

6 of 21 DOCUMENTS

**CHARLES ISELEY, SR., Plaintiff, v. MARTIN DRAGOVICH, ET AL.,
Defendants.**

CIVIL ACTION NO. 00-4839

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
PENNSYLVANIA**

2003 U.S. Dist. LEXIS 5483

**April 3, 2003, Decided
April 3, 2003, Filed, Entered**

SUBSEQUENT HISTORY: Affirmed by, Motion denied by *Iseley v. Dragovich, 2004 U.S. App. LEXIS 1898 (3d Cir. Pa., Jan. 6, 2004)*

PRIOR HISTORY: *Iseley v. Dragovich, 236 F. Supp. 2d 472, 2002 U.S. Dist. LEXIS 23750 (E.D. Pa., 2002)*

DISPOSITION: [*1] Defendants' renewed motions for summary judgment granted. Judgment entered in favor of defendants and against plaintiff.

COUNSEL: CHARLES . ISELEY, SR., PLAINTIFF, Pro se, PITTSBURGH, PA USA.

For MARTIN DRAGOVICH, MARTIN HORN, CAROL DOTTER, ROBERT BITNER, MARVA CERULLO, LT. HENRICKSON, FRANK GILLIS, KANDIS DASCANI, WILMA SEWELL, JANE DANDO, JANE HIMMAN, DEFENDANTS: SUE ANN UNGER, PATRICK J. MC MONAGLE, OFFICE OF ATTORNEY GENERAL, PHILADELPHIA, PA USA.

For WILLIAM SEWELL, DEFENDANT: PATRICK J. MC MONAGLE, OFFICE OF ATTORNEY GENERAL, PHILADELPHIA, PA USA.

For RENATO DIAZ, LASZLO KIRALY, BRAD LORAH, DEFENDANTS: ALAN S. GOLD, SEAN ROBINS, GOLD, BUTKOVITZ & ROBINS, PC, ELKINS PARK, PA USA.

For CORRECTIONS PHYSICIAN SERVICES INC., DEFENDANT: ALAN S. GOLD, GOLD, BUTKOVITZ

& ROBINS, PC, ELKINS PARK, PA USA.

JUDGES: EDUARDO C. ROBRERNO, J.

OPINION BY: Eduardo C. Robreno

OPINION

MEMORANDUM

EDUARDO C. ROBRENO, J.

APRIL 3rd, 2003

I. INTRODUCTION

Plaintiff Charles Iseley, Sr. ("plaintiff") is an inmate at the Pennsylvania State Correctional Institution at Greene. Plaintiff [*2] suffers from dental pain and malocclusion, nearsightedness, asthma and Hepatitis C, a common viral infection of the liver which can cause liver cancer. As a result of his ailments, plaintiff has repeatedly requested that prison officials provide him with orthodontics and laser vision corrective surgery (or, in the alternative, corneal implants), allow him to maintain physical possession of his inhaler and provide prescription drug treatment for Hepatitis C. The Department of Corrections ("DOC") has denied these requests.¹

¹ Although, initially, the DOC did not allow the plaintiff to maintain physical possession of his inhaler, it appears from the pleadings that the DOC has recently allowed the plaintiff to do so.

First, in response to plaintiff's request for ocular surgery and orthodontics, defendants² aver that these procedures are not medically necessary and are cosmetic in nature. Therefore, under DOC policy, they need not be provided to inmates. Instead, the DOC has provided plaintiff with corrective [*3] lenses, i.e., glasses, to correct his nearsightedness, and various dental procedures, including cavity fillings and root canal, to help alleviate his dental pain.

2 Plaintiff brings this action against a number of defendants, including prison institutions, officials and employees, as well as other individuals and entities alleged by plaintiff to be liable for failing to provide plaintiff with adequate medical treatment. Although, technically, not all defendants are charged with liability under each theory proffered by plaintiff, for the sake of clarity and given that no liability is found as to any defendant, all defendants in this opinion are referred to collectively as "defendants."

Second, in response to plaintiff's request to maintain physical possession of his inhaler, defendants aver that, under prison policy regarding inmates confined in the Restricted Housing Unit ("RHU"), such as the plaintiff, self-medication is prohibited. The purpose of this prohibition, according to the DOC, is concern over the [*4] safety of prison employees and the inmates themselves. Accordingly, inmates who suffer from asthma are not allowed to maintain physical possession of inhalers, or any other medication, unless a doctor specifically orders otherwise. Instead, inmates' inhalers are held by RHU guards and provided to the inmates as needed.

Finally, in response to plaintiff's request that he be provided with prescription drug treatment for Hepatitis C, the DOC directed, in accordance with prison policy, that plaintiff submit to a psychological evaluation before his requested treatment could proceed. As part of the required psychological evaluation, plaintiff must (1) complete a Beck Depression Inventory ("BDI questionnaire"), which consists of a series of questions designed to help evaluate whether plaintiff suffers from depression or other psychological disorders, and (2) sign a Mental Health Informed Consent Document ("consent form") which authorizes the release of certain medical and personal information under certain conditions.

Defendants assert that plaintiff's treatment cannot

proceed without plaintiff first undergoing the psychological evaluation. This is so, according to the DOC, because treatment [*5] for Hepatitis C, by medication, can cause severe psychological side effects, and the likelihood that plaintiff will experience these side effects must be assessed before treatment can be administered. Thus, defendants contend that, without a psychological evaluation, the proper course of treatment cannot be ascertained. Moreover, defendants refuse to treat plaintiff without first obtaining a signed consent form. According to defendants, the consent form authorizes the DOC to release plaintiff's medical and personal information in order to protect other inmates and staff, and to insure the orderly operation of the prison facility. Plaintiff, however, refuses to submit to the psychological evaluation or sign the consent form as conditions for receiving treatment for Hepatitis C.

Based on the defendants' response to plaintiff's requests for medical treatment, plaintiff brings this action under 42 U.S.C. § 1983 claiming that defendants have acted with deliberate indifference towards his serious medical needs. Plaintiff seeks monetary damages and an order compelling the defendants to provide him with the treatment and procedures he has requested. Before the court [*6] are defendants' renewed motions for summary judgment (doc. nos. 111 & 125),³ in relation to which the parties have made extensive and highly detailed written submissions (*see* doc. nos. 67-70, 83-84, 96-97, and 102-104 for plaintiff and doc. nos. 42, 50, 77-78, 82, 89, 100 and non-commonwealth defendants' response to plaintiff's motion for a preliminary injunction, which has yet to be docketed, for defendants).⁴ For the reasons that follow, the defendants' motions for summary judgment will be granted.

3 The court had previously denied defendants' original motions for summary judgment (doc. nos. 42 & 50) without prejudice, in order to provide plaintiff with ample time to file adequate responses. On March 22, 2002, plaintiff filed two memoranda of law in opposition to defendants' motions for summary judgment (doc. nos. 67-70). On December 30, 2002 and March 3, 2003, respectively, defendants filed renewed motions for summary judgment incorporating by reference identically their previously filed pleadings. These motions have been previously opposed *in extenso* by plaintiff and this opposition is equally applicable to the renewed motions. Given that

plaintiff is on notice of the request for summary judgment against him and has been given an opportunity to respond to the motions, these motions are now ripe for disposition.

[*7]

4 A number of these documents were submitted in relation to plaintiff's motion for a preliminary injunction (doc. no. 96), which the court denied by order dated December 11, 2002 (doc. no. 107). The issues addressed therein are also present in defendants' renewed motions for summary judgment. Thus, the court finds these documents helpful in its consideration of the motions presently before the court.

II. DISCUSSION

A. Summary Judgement Standard

Summary judgment may be granted "if the pleadings, depositions, 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." *Fed. R. Civ. P. 56(c)*. The role of the trial court is to determine whether there are material factual issues that merit a trial. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986). In making that determination, the court must give the nonmoving party the benefit of all reasonable inferences that [*8] might be drawn from the underlying facts. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986); *Sempier v. Johnson and Higgins*, 45 F.3d 724, 727 (3d Cir. 1995) (en banc). Summary judgment is appropriate if the court finds that the record "could not lead a rational trier of fact to find for the nonmoving party, [and] there is no 'genuine issue for trial.'" *Matsushita*, 475 U.S. at 587.

B. Deprivation of Medical Treatment under 42 U.S.C. § 1983 and the Eighth Amendment

To state a claim under 42 U.S.C. § 1983 for deprivation of medical treatment in violation of the Eighth Amendment, plaintiff must show that the defendants acted with "deliberate indifference to [his] serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 104, 50 L. Ed. 2d 251, 97 S. Ct. 285 (1976). The Third Circuit has defined a serious medical need as: (1) "one that has been diagnosed by a physician as requiring

medical treatment;" (2) "one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention; [*9] " or (3) one for which "the denial of treatment would result in the unnecessary and wanton infliction of pain" or "a life-long handicap or permanent loss." *Atkinson v. Taylor*, 316 F.3d 257, 272-73 (3d Cir. 2003)(internal quotations and citations omitted).

1. *The conditions from which the plaintiff suffers, with the exception of malocclusion, constitute serious medical needs.*

With regards to his malocclusion, the plaintiff has failed to adduce any evidence demonstrating that this condition has been "diagnosed by a physician as requiring medical treatment." *See id.* Nor has the plaintiff produced any evidence that the dental pain he claims to suffer from is somehow caused by his malocclusion and, in turn, that the denial of treatment for this condition "would result in the unnecessary and wanton infliction of pain." *See id.* The plaintiff merely alleges that as a result of this condition, his "bite is off." Finally, a lay person would recognize malocclusion not as a condition for which medical attention is necessary, but as a cosmetic flaw in one's appearance. Accordingly, viewing all facts and drawing all inferences in plaintiff's favor, the court finds that [*10] malocclusion, in and of itself, does not constitute a serious medical need for the purposes of an Eighth Amendment claim under section 1983 for deprivation of medical treatment.

With regards to plaintiff's nearsightedness, dental pain, asthma and Hepatitis C, however, viewing all evidence and drawing all reasonable inferences in favor of the plaintiff and assuming for the purpose of this opinion that, under the above standards, these conditions constitute serious medical needs, the court must determine if genuine issues of material fact exist as to whether the defendants addressed these needs with deliberate indifference.

2. *The Defendants did not act with deliberate indifference to plaintiff's serious medical needs.*

To prove deliberate indifference, the plaintiff must establish that the defendants knew that he faced a "substantial risk of serious harm," but disregarded "that risk by failing to take reasonable measures to abate it." *Farmer v. Brennan*, 511 U.S. 825, 847, 128 L. Ed. 2d 811, 114 S. Ct. 1970 (1994); *see Singletary v. Pa. Dept. of Corrections*, 266 F.3d 186, 193 n.2 (3d Cir. 2001)

(stating that the general standard for a § 1983 deliberate [*11] indifference claim is set forth in *Farmer*). For the purpose of this opinion, the court will assume that the defendants knew of the "substantial risks of serious harm" posed to the plaintiff as a result of his serious medical needs. Accordingly, the court must determine, under these facts, viewed in the light most favorable to the plaintiff, whether a reasonable jury could find that the defendants failed to take reasonable measures to abate those risks.

a. *The defendants took reasonable measures to abate the risks posed to plaintiff as a result of his nearsightedness and dental pain.*

It is uncontested that plaintiff was provided with corrective lenses, i.e., glasses, to correct his nearsightedness. It is also uncontested that by wearing glasses, the plaintiff's nearsightedness is corrected. The plaintiff, however, has requested laser vision corrective surgery or corneal implants in order to correct his sight without wearing glasses. In *Farmer*, the Supreme Court instructed that a prison official may be found to have acted with deliberate indifference only when that official has failed to take "reasonable measures" to abate a "substantial risk of serious harm" to an inmate. [*12] *Farmer*, 511 U.S. at 847. The teaching of *Farmer* is that prison officials are not constitutionally required to take all possible measures, or even the most appropriate or best measure to avoid harm to inmates. Rather, as stated by the Second Circuit in *Harrison v. Barkley*, 219 F.3d 132, 138-140 (2d Cir. 2000), "a prisoner has no right to choose a specific form of medical treatment," so long as the treatment provided is reasonable. *Id.* at 140. The plaintiff has produced no evidence that would demonstrate that prison officials acted unreasonably by providing him with glasses, as opposed to ocular surgery, for the purpose of correcting his nearsightedness. Thus, under the facts before the court, even when viewed in the light most favorable to plaintiff, the court finds that no reasonable jury could find that the defendants failed to take reasonable measures to correct plaintiff's nearsightedness.

Likewise, it is also uncontested that the DOC provided plaintiff with numerous dental procedures, such as cavity filings and root canal, to alleviate plaintiff's dental pain. Moreover, plaintiff has offered no evidence that such treatment, [*13] as opposed to orthodontics, was an unreasonable response to plaintiff's condition.

Under the *Farmer* analysis, the court finds that no reasonable jury could find that the defendants acted unreasonably by not providing plaintiff with the requested orthodontics. Accordingly, summary judgement is appropriate with regards to plaintiff's claim that the defendants violated the *Eighth Amendment* by refusing to provide him with laser vision corrective surgery and orthodontics.

b. *The defendants did not fail to take reasonable measures to abate the risks posed to plaintiff as a result of his need for Hepatitis C treatment because the DOC policies relied upon by defendants in denying plaintiff's requests were reasonably related to legitimate penological interests.*

As previously noted, the plaintiff suffers from Hepatitis C and has requested that he be provided with the appropriate medical treatment. The defendants explain that they agreed to provide the requested treatment, but informed plaintiff that he would have to undergo a psychological evaluation and sign a consent form before treatment could begin. Plaintiff refused. Accordingly, defendants contend that, it is plaintiff who has [*14] delayed treatment by refusing to submit to the psychological evaluation, which includes completion of the BDI questionnaire, and by refusing to sign the consent form.

Defendants further explain that DOC policy requires that all treatment of Hepatitis C begin with a psychological evaluation of the patient.⁵ The purpose of this requirement is to enable medical personnel to determine if there is a risk that the patient will suffer certain psychological side effects from receiving Hepatitis C medication,⁶ and, in turn, to calibrate the course of treatment accordingly. The DOC further asserts that it cannot make an exception to this policy because the administration of Hepatitis C treatment without first conducting a psychological evaluation would put plaintiff and other inmates and staff at risk. Finally, concern for the integrity of a fair and uniform policy that applies to all inmates, given the reported outbreak of Hepatitis C among prison populations, is particularly relevant to this case.⁷

5 In support of this assertion, the defendants direct the court to the DOC Protocol for Hepatitis C ("Protocol"), which was provided to the court by plaintiff. See Plaintiff's Reply Brief for Motion for Temporary Restraining Order and/or

Preliminary Injunction, Exhibit 1 at 1 (doc no. 103). The Protocol is in the form of a flow chart. The sixth step of the protocol addresses various reasons why a patient is to be excluded from treatment. One of the reasons listed is "psychiatric." The protocol directs us to Attachment C. *See Id.* Attachment C is entitled "Exclusionary Criteria for Psychiatry." *See Id.* at 5. The document lists a number of psychiatric disorders that would serve as grounds for exclusion from treatment, of which depression is one, and directs that certain factors be considered in assessing whether the patient meets any of the exclusionary criteria.

Plaintiff correctly points out that neither the protocol nor the attachments thereto make any specific reference to the BDI questionnaire. However, Attachment C to the protocol clearly identifies certain psychological conditions which, if present, would serve to exclude certain patients from treatment. Brian Hyde, the Corrections Health Care Administrator at the State Correctional Institution at Greene, has stated, under penalty of perjury, that the BDI questionnaire is consistently relied upon to help determine whether a particular individual meets any of the exclusionary criteria. *See* Declaration of Brian Hyde, *attached to* Commonwealth Defendants' Supplemental Response in Opposition to Plaintiff's Motion for Temporary Restraining Order and/or Preliminary Injunction (doc. no. 100).

Plaintiff puts forth no evidence that the DOC's reliance on the BDI questionnaire is unreasonable and that, therefore, it should not be used for the purpose of determining whether an individual should be excluded from treatment.

[*15]

6 Specifically, defendants assert that the medication used to treat Hepatitis C can cause severe depression in certain individuals.

7 *See, e.g.,* Mark Fazlollah and Jennifer Lin, *Inmates Will Get Care for Hepatitis*, THE PHILADELPHIA INQUIRER, October 31, 2002; Fazlollah and Lin, *New Jersey Prisons Fail to Treat an Epidemic*, THE PHILADELPHIA INQUIRER, July 21, 2002.

Plaintiff, on the other hand, contends that the DOC's requirement that he complete the BDI questionnaire is unreasonable and unlawful because: 1) it requires plaintiff to involuntarily submit to unwanted mental health treatment and 2) it forces plaintiff to submit to unwanted treatment in order to receive required treatment. Plaintiff also contends that the DOC requirement that plaintiff sign a consent form before he can be treated for Hepatitis C is unreasonable and unlawful because: 1) plaintiff has a right to his medical privacy and 2) prison officials cannot refuse necessary medical treatment by first requiring plaintiff to sign a waiver.

Plaintiff is correct in his assertions that: (1) a prisoner "possesses a [*16] significant liberty interest in avoiding the unwanted administration of" mental health treatment, *Washington v. Harper*, 494 U.S. 210, 221-22, 108 L. Ed. 2d 178, 110 S. Ct. 1028 (1990), or, for that matter, any other type of medical treatment, *White v. Napoleon*, 897 F.2d 103, 113 (3d Cir. 1990); (2) an inmate cannot be forced to submit to unwanted medical treatment in order to receive required medical treatment, *Harrison v. Barkley*, 219 F.3d 132, 138-140 (2d Cir. 2000);⁸ and (3) prisoners have a constitutional right to privacy in their medical information, *Doe v. Delie*, 257 F.3d 309, 315-17 (3d Cir. 2001). These rights, however, are subject to clear limitations. *See Sutton v. Rasheed*, F.3d , 323 F.3d 236, 2003 U.S. App. LEXIS 4940, 2003 WL 1354099, *10 (3d Cir. 2003).

8 Plaintiff relies heavily on *Harrison* to support the proposition that he cannot be forced to submit to unwanted treatment in order to receive required treatment. Under the facts of this case, however, reliance on *Harrison* is misplaced. In *Harrison*, the plaintiff complained to prison medical officials that he suffered severe tooth pain as a result of a cavity. *Harrison*, 219 F.3d at 134. The plaintiff requested that the cavity be filled. *Id.* After examining the plaintiff, however, prison medical officials "refused to fill the cavity on the ground that [plaintiff] was also afflicted by an unrelated carious non-restorable tooth, and that prison regulations required the non-restorable tooth to be extracted before [plaintiff's] cavity could be filled." *Id.* Plaintiff, on the other hand, did not want the non-restorable tooth pulled, "because it was causing him no pain and because he considered that he had no teeth to spare." *Id.*

In this case, unlike in *Harrison*, where the medical procedures in question were two distinct and separate procedures and where there was no legitimate penological reason for requiring one procedure to be done before the other, the requirement that plaintiff submit to a psychological evaluation is part and parcel of the treatment that plaintiff is requesting. Absent evidence from the plaintiff that the treatment prescribed by the DOC protocol is either unreasonable or in error, the court will not second-guess the professional judgment of prison medical personnel. *See White*, 897 F.2d at 113.

[*17] As recently stated by the Third Circuit, "the constitutional rights that prisoners possess are more limited in scope than the constitutional rights held by individuals in society at large," and thus, "incarceration almost always results in a narrowing, not a broadening, of constitutional protections." *Id.* (internal quotations and citations omitted). Accordingly, "a prison may compel a prisoner to accept treatment when prison officials, in the exercise of professional judgment, deem it necessary to carry out valid medical or penological objectives." *White*, 897 F.2d at 113. Additionally, a prisoner's constitutional right to privacy, including the preservation of the confidentiality of medical information, "is subject to substantial restrictions and limitations in order for correctional officials to achieve legitimate correctional goals and maintain institutional security." *Delie*, 257 F.3d at 317. The proper inquiry is "whether the regulation [at issue] is reasonably related to legitimate penological interests." *Washington*, 494 U.S. at 223 (internal quotations omitted).

In answering this question, the Supreme Court has instructed [*18] that courts should weigh the following four factors, commonly referred to as the *Turner* factors, *see Turner v. Safley*, 482 U.S. 78, 89, 96 L. Ed. 2d 64, 107 S. Ct. 2254 (1987): 1) whether there is "a rational connection between the prison regulation and the legitimate governmental interest put forward to justify it," so that the policy is not rendered "arbitrary or irrational;" 2) "whether inmates retain alternative means of exercising the prescribed right;" 3) "the costs that accommodating the right would impose on other inmates, guards, and prison resources;" and 4) "whether there are alternatives to the regulation that fully accommodate the prisoner's rights at de minimis cost to valid penological interests." *Delie*, 257 F.3d at 317 (citing *Dehart v. Horn*,

227 F.3d 47, 51 (3d Cir. 2000) (en banc)).

i. *The requirement that plaintiff submit to a psychological evaluation as a precondition to receiving prescription drug treatment for Hepatitis C is reasonably related to a legitimate penological interest.*

With regards to the first *Turner* factor, defendants have offered evidence to support a medically legitimate justification [*19] for the policy, i.e., the need to enforce an appropriate medical protocol which protects inmates from the psychological side effects that can be caused by medical treatment of Hepatitis C. In turn, plaintiff presents no evidence to refute defendants' assertion that treatment for Hepatitis C can cause severe psychological side effects, and that therefore, a psychological evaluation is necessary to determine the best course of treatment for that individual.⁹ Additionally, plaintiff offers no reliable evidence that the requirement that he undergo a psychological evaluation prior to receiving drug treatment for Hepatitis C was imposed in an arbitrary or irrational manner. Accordingly, and in light of the deference that is to be given to the professional judgment of prison medical personnel, *see White*, 897 F.2d at 113, the court finds that the requirement that plaintiff undergo a psychological evaluation prior to receiving treatment for Hepatitis C, is reasonably related to a legitimate penological interest.

⁹ In fact, in an attachment to a letter to the court from plaintiff dated November 14, 2002, plaintiff provides evidence of the many serious potential side effects of Hepatitis C treatment. *See Hepatitis C Patient Handout* at 5-6, *attached to Plaintiff's letter to the court dated November 14, 2002.*

[*20] The second *Turner* factor, regarding alternative means that are available to the prisoner for exercising the constitutional right in question, i.e., the right to decline medical treatment, is not applicable to these facts.

Under the third *Turner* factor, the court finds that accommodating plaintiff would indeed impose significant costs on both, prison resources and the plaintiff. Plaintiff himself has provided the court with information concerning the severe psychological side effects that can result from medical treatment of Hepatitis C. *See Hepatitis C Patient Handout* at 5-6, *attached to plaintiff's letter to the court dated November 14, 2002* (describing psychological risks associated with treatment of Hepatitis

C). The purpose of the psychological evaluation is to help determine the likelihood that plaintiff may, in fact, develop one of these side effects. The actual risks to the inmate - depression, confusion, psychosis, aggression, etc. - and to other inmates and staff are not merely conjectural, but are indeed proximate and substantial. Should these side effects materialize, the correctional authorities would be forced to bear the cost of treating plaintiff not [*21] only for Hepatitis C, but also for the psychological side effects that may have been avoided through proper evaluation.

With regards to the fourth factor, the court concludes that there are no alternative courses of action that would fully accommodate the plaintiff's right to avoid unwanted medical treatment without substantially affecting the penological interests involved herein.

After giving due consideration to the *Turner* factors, the court concludes, as a matter of law, that the requirement that prisoners submit to a psychological evaluation before being treated for Hepatitis C is reasonably related to legitimate penological interests.

ii. *The requirement that plaintiff sign a consent form as a precondition to receiving prescription drug treatment for Hepatitis C is reasonably related to a legitimate penological interest.*

As previously noted, prisoners have a constitutional right to privacy in their medical information, which protects the prisoner's interest in keeping certain medical information confidential. *See Delie, 257 F.3d at 315-17*. As a corollary, however, the Third Circuit has cautioned that "a prisoner does not enjoy a right of privacy in [*22] his medical information to the same extent as a free citizen." *Id. at 317*. In short,

an inmate's constitutional right may be curtailed by a policy or regulation that is shown to be "reasonably related to legitimate penological interests." *Turner v. Safley, 482 U.S. 78, 89, 96 L. Ed. 2d 64, 107 S. Ct. 2254* [] (1987). Courts must respect the administrative concerns underlying a prison regulation, without requiring proof that the regulation is the least restrictive means of addressing those concerns.

Delie, 257 F.3d at 317.

In the instant action, defendants are attempting to limit plaintiff's right to privacy in his medical information by requiring plaintiff, as a precondition to receiving medical treatment, to consent to the disclosure of information obtained from plaintiff's psychological evaluation under three circumstances. First, defendants seek to require plaintiff to consent to disclosure of certain non-confidential information. Thus, the information for which plaintiff is required to consent to disclosure is, by definition, not confidential. Accordingly, such information could be disclosed by prison officials [*23] with or without plaintiff's consent and requiring plaintiff to consent to its disclosure can not be said to infringe upon his privacy.

Second, defendants seek to require plaintiff to consent to disclosure of his medical information if it is believed that plaintiff poses a threat to his own health and safety, the health and safety of others or the orderly operation of the prison facility. This requirement is specifically the type of institutional regulation contemplated and approved by the Third Circuit in *Delie* as a proper basis for infringing upon a prisoner's right to privacy in his medical information. *See Delie, 257 F.3d at 317* (an inmate's right to privacy "is subject to substantial restrictions and limitations in order for correctional officials to achieve legitimate correctional goals and maintain institutional security"). Accordingly, the court finds that requiring plaintiff to consent to disclosure of his medical information under these circumstances is reasonably related to a legitimate penological interest.

Finally, defendants seek to require plaintiff to consent to disclosure of his medical information, to the extent necessary, "to prepare reports [*24] or recommendations, or to make decisions, regarding any aspect of [plaintiff's] current or future custody, including, but not limited to, [plaintiff's] housing, work or program status, pre-release or parole." Under the relevant *Turner* factors, the court concludes that this requirement is reasonably related to legitimate penological interests for the reasons that follow.

First, in order for prison officials to provide safe and appropriate conditions of confinement, they have a legitimate need to gather and evaluate information that is relevant to an inmate's psychological condition. Based on the language of the form itself, it appears that this information plays an important role in designating the

type of confinement a particular prisoner requires and to ascertain the circumstances under which it would be safe to allow that prisoner to interact with other inmates and prison staff.

Second, given the substantial deference afforded to penological decisions made by prison personnel, *see White*, 897 F.2d at 113, and the limited circumstances under which courts may consider alternatives to prison regulations, *see Delie*, 257 F.3d at 317, the court [*25] will not second guess prison authorities and devise alternatives to the regulation at issue.¹⁰

10 The plaintiff has not proposed any alternatives either. Instead, plaintiff rests on the absolutist position that he can not be forced to consent to the disclosure of any medical or personal information under any circumstances.

Under these circumstances, the court concludes that no reasonable jury could find that the requirement that plaintiff sign the consent form is not reasonably related to a legitimate penological interest. Therefore, the court having found the DOC policy to be lawful under the Constitution, the court concludes, as a matter of law, that the defendants did not fail to take reasonable measures to abate the plaintiff's need for Hepatitis C treatment by requiring the plaintiff to abide by that policy. Accordingly, summary judgment is appropriate as to this claim.

*c. The defendants did not fail to take reasonable measures to abate the risks posed to plaintiff as a result of his asthma because [*26] the DOC policy relied on by defendants in prohibiting plaintiff from maintaining physical possession of his inhaler is reasonably related to a legitimate penological interest.*

Finally, the plaintiff alleges that the defendants acted with deliberate indifference to his serious medical needs, in violation of the *Eighth Amendment*, by prohibiting plaintiff from maintaining physical possession of his inhaler. As noted earlier in this opinion, the defendants' denial of plaintiff's request to possess his inhaler was based on a DOC policy which prohibited inmates confined to the RHU from self-medicating. Under the analysis set forth in *Turner*, the court finds, as a matter of law, that this policy is reasonably related to a legitimate penological interest.

With regards to the first *Turner* factor, defendants

have offered evidence of a legitimate justification for the policy, i.e., allowing inmates confined in the RHU to self-medicate poses legitimate threats to the health and safety of those inmates, as well as the safety of prison officials. Although a less restrictive policy, which would allow inmates confined to the RHU to possess certain medications, would probably serve the [*27] prison's objectives, the Third Circuit has clearly held that "courts must respect the administrative concerns underlying a prison regulation," and that therefore, the standard employed to review the constitutionality of such regulations does not require proof "that the regulation is the least restrictive means of addressing [the prison's] concerns." *Delie*, 257 F.3d at 317. Without evidence that such a policy is being implemented in an arbitrary or capricious manner, of which the plaintiff presents none, the court must conclude, as a matter of law, that the policy does not violate the Constitution.

The second *Turner* factor requires that alternative means be available to the prisoner to exercise the right in question. *See Turner*, 482 U.S. at 89. Here, the relevant right is plaintiff's right to adequate medical treatment. As previously noted, although RHU inmates are not permitted to possess inhalers, they are indeed provided to them as needed. Thus, the second *Turner* factor is also satisfied.

Although the third and fourth *Turner* factors appear to weigh in the plaintiff's favor, i.e., the costs of accommodating plaintiff's right would [*28] not be significant and there are alternatives to the regulation that would fully accommodate the prisoner's rights at de minimis cost, the court finds that the balance of all four factors supports a finding that the policy is reasonably related to a legitimate penological interest, especially when viewed in light of the deference to which prison officials are entitled when formulating prison policy.

Thus, the court finds, as a matter of law, that the defendants did not fail to take reasonable measure to abate the risks posed to plaintiff as a result of his asthma when they prohibited plaintiff from maintaining possession of his inhaler, but instead, provided plaintiff with his inhaler as needed. Accordingly, summary judgment is appropriate as to this claim.

III. CONCLUSION

For the reasons set forth above, the court finds that there are no genuine issues of material fact as to whether

the defendants acted with deliberate indifference to plaintiff's serious medical needs and that the defendants are entitled to judgment as a matter of law. Therefore, defendants' renewed motions for summary judgment will be granted.

An appropriate order follows.

ORDER

AND NOW, on this [*29] *3rd* day of **April, 2003**, upon consideration of all relevant pleadings, it is hereby **ORDERED** that the commonwealth defendants' renewed motion for summary judgment (doc. no. 111) and the non-commonwealth defendants' renewed motion for summary judgment (doc. no. 125) are **GRANTED**.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO J

JUDGMENT

AND NOW, on this *3rd* day of **April, 2003**, upon consideration of the order of the court dated April *3rd*, 2003, judgment is entered in favor of defendants and against the plaintiff.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO J