

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

STEVEN BRODER,

Plaintiff,

vs.

File No. 03-75106
Hon. Gerald E. Rosen
Mag. Judge Paul J. Komives

CORRECTIONAL MEDICAL SERVICES, INC.,
and its physician employees, namely:
AUBERTRO ANTONINI, JOHN AXELSON,
MALCOLM TRIMBLE, _____ BEY,
BENZI MATHAI, and RAY H. CLARK;
and employees and medical staff of the Michigan
Department of Corrections, namely:
PATRICIA L. CARUSO, director,
GEORGE PRAMSTALLER, medical director,
HENRY GRAYSON, warden,
and JAN EPPS, regional medical director;
in their individual and official capacities,

Defendants.

COMPLAINT AND JURY DEMAND

Plaintiff Steven Broder, by his attorneys, the Michigan Clinical Law Program, for his complaint states as follows:

INTRODUCTION

1. This is a civil rights action for damages and injunctive relief against Michigan Department of Corrections' (MDOC) employees and medical staff, and against MDOC's managed health care provider, Correctional Medical Services, Inc. (CMS), and several of its physician employees.

2. Mr. Broder's claims arise out of inadequate medical care provided to him while he was incarcerated at the Parnell Correctional Facility in Jackson, Michigan.

3. 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.

4. Mr. Broder's complaint also includes the Michigan common law torts of gross negligence, reckless indifference, and willful and wanton misconduct as to all defendants, and the common law and statutory torts of negligence and medical malpractice (under MCL 600.2912) as to those defendants who fall outside the governmental immunity statute (MCL 691.1407(2)(c)).

PARTIES

5. Plaintiff STEVEN BRODER (MDOC # 226094) is in the custody of the MDOC. His minimum sentence was completed in January 1999 and his maximum sentence will be completed in October 2008. Mr. Broder is classified as a level one security risk.

6. Defendant PATRICIA L. CARUSO is the director of the Michigan Department of Corrections. In that capacity she is ultimately responsible for the policies, procedures, and staff training that govern the medical care provided to prisoners in the custody of the MDOC, and she can implement any injunctive relief ordered by the Court.

7. Defendant GEORGE PRAMSTALLER, D.O., is the MDOC's chief medical officer. In that capacity at all relevant times he was and is directly responsible for the policies, procedures, and staff training that govern the medical care provided to prisoners in the custody of the MDOC, and he can implement any injunctive relief ordered by the Court.

8. Defendant HENRY GRAYSON is the warden of the Parnall Correctional Facility. At all relevant times he was and is directly responsible for the policies, procedures, and staff training that govern the medical care provided to prisoners at Parnall, and he can implement any injunctive relief ordered by the Court.

9. Defendant JAN EPPS, B.S.N., R.N., is the regional health care administrator. At all relevant times she was and is directly responsible for the policies, procedures, and staff training that govern the medical care provided to prisoners in the MDOC region that includes Parnall, and she can implement any injunctive relief ordered by the Court.

10. Defendant CORRECTIONAL MEDICAL SERVICES is a for-profit corporation licensed to do business in Michigan. At all relevant times CMS was and is obligated by contract to provide managed health care to MDOC prisoners generally and to Mr. Broder in particular. Upon information and belief, CMS helps to formulate the policies, procedures, and staff training related to medical care in MDOC facilities, and it implements those protocols.

11. Defendant AUDBERTO ANTONINI, M.D., is an agent or employee of CMS

who at all relevant times worked as a primary care physician in the prisons and who provided care to the plaintiff.

12. Defendant BENZI MATHAI, M.D., is an agent or employee of CMS who at all relevant times worked as a primary care physician in the prisons and who provided care to the plaintiff.

13. Defendant _____ BEY, M.D. [first name unknown], is an agent or employee of CMS who at all relevant times worked as a physician in the prisons and who provided care to the plaintiff.

14. Defendant MALCOLM TRIMBLE, M.D., is an agent or employee of CMS who at all relevant times worked as a physician in the prisons and who provided care to the plaintiff at Dwayne Waters Hospital in the Jackson Complex.

15. Defendant JOHN AXELSON, M.D., is an agent or employee of CMS who at all relevant times worked as a physician in the prisons and who provided care to the plaintiff at the Dwayne Waters Hospital in the Jackson Complex.

16. RAY H. CLARK, M.D., is an agent or employee of CMS who at all relevant times worked as a primary care physician in the prisons and who provided care to the plaintiff at the Dwayne Waters Hospital in the Jackson Complex.

JURISDICTION

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

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

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

20. 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.

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

22. The plaintiff has exhausted his administrative remedies pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). Copies of his grievances and corresponding

denials are attached as Exhibit 1.

FACTUAL ALLEGATIONS

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

24. 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.

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

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

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

28. 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.

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

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

31. He received no treatment as a result of these symptoms or complaints.

32. On September 5, 2001, Mr. Broder again presented at sick call with the same symptoms, but he was not treated.

33. On October 12, 2001, Dr. Auberto Antonini examined Mr. Broder, who presented with the same sore throat and difficulty swallowing and talking, and significant weight loss.

34. 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.

35. On October 19, 2001, Mr. Broder was examined at Dwayne Waters Hospital. He had chest x-rays taken, but due to broken equipment, no stomach or intestinal x-rays were taken.

36. On October 31, 2001, Mr. Broder was again taken to Dwayne Waters Hospital to complete his x-rays, but those x-rays were not done because the hospital was out of barium.

37. On November 4, 2001, the x-rays were completed.

38. On November 13, 2001, Mr. Broder was sent out of the prison to see an ENT specialist in the city of Jackson, Michigan.

39. On November 13, 2001, Dr. Ronald Kornak examined Mr. Broder and found a lesion on his larynx.

40. Dr. Kornack recommended that Mr. Broder undergo a microlaryngoscopy and vocal cord stripping promptly, to determine if the lesion was cancerous.

41. On November 19, 2001, Mr. Broder saw a gastroenterologist, Dr. _____ Sharma.

42. Dr. Sharma recommended that Mr. Broder undergo an endoscopy.

43. On November 29, 2001, Dr. Benzi Mathai signed an order delaying both Dr. Kornak's recommended microlaryngoscopy and vocal cord stripping and Dr. Sharma's recommended endoscopy.

44. In early December, Mr. Broder was notified of a pre-operative appointment scheduled for December 7, 2001.

45. That appointment was cancelled.

46. Mr. Broder's endoscopy, scheduled for December 10, 2001, was also cancelled.

47. On January 2, 2002, Dr. Mathai signed another order delaying both Dr. Kornak's recommended microlaryngoscopy and vocal cord stripping and Dr. Sharma's recommended endoscopy.

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

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

50. By that time, Mr. Broder had had a continuous sore throat for some 8-9 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.

51. 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.

52. 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.

53. 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.

54. On January 22, 2002, Dr. Kornak informed Mr. Broder that he had Stage I laryngeal cancer.
55. With treatment, the statistical five-year survival rate for Stage I laryngeal cancer is approximately 90 percent.
56. Mr. Broder was told that he should start radiation therapy immediately.
57. 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.
58. 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.
59. 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.
60. Mr. Broder did not get a CT treatment-planning scan until March 12, 2002.
61. Mr. Broder’s radiation treatment was scheduled to begin on March 19, 2003, but the radiation did not start that day.
62. On March 27, 2002, Mr. Broder had an MRI.
63. 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.
64. 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 Stage III T2N1.
65. Stage III T2N1 indicates a second site of cancer within the larynx (“T2”) and that the cancer had metastasized to a lymph node (“N1”).
66. With treatment, the statistical five-year survival rate of Stage III laryngeal cancer is 34 to 60 percent.
67. 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).
68. As a result of the delay in diagnosis and/or treatment, Mr. Broder had to undergo chemotherapy as well as radiation therapy.
69. On April 2, 2002, Mr. Broder finally began chemotherapy.
70. On April 3, 2003, Mr. Broder finally began daily radiation treatment.
71. Mr. Broder received no treatment for his disease until approximately 25 weeks

after Dr. Antonini suspected that Mr. Border had throat cancer, and 11 weeks after Dr. Kornak and the pathology lab confirmed that Mr. Broder had Stage I throat cancer.

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

73. 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.

74. 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.

75. 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.

76. 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.

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

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

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

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

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

82. Throughout the period of Mr. Broder's treatment he suffered from dry mouth, which resulted or will result in accelerated dental decay and possible loss of his teeth.

83. 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.

84. 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.

85. The defendants' failure to timely diagnose and treat Mr. Broder's cancer stemmed

in part from their failure to have in place policies and procedures to ensure prompt treatment of life-threatening disease.

86. Indeed, the defendants' policies and procedures made the failure to timely diagnose and treat Mr. Broder's cancer almost inevitable.

87. The defendants' failure to timely diagnose and treat Mr. Broder's cancer stemmed in part from their failure to train or supervise staff in a way that would ensure prompt and effective treatment of life-threatening disease.

88. Defendants Caruso, Pramstaller, Grayson, and Epps have a non-delegable duty to create customs, policies, and procedures to ensure timely and effective treatment of life-threatening disease, and to ensure that such treatment is in fact provided.

89. Defendants Caruso, Pramstaller, Grayson, and Epps have a non-delegable duty to train or supervise staff in a way that ensures timely and effective treatment of life-threatening disease, and to ensure that such treatment is in fact provided.

90. Defendants CMS and its employees have the same duty to implement policies and procedures to ensure timely and effective treatment of life-threatening disease, and to ensure that such treatment is in fact provided.

LEGAL CLAIMS

42 U.S.C. § 1983

91. The defendant doctors, 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.

92. The defendant doctors 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, when Mr. Broder's cancer was diagnosed, by failing to treat him within a reasonable time.

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

94. The defendant doctors' repeated delay in diagnosis and treatment allowed Mr. Broder's cancer to progress from Stage I to Stage III T2N1, necessitating chemotherapy and insertion of a PEG tube, and causing other complications and side effects, including but not

limited to an increased risk of recurrence of his cancer.

95. The violation of Mr. Broder's Eighth Amendment rights stemmed in part from MDOC and CMS customs and policies that allowed or facilitated care that was deliberately indifferent, wanton, oppressive, or reckless.

96. Specifically, the defendants with the authority to create customs 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.

97. Alternatively, the defendants with the authority to create customs or policies promulgated or implemented policies that failed to flag his life-threatening disease and also failed to ensure that he got timely testing, diagnosis, care, and treatment.

98. The defendants with the authority to train staff failed to train them sufficient to prevent the provision of care that was deliberately indifferent to the plaintiff's reasonable medical needs.

99. As a direct and proximate result of the defendants' deliberate indifference, their customs and policies, and their failure to train, Mr. Broder was harmed, including but not limited to long-term sore throat, weight loss, loss of voice, difficulty swallowing, suppression of his salivary glands, and severe tooth decay; he was 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 will recur.

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

**GROSS NEGLIGENCE, RECKLESS INDIFFERENCE,
AND WILLFUL AND WANTON MISCONDUCT**

101. The defendants owed a duty to Mr. Broder to provide him with reasonable medical care.

102. The defendants' repeated failures to provide timely testing, diagnosis, care, and treatment of Mr. Broder's life-threatening disease, as described above, constitute gross negligence, reckless indifference, and willful and wanton misconduct under Michigan common law.

103. The defendants failed to draft, promulgate, adopt, or enforce appropriate rules, regulations, procedures, orders, and protocols that could and should have prevented the acts of

gross negligence, reckless indifference, and willful and wanton misconduct committed against Mr. Broder, and that also could and should have prevented the injuries that Mr. Broder suffered.

104. The defendants failed to train staff sufficient to prevent the acts of gross negligence, reckless indifference, and willful and wanton misconduct described above.

105. As a direct and proximate result of the defendants' gross negligence, reckless indifference, and willful and wanton misconduct, Mr. Broder was harmed, including but not limited to long-term sore throat, weight loss, loss of voice, difficulty swallowing, suppression of his salivary glands, and the risk of severe tooth decay; and he was forced to undergo three courses of chemotherapy and insertion of a PEG tube; and suffered physical pain, mental anxiety, and emotional anguish; and increased risk that his cancer will recur.

NEGLIGENCE AND MEDICAL MALPRACTICE

106. 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.

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

108. 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 negligence and medical malpractice committed against Mr. Broder and that also could and should have prevented the injuries that he suffered.

109. The defendants failed to train staff sufficient to prevent the acts of negligence and medical malpractice described above.

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

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

112. 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.

113. As a direct and proximate result of the defendants' negligence and medical mal-

practice, Mr. Broder was harmed, including but not limited to long-term sore throat, weight loss, loss of voice, difficulty swallowing, suppression of his salivary glands, and the risk of severe tooth decay; and he was forced to undergo three courses of chemotherapy and insertion of a PEG tube; and suffered physical pain, mental anxiety, and emotional anguish; and increased risk that his cancer will recur.

The Standard of Care

114. 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, difficulty swallowing, and loss of voice.

115. 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.

116. 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.

117. 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.

118. 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.

119. 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.

120. 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.

121. 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.

The Defendants' Breaches of the Standard of Care

122. 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.

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

124. 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.

125. 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.

126. 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.

127. 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.

128. Mr. Broder did not and has not had 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.

129. 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**

130. The defendants' failure to timely diagnose and treat Mr. Broder's throat cancer caused him to suffer from an extended period of sore throat, weight loss, loss of voice, and pain and difficulty swallowing.

131. 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 Stage III T2N1, lowering his statistical life expectancy.

132. The defendants' failures described above caused Mr. Broder to undergo three courses of chemotherapy, insertion of a PEG tube, infection, and dental work; these treatments were in addition to the radiation treatment that should alone have been sufficient to treat Mr. Broder's Stage I throat cancer.

133. 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.

134. 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.

135. 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 Stage III laryngeal cancer and because of the uncertainty caused by the delays in diagnosis, treatment, and follow-up.

RELIEF

Wherefore, the plaintiff asks the Court to:

- a. Grant him compensatory, exemplary, and punitive damages commensurate with his injuries;
- b. Declare that his constitutional and state law rights were violated by the defendants;

- c. Grant equitable relief to bar the defendants from acting with deliberate indifference to his medical needs, or from failing to provide him with reasonable medical care consistent with the standard of care, in the future;
- d. Order the defendants to change their policies and procedures and training regimen so that similar violations will not and cannot recur as long as Mr. Broder remains in MDOC custody;
- e. Award him his costs, interest from the date of filing, and reasonable attorneys' fees as permitted by state or federal law; and
- f. 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,

MICHIGAN CLINICAL LAW PROGRAM

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Dated: December 17, 2003

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