



PC-NY-003-001

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MARY DEAN, KAREN WHITE, WINIFRED MACK  
and ELIZABETH TAYLOR, for themselves  
and all others similarly situated,

Plaintiffs,

-against-

THOMAS A. COUGHLIN III, Commissioner  
of the New York State Department of  
Correctional Services; RAYMOND BROADDUS,  
Assistant Commissioner for Health  
Services of the New York State  
Department of Correctional Services;  
SYDNEY POLLARD, Dental Director of  
the New York State Department of  
Correctional Services; FRANK HEADLEY,  
Superintendent of Bedford Hills  
Correctional Facility; JIMMIE HARRIS,  
Health Administrator of Bedford Hills  
Correctional Facility; and DONALD  
COLLINGS, Dentist at Bedford Hills  
Correctional Facility, individually,  
and in their official capacities,

84 Civ. 1528 (SWK)

STIPULATION

Defendants.  
-----X

WHEREAS, this action challenging the provision o  
dental care to inmates at the Bedford Hills Correctional Facilit  
("Bedford Hills") as violative of their rights under the Eight  
Amendment of the United States Constitution was filed b  
plaintiffs on March 2, 1984; and

WHEREAS, defendants have denied that the provision o  
dental care at Bedford Hills violated plaintiffs' rights unde  
the Eighth Amendment of the United States Constitution; and

WHEREAS, this action was certified as a class action on behalf of all women who are or will be confined at Bedford Hills and

WHEREAS, the District Court found a breakdown in the provision of dental care at Bedford Hills and issued Preliminary Injunction on December 3, 1985; and

WHEREAS, a further Preliminary Injunction was issued by the District Court on April 1, 1986; and

WHEREAS, the Preliminary Injunction issued on April 1, 1986 was vacated by the Court of Appeals on October 28, 1986, and the matter was remanded for entry of an order adopting defendants' plan for implementing the December 3, 1985 Preliminary Injunction and further proceedings;

WHEREAS, the parties, without conceding any infirmity in their claims or defenses, have come to an agreement that a final resolution, without further litigation, of the injunctive portion of this action is appropriate, and have entered into this Stipulation; and

WHEREAS, nothing in this Stipulation shall be construed as evidence of an admission by defendants of a violation of any law, regulation, rule or order, or of an agreement by defendant that the provisions of this Stipulation set forth the minimum standard for dental care required by the United States Constitution or by New York State law;

IT IS STIPULATED therefore that defendants as well as their successors, agents, employees, assigns and those acting in concert with them, shall forthwith be enjoined as follows:

I. TREATMENT PRIORITIES.

All patients examined in the Bedford Hills dental clinic, other than those who are not in need of treatment, shall, in accordance with the professional judgment of the examining dentist, be classified for treatment priorities as set forth in Paragraphs A, B, and C of Appendix A to this Stipulation, which is incorporated herein.

II. ACCESS TO DENTAL CARE AND FOLLOW-UP TREATMENT.

A. DENTAL EMERGENCIES.

1. Each patient requesting emergency dental assistance shall be evaluated on the day of her request. Each patient shall be evaluated without physical examination unless the health care provider speaks with the patient and determines that the complaint is not of an emergent nature. In such cases, an entry shall be made in the dental chart by the health care provider setting forth the reason the complaint is determined not to be an emergency. Whenever it is determined that a patient seeking emergency care may be suffering from a dental emergency she shall be examined on the day of her request.

2. If a dentist is present at the facility when the request for emergency dental treatment is made, the patient shall be evaluated and, when appropriate, examined by a dentist. If a dentist is not present at the facility when the request is made, the patient shall be evaluated and, when appropriate, examined by a physician or nurse, who shall have twenty-four hour access to a dentist for consultation; and the patient shall be evaluated and, when appropriate, examined by a dentist on the next working day.

Defendants shall adopt a protocol to guide non-dentist health care providers in evaluating requests for emergency dental care.

3. Upon such evaluation and/or examination, and except as otherwise provided in §§ II-A-4 and II-A-5, treatment shall then commence immediately for those patients determined to be suffering from an emergent condition.

4. Whenever a health care provider determines that a patient is suffering from a dental emergency involving facial fracture, serious trauma or hemorrhage and requires treatment by an outside provider, defendants shall ensure that the patient is taken immediately to an outside provider for such treatment.

5. For other patients found to be suffering from a dental emergency that does not require immediate treatment as set forth above but requires treatment by an outside provider, defendants shall exercise their best efforts to have such treatment provided as quickly as possible, but in any event such treatment must occur within ten working days. Pending the provision of such treatment by an outside provider, the patient shall be seen by the Bedford Hills dental clinic on a regular basis for palliative treatment to stabilize the patient's condition and control pain or infection.

6. Those patients found not to be suffering from a dental emergency may be referred to dental sick call.

B. DENTAL SICK CALL. Defendants shall provide all inmates an opportunity to request dental sick call in writing each day. An inmate whose sick call request indicates the need for emergency dental assistance shall be evaluated, examined and

treated in accordance with paragraph II-A of this Stipulation. Any other inmate who requests dental sick call shall be examined within one week of her request. Treatment shall begin within one week after examination for a Class 3 patient and within eight weeks after examination for a Class 2 patient. Each patient shall be informed of her treatment plan and its priority at the time of her examination or, if not possible at that time, as soon as possible thereafter.

C. FOLLOW-UP CARE.

1. Whenever a dentist determines that a patient requires a return visit to the dental clinic for follow-up treatment or evaluation, the dentist shall exercise his or her best professional judgment as to when the patient should be seen again and shall enter such order on the patient's dental chart. The patient shall be given a follow-up appointment in accordance with the dentist's order, and completion of the treatment shall not be unduly prolonged. When the dentist does not specify time for the patient's next visit after treatment has begun, recall appointment shall be given as follows:

- a. Within the next ten working days for a Class 3 patient;
- b. Within the next twenty working days for a Class 2 patient; and
- c. Within seven working days after the return of prosthetic work from an outside laboratory for a patient receiving prosthetic treatment.

2. For a patient who has a Class 3 or Class 2 condition that requires treatment by an outside provider, the defendants shall exercise their best efforts to have such

treatment provided within the timelines set forth in Paragraph II-C-1 of this Stipulation, but in any event such treatment shall be provided within twenty working days for Class 3 patients and within sixty working days for Class 2 patients. Pending the provision of such treatment by an outside provider, the patient shall be seen by the Bedford Hills dental clinic on a regular basis for palliative treatment to stabilize the patient's condition and control pain or infection.

3. A patient who has been examined or treated in the dental clinic and who requires follow-up care or evaluation shall be informed orally at the time of such determination of the approximate date and time of her next appointment. At least forty-eight hours before the appointment is scheduled to occur the patient shall be advised in writing of the date and time of her next appointment. A patient whose appointment does not occur on the day it was scheduled shall be given a new appointment unless she has informed the dental clinic in writing that she wishes to discontinue treatment.

4. No patient scheduled to be seen in the dental clinic shall be deemed to have refused treatment unless she, or a facility staff member witnessing her refusal, so states in writing. A patient who refuses treatment three (3) consecutive times shall be deemed to have discontinued treatment.

#### D. PROFESSIONAL JUDGMENT OF THE DENTIST.

Whenever, in the professional opinion of the treating dentist, commencement or continuation of treatment for a particular patient within the deadlines imposed by the

Stipulation is contrary to sound medical judgment, the dentist opinion shall control. In such cases, the dentist shall enter that patient's dental chart the reasons why adherence to the deadlines for that patient is contrary to sound medical judgment.

### III. IMPLEMENTATION.

A. Defendants shall maintain adequate staff as well as adequate and properly functioning facilities and equipment to fulfill the terms of this Stipulation.

B. Defendants shall maintain an individual dental record for each dental patient, containing at a minimum:

1. a chart of the patient's teeth;
2. an accurate medical history;
3. all dental x-rays of the patient taken by dental clinical staff at any DOCS facility and/or which accompany the inmate upon reception, to be affixed;
4. a prioritized treatment plan;
5. chronological entries for every encounter of the patient with the dental clinic;
6. a description of the treatment performed; and
7. orders by the dentist for follow-up care and medication.

C. Defendants shall ensure that problems and complaints relating to dental care are adequately and fairly resolved through the existing grievance mechanism.

D. Defendants shall ensure that every inmate arriving at Bedford Hills receive, as part of her orientation, written materials describing the dental priority system, her rights and

access to dental care and follow-up treatment, and the availability of the grievance and conciliation mechanism for resolution of problems and complaints about dental care. Orientation materials translated into Spanish shall be made available to Spanish-speaking inmates.

#### IV. COMPLIANCE SUPERVISION.

A. RECORD MAINTENANCE. Defendants shall maintain such records as are necessary for effective and meaningful auditing of their compliance with this Stipulation. At a minimum, the following information shall be maintained separate from patient dental charts and shall clearly reflect:

1. The name of each patient requiring prosthetic services, the date that a prosthesis was recommended, the date(s) that the impression or prosthetic was sent to and returned from the laboratory, and the date that the prosthetic was inserted.

2. All requests for or scheduling of dental care and treatment of patients, including, but not limited to, the patient's name, the date and type of requests (including emergencies) or scheduled appointments, the date the patient was seen in the dental clinic, the treatment provided, the assigned priority, if any, the name of the treating dental personnel and the reason for any failure to see a patient who was scheduled to be seen.

3. The name of each patient seen and the procedure performed on a daily basis.

B. RECORD RETENTION. Defendants shall retain for five years from the document's date copies of all inmate letters



complaints and grievances regarding dental care and all memoranda, reports, rules, contracts, directives, policies and procedures relating to dental care at Bedford Hills.

C. QUALITY ASSURANCE. Defendants shall maintain a quality assurance mechanism to maintain compliance with this Stipulation. This quality assurance mechanism shall be employed quarterly by Department of Correctional Services' dentists who are not employed at Bedford Hills and shall follow a protocol. The protocol shall include a procedure to insure that treatment is not unduly prolonged, and a review shall be conducted of a sample of patients who have been seen for follow-up care more than eight (8) times following their classification as Class 3 patients and whose treatment priority has not been lowered from Class 3 to Class 2 as a result of the treatment. Defendants shall provide plaintiffs' counsel with a copy of their quality assurance protocol, and written reports of such quality assurance shall be retained on file and be available for inspection.

D. REPORTS. Defendants shall submit to counsel for plaintiffs periodic reports concerning compliance with this Stipulation. The reports shall contain the information described in Paragraphs IV-A and B of this Stipulation. Defendants shall also provide counsel with a list of cases in which treatment was not commenced or continued within the deadlines imposed by this Stipulation because the treating dentist determined that commencement or continuation of treatment within such deadlines was contrary to sound medical judgment. These reports shall be

submitted for a period of three years in accordance with the following schedule:

1. Every thirty days for the first six months after the date this Stipulation is "So Ordered" by the Court.
2. Every ninety days for the next six month period.
3. Every one hundred twenty days for the next twelve month period.
4. Every one hundred eighty days for the next twelve month period.

Defendants shall promptly inform plaintiffs' counsel of substantial changes in procedures for access to dental care and follow-up treatment and of any modification, extension or termination of any contract for delivery of dental care in Bedford Hills.

E. INSPECTIONS. Upon five working days' notice plaintiffs' experts and counsel shall have the right to inspect once within any period of ninety days for a period of three years, all dental care areas of Bedford Hills and to review all records and documents, not previously provided to plaintiffs' counsel pursuant to the provisions of this Stipulation, that are maintained by the dental clinic as well as those required by this Stipulation. Such inspections shall last no more than one day per inspection, shall not disrupt the functioning of the dental clinic and, for the review of documents, shall occur at a place within Bedford Hills designated by the defendants.

F. COMPLIANCE.

1. For the purposes of this Stipulation and a motion for systemic relief based upon defendants' alleged compliance or non-compliance with the substantive requirements of this Stipulation, defendants shall be considered to be in "compliance" with the provisions of this Stipulation unless plaintiffs make a clear and convincing showing that defendant failures or omissions to meet the terms of this Stipulation were not minimal or isolated but were substantial and sufficient in frequency or widespread as to be systemic.

2. In the event that plaintiffs believe that defendants are not in "compliance" with this Stipulation as defined in ¶ IV-F-1, plaintiffs' counsel shall bring the facts supporting that belief to the attention of defendants' counsel prior to the filing of any motion to enforce the terms of the Stipulation. Upon receipt of plaintiffs' notice by defendant counsel, defendants shall either remedy the alleged problem or so notify plaintiffs' counsel in writing or provide a written explanation within five (5) days for dental emergencies and within forty-five (45) days for other care. At the end of such period, if the issue is not resolved, plaintiffs may seek relief from the Court in accordance with ¶ IV-G.

3. In the event of individual cases of class members in which dental care was not provided in accordance with the Stipulation, despite defendants' "compliance" with the Stipulation, plaintiffs or plaintiffs' counsel shall bring such cases to the attention of defendants' counsel prior to the filing

of any motion to enforce the terms of this Stipulation. Upon receipt of plaintiffs' notice by defendants' counsel, defendants shall either remedy the alleged problem and so notify plaintiffs or plaintiffs' counsel in writing or provide a written explanation within five (5) days for dental emergencies and within thirty (30) days for other care. At the end of such period, if the issue is not resolved, the class member shall have the right to seek from the Court individual injunctive relief enforcing the terms of this Stipulation as well as remedies available upon a finding of contempt.

G. The Court, upon motion and based on proof of defendants' failure to comply with this Stipulation as defined in ¶ IV-F-1, may alter the frequency of reports and inspections during the periods set forth above, may extend such periods beyond the three years specified in ¶¶ IV-D and IV-E of this Stipulation, by periods of no more than one year for each extension, and may make such other orders as are consistent with and reasonably necessary to ensure compliance with this Stipulation.

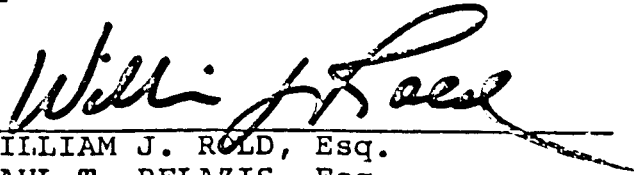
H. Except as provided in ¶ IV-F-3, plaintiffs shall not seek or obtain any order, judgment or decree enforcing or extending this Stipulation except upon motion and a finding by the Court of non-compliance with the terms thereof as set forth in ¶ IV-F-1. Such motion shall be supported by affidavits or declarations made under penalty of perjury and based on personal knowledge. Such affidavits or declarations shall set forth facts that would be admissible in evidence and shall show affirmatively

that the affiant or declarant is competent to testify to the matters stated therein. Such a motion shall allege compliance by the plaintiffs with the requirements of ¶ IV-F-2.

I. At the conclusion of six years from the date this Stipulation is "So Ordered" by the Court, unless extended by the Court in accordance with the provisions of ¶ IV-G based on an assessment of "compliance" as defined in ¶ IV-F-1, and then at the conclusion of that extended period, the requirements of this Stipulation shall cease to bind the defendants as well as their successors, agents, employees, assigns and those acting in concert with them, except that defendants, their successors, agents, employees, assigns and those acting in concert with them shall continue to provide a dental access system that assures prompt diagnosis and treatment for inmates with serious dental needs and provide a system that assures that prompt follow-up care is provided as ordered and without delay.

Dated: New York, New York  
February 26, 1987

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Dated: New York, New York  
February 26, 1987

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APPENDIX A

A. EMERGENCY TREATMENT (Class 4): Cessation of hemorrhage; immediate relief of pain; removal of oral infections that may endanger the health and welfare of the patient; treatment and referral for treatment of fractures of the maxilla or mandible; fracture of a vital natural tooth; and/or any other oral condition which can jeopardize the health or safety of a patient including, but not limited to, the taking of cytological smears of suspicious soft tissue lesions of unknown etiology, when appropriate.

B. ESSENTIAL TREATMENT (Class 3): The early treatment of conditions of an urgent nature, including: restoration of teeth that are severely carious where lack of their restoration would soon lead to their extraction; extensive or advanced periodontal disease; chronic pulpal or apical infection; chronic oral infection; heavy calculus; surgical procedures required for removal of one or more teeth and other surgical procedures not included in Class 4; and/or insufficient number of teeth for mastication.

C. ROUTINE TREATMENT (Class 2): The treatment of conditions not of an urgent nature but requiring preventive or corrective measures, including routine restorations; caries--not extensive or advanced; fabrication and repair of prosthetics not included in Class 3; moderate calculus; and/or periodontal disease--not extensive or advanced.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MARY DEAN, et al., :  
 :  
 Plaintiffs, : NOTICE TO ALL INMATES  
 : AT BEDFORD HILLS  
 -against- :  
 : 84 Civ. 1528 (SWK)  
 THOMAS A. COUGHLIN III, et al., :  
 :  
 Defendants. :  
-----X

This is to advise you that on June \_\_\_\_\_, 1987, United States District Judge Shirley Wohl Kram entered a Final Judgment By Consent in the lawsuit about dental care at Bedford Hills. The Judge's Final Judgment approves the Stipulation previously distributed to the population, a copy of which is available in the Bedford Hills law library.

If you have any questions, comments or problems regarding the provision of dental care, please contact the Prisoners' Rights Project at the following address:

The Legal Aid Society  
Prisoners' Rights Project  
15 Park Row - 7th Floor  
New York, New York 10038

This notice is to be distributed to every inmate at Bedford Hills and is to be posted in the vicinity of the dental clinic for the duration of the Stipulation.