

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

JOHN FLAMER,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	No. 95-7889
	:	
E.M.S.A; NURSES CYNTHIA; KIM	:	
CHRISTIE; NURSE SUE; BARBARA	:	
WALRATH; DOCTOR CARRILLO;	:	
CAPTAIN LEVANDOWSKI; GEORGE	:	
HILL; SPIGERILLI; NURSE SHARON	:	
CORPORAL QUIGLEY,	:	
Defendants.	:	

MEMORANDUM-ORDER

GREEN, S.J.

October , 1997

Presently before the court is Defendants EMSA, Nurse Cynthia, Kim Christie, Nurse Sue, Barbara Walrath, Doctor Carrillo and Nurse Sharon's Motion For Summary Judgment and Plaintiff's response thereto. For the following reasons, Defendants' Motion is granted.

I. FACTS

Plaintiff was granted leave to proceed in forma pauperis in this matter by Order of this Court dated February 27, 1996. Thereafter, Plaintiff executed a voluntary dismissal with respect to his claims against Defendants Walrath, Levandowski, Spigerilli and Hill which was granted by Order of this Court dated December 11, 1996.

Plaintiff brings this action against the moving Defendants under 42 U.S.C. § 1983 alleging violations of his civil and/or constitutional rights. Plaintiff states in his deposition and Answer that the Defendants isolated him from the rest of the prison population for his refusal to have blood drawn. Plaintiff

further states that he was denied medical treatment for a vomiting condition. Finally, Plaintiff states that he was placed naked in a cell because a wound he allegedly received during an assault was logged as "self-inflicted" without an investigation into the assault.

With respect to Plaintiff's claim that he was isolated from the prison population because he refused to have his blood drawn, the affidavit of Defendant Kim Christie states that the Plaintiff did refuse to undergo an intake medical screen on October 26, 1995. Defendants' Memorandum of Law, Exhibit G at 1. The medical staff placed the Plaintiff on medical lockdown as a result of this refusal. Plaintiff states in his deposition that he understood the reason why he was placed in medical lockdown was to prevent the spread of diseases to the general prison population. Flamer Deposition 1/10/97 at 39-40.

With respect to Plaintiff's attempt to seek medical attention for his physical conditions, the medical records from the Health Services Department show that the Plaintiff was either evaluated or attempted to be evaluated because Plaintiff refused the evaluation approximately 50 times for various complaints from November until December 11, 1995 which is the time period in question. Defendants' Memorandum of Law, Exhibit F. Plaintiff first complained of a vomiting condition on November 11, 1995 at which time a sample of his sputum was evaluated. Id. at 11/11/95. On November 12, Plaintiff was again evaluated for his vomiting condition, and his sputum was again tested. Id. at

11/12/95. On November 13, Plaintiff was referred to the doctor regarding his vomiting condition, but Plaintiff refused to see the doctor twice that day. Id. at 11/13/95. Plaintiff also refused to be treated for his vomiting condition on several occasions on November 14, 15 and 16. Id. at 11/14/95, 11/15/95 and 11/16/95. On November 21, 22 and December 9, the medical records reveal that Plaintiff was evaluated for his vomiting condition. Id. at 11/21/95, 11/22/95, and 12/9/95.

Subsequent to the filing of Plaintiff's Complaint on December 11, 1995, Plaintiff's vomiting condition was evaluated or attempted to be evaluated another eight times throughout December of 1995. Id. Plaintiff also received several diagnostic tests to evaluate his condition including an iron test, CBC, and upper GI, all of which were negative. Id. The affidavit of Kim Christie confirms the account of events recorded in the medical records. See Defendants' Memorandum of Law, Exhibit G. Plaintiff testified in his deposition that since 1991, when he initially started spitting up, he has been treated at various medical facilities, including, SCI-Haverford, Chester County Prison, Philadelphia Detention Center and Sacred Heart Crisis Center, and none of these entities has been able to diagnose his condition. Flamer Deposition 2/27/97 at 33-34.

With respect to Plaintiff's assertions that he was placed naked in a cell, Plaintiff stated in his deposition that a nurse named Mary took his clothes on November 19, 1995 because he told her he was mad and needed to calm down. Flamer Deposition

2/27/97 at 64. Plaintiff admits having a history of self-mutilation. Flamer Deposition 2/27/97 at 62. Plaintiff further stated that his clothes were removed a second time on that same day by Corporal Quigley. Flamer Deposition 2/27/97 at 72. Plaintiff alleges that Corporal Quigley, not one of the moving Defendants in this Motion, refused to investigate an alleged assault which caused a wound on Plaintiff's leg. As a result of Corporal Quigley's refusal to investigate the assault, the Plaintiff claims that the wound was logged as "self-inflicted." Flamer Deposition 5/22/97 at 44-56. According to the affidavit of Defendant Kim Christie, the Plaintiff's clothes were removed the second time because of the designation of the wound as "self-inflicted," and as per prison protocol, the plaintiff was stripped and given a blanket while in the isolation cell for observation. Defendants' Memorandum of Law, Exhibit G at 5.

II. DISCUSSION

Summary judgment shall be awarded "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). Once the moving party has carried the initial burden of showing that no genuine issue of material fact exists, the nonmoving party cannot rely upon conclusory allegations in its pleadings or in memoranda and briefs to establish a genuine issue of material fact. Pastore v. Bell Telephone Co. of Pa., 24 F.3d

508, 511 (3d Cir. 1994). The nonmoving party, instead, must establish the existence of every element essential to his case, based on the affidavits or by the depositions and admissions on file. Id. (citing Harter v. GAF Corp., 967 F.2d 846, 852 (3d Cir. 1992)); see also Fed. R. Civ. P. 56(e).

A. DEFENDANTS NURSE CYNTHIA, KIM CHRISTIE, NURSE SUE, BARBARA WALRATH AND DOCTOR CARRILLO

The Eighth Amendment prohibits punishments which involve the unnecessary and wanton infliction of pain such that the punishment does not comport with the basic concept of human dignity. Gregg v. Georgia, 428 U.S. 153, 173, 96 S. Ct. 2909 2925, (1976). Where a plaintiff claims a denial of medical treatment, the plaintiff must demonstrate a deliberate indifference to serious medical needs. Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 291 (1976). Deliberate indifference has been defined as subjective recklessness, or the actor's conscious disregard of substantial harm that may result from his or her action. Farmer v. Brennan, 511 U.S. 825, 839, 114 S. Ct. 1970, 1980 (1994).

In the present case, Plaintiff has failed to produce any evidence in his Answer to substantiate the allegations he set forth in his Complaint or to refute the facts presented in Defendants' Memorandum. Plaintiff's Answer merely recites the allegations in the Complaint and relies on bare assertions of fact. Plaintiff's Answer does not include any affidavits, depositions, admissions on file or any other evidence to support

the assertions he makes regarding his Eighth Amendment claim. Even considering the Plaintiff's depositions of 1/10/97, 2/27/97 and 5/22/97, the deposition testimony, along with the Plaintiff's Complaint and Answer, still do not produce sufficient evidence of an unnecessary and wanton infliction of pain by the Defendants concerning the Plaintiff's medical treatment or confinement conditions during the time period in question. Therefore, as Plaintiff has failed to show that a genuine issue of material fact exists, Defendants are entitled to summary judgment.

B. DEFENDANT EMSA

A defendant in a civil rights action must have personal involvement in the alleged wrongs; liability cannot be predicated solely on respondeat superior. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). "To make out a case under Section 1983, the plaintiff must show actual participation in the unlawful conduct, or actual knowledge of and acquiescence in that conduct." Payton v. Vaughn, 798 F. Supp. 258, 260 (E.D. Pa. 1992). Private entities who act under state law may also be held liable for a policy or custom demonstrating deliberate indifference to constitutional rights. See, e.g., Sanders v. Sears, Roebuck & Co., 984 F.2d 972, 975 (8th Cir. 1993).

Because Plaintiff has failed to produce any evidence of any unlawful conduct on the part of the individual Defendants, Plaintiff cannot support any allegations against EMSA based on vicarious liability. Plaintiff has also failed to produce any evidence of a policy or custom demonstrating a deliberate

indifference to plaintiff's constitutional rights on the part of EMSA. Therefore, as Plaintiff has failed to produce sufficient evidence of a genuine issue of material fact, Defendant EMSA is entitled to summary judgment.

An appropriate Order follows.

