

THE
ROGER
BALDWIN
FOUNDATION
OF ACLU,
INC.

SUITE 2300
180 NORTH MICHIGAN AVENUE
CHICAGO, ILLINOIS 60601-1287
(312) 201-9740
FAX (312) 201-9760
WWW.ACLU-IL.ORG



June 20, 2011

Sheriff John E. Thompson
700 S Main St
Princeton IL 61356
Fax: (815) 875-2452

Re: Denial of Essential HIV Medical Care for Arick Buckles

Dear Sheriff Thompson:

I write on behalf of Arick Buckles, who was in custody as a pre-trial detainee at the Bureau County Jail from September 29, 2010 through October 6, 2010. Mr. Buckles, who is HIV-positive, relies upon prescribed medication to manage his condition. Although Mr. Buckles, a friend, and his partner informed both the court and Jail officials of Mr. Buckles' medical condition, his need for life-saving medications to treat his HIV, and the grave medical consequences to Mr. Buckles of denying him those medications, he received no medication whatsoever during his entire week-long period of detention at Bureau County Jail. In addition, the Jail's handling of his personal property evidenced a serious disregard for his privacy and a frightening lack of understanding of the modes of HIV transmission.

I. Denial of Necessary Medical Treatment.

It is well established that a diagnosed HIV infection constitutes a serious medical need to which prison and jail officials must respond appropriately. *See, e.g., Brown v. Johnson*, 387 F.3d 1344, 1351 (11th Cir. 2004). Unfortunately, the medical care Mr. Buckles received at Bureau County Jail demonstrates deliberate indifference to this serious medical condition, in violation of his Eighth and Fourteenth Amendment rights. *See, e.g., City of Revere v. Mass. Gen'l Hosp.*, 463 U.S. 239, 244 (1983) (pre-trial detainees have constitutional right to medical care); *Brown v. Johnson*, 387 F.3d 1344 (11th Cir. 2004) (prison's refusal to provide prescribed HIV treatment to inmate states claim for deliberate indifference); *McNally v. Prison Health Servs.*, 46 F. Supp.2d 49 (D. Me. 1999) (prison's refusal to provide HIV medications for three days states a constitutional claim); *Albertson v. San Francisco County Health & Welfare Dept.*, 1993 WL 313142 (N.D. Cal. Aug. 6, 1993) (prison's refusal to provide HIV medications states a constitutional claim); *Roe v. Fauver*, 1988 WL 106316 (D.N.J. Oct. 11, 1988) (refusal of prison to provide HIV medications at proper times, in proper dosages, states a constitutional claim).

Moreover, Jail officials told Mr. Buckles that they could not provide appropriate medications for him due to the costs of those medications, an inappropriate and unconstitutional reason to deny necessary treatment. *See, e.g., Ancata v. Prison Health Servs.*, 769 F.2d 700, 705 (11th Cir. 1985) (Lack of funds . . . cannot justify an unconstitutional lack of competent medical care and treatment for inmates); *Taylor v. Barnett*, 105 F. Supp.2d 483, 489 (E.D. Va. 2000) (evidence that HIV medication was denied because of its cost, not because of “an informed medical decision,” supports constitutional claim).

The County Jail Standards for Medical and Mental Health Care established by the Illinois Department of Corrections, Ill. Admin. Code tit. 20, § 701.90, require that jails “provide a competent medical authority to ensure . . . [t]reatment of ailments,” and “[p]rescription of medications” The National Center for Correctional Health Care (“NCCHC”) standards for jails require that medication services “are clinically appropriate and provided in a timely, safe, and sufficient manner,” so that “[i]nmates entering the facility on prescription medication continue to receive the medication in a timely fashion as prescribed, or acceptable alternate medications are provided as clinically indicated.” NCCHC Standard J-D-02. The NCCHC standards also require that a jail have in place clinical protocols consistent with *national clinical practice guidelines*,” including protocols for the management of HIV and keep medical record documenting that the protocols are being followed. NCCHC Standard J-G-01 (emphasis in original). All detainees should be screened “to ensure that emergent and urgent health needs are met” so that “[p]rescribed medication are reviewed and appropriately maintained according to the medication schedule the inmate was following before admission.” NCCHC Standard J-E-02.

Mr. Buckles daily informed Bureau County Jail staff, including the nurse he saw at the Jail, that he had HIV and needed medication for his treatment. He explained specifically that these medications were life-saving and that it would be extremely harmful to him to interrupt his HIV treatment. His friend, Rev. Theodore Carter, and his partner, Jeffrey Pulliam, also called the Jail to ask that he be given his HIV medications. Additionally, Lauren Keppel from the Gaining Ground housing program for people with AIDS, where Mr. Buckles received case management services, faxed the Jail his list of prescriptions and his doctor’s name and phone number on the morning of October 1, the day after Mr. Buckles’ arrival at the Jail. The Jail’s medical records included the fax from Ms. Keppel and corroborate the justification given Mr. Buckles for denying the medications. The Jail’s Medical Progress Notes state: “These medications are costly and are only issued monthly, because pharmacy manufactors [sic] bottle these meds in a 30 day sealed bottle per each med.” In the Plan section of the Notes, staff wrote: “Notify states attorney of Bureau County Court et update him with this medical info that *would be very costly for the Bureau County Sheriff’s Office*. Roe LPN.”

Mr. Buckle never saw a physician and never received his medication, even though successful HIV treatment, which reduces “HIV-associated morbidity and prolong[s] the duration and quality of survival” requires adherence to the prescribed medication regimens. *See* Panel on Antiretroviral Guidelines for Adults and Adolescents, Guidelines for the use of antiretroviral agents in HIV-1-infected adults and adolescents, Department of Health and Human Services, Jan. 10, 2011, 24-25, *available at* <http://www.aidsinfo.nih.gov/ContentFiles/AdultandAdolescentGL.pdf> (accessed May 25, 2011). *See also id.* at 121 (“Adherence to antiretroviral therapy (ART) has been strongly correlated with

HIV viral suppression, reduced rates of resistance, an increase in survival, *and* improved quality of life.”).

After the Jail’s failure to provide Mr. Buckles with adequate and constitutionally required medical care, he suffered from severe diarrhea. And, as noted, denying him his medication for a week may have caused lasting harm to him. It is essential that you take steps to remedy this unconstitutional treatment of Mr. Buckles *and* prevent this kind of injury from happening to others in the future.

II. Shortcomings Regarding Medical Privacy and Knowledge About HIV.

When Mr. Buckles was released, he discovered that his clothes and nail clippers had been placed in plastic bags and kept separately from the belongings of other detainees with the words “HIV positive” written in on the bags. Mr. Buckles reports that those bags were kept in a place where other staff as well as other detainees could have seen them. This conduct raises serious concerns about the Jail’s understanding of its obligations to maintain the confidentiality of HIV test results as required by the AIDS Confidentiality Act. That Act forbids the disclosure of the HIV status except in certain circumstances not applicable here, 410 ILCS § 305/9, and provides a private right of action for damages and attorney’s fees to any victim of such a disclosure. *Id.* at § 13. *See also* NCCHC Standard J-H-02 (“The confidentiality of a patient’s written or electronic health record, as well as orally conveyed health information, is maintained”).

In addition, the separate bagging of Mr. Buckles’ clothing and possessions: a serious misunderstanding of the ways in which HIV is transmitted. HIV cannot be transmitted by touching Mr. Buckles’ possessions. The Center for Disease Control states as follows:

Only specific fluids (blood, semen, vaginal secretions, and breast milk) from an HIV-infected person can transmit HIV. These specific fluids must come in contact with a mucous membrane or damaged tissue or be directly injected into the blood-stream (from a needle or syringe) for transmission to possibly occur.

In the United States, HIV is most commonly transmitted through specific sexual behaviors (anal or vaginal sex) or sharing needles with an infected person.

Questions and Answers: How is HIV transmitted from one person to another?, Divisions of HIV/AIDS Prevention, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Center for Disease Control and Prevention, Department of Health and Human Services, available at: <http://www.cdc.gov/hiv/resources/qa/transmission.htm> (accessed Mar. 29, 2011).

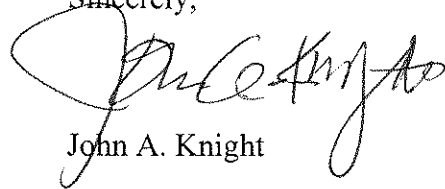
III. Conclusion.

Bureau County Jail’s violation of Mr. Buckles’ legal right to necessary medical treatment is abundantly clear. Please advise me by June 27, 2011 how you intend to remedy the serious and life-threatening deficiencies in the Jail’s treatment of Mr. Buckles as well as the privacy violations I have described. No detainee should receive the inadequate care and treatment he endured. As a part of your response, Mr. Buckle would like you to address the following: a.

The changes the Jail will make to ensure that detainees with HIV are given prompt access to medical care and treatment by medical staff with expertise in treating persons with HIV and to HIV medications notwithstanding the cost of that treatment and those medications; b. The policy review and training that the Jail will undergo to ensure that staff understand how to prevent HIV transmission through the use of universal precautions without violating the medical privacy and dignity of persons with HIV.

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Knight". The signature is fluid and cursive, with a large initial "J" and "K".

John A. Knight

cc: Mr. Steve Godlock,
Office of Jail & Detention Standards, Illinois Department of Corrections
Mr. Mike Funk,
Office of Jail & Detention Standards, Illinois Department of Corrections
Mr. Patrick Herrmann, Office of the State's Attorney