

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MICHAEL ALLEN HARRIS, SR.,)
)
 Plaintiff,)
)
 v.) Civil Action No. 98-332-SLR
)
JEAN M. SNYDER, Regional Vice)
President; DR. GORDON OSTRUM;)
MARYANN TAYLOR, RN; and CONNIE)
JOHNSON, HSA,)
)
 Defendants.)

MEMORANDUM ORDER

I. INTRODUCTION

On June 15, 1998, plaintiff Michael Allen Harris, Sr. filed a civil rights action pursuant to 42 U.S.C. § 1983, asserting that defendants Dr. Gordon Ostrum, Jean M. Snyder, Maryann Taylor, RN, and Connie Johnson, HSA, violated his Eighth Amendment right to be free from cruel and unusual punishment by (1) deliberately neglecting to give him sufficient medical treatment, and (2) deliberately charging poor minority inmates for insufficient medical treatment. (D.I. 2) In an order dated May 30, 2000, the court dismissed defendants Snyder, Taylor, and Johnson from the action, and denied plaintiff's motion for a default judgment against Dr. Ostrum.¹ (D.I. 45)

¹Plaintiff appealed the court's order, and the Third Circuit dismissed the appeal for lack of appellate jurisdiction on February 12, 2001. (D.I. 56)

On June 30, 2000, Dr. Ostrum filed a motion to dismiss plaintiff's complaint, arguing: (1) that the complaint violates Fed. R. Civ. P. 12(b)(6) for failing to state a claim upon which relief can be granted, and (2) that the complaint must be dismissed pursuant to Fed. R. Civ. P. 4 for improper service of process.² Currently before the court is Dr. Ostrum's motion to dismiss plaintiff's complaint. (D.I. 48) For the reasons discussed below, Dr. Ostrum's motion to dismiss is granted.

II. BACKGROUND

The following recitation of events is based upon the allegations set forth in plaintiff's complaint and the medical records submitted by defendants Snyder, Taylor, and Johnson. Plaintiff is an inmate at the MultiPurpose Criminal Justice Facility ("M.P.C.J.F."). On December 29, 1997, plaintiff's cellmate stabbed him in the head with a pen. (D.I. 2 at 3, D.I. 37 at 0038) Plaintiff was taken to the infirmary where his wound was cleaned and potential foreign material was noted in his scalp. (D.I. 37 at 0038) Following his return to his cell, plaintiff became aware that the pen tip was missing after the stabbing, causing him to worry that it was still in his scalp. (D.I. 2 at 3A) On December 31, 1997, plaintiff returned to the infirmary complaining of, inter alia, headaches and dizziness. (D.I. 37 at 0038) Dr. Ostrum examined plaintiff "with his hands"

²Dr. Ostrum filed an addendum to his motion to dismiss on July 24, 2000. (D.I. 51)

and told plaintiff that "[he] needed no further treatment."

(D.I. 2 at 3A) Plaintiff asked for an x-ray, but Dr. Ostrum refused to order one. (Id.)

Plaintiff alleges that although he submitted over twenty sick calls, requesting treatment for his injury, he was taken to the infirmary on only two occasions.³ According to plaintiff, during his first visit, Taylor examined his head and "felt the pen tip sticking out of [his] scalp." Plaintiff contends that his second visit to the infirmary was cancelled and never rescheduled. Plaintiff asserts that he continued to seek medical attention for his injury but was denied further treatment. On the back of two of the medical grievances plaintiff completed, Dr. Ostrum noted that plaintiff "needed no further medical assistance." Plaintiff also avers that Taylor told him "to stop bothering her and that [he] was alright."

According to his medical records, plaintiff completed a sick call slip on January 18, 1998, wherein he complained that he had not received an x-ray that was ordered to determine if there was in fact a pen tip in his head. (D.I. 37 at 0038) The medical records reflect that no x-ray was ever ordered. (Id.) On March 1, 1998, plaintiff submitted another sick call slip, wherein he stated that, "I now have a pen tip in my scalp . . . which M.P.C.J.F. Medical has been ignoring me. I would like an [x]-

³Plaintiff alleges that Taylor charged him \$4.00 for each sick call slip he submitted.

ray." (D.I. 37 at 0005) In a sick call slip dated March 8, 1998, plaintiff complained that the pen tip "is moving to my forehead and it hurts and [is] uncomfortable." (D.I. 37 at 0019)

On March 12, 1998, plaintiff was seen in the infirmary where he complained that there was a "pen tip lodged in his scalp," and that there was "movement of the pen tip towards [his] forehead." (D.I. 37 at 0019; D.I. 42, Exh. B) Medical records note that there was no swelling or redness in the area of the wound, but that plaintiff would be referred to a doctor. (Id.)

On April 10, 1998, plaintiff was examined by a nurse. (D.I. 37 at 0015) The nurse noted that she felt something under plaintiff's scalp, although no entrance scar could be seen. (Id.) Plaintiff was given Motrin™ for his headache and the inflammation. (Id.) The nurse indicated that she would refer plaintiff to the doctor's list. According to plaintiff's medical records, Dr. Ostrum was called and made aware of plaintiff's situation. (Id.)

On May 5, 1998, plaintiff was seen by a doctor regarding the possible pen tip left in his head and his request for an x-ray. (D.I. 37 at 0005) Upon examination, the doctor noted that there was a palpable nodule on plaintiff's head, but the puncture site was not apparent. (Id.) The doctor also noted that the wound had healed without scarring. (Id.) The doctor found no signs of infection or tenderness. (Id.) An x-ray was ordered. (Id.) According to the progress notes, the doctor had a long discussion

with plaintiff regarding possible removal of the pen tip, but recommended that nothing further be done given that there were "no signs of infection, [plaintiff's] tendency to keloid (tissue scarring that is caused by trauma or surgical incision), and the location is not life threatening at this time." (Id.)

On May 7, 1998, an x-ray was performed on plaintiff's head. (D.I. 42, Exh. B) Plaintiff contends that he obtained the x-ray only after "continuously complain[ing]" to Johnson, who told him she "would take care of it." (D.I. 22 at 2) The x-ray revealed no evidence of an acute fracture or osseous deformity. (D.I. 42, Exh. B) It did reveal, however, a "questionable foreign body" in the soft tissues of the superior skull. (Id.) Additional views were recommended for further evaluation. (Id.)

The record shows that the next time plaintiff was seen regarding this wound was on July 17, 1998, when it was noted that plaintiff had been stabbed in the head with a pen "and had something left (by x-ray) in the soft tissue; headaches." (D.I. 37 at 0010) The medical records further reveal that plaintiff did not complain of a headache again until April 25, 1999. At this time, plaintiff did not assert that his headaches were caused by the pen tip in his head. (D.I. 42, Exh. B)

III. STANDARD OF REVIEW

Since the parties have referred to matters outside the pleadings, Dr. Ostrum's motion shall be treated as one for

summary judgment. See Fed. R. Civ. P. 12(b)(6). A party is entitled to summary judgment only when the court concludes "that there is no genuine issue of material fact and that the party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no material issue of fact is in dispute. See Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). Once the moving party has carried its initial burden, the nonmoving party "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Id. at 587 (quoting Fed. R. Civ. P. 56(e)). "Facts that could alter the outcome are 'material', and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995). If the nonmoving party fails to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The mere existence of some evidence in support of the nonmoving party will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that factual issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). This court, however, must "view all the underlying facts and all

reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995).

IV. DISCUSSION

In support of his § 1983 claim, plaintiff alleges that Dr. Ostrum did not provide him with sufficient medical treatment. Under the Eighth Amendment, the States have a duty to provide "adequate medical care to those it is punishing by incarceration." West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978). To hold a prison official liable for violating a prisoner-plaintiff's Eighth Amendment rights, the plaintiff "must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976); accord White v. Napoleon, 897 F.2d 103, 109 (3d Cir. 1990). Plaintiff must demonstrate: (1) that he had a serious medical need, and (2) that the defendant was aware of this need and was deliberately indifferent to it. See West, 571 F.2d at 161; see also Boring v. Kozakiewicz, 833 F.2d 468, 473 (3d Cir. 1987).

The seriousness of a medical need may be demonstrated by showing that the 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) (quoting Pace v. Fauver, 479 F. Supp. 456, 458 (D.N.J. 1979)). Moreover, "where denial or delay causes an inmate to suffer a life-long handicap or permanent loss, the medical need is considered serious." Id.

As to the second requirement, a prison official's denial of an inmate's reasonable requests for medical treatment constitutes deliberate indifference if such denial subjects the inmate to undue suffering or a threat of tangible residual injury. See id. at 346. Deliberate indifference may also be present if necessary medical treatment is delayed for non-medical reasons, or if a prison official bars access to a physician capable of evaluating a prisoner's need for medical treatment. See id. at 347. However, a prison official's conduct does not constitute deliberate indifference unless it is accompanied by the requisite mental state. Specifically, "the official [must] know . . . of and disregard . . . an excessive risk to inmate health and safety; the official must be both aware of facts from which the inference can be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994). While a plaintiff must allege that the official was subjectively aware of the requisite risk, he may demonstrate that the prison official had knowledge of the risk through circumstantial evidence and "a fact finder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." Id. at 842.

Plaintiff's allegations do not constitute an Eighth Amendment violation because plaintiff has failed to establish that he had a serious medical condition. While there is little doubt that a stab wound to the head by a pen could possibly pose a serious medical condition, plaintiff's medical records reveal that his wound was not serious. (D.I. 42, Exh. B) Although plaintiff's x-ray revealed that he had a "questionable foreign body in the soft tissues of the superior skull," there was "no evidence of an acute fracture or osseous deformity." (Id.)

Plaintiff's initial visit to the infirmary on December 29, 1997 revealed that a physician examined plaintiff, cleaned his wound, and sent plaintiff back to his cell. (D.I. 37 at 0038) At that time, the doctor did not find plaintiff's injury to be serious. After returning to the infirmary on December 31, 1997, plaintiff was again told by Dr. Ostrum that "[he] needed no further treatment." (D.I. 2 at 3A) Months later, a different doctor spoke with plaintiff, recommending that nothing further be done given the lack of infection, plaintiff's tendency to keloid, and the location of the pen tip, which was "not life threatening." (D.I. 37 at 0005) Furthermore, plaintiff does not allege that he has suffered a "life-long handicap or permanent loss" caused by Dr. Ostrum's denial of medical care. Therefore, because the facts asserted by plaintiff do not demonstrate that plaintiff had a serious medical need, plaintiff's claim does not rise to a constitutional violation.

Since plaintiff has failed to allege a serious injury, the court need not address whether defendant's conduct implicates deliberate indifference. However, the court notes that even if plaintiff had demonstrated a serious medical injury, he has failed to establish deliberate indifference by Dr. Ostrum. Plaintiff does not allege that Dr. Ostrum "knew . . . of and disregard[ed] . . . an excessive risk to [plaintiff's] health and safety." Farmer v. Brennan, 511 U.S. 825, 837 (1994). As stated above, the medical records reveal that Dr. Ostrum, and months later a second doctor, examined plaintiff and both concluded that plaintiff's wound was not serious.⁵ (D.I. 2)

V. CONCLUSION

Therefore, at Wilmington this 30th day of March, 2001;

IT IS ORDERED that defendant Dr. Ostrum's motion to dismiss (D.I. 48) is granted. The Clerk of Court is directed to enter judgment in favor of defendant and against plaintiff.

United States District Judge

⁵Although plaintiff alleges in his complaint that defendants were "charging poor minorit[y] inmates money for no or insufficient medical treatment in a state owned facility," he has failed to further develop this claim. (D.I. 2) Plaintiff has not demonstrated Dr. Ostrum's involvement in establishing this policy, or his ability to stop or change this policy.