus the additional regular insulin. (See Exhibit "1".)

27. Plaintiff's MARS records from February 10, 2010 through February 28, 2010 is not in the Plaintiff's inmate file.

28. I am not responsible for placing the MARS in the inmate medical file and according to the physician's order sheet Plaintiff's insulin medication was changed again on February 19, 2010, which would require a new MARS from February 19, 2010 until February 28, 2010.

29. There is no reason for me to remove or dispose of Plaintiff's MARS record, since Plaintiff was not given an incorrect amount of insulin. Plaintiff himself, in his Complaint has improperly stated the proper amount prescribed by the doctor for February 18, 2010.

30. I hereby certify that the above documents pertaining to inmate Humberto Toras DC#616199, attached to this affidavit are true and accurate depictions of the documents contained in Plaintiff's original medical file.

31. At no time was Plaintiff given an improper amount of insulin that would have resulted in the injuries Plaintiff sustained some seven and half hours later.

32. At all times material as alleged in the complaint and this affidavit, I was acting within my discretionary authority and pursuant to Departmental and Institutional Rules and Regulations. I had no belief that my actions were violating any statutory or constitution right belonging to Plaintiff Toras.

33. I have personal knowledge of the foregoing facts, and I am competent to testify to such facts. I would testify to these facts as above if I appeared in court as a witness under oath.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on November _____, 2012.

_____
BERNICE TERRELL

I declare under penalty of perjury that the forgoing is true and correct.

Executed on November 8, 2012.

Bernice Terrell

BERNICE TERRELL

FLORIDA DEPARTMENT OF CORRECTIONS
PHYSICIAN'S ORDER SHEET
USE BALL POINT PEN ONLY-PRESS FIRMLY—NO MORE THAN ONE ORDER PER LINE

Institution: SFRC | Date: [illegible] | Time: | ☐ Inpatient ☐ Outpatient

Inmate Name: [illegible]
DC#: [illegible] 6116199
Dorm:
Diagnosis:

STAT	Initial Each Order as Transcribed	List Allergies Here: NKA
		Infusion 0.002% - 0.9% solution 1 gtt to (R) eye q 4 hrs [illegible]
		Antibiotic cream (topical) [illegible] - [illegible]
		T.A.C. [illegible] ointment [illegible]

Time Noted: 1530 | Nurse Signature/Stamp: [illegible] | Doctor Signature/Stamp: DR. M. MIRANDER, CHO SFRC | Date/Time: [illegible]

DC4-714B (9/05) Distribution: White Original—Pharmacy Canary—Medical Record

FLORIDA DEPARTMENT OF CORRECTIONS
PHYSICIAN'S ORDER SHEET
USE BALL POINT PEN ONLY-PRESS FIRMLY—NO MORE THAN ONE ORDER PER LINE

Institution: SFRC | Date: [illegible] | Time: [illegible] | ☐ Inpatient ☐ Outpatient

Inmate Name: [illegible]
DC#: [illegible] 6116199
Dorm:
Diagnosis:

STAT	Initial Each Order as Transcribed	List Allergies Here: NKA
		AM insulin [illegible]
		PM insulin [illegible]
		[illegible]
		[illegible]

Time Noted: 1530 | Nurse Signature/Stamp: [illegible] | Doctor Signature/Stamp: DR. M. MIRANDER, CHO SFRC | Date/Time: [illegible]

DC4-714B (9/05) Distribution: White Original—Pharmacy Canary—Medical Record

FLORIDA DEPARTMENT OF CORRECTIONS
PHYSICIAN'S ORDER SHEET
USE BALL POINT PEN ONLY-PRESS FIRMLY—NO MORE THAN ONE ORDER PER LINE

Institution: SFRC | Date: [illegible] | Time: [illegible] | ☐ Inpatient ☐ Outpatient

Inmate Name: [illegible]
DC#: [illegible] 6116199
Dorm:
Diagnosis:

STAT	Initial Each Order as Transcribed	List Allergies Here: NKA
		[illegible]
		[illegible]
		[illegible]
		[illegible]

Time Noted: 1530 | Nurse Signature/Stamp: [illegible] | Doctor Signature/Stamp: DR. M. MIRANDER, CHO SFRC | [illegible]

DC4-714B (9/05) Distribution: White Original—Pharmacy C

DEFENDANT'S EXHIBIT 1

FLORIDA DEPARTMENT OF CORRECTIONS
PHYSICIAN'S ORDER SHEET
USE BALL POINT PEN ONLY-PRESS FIRMLY—NO MORE THAN ONE ORDER PER LINE

Institution: SFRC | Date: [illegible] | Time: 11:25 | ☐ Inpatient ☒ Outpatient

Inmate Name: Toras, Humberto
DC#: ~~[illegible]~~ 616199
Dorm:
Diagnosis: [illegible]

STAT	Initial Each Order as Transcribed	List Allergies Here: NKDA
		[illegible]
		[illegible]
		[illegible]
		[illegible]

Time Noted: | Nurse Signature/Stamp | Doctor Signature/Stamp: M. CASTILLO, MD SFRC | Date/Time:

DC4-714B (9/05) Distribution: White Original—Pharmacy Canary—Medical Record

FLORIDA DEPARTMENT OF CORRECTIONS
PHYSICIAN'S ORDER SHEET
USE BALL POINT PEN ONLY-PRESS FIRMLY—NO MORE THAN O

0-~~B08002~~ 616199 TM 12 01/21/2010

Institution: SFRC | Date: 1/27/10 | Time: 30' | ☐ Inpatient ☐ Outpatient

Inmate N TORAS, HUMBERTO
DC#
Dorm W/M DOB 07/31/1979(30) DD
Diagnosis: [illegible]

STAT	Initial Each Order as Transcribed	List Allergies Here: NKDA
		Synthroid 100 mcg p.o. daily x 90 days
	1/27/10	

Time Noted: 1540 | Nurse Signature/Stamp: R. BLAIR, LPN S.F.R.C. | Doctor Signature/Stamp: [illegible] P.A. | Date/Time: 1/27/10

DC4-714B (9/05) Distribution: White Original—Pharmacy Canary—Medical Record

FLORIDA DEPARTMENT OF CORRECTIONS
PHYSICIAN'S ORDER SHEET
USE BALL POINT PEN ONLY-PRESS FIRMLY—NO MORE THAN (

0-~~B08002~~ 616199 TM 12 01/21/2010

Institution: SFRC | Date: 1/26/10 | Time: 2:22 | ☐ Inpatient ☒ Outpatient

Inmate TORAS, HUMBERTO
DC#
Dorm W/M DOB 07/31/1979(30) DD
Diagnosis: [illegible]

STAT	Initial Each Order as Transcribed	List Allergies Here: NKDA
		[illegible] 500 mg p.o. bid x 90 days
		[illegible]
		[illegible]
	1/26/10	[illegible]

Time Noted: 1440 | Nurse Signature/Stamp: R. BLAIR LPN/SFRC | Doctor Signature/Stamp: [illegible] P.A. | Date/Time: 1/26/10

DC4-714B (9/05) Distribution: White Original—Pharmacy Canary—Medical Record

FLORIDA DEPARTMENT OF CORRECTIONS
PHYSICIAN'S ORDER SHEET
USE BALL POINT PEN ONLY-PRESS FIRMLY—NO MORE THAN ONE ORDER PER LINE

Institution: SFRC | Date: 4/8/10 | Time: 2:00 | ☐ Inpatient ☒ Outpatient | Inmate Name: [illegible]
DC#: [illegible] 6016199
Dorm:
Diagnosis: [illegible]

STAT	Initial Each Order as Transcribed	List Allergies Here: NKDA
	[illegible]	Calucca 5mg IM STAT
	[illegible]	Transfer to Hosp [illegible]

Time Noted: _____ | Nurse Signature/Stamp: [illegible] | Doctor Signature/Stamp: T DIEGUEZ M.D. SFRC | Date/Time:

DC4-714B (9/05) Distribution: White Original—Pharmacy Canary—Medical Record

FLORIDA DEPARTMENT OF CORRECTIONS
PHYSICIAN'S ORDER SHEET
USE BALL POINT PEN ONLY-PRESS FIRMLY—NO MORE THAN ONE ORDER PER LINE

Institution: SFRC | Date: 2/9/10 | Time: 1300 | ☐ Inpatient ☒ Outpatient | Inmate Name: Torres Humberto
DC#: [illegible] 6016199
Dorm: DOB 07-31-1979 [illegible]
Diagnosis: [illegible]

STAT	Initial Each Order as Transcribed	List Allergies Here: NKDA
		Bactrim 70/350 2 qd x 10 days
		Bactrim 70/350 1 qd x 30 days
		Decadron 4mg po once [illegible]

Time Noted: 1300 | Nurse Signature/Stamp: C. HOWARD, LPN SFRC | Doctor Signature/Stamp: M. CASTILLO, MD SFRC | Date/Time: 2/9/10

DC4-714B (9/05) Distribution: White Original—Pharmacy Canary—Medical Record

FLORIDA DEPARTMENT OF CORRECTIONS
PHYSICIAN'S ORDER SHEET
USE BALL POINT PEN ONLY-PRESS FIRMLY—NO MORE THAN ONE ORDER PER LINE

Institution: SFRC | Date: 2/10 | Time: | ☐ Inpatient ☒ Outpatient | Inmate Name: Torres Humberto
DC#: [illegible] 6016199
Dorm:
Diagnosis: [illegible]

STAT	Initial Each Order as Transcribed	List Allergies Here: NKDA
		Bactrim 70/350 2 qd x 10 days
		Bactrim 70/350 1 qd x 30 days
		[illegible]
		Decadron [illegible]

Time Noted: _____ | Nurse Signature/Stamp: [illegible] | Doctor Signature/Stamp: M. CASTILLO, MD SFRC | Date/Time:

DC4-714B (9/05) Distribution: White Original—Pharmacy Canary—Medical Record

FLORIDA DEPARTMENT OF CORRECTIONS
PHYSICIAN'S ORDER SHEET
USE BALL POINT PEN ONLY-PRESS FIRMLY—NO MORE THAN ONE ORDER PER LINE

Institution: CMCI | Date: 3-3-10 | Time: 1515 | ☐ Inpatient ☐ Outpatient

Inmate Name: Toras, Humberto
DC#: 616199 ~~B05002~~
Dorm:
Diagnosis:

List Allergies Here: NKDA

STAT	Initial Each Order as Transcribed	
	NR	D/C 70/30 Insulin; Start NPH 18 units in A.M. = 12 units in P.M.
		Reg. Insulin Sliding Scale as follows: PS 200-250 = 2 "U"
		251-300 = 4 "U"; 301-350 = 6 "U"; 350-400 =
		7400 = 10 "U" x 7 yr.

Time Noted: 1725 | Nurse Signature/Stamp: [signature] Senior LPN Calhoun Corr. Inst. | Doctor Signature/Stamp: [signature] 3-10-10 | Date/Time:

EXPEDITO M. SALVADOR, CA
PAX 00002368 [illegible]
MOSES N. IZUEGBU, MD
CALHOUN CI
19562 SE INSTITUTION DR.
BLOUNTSTOWN, FL 32424
850-237-6500

DC4-714B (9/05) Distribution: White Original—Pharmacy Canary—Medical Record

FLORIDA DEPARTMENT OF CORRECTIONS
PHYSICIAN'S ORDER SHEET
USE BALL POINT PEN ONLY-PRESS FIRMLY—NO MORE THAN ONE ORDER PER LINE

Institution: SFRC | Date: 2/19/10 | Time: 9:25 | ☐ Inpatient ☑ Outpatient

Inmate Name: Toras Humberto
DC#: ~~B05002~~ 616199
Dorm:
Diagnosis: s/p Hypoglycemia

List Allergies Here: NKDA

STAT	Initial Each Order as Transcribed	
	NR	D/C Regular Insulin s/s.
	NR	Cont 70/30 Insulin - [illegible] c̄ documentation.

T. DIEGUEZ, M.D. SFRC

Time Noted: 0950 | Nurse Signature/Stamp: [signature] M. Raphael L.P.N S.F.R.C | Doctor Signature/Stamp: [signature] | Date/Time: 2/19/10 0925

DC4-714B (9/05) Distribution: White Original—Pharmacy Canary—Medical Record

FLORIDA DEPARTMENT OF CORRECTIONS
PHYSICIAN'S ORDER SHEET
USE BALL POINT PEN ONLY-PRESS FIRMLY—NO MORE THAN ONE ORDER PER LINE

Institution: SFRC | Date: 2/18/10 | Time: 2030 | ☐ Inpatient ☑ Outpatient

Inmate Name: Toras, Humberto
DC#: 616199 ~~B05002~~
Dorm:
Diagnosis: [illegible]

List Allergies Here: NKDA

STAT	Initial Each Order as Transcribed	
	NR	23° observation in infirmary
2/19/10	NR	Keflex 500mg PO Tid X 7 days
0950	NR	Motrin 400mg PO Tid X 7 d
	NR	Continue all previous meds as ordered

T. DIEGUEZ, M.D. SFRC

Time Noted: 2/18/10 | Nurse Signature/Stamp: [signature] C. Bazo Registered Nurse S.F.R.C | Doctor Signature/Stamp: [signature] | Date/Time: 2/19/10 0925

DC4-714B (9/05) Distribution: White Original—Pharmacy Canary—Medical Record

FLORIDA DEPARTMENT OF CORRECTIONS
Chronological Record of Health Care

Allergies: NKA.

DATE/TIME

1·21·10 TAC note. IPM rcvd thru TFR new commitment. Hx of Type
1114. 1 diabetes. BS elevated @ this time as displayed by
monitor — HI. Call placed to MD. New orders rcvd.
10 units NPH, 12 units (R) insulin. — [signature]

1/21/10 TFR
1435 hr
Hx of DM per transfer summary
DM Type I
BP 09
Glucoma
Also hx HTN/Hypoxid d/o/Hiperpedis.
Meds re-ordered.
Pt per protocol.
[signature]
DR. M. MIRANDER, CHO
SFRC

BP 119/84
Acc — HI.

Note
01/21/10
A. PANTALEO, LPN
SFRC

N. Heredia
H.S.T
S.F.R.C

1/26/10 Accuck 223
N.H.

616199
0 ~~B08002~~ TM 12 01/21/2010 rto
TORAS, HUMBERTO
W/M DOB 07/31/1979(30) DD

S- Subjective Data
O- Objective Data
A- Assessment of S and O Data
P- Plan
E-Education

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DEFENDANT'S EXHIBIT 2

FLORIDA DEPARTMENT OF CORRECTIONS

Chronological Record of Health Care

Allergies: NKA

DATE/TIME

LABS DRAWN

DATE: 1-29-10 TFM 13

O. SMIKLE, HST SFRC

1-29-10 1/e

1900

2-1-10 Dr Kitt. Emergency Follow up ↑ Blood Sugar [illegible]

[illegible]

2/1/10 11:30

S: uncontrolled BS

O: PT c̄ hx of IDDM. on new regimen of NPH. That according c̄ MAR. keep BS level @ 400 in AM, & 300 in afternoon. PT educated regarding his need. compliance.

PE:

lungs. clear bilaterally. [illegible]

heart. RR.

abdom NAD.

JG: [illegible]

A/P: Uncontrolled BS. - Ss to [illegible] 70/30.

accuchek BID.

[illegible] in 5 days

M. CASTILLO MD SFRC

2-1-10

12:00

[illegible]

[illegible]

0-B08002 TM 12 01/21/2010

6/16/99

TORAS, HUMBERTO

W/M DOB 07/31/1979(30) DD

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DC4-701 (Revised 10/31/08)

DEPARTMENT OF CORRECTIONS
OFFICE OF HEALTH SERVICES

DIABETES ASSESSMENT

SUBJECTIVE

Date/Time 2/1/10 @ 0610 Age 30 Complaint Accu ck !

☐ IDDM ☐ NIDDM Age diagnosed 2 years ☑ Currently in diabetic clinic.

Time last eaten 1/31/10 @ 1700 What was eaten 01/31/10 – DINNER – 3600 cal

Check all that apply. Place additional comments on back.

☑ Nausea ☐ Vomiting ☑ Increased urinary output ☑ Headache

☐ Elevated respirations ☑ Blurred vision ☑ General malaise

Medications(list)

Last dose of diabetic med 01/31/10 – 1700 Allergies NKDA

OBJECTIVE

Temp 98 Pulse 70 Resp 20 B/P 94/56 Weight 136 lbs

Mental Status: ☑ Alert and oriented x 4 ☐ Confused ☐ Comatose

Skin: ☐ Diaphoretic ☐ Ashen ☐ Pale ☐ Flushed ☑ Warm ☐ Cool

Blood Sugar (fingerstick): Initial 450-454 After treatment 430

ASSESSMENT

Altered blood sugar.

PLAN

Notify physician if any loss of consciousness.

1. ☑ If blood sugar is over 300, call M.D.
2. ☐ If blood sugar is below 60 and patient is conscious:
   a. O_2 2L/min - nasal cannula (NC).
   b. Administer orange juice or oral glucose; recheck blood sugar at 15 and 30 minute intervals.
   c. If blood sugar remains below 60 after 30 minutes, repeat step one and if after second recheck blood sugar remains below 60, call M.D.
3. ☐ If patient is unconscious and BS is <60:
   a. Give glucose gel and start IV NS solution KVO rate, #18G needle.
   b. Notify physician.
   c. O_2 26/min. – NC.
4. ☐ If patient remains unconscious after 5 minutes, activate EMS.

Other SCHEDULED FOR MEDICAL CLINIC @ 0900 TODAY 02/01/10

EDUCATION

☑ Signs and symptoms of hyper/hypoglycemia.

☑ Medication and testing compliance.

☑ Diet instruction as indicated.

Other

INMATE NAME TORAS, Humberto
DC# B08002 Race/Sex W/M
DATE OF BIRTH 07/31/79
INSTITUTION SFRC

S. WILLIAMS, RN
SFRC
S Williams RN
Signature/Stamp

This form is not to be amended, revised, or altered without approval of the Deputy Assistant Secretary for Health Services Administration

FLORIDA DEPARTMENT OF CORRECTIONS

Chronological Record of Health Care

Allergies: NKDA

DATE/TIME	RR
2/9/10	Sec Note.
1100	nurse shows MAR for Insulin Treatment
	received from PT. PT keeps uncontrolled BS
	level. no med ords started & continue monitored.
Noted	BS level 5d & flu by POD in 10 days.
CP 03/09/10	
C. HOWARD, LPN SFRC	M. CASTILLO, MD SFRC
2/15/10	S- flu hyperglycemia
10:30	O- PT referring sometimes had legs cramps.
	we explained to the pt. & discusses regarding
	his need compliance.
	PT at confinement at this time on Insul. 70/30
	flu & monitor changes according to MARC
	results.
	PE: lungs - CTAX2
	heart: RR
	abdom - NAD.
	A/P: flu uncontrolled BS.
	continue s. med ords
	flu on Zanes
NOTED 2/11/10 1300	
M. Raphael L.P.N S.F.R.C	M. CASTILLO, MD SFRC

0 ~~B08002~~ 616199 TM 12 01/21/2010

TORAS, HUMBERTO

W/M DOB 07/31/1979(30) DD

Institution SFRC

S- Subjective Data
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DC4-701 (Revised 10/31/08)

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1D

FLORIDA DEPARTMENT OF CORRECTIONS

Chronological Record of Health Care

Allergies: NKDA

DATE/TIME	
	INC note.
2-17-10	BS @ 39. ENSURE GIVEN
1450	NOT, other glucose handy - will
	wait 30 minutes to re-test. Hpupo
	HENDRISH PUPO RN SFRC
2-17-10	INC note BS FS now at 71 mg/dl.
1515	F/u to go to eat now. Hpupo.
	HENDRISH PUPO RN SFRC

Inmate TORAS, HUMBERTO
DC# DC# 616199 W/M
Date of DOB: 07/31/1979
Institut

TO

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DC4-701 (Revised 10/31/08)

FLO[illegible] DEPARTMENT OF CORREC[illegible]NS

Chron[illegible]gical Record of Health Ca[illegible]

Allergies: NKDA

DATE/TIME

2/18/10
1:40

E. Room

Pte in ERoom transfer from dorm
Pte was found over pool of clot
blood c̄ poor response to stimuli
Pte c̄ Ax of DM receive instant glucose po
and was transf to ERoom.
At arrival. BP WG 142/92 P 100
acc V 53 O_2 90 RA.
Pte obtundered answer some questions
Pte received Glucagon 1 mg IM +
O_2 5 l/m partial rebreathing.
acc V was up to 91% and O_2 to 98%
Heart Rhd 5 m
Lu clear.
Deep laceration over (A) forked about 4 inch
long.
EMT activated.

Pte transfer to ERoom via 911.

T DIEGUEZ, M.D.
SFRC

2/18/10
1:40 pm

Inmate TORAS, HUMBERTO
DC# 616199 W/M
Date of DOB: 07/31/1979
Institut

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DC4-701 (Revised 10/31/08)

FLORIDA DEPARTMENT OF CORRECTIONS

Chronological Record of Health Care

Allergies: NKDA

DATE/TIME	
2/18/10 2030	Inc Note: I/m placed in infirmary for 23° observation per Dr Dieguez — [signature] C. Baro Registered Nurse S.F.R.C
2/19/10 01:50	Inc. Note: V/S 97-68-18 128/68. O_2 SAT @ 97% on R/A. Rec'd I/m in cell c̄ eyes closed. Easily aroused. No neuro deficits nor active bleeding from skull laceration noted. Skin W/D. Color wnl. Resps are even & unlabored. Abd. is soft & (+) BS noted. Stable. MD Fly & Eval pending. — BWS/B. Terrelle
03:30	Inc. note: Easily aroused. ∅ active bleeding or neuro deficits noted. — BWS/B. Terrelle
05:00	Inc. note: Condition same. — BWS/B. Terrelle
2/19/10 0830	INC NOTE: VS BP 98/68, P 85, R 20, T 98.5, O_2 at 98% on RA. Dx. Hypoglycemia, head laceration. I/m AAOX3 resting in bed c̄ eyes closed. I/m c̄ sutures to Rt fore head, intact, ∅ drainage. ∅ c/o pain noted or expressed at this time. Respirations even and non labored. Skin to extremeties warm and dry. I/m ~~DC~~ error given glasses and contact from staff. Pending assessment from MD in regards to disposition. Safety and comfort measures obtained, ∅ s/s of hypo or hyperglycemia. — [signature] M. Raphael L.P.N S.F.R.C

616199
0-~~B08002~~ TM 12 01/21/2010

TORAS, HUMBERTO

W/M DOB 07/31/1979(30) DD

Institution SFRC

S- Subjective Data
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DC4-701 (Revised 10/31/08)

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Chr[illegible]logical Record of Health [illegible]

Allergies: NKDA

DATE/TIME

2/19/10 9.20

Pte in infirmary back from Hosp last night. Pte seen in Hosp after fear trauma relative to seen hypoglycemia. Pte D/C c̄ Dx of Hypoglycemia - Insulin reaction, facial laceration and scalp contusion.
One day ago: c/o not able to see

Pt totally blind OS and legally blind OD. Pt able to see some vision on contact.
As Tc I/m he does not know where his eyeglass and contacts are
As I/m he is very able to see shadows

O 98/68 85 20 985 98% O2
Heat N.R. 5 m
Lg are clear
Head. forehead wound c̄ stitches.
no infection

A. S/p Hypoglycemia. S/p forehead laceration

P. D/C to dorm.
Keflex 500 g po tid ~~14 d~~ 7 d. (as ordered on Hosp)
Refer to Optometrist
~~Low back pain~~
D/C Regular Insulin

NOTED
2/19/10 0945
M. Raphael
L.P.N
S.F.R.C

Inmate 616199
DC# 0-~~B08002~~ TM 12 01/21/2010
Date of
Institut TORAS, HUMBERTO
W/M DOB 07/31/1979(30) DD

S- Subjective Data
O- Objective Data
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E-Education

F/U c̄ POD in 7 d

T. DIEGUEZ, M.D.
SFRC

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DC4-701 (Revised 10/31/08)

549 SOAPE Comments

Offender Details

DC Number: ~~B08002~~ 016199 **Offender Name:** TORAS, HUMBERTO **DOB:** 07/31/79

Age: 31 **Race:** WHITE **Sex:** MALE **Tentative Release Date:** 05/07/2037

Status: ACTIVE **Location:** CALHOUN C.I. **Housing:** C1130S

Contact Information

From: 03/03/10 15:00 **Location:** 105 **Staff:** SA23 - SALVADOR, EXPEDITO

To: 03/03/10 15:20 **Type:** RR - RECORD REVIEW (RR)

Vital Signs

BP: **Pulse:** **Resp:** **Temp:** **Weight:** **Height:**

SOAPE Comments

1 - H105EMS - SALVADOR, EXPEDITO - CLINICAL ASSOCIATE - F/C 3/3/2010 4:47:03 PM

NN : COUNSELLED INMATE ON TLC, LOW CALORIC INTAKE, DAILY WALKING EXERCISE, SMOKING CESSATION AND COMPLIANCE TO MEDS/EXRECISE/DIET/LIFESTYLE CHANGES.
D/C 70/30 INSULIN, START NPH INSULIN 18 UNITS IN AM AND 12 UNITS IN PM
REG. INSULIN S/S AS FOLLOWS: BS OF 200-250 GIVE 2"U", 251-300 GIVE 4"U", 302-350 GIVE 6"U", 351-400 GIVE 8"U", >400 GIVE 10"U".
D/C 3600 CAL. REG. DIET, START 2800 CAL. REG. DIET X 3 MOS.
INCREASE LEVOTHYROXINE 125 MCG PO Q PM, D/C METFORMIN.
START PRAVASTATIN 10 MG PO Q HS
CONT. ALL OTHER MEDS. AS PREVIOUSLY ORDERED.
ORDER CONTACT LENS CLEANING SOL'N. UAD.
ACCUCHECKS TID AC X 2 WKS THEN REVIEW MAR. THEN ACCUCHECKS BID AC X 6 MOS.
SCHED. FOR OPTO. CONSULT NEXT MONTH.

2 - H105EMS - SALVADOR, EXPEDITO - CLINICAL ASSOCIATE - F/C 3/3/2010 4:51:51 PM

NN : CC/EC AS SCHEDULED; SCHEDULE FASTING HGBA1C, TSH, CMP IN 6 WKS.;
DISAPP. FOR W/C. ISSUE LOW BUNK PASS X 1 YR.

3 - H105KGJ - GRANTHAM, KARLA - SENIOR LICENSED PRACTICAL NURSE-F/C 3/3/2010 6:44:13 PM

ORDERS NOTED.

4 - H105LC1 - Coxwell, LORA - CLERK TYPIST SPECIALIST - F/C 3/4/2010 10:37:50 AM

LABS SCHEDULED

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DEPARTMENT OF CORRECTIONS
OFFICE OF HEALTH SERVICES

EM

DIABETES ASSESSMENT

SUBJECTIVE

Date/Time 3/4/10 2225 Age 30 Complaint called to "seizure"

☒ IDDM ☐ NIDDM Age diagnosed infant ☒ Currently in diabetic clinic.

Time last eaten 1/30 What was eaten 2 hotdogs, mac + cheese, cole slaw, beans

Check all that apply. Place additional comments on back.

☐ Nausea ☐ Vomiting ☐ Increased urinary output ☐ Headache

☐ Elevated respirations ☒ Blurred vision ☐ General malaise

Medications(list) Levothyroxine 125 mcg ± po q PM, Pravastatin 10mg q HS, NPH insulin c̄ Reg SSC

Last dose of diabetic med 1600 Allergies NKDA

OBJECTIVE

Temp 97.2 Pulse 88 Resp 18 B/P 90/70 Weight 136

Mental Status: ☒ Alert and oriented x 4 ☐ Confused ☐ Comatose

Skin: ☒ Diaphoretic ☐ Ashen ☐ Pale ☐ Flushed ☒ Warm ☐ Cool

Blood Sugar (fingerstick): Initial 39 After treatment 93

ASSESSMENT

Altered blood sugar.

PLAN

Notify physician if any loss of consciousness.

1. ☐ If blood sugar is over 300, call M.D.
2. ☐ If blood sugar is below 60 and patient is conscious:
   a. O_2 2L/min - nasal cannula (NC).
   b. Administer orange juice or oral glucose; recheck blood sugar at 15 and 30 minute intervals.
   c. If blood sugar remains below 60 after 30 minutes, repeat step one and if after second recheck blood sugar remains below 60, call M.D.
3. ☐ If patient is unconscious and BS is <60:
   a. Give glucose gel and start IV NS solution KVO rate, #18G needle.
   b. Notify physician.
   c. O_2 26/min. – NC.
4. ☐ If patient remains unconscious after 5 minutes, activate EMS.

Other

EDUCATION

☒ Signs and symptoms of hyper/hypoglycemia.

☒ Medication and testing compliance.

☒ Diet instruction as indicated.

Other

TORAS, HUMBERTO

DC# ~~B08002~~ C016199

W/M DOB:07-31-79

K Grantham SLPN

Senior LPN
Calhoun Corr. Inst.

Signature/Stamp

This form is not to be amended, revised, or altered without approval of the Deputy Assistant Secretary for Health Services Administration

S49 SOAPE Comments

Offender Details

DC Number: ~~B08002~~ L016199 **Offender Name:** TORAS, HUMBERTO **DOB:** 07/31/79

Age: 31 **Race:** WHITE **Sex:** MALE **Tentative Release Date:** 05/07/2037

Status: ACTIVE **Location:** CALHOUN C.I. **Housing:** C1127S

Contact Information

From: 03/05/10 16:38 **Location:** 105 **Staff:** SA23 - SALVADOR, EXPEDITO

To: 03/05/10 16:58 **Type:** RR - RECORD REVIEW (RR)

Vital Signs

BP: **Pulse:** **Resp:** **Temp:** **Weight:** **Height:**

SOAPE Comments

1 - H105EMS - SALVADOR, EXPEDITO - CLINICAL ASSOCIATE - F/C **3/5/2010 4:49:04 PM**

NN : INMATE WITH EPISODES OF HYPOGLYCEMIA AND HYPERGLYCEMIA. IT WAS NOTED THAT THIS INMATE HAD A HIGH BS AND TOOK THE REG INSULIN S/S THEN PURPOSELY MISSED THE EVENING MEAL. HE LATER HAD A HYPOGLYCEMIC ATTACK WHICH WAS CORRECTED LATER. THEN IT WAS ALSO FOUND OUT THAT THE INMATE RECENTLY PURCHASE 2 PACKS OF DIFFERENT KINDS OF COOKIES. LATER, HE WAS IN THE MEDICAL DEPT. DUE TO HYPERGLYCEMIA. ALL OF THE ATTACKS WERE APPROPRIATELY CORRECTED.
MAY START REGULAR INSULIN 8 UNITS IN A.M. AND 6 UNITS IN P.M.
CONT. SLIDING SCALE AS PREVIOUSLY ORDERED.
RECOUNSEL ON EXERCISE COMPLIANCE AS WELL AS DIET COMPLIANCE.
ADVISE INMATE NOT TO SKIP MEALS EVEN WHEN HIS BS ELEVATED.
APPROPRIATE TREATMENT PLAN HAD BEEN DOCUMENTED AND THE INMATE IS AWARE OF THIS.

---

2 - H105EMS - SALVADOR, EXPEDITO - CLINICAL ASSOCIATE - F/C **3/5/2010 4:49:56 PM**

NN : MAY DISCHARGE FROM THE INFIRMARY AFTER SUPPER.

---

3 - H105KPL - LYTLE, KATHRYN - SENIOR REGISTERED NURSE - F/C **3/5/2010 5:57:18 PM**

ORDERS NOTED.

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S49 SOAPE Comments

4 - H105JPE - pike, JENNIFER - SENIOR LICENSED PRACTICAL NURSE-F/C **3/5/2010 3:35:34 AM**

NN: RECHECK FSBS 63. DENIES ANY C/O'S.

---

5 - H105JPE - pike, JENNIFER - SENIOR LICENSED PRACTICAL NURSE-F/C **3/5/2010 7:51:17 AM**

NN: 0420 FSBS 90. NO VLICED C/O'S. A+OX4.

---

6 - H105JPE - pike, JENNIFER - SENIOR LICENSED PRACTICAL NURSE-F/C **3/5/2010 7:55:09 AM**

NN: 0440 NOTIFIED BY SECURITY THAT AFTER FOOD TRAY WAS DELIVERED, IM LOOKED AT TRAY AND THEN COVERED HIS HEAD AND WAS NOT EATING. THIS WRITER TO INFIRMARY. EDUCATED IM ON IMPORTANCE OF EATING. IM SAT UP AND CONSUMED 100% OF MEAL.

---

7 - H105JPE - pike, JENNIFER - SENIOR LICENSED PRACTICAL NURSE-F/C **3/5/2010 7:57:51 AM**

NN: 0640 FSBS 315. IM STS "IT'S GOING TO BE JUST LIKE IT WAS YESTERDAY." EDUCATED IM ON IMPORTANCE OF CHEKING FSBS, TAKING MEDICATION PROPERLY AND EATING. THIS WRITER WAS ADVISED THAT IM DID NOT EAT YESTERDAY AFTER TAKING INSULIN. WHEN QUESTIONED, IM STD "IT WASN'T LIKE THAT, I DIDN'T DO IT ON PURPOSE." "I NEED TO GAIN WEIGHT."

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DEPARTMENT OF CORRECTIONS
OFFICE OF HEALTH SERVICES

EMID

DIABETES ASSESSMENT

SUBJECTIVE

Date/Time 3-25-10 @ 2130 Age 31 Complaint I feel bad & think my sugar is low

☑ IDDM ☐ NIDDM Age diagnosed at age 3 ☑ Currently in diabetic clinic.

Time last eaten 12-25-10 What was eaten Mac & cheese - Salad - Meat - Rice ate 100% : ~~juice~~ H2O

Check all that apply. Place additional comments on back.

☐ Nausea ☐ Vomiting ☐ Increased urinary output ☐ Headache

☐ Elevated respirations ☒ Blurred vision ☒ General malaise

Medications(list) Levothryoxine - Pravastatin - Reg insulin - NPH

Last dose of diabetic med _____ Allergies Fish

OBJECTIVE

Temp 97.8 Pulse 78 Resp 16 B/P 102/68 Weight 136

Mental Status: ☐ Alert and oriented x 4 ☒ Confused ☐ Comatose

Skin: ☐ Diaphoretic ☒ Ashen ☐ Pale ☐ Flushed ☒ Warm ☐ Cool

Blood Sugar (fingerstick): Initial 33 After treatment 45 BS @ 2215-63 · BS @ 2230-87

ASSESSMENT Sluggish take - inattentive

Altered blood sugar.

PLAN glucose & Peanut butter sandwich

Notify physician if any loss of consciousness.

1. ☐ If blood sugar is over 300, call M.D.
2. ☐ If blood sugar is below 60 and patient is conscious:
   a. O_2 2L/min - nasal cannula (NC).
   b. Administer orange juice or oral glucose; recheck blood sugar at 15 and 30 minute intervals.
   c. If blood sugar remains below 60 after 30 minutes, repeat step one and if after second recheck blood sugar remains below 60, call M.D.
3. ☐ If patient is unconscious and BS is <60:
   a. Give glucose gel and start IV NS solution KVO rate, #18G needle.
   b. Notify physician.
   c. O_2 26/min. – NC.
4. ☐ If patient remains unconscious after 5 minutes, activate EMS.

Other _____

EDUCATION

☒ Signs and symptoms of hyper/hypoglycemia.

☒ Medication and testing compliance.

☒ Diet instruction as indicated.

Other _____

INMATE NAME TORAS, HUMBERTO
DC#
DATE
INSTI DC# ~~B08002~~ 616199

DIABE
DC4-6 W/M DCB:07-31-79

[signature] BSN J. SINGLETON BSN CALHOUN CI

Signature/Stamp

This form is not to be amended, revised, or altered without approval of the Deputy Assistant Secretary for Health Services Administration

1D

FLORIDA DEPARTMENT OF CORRECTIONS

Chronological Record of Health Care

Allergies: NKDA

DATE/TIME	INC note
2-17-10 1450	BS @ 39. ENSURE GIVEN NOT other glucose handy - will wait 30 minutes to Re-Test. Hupoma HENDRISH PUPO RN SFRC
2-17-10 1515	INC note BS FS now at 71 mg/dl. I/M to go to eat now. Hupoma. HENDRISH PUPO RN SFRC

Inmate TORAS, HUMBERTO
DC# DC# 616199 W/M
Date of DOB: 07/31/1979
Institut

IO

S- Subjective Data
O- Objective Data
A- Assessment of S and O Data
P- Plan
E-Education

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DC4-701 (Revised 10/31/08)

DEPARTMENT OF CORRECTIONS
OFFICE OF HEALTH SERVICES

EMID

DIABETES ASSESSMENT

SUBJECTIVE

Date/Time 3/27/10 0007 Age 40 Complaint ↓BS. called to dorm in response to I/M "laying on floor"

☒ IDDM ☐ NIDDM Age diagnosed 2 y/o ☒ Currently in diabetic clinic.

Time last eaten 3/26/10 Approx 1630 What was eaten potatoes, meat loaf, bread, salad c̄ French dress

Check all that apply. Place additional comments on back.

☐ Nausea ☐ Vomiting ☐ Increased urinary output ☐ Headache

☐ Elevated respirations ☒ Blurred vision ☒ General malaise

Medications(list) Synthroid, Prevastatin, NPH Insulin c̄ Reg insulin ssc

Last dose of diabetic med 3/26/10 approx 1600 Allergies NKDA / Fish

OBJECTIVE

Temp 96.1 Pulse 62 Resp 16 B/P 102/72 Weight deferred

Mental Status: ☐ Alert and oriented x 4 ☒ Confused ☐ Comatose

Skin: ☐ Diaphoretic ☐ Ashen ☐ Pale ☐ Flushed ☐ Warm ☒ Cool

Blood Sugar (fingerstick): Initial 42 After treatment 52 94
15 min ✓ 30 min ✓

ASSESSMENT

Altered blood sugar.

PLAN

Notify physician if any loss of consciousness.

1. ☐ If blood sugar is over 300, call M.D.
2. ☒ If blood sugar is below 60 and patient is conscious:
   a. O_2 2L/min - nasal cannula (NC).
   b. Administer orange juice or oral glucose; recheck blood sugar at 15 and 30 minute intervals.
   c. If blood sugar remains below 60 after 30 minutes, repeat step one and if after second recheck blood sugar remains below 60, call M.D.
3. ☐ If patient is unconscious and BS is <60:
   a. Give glucose gel and start IV NS solution KVO rate, #18G needle.
   b. Notify physician.
   c. O_2 26/min. – NC.
4. ☐ If patient remains unconscious after 5 minutes, activate EMS.

Other glucose gel po x 1 tube & 1/2 PB sandwich / 23° Obs infirmary d/t ↓BS ↓Temp

EDUCATION

☒ Signs and symptoms of hyper/hypoglycemia.

☒ Medication and testing compliance.

☒ Diet instruction as indicated.

Other

TORAS, HUMBERTO

DC# ~~B08002~~ 616199

Sex

W/M DOB:07-31-79

[signature] MEthridge Cal CI
Signature/Stamp

This form is not to be amended, revised, or altered without approval of the Deputy Assistant Secretary for Health Services Administration

Additional Comments

0007 NN: Upon arrival I/m sitting on floor c̄ knees to crest c̄ arms folded around knees. I/m alert rocking back & forth stating, "I am so cold." I/m brought to unit via wheelchair for further eval. — [illegible] METLEY

INMATE NAMI TORAS, HUMBERTO
DC# ~~B08002~~ 616199 W/M
DATE OF BIR 07/31/1979
INSTITUTION

DIABETES ASSESSMENT
DC4-683G (4/99) Page 2 of 2

This form is not to be amended, revised, or altered without approval of the Deputy Assistant Secretary for Health Services Administration

List Drug Allergies: NKDA

Codes: 0 = Not Administered*
= Not to be Given
= Refusal

Month/Year: FEB 2010

Effective Dates	Medication/TX	Time	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
START 1/21/10	NPH Insulin 10 units sq QAM x 90 days	0600	SW																														
		Results	450																														
STOP 3/21/10	TRANSCRIBER INT. BT	/																															
START 1/21/10	NPH insulin 5 units sq QPM x 90 days	1700																															
		Results																															
STOP 3/21/10	TRANSCRIBER INT. BT																																
START 1/21/10	Regular Insulin sliding scale cove sq x 90 days	0600	SW																														
		UNITS	12																														
		1700																															
		UNITS																															
STOP																																	
START																																	
STOP 3/21/10	TRANSCRIBER INT. BT																																

REGULAR INSULIN
150 – 200 2 Units
201 – 250 4 Units
251 – 300 6 Units
301 – 350 8 Units
351 – 400 10 Units
401 – 450 12 Units
> 450 CALL MD

NOTE: This MAR is to be used for PRN meds other than RMC and new orders prior to receipt of Pharmacy generated MARS.

This is a combination treatment/medication MAR.

Inmate Name Toras, Humberto
DC# ~~B08002~~ R/S H/M
Date of Birth 7-31-79
Institution SFRC
DC
L016199 L22074

Signature/Stamp	Initials	Signature/Stamp	Initials	Signature/Stamp	Initial
BT TERRELL, RN SFRC	BT				
[signature] RN	SW				

* Requires comment on back Page

DC4-701A (Revised 7/2/08) Page 1 of 2

DEFENDANT'S EXHIBIT 3

STATE OF F[illegible]DA
DEPARTMENT OF C[illegible]RECTIONS
MEDICATION AND TREATMENT RECORD (MAR)

CONFINEMENT

Month/Year: 2/10

List Drug Allergies: NKA.

Codes: 0 = Not Administered*
X = Not to be Given
R = Refusal

Effective Dates	Medication/TX	Time	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
START 2-1-10	Insulin 70/30 10 units sq AM 8:00 x 30 Dys.	0600	481	344	177	154	351	344	405	337																							
		INT	SW	[illegible]	[illegible]	[illegible]	SW	[illegible]	[illegible]	SW																							
		~~1600~~																															
STOP	TRANSCRIBER INT.																																
TART 2-1-10	Insulin 70/30 10 units sq 9 PM x 30 Dys	1600	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]																							
		INT																															
		RESULT	152	302	423	551	497	488	130	244																							
STOP	TRANSCRIBER INT.																																
START 2-1-10	S/C Metformin																																
STOP	TRANSCRIBER INT.																																
START 2-1-10	Accucheck BID & Regular Insulin 200/24 per protocol	0600			[illegible]	[illegible]	[illegible]	SW	[illegible]	[illegible]	[illegible]																						
		AMT			[illegible]	22	2	10	SUGO		[illegible]																						
		24			84			1700 5 1752 65																									
		1600	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]																							
STOP	TRANSCRIBER INT.	AMT	20	8	12	12	12	198 1900		10																							

FYI — NEW Sheet on 2/1/10

NOTE: This MAR is to be used for PRN meds other than RMC and new orders prior to receipt of Pharmacy generated MARS.
This is a combination treatment/medication MAR.

Inmate Name Tocos Hubaldo
DC# ~~[illegible]~~ R/S
Date of Birth
Institution STPC
DC# 6116199

Signature/Stamp	Initials	Signature/Stamp	Initials	Signature/Stamp	Initials
[illegible]	[illegible]	B. Tremper		[illegible]	[illegible]
M. Wellen RN	SW	[illegible]	[illegible]		
J. Pierre RN	JP	[illegible]	[illegible]		

* Requires comment on back Page _____ of _____

STAT[illegible] FLORIDA
DEPARTMENT[illegible] CORRECTIONS
MEDICATION AND TREATMENT RECORD (MAR)

Month/Year: 3/10

List Drug Allergies: NKDA

Codes: 0 = Not Administered*
X = Not to be Given
R = Refusal

Effective Date	Medication/Dx	Time	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
START 3-6-10	NPH 18u c̄	0600						ME	ME	[illegible]																							
	Reg. 8u sq	results						119	69	140																							
	q̄ AM a.c. c̄ SSC	Site						RA	LA	LA																							
STOP 9-6-10	TRANSCRIBER INT. NB	cov.						Ø	Ø																								
START 3-6-10	Accu r q̄ noon	1200						NB	NB																								
	x 2 weeks	results						245	29																								
	c̄ SSC																																
STOP 3-19-10	TRANSCRIBER INT. NB																																
START 3-6-10	NPH 12u c̄	1600						NB	NB																								
	Reg. 6u sq	results						272	61																								
	q̄ PM a.c. c̄ SSC	Site						Nod	LA																								
STOP 9-6-10	TRANSCRIBER INT. NB	cov.						4u	Ø																								
START 3-6-10	Reg Insulin SSC 200 - 250 = 2u 251 - 300 = 4u 301 - 350 = 6u 351 - 400 = 8u > 400 = 10u call MD	D																															
		R																															
		N																															
STOP 9-6-10	TRANSCRIBER INT. NB																																

NOTE: This MAR is to be used for PRN meds other than RMC and new orders prior to receipt of Pharmacy generated MARS.
This is a combination treatment/medication MAR.

TORAS, HUMBERTO
L011199
DC# B08002
W/M DOB:07-31-79 C1130S

Signature/Stamp	Initials	Signature/Stamp	Initials	Signature/Stamp	Initials
[illegible]	ME			[illegible] SPN	LP
				[illegible] SPN	[illegible]

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS
MEDICATION AND TREATMENT RECORD (MAR)

Month/Year: 3/10

List Drug Allergies: NKDA

Codes: 0 = Not Administered*
X = Not to be Given
R = Refusal

Effective Dates	Medication/TX	Time	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
START 3/8/10	NPH 18u QAM AC c̄ SSC	0600								→		[illegible]	ME	ME	ME	ME	[illegible]	[illegible]	ME	[illegible]	ME												
		results									222	114	265	380	119	338	270	186	537	218	264												
		Site										LA	LA	LA	RA	LA	LA	LA	LA	LA	LA												
STOP 3/8/11		Cov											4u	8u	Ø	6u	4u	Ø	10u	2u	4u												
	TRANSCRIBER INT. SZ																																
START	NPH 12u QPM c̄ SSC	1600								[illegible]	[illegible]	KD	KL	KD	WM	KL	JS	LA	NB	KL													
		results								247	249	105	247	158	374	191	118	177	95	141													
		Site								LA	JS	Abd	RA	RA	LA	LA	RA	Abd	Abd	ABD													
STOP											1440																						
		Cov								2u	2u	Ø	2	Ø	6u	Ø	Ø	Ø	Ø	Ø													
	TRANSCRIBER INT. SZ														(2u)																		
START	Reg Insulin SSC	P							→																								
	200 - 250 - 2u	P																															
	251 - 300 - 4u	N																															
	301 - 350 - 6u																																
STOP	351 - 400 - 8u																																
	> 400 - ~~call~~ 10u Call MD																																
	TRANSCRIBER INT. SZ																																
START 3/10/10	Accu V q noon Ø SSC.	1200							→	→	JS	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	KL	NB	[illegible]	[illegible]												
		Results									451	183	152	236	382	601	49	53	214	82	261												
		Site									8		Ø	Ø			1200				Ø												
		Cov									8u		Ø	Ø			149				Ø												
3/20	TRANSCRIBER INT. KD																																

See new order

NOTE: This MAR is to be used for PRN meds other than RMC and new orders prior to receipt of Pharmacy generated MARS.
This is a combination treatment/medication MAR.

TORAS, HUMBERTO
DC# ~~B08002~~ 6116199
W/M DOB:07-31-79

Signature/Stamp	Initials	Signature/Stamp	Initials	Signature/Stamp	Initials
[illegible] SPN	SZ	K Grantham SPN	KG	[illegible]	[illegible]
[illegible] BSN	JS	[illegible]	[illegible]	[illegible] SPN	[illegible]
W Mathews	[illegible]				
K Niedzwiecki LSN	KN				

* Requires comment on back Page _____ of _____

DC4-7(Revised) Page 1 of 2

DEPARTMENT OF CORRECTIONS
OFFICE OF HEALTH SERVICES

ALTERED LEVEL OF CONSCIOUSNESS/HEAD TRAUMA ASSESSMENT

SUBJECTIVE

Date/Time 2/18/10 Age 40 Description of injury and event: Inmate was found in cell unresponsive & large amount of blood in floor and large laceration to forehead.

Check all that apply. Place additional comments on back.

History: ☑ Blunt trauma Time 1:40 Witnessed? ☐ Yes ☑ No

☐ Fall Time _____ Distance _____

☐ Penetrating Trauma Cause: _____

☐ Irritability ☐ Lethargy ☑ Loss of Consciousness ☐ Memory Loss ☐ Blurred/Double Vision

☑ Syncope ☐ Severe Headache—how long? POST-Trauma ☐ Vomiting—how long? NO

Medications (list): 70/30 insulin hytrin lisinopril, ~~metformin~~ asa Trusopt 2% Synthroid, Colac

Allergies NKDA

OBJECTIVE

B/P 138/88 Temp 97.8 Pulse 95 Apical Pulse

Level of consciousness: ☑ A and O ☐ Unconscious ☐ Disoriented

Ears (tympanic membrane): ☑ Intact ☐ Bulging ☐ Ruptured

Drainage? ☑ No ☐ Yes—describe _____

Pupils: ☑ PERRLA> ☐ Prompt ☐ Sluggish ☐ Dilated

ROM: ☐ Full ☐ RUE ☐ LUE ☐ RLE ☐ LLE

Glasgow score _____ Trauma score _____ Combined _____ (see back of page)

Description of injuries: Inmate was found in cell unresponsive & large amount of blood on floor and large laceration on forehead. (L) glaucoma

ASSESSMENT

Head trauma

PLAN

Refer to/notify M.D./CA

Monitor v/s and neuro signs every 15 minutes x then every 30 minutes x4. Report fluctuations

Check Tet Tox status

Report v/s to M.D. and receive additional orders

☑ Notify EMS if indicated or per physician order

☐ If EMS activated, IV Lactated Ringers Solution and/or normal saline and 18G KVO (or per M.D. order).

EDUCATION

☐ Report onset of:

Vomiting. Changes in mental status. Increasing amount of pain.

Drowsiness. Severe headache. Visual changes.

Other: pain on head and (R) shoulder.

IN 0-~~B08002~~ 616199 TM 12 01/21/2010

D

D

IN TORAS, HUMBERTO

W/M DOB 07/31/1979(30) DD

K Ferrer / K Fernandez LPN SFRC.

Signature/Stamp

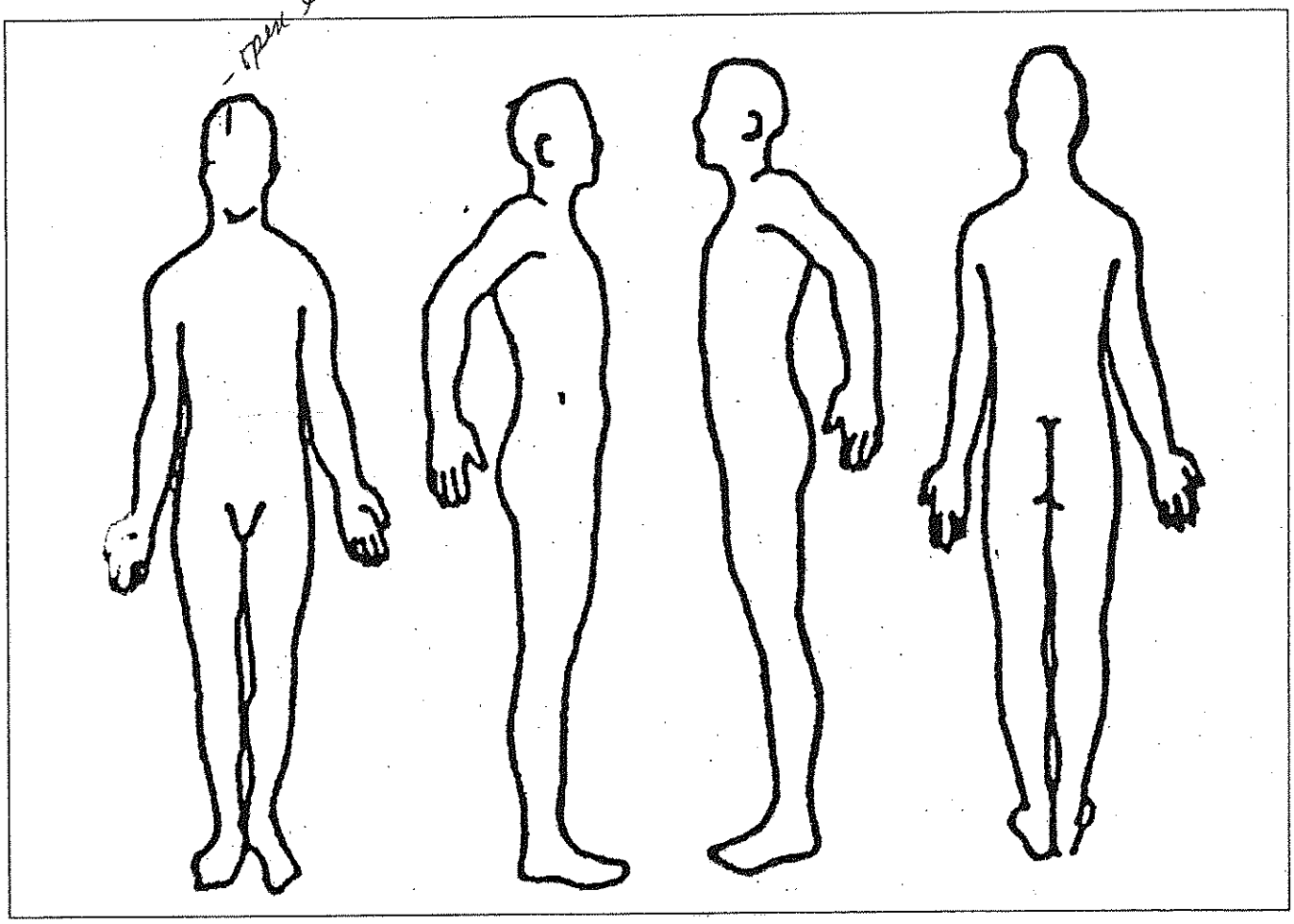
This form is not to be amended, revised, or altered ... of the Deputy Director of Health Services ...

DC4-683K (Revised 2/00) Page 1 of 2

DEFENDANT'S EXHIBIT 4

FLORIDA DEPARTMENT OF CORRECTIONS
OFFICE OF HEALTH SERVICES
DIAGRAM OF INJURY

open laceration



Date of occurrence 2/18/10 Time of occurrence 1:40

☐ No injury identified

Description of injury Inmate was found in cell unresponsive to large amount of blood on floor and large laceration to forehead.

J Espinosa J E Perez RNS
Staff Signature

Inmat TORAS, HUMBERTO
DC# DC# 616199 W/M
Date o DOB: 07/31/1979
Institu

This form is not to be amended, revised, or altered without approval of the Deputy Assistant Secretary of Health Services Administration

DC4-708 (Revised 1/05)

LORIDA DEPARTMENT OF CORRECTIONS

HEALTH INFORMATION SUMMARY FOR EMERGENCY TRANSFER TO OUTSIDE HOSPITAL

PLEASE PRINT

If assessment is performed by health staff other than physician, form must be reviewed and signed by a physician/CA on the next working day.

Time of event: 2/18/10 1.40

Brief history of event (if accident, state where, when, and how injured; if illness, describe): Pte was found unresponsive to big spot of clot blood. Pte obtained. States he does not know for how long he was on floor. Last think remember is breakfast

History of medical/mental health problems:

Vital Signs: Temp ____ °F Pulse 100 /Min. Resp ____ /Min. Blood Pressure 142 / 92

Condition on arrival to medical (check): ☐ Stable ☐ Unstable ☐ Bleeding ☐ Unresponsive

Assessment: Pte 30 y c̄ IDDM in TX c̄ 70/30 Insulin 25 ulds am + 15 ulds pm. plus sliding scale
Pte received Distans gluc 15 gr and Glucagon 1 mg IM stat
Pte c̄ head trauma. / Wound alt 4 inch and deep.

Medication/IV? ☐ No ☐ Yes (name and time given): Glucagon 1 mg IM.

Labs ordered? ☑ No ☐ Yes (type): Acc V 53. b/w glucagon and after glucose.

Lab results (if applicable/available): Acc V 95%
BP. 138/88
P 95
O_2 90%. RA
upt to 98 c̄
O_2 5 l/min partial rebreathing

Treatment ordered? ☐ No ☐ Yes (type):

Inmate response to treatment: poor.

Diagnosis (physician/CA only): Head Trauma, Hypoglycemia, unresponsive

EMS activated? ☐ No ☒ Yes→ Time 1.30 Physician contacted? ☐ No ☐ Yes→ Time

Transferred to: Kendal Hosp Ellaro

Transferred at (time): Condition at transfer: ☒ Stable ☐ Unstable

Health Care Provider's Signature and Stamp: Date/Time:

Reviewing Physician's Signature and Stamp: T DIEGUEZ, M.D. SFRC Date/Time: 2/18/10 1.40

Inmate TORAS, HUMBERTO
DC# DC# 616199 W/M
Date of DOB: 07/31/1979
Institu

Distribution: White—Health Record
Canary—Hospital Emergency Room
Pink—EMS (Emergency Medical Services)

... revised, or altered without approval of the Deputy Assistant Secretary of Health Services Administration

DC4-760B (Revised 10/05)

EMERGENCY ROOM RECORD

Check one: ☒ **Inmate/Post-Use-of-Force Exam**
☐ **Employee:** ☐ **Post-Use-of-Force Exam OR** ☐ **Injury OR** ☐ **Physical Altercation**
☐ **Visitor/Injury**

All inmates must receive a complete assessment following a use of force. This includes a visual inspection of the entire body to identify any sign of injury. This exam shall be performed in the medical unit except under unusual circumstance. Injuries shall be documented on the DC4-708 *Diagram of Injury*. If a physician/CA is not present at the time of the exam, a physician/CA **must** review this form and sign it on the next working day.

Time of occurrence: 1:40 pm Time of exam: 1:45pm

Description of occurrence:
Im was found in cell unresponsive, large amount of blood on floor and large laceration to forehead.

Inmate showered without soap (if postuse of chemical agent)? ☐ Yes ☐ Refused ☒ N/A

Vital Signs: Temperature 97.8° Pulse 95 Respiration 17 Blood Pressure 138/88

Arrived via: ☐ Ambulatory ☒ Stretcher ☐ Wheelchair ☐ Other:

Condition on arrival (check all that apply): ☒ Alert ☒ Oriented x 4 (person, place, time, situation) ☒ Responding to questions verbally
☐ Other (requires description in assessment summary)
☒ C/O pain? If checked, where? head, (R) shoulder.

Assessment summary:

Physician notified? ☐ No ☒ Yes Name: Dr. Diegues Time: 1:45pm.

Treatment provided? ☐ No ☒ Yes If yes, describe: glucagon 15gm oral / glucagon 1gm IM.

Response to Treatment:

Disposition: ☐ Population ☐ Confinement ☐ Infirmary ☒ Hospital ☐ Rescue ☐ Other (explain):

Discharge Instructions and Education:

Health Care Provider's Signature and Stamp: [signature] DIEGUEZ, M.D. SPRC Date/Time:

Reviewing Physician's Signature and Stamp: [signature] Date/Time: 8/18/10 1pm

Name TORAS, HUMBERTO
DC# DC# 616199 W/M
Date DOB: 07/31/1979
Instit

JM

Inmate Distribution: White—Health Record
Canary—Inspector General
Pink—Local Requirements

Employee Distribution: White—Safety Officer/Designee
Canary—Employee Copy
Pink—DESTROY

This form is not to be amended, revised, or altered without approval of the Deputy Assistant Secretary of Health Services Administration

DC4-701C (Revised 1/05)