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Medications

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Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

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Medications

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Facilities shall confiscate all medications in the possession of an inmate at the time of admission to the facility. The identification of and the need for such medication shall be verified by a physician or qualified health care personnel before it is administered. This shall include controlled drugs and injections. There must be strict control of medications to be issued to inmates. Medications issued to inmates shall be strictly controlled and shall be kept in a secure place within the administrative or medical offices in the facility. All medications shall be prescribed by a physician or his designee at the time of use. An officer or qualified health care personnel shall verify that the medication is taken as directed and a medication receipt system is established. This shall include controlled drugs and injections. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(18), (19) and (20).

It has been held that a prison official's actions of confiscating a diabetic prisoner's stockpiled medication and requiring him to take the medication under supervision did not amount to deliberate indifference to the prisoner's serious medical needs. *Jackson v. Lucine*, 119 Fed.Appx. 70 (9th Cir. 2004). See also *Loggins v. Phils*, 10 Fed.Appx. 793 (10th Cir. 2001) (Complaint alleging that a detention facility dispensed medication to inmate without first performing a physical examination or securing a doctor's prescription, resulting in significant side effects, stated, at most, a claim of medical malpractice, and did not state a claim under § 1983 for violation of civil rights, absent allegation of facts evidencing deliberate indifference to serious medical needs.).

"Differences in opinion by a doctor and a prisoner over the appropriate medication to be prescribed is a disagreement over a treatment plan and does not implicate the Eighth Amendment. The Eighth Amendment is not implicated by prisoners' complaints over the adequacy of the care they received when those claims amount to a disagreement over the appropriateness of a particular prescription plan. At most, such allegations may rise to the level of a medical malpractice claim, a type of action in which the Eighth Amendment is not implicated." *Veloz v. New York*, 339 F.Supp.2d 505, 525 (S.D. N.Y. 2004) (citations omitted). See *Houston v. Zeller*, 91 Fed.Appx. 956, 957 (5th Cir. 2004) (Inmate's disagreement with prison physician's choice of medications cannot support a claim of cruel and unusual punishment.); *White v. Correctional Medical Services Inc.*, 94 Fed.Appx. 262 (6th Cir. 2004) (same); *Chance v. Armstrong*, 143 F.3d 698, 702, 703 (2d Cir. 1998) (same). See also *Edens v. Larson*, 110 Fed.Appx. 710 (7th Cir. 2004) (holding that a doctor's refusal to dispense a medicine containing barbiturates until he could directly observe and evaluate an inmate's headaches was not so substantial a departure from reasonable and accepted practice as to imply deliberate indifference, so as to support the inmate's Eighth Amendment claim in a § 1983 suit); *Kittelson v. Nafrawi*, 112 Fed.Appx. 946 (5th Cir. 2004) (Inmate's claim that his receipt of other inmates' medication was negligent, medical malpractice, and illegal is not sufficient to establish deliberate indifference.).

The Eighth Amendment proscription on the infliction of cruel and unusual punishment prohibits jail guards from "intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed." *Zentmyer v. Kendall County*, 220 F.3d 805, 810 (7th Cir. 2000) (citations omitted). "Refusing to provide prescribed medication may violate the Constitution. However, as with any other Eighth Amendment claim, plaintiff will have to show both that the denial of the medication caused a substantial risk of serious harm to his health and that defendants were deliberately indifferent to his health." *King v. Frank*, 328 F.Supp.2d 940, 948 (W.D. Wis. 2004) (citations omitted). See also *Cherry v. Berge*, 98 Fed.Appx. 513, 515 (7th Cir. 2004) (Prison staff act with deliberate indifference if they refuse to carry out a doctor's prescribed treatment in the face of a substantial risk to an inmate's health.).

The mere delay in administering medication to an inmate does not in and of itself constitute deliberate indifference to a serious medical need. *Van Court v. Lehman*, 137 Fed.Appx. 948 (9th Cir. 2005) (One-day delay in administering pain medication to inmate after he was injured in attack by another inmate did not demonstrate deliberate indifference to a serious medical need.). "Where the alleged lapses in treatment are minor and inconsequential in that they do not result in substantial risk of injury, an Eighth Amendment claim cannot be made out." *Atkins v. County of Orange*, 372 F.Supp.2d 377, 413 (S.D. N.Y. 2005). See also *Smith v. Carpenter*, 316 F.3d 178, 188 (2nd Cir. 2003) (Noting that "[a]lthough [inmate] suffered from an admittedly serious underlying condition, he presented no evidence that the two alleged episodes of missed medication resulted in permanent or on-going harm to his health..."); *Hill v. Dekalb Regional Youth Detention Ctr.*, 40 F.3d 1176, 1188 (11th Cir. 1994) ("An inmate who complains that delay in medical treatment rose to a constitutional violation must place verifying medical evidence in the record to establish the detrimental effect of the delay in the medical treatment to succeed."). The failure to "dispense bromides for the sniffles or minor aches and pains or a tiny scratch or a mild headache or minor fatigue - the sorts of ailments for which many people who are not in prison do not seek medical attention -

does not ... violate the Constitution." *Zentmyer v. Kendall County*, 220 F.3d 805, 810 (7th Cir. 2000) (citations omitted).

It has been held that jail personnel are not deliberately indifferent to an inmate's serious medical need when they unsuccessfully attempt to get an inmate to take his prescribed medication. *Atwell v. Hart County*, 122 Fed.Appx. 215, 218 (6th Cir. 2005). It has also been held that jail personnel do not act with deliberate indifference in not dispensing an inmate's medication when the inmate refuses to comply with the rules for receiving medication. *Cherry v. Berge*, 98 Fed.Appx. 513, 515 (7th Cir. 2004), *citing Hernandez v. Keane*, 341 F.3d 137, 147 (2nd Cir. 2003) (no deliberate indifference where doctors attempted to provide post-operative treatment but inmate declined some of the treatment); *Watkins v. City of Battle Creek*, 273 F.3d 682, 686 (6th Cir. 2001) (Staff were not deliberately indifferent in failing to treat detainee when he denied need for treatment and staff did not force him to accept treatment.); *Logan v. Clarke*, 119 F.3d 647, 650 (8th Cir. 1997) (Doctor was not deliberately indifferent when inmate did not follow treatment instructions.). *See also Holley v. Deal*, 948 F.Supp. 711, 718-719 (M.D. Tenn. 1996) (Prison officials did not act with deliberate indifference in forcibly administering medication to inmate, and thus did not subject him to cruel and unusual punishment in violation of Eighth Amendment.).

In *Quint v. Cox*, 348 F.Supp.2d 1243, 1251 (D. Kan. 2004), the district court found that the sheriff's practice of not having a medical nurse or better trained personnel on staff to dispense medications to inmates did not amount to deliberate indifference to the inmates' serious medical needs.

Inmates do not have a constitutional right to take medications in private. *Chevrette v. Marks*, 558 F.Supp. 1133, 1134 (M.D. Pa. 1983) (An inmate is not subjected to cruel and unusual punishment simply because he is not allowed to take his prescribed medication in private.).

The jail's written policy and procedure must prohibit inmates from performing patient care services, scheduling health care appointments or having access to medications, health records or medical supplies and equipment. Rules of the Tennessee Corrections Institute, Rule 1400-1-.13(6).

At least one federal district court has held that the use of inmate trustees to carry out sensitive tasks such as distributing drugs violates the Eighth Amendment. *Nicholson v. Choctaw County*, 498 F.Supp. 295, 309 (S.D. Ala. 1980).

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