

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STEVEN BRODER, by James H. Jackson, personal
representative for the estate of Steven Broder,

Plaintiff,

vs.

File No. 03-75106
Hon. Marianne O. Battani
Mag. Judge Paul J. Komives

CORRECTIONAL MEDICAL SERVICES, INC.,
its medical director CRAIG HUTCHINSON, and
BENCY MATHAI, and employees of the Michi-
gan Department of Corrections, namely GEORGE
PRAMSTALLER, medical director, and JAN EPP,
regional medical director, all in their individual
capacities,

Defendants.

SECOND AMENDED COMPLAINT AND JURY DEMAND

The personal representative of Steven Broder's estate,¹ by his attorneys, the Michigan Clinical Law Program, files this second amended complaint in light of Mr. Broder's death on December 13, 2008, stating as follows:

INTRODUCTION

1. This is a civil rights action for damages against Michigan Department of Corrections' medical supervisors George Pramstaller and Jan Epp, and against the MDOC's contract medical provider Correctional Medical Services, Inc. (CMS), its medical director Craig Hutchinson and its employee or agent Bency Mathai, who was Mr. Broder's primary care physician.

2. Under MCL 600.2921, Mr. Broder's claims survive his death, and all state-law claims regarding the defendants' actions which resulted in his death are brought under MCL 600.2922, as required by MCL 600.2921.

3. Mr. Broder's claims arise out of inadequate medical care provided to him while he was incarcerated at the Parnall Correctional Facility and Duane Waters Hospital at the state prison complex in Jackson, Michigan.

¹ Mr. Broder's name is used interchangeably with his estate and/or personal representative in this complaint.

4. The heart of Mr. Broder's complaint is that the defendants were deliberately indifferent to his serious medical needs by failing to timely diagnose and treat his laryngeal cancer, in violation of the Eighth Amendment to the United States Constitution, as actionable through 42 U.S.C. § 1983.

5. Mr. Broder's complaint also includes the state-law statutory torts of medical malpractice (MCL 600.2912) and wrongful death (MCL 600.2922), as well as negligence, as to those defendants who fall outside the governmental immunity statute (MCL 691.1407(2) (c)).

PARTIES

6. Plaintiff-decedent Steven Broder was in the custody of the MDOC from on or about October 19, 1994, to October 17, 2009.

7. Defendant George Pramstaller, D.O., was the MDOC's chief medical officer. In that capacity at all relevant times he was directly responsible for the customs, policies, practices, procedures, and staff training that governed the medical care provided to prisoners in the custody of the MDOC.

8. Defendant Jan Epp, B.S.N., R.N., was the regional health care administrator. At all relevant times she was directly responsible for the customs, policies, practices, procedures, and staff training protocols that governed the medical care provided to prisoners in the MDOC region that included Parnall.

9. Defendant Correctional Medical Services, Inc., (CMS), is a for-profit corporation licensed to do business in Michigan. At all relevant times CMS was obligated by contract to provide managed health care to MDOC prisoners generally and to Mr. Broder in particular. Upon information and belief, CMS helped formulate and implement the customs, policies, practices, procedures, and staff training protocols related to medical care in MDOC facilities.

10. Defendant Craig Hutchinson, M.D., was the CMS medical director. At all relevant times he was obligated by contract to provide managed health care to MDOC prisoners generally and to Mr. Broder in particular. Upon information and belief, Dr. Hutchinson helped formulate and implement the customs, policies, practices, procedures, and staff training protocols related to medical care in MDOC facilities.

11. Defendant Bency Mathai, M.D., was an agent or employee of CMS who at all relevant times worked as a primary care physician in the prisons and provided care to the plaintiff.

JURISDICTION

12. Actions by the MDOC's agents or employees and by CMS and its agents or employees were carried out under color of state law.

13. This action is brought under 42 U.S.C. § 1983 and the Eighth Amendment to the United States Constitution.

14. Jurisdiction of this Court is based on 28 U.S.C. § 1331 and § 1343.

15. Venue is proper within the Eastern District of Michigan because a substantial part of the events or omissions giving rise to Mr. Broder's claims occurred within this district, certain defendants reside within this district, and upon information and belief, all the defendants reside in the state of Michigan.

16. For the state-law-based claims, this Court has supplemental jurisdiction under 28 U.S.C. § 1367.

17. The plaintiff exhausted his administrative remedies pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). Copies of his grievances and corresponding denials were attached to his original complaint as Exhibit 1.

FACTUAL ALLEGATIONS

2001 - 2003

18. In the early spring of 2001, while in the custody of the MDOC, Mr. Broder began suffering from a sore throat and sinus problems.

19. On May 4, 2001, Mr. Broder presented at sick call with symptoms of a sore throat and sinus problems. Sinus medication was prescribed for approximately 10 days.

20. Mr. Broder's sore throat did not improve as a result of that treatment.

21. Between May 4, 2001, and July 2001, Mr. Broder made several follow-up complaints and requests for treatment.

22. Mr. Broder received no treatment as a result of these complaints and requests.

23. On July 11, 2001, during Mr. Broder's annual physical exam, he again requested treatment for his sore throat, which at that point had been continuous for 3-4 months.

24. At the July 11 physical, Mr. Broder presented with a long-term sore throat, difficulty in swallowing and talking, and significant weight loss.

25. Between July 11 and September 5, 2001, Mr. Broder continued to suffer from and to complain of the same symptoms.

26. He received no treatment as a result of these symptoms or complaints.
27. On September 5, 2001, Mr. Broder again presented at sick call with the same symptoms, but he was not treated.
28. On October 12, 2001, Dr. Audberto Antonini, a physician working at Parnall that day, examined Mr. Broder, who presented with the same sore throat and difficulty swallowing and talking, and significant weight loss.
29. Dr. Antonini, suspecting laryngeal or esophageal cancer, recommended that Mr. Broder see an ear, nose, and throat (ENT) specialist and a gastroenterologist for immediate testing.
30. On October 19, 2001, Mr. Broder was examined at Duane Waters Hospital. Chest x-rays were taken, but due to broken equipment, x-rays of his stomach/intestines were not taken.
31. On October 31, 2001, Mr. Broder was again brought to Duane Waters Hospital to complete his x-rays, but those x-rays were not done because the hospital was out of barium.
32. On November 4, 2001, the x-rays were completed.
33. On November 13, 2001, Mr. Broder was sent out of the prison to see an ENT specialist in Jackson, Michigan.
34. On November 13, 2001, Dr. Ronald Kornak examined Mr. Broder and found a lesion on his larynx.
35. Dr. Kornak recommended that Mr. Broder undergo a microlaryngoscopy and vocal cord stripping promptly, to determine if the lesion was cancerous.
36. On November 19, 2001, Mr. Broder saw a gastroenterologist, Dr. _____ Sharma.
37. Dr. Sharma recommended that Mr. Broder undergo an endoscopy.
38. On November 29, 2001, Dr. Bency Mathai signed a form delaying both Dr. Kornak's recommended microlaryngoscopy and vocal cord stripping and Dr. Sharma's recommended endoscopy.
39. In early December, Mr. Broder was notified of a pre-operative appointment scheduled for December 7, 2001.
40. That appointment was cancelled.
41. Mr. Broder's endoscopy, scheduled for December 10, 2001, was also cancelled.
42. On January 2, 2002, Dr. Mathai signed another form delaying both Dr. Kornak's recommended microlaryngoscopy and cord stripping and Dr. Sharma's recommended endoscopy.

43. On January 11, 2002, Dr. Kornak performed a microlaryngoscopy and vocal cord stripping on Mr. Broder at Foote Hospital in Jackson.

44. On January 14, 2002, lab tests confirmed that Mr. Broder had a malignant tumor on his larynx.

45. By that time, Mr. Broder had had a continuous sore throat for some 8 to 9 months; more than three months had passed since Dr. Antonini first suspected that Mr. Broder had cancer and referred him to specialists for testing; more than two months had passed since the ENT specialist had identified a lesion on Mr. Broder's throat.

46. On January 14, 2002, Mr. Broder was specifically diagnosed with Stage I invasive and in-situ moderately differentiated keratinizing squamous carcinoma on his left vocal cord.

47. The seriousness of laryngeal cancer is measured by four stages: Stage I, Stage II, Stage III, and Stage IV. Stage I is the least serious; Stage IV is the most serious.

48. The physical effects of laryngeal cancer and treatment include pain, difficulty in eating, choking on secretions, trouble swallowing, weight loss, hoarseness, and loss of voice.

49. On January 22, 2002, Dr. Kornak informed Mr. Broder that he had Stage I laryngeal cancer.

50. With treatment, the statistical five-year survival rate for Stage I laryngeal cancer is approximately 90 percent.

51. Mr. Broder was told that he should start radiation therapy immediately.

52. On January 30, February 4, and February 5, 2002, Mr. Broder requested information concerning the start of his radiation treatment. The reply indicated that radiation treatment had been requested but had not yet been scheduled.

53. On February 5, 2002, Mr. Broder was told during an outside appointment with Dr. James Hayman that radiation treatment should begin immediately – within one or two weeks.

54. On February 25, 2002, Mr. Broder requested information concerning the start of his radiation treatment. The reply indicated that the treatment would begin the following week.

55. Mr. Broder did not get a CT treatment-planning scan until March 12, 2002.

56. Mr. Broder's radiation treatment was scheduled to begin on March 19, 2003, but the radiation did not start that day.

57. On March 27, 2002, Mr. Broder had an MRI.

58. On March 27, 2002, Mr. Broder again requested information concerning the start of

his radiation treatment; he was again told that he would have to wait.

59. By April 1, 2002, before Mr. Broder's disease was treated in any way, his throat cancer had advanced from Stage I (the original January diagnosis) to at least Stage III T2N1.

60. Stage III T2N1 indicates a second site of cancer within the larynx ("T2") and that the cancer had metastasized to a lymph node ("N1").

61. With treatment, the statistical five-year survival rate of Stage III laryngeal cancer is 34 to 60 percent.

62. Because Mr. Broder's cancer had metastasized to the lymph nodes, however, the statistical five-year survival rate could be reduced by as much as half (to 17 to 30 percent).

63. As a result of the delay in diagnosis and/or treatment, Mr. Broder had to undergo chemotherapy as well as radiation therapy.

64. On April 2, 2002, Mr. Broder finally began chemotherapy.

65. On April 3, 2002, Mr. Broder finally began daily radiation treatment.

66. Mr. Broder received no treatment for his disease until approximately 25 weeks after Dr. Antonini suspected that Mr. Broder had throat cancer, and 11 weeks after Dr. Kornak and the pathology lab confirmed that Mr. Broder had Stage I throat cancer.

67. But for the delays Mr. Border would not have needed chemotherapy, as Stage I throat cancer is treatable with radiation only.

68. Complications and side effects caused by Mr. Broder's radiation and/or chemotherapy included nausea, dry mouth, irritated skin, loss of appetite, vomiting, diarrhea, anemia, suppressed immune system, and fatigue; the defendants failed to treat these side effects, particularly the dry mouth caused by the suppression of Mr. Broder's salivary glands.

69. On April 3, 2003, a PEG tube was inserted in Mr. Broder's abdomen to provide for nutrition, as Mr. Broder was having extreme difficulty swallowing and had lost considerable weight.

70. On April 4, 2002, Mr. Broder had one tooth pulled; the loss of this tooth caused the failure of a partial denture in August 2002.

71. Within one week of the PEG tube's insertion, the area surrounding the PEG tube became infected, requiring an incision to drain and treat the infection.

72. On May 2, 2002, Mr. Broder began a second course of chemotherapy; his radiation treatment also continued.

73. On May 24, 2002, Mr. Broder's daily radiation treatment ended.

74. On June 10, 2002, Mr. Broder began a third course of chemotherapy.

75. During the third course of chemotherapy, Mr. Broder's PEG tube was removed.

76. During the third course of chemotherapy, Mr. Broder underwent a microlaryngoscopy and biopsy that revealed that his laryngeal cancer was reaching remission.

77. Throughout the period of Mr. Broder's treatment he suffered from dry mouth, which resulted in accelerated dental decay.

78. On November 5, 2002, Mr. Broder saw Dr. Kornak, who recommended another follow-up biopsy and vocal cord stripping promptly to check for a recurrence of Mr. Broder's laryngeal cancer.

79. The biopsy and vocal cord stripping were not performed until April 17, 2003, more than five months after Dr. Kornak recommended these procedures. The biopsy was negative.

2007 - 2008

80. In December 2007 and January 2008, Mr. Broder began having problems with a sore throat, shortness of breath, and weight-loss. He also began coughing up blood.

81. In February 2008, Mr. Broder was examined by ENT Dr. Jayson Greenberg at Foote Hospital in Jackson. Dr. Greenberg performed a laryngoscopy and a biopsy.

82. Mr. Broder was diagnosed with recurrent squamous cell carcinoma. He was referred to the University of Michigan Medical Center for an appointment for a salvage laryngectomy.

83. On March 23, 2008, Mr. Broder had difficulty breathing and was rushed to Foote Hospital.

84. On March 27, 2008, Mr. Broder was again taken to Foote Hospital for difficulty breathing and shortness of breath. He was discharged on March 29, 2008.

85. On April 1, 2008, Mr. Broder was taken once more to Foote Hospital for shortness of breath, acute respiratory distress, and airway obstruction. When he arrived at Foote Hospital, he was unable to speak.

86. Dr. Jayson Greenberg performed an emergency tracheostomy. Mr. Broder was awake during the entire procedure.

87. From early April to May 22, 2008, Mr. Broder was placed at Duane Waters Hospital (DWH) at the Jackson correctional facilities awaiting his scheduled laryngectomy.

88. For 7-10 days after his arrival at DWH, Mr. Broder was without his dental bridge,

which made eating difficult. The bridge was in his cell at Parnall less than a mile away, but no one would get it or bring it to him.

89. For days at a time at DWH, Mr. Broder did not have a change of bed sheets or of his hospital johnny. His room was cold but he was not provided sufficient blankets to keep warm.

90. Throughout his time at DWH, the medical supplies that were necessary to keep his tracheotomy tube clean and functioning were in short supply or were not provided at all. Medications sometimes were unavailable even though Mr. Broder had a supply of the same medications in his cell at Parnall.

91. On May 22, 2008, Mr. Broder was transferred to the U of M Medical Center, where Dr. Douglas Chepeha performed a total laryngopharyngectomy. The surgery included the removal of Mr. Broder's voice box and reconstruction of his throat and neck, with a 13 x 9 cm. graft of skin removed from his right thigh. The procedure left Mr. Broder unable to speak and physically disfigured.

92. Dr. Chepeha removed a tumor that filled Mr. Broder's entire larynx and was completely obstructing his airway.

93. On May 30, 2008, Mr. Broder was discharged from the U of M Medical Center and transferred back to DWH.

94. At DWH, Mr. Broder was isolated in a cold room. His bedding and johnny were rarely changed, and he was rarely given the opportunity to bathe. The staff at DWH lacked access to supplies necessary for Mr. Broder's treatment and recovery.

95. Because his voice box had been removed, Mr. Broder was unable to request help verbally, but could only write out what he needed, if and when staff supplied pencil and paper.

96. On June 2, 2008, Mr. Broder was sent to Foote Hospital where he was diagnosed with cellulitis and hypocalcemia. Both were considered to be complications of the surgery performed on May 22, 2008.

97. On June 6, 2008, Mr. Broder was discharged from Foote Hospital and returned to DWH. He remained there until June 23, 2008, when he was transferred back to Parnall.

98. On July 3, 2008, Mr. Broder was prescribed oral chemotherapy.

99. During July 2008, Mr. Broder continued to suffer from hypocalcemia.

100. In the late summer of 2008, Mr. Broder suffered fainting spells, episodes of low blood pressure, and fatigue.

101. In September 2008, Mr. Broder had pain in the left side of his neck and his face.

102. In October 2008, Mr. Broder experienced throat soreness and difficulty swallowing.

103. On October 17, 2008, Mr. Broder was discharged from Parnall Correctional Facility, having completed his sentence.

104. On November 21, 2008, Mr. Broder had a seizure in the middle of the night and was rushed to Henry Ford Macomb Hospital. Mr. Broder suffered a second seizure at the hospital and his heart rate dropped very low.

105. At Henry Ford an ENT performed a scoping that revealed thickened, asymmetrical tissue in Mr. Broder's throat. Plans were made to transfer Mr. Broder to the U of M Medical Center in Ann Arbor once he was stabilized and a bed became available.

106. On December 3, 2008, Mr. Broder was discharged from Henry Ford Macomb Hospital and transferred to the U of M where he was evaluated in the otolaryngology clinic. A biopsy was performed, showing recurrent squamous cell carcinoma.

107. On or about December 6, 2008, Mr. Broder was discharged from the U of M. At that point his cancer was viewed as terminal and palliative care was his only option. Dr. Chepeha thought Mr. Broder might survive as long as five months, and possibly 10-11 months if he could tolerate oral chemotherapy, and if the cancer responded to it.

108. On December 8, 2008, Mr. Broder was found unconscious on his bedroom floor. He was rushed to St. John Macomb – Oakland Hospital where doctors chemically induced a coma to try to bring his seizures under control.

109. When the doctors tried to bring Mr. Broder out of the coma a few days later, he did not regain consciousness.

110. Mr. Broder died on December 13, 2008. His death certificate lists recurrent supraglottis carcinoma as the cause of death.

111. From May 22, 2008, until his death, Mr. Broder could make noises with his mouth and throat but could not speak and be understood. He was forced to gesture with his hands and scribble notes on scraps of paper in order to make the simplest requests.

112. Mr. Broder was unable to use an electronic voice box for lack of speech therapy and because of the condition of this throat after the May 2008 surgery.

Causation

113. The defendants' failure to timely diagnose and treat Mr. Broder's cancer in 2001-

2002 stemmed in part from their failure to train or supervise staff in a way that would ensure prompt and effective treatment of life-threatening diseases.

114. Defendants Pramstaller and Epp had a non-delegable duty to create customs, policies, practices, and procedures to ensure timely and effective treatment of life-threatening diseases, and to ensure that such treatment was in fact provided.

115. Defendants Pramstaller and Epp had a non-delegable duty to train or supervise staff in a way that ensured timely and effective treatment of life-threatening disease, and to ensure that such treatment was in fact provided.

116. Defendants CMS and Hutchinson had the same duty to implement customs, policies, practices, and procedures, and to train or supervise staff, to ensure timely and effective treatment of life-threatening diseases, and to ensure that such treatment was in fact provided.

117. Defendant Mathai had a duty to ensure timely and effective treatment of life-threatening diseases, and to ensure that such treatment was in fact provided to her patient.

118. Mr. Broder's cancer that recurred in 2007-2008 was directly linked to the cancer that was late-diagnosed and late-treated in 2001-2002.

LEGAL CLAIMS

42 U.S.C. § 1983

119. The defendants, acting under color of state law, demonstrated deliberate indifference to Mr. Broder's serious medical needs, subjecting him to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution, as actionable under 42 U.S.C. § 1983.

120. The defendants demonstrated deliberate indifference by failing to diagnose Mr. Broder's throat cancer within a reasonable time, by failing to confirm their suspicions through laboratory tests that he had cancer within a reasonable time, and, once Mr. Broder's cancer was diagnosed, by failing to treat him within a reasonable time.

121. Even after treatment, the defendants demonstrated deliberate indifference by failing to test Mr. Broder for recurrence of his cancer within a reasonable time.

122. The defendants' repeated delays in diagnosis and treatment allowed Mr. Broder's cancer to progress from Stage I to at least Stage III T2N1, necessitating chemotherapy in addition to radiation treatment, and insertion of a PEG tube, causing other complications and side effects, as well as the increased risk of a recurrence of Mr. Broder's cancer, the eventual recur-

rence of his cancer, and ultimately, his death.

123. The violation of Mr. Broder's Eighth Amendment rights stemmed in part from the MDOC defendants' and CMS defendants' customs, practices, procedures, and policies that allowed or facilitated the deliberate indifference to his medical needs..

124. Specifically, the defendants with the authority to create customs, practices, procedures, or policies failed to draft, promulgate, adopt, or enforce appropriate rules, regulations, procedures, orders, or protocols that could and should have prevented the acts of deliberate indifference committed against Mr. Broder, and that also could and should have prevented the injuries he suffered.

125. Alternatively, the defendants with the authority to create customs or policies promulgated or implemented policies that caused the failure to timely diagnose and treat Mr. Broder's life-threatening disease and also failed to ensure that he got timely testing, diagnosis, care, and treatment,

126. The defendants with the authority to train staff failed to train them sufficiently to prevent the deliberate indifference to the plaintiff's reasonable medical needs.

127. As a direct and proximate result of the defendants' deliberate indifference, their customs and policies, and their failure to train, from 2001 to 2007 Mr. Broder suffered harm including but not limited to long-term sore throat, weight loss, weak voice, difficulty swallowing, suppression of his salivary glands, and severe tooth decay; he was also forced to undergo three courses of chemotherapy and insertion of a PEG tube; he suffered physical pain, mental anxiety, emotional anguish, and an increased risk that his cancer would recur.

128. As a direct and proximate result of the defendants' deliberate indifference, their customs and policies, and their failure to train, from 2007 to 2008 Mr. Broder suffered harm including but not limited to recurrence of his cancer, fainting spells, difficulty breathing, tracheostomy, removal of his larynx and radical reconstruction with skin grafts, cellulitis, hypocalcemia, loss of the ability to speak, physical disfigurement, seizures, and death; he suffered physical pain, mental anxiety, emotional anguish, and the loss of his life with all attendant future economic losses.

129. The defendants' deliberate indifference, their customs and policies, and their failure to train directly and proximately caused the recurrence of Mr. Broder's cancer and Mr. Broder's death.

130. At all relevant times the law was clearly established such that qualified immunity is no defense to the plaintiff's constitutional claims.

Medical Malpractice/Negligence

131. The defendants owed a duty to Mr. Broder to provide him with reasonable medical care and with medical care consistent with the standard of care for the area where he lived.

132. The defendants' repeated failures to provide timely testing, diagnosis, care, and treatment of Mr. Broder's life-threatening disease, as described above, constitute medical malpractice under Michigan law.

133. The defendants failed to draft, promulgate, adopt, or enforce appropriate rules, regulations, policies, procedures, orders, and protocols that could and should have prevented the acts of medical malpractice committed against Mr. Broder and that also could and should have prevented the injuries that he suffered.

134. The defendants failed to train staff sufficiently to prevent the acts of medical malpractice described above.

135. Mr. Broder has complied with the notice of claim and the affidavit of merit provisions of the Michigan medical malpractice statute (MCL 600.2912b).²

136. The defendants violated the applicable standard of care by failing to timely diagnose and treat Mr. Broder's Stage I cancer, allowing Mr. Broder's cancer to progress to at least Stage III T2N1; by failing to timely treat the side effects of Mr. Broder's late-stage cancer and treatment; and by failing to provide regular follow-up care and treatment for Mr. Broder.

137. The defendants further failed to provide reasonable care by delaying Mr. Broder's access to physicians for diagnosis of his cancer and by delaying his prescribed treatment.

138. As a direct and proximate result of the defendants' negligence/medical malpractice, Mr. Broder suffered the harms described in paragraphs 127-128 above, plus all other damages allowed by state law.

The Standard of Care

139. A reasonable general practitioner, internist, or health care provider would have made sure that Mr. Broder saw an ENT specialist within four to eight weeks after July 11, 2001, when Mr. Broder first presented with a long-term sore throat in conjunction with weight loss,

² Because this amended complaint simply brings the claims up to date in light of the Court's previous rulings, and adds the survival and wrongful death claims in light of Mr. Broder's death, the affidavits of merit filed earlier do not change and are incorporated by reference.

difficulty swallowing, and loss of voice.

140. A reasonable general practitioner, internist, or health care provider would have made sure that Mr. Broder saw an ENT specialist within one to two weeks after October 12, 2001, when Dr. Antonini first suspected that Mr. Broder had throat or stomach cancer.

141. A reasonable general practitioner, internist, health care provider, or ENT specialist would have made sure that Mr. Broder had laboratory tests (to establish or eliminate a diagnosis of cancer) within four to eight weeks after October 12, 2001, when Dr. Antonini first suspected that Mr. Broder had throat or stomach cancer.

142. A reasonable general practitioner, internist, health care provider, or ENT specialist would have performed a microlaryngoscopy and vocal cord stripping to establish or eliminate a diagnosis of cancer within two to four weeks after November 13, 2001, when an ENT specialist identified a lesion on Mr. Broder's larynx.

143. A reasonable general practitioner, internist, health care provider, or ENT specialist would have begun radiation therapy on Mr. Broder no later than one month after January 14, 2002, when lab tests confirmed the diagnosis of Mr. Broder's Stage I invasive and in-situ moderately differentiated keratinizing squamous left vocal cord carcinoma.

144. A reasonable general practitioner, internist, health care provider, or ENT specialist would have prescribed medications necessary to counteract the suppression of Mr. Broder's salivary glands to prevent damage to his teeth.

145. A reasonable general practitioner, internist, health care provider, or ENT specialist would have provided regular follow-up visits with an ENT specialist to monitor the condition of Mr. Broder's larynx and to determine if his cancer had recurred.

146. A reasonable general practitioner, internist, health care provider, or ENT specialist would have performed a biopsy and microlaryngoscopy within two to three months after an ENT specialist recommended those tests on November 5, 2002, to determine if Mr. Broder's cancer had recurred.

Breach of the Standard of Care

147. Mr. Broder was not referred to an ENT specialist until October 12, 2001, about 12 weeks after he presented with long-term sore throat in conjunction with significant weight loss, difficulty swallowing, and loss of voice; he should have been referred to an ENT specialist four to eight weeks after he presented with these symptoms, if his condition did not improve.

148. Mr. Broder did not see an ENT specialist until November 13, 2001; he should have seen an ENT specialist within two weeks of October 12, 2001, when Dr. Antonini first suspected cancer.

149. Surgical and laboratory tests were not performed to establish or eliminate a diagnosis of cancer until January 11 and January 14, 2002, some 13 weeks after Dr. Antonini suspected that Mr. Broder had throat or stomach cancer (on October 12, 2001); the tests should have been performed within four to eight weeks of the suspected diagnosis.

150. The surgical and laboratory tests were not performed until approximately eight weeks after an ENT specialist identified a lesion on Mr. Broder's larynx (on November 13, 2001); the defendants should have ensured that a microlaryngoscopy and vocal cord stripping and laboratory tests were performed within two to four weeks of the ENT specialist's identification of a lesion on Mr. Broder's larynx.

151. Mr. Broder did not undergo any treatment of his throat cancer until April 2, 2002, approximately 11 weeks after it was diagnosed on January 14, 2002; the defendants should have ensured that Mr. Broder was treated within four weeks of the confirmed diagnosis.

152. Mr. Broder did not receive medications necessary to counteract the effects of his chemotherapy or the suppression of his salivary glands; the defendants should have regularly provided Mr. Broder with the necessary medications.

153. Mr. Broder did not have regular follow-up visits with an ENT specialist to monitor the condition of his larynx and to determine if his cancer has recurred; the defendants should have provided Mr. Broder with regular follow-up visits with an ENT specialist.

154. Mr. Broder did not receive a post-treatment microlaryngoscopy and biopsy until April 17, 2003, more than five months after an ENT specialist recommended these procedures (on November 5, 2002) to check for a recurrence of Mr. Broder's laryngeal cancer; the defendants should have made sure that these procedures were performed within two to three months of the ENT specialist's recommendation for such tests.

**Damages Proximately Caused
by the Breach of the Standard of Care**

155. The defendants' failure to timely refer Mr. Broder to an ENT specialist and then promptly to act on his diagnostic and treatment recommendations caused Mr. Broder's cancer to progress from Stage I to at least Stage III T2N1, lowering his statistical life expectancy.

156. The defendants' failure to replace Mr. Broder's partial denture between August 2002 and October of 2003 prevented him from eating properly despite his need to do so to recover promptly from his chemotherapy and radiation treatments.

157. The defendants' failure to timely provide medications necessary to counteract the effects of his treatment, including the suppression of his salivary glands, caused Mr. Broder to suffer side effects and significant dental problems.

158. From 2001 to 2007, the defendants' breaches of the standard of care caused Mr. Broder to suffer physical pain, mental anxiety, and emotional anguish because of the complications and side effects of additional treatments needed to remedy his late stage laryngeal cancer and because of the uncertainty caused by the delays in diagnosis, treatment, and follow-up.

159. From 2007 to 2008, the defendants' breaches of the standard of care caused the recurrence of Mr. Broder's cancer that led to his death.

160. The defendants' failure to timely diagnose and treat Mr. Broder's throat cancer proximately caused him to suffer all of the harm described in paragraphs 127-128 above.

161. The defendants' breaches of the standard of care limited Mr. Broder's employment opportunities and his ability to earn an income once he was released from prison.

Michigan's Survival and Wrongful Death Act (MCL 600.2921-2922)

162. Mr. Broder's estate is entitled to receive and seeks compensation for the pain and suffering detailed above, which Mr. Broder endured as a result of the defendants' violation of his civil rights, and for medical malpractice, breaches of the standard of care, and negligence, to the same extent that Mr. Broder would have been entitled to such compensation.

163. Mr. Broder's estate may seek damages for all who claim and are entitled to recover damages, including but not limited to qualified devisees or beneficiaries of Mr. Broder's will, for loss of society, companionship, and support, and other things of value such as funeral and burial expenses incurred as a result of his death, if any such claimants come forward with a valid claim.

164. Mr. Broder's estate is entitled to receive and seeks compensation for the uninsured medical expenses incurred for the treatment of his cancer and its complications and side effects after his release from prison.

RELIEF

165. Wherefore, the plaintiff's estate, by the personal representative, asks the Court to:

- a. Grant the plaintiff compensatory, exemplary, and punitive damages commensurate with his injuries for all qualified claims and claimants, and enter a judgment for the plaintiff;
- b. Declare that Mr. Broder's constitutional and state law rights were violated by the defendants;
- c. Award the plaintiff his costs, interest from the date of filing, and reasonable attorneys' fees as permitted by state or federal law; and
- d. Grant such further relief as the Court sees fit.

JURY DEMAND

The plaintiff requests a trial by jury of all issues so triable.

Respectfully submitted,

/s/ Paul D. Reingold
Michigan Clinical Law Program
363 Legal Research Building
801 Monroe Street
Ann Arbor, MI 48109-1215
(734) 763-4319
pdr@umich.edu - P27594

Kate Ides and Meredith Weill
Student Attorneys

Dated: March 24, 2009

Proof of Service

The above second amend complaint and jury demand were filed using the court's ECF system, which will send same-day e-mail notice to all counsel of record.

/s/ Paul D. Reingold
pdr@umich.edu - P27594

Dated: April 24, 2009