

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

KEVIN KELLER, : **CIVIL NO: 03-4017**
BENJAMIN MARTIN, :
v. :

**COUNTY OF BUCKS, and MICHAEL :
FITZPATRICK; CHARLES MARTIN,
and SANDRA MILLER, individually and :
as the Bucks County Bd. of Commissioners;
GORDIAN EHRLACHER, individually : JURY TRIAL DEMANDED
and as Director, Bucks County Department of
Health; LEWIS POLK, M.D., Medical :
Director, Bucks Co. Health Department, indiv.
and as Director of Correctional Health Svc.:
(CHS); JOAN CROWE, R.N. ,individ. and as
CHS director at BCCF; HARRIS :
GUBERNICK, individually and as Director,
Bucks Co. Department of Corrections; WILLIS :
MORTON, individually and as Warden,
Bucks County Correctional Facility : ATTORNEY NO: 30889**

COMPLAINT

I. JURISDICTION

1. Jurisdiction is premised upon 28 U.S.C. § 1331 and 28 U. S.C. §1343, and presents claims for violation of the First, Eighth and Fourteenth Amendments of the U.S. Constitution pursuant to 42 U.S.C. § 1983.

II. PARTIES

2. Plaintiff Kevin Keller is an adult individual whose permanent address is 457 Fairhill Drive, Chruchville, Bucks County PA 18966.

3. Plaintiff Benjamin Martin is an adult individual whose permanent address is 914 Ivyland Road, Warminster, Bucks County PA 18974.

4. Defendant County of Bucks is a municipal governmental entity maintaining offices at the Bucks County Courthouse, 55 East Court Street, Doylestown PA 18901. The County is governed by a three-member Board of Commissioners, responsible to manage, supervise and operate the Bucks County Department of Corrections and the Correctional Facility (BCCF).

5. Defendant Michael Fitzpatrick is Chairman of the County Board of Commissioners, and Defendants Charles Martin and Sandra Miller are members of the Board of Commissioners. All are elected governmental officials and are sued both individually and in their official capacity. Fitzpatrick, Martin and Miller maintain offices at 55 E. Court St., Doylestown PA.

6. Defendant Gordian Ehrlacher is Director of the Bucks County Department of Health and maintains offices at Neshaminy Manor Center, Doylestown PA 18901.

7. Defendant Lewis Polk, M.D. Dr. Polk is Medical Director for the Department of Health and for Correctional Health Services, (CHS) and maintains offices at Neshaminy Manor Center, Doylestown PA 18901. The Health Department and CHS provide medical care at BCCF and employ Defendant Joan Crowe. Defendants Ehrlacher, Polk and Crowe are sued individually and in their official capacity.

8. Defendant Harris Gubernick is Director of the Bucks County Department of Corrections and also deputy warden for inmate work release centers. He maintains offices at 1730 South Easton Road, Doylestown PA 18901. Mr. Gubernick reports to the BCCF Warden as his deputy, but as Director of Corrections the Warden, Willis Morton,

reports to him. Willis Morton, BCCF Warden, also maintains offices at 1730 S. Easton Rd., Doylestown PA 18901. Both Willis Morton and Harris Gubernick are sued individually and in their official capacities.

III. FACTUAL BACKGROUND

9. At all times relevant to this action, all defendants maintained an official but unwritten policy and practice of providing no medical isolation facilities for inmates, and no adequate screening inmates prior to admitting them to their cellblock; providing as little as possible necessary medical care to inmates unless death appears imminent; refusing medical testing without an Order of Court, denying existence of infectious disease in the prison; refusing to provide basic sanitation for inmates, and covering up the outbreak of infectious disease

10. Defendant Commissioners, Ehrlacher and Polk are responsible for this policy and practice. Defendant Crowe implement this policy, acting as a "gatekeeper" denying inmates medical attention at will and arbitrarily punishing those who seek care. She has charged inmates with misconduct for complaining about denial of necessary medical care, thus postponing their release and placing them in solitary confinement.

11. Between July 10, 2002 and August 28, 2002, Plaintiff Kevin Keller, a male inmate at the Bucks County Correctional Facility became infected with a methicillin resistant staph infection contracted in the facility. Mr. Keller was housed in a cell with one Gary Brown who had a huge MRSA boil on his back, which broke open and left a gaping wound.

12. After being cellmates with Mr. Brown for one month, Mr. Keller developed painful boils under his armpits, which quickly grew to the size of golf balls. Although, Mr. Keller put in for a sick call, he received no treatment for the boils.

13. Mr. Keller popped the abscesses and they eventually went away. At no time was he warned that there was an outbreak of MRSA in the prison or that he should take precautions not to have contact with infected inmates or that he should not touch his infections. All through his illness, Mr. Keller was assigned to work in the prison kitchen where he handled the food for all 600 inmates and staff.

14. On August 27, 2002 Keller popped a little purple infection on his scrotum. After two days, a wound developed, with long white things extruding from it. He wrote and requested denied treatment in the prison for days after his infection started. He told the Corrections Officers of his problem and when he demanded treatment he was told that he would be given a misconduct.

15. Mr. Keller became sicker and sicker with not help. On Friday, August 28, 2002 he signed up for a sick call. He told the Corrections officer that his scrotum was infected, and they told him that he could not be seen until Tuesday, there being no sick call over the weekend or Labor Day holiday. By Sunday, Mr. Keller was bleeding all over the place and was in excruciating pain. Keller then, disregarding the facility's rules, snuck down to the dispensary and was excoriated for just showing up.

16. At the dispensary he was told by the nurse that "it'll be alright" and that he could see the prison doctor after the Labor Day Holiday. He was then locked down in solitary punitive confinement without seeing a doctor. The only medication he was given was ibuprofen. Keller was still denied access to a medical doctor, despite a painful

abscess on his scrotum, which was so painful that he actually contemplated suicide as a way of release from the pain. Keller was forced to drain the open wound in his scrotum over the toilet in his cell every two hours.

17. Keller sent in sick call slips and grievances for the failure of the facility to attend to his medical condition. When his scrotum was the size of a grapefruit he was hospitalized at Doylestown Hospital. Keller was operated on in the hospital to incise his infection. When he returned to the facility after almost a month of hospitalization he has lost large amounts of weight, suffered from chills, high fever. Although the Hospital recommended bandages and access to hot water for cleansing and soaking, Keller was denied all supplies and hot water.

18. Mr. Keller was released from BCCF November 8, 2002.

19. Plaintiff, Mr. Benjamin Martin was an inmate incarcerated at Bucks County Correctional Facility in August 2001.

20. He developed a major abscess on his leg, developing nausea and the inability to sleep. He went to the dispensary and was seen by the medical crew he was told that it was a spider bite. He asked for help over and over again and was told by the head nurse, Joan Crowe, "I have not time to help you" On Sunday, the second week of August, the abscess burst open. It was a huge infection.

21. Finally he was taken to the Doylestown Hospital Emergency room where he was told that the delay had caused the infection to go up into his hip and bone and that he was in danger of losing his leg. Mr. Martin suffers nerve damage on both legs caused by the removal of numerous infectious boils.

22. As soon as he returned from the hospital, the warden and the chief of probation made a decision to parole him. Mr. Martin wrote to the Warden to complain about the lack of treatment that he had received in September 2002.

23. On December 26, 2001 a female inmate, Virginia Brejak, died at BCCF. For several months before her death, Brejak suffered from painful, prurulent boils on her head and body, and was known to have contracted an infectious disease, methicillin resistant staphylococcus aureus (MRSA). She died of massive cerebral hemorrhage, possibly caused by MRSA abscess.

24. Defendants Polk, Ehrlacher and Crowe did not disclose to Brejak or other inmates that Brejak's boils or the boils then contracted by 50 other inmates were infectious nor did they disclose they were MRSA boils. Inmates were told that the boils were "bedsores", "spider bites", "foliculitis", "pimples", "allergies" and not communicable infections. Presence of MRSA in the prison was not disclosed to the inmates so that they could protect themselves.

25. The prison does not have any medical isolation facilities or segregated housing for the inmates carrying communicable diseases. Inmates are reluctant to tell the authorities that they are ill because they would be punished by being placed in the hole if they develop a contagious disease. This policy, of punishing the ill, puts all of the inmates at risk. Medical Isolation," for lack of an infirmary, was placement in punitive solitary confinement. Many infected inmates did not report to sick call because they would be kept in solitary confinement, would not be re-tested, and might not receive treatment.

26. MRSA is a chronic staph infection, difficult to treat because it is drug resistant. Inmates are subject to repeated infections because the bacteria are present on virtually all surfaces in the jail and the bacteria are spread by repeated contact. Depending on the location and severity of the infection and the condition of the victim's immune system, MRSA can be fatal.

27. By the end of August 2002 at least four inmates and a prison guard were exhibiting symptoms consistent with MRSA, and that no report of infectious disease outbreak at BCCF had been made to the Pennsylvania Department of Corrections as required by 37 Pa. Code § 95.242 (2)(xii). Further, none of the ill were given appropriate treatment or seen by a certified infectious disease physician until they were ordered by the court or after their condition had become so acute as to require inpatient hospitalization.

28. As of this filing, the plaintiffs are aware of 25 new cases of MRSA in the prison since January 2003. The prison is still taking inadequate care of its ill inmates. Infections are still rampant and inmates are not being treated.

29. At all times relevant to this action all defendants were deliberately indifferent to all Plaintiffs' serious medical needs as inmates in BCCF.

30. At all times relevant to this action all defendants were deliberately indifferent to all Plaintiffs' constitutionally protected rights to humane treatment, basic sanitation, and to be free of cruel and unusual punishment during incarceration.

COUNT I

PLAINTIFFS' CONSTITUTIONAL CLAIMS PURSUANT TO 42 U.S.C. § 1983

31. Allegations of Paragraphs 1 through 31 above are incorporated herein as if set forth in full.

32. These severe and chronic illnesses, repetitive painful infections and continued suffering far beyond the sentences Plaintiffs have served constitute violations of Plaintiffs' Eighth Amendment rights to be free of cruel and unusual punishment.

33. Defendants' refusal to inform inmates of the dangers of MRSA, and refusal to acknowledge, isolate and treat MRSA infections, violate inmates' First Amendment guarantees by depriving them of vital medical knowledge they are entitled to have, and causing them to suffer chronic disease and physical problems, and also to carry disease and infection to families and neighbors.

34. The recurring, dangerous and extremely painful boils, wounds, sores, headaches, diseases and permanent injuries caused by MRSA infection, suffered during incarceration by plaintiffs constitute cruel and unusual punishment in violation of the Eighth Amendment.

35. These painful afflictions and injuries, some of which are permanent and disfiguring, were directly caused by:

(a) Defendant County and Commissioners' ongoing refusal to provide independent supervision and oversight of the jail, the warden, and inmate living conditions.

(b) All Defendants' failure and refusal to develop, promulgate, implement or enforce a policy for testing, diagnosis, isolation and treatment of inmates with contagious disease.

(c) Defendants' refusal to acknowledge that the inmate population, plaintiffs in particular, have compromised immune systems, and are especially susceptible to infections living in a closed, damp, dirty prison lacking ventilation and with disease-laden showers.

(d) Defendants' practice of treating inmates complaining of pain, fevers, chills, boils, sores, sickness and injury as malingerers undeserving of medical care or personal hygiene.

(e) Defendants' deliberate indifference to inmates' serious medical based on presumption of malingering, withholding medical care unless imminent death is apparent.

(f) Persistent official refusal to acknowledge that all inmates, especially women, require adequate housing with medical isolation for contagious disease including hepatitis C and MRSA.

(g) Failure to maintain humane conditions of incarceration as required by the Eighth and Fourteenth Amendments of the U.S. Constitution.

(h) Failure to disclose medical test results to inmates; failure to test for serious infection unless ordered by a court; and refusal to re-test inmates who are treated for infections.

36. Plaintiffs Kevin Keller and Benjamin Martin have incurred substantial costs for medical care and have endured severe ongoing pain, anguish, emotional distress and continued suffering. They seek monetary relief for their personal injuries, loss of earning

capacity, and violations of their Constitutionally protected rights. Money damages are sought for unnecessary suffering, pain, injuries, agony, fevers, disfigurement, surgeries, medical care, and possible shortened life expectancy.

WHEREFORE, Plaintiffs Kevin Keller and Benjamin Martin demand judgment in their favor and against all defendants for violation of their First, Eighth and Fourteenth Amendment rights under and pursuant to 42 U.S.C. § 1983 in an amount in excess of the jurisdictional threshold (\$150,000.00) each, plus counsel fees and costs of this action as provided for in 42 U.S.C. § 1988.

Respectfully submitted

Respectfully submitted,

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