

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GABRIEL B. NOCK :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 03-865 JJF
 :
 CORRECTIONAL MEDICAL SERVICES/ :
 SPECTRUM BEHAVIORAL SERVICES, :
 LINDA NICHOLS, AND RICK :
 KERNEY, :
 :
 Defendants. :


Gabriel B. Nock, Dover, Delaware.
Pro se Plaintiff.

Kevin J. Connors, Esquire, MARSHALL, DENNEHEY, WARNER, COLEMAN
AND GOGGIN, Wilmington, Delaware.
Attorney for Defendants Correctional Medical Services/ Spectrum
Behavioral Service.

Eileen Kelly, Esquire, DEPARTMENT OF JUSTICE, STATE OF DELAWARE,
Wilmington, Delaware.
Attorney for Defendants Linda Nichols and Rick Kerney.

MEMORANDUM OPINION

March 8, 2005
Wilmington, Delaware


Farnan, District Judge.

Pending before the Court is the Motion To Dismiss Plaintiff's Complaint filed by Correctional Medical Services ("Correctional Medical") and Spectrum Behavior Services ("Spectrum") (D.I. 14). For the reasons discussed, motion will be granted in part and denied in part.

I. Background

Plaintiff Gabriel B. Nock is a pro se litigant incarcerated at the Morris Community Correctional Center in Dover, Delaware. Plaintiff filed this action pursuant to 42 U.S.C. § 1983 and is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915. By his complaint, Plaintiff alleges that Defendants subjected him to mental and physical abuse.

Defendant Correctional Medical was the medical services provider in Delaware's prisons from July 1, 2000, through June 30, 2002. (D.I. 14 ¶ 4.) Defendant Spectrum was a corporation which provided the inmates with counseling services until June 30, 2003. (D.I. 14 ¶ 5.)

II. Parties' Contentions

By their motion, Defendants Correctional Medical and Spectrum contend that dismissal is proper because (1) the alleged misconduct occurred after their contracts had expired, (2) Plaintiff fails to allege that Defendants were personally involved in the alleged wrongs, as required by Section 1983, and (3) Plaintiff failed to exhaust his administrative remedies. On

July 14, 2004, the Court ordered Plaintiff to file an answering brief within twenty days. (D.I. 15.) Plaintiff has not responded and, therefore, in accord with its July 14, 2004, Order (Id.), the Court will render its decision on the papers submitted.

III. Discussion

A motion to dismiss tests the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-56 (1957). In reviewing a motion to dismiss pursuant to Rule 12(b)(6), courts "must accept as true the factual allegations in the [c]omplaint and all reasonable inferences that can be drawn therefrom." Langford v. Atlantic City, 235 F.3d 845, 847 (3d Cir. 2000). A court will grant a motion to dismiss only when it appears that a plaintiff could prove no set of facts that would entitle him or her to relief. Id.

The Court will grant Correctional Medical's motion to dismiss. The Court finds that Plaintiff's Complaint alleges only one civil rights violation that could have occurred prior to Correctional Medical's departure on June 30, 2002. Plaintiff alleges that some time before April 22, 2003, he was "humiliated by having a 'Listen-up' (which is when an inmate calls the [a]ttention of the entire program to stop, look and listen) called on me while I was in the shower naked ..." (D.I. 2 at 3). Because this alleged conduct is unrelated to medical treatment,

the Court concludes that Plaintiff has failed to state a claim against Correctional Medical upon which relief can be granted.

The Court will deny Spectrum's motion. The Court concludes that Plaintiff's Complaint alleges that he was injured prior to Spectrum's termination on June 30, 2003. In addition to the aforementioned "listen-up," Plaintiff contends that, immediately after re-entering the "Key Program" on April 22, 2003, he was forced to "sit[] on steel stools for extended periods of time." (D.I. 2 at 4.)

Further, the Court concludes that Plaintiff's Complaint alleges that he was harmed by the counseling services provided under the "Key Program." On the facts asserted by Plaintiff, the Court may reasonably infer that Spectrum and its counseling policies were the driving force behind the alleged misconduct or that Spectrum knew of Plaintiff's allegations and remained deliberately indifferent.

Finally, regarding the exhaustion of administrative remedies, the Court finds that, because Plaintiff avers that he "[f]iled a grievance," (D.I. 2 at 2) the Court concludes, at this juncture, that Plaintiff did exhaust his administrative remedies. For these reasons, the Court will grant in part and deny in part Defendants' motion.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GABRIEL B. NOCK

Plaintiff,

v.

CORRECTIONAL MEDICAL SERVICES/
SPECTRUM BEHAVIORAL SERVICES,
LINDA NICHOLS, AND RICK
KERNEY,

Defendants.

:
:
:
:
:
:
:
:
:
:
:
:
:

Criminal Action No. 03-865 JJF


ORDER

At Wilmington, this 8 day of March 2005, for the reasons
set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED THAT Defendants' Motion To Dismiss
Plaintiff's Complaint (D.I. 14) will be GRANTED in part and
DENIED in part:

- 1) Correctional Medical's Motion To Dismiss will be GRANTED;
- 2) Spectrum's Motion To Dismiss will be DENIED.

March 8, 2005
DATE


UNITED STATES DISTRICT JUDGE