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

WILLIAM SEYMOUR JONES,	
Plaintiff,	
	CIVIL ACTION NO. 04-CV-1877
v.	
CLIFFORD A. CHANDLER,	
Warden of F.D.C. Philadelphia,	
ET AL.	
Defendants.	

MEMORANDUM AND ORDER

Tucker, J. **August 9, 2005**

Presently before this Court is Defendants Clifford Chandler, Brian Patton, Aramis Martinez, Gary Reynolds, and David Massa's[1] Motion to Dismiss Plaintiff's Amended Complaint (Doc. 12). For the reasons set forth below, upon consideration of Defendants' Motion and Plaintiff's Responses (Docs. 14-17), this Court will grant Defendants' Motion to Dismiss.

BACKGROUND

Plaintiff William Seymour Jones was held at the Federal Detention Center ("FDC") in Philadelphia, Pennsylvania, as a pre-sentence detainee by the United States Marshal's Service from July 12, 2001, until December 13, 2002, and again from September 8, 2003, until October 2, 2003. Plaintiff suffers from hypertension and was under the medical care of the Prison Health Services from July 2001 until December 2003. Originally, Plaintiff was prescribed .3 mg of Clonidine and 50 mg of H.C.T.Z. as a part of his treatment for hypertension. Some time later, on December 9, 2002, Plaintiff states that he was diagnosed with diabetes.

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[1]In Plaintiff's Second Amended Complaint, he names Mylan Pharmaceuticals, Inc., Paul Shedds, and Winston Freeman as additional Defendants. However, this Motion to Dismiss was filed only on behalf of the above-listed individuals.

Plaintiff alleges that on December 12, 2002, Dr. Gary Reynolds ("Dr. Reynolds") discontinued his prescription for Clonidine and lowered the dose of H.C.T.Z. to 12.5 mg. Plaintiff also alleges that during his appointment, Dr. Reynolds inquired about his services as a jailhouse lawyer. On December 13, 2002, Plaintiff was transferred from the FDC to the Hudson County Correctional Facility in New Jersey, where he claims that the prison officers advised him to stop filing grievances.

In his original complaint, Plaintiff stated that the prison officers acted with deliberate indifference to his medical needs when he was deprived of medication while in custody at the FDC. He also claimed that he was subjected to unlawful retaliation when he was transferred to state prison in Hudson County, New Jersey, following complaints about his medical care.

Subsequently, Plaintiff sought to amend his complaint to include an Eighth Amendment claim alleging that his right to be free from cruel and unusual punishment was violated when he was prescribed Clonidine to treat his hypertension. Pl.'s Second Am. Compl. Plaintiff alleges he contracted type II diabetes and hepatitis from taking the Clonidine from July 2001 through December 9, 2002. Id. ¶¶ 13 and 15. He further claims the prison officers breached their duty to warn him of the possibility of contracting both diseases as a side effect of the Clonidine. Id. Finally, Plaintiff's Second Amended Complaint adds Mylan Pharmaceuticals, Inc. ("Mylan"), the makers of the drug Clonidine and its officers as defendants. Id. ¶ 9. Plaintiff alleges that the prison officers and Mylan "conspired to hide and conceal the fact that Clonidine causes diabetes and hepatitis diseases from the Plaintiff and the general public at large." Id. ¶ 16.

PROCEDURAL HISTORY

In December 2002, Plaintiff filed an action against employees of the FDC and the Hudson

County Correctional Facility in the United States District Court for the District of New Jersey. The defendants in that action filed a motion to dismiss on September 5, 2003. In an opinion dated April 22, 2004, the Honorable Faith Hochberg, U.S.D.J. for the District of New Jersey, dismissed the claims against the Hudson County defendants and transferred the claims against the federal defendants to the Eastern District of Pennsylvania for the convenience of the parties. Jones v. Green, No. 02-6029, slip op. at 9 (D.N.J. Apr. 22, 2004). The remaining Defendants, former Warden, Clifford Chandler ("Chandler"); Associate Warden of Operations, Brian Patton ("Patton"); Health Services Administrator, Aramis Martinez ("Martinez"); David Massa, M.D.; and Medical Officer, Gary Reynolds ("Dr. Reynolds") are FDC employees (collectively "Defendants").

On September 7, 2004, pursuant to FED. R. CIV. P. 15(a), Plaintiff filed a Second Amended Complaint, without leave of court, including allegations against Mylan. Defendants re-filed their Motion to Dismiss the Amended Complaint, and Plaintiff filed a response in opposition.

LEGAL STANDARD

In considering a motion to dismiss under Rule 12(b)(6), the court "must take all the well pleaded allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988) (citations omitted), cert. denied, 489 U.S. 1065, 109 S. Ct. 1338, 103 L. Ed. 2d 808 (1989); see Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989). The court must decide whether "relief could be granted on any set of facts which could be proved." Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988). A motion to dismiss may be granted only "if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson,

355 U.S. 41, 45-46, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957).

Because Plaintiff filed a pro se Amended Complaint, we must liberally construe his pleadings and apply the applicable law, regardless of whether he has mentioned it by name. Dluhos v. Strasberg, 321 F.3d 365, 369 (3d Cir. 2003). "On the other hand, a judge may not become the surrogate attorney for a party, even one who is proceeding pro se. A pro se plaintiff must abide by the Federal Rules of Civil Procedure and when confronted by motions to dismiss must articulate reasons why the motions should not be granted." Mazur v. Pennsylvania Dep't of Transp., 507 F. Supp. 3, 4 (E.D. Pa. 1980), aff'd without opinion at 649 F.2d 860 (3d Cir. 1981) (quoting Tilli v. Capabianco, No. 79-931, slip op. at 1-2 (E.D. Pa. Jan. 28, 1980)).

DISCUSSION

Defendants state that Plaintiff's Amended Complaint should be dismissed pursuant to Rule 12(b)(6) because Plaintiff has failed to articulate any facts which establish that the Defendants were responsible for any unconstitutional acts or omissions. In addition, Defendants ask that this Court deny Plaintiff leave of Court to file his Second Amended Complaint against Mylan, or, in the alternative, dismiss Plaintiff's Second Amended Complaint pursuant to Rule 12(b)(6).

From the Plaintiff's Complaints, the Court is able to discern the following claims: (1) Plaintiff was retaliated against when he was transferred to New Jersey for complaining about the medical treatment he was receiving at the FDC; (2) the Defendants violated Plaintiff's Eighth Amendment right against cruel and unusual punishment when he was (a) prescribed Clonidine, which caused him to develop type II diabetes and hepatitis, (b) deprived of blood pressure medication while in custody at the FDC, and (c) the Defendants and Mylan failed to warn the Plaintiff of the potential side effects of Clonidine; and (3) the Defendants and Mylan conspired to

conceal the fact that Clonidine may cause serious side effects from the Food and Drug Administration ("FDA"), the Plaintiff and the public at large. This Court will address each of Plaintiff's allegations in turn, and will consider both Plaintiff's Amended Complaint and Second Amended Complaint.[2]

I. Plaintiff's Retaliation Claim

Plaintiff alleges that Defendants retaliated against him for acting as a jailhouse lawyer and for filing grievances on December 10, 2002, by transferring him from the FDC to the Hudson County Correctional Center in New Jersey on December 13, 2002. In considering this claim, this Court adopts the findings of Judge Hochberg in Jones v. Green, No. 02-6029, slip op. (D.N.J. Apr. 22, 2004). Judge Hochberg stated in relevant part,

> The Plaintiff was transferred to the Hudson County Correctional Center, along with eight other federal prisoners, pursuant to a request from the U.S. Marshals Service. Once the U.S. Marshals Service requested that he be discharged and transferred back to the custody of the U.S. Marshals Service, Jones was discharged from the Hudson County Correctional facility. . . . An Intergovernmental Services agreement, executed in June 2002, between the United States Marshals Service, the Immigration and Naturalization Service (now known as the U.S. Citizenship and Immigration Services) and the County of Hudson, New Jersey, which is a matter of public record, requires Hudson County to provide detention space and services for 384 federal prisoners/detainees (129 in the U.S. Marshals Service Custody and 256 in INS custody) each day at the Hudson County Correctional Facility.

Id. at 7-8 (internal citations omitted).

As was the finding of Judge Hochberg, the finding of this Court is that Plaintiff has asserted nothing more than conclusory allegations and bald assertions that the Defendants had any part in his

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[2]The Plaintiff has made no allegations against Defendants Chandler and Patton establishing that either had knowledge or personal involvement with his medical treatment. Actually, Plaintiff does not mention Chandler and Patton at all in his Complaints. "A defendant in a civil rights action must have personal involvement in the alleged wrongs; liability cannot be predicated solely on the operation of *respondeat superior*." Rode v. Dellaciprete, 815 F. 2d 1195, 1207 (3d Cir. 1988). Thus, all claims against these Defendants are dismissed.

transfer to the Hudson County Correctional Facility. This Court is not required to accept such statements as true in light of the fact that Plaintiff will be unable to prove any set of facts to support his claims. See Schuylkill Energy Res., Inc. v. Pa. Power & Light Co., 113 F. 3d 405, 417 (3d Cir. 1997) (stating that when reviewing a 12(b)(6) dismissal motion, the court is not required to accept as true unsupported conclusions and unwarranted inferences). In reality, these Defendants had no authority, controlling or persuasive, to have Plaintiff transferred. The transfer decision was within the sole discretion of the U.S. Marshals Service. Further, the Bureau of Prisons has discretion to contract with county jails for holding federal prisoners. Green v. Cook, 1988 WL 48558, *6 (E.D. Pa. May 12, 1988). Therefore, Plaintiff is unable to demonstrate any causal link between his exercise of his constitutional rights and the Marshals' decision to transfer him from the FDC. Consequently, Plaintiff's retaliation claims are dismissed with prejudice.

II. Plaintiff's Eighth Amendment Claims

Plaintiff claims that the Defendants violated his Eighth Amendment right against cruel and unusual punishment when he was (1) prescribed Clonidine, which caused him to develop type II diabetes and hepatitis; (2) deprived of blood pressure medication while in custody at the FDC; and (3) when Defendants and Mylan failed to warn him of the potential side effects of Clonidine.[3] Defendants respond with the following arguments: (1) the failure to warn Plaintiff of Clonidine's alleged side effects at most amounts to negligence, and is not actionable under the Eighth

[3]Plaintiff also alleges that Defendant Freeman, as listed in his Second Amended Complaint, failed to process grievances filed by him on December 10, 2002, three days before his transfer, with deliberate indifference in violation the Eighth Amendment. As Defendant Freeman, as pled by Plaintiff, is not a medical provider, he cannot be held liable under the Eighth Amendment. Therefore, Plaintiff's Eighth Amendment claims against Defendant Freeman are dismissed.

Amendment; (2) the fact that Plaintiff may disagree with his course of treatment does not constitute an Eighth Amendment violation; and (3) Plaintiff cannot establish that the FDC doctors acted with the requisite intent to violate his Eighth Amendment rights.

In order for the Plaintiff to establish an Eighth Amendment violation, he must show that the medical provider exhibited "deliberate indifference" to a serious medical need. Estelle v. Gamble, 429 U.S. 97, 104-06 (1976). In this case, Plaintiff suffered from hypertension, or high blood pressure. It is undisputed that this qualifies as a serious medical need. "Deliberate indifference is characterized by conduct that is obdurate and wanton." Muse v. Lessiq, 1994 U.S. Dist. LEXIS 217, *5 (E.D. Pa. Jan. 13, 1994). Inadequate medical care can rise to the level of cruel and unusual punishment under the Eighth Amendment. Id. at *4. However, it is well-settled that claims of negligence or medical malpractice, without some more culpable state of mind, do not constitute "deliberate indifference," nor do these claims present a constitutional violation. Jetter v. Beard, 130 Fed. Appx. 523, 526 (3d Cir. May 5, 2005) (non-precedential); Muse, 1004 U.S. Dist. LEXIS at *4. "Only 'unnecessary and wanton infliction of pain' or 'deliberate indifference to the serious medical needs' of prisoners is sufficiently egregious to rise to the level of a constitutional violation." Jetter, 130 Fed. Appx. at 526.

In this case, the conduct alleged by the Plaintiff would have been, at most, negligence or malpractice. Plaintiff's allegations do not suffice to show reckless disregard with respect to the care that he received, nor do the allegations suggest the requisite intent to harm Plaintiff on behalf of his treating physicians. "Plaintiff must allege facts sufficient to establish that the indifference to his medical needs arose from the intentional actions of the defendant." Escalera v. Butler, 1993 U.S. Dist. LEXIS 2309, *2 (E.D. Pa. Jan. 26, 1993). In fact, the evidence presented shows that Plaintiff

received care for his medical conditions regularly, including prescriptions of Clonidine and H.C.T.Z., his blood pressure was monitored, and when he was diagnosed with diabetes, the doctors reduced his other medications. Moreover, in Plaintiff's Second Amended Complaint, he characterizes his claim as negligence. Pl.'s Second Am. Compl. ¶ 15.

Further, Plaintiff's claims that the Defendants failed to inform him of the side effects of Clonidine also amount to no more than negligence. See id. (holding that failure to inform of side effects is nothing more than negligence). In the product information for Clonidine, it lists hepatitis as a rare side effect (less that 1 out of 100) and does not list diabetes at all. Pl.'s SecondAm. Compl. Exh. D. These two side effects occur so rarely, as a matter of fact, that it does not seem unreasonable for a doctor not to mention them. Moreover, Mylan Pharmaceuticals cannot be liable to the Plaintiff under the Eighth Amendment because it is not a state actor. Simms v. GlaxoSmithKline, 2001 U.S. Dist. LEXIS 20378, *3 (E.D. Pa. Dec. 6, 2001). Thus, Plaintiff has not stated a claim that the Defendants and Mylan failed to warn him of the potential side effects of Clonidine in violation of the Eighth Amendment.

This Court can address the Plaintiff's other two Eighth Amendment claims summarily. First, Plaintiff claims that Defendants prescribed Clonidine with "deliberate indifference" to his serious medical need, and that Clonidine caused him to contract type II diabetes and hepatitis. However, accepting the Plaintiff's allegations as true, there is no set of facts that Plaintiff could present to prove this allegation. The Plaintiff began taking Clonidine prescribed by the Defendants in July 2001. Plaintiff was not diagnosed with diabetes until December 2002. The amount of time that lapsed between when he began taking Clonidine and the onset of diabetes negates the finding of a causal link. Furthermore, there are several natural, hereditary, and external causes of diabetes, and

the Plaintiff has no way of proving or excluding what may have caused him to develop diabetes. The same is true of hepatitis. Even if the Plaintiff could present evidence that he does, in fact, have hepatitis, there is no way to determine with any reasonable certainty what caused it. Also, Plaintiff has not alleged that Clonidine was ineffective or unsatisfactory in treating his hypertension. Even if Plaintiff may have preferred a different course of treatment, his preference does not establish a cause of action. Jetter, 130 Fed. Appx. at 526. Thus, Plaintiff has failed to state a claim that the Defendants' prescription of Clonidine caused him to contract diabetes and hepatitis or that Clonidine was prescribed with deliberate indifference to his serious medical need in violation of the Eighth Amendment.

Second, Plaintiff claims that the Defendants deprived him of his blood pressure medication while in custody at the FDC. Plaintiff is referring to when the Defendants discontinued his Clonidine prescription after he was diagnosed with diabetes. Plaintiff argues that the product information for Clonidine suggests that it should be discontinued gradually, over the course of two-four days rather than immediately, and the doctors discontinued his Clonidine abruptly in violation of his Eighth Amendment rights. The problem with Plaintiff's argument is that he fails to allege any injury as a result of these actions, and Plaintiff cannot prove an Eighth Amendment violation without some proof of an injury as a result of the Defendants' actions. Wilson v. Wigen, 1998 U.S. Dist. LEXIS 5792, *10 (E.D. Pa. Apr. 24, 1998). Moreover, Plaintiff has attached copies of his prescriptions from December 13, 2002, through April 21, 2003, and on each one is a prescription for Clonidine. So, it looks like at most, Plaintiff was without his Clonidine for approximately one day. Plaintiff alleges that his prescription was discontinued on December 12, 2002, but he has a prescription for Clonidine dated December 13, 2002. This falls short of an Eighth Amendment

violation. As such, Plaintiff has failed to state a claim for cruel and unusual punishment under the Eighth Amendment.

III. Plaintiff's Conspiracy Claims

Plaintiff alleges that "Defendants Martinez, Freeman, Reynolds, Shedds, Massa and Mylan Pharmaceuticals, Inc. conspired to hide and conceal the facts that Clonidine causes diabetes and hepatitis diseases from Plaintiff Jones and the general public at large." Pl.'s Second Am. Compl. at ¶ 16. Plaintiff also claims that this conspiracy attempted to conceal these "life threatening" diseases from the FDA. Id. ¶ 13.

It is clear to this Court that the above-listed allegations have no rational basis in fact. The Plaintiff, even if this Court accepts everything alleged as true, has no means of proving these claims, nor does the Plaintiff have standing to prosecute a claim on behalf of the "general public" or the FDA. Moreover, it is inconceivable that Mylan Pharmaceuticals, Inc. and the FDC would conspire to "hide information" regarding Plaintiff's high blood pressure medication. As stated *supra*, this Court is not required to accept such statements as true in light of the fact that Plaintiff will be unable to prove any set of facts to support his claims. Schuylkill Energy, 113 F. 3d at 417. Plaintiff's claim is wholly frivolous and is dismissed with prejudice.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is granted, and both Plaintiff's Amended Complaint and Second Amended Complaint are dismissed pursuant to Rule 12(b)(6). An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT FOR

THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM SEYMOUR JONES,		
Plaintiff,		
		CIVIL ACTION NO. 04-CV-1877
v.		
CLIFFORD A. CHANDLER,		
Warden of F.D.C. Philadelphia,		
ET AL.		
Defendants.		

ORDER

AND NOW, this 9th day of August, 2005, upon consideration of Defendants Clifford Chandler, Brian Patton, Aramis Martinez, Gary Reynolds, and David Massa's Motion to Dismiss Plaintiff's Amended Complaint (Doc. 12) and Plaintiff's Responses (Docs. 14-17), **IT IS HEREBY ORDERED and DECREED** that the Defendants' Motion is **GRANTED**. The Plaintiff's Amended Complaint and Second Amended Complaint are **DISMISSED WITH PREJUDICE** in accordance with this Court's Memorandum Opinion.

IT IS FURTHER ORDERED that the Clerk of the Court shall mark the above-captioned case as **CLOSED**.

BY THE COURT:

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Hon. Petrese B. Tucker, U.S.D.J.