

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ADAM CORRIS,

9:15-CV-1205

Plaintiff,

COMPLAINT

-against-

**CARL KOENIGSMANN, M.D., Chief Medical Officer,
Department of Corrections and Community Supervision,
ROBERT KASULKE, M.D., Facility Health Services
Director, Gouverneur Correctional Facility, BRIAN
CONNELLY, M.D., Bare Hill Correctional Facility,
VIJAY KUMAR MANDALAYWALA, M.D., Facility
Health Services Director, Upstate Correctional Facility,
MICHAEL SEIDMAN, M.D., Facility Health Services
Director, Riverview Correctional Facility, JON
MILLER, M.D., Facility Health Services Director,
Coxsackie Correctional Facility, AMANDA RUPERT,
R.N., Infection Control Nurse, SHERRY BURKE, R.N.,
Gouverneur Correctional Facility,**

Defendants.

PRELIMINARY STATEMENT

1. This is a civil rights action by a state prison inmate, pursuant to 42 U.S.C. §1983. Plaintiff seeks injunctive and declaratory relief, as well as compensatory and punitive damages for defendants' deliberate indifference to plaintiff's serious medical needs. This action arises from defendants' failure to provide appropriate care and treatment for plaintiff's Hepatitis C. As a result of defendants' actions, plaintiff suffered, and continues to suffer, serious injury and harm, needless pain and suffering, and mental and emotional distress. The defendants' actions, as alleged herein, violated plaintiff's rights under the 8th and 14th Amendments of the United States Constitution.

JURISDICTION

2. This court has jurisdiction of plaintiff's federal claims pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4).

3. Remedies are sought under 42 U.S.C. §§ 1983 and 1988 for violations of plaintiff's rights under the Constitution of the United States.

4. Venue is proper because the events at issue occurred in the Northern District of New York. 28 U.S.C. § 1391(a)(2).

PARTIES

5. Plaintiff ADAM CORRIS is a citizen of the United States, presently in the custody of the New York State Department of Corrections and Community Supervision (hereinafter "DOCCS") at Gouverneur Correctional Facility (hereinafter "Gouverneur"), in Gouverneur, New York. He was on the dates and times hereinafter mentioned, also confined at Bare Hill Correctional Facility (hereinafter "Bare Hill") in Malone, New York, Upstate

Correctional Facility (hereinafter “Upstate) in Malone, New York, Riverview Correctional Facility (hereinafter “Riverview”) in Ogdensburg, New York, and Coxsackie Correctional Facility (hereinafter “Coxsackie”) in Coxsackie, New York.

6. Defendant CARL KOENIGSMANN, M.D., is and was on the dates and times hereinafter mentioned, employed as the Chief Medical Officer for DOCCS in Albany, NY. He is the final arbiter of DOCCS’ medical policies and was directly and personally involved in decisions concerning plaintiff’s medical care. Defendant failed to provide necessary and timely medical care and treatment for plaintiff’s known serious medical needs and continues to deny such treatment. Defendant is a person under 42 U.S.C. § 1983, at all times acted under color of law, and is sued in his official and individual capacity.

7. Defendant ROBERT KASULKE, M.D., is and was on the dates and times hereinafter mentioned, employed as a physician and the Facility Health Services Director (hereinafter “FHSD”) at Gouverneur. As FHSD, defendant KASULKE is the chief medical officer at Gouverneur and was directly and personally involved in decisions concerning plaintiff’s medical care. Defendant KASULKE is also charged with ensuring the provision of necessary and appropriate medical care for all inmates at Gouverneur in a timely manner. Defendant failed to provide necessary and timely medical care and treatment for plaintiff’s known serious medical needs and continues to deny such treatment. Defendant is a person under 42 U.S.C. § 1983, at all times acted under color of law, and is sued in his official and individual capacity.

8. Defendant BRIAN CONNELLY, M.D., is and was on the dates and times hereinafter mentioned, employed as a physician and the FHSD at Bare Hill. As FHSD, defendant

CONNELLY is the chief medical officer at Bare Hill and was directly and personally involved in decisions concerning plaintiff's medical care. Defendant CONNELLY is also charged with ensuring the provision of necessary and appropriate medical care for all inmates at Bare Hill in a timely manner. Defendant failed to provide necessary and timely medical care and treatment for plaintiff's known serious medical needs. Defendant is a person under 42 U.S.C. § 1983, at all times acted under color of law, and is sued in his official and individual capacity.

9. Defendant VIJAY KUMAR MANDALAYWALA, M.D., is and was on the dates and times hereinafter mentioned, employed as a physician and the FHSD at Upstate. As FHSD, defendant MANDALAYWALA is the chief medical officer at Upstate and was directly and personally involved in decisions concerning plaintiff's medical care. Defendant MANDALAYWALA is also charged with ensuring the provision of necessary and appropriate medical care for all inmates at Upstate in a timely manner. Defendant failed to provide necessary and timely medical care and treatment for plaintiff's known serious medical needs. Defendant is a person under 42 U.S.C. § 1983, at all times acted under color of law, and is sued in his official and individual capacity.

10. Defendant MICHAEL SEIDMAN, M.D., is and was on the dates and times hereinafter mentioned, employed as a physician and the FHSD at Riverview. As FHSD, defendant SEIDMAN is the chief medical officer at Riverview and was directly and personally involved in decisions concerning plaintiff's medical care. Defendant SEIDMAN is also charged with ensuring the provision of necessary and appropriate medical care for all inmates at Riverview in a timely manner. Defendant failed to provide necessary and timely medical care

and treatment for plaintiff's known serious medical needs. Defendant is a person under 42 U.S.C. § 1983, at all times acted under color of law, and is sued in his official and individual capacity.

11. Defendant JON MILLER, M.D., is and was on the dates and times hereinafter mentioned, employed as a physician and the FHSD at Coxsackie. As FHSD, defendant MILLER is the chief medical officer at Coxsackie and was directly and personally involved in decisions concerning plaintiff's medical care. Defendant MILLER is also charged with ensuring the provision of necessary and appropriate medical care for all inmates at Coxsackie in a timely manner. Defendant failed to provide necessary and timely medical care and treatment for plaintiff's known serious medical needs. Defendant is a person under 42 U.S.C. § 1983, at all times acted under color of law, and is sued in his official and individual capacity.

12. Defendant AMANDA RUPERT, R.N., is and was on the dates and times hereinafter mentioned, employed as an Infection Control Nurse (ICN) by DOCCS at both Riverview and Gouverneur. As ICN, defendant RUPERT is directly involved in plaintiff's medical care, failed to provide necessary and timely medical care and treatment for plaintiff's serious medical needs, and continues to deny such treatment. Defendant is a person under 42 U.S.C. § 1983, at all times acted under color of law, and is sued in her official and individual capacity.

13. Defendant SHERRY BURKE, R.N., is and was on the dates and times hereinafter mentioned, employed as a registered nurse at Gouverneur. Defendant BURKE is directly involved in plaintiff's medical care, failed to provide necessary and timely medical care and treatment for plaintiff's serious medical needs, and continues to deny such treatment. Defendant

is a person under 42 U.S.C. § 1983, at all times acted under color of law, and is sued in her official and individual capacity.

STATEMENT OF FACTS

14. On May 16, 2013, plaintiff was committed to the care and custody of DOCCS.

15. Beginning at least on July 10, 2013, laboratory blood test results reflect the presence of Hepatitis C RNA (viral load) in plaintiff. The reported levels of Hepatitis C RNA at that time were listed as “Abnormal” at 6.53, when the “Reference” number was 1.18 and under.

16. Laboratory blood test results nearly one year later, on June 19, 2014, reflected the continued and increasing presence of Hepatitis C RNA at “Abnormal” levels of 6.97, when the “Reference” number was 1.18 and under. This blood test was ordered by defendant CONNELLY at Bare Hill Correctional Facility.

17. The June 19, 2014 laboratory blood test also reflected low levels of Glucose (Abnormal at 67, with Reference between 70-99), low levels of Creatinine (Abnormal at 0.83, with Reference between 0.90-1.30), high levels of alanine aminotransferase (ALT) (Abnormal at 63, with Reference under 41), and a low Platelet count (Abnormal at 114, with Reference between 144-400). These levels are evidence of a severely damaged liver.

18. Plaintiff requested treatment for his Hepatitis C at least as early as August 22, 2014 at Bare Hill. Plaintiff’s medical records on that date state, “Req. Hep C tx [treatment] is going back to court soon and will be OOF [out of facility]. Hep C teaching re-enforced. Already sched. with MD re: same.” However, plaintiff was not seen or treated by defendant CONNELLY for his Hepatitis C at this time.

19. On October 23, 2014, laboratory blood tests were performed at the request of defendant CONNELLY. Those blood tests reflected, among other abnormalities, high levels of alanine aminotransferase (ALT) (Abnormal at 140, with Reference under 41), and a low Platelet count (Abnormal at 128, with Reference between 144-400). These levels are evidence of a severely damaged liver.

20. Plaintiff was sent to Albany Medical Center on or around October 30, 2014 to receive radioactive iodine ablation for his hyperthyroidism.

21. Plaintiff was admitted to the infirmary at Coxsackie on October 31, 2014 and was discharged from the infirmary on November 7, 2014. Plaintiff was not treated by defendant MILLER for his Hepatitis C during his time at Coxsackie.

22. Plaintiff's November 13, 2014 laboratory blood test, ordered by defendant CONNELLY, reflected high levels of alanine aminotransferase (ALT) (Abnormal at 107, with Reference under 41), and high levels of aspartate aminotransferase (AST) (Abnormal at 47, with Reference under 40). These levels are evidence of a severely damaged liver.

23. Plaintiff was transferred to Upstate Correctional Facility on or around November 17, 2014. His Ambulatory Health Record (AHR) from that date states that his chronic medical problems included hyperthyroid and Hepatitis C. However, plaintiff was not treated by defendant MANDALAYWALA for his Hepatitis C during his time at Upstate Correctional Facility.

24. On January 28, 2015, plaintiff was screened pending his transfer to Riverview. The AHR from that date notes his diagnoses of hyperthyroid and Hepatitis C. However, plaintiff was not treated by defendants SEIDMAN and RUPERT for his Hepatitis C during his time at Riverview.

25. On February 4, 2015, plaintiff was given a urinalysis test which tested positive for buprenorphine (suboxone). Plaintiff was issued a misbehavior report for drug use. At his disciplinary hearing, ending on February 9, 2015, he was given 180 days confinement in the Special Housing Unit (SHU), as well as 180 days loss of recreation, packages, commissary, and phone privileges.

26. When a prisoner is in SHU, his/her access to programs, including alcohol or substance abuse programming, is severely restricted.

27. On February 11, 2015, the AHR reflects that plaintiff was seen by defendant RUPERT, the Infection Control Nurse (ICN) at Riverview, who noted that plaintiff was “interested in treatment.” Defendant RUPERT noted that plaintiff needed a Hepatitis A screening, fibrosure (a liver function test), and an HIV screening. Defendant RUPERT also noted that the doctor, defendant SEIDMAN would check orders for labs and would evaluate plaintiff with the results.

28. However, the following day, on February 12, 2015, plaintiff was instead transferred to Gouverneur. The AHR upon his arrival reflects the need for doctor approval for the Hepatitis A screening, fibrosure, and HIV screening. That test was not performed for over one month.

29. On March 8, 2015, plaintiff was given another urinalysis test which tested positive for buprenorphine (suboxone) and synthetic marijuana. Plaintiff was issued a misbehavior report for drug use. At his disciplinary hearing, ending March 19, 2015, he was given an additional 180 days confinement in SHU, as well as 180 days loss of recreation, packages, commissary, and phone privileges.

30. On March 10, 2015, plaintiff again requested to start Hepatitis C treatment. Defendant BURKE noted in plaintiff's AHR, "He was explained that he must be drug free x 6 mo's prior to starting Rx. He is currently in the S200 [SHU] on a drug charge."

31. Plaintiff's March 13, 2015 laboratory blood test, ordered by defendant KASULKE, reflected high levels of Necroinflammation ACTScore (Abnormal at 0.72, with Reference under 0.18), high levels of Alpha 2-Macroglobulins (Abnormal at 540, with Reference between 110 to 276), low levels of Haptoglobin (Abnormal at <10, with Reference between 34 to 200), low levels of Apolipoprotein A-1 (Abnormal at 106, with Reference between 110 to 180), and high levels of high levels of alanine aminotransferase (ALT) (Abnormal at 184, with Reference under 56). All of these levels are evidence of a severely damaged liver.

32. The March 13, 2015 laboratory blood test results also reflect that plaintiff had Stage F4 fibrosis (cirrhosis) and severe inflammation activity.

33. Plaintiff again asked for Hepatitis C treatment on March 26, 2015, but the AHR reflects that defendant BURKE denied treatment, writing, "For the 2nd time he was explained per policy he must be drug free x 6 mo's."

34. Plaintiff's AHR from April 5, 2015 states that plaintiff's chart was sent to the doctor for review and orders and reflects that plaintiff was scheduled to meet with the doctor "to discuss disease progression (cirrhosis)."

35. Plaintiff's May 1, 2015 laboratory blood test, ordered by defendant KASULKE, reflected a low Platelet count (Abnormal at 101, with Reference between 144 to 400), high Prothrombin Time (Abnormal at 13.2, with Reference between 10.3 to 12.8), and high levels of

high levels of alanine aminotransferase (ALT) (Abnormal at 61, with Reference under 41). These levels are evidence of a severely damaged liver.

36. On May 13, 2015, plaintiff met with defendant KASULKE and requested Hepatitis C treatment. Defendant KASULKE's notes reflect that plaintiff must be "drug free for 6 months" and a follow up was scheduled for September 2015.

37. On June 6, 2015 defendant BURKE again states in plaintiff's AHR that because plaintiff had a drug charge, he "must be drug free x 6 mo's before Tx is offered."

38. On June 10, 2015, plaintiff's counsel wrote to defendants KOENIGSMANN and KASULKE requesting that Hepatitis C treatment begin immediately.

39. Plaintiff's counsel's correspondence also explained that current guidelines from the American Association for the Study of Liver Disease (AASLD), upon which DOCCS' Hepatitis C Policy is allegedly based, explicitly supports Hepatitis C treatment for active drug users.

40. Plaintiff's counsel relayed to defendants KOENIGSMANN and KASULKE plaintiff's physical complaints which included: profuse sweating, body pains and aches, lethargy, trouble sleeping, fatigue, weakness, lack of appetite, changes in body temperature, throat pains and aches, headaches, diarrhea, shaking, dizziness, and black outs.

41. Plaintiff's June 26, 2015 laboratory blood test, ordered by defendant KASULKE, reflected a low Platelet count (Abnormal at 101, with Reference between 144 to 400), and a high Mean Corpuscular Hemoglobin Concentration (MCHC) (Abnormal at 35.4, with Reference between 29 to 35). These levels are evidence of a severely damaged liver.

42. On June 29, 2015, defendant KOENIGSMANN responded to plaintiff's counsel, stating, "Please note that current DOCCS Hepatitis C practice guidelines require that the inmate be drug and alcohol free for 6 months."

43. On June 29, 2015, plaintiff's counsel sent an email to defendant KOENIGSMANN requesting that treatment begin immediately for plaintiff.

44. Defendant KOENIGSMANN responded on June 29, 2015 via email stating, "Our policy is to treat HCV pt with drug infractions after a 6 month drug free interval. This pt has had 2 recent drug infractions 3/2015 and 2/2015 including 2 infractions in 2014. It is important that he understand that it is critical that he avoid drug use."

45. On June 30, 2015, defendant ICN RUPERT wrote in plaintiff's AHR, "Fibrosis score = F-4 cirrhosis. [...] Per primary practice guidelines pt must be 6 mo free of drugs. [...] Per Dr. Koenigsmann's direction we will continue to monitor pt platelet count and if below 100k we will then request tx."

46. On July 15, 2015, plaintiff was given another urinalysis test which tested positive for buprenorphine (suboxone). Plaintiff was issued a misbehavior report for drug use. At his disciplinary hearing, ending August 11, 2015, he was given an additional 270 days confinement in SHU, as well as 180 days loss of recreation, packages, commissary, phone privileges and recommended loss of good time.

47. Treatments exist for Hepatitis C which are not contraindicated with hyperthyroidism or drug use.

48. There is no medical basis for denying plaintiff's Hepatitis C treatment.

49. At no point was plaintiff evaluated by an Infection Control Doctor or other physician who specializes in Hepatitis C.

50. Plaintiff continues to be denied treatment by defendants KOENIGSMANN, KASULKE, RUPERT, and BURKE for his Hepatitis C.

51. As a result of his untreated Hepatitis C, plaintiff has complained of and continues to experience profuse sweating, body pains and aches, lethargy, trouble sleeping, fatigue, weakness, lack of appetite, changes in body temperature, throat pains and aches, debilitating headaches, diarrhea, shaking, dizziness, black outs, the fear of death, and the fear that his Stage 4 fibrosis is rapidly turning into liver cancer or will require him to need a liver transplant.

52. Plaintiff's condition continues to worsen and his suffering is prolonged from lack of Hepatitis C treatment.

53. Plaintiff has exhausted his administrative remedies.

DOCCS' HEPATITIS C POLICY

54. At all relevant times, DOCCS' Hepatitis C Primary Care Practice Guidelines ("the Hepatitis C Policy") excludes from treatment any prisoner who is not drug or alcohol free for six months.

55. The Hepatitis C Policy is promulgated by defendant KOENIGSMANN.

56. The Hepatitis C Policy was relied upon by defendants KOENIGSMANN, KASULKE, BURKE, and RUPERT to deny plaintiff medical care for his serious medical need.

57. The Hepatitis C Policy states that it relies upon Guidelines from the American Association for the Study of Liver Disease (AASLD).

58. Current AASLD guidelines explicitly support Hepatitis C treatment even for active injecting drug users.

59. Plaintiff's counsel's June 10, 2015 correspondence informed defendants KOENIGSMANN and KASULKE that the AASLD Guidelines which DOCCS policy relies upon supports treating plaintiff despite his positive drug tests.

60. The Hepatitis C Policy in effect from June 10, 2014 until April 16, 2015, stated that treatment exclusion criteria included, "evidence of ongoing substance abuse (must be drug/alcohol free for six months)."

61. The Hepatitis C Policy in effect from April 16, 2015 until the present states that treatment exclusion criteria includes, "Documented chronic noncompliance with medical care and evidence of ongoing substance abuse will be considered exclusion criteria for treatment (must be drug/alcohol free for six months)."

62. Plaintiff's counsel's June 10, 2015 letter requesting treatment for plaintiff also requested that defendant KOENIGSMANN revise the above exclusion criteria.

63. Defendant KOENIGSMANN's responses to plaintiff's counsel regarding plaintiff's treatment and the Hepatitis C Policy stated, "Please note that current DOCCS Hepatitis C Practice Guidelines require that the inmate be drug and alcohol free for six months," and, "Our policy is to treat HCV pt with drug infractions after a 6 month drug free interval."

64. The Hepatitis C Policy further recommends that "patients with suspected cirrhosis (Stage 4 fibrosis) will also undergo an abdominal or liver ultrasound to determine the presence of cirrhosis and/or portal hypertension," and "patients with cirrhosis need periodic surveillance for

hepatocellular carcinoma (HCC). According to the AASLD guidelines, these patients should be monitored every six months with an ultrasound of the liver.”

65. Plaintiff has not received a liver ultrasound.

66. Plaintiff has not received any treatment for his Hepatitis C since testing positive in July 2013, and showing laboratory evidence of a severely damaged liver with cirrhosis since that date.

LEGAL CLAIMS

FIRST CLAIM FOR RELIEF

67. By their actions as described hereinabove, in failing to promptly schedule plaintiff for Hepatitis C treatment beginning on July 10, 2013, and in otherwise failing to ensure appropriate continuity of care and treatment in a timely manner, ALL DEFENDANTS were and continue to be deliberately indifferent to plaintiff’s serious medical needs, in violation of his 8th and 14th Amendment rights.

SECOND CLAIM FOR RELIEF

68. By their actions as described hereinabove, in failing to ensure necessary and appropriate continuity of care and treatment in a timely manner, either by personally intervening in plaintiff’s care or by implementing proper systems, policies, and procedures for ensuring appropriate monitoring and management of plaintiff’s care, ALL DEFENDANTS were and continue to be deliberately indifferent to plaintiff’s serious medical needs, in violation of his 8th and 14th Amendment rights.

THIRD CLAIM FOR RELIEF

69. By their actions as described hereinabove, by reflexively applying the Hepatitis C Policy to exclude plaintiff from necessary treatment, defendants KOENIGSMANN, KASULKE, BURKE, and RUPERT were and continue to be deliberately indifferent to plaintiff's serious medical needs, in violation of his 8th and 14th Amendment rights.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this court:

1. declare that the acts set forth herein by defendants are in violation of plaintiff's rights under the Constitution and laws of the United States;
2. enjoin defendants from reflexively enforcing the six-month drug-free requirement in the care and treatment of prisoners with Hepatitis C;
3. enter judgment in favor of plaintiff for reasonable actual and compensatory, including consequential, damages against each of the defendants, jointly and severally, to compensate plaintiff for his pain, suffering, and other hardships arising from defendants' deliberate indifference to plaintiff's serious medical needs;
4. enter judgment for plaintiff for reasonable punitive damages against each of the defendants;
5. award plaintiff the costs of this action, including reasonable attorneys fees; and

6. grant such other and further relief as this court deems just and proper.

DATED: October 7, 2015

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