

UNITED STATE DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

JOHN W. JEFFRIES,

Plaintiff,

CASE NO.: 3:06cv344/MCR/MD

vs.

JAMES EDWARD SULLIVAN, et al

Defendants.

_____/

**DEFENDANT CLARK'S SPECIAL REPORT FILED IN RESPONSE TO
PLAINTIFF'S AMENDED COMPLAINT**

Defendant, Stephanie Clark, pursuant to the Court's Order on January 17, 2007. (Doc. 17), and pursuant to Fed. R. Civ. P. 56 and Local Rule 56.1, submits to the Court her Special Report, and states as follows:

SUMMARY OF PLAINTIFF'S CLAIMS

Plaintiff, *pro se* inmate, filed the present civil rights complaint pursuant to 42 U.S.C. §1983, alleging that Stephanie Clark, E.M.T., along with other defendants, was deliberately indifferent to his serious medical needs in violation of the Fourteenth Amendment's due process clause. As it relates to this Defendant, Plaintiff contends that Stephanie Clark deliberately denied medical care and treatment to Plaintiff. *See* Amended Complaint (Doc. 9). Plaintiff claims he suffered a medical emergency on January 19, 2004 when he woke during the night with shortness of breath and chest pain. *Id.* The Plaintiff called a medical emergency to which Stephanie Clark, E.M.T. and Annie Adams, R.M.A responded. Statement of Facts ¶2.

Where the evidence demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment in their favor as a matter of law, summary judgment is appropriate. *See* Fed. R. Civ. P. 56 (c). The moving party can demonstrate that no genuine issue of material fact exists by filing affidavits which prove the absence of evidence which would support Plaintiff's claims. *See id.* To avoid an entry of summary judgment, the opposing party cannot rely simply upon the pleadings, but must then file its own opposing affidavits or documents which demonstrate that a genuine issue of material fact does exist. *See* Fed. R. Civ. P. 56(e).

To state a claim under § 1983 for failure to provide adequate medical care in violation of a prison's rights, a plaintiff must allege facts which demonstrate a "deliberate indifference to serious medical needs of prisoners." *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Convicted prisoners' rights are protected by the Eighth Amendment's prohibition of cruel and unusual punishment, but a pre-trial detainee's rights are protected under the due process clause of the Fourteenth Amendment, although the test is the same. *Davis v. Hall*, 992 F.2d 151, 152(8th Cir. 1993). A differing of medical opinion will not give rise to a cause of action for violation of the Fourteenth Amendment. *Waldrop v. Evans*, 871 F.2d 1030, 1033 (11th Cir. 1989) (citing *Bowring v. Godwin*, 551 F.2d 44, 48 (4th Cir.1977)). The Supreme Court distinguished between an inadvertent failure to provide medical treatment and deliberate indifference, stating that "a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim for medical mistreatment" *Estelle* at 104. "It is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited...." *Wilson v. Seiter*, 501 U.S. 294, 299 (1991) (emphasis in original).

Defendant Stephanie Clark is licensed by the state of Florida as an Emergency Medical Technician (E.M.T.) under Florida Statutes § 401.27. Her scope of practice is defined in Florida Statutes § 401.23(7) and includes:

the use of techniques such as patient assessment, cardiopulmonary resuscitation (CPR), splinting, obstetrical assistance, bandaging, administration of oxygen, application of medical antishock trousers, administration of a subcutaneous injection using a premeasured autoinjector of epinephrine to a person suffering an anaphylactic reaction, and other techniques described in the Emergency Medical Technician Basic Training Course Curriculum of the United States Department of Transportation.

E.M.T.s do not diagnose medical conditions.

Plaintiff alleges that his diagnosis of pneumothorax on January 19, 2004 was as a result of a beating he received from Deputy Sheriffs Dix and Sullivan at the time of his arrest on January 1, 2004. Plaintiff contends that as a result of physical injury at the hands of Dix and Sullivan he suffered a pneumothorax, or collapsed lung, some nineteen days later. (Doc. 9) He began experiencing shortness of breath and pain which woke him from his sleep in the early morning hours of January 19, 2004. *Id.* Plaintiff also alleges that he announced he was having a medical emergency and members of Prison Health Services (PHS) staff responded. *Id.* Two members of the medical staff came to Plaintiff's cell to assess him. Statement of Facts ¶ 5. These Defendants are identified in Plaintiff's complaint as Jane Does #1 and #2. In the medical records, these Jane Does are identified as Stephanie Clark, E.M.T. and Annie Adams, R.M.A. *Id.* at ¶ 2. Plaintiff alleges that Adams and Clark performed an inadequate medical evaluation and were deliberately indifferent to his serious medical need. Inmate Jeffries was ultimately diagnosed with a pneumothorax and transported to Sacred Heart Hospital for emergent care and treatment. (Doc. 9).

I. THE PLEADINGS AND EVIDENCE FAIL TO ESTABLISH THAT PLAINTIFF WAS DENIED CARE AND TREATMENT FOR A SERIOUS MEDICAL NEED.

The Plaintiff cannot demonstrate that Stephanie Clark subjectively exhibited deliberate indifference to Plaintiff's serious medical needs. In addition to the objective requirement that there must be some serious medical need, Plaintiff must demonstrate that Defendant had the subjective intent to unnecessarily and wantonly inflict pain on Plaintiff by denying him treatment. *See Farmer v. Brennan*, 511 U.S. 82, 834 (U.S. Wis. 1994). It is axiomatic that a claim for medical malpractice does not equate to a violation of constitutional rights. *See Estelle v. Gamble*, 429 U.S. at 104. "Deliberate indifference has three components: (1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than mere negligence." *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999.) "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." *Farmer*, 511 U.S. at 837.

The court in *McElligott* defined deliberate indifference as above and held in that case that summary judgment for the defendants should be reversed since there were adequate facts in the record to support a jury finding of deliberate indifference on the part of the treating physician and nurse. 182 F.3d 1248 at 1256. The Plaintiff in that case, however, was repeatedly denied care and treatment over a six month period despite his repeated requests to be seen, complaints of unrelenting pain, and his ultimate diagnosis of terminal cancer. *Id.*

In the present case, Defendant Clark noted that Inmate Jeffries was short of breath and complained of chest pain. Statement of Facts ¶ 6. Defendant Clark assessed Inmate Jeffries and transported him to the nurses' station for further evaluation and treatment. *Id.* Defendant Clark attempted to evaluate Inmate Jeffries with an EKG and via R.M.A. Adams consulted with Elaine Gregory, RN regarding the inmate's condition. *Id.* at ¶¶ 9 and 10. After Inmate Jeffries received some Mylanta for his discomfort and he expressed some relief, Defendant Clark continued to observe him for an additional thirty-five minutes until Inmate Jeffries went back to his cell. *Id.* at ¶¶ 12 and 13. During that time the inmate sat quietly waiting for transport. *Id.* Defendant Clark also put Inmate Jeffries on the list of inmates to be evaluated by the Physicians Assistant later that morning. *Id.* at 13. Neither the affidavits nor the records affirm the notion that Stephanie Clark ever assessed Plaintiff with an emergency or life threatening condition and then refused to provide care and treatment for the injury.

Furthermore, Defendant Clark's actions do not evince the subjective intent to unnecessarily and wantonly inflict pain upon Plaintiff as a requisite for a § 1983 claim for failure to care and treatment for serious medical need. Defendant Clark assessed Inmate Jeffries and evaluated his medical needs. She consulted with Nurse Gregory as per PHS policy and R.M.A. Adams administered Mylanta to the Plaintiff. It was only when the Plaintiff expressed some relief from his symptoms that Defendant Clark arrange for the Plaintiff to be transported back to his cell. While the inmate awaited his escort, Defendant Clark continued to observe him and assess his condition. She observed that his vital signs were normal and although he was still experiencing some shortness of breath, he appeared and reported to be feeling better. *Id.* She also assured that Inmate Jeffries'

complaints would be followed up by the Physicians Assistant later in the morning by placing him on the list of inmates to be seen. *Id.* The Plaintiff returned to his cell and Defendant Clark was never made aware that further medical treatment was necessary or even desired by the Inmate. *See* Medical Records of Plaintiff (Doc. 52-4). Defendant Clark's actions are inconsistent with any subjective intent to inflict unnecessary pain and suffering upon Plaintiff.

CONCLUSION

Based on the arguments above, Defendant Clark requests the Court grant dismissal of Plaintiff's claim in the event that it decides to transform the instant Special Report into a Motion for Summary Judgment.

/s/ Jeannette M. Andrews

Jeannette M. Andrews, FBN: 0352896

Anna Small, FBN: 0017064

ANDREWS, CRABTREE, KNOX & ANDREWS,

LLP

1558 Village Square Boulevard (32309)

Post Office Box 12800

Tallahassee, Florida 32317-2800

850-297-0090; 850-297-0219 facsimile

Attorneys for Defendant, Prison Health Services,

Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. Mail to John W. Jeffries, *pro se*, Q13522, Tarpon Springs Work Release Camp, 566 Brady Road, Room A1114, Tarpon Springs, FL 34689, and by **electronic filing** to Leonard J. Dietzen, III, Esq., Rumberger, Kirk & Caldwell, P.A., 215 South Monroe Street, Suite 130, Post Office Box 10507 (32302-0507), Tallahassee, Florida 32301,

Timothy M. Warner, Esq., Post Office Box 1820, Panama City, Florida 32402, this 27th
day of August, 2007.

/s/ Jeannette M. Andrews