

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

PETER CARTER	:	CIVIL ACTION
	:	
v.	:	
	:	
STATE CORRECTIONAL INSTITUTE	:	04-CV-3285
AT GRATERFORD MEDICAL HEALTH	:	
DEPARTMENT, PRISON HEALTH CARE	:	
SERVICES, INC. And DAVID DiGUGLIELMO	:	

MEMORANDUM

Baylson, J.

December 28, 2004

I. Introduction

Presently before this Court are Motions to Dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), filed by Defendants Prison Health Care Services, Inc. (“PHS”) and Superintendent David DiGuglielmo. For the reasons set forth below, the Motions to Dismiss will be granted.

II. Background

A. Procedural Background

Plaintiff Peter Carter (“Plaintiff”) filed a Complaint against the above named Defendants in the Court of Common Pleas of Montgomery County, Pennsylvania on June 3, 2004. On July 9, 2004, Defendant PHS removed this case to federal court. On July 21, 2004, Plaintiff filed a Motion to Remand, contending that his Complaint contained only state law claims arising from the Defendants’ alleged failure to provide medical care and, thus, removal was not proper. Defendants filed a responsive brief on August 9, 2004, arguing that Plaintiff stated a claim under

42 U.S.C. § 1983 and, thus, the case was properly removed to federal court. In an Order dated August 11, 2004, this court denied Plaintiff's Motion to Remand because the Complaint stated claims based on federal law.

On August 11, 2004, Defendant PHS filed a Motion to Dismiss. On September 1, 2004, Plaintiff filed a Motion for Clarification, a Motion for an Extension of Time to Respond to the Motion to Dismiss, and an Amended Complaint. On September 8, 2004, Defendant PHS filed a Motion to Dismiss the Amended Complaint.

In an Order dated September 15, 2004, this court ordered that Plaintiff file a Response to the Motion to Dismiss filed by Defendant PHS by September 29, 2004. Plaintiff's Motions for Extension of Time and for Clarification were terminated as moot.

On September 17, 2004, Plaintiff filed a Motion to Vacate the Order Denying his Motion to Remand. On October 1, 2004, Plaintiff filed a Motion for New Matter as Cause to Remand. The court treated this as a Rule 59(e), Motion to Reconsider. Defendants filed a Response on October 8, 2004 indicating the Amended Complaint still alleged federal claims. On October 13, 2004, this court denied Plaintiff's Motion for Reconsideration and ordered Plaintiff to respond to the Motion to Dismiss filed by Defendant PHS by November 12, 2004. Defendant DiGuglielmo filed a Motion to Dismiss on October 21, 2004. Plaintiff filed a Response to both Motions to Dismiss on November 11, 2004. Defendant PHS filed a Reply on November 15, 2004. Defendant DiGuglielmo filed a Reply on December 2, 2004. On December 8, 2004, Plaintiff filed a "Second Opposition" to Defendant DiGuglielmo's Motion to Dismiss.

B. Allegations in the Complaint

According to the Complaint and Amended Complaint, in June 2003, Plaintiff registered for sick call “seeking medical attention . . . for significant hemorrhoid problems, including but not limited to irritation, swelling, inability to defecate, etc.” (Compl. at ¶ 12). Plaintiff alleges that he obtained a consult from a physician to conduct surgery to repair the hemorrhoids. He asserts that he later discovered that the doctor misled him into believing that he had submitted a consult but did not. Id. at ¶ 13. In December 2003, Plaintiff claims that he submitted a grievance to the medical staff requesting medical care in the form of a concise examination to treat and repair his hemorrhoid condition. He asserts that the suppositories, creams and stool softeners that he was given were not effective. Id. at ¶ 14.

Count I asserts a negligence cause of action based on the common law of Pennsylvania against all defendants.¹ Count II asserts a cause of action based on deliberate indifference to a

¹The allegations of negligence in Count I include:

17. Defendants SCIG med/dept, The Warden, and PHS Inc., individually and/or jointly and severally, were gross negligent, negligent, careless and reckless in rendering medical care and treatment to plaintiff in the following respects:

a. failing to select and retain physicians competent in the medical profession in general and specifically in treating of patients with hemorrhoid conditions.

b. failing to oversee all persons who practice medicine on behalf of and within PHS Inc., and SCIG med/dept. in general and specifically in regard to treatment of treating patients with hemorrhoid conditions.

c. Failure to formulate, adopt and enforce rules and policies to ensure quality care for patients treated by them, to ensure that inmates with damaged hemorrhoids are promptly diagnosed, referred to and seen by adequate specialities, that appropriate test are performed under

the circumstances,

d. Failure to order appropriate diagnostic test, including but not limited to MRI and CAT scans, for the purpose of ascertaining the cause or source of plaintiff's damaged hemorrhoids, complaints such as in this case of plaintiff herein.

e. failure to promptly refer plaintiff to a specialist(s), who specializes in repairing hemorrhoid(s) conditions.

f. failure to minimize the risk of advancing related problems due to the failure to treat his aforesaid conditions with reasonable appropriate sufficient aggressive and timely treatment.

g. Failure to take the necessary and proper medical precautions against further deterioration of plaintiff's medical problem.

h. failure to direct, supervise, monitor, oversee and maintain prompt and continuing review of plaintiff's condition in order to be current in awareness of his progress or lack thereof and to prevent the highly foreseeable worsening of his problem by forming or modifying the treatment plan and otherwise taking appropriate and prompt medical action and intervention.

i. Neglecting their patient, plaintiff utilizing minimal medical intervention and allowing him to languish, knowing that doing so would result in substantial worsening of his symptoms.

j. Defendants neglected and grossly neglected the medical needs of plaintiff, refusing and/or declining to examine and treat him when he reasonably and periodically issued requests for assistance for treating his progressive hemorrhoid problem.

k. Defendants neglected and grossly neglected the medical needs of plaintiff by failing to take proactive action in the form of scheduling appointments to examine and treat plaintiff, given the progressive nature of his hemorrhoid condition.

l. Defendants were in other ways acting in manner

serious medical need in violation of Plaintiff's constitutional rights.² Plaintiff seeks compensatory damages in excess of \$100,000 against all defendants for the alleged negligence and violation of his constitutional rights. Id. at 6.

C. Motions to Dismiss

1. Defendant PHS

Defendant PHS argues that the claims against it must be dismissed because 1) Count I fails to state a claim for corporate negligence; and 2) Count II fails to allege that PHS had a policy or knew that one of its policies violated the Constitution of the United States and caused injury to Plaintiff. (Def's Motion to Dismiss at ¶¶ 9-10.)

2. Defendant DiGuglielmo

Plaintiff is suing Defendant DiGuglielmo in his official and individual capacity.

which was reckless, grossly negligent, negligent and careless at law as will be determined during the discovery and investigation process.

Compl. at 6-7.

²In an attempt to have this case remanded to state court, Plaintiff amended Count II of his Complaint to read, in part:

25. At all times relevent [sic] all defendants knowingly violated plaintiff [sic] Constitutional rights statute [sic] under the Constitution of the Commonwealth and any and all other Constitutions that this court may deem occuured [sic].

Amended Compl. at ¶ 25.

However, Plaintiff did not amend Paragraph 10 of the Complaint, which is incorporated into Counts I and II, and reads:

10. As an inmate at SCIG, plaintiff had a right to receive prompt, adequate and competent care and attention under the United States Constitution, 42 U.S.C. section 1983 and the Commonwealth of Pennsylvania's Constitution.

Compl. at ¶ 10.

Defendant DiGuglielmo argues that the claims against him must be dismissed because 1) the Eleventh Amendment bars all of Plaintiff's claims for damages against Defendant DiGuglielmo in his official capacity; 2) he is not a "person" under section 1983 and is therefore immune from suit; 3) based on the allegations in the Complaint, Plaintiff's federal rights were not violated; 4) Defendant DiGuglielmo lacked the personal involvement required under section 1983 claims; and 5) sovereign immunity bars Plaintiff's state law claims against Defendant DiGuglielmo. (Def's Motion at 2, ¶¶6-8). Because Defendant DiGuglielmo is not a "person" under section 1983 and lacked the personal involvement required under section 1983, the claims against him must be dismissed with prejudice.

III. Jurisdiction and Legal Standard

A. Jurisdiction

Although the Court notes that the Plaintiff contends that he is raising causes of action in tort, and that these causes of action are state law ones, the fact that Plaintiff has pled a claim under 42 U.S.C. § 1983 properly gives this Court jurisdiction over the entire case, pursuant to 28 U.S.C. § 1331.³

B. Legal Standard

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the court may grant the motion only if, accepting all well-pleaded allegations in the complaint as

³ 18 U.S.C. § 1331 states:
§ 1331. Federal question
The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1331 (West 2004).

true, and viewing them in the light most favorable to plaintiff, the plaintiff is not entitled to relief. Doug Grant, Inc. V. Greate Bay Casino Corp., 232 F.3d 173, 183 (3d Cir. 2000).

Accordingly, a federal court may dismiss a complaint for failure to state a claim only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Doe v. Delie, 257 F.3d 309, 313 (3d Cir. 2001).

IV. Analysis

A. Section 1983 Claims

To state a cause of action under § 1983, Plaintiff must demonstrate that 1) Defendants acted under color of state law; and (2) Defendants deprived him of a federal right. Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995).

In this case, Defendants were acting under color of law because they were either government officials or working on behalf of the state at the time of the alleged violations. Fox v. Horn, 2000 WL 49374, *3 (E.D.Pa., 2000). Therefore, the issue remaining is whether the Defendants have subjected Plaintiff to “the deprivation of any right, privilege, or immunities secured by the Constitution and laws.” 42 U.S.C. § 1983.

In the instant matter, Plaintiff’s right to receive adequate health care derives from a prisoner’s constitutional rights embodied in the Eighth Amendment’s prohibition against cruel and unusual punishment. See Farmer v. Brennan, 511 U.S. 825, 832 (1994); Estelle v. Gamble, 429 U.S. 97 (1976) (reversing court of appeals’ decision reversing district court’s dismissal of inmate’s complaint as to physician, both in his capacity as treating physician and as medical director of corrections department). This prohibition has been interpreted by the Supreme Court as prohibiting “the unnecessary and wanton infliction of pain.” Hudson v. McMillian, 503 U.S. 1

(1992) (reversing decision of court of appeals, which held that inmate could not prevail on his claim of cruel and unusual punishment against corrections officers). Under this standard, an inmate who claims a violation of § 1983 on the basis of a failure to provide necessary medical treatment must show both that 1) his medical needs were serious, and that 2) the defendants' failure to attend to his medical needs rose to the level of deliberate indifference. Colburn v. Upper Darby Township, 946 F.2d 1017, 1023 (3d Cir. 1991) (affirming district court's summary judgment in favor of defendants, township and officials, in plaintiff mother's civil rights action for suicide of her daughter, a pretrial detainee).

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). A medical need may be considered serious if denial or delay in the provision of adequate medical care results in "unnecessary and wanton infliction of pain," or where it causes an inmate to suffer a life-long handicap or permanent loss. Id. "Inadvertent failure to provide adequate medical care . . . or . . . negligent diagnosis" is insufficient to establish an Eighth Amendment violation. Wilson v. Seiter, 489 U.S. 1024, 1028 (1991) (quoting Estelle, 429 U.S. at 105-06)).

In the present case, Plaintiff concedes that he received medical care at the prison,⁴ but alleges that the treatment was inadequate, negligent and untimely. (Compl. at ¶¶ 12-17). Plaintiff claims that this caused him to "languish" as his symptoms worsened. (Compl. at ¶ 17).

⁴Specifically, Plaintiff admits that he registered for "sick call" and was seen by a doctor for his condition. (Compl. at ¶¶ 12-13). He also received "suppositories, creams and stool softeners." Id. at ¶ 14.

Although Plaintiff states that the full extent of his condition is not yet known, id. at ¶ 15, he claims that he has sustained “severe debilitating and permanent injuries” as well as “depression, anxiety and embarrassment . . . of a permanent nature.” Id. at ¶ 20. Plaintiff also alleges that he “has undergone great physical pain and suffering, mental anguish, emotional upset, humiliation, frustration the general loss of the pleasures and enjoyment of life and the serious impairment of bodily functions.” Id. at ¶ 22. At worst, the Complaint contends that the doctors negligently diagnosed and treated Plaintiff. Under Wilson, this is insufficient to establish an Eighth Amendment violation. Wilson, 489 U.S. at 1028. However, viewing these allegations in the light most favorable to Plaintiff, and keeping in mind the liberal pleading requirements of Rule 8 of the Federal Rules of Civil Procedure, the Court will assume, arguendo, that the Amended Complaint adequately alleges a serious medical need and analyze whether the Complaint sufficiently alleges that Defendants were deliberately indifferent.

In defining the deliberate indifference standard, the Supreme Court has stated that “a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official 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 risk of serious harm exists, and he must also draw the inference.” Farmer, 811 U.S. at 837, 844. In the present case, Plaintiff concedes that he received medical care at the prison, but alleges that Defendants acted with deliberate indifference in their failure to provide adequate and timely treatment. (Compl. at ¶¶ 12-14, 24).

1. Defendant PHS

Because PHS is a private corporation that provided medical services “to inmates at SCIG

pursuant to the terms of a contract between PHS and the Commonwealth of Pennsylvania,” (Compl. at ¶ 3), Plaintiff must allege that PHS had a policy or custom that caused his constitutional injury in order to show deliberate indifference on the part of PHS.⁵ See Groman, 47 F.3d at 637. While a corporation cannot be held liable under § 1983 on a theory of respondeat superior, see Priovolos v. Prison Health Servs., Inc., CIV.A. No. 90-2089, 1990 WL 82097, at *1 (E.D. Pa. June 13, 1990) (dismissing PHS from a lawsuit where the plaintiff’s only theory of liability against PHS was respondeat superior), “it may be held liable if it knew of and acquiesced in the deprivation of [Plaintiff’s] rights.” See Miller v. Hoffman, 1998 WL 404034 at *5 (E.D. Pa. 1998); Miller v. City of Philadelphia, 1996 WL 683827, at *3-4 (E.D. Pa. 1996).

In this case, Plaintiff has argued in his Complaint that, inter alia, PHS:

- Failed to select and retain physicians competent in the medical profession;
- Failed to oversee all persons who practice medicine on behalf of and within PHS;
- Failed to formulate, adopt and enforce rules and policies to ensure quality care for patients;
- Failed to order appropriate diagnostic tests; and
- Substantially departed from accepted professional practice and standards.

Compl. at ¶¶ 17, 22.⁶

In Estelle, the Supreme Court held:

⁵ This requires plaintiff to demonstrate both “the existence of a policy and a causal link between the policy and the alleged injuries.” Unterberg v. Correctional Medical Systems, Inc., 799 F. Supp. 490, 497 (E.D.Pa. 1992) (citations omitted). A custom “can be proven by showing that a given course of conduct, although not specifically endorsed or authorized by law, is so well-settled and permanent as virtually to constitute law.” Bielevicz v. Dubinon, 915 F.2d 845, 850 (3d Cir. 1990).

⁶See supra note 1 (listing all the allegations).

A complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.

Estelle, 429 U.S. at 106. Because all of Plaintiff's allegations are grounded in negligence, such statements are insufficient to allege that PHS had a custom or policy that caused a constitutional injury to Plaintiff. Thus, Plaintiff has not alleged sufficient facts to state a § 1983 claim.

Accordingly, the Court will grant the Motion of Defendant PHS to Dismiss Count II of the complaint.

2. Defendant DiGuglielmo

To the extent that Plaintiff is suing Defendant DiGuglielmo in his official capacity as warden or Superintendent, the claims against him must be dismissed because state officials acting in their official capacities are not "persons" subject to suit for damages under § 1983. Will v. Mich. Dep't of State Police, 491 U.S. 58, 70-71 (1989); Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690, 698 (3d Cir. 1996) (affirming judgment barring ADEA claims of employees against employer and Commonwealth of Pennsylvania, Department of Labor and Industry).

To the extent that Plaintiff is suing Defendant DiGuglielmo in his personal capacity, an individual cannot be held liable for § 1983 liability unless he personally "participated in violating [another's] rights, or . . . directed others to violate them or . . . had knowledge of and acquiesced in his subordinates' violations." Baker v. Monroe Township, 50 F.3d 1186, 1190-91 (3d Cir. 1995); see also Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988) (holding that

defendant in civil rights action must also have personal involvement in alleged wrongs). The Third Circuit has explained that “allegations of participation or actual knowledge and acquiescence, however, must be made with appropriate particularity.” Dellarciprete, 845 F.2d at 1195.

Although the Complaint states that “all defendants had personal knowledge and personal involvement in delaying and/or decision making in what medical care plaintiff would be allotted,” (Compl. at ¶ 27), the Complaint fails to state any particular facts indicating that Defendant DiGuglielmo had any personal involvement with Plaintiff’s medical treatment. As a result, Defendant DiGuglielmo may not properly be named as a defendant in this action and the claims against him will be dismissed.

B. State Claims

There being no remaining federal claims, the Court will exercise its discretion and dismiss the Plaintiff’s surviving state claims pursuant to 28 U.S.C. § 1367.⁷ Plaintiff may re-file

⁷ 28 U.S.C. §1367 states, in pertinent part:

§ 1367. Supplemental jurisdiction

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection

(a) if--

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

his Complaint in state court if he wishes to assert any claims under Pennsylvania state law.

V. Conclusion

Because Plaintiff has not alleged that a pattern or procedure of Defendant PHS violated the Constitution of the United States or any federal statute, Count II of Plaintiff's Amended Complaint against Defendant PHS must be dismissed. Further, Because Defendant DiGuglielmo is not a "person" under section 1983 and lacked the personal involvement required under section 1983, Count II against him must be dismissed with prejudice. There being no remaining federal claims, the court is also dismissing the state claims pursuant to 28 U.S.C. § 1367.

An appropriate Order follows.

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 USCS § 1367.

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DEPARTMENT, PRISON HEALTH CARE	:	
SERVICES, INC. And DAVID DiGUGLIELMO	:	

ORDER

AND NOW, this 28th day of December, 2004, based on the foregoing memorandum and upon consideration of the pleadings and briefs, it is hereby ORDERED that Defendants' Motions to Dismiss (Doc. Nos. 5, 12, and 22) be GRANTED as follows:

- Count II is hereby dismissed;
- Count I is dismissed pursuant to 28 U.S.C. § 1367, without prejudice.

It is furthered ORDERED that Plaintiff's Motion to Compel (Doc. No. 26) is hereby DENIED as moot. The Clerk is directed to close this case.

BY THE COURT:

/s/ Michael M. Baylson

MICHAEL M. BAYLSON, U.S.D.J.