

DAVID BURNS

Name

1139521

Prison Number

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\*\*\*

DAVID BURNS, Plaintiff

vs.

M.D.HANF, Defendant(s).

Case No. 2:19-cv-00722-JAD-NJK  
(Supplied by Clerk of Court)  
FIRST AMENDED COMPLAINT  
CIVIL RIGHTS COMPLAINT  
PURSUANT TO  
42 U.S.C. § 1983

A. JURISDICTION

1) This complaint alleges that the civil rights of Plaintiff, DAVID BURNS,  
(print plaintiff's name)

who presently resides at ELY STATE PRISON, were violated by

the actions of the below-named individuals that were directed against Plaintiff at

ELY STATE PRISON ELY, NV on the following dates:  
(institution/city where violation occurred)

Ongoing from May 21<sup>st</sup> 2017, Ongoing from May 21<sup>st</sup> 2017, and \_\_\_\_\_  
(Claim 1) (Claim 2) (Claim 3)

**Make a copy of this page to provide the below information if you are naming more than five (5) defendants**

- 2) Defendant M.D. HANF resides at P.O. BOX 650 HDSP Indian Springs, NV, 89070, and is  
(full name of first defendant) (address of first defendant)  
employed as Medical Director at HDSP. This defendant is sued in his/her  
(defendant's position and title, if any)  
 individual  official capacity. (Check one or both.) Explain how this defendant was acting  
under color of law: This individual is the Medical Director at HDSP for NDOC  
acting under color of state law.
- 3) Defendant Dr. Wolf resides at P.O. BOX 650 HDSP Indian Springs, NV, 89070, and is  
employed as Doctor at HDSP. This defendant is sued in his/her  
 individual  official capacity. (Check one or both.) Explain how this defendant was acting  
under color of law: This individual is the Doctor at HDSP for NDOC acting  
under color of state law
- 4) Defendant N.P. Martin resides at P.O. BOX 1489 E.S.P Ely, NV 89301, and is  
employed as Nurse Practitioner at E.S.P. This defendant is sued in his/her  
 individual  official capacity. (Check one or both.) Explain how this defendant was acting  
under color of law: This individual is the Nurse Practitioner at E.S.P for NDOC  
acting under color of state law.

5) Defendant EDMUND PILLSBURY resides at Carson City, and is employed as Utilization Review Panel. This defendant is sued in his/her  individual  official capacity. (Check one or both.) Explain how this defendant was acting under color of law: This individual is a Medical Director on the Utilization Review Panel for NDOC acting under color of state law.

6) Defendant \_\_\_\_\_ resides at \_\_\_\_\_, and is employed as \_\_\_\_\_. This defendant is sued in his/her \_\_\_\_\_ individual \_\_\_\_\_ official capacity. (Check one or both.) Explain how this defendant was acting under color of law: \_\_\_\_\_

7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional statutes, list them below.

**B. NATURE OF THE CASE**

8) Briefly state the background of your case.

Plaintiff first complained of his hand pain and not bending May 21<sup>st</sup> 2017, which was later determined to be fractured. Plaintiff complained through Medical request forms at Ely State Prison and was given medication that was later reduced for a still existing pain. Plaintiff was denied necessary medical care to fix finger and all requests to see an orthopedic were denied by Utilization Review Panel for no penological reason violating plaintiff's 8<sup>th</sup> amendment rights to Adequate Medical Care.

## C. CAUSE(S) OF ACTION

### CLAIM 1

The following civil rights have been violated: That Plaintiff's 8<sup>th</sup> amendment rights under access to adequate medical care Deliberate Indifference and Cruel and Unusual Punishment have been violated by Edmund Pillsbury, M.D., Dr. Wolf, and M.D. Hanf

Supporting Facts: [Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

1. The Utilization Review Panel including member Edmund Pillsbury, M.D have denied plaintiff access to medical personnel qualified to exercise judgement about a particular medical problem. These defendants have denied access to medical personnel with necessary expertise specialized to correct or pass judgement on this serious medical need of a fractured finger.
2. On May 21<sup>st</sup> 2017, plaintiff first complained of finger not bending correctly in a medical request form dated this date.
3. On February 17<sup>th</sup> 2018, Utilization Review Panel member Edmund Pillsbury, M.D. reviewed Plaintiff's x-ray and denied plaintiff relief from fractured left pinky finger.
4. On February 18<sup>th</sup> 2018, G. Mangum sent a Utilization Review Panel decision stating "The E. S. P provider continue to monitor you. Please kite for an appointment if you are having further problems"
5. Plaintiff was seen by Nurse Practitioner Martin and told plaintiff he had a fractured finger and would be provided Tylenol 3 for the pain for 30 days.
6. Plaintiff moved down to High Desert State Prison and had another x-ray and was further denied by Dr. Wolf and M.D. Hanf, stating "tendons are damaged far too long," and further denied request to orthopedic referral stating "It would be pointless."
7. Edmund Pillsbury, Dr. Wolf, and M.D. Hanf denied Plaintiff orthopedic help and judgement ~~for this~~ by a professional for this particular medical problem.

## CLAIM 2

The following civil rights have been violated: That Plaintiff's 8<sup>th</sup> amendment rights under adequate medical care has been violated by Nurse Practitioner Martin and M.D. Hanf. These individuals have delayed and/or denied treatment by pain medication along with Dr. Wolf

Supporting Facts: [Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

1. Plaintiff was delayed and/or denied treatment by pain medication for fractured finger.
2. Plaintiff first complained of pain May 21<sup>st</sup> 2017 and was prescribed Indothacin and Capsaicin creme for Arthritis and Fractured finger, which was first diagnosed as a arthritic inflammatory issue by Nurse Practitioner Martin. Plaintiff's request form on this day stated plaintiff not being able to bend his hand.
3. After plaintiffs request forms plaintiff still experienced a shooting pain everytime plaintiff attempted to close his hand into a fist. Plaintiff could not play basket ball or have much use of a fully gripped left hand due to pain when hand was attempted to be balled.
4. After the x-ray came back in the beginning of 2018, Nurse Practitioner Martin said in a visit "your in pain huh?" "Your left pinky is fractured from your x-rays, I'm prescribing you Tylenol 3 for your pain."
5. Plaintiff was on Tylenol 3 for 30 days.
6. When this medication ran out plaintiff was reduced to Ibuprofen which did nothing for pain and if plaintiff took more then 1 per day, plaintiff would experience painful constipation, and 2 per day was the prescribed dose.
7. Plaintiff wrote request forms and complained of this, and was put in to see the medical provider while being left in ~~pain~~ pain with no remedy.
8. Plaintiff was seen by M.D. Hanf, plaintiff explained the pain he was going through by stating

1 "I'm having shooting pains in the fractured finger everytime I try to form a grip, even for simple  
2 tasks of gripping a pen or spoon.

3 9. M.D. Hanf provided only 20 pills of indomethacin for arthritis pain but made no further  
4 mention of plaintiff's pain in fractured finger.

5 10. Plaintiff was seen by Dr. Wolf but not given no medication when seen for this fractured  
6 finger, stating "the arthritis medication you were provided should be enough."

7 11. Due to this plaintiff was denied adequate medical care for pain Defendants knew of, but failed  
8 to fully remedy.

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9) Have you filed other actions in state or federal courts involving the **same or similar facts** as involved in this action? Circle one: Yes or No. If your answer is "Yes," describe each lawsuit. (If more than one, describe the others on an additional page answering the following questions.)

a) Defendants: \_\_\_\_\_

b) Name of court and docket number: \_\_\_\_\_

c) Disposition (for example, was the case dismissed, appealed or is it still pending?):  
\_\_\_\_\_

d) Issues raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

e) Approximate date it was filed: \_\_\_\_\_

f) Approximate date of disposition: \_\_\_\_\_

10) Have you filed an action in federal court that was dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted? Circle one: Yes or No. If your answer is "Yes," describe each lawsuit. (If you had more than three actions dismissed based on the above reasons, describe the others on an additional page answering the following questions.)

**Lawsuit #1 dismissed as frivolous, malicious, or failed to state a claim:**

a) Defendants: \_\_\_\_\_

b) Name of court and case number: \_\_\_\_\_

c) The case was dismissed because it was found to be (circle one): (1) frivolous;  
(2) malicious; or (3) failed to state a claim upon which relief could be granted.

d) Issues raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

e) Approximate date it was filed: \_\_\_\_\_

f) Approximate date of disposition: \_\_\_\_\_

**Lawsuit #2 dismissed as frivolous, malicious, or failed to state a claim:**

- a) Defendants: \_\_\_\_\_
- b) Name of court and case number: \_\_\_\_\_
- c) The case was dismissed because it was found to be (circle one): (1) frivolous;  
(2) malicious; or (3) failed to state a claim upon which relief could be granted.
- d) Issues raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- e) Approximate date it was filed: \_\_\_\_\_
- f) Approximate date of disposition: \_\_\_\_\_

**Lawsuit #3 dismissed as frivolous, malicious, or failed to state a claim:**

- a) Defendants: \_\_\_\_\_
- b) Name of court and case number: \_\_\_\_\_
- c) The case was dismissed because it was found to be (circle one): (1) frivolous;  
(2) malicious; or (3) failed to state a claim upon which relief could be granted.
- d) Issues raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- e) Approximate date it was filed: \_\_\_\_\_
- f) Approximate date of disposition: \_\_\_\_\_

**D. REQUEST FOR RELIEF**

I believe I am entitled to the following relief: I believe I am entitled to the following relief:

Compensatory Damages against Pillsbury Wolf, and Hanf for the 8<sup>th</sup> amendment violation of  
denial of adequate medical care \$ 200,000 and \$ 200,000 punitive damages.

Pain and Suffering \$50,000 and \$ 50,000 Mental and Emotional Distress

Injunction: To be seen by Orthopedic surgeon

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.** See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

\_\_\_\_\_  
(name of person who prepared or helped  
prepare this complaint if not the plaintiff)

DBurns  
(signature of plaintiff)

4/21/20  
(date)