

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RICHARD ROMERO,

Plaintiff,

13v0691

ELECTRONICALLY FILED

v.

LOUIS FOLINO *Facility Superintendent*, ET
AL.,

Defendants.

ORDER OF COURT RE: DEFENDANTS' MOTIONS TO DISMISS (DOC. NOS. 11 AND 27), UNITED STATES MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION (DOC. NO. 39) AND DEFENDANTS' OBJECTIONS THERETO (DOC. NOS. 41 AND 43)

Pro Se Plaintiff alleges claims of equal protection and deliberate indifference against the following Defendants: Louis Folino-Facility Superintendent (“Folino”); John/Jane Doe-Director of Bureau of Health Care; Dr. Byunghak Jin-Facility Medical Director (“Dr. Jin”); Nedra Grego-RN Supervisor (“Grego”); and John McAnany-RN Supervisor (“McAnany”). Doc. No. 5.

Plaintiff’s claims are based on Defendant’s alleged refusal to treat a fungal infection and their alleged cover-up of their refusal of necessary treatment. *Id.* Defendants moved this Court to dismiss Plaintiff’s claims. Doc. Nos. 11 and 27. On February 4, 2014, United States Magistrate Judge Lisa Pupo Lenihan issued a Report and Recommendation which recommended that:

- DOC Defendants’ Motion to Dismiss (Doc. No. 27) be granted as to Defendant John/Jane Doe, but denied in all other respects; and
- Defendant Jin’s Motion to Dismiss (Doc. No. 11) be granted as to Plaintiff’s equal protection claim, but denied on all other grounds.

Objections to the Report and Recommendation were due by February 21, 2014. Doc. No. 39.

To date, Plaintiff has not filed any objections.

All of the remaining Defendants have filed Objections to Judge Lenihan's Report and Recommendation. Doc. Nos. 41 and 43. Dr. Jin moves this Court to dismiss all claims against him because: 1. Plaintiff's fungal treatment is not a serious medical condition, and 2. Plaintiff refused medical treatment and thus, cannot sustain a claim for deliberate indifference. Doc. Nos. 43 and 44. The County Defendants move this Court to dismiss all claims against them because Plaintiff has not sufficiently alleged any personal involvement apart from their denial of his grievances. Doc. Nos. 41 and 42.

Plaintiff has sufficiently advanced his deliberate indifference claims, including sufficient personal involvement of all Defendants. Defendants' objections (many of which rely on grounds outside of Plaintiff's Complaint or misconstrue factual averments, which is improper in this context) do not contain any grounds to disturb Judge Lenihan's analysis or recommendations.

AND NOW, this 25th day of February, 2014, IT IS HEREBY ORDERED THAT:

1. United States Magistrate Judge Lenihan's Report and Recommendation (Doc. No. 39) is **ADOPTED AS THE OPINION OF THIS COURT**;
2. Defendant Jin's Motion to Dismiss (Doc. No. 11) is **GRANTED IN PART AND DENIED IN PART**;
3. County Defendants' Motion to Dismiss (Doc. No. 27) is **GRANTED IN PART AND DENIED IN PART**;
4. Plaintiff's claims against Defendant John/Jane Doe are **DISMISSED**;
5. Plaintiff's equal protection claim is **DISMISSED WITH PREJUDICE**; and
6. The case shall proceed to jury trial on April 22, 2014, on Plaintiff's claim for deliberate indifference against Defendants Folino, Dr. Jin, Greco, McAnany. A separate Case Management Order shall be entered.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All Registered ECF Counsel and Parties