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United States District Court
Western District of Wisconsin

Mustafa-El K.A. Ajala
[f.k.a. Dennis E. Jones-El],
Plaintiff,

V.

CASE No. #16-CV-639-BBC

U.W. Hospital and Clinics, Sutchin Patel,
Lenton Cox, Srikaran Sivalingam,
And Injured Patients and Family
Compensation Fund (IPFWC),
Defendants.

AMENDED CIVIL COMPLAINT

NOW COMES the above named Plaintiff, and as causes of action against the above named Defendants, pleads the following:

Nature of the Case

(1) This action is brought forth by Plaintiff under 42 U.S.C.§1983, alleging that defendants were deliberately indifferent to his serious medical needs, engaged in medical malpractice/negligence against him, and caused him personal injury for which he seeks declaratory, compensatory, and punitive relief, as well as injunctive relief.

LEGAL CORRESPONDENCE

Jurisdiction

(2) The Court has original jurisdiction over this action under 28 U.S.C. § 1331, and supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367.

The Venue and Trial

(3) The Court has venue of this case under 28 U.S.C § 1391(b), and Ajala demands a trial by jury.

Exhaustion

(4) Plaintiff has exhausted all available administrative remedies.

Parties

(5) Plaintiff, Mustafa-el K.A. Ajala [f.k.a. Dennis E. Jones-El] (Ajala hereinafter), was at all relevant times a patient, and prisoner, confined at the Wisconsin Secure Program Facility (WSPF), 1101 Morrison Dr., P.O. Box 9900, Boscobel, WI. 53805, a Wisconsin State Prison.

(6) Defendants are as follows: Dr. Sueton Cox, a state doctor employed by the Wisconsin Department of Corrections (DOC), at WSPF (same address as above, para. (5)); Dr. Sutchin Patel and Dr. Sriharan

Sivalingam, State doctors employed at U.W. Hospital and Clinics (also a Defendant), at 600 Highland Ave., Madison, WI. 53792; Injured Patients and Families Compensation Fund, P.O. Box 7873, Madison, WI. 53707-7873; ~~Wisconsin Health Care Liability Plan, P.O. Box 8017, Wausau, WI. 54402~~ ~~& the Wisconsin Commissioner of Insurance, P.O. Box 7873, Madison, WI. 53707-7873, AFC Insurance Co. (proper name and address currently unknown); and XYZ Anonymous Individuals (proper name and address currently unknown).~~ The State doctors and U.W. Hospital and Clinics (UWHC) are indemnified by aforementioned Insurers and Fund.

(6)(A) Defendants Cox, Patel, Sivalingam, UWHC, ~~XYZ Anonymous Individuals~~ acted under color of state law, at all relevant times plended below, and are being sued in their individual capacity with regard to Ajala's Federal law claims, and state law claims. UWHC is also being sued under the doctrine of respondent superior, with regard to State law claims.

Facts

(7) In the year 2001 (3-8-2001), Ajala began to have high calcium levels while confined at the Wisconsin Secure Program Facility (WSPF) under the medical care of Defendant Cox. He was told by Dr. Cox and WSPF nurses that it was good, it meant he had strong bones and teeth.

(8) By 2002 (6-24-2002), urinalysis (U.A.) testing revealed

that Ajala had blood in his urine. He also still tested high for calcium levels (5-22-2002), and complained of discoloration (a white milk colored look) of his urine, side pain, and complained to Dr Cox that: "I want this diagnosed, and what is suppose to come next — treated." (Letter in WSPF Health Services Unit (HSU) file dated 12-26-2002).

(9) In 2003, Ajala's U.A. testing again showed blood in his urine (1-14-2003), he remained with high calcium levels, developed a prostate infection, and frequent urination and lower back and pelvis pain that he complained of to Dr. Cox on 2-26-2003.

(10) From 2003 to May of 2005 Ajala's calcium levels remained high, he experienced an increase in urination, frequent sharp chest pains and rapid heart beat — all of which he complained to Dr. Cox. Dr. Cox maintained that the high calcium levels was good, that the white substance in the urine was likely leftover ejaculation (even when none had occured), and that the chest/heart problems were likely anxiety attacks.

(11) Ajala had a condition known as hypercalcemia, and those (esp. high calcium levels), supra (8)-(10), were the early symptoms of it.

(12) In May of 2005, Ajala was transferred to the Green Bay Correctional Institution (GBCI), in Green Bay, WI, where he

remained until being returned to WSPF, under the care of Dr. Cox again, in February 2007.

(13) By February 2007, Ajala remained with high calcium levels, which had progressed to include "ca oxalate crystals" (calcium crystals — which was the beginning of kidney stones) in his urine, urination so frequent that he was prescribed Flomax (which did not cease the frequency), the chest pains and rapid heart beats continued, and high blood pressure developed, all of which also caused Ajala sleep deprivation (i.e., less than 4 hours of sleep a night).

(14) Defendant Cox still maintained that the high calcium levels was good; the "ca oxalate crystals" in the urine was "okay"; the chest pains/rapid heart beats were anxiety attacks; the frequent urination just an overactive bladder, it's common; sleep interruption due to anxiety — a need to relax; and the high blood pressure was also common, especially among African-Americans as Ajala. He failed to diagnose the condition as hypercalcemia.

(15) The test results that recorded the high calcium levels and "ca oxalate crystals" in the urine indicated in the legend that it was not "okay", but rather "high" and "abnormal", on 2-22-2007.

(16) All of the above symptoms, supra (13) - (15), persisted from 2007 - 2008 when Ajala also was diagnosed with low Vitamin D — for which Dr. Cox prescribed Vitamin D supplements (which

did not cure the low Vitamin D levels). Ajala continued to complain to Dr. Cox and request curative treatment, to no avail. Ajala had also been found to be suffering bone loss in his gums and receding gums as a result and loose teeth. Dr. Cox still failed to diagnose Ajala's condition as hypercalcemia.

(17) All of the above symptoms, supra (13)-(16), persisted from 2008-2010, and Ajala continued to complain to Dr. Cox and request curative treatment. Ajala's blood pressure, however, was controlled by medication (not cured); but by 2010 his symptoms had progressed to include him experiencing some incontinence.

(18) Finally, on 5-14-2010, Dr. Cox had Ajala see urologist, Dr. Sutchin Patel, at UWHC, but for an overactive bladder — due in part to the medication prescribed by Dr. Cox not being effective. Dr. Patel recommended new medication (Ditropan) be prescribed and a follow-up be done. The new medication was not prescribed by Dr. Cox. Dr. Patel also failed to diagnose Ajala's condition as hypercalcemia.

(19) Additionally, at the 5-14-2010 urology visit, supra (18), Ajala had to endure a painful cystourethroscopy (a tube with a camera that is forced through the penis and through the urinary tract).

(20) On 11-12-2010, Ajala went back to UWHC for a follow-up with Dr. Patel, who then noted small calculi stones in Ajala's kidney and recommended an increase in his citrate intake with lemon-

-Ade/lime juice, Diteopan or Detrol LA Medication, a Void diary, Moderate Fluid intake, decrease salt intake, and stated that if the symptoms persisted while on the medication there would then be further evaluation to determine the source of Ajala's lower urinary tract (L.U.T.) symptoms, not his high calcium levels or other symptoms. Dr. Patel still failed to diagnose Ajala's condition as hypercalcemia.

(21) Dr. Cox did not prescribe any citrate treatment for 2010 or 2011, Ajala Fluid intake was already Moderate, and had already been on a low sodium diet. Ajala was urinating 20-30 times a day, and the Detrol LA/Diteopan did not stop the frequent urination. Thus, Ajala begin to demand to Dr. Cox to follow up as Dr. Patel had said would be done to determine the cause of these problems, but it was to no avail.

(22) In August 2011 (8-22-2011), Ajala had to be taken to the EMERGENCY ROOM (E.R.) at the Bassett Area Health Care (BAHC) Hospital due to unbearable side pain. BAHC Dr. Paul Mariskandh treated Ajala and upon CT scan examination found several kidney stones on Ajala's left side, calculus in the left ureter, a dilated left renal pelvis, calcification of Ajala's prostate gland, and even coronary artery calcifications.

(23) Subsequently, to the above (para (22)), Ajala continued to complain to Dr. Cox and request a determination of the cause of all of these problems, supra (13)-(22), and curative treatment,

including in a 9-19-2011 Health Services Request (HSR), 3 pages long, in which Ajala recounts some of the symptoms he's been experiencing over the years, including heart and prostate problems, and states to Dr. Cox: "The stones were calcified, as the prostate, coronary & high calcium (consistently for years, near a decade) in my blood. There must be some connection here. Do you agree?" and "Dr. Cox, I . . . pray for improvement and to make it out of here alive. To be frank, . . . the forecast appears to be getting worst — constant physical deterioration. It's rather depressing, but I've got to deal with it. [ ]. [ ]. My care is in your hands. Let's get to the bottom of these illnesses Dr. Cox, one that results in treatment, and cure if possible."

(24) On 8-24-11, Ajala passed a kidney stone which was tested and found to be 100% calcium (on 9-8-11), and that is what Ajala was referring to when he stated "The stones were calcified" in his 9-19-11 HSR, supra (23).

(25) An endocrinologist is a doctor who treats conditions related to the glands of the human body, and the hormones and substances that the glands produce and/or regulates, and Dr. Cox, Dr. Patel, Dr. Sivalingam, and UWHC knew this when they met, examined, and treated Ajala.

(26) In 2011, Dr. Sivalingam replaced Dr. Patel, and Ajala began to complain to him of the above symptoms, supra (13)-(24), and requested that he determine the cause as Dr. Patel said would be done if the symptoms pers-

-isted, but he said it was just an overactive bladder (as for urinary symptoms). As for kidney stones he said some people just get them, high calcium is good thing. Ajala had to pass kidney stones in the meantime, the worst pain he had ever experienced in his life.

(27) Ajala continued to pass kidney stones in 2012 and 2013.

(28) No defendant in this case referred Ajala to an endocrinologist prior to April 2013, despite his aforementioned symptoms, and his body's excessive secretion of calcium in particular.

(29) Ajala's symptoms, supra (13)–(24), (27), persisted and he continued to complain to Dr. Cox, Dr. Sivalingam, and other doctors and residents of UWHC when he visited them, all to no avail; all still failed to diagnose Ajala's condition as hypercalcemia, including these other doctors and residents [redacted].

(30) "Hypercalcemia" is a condition in which the calcium level in one's blood is above normal.

(31) Ajala's consistent high calcium levels, for several years, 2001-2012, and over secretion of calcium was, by definition, hypercalcemia.

(32) Calcium is not only needed to maintain one's bones, but it also plays an important role in contracting muscles, releasing hormones and ensuring that one's nerves and brain function properly. High calcium levels, however, can interfere

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with these processes.

(33) The main cause of hypercalcemia is over-activity in one or more of the parathyroid glands, which is a condition known as hyperparathyroidism. It is the parathyroid glands which regulates blood calcium levels, and low Vitamin D can lead to hyperparathyroidism.

(34) Symptoms and complications from severe or chronic hypercalcemia include frequent urination, excessive thirst, abnormal pain, muscle and joint aches, kidney stones, kidney failure, osteoporosis, nervous system problems, and abnormal heart rhythm (arrhythmia).

(35) Defendants Dr. Cox, Dr. Patel, Dr. Sivalingam, and UWHC [redacted] know what hypercalcemia was, that high calcium levels and kidney stones, as well as frequent urination were symptoms of it, and that its main cause was over-activity in one or more of the parathyroid glands, and they knew this when they met and examined Ajala.

(36) These same defendants, supra (35), also knew what hyperparathyroidism was when they met and examined Ajala, and that it was the parathyroid glands which regulate blood calcium levels.

(37) The same defendants, supra (35)-(36), had a duty as health care providers to possess knowledge of the medical history and medical file of the patient, Ajala in this case, that was available to them when they

met and cared for/treated him.

(38) On 12-3-12, Dr. Cox finally prescribed the citrate treatment (lemon juice) for the prevention of further development or growth of kidney stones, more than 2 years after it was recommended by Dr. Patel on 11-12-10 for that purpose.

(39) Dr. Cox's 12-3-12 prescription, supra (38), was due to Dr. Patel's 11-12-10 recommendation, supra (20).

(40) In March of 2013 Ajala began to have terrible kidney stone complications and was seen by a female doctor at WSPF who was filling in for Dr. Cox, a Dr. Martin. She looked at Ajala's file and immediately identified the problem as "hypercalcemia", likely caused by "hyperparathyroidism", and ensured that further testing for it be done, and that he be further examined.

(41) On 4-25-13, test results indeed showed that Ajala had a parathyroid problem, which, in addition to having caused aforementioned symptoms, was also found to have caused a kidney stone over 1 cm large and right-sided hydronephrosic (testing done 4-9-13), requiring surgery, and had further caused an enlarged calcified prostate gland (testing done 5-1-13); even Ajala's penile veins/blood vessels had hardened.

(42) From 6-3-13 to 7-5-13, Ajala had five surgeries to remove the stones from his kidneys and/or to correct complications from those attempts, which at one

point had him urinating via a nephrostomy (i.e., a bag and tube attached to a hole in his side) and even had to use a catheter. Each urination, which were over 20 a day, felt like someone raking a rusty nail through Ajala's urinary tract; it was torturous pain, brought tears to his eyes, loud cries of pain, and the worst pain, nightmarish, that he's ever experienced before or since.

(43) Moreover, after Ajala's third surgery (6-13-13) he was prescribed Vicodin to reduce and/or eliminate the pain, but on 6-16-13 Dr. Cox discontinued it — even though Ajala was still in pain, unbearable pain, which he complained to Dr. Cox of and requested that it be represcribed, but Dr. Cox denied him, despite the fact that Ajala was also urinating blood, suffering a urinary tract infection, and Ajala pleaded with him, because the prescription was supposed to be until 6-27-13.

(44) On 7-5-13, an "adenoma" (tumor on Ajala's parathyroid) was discovered by UWHC radiology department, officially confirming hyperparathyroidism, and the cause: "Adenoma", which led to hypercalcemia and other noted symptoms and complications, infra (46)(i)-(xvii). Surgery for its removal was scheduled for 9-16-13. In the meantime Ajala's symptoms persisted, including bone loss.

(45) Surgery to remove the adenoma was performed on 9-16-13, by UWHC Dr. Sarah Oltmann, after which Ajala's calcium levels returned to normal and remain normal today. Ajala's high blood pressure also ended; is cured. Dr. Oltmann has designated the 9-16-13 treatment a "surgical cure" of hyperparathyroidism and hypercalcemia.

(46) Serious damage was done to Ajala, some of which may never be undone, as a result of the hypercalcemia and hyperparathyroidism going undiagnosed and untreated for so long, among them: (i) high blood pressure — cured, but endured for over 6 years; (ii) enlarged heart and heart valve problems caused by high blood pressure; (iii) chest pains and rapid heart beats — mostly cured; (iv) kidney stones and painful urinations — cured; (v) frequent urinations — greatly reduced from 20–30 times a day to approximately 10, but there remains voiding interruptions; (vi) urinary tract infections — cured; (vii) calcification of organs (prostate, penile veins, coronary artery); (viii) enlarged prostate; (ix) joint pains and bone problems — still persists, getting better, but there is permanent gum bone loss; (x) "adenoma" — removed, cured; (xi) high calcium levels — cured; (xii) hydronephrosis — cured; (xiii) short term memory loss — persists; (xiv) incontinence — cured; (xv) sleep deprivation — much better; (xvi) low Vitamin D — cured; and (xvii) multiple surgeries, 6 total, frightening, painful and permanent scarring.

(47) Ajala's symptoms of hypercalcemia began in 2001 and persisted for more than a decade before being cured with surgery on 9-16-13.

(48) Hypercalcemia and hyperparathyroidism are life-threatening conditions if left untreated.

(49) Defendants Cox, Patel, Sivalingam, UWHC ~~and other XYZ individuals~~ [redacted] had a duty to care for Ajala medically, including to diagnose the hypercalcemia and

hyperparathyroidism he was displaying symptoms of, to properly review his medical file and properly inform him of his condition, to ensure both were treated and cured, and particularly so when Ajala repeatedly demanded and pleaded with them to find the cause of his symptoms and provide a cure; and, they were capable of doing so.

(50) Defendants, supra (49), failed to diagnose Ajala's condition of hypercalcemia and hyperparathyroidism, failed to treat the conditions and provide a cure, until after March of 2013; despite Ajala displaying symptoms of the conditions several years prior, beginning with his 3-8-2001 high calcium levels, supra (7).

(51) At the time Ajala was experiencing hypercalcemia (i.e., above normal calcium levels in his blood), March 2001 — March 2013, there were medications available to treat his condition; i.e., plicamycin, gallium nitrate, calcitonin, bisphosphonates, and corticosteroids. These drugs work primarily by slowing the release of calcium from bones.

(52) Defendants in this case, supra (49), from March 2001 — March 2013, did not prescribe any of the above medications, supra (51), nor any others as a prescription for the lowering of his calcium levels (i.e., Ajala's calcium levels).

(53) Defendants in this case, supra (49), from March 2001 — March 2013, did not prescribe any treatment for Ajala that was specifically for the purp-

[-ose of lowering his high calcium levels.]

(54) Due to defendants, supra (49), failures, supra (49)-(53), Ajala suffered serious physical, mental, and emotional injuries from 2004-2013.

(55) Defendants, supra (49), failed to inform Ajala, prior to 2013, that he had the medical conditions known as hypercalcemia and hyperparathyroidism, the viable modes of treatment, along with the risks and benefits, in order for him to give an informed consent to the treatment options they did provide for some of the symptoms (i.e., frequent urination, kidney stones, and high blood pressure), as well as failed to provide, prior to March 2013.

(56) Defendants, supra (49), prior to 2013, failed to properly review Ajala's medical history, medical file, and symptoms, which yelled out to them what Ajala's condition was, or refer him to an endocrinologist to determine what it was.

(57) Defendants', supra (49), failures to do the above, supra (55)-(56), led to Ajala not being properly diagnosed, treated, and cured (of hypercalcemia and hyperparathyroidism) until 2013, more than 10 years after his symptoms began, and which caused Ajala to suffer greater harm than he would have had his condition been identified, diagnosed, and he informed of the same and provided his informed consent to the treatments and cure early on (circa 2003), as he did later on (2013). Some of those greater harms are enumerated above, supra (46).

[(58) At all times relevant to the events complained of herein, UWHC]

was responsible for the hiring and supervision of qualified staff providing health care services to its patients; including Ajala when he was a UWHC patient.

(59) During all of the times alleged herein that Ajala was receiving medical care and treatment from doctors Patel, Sivalingam [redacted] at UWHC, they were employed by or providing medical care at UWHC and they were acting within the scope of that employment.

(60) Defendant UWHC was negligent in the care and treatment of Ajala in several respects, as follows:

(A) Failure of UWHC to adequately select, train and supervise its agents and employees, Patel, Sivalingam ~~and XYZ~~ [redacted] involved in and responsible for providing health care services to Ajala, to ensure that he received the appropriate care;

(B) Failure of the agents and employees of UWHC to exercise appropriate care, skill and judgment in diagnosing and treating Ajala;

(C) Failure of the agents and employees of UWHC to properly diagnose and treat Ajala;

(D) Failure of its systems and policies in the manner and method of treating, diagnosing, admitting and discharging patients and other treatment practices; and, including a system of inadequate review of medical files and history, & recordkeeping;

(E) In all other respects not specifically enumerated herein.

(61) Defendant UWHC is responsible for the breach of applicable medical care occasioned by its employees and agents, including doctors Patel, Siva-

-Ungam, and XYZ individuals, which resulted in physical injuries to Ajala.

(62) As a proximate result of defendant UWHC's conduct alleged herein, Ajala suffered serious, damaging health problems, and mental, physical, and emotional pain and suffering.

(63) Moreover, both Dr. Cox and Dr. Sivalingam were deliberately indifferent to Ajala's serious medical needs in that they ignored his complaints and requests for a determination of the "cause" of his symptoms (hypercalcemia and hyperparathyroidism), and doggedly persisted in treatment courses (and sometimes none at all) they knew to be ineffective in treating the "symptoms" (supra (7)-(11), (22)-(24), (26)-(27), and (46)) of his condition (hypercalcemia and hyperparathyroidism) or the cause (i.e., curing him); i.e., they knew of the risk of continued harm to Ajala and disregarded it.

(64) Additionally, Dr. Cox failed to manage Ajala's pain after his 6-13-13 surgery, and failed to provide treatment (i.e., citrate, lemonjuice) to reduce kidney stone development until over 2 years after urologist, Dr. Patel, recommended it for that purpose, despite Dr. Cox's awareness of the pain Ajala was in after the 6-13-13 surgery, and his awareness of the progression of Ajala's kidney stone problem. Dr. Cox's reason for this were not medical.

(65) The Injured Patients and Families Compensation Fund (IPFCF), under § 655.27(5)(a), WI stats., has liability insurance coverage, ~~as does WI Health Care Liability Plan (WHCLP)~~, for defendants UWHC, ~~Patel, Sivalingam and~~

~~other XYZ individuals~~, and IPFCF ~~and WHCP~~ have agreed to defend said defendants in a lawsuit, to pay any award of damages incurred by said defendants, to appear on their behalf in a lawsuit and/or as defendants along with them. This action has been commenced against IPFCF ~~and WHCP~~ at the same time as said defendants, and they are, therefore, properly named as defendants, [redacted]

Medical Mediation Request

(66) Ajala has timely and adequately requested that his aforementioned claims be mediated and resolved in his favor, by sending a request for Mediation by certified and registered mail to the Director of State Courts on 6-14-16, pursuant to § 655.44 WI. Stats., but the request was denied.

Causes of Action

(67) The above actions and omissions of defendants, supra (7)-(65), constitutes causes of action for claims of:

(i) Failure of defendants Cox, Patel, Sivalingam, UWHC [redacted] to diagnose and cure Ajala's hypercalcemia and hyperparathyroidism before March 2013 — September 2013, in violation of the 8th Amendment and Wisconsin medical Negligence/Malpractice law;

(ii) Failure of defendant Cox to prescribe citrate for Ajala until over 2 years after recommendation, contrary to the 8th Amend. and Wisconsin medical Negligence/Malpractice law;

(iii) Failure of defendant Cox to give Ajala adequate pain Medication, and discontinuing medication already prescribed for the pain, after

Ajala's 6-13-13 surgery, for non-medical reasons, in violation of the 8th Amend. and Wisconsin Medical Negligence/Malpractice law;

(iv) Defendants Cox, Patel, Sivalingam, UWHC [redacted] failed to provide medication or other treatment to reduce Ajala's high calcium levels prior to March 2013 in violation of the 8th Amend. and WI. Med. Neg. law;

(v) Defendants Cox, Patel, Sivalingam, UWHC [redacted] failed to provide Ajala with information necessary to enable him to make informed decisions about his condition of hypercalceria, hyperparathyroidism, the symptoms thereof, viable treatments, cures, and the risks and benefits of the same, as was their duty in violation of the 14th Amend. and WI. Med. Neg. law;

(vi) Defendant UWHC are liable for the negligence of defendants Patel, Sivalingam [redacted] under the doctrine of Respondent Superior or Apparent authority, and, liable itself for operating a system of deliberate indifference (supra (42)-(60));

(vii) If defendants Patel, Sivalingam, UWHC [redacted] are found liable on Ajala's state law claims, defendants IPCF and WHCLP may be required to pay all or a portion of the judgment pursuant to WI. stat. §§ 655.27 and 632.24.

Relief Sought

(68) Ajala has endured horrible mental, physical and emotional pain and suffering due to defendants' actions and/or omissions, and is still suffering due to it, and for which he requests the following relief:

(i) Declaratory judgment, finding that defendants have indeed committed the civil violations Ajala has alleged;

(ii) Injunctive Relief requiring defendants to cover the cost of, and permit Ajala to receive dental implants and teeth whitening due to the damage (gum loss, loose teeth and discoloration) caused to him dentally due to hypercalcemia and hyperparathyroidism, which he is not now permitted to correct due to WSPF/DOC policy that doesn't permit DOC dentists to provide such services which it regards as "cosmetic";

(iii) Compensatory damages to be determined by jury;

(iv) Punitive damages to be determined by jury; and

(v) Attorney fees, should one appear on Ajala's behalf, and all other fees and costs incurred as a result of bringing forth this action.

Dated this 12th day of February, 2017.

Signed: K.A. Ajala

Mustafa-El K. A. Ajala, #223871
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