

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

ANTHONY FERNANDEZ,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	NO. 09-CV-320
v.	:	
	:	
NORTHAMPTON COUNTY, PRIMECARE MEDICAL, INC., DR. WILLIAM SPRAGUE, VICTORIA GESSNER, M.D., TODD HASKINS, RN, CCHP, TODD BUSKIRK,	:	
	:	JURY TRIAL DEMANDED
Defendants.	:	

**ANSWER AND AFFIRMATIVE DEFENSES OF
NORTHAMPTON COUNTY AND TODD BUSKIRK
TO PLAINTIFF'S COMPLAINT**

Defendants, Northampton County and Todd Buskirk (individually and in his capacity as Director of Corrections for Northampton County Prison) (hereinafter collectively referred to as “Answering Defendants”), hereby answer the Complaint of Plaintiff Anthony Fernandez (“Plaintiff”) as follows, denying each and every averment except as expressly admitted below:

1. Admitted in part, denied in part. It is admitted only that according to Plaintiff’s prison records, Plaintiff was incarcerated on or about December 31, 2006 and remains so at present. The remainder of this averment is denied in that Plaintiff was at all relevant times responsible for maintaining his own personal hygiene. To that end, Plaintiff was at all relevant times provided by the prison with reasonable access to shower facilities, soap, clean towels, clothing and bed linens, as well as cleaning supplies for his cell area.

2. Admitted.

3-6. The averments of paragraphs 3-6 are directed to parties other than the Answering Defendants; accordingly no response is required.

7. Admitted.

8. This averment constitutes a conclusion of law to which no response is required.

To the extent that a response to this averment is deemed necessary, the averment is denied.

9. Admitted.

10-11. Denied

12. Denied. By way of further response, individuals incarcerated at Northampton County Prison have, from time to time, exhibited symptoms of MRSA infection. However, the prison has acted reasonably to promptly diagnose and treat inmates exhibiting symptoms of MRSA infection and to prevent spread of the infection to other inmates.

13. Denied as stated. The Center for Disease Control and Prevention (“CDC”) has stated the following concerning MRSA: “MRSA infections that occur in otherwise healthy people who have not been recently (within the past year) hospitalized or had a medical procedure (such as dialysis, surgery, catheters) are known as community-associated (CA)-MRSA infections. These infections are usually skin infections, such as abscesses, boils, and other pus-filled lesions.” The CDC has further stated that “[i]n the outbreaks of MRSA, the environment has not played a significant role in the transmission of MRSA. MRSA is transmitted most frequently by direct skin-to-skin contact. You can protect yourself from infections by practicing good hygiene (e.g., keeping your hands clean by washing with soap and water or using an alcohol-based hand rub and showering after working out); covering any open skin area such as abrasions or cuts with a clean dry bandage; avoiding sharing personal items such as towels or razors; using a barrier (e.g., clothing or a towel) between your skin and shared equipment; and

wiping surfaces of equipment before and after use.”

14. Admitted in part, denied in part. It is admitted only that MRSA infection can present as a pimple or boil on the skin. By way of further response, individuals may be colonized in the nose or on the skin with MRSA for years and not develop an active skin infection. According to the CDC, “[a]pproximately 25% to 30% of the population is colonized (when bacteria are present, but not causing an infection) in the nose with staph bacteria.”

15. Admitted in part, denied in part. It is admitted only that the drainage of skin boils or abscesses may require medical attention.

16. Admitted in part, denied in part. It is admitted only that MRSA infection can cause scarring in some cases; however, whether and to what extent scarring occurs varies from individual to individual and infection to infection.

17. Admitted.

18. Admitted. By way of further response, the first factor identified by the CDC as being associated with MRSA infection is “close skin-to-skin contact.” In addition, according to the CDC the first thing an individual should do to prevent MRSA infection is to practice good personal hygiene by keeping his or her hands clean and washing them thoroughly.

19-21. Denied. By way of further response, inmates are responsible for cleaning their cells every day and can be sanctioned for failing to pass daily cell inspections.

22-23. Denied.

24. Admitted in part, denied in part. It is admitted only that there have been leaks, from time to time at the prison, but they were repaired and did not leave “holes in the walls.” By way of further response, meals at the prison are certified by a dietician to exceed the minimum caloric intakes provided by the American Correctional Association. Answering Defendants note

that it appears Plaintiff has included two distinct allegations in allegation No. 24.

25-29. Denied.

30. Denied. By way of further response, the prison has an ongoing weekly service contract with a pest-control service to protect against the possibility of insect infestation.

31. Admitted in part, denied in part. It is admitted only that there was on one occasion, a backup in the kitchen area of the prison. Professionals were called in, the backup was treated, eliminated, and the area was cleaned and disinfected before inmates were again granted access to the affected area. The remainder of this averment is denied.

32-34. Admitted in part, denied in part. It is admitted only that there was a leak in the ceiling of the cafeteria. Upon information and belief, the leak emanated from a shower drain above the cafeteria. The floor and drain in the shower area were repaired and the affected ceiling tiles in the cafeteria were replaced. The remainders of these averments are denied.

35. Denied. By way of further response, shower areas are cleaned on at least a daily basis.

36-40. Denied.

41. Denied. Pursuant to prison hygiene policy, inmates are afforded the opportunity to shower every day, with the exception of inmates housed in the segregation units.

42. Admitted in part, denied in part. It is admitted only that the prison cannot guarantee individual inmates access to showers more than once a day. By way of further response, the prison makes reasonable efforts to accommodate inmate requests for additional showers.

43. Denied. By way of further response, inmates elect the time of their daily showers, and usually wait until after performing recreational activities to do so.

44. Denied.

45. After reasonable investigation, Defendants are without sufficient knowledge or information to form a belief as to the truth of this averment; accordingly, it is denied.

46. Admitted in part, denied in part. It is admitted only that inmate demands to use the showers cannot always be immediately met, because there are fewer showers than inmates at the prison and the guards must maintain order and security. By way of further response, inmate showers are not timed, but generally average 10 to 15 minutes. The remainder of this averment is denied.

47-48. Denied.

49. Denied. By way of further response, inmates are provided with cleaning supplies for their cells and are responsible for maintaining the sanitary condition of their toilets and sinks.

50. Denied. By way of further response, if a toilet leaks, it is repaired.

51. Admitted in part, denied in part. It is admitted only that due to unavoidable prison overcrowding, approximately 20 inmates once were temporarily housed in the “gym” area of the prison. These inmates were provided with plastic beds, which some of them turned upside down for increased privacy, as well as mattresses and linens. The remainder of this averment is denied.

52-53. Denied.

54. Denied. By way of further response, inmates are provided with cleaning supplies for their cells and are responsible for maintaining the sanitary condition of their toilets and sinks.

55-57. Denied. By way of further response, inmates are provided with cleaning supplies for their cells and are responsible for maintaining the sanitary condition of their cell areas.

58. Denied.

59. Denied. By way of further response, inmates are given ready access to mop sinks where they can refill their mop buckets with clean water, soap and bleach.

60-61. Denied.

62. Denied. By way of further response, inmates are responsible for placing their linens and towels in laundry bags with personal identifiers. Once an inmate's linens and towels are washed and dried, they are returned to his cell.

63. Admitted in part, denied in part. Inmates are responsible for placing their linens and towels in laundry bags with personal identifiers. If an inmate fails to submit his linens and towels for washing with appropriate frequency he can and will be forced to do so.

64-65. Denied.

66. Denied. Mattresses are disinfected between inmates.

67. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of this averment. Accordingly, it is denied.

68. Defendants specifically deny Plaintiff's characterization of MRSA "outbreaks" at the prison. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of this averment. Accordingly, it is denied.

69. Denied as stated. By way of further response, inmates suspected of having a MRSA infection are placed in a Medical Determined Isolation Cell, and attempts are made to house these inmates alone until test results confirm or deny suspicion of MRSA infection.

70-71. Denied.

72. Admitted in part, denied in part. Each inmate who displays signs of a potential staph infection, MRSA or otherwise, receives individualized medical treatment from a licensed

professional.

73. Denied.

74. Denied. By way of further response, inmates are provided with cleaning supplies for their cells and are responsible for maintaining the sanitary condition of their cell areas.

Inmates with confirmed MRSA infections are segregated in Medical Determined Isolation Cells in order to protect the general population from infection. Each inmate who displays signs of a potential staph infection, MRSA or otherwise, receives individualized medical treatment from a licensed professional.

75. Denied. Each inmate who displays signs of a potential staph infection, MRSA or otherwise, receives individualized medical treatment from a licensed professional.

76-78. Denied.

79. This averment constitutes a conclusion of law as to which no response is required. To the extent that a response to this averment is deemed necessary, the averment is denied.

80. Admitted in part, denied in part. It is admitted only that according to Plaintiff's prison records, on or about April 4, 2007 medical staff examined Plaintiff and noted that Plaintiff had a one-week old swollen and painful area on his 2nd finger on his right hand.

81. Admitted in part, denied in part. It is admitted only that according to Plaintiff's prison records, on or about April 9, 2007, medical staff wrote an order pertaining to Plaintiff, and that the order included the phrases "isolation until further notice" and "house alone."

82. Admitted in part, denied in part. It is admitted only that according to Plaintiff's prison records, on or about April 9, 2007 Plaintiff was placed in medical isolation in a Special Needs cell, and that on or about April 10, 2007 Plaintiff was placed in another cell until on or about April 13, 2008. After reasonable investigation, Answering Defendants are without

knowledge or information sufficient to form a belief as to the truth of the remainder of this averment. Accordingly, it is denied.

83. Admitted in part, denied in part. It is admitted only that according to Plaintiff's prison records, medical staff examined Plaintiff on or about April 4, 2007 and prescribed Bactrim, and medical staff examined Plaintiff on or about April 9, 2007, prescribed Doxycycline, took a culture, and placed Plaintiff in medical isolation.

84. Admitted in part, denied in part. It is admitted only that according to Plaintiff's prison records, on or about April 9, 2007 medical staff examined Plaintiff, took a culture, and a culture for Plaintiff dated April 12, 2007 came back positive.

85-86. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of these averments. Accordingly, they are denied.

87. It is admitted only that according to Plaintiff's prison records, on or about June 26, 2008 Plaintiff was housed in BHU-4 for disciplinary segregation until on or about July 17, 2008. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of this averment. Accordingly, it is denied.

88. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of this averment. Accordingly, it is denied.

89. Admitted in part, denied in part. It is admitted only that according to Plaintiff's prison records, on or about July 11, 2008 medical staff examined Plaintiff, noted a healed wound on his cheek, continued Plaintiff's antibiotic treatment, and continued his medical isolation.

90. Admitted in part, denied in part. It is admitted only that according to Plaintiff's

prison records, a culture for Plaintiff dated July 10, 2008 came back positive.

91. Admitted in part, denied in part. It is admitted only that according to Plaintiff's prison records, on or about September 18, 2008 medical staff examined Plaintiff, noted a small closed boil under Plaintiff's left arm, and prescribed Clindamycin.

92. Denied. It is admitted only that according to Plaintiff's prison records, on or about September 18, 2008 medical staff examined Plaintiff, and prescribed Clindamycin. By way of further response, according to Plaintiff's prison records, on or about September 25, 2008, medical staff examined Plaintiff, and noted that his wound had resolved.

93. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of this averment. Accordingly, it is denied.

94. Admitted in part, denied in part. It is admitted only that according to Plaintiff's prison records, on or about December 10, 2008 medical staff examined Plaintiff, noted that Plaintiff had a wound on his face for three weeks, Plaintiff popped that day, and nothing was draining from the wound. By way of further response, according to Plaintiff's prison records, on or about December 10, 2008 medical staff prescribed Bactrim and Clindamycin for Plaintiff.

96. Denied. It is admitted only that according to Plaintiff's prison records, on or about December 10, 2008 medical staff prescribed Bactrim and Clindamycin for Plaintiff, and Plaintiff was moved to cell H-12. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of this averment. Accordingly, it is denied. By way of further response, Answering Defendants note that Plaintiff's Complaint contains no allegation numbered 95.

97. Denied. It is admitted only that according to Plaintiff's prison records, Plaintiff was housed in cell H-12 for approximately 2 days.

99. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of this averment. Accordingly, it is denied. By way of further response, Answering Defendants note that Plaintiff's Complaint contains no allegation numbered 98.

100. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of this averment. Accordingly, it is denied.

101-125. These averments constitute conclusions of law as to which no response is required. To the extent that responses to these averments are deemed necessary, the averments are denied.

COUNT I – ALLEGED VIOLATION OF EIGHTH AMENDMENT RIGHTS

126. The responses of all the preceding paragraphs of this Answer are realleged herein as if fully set forth.

127-28. These averments constitute conclusions of law as to which no response is required. To the extent that responses to these averments are deemed necessary, the averments are denied.

WHEREFORE, Defendants Northampton County and Todd Buskirk respectfully request that the Court enter judgment in their favor and against Plaintiff, together with costs, disbursements, attorneys fees under, *inter alia*, 42 U.S.C. § 1988 and any further relief deemed appropriate by this Court.

COUNT II – ALLEGED VIOLATION OF FOURTEENTH AMENDMENT RIGHTS

129. The responses of all the preceding paragraphs of this Answer are realleged herein as if fully set forth.

130-31. These averments constitute conclusions of law as to which no response is required. To the extent that responses to these averments are deemed necessary, the averments are denied.

WHEREFORE, Defendants Northampton County and Todd Buskirk respectfully request that the Court enter judgment in their favor and against Plaintiff, together with costs, disbursements, attorneys fees under, *inter alia*, 42 U.S.C. § 1988 and any further relief deemed appropriate by this Court.

COUNT III – DEFENDANT NORTHAMPTON COUNTY

132. The responses of all the preceding paragraphs of this Answer are realleged herein as if fully set forth.

133-44. These averments constitute conclusions of law as to which no response is required. To the extent that responses to these averments are deemed necessary, the averments are denied. By way of further response, Northampton County never developed or maintained a policy, practice or custom exhibiting deliberate indifference to the constitutional rights of Plaintiff or any other persons within the Northampton County Prison. Nor has Northampton County caused violations of Plaintiff's rights.

WHEREFORE, Defendants Northampton County and Todd Buskirk respectfully request that the Court enter judgment in their favor and against Plaintiff, together with costs, disbursements, attorneys fees under, *inter alia*, 42 U.S.C. § 1988 and any further relief deemed appropriate by this Court.

**COUNT IV – ALLEGED VIOLATION OF THE CONSTITUTION OF THE
COMMONWEALTH OF PENNSYLVANIA, ARTICLE I, SECTION 13**

145. The responses of all the preceding paragraphs of this Answer are realleged herein

as if fully set forth.

146-47. These averments constitute conclusions of law as to which no response is required. To the extent that responses to these averments are deemed necessary, the averments are denied.

WHEREFORE, Defendants Northampton County and Todd Buskirk respectfully request that the Court enter judgment in their favor and against Plaintiff, together with costs, disbursements, attorneys fees under, *inter alia*, 42 U.S.C. § 1988 and any further relief deemed appropriate by this Court.

AFFIRMATIVE DEFENSES

Defendants reserve the right to assert any and all applicable defenses to Plaintiff's claims. Defendants have not yet obtained discovery from Plaintiff in connection with this action, and therefore, reserve the right to amend or otherwise supplement this pleading on that basis. Without limiting the generality of the foregoing, without regard to whether the defenses set forth below are affirmative defenses within the meaning of Fed. R. Civ. P. 8(c), and without conceding that any such defense must be set forth in this Answer, Defendants state as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to set forth a claim, in whole or in part, against Northampton County or Todd Buskirk upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff assumed the risk of harm by his own conduct.

THIRD AFFIRMATIVE DEFENSE

Any injury or damage sustained by Plaintiff was a direct and proximate result of Plaintiff's conduct and/or the conduct of unrelated third parties.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part, or otherwise subject to reduction by reason of Plaintiff's contributory negligence.

FIFTH AFFIRMATIVE DEFENSE

No act or failure to act on the part of Northampton County or Todd Buskirk, or any other Northampton County employee or agent, violated any of Plaintiff's constitutional rights.

SIXTH AFFIRMATIVE DEFENSE

Northampton County and Todd Buskirk are immune from all or part of the claims set forth in Plaintiff's Complaint.

SEVENTH AFFIRMATIVE DEFENSE

At all times material hereto, Plaintiff was afforded all of the rights, privileges and immunities granted pursuant to the Constitution and laws of the United States and the Commonwealth of Pennsylvania.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff suffered no injury or damages as a result of any acts or omissions by Defendants.

NINTH AFFIRMATIVE DEFENSE

At no time material hereto did Northampton County or Todd Buskirk, or any Northampton County employee or agent act in bad faith or wantonly, recklessly, or maliciously, or with a disregard for Plaintiff's health, safety and welfare.

TENTH AFFIRMATIVE DEFENSE

At all times material hereto, the actions of Northampton County and Todd Buskirk were appropriate under the circumstances and based upon a reasonable good-faith belief that they were justified under the law.

ELEVENTH AFFIRMATIVE DEFENSE

At all times material hereto, the actions of Northampton County and Todd Buskirk were reasonable and justified under the circumstances.

TWELFTH AFFIRMATIVE DEFENSE

Merely negligent or careless conduct on the part of a Northampton County employee or agent is insufficient to maintain a cause of action pursuant to 42 U.S.C. § 1983.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part, or otherwise subject to reduction by the doctrines of *res judicata* and/or collateral estoppel.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Pennsylvania Political Subdivision Tort Claims Act 42 Pa. C.S.A. § 8501 *et seq.*

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff lacks standing to assert claims for declaratory or injunctive relief against the defendants.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Prisoner Litigation Reform Act, 42 U.S.C. § 1997e(a).

EIGHTEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff's Complaint can be construed to seek punitive damages against Defendants, Plaintiff's claims for punitive damages are limited and/or barred by the Constitution of the Commonwealth of Pennsylvania, by the Fourteenth, Fifth and Eighth Amendments to the United States Constitution and by the laws of the United States and the Commonwealth of Pennsylvania.

WHEREFORE, Defendants Northampton County and Todd Buskirk respectfully request that the Court enter judgment in their favor and against Plaintiff, together with costs, disbursements, attorneys fees under, *inter alia*, 42 U.S.C. §1988 and any further relief deemed appropriate by this Court.

Dated: May13, 2009

/s/ David J. MacMain

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Attorneys for Defendants
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CERTIFICATE OF SERVICE

I, David J. MacMain, hereby certify that on this 13th day of May 2009, I caused the foregoing Answer and Affirmative Defenses of Defendants Northampton County and Todd Buskirk to Plaintiff's Complaint to be served upon the following via the ECF system of the United States District Court for the Eastern District of Pennsylvania:

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This *Certificate of Service* and the said filing are intended to be available for viewing and downloading from the ECF system of the United States District Court for the Eastern District of Pennsylvania.

/s/ David J. MacMain
David J. MacMain