



PC-NY-003-002

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARY DEAN, et al.,

Plaintiffs, REPORT AND RECOMMENDATION

- against -

84 Civ. 1528 (SWK)

THOMAS A. COUGHLIN, III, et al.,

Defendants.

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TO THE HONORABLE SHIRLEY WOHL KRAM, U.S.D.J.:

This class action was brought, pursuant to 42 U.S.C. § 1983, by inmates at the Bedford Hills Correctional Facility challenging the dental care provided there as violative of their rights under the Eighth Amendment. It was referred to me on April 25, 1986. The action has now been settled and this report recommends approval of the settlement.

The complaint sought declaratory and injunctive relief.¹ The facts of this case are set out in detail in opinions by the district court, 623 F.Supp. 392 (1985), 633 F.Supp. 302 (1986), and by the Court of Appeals, 804 F.2d 207 (1986). Since familiarity with those opinions is assumed, the facts need not be repeated here. Suffice it to say, a hearing was held on plaintiffs' motion for a preliminary injunction and, in a decision dated December 3, 1985, see 623 F.Supp. 392, the

¹The complaint also sought damages on behalf of the four named plaintiffs. This report does not concern the damages aspect of the case.

district court found that plaintiffs had satisfied the requirements for a mandatory preliminary injunction.

In that decision, Judge Kram found a total breakdown in the administration of the dental clinic at Bedford Hills. See 623 F.2d at 396. She noted the failure to perform initial exams, the collapse of the system for requesting routine care, the backlog in emergency requests, and the failure to keep follow-up appointments. Id. Accordingly, Judge Kram ordered defendants

to provide a dental access system that assures prompt diagnosis and treatment for inmates with serious dental needs, provide a system that assures that follow-up care is provided as ordered and without delay, and take prompt steps to eliminate expeditiously the current backlogs in treatment.

623 F.Supp. at 405.

The settlement provides for the entry of a permanent injunction covering all the areas identified by Judge Kram in her December 1985 opinion as being inadequate, and other areas as well.

The settlement establishes three classes of treatment priorities: emergency treatment, essential treatment and routine treatment. Patients requesting emergency treatment will be evaluated on the day of their request. Any other inmate who requests dental sick call will be examined within one week of her request. Treatment will be given within one week after examination for those patients in need of essential treatment and within eight weeks for those in need of routine treatment.

The settlement requires that follow-up care be provided as the dentist orders. It also requires that treatment not be unduly prolonged. In fact, when the dentist does not specify a time for a follow-up visit, one will automatically be set.

The settlement also requires the state to maintain adequate staff, facilities and equipment to fulfill the terms of the settlement. In this regard, the state must maintain proper dental charts, medical histories, dental x-rays, treatment plans, and records of treatment. In addition, the state will provide every inmate arriving at Bedford Hills, as part of her orientation, with written materials describing the dental priority system, her rights of access to dental care and follow-up treatment, and the availability of a grievance and conciliation mechanism for resolution of problems and complaints about dental care. These materials will be provided in Spanish, too.

The state must also maintain records for meaningful auditing of their compliance with the stipulation of settlement. Further, the state shall submit periodic reports to plaintiffs' counsel, at first every month, and later on a less frequent basis. In addition, plaintiffs' counsel has the right to inspect all dental care areas and to review all records and documents maintained by the dental clinic.

In the event of disputes, a conciliation mechanism is provided. If that mechanism cannot resolve the dispute, then plaintiffs may seek relief from the court. Six years after the

settlement is "so ordered," provided there is compliance, the requirements of this stipulation will cease to bind the state. Nevertheless, the state must continue to provide a dental access system that assures prompt diagnosis and treatment of inmates with serious dental needs, as well as a system that assures prompt follow-up. In other words, the December 1985 preliminary injunction becomes a permanent injunction.

Pursuant to this court's order, filed March 27, 1987, the class received notice of the settlement. Although the order provided for notice by certain means, counsel for defendants has indicated that, in addition, notices were distributed to all inmates in their cells.² See Transcript of Hearing on Class Action Settlement ("Hearing") at 10. With respect to the named plaintiffs, plaintiffs' counsel has indicated that they spoke to each of them and that they all concur in entry of the stipulation. As for the class, plaintiffs' counsel toured the institution on April 23 and April 27, 1987, and spoke with inmates concerning the settlement. Hearing at 9-10. These inmates raised two issues. The first dealt with the departure from Bedford Hills of the Mobile Dental Services, an independent contractor brought in by the state to provide dental care after the December 3, 1985, opinion. The state has elected not to renew the one year contract, but intends to replace these personnel with civil service employees.

²A hearing on the settlement was held on May 5, 1987.

At the hearing, plaintiffs' counsel submitted a petition signed by 285 inmates, expressing their unhappiness with the departure of the Mobile Dental Services Unit.³ Although this sentiment appears widespread, the class still does not oppose the settlement. Hearing at 16-17.

The second issue raised concerned the treatment of patients with AIDS or AIDS Related Complex ("ARC"). Plaintiffs' counsel met with an inmate who had written to me, expressing her concern for this problem. Counsel for plaintiffs feel the failure to treat patients with AIDS or ARC is a legitimate complaint. Nonetheless, the state at present plans to treat patients diagnosed as having AIDS or ARC, and is doing so now.⁴ What is more, it appears that language in the stipulation covers patients with those diseases.⁵

In sum, no member of the class has opposed the settlement. Indeed, there is no reason for opposition. The settlement is fair and reasonable. As counsel for plaintiffs

³A letter from an individual class member, also expressing disappointment with the failure to renew the contract of Mobile Dental Services, was submitted at the hearing as well.

⁴The state pointed out at the hearing, however, that some cases may be so advanced that no treatment could be rendered. Hearing at 20.

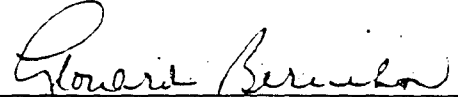
⁵The inmate who wrote to me at first wanted to appear at the hearing. She then called plaintiffs' counsel to advise him that she no longer wished to attend, as some of her friends, on whose behalf she had expressed concern, had been called to the dental clinic. Hearing at 23.

said at the hearing, "[w]e believe that plaintiffs have achieved through the consent decree the relief they sought from the court." Hearing at 9. Consequently, it is recommended that the settlement be approved.

Copies of this report have been mailed this date to all parties listed below, who are hereby advised of their right to file objections to this report on or before June 9, 1987. See Fed. R. Civ. P. 72(b), 6(a), 6(e).

Dated: New York, New York
May 20, 1987

Respectfully submitted,


LEONARD BERNIKOW
United States Magistrate

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