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**RONALD FRANCIS PUKSAR, Plaintiff, v. STANLEY HOFFMAN, M.D., et al.,
Defendants.**

CIVIL ACTION NO. 98-5832

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

2000 U.S. Dist. LEXIS 56

**January 7, 2000, Decided
January 7, 2000, Filed; January 10, 2000, Entered**

DISPOSITION: [*1] Defendants' Motion for Summary Judgment GRANTED.

COUNSEL: RONALD FRANCIS PUKSAR, PLAINTIFF, Pro se, GRATERFORD, PA.

For HOFFMAN, DR., DEFENDANT: ALAN S. GOLD, SEAN ROBINS, MONAGHAN & GOLD, P.C., ELKINS PARK, PA USA.

For OMAR, DR., DEFENDANT: SEAN ROBINS, MONAGHAN & GOLD, P.C., ELKINS PARK, PA USA.

JUDGES: ROBERT F. KELLY, J.

OPINION BY: ROBERT F. KELLY

OPINION

MEMORANDUM

R.F. KELLY, J.

JANUARY 7, 2000

Before this Court is a motion for summary judgment filed by Defendants Stanley Hoffman, M.D. ("Hoffman"), and Kenan Umar, M.D. ("Umar"), physicians employed by Correctional Physicians Services, Inc. ("CPS"), a private corporation under contract with the Commonwealth of Pennsylvania to provide medical services to inmates at SCI-Graterford. Plaintiff Ronald Francis Pukсар ("Pukсар") alleges that Defendants

provided him with inadequate medical care while he served time as an inmate at SCI-Graterford in violation of 42 U.S.C. § 1983. For the following reasons, Defendants' Motion for Summary Judgment will be granted.

STANDARD OF REVIEW

"Summary judgment is appropriate when, after considering the evidence in the light most favorable to the nonmoving [*2] party, no genuine issue of material fact remains in dispute and 'the moving party is entitled to judgment as a matter of law.'" *Hines v. Consolidated Rail Corp.*, 926 F.2d 262, 267 (3d Cir. 1991) (citations omitted). "The inquiry is whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one sided that one party must, as a matter of law, prevail over the other." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986). The moving party carries the initial burden of demonstrating the absence of any genuine issues of material fact. *Big Apple BMW, Inc. v. BMW of North America, Inc.*, 974 F.2d 1358, 1362 (3d Cir. 1992), cert. denied, 507 U.S. 912, 122 L. Ed. 2d 659, 113 S. Ct. 1262 (1993). Once the moving party has produced evidence in support of summary judgment, the nonmovant must go beyond the allegations set forth in its pleadings and counter with evidence that demonstrates there is a genuine issue of fact for trial. 974 F.2d at 1362-63. Summary judgment must be granted "against a party who fails to make a showing sufficient [*3] 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." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986).

DISCUSSION

Puksar's Complaint stems from his allegations that Defendants have adopted a policy of no longer issuing or renewing "nonformulary medicines," which he defines as requiring special dispensation from treating physicians by prescription. (Def.'s Ex. D, Deposition of Ronald Francis Puksar, dated 5/25/99 ("Puksar Dep."), at 32). In his deposition, however, Puksar does not dispute that his prescriptions are being renewed, but merely complains that he must submit paperwork and make sure it is timely processed so that he receives the renewed medications before his existing supply runs out. *Id.* As demonstrated below, such allegations, even if proven true, cannot result in the liability of Defendants under § 1983 for inadequate medical care.

"The *Eighth Amendment* provides a constitutional basis for a § 1983 claim by prisoners alleging inadequate medical care." *Maldonado v. Terhune*, 28 F. Supp. 2d 284, 289 (D.N.J. 1998). [*4] Failure to provide medical care, however, must be evidenced by acts or omissions sufficiently harmful to show deliberate indifference to that person's serious medical needs in order to rise to the level of a constitutional violation. *Groman v. Township of Manalapan*, 47 F.3d 628, 636-37 (3d Cir. 1995). "Deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain.'" *Estelle v. Gamble*, 429 U.S. 97, 104, 50 L. Ed. 2d 251, 97 S. Ct. 285 (1976).

For the deliberate indifference standard to be met, a two-pronged test requires (1) deliberate indifference on the part of prison officials,¹ and (2) that the prisoner's medical needs be serious.² *Inmates of Allegheny County Jail v. Pierce*, 612 F.2d 754, 762 (3d Cir. 1979). "A mere disagreement with the form of treatment does not rise to a constitutional violation. Moreover, medical malpractice, even if it did occur, does not become a constitutional claim merely because the victim is a prisoner." *Maldonado*, 28 F. Supp. 2d at 289 (citing *Estelle*, 429 U.S. at 106-07).

1 The Supreme Court has held that a finding of deliberate indifference on the part of a prison official requires a showing that "the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm

exists, and he must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837, 128 L. Ed. 2d 811, 114 S. Ct. 1970 (1994).

[*5]

2 A serious medical need is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." *Monmouth County Correctional Inst. Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir. 1987) (citation omitted), cert. denied, 486 U.S. 1006, 100 L. Ed. 2d 195, 108 S. Ct. 1731 (1988). In addition, where denial or delay of medical treatment causes an inmate to suffer unnecessary and wanton infliction of pain, a life-long handicap, or permanent loss, the medical need is considered serious. *Id.* (citations and quotations omitted). Factors that should be considered by a court in applying this test include the severity of the medical problems, the potential for harm if the medical care is denied or delayed and whether any such harm actually resulted from the lack of medical attention. *Maldonado*, 28 F. Supp. 2d at 289.

In the instant action, Puksar contends that he was denied certain prescription medications for various medical conditions. First, Puksar [*6] complains of not receiving Blephamide eye drops and medicine for a lesion on the back of his right ear. In addition, Puksar contends that his requests for Micatin cream and Triaminolone cream for a skin irritation around his groin area, as well as Prilosec for Gastroesophageal Reflux Disease ("GERD"), have been ignored. Puksar also uses baby wipes instead of toilet paper to take care of his bowel movements due to a medical condition called pruritus, but claims that the wipes were withheld for two or three weeks. (Puksar Dep. at 38-39). Finally, Puksar has a foot condition in which excess skin builds up on the bottom of his feet, requiring application of Sal-Tar ointment and Diprolene gel, two other medications that he was allegedly denied.

Puksar claims that he went without Prilosec for three or four months, but acknowledges that he was offered a substitute medication. (Puksar Dep. at 33). Indeed, the medical records indicate that Dr. Hoffman recommended that Puksar receive Prilosec and alternate it with equivalent medications, such as Tagamet and Gavescon, in accordance with the guidelines of the manufacturer of

Prilosec that appear in the Physicians' Desk Reference.³ (Def.'s [*7] Ex. E, Progress Notes dated 10/28/98).

3 Puksar's complaint about Dr. Umar is simply that he is Dr. Hoffman's boss, who allegedly issued orders to Hoffman that nonformulary medicines, like Prilosec, will not be issued. (Puksar Dep. at 43). It is worth noting, however, that there is no respondeat superior liability under § 1983. *Durmer v. O'Carroll*, 991 F.2d 64, 69 n.14 (3d Cir. 1993).

While Puksar argues that Prilosec was more effective in treating his symptoms, the fact that Puksar received a medication other than Prilosec, which he considered to be less effective, does not amount to a constitutional violation. *See Coleman v. Frame*, 843 F. Supp. 993, 994 (E.D. Pa. 1994) ("Plaintiff may not demand a particular type of treatment as long as some treatment is provided."); *Dike v. Meisel*, 1998 U.S. Dist. LEXIS 3367, No. CIV. A. 97-2620, 1998 WL 126942, *2 (E.D. Pa. March 13, 1998) (same); *see also Pierce*, 612 F.2d at 762 ("Courts will 'disavow any attempt to second-guess [*8] the propriety or adequacy of a particular course of treatment . . . [which] remains a question of sound professional judgment."); *Henderson v. Umar*, 1989 U.S. Dist. LEXIS 7083, CIV. A. No. 88-6915, 1989 WL 71285, *2 (E.D. Pa. June 26, 1989) ("[A] difference of medical opinion as to the best treatment for a particular condition falls short of the standard.").

Puksar also alleges that for several weeks to a month he was denied use of Micatin cream for application to his groin area, during which time an infection in said area became more severe, causing pain and discomfort. (Puksar Dep. at 26). Likewise, Puksar contends that he was denied Blephamide eye drops for approximately one month for conjunctivitis which resulted in the build up of an infection.⁴ (Puksar Dep. at 20-22). During this same time period, Puksar states that the baby wipes he used for his pruritus condition were withheld. (Puksar Dep. at 38-39).

4 In his deposition, Puksar names Dr. Emre Beken, rather than Defendants, as the physician who denied him the eye drops. (Puksar Dep. at 10-12, 21-23).

[*9] However, such allegations, even if proven true, cannot show that Puksar suffered the type of serious injury required to support his constitutional claim. *See*,

e.g., *Palladino v. Wackenhut Corrections*, 1998 U.S. Dist. LEXIS 19173, No. CIV. A. 97-2401, 1998 WL 855489, *4 (E.D. Pa. Dec. 10, 1998) (plaintiff claiming inadequate treatment of inactive tuberculosis could not show that he suffered serious injury to support *Eighth Amendment* claim); *Brown v. Wigin*, 1995 U.S. Dist. LEXIS 8703, No. 94-2240, 1995 WL 376482, *4 (E.D. Pa. June 23, 1995) ("The medical deprivation alleged must be, objectively, sufficiently serious."); *Henderson*, 1989 WL 71285 at *4 ("Even accepting Henderson's claims that his prescription needs adjustment and his contact lens has some surface calcium accumulation, neither problem amounts to a serious medical need as a matter of law."). Moreover, the delays claimed by Plaintiff are, at most, evidence of negligence, which does not constitute deliberate indifference to Plaintiff's medical needs. *Bonilla v. Malebrance*, 1997 U.S. Dist. LEXIS 19545, No. CIV. A. 96-501, 1997 WL 793583, *3 (E.D. Pa. Dec. 9, 1997) (simple medical malpractice is insufficient to present a constitutional [*10] violation). In this regard, the record indicates that Plaintiff's ailments are being controlled with the medications, which Puksar admits he is now receiving. (Puksar Dep. at 32, 34, 39).

As for Puksar's allegations regarding the lack of medical treatment for a lesion on the back of his right ear and the withholding of prescription ointment and gel for his foot condition, Puksar fails to indicate any part that the Defendants played in his medical care for those ailments.⁵ Indeed, the record shows, and Plaintiff does not dispute, that Puksar was seen by Dr. Emre Beken, not Hoffman or Umar, for the ear and foot conditions.⁶ (Puksar Dep. at 14-16, 39-40). Because there is no evidence that Defendants had any effect on the medical treatment of Puksar's ear or feet back in March of 1998, Defendants are entitled to summary judgment. *See Teague v. S.C.I. Mahanoy Med. Dep't*, 1999 U.S. Dist. LEXIS 3606, No. 97-2589, 1999 WL 167727, *2 (E.D. Pa. March 24, 1999) ("Defendants Cerullo and Dragovich did not participate in Teague's medical treatment and lacked the requisite involvement to subject them to liability under *Section 1983*."); *James v. Oyefule*, 1992 U.S. Dist. LEXIS 7422, Civ. A. No. 91-2029, 1992 WL 121618, [*11] *3 (supervisory personnel are only liable for § 1983 violations of their subordinates if they personally participated in the medical mistreatment).

5 According to Puksar, the problem with his ear persisted for "about four or five months" until it eventually cleared up. (Puksar Dep. at 16).

6 Notably, Puksar's medical records show that an ointment was prescribed by Dr. Beken for a skin lesion behind Puksar's ear as well as Sal-Tar and Diprolene for his feet. (Def.'s Ex. E., Physician's Orders, entry dates 3/16/98 through 9/3/98).

Based on the above, Defendants' Motion for Summary Judgment is granted. An order follows.

ORDER

AND NOW, this 7th day of January, 2000, upon consideration of Defendants' Motion for Summary Judgment, and all responses thereto, it is hereby ORDERED that Defendants' Motion is GRANTED.

BY THE COURT:

ROBERT F. KELLY, J.