

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ERIC VEGA, et al.,

Plaintiffs,

-against-

RICHARD KOEHLER, et al.,

Defendants.
-----x

STIPULATION AND ORDER

82 Civ. 6475 (MEL)

This action was brought on September 29, 1982 challenging certain conditions of confinement and the provision of health care services at Rikers Island Hospital ("RIH") as violative of the rights of the plaintiffs and the plaintiff class under the Eighth and Fourteenth Amendments to the United States Constitution. Defendants have denied that plaintiffs' rights have been violated. The case was certified as a class action by order of the Court on October 27, 1982. The parties now agree that the portions of this case dealing with certain conditions of confinement should be resolved without further litigation and that certain portions of plaintiffs' preliminary injunction motion dated November 18, 1988 should be withdrawn. Accordingly,

IT IS HEREBY STIPULATED by the undersigned parties, subject to approval by the Court after notice is given to the plaintiff class, as follows:

A. **Environmental Health**

1. RIH shall hereafter be subject to the provisions of sections J, S and V of the Partial Final Judgment by Consent, dated September 29, 1978, entered in Benjamin v. Malcolm, 75 Civ. 3070 (MEL)(S.D.N.Y), as such Partial Final Judgment by Consent may

hereafter be modified, ("the Benjamin Decree"), and the provisions governing monitoring (at p. 49) in the Benjamin Decree to the extent that such provisions governing monitoring apply to provisions J, S and V of the Benjamin Decree. In addition, until such time, if ever, as RIH ceases to house infirmity patients, Dormitory 18-E in the North Facility Annex ("Dormitory 18-E") shall also be subject to the provisions of sections J, S and V of the Benjamin Decree and the provisions governing monitoring (at p. 49) of the Benjamin Decree, to the extent that such provisions governing monitoring apply to provisions J, S and V of the Benjamin Decree, and both RIH and Dormitory 18-E shall be subject to the following additional procedures:

- a. cleaning and sanitation tasks will not be dependent on patient help, except that patients who have been deemed "capable," in single-cell areas, will be responsible for routine cleaning of such items as the toilet, sink, cell furniture, and cell floor and changing their own linen, and ward patients, who have been deemed "capable" will be responsible for cleaning their bedside cupboards and changing their own linen. Patients shall be deemed to be "capable" for purposes of this sub-paragraph only if an attending doctor or registered physician's assistant has certified that the patient is fit to perform some or all of the cleaning tasks listed in this sub-paragraph and if the performance of such tasks does not in fact compromise health or treatment.
- b. reasonable measures will be employed that are designed to effectively prevent the roosting of pigeons on the hospital building and to prevent accumulation of bird feces on window ledges and other outside surfaces of the building;
- c. handicapped showers and toilets, one each on the fifth and sixth floor of RIH, and one handicapped shower with bath, one toilet and a handicapped accessible gang sink in Dormitory 18-E, will be provided for use by physically handicapped patients, and will include ramps, safety railings and doorways of sufficient width to provide

adequate and safe access by handicapped persons; and

- d. all medical and infectious waste materials shall be promptly collected, stored, transported and disposed of separately from other waste materials and in a safe and sanitary manner.

2. Defendants shall make the following improvements in the building currently known as Rikers Island Hospital, and will use their best efforts to meet the following schedule for completing said improvements:

- a. defendants shall replace the existing roof of RIH by November 1, 1988;
- b. defendants shall replace the existing kitchen of RIH with a newly constructed kitchen by August 1, 1989;
- c. defendants shall install new windows in RIH by February 1, 1991;

Defendants shall provide plaintiffs' counsel with a written schedule for achieving all steps necessary to make the above improvements and, with respect to subdivision (a) above, shall on a monthly basis advise counsel in writing of the progress made in meeting that schedule. With respect to subdivisions (b) and (c) above such written advice shall be provided on a quarterly basis.

3. In the interim until defendants shall have replaced the existing kitchen of Rikers Island Hospital, defendants shall cause monthly inspections of the existing kitchen to be done by a sanitarian in the employ of the Department of Health (DOH) who shall determine whether the kitchen is operated in a safe and sanitary manner, who shall review any deficiencies found by plaintiffs' expert, and who shall make written recommendations of measures to assure such safe

and sanitary operation. Defendants shall provide copies of such recommendations to plaintiffs' counsel. Defendants shall also permit plaintiffs' counsel to conduct inspections of the kitchen with their expert on a quarterly basis. Defendants shall within a reasonable period of time remedy any deficiencies in the sanitary conditions or food service operations which are determined to exist by the DOH sanitarian or which are found to exist by plaintiffs' expert and the existence of which is confirmed by the DOH sanitarian.

4. In the event that defendants finally determine to house the patients currently at RIH in a newly constructed or renovated space ("the new infirmary space"), defendants shall follow the procedures set out in Appendix A to the Order of the Court dated October 23, 1987 entered in Benjamin v. Malcolm (regarding the authority of the Office of Compliance Consultants) with respect to the new infirmary space; provided, however, defendants shall provide plaintiffs' counsel with the descriptions and plans specified in paragraphs 1 and 2 of Appendix A within two weeks from the date said descriptions and plans are finalized. Defendants shall also provide plaintiffs' counsel with a list of all construction, building, fire or other codes with reference to which the plans for the new infirmary space have been drawn.

5. Nothing in this stipulation shall be deemed to constitute a settlement or compromise of any claims of the plaintiff class with respect to the unconstitutionality or illegality of environmental conditions (including safety, sanitation, food service, or other unhealthful conditions) in any new infirmary space provided

for it by defendants, and the class retains its rights to litigate all such issues. Provided, however, that defendants reserve the right to raise any and all defenses to such claims, including a defense that such claims may not appropriately be raised in this lawsuit.

6. Defendants will maintain the heating and ventilation system in RIH and, until such time, if ever, as RIH ceases to house infirmity patients, the heating and ventilation system in Dormitory 18-E, in a state of functioning and good repair so as to provide sufficient amounts of heat to the housing areas in the cold season and adequate fresh air to provide for cooling in the warm season. In addition, in the interim until new windows are installed in RIH, defendants shall, with respect to RIH, take steps to prevent the entry of cold air or precipitation through or around the existing windows, and shall maintain the windows in a state of good and safe repair.

7. Defendants shall inspect RIH and Dormitory 18-E for the presence of asbestos and, if asbestos is found which presents a health hazard, said asbestos shall be abated in a manner and time consistent with the health of the inmates housed at RIH and Dormitory 18-E.

8. Prior to bringing any action to enforce the provisions of this stipulation, the parties shall follow the conciliation procedures set out at page 50 of the Benjamin Decree.

9. Upon entry of this stipulation as an order of the Court, plaintiffs shall withdraw their preliminary injunction motion dated November 18, 1987 insofar as it seeks relief regarding (i) the

provision of food to inmates housed in RIH, and (ii) the physical plant of RIH and the sanitation and maintenance of the physical plant, including such claims as those alleging that RIH has been maintained in an unsafe, unsanitary or unhealthful manner.

10. Approval of this stipulation as an order of the Court will settle and compromise with prejudice all claims in the complaint relating in any way to (i) the provision of food in the building currently known as RIH, and (ii) the physical plant of RIH and the sanitation and maintenance of the physical plant, including such claims as those alleging that RIH has been maintained in an unsafe, unsanitary or unhealthful manner. Provided, however, that the foregoing does not constitute a compromise or settlement of claims concerning fire safety at RIH.

B. Provisions Relating Solely to AIDS Patients

1. Admission Screening and Isolation:

- a. Before any AIDS patient is admitted to, or physically placed in, Dormitory 18-E or any other AIDS patient housing, defendants shall have a physician conduct an admission physical examination of the patient and if a patient presents signs or symptoms of parasitic illness, such as cryptosporidium, a test for ova and parasites will be done as part of the admission physical. No patient who presents clinical symptoms suggestive of pulmonary tuberculosis and whose communicable status is unknown, who has stool test results showing evidence of untreatable parasitic illness such as cryptosporidium, or who evidences any other disease or condition requiring (in accordance with acceptable medical practice) isolation from an immune-efficient population, shall be admitted to, or physically placed in, Dormitory 18-E or any other AIDS patient housing and shall be isolated in a medically appropriate manner from the rest of the inmate population.
- b. All AIDS patients admitted to Dormitory 18-E or any other AIDS patient housing shall be given a chest

x-ray within 24 hours of the patient's admission, unless, within 24 hours of the patient's admission, a physician has personally reviewed, or received the results of a chest x-ray of the patient taken within the prior 4 weeks. In the event any such chest x-ray shows evidence of active pulmonary tuberculosis infection, or in the event that a patient subsequently develops clinical symptoms of such tuberculosis, the patient shall immediately be removed from Dormitory 18-E or any AIDS patient housing. Any such patient shall be isolated in a medically appropriate manner from the rest of the inmate population until it is determined that the patient does not have communicable pulmonary tuberculosis.

- c. Any party may obtain modification of the above provisions upon application to the court and a showing that, in light of advances in medical knowledge post-dating the entry of this stipulation as an order, the provisions are medically inappropriate. Provided, however, that in ruling upon any such application, the Court shall defer to defendants' position unless said position represents an unreasonable exercise of medical judgment.

2. Isolation rooms or partitioned isolation areas will be made available for all AIDS patients for whom such areas are medically appropriate.

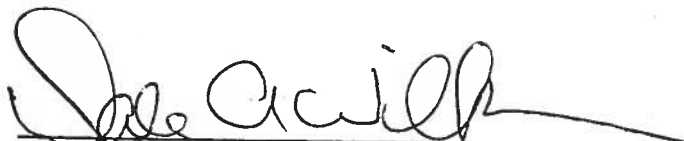
3. Approval of this stipulation as an order of the Court will settle and compromise with prejudice all claims in the complaint relating in any way to admission, screening and isolation procedures for AIDS patients.

C. **Miscellaneous**

1. This Stipulation shall in no way be deemed to be an admission of any liability or obligation on the part of defendants for the payment of fees or damages and is no way to be construed, understood or implied to mean that defendants admit liability or have in any manner violated plaintiffs' rights under any provision of the

constitutions, laws or regulations of the United States, the State of New York or the City of New York.

Dated: May 12, 1988
New York, New York



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SO ORDERED:

Hon. Morris E. Lasker