

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

SEP 15 2021
JEFFREY P. COLWELL
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 21-CV-01589 GPG
(To be supplied by the court)

Peter George Noe Plaintiff

v.

United States Government

DR Berkley

H. Schouweiler

F.B.O.P. Defendant(s).

(List each named defendant on a separate line. If you cannot fit the names of all defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Section B. Do not include addresses here.)

PRISONER COMPLAINT

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Plaintiff need not send exhibits, affidavits, grievances, witness statements, or any other materials to the Clerk's Office with this complaint.

A. PLAINTIFF INFORMATION

You must notify the court of any changes to your address where case-related papers may be served by filing a notice of change of address. Failure to keep a current address on file with the court may result in dismissal of your case.

Peter G Noe 10849-041 Box 8500 Florence Co 81226
(Name, prisoner identification number, and complete mailing address)

N/A
(Other names by which you have been known)

Indicate whether you are a prisoner or other confined person as follows: (check one)

- Pretrial detainee
- Civilly committed detainee
- Immigration detainee
- Convicted and sentenced state prisoner
- Convicted and sentenced federal prisoner
- Other: (Please explain) _____

B. DEFENDANT(S) INFORMATION

Please list the following information for each defendant listed in the caption of the complaint. If more space is needed, use extra paper to provide the information requested. The additional pages regarding defendants should be labeled "B. DEFENDANT(S) INFORMATION."

Defendant 1: United States Government, Solicitor General of the U.S.
(Name, job title, and complete mailing address)

Room 5614 Dept of Justice 950 Penn Ave NW Wash DC
20530-0001

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? Yes No (check one). Briefly explain:

the US Gov is liable under FTCA 1346 for
staff acting under fed law

Defendant 1 is being sued in his/her individual and/or official capacity.

Defendant 2: DR Berkely P.O. Box 8500 Florence Co
(Name, job title, and complete mailing address)

81226

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? Yes No (check one). Briefly explain:

Dr Berkely is the dentist and has a
duty of care at the prison

Defendant 2 is being sued in his/her individual and/or official capacity.

Defendant 3: H Schouweiler P.O. Box 8500
(Name, job title, and complete mailing address)

Florence Co 81226

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? Yes No (check one). Briefly explain:

she is the dental assistant and has
a duty of care at the prison

Defendant 3 is being sued in his/her individual and/or official capacity.

(see attached)

C. JURISDICTION

Indicate the federal legal basis for your claim(s): (check all that apply)

42 U.S.C. § 1983 (state, county, and municipal defendants)

Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971)
(federal defendants)

Other: (please identify) 1331 constitution claim, FTCA-

28 u.s.c 2671-2680

B. defendants info cont

Defendant 4, Federal Bureau of Prisons
320 First St N.W. Wash DC 20534

was acting under the color
of fed law yes

is the prison itself as is
responsible for its policy

sued in its official capacity,

D. STATEMENT OF CLAIM(S)

State clearly and concisely every claim that you are asserting in this action. For each claim, specify the right that allegedly has been violated and state all facts that support your claim, including the date(s) on which the incident(s) occurred, the name(s) of the specific person(s) involved in each claim, and the specific facts that show how each person was involved in each claim. You do not need to cite specific legal cases to support your claim(s). If additional space is needed to describe any claim or to assert additional claims, use extra paper to continue that claim or to assert the additional claim(s). Please indicate that additional paper is attached and label the additional pages regarding the statement of claims as "D. STATEMENT OF CLAIMS."

CLAIM ONE: Eighth amend. (deliberate indifference)

Supporting facts:

① in nov or dec plaintiff was seen by dental defendant (Berkely). Plaintiff had several issues with his teeth including one tooth that was broke in half.

② After an examination (Defendant) Berkely explained that three of plaintiff's teeth were broken and that of the three the one that was broken in half would require a crown.

③ Plaintiff explained to (Defendant) DR Berkely that he also had two other teeth that were causing substantial pain whenever Plaintiff ate or drank anything hot or cold.

④ after an examination (Defendant) Berkely explained to Noe

D. Statement of Claim cont.

That those teeth would also require a crown because the hole tooth was filling from previous dental work.

⑤ (Defendant)

Berkely explained to Plaintiff that Plaintiff was going to lose all three teeth that need crowns because under F.B.O.p policy the dentist are not allowed to do crowns due to them "costing too much money" See exhibit (A) Decl of Noe.

⑥ (Defendant) Berkely explained that he would fix the three broken teeth but that under A.D.X policy he could only fix one tooth at a time or "one procedure, per inmate per visit".

⑦ Noe begged to have all three teeth fixed and to do the crowns on the other teeth because they were causing substantial pain Defendany (Berkely) Refused, see decl of Noe at exhibit (A)

⑧ For the next

D. Statement of Claim cont.

15 months Noe was denied care.

⑨ it took six months for (defendant) Berkely to fix the tooth that was broke in half and because of the delay in treatment the procedure broke the tooth and it had to be removed.

⑩ It took a year to get the second tooth fixed; see decl of Noe exhibit (A)

⑪ it took 15 months before the last tooth was fixed and because of the delay that tooth also needs a crown now. see decl of Noe exhibit (A)

⑫ Defendant (Berkely) new Plaintiff was in substantial pain, had a serious medical need and refused to respond reasonably.

⑬ Defendant Berkely showed deliberate indifference to a serious medical need. see decl of Noe exhibit (A)

D. Statement of claim cont.

(14) (defendant) Berkely has also told Plaintiff he needs crowns on two of his teeth and is leaving Noe to suffer in substantial pain to save money.

(15) Defendant (H. Schouweiler) is responsible for scheduling Plaintiff for treatment she intentionally denied and delayed access to medical care and interfered with treatment.

(16) she knew Plaintiff was in substantial pain for over a year and was deliberately indifferent

(17) she was mad because Noe told her if she didn't call him to fix his teeth he would "file on her", so she maliciously and sadistically refused to call him for 5 extra months with the intent to cause harm & pain see exhibit (A)

(18) This has caused Noe to suffer in pain for years

D. Statement of claim cont.

he lost a tooth and if the defendants don't do the crowns on the other two (three now) teeth he will lose those as well.

Claim Two

Eighth amend: Medical Negligence
medical malpractice

claim. (19) The defendant United States Government is liable for the acts of its employees under the federal tort claim act title 28 USC 1346, 2671.

(20) Plaintiff exhausted his remedies by filing a form 95 tort claim on Sept 17 case # TRT-NCR-2020-07199 see exhibit (B)

(21) Defendant denied claim in writing.

(22) Dr Berkely and H. Schouweiler owed 4-5

D. Statement of Claim cont.

Plaintiff a legal duty of care.

(23)

DR Berkely is the Institutional dentist H Schouweiler is the dental assistant. Both owe a duty to Noe to provide "adequate healthcare"

(24) DR Berkely and H Schouweiler, breached this professional duty of care by denying and delaying care for 15 months see exhibit (A)

(25) DR

Berkely also breached this duty of care by prescribing crowns as treatment but refusing to do them to save the prison money see exhibit (A)

(26)

To save money DR Berkely tried an untest procedure by drilling into Noe's tooth putting a metal rod into it and then putting filling all over it. This caused substantial pain and caused Noe to lose a tooth see exhibit

(A)

D Statement of Claim cont.

27 This negligence in medical treatment shows the defendants care falls below the degree of knowledge skill and care used by others physicians practicing the same skill or same specialty

28

This breach of duty caused Noe to suffer in pain for 15 months and caused him to lose a tooth see exhibit (A)

29 The allegations in exhibit (A) show medical negligence.

30

The allegations in exhibit (A) show medical malpractice.

Claim three

Eighth Amend del. indiff.

31 Defendant F.B.O.P is enforcing a policy that is deliberately indifferent to a serious

D. Statement of Claim cont.

medical need.

(32) Defendant F.B.O.P has instructed all the dentists that they are not to do crowns on inmates to save money.

(33) Defendant FBOP Policy that Noe cannot receive crowns knowing that he is in substantial pain with a serious medical need is a constitutional violation.

(34) This policy shows deliberate indifference to a serious medical need.

(35) This policy cost noe to lose one tooth already and to suffer in pain for years because under this policy defendant Berkely couldn't do the required crowns.

E. PREVIOUS LAWSUITS

Have you ever filed a lawsuit, other than this lawsuit, in any federal or state court while you were incarcerated? Yes ___ No (check one).

If your answer is "Yes," complete this section of the form. If you have filed more than one previous lawsuit, use additional paper to provide the requested information for each previous lawsuit. Please indicate that additional paper is attached and label the additional pages regarding previous lawsuits as "E. PREVIOUS LAWSUITS."

Name(s) of defendant(s): Andre matevousian Et al

Docket number and court: 19-CV-02148 Dis Colo

Claims raised: 1st amend.

Disposition: (is the case still pending? has it been dismissed?; was relief granted?) pending

Reasons for dismissal, if dismissed: N/A

Result on appeal, if appealed: N/A

F. ADMINISTRATIVE REMEDIES

WARNING: Prisoners must exhaust administrative remedies before filing an action in federal court regarding prison conditions. See 42 U.S.C. § 1997e(a). Your case may be dismissed or judgment entered against you if you have not exhausted administrative remedies.

Is there a formal grievance procedure at the institution in which you are confined?

Yes ___ No (check one)

Did you exhaust administrative remedies?

Yes ___ No (check one)

G. REQUEST FOR RELIEF

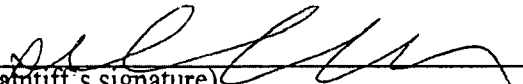
State the relief you are requesting or what you want the court to do. If additional space is needed to identify the relief you are requesting, use extra paper to request relief. Please indicate that additional paper is attached and label the additional pages regarding relief as "G. REQUEST FOR RELIEF."

Claim one A) declare that the acts and omissions described herein violated plaintiffs rights under the Constitution and laws of the united states (B) order defendant DR Berkely and defendant H Schouweiler to pay compensatory and punitive damages in the amount of \$200,000 each c) grant plaintiff attorney fees and court costs. d) Grant other just and equitable relief this court deems necessary.

H. PLAINTIFF'S SIGNATURE

I declare under penalty of perjury that I am the plaintiff in this action, that I have read this complaint, and that the information in this complaint is true and correct. See 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Under Federal Rule of Civil Procedure 11, by signing below, I also certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.


(Plaintiff's signature)

9/9/21
(Date)

"G" request for relief.

Claim two

- A) declare defendants are liable and order them to pay \$200,000 in compensatory and punitive damages
- (B) Grant other just and equitable relief this honorable court deems necessary
- (C) order defendant to pay attorney fees and costs.

Claim three

- A) declare the acts and omissions described herein violated Noe's rights under the constitution and laws of the U.S.
- (B) Injunctive relief on the claim
- (C) Grant other just and equitable relief this court deems necessary

EXHIBIT A

Declaration of Plaintiff Peter George Noe

I, Peter Noe, pursuant to 28 USC 1746 and based upon my personal knowledge and information, hereby declare as follows:

1. In October 2019, I broke three teeth.
2. I also had two other teeth that were causing me pain.
3. I turned in several requests to be seen and was finally taken to dental late November or early December, 2019.
4. The dentist checked all five of my teeth during this visit.
5. The dentist explained that the two teeth that were causing me pain have had so much dental work done that the whole tooth is filling.
6. He told me that those two teeth need crowns but under F.B.O.P. policy, he could not do crowns because they are too expensive.
7. The dentist went on to check the three broken teeth.
8. The dentist explained that one of the broken teeth needed a crown but that he would try to fix it with a filling and the other two broken teeth could be fixed with fillings.
9. The dentist explained he would only fix one tooth per inmate, per visit, under A.D.X. policy because they only have one dentist.
10. The dentist explained he would fix the one broken tooth that was broken in half and that I would be put on the bottom of the waiting list. He would then fix one of the two remaining teeth, put me back on the waiting list and then fix the last tooth.
11. Each time I'm put on this waiting list, it takes over a month to be seen by dental.

12. The dentist tried to fill the one tooth that was broken in half and assured me he would get the other two broken teeth fixed.
13. I turned in several cop-outs (requests) to be seen that were ignored, so I filed an administrative remedy on January 15, 2020.
14. I was ignored and denied treatment and on April 17, 2020, the warden responded that I was still on the waiting list to be seen for my broken teeth but he refused to address the cusp of the remedy, that I want crowns on the three that the dentist himself said needed crowns.
15. On April 21, 2020, I appealed the warden's response and demanded they put crowns on these three teeth before I lose them.
16. On June 3, 2020, the dentist came down to my cell with several staff and told me that I needed to stop filing that he knew about my broken teeth but couldn't fix them because he couldn't use the drilling during the COVID 19 lockdown.
17. I explained to him in front of everyone that he was a liar because this has been going on since four months prior to COVID 19 even hitting the U.S.A.
18. I told him that I am in pain and I am not going to stop filing. I explained that the tooth he tried to fix is still hurting bad, and that I was in substantial pain.
19. He said that the tooth needs a crown but he was going to try to drill it and put a pin in it because he wasn't allowed to do crowns.
20. On June 14, 2020, the Regional Director responded to my administration remedy and intentionally lied by claiming that they haven't received any of my staff requests.
21. On June 14, 2020, I appealed that decision.
22. On June 17, 2020, I was called to dental to have my teeth fixed. When I got to dental the dentist explained that he was going to drill out and put a pin in the tooth that he attempted to fix in November of 2020.

23. I begged him to please just fix all three of my broken teeth because they were all hurting me and I couldn't take it anymore. I was in substantial pain.
24. The dentist refused and explained that he was only authorized to fix that one tooth and that he was only doing that because I wouldn't stop filing.
25. The dentist had waiting so long to fix that tooth that the procedure he tried broke the tooth because it had rotted over the seven month delay.
26. After several requests, on July 31, 2020, I was taken to dental. The dentist did an x-ray. He explained that the only way to fix that tooth was with a crown but because we couldn't do crowns he had to remove the tooth. The tooth was removed.
27. I again, at that meeting begged to have the other two broken teeth fixed because I was in pain and was refused again because the dentist said he could only do one procedure per inmate, per visit, and that those teeth need the drill, and that he couldn't use the drill due to COVID 19.
28. In mid-August, 2020, I filed a tort claim at the regional office, hoping that would motivate the dentist to fix my two remaining broken teeth.
29. On August 27, 2020, I was taken to dental and both of the remaining two broken teeth were x-rayed and the dentist explained that the top one had a crack that was why it was hurting me so badly, and the bottom one was broken. He again refused to fix these teeth, due to the policy of "no drilling" during the COVID 19 pandemic.
30. I stopped the institutional P.A. several times from August to November, 2020; both Ms. Fellows and Ms. Dunn. I explained to both of them that I'm in pain and that I didn't know what to do because every time I send a request, dental refuses to answer it and every time I file an administrative remedy, they say that dental is claiming that I haven't sent in any requests to be seen.
31. Both P.A. Dunn and Fellows said that everyone knew about my dental issues and that it was wrong what they were doing. They both suggested that I start giving my dental requests to them, and that they would FAX them to dental and then no one could deny receiving them.
32. I gave Dunn and Fellows several requests after that, explaining I was in a substantial amount of pain.

33. Dental then started responding back by H. Schouweiler, Dental Assistant, that I was on the list to be seen.
34. In September the D.C. Office denied my administrative remedy (it was dated August 27, 2020, but I received it in late September, 2020) concerning my broken teeth.
35. On October 16th, 2020, I again started to use the administrative remedy process in an attempt to motivate the dentist to fix my two remaining broken teeth. I explained that I was in pain.
36. The dental office responded by saying that this was the first time that they haerd I was in pain and that I would be seen.
37. I appealed that decision on October 25, 2020, and explained that dental was lying. I have been in pain for a year.
38. On November 12, 2020, dental called me up there and fixed one of the two broken teeth but again refused to fix the other one, following the policy that I can only have one toot fixed at a time; both teeth were x-rayed.
39. I turned in several more cop-outs requesting this last tooth be fixed and finally on December 20, 2020, sent a request in telling dental that I was in pain and that if they didn't fix my tooth I was going to file again.
40. On December 31, 2020, the dental assistant, H. Schouweiler responded back that I was not to 'threaten' her, that I 'could file' as much as I want and they will see me when they get around to it.
41. On February 5, 2021, the warden responded to my administrative remedy that I had been seen by dental six times.
42. I appealed that decision by explaining yes, I had been seen (I had only truly been seen twice) but they were not fixing the teeth and that I was in substantial pain.
43. The dental assistant, H. Schouweiler, intentionally refused to call me up to have my last tooth fixed and left me in substantial pain.

44. The last tooth was fixed on April 1, 2021, in response to this lawsuit.

Pursuant to 20 USC 1746, I declare under penalty of perjury that the above written is true and correct to the best of my knowledge, information and understanding

Executed on: 9/9/21

In Florence, Colorado,

Signed: ptg Noe

Peter G. Noe
#10849-041
United States Prison / Max
P.O. Box 8500
Florence, CO 81226

EXHIBIT B



**U.S. Department of Justice
Federal Bureau of Prisons**

North Central Regional Office

Office of the Regional Counsel

400 State Avenue
Tower II, Suite 800
Kansas City, KS 66101

SEP 15 2021

PETER NOE, #10849-041
ADX FLORENCE
P.O. BOX 8500
FLORENCE, CO 81226

Re: Administrative Claim for Damages
Claim #: TRT-NCR-2020-07199 \$ 100,000.00

Dear Claimant:

This is to notify you of our receipt of your administrative claim for damages under provisions of the Federal Tort Claims Act, Title 28 USC §1346(b), 2671 et. seq., alleging liability of the United States Government.

Your claim was received on 08-31-2020. The above referenced Act provides that the agency has 6 months to make an administrative determination on your claim from the date such claim was received by the appropriate agency. Accordingly, in the matter of the above referenced claim, the government's response is not due until 02-27-2021.

Regulations that may be pertinent to your claim may be found at Title 28 C.F.R. Part 14 et.seq., and §543.30.

Sincerely,
Richard M. Winter
Regional Counsel

Name: Peter George Nise #10849-041
Reg No: _____
U.S. Penitentiary MAX
P.O. Box 8500
Florence, CO. 81226-8500



"Legal Mail"

Office of the Clerk
Unite d States Dist Ct
901-19th Street Room P
Denver, CO, 80294-3588

FEDERAL PRISON CAMP
P.O. BOX 5000
FLORENCE, COLORADO 81226

SEP 09 2021

DATE: _____
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The enclosed letter was processed through special mailing
procedures for forwarding to you. The letter has neither
been opened nor inspected. If the writer raises a question
or problem over which this facility has jurisdiction, you may
wish to return the material for further information or clarification.
If the writer enclosed correspondence for forwarding to another
addressee, please return the enclosed to the above address.