

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

LESTER EADDY	:	
	:	
Plaintiff,	:	Case No.
	:	
v.	:	
	:	
	:	
Dr. Paul Noel, DOC Bureau of Health	:	JURY TRIAL DEMANDED
Care Services Chief of Clinic Services,	:	
Member of Hepatitis C Treatment	:	ELECTRONICALLY FILED
Committee	:	
	:	
Dr. Courtney Rodgers, Treating Physician	:	
SCI Mahanoy	:	
	:	
Defendants.	:	

COMPLAINT IN CIVIL ACTION

And now comes Plaintiff, Lester Eaddy, who by and through the undersigned counsel brings the following complaint:

JURISDICTION

1. This is an action for injunctive and monetary relief for violations of the Eighth and Fourteenth Amendments of the United States Constitution pursuant to 42 U.S.C. § 1983, and Pennsylvania law prohibiting medical malpractice.

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4). This Court also has supplemental jurisdiction under 28 U.S.C. § 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. Lester Eaddy is a 63-year-old male currently incarcerated in the custody of the Pennsylvania Department of Corrections (DOC) at the State Correctional Institution (SCI) at Mahanoy. At all times giving rise to the claims in this lawsuit Mr. Lester Eaddy was suffering from chronic hepatitis C, kidney disease with cysts on his kidneys, type 2 diabetes, anemia, moderate asthma, atherosclerotic heart disease, hypercholesterolemia, high blood pressure, hepatomegaly, liver pains, and fatigue. Defendants denied him treatment for more than five years during which his condition worsened.
5. Defendant Paul Noel, M.D. is the Chief of Clinical Services for the DOC's Bureau of Health Care Services (BHCS). 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 Treatment Committee that is responsible for implementing the DOC's Hepatitis C protocol and makes decisions concerning which prisoners will receive Hepatitis C treatment. Dr. Noel took part in determining the course of

treatment for Plaintiff and as such he acted as a treating physician. He is sued in his official capacity for injunctive relief, and in his individual capacity for monetary damages. At all times relevant hereto Defendant Noel acted under color of state law.

6. Defendant Dr. Courtney Rodgers is the Treating Physician at SCI Mahanoy. He is the physician assigned to SCI Mahanoy who is responsible for plaintiff Lester Eaddy's health care. He is sued in his official capacity for injunctive relief, and in his individual capacity for money damages. At all times relevant hereto the defendant acted under color of state law.

STATEMENT OF FACTS

Hepatitis C

7. 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.¹
8. Inflammation caused by the virus can lead to scarring, known as fibrosis, and extreme scarring, known as cirrhosis, both of which affect liver functioning.
9. One of the ways liver inflammation is measured is on the Metavir scale. On that scale, FO means no fibrosis and F4 means cirrhosis.
10. Chronic hepatitis C patients with any liver scarring, i.e. greater than FO, are at a

¹ Center for Disease Control and Prevention, Hepatitis C FAQ for Health Professionals, accessed at: <https://www.cdc.gov/hepatitis/hcv/hcvfaq.htm>.

greater risk of rapid disease progression.

11. At least twenty percent of chronic hepatitis C patients, and perhaps as high as fifty percent, will develop cirrhosis.²
12. Approximately 11-19% of those who develop cirrhosis will go on to develop liver cancer.³
13. In the United States, hepatitis C causes more deaths than all other infectious diseases combined.⁴
14. Chronic hepatitis C often causes complications outside of the liver, including anemia and diabetes.
15. 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).
16. Beginning in 2011, the United States Food and Drug Administration approved new anti-viral medications for treating hepatitis C. 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.

² Cutaneous Manifestations of Hepatitis C, Schwartz, et al., accessed at: <https://emedicine.medscape.com/article/1134161-overview#a2>.

³ *Id.*

⁴ Centers for Disease Control and Prevention. (2016, May 4). Hepatitis C Kills More Americans than Any Other Infectious Disease| CDC Online Newsroom | CDC. Accessed at: <https://www.cdc.gov/media/releases/2016/p0504-hepc-mortality.html>.

17. Because of the numerous benefits 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 or fibrosis score.⁵
18. 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.
19. It is further the established practice of Medicare, Fee for Service Medicaid and Medicaid Managed Care Plans in Pennsylvania, the Veterans Administration, and other medical care providers to provide DAA treatment to all persons with chronic hepatitis C.

Hepatitis C and the Policy of the Pennsylvania DOC

20. The Pennsylvania Department of Corrections (DOC), through its Bureau of Health Care Services is charged with delivery of necessary medical care to prisoners in the custody of the DOC.
21. There are more than 5,000 prisoners under the jurisdiction of the DOC who have active, i.e. chronic, hepatitis C.
22. In 2013, when the current anti-viral drugs became available, the DOC, through its Bureau of Health Care Services and under the direction of Defendant Noel, ceased

⁵ The fibrosis score indicates the degree of liver scarring that has been caused by hepatitis C.

treating all prisoners in the custody of the DOC who have active, i.e. chronic, hepatitis C.

23. This policy continued under the direction of Defendant Noel throughout 2014 and most of 2015.

24. In late 2015, Defendant Noel formulated and adopted a medical protocol concerning who would be treated and not treated with hepatitis C anti-viral drugs.

25. The hepatitis C protocol was added as Appendix 16-B to the Access to Health Care Procedures Manual of the Department of Corrections and was part of the DOC Policy Statement 13.1.1 entitled "Management and Administration of Health Care".

26. Under that policy, only prisoners with decompensated cirrhosis and esophageal varices were authorized to receive the anti-viral drugs.

27. When the disease has advanced to decompensated cirrhosis with esophageal varices, a person has already suffered irreversible damage to their health and is at grave risk of death.

28. In addition, 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 extra hepatic manifestations of the disease that adversely affect quality of life.

29. The protocol delegates determinations as to who will be treated to the Hepatitis C

Treatment Committee.

30. Defendant Noel, as BHCS Chief of Clinical Services and member of the Hepatitis C Treatment Committee, is the principal decision-maker as to who will or will not receive treatment for their hepatitis C.
31. This policy was adopted and implemented by Defendant Noel even though he knew that denying treatment to prisoners who did not fall under the protocol had no medical justification, causes harm to those incarcerated patient's health, and places them at risk of death.
32. Defendant Noel adopted and implemented this protocol knowing that the standard of care in the community, as articulated by the AASLD and CDC, is to treat all who have chronic hepatitis C.
33. On August 31, 2016, the Honorable Judge Robert Mariani of the federal court for the Middle District of Pennsylvania held that the DOC's hepatitis C protocol constituted deliberate indifference to the serious medical needs of incarcerated patients with hepatitis C because it "fails to provide treatment for hepatitis C through the administration of DAA medications such as Harvoni, Sovaldi, and Viekira Pak until an inmate . . . has progressed to the stage of advanced compensated cirrhosis or early decompensated cirrhosis manifested by esophageal varices. The Court found that the interim Hepatitis C Treatment Protocol presents a conscious disregard of a known risk of advanced cirrhosis and death by esophageal hemorrhage." *Abu-Jamal v. Wetzel*, 2016 WL 4574646, *9 (M.D.Pa.

2016). After Judge Mariani's decision of August 31, 2016, in which he found the DOC's hepatitis C protocol unconstitutional under the Eighth Amendment but denied relief on procedural grounds, the DOC revised its protocol.

34. The current protocol has been adopted as Section 20 of the DOC's 13.2.1 Access to Health Care Procedures Manual.

35. The policy still denies treatment until a patient has developed cirrhosis.

36. On January 3, 2017, Judge Mariani found that the revised protocol violated the Eighth Amendment and he granted Plaintiff's injunction for treatment with the direct-acting antiviral medications. *Abu-Jamal v. Wetzel*, 2017 WL 34700 (M.D.Pa. 2017).

37. This current protocol remains in effect and is administered and enforced by Defendant Noel and Defendant Rogers as the doctor at SCI Mahanoy despite a federal court holding it unconstitutional.

The Plaintiff's Medical Care

38. Lester Eaddy's history in the DOC, beginning over 40 years ago, includes documentation of his chronic hepatitis C infection.

39. The DOC has known about Mr. Eaddy's hepatitis C for at least two decades. When Mr. Eaddy re-entered DOC custody in 2012, he was informed that he would receive treatment, and he has repeatedly requested treatment since that time.

40. Mr. Eaddy also suffers from liver pains, fatigue, anemia, hepatomegaly (enlarged

liver), chronic obstructive pulmonary disease/asthma, gastroesophageal reflux disease, coronary artery disease, and polycystic kidney disease.

41. Additionally, Mr. Eaddy is co-infected with type 2 diabetes. According to the American Association for the Study of Liver Disease, insulin resistance and type 2 diabetes are independent predictors of accelerated liver fibrosis progression.⁶
42. A consultation from September 2017 revealed that Mr. Eaddy suffers from kidney disease, and a renal ultrasound showed both kidneys to have cysts. The kidney is an important component of the hepatitis C virus clinical syndrome, besides the liver, the musculoskeletal, immune and hematopoietic systems and the skin. Hepatitis C can cause kidney disease, creating a major risk in dialysis wards, and poses a significant threat in renal transplantation.⁷
43. Test scores noted in the laboratory report show Mr. Eaddy having consistently low levels of hemoglobin and hematocrit, which are the two markers used to determine red blood count. Low levels of both hemoglobin and hematocrit can be a clinical indication of anemia, which is a manifestation of a chronic hepatitis C infection.

PLAINTIFF'S TREATMENT

44. The DOC's hepatitis C protocol is enforced at SCI Mahanoy by its medical director, defendant Rodgers, who is Plaintiff's treating physician.

⁶ When and in Whom to Initiate HCV Therapy <https://www.hcvguidelines.org/evaluate/when-whom>.

⁷ Hepatitis C and kidney disease: A narrative review, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5272932/>.

45. Plaintiff was denied medically necessary treatment, to wit, the anti-viral medication, due to the DOC's hepatitis C protocol policy and the actions and omissions of the defendants in formulating, implementing, and enforcing the policy.
46. Defendants Noel and Rodgers knew through correspondence from Plaintiff's counsel, requests made by the Plaintiff himself, and Plaintiff's own DOC medical records, that their refusal to provide him with the anti-viral medication would cause Plaintiff to suffer irreversible damage to his health, and place him at risk of death.
47. Defendant Rodgers knows that Mr. Eaddy is suffering the adverse health effects of chronic hepatitis C, as well as an array of comorbidities that substantially augment the importance of his receiving immediate curative treatment.
48. Despite his knowledge of Mr. Eaddy's health conditions, Defendant Rodgers has refused to recommend treatment for Mr. Eaddy.
49. Defendant Rodgers has not ordered more precise testing to assess the extent of Mr. Eaddy's fibrosis, although the current methods utilized by the DOC's protocol are often unreliable vis-à-vis assessing the presence of cirrhosis of the liver.
50. Defendant Rodgers has acquiesced in enforcing a protocol that refuses Mr. Eaddy any treatment for his hepatitis C, placing Plaintiff at a risk of further disease progression, liver damage, development of liver cancer, exacerbation of his anemia and diabetes, risk of heart attack, and heightened risk of mortality.

51. Additionally, Defendant Rodgers is also failing to properly treat Mr. Eaddy's serious medical needs of anemia, diabetes, and kidney disease by his refusal to provide DAA treatment to Mr. Eaddy for his hepatitis C. In refusing to cure his hepatitis C, Defendant Rodgers is exposing Mr. Eaddy to an increased risk that these other adverse health conditions will become worse, further harming and threatening his health.
52. There is no medical reason for Defendant Rodgers to refuse the DAA treatment to Mr. Eaddy in order to cure his hepatitis C.
53. There is also no medical reason for Defendant Rodgers to refuse to cure Mr. Eaddy's hepatitis C in order to improve the prognosis of Mr. Eaddy's comorbidities, including but not limited to his anemia, diabetes, and kidney disease.
54. On Thursday, August 23, 2018, Mr. Eaddy wrote to defendant Rodgers, stating that he was:
- suffering severe Back, Abdominal, Legs, Feet and toes pain, that has become very hard for me to endure, including fever, persistent nausea, fatigue, dark colored urine that burns and very painful and hard to come out. Lost of appetite, joint aches, trouble concentrating, Acid-reflux, Confusion, Depression, Paleness, I am always cold.
I respectfully request to be seen by you as soon as possible for all the above, or to be seen by and Doctor.
Thank You and I await your reply in this URGENT matter.
55. Many of the symptoms experienced by Mr. Eaddy are likely related to his hepatitis C, kidney disease, and anemia.

56. As of the time of this filing, defendant Rodgers has not responded to Mr. Eaddy's request.
57. Defendant Rodgers has an ethical obligation to advocate, prescribe, seek, and provide treatment that will ensure the optimal health outcome for his patients.
58. Defendant Rodgers' failure to advocate, prescribe, seek and provide for the treatment of Mr. Eaddy's hepatitis C violates his ethical obligation to his patient.
59. Defendant Rodgers has a professional obligation to treat all his patients, including Mr. Eaddy, in accord with recognized medical standards of care.
60. Defendant Rodgers' failure to seek treatment for Mr. Eaddy without medical justification violates his professional obligation to treat patients in accord with the recognized medical standard of care.
61. Defendant Rodgers has a legal obligation not to expose Mr. Eaddy to harm and the risk – in fact, the certainty – of future harm when such can be averted through appropriate medical treatment.
62. Defendant Rodgers' failure to treat or seek treatment for Mr. Eaddy exposes the Plaintiff to ongoing pain, suffering, injury, and substantial risk of further harm, up to and including death.
63. Defendant Noel oversees and administers the DOC's hepatitis C treatment protocol.
64. Each patient being considered for hepatitis C treatment will have his or her case submitted to the hepatitis C treatment committee. Defendant Noel is in charge of

that committee and has final say on whether treatment will commence or not.

65. Defendant Noel knows that Mr. Eaddy is suffering the adverse health effects of chronic hepatitis C, as well as an array of comorbidities that substantially augment the importance of his receiving immediate curative treatment.
66. Despite his knowledge of Mr. Eaddy's health conditions, Defendant Noel has refused to authorize treatment for Mr. Eaddy.
67. Defendant Noel has not ordered more precise testing to assess the extent of Mr. Eaddy's fibrosis, although the current methods utilized by the DOC's protocol are often unreliable vis-à-vis assessing the presence of cirrhosis of the liver.
68. Defendant Noel has created and is enforcing a protocol that refuses Mr. Eaddy any treatment for his hepatitis C, placing Plaintiff at a risk of further disease progression, liver damage, development of liver cancer, exacerbation of his anemia and diabetes, risk of heart attack, and heightened risk of mortality.
69. Defendant Noel is further failing to properly treat Mr. Eaddy's serious medical needs of anemia, diabetes, and kidney disease by his refusal to provide DAA treatment to Mr. Eaddy for his hepatitis C. In refusing to cure his hepatitis C, Defendant Noel is exposing Mr. Eaddy to an increased risk that these other adverse health conditions will become worse and further harm and threaten his health.
70. There is no medical reason for Defendant Noel to refuse to provide the DAA treatment to Mr. Eaddy, which would cure his hepatitis C.

71. There is also no medical reason for defendant Noel to refuse to cure Mr. Eaddy's hepatitis C in order to improve the prognosis of Mr. Eaddy's comorbidities, including but not limited to his anemia, diabetes, and kidney disease.
72. Defendant Noel has an ethical obligation to advocate, prescribe, seek, and provide for the optimal health outcome for his patients.
73. Defendant Noel's failure to authorize treatment of Mr. Eaddy's hepatitis C violates his ethical obligation to his patient.
74. Defendant Noel has a professional obligation to treat all his patients, including Mr. Eaddy, in accord with recognized medical standards of care.
75. Defendant Noel's failure to authorize treatment for Mr. Eaddy without medical justification violates his professional obligation to treat patients in accord with the recognized medical standard of care.
76. Defendant Noel has a legal obligation not to expose Mr. Eaddy to harm and the risk – in fact, the certainty – of future harm when such can be averted through appropriate medical treatment.
77. Defendant Noel's failure to authorize treatment for Mr. Eaddy exposes the Plaintiff to ongoing pain, suffering, injury, and substantial risk of further harm, up to and including death.
78. Mr. Eaddy suffered permanent damage to his health and his life was put in severe danger by the defendants' failure to provide medically necessary hepatitis C treatment for more than 5 years.

79. As the direct, proximate, and factual result of the conduct of the defendants, the

Plaintiff, has suffered the following damages:

- a. Plaintiff has suffered physically and mentally by being forced to endure a curable condition;
- b. Plaintiff has a fear of contracting liver cancer and shortened life expectancy;
- c. Plaintiff's health may be permanently impaired and he has increased risk of terminal cancer;
- d. Plaintiff has unnecessarily endured great pain, suffering, inconvenience, embarrassment, mental anguish, emotional and psychological trauma;
- e. Plaintiff may be required in the future to incur expenses for medical treatment and care, medical supplies, medicines and other attendant services;
- f. Plaintiff's general health, strength and vitality have been impaired;
- g. Plaintiff has been and may in the future be unable to enjoy the various pleasures of life;
- h. Plaintiff has in the past, and may continue in the future, to experience severe pain and suffering; and

CAUSE OF ACTION

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

(Against Defendants Noel and Rodgers in their official capacities for injunctive relief and their individual capacities for monetary relief.)

80. Plaintiff re-alleges paragraphs 1-79 as if fully stated herein.

81. Defendants Noel and Rodgers at SCI Mahanoy violated Plaintiff's Eighth

Amendment right to be free from cruel and unusual punishment through their

deliberate indifference to his chronic hepatitis C. Through enactment and enforcement of a Hepatitis C protocol that denied medically necessary treatment to Plaintiff, these defendants failed to treat his chronic hepatitis C, exposing Plaintiff to an excessive risk and harm to his health, causing Mr. Eaddy serious injuries, pain, suffering, and risk of death.

Count II – Medical Malpractice for failure to treat Plaintiff’s Hepatitis C

82. Plaintiff re-alleges paragraphs 1-79 as if fully stated herein.

83. Defendants Noel and Rodgers were negligent in their handling of Plaintiff’s condition as described above and failed to provide medical care in accordance with the applicable standard of care within the medical profession.

84. Defendants Noel and Rodgers were negligent in assisting the DOC to develop and implement a policy of treatment at odds with the reasonable standard of medical care in the community.

85. Plaintiff’s injuries, including decreased liver function, kidney disease, type 2 diabetes, risk of cancer, the conditions listed above and other symptoms and conditions were directly, proximately and factually caused by the negligence of defendant’s in the manner described above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court grant the following relief:

- A. Grant a preliminary injunction ordering Plaintiff shall be treated for his hepatitis C with DAA medications that are the medical standard of care;

- B. Award compensatory and punitive damages;
- C. Award attorneys' fees, litigation expenses and costs.
- D. Any further relief as the Court may deem proper.

Respectfully submitted,

/s/ Bret D. Grote

Bret D. Grote
PA I.D. No. 317273
Abolitionist Law Center
P.O. Box 8654
Pittsburgh, PA 15221
Telephone: (412) 654-9070
bretgrote@abolitionistlawcenter.org

/s/ Ashley Henderson

Ashley Henderson (*pro hac vice* pending)
PA I.D. No. 313492
Amistad Law Project
P.O. Box 9148
Philadelphia, PA 19139
Telephone: (215) 310-0424
ashley@amistadlaw.org

/s/ Deneekie Grant

Deneekie Grant (*pro hac vice* pending)
PA I.D. No. 314220
Amistad Law Project
P.O. Box 9148
Philadelphia, PA 19139
Telephone: (267) 225-5884
nikki@amistadlaw.org

/s/ Carey Shenkman

Carey Shenkman (*pro hac vice* pending)
The Law Office of Carey Shenkman
347 5th Avenue #1402

New York, NY 10016
Telephone: (646) 598-6972
carey@cshenkman.com

Attorneys for Plaintiff