

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DENISE L. GRANT, as Administratrix of  
the ESTATE OF KHYNESHA E.  
GRANT,

Plaintiff,

v.

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS; RONALD MERINO,  
MD; PHYSICIAN ASSISTANT JOHN  
OGE; PHYSICIAN ASSISTANT RILEY;  
PHYSICIAN ASSISTANT DEANNA  
SHROUT; ASHLEY CHIOCCO, RN;  
BRENDA CHIZMAR, RN; DAVID  
MCPHILOMY, RN; JEFFREY MOLES,  
RN; and WENDY PAYNE, RN,

Defendants.

CIVIL ACTION

No. 1:20-cv-338

JURY TRIAL DEMANDED

COMPLAINT

I. PRELIMINARY STATEMENT

1. In December of 2018, Khynesha Grant, who was incarcerated at SCI-Cambridge Springs, a prison in the Pennsylvania Department of Corrections, had classic signs of a serious, but treatable, brain disorder. And the defendant medical providers working in the prison knew it. Ms. Grant complained for weeks about debilitating and painful headaches. She suffered neurological difficulties, including dizziness, blurred vision, and fainting. She begged the medical staff to do something about it by sending her for readily available diagnostic imaging.

2. The medical staff refused her simple requests. Instead, they questioned the truthfulness of Ms. Grant’s complaints, accusing her of exaggerating, or even fabricating, her symptoms. They conducted no neurological exams. And they never ordered diagnostic testing.

3. On January 23, 2019, Ms. Grant, while in a bed in the prison infirmary, lost consciousness and became unresponsive. She was finally taken to a hospital where diagnostic imaging showed that she had a massive cystic tumor in her brain. While such conditions are typically treatable with timely intervention, for Ms. Grant, it was too late. She had no neurological function, and, based on the advice of hospital medical providers, her family elected to withdraw medical intervention. She died on January 24, 2019. She was 34 years old.

4. Plaintiff Denise L. Grant, the mother of Khynesha Grant, and the Administratrix of her Estate, brings this civil rights survival and wrongful death action under 42 U.S.C. § 1983, with supplemental state-law claims, concerning the defendants' deliberate indifference and negligence in failing to ensure necessary medical treatment that would have saved her life. Plaintiff seeks on behalf of her daughter's estate and heirs damages for the substantial pain and suffering, financial losses, and loss of life caused by the defendants' conduct.

## **II. JURISDICTION**

5. This Court has jurisdiction over the subject matter of this Complaint under 42 U.S.C. § 1983 and 28 U.S.C. §§ 1331, 1343(a)(3), 1343(a)(4), and 1367(a).

## **III. PARTIES**

6. Khynesha Grant ("Ms. Grant"), who was at all times relevant to this Complaint a resident of Upper Darby, Pennsylvania, died on January 24, 2019, at the age of 34.

7. Plaintiff Denise L. Grant (hereinafter, "plaintiff") is the mother of Khynesha Grant. On February 28, 2020, plaintiff was appointed as the Administratrix of the Estate of Khynesha Grant by the Register of Wills of Delaware County. Plaintiff brings this action in her capacity as Administratrix of the Estate and for the benefit of Ms. Grant's heirs.

8. The Pennsylvania Department of Corrections is an agency of the Commonwealth of Pennsylvania that employs each of the below “health care employees” as defined under 42 Pa. C.S. § 8522(b)(2) at SCI Cambridge Springs in Cambridge Springs, Pennsylvania.

9. At all times relevant to this Complaint, defendant Ronald Merino, MD, was employed by the Pennsylvania Department of Corrections as a physician assigned to SCI-Cambridge Springs.

10. At all times relevant to this Complaint, defendant Physician Assistant John Oge was employed by the Pennsylvania Department of Corrections as a physician assistant assigned to SCI-Cambridge Springs.

11. At all times relevant to this Complaint, defendant Physician Assistant Riley (whose first name is unknown to plaintiff) was employed by the Pennsylvania Department of Corrections as a physician assistant assigned to SCI-Cambridge Springs.

12. At all times relevant to this Complaint, defendant Physician Assistant Deanna ShROUT was employed by the Pennsylvania Department of Corrections as a physician assistant assigned to SCI-Cambridge Springs.

13. At all times relevant to this Complaint, defendant Ashley Chiocco, RN, was employed by the Pennsylvania Department of Corrections as a registered nurse assigned to SCI-Cambridge Springs.

14. At all times relevant to this Complaint, defendant Brenda Chizmar, RN, was employed by the Pennsylvania Department of Corrections as a registered nurse assigned to SCI-Cambridge Springs.

15. At all times relevant to this Complaint, defendant David McPhilomy, RN, was employed by the Pennsylvania Department of Corrections as a registered nurse assigned to SCI-Cambridge Springs.

16. At all times relevant to this Complaint, defendant Jeffrey Moles, RN, was employed by the Pennsylvania Department of Corrections as a registered nurse assigned to SCI-Cambridge Springs.

17. At all times relevant to this Complaint, defendant Wendy Payne, RN, was employed by the Pennsylvania Department of Corrections as a registered nurse assigned to SCI-Cambridge Springs.

18. At all times relevant to this Complaint, all defendants acted under color of state law.

19. At all times relevant to this Complaint, defendants Merino, Oge, Riley, Shrout, Chiocco, Chizmar, McPhilomy, Moles, and Payne were acting as agents, servants, and/or employees of defendant Pennsylvania Department of Corrections, were acting within the scope and course of their employment, and were acting under the direct control and supervision of defendant Pennsylvania Department of Corrections.

20. At all times relevant to this Complaint, all defendants acted in concert and conspiracy and were jointly and severally responsible for the harms caused to Ms. Grant.

#### **IV. FACTUAL ALLEGATIONS**

21. As employees of the medical department at SCI Cambridge Springs, defendants Ronald Merino, MD; Physician Assistant John Oge; Physician Assistant Riley; Physician Assistant Deanna Shrout; Ashley Chiocco, RN; Brenda Chizmar, RN; David McPhilomy, RN; Jeffrey Moles, RN; and Wendy Payne, RN (collectively “defendant medical providers”), were

aware of the responsibilities to address the serious medical needs of all prisoners they encountered.

22. Regardless of their patients' status as prisoners, these defendants knew that their constitutional duty to provide adequate medical care required them to treat medical complaints seriously and precluded them from refusing to conduct diagnostic testing and evaluation called for by a patient's symptoms.

23. Throughout December 2018 and January 2019, the defendant medical providers violated these responsibilities with deadly consequences for Khynesha Grant.

24. Ms. Grant had been incarcerated in the Department of Corrections at SCI-Cambridge Springs since 2015 as the result of a conviction for a drug offense.

25. Beginning in the fall of 2017, Ms. Grant began to experience severe and debilitating headaches.

26. She complained to prison medical staff about the headaches, and, in October of 2017, she was referred to a neurologist outside of the prison.

27. On October 12, 2017, Ms. Grant saw the neurologist, who, based on her symptoms and a neurological evaluation, diagnosed her with greater occipital neuralgia. The neurologist gave Ms. Grant an injection of pain medication and prescribed continued use of a standard medication to address headache symptoms.

28. After that visit, Ms. Grant's symptoms resolved, and she did not complain of any headache related issues.

29. After approximately five months, however, Ms. Grant's symptoms returned. On March 19, 2018, she saw a neurologist again, and, as with the previous visit, the neurologist gave her an injection and prescribed pain medication.

30. The pattern of symptoms was repeated once again between March and May 2018. Ms. Grant's symptoms resolved for a time, and then they returned, leading to another neurologist visit on May 11, 2018, where the neurologist provided an injection and medication.

31. After that visit, Ms. Grant did not complain of symptoms again until December of 2018.

32. She was returned to the neurologist on December 14, 2018, where, once again, she was given an injection and pain medications.

33. After this visit to a neurologist, Ms. Grant reported significantly different experiences.

34. Less than two weeks after she saw the neurologist, she complained of a return of serious headaches and described the presence of more significant and worrying symptoms, each of which provided clear evidence of a serious brain disorder.

35. On the morning of December 27, 2018, Ms. Grant saw defendant McPhilomy. She told him that she had a severe, throbbing headache and described the pain as a level eight out of ten.

36. Later that morning, Ms. Grant saw defendant Riley. Despite the report of serious symptoms and the fact that Ms. Grant's symptoms had returned so soon after her visit with a neurologist, Riley conducted neither a physical examination nor a neurological examination.

37. After Ms. Grant saw defendant Riley, her symptoms persisted and she asked to be seen by a medical provider once again.

38. Later on the morning of December 27, 2018, Ms. Grant saw defendant Oge. She told Oge that the medication she had been given was not working. Oge told Ms. Grant that she should increase the amount of the medication she was taking. He did not, however, conduct any

physical or neurological examination of Ms. Grant despite the severity of her complaints and the proximity of those complaints to her last visit with the neurologist.

39. Two days later, on December 29, 2018, Ms. Grant's headache had not subsided, and it had grown so severe that she was unable to move. She also reported that she was nauseous and sensitive to light.

40. That afternoon, she saw defendant Chiocco, who, skeptical of Ms. Grant's report, wrote in the medical chart: "Medical Emergency due to 'unable to move.'"

41. Chiocco conducted a limited neurological examination, but she did not refer Ms. Grant to a physician. Instead, she told Ms. Grant to use ice and rest.

42. During the evening of December 29, 2018, Ms. Grant's symptoms persisted, so she went to the medical unit for the third time that day where she saw defendant Payne.

43. Payne did not conduct any neurological examination. Instead, she stated that the medical unit would "monitor" Ms. Grant and that she would see a physician assistant or a doctor.

44. The next morning, December 30, 2018, correctional staff reported a medical emergency, stating that Ms. Grant was unresponsive.

45. Ms. Grant was seen by defendant Moles, who reported that Ms. Grant had throbbing pain all over her head that only resolved when she stayed away from light. Her pulse was also elevated, despite the fact that she was laying in bed. She had difficulty walking.

46. Moles expressed in his written note about the encounter significant doubts about the credibility of Ms. Grant's complaints. He wrote that:

- a. Ms. Grant had been the subject of emergency complaints for the past two days;

- b. Ms. Grant would move her extremities on command but would “drop her arms” when he was attempting to take her blood pressure; and
- c. She “refused” to get out of bed.

47. Later in the afternoon of December 30, 2018, Ms. Grant was seen by defendant Shroul.

48. Shroul documented that Ms. Grant complained of pain in her head with nausea and vomiting and pressure behind her eyes. Ms. Grant stated that she felt like her headaches were stemming from spasms in her neck. She stated that nothing improved her symptoms and that all she could do was try to find the most comfortable position.

49. Ms. Grant also informed Shroul that, in her past visits to a neurologist, the injections she received had resolved her symptoms, but, after the last visit on December 14, 2018, she did not experience any relief.

50. Shroul documented her observations of Ms. Grant’s abnormal symptoms. Ms. Grant was in a wheelchair, with her head cocked to the right side during the entire encounter. She also had observable spasms in her neck.

51. Despite these symptoms, Shroul, like defendant Moles earlier in the day, expressed skepticism about the credibility of Ms. Grant’s complaints, by writing:

- a. Medical emergencies had been called for Ms. Grant multiple times over the past few days with Ms. Grant “unresponsive,” but, on each occasion, when medical personnel arrived, she was found to be in no acute distress and responsive;
- b. Ms. Grant was concerned that the medication she had been prescribed left her “on the floor” the morning after she last took it; and



c. Ms. Grant's main complaint was "pain."

52. Shroud, despite noticing Ms. Grant's objective symptoms, conducted no physical examination of Ms. Grant. She conducted no neurological examination. Nor did she assess Ms. Grant's vital signs.

53. Instead, Shroud told Grant to take two different medications, one for neck spasms and one for headaches.

54. Shroud concluded her note with a statement that Ms. Grant "may benefit from a head CT [scan]." However, she took no action to order that diagnostic test.

55. On January 8, 2019, Ms. Grant saw defendant Oge again. Oge conducted no physical examination and no neurological examination. Nor did he take any action on the suggestion from defendant Shroud to consider ordering a CT scan. Instead, he directed an increase in Ms. Grant's medication and gave her authorization to receive an ice pack for use throughout the night.

56. On January 16, 2019, Ms. Grant saw defendant Oge yet again. She told him that she had severe pain in her head. She said she was dizzy. And she said her vision had changed. Oge noted that she had an elevated heart rate and tenderness in her neck. Still, he recorded in his note that Ms. Grant did not show any signs of acute distress. He conducted no neurological exam. Instead, he told Ms. Grant to keep taking her medication.

57. On January 22, 2019, Ms. Grant saw defendant Moles. Ms. Grant reported that her headache pain was so severe that she could not sit down, and, if she did sit down, she would feel faint and an increase in pain. She reported that she was nauseous and dizzy and that her vision had changed. She complained that she had experienced these symptoms for a very long time and that she needed an X-ray.

58. Moles wrote in his note that he would request that Ms. Grant be seen by defendant Dr. Merino. He reported, further, that Merino saw Ms. Grant that same day.

59. That report was false. Defendant Merino did not see Ms. Grant at any time on January 22, 2019.

60. Ms. Grant was sent back to her housing unit.

61. The next morning, January 23, 2019, Ms. Grant saw defendant Oge again. She told him that she had a serious head ache, neck pain, tingling in her right hand, pressure in her head and eyes, and that she was feeling faint. She was not able to sit on the exam table as doing so increased her pain. Oge told Ms. Grant to take her medication. He ordered an X-ray to assess her neck pain and directed that the X-ray be completed within three weeks.

62. Later that day, January 23, 2019, Ms. Grant was eating lunch in her cell. She stood up and felt what she described as seizure like symptoms. She lost control of her bladder and urinated in her clothing.

63. A medical emergency was called and defendant Moles went to Ms. Grant's housing area. Again, he expressed skepticism about Ms. Grant's complaints, noting:

- a. He did not see any seizure or tremor activity;
- b. Ms. Grant's clothing was dry on visual inspection; and
- c. Ms. Grant was able to walk down three flights of stairs to the medical unit.

64. Moles consulted with defendants Chizmar and Merino, and they decided to place Ms. Grant in the infirmary so that she could be observed for the next 23 hours.

65. While she was in the infirmary, in the afternoon of January 23, 2019, Ms. Grant got up to go to the bathroom and she passed out and wet herself. She said that any time she moved her head, she felt like she would pass out again.

66. Defendant Merino reported—in a note written the next day, January 24, 2019—that he was aware of Ms. Grant’s loss of consciousness. He expressed skepticism about her reporting, stating:

- a. There were no witnesses to any seizure activity; and
- b. She was not in any acute distress.

67. Merino directed that Ms. Grant stay in the infirmary.

68. At 7:05 p.m. on January 23, 2019, medical staff were called to Ms. Grant’s infirmary bed. She was unresponsive. She had urinated in her bed. Her heart rate was very rapid. And she was gasping for breath.

69. Medical staff contacted emergency medical personnel who arrived at the prison and then took Ms. Grant to the emergency room.

70. Ms. Grant was first taken first to Meadville Medical Center and then to the University of Pittsburgh Medical Center-Hamot.

71. CT scan imaging showed that Ms. Grant had a massive growth in her brain, which, at that point, had shut down her bodily functioning and was inoperable.

72. Ms. Grant’s family traveled from their home near Philadelphia and, after consultation with medical staff, agreed to withdraw further care for Ms. Grant.

73. Ms. Grant died on January 24, 2019.

74. Throughout December 2018 and January 2019, as outlined above, the defendant medical providers were aware that Ms. Grant presented with symptoms of a neurological condition that caused her extreme pain and discomfort and limited her functioning, and, accordingly, they were aware that she had serious medical needs.

75. Throughout December 2018 and January 2019, as outlined above, the defendant medical providers were aware that they had readily available to them diagnostic measures, including a CT scan or, at a minimum, a referral to a neurologist, to evaluate Ms. Grant's increasingly concerning symptoms.

76. Despite that knowledge, the defendant medical providers did nothing to adequately respond to Ms. Grant's needs, at times accusing her of exaggerating or faking her symptoms, and telling her that she should take medications, all while knowing or recklessly disregarding the fact that Ms. Grant was in danger of more serious medical consequences.

77. Ms. Grant's death could and would have been prevented with early medical intervention as the growth in her brain was treatable.

78. The delay in intervention for Ms. Grant was the direct and proximate result of the actions and inactions, with deliberate indifference, of the defendant medical providers.

79. At all relevant times, all of the defendant medical providers were aware of Ms. Grant's serious medical needs and failed, with deliberate indifference, to ensure that Ms. Grant received needed evaluation and treatment.

80. At all times relevant to this Complaint, the conduct of all defendants was in willful, reckless, and callous disregard of Ms. Grant's rights under federal and state law.

81. As a direct and proximate result of the conduct of all defendants, Ms. Grant experienced enormous physical and emotional pain and suffering.

82. As a direct and proximate result of the conduct of all defendants, Ms. Grant was caused to lose the enjoyment of her life and was also caused to suffer complete loss of earnings and earning capacity.

## V. WRONGFUL DEATH AND SURVIVAL ACTIONS

83. Plaintiff, as Administratrix of the Estate of Khynesha Grant, brings this action on behalf of Ms. Grant's heirs under the Pennsylvania Wrongful Death Act, 42 Pa. C.S. § 8301.

84. Ms. Grant's heirs under the Wrongful Death Act, all of whom have received notice of this action from plaintiff, are:

- a. Her daughter, Ahmesha Billups;
- b. Her minor daughter, M.W.; and
- c. Her minor son, K.M.

85. Ms. Grant did not bring an action against defendants for damages for the injuries causing her death during her lifetime.

86. Ms. Grant's heirs have, by reason of Ms. Grant's death, suffered pecuniary loss, and have or will incur expenses for the costs of Ms. Grant's funeral, the costs of Ms. Grant's headstone, and the costs of administering Ms. Grant's estate.

87. Ms. Grant's heirs have, by reason of Ms. Grant's death, suffered further pecuniary loss including expected contributions and financial support from Ms. Grant for food, clothing, shelter, medical care, education, entertainment, recreation and gifts.

88. Plaintiff also brings this action on behalf of the Estate of Khynesha Grant under the Pennsylvania Survival Statute, 42 Pa. C.S. § 8302, under which all claims Ms. Grant would have been able to bring had she survived may be brought by Ms. Grant's estate.

89. Ms. Grant's estate has, by reason of Ms. Grant's death, suffered pecuniary loss, and has or will incur expenses for the costs of Ms. Grant's funeral, the costs of Ms. Grant's headstone, and the costs of administering Ms. Grant's estate.

90. As a direct and proximate result of the conduct of all defendants, Ms. Grant experienced extraordinary physical and emotional pain and suffering before her death, and, as a result of her death, suffered complete loss of earnings and earnings capacity.

91. Plaintiff, via this survival action, seeks damages for these harms caused to Ms. Grant.

## **VI. CLAIMS FOR RELIEF**

### **COUNT I**

#### **Plaintiff v. Defendants Merino, Oge, Riley, Shrout, Chiocco, Chizmar, McPhilomy, Moles, and Payne Federal Constitutional Claims**

92. Defendants Merino, Oge, Riley, Shrout, Chiocco, Chizmar, McPhilomy, Moles, and Payne were deliberately indifferent to Ms. Grant's serious medical needs and thereby violated Ms. Grant's right to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution.

### **COUNT II**

#### **Plaintiff v. Defendants Pennsylvania Department of Corrections, Merino, Oge, Riley, Shrout, Chiocco, Chizmar, McPhilomy, Moles, and Payne State Law Negligence Claims**

93. Defendants Merino, Oge, Riley, Shrout, Chiocco, Chizmar, McPhilomy, Moles, and Payne had a duty to comply with generally accepted medical standards of care in their medical treatment of Ms. Grant.

94. These defendants violated their respective duties of care to Ms. Grant.

95. The defendants' violation of their duty of care to Ms. Grant was a direct and proximate cause and a substantial factor in bringing about Ms. Grant's damages as outlined above, and, as a result, defendants are liable to plaintiff.

96. Because these defendants were acting as agents, servants, and/or employees of defendant Pennsylvania Department of Corrections, and because these individual defendants were acting within the scope and course of their employment, and under the direct control and supervision of defendant Pennsylvania Department of Corrections, defendant Pennsylvania Department of Corrections is, likewise, liable to plaintiff on the basis of *respondeat superior* liability.

#### VII. REQUESTED RELIEF

**Wherefore**, plaintiff respectfully requests:

- A. Compensatory damages as to all defendants;
- B. Punitive damages as to defendants Merino, Oge, Riley, Shrouf, Chiocco, Chizmar, McPhilomy, Moles, and Payne;
- C. Reasonable attorney's fees and costs;
- D. Such other and further relief as may appear just and appropriate.

Plaintiff hereby demands a jury trial.

/s/ Jonathan H. Feinberg  
Jonathan H. Feinberg  
I.D. No. 88227  
KAIRYS, RUDOVSKY, MESSING,  
FEINBERG & LIN LLP  
The Cast Iron Building  
718 Arch Street, Suite 501 South  
Philadelphia, PA 19106  
215-925-4400  
215-925-5365 (fax)  
jfeinberg@krlawphila.com

*Counsel for Plaintiff*