

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

BENEDICTUS YARZUE,

Plaintiff

v.

DIVISION OF IMMIGRATION HEALTH
SERVICES; DEPARTMENT OF
HOMELAND SECURITY;
YORK COUNTY, PENNSYLVANIA;
BERKS COUNTY, PENNSYLVANIA;
DR. TIMOTHY SHACK, MEDICAL
DIRECTOR, DIVISION OF IMMIGRATION
HEALTH SERVICES, *sued in his individual
capacity*;
JOHN/JANE DOE, DIVISION OF
IMMIGRATION HEALTH SERVICES *sued
in his/her individual capacity*;
THOMAS HOGAN, WARDEN, YORK
COUNTY PRISON, *sued in his individual
capacity*;
DR. CHARLES NORRIS, MEDICAL
DIRECTOR, YORK COUNTY PRISON, *sued
in his individual capacity*;
DR. JOHN/JANE ROE, PHYSICIAN, BERKS
COUNTY PRISON, *sued in his/her individual
and official capacity*;
PRISON HEALTH SERVICES, INC.
PRIMECARE MEDICAL, INC.

Defendants.

: CIVIL ACTION
: NO. 05-cv-1415

:
: Judge McCLURE

:
: Electronically Filed Document

PLAINTIFF’S SECOND AMENDED COMPLAINT

INTRODUCTION

Plaintiff Benedictus Yarzue is a Federal immigration detainee who is currently housed in Berks County Prison.

Mr. Yarzue has repeatedly sought medical treatment for a painful condition in his penis, testicles, and anus. The Division of Immigration Health Services (DIHS) has refused to pay for testing recommended by an urologist. Absent DIHS authorization for reimbursement, the York County Defendants, Berks County Defendants, Prison Health Services, and PrimeCare Medical have failed to provide the recommended care to Mr. Yarzue.

Almost a year has passed and Mr. Yarzue has still not received the testing the urologist recommended. He continues to suffer from extreme pain in his penis, testicles, and anus.

Mr. Yarzue alleges that Defendants violated his rights under the Eighth Amendment to the U. S. Constitution through their deliberate indifference to his serious medical needs. He seeks money damages and equitable relief.

JURISDICTION

1. This action is brought pursuant to 42 U.S.C. §1983, the Eight and/or Fourteenth Amendments to the United States Constitution, 28 U.S.C. §§2201,

2202, 2283, and 2284, Rule 65 of the Federal Rules of Civil Procedure, and 5 U.S.C. §702.

2. Jurisdiction is based upon 28 U.S.C. §§1331 and 1343.
3. Venue is proper in the United States District Court for the Middle District of Pennsylvania under 28 U.S.C. § 1391.

PARTIES

3. Benedictus Yarzue is a current immigration detainee at Berks County Prison.
4. The Division of Immigration Health Services (DIHS) is a sub-division of the Department of Health and Human Services. DIHS provides health care services for individuals detained by Immigration and Customs Enforcement (ICE) through an interagency agreement with the Department of Homeland Security (DHS).
5. The Department of Homeland Security (DHS) is an administrative agency of the United States.
6. Berks County is a political subdivision in Pennsylvania.
7. York County is a political subdivision in Pennsylvania
8. Dr. Timothy Shack is the Medical Director of DIHS. Dr. Shack is sued in his individual capacity.

9. John/Jane Doe is an employee of DIHS who ordered the transfer of Plaintiff Yarzue from York County Prison to Berks County Prison. His or her true name is currently unknown. He/She is sued in his/her individual capacity.
10. Thomas Hogan is the Warden of York County Prison. He is sued in his individual capacity.
11. Charles Norris is the Medical Director at York County Prison. He is sued in his individual capacity.
12. Dr. Jane/John Roe is a doctor at Berks County Prison. His or her true name is currently unknown. He/She is sued in his/her individual and official capacity.
13. Prison Health Services, Inc. provides medical care at York County Prison.
14. PrimeCare Medical, Inc. provides medical care at Berks County Prison.

FACTS

15. Immigration and Customs Enforcement (ICE) is a bureau of the Department of Homeland Security (DHS) that performs the detention function of the former Immigration and Nationalization Services (INS).
16. The Division of Immigration Health Services (DIHS) is a bureau of the Department of Health and Human Services (HHS).

17. DIHS provides and oversees health care services to immigration detainees pursuant to an inter-service agreement between the Department of Health and Human Services and the Department of Homeland Security.
18. DIHS provides health services for undocumented migrants detained in federal, state, and local jails through a managed care/utilization management system.
19. York County and Berks County contract with DHS to house immigration detainees at the York County Prison and the Berks County Prison, respectively.
20. If York or Berks County wishes to be reimbursed for the cost of health care services provided to immigration detainees in their facilities, they must seek authorization from DIHS.
21. In order to receive authorization from DIHS for the provision of health services, the jail or custodial facility must submit a Treatment Authorization Request (TAR) to the appropriate DIHS Utilization Manager.
22. Absent authorization, DIHS will not reimburse the counties for medical costs.
23. Nothing in the agreement between York County and DHS prohibits York County from providing medical care to immigration detainees at its own cost. Upon information and belief, the same is true for Berks County.

24. Prison Health Services has the ability to set policies related to the provision of medical care at York County Prison.
25. On June 24, 2004, Plaintiff Benedictus Yarzue was detained by Immigration and Customs Enforcement and was held at Clinton County Prison.
26. While he was detained at Clinton County Prison, Plaintiff Yarzue began to suffer from pain in his penis, testicles, and anus. He also found that he was urinating constantly at night.
27. On or about July 21, 2004, he was transferred to the York County Prison.
28. Upon arrival at York County Prison, Plaintiff Yarzue sought medical treatment complaining of severe pain in his penis, testicles, and anus and also of constant urination.
29. On or about August 17, 2004, Plaintiff Yarzue saw a doctor in York County Prison.
30. The doctor checked Plaintiff's prostate and took a urine sample. The urine sample tested negative for a urinary tract infection. The doctor prescribed Tetracycline.
31. On or about September 17, 2004, Plaintiff saw the doctor again. He told the doctor that the medication was not helping him at all and that he was still suffering from severe pain in his penis, testicles, and anus also was still urinating constantly.

32. The doctor checked Plaintiff's prostate again and prescribed a medication called Hydren. He also filled out a treatment authorization request to DIHS seeking a urology consult for the Plaintiff.
33. In December, 2004, DIHS approved the treatment authorization request and Plaintiff was taken to see Dr. Edgar Baselli.
34. Dr. Baselli checked Plaintiff's prostate and prescribed a medication called Flomax. He also stated that Plaintiff should return in three months for a Cystoscopic evaluation.
35. In January, 2005, Plaintiff's condition worsened and he was seen by Defendant Dr. Norris at York County Prison.
36. Dr. Norris wrote to DIHS seeking approval for the Cystoscopic evaluation that Dr. Baselli had recommended.
37. In February, 2005, Defendant Dr. Norris ordered that Plaintiff be placed on 24 hour urine evaluation. The test showed that Plaintiff was producing 500 milliliters more urine than normal.
38. In February, 2005, Defendant Dr. Norris informed Plaintiff that DIHS had denied authorization for him to receive the Cystoscopic evaluation that Dr. Baselli had recommended.
39. Defendant Dr. Norris stated to Plaintiff that there was nothing he could do. He suggested that Plaintiff submit a grievance to Defendant Warden Hogan.

40. Sometime before March 18, 2005, Plaintiff submitted a grievance in which he complained of the lack of medical care he had received.

41. In response, on March 18, 2005, the complaint supervisor wrote:

Immigration has denied the medical department's request for you to be seen by a urologist. Without immigration approval, the medical department cannot schedule an appointment with a specialist for you.

42. On April 4, 2004, Plaintiff appealed the complaint supervisor's ruling.

43. The appeal was denied by Deputy Warden Roger Thomas who stated, in part:

Your case was reviewed by Dr. Shack from the Division of Immigration Health Services. These are the medical people responsible for overseeing INS inmates. The request for a cystoscopic evaluation was denied due to lack of medical necessity.

44. Plaintiff appealed Deputy Warden Thomas' ruling to Deputy Warden Bowen who affirmed Deputy Warden Thomas' ruling on April 8, 2005.

45. Plaintiff appealed Deputy Warden Bowen's ruling to the County Solicitor.

46. On April 26, 2005, the Assistant Solicitor, Donald Reihart, ruled that Plaintiff did have a valid Eighth Amendment claim because he had produced evidence of a serious medical need that was not being addressed.

47. Assistant Solicitor Reihart further ruled that "Under the circumstances, we believe that this case raises serious questions concerning INS responsibility to

approve appropriate health care and the prison's responsibility to assure that an inmate's constitutional rights are protected.”

48. Accordingly, Assistant Solicitor Reihart referred the case to the Complaint Review Board.

49. The Complaint Review Board met on May 5, 2005. The hearing was recorded by a stenographer, Plaintiff gave sworn testimony, and the members of the Complaint Review Board spoke on the record.

50. Defendant Dr. Norris was present and he stated “I feel that the need to have a further evaluation as far as a urology consultation is necessary.”

51. One of the members of the board, a Mr. Chronister, asked “What would be wrong if he needs medical treatment, we went ahead and did it and bill INS?”

52. Warden Hogan replied “The worst they could do is they wouldn't pay, and that would be a mistake.”

53. As a result of the hearing, Plaintiff's appeal was granted. In so ruling, the Complaint Review Board stated:

Prisoner shall be provided necessary treatment. INS shall be billed for reimbursement. Efforts be made to devise a procedure for alleviating, in the future, the delay in acquiring approval or better define INS obligation to reimburse the county.

54. However, in mid-May of 2005, Plaintiff was transferred to Berks County Prison.

55. Since he has been detained at Berks County Prison, Plaintiff has continued to experience severe pain in his penis, testicles, and anus as well as constant urination.
56. Plaintiff has requested medical care while at Berks County Prison.
57. Plaintiff was seen by Dr. John/Jane Roe who told him that he/she needed to talk to Dr. Baselli before he/she could prescribe medication.
58. Dr. Roe also put in a treatment authorization request to DIHS. The request was denied.
59. He was told by doctors there that there was nothing they could do for him unless DIHS approved their request for him to see an urologist.

COUNT I

60. Plaintiff incorporates by reference Paragraphs 1 through 59 as if fully set forth herein.
61. Plaintiff currently suffers from a serious medical need that requires immediate treatment.
62. The failure of the Division of Immigration Health Services and the Department of Homeland Security to authorize reimbursement for Plaintiff's medical care constitutes deliberate indifference to a serious medical need and

therefore deprives Plaintiff of his rights under the Eighth and/or Fourteenth Amendments to the U. S. Constitution.

63. The failure of Dr. Roe to provide Plaintiff with medical care despite the refusal of DIHS and/or DHS to authorize reimbursement constitutes deliberate indifference to a serious medical need and therefore deprives Plaintiff of his rights under the Eighth and/or Fourteenth Amendments to the U. S. Constitution.

64. The policy and/or practice of Berks County and PrimeCare Medical of not providing treatment for serious medical needs absent DIHS and/or DHS authorization of reimbursement constitutes deliberate indifference to a serious medical need and has caused Plaintiff to be deprived of his rights under the Eighth and/or Fourteenth Amendments to the U. S. Constitution.

COUNT II

65. Plaintiff incorporates by reference Paragraphs 1 through 59 as if fully set forth herein.

66. The failure of Dr. Shack to provide authorization for Plaintiff to receive the test recommended by Dr. Baselli while he was detained at York County Prison constituted deliberate indifference to a serious medical need and therefore

deprived Plaintiff of his rights under the Eighth and/or Fourteenth Amendments to the U. S. Constitution.

COUNT III

67. Plaintiff incorporates by reference Paragraphs 1 through 59 as if fully set forth herein.
68. The failure of Dr. Charles Norris and Thomas Hogan to provide Plaintiff medical care after DIHS and/or DHS denied authorization for reimbursement constituted deliberate indifference to a serious medical need and therefore deprived Plaintiff of his rights under the Eighth and/or Fourteenth Amendments to the U. S. Constitution.

COUNT IV

69. Plaintiff incorporates by reference Paragraphs 1 through 59 as if fully set forth herein.
70. The policy and/or practice of York County and Prison Health Services of not providing treatment for serious medical needs absent DIHS and/or DHS authorization of reimbursement constitutes deliberate indifference to a serious medical need and caused Plaintiff to be deprived of his rights under the Eighth and/or Fourteenth Amendments to the U. S. Constitution.

COUNT V

71. Plaintiff incorporates by reference Paragraphs 1 through 59 as if fully set forth herein.
72. The decision of John/Jane Doe of the Department of Homeland Security to transfer Plaintiff after York County had decided to provide him medical care constituted deliberate indifference to a serious medical need and caused Plaintiff to be deprived of his rights under the Eighth and/or Fourteenth Amendments to the U. S. Constitution.

RELIEF REQUESTED

Wherefore, Plaintiff requests that this Court:

1. Declare that the failure of the Division of Immigration Health Services and the Department of Homeland Security to authorize reimbursement for Plaintiff's medical care constitutes deliberate indifference to a serious medical need and therefore deprives Plaintiff of his rights under the Eighth and/or Fourteenth Amendments to the U. S. Constitution.
2. Declare that the policy and/or practice of Berks County and PrimeCare Medical of not providing treatment for serious medical needs absent DIHS and/or DHS authorization of reimbursement constitutes deliberate indifference to a serious medical need and has caused Plaintiff to be

- deprived of his rights under the Eighth and/or Fourteenth Amendments to the U. S. Constitution.
3. Order an injunction directing the Division of Immigration Health Services, the Department of Homeland Security, Berks County, and/or PrimeCare Medical to provide treatment for Plaintiff's serious medical need;
 4. Award compensatory damages to Plaintiff against the Defendants, except the Division of Immigration Health Services and the Department of Homeland Security, jointly and severally;
 5. Award the costs of this action to Plaintiff;
 6. Award punitive damages to the Plaintiff;
 7. Award nominal damages to the Plaintiff;
 8. Award reasonable attorney's fees and costs to Plaintiff; and
 9. Award any other relief the court may deem appropriate.

Respectfully submitted,

s/Michael Cooke, mjc91247
Angus Love, Atty# PA22932
Michael Cooke, Atty#PA91247
Pennsylvania Institutional Law Project
924 Cherry Street, Suite 523
Philadelphia, PA 19107
(215) 925-2966

Attorneys for Plaintiff

Date: December 21, 2005