

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _____

ALLEN BRASH,)
)
 Plaintiff,)
)
 v.)
)
 WEXFORD HEALTH SOURCES, INC.,)
 a Florida corporation, DAVID)
 ROWE, and MICHAEL MOORE, in)
 his official capacity as)
 Secretary of the Florida)
 Department of Corrections,)
)
 Defendants.)
 _____)

VERIFIED COMPLAINT

Plaintiff, Allen Brash, sues defendants and states:

1. Plaintiff seeks temporary, preliminary, and permanent injunctive relief arising from the defendants' deliberate indifference to his serious medical needs in violation of the Eighth Amendment to the United States Constitution.

Jurisdiction

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 in that this is a civil action arising under the Constitution of the United States.

3. Jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1343(a)(3) in that this action seeks to redress the deprivation, under color of state law, of rights secured to the plaintiff by the Eighth Amendment to the Constitution of the United States of America.

4. The plaintiff's claims for relief are predicated upon 42 U.S.C. § 1983 which authorizes actions to redress the deprivation, under color of state law, of rights, privileges, and immunities secured by the Constitution and laws of the United States, and upon 42 U.S.C. § 1988 which authorizes the award of attorney's fees and costs to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. § 1983.

5. Plaintiff seeks temporary, preliminary and permanent injunctive relief pursuant to Rule 65, Federal Rules of Civil Procedure.

Parties

6. Plaintiff, Allen Brash, is a prisoner in the custody of defendant Moore, Secretary of the Florida Department of Corrections, currently confined at Okeechobee Correctional Institution.

7. Defendant, Wexford Health Resources, Inc., (hereinafter Wexford) is a Florida corporation operating under color of state law under contract with defendant Moore to provide medical and health care services to the inmates confined at Okeechobee Correctional Institution.

8. Defendant, David Rowe, is Vice President and Chief Medical Director for defendant Wexford Health Sources, Inc. As Chief Medical Director, defendant Rowe makes policy under color of state law for Wexford by determining who is allowed to receive medical care recommended by defendant Wexford's prison doctors.

9. Defendant Michael Moore, is the Secretary of the Florida Department of Corrections. He acts under color of state law. As

Secretary, he is the highest ranking official of the Department of Corrections and is responsible for the medical care of all inmates. He is sued in his official capacity for injunctive relief, attorneys fees and costs.

Factual Allegations

10. Plaintiff came into the custody of the Florida Department of Corrections in 1987.

11. Plaintiff has an advanced stage of Hepatitis C and is in the early stage of cirrhosis, a condition which can be caused by the Hepatitis C virus (HCV). If Hepatitis C is left untreated, it may lead to liver failure, cancer of the liver, and death.

12. Until December 2001, the plaintiff was housed at Union Correctional Institution under the care of Dr. Shah, a Gastroenterologist at the North Florida Reception Center employed by the Florida Department of Corrections. Dr. Shah treated the plaintiff with Interferon and plaintiff's condition improved.

13. A hepatitis patient is deemed cured when his viral loads fall to zero. Although plaintiff responded favorably to treatment, the treatment did not eliminate the virus completely, his viral counts fell to less than 600IU/ml. At the end of the 11 month treatment period, in August 2001, Dr. Shah charted that the plaintiff should be checked after 6 months for a liver profile and presumably be restarted on a treatment regimen for Hepatitis C. On October 10, 2001, Dr. Shah charted that the plaintiff should be scheduled to see a Gastroenterologist by

December 10, 2001. Before plaintiff could see a Gastroenterologist, Mr. Brash was transferred to Okeechobee Correctional Institution.

14. Plaintiff came under the medical care of defendant Wexford and its prison doctor, Dr. Bhadja, at Okeechobee Correctional Institution. Another Gastroenterologist Consult was recommended for the plaintiff on January 23, 2002, this time by Dr. Bhadja. The consult recommendation was denied by defendant David Rowe on January 28, 2002. On January 30, 2002, Dr. Diaz, another Wexford prison doctor at Okeechobee Correctional Institution charted, "this patient [Mr. Brash] is a treatment failure. He should not be treated again. Follow up yearly for Hep C."

15. Plaintiff has not seen a Gastroenterologist after his medical care was assumed by defendants Wexford and Rowe from mid-December 2001 until the present despite the recommendations of three prison doctors, two of whom are employed by defendant Wexford and one by defendant Moore.

16. Plaintiff's condition is such that if he is not provided the FDA approved PEG Interferon with Ribavirin combination therapy, there is a 50%-50% chance that he will not survive another 10 years.

17. Plaintiff is a curable patient. But since he has severe fibrosis, plaintiff needs treatment to prevent his premature death. Cirrhosis, or a massive scarring of the liver, follows long-term infection from the virus. Cirrhosis leads to

liver cancer or liver failure. Absent a transplant, death follows.

18. Liver disease and especially end stage liver failure is a prolonged, and often gruesome, death. As scar tissue replaces healthy cells, liver function starts to fail and a person may experience the following symptoms: exhaustion, fatigue, loss of appetite, nausea, weakness and weight loss. These are usually early signs of liver failure which can lead to the complications of cirrhosis and end-stage liver disease.

19. Plaintiff's HCV virus will not be eradicated without treatment. In August 2001 the FDA approved the combination of Peginterferon and the nucleoside analogue Ribaviron for patients with chronic HCV infection.

20. Unless plaintiff receives immediate treatment with Pegylated Interferon and Ribavirin therapy, plaintiff will die a premature death due to liver failure or to liver cancer. If he is successfully treated, he has a normal life expectancy.

21. In June 2002, Dr. Robert Smith, regional medical director for defendant Wexford recommended that the plaintiff be restarted on Pegintron and Ribaviron therapy treatment. Plaintiff was told that he could expect treatment to begin in 8 weeks.

In late June, plaintiff was informed that someone countered Dr. Smith's recommendation, and plaintiff would not be restarted on treatment as promised.

22. Defendant David Rowe rejected Dr. Robert Smith's recommendation that the plaintiff receive Pegintron with Ribaviron treatment for Hepatitis C.

23. Defendant Moore has similarly denied plaintiff's administrative remedies for medical care using the inmate grievance procedure and after requests to his regional medical director seeking treatment for Hepatitis C. Plaintiff has also written personal letters to defendants requesting reconsideration that treatment be restarted albeit without success.

24. Defendants Wexford, Rowe and Moore have refused to approve plaintiff's need for a consult with a Gastroenterologist and appropriate medication for the treatment of Hepatitis C for non-medical reasons just to save money.

Claim for Relief

25. With full knowledge of plaintiff's history of Hepatitis C and his need to start a retreatment regimen within 6 months from the date he ceased treatment, and with full knowledge that Dr. Shah, plaintiff's treating physician at North Florida Reception Center had recommended that plaintiff see a Gastroenterologist in mid-December, 2002, defendants Wexford and Rowe disapproved Dr. Shah's recommendation that plaintiff have a specialist [Gastroenterologist] consult for plaintiff's Hepatitis C so he might restart his treatment regimen.

26. With full knowledge of plaintiff's history of Hepatitis C, and with full knowledge that Dr. Bhadja had recommended that plaintiff see a Gastroenterologist for a consult, defendants

Wexford and Rowe disapproved Dr. Bhadja's recommendation that the plaintiff see a Gastroenterologist for plaintiff's Hepatitis C so he might restart a treatment regimen.

27. With full knowledge of plaintiff's history of Hepatitis C, and with full knowledge that defendant Wexford's Regional Medical Director in Miami, Dr. Robert Smith, had recommended that plaintiff be restarted on Pegintron with Ribavirin medication for Hepatitis C, defendants Wexford and Rowe disapproved the plaintiff from restarting his treatment regimen as Dr. Smith had recommended for financial, not medical, reasons. Defendant Moore has also refused to restart the plaintiff on a treatment regimen after similar requests that he intervene.

28. Defendants Wexford, Rowe, and Moore know that Hepatitis C is a progressive disease and that, absent treatment, the plaintiff's liver will eventually stop functioning and unless he has a liver transplant, he will die.

29. In refusing to approve the Gastroenterologist consultations recommended by Dr. Shah and Dr. Bhadja, defendants Wexford, Rowe, and Moore are being deliberately indifferent to the serious medical needs of plaintiff, in violation of the Eighth Amendment.

30. In refusing to approve the medication regimen for Hepatitis C recommended by Dr. Robert Smith, defendants Wexford, Rowe, and Moore are being deliberately indifferent to the serious medical needs of plaintiff, in violation of the Eighth Amendment.

31. As the direct result of the refusal of defendants Wexford, Rowe, and Moore, plaintiff's Hepatitis C has gone untreated for nearly a year, his liver is being damaged, and his life expectancy shortened.

32. Absent intervention of this Court, plaintiff's Hepatitis C will continue to worsen to the point that he will have to have a liver transplant or he will die prematurely.

33. The acts of defendants have caused plaintiff great discomfort, pain, disfigurement, disability, and mental and emotional suffering.

WHEREFORE, plaintiff requests that this Court:

A. Declare that the conduct of the defendants, as alleged, violates plaintiff's right to be free from cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution;

B. Enter temporary, preliminary, and permanent injunctive relief requiring defendants Wexford, Rowe, and Moore, their successors in office, and their servants, agents and employees, and those acting in concert with him, to immediately schedule the recommended consultant review by a Gastroenterologist and the medication regimen needed for Hepatitis C for plaintiff;

C. Award attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

D. Grant plaintiff such other and further relief as the Court may deem just and equitable.

Respectfully submitted,

Randall C. Berg, Jr., Esq.
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DECLARATION OF ALLEN BRASH

I, Allen Brash, pursuant to 28 U.S.C. § 1746, make this Unsworn Declaration Under Penalty of Perjury, and declare that the statements made below are true, and state:

1. I have reviewed the Verified Complaint set forth above and I find the facts contained therein which pertain to me to be true and accurate to the best of my knowledge and belief.

I understand that a false statement in this declaration will subject me to penalties for perjury.

I declare under penalty of perjury that the foregoing is true and correct.

Allen Brash

Date: _____

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Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing document has been furnished to Mitchel Chusid, Esq., Ritter Chusid Bivona & Cohen, L.L.P., 7000 West Palmetto Park Road, Suite 305, Boca Raton, Florida 33433, counsel for the defendants Wexford and Rowe, and Louis Vargas, Esq., General Counsel, Florida Department of Corrections, 2601 Blairstone Road, Tallahassee, Florida 32399-2500, counsel for defendant Moore by First Class U.S. Mail on December 6, 2002.

Randall C. Berg, Jr., Esq.