

# Scott v. Clarke Timeline

Every day the 1,200 women prisoners at Virginia's largest and most secure women's prison receive no health care for serious conditions or receive abysmally sub-standard care. On July 24, 2012, we, along with Wiley Rein LLP of Washington, D.C. and the Washington Lawyers Committee for Civil Rights and Urban Affairs, filed a class action lawsuit on behalf of five women prisoners incarcerated in the Fluvanna Correctional Center for Women. The lawsuit, titled *Scott v. Clarke*, and filed in the U.S. District Court for the Western District of Virginia, challenges the Virginia Department of Corrections (VDOC) and its health care contractor(s) for failing to provide constitutionally adequate medical care.

Our complaint demonstrates that the medical care provided is so deficient that it violates the Eighth Amendment. The Eighth Amendment to the U.S. Constitution protects prisoners from cruel and unusual punishment and requires adequate health care for prisoners. The courts forbid prisons from giving medical care that shows deliberate indifference to prisoners' medical problems. The suit is significant because it will establish standards for adequate and appropriate health care for the five women's prisons in Virginia and clarify the continuing legal obligation of VDOC to ensure quality healthcare.

Below is a timeline of major events in the life of *Scott v. Clarke*.

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## July 2012

- Filed July 24<sup>th</sup> in the U.S. District Court for the Western District of Virginia

## December 2012

- *Scott V. Clarke* survives a motion to dismiss filed by the Virginia Department of Corrections, with the judge issuing a strong written opinion declaring our complaint adequate as pled to allege Eighth Amendment violations.

## April - May 2013

- Armor Correctional Health Services, VDOC's health contractor at the time of filing, loses their contract with VDOC when it expires on April 30<sup>th</sup> and is not renewed. The same day, VDOC begins a new contract with Corizon Health, Inc, the health provider who served in this role prior to Armor's contract.
- Armor files a motion to dismiss seeking to remove themselves from the suit because they no longer provide health services in Virginia prisons.
- We file a request for production of documents seeking policies, procedures, contracts, medical/grievance/disciplinary records, etc.

## June- July 2013

- For an article on [www.CVille.com](http://www.CVille.com)<sup>1</sup> about *Scott v. Clarke*, a spokesperson for Armor states that Corizon undercut Armor's bid to renew their contract by about \$17 million annually. Their success with that bid demonstrates that VDOC intends to spend less, not more on inmate healthcare.

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<sup>1</sup> <http://www.c-ville.com/fluvanna-prison-lawsuit-celebrates-small-victories-faces-uphill-battle/>

- We file a motion to amend our complaint to add Corizon to the suit after we determined that Corizon had not taken any immediate steps to reform the quality of health care being provided at Fluvanna Correctional Center for Women.
- Our motion to amend is granted during a telephonic hearing during which the motion surprisingly went unchallenged by Corizon.

### **September – October 2013**

- Armor's motion to dismiss is granted, removing them from the suit but retaining VDOC and Corizon. This was not viewed as detrimental as we are not seeking damages but rather injunctive relief going forward.
- We file a motion to compel discovery after VDOC refuses to release documents citing privilege and irrelevancy. Documents withheld or redacted include reports regarding the tracking of infectious diseases, documents regarding the investigation of fatalities, and policies regarding the treatment of a range of serious diseases including diabetes, hepatitis, MRSA and cancer.

### **November – December 2013**

- Our motion to compel discovery is granted along with attorneys' fees. In his written opinion, the judge stated that VDOC, "does not remotely satisfy their burden (to show discovery should not be allowed)" and "the objections that VDOC Defendants have interposed as a basis for limiting their response...are not well-taken."

### **January – March 2014**

- Ongoing discovery with over 20,000 pages of documents received.
- We secured the services of Dr. Bob Greifinger, a recognized expert in prison healthcare lawsuits, to examine these documents and prepare his expert opinion. Dr. Greifinger has testified in several similar cases, sometimes for the plaintiffs and other times for the defense.
- VDOC identifies one corrections expert.
- Corizon secures three medical experts and any experts identified by VDOC.

### **April – June 2014**

- We take or defend 23 depositions including our 4 named plaintiffs, VDOC officials, employees of both Corizon and Armor, and prison employee..
- The deadline to disclose experts passes on June 13. This ends up being important.

### **June 2014**

- Corizon files a 120 day notice to VDOC of their intent to cancel their contract with VDOC by exercising a clause that allows them to exit after the first year. We believe they were expecting to be able to renegotiate, but instead DOC initiated a bid process and hired Armor on an emergency basis starting in October 2014. This turn of events validated an argument that we had put forth during Armor's motion to dismiss themselves from the lawsuit, namely that there had been and would be a revolving door of healthcare vendors.

- Upon learning that Armor was to be reinstated, Corizon filed a motion to stay the case until they are no longer the healthcare vendor arguing that having to pay legal fees in the meantime for a case in which they would likely be dismissed was an undue burden.

#### **July 2014**

- In mid-July the judge denied Corizon's motion to stay. In his written opinion the judge states, "Corizon unilaterally seeks to suspend this litigation as to all parties, but offers no credible basis for granting the extraordinary relief requested." He also notes, "A stay under such circumstances would work manifest injustice to the claimant."
- The same day the judge rejected Corizon's motion to stay, we filed a motion to dismiss Corizon from the case pursuant to an agreement we negotiated with their council that they would still be subject to the court's jurisdiction for the purposes of adjudicating any disputes about discovery documents that had not yet been turned over.
- On July 31<sup>st</sup>, Corizon is dismissed from the case. Going forward, VDOC is the sole defendant, represented by the Attorney General's Office.

#### **August – September 2014**

- In mid-August we filed our motion for class certification. The motion itself is forty-nine pages long and includes fifty-four exhibits.
- In early September we filed our motion for partial summary judgment on two points. The first was asking the judge to rule that our clients had serious medical needs. The second was that VDOC has a non-delegable duty to provide constitutionally adequate medical care.
- VDOC filed a summary judgment motion asking the judge to rule on the entire case in their favor.
- In mid-September at the hearing on Class Certification the Judge ruled from the bench that he would rule to certify the class.
- Sometime in September, VDOC realized that when Corizon was allowed to exit the lawsuit they took with them the medical experts that they had designated. Facing the prospect of a trial with the quality of medical care at its core and no medical experts, on September 18<sup>th</sup>, VDOC filed a motion to amend its expert disclosures to add Corizon's former experts, despite the deadline for doing so having passed in Mid-June and more than six weeks having passed since Corizon was dismissed.

#### **October 2014**

- In early-October we file a response opposing VDOC's adding additional experts and file a motion to strike the jury, arguing that because we seek only injunctive relief going forward, VDOC does not have a right to a jury trial.
- In mid-October at the hearing for Summary Judgment, the judge also heard argument on VDOC's motion to amend their expert disclosures. Five days later, he denied that motion, leaving VDOC with no medical experts in the case. He also granted our motion to strike the jury.
- During the arguments regarding summary judgment, the judge did not rule from the bench, but his statements and questions to counsel suggest that he is unlikely to grant VDOC's motion for summary judgment and views our motion favorably. We have not yet received a decision.

### **Current Status**

- One of our clients has cancer that has resisted treatment and is currently receiving palliative care for her extremely painful condition. When we went to the prison on November 4<sup>th</sup> to prepare her for her deposition (because of her illness, we cannot be sure she will be able to testify at trial, so we are taking her deposition in advance), we were prevented from meeting with her because she was in too much pain to speak with us. Fluvanna Women's Prison had run out of her pain medication, despite repeated assurances that she would be properly cared for. As this report is being written on November 5th, our staff are traveling back to the prison having been assured that the problem has been rectified, but our staff are outraged, and prepared to take immediate action should this ever occur again.

**Opening Arguments are December 1<sup>st</sup> at the Federal Court Building in Charlottesville at 9:30AM.**