

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL GRIMES,
Plaintiff,
v.
J. BEARD, et al.
Defendants.

NO. EDCV 15-2267-ODW (AGR)

ORDER ACCEPTING FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the complaint, records on file, the Report and Recommendation of the United States Magistrate Judge (“Report”) and the Objections. Further, the Court has engaged in a *de novo* review of those portions of the Report to which Plaintiff has objected. The Court accepts the findings and recommendation of the Magistrate Judge.

Plaintiff argues that he should not have been disciplined for failing to provide a urine sample through self catheterization for purposes of drug testing even though he otherwise “does catheterize himself 5 times a day.” (Obj. at 4.) Instead, Plaintiff argues, California prison regulations purportedly require that prison medical staff perform catheterization on the inmate when the purpose is drug testing and defendants should not be entitled to qualified immunity.¹ However, “state

¹ The California Department of Corrections and Rehabilitation (“CDCR”) Operations Manual (“DOM”) is available on the CDCR website, www.cdcr.ca.gov. None of the sections cited by Plaintiff establish that medical staff is required to perform catheterization on an inmate for purposes of drug testing. See DOM § 52010.18

1 departmental regulations do not establish a federal *constitutional* violation” for
2 purposes of qualified immunity. *Cousins v. Lockyer*, 568 F.3d 1063, 1070 (9th Cir.
3 2009) (emphasis in original; collecting cases); see also *King v. Los Angeles Cnty.*
4 *Sheriff’s Dep’t*, 672 Fed. Appx. 701, 702-03 (9th Cir. 2016) (noting Title 15 of
5 California Code of Regulations does not create private right of action under California
6 law). Plaintiff’s objections are without merit.

7 IT IS ORDERED that (1) Defendants’ motion to dismiss the First Amended
8 Complaint is granted without leave to amend; (2) any pending motions are denied as
9 moot; and (3) judgment be entered dismissing this action with prejudice.

10
11
12
13 DATED: December 13, 2018



OTIS D. WRIGHT, II
United States District Judge

14
15
16
17
18
19
20
21
22 (requiring only “reasonable accommodation” to inmates with disabilities “to facilitate
23 their full participation in drug and/or alcohol testing”). Plaintiff cites regulations that are
24 inapplicable to drug testing. Each prison is required to provide clinical laboratory testing
25 for the examination, care and treatment of inmates. DOM § 91050.1. In a prison’s
26 Clinical Laboratory Service, inmates are not permitted to perform tasks such as
27 “[o]btaining blood samples,” “[a]dministering blood,” “[i]ntroducing or discontinuing
28 intravenous infusions” and “[a]ny other task identified as medical or nursing functions.”
DOM § 91050.7.3. Plaintiff does not allege that he was working in the prison’s clinical
laboratory service or was required to perform catheterization on any inmate in a clinical
laboratory service. Plaintiff cites a mentally competent inmate’s right to refuse “[h]ealth
care treatments, including medications and tests” “except when permitted by law to
prevent infectious diseases or unless the procedures set forth in DOM 91090
(Involuntary Psychotropic Medications) are followed.” DOM § 51080.3. Plaintiff’s
complaint, however, does not allege he refused any health care treatments.