UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

DALLAS COBBS, #164276,

Plaintiff,

v

GEORGE PRAMSTALLER, *et al*.,

Defendants.

NO. 2:07-cv-14644

HON. ANNA DIGGS TAYLOR
MAG. CHARLES E. BINDER

Paul D. Reingold (P27594) *Attorney for Plaintiff* University of Michigan 801 Monroe Street 363 Legal Research Bldg Ann Arbor, MI 48109 734-763-4319	Randall A. Juip (P58538) Brian J. Richtarcik (P49390) The JuipRichtarcik Law Firm *Attys for CMS Defts* The Penobscot Building 645 Griswold, Suite 3850 Detroit, Michigan 48226	Clifton B. Schneider (P70582) Assistant Attorney General *Attorney for Defendants Naylor, Clark, Neighbors, Pandya, and Pramstaller* Corrections Division P.O. Box 30217 Lansing, MI 48909 (517) 335-7021

DEFENDANTS PRAMSTALLER, CLARK, NAYLOR, PANDYA, AND NEIGHBORS'S MOTION FOR SUMMARY JUDGMENT

Defendants Pramstaller, Clark, Naylor, Pandya, and Neighbors, by counsel, move under Fed R Civ P 56(b) for summary judgment. The defendants ask that the Court grant this motion in their favor as to the claims against them and dismiss this suit. This motion is based on Fed R Civ P 56(b) and the other grounds set forth in the defendants' accompanying brief, as well as the reasons set forth in the CMS defendants' motion for summary judgment (D/E #103).

Concurrence in this motion was sought by email to plaintiff's counsel.

Respectfully submitted,

Michael A. Cox
Attorney General

s/ Clifton Schneider
CLIFTON SCHNEIDER (P70582)
Assistant Attorney General
Corrections Division

PO Box 30217
Lansing, MI 48909
Em ail: schneiderC1@michigan.gov
(517) 335-7021

Date: December 1, 2009 [P70582]

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BRIEF IN SUPPORT OF DEFENDANTS PRAMSTALLER, CLARK, NAYLOR, PANDYA, AND NEIGHBORS'S MOTION FOR SUMMARY JUDGMENT

Michael A. Cox
Attorney General

s/ Clifton Schneider
SCHNEIDER (P70582)
Assistant Attorney General
Division
Box 30217
MI 48909
ail: schneiderC1@michigan.gov
335-7021

CLIFTON

Corrections
PO
Lansing,
Em
(517)

Date: December 1, 2009 [P70582]

CONCISE STATEMENT OF ISSUES PRESENTED

I. The plaintiff alleges deliberate indifference based on failure to provide him with cataract surgery in his left eye. He has not placed verifying medical evidence into the record showing a detrimental effect of the delay in treatment. The defendants made a reasoned medical decision not to provide the surgery because there determined that there was no risk to the plaintiff. Has the plaintiff failed to show an Eighth Amendment violation?

Defendants' answer: **Yes**
Plaintiff's answer: **unknown**

II. The plaintiff has shown only a disagreement over the course of care provided. There is no clearly established law holding that failure to provide a cataract surgery is a constitutional violation where the patient has good vision in the other eye. The defendants acted reasonably and did not violate the plaintiff's clearly established constitutional rights. Are defendants Pramstaller, Clark, Naylor, Pandya, and Neighbors entitled to qualified immunity?

Defendants' answer: **Yes**
Plaintiff's answer: **unknown**

STANDARD OF REVIEW

A defendant is entitled to judgment as a matter of law, with or without supporting affidavits, in the absence of a genuine issue of material fact. FRCP 56(b). Once the moving party discharges his burden of demonstrating the absence of a genuine issue of material fact, the burden then shifts to the nonmoving party, who may not rest on his pleadings but, instead, must present specific facts showing a genuine triable issue. FRCP 56(e). The nonmoving party is not entitled to a trial merely on the basis of allegations, but must come forward with some significant probative evidence to support its claim. *Celotex Corp v. Catrett*, 477 U.S. at 324. "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Anderson v. Liberty Lobby, Inc*, 477 U.S. 242, 252 (1986).

The party opposing summary judgment cannot rest on its pleadings or merely reassert its previous allegations. It is not sufficient "simply [to] show that there is some metaphysical doubt as to the material facts." *Matsushita Elec Indus Co v. Zenith Radio Corp*, 475 U.S. 574, 586 (1986). Rather, Rule 56(e) "requires the nonmoving party to go beyond the pleadings" and present some type of evidentiary material in support of its position. *Celotex*, 477 U.S. at 324; *see also Harris v. Gen Motors Corp*, 201 F.3d 800, 802 (6th Cir. 2000). Ultimately, the Court must determine whether the evidence "is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-52; *see also Atchley v. RK Co.*, 224 F.3d 537, 539 (6th Cir. 2000).

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Prison officials are forbidden from "unnecessarily and wantonly inflicting" pain on an inmate by acting in "deliberate indifference" toward the inmate's serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). A prison official cannot be found liable under the Eighth Amendment unless the 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 harm exists, and he must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

"[A]n inmate who complains that delay in medical treatment rose to a constitutional violation must place verifying medical evidence in the record to establish the detrimental effect of the delay in medical treatment to succeed." *Napier v. Madison County*, 238 F.3d 739, 742 (6th Cir. 2001).

Mere disagreement with medical staff's prescriptions does not state a claim for violation of the Eighth Amendment. *See Estelle v. Gamble*, 429 U.S. at 104-06.

The defense of qualified immunity is available to a state actor unless three criteria are met: a constitutional violation has occurred; the violated right was a clearly established right of which a reasonable person would have known; and the plaintiff has alleged sufficient facts, and supported the allegations by sufficient evidence, to indicate that what the official allegedly did was objectively unreasonable. *Saucier v. Katz*, 533 U.S. 194, 201-02 (2001); *Higgason v. Stephens*, 288 F.3d 868, 876-77 (6th Cir. 2002); *Williams v. Mehra*, 186 F3d 685, 690 (6th Cir. 1999).

STATEMENT OF THE FACTS

This is a prisoner civil rights action. The plaintiff alleges that his Eighth Amendment rights were violated when medical staff disagreed over whether a second cataract surgery was appropriate. Because of the extensive nature of the facts of this case, and because the facts have already been succinctly laid out, the defendants incorporate and adopt by the reference the Statement of Facts from the CMS defendants' brief and lay out only a summary here. [D/E #103, pages 1-16].

The MDOC defendants, Pramstaller, Clark, Naylor, Pandya, and Neighbors, are sued due to their membership in the MDOC's Medical Services Advisory Committee (MSAC). The plaintiff in this case was referred for cataract surgery on his left eye after having successful cataract surgery on his right eye. The request was denied by CMS, and the appeal was heard by the MSAC on multiple occasions. The MSAC upheld the denial each time from 2004 until February 2008. The surgery was eventually approved by the MSAC due to a decrease in the plaintiff's right-eye vision as well as complaints of binocular double vision. [*See* D/E #103, pages 11-13]. Prior to that, the members of the MSAC upheld the surgery denials based on criteria based on their medical judgment in conjunction with the assistance of ophthalmologists. [D/E #103, page 6, n 11].

ARGUMENT

I. A second-eye cataract surgery is not medically necessary, and there was no substantial risk of serious harm in delaying the surgery.

The defendants adopt and incorporate by reference the arguments made by the CMS defendants in section II of their motion for summary judgment. [D/E #103, pages 20-29].

Prison officials are forbidden from "unnecessarily and wantonly inflicting" pain on an inmate by acting in "deliberate indifference" toward the inmate's serious medical needs.[1] Mere disagreement with medical staff's prescriptions, however, does not state a claim for violation of constitutional rights.[2] A prison official cannot be found liable under the Eighth Amendment unless the 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 harm exists, and he must also draw the inference."[3]

To reach the level of a constitutional violation, a deprivation "must result in the denial of 'the minimal civilized measure of life's necessities.'"[4] The Eighth Amendment is only concerned with "deprivations of essential food, medical care, or sanitation" or "other conditions intolerable for prison confinement."[5] "[N]ot every unpleasant experience a prisoner might endure while incarcerated constitutes cruel and unusual punishment within the meaning of the Eighth Amendment."[6]

"[A]n inmate who complains that delay in medical treatment rose to a constitutional violation must place verifying medical evidence in the record to establish the detrimental effect

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[1] *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).
[2] *See Estelle*, 429 U.S. at 104-06.
[3] *Farmer*, 511 U.S. at 837.
[4] *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981); *see also Wilson v. Yaklich*, 148 F.3d 596, 600-01 (6th Cir. 1998).
[5] *Rhodes*, 452 U.S. at 348.
[6] *Ivey v. Wilson*, 832 F.2d 950, 954 (6th Cir. 1987).

of the delay in medical treatment to succeed."[7] "[T]he 'verifying medical evidence' requirement is relevant to those claims involving minor maladies or non-obvious complaints of a serious need for medical care."[8]

In *Napier*, the prisoner did not complain about missing treatment; he told the prison guards that missing a treatment was "no big deal"; he missed over forty treatment sessions of his own accord; and he neither sought immediate medical attention upon his release nor even attended his next scheduled treatment.[9] The facts in *Blackmore* differed in that the plaintiff there "did not suffer from a long-term and well monitored illness, but rather exhibited obvious manifestations of pain and injury. [He] complained of 'sharp' and 'severe' stomach pains for an extended period of time."[10] The Court held that the plaintiff's "classic signs of appendicitis" made the need for care so obvious that he did not need to submit verifying medical evidence to avoid summary judgment.[11]

Here, the plaintiff's eye health was well monitored by several doctors and nurses over the relevant timeframe. Absent certain conditions, a cataract poses at most minimal risk of harm to a patient; the conditions identified by Dr. Pramstaller were diabetic retinopathy, glare, and a great discrepancy in vision, but each case is evaluated individually. [D/E #103, page 6, n 11]. The plaintiff was seen by healthcare professionals continually throughout the relevant time period. Dr. Pramstaller also directed that the intraocular pressure in the plaintiff's eyes should be monitored to rule out glaucoma. The MSAC members determined in their medical judgment that there was no significant risk to the plaintiff in denying or delaying the surgery. Once the

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[7] *Blackmore v. Kalamazoo County*, 390 F.3d 890, 898 (6th Cir. 2004) (quoting *Napier v. Madison County*, 238 F.3d 739, 742 (6th Cir. 2001)).
[8] *Blackmore*, 390 F.3d at 898.
[9] *Napier*, 238 F.3d at 741.
[10] *Blackmore*, 390 F.3d at 899.
[11] *Blackmore*, 390 F.3d at 900.

plaintiff eventually presented with one of the conditions, a great discrepancy in vision (double vision), defined by Dr. Pramstaller as a condition affecting the visual cortex, the surgery was authorized. [Exhibit I to D/E #103, pages 57-61, 71-74]. The plaintiff received the second-eye surgery earlier than or when he would have received it under Federal Bureau of Prisons, Aetna, and Medicare standards. [D/E #103, page 12, n 20]. The plaintiff did not have an objectively serious medical condition requiring treatment, and the defendants did not have subjective knowledge of any such condition because in their medical judgment, there was at most a minimal risk in denying the surgery because the plaintiff never presented with risk factors.

This case involves no more than a disagreement over the prescribed course of care. The defendants relied on their medical judgment in determining standards to govern the provision of second-eye cataract surgery. Other doctors' disagreement with those standards or insistence on surgery without consideration of any standards does not transform the defendants' judgment into a constitutional violation. The defendants are entitled to summary judgment because there was no serious medical need and because none of the defendants knew of or disregarded any excessive risk – to the contrary, the plaintiff was continually monitored and provided with care.

II. The defendants are entitled to qualified immunity.

Officials or employees of the Michigan Department of Corrections who are sued in their individual capacities "are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."[12] The Sixth Circuit applies a three-part test to determine whether a government official is entitled to the defense of qualified immunity: (1) whether a constitutional violation has occurred; (2) whether the right that was violated was a clearly established right of

[12] *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982); *Dietrich v. Burrows*, 167 F.3d 1007, 1012 (6th Cir. 1999); *Noble v. Schmitt*, 87 F.3d 157, 160 (6th Cir. 1996).

which a reasonable person would have known; and (3) whether the plaintiff has alleged sufficient facts, and supported the allegations by sufficient evidence, to indicate that what the official allegedly did was objectively unreasonable in light of the clearly established constitutional rights.[13] While the defendants bear the initial burden of presenting facts that, if true, would entitle them to immunity, the ultimate burden of proof falls on the plaintiff to show that the defendants violated a right so clearly established that any official in the defendants' positions would have clearly understood that he was under an affirmative duty to refrain from such conduct.[14]

The court in *Lavado v. Keohane* gives the test for finding a clearly established constitutional right:[15]

> [T]o find a clearly established constitutional right, a district court must find binding precedent by the Supreme Court, its court of appeals or itself. In an extraordinary case, it may be possible for the decisions of other courts to clearly establish a principle of law. For the decisions of other courts to provide such "clearly established law," these decisions must both point unmistakably to the unconstitutionality of the conduct complained of and be so clearly foreshadowed by applicable direct authority as to leave no doubt in the mind of a reasonable officer that his conduct, if challenged on constitutional grounds, would be found wanting.

There is no clearly established law holding that denial of a cataract surgery is a constitutional violation. To the contrary, courts have routinely denied such claims. In *Samonte v. Bauman*, the court held that a doctor's "refusal to authorize cataract surgery after another doctor determined that such surgery was an option was a 'difference of medical opinion,' insufficient by itself to raise a triable issue of deliberate indifference."[16] Likewise, in *Stevenson*

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[13] *Saucier v. Katz*, 533 U.S. 194, 201-02 (2001); *Higgason v. Stephens*, 288 F.3d 868, 876-77 (6th Cir. 2002); *Williams v. Mehra*, 186 F.3d 685, 690 (6th Cir. 1999).
[14] *Noble*, 87 F.3d at 161.
[15] *Lavado v. Keohane*, 992 F.2d 601, 606-07 (6th Cir. 1993).
[16] *Samonte v. Bauman*, 264 Fed. Appx. 634, 636 (9th Cir. 2008) (unpublished) (Exhibit T to D/E #103).

v. Pramstaller, the plaintiff alleged "that he has suffered from psychological symptoms, including fear, anger, anxiety, and emotional suffering, as well as, an increased risk of injury due to the resulting lack of peripheral vision, and depth perception" due to failure to "the [d]efendants' failure to treat a hyper cataract in his left eye."[17] There, Judge Denise Page Hood found that neither the subjective nor objective components of a deliberate indifference claim were met because the "panel of physicians that form the MSAC reached a consensus, based on documentation accompanying the request for cataract surgery, that the surgery was not immediately necessary."[18]

The plaintiff here is unable to show anything more than a disagreement over the course of care prescribed to him. Furthermore, he has not demonstrated, through medical evidence, that he suffered any harm as a result of any delay in removal of the left-eye cataract. This case is similar to *Stevenson* in that the MSAC reached a consensus that the surgery was not immediately necessary. The plaintiff's constitutional rights were not violated. Furthermore, the defendants have found no caselaw indicating that delay in providing cataract surgery could amount to deliberate indifference. The plaintiff's clearly established constitutional rights have not been violated, and the defendants are entitled to qualified immunity.

CONCLUSION AND RELIEF SOUGHT

The plaintiff cannot show an Eighth Amendment violation because he can show nothing more than disagreement over the prescribed course of care. Neither the objective nor subjective prongs of a deliberate indifference claim are met here. The plaintiff has not submitted verifying medical evidence to show that a delay in treatment could have caused him any harm or that he

[17] *Stevenson v. Pramstaller, et al*, ED case no. 07-cv-14040, 2009 U.S. Dist. LEXIS 25495 at *2 (E.D. Mich. 2009) (attached as Exhibit A).
[18] *Stevenson v. Pramstaller, et al*, 2009 U.S. Dist. LEXIS 25495 at *16.

suffered any harm. And no Sixth Circuit authority could be found for the proposition that denial of cataract surgery based on medical judgment could equate to deliberate indifference.

Defendants Pramstaller, Clark, Naylor, Pandya, and Neighbors respectfully request that the Court grant their motion for summary judgment and dismiss this action.

Respectfully submitted,

Michael A. Cox
Attorney General

s/ Clifton Schneider
CLIFTON SCHNEIDER (P70582)
Assistant Attorney General
Corrections Division
PO Box 30217
Lansing, MI 48909
Em ail: schneiderC1@michigan.gov
(517) 335-7021

Date: December 1, 2009 [P70582]

PROOF OF SERVICE

I hereby certify that on December 1, 2009, the foregoing paper was presented and uploaded to the United States District Court ECF System, which will send notification of such filing to the attorneys of record listed herein, and I hereby certify that a copy of this same document(s) was mailed by US Postal Service to any involved non-ECF participant.

/s/Clifton B. Schneider (P70582)
Assistant Attorney General
Attorney for Defendants

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INDEX OF EXHIBITS

Exhibit A *Stevenson v. Pramstaller, et al*, ED case no. 07-cv-14040, 2009 U.S. Dist. LEXIS 25495 at *2 (E.D. Mich. 2009)