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62nd Montana Legislature

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January 19, 2012

TO: Law and Justice Interim Committee Members

FROM: Sheri Scurr, LSD Research Analyst, committee staff

RE: Medical issues of Mr. Ronney Harriman, MSP inmate # 2056680

Following our LJIC meeting on December 24, 2011, Senator Shockley requested that I prepare a summary of a packet or information provided during public comment by Ms. Casey Rudd, Director of Connections in Bozeman, concerning the medical issues of MR. RONNEY HARRIMAN, #2056680, presently incarcerated at MSP. Senator Shockley further requested that I provide this summary for informational purposes to all LJIC members.

This is a chronological summary of documents submitted as exhibits in litigation against the Department of Corrections initiated by Mr. Harriman's attorney, Patrick Flaherty, in February 2009. Mr. Flaherty filed a Petition for a Writ of Mandate asking the court to compel surgery for Mr. Harriman's hernia. The court denied the petition on October 19, 2009, stating that the court cannot compel a discretionary act. I have copies of the key court documents from which this summary was made and will make them available to committee members upon request.

Please note that according to the Department of Corrections, there are more recent medical documents related to Mr. Harriman's condition that are not part of this court record and are therefore not public.

Date **Document Summary**

Nov. 19, 2008 1st Letter from Dr. Rohrer for Harriman: A letter from Dr. David Rohrer, Great Falls, to Mr. Harriman's attorney, Patrick Flaherty. The letter stated that Dr. Rohrer had reviewed documents dropped off at his office, which were not medical records. Dr. Rohrer said he believed Mr. Harriman's abdominal complaints were caused by a traumatic injury in June 2006, for which an exploratory laparotomy was done, that Harriman apparently developed multiple incisional hernias over the next few months and then underwent a mesh repair in 2007, but then apparently developed a recurrent hernia. Dr. Rohrer stated that "abdominal wall hernia are at risk of developing incarceration or strangulation which would require

emergency surgery and can be life-threatening. As long as the person is physically able to undergo surgery, repair of hernias are recommended." Dr. Rohrer also stated that "repeat surgeries for hernia repairs certainly do have a higher risk for complications including bleeding, infection, recurrence of hernias, and chronic pain. I would not expect that his pain issues would necessarily resolve with another repair. He should take that into consideration as well but should not necessarily prevent him from having another repair."

Nov. 24, 2008

Letter from Flaherty to MSP: Flaherty sent a letter to Warden Mahoney and the Medical Director of MSP requesting that Mr. Harriman be immediately referred to a qualified physician for surgical repair of the hernia as recommended by Dr. Rohrer. The letter included attachments of photos and a copy of Dr. Rohrer's Nov.19, 2009, letter.

Feb. 5, 2009

2nd Letter from Flaherty to MSP: Flaherty sent a second letter to Warden Mahoney and the Medical Director of MSP requesting a reply to the first letter, noting that Mr. Harriman reported his condition was worsening, and stating that if he (Flaherty) did not get an answer within 10 days he would be constrained to file suit for damages and ask the court to order that proper medical care be provided.

Feb. 17, 2009

1st Harriman affidavit: Flaherty obtained affidavit of Harriman stating that initial injury occurred at work in June 2006, when he was hit in the belly button by a pick ax, was hospitalized for internal bleeding and went in for emergency surgery. Awoke to find staples from groin to rib cage. Four months later, car accident, arrested in Kalispell and incarcerated in Flathead County jail. Shortly after, noticed B.B. size bump, notified doctor and nurse at the jail, no response for four months. Hernias progressed to marble size, then golf ball size. According to Harriman, the jail said they would not treat because he was being sent to state prison and his treatment was not the jail's responsibility. According to Harriman, Dr. Raiser (a private practice doctor on contract with MSP to provide surgery) saw him shortly after his arrival at MSP, was very concerned, and scheduled surgery as soon as possible. It took 3 months for MSP to coordinate the surgery. Harriman states that after the surgery, he did not get adequate time to recover and received no follow up for 6 weeks. He was sent to close II (max) and required to walk stairs twice a day to get to meals. When MSP finally allowed Dr. Raiser to see him again, the doctor told Harriman another surgery would be scheduled. But, Harriman was moved to Glendive and his hernia was aggravated by all the activity and no special considerations were given for his medical needs. He filed kites and grievances and was told to stop it, he would not be scheduled for

surgery while he was in Glendive. In 2007 he was moved back to MSP. Harriman states that Dr. Raiser agreed he needed another surgery, but was told that Medical Director Dr. Rantz had spoken with Dr. Raiser and determined that the surgery was "elective" and that Mr. Harriman had ruptured his hernias "on his own". Harriman stated he was promised he would get a new binder to hold in his intestines, but was not given one and was in constant pain that was intolerable.

Feb. 19, 2009

Harriman's Petition for Writ of Mandate: Flaherty filed a petition in the 3rd Judicial District Court, Powell County, asking that the court direct that "essential medical care be provided" to Mr. Harriman. The petition also noted that Mr. Harriman was noticing blood in his stool and requesting that he receive immediate medical treatment for that as well.

March 12, 2009

Affidavit from Dr. Kohut, MSP, for State: In its reply brief, the state submitted an affidavit from Dr. Tristan Kohut, a physician employed at MSP. Affidavit summarizes Harriman's treatment history, stated that larger hernia reduces the risk of incarceration and strangulation and that hernia is reducible if Harriman lies down. Kohut recounted Harriman's medical history concerning the hernia, stated that on March 7, 2007, Harriman was transported for consultation with Dr. Frank Raiser, who recommended a laparoscopic mesh repair, which was done on May 1, 2007. Harriman was directed to use a prison-issued binder around his torso to promote healing and provide support and pain relief. Kohut states that medical records indicate that there were likely many instances of Harriman not wearing his binder and perhaps manipulating the hernia site. June 6, 2007, Harriman transported to Butte for post-operative appointment with Dr. Raiser. Dr. Raiser recommends monitoring and repair in the event it incarcerates. January 16, 2008, Harriman transported to Butte for second follow-up with Dr. Raiser, due to dramatic enlargement of hernia. Kohut states that Dr. Raiser determined the hernia was unlikely to incarcerate and surgery to repair was not recommended, but hernia should continue to be monitored. Kohut concludes that "Harriman is not a good candidate for a third abdominal surgery" because of "questionable compliance with treatment recommendations", "it is likely that Harriman has actively exacerbated his condition by manipulating his hernia site", and "with each surgery, the quality of the patient's tissue weakens over time".

March 16, 2009

State's reply brief filed with court. State argues that given the facts in this matter, mandamus is not appropriate remedy for alleged harm Harriman seeks to redress. Reply summarizes treatment history, argues that the provision of medical treatment involves a series of discretionary acts and

that the decisions are made based on the patient's condition taking into account the potential risks and benefits inherent in following any one particular course of treatment, and notes that Harriman is not a good candidate for a third surgery because: (1) Harriman's questionable compliance with treatment recommendations, (2) it is likely Harriman actively exacerbated his condition by manipulating his hernia site, (3) with each surgery, the quality of the patient's tissue weakens over time, and Dr. Raiser observed that Harriman's tissue quality was not good, (4) Dr. Kohut's conclusion that Harriman's condition is not a condition of medical urgency and that continued monitoring is the appropriate course in this case, (5) that Harriman's hernia is "easily reducible" if he lies down, (6) that because Harriman's hernia has grown larger over time, the risk of incarceration and strangulation are reduced. State argues that Harriman seeks to compel a discretionary act of providing particular medical treatment, but cannot show that state has any legal duty that is defined "with such precision and certainty as to leave nothing to the exercise of discretion or judgement", therefore court should deny petition for Writ of Mandate and dismiss.

March 24, 2009

2nd Harriman affidavit. Flaherty obtains affidavit from Mr. Harriman stating that he never manipulated his hernia and noting that state is relying on "heresay" about his non-compliance with treatment recommendations and his manipulating his injury and that this "heresay" was coming from the very staff from whom he was requesting relief.

June 25, 2009

2nd Letter from Dr. David Rohrer, M.D., F.A.C.S. Letter to Harriman's attorney, Flaherty, states that based on his (Dr. Rohrer's) review of the affidavit by Dr. Tristan Kohut, Dr. Rohrer still has concerns about Mr. Harriman's hernia and stating "While it is true that broad based hernia defects are less like to cause incarceration or strangulation, there is no guarantee. Also, abdominal wall hernias often have more than one actual defect, besides the larger and more obvious one. Therefore, I still feel that anyone with an abdominal wall hernia is at risk of developing incarceration or strangulation. The fact that it is reducible when becoming recumbent does make his surgery relatively elective, meaning that there is no urgency or emergency need to repair it. Unfortunately, the longer he has a hernia, the larger it becomes, and the more difficult it will be to repair and possibly the higher the risk is of still getting another recurrence. Regarding the concerns that he told you that he is seeing blood in his stools, it would very unlikely be related to his hernia but still needs to be followed and worked up by his treating physician."

August 5, 2009 3rd Harriman affidavit. Harriman states that he is gravely concerned about his hernias, now basketball sized, that he is in considerable pain, and stating he disagrees that the surgery is "elective".

Sept. 17, 2009 Harriman Rely Brief: Harriman's attorney, Flaherty, filed a Reply Brief and Request for Hearing based on expert witness opinion of Dr. David Rohrer, second letter dated June 25, 2009 and third personal affidavit of Mr. Harriman dated August 5, 2009.

Sept. 21, 2009 State Reply: State of Montana's Objection to Request for Evidentiary Hearing, Brenda K. Elias, Department of Corrections Special Assistant Attorney General. Objection on grounds that Harriman is not entitled to the issuance of a writ of mandamus, which is only appropriate to compel a "ministerial act".

Oct. 19, 2009 Court denies petition. 3rd Judicial District Court issues order in Cause No.: DV-09-16 denying the petition for a Writ of Mandamus. In the order the court stated "The disagreement between medical specialists about which course is better is evidence that this issue is beyond the scope of this Court's jurisdiction and competency. The course of treatment selected by medically-trained physicians is not subject to a writ of mandamus, because it is discretionary." (District Judge Ray Dayton)

Sometime after Harriman transferred from MSP to private prison in Shelby.

November 13, 2011 Mr. Harriman wrote a letter to the Board of Medical Directors, c/o Dr. Rantz (the DOC chief medical officer) pleading for treatment of his hernias and medical evaluation for blood in his stool and for coughing up blood.

January 11, 2012 In a phone conversation with legislative staff about Mr. Harriman's November 12, 2011, letter, Casey Rudd, said that when Mr. Harriman was transferred from Shelby back to MSP, he was told he would be able to see the physician, but as far as she knew, Mr. Harriman has not been seen by the physician or provided with any information or reply concerning his Nov. 13, 2011.

As of Jan. 30, 2012 Sen. Shockley has worked through legislative staff to develop a waiver for Harriman to sign so that when Sen. Shockley visits Harriman in mid-February, along with Sen. Murphy, the more recent medical history on this can be made available by MSP.

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