

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

DONALD BENN : CIVIL ACTION
: :
: :
v. : :
: :
: :
UNIVERSAL HEALTH SYSTEMS, : 99-CV-6526
INC., et al. :

Memorandum

McLaughlin, J.

_____ July, 2001

I. Introduction

This lawsuit arises out the involuntary commitment of Donald Benn at Montgomery County Emergency Services between August 15 and August 18, 1998 under the Pennsylvania Mental Health Procedures Act (MHPA). 50 Pa.C.S. §7101 et seq. The plaintiff, Donald Benn, has asserted claims pursuant to 42 U.S.C. §1983 against the Horsham Clinic, one of its doctors (Ramesh Eluri), one of its staff members (Eileen Wilcox), and its parent corporation (Universal Health Services), as well as against the Montgomery County Emergency Services (MCES) and three of its doctors (Stephen Zerby, Venu Mukerjee, and Mohammad Quasim).¹ He

¹ Universal Health Services (UHS) was improperly captioned as Universal Health Systems.

alleges that the defendants violated his procedural and substantive due process rights by involuntarily committing him without a prior hearing. The plaintiff also asserts pendent state law claims for violation of the MHPA, punitive damages, intentional infliction of emotional distress, negligence, assault and battery, false imprisonment, and medical malpractice.

Presently before the court are cross-motions for summary judgment on behalf of all the defendants and the plaintiff. The Court grants the motion for summary judgment on behalf of MCES and the MCES doctors, because it finds (1) that they did not violate Benn's procedural or substantive due process rights; and (2) that they are immune from liability on the state law claims under Section 7114 of the MHPA. The Court grants the motions for summary judgment on behalf of Eluri, Horsham, and UHS, because it finds (1) that they are not state actors for purposes of Section 1983 and therefore not subject to liability on the federal claim; and (2) that they are immune from liability on the state law claims under Section 7114 of the MHPA. The Court grants Eileen Wilcox's motion for summary judgment, because (1) she is not a state actor for purposes of the federal claim, and (2) Benn has failed to allege sufficient facts to support her liability on the state law claims.

II. Facts

The plaintiff, Donald Benn, has a lengthy history of psychological and psychiatric treatment. Prior to August 15, 1998, Benn had been under the care of a therapist, Dr. Jack Hartke, and a psychiatrist, Dr. Lynn Bornfriend. Both doctors were treating Benn for depression and post-traumatic stress disorder. (MCES Ex. B, C). Bornfriend had been prescribing antidepressant medication to the plaintiff. (MCES Ex. C). In addition to the treatment, Benn was working with Hartke as a candidate at the Philadelphia School of Psychoanalysis. He enrolled at the School in 1993 and began training analysis with Hartke in January 1994. (Eluri Ex. H).

On Saturday, August 15, 1998, Benn contacted the Horsham Clinic by telephone three times. On each occasion, he spoke with Eileen Wilcox, an assessment and referral coordinator at Horsham. (Horsham Ex. C 78, 170-179). The content of these telephone calls is disputed. According to Benn, he informed Wilcox that he was looking for treatment for post-traumatic disorder and was also considering the Horsham Clinic as an institution for his continuing psychoanalytic training. In one of the conversations, he mentioned to Wilcox that he had been driving on the Tacony-Palmyra bridge. (MCES Ex. E, 149). According to Wilcox, Benn stated that he had been considering jumping off the bridge.

(Horsham Ex. C, 173). When the plaintiff stated that he intended to come to the Horsham Clinic, Wilcox informed him that the Horsham Clinic did not make regular outpatient appointments, but would treat his visit instead as an assessment of his need for care at that time. (Horsham Ex. C, 187-8).

Benn arrived at the Horsham Clinic at approximately 7:30 p.m. on Saturday, August 15, 1998. He was seen by Eluri within five minutes of his arrival at Horsham and spent approximately 40 minutes with the doctor. (Horsham Ex. C, 196, 200). According to Eluri, Benn informed him that he was depressed and suicidal. (Eluri Ex. C, 37). Benn has confirmed that he told individuals at the Horsham Clinic that he was depressed, but states that he denied being suicidal. (MCES Ex. E, 131-2).

At the end of the examination, Eluri informed Wilcox that he was concerned for Benn's safety and that an emergency involuntary commitment petition might be necessary, because the plaintiff refused to seek treatment. (Horsham Ex. C, 201-202). Wilcox asked Benn to sign a Contract for Safety. (Horsham Ex. C, 212-13). She drafted a form, which stated "I, Donald Benn on 8-15-98 agreed to keep myself safe and that if I feel any increase of suicidal thoughts or feeling I will contact Horsham Clinic [or] the police." (Eluri Ex. D). Benn signed the form, but added the

following statement above his signature: "While there is no doubt what-so-ever that my mental/emotional health has been GREATLY compromised I feel as certain as certain can be that a few more days won't hurt (too much)." (Eluri Ex. D, emphasis in original). According to Wilcox, Benn then left the clinic, although she asked him to wait while Eluri reviewed the note. (C, 211, 169-170).

Eluri decided to submit a petition for involuntary commitment - called a "302 petition" - and asked Wilcox to obtain the necessary paperwork. (Horsham Ex. E, 63).² On the petition, Eluri made the following notation about Benn:

He said he had seriously thought about jumping off the Coney Bridge [sic], while he was driving. In fact he stopped the car. He admits feeling suicidal now and feels unsafe and unstable. He also believes that his mental health is compromised and needs hospitalization. He also says he had suicidal thoughts consistently for the past few weeks. He is vague about his attempts ... In my assessment, Pt. is very suicidal, feels unsafe and dangerous to himself. He needs inpatient treatment.

(Eluri Ex. E, 3). On the basis of this petition, the police were

² A "302 petition" is a petition for involuntary emergency examination and treatment authorized by a physician not to exceed one hundred and twenty hours pursuant to Section 7302 of the MHPA. Section 7302 allows a physician to petition for an emergency examination without a warrant "upon personal observation of the conduct of a person constituting reasonable grounds to believe that he is severely mentally disabled and in need of immediate treatment." 50 Pa.C.S. §7302.

sent to Benn's home. They transported Benn from his home to Montgomery County Emergency Services by ambulance. (MCES Ex. E, 174-177).

Upon arrival at MCES, Benn was placed in an isolated waiting room. He was then seen by Zerby, who conducted an hour-long examination and decided that Benn needed inpatient hospitalization. (MCES Ex. H, 63-4, 132). On the following day, Sunday, August 16, 1998, Benn was interviewed by Quasim, the on-call doctor, who continued the treatment prescribed by Zerby. (MCES Ex. N, 7-8). On Monday, August 17, Benn was then examined by Mukerjee, the attending psychiatrist, who noted: "Patient seemingly has limited insight and obviously has difficulties with impulse control, where he might have verbalized suicidal intent while at Horsham ... His insight is limited, and judgment is definitely impaired." (MCES Ex. T). After an additional examination on August 18, Mukerjee noted: "He is now contracting for safety and has never been suicidal since his admission here." Benn was released from MCES on the morning of August 18, 1998. (MCES Ex. I). During the two and a half days at MCES, he was in contact with his common-law wife, his treating therapist, his lawyer, and a friend. (MCES Ex. E, 214).

III. Summary Judgment Standard

A motion for summary judgment shall be granted where all of the evidence demonstrates "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. Pro. 56(c). The moving party has the initial burden of demonstrating that no genuine issue of material fact exists. Once the moving party has satisfied this requirement, the non-moving party must present evidence that there is a genuine issue of material fact. The non-moving party may not simply rest on the pleadings, but must go beyond the pleadings in presenting evidence of a dispute of fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323-324 (1986). In deciding a motion for summary judgment, the Court must view the facts in the light most favorable to the non-moving party. Josey v. John R. Hollingsworth Corp., 996 F.2d 632, 637 (3rd Cir. 1993).

IV. Discussion

A. Constitutional Claims

The Court will first address the plaintiff's federal claims, because the Court's jurisdiction relies on these claims. Both the complaint and the plaintiff's motion for summary judgment provide only the most cursory description of the constitutional claims alleged. In his complaint, Benn states:

The acts and conduct of each of the Defendants in the above-stated cause of action constitute civil rights violations including outrageous conduct, invasion of privacy, negligence, gross negligence, and negligent hiring, retention and supervision, and civil rights violations under the United States Constitution and laws of the Commonwealth of Pennsylvania.

(Complaint, Para. 45). Although this count of the complaint does not include the words "due process", plaintiff's counsel attempted to clarify the allegation at oral argument by claiming violations of procedural as well as substantive due process under the Fourteenth Amendment. Counsel's lengthy discussion of the facts did not provide the Court with much guidance as to the basis for plaintiff's due process claims, however. As a result, the Court will consider arguments that conceivably could have been made on this record.

1. Who is a State Actor?

Donald Benn challenges the defendants' actions under the Due Process Clause of the Fourteenth Amendment. To state a claim under that clause, the plaintiff must prove that he was (1) deprived of his right to life, liberty, or property without due process of law; (2) by a state actor. Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 155 n.4 (1978). MCES and the MCES doctors have conceded, for purposes of this motion only, that they are state actors within the meaning of the Fourteenth Amendment. The remaining defendants challenge the application of the Fourteenth

Amendment to their actions.

This Court finds that Eluri, Wilcox, the Horsham Clinic, and UHS are not state actors for purposes of the Fourteenth Amendment. Private conduct can be classified as state action when the facts of the case reveal that the defendants actions were "fairly attributable to the State." Rendell-Baker v. Kohn, 457 U.S. 830, 838 (1982), quoting Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982). The Supreme Court has developed four tests to satisfy this state action inquiry, including the close nexus test, the government compulsion test, the traditional government function test, and the symbiotic relationship test. Rendell-Baker, 457 U.S. at 842. In Groman v. Township of Manalapan, 47 F.3d 628 (3d Cir. 1995), the Third Circuit stated that "any approach a court uses must remain focused on the heart of the state action inquiry, which ... is to discern if the defendant exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." Id. at 639 (citations ommitted).

In Bodor v. Horsham Clinic, 1995 WL 424906 at *9 (E.D.Pa. July 19, 1995), a Judge of this Court analyzed the actions of the Horsham Clinic and its doctors during an involuntary commitment proceeding under the above state action tests and concluded that

the defendants were not state actors. See also Covell v. Smith, 1996 WL 750033 at *6 (E.D.Pa Dec. 30 1996) ("Courts have held that private health care facilities and physicians acting under the provisions of the MHPA are not state actors for purposes of Section 1983"); Doby v. DeCrescenzo, 1996 WL 510095 at *7-8 (E.D.Pa. Sept. 9, 1996) (private individual who submitted a petition for his employee's involuntary commitment was not a state actor).

The Court finds the analysis of these cases persuasive and finds that Eluri, Wilcox, the Horsham Clinic, and UHS are not state actors for the purposes of Benn's due process claims. None of their actions were "fairly attributable to the state." Rendell-Baker, 457 U.S. at 838. Eluri did not make the decision to involuntarily commit Benn. Instead, he petitioned to have MCES conduct an examination as to whether involuntary commitment was needed. His role as petitioner was not undertaken at the request of the state; he was not fulfilling a traditional government task; and he was not acting together with state officials. The role of Wilcox, the Horsham Clinic, and UHS in the state involuntary commitment procedures was even more limited than Eluri's. They were not "clothed with the authority of the state." Groman, 47 F.3d at 639. The Court will therefore analyze the due process claims with respect to MCES and the MCES

doctors only.

2. Procedural Due Process

a. Liability of the MCES doctors

Donald Benn does not challenge the constitutionality of the Pennsylvania Mental Health Procedures Act. He claims instead that the defendants violated the Pennsylvania Mental Health Procedures Act by not granting Benn a hearing before a judge, and that this violation amounted to a deprivation of procedural due process. (Tr. 10).³ This argument fails for two reasons. First, the MHPA does not require a pre-deprivation hearing when a physician submits a petition for examination and a patient is thereafter involuntarily committed on an emergency basis not to exceed 120 hours. 50 Pa.C.S. §7302. Second, the violation of a state law by state officials does not give rise to a claim under Section 1983. Brown v. Grabowski, 922 F.2d 1097, 1113 (3d Cir. 1990), cert. denied, 501 U.S. 1218 (1991).

³ The only other procedural due process claim that Benn is arguably making is that the doctors involved in the commitment procedures did not make independent evaluations of Benn's mental state. At oral argument, plaintiff's counsel stated: "The doctor had a responsibility under the Act to make an independent evaluation and not depend on some phone operator who has an associate's degree..." (Tr. 11). First, it appears that Counsel was referring to Eluri, who is not a state actor and therefore cannot be liable under Section 1983. Second, both Eluri and Zerby did, in fact, undertake independent evaluations. Eluri spoke with Benn for approximately 40 minutes. (Horsham Ex. C, 200). Zerby undertook an extensive examination, as evidenced by the medical charts he describes in his deposition. (MCES Ex. H, 63-64).

Instead of looking to state law, the Court must look to federal law and to the due process clause itself in determining what process is due in a given situation. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541 (1985). Involuntary commitment does implicate a liberty interest protected by the due process clause. Vitek v. Jones, 445 U.S. 480, 491-2 (1980). Numerous courts have held, however, that due process does not require a hearing prior to a short-term emergency involuntary commitment.

According to the Third Circuit, "it may be reasonable ... for a state to omit a provision for notice and a hearing in a statute created to deal with emergencies, particularly where the deprivation at issue ... continues only for a short period of time." Doby v. DeCrescenzo, 171 F.3d 858, 870 (3d Cir. 1999). See also Project Release v. Prevost, 722 F.2d 960, 974 (2d Cir. 1983); Covell v. Smith, 1996 WL 750033 (E.D.Pa. Dec. 30, 1996); Luna v. Zandt, 554 F.Supp. 68, 72 (S.D.Tex. 1982).

In this case, Benn was examined by two physicians prior to being involuntarily admitted on an emergency basis that could last at most 120 hours. His confinement, in fact, lasted a total of two and a half days. During this time, he was evaluated by several doctors in order to determine whether there was a continued need for commitment. In addition, he was in contact

with his common-law wife, his treating therapist, his lawyer, and a friend during this time. (MCES Ex. E, 214). Benn was released on the morning of August 18, when Mukerjee determined that he was not a danger to himself and, therefore, no longer in need of inpatient treatment. The lack of a hearing under these circumstances does not amount to a due process violation.⁴

b. Liability of MCES

In order to prove a due process violation on the part of MCES, Benn must establish that MCES acted pursuant to an unconstitutional custom or policy. See Monell v. Department of Social Services, 436 U.S. 658, 694 (1978); Doby v. Decrescenzo, 1996 WL 510095 at *19 (E.D.Pa. Sept. 9, 1996), aff'd 171 F.3d 858 (3d Cir. 1999) ("The Supreme Court's holding in Monell applies with equal force to both municipalities and private entities which are state actors"). MCES' policy is outlined in the Montgomery County Emergency Commitment Office Guidelines. (MCES Ex. R). These guidelines do not depart from the requirements of the MHPA, however. As already discussed, the MHPA procedures for emergency warrantless commitments without a hearing do not violate procedural due process requirements. Therefore, Benn's

⁴ The very fact that Benn claims not to be challenging the constitutionality of the statute, which explicitly provides for emergency commitment without a hearing, undermines his claim that the commitment procedure in this case violated due process.

claim against MCES must also fail.

3. Substantive Due Process

Plaintiff did not clearly allege substantive due process violations in his complaint or in his motion for summary judgment. As a result, the defendants also did not address the substantive aspects of the alleged due process violations in any detail in their motions and responses. At oral argument on the cross-motions for summary judgment, plaintiff's counsel did claim substantive due process violations, but was not able to articulate the basis for these claims with any clarity. Therefore, the Court will address those factual allegations that conceivably could support a substantive due process claim, despite the lack of briefing on the subject.

As the Third Circuit stated in Doby, "a substantive due process violation is established if the government's action were not rationally related to a legitimate government interest or were in fact motivated by bias, bad faith or improper motive." 171 F.3d at 871 n.4, quoting Sameric Corp. of Delaware v. City of Philadelphia, 142 F.3d 582, 590 (3d Cir. 1998). According to the Third Circuit, "the MHPA meets the rationality test imposed by substantive due process." Id.

In addition, the defendants did not act with the required level of culpability to support Benn's claim that his substantive due process rights were violated. The Supreme Court has held that conduct must "shock the conscience" in order to constitute a substantive due process violation. County of Sacramento v. Lewis, 523 U.S. 833, 846-7 (1998). The Court has identified three actions that Benn might arguably be challenging as substantive due process violations and finds that none of these actions satisfy the standard enunciated in Lewis.

First, Benn alleges that Zerby questioned the accuracy of Benn's claimed accomplishments and failed to seek outside confirmation of their accuracy. Assuming that these allegations are true, they do not shock the conscience. The plaintiff's treating psychiatrist, Dr. Bornfriend, stated in her expert report that "it is understandable that a psychiatrist might question the veracity of such statements." (Eluri Ex. I). Zerby has testified that he did not seek outside corroboration, because the accuracy of Benn's statements was not a crucial element in his assessment that involuntary commitment was necessary. (MCES Ex. H, 107-9). Zerby's conduct does not amount to a substantive due process violation.

Second, Benn alleges that he was not allowed to use a

bathroom when he was first placed in the isolated waiting room at MCES prior to meeting with Zerby. Benn has failed to produce any evidence to show that any of the individual defendants were even aware of his need to use the bathroom. In addition, he has not alleged that MCES had a custom or policy of refusing to allow patients to use the bathroom. (MCES Ex. H, 41-42).

Third, Benn claims that Zerby prescribed antipsychotic medication for him without first consulting his treating psychiatrist. In a case challenging the forcible administration of antipsychotic medication to mental patients, the Supreme Court chose not to resolve the question of whether a liberty interest in refusing antipsychotic medication exists as a federal constitutional matter. Mills v. Rogers, 457 U.S. 291, 299 n.16 (1982). The Third Circuit has held that "antipsychotic drugs may be constitutionally administered to an involuntary committed mentally ill patient whenever, in the exercise of professional judgment, such an action is deemed necessary to prevent the patient from endangering himself or others." Rennie v. Klein, 720 F.2d 266, 269 (3d Cir. 1983).

The Court finds that Zerby's decision to prescribe antipsychotic medication does not constitute a substantive due process violation. First, Benn has failed to allege that he

objected to the administration of the antipsychotic medication while at MCES. In his deposition, he stated that he was "forced" to take the drug, because he was a "prisoner". He did not testify, however, that he informed any MCES staff member of an objection to taking the medication. (MCES Ex. E, 192-4). Second, Zerby prescribed the medication as part of an emergency involuntary commitment procedure after having found, in his professional judgment, that Benn suffered from psychosis. On his Multidisciplinary Assessment Form, Zerby noted a provisional diagnosis of Psychosis NOS and stated that the patient had "apparent worsening psychiatric condition ... appears psychotic, a danger to himself." (MCES Ex. J, 5). Under the circumstances, Zerby's decision to prescribe antipsychotic medication for Benn does not shock the conscience.

4. Good Faith Defense or Qualified Immunity

Even if the MCES or the MCES doctors had violated Benn's procedural or substantive due process rights, they would be protected from liability either by qualified immunity or by a good faith defense. Qualified immunity shields defendants from liability if a reasonable official in their place could have believed that their conduct was lawful in light of clearly established law. Anderson v. Creighton, 483 U.S. 635 (1987). Qualified immunity will protect an official from mistaken

judgments and protects "all but the plainly incompetent or those who knowingly violate the law." Hunter v. Bryant, 502 U.S. 224, 229 (1991). In Wyatt v. Cole, 504 U.S. 158, 168-9 (1992), the Supreme Court held that qualified immunity did not apply to "private defendants faced with Section 1983 liability for invoking a state replevin, garnishment, or attachment statute", but the Court left open the question of whether a good faith defense might apply to private defendants.

The good faith defense has been defined by the Fifth Circuit as follows: "Private defendants should not be held liable under Section 1983 absent a showing of malice and evidence that they either knew or should have known of the statute's constitutional infirmity." Wyatt v. Cole, 994 F.2d 1113, 1120 (5th Cir.), cert. denied, 510 U.S. 977 (1993). In Jordan v. O'Brien & Frankel, 20 F.3d 1250, 1276 (3d Cir. 1994), the Third Circuit quoted the Wyatt test and stated: "We are in basic agreement, but we believe 'malice' in this context means a creditor's subjective appreciation that its act deprives the debtor of his constitutional right to due process."

In Doby, a Judge of this Court applied the good faith defense to the employee of a private foundation, which was under contract to process intake petitions for involuntary commitment.

1996 WL 510095 at *21 n.11. In Covell, on the other hand, another Judge of this Court applied a qualified immunity defense to private mental institutions involved in the involuntary commitment process. 1996 WL 750033 at *7. This court need not decide whether the good faith defense or qualified immunity applies to MCES and the MCES doctors, because they would be shielded from liability under either defense. There is no evidence in the record that the MCES defendants were acting out of malice or that they knowingly violated the law.

B. Violation of the MHPA

Benn alleges a series of pendent state law claims. Most significantly, he alleges that all the defendants violated the MHPA. Despite the disposition of the federal claims, the Court chooses, at the urging of all counsel, to exercise its discretion to address these state law claims under 28 U.S.C. §1367.

Under the Mental Health Procedures Act, a person may be subject to involuntary emergency examination and treatment "whenever a person is severely mentally disabled and in need of immediate treatment." 50 Pa.C.S. §7301.⁵ The Mental Health

⁵ Section 7301 defines severely mentally disabled as follows: "A person is severely mentally disabled when, as a result of mental illness, his capacity to exercise self-control, judgment and discretion in the conduct of his affairs and social relations or to care for his own personal needs is so lessened that he poses a clear and present danger of harm to others or to himself." 50 Pa.C.S. §7301.

Procedures Act explicitly provides for broad immunity from liability:

In the absence of willful misconduct or gross negligence, ... a physician ... or any other authorized person who participates in a decision that a person be examined or treated under this act, or that a person be discharged, or placed under partial hospitalization, outpatient care or leave of absence, or that the restraint upon such person be otherwise reduced ... shall not be civilly or criminally liable for such decision or for any of its consequences.

50 Pa.C.S. §7114.

Eileen Wilcox is not covered by the immunity provision, because her involvement in Benn's involuntary commitment consisted solely of taking down information, relaying that information to Eluri, and providing Eluri with requested forms. As such, she did not "participate" in the involuntary commitment decision. See McNamara v. Schleifer Ambulance Serv., 556 A.2d 448 (Pa.Super.Ct. 1989) (ambulance personnel not covered by immunity).

The remaining defendants are immune under Section 7114 because their actions did not rise to the level of gross negligence or willful misconduct. Pennsylvania law defines gross negligence in the context of the MHPA as "more egregiously

deviant conduct than ordinary carelessness, inadvertence, laxity or indifference ... The behavior of the defendant must be flagrant, grossly deviating from the ordinary standard of care." Doby, 171 F.3d at 875, quoting Albright v. Abington Memorial Hospital, 696 A.2d 1159, 1164 (Pa. 1997). Willful misconduct exists when "the danger to the plaintiff, though realized, is so recklessly disregarded that, even though there be no actual intent, there is at least a willingness to inflict injury, a conscious indifference to the perpetration of the wrong." Doby, 171 F.3d at 875, quoting Krivijanski v. Union R. Co., 515 A.2d 933, 937 (Pa.Super.Ct. 1986).⁶

Plaintiff's three expert reports fail to support his allegations of gross negligence and willful misconduct. The first report, submitted by Dr. Hartke, states that "Dr. Eluri and Eileen Wilcox were apparently quite convinced that [Benn] was suicidal." (Eluri Ex. H). Although Hartke states that the experience at MCES was traumatic for Benn, he makes no judgment as to the culpability of the MCES doctors. (Eluri Ex. H). This report, therefore, does not create a genuine factual dispute about the defendants' gross negligence or willful misconduct.

⁶ Although the question of whether the defendants acted with gross negligence will generally be a question of fact, the Court may decide the issue as a matter of law where no reasonable jury could find gross negligence. Albright, 696 A.2d at 1164-5.

The other two expert reports were submitted by the plaintiff's treating psychiatrist, Dr. Bornfriend, after review of discovery materials. In her initial report, dated June 13, 2000, Bornfriend concludes that all of the professionals involved with Benn's involuntary commitment were "guilty of negligence and malpractice." (MCES Ex. K). Bornfriend submitted a second report on June 17, 2000, after having reviewed additional discovery materials. In this report, Bornfriend alleges more serious misconduct:

There appears to be evidence, however, that some of the mistreatment Mr. Benn endured appeared secondary to even more malignant causes, raising issues of deliberate indifference, arrogance, condescension, and punitive hostility from these doctors. I find shocking the level of disregard of the standard practices involved in psychiatric treatment, especially as they relate to involuntary commitment and find that these Depositions show clear and convincing evidence that Mr. Benn was inappropriately involuntarily committed and held in the psychiatric hospital, subjected to abusive mistreatment, and a victim of medical malpractice and negligence.

(MCES Ex. L, 1).

Bornfriend's report distinguishes between the culpability of the various doctors, reaching different conclusions with respect to each. She concludes that Quasim "appeared totally ignorant of, or indifferent to the fact that in order to require continued involuntary commitment, a patient had to be clinically found to

be acutely dangerous to himself or others." (MCES Ex. L, 2).

Quasim has testified that he was not a doctor assigned to Benn's case, but was instead assigned to doing rounds:

Basically, the case is not assigned to you; so, you are not in charge of the case. You do a round, like a routine round, as an on-call doctor and see every patient; you see those who are admitted as a round doctor. Since the case is not assigned to you, you're not a decision-making power at that point unless the patient demands something be changed at that point.

(MCES Ex. N, 40-41). Bornfriend's report does not allege gross negligence or willful misconduct, nor do the facts support such a finding.

With respect to Mukerjee's actions, Bornfriend concludes that her "behavior in this case supports allegations that Mr. Benn was held inappropriately under involuntary commitment, and speaks to her committing malpractice and negligence while he was under her care." (MCES Ex. L, 3). She states that Mukerjee "cannot justify a reason for continuing hospitalization from Monday, August 17 until the 18th." (MCES Ex. L, 3). Mukerjee justified the decision in her deposition as follows: "When I saw there was a thought disorder, ... I wanted to see whether there would be any remission of that one more day to be sure and safe; so I waited overnight." (MCES Ex. O, 41). Once again, neither Bornfriend's report nor the facts support a finding of gross

negligence or willful misconduct. While the Court does not minimize the significance of an additional day of involuntary commitment from the plaintiff's perspective, the Court cannot fault Mukerjee for her attempt to be sure and safe. It is this sort of well-intentioned decision that the immunity provision of the MHPA is meant to address.

Bornfriend's expert report does suggest that Zerby may have been acting with deliberate indifference: "he appears clearly to be guilty of medical malpractice, inappropriate involuntary commitment, negligence and deliberate indifference." (MCES Ex. L). The Court rejects this conclusion, however, because it is based on a misreading of the facts in the record. See Doby, 171 F.3d at 876 (rejecting an expert report, because the expert's failure to consider a letter and a suicide note "suggests a lack of familiarity with the basic facts of the case").

First, Bornfriend stated that Zerby denied being familiar with the MCES Commitment Office Guidelines. In his deposition, Zerby stated that he was given verbal instructions concerning 302 petitions, but that he did not remember whether he had been shown the MCES Commitment Office Guidelines in writing. (MCES Ex. H, 45-49). Second, Bornfriend states that "Zerby did not seem to understand the difference between suicidal ideation and suicidal

intent, stating that the report from Horsham Clinic that Mr. Benn had suicidal ideation was enough to require involuntary commitment." (MCES Ex. L). In his deposition, Zerby did not state that the Horsham report of suicidal ideation was sufficient to support involuntary commitment. Rather, Zerby explained at length that he based his decision to commit Benn on (1) the 302 petition from Horsham, (2) the Contract for Safety on which Benn had written the additional note, and (3) an extensive independent evaluation of Benn. (MCES Ex. H, 138). On this basis, the Court rejects Bornfriend's expert report as it relates to Zerby's culpability.

Finally, the Court notes that Bornfriend did not review Eluri's deposition testimony and did not reach any specific conclusions about his culpability.

On the basis of the record, the Court holds that the actions of the defendant doctors did not rise to the level of gross negligence or willful misconduct. On the contrary, the doctors took the involuntary commitment procedure seriously and understood the need for careful decision-making. With regard to involuntary commitment procedures, Quasim stated that "you thoroughly investigate the issue prior to admission and give more time and a lot of other people get involved to get more

investigation." (MCES Ex. N, 16). Mukerjee testified as follows with regard to Benn's commitment: "We had a meeting, again the same staff meeting. The nursing staff, the social service workers and all the other psychiatrists were there and we all discussed the case to see whether everyone felt the same as I did, that he was no longer suicidal or a threat to himself." (MCES Ex. O, 44). Zerby undertook a detailed assessment of Benn's mental state, which resulted in a five-page chart. Finally, Benn's treating therapist has stated that Eluri was "apparently quite convinced that [Benn] was suicidal." (Eluri Ex. G, 5). The process leading to Benn's involuntary commitment may not have been perfect, but it was certainly not characterized by gross negligence or willful misconduct. On the basis of the record, the Court finds that all of the defendants are immune from liability under Section 7114 of the MHPA.

Because the doctor defendants are immune under Section 7114, the institutions for which they work are also immune: "To allow an individual to claim immunity under this provision but in turn preclude its employer the same benefit of immunity would indeed undermine the stated purpose of the limited immunity conferred under this act." Farago v. Sacred Heart Hospital, 562 A.2d 300, 303 (Pa. 1989). The only defendant not shielded from liability by the immunity provision of the MHPA is, therefore, Eileen

Wilcox.

C. Remaining State Law Claims

The Court must now determine whether Eileen Wilcox is liable under the MHPA or on any of the remaining state law claims. The Court first finds that Wilcox did not violate the MHPA. She was not a participant in the involuntary commitment procedure, and none of her actions violated the MHPA.⁷

The Court also grants Wilcox's motion for summary judgment with respect to the remaining state law claims.⁸ Those claims are as follows:

1. Punitive Damages
2. Intentional Infliction of Emotional Distress
3. Negligence
4. Assault and Battery
5. False Imprisonment
6. Negligence/Medical Malpractice

First, to establish a viable claim for intentional infliction of emotional distress, the plaintiff must prove conduct which is outrageous and extreme and which caused severe distress. Silver v. Mendel, 894 F.2d 598 (3d Cir.), cert.

⁷ The Court notes that, if Wilcox were to be considered a participant in the involuntary commitment procedure, she would be covered by the immunity provision of Section 7114 of the MHPA.

⁸ The plaintiff also had a claim for consumer fraud. At oral argument, plaintiff's counsel conceded that there was no evidence to support this allegation. (Tr. 31). Summary judgment will therefore be granted to the defendants on this claim.

denied, 496 U.S. 926 (1990). The conduct must "go beyond all possible bounds of decency so as to be regarded as atrocious and utterly intolerable in a civilized society." Frankel v. Warwick Hotel, 881 F.Supp. 183 (E.D.Pa. 1995). No reasonable jury could find Wilcox's conduct in this case outrageous or extreme. Therefore, Wilcox's motion for summary judgment must be granted with respect to the plaintiff's claim of intentional infliction of emotional distress.

Second, the plaintiff has alleged "negligence in hiring, retention, supervision, training and screening of agents and employees." According to the record, Wilcox was not involved in the hiring, retention, supervision, training or screening of any agents of employees. The plaintiff's claim must therefore fail.

Third, the plaintiff has raised a claim for assault and battery. Under Pennsylvania law, an assault is an intentional attempt by force to do an injury to the person of another, and a battery is committed whenever the violence menaced in an assault is actually done. Cohen v. Lit Bros., 70 A.2d 419, 421 (Pa.Super.Ct. 1950). The plaintiff has failed to allege any facts which would support such a claim against Wilcox. According to the record, Wilcox did not make or contribute to the decision to have the plaintiff taken from his home by the police. With

the exception of Benn's statement that he was "pulled" into Wilcox' office after meeting with Eluri, there is no evidence that she ever attempted to make or made physical contact with the plaintiff. This claim must fail.

Fourth, the plaintiff has raised a claim of false imprisonment. False arrest or imprisonment occurs under Pennsylvania law where a person has been (1) arrested or restrained (2) without adequate legal justification. See Gilbert v. Field, 788 F.Supp. 854, 862 (E.D.Pa. 1992). A private individual can be held liable for false imprisonment, where he knowingly provides false information to authorities and where the false imprisonment results from this information. Doby, 1996 WL 510095 at *13. Nothing in the record indicates that Wilcox conveyed any information to the authorities that could have affected their decision to commit Benn. (Horsham Ex. C, 220). Wilcox cannot be held liable for false imprisonment.

Fifth, plaintiff has claimed medical malpractice. In her capacity as intake and assessment counselor, Wilcox was never asked to provide medical treatment to the plaintiff and never did provide any such treatment. She had no role in the evaluations of Benn or in any determinations concerning his mental state. Therefore, she cannot be liable for medical malpractice.

Finally, Wilcox cannot be liable for punitive damages, because she is not liable on any of the other counts. Absent a viable cause of action, an independent claim for punitive damages cannot stand. Kirkbride v. Lisbon Contractors, 555 A,2d 800, 802 (Pa. 1989). For all of the above reasons, Eileen Wilcox's motion for summary judgment on all the state law claims will be granted.

V. Conclusion

For all of the above reasons, the Court grants the defendants' motions for summary judgment and denies the plaintiff's motion for summary judgment. An appropriate order follows.