

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

SIXTH AMENDED COMPLAINT

Plaintiff, by counsel, alleges as follows:

Jurisdiction

1. This is a civil action arising under 42 U.S.C. § 1983, the Illinois Wrongful Death Act, 740 ILCS 180/1 et seq., and the Illinois Survival Statute, 755 ILCS 5/1-1 et seq. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1333 and 28 U.S.C. § 1337(a).

Parties

2. Plaintiff Victor M. Gonzalez is the duly appointed Independent Administrator of the Estate of Roger Gonzalez, deceased.

3. Defendant Wexford Health Sources, Inc. (hereinafter "Wexford") is a foreign corporation that, pursuant to a written contract with the State of

Illinois, provides health care to inmates held by the Illinois Department of Corrections. Plaintiff asserts federal and state law claims against Wexford.

4. Defendant Arthur Davida was, in October of 2014, a physician employed by defendant Wexford at the NRC Stateville Correctional Facility of the Illinois Department of Corrections (hereinafter “NRC”) in Crest Hill, Illinois. Plaintiff asserts federal and state law claims against Davida, who is sued in his individual capacity.

5. Plaintiff’s claims, explained in more detail below, are as follows:

Defendant	Claims
Arthur Davida	Section 1983 deliberate indifference in failure to impose a “medical hold”
Wexford Health Sources, Inc.,	Section 1983 deliberate indifference from failure to have implemented a “medical hold” policy and respondeat superior liability under Illinois law for the negligence of Wexford employees

The Serious Medical Needs of Plaintiff’s Decedent

6. Plaintiff’s decedent entered the McHenry County Correctional Facility (hereinafter “Jail”) on October 18, 2013 as a pre-trial detainee.

7. On entry to the Jail, plaintiff’s decedent weighed 400 pounds and had a variety of serious medical needs, including but not limited to:

- a) Chronic hepatitis C with liver failure,
- b) renal failure,
- c) leg edema,
- d) cirrhosis,

e) congestive heart failure, and

f) morbid obesity.

8. On September 2, 2014, following his plea of guilty, plaintiff's decedent was transferred from Centegra Hospital to the Northern Receiving Center ("NRC") of the Illinois Department of Corrections, where defendant Davida was responsible for the medical treatment provided to plaintiff's decedent.

9. Plaintiff's decedent weighed about 460 pounds when he was transferred to the NRC.

Events at NRC

10. Defendant Davida was informed on September 2, 2014 that on August 15, 2014, while in the custody of the Sheriff of McHenry County, plaintiff's decedent had been found unresponsive and was transported to Centegra Hospital where he remained until he was transferred to the Illinois Department of Corrections.

11. Defendant Davida was also informed on September 2, 2014 that a physician at Centegra Hospital had written the following in the medical records of the plaintiff's decedent:

Basically, he comes to the hospital with vastly elevated serum ammonia level, gets put on lactulose and rifaxirnin to which the morning level decreases and the patient returns to his baseline. Then he is released from the hospital, and comes back with the same type pictures a few days later.

This patient is critically ill and will definitely need more than two midnights in hospital secondary to his risk of comorbidities, permanent disability and death.

12. As a result of the foregoing, defendant Davida knew on September 2, 2014 that plaintiff's decedent was critically ill and required medical attention lest he suffer permanent disability or death.

13. Defendant Davida was informed on or about September 5, 2014 of the results of blood tests taken of plaintiff's decedent on September 2, 2014. These blood tests showed a variety of abnormal readings.

14. On September 22, 2014, medical personnel employed by defendant Wexford ordered a repeat of the blood tests that had been taken of plaintiff's decedent on September 2, 2014. The results of these blood tests were available to Wexford employees on September 24, 2014 and showed that plaintiff's decedent had become more ill.

15. Plaintiff's decedent continued to become increasingly ill, and on October 22, 2014, he was sent from the NRC to the University of Illinois Hospital, where he remained until October 31, 2014 when he was returned to the NRC.

Transfer to the Robinson Correctional Center

16. Plaintiff's decedent was transferred from the NRC to the Robinson Correctional Center in the morning of November 6, 2014.

17. The transfer involved a six to seven hour ride by van.
18. It was obvious when plaintiff's decedent left the NRC that the transfer would be harmful to his health.
19. At all times relevant, Wexford's contract with the State of Illinois required that Wexford employees place an inmate on a "medical hold" to prevent a transfer that would be injurious to the inmate's health.
20. At all times relevant, defendant Wexford knew that there was a serious risk of harm if the transfer of an inmate from one IDOC facility to another:
 - a) interfered with medical treatment that the inmate was receiving for serious medical needs, or
 - b) involved a lengthy drive by van that would be injurious to the inmate's health.
21. At all times relevant, defendant Wexford knew that failing to inform its physicians that they were required to place an inmate on a "medical hold" under the circumstances set out above would result in harm to inmates.
22. Defendant Wexford did not inform its physicians, including defendant Davida, about the above described "medical hold" power.

23. Defendant Davida did not know on November 6, 2014 that he had the power to place a “medical hold” on the transfer of plaintiff’s decedent to the Robinson Correctional Center.

24. Defendant Davida would have instituted a “medical hold” and thereby prevented the transfer of plaintiff’s decedent to the Robinson Correctional Center if he knew that he had that power.

25. In the alternative to the facts alleged in paragraphs 23-24 above:

- a) Defendant Davida knew that he had the power to place a hold on the transfer of plaintiff’s decedent from the NRC.
- b) Defendant Davida knew that plaintiff’s decedent would suffer harm if he was transferred from the NRC.
- c) Defendant Davida had a duty, under state and federal law, to prevent plaintiff’s decedent from suffering unnecessary harm while in the custody of the Illinois Department of Corrections.
- d) Defendant Davida breached the aforesaid duty when he turned a blind eye to the fact that plaintiff’s decedent would suffer harm if transferred from the NRC to Robinson and refused to place a hold on the transfer.

e) Defendant Davida thereby caused harm to plaintiff's decedent.

26. Defendant Wexford's failure to have implemented the above described "medical hold" requirement in an explicit policy and any failure to have informed its physicians, including defendant Davida, about that power amounted to deliberate indifference to a known risk of serious harm and was a cause of the death of plaintiff's decedent.

27. The contractual requirement referred to in paragraph 19 above means that defendant Wexford consciously chose the approach that it took when it failed to implement that contractual requirement.

28. Defendant Wexford's failure to have implemented the above described "medical hold" requirement reflects reckless or callous indifference to the federally protected rights of inmates confined in the Illinois Department of Corrections and warrants an award of punitive damages.

Arrival at the Robinson Correctional Center

29. Plaintiff's decedent arrived at the Robinson Correctional Center without shoes, wearing socks and gauze wrapping on his ankles. One foot was a dark purple color. Plaintiff's decedent was wearing dirty pajamas with urine stains on them and a medical gown to cover his scrotum. His scrotum was swollen to the size of a basketball and leaking.

30. Medical staff recognized upon the arrival of plaintiff's decedent at the Robinson Correctional Center that the prison did not have the proper equipment to handle plaintiff's decedent, such as a bed that could accommodate his size.

31. Nursing staff at Robinson informed a physician employed by defendant Wexford about the arrival of plaintiff's decedent and the fact that plaintiff's decedent had a variety of serious medical problems, including acute chronic heart failure, ascites (accumulation of fluid in the peritoneal cavity), stage 3 renal disease, morbid obesity, anemia, hepatitis C, chronic obstructive pulmonary disease, liver disease, and hypertension.

32. Nursing staff also informed the above referred physician that plaintiff's decedent weighed about 500 pounds, had a catheter, a scrotum that was swollen to the size of a basketball and leaking, and that plaintiff's decedent could not transfer, stand, or move himself in any way. The nurse also informed the physician that plaintiff's decedent had an elevated ammonia level that caused him to not be able to speak coherently or to stay awake.

33. Later in the day on November 6, 2014, a physician employed by the Illinois Department of Corrections ordered that plaintiff's decedent receive medical attention at a hospital emergency room.

34. On November 6, 2014, an ambulance transported plaintiff's decedent from the Robinson Correctional Center to Crawford Memorial Hospital in Robinson, Illinois; plaintiff's decedent arrived at the hospital at 8:48 p.m.

35. Plaintiff required hospitalization on November 6, 2014 as the direct and proximate result of his transfer that day from NRC to the Robinson Correctional Center.

Crawford Memorial Hospital

36. Medical staff at Crawford Memorial Hospital measured the weight of plaintiff's decedent at 489 pounds upon his arrival on November 6, 2014.

37. Plaintiff's decedent was returned to the Robinson Correctional Center at about 9:14 p.m. on November 6, 2014

Return to the Robinson Correctional Center

38. Plaintiff's decedent remained at the Robinson Correctional Center until the morning of November 9, 2014 when he was returned to the Emergency Room at Crawford Memorial Hospital.

39. Dr. Vipin Shah, a physician employed by defendant Wexford and acting within the scope of that employment, attended to plaintiff's decedent at Robinson following his return from Crawford Memorial Hospital.

40. Dr. Shah did not meet the standard of care, as explained in the expert report previously disclosed to defendants.

41. As a result of this breach of duty, the condition of plaintiff's decedent worsened, causing him to experience great pain and suffering and resulting in his death.

42. At about 7:10 a.m. on November 9, 2014 a nurse at the Robinson Correctional Center was unable to measure plaintiff's blood pressure and plaintiff was evacuated by ambulance to the Crawford Memorial Hospital Emergency Room.

43. Plaintiff's decedent experienced cardiac arrest at the Crawford Memorial Hospital Emergency Room and died on November 9, 2014.

44. Plaintiff's decedent was deprived of his life and experienced great pain and suffering as a result of the foregoing wrongful acts.

45. Plaintiff hereby demands trial by jury.

WHEREFORE plaintiff requests that appropriate damages be awarded against each defendant.

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