



U.S. Department of Justice 9/2/96

Civil Rights Division

AEP:MHN:TRP:WGM:VBR:drb
DJ 168-44-11

Special Litigation Section
P.O. Box 66400
Washington, D.C. 20035-6400

September 12, 1996

FEDERAL EXPRESS

Ms. Tami Canaan
Clerk of Court
United States District Court
District of Montana
Room 542
301 S. Park Ave.
Helena, Montana 59626

Re: United States of America v. State of Montana, et al.
Civil Action No. 94-90-H-CCL

Dear Ms. Canaan:

Enclosed for filing in the above referenced action are the original and two copies of the United States' and State of Montana's Joint Motion to enter their Stipulated Agreement settling the issues of medical, dental and mental health care, a Proposed Order to that effect, and a Stipulated Agreement with Certificate of Service. Please file the originals and date-stamp and return one copy to our office in the enclosed self-addressed envelope.

Sincerely,

William G. Maddox

William G. Maddox
Senior Trial Attorney
Special Litigation Section

Enclosures

U.S. v. Montana



PC-MT-003-003

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cc: Records Peabody Nelson Payne Maddox Ryan Hold

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(406) 657-6101

ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action
)	No. 94-90-H-CCL
STATE OF MONTANA; MARC RACICOT,)	
in his official capacity as)	
Governor of the State of Montana;)	
RICK DAY, in his official capacity as)	
Director, Montana Department of)	
Corrections and Human Services; the)	
Administrator of the Corrections)	
Division of the Montana Department of)	
Corrections and Human Services, in his)	
official capacity; MIKE MAHONEY, in)	
his official capacity as Deputy Warden,)	
Montana State Prison; and the)	
Department of Corrections and Human)	
Services,)	
)	
Defendants.)	
)	

JOINT MOTION

The United States and the State of Montana, et. al., having entered into the attached Stipulated Agreement ("Agreement"), jointly move this Court to dismiss without prejudice pursuant to Fed. R. Civ. P. 41(a)(2) the issues of medical, dental, and

mental health care in the above styled case.

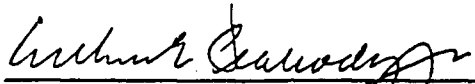
The parties agree and request that the Court shall retain jurisdiction over the issues of medical, dental, and mental health care in this civil action pending completion of the Agreement by the Defendants according to its terms. The parties request that the Clerk of the Court be directed to remove this civil action as to the issues of medical, dental, and mental health care, from the Court's active docket.

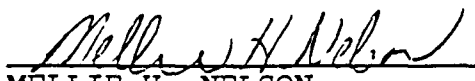
The parties further agree that in the event that Defendants are unable to meet the terms of the Agreement within the time frames provided by the Agreement, the United States may move this Court to restore the issues of medical, dental, and mental health care in this civil action to the Court's active docket for the purposes of further litigating such issues.

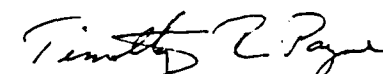
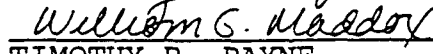
Agreed to by:

COUNSEL FOR UNITED STATES:

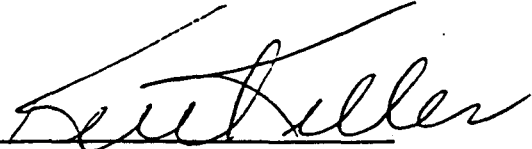
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Corrections and Human Services, in his)
official capacity; MIKE MAHONEY, in)
his official capacity as Deputy Warden,)
Montana State Prison; and the)
Department of Corrections and Human)
Services,)
)
Defendants.)
_____)

STIPULATED AGREEMENT

For the purposes of resolving the issues of medical, dental
and mental health care in the instant case, the United States

agrees to postpone litigating the issues at trial to permit the Defendants the opportunity to implement the terms set forth in this Stipulated Agreement ("Agreement") consistent with its terms and specified time frames.

Immediately upon execution of this Agreement, the parties shall jointly move the Court for entry of an Order of dismissal without prejudice pursuant to Fed. R. Civ. P. 41(a)(2) and shall attach this Agreement to such motion.

If Defendants are unable to comply with the terms of this Agreement within the time frames listed, the United States may file a motion to vacate the dismissal without prejudice and to restore the action to the Court's active docket ("Motion to Restore") for the purpose of adjudicating the issues of medical, dental, and mental health care.

I. SUBSTANTIVE REQUIREMENTS

The Defendants shall ensure provision of adequate medical and mental health care services to inmates confined at the Montana State Prison ("MSP"). To that end, Defendants shall:

1. Comply with the medical and dental care requirements as set forth in the November 29, 1994, Settlement Agreement entered in Langford, et al. v. Racicot, et al., CV 92-13-H-LBE (Part V, Sections 1 and 2). See Appendix A. The terms of the settlement agreement in Langford as contained in Appendix A will be binding on the parties pursuant to this Stipulated Agreement even if the court dismisses the Langford agreement.

2. Establish and maintain an adequate medical records system that contains current information concerning an inmate's treatment and is organized in a functional manner to enable qualified medical professionals to render adequate and timely professional treatment decisions. The medical records shall contain, among other things, adequate and appropriate documentation of clinical encounters, chronologies, medication profiles, lab reports, diagnostic test results, and off-site consultation reports and treatment information. Defendants shall focus initially on the medical records for chronic care inmates, newly admitted inmates, and seriously mentally ill inmates. Defendants shall implement this paragraph as to other medical records as efficiently as possible and the organization of such other records shall not be grounds solely for a finding of non-compliance. Defendants shall hire or consult with a certified medical records technician.

3. Comply with the following mental health provisions:

a. Mental Health Screening/Evaluation. Develop and implement mental health screening, intake evaluation, and comprehensive mental health evaluation procedures to ensure proper identification of inmates with mental illness.

b. Continuity of Care. Provide inmates access to a full continuum of mental health care ranging from outpatient transition services to inpatient hospitalization or infirmary-based crisis intervention.

c. Policies and Procedures. Develop and implement a comprehensive set of written policies and procedures for the delivery of mental health care at MSP. The policies shall generally conform with NCCHC guidelines and shall address areas to include, but not be limited to, the organizational structure of mental health services staffing, intake screening and evaluation upon admission, housing, comprehensive mental health evaluations, referrals for further assessments following comprehensive evaluations, treatment and programming, medication administration, use of restraints, use of seclusion or observation cells, forced medication, suicide prevention, continuity of care, quality assurance, and transfers to hospitals. Defendants shall ensure that the policies and procedures for mental health are coordinated and consistent with the prison's policies and procedures for medical care.

d. Organizational Structure. Ensure psychiatric and psychological services are structured under a mental health services department with a single director.

e. Minimal Staffing. Provide the following minimum levels of staffing:

1 - FTE licensed Psychiatrist (allowing 1/2 day a week coverage of the women's prison)

1 - FTE Ph.D. Psychologist

4 - FTE Psychology Specialists (Master's Degree level)

2 - 1/4 time Master's level interns

1 - sex offender program consultant (L.C.P.C.)

1 - Special Duty Aide

Defendants shall make a good faith effort to hire 1 FTE Activities Therapist.

f. Mental Health/Special Needs Unit. Provide at MSP an intermediate care mental health unit of at least 24 beds. This unit shall serve inmates with serious mental illness who do not require acute care placement, but who require more than is offered by outpatient services. The out-of-cell time afforded inmates housed in this unit shall at least be equivalent to that afforded general population inmates (of the same classification), and shall consist of at least 4 hours a day of structured activities during the week. Defendants shall assign a clinician who shall be responsible as Director of this unit.

g. Segregation Inmates. Generally not confine inmates with serious mental illness in prison segregation housing, or under maximum security conditions that are identical or similar. Any decision to place inmates with serious mental illness in such housing shall be supported by clinical justification, appropriately documented, and shall require appropriate monitoring of the mentally ill inmate by clinical staff at least weekly. Weekly rounds of the segregation and maximum security housing units shall be conducted by a mental health clinician. At least once a month, the Director of Mental Health Services, shall accompany the mental health clinician on rounds of the segregation housing unit.

h. Suicide Prevention. Establish a suicide prevention program, consistent with NCCHC guidelines, to ensure the proper identification, housing, and monitoring of suicidal inmates. This program shall include provision of an appropriate inmate observation cell in the infirmary and sufficient non-inmate staff to ensure adequate monitoring and observation of suicidal inmates.

i. Inmate Workers. In accordance with NCCHC guidelines, no inmate workers shall be involved in the care and treatment of mentally ill inmates. Inmates specifically shall not engage in: (i) filing of inmate mental health records and/or parole board related documents; (ii) scoring of inmate tests, e.g., the MMPI; and (iii) scheduling of inmate appointments for mental health related services.

j. Needs Assessment/Tracking System. Develop a basic management information system for mental health care services that shall contain, at a minimum, the following: (i) the name of all inmates receiving mental health treatment, (ii) the housing unit of the inmate, (iii) the mental health diagnosis of the inmate, (iv) the level of care required (i.e., intermediate mental health care treatment, inpatient treatment, outpatient treatment). Defendants shall make a good faith effort to computerize such management information system.

II. MONITORING COMPLIANCE

1. The monitoring of compliance for medical care shall be done by a joint evaluation (involving an on-site tour of MSP)

conducted by Plaintiff's expert, Dr. Michael Puisis, and by Defendants' expert, Dr. Ronald Shansky. The monitoring for mental health care shall be done by Plaintiff's expert, Dr. Jeffrey Metzner, and by Defendants' expert, Dr. Mary West. The first such evaluation/tour shall take place no later than the end of November of 1996. Upon completion of the evaluation/tour, the experts shall submit a joint written report for medical care and a joint written report for mental health care regarding Defendants' status of compliance. The joint experts shall submit such reports within 30 days.

2. Following the first tour, for those provisions of Section I of this Stipulated Agreement in which Defendants have achieved substantial compliance, Defendants must sustain substantial compliance not less than four months. The experts shall conduct a follow-up tour, not less than four months following the initial tour, to determine whether Defendants have sustained substantial compliance.

3. If, upon completion of the fall 1996 evaluation/tour, Defendants have not achieved substantial compliance with regard to any provisions of Section I of this Agreement, the experts shall conduct a second evaluation/tour no later than the end of May 1997.

III. DEFAULT OF AGREEMENT AND MOTION TO RESTORE THE ACTION

1. To meet fully the terms of this Agreement, Defendants must achieve substantial compliance and sustain such substantial compliance for not less than four months for each provision set

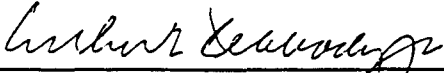
forth in Section I of this Agreement.

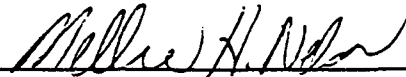
3. If Defendants have not achieved substantial and sustained compliance with regard to any provisions of Section I of this Agreement by the end of May 1997, Defendants shall be in default of this Agreement and the United States may file a motion to vacate the dismissal without prejudice and to restore the action to the Court's active docket ("Motion to Restore") for the purpose of adjudicating the issues of medical, dental, and mental health care.


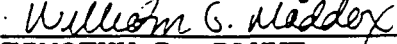
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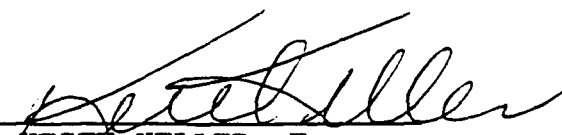
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APPENDIX A

1 attempt to arrive at an amicable resolution of the claim. If after
2 twenty (20) business days following such meeting, the matter has
3 not been resolved, Defendants' counsel shall be so informed by
4 Plaintiffs' counsel, in writing, and Plaintiffs may then have due
5 recourse to the Court.

6 V. TERMS ADDRESSING SUBSTANTIVE ALLEGATIONS

7 The terms and conditions of this part of the agreement are
8 couched in terms of future acts. The Defendants contend that they
9 have implemented many of the terms contained in this part of the
10 agreement, a contention with which the Plaintiffs do not
11 necessarily agree. The use of prospective terms in this portion of
12 the agreement is without prejudice to the Defendants' claims that
13 the programs described have already been implemented.

14 SECTION 1 - MEDICAL

15 A. Medical Director - The Defendants agree to appoint a
16 Medical Director who is responsible for making recommendations for
17 the development of medical policies and procedures which, when
18 adopted, will be largely in compliance with the National Commission
19 on Correctional Health Care Guidelines as they currently exist
20 except as otherwise provided in this agreement. These policies and
21 procedures would include, but not be limited to, such issues as
22 quality assurance, programs for chronic care, special-needs
23 inmates, admission to and administration of the infirmary, and a
24 peer review of the practitioners who are contracting with the State
25 of Montana. The Medical Director shall be responsible for imple-
26 menting the medical policies and procedures, as well as the duties

1 set forth in Exhibit A. Day-to-day supervision and management
2 would be provided by a manager contracted by the Defendants.

3 B. Physicians - Defendants shall ensure that, in addition to
4 the Medical Director, one or more licensed physicians shall provide
5 medical services as described in Exhibit B. Additionally,
6 Defendants shall ensure two (2) physician assistants or the
7 equivalent, each on a 40-hour week.

8 C. Nurses - Defendants shall provide adequate nursing staff
9 to cover sick call, the chronic care program, patient follow-up,
10 and to be responsive to any routine or emergent medical situation
11 which may arise on a day-to-day basis. Defendants shall ensure 24-
12 hour nursing coverage of the infirmary.

13 D. Nursing Protocols - Defendants shall establish and
14 implement standing orders or protocols for the treatment of common
15 conditions by nurses performing sick call. Such standing orders
16 shall be reviewed and approved by the prison Medical Director.

17 E. TB Screening - Defendants shall conduct TB screening of
18 inmates in conformance with Center for Disease Control Guidelines.
19 Most notably, this shall include a skin-test (PPD) of each inmate
20 upon entry (except any inmate providing documentation of already
21 testing positive for TB), to be administered and read by
22 appropriately trained personnel and recorded in the inmate's
23 medical record. Any inmate with positive skin-test reactions, or
24 with symptoms suggesting TB (e.g., cough, anorexia, weight loss,
25 fever), should be provided a chest x-ray within 72 hours of the
26 skin-test reading or identification of symptoms. Further, all

1 inmates with negative skin-tests shall be administered a repeat
2 skin-test on an annual basis.

3 F. Intake Screening - Defendants shall conduct an intake
4 screening of each incoming inmate within 24 hours of admission,
5 excluding weekends and holidays. The screening shall entail
6 conducting a preliminary history and physical, including the taking
7 of vital signs. Initial assessments shall be performed by nursing
8 staff, and for every inmate shall be followed with a comprehensive
9 physical examination to be completed by a physician assistant
10 and/or a physician. Such physical examination shall be completed
11 within the first 14 days of an inmate's admission into the prison.
12 At the discretion of MSP health officials, returnees within one (1)
13 year of their last separation may be exempted from the PE
14 requirements.

15 G. Sick Call - Defendants shall conduct a daily sick call,
16 except weekends and holidays. The sick call clinics shall be
17 conducted in the satellite (out-patient) infirmaries by an on-site
18 nurse and/or physician's assistant. In conducting these clinics,
19 health care staff shall utilize triage protocols and shall ensure
20 all appropriate follow-up care is provided. Further, Defendants
21 shall ensure all inmates are seen at sick call, by a nurse and/or
22 physician's assistant, within 48 hours of their submission of a
23 request for health care services.

24 H. Sick Call/Maximum Security - Defendants shall conduct
25 daily sick call, except weekends and holidays, in the Maximum
26 Security Unit, with assessments to be done by the nursing staff and

1 appropriate follow-up care to be provided on a day-to-day basis.
2 The Defendants shall provide an examination area within the Maximum
3 Security building that is properly equipped and lighted for
4 physical examinations and assessments, excluding weekends and
5 holidays.

6 I. Patient Referrals - Defendants shall schedule referrals to
7 primary care physicians according to clinical priority, but
8 patients needing to see a physician shall be seen in no more than
9 five (5) days. Patient referrals to specialists outside the prison
10 shall be made by physicians timely, subject to review by the
11 facility's medical review panel in appropriate cases. Medical
12 Review Panel decisions shall be made consistent with DOC's level of
13 therapeutic care policy number 528 attached as Exhibit C.

14 J. Over-the-Counter Medications - Defendants shall revise the
15 current over-the-counter medication policy and implement such
16 revised policy so that any over-the-counter medication that is
17 authorized by a licensed health care provider shall be provided by
18 the Defendants for the period of time recommended by the health
19 care provider, and in any other instance over-the-counter
20 medications shall be available for purchase to the inmate
21 population through the canteen. The policy shall set forth under
22 what conditions or circumstances over-the-counter medication is
23 considered medically indicated. It is the expectation of the
24 parties that over-the-counter medications shall be provided for
25 common ailments when medically appropriate.

1 K. Annual Physicals - Defendants shall develop and implement
2 a policy to ensure all inmates over the age of 50 shall be offered
3 a physical exam annually, and all inmates over the age of 40 shall
4 be offered a physical exam bi-annually.

5 L. Medication Distribution - With respect to distribution of
6 medication, Defendants shall comport with state law and the
7 Administrative Rules of Montana - Board of Nursing Guidelines.

8 M. Chronic Care Patients - Defendants shall develop and
9 implement a program for the care of chronic care inmate/patients.
10 The chronic care provided shall entail a clinic or examination for
11 each chronic care patient at least once every four (4) months, and
12 at greater intervals where medically indicated. Inmates who are
13 considered to be chronic care patients shall include, but not be
14 limited to, inmates who are: diabetic, asthmatic, HIV+, TB+,
15 hypertensive, and epileptics.

16 N. Eye Care - The Defendants shall provide eyeglasses to
17 those inmates who need them. Should an inmate break his eyeglasses
18 through no fault of his own, the same shall be replaced at
19 Defendants' expense. If an inmate's eyeglasses are broken through
20 the inmate's fault, the Defendants shall replace the eyeglasses at
21 the inmate's expense, provided that should an inmate be indigent,
22 as defined in the indigency policy, the Defendants shall
23 nevertheless replace the inmate's eyeglasses, billing the cost to
24 his account. The Bureau Warden shall have the discretion to
25 determine whether or not to replace an indigent inmate's eyeglasses
26 more than one (1) time in one (1) year.

15. SETTLEMENT AGREEMENT

1 SECTION 2 - DENTAL

2 The Defendants shall provide adequate dental care to its
3 inmate population.

4 A. Dentist, - Defendants shall retain or contract for dental
5 staff who shall provide adequate dental services within 60 days of
6 any routine or non-urgent request made regarding dental health care
7 within the institution. If Defendants cannot provide such
8 services within 60 days, Defendants shall add additional resources
9 so as to reduce the inmate waiting period to within 60 days.

10 B. Emergency Dental Care - The Defendants shall ensure timely
11 provision of emergency dental care to inmates.

12 C. Elimination of Backlog - Defendants shall contract with
13 health care providers to eliminate the backlog of requests for
14 dental health care. The backlog shall be eliminated within one (1)
15 year of the date of the signing of this agreement. In the process
16 of eliminating the backlog, the Defendants shall prioritize cases
17 according to clinical priority. The Defendants shall re-evaluate
18 the current level of staffing once every six (6) months to
19 determine if additional dental staff is needed. Once the backlog
20 has been eliminated, the Defendants shall initiate a program to
21 provide dental hygiene services.

22 ~~SECTION 3 - MENTAL HEALTH~~

23 ~~The Plaintiffs' mental health expert, Jeffrey Metzner, M.D.,~~
24 ~~and the Department of Corrections and Human Services psychiatrist,~~
25 ~~David Schaeffer, M.D., shall recommend a plan to the parties for~~
26 ~~provision of mental health care services to the inmate population~~

Timothy R. Payne
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ORDER

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the issues of medical, dental, and mental health care in the above styled case. The Court shall retain jurisdiction over the issues of medical, dental, and mental health care in this civil action pending completion of the Agreement by the Defendants according to its terms.

The Clerk of the Court is directed to remove this civil action as to the issues of medical, dental, and mental health care from the Court's active docket and to forward copies of this Order to counsel of record.

In the event that Defendants are unable to meet the terms of the Agreement within the time frames provided by the Agreement, the United States may move this Court to restore the issues of medical, dental, and mental health care in this civil action to the Court's active docket for the purposes of further litigating such issues.

It is hereby Ordered this _____ day of _____, 1996.

UNITED STATES DISTRICT JUDGE

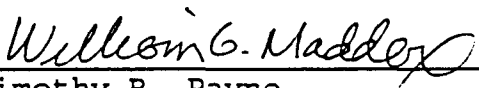
Certificate of Service

I hereby certify that the foregoing United States' and State of Montana's Joint Motion, Stipulated Agreement and Proposed Order, was mailed postage prepaid, this 12th day of September, 1996, to the following individuals and counsel of record.

P. Keith Keller, Esq.
Keller, Reynolds, Drake,
Johnson & Gillespie
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