

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

BENNIE OUTERBRIDGE, as Administratrix	:	
of the ESTATE OF EDDIE SAMUEL	:	
OUTTERBRIDGE and in her own right,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	NO. 00-1541
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF CORRECTIONS, et al.	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

May 25, 2000

Presently before the Court is the Commonwealth Defendants’¹ Motion to Dismiss or to Change Venue. For the reasons stated below, the Motion is Granted in part and Denied in part.

I. BACKGROUND

Plaintiff Bennie Outterbridge is the alleged Administratrix of a decedent prisoner, Eddie Samuel Outterbridge (“Outterbridge”). She filed the Complaint on March 24, 2000 alleging federal and state claims against both the moving Commonwealth Defendants and the non-moving medical providers. The federal claims against the Commonwealth Defendants include violations of the Eighth and Fourteenth as well as a conspiracy count. The state law

1. The Commonwealth Defendants are the 1) Commonwealth of Pennsylvania Department of Corrections (“DOC”), Martin Horn, the Commissioner of the Pennsylvania Department of Corrections (“Horn”), and the State Correctional Institution at Mahanoy (“SCI-Mahanoy”).

claims involve medical negligence, survival and wrongful death. The Complaint arises from the allegedly negligent medical care provided to decedent Outterbridge that ultimately resulted in his death.

According to the Complaint, Outterbridge began his incarceration at SCI-Mahanoy in October, 1992. In October, 1997, he began INH, a prophylactic treatment after receiving a positive tuberculin test. Although Outterbridge complained repeatedly to treating physicians that the INH was making him ill, he was forced to continue the medication. He was finally removed from SCI Mahanoy on April 15, 1998 and died April 25, 1998.

II. LEGAL STANDARD

Defendants argue that the case should be dismissed for lack of jurisdiction under Fed. R. Civ. P. 12(b)(1). A motion to dismiss on jurisdictional allegations should be judged by the same standards as a Rule 12(b)(6) motion to dismiss. See Mortenson v. First Federal Sav. and Loan Ass'n, 549 F.2d 884, 890 (3d Cir. 1977). When deciding to dismiss a claim pursuant to Rule 12(b)(6) a court must consider the legal sufficiency of the complaint and dismissal is appropriate only if it is clear that "beyond a doubt ... the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." McCann v. Catholic Health Initiative, 1998 WL 575259 at *1 (E.D. Pa. Sep. 8, 1998) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). The court assumes the truth of plaintiff's allegations, and draws all favorable inferences therefrom. See, Rocks v. City of Philadelphia, 868 F.2d. 644, 645 (3d. Cir. 1989). However, conclusory allegations that fail to give a defendant notice of the material elements of a claim are insufficient. See Sterling v. SEPTA, 897 F.Supp. 893, 895 (E.D. Pa.1995). The pleader must

provide sufficient information to outline the elements of the claim, or to permit inferences to be drawn that these elements exist. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d. Cir. 1993). The Court must determine whether, under any reasonable reading of the pleadings, the law allows the plaintiff a remedy. See, Nami v. Fauver, 82 F.3d 63, 65 (3d. Cir. 1996).

III. DISCUSSION

A. Federal claims against Defendants DOC, SCI-Mahanoy and Commissioner Horn

Neither a State nor its officials acting in their official capacities are "persons" under § 1983. Will v. Michigan Department of State Police, 491 U.S. 58, 71 (1989). Therefore, relief under § 1983 is unavailable for Plaintiffs against the DOC and SCI Mahanoy which are, respectively, a state agency and a state institution. Also, the Eleventh Amendment provides:

"The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." The Supreme Court has interpreted this Amendment as meaning "first, that each State is a sovereign entity in our federal system; and second, that it is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent". Seminole Tribe of Florida v. Florida, 517 U.S. 44, 54 (1996). It has been recognized that states can consent to suit in federal court. But Pennsylvania has not given its consent. See 42 Pa. C.S. §8521(b)². Therefore, the State and its agencies are protected from suit in federal court.

2. (Federal courts.--Nothing contained in this subchapter shall be construed to waive the immunity of the Commonwealth from suit in Federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States).

With regard to Commissioner Horn, “an individual defendant in a civil rights action must have personal involvement in the alleged wrongs; liability cannot be predicated solely on the operation of respondeat superior”. See Rode v. Dellarciprete, 845 F.2d. 1195, 1207 (3d. Cir. 1989) *quoting* Parratt v. Taylor, 451 U.S. 527, 537 n. 3 (1981). “A defendant must be the moving force behind a constitutional violation. The mere fact that a named defendant is in a supervisory position is insufficient. See Hampton v. Holmesburg Prison Officials, 546 F.2d 1977, 1082 (3d Cir. 1976) (“Even if liability had been established against the guards, no liability for the warden absent evidence of actual knowledge of deprivation).

The Plaintiff does not allege any actions that directly involved Secretary Horn. While the Complaint alleges that the Commonwealth Defendants violated Outterbridge’s rights by failing to adopt proper procedures or policies, there is no mention of any role that Horn played in this oversight. These are mere conclusory allegations that include the Commissioner and an attempt by Plaintiff to hold Horn liable based upon a respondeat superior theory. Accordingly, the § 1983 claims against the Defendant Horn will be dismissed.

The elements of a conspiracy are a combination of two or more persons to do a criminal act, or to do a lawful act by unlawful means or for an unlawful purpose. Ammlung v. City of Chester, 494 F.2d 811, 814 (3rd Cir.1974). The plaintiff must make specific factual allegations of combination, agreement, or understanding among all or between any of the defendants to plot, plan, or conspire to carry out the alleged chain of events. See Panayotides v. Rabenold, 35 F.Supp.2d 411, 419 (E.D. Pa. 1999). The Plaintiff has not stated any agreement by or actions taken by Defendant Horn that make him a part of a conspiracy. The Plaintiff baldy asserts that all the Defendants acted in concert together to violate decedent Outterbridge’s

constitutional rights without alleging any facts that suggest a conspiracy. This is not enough to state a claim. Therefore, the Conspiracy claim against Defendant Horn will be dismissed.

B. State Law Claims

The Court has dismissed the federal claims against the Commonwealth Defendants. However, it may still exercise jurisdiction over the state law claims under the supplemental jurisdiction statute. See 28 U.S.C. § 1367(a).³ States are also generally protected against liability under the doctrine of sovereign immunity unless they have waived their immunity. See 42 Pa. C.S.A. § 2310⁴. There are nine exceptions to the general rule of immunity, including one for medical and professional liability. See 42 Pa. C.S.A. § 8522(b)(2)⁵. Exceptions to sovereign immunity should be narrowly interpreted. See SEPTA v. Simpkins, 648 A.2d 591, 594 (Pa. Commw. Ct. 1994). It is obvious that none of the Commonwealth Defendants are health care personnel. There are also no allegations that any of the non-moving Defendants who are health care personnel are employees of the Commonwealth’s agency or prison. Horn is the only named Defendant who is an employee of a state agency and he is not a health care worker. The conduct of an employee is within the scope of employment if it is of a kind and nature that the employee is employed to perform; it occurs substantially within the authorized time and

3. § 1367(a) provides that “... in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution”. Since there are still claims based on federal question jurisdiction that remain in this case, the Court still has original jurisdiction over the case. Since the state law claims against the Commonwealth Defendants form part of the same case or controversy, the Court may exercise jurisdiction over such claims.

4. § 2310 provides that “The Commonwealth, and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign immunity and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity”.

5. Medical-professional liability.--Acts of health care employees of Commonwealth agency medical facilities or institutions or by a Commonwealth party who is a doctor, dentist, nurse or related health care personnel.

space limits; it is actuated, at least in part, by a purpose to serve the employer. See Natt v. Labar 543 A.2d, 223, 225 (Pa. Commw. Ct. 1988). The Complaint does not allege that Commissioner Horn's actions were outside of the scope of his employment. Therefore, the Court finds that the above mentioned exception to sovereign immunity does not apply in the present action and the Commonwealth's agencies and officials acting within the scope of their employment are immune from liability.

IV. CONCLUSION

The federal and state law claims against the Commonwealth Defendants must be dismissed because of the Eleventh Amendment and Sovereign Immunity.

An appropriate Order follows.

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DEPARTMENT OF CORRECTIONS, et al.	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 25th day of May, 2000, upon consideration of the Commonwealth Defendants' Motion to Dismiss or to Transfer Venue (Docket No. 3), and the Plaintiff's Response thereto (Docket No. 8); it is hereby **ORDERED** that:

1. All claims against a) the Commonwealth of Pennsylvania Department of Corrections b) Martin Horn, Commissioner of the Department of Corrections and c) the State Correctional Institute at Mahanoy are **DISMISSED**; and
- b. the request to transfer venue is **DENIED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.