

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

CLAUDIO HERNANDEZ,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
VINCENT GUARINI, WARDEN, et al.,	:	No. 03-2298
Defendants.	:	

MEMORANDUM AND ORDER

Schiller, J.

September 7, 2004

Plaintiff Claudio Hernandez brings this civil rights action against Lancaster County Prison officials Vincent Guarini, Robert Doe, Amy Hill, Tammy Moyer and an unnamed dentist¹ for alleged constitutional violations arising from dental care received during his incarceration. Presently before this Court are Defendants’ motions for summary judgment. For the reasons set forth below, Defendants’ motions are granted.

I. BACKGROUND

The following undisputed facts trace Plaintiff’s dental history at Lancaster County Prison and form the basis for his allegations of improper treatment. Plaintiff was incarcerated in the Lancaster

¹Although Plaintiff’s complaint contains allegations against an unnamed “Institutional Dentist,” Plaintiff never named this Defendant or served him with process in accordance with Federal Rule of Civil Procedure 4. As a result, the Court is required to dismiss the action against the Institutional Dentist. *See Lovelace v. Acme Mkts.*, 820 F.2d 81, 84 (3d Cir. 1987) (“The 120-day limit to effect service of process, established by Fed.R.Civ.P. 4(j) is to be strictly applied, and if service of the summons and the complaint is not made in time and the plaintiff fails to demonstrate good cause for the delay the court must dismiss the action as to the unserved defendant.”) (citation and quotation omitted).

County Prison (“LCP”) on May 15, 2002. Under LCP policy, an inmate must submit a formal request to the medical department to see the prison dentist. (Defs.’ Guarini, Hill & Moyer Mot. for Summ. J. Ex. H (Prison Handbook) [hereinafter “Guarini Mot.”].) The request process requires inmates to fill out a general request form and at least one additional dental form. (Hernandez Dep. at 42.)

In October 2002, Plaintiff submitted the appropriate forms and was placed on the dental appointment list. (Guarini Mot. Exs. B (Medical Request Form), C (LCP Dental List).) On November 22, 2002, prison dentist Dr. Kovalski examined Plaintiff and concluded that all of Plaintiff’s remaining teeth were “carious,” or decayed, that the area around Plaintiff’s tooth number 18 was swollen, and that Plaintiff had a large mass under the “left angle” of his mandible. (*Id.* Ex. E (Dental Services Form).) Initially, Dr. Kovalski’s examination report recommended that Plaintiff “see oral surgeon for evaluation of mass and extraction [of] number 3, 4, 11 and 18.” (*Id.*) After speaking with prison medical doctor Robert Doe, however, Dr. Kovalski cancelled this recommendation. (*Id.*) Dr. Doe, who had examined Plaintiff in the past, told Dr. Kovalski that Plaintiff’s HIV status, rather than a dental problem, was the cause of the mass under Plaintiff’s mandible. (Doe Aff. ¶¶ 3, 11.) Dr. Kovalski subsequently amended his examination report with the following language: “[C]ancel order to take to OS [oral surgeon]. I spoke with Dr. Doe and he stated swelling is due to [patient’s] HIV status and he is not to go to OS.” (Guarini Mot. Ex. E.)

On December 26, 2002, Plaintiff sent a general request form to the medical department asking why he had not received an appointment with the oral surgeon. (*Id.* Ex. K (General Purpose Request Form).) A medical department official, apparently unaware that the referral had been cancelled, replied that it was “not easy to schedule appointments” during the holiday season and told

Plaintiff that an appointment would be scheduled as soon as possible. (*Id.*) On January 3, 2003, Plaintiff had an appointment with oral surgeon Dr. Frederick Chairsell, who extracted Plaintiff's tooth number 17. (*Id.* Ex. L (Oral Surgery Report).) Although Plaintiff contends that Dr. Chairsell planned to pull more teeth in a follow-up visit (Compl. ¶ 1), a post-examination form signed by Dr. Chairsell states that no follow-up visit was to be scheduled. (Guarini Mot. Ex. M (Post-Examination Form).)

On January 20, 2003, Plaintiff submitted another general request form. (*Id.* Ex. N (General Purpose Request Form).) In that form, Plaintiff claimed that he was entitled to an additional appointment with the oral surgeon and asked the medical department to schedule that appointment as soon as possible. (*Id.*) Medical department personnel responded by noting, at the top of that form, "will talk to MD [medical doctor] 1/20/03." (*Id.*) Indeed, Plaintiff saw Dr. Robert Doe on January 20, 2003. (Doe Aff. ¶ 3.) Dr. Doe's examination notes from that visit contain the phrase "see dentist." (Guarini Mot. Ex. O (1/20/03 Progress Sheet).) Plaintiff did not again contact the medical department regarding a dental appointment until March 12, 2003. On that date, he submitted a general request form maintaining that he had been waiting over two months to see the dentist and that he also needed to see the oral surgeon. (*Id.* Ex. S (General Purpose Request Form).)

Medical administrator Tammy Moyer mistakenly conflated Plaintiff's March 12 request to see the oral surgeon with the original referral made by Dr. Kovaleski on the November 22, 2002 dental form. (Moyer Aff. ¶ 6; Guarini Mot. Ex. E.) Accordingly, Moyer responded to the March 12 request by telling Plaintiff that Dr. Kovaleski had cancelled that referral after discussion with Dr. Doe. (Moyer Aff. ¶ 6.) Plaintiff made another general request on March 17, 2003. (Guarini Mot. Ex. T (General Purpose Request Form).) In that request, Plaintiff stated that he was in extreme pain

and asked to see Dr. Doe regarding his tooth problem, given Dr. Doe's role in the cancellation of Dr. Kovaleski's November 22, 2002 referral. (*Id.*) Moyer responded by reiterating her answer to Plaintiff's March 12 general purpose request form and further suggesting that Plaintiff discuss the matter with Dr. Doe directly. (*Id.*) Although an appointment with Dr. Doe was not immediately scheduled, Plaintiff was seen in the medical department on March 18, 2003, at which time he did not complain about any problems with his teeth. (*Id.* Ex. R (3/18/03 Progress Sheet).) On March 24, 2003, Plaintiff sent a letter to Deputy Warden Robert Siemasko contending that he had received inadequate dental treatment. (Guarini Mot. Ex. U (Written Complaint to Robert Siemasko).)

On March 26, 2003, two days after his complaint to Siemasko, Plaintiff was seen by Dr. Kovaleski. (*Id.* Ex. V (3/26/03 Progress Sheet).) On March 28, 2003, Dr. Kovaleski extracted Plaintiff's teeth numbers 2 and 3. (*Id.* Ex. W (3/28/03 Progress Sheet).) Three days later, Plaintiff complained to a prison doctor of pain in the area of these extractions, and the doctor increased Plaintiff's pain medication.² (*Id.* Ex. Y (3/31/03 Progress Sheet).) On April 7, 2003, Dr. Doe saw Plaintiff, ordered additional pain medication, and noted that Plaintiff should "see Dentist ASAP." (*Id.* Ex. Z (4/7/03 Progress Sheet).) Ultimately, Plaintiff saw Dr. Kovaleski again in May 2003 (*Id.* Ex. EE (5/9/03 Progress Sheet)), and thereafter Dr. Chairsell extracted Plaintiff's tooth number 11. (*Id.* Ex. HH (Oral Surgery Report).)

II. STANDARD OF REVIEW

Summary judgment is appropriate when the admissible evidence fails to demonstrate a

² Medical records reveal that Plaintiff was continuously given pain medication throughout March, April and May. (Guarini Mot. Ex. S-1) (Medication Charts).)

dispute of material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c) (2004); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). When the moving party does not bear the burden of persuasion at trial, the moving party may meet its burden on summary judgment by showing that the nonmoving party's evidence is insufficient to carry its burden of persuasion at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Thereafter, the nonmoving party demonstrates a genuine issue of material fact if sufficient evidence is provided to allow a reasonable jury to find for him at trial. *Anderson*, 477 U.S. at 248. To meet this burden, the opposing party must point to specific, affirmative evidence in the record and not simply rely on mere allegations, conclusory or vague statements, or general denials in the pleadings. *Celotex*, 477 U.S. at 324. In reviewing the record, "a court must view the facts in the light most favorable to the nonmoving party and draw all inferences in that party's favor." *Armbruster v. Unisys Corp.*, 32 F.3d 768, 777 (3d Cir. 1994). Furthermore, a court may not make credibility determinations or weigh the evidence in making its determination. *See Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150 (2000); *see also Goodman v. Pa. Tpk. Comm'n*, 293 F.3d 655, 665 (3d Cir. 2002).

III. DISCUSSION

Plaintiff brings claims pursuant to 42 U.S.C. § 1983 for violation of his federal constitutional rights under the Eighth Amendment and the Equal Protection Clause of the Fourteenth Amendment. To show liability pursuant to § 1983, Plaintiff must demonstrate that a person acting under color of state law deprived him of a federal right. *Gorman v. Township of Manalapan*, 47 F.3d 628, 633 (3d Cir. 1995). As Defendants do not dispute that they are state actors for purposes of § 1983, the issue at hand is whether Defendants' conduct violated Plaintiff's constitutional rights. The Defendants

have moved for summary judgment on each of Plaintiff's claims, which this Court will address in turn.

A. Violation of the Eighth Amendment³

Plaintiff alleges that Defendants violated the Eighth Amendment prohibition on cruel and unusual punishment by depriving Plaintiff of needed dental treatment.⁴ To establish a constitutional claim for deprivation of medical care during incarceration, a prisoner must show more than inadvertence or negligence by state officials. *Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976). Rather, Plaintiff must produce evidence demonstrating that: (1) objectively, his need for medical care was sufficiently serious; and (2) subjectively, prison officials were deliberately indifferent to that need. *Wilson v. Seiter*, 501 U.S. 294, 298 (1991). 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 Corr. Inst. Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir. 1987) (collecting cases). The standard of deliberate indifference is met only when the official in question subjectively “knows of and disregards an excessive risk to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). In sum, “to defeat [a]

³ Plaintiff was a pretrial detainee at the time of the alleged incidents. Although Plaintiff brings his claims under the Eighth Amendment, claims for inadequate medical care by a pretrial detainee should be based on the Due Process Clause of the Fourteenth Amendment. *Natale v. Camden County Corr. Facility*, 318 F.3d 575, 581 (3d Cir. 2003). Accordingly, the Court will evaluate Plaintiff’s claims under Fourteenth Amendment standards, which, under Third Circuit case law, are identical to the standards articulated in Eighth Amendment jurisprudence. *Id.* at 581-82.

⁴Plaintiff also alleges that Defendants violated his Eighth Amendment rights by using unsterile equipment on Plaintiff’s tooth extractions. However, the undisputed record indicates that the sterilization procedures in question were proper. (Pl.’s Resp. Ex. A (Expert Rep.)). As Plaintiff has failed to produce any evidence on this claim, Defendants’ motions for summary judgment on this claim are granted.

summary judgment motion, [a plaintiff] must present enough evidence to support the inference that the defendant[s] knowingly and unreasonably disregarded an objectively intolerable risk of harm.” *Beers-Capitol v. Whetzel*, 256 F.3d 120, 132 (3d Cir. 2001).

1. Serious Medical Need

Plaintiff has presented sufficient evidence to allow a reasonable jury to find that his dental problems constituted a objectively serious medical need. Plaintiff clearly had a dental condition that caused him pain and required some amount of professional care. In fact, Dr. Doe’s own expert concedes that, on more than one occasion, prison medical officials examined Plaintiff and found “rampant caries.” (Pl.’s Resp. Ex. A (Expert Rep.)). The expert report notes that on October 30, 2002, a nurse practitioner diagnosed Plaintiff with “numerous eroded carious teeth,” and that on November 22, 2002, Dr. Kovaleski found that “all” of Plaintiff’s teeth were carious. (*Id.*) Moreover, prison officials sent Plaintiff to an oral surgeon on January 3, 2003. (Guarini Mot. Ex. L.) Plaintiff had one tooth extracted on that date (*id.*), two teeth extracted in March 2003 (*id.* Ex. W), and a final tooth extracted in May 2003 (*id.* Ex. HH). Thus, Plaintiff’s dental history is replete with evidence from which a jury could conclude that Plaintiff had serious medical needs “diagnosed by a physician as requiring treatment.” *Monmouth* 834 F.2d at 347; *see also Coades v. Jeffes*, 822 F. Supp. 1189, 1192 (E.D. Pa. 1993) (holding that a prisoner’s stomach ulcer could constitute a serious medical need for purposes of a § 1983 claim).

2. Deliberate Indifference

Although Plaintiff has raised a question of fact as to whether he had an objectively serious medical need, Plaintiff has not presented any evidence to show that Defendants knowingly and unreasonably disregarded that need.

a. Dr. Robert Doe

Nothing in the record suggests that Medical Director Dr. Robert Doe acted with deliberate indifference towards Plaintiff's medical needs. Dr. Doe treated Plaintiff for various medical conditions on eight separate occasions between May 2002 and July 2003. (Doe Aff. ¶ 3.) As Dr. Doe is a medical doctor, he responded to Plaintiff's complaints of tooth pain by noting that Plaintiff should see a dentist. (*Id.* ¶¶ 1, 9; Guarini Mot. Exs. O, Z.) The only time Dr. Doe prevented Plaintiff from receiving dental care was when he advised Dr. Kovalski that Plaintiff's left mandible swelling was due to Plaintiff's HIV status and did not require an evaluation by an oral surgeon. (Guarini Mot. Ex. E.) However, even assuming that Plaintiff is correct in his assertion that Dr. Doe ordered the cancellation of Dr. Kovalski's November 22, 2002 referral to the oral surgeon (Pl.'s Resp. at 5-6), the record does not support the inference that such an order, if given, stemmed from deliberate indifference. Dr. Doe had treated Plaintiff during a prior incarceration at LCP, at which time Dr. Doe sent Plaintiff to a specialist to evaluate the lump in Plaintiff's left mandible. (Def. Doe's Mot. for Summ. J. Ex. G.) The specialist evaluated Plaintiff and told Dr. Doe that Plaintiff "has a cystic lesion of his left parotid gland . . . This is a classic presentation of HIV disease. This is not a surgical disease." (*Id.*) Therefore, even though Dr. Doe had not examined Plaintiff on November 22, 2002, his prior treatment of Plaintiff afforded him a medical basis for believing that the swelling in Plaintiff's left gland did not need to be evaluated by an oral surgeon.⁵ Furthermore, even if Dr. Doe's opinion regarding the swelling was medically incorrect, which there is no evidence to suggest, "[m]edical malpractice does not become a constitutional violation merely because the

⁵There is nothing in the record to suggest that Dr. Doe knew that Dr. Kovalski's initial referral to the oral surgeon might also have been for the purposes of tooth extraction.

victim is a prisoner.” *Estelle*, 429 U.S. at 106; *see also Litz v. City of Allentown*, 896 F. Supp. 1401, 1409 (E.D. Pa. 1995) (“allegations amounting only to malpractice or mere negligence have consistently been held not to raise issues of constitutional import”); *Inmates of the Allegheny County Jail v. Pierce*, 612 F.2d 754, 762 (3d Cir. 1979) (stating that the deliberate indifference test “affords considerable latitude to prison medical authorities in the diagnosis and treatment of the medical problems of inmate patients”).

Plaintiff further contends that Dr. Doe exhibited a religious “animus” toward Plaintiff, which motivated Dr. Doe to purposely deprive Plaintiff of medical care. (Pl.’s Resp. at 8-9.) Despite Plaintiff’s contention, there is no evidence to suggest that any of Dr. Doe’s diagnoses of Plaintiff were influenced by Dr. Doe’s personal religious beliefs. Although Plaintiff has produced evidence to show that Dr. Doe regularly attempted to interest LCP inmates in Christianity (Doe Dep. at 6-26), and even told Plaintiff during an April 7, 2003 medical visit that he would “burn in hell” for rejecting Dr. Doe’s religious activities (Hernandez Dep. at 157-58), there is nothing in the record indicating that these incidents negatively affected Plaintiff’s medical care. In fact, during the same April 7, 2003 medical visit, Dr. Doe made a notation for Plaintiff to “see dentist ASAP.” (Guarini Mot. Ex. Z.) Even if Dr. Doe did harbor a religious bias against Plaintiff, the record does not suggest that this bias impacted his judgment as Plaintiff’s doctor. Throughout the time period in question, Dr. Doe provided responsive medical care that could not be described as “deliberate indifference.” Accordingly, summary judgment is granted with respect to Plaintiff’s Eighth Amendment claim against Dr. Doe.

b. Tammy Moyer

Similarly, based upon the record before this Court, a reasonable jury could not conclude that

Medical Administrator Tammy Moyer was deliberately indifferent. Moyer admits that she dismissed Plaintiff's March 12, 2003 and March 17, 2003 inquiries because of her incorrect belief that these requests were associated with the November 22, 2002 referral to the oral surgeon initially made and subsequently withdrawn by Dr. Kovaleski. (Moyer Aff. ¶ 6.) Moyer states that her review of Plaintiff's file did not reveal any outstanding request by Plaintiff to see the dentist or any outstanding referrals to the oral surgeon. (*Id.* ¶¶ 5-6.) Nonetheless, Moyer promptly responded in writing to each of Plaintiff's March 2003 general purpose requests. (*Id.* ¶ 6.) In her response to Plaintiff's March 17, 2003 request, she also advised Plaintiff to discuss the matter with his doctor. (Guarini Mot. Ex. T.)

Plaintiff argues that, by failing to investigate further, Moyer exhibited deliberate indifference. (Pl.'s Resp. at 7, 9.) While it is unclear whether a reasonable official in Moyer's position would have better understood Plaintiff's dental history or endeavored to search beyond Plaintiff's file for the details of that history, this Court must apply a subjective standard. *See Beers-Capitol*, 256 F.3d at 131 (“*Farmer* rejected an objective test for deliberate indifference; instead it looked to what the prison official actually knew rather than what a reasonable official in his position should have known.”). There is no evidence to suggest that Moyer was aware of a serious risk and chose to disregard it. Furthermore, although subjective knowledge may also be proven when an excessive risk is “so obvious that the official must have known of the risk,” *id.*, the record reveals that there was no obvious risk in this case. Rather, because a search of Plaintiff's file did not uncover any outstanding referrals or outstanding requests to see the dentist (Moyer Aff. ¶ 5-6), it could not have been “obvious” to Moyer that Plaintiff had a serious medical need requiring attention.

Moyer's course of action in no way indicates that she was deliberately indifferent to

Plaintiff's dental needs. She merely communicated to Plaintiff information concerning his condition that she believed to be true and then suggested that he discuss the matter with his doctor. At most, Moyer's behavior constitutes "a pattern of neglect in providing prompt medical attendance . . . which could perhaps establish tort liability." *Hampton v. Holmesburg Prison Officials*, 546 F.2d 1077, 1081 (3d Cir. 1976) (holding that prison guards who did not intentionally prevent a pretrial detainee from receiving needed medical treatment could not be found deliberately indifferent); *see also Wilson*, 501 U.S. at 299 ("It is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause") (citation and quotation omitted). Accordingly, summary judgment is granted with respect to Plaintiff's Eighth Amendment claims against Tammy Moyer.

c. Warden Vincent Guarini and Amy Hill

As Plaintiff has failed to produce, and this Court's review of the record has failed to reveal, any evidence to suggest that Defendants Guarini or Hill acted with deliberate indifference, summary judgment is granted with respect to Plaintiff's Eighth Amendment claims against Defendants Guarini and Hill.

B. Violation of the Equal Protection Clause

Plaintiff also claims that Defendants violated the Equal Protection Clause of the Fourteenth Amendment by: (1) handing out Plaintiff's medication to other inmates without Plaintiff's permission or consent; and (2) charging Plaintiff for medication that he did not receive. To establish a violation of the Equal Protection Clause, a plaintiff must show an allegedly offensive categorization that invidiously discriminates against a disfavored group. *Price v. Cohen*, 715 F.2d 87, 91 (3d Cir. 1983); *see also City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439

(1985) (stating that the Equal Protection clause of the Fourteenth Amendment is “essentially a direction that all persons similarly situated should be treated alike”). It is well established that “[w]here there is no discrimination, there is no equal protection violation.” *Tillman v. Lebanon County Corr. Facility*, 221 F.3d 410, 424 (3d Cir. 2000) (citation omitted) (granting defendants’ motion for summary judgment on inmate’s equal protection claim where inmate had failed to demonstrate any discrimination).

Plaintiff has failed to bring forth any evidence of discrimination in connection with the distribution of his medication. In fact, Plaintiff does not even respond to Defendants’ motions on these claims, as there is no evidence in the record to support them. Defendants’ motions for summary judgment are thus granted as to all of Plaintiff’s Equal Protection claims.

IV. CONCLUSION

For the reasons stated above, Defendants’ motions for summary judgment are granted. An appropriate Order follows.

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

CLAUDIO HERNANDEZ,	:	
Plaintiff,	:	CIVIL ACTION
v.	:	
	:	
	:	
VINCENT GUARINI, WARDEN, et al.,	:	No. 03-2298
Defendants.	:	

ORDER

AND NOW, this 7th day of **September, 2004**, upon consideration of Defendants Vincent Guarini, Amy Hill, and Tammy Moyer’s Motion for Summary Judgment, Defendant Robert Doe’s Motion for Summary Judgment, Plaintiff Claudio Hernandez’s response thereto, all replies thereon, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendants Vincent Guarini, Amy Hill, and Tammy Moyer’s Motion to File a Reply (Document No. 29) is **GRANTED**.
2. Defendants Vincent Guarini, Amy Hill, and Tammy Moyer’s Motion for Summary Judgment (Document No. 22) is **GRANTED**.
3. Defendant Robert Doe’s Motion for Summary Judgment (Document No. 24) is **GRANTED**.
4. Defendant Robert Doe’s Motion in Limine to Limit Plaintiff to the Claims Contained in his Complaint (Document No. 27) is **DENIED** as **moot**.
5. Judgment is entered in favor of Defendants Vincent Guarini, Amy Hill, Tammy Moyer, and Robert Doe and against Plaintiff Claudio Hernandez.

6. The Clerk of Court is directed to close this case.

BY THE COURT

Berle M. Schiller, J.