

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JAMES N. MCCARDELL,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civ. No. 17-1121-REA
	:	
PERRY PHELPS, COMMISSIONER, of	:	JURY TRIAL DEMANDED
DELAWARE DEPARTMENT OF CORRECTION:	:	IMMINENT DANGER CASE
CONNECTIONS COMMUNITY SUPPORT	:	
PROGRAMS, INC., MARC RICHMAN,	:	
BUREAU CHIEF HEALTHCARE, ADRIAN	:	
HAREWOOD, MD, MEDICAL DIRECTOR -	:	
J.T.V.C.C. and PHILLIP PARKER,	:	
DEPUTY WARDEN - J.T.V.C.C.	:	

FIRST AMENDED COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY RELIEF

**I. INTRODUCTION**

This lawsuit challenged the Delaware Department of Corrections ("DOC") and Connctions Community Support Programs, Inc. ("CCSP") regular practice of withholding necessary medical care for plaintiff with serious and painful medical conditions. On December 15, 2015 plaitiff was shot once in the abdomen, which resulted in my having use colostomy bag and supra pubir catheter. I have constantly had to fight with the defendants to get anytype medical treatment, and still not receiving required treatment. Have attempted address this matter via grievances and family contacting various defendants. I have not seen GI doctor or a Urologist over yearl and half, it been determine my injuries require treatment of specialist. I suffer constant urinary tract infections, required take series of antibiotics.

The aforementioned medications take three weeks out of the month, and causing harmful effects to my kidneys. As result not seeing proper specialist, becoming immune to some of the antibiotics. The reason not being provided needed medical care, is the cost their

is specialist at Temple University Hospital that could provide needed treatment, again defendants don't want cover cost for same. It's been determine need surgery to correct my problems, constantly informed no doctor will see me. My body unable to digest any of the following vegetables: corn, green beans, wax beans, pinto beans, cucumbers, cabbage, and carrots. Also, unable digest following fruits/spinapples, oranges and pears. Just about all the meals served concatain some of the above. I'm constantly hungry and result being unable to consume food being served. Medical Defendants state cannot order type food needed, same is said by DOC defendants.

On October 12, 2017 saw Nurse Practioner Corla Miller for chronic care appointment. Upon examining adjusted my insulin and prescibed several new medications, this included antibiotics for ongoing urinary tract infection. At about 1:00 p.m. on same day calle to infirmary to see defendant Dr. Harewood, informed had seen Nurse Practions Miller earlier in morning. He became upset told me shut-up he was smarter than myself, I was really behooved by his actions. He than went on the computer and cancelled all my medications and conveyed didn't want to see me again. I later learn't tere was some type problem between Nurse Practioner Miller and Dr. Harewood.

## **II. JURISDICTION & VENUE**

1. This Court has orginal jurisdiction under 28 U.S.C. 1331 and 28 U.S.C. 1343(a)(4). Declaratory relief is authorized by 28 U.S.C. 2201 -2202.

2. Venue is proper in this judicial district under 28 U.S.C. 1391 (b) because all Defendants reside it this District.

### III. PARTIES

#### Plaintiff

3. Plaintiff is currently incarcerated at James T. Vaughn Correctional Center, Smyrna, Delaware. I suffer major medical problems as result of having colostomy, and supra pubic catheter. This condition cause him chronic and substantial pain that interferes with his ability to consume food and sleep. Defendants resue to provide plaintiff with necessary treatment for his conditions.

#### Defendants

4. Defendant Perry Phelps is Commissioner of Delaware Department of Corrections, as such, he is legal custdial of all inmates sentence by the court of Delaware, and is responsible for safe, secure and human housing of plaintiff at all time relevent hereto, has acted under color of state law. Defendant Phelps is sued in his personal and official capacity for these constitutional violations he has committed under color of law.

5. Defendant Delaware Department of Corrections operate the correctional facilitie that subject of claim against for violations of the American with Disabilities Act.

6. Defendant/Connections Community Support Programs, Inc., is medical provider for inmates under the custody/control of Delaware Department of Corrections. The afoemention resulting contract betwee State of Delaware and Department of Corrections

7. Defendant/Marc Richman is Medicla Director for Department of Corrections, responsible for medical decisions within Department of Corrections and their contracted medical provider. He is sued in his personal capacity.

8. Defendant Adrian Harewood, MD., is the Medical Director for JTVCC. In that role he has a duty to ensure that JTVCC provides constitutionally-adequate medical care to inmates in its custody. He has the authority to appropor or deny medical treatment for JTVCC inmates. At all time relevant to this action Dr. Harewood was acting under color or state law. Dr. Harewood is sued in his official and individual capacity.

9. Defendant Phillip Parker, Deputy Warden, was serving as Acting Warden - J.T.V.C.C., as such is was legal custodian of inmate sentence by the courts of Delaware, as is responsible for safe, secure. nad human housing those inmates and is sued in his personal and individual capacity.

#### IV. EXHAUSTION OF LEGAL REMEDIES

10. Plaitiff utilized grievance/appeal process on all issues raised in complaint.

#### V. LEGAL CLAIMS

11. The deliberate indifference to needed medical treatment, denial treatment of specialist and utilization of cost of such treatment violate plaintiff's rights and be free cruel and unusal punishments under the eighth and fourteenth Amendments of Delaware and United States C~~o~~nstitution.

12. The plaintiff has been and will continue to be irreparably injured by the conduct of the defendants unless this Court grant the declaratory and injunctive relief which plaintiff seeks.

13. Court usually agree that an inmate can show a serious medical need if the "failure to treat plaintiff's conditions could result in futher significant injury the "unnecessary and wanton in-fliction of pain."

## VI. CLAIM FOR RELIEF - VIOLATION OF EIGHTH AMENDMENT

14. The Defendants have acted, and continue to act, with deliberate indifference to the serious medical need of the Plaintiff.

15. By their actions and omissions, taken under color of state law, Defendants have violated, and continue to violate the rights of the Plaintiff to be free from cruel and unusual punishment, guaranteed to him by the Eighth Amendment to the United States Constitution. Defendants' constitutional violations are actionable under 42 U.S.C. 1983.

## VII. REQUEST FOR RELIEF

16. Preliminary and permanent injunction restraining Defendants from denying without reasonable medical justification, necessary care for the Plaintiff and his serious medical needs.

17. Preliminarily and permanently enjoin the Defendant's, their agents, employees and all persons acting in concert with them from subjecting the Plaintiff to the illegal policies, practices, omissions and conditions described herein.

18. Order Defendants' agents, employees and all persons acting in concert with them to:

a. Halt Defendant Harewood from interfering or providing Plaintiff medical services.

b. Permit Mr Robert Saunders to provide Plaintiff legal assistance in this matter until either court appoint counsel or pro bono counsel secured.

c. Provide immediately all medical services Plaintiff in need.

d. Immediately provide Plaintiff with diet needed to address his medical needs.

19. Award Plaintiff damages, determined by either the Court or jury, in compensatory damages, against the Defendants for violations of Plaintiff's constitutional rights.


20. Award Plaintiff punitive damages for Defendants violations of Plaintiff's constitutional rights.

21. Retain jurisdiction of this case until the Defendants have fully complied with the orders of this Court and there is reasonable assurance that the Defendants will continue to comply in the future absents continuing jurisdiction.

22. Award such other and further relief as the Court deems just and proper.

DATED: October 19, 2017

Respectfully submitted,

  
JAMES N. MCCARDELL, 00410994  
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Smyrna, DE 19977