

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

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U.S. DISTRICT COURT
N.D. OF ALABAMA

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ANTONIO LEATHERWOOD, ERIC
HOWARD, JERRY SANFORD, JOHN
LEVINS, MICHAEL PATRICK, and,
individually and on behalf of all present and
future HIV-positive inmates in the Limestone
Correctional Facility in Capshaw, Alabama,

Plaintiffs,

v.

DONAL CAMPBELL, Commissioner of the
Alabama Department of Corrections, RONALD
CAVANAUGH, Director of Treatment Alabama
Department of Corrections, BILLY MITCHEM,
Warden of Limestone Correctional
Facility, DAVID WISE, Deputy Warden,

Defendants.

CIVIL ACTION

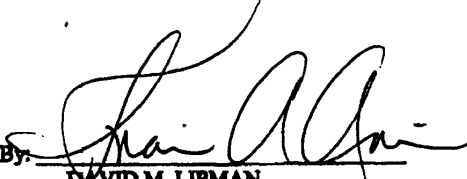
No. CV-02-BE-2812-W

CLASS ACTION

**JOINT MOTION TO ADOPT SETTLEMENT AGREEMENT
AND PROVIDE FOR SPECIAL MASTER**

The Parties jointly move this Court to enter the attached order adopting and incorporating
the Parties' Settlement Agreement (Exhibit A hereto) and providing for a Special Master.

Respectfully submitted, this 7 day of May, 2004.

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 Alabama Department of Corrections, RONALD)
 CAVANAUGH, Director of Treatment Alabama)
 Department of Corrections, BILLY MITCHEM,)
 Warden of Limestone Correctional)
 Facility, DAVID WISE, Deputy Warden,)
)
 Defendants.)

CIVIL ACTION
 No. CV-02-BE-2812-W
 CLASS ACTION

SETTLEMENT AGREEMENT

The Plaintiffs have filed suit challenging the constitutional adequacy of the medical care and conditions relating to HIV infected prisoners incarcerated at the Limestone Correctional Facility ("Limestone").

Defendants have denied, and continue to deny, allegations of Plaintiffs' complaint and the commission of the constitutional violations.

The parties have agreed that it is in their best interests to resolve this litigation.

Therefore, the parties stipulate and agree to the following provisions to resolve this

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lawsuit.

I. Introduction

1.1. During the term of the *Agreement*, the United States District Court for the Northern District of Alabama, Western Division, shall retain jurisdiction to enforce the terms of the *Settlement Agreement*. This *Settlement Agreement* and the Defendants' stipulation that their conduct shall be governed by the standards set forth herein, shall automatically terminate two years after the Court has granted final approval of its terms. The parties agree that this provision shall not limit or divest the Court of jurisdiction over claims of current and ongoing violations of the United States Constitution.

II. The Standard of Care

2.1. The standard of medical care shall be consistent with the guidelines adopted by the National Commission on Correctional Healthcare ("NCCHC") and the Centers for Disease Control and Prevention ("CDC").

2.2. This standard of medical care applies to antiretroviral treatment of HIV infection as well as the treatment and prevention of opportunistic infections and other illnesses experienced by HIV infected prisoners confined at Limestone.

2.3. Medically necessary services shall be provided in a timely manner. "Medically necessary" refers to that which is required for the alleviation of pain, prevention of diseases, prevention of deterioration of function or organs, or reduction of mortality.

III. Healthcare Staff

3.1. An HIV Specialist and a medical doctor shall provide medical treatment at Limestone Correctional Facility ("Limestone"). The HIV Specialist will provide medical

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treatment to HIV and AIDS infected prisoners at Limestone. The HIV Specialist shall have more than three years experience in inpatient and outpatient management of patients infected with HIV. The HIV Specialist shall devote at least thirty (30) hours per week to treatment of HIV infected prisoners. The medical doctor will provide medical treatment to non-HIV infected prisoners.

3.2. The Medical Director shall be designated as the health authority conforming to NCCHC P-A-02 (2003). The Medical Director should be, but not limited to, (1) accountable for access to care and quality of care, (2) clinical supervision of licensed health professionals, (3) performance measurement, (4) utilization management, and (5) quality management.

3.3. An additional full time registered nurse shall be hired to work at Limestone. The registered nurse shall serve as an "HIV Coordinator" and coordinate the infection control program. The HIV Coordinator shall be responsible for coordinating care to HIV infected prisoners including: coordinating and supervising appointments with both Limestone and with outside specialists; ensuring that follow-up care ordered by a medical provider occurs in a timely manner; monitoring the progress and treatment of all known HIV infected prisoners at Limestone; and organizing education on the transmission and treatment of HIV and other infectious and sexually transmitted diseases. The HIV Coordinator shall also serve as a triage person for HIV infected prisoners needing to visit the HIV Specialist.

3.4. Prisoners shall not provide emergency medical treatment to other prisoners. This includes prisoners placing deceased prisoner bodies into body bags.

3.5. A registered nurse shall be on duty twenty four (24) hours per day, seven days per week in the Health Care Unit. A licensed practical nurse shall be on duty sixteen (16) hours per

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day, seven days a week in the HIV Dorms.

3.6. Correctional officers shall not make medical decisions or medical judgments.

3.7. All staffing levels shall conform to NCCHC P-C-07 (2003).

IV. Healthcare Staff Training

4.1. All medical and correctional staff shall receive current cardiopulmonary resuscitation ("CPR") training. Trained medical and correctional staff shall be available to perform CPR and other emergency aid when needed. CPR training shall be consistent with the recommendations of the American Heart Association or the American Red Cross. Documentation addressing CPR training for medical and correctional staff shall be maintained at Limestone. Appropriate protective gear and adequate training for the use of the protective gear shall be made available to healthcare and correctional staff to safely perform CPR.

4.2. All registered nurses ("RN") and licensed practical nurses ("LPN") shall not make medical decisions outside the scope of their license.

4.3. All medical staff must attend continuing medical educational programs as recommended by the state of Alabama and provided in the Alabama Rules of Regulations of the Board of Medical Examiners. Attendance of healthcare staff at continuing medical education programs shall be documented.

4.4. If Limestone lacks adequate resources for the medical treatment of an HIV infected prisoner, then the prisoner shall be sent to an outside specialist in a timely manner. Diagnostic reports, consultation reports, and hospital discharge summaries shall be incorporated into the HIV infected prisoners' Limestone medical record.

4.5. Copies of an HIV infected prisoner's Kilby Correctional Facility medical record

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shall follow the HIV infected prisoner at Limestone.

V. Periodic Evaluations

5.1. The HIV Specialist shall see all HIV infected prisoner at least quarterly, or more frequently as medically necessary, which will include: a history, physical examination, and evaluation of current CD4+ levels and viral load. All prisoners with AIDS shall be seen every sixty (60) days.

5.2. Any HIV infected prisoner taking medications which can damage the liver, including but not limited to Isoniazid ("INH"), or who demonstrate signs of liver dysfunction shall have their enzymes monitored periodically.

VI. Infection Control

6.1. The registered nurse referenced in section III hereof shall implement the infection control program and document the activities of the Limestone infection control program. The infection control program shall include: airborne and blood borne pathogen control plans that follow CDC.

6.2. All prisoners who have, or are suspected to have, contagious tuberculosis, shall be placed in respiratory isolation until they have no longer pose a risk to the public health, especially to other HIV infected prisoners.

6.3. Protocols shall be adopted to minimize the spread of Methicillin Resistant Staphylococcus Aurcus ("MRSA") among the HIV infected prisoner population at Limestone. The MRSA guidelines will address: (1) prevention, (2) examining and interviewing prisoners at intake and listing MRSA on a prisoner's "problem list" in their medical chart, (3) diagnosis and treatment, and (4) MRSA outbreak and control protocols.

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VII. Medication Administration

7.1. Medication shall be provided within forty-eight (48) hours of being prescribed by the HIV Specialist. Medications shall be provided in appropriate doses and times in accordance with Food and Drug Administration ("FDA") approval.

7.2. If HIV infected prisoners refuse the dose, counseling shall be provided and the record shall document this counseling. HIV infected prisoners who miss doses on three consecutive days shall be seen by the prescribing physician and counseled. A record of such counseling shall be maintained.

7.3. Criteria shall be established for a "self medication" program. Each HIV infected prisoner that keeps medication on their person shall be provided clear written instructions for medication administration, including dosing timing and potential side effects for each medication. All HIV medications shall be administered, and dispensing documented, consistent with FDA recommendations.

7.4. No medication prescribed to one prisoner shall be given to another prisoner in accordance with the rules and regulations adopted by the Drug Enforcement Agency ("DEA").

7.5. Medication shall be hand delivered to all acutely ill HIV infected prisoners. Medication shall be administered to HIV infected prisoners in strict accordance with the prescriptions -- including directions relating to the timing of HIV medication administration in relation to food and water intake.

7.6. When medically appropriate, a snack shall be provided with the distribution of medication.

7.7. All HIV infected prisoners shall have access to fresh drinking water twenty-four

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hours per day, seven days per week.

7.8. The medication formulary shall include medications typically used to treat HIV infection, co-occurring illnesses, and opportunistic infections. At a minimum, the formulary shall be updated quarterly. The formulary shall be published annually.

VIII. Chronic Care of HIV-Positive Prisoners

A. HIV-positive diabetic prisoners.

8.1. Treatment for HIV infected prisoners with diabetes mellitus shall conform to Gaddis, et. al. v. Campbell, et. al. settlement agreement dated October, 2004.

B. Hepatitis A, B, and C screening and treatment.

8.2. HIV-positive prisoners shall be vaccinated against Hepatitis A and B.

8.3. Treatment of HIV infected prisoners with Hepatitis C shall conform to Baker, et. al. v. Campbell, et. al. settlement agreement dated _____, 2004. HIV infected prisoners with symptoms of liver dysfunction and who have a negative HCV antibody test, shall be administered an HCV PCR test, as medically indicated.

IX. Food

9.1. All HIV infected prisoners shall receive three meals per day, six days per week. On Sundays and holidays, all HIV infected prisoners shall receive two meals per day and a medication food sack consisting of one sandwich and eight ounces of milk.

9.2. Meals shall be served to HIV infected prisoners after 5:00 a.m.

9.3. HIV infected prisoners prescribed special diets shall be provided a special diet.

9.4. HIV infected prisoners shall have medical diets addressing their individual medical needs for calories, carbohydrates and fat. A record of those prisoners receiving special

diets shall be maintained at Limestone.

9.5. Patients with wasting shall have dietary supplementation and medications as medically necessary.

X. Emergencies

10.1. A wireless intercom system shall be placed in five cells per dorm used to house HIV infected prisoners. The wireless intercom in these cells shall be linked to the dormitory officer station. These cells shall be available for acutely ill HIV infected prisoners.

10.2. Emergency drills shall be conducted one time per year involving both medical and correctional staff. The medical emergency plan shall conform with NCCHC P-A-07.

10.3. An emergency medical plan shall be developed in conformity with NCCHC standards and shall be active twenty-four hours per day, seven days per week.

10.4. During emergencies, all medical decisions shall be made by an on-site, on-duty medical person.

10.5. All emergency medical equipment shall be kept in good working condition.

XI. Intake at Limestone

11.1. Within twenty-four (24) hours of arriving at Limestone, the HIV infected prisoner shall have an intake assessment or screening by a nurse. This assessment shall include, but not be limited to, inquiry into communicable diseases, including tuberculosis and sexually transmitted diseases, and urgent conditions; review and continuation of any medications; and timely referral for HIV infected prisoners in urgent need of physician review.

11.2. Within two weeks of arriving at Limestone, the HIV infected prisoner shall be seen by the HIV Specialist or a mid-level provider.

11.3. If an HIV infected prisoner can identify his medication upon entry at Limestone, then the medication shall be continued provided the prescription for such medication can be verified by a physician or pharmacist. There shall be no unnecessary disruption in the continuity of medication. The intake provider shall ask each known HIV infected prisoner to sign a release of information form so that confirmation of any treatment regimen and exchange of relevant information can take place as soon as possible.

11.4. Within forty-eight hours of arriving at Limestone, an HIV infected prisoner shall be referred to the HIV Specialist.

11.5. All HIV infected prisoners shall be tested for syphilis and screened for chlamydia, and gonorrhea. Testing for chlamydia and gonorrhea shall be performed if symptoms are present.

XII. End-of-life Treatment

12.1. Appropriate palliative care shall be provided to all end-of-life HIV and AIDS infected prisoners.

12.2. "Terminally ill" is defined as a physical condition that has deteriorated to the point where the patient has been given less than a year to live. See NOCHC P-G-12 (2003). At the point that an HIV infected prisoner becomes terminally ill, the prisoner should be counseled regarding end of life care.

12.3. One option for end of life treatment may be to continue vigorous treatment. The HIV infected patient may also opt to or may also choose to refuse certain life prolonging measures which could include: intravenous feeding, mechanical ventilation, or CPR. The HIV infected prisoner may then sign an Advanced Medical Directive, consistent with state law,

regarding their choice regarding end of life care. At least two witnesses also shall sign an Advanced Medical Directive. In no case shall an HIV infected prisoner be denied appropriate comfort, such as medication for pain. A copy of the end of life treatment request shall be maintained in the HIV infected prisoner's medical record.

XIII. Physically Disabled HIV Infected Prisoners

13.1. Cells used to confine physically disabled HIV infected prisoners shall have adequate hand-railing.

13.2. One shower in each HIV dorm shall have adequate hand-railing, ramp entry, and seating.

13.3. If medically indicated, an HIV infected prisoner shall have a prosthesis re-fitted for a revised or new prosthesis within ninety (90) days.

XIV. Dental Services

14.1. HIV infected prisoners who require dentures shall have timely dental treatment, including the making of denture impressions, to prepare for proper use of dentures. Dentures shall be delivered and fitted within sixty (60) days of impressions.

14.2. All HIV infected patients shall have access to prophylactic dental hygiene, which include dental cleanings, at least annually.

XV. Triage System

15.1. All sick call slips shall be triaged daily for degree of urgency. All medical informal grievance forms and medical formal grievance forms shall be triaged every five days for degree of urgency. The triage system for sick-call slips, medical complaint forms, and medical grievance forms shall conform with NCCHC guideline P-E-07.

XVI. Co-payments

16.1. Co-payments shall not be assessed for chronic care clinic appointments, emergency care, care of communicable diseases, or any follow-up appointments.

16.2. All co-payment fees shall be accurately documented.

16.3. A document describing the Limestone co-payment system shall be posted in the HIV infected living quarters.

XVII. Complaint and Grievance Process

17.1. All HIV infected prisoners shall have ready access to complaint and grievance forms; be informed of the location of the complaint and grievance forms; and be provided documentation describing the complaint and grievance process.

17.2. All complaint and grievance forms shall be accurately tracked by the Continuing Quality Improvement ("CQI") program.

17.3. All informal grievances submitted by HIV infected prisoners shall be answered within seventy-two (72) hours. All formal grievances submitted by HIV infected prisoners shall be answered within in five (5) days.

17.4. All HIV infected prisoners shall be provided duplicate copies of the medical grievance forms that are submitted.

17.5. A log shall be kept documenting all medical grievance forms submitted.

17.6. A medical staff person shall prepare a monthly report addressing the number, substance, and resolution to medical grievance forms. This report shall be maintained at Limestone.

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XVIII. Translators

18.1. When Spanish speaking HIV infected prisoners visit the HIV-specialist or physician assistant for sick call, a translator shall be located.

XIX. Housing

19.1. Housing facilities will be cleaned on a daily basis; the housing areas shall be disinfected between prisoner placement; and the physical conditions of the housing areas be maintained in good working order. The Department of Corrections shall conduct weekly checks on these housing areas to ensure that sanitation and physical conditions comply with these standards, and shall respond promptly to any deficiencies identified during these checks.

Sanitary supplies such as soap, clean towels, bleach and disinfectants shall be made available to prisoners and staff as needed. Gloves and other safety equipment recommended during usage of certain disinfectants shall be provided to any prisoner or staff using the product. The Department of Corrections shall maintain an exposure control plan for blood-borne pathogens consistent with the terms of this *Agreement*.

19.2. There shall be no dormitory or open-bay housing or triple celling of HIV infected prisoners.

19.3. Rodent and pest control shall be conducted on a monthly basis, or as needed.

XX. HIV Counselor

20.1. HIV infected prisoners shall be informed that they may visit an HIV counselor. HIV counseling at Limestone can be provided by outside agencies including representatives from Public Health HIV Division or Alabama AIDS Outreach. HIV counseling shall be provided at Limestone one day per week.

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20.2. The HIV counselor shall have relevant training or experience in the area of HIV.

20.3. HIV infected prisoners shall be able to request a visit with the HIV counselor through the Limestone sick-call procedure.

XXI. HIV Education

21.1. Outside HIV educators, pamphlets, newsletters, and up-to-date periodicals addressing HIV disease education shall be accessible to HIV infected prisoners.

21.2. Periodically, a person with knowledge of HIV disease shall conduct group education sessions with HIV infected prisoners.

XXII. Release from the Department of Corrections ("DOC")

22.1. Upon release from the DOC, all HIV infected prisoners shall have reasonably expeditious access to their Limestone medical records upon submission of a signed medical release of information.

22.2. Upon the submission of a signed medical release, an outside medical provider shall have access to an HIV infected prisoner's Limestone medical records.

22.3. Prior to being released into the community, an HIV infected prisoner shall be provided adequate and appropriate discharge planning.

22.4. Upon release, HIV infected prisoners shall be provided at least a thirty (30) day supply of medication.

22.5. The DOC shall invite local Social Security Administration ("SSA") representatives to visit Limestone and register the facility for the SSA Prerelease Program for the Institutionalized.

XXIII. Confidentiality

23.1. Confidentiality addressing the HIV status of prisoners shall be maintained.

XXIV. Mortality

24.1. All DOC mortality reviews shall be conducted by the Department of Corrections, its agents or contractors within thirty days of an HIV positive prisoner's death.

24.2. Documentation shall be maintained addressing the number of HIV infected prisoner deaths per year.

24.3. The Department of Corrections shall provide Plaintiffs' counsel with a copy of all DOC mortality reviews or MAC reports within fifteen days of completion.

24.4. Full internal and external autopsy reviews shall be conducted after an HIV infected prisoner's death, as long as the cost of each individual review does not exceed \$1500.

XXV. Quality Improvement Program ("CQI")

25.1. The Department of Corrections shall perform an on-going Quality Improvement Program at Limestone.

25.2. Copies of the Qualitative Improvement findings, conclusions, corrective plans, and any other reports and outcomes of the corrective plans shall be maintained at Limestone.

25.3. Staff shall also perform qualitative analysis to identify problems, and shall implement timely remedies.

25.4. A multi-disciplinary Quality management Committee shall meet quarterly, and shall perform at least quarterly reviews of all aspects of healthcare. The Committee shall involve the participation of qualified professionals with appropriate specialties and representatives from all clinical departments at Limestone.

XXVI. Medical Consultant

26.1. Subject to Court approval, the Plaintiffs and Defendants shall identify a neutral medical consultant, independent of both Plaintiffs and Defendants, to facilitate the implementation of this *Settlement Agreement*. The medical consultant shall be experienced in correctional healthcare and HIV infection. The parties agree that _____ shall serve as the medical consultant.

26.2. The fees and expenses of the medical consultant shall be borne equally by the DOC and SCHR.

26.3. Upon entry of this agreement, and for a period of two years, the medical consultant will tour Limestone four times per year, for a total of eight visits. For the four yearly visits, the medical consultant shall notify the DOC at least one week prior to the visit. The medical consultant's visit shall last no longer than five days.

26.4. During each visit, the medical consultant shall meet with any medical staff or other Limestone staff, shall tour Limestone, and may review all records relating to the medical condition, living conditions and food service provided to the class.

26.5. At the conclusion of the medical consultant's tour, an exit conference shall be conducted with Limestone medical staff, correctional staff, plaintiffs' counsel and defendants' counsel addressing positive changes, failures to conform with this Agreement, and suggested remedies.

XXVII. Bradley Enforcement

27.1. Mental health evaluations, treatment, and staffing shall conform with the Bradley v. Haley settlement agreement.

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XXVIII. Conclusion

28.1. Upon any report or observation of possible noncompliance with the *Settlement Agreement*, the plaintiffs shall submit a written description to the Defendants addressing the noncompliant acts.

28.2. The parties agree that the remedial phase of this case is sufficiently complex to warrant the appointment of a special master pursuant to 18 U.S.C. §3626 (f)(1)(A). Magistrate Judge John Ott shall serve as special master. The parties also agree to waive their right to an interlocutory appeal challenging the District Court's appointment of Magistrate Judge John Ott as special master pursuant to 18 U.S.C. §3626 (f)(3).

28.3. Upon receipt of the complaint, the Defendants shall have 15 days to resolve the dispute.

28.4. Prior to applying to the Special Master for such relief, Plaintiffs' counsel will try to resolve the issues informally with the Defendants and the Monitor.

28.5. If after 15 days, the dispute has not been adequately resolved, then the Plaintiffs may petition the Special Master to make findings of fact addressing noncompliance, in accordance with 18 U.S.C. § 3626(f)(1)(A).

28.6. Upon entry of the Special Masters findings of noncompliance, Plaintiffs may petition the District Court for an order enforcing specific provisions of the *Settlement Agreement* and providing other appropriate relief.

28.7. The parties agree and stipulate, that the prospective relief set forth in this *Settlement Agreement* is narrowly drawn, extends no further than necessary to correct the alleged violations of plaintiffs' federal rights set forth in the Second Amended Complaint, and is the

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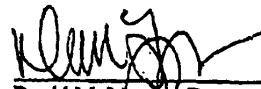
least intrusive means necessary to correct these alleged violations.

28.8. The parties agree and stipulate, that this Settlement Agreement will not have an adverse impact on the public safety or the operation of the operation of the criminal justice system.

28.9. Accordingly, the parties agree and stipulate, that this Settlement Agreement complies in all respects with the provisions of 18 U.S.C. § 3626(a).

28.10. Prior to the Court's approval of the Settlement Agreement, Plaintiffs' counsel shall be afforded the opportunity to meet with all class members -- in groups of at least fifteen -- to inform them of the provisions of the Settlement Agreement. Class members shall be informed that they have the right to accept or object to the terms of the Settlement Agreement, and how they may express their acceptance or objections to the terms thereof, pursuant to Rule 23(e)(4)(A) of the Federal Rules of the Civil Procedure. Consistent with Rule 23(e), notice of the Settlement Agreement shall be posted in all areas used to house HIV infected prisoners at Limestone.

28.11. In the event the parties are unable to hereafter resolve by agreement issues relating to Plaintiffs' claim for attorneys' fees, Plaintiffs may petition the Court within sixty days of the date on which the Court enters its order granting the parties' Joint Motion to Adopt Settlement Agreement and Provide for Special Master, for a resolution thereof.

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By: Hoy King
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Attorney General, State of Alabama

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Commissioner of Department of Corrections
State of Alabama

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