

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

**RHODA GLASCO FODERINGHAM**  
**as Administrator for the Estate of**  
**GARY GLASCO**

**Plaintiff,**

**v.**

**JOHN WETZEL, Secretary of the**  
**Pennsylvania Department of**  
**Corrections, Dr. PAUL NOEL,**  
**Pennsylvania DOC Bureau of Health**  
**Care Services, Chief of Clinical**  
**Services, BRIAN HYDE, Health Care**  
**Administrator at SCI Somerset, Dr.**  
**JOHN ROBINSON, Treating**  
**Physician at SCI Somerset and Dr.**  
**RASHIDA MAHMUD, Treating**  
**Physician at SCI Somerset**

**Defendants.**

**:**  
**:**  
**: Case No.**  
**:**  
**:**  
**: JURY TRIAL DEMANDED**  
**:**  
**: ELECTRONICALLY FILED**

**COMPLAINT**

**JURISDICTION**

1. This is an action for monetary relief for violations of the Eighth and Fourteenth Amendments of the United States Constitution pursuant to 42 U.S.C. § 1983, as well as 42 Pa.C.S.A. §§ 8301 and 8302.
2. This Court has jurisdiction pursuant to 28 U.S.C. SS 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. Plaintiff, as Administrator of the Estate of Decedent Gary Glasco, is entitled to bring this action under the Pennsylvania Wrongful Death Act, 42 Pa.C.S.A. § 8301.
4. Plaintiff is entitled to bring this action on behalf of the Decedent, Gary Glasco, under the Survival Act, 42 Pa.C.S.A. § 8302.
5. This Court is the appropriate venue pursuant to 28 U.S.C. § 1391 (b)(1) because the Pennsylvania Department of Corrections defendants reside and work in the Middle District of Pennsylvania and all defendants reside in the Commonwealth of Pennsylvania.

### **PARTIES**

6. Plaintiff Rhoda Glasco Foderingham is a resident of Fort Lauderdale, Florida. Ms. Foderingham is the cousin and was the emergency contact of Decedent Gary Glasco. On January 26, 2018, the Register of Wills of Somerset County, Pennsylvania granted Letters of Administration on the Estate of Gary Glasco to Ms. Foderingham. Ms. Foderingham brings this action in her capacity as Administrator of the Estate of Gary Glasco.

7. Decedent Gary Glasco was a 73-year-old<sup>1</sup> man who was incarcerated in the custody of the Pennsylvania Department of Corrections (DOC) at the State Correctional Institution (SCI) at Somerset. Mr. Glasco was diagnosed with chronic hepatitis C during his previous incarceration and suffered horrific associated effects such as bloody urine, cirrhosis and kidney failure. As a result of his severe health problems, he requested treatment, which Defendants failed to provide.
8. Defendant John Wetzel is and at all relevant times hereto was the Secretary of the Pennsylvania DOC. Defendant Wetzel is sued in his individual capacity.
9. 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. He is sued in his individual capacity. At all times relevant hereto defendant Noel acted under color of state law.

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<sup>1</sup> Gary Glasco's date of birth of 4/12/1942 is incorrectly listed as 4/12/1945 on his death certificate

10. Defendant Brian Hyde is the Corrections Health Care Administrator at SCI Somerset. He was the health care administrator at SCI Somerset who was responsible for Mr. Glasco's health care. He is sued in his individual capacity. At all times relevant hereto the defendant acted under color of state law.

11. Defendant Dr. John Robinson is, upon knowledge and belief, a physician at SCI Somerset. He was a primary care physician at SCI Somerset who was responsible for Mr. Glasco's medical treatment. He is sued in his individual capacity. At all times relevant hereto, the defendant acted under the color of state law

12. Defendant Dr. Rashida Mahmud is, upon knowledge and belief, a physician at SCI Somerset. She was a primary care physician at SCI Somerset who was responsible for Mr. Glasco's medical treatment. She is sued in her individual capacity. At all times relevant hereto, the defendant acted under the color of state law.

## **STATEMENT OF FACTS**

### **Death of Gary Glasco**

13. Gary Glasco was convicted of robbery and attempted carjacking in Chester County, Pennsylvania and sentenced to 32-67 years of imprisonment in August 2010. The year prior, Mr. Glasco had been released after serving 26

years in prison, but stated that he committed the robbery in October 2009 after being denied medication by the Department of Welfare and needing money to purchase it.<sup>2</sup> Mr. Glasco was sent to SCI Somerset on December 30, 2010.

14. Mr. Glasco was diagnosed with Hepatitis C while incarcerated at SCI Somerset during his previous incarceration.
15. Mr. Glasco was diagnosed with cirrhosis of the liver in 2012. Hepatitis C is widely understood as a leading cause of cirrhosis.
16. From 2012 to 2015, Mr. Glasco experienced increasingly alarming health crises, including fatty liver disease, gallstones, kidney stones, hypertension, atrial fibrillation, insomnia, painful urination, thrombocytopenia, hydronephrosis, and severe bleeding during and after urination (hematuria).
17. Mr. Glasco was repeatedly told, and it was noted in his DOC medical records, that his Hepatitis C was not treated because of “his age and problems”.
18. In 2014, Mr. Glasco was placed in the Restricted Housing Unit (RHU) after insisting upon being placed in a single cell that was close to the infirmary.

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<sup>2</sup> “Freed convict trapped in time,” *Daily Local News*, 8/22/2010.  
<http://www.dailylocal.com/article/DL/20100822/NEWS/308229969>

He remained in the RHU until December 2015 when he was placed in a single cell in the medical unit.

19. In 2015, Mr. Glasco went to Somerset Hospital multiple times after repeated complaints of painful and bloody urination. During a hospitalization in September or October of 2015, Mr. Glasco had a catheter inserted.

20. Mr. Glasco was hospitalized for a final time in January 2016 as bleeding from his urethra worsened. On January 29, 2016, Gary Glasco was pronounced dead at Somerset Hospital.

### **Hepatitis C**

21. 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.

22. Inflammation caused by the virus can lead to scarring, known as fibrosis, and extreme scarring, known as cirrhosis, both of which affect liver functioning.

23. One of the ways liver inflammation is measured is on the Metavir scale. On that scale FO means no fibrosis and F4 means cirrhosis

24. Chronic hepatitis C patients with any liver scarring, i.e. greater than FO are at a greater risk of rapid disease progression.

25. 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.
26. About 19% of those who develop cirrhosis will go on to develop liver cancer.
27. Approximately 20% of all those with chronic hepatitis C will die from complications of the disease.
28. In the United States, hepatitis C causes more deaths than all other infectious diseases combined.
29. Chronic hepatitis C often causes complications outside of the liver, including gallstones and kidney disease.
30. 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.
31. 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.

32. 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**

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

34. There are at least 5,400 prisoners under the jurisdiction of the DOC who have active, i.e. chronic, hepatitis C.

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

36. This policy continued under the direction of defendant Noel throughout 2014 and most of 2015.

37. 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.

38. 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.

39. Under that policy, only prisoners with decompensated cirrhosis with esophageal varices are authorized to receive the anti-viral drugs.
40. When the disease has advanced to decompensated cirrhosis with esophageal varices, a person has already suffered irreversible damage to their health and are at a grave risk of death.
41. 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 extra hepatic manifestations of the disease that adversely affect quality of life.
42. 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. As such, 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).

43. As discussed *infra*, decedent Gary Glasco was known to have several symptoms including cirrhosis, fatty liver disease, gallstones, kidney stones and hematuria between 2012 and 2015, while in DOC custody.

44. Despite Mr. Glasco’s medical records indicating that he suffered from cirrhosis, fatty liver disease, gallstones, kidney stones, he was denied hepatitis C treatment, even though a cure was developed and approved by the FDA in 2013.

45. In the DOC’s 2015 protocol the determinations as to who will be treated is delegated to the Hepatitis C Treatment Committee.

46. 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.

47. Prior to adoption of the 2015 Interim Protocol, defendants Wetzel and Noel were responsible for the failure of the DOC to adopt *any* policy for treating hepatitis C between December 2013 and approximately November 2015.

48. During this nearly two-year period where nobody was approved for hepatitis C treatment, Mr. Glasco

49. 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 prisoner's health and places them at risk of death.

50. 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.

51. During that time Mr. Glasco's hepatitis C progressed, causing him increasing injury and complications, including a substantially increased risk of mortality.

52. This protocol the put into effect was administered and enforced by Defendant Noel an

53. d Defendants Hyde, Robinson and Mahmud as the medical personnel at SCI Somerset.

### **The Plaintiff's Medical Care**

54. Mr. Glasco's history in the DOC, extending back more 30 years, includes documentation of his chronic hepatitis C infection.

55. Mr. Glasco entered DOC custody most recently before his death in December 2010. He was diagnosed as having chronic Hepatitis C.
56. A physical examination on July 16, 2014 found that Mr. Glasco had “mild neutropenia and thrombocytopenia due to hypersplenism and cirrhosis of the liver due to hepatitis C.”
57. Ultrasound reports from August 18, 2014 indicated that Mr. Glasco had “gallstones and fatty infiltration of liver with mild right-sided hydronephrosis present.”
58. DOC records from January 21, 2015, stated that “there is no active treatment being pursued for thrombocytopenia due to liver disease except for blood component therapy on p.r.n. basis.”
59. Mr. Glasco’s diagnostic findings have been repeatedly noted throughout his medical records up to his death.
60. When the DOC issued its first hepatitis C protocol to permit treatment with the new direct-acting antiviral medications for hepatitis C, the only patients specifically authorized for treatment were those with cirrhosis and esophageal varices.
61. The reasoning for Mr. Glasco’s non-treatment was never explained to him or documented in his medical records other than stating that he was not being considered a candidate for treatment “because of his age and problems.”

62. The DOC has not enacted policies and protocols requiring that individuals with chronic hepatitis C, such as Mr. Glasco, automatically receive medically necessary treatment.

63. Defendants Noel, Hyde, Robinson and Mahmud continued to withhold treatment to Mr. Glasco until his death, exposing him to medical injury and risk of further harm, up to and including his death.

64. The policy is enforced on the facility level by the offices of the Corrections Health Care Administrator (CHCA) Brian Hyde and Superintendent Trevor Wingard at SCI Somerset.

65. Despite Defendants Hyde, Robinson and Mahmud's knowledge of Mr. Glasco's hepatitis C diagnosis, Defendants did not seek to treat or cure his hepatitis C while Mr. Glasco continued to suffer more and more health setbacks that could be linked to hepatitis C, nor make assessments to rule out hepatitis C as the cause of his mounting conditions.

66. Mr. Glasco was denied medically necessary treatment, to wit, the anti-viral medication, due to this policy and the actions of the defendants in formulating, implementing, and enforcing it.

67. Defendants Noel and Hyde knew through correspondence from Mr. Glasco, requests made by Mr. Glasco, and Mr. Glasco's own DOC medical records,

that their refusal to provide him with the anti-viral medication caused him suffering, irreversible damage to his health, and placed him at risk of death.

68. The antiviral medications were necessary to save Mr. Glasco's life.

69. Defendants knowingly played with Mr. Glasco's life, put him at risk of dying from complications of Hepatitis C, and ultimately turned a blind eye and let him be killed by a curable disease.

70. In fact, according to official DOC death records obtained via a Right-to-Know request, multiple prisoners died in DOC custody in 2015 and 2016 from complications of hepatitis C.

71. These deaths occurred at a time when the DOC was providing no treatment for hepatitis C to anybody, or else denying it to such an extent that people were left to die from a curable illness.

72. Plaintiff has no adequate remedy at law.

### **CAUSES OF ACTION**

#### **Count I — Deprivation of Eighth Amendment Right to Medical Care for Hepatitis C**

(Against defendants Noel, Wetzel, Hyde, Robinson, and Mahmud in their individual capacities for monetary relief.)

73. Plaintiff re-alleges paragraphs 1-72 as if fully stated herein.

74. Defendants Noel, Wetzel, Hyde, Robinson, and Mahmud at SCI Somerset violated Mr. Glasco's Eighth Amendment right to be free from cruel and

unusual punishment through their deliberate indifference to his chronic hepatitis C. These defendants failed to treat his chronic hepatitis C and failed to authorize and implement policies for treating hepatitis C, causing Mr. Glasco serious injuries, pain, suffering, and death.

75. Decedent's injuries and damages were a direct and proximate result of the acts and omissions of defendants in the following particulars;

- a. In failing to adopt, maintain or follow policies or practices with regard to diagnosing, assessing, treating or providing for the medical care of prisoners;
- b. In failing to implement policies or practices with regard to the treatment of prisoners such as Decedent;
- c. In failing to timely, properly and/or adequately monitor the availability and competency of the members of its medical staff, the availability of medical supplies and medications and the adequacy of their inmate care and treatment;
- d. In failing to investigate whether their employees and agents were complying with applicable policies and customs and/or violating inmate's constitutional rights;
- e. In failing to timely, properly and/or adequately have in place medical review procedures or medical request follow-up procedures so that

- they could obtain knowledge regarding the performance of their employees, doctors, nurses, physician assistants and healthcare personnel regarding the quality of their patient care, their availability, and their compliance with prison policies and procedures;
- f. Systemically, regularly and continuously delaying the proper treatment of Decedent's condition;
  - g. In failing to properly follow up with Decedent in light of his repeated medical requests, symptoms and complaints;
  - h. In failing to give significance to the findings and/or diagnoses of others involved in Decedent's care and treatment;
  - i. In failing to ensure and maintain a continuity of care and communication between health care professionals and their respective staffs with respect to Decedent and his medical condition.

**Count II—Medical Malpractice for Failure to Treat Decedent's  
Hepatitis C**

76. Plaintiff re-alleges paragraphs 1-72 as if fully stated herein.

77. Defendants Noel Wetzell, Hyde, Robinson, and Mahmud were negligent in their handling of Mr. Glasco's condition as described above and failed to provide medical care or adequate medical assessment of damage caused by



Mr. Glasco's hepatitis C in accordance with the applicable standard of care within in the medical profession.

78. Defendants Noel Wetzel, Hyde, Robinson, and Mahmud 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.

79. Decedent's injuries, including cirrhosis, fatty liver disease, kidney disease, hematuria, hemorrhage, conditions listed above and other symptoms and conditions were directly, proximately and factually caused by the negligence of Defendants' in the manner described above.

### **Count III—Wrongful Death**

80. Plaintiff re-allege paragraphs 1-72 as if fully stated herein.

81. Plaintiff is eligible to recover damages as a result of Gary Glasco's death pursuant to 42 Pa. C.S.A. § 8301.

82. During his lifetime, Gary Glasco did not commence any action for the injuries that caused his death and no other action has been filed to recover damages for the wrongful death of the decedent.

83. At all relevant times, all Defendants committed acts of willful misconduct and acted with reckless indifference, carelessness, and negligence in regard to the rights of Gary Glasco.

84. As the direct and proximate result of the acts and omissions of all

Defendants, Plaintiff has suffered the following damages:

- a. Expenses of administration related to Gary Glasco's death; and
- b. All other damages permissible in a wrongful death action.

#### **Count IV—Survival Action**

85. Plaintiff re-alleges paragraph 1-72 as if fully stated herein.

86. Plaintiff brings this survival action pursuant to 20 Pa. C.S.A. § 3373 and 42 Pa. C.S.A. § 8302.

87. As a direct and proximate result of Defendants' acts and omissions, all Defendants are liable for the following damages:

- a. Gary Glasco's pain and suffering during his illness in the PA DOC, including prior and at the time of his death;
- b. Gary Glasco's total estimated future earning power;
- c. Gary Glasco's loss of retirement and Social Security income;
- d. Gary Glasco's other financial losses suffered as a result of his death;
- e. Gary Glasco's loss of the enjoyment of life.

#### **PRAYER FOR RELIEF**

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

- A. Award compensatory and punitive damages;
- B. Award attorneys' fees, litigation expenses and costs;
- C. Such other relief as Court deems just and proper.

Respectfully submitted,

/s/ Bret Grote

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