

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA**

Middle Division

FILED
03 MAY 13 AM 11:30
FEDERAL COURT
N.D. OF ALABAMA
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JERRY BAKER, BILLY RAY
DAVIS, JOHNNY DEFRIES,
TONY DEXTER, TED
MCGINNIS, DARRYL MULLINS,
JERRY YOUNGBLOOD,

Case No.

on behalf of themselves and other
persons similarly situated,

CV-03-C-1114-M

Plaintiffs,

vs.

DONAL CAMPBELL,
Commissioner of the Alabama
Department of Corrections;

RALPH HOOKS,
Warden of St. Clair Correctional
Facility; and

NAPHCARE, INC.,

Defendants.

COMPLAINT

NATURE OF THE ACTION

This is a civil action brought to vindicate the Plaintiffs' rights under the Eighth and Fourteenth Amendments to the United States Constitution pursuant to 42 U.S.C. § 1983. The Plaintiffs are seven Alabama inmates

incarcerated at St. Clair Correctional Facility (“St. Clair”) who suffer from serious medical conditions, including cancer, hemophilia, Hepatitis C, and deafness. Because of the grossly inadequate medical care provided to them by the Defendants, the Plaintiffs and the class they represent are suffering serious harm and are at great risk of further harm, including death. The failure to provide adequate medical care to the Plaintiffs violates the Eighth and Fourteenth Amendments to the United States Constitution. The Plaintiffs seek declaratory and injunctive relief to remedy the Defendants’ unconstitutional practices.

JURISDICTION

1. This action arises under the Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has jurisdiction over the Plaintiffs’ request for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202.

PARTIES

2. The named Plaintiffs are all prisoners incarcerated at St. Clair Correctional Facility, an Alabama maximum-security prison. As explained in greater detail in the Factual Allegations Regarding the Plaintiffs, below,

all of the named Plaintiffs have been and continue to be provided grossly inadequate care for their serious medical conditions.

3. Defendant Donal Campbell is the Commissioner of the Alabama Department of Corrections (“ADOC”). As Commissioner, he is responsible for the development and oversight of all ADOC policies and practices, including medical and nutritional care in all ADOC facilities and the monitoring and oversight of health care services that have been contracted out to private providers. Defendant Campbell is responsible for ensuring that Alabama prisons operate in a manner that is consistent with the United States Constitution. He is sued in his official capacity only.

4. Defendant Ralph Hooks is the Warden of St. Clair Correctional Facility. He is responsible for the day-to-day operations of the prison and supervises all conditions and practices therein. Defendant Hooks is sued in his official capacity only.

5. Defendant Naphcare, Inc. is a private for-profit company that is under a contractual obligation to the ADOC to provide the Plaintiffs’ medical care. Under the terms of the contract, Naphcare is obligated to provide “all reasonable and necessary medical, dental, and mental healthcare to Inmates” in the ADOC. On or about May 2, 2003, the ADOC notified Naphcare that it was terminating the contract within 90 days.

During this 90-day period, however, Naphcare continues to be responsible for the health care provided to inmates at St. Clair. The acts by Naphcare about which the Plaintiffs complain are part of Naphcare's formal and informal policies and practices.

CLASS ACTION ALLEGATIONS

6. The Plaintiffs bring this suit on their own behalf and on behalf of the class of all present and future inmates who are or will be incarcerated in the St. Clair Correctional Facility and who are in need of medical care.

7. The individual Plaintiffs sue on their own behalf and as class representatives pursuant to Rule 23 of the Federal Rules of Civil Procedure. The prerequisites of Rule 23(a) and Rule 23(b)(2) are satisfied. There are questions of law and fact common to the class and the claims of the named Plaintiffs are typical of the claims of the class: all class members suffer from a serious medical illness and are at great risk of harm as a result of the Defendants' provision of grossly inadequate medical care.

FACTUAL ALLEGATIONS REGARDING THE CLASS

8. Alabama spends less per prisoner on medical care than any other state in the nation -- only about \$1300 per inmate per year. As a result, the health care system at St. Clair -- the Alabama prison designated to treat chronically ill inmates -- is completely inadequate to meet the serious

medical and dental needs of inmates. There is a severe shortage of qualified medical personnel, a lack of access to all levels of medical and dental care, a deficient chronic care program, long delays in proper diagnosis and treatment, and dangerous lapses in the provision of necessary medication and medical supplies.

9. Decisions regarding treatment are made primarily on the basis of cost, rather than on the basis of the medical needs of patients. Serious medical problems are largely ignored until they present an emergency that the Defendants consider to be sufficiently life threatening to warrant treatment or transport to a hospital. Medical treatment has been deliberately delayed until it will no longer be effective in order to reduce costs. This financially calculated approach to medical treatment places inmates' lives in severe danger, causes unnecessary pain and suffering, and exacerbates serious medical conditions.

Insufficient Staffing

10. There is insufficient medical and dental staff to properly screen, diagnose and treat inmates with medical and/or dental problems. The inmates at St. Clair have no access to a primary care physician. Rather, the over 1500 inmates are served by *one* part-time urologist present at St. Clair only *one* day per week. The nursing staff is insufficient and

underqualified, and the dentist is available only two days per week. As a result, inmates are denied prompt access to medical care and are forced to endure unnecessary delays in treatment.

Access to Care

11. Inmates are discouraged from seeking necessary medical care and treatment. Other than emergency situations, inmates' only access to a physician occurs through a process called "sick call," whereby inmates request to be examined for their condition or illness. Inmates wait in line to be screened by a nurse who then determines whether referral to a physician is necessary. The screenings are conducted by Licensed Practical Nurses ("LPN's") who are not qualified by education or training to properly assess patients, resulting in their failure to appropriately refer inmates to a physician for further diagnosis and treatment. Inmates who specifically request to see a doctor are often denied the opportunity to do so. Even inmates who *are* referred to a doctor face delays because of the lack of a full-time, on-site physician.

12. Inmates are charged a \$3.00 co-pay every time they are screened by the L.P.N., even if he or she does not refer the inmate to the doctor and no medical treatment is provided. Moreover, inmates must pay this fee for each medical condition that is assessed; inmates are not allowed

to combine medical conditions or illnesses in one sick call request. These practices deter inmates with legitimate medical problems from seeking medical attention. Inmates with chronic illnesses are often required to utilize the co-pay system for necessary care (as opposed to elective care) that is related to their chronic illness. For example, inmates with diabetes must pay the \$3.00 co-pay if they seek treatment for hypoglycemia (low blood sugar) even though the inmates would not need to seek treatment if the medical staff provided adequate glucose monitoring and insulin adjustment.

13. Inmates are typically denied information about the results of medical tests, even when those results are abnormal. Even when inmates are informed, they are not educated about their disease or how to manage their illness. As a result, inmates do not always seek proper follow-up treatment that could improve their condition or even save their lives.

14. Inmates who must be seen by a specialist and even those who have been referred to a specialist by a physician often have their treatment delayed because of expense. Referrals have been denied altogether in an effort to save money.

15. Even inmates housed in the infirmary have difficulty receiving care. There is no operational call system so that inmates can get the

attention of the medical staff when they are locked in their infirmary cell. Sick inmates must bang on the door and hope another inmate or one of the medical staff hears them. Dying inmates unable to control their bowel movements sometimes go for hours without being changed or cleaned. Because of the shortage of nursing staff, nurses depend on inmates to perform these tasks.

16. Nurses often fail to follow instructions from on-site or free world physicians. Nurses have discontinued treatment, changed medication, or failed to arrange referrals to specialists, placing inmates at risk of serious injury, complications from their illness, or even death.

17. The Defendants have failed to conduct required annual tuberculosis (“TB”) testing for each inmate, an illness causing death if not treated. TB is contagious and has the potential to spread rapidly through a prison population. The Defendants’ failure endangers the entire prison population at St. Clair.

18. Medical records are disorganized and lack critical documentation. During a recent audit, the ADOC consultant could not confirm off-site consults because the files were in such disarray. Medical records that should be transferred along with inmates from one facility to another are sometimes lost, missing important information, or not

transferred at all. The poorly maintained medical records cause unnecessary delays and uninformed treatment decisions.

Chronic Medical Conditions

19. Inmates with chronic conditions such as diabetes, HCV (Hepatitis C), kidney disease, and cancer are not properly identified, appropriately treated, or consistently followed-up. The Defendants' treatment of these chronic conditions falls far below the standards of care that are well established and widely accepted by the medical community for the treatment of chronic illnesses. As a result, the Plaintiffs suffer pain, increased medical complications, and the risk of death.

Medication and Medical Supply Practices

20. Inmates on medication, including medication for chronic illnesses, frequently have their prescriptions disrupted or changed (often by nurses without physician approval) to a less expensive medication without proper follow-up to determine if the new medication is effective or to evaluate side effects.

21. The Defendants do not provide adequate pain management for inmates who are in chronic and acute pain. Cancer patients, for example, often receive pain medication sporadically or not at all.

22. Inmates frequently experience dangerous lapses in receiving their prescribed medications. These gaps in medication may have life-threatening consequences for inmates with serious medical conditions.

23. Inmates are at risk of receiving expired medications. During a recent audit, the ADOC consultant noted that many vials of medication were expired, including Ampicillin, Cogentin, Atropine, Epinephrine, and Lidocaine. Epinephrine is used to treat cardiac arrest; the provision of expired Epinephrine in a cardiac emergency could lead to unnecessary death.

24. Distribution of necessary medical supplies is often delayed or denied altogether. Inmates with colostomies are denied the bags that attach to their abdomen for proper waste removal. Although these bags should be provided daily, the official practice is to provide these bags three times per week. Some inmates have gone over one month without a replacement bag, forcing them to clean feces from the bag in the sinks in their cells, without medical gloves or disinfectant.

Dental Care

25. Inmates for whom dentures are medically necessary must wait for months and sometimes years to receive them. Inmates who previously received dentures from the ADOC must wait at least five years before

getting another pair – even if the old pair no longer fits or is broken.

Inmates without appropriate dentures cannot eat properly, a problem that creates or exacerbates other medical problems, including malnourishment and acid reflux.

STATEMENT OF FACTS REGARDING NAMED PLAINTIFFS

26. **Plaintiff Jerry Baker** is 63 years old and has been housed at St. Clair for fourteen years. He suffers from a serious breathing problem. Although Mr. Baker was prescribed several medications to treat his problem on March 13, 2003, the nurses at St. Clair have been unable to locate his records and, thus, his prescriptions have gone unfilled. The failure to fill his prescribed prescriptions may have serious medical consequences.

27. Last year, Mr. Baker suffered a rapid weight loss of twenty-six percent of his body weight (he went from 155 to 115 pounds), for which he was not diagnosed or treated. Mr. Baker may be at risk for lung or colon cancer, yet his weight loss was not investigated. His weight loss was caused or compounded by the fact that he has only two teeth on the top of his mouth and ten teeth on the bottom. He was given a top denture plate approximately five years ago, but that plate has been broken for over a year. When he took it to the infirmary, they glued it back together with Crazy Glue; it still does not hold together. For the last year, Mr. Baker has had

only half of a plate in the top of his mouth. Even though the doctor prescribed extra food (double trays), he is unable to consume enough food and therefore receive proper nourishment due to his difficulty in chewing food. The limited time given to inmates to eat – 4 to 6 minutes – only exacerbates this serious problem. Mr. Baker has not been prescribed vitamins or any nutritional supplements, such as a nutrient drink, that could assist him in gaining weight.

28. **Plaintiff Billy Ray Davis** is 47 years old and has been housed at St. Clair since 1987. In September 1999, Mr. Davis had trouble breathing and went to the prison doctor. He was treated for bronchitis, but continued to have difficulty breathing. Despite repeated requests for diagnosis and treatment, the prison doctor told Mr. Davis that his condition could not be diagnosed and refused to send him out of the prison for a specialty referral. When a “free world” doctor finally examined him in October 2000, the doctor explained that Mr. Davis’s left lung had collapsed. Another physician later told him that the damage could have been corrected had his condition been diagnosed and treated promptly.

29. Mr. Davis is currently prescribed medication for his lung problems, including an inhaler. Despite his serious medical needs, he was not provided the inhaler for three to four months last year. His prescription

ended on May 5, 2003; he has to sign up for sick call and pay \$3.00 to have it renewed. His other medications, including Albuterol and Theodur, have been delayed for as long as 10-12 days at a time.

30. Mr. Davis also suffers from a bone spur in his right elbow, causing sharp pain at times, and resulting in the inability to lift items weighing over 5-10 pounds. The physician told him that he needed to be sent to a specialist to treat his condition. Instead, the nurse practitioner gave him an ace bandage for ninety days.

31. **Plaintiff Johnny Defries** is 63 years old and has been housed at St. Clair for fifteen years. He suffers from numerous illnesses, including cirrhosis of the liver. Although liver damage from cirrhosis cannot be reversed, treatment can stop or delay further progression and reduce complications. A low protein diet is necessary for patients like Mr. Defries with end-stage cirrhosis, but Mr. Defries' diet consists of the very same food served to the general population, albeit without dessert.

32. Mr. Defries has been diagnosed with a number of other significant medical conditions, including shingles, an ulcer, and a hernia. In October or November 2002, Mr. Defries contracted shingles, an inflammation of the nerves that causes extremely painful skin lesions that persist for months. Shingles is so painful that a patient is often incapable of

wearing clothing. Although immediate treatment with antiviral drugs can reduce the severity and duration of an attack, Mr. Defries lay in his bed for ten days begging for help before he was finally moved to the infirmary. After twelve days in the infirmary, he was finally given medication for the first time. Although his medication was supposed to be administered five times per day, he received it only sporadically. He continues to suffer from pain from the shingles, although he is not provided any pain medication or treatment.

33. Confined to a wheelchair for months due to a painful hernia, Mr. Defries finally had surgery on January 23, 2003. Although he was in constant pain during the month following the surgery, the Lortab that was prescribed for him was only given to him sporadically.

34. Mr. Defries uses dentures that are twenty-two years old. He has no teeth on the bottom of his mouth; he has only had a top plate for the last six years. This top plate is virtually unusable because it is so worn and does not fit his mouth properly. During a recent visit to the prison dentist, the top plate was improperly re-lined, causing pain when the plate is worn. Without dentures, Mr. Defries has a total of three teeth in his mouth. Despite multiple requests, the Defendants refuse to replace Mr. Defries' dentures. Although Mr. Defries has multiple nutritional needs, he cannot

chew any solid food, exacerbating the risks to his already poor health. He is supposed to receive the nutrient drink Resource, but the prison health care unit has been out of the drink for the past two weeks.

35. **Plaintiff Tony Dexter** is 54 years old and has been housed at St. Clair for four years. He suffers from a type of hemophilia called von Willebrand Type III disease, a bleeding disorder characterized by the inability of the blood to properly clot. If blood does not properly clot, blood can leak into the muscles, joints, and other parts of the body, causing scarring, cartilage erosion, and damage to the joints. Despite needing infusions of blood products on an average of two to three times per month to prevent internal bleeding and possible death, the infirmary at St. Clair has consistently failed to have adequate supplies on hand.

36. On February 25, 2003, Mr. Dexter had a hip bleed, or spontaneous internal bleeding. A week later, he met with Dr. Lineberry, an oncologist who visits St. Clair on a part-time basis. Dr. Lineberry ordered ten units of blood product to be kept on-site, but told Mr. Dexter that he could not guarantee that it would be delivered, available, or actually administered to Mr. Dexter should he need it. During the first week of April, Mr. Dexter had a hip and nose bleed. The medical staff could not properly treat Mr. Dexter and, the next day, had to transport him to a

hospital for an infusion. Since April 21, 2003, Mr. Dexter has not received the blood pressure medication that he has been taking on a daily basis for eleven years.

37. Mr. Dexter was recently told that he may also have Hepatitis-C (HCV), a blood-borne virus that attacks and kills liver cells. Over ninety percent of hemophiliacs have contracted HCV through infected blood products. Despite its official policy, the Defendants do not test or treat HCV, leaving Mr. Dexter vulnerable to progression of the disease and its complications and, ultimately, death.

38. **Plaintiff Ted McGinnis** is 48 years old and has been housed at St. Clair for over ten years. In 2001, he suffered from swelling in his legs and feet. Blood tests showed an enzyme count of 200 (60 is normal), which is indicative of HCV. The then-prison doctor asked Mr. McGinnis if anyone had ever told him that he had Hepatitis-C and advised him to reduce the protein in his diet while more blood tests were performed. Two more blood tests were conducted and all showed increased levels of enzymes. Mr. McGinnis was given an ultrasound within three months of the initial blood test; it showed fatty tissue in his liver. On two occasions in late 2002, the physician at St. Clair told Mr. McGinnis that a liver biopsy, which is necessary to properly diagnose and treat HCV, was recommended. The

physician also recommended treatment with interferon, a drug commonly used to treat HCV. Despite that physician's recommendation, Mr. McGinness has not been given biopsy or any follow-up treatment. Instead, he was placed on a chronic care list to be treated for a liver disorder. The only "treatment" he receives, however, is a monthly check of his weight, blood pressure, and pulse. Mr. McGinniss suffers severe joint pain, especially in his hips, that may be a result of HCV. The pain is so severe that he wakes up in the middle of the night three to four times per week. He also has headaches, swelling, and fatigue. With the exception of water pills, he has never been given any medication to treat any of these conditions. As a result, he takes ibuprofen that he purchases from the store. Because this medication is insufficient to deal with his pain, he often takes excessive amounts, causing stomach pain. Instead of treating his underlying pain and other conditions, the nurses gave him Zantac for his stomach. Mr. McGinnis often asks the medical personnel about receiving treatment for HCV, but has been told that Naphcare will treat inmates only "if they get sick enough."

39. **Plaintiff Darryl Mullins** is 45 years old and has been housed at St. Clair for nineteen years. In November 2002, he was diagnosed with testicular cancer, which has spread to his lymph nodes. Despite a CT scan

on January 30, 2003, showing the metastasis of the cancer, chemotherapy was not initiated until April 29, 2003, -- a period of three months -- because there was not a nurse at St. Clair certified to provide it.

40. On January 22, 2003, Mr. Mullins underwent surgery for the removal of his testicle. He was given pain medication following his surgery, but it was discontinued after one week, despite his continued severe, unrelenting pain. On February 24, 2003, he complained to a nurse that he was in severe pain and begged for pain medication, but the nurse refused to provide it. After counsel for the Plaintiffs sent a letter to the Defendants on March 10, 2003, Mr. Mullins was finally given pain medication, several weeks after it had been abruptly discontinued.

41. **Plaintiff Jerry Youngblood** is 31 years old and has been housed at St. Clair since March 2002. He is extremely hearing-impaired and has to read lips to communicate. His multiple requests to be evaluated for a hearing aid have been ignored. Mr. Youngblood's inability to hear makes it difficult for him to adequately monitor his surroundings, placing him at risk of harm from other inmates and at danger of getting in trouble from correctional officers for not following orders.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

42. The current contract medical provider, Naphcare, Inc., uses a two-part complaint process for inmates to obtain redress of the grievances over inadequate medical care. Inmates must file a “Naphcare Medical Complaint Form,” wait for a response, and then file a “Naphcare Medical Grievance Form.” Inmates who request grievance forms are often denied them. One inmate was told that he would have to fill out *three* complaints before he could receive a copy of a grievance form. The inability to make legitimate complaints contributes to the inability of medical staff to properly diagnose and treat the inmate population.

43. The Plaintiffs have exhausted their administrative remedies by filing complaint and grievance forms with Naphcare, to the extent the grievance process has been available to them. All of the Plaintiffs received inadequate responses to their complaints and grievances or received no response at all.

a. Plaintiff Baker submitted complaints on February 20 and April 7, 2003. On March 23 and April 11, 2003, Mr. Baker submitted grievances to the Health Care Unit.

b. Plaintiff Davis submitted a complaint on April 24, 2003, and a grievance on May 6, 2003.

c. Plaintiff Defries submitted complaints on February 20, March 28, and April 7, 2003. On April 11 and April 20, 2003, Mr. Defries submitted grievances.

d. Plaintiff Dexter submitted complaints on July 16, 2002, February 20 and April 21, 2003. On February 20 and April 21, 2003, he submitted grievances.

e. Plaintiff McGinness submitted a complaint on March 17, 2003, and a grievance on April 23, 2003.

f. Plaintiff Mullins submitted complaints on February 27 and March 1, 2003, and a grievance on March 6, 2003.

g. Plaintiff Youngblood submitted a complaint on April 7, 2003. Although the Defendants indicated that the situation would be addressed, Mr. Youngblood has received no follow-up treatment. Mr. Youngblood submitted a grievance in May 2003.

CLAIMS FOR RELIEF

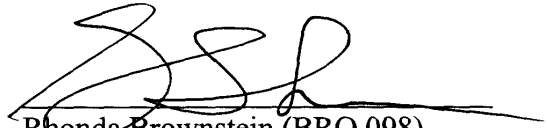
44. The Defendants' deliberate indifference to the serious medical needs of the inmates housed at St. Clair violates the Plaintiffs' rights under the Eighth and Fourteenth Amendments to the United States Constitution, as enforced through 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Honorable Court grant the following relief:

1. Certify the plaintiff class;
 2. Declare that the acts and omissions of the Defendants with regard to the class members violate the Eighth and Fourteenth Amendments to the United States Constitution;
 3. Enter a preliminary and permanent injunction requiring the Defendants, their agents, employees, and all persons acting in concert with them to cease their unconstitutional and unlawful practices;
 4. Award to the Plaintiffs reasonable costs and attorneys' fees;
- and
5. Grant the Plaintiffs such other relief as the Court deems necessary and just.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Rhonda Brownstein', written over a horizontal line.

Rhonda Brownstein (BRO 098)

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