

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

PURCELL BRONSON : CIVIL ACTION
V. : NO. 3:05-CV-0514
MARTIN LASKY, M.D., WILLIAM YOUNG, :
M.D., P.A. NEWFIELD, ET AL.

ORDER

IT IS THIS _____ day of _____, 2007, hereby ORDERED that the Motion for Summary Judgment of Defendants, Martin Lasky, M.D., William Young, M.D. and P.A. Newfield, is GRANTED. The Amended Complaint of Plaintiff, Purcell Bronson, as to defendants, Lasky, Young and Newfield, is DISMISSED with prejudice.

BY THE COURT:

J.

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MARTIN LASKY, M.D., WILLIAM YOUNG, :
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**MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS,
MARTIN LASKY, M.D., WILLIAM YOUNG, M.D. AND P.A. NEWFIELD**

Moving defendants, Martin Lasky, M.D., William Young, M.D. and P.A. Newfield, by and through their attorneys, Gold & Robins, P.C., hereby move before this Honorable Court for the entry of Summary Judgment in their favor, and against the Plaintiff, Purcell Bronson (“Bronson”), and in support whereof, state as follows:

1. Plaintiff, Bronson, initiated this action pursuant to 42 U.S.C. §1983 on or about March 14, 2005, with the filing of a Complaint, in which he alleges *inter alia* that moving defendants acted with deliberate indifference to his serious medical needs.

2. On or about May 2, 2005, Plaintiff, Bronson, filed an Amended Complaint, a true and correct copy of which is attached hereto as Ex. “A”.

3. Bronson is an inmate of the Pennsylvania Department of Corrections, and is and has been at all times relevant to this action, incarcerated at the State Correctional Institution at Camp Hill, Pennsylvania. (“SCI-Camp Hill”).

4. Bronson alleges in his Amended Complaint that, starting in October, 2004, he told the “defendants” that he was having “difficulty with throat pain/swallowing, and painful lymph nodes in his neck.” (Ex. “A”, at ¶1) Bronson asserts that the “defendants” “made perfunctory examinations” of his throat, and told him that there was nothing wrong when, according to Bronson, there was. (*Id.*)

5. Bronson further claims that the “defendants” acted with the “intent to inflict retaliatory pain” (although he failed to state any basis for this speculation), and to “hide the fact

that something was wrong” with him, in order to save the prison money. (Ex. “A”, at ¶2) Bronson claims that “defendants” did this by failing to prescribe medication and/or diagnostic testing which his alleged symptoms required. (Id.) Bronson further asserts that defendants, Young and Lasky’s “refusals” to comply with his demands for particular medication and testing constituted deliberate indifference. (Id.)

6. According to Bronson, he has “displayed the classic symptoms of laryngeal cancer,” which Bronson claims consist of “hoarseness/cough, difficulty swallowing, pain in the ears, blood in the sinuses, chronic block sinuses, and blood in spit.” (Ex. “A”, at ¶3)

7. During a February, 2005 dental examination, alleged Bronson, the dentist prescribed penicillin for a gum infection, and that he told him to sign up for sick call for “further evaluation.” (Ex. “A”, at ¶4) At sick call, Bronson alleges, he requested to be referred to an ENT specialist, and that Newfield failed to grant his request. (Ex. “A”, at ¶5) Bronson claims that his “condition is chronic and unresponsive to antibiotics.” (Ex. “A”, at ¶6)

8. Bronson further alleges that defendants Young, Lasky and Newfield “acted in an ongoing retaliatory fashion” by refusing to accede to Bronson’s continuing demands that he be provided with a particular medication of his own choosing, Prednisone, for treatment of pain from arthritis. (Ex. “A”, at ¶8) Bronson does not claim that the defendants have failed to provide treatment for his pain, but rather, that they have failed to provide him with the medication of his choice, Prednisone. (Ex. “A”, at ¶9)

9. Bronson further alleges that he suffers from “a tear in the right knee ligament/tendon,” and was supposed to be seen by an orthopaedist in January, 2005, for surgical evaluation. (Ex. “A”, at ¶10) Bronson asserts that he was not seen at that time, for unknown reasons, but that he was seen in March, 2005, and injected with Cortisone in his knee. (Id.) Bronson claims that at this March visit, the orthopaedic physician refused to address Bronson’s arthritis pain because Newfield did not list that request on the consultation form. (Id.)

10. Bronson alleges that on February 28, 2005, at sick call, he told Newfield that his

skin was “inflamed” from the “mental distress” Bronson claims he was undergoing. (Ex. “A”, at ¶11) Bronson claims that Newfield stated that she could not treat him at that time because she could not find his medical records, and that she would return, but that she never did. (Id.) Bronson claims that on three following dates he signed up for sick call, but that Newfield did not come to see him. (Ex. “A”, at ¶12)

11. Bronson claims that Newfield told him on March 11, 2005, that he was scheduled for a complete physical, and that “blood test would show-up any white cell abnormalities indicative of cancer,...” (Ex. “A”, at ¶15) Bronson claims he received the physical examination, but not the blood test. (Id.)

12. Bronson further asserts that on March 24, 2005, Newfield saw him at sick call and allegedly told him that he “had to take a blood test first before she would allow plaintiff to see a doctor,” but that he never received the blood test. (Ex. “A”. at ¶16) Bronson claims at that visit he asserted that he was suffering the symptoms of an aneurysm. (Id.)

13. On April 5, 2005, Bronson alleges, Newfield examined him, and told him that he had “some problems” but that it was “not major,” although she did not prescribe medication for the ringing in his ears. (Ex. “A”, at ¶18) Bronson alleges that Newfield refused to renew his prescription for Elavil in the manner that Bronson requested “because plaintiff asked for his morning dose to be increased.” (Ex. “A”, at ¶19) According to Bronson, “if she renewed the medication she would not increase it.” (Id.) According to Bronson, if he wanted his medication to be increased, he had to see the physician who would make the decision. (Id.)

14. Bronson also alleges that Newfield has charged him for chronic care medications as a form of retaliation for his having sought medical attention. (Ex. “A”, at ¶23)

15. Bronson alleges that moving defendant, Dr. Lasky, acted with deliberate indifference on February 4 and 10, 2005, and March 27, 2005, “when he ignored plaintiff complaints surrounding the refusal of defendants, Young, Newfield and Lasky, to provide adequate medical treatment. (Ex. “A”, at ¶24) Bronson provides no details as to what treatment

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DATE: May 30, 2007

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V. : NO. 3:05-CV-0514
MARTIN LASKY, M.D., WILLIAM YOUNG, :
M.D., P.A. NEWFIELD, ET AL.

**BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS,
MARTIN LASKY, M.D., WILLIAM YOUNG, M.D. AND P.A. NEWFIELD**

I. PROCEDURAL HISTORY

Plaintiff, Bronson, initiated this action pursuant to 42 U.S.C. §1983 on or about March 14, 2005, with the filing of a Complaint, in which he alleges *inter alia* that moving defendants acted with deliberate indifference to his serious medical needs.

On or about May 2, 2005, Plaintiff, Bronson, filed an Amended Complaint, a true and correct copy of which is attached hereto as Ex. “A”.

Bronson alleges in his Amended Complaint that, starting in October, 2004, he told the “defendants” that he was having “difficulty with throat pain/swallowing, and painful lymph nodes in his neck.” (Ex. “A”, at ¶1) Bronson asserts that the “defendants” “made perfunctory examinations” of his throat, and told him that there was nothing wrong when, according to Bronson, there was. (*Id.*)

Bronson further claims that the “defendants” acted with the “intent to inflict retaliatory pain” (although he failed to state any basis for this speculation), and to “hide the fact that something was wrong” with him, in order to save the prison money. (Ex. “A”, at ¶2) Bronson claims that “defendants” did this by failing to prescribe medication and/or diagnostic testing which his alleged symptoms required. (*Id.*) Bronson further asserts that defendants, Young and Lasky’s “refusals” to comply with his demands for particular medication and testing constituted deliberate indifference. (*Id.*)

According to Bronson, he has “displayed the classic symptoms of laryngeal cancer,”

which Bronson claims consist of “hoarseness/cough, difficulty swallowing, pain in the ears, blood in the sinuses, chronic block sinuses, and blood in spit.” (Ex. “A”, at ¶3)

During a February, 2005 dental examination, alleged Bronson, the dentist prescribed penicillin for a gum infection, and that he told him to sign up for sick call for “further evaluation.” (Ex. “A”, at ¶4) At sick call, Bronson alleges, he requested to be referred to an ENT specialist, and that Newfield failed to grant his request. (Ex. “A”, at ¶5) Bronson claims that his “condition is chronic and unresponsive to antibiotics.” (Ex. “A”, at ¶6)

Bronson further alleges that defendants Young, Lasky and Newfield “acted in an ongoing retaliatory fashion” by refusing to accede to Bronson’s continuing demands that he be provided with a particular medication of his own choosing, Prednisone, for treatment of pain from arthritis. (Ex. “A”, at ¶8) Bronson does not claim that the defendants have failed to provide treatment for his pain, but rather, that they have failed to provide him with the medication of his choice, Prednisone. (Ex. “A”, at ¶9)

Bronson further alleges that he suffers from “a tear in the right knee ligament/tendon,” and was supposed to be seen by an orthopaedist in January, 2005, for surgical evaluation. (Ex. “A”, at ¶10) Bronson asserts that he was not seen at that time, for unknown reasons, but that he was seen in March, 2005, and injected with Cortisone in his knee. (Id.) Bronson claims that at this March visit, the orthopaedic physician refused to address Bronson’s arthritis pain because Newfield did not list that request on the consultation form. (Id.)

Bronson alleges that on February 28, 2005, at sick call, he told Newfield that his skin was “inflamed” from the “mental distress” Bronson claims he was undergoing. (Ex. “A”, at ¶11) Bronson claims that Newfield stated that she could not treat him at that time because she could not find his medical records, and that she would return, but that she never did. (Id.) Bronson claims that on three following dates he signed up for sick call, but that Newfield did not come to see him. (Ex. “A”, at ¶12)

Bronson claims that Newfield told him on March 11, 2005, that he was scheduled for a complete physical, and that “blood test would show-up any white cell abnormalities indicative of

cancer,..." (Ex. "A", at ¶15) Bronson claims he received the physical examination, but not the blood test. (Id.)

Bronson further asserts that on March 24, 2005, Newfield saw him at sick call and allegedly told him that he "had to take a blood test first before she would allow plaintiff to see a doctor," but that he never received the blood test. (Ex. "A". at ¶16) Bronson claims at that visit he asserted that he was suffering the symptoms of an aneurysm. (Id.)

On April 5, 2005, Bronson alleges, Newfield examined him, and told him that he had "some problems" but that it was "not major," although she did not prescribe medication for the ringing in his ears. (Ex. "A", at ¶18) Bronson alleges that Newfield refused to renew his prescription for Elavil in the manner that Bronson requested "because plaintiff asked for his morning dose to be increased." (Ex. "A", at ¶19) According to Bronson, "if she renewed the medication she would not increase it." (Id.) According to Bronson, if he wanted his medication to be increased, he had to see the physician who would make the decision. (Id.)

Bronson also alleges that Newfield has charged him for chronic care medications as a form of retaliation for his having sought medical attention. (Ex. "A", at ¶23)

Bronson alleges that moving defendant, Dr. Lasky, acted with deliberate indifference on February 4 and 10, 2005, and March 27, 2005, "when he ignored plaintiff complaints surrounding the refusal of defendants, Young, Newfield and Lasky, to provide adequate medical treatment. (Ex. "A", at ¶24) Bronson provides no details as to what treatment Lasky allegedly "ignored," or what medical treatment of Young, Newfield and Lasky is alleged to have been inadequate.

Finally, Bronson alleges that moving defendants, Young, Newfield and Lasky, acted in retaliation for Bronson's having previously filed law suits against them. (Ex. "A", at ¶27)

II. STATEMENT OF FACTS

See moving defendants' Statement of Uncontested Facts (referred to herein as "SUF"), filed contemporaneously with this Brief, which is incorporated by reference as if set forth fully herein at length.

III. STATEMENT OF THE ISSUES PRESENTED

(1) Whether Plaintiff, Purcell Bronson, has failed to demonstrate that moving defendants, Lasky, Young and Newfield, acted with the subjective knowledge that their alleged actions or failures to act presented a substantial risk of harm to Bronson, as required for a claim of deliberate indifference under 42 U.S.C. §1983. **Suggested Answer: No.**

(2) Whether Bronson has failed to demonstrate the existence of a serious medical need as to which moving defendants are alleged to have been deliberately indifferent, as required for a claim of deliberate indifference under 42 U.S.C. §1983. **Suggested Answer: Yes.**

(3) Whether Bronson has failed to exhaust the available administrative remedies, under Pennsylvania D.O.C. policy DC-ADM804, as required by the Prison Litigation Reform Act, 42 U.S.C. §1997e(a), for claims filed under 42 U.S.C. §1983. **Suggested Answer: Yes.**

IV. ARGUMENT

A. STANDARD ON SUMMARY JUDGMENT

In 1986 the Supreme Court of the United States radically changed the standard for summary judgment and in effect issued a directive to district courts to be more assertive in using this procedural tool to eliminate cases prior to trial. As the Supreme Court indicated in Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574 (1986) once the party seeking summary judgment has pointed out to the court the absence of a fact issue:

...its opponent must do more than simply show that there is a metaphysical doubt as to the material facts...In the language of the Rule, the non-moving party must come forward with 'specific facts showing that there is a genuine issue for trial'...where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial'. 475 U.S. at 586-87.

Summary judgment must be granted unless the evidence construed in favor of the non-moving party is sufficient for a reasonable jury to return a verdict for that party. Anderson v. Liberty Lobby, Inc., 477 U.S. 243, 249-50 (1986). Granting summary judgment is appropriate against "a party who fails to make a showing sufficient to establish the existence of an element

essential to that party's case, and on which that party will bear the burden of proof at trial."

Celotex Corp. v. Catrett, 106 S. Ct. at 2553.

The United States Court of Appeals for the Third Circuit in Williams v. Borough of West Chester, Pa., 891 F.2d 458 (3d Cir. 1989) recognized this drastic change in the standard for summary judgment when it stated:

Since the Supreme Court decided its summary judgment trilogy, appellate courts have increasingly been called upon to engage in difficult line-drawing exercises to determine whether a non-moving party has adduced sufficient evidence to defeat a motion for summary judgment. (Id. at 459)

The Court in that case was faced with a situation where the plaintiff had established a dispute as to a genuine issue of material fact. The Court of Appeals upheld the district court's granting of summary judgment for the defendants. The Court stated that although a dispute had been established plaintiff had failed to show that he could produce sufficient evidence to support a jury verdict in his favor. In that case the plaintiff claimed that the decedent had committed suicide while in the custody of the West Chester police. The decedent had previously been in the custody of the West Chester police on prior occasions. A police sergeant of the West Chester police testified at his deposition that the decedent's suicidal tendencies were widely known at the West Chester police department. The specific defendants who were charged with not taking appropriate precautions to prevent decedent's suicide denied knowing of the tendencies. No direct evidence was established that they did know of his suicidal tendencies. The defendant officers had served on a squad that had recorded the bizarre behavior of the decedent. The Court indicated that the question was whether given the propensity of human beings to talk about bizarre behavior, a reasonable jury could find that the defendant officers knew about decedent's suicidal tendencies and whether the jury could find that they acted with deliberate indifference to the decedent's psychological condition by not following the West Chester's police's normal policy regarding belt removal.

The United States Court of Appeals for the Third Circuit held that although the case was extremely close it had to conclude that no reasonable jury could so find. The court indicated that

circumstantial evidence could not support the plaintiff's case concerning a constitutional violation. The court concluded:

Although the line we draw today is, as I have said, not easy to place, the line must be drawn somewhere, and somewhere that adequately protects the salutary policies underlying Rule 56. Of course the right to present one's claims to a jury provides competing, no less important policies to be considered, but the upshot of the Supreme Court's summary judgment trilogy is the former must not be sacrificed entirely to the latter. The old scintilla rule, although it would make cases like this one far easier to decide, did just that. I concede, as I must, that plaintiffs have adduced some circumstantial evidence tending to show deliberate indifference. However, because the line we must draw depends entirely on context and differences in degree, 'some evidence is not necessarily enough to survive summary judgment.

Id. at 891 F.2d at 466 (Emphasis added).

Plaintiff, Bronson, has failed to meet this burden. He has failed to submit evidence sufficient to support a jury verdict in his favor as to his claims against moving defendants, and for the reasons discussed following, Plaintiff's claims against moving defendants should be dismissed with prejudice.

B. PLAINTIFF, BRONSON, HAS FAILED TO DEMONSTRATE THE MOVING DEFENDANTS, LASKY, YOUNG AND NEWFIELD, HAD SUBJECTIVE KNOWLEDGE THAT THEIR ALLEGED ACTIONS OR FAILURE TO ACT PRESENTED A SUBSTANTIAL RISK OF HARM TO BRONSON, AS REQUIRED PURSUANT TO 42 U.S.C. §1983, AND THEREFORE, HIS CLAIMS AS AGAINST MOVING DEFENDANTS SHOULD BE DISMISSED WITH PREJUDICE

To defeat moving defendants' Motion for Summary Judgment, Bronson must demonstrate that he has sufficient evidence to support a jury verdict in his favor on both the objective and subjective prongs of the deliberate indifference standard. That is, Bronson must be able to demonstrate both that the actions or omissions of moving defendants in responding to his medical conditions were objectively deliberately indifference to a serious medical need, and that they had actual knowledge that their alleged actions or omissions presented a substantial risk of harm to him. Bronson must make this showing in order to establish deliberate indifference to a serious medical need. The undisputed evidence in this matter, demonstrates that Bronson has

failed to do so.

The United States Supreme Court in Estelle v. Gamble, 429 U.S. 97 (1976) has set forth the elements of a cause of action brought by a prisoner pursuant to 42 U.S.C. §1983 raising allegations of the infliction of cruel and unusual punishment based on medical care. In upholding summary judgment in favor of the defendant/doctor in that case the Supreme Court stated:

It suffices to note that the primary concern of the drafters was to prescribe 'tortures' and other 'barbarous methods of punishment'... it is safe to affirm that punishments of tortures...and all others in the same line of unnecessary cruelty, are forbidden by that amendment...We therefore conclude that deliberate indifference to the serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain'. (citations omitted.)

Id. at 102-104.

Examples of the "unnecessary and wanton infliction of pain", which constitute deliberate indifference provided by the Supreme Court consists of the following:

...doctors choosing the easier and less efficacious treatment of throwing away the prisoner's ear and stitching the stump may be attributable to deliberate indifference... rather than an exercise of professional judgment...injection of penicillin with knowledge that prisoner was allergic, and refusal of doctor to treat allergic reaction ...prison physician refuses to administer the prescribed pain killer and renders leg surgery unsuccessful by requiring prisoner to stand despite contrary instructions of surgeon. (citations omitted.)

Id. at 104 f.n. 10.

In Estelle v. Gamble, supra, the United States Supreme Court rejected a Constitutional claim based on medical malpractice, stating:

Similarly, in the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute an 'unnecessary and wanton infliction of pain' or to be 'repugnant to the conscience of mankind'. Thus a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend 'evolving standards of decency' in violation of the Eighth Amendment. Id. at 106.

The United States Supreme Court has also defined the deliberate indifferent standard in its opinion in Farmer v. Brennan, supra, 114 S.Ct. 1970 (1994). According to the Supreme Court, deliberate indifference now requires a showing that prison medical staff were "subjectively" aware of a substantial risk of harm to the prisoner. Justice Souter, writing for the Court, stated:

We reject [the] invitation to adopt an objective test for deliberate indifference. We hold...that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety...The official must be both aware of facts from which the inference can be drawn that a substantial risk of serious harm exists, and he must also draw the inference. ... [A]n official's failure to alleviate a significant risk that he should have perceived but did not...cannot under our cases be condemned as the infliction of punishment.

Id. at 114 S.Ct. at 1979. (Emphasis added).

Thus, under Farmer, supra, 114 S.Ct. at 1979, Bronson must show that moving defendants, Lasky, Young and Newfield, knew that their alleged actions would cause serious harm to him, and that they proceeded nonetheless.

An examination of the record in this matter establishes that Bronson has failed to produce sufficient evidence to support a jury verdict as to both the objective and subjective prongs of deliberate indifference.

As an objective matter, the evidence in this matter fails to support the conclusion that moving defendants acted with deliberate indifference. The medical records pertaining to the time period at issue in this matter amply demonstrate that Bronson received medical care at treatment on a continuous and consistent basis, for a variety of complaints which he presented to the medical department.

Bronson does not dispute that he, in fact, received medical care from moving defendants. Throughout the applicable time period, October 2004 through May 2005, the record, and Bronson's own testimony, demonstrates that he received constant and frequent medical care, treatment, and medication for his various medical complaints. Bronson, however, contends that the medical care provided to him was inadequate, insufficient and/or the wrong type of treatment

for his conditions. In short, Bronson *disagrees* with the decisions made by moving defendants as to the appropriate choice of medical treatment.

Disagreements with medical care fail to constitute deliberate indifference as a matter of law. In Smith v. Marcantonio, 910 F.2d 500 (8th Cir. 1990) plaintiff, an inmate, alleged that prison officials violated his constitutional rights by engaging in conduct deliberately indifferent to his serious medical needs in violation of the Eighth Amendment of the United States Constitution.

The United States Court of Appeals for the Eighth Circuit held that the plaintiff had failed to state a cause of action:

Because Smith's complaints represent nothing more than mere disagreement with the course of his medical treatment, he has failed to state an eighth amendment claim of deliberate indifference. Id. at 910 F.2d at 502.

The same analysis applies to the claims of Bronson.

In Sult v. Prison Health Services Polk County Jail, 806 F.Supp. 251 (M.D. Fla. 1992) the United States District Court for the Middle District of Florida found that a complaint similar to the one presented by Prince failed to state a cause of action pursuant to 42 U.S.C. §1983. In Sult, supra, the plaintiff, a prisoner, contended that the defendant engaged in conduct that constituted deliberate indifference to his medical needs. The prisoner based his contention on the failure of the defendants to conduct an MRI examination or refer him to a specialist for further evaluation of his back pain. The court held:

Whether diagnostic techniques or particular forms of treatment are indicated is a matter for medical judgment. A medical decision not to order such measures does not represent cruel or unusual punishment. Id. at 806 F.Supp. at 252.

The same analysis requires the granting of this motion for summary judgment. Bronson disagrees the appropriateness of the care he received. At best, a disagreement concerning the course of medical treatment provided might state a claim of negligence, not deliberate indifference to a serious medical need. Claims of medical negligence never support a cause of action based on 42 U.S.C. §1983. See Daniels v. Williams, 474 U.S. 327 (1986). Even gross

negligence never supports a cause of action based on 42 U.S.C. §1983. Wilson v. Seiter, 501 U.S. 294 (1991).

In his Amended Complaint, Bronson's claim of deliberate indifference largely revolves about his assertion that moving defendants have denied him treatment for throat cancer, or esophageal cancer, or laryngeal cancer, as he variously terms his alleged medical condition. (See Ex. "A", e.g., at ¶¶3-6, 16) It is Bronson's contention that he has "displayed the classic symptoms of laryngeal cancer." (Ex. "A", at ¶3) There exists, however, and Bronson has produced, however, *no evidence that he suffers from or has ever suffered from laryngeal cancer or any type of throat-related cancer.*

Bronson first complaint about a throat-related condition during the time period at issue, on October 29, 2004, when he presented with a dry cough and stuffy nose, but no sore throat or fever. (SUF, at ¶25) On November 8, 2004, Bronson was seen by P.A. Spaeder, with complaints of allergies and a sinus infection, and was diagnosed as having sinusitis, for which he was prescribed 14-day courses of Bactrim DS and CTM 8mg. (SUF, at ¶29)

On November 29, 2004, Bronson was seen by P.A. Newfield, at which time he told her that he wanted to be seen on Doctor Line, and be given Ampicillin for a stuffy nose, sore throat and swollen glands. (SUF, at ¶35) At that time, Newfield examined Bronson, and noted that his sinuses were clear, and that his pharynx (neck and throat areas) appeared normal. Bronson refused to permit Newfield to perform any further examination. (Id.) Three days later, Bronson was seen and examined by Dr. Young, at which time he complained of swollen glands and blocked sinuses, and stated that the Bactrim previously given did not work. (SUF, at ¶36) At that time, Dr. Young noted that Bronson's lungs were clear, his heart regular, and that there was no coughing, no apparent congestion, and no nasal drainage. His impression was a "normal exam." (Id.) Dr. Young told Bronson at that time that his throat appeared "OK," that his glands were not swollen, and that he "did not think any antibiotic would work," and that the Bactrim "didn't work because [Bronson did not have] a bacterial infection." (Id.)

On December 22, 2004, Bronson stated that he wanted an ENT consult "as he sometimes

awakes with dried blood in his nose [and] thinks this could be a sign of a brain tumor.” (SUF, at ¶39) Bronson also complained of a sore throat. (*Id.*) Newfield examined Bronson, and noted that his nasal mucosa was dry, that there were no signs of bleeding or swelling, and that his pharynx was clear, without redness or exudate. (*Id.*) Again, on January 5, 2005, Bronson complained that he had a sore throat and swollen lymph nodes. Newfield examined him, and noted that his pharynx was clear, and that his lymph node appeared only slightly swollen, non-tender and mobile. (SUF, at ¶43) Newfield noted at that time that Bronson’s lymph nodes presented no significant medical findings. (*Id.*)

On January 24, 2005, Bronson was examined by Dr. Young, complaining of a dry throat and enlarged nodes. (SUF, at ¶45) Upon examination, Dr. Young noted no significant lymph node findings, no oro-pharyngeal pathology, and lymphadenopathy (i.e., no lymph node abnormalities). (*Id.*) Again, on February 4, 2005, Bronson was examined for a complaint of difficulty swallowing, this time by P.A. Barbacci. (SUF, at ¶46) Barbacci found Bronson’s oro-pharynx to be normal, with no significant pathology. (*Id.*)

On February 7, 2005, Bronson again requested an ENT consult, stating that he believed he might have laryngeal cancer, and Newfield – based upon her own assessments, and those of three other medical personnel during recent months – determined that there was no medical indication for such a consultation. (SUF, at ¶47)

On February 18, 2005, Bronson asked P.A. Newfield to give him a blood test for laryngeal cancer. Newfield at that time explained to Bronson that there existed no direct test for laryngeal cancer, and that based upon her examinations, as well as the examinations of other medical personnel, and Bronson’s medical records going back several years, *there existed no clinical evidence to suggest that he had laryngeal cancer*, or which would provide a basis to order an ENT consult or any more specific clinical testing. (SUF, at ¶49)

Bronson’s bi-annual physician examination was conducted by Dr. Nse Akpe on February 20, 2005, at which time no abnormal ENT findings were noted, nor any other findings of significance. The examination was comprehensive, and included a variety of examinations and

testing, including blood testing. No abnormal findings were noted which related to any of Bronson's complaints in this matter. (SUF, at ¶51)

When Bronson was seen by P.A. Newfield on March 11, 2005; March 15, 2005; and March 17, 2005; Bronson made no ENT-related complaints. (SUF, at ¶¶53,56 and 58)

On April 12, 2005, Bronson was seen and examined by Dr. Romero, at which time Dr. Romeo made no abnormal ENT findings. (SUF, at ¶69) On April 13, 2005, Bronson told P.A. Newfield that he no longer had any ENT complaints. (SUF, at ¶70)

A review of Bronson's medical records, spanning from his present incarceration at SCI-Camp Hill, back through approximately 1998, conducted by P.A. Newfield, reveals that there exists no medical evidence or basis for the conclusion that Bronson has laryngeal or throat cancer. (SUF, at ¶74)

P.A. Newfield was of the opinion that there existed no basis for referring Bronson for an ENT consult to address his belief that he has esophageal or laryngeal cancer. (SUF, at ¶74; Ex. "J", at ¶5) To the best of P.A. Newfield's knowledge, and based upon her treatment of Bronson, and her review of his medical records dating back to at least 1998, at no time had Bronson been diagnosed with, nor did he in fact suffer from, any type of throat cancer, esophageal or laryngeal cancer. (Ex. "J", at ¶3) Further, at no time was P.A. Newfield of the opinion that there existed any medical indication for the referral of Bronson for an outside ENT consult. (Ex. "J", at ¶5)

To the best of Dr. Lasky's knowledge, at no time relevant to this matter had Bronson been diagnosed with, nor did he suffer from, any type of throat cancer, esophageal or laryngeal cancer. (SUF, at ¶91)

At no time relevant to this matter, and to the best of Dr. Young's knowledge, had Bronson been diagnosed with, nor did he suffer from, any type of throat cancer, esophageal or laryngeal cancer. (SUF, at ¶108) Based upon his treatment of Bronson, and his review of Bronson's medical records, it was Dr. Young's professional medical opinion that Bronson did not suffer from esophageal or laryngeal cancer. (Id.) At no time was Dr. Young of the medical opinion that an ENT consult was medically indicated for Bronson. (SUF, at ¶106)

Bronson has admitted that *no medical professional has ever diagnosed him as suffering from esophageal, laryngeal or any type of throat cancer.* (SUF, at ¶104) Bronson testified that Dr. Young told him that he did not have esophageal or laryngeal cancer, and that there was nothing wrong with his throat. (SUF, at ¶105) Bronson admitted that the *only* medical professionals with whom he had even discussed his belief that he had esophageal or laryngeal cancer, were Drs. Lasky and Young, and P.A. Newfield, and that they told him that “there was nothing wrong with my throat.” (SUF, at ¶111) Bronson testified also that he has *no medical evidence whatsoever*, no reports, no diagnostic testing, nothing whatsoever, which indicates that he has esophageal or laryngeal cancer. (SUF, at ¶112) Finally, Bronson admits that it is possible that he does not have esophageal or laryngeal cancer. (SUF, at ¶113)

With respect to Dr. Young, Bronson’s sole claims are that he refused “to make a proper examination of my throat” and that he “refused to prescribe treatment,” “diagnostic testing and medication.” (SUF, at ¶95) Bronson, however, admits that Dr. Young, in fact, did examine his throat - Bronson believes however that it was not a “proper examination.” (*Id.*) Bronson testified that, with respect to his claim that Dr. Young refused to provide diagnostic testing, is his claim that he should have ordered an ENT consult. (SUF, at ¶97) When asked whether he was alleging that Dr. Young, in refusing to refer him for an outside ENT consult, actually believed that there was a valid medical reason for the referral, Bronson admitted that “I don’t know what he believed. You have to ask him that.” (SUF, at ¶98) As noted, at no time was Dr. Young of the professional medical opinion that an ENT consult was medically indicated. (SUF, at ¶106)

Bronson admitted under oath that he *has no evidence that he was denied any diagnostic testing that was medically appropriate* for his treatment during the time period at issue. (SUF, at ¶100) Further, Bronson admitted that the only basis upon which he makes his claim that certain diagnostic testing should have been performed, is his own personal opinion, and that he has no evidence, no opinion from any medical professional, which supports this belief of his. (SUF, at ¶101)

Bronson’s other primary medical claim is that moving defendants have refused to provide

him with appropriate treatment for pain, stemming, he claims, from arthritis and a long-standing knee condition. (See Ex. “A”, e.g., at ¶¶8-10)

On October 6, 2006, however, Bronson demanded that he be treated with the pain medication of *his* choice: Prednisone, in addition to the Elavil that he was already receiving. (SUF, at ¶19) On October 20, 2004, he again demanded Prednisone, which Newfield told him was not medically indicated. She, however, ordered a course of another pain medication, Indocin, for Bronson. (SUF, at ¶22) On October 28, 2004, Dr. Young discussed Bronson’s demand for Prednisone with him, and told him that he did not feel that Prednisone was appropriate, and offered Motrin, which Bronson refused. (SUF, at ¶24) Dr. Young also noted in his examination of Bronson, that he found “no evidence . . . of arthritis.” (*Id.*)

There is no dispute but that Bronson was prescribed a variety of pain medications, for his arthritis pain, for his knee pain, for other complaints of pain. On October 6, 2004, when Bronson first demanded Prednisone, he was already taking Elavil for pain. (SUF, at ¶19) On October 20, 2004, P.A. Newfield ordered a course of Indocin for Bronson’s pain. (SUF, at ¶22) On November 1, 2004, Bronson refused to take his prescribed medications. (SUF, at ¶26) On November 23, 2004, P.A. Newfield ordered a 15-day course of Naprosyn for Bronson’s pain. (SUF, at ¶34) On December 10, 2004, Newfield ordered a 90-day course of Naprosyn for Bronson. (SUF, at ¶38)

On December 30, 2004, Bronson’s Elavil prescription was re-ordered for 90 days. (SUF, at ¶40) On January 12, 2005, Bronson requested that the Naprosyn be discontinued, and it was. (SUF, at ¶44)

On March 29, 2005, Bronson told P.A. Newfield that he wanted to stop taking Elavil (which had been prescribed as morning and an evening doses) in the evening, and to take it all at one time. Newfield told Bronson that she did not believe that this was advisable. (SUF, at ¶66) On April 5, 2005, Bronson again demanded that he be given his entire daily dose of Elavil at one time, and that the overall dosage be increased. At this time, P.A. Newfield referred Bronson to the Doctor Line to address the issue. (SUF, at ¶68) Bronson saw Dr. Romeo on April 12, 2005,

at which time Romeo re-wrote the order for Elavil, so that Bronson would be given a single 50mg dose in the morning. (SUF, at ¶69)

Following this time (April 25, 2005 for P.A. Newfield, and May 9, 2005 for Dr. Young), Bronson refused to be seen or treated by either P.A. Newfield or Dr. Young. (SUF, at ¶¶71-72)

The record clearly demonstrates that throughout the relevant time period in this matter, Bronson was continuously and constantly prescribed a variety of pain medications in response to his complaints. At times he would take the medication - as he consistently did with Elavil - and at times he would refuse to take the medication. The only medication/pain-treatment related “dispute” asserted by Bronson, is his demand that he be given one specific, particular medication of his own choosing: Prednisone. The only dispute is one of a disagreement as to the course of his treatment, here, in the choice of the medication(s) provided for pain relief. Such a dispute fails, as a matter of law, to constitute a claim for deliberate indifference.

The sole medication that Bronson asserts Dr. Young refused to provide to him is Prednisone. (SUF, at ¶96) As noted, there is no dispute that Bronson was provided with numerous other pain medications. Bronson merely disagrees with the medical decisions made as to this one medication, Prednisone. At no time, however, did Dr. Young believe that the use of Prednisone in Bronson’s treatment was medically indicated. (SUF, at ¶107) Bronson admits that he has received at least the medications Elavil, Motrin, Tylenol and Robaxin for pain at SCI-Camp Hill, and that the *only* medication which he has been refused has been Prednisone. (SUF, at ¶¶114-115)

Likewise, at no time was P.A. Newfield of the medical opinion that there existed any medical indication for the treatment of Bronson with Prednisone. (Ex. “J”, at ¶4)

With respect to Dr. Lasky, Bronson admits that his sole claim against him is that Dr. Lasky allegedly refused to act upon complaints made by Bronson, as to the medical care and treatment of defendants, Young and Newfield. (SUF, at ¶88) Bronson testified that his basis for asserting a claim against Dr. Lasky was solely that Dr. Lasky was the Medical Director at the prison during the applicable time period. (Id.)

It is apparent that the claims which Bronson asserts as against Dr. Lasky are based solely in *respondeat superior* liability, for the position he allegedly played as Medical Director with respect to the actions of Dr. Young and P.A. Newfield.

Bronson has testified that Dr. Lasky was never involved in providing medical care and treatment to him. (SUF, at ¶87) Dr. Lasky's involvement, as Medical Director at SCI-Camp Hill, consisted solely of his occasional review of Bronson's medical chart, as he would likewise perform in his capacity of Medical Director, with respect to the medical charts of other inmate patients. (Ex. "H", at ¶3) There is no evidence, nor does Bronson allege, that Dr. Lasky was personally involved in the provision of his medical care and treatment.

The United States Court of appeals for the Third Circuit has repeatedly concluded that no *respondeat superior* liability exists under any circumstance pursuant to 42 U.S.C. §1983. See Rode v. Dellarciprete, 845 F.2d 1195 (3d Cir. 1988); Robinson v. City of Pittsburgh, 120 F.3d 1285 (3d Cir. 1997); Parkway Garage, Inc. v. City of Philadelphia, 5 F.3d 685 (3d Cir. 1993). The claims which Bronson attempts to assert as against Dr. Lasky clearly fall under the rubric of *respondeat superior*, and as such, his claims must fail, and the entry of summary judgment is appropriate.

Bronson has failed to prove that moving defendants acted with the subjective knowledge that their actions presented a substantial risk of harm to Bronson. Bronson admitted to this in his deposition testimony.

At no time relevant to this matter, was Dr. Young aware that any medical care or treatment being provided to Bronson, by any medical personnel at SCI-Camp Hill, presented a substantial risk of harm to him. (SUF, at ¶109) Further, based upon his knowledge of Bronson's care and treatment during the relevant time period, it is Dr. Young's opinion, to a reasonable degree of medical certainty, that the medical care and treatment provided to Bronson (including that provided to him by P.A. Newfield), was reasonable and medically appropriate, and within the standard of care. (SUF, at ¶110) Bronson testified that he has no evidence that Dr. Young acted with the subjective knowledge that his actions presented a substantial risk of harm to him;

when asked this question, Bronson responded that “I don’t know what he knew.” (SUF, at ¶102)

Bronson admitted that under oath that he has no evidence that Dr. Lasky subjectively knew that his actions presented a substantial risk of harm to Bronson; when asked, Bronson testified that “I don’t know what he knew.” (SUF, at ¶89)

At no time was Dr. Lasky aware, nor did he believe, that any of the medical care or treatment being provided to Bronson by medical personnel at SCI-Camp Hill presented a substantial risk of harm to Bronson. (SUF, at ¶90) At all relevant times, Dr. Lasky believed that the treatment being provided to Bronson was medically appropriate. (Id.) It was Dr. Lasky’s belief, to a reasonable degree of medical certainty, that the medical care and treatment being provided to Bronson, was reasonable and appropriate, and within the standard of care. (SUF, at ¶92) It is also his opinion, to a reasonable degree of medical certainty, that the medical care and treatment provided to Bronson by Dr. Young and P.A. Newfield, was reasonable and medically appropriate, and within the standard of care. (SUF, at ¶93)

Finally, at no time relevant to the claims in this matter, was P.A. Newfield aware, nor did she believe, that the medical care or treatment being provided to Bronson presented a substantial risk of harm to him. (Ex. “J”, at ¶6) It was P.A. Newfield’s opinion, that the treatment being provided to Bronson during the time period at issue, was reasonable and medically appropriate, and within the standard of care. (Ex. “J”, at ¶¶6-7)

Accordingly, and as discussed above, Plaintiff, Bronson, has failed to prove that moving defendants, Lasky, Young and Newfield, acted with deliberate indifference with respect to the treatment of Bronson’s medical conditions during the period of time at issue in this matter. Therefore, it is respectfully requested that moving defendants’ Motion for Summary Judgment be granted.

C. PLAINTIFF, BRONSON, HAS FAILED TO DEMONSTRATE THE EXISTENCE OF A SERIOUS MEDICAL NEED, AS TO WHICH MOVING DEFENDANTS ARE ALLEGED TO HAVE BEEN DELIBERATELY INDIFFERENT, AS REQUIRED PURSUANT TO 42 U.S.C. §1983, AND THEREFORE, HIS CLAIMS AS AGAINST MOVING DEFENDANTS SHOULD BE DISMISSED WITH PREJUDICE

In order to sustain a cause of action under 42 U.S.C. §1983 for deliberate indifference to a serious medical need, a plaintiff must establish both an objective component and a subjective component. Wilson v. Seiter, 501 U.S. 294, 298 (1991).

A medical need rises to the level of seriousness required if it has been diagnosed by a physician as mandating treatment or if it constituted a condition so obvious that even a lay person recognizes the necessity for a doctor's attention. Johnson v. Busby, 953 F.2d 349, 351 (8th Cir. 1991); Monmouth County Correctional Institution Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987), cert. denied, 486 U.S. 106 (1988). The serious medical need requirement contemplates a condition or urgency, one that produces death, degeneration, or extreme pain. Monmouth County, 834 F.2d at 347; Archer v. Dutcher, 733 F.2d 14, 16-17 (2d Cir. 1984). Not every injury or illness invokes Constitutional protection - only those that rise to the level of seriousness have that affect. Monmouth County, 834 F.2d at 347.

The federal courts have consistently held that conditions such as the one from which Bronson alleges, that fail to produce death, degeneration, extreme pain or a condition of urgency, fail to rise to the level of seriousness necessary to support a cause of action based on the Eighth Amendment pursuant to 42 U.S.C. §1983. In Wesson v. Oglesby, 910 F.2d 278, 284 (5th Cir. 1990), the United States Court of Appeals for the Fifth Circuit held that swollen wrists failed to constitute a serious medical need sufficient to state a cause of action under 42 U.S.C. §1983. In Johnson v. Ventura, 790 F.Supp. 898, 900 (E.D.Mo. 1992), the court held that a plaintiff inmate who suffered from headaches, neck pain and blurred vision did not establish a serious medical need sufficient to require that the prison provide him with whirlpool treatments.

In Borrelli v. Askey, 582 F.Supp. 512, 513 (E.D. Pa. 1984), the court held that a prisoner suffering from a slight visual impairment causing mild headaches and mild tension did not have a

serious medical need. In Griffin v. DeRobertis, 557 F.Supp. 302, 306 (N.D. Ill. 1983), the court concluded that aches and sore throats do not constitute serious medical needs. In Dickson v. Coleman, 569 F.2d 1310 (5th Cir. 1978), the court concluded that headaches failed to rise to the level of a serious medical need. In Rodriguez v. Joyce, 693 F.Supp. 1250 (D.Me. 1988), the court concluded that a broken finger failed to rise to the level of a serious medical need. In Glasper v. Wilson, 559 F.Supp. 13 (W.D.N.Y. 1982), the court held that bowel problems failed to rise to the level of a serious medical need. In Jones v. Lewis, 974 F.2d 1125 (6th Cir. 1989), the United States Court of Appeals for the Sixth Circuit concluded that a mild concussion, together with a broken jaw, failed to constitute a serious medical need sufficient to support a claim under the Eighth Amendment. In Hutchinson v. United States, 838 F.2d 390 (9th Cir. 1988), the United States Court of Appeals for the Ninth Circuit concluded that a kidney stone failed to rise to the level of seriousness necessary to support a cause of action based upon a violation of the Eighth Amendment. In Ware v. Fairman, 884 F.Supp. 1201, 1206 (N.D. Ill. 1995), the court held that a failure to treat a rash, acne and flu failed to state a cause of action for an Eighth Amendment violation. None of these conditions, the Court held, constituted a serious medical need, including flu, which causes thousands of deaths per year.

In the present case, Bronson has failed to prove, as required for a claim of deliberate indifference pursuant to 42 U.S.C. §1983, that he suffers from a serious medical need - as that is defined for purposes of §1983 - as to which moving defendants have been deliberately indifferent.¹

Despite Bronson's continuous assertions that he *believes* (or believed) that he suffers from throat cancer, or esophageal cancer, or laryngeal cancer (as he has used all three terms within this litigation), Bronson's personal belief is of no moment. While the Court permitted Mr. Bronson's claims to proceed beyond moving defendants' Rule 12(b)(6) motion, finding as

¹ As already argued in Part "B" above, Bronson has failed to demonstrate that moving defendants acted with deliberate indifference in the provision of his medical treatment. His failure to prove that he suffered from a serious medical need provides an independent basis for the dismissal with prejudice of his claims against moving defendants.

sufficient Bronson's assertion that he had throat cancer, the threshold upon this Motion for Summary Judgment is far greater for Mr. Bronson, and the time is now for Plaintiff to set forth evidence that he, in fact, suffers from some type of throat cancer (or esophageal or laryngeal cancer).

Bronson's failure to adduce such evidence during the course of discovery in this matter is easily explained: He has no such evidence because there is no such evidence, because he does not suffer from any such malady. As discussed in detail in Part "B" above, and set forth in detail in moving defendants' Statement of Uncontested Facts, there exists no evidence that Bronson suffers or has ever suffered from throat or any kind of related cancer. Bronson has never been diagnosed as suffering from throat or laryngeal or esophageal cancer. There exist no diagnostic test results which would support the conclusion that he has any form of cancer. No medical professional has ever opined that Bronson suffers from throat, esophageal or laryngeal cancer. At no time has Dr. Lasky, Dr. Young or P.A. Newfield ever been of the professional opinion that Bronson suffers from throat, laryngeal or esophageal cancer. To the contrary, each has stated (see Part "B" above, and Exs. "H", "I" and "J") that it is their opinion, to a reasonable degree of medical certainty - based upon their treatment and review of treatment records (and in the case of Dr. Lasky, who did not treat Bronson, his review of the treatment records) - that Bronson does not and did not suffer from throat or esophageal or laryngeal cancer.

Accordingly, Bronson bald assertion, based upon his lay opinion, that he does or may suffer from throat or esophageal or laryngeal cancer, fall far short of that which is required to state the existence of a serious medical need, pursuant to 42 U.S.C. §1983.

Bronson fails to allege, let alone prove, the existence of any other medical condition which even approaches the seriousness of that which is required for a claim pursuant to 42 U.S.C. §1983.

Accordingly, and for the reasons discussed herein, Plaintiff, Bronson, has failed to prove the existence of a serious medical need, within the meaning of 42 U.S.C. §1983, as to which

moving defendants, Lasky, Young and Newfield, acted with deliberate indifference. Therefore, it is respectfully requested that moving defendants' Motion for Summary Judgment be granted.

D. PLAINTIFF, BRONSON, HAS FAILED TO EXHAUST HIS AVAILABLE ADMINISTRATIVE REMEDIES UNDER PENNSYLVANIA DEPT. OF CORRECTIONS POLICY, DCADM-804, AS REQUIRED PURSUANT TO THE PRISON LITIGATION REFORM ACT, 42 U.S.C. §1997e(a), FOR CLAIMS BROUGHT PURSUANT TO 42 U.S.C. §1983, AND THEREFORE HIS CLAIMS AGAINST MOVING DEFENDANTS, SHOULD BE DISMISSED WITH PREJUDICE

The Congress of the United States has required expressly and with no exception that any inmate who wishes to pursue a cause of action based on any federal law or the United States Constitution must exhaust all administrative remedies before filing suit. See 42 U.S.C.

§1997e(a). That statute states in relevant part:

No action shall be brought with respect to prison conditions under §1979 of the Revised Statutes of the United States (42 U.S.C. §1983), or any other Federal Law, by a prisoner confined in any jail, prison or other correctional facility until such administrative remedies as are available are exhausted.

Thus, in order to proceed upon a cause of action pursuant to any of the claims in his Amended Complaint, Bronson must have exhausted his available administrative remedies. The evidence in this matter demonstrates that the Bronson failed to exhaust his administrative remedies, and his claims against moving defendants, Young, Lasky and Newfield, should therefore be dismissed.

The Congress of the United States has required expressly and with no exception that any inmate who wishes to pursue a cause of action based on any federal law or the United States Constitution must exhaust all administrative remedies before filing suit. See 42 U.S.C.

§1997e(a). That statute states in relevant part:

No action shall be brought with respect to prison conditions under §1979 of the Revised Statutes of the United States (42 U.S.C. §1983), or any other Federal Law, by a prisoner confined in any jail, prison or other correctional facility until such administrative remedies as are available are exhausted.

Thus, in order to state a cause of action pursuant to any of the claims in his Amended

Complaint, Bronson must show that prior to filing, he exhausted all available administrative remedies. The record in this matter establishes that he did not.

The Supreme Court of the United States in Woodford, et al. v. Viet Mike Ngo, 126 S.Ct. 2378 (June 22, 2006) has held that any failure to comply with state administrative procedures, including filing appeals late or filing the initial grievance late, constitutes a bar to a complaint based on a constitutional deprivation in federal court.

The Department of Corrections of the Commonwealth of Pennsylvania at all times relevant to the facts in this complaint provided a three tiered grievance procedure. The grievance procedures appear at DC-ADM804. First, Bronson had the right to file an initial review. DC-ADM804, Part VI.B. Next, he had the ability to file a first appeal from the initial review known as an appeal to the facility manager. In Henry's case, this was Harry E. Wilson, the Superintendent at SCI-Fayette. DC-ADM804, Part VI.C. Finally, he had the right to file a second and final appeal to the Secretary's Office of Inmate Grievances and Appeals, DC-ADM804, Part VI.D. (See copy of DC-ADM804, attached hereto as Ex. "K")

An examination of Bronson's grievances relevant to this matter (See SUF, at ¶¶76-79), shows that he initiated four (4) grievances during the applicable time period as to medical-related issues, none of which had been properly or fully pursued or exhausted by Plaintiff, Bronson, as required under 42 U.S.C. §1997e(a).

On January 24, 2005, Bronson filed Grievance No. 107968. This grievance alleged failures on the parts of P.A. Newfield and Dr. Young to provide him with medical treatment. On April 29, 2005, Chief Grievance Officer, Sharon M. Burks, of the Office of Inmate Grievances and Appeals, acknowledged receipt of Bronson's appeal of the lower level denial of this appeal, but *dismissed* the appeal without action, due to his failure to properly follow the appeal procedure, and failing to attach to his grievance the required documentation. Consequently, this grievance was not properly exhausted. (SUF, at ¶76)

On February 7, 2005, Bronson filed Grievance No. 111486. In this grievance, Bronson complained about alleged failures on the part of P.A. Newfield and Dr. Young, as to his medical

treatment. On April 29, 2005, Chief Grievance Officer, Sharon M. Burks, of the Office of Inmate Grievances and Appeals, acknowledged receipt of Bronson's appeal of the lower level denial of this appeal, but *dismissed* the appeal without action, due to his failure to properly follow the appeal procedure, and failing to attach to his grievance the required documentation. Consequently, this grievance was not properly exhausted. (SUF, at ¶77)

On April 7, 2005, Bronson filed Grievance No. 114656. In this grievance, Bronson complained about alleged failure to provide medical treatment by P.A. Newfield and Dr. Young. On April 12, 2005, the prisons Grievance Coordinator was rejected because the issues contained in this grievance had been previously addressed in Grievance No. 111486. Bronson filed no appeal of this rejection. Consequently, this grievance was not properly exhausted. (SUF, at ¶78)

On February 1, 2005, Bronson filed Grievance No. 108685, in which he claimed that there had been no response to a sick call request twice submitted by him, but which mentioned no individuals. The grievance was denied on February 11, 2005, by the Grievance Officer as frivolous. Bronson thereafter withdrew the grievance, which is reflected in the memo dated February 11, 2005. Consequently, this grievance was not exhausted. (SUF, at ¶79)

As such, Bronson filed four (4) grievances concerning medical treatment, and each relating to various moving defendants, but none of which Bronson fully, adequately and properly exhausted. Bronson's failure to exhaust his administrative remedies as to any claims against any of the moving defendants, requires the dismissal, with prejudice, of his claims against moving defendants.

V. CONCLUSION

There exists no more evidence today than existed on July 24, 2006, when Judge Caputo issued his Order and Memorandum adopting Magistrate Judge Smyser's Report and Recommendation, which denied the Plaintiff's motion for a temporary restraining order. Bronson's TRO motion raised many of the same issues and claims which arise in his Amended Complaint. What Judge Caputo held on July 24, 2006, is no less true today:

In this case, the medical professionals who treated Plaintiff determined that there was no medical reason to refer Plaintiff to an ENT specialist. Plaintiff's objection, based primarily on the fact that he disagrees with Defendant Newfield and the rest of the Defendants, is insufficient to establish an Eighth Amendment violation. The courts will generally defer to the sound professional judgment of the medical staff and will refuse to second guess the propriety or adequacy of a medical treatment. . . . Hence, the Court agrees with the Magistrate Judge that mere disagreement as to the proper medical treatment does not support an Eighth Amendment claim.

(Dkt. No. 58, at p.5)²

The indisputable evidence adduced in this matter, and set forth above, and in the accompanying Statement of Uncontested Facts, show these conclusions to hold true for all of Bronson's claims herein. BRONSON has failed to adduce evidence which would be sufficient to support a jury verdict as to any of his claims against moving defendants. He has failed to prove that moving defendants were deliberately indifferent to his medical needs. He has failed to prove that he has or has ever had any condition constituting throat cancer, laryngeal cancer, or esophageal cancer.

There is no evidence whatsoever that BRONSON suffers from, or has suffered from, any type of throat-related cancer, laryngeal cancer or esophageal cancer. BRONSON admits that he has never been diagnosed with it, nor does he have any evidence or testimony (other than his own lay speculation) that he has any such medical condition. Accordingly, BRONSON has failed to prove that he suffers from a serious medical condition.

BRONSON has had other medical conditions which have accounted for Bronson's alleged sore throat, cough, stuffy nose, and so on: On one occasions he was diagnosed as treated for sinusitis (an inflammation of the sinuses); on another, for rhinitis (a common head cold), for

² During the proceedings on his Motion for a Temporary Restraining Order, Bronson raised a medical issue not asserted in his Amended Complaint, a claim that he had "bilateral aneurisms" or "temporal aneurisms." That this issue is not raised in his Amended Complaint is clear on the face of the complaint (See Ex. "A"), and Bronson, in his sworn deposition testimony, admits that it was not raised in his complaint. (SUF, at ¶65) Further, Bronson testified that he no longer believes that he has any such condition, admits that he has no evidence that he ever had a "temporal aneurism," and that the issue of whether he had a temporal aneurism is not part of this matter. (*Id*)

which he was also treated. (See, e.g., SUF at ¶¶29 and 60)

There is no evidence that BRONSON has ever been denied medical care and treatment for any medical condition of his. The only evidence is that he has been treated and medicated and examined continuously throughout the time period at issue in this matter by moving defendants, and other medical personnel at SCI-Camp Hill. He has never been denied medical treatment, he has only at time *disagreed* with the choice of medical treatment which has been provided. This fails to constitute any claim whatsoever under 42 U.S.C. §1983.

He has failed to prove that the decision not to provide him with his specific choice of pain medication, Prednisone, was as a result of deliberate indifference, but rather, it was a difference of opinion between himself and the medical professionals in this matter, as to the appropriate choices for pain medications. BRONSON received a variety of pain medications during the time period at issue in this matter which moving defendants believed were medically appropriate. Prednisone was not one of them.

Finally, as BRONSON himself admits, he has no evidence from which it could be concluded, that any moving defendant acting with the subjecting knowledge that their alleged actions or failures to act presented a substantial risk of harm to him.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that true and correct copies of defendants, Martin Lasky, D.O., William Young, M.D. and P.A. Newfield's Brief in Support of Motion to for Summary Judgment, Statement of Uncontested Facts, and Exhibits, on this date to the following individuals as indicated:

Purcell BRONSON (Via U.S. mail)
AF-8163
P.O. Box 200
Camp Hill, PA 17001

Raymond W. Dorian, Esquire (Via ECF)
Office of Counsel
Department of Corrections
55 Utley Drive
Camp Hill, PA 17011

/s/ ALAN S. GOLD

DATE: June 12, 2007

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

PURCELL BRONSON : CIVIL ACTION
V. : NO. 3:05-CV-0514
MARTIN LASKY, D.O., WILLIAM YOUNG, :
M.D., P.A. NEWFIELD, ET AL.

**STATEMENT OF UNCONTESTED FACTS IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS,
MARTIN LASKY, D.O., WILLIAM YOUNG, M.D. AND P.A. NEWFIELD**

Moving defendants, Martin Lasky, D.O., William Young, M.D. and P.A. Newfield, by and through their attorneys, Gold & Robins, P.C., provide the following Statement of Uncontested Facts in support of their Motion for Summary Judgment as against Plaintiff, Purcell Bronson (“Bronson”):

1. Plaintiff, Bronson, initiated this action pursuant to 42 U.S.C. §1983 on or about March 14, 2005, with the filing of a Complaint, in which he alleges *inter alia* that moving defendants acted with deliberate indifference to his serious medical needs.

2. On or about May 2, 2005, Plaintiff, Bronson, filed an Amended Complaint, a true and correct copy of which is attached hereto as Ex. “A”.

3. Bronson is an inmate of the Pennsylvania Department of Corrections, and is and has been at all times relevant to this action, incarcerated at the State Correctional Institution at Camp Hill, Pennsylvania. (“SCI-Camp Hill”). (Ex. B”, at p.10)

Plaintiff’s Claims

4. Bronson alleges in his Amended Complaint that, starting in October, 2004, he told the “defendants” that he was having “difficulty with throat pain/swallowing, and painful lymph nodes in his neck.” (Ex. “A”, at ¶1) Bronson asserts that the “defendants” “made perfunctory examinations” of his throat, and told him that there was nothing wrong when, according to Bronson, there was. (Id.)

5. The allegations contained in Bronson’s Amended Complaint cover the period

from October, 2004 to April, 2005. (Ex. "B", at p.55)

6. Bronson further claims that the "defendants" acted with the "intent to inflict retaliatory pain" (although he failed to state any basis for this speculation), and to "hide the fact that something was wrong" with him, in order to save the prison money. (Ex. "A", at ¶2) Bronson claims that "defendants" did this by failing to prescribe medication and/or diagnostic testing which his alleged symptoms required. (Id.) Bronson further asserts that defendants, Young and Lasky's "refusals" to comply with his demands for particular medication and testing constituted deliberate indifference. (Id.)

7. According to Bronson, he has "displayed the classic symptoms of laryngeal cancer," which Bronson claims consist of "hoarseness/cough, difficulty swallowing, pain in the ears, blood in the sinuses, chronic block sinuses, and blood in spit." (Ex. "A", at ¶3)

8. During a February, 2005 dental examination, alleged Bronson, the dentist prescribed penicillin for a gum infection, and that he told him to sign up for sick call for "further evaluation." (Ex. "A", at ¶4) At sick call, Bronson alleges, he requested to be referred to an ENT specialist, and that Newfield failed to grant his request. (Ex. "A", at ¶5) Bronson claims that his "condition is chronic and unresponsive to antibiotics." (Ex. "A", at ¶6)

9. Bronson further alleges that defendants Young, Lasky and Newfield "acted in an ongoing retaliatory fashion" by refusing to accede to Bronson's continuing demands that he be provided with a particular medication of his own choosing, Prednisone, for treatment of pain from arthritis. (Ex. "A", at ¶8) Bronson does not claim that the defendants have failed to provide treatment for his pain, but rather, that they have failed to provide him with the medication of his choice, Prednisone. (Ex. "A", at ¶9)

10. Bronson further alleges that he suffers from "a tear in the right knee ligament/tendon," and was supposed to be seen by an orthopaedist in January, 2005, for surgical evaluation. (Ex. "A", at ¶10) Bronson asserts that he was not seen at that time, for unknown reasons, but that he was seen in March, 2005, and injected with Cortisone in his knee. (Id.) Bronson claims that at this March visit, the orthopaedic physician refused to address Bronson's

arthritis pain because Newfield did not list that request on the consultation form. (Id.)

11. Bronson alleges that on February 28, 2005, at sick call, he told Newfield that his skin was “inflamed” from the “mental distress” Bronson claims he was undergoing. (Ex. “A”, at ¶11) Bronson claims that Newfield stated that she could not treat him at that time because she could not find his medical records, and that she would return, but that she never did. (Id.) Bronson claims that on three following dates he signed up for sick call, but that Newfield did not come to see him. (Ex. “A”, at ¶12)

12. Bronson claims that Newfield told him on March 11, 2005, that he was scheduled for a complete physical, and that “blood test would show-up any white cell abnormalities indicitive of cancer,…” (Ex. “A”, at ¶15) Bronson claims he received the physical examination, but not the blood test. (Id.)

13. Bronson further asserts that on March 24, 2005, Newfield saw him at sick call and allegedly told him that he “had to take a blood test first before she would allow plaintiff to see a doctor,” but that he never received the blood test. (Ex. “A”. at ¶16) Bronson claims at that visit he asserted that he was suffering the symptoms of an aneurysm. (Id.)

14. On April 5, 2005, Bronson alleges, Newfield examined him, and told him that he had “some problems” but that it was “not major,” although she did not prescribe medication for the ringing in his ears. (Ex. “A”, at ¶18) Bronson alleges that Newfield refused to renew his prescription for Elavil in the manner that Bronson requested “because plaintiff asked for his morning dose to be increased.” (Ex. “A”, at ¶19) According to Bronson, “if she renewed the medication she would not increase it.” (Id.) According to Bronson, if he wanted his medication to be increased, he had to see the physician who would make the decision. (Id.)

15. Bronson also alleges that Newfield has charged him for chronic care medications as a form of retaliation for his having sought medical attention. (Ex. “A”, at ¶23)

16. Bronson alleges that moving defendant, Dr. Lasky, acted with deliberate indifference on February 4 and 10, 2005, and March 27, 2005, “when he ignored plaintiff complaints surrounding the refusal of defendants, Young, Newfield and Lasky, to provide

adequate medical treatment. (Ex. "A", at ¶24) Bronson provides no details as to what treatment Lasky allegedly "ignored," or what medical treatment of Young, Newfield and Lasky is alleged to have been inadequate.

17. Finally, Bronson alleges that moving defendants, Young, Newfield and Lasky, acted in retaliation for Bronson's having previously filed law suits against them. (Ex. "A", at ¶27)

Medical Care and Treatment to the Plaintiff

18. Plaintiff, Purcell Bronson, had been seen by the medical personnel at SCI-Camp Hill on a frequent basis for a wide variety of medical complaints. Each time that Bronson has submitted a "sick call" slip requesting to be seen by medical personnel, he has been seen at the next available sick call, and each of his complaints have been addressed. The only exception to this is when Bronson either refuses to present himself for sick call when his cell is visited, or if he is otherwise unavailable at the time of sick call, such as when he has gone to the exercise yard instead of awaiting his sick call visit. (See Verification of P.A. Newfield, attached hereto as Ex. "F", at ¶5)

19. On October 6, 2004, Bronson was seen at sick call by P.A. Newfield, at which time he made no ENT (ear, nose, throat)-related complaints. Bronson demanded, however, that he be provided with Prednisone for pain, in addition to the Elavil that he was already receiving. (Ex. "C", at 10/6/04)

20. Bronson was next seen by P.A. Newfield on October 14, 2004, at which time he complained that he had a "sore throat" that was not helped by salt water gargle. (Ex. "C", at 10/14/04)

21. On October 18, 2004, Bronson was seen again by P.A. Newfield, at which time Bronson told her that he wanted surgery for tear in his right knee. Newfield reviewed Bronson medical records prior to his transfer to SCI-Camp Hill, and noted a May 13, 2003 MRI of the right knee that showed a "sprain and/or partial tear of ACL without disruption." (Ex. "C", at 10/18/04) She also noted from these records that an orthopaedic consult at that time had not

been ordered. As Bronson was scheduled to see Dr. Young, Newfield instructed him to discuss the matter at that time. (Id.)

22. On October 20, 2004, Bronson again saw Newfield at sick call, and complained that he had not yet seen Dr. Young, and again demanded that he be given Prednisone for pain. (Ex. "C", at 10/20/04) Newfield explained to Bronson that she could not order Prednisone as to was not indicated. (Id.) At that time, Newfield ordered a 90-day course of Indocin 50mg for Bronson. (Ex. "D", at 10/20/04)

23. On October 22, 2004, Dr. Lasky reviewed Bronson medical chart, noted his current course of treatment, and reduced the order for Indocin from 50 mg to 25 mg, out of concern for possible adverse effects, while certain testing was ordered. (Ex. "C", at 10/22/04) At that time, Dr. Lasky decreased the order for Indocin to 25 mg, and ordered a 30-day course of Maalox 30 cc. He also ordered lab testing, including an "Arthritis Profile." (Ex. "D", at 10/22/04)

24. On October 28, 2004, Bronson was seen and examined by Dr. Young, at which time Young noted Bronson's complaints of arthritis pain in both shoulder, lower and upper back, and neck, however he found "no evidence in exam of arthritis." (Ex. "C", at 10/28/04) Dr. Young noted Bronson's request for Prednisone, but told him that he did not feel Prednisone to be appropriate, and instead offered Motrin, which Bronson refused. (Id.)

25. On October 29, 2004, Bronson was seen by P.A. Newfield, and complained of a dry cough and stuffy nose, but denied having a sore throat or fever. (Ex. "C", at 10/29/04)

26. On November 1, 2004, Bronson refused to take his prescribed medications. (Ex. "C", at 11/1/04)

27. On November 2, 2004, Bronson asked that the order for Indocin be discontinued. P.A. Newfield advised Bronson that "we had ordered special lab tests," and that he would be advised if any results were positive. (Ex. "C", at 11/2/04)

28. On November 3, 2004, after a chart review, Dr. Lasky wrote: "Please do lab or re-attempt to pickup lab ordered 10/22/04," and that if Bronson refused the testing, Dr. Young was

to be notified. (Ex. "D", at 11/3/04)

29. On November 8, 2004, Bronson was seen and examined by P.A. Spaeder, at which time he complained of allergies and a sinus infection, who diagnosed Bronson as having sinusitis. (Ex. "C", at 11/8/04) Spaeder ordered 14-day courses of CTM 8 mg, and Bactrim DS, to treat Bronson's sinusitis. (Ex. "D", at 11/8/04)

30. On November 17, 2004, P.A. Newfield attempted to see Bronson for sick call, but he refused. (Ex. "C", at 11/17/04)

31. On November 18, 2004, P.A. Newfield again went to see Bronson for sick call, at which time Bronson complained that he had pain in his shoulders, and asked for an x-ray. Bronson refused to cooperate at that time with Newfield's attempt to examine his shoulders, and would not permit an evaluation of his range of motion (ROM). (Ex. "C", at 11/18/04)

32. On November 19, 2004, P.A. Newfield saw Bronson again at sick call, at which time he complained of a sore throat and swollen glands. (Ex. "C", at 11/19/04) P.A. Newfield referred Bronson to the "doctor line" at his request. (Ex. "D", at 11/19/04)

33. On November 22, 2004, Bronson again refused to be seen at sick call by P.A. Newfield. (Ex. "C", at 11/22/04)

34. On November 23, 2004, Bronson was seen by P.A. Newfield, at which time he complained of "hard BM's," a pulled hamstring and chapped lips. She also noted that Bronson's sick call slip stated: "You are only digging yourself a deeper hole in court." (Ex. "C", at 11/23/04) Newfield ordered Metamucil as needed, for 90 days; a 15-day course of Naprosyn 500 mg; and A&D ointment for 7 days, for Bronson. (Ex. "D", at 11/23/04)

35. On November 29, 2004, Bronson was seen again by P.A. Newfield, at which time he demanded to be seen on Doctor Line. Bronson stated that he wanted to be given Ampicillin for stuffy nose, sore throat and swollen glands. (Ex. "C", at 11/29/04) Newfield noted at that time that Bronson's sinuses were clear, and that his pharynx (neck and throat) appeared normal. (Id.) Bronson refused Newfield's offer of a complete physician exam, and again demanded to be seen at the Doctor Line. (Id.)

36. On December 2, 2004, Bronson was seen and examined on Doctor Line by Dr. Young, at which time he complained of swollen glands and blocked sinuses, and stated that the Bactrim previously provided did not work. (Ex. "C", at 12/2/04) Dr. Young noted Bronson's lungs were clear, his heart regular, and that there was no coughing, no apparent congestion, and no nasal drainage. His impression was a "normal exam." (Id.) Dr. Young explained to Bronson that his throat appeared "OK", that his glands were not swollen, and that he "did not think any antibiotic would work" and that Bactrim "didn't work because there isn't a bacterial infection." (Id.)

37. On December 3, 2004, Bronson was seen and examined by P.A. Newfield, with complaints of shoulder pain. (Ex. "C", at 12/3/04) Newfield ordered x-rays of Bronson's shoulder to "rule out DJD" (Degenerative Joint Disease). (Ex. "D", at 12/3/04)

38. On December 10, 2004, Newfield saw Bronson again at sick call, at which time he requested a refill of his Naprosyn order. Newfield noted that Bronson's x-ray showed "mild DJD (degenerative joint disease) R shoulder." (Ex. "C", at 12/4/04) Newfield ordered a 90-day course of Naprosyn 500 mg. (Ex. "D", at 12/4/04)

39. On December 22, 2004, Bronson was again seen and examined by P.A. Newfield at sick call, at which time she noted Bronson requested "another ortho referral as he still has pain in R knee," and difficulty walking up and down stairs. (Ex. "C", at 12/22/04) She also noted that Bronson wanted an ENT consult "as he sometimes awakes with dried blood in his nose," and that he "thinks this could be a sign of a brain tumor." (Id.) Bronson also complained of a sore throat. (Id.) Newfield noted that Bronson's nasal mucosa was dry, and that there were no signs of bleeding or swelling, and that his pharynx was clear, without redness or exudate. (Id.) Newfield wrote for an ortho consult. (Ex. "D", at 12/22/04)

40. On December 30, 2004, Bronson was seen by P.A. Spaeder, and requested a refill of his Elavil prescription and CTM. (Ex. "C", at 12/30/04) Elavil 25mg and CTM 8mg, were both reordered for 90 days. (Ex. "D", at 12/30/04)

41. On January 3, 2005, Bronson was seen again at sick call by P.A. Newfield, at

which time he complained of swollen ankle, and a rash on his fingers, and asked that he be given Prednisone for knee and shoulder pain. (Ex. "C", at 1/3/05; Ex. "F", at ¶6) Newfield ordered a course of 1% hydrocortisone cream for his rash. (Ex. "D", at 1/3/05) Bronson made no ENT-related complaints. (Ex. "F", at ¶6)

42. On January 4, 2005, Bronson was again seen at sick call by P.A. Newfield, at which time Bronson requested that he be given a "cuff in front order for shoulder arthritis," that he be given a "back brace for 'curvature of spine'," and that he be given Prednisone. (Ex. "C", at 1/4/05; Ex. "F", at ¶7) Bronson made no ENT-related complaints. (Ex. "F", at ¶7)

43. On January 5, 2005, Bronson was seen and examined by P.A. Newfield at sick call, at which time he complained of sore throat and swollen lymph nodes on right. She noted that Bronson's pharynx was clear, that his lymph node appeared only slightly swollen, non-tender and mobile. Bronson's ankle/feet had no edema, and he walked without difficulty or limp. (Ex. "C", at 1/5/05; Ex. "F", at ¶8) Newfield assessed at that time that no additional treatment was required. (Id.) At that time Bronson's lymph nodes presented no significant medical findings. (Ex. "F", at ¶8)

44. Bronson was again seen by P.A. Newfield on January 12, 2005, at which time he asked that orders for Metamucil and Naprosyn be discontinued. He made no ENT-related complaints during this visit. (Ex. "C", at 1/12/05; Ex. "F", at ¶9) According to Bronson's request, the orders for Metamucil and Naprosyn were discontinued. (Ex. "D", at 1/12/05)

45. On January 24, 2005, Bronson was seen and examined by Dr. Young, at which time he complained of having a dry throat and enlarged nodes for the past two months. An examination by Dr. Young at that time revealed no significant lymph node findings, no oro/pharyngeal pathology, and no lymphadenopathy (that is, no lymph node abnormalities). (Ex. "C", at 1/24/05; Ex. "F", at ¶10)

46. Bronson was seen again at sick call on February 4, 2005, by P.A. Kristen Barbacci, at which time he complained of difficulty swallowing. Upon examination, P.A. Barbacci found his oro/pharynx to be normal, and found no significant pathology. Interestingly,

at this time Bronson specifically stated that he had not had a sore throat in the prior 2-3 months, contrary to what he had reported to P.A. Newfield on January 5, 2005. (Ex. "C", at 2/4/05; Ex. "F", at ¶11)

47. On February 7, 2005, P.A. Newfield again saw Bronson at sick call, at which time he requested and ENT consultation because he believed that he might have laryngeal cancer. (Ex. "C", at 2/7/05) A review of Bronson's recent sick call encounters and examinations—performed over recent months by Newfield and at least three other medical personnel—showed no medical indication which would support the scheduling of an ENT consult at that time. This decision was based upon the medical findings of P.A. Newfield, as well as those of Dr. Young, P.A. Barbacci and others. (Id.; Ex. "F", at ¶12)

48. On February 8, 2005, Bronson requested a dermatology consult. At this time, he made no ENT-related complaints. (Ex. "C", at 2/8/05; Ex. "F", at ¶13)

49. On February 18, 2005, Bronson requested that he be given a blood test because he believed that he had laryngeal cancer. (Ex. "C", at 2/18/05; Ex. "F", at ¶14) P.A. Newfield explained to Bronson that there exists no direct test for laryngeal cancer. In addition, based upon P.A. Newfield's examinations, in conjunction with the examinations of other medical personnel, and Bronson's medical records going back several years, there existed no clinical evidence to suggest that he might have laryngeal cancer, or provide the basis for an ENT consult or more specific clinical testing. (Id. Ex. "C"; Ex. "F")

50. On February 18, 2005, Bronson refused to take his "p.m." medications. (Ex. "C", at 2/18/05; Ex. "F", at ¶15)

51. On February 20, 2005, Bronson underwent his bi-annual physical examination and health appraisal, performed by Physician's Assistant Nse Akpe. Bronson's examination resulted in no abnormal ENT findings, or any other related findings of significance. The examination was a comprehensive physical examination provided to all inmates, which includes a variety of routine examinations and testing, including blood testing. No abnormal findings were noted related to any of Bronson's complaints in this matter. (Ex. "D", at 2/20/05; Ex. "F", at ¶16)

52. On March 7, 2005, Dr. Young went to see Bronson for sick call, but Mr. Bronson refused to present himself for that sick call. (Ex. "C", at 3/7/05; Ex. "F", at ¶17)

53. P.A. Newfield again saw Bronson again on March 11, 2005, for sick call, at which time he requested that he be given Motrin and complained of a skin rash. (Ex. "C", at 3/11/05; Ex. "F", at ¶18) At this time, Mr. Bronson made no ENT-related complaints. (Id.) Based upon his recent examinations, and his medical history at that time, a request for an ENT consult based upon his belief that had might have laryngeal cancer, would not have been appropriate, even if he had made such a request on this date. (Id.)

54. Bronson also states that on March 11, 2005, he requested that he be scheduled for a complete physical examination along with blood testing to indicate whether he had any white cell abnormalities. He made no such request on this date, as demonstrated by the medical records. (Ex. "C", at 3/11/05; Ex. "F", at ¶19) Such a request would not have made sense, in view of the complete physical examination he underwent only a few weeks earlier, on February 20, 2005, noted above. The blood testing which was performed prior to that physical examination showed no such white cell abnormalities. (Ex. "F", at ¶19; Ex. "E", dated 11/8/04)

55. On March 14, 2005, P.A. Newfield went to see Bronson for sick call, at which time he was in the exercise yard and unavailable to be seen. (Ex. "C", at 3/14/05; Ex. "F", at ¶20)

56. On March 15, 2005, Bronson was again seen by P.A. Newfield at sick call, at which time he complained of hemorrhoids, and requested that he be given Metamucil, something for jock itch, and Motrin. At this time he made no ENT-related complaints. (Ex. "C", at 3/15/05; Ex. "F", at ¶21)

57. On March 16, 2005, Bronson was seen and examined by an orthopaedic physician for orthopaedic related complaints. (Ex. "C", at 3/16/05; Ex. "F", at ¶22) Dr. Yueha examined Bronson's knee, and reviewed his latest MRI, and give him an injection of triamcinolone and lidocaine. (Ex. "E", at 3/16/05) Dr. Yueda wrote to continue with Bronson's present medication. (Id.)

58. On March 17, 2005, P.A. Newfield again saw Bronson for sick call, at which time he complained that when he was seen by the orthopaedic physician the prior day, he was seen only about his knee complaints, and not about a variety of other orthopaedic complaints. (Ex. "C", at 3/17/05; Ex. "F", at ¶23) Bronson, however, was seen by the orthopaedist for those complaints which he had raised at the time the appointment was scheduled. When P.A. Newfield saw him on this date, Bronson made no ENT-related complaints. (Ex. "E", at 3/16/05; Ex. "F", at ¶23)

59. On March 21, 2005, P.A. Newfield went to see Bronson for sick call, at which time he was in the exercise yard and unavailable to be seen. (Ex. "C", at 3/21/05; Ex. "F", at ¶24)

60. On March 22, 2005, P.A. Newfield again saw Bronson at sick call, at which time he complained of having a head cold, and that some blood had been discharged when he blew his nose. (Ex. "C", at 3/22/05; Ex. "F", at ¶25) Upon examination, the interior of his nose was dry, and the only findings were consistent with rhinitis (the common head cold). (Ex. "F", at ¶25) Newfield ordered a 5-day course of Sudafed 30 mg for Bronson. (Ex. "D", at 3/22/05)

61. On March 23, 2005, P.A. again saw Bronson at sick call, at which time he complained that the arteries in his temples were swollen and taught. (Ex. "C", at 3/23/05; Ex. "F", at ¶26) Examination however was normal, there were no nodules or inflammation found in the arteries in question. (Ex. "C", at 3/23/05; Ex. "F", at ¶26) Newfield noted in the Orders to check for a Sed Rate (ESR) that had been done previously. (Ex. "D", at 3/23/05)

62. On March 24, 2005, P.A. Newfield again saw Bronson at sick call, at which time he complained of having "bilateral aneurisms" which, he claimed, were indicated by "dilated arteries" in his temple. P.A. Newfield explained to Bronson that there existed no medical indication of the presence of any such condition in the prior day's examination. (Ex. "C", at 3/24/05; Ex. "F", at ¶27)

63. Also on March 24, 2005, P.A. Newfield explained to Bronson that she was in the process of reviewing his records to ascertain the results a blood test that had been performed,

known as an ESR (erythrocyte sedimentation rate). (See Ex. "D", at 3/2/05; Ex. "F", at ¶28) An ESR is used to determine whether a patient might have a condition known as temporal arteritis: the inflammation of the temporal arteries, an auto-immune condition. Until and unless Bronson's ESR results showed the presence of a problem, there was no need to schedule him to see the physician about such a complaint at that time. (Ex. "C", at 3/24/05; Ex. "F", at ¶28)

64. Following this, P.A. Newfield determined that the ESR had been performed and that the results were normal. Bronson's ESR result was eight (8). ESR results of 21 and below are considered normal. Consequently, the result of this test confirmed that Bronson did not have temporal arteritis, or inflammation of his temporal arteries. Bronson was told of these findings. (Ex. "F", at ¶29) (See copy of ESR test result, at Ex. "E", Bio-Reference Laboratories report, dated November 8, 2004)

65. Bronson admitted in his deposition testimony that the issue of the "temporal aneurism" was not alleged in his amended complaint. Bronson also admitted that he no longer believes that he has this condition. (Ex. "B", at p.85) Finally, Bronson admitted that he has no evidence that he ever had a "temporal aneurism." (Ex. "B", at p.86) Bronson testified that the issue of whether he had a temporal aneurism is not part of this civil action. (Id.)

66. P.A. Newfield again saw Bronson on March 29, 2005, at sick call, at which time he complained of having a stuffy nose. Examination revealed a dry mucosa, but no significant findings. (Ex. "C", at 3/29/05; Ex. "F", at ¶30) At this time, Bronson told Newfield that he wanted to stop taking Elavil in the evening, and to take it all at one time. Newfield advised him that this was not medically advisable. (Ex. "C", at 3/29/05) Newfield ordered a 15-day course of Sudafed 60mg, for Bronson. (Ex. "D", at 3/29/05)

67. On April 5, 2005, P.A. Newfield again saw Bronson at sick call. At this time, Bronson complained of a dry cough, stuffy nose, again "taught temples" and ringing in his ears. An examination of his ear drums, pharynx and lymph nodes were all essentially normal. (Ex. "C", at 4/5/05; Ex. "F", at ¶31) At that time P.A. Newfield diagnosed Bronson with rhinitis, and orders were written to increase his Pseudophed and his was provided with a cold medication

called Hi-Tuss. (Ex. "F", at ¶31)

68. Also on April 5, 2005, Bronson requested that he be given his entire daily dose of Elavil (both a.m. and p.m.) in the morning at one time, and that the overall dosage be increased. There was never any question raised during this visit about the renewal of his Elavil (a pain medication), only *whether* the dosage would be increased, and *whether* he could take it all at once. Neither was appropriate at the time. (Ex. "C", at 4/5/05; Ex. "F", at ¶32) Newfield referred Bronson to the Doctor Line to address the issue of taking his daily Elavil at one time. (Ex. "D", at 4/5/05)

69. On April 12, 2005, Bronson was seen by Dr. Romeo, at which time he complained of pains in his neck. Dr. Romeo examined Bronson, and made no abnormal ENT findings. (Ex. "C", at 4/12/05; Ex. "F", at ¶33) At this time, at Bronson's request, Dr. Romeo ordered that Bronson receive a single dose of Elavil, 50 mg, in the a.m. only. (Ex. "D", at 4/12/05)

70. P.A. Newfield saw Bronson again at sick call on April 13, 2005, at which time Bronson told her that he no longer had any ENT complaints. At that time, he complained that he was having pain around his belly button from a new medication previously given, Disalcid. (Ex. "C", at 4/13/04; Ex. "F", at ¶34)

71. During the ensuing weeks, Bronson continued to make routine requests to be seen at sick call, but consistently refused to speak with either P.A. Newfield or Dr. Young when they attempted to see him at sick call. On April 25, 2005, Bronson, at sick call, told P.A. Newfield that he was "not interested" in anything she had to say. (Ex. "C", at 4/25/05; Ex. "F", at ¶35) Following this, Bronson continued to refuse to be seen by P.A. Newfield. (See Ex. "C", 5/17/05, et seq.)

72. On May 9, 2005, Dr. Young went to see Bronson on Doctors Line, having been referred by P.A. Newfield, at which time Bronson refused to be seen by Dr. Young. (Ex. "C", at 5/9/05) Following this, on at least several more occasions, Bronson refused to be seen by Dr. Young at sick line. (Ex. "C", at 5/16/05, et seq.)

73. P.A. Newfield, at all times relevant to this matter, was the primary Physician's

Assistant assigned to sick call for inmates in the SMU. Dr. Young, during the relevant time period, was a physician assigned to see inmates in the SMU. Inmates are not permitted to choose from which medical personnel they will accept treatment, and which they will not accept treatment. Inmates are required to see and cooperate with the medical personnel who are assigned to their treatment. Likewise, neither P.A. Newfield or Dr. Young are in a position to determine which inmates they will or will not see or treat. They are required to provide treatment to all inmates in need of and requesting treatment who fall within the parameters of their assignments. (Ex. "F", at ¶36)

74. With respect to Bronson's several incarcerations at SCI-Camp Hill, P.A. Newfield had the opportunity to review his medical records, at least back to 1998. Based upon this review, as well as her own experience examining and treating Bronson, she is able to state that there exists no medical evidence or basis for the conclusion that Bronson has cancer of the larynx. At no time relevant to the claims raised in this matter, and based upon the foregoing, did there exist any medical basis to believe that Bronson had cancer of the larynx or any medical condition consisting of or relating to either an aneurism or temporal arteritis. Likewise, at no time relevant to the claims in this matter, did there exist any medical basis to refer Bronson for examination by an ENT specialist. (Ex. "F", at ¶37)

75. Bronson, throughout his stay at SCI-Camp Hill during the relevant time period, received and continues to receive routine and appropriate medical care and treatment for all existing medical conditions. This is subject solely to his willingness to accept treatment from and to cooperate with the medical personnel assigned to do so. (Ex. "F", at ¶38)

Plaintiff's Grievances

76. On January 24, 2005, Bronson filed Grievance No. 107968. This grievance alleged failures on the parts of P.A. Newfield and Dr. Young to provide him with medical treatment. On April 29, 2005, Chief Grievance Officer, Sharon M. Burks, of the Office of Inmate Grievances and Appeals, acknowledged receipt of Bronson's appeal of the lower level denial of this appeal, but *dismissed* the appeal without action, due to his failure to properly

follow the appeal procedure, and failing to attach to his grievance the required documentation. Consequently, this grievance was not properly exhausted. (See Ex. "G-1")

77. On February 7, 2005, Bronson filed Grievance No. 111486. In this grievance, Bronson complained about alleged failures on the part of P.A. Newfield and Dr. Young, as to his medical treatment. On April 29, 2005, Chief Grievance Officer, Sharon M. Burks, of the Office of Inmate Grievances and Appeals, acknowledged receipt of Bronson's appeal of the lower level denial of this appeal, but *dismissed* the appeal without action, due to his failure to properly follow the appeal procedure, and failing to attach to his grievance the required documentation. Consequently, this grievance was not properly exhausted. (See Ex. "G-2")

78. On April 7, 2005, Bronson filed Grievance No. 114656. In this grievance, Bronson complained about alleged failure to provide medical treatment by P.A. Newfield and Dr. Young. On April 12, 2005, the prisons Grievance Coordinator was rejected because the issues contained in this grievance had been previously addressed in Grievance No. 111486. Bronson filed no appeal of this rejection. Consequently, this grievance was not properly exhausted. (See Ex. "G-3")

79. On February 1, 2005, Bronson filed Grievance No. 108685, in which he claimed that there had been no response to a sick call request twice submitted by him, but which mentioned no individuals. The grievance was denied on February 11, 2005, by the Grievance Officer as frivolous. Bronson thereafter withdrew the grievance, which is reflected in the memo dated February 11, 2005. Consequently, this grievance was not exhausted. (See Ex. "G-4")

Plaintiff's Motion for Injunctive Relief

80. Bronson filed a Motion for Temporary Restraining Order (TRO) on April 18, 2005, in which he requested that he be referred to an ENT specialist, and that P.A. Newfield be prohibited from treating him. (Dkt. No. 10) On June 2, 2005, Bronson added to his TRO, a request that Dr. Young likewise be prohibited from providing him with treatment. (Dkt. No. 21)

81. In his July 28, 2005, Report and Recommendation on Bronson's TRO motion, Magistrate Judge Smyser recommended that the TRO motion be denied on the grounds that

Bronson had failed to submit evidence sufficient to reasonably conclude that the defendants were deliberately indifferent to Bronson's medical needs, or that they were motivated by non-medical factors. (Dkt. No. 32) Following this, Bronson filed objections to the Report and Recommendation, and submitted three additional declarations in support of his TRO motion. (Dkt. Nos. 42, 43 and 47)

82. On July 24, 2006, Judge Caputo issued an Order and Memorandum in which he overruled Bronson's objections, adopted the Report and Recommendation, and denied Bronson's TRO motion. (Dkt. No. 58) In his Memorandum, Judge Caputo reviewed the findings made by Judge Smyser, and noted:

In this case, the medical professionals who treated Plaintiff determined that there was no medical reason to refer Plaintiff to an ENT specialist. Plaintiff's objection, based primarily on the fact that he disagrees with Defendant Newfield and the rest of the Defendants, is insufficient to establish an Eighth Amendment violation. The courts will generally defer to the sound professional judgment of the medical staff and will refuse to second guess the propriety or adequacy of a medical treatment. . . . Hence, the Court agrees with the Magistrate Judge that mere disagreement as to the proper medical treatment does not support an Eighth Amendment claim.

(Dkt. No. 58, at p.5) The Court held that there was no "plain error or manifest injustice" in the findings contained in the Report and Recommendation. The Court concluded with the agreement that Bronson "does not have a reasonable probability of success on the merits of his claim."

(Dkt. No. 58, at p.6)

83. Plaintiff, Bronson, has adduced no evidence beyond that which he had provided at the time of the ruling on his TRO motion in support of his claim that moving defendants acted with deliberate indifference in providing him with medical care and treatment. In the absence of any new evidence in support of his claims herein, not provided to the Court in support of his TRO motion, there exists no basis for holding other than the Court held in the Report and Recommendation and Memorandum adopting the same.

Colleen Newfield, P.A.

84. When asked whether he has any evidence that P.A. Newfield knew, subjectively

that his actions presented a substantial risk of harm to him, Bronson testified that “I don’t know what she knew.” (Ex. “B”, at p.79)

85. Bronson admitted that there came a time, in approximately April, 2005, when he would no longer agree to be seen or treated by P.A. Newfield. (Ex. “B”, at p.81)

Martin Lasky, D.O.

86. The only allegations directed to Dr. Lasky are contained in ¶¶8 and 24 of Bronson’s Amended Complaint. (Ex. “A”; Ex. “B”, at pp.56-57)

87. Bronson admitted in his deposition testimony that Dr. Lasky was never involved in his medical care and treatment. (Ex. “B”, at p.57; Ex. “H”, at ¶3)

88. Bronson testified that his sole basis for alleging a claim of deliberate indifference on the part of Dr. Lasky, is that, according to Bronson, Dr. Lasky refused to act upon complaints made by Bronson as to medical care and treatment by the other defendants, Dr. Young and P.A. Newfield. (Ex. “B”, at p.57) Bronson testified that his basis for asserting a claim against Dr. Lasky was solely that Dr. Lasky was the Medical Director at the prison. (Ex. “B”, at p.58)

89. When asked whether he has any evidence that Dr. Lasky knew, subjectively that his actions presented a substantial risk of harm to him, Bronson testified that “I don’t know what he knew.” (Ex. “B”, at p.79)

90. At no time was Dr. Lasky aware, nor did he believe, that any medical care or treatment being provided to Bronson by medical personnel at SCI-Camp Hill presented a substantial risk of harm to him. At all time relevant, Dr. Lasky believed that the treatment being provided to Bronson was medically appropriate. (Ex. “H”, at ¶5)

91. To the best of Dr. Lasky’s knowledge, at no time relevant to this matter, had Bronson been diagnosed with, nor did he suffer from, any type of throat cancer, esophageal or laryngeal cancer. (Ex. “H”, at ¶4)

92. It is Dr. Lasky’s opinion, to a reasonable degree of medical certainty, that the medical care and treatment which was provided to Bronson during the time period at issue in this matter, was reasonable and medically appropriate, and within the standard of care. (Ex. “H”, at

¶6)

93. It is also Dr. Lasky's opinion, to a reasonable degree of medical certainty, that the medical care and treatment which was provided to Bronson by Dr. Young and P.A. Newfield, likewise was reasonable and medically appropriate, and within the standard of care. (Ex. "H", at

¶7)

William Young, M.D.

94. The only allegations directed to Dr. Young are contained in ¶¶2, 8 and 27 of Bronson's Amended Complaint. (Ex. "A"; Ex. "B", at pp.58-59)

95. Bronson claims that Dr. Young refused to "make a proper examination of my throat" and that he "refused to prescribe treatment" - "diagnostic test and medication." (Ex. "B", at ¶59) Bronson admits that Dr. Young did, in fact, examine his throat, but that Bronson believed that it was not a "proper examination." (Ex. "B", at p.60)

96. With respect to his refusal to provide medication, the sole medication that Bronson alleges he requested and that Dr. Young refused to provide was Prednisone. (Ex. "B", at p.60-61)

97. As to refusal to provide diagnostic testing, Bronson testified that what he actually meant was that Dr. Young did not refer him for an outside ENT (ear, nose and throat) consultation what he requested that he do so. (Ex. "B", at p.61)

98. When asked whether it was Bronson's allegation that Dr. Young, in refusing to refer him for an outside ENT consultation, actually believed that there existed a valid medical reason for the referral, Bronson responded: "I don't know what he believed. You have to ask him that." (Ex. "B", at p.61)

99. Bronson claims that Dr. Young acted with a "retaliatory motive" - "getting back at me for filing a suit against them." (Ex. "B", at p.59)

100. Bronson testified that he has no evidence from any source that - with respect to the relevant time period in this matter - he was denied any diagnostic testing that was medically appropriate. (Ex. "B", at p. 63-64)

101. Bronson admitted that the basis upon which he claims certain diagnostic testing should have been performed is his own personal opinion, and that he has no evidence, no opinion from any medical profession which supports his own belief. (Ex. "B", at p.63)

102. When asked whether he has any evidence that Dr. Young knew, subjectively that his actions presented a substantial risk of harm to him, Bronson testified that "I don't know what he knew." (Ex. "B", at p.79)

103. Bronson admitted that there came a time, in approximately April, 2005, when he would no longer agree to be seen or treated by Dr. Young. (Ex. "B", at p.81)

104. Bronson admitted that no medical professional has ever diagnosed him as suffering from esophageal, laryngeal or any type of throat cancer. (Ex. "B", at pp. 70-71)

105. Bronson testified that Dr. Young told him that he did not have esophageal or laryngeal cancer, and that there was nothing wrong with his throat. (Ex. "B", at p.71)

106. At no time relevant to this matter, was Dr. Young of the professional medical opinion that an ENT consult was medically indicated for Bronson. (Ex. "T", at ¶3)

107. At no time relevant to this matter, did Dr. Young believe that the use of Prednisone in the treatment of Bronson was medically indicated. (Ex. "T", at ¶4)

108. At no time, relevant to this matter, was Bronson diagnosed with esophageal, laryngeal or any type of throat cancer. To the best of Dr. Young's knowledge, and based upon his treatment of Bronson and review of Bronson's medical records at the time, Bronson did not suffer from esophageal or laryngeal, or any type of throat cancer. (Ex. "T", at ¶5)

109. At no time relevant to this matter, was Dr. Young aware that any medical care or treatment being provided to Bronson, by any medical personnel at SCI-Camp Hill, presented a substantial risk of harm to him. The medical care and treatment provided to Bronson was medically appropriate. (Ex. "T", at ¶6)

110. Based upon Dr. Young's knowledge of Bronson's care and treatment during the relevant period of time, it is his opinion, to a reasonable degree of medical certainty, that the medical care and treatment provided to Bronson - including that provided by P.A. Newfield - was

