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United States District Court  
For the Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SAM WESLEY, JR.,  
Plaintiff,

v.

MICHAEL SAYRE, et al.,  
Defendants.

No. C 08-5035 SI (PR)

**ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT**

**INTRODUCTION**

This is a federal civil rights action filed by a pro se state prisoner pursuant to 42 U.S.C. § 1983. Defendants, employees of Pelican Bay State Prison ("PBSP"), move for summary judgment on grounds that there are no triable issues of fact and that they are entitled to summary judgment as a matter of law. (Defs.' Mot. for Summ. J. ("MSJ") at 3.) For the reasons set forth below, defendants' motion is GRANTED. Judgment will be entered in favor of defendants. Plaintiff shall take nothing by way of complaint.

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**BACKGROUND**

1  
2 The following facts appear to be undisputed except as noted. Plaintiff alleges that  
3 defendants provided constitutionally inadequate medical care for his chronic pain in violation  
4 of the Eighth Amendment. From April 2007 until April 2008, plaintiff was incarcerated at  
5 Martinez Detention Facility. While there, plaintiff was prescribed methadone as treatment for  
6 chronic pain. In April 2008, he was transferred to San Quentin State Prison. He was continued  
7 on his previous methadone prescription for chronic pain while at Martinez Detention Facility and  
8 San Quentin. (Pl.’s Opp. Mot. Summ. J. (“Opp.”), Decl. Lynne G. Stocker (“Decl. Stocker”),  
9 Ex. A at 2.) On May 13, 2008 plaintiff was transferred to PBSP and remained there until he was  
10 paroled July 11, 2009. (Id. at 3.) Plaintiff’s allegations concern medical treatment he received  
11 by the following defendants.

12  
13 **I. Treatment by Defendant Williams**

14 When transferred to PBSP on May 13, 2008, plaintiff was placed in the infirmary and was  
15 taken off methadone by Dr. Claire Williams. Plaintiff alleges that he went through painful  
16 withdrawals and was put on Tylenol #3 (Tylenol with Codeine) to be taken every six hours for  
17 about two weeks as an alternative to the methadone. (Compl. at 3.)

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19 **II. Treatment by Defendant Skinner**

20 Plaintiff alleges that Shery Skinner prescribed insufficient pain medication for his pain.  
21 (Compl. at 3.) The parties do not dispute the treatment plaintiff received from Skinner; they only  
22 dispute the effectiveness of that treatment. On June 12, 2008 plaintiff’s Tylenol #3 prescription  
23 was temporarily set at one tablet a day by Skinner, a family nurse practitioner. (Id.) Defendant  
24 Skinner prescribed the Tylenol #3 for seven days until amitriptyline (Elavil), another pain  
25 reliever, became effective. (MSJ, Decl. Stocker, Ex. B at 170.)<sup>1</sup> At the same time, Skinner also

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28 <sup>1</sup> The cited page numbers for Exhibit B refer to the handwritten numbers in the bottom  
right-hand corner of each page.

1 prescribed Clonidine for plaintiff's high blood pressure. (Id.) According to the medical  
2 records, in one of his medical appeals, plaintiff was granted a change in medical care. At this  
3 point, Skinner added Tylenol #3 while continuing the previous levels of amitriptyline. Plaintiff's  
4 medical case was also submitted for case review to determine if a neurology consult was needed.  
5 (Id. at 27.) On August 13, plaintiff was seen by Skinner. Plaintiff reported severe pain and  
6 stated that the Tylenol #3 and amitriptyline was not enough to manage the pain; plaintiff then  
7 requested an increase in the amitriptyline or the Tylenol #3. (Id. at 143.) Also on August 13,  
8 plaintiff was sent to Sutter Coast Hospital for an MRI of his cervical spine due to his claims of  
9 chronic head and neck pain. The radiologist's impression was that plaintiff had degenerative  
10 disc disease, no focal disc protrusions, and no cord injury. (Id. at 213–14.)

11 It is undisputed that plaintiff was prescribed amitriptyline during part of his stay at PBSP.  
12 Contrary to defendant's assertion, plaintiff contends that amitriptyline "is not a pain reliever.  
13 That — what amitriptyline is prescribed for is it's a mild depressant. It's — but some doctors  
14 seem to think that it's useful in the treatment of chronic pain." (MSJ, Decl. Stocker, Ex. A at  
15 76–77.) Because he believed it not to be a pain reliever, plaintiff sometimes did not take it. (Id.  
16 at 77.)

### 18 **III. Treatment by Defendant Murray**

19 Plaintiff alleges that in June and July 2008 he was "denied any medical treatment by  
20 Charles Murray, [r]egistered [n]urse, for disabling pain." (Compl. at 3.)

21 Defendants report, and plaintiff does not dispute, that on June 12, 2008 plaintiff was  
22 given trigger point injections to his neck area to alleviate reported pain. After treatment, plaintiff  
23 asserted feeling "much better." (MSJ, Decl. Stocker, Ex. B at 170.) As described earlier,  
24 plaintiff was also prescribed amitriptyline and continued on Tylenol #3 by defendant Skinner  
25 on that date.

26 Plaintiff alleges that he was denied medical treatment by Murray on June 23. (Compl. at  
27 3.) Murray disputes this and says that plaintiff was advised by Murray that he had an upcoming  
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1 appointment with his primary care provider. (Id. at 161.) On June 25th, plaintiff was seen by  
2 defendant Murray for a nursing evaluation. Plaintiff complained of chronic pain and explained  
3 that he had previously been on methadone but that he was no longer allowed it. Defendant  
4 Murray wrote on plaintiff’s medical chart that he observed plaintiff sitting on a bench facing  
5 away and when defendant Murray called plaintiff’s name, plaintiff turned his head to look over  
6 his shoulder, had no facial grimace or tightness while rising without hand support, fluidly  
7 ambulated to the door, sat through the interview without obvious pain, placed and later grabbed  
8 coat from overhead hook, and flung medical door open with one push then proceeded to  
9 ambulate out in an almost marching or stomping fashion. (Id. at 158.) Plaintiff denies this and  
10 says that defendant Murray “never observed me sitting in bleachers facing away from him. His  
11 reports are totally without merits.” (Opp. at 6.) In addition, plaintiff denies that Murray ever  
12 saw plaintiff not in pain. (Id.)

13 On July 1, Murray observed plaintiff during a ten to fifteen minute visit where there was  
14 no visual evidence of pain. (MSJ, Decl. Stocker, Ex. B at 156.) Plaintiff presented with  
15 complaints of chronic pain and once again threatened Murray with a lawsuit if methadone were  
16 not provided. Murray informed plaintiff that he was unable to proscribe the narcotics plaintiff  
17 desired. (Id.) Plaintiff denies asking Murray for medication, and instead says that he asked  
18 Murray “to schedule me to see a primary care physician.” (Id., Ex. A at 80.) On July 1, Murray  
19 noted plaintiff’s elevated blood pressure and informed plaintiff that he had a call into the primary  
20 care physician and was awaiting a call back. (Id., Ex. B at 154.) Plaintiff asserts that Murray  
21 denied him medical treatment on July 2, 2008; however, plaintiff does not provide evidence of,  
22 nor is the court aware of, any medical visit on that date. Presumably plaintiff was referencing  
23 the July 1 visit.

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25 **IV. Treatment by Defendant Cross**

26 Plaintiff alleges that he was denied medical care by J. Cross, a registered nurse, on  
27 September 5, 2008. (Compl. at 3.) The parties due not dispute that plaintiff presented with  
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1 severe neck and headache pain and wanted to be seen by a medical professional as soon as  
2 possible. The vitals taken showed hypertension and plaintiff’s medications were reviewed by  
3 Cross. Plaintiff was given his daily dose of blood pressure medication, which he had not taken  
4 at that point, and his blood pressure was taken again, for a total of four times on September 5.  
5 After his blood pressure appeared to be normalizing at the end of the day, plaintiff was released  
6 and orders were given to recheck his blood pressure five days later. (MSJ, Decl. Stocker,  
7 Ex. B at 136.) Plaintiff contends this was not the proper medical treatment because he was taken  
8 to the hospital the next day for further treatment. (Opp. at 6.)

9       According to the defendants, and undisputed by plaintiff, as of September 6, 2008  
10 plaintiff was generally taking amlodipine and hydrochlorothiazide for his blood pressure. (MSJ,  
11 Decl. Stocker, Ex. B at 233.) That morning, because his blood pressure was elevated, plaintiff  
12 received “clonidine 0.2 mg in the morning and 0.2 mg approximately 1700.” (Id.) Because  
13 plaintiff’s blood pressure remained high, he was brought into urgent care via ambulance to Sutter  
14 Coast Hospital where he received another 0.2 mg of clonidine. (Id.) The urgent care physician  
15 recommended steps to decrease plaintiff’s blood pressure and recommended that plaintiff’s  
16 primary care physician “consider increasing Tylenol #3 for better pain management.” (Id. at  
17 236.)

18       As discussed earlier, it is undisputed that plaintiff often refused to take his prescribed  
19 medication, including the pain medication amitriptyline. One such date when plaintiff was  
20 documented as refusing to take amitriptyline was September 17, 2008 as it was being distributed  
21 by Cross.<sup>2</sup> (Opp. Ex. A at 21.)

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24       <sup>2</sup> Although not included in the pleadings, plaintiff did file a complaint against defendant  
25 Cross while at PBSF for his “discriminatory attitude of people of color.” (Opp., Ex. A at 18.)  
26 Plaintiff alleges that Cross failed to dispense the amitriptyline in a respectful manner. Id. Cross  
27 reported that plaintiff refused to take amitriptyline as ordered and that when plaintiff became  
28 verbally abusive Cross asked plaintiff to leave the area and proceeded to shut the window. (Id.  
at 21.) Even if plaintiff had properly brought this racial discrimination claim, there is no issue  
of material fact as plaintiff provides no evidence of racial discrimination from Cross and such  
a claim is dismissed as facially insufficient.

1 **V. Treatment by Defendant Sayre**

2 Plaintiff alleges that Michael Sayer, the chief medical officer at PBSP denied him medical  
3 treatment and transfer back to San Quentin where plaintiff could have access to methadone.  
4 (Compl. at 3.) It is undisputed that Sayre never saw nor treated plaintiff and acted only in an  
5 administrative role in plaintiff's health care while at PBSP. Neither party disputes that in a July  
6 29, 2008 letter, defendant Sayre partially granted one of plaintiff's appeals, as plaintiff's primary  
7 care provider had prescribed medication, but denied transfer to San Quentin State Prison. (Opp.,  
8 Exh. A at 42.) Plaintiff appealed again, and Sayre's holding was upheld on the second level of  
9 appeal on August 28, 2008. (Id. at 43–44.) Plaintiff then appealed to the administrative level,  
10 the final level of appeal, but the issue was dismissed as of July 23, 2009 as plaintiff had already  
11 been paroled and the Office of Third Level Appeals no longer had jurisdiction. (Id. at 40.)

12 It is further undisputed that in a December 11, 2008 letter defendant Sayre partially  
13 granted another one of plaintiff's appeals for changed medical treatment. (Opp., Ex. A at 49.)  
14 Plaintiff requested that his prescription for Tylenol #3 be changed to a long-lasting pain  
15 medication. (Id.) Defendant Sayre partially granted the appeal as plaintiff's Tylenol #3 was  
16 increased on November 10, 2008 and Clonidine was increased on November 12. (Id.)

17 Neither party disputes that plaintiff asked for a continuance of his Tylenol #3 forty-five  
18 days beyond his parole date of July 11, 2009. PBSP's pharmacy does not grant continuances  
19 unless one is ordered by an inmate's primary care provider. Plaintiff was seen by James  
20 Flowers, a nurse, where Flowers observed that plaintiff ambulated with "no limping, no  
21 guarding, and no other signs of pain." (MSJ, Decl. Stocker, Ex. B at 50.) When denied a  
22 continuance, plaintiff stated that "I will just add this to my other lawsuits." (Id.) In an April 27,  
23 2009 letter, Sayre partially granted plaintiff's appeal seeking an adjustment in pain medication,  
24 a 30-day supply of pain medication once paroled, or alternatively transfer back to San Quentin  
25 State Prison. (Opp., Ex. A at 9.) Sayre determined that plaintiff would receive a 30-day supply  
26 of any essential medications, but denied an increase in pain medication or a transfer. (Id.)

1 **VI. Other Medical Treatment**

2 Plaintiff alleged no further claims beyond the treatment described above; however, the  
3 medical staff at PBSP took additional actions and made further recommendations to treat  
4 plaintiff's pain. Descriptions of these further treatments follow.

5 Two days after arriving, May 15, 2008 at PBSP and in response to plaintiff's complaints  
6 of pain, x-rays were taken of his hips, lumbar spine, pelvis, knees, cervical spine and right  
7 shoulder. (MSJ, Decl. Stocker, Ex. B at 216–18.)

8 On June 11, 2008 plaintiff refused a laboratory blood draw for the purpose of completing  
9 a comprehensive metabolic panel and checking for lipids. (Id. at 143.)

10 On August 28, 2008 plaintiff saw Dr. Caroline Capitano, a pain specialist at PBSP, for  
11 evaluation of his neck pain. However, as Capitano notes, plaintiff was a "reluctant historian"  
12 and "refuse[d] to answer some questions" and therefore "the evaluation [was] somewhat  
13 compromised." (Id. at 140.) Capitano diagnosed plaintiff as having "significant suffering  
14 associated with mild cervical disease" where much of the pain "can be related to poor posture"  
15 and recommended physical therapy for plaintiff. (Id. at 141.) Plaintiff attended two of these  
16 physical therapy sessions then refused to return for further physical therapy. (Id., Decl. Stocker,  
17 Ex. A at 83–84.)

18 On November 11, 2008 plaintiff's prescription for Tylenol #3 was increased to two tablets  
19 per day and plaintiff was to continue on amitriptyline. (Id., Decl. Stocker, Ex. B at 100.)

20 On March 6, 2009 plaintiff asked to be seen by a medical doctor instead of a family nurse  
21 practitioner. (Id. at 63.) During the nursing evaluation, plaintiff was observed by Jose Bales,  
22 a registered nurse, to be alert, ambulatory, have a steady gait with no limping or guarding noted,  
23 and not be in any pain or discomfort. (Id.) Plaintiff was told that there was no guarantee he  
24 could see a doctor, because defendant Sayre had previously set up the primary care provide  
25 schedule; however, plaintiff was informed that if Dr. Rowe were to be available, then plaintiff  
26 would be placed in line to see her. (Id. at 65.)

1           On March 15, 2009 plaintiff was seen by Dr. Rowe and asked for an increase in pain  
2 medications. Plaintiff reports that Dr. Rowe told him that for any adjustment of pain  
3 medications he would have to be housed in the infirmary (“CTC”). (Opp., Ex. A at 61; MSJ,  
4 Decl. Stocker, Ex. A at 62.) Plaintiff told Dr. Rowe that he did not want to go to the CTC  
5 because he felt that it was punishment and it was isolating. (MSJ, Decl. Stocker, Ex. A at 62.)  
6 While plaintiff did tell Dr. Rowe he did not want to go to the CTC, as discussed above he  
7 believes that defendant Cross and defendant Murray displayed deliberate indifference by not  
8 sending him to the CTC at different times. (Id.)

9           On March 22, 2009 plaintiff filed an appeal of Dr. Rowe’s decision to not increase his  
10 pain medications on March 15. Plaintiff sought either transfer to San Quentin State Prison or  
11 increased pain medicine. (Opp., Ex. A at 61.) This was the same basic issue on appeal as had  
12 previously been filed by plaintiff that led to two sessions of physical therapy before plaintiff  
13 refused further treatment and the appointment with Dr. Capitano, the pain specialist. On April  
14 4, Dr. Rowe saw plaintiff. Dr. Rowe reported that plaintiff was “very noncompliant” with his  
15 blood pressure medications, leaving his blood pressure generally uncontrolled. (MSJ, Decl.  
16 Stocker, Ex. B at 52.) Dr. Rowe also reported that plaintiff was “very angry and hostile,”  
17 “refused to listen and overtalked” her saying that the medical staff “do not know his case or how  
18 to properly treat him,” and “left before any further conversation could be had or for any exam  
19 to [be] performed.” (Id.) Dr. Rowe denied plaintiff’s appeal for the same reasons the previous  
20 appeals had failed: plaintiff’s “degree of chronic pain [did] not warrant higher doses of  
21 narcotics” and plaintiff had “no desire to go to CTC for instances of uncontrollable pain as he  
22 view[ed] this as punitive and isolating.” (Id.) On April 30, 2009 plaintiff filed a second level  
23 of appeal saying that “Dr. Rowe was the one who was hostile and trying to out talk me. My  
24 constant high level of blood pressure is the reason my life is in danger here because you are not  
25 treating me the same.” (Opp., Ex. A at 61.)

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1 occasion; and (3) Michael Sayer Chief Medical Officer denied him medical treatment and  
2 transfer back to San Quentin State Prison for proper medical treatment. (Compl. at 3.)

3 The Eighth Amendment requires that prison officials provide all prisoners with medical  
4 care. See Farmer v. Brennan, 511 U.S. 825, 832 (1994); DeShaney v. Winnebago County Dep't  
5 of Social Servs., 489 U.S. 189, 199–200 (1989); Hoptowit v. Ray, 682 F.2d 1237, 1246 (9th Cir.  
6 1982). A prison official violates the Eighth Amendment when two requirements are met: (1) the  
7 deprivation alleged must be, objectively, sufficiently serious, see Farmer, 511 U.S. at 834 (citing  
8 Wilson v. Seiter, 501 U.S. 294, 298 (1991)), and (2) the prison official possesses a sufficiently  
9 culpable state of mind, i.e., the offending conduct was wanton, id. (citing Wilson, 501 U.S. at  
10 297).

11 In determining whether a deprivation of a basic necessity is sufficiently serious to satisfy  
12 the objective first component of an Eighth Amendment claim, a court must consider the  
13 circumstances, nature, and duration of the deprivation. The more basic the need, the shorter the  
14 time it may be withheld. See Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000).

15 Plaintiffs seeking relief must show that the defendants were deliberately indifferent to  
16 their serious medical needs. See, e.g., Farmer, 511 U.S. at 834 (inmate safety); Estelle v.  
17 Gamble, 429 U.S. 97, 104 (1976) (inmate health). Neither negligence nor gross negligence will  
18 constitute deliberate indifference. See Farmer, 511 U.S. at 835–36 & n.4. A prison official  
19 cannot be held liable under the Eighth Amendment for denying an inmate humane conditions  
20 of confinement unless the standard for criminal recklessness is met, i.e., the official knows of  
21 and disregards an excessive risk to inmate health or safety. Id. at 837. The official must both  
22 be aware of facts from which the inference could be drawn that a substantial risk of serious harm  
23 exists, and he must also draw the inference. See id.

24 Applying these principles to the instant case, the Court concludes that plaintiff's claims  
25 against the medical personnel are appropriate for summary judgment. The parties do not dispute  
26 that plaintiff was in pain, that he received medical treatment, and that he refused further medical  
27 treatment at various times. The parties do dispute whether the medical treatment was  
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1 constitutionally adequate and whether not receiving stronger pain medication was a violation of  
2 plaintiff's Eighth Amendment rights.

3  
4 **A. Claim One against Defendants Williams and Skinner**

5 Plaintiff has failed to establish either Farmer element with respect to Williams and  
6 Skinner. First, the record indicates that the alleged deprivation of the basic necessity of medical  
7 care was not objectively sufficiently serious — there was a difference in opinion about what the  
8 treatment should be, not a substantial deprivation of treatment itself. It is undisputed that the  
9 medical professionals at PBSP declined to give plaintiff methadone for his pain. While plaintiff  
10 may have experienced pain during withdrawal and throughout his stay, the use of other pain  
11 medications and alternative treatments cannot be called a substantial deprivation, especially  
12 considering that plaintiff refused some treatments and medications and that he did in fact receive  
13 appropriate medical care. Second, plaintiff has not established that the medical personnel acted  
14 with deliberate indifference. When plaintiff first arrived at PBSP, Williams did take plaintiff  
15 off of methadone, but prescribed the alternative pain medication of Tylenol #3. Skinner  
16 continued plaintiff on Tylenol #3 and added amitriptyline. According to plaintiff's own  
17 statements, he was given pain medications, saw a pain specialist, and was recommended physical  
18 therapy. Plaintiff also indicates that he chose not to complete physical therapy or take the  
19 amitriptyline prescribed to him.

20 Moreover, the only apparent factual dispute in the case against Williams and Skinner is  
21 a difference of opinion between plaintiff and the defendants. "A difference of opinion between  
22 a prisoner-patient and prison medical authorities regarding treatment does not give rise to a  
23 § 1983 claim." Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981). Similarly, a showing  
24 of nothing more than a difference of medical opinion as to the need to pursue one course of  
25 treatment over another is insufficient, as a matter of law, to establish deliberate indifference, see  
26 Toguchi v. Chung, 391 F.3d 1051, 1058. In order to prevail on a claim involving choices  
27 between alternative courses of treatment, a plaintiff must show that the course of treatment the  
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1 doctors chose was medically unacceptable under the circumstances and that he or she chose this  
2 course in conscious disregard of an excessive risk to plaintiff's health. Id. at 1058. Here,  
3 plaintiff cites as evidence of defendant's medical indifference that other physicians had  
4 prescribed him, or continued him on, methadone. However, plaintiff does not show that the  
5 course of treatment, such as the Tylenol #3, amitriptyline, physical therapy, injections, and  
6 routine appointments along with a visit to a specialist, and x-rays and an MRI, was medically  
7 unacceptable. In addition, there is no evidence that Williams and Skinner chose this in  
8 conscious disregard of an excessive risk to plaintiff's health. Instead, the medical chart indicates  
9 that the medical personnel at PBSP tried different methods to relieve plaintiff's pain without  
10 resorting to methadone.

11  
12 **B. Claim Two against Defendants Murray and Cross**

13 Plaintiff also has failed to establish either Farmer element with respect to defendants  
14 Murray and Cross. First, the record indicates that the alleged deprivation of the basic necessity  
15 of medical care was not objectively sufficiently serious — there was a difference in opinion  
16 about the urgency of plaintiff's medical needs on several days, not substantial deprivation of the  
17 treatment itself. It is undisputed that Murray and Cross did not instantaneously send plaintiff  
18 to see a medical doctor. While plaintiff believed that he required immediate treatment by a  
19 physician, both defendants Murray and Cross communicated with plaintiff that he would be  
20 placed in line to see a primary care provider. On the days that plaintiff cites where he was  
21 denied medical treatment he was given trigger point injections, was scheduled for appointments  
22 with a primary care provider, was given additional pain medication, was given additional blood  
23 pressure medication, and was monitored for high levels of blood pressure. While plaintiff  
24 believes that this treatment was not sufficient, this medical care was objectively sufficient to  
25 treat plaintiff on those occasions. Far from denying plaintiff any medical care, Murray and  
26 Cross observed, monitored, and documented plaintiff's health and helped plaintiff schedule  
27 appointments with a primacy care provider. Second, plaintiff has not established that the  
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1 medical personnel acted with deliberate indifference. When plaintiff saw defendants Murray and  
2 Cross with complaints of pain, he was examined and scheduled for further appointments.  
3 According to plaintiff's own statements, Murray could not have prescribed narcotic pain  
4 medication anyway. It appears that Murray and Cross provided the care that they could, fully  
5 documented visits on the dates in question, and recommended plaintiff to see other medical  
6 professionals if necessary.

7  
8 **C. Claim Three against Defendant Sayre**

9 Finally, plaintiff has failed to establish either Farmer element with respect to Sayre. First,  
10 the record indicates that the alleged deprivation of the basic necessity of medical care was not  
11 objectively sufficiently serious. It is undisputed that Sayre was the Chief Medical Officer at  
12 PBSP, he never saw plaintiff, and that under his supervision plaintiff was not prescribed  
13 methadone by health care providers and was not transferred back to San Quentin State Prison.  
14 Plaintiff's main complaint against Sayre is that he "signed all the grievances that [plaintiff] filed  
15 concerning [these] issues. He denied them." (MSJ, Decl. Stocker, Ex. A at 64.) However,  
16 defendant Sayre did grant some partial relief in plaintiff's complaints. In addition, for all of the  
17 reasons cited above, the medical care that plaintiff received was not objectively insufficient and  
18 therefore, Sayre did not deprive plaintiff of the basic necessity of medical care by approving the  
19 treatment plan of the primary care providers. Second, plaintiff has not established that Sayre  
20 acted with deliberate indifference. Plaintiff alleges that "Dr. Sayre knew very well that the  
21 [p]laintiff should continue methadone." (Opp. at 4.) This is a conclusory statement and plaintiff  
22 has not provided, nor is the Court aware, of any evidence in support of this statement. Plaintiff  
23 also alleges that defendant Sayre instituted a blanket policy denying all inmates access to  
24 methadone while at PBSP. (Id.) However, the only evidence plaintiff cites in support of this  
25 claim is that defendant Williams did not prescribe him methadone and that there was a  
26 "statement by [d]efendants that [p]laintiff was incarcerated at PBSP and did not deserve  
27 treatment." (Id.) However, there is no further evidence of what defendant made this statement  
28 or in what context. This is not enough to show that Sayre acted with deliberate indifference,

1 particularly in that he did partially grant some of plaintiff's filings for changes in medical  
2 treatment, including an increase in pain medication and a continuance of pain medication.

3  
4 **CONCLUSION**

5 Plaintiff having failed to show that there are triable issues of material fact, defendants'  
6 motion for summary judgment (Docket No. 20) is GRANTED as to all claims against all  
7 defendants, who are entitled to judgment as a matter of law.

8 This order terminates Docket No. 20.

9 The Clerk shall terminate the pending motion, enter judgment in favor of defendants, and  
10 close the file.

11 **IT IS SO ORDERED.**

12 DATED: August 27, 2010



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SUSAN ILLSTON  
United States District Judge