

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

**CARMEN PAGAN, BELINDA WEEMS,  
NADIYAH ALA,**

**Plaintiffs,**

v.

**CITY OF PHILADELPHIA; PRISON  
HEALTH SERVICES, INC.; P.A.  
BOYD; KELLY BYRNE-FORSTER;  
DR. VIVIAN GANDY; DR. LIAQAT  
KAZIM; ALVIN KINCADE; K.  
MCKINNEY; FRANCINE RICKETTS;  
DR. DEMETRIUS SKILROS;  
ROCHELLE SMITH; DR. TACIANO  
TAMASE; DR. JAMES A. THOMAS,**

**Defendants.**

**CIVIL ACTION**

**No. 05-\_\_\_\_\_**

**JURY TRIAL DEMANDED**

**COMPLAINT**

**I. PRELIMINARY STATEMENT**

1. This is a civil rights action brought under 42 U.S.C. § 1983 and raising supplemental state-law claims concerning the defendants’ deliberate indifference to accepted standards of medical care in the diagnosis, treatment, and prevention of drug-resistant staph infections in a correctional setting. As a result of defendants’ actions, policies, and practices, plaintiffs, while incarcerated in the Philadelphia Prison System, suffered from serious staph infections on their skin, known as Methicillin-Resistant Staphylococcus Aureus (“MRSA”), for lengthy periods of time without proper diagnosis and treatment. Plaintiffs now seek damages for the substantial pain they have suffered as a result of the infections.

## **II. JURISDICTION**

2. 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**

3. Plaintiff Carmen Pagan, who is 25 years old, was at all times relevant to this Complaint a resident of Philadelphia, Pennsylvania.

4. Plaintiff Belinda Weems, who is 41 years old, was at all times relevant to this Complaint a resident of Philadelphia Pennsylvania.

5. Plaintiff Nadiyah Ala, who is 28 years old, was at all times relevant to this Complaint a resident of Philadelphia, Pennsylvania.

6. Defendant City of Philadelphia is a municipality in the Commonwealth of Pennsylvania which manages and oversees the Philadelphia Prison System.

7. Defendant Prison Health Services, Inc. (“PHS”) is a corporation which regularly conducts business in Philadelphia, Pennsylvania, and which has a principal place of business in Nashville, Tennessee. Defendant PHS is the holder of a contract to provide all medical services to inmates in the Philadelphia Prison System.

8. At all times relevant to this Complaint, defendant P.A. Boyd was employed as a medical professional by defendant PHS and defendant City of Philadelphia working in the Philadelphia Prison System.

9. At all times relevant to this Complaint, defendant Kelly Byrne-Foster was employed as a medical professional by defendant PHS and defendant City of Philadelphia working in the Philadelphia Prison System.

10. At all times relevant to this Complaint, defendant Dr. Vivian Gandy was employed as a medical professional by defendant PHS and defendant City of Philadelphia working in the Philadelphia Prison System.

11. At all times relevant to this Complaint, defendant Dr. Liaqat Kazim was employed as a medical professional by defendant PHS and defendant City of Philadelphia working in the Philadelphia Prison System.

12. At all times relevant to this Complaint, defendant Alvin Kincade was employed as a medical professional by defendant PHS and defendant City of Philadelphia working in the Philadelphia Prison System.

13. At all times relevant to this Complaint, defendant K. McKinney was employed as a medical professional by defendant PHS and defendant City of Philadelphia working in the Philadelphia Prison System.

14. At all times relevant to this Complaint, defendant Francine Ricketts was employed as a medical professional by defendant PHS and defendant City of Philadelphia working in the Philadelphia Prison System.

15. At all times relevant to this Complaint, defendant Dr. Demetrius Skilros was employed as a medical professional by defendant PHS and defendant City of Philadelphia working in the Philadelphia Prison System.

16. At all times relevant to this Complaint, defendant Rochelle Smith was employed as a medical professional by defendant PHS and defendant City of Philadelphia working in the Philadelphia Prison System.

17. At all times relevant to this Complaint, defendant Dr. Taciano Tamase was employed as a medical professional by defendant PHS and defendant City of Philadelphia working in the Philadelphia Prison System.

18. At all times relevant to this Complaint, defendant Dr. James A. Thomas was employed as a medical professional by defendant PHS and defendant City of Philadelphia working in the Philadelphia Prison System.

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

20. At all times relevant to the Complaint, defendants Boyd, Byrne-Forster, Gandy, Kazim, Kincade, McKinney, Ricketts, Skilros, Smith, Tamase, and Thomas (hereinafter referred to collectively as “individual defendants”) were acting as agents, servants, and/or employees of defendant City of Philadelphia and/or defendant PHS, and were acting within the scope and course of their employment, and under the direct control and supervision of defendant City of Philadelphia and/or defendant PHS.

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

##### **A. Methicillin-Resistant Staphylococcus Aureus and Accepted Standards of Care**

21. As is commonly known among medical practitioners, Methicillin-Resistant Staphylococcus Aureus (“MRSA”) refers to a bacterial infection that is resistant to, and therefore not treatable by, traditional antibiotic medications.

22. MRSA infections are manifested on a person’s skin. They cause boils or oozing sores which progressively become abscesses that penetrate deep below the outer layer of skin and drain pus or blood. When left untreated, the infections may enter the blood stream and cause fatal sepsis.

23. Once manifested on a person's skin, the infections cause substantial pain and soreness and inhibit movement. Certain infections result in permanent scarring.

24. MRSA infections pose a critical danger in the correctional setting. In light of large populations of inmates and corrections staff who are in close contact with one another, highly contagious MRSA infections may spread rapidly through a prison population and, once affected inmates are released from custody, into the community at large.

25. Under generally accepted medical standards of care, medical professionals examining a person with a skin infection should initially prescribe a broad-spectrum antibiotic.

26. If the initially prescribed antibiotic does not mitigate the infection, under generally accepted medical standards of care it is essential for the treating medical professional to immediately take a culture of the infection.

27. Culturing the infection and subsequent analysis of the culture allows medical professionals to determine the identity of antibiotics to which the infection is susceptible.

28. Generally accepted medical standards of care call for the treating medical professional to prescribe an antibiotic to which the infection is susceptible.

29. Aside from diagnosis and treatment of individuals with MRSA infections, generally accepted medical standards of care require medical professionals in a prison setting to take precautions to prevent an outbreak of infections among the inmate population and prison staff.

30. Before the time period in which inappropriate medical care was rendered as described in this Complaint, there were several documented outbreaks of MRSA infections in correctional facilities throughout the United States.

31. All defendants were aware or should have been aware of these documented outbreaks.

32. In light of generally accepted medical standards of care and in light of their knowledge of MRSA outbreaks in other correctional facilities, all defendants should have taken precautionary measures to prevent the outbreak of MRSA infections in the Philadelphia Prison System, including but not limited to:

- a. Properly dressing active MRSA infections so as to prevent non-affected inmates from having contact with the infection;
- b. Preventing close contact between affected inmates and non-affected inmates;
- c. Encouraging inmates to practice good hygiene, including daily showers;
- d. Preventing inmates from sharing linens, razors, and undergarments;
- e. Providing inmates with access to sinks and plain soap for hand washing;
- f. Encouraging inmates to clean their personal living spaces with appropriate cleaning materials;
- g. Ensuring proper ventilation of prison facilities; and
- h. Ensuring the sanitary condition of all inmate facilities, including showers, bathrooms, and food service areas.

33. At all times relevant to this Complaint, defendants PHS and City of Philadelphia, with deliberate indifference, failed to develop and implement policies, practices, and procedures in accordance with the above-described generally accepted medical standards of care so as to ensure the proper diagnosis, treatment, and prevention of MRSA infections among the inmate population and prison staff.

34. At all times relevant to this Complaint, all defendants failed, with deliberate indifference, to timely culture MRSA infections to determine the appropriate anti-biotic treatment. To the contrary, as a matter of practice and policy, the defendants did not engage in such cultures or provide proper anti-biotic treatment to inmates.

35. At all times relevant to this Complaint, the individual defendants were deliberately indifferent to the generally accepted medical standards of care described above and deliberately indifferent to the serious medical needs of plaintiffs.

36. At all times relevant to the Complaint, the conduct of all defendants, their agents, servants and/or employees, was intentional, willful, reckless, and grossly negligent with respect to plaintiffs' rights under federal and state law.

#### **B. Carmen Pagan**

37. During 2002 and 2003, Plaintiff Carmen Pagan was incarcerated in the Philadelphia Industrial Correctional Center in the Philadelphia Prison System.

38. In or about August 2002, Plaintiff Pagan began to suffer from infected blisters on both of her legs.

39. On September 21, 2002, Plaintiff was seen by defendant Thomas who diagnosed her with cellulitis and prescribed a broad-spectrum antibiotic.

40. Between September 21, 2002, and June 18, 2003, the infections on Plaintiff Pagan's body, which spread to her buttocks and back, did not resolve.

41. Between September 21, 2002, and June 18, 2003, Plaintiff Pagan was seen by PHS medical professionals on numerous occasions concerning the unresolved infections on her body.

42. Between September 21, 2002, and June 18, 2003, Plaintiff Pagan was seen by defendants Thomas, Kincade, Kazim, Boyd, and Tamase.

43. At no time between September 21, 2002, and June 18, 2003, did any of the above-referenced defendants, or any other employee of defendant PHS or defendant City of Philadelphia, take a culture of the infections on Plaintiff Pagan's body.

44. On or about June 18, 2003, after Plaintiff Pagan had suffered from the infections for approximately nine months, a culture was taken of Plaintiff Pagan's infections. The culture indicated that Plaintiff Pagan had an MRSA infection and allowed for the identification of medications to which the infections would be susceptible.

45. More than three weeks later, on July 10, 2003, Plaintiff Pagan was provided with appropriate medication as indicated by the June 18, 2003, culture, and was placed in isolation. The infections resolved shortly thereafter.

46. Plaintiff experienced a recurrence of MRSA-type infections in August 2003, but no cultures were taken of those infections.

47. The above referenced defendants acted with deliberate indifference to Plaintiff Pagan's serious medical needs.

48. The care provided to Plaintiff Pagan by the above-referenced defendants and any other employee of defendant PHS or defendant City of Philadelphia failed to comply with generally accepted standards of medical care.

49. As a direct and proximate result of defendants' conduct, plaintiff suffered from MRSA infections, which could have been resolved with proper medical diagnosis and treatment, for a period of more than nine months.

50. As a direct and proximate result of defendants' conduct, plaintiff suffered substantial damages, including pain and suffering, embarrassment, emotional distress, lost wages, and loss of the enjoyment of life.

**C. Belinda Weems**

51. During 2003 and 2004, Plaintiff Belinda Weems was incarcerated in the Philadelphia Industrial Correctional Center in the Philadelphia Prison System.

52. In or about April 2003, Plaintiff Weems began to suffer from boils on both of her legs.

53. On April 9, 2003, Plaintiff was seen by defendants Gandy and Smith who diagnosed her with cellulitis and prescribed a broad-spectrum antibiotic.

54. Between April 9, 2003, and June 26, 2003, the infections on Plaintiff Weems' body, which spread to her buttocks and back, did not resolve.

55. Between April 9, 2003, and June 26, 2003, Plaintiff Weems was seen by PHS medical professionals on numerous occasions concerning the unresolved infections on her body.

56. Between April 9, 2003, and June 26, 2003, Plaintiff Weems was seen by defendants Byrne-Forster, Skilros, Ricketts, Tamase, and McKinney.

57. At no time between April 9, 2003, and June 26, 2003, did any of the above-referenced defendants, or any other employee of defendant PHS or defendant City of Philadelphia, take a culture of the infections on Plaintiff Weems' body.

58. On or about June 26, 2003, after Plaintiff had suffered from the infections for more than two months, a culture was taken of Plaintiff Weems' infections. The culture indicated that Plaintiff Weems had an MRSA infection and allowed for the identification of medications to which the infections would be susceptible.

59. More than two weeks later, on July 13, 2003, Plaintiff Weems was provided with appropriate medication as indicated by the June 26, 2003, culture, and was placed in isolation. The infections resolved shortly thereafter.

60. Plaintiff experienced a recurrence of MRSA-type infections in August 2003 which lasted through her release from custody in February 2004, but no cultures were taken of those infections.

61. The above referenced defendants acted with deliberate indifference to Plaintiff Weems' serious medical needs.

62. The care provided to Plaintiff Weems by the above-referenced defendants and any other employee of defendant PHS or defendant City of Philadelphia failed to comply with generally accepted standards of medical care.

63. As a direct and proximate result of defendants' conduct, Plaintiff Weems suffered from MRSA infections, which could have been resolved with proper medical diagnosis and treatment, for a period of approximately nine months.

64. As a direct and proximate result of defendants' conduct, Plaintiff Weems suffered substantial damages, including pain and suffering, embarrassment, emotional distress, lost wages, and loss of the enjoyment of life.

#### **D. Nadiyah Ala**

65. During 2003 and 2004, Plaintiff Nadiyah Ala was incarcerated in the Philadelphia Industrial Correctional Center in the Philadelphia Prison System.

66. In or about October 2003, Plaintiff Ala began to suffer from boils on both of her legs.

67. On October 10, 2003, Plaintiff was seen by defendant Thomas who diagnosed her with cellulitis and prescribed a broad-spectrum antibiotic.

68. Between October 10, 2003 and May 2004, the infections on Plaintiff Ala's body, which spread to her buttocks and back, did not resolve.

69. Between October 10, 2003, and May 2004, Plaintiff Ala was seen by PHS medical professionals concerning the unresolved infections on her body and she was diagnosed with folliculitis, cellulitis, and carbuncles.

70. At no time between October 10, 2003 and May 2004 did any of the above-referenced defendants, or any other employee of defendant PHS or defendant City of Philadelphia, take a culture of the infections on Plaintiff Ala's body.

71. The above referenced defendants acted with deliberate indifference to Plaintiff Ala's serious medical needs.

72. The care provided to Plaintiff Ala by the above-referenced defendants and any other employee of defendant PHS or defendant City of Philadelphia failed to comply with generally accepted standards of medical care.

73. As a direct and proximate result of defendants' conduct, Plaintiff Ala suffered from MRSA infections, which could have been resolved with proper medical diagnosis and treatment, for a period of approximately eight months.

74. As a direct and proximate result of defendants' conduct, Plaintiff Ala suffered substantial damages, including pain and suffering, embarrassment, emotional distress, lost wages, and loss of the enjoyment of life.

## V. CLAIMS FOR RELIEF

### COUNT I

#### **Plaintiff Pagan v. Defendants Thomas, Kincade, Kazim, Boyd, and Tamase Federal Constitutional Claims**

75. Defendants Thomas, Kincade, Kazim, Boyd, and Tamase were deliberately indifferent to Plaintiff Pagan's serious medical needs and thereby violated Plaintiff Pagan's right to be free from cruel and unusual punishment under the Eighth Amendment to the United States Constitution and/or Plaintiff Pagan's right to due process of law under the Fourteenth Amendment to the United States Constitution.

### COUNT II

#### **Plaintiff Pagan v. Defendants Thomas, Kincade, Kazim, Boyd, Tamase, and PHS State Law Negligence Claims**

76. Defendants Thomas, Kincade, Kazim, Boyd, and Tamase had a duty to comply with generally accepted medical standards of care in their medical treatment of Plaintiff Pagan.

77. These defendants violated their duty of care to Plaintiff Pagan.

78. These defendants' violations of their duty of care to Plaintiff Pagan was a direct and proximate cause and a substantial factor in bringing about Plaintiff Pagan's damages outlined above, and, as a result, defendants are liable to Plaintiff Pagan.

79. Because these defendants were acting as agents, servants, and/or employees of defendant PHS, and were acting within the scope and course of their employment, and under the direct control and supervision of defendant PHS, defendant PHS is liable to Plaintiff Pagan on the basis of *respondeat superior* liability.

**COUNT III**  
**Plaintiff Weems v. Defendants Byrne-Forster, Skilros, Ricketts, Tamase, and McKinney**  
**Federal Constitutional Claims**

80. Defendants Byrne-Forster, Skilros, Ricketts, Tamase, and McKinney were deliberately indifferent to Plaintiff Weems' serious medical needs and thereby violated Plaintiff Weems' right to be free from cruel and unusual punishment under the Eighth Amendment to the United States Constitution and/or Plaintiff Weems' right to due process of law under the Fourteenth Amendment to the United States Constitution.

**COUNT IV**  
**Plaintiff Weems v. Defendants Byrne-Forster, Skilros,**  
**Ricketts, Tamase, McKinney, and PHS**  
**State Law Negligence Claims**

81. Defendants Byrne-Forster, Skilros, Ricketts, Tamase, and McKinney had a duty to comply with generally accepted medical standards of care in their medical treatment of Plaintiff Weems.

82. These defendants violated their duty of care to Plaintiff Weems.

83. These defendants' violations of their duty of care to Plaintiff Weems was a direct and proximate cause and a substantial factor in bringing about Plaintiff Weems' damages outlined above, and, as a result, defendants are liable to Plaintiff Weems.

84. Because these defendants were acting as agents, servants, and/or employees of defendant PHS, and were acting within the scope and course of their employment, and under the direct control and supervision of defendant PHS, defendant PHS is liable to Plaintiff Weems on the basis of *respondeat superior* liability.

**COUNT V**  
**Plaintiff Ala v. Defendant Thomas**  
**Federal Constitutional Claims**

85. Defendant Thomas was deliberately indifferent to Plaintiff Ala's serious medical needs and thereby violated Plaintiff Ala's right to be free from cruel and unusual punishment under the Eighth Amendment to the United States Constitution and/or Plaintiff Ala's right to due process of law under the Fourteenth Amendment to the United States Constitution.

**COUNT VI**  
**Plaintiff Ala v. Defendants Thomas and PHS**  
**State Law Negligence Claims**

86. Defendant Thomas had a duty to comply with generally accepted medical standards of care in his medical treatment of Plaintiff Ala.

87. This defendant violated his duty of care to Plaintiff Ala.

88. This defendant's violation of his duty of care to Plaintiff Ala was a direct and proximate cause and a substantial factor in bringing about Plaintiff Ala's damages outlined above, and, as a result, defendant is liable to Plaintiff Ala.

89. Because this defendant was acting as an agent, servant, and/or employee of defendant PHS, and was acting within the scope and course of their employment, and under the direct control and supervision of defendant PHS, defendant PHS is liable to Plaintiff Ala on the basis of *respondeat superior* liability.

**COUNT VII**  
**All Plaintiffs v. Defendants City of Philadelphia and PHS**  
**Municipal Liability**

90. The violations of plaintiffs' constitutional rights, plaintiffs' damages, and the conduct of the individual defendants were directly and proximately caused by the deliberate indifference of Defendant City of Philadelphia and Defendant PHS to:

- a. Generally accepted standards of medical care concerning the treatment of MRSA and other drug-resistant staph infections;
- b. The need for training, supervision, investigation, monitoring, and discipline with respect to generally accepted standards of medical care concerning the treatment of MRSA and other drug-resistant staph infections.

91. The violations of plaintiffs' constitutional rights, plaintiffs' damages, and the conduct of the individual defendants were directly and proximately caused by Defendant City of Philadelphia's and Defendant PHS' encouragement, tolerance, and ratification of policies, practices, and customs concerning medical treatment of inmates which fail to comply with generally accepted standards of medical care concerning the treatment of MRSA and other drug-resistant staph infections.

**COUNT VIII**  
**All Plaintiffs v. All Defendants**  
**State Constitutional Claims**

92. Defendants' conduct violated plaintiffs' rights under Article I, § 1 and/or Article I, § 13 of the Pennsylvania Constitution and the laws of the Commonwealth of Pennsylvania.

93. This Court has supplemental jurisdiction to hear and adjudicate these claims.

**REQUESTED RELIEF**

**Wherefore**, Plaintiffs respectfully request:

- A. Compensatory damages;
- B. Punitive damages against the individual defendants and defendant PHS;
- C. Reasonable attorneys' fees and costs;
- D. Such other and further relief as may appear just and appropriate.

Plaintiffs hereby demand a jury trial.

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