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

DARREN JOHNSON	**:**	**CIVIL ACTION**
	:	
v.	**:**	**NO. 00-711**
	:	
NORMAN STEMPLER, M.D., et al.	**:**	

MEMORANDUM AND ORDER

Kauffman, J. **January , 2005**

Pro se plaintiff Darren Johnson asserts claims under 42 U.S.C. § 1983 against Defendants Norman Stempler, M.D. ("Dr. Stempler"), Dennis Moyer, M.D. ("Dr. Moyer"), Prison Health Services, Inc. ("PHS") and Correctional Physician Services, Inc. ("CPS") alleging that, during his incarceration at the State Correctional Institution at Graterford ("SCI-Graterford"), Defendants failed to provide him with timely and adequate medical treatment, in violation of the Eighth Amendment. Plaintiff also asserts state law medical malpractice and corporate negligence claims. Defendants Dr. Stempler and Dr. Moyer, together with PHS and CPS, have filed separate motions for summary judgment. For the reasons that follow, these motions will be granted in part and denied in part.

I. Background

Plaintiff alleges that he was given inadequate medical treatment for an injury he sustained while incarcerated at SCI-Graterford. It is undisputed that on June 9, 1999, while Plaintiff was incarcerated, he injured his right knee while playing volleyball. See Deposition of Darren Johnson ("Dep.") at 14; Dr. Moyer, et al. Motion for Summary Judgment ("Moyer") at 4. Plaintiff was immediately taken to the prison dispensary where he received an ice pack and

crutches. Dep. at 15. He was told to sign up for sick call, to obtain an x-ray and diagnosis. Dep. at 15-16. The next day, Plaintiff went to sick call, where Dr. Kirnara ordered an x-ray. Dep. at 16. On June 11, 1999, an x-ray was performed. Complaint ¶ 12. According to a report provided by Plaintiff, this x-ray revealed that the "patella is in high position suggesting the possibility of compromise of the patellar ligament." Plaintiff's Motion in Opposition to Motion for Summary Judgment of Defendants Dr. Moyer, CPS, and PHS, ("Plaintiff's Motion in Opposition to Moyer") Exhibit 1. This report apparently was obtained by the prison on June 18, 1999. Id.

Over the next few weeks, Plaintiff continued to have problems with pain and swelling in his right knee. On June 15, 1999, Plaintiff signed up for sick call and was seen by Dr. Moyer, who conducted a knee tap without local anesthetic. Dep. at 26-27; Complaint ¶ 14-15. Plaintiff contends that this procedure caused him intense pain. Dep. at 28. He further states that his kneecap was out of place, swollen, painful, and that he was not able to fully bend his knee. Complaint ¶ 17; Dep. at 28. Dr. Moyer's report from that day details swelling and bloody fluid in the right knee. See Plaintiff's Motion in Opposition to Moyer, Exhibit 1.

On June 22, Plaintiff again signed up for sick call due to the pain and swelling in his right knee. Complaint ¶ 18; Dep. at 31. Again, he received a pass to see Dr. Moyer, who conducted a second knee tap. Complaint ¶¶ 19-20. This knee tap also caused Plaintiff extreme and intense pain. Id. A report from that day indicates that Dr. Moyer observed swelling and fluid in the right knee. Plaintiff's Motion in Opposition to Moyer, Exhibit 1. As with the previous examination, Dr. Moyer prescribed Motrin and recommended the use of an ace bandage. Id. On July 9, Plaintiff reported to the Clinic Office and was given a knee immobilizer. Complaint ¶ 21; Dep. at 32-33. At that time, the office secretary, Ms. Rose, contacted Dr. Baddick, the supervising

doctor, to look at Plaintiff's knee because it "didn't look right." Dep. at 34-35. Dr. Baddick instructed Plaintiff to return to the Clinic later that day, so that he could examine the knee. Complaint ¶ 23. According to Plaintiff's testimony, Dr. Baddick and Dr. Eugene Pratt conducted an examination of Plaintiff's knee and determined that he was possibly suffering a "patella altered." Dep. at 36. One of these doctors informed Plaintiff that prison authorities had reviewed his medical file and determined that he would not be referred to outside facilities for surgery. Dep. at 37. Plaintiff has also submitted affidavits of fellow prisoners who claim that their referrals for outside medical treatment were improperly delayed by prison officials. Plaintiff's Motion in Opposition to Moyer, Exhibit 7

On July 15, 1999, approximately a month after the results of his first x-ray, Plaintiff was taken to the prison orthopedic clinic, where he was examined by Dr. Stempler. According to a consultation record provided by Plaintiff, Dr. Stempler identified a possible disruption in Plaintiff's right patellar tendon and noted significant right knee effusion, requiring attempts to drain the knee. Plaintiff's Motion in Opposition to Moyer, Exhibit 4. Dr. Stempler reportedly informed Plaintiff that he had a "raised patella" and advised Plaintiff to perform leg exercises and desist wearing the knee immobilizer. Dep. at 67-68. The next day, Plaintiff was taken to an outside MRI Center, Suburban General Hospital, apparently at the recommendation of Dr. Baddick. Dep. at 42. According to medical records, the MRI revealed a "complete tear of the patellar tendon at the apex of the patella." Plaintiff's Motion in Opposition to Moyer, Exhibit 5. This report was received by the prison and reviewed by Dr. Baddick on July 20, 1999. An immediate outside referral was recommended in light of the diagnosis. Id.

On July 27, 1999, Plaintiff was examined by Dr. Mandel, an outside orthopedic surgeon.

Dr. Mandel informed Plaintiff that he would likely have permanent damage to his right knee as a result of the delayed treatment. Dep. at 44. Plaintiff alleges that Dr. Mandel wanted to perform the surgery immediately, but that the guards escorting him were not scheduled to stay at the hospital so the treatment was delayed. Dep. at 45. A letter from Plaintiff's previous attorney confirms that Dr. Mandel would testify that he wanted to perform the reconstructive surgery in July, in order to limit long term knee damage, but that he did not receive the necessary approval from the prison until much later. Plaintiff's Motion in Opposition to Moyer, Exhibit 8. Prison medical records provided by Plaintiff reveal that he was approved for surgery on August 13, 1999. Plaintiff's Motion in Opposition to Moyer, Exhibit 6. Plaintiff was not scheduled for reconstructive surgery at the hospital until September 17, 1999. Dep. at 45-46. Dr. Mandel, who performed the surgery, notes in a report that Plaintiff suffered a total rupture of his patellar tendon, resulting in limitations of knee movement and extension. Plaintiff's Motion in Opposition to Moyer, Exhibit 6. He further notes that there is no guarantee surgery will fully restore the knee. Id. After surgery, Plaintiff underwent several months of physical therapy. Dep. at 71. Plaintiff has alleged continuing difficulties with his knee, and his inability to perform everyday functions such as cleaning up and walking down the steps. Dep. at 66.

II. Legal Standard

In deciding a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56, the test is "whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." Med. Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999) (quoting Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994)). "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the

evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The Court must examine the evidence in the light most favorable to the non-moving party and resolve all reasonable inferences in that party's favor. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). However, "there can be 'no genuine issue as to any material fact' . . . [where the non-moving party's] complete failure of proof concerning an essential element of [its] case necessarily renders all other facts immaterial." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

III. Analysis

A. Plaintiff's Eighth Amendment Claims (Counts I & II)

Count I of Plaintiff's Third Amended Complaint alleges violations of the Eighth Amendment's prohibitions of cruel and unusual punishment, based on inadequate medical care, against Drs. Stempler and Moyer; Count II charges the same against PHS and CPS. Through its prohibition on cruel and unusual punishment, the Eighth Amendment imposes a duty on prison officials to provide humane conditions of confinement, including adequate medical treatment. Estelle v. Gamble, 429 U.S. 97, 104 (1976). A violation of the Amendment occurs when (1) a medical need is serious and (2) the acts or omissions by prison officials demonstrate "deliberate indifference" to the inmate's health or safety. See Estelle, 429 U.S. at 106; Monmouth County Corr. Institutional Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987) ("Lanzaro"). The Supreme Court has clarified this "deliberate indifference" standard, explaining that it is a subjective test, meaning the official must actually know of and disregard an excessive risk to the health of the inmate. Farmer v. Brennan, 511 U.S. 825, 829 (1994).

1. Serious Medical Need

A medical need will be considered "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." Lanzaro, 834 F.2d at 347. In addition, where a denial or delay in treatment causes an inmate "to suffer a life-long handicap or permanent loss, the medical need is considered serious." Id.; see also Gerber v. Sweeney, 292 F. Supp. 2d 700, 708 (E.D. Pa. 2003). Contrary to the assertions of Drs. Stempler and Moyer, there is no requirement that an injury be "life threatening" to be considered serious under the Eighth Amendment. Courts in this district have found a range of injuries to constitute a serious medical need. See Petrichko v. Kurtz, 117 F. Supp. 2d 467, 470 (ruling dislocated shoulder to be serious injury); Gerber, 292 F. Supp. 2d at 708 (finding hypertension to be a serious medical need); Cropps v. Chester County Prison, 2001 WL 45762, at *2 (E.D. Pa. Jan. 19, 2001) (ruling slip and fall that results in loss of consciousness constitutes serious medical injury); Miller v. Hoffman, 1998 WL 404034, at *4 (E.D. Pa. July 7, 1998) (elbow injury).

Between the diagnosis of Dr. Mandel and the MRI, there is sufficient evidence to show that Plaintiff suffered a completely torn patellar tendon, and that his kneecap was displaced. Records of examinations by prison doctors detail the swelling and bloody fluid surrounding Plaintiff's knee, and some form of problem with his patella. Even without the medical records confirming Plaintiff's knee injury and the necessity of surgery, a lay person could reasonably conclude from the swelling, pain, and limited motion that some manner of medical treatment was needed. In addition, the medical reports of Dr. Mandel and Plaintiff's testimony provide a basis for determining that Plaintiff will suffer a life-long handicap in terms of loss of knee function and

range. There is evidence that Plaintiff was required to undergo months of physical therapy to regain use of his knee after surgery. Finally, a reasonable jury could credit Plaintiff's testimony regarding an on-going difficulty with daily life activities, such as walking down stairs. In sum, there is sufficient evidence for a reasonable jury to determine that Plaintiff's injury was "serious" under the terms of Estelle.[1]

2. Deliberate Indifference by Drs. Stempler and Moyer

Under Estelle, deliberate indifference is present when prison officials intentionally deny or delay access to necessary medical treatment for non-medical reasons, or when they intentionally interfere with a course of treatment once prescribed. See Estelle, 429 U.S. at 104-05; Rouse v. Plantier, 182 F.3d 192, 197 (3d Cir. 1999). Medical judgments by doctors or prison officials that later prove inappropriate or negligent, however, are not alone sufficient to give rise to an Eighth Amendment claim. See Estelle, 429 U.S. at 106-07. Stated simply, medical malpractice is not a constitutional violation. Id. The result is that, when some medical care is administered by officials (even if it would arguably fall below the generally accepted standard of care), this is generally sufficient to rebut accusations of deliberate indifference and preclude finding an Eighth Amendment violation. See, e.g., Brown v. Borough of Chambersburg, 903 F.2d 274, 278 (3d Cir. 1990) (stating that prison officials and doctors will be given wide latitude to address the medical needs of inmates and that "as long as a physician exercises professional judgement his behavior will not violate a prisoner's constitutional rights").

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[1] Especially in cases where a lay person would recognize the need for medical treatment, it is well established that an inmate need not present expert testimony to prevail on an Eighth Amendment claim. See Petrichko, 117 F. Supp. 2d at 473-74 (collecting cases); see also Rodriguez v. Brewington-Carr, 2002 WL 484714, at *4-5 (D. Del. March 14, 2002).

While Drs. Stempler and Moyer may not have provided the most effective treatment, there is not sufficient evidence for a reasonable jury to conclude that they failed to exercise their professional judgment, or that they were deliberately indifferent to Plaintiff's medical needs. Dr. Stempler examined Plaintiff once before his surgery on July 15, over a month after the initial injury. Dep. at 64. Dr. Stempler diagnosed Plaintiff's injury (a "raised patella") and recommenced a course of treatment, including leg exercises. Dep. at 67-68. Even though doctors later determined that Plaintiff required surgery, Dr. Stempler's seemingly contrary diagnosis merely represents a medical judgment that, without more, cannot give rise to an Eighth Amendment deliberate indifference claim. See, e.g., Estelle, 429 U.S. at 107 (stating that even if more could have been done in terms of medical diagnosis and treatment, there is no Eighth Amendment violation provided the prisoner receives some medical care); White v. Napolean, 897 F.2d 103, 110 (3d Cir. 1990) ("Certainly no claim is stated when a doctor disagrees with the professional judgment of another doctor. There may...be several acceptable ways to treat an illness.").

Similarly, though Dr. Moyer's chosen course of treatment ultimately proved inefficacious and he seemingly mis-diagnosed Plaintiff's injury, his actions were undertaken pursuant to his medical judgment and cannot constitute the basis of an Eighth Amendment claim. Dr. Moyer performed two knee taps on Plaintiff and recommended treatment, including the use of Motrin and an ace bandage. There is no evidence that he refused treatment or that he had some knowledge of the severity of Plaintiff's injury, but intentionally chose not to treat it appropriately. The treatment provided by Dr. Moyer is sufficient to establish that he was not deliberately indifferent to Plaintiff's needs under the Estelle standard.

In many ways, this case is similar to Lindsay v. Dunleavy, recently decided in this district. See 177 F. Supp. 2d 398 (E.D. Pa. 2001). In Lindsay, a prisoner was struck in the jaw by another inmate and taken to a physician's assistant, Amoh, within the prison for treatment. Id. at 400. Amoh gave the prisoner cotton to stop the bleeding in his mouth and some pain medication. Id. Repeatedly, the prisoner returned to Amoh due to pain, swollenness, and continued bleeding in his jaw. Id. at 400-01. Amoh refused to order an x-ray and continually told the prisoner that his jaw would simply take time to heal. Lindsay, 177 F. Supp. 2d at 401. Finally, over a week after the assault, the prisoner was transferred to another facility, where an x-ray was ordered, and the prisoner was diagnosed with a broken jaw, which required surgery. Id. The court in that case dismissed the prisoner's Eighth Amendment claim, reasoning that the prisoner could not make out an argument of deliberate indifference because he had consistently received some form of treatment from Amoh. Id. at 402-03.

In sum, however ineffective or cursory the doctors' treatments of Plaintiff proved, this Court is constrained by cases repeatedly emphasizing that the Eighth Amendment is not a tool to second guess a particular course of medical treatment. When a plaintiff receives some medical care, the Court is not permitted to scrutinize the adequacy or propriety of that care; such a claim sounds in medical malpractice, not constitutional law. See, e.g., Stackhouse v. Marks, 556 F. Supp. 270 (M.D. Pa. 1982) (no Eighth Amendment claim where defendant visited medical personnel approximately 40 times for treatment of hip and back injuries); Brinton v. Gaffney, 554 F. Supp. 388, 389 (E.D. Pa. 1983) (dismissing prisoner Eighth Amendment claim where prisoner received some medical care); Gerber, 292 F. Supp. 2d at 709. For these reasons, summary judgment will be granted against Plaintiff, in favor of Dr. Stempler and Dr. Moyer on

the Eighth Amendment claim (Count I).

3. Deliberate Indifference by CPS and PHS

Plaintiff raises a similar Eighth Amendment claim against CPS and PHS. As a preliminary matter, PHS claims that it had no contractual obligation to provide medical services to the inmates at SCI-Graterford until May 2000. See Answer to Complaint by Dr. Moyer, et al.; Verification of Jonessa Milliken. Plaintiff has offered no evidence to show that PHS was involved with medical care at SCI-Graterford at that time, meaning that it can bear no liability for the events giving rise to this suit. Consequently, summary judgment must be granted in favor of PHS.

Like treating physicians and other prison employees, cities and private health care providers acting under color of state law, like CPS, can be liable under § 1983 for Eighth Amendment violations stemming from inadequate medical treatment of prisoners. See Monell v. Dep't of Social Servs., 436 U.S. 658, 690; Thomas v. Zinkel, 155 F. Supp. 2d 408, 412 (E.D. Pa. 2001). This liability cannot rest on respondeat superior alone, however, but must instead be based on some policy, practice, or custom within the institution that caused the injury. See Thomas, 155 F. Supp. 2d at 412; Miller v. Hoffman, 1998 WL 40434, at *4-5 (E.D. Pa. July 7, 1998). Therefore, in order to survive summary judgment, Plaintiff must present evidence of a policy, practice, or custom of CPS, which caused or exacerbated a serious medical need and was instituted with deliberate indifference to the consequences. Thomas, 155 F. Supp. 2d at 412; Miller, 1998 WL 404034 at *5 (citing Stoneking v. Bradford Area Sch. Dist., 882 F.2d 720, 725 (3d Cir. 1989)).

For the purposes of § 1983, a policy is made when a decision-maker with final authority

to establish such policy issues an official proclamation, policy or edict. See Andrews v. City of Philadelphia, 895 F.2d 1468, 1480 (3d Cir. 1990); Unterberg v. Corr. Med. Sys., Inc., 799 F. Supp. 490, 497-98 (E.D. Pa. 1992). Custom, on the other hand, "can be proven by showing that a given course of conduct, although not specifically endorsed or authorized by law, is so well-settled and permanent as virtually to constitute law." Bielevicz v. Dubinon, 915 F.2d 845, 850 (3d Cir.1990). As a result, custom can be established by "proof of knowledge and acquiescence." Fletcher v. O'Donnell, 867 F.2d 791, 793-94 (3d Cir. 1989); Unterberg, 799 F. Supp. at 498. Under Estelle, deliberate indifference in the present context can be shown where there is an established policy or custom that causes prison officials to intentionally deny or delay access to necessary medical treatment for non-medical reasons, or when officials intentionally interfere with a course of treatment once prescribed. See Estelle, 429 U.S. at 104-05; Rouse v. Plantier, 182 F.3d 192, 197 (3d Cir. 1999).

Considering the evidence, this Court cannot conclude that no reasonable jury could find deliberate indifference on the part of CPS, when it inexplicably delayed Plaintiff's necessary orthopedic surgery and referral to outside specialists for treatment. As numerous courts have recognized, deliberate indifference exists where "prison authorities prevent an inmate from receiving recommended treatment for serious medical needs." Lanzaro, 834 F.2d at 347; cf. Petrichko, 117 F. Supp. 2d at 472 (finding deliberate indifference where prison officials denied access to appropriate physician for two weeks); Parham v. Johnson, 126 F.3d 454, 458 (3d Cir. 1997) (finding potential deliberate indifference claim where prison official refused to refer prisoner to medical specialist).

In this case, Plaintiff has produced evidence that CPS did not respond to his knee injury

in a timely or adequate fashion, despite knowledge of the injury. An x-ray of Plaintiff's knee was taken on June 11, which revealed some patellar damage; yet, he was not seen by the prison's orthopedic specialist until a month later. Following an MRI and diagnosis of patellar tear, Plaintiff was referred to Dr. Mandel, who reportedly recommended that surgery be performed immediately to attempt to repair Plaintiff's knee. A jury could credit Plaintiff's testimony that, on July 27, 1999, prison officials refused to permit Plaintiff's surgery to take place because they had not planned on having guards remain at the hospital with him. Cf. Petrichko, 117 F. Supp. 2d at 472. Furthermore, Plaintiff has shown that, despite the medical need identified in July, the surgery was not performed until September 17, 1999. Finally, Plaintiff has offered affidavits from other inmates who experienced similar delays in receiving medical treatment.

CPS has not met its initial burden of establishing the absence of a genuine issue of material fact regarding the delays in treatment that Plaintiff suffered. See, e.g., Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); see also Matsushita Elec. Indus. Co., 475 U.S. at 587 (instructing courts to draw factual inferences in favor of the non-moving party in deciding summary judgment motions). No explanation, medical or otherwise, has been offered for these delays, which Dr. Mandel described as potentially aggravating Plaintiff's injury. At this point, although Plaintiff has not presented conclusive evidence of a CPS policy or custom that caused this delay, there is a material question of fact sufficient to survive summary judgment. Significantly, Plaintiff does not merely disagree with the course of treatment. Here the necessary course of treatment was clear and prison officials simply delayed undertaking it. Accordingly, summary judgment must be denied.

B. Medical Malpractice Claims Against Drs. Stempler and Moyer (Count III)

In Count III of his Amended Complaint, Plaintiff brings state law claims of medical malpractice against Drs. Stempler and Moyer for their treatment of his injured knee. Under Pennsylvania law, a prima facie claim for medical malpractice requires: (1) a duty owed by the physician to the plaintiff/patient; (2) a breach of that duty; (3) the breach of duty was the proximate cause of, or a substantial factor in, bringing about the injury; and, (4) damages suffered by the patient that were a direct result of the injury or harm. Mitzelfelt v. Kamrin, 584 A.2d 888, 891 (Pa. 1990). In addition, a plaintiff is required to present expert witness testimony to support his claim. Id. at 892;see also Brannon v. Lankenau Hosp., 417 A.2d 196, 199-200 (Pa. 1980); Hardy v. Kreider, 1996 WL 583176, at *8-9 (E.D. Pa. Oct. 10, 1996). The only exception to the requirement of expert testimony is in those cases where "the matter and investigation is so simple and the lack of skill or want of care is so obvious as to be within the range of ordinary experience or comprehension of even non-professional persons." Hardy, 1996 WL 583176 at *9 (quoting Hoffman v. Mogil, 665 A.2d 478, 480 (Pa. 1995)). An example of such a case is where a surgical tool or instrument is left inside a patient. Id.

In this case, Plaintiff has not presented expert testimony to support his claim of medical malpractice. Plaintiff apparently does not have the funds or ability to secure an expert, and on July 31, 2003, this Court denied Plaintiff's motion to appoint an independent medical expert, as there was no statutory authority for the appointment of medical experts in such suits. Non-prisoner civil plaintiffs are often unable to pay for medical experts; there is no reason to put prisoner plaintiffs in a better position. See, e.g., Boring v. Kozakiewicz, 833 F.2d 468, 474 (3d Cir. 1987). Therefore, although Plaintiff's knee clearly required some medical attention, this is

not a matter so obvious that a determination as to the competency of the medical care administered could be made without an expert. As a result, Plaintiff cannot establish a prima facie case for medical malpractice and summary judgment on this Count will be granted in favor of Drs. Stempler and Moyer.

C. Corporate Negligence Claim (Count IV)

Finally, in Count IV, Plaintiff brings a state law claim for corporate negligence against CPS.[2] Under Pennsylvania law, a claim for corporate negligence exists if a hospital or similar institution can be shown to have had actual or constructive knowledge of a defect or procedure that created harm to an injured party, and if the hospital or institution's negligence was a substantial factor in bringing about this harm. See, e.g., Thompson v. Nason Hosp., 591 A.2d 703, 708 (Pa. 1991). More specifically, corporate negligence can be present if a hospital breaches one of the following duties: (1) a duty to use reasonable care in maintenance of safe and adequate facilities; (2) a duty to select and retain only competent physicians; (3) a duty to oversee all persons who practice medicine within its walls as to patient care; and, (4) a duty to formulate, adopt, and enforce adequate rules and policies to ensure quality care for patients. Id. at 707. Just as with medical malpractice, plaintiffs in corporate negligence suits are required to present expert testimony to establish a prima facie case against the defendant where the negligence is not "obvious." See Welsh v. Bulger, 698 A.2d 581, 585 (Pa. 1997).

Pennsylvania courts have applied the corporate negligence doctrine to hospitals and HMO's, but the Pennsylvania Supreme Court has yet to decide whether the claim can apply to

[2] This claim is also brought against PHS, but must be dismissed, as PHS was not responsible for providing medical care within the prison at the time of Plaintiff's injury.

organizations such as CPS, which provide medical services to prison inmates. See Shannon v. McNulty, 718 A.2d 828, 835-36 (Pa. 1998). In this Court's Order of August 27, 2003, the Court predicted – pursuant to the principle that federal courts should make such predictions when state law is ambiguous – that this doctrine would be extended to organizations like CPS. See Rolick v. Collins Pine Co., 925 F.2d 661, 664 (3d Cir. 1991). This assessment is supported by other courts in the district. See, e.g., Fox v. Horn, 2000 WL 49374, at *8 (E.D. Pa. Jan. 21, 2000).

Plaintiff has alleged violations of the corporate duties to retain only competent physicians, to adequately oversee all practitioners, and to formulate and adopt policies and rules that ensure adequate care for patients. However, Plaintiff has offered no evidence in support of these allegations and, significantly, has not offered an expert report. As a result, Plaintiff cannot survive summary judgment on these claims and the Motion for Summary Judgment of CPS on this Count will be granted.

IV. Conclusion

Based on the above analysis, the Court will grant Defendant Stempler's Motion for Summary Judgment, and grant in part and deny in part the Motion for Summary Judgment by Defendants Moyer, PHS, and CPS. An appropriate Order follows.

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	:	
NORMAN STEMPLER, M.D., et al.	**:**	

ORDER

AND NOW, this 18th day of January, 2005, upon consideration of Defendants' Motions for Summary Judgment, Plaintiff's responses thereto, Defendants' replies, and after oral argument on November 18, 2004, for the reasons stated in the accompanying Memorandum, it is **ORDERED** that:

1. The Motion of Defendant Stempler (docket no. 93) is **GRANTED**. Accordingly, judgment is entered in favor of Defendant Stempler and against Plaintiff on Counts I and III.
2. The Motion of Defendants Moyer, PHS, and CPS (docket no. 97) is **GRANTED** in part and **DENIED** in part. Accordingly, it is **FURTHER ORDERED**:
   a. Judgment is entered in favor of Defendant Moyer and against Plaintiff on Counts I and III.
   b. Judgment is entered in favor of Defendant PHS and against Plaintiff on Counts II and IV.
   c. Judgment is entered in favor of Defendant CPS and against Plaintiff on Count IV, but denied on Count II.

BY THE COURT:

S/ Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.