

Jurisdiction and Venue

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 in that this is a civil action arising under the Constitution of the United States.

3. Jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1343(a)(3) in that this action seeks to redress the deprivation, under color of state law, of rights secured to the Plaintiff by the Constitution and laws of the United States.

4. Plaintiff's claims for relief are predicated, in part, upon 42 U.S.C. § 1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges, and immunities secured by the Constitution and laws of the United States, and upon 42 U.S.C. § 1988, which authorizes the award of attorney's fees and costs to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. § 1983.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and § 1391(c), as Defendants Crews, Corizon, LLC, and Mesa do business in this judicial district and many of the events or omissions giving rise to the claims occurred in this judicial district.

6. Plaintiff seeks a preliminary and permanent injunction pursuant to Rule 65, Federal Rules of Civil Procedure.

Parties

7. Plaintiff, Jonathan Plotnick, is a citizen of the United States and a resident of Martin County, Florida. He is, and at all times material to this action was, a prisoner incarcerated at Lake Correctional Institution. Mr. Plotnick was initially received and classified at the Central Florida Reception Center (CFRC) in Orlando, Florida.

8. Defendant, Michael D. Crews, is, and at all times material to this action was, the Secretary of the Florida Department of Corrections (“FDOC”). As such, he is responsible for the overall operation of the FDOC, including the operation of Lake Correctional Institution, a facility located in Clermont, Lake County, Florida. He is also responsible for the operation of Utilization Management, the body at the FDOC that approves or denies certain medical care. Defendant Crews has a non-delegable duty to provide medical care to all inmates in his custody despite his contracting away such services to Defendant Corizon, LLC. He is sued in his official capacity for injunctive relief.

9. Defendant Corizon, LLC, is an out-of-state corporation, registered and doing business in Florida (hereinafter referred to as “Corizon”). Defendant Corizon has since October 2012 contracted with the Florida Department of Corrections to provide medical and mental health care services to all inmates confined in several FDOC prisons, including Lake Correctional Institution. Defendant Corizon is sued for injunctive relief and damages.

10. Defendant Dr. Virginia Mesa at all times material to this action was the Chief Health Officer at Lake Correctional Institution. At all relevant times she was employed by Defendant Corizon and was acting within the scope of her employment. She is sued in her individual capacity for compensatory and punitive damages.

11. The actions of the Defendants, as herein alleged, were performed under color of state law and constitute state action.

Factual Allegations

12. Plaintiff came into the custody of the Florida Department of Corrections on April 5, 2013, and went through his receiving physical exam at Central Florida Reception Center in Orlando. He was immediately diagnosed as having two hernias. He was issued a jock strap for his hernias.

13. On May 3, 2013, Plaintiff had his initial intake physical at Lake Correctional Institution. At this exam, Plaintiff reported that he had a hernia that was causing him severe pain. Shortly thereafter he was sent to the Reception and Medical Center in Lake Butler where he received an ultra-sound which confirmed he had hernias. Doctors at Lake Correctional Institution, and earlier at Central Florida Reception Center, issued low bunk activity, restricted activity, and hernia truss passes after confirming that the Plaintiff had an inguinal hernia. On May 5, 2013, Plaintiff also began to write grievances in which he requested more relief for his painful hernias. All of his requests were denied. All grievance appeals were denied.

14. In June of 2013, Dr. Ta, a Medical Doctor at Lake Correctional Institution, told Plaintiff that he was 30 pounds overweight and needed to exercise more. When Plaintiff responded that he was not allowed nor able to exercise, Dr. Ta merely laughed at him.

15. In August of 2013, Dr. Ta told Plaintiff that he indeed needed surgery but that he could not grant the Plaintiff surgery because of the State's money shortage issues.

16. On August 29, 2013, Plaintiff's hernias popped out, and he was only prescribed ibuprofen for his intense pain.

17. Plaintiff went in for an ultrasound at the Reception and Medical Center in Lake Butler on September 30, 2013. The ultrasound clearly showed his two hernias, even though Dr. Mesa had told him that he might not even have one hernia to begin with.

18. At all relevant times, Drs. Ta and Mesa were employed by Defendant Corizon and were acting within the scope of their employment.

19. Plaintiff filed multiple unsuccessful grievances over a period of months that expressed his intense pain, declining health, and his immediate need for corrective surgery. On December 20, 2013, in a grievance Plaintiff again begged to have a surgery consult because he was in constant pain and could not “do anything at all ... no exercise, walking, laps, or anything.” Defendant Corizon’s attorney was also requested in December 2013 to intercede on behalf of the Plaintiff to arrange for hernia surgery, all to no avail.

20. All of Plaintiff’s medications that he had received at Central Florida Reception Center as well as from Dr. Ta at Lake Correctional Institution were revoked by Dr. Mesa, who also told the Plaintiff that there was “not enough time for surgery” even though Plaintiff’s release date is not until 2021. Although Dr. Mesa was aware that Plaintiff’s hernia was almost to his testicles and that the hernia belt was not helping, she did not prescribe him any other medication or treatment. She instead told Plaintiff to “shut up and not speak.”

21. All attempts by Plaintiff to obtain a surgery consult for his debilitating hernias were denied by Defendant Mesa at Lake Correctional Institution. In response to his multiple requests, Defendant Mesa repeatedly replied by telling him that “[t]he small hernia does not require surgery at this time.” Although Dr. Ta told Plaintiff that he needed surgery, Dr. Mesa continuously denied him a surgery consult and even went so far as to say that the hernia would heal

itself which is a medical impossibility. As a result of Defendant Mesa not approving the surgery, Mr. Plotnick has suffered severe and debilitating pain while his hernias have gotten progressively worse, more dangerous, and life threatening.

22. Plaintiff's hernia on his right side is now about the size of a golf ball, and the hernia on his left side is about the size of a thumbnail. He can barely walk or even use the bathroom without being in pain.

23. Plaintiff has fully and timely used the inmate grievance process at the institutional levels and on appeal to both Defendants.

24. As a result of not having surgery to repair his hernias, Plaintiff has been in constant pain and cannot partake in any physical activity, including "exercise, walking, laps, or anything." The double hernias have also caused the Plaintiff great mental distress and embarrassment.

25. Plaintiff requires surgery on his hernias in order to adequately engage in the daily activities of living such as walking, running, working, and exercising. Having hernias has made these and other similar daily activities exceedingly difficult, if not impossible since the beginning of his incarceration. To compound things and make matters worse, on June 1, 2014, Defendants revoked the Plaintiff's low bunk activity, restricted activity, and hernia truss passes.

26. Defendant Corizon has a policy, practice, and custom of not providing medically necessary surgeries to repair hernias, in part to save costs and make larger profits from its contract with the FDOC. Instead of doing what is medically necessary for her patient so he would no longer be in severe pain, Dr. Mesa acted pursuant to this policy.

27. The willful and deliberate acts of Defendants Crews, Corizon, and Mesa in not approving a surgery consultation and eventually surgery to repair his hernias have caused Plaintiff great physical pain and mental discomfort in his daily activities of living and have prevented Plaintiff from walking, running, working, and exercising, thereby causing him to suffer a loss of strength as well as unhealthy weight gain. Further, due to Plaintiff's inguinal hernias, there is a chance that a portion of a herniated intestine may become trapped and unable to slide back into the abdomen. If this happens, the trapped intestine can twist and die because its blood supply is cut off.

Claims for Relief

Defendants' Violations of the Eighth Amendment

28. Although persons are sent to the Florida Department of Corrections for punishment for committing a crime, Defendants Crews, Corizon, and Mesa in refusing to permit Mr. Plotnick to obtain vital and necessary surgery to repair his hernias has imposed punishment far in excess of that authorized by law, contrary to the Cruel and Unusual Punishments Clause of the Eighth and Fourteenth Amendments.

29. Refusing to permit and authorize an individual such as Mr. Plotnick to obtain surgery for his excruciatingly painful and dangerous hernias violates all standards of decency, contrary to the Cruel and Unusual Punishments Clause of the Eighth Amendment, applicable to the states through the Fourteenth Amendment.

30. Defendants' refusal to permit Plaintiff Plotnick to receive a surgery consultation or surgery for his hernias constitutes deliberate indifference to Plaintiff's serious medical needs, in violation of the Eighth and Fourteenth Amendments.

31. Defendants' intentional failure to provide Plaintiff Plotnick with necessary surgery and instead making him rely on ibuprofen, a jock strap, and a hernia belt is medical care so cursory as to amount to no medical care at all.

32. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff Plotnick demands the following relief:

A. Enter judgment declaring that the Defendants Crews, Corizon, and Mesa have violated the Plaintiff's right to be free from Cruel and Unusual Punishment, as secured by the Eighth and Fourteenth Amendments to the Constitution of the United States of America;

B. Enter preliminary and permanent injunctions enjoining Defendants Crews, Corizon, and Mesa; their successors in office, agents, and employees, and all other persons in concert therewith, from taking or continuing any action which has the purpose or effect of imposing Cruel and Unusual Punishment on Plaintiff by virtue of his medical status and require Defendants to immediately provide Plaintiff with surgery for his hernias;

C. Award Plaintiff compensatory and punitive damages against Defendants Corizon and Mesa;

D. Award attorneys' fees, expenses and costs of suit; and

E. Award such other relief as the Court may deem equitable and just under the circumstances.

Jury Demand

Plaintiff demands trial by jury on all such counts which are triable by a jury.

Respectfully submitted,

Randall C. Berg, Jr., Esq.
Fla. Bar No. 0318371
E-mail: RBerg@FloridaJusticeInstitute.org
Dante P. Trevisani, Esq.
Florida Bar No. 72912
E-mail: DTrevisani@FloridaJusticeInstitute.org

Florida Justice Institute, Inc.
100 S.E. 2nd Street
3750 Miami Tower
Miami, Florida 33131-2309
305-358-2081
305-358-0910 (FAX)

By: s/Randall C. Berg, Jr.
Randall C. Berg, Jr., Esq.

Attorneys for the Plaintiffs

Declaration of Jonathan Plotnick

I, Jonathan Plotnick, pursuant to 28 U.S.C. § 1746, make this Unsworn Declaration Under Penalty of Perjury, and declare that the statements made below are true, and state:

My name is Jonathan Plotnick. I have reviewed the Verified Complaint set forth above and I find the facts contained therein to be true and accurate to the best of my knowledge and belief.

I understand that a false statement in this declaration will subject me to penalties for perjury.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 18, 2014

s/ Jonathan Plotnick
Jonathan Plotnick

Certificate of Service

I HEREBY CERTIFY that on July 18, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: s/ Randall C. Berg, Jr.
Randall C. Berg, Jr., Esq.

Service List

By Email

Jennifer A. Parker, Esq.
General Counsel, Florida Department of Corrections
parker.jennifer@mail.dc.state.fl.us

Dorothy Ridgway, Esq.
Assistant General Counsel, Florida Department of Corrections
Ridgway.dorothy@mail.dc.state.fl.us

Counsel for Defendant Crews

Gregg A. Toomey, Esq.
gat@bunnellwoulfe.com

Counsel for Defendants Corizon and Mesa