

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

ANDRE CALHOUN & JOHN MORROW : CIVIL ACTION
 :
 v. :
 :
 MARTIN HORN, et al. : NO. 96-350

MEMORANDUM and OPINION

Norma L. Shapiro, J.

October 8, 1997

Plaintiffs Andre Calhoun ("Calhoun") and John Morrow ("Morrow") are two prisoners detained at the State Correctional Institution at Graterford ("Graterford"). They filed a complaint against various prison administrators and the following medical personnel at Graterford: Dennis L. Moyer, M.D. ("Dr. Moyer"), the prison's medical director; Richard A. Friedman, M.D. ("Dr. Friedman"), the chief nephrologist at the prison; Missy Healy ("Healy"), a dietician in Graterford's Renal Treatment Unit ("RTU"); and Susan Artale ("Artale"), an administrator for the RTU. Calhoun and Morrow alleged that the defendants violated their Eighth Amendment rights by denying them adequate medical treatment. Dr. Moyer, Dr. Friedman, Healy and Artale moved for summary judgment. For the reasons stated below, their motion will be granted.

FACTS

Calhoun and Morrow filed a pro se complaint against defendants, pursuant to 42 U.S.C. § 1983, that alleged violation

of their Eighth Amendment right to receive adequate medical care by failing to provide adequate renal facilities and treatment options. Both Calhoun and Morrow receive regular dialysis treatment at Graterford. The dialysis unit is operated under a contract with Renal Treatment Centers, Inc. ("RTC"). Calhoun and Morrow allege in their complaint that: the dialysis treatment is substandard; renal patients housed in the general population are treated differently than those housed in the RTU; medication is unavailable for those housed in the general population; the medical staff is not adequately trained to operate the dialysis machines; the medical staff deny them access to renal transplants.

The case was placed in administrative suspense to obtain counsel for the plaintiffs. Calhoun and Morrow sought a preliminary injunction against defendants. All parties agreed to select an independent medical expert to examine the RTU, interview the plaintiffs, catalog their complaints, review their records and submit a report on the Graterford renal treatment program. The parties selected Joseph E. Bisordi, M.D. ("Dr. Bisordi"), chair of the medical review board of the End Stage Renal Disease ("ESRD") Network No. 4, as the independent expert.

Dr. Bisordi conducted a tour of the Graterford facility on December 13, 1996. Counsel for both sides and various prison officials were present. Dr. Bisordi submitted a written report

stating his findings. Dr. Bisordi reported that the RTU observes universal precautions throughout the facility. See Report of Dr. Bisordi at 3, attached as Exh. B to Defs.' Mem. Supp. Mot. for Summ. Judgment [hereinafter the "Bisordi Report"]. He described the quality assurance procedures implemented in the RTU, and found them to be "similar to those used throughout the RTC system." Id. Dr. Bisordi determined that the "overall nutritional status of this unit's patients appears good compared to the typical dialysis population." Id. at 4.

Dr. Bisordi stated that the medical staff provide adequate counseling of patients who voluntarily shorten or skip their treatments. See id. The RTU staff has implemented short- and long-term care plans for the patients; the nursing staff makes "extensive documentation." Id. at 5. The RTU staffs make "appropriate use" of lab analysis each month. Id.

Dr. Bisordi stated that referrals from Dr. Friedman to regular prison doctors and outside specialists "appear to occur smoothly and in a timely manner," although formerly there were "problems with communication and mutual education." Id.

Dr. Bisordi reviewed Urea Reduction Ratio ("URR") reports, and noted that approximately two-thirds of the Graterford patients have URRs less than 65%, while only about one-third of the patients should have a URR level below 65%. See id. at 5, 8. Staff at the RTU attribute the problem to early sign-offs by the

patients. See id. at 5. Dr. Bisordi recommended that the RTU implement a corrective action plan to educate the patients on the need to stay connected to the dialysis machines for at least four hours at a time. See id. at 9.

Dr. Bisordi reported that ten patients of the Graterford RTU have died since the unit began operating in 1994. He determined the mortality rate at the RTU to be about 16%, which he said is below the national average. See id. at 6.

"Overall, the functioning of the Dialysis Unit at SCI-Graterford appears to be within the range encountered in adequately functioning facilities throughout the Commonwealth." Id. at 8. Dr. Bisordi "emphasized that the operation and outcomes of this unit are, overall, consistent with those found in some dialysis units throughout the [ESRD] Network." Id.

Dr. Bisordi made the following findings based on his inspection, interviews with patients and review of medical records: the renal patients' diets are adequate; the renal equipment "appeared to be functioning properly and to be properly maintained"; the unit is crowded but "sanitation is adequate"; staffing ratios are "satisfactory" and the staff are "adequately trained"; emergency equipment and procedures are "appropriate"; "quality assurance protocols are adequate"; and current sick call procedures offer "appropriate access to care." Id. at 10-11.

Dr. Bisordi did suggest areas for improvement: length of

dialysis time; better infection control to reduce the risk of spreading hepatitis B; an option for renal transplants; and better communication among medical providers. See id. at 8. But Dr. Bisordi indicated that these areas for improvement "are not unique to this facility and have been found on site visits" at other renal facilities throughout Pennsylvania. Id.

This court held a hearing on plaintiffs' motion for a preliminary injunction on January 23, 1997; Calhoun and Morrow testified. The hearing was continued until March 25, 1997, at which time Dr. Bisordi testified concerning his report. The court denied plaintiffs' motion for a preliminary injunction on April 30, 1997.

Defendants Dr. Moyer, Dr. Friedman, Healy and Artale filed a motion for summary judgment on April 23, 1997. Plaintiffs Calhoun and Morrow filed a motion in opposition to Dr. Friedman's motion. The court grants summary judgment in his favor for the reasons now stated. Plaintiffs did not oppose summary judgment in favor of Dr. Moyer, Healy and Artale; Rule 56(e) requires the court to grant summary judgment in their favor. See Fed. R. Civ. P. 56(e).

DISCUSSION

A court may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A defendant moving for summary judgment bears the initial burden of demonstrating there are no facts supporting the plaintiff's claim; then the plaintiff must introduce specific, affirmative evidence that there is a genuine issue for trial. See Celotex v. Catrett, 477 U.S. 317, 322-24 (1986). "When a motion for summary judgment is made and supported as provided in [Rule 56], an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

The court must draw all justifiable inferences in the non-movant's favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). A genuine issue of material fact exists only when "the evidence is such that a reasonable jury could return a verdict for the non-moving party." Id. at 248. The non-movant must present sufficient evidence to establish each element of its case for which it will bear the burden at trial. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-86 (1986).

Calhoun and Morrow filed their claim against Dr. Friedman

pursuant to 42 U.S.C. § 1983.¹ They allege that he intentionally deprived them of adequate medical care while in state custody, in violation of their rights under the Eighth Amendment.²

The primary purpose for the Eighth Amendment was "to proscribe 'torture[s]' and other barbar[ous]' methods of punishment." Estelle v. Gamble, 429 U.S. 97, 102 (1976) (citation omitted). The Eighth Amendment prohibits punishments that are incompatible with "the evolving standards of decency that mark the progress of a maturing society," Trop v. Dulles, 356 U.S. 86, 101 (1958), or that involve "'unnecessary and wanton infliction of pain.'" Estelle, 429 U.S. at 103 (quoting Gregg v. Georgia, 428 U.S. 153, 173 (1976) (joint opinion of Stewart, Powell, & Stevens, JJ.); see Hassine v. Jeffes, 846 F.2d 169, 174

¹ The statute provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

42 U.S.C. § 1983.

² The Eighth Amendment states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. The Eighth Amendment applies to the states through the Due Process Clause of the Fourteenth Amendment. See Robinson v. California, 370 U.S. 660, 666 (1962).

(3d Cir. 1988). The Eighth Amendment forbids punishment that is “repugnant to the conscience of mankind.” Lousiana ex rel. Francis v. Resweber, 329 U.S. 459, 471 (1947) (Frankfurter, J., concurring) (quoting Palko v. Connecticut, 302 U.S. 319, 323 (1937)).

The Eighth Amendment applies to medical treatment in prison. See Estelle, 429 U.S. at 103; West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978). “An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In worst cases, such a failure may actually produce physical ‘torture or a lingering death,’ ... the evils of most immediate concern to the drafters of the Amendment.” Estelle, 429 U.S. at 103. (citation omitted).

To recover for denial of medical treatment, the prisoner must prove: 1) the prisoner suffered from a serious medical condition;³ and 2) the prison officials were “deliberately indifferent” to the prisoner’s medical needs. Id. at 104; see also Wilson v. Seiter, 501 U.S. 294, 297 (1991); White v. Napolean, 897 F.2d 103, 108-09 (3d Cir. 1990); West, 571 F.2d at 161. “To be cruel and unusual punishment, conduct that does not purport to be punishment at all must involve more than ordinary

³ Defendants concede that plaintiffs’ renal conditions are “serious,” so the court only needs to determine if the defendants have exhibited “deliberate indifference” to that serious need. See Defs.’ Mem. Supp. Mot. for Summ. Judgment at 5 n.2.

lack of due care for the prisoner's interests or safety." Whitley v. Albers, 475 U.S. 312, 319 (1986) (quoted in Wilson, 501 U.S. at 298-99). The prison officials' conduct must rise to the level of "obduracy and wantonness." Id.

The Eighth Amendment does not protect prisoners from medical malpractice. The mere failure to provide optimal medical care does not give rise to a constitutional violation. See Estelle, 429 U.S. at 106 ("[A] complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a claim of medical mistreatment under the Eighth Amendment."); Inmates of the Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979) [hereinafter "Allegheny County"]. The prisoner must allege acts by prison officials "sufficiently harmful" to constitute deliberate indifference. Id. The acts must be "sufficiently egregious to rise to the level of a constitutional violation." White, 897 F.2d at 109.

In Estelle, 429 U.S. at 105 n.10., the Court cited examples of "deliberate indifference" by prison doctors: Williams v. Vincent, 508 F.2d 541 (2d Cir. 1974) (prison doctor made no effort to repair prisoner's maimed ear); Martinez v. Mancusi, 443 F.2d 921 (2d Cir. 1970), cert. denied, 401 U.S. 983 (1971) (prison officials refused to administer pain killers prescribed by the surgeon for leg surgery or allow prisoner to comply with the surgeon's instructions, see id. at 922-23; such conduct

amounted to "deliberate indifference" to prisoner's well-being, see id. at 924).

Where a prison medical facility has provided extensive treatment for an inmate, deliberate indifference cannot be demonstrated. See Estelle, 429 U.S. at 107 (no recovery by prisoner seen by medical personnel on seventeen occasions over a three-month period.). "The Eighth Amendment does not confer upon this Court the authority to impose upon the Graterford Administration, or any prison administration, our notions of enlightened policy." Hassine, 846 F.2d at 175.

The courts "afford[] considerable latitude to prison medical authorities in the diagnosis and treatment of the medical problems of inmate patients." Allegheny County, 612 F.2d at 762. As long as the prison provides "some care" that is adequate, there is no violation of the Eighth Amendment. Brinton, 554 F. Supp. at 389; see Roach v. Kligman, 412 F. Supp. 521, 525 (E.D. Pa. 1976). The prison must provide adequate care, not the most effective medical treatment.

Lack of prison medical care violates the Eighth Amendment when prison doctors intentionally ignore the prisoners' conditions and cause them to suffer severe pain. See, e.g., White, 897 F.2d at 109; United States ex rel. Walker v. Fayette County, 599 F.2d 573, 575 (3d Cir. 1979). In White, the doctor "deliberately ignore[d] the express orders of a prisoner's prior

physician." Id. at 109. The doctor's intentional refusal to follow the instructions of prior treating physicians for no apparent reason and other acts deliberately causing prisoners pain and suffering amounted to "deliberate indifference" to prisoners' serious medical needs. See id. at 110.

In Walker, acts by the prison medical staff were intended to cause pain and suffering. Walker informed prison officials he was addicted to heroin, but they gave him no medical attention for the first ten days of his incarceration. Walker suffered ten days of "severe withdrawal symptoms, including 'stomach cramps, chills, sweating, lack of sleep, 'dry heaves,' and much pain and suffering.'" Walker, 599 F.2d at 574 (citing Walker's complaint). The medical staff, knowing of Walker's condition, intentionally violated their legal duty under state law to medically examine all prisoners within forty-eight hours after admission and were "deliberately indifferent" to his medical needs. Id. at 576.

Calhoun, Morrow and defendants all rely on the report of Dr. Bisordi in support of their summary judgment positions. There is no dispute as to what Dr. Bisordi's report states, and there is "no genuine issue as to any material fact"; summary judgment is appropriate. Fed. R. Civ. P. 56(c).

Dr. Bisordi determined the RTU observes universal precautions throughout the facility. See Bisordi Report at 3.

He reported the quality assurance procedures implemented in the RTU are "similar to those used throughout the RTC system," id., and the nutritional status of Graterford's RTU patients is "good compared to the typical dialysis population." Id. at 4.

Dr. Bisordi concluded that the medical staff provides appropriate amounts of patient counseling. See id. The RTU staff implement care plans for the patients and make "extensive documentation" of each patient's medical history. Id. at 5. The RTU staff perform proper lab analysis on the patients. See id.

Medical referrals from Dr. Friedman to the regular prison doctors and to outside specialists occur "smoothly and in a timely manner." Id. Dr. Bisordi found the renal equipment well-maintained and functioning properly and the staff adequately trained. See id. at 10-11. "Overall, the functioning of the Dialysis Unit at SCI-Graterford appears to be within the range encountered in adequately functioning facilities throughout the Commonwealth." Id. at 8.

Dr. Bisordi recommended areas for improvement in the Graterford RTU. Approximately two-thirds of the Graterford patients had URR levels below 65%, but in his opinion only one-third of the patients should have URRs below that level. See id. at 5, 8. Dr. Bisordi recommended that the RTU implement a corrective action plan to educate the patients on the need to stay connected to the dialysis machines for at least four hours

each time. See id. at 9.

Dr. Bisordi suggested the RTU increase dialysis time, show greater awareness of the risk of hepatitis B, improve communication among medical providers and consider the option of renal transplants. See id. at 8. Dr. Bisordi and the ESRD Network often make the same recommendations to non-penal renal facilities throughout Pennsylvania. See id.

The Graterford RTU is performing "within the range encountered in adequately functioning facilities throughout the Commonwealth." Id. at 8. If Dr. Friedman operates an "adequate" RTU facility, he is not "deliberately indifferent" to his patients' needs. See, e.g., Wilson, 501 U.S. at 298; Estelle, 429 U.S. at 104; West, 571 F.2d at 108.

Calhoun and Morrow argue the prison's policy to refuse inmates renal transplants constitutes "deliberate indifference" to their medical needs. Dr. Bisordi reported that renal transplants improve patients' quality of life and survival rates; transplants are less expensive over time than non-surgical care. See Bisordi Report at 9. The most effective treatment for every Graterford patient might be a renal transplant, but the prison's policy of non-surgical care is not necessarily "wanton" or intentionally designed to inflict pain and suffering. See Estelle, 429 U.S. at 102; Hassine, 846 F.2d at 174. Dr. Friedman

and the RTU provide competent, "adequate" treatment for the Graterford inmates. See Bisordi Report at 8. Calhoun and Morrow have made no allegations that the prison medical policies are based on a "sadistic" desire to inflict pain or illness. See White, 897 F.2d at 107-08.

The prison is providing some level of medical care, and the court should not impose its own notion of "enlightened," preferred medical policy. See Hassine, 846 F.2d at 175. This court should not second-guess the medical decisions of the prison staff. See Allegheny County, 612 F.2d at 762; Brinton, 554 F. Supp. at 389. Dr. Friedman and the RTU provide dialysis treatment for the prisoners three times per week; Dr. Friedman examines each patient once per month. There is no evidence supporting plaintiffs' contention that their care is inadequate or life threatening.

Prisoners do not have any constitutional right under the Eighth Amendment to receive a particular treatment, as long as they receive adequate care. See, e.g., Norris v. Frame, 585 F.2d 1183, 1188 (3d Cir. 1978) (pretrial detainees had no constitutional right to receive the drug methadone). Calhoun and Morrow have no constitutional right to receive renal transplants, as long as Dr. Friedman and the RTU provide adequate medical care. See, e.g., Estelle, 429 U.S. at 107; White, 897 F.2d at 110.

CONCLUSION

Calhoun and Morrow have not established that Dr. Friedman has acted with "deliberate indifference" to their medical needs. They have shown no violation of the Eighth Amendment; summary judgment will be entered in Dr. Friedman's favor.

An appropriate order follows.

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

ANDRE CALHOUN & JOHN MORROW : CIVIL ACTION
 :
 v. :
 :
 MARTIN HORN, et al. : NO. 96-350

ORDER

AND NOW, this 8th day of October, 1997, upon consideration of the motion for summary judgment filed by defendants Dr. Dennis Moyer, Dr. Richard Friedman, Missy Healy and Susan Artale, plaintiffs' motion in opposition to the motion of Dr. Friedman, several hearings in which counsel for all parties were heard, and for the reasons stated in the attached Memorandum, it is hereby **ORDERED** that:

1. The motion for summary judgment filed by defendants Dr. Dennis Moyer, Dr. Richard Friedman, Missy Healy and Susan Artale is **GRANTED**.

2. The motion in opposition to Dr. Friedman's motion filed by plaintiffs Andre Calhoun and John Morrow is **DENIED**.

3. Judgment is **ENTERED** in favor of defendants Dr. Dennis Moyer, Dr. Richard Friedman, Missy Healy and Susan Artale.

Norma L. Shapiro, J.