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

JOSEPH C. HUSSMANN	:	**CIVIL ACTION**
	:	
vs.	:	
	:	
JULIE KNAUER, C.H.C.A., BENJAMIN ROBINSON, DR., and, ALAN B. FOGEL, DIRECTOR, BUREAU OF HEALTH CARE SERVICES	:	**NO. 04-2776**

ORDER AND MEMORANDUM

ORDER

AND NOW, this 22nd day of February, 2005, upon consideration of Commonwealth Defendants' Motion to Dismiss (Doc. No. 3, filed August, 26, 2004) and Plaintiff's Response to the Commonwealth Defendants' Motion to Dismiss (Doc. No. 8, filed September 24, 2004), **IT IS ORDERED** that Commonwealth Defendants' Motion to Dismiss is **GRANTED WITHOUT LEAVE TO AMEND** and plaintiff's claims against Julie Knauer and Alan B. Fogel are **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that the caption of the case is **AMENDED** so as to remove Julie Knauer and Alan B. Fogel as defendants.

MEMORANDUM

I. INTRODUCTION

Pro se plaintiff, Joseph C. Hussmann, a prisoner in the custody of the Pennsylvania Department of Corrections at the State Correctional Institutional at Graterford ("Graterford"), filed the instant action for compensatory, injunctive, and punitive relief under 42 U.S.C. § 1983, alleging

deliberate indifference to his medical needs in violation of the Eighth and Fourteenth Amendments of the U.S. Constitution. Named as defendants are Dr. Benjamin Robinson, a physician who treated inmates at Graterford, for not approving surgery to repair a hernia; Julie Knauer, Corrections Health Care Administrator at Graterford, for her failure to overrule Robinson's decision disapproving the surgery; and Alan B. Fogel, Director of the Bureau of Health Care Services at Graterford, for his failure to intervene in the matter and approve plaintiff's surgery. Commonwealth Defendants, Julie Knauer and Alan B. Fogel, moved to dismiss plaintiff's Complaint for failure to state a claim upon which relief can be granted. For the reasons stated below, the Motion to Dismiss is granted.

II. BACKGROUND

The facts are taken from the Complaint and the appended Memorandum of Law with attached documents and documents identified in those filings. Because plaintiff is *pro se*, the Court also relies on facts set forth in plaintiff's Response to the Commonwealth Defendants' Motion to Dismiss to the extent they amplify the allegations in the Complaint.

On February 6, 2003, plaintiff was experiencing pain in his lower abdomen and was examined by Dr. Lou Martinez, a prison physician. Dr. Martinez diagnosed plaintiff with a hernia. On March 10, 2003, plaintiff was examined by another prison physician who concurred in the diagnosis of a hernia. According to plaintiff, the physician told him that the prison was "not fixing hernias," but that he would be scheduled for a further examination. On April 10, 2003, Dr. Kotoh, another prison physician, confirmed the diagnosis of a hernia and recommended that plaintiff undergo surgery.

Approximately two weeks later, plaintiff sent a request slip to defendant Knauer, Health Care Administrator, asking for medical attention. Plaintiff followed up with a formal grievance

filed on May 6, 2003. On May 14, 2003, Knauer informed plaintiff that on April 14, 2003, surgery had not been approved by defendant, Dr. Benjamin Robinson, and that plaintiff should sign up for sick call to be evaluated again if the problem persisted. Thereafter, Dr. Robinson examined plaintiff for the first time. At that examination Dr. Robinson told him he would be examined monthly, but that was not done. Plaintiff continued to experience pain, as a result of which, he signed up for sick call on August 3, 2003. At that time he was "told once again that they are not fixing hernias." (Response at 2).

On September 17, 2003, plaintiff filed a request slip inquiring whether the hernia would be fixed. The medical staff responded to plaintiff's inquiry, stating that the surgery had been disapproved. Plaintiff then filed another grievance on October 3, 2003, requesting that surgery be performed. On October 28, 2003, a member of Knauer's staff responded that the surgery was denied for the following reasons: "not medically necessary at this time; hernia is reducible; you are not routinely bothered except when coughing or straining; you have no problems with constipation and bowel sounds are within normal limits." At that time, plaintiff was assured that his medical condition was not being ignored, and he was told that he should sign up for sick call if his symptoms continued.

Plaintiff appealed the October 28, 2003 decision to the Superintendent of Graterford. The Superintendent upheld the decision not to perform surgery, stating that the plaintiff had not shown up for sick call since the hernia surgery was denied.

Plaintiff's Complaint alleges that defendants, in violation of the Eighth Amendment, exercised deliberate indifference to his medical needs. Plaintiff also alleges that under the Equal Protection Clause of the Fourteenth Amendment he is entitled to the same medical treatment as a

non-prisoner. Plaintiff seeks compensatory and punitive damages, each in the amount of $300,000 from Robinson and Knauer; he seeks no compensatory damages from Fogel. Additionally, plaintiff seeks two forms of injunctive relief: (1) surgery for himself; and (2) an order prohibiting Knauer and Fogel from denying medical care and hernia surgery to other inmates. (Response at 2).

On August, 26, 2004, Commonwealth Defendants, Julie Kanuer and Alan B. Fogel, filed a Motion to Dismiss plaintiff's Complaint under Federal Rule of Civil Procedure 12(b)(6) on the ground that plaintiff has failed to state a claim upon which relief can be granted.

III. STANDARD OF REVIEW

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of a complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In considering a motion to dismiss under Rule 12(b)(6), a court must take all well-pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969). A complaint should be dismissed if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

Generally, the court may not consider documents outside of the pleadings when ruling on a motion to dismiss. In re Burlington Coat Factory Sec. Litig., 114 F.3d 1210, 1426 (3d Cir. 1997). However, the court may rely on documents which plaintiff has attached to or submitted with the complaint and any documents "integral to or explicitly relied upon in the complaint." In re Rockefeller Ctr. Props. Sec. Litig., 184 F.3d 280, 292-93 (3d Cir. 1999); Lum v. Bank of America, 361 F.3d, 217, 222 n.3 (3d Cir. 2004); Pryor v. Nat'l Collegiate Athletic Ass'n., 228 F.3d 548, 560 (3d Cir. 2002). The court may consider such documents without converting the motion to dismiss

into one for summary judgment. In re Rockefeller Ctr. Props. Sec. Litig., 184 F.3d at 292-93. In the instant case, plaintiff has attached to the Complaint his formal grievances and the defendants' responses thereto. Accordingly, these documents will be considered by the Court in deciding the Motion to Dismiss.

The Court is mindful that *pro se* plaintiffs are not held to as high a pleading standard as other litigants. Haines v. Kerner, 404 U.S. 519, 520 (1972). Therefore, *pro se* pleadings must be construed liberally. Id. A court may dismiss a *pro se* complaint under Rule 12(b)(6) only when it "appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." McDowell v. Del. State Police, 88 F.3d 188, 189 (3d Cir. 1996).

IV. DISCUSSION

A. Plaintiff's Eighth Amendment Claim

In order to state a claim for a violation of the Eighth Amendment a plaintiff must allege that the defendants were deliberately indifferent to his serious medical needs. Estelle v. Gamble, 429 U.S. 97 (1976); see also Farmer v. Brennan, 511 U.S. 825 (1994); Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979). This two-prong test requires that a prisoner's medical needs be serious and that prison officials demonstrated deliberate indifference to such needs. Maldonado, v. Terhune, 28 F. Supp. 2d 284, 289 (D.N.J. 1998) (citing Pace v. Fauver, 479 F. Supp. 456, 458 (D.N.J. 1979), aff'd, 649 F.2d 860 (3d Cir. 1981)).

The Third Circuit has defined a medical need as "serious" if it 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). As to the second prong, the prison officials'

acts must constitute “an unnecessary and wanton infliction of pain,” be “repugnant to the conscience of mankind” or offend the "evolving standards of decency." Estelle, 429 U.S. at 106.

A plaintiff must show more than mere negligence or inadvertent failure to provide adequate medical care to state a claim of deliberate indifference. See Estelle, 429 U.S. at 104-05; see also Monmouth County, 834 F.2d at 346. Moreover, prison medical officials have considerable latitude in the diagnosis and treatment of the medical conditions of inmate patients. Parham v. Johnson, 126 F.3d 454, 458 (3d Cir. 1997). Therefore, a mere difference of opinion concerning the treatment received by an inmate is not actionable under the Eighth Amendment. Monmouth County, 834, F.2d at 346.

“Where a plaintiff has received some care, inadequacy or impropriety of the care that was not given will not support an Eighth Amendment claim.” Norris v. Frame, 585 F.2d 1183, 1186 (3d Cir. 1978). Consequently, a claim for deliberate indifference 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 fundamental fairness or barbarous.” Id. Even where a medical condition may require surgery, if the need for surgery does not appear to be acute and the surgery is “elective,” it is unlikely that a constitutional violation has occurred. Boring v. Kozakiewicz, 833 F.2d 468, 473 (3d Cir. 1987).

In order for a §1983 claim to survive against a state official sued in her individual capacity, the official must have had personal involvement in the alleged constitutional depravation. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). The mere fact that a defendant holds a supervisory position, without more, is insufficient to state a claim, as § 1983 does not support a

claim based on a theory of respondeat superior or vicarious liability. Durmer v. O'Carroll, 991 F.2d 64, 69 n. 14 (3d Cir. 1993).

Courts in this district have held that prison officials with supervisory positions over a prison physician cannot be held liable for the medical complaints of a prisoner who is already being treated by a prison doctor. See 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 a position to assess the reasonableness of prison doctor's treatment). In fact, a court in this district has specifically ruled that Knauer, as Health Care Administrator, cannot be found liable under §1983 simply by virtue of her supervisory role. Thomas v. Zinkel, 155 F. Supp. 2d 408, 414 (E.D. Pa. 2001). Therefore, to the extent that plaintiff relies on respondeat superior as a basis for liability, defendants' Motion to Dismiss is granted. See Durmer, 991 F.2d at 69 n.14.

In order to establish liability, plaintiff must allege deliberate indifference to a serious medical condition. The Court need not address the question of whether plaintiff has alleged a serious medical condition because it is clear that his allegations do not satisfy the second prong of the deliberate indifference test – he does not allege that Knauer's actions constituted "an unnecessary and wanton infliction of pain." Estelle, 429 U.S. at 106.

In Durmer v. O'Carroll, the court held that defendants who were not physicians could not 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." 991 F.2d at 69. The Court finds Durmer instructive. In this case, plaintiff's medical records demonstrate that Knauer did not ignore plaintiff's hernia. (See Compl. ¶¶ 1-3). She, or a member of her staff, responded to each of plaintiff's grievances and encouraged plaintiff to sign-up for sick call so that his hernia could be monitored. Plaintiff was examined and treated for his hernia by physicians on various occasions. Furthermore, as Knauer's position at Graterford is purely administrative, she appropriately relied on the decisions of medical professionals' regarding plaintiff's course of treatment. Therefore, there is nothing to suggest that Knauer intentionally disregarded plaintiff's medical condition or that her behavior was grossly negligent or shocking to the conscience. Farmer, 511 U.S. at 837; Norris, 585 F.2d at 1186.

Moreover, plaintiff does not allege that Knauer had actual knowledge or reason to believe that the prison medical staff was mistreating or not treating plaintiff. See Spruill v. Gillis, 372 F.3d 218, 236 (3d Cir. 2004) (citing Durmer, 991, F.2d at 69 n.14) (holding that "absent a reason to believe (or actual knowledge) that prison doctors or their assistants are mistreating (or not treating) a prisoner, a non-medical prison official" cannot be charged with deliberate indifference). According to plaintiff's submissions, Knauer or a member of her staff responded to each of plaintiff's grievances related to his hernia condition, the hernia surgery was not medically necessary because it was reducible, he was not routinely bothered by the hernia except when coughing or straining, he had no problems with constipation, his bowel sounds were within normal limits, and he was regularly instructed to return to sick call if his symptoms persisted. These facts, all of which are set forth in the documents plaintiff attached to his submissions, fail to satisfy the pleading requirements of an Eighth Amendment claim. See id.

Taking all of plaintiff's allegations as true, the facts alleged do not support the conclusion that Knauer acted with deliberate indifference to plaintiff's medical needs. Accordingly, plaintiff's claims against Knauer in her individual capacity are dismissed.[1]

B. Equal Protection Claim

Plaintiff has also failed to state a claim under the Equal Protection Clause of the Fourteenth Amendment. The equal protection clause, in essence, imposes the requirement that similarly situated persons be treated alike. See Williams v. Morton, 343 F.3d 212, 221 (3d Cir. 2003) ("To prevail on an equal protection claim, a plaintiff must present evidence that s/he has been treated differently from persons who are similarly situated."); see also City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985).

Plaintiff argues that prisoners and non-prisoners are entitled to receive the same level of medical care. This argument is without merit. While the Supreme Court has held that the state is obligated to provide inmates with basic medical care, See Estelle, 429 U.S. at 103, inmates are not entitled to the same level of care as non-inmates. See Jones v. North Carolina Prisoners' Labor Un. Inc., 433 U.S. 119, 125 (1977).

Plaintiff has not alleged that he has been treated differently from persons who are similarly situated. In other words, plaintiff makes no allegations that other inmates at Graterford who were suffering from a hernia or a similar condition were granted surgery. Therefore, the Court concludes that plaintiff has failed to state a claim under the Fourteenth Amendment.

C. Official Capacity Claims

To the extent that plaintiff brings this action against Knauer and Fogel in their official

[1]Plaintiff did not sue Fogel in his individual capacity.

capacities, the Eleventh Amendment bars plaintiff's claims for monetary damages. See Arizonans for Official English v. Ariz., 520 U.S. 43, 68-69 (U.S., 1997) (Eleventh Amendment bars § 1983 actions against a state) (citing Will v. Mich. Dept. of State Police, 491 U.S. 58, 71 (1989) (states and state officers in their official capacities cannot be sued for damages under § 1983).

D. Claims for Injunctive Relief

Plaintiff asks this court to grant two forms of injunctive relief: hernia surgery for himself and an order prohibiting Knauer and Fogel from denying medical care and hernia surgery to inmates in the future.

While a plaintiff may not bring a § 1983 action for monetary damages against state officials in their official capacities, the Eleventh Amendment does not prohibit a prisoner from bringing a § 1983 action against state officials in their official capacities for prospective injunctive relief. Ex parte Young, 209 U.S. 123 (1908); Pa. Fedn. of Sportsmen's Clubs, Inc. v. Hess, 297 F.3d 310, 323-24 (3d Cir. 2002) ("The relief sought must be prospective, declaratory, or injunctive relief governing an officer's future conduct and cannot be retrospective, such as money damages."). Claims for prospective injunctive relief are permissible provided the official against whom the relief is sought has "a direct connection to, or responsibility for, the alleged illegal action." Davidson v. Scully, 148 F. Supp. 2d 249, 254 (S.D.N.Y. 2001).

Generally, a litigant must assert his or her own legal rights and interests and cannot seek redress for the legal rights of third parties. Powers v. Ohio, 499 U.S. 400, 410 (1991). However, under certain circumstances, this rule of standing is relaxed to permit a third party to assert the rights of those not before the court. Pa. Psychiatric Soc'y v. Green Spring Health Servs., 280 F.3d 278, 288 (3d Cir. 2002). In order for a plaintiff to assert third party standing, the plaintiff must

himself have suffered a concrete "injury-in-fact" as a result of the challenged policy or practice. Powers, 499 U.S. at 411. In addition, the court must examine and balance the following three factors: (1) the relationship between the plaintiff and the third party whose rights are asserted; (2) the ability of the third party to advance his own rights; and (3) the impact of the litigation on third-party interests. Amato v. Wilentz, 952 F.2d 742, 749-50 (3d Cir. 1991) (citing Caplin & Drysdale v. United States, 491 U.S. 617 (1989)).

The Court has determined that plaintiff has failed to allege a constitutional violation. For that reason, he is not entitled to the injunctive relief he seeks on his behalf or on behalf of other inmates. See Ex parte Young, 209 U.S. at 160.

V. CONCLUSION

For the forgoing reasons, Commonwealth Defendants' Motion to Dismiss is granted and plaintiff's claims against Commonwealth Defendants, Julie Kanuer and Alan B. Fogel, are dismissed with prejudice. Plaintiff is not granted leave to amend his Complaint on the ground that the medical records appended to or referred to in the Complaint demonstrate that any such amendment would be futile. See In re NAHC, Inc. Sec. Litig., 306 F.3d 1314, 1332 (3d Cir. 2002) (plaintiff should not be granted leave to amend if the amendment would be futile).

BY THE COURT:

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JAN E. DUBOIS, J.