

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

EDWARD KAVANAUGH,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	
	)	
UNITED STATES OF AMERICA; DR.	)	
ANDREW EDINGER; EMT-P	)	
MATTHEW BARTH; EMT-P L. POTTER	)	
	)	
<i>Defendants.</i>	)	

Civil No. 1:21-CV-0454

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff Edward Kavanaugh, by and through his attorneys, brings this civil rights action for compensatory and punitive damages against Defendants United States of America, Dr. Andrew Edinger, EMT-P Matthew Barth, and EMT-P L. Potter. This case stems from constitutional violations at the United States Penitentiary in Lewisburg (“USP Lewisburg”). Mr. Kavanaugh seeks damages against the Defendants for their deliberate indifference to his serious medical needs under the Eighth Amendment, and for negligence under the Federal Tort Claims Act (“FTCA”).

Employees of Defendant United States incorrectly identified Mr. Kavanaugh as a Type II Diabetic in 2011, rather than acknowledging his previous diagnosis of Type I Diabetes. Defendants then proceeded to gravely mishandle his condition for

8 years, causing him years of frequent pain and discomfort, as well as long-term, permanent health consequences. Defendants disregarded Mr. Kavanaugh's many concerns that his health was declining and deliberately ignored years of test results clearly showing that his Diabetes was out of control. Defendants also frequently refused to provide Mr. Kavanaugh with his life sustaining insulin.

Defendants' failures to properly treat Mr. Kavanaugh's diabetes culminated in Mr. Kavanaugh being improperly prescribed and administered a Type II Diabetes medication that is not an insulin substitute, in place of his required insulin. After days of unbearable pain, he fell critically ill and nearly died from diabetic ketoacidosis and kidney failure. While hospitalized he discovered Defendants had misdiagnosed him and given him improper medication to treat his condition which directly lead to his health crisis.

### **JURISDICTION & VENUE**

1. Plaintiff brings this action pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) and the Eighth Amendment to the United States Constitution.

2. Plaintiff also brings this action pursuant to the Federal Tort Claims Act of 1946 ("FTCA"), 28 U.S.C. § 1346.

3. This Court has jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1343.

4. Venue is appropriate in this Court pursuant to 28 U.S.C. §1391(b)(2) because the events and omissions giving rise to this action occurred in Union County, Pennsylvania, within the Middle District of Pennsylvania.

**PARTIES**

5. Plaintiff Edward Kavanaugh is an adult individual currently incarcerated at United States Penitentiary at Coleman, and previously was incarcerated at USP Lewisburg

6. Defendant United States of America is sued for Mr. Kavanaugh's personal injuries caused by the negligent or wrongful acts or omissions of its employees, who were acting within the scope of their employment.

7. Defendant Dr. Andrew Edinger is, and was at all relevant times, a Physician employed by the Federal Bureau of Prisons ("BOP") responsible for, among other things, overseeing the medical staff and providing medical care to people incarcerated at USP Lewisburg. Defendant Edinger is sued in his individual capacity.

8. Defendant Emergency Medical Technician-Paramedic (EMT-P) Matthew Barth is, and was at all relevant times, an EMT-P employed by the BOP at USP Lewisburg responsible for, among other things, providing medical care to the people incarcerated there. Defendant Barth is sued in his individual capacity.

9. Defendant EMT-P Potter is, and was at all relevant times, an EMT-P employed by the Federal Bureau of Prisons at USP Lewisburg responsible for, among other things, providing medical care to the people incarcerated at USP Lewisburg. Defendant Potter is sued in his individual capacity.

### **FACTUAL ALLEGATIONS**

#### **Type I Diabetes is a Serious Medical Condition That Requires Proper Diagnosis, Constant Monitoring and Daily Treatment**

10. Plaintiff Edward Kavanaugh has Type I Diabetes.

11. Type I Diabetes is an autoimmune disorder in which an individual's pancreas *fails* to produce insulin (in contrast to Type II Diabetes where the pancreas is able to produce some insulin).<sup>1</sup>

12. Insulin is a hormone that allows the body to convert glucose (sugars) into energy. Insulin acts like a key, allowing glucose to leave the blood stream and enter the cells in order to be converted into, and used as, energy.<sup>2</sup>

13. Without insulin, glucose builds up in the blood stream and results in hyperglycemia (high blood sugar).<sup>3</sup>

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<sup>1</sup> Francine R. Kaufman, *Medical Management of Type 1 Diabetes*, American Diabetes Association, 5 (2012).

<sup>2</sup> Jamie Wood and Anne Peters, *The Type 1 Diabetes Self-Care Manual*, American Diabetes Association, 45 (2018).

<sup>3</sup> Cleveland Clinic, *Hyperglycemia (High Blood Sugar)*, <https://my.clevelandclinic.org/health/diseases/9815-hyperglycemia-high-blood-sugar> (last visited March 3, 2021).

14. Normal blood sugar levels are between 70 mg/dL and 140 mg/dL. Levels above 140 mg/dL are considered hyperglycemic and should be addressed immediately. The higher the blood sugar levels, the more dangerous they can be and the more urgently they need to be addressed.<sup>4</sup>

15. Symptoms of hyperglycemic episodes include disorientation, increased thirst, frequent need to urinate, headaches, fatigue, blurred vision, and trouble thinking or concentrating. If blood sugar levels get high enough, diabetic ketoacidosis or coma can occur.<sup>5</sup>

16. Diabetic ketoacidosis (“DKA”) is a life-threatening complication of Type I Diabetes. If an individual is not provided with insulin, high blood sugar levels cause the body to produce “ketones.” Elevated ketones cause the blood to become acidic. This can result in death.<sup>6</sup>

17. People with diabetes can also experience hypoglycemic episodes, or low blood sugar, due to the body’s inability to manage blood sugar levels. Blood sugar levels below 70 mg/dL are considered to be hypoglycemic and require immediate attention.<sup>7</sup>

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<sup>4</sup> *Supra* note 2 at 2.

<sup>5</sup> *Supra* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> American Diabetes Association, *Hypoglycemia (Low Blood Glucose)*, [diabetes.org/healthy-living/medication-treatments/blood-glucose-testing-and-control/hypoglycemia](https://diabetes.org/healthy-living/medication-treatments/blood-glucose-testing-and-control/hypoglycemia) (last visited March 3, 2021).

18. Symptoms of hypoglycemia include irritability, confusion, anxiety, shakiness, fatigue, blurred vision, headaches, clumsiness, irregular heartbeat, seizures, and loss of consciousness.<sup>8</sup>

19. Blood sugar levels fluctuate during or after sleeping, exercising, eating, or experiencing stress and can therefore be unpredictable. As a result, individuals with Type I Diabetes must continually monitor their blood sugar levels and take insulin or ingest sugars throughout the day as needed.<sup>9</sup>

20. The American Diabetes Association recommends that people living with Type I Diabetes check their blood sugar at least four times per day using a Glucometer and more frequently when blood sugar numbers are not within the normal range.<sup>10</sup>

21. “A1C” tests measure the blood sugar levels of a person over the prior three months. When sugar enters the blood stream, it attaches to the hemoglobin protein in red blood cells. A1C tests measure the percentage of red blood cells that have sugar-coated hemoglobin. These tests provide insight into how well diabetes is being controlled in the long-term.<sup>11</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> American Diabetes Association, *The Big Picture: Checking Your Blood Glucose*, <https://www.diabetes.org/healthy-living/medication-treatments/blood-glucose-testing-and-control/checking-your-blood-glucose> (last visited March 3, 2021).

<sup>10</sup> *Supra* note 2 at 29.

<sup>11</sup> Center for Disease Control and Prevention, *All About Your A1C*, <https://www.cdc.gov/diabetes/managing/managing-blood-sugar/a1c.html> (last

22. The goal for people living with Diabetes is an A1C level under 7%.<sup>12</sup>

23. Over time, chronic or frequent hyperglycemia causes devastating permanent damage to tissues and organs. Chronic or frequent hyperglycemia results in tooth decay, gum infections, cardiac damage and angina, impaired immune response, nerve damage (“diabetic neuropathy”), gastrointestinal problems (“diabetic gastroparesis”), vision problems and blindness (“diabetic retinopathy”), and permanent damage to the blood vessels and kidneys.<sup>13</sup>

24. Diabetic neuropathy is a form of nerve damage caused by chronic or frequent hyperglycemia, most often affecting the nerves in the legs and feet first. Diabetic neuropathy results in more frequent infections, and eventually can result in chronic non-healing wounds leading to limb amputation.<sup>14</sup>

25. High glucose levels can also increase the likelihood of bacterial infections in nails, skin and hair follicles.<sup>15</sup>

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visited March 3, 2021).

<sup>12</sup> *Glycemic Targets. Sec. 6.* In Standards of Medical Care in Diabetes—2017. Diabetes Care 2017; 40 (Suppl. 1); S48-S56 - July 01, 2017

<sup>13</sup> Mayo Clinic, *Hyperglycemia in Diabetes*, <https://www.mayoclinic.org/diseases-conditions/hyperglycemia/symptoms-causes/syc-20373631> (last visited March 3, 2021).

<sup>14</sup> Mayo Clinic, *Diabetic Neuropathy*, <https://www.mayoclinic.org/diseases-conditions/diabetic-neuropathy/symptoms-causes/syc-20371580> (last visited March 3, 2021).

<sup>15</sup> American Diabetes Association, *Skin Complications*, <https://www.diabetes.org/diabetes/complications/skin-complications> (last visited March 3, 2021).

26. When diabetes is not properly controlled, high glucose levels in saliva can cause tooth enamel to break down and higher levels of plaque that hardens into tartar. When tartar collects on teeth, it can cause infections such as pulpitis and chronic inflammation of the gums.<sup>16</sup>

27. Individuals whose diabetes is properly managed are far less likely to experience long-term diabetes complications.<sup>17</sup>

28. In contrast to Type I Diabetes, Type II Diabetes is a related autoimmune disorder in which the pancreas is able to create insulin, but either cannot produce sufficient amounts of insulin, or the individual's body is less able to utilize the insulin that is produced.<sup>18</sup>

29. The distinction between Type I and Type II diabetes is crucial to determining proper treatment. Individuals with Type I diabetes will always require insulin treatments, as their bodies are incapable of producing any insulin, whereas individuals with Type II diabetes may require insulin to control their blood sugar levels, but can also be treated with other medication to increase the body's natural insulin production, sometimes with lifestyle and diet adjustments.<sup>19</sup>

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<sup>16</sup> Mayo Clinic, *Diabetes and Dental Care: Guide to a Healthy Mouth*, <https://www.mayoclinic.org/diseases-conditions/diabetes/in-depth/diabetes/art-20043848> (last visited March 3, 2021).

<sup>17</sup> *Supra* note 2 at 24.

<sup>18</sup> Center for Disease Control and Prevention, *Type 2 Diabetes*, <https://www.cdc.gov/diabetes/basics/type2.html> (last visited March 3, 2021).

<sup>19</sup> Johns Hopkins Patient's Guide to Diabetes, *Type 1 and Type 2 Diabetes*,

30. The Bureau of Prisons (BOP) Clinical Practice Guidance categorizes Type I Diabetes as a Care Level 3 condition.

31. Type II Diabetes is also categorized as Care Level 3 when it is “poorly controlled,” with A1C levels greater than 9% for at least 12 months.

32. The purpose of BOP Care Level distinctions is to ensure that incarcerated people in BOP custody are housed in facilities that have the capacity to meet their specific health needs.

33. Care Level 3 institutions, for example, are typically located near Care Level 4 institutions or federal medical centers for access to enhanced medical services and have resources to provide frequent clinical contacts to prevent hospitalization.

34. Care Level 2 institutions, in contrast, have no special treatment capabilities and can be located up to an hour away from regional treatment centers.

The BOP Incorrectly Changed Mr. Kavanaugh’s Diabetes Diagnosis  
from Type I to Type II

35. Mr. Kavanaugh was diagnosed with Type I Diabetes in 2007. Since his diagnosis, he has required insulin multiple times daily.

36. Mr. Kavanaugh’s records indicate that the BOP knew he was a Type I Diabetic up until July 26, 2011.

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<https://hopkinsdiabetesinfo.org/diagnosis-of-diabetes/> (last visited March 3, 2021).

37. On July 29, 2011, PA-C Brigitte Wolverton incorrectly transcribed Mr. Kavanaugh's diagnosis to Type II Diabetes upon his transfer to USP Victorville.

38. Mr. Kavanaugh remained improperly diagnosed and treated as a Type II Diabetic until he was hospitalized on April 6, 2019 with diabetic ketoacidosis.

Defendants Failed to Properly Treat Mr. Kavanaugh's  
Type I Diabetes for Several Years

39. After the 2011 misdiagnosis, Mr. Kavanaugh's Type I diabetes was severely mismanaged in multiple prisons operated by the BOP.

40. Throughout this period, the BOP repeatedly ignored serious fluctuations in his blood sugar and persistently high A1C levels.

41. During this time, Mr. Kavanaugh also experienced several corollary conditions and symptoms due to his poorly managed Type I diabetes, including sensitive teeth, polyneuropathy, disorientation, nocturnal enuresis and worsening vision.

42. Mr. Kavanaugh was not permitted to take insulin more than twice a day—one injection of regular insulin in the morning and evening and one injection of long-acting insulin in the evening—until 2020—despite persistently high blood sugar levels.

43. An intensive insulin regime, which consists of both slow-acting and regular insulin injections, typically requires four or more injections per day—with one or two long-acting injections per day and one regular injection per meal.<sup>20</sup>

44. The Bureau of Prisons Clinical Guidance for Management of Diabetes states that “[i]nsulin therapy is the cornerstone of medication management” for people with Type I Diabetes.<sup>21</sup>

45. The Bureau of Prisons Clinical Guidance for Management of Diabetes recommends intensive insulin therapy for people with Type 1 Diabetes, noting that it has “been clearly demonstrated” to improve glycemic control and reduce diabetes-related complications (including nephropathy, retinopathy, neuropathy, and cardiovascular morbidity and mortality).<sup>22</sup>

46. The BOP defines “intensive insulin therapy” as three or more regular insulin injections and one or two long-acting insulin injections per day and recommends this therapy for people with Type I Diabetes.<sup>23</sup>

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<sup>20</sup> Johns Hopkins Patient Guide to Diabetes, *Insulin Treatment in Type 1 Diabetes*, <https://hopkinsdiabetesinfo.org/insulin-treatment-in-type-1-diabetes/> (last visited March 3, 2021).

<sup>21</sup> Bureau of Prisons, *Management of Diabetes, Clinical Guidance*, at 15, March 2017, available at [https://www.bop.gov/resources/pdfs/diabetes\\_guidance\\_march\\_2017.pdf](https://www.bop.gov/resources/pdfs/diabetes_guidance_march_2017.pdf) (last visited March 12, 2021).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 35.

47. The BOP Clinical Guidance cites to the American Diabetes Association's Diagnostic Criteria, which provides, "Unless unequivocal symptoms of hyperglycemia are present, diagnosis of diabetes requires that test results be confirmed, preferably by repeating the same test on a subsequent day."<sup>24</sup>

48. Medical records indicate that from January 1, 2017 to December 31, 2017, Mr. Kavanaugh's blood sugar was measured 428 times. Mr. Kavanaugh was hyperglycemic on 348 occasions, or roughly 81% of the times he was tested. On 227 occasions, or 53% of the time, his blood sugar exceeded 240 mg/dL. Mr. Kavanaugh was hypoglycemic on 22 occasions.

49. Throughout 2017, Mr. Kavanaugh was seen several times for worsening diabetic neuropathy, pain in his feet and hands, and burning sores on his scalp, all symptoms and indications of poorly or mismanaged diabetes.

50. Mr. Kavanaugh was transferred to USP Allenwood in June 2017. While he was at USP Allenwood, the BOP continued to deliberately ignore Mr. Kavanaugh's poorly controlled diabetes and failed to correct his misdiagnosis.

51. On July 19, 2017, Mr. Kavanaugh's A1C level was 9.4%.

52. On September 15, 2017, Mr. Kavanaugh was found unresponsive in his cell while experiencing a hypoglycemic episode.

53. On October 31, 2017, Mr. Kavanaugh's A1C level was 10.9%.

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<sup>24</sup> *Id.* at 15.

54. On January 23, 2018 Mr. Kavanaugh was seen for ongoing pain on his scalp with open bleeding.

55. Mr. Kavanaugh suffered Pulpitis (tooth pain) on October 30, 2017 and September 10, 2018.

Mr. Kavanaugh Nearly Died Due To Defendants' Repeated Failures  
To Properly Treat His Diabetes

56. Mr. Kavanaugh was transferred to the Special Management Unit ("SMU") at USP Lewisburg on or around May 4, 2018.

57. The SMU was not properly equipped or staffed to provide adequate treatment for Care Level 3 class individuals.

58. Around the time of his transfer, Mr. Kavanaugh wrote a letter to BOP staff expressing concerns about the SMU's capacity to appropriately treat his Type I Diabetes, but he received no response.

59. Mr. Kavanaugh was listed on his transfer papers as having "Diabetes mellitus, type II (adult onset)." His Care Level was listed as Care Level 2.

60. Mr. Kavanaugh was also diagnosed at that time with chest pain, pulpitis, myopia, and polyneuropathy in diabetes.

61. Medical records indicate that from January 1, 2018 to December 31, 2018, Mr. Kavanaugh's blood sugar was tested 195 times. Mr. Kavanaugh was hyperglycemic on 132 occasions, roughly 68% of the times he was tested. On 70

occasions, roughly 36% of the time, Mr. Kavanaugh's blood sugar exceeded 240 mg/dL. Mr. Kavanaugh was hypoglycemic on 25 occasions.

62. Mr. Kavanaugh first saw Defendant Edinger on May 14, 2018. Dr. Edinger indicated that Mr. Kavanaugh "has a known history of Type II DM."

63. At the time of his appointment with Defendant Edinger, Mr. Kavanaugh's most recent A1C level, from May 3, 2018, was 9.9% (well above the standard goal of 7%), and his most recent blood sugar level was hyperglycemic at 250 mg/dL (nearly twice the upper standard guideline of 140 mg/dL).

64. Defendant Edinger also noted Mr. Kavanaugh's chronic neuropathy pain and tingling.

65. On multiple occasions in 2018, Defendant Potter did not provide Mr. Kavanaugh with his morning and/or evening insulin.

66. During this period, Mr. Kavanaugh did not refuse insulin except during the coordinated National Prison Strike in late-August 2018.

67. On June 13, 2018, Mr. Kavanaugh's A1C level was still 9.9%.

68. On August 9, 2018, Mr. Kavanaugh was found disoriented in the midst of a hypoglycemic episode.

69. Medical records indicate that from January 1, 2019 to July 18, 2019, Mr. Kavanaugh's blood sugar was tested on seven occasions at USP Lewisburg. Mr. Kavanaugh was hyperglycemic on six of those occasions, with blood sugar levels

above 250mg/dL on five of those occasions. His blood sugar was only within normal range on one occasion.

70. On March 20, 2019, Mr. Kavanaugh's A1C level was 9.5%.

71. On March 31, 2019 between 7:15 am and 7:30 am, Defendant Barth brought Mr. Kavanaugh insulin that had been pre-drawn into the syringe outside of Mr. Kavanaugh's presence.

72. Mr. Kavanaugh saw that the pre-drawn insulin was cloudy and had clumps of sediment in it, indicating that the insulin was not usable.<sup>25</sup>

73. When Mr. Kavanaugh handed the bad insulin back to Defendant Barth and pointed out that it was not good to use, Defendant Barth responded that the insulin was "only half bad" and that Mr. Kavanaugh would be fine. He also told Mr. Kavanaugh that if he did not take the bad insulin, he wouldn't get any insulin at all.

74. Mr. Kavanaugh declined to take the bad insulin.

75. That afternoon, Defendant Barth came to Mr. Kavanaugh's housing block and stood in front of Mr. Kavanaugh's cell door, out of reach. Defendant Barth held up Mr. Kavanaugh's insulin and taunted Mr. Kavanaugh, stating that he bet Mr. Kavanaugh needed his insulin.

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<sup>25</sup> Federal Drug Administration, *Humulin R Patient Information* at 9, available at [https://www.accessdata.fda.gov/drugsatfda\\_docs/label/2011/018780s120lbl.pdf](https://www.accessdata.fda.gov/drugsatfda_docs/label/2011/018780s120lbl.pdf) (last visited March 12, 2021) ("Do not use Humulin R if it appears cloudy, thickened, or slightly colored, or if solid particles are visible").

76. Mr. Kavanaugh told Defendant Barth that he needed his insulin and that his blood sugar level was 411 mg/dL. Defendant Barth responded that Mr. Kavanaugh clearly didn't want his insulin and that he was refusing it.

77. At that point Mr. Kavanaugh had not had insulin since around 3:00pm the prior day.

78. Mr. Kavanaugh did not receive insulin until the following morning pill line on April 1, 2019.

79. Mr. Kavanaugh was hyperglycemic and without insulin for approximately 40 hours.

80. As a result, Mr. Kavanaugh experienced nausea, vomiting, frequent urination, dehydration, and muscle cramps. He was unable to eat out of fear that eating food without insulin would have increased his blood sugar further, threatening his life.

81. On April 3, 2019, Mr. Kavanaugh informed Defendant Edinger that the USP Lewisburg medical staff were withholding Mr. Kavanaugh's insulin, and that staff were saying he was refusing it when he was not actually refusing it.

82. Defendant Edinger told Mr. Kavanaugh that he was aware of the situation, and that instead of directing his staff to provide insulin, Defendant Edinger would be putting Mr. Kavanaugh on a medication called Trulicity—a once weekly injection—to circumvent the staff bringing Mr. Kavanaugh his insulin entirely.

83. Defendant Edinger stated that putting Mr. Kavanaugh on Trulicity would mean Mr. Kavanaugh would no longer need to take insulin.

84. Trulicity is not an insulin substitute, nor is it a type of insulin.

85. Trulicity is a medication specifically for Type II Diabetics and is contraindicated for Type I Diabetics.

86. Trulicity works by stimulating the body's natural production of insulin, but Type I diabetics do not produce insulin at all.

87. Mr. Kavanaugh asked Defendant Edinger if he was sure Trulicity was a safe type of insulin for him to take with his type of diabetes. Defendant Edinger assured him that it was.

88. That afternoon, Defendant Potter came onto Mr. Kavanaugh's housing unit with medications. Mr. Kavanaugh told him that he needed his insulin.

89. Defendant Potter responded that he had heard Mr. Kavanaugh had been a "bad little monkey" and that he would not get any insulin until he learned how to act.

90. Mr. Kavanaugh told Defendant Potter that his blood sugar level was high at 270 mg/dL and that he needed insulin.

91. Defendant Potter responded that Mr. Kavanaugh would not get insulin that night, and that he had not even brought insulin with him to Mr. Kavanaugh's housing unit.

92. The next morning on April 4, 2019, a nurse had Mr. Kavanaugh pulled into the hall to administer the Trulicity injection.

93. At that point, Mr. Kavanaugh had gone for approximately 24 hours with high blood sugar levels and without any insulin, and he was already beginning to experience symptoms of hyperglycemia.

94. While Mr. Kavanaugh was receiving the Trulicity injection, staff went into his cell and removed his Glucometer.<sup>26</sup>

95. Mr. Kavanaugh did not realize his Glucometer was gone until around 3:00 pm that day when he went to test his blood sugar level.

96. At around 8:00 pm the next day, Mr. Kavanaugh became violently ill. He began vomiting, defecating, and urinating uncontrollably. He also experienced severe muscle cramps and dehydration.

97. At that point Mr. Kavanaugh had gone approximately 60 hours without any insulin.

98. Mr. Kavanaugh notified officers that he needed urgent help.

99. Correctional officers called the medical unit, but medical staff, under the supervision of Defendant Edinger, told the officers and Mr. Kavanaugh that it was only the side-effects of Trulicity and that Mr. Kavanaugh was fine.

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<sup>26</sup> A Glucometer is a small, portable medical device used to determine the approximate concentration of glucose in the blood. People with diabetes use glucometers to measure their blood sugar levels.

100. Medical staff did not evaluate Mr. Kavanaugh, test his blood sugar level, or run any lab work.

101. Mr. Kavanaugh experienced excruciating and debilitating pain throughout that night.

102. He notified correctional officers and a Lieutenant that he was in need of urgent medical attention. However, they told Mr. Kavanaugh that since medical staff had already said it was the result of the Trulicity, he could not see medical staff again until the morning.

103. Over the course of the night, Mr. Kavanaugh's symptoms worsened, becoming even more unbearable. He feared that he was going to die in his cell before morning.

104. Mr. Kavanaugh's cell had no duress button that he could use to call for help as his condition declined.

105. On April 6, 2019, medical staff checked Mr. Kavanaugh's blood sugar level.

106. The Glucometer read "Hi" indicated Mr. Kavanaugh's blood sugar level was over 600 mg/dL, too high for the Glucometer to provide a specific reading. Medical staff also took Mr. Kavanaugh's vitals and took a urine sample.

107. Mr. Kavanaugh was finally rushed to the emergency room at Evangelical Community Hospital.

108. Mr. Kavanaugh was in Diabetic Ketoacidosis (“DKA”) with acute renal failure and elevated liver enzymes.

109. He was also diagnosed with “high anion gap metabolic acidosis with hyperkalemia due to acidemia induced cellular shifts” as well as diabetic retinopathy of both eyes.

110. The “Reason for Admission” on Mr. Kavanaugh’s Evangelical Hospital records indicates “DKA triggered by Corrections system health provider stopping insulin on 4/3/19 in favor of Trulicity injections weekly.”

111. The physician in the Evangelical Hospital Intensive Care Unit informed Mr. Kavanaugh that the BOP had misdiagnosed him as a Type II Diabetic.

112. This was the first time Mr. Kavanaugh became aware of this misdiagnosis.

113. The outside physician informed Mr. Kavanaugh that he should have never been given Trulicity in lieu of insulin, as it is not a first-line treatment,<sup>27</sup> even for Type II Diabetics.

114. The physician also told Mr. Kavanaugh that he had almost died.

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<sup>27</sup>A first-line treatment is a preferred or best-practices treatment for a disease, associated with the greatest benefit and lowest risks.

115. The hospital discharge plan ordered that Mr. Kavanaugh see Defendant Edinger for a follow-up visit one to three days after returning to the prison from the hospital. That follow-up visit did not take place.

116. Mr. Kavanaugh was also told to check his blood sugar level 3-4 times a day, which is standard for Type I Diabetics.

117. Prison medical staff did not return Mr. Kavanaugh's Glucometer to him when he returned to the prison. He was not permitted to check his blood sugar at all even when he requested that medical staff check it for him.

118. Another physician at Evangelical Hospital told Mr. Kavanaugh that he had spoken with Defendant Edinger about returning Mr. Kavanaugh to regular sliding scale insulin and Lantus, a long-acting insulin.

119. When Mr. Kavanaugh returned to the prison, Defendants Edinger, Barth and Potter, informed him that he would not be put on sliding scale insulin.

Mr. Kavanaugh Has Suffered Serious Permanent Damage from the  
Long-Term Mismanagement of His Type I Diabetes

120. Since his misdiagnosis in 2011, Mr. Kavanaugh has suffered from chronic hyperglycemia due to improper management of his diabetes.

121. Even when providers were giving him scheduled insulin, he was given at the most three insulin injections per day, despite his persistently high blood glucose levels.

122. As a result, Mr. Kavanaugh has suffered from progressive digestive issues potentially connected to diabetic gastroparesis.

123. Mr. Kavanaugh has also suffered extensive progression of his diabetic polyneuropathy, which could soon result in amputation of one of his lower limbs should he experience an infection.

124. Mr. Kavanaugh's internal organs have suffered significant permanent damage due to the chronic hyperglycemia.

125. Mr. Kavanaugh's retinal tissue has suffered extensive permanent damage. He was diagnosed with diabetic retinopathy in 2019, and was recently told that he is going blind due to chronic hyperglycemia.

126. Mr. Kavanaugh has suffered extensive emotional pain in not being able to properly manage his diabetes. Not being able to take insulin when he has hyperglycemic, and knowing the devastating consequences this has on his body, has caused Mr. Kavanaugh incredible feelings of anxiety, fear, hopelessness, and powerlessness.

## CLAIMS

### COUNT I: Deprivation of Eighth Amendment Right to Be Free from Cruel and Unusual Punishment

(Against Defendants Barth, Edinger and Potter)

127. Plaintiff hereby incorporates by reference the allegations contained in each and every preceding paragraph, as if fully set forth herein.

128. Defendants violated Mr. Kavanaugh's right to be free from cruel and unusual punishment under the Eighth Amendment to the United States Constitution through their deliberate indifference to Mr. Kavanaugh's serious medical needs, including but not limited to their failure to correctly diagnose and adequately treat his Type I Diabetes, and jeopardizing his life by prescribing and administering Trulicity, a Type II Diabetes medication that is specifically not an insulin substitute.

129. Defendants caused Mr. Kavanaugh to experience extensive emotional pain and suffering, as well as physical pain and long-term damage resulting from their refusal to properly treat his Type I Diabetes and resulting medical needs.

**COUNT II: Negligence Under the Federal Tort Claims Act**

(Against Defendant United States of America)

130. Plaintiff hereby incorporates by reference the allegations contained in each and every preceding paragraph, as if fully set forth herein.

131. BOP staff acted with negligence in repeatedly misdiagnosing Mr. Kavanaugh's Type I Diabetes as Type II and subsequently not treating or accommodating him appropriately.

132. Defendant, United States, owed a duty to treat and accommodate Mr. Kavanaugh's medical needs while incarcerated in BOP custody.

133. BOP staff breached this duty by repeatedly misdiagnosing him, denying him adequate insulin to treat his condition, prescribing him medication meant for

Type II Diabetics only, and taking him completely off insulin while putting him on a medication that was not an insulin substitute.

134. Mr. Kavanaugh suffered extensive emotional and physical pain and suffering as a result of BOP staff's failure to treat his Type I Diabetes.

135. This breach of defendant United States' duty was a direct and proximate cause of and a substantial factor in Mr. Kavanaugh's extensive physical and emotional suffering.

136. The actions of BOP staff constitute the tort of negligence under the laws of the Commonwealth of Pennsylvania.

137. Under the FTCA, defendant United States of America is liable for these actions.

### **RELIEF**

Wherefore, Plaintiff Edward Kavanaugh respectfully requests that the Court grant the following relief

- A. An award of appropriate compensatory against Defendants in an amount to be determined by the finder of fact;
- B. An award of appropriate punitive damages against Defendants Edinger, Barth, and Potter in an amount to be determined by the finder of fact;
- C. Reasonable attorneys' fees and costs; and

D. Such other relief as this Court deems just and proper.

Respectfully submitted,

/s/ Alexandra Morgan-Kurtz

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