

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

JAMES MILLER : CIVIL ACTION
 :
 v. :
 :
 STANLEY HOFFMAN, M.D. and :
 DONNA HALE : NO. 97-7987

MEMORANDUM AND ORDER

HUTTON, J.

June 21, 1999

Presently before the Court are the Motion for Summary Judgment of Defendant Donna Hale ("Hale") (Docket No. 53) and the Plaintiff James Miller's response thereto (Docket No. 59). Also before the Court is the Motion for Summary Judgment by Defendant Stanley Hoffman, M.D. ("Hoffman") (Docket No. 58), the Plaintiff's response thereto (Docket No. 60), and Dr. Hoffman's Reply Brief (Docket No. 66). For the reasons stated below, Defendant Hale's Motion for Summary Judgment is **GRANTED** and Dr. Hoffman's Motion for Summary Judgment is **DENIED**.

I. INTRODUCTION

James Miller ("Miller" or "Plaintiff" filed this civil rights action against Stanley Hoffman, M.D. ("Hoffman"), the former medical director at SCI-Graterford and Plaintiff's former treating physician, Joseph Dimino, M.D. ("Dimino"), the corporate medical director for Correctional Physician Services, Correctional

Physician Services ("CPS"), the Commonwealth of Pennsylvania, Department of Corrections, and the following SCI-Graterford officials: Superintendent Donald T. Vaughn, Deputy Superintendent David Diguglielmo, former Deputy Superintendent Henry Jackson, Officer James Davis, and Health Care Administrator, Donna Hale ("Hale").

Plaintiff alleged that all of the defendants violated his Eighth Amendment rights for denying him adequate medical care. Additionally, he asserted a medical malpractice claim against Drs. Hoffman and Dimino and CPS. On April 17, 1998, this Court approved a stipulation voluntarily dismissing all of the Plaintiff's claims against the Department of Corrections. Defendants Dimino and CPS filed a motion to dismiss, which this Court granted as to CPS only. This Court granted the Plaintiff's motion under Federal Rule of Civil Procedure 21 to dismiss all claims against defendants Vaughn, Diguglielmo, Jackson, and Davis. It also granted Dimino's unopposed motion to dismiss all claims against him. Therefore, Plaintiff's only remaining claims are that Dr. Hoffman and Donna Hale were deliberately indifferent to his medical needs and that Dr. Hoffman was reckless and negligent under state law.

II. BACKGROUND

Taken in the light most favorable to the nonmoving party, the facts are as follows. Miller is not really James Miller. His actual name is Timothy Miller. When he was arrested he assumed the

identity of his brother, James Miller. Miller was first incarcerated at SCI-Graterford in 1989, was transferred to other state correctional institutions from 1990 to 1994, and returned to Graterford in 1994, where he has since remained. The events leading to this case began on April 16, 1997, when Miller fell and injured his left elbow while working in the main kitchen at Graterford.

After his fall, Miller went to see his supervisor who sent him to the prison hospital. At the hospital, Miller was placed on sick call for the next morning. The next day Miller's elbow began to swell. He attempted to report to sick call to have his elbow examined. On the way to the hospital, however, Miller got into a confrontation with a guard. As a result, Miller was placed in the Restricted Housing Unit ("RHU") rather than being allowed to proceed to the infirmary.

Approximately ten days later, on April 26, 1997, Miller's initial injury was seen by a prison physician for the first time. On May 2, 1997, Miller was seen by Defendant Hoffman. At this time, Hoffman attempted to drain fluid from Miller's swollen elbow. After two unsuccessful attempts, Hoffman drained some fluid from Miller's elbow, but was unable to get all of the fluid out. Hoffman then injected 250 milligrams of a steroid called solumedrol into Miller's elbow. Approximately ten days later, the wound at issue appeared on Miller's left elbow and began draining blood and

fluid. For about four months, Miller was treated with "dressings and soaks" for this condition.

During this time, Miller repeatedly requested another physician's opinion of the treatment. Consequently, Miller filed grievances with Donna Hale, the Health Care Administrator responsible for scheduling referrals to specialists. As Health Care Administrator, Hale is part of the executive staff at Graterford and attends weekly executive staff meetings with the Superintendent of Graterford and various other high-level staff members. Her responsibilities as Health Care Administrator include supervising staff, responding to inmate grievances and monitoring referrals of prisoners for consultations with outside physicians or specialists.

Three months after the wound appeared, in August of 1997, Hale met with Hoffman to discuss plans for Miller to be referred to a specialist. Hoffman did not schedule Miller for a consultation after this meeting. Instead, on August 13, 1997, Nuhad Kulaylat, M.D. ("Kulaylat") referred Miller to a visiting orthopedic specialist named Norman Stempler, M.D. ("Stempler"). When Hoffman learned about this referral, he immediately canceled the appointment. Nonetheless, Miller managed to be seen by Stempler despite Hoffman's cancellation of the appointment. Miller had inadvertently been issued two passes for the consultation. Hoffman--who apparently did not know this--caused just one pass to

be confiscated. Miller used the other to go to the appointment that Kulaylat had scheduled for him, and was treated by Stempler. After examining Miller, Stempler concluded that if his wound did not heal, he would consider "debridement and primary closure by general surgery." Hoffman was very upset with both Stempler and his staff for allowing the consultation. After Miller was treated by Stempler, Hoffman declared in Miller's medical chart that Stempler had "assumed responsibility for [Miller's] wound care."

A month later, Hoffman's supervisor referred Miller to see another physician for a second opinion. On September 10, 1997, after a CPS Administrator named Frank Bott contacted him from the prison and requested him to do so, Dimino, the Corporate Medical Director for CPS, referred Miller for a consultation with an outside general surgeon named Dr. Botempo. Again, upon discovering the appointment had been scheduled, Hoffman canceled it immediately. And again, Hoffman was angry and wrote in Miller's medical chart that Miller's care was "transferred" to Dimino. Hoffman also noted that Dimino would be guilty of patient abandonment if he failed to check on Miller daily. Neither Stempler nor Dimino made daily visits or even weekly visits to the prison. Dimino conceded that Hoffman's comment was inappropriate.

In September of 1997, four months after incurring the initial injury, Miller contacted an attorney who requested that Miller be allowed to see another doctor. On October 17, 1997,

Miller was sent to see Ernest Rosato, M.D. ("E. Rosato"), a general surgeon at Thomas Jefferson University Hospital. E. Rosato recommended that Miller "have [the wound on his left elbow] re-excised and closed primarily." After conferring with a plastic surgeon, E. Rosato decided that an orthopedic hand surgeon should perform the surgery. Dr. Rosato advised Dr. Hoffman of his diagnosis and provided him with a list of specialists to consult with respect to the surgery.

In September of 1997, suggested in front of other inmates that Miller might have AIDs. Miller had already been tested several months before and was known by medical care providers at Graterford to not have AIDs. Hoffman decided to confine Miller in "reverse isolation," a status for patients with compromised immune systems. Hoffman recorded in Miller's chart that Miller was manipulating his own wound and causing it not to heal. Miller also noted that Miller was manipulating the Pennsylvania Department of Corrections.

On October 17, 1997, Miller has seen by Dr. Ernest Rosato, M.D. ("E. Rosato"), a general surgeon at Thomas Jefferson University Hospital. E. Rosato recommended that Miller "have [the wound on his left elbow] re-excised and closed primarily." After conferring with a plastic surgeon, E. Rosato decided that an orthopedic hand surgeon should perform the surgery. E. Rosato informed Hoffman of his diagnosis and forwarded him a list of

several such specialists to consult with respect to the surgery. On October 22, 1997, Randall Sears, Deputy Chief Counsel for the Pennsylvania Department of Corrections, advised Miller's counsel by letter that if his wound did not heal by "Thursday," October 23, 1997, surgery would be performed on Miller's elbow. Despite the wound not healing, no surgery was performed.

On December 5, 1997, Miller was examined by Francis Rosato, M.D. ("F. Rosato"). F. Rosato advised Dr. Hoffman that Miller's elbow did not require surgery at that time. However, he also said that should the wound reappear, then "the recommendation previously made [of surgery] should be followed." F. Rosato wrote that although there was "some soft tissue swelling" it was "without bone abnormality."

On December 1, 1998, Hale filed a motion for summary judgment. On December 15, 1998, the Plaintiff filed his response in opposition. On December 8, 1998, Dr. Hoffman filed a motion for summary judgment. On December 22, 1998, the Plaintiff filed his response in opposition. Dr. Hoffman filed a Reply Brief on January 12, 1999. Because the Defendants' motions are ripe, the Court considers the motions for summary judgment.

III. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "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 a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. See Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. See id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. See Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

IV. DISCUSSION

A. Hoffman's Motion for Summary Judgment

In his motion, Hoffman raises essentially four general issues regarding Miller's Complaint. First, Hoffman claims that Miller's § 1983 Claim for Medical Maltreatment must be dismissed because: (1) Miller has not produced sufficient evidence that Hoffman had actual knowledge that his treatment of Miller presented a substantial risk of harm to Miller; (2) Hoffman is entitled to qualified immunity; and (3) Hoffman has a good faith defense, which Miller lacks the ability to rebut. Second, Hoffman claims that Miller's claim for intentional infliction of emotional distress is fatally flawed because: (1) Hoffman's alleged conduct was not "outrageous;" and (2) Miller suffered no physical injury. Third, Hoffman claims that Miller's malpractice claim must be dismissed because Miller has failed to produce sufficient expert testimony. Fourth, and finally, Hoffman contends that Miller's entire suit must be dismissed because he has sued in the wrong name. The Court will address each of the arguments asserted by Defendant Hoffman.

1. 42 U.S.C. § 1983 Medical Maltreatment Claim

a. Standard

The validity of an inmate's claim for medical maltreatment depends on whether it represents cruel and unusual punishment. In Estelle v. Gamble, the Supreme Court held that "the deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' ... proscribed by the Eighth Amendment." 429 U.S. 97, 104, 97 S.Ct.

285, 50 L.Ed.2d 251 (1976). This standard has been split into a two part test: (1) deliberate indifference by the prison official

and (2) serious medical need by the prisoner. West v. Keve, 571 F.2d 158, 161 (3d Cir.1978).

A serious medical need is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." Monmouth County Correctional Inst. Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir.1987) (citing Pace v. Fauver, 479 F. Supp. 456, 458 (D.N.J.1979), aff'd, 649 F.2d 860 (3d Cir. 1981)). In addition, "[t]he seriousness of an inmate's medical need may also be determined by reference to the effect of denying the particular treatment"; e.g., the suffering of a "lifelong handicap or permanent loss." Id. at 347.

The Supreme Court clarified the mental state required to show an official's deliberate indifference in Farmer v. Brennan, 511 U.S. 825, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). The Court held that an official shows deliberate indifference when he "knows of and disregards an excessive risk to inmate health or safety: the official must both be aware of facts from which the inference could be drawn that a substantial harm exists, and he must also draw the inference." Id. at 837. In other words, deliberate indifference does not occur where the official fails to alleviate a significant risk that he should have identified but failed to do so. Id.

In Estelle, the Court identified three situations where deliberate indifference to serious medical needs may be manifested:

(1) "by prison doctors in their response to the prisoner's needs," (2) "by prison guards in intentionally denying or delaying access to medical care," or (3) by prison guards in "intentionally interfering with the treatment once prescribed." Estelle, 429 U.S. at 104-05 (footnotes omitted). Nevertheless, claims for negligent diagnosis or treatment do not rise to the level of deliberate indifference. Id. at 106. A doctor's decision whether to order specific diagnostic techniques or forms of treatment is within his medical judgment, and it does not represent cruel and unusual punishment under the Eighth Amendment. Id. at 107. Even "[m]edical malpractice does not become a constitutional violation merely because the victim is a prisoner." Id. at 106.

"Where the plaintiff has received some care, inadequacy or impropriety of the care that was given will not support an Eighth Amendment claim." Norris v. Frame, 585 F.2d 1183, 1186 (3d Cir.1978). Consequently, a claim for the violation of the Eighth Amendment will not succeed unless the medical treatment received consists of "act[s] which were either intentionally injurious, callous, grossly negligent, shocking to the conscience, unconscionable, intolerable to the fundamental fairness or barbarous." Id.

Inadequate medical treatment claims under § 1983 must be denied where the medical treatment provided by officials does not comport to the inmate's specific requests since "complaints merely

reflect a disagreement with the doctors over the proper means of treat[ment]." Boring v. Kozakiewics, 833 F.2d 468, 473 (3d Cir. 1987); see also Holly v. Rapone, 476 F.Supp. 226 (E.D. Pa. 1979) (claim under § 1983 denied where medical treatment was provided but prisoner claimed that he did not receive proper medications and an X-ray). Dismissal of a complaint is not proper, however, where prisoners allege, for example, that on numerous occasions a prison doctor intentionally inflicted pain, continued ineffective courses of treatment and refused to prescribe appropriate medications. White v. Napoleon, 897 F.2d 103 (3d Cir.1990).

b. Analysis

The Court finds that Miller has produced sufficient evidence for a reasonable jury to conclude that Hoffman was deliberately indifferent to Miller's serious medical needs. If the Court accepts the reading of the evidence most favorable to Miller, the alleged misconduct violates the Eighth Amendment. Hoffman refused to allow Miller to be seen by a specialist, although the treatment he was rendering failed to work after several months. Hoffman canceled consultations with orthopedic surgeons and did not approve other consultations with orthopedic surgeons. On the two occasions that Miller managed to see a specialist, Hoffman did not follow the recommendations of those specialists. Moreover, Hoffman knew that Miller was in a state of pain and suffering during this time.

Hoffman contends that he had concluded that orthopedic surgeons had nothing to offer in the treatment of Miller. The reasonableness of this conclusion is a question for the jury. As noted above, denying an inmate access to a physician capable of assessing the need for treatment and/or preventing inmate from receiving a recommended treatment is deliberate indifference. Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979). Deliberate indifference to serious medical needs can be reasonably inferred from persistent conduct in the face of resultant pain and risk of permanent injury. Napoleon, 897 F.2d at 109.

Reviewing the evidence in the light most favorable to the Plaintiff, a reasonable juror might conclude that Hoffman took extraordinary measures to deny Miller access to alternative medical care in order to avoid review of the propriety of his initial treatment. After Hoffman's initial treatment of Miller's injury, the elbow began to swell and drain fluid. This condition remained unchanged for several months. Hoffman denied Miller access to other physicians capable of assessing his wound. Indeed, Hoffman became irate after learning that other doctors had scheduled Miller to be seen by other specialists and attempted to cancel those appointments. Hoffman prevented consistent treatment recommendations from respected orthopedic specialists from being implemented.

Hoffman also noted without a factual basis that Miller's wounds may not be healing due to self-manipulation and AIDS. No evidence indicates that Miller was manipulating his wound. Miller had also tested negatively for AIDS. Nonetheless, Hoffman had Miller placed in "reverse isolation" due to his "high risk" condition. This confinement isolated Miller from his attorney and the "outside world" because Miller was denied all phone privileges. Hoffman also refused to allow Miller to change doctors within the prison system. Hoffman knew that Miller's injury was causing him pain. Reviewing the evidence before the Court in the light most favorable to Miller, a reasonable juror could conclude that Hoffman knew that his refusal to allow Miller to see other doctors would cause harm to Miller and yet proceeded with this treatment anyway. Thus, the Court finds that Hoffman has failed to carry his burden of showing an absence of material issues of fact in light of Eighth Amendment standards. Accordingly, summary judgment in favor of Hoffman regarding Miller's § 1983 Medical Maltreatment Claim is not warranted.

c. Qualified Immunity and Good Faith

Hoffman argues that Miller has failed to overcome his "good faith defense." Hoffman states that as a prison physician, he is entitled to assert a good faith defense, which the Plaintiff must overcome with proof that Hoffman subjectively understood his conduct violated the Plaintiff's constitutional rights. For this

Hoffman relies on Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250 (3d Cir. 1994). The Court in Jordan held that private individuals invoking state attachment laws subsequently held unconstitutional had a defense of good faith. Id. at 1276. Like the subjective knowledge component of an Eighth Amendment claim itself, bad faith can be inferred from circumstantial evidence. Id. at 174. It is "virtually inconceivable" that a medical professional working in a prison would be unaware that preventing necessary medical care to a patient in pain for a period of months in order to avoid discovery of his possible malpractice violated his constitutional rights. See Pearson v. City of Philadelphia, Civ.A. No.97-1298, 1998 WL 721076, *2 (E.D. Pa. Oct.15, 1998). If the jury were to credit the Plaintiff's evidence and reject Defendant Hoffman's, it could reasonably conclude that Hoffman did not act in good faith.

Hoffman also alleges that he is entitled to a qualified immunity defense. Hoffman concedes that he is a private actor, however, he asserts that he functioned in the same way as a physician who was employed by the Commonwealth of Pennsylvania. Qualified immunity has been afforded to private individuals who at the behest of state officials perform governmental functions. See Warner v. Grand County, 57 F.3d 962, 965-67 (10th Cir. 1995); Williams v. O'Leary, 55 F.3d 320, 323 (7th Cir.1995); Burwell v. Board of Trustees of Georgia Military College, 970 F.2d 785, 795

(11th Cir.1992), cert. denied, 507 U.S. 1018, 113 S.Ct. 1814, 123 L.Ed.2d 445 (1993). Whether such immunity remains available in these circumstances is questionable after the recent five to four holding of the Supreme Court that private prison guards, at least those who act without meaningful government supervision or direction, do not enjoy qualified immunity from suit under § 1983. See Richardson v. McKnight, 521 U.S. 399, 117 S.Ct. 2100, 2109, 138 L.Ed.2d 540 (1997). In any event, construing the record in a light most favorable to the Plaintiff as the Court must when asked to grant summary judgment, Hoffman's conduct violated a clearly established right to treatment for serious medical needs of which a reasonable prison health care professional would have been aware. Thus, the Court finds that Hoffman is not entitled to qualified immunity from Miller's § 1983 claim.

2. Intentional Infliction of Emotional Distress

To prevail on a claim of intentional infliction of emotional distress, the plaintiff must prove that defendant, by extreme and outrageous conduct, intentionally or recklessly caused the plaintiff severe emotional distress. Motheral v. Burkhart, 400 Pa.Super. 408, 583 A.2d 1180 (1990). Liability will be found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Restatement (Second) of Torts, § 46 comment

d. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!" Id. The extreme and outrageous character of conduct may arise from an abuse by a person in a position of actual or apparent authority over another, or by one with the power to affect the other's interests. Restatement (Second) of Torts § 46 comment e.

Regarding Miller's claim for intentional infliction of emotional distress, Hoffman asserts two arguments. First, Hoffman contends that no evidence establishes that Miller's alleged injuries resulted from emotional distress. Second, Hoffman asserts that Miller has failed to produce evidence establishing that Miller's conduct was so extreme and outrageous as to be offensive to the moral values of society. The Court will address each of Defendant's arguments in turn.

a. Outrageous Conduct

It is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. Restatement (Second) of Torts § 46 comment h. Motheral, at 423, 583 A.2d at 1188. Where reasonable persons may differ, it is for the jury, subject to the control of the court, to determine whether, in the particular case, the conduct has been sufficiently extreme and outrageous to result in liability. Restatement (Second) of Torts § 46 comment h;

Motheral, at 423, 583 A.2d at 1188.

In his motion, Hoffman cites various cases in an attempt to demonstrate that his conduct is not outrageous enough to support a claim for intentional infliction of emotional distress. Pennsylvania courts, however, have held that conduct much less outrageous than that alleged here was sufficient to support such a claim. See, e.g., Pierce v. Penman, 357 Pa. Super. 225, 236, 515 A.2d 948, 953 (1986) (finding sufficiently outrageous conduct where defendant engaged in repeated failure over a period of years to provide records to former patient with known emotional difficulties), allocatur denied, 515 Pa. 608, 529 A.2d 1082 (1986). Pennsylvania court have also indicated that they will be more receptive to find outrageous conduct and permit recovery in intentional infliction of emotional distress cases where, like here, there is a continuing course of conduct. Williams v. Guzzardi, 875 F.2d 46, 52 (3d Cir. 1989) (citing Pierce, 357 Pa. Super at 236, 515 A.2d at 953)).

If the Court construes the evidence in the light most favorable to the Plaintiff, Hoffman's conduct in this case is sufficiently extreme and outrageous to permit recovery based upon intentional infliction of emotional distress. Miller contends, and has presented evidence to support, that Hoffman engaged in a deliberate course of conduct to prevent Miller from obtaining the appropriate and recommended medical care for his injury. Hoffman

unsuccessfully treated Miller's injury for several months. Other physicians that had examined Miller recommended alternative medical care, which Hoffman did not implement. Throughout the entire course of this conduct, Miller was under the control of Hoffman. Not only did Hoffman refuse Miller's requests to see other physicians, but he canceled scheduled appointments with specialists made by other physicians. Hoffman also placed Miller in "reverse isolation" which shut-off Miller from the outside world.

As stated above, a reasonable juror could conclude that Hoffman violated Miller's civil rights and subjected him to cruel and unusual punishment by deliberately preventing him from receiving the necessary medical care. The Court has also noted that Miller has provided sufficient evidence for a reasonable juror to conclude that Hoffman knew that Miller was in pain and suffered as a result of his deliberate intervention of Miller's medical treatment. Accordingly, the Court finds that Miller has produced sufficient evidence of outrageous conduct to support a jury verdict for intentional infliction of emotional distress.

b. Physical Harm

In order to state a claim for intentional infliction of emotional distress, "a plaintiff must allege "physical injury, harm, or illness caused by the alleged outrageous conduct." Corbett v. Morgenstern, 934 F.Supp. 680, 684 (E.D.Pa. 1996); see also Rolla v. Westmoreland Health Sys., 438 Pa.Super. 33, 651 A.2d

160, 163 (1994). "[D]epression, nightmares, stress, and anxiety" have been found to be physical manifestations of emotional distress and sufficient to sustain a claim. Love v. Cramer, 414 Pa.Super. 231, 606 A.2d 1175, 1179 (1992). Hoffman alleges that Miller's claim must fail because he has no evidence that he suffered physical injury from the alleged intentional infliction of emotional distress.

In this case, however, Miller has produced his medical chart that is riddled with notations by various doctors and nurses that Miller was upset or worried about Hoffman's behavior. If the Court accepts the reading most favorable to Miller, then Plaintiff if given the opportunity could prove physical injury arising from his emotional distress and mental anguish. Accordingly, Hoffman is not entitled to summary judgment of Plaintiff's claim for intentional infliction of emotional distress.

3. Medical Malpractice

To establish a prima facie case of negligence in a medical malpractice action alleging deviation from the standard of care, "a plaintiff must present expert testimony establishing (1) the applicable standard of care; (2) a deviation from that standard of care; and (3) that the deviation proximately caused the injury." Gardner, supra, 150 N.J. at 375, 696 A.2d 599 (citations omitted). Hoffman alleges that Miller has failed to produce sufficient evidence of the prima facie case. This Court must disagree.

Miller has produced the report of Robert Dunn, M.D. ("Dunn"). First, regarding the standard of care, Dunn opined that "[g]ood and proper medical care mandate that a draining wound such as this be attended to by a surgeon and be irrigated and debrided and then either closed primarily or allowed to heal by secondary intention." Thus, Plaintiff has satisfied the first element of the prima facie case.

Second, the report indicates to a reasonable degree of medical certainty that "Dr. Hoffman deviated from the accepted standard of care by failing to refer Mr. Miller to an orthopedic surgeon, plastic surgeon or a general surgeon for appropriate care of his draining wound sinus." The second element of the prima facie is, therefore, satisfied.

Third, Dunn opined that Hoffman's conduct was the proximate cause of Miller's damage. More specifically, the report states that Hoffman's failure to provide Miller the accepted standard of care "increase[d] the risk of an infection to the adjoining joint and cause increased scarring in the surrounding tissues." Dunn also opined that Hoffman's conduct "not only exposed him to increased risk and damage but also others who were caring for him." Thus, Miller has satisfied the third element of the prima facie case.

Hoffman suggests that Miller's claim for medical malpractice must fail because Miller relies on "only one" expert

report. Hoffman, however, fails to cite to any authority to support this contention. Thus, despite the Plaintiff's reliance on just one expert report, the Court finds that Miller has satisfied the prima facie case of medical malpractice, and summary judgment is therefore not warranted.

4. Wrong Name

The Court declines Hoffman's invitation to dismiss Miller's entire action because he brought this action as "James Miller" and not "Timothy Miller." While Plaintiff concedes that his birth name is Timothy Miller, it is uncontroverted that "James Miller" is the name under which the Plaintiff was convicted and sentenced. Hoffman's sole reliance on Prince v. Delaware County, Civ.A. No.92-1942, 1993 WL 141711 (E.D. Pa. May 3, 1993) (Kelly, J.) is misguided. In Prince, a plaintiff who had filed numerous pro se civil rights actions under his "real" name, Brian Winward, filed additional actions in the same court under a complete alias, Julian Prince, sometimes suing the same defendants under both names. Prince, 1993 WL 141711, at *2. Judge Kelly found that "this conduct is the type that constitutes fraud on the court because it clearly tampers with the judicial machinery and subverts the integrity of the court itself." Id.

In the present matter, no evidence suggests that Miller intended to commit fraud on the Court or on anyone else. Miller

volunteered the information during his deposition that the first name given to him at birth was "Timothy" and not James. Moreover, Hoffman does not refute that every record pertaining to him bears the name James Miller and the prisoner number BD-4691. Indeed, prison regulations provide that while incarcerated, prisoners must respond to the name under which the prisoner was convicted. See K.A.R. 44-12-506; Kirwan v. Larned Mental Hlth, 816 F. Supp. 672, 673 (D. Kan. Mar. 19, 1993). Thus, the Court finds that Miller's use of the name "James Miller" does not constitute fraud, and dismissal of this action is not warranted on that basis.

B. Hale's Motion for Summary Judgment

In her motion, Hale asserts two defenses against Miller's § 1983 Medical Maltreatment claim. First, Hale contends that Miller's failure to receive the responses he wanted to his grievances does not state a viable claim against Defendant Hale. Second, Hale claims that the evidence before the Court irrefutably shows that Hale was not deliberately indifferent to Plaintiff's medical needs. Because the Court finds that Hale was not deliberately indifferent to Miller's medical needs, the Court need not consider Hale's other argument.

1. Deliberate Indifference

In order for an individual defendant to be liable under § 1983, he or she must have participated in or had personal

knowledge of and acquiesced in the actions which deprived plaintiff of his or her constitutional rights. Pierce v. Pennsylvania Dept. of Corrections, 1992 WL 131882 (E.D.Pa. June 5, 1992); see also Robinson v. City of Pittsburgh, 120 F.3d 1286, 1294 (3d Cir. 1997). The mere fact that a defendant holds a supervisory position is insufficient to find liability, because there is no vicarious liability or respondeat superior in § 1983 cases. Durmer v. O'Carroll, 991 F.2d 64, 69 n. 14 (3d Cir. 1993).

In Durmer, the Third Circuit held that prison officials who are not physicians cannot be considered deliberately indifferent simply because they failed to respond directly to the medical complaints of a prisoner who was already being treated by the prison doctor. Durmer, 991 F.2d at 68. District courts have also refused to find health care administrators deliberately indifferent when the prisoner is receiving treatment from a doctor. See Hull v. Dotter, 1997 WL 327551, *4 (E.D. Pa. Jun.12, 1997) (finding health care administrator cannot be liable under § 1983 for refusal to permit prisoner to consult with outside physician); Freed v. Horn, 1995 WL 710529, *3-4 (E.D. Pa. Dec.1, 1995) (finding health care administrator and other prison officials who may have had supervisory positions over treating physician were entitled to summary judgment because they did not personally participate in treating plaintiff's medical condition); see also McAleese v. Owens, 770 F. Supp. 225, 262 (M.D. Pa. 1991) (finding health care

administrator entitled to summary judgment because he was not a physician and was not in position to assess the reasonableness of prison doctor's treatment).

In the present case, Hale could not and did not make any medical decisions regarding the course of treatment for Plaintiff's elbow. Hale is not a physician. She does not prescribe medications or make decisions regarding the course of treatment prescribed to inmates, nor does she make referrals to outside physicians. Such decisions are left to the medical staff employed by CPS. Hale is the health care administrator at Graterford. As this title suggests, her duties are purely administrative and include supervising the nursing staff, dental staff, and the medical records director and her staff, monitoring physician and psychiatrist contracts, hiring and disciplining staff, responding to inmate grievances, providing documentation for ACA standards and proof of practice, and monitoring time frames for referrals or prisoners to outside physicians.

Moreover, "[i]n order to succeed in an action claiming inadequate medical treatment, a prisoner must show more than negligence; he must show 'deliberate indifference' to a serious medical need." Durmer, 991 F.2d at 67. No evidence has been produced that Hale was "deliberately indifferent" to Miller's injury or medical needs. On the contrary, Hale responded to Plaintiff's complaints, she referred Miller to outside physicians,

and then followed up to ensure that Plaintiff was seen by those physicians. Based on Plaintiff's medical records, Hoffman was actively treating Plaintiff's elbow. No evidence has been produced that would suggest that Hale should have known that Hoffman's treatment of Miller's elbow may have been inadequate. Thus, no evidence shows that Hale violated Miller's Eighth Amendment rights.

Accordingly, Hale's motion for summary judgment is granted, and judgment is entered in her favor and against Miller.

An appropriate Order follows.

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

JAMES MILLER : CIVIL ACTION
 :
 v. :
 :
 STANLEY HOFFMAN, M.D. and :
 DONNA HALE : NO. 97-7987

O R D E R

AND NOW, this 21st day of June, 1999, upon consideration of the Motion for Summary Judgment of Defendant Donna Hale ("Hale") (Docket No. 53) and the Plaintiff James Miller's response thereto (Docket No. 59), and the Motion for Summary Judgment by Defendant Stanley Hoffman, M.D. ("Dr. Hoffman") (Docket No. 58), the Plaintiff's response thereto (Docket No. 60), and Dr. Hoffman's Reply Brief (Docket No. 66), IT IS HEREBY ORDERED that Defendant Hale's Motion for Summary Judgment is **GRANTED** and Dr. Hoffman's Motion for Summary Judgment is **DENIED**.

IT IS FURTHER ORDERED that:

(1) Judgment is **ENTERED** in favor of Defendant Hale and against Plaintiff Miller with prejudice; and

(2) Plaintiff's claim against Defendant Dr. Hoffman is
NOT DISMISSED.

BY THE COURT:

HERBERT J. HUTTON, J.