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R.J. Hughes Justice Complex
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Hairston v. Fauver



PC-NJ-002-001

By: Ronald L. Bollheimer
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RLB0374

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF NEWARK

EUGENE HAIRSTON, (Prisoner)
Representative) GREGORY PERRY)
(Prisoner Representative and)
Para-Legal) WALTER TILLERY)
(Chairman-Prisoner Representative)
NAIM SHABAZZ (Co-Chairman)
Prisoner Representative) DANIEL)
PILUSO (Prisoner), TARIQ WATSON)
(Prisoner) and THOMAS RODGERS,)

Plaintiffs,)

v.)

Civil Action No. 90-1850

SETTLEMENT AGREEMENT

WILLIAM FAUVER, Commissioner of)
Corrections; GARY HILTON, Asst.)
Commissioner; JOHN J. RAFFERTY,)
Director of Field Operations;)
ROBERT E. STEPHENS, Superintendent))
of Northern State Prison, Dept.)
of Corrections for New Jersey,)

Defendants.)

WHEREAS, plaintiffs, Eugene Hairston, Gregory Perry,
Walter Tillery, Naim Shabazz, Daniel Piluso, Tariq Watson and
Thomas Rodgers, initiated this class action against defendants,
William Fauver, Gary Hilton, John J. Raffery and Robert E. Stephens
and defendants having responded thereto; and,

WHEREAS, plaintiffs' motion for certification of this matter as a class action under Federal Rule of Civil Procedure 23(B)(2) was granted; and

WHEREAS, plaintiffs, Eugene Hairston, et al., and defendants, William Fauver, et al., desire to resolve all disputes between them giving rise to the claims in this action; and

WHEREAS, plaintiffs, Eugene Hairston, et al., and defendants, William Fauver, et al., desire to set forth their agreement to settle their disputes here below; and

WHEREAS, none of the claims made herein by any party are admitted or conceded; and

WHEREAS, this Agreement is limited to actions taken at Northern State Prison and does not affect any other institution; and

NOW THEREFORE, plaintiffs Eugene Hairston, et al., and defendants, William Fauver, et al., agree to settle their disputes on the following terms:

1. Plaintiffs and plaintiffs' counsel hereby agree to waive any and all claims for attorneys fees and costs arising out of this matter.

ORGANIZATION OF HEALTH SERVICES

2. Northern State Prison's Chief Physician shall be responsible for supervision of the Clinical Health Services. He/she shall maintain, in conjunction with the Personnel Officer, complete files for all clinical workers in accordance with N.J.A.C. 10A:16-2.4.

3. The Chief Physician shall be responsible for the regular and periodic review of the quality of health care provided at the prison, including regular, periodic review of patient charts.

4. Continuing medical education programs shall be offered to all health care staff at least quarterly.

5. Current medical reference books shall be made available for the staff at the facility.

INTAKE

6. Within two weeks of a prisoner's arrival at Northern State Prison a physician shall perform a thorough chart review. Physical exams on all prisoners at Northern State Prison shall be conducted as per N.J.A.C. 10A:16-2.11.

7. In the event that Northern State Prison is the first place of incarceration for a prisoner, a tuberculosis test shall occur within one month of arrival at the institution. All inmates will be tested annually for tuberculosis.

RECORDS

8. Northern State Prison shall dedicate one full-time equivalent clerical worker to maintain medical files.

9. Northern State Prison will maintain medical files in a locked room that is not accessible to non-medical personnel.

10. Whenever a prisoner is examined in the Medical Department, a record of that encounter shall be recorded as required in N.J.A.C. 10A:16-2.18(c). The medical continuation form shall contain a description of the prisoner's complaint, if any, examinations and test conducted.

11. All physicians and nurses' notes will be maintained in chronological order on sequentially numbered pages.

12. For each prisoner receiving hemo-dialysis the prisoner's medical file will contain a complete record of each dialysis treatment received, including the name of the dialysis contractor or in-house medical staff responsible for oversight of the dialysis treatment.

13. For all prisoners with a known diabetic condition, a diabetic record will be kept in that prisoner's medical record. The record shall contain a record of the examination and tests that are performed in connection with the diabetic condition, and any medical findings made in connection therewith.

14. Each prisoner's medical file shall contain a medical continuation form and nurses' notes. These forms shall be kept in accord with N.J.A.C. 10A:16-2.18(c).

15. Sick call shall be available to all prisoners at least every other non-holiday weekday. In the event a decision is made by the medical personnel that the inmate does not see a doctor, the inmate shall have the opportunity to fill out an Interview Request form to the attending physician requesting to be seen notwithstanding the decision of the nurse or EMT. That form will be delivered by the EMT to a physician on the day it is returned to the EMT. The Doctor will review the request form and note his/her decision on the request form.

16. Plaintiff attorney shall receive copies of these interview requests on a quarterly basis.

17. A prisoner who requests to be seen at sick call will be seen by a nurse or emergency medical technician.

18. If a prisoner has a condition which requires emergency treatment, the prisoner shall be seen by a nurse or emergency medical technician who will make a decision as to what further action is necessary.

FOLLOW-UP

19. The Chief Physician shall maintain a follow-up system for all prisoners with chronic problems, with abnormal laboratory results, or with a prolonged acute problem. The system shall be maintained in a computerized form or in a logbook, and must be maintained in a manner that provides a system for patients to be scheduled appropriately and promptly for follow-up visits.

20. If a prisoner refuses to permit follow-up care, such refusal shall be documented by staff through the completion of a refusal form. If the prisoner is unavailable through no fault of his/her own, the appointment shall be rescheduled within a time consistent with sound medical practice.

RADIOLOGY

21. All X-ray machines, including the dental X-ray machines, shall be properly maintained with annual inspections and certified as required by the State Health Board.

22. Prisoner-porters shall not be used to perform any function in the Radiology Department other than routine cleaning.

EMERGENCY STAFFING AND PROCEDURES

23. All nurses and emergency medical technicians shall have current CPR certifications.

24. In accordance with N.J.A.C. 10A:16-2.10 the policy manual shall describe emergency response plan.

25. The following equipment shall be maintained in working order in the prison:

- a. a difibulator with a monitor (to be checked daily for battery level);
- b. portable oxygen apparatus;
- c. an ECG machine;
- d. three portable emergency response bags located throughout the institution.

Records shall be maintained to reflect that the oxygen equipment and emergency bags are checked weekly. All other equipment will be checked at least quarterly.

26. An emergency medical incident report will be filled out and filed in the prisoner's medical file whenever injury occurs which requires medical attention. The form will be completed and signed by the clinical worker providing treatment to the injured prisoner. The form shall contain the place in the prison where the injury occurred; the nature of the injury; the prisoner's condition following the injury; the nature of the treatment provided at the place of the injury; the hospital, if any, at which the prisoner received further treatment; comments of the clinical worker(s)

providing the treatment for the prisoner; the prisoner's account of the illness or injury and the time and date of the treatment.

CONSULTATIONS AND REFERRALS

27. Each referral of a prisoner to a consulting physician or physical therapist or psychologist will be reflected in a form included in the prisoner's file. This form contains the name of the attending physician, the name of the consulting physician, physical therapist or psychologist, the nature of the consultation requested, a description of the prisoner's presenting problems, the findings, diagnosis and recommendations of the consultant and the signature of the consultant along with the date of the consultation. The attending physician shall sign this form acknowledging his receipt and review of the form.

28. In addition the attending physician at the prison shall complete a record to be included in the prisoner's file describing the attending physician's actions in response to a consultant's recommendation. The form shall be signed and dated by the attending physician and shall describe any action taken in response to the consulting physician's recommendations and the reasons for following or declining to follow the consultation's recommendations.

29. Each medical trip by a prisoner outside the institution will be reflected in a medical trip form to be included in the prisoner's medical file. The medical trip form shall include the name of the person scheduling the medical trip, the date the trip was scheduled, the date the trip occurred, and the reason for the

scheduled trip. The form shall also reflect the medical records, including X-rays, that were transported with the prisoner and that were returned with the prisoner.

30. The prisoner's record shall also include a record of all admissions to hospitals, including the hospital emergency rooms, for treatment. The record shall describe the time and date of the admission of the prisoner to the hospital, the purpose of the prisoner's visit to the hospital, and the day of discharge of the prisoner from the hospital or exit from the emergency room. A record of the discharge recommendations shall be placed in the prisoner's medical records. If no discharge summary is received, the medical personnel will follow up with a phone call or facsimile to ascertain what follow up care is needed and enter same in the medical record.

PHARMACY

31. The prison shall maintain a pharmacy and therapeutic quality assurance committee. This committee shall serve to identify and correct all quality assurance mechanisms in connection with medication and shall maintain an adequate supply of all necessary drugs.

32. The pharmacy shall employ a system, reviewed by the pharmacy quality assurance committee, to check and dispose of expired medications. The pharmacy shall not employ old bottles to store new medications.

DENTAL

33. All prisoners requesting dental treatment shall be scheduled and treated by a dentist within one month of the request in the absence of an emergency. In the case of an emergency, a prisoner shall be treated within 24 hours. An "emergency," for purposes of this section, is defined as a situation requiring immediate services for alleviation of severe pain or immediate diagnosis and treatment of unforeseeable dental conditions, which, if not immediately diagnosed and treated, would lead to serious disability or death.

34. In the case of all urgent dental consultations, including oral surgery, treatment shall be provided within two weeks of the request. "Urgent dental consultations" are all other situations, other than routine care situations, not amounting to an emergency, as defined above, that require the immediate attention of a dentist, oral surgeon, or other dental care practitioner.

35. A scheduling system, either by computer or log, shall be established to track the appointments of prisoners seeking dental services. This system shall be adequate to assure that prisoners are seen in a timely fashion, and to reschedule those who need additional services, including consultations, within one month of an initial appointment.

WOMEN'S HEALTH NEEDS

36. Gynecological and obstetrical care for female prisoners will be made available at least once per week.

MENTAL HEALTH

37. All prisoners shall have a mental health and suicide risk assessment performed by a psychiatrist or psychologist within two weeks of their arrival at Northern State Prison.

38. If a clinical worker determines that there is risk of suicide, they will either be sent to a hospital or placed in an observation unit in accordance with N.J.A.C. 10A:16-12.

39. In each observation unit the staff shall be trained and certified in CPR and trained in the means to recognize the signs of potential suicide attempts. Observation shall be in accordance with N.J.A.C. 10A:16-12.

40. Each time a prisoner is seen by a psychiatrist, the psychiatrist shall complete a report to be included in the prisoner's medical records. The report shall document the date on which the prisoner was seen, and observations and findings of the psychiatrist and the recommendations of the psychiatrist for further treatment.

41. The prisoner's treating physician shall acknowledge receipt of the report of the treating psychiatrist.

42. Any time a person is seen by a psychologist at the prisoner's request, for other than a routine administration matter, a notation shall be placed in the medical record by the record clerk that the prisoner was seen by the psychologist.

LABORATORY

43. The prisoner's medical record shall contain an entry or an order completed by the attending physician, clearly indicating

each procedure or study that is ordered for the prisoner. The order shall be dated and signed or name stamped by the physician. Upon receipt of the results from the laboratory those results will be entered into the inmate's medical record. The attending physician will review these results and acknowledge by signing and stamping the record.

QUALITY ASSURANCE

44. In addition to the routine quality assurance performed by the Chief Physician, there shall be a medical audit performed by an outside physician at least twice per year. This medical audit shall consist of at least routine review of medical files, inspection of physical equipment and the observation of the treatment provided by clinical workers. The results of this audit shall be provided to the Chief Physician for his review and action.

MONITORING AND COMPLIANCE

45. Plaintiff's counsel shall be permitted an inspection of the medical facilities of the institution once prior to the court's hearing on the final approval of the settlement and once per year for the duration of the settlement agreement pursuant to ¶49 below.

46. The visit shall be conducted by plaintiff's counsel and accompanied by a consulting physician. The visit shall be conducted on five days notice to defendants, who shall make the facilities available to plaintiff's counsel. In the course of the visit, plaintiffs' counsel and consulting physicians shall be permitted access to all patient charts. Prior to gaining such access, plaintiffs' counsel shall consent to the entry of a Protective Order by which the Court; (a) finds that the review is necessary to monitor compliance with this agreement; and (b) requires that plaintiffs' counsel and consulting physician maintain in confidence any medical information obtained by access to the charts, for use only in this litigation, and for submission to the Court only under seal. Counsel for defendants shall not oppose the entry of this Protective Order.

47. Plaintiffs' counsel may request that counsel for defendants provide access to relevant documents to assist in verifying defendants' compliance with this agreement.

48. Defendants shall make the requested documents available for inspection by plaintiffs' counsel, their consultants or investigators at Northern State Prison or at another site mutually agreeable to the parties.

49. In the absence of an emergent health condition, any member of the plaintiff class may seek enforcement of this agreement through their attorney by first notifying the Administrator of Northern State Prison of the alleged violation of the Settlement Agreement; and within 30 days of said notification the Administrator shall either (a) resolve the violation or (b) inform the attorney in detail why the alleged violation cannot be resolved. If the Administrator cannot rectify the alleged violation, then the attorneys for the plaintiff class may file a motion with the court pursuant to the Federal Rules of Civil Procedure for enforcement of this Settlement Agreement. In the case of an emergent health condition, plaintiff's attorney shall make every possible effort to notify either the Administrator or defendants' attorney of record. If such notification fails to rectify the emergent problem, plaintiffs' attorney may file a motion with the court pursuant to the Federal Rules of Civil Procedure.

TERMINATION

50. It is agreed between the parties that the Settlement Agreement shall remain in force for a period of two years from the date of execution of the Settlement Agreement subject to the following provision:

A) Two years from entry of the order dismissing this action, this agreement shall terminate unless the court, on motion of the plaintiffs' counsel, finds that the defendants are not in substantial compliance with the terms of this agreement.

B) If the court finds a violation of the Settlement Agreement during the last year that it is in force, the terms of the Settlement Agreement shall remain in force for one year after the date of the court's order finding said violation. At the expiration of that one year, this Settlement Agreement shall dissolve, unless the court, on motion of the plaintiffs, find that defendants are not in substantial compliance with the terms of this agreement.

The undersigned hereby consent to the terms of this
Settlement Agreement.

For the plaintiffs:

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By: 
John V. Jacobi, Esq.

Date: 11/10/94

For the plaintiffs:

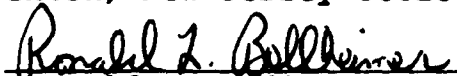
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By: 
Bernard K. Freamon, Esq.

Date: 11/10/94

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By: 
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Date: November 7, 1994