

## INTERIM REPORT

April 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*.

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### **July 2012**

- Filed July 24<sup>th</sup> 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 (see attached) 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 30<sup>th</sup> 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](http://www.CVille.com)<sup>1</sup> about *Scott v. Clarke*, a spokesperson for Armor states that Corizon undercut Armor’s bid to renew their contract by about \$17 million annually, demonstrating that VDOC intends to spend less, not more on inmate healthcare.

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<sup>1</sup> <http://www.c-ville.com/fluvanna-prison-lawsuit-celebrates-small-victories-faces-uphill-battle/>

- 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 went unchallenged by Corizon. (see attached)

**September – October 2013**

- Armor’s motion to dismiss is granted (see attached), 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 discover is granted along with attorneys fees. In his written opinion (see attached), 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 to Plaintiffs’ Request No. 14 and for refusing to provide any discovery responsive to Requests Nos. 15 and 21 are not well-taken.”

**January – March 2014**

- Ongoing discovery with over 20,000 pages of documents received to date.
- 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.

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**Current Status:**

We are in the midst of a series of depositions including a corporate deposition of the Virginia Department of Corrections’ Director of Health Services, Frederick Schilling, scheduled for March 26th. Discovery is scheduled to close on May 1<sup>st</sup> with class certification to occur thereafter. We anticipate a contested process followed by cross-motions for summary judgment. The case is currently scheduled for a jury trial at the end of September.

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](mailto:brenda@justice4all.org) or 434-977-0553, x 849. Otherwise, we look forward to sharing our further progress in our final report.