

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FRANK WHALEN, JR., :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 02-246 JJF
 :
 CORRECTIONAL MEDICAL SERVICES, :
 DR. KEITH IVENS AND MELODY A. :
 THORPE, :
 :
 Defendants. :

Frank Whalen, Jr., Pro se Plaintiff.

Kevin J. Conners, Esquire of MARSHALL, DENNEHEY, WARNER, COLEMAN
AND GOGGIN, Wilmington, Delaware.
Attorney for Defendant, Melody A. Thorpe.

MEMORANDUM OPINION

November 20, 2003

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is the Motion Of Defendant, Melody A. Thorpe, To Dismiss Plaintiff's Complaint. (D.I. 35.) For the following reasons, the Court will grant Defendant's Motion.

BACKGROUND

Plaintiff is an inmate alleging that various acts by Correctional Medical Services and its employees amounted to a deliberate indifference to his medical needs, and therefore, violated his Eighth Amendment rights. Plaintiff alleges that during his incarceration Defendant administered to him an excessive amount of the drug Nubain, leading to his "near death and paralysis." (D.I. 2.) Defendant is a nurse practitioner who was employed by Correctional Medical Services at the time Plaintiff was treated. By her Motion (D.I. 35), Defendant moves to dismiss Plaintiff's Complaint.

STANDARD OF REVIEW

When reviewing a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a court must "accept as true the factual allegations in the Complaint and all reasonable inferences that can be drawn therefrom." Langford v. City of Atlantic City, 235 F.3d 845, 847 (3d Cir. 2000). A court will grant a defendant's motion to dismiss only if it appears that the plaintiff could prove no set of facts that would entitle him or

her to relief. A court is to construe a handwritten pro se complaint liberally, holding it to a less stringent standard than pleadings drafted by attorneys. Estelle v. Gamble, 429 U.S. 97, 106 (1976).

DISCUSSION

Defendant contends that Plaintiff has not satisfied the notice pleading required of Federal Rule of Civil Procedure 8(a). Specifically, Defendant contends that Plaintiff's Complaint does not state a claim of deliberate indifference amounting to an Eighth Amendment violation. Further, Defendant contends that Plaintiff's Complaint does not allege that she personally committed any acts amounting to a deliberate indifference to Plaintiff's medical needs. In response, Plaintiff contends that his Complaint sufficiently alleged acts demonstrating Defendant's deliberate indifference in administering excessive doses of Nubain thereby leading to his alleged injury.

In order to successfully allege a Section 1983 action for failure to provide medical care under the Eighth Amendment, an inmate plaintiff must allege practices that violate "evolving standards of decency." Estelle, 429 U.S. at 102. Medical malpractice does not become an Eighth Amendment violation merely because the plaintiff is a prisoner. Id. at 105. Instead, the defendant's action must be said to constitute "'an unnecessary and wanton infliction of pain' or to be 'repugnant to the

conscience of mankind.'" Id. at 106. To meet this standard of deliberate indifference, the defendant must know of the inmate's condition and disregard an excessive risk of the inmate's health or safety. Farmer v. Brennan, 511 U.S. 825, 837 (1994).

Applying these standards, the Court will grant Defendant's motion to dismiss.

In his Complaint, Plaintiff alleges that "he was given an overdose of the Narcotic [sic] Nubain by defendants on 12-18-2000 at 2:30 P.M.; which led to plaintiff coming near death and paralysis." (D.I. 2.) Although this allegation sufficiently pleads an action for medical malpractice, an incident of medical malpractice does not amount to an Eighth Amendment violation simply because Plaintiff is an inmate. See Estelle, 429 U.S. at 102. Accordingly, even when viewing Plaintiff's Complaint under the liberal standards provided by Rule 8(a) and Estelle, the Court concludes that Plaintiff has failed to state a claim upon which relief can be granted.

An appropriate order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FRANK WHALEN, JR.,
Plaintiff,
v.
CORRECTIONAL MEDICAL SERVICES,
DR. KEITH IVENS AND MELODY A.
THORPE,
Defendants.

:
:
:
:
: Civil Action No. 02-246 JJF
:
:
:
:
:
:

ORDER

WHEREAS the Defendant Melody A. Thorpe filed a Motion To Dismiss Plaintiff's Complaint (D.I. 35);

IT IS HEREBY ORDERED this 20 day of November, 2003, that Defendant Melody A. Thorpe's Motion To Dismiss Plaintiff's Complaint (D.I. 35) is GRANTED.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE