



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

NOV 23 1993

The Honorable Marc Racicot  
Governor  
State of Montana  
State Capitol  
Helena, Montana 59620

Re: Notice of Findings Regarding the Montana State  
Prison, Pursuant to 42 U.S.C. Section 1997b

Dear Governor Racicot:

I am writing to you regarding our investigation of the Montana State Prison ("MSP") in Deer Lodge, Montana, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 et seq. Consistent with the requirements of CRIPA, the purpose of this letter is to advise you of the conditions at MSP that deprive the inmates confined there of their constitutionally protected rights and to recommend minimum remedial measures.

In general, prison inmates may not be subjected to conditions that are incompatible with evolving standards of decency or that deprive them of their basic human needs while incarcerated. See Estelle v. Gamble, 429 U.S. 97 (1976). More specifically, the most commonly applied standard is the Eighth Amendment's proscription against cruel and unusual punishment. Wilson v. Seiter, \_\_\_ U.S. \_\_\_, 111 S.Ct. 2321 (1991); Rhodes v. Chapman, 452 U.S. 337 (1981).

Our investigation of MSP consisted of two two-day tours in March 1993, one in which we were accompanied by our penology consultant and the other by our medical consultant. During the course of the investigation, we also examined numerous records at MSP, focusing especially on administrative and facility policies and procedures, incident reports and inmate medical records. In addition, our consultants interviewed numerous MSP personnel and inmates. At the end of these tours, our consultants met with appropriate officials and advised them of life-threatening conditions which they had identified. At all times during the investigation, Montana State officials and prison staff extended to us and our consultants their cooperation, for which we wish to convey to you our thanks.

U.S. v. Montana



PC-MT-003-001

Our investigation of MSP revealed that conditions exist which violate the constitutional rights of the inmates. The facts and conclusions set forth below are based upon our March 1993 tours.

**I. Medical care is grossly inadequate and fails to meet the serious needs of inmates.**

**A. There are an inadequate number of appropriately trained medical staff.**

Our investigation disclosed that the State employs only one physician, Dr. Autry, for its entire correctional system, including MSP, a women's prison and a protective custody unit at the State hospital. MSP alone houses almost 1200 inmates. Quite obviously, one physician for the entire correctional system housing inmates with serious medical problem is clearly inadequate. For example, Dr. Autry spends only one day each week at the women's facility, which has no gynecologist or obstetrician on staff. In addition, the number of psychiatrists retained to address the mental health needs of inmates is inadequate. The management of any adequate medical care delivery system requires far greater physician resources.

As to other medical staff, MSP has budgeted for two physician assistants and 12 nurses (5 registered and 7 licensed practical nurses) to assist in providing health care services. At the time of our tour, one of the two physician assistant positions and a LPN position were vacant. This staffing complement is likewise clearly insufficient to provide all of the necessary medical care for MSP's inmate population.

In many cases, our consultant observed that the physician assistant responsible for the care and treatment of an inmate with a serious medical condition, such as coronary artery disease, AIDS or diabetes, did not appear to have the necessary medical expertise to treat such conditions. Moreover, in these cases there was no physician supervision which generally accepted professional standards require.

Staffing for dental care was similarly found to be insufficient. At the time of the tour, MSP had just hired a dentist, and the waiting list to see him was over 400 inmates. A waiting list of 400 inmates is simply unjustifiable. Our consultant was informed of situations where inmates, due to the overwhelming pain from their dental problems, ultimately resorted to self-treatment or asked other inmates to take care of their

problem. In one case, one inmate pulled out the tooth of another inmate using a piece of string because he was unable to get an appointment and could not stand the pain.

Finally, since the State corrections system lacks a prison medical director, Dr. Autry also serves as the State's prison medical director in addition to being the sole physician for all inmates. The State provides no staff to assist Dr. Autry in formulating department health care policies or procedures or performing necessary administrative tasks. As a result, health care policy and procedure is virtually non-existent at MSP as well as the other two state facilities. The State's ability to monitor or identify health care service issues or problems throughout its prison system is similarly non-existent.

In sum, staffing deficiencies exist in all areas of the health care delivery system at MSP. In addition, administrative support and assistance for the medical care delivery system for all prisoners is inadequate.

**B. The failure to provide prompt and appropriate medical care, especially for inmates suffering from chronic or serious medical conditions, jeopardizes the health and safety of inmates.**

MSP uses infirmiry aides at intake to screen inmates for health concerns, with examination by a physician or physician assistant occurring sometime during the inmate's first two weeks at the prison. A physician or physicians assistant, however, does not examine inmates with chronic diseases within 24 hours of admission. This is contrary to accepted practice and is dangerous.

Aside from intake, MSP uses a "kite" system to identify inmates who have health care problems -- inmates submit a form requesting medical attention. While our consultant found that MSP's kite system to be adequate in most respects, he also concluded that it cannot be used alone to identify inmates who have medical problems. For example, under MSP's system, no medical attention is received unless a request is made by an inmate. Inmates who are disabled or unable to accurately describe their complaints or symptoms are likely to be overlooked by MSP's medical staff. This gap in the system can and has had particularly serious consequences for inmates with chronic diseases, who, according to generally accepted practice, should be reviewed or examined, as necessary, by MSP medical staff at regular intervals.

The facility's failure to timely and appropriately treat inmates was apparent in almost every case reviewed by our consultant. For example, in one case, an inmate who had hypercholesterolemia, a potentially life-threatening condition, and who probably should have been hospitalized, received no treatment for his condition. Another inmate with a painful testicle had to wait five weeks for an examination. In another case, an inmate who had symptoms of stroke was not appropriately examined for seven months. Another inmate had to wait over a year before he was examined for abdominal pain and even then no diagnostic tests were ordered. This inmate was eventually diagnosed with significant liver disease.

MSP's provision of necessary subspecialty medical services is also inadequate due to unnecessary delay and absence of follow-up or monitoring by MSP health care staff. MSP provides limited subspecialty consultation on-site at MSP; inmates are sent off campus for all other consultations. Patients may wait as long as 2-1/2 months for certain subspecialty appointments. More importantly, when patients return from the hospital or their consultation, it appears that MSP health care staff fail to conduct any review of the results of the consultation or of the follow-up requirements. In one case, for example, an inmate's grossly abnormal cardiac stress test results went unrecognized by MSP staff for 6 months. In another case, MSP medical staff repeatedly failed to examine an inmate who, after undergoing bypass surgery, had experienced chest pain. Even after two subsequent admissions to the hospital for the pain, MSP staff failed to conduct appropriate follow-up.

MSP also fails in providing minimally adequate care to patients with special medical needs. With respect to diabetic inmates, for example, MSP has no appropriate diet for these inmates, fails to regulate the time at which diabetics receive their meals, has no policy requiring routine retinal exams, and provides no dietary counseling or other health education to diabetic inmates. These are, however, fundamental and critical issues in the treatment of diabetics. For example, if a diabetic inmate receives his meal long after he has taken his insulin, serious hypoglycemia (i.e., abnormally low blood sugar) can occur. In the case of one inmate, he had not received a retinal exam for 3 years, until he eventually requested one. By that time, he had already developed retinopathy and cataracts, which might have been prevented had regular retinal examinations been conducted. If this inmate does not receive prompt treatment (i.e., laser treatment), he will become blind.

MSP also fails to provide for inmates requiring skilled nursing, such as inmates who have terminal illnesses. In one case, an inmate with adrenal leukodystrophy was simply kept in the prison infirmary awaiting his death. This practice is unacceptable. The state should provide skilled nursing care to these individuals in an appropriate medical setting at MSP or elsewhere.

**C. Supervision of inmates and practices in MSP's Infirmary are inadequate.**

At MSP, any staff person, including non-medical staff, can admit an inmate to the facility's 14-bed infirmary. Nurses can admit inmates for observation for up to 24 hours. Security officers can admit inmates to the infirmary for protective custody. MSP, however, has no admission criteria for the infirmary. This is unacceptable. Such a practice results in the admission into the infirmary of individuals absent appropriate medical justification and the misuse of the infirmary. Due to the limited number of infirmary beds, such beds should be reserved for use by individuals with serious medical problems.

Our medical consultant also observed that a number of core, fundamental medical procedures and practices are not consistently followed in the infirmary. For example, nurses do not consistently make rounds and take vital signs during each shift; physicians do not conduct daily rounds and make appropriate entries in the medical record; admissions notes are not written in a timely manner; coverage by both physicians and registered nursing is inadequate; and smoking, a commonly recognized health hazard long banned in medical facilities, is permitted. In sum, the MSP infirmary substantially departs from any known medical standard.

**D. Psychiatric care is grossly inadequate.**

The conditions to which mentally ill inmates at MSP are subjected are contrary to accepted practice. MSP inmates suffering from moderate to severe mental illness are housed in two units (Lower A and C) in the close 1 Building. The environment in these units, however, is overly restrictive, anti-therapeutic, and may tend to exacerbate mental illness. Inmates in these units are subjected to frequent lock-downs and are otherwise restricted to their cells except for a one hour period three times per week and a once a week visit to a psychologist and group session.

The situation for MSP inmates who are psychotic is worse. MSP has no unit to house psychotic inmates, who are instead frequently housed in maximum security cells. These inmates are

typically not allowed out of their security cells. Acutely psychotic inmates are housed in the infirmary, purportedly on a short-term basis, before being sent to the state hospital. The state hospital, however, recently reduced the number of beds in its psychiatric forensic unit by more than 50%, from 60 to 22 beds, which, in turn, reduced the number of MSP psychiatric inmates the hospital will admit from 12 to 6.

MSP lacks not only appropriate housing for its mentally ill inmates, but psychiatric staff as well. While 10% of MSP's inmates are on some form of psychotropic medication, the prison has only one contract psychiatrist who works 12 hours each month. This psychiatrist sees approximately 35 patients in a 6-hour day, which affords him little time to evaluate each inmate. Indeed, these hours preclude him from regularly evaluating all inmates who are on psychotropic medications. During the week of the tour, 10 inmates had their medication regimens renewed without even being seen by the psychiatrist. This is clearly an unacceptable and dangerous practice. In addition, no mental health services are provided to inmates housed at MSP's "Expansion Unit," located in Warm Springs, where protective custody inmates are housed. During the tour, one of our consultants observed two inmates in this unit obviously in need of mental health services.

Finally, MSP lacks any policies or procedures on the use of restraints or psychotropic medications. This too is unacceptable and inconsistent with generally accepted medical standards.

**E. Medication practices are inappropriate and dangerous.**

Our physician consultant found that MSP also fails to observe appropriate and safe practices in its administration of medications. This finding was also made by our penology consultant.

Currently, all medications given to inmates outside the infirmary, including psychotropic medications, are administered by corrections officers who lack appropriate training (e.g., how to administer medications or how to recognize side effects). These officers administer medications simply by handing the medication to the inmate without witnessing ingestion, or in some cases, by providing inmates with several days' doses of medications all at once, again leaving it for the inmate to take the medication on his own. This practice is fundamentally unacceptable, especially with respect to psychotropic medications. Psychotropic medications must be given dose-by-dose under supervision of a licensed nurse or trained personnel. Aside from the obvious health-related consequences of these practices, they also create opportunities for inmates to sell drugs or to be forced into giving them to other inmates.

As well, medications are not reviewed in a manner which comports with generally accepted medical standards. Finally, as referenced above, psychotropic medications are prescribed without examination of the patient -- an unacceptable medical practice.

**F. Infection monitoring or control is absent.**

With respect to infection control, our consultant focused primarily on MSP's approach to the detection and treatment of tuberculosis ("TB"), the incidence of which has risen dramatically in institutions throughout the country in recent years. While MSP staff informed our consultant that there had never been an active case of TB at MSP, TB test results compiled by the facility shows that 5% of MSP's current inmate population has tested positively for TB. The magnitude of this number strongly indicates that a current or recent, unrecognized outbreak of tuberculosis has occurred at the facility. Clearly, the prison is either missing cases of active TB or performing the skin test inaccurately. Our consultant believes that the former is more likely.

Related to the control of communicable diseases is the issue of routine health maintenance. MSP fails to provide any such maintenance, which should include yearly examinations, including TB testing, updating immunizations, cholesterol screening for inmates over 35 years of age, and testicular examinations for inmates under 30 years of age.

**II. Measures recommended to ensure medical care satisfies constitutional standards.**

**A. Management and staffing.**

1. State officials must hire and retain a competent and qualified physician to serve as medical director to organize and direct all medical services in the Department of Corrections and provide such director with appropriate administrative and other support; MSP must hire and retain sufficient numbers of physicians, physicians assistants, dentists, nurses, and other medical professionals to meet the medical needs of inmates, including, by contract or otherwise, medical specialists, e.g., psychiatrists, a part-time obstetrician/gynecologist for the women's prison.

2. Develop and implement system-wide policies and protocols for the delivery of medical services.

**B. Basic medical care.**

1. Develop and implement a system of rounds by nurses or other qualified medical professionals to identify individuals in need of medical care and to monitor or follow-up inmates with medical problems.

2. Ensure the examination by a physician of all inmates with chronic medical conditions within 24 hours of admission; conduct yearly physicals of all inmates; and schedule and conduct periodic examinations of inmates with chronic medical problems.

3. Mandate and monitor the supervision of physician's assistants by competent and qualified physicians, including review and countersigning of medical charts.

4. Require MSP physicians to follow-up all consultations by non-MSP medical professionals.

5. Develop and implement policies and protocols for the delivery of medical care and medically related services to inmates with special medical needs, e.g., diabetes.

**C. Infirmary.**

Take sufficient steps to ensure that the operation of the MSP infirmary complies with generally accepted professional standards or obtain the use of alternate medical services elsewhere; if used, develop and implement policies and procedures for the administration of the infirmary, including requirements for adequate physician and nursing coverage, rounds by medical professionals, admissions based upon medical need, and other essential medical services. Ban use of the infirmary for protective custody purposes.

**D. Psychiatric care.**

1. Ensure that the delivery of mental health services to inmates fully satisfies generally accepted medical standards; obtain more beds at the state psychiatric hospital or build and operate an acute psychiatric unit at MSP for psychotic inmates or others in need of such services; enhance psychiatric resources, including staffing, to ensure appropriate therapies are available.

2. Evaluate the individual mental health needs of all mentally ill inmates and provide necessary mental health services; require that all lock-downs of mentally ill inmates be medically justifiable; enhance out of cell opportunities, including opportunities for exercise.

**E. Medication practices.**

1. Medications must be administered on an individualized, dose-by-dose basis; psychotropic medication shall not be renewed without examination or review of the patient.

2. Staff must be appropriately trained to administer medication, including the monitoring of inmates taking medication to determine side effects.

**F. Infection control.**

1. Develop and implement appropriate infection monitoring and control policies, especially relating to tuberculosis and HIV. Such policies should include TB and HIV screening at appropriate times, schedules for routine health maintenance issues, and the provision of health counseling to inmates on issues such as AIDS prevention.

2. Re-screen all inmates and provide chest x-rays where indicated. In addition, because individuals with HIV may have negative TB skin tests despite being infected with TB, MSP should consider screening inmates for HIV at intake.

**III. Security remains inadequate.**

During the tour, our penology consultant was cognizant of the fact that MSP has recently made numerous, significant changes in response to the riot that occurred at the facility in September 1991 and the resulting assessments conducted by correctional organizations, such as the National Institute of Corrections, and other consultants to the State. Indeed, he noted many of these changes with approval. Our consultant, however, found that serious deficiencies continue to exist regarding MSP's security practices.

**A. Security practices threaten the safety and well-being of the inmates.**

One of the most glaring problems at MSP is the continued absence of a disturbance control policy, despite the recent riot. The absence of such a policy poses considerable risk of harm.

A second aspect of security that is deficient at MSP is its detection and control of potential weapons and other dangerous items. The absence of checks or monitoring of inmates entering and leaving MSP's industrial, vocational and maintenance shops is a serious lapse in security that creates the opportunity for weapons and other dangerous items to be distributed throughout the prison.

The failure to conduct routine, large-scale shakedowns is a serious deficiency in security practices. One manifestation of this problem is the excessive number of unused hypodermic needles confiscated by MSP staff. In addition, supervision of the exercise yard on the High Security Side is inadequate.

Finally, MSP fails to provide adequate in-service staff training with regard to security practices, including disturbance control.

**IV. Measures recommended to ensure adequate security.**

1. Immediately develop an adequate disturbance control policy and ensure that all staff are adequately trained in its implementation.

2. Enhance security policies and procedures regarding the detection and control of potential weapons and other dangerous items from industrial, vocational and maintenance shops at MSP, specifically, fully implement the state's security consultants recommendations; in addition, assign a correctional officer to the industrial area during the weekdays solely for the purpose of monitoring security, expand the "lock-out" system currently being used in the maintenance shops.

3. Conduct routine, large-scale shakedowns.

4. Provide adequate supervision of the exercise yard on the MSP High Security side and during mass movement.

5. Provide all correctional officer staff each year a minimum of 40 hours of in-service training in prison security practices.

**V. Environmental conditions present health risks and significant fire hazards.**

Our corrections consultant identified a number of hazardous and otherwise unacceptable environmental conditions. In the Rothe Dorm, he found overcrowding, lack of ventilation and significant fire, safety/security and health risks for the inmates housed there.

Numerous obvious fire safety hazards were also noted by our consultant. None of MSP's industrial and maintenance shops, nor the hobby shop in the Low Security side, are sprinklered. MSP does not provide on-going training to MSP staff in the operation of fire safety equipment and implementation of the facility's emergency fire plan, nor conduct regular fire drills. The number of Scott air-paks in the facility is insufficient.

**VI. Measures recommended to ensure a safe environment.**

1. Either close the Rothe Dorm or correct and eliminate the overcrowding (lack of space), lack of ventilation and fire safety deficiencies present in the area.

2. Correct and eliminate the fire safety hazards in the industrial, maintenance and hobby shops.

3. Provide staff with on-going training regarding the facility's emergency plan and operation of fire safety equipment and conduct regularly scheduled fire drills. Purchase sufficient numbers of Scott air-paks.

**VII. MSP fails to comply with the requirements of the Americans with Disabilities Act, 42 U.S.C. § 1201.**

Our consultant noted numerous failures to comply with the ADA. For example, in Unit D on the Low Security side, our consultant found that there was an insufficient number of bedrooms fitted for handicap access for the number of disabled inmates. He also observed an absence of handrails in shower areas used by the disabled.

**VIII. Measures recommended to ensure compliance with the ADA.**

1. MSP must provide bedrooms sufficient in number and adapted to accommodate disabled inmates.

2. MSP must provide handrails in the shower areas, and any other adaptations necessary to provide adequate access for the handicapped to prison facilities.

**Other Areas of Concern**

In addition to the inadequate conditions identified above, our corrections consultant observed numerous other problems at MSP. While not of a constitutional dimension, these problems warrant attention and should be corrected or eliminated.

With respect to classification and housing decisions, while noting that, in part due to the assistance of the National Institute of Corrections, a new classification system is in process, our consultant determined that MSP needs to promulgate policies regarding the selection of housing for inmates, especially given the prevalence of double cell assignments. Such policies should set forth guidelines for those making placement decisions and should provide for screening out inmates who would be inappropriate for double celling (e.g., certain mentally ill inmates, aggressive homosexuals, and inmates likely to be victimized). He also recommends discontinuing the practice of

using inmates in the classification and intake offices where they have access to personal information regarding other inmates.

With respect to food service at MSP, our consultant's single concern is that the facility fails to conduct any quality control regarding food temperatures, an issue that has potentially serious health consequences. Given the distances that some of the food is transported, this issue should be monitored. He recommends that MSP check food temperatures at the time of service in the more remote housing units.

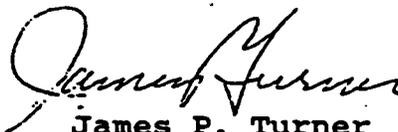
At MSP's Expansion Unit, our consultant found that inmates are not being allowed sufficient access to the telephone. These inmates are only permitted one 15-minute telephone call per week. In addition, our consultant stressed that to the extent that the State is considering closing this unit, the State should find appropriate and safe alternative housing and should, in no event, return these inmates to MSP.

Pursuant to CRIPA, the Attorney General may initiate a lawsuit to correct deficiencies at an institution 49 days after appropriate local officials are notified of them. 42 U.S.C. § 1997b(a)(1). That period expires on January 11, 1994. Therefore, we anticipate hearing from you before that date with any response you may have to our findings and a description of the specific steps you have taken, or intend to take, to implement each of the minimum remedies set forth above. If you do not respond within the stated time period, we will consider initiating an action against your jurisdiction to remedy the unlawful conditions. During this period, you should feel free to contact federal agencies, including the National Institute of Corrections and the Federal Bureau of Prisons, to obtain any technical assistance that may be available to improve institutional conditions at MSP.

We look forward to working with you and other State officials to resolve this matter in a reasonable and expeditious manner. If you or any of your staff have any questions, please

feel free to call Laurie J. Weinstein, Senior Trial Attorney, Special Litigation Section, at (202) 514-6408, or Timothy R. Payne, Senior Trial Attorney, at (202) 514-6441.

Sincerely,



James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division

cc: The Honorable Joseph P. Mazurek  
Attorney General  
State of Montana

Mr. Rick Day, Director  
Montana Department of Corrections  
and Human Services  
State of Montana

Mr. Mickey Gamble, Warden  
Montana State Prison

Lorraine I. Gallinger, Esq.  
United States Attorney  
District of Montana