

FINAL REPORT

August 2014

Barbara McDowell & Gerald S. Hartman Foundation

Legal Aid Justice Center – *Challenge to substandard medical care in women's prison*

Every day the 1,200 women prisoners at Virginia's largest and most secure women's prison receive no health care for serious conditions or receive abysmally sub-standard care. On July 24, 2012, we, along with Wiley Rein LLP of Washington, D.C. and the Washington Lawyers Committee for Civil Rights and Urban Affairs, filed a class action lawsuit on behalf of five women prisoners incarcerated in the Fluvanna Correctional Center for Women. The lawsuit, titled *Scott v. Clarke*, and filed in the U.S. District Court for the Western District of Virginia, challenges the Virginia Department of Corrections (VDOC) and its health care contractor for failing to provide constitutionally adequate medical care.

Our complaint demonstrates that the medical care provided is so deficient that it violates the Eighth Amendment. The Eighth Amendment to the U.S. Constitution protects prisoners from cruel and unusual punishment and requires adequate health care for prisoners. The courts forbid prisons from giving medical care that shows deliberate indifference to prisoners' medical problems. The suit is significant because it will establish standards for adequate and appropriate health care for the five women's prisons in Virginia and clarify the continuing legal obligation of VDOC to ensure quality healthcare.

Below is a timeline of major events in the life of *Scott v. Clarke*.

July 2012

- Filed July 24th in the U.S. District Court for the Western District of Virginia

December 2012

- *Scott V. Clarke* survives a motion to dismiss filed by the Virginia Department of Corrections, with the judge issuing a strong written opinion declaring our complaint adequate as pled to allege Eighth Amendment violations.

April - May 2013

- Armor Correctional Health Services, VDOC's health contractor at the time filing, loses their contract with VDOC when it expires on April 30th and is not renewed. The same day, VDOC begins a new contract with Corizon Health, Inc, the health provider who served in this role prior to Armor's contract.
- Armor files a motion to dismiss seeking to remove themselves from the suit because they no longer provide health services in Virginia prisons.
- We file a request for production of documents seeking policies, procedures, contracts, medical/grievance/disciplinary records, etc.

June- July 2013

- For an article on www.CVille.com about *Scott v. Clarke*, a spokesperson for Armor states that Corizon undercut Armor's bid to renew their contract by about \$17 million annually. Their success with that bid demonstrates that VDOC intends to spend less, not more on inmate healthcare.
- We file a motion to amend our complaint to add Corizon to the suit after we determined that Corizon had not taken any immediate steps to reform the quality of health care being provided at Fluvanna Correctional Center for Women.
- Our motion to amend is granted during a telephonic hearing during which the motion surprisingly went unchallenged by Corizon.

September – October 2013

- Armor's motion to dismiss is granted, removing them from the suit but retaining VDOC and Corizon. This was not viewed as detrimental as we are not seeking damages but rather injunctive relief going forward.
- We file a motion to compel discovery after VDOC refuses to release documents citing privilege and irrelevancy. Documents withheld or redacted include reports regarding the tracking of infectious diseases, documents regarding the investigation of fatalities, and policies regarding the treatment of a range of serious diseases including diabetes, hepatitis, MRSA and cancer.

November – December 2013

- Our motion to compel discovery is granted along with attorneys' fees. In his written opinion, the judge stated that VDOC, "does not remotely satisfy their burden (to show discovery should not be allowed)" and "the objections that VDOC Defendants have interposed as a basis for limiting their response...are not well-taken."

January – March 2014

- Ongoing discovery with over 20,000 pages of documents received.
- We secured the services of Dr. Bob Greifinger, a recognized expert in prison healthcare lawsuits, to examine these documents and prepare his expert opinion. Dr. Greifinger has testified in several similar cases, sometimes for the plaintiffs and other times for the defense.

April – June 2014

- We take 23 depositions including our 4 named plaintiffs, VDOC officials, employees of both Corizon and Armor, prison employees and employees of other former health contractors.

June 2014

- Corizon files a 120 day notice to VDOC of their intent to cancel their contract with VDOC by exercising a clause that allows them to exit after the first year. We believe they were expecting to be able to renegotiate, but instead DOC initiated a bid process and hired Armor on an emergency basis starting in October 2014. This turn of events validated an argument that we had put forth

during Armor's motion to dismiss themselves from the lawsuit, namely that there had been and would be a revolving door of healthcare vendors.

- Upon learning that Armor was to be reinstated, Corizon filed a motion to stay the case until they are no longer the healthcare vendor arguing that having to pay legal fees in the meantime for a case in which they would likely be dismissed was an undue burden.

July 2014

- In mid-July the judge denied their motion to stay. In his written opinion the judge states, "Corizon unilaterally seeks to suspend this litigation as to all parties, but offers no credible basis for granting the extraordinary relief requested." He also notes, "A stay under such circumstances would work manifest injustice to the claimant."
- The same the judge rejected their motion to stay, we filed a motion to dismiss Corizon from the case pursuant to an agreement we negotiated with their council that they would still be subject to the court's jurisdiction for the purposes of adjudicating any disputes about discover documents that had not yet been turned over.

August 2014

- In mid-August we filed our motion for class certification.

Current Status:

We are currently working on our motion for summary judgment which is due on September 2nd. If summary judgment is not granted, then the next substantial step will be a jury trial scheduled for December 1st through 12th. VDOC's request for a jury trial ups the stakes considerably. We are confident that the judge in this case understands the complicated law and facts, but we must successfully both educate and persuade a jury that VDOC's conduct amounts to deliberate indifference to the suffering of the inmates at Fluvanna Correctional Center for Women.

We greatly appreciate the support of the Barbara McDowell and Gerald S. Hartman Foundation. If there is any additional information you would like, please contact Attorney Brenda Castaneda at brenda@justice4all.org or 434-977-0553, x 849. Thank you again for your support. We look forward to providing you with an additional update in December!