

CYNTHIA B. SCOTT, *et al.*,)
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Plaintiffs,)
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 v.)
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 HAROLD W. CLARKE, *et al.*,)
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Defendants.)
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Case No. 3:12-cv-00036-NKM
 Sr. Judge Norman K. Moon

DECLARATION OF PEGGY ELLIS

1. My name is Peggy Ellis. I am a 54-year-old woman. I have been incarcerated at FCCW since December 19, 2005. I am scheduled to be released in June 2022. I have personal knowledge of the facts in this declaration.

2. I am an insulin-dependent Type 1 diabetic. I also have other chronic health conditions as complications of my diabetes, including high blood pressure, glaucoma, fourth-stage kidney disease, a history of blood clots, and acute heart failure. These conditions can worsen if my diabetes is not well-controlled.

3. My health has declined since arriving at FCCW. In the past fifteen years, I have been to the University of Virginia hospital three times due to diabetic ketoacidosis, a serious and life-threatening complication of diabetes.

4. I was sent to the ICU for a few days in 2015 and required emergency dialysis to clean out my kidneys. My kidney disease is a complication of my diabetes. My kidneys function at around 17 percent as of my June bloodwork, but my nephrologist, Dr. Gibson, told me this May (2020) that when they drop to around 8 percent I will need to go on dialysis. I found out that I was in acute kidney failure when I was hospitalized at UVA. Doctors told me that I had been in fourth stage kidney failure for at least five years. Despite having access to my

bloodwork, which indicated my declining GFR (glomerular filtration rate) levels, no one at FCCW informed me that I had entered late-stage kidney failure, or took any steps to treat it.

5. I also had a heart attack in January 2020, which required me to be in the University of Virginia Medical Center for nearly a month. My heart disease and heart attack were related to my diabetes. When you have diabetes, vessels in your heart constrict, which can cause blood clots and lead to a heart attack. I was in the hospital for a few days after my heart attack, and then returned to FCCW. After being there for five days, I had to return to the hospital because of a complication from the heart attack that made it hard to breathe. I had to stay in the hospital for another three weeks. When I returned to the hospital, I found out that my blood oxygen saturation was at 80, a very low number. Doctors told me that this was because my heart was weak and could not pump strong enough, so my lungs filled with fluid.

6. I have been diabetic for 36 years. As I was incarcerated at FCCW 15 years ago, I spent 21 years prior to my incarceration managing the treatment of my diabetes.

7. This management included careful monitoring of my diet, which is necessary because my blood sugar levels depend on both the level of insulin in my body and on what I eat.

8. For example, diabetics are not able to effectively process carbohydrates, so consuming too many carbohydrates can exacerbate my condition and put my health at risk.

9. When I was managing my own diabetes, I was careful to restrict and monitor the carbohydrates I consumed in order to keep my blood sugars at a healthy and appropriate level. For example, I ate salads and fresh fruit and vegetables. I also ate brown rice instead of white rice and whole wheat bread instead of white bread. I avoided junk food like chips, noodles, ramen, and food that was high in sugar, like cake or other sweets. While I did sometimes have

carbohydrate-heavy food, like pasta, I always made sure I had the insulin to cover what I ate. I usually opted for sugar-free snacks.

10. When I was managing my own diabetes, I tested my blood sugar many times a day to check if my levels were high or low, and I changed my diet and insulin to keep up with those changes. I was always able to make sure I took my insulin when I needed it.

11. The standard diet at FCCW is very heavy in carbohydrates. Most meals contain potatoes, bread, pasta, or rice. Recently, the prison switched from providing whole wheat bread, which is better for diabetics, to providing white bread. White bread raises blood sugar levels more drastically than whole wheat bread because it has highly processed carbohydrates and added sugar.

12. Because I had experience handling my diabetes before my incarceration, I knew about the important role diet plays in treatment. I (along with other diabetics at FCCW) have repeatedly requested alternate dietary accommodations in the form of “diabetic trays” or simple substitutions from ingredients containing substantial starch or added sugar. A few years ago, FCCW did offer “diabetic trays,” but these were just provided same foods (potatoes, bread, pasta, rice) given to the general population in smaller portion sizes. FCCW got rid of this option three or four years ago, though we do receive snacks to keep our blood sugar levels up.

13. A few years ago, myself and several other diabetics asked prison officials, including the kitchen supervisor, for diabetic-appropriate food options. The prison said no and told us that the food served day-to-day is approved by a dietician at the Department of Corrections, and we should write to her if we had a problem. The diabetics at FCCW jointly wrote to her, and we filed several grievances with the DOC. It never went anywhere. We still get the same carbohydrate-heavy diet that is provided to the rest of the prison.

14. Dr. McDonald oversaw our care before his departure from FCCW several years ago. He was aware of the unavailability of suitable food, and advocated for us to receive diets better suited to our medical conditions and diabetes, such as meals containing more fresh fruits and vegetables and fewer carbohydrates. He spoke on our behalf with prison officials and supported our written grievances with the Department of Corrections. Dr. Remaly worked with Dr. McDonald to get us more yard time for exercise too.

15. Despite Dr. McDonald going to bat for us, we continue to receive the same diet provided to non-diabetic inmates. In fact, the nutritional value, and diabetic-appropriate nature of the food provided by the prison has gotten worse. Sugar-laden items, such as cookies and cake, have been added to the menu and are served to both diabetics and nondiabetics. Since Dr. McDonald left, as far as I know, no other doctors have raised this issue or advocated for healthier, diabetic-friendly food options at the prison.

16. The lack of food I can safely eat makes my diabetes worse and puts me at risk for developing further complications and health conditions. Because of the food I'm forced to eat at FWCC, my blood sugar readings are higher than they were before I was incarcerated. They rose within months of my arrival here and never returned to normal. My Hemoglobin A1C test, which measures my average blood sugar range for the past two to three months, has been 9 percent or higher in recent readings. A measure of over 8 percent generally indicates that your diabetes is not well-controlled. Because my blood sugars have been so high and uncontrolled, I have a higher risk of developing complications.

17. My insulin prescription was increased by two units at my last visit to the University of Virginia Hospital. I am a "brittle diabetic," which means my blood sugar levels can

go from very high to very low, very quickly. When I was in the hospital, they had to hook me up to an insulin IV drip and test my sugar every hour to keep everything stabilized.

18. Additionally, my physical wellbeing is worse on a daily basis because I don't have the right food to eat. When my sugars are too high or too low, I experience severe headaches and dizziness. I become lethargic, and my vision blurs. I feel light-headed, and my mouth gets dry. When my blood sugar is too high, I become so disoriented I can seem intoxicated. Before coming to FCCW, I carried a card in my wallet that stated that I was not drunk but was experiencing a diabetic reaction. When I become that disoriented, I cannot think straight or talk right, so the card was how I could communicate what was happening to me. FCCW has never provided us with cards, medical bracelets, or other reliable ways of identifying ourselves as insulin-dependent diabetics. Without these cards, correctional officers may not believe that our unusual behavior may be caused by our diabetes.

19. I also have neuropathy (nerve damage) in my legs and feet as a result of my unbalanced sugars, which causes sharp pains. When my sugar is high, the pain is worse. I used to take Neurontin, a medicine for the nerve damage, but I cannot take it at FCCW because it is classified as a narcotic. Tylenol, which is designed for muscle aches, does not help with the pain. FCCW nurses just advise diabetics to manage the nerve damage by drinking more water. This is not possible for me since I am on fluid restriction because of my heart disease and chronic late-stage kidney failure. The pain can be so sharp it feels like my legs are on fire. Other times, I can't feel my feet at all. Sometimes, the pain is so bad I cannot sleep at night. Every doctor I have seen, including outside FCCW, has told me that the damage to my nerves is permanent.

20. My worsening health has sometimes made me feel hopeless and depressed. As my health deteriorated, I could not picture actually walking out of FCCW. I thought I would die

in prison. As I get closer to release, I try to focus on the time I will have with my family. I have a mother, sister, daughter, and three grandchildren I think the world of. I try to stay strong for them. Even now, though, I can become so discouraged I think I will die in this prison anyway, and I just want to give up.

21. Because I am incarcerated, I am not allowed to store and decide when to take my own medication. I have to depend on prison staff to keep track of my medications and provide them to me on time. When these medications are missed or provided in the wrong dose, I face the risk that my chronic conditions will flare up and my health will deteriorate even further.

22. Insulin is the only medication I take right now to manage my diabetes, although I take other medications for my other conditions. In order to effectively manage my blood sugar, I have to receive the insulin on a regular schedule. Each day, I am supposed to receive two shots at 6 AM, one shot at 10:30 AM, and two shots at 4 PM, depending on my blood sugar levels. The shots serve different purposes. In the mornings and afternoons, I get one injection of long-acting insulin and one injection of short-acting insulin.

23. I know that you are supposed to take your insulin injections before meals. The nurses at FCCW, however, will sometimes give it to us after we have already eaten. Since I have been in the infirmary, the nurses bring me pre-drawn insulin about half of the time, even though they are supposed to draw the insulin in front of me. This concerns me because I have no way of knowing that I am being injected with the right kind of insulin.

24. On many occasions, probably more than a hundred, nurses at FCCW did not provide my insulin injections on time or skipped them entirely. Sometimes, I have to call family members and get them to call the prison and tell them I need my medication. Missing insulin causes my blood sugar to spike and puts me at risk of diabetic emergencies and hospitalization,

including diabetic ketoacidosis or diabetic coma. It also causes the other painful side effects I already described, including severe headaches, leg and foot pain, disorientation, lethargy, and dizziness.

25. Three months ago, for example, the nurse did not provide one of my required long-acting insulin injections at 4 PM. I repeatedly asked for my shot, but no one listened to my concerns. Instead, I was accused of lying to the staff. The nurse swore that I had received the correct dose, because it was marked in the computer. She refused to listen to me, and emphasized that she could only do what the computer said. I felt powerless as my blood sugar rose throughout that day, and I experienced the symptoms I described earlier (headaches, blurred vision, pain from my neuropathy, disorientation, lethargy, and dizziness). I knew that filing a grievance would be pointless, because it would not get me my insulin shot that night. My next blood sugar reading was at 400, which is substantially higher than normal. This confirmed that I had not received my shot.

26. I take a total of thirty-one pills every day for my other chronic conditions. These are provided to me in a cup by a nurse every morning and evening.

27. Each time, I have to check that I am receiving the correct medication, because the nurses frequently make mistakes in providing the correct number and dosage of prescribed medication. I often notice missing or additional pills in my cup.

28. When I tell the nurses that I have not received a particular medication or that there is an unexplained change to the contents of my pill cup, they usually don't listen. When I ask them about the pills, they get an attitude. Most of the time in these cases, the nurses will refuse to cross-check my concerns with their computer records, and I end up receiving the wrong type or amount of medication. When I can't get answers from the nurses, I refuse to take the pills. I feel

like I have no other option. Filing a grievance feels pointless, as grievances do not lead to answers and grievances I have filed in the past have not encouraged the nurses to communicate with me.

29. In the past, the nurses would miss pills all the time, and it felt like it was always the medication I needed. For example, when my cardiologist prescribed me a diuretic after my heart attack, the FCCW clinic could never keep it in stock. I was eventually given a different prescription by Dr. Gibson. I also have to regularly remind the nurses to give me my iron pills. These are important because they help make up for my reduced kidney function.

30. Even when a doctor prescribes additional medication or changes the dosage of existing medication, I am often in the dark about the details of my medical care. Medical decisions are made without communication, and I find out about these changes only by observing my cup in the pill line. For example, I only learned that my cholesterol levels had increased (which have to be monitored due to my kidney problems), because I noticed an extra cholesterol pill in the cup.

31. When I ask the nurses about my care, they usually will not answer my questions. In recent months, these communication issues have gotten much worse. I usually need to speak with a doctor to get any real answers. Unfortunately, it is very hard to get those opportunities. Especially since I have been in the infirmary, it has been rare to be able to get appointments, and I only have few opportunities to speak with Dr. Heater about my care.

32. Though I am supposed to see my assigned chronic care team doctors every three months, I have also been unable to get these appointments. In the past, I would meet with a chronic care nurse every three months, and they would refer me to a doctor if they noted any

changes in my condition. Now, I am seen in the chronic care clinic only twice a year. Because I have multiple chronic conditions, I have to talk to the doctor about all of them at once.

33. The lack of communication at FCCW makes me feel powerless when it comes to my health, and leaves me at the mercy of mistakes by the prison staff. I fear that this may have drastic permanent effects on my health, given my multiple chronic conditions.

34. Because of Covid-19, I cannot meet in person with my attorney to sign this document. Instead, my attorney has read this declaration out loud to me. I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief and ask my attorneys to file this declaration on my behalf.

I swear under penalty of perjury that the above is true to the best of my knowledge.

 /s/ Peggy Darlene Ellis

 9/14/2020

Peggy Darlene Ellis

Date