

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN HART : **CIVIL ACTION**
v. :
CITY OF PHILADELPHIA, et al. : **NO. 13-cv-6661**

MEMORANDUM

SCHMEHL, J. /s/ JLS

JULY 27, 2017

Pro se plaintiff John Hart brings this action under 42 U.S.C. §1983. He alleges violations of his constitutional rights while incarcerated at the Curran-Fromhold Correctional Facility (“CFCF”) in Philadelphia. Presently before the Court is the motion to dismiss for failure to state a claim by defendant James Arnone, a doctor involved in plaintiff’s medical care at CFCF. For the reasons that follow, the motion is granted.

To survive a motion to dismiss, a complaint must contain sufficient facts that, when accepted as true, state a plausible claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007). A complaint is facially plausible if it pleads "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 663. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," do not establish a plausible allegation. *Id.* Where, as here, the plaintiff is proceeding pro se, "the court has an obligation to construe the complaint liberally." *Giles v. Kearney*, 571 F.3d 318, 322 (3d Cir. 2009).

Section 1983 provides a remedy for deprivation of rights established in the Constitution or by federal law. To state a claim under section 1983, a plaintiff must demonstrate the defendant, acting under color of state law, deprived him of a right secured by the Constitution or the laws of the United States. *Kaucher v. Cnty. of Bucks*, 455 F.3d 418, 423 (3d Cir. 2006).

In his second amended complaint, plaintiff alleges that another prison doctor at CFCF, prescribed Amlactin lotion to treat plaintiff's "skin condition" and, soon thereafter defendant Arnone "cancelled the prescription ...without seeing Plaintiff or evaluating Plaintiff's skin condition... [ECF 52, ¶¶ 51-53]. Plaintiff's second amended complaint does not specify the skin condition. Plaintiff's first amend complaint noted the condition as Keratosis Pilaris ("KP"). [ECF 23, ¶¶ 112-117]. In his motion to dismiss second amended complaint, Dr. Arnone notes KP "is a common skin condition that causes rough patches and small, acne-like bumps usually on the arms, thighs, cheeks and buttocks. Keratosis pilaris bumps are usually white, sometimes red, and generally don't hurt or itch. Keratosris pilaris can be frustrating because it's difficult to treat. However keratosis pilaris isn't often serious and usually disappears by age 30. In the meantime, prescription medications and self-care measures can improve the appearance of keratosis pilaris. [ECF 58 , p. 3], quoting *Keratosis Pilaris*, MAYO CLINIC, available at <http://www.mayoclinic.org/diseases-conditions/keratosis-pilaris/basics/definition/con-20025750>].

"In order to establish a violation of [a plaintiff's] constitutional right to adequate medical care, evidence must show (i) a serious medical need, and (ii) acts or omissions by prison officials that indicate deliberate indifference to that need." *Natale v. Camden*

Cnty. Corr. Facility, 318 F.3d 575, 582 (3d Cir. 2003) (citing *Rouse v. Plantier*, 182 F.2d 192, 197 (3d Cir. 1999)). The *Natale* two-pronged test does not attempt to second-guess the adequacy of a particular course of treatment, and deference is given to prison medical professionals in the diagnosis and treatment of patients. See *Inmates of Allegheny Cty. Jail v. Pierce*, 612 F.2d 754, 762 (3d Cir. 1979). However, if an inmate is prevented from receiving recommended treatment, or is denied access to a physician capable of evaluating the need for treatment, the constitutional standard has been violated. *Id.* (citing *West v. Keve*, 571F.2d158, 162 (3d Cir. 1978)); see also *Monmouth Cnty. Corr. Inst. Inmates v. Lanzaro*, 834 F.2d 326, 346 (3d Cir. 1987) (plaintiff's disagreement with the course and method of treatment is not sufficient to establish a constitutional claim); *Estelle v. Gamble*, 429 U.S. 97, 105-106 (1976)(negligent treatment or medical malpractice claims do not trigger constitutional protections).

A medical need is serious if “a failure to treat can be expected to lead to substantial and unnecessary suffering, injury or death [and] the condition [is] ‘one that has been diagnosed by the physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor’s attention.’” *Coburn v. Upper Darby Twp.*, 946 F. 2d 1017, 1023 (3d Cir. 1991)(internal citations omitted). Not every prescribed treatment is “required.” *Boring v. Kozakiewicz*, 833 F. 2d 468, 473 (3d Cir. 1987). If the condition is not “acute” or is “little more than an annoyance” it is not a serious medical need. *Id.*

"Deliberate indifference is a 'subjective standard of liability consistent with recklessness as that term is defined in criminal law'" *Natale*, 318 F.3d at 582 (quoting *Nicini v. Morra*, 212 F.3d 798, 811 (3d Cir. 2000)). Deliberate indifference has been

found where a prison official "(1) knows of a prisoner's need for medical treatment but intentionally refuses to provide it; (2) delays necessary medical treatment based on a non-medical reason; or (3) prevents a prisoner from receiving needed or recommended treatment." *Rouse*, 182 F.3d at 197.

Accepting as true all facts plaintiff alleges, the Court concludes that plaintiff's skin condition does not present a serious medical need. Furthermore, Plaintiff's second amended complaint is completely void of any symptoms he suffered. His reply to Dr. Arnone's motion to dismiss states the condition "continues to cause Plaintiff unnecessary pain" and that the condition is serious because (1) Dr. Evangelista prescribed a lotion and (2) the condition has persisted since plaintiff turned thirty. [ECF 62, p.10] Plaintiff has not explained why the prescribed Amlactin was required or how he considered his symptoms acute or more than a mere annoyance.

The Court further finds that any more opportunities to amend would be futile. Plaintiff has already twice amended his complaint and had a full opportunity in his reply brief to the motion to dismiss to fully explore the seriousness of his skin condition and why the treatment was insufficient.

In sum, plaintiff has failed to set forth facts supporting a plausible constitutional violation of the denial of medical care. An appropriate Order follows.

