IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STEPHEN W. KRAFCHICK, Plaintiff, v. RAPHAEL WILLIAMS, MARY MOODY, JEANNIE LONG, DR. JAFRI, and DR. IVENS, Defendants.	)	Civil Action No. 02-003-GMS

MEMORANDUM AND ORDER

I. INTRODUCTION

On December 11, 2001, Stephen Krafchick, a *pro se* prisoner, filed a complaint against correctional officers and officials at Gander Hill prison in Wilmington, Delaware pursuant to 42 U.S.C. §1983. Prior to his incarceration, Krafchick suffered an injury to his hand. To regain full use of his hand, Krafchick was instructed to undergo a course of physical therapy. Although he participated in a course of physical therapy at the prison, Krafchick asserts that the defendants terminated this therapy prematurely and against the advice of his physician. Krafchick claims that by denying him further visits to the physical therapist, the defendants showed deliberate indifference to his serious medical needs, thereby violating his Eighth Amendment right to be free from cruel and unusual punishment.

Presently before the court is the defendants' motion to dismiss. The defendants maintain that Krafchick has not demonstrated that any of them were deliberately indifferent to his serious medical needs. The defendants contend that this case is one of a difference of opinion between medical providers as to the proper course of treatment. The defendants also assert that Krafchick's claims

are barred by the doctrine of qualified immunity. Krafchick contends that there are sufficient facts to support a finding of deliberate indifference to a serious medical need, and that the defendants are not protected by qualified immunity.

After reviewing the applicable law and the submissions of the parties, the court has determined that the facts do not support a finding of deliberate indifference on the part of the prison medical staff. Moreover, the court can not conclude that Krafchick's medical need was serious. Therefore, the court will grant the defendants' motion to dismiss. The court will now explain the reasons for its ruling.

II. FACTS

The plaintiff injured his hand on January 15, 2001. The injury was treated at Christiana Hospital that same day by Dr. J. Joseph Danyo. As a result of the injury, the plaintiff lost some function in his hand.

Stephen Krafchick was incarcerated at Gander Hill on January 16, 2001, the day after he injured his hand. Following his incarceration, Krafchick was examined by Dr. Jafri, one of the physicians at Gander Hill, in February 2001. He was also seen that month by Jeannie Long, the medical administrator. There is no evidence before the court to indicate what determinations or decisions were made as a result of these examinations.

Krafchick also saw Dr. Danyo in February 2001. Dr. Danyo recommended a course of physical therapy to "recover loss of function in the effected area." (D.I. 2(2) at 3.)[1] Krafchick then commenced a course of treatment with Sandra Cooper, an occupational therapist from St. Francis

[1]D.I. 2 consists of a standard complaint form filled out by Krafchick, marked as "Form 1 of 5" by Krafchick, and Krafchick's handwritten complaint, marked as "Form 2 of 5." For purposes of clarity, the court will refer to these as D.I. 2(1) and D.I. 2(2) respectively.

Hospital. Krafchick saw Ms. Cooper from March 16, 2001 to April 18, 2001. He had approximately six therapy sessions with her during that period. Although there is no indication of the course of therapy provided during those sessions, a set of instructions from Ms. Cooper to Krafchick dated 3/23/01 states, "Do home program as before; Be in splint only for sleep or protection; Alternate bending/straightening of wrist & hand more frequently; Push to tolerance passive range of motion for bending/straightening using R [right] hand to help; Work for straightening with ace bandage." (D.I. 16 at Exh. D.) These instructions also recommend vitamins to assist in nerve repair and scarring. Finally, the instructions include a note to "ask Dr. Danyo," which appears directly underneath two question marks that have been written next to the order stating, "Work for straightening with ace bandages." (*Id.*)

Krafchick saw Dr. Danyo again in mid-May 2001. At that time, Dr. Danyo recommended continued physical therapy. Krafchick was then seen twice by a second, unnamed physical therapist at the end of May or the beginning of June 2001. However, there is no indication in the record that any actual therapy was provided at these sessions. Instead, Krafchick indicates that the second physical therapist told him that a signed medical release form was required before therapy could be started, and that Ms. Cooper should have him sign such a form. Following these sessions, Krafchick met with Dr. Danyo for a follow-up visit on July 19, 2001. According to Krafchick, Dr. Danyo told him that no release form was required, that he should continue his course of therapy, and that therapy "should've never been stopped." (D.I. 2(1) at 3.)

In the following months, Krafchick made multiple sick call requests in order to see "the

doctor in the institution." (D.I. 2(2) at 5(1)).[2] However, the defendants denied Krafchick's requests. To date, the defendants have not allowed Krafchick to visit a physical therapist. On September 13, 2001, Krafchick was informed by Warden Williams that Jeannie Long had told his office that, "'[Krafchick] [had] met the goals of therapy and [had been][sic] discharged by the therapist.'" (D.I. 2(2) at 4(2).) The plaintiff reports that, currently, his hand causes him pain. He also asserts that his fingers are "stiff" and do not "work properly." (D.I. 2(2) at 5(2)).

III. STANDARD OF REVIEW

In ruling on a motion to dismiss, the factual allegations of the complaint must be accepted as true. *See Graves v. Lowery*, 117 F.3d 723, 726 (3d Cir. 1997); *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996). Moreover, a court must view all reasonable inferences that may be drawn from the complaint in the light most favorable to the non-moving party. *See Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969); *Schrob v. Catterson*, 948 F.2d 1402, 1405 (3d Cir. 1991). A court should dismiss a complaint "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *See Graves*, 117 F.3d at 726; *Nami*, 82 F.3d at 65 (both citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

IV. DISCUSSION

In order to state a claim under the Eighth Amendment for cruel and unusual punishment

[2]This is actually the first of two page 5's in Krafchick's handwritten complaint. For purposes of clarity, when Krafchick has included identically numbered pages, the court will include a parenthetical number to indicate which of the identically numbered pages is being cited.

stemming from the alleged failure to provide medical treatment, a plaintiff must demonstrate that the defendant was deliberately indifferent to his serious medical needs. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Krafchick has failed to meet this burden. The court will first address the issue of deliberate indifference and then turn to the issue of serious medical need.

A. Deliberate Indifference

"[D]eliberate indifference l[ies] somewhere between the poles of negligence at the one end and purpose or knowledge at the other . . ." *Farmer v. Brennan*, 511 U.S. 825, 836 (1994). Thus, the deliberate indifference standard may be satisfied by a number of factual scenarios. Deliberate indifference may exist:

> (1) where "'knowledge of the need for medical care [is accompanied by the] ... intentional refusal to provide that care;' " (2) where "[s]hort of absolute denial ... 'necessary medical treatment [i]s ... delayed for non-medical reasons;'" (3) where " 'prison authorities prevent an inmate from receiving recommended treatment;'" (4) "[w]here prison authorities deny reasonable requests for medical treatment ... and such denial exposes the inmate 'to undue suffering or the threat of tangible residual injury;'" and (5) "where prison officials erect arbitrary and burdensome procedures that 'result[ ] in interminable delays and outright denials of medical care to suffering inmates.'"

Douglas v. Hill, 1996 WL 716278, No. 95-6497, at * 7 (E.D. Pa. Dec. 6, 1996) (quoting *Monmouth County Correctional Institutional Inmates v. Lanzaro*, 834 F.2d 326, 346 (3d Cir. 1987)). The court will address each of the five *Lanzaro* factors.

Three of the *Lanzaro* factors are not implicated in this litigation. Krafchick cannot demonstrate deliberate indifference under the first *Lanzaro* factor because his need for medical care was not accompanied by an intentional refusal to provide that care. Although the defendants have not acquiesced in Krafchick's more recent requests for physical therapy, they have permitted him to visit two different physical therapists, as well as Dr. Danyo. Thus, Krafchick cannot demonstrate

an outright refusal of medical care. Krafchick also fails to demonstrate deliberate indifference under the second *Lanzaro* factor because he has presented no evidence tending to demonstrate that his requested treatment has been delayed for non-medical reasons. The treatment has apparently been refused due to a medical disagreement. Similarly, Krafchick cannot demonstrate deliberate indifference under the fifth *Lanzaro* factor because he has adduced no facts demonstrating that the prison "sick call" procedures are excessively arbitrary and burdensome.

The third and fourth *Lanzaro* factors require more attention. The fourth *Lanzaro* factor requires a showing that prison authorities denied treatment and that this denial exposed the plaintiff to undue suffering or a threat of tangible residual injury. Although the defendants have not permitted Krafchick to attend further physical therapy sessions, Ms. Cooper did recommend a "home program" of self-administered physical therapy. It appears that if Krafchick continues the course of self-administered therapy recommended by Ms. Cooper, he may regain full use of his hand, thus avoiding any tangible residual injury.

Under the third *Lanzaro* factor, the plaintiff must show that prison authorities prevented him from receiving recommended treatment. Krafchick argues that he has been prevented from receiving continued physical therapy as recommended by Dr. Danyo. However, the defendants' denial of further visits to a physical therapist is based on apparently conflicting recommendations by the prison medical staff, in particular Medical Administrator Long and Ms. Cooper. Ms. Long determined that the goals of physical therapy had been met. This conclusion was reasonable in light of the recommendations of Ms. Cooper, who prescribed continued home therapy but did not prescribe or request further visits. Thus, the court is faced with a difference of opinion between Dr. Danyo and the prison medical staff. However, "mere disagreement as to the proper medical

treatment [does not] support a claim of an eighth amendment violation." *Lanzaro*, 834 F.2d at 346. Moreover, "If a plaintiff's disagreement with a doctor's professional judgment does not state a violation of the Eighth Amendment, then certainly no claim is stated when a *doctor* disagrees with the professional judgment of another doctor. There may, for example, be several acceptable ways to treat an illness." *White v. Napoleon*, 897 F.2d 103, 110 (3d Cir. 1990). Although the plaintiff, and even Dr. Danyo, may believe that the experience of visiting a therapist would be reasonable, it is also reasonable to have the plaintiff continue the self-administered regimen prescribed by Ms. Cooper and approved by the prison medical staff.[3] The court concludes that the defendants' decision to refuse further physical therapy visits is therefore reasonable and not deliberately indifferent to the plaintiff's medical needs.

B. Serious Medical Need

In the Third Circuit, a plaintiff must meet a two-pronged test to prove that he had a serious medical need. First, he or she must demonstrate that "the failure to treat [the condition] can be expected to lead to substantial and unnecessary suffering, injury, or death." *Colburn v. Upper Darby Township*, 946 F.2d 1017, 1023 (3d Cir. 1991). After making this showing, the plaintiff must demonstrate that the condition "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." *Id.* Krafchick has failed to satisfy this test.

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[3] The court recognizes that Ms. Cooper is not a doctor. However, Ms. Cooper is a trained provider of medical services who provided physical therapy to Krafchick in six separate visits over a period of approximately two months. Given her familiarity with Krafchick and his medical situation, the court finds that her opinion is sufficiently reliable to give it credence and view it as a differing medical opinion.

The plaintiff has satisfied the second prong of the *Colburn* test because he was diagnosed by a physician as requiring treatment. Nevertheless, Krafchick has not demonstrated that the failure to treat his wrist will lead to substantial and unnecessary suffering, injury, or death. While a wrist or hand injury such as the one suffered by Krafchick might be serious under other circumstances, *see Watson v. Caton*, 984 F.2d 537 (1st Cir. 1993) (wrist injury serious enough to require surgery constituted a serious medical need); *Bonilla v. Geraci*, Civ. A. No. 90-4336, 1991 WL 155369 (E.D. Pa. Jul. 30,1991) (broken arm constituted a serious medical need), Krafchick has not proven that his case rises to this level. For instance, if the prison had denied all medical treatment and Krafchick were still unable to move his hand, the court might find the refusal placed him at risk for substantial and permanent injury. However, Krafchick's complaint indicates that even after the limited course of therapy, although his fingers are stiff, he has regained some function. The fact that the plaintiff has regained some mobility in his hand militates against a finding that his injury is serious within the meaning of *Colburn*.

Moreover, if the plaintiff cannot show that the course of therapy he requests would improve his condition, his injury may not be serious. *See Warren v. State of Missouri,* 995 F.2d 130 (8th Cir. 1993) (plaintiff's wrist injury found not to be serious because physical therapy would not have improved his condition). Krafchick has not shown that the course of therapy he seeks (visits with a physical therapist) would improve his condition any more than the course of therapy recommended by Ms. Cooper. Although the record does not indicate whether Krafchick has continued with the program of self-administered therapy assigned to him by Ms. Cooper, it is reasonable to assume that if he continues with this program he will continue to gain function.

Krafchick has presented the court with no evidence to support a finding that the denial of

future visits to a physical therapist will result in substantial and unnecessary suffering. Therefore, since Krafchick has not met the first prong of the *Colburn* test, the court finds that his medical needs are not serious.[4]

V. CONCLUSION

The plaintiff has failed to prove that he has a serious medical need and that, if he had such a need, the defendants were deliberately indifferent to it. For all of the foregoing reasons, the court will grant the defendants' motion to dismiss.[5]

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Defendants' Motion for Dismissal (D.I. 12) is GRANTED.

2. The plaintiff's Motions for Appointment of Counsel (D.I. 17) (D.I. 21) are DISMISSED as MOOT.

Dated: July 9, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE

[4] The court further notes that even when patients visit physical therapists on a regular basis, there is no guarantee they will regain complete functionality in the affected area. Therefore, it is possible that Krafchick's injury has reached its healing potential and will not improve, with or without therapy.

[5] Because Krafchick has not proven that the defendants were deliberately indifferent to his serious medical needs, his §1983 claim must fail. Therefore, the court will not address the defendants' qualified immunity defense.