

**IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF PENNSYLVANIA**

MUMIA ABU-JAMAL

Plaintiff,

v.

**JOHN KERESTES, Former
Superintendent State Correctional
Institution Mahanoy**

**Theresa DelBalso, Superintendent State
Correctional Institution Mahanoy**

**Joseph Silva, DOC Director of Bureau
of Health Care Services**

**Pennsylvania Department of
Corrections**

**John Wetzel, Secretary of Pennsylvania
Department of Corrections**

**Dr. Paul Noel, Director of Clinical
Service**

Dr. Jay Cowan, Correct Care Solutions

**Christopher Oppman, DOC Director of
Bureau of Health Care Services**

Dr. John Lisiak, SCI Mahanoy

Dr. Shaista Khanum, SCI Mahanoy

**Scott Saxon, Physician's Assistant, SCI
Mahanoy**

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: **Case No. 15-Cv-00967**
: **(RDM)(KM)**

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: **Judge Robert D. Mariani**

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: **Magistrate Judge Karoline**
: **Mehalchick**

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: **JURY TRIAL DEMANDED**

ELECTRONICALLY FILED

**John Steinhart, SCI Mahanoy, Chief
Health Care Administrator**

Defendants.

FOURTH AMENDED COMPLAINT

JURISDICTION

1. This is an action for monetary, declaratory, and injunctive relief for violations of the First, Eighth, and Fourteenth Amendments of the United States Constitution pursuant to 42 U.S.C. § 1983, and violations of Pennsylvania State law.
2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4). The Plaintiff further invokes the supplemental jurisdiction of this Court under 28 U.S.C. Section 1367(a) to hear and adjudicate state law claims.
3. This Court is the appropriate venue pursuant to 28 U.S.C. § 1391(b)(2) because the events and omissions giving rise to the claims occurred in the Middle District of Pennsylvania.

PARTIES

4. Mumia Abu-Jamal is an African-American currently incarcerated in the custody of the Pennsylvania Department of Corrections (DOC) at the State Correctional Institution at Mahanoy. Mr. Abu Jamal's case is well-known world-wide and is considered by many to be a case of injustice.

5. Mr. Abu-Jamal is suffering from chronic hepatitis C. The disease has caused and is causing severe health problems. He has requested that he be provided with anti-viral medication that would cure his disease but the defendants have denied that treatment.
6. Defendant John Kerestes was the Superintendent, also known as the Facility Manager at SCI Mahanoy. Defendant Kerestes was responsible for the overall operation of SCI Mahanoy during the time giving rise to this complaint. Defendant Kerestes had the power to authorize attorney and family visits with individuals in the custody of SCI Mahanoy when they are in a hospital off of prison grounds. In addition, he was responsible for the well-being and health of individuals incarcerated at SCI Mahanoy including their access to hepatitis C treatment. Defendant Kerestes is sued in his individual capacity. At all times relevant hereto defendant Kerestes acted under color of state law.
7. Defendant John Wetzel is the Secretary of the Pennsylvania Department of Corrections. In that capacity he is responsible for the formulation and implementation of policies within the DOC including but not limited to those concerning inmate health care, including policies for the treatment of hepatitis C. He is sued in his individual capacity for money damages and in

his official capacity for injunctive relief. At all times relevant hereto, Defendant Wetzel acted under color of state law.

8. The Pennsylvania Department of Corrections (DOC) is the state agency in which the plaintiff is held custody. The DOC is required to provide medical care for those in its custody.

9. Defendant Theresa Delbalso is the Superintendent at SCI Mahanoy.

Defendant Delbalso is responsible for the overall operation of SCI Mahanoy. Defendant Delbalso has the power to authorize attorney and family visits with individuals in the custody of SCI Mahanoy when they are in a hospital off of prison grounds. In addition, she is responsible for the well-being and health of individuals incarcerated at SCI Mahanoy including their access to hepatitis C treatment. Defendant DelBalso is sued in her official capacity for injunctive relief and not for money damages. She has been substituted as a defendant pursuant to Fed.R.Civ.P. 25(d). At all times relevant hereto, defendant Delbalso acted under color of state law.

10. Defendant Christopher Oppman was the Director of the Bureau of Health Care Services of the DOC. According to the DOC website, the Bureau of Health Care Services “is responsible for supervising and monitoring the delivery of all medical/dental services...throughout the state correctional system.” Defendant Oppman is responsible for the formulation and

implementation of health care policies within the DOC including policies concerning access to treatment for hepatitis C. He is sued in his individual capacity for money damages. At all times relevant hereto defendant Oppman acted under color of state law.

11. Defendant Joseph J. Silva is the Director of the Bureau of Health Care Services of the DOC. According to the DOC website, the Bureau of Health Care Services “is responsible for supervising and monitoring the delivery of all medical/dental services...throughout the state correctional system.” Defendant Silva is responsible for the formulation and implementation of health care policies within the DOC including policies for access to treatment for hepatitis C. Defendant Silva is sued in his official capacity only for injunctive relief and not money damages. He has been substituted as a defendant pursuant to Fed.R.Civ.P. 25(d). At all times relevant hereto, defendant Silva acted under color of state law.

12. Defendant Paul Noel, M.D. is the Director of Clinical Services of the DOC. In that capacity he has oversight over the delivery of health care services to inmates within the DOC. In addition, Dr. Noel sits on the hepatitis C committee that is responsible for implementing the DOC’s hepatitis C protocol and makes recommendations concerning which inmates will receive hepatitis C treatment. He is sued in his individual capacity for

money damages and his official capacity for injunctive relief. At all times relevant hereto defendant Noel acted under color of state law.

13. Defendant John Lisiak is a Doctor at SCI Mahanoy. Defendant Lisiak is sued in his individual capacity for money damages and official capacity for injunctive relief. At all times relevant hereto defendant Lisiak acted under color of state law.

14. Defendant Shaista Khanum is a Doctor at SCI Mahanoy. Defendant Khanum is sued in his individual capacity for money damages and official capacity for injunctive relief. At all times relevant hereto defendant Khanum acted under color of state law.

15. Defendant Scott Saxon is a Physician's Assistant at SCI Mahanoy. Defendant Saxon is sued in his individual capacity for money damages and official capacity for injunctive relief. At all times relevant hereto defendant Saxon acted under color of state law.

16. Defendant John Steinhart is the Chief Health Care Administrator at SCI Mahanoy. According to the DOC Medical Procedures Manual, Defendant Steinhart is responsible for overseeing delivery of medical services to the inmates at SCI Mahanoy via the medical vendor and department staff. Defendant Steinhart is sued in his individual capacity for money damages

and official capacity for injunctive relief. At all times relevant hereto defendant Steinhart acted under color of state law.

17. Defendant Jay Cowan, M.D. is employed by Correct Care Solutions (CCS), the corporation that is contracted to provide medical services to inmates incarcerated within the Pennsylvania Department of Corrections. He has served as Statewide Medical Director of that entity and as a member of the DOC's hepatitis C treatment committee.

STATEMENT OF FACTS

Background

18. Mumia Abu Jamal, now 62 years old, has been incarcerated since 1981. In the late 1960's and early 1970's he was a member of the Philadelphia chapter of the Black Panther Party for Self Defense (BPP). That organization, founded in 1966 in Oakland, California, had a ten point program that called for community control of the institutions in the Black community including community control of the police, health care and education.

19. According to disclosures made to Congress in the mid-1970's, the Black Panther Party was the main target of the Federal Bureau of Investigation's (FBI) counterintelligence program, known as COINTELPRO. COINTELPRO's stated aim was to "neutralize" Black organizations and

their leaders through a variety of illegal and/or unconstitutional actions.

(See Final Report Book III, Senate Select Committee On Government

Operations at

http://www.aarclibrary.org/publib/church/reports/book3/pdf/ChurchB3_1_COINTELPRO.pdf).

20. As a member of the Philadelphia chapter of the BPP Plaintiff Abu-Jamal

often spoke out against racism, particularly the violence of the police

directed at the Black community. Aware of his activities, the FBI placed

him on its Security Index solely due to his public speeches for the Black

Panther Party. (See “FBI File Tracks Abu-Jamal Through His Teenage

Years” Philadelphia Inquirer, June 12, 1995,

http://articles.philly.com/1995-06-12/news/25690155_1_mumia-abu-jamal-officer-daniel-faulkner-wesley-cook).

21. By the late 1970’s Plaintiff Abu-Jamal was a well-known print and radio

journalist. He was known as the “Voice of the Voiceless” and continued

writing about issues affecting the Black community. He was, among other

things, a vocal supporter of the MOVE organization and served a term as

the President of the Philadelphia Chapter of the National Association of

Black Journalists.

22. On December 9 1981, Mr. Abu-Jamal was arrested following a shooting incident that left Philadelphia Police Officer Daniel Faulkner dead and Mr. Abu-Jamal severely wounded.
23. Plaintiff Abu-Jamal was charged with Officer Faulkner's murder. He was convicted and sentenced to death. He has always maintained his innocence.
24. After his sentencing Plaintiff Abu Jamal was transferred to the custody of the Pennsylvania Department of Corrections (DOC) and placed on death row. He was to be on death row for nearly 30 years.
25. During that time, Plaintiff Abu-Jamal made numerous applications to both state and federal courts to vacate his conviction. These applications included new evidence that provided compelling proof of his innocence. The numerous injustices in his case led to a world-wide movement calling for his release.
26. At the same time, many police organizations, most notably the Fraternal Order of Police (FOP), engaged in a campaign calling for Mr. Abu-Jamal's execution. See "FOP Outraged Over Court's Consideration Of New Trial For Jamal" at <http://www.fop.net/causes/faulkner/3rdcircuit.shtml>.
27. All applications for a new trial have, to date, been denied. However, in 2011, the United States Court of Appeals for the Third Circuit affirmed the

order of the lower court that set aside the death sentence. *Abu-Jamal v. Secretary, Pennsylvania Department of Corrections*, 643 F.3d 370 (3d Cir. 2011).

28. The Philadelphia District Attorney's Office chose not to seek to reinstate the death sentence. Mr. Abu-Jamal was then placed by the DOC into general population.

29. As he has done throughout his incarceration, Mr. Abu-Jamal has commented orally and through writings, on the issues of the day (*See* www.prisonradio.org).

30. But there have been extraordinary efforts to deny Mr. Abu-Jamal his First Amendment rights. In 2014 Mr. Abu-Jamal was invited to send a statement that would serve as the commencement address at Goddard College, his alma mater. At the urging of the Fraternal Order of Police, the Pennsylvania legislature passed, and the Governor signed a law that became commonly known as the "Silence Mumia Act."

31. Under it, a court would have had the authority to stop publication of anything written or said by a prisoner that could have caused distress to the prisoners' victims and/or the victims' loved ones.

32. On April 28, 2105, the law was declared unconstitutional on its face. *Jamal v. Kane*, -- F.Supp.3d --, 2015 WL 1932236 (M.D.Pa. 2015).

Hepatitis C

33. Hepatitis C (HCV) is a virus that infects cells of the liver. Approximately 75-85 percent of individuals infected with the HCV will develop chronic hepatitis C, causing progressive inflammation of the liver.
34. Inflammation caused by the virus can lead to scarring, known as fibrosis, and extreme scarring, known as cirrhosis, both of which affect liver functioning.
35. One of the ways liver inflammation is measured is on the Metavir scale. On that scale F0 means no fibrosis and F4 means cirrhosis
36. Chronic hepatitis C patients with any liver scarring, i.e. greater than F0 are at a greater risk of rapid disease progression.
37. At least twenty percent of chronic hepatitis C patients will develop cirrhosis, and between 2 and 7% of them per year will develop liver cancer.
38. About 19% of those who develop cirrhosis will go on to develop liver cancer.
39. Approximately 20% of all those with chronic hepatitis C will die from complications of the disease.
40. In the United States, hepatitis C causes more deaths than all other infectious diseases combined
41. Chronic hepatitis C often causes complications outside of the liver, including anemia and diabetes.

42. Between 20-40% of chronic hepatitis C patients have cutaneous (skin) manifestations of the disease. Among them are the relatively rare conditions of lichen planus and necrolytic acral erythema (NAE), and more common ones such as psoriasis, eczema and pruritus (persistent itching).
43. In or about 2013 new anti-viral drugs became available. These drugs have a 90-95% cure rate and few, if any, side effects. These drugs, two of which are Harvoni and Sovaldi have become the standard of care in the medical community.
44. Because of the numerous benefit of early treatment, the American Association for the Study of Liver Diseases (AASLD), recommends that everyone with chronic hepatitis C be treated with those anti-viral drugs irrespective of disease stage on the Metavir scale or prognosis for progression.
45. The Center for Disease Control (CDC) has issued its own guidelines that state that the guidelines issued by the AASLD are the standard of care for the treatment of hepatitis C.

Hepatitis C and The Policy Of The Pennsylvania DOC

46. The Pennsylvania Department of Corrections, through its Bureau of Health Care Services is charged with delivery of necessary medical care to inmates under the jurisdiction of the DOC

47. There are at least 5000 inmates under the jurisdiction of the DOC who have active, i.e. chronic, hepatitis C.
48. In 2013, when the current anti-viral drugs became available, the DOC, through its Bureau of Health Services, headed by defendant Oppman and with the knowledge and approval of defendants Oppman and Wetzel ceased treating all inmates in the custody of the DOC who have active, i.e. chronic hepatitis C.
49. This policy continued under the direction of defendant Oppman, with the knowledge and approval of defendant Wetzel throughout 2014 and most of 2015
50. In late 2015, defendants Oppman, Cowan, and Noel, with the knowledge and approval of defendant Wetzel formulated and adopted a medical protocol concerning who would be treated and not treated with hepatitis C anti-viral drugs.
51. The hepatitis C protocol was added as Appendix 16-B to the Access to Health Care Procedures Manual of the Department of Corrections and is part of the DOC Policy Statement 13.1.1 entitled “Management and Administration of Health Care”. The Policy Statement was personally authorized by defendant Wetzel.

52. Under that policy, only inmates with decompensated cirrhosis with bleeding are authorized to receive the anti-viral drugs.
53. When the disease has advanced to decompensated cirrhosis with bleeding, a person has already suffered irreversible damage to their health and are at a grave risk of death.
54. In addition, long before the disease has progressed to that stage, individuals suffering from it have suffered irreversible damage to their liver, decreased liver function, and are at a significantly higher risk of developing liver cancer. Many also suffer severe extrahepatic manifestations of the disease that adversely affect quality of life.
55. The DOC Policy Statement requires that copies of the Procedures Manual be delivered to each Facility Manager (Superintendent).
56. This policy was adopted and implemented by defendants Wetzel, Oppman, Noel, Kerestes, Steinhart, Cowan, and others even though they knew that denying treatment to inmates who did not fall under the protocol had no medical justification, causes harm to those inmates' health and places them at risk of death.
57. The defendants, and each of them, adopted and implemented this protocol even though they knew that the standard of care in the community, as

articulated by the AASLD and CDC is to treat all who have chronic hepatitis C.

58. This protocol remains in effect and is administered and enforced by defendant Wetzel, defendant Silva, the current head of the Bureau of Health Care Services, defendant Noel, the Director of Clinical Services, defendant Cowan, defendant DelBalso, Superintendent of SCI Mahanoy and defendant Steinhart, Chief Health Care Administrator at SCI Mahanoy.

59. As more fully discussed *infra.*, it was pursuant to the refusal of the DOC to treat anyone between 2013 and 2015 and the policy adopted in 2015 that the plaintiff Mumia Abu Jamal was denied and is being denied treatment for his hepatitis C with the anti-viral medications.

The Plaintiff's Medical Care

60. During routine blood work performed by DOC medical staff in 2012, Plaintiff Abu-Jamal tested positive for the Hepatitis C antibody. He likely contracted the virus during a 1981 blood transfusion.

61. At that time and for the next three years, no one in the DOC medical staff ordered follow-up testing to determine whether his disease was chronic.

62. That Mr. Abu-Jamal had tested positive for the hepatitis C anti-body is noted in his medical records that are in the possession of the DOC.

63. In or about August 2014, Mr. Abu-Jamal's hepatitis C infection began to manifest itself through a severe skin rash that itched incessantly.

64. In that month Mr. Abu Jamal began to experience itching over his whole body. Plaintiff went to sick call on several occasions. Medical personnel prescribed steroid creams. They did not alleviate the rash or the itching.

65. On or about February 11, 2015 defendant Dr. Lisiak noted that the itchy rash covered 70% of Mr. Abu-Jamal's body

66. On February 16 and February 17, Plaintiff again went to sick call and saw defendant Dr. Khanum. He too noted that the rash covered 70% of Plaintiff's body. Plaintiff told Dr. Khanum that he felt dizzy and experienced some blurred vision.

67. Plaintiff's skin became increasingly dark and scaly. He continually itched and was in near constant pain and discomfort. He began using a wheelchair whenever he left the infirmary area.

68. On February 20, 2015, defendant Dr. Khanum ordered that Plaintiff be admitted to the facility infirmary.

69. On that same date, defendant Dr. Lisiak noted that Plaintiff's blood glucose had risen to an above-normal 167. No one at SCI Mahanoy, including but not limited to defendants Lisiak, Saxon, and Khanum told the Plaintiff that his blood glucose was abnormally high.

70. Although Mr. Abu Jamal's medical records noted that he had tested positive for the hepatitis C antibody years earlier, none of the medical personnel, including but not limited to defendants Lisiak, Saxon, and Khanum ordered a test to determine whether the infection was active and/or whether hepatitis C might be the underlying cause of the skin condition.
71. In late February 2015 Mahanoy medical staff, with the knowledge and approval of defendants Khanum, Lisiak and Saxon prescribed another steroid, oral prednisone, and Cyclosporine, an immunosuppressant. The rash persisted. A medical note dated February 19, 2015 recorded the fact that plaintiff Abu-Jamal was experiencing "increasing peeling off of dry skin at the site of rashes".
72. Blood work taken on March 6, 2015 showed that Mr. Abu-Jamal's glucose level had risen to the severely abnormal level of 419. These results were reviewed by defendants Lisiak, Khanum and Saxon.
73. Because the glucose levels were noted in the medical records, defendants Lisiak, Khanum, and Saxon knew or should have known that plaintiff Abu-Jamal had a dramatically elevated glucose level indicating a dangerous case of hyperglycemia.

74. Defendants Lisiak, Khanum, and Saxon took no action to address the glucose level. There was no treatment provided, nor any follow up testing of his glucose level. They did not even inform Mr. Abu-Jamal of that test result.
75. Defendants Lisiak, Khanum and Saxon continued to prescribe cyclosporine notwithstanding that it is medically contraindicated for an African American with sudden onset diabetes.
76. In approximately the third week of March, 2015 an inmate at Mahanoy saw defendant Kerestes in one of the facility's corridors. He told defendant Kerestes that Mr. Abu-Jamal was in a seriously weakened state and was suffering.
77. Upon information and belief defendant Kerestes took no action as a result of that inmate's statements to him.
78. On March 30, 2015, Mr. Abu-Jamal lost consciousness. He was rushed to Schuylkill Medical Center. Upon testing his blood glucose was found to be 507. He had gone into diabetic shock and was placed in the Critical Care Unit.
79. Untreated hyperglycemia is a potentially fatal condition.
80. Plaintiff returned to the prison on April 1. His release papers indicate the prognosis as "guarded" and include the following medical issues: diabetes,

new onset, encephalopathy secondary to hyperglycemia, dehydration, acute kidney injury, hyponatremia, hypokalemia, asymptomatic gallstones, skin rash, anemia and a history of hepatitis C.

81. In the weeks following the diabetic shock, Mr. Abu Jamal experienced fatigue, episodes of “brain fog” and emotional distress.

82. Mr. Abu Jamal’s blood work revealed, and continues to reveal abnormalities, including a consistently below-normal-range hemoglobin count.

83. Although the Schuylkill release order noted that Mr. Abu Jamal had a “history” of hepatitis C, none of the defendants, including defendants Kerestes, Steinhart, Lisiak, Khanum, or Saxon, took any steps to investigate whether the hepatitis C may be the cause of the rash and/or other medical issues.

84. In March 2015, Mr. Abu Jamal retained counsel to advocate on behalf of Mr. Abu-Jamal for appropriate medical care. These efforts have included visits, procurement of medical records, consultation with medical experts and communications with the DOC urging adequate health care.

85. During and after Mr. Abu-Jamal’s March 30, 2015 hospitalization, defendant Steinhart frequently spoke on the phone with Mr. Abu-Jamal’s wife. During these conversations he received regular, daily updates on Mr.

Abu-Jamal's ongoing health problems, including the skin condition that had yet to have its underlying cause diagnosed.

86. In the weeks and months that followed, counsel communicated with defendants Kerestes and Steinhart via letter in an effort to secure adequate medical care for Mr. Abu-Jamal. Copies of some of the correspondence were sent to defendant Oppman and defendant Wetzel, Secretary of the Pennsylvania Department of Corrections.
87. Requests included, but were not limited to treatment for the skin condition, a hepatitis C workup and an overall health plan to determine the underlying cause(s) of Plaintiff's health issues.
88. For example, on or about April 5, 2015, counsel sent a letter to defendant Kerestes recounting the events of March 30, 2015 and the fact that it occurred after several months of adverse health symptoms, including abnormal blood work. Among other things counsel requested that a doctor of Mr. Abu-Jamal's own choosing be permitted to examine him. Plaintiff's counsel sent Defendants Oppman and Steinhart copies of that letter.
89. None of the defendants responded to counsel's letter.
90. On or about April 6, 2015, counsel sent letters to both defendant Kerestes and defendant Steinhart. Counsel told defendants Kerestes and Steinhart,

inter alia, that the plaintiff's blood sugar remained abnormal. Counsel noted that the blood sugar "and other symptoms required specialized diagnostic and treatment care."

91. Neither defendant Kerestes nor defendant Steinhart responded to counsel's letter.

92. On or about April 11, 2015, Plaintiff submitted a grievance to the SCI Mahanoy Facility Grievance Coordinator. The grievance stated, *inter alia* that medical staff at Mahanoy had failed to properly diagnose and monitor his health. He requested, *inter alia*, a detailed health care plan and the opportunity to be examined by a doctor of his own choosing.

93. On or about April 28, 2015, defendant Steinhart responded to the grievance. He denied the grievance stating that Mr. Abu Jamal's medical needs were being met. Defendant Steinhart based his denial on his own review of plaintiff's medical records.

94. Mr. Abu Jamal filed a timely appeal from that denial. He stated that the failure to administer adequate health care had caused serious harm, including hyperglycemia and the skin rash and the failure to determine and its underlying cause.

95. On or about May 26, 2015, (after plaintiff's release from Geisinger Medical Center discussed *infra*.) defendant Kerestes upheld the denial of

the grievance. In that denial he stated that he had he had reviewed it and defendant Steinhart's response and found that response to be "appropriate".

96. The grievance denial failed to address at all Mr. Abu-Jamal's request for a diagnostic workup to determine the underlying cause of his health care issues.

97. On April 28, 2015, counsel transmitted a medical opinion letter from the medical expert to the Department of Corrections via DOC counsel.

98. The expert opined, *inter alia* that there should be an "occult malignancy workup" to determine the cause of the still-present severe rash and anemia as both are indicative of T-Cell Lymphoma. He noted:

The workup to investigate the cause of the rash is urgent at this time. If it is due to lymphoma or some other serious underlying medical condition then delaying the diagnosis may have severe and even lethal consequences.

99. On or about May 12, 2015, Mr. Abu-Jamal experienced extreme pain in his lower extremities when showering. Later that day, he was removed from the facility and moved to Geisinger Medical Center

100. Counsel contacted SCI Mahanoy. He requested that he be permitted to visit with Mr. Abu-Jamal at Geisinger. Mr. Abu-Jamal's wife made the same request.

101. Defendant Kerestes stated that he would permit visits from immediate family members. But before any visits took place both counsel and Mrs. Abu-Jamal were advised that defendant Kerestes had denied all visitation, including visits with his attorneys so long as he remained at Geisinger. Nor would Mr. Abu-Jamal be permitted to telephone his attorneys and/or his wife.
102. Plaintiff's counsel spoke with DOC counsel. The latter asserted that the prohibition on visitation and phone calls was the policy of Geisinger Medical Center and not the DOC. In fact, during a prior hospitalization at Schuylkill Medical Center, Mr. Abu Jamal received visits from his attorney and immediate family.
103. On Thursday, May 14, counsel contacted Geisinger Medical Center's litigation counsel. Counsel agreed to seek authorization from Geisinger's Chief Medical Officer and DOC officials to permit family and attorney visits and phone calls with Mr. Abu-Jamal.
104. On Monday, May 18, plaintiff Abu-Jamal was granted a 15-minute phone call with his wife. However, he was not permitted visitation with his attorneys or family during his entire stay at Geisinger.
105. At about this time, counsel for the Department of Corrections informed plaintiff's counsel that because this matter had moved toward litigation,

plaintiff's counsel should send all communications regarding Mr. Abu-Jamal, including but not limited to health care concerns, to DOC counsel and not DOC officials.

106. During his May 12, 2015 to May 19, 2015 stay at Geisinger numerous diagnostic tests were conducted. Blood work showed consistently low hemoglobin levels indicating anemia.

107. While those tests and a subsequent bone marrow biopsy ruled out some serious conditions, including some cancers, the underlying cause(s) of Mr. Abu-Jamal's health problems, including the rash and anemia, were not determined.

108. A CT scan performed at Geisinger noted irregularities in the architecture of plaintiff's liver, a sign of cirrhosis.

109. No hepatitis C workup was performed at Geisinger Medical Center.

110. The discharge report from Geisinger dated May 18, 2015 noted that Mr. Abu Jamal might be a suitable candidate for hepatitis C treatment. This report was placed in Plaintiff's medical records at SCI Mahanoy.

111. None of the defendants' including but not limited to defendants Lisiak, Khanum, Kerestes or Steinhart ordered a hepatitis C blood test to determine whether the disease was chronic.

112. For a period of time after his return from Geisinger, plaintiff's overall health improved and symptoms from the skin condition eased.

113. By mid-June 2015, however, the skin condition intensified. The rash spread throughout plaintiff's body and he experienced constant itching.

114. As DOC counsel had directed that all communications regarding plaintiff's medical issues be sent to Counsel's Office and not DOC officials directly, these matters were brought to the defendants' attention through communications from plaintiff's counsel to DOC counsel. Upon information and belief, the content of those letters was shared with defendants Kerestes, Steinhart, Oppman, Wetzel and Noel.

115. For example, in June 2015, plaintiff's counsel sent a letter to DOC counsel requesting, *inter alia*, that blood work be performed to determine whether plaintiff's hepatitis C was active as that disease could be the underlying cause of his health issues, including the skin condition, anemia and hyperglycemia.

116. Neither the defendants, nor their counsel, responded to that letter.

117. Meanwhile, on June 25, 2015 Plaintiff filed a timely appeal to the DOC Central Office of the medical grievance discussed *supra*. He argued that there had yet to be any diagnostic inquiry into his health issues given his "severe adverse health symptoms". There had not been, Mr. Abu-Jamal

argued, a determination of the “underlying causation responsible for my health related issues.”

118. In or about July 2015, plaintiff’s counsel sent another letter to DOC counsel. That letter enclosed a report from a physician who had visited plaintiff at SCI Mahanoy.

119. The report stated, *inter alia*, that in the physician’s opinion, the skin condition was an extrahepatic manifestation of hepatitis C.

120. In that same letter plaintiff’s counsel requested that bloodwork to determine whether the hepatitis C was active be done forthwith.

121. Neither the defendants nor their counsel responded to plaintiff’s counsel’s letter.

122. In or about late July 2015, hepatitis C bloodwork performed by DOC medical staff at Mahanoy revealed a viral load meaning that plaintiff has active hepatitis C and that the disease is chronic.

123. On or about August 13, 2015, DOC Central Office advised Mr. Abu-Jamal that the appeal of the medical care grievance had been referred to “Central Office” for further review. The Bureau or Office taking the action was listed as the “Bureau of Health Care Services”, then headed by defendant Oppman.

124. On or about September 24, 2015, the DOC Central Office affirmed the denial of plaintiff's medical care grievance. The denial noted Mr. Abu-Jamal's admission to Schuylkill in March but did not acknowledge his admission to Geisinger in May, his skin condition, the CT scan at Geisinger that was consistent with cirrhosis and/or Mr. Abu-Jamal's request for a treatment plan for his health issues.
125. On several occasions between late July 2015 and mid-September 2015 plaintiff requested from his treating physicians, including but not limited to defendants Lisiak and Khanum as well as consulting infectious disease specialist Ramon Gadea that his hepatitis C be treated with either Harvoni or Sovaldi, the two anti-viral medications. The physicians told him that the matter was out of their hands, that the DOC was not treating anyone with the anti-virals because of the medications' cost.
126. Plaintiff's disease is progressing. He is, at a minimum, at fibrosis level 2-2.5, a level consistent with significant liver scarring. This places him at risk for rapid disease progression.
127. Plaintiff's platelet levels, also a sign of hepatitis C progression, have been consistently below normal since October 2015.

128. Based upon bloodwork performed in June 2016, there is a more than 50% chance that plaintiff's disease has already progressed to cirrhosis and that he has suffered irreversible liver damage.

129. Plaintiff is now at significantly higher risk of developing liver cancer, portal hypertension (bleeding) and adult onset diabetes.

130. Plaintiff continues to experience itching and severe discomfort from the skin condition. The therapies that have been applied have provided only temporary relief.

131. The skin condition will only be cured if the hepatitis C is treated.

132. Plaintiff's hemoglobin levels have remained below normal for over one year. Anemia is an extrahepatic manifestation of hepatitis C.

133. On or about August 21, 2015, plaintiff's counsel filed a motion for a preliminary injunction requesting that the defendants, including but not limited to defendants Oppman, Kerestes and Steinhart, provide plaintiff with the anti-viral medication.

134. The defendants, through counsel, have opposed that motion and have refused to provide the plaintiff with that medication.

135. The Department of Corrections [DOC] has legal obligations to provide medical care for all those in their custody, including Plaintiff. The DOC has failed to enact policies and protocols requiring that individuals with hepatitis

C, such as Mr. Abu-Jamal, receive medically necessary treatment. Instead, DOC withholds treatment and exposes patients like Mr. Abu-Jamal to medical injury and risk of further harm, up to and including death.

136. Defendant Wetzel has authorized, condoned, and approved the DOC's policy of refusing to treat plaintiff's hepatitis C.

137. It was widespread knowledge to all involved in the provision of health care in prison systems around the country, including department heads, that medical breakthroughs now mean that hepatitis C can be cured in a safe and effective manner. Defendant Wetzel certainly was aware of these breakthroughs.

138. Defendant Wetzel has authorized the DOC's hepatitis C protocol even though it withholds treatment until a patient has already suffered from advanced cirrhosis, esophageal varices, and any number of related serious health problems.

139. Defendant Wetzel is responsible for authorizing all critical procedures and policies in the DOC.

140. He is aware that the current hepatitis C protocol provides no treatment for those with hepatitis C until they have sustained extreme liver damage and related health problems, and only after they have been exposed to severe risks of injury and death.

141. Despite his knowledge that the DOC's refusal to provide hepatitis C treatment to Mr. Abu-Jamal and other similarly situated prisoners is causing injury and substantial risk of further harm, defendant Wetzel has refused to take steps to authorize a hepatitis C treatment protocol that provides medically necessary treatment for those infected with hepatitis C.
142. Defendant Noel is the Director of Clinical Services within the Bureau of Health Care Services.
143. Defendant Noel also sits on the DOC's Hepatitis C Committee (hereafter "HCV Committee"). Under the hepatitis C protocol, the HCV Committee makes recommendations as to whether a prisoner with hepatitis C in DOC custody will receive treatment or not.
144. Defendants Noel has been presented with the facts of Mr. Abu-Jamal's chronic hepatitis C infection, his severe skin condition, anemia of chronic disease, and other health information indicating his need for hepatitis C treatment.
145. Defendant Noel and Cowan testified at the December 2015 hearing in this lawsuit and that they had personally reviewed plaintiff's medical records.
146. Defendants Noel and Cowan in their role on the hepatitis C committee, determined that plaintiff should not be treated with the anti-viral

medications. This decision to refuse treatment was done with the knowledge and approval of defendants Wetzel, Kerestes and Steinhart, who have all adopted that recommendation and refused to provide plaintiff with the anti-viral medication.

147. Defendant Noel has testified that the reason for the recommendation is that plaintiff's condition does not meet the requirements of the DOC's hepatitis C protocol. That protocol requires that the disease progress to decompensated cirrhosis with bleeding before the DOC will authorize treatment with anti-viral medications.

148. Defendant Noel and Cowan have testified that there was no medical justification for refusing to treat the plaintiff with the anti-viral medications.

149. The hepatitis C policy under which plaintiff has been denied treatment was developed, administered and authorized by defendants Wetzel, Noel, Cowan, and Oppman.

150. The policy is currently enforced by defendants Wetzel, Noel, Cowan and Silva.

151. The policy was enforced on the facility level defendants Steinhart and Kerestes and is enforced on the facility level by defendants Steinhart and DelBalso.

152. Plaintiff is being denied medically necessary treatment, to wit, the anti-viral medication, due to this policy and the actions of the defendants in formulating and implementing it.

153. The defendants, including but not limited to defendants Wetzel, Oppman, Noel, Cowan, Silva, Kerestes, Delbalso and Steinhart know through correspondence from plaintiff's counsel, requests made by the plaintiff himself, plaintiff's own medical records and the evidence adduced at the December 2015 hearing in this lawsuit that their refusal to provide plaintiff with the anti-viral medication has caused plaintiff suffering, irreversible damage to his health and places him at risk of death.

154. In addition, the defendants know that the DOC protocol falls below the standard of care in the community. Defendants Noel and Cowan testified at the December 2015 hearing that he was aware that the AASLD and CDC have recommended treatment for all with chronic hepatitis C

155. The sole basis for refusing to provide the anti-viral drugs to plaintiff is monetary cost

156. There is no medical justification for failing to provide the anti-viral drugs to the plaintiff.

157. Plaintiff has no adequate remedy at law.

CAUSES OF ACTION

Count I – Deprivation of Eighth Amendment Right to Medical Care for Hepatitis C

(Against Defendant Pennsylvania Department of Corrections in its official capacity for injunctive relief only, against Defendant Kerestes in his individual capacity for money damages, against Defendants Wetzel, Oppman, Noel, Cowan, Lisiak, Khanum, Saxon, and Steinhart in their individual capacities for money damages, and official capacities for injunctive relief and against Defendants DelBalso and Silva in their official capacities for injunctive relief)

158. Plaintiff re-alleges paragraphs 1-157 as if fully stated herein.

159. Defendants Department of Corrections, Kerestes, Oppman, Wetzel, Noel, Cowan, Lisiak, Khanum, Saxon, DelBalso, Steinhart and Silva violated and, if injunctive relief is not issued will continue to violate, Plaintiff's Eighth Amendment right to be free from cruel and unusual punishment through their deliberate indifference to his Hepatitis C. These Defendants have failed and are failing to treat his Hepatitis C, causing plaintiff serious injuries, pain, and suffering.

Count II – Deprivation of Eighth Amendment Right to Medical Care for Skin Condition

(Against Defendants Kerestes, Wetzel, Noel, Lisiak, Khanum, and Saxon in their individual capacities for money damages)

160. Plaintiff re-alleges paragraphs 1-157 as if fully stated herein.

161. Defendants Kerestes, Lisiak, Khanum, Saxon, Wetzel and Noel have violated Plaintiff's Eighth Amendment right to be free from cruel and unusual punishment through their deliberate indifference to his skin

condition. These Defendants have failed to treat his skin condition as a manifestation of hepatitis C, causing plaintiff serious injuries, pain, and suffering.

Count III – Deprivation of Eighth Amendment Right to Medical Care for Hyperglycemia

(Against Defendants Kerestes, Lisiak, Khanum, and Saxon in their individual capacities for money damages)

162. Plaintiff re-alleges paragraphs 1-157 as if fully stated herein.

Defendants Kerestes, Lisiak, Khanum, and Saxon violated Plaintiff's Eighth Amendment right to be free from cruel and unusual punishment through their deliberate indifference to his hyperglycemia, resulting in a nearly fatal episode and causing severe injuries, including, diabetic ketoacidosis, new onset diabetes, encephalopathy secondary to hyperglycemia, dehydration, acute kidney injury, hyponatremia, hypokalemia, and severe psychological pain and suffering.

Count IV – Negligence – Medical Malpractice for Failure to Treat Plaintiff's Hyperglycemia

(Against Defendants Lisiak, Khanum, and Saxon in their individual capacities for money damages)

163. Plaintiff re-alleges paragraphs 1-157 as if fully stated herein.

164. Defendants Lisiak, Khanum, and Saxon violated plaintiff's rights under Pennsylvania state law by their negligent conduct in regard to his

hyperglycemia resulting in severe injuries. Defendants violated the standard of care required of medical care professionals and plaintiff's injuries are the direct result of Defendants' negligence.

Count V – Negligence – Medical Malpractice for Failure to Treat Plaintiff's Hepatitis-C

(Against Defendants, Noel, Cowan, Oppman, Lisiak, Khanum, and Saxon, in their individual capacities for money damages)

165. Plaintiff re-alleges paragraphs 1-157 as if fully stated herein.

Defendants Noel Oppman, Lisiak, Khanum, and Saxon, violated Plaintiff's rights under Pennsylvania state law by their negligent conduct in regard to his Hepatitis C. These Defendants have failed to treat his Hepatitis C, causing plaintiff serious injuries, pain, and suffering. Defendants violated the standard of care required of medical care professionals and plaintiff's injuries are the direct result of Defendants' negligence.

Count VI – Medical Malpractice For Failure to Treat Skin Condition.

(Against Defendants Noel, Oppman, Lisiak, Khanum, and Saxon in their individual capacities)

166. Plaintiff re-alleges paragraphs 1-157 as if fully stated herein.

167. Defendants Noel, Oppman, Lisiak, and Saxon have violated Plaintiff's rights under Pennsylvania state law for their negligent disregard to Mr. Abu Jamal's skin condition. These Defendants have failed to treat his skin condition, causing plaintiff serious injuries, pain, and suffering.

Count VII – First Amendment Right of Association

(Against Defendants Kerestes and DelBalso in their Official Capacities
for injunctive relief only)

168. Plaintiff re-alleges paragraphs 1-157 as if fully stated herein.

169. Plaintiff's First Amendment right of association was violated by
arbitrarily restricting communication and preventing all visitation with his
family during his May 2015 hospitalization at Geisinger Medical Center.
This will likely happen again if he is hospitalized.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court grant the following relief:

- A. Award compensatory and punitive damages for defendants' deliberate
indifference in failing to treat plaintiff's Hepatitis C.
- B. Award compensatory and punitive damages for the defendants' deliberate
indifference to Mr. Abu Jamal's skin condition.
- C. Award compensatory and punitive damages for defendants' deliberate
indifference to plaintiff's hyperglycemia and the resulting injuries.
- D. Grant an injunction ordering the defendants to administer to Mr. Abu Jamal
direct-acting anti-viral drugs, such as Harvoni or Sovaldi as treatment for his
hepatitis C.
- E. Granting Mr. Abu Jamal the right to an in-person consultation and
examination by the medical doctor of his choice under conditions that

would permit such an examination and further ordering that if DOC refuses to permit adequate consultation and/or treatment by a doctor of his choice inside the prison that the same be ordered to take place outside of DOC custody.

- F. Grant a permanent injunction ordering defendants to permit attorney-client visits whenever plaintiff Abu-Jamal is taken from a DOC facility to receive inpatient medical treatment;
- G. Grant a permanent injunction ordering defendants to permit family visits when plaintiff Abu-Jamal is taken from a DOC facility to receive inpatient medical treatment;
- I. Grant attorneys' fees and costs.

/s/ Bret D. Grote

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DATED: August 23, 2017