

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RODNEY FUSSEL, *et al.*, :
 :
 Plaintiffs, : Case No. C-1-cv-03-704
 :
 v. : Sr. District Judge Beckwith
 :
 REGINALD WILKINSON, *et al.*, :
 :
 Defendants. :

~~Proposed~~ Proposed Modifications to the Stipulation for Injunctive Relief

I. Introduction

On November 22, 2005, the Court approved the Parties' Stipulation for Injunctive Relief ("Stipulation") in this inmate civil rights class action. (Doc. 140.) That Stipulation resolved class action issues pertaining to the department wide delivery of medical and dental services within the Ohio Department of Rehabilitation and Correction ("ODRC"). (Doc. 140.) By the express terms of the Stipulation, the jurisdiction of the Court is to terminate five years after the Court's approval. (Doc. 140, ¶ 143.) Also the Stipulation expressly allows the Parties to seek to modify the Stipulation. (Doc. 140, ¶ 147.)

The Parties agree that additional time is required to implement provisions of the terms pertaining to the medical services set forth in the Stipulation. ODRC has elected to change from a contract system to a civil service model in the provision of medical services at its institutions. The complexity of this undertaking has, in part, contributed to the need for an extension of time to implement the Stipulation. The Parties agree that all applicable terms to seek modification of the Stipulation have taken place. Accordingly, the Parties agree to modify the Stipulation as follows.

II. Stipulated Changes

A. Stipulated Changes to Section MM, Stipulation Oversight

Under Section MM of the Stipulation, "Stipulation Oversight," the Parties agree to the following changes:

1. Paragraph 126 of the Stipulation now is to read as follows:

126. The parties agree to continue the appointment of Fred Cohen, L.L.B., L.L.M., Professor Emeritus of the School of Criminal Justice, S.U.N.Y. at Albany, as Independent Consultant (I.C.) and head of the MOC, which is to continue to serve as consultants to provide oversight of the provisions of this Stipulation. The parties further agree that the scope of the oversight by the I.C. and MOC is to be modified as set forth in paragraphs 139 to 139.4, as presented below.

2. Paragraph 139 of the Stipulation now is to read as follows:

139. Oversight of the medical provisions of this Stipulation by the I.C. and MOC shall continue for eighteen (18) months following November 22, 2010, the originally contemplated date by which remediation efforts in this case were expected to be completed. The Parties agree to alter the period of oversight for the dental provisions of the Stipulation as explained in new paragraph 112.1, stated below.

139.1. The parties agree that monitoring of the medical provisions in the final eighteen (18) months shall be modified and will be either (1) discontinued for some institutions, (2), focused upon particular issues with document review only at some institutions (3) focused upon particular issues with limited on-site visits at some institutions or (4) full on-site review for other institutions.

139.2. The parties agree that institutions will be assigned to one of four categories for monitoring purposes:

- i. Substantially compliant – no further monitoring required;
- ii. Substantially compliant but for specified areas to be addressed through paper monitoring;
- iii. Substantially compliant but for ongoing concerns for specific area(s) noted to be addressed through in-person, on-site monitoring from a portion of the MOC best suited to address the concerns; and,
- iv. Ongoing concerns in specified areas(s) or the entire operation with in-person, on-site monitoring by the entire MOC.

139.3. The parties agree that the I.C. and Dr. Shansky will designate which institution falls into which of the foregoing categories.

139.4 The parties agree that the I.C. and Dr. Shansky may move an institution from one category to another, based upon the same principles as found in paragraph 132.ii of the Stipulation.

3. Paragraph 112.1 shall be added to the Stipulation to provide as follows:

112.1 Oversight of the Dental Stipulation by Don Sauter, D.D.S., and the I.C. will terminate on June 30, 2011. From the point of the extension of this Stipulation until February 28, 2011, oversight will include document review and limited on-site inspections. After February 28, 2011 until June 30, 2011, oversight will consist of assistance with self-monitoring and quality improvement reviews. On or before June 30, 2011, Dr. Sauter and the I.C. will provide BOMS with a final report and such consultation as may be needed or deserved regarding implementation of the dental agreement.

B. Changes to Section OO, Compliance and Termination

Under Section OO of the Stipulation, which addresses compliance and termination terms, the Parties agree to the following changes:

4. Paragraphs 143 and 144 of the Stipulation now are to read as follows:

143. The parties had agreed in November 2005 that a five (5) year period was presumptively required to retain, train and oversee the additional medical staff agreed upon in this Stipulation. The parties now agree that an additional eighteen (18) months from November 22, 2010, is needed to continue the process to retain, train and oversee the additional medical staff that has to be added to reach ODRC's goal of converting all medical health positions to civil servant positions. The parties agree that the terms of this Stipulation shall terminate on June 22, 2012. The parties continue to acknowledge the provision of the P.L.R.A, 18 U.S.C. § 3626(F)(b)(1), making prospective relief terminable two (2) years after a court initially approved prospective relief involving any correctional facility. The parties expressly agree that there is no intent to extend the duration of the Court's jurisdiction as to the dental provisions of this Stipulation or lawsuit.

144. Notwithstanding the P.L.R.A. or any other law, Defendants may move to terminate this Stipulation and dismiss the case on the grounds that all institutions subject to this Stipulation are in substantial compliance with the terms of this Stipulation

C. Conclusion

The Parties agree that no other terms of the Stipulation, Doc. 140, are to be changed.

IT IS SO STIPULATED AND AGREED.

For the Plaintiff Class:

s/ Al Gerhardstein

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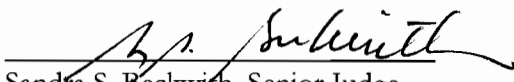
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WHEREFORE, for good cause shown, it is SO ORDERED.



Sandra S. Beckwith, Senior Judge
United States District Court for the Southern District
of Ohio