

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

JASON CARLOS CASIANO	:	
	:	PRISONER
v.	:	Case No. 3:97CV2583(CFD)
	:	
NORTH HAVEN POLICE, et al. <sup>1</sup>	:	

**RULING ON MOTION TO DISMISS**

The plaintiff, an inmate at the State of Connecticut Garner Correctional Institution, filed this civil rights action pro se and in forma pauperis pursuant to 28 U.S.C. § 1915. He alleges, inter alia, that on separate occasions in September and October 1995, he was denied medical treatment and confined in an unsanitary cell without heat or water, in violation of various provisions of the United States Constitution. On September 28, 2000, the court denied the defendants' motion to dismiss without prejudice to refiled accompanied by legible copies of the inmate grievance forms provided by the plaintiff as evidence of exhaustion of administrative remedies. The defendants have refiled their motion.

**I. Standard of Review**

When considering a Rule 12(b) motion to dismiss, the court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Bernheim v. Litt, 79 F.3d 318,

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<sup>1</sup>The remaining defendants are Warden Huckabey, Correctional Officer C. Padro, Jr., and Head Medical Director John Doe. In a Ruling and Order filed November 19, 1998, the court dismissed the action in its entirety against defendants North Haven Police Department, Smith, Ricci, Connolly, Chief of Police Doe, Armstrong and Scully and against defendants Huckabey, Padro and Medical Director Doe in their official capacities. In that ruling, the court incorrectly referenced a motion to dismiss, but the dismissals were pursuant to 28 U.S.C. § 1915. In that ruling, the court also directed the plaintiff to identify Medical Director Doe by name. (See Doc. #6.)

321 (2d Cir. 1996). Dismissal is warranted only if, under any set of facts that the plaintiff can prove consistent with the allegations, it is clear that no relief can be granted. See Hishon v. King & Spaulding, 467 U.S. 69, 73 (1984); Cooper v. Parsky, 140 F.3d 433, 440 (2d Cir. 1998). In reviewing this motion, the court is mindful that the Second Circuit “ordinarily require[s] the district courts to give substantial leeway to pro se litigants.” Gomes v. Avco Corp., 964 F.2d 1330, 1335 (2d Cir. 1992).

## II. Facts

Keeping this standard in mind, the court accepts as true the following allegations taken from the complaint. The court includes only those allegations concerning the remaining defendants.

On September 19, 1995, the plaintiff injured his right foot when it was caught in the electronic door to the dayroom at the New Haven Correctional Center.<sup>2</sup> The plaintiff was denied medical treatment for his foot and toe because he “did not sign a piece of paper.” He maintains that he still suffers from that injury and has not received proper medical treatment for it.

On October 26, 1995, the plaintiff was involved in an altercation. As a result, he was transferred to the segregation unit and charged with assaulting an inmate. At that time, the plaintiff was denied medical treatment for cuts on his hand, face and ear. Further, the cell in the segregation unit was unsanitary. The plaintiff was not permitted to clean the cell, and there was no heat. During his confinement, the cell became flooded and a correctional lieutenant ordered the water shut off. The plaintiff did not have drinking water “for days” and became ill. The

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<sup>2</sup>The plaintiff alleges that the closing of the door on his foot was negligent on the part of the correctional officer, not intentional.

plaintiff asked for assistance from various correctional officers and wrote to defendant Warden Huckabey about the lack of heat and conditions in the segregation unit, but the plaintiff did not receive a response.

Finally, the plaintiff asked defendant Correctional Officer Padro to call the medical unit for assistance with an asthmatic condition on several occasions. Despite these requests, Padro refused. When a correctional lieutenant called the medical unit, the staff refused to help the plaintiff.

### III. Discussion

The remaining named defendants, Warden Huckabey and Correctional Officer Padro, have refiled their motion to dismiss this action on the ground that the plaintiff did not exhaust his administrative remedies before filing suit. They have attached legible copies of the administrative grievance forms provided by the plaintiff in response to the defendants' previous motion to dismiss on this same ground.

#### a. Exhaustion of Administrative Remedies

The Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), requires an inmate to exhaust “administrative remedies as are available” before bringing a section 1983 “action . . . with respect to prison conditions.” The term “prison conditions” is not defined in the statute. The Second Circuit has stated that “the use of the term ‘prison conditions’ in [section] 1997e(a) would appear to refer to ‘circumstances affecting everyone in the area affected by them,’ rather than ‘single or momentary matter[s],’ such as beatings or assaults, that are directed at particular individuals.” Nussle v. Willette, 224 F.3d 95, 101 (2d Cir. 2000), cert. granted sub nom. Porter v. Nussle, 121 S. Ct. 2213 (2001).

Here, the plaintiff appears to be challenging: (1) the denial of medical treatment after he injured his foot in September 1995, and (2) the conditions in the segregation unit where he was placed in October 1995 following the altercation, and the lack of medical treatment there.

With respect to the September 1995 situation, the Second Circuit has not yet determined whether the exhaustion requirement of 42 U.S.C. § 1997e(a) applies to the alleged denial of proper medical treatment. This district, however, has held that the provision of medical treatment is a condition of confinement requiring the exhaustion of administrative remedies before filing suit pursuant to section 1983. See Calca v. Keefe, No. Civ.3:98CV01685(AWT), 2001 WL 256170, at \*3 (D. Conn. Mar. 8, 2001) (distinguishing claims for assault from claims concerning the adequacy of food, clothing, shelter and medical care and holding that exhaustion requirement applies to claim of denial of non-emergency medical care); Martino v. Korch, No. 3:99cv2057(HBF), slip op. at 4 (D. Conn. Oct. 12, 2000) (Ruling on Motion to Dismiss) (concluding that exhaustion requirement applied to claim of deliberate indifference to a serious medical need). See also Graham v. Perez, 121 F. Supp. 2d 317, 321 n.6 (S.D.N.Y. 2000) (holding that claims of deliberate indifference to medical needs are governed by the PLRA)(citing Cruz v. Gorton, 80 F. Supp. 2d 109, 116 (S.D.N.Y. 1999)). This court agrees with Calca and concludes that the plaintiff must exhaust his administrative remedies concerning the denial of medical care because it is a condition of confinement similar to others that require exhaustion.

As to the October 1995 situation, the court also concludes that plaintiff's allegations regarding the segregation unit concerning the provision of heat and drinking water and the flooding of his cell also require exhaustion because they concern conditions of confinement contemplated by section 1997e(a).

The next question, then, is whether the plaintiff has exhausted his administrative remedies. The defendants attached to their first motion to dismiss a copy of State of Connecticut Department of Correction Administrative Directive 9.6 describing the grievance process that was applicable in September and October 1995.<sup>3</sup> The directive applies to inmate challenges to “conditions of care” and “living unit conditions” at paragraph 6 and also provides that the inmate should first attempt to resolve the problem informally, and then file a grievance. If the grievance is denied, the inmate may administratively appeal the denial. Here, except for two inmate request forms and a letter the plaintiff wrote to his counselor concerning an x-ray of his injured foot, there is no evidence that the plaintiff took any of these steps with respect to the September incident and the claim of improper medical care thereafter. Therefore, he has not properly exhausted his administrative remedies, and that claim must fail.

As to the October incident, the plaintiff’s efforts also do not amount to exhaustion of administrative remedies as required by the PLRA. The inmate grievance filed by the plaintiff on October 30, 1995 and denied on November 8, 1995, only claimed that he had been falsely accused of the assault on an inmate which led to his placement in the segregation unit. On that basis, he sought reassignment out of segregation. He did not mention the conditions in the segregation unit, and although he did mention he was cut in the incident and did not receive treatment, the only relief he requested was transfer out of the segregation unit.

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<sup>3</sup>In opposition, the plaintiff states that the defendants have provided an outdated copy of the directive describing the inmate grievance process and argues that the defendants are attempting to mislead the court. To the contrary, the defendants have provided the required copy of the directive. The court must determine whether the plaintiff complied with the grievance requirements by examining his efforts in light of the directive in effect at that time. The effective date of the directive at issue was August 12, 1994.

As to his claim that he was denied treatment for his asthmatic condition, the plaintiff filed two inmate request forms and the letter to the plaintiff's counselor which also mentioned the denial of an "asthma pump."<sup>4</sup> However, although the plaintiff had available to him the grievance process for this issue, there is no evidence that the plaintiff properly employed it. Neither the allegations of the complaint nor the documents attached to the plaintiff's opposition to the defendants' motion to dismiss demonstrate that the plaintiff exhausted these available administrative remedies, and therefore this claim also must fail.<sup>5</sup>

In Lawrence v. Goord, 238 F.3d 182 (2d Cir. 2001), the Second Circuit recently held that exhaustion of administrative remedies is not required where claims of particularized instances of retaliatory conduct aimed at an inmate are alleged. However, the materials submitted here by the plaintiff do not allege that the lack of medical care or the conditions in the segregation unit were specifically directed at him due to a retaliatory motive on the part of the defendants. Nor is it alleged that these conditions would apply only to the plaintiff, but rather fall within the category

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<sup>4</sup>In addition, the plaintiff alleges in his complaint that he spoke to defendant Padro and wrote to defendant Huckabey about the conditions of the segregation cell and lack of medical attention. However, he provided no evidence that grievances had been filed concerning these issues.

<sup>5</sup>The plaintiff may be claiming that prison officials were deliberately indifferent to his medical needs concerning his asthma and foot problems. The Second Circuit has expressed some doubt whether exhaustion of administrative remedies is required in the context of such claims. See Snider v. Dylag, 188 F.3d 51, 55 (2d Cir.1999) ("We note that it is far from certain that the exhaustion requirement of 42 U.S.C. § 1997e(a) applies to deliberate indifference claims in the context of the instant one, under § 1983, where the relief requested is monetary and where the administrative appeal, even if decided for the complainant, could not result in a monetary award."). However, in light of the Supreme Court's recent holding in Booth v. Churner that claims for damages must be administratively exhausted, and the failure of the plaintiff to allege that he was "singled out" for inadequate treatment or that the defendants here were intentionally indifferent to his medical needs, exhaustion is required here. See 121 S. Ct. 1819, 1825 (May 29, 2001).

of prison conditions that would apply to other inmates as well. See Nussle, 224 F.3d at 106.<sup>6</sup>

In sum, the plaintiff has not exhausted his administrative remedies as to any of his claims arising from the September or October incidents or his asthma-related claim.

b. Retroactivity of PLRA

The plaintiff also argues that the PLRA should not be applied in this case because the incidents giving rise to the complaint occurred before its enactment. The court notes, however, that the plaintiff did not file this action until December 9, 1997, over nineteen months after the PLRA was enacted. Because the PLRA applies to actions filed after its adoption, the plaintiff's claim is without merit. See Salahuddin v. Mead, 174 F.3d 271, 274 (2d Cir. 1999) (stating that “[a] plain reading of the section makes it clear that it applies only to actions that have yet to be brought” (quoting Bishop v. Lewis, 155 F.3d 1094, 1095 (9th Cir.1998)); Wright v. Morris, 111 F.3d 414, 418 (6th Cir.) (holding that PLRA applies to all cases filed after enactment date), cert. denied, 522 U.S. 906 (1997).

c. Futility

The plaintiff also contends that exhausting his administrative remedies would be futile because he seeks monetary damages which are not available through the inmate grievance process. In a recent decision, however, the Supreme Court held that inmates are required to exhaust administrative remedies before filing suit in federal court, regardless of the relief sought. See Booth v. Churner, 121 S. Ct. 1819, 1825 n.6 (May 29, 2001) (“Without getting into the force of this claim generally, we stress the point . . . that we will not read futility or other exceptions

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<sup>6</sup>As to the September incident, plaintiff claims he was denied medical treatment “because he did not sign a piece of paper.” That is not enough to allege a retaliatory motive, as there very well could be other reasons for requiring the completion of a form in order to treat a prisoner.

into statutory exhaustion requirements where Congress has provided otherwise.”). Thus, this argument is without merit also.<sup>7</sup>

#### d. Other Issues

Finally, the plaintiff argues that a state court judge has ordered that he obtain medical treatment for the conditions described in the complaint. He argues that because he brought his claims to the attention of that judge, he need not exhaust his administrative remedies in the Department of Corrections. However, the PLRA does not include an exception where the prisoner has raised his concerns in the state courts. In addition, the transcript submitted by the plaintiff is apparently from an October 5, 1995, preliminary appearance in the Connecticut Superior Court. At the conclusion of that session, the Superior Court judge merely requested that the medical personnel at the state correctional center be notified of the plaintiff’s medical complaints. That is an insufficient showing of exhaustion of administrative remedies.

The court notes that the plaintiff has not yet identified Medical Director John Doe as ordered in the court’s Ruling and Order of November 19, 1998. The plaintiff claims that he is unable to identify the medical director without first conducting discovery. However, the requirement that the plaintiff exhaust his administrative remedies applies equally to the claims against Medical Director Doe. Therefore, even if the plaintiff were permitted to conduct

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<sup>7</sup>The prisoner in Booth was pursuing a claim that correctional staff had used excessive force against him. This court questions the continued viability of the Second Circuit’s definition of conditions of confinement in light of the Supreme Court’s consideration of the exhaustion requirement in the context of a claim that, under the Second Circuit’s definition, would have been exempt from the requirement regardless of the relief requested. See Nussle, 224 F.3d at 106. However, because the claims in this case are subject to the exhaustion requirement even under the definition of conditions of confinement set forth in Nussle, the court need not resolve this question to resolve the pending motion to dismiss.

additional discovery to identify the medical director, any claims against him still would be barred by the exhaustion requirement. Thus, the claims against Medical Director Doe are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), and the plaintiff's Motion for Order Compelling Disclosure and Discovery [Doc. # 31] is DENIED.<sup>8</sup>

#### IV. Conclusion

The defendants' Motion to Dismiss [doc. #26] is GRANTED. The claims against Medical Director Doe are DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). The plaintiff's motion to compel discovery [doc. #31] is DENIED as moot. The Clerk is directed to enter judgment in favor of the defendants and close this case.<sup>9</sup>

SO ORDERED this 6<sup>th</sup> day of August, 2001, at Hartford, Connecticut.

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Christopher F. Droney  
United States District Judge

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<sup>8</sup>The plaintiff's motion also concerns discovery requests for his medical file, x-rays, documents "pertinent to this action" contained in the plaintiff's master file, and tapes and reports related to the altercation. However, the requested documents do not include copies of grievances or other documents which could show exhaustion of administrative remedies.

<sup>9</sup>This is without prejudice to the plaintiff, after exhausting his administrative remedies, filing a new suit based on continuing medical conditions such as his foot problems and asthma.