

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

IVAN LOPEZ-DIAZ

CIVIL ACTION  
NO. 01-CV-5181

v.

COUNTY OF LANCASTER,  
ROBERT G. DOE, M.D., et al.

O'Neill, J.

July , 2003

**MEMORANDUM**

I. INTRODUCTION

Plaintiff Ivan Lopez-Diaz, a prisoner formerly housed in the Restricted Housing Unit (“RHU”) at Lancaster County Prison, has asserted three counts against several prison officials, medical personnel including Dr. Robert G. Doe, and Lancaster County for allegedly violating his Eighth Amendment right to be free from cruel and unusual punishment. Before me is defendant Doe’s motion to dismiss Counts II and III of the amended complaint as well as plaintiff’s claim for punitive damages against defendant Doe pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. For the reasons stated below, I will grant the motion as to both counts.

II. BACKGROUND

From May 2001 until December 2001, plaintiff was a resident of the RHU, where the residents are to be completely segregated from one another because they are perceived to be high-risk, dangerous inmates. In accordance with RHU policy, plaintiff was “locked down” in his cell

twenty-three hours per day. During the one hour in which plaintiff was allowed out of his cell he was permitted to exercise, make telephone calls, and shower in the “day room,” a recreational area in the prison. Plaintiff alleges that, although prison policy required RHU inmates to be handcuffed while in transit from their cells to the day room, they were to be freed upon arrival at the day room.

Plaintiff asserts that the day room’s shower was the only one to which he had access and that it lacked a gate or cage that would have allowed inmates the opportunity to have their hands free to shower while other RHU residents were present in the day room. Plaintiff complains that because he had to shower while handcuffed he was unable to reach his wrists, back, thighs and buttocks to wash and a severe rash developed in those areas from inadequate hygiene, causing pain, itching, rawness, and flaking. Plaintiff contends that these symptoms occasionally recur, even after his release from Lancaster County Prison.

After the rash developed, plaintiff allegedly submitted five or six official requests over a two-and-a-half-week period for nursing assistance, wrote numerous letters to Warden Guarini requesting medical treatment, and made frequent oral requests that the guards permit him to visit the infirmary. After two and one half weeks of making requests, defendant Nurse Catalfamo was brought in to examine plaintiff’s rashes. The nurse allegedly conducted the entire examination from a distance of approximately ten feet, standing outside of plaintiff’s cell. The nurse did not provide any medication to treat the rash or its symptoms and recommended that plaintiff run water over the rash. This treatment did not alleviate the problem. Although the rash worsened, plaintiff was not examined again.

### III. STANDARD FOR RULE 12(b)(6)

A Rule 12(b)(6) motion to dismiss examines the sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45 (1957). “The pleader is required to ‘set forth sufficient information to outline the elements of his claim or to permit inferences to be drawn that these elements exist.’” Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993), quoting 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1357, at 340 (2d ed. 1990). In determining the sufficiency of the complaint I must accept all the plaintiff’s allegations as true and draw all reasonable inferences therefrom. Graves v. Lowery, 117 F.3d 723, 726 (3d Cir. 1997).

The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is “a short and plain statement of the claim” that will give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.

Id., quoting Conley, 355 U.S. at 47. “Thus, a court should not grant a motion to dismiss ‘unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’” Graves, 117 F.3d at 726, quoting, Conley, 355 U.S. at 45-46.

#### IV. DISCUSSION

Count II of the second amended complaint alleges that defendant failed to properly examine plaintiff’s rashes constituting a violation of plaintiff’s Eighth Amendment right to adequate medical care. Count III of the second amended complaint alleges medical malpractice under Pennsylvania state law.

##### A. Adequate Medical Care

I will grant defendant Doe’s motion to dismiss Count II as it pertains to him. Plaintiff alleges that defendant was deliberately indifferent to plaintiff’s medical needs constituting a violation of the Eighth Amendment. The Supreme Court has said that “a prison official cannot

be found liable under the Eighth Amendment. . . unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference can be drawn. . . and he must also draw the inference.” Farmer v. Brennan, 511 U.S. 825, 837 (1994). Prisons have a constitutional duty under the Eighth Amendment to provide prisoners with adequate health care. See e.g. Estelle v. Gamble, 429 U.S. 97 (1976). However, “[i]n order to succeed in a § 1983 action claiming inadequate medical treatment, plaintiff must show more than negligence on the part of his prison doctor, he must show that the doctor exhibited deliberate indifference to a serious medical need.” Coades v. Jeffes, 822 F. Supp. 1189, 1191 (E.D. Pa. 1993) (internal quotations omitted). Deliberate indifference cannot be proved without a showing of actual knowledge on the part of defendant. See Rode v. Dellarciprete, 845 F. 2d 1195, 1207 (3d Cir. 1988).

Plaintiff has averred nothing showing that defendant had actual knowledge of plaintiff’s condition or of any treatment or lack thereof by Nurse Catalfamo. There are no allegations at all with regard to the action or inaction of defendant. Rather, all allegations refer to the actions of Nurse Catalfamo in her capacity as a nurse under defendant’s supervision. Simply because the nurse had seen plaintiff’s condition and was under the supervision of defendant does not prove the ‘actual knowledge’ element of the claim. Plaintiff alleges that since he sent several requests for medical treatment defendant Doe must have seen them because he was in charge of the medical facility. However, plaintiff may not invoke the doctrine of respondeat superior to prove actual knowledge by defendant. “A 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.” Rode, 845 F. 2d at 1207. Without an allegation that defendant Doe

specifically knew of plaintiff's condition and was deliberately indifferent to it, his claim fails.

B. State Medical Malpractice Claim

Title 28 U.S.C. § 1367(c)(3) authorizes a district court to dismiss supplemental state law claims if all of the claims over which it has original jurisdiction have been dismissed. “[W]here the claim over which the district court has original jurisdiction is dismissed before trial, the district court must decline to decide the pendant state claims unless considerations of judicial economy, convenience and fairness to the parties provide an affirmative justification for doing so.” Hedges v. Musco, 204 F.3d 109, 123 (3d Cir. 2000) (emphasis in original), quoting Borough of West Mifflin v. Lancaster, 45 F.3d 780, 788 (3d Cir. 1995). Here, judicial economy, convenience and fairness do not require me to decide the pendant state claims. Therefore, I will dismiss the remaining state law claims against defendant without prejudice.

C. Claim For Punitive Damages

Since Counts II and III will be dismissed, I need not consider defendant's motion to dismiss plaintiff's punitive damages claim.

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**ORDER**

AND NOW, this        day of July, 2003, after considering defendant Doe's motion to dismiss, and plaintiff's response thereto, and for the reasons set forth in the accompanying memorandum, it is ORDERED that:

- 1)     The motion to dismiss is GRANTED as to the claims asserted against defendant Robert G. Doe, M.D. in Count II;
- 2)     The motion to dismiss is GRANTED as to the claims asserted against defendant Robert G. Doe, M.D. in Count III.

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THOMAS N. O'NEILL, JR., J.