UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

PATRICK SCOTT BLACK,	)	
	)	
Plaintiff,	)	
vs.	)	No. 1:08-cv-506-WTL-TAB
	)	
	)	
BRENT LLOYD, et al.,	)	
Defendants.	)	

Entry Granting Motions for Summary Judgment of Dr. Gee and Dr. Cure

The motions for summary judgment of Dr. Lee Ann Gee (incorrectly named in the complaint as Leeann Gay) and Dr. Cure, two of the defendants in this civil rights action brought by Patrick Black, must be granted. This conclusion is based on the following facts and circumstances:

1. Black's federal claims against Dr. Gee and Dr. Cure are asserted pursuant to 42 U.S.C. § 1983. A viable claim under 42 U.S.C. § 1983 requires that the alleged misconduct have been taken under color of state law, *West v. Atkins,* 487 U.S. 42, 48 (1988). A person acts under color of state law only when exercising power "possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." *United States v. Classic,* 313 U.S. 299, 326 (1941).

2. Summary judgment must be granted "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." **FED.R.CIV.P.** Rule 56(c). A fact is material if it might affect the outcome of the suit under the governing law, and a dispute about a material fact is genuine only if the evidence would allow a reasonable jury to return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986).

3. The evidentiary record shows that Dr. Gee and Dr. Cure provided medical treatment to Black at Deaconess Hospital on July 5, 2006. On that date, Black had been injured in the course of being apprehended and arrested. He was transported to Deaconess Hospital by the police. His medical needs were assessed and treatment was provided. In doing so, however, Dr. Gee and Dr. Cure did not act "under color of state law." *Rodriguez v. Plymouth Ambulance Service,* 577 F.3d 816, 828 (7th Cir. 2009).

4. Because Dr. Gee and Dr. Cure did not act under color of state law in relation to the alleged conduct for which they are being sued here, because action taken under color of state law is a *sine qua non* to an action brought pursuant to 42 U.S.C. § 1983, and because "[i]f the nonmoving party fails to establish the existence of an element essential to his case, one on which he would bear the burden of proof at trial, summary judgment must be granted to the moving party," *Ortiz v. John O. Butler Co.*, 94 F.3d 1121, 1124 (7th Cir. 1996), *cert. denied*, 519 U.S. 1115 (1997), these defendants are entitled to summary judgment. Their motions to that effect (dkts 41 and 43) are **granted** as to any claim asserted against them.[1]

The rulings in this Entry do not resolve all claims against all parties. No partial final judgment shall issue at this time as to the claims resolved in this Entry.

IT IS SO ORDERED.

Date: 12/07/2009

William T Lawrence

Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

1It would not advance Black's interests in this action even if his complaint is understood as asserting a pendent claim for medical malpractice under Indiana state law. This is because any such claim would have to have been preceded by the filing of a proposed complaint with the Indiana Department of Insurance before the statute of limitations of two years expired, and Black did not take that step. He is therefore barred from bringing such a claim. IND. CODE § 34-18-7-1.

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