Kentucky Weighed Politics, Medicine In Inmate's Surgery

LOUISVILLE, Ky. (AP) — A condemned killer's fight to receive surgery for agonizing hip pain pushed Kentucky officials into an uncomfortable debate over security, politics and even the possibility of inviting scorn from Fox News pundits.

Emails and memos obtained by The Associated Press show corrections officials struggling for a year to reconcile their duty to provide medical care with the political ramifications of spending tens of thousands of dollars for surgery on a man they plan to execute. A key problem would turn out to be security issues that led several hospitals to balk at treating inmate Robert Foley, who still hasn't had the surgery.

"Hip replacement for an inmate who has exhausted all appeals and will soon be executed?" Kentucky State Penitentiary warden Phil Parker wrote in an email on Nov. 22, 2010. "I can see this making Fox News on a slow news day, maybe even on a busy news day. In fact, I bet (Fox News host Bill O'Reilly) would love to put this in his 'Pinheads' commentary. Just a thought to consider before it goes too much further."

Prison officials also made contingency plans to call off the surgery if Gov. Steve Beshear set an execution date, and they considered whether to consult with him about the procedure.

"I think it is that important and all this may have political consequences," Parker wrote a year before Beshear's re-election. Ultimately, Beshear's spokeswoman said he wasn't contacted about it.

Foley, 55, was convicted of killing six people in eastern Kentucky in 1989 and 1991, making him the most prolific killer on the state's death row. His status as an extremely dangerous prisoner was a key factor in the state's difficulty finding a surgeon and hospital, according to the documents obtained through a public records request and a lawsuit filed by Foley.

Foley still hasn't had the surgery, with Parker lamenting in an email they had no options after an exhaustive search.

State officials deny that politics played a role, and there's no evidence in the documents that political considerations prevented the surgery.

A spokeswoman for the Kentucky Justice Cabinet — which oversees corrections and law enforcement — declined to comment because of the pending lawsuit.

Foley's attorney, Jamesa Drake, said the state needs a way to care for condemned

inmates, even those with complex needs. Foley, who has been on death row since 1993, is unable to get around without help because he's at risk of a dangerous fall, Drake said.

"If you're on death row, it's just like anybody else," Drake said. "If you need a new hip, you need a new hip. It hurts."

The Department of Corrections acknowledged his degenerative hip in a response to the lawsuit, but also said he has been receiving adequate care. The federal lawsuit filed in March is pending.

Corrections Department attorney Brenn Combs wrote to Drake that the Department of Corrections couldn't enter into a legal agreement about the hip surgery because it would impose requirements exceeding "our legal duty regarding inmate health care."

"The Department is not interested in doing that and, like me, nobody else here can see a way that it would help inmate Foley," Combs said in a Nov. 14 email.

It's not unusual for inmates to receive treatment outside of prison, and Foley has twice left death row for other surgical procedures.

Foley first complained to prison officials about the persistent pain in his right hip in September 2010, saying his leg sometimes "gives out on him," according to the lawsuit.

Foley initially didn't want the surgery and tried to fashion his own hip brace out of "flip flops and other everyday items." Foley said the brace helped with the pain in an affidavit signed in February, but prison officials confiscated it.

After Foley agreed to the surgery, officials searched for a doctor to perform the $56,000 operation. At the time, Foley was under a death warrant signed by Beshear.

"If and when an order is received to execute Foley, I will contact (then-prison medical director Dr. Scott Haas) to try to stop all medical procedures related to his hip replacement," Parker wrote.

No execution date was set, and a judge later halted lethal injections as the state weighs execution procedures. It's not clear when executions could resume.

While looking for a hospital, corrections officials increased Foley's pain medication and looked into the logistics of moving him. But prison nurse Chanin Hiland wrote in a September 2010 email to Haas that orthopedists in Paducah, Madisonville and Murray had been contacted, and "none of them want any part of this."

"The farther we have to go, the more security will have to be sent with him; although, it is obvious he will not be running anywhere soon," Hiland wrote. Foley's hepatitis C infection was a further risk factor.

In November of that year, Parker and Haas asked Corrections Commissioner LaDonna Thompson for advice on security. Parker also wrote Hass about his concerns about publicity and whether he could be safety housed outside the prison system.

The difficulty in finding a surgeon illustrates the "gray area" between the law's requirement of treatment for inmates and a hospital's ability to turn down those patients, said Rebecca Walker, an associate professor of social medicine at the University of North Carolina in Chapel Hill.

"Everyone would probably agree he ought to get his care somewhere. It's a collective responsibility," Walker said in a phone interview. "Who does it is the question."

After finding a doctor to perform the surgery, Foley and corrections officials thought they had found a hospital when Frankfort Regional Medical Center initially agreed. Corrections officials and the hospital set the surgery for Feb. 28, 2011 and conducted preoperative testing.

During a meeting between corrections officials and hospital staff on Feb. 22, 2011, hospital CEO Chip Peal said he hadn't been aware the surgery was scheduled for less than a week later. A memo by Parker summarized security measures and noted that Peal needed others' approval.

Peal returned to the meeting after 30 minutes and said the surgery was off.

"CEO Peal stated that they never had a patient at the hospital that required security and that he felt this was too high a profile person to be the first," Parker wrote.

At that point, corrections officials were left with few options.

"After over a year of exhaustive search for a surgeon and hospital, this was our last hope," Parker wrote to Thompson and Deputy Commissioner Jim Erwin on Feb. 23, 2011. "I expect future legal action in this matter, however, we know of no other options at this time."

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