

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA**

BAKER, *et al.*,

on behalf of themselves and other persons
similarly situated,

Plaintiffs,

vs.

CAMPBELL, *et al.*,

Defendants.

Case No. CV-03-C-1114-M

SETTLEMENT AGREEMENT

WHEREAS on May 13, 2003, the Plaintiffs filed suit challenging the constitutional adequacy of the medical care provided by the Alabama Department of Corrections (ADOC) to inmates housed at St. Clair Correctional Facility (St. Clair); and

WHEREAS the Plaintiffs and the Defendants agree that it is in their best interests to resolve this litigation;

NOW THEREFORE the parties, by and through their respective counsel, hereby stipulate and agree to the following provisions to resolve this litigation:

I. CLASS CERTIFICATION

1. For the purpose of settlement only, the Defendants do not object to class certification. The settlement class is defined as “all present and future inmates who are or will be incarcerated at St. Clair Correctional Facility and who are in need of medical care.”

II. AGREEMENT OF EXPERTS

2. The Defendants agree to comply with the requirements for adequate medical care for inmates housed at St. Clair as contained in the document entitled "Agreement of Experts." The Agreement of Experts, which is attached to this Settlement Agreement as "Exhibit A," is incorporated into this Settlement Agreement as though fully set forth herein.

3. The Agreement of Experts addresses such issues as (1) the medical treatment that will be provided to inmates who are ill; (2) timely access to appropriate care; (3) the levels and types of staffing necessary to provide adequate care; (4) the formulary; (5) the development and implementation of performance measures; and (6) the ADOC contract oversight and quality management program to ensure ongoing quality of care.

4. In the event that the inmate population at St. Clair increases over and above the inmate census that existed on January 21, 2004, the ADOC agrees to add additional medical staff in accordance with the staffing levels expressed in the Agreement of Experts.

III. TREATMENT WITH RESPECT TO NAMED PLAINTIFFS

5. All required procedures, evaluations, and/or medications shall be recorded in the medical record of each inmate. The named medical consultant for this agreement will receive copies of all reports, studies and evaluations related to the medical assessments of these named plaintiffs and will be kept informed as to the details of their medical management as soon as they become available to the ADOC's medical care

provider.¹ Completion of these evaluations and commencement of treatment as medically indicated shall be a component of the consultant's evaluation of medical care and determination of compliance with this Agreement. Failure to follow these stipulations or to provide appropriate follow-up and documentation may lead to a finding of non-compliance by the consultant. The ADOC's medical care provider's Regional Vice-President or State Medical Director shall be designated the responsible authority to assure that these medical evaluations are scheduled and completed, follow-up recommendations acted upon and that inordinate delays do not occur in either evaluation or treatment. The ADOC will also name a responsible individual (either employee or contractor) to specifically assist the medical care provider and the medical consultant in assuring compliance with these stipulations for the named plaintiffs.

6. **Tony Dexter**, AIS No. 169283, will receive an evaluation by a hematologist for his von Willebrand's disease (Type 3) within 30 days of the date of this Agreement. Within 90 days of the completion of this evaluation by a hematologist, Mr. Dexter shall be evaluated for possible treatment for hepatitis C consistent with the clinical guideline for treatment referred to in paragraph 11 of this Agreement. If in the opinion of a gastroenterologist treatment is indicated (based on the guideline) and can proceed without a liver biopsy, treatment shall commence within 30 days of that evaluation. If a liver biopsy is deemed necessary for treatment, a hematologist shall be consulted for specific recommendations concerning pre- and post-liver biopsy transfusion requirements to assure clinical stability. If indicated, hospitalization to accomplish this procedure shall be accomplished. If in the opinion of a hematologist a liver biopsy is not feasible (*i.e.*, presents excessive risk) a copy of that opinion shall be provided to the

¹ At the time of this agreement, the "medical care provider" is Prison Health Services, Inc.

consultant as soon as it becomes available. Assuming compliance with the clinical guideline for treatment, Mr. Dexter will receive appropriate therapy commencing within 30 days of completion of evaluation for treatment of his hepatitis C infection. All nursing staff and all security shift commanders will be educated on at least an annual basis and all new employees oriented at time of hire, that all of Mr. Dexter's bleeding episodes must be considered a medical urgency and potential emergency regardless of what may appear to be trivial on initial assessment. The site physician or on-call practitioner will be contacted for all bleeding episodes and appropriate treatment will be provided. All bleeding episodes, as well as the name of the practitioner contacted and the decision regarding disposition, shall be documented in the medical record.

7. **James Freeman**, AIS No. 160415, will receive an evaluation from a colorectal specialist within 30 days of the date of this Agreement. Within 30 days of the date of this Agreement, Mr. Freeman will also receive an appropriate evaluation and diagnosis by either a surgeon or gastroenterologist regarding the recent-onset abdominal pain that is currently requiring opiates for control. Subsequent to these evaluations, if it is the medical opinion of the specialist that a reanastomosis can be performed successfully, it must be scheduled and performed as soon as practical and no more than 90 days of the completed evaluation. Prior to surgery and as long as necessary (or if surgery is not deemed technically feasible, indefinitely), Mr. Freeman will receive adequate supplies of colostomy materials to appropriately care for his medical condition. He will be given regular and routine unrestricted access to a clean working environment (including hot and cold running water with soap or disinfectant available) in which to change and/or clean his colostomy bags. At least once every six weeks, he will be

scheduled for a routine examination of his stoma to assure that it is not infected.

Evaluations that are more frequent shall occur on an “as needed” basis. All such evaluations will be recorded in the medical record. If there is an infection or skin breakdown, prompt and appropriate medical treatment shall be provided.

8. **Ted McGinnis**, AIS No. 121161, will receive an evaluation from a hematologist regarding his abnormal complete blood count (lymphocytosis) within 30 days of the date of this Agreement. Within 90 days of this evaluation by a hematologist, assuming no medical contraindications, Mr. McGinnis will be evaluated as a candidate for treatment for hepatitis C consistent with the clinical guideline for treatment referred to in paragraph 11 of this Agreement. Assuming no medical contraindications, this evaluation shall include the previously approved liver biopsy, which shall be performed within 90 days of the hematology evaluation. Assuming compliance with the clinical guideline for treatment, Mr. McGinnis will receive appropriate therapy commencing within 30 days of completion of evaluation for treatment of his hepatitis C infection.

9. **Darrel Mullins**, AIS No. 138916, will receive appropriate and prompt medical treatment under the direction of an oncologist or radiation therapist for metastatic seminoma of the testicle that has metastasized to his abdomen and lower back. Mr. Mullins will be kept fully informed of his medical condition at all times and apprised of his treatment options. He will receive regularly prescribed pain medications in dosages necessary to alleviate pain and suffering. Such treatment for pain will not be allowed to lapse once prescribed unless dictated by changes in his clinical condition.

IV. CONTRACT WITH MEDICAL CARE PROVIDER

10. The ADOC's contract with its medical care provider is incorporated into this Settlement Agreement as though fully set forth herein. If the Settlement Agreement conflicts with the ADOC contract with its medical care provider, the Settlement Agreement controls.

V. HEPATITIS C

11. The ADOC's medical care provider's current clinical guideline for Hepatitis C is incorporated into this Settlement Agreement as though fully set forth herein. The clinical guideline for Hepatitis C may change from time to time as medically appropriate, so long as there is no decrease in the level of care or conflict with viral hepatitis guidelines issued by the Centers for Disease Control and Prevention or the National Institutes of Health.

VI. TIMING

12. Aside from the provisions contained in ¶¶ 6-9 that may include different time requirements, absent any unforeseen delays that are outside the control of the ADOC, the Defendants agree to implement the terms of the Settlement Agreement by July 1, 2004.

VII. MONITORING AND REPORTING

Appointment and Duties of the Consultant

13. The Plaintiffs and the Defendants stipulate to the appointment of a consultant, who shall be independent of the Plaintiffs and the ADOC, to facilitate the implementation of the Settlement Agreement and to oversee compliance. The parties agree that John Robertson, M.D., MPH, FACP, shall serve as the consultant.

14. The consultant shall contract for his services directly with the ADOC and shall in all relevant respects be governed by existing ADOC rules and regulations regarding such employment, including those related to compensation and expenses.

Inspection of Facilities

15. For a period beginning on July 1, 2004, and ending on July 1, 2006, the consultant will tour St. Clair at least four times per year for a total of eight visits over the time period. At least three of these visits shall be formal audits requiring a consultant's report as detailed in ¶ 19. One visit may be utilized as a problem-solving, consultative visit during which the consultant may meet with employees of the ADOC, its medical care provider, or any other person as he deems necessary. The consultant shall notify the ADOC at least two weeks in advance of each visit. Each visit shall last no longer than five business days.

16. During each quarterly visit, the consultant may, as he deems necessary:
- a. meet with the primary care physician, the Health Services Administrator (or Head Nurse), and any other medical care staff with whom the consultant wishes to meet;
 - b. meet with vendor corporate staff and ADOC central office staff;
 - c. tour the prison, including the infirmary, mental health unit, segregation unit, and general population living areas, and speak with any inmates, on-site medical care staff, and ADOC correctional staff at the prison;
 - d. review any records, including the medical records of any inmate.

Quarterly Reporting by ADOC

17. On a quarterly basis beginning with the quarter ending September 30, 2004, the ADOC will provide the consultant with the written information listed below. As necessary, the information will be in a reporting format (*e.g.*, logs and/or report forms) that will be initially developed by the consultant and agreed upon by the Plaintiffs and the ADOC by July 1, 2004. The information provided by the ADOC to the consultant is as follows:

- a. the inmate census at St. Clair;
- b. ADOC and medical care provider's staffing, including the number of staff and scheduled and actual hours currently provided;
- c. training efforts undertaken during the preceding quarterly period;
- d. performance measurement reports of the ADOC or its medical care provider that relate to items specific to the Agreement of Experts;
- e. mortality reports, grievance analyses, and incident reports on sentinel events;
- f. any new medical care policies and procedures or revisions to medical care policies and procedures that were implemented during the preceding quarterly period;
- g. data derived from the performance measurements identified in the Agreement of Experts;
- h. monthly reports submitted by the medical care provider to the ADOC and any reports resulting from the ADOC's consulting process; and

i. any other documents or reports requested by the consultant that would assist him in performing his duties under the terms of the Settlement Agreement.

18. Information detailed in subsections (d), (e), and (g) of ¶ 17 shall be provided to the consultant only and shall be reviewed on-site.

Reports by the Consultant

19. Within 30-40 days after the consultant's formal audit, the consultant shall submit a written report to the ADOC and to the Plaintiffs' counsel. This report shall include (a) the steps taken by the ADOC to implement the terms of the Settlement Agreement since the consultant's prior report; and (b) the ADOC's status in achieving substantial compliance with the terms of the Settlement Agreement.

20. "Substantial compliance" means that the ADOC has and is reasonably expected to continue to substantially satisfy the terms of the Settlement Agreement. Where there appears to be non-compliance with the terms of the Settlement Agreement, the consultant shall provide a detailed explanation of the basis of his finding, and provide a recommendation to the ADOC for how compliance might be achieved. A finding of non-compliance shall not be based on isolated, non-continuing instances of failure to substantially satisfy the terms of the Settlement Agreement, nor shall a finding of non-compliance be based on omissions of a technical or unimportant nature.

21. By July 1, 2006, the consultant shall issue a final report detailing the ADOC's overall effort at achieving compliance with the terms of the Settlement Agreement during the preceding two years and recommending any future action to be taken by the ADOC to achieve or maintain substantial compliance.

22. The consultant's reports and any documents reviewed or information obtained during the consulting period may be used by either party in an action to enforce the Settlement Agreement in state court or in any new action brought by the Plaintiffs pursuant to ¶¶ 25 - 27. Otherwise, any report by the consultant shall remain confidential.

VIII. NEW CONTRACTORS

23. The ADOC shall incorporate the Agreement of Experts and any other relevant terms of the Settlement Agreement in any Request for Proposal for medical care submitted to potential vendors.

IX. DISCLAIMER OF LIABILITY

24. The Plaintiffs and the Defendants expressly acknowledge and agree that this Settlement Agreement does not constitute an admission of liability by the Defendants.

X. ENFORCEMENT OF SETTLEMENT AGREEMENT

25. This Settlement Agreement is not a consent decree, and is not enforceable in federal court. In the event of non-compliance with any of the terms in this Settlement Agreement, the Plaintiffs may enforce the Settlement Agreement in state court only, pursuant to 18 U.S.C. § 3626(c)(2)(B).

26. The Plaintiffs are not precluded from bringing a new action in federal court in the event of non-compliance with the terms of this Settlement Agreement. In the event that the Plaintiffs' current counsel bring suit on any of the issues presented in this action before July 1, 2006 (the end of the consulting and reporting period), the newly filed action will be considered a related case. All discovery that has been exchanged to date will be deemed to be part of discovery in any such new action. All documents

provided to the consultant pursuant to ¶ 17, and all consultant's reports that were written pursuant to ¶ 19 will be admissible in any such new action.

27. Should Plaintiffs decide that an enforcement action or new action is necessary, information derived from the reports listed in subsections (d), (e), and (g) of ¶ 17 shall be filed under seal, to the extent Plaintiffs can determine the source of the information.

XI. DISMISSAL

28. If the Court approves this Settlement Agreement, the current case will be dismissed without prejudice from federal court.

29. Nothing in this settlement prohibits the named plaintiffs or any class member from bringing individual claims for damages against the ADOC, its employees, or its agents.

XII. PLAINTIFFS' ATTORNEY'S FEES AND COSTS

30. The Defendants shall pay the Plaintiffs' attorney's fees and costs in the total amount of \$30,000.

Agreed upon this _____ day of May 2004.

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