

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

JOHN FLAMER,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
JONES, OFFICER, BARBARA	:	No. 95-CV-3745
WALRATH, KIM CHRISTIE,	:	
CARRILLO, DOCTOR, NURSE TRACY,	:	
NURSE SUE, NURSE SHARON,	:	
CAROL WOODWORTH, NURSE JEAN,	:	
SECRETARY LINDA	:	
Defendants.	:	

MEMORANDUM-ORDER

GREEN, S.J.

November , 1997

Presently before the court is Plaintiff's Motion For Summary Judgment, Defendants' Motion For Summary Judgment and Plaintiff's Answer to Defendants' Motion. Upon consideration of both motions, Plaintiff's Motion For Summary Judgment is DENIED and Defendants' Motion For Summary Judgment is GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed the present action on July 7, 1995 asserting a violation of his constitutional rights pursuant to 42 U.S.C. § 1983. Defendants Barbara Walrath and David Jones were dismissed from this action by order of this court dated December 26, 1995. The remaining defendants are the moving defendants in the present motion.

Plaintiff alleges that Defendants misdiagnosed a pinched nerve in his shoulder as a muscle spasm. Plaintiff also alleges that Defendants prescribed a medicine which caused his condition to worsen, upset his stomach and induced him to spit up blood. Finally, Plaintiff alleges that Defendant Secretary Linda

interfered with medical procedures by telling a guard to tell the Plaintiff to put his name on sick call after Plaintiff fell and injured himself instead of referring the Plaintiff directly to a nurse.

The medical records from the Delaware County Prison reveal that Doctor Carrillo prescribed Naprosyn and Robaxin for the Plaintiff on May 22, 1995 for what Doctor Carrillo believed to be a muscle spasm. (Defs.' Mem., Exh. D at May 22, 1995.) Plaintiff was seen or attempted to be seen (because he refused) by the medical staff at least 25 times for various complaints, including those pertaining to the pain in his shoulder, during the month of June. On June 3, 1995 Plaintiff received x-rays of his left shoulder and cervical spine which indicated the possibility of a muscle spasm. On July 5, 1995 Doctor Carrillo ordered an orthopedic consultation because of Plaintiff's continuing complaints, however, the first orthopedist refused to evaluate Plaintiff because of his litigious nature. (Defs.' Mem., Exh. D at July 7, 1995.) Plaintiff then filed the instant lawsuit.

Subsequent to the filing of this lawsuit, Plaintiff was evaluated by an orthopedist and received an MRI on September 25, 1995. The MRI results revealed a possible partial tear of the rotator cuff. (Defs.' Mem., Exh. D, MRI Center of Delaware County.) There is no record after September 25, 1995 of any complaints related to the Plaintiff's shoulder until January 22, 1996, when he demanded his MRI results. Plaintiff was given his

results and advised by Doctor Carrillo that the injury did not require surgery. Doctor Carrillo ordered Salsalate, noting that the Plaintiff complained of stomach pain from the Naprosyn and Robaxin.

Plaintiff states in his deposition of February 27, 1997 that Dr. Brandfass, the orthopedist consulted for Plaintiff's injury, advised him to have surgery. (Flamer Dep., 2/27/97 at 41.) The report of Dr. Brandfass dated March 20, 1996 states "I do not feel that the rotator cuff injury needs surgery at this time." (Defs.' Mem., Exh. D, Wackenhut Consultation-Emergency room referral of March 20, 1996.) An EMG was performed on April 18, 1996 at the request of Doctor Brandfass. On June 5, 1996 Doctor Brandfass injected Plaintiff with cortisone and xylocaine, prescribed pain medication and gave him an ice pack. (Defs.' Mem. Exh. D, Wackenhut Consultation-Emergency Room Referral of June 5, 1996.) In Plaintiff's deposition of February 27, 1997, Plaintiff states that with regard to his shoulder injury, he believed he should have been placed in a safer environment, given whirlpool treatments and had the injury corrected if possible. (Flamer Dep., 2/27/97 at 39-41.)

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). The evidence presented must be viewed in the light most favorable to the non-moving party. Lang v. New York Life Ins. Co., 721 F.2d 118, 119 (3d Cir. 1983).

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). Allegations merely stating a claim for medical malpractice do not support a Section 1983 claim for

deliberate indifference. White v. Napoleon, 897 F.2d 103, 108 (3d Cir. 1990) (citing Estelle v. Gamble, 429 U.S. at 106, 97 S. Ct. at 292).

In the present case, Plaintiff has failed to produce any evidence in his Motion For Summary Judgment or Answer to Defendants' Motion For Summary Judgment to substantiate the allegations he set forth in his Complaint or to refute the facts presented in Defendants' Memorandum. Plaintiff's Motion and Answer merely recite the allegations in the Complaint and rely on bare assertions of fact. Plaintiff's Motion and Answer do not include any affidavits, depositions, admissions on file or any other evidence to support the assertions Plaintiff 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, Motion for Summary Judgment and Answer to Defendant's Motion For Summary Judgment, still do not produce sufficient evidence of an unnecessary and wanton infliction of pain by the Defendants concerning the Plaintiff's medical treatment for his shoulder injury. Therefore, as Plaintiff has failed to show that a genuine issue of material fact exists, Defendants are entitled to summary judgment.

An appropriate Order follows.

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SECRETARY LINDA	:	
Defendants.	:	

ORDER

AND NOW, this day of November, 1997 upon consideration of the Plaintiff's Motion For Summary Judgment, Defendants' Motion For Summary Judgment and Plaintiff's Answer to Defendants' Motion, IT IS HEREBY ORDERED that Plaintiff's Motion is DENIED and Defendants' Motion is GRANTED.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.