UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HERBERT V. DIXON, Plaintiff,	:	
	:	PRISONER CASE NO.
v.	:	3:99-CV-1513 (JCH) (HBF)
RONALD HENSLEY, M.D., Defendant.	:	FEBRUARY 16, 2001

RULING ON MOTION FOR SUMMARY JUDGMENT [DKT. NO. 15]

The plaintiff, Herbert V. Dixon ("Dixon"), has filed this civil rights action pro se and in forma pauperis pursuant to 28 U.S.C. § 1915. He alleges that the defendant, Department of Correction psychiatrist Ronald Hensley ("Hensley"), was deliberately indifferent to his serious mental health needs. Pending is the defendant's motion for summary judgment. For the reasons that follow, the motion for summary judgment is granted.

I. FACTS[1]

Hensley has been providing psychiatric services to inmates in the custody of

[1] The facts are taken from the defendant's Statement of Material Facts Not in Dispute Pursuant to Local Rule 9(c)(1) [Dkt. No. 17], the affidavit of Ronald Hensley, MD, in Support of Defendant's Motion for Summary Judgment with attached exhibits [Dkt. No. 18], the Affidavit of Paul Chaplin, Ph.D., in Support of Defendant's Motion for Summary Judgment with attached exhibit [Dkt. No. 19], the Plaintiff's Statement of Disputed Factual Issues [Dkt. No. 23], Plaintiff's Declaration in Opposition to Defendant's Motion for Summary Judgment [Dkt. No. 26] and the exhibits attached to the plaintiff's response to defendant's answer [Dkt. No. 14].

the Connecticut Department of Correction since 1972. He is currently assigned to Northern Correctional Institution.

Dixon was transferred from Hartford Correctional Center to Northern Correctional Institution on July 8, 1998. At the time of his transfer, he had been diagnosed with a history of polysubstance abuse, antisocial personality, and depression and anger concerning his criminal conviction and sentencing. On July 10, 1998, Dixon was seen by a psychiatric social worker at Northen Correctional Institution for a mental health status evaluation. The psychiatric social worker referred him to Sheila Hughes ("Hughes"), the facility psychiatric nurse clinician.

On July 23, 1998, Dixon told Hughes that he had been exposed to contaminated insulin earlier in the year while confined at Bridgeport Correctional Center and that he was periodically tested to ensure no HIV transmission. Dixon also reported problems with anger management. Hughes agreed to provide him anger management literature.

On August 1, 1998, Hughes prepared a mental health treatment plan for Dixon. In the plan, she noted that he experienced difficulty facing a long sentence and anxiety regarding the HIV test results. She recommended monitoring the HIV test results, encouraging Dixon to accept some responsibility for his actions and providing support to facilitate his adjustment to a long prison sentence.

Because of the exposure to possibly contaminated insulin, Dixon received four HIV tests in accordance with the procedures recommended by the Centers for Disease Control. The tests were administered on February 4, March 18, May 1 and August 14, 1998. All test results were negative. On August 20, 1998, Dixon had just received his fourth and final negative test result and was resting comfortably in his cell. He declined to see Hughes.

On September 10, 1998, Dixon asked to see someone on the mental health staff and was seen by a psychiatric social worker. He complained of adjustment problems with another inmate, the noise level in the unit and stress over his sentencing. Hughes saw Dixon on September 12, 1998. Dixon told her that he did not believe the HIV test results. He complained about the noise on the tier and said that he was not interested in managing his anger. On October 17, 1998, Dixon again saw Hughes. He told her that he was depressed and worried about the negligence of the medical staff at the Bridgeport Correctional Center which may have resulted in his exposure to contaminated insulin. He expressed displeasure at a request to keep an anger diary. Dixon told Hughes that he was going to speak to his attorney about a case against the Bridgeport Correctional Center staff concerning the insulin incident.

On November 6, 1998, Dixon again met with Hughes. He claimed that he experienced low energy and appetite levels and had trouble sleeping. He also asked to see Hughes's notes from their last meeting. Hughes showed him the notes. After this meeting, Hughes referred Dixon to Hensley for an assessment regarding his request for medication.

Hensley saw Dixon on December 2, 1998. Before the meeting, he reviewed Dixon's entire file and spoke with Hughes. At the meeting, Dixon claimed that people were being untruthful and accused Hughes of writing things in her notes without his permission. He was uncooperative and unwilling to discuss any issues relating to his threatened lawsuit against the medical staff at Bridgeport Correctional Center. When mental health staff members interview inmates, it is common practice to note any complaints or comments regarding litigation as well as any physical symptoms. This information is needed to evaluate the effect of any preoccupation with litigation on the inmate's overall mental health. Dixon states that when he refused to discuss the litigation, Hensley refused to treat him and ordered him back to his cell.

Dixon was vague when asked to describe his symptoms. Because insomnia is a common prisoner complaint and many inmates request sleep medication, the medical staff usually does not order treatment unless insomnia is accompanied by

other symptoms. Hensley determined that Dixon should be rated Mental Health 2. At this level, an inmate does not need any mental health medication or regular contact with mental health staff. Although Dixon would not be scheduled for regular meetings with mental health staff, he could ask to be seen as needed.

On April 1, 1999, Dixon asked to be seen by the staff psychologist, Dr. Venters. Dr. Venters passed away on April 5, 1999. Thus, on April 21, 1999, Hensley met with Dixon. Again, Dixon was vague and unconvincing when describing his symptoms. Hensley determined that Dixon presented no treatable mental health problems and did not prescribe any medication or recommend regularly scheduled contact with mental health staff. Hensley did refer Dixon to be given the Minnesota Multiphasic Personality Inventory test. This test, given to Dixon on April 22, 1999 and again on June 15, 1999, is used to conduct mental health assessments. Dr. Martin Paul Chaplin ("Chaplin"), the supervising psychologist at Northern Correctional Institution, reviewed the test results. The results of the two tests were similar and strongly suggested that Dixon grossly exaggerated any symptoms he may have experienced and probably fabricated other psychiatric symptoms. The mental health staff concluded that Dixon intentionally produced false or exaggerated symptoms to appear to have a mental health disorder.

In July 1999, Dixon was transferred to Cheshire Correctional Institution. On July 22, 1999, Dixon was seen by the staff psychiatrist at Cheshire Correctional Institution. The psychiatrist reviewed his chart and interviewed Dixon. He diagnosed antisocial personality disorder and history of polysubstance abuse. He noted no need for medication and recommended follow-up visits only as needed. In December 1999, Dixon returned to Northern Correctional Institution. Since his return, he has been seen by the psychiatric social worker on request, and from time-to-time by Chaplin. During the last visit on June 23, 2000, Chaplin noted no signs of psychotic process, significant depression , dementia or suicidal ideation.

II. STANDARD OF REVIEW

In a motion for summary judgment, the burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. See Rule 56(c), Fed. R. Civ. P.; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986); White v. ABCO Engineering Corp., 221 F.3d 293, 300 (2d Cir. 2000). A court must grant summary judgment "'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact . . . .'" Weinstock v. Columbia Univ., 224 F.3d 33, 41 (2d Cir. 2000) (quoting Fed. R. Civ. P. 56(c)). "An issue of fact is 'genuine' if 'the evidence is such that a

reasonable jury could return a verdict for the nonmoving party.'" Konikoff v. Prudential Ins. Co. of Am., 234 F.3d 92, 97 (2d Cir. 2000) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). "[I]f after discovery, the nonmoving party has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof," summary judgment is appropriate. Hellstrom v. U.S. Dep't of Veterans Affairs, 201 F.3d 94, 97 (2d Cir. 2000) (internal quotation marks omitted) (quoting Berger v. United States, 87 F.3d 60, 65 (2d Cir. 1996)).

"The non-moving party may not rely on conclusory allegations or unsubstantiated speculation. Instead, 'the non-movant must produce specific facts indicating' that a genuine factual issue exists. 'If the evidence [presented by the non-moving party] is merely colorable, or is not significantly probative, summary judgment may be granted.' To defeat a motion, 'there must be evidence on which the jury could reasonably find for the [non-movant].'" Scotto v. Almenas, 143 F.3d 105, 114 (2d Cir. 1998) (citations omitted).

"In deciding the motion, the trial court must first resolve all ambiguities and draw all inferences in favor of the non-moving party, and then determine whether a rational jury could find for that party." Graham v. Long Island R.R., 230 F.3d 34, 38 (2d Cir. 2000). "If reasonable minds could differ as to the import of the

evidence, . . . and [i]f . . . there is any evidence in the record from any source from which a reasonable inference in the [nonmoving party's] favor may be drawn, the moving party simply cannot obtain a summary judgment." R.B. Ventures, Ltd. v. Shane, 112 F.3d 54, 59 (2d Cir. 1997) (internal quotation marks omitted) (quoting Brady v. Town of Colchester, 863 F.2d 205, 211 (2d Cir. 1988)). Moreover, where one party is proceeding pro se, the "court[] must construe pro se pleadings broadly, and interpret them 'to raise the strongest arguments that they suggest.'" Cruz v. Gomez, 202 F.3d 593, 597 (2d Cir. 2000) (quoting Graham v. Henderson, 89 F.3d 75, 79 (2d Cir. 1996)).

"At the same time, the non-moving party must offer such proof as would allow a reasonable juror to return a verdict in his favor . . .." Graham, 230 F.3d at 38. A party, even a pro se plaintiff, may not create a genuine issue of material fact by presenting unsupported statements or "sweeping allegations." Shumway v. United Parcel Serv., Inc., 118 F.3d 60, 65 (2d Cir. 1997). The non-moving party "cannot defeat the motion by relying on the allegations in his pleading, or on conclusory statements, or on mere assertions that affidavits supporting the motion are not credible. The motion 'will not be defeated merely . . . on the basis of conjecture or surmise.'" Gottlieb v. County of Orange, 84 F.3d 511, 518 (2d Cir. 1996) (citations omitted); see also Fed. R. Civ. P. 56(e) (a non-moving party "may

not rest upon the mere allegations or denials of the [non-moving] party's pleading").

However, a pro se plaintiff must be provided with "explicit notice [as to the nature of the defendant's summary judgment motion, and] the mere existence of a response does not automatically give rise to the inference that a pro se litigant understood the nature of a summary judgment motion." Sawyer v. Am. Fed'n of Gov't Employees, 180 F.3d 31, 35 (2d Cir. 1999). "'Where the proper notice has not been given, the mere fact that the pro se litigant has made some response to the motion for summary judgment is not dispositive where neither his response nor other parts of the record reveal that he understood the nature of the summary judgment process.'" Id. However, the Second Circuit has not imposed "an unyielding rule prohibiting district courts from acting upon motions for summary judgment sought against pro se litigants in the absence of explanatory notice," but rather "the issue in each case remains whether from all of the circumstances, including the papers filed by the pro se litigant, it is reasonably apparent that the litigant understood the nature of the adversary's summary judgment motion and the consequences of not properly opposing it." Id. Here, based on the plaintiff's response, which includes filing a separate brief, declaration, and "Statement of Disputed Factual Issues," the court concludes that it is reasonably apparent that the litigant understood the nature of the adversary's summary judgment motion and the

consequences of not properly opposing it.

III. DISCUSSION

The defendant raises three grounds in support of his motion for summary judgment: (1) all claims for monetary damages against the defendant in his official capacity are barred by the Eleventh Amendment, (2) the defendant did not violate any constitutionally protected right of the plaintiff, and (3) the defendant is protected by qualified immunity.

A. **Eleventh Amendment**

The defendant first argues that any claims for monetary damages against him in his official capacity are barred by the Eleventh Amendment. This court agrees.

Generally, a suit for recovery of money may not be maintained against the state itself, or against any agency or department of the state, unless the state has waived its sovereign immunity under the Eleventh Amendment. See Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984). 42 U.S.C. § 1983 does not override a state's Eleventh Amendment immunity. See Quern v. Jordan, 440 U.S. 332, 342-45 (1979); Santiago v. N.Y. State Dep't of Corr. Servs., 945 F.2d 25, 31 (2d Cir. 1991). The Eleventh Amendment immunity which protects the state from suits for monetary relief also protects state officials sued for damages in their official capacity. See Spencer v. Doe, 139 F.3d 107, 111 (2d Cir. 1998). A

suit against a defendant in his official capacity is ultimately a suit against the state if any recovery would be expended from the public treasury. See N.Y. City Health & Hosps. Corp. v. Perales, 50 F.3d 129, 134 (2d Cir. 1995).

In his complaint, the plaintiff names the defendant in his official and individual capacities. He seeks damages and injunctive relief, but does not specify in which capacity he seeks money damages. Because an award of damages against the defendant in his official capacity is barred by the Eleventh Amendment, the motion for summary judgment is granted as to this claim.

B. Deliberate Indifference to a Serious Mental Health Need

The plaintiff asserts a claim of deliberate indifference against Hensley. Hensley moves for summary judgment on this claim against his individual capacity on the ground that he has not violated any constitutionally protected right of the plaintiff.

Deliberate indifference by prison officials to a prisoner's serious medical or mental health need constitutes cruel and unusual punishment in violation of the Eighth Amendment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976). To prevail on such a claim, however, the plaintiff must allege "acts or omissions sufficiently harmful to evidence deliberate indifference" to serious medical or mental health needs. Id. at 106. A prisoner must show intent to either deny or unreasonably

delay access to needed medical or mental health care or the wanton infliction of unnecessary pain by prison personnel. Id. at 104-05. Mere negligence will not support a section 1983 claim; the conduct complained of must shock the conscience or constitute a barbarous act. Hathaway v. Coughlin, 99 F.3d 550, 553 (2d Cir. 1996); Martinez v. Mancusi, 443 F.2d 921, 923 (2d Cir. 1970).

"Medical malpractice does not become a constitutional violation merely because the victim is a prisoner." Estelle, 429 U.S. at 106. A treating physician will be liable under the Eighth Amendment only if his conduct is "repugnant to the conscience of mankind." Estelle, 429 U.S. at 105-06. Inmates do not have a constitutional right to the treatment of their choice. See Dean v. Coughlin, 804 F.2d 207, 215 (2d Cir. 1986). Thus, mere disagreement with prison officials about what constitutes appropriate care does not state a claim cognizable under the Eighth Amendment. Chance v. Armstrong, 143 F.3d 698, 703 (2d Cir. 1998).

There are both subjective and objective components to the deliberate indifference standard. Id. at 702. "[T]he alleged deprivation must be, in objective terms, sufficiently serious." Id. (internal quotation marks omitted). Thus, not all medical or mental health conditions satisfy this component of the standard. See id. Rather, "[a] serious medical condition exists where 'the failure to treat a prisoner's condition could result in further significant injury or the unnecessary and wanton

infliction of pain.'" Harrison v. Barkley, 219 F.3d 132, 136 (2d Cir. 2000) (quoting Chance, 143 F.3d at 702).

In addition to demonstrating a serious medical need to satisfy the objective component of the deliberate indifference standard, an inmate also must present evidence that, subjectively, the charged prison official acted with "a sufficiently culpable state of mind." Chance, 143 F.3d at 702. "An official acts with the requisite deliberate indifference when that official 'knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.'" Id. (quoting Farmer v. Brennan, 511 U.S. 825, 837 (1994)).

In this case, Dixon contends that his mental health condition constitutes a serious medical need and that Hensley was deliberately indifferent to that need when he failed to examine Dixon fully and prescribe treatment on December 2, 1998. Dixon had been prescribed Risperdol in late April 1997. (See Consent form, dated April 29, 1997, attached to Pl.'s Resp., Dkt. No. 14.) Dixon's medical records, attached to Hensley's affidavit as Exhibit B, indicate that the medication was discontinued on May 1, 1997. In February 1998, Dixon was prescribed Vistaril for seven days. There are no other referenced to medication other than insulin in the

medical records.

The medical records reveal that after the exposure to possibly contaminated insulin in February 1998, Dixon underwent HIV testing in accordance with procedures recommended by the Centers for Disease Control and counseling. Over time, the counseling sessions became less frequent. Dixon appeared to adjust well to Northern Correctional Institution. Hughes, his primary therapist, indicated that Dixon was generally resting comfortably when she saw him and exhibited no discernable distress. His complaints concerned stress over the length of his sentence, noise in the tier and problems controlling anger. Hughes noted in July and August 1998, that Dixon should be considered for a Mental Health 2 rating. Dixon was referred to Hensley when he requested medication to help him sleep.

At the December 2, 1998 examination, Hensley states that Dixon was uncooperative and refused to answer questions about planned litigation. Hensley noted that Dixon was vague about his symptoms and observed no discernable need for psychotic medication or regularly scheduled treatment. Thus, he rated Dixon as Mental Health 2. Inmates with this classification received no scheduled contact with mental health staff and no medication, but could request mental health visits as needed. Dixon, on the other hand, states that Hensley only asked him about his litigation and was not interested in his symptoms. Dixon claims to have been

cooperative at all times and only declined to answer questions about his planned lawsuit.

Hensley saw Dixon again in April 1999. His notes of the examination reveal that he had the same impression as in December 1998. Dixon was vague and unconvincing when describing his symptoms and did not require medication or regularly scheduled contact with mental health staff. Subsequently, Dixon was transferred to Cheshire Correctional Institution. After interviewing Dixon and reviewing his medical records, the staff psychiatrist concurred with Hensley's diagnosis. In addition, in mid-1999, Dixon underwent testing that suggested that he was exaggerating and fabricating his symptoms. Chaplin, the staff psychologist at Northern Correctional Institution interpreted the test results. In May 1999, Dixon was seen for claims of being depressed two or three days a week. The treatment provider noted that Dixon presented himself as angry, not as depressed.

In May 2000, Hughes met with Dixon about his complaints of depression. Dixon stated that he felt sleepy and had low energy. He concluded that these symptoms indicated depression. Hughes noted, however, that Dixon is diabetic and frequently refuses to take his insulin. She indicated that the resulting hyperglycemia causes the same symptoms that Dixon attributed to depression. Also, in June 2000, Chaplin noted that Dixon was neither depressed nor psychotic. After reviewing all

of the medical records provided by the parties, the court concludes that the plaintiff has not raised a material issue of fact, sufficient to survive summary judgment, as to whether he suffered from a serious mental health condition in December 1998.

Further, even if Dixon's condition could be considered serious, he has not set forth evidence to raise a material issue of fact as to whether he required medication or regularly scheduled contact with medical staff, rather than treatment on an as-needed basis. Inmates have no right to the treatment of their choice. See Dean v. Coughlin, 804 F.2d 207, 215 (2d Cir. 1986). Thus, the fact that Dixon would have preferred other treatment does not sustain his claim. Mental health records indicate that Dixon was being seen upon request. He was being considered for Mental Health 2 status as early as July 1998, and all the medical records support this classification. Dixon has presented no evidence indicating how he was harmed by the classification.

The court notes that Dixon also contends that he was not seen timely in accordance with Department of Correction policy. That policy provides that an inmate will be evaluated within thirty days of his arrival at Northern Correctional Institution and every ninety days thereafter. Dixon was evaluated initially by the psychiatric social worker and seen regularly by Hughes, the nurse clinician. He argues, however, that he was not seen from December 2, 1998 until April 21, 1999,

a period of more than ninety days. He argues that this review should be automatic; he should not be required to request a mental health visit. As discussed above, Dixon has presented no evidence that he suffered any injury as a result of the length of time between these two examinations. See Harrison, 219 F.3d at 138 (delay in treatment may constitute deliberate indifference if it involves "outright refusal of any treatment for a degenerative condition that tends to cause acute infection and pain if left untreated"). Although the reviews did not technically comply with the departmental policy, the plaintiff has not shown that Hensley disregarded a serious risk of harm by the delay.

The court concludes that the plaintiff has failed to meet his burden of raising a material issue of fact as to whether Hensley was aware of and deliberately disregarded a substantial risk of harm by his actions. Thus, the defendant's motion for summary judgment is granted on this ground.

C. Qualified Immunity

Finally, the defendant argues that he is protected by qualified immunity. Even though the court has determined that the defendant's motion for summary judgment should be granted on other grounds, it considers this ground for relief because Hensley's actions appear objectively reasonable in light of the existing law.

"Qualified immunity shields government officials from liability in their

individual capacity if 'their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Lauro v. Charles, 219 F.3d 202, 214 (2d Cir. 2000) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). The Supreme Court has recently clarified the analysis which courts must employ to resolve a claimed defense of qualified immunity. In Wilson v. Layne, the Court held:

> A court evaluating a claim of qualified immunity must first determine whether the plaintiff has alleged the deprivation of an actual constitutional right at all, and if so, proceed to determine whether that right was clearly established at the time of the alleged violation. This order of procedure is designed to spare a defendant not only unwarranted liability, but unwarranted demands customarily imposed upon those defending a long drawn-out lawsuit. Deciding the constitutional question before addressing the qualified immunity question also promotes clarity in the legal standards for official conduct, to the benefit of both the officers and the general public.

526 U.S. 603, 609 (1999) (citations and internal quotation marks omitted). Thus, "a government official sued in his individual capacity . . . is entitled to qualified immunity in any of three circumstances: (1) if the conduct attributed to him is not prohibited by federal law; or (2) where that conduct is so prohibited, if the plaintiff's right not to be subjected to such conduct by the defendant was not clearly established at the time of the conduct; or (3) if the defendant's action was 'objective[ly] legal[ly] reasonable[ ] . . . in light of the legal rules that were clearly

established at the time it was taken.'" X-Men Sec., Inc. v. Pataki, 196 F.3d 56, 65-66 (2d Cir. 1999) (citations omitted).

In this case, the challenged action is Hensley's failure to continue the December 2, 1998 examination when Dixon refused to discuss his planned litigation against the medical staff at Bridgeport Correctional Center. The plaintiff has alleged the deprivation of an actual constitutional right, and the legal rules regarding the contours of an inmate's right to be free from cruel and unusual punishment in the form of deliberate indifference to a serious medical need were clearly established in December 1998. See, e.g., Farmer, 511 U.S. at 835.

Thus, the court must consider whether Hensley's actions were objectively reasonable. "The objective reasonableness test is met—and the defendant is entitled to immunity—if 'officers of reasonable competence could disagree' on the legality of the defendant's actions." Rohman v. N.Y. Transit Auth., 215 F.3d 208, 216 (2d Cir. 1999) (quoting Lennon v. Miller, 66 F.3d 416, 420 (2d Cir. 1995)). The medical records indicate that every other psychiatrist or psychologist examining Dixon has concurred with Hensley's diagnosis. The psychological tests supported Hensley's determination that Dixon was exaggerating or fabricating his complaints. The plaintiff has failed to come forward with evidence to raise a material issue of fact, such as a medical diagnosis to suggest that medical personnel, faced with the

plaintiff's condition and situation, would opine that Hensley acted unreasonably. "[I]n the absence of a material factual dispute, the question of whether it was objectively reasonable for the officers to believe that they did not violate the plaintiff's rights is a purely legal determination for the court to make." Lennon, 66 F.3d at 422. In light of the above findings, the court concludes that Hensley's classification of Dixon as Mental Health 2 with treatment on an as requested basis is objectively reasonable. Thus, the motion for summary judgment may be granted on this ground as well.

IV. CONCLUSION

The defendants' Motion for Summary Judgment [Dkt. No. 15] is GRANTED. The Clerk is directed to enter judgment for the defendant and close the case.

SO ORDERED.

Dated at Bridgeport, Connecticut, this 16th day of February, 2001.

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Janet C. Hall
United States District Judge