

ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

JOHN T. THOMPSON, BETTINA SCHRECK,
GERALD L. HESSELL, DONALD WARD,
KENNETH ALEXANDER, HENRY TORREZ,
and SILAS T. MCADOO, on behalf of themselves
and others similarly situated,

Plaintiffs,

v.

WILLIAM OVERTON, Director, Michigan
Department of Corrections, in his official capacity;
GEORGE PRAMSTALLER, M.D., Director of
Bureau of Health Services, Michigan Department of
Corrections, in his official capacity; CORRECTIONAL
MEDICAL SERVICES, INC., and DR. CRAIG
HUTCHINSON, M.D., Director of Correctional
Medical Services Inc., in his official capacity,

Defendants.

Case No. _____

Hon. _____

LAWRENCE P. ZATKOFF

MAGISTRATE JUDGE R. STEVEN WHALEN
COMPLAINT
(Class Action)

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CLASS ACTION COMPLAINT

136008 258303 150163 138224
Plaintiffs John T. Thompson, Bettina Schreck, Gerald L. Hessell, Donald Ward, Kenneth
265879 147429 241485
Alexander, Henry Torrez, and Silas T. McAdoo, on behalf of themselves and all others similarly

situated, by their attorneys, for their complaint state the following:

I. NATURE OF THE CLAIMS

1. This is a prisoners' civil rights class action for declaratory and injunctive relief against defendants William Overton, Director, Michigan Department of Corrections ("MDOC"), George Pramstaller, MDOC's Director of Bureau of Health Services, Correctional Medical Services, Inc. ("CMS"), and Dr. Craig Hutchinson, CMS's director. Plaintiffs' and plaintiff class claims arise

out of the inadequate medical care provided them while incarcerated in various MDOC prison facilities throughout the state.

2. This class action is brought pursuant to 42 U.S.C. § 1983, the Eighth Amendment to the United States Constitution, and Article 1, § 16 of the Constitution of the State of Michigan. It seeks only declaratory and equitable relief from defendants with respect to the conditions of plaintiffs' confinement within the MDOC, which conditions constitute cruel and unusual punishment under the Eighth Amendment to the Constitution of the United States and Article 1, § 16 of the Constitution of the State of Michigan.

3. The heart of this complaint is that the defendants have been, and continue to be, in violation of the prohibition on cruel and unusual punishment in that, by policy, custom and practice, they are deliberately indifferent to plaintiffs' serious medical needs by failing to provide adequate testing and treatment for the Hepatitis C Virus ("HCV"). Without the testing and treatment herein requested, plaintiffs and those similarly situated suffer an increased risk of, and actual grave illness and/or death as the result of undetected and/or untreated HCV infection.

4. The Surgeon General of the United States has declared HCV a national epidemic. There are currently more individuals in the United States infected with HCV than with HIV, and the numbers are increasing rapidly. Already approximately ten thousand people die each year from complications related to HCV, and that number is expected to at least triple in the next few decades. Within prisons, the HCV epidemic is of even greater consequence: it is estimated that between fifteen and forty percent of the United States' prison population is infected with HCV. Most of these people will be released at some point.

5. Existing treatments are most often effective in the early stages of the disease, and, in advanced cases, are contraindicated. The public health care expense of treating the disease early is far less than treatment of the disease (and related complications) in its advanced stages.

6. Despite the vulnerable nature of the prison population, the HCV testing and treatment of Michigan prisoners is constitutionally defective. Defendants' guidelines and protocols for the testing for and treatment of HCV demonstrate a custom, policy and practice of medical care that, *inter alia*, improperly excludes most at risk inmates from proper testing, and most infected inmates from proper treatment. Additionally, defendants have a policy, custom and practice of failing to adhere to their own constitutionally deficient testing and treatment protocols.

II. JURISDICTION, VENUE, AND EXHAUSTION OF REMEDIES

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 in that this action arises under the Constitution of the United States, and pursuant to 28 U.S.C. § 1343(a), in that plaintiffs seek redress for civil rights violations under 42 U.S.C. § 1983.

8. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure. This Court has supplemental jurisdiction over state law claims based on 28 U.S.C. § 1367.

9. Venue is proper in the Eastern District of Michigan because a substantial part of the events and omissions giving rise to this suit occurred (and are occurring) within this District.

10. The named plaintiffs have exhausted administrative remedies pursuant to 42 U.S.C. § 1997e(a). Copies of these Final, Step III, grievance denials are attached as Exhibit 1.

III. PARTIES

A. Plaintiffs

11. Plaintiff John T. Thompson (136008) has been incarcerated within MDOC since 1993. From July 1998 to March 2001, Mr. Thompson was housed in the Alger Correctional Facility in Munising, Michigan. In March 2001, Mr. Thompson was transferred to Baraga Correctional Facility in Baraga, Michigan. Most recently, he was transferred to Marquette Branch Prison, in Marquette, Michigan.

12. Plaintiff Bettina Schreck (258303) has been incarcerated within MDOC since 1995. Throughout the relevant period she has been housed at the Scott Correctional Facility in Plymouth, Michigan, within the District.

13. Plaintiff Gerald L. Hessel (150163) has been incarcerated within MDOC since 1976. Throughout the relevant period he has been housed in the Saginaw Correctional Facility in Freeland, Michigan.

14. Plaintiff Donald Ward (138224) has been incarcerated within MDOC since 1987. Between 1999 and March 2002, Mr. Ward was housed in the Cooper Street Correctional Facility in Jackson, Michigan, within the District. In March of 2002, he was transferred to Camp Cusino Correctional Facility in Shingleton, Michigan, and was later transferred to Hiawatha Correctional Facility in Kincheloc, Michigan, where he currently resides.

15. Plaintiff Kenneth Alexander (269879) has been incarcerated within MDOC since 1998. From the fall of 1998 until 2001, due to prison overcrowding, Mr. Alexander was housed in a correctional facility in Virginia. Since 2001, Mr. Alexander has been housed in the Cooper Street Correctional Facility in Jackson Michigan, within the District.

16. Plaintiff Henry Torrez (147429) has been incarcerated within MDOC since 1985. Throughout the relevant period he has been housed in the Thumb Correctional Facility in Lapeer, Michigan.

17. Plaintiff Silas T. McAdoo (241485) has been incarcerated within MDOC since 1994. Throughout the relevant period he has been housed in the Gus Harrison Correctional Facility in Adrian, Michigan, within the District.

B. Defendants

18. Defendant William Overton is the Director of the Michigan Department of Corrections. Defendant Overton is responsible for the customs, policies and practices of MDOC, including those complained of herein, and is capable of commanding performance of the injunctive relief plaintiffs seek. Defendant Overton is sued in his official capacity.

19. Defendant George Pramstaller, M.D., is the Director of Bureau of Health Services, Michigan Department of Corrections. Defendant Pramstaller was at all times relevant to this action responsible for the establishment and implementation of all medical policies, procedures, customs, and practices within MDOC, including those relating to the testing and treatment of HCV. Defendant Pramstaller is sued in his official capacity.

20. Defendant CORRECTIONAL MEDICAL SERVICES, INC. (CMS), is and was at all times relevant, a for-profit corporation licensed to do business in Michigan. CMS is obligated under contract to provide managed health care to MDOC prisoners and, upon information and belief, participates in the formation of health care policies, customs and practices within MDOC, and in implementing same.

21. Defendant Dr. Craig Hutchinson, M.D., is the Director of Correctional Medical Services. Defendant Hutchinson was at all times relevant to this action responsible for the care and treatment provided by defendant CMS to plaintiffs and, upon information and belief, participates in the formation of health care policies, customs and practices within MDOC, and in implementing same.

IV. FACTUAL ALLEGATIONS

A. The Hepatitis C Virus

22. The Hepatitis C virus is a blood borne virus that causes liver disease. It is a rapidly growing national epidemic. It is currently the most common blood borne infection in the United States. Over four million Americans – or 1.8% of the United States population – are currently infected.

23. About eighty-five percent of HCV-infected individuals develop chronic hepatitis, and at least twenty percent of these develop irreversible cirrhosis within two decades of the onset of infection. Chronic HCV infection also puts one at significantly increased risk for liver cancer (“HCC”).

24. Approximately ten thousand Americans die from complications due to HCV each year. HCV is one of the most common reasons for liver transplant in the United States.

25. HCV is spread primarily through contact with the blood of an infected person. Factors that indicate an increased risk of infection with HCV include: (i) being a child born to an HCV-positive woman; (ii) service in the armed forces, particularly Vietnam veterans; (iii) receiving blood, blood products or an organ transplant before 1992; (iv) long-term kidney dialysis; (v)

exposure to HCV positive blood or body fluids, including during sex; (vi) a history of tattoos or body piercings; and (vii) a history of IV drug use.

26. The majority of people infected with HCV are asymptomatic. Around one-third of infected individuals develop symptoms of liver disease including malaise, weakness, anorexia, and jaundice. Many patients will become symptomatic only at the time of development of advanced liver disease when existing treatments are most often not effective or, in many advanced cases, contraindicated.

27. After initial exposure, HCV can be detected in blood within one to three weeks and is present at the onset of symptoms. Antibodies to HCV are detected by enzyme immunoassay ("EIA") in only fifty to seventy percent of patients at the onset of symptoms, increasing to more than ninety percent after three months.

28. Within an average of four to twelve weeks, liver cell injury caused by HCV is often, though not always, manifested by elevation of serum alanine aminotransferase ("ALT") levels.

29. Testing for serum ALT levels is the most inexpensive and noninvasive, but relatively insensitive, means of assessing disease activity.

B. HCV in Michigan's Prisons

30. Prisons are a locus for HCV infection and transmission.

31. Defendants use HCV testing and treatment protocols that, on their face, fall far short of nationally and locally accepted medical standards for the basic and humane care and treatment of HCV infected persons. These testing and treatment protocols, on their face, constitute deliberate indifference to plaintiffs' serious medical needs.

32. Defendants also have a policy, custom and practice of failing to adhere to their constitutionally defective HCV testing and treatment protocols and have, in some cases, failed to even notify inmates of their HCV positive status.

33. Defendants also fail to educate inmates about HCV, its causes, methods of transmission, consequences of infection, and available methods of treatment.

34. While incarcerated, infected prisoners who are untested and thus unaware of their positive HCV-status unknowingly pass the infection to each other, to prison guards, and to health care workers. When they are released, they may and do unknowingly infect people in the community.

35. Further, prisoners – both those who are aware of their HCV-positive status and those who are uninformed – do not receive adequate treatment.

36. Defendants' policies, procedures, customs, and practices described herein are likely to persist unless enjoined by this Court.

V. CLASS ALLEGATIONS

37. Plaintiffs bring this action on behalf of themselves and all others similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2) and (1)(A).

38. Plaintiffs request that the Court certify a class consisting of all persons who are presently imprisoned with MDOC and who meet the following conditions:

(a) her or his blood work or medical or social history indicates that she/he may be at risk for HCV;

(b) she or he is not currently being appropriately tested and/or treated for HCV;
and

(c) she or he has not declined further testing and/or treatment for HCV.

39. This class is properly maintainable as a class action under Rule 23(a) because the requirements of Rule 23(a) are met, as follows:

(a) The members of the class are too numerous to be joined in one action. At the end of 2002, Michigan's inmate population exceeded 49,000. National and other state estimates suggest that 7,350 – 19,600 of these inmates (fifteen to forty percent) may be infected with HCV, and many more are likely to have elevated risk factors for HCV infection that indicate HCV testing would be appropriate. Joinder of all class members is therefore impracticable.

(b) Common questions of law and fact exist as to all class members and dominate those questions that only affect individual members. These common questions include, but are not limited to:

- i. whether defendants' HCV testing and treatment protocols, on their face, constitute deliberate indifference to plaintiffs' serious medical needs in violation of the Eighth Amendment of the United States Constitution and Article 1, § 16 of the Constitution of the State of Michigan; and
- ii. whether defendants have by policy, custom or practice failed to follow their own HCV testing and treatment protocols and, if so, whether this failure constitutes deliberate indifference to plaintiffs' serious medical needs in violation of the Eighth Amendment of the United States Constitution and Article 1, § 16 of the Constitution of the State of Michigan;

(c) Plaintiffs' claims are typical of claims of the class. All of the

named plaintiffs are infected with HCV, and have been denied adequate testing and/or treatment by defendants. The claims of the named plaintiffs are based on the same legal theory as those of the entire class. The named plaintiffs and plaintiff class both seek declaratory and injunctive relief only.

(d) Plaintiffs will fairly and adequately represent the interests of the class. The interests of the class representatives are consistent with those of the class members. Plaintiffs' counsel knows of no conflicts of interest among class members that would affect this litigation nor of any conflicts of interest between the attorneys and class members. Moreover, class counsel is comprised of experienced attorneys who have no conflict of interest. Plaintiffs' counsel have the experience and ability to prosecute this case vigorously.

40. This action is properly maintainable under Rule 23(b)(2) because defendants have acted or have refused to act on grounds generally applicable to the class as a whole, thereby making class-wide declaratory and injunctive relief appropriate. This case involves a challenge to the defendants' customs, policies and/or practices, including, but not limited to, defendants' HCV testing and treatment protocols and their implementation. Defendants' refusal to provide adequate testing and treatment has generally, and in important aspects, similarly affected the entire proposed class.

41. This class action is also maintainable under Rule 23(b)(1)(A). Separate actions would create a risk of inconsistent adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for defendants. Defendants could be subject to varying, and possibly conflicting, injunctive and/or declaratory orders.

42. Class action treatment provides a fair and efficient method of adjudication for the controversy herein described, which affects a large number of people for whom joinder is impracticable. This class action provides an effective method whereby the enforcement of the rights of plaintiffs and the class members can be fairly managed without unnecessary expense or duplication.

VI. ALLEGATIONS OF NAMED PLAINTIFFS

A. John T. Thompson

43. Mr. Thompson was diagnosed with HCV in 1998.

44. Mr. Thompson has not received routine testing to determine if his ALT levels are elevated. Defendants have failed to follow their own protocol in this regard.

45. When Mr. Thompson's ALT levels are tested, they are consistently elevated.

46. In spite of his elevated ALT levels and his requests, Mr. Thompson has been unlawfully denied referral for ultra-sound and liver biopsy and evaluation for treatment. Mr. Thompson has also not received adequate information and education about HCV.

B. Bettina Schreck

47. Ms. Schreck was diagnosed with HCV in September 1995, when she was in the Macomb County Jail.

48. During the last four years, Ms. Schreck has experienced tremendous HCV-related pain. Her symptoms include: severe and stabbing pains in her right side, pains that radiate down her back, swollen feet and legs, blurred vision, photosensitivity, gastrointestinal problems, loss of appetite, exhaustion, kidney pain, bladder cramps, and swollen neck glands.

49. Despite having tested positive for HCV, and having elevated ALT levels, she has not received a liver biopsy or ultrasound to determine the extent of the damage to her liver and treatment options. Moreover, unless Ms. Schreck formally grieves, defendants do not provide her with the monitoring and testing called for by their current policy.

50. Defendants have also denied Ms. Schreck the appropriate dietary accommodations that her condition requires.

51. Defendants are unlawfully denying Ms. Schreck basic and humane medical care and treatment for, and information and education about her serious medical needs.

C. Gerald Hessell

52. Mr. Hessell was diagnosed with HCV in 1998.

53. Mr. Hessell has experienced tremendous HCV-related pain. His symptoms include mild to sharp pains in his upper right quadrant, extreme fatigue, loss of appetite resulting in a weight loss of nearly forty pounds in approximately sixteen months.

54. Mr. Hessell's ALT levels have remained above 148 – well above the upper normal limit – for over twenty months.

55. Despite his elevated ALT levels and significant symptoms, Mr. Hessell has not received adequate follow-up testing and/or treatment. Indeed, Mr. Hessell has not received treatment of any kind for HCV.

56. Dr. Aldabagh, a CMS physician, told Mr. Hessell that the cost of the testing was a factor in Mr. Hessell's inadequate monitoring and treatment.

57. Defendants have unlawfully denied Mr. Hessell adequate testing and treatment for and education and information about his serious medical needs.

D. Donald Ward

58. Mr. Ward was diagnosed with HCV in 1994 and his diagnosis was confirmed in August 2000. His ALT levels have been elevated for over three years, and he has not been tested at regular intervals.

59. Despite his condition, defendants have denied Mr. Ward a liver biopsy or ultrasound, and any treatment these tests might demonstrate is medically necessary. Mr. Ward has not received adequate education about HCV.

60. Defendants have unlawfully denied Mr. Ward adequate testing and treatment for, and education and information about his serious medical needs.

E. Kenneth Alexander

61. Mr. Alexander was diagnosed with HCV in 1998.

62. Defendants have failed to conduct blood draws in two-month intervals to test Mr. Alexander's ALT levels.

63. Defendants have unlawfully denied Mr. Alexander the testing his condition requires, including a liver biopsy and ultrasound, and the treatment, if any, those tests might demonstrate is medically necessary. Mr. Alexander has also not received adequate education and information about HCV.

F. Henry Torrez

64. Mr. Torrez was diagnosed with HCV in June 1996.

65. Mr. Torrez's ALT levels have been abnormally elevated since January of 1990.

66. In January 2002, Mr. Torrez was approved for Hepatitis C treatment. Treatment began six months later on May 30, 2002.

67. MDOC's Bureau of Health Care discontinued Mr. Torrez's Hepatitis C on June 24, 2002, due to Mr. Torrez's alleged depression. The Bureau based this determination on a Center for Epidemiologic Studies Depression (CES-D) Scale completed by a nurse that misrepresented Mr. Torrez's mental condition. The discontinuation of Mr. Torrez's treatment was wrongly predicated on false medical conclusions.

68. Moreover, even if the CES-D was accurate, it was a medically inappropriate basis for discontinuing his treatment.

69. Defendants have unlawfully denied Mr. Torrez continued treatment for his Hepatitis C, and information and education about his serious medical needs.

G. Silas McAdoo

70. Mr. McAdoo was diagnosed with HCV in 1995.

71. Mr. McAdoo's symptoms include: dark urine, fatigue, aches, flu-like symptoms, low grade fever, mild abdominal pain, and psychiatric symptoms believed to be caused by increased blood ammonia levels due to liver disease.

72. Mr. McAdoo's ALT levels have been abnormally elevated since 1995.

73. Defendants have unlawfully denied Mr. McAdoo information and education about his serious medical needs, a liver biopsy and ultrasound, regular monitoring, and any course of treatment that these tests might demonstrate is medically necessary for his serious medical needs.

VII. CLAIMS

74. By employing HCV testing and treatment protocols that are medically inappropriate and insufficient on their face in that they do not reflect the community standard of care, defendants, acting under color of state law, by policy, custom, and/or practice, have demonstrated deliberate

indifference to plaintiffs' serious medical needs, subjecting plaintiffs and those similarly situated to cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution as actionable under 42 U.S.C § 1983. These same acts also violate Article 1, § 16 of the Constitution of the State of Michigan.

75. By failing to abide by their own deficient HCV testing and treatment protocols, defendants, acting under color of state law, by policy, custom, and/or practice, have demonstrated deliberate indifference to plaintiffs' serious medical needs, subjecting plaintiffs and those similarly situated to cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution as actionable under 42 U.S.C § 1983. These same acts also violate Article 1, § 16 of the Constitution of the State of Michigan.

76. By failing to educate prisoners about HCV, by denying them the right to special association by forming support and other groups regarding the disease, and by failing to take reasonable precautions to prevent the further transmission of the disease, defendants, acting under color of state law, by policy, custom, and/or practice, have demonstrated deliberate indifference to plaintiffs' serious medical needs, subjecting plaintiffs and those similarly situated to cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution as actionable under 42 U.S.C § 1983. These same acts also violate Article 1, § 16 of the Constitution of the State of Michigan.

PRAYER FOR RELIEF

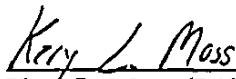
WHEREFORE, plaintiffs respectfully request that the Court:


- a. Certify this action as a class action;
- b. Declare that defendants' HCV testing and treatment protocol on its face violates the Eighth Amendment of the United States Constitution and Article 1, § 16 of the Constitution of the State of Michigan;
- c. Declare that defendants' failure to abide by its present testing and treatment protocol violates the Eighth Amendment of the United States Constitution and Article 1, § 16 of the Constitution of the State of Michigan;
- d. Enter a permanent injunction requiring defendants to adopt and fully implement within 120 days the *Hepatitis C Prevention, Testing, Treatment, Education and Monitoring Protocol* (attached hereto as Exhibit 2), which represents the community standard of care for the disease, or adopt other appropriate measures; and
- e. Award plaintiffs their costs and fees of this action, including their attorneys fees;

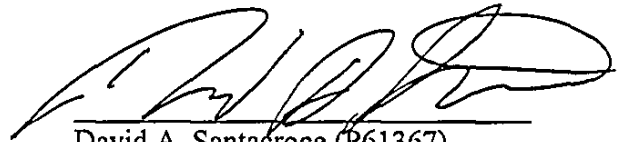
Together with such other, further and different relief that this Court deems just and proper.

Dated: January 21, 2003

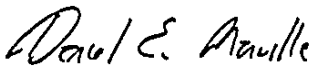
Respectfully Submitted,





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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

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