IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 23-CV-03420-CNS-CYC

TRACY SPENCER a/k/a JAHAD ALI,

Plaintiff

v.

Jury Trial requested:
(Please check one)
X Yes ____ No

MARY DWYER, in her individual capacity,
CORRECTIONAL HEALTH PARTNERS, in their official capacity,
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.

Tracy Spencer a/k/a Jahad Ali #56036, Fremont Correctional Facility, P.O. Box 999, Canon City, CO. 81215
(Other names by which you have been known)
Jahad Ali (legal name)

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

___ Pretrial detainee
___ Civilly committed detainee
___ Immigration detainee
_X_ 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: Mary Dwyer, Physician Assistant, Fremont Correctional Facility (FCF), P.O. Box 999, Canon City, CO. 81215
(Name, job title, and complete mailing address)

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

Was, at all times pertinent to this complaint, Physician Assistant, in that capacity, was responsible for ensuring, and managing my diabetes, congestive heart failure, and high blood pressure. Defendant Dwyer took an oath to do no harm. At all times pertinent hereto, Dwyer was acting under color and authority of state law.

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

Defendant 2: Correctional Health Partners, 1720 S. Bellaire Str. Suite 700, Denver, CO. 80222
(Name, job title, and complete mailing address)

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

Was, at all times pertinent to this complaint, CHP is a third party medical claims administrator, in that capacity, was responsible for ensuring that as a patient within CDOC I would be provided with access to outside consults, procedures, and diagnostic tools. To help control the plaintiff's diabetes. At all times pertinent hereto, Correctional Health Partners was acting under color and authority of state law.

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

Defendant 3: _____
(Name, job title, and complete mailing address)

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:

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

C. JURISDICTION

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

_X_ State/Local Official (42 U.S.C. § 1983) This action is authorized by U.S.C. Sec. 1983 to redress the deprivation, under color of law, of rights secured by the U.S. of the United States. The Court has jurisdiction under 28 U.S.C. 1291, 1331, 1343 (a) (3). I am a citizen of the United States of America, and was at all times mentioned herein in the constructive custody of the State of Colorado via the Department of Corrections at the Fremont Correctional Facility, Located in Fremont County, Canon City, and CO. 81215. The United States District Court for the 10th District of Colorado is the appropriate venue because it is where the events giving rise to the claim(s) herein occurred. The herein named defendants Mary Dwyer, and Correctional Health Partners acted under the color of law, and Mary Dwyer sued in her individual capacity, and Correctional Health Partners sued in their official capacity.

___ Federal Official
As to the federal official, are you seeking?

COLORADO DEPARTMENT OF CORRECTIONS
LEGAL ACCESS PROGRAM

REQUEST FOR PRISONER ELECTRONIC SCANNING (PEF) | COVER PAGE

INCOMPLETE FORMS WILL BE DENIED. TODAY'S DATE: 1/31/25

LAST NAME: Spencer, Al. FIRST INITIAL: J DOC#: 56036

FACILITY: FCF HOUSING UNIT: 3 TIER: F CELL: 8

STATE THE TYPE OF DOCUMENT BEING SENT:

☐ 42 USC §1983 INITIAL **COMPLAINT** (FORM=6 PGS.) TOTAL PGS. BEING SENT: _____

☐ 28 USC §1915 **INFORMA PAUPERIS 1983 COMPLAINT** (FORM=4 PGS) TOTAL PGS. BEING SENT: _____

☐ 28 USC §2241 **APPLICATION FOR A WRIT OF HABEAS CORPUS** (FORM=4PGS) TOTAL PGS. BEING SENT: _____

☐ 28 USC §2254 **APPLICATION FOR A WRIT OF HABEAS CORPUS** (FORM=6PGS) TOTAL PGS. BEING SENT: _____

☐ 28 USC §2255 **APPLICATION FOR A WRIT OF HABEAS CORPUS** (FORM=5 PGS) TOTAL PGS. BEING SENT: _____

☐ 28 USC §1915 **INFORMA PAUPERIS FOR HABEAS** (FORM=2PGS) TOTAL PGS. BEING SENT: _____

☑ Other, please list document(s) here with page number for each document:
Amended 1983 Complaint 9 pgs

OFFENDER MUST PROVIDE COURT ORDER TO CURE DEFICIENCIES TO LEGAL ASSISTANT

☑ CHECK HERE IF THIS IS AN AMENDED COMPLAINT _____

☐ CHECK HERE IF THIS IS IN RESPONSE TO CURE DEFICIENCY _____

OFFENDER SIGNATURE _____
(Sign on this line)

DO NOT WRITE BELOW THIS LINE.

Date Request Received: JAN 31 2025 Facility Law Library FCF Legal Assistant's Initials CAT

TOTAL PAGES WITH THIS FAX, INCLUDING THIS COVER PAGE 10 pgs

Your request has been **DENIED:** _____ **in whole** _____ **in part for the following reason(s):**

____Your request form was not properly completed (Missing required signature, last name, first initial, full cell location, facility, unit, tier, cell, DOC #, date, etc.)

____The material you have submitted does not meet program definitions of legal material, as described in AR 750-01.

____Your PEF request exceeds the page limit established by the Legal Access Program (see attached). Also see posted PEF policies.

____You have not submitted the documents to be scanned.

____The Legal Access Program will not allow scanning/transmission of ARs, IAs, OMs, case law, statutes, court rules, session laws, or material contained in the law library, even as attachments/exhibits.(Exception for non-published case law to be attached to a pleading.)

____The Legal Access Program will not allow scanning/transmission of transcripts, electronic or paper media, including but not limited to transcripts, court records, and discovery from courts or attorneys, incomplete documents, altered documents, and/or blank forms.

____The Legal Access Program will not allow scanning/transmission of non-original documents, previously-copied/scanned documents, incoming correspondence, or documents (account statements, mittimus, etc.), grievances, COPD appeals; except as exhibits attached to an original pleading being filed with the court. Your pleading must include a statement referring to the attached exhibits in order for them to be scanned/transmitted.

____The Legal Access Program will not allow scanning/transmission of documents which have any substance on them (such as dirt, food, coffee, hair, bodily secretions, glue, tape, toothpaste, etc.

____Documents containing UCC/Sovereign citizen statements or signatures will not be allowed to be scanned/transmitted.

____You may bring your request into compliance and resubmit.

Other_____

METER END: _____ MINUS (-) METER BEGIN: _____ EQUALS (=) TOTAL ADMIN COPIES: _____

___ Money damages pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)

___ Declaratory/Injunctive relief pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1361, or 28 U.S.C. § 2201

__X__ Other: (*please identify*) Punitive damages, Compensatory damages,

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: CRUEL AND UNSUAL PUNISHMENT DELIBERATE INDIFFERENCE, based on continual denial and delay of medical care and treatment

Claim one is asserted against these Defendant(s): Mary Dwyer, P.A., and Correctional Health Partners

Supporting facts: On November 15, 2021, I was diagnosed with Congestive Heart failure, High Blood Pressure, and Type II Diabetes, and was prescribed Metformin for my diabetes.

¶1. October of 2019, I arrived here at Fremont Correctional Facility (FCF) and have resided here since.

¶2. Since my arrival here, I have not experienced any medical crisis like the one I experienced on September 9, 2023.

¶3. I was assigned P.A. Dwyer as my primary care physician in 2022.

¶4. Prior to September 9, 2023, the only medication that I was prescribed for my diabetes was Metformin, I am required to take insulin now to control my diabetes.

¶5. The last time that P.A. Dwyer consulted with me was in March of 2023-six months prior to the life-threatening medical incident on September 9, 2023.

¶6. The following are my five Request for Sick call (kites) forms-all addressed to Physician Assistant Dwyer, which went unanswered, (unanswered kites here at FCF are standard practice violating access to medical treatment):

1. August 7, 2023, "Attn: PA Dwyer I need my Metformin I am getting sick."
2. August 12, 2023, "I am losing weight and dehydrated, and my vision is blurry, thirsty and urinating every 15 min."
3. August 17, 2023, "I need to see you I am not feeling well my diabetes is getting worst."
4. August 28, 2023, "If you are not going to see me assign me to someone else my vision, I can barely see, I am urinating constantly.
5. September 5, 2023, "You are still not helping me my diabetes is not being treated I am fatigued, dehydrated now my heart is not functioning right my vision, my kidneys.

¶7. The following are my three Request for Sick Call (kites) forms-all addressed to Physicians Assistant Dwyer, which went unanswered:

1. October 2, 2023, "While in ICU I was prescribed by Dr. Begren Psyllium husk I need this ordered."
2. October 6, 2023, "While in ICU I was prescribed by Dr. Begren Psyllium husk I need this ordered."
3. October 7, 2023, "Since coming back from the hospital I've had blood in my urine I am requesting to see my endocrinologist."

¶8. I returned from the hospital on September 13, 2023, and was not seen by P.A. Dwyer, or any other P.A. until December 20, 2023.

¶9. P.A. Dwyer, being my primary care-giver, it is irrefutable that I have consulted with P.A. Dwyer about the seriousness of my condition which she diagnosed; and such should be memorialized in the treatment records.

¶10. On or around August 29, 2023, I attended a tele-health appointment with Dr. Scott at which time, I alerted P.A. Dwyer of my condition blurry vision, extreme thirst, constant urination, dehydration, etc., and she refused to give treatment, my symptoms were clearly evident to the defendant yet she refused to give even minimal attention to my obvious medical needs/problems. However, what she did do was inform me (just as other staff has told me) that, "medical was overwhelmed and understaffed." Therefore my medical needs were delayed, denied, and not met.

¶11. Based on the lack of medical attention my symptoms would worsen. On September 9, 2023, my symptoms became life-threateningly worse. C/O Llewellyn (cell-house staff) noticed my condition then called medical, and then had me escorted by inmate Newman # 174285 to FCF Medical Clinic. Ultimately, it was determined that I was in the midst of a medical crisis. I was immediately transported by ambulance to St. Thomas More Hospital and admitted to the Intensive Care Unit.

¶12. The following are the urgent request from Provider Kelly E. Gillion to Correctional Health Partners (CHP), requesting consult with an endocrinologist.

1. Provider Gillion requested consultation with an endocrinologist on June 27, 2024.

2. This consult was presented "priority urgent" because the plaintiff's blood sugar has remained out of control.

3. Action taken by CHP on July 3, 2024 was a denial of consultation.

4. The comments given by CHP is as follows: "Patient was previously seen for other conditions by endocrinology and not for DM. Please document response to medication changes initiated at this visit. Please document specifically 'changes" patient has made, historical medical regimens, as well as documented overall glycemic trends."

5. Over a two year period the provider has provided CHP with the information that they have requested, the plaintiff's blood sugar has gotten worst as memorialized in his records, and marked as urgent by the provider.

6. CHP, has continued to not just deny the consult request but also the appeals for those request, and till this day plaintiff's blood sugar is uncontrolled, and untreated without a treatment plan from a specialist. These customs, and policies have led to the continuation of the plaintiff's constitutional rights.

E. PREVIOUS LAWSUITS

Have you ever filed a lawsuit, other than this lawsuit, in any federal or state court while you were incarcerated? _X_ 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): Colorado Department of Corrections

Docket number and court: I do not have this information

Claims raised: Due Process

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

Reasons for dismissal, if dismissed there was no claim on which relief could be granted

Result on appeal, if appealed: None

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?

_X_ Yes ___ No (*check one*)

Did you exhaust administrative remedies?

_X_ 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."

$ 1.000.000.00 severally against P.A. Dwyer, for physical and emotional suffering for deliberate indifference to serious medical needs, and delay and denial of treatment.

$2.000.000.00 severally against Correctional Health Partners, for physical and emotional suffering for deliberate indifference to serious medical needs, and delay and denial of treatment.

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)

1/31/25
(Date)

(Revised November 2022)