

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
at Santa Fe, NM

JIMMY (BILLY) MCCLENDON, et al.,

JUN 30 2005

Plaintiffs,

MATTHEW J. DYKES, JR.
CLERK

vs.

No. CV-95-24 MV/ACT

CITY OF ALBUQUERQUE, et al.,

Defendants,

vs.

E.M., R.L., W.A., D.J., P.S., and N.W., on behalf
of themselves and all others similarly situated,

Plaintiff-Intervenors.

STIPULATED SETTLEMENT AGREEMENT
BETWEEN PLAINTIFF INTERVENORS AND DEFENDANTS

INTRODUCTION

The parties to this litigation have met and conferred regarding the matters raised by the Plaintiff Intervenors' *Motion for an Order to Show Cause and for Further Remedial Relief* and the Defendants' *Motion to Vacate Settlement Agreement*. After negotiation, the parties have determined that it is in the interest of all parties for both these motions to be resolved through compromise. This decision is reached because the parties recognize that it is in the best interest of all concerned that the federal rights of sub class members be ensured by entering into this Stipulation.

Nothing contained in this Stipulated Settlement Agreement constitutes an admission that the Defendants have ever violated the constitutional rights of any sub class member, nor is it an admission that any prior or present policy, procedure, practice, event, circumstance, act or failure to act by the

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Defendants, their elected officials, contractors, agents or employees violated the civil laws of the United States, failed to meet applicable constitutional standards, or otherwise fell short of any standard of care imposed by law.

The Plaintiff Intervenors and Defendants enter into this Stipulated Settlement Agreement for the purpose of avoiding the risks and burdens of litigation and in order to describe conditions both parties wish to see at the Bernalillo County Metropolitan Detention Center, located at 100 John Dantis Road SW, Albuquerque, New Mexico (hereinafter the "MDC").

In order to ensure that the improvements achieved thus far by Defendants are enhanced and preserved, the parties hereby enter this Stipulated Settlement Agreement. This Stipulated Settlement Agreement replaces in its entirety the November 5, 1996 Order entered between the Defendants and Plaintiff Intervenors (doc #256). The parties stipulate that this Stipulated Settlement Agreement complies with all requirements of the Prison Litigation Reform Act. Defendants agree to file no motion in the future asserting that this Settlement Agreement should be terminated based upon the provisions of the PLRA.

I. GENERAL PROVISIONS

The Plaintiff Intervenors acknowledge that the Defendants already have policies that address areas described in this Stipulated Settlement Agreement. If necessary, the Defendants will revise and/or develop as necessary policies, procedures, protocols, training materials and practices to ensure that they are consistent with the requirements of the United States Constitution and this Settlement Agreement.

In consideration for this Stipulated Settlement Agreement, the Plaintiff Intervenors agree to withdraw their *Motion for an Order to Show Cause and for Further Remedial Relief* and the

Defendants agree to withdraw their *Motion to Vacate Settlement Agreement*.

II. SPECIFIC PROVISIONS

A. Staffing of the Psychiatric Services Unit (PSU)

Defendants will staff the Psychiatric Services Unit with sufficient clinical and support staff to provide adequate mental health services to the residents of MDC, consistent with the requirements of the United States Constitution and consistent with the principles set forth in Ruiz v. Estelle, 503 F Supp 1265 (S.D. Texas 1980) and in Langley v. Coughlin, 715 F. Supp. 522 (S.D. NY 1989) [conduct required psychological testing and evaluation; inquire about the patient's prior history; establish proper methods for making diagnosis; monitor seizure disorders; provide proper medication; provide regular access to counseling for those in need; establish criteria for corrections personnel to consider when making referrals to PSU; follow those criteria for referral; monitor inmates' behavior for deterioration or crises for purposes of rendering treatment; develop adequate treatment plans; develop proper procedures for determining medication]. Defendants agree to consult with Plaintiff Intervenors regarding appropriate staffing for the PSU. The Defendants will ensure that no less than the numbers of mental health professionals, nurses and support staff set forth in the November 2004 "University Hospital Employees Salary Calculation Worksheet FY 05 Supplemental" are available to provide mental health care to the residents of the MDC.

B. Psychiatry time

An appropriate number of psychiatric positions will be included in the contract with the PSU provider in order to provide adequate psychiatric care consistent with the requirements of the United States Constitution and consistent with the principles set forth in Ruiz v. Estelle, 503 F Supp 1265 (S.D. Texas 1980) and in Langley v. Coughlin, 715 F. Supp. 522 (S.D. NY 1989) [conduct required

psychological testing and evaluation; inquire about the patient's prior history; establish proper methods for making diagnosis; monitor seizure disorders; provide proper medication; provide regular access to counseling for those in need; establish criteria for corrections personnel to consider when making referrals to PSU; follow those criteria for referral; monitor inmates' behavior for deterioration or crises for purposes of rendering treatment; develop adequate treatment plans; develop proper procedures for determining medication]. Defendants agree to consult with Plaintiff Intervenor regarding appropriate psychiatric staffing for the PSU. At least the number of psychiatry FTE set forth in the November 2004 "University of New Mexico Health Sciences Center Department of Psychiatry Exhibit B" for the FY 05 Supplemental agreement with UNM will be included in the contract with the PSU provider. Psychiatry caseloads will not exceed 100 psychiatric clients who are receiving medication per FTE of psychiatry provided on site. Psychiatric evaluations will be completed on the first business day after a resident's admission, for any resident who: (1) reports being on any psychoactive medication when taken into custody, (2) requests any psychoactive medication or other psychiatric service, or (3) has been identified by any mental health or health professional as appropriate for a psychiatric assessment. The psychiatrists shall personally assess every resident on psychoactive medication at least once every thirty days.

C. Discharge planning

Defendants will include appropriate discharge planning for PSU clients who receive a treatment plan. Discharge plans will describe the arrangements that should be taken to enable sub class members to have continuity of medication provided at MDC, case management, housing, and therapeutic services, as well as information concerning how sub class members can obtain public

benefits, e.g., SSI and Medicaid. Sub class members shall be afforded the opportunity to participate in the development of discharge plans. Referral for needed case management will be undertaken immediately upon a determination by PSU that case management could enable the sub class member to end her/his incarceration. Sub class members who have previously received Medicaid and/or SSI will be offered applications to reinstate those benefits. Assistance needed to complete the application will be provided, if necessary.

D. Therapeutic services

PSU staff will provide therapeutic services to sub class members, as deemed clinically appropriate for each sub class member, consistent with the requirements of the United States Constitution and consistent with the principles set forth in Ruiz v. Estelle, 503 F Supp 1265 (S.D. Texas 1980) and in Langley v. Coughlin, 715 F. Supp. 522 (S.D. NY 1989) [conduct required psychological testing and evaluation; inquire about the patient's prior history; establish proper methods for making diagnosis; monitor seizure disorders; provide proper medication; provide regular access to counseling for those in need; establish criteria for corrections personnel to consider when making referrals to PSU; follow those criteria for referral; monitor inmates' behavior for deterioration or crises for purposes of rendering treatment; develop adequate treatment plans; develop proper procedures for determining medication]. Defendants agree to consult with Plaintiff Intervenors regarding appropriate therapeutic services for the PSU. Therapeutic services will include group therapy for anger management, medication management, avoiding domestic violence and substance abuse treatment (for sub class members with co-occurring disorders). Individual counseling will be available for sub class members who cannot participate in group therapy, as deemed clinically

appropriate for each sub class member. Sub class members who choose not to participate in therapy shall not be punished for that choice.

E. Investigations of allegations of abuse and of deaths

Defendants are considering establishing an Internal Affairs Unit to investigate allegations of abuse of residents. If the defendants create such a unit, the investigators assigned to conduct investigations of allegations of abuse by residents will be adequately trained and otherwise qualified to conduct adequate investigations. If such a unit is not created, and until such a unit is created, corrections officers and supervisors participating in investigations will receive sufficient training concerning how to conduct such investigations to ensure that the investigations they conduct are adequate. Defendants will continue to hire an independent outside firm to investigate incidents in which a PSU client experiences bodily harm for which medical treatment is needed and the client alleges that the injury was caused by staff abuse. The internal investigations shall be completed within thirty (30) calendar days for alleged abuse investigations and ninety (90) calendar days for death investigations. Written reports regarding alleged abuse with respect to PSU clients will be provided to PSU staff and to counsel for Plaintiffs Intervenors within a week of the completion of the investigation. Investigations of deaths of sub class members will include the participation of an independent medical doctor. An independent psychiatrist will participate in all suicide investigations. A Mortality Review Committee including both the PSU medical director psychiatrist and the Medical Services Unit medical director will review all deaths of a person committed to the custody of the MDC. The Committee will complete their internal review of any death within thirty (30) calendar days of the death and complete the final review within thirty (30) calendar days of the production of all reports from the Office of Medical Investigator. The findings and recommendations of the

Mortality Review Committee will be incorporated into the Defendants' death investigation and provided to Plaintiff Intervenors' counsel during the pendency of this case. Jail administrators will implement the recommendations of the Mortality Review Committee, or provide in writing to counsel for Plaintiff Intervenors any reason why such recommendations should not be implemented.

F. Notification of rights

Defendants will accurately notify sub class members orally and in writing, upon classification, of their rights and of the methods available to initiate a grievance regarding alleged violations of their rights, including an explanation of their rights to appeal. Defendants will continue to notify residents of their rights in R&D.

G. Specially trained correctional officers

Defendants shall assign only correctional officers specially trained in working with people with mental disabilities to all designated units where people with psychiatric disorders are housed. Sufficient number of correctional officers will receive the special training on a regular basis to ensure that only specially trained correctional officers are assigned to the units. During the pendency of the case, Defendants shall provide monthly reports to Plaintiff Intervenors' counsel listing correctional officers who have not received training and are assigned to a unit and anticipated training date for each such correctional officer.

H. Community-based services for sub class members

The Defendants will:

1. Continue participating in available technical assistance from the National Gains Center to improve jail diversion activities;

2. Continue to consult with the Forensic Intervention Consortium (FIC), the Metropolitan Criminal Justice Coordinating Council (MCJCC), the University of New Mexico and the state Department of Health, and draft a written plan or plans to be presented to their governing bodies for adoption to improve the provision of community-based intensive case management services, crisis supports and housing, and for the provision of treatment for sub class members who have co-occurring disorders. The plan will describe how to establish services for at least two hundred individuals;

3. establish a system to assist sub class members who may be eligible for SSI benefits or Medicaid to apply for those benefits within ten days of their incarceration and to assist sub class members who previously received SSI benefits or Medicaid to apply for reinstatement of those benefits prior to their release; and

4. make their best efforts to fund for a two year period a full time position or contract person to work with the University of New Mexico, the MCJCC, the FIC, the state Department of Health and the Region 5 mental health authority to improve and co-ordinate jail diversion activities.

III. CONCLUSION OF THE LITIGATION

From this date forward, the Court will incrementally disengage from supervision of the requirements of the Stipulated Settlement Agreement. Plaintiff Intervenors and Defendants will jointly select an Auditor who will, within six (6) months (or sooner) of entry of this Stipulated Settlement Agreement and evaluate compliance with the prevailing professional standards guaranteed by the requirements of the United States Constitution and the requirements of this Settlement Agreement, issue a written report to Plaintiff Intervenors' counsel and the Defendants on those topics. The Auditor will be a licensed mental health professional who has been appointed in the past

by a court to assess mental health care provided in a jail or prison. If the Plaintiff Intervenors and Defendants cannot agree on the Auditor, the Plaintiff Intervenors and Defendants agree to submit a list of names to the United States District Judge, whose selection shall be final.

The Auditor shall have free access to all areas of the MDC, at such times and for such duration as the Auditor desires. The Auditor shall have unlimited access to all MDC personnel and records, and to sub class members incarcerated in the MDC. The Auditor shall have unlimited access to all personnel who are assigned to work at the MDC and who work for private vendors which provide services to the MDC.

The Auditor will notify the Director or his designee of the Auditor's visits to the MDC, so that the Auditor's personal security can be assured.

The Auditor shall have the right to conduct confidential interviews with sub class members, and to conduct interviews with MDC and private vendor staff outside the presence of other staff or supervisors. The only exception would be that the Auditor may not interview witnesses regarding a matter when an active criminal investigation of that matter is on-going, if conducting such an interview would compromise the integrity of the criminal investigation.

If, at the end of the six (6) month period (or sooner), the Auditor reports that one or more of the provisions of this Stipulated Settlement Agreement, or the requirements of prevailing professional standards guaranteed by the United States Constitution, are not met, the Auditor shall continue to evaluate and report on those particular items. If the Auditor reports that all the terms of this Stipulation are being met, that the mental health care provided at MDC complies with prevailing professional standards guaranteed by the requirements of the United States Constitution are being met in the delivery of mental health services, Plaintiff-Intervenors will dismiss the claims raised in their Complaint in Intervention in this litigation with prejudice.

The Defendants and Plaintiff Intervenors agree to cooperate regarding any fairness or other hearings which are required by the Court in order to facilitate the dismissal of Plaintiff Intervenors'

claims.

The Auditor will be compensated by the Defendants, at rates to be negotiated between the Auditor and the Defendants.

Until such time as the auditor declares that the mental health services comply with the terms of this Stipulation and with the prevailing professional standards guaranteed by the United States Constitution counsel for Plaintiff-Intervenors shall have the same access to the Metropolitan Detention Center that they presently have. However, the Defendants will not be obligated to pay the counsel for the Plaintiff Intervenors and their paralegals for more than 180 hours of monitoring during any three month period. The Defendants also will permit Dr. Joel Dvoskin PhD to inspect the jail and to talk to the Auditor before the auditor issues a report under the same terms that have been followed since November of 1996. This Stipulated Settlement Agreement shall be binding on all successors, employees, and all those working for or on behalf of the Defendants, and those working for or on behalf of the Plaintiff Intervenors. Provided that nothing in this Agreement impacts upon the statutory rights of the Protection & Advocacy System.

The Plaintiff Intervenors and Defendants do not intend to create in any non-party the status of a third-party beneficiary. This Stipulated Settlement Agreement shall not be construed so as to create a private right of action to any non-party against the Defendants. The rights, duties and obligations contained in this Stipulated Settlement Agreement shall only bind the parties to this Stipulated Settlement Agreement.

Except in an emergency which threatens the health or safety of a subclass member, any claimed breach of this Stipulated Settlement Agreement will be mediated by the United States Magistrate Judge before it is submitted to the United States District Court.

11/22/04
James Lewis
James Lewis
Chief Administrative Officer
City of Albuquerque

Michael Salas
Subject to approval of James Lewis
11-19-04

11/23/04
Thaddeus Lucero
County Manager
County of Bernalillo

John Daulton
for T.L.
Subject to Commission Approval
11/19/04

Date: _____

Date: _____

Peter Culrus

Counsel for Plaintiff Intervenors

msb

Counsel for Defendants

Date: 11/19/04

Date: 11-19-04

SO ORDERED

M. Vazquez

HONORABLE MARTHA VAZQUEZ
UNITED STATES DISTRICT JUDGE