

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

BERNARD JACKSON	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	
	:	
BADDICK, D.O., et al	:	NO. 02-CV-6779

MEMORANDUM & ORDER

Surrick, J.

July __, 2004

Presently before the Court are the Motion of Defendants Donald Vaughn, Julie Knauer, and Thomas James to Dismiss the Amended Complaint, (Doc. No. 35), and the Motion of Peter Baddick, D.O., Dennis Moyer, M.D., Emerl Beken, M.D.,¹ Ralph W. Smith, M.D. and Joseph Korszniak, P.A. to Dismiss the Complaint of Bernard Jackson, (Doc. No. 39).² For the following reasons, both Motions will be granted.

I. FACTS

Plaintiff's claims arise out of the medical treatment he received as a result of a series of injuries he suffered while incarcerated at the State Correctional Institution at Graterford,

¹ Despite the spelling in the Motion's caption, this Defendant's first name is "Emre."

² In deciding the present Motions to Dismiss we will also consider Plaintiff's formal grievances, which are attached to Defendants Vaughn, Knauer, and James's Motion. While courts are normally restricted to the face of the pleadings when deciding a motion to dismiss, exceptions are permitted when the documents' authenticity is undisputed and the Plaintiff refers to the documents on the face of his complaint. Dixon v. Phila. Housing Auth., 43 F.Supp. 2d 543, 544 (E.D. Pa. 1999) (granting an exception to the general rule because "[o]therwise, a plaintiff with a legally deficient claim could survive a motion to dismiss simply by failing to attach a dispositive document on which it relied") (citing Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993)). In the instant case, Plaintiff incorporates several quotations from his formal grievances and the Defendants' responses thereto into the body of the Complaint. In addition, Plaintiff has not challenged the authenticity of the documents. Accordingly, those documents will become part of the record.

Pennsylvania (“Graterford”). In the four-count Complaint, Plaintiff alleges that Defendants, various medical personnel and administrators at Graterford,³ violated his rights under the Eighth and Fourteenth Amendments to the United States Constitution by providing inadequate medical care, and failing to adopt and/or enforce policies that ensure that Graterford residents will receive

³ Plaintiff’s Amended Complaint names the following individuals as Defendants:

2. Peter Baddick, D.O., is an individual, formerly employed at Graterford as the Medical Director.
3. Dennis Moyer, M.D., is an individual, formerly employed as a physician at Graterford.
4. Emre Beken, M.D., is an individual, formerly employed at Graterford as the Medical Director.
5. Ralph W. Smith, M.D., is an individual, employed at Graterford as the Medical Director.
6. Norman Stempler, D.O., is an individual, contracted at Graterford as an orthopedic consultant.
7. Joseph Korszniak, is an individual, employed as a Physician Assistant at Graterford.
8. Julie Knauer, is an individual, employed as a[] Correctional Health Care Administrator and Medical Grievance Officer at Graterford.
9. Donald T. Vaughn is an individual, employed as the Facility Manager/Superintendent at Graterford.
10. Thomas L. James is an individual, employed as the State prison system chief grievance and appeals coordinator located at Camp Hill, Pennsylvania.

(Am. Compl. at ¶¶ 2-10.) We note that despite being named as a Defendant, Stempler was never served with either the original or the Amended Complaint. In addition, no attorney has entered an appearance on Stempler’s behalf. We also note that the summons was returned unexecuted as to Baddick, Beken, Moyer, and Smith. (Doc. No. 43.)

Plaintiff also names Correctional Physicians Services, Inc. (“CPS”), and Prison Health Services, Inc., (“PHS”) as Defendants. While unclear from Plaintiff’s Amended Complaint, it appears that Plaintiff is suing CPS and PHS in their capacity as the Medical Defendants’ employers. However, it does not appear that CPS and PHS have been served or that anyone has entered an appearance on behalf of these entities. The Amended Complaint suggests that Plaintiff’s claims against these entities are based on the Medical Defendants’ actions. However, as discussed *infra*, there is no respondeat superior liability under § 1983. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). Moreover, we cannot agree that CPS and PHS could be liable for the Medical Defendants’ actions, as we have found those actions to be reasonable.

appropriate medical care. Plaintiff also alleges that several Defendants provided negligent medical care in violation of Pennsylvania law.⁴

A. Injury to Large Right Toe

On August 3, 1999, a forty-pound dumbbell was dropped on Plaintiff's right large toe. This aggravated a previous injury. Plaintiff reported the injury and received a pass to visit the medical dispensary. (Am. Compl. ¶¶ 18-20.) After a consultation with medical personnel, Plaintiff received an ice bag, but was denied pain medication. Shortly thereafter, Plaintiff's toe was X-rayed, and Defendant Beken informed Plaintiff that his large right toe was fractured. (*Id.* at ¶ 22.) More than an hour after Plaintiff's arrival at the medical facility, Defendant Korszniak provided Plaintiff with an ortho-shoe, crutches, ice, and Motrin. At that point, Plaintiff was told that nerve damage had to be ruled out before the toe could be put in a cast. (*Id.* at ¶¶ 22, 27(a).)

Plaintiff contends that between sometime in August, 1999 and September 3, 1999, he visited the infirmary, complaining about his large right toe and requesting an appointment with an orthopedist. (*Id.* at ¶23.) On September 4, 1999, Plaintiff met with Defendant Stempler, an orthopedist. According to Plaintiff, upon reviewing Plaintiff's medical records, Defendant Stempler stated that there was nothing he could do because too much time had passed since Plaintiff's injury. (*Id.* at ¶ 25.)

Plaintiff claims that he continued to suffer, and visited the medical center on "numerous occasions," where he was told that medical personnel could not prescribe anything stronger than

⁴ On August 8, 2003, we dismissed the claims against Correctional Medical Services, Inc., with prejudice. (Doc. No. 27.) On August 14, 2003, we granted Plaintiff's Motion for Leave to File an Amended Complaint. The Amended Complaint adds CPS and PHS as Defendants. (Am. Compl. at ¶¶ 11-12.) The Amended Complaint was not individually docketed, but was included with Plaintiff's Motion to File an Amended Complaint. (Doc. Nos. 25, 26.) It is that Amended Complaint that will be analyzed in this Memorandum.

Motrin. (Id. at ¶ 29.) In December 1999, Plaintiff had a second consultation with Defendant Stempler. Again, Defendant Stempler said there was nothing he could, but he would recommend that Plaintiff be evaluated by a podiatrist. Defendant Stempler also provided Plaintiff with Motrin, explaining that he could not prescribe anything stronger. (Am. Compl. at ¶ 30.) Sometime thereafter, Plaintiff was evaluated by a podiatrist who prescribed an ortho-boot. (Id. at ¶ 31.)

On February 26, 2001, Plaintiff filed an inmate grievance, claiming that he did not receive adequate medical care, and requesting an investigation. Plaintiff's grievance was denied as untimely because it was not submitted within fifteen calendar days of the events upon which the claims were based. (Id. at ¶ 32.) Plaintiff's appeal was denied on April 10, 2001, because the complaint was "not filed in a timely manner." (Id. at ¶ 34.) On July 17, 2001, Plaintiff's Request for Final Review was denied because he had not met the proper time frame and had failed to provide a reasonable explanation for the delay. (Id. at ¶ 36.)

B. Back, Shoulder, Chest, and Scalp

On May 23, 2000, Plaintiff visited the medical center, complaining of swollen legs, scalp sores, and pain to his back, shoulder, and chest. (Id. at ¶ 38.) During that visit, Plaintiff had X-rays taken and blood pressure medication prescribed. (Id.) On June 12, 2000, Plaintiff visited the medical center for follow-up care for his back, shoulder, and chest. (Id.) At that time, Plaintiff informed Defendant Moyer, the consulting physician, that in his last visit X-rays had been taken and medication prescribed. According to Plaintiff, Defendant Moyer told Plaintiff that he was only going to treat the high blood pressure. Two days later, on June 14, 2000, Plaintiff returned to the medical center and was examined by Dr. Benoit, who prescribed medication for Plaintiff's scalp sores and muscle spasms in his back. (Id. at ¶ 44.)

On July 13, 2000, Plaintiff filed an inmate grievance, complaining that “he was not offered alternative treatment for [the] pain in his chest, back, and shoulder, and scalp sores.” (*Id.* at ¶ 45.) On August 14, 2000, Plaintiff met with Graterford Medical Grievance Officer Knauer to explain “how defendant Moyer[’s] conduct violates [Plaintiff’s] Constitutional rights and State law....” (*Am. Compl.* at ¶ 47.) Plaintiff’s grievance was denied with the following explanation: “[W]hen patients have numerous complaints there are times when doctors choose to treat initially the most serious and have you follow-up for others later.” (*Id.* at ¶ 49.) Plaintiff filed an appeal on August 20, 2000. On September 26, 2000, Plaintiff sent a letter to the Pennsylvania Department of Corrections, Central Office Review Committee, stating that he had not received a decision on his appeal. (*Id.* at ¶ 51.) Sometime thereafter, the appeal committee requested a copy of Plaintiff’s appeal. Plaintiff complied, and on October 10, 2000, Plaintiff’s appeal was denied with the following explanation: “I do agree with the Grievance Officer in that the most serious medical problem an inmate has receives the attention first.” (*Id.* at ¶¶ 52-53.) On October 20, 2000, Plaintiff filed a Request for Final Review. On November 20, 2000, the Chief Grievance Officer, Defendant James, upheld the decision, stating that it was “reasonable and appropriate.” (*Id.* at ¶ 55.)

C. Left Thumb

On June 26, 2000, Plaintiff injured his left thumb when the push button on his sink jammed. (*Id.* at ¶¶ 57-60.) On June 27, 2000, Plaintiff requested a pass to visit the medical center. Plaintiff was granted a pass the same day. (*Id.* at ¶¶ 62-67.) Defendant Moyer examined Plaintiff, diagnosed him with a sprain, and prescribed Motrin for ten days. (*Id.* at ¶ 67.) Plaintiff continued to experience pain and returned to the medical center on July 4, 2000. During that visit, Plaintiff spoke with Nurse F. Bell, who informed Plaintiff that there was no doctor on duty and that he should

return the next day. (Id. ¶¶ 68-69.) Plaintiff returned on July 5, 2000, and was examined by Defendant Korszniak. Again, Plaintiff requested to see an orthopedist. However, Defendant Korszniak classified Plaintiff's injury as soft tissue damage and informed Plaintiff that an orthopedist was not necessary. Defendant Korszniak directed Plaintiff to take Motrin. (Id. at ¶ 72.) On July 6, 2000, Plaintiff returned to the medical center and was examined by Dr. Marc Jaffee. Jaffee informed Plaintiff that he had a possible fracture and that he would recommend an X-ray, physical therapy, and an examination with an orthopedist. (Am. Compl. at ¶ 76.) On July 6 or July 7, 2000, a technician performed X-rays on Plaintiff's thumb. (Id. at ¶¶ 77, 78.) On July 14, 2000, Plaintiff had a follow-up consultation with Jaffee, and learned that the thumb X-rays showed no fracture. (Id. at ¶ 78.) On July 25, 2000, Plaintiff was examined by a physical therapist named DiPaolo. (Id. at ¶ 80.) On August 3, 2000, Defendant Stempler examined Plaintiff's thumb and informed Plaintiff that nothing could be done because too much time had passed since the injury and the thumb had fused. Defendant Stempler prescribed Motrin and referred Plaintiff back to physical therapy. (Id. at ¶ 87.) Plaintiff was again examined by DiPaolo, who informed Plaintiff that there was nothing he could do. (Id. at ¶ 88.)

In October 2000, Plaintiff went to the medical center complaining of severe pain in his left thumb, and was examined by a doctor. (Id. at ¶ 90.) Sometime in October or November 2000, Plaintiff received another X-ray of his left thumb. (Id.) The second X-ray showed an elongated fracture, and on December 1, 2000, Plaintiff was examined by Defendant Stempler. Defendant Stempler concluded that nothing could be done because too much time had passed since the fracture occurred. (Am. Compl. at ¶¶ 91-93.)

On December 13, 2000, Plaintiff filed an inmate grievance related to the medical care he

received for his left thumb. (Id. at ¶ 94.) Plaintiff's "complaint sought to charge whoever was responsible for the failure to have plaintiff examined by an orthopedic doctor in a timely manner." (Id.) On January 8, 2001, Plaintiff's grievance was denied, and Plaintiff appealed on January 17, 2001. On January 31, 2001, Plaintiff's appeal was denied. On February 8, 2001, Plaintiff filed a Request for Final Review, which was denied on July 18, 2001.

D. Right Hand

In March 2001, Plaintiff injured his right hand while performing his prison duties as a janitor. In March or April 2001, Dr. Kulaylat examined Plaintiff. Plaintiff explained that the injury was caused by his janitorial work and use of disinfectants. Plaintiff claims that Kulaylat advised him to "seek other employment." (Am. Compl. at ¶ 104.) On April 26, 2001, Smith examined Plaintiff for "pain and swelling in his right and left palms, index and ring fingers and right thumb...." (Id. at ¶ 105.) Smith prescribed medication and excused Plaintiff from prison work requiring the use of disinfectants. (Id.) On May 2, 2001, Plaintiff visited the medical center complaining of "severe pain and swelling in his right thumb and skin irritation." (Id. at ¶ 106.) Jaffee examined Plaintiff and recommended X-rays, physical therapy, and an examination by an orthopedist. (Id.) On May 7, 2001, an X-ray was performed on Plaintiff's right thumb. (Id. at ¶ 107.) On May 16, 2001, Plaintiff attended a follow-up consultation with Jaffee. Jaffee informed Plaintiff that the X-ray showed an old fracture and that Defendant Beken, the medical director, denied authorization of another visit to the orthopedist because Plaintiff had already seen an orthopedist for his (left) thumb in 2000. (Id. at 109.) Jaffee advised Plaintiff that Defendant Beken's decision was based on erroneous information. (Id. at ¶ 110.)

On June 1, 2001, Plaintiff filed an inmate grievance, stating that he had requested medical

care for a work-related injury to his hands, that Jaffee had recommended a certain course of treatment, and that treatment was denied based on erroneous information. (Id. at ¶ 112.) On July 20, 2001, Plaintiff's grievance was denied, based on the number of times Plaintiff had been examined for his ailments. (Id. at ¶ 114.) On July 27, 2001, Plaintiff filed an appeal, which was denied on August 17, 2001. The denial of Plaintiff's appeal cited the "six different occasions since May" 2001, that Plaintiff had visited the medical center, and concludes that, in the opinion of the appeal committee, Plaintiff is receiving adequate medical attention. (Am. Compl. at ¶ 116.) On August 28, 2001, Plaintiff filed a Request for Final Review, which was denied on March 1, 2002. The denial stated that Plaintiff had received physical therapy and was receiving adequate medical care. (Id. at ¶ 118.)

E. The Events of January 2002 to July 2002

In January 2002, Dr. Anthony Iaccarino examined Plaintiff, and recommended that Plaintiff be examined by a dermatologist and an orthopedist. (Am. Compl. at ¶ 121(a).) Plaintiff was not examined by a dermatologist, but did see an orthopedist on February 21, 2002. (Id.) On March 7, 2002, Iaccarino recommended that Plaintiff see a dermatologist for his hands and scalp, but this recommendation was denied. (Id. at ¶ 121(b).) In March 2002, Jaffee "recommended an examination for his work related injury to his left and right hands by the dermatologist and, an evaluation for carpal tunnel in plaintiff's right and left hands." (Id. at ¶ 121(c).) Plaintiff was not examined by a dermatologist, but was evaluated for his carpal tunnel at Suburban General Hospital on May 23, 2002. (Id.) On June 1, 2002, Jaffee told Plaintiff that he was suffering from carpal tunnel syndrome and ordered a wrist brace. Plaintiff did not receive the brace, but followed up with Defendant Stempler on June 20, 2002. Defendant Stempler ordered the brace, which Plaintiff

received on July 9, 2002.

F. Procedural History

On October 1, 2003, Defendants Thomas James, Julie Knauer, and Donald Vaughn (the “Administrative Defendants”) filed a Motion to Dismiss the Amended Complaint (the “Administrative Defendants’ Motion to Dismiss”). On two occasions, we granted Plaintiff’s requests for an extension of time to respond to the Motion, but stated that no further extensions would be granted. (Doc. Nos. 38, 41.) Two days after the extension for the second deadline had passed, Plaintiff filed a two-page response, which concludes: “Plaintiff is filing a Memorandum of Law in Opposition to Defendants’ Vaughn, Knauer and James[’s] motion to dismiss amended complaint, which shall follow this response.” (Pl.’s Pro Se Resp. to Defs. Vaughn, Knauer, and James’s Mot. to Dismiss Am. Compl. at 2.) Plaintiff never filed his supporting memorandum. On December 23, 2003, Defendants Peter Baddick, Dennis Moyer, Emerl Beken, Ralph Smith, and Joseph Korszniak, (the “Medical Defendants”) filed a Motion to Dismiss the Complaint. (Doc. No. 39.) Plaintiff failed to respond to the Motion.

On May 12, 2004, we issued an Order advising Plaintiff that he had an additional fourteen days to respond to both Motions to Dismiss, and that failure to respond would result in the Court deciding the Motions to Dismiss without the benefit of Plaintiff’s input. (Doc. No. 45.) On June 1, 2004, six days after the fourteen-day extension had passed, we received a letter from Plaintiff requesting five additional days to respond to the Motions. (Letter from Jackson to Judge Surrick of 5/27/04.) On June 23, 2004, Plaintiff filed his Memorandum of Law in Opposition to Defendants’ Vaughn, Knauer, and James’s Motion to Dismiss the Amended Complaint, (Doc. No. 46), and its Appendix, (Doc. No. 47). We have considered these most recent filings in the following analysis.

II. LEGAL STANDARD

When considering a motion to dismiss a complaint for failure to state a claim under Rule 12(b)(6), we must “accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved.” Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990). For this reason, courts strongly disfavor Rule 12(b)(6) motions. Melo-Sonics Corp. v. Cropp, 342 F.2d 856 (3d Cir. 1965); Kuromiya v. United States, 37 F. Supp. 2d 717, 722 (E.D. Pa. 1999). We will only dismiss a complaint if “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)). In considering a motion to dismiss, however, we need not assume the truth of legal conclusions. Papasan v. Allain, 478 U.S. 265, 286 (1986).

In order to state a § 1983 claim for a violation of the Eighth Amendment, Plaintiff must allege that the Administrative Defendants were deliberately indifferent to his serious medical needs. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). Courts have characterized the “deliberate indifference” standard as “a two-pronged test, requiring both deliberate indifference on the part of the prison officials and that the prisoner’s medical needs be serious.” Maldonado, 28 F. Supp. 2d 284, 289 (D.N.J. 1998) (citing Pace v. Fauver, 479 F. Supp. 456, 458 (D.N.J. 1979), aff’d, 649 F.2d 860 (3d Cir. 1981). “This test ‘affords considerable latitude to prison medical authorities in the diagnosis and treatment of the medical problems of inmate patients. Courts will “disavow any attempt to second guess the propriety or adequacy of a particular course of treatment . . . which remains a question of sound professional judgment.” Little v. Lycoming County, 912 F. Supp. 809,

815 (M.D. Pa. 1996) (quoting Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979)). Further, it is clear that a disagreement with the form of treatment does not rise to the level of a constitutional violation, and even if medical malpractice were to occur, it “does not become a constitutional claim merely because the victim is a prisoner.” Id.

Courts have defined a medical need as serious “if it 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.” Maldonado, 28 F.Supp. 2d at 289. In Estelle, the Supreme Court stated that “[d]eliberate indifference may only be found where there has been an unnecessary and wanton infliction of pain.” Estelle, 429 U.S. at 104. See also Little, 912 F.Supp. at 815 (“Deliberate indifference is more than inadvertence or a good faith error; it is characterized by ‘obduracy and wantonness.’”) (quoting Whitley v. Albers, 475 U.S. 312, 319 (1986)). “In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend the ‘evolving standards of decency’ in violation of the Eighth Amendment.” Maldonado, 28 F. Supp. 2d at 289 (quoting Estelle, 429 U.S. at 105-06). In Farmer v. Brennan, the Supreme Court adopted a test for deliberate indifference that stated that “claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.” 511 U.S. 825, 842 (1994).

III. DISCUSSION

A. The Administrative Defendants

1. Statute of Limitations

Claims brought under § 1983 are subject to a two-year statute of limitations. Bougher v. Univ. of Pittsburgh, 882 F.2d 74, 78 (3d Cir. 1989). The limitations period begins to run when the person knows or has reason to know of the injury that forms the basis for the claim. Chardon v. Fernandez, 454 U.S. 6 (1981). A court may dismiss a complaint for failure to state a claim if the face of the complaint demonstrates that the complaint was not timely filed. Cito v. Bridgewater Township Police Dept., 892 F.2d 23, 25 (3d Cir. 1989).

Plaintiff commenced the instant action on August 15, 2002, which would preclude those events that occurred prior to August 15, 2000. However, as to the Administrative Defendants, Plaintiff's harm did not occur until his Request for Final Review was denied by the Administrative Defendants. Prior to that point, Plaintiff could not allege that the Administrative Defendants had been indifferent to his Eighth Amendment rights. The Administrative Defendants denied Plaintiff's Request for Final Review of the grievances related to Plaintiff's large right toe on July 17, 2001, less than two years before August 15, 2002. Accordingly, that claim is not barred by the statute of limitations. As to the Final Review of Plaintiff's grievance for his back, shoulder, chest, and scalp, the Administrative Defendants did not deny Plaintiff's Request for Final Review until November 20, 2000. Therefore, this claim was also filed in a timely manner. Likewise, Plaintiff's other allegations, which occurred subsequent to these claims, do not run afoul of the statute of limitations.

_____ 2. _____ Immunity

To the extent that Plaintiff brings these claims against the Administrative Defendants in their official capacity, Plaintiff's claims are barred by the Eleventh Amendment. See Will v. Mich. Dept. of State Police, 491 U.S. 58, 71 (1989) (holding that state agencies and state officials in their official capacities are not "persons" under § 1983).

The Administrative Defendants contend that, to the extent that Plaintiff brings these claims against the Administrative Defendants in their individual capacities, Plaintiff's claims are barred by the doctrine of qualified immunity. We agree. State officials are entitled to qualified immunity as long as their actions were objectively reasonable given the existing law and the information they possessed at the time the officials acted. Hunter v. Bryant, 502 U.S. 224, 227 (1991); McLaughlin v. Watson, 271 F.3d 566, 571 (3d Cir. 2001). In addition, the Third Circuit has stated that whether a defendant is entitled to qualified immunity is, in most instances, a question of law for the court to decide. Sharrar v. Felsing, 128 F.3d 810, 828 (3d Cir. 1997) (holding that only when the facts related to actions that defendant claims were objectively reasonable are in dispute does the issue need to go to a jury).

The rationale behind the doctrine of qualified immunity is clearly established. The Supreme Court has stated that, "permitting damages suits against government officials can entail substantial social costs, including the risk that fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties." Aderson v. Creighton, 483 U.S. 635, 638 (1987). "The rule supports 'the need to protect officials who are required to exercise their discretion and the related public interest in encouraging the vigorous exercise of official authority.'" McLaughlin, 271 F.3d at 570 (quoting In Re City of Phila. Litig., 49 F.3d 945, 960 (3d Cir. 1995)).

In order to defeat the Administrative Defendants' assertion of qualified immunity, Plaintiff is first required to allege a violation of a clearly established constitutional right. McLaughlin, 271 F.3d at 570-71. We are satisfied that Plaintiff met this burden by claiming that Defendants violated his rights under the Eighth Amendment. However, Plaintiff cannot simply allege the violation of a

constitutional provision. Id. at 571. In determining the contours of a clearly established right, the Third Circuit has stated that “[t]he essential inquiry is whether a reasonable official in the defendant’s position at the relevant time ‘could have believed, in light of clearly established law, that [his or her] conduct comported with established legal standards.’” Id. (quoting Merkle v. Upper Dublin Sch. Dist., 211 F.3d 782, 797 (3d Cir. 2000)). See also Little, 912 F.Supp. at 815 (“The courts will not intervene upon allegation of mere negligence, mistake or difference of opinion ... For a constitutional tort to arise and for a cause of action to be stated under section 1983, the complaint must allege deliberate indifference to his continued health and well-being.” (internal citations omitted)).

In the instant case, we are satisfied that the Administrative Defendants could have reasonably concluded that their decisions to dismiss Plaintiff’s grievances, after an appropriate investigation, comported with established legal standards. Even if we accept all of Plaintiff’s factual allegations as true, the conclusion is the same. The Administrative Defendants’ actions were objectively reasonable. Plaintiff alleges that the Administrative Defendants violated his constitutional rights through their: “failure to have a policy or procedure to treat their patients’ conditions expeditiously and thoroughly,” (Am. Compl. at ¶ 140(a)); “failure to have a policy of follow-up and reexamining patients whose conditions cause progressive deterioration,” (id. at ¶ 140(b)); “failure to have a policy of referring patients to appropriate specialists,” (id. at ¶ 140(c)); “failure to have a policy of allowing patients to timely get a second opinion of a referral or other physician or medical professional concerning the diagnosis of their condition,” (id. at ¶ 140(d)); “failure to have a policy of selecting and retaining physicians competent in the medical profession in general and specifically in treatment of patients with injury to foot and/or hands,” (id. at ¶ 140(e));

“failure to have a policy of overseeing all persons who practice on behalf of and within CPS, PHS and [the Graterford] medical department,” (*id.* at ¶ 140(f)); “failure to formulate, adopt, and enforce adequate rules and policies to ensure timely quality care for patients,” (*id.* at ¶ 140(g)); “failure to have a policy of directing, supervising, monitoring, overseeing and maintaining prompt and continuing review of patients’ conditions,” (*id.* at ¶ 140(h)); “failure to have a policy of disciplining or possibly discharging medical personnel and/or physicians who fail to competently treat their patients,” (*id.* at ¶ 140(i)); and “failure to have a policy of promptly prescribing, or facilitat[ing] special test to treat the patient’s condition,” (*id.* at ¶ 140(j)). Plaintiff claims that the Administrative Defendants had knowledge of his allegedly harmful situation through the formal grievances that Plaintiff filed. Therefore, the issue before us is whether, based on the information contained in Plaintiff’s grievances, it was objectively reasonable for the Administrative Defendants to not implement changes in the Graterford medical system. We conclude that their actions were objectively reasonable.

Plaintiff’s grievances focus on four major events. The first grievance complains that Plaintiff was not provided with a consultation with an orthopedic physician until one month after the injury. (Am. Compl. at ¶¶ 23-25.) However, Plaintiff failed to file the grievance until approximately eighteen months had passed, despite the clear requirement that such grievances be filed within fifteen days of the alleged harm. It was reasonable for the Administrative Defendants to decline to investigate this grievance.⁵ The second grievance involved Plaintiff’s consultation with

⁵ We also note that the Administrative Defendants explained their reasoning to Plaintiff:

Upon completion of this review, it is the decision of this office to uphold the responses provided by staff at the institutional level. This office has reviewed your grievance and found that the incident that initiated this grievance happened nearly 18 months ago. The

Defendant Moyer on June 12, 2000. During that visit, Plaintiff complained of problems with his blood pressure, chest, back, shoulder, and scalp. Defendant Moyer treated only Plaintiff's high blood pressure. Plaintiff returned to the medical facility just two days later and was treated by Dr. Benoit for his scalp sores and ailments with his chest, back, and shoulder. In response to Plaintiff's formal grievance, and following an interview with Plaintiff (Am. Compl. at ¶ 47), Defendant Knauer provided Plaintiff with the following written explanation of her decision to deny Plaintiff's grievance:

Mr. Jackson,

We had our interview today. We reviewed your medical records and discussed the 6/12 visit to sick call. When patients have numerous complaints there are times when doctors choose to treat initially the most serious and have you follow up for others later.... I understand you do not agree and feel Dr. Moyer should have addressed your scalp problems and pain problems instead of only addressing your hypertension and peripheral [illegible] which was increased.

(Letter from Knauer to Jackson of 8/14/00, App. to Administrative Defs.' Mot. to Dismiss at 10.)

Again, it was objectively reasonable for the Administrative Defendants to conclude that the Graterford medical system did not jeopardize Plaintiff's well-being by requiring that he wait two additional days to receive treatment for non-life threatening ailments.

Plaintiff's third formal grievance focuses on his injury to the thumb on his left hand. On June 27, 2000, Defendant Moyer diagnosed Plaintiff with a sprain and prescribed Motrin. (Am.

DC-ADM 804, Inmate Grievance policy is clear regarding the timeframe for submitting a legitimate complaint. You did not meet that timeframe, nor did you provide this office with a reasonable explanation for the delay.

(Letter from James to Jackson of 7/17/01, App. to Administrative Defs.' Mot. to Dismiss at 10.)

Compl. at ¶ 67.) On July 5, 2000, Plaintiff returned to the medical center and Defendant Korszniak characterized the ailment as a “soft tissue injury,” concluding that there was no need to consult with an orthopedic physician. (Id. at ¶ 72.) The next day, Plaintiff consulted with Jaffee, who ordered X-rays. The X-rays indicated that there was no fracture. (Am. Compl. at ¶¶ 77-78.) On August 3, 2000, Plaintiff consulted with Defendant Stempler, an orthopedic physician. According to Plaintiff, Defendant Stempler said there was nothing he could do because the thumb had already fused. (Id. at 87.) In light of the fact that Plaintiff himself admits that the X-rays revealed no fracture, it is not clear why Defendant Stempler would make this statement. In any event, Plaintiff thereafter followed up with a physical therapist. (Id. at ¶ 79.) Plaintiff continued to complain of pain in his left thumb, and in October or November 2000, Plaintiff received another X-ray of his left thumb. (Id. at 90.) The second X-ray results indicated a fracture on the thumb, but it is unclear whether the fracture was new or related to Plaintiff’s injury in June 2000. (Id. at 91.) In light of the positive X-ray, Plaintiff was permitted an examination with Defendant Stempler, which took place on December 1, 2000. (Id. at ¶ 91.) Plaintiff claims that Defendant Stempler again told him that there was nothing that could be done because too much time had passed. (Id. at ¶¶ 92-93.) On December 13, 2000, Plaintiff filed a grievance related to the foregoing allegations. However, the record reflects that until October or November of 2000, Plaintiff’s X-rays indicated that there was no fracture and the injury was, as the doctors indicated, just soft tissue damage. Based on this information, it was reasonable for the Administrative Defendants to affirm the doctors’ decisions to not initially schedule an appointment with an orthopedic physician. We note that even with a negative X-ray, Plaintiff eventually received a consultation with an orthopedic physician. In addition, when Plaintiff’s X-rays later indicated that his left thumb was fractured, Plaintiff received

a consultation with an orthopedic physician. Again, it was within Defendant Stempler's professional judgment to decide whether the fracture would benefit from a casting or other procedure. Accordingly, we conclude that the Administrative Defendants reasonably concluded that Plaintiff's grievance lacked merit.

Plaintiff's fourth formal grievance relates to an injury to his right thumb and hand. On several occasions, Plaintiff consulted with Graterford physicians regarding the swelling and skin irritation on his right thumb and hand. The Amended Complaint suggests that the pain was due to disinfectants that Plaintiff used in his job as a janitor. After one such examination, Defendant Smith "ordered medication and the removal from any prison work assignments requiring the usage of disinfectants." (Am. Compl. at ¶ 105.) At no point does the Amended Complaint indicate that up until this point, Plaintiff requested an X-ray for this injury, that medical personnel suggested one was necessary, or that X-rays were ever discussed for the right hand. Approximately one week later, Plaintiff returned to the medical facility, complaining of pain and swelling in his right thumb. At that point, Jaffee ordered an X-ray, which indicated that Plaintiff's right thumb had an old fracture. (*Id.* at ¶¶ 106-09.) Plaintiff alleges that Defendant Beken denied Plaintiff's request to see an orthopedic physician, stating that Plaintiff "had already seen the orthopedic for [his] thumb," apparently confusing Plaintiff's right thumb injury with his old left thumb injury. (*Id.* at ¶ 109.) Accepting these allegations as true, we cannot conclude that it was unreasonable for Defendant Beken or the Administrative Defendants to come to their, albeit potentially mistaken, conclusion. Plaintiff himself indicates that the decision was "based upon erroneous information." (*Id.* at ¶ 110.) A mistaken belief does not preclude a finding that Defendants' actions were objectively reasonable. In fact, Plaintiff's claim that Defendant Beken erred actually supports the conclusion that the

Administrative Defendants were objectively reasonable in their decision to not implement new policies as Plaintiff had requested. Based upon the facts alleged by Plaintiff, it was a misunderstanding, not a systemic problem, that prevented Plaintiff from consulting with an orthopedic for his right thumb fracture.

While it is not clear in the Amended Complaint, Plaintiff seems to indicate that after Plaintiff's grievance was investigated, Defendant Knauer's response denying Plaintiff's grievance was based on the fact that Plaintiff had received medical attention several times in recent months. Again, in light of Plaintiff's extensive medical treatment, we conclude that the Administrative Defendants were not unreasonable in reaching that conclusion. Plaintiff's constant demands on the Graterford medical facilities, and his complete unwillingness to accept the staff's medical determinations cannot be ignored. At some point, the Administrative Defendants must be permitted to use their professional judgment to decide when specialized care is necessary. Absent any indication of systemic abuses of that authority that rise to the level of constitutional harm, it is not for the courts or administrative personnel to second guess the decisions of medical professionals. *Andrews v. Camden County*, 95 F. Supp. 2d 217, 228 (D.N.J. 2000) ("Courts will disavow any attempt to second guess the propriety or adequacy of a particular course of treatment ... [which] remains a question of sound professional judgment.") (quoting *Inmates of Allegheny County Jail*, 612 F.2d at 762).

We are compelled to conclude that the Administrative Defendants were objectively reasonable in their actions and that qualified immunity applies to the instant situation.⁶

⁶ Plaintiff's Amended Complaint details further allegations related to Plaintiff's attempt to seek medical care. However, it does not appear that Plaintiff filed grievances related to those events. Further, Plaintiff does not allege that the Administrative Defendants were ever made aware of those events. Accordingly, we cannot conclude that that information entered into the

Accordingly, we will dismiss all claims against the Administrative Defendants.⁷

B. The Medical Defendants

1. Statute of Limitations

The Medical Defendants also raise the statute of limitations in their Motion to Dismiss. As stated above, Plaintiff commenced this lawsuit on August 15, 2002,⁸ and the applicable statute of limitations is two years, Bougher, 882 F.2d at 78. Therefore, it would seem that those events that occurred prior to August 15, 2000, would be barred.⁹ However, because that statute of limitations was tolled while Plaintiff exhausted his administrative remedies, not all such events will be barred by the statute of limitations. Howard v. Mendez, 304 F. Supp. 2d 632, 638 (M.D. Pa. 2004) (citing 42 PA. CON. STAT. § 5535(b)) (“Where the commencement of a civil action or proceeding has been stayed by a court or by statutory prohibition, the duration of the stay is not a part of the time within which the action or proceeding must be commenced.”). The Amended Complaint states that

Administrative Defendant’s decision-making. McLaughlin, 271 F.3d at 571 (holding that the appropriate inquiry involves whether the reasonable person in defendant’s position, at that time, would have believed his actions comported with constitutional law (emphasis added)).

⁷ The Administrative Defendants also contend that Plaintiff has failed to state a cause of action against the Administrative Defendants because “as non-treating prison administrators, [they] were not deliberately indifferent because Plaintiff received copious attention for all of his complaints....” (Administrative Defs.’ Mot. to Dismiss at 14.). The record appears to support this contention.

⁸ The Medical Defendants contend that Plaintiff commenced the instant lawsuit on December 5, 2002, the date the Complaint was docketed. However, the suit was actually initiated for the purposes of the statute of limitations on August 15, 2002, the date that Plaintiff filed his Motion to Proceed in Forma Pauperis. Estrada v. Trager, Civ.A. No. 01-4669, 2002 WL 31053819, at *1 (E.D. Pa. Sept. 10, 2002) (citing Urrutia v. Harrisburg County Police Dep’t, 91 F.3d 451, 457 n.8 (3d Cir. 1996)).

⁹ Courts have the authority to address the statute of limitations, even if the defendant does not first raise the issue as an affirmative defense, if the face of the complaint demonstrates non-compliance. Oshiver v. Levin, Fishbein, Sedran & Burman, 38 F.3d 1380, 1385 (3d Cir. 1994).

Plaintiff sought treatment for injuries to his large right big toe between August 3, 1999, and December 1999, and that Plaintiff pursued grievances related to treatment for this injury from February 26, 2001 to July 17, 2001. Because Plaintiff did not commence the instant lawsuit until August 15, 2002, more than two years had passed, even with the benefit of the tolling between February and July 2001. Accordingly, all claims against the Medical Defendants that are associated with Plaintiff's large right toe injury are barred by the statute of limitations.

The Medical Defendants contend that the events related to Plaintiff's care for his back, shoulder, chest, and scalp also run afoul of the statute of limitations because Plaintiff was treated from June 12 to June 14, 2000. However, from July 13, 2000 to November 20, 2000, the statute of limitations was tolled while Plaintiff exhausted his administrative remedies. Accordingly, Plaintiff's claims associated with his back, shoulder, chest, and scalp will not be barred by the statute of limitations. Likewise, Plaintiff's other allegations do not run afoul of the statute of limitations.

2. No Respondeat Superior

The Medical Defendants contend that the Amended Complaint fails to state a cause of action against Defendants Smith and Beken because the only references to those individuals are related to their responsibilities in managing Graterford's medical center, and § 1983 does not permit a claim based on respondeat superior. While we agree with Defendants' contention that no § 1983 liability exists based solely on respondeat superior, we do not agree that Defendants Smith and Beken's involvement was limited to their roles as supervisors. Rode, 845 F.2d at 1207 ("Liability cannot be predicated solely on the operation of respondeat superior."). The Amended Complaint states that Smith examined Plaintiff on April 26, 2001. (Am. Compl. at ¶ 105.) The

Amended Complaint also states that Defendant Beken diagnosed the fracture in Plaintiff's large right toe on August 3, 1999. (Id. at ¶ 22.) Accordingly, Defendants' position in this regard is without merit.

3. Conspiracy

In Count II of his Amended Complaint, Plaintiff alleges that “[a]s a direct result of defendants’ conspiracy to deprive plaintiff of his federally protected civil rights, plaintiff has suffered damages....” (Am. Compl. at ¶ 131.) The Medical Defendants contend that Plaintiff has failed to sufficiently set forth an allegation of conspiracy. We agree. “Only allegations of conspiracy which are particularized, such as those addressing the period of the conspiracy, the object of the conspiracy, and certain actions of the alleged conspirators taken to achieve that purpose, will be deemed sufficient.” Rose v. Bartle, 871 F.2d 331, 366 (3d Cir. 1989). See also Panayotides v. Rabenold, 35 F. Supp. 2d 411, 419 (E.D. Pa. 1999) (granting defendant’s motion to dismiss because plaintiff had failed to properly allege civil rights conspiracy). In the instant case, Plaintiff has done no more than state that Defendants engaged in a conspiracy that harmed him. At no point in the Amended Complaint does Plaintiff indicate that any of the Medical Defendants were working together to achieve a common purpose, or that there was any common understanding among the Medical Defendants. Accordingly, we will dismiss Count II with prejudice.¹⁰

4. No Cause of Action Against Baddick

The Medical Defendants contend that the Amended Complaint fails to state a cause of action against Defendant Baddick because “[i]t fails to indicate what Baddick did or failed to do

¹⁰ While not specifically raised in the Administrative Defendants’ Motion to Dismiss, we note that Plaintiff has also failed to appropriately allege a conspiracy as to the Administrative Defendants.

that violated the constitutional rights of Jackson. It never indicates how Baddick committed malpractice. It does not ever allege that Baddick treated Jackson or even knew of Jackson's conditions." (Medical Defs.' Mot. to Dismiss at 13.) We agree. In the 145-paragraph Amended Complaint, Plaintiff makes only two references to Defendant Baddick. The first reference states: "Peter Baddick, D.O., is an individual, formerly employed at Graterford as the Medical Director." (Am. Compl. at ¶ 2.) The second reference states: "Between August 3, 1999 and September 4, 1999, the Graterford medical staff, under the supervision and control of defendant Baddick, provided some medical care to plaintiff." (*Id.* at ¶ 27.) As discussed above, a supervisory relationship with an employee who allegedly violated Plaintiff's constitutional rights is insufficient to state a cause of action under § 1983. *Rode*, 845 F.2d at 1207 ("[L]iability cannot be predicated solely on the operation of respondeat superior."). The court in *Rode* also made it clear that in order to demonstrate personal involvement, a plaintiff must allege "participation or actual knowledge and acquiescence" with appropriate particularity. *Id.* Because Plaintiff does no more than describe Defendant Baddick's role as director of the Graterford medical facility, and fails to state Baddick's role in the alleged constitutional violation, we will dismiss all Counts of the Amended Complaint as to Defendant Baddick.

5. Failure to State a Claim Pursuant to § 1983

In *Estelle*, the Supreme Court distinguished § 1983 claims from those of negligence in medical treatment. 429 U.S. at 106. "[A] complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner." *Id.* The Court further stated that in order to establish an

Eighth Amendment claim, a prisoner “must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.” Id. In Estelle, the inmate plaintiff had seen medical personnel seventeen times during the course of only three months. The Estelle plaintiff was treated for various ailments, but complained only about the care related to his back. The plaintiff complained that the medical treatment of bed rest, muscle relaxants, and pain relievers was not sufficient, and contended that more should have been done. Specifically, the Estelle plaintiff argued that the medical defendants should have pursued various other treatment options, including X-rays and other tests. In dismissing the complaint against the medical personnel for failure to state a claim, the Court stated:

[T]he question whether an X-ray or additional diagnostic techniques or forms of treatment are indicated is a classic example of a matter for medical judgment. A medical decision not to order an X-ray, or like measures, does not represent cruel and unusual punishment. At most it is medical malpractice, and as such the proper forum is the state court....

Id. at 293.

In the instant case, Plaintiff had extensive access to medical professionals. In fact, from August 3, 1999 to July 9, 2002, Plaintiff received medical consultations and/or treatment at least thirty-four times. Plaintiff met with general physicians, orthopedic physicians, physician assistants, nurses, and physical therapists. In addition, Plaintiff received various X-rays, was prescribed medical devices and received follow-up treatment. In light of the extensive medical treatment that Plaintiff received, we conclude that the Medical Defendants were not deliberately indifferent to Plaintiff’s medical needs. See also Monmouth County Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987) (holding that prisoner complaints related to appropriateness of medical care do

not support a claim of Eighth Amendment violations). Accordingly, we will dismiss all claims against the Medical Defendants.

C. State Law Claims

Having disposed all federal claims as to both the Administrative Defendants and the Medical Defendants, we decline to exercise supplemental jurisdiction over Plaintiff's state law claims. Accordingly, Plaintiff's state law claims will be dismissed without prejudice.

An appropriate Order follows.

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

BERNARD JACKSON	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	
	:	
BADDICK, D.O., et al	:	NO. 02-CV-6779

ORDER

AND NOW, this ____ day of July, 2004, upon consideration of the Motion of Defendants Donald Vaughn, Julie Knauer, and Thomas James to Dismiss the Amended Complaint, (Doc. No. 35), and the Motion of Peter Baddick, D.O., Dennis Moyer, M.D., Emerl Been, M.D, Ralph W. Smith, M.D. and Joseph Korszniak, P.A. to Dismiss the Complaint of Bernard Jackson, (Doc. No. 39), and all papers filed in support thereof and opposition thereto, it is ORDERED that:

1. The Motion of Defendants Donald Vaughn, Julie Knauer, and Thomas James to Dismiss the Amended Complaint, (Doc. No. 35), is GRANTED as to all federal claims;
2. The Motion of Peter Baddick, D.O., Dennis Moyer, M.D., Emerl Been, M.D, Ralph W. Smith, M.D. and Joseph Korszniak, P.A. to Dismiss the Complaint of Bernard Jackson, (Doc. No. 39), is GRANTED as to all federal claims;
3. Federal claims against Norman Stempler, Correctional Physicians Services, Inc., and Prison Health Services, Inc. are DISMISSED with prejudice; and
4. All state law claims are DISMISSED without prejudice.

IT IS SO ORDERED.

BY THE COURT:

R. Barclay Surrick, Judge