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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CHARLES E. AUSTIN, et al.,	:	CASE NO. 4:01CV071
	:	
Plaintiffs,	:	
	:	
v.	:	JUDGE GWIN
	:	
REGINALD A. WILKINSON, et al.,	:	
	:	
Defendants.	:	

STIPULATION FOR INJUNCTIVE RELIEF

A. NATURE OF THIS STIPULATION

1. This Stipulation For Injunctive Relief (hereinafter "Stipulation") resolves all issues, except for the classification/due process issues, between the Plaintiff Class and the Defendants arising out of the claims for declaratory and injunctive relief set forth in the First Amended Complaint filed with this Court on April 9, 2001.

2. The terms of this Stipulation shall be applicable to and binding upon the Plaintiff Class and the Defendants in their official capacities and their officers, agents, employees, assigns and successors.

3. Upon signing of this Stipulation, the parties shall seek approval of this Stipulation from the Court pursuant to Fed. R. Civ. P. 23(e).

Austin v. Wilkinson



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4. Upon approval of this Stipulation, this Court shall retain jurisdiction of this action to enforce the terms of this Stipulation.

5. This Stipulation may not be used as evidence of liability in any legal proceedings.

B. NATURE OF THIS ACTION

6 This is a class action brought under 42 U.S.C. § 1983 seeking declaratory and injunctive relief.

7. The Plaintiff Class challenges the constitutional adequacy of certain conditions of confinement and practices at the Ohio State Penitentiary ("OSP") located in Youngstown, Ohio.

8. This Court has jurisdiction over this class action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

C. PROCEDURAL BACKGROUND

9. On January 9, 2001, the proposed Plaintiff Class filed its Complaint for declaratory and injunctive relief in this action challenging the constitutional adequacy of certain conditions and practices at OSP.

10. On April 9, 2001, the proposed Plaintiff Class filed its First Amended Complaint for declaratory judgment and injunctive relief.

11. On October 5, 2001, this Court certified this action as a class action pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. Moreover, the Court defined the class as :

All persons who were confined at the Ohio State Penitentiary as of January 9, 2001, or who have come to be confined there since that date, or who may be confined there during the pendency of this litigation, membership in the class once thus established to continue during the pendency of the litigation.

D. PARTIES

12. The representative inmate plaintiffs named in the First Amended Complaint are: Charles E. Austin, Robert A. Baksi, Michael Benge, Alonzo L. Bonner, August Cassano, David Clark, James DeJarnette, Roy D. Donald, David Easley, Brian K. Eskridge, Keith Gardner, Roger L. Hall, Frederick Harris, Daryl Heard, Edward O. Hodge, Orsino Iacovone, Kunta Kenyatta, (aka Jerome Lennon), Stacy Lane, James D. Mitchell, Emanuel Newell, John W. Perotti, Lamar Preston, Jason H. Robb, Kevin Roe, Richard Siggers, Eric Swofford, Lahray Thompson, and Edward A. Tilley.

13. The Defendants named in the First Amended Complaint are: Patrick Biggs, Stephen Huffman, Todd Ishee, Cheryl Jorgenson-Martinez, Manish Joshi, Bruce Martin, Matthew Meyer, Audrey Nietzel (Sandor), Debra Nixon-Hughes, Bernie Ryzner, and Reginald Wilkinson.

E. REMEDIES

14. The Department of Rehabilitation and Corrections ("DRC") has undertaken a number of projects at OSP to continue improving that facility's conditions of confinement and practices. The Defendants acknowledge, however, that certain deficiencies exist in the areas noted below and agree to correct those deficiencies.

a. Medical Care

15. The Defendants agree to correct the various medical problems identified in Exhibit A, page 16, of Dr. Joe Goldenson's report, dated October 5, 2001, and in Exhibit B, pages 47 – 50, of Dr. Robert Cohen's report, dated December 3, 2001, with the Defendant's specific exceptions to such reports noted in Exhibit C attached with Exhibits A and B and fully incorporated in this Stipulation.

16. As described below, Joe Goldenson, M.D., and Robert Cohen, M.D., are designated as the Monitors to aid the parties in the implementation of the medical care provisions of this Stipulation.

b. Mental Health Care

17. DRC has a policy excluding inmates with serious mental illness from placement in "high maximum" security and calling for the expeditious removal of any inmate with serious mental illness inadvertently placed at OSP or of any inmate who has developed serious mental illness while at OSP. ODRC Policy 111-07 § C (August 31, 1998). In August, 2001, DRC expanded the exclusionary criteria. Standard Operating Procedure – SOP 2 (August 8, 2001). DRC agrees that any inmate who meets the exclusionary criteria set forth in those two documents should not be transferred to OSP, and that any inmate currently housed at OSP who, after evaluation, is deemed to meet the exclusionary criteria should be transferred to another institution.

18. DRC agrees to undertake a study to develop, in consultation with the Monitor, a policy addressing the issue of returning to SOP those inmates transferred from OSP for mental health reasons. In the interim, DRC agrees not to return those inmates to OSP.

19. The parties will select a Monitor to aid the parties in the implementation of the mental health care provisions of this Stipulation.

20. The Defendants agree to make arrangements for the Monitor to perform evaluations of the following categories of inmates currently at OSP: (a) inmates on the current mental health caseload at OSP; (b) inmates who were on DRC's mental health caseload within the last two years prior to their transfer to OSP; (c) any inmate currently prescribed psychotropic medications; (d) inmates who have been hospitalized in a psychiatric institution at any time in

their lives; (e) inmates who have spent more than one year on level 2 (or in the future, level 5B) at OSP and remain on that level; (f) inmates who have been on suicide watch at OSP or at any other DRC institution (including juvenile placements at Department of Youth Services (DYS)) during the past five years.

21. If the Monitor determines that any of those inmates described above meet the exclusionary criteria set forth in Policy 111-07 § C and Standard Operating Procedure – SOP 2, the Monitor shall decide what the appropriate placement for each of those inmates should be and shall also undertake a study to determine whether additional placement options may be desirable.

22. The Monitor shall conduct evaluations at least once every six months during the life of this Stipulation of those inmates within categories a-f, and shall determine whether any such inmates have developed a serious mental illness while confined at OSP, with the additional authority to randomly review any inmate's case at any time.

23. The Monitor shall evaluate the efficacy of OSP's various procedures (e.g. screening, evaluation, rounds, "kites" and staff referrals) designed to identify inmates who may meet the mental illness exclusionary criteria and shall make specific binding recommendations concerning any changes needed to enhance the efficacy of the process.

c. Outdoor Exercise Spaces

24. The Defendants agree to construct ground-level outdoor exercise spaces at OSP, as specified in paragraph 25

25. On July 9, 2001, DRC Director Reginald Wilkinson approved the State Architect's preliminary design for the construction of eight separate ground-level outdoor exercise spaces. The estimated cost of this project is Four Million Dollars. Funds have been released to DRC for the design phase of the project. A capital budget request for the

construction phase of the project has been submitted. The retained architectural firm has commenced the design phase of the project. The estimated timelines are: actual construction of the outdoor exercise spaces will begin December, 2002, and construction should be completed by August, 2003.

d. Security Restraints

26. Recently, OSP discontinued the utilization of the "black box" and belly chains as required security restraints during all inmate visitation sessions. The Defendants agree to continue that practice except where an inmate has demonstrated a history justifying the utilization of such restraints.

F. MONITORING FOR MEDICAL AND MENTAL HEALTH CARE

27. As mentioned above, Joe Goldenson, M.D., and Robert Cohen, M.D., are designated as the Monitors to aid the parties in the implementation of the medical care provisions of this Stipulation. All of their mutually agreed upon decisions relating to the implementation of those provisions are binding upon the parties. Their duties include determining whether the Defendants have achieved substantial compliance with the terms of the medical provisions of this Stipulation. In the event that either Dr. Joe Goldenson or Dr. Robert Cohen is unable or unwilling to serve, the parties agree to designate another Monitor.

28. As mentioned above, the parties will designate a Monitor to aid the parties in the implementation of the mental health care provisions of this Stipulation.

29. All of the Monitors' decisions relating to the implementation of the medical care and mental health care provisions of this Stipulation are binding upon the parties. The Monitors' duties include determining whether the Defendants have achieved substantial compliance with

the terms of the mental health provisions of this Stipulation. In the event that any Monitor is unable or unwilling to serve, the parties agree to designate another Monitor.

30. The Monitors may retain such appropriate staff, with the approval of the Defendants, as is necessary to conduct the requisite monitoring. The Defendants agree to pay for all reasonable costs associated with said monitoring. The Monitors will submit the curriculum vitae of any proposed staff to counsel for both parties and will seek their advice and consultation prior to retention of the experts.

31. The role of the Monitors includes review of records, the gathering of appropriate data and statistics and on-site inspections. A review of the aforementioned documents by the Monitors or their staff shall not constitute a waiver of any claim that the documents are subject to nondisclosure in this or any other proceeding. In addition, the Monitors and their staff agree to keep said documentation confidential and not to disclose, publish, or disseminate any of the records reviewed by the Monitors or their staff. However, all non-privileged institutional records, reports and material relevant to implementation of this Stipulation reviewed by the Monitors also shall be available for review by counsel for the Plaintiff Class. Review by counsel for the Plaintiff Class shall not constitute a waiver of any claim that the records are subject to nondisclosure.

G. INMATE COMPLAINTS REGARDING MEDICAL CARE

32. Except for instances where emergency medical care is required, all inmate medical complaints will continue to be processed through the existing grievance procedure in a timely manner. If the OSP staff fails to respond within twenty-five days from the date of the filing of an inmate's Informal Complaint Resolution ("ICR"), the inmate, in addition to

appealing to the Chief Inspector, may bring his medical care concern to the attention of counsel for the Plaintiff Class.

H. DISPUTE RESOLUTION

33. As mentioned above, all disputes concerning the implementation of the medical care and mental health care provisions of this Stipulation shall be submitted to the designated Monitors in those areas for final and binding decisions. If an agreement cannot be reached in the other areas (outdoor exercise spaces and security measures) covered in this Stipulation, either party may have recourse to this Court.

I. COMPLIANCE

34. Defendants shall be deemed to be in compliance with the terms of this Stipulation when they have substantially complied with those terms. As mentioned above, the designated Monitors in their designated areas of expertise will determine whether the Defendants have achieved substantial compliance with the terms of the medical care provisions and mental health provisions of this Stipulation. Their respective decisions are final and binding.

J. EMERGENCIES

35. It may be necessary to suspend temporarily any provision of this Stipulation in the event of an emergency. An emergency is an event which makes compliance with the terms of this Stipulation impracticable, impossible, or extraordinarily difficult, and is caused by unforeseeable events, beyond the control of the Defendants.

K. MODIFICATION

36. The parties recognize that some conditions or practices or the uses of particular buildings may change and thus affect the implementation of this Stipulation. Therefore, it may be appropriate to modify this Stipulation from time-to-time as the situation warrants.

37. Any such proposed modification shall become effective upon such terms as are agreed to by the parties.

38. If either party objects to a proposed modification regarding the medical care or mental health care provisions of this Stipulation, both parties shall confer promptly and attempt to reach an agreement. If an agreement cannot be reached, the proposed modification will be submitted to the designated Monitors in their designated areas for final and binding decisions. If an agreement cannot be reached in the other areas (outdoor exercise spaces and security measures) covered in this Stipulation, either party may have recourse to this Court.

L. EFFECTIVE DATES OF AGREEMENT

39. This Stipulation shall become effective upon approval of this Stipulation by this Court.

40. This Stipulation shall terminate within two years after this Stipulation becomes effective unless terminated sooner when the Defendants have achieved substantial compliance with the terms of this Stipulation.

M. ATTORNEY FEES

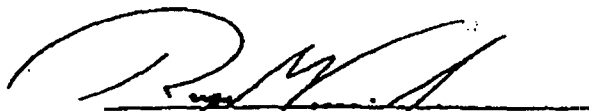
41. The Defendants agree to pay the costs and attorney fees of the undersigned counsel for the Plaintiff Class in the amount of \$150,000. Except for the contingency noted

below, this payment includes any claim that the Plaintiff Class could make for all work done and costs expended in the litigation of this matter, through and including the effective date of this Stipulation. Should the Plaintiff Class prevail at trial with the classification issue, Defendants agree to pay counsel an additional amount commensurate with the time actually expended on that issue.

42. The Monitoring phase of this Stipulation is two years. The Defendants agree to pay counsel for the Plaintiff Class \$10,000 per year for lawyer monitoring. Should counsel have to file motions to compel with the Court, they will be paid an additional amount commensurate with the time actually expended.

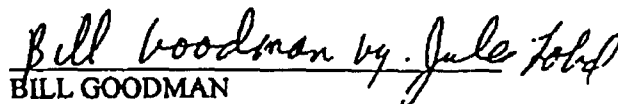
IT IS SO STIPULATED AND AGREED

DATED: 8 January 2002



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DATED: Jan 8, 2002



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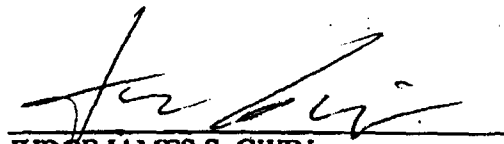
Counsel for Plaintiff Class

DATED: 1/8/02


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Counsel for Defendants

THE COURT SO FINDS AND IT IS SO ORDERED

DATED: 4/5/02


JUDGE JAMES S. GWIN
United States District Court Judge

that this is still in its beginning stages and needs more time to develop. Six months of minutes were provided to indicate meetings are being held to address health system areas needing improvement. This is a joint meeting with custody administration. In addition to these activities, a regular review of the quality of the physician's care and documentation, as well as an ongoing review of the quality of nursing assessments and care should be done.

SUMMARY

The major issues and concerns we identified during our review were:

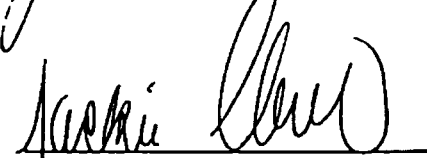
1. The medical records were poorly organized.
2. The quality of the nursing documentation was not adequate.
3. The quality of nursing assessments was not adequate.
4. The physician is not consistently seeing patients in a timely manner.
5. There were problems related to the chronic care program.
6. All nursing vacancies, whether short or long-term, need to be filled.
7. Screening for hepatitis C is not occurring.
8. Follow-up of specialty and telemedicine clinics is not adequate.
9. Periodic health exams are not consistently being done.
10. There were problems related to confidentiality.
11. The quality of the dentist's documentation was not adequate.
12. Custody staff is not certified in CPR and is not required to be first responders.

We were assured during our site visit that areas we have identified as problems or deficiencies would be addressed. We are planning to return to the facility prior to trial for another inspection. If time permits we will produce a supplemental report and if not, will be prepared to report at trial.

Respectfully submitted on October 5, 2001



Joe Goldenson, MD



Jackie Clark, RN

RECOMMENDATIONS:

Following are a set of recommendations which will provide an outline for improving the health care program at Ohio State Penitentiary. It is clear that there is no adequate on-site leadership to implement the following program. Changing the health care program at OSP will require substantial outside consultation and dedicated Central Office leadership.

1. Provide new clinical and administrative leadership for the medical program
2. Weekly physician rounds for all prisoners in the facility
3. Daily nursing rounds for all prisoners in the facility
4. Eliminate charges for any health care services at OSP
5. Forbid physical examination through food slots. Physical examination must take place in medically appropriate areas with adequate light, instruments, and preservation of aural and visual privacy and confidentiality. Do not perform physical examination when prisoners are rear cuffed to a wall.
6. Provide shoes to prisoners that are supportive and protective.
7. Do not use chemical restraint agents (mace, pepper spray) on prisoners with known contraindications to these substances (e.g. respiratory compromise, asthma, etc.)

8. If the ventilation system distributes these chemical restraint agents to other cells, do not use chemical restraint agents in these settings.
9. Revise clinical protocols for:
 - a. HIV infection
 - b. Diabetes
 - c. Hepatitis C
 - d. Hyperlipidemias (elevated cholesterol)
10. Revise formulary to provide appropriate analgesic agents, including narcotics when indicated, for management of painful conditions. Second line agents such as neurontin and amytriptilline are supplementary to the use of effective analgesic medication.
11. Develop and assure the utilization of humane, safe modes for transport of prisoners from OPC to other facilities. If this is too difficult, bring specialists to OSP instead.
12. Review and modify current x-ray capabilities to assure that they are adequate.
13. Provide quality continuing education to the medical and nursing staff in the following areas

- a. AIDS
 - b. Hepatitis C
 - c. Tuberculosis: Control and Treatment
 - d. Palliative Care
 - e. Pain management
 - f. Treatment of insomnia
 - g. Recognition and treatment of medication side effects, particularly those secondary to HIV and Hepatitis treatments
 - h. Hypertension
 - i. Hyperlipidemia
 - j. Epilepsy
 - k. Management of Medical Emergencies in Prison
 - l. Quality Improvement
14. Establish and maintain an Emergency Kit which contains medications necessary for treatment of

- a. Acute Myocardial Infarction (nitroglycerin, parenteral morphine sulfate)
 - b. Status Asthmaticus (epinephrine, albuterol, parenteral steroids)
 - c. Status Epilepticus (parenteral diazepam)
15. Establish a quality assurance/continuous quality improvement program for the medical care program at OSP based upon:
- a. Sentinel events
 - b. Adverse outcomes
 - c. Infection control
 - d. Medical Grievances
 - e. Regular data collection and analysis regarding chronic disease process and outcome
 - f. Existing models of quality improvement in prison health systems
16. Assure that prisoners whose health cannot be assured at OSP because of the restrictions on access to care are not housed at the facility. All patients health status should be reviewed with respect to this critical issue.

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**Defendants' Specific Exceptions To The Various Medical Problems
Identified In The Medical Reports of Dr. Joe Goldenson and
Dr. Robert Cohen**

The Defendants agree to do the following:

Custody staff volunteers trained in CPR will promptly respond to acute and emergent medical problems. Goldenson's Report (14)

For a six-month period, the OSP doctor will make weekly rounds per block, thus visiting all four blocks each month. Shortly thereafter, OSP, after consultation with Drs. Goldenson and Cohen, will decide whether the weekly doctor rounds will be continued. Cohen's Report (2)

The co-payment for medical services requirement will not be modified. Cohen's Report (4)

Inmates will be allowed to purchase from the commissary another brand of shoe that is also supportive and protective. Cohen's Report (6)

Once the inmate is placed in a holding cell at the Central Medical Center (CMC) the black box used as a security measure during transport will be removed. Cohen's Report (11)

EXHIBIT C