

defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners' health, care, and well-being. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 136. Reasonable or ordinary care is that degree of caution and foresight which an ordinary prudent person would employ in similar circumstances. *Smith v. United Properties Inc.* (1965), 2 Ohio St.2d 310. However, the state is not an insurer of inmates' safety. See *Williams v. Ohio Dept. of Rehab. and Corr.* (1991), 61 Ohio Misc.2d 699, at 702.

{¶ 4} The crux of plaintiff's claim is that defendant was negligent in failing to honor his permanent medical restriction. Defendant argues that while plaintiff may have been issued a permanent restriction in 1999, policies regarding such restrictions had changed in the ensuing five years. Vanessa Shepherd, a unit manager at GCI, testified that at the time of plaintiff's move, medical bunk and range restrictions were re-evaluated and updated annually.

{¶ 5} On the date that plaintiff was moved to the top range, he brought his 1999 restriction to the attention of several GCI staff members. The staff informed plaintiff that he needed to get an evaluation from "medical" who would update his restriction and make a recommendation to the count office which was the only office that could authorize such moves.

{¶ 6} Plaintiff testified that a few days after he was moved to the upper range, he got an appointment and was evaluated by medical. As a result of the evaluation, plaintiff was granted a

lower-bunk and lower-range restriction effective from October 22, 2004, until April 22, 2005. The order included the handwritten phrase "when available." Corrections Officer Lieutenant Wright testified that the initials next to the phrase were those of Jim Wolf, a registered nurse employed at GCI at the time.

{¶ 7} Eleven days after the evaluation, plaintiff fell down a flight of concrete steps. After the fall, plaintiff was treated at an outside medical facility, and was granted a bottom-range, bottom-bunk placement upon his return to GCI on November 8, 2004.

{¶ 8} After considering all the relevant testimony and evidence, the court finds that defendant implemented a reasonable policy regarding the renewal and re-evaluation of medical restrictions.

{¶ 9} To the extent that plaintiff argues that defendant's medical staff were negligent for failing to grant him an immediate, permanent bottom-bunk and bottom-range restriction, he has failed to satisfy his burden of proof. "Under Ohio law, as it has been developed, in order to establish medical malpractice, it must be shown by a preponderance of the evidence that the injury complained of was caused by the doing of some particular thing or things that a physician or surgeon of ordinary skill, care, and diligence would not have done under like or similar conditions or circumstances, or by the failure or omission to do some particular thing or things that such a physician or surgeon would have done under like or similar conditions and circumstances, and that the injury complained of was the direct result of such doing or failing to do some one or more of such particular things." *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127, 131, citing *Ault v. Hall* (1928), 119 Ohio St. 422. (Additional citations omitted.) Furthermore, "proof of the recognized standards must necessarily be provided through

expert testimony." *Bruni, supra*, at 132. Plaintiff produced no testimony on the issue of medical malpractice. Therefore, the court is not persuaded that institutional medical staff were negligent in not granting plaintiff a more restrictive medical assignment.

{¶ 10} The court finds that plaintiff has failed to prove by a preponderance of the evidence that defendant breached a duty of care to plaintiff by failing to honor a five-year-old bottom-bunk, bottom-range restriction, and subsequently issuing him a restriction to be honored "when available." Accordingly, judgment is recommended in favor of defendant.

{¶ 11} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

STEVEN A. LARSON
Magistrate

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MAGISTRATE DECISION

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