STATE OF MICHIGAN

COURT OF CLAIMS

BRYAN BUTZIN,

Plaintiff,

v

Case No. 26-000035-MZ

BOARD OF REGENTS OF UNIVERSITY OF BUSINESS, d/b/a UNIVERSITY OF MICHIGAN HEALTH,

Hon. Sima G. Patel

Defendant.
_____ /

OPINION AND ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION AND GRANTING IN PART PLAINTIFF'S MOTION TO FILE THIRD AMENDED COMPLAINT

Pending before the Court are defendant's July 8, 2026 motion for summary disposition of plaintiff's second amended complaint and plaintiff's August 18, 2026 motion to file a third amended complaint. The Court agrees with defendant that plaintiff's second amended complaint did not adequately state a claim of ordinary, gross negligence. However, the factual allegations in plaintiff's proposed third amended complaint remedy that defect. Amendment of the complaint to include three new constitutional claims would be futile though, and the Court must deny the motion to add these counts. Accordingly, the Court DENIES defendant's motion for summary disposition and GRANTS IN PART plaintiff's motion to file a third amended complaint.

I. BACKGROUND

On May 28, 2026, the Court granted in part and denied in part defendant's motion to dismiss plaintiff's first amended, verified complaint raising a claim of gross negligence.[1] The Court dismissed plaintiff's claims to the extent they sounded in medical malpractice and directed plaintiff to file a second amended complaint clarifying his ordinary, gross negligence claims. Plaintiff filed a second amended complaint on June 18, 2026. Defendant argued in its July 8, 2026 motion for summary disposition that plaintiff's amendments fell short and still did not adequately plead an ordinary, gross negligence claim.

In addition to responding to defendant's motion for summary disposition, plaintiff also sought leave to file a third amended complaint. Plaintiff seeks to add Count II Violation of Const 1963, art 1, § 17-State-Created Danger, Count III Violation of Const 1963, art 1, § 17-Substantive Right to Bodily Integrity, and Count IV Violation of Const 1963, art 1, § 16 or alternatively § 17-Cruel or Unusual Punishment and the Right to Safe Conditions of Confinement. Plaintiff also adds significant allegations in the statement of facts. Defendant contends that these amendments would be futile.

[1] In his August 18, 2026 response to defendant's second motion for summary disposition, plaintiff asserts that defendant's June 18, 2026 motion for reconsideration of the order partially denying defendant's first summary disposition motion remains pending. The Court denied defendant's motion for reconsideration on June 22, 2026.

II. LEGAL STANDARDS

Defendant seeks summary disposition of the second amended complaint pursuant to MCR 2.116(C)(8).

> A motion under MCR 2.116(C)(8) tests the *legal sufficiency* of a claim based on the factual allegations in the complaint. When considering such a motion, a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone. A motion under MCR 2.116(C)(8) may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery. [*El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160; 934 NW2d 665 (2019) (cleaned up).]

Plaintiff seeks to file a third amended complaint. Pursuant to MCR 2.118(A)(2), leave to amend "shall be freely given when justice so requires." "Leave to amend should be denied only for particularized reasons, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party, or where amendment would be futile." *Miller v Chapman Contracting*, 477 Mich 102, 105; 730 NW2d 462 (2007).

III. ANALYSIS

The Court agrees with defendant that plaintiff's second amended complaint did not adequately state a claim of ordinary, gross negligence. However, the factual allegations in plaintiff's proposed third amended complaint remedy that defect.

The Court notes that plaintiff has added significant factual allegations to his complaint that sufficiently support his gross negligence claim to avoid dismissal. To support a claim of ordinary, gross negligence rather than medical malpractice, plaintiff must support that even if the defendant's conduct occurred in the course of the parties' professional relationship, the claim does

not raise "questions of medical judgment beyond the realm of common knowledge and experience." *Bryant v Oakpointe Villa Nursing Center, Inc*, 471 Mich 411, 422; 684 NW2d 864 (2004). "Also, if the reasonableness of an action can be evaluated by a jury only after the presentation of expert testimony, the claim sounds in medical malpractice." *Id*. at 423; see also *Dorris v Detroit Osteopathic Hosp Corp*, 460 Mich 26, 46; 594 NW2d 455 (1999).

Plaintiff's proposed third amended complaint alleges that defendant knew of TA's violent tendencies because he had assaulted a nurse an hour earlier and yet defendant left TA in the common area with other patients. Defendant did not warn the other patients to avoid TA or otherwise advise them that TA posed a threat. Moreover, once admitted to the psychiatric unit, plaintiff was unable to freely move about to avoid TA or anyone else. A lay person could evaluate the reasonableness of defendant's alleged conduct without resort to expert testimony. Accordingly, the Court finds that plaintiff has now adequately supported his gross negligence claim. The Court grants plaintiff's motion to file a third amended complaint, limited to the introduction of his new factual allegations and revision of Count I Gross Negligence, and denies defendant's motion to summarily dismiss plaintiff's action.

However, the Court concludes that amendment of the complaint to add plaintiff's three proposed constitutional counts would be futile. Plaintiff cannot state a claim for a due process violation based on the state-created danger doctrine or for cruel or unusual punishment. The United States Supreme Court has explained that such constitutional claims arise "when the State takes a person into its custody and holds him there against his will." *Deshaney v Winnebago Co Dep't of Social Servs*, 489 US 189, 199-200; 109 S Ct 998; 103 L Ed 2d 249 (1989).

> The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable

> to care for himself, and at the same time fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause. The affirmative duty to protect arises not from the State's knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf. In the substantive due process analysis, it is the State's affirmative act of restraining the individual's freedom to act on his own behalf—through incarceration, institutionalization, or other similar restraint of personal liberty—which is the "deprivation of liberty" triggering the protections of the Due Process Clause, not its failure to act to protect his liberty interests against harms inflicted by other means. [*Id.* at 200 (cleaned up).]

Plaintiff alleges that although he voluntarily hospitalized himself at defendant's facility, once admitted, his movements were restricted and he could not take action to protect himself. The Court concludes that the restrictions on plaintiff's movements while in defendant's care enhanced defendant's duty to protect plaintiff for purposes of his gross negligence claim. However, this is not the type of scenario to which plaintiff's proposed constitutional claims apply. Defendant did not take plaintiff into custody and hold him there against his will. Plaintiff was not involuntarily hospitalized and although plaintiff could not simply walk out of the secured hospital unit, there were steps he could take to check himself out. Plaintiff was not imprisoned or institutionalized by the State and it would be futile to add a state-created-danger or cruel-or-unusual-punishment claim.

The Court further concludes that plaintiff's proposed claim of violation of the constitutional right to bodily integrity is not supportable.

> Violation of the right to bodily integrity involves an egregious, nonconsensual entry into the body which was an exercise of power without any legitimate governmental objective. To survive dismissal, the alleged violation of the right to bodily integrity must be so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience. [*Mays v Governor*, 506 Mich 157, 192; 954 NW2d 139 (2020) (cleaned up).]

Governmental conduct "intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level. At a minimum,

proof of deliberate indifference is required." *Id.* (cleaned up). The "failure to alleviate a significant risk that [the actor] should have perceived but did not does not rise to the level of deliberate indifference." *Id*. at 192-193 (cleaned up). Rather, deliberate indifference requires evidence that the actor knew of and disregarded "an excessive risk to the complainant's health or safety." *Id*. at 193 (cleaned up). Deliberate indifference and redressable egregious conduct is more likely to arise when the government actors have time to deliberate and less likely "in circumstances calling for quick decisions." *Id*. at 193 (cleaned up).

In *Mays*, 506 Mich 157, the Supreme Court found sufficient evidence to support a bodily-integrity claim where the defendants determined to upgrade the Flint water system, requiring the interim use of water from the Flint River despite knowledge that the Flint River water was not safe for this purpose and despite that the defendants had several years to contemplate their options. Here, defendant's knowledge of the potential hazard and the attack on plaintiff occurred within one hour in a busy hospital ward. Under these circumstances, the Court concludes that plaintiff cannot establish the level of conduct necessary to support this constitutional claim.

Accordingly, the Court denies plaintiff's motion to add these constitutional claims to his third amended complaint. The Court also warns plaintiff that further motions to amend the complaint will be treated with a presumption of prejudice to defendant.

IT IS ORDERED:

1. The Court DENIES defendant's motion for summary disposition.
2. The Court GRANTS IN PART plaintiff's motion to file a third amended complaint.
3. Plaintiff is directed to file a third amended complaint consistent with this opinion by Monday, November 30, 2026.

4. Defendant is directed to respond to the third amended complaint by Monday, December 21, 2026.

5. Following defendant's answer, the Court will issue a scheduling order to initiate discovery.

6. This is not a final order.

Date: November 16, 2026

Sima G. Patel
Judge, Court of Claims