Third monitoring report of Dr. Homer Venters in Scott v. Clarke

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A. Introduction

This is the third compliance monitoring report submitted for the Fluvanna Correctional Center for Women (FCCW) in the case of Scott v. Clarke. This report includes the initial compliance monitoring for those metrics not previously reported on. Since the initial report, both defendants and plaintiffs' counsel and the FCCW team have been extremely forthcoming and helpful in the collection of relevant data and information. One hearing has occurred since the last monitoring report in this case and multiple communications with the various stakeholders have also occurred.

B. Methodology

Information reviewed for this report includes data requested from FCCW as well as interviews with patients and staff during my site inspection and video/phone conversations before and afterwards as well as review of medical records. This report represents the first measurement of compliance of 14 metrics contained within the terms of the settlement agreement in this case. Compliance with remaining metrics was reported in the prior (2nd) report.

As described in previous reports, the review of medical records was conducted both on site, and remotely for records that the facility produced securely. Individual audit tools utilized to measure compliance were shared in draft and final form with both plaintiffs and defendants once comments were received. Cases in which the audits showed a lack of compliance with a specific measurement were shared with the defendants for response. A compliance rate of 90% was utilized. A data appendix is provided below. (Appendix 1) For any metrics that were assessed as partially complaint or noncompliant (including any that were previously identified by the prior monitor as being fully compliant) I have included the specific steps required to achieve full compliance. I have also included the audit tool elements for each of the metrics reported on here and will do the same for subsequent reports.

Facility staff were extremely helpful in providing scanned documents remotely as well as paper charts and access to the facility during my inspection and on-site reviews. This report was shared in draft form with both plaintiffs and defendants' legal teams and the final version was completed after receipt of their comments and responses. Individual cases that raised clinical concerns were shared with the FCCW Medical Director. I have included a tracking of compliance that begins with the last assessments of the prior monitor and will be updated as each new round of monitoring is completed. (Appendix 2)

C. Inspection and patient interviews

This inspection was conducted April 13-15, 2022. This visit included physical inspection of various parts of the complex, interviewing individual staff and detained people, as well as review of medical records. In total, I spoke with twelve detained women who expressed an interest in speaking confidentially before or during my visit, as well as seven staff members. My primary areas of physical inspection included the infirmary and the placement and condition of medical equipment throughout the facility.

Among the twelve detained women I spoke with, several issues regarding medical care were reported that are relevant to this set of compliance metrics. One issue reported by six of these women was difficulty in submitting grievances. The process in place at FCCW involves an initial submission of an 'informal complaint' and if/when the issue is not addressed, then a person may elevate their concern to become a 'formal grievance'. This process is separate from the 'emergency grievance' process, which is utilized to triage emergency health issues. One problem reported by women I spoke with regarding the informal complaint/formal grievance process was that they may submit an informal complaint and not receive a response for 3-4 weeks, making it difficult or impossible to meet time limit to elevate their informal complaint as a formal grievance. When they submitted their formal grievance in these cases, they report having their grievance rejected because it was not submitted in a timely manner. In addition, three women reported that staff had either refused to accept their grievances or encouraged them not to submit them.

Four women reported problems with being able to use call buttons in their cells, with delayed or no responses from security staff. This problem included an inability to have security staff open their doors at night so they could use the bathroom, with two women reporting they or cellmates

had urinated or defecated in a bag overnight because they could not get their doors opened when they needed to use the bathroom. Of note, the cells in most FCCW housing areas have no toilets, and the evening count involves women being locked into their cells, with an expected practice of unlocking those cells after the count is completed, as reported to me by security staff.

Five of the women I spoke with reported being given the wrong medications recently at housing area pill lines, and that once they called the nurses' attention to the error, it was corrected. Two of them reported being able to see that their name was not present on the computer at the time the nurse handed them their medications, leading them to think that the error stemmed from the nurse assuming their identity and handing them medications of someone else.

Two women reported problems with their access to disability related equipment. One woman who relies on hearing aids for both ears reported going several months without their use due to a lack of batteries, and that she had submitted numerous messages and requests to staff for this problem to be addressed. She also reported missing medical appointments and medications because she was unable to hear when various announcements were made in her housing area and that there was no effort by security staff to address/accommodate her disability. She reports being told by staff "You need to take care of this yourself and get a buddy in the pod." Another woman reported that when she was transferred from medical isolation for COVID-19 back to her regular housing area, the foot and arm rests for her wheelchair, as well as her walker, remained in the medical isolation housing area. She reported having made numerous requests to staff for this problem to be addressed without success. Both of these patients were well-known to clinical staff, who reported undertaking efforts to address their concerns.

Three of the women I spoke with reported recent infirmary stays and that the installation of safety rails has significantly improved their ability to move around without falling. These women also reported that the infirmary was often short staffed, with only one nurse present at times.

When I inspected the infirmary, it was apparent that safety rails had been installed throughout the patient rooms, and the layout I described in my previous report of a dangerous lack of hand holds as patients transferred from bed to toilet seems to have been addressed. This area of concern was included in my prior report and FCCW undertook their own safety assessment of the infirmary.

A second area of the facility with redesigned workflows is the mental health unit in building 2. This area has historically been utilized for housing and treatment of women with serious mental illness as well as women being evaluated for self-harm risks. As I reported in both of my prior reports, this unit has functioned as a de facto segregation unit because these women are held in locked cells for most of the time, a harmful and counterproductive approach. FCCW objects to this characterization, but however one labels the practice of being locked in a cell as a feature of treatment for serious mental illness, FCCW previously stated that they would hire and train a custodial staff member to work as metal health officer on this unit, with the goal of facilitating out of cell time and access to programs. I was able to meet the first officer trained and now functioning in this role and was impressed with her understanding of the benefits of out of cell time and the need for clinical engagement. Speaking with her, as well as patients and other staff, made clear that the facility has made substantial progress in securing more out of cell time for these patients and also helping patients who had become accustomed to a lock-in approach to gradually increase their time out of cell as well as their social and therapeutic engagement. Four officers with this role and training are needed in the facility given the need for out of cell time

across two tours of the day and on multiple units. The improvements I was able to observe with the implementation of this one officer will be important to continue for women on the other mental health units. With the emphasis on therapeutic engagement occurring in this unit, there appears to be more assessment/housing of women with acute self-harm issues in the segregation unit, which is concerning. Patients with self-harm require clinical assessment and safety, tasks that are inconsistent with the operations of a segregation unit. This is a common issue in carceral settings that lack discrete clinical spaces for both crisis response and longer-term treatment. I will place focus on this in my next inspection and compliance review.

One of the core areas of inspection for this round was the equipment utilized for health care, the durable medical equipment and supplies in the clinical areas, as well as the logbooks and records with the emergency gear and crash carts. These supplies and equipment were in good working order and in adequate quantity at the time of my inspection, and more detail is provided below where relevant to specific metrics. As with my prior inspections, I conducted a readout with facility/DOC leadership on the last day of inspection.

Since the last inspection report, I have received an additional 16 letters from detained women in FCCW. The most common concerns raised by these women revolve around recent changes in medications and access to specialty care and assistive devices. The reports of women regarding access to and quality of care are a critical source of data in assessing compliance. The reports of individual women are also referenced below in several of the compliance ratings. While each of the problems they reported to me was not always evident in the sample of grievances, patient charts or other data that I reviewed, the details of what they report are extremely important in understanding how barriers to care develop and their resulting impact on

health. These reports often help to understand gaps in other data sources, a problem that is exacerbated by the lack of electronic medical record.

The facility is currently responding to a new wave of COVID-19 cases. I have reviewed data from the facility regarding the location of new cases and level of symptoms among women who have tested positive (over 90) and their response plan. As with their prior responses, I find their efforts to mitigate the impact of these infections, and detect, treat and prevent future illness from COVID-19 to meet or exceed CDC guidelines. Two areas reflect particular strengths; the ongoing practice of allowing women to control their entry/exit from their cell in medical isolation and the testing of especially vulnerable groups (women in building 2 and in the infirmary) when new cases arise elsewhere.

D. Compliance Monitoring

Provider staffing, compliant. This area of the settlement requires that FCCW maintain adequate numbers and coverage of health staff, that nurses work within the scope of their licenses and specifically, that the facility maintain the equivalent of "78 full-time personnel (certified and noncertified), including at least the equivalent of 29 full-time registered nurses." The audit tool elements for this area include;

- Are sufficient staff scheduled and actually working to meet the settlement criteria and provide adequate care?
- Do staffing shortages significantly interfere with care?

The last monitoring report of the prior monitor found FCCW to be in compliance with this area. In order to assess this area of compliance, I reviewed the following sources of information.

- Staffing assignments (shifts assigned) November 2021-January 2022.

- Staffing schedule (shifts worked) November 2021-January 2022.
- FCCW annual report (2021) and first quarter report (2022).
- Missed appointments because of lack of security or health staff November 2021-January 2022.

Review of these data sources showed that FCCW was compliant with the requirements to have 78 assigned staff and 29 full-time registered nurses during these months. (Appendix 1) This assessment is based on both the data reflecting the number of staff who worked during this period, as well as clinical provision of care. This is also consistent with the internal audit of the facility presented in their annual report for 2021 and first quarter report for 2022.

Review of the occasions when a scheduled appointment was missed due to lack of staffing show that eight of the thirteen instances were due to a lack of security staff, and these missed encounters were for the following appointments:

- Neurology/pain (3)
- MRI/CT (2)
- Orthopedics/spine (4)
- Hematology/Oncology (1)
- Breast care (2)
- Dental (1)

I view the issue of the missed encounters due to lack of security staff as a serious matter for ongoing review even though the facility is in compliance with the overall provider staffing requirement of the settlement at this time. If the number of these missed encounters increases to

the point where patient care is being consistently delayed or interrupted (which does not appear to currently be the case) then this compliance with this metric may change.

A separate issue I am concerned about (and will continue to review) is the reliance on agency nursing staff and the turnover among FCCW nursing staff. This issue was raised by the prior monitor and my experience elsewhere is that when many nurses without substantial experience are substituted for longer term employees, some of the more complicated tasks like documenting medication variances may be less effectively completed. This issue may arise in my next round of monitoring, when I review medication administration, but at the moment, it does not appear to be contributing to a lack of compliance with this metric. The issue of infirmary staffing is addressed below.

Co-Pay Policy, compliant. This area of the settlement includes three areas of care for which copays will not be imposed. FCCW eliminated the use of copays more broadly during the COVID-19 response in an effort to encourage patients to seek care and has maintained this approach. The audit tool elements for this area include;

- Are people being charged Co-Pays for care?
- Are Co-Pays being utilized consistent with the settlement agreement?

The last monitoring report of the prior monitor found FCCW to be in compliance with this area. I reviewed the following sources of information in measurement of this area.

- Current FCCW Co-Pay policy.
- Records of any Co-Pays imposed (for refusal of care) in December 2021 or January 2022.

In speaking with individual patients, staff and reviewing these data from FCCW, it appears that copays are generally not being utilized except for refusal of outside, same-day care and that the current approach to copays is more than adequate to establish compliance with this part of the settlement. Among the 14 Co-Pays during this time, all were for refusal of outside care and signatures were documented in 14 of the cases, with one chart being unavailable at the time of review. One area of concern is that two of the refusals I reviewed indicated that a patient was experiencing health symptoms (such as joint pain or headache) as a reason for not going to their encounter. The facility should consider waiving Co-Pays in these cases.

Diagnosis and Treatment, not compliant. This area of the settlement includes six specific aspects of compliance regarding diagnosis and treatment with four that are relatively specific (soft tissue infections, use of antipsychotic medications, treatment for urinary tract infections and pain management) and another two that are more general (unimpeded access to timely medical care at an appropriate level and unimpeded access to timely medical care, including specific actions Defendants will take to remedy deficiencies in sick-call process). The last report of the prior monitor rated this area as compliant but noted longstanding issues with parts of compliance and recommended ongoing review. The audit tool elements for this area include;

- Do patients receive appropriate initial screening and diagnosis for relevant medical problems?
- Do patients receive appropriate treatment for medical problems once identified?
- Are barriers to care including sick call evident in delays or deficiencies in care?

In order to review this area of the settlement, I reviewed the following information.

- Medical records for 13 patients with new diagnoses including potential soft tissue infections, use of antipsychotic medications, urinary tract infection and pain management.
- Information on number of people eligible for and receiving cancer screening (cervical, breast cancer, lung cancer).
- Data regarding patients treated with medications for opiate use disorder in 2021.
- Clinical records regarding wound cultures and diagnosis of skin ulcer, boil or soft tissue infections in December 2021 and January 2022.
- Administrative records regarding pain management and other specialty referrals and appointments.

Review of medical records and facility data in the areas of potential soft tissue infection, antipsychotic medication, urinary tract infection and pain management, compliance was >90%. (Appendix 1, 'Medical/Psychiatric') One deficient chart included a denial of pain medication because of a history of substance use disorder. I confirmed with the Medical Director that this did not reflect facility policy. I also reviewed additional data on patients with skin ulcers or boils and those who received wound cultures in a two-month period. FCCW reported only four patients with a skin ulcer or boil and ten (including those four) who received a wound culture. While there are several reasons for a patient to receive a wound culture without having a diagnosis of a skin boil or ulcer, my main concern in reviewing this data was to ensure that the opposite was not occurring; patients being identified as having skin ulcers or boils and not receiving a wound culture. This practice, as currently implemented by FCCW appears adequate to detect and address staphylococcal infections, a common source of outbreaks in carceral settings.

Patient records for mammography and cervical cancer showed full compliance with the need for these areas of screening, diagnosis and treatment. However patient records with clear diagnosis of opiate use disorder lacked any record of effort to provide treatment. In addition, records with clear and extensive smoking histories lacked any indication that the patient had been identified for low dose screening CT scan of the chest.

While my review of medical records shows that the facility is in compliance with many of the individual areas of care included in this metric, I continue to receive more communication regarding pain management than almost any other aspect of care. One of the concerns that I have in this area is that individual providers may have significantly different practices, and that a new provider may alter or even halt a patient's medications in order to restart their overall plan. This approach has been reported by several women as new providers have come into FCCW and can increase pain, interrupt effective management and should be avoided to the extent possible, especially precipitous stopping of multiple long-term medications.

There are two important areas of diagnosis and treatment that are not routinely provided to women at FCCW. These include diagnosis and treatment for opiate use disorder and screening for lung cancer. These two health problems represent significant causes of mortality in the State of Virginia and are not measured in other parts of this settlement. Programs to provide limited access to medications for opiate use disorder have started in VDOC, and FCCW reports that "FCCW is in the final stage of approving a pilot OUD MAT program, which includes the use of buprenorphine and methadone as clinically appropriate and contingent on patient compliance with the program's standards. Implementation of the pilot program is expected to start this summer with full implementation expected by early fall."

The data provided by FCCW show that only twelve women received any medications for opiate use disorder in the past year, and eleven of them received naltrexone, one woman received methadone, and none received buprenorphine.

Like treatment with medications for opiate use disorder, screening for lung cancer is an area where clearly established evidence practice is absent in FCCW. For several years, the US Preventive Services Task Force has recommended lung cancer screening with low dose CT scan for people who are older and who have extensive smoking histories.[1] This guidance has been adopted by the Virginia Department of Health, which recommends "Annual screening for lung cancer with low-dose computed tomography (LDCT) in adults aged 55 to 80 years who have a 30 pack-year smoking history and currently smoke or have quit within the past 15 years."[2] The Veterans Administration also follows this guidance.[3] The state of Virginia currently has approximately 3,500 lung cancer deaths per year, and the rate of death, 37 per 100,000, is the highest among all cancer types for residents of Virginia.[4]

In order to come into compliance with these two areas of care, I believe that creating a plan and timeline for when patients will receive appropriate diagnosis and treatment is essential, as is showing progress towards identifying these patients and delivering on this goal. I shared this view with the facility leadership in my readout of the last inspection. While the prior monitor did not specifically identify these areas of treatment and diagnosis as an area of concern, they both reflect areas where the clinical standards of care are not being met and where substantial morbidity and mortality can be avoided if/when these standards of care are applied.

[1] https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/lung-cancer-screening
[2] https://www.vdh.virginia.gov/content/uploads/sites/65/2017/06/Cancer-ScreeningFlyer.pdf
[3] https://www.prevention.va.gov/docs/LungCancerScreeningHandout.pdf
[4] https://cancerstatisticscenter.cancer.org/#!/state/Virginia

These two areas also make clear the need for an electronic medical record. Finding patients who meet these criteria is far more cumbersome for staff when attempting to identify and track a group when the information sits in paper charts. Data for smoking history (including stop date) is important to transfer from paper records into the new electronic medical record, as is data regarding substance use history.

Response to Medical Emergencies/Medical Care, compliant. This area of the settlement requires that medical emergencies be timely (within four minutes) and be comprised of adequate care, which includes adequate medications, elevation for outside care as well as follow-up. The audit tool elements for this area include.

- Do emergency responses occur within the prescribed timeframe?
- Do emergency responses include clinically appropriate initial assessment/care and follow-up?
- Do staff respond to emergencies with appropriate equipment?

The last monitoring report of the prior monitor found FCCW to be in compliance with this area. In order to assess this area of compliance, I reviewed the following.

- Facility data on response time for all emergency responses in January 2022.
- Emergency response notes and initial follow-up notes for all emergency responses in January 2022.
- Full medical records of 12 emergency responses in January 2022.

Review of this information indicated that the facility is >90% compliance with this area of health care, with review of both timeliness and adequacy. (Appendix 1) One case was assessed as noncompliant for adequacy because of a lack of provider encounter at the time of the emergency.

Infirmary Care & Conditions, partially compliant. This area of the settlement requires that care in the infirmary should be appropriate to the medical needs of patients, that the physical plant meet the needs of patients housed there and that the environment be safe and hygienic. Specific areas of care include the presence of an admission, treatment and discharge notes for patients in the infirmary as well as access to programming and recreation.

The audit tool elements for this area include.

- Does each patient have an adequate treatment plan and frequency of encounters?
- Does the infirmary provide a safe environment of care, including physical plant and equipment?
- Are patients able to receive ongoing care and programs while in the infirmary?

This area was assessed as compliant by the prior monitor in his last report. In order to assess the adequacy of care in this domain, I reviewed the following information.

- Physical inspection of physical plant and equipment.
- Review of equipment maintenance logs.
- Review of infirmary charts for six recently admitted patients, interviews with patients.
- Infirmary staffing (shifts with only one nurse assigned) December 2021-Feburary 2022.

Review of six patient charts showed that all of them had timely and adequate initial admission notes and follow up notes from providers. (See Appendix 1)

Review of the infirmary staffing information revealed that over the three months of review, there were nine shifts in which it was possible that only one nurse was present on the infirmary and

during these shifts, the number of patients ranged from 14-21. The facility offered this explanation of the staffing during these times.

> "There were 9 shifts in the Infirmary when a nurse *could* have possibly been left alone with patients for more than 15 minutes, but only if guidelines were not followed. In all of these instances, there were at least two nurses assigned to the area, but inadequate timekeeping practice by the nurses regarding signing in and sign out for breaks prevents complete assurance that there was coverage for breaks to prevent only one nurse for more than 15 minutes - as such these were treated as possible instances. The guidelines call for a nurse from another area (usually from Treatment, which is adjacent to the Infirmary) to cover for an Infirmary nurse who goes on break. This information was checked across multiple platforms including the Schedule, the Assignment Sheet, the Sign-in Sheet, DOC Time Clock, and Agency Payroll documents."

Several of the women I spoke with in the facility reported that in the past three months, there have been intermittent but repeated instances in which only one nurse is working in the infirmary. Because these reports appear credible, and also because there is no system in place to ensure that proper staffing is preset in the infirmary, I have concerns about this area of the metric and have assigned a rating of partial compliance. I consider this an area of concern for ongoing review.

One of the areas that posed a clear safety risk to infirmary patients, and which I addressed in my prior report, was the lack of safety rails in patient rooms. The facility undertook their own consultant review of this issue, which concurred with this problem posing a safety risk for infirmary patients. As a result, the facility installed safety rails in the infirmary living spaces, representing an important patient safety improvement.

One of the persisting issues that arose in this inspection was the slow response time to either call bells or patients needing physical repositioning. These issues are not well-represented in the medical records of patients, but the consistency over time of these reports makes them important in my view. The persistence of these issues, together with the above-mentioned concern about nurse staffing in the infirmary, lead me to give a rating of partial compliance. FCCW reports plans to institute a time clock system for staff based in the infirmary, as well as video review, and these efforts may represent substantial improvements in addressing these concerns.

Infectious Disease, compliant. This area of the settlement includes the requirement that FCCW have effective policies and procedures for "surveillance, prevention and control of communicable disease, including expedited access to prophylactic measures for high-risk exposures, such as blood-borne exposure." Additional areas include diagnosis and treatment of hepatitis and comorbid conditions, such as diabetes.

The audit tool elements for this area include.

- Are Hepatitis, COVID and other infectious disease policies and practices adequate?
- Is the facility infectious disease policy and practice adequate, including waste storage and disposal?
- Is equipment relating to infectious disease treatment and control, including negative pressure rooms maintained with documentation?

The last monitoring report of the prior monitor found FCCW to be in compliance with this area but recommended ongoing monitoring. Assessment of this area of health services included inspection of the physical spaces where infectious waste is stored, a review of the protocol and logbooks related to the collection, storage and disposal of this material, and review of the

contract with the outside vendor that provides disposal services. I also spoke with several women who utilize these services as part of their regular care as well as health services staff. This information shows that FCCW has a sound practice in collection, storage and disposal of infectious material and that their policies in this area are both adequate and are being followed consistently.

I have also reviewed the records of multiple people being offered testing and treatment for Hepatitis and am impressed with the thoroughness of both the diagnostic and treatment pathways implemented by FCCW, as was the prior monitor. The facility has a program to identify Hepatitis infection during the initial intake process and provide treatment using oral therapies that can cure patients of infection. This approach is increasingly a standard in prison health services, and based on my current assessment, is being well-implemented at FCCW.

I also reviewed several areas of clinical care relating to infectious diseases, including the updated COVID-19 protocol as well as data on diagnosis and testing for sexually transmitted infections including syphilis, HIV, gonorrhea, chlamydia. The most recent quarterly report of FCCW references the newly revised guidelines of the CDC regarding infectious disease diagnosis and treatment and states that FCCW has been complaint with these recommendations for some time. I was able to independently validate this by reviewing testing data for HIV, syphilis gonorrhea, chlamydia among newly admitted patients. This review shows that the facility is following the new CDC guidelines regarding testing for sexually transmitted infections among newly admitted people. (Appendix 1) Data show that among a sample of recently admitted women who are 35 years of age or younger, all have received the recommended testing. This age subset was chosen because one of the areas of testing, chlamydia and gonorrhea, is recommended for this age group

in detention settings. Subsequent monitoring will look specifically at testing recommended for other age groups.

Utilization management, compliant. This area of the settlement requires that referrals to outside care occur in a timely manner as should compliance with the recommendations of outside providers. This metric also requires an adequate process for provision of non-formulary medications.

The audit tool elements for this area include.

- Are specialty referrals reviewed and acted upon within prescribed timeframes?
- Are patients awaiting specialty care assessed every 30 days during their waiting period?
- Are plans of care recommended by specialists, and use of non-formulary medications documented regarding reasons for implementing or providing alternative therapies?

The last report of the prior monitor found the facility to be in compliance with this part of the settlement. In order to determine the adequacy of this area of care, I relied on the following sources of information.

- Interviews with health staff and the Medical Director
- Interviews with patients
- Review of medical records
- Specialty service requests for October-December 2021

Based on this information, I find the facility to be in compliance, not only based on the timing of the referral process but also because patients are seen at 30-day intervals while awaiting their appointments. Several women I spoke with reported recent improvement in their access to timely referrals and outside specialty care, and none reported new or worsening problems. Medical

records of 13 patients showed that specialty encounters are reviewed and acted on by FCCW providers in seven of seven cases reviewed. (See Appendix 1) None of the charts I reviewed indicated clinical worsening during the timeframe between referral and specialty care. Two women I interviewed did report that they were unsure about what a specialist had recommended for them and that their subsequent encounter in FCCW had also left them unsure about the recommendations of the specialist. In addition, review of 83 specialty service requests for October-December 2021 showed that >90% of these requests and reviews occur within the required timelines. (Appendix 1,). One area that remains unclear regarding these data is the significant number of referrals that are requested by a medical provider, approved by the utilization office, and then assessed as not necessary. (Appendix 1) While I did not detect any clinical worsening among the patient records I reviewed, I will seek further information about this cohort of patients in subsequent reviews of this area.

Medical equipment, not compliant. This area of the settlement requires that people have access to durable medical equipment that is in working order and that medical supplies be available as necessary. The last report of the prior monitor found the facility to be in compliance with this area of the settlement. The audit tool elements for this area include.

- Are logs of durable medical equipment present and reflect timely maintenance?
- Are medical equipment and assistive devices available for initial provision and repair in a timely manner?
- Are delays in access to required equipment present?

In order to assess this area of care, I relied on the following information.

- Interviews with patients.
- Interviews with health and security staff.
- Review of eleven communications regarding medical equipment/supplies.
- Records of new or repaired durable medical equipment.

Staff reported that the durable medical equipment clinic (DME) had been discontinued because of a lack of utilization, and the DME issues were now raised in the normal clinical workflows. As mentioned above, two women reported serious issues with their DME access, one who reported inoperable hearing aids due to lack of replacement batteries, and another who reported essential wheelchair parts had been left in medical isolation and not returned. Both women reported these problems to be ongoing for months and that they had made numerous efforts to address with staff. One person also reported difficulty accessing wound care supplies.

A total of six records were available for new or repaired DME in January 2022, relating to two wheelchairs and four rollators. Review of the eleven equipment/supplies communications from patients received December 1, 2021-Feb 28, 2022, showed that among the eleven reports to facility staff, five were for delays in wrist or other braces that had been ordered but not received into the facility. Four of the eleven responses were not adequate in that they either had no reply or did not address issues raised by the patients. Ten of the eleven had a reply by an appropriate staff member. (Appendix 1) As a result, this metric is rated as not compliant at this time. Aside from how these individual complaints are responded to, I am also concerned about the delays in women receiving braces that have been ordered for patients by facility staff.

Medical grievances, compliant. This element of the settlement requires that patients be allowed to question or lodge a complaint about their care and that their communications and concerns be

tracked and addressed in a timely manner. This process involves two steps at FCCW, an informal complaint and a formal grievance, when the initial complaint remains unaddressed in the eyes of the patient. Escalation of an informal complaint to a formal grievance must occur within 30 days and the submission of the original complaint must be made within 30 days of the incident/issue being reported, per VDOC policy. The audit tool elements for this area include;

- Are initial written complaints responded to in a timely and adequate manner?
- Are grievances resulting from written complaints responded to in a timely and adequate manner?

This area of the settlement was rated as partially compliant in the last monitor's most recent assessment. In order to assess this area, I reviewed the following sources of information.

- Internal audits of the complaints and grievances processes (2021 and 2022 quarterly reports).
- Medical complaints and grievances from January 2022.
- Refused grievances from December 2021-Febuary 2022.
- Interviews with staff and patients.

The internal audits of medical complaints and grievances are a relevant source of data for this part of the settlement. This type of analysis was not present during the last monitor's tenure and the ability (and practice) to track and review aggregate data about these important areas of the health services was central to his recommendations for further improvement. In the quarterly report for first quarter of 2022, an internal facility audit of 30 written complaints in January 2022 found that the complaints were addressed in the prescribed timeframes, and by the appropriate level of clinical staff. This audit found that among 205 written complaints in the quarter, a

random sample of 30 complaints revealed that 24 of them addressed the clinical issue, five required more specific in the response and one was not actually a complaint. Regarding timeliness, 28 of the 30 were addressed within 15 days.

I separately reviewed complaint and grievance data obtained from the facility, with focus on January 2022. This involved an independent review of the actual grievance forms that were submitted and the responses of the facility staff. A total of 61 medical complaints were reviewed. Among these, 60 were dated and had response times within 30 days and virtually all of the 60 were dated with a response day at day 9, 10 or 11 after submission. One medical complaint had no date. All of the medical complaints, save for the one without a date, had an adequate written response, meaning that the substance of the clinical issue being reported was addressed in the response.

I additionally reviewed data on any grievances that were refused when submitted as formal grievances. The facility supplied 28 grievances that were rejected during this time. (See Appendix 1) All of the refused grievances had date stamps for when they were received and responded to, and each had an accompanying sheet that identified the reasons for the denial. The two most common reasons for refusal were that the 30-day time limit time had expired, and that the grievance was actually an informal complaint or report, not a grievance. Some of the grievances that were refused because of the expired timeframe did have a date recorded by the patient that was 2-3 weeks before the initial review, which could make it difficult to receive and re-submit in the remaining time. However, the data I reviewed for the total sample of medical complaints in January 2022 did not reveal the specific issue reported to me about a delay in response making grievance submission impossible.

During my inspection I asked the clinical team about how the findings from grievances are incorporated into their quality work and they were able to provide examples of how recent medical complaints and grievances had been substantiated and had led them to make changes in their delivery of services.

Training of staff, compliant. This area of the settlement requires that the facility implement training for custody staff on recognizing signs of physical and mental health emergencies, adverse effects of medications and training on suicide prevention and general mental health symptoms. The audit tool elements for this area include;

- Are the required trainings for health and security staff being conducted and documented?
- Are the training materials appropriate, including emergency repose for security staff, medications, and medical emergency response for nursing staff?

The last report of the prior monitor found that the facility was not complaint with this area based on the partial implementation of training focused largely on first aid and cardiopulmonary resuscitation.

In order to review this area of the settlement, I requested training materials and data for health-related trainings of 2021. These records included the following.

- Recognizing and Reporting Need for Medical Attention (RRNMA) Content.
- Officer RNMA Training Records.
- In Service Training Agenda, Phase 1 & 2.
- Nursing training data.
- Interviews with staff.

These documents reflect a significantly expanded scope of training for custodial staff and bring the facility into compliance with this area of the settlement. In particular, the need to provide training on recognizing signs and symptoms of behavioral health and chronic physical health problems address the specific deficiencies noted by the prior monitor. Training data show that 100% of staff completed this training by the end of 2021. (See Appendix 1) I have also reviewed training documents for nursing staff and find this area to be well-addressed and in compliance.

Care/release of terminally ill patients, partially compliant. This area of the settlement requires that the facility implement a palliative care program, address the needs of terminally ill patients and also refer them for potential transfer to an outside facility or for potential release. The audit tool elements for this area include;

- Are patients who meet criteria for release or palliative care being reviewed by health staff?
- Do reviews and assessments of patients who meet criteria for release or palliative care result in appropriate responses by health staff and VDOC?

The last report of the prior monitor found that the facility was complaint with this area.

In order to review this area of the settlement, I reviewed the following.

- Internal facility quarterly reports and mortality reviews.
- Records of patients who were considered for release based on medical grounds.
- Interviews with patients and staff.

Review of this information shows that when patients request release based on these grounds, they are evaluated by health staff and a determination in made by VDOC as to their suitability for release. I received a list of six patients who FCCW indicated asked for release on these

grounds, with one person who was approved and ultimately released. While this indicates that a process is in place, I am concerned that patients may meet these criteria and based on their level of illness or general knowledge, may not know to ask for this review or may delay in asking for many months or even years, while they needlessly deteriorate in custody. This concern that referrals may occur later than needed, together with my previously stated concern there continues to be little referral capacity for nursing home placement outside the FCCW infirmary leads me to assess this area as partially complaint. In order to come into full compliance, FCCW should create a tracking system to affirmatively identify patients who may meet these release and palliative care criteria and track them with periodic assessments.

Performance measures, evaluation and comprehensive quality improvement, partially compliant. This area of the settlement requires that the facility implement a program to measure and improve the quality of care delivered using both qualitative and quantitative methods. The audit tool elements for this area include;

- Does the facility utilize quality assurance measurement to detect deficiencies in care?
- Does the quality committee of the facility meet regularly and formulate action plans or improvements to care that are tracked and reported back to the quality team?
- Are the chosen measurements and quality improvement areas sufficient to address the spectrum of clinical care issues identified in the settlement?

The last report of the prior monitor found that the facility was not complaint with this area, largely because of a lack of integrating grievance data into the quality improvement workflow.

In order to review this area of the settlement, I reviewed the following.

- Quarterly and annual reports from 2021 and 2022.

- Interviews with staff and patients.

This part of the settlement represents another are of significant improvement for the facility. Overall, the approach to measurement of a selected metric is sound but there does appear to be repetition of some areas of measurement while others remain unassessed. The lack of electronic medical record continues to pose a serious barrier because of the physical review of paper charts and smaller sample size that must occur.

The prior monitor was critical of the lack of integration of grievance information into the facility's process for detecting and improving deficiencies in care. This is a crucial gap and while not rare in correctional health, it represents a serious flaw because incarcerated patients face many barriers to accessing care and maintaining autonomy over their health and health care. These barriers may be unknown to or unaddressed by health staff and the grievance process is essential to genuine measurement and improvement in health services. In my last visit, there were two areas of care where grievance or complaint information had been integrated to quality review and improvement, representing an important step forward. The one remaining step for the facility to achieve full compliance in this area is to use these newly developed practices to assess the full spectrum of areas detailed in the settlement.

VDOC involvement in monitoring, partially compliant. This area of the settlement requires that the VDOC be involved in the review of quality and access to care issues to ensure sustained improvements to the health services for women detained at FCCW after the completion of this settlement. The audit tool elements for this area include;

- Are health staff reviewed for their work performance on a regular basis?
- Does VDOC support and otherwise facilitate delivery of adequate care at FCCW?

The last report of the prior monitor found that the facility was complaint with this area.

In order to review this area of the settlement, I reviewed the following.

- Quarterly and annual reports from 2021 and 2022.
- Interviews with staff and patients.
- Performance review data of staff.

The prior monitor noted improvements in how VDOC is integrated to the mission of the health service, and this partnership has continued and been strengthened by the experience of COVID-19 management. In my discussions with senior health and custodial staff, it is apparent that the VDOC team at FCCW currently has regular reviews of health care access and adequacy that involves the relevant custodial staff, not only the health staff. The one area of concern that leads to a partially compliant rating for this metric is the large number of agency staff for whom there appears to be less clear performance evaluation practices. Among the providers, 50% are agency staff, and among RN's, this is over 50%. While some of these staff may work relatively few shifts or hours, for any health staff member working over half time, there should be a method to evaluate their performance. Creating a transparent process that ensures these staff are fully integrated into facility performance review and tracking practices will bring this area into compliance.

Operational policies/protocols, compliant. This area of monitoring involves assessment of whether FCCW is adhering to operational procedures of the VDOC and whether the facility has met with the requirement to "Provide notice of proposed changes to OPs governing or relating to the provision of medical care at FCCW to Plaintiffs and Monitor at least 20 days before such changes are scheduled to take effect." The audit tool elements for this area include;

- Does FCCW adhere to operational policies put into effect by VDOC?
- Does FCCW provide notification of changes or updates to policies with 20 days' notice?

The last monitoring report of the prior monitor found FCCW to be in compliance with this area. In order to assess this element of the settlement agreement, I requested updates to operational procedures and protocols issued since 9/1/21. FCCW supplied a broad spectrum of fourteen operational procedures for review, including medical, nursing, pharmacy, mental health and other basic health related policies. I also reviewed communications with the facility since the start of my role as compliance monitor. Overall, FCCW appears to be broadly compliant with this part of the settlement in that they have adequate policies in place. In addition, the quarterly reports supplied by FCCW have included updates on multiple changes that stem from quality improvement projects. The most significant area of change in health services in the past 24 months relates to the numerous COVID-19 health care activities and workflow changes, which have been reported in regularly updated COVID-19 protocols shared by the facility. If/when I detect policies or operational policies that appear inconsistent with the settlement agreement, I will report on those.

One area of concern involves a notice that was recently posted in clinic areas regarding health encounters. (See appendix 3) This notice alerts patients to the fact that "EVERY PROVIDER APPOINTMENT IS FOR A SPECIFIC REASON". What follows is a warning that if a patient uses an appointment for another reason than originally specified, they may be charged with the following offenses.

> "206-Lying or giving false information to and employee" and/or "205-Intentionally delaying, hindering, or interfering with an employee in the performance of duties."

This notice reflects a potentially harmful approach to delivery of health services because it seeks to punish patients for the predicable and routine scenario in which a health problem either changes in presentation, or potentially, when new or apparently unrelated health problems poses serious risk to health. FCCW indicated that this policy was not implemented, that they did not detect any adverse impact on patients receiving or seeking care as a result of this being posted, and that no grievances were filed as a result. I will continue to follow up on this notice and will have special scrutiny to detect whether any potentially punitive approach to health care is evidenced at FCCW. If I determined that this posting interfered with care, I would have also identified this as a barrier to care in the diagnosis and treatment area of compliance monitoring.

E. Summary and next steps

FCCW continues to build on their clinical strengths and address areas of deficiency in coming into compliance with the terms of this settlement. Among the metrics evaluated in this round, all but two are in full or partial compliance and the path towards compliance is relatively clear, as long as the gaps in the scope of services are addressed and the electronic medical record implemented. For each area of partial compliance or noncompliance, I have indicated the steps that should be taken to achieve full compliance. Since the last monitoring report, FCCW has made progress on three fronts that are crucial towards long term compliance with the increased safety measures in the infirmary, the start of the mental health officers' deployment and the initial selection of a vendor for the electronic medical record. Review of the past monitoring reports in this case also makes clear that the flux in staffing and clinical practices can result in transitory, rather than sustained compliance. I plan to return to the facility at the end of July or

early August 2022 and conduct a second review of the compliance metrics reported in my prior report.

Executed this 13th day of June, 2022 in Port Washington, NY

Signed,

Homer Venters MD, MS

Appendix 1. Data Sources

Diagnosis and Treatment

Data reviewed	Medical/Psychiatric*	Lung cancer screening	Substance Use Disorder treatment
Medical records (n=13)	15 relevant encounters, 14 complaint (93%)	0/3**	0/5**

*Compliance with these cases involved the clinically appropriate diagnosis of a new health problem, and appropriate treatment response.

**FCCW does not currently identify and provide lung cancer screening or routine treatment for opiate use disorder for women who meet clinical criteria, except for women who are pre-release who may be offered some treatment for opiate use disorder (see below).

Number of women prescribed naltrexone, methadone, and buprenorphine/suboxone in 2021, broken out by medication.

MEDICATION	NUMBER OF WOMEN WITH PRESCRIPTIONS
Naltrexone	11
Methadone	1
Buprenorphine/suboxone	0

Response to Medical Emergencies/Medical Care

Data reviewed	Responses Adequate
Medical records (n=12)	12 instances, 11 complaint (92%)

Infirmary Care & Conditions

Data reviewed	Responses Adequate
Medical records (n=6)	6 sets of admissions and progress notes. 6 complaint (100%)

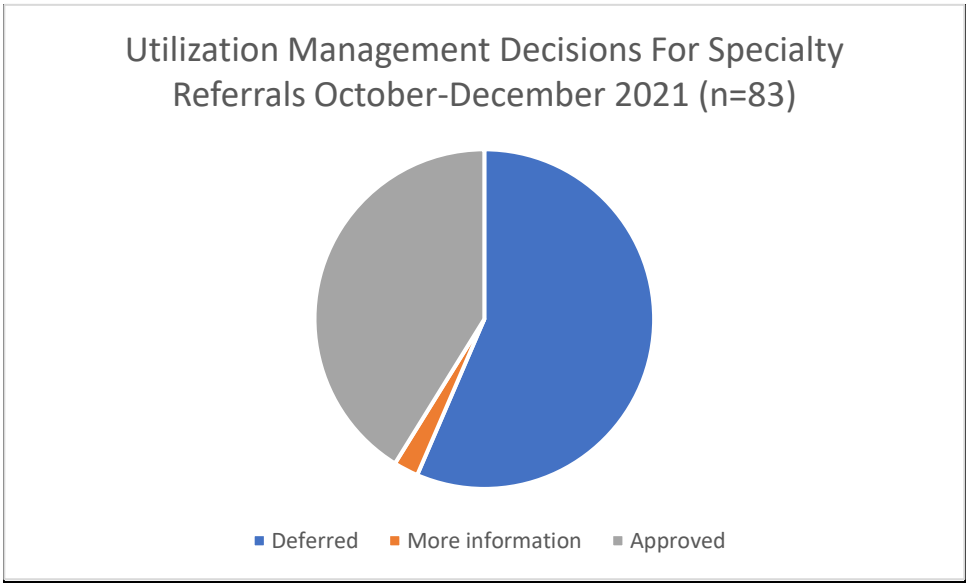
Infectious disease and testing for HIV, Syphilis, Gonorrhea and Chlamydia

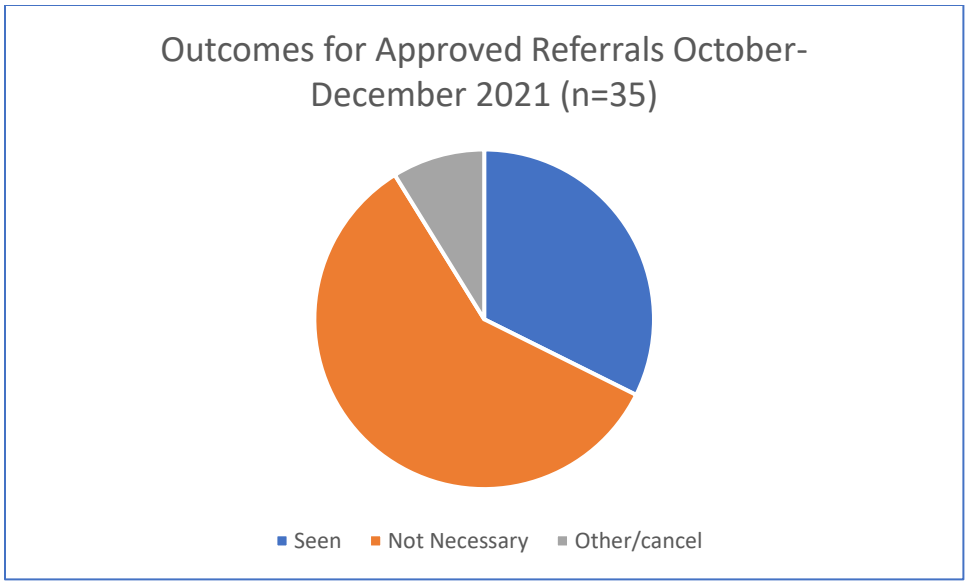
Patients admitted 35 years or younger*	Tested for HIV (Lab)	Tested for Syphilis (Lab)	Tested for Gonorrhea (Pap)	Tested for Chlamydia (Pap)	Patient refused Lab and/or Pap tests
66	66	66	66	66	0

*Jan-March 2022.

Utilization Management

Data reviewed	Responses Adequate
Medical records (n=13)	7 specialty encounters with 7 timely and adequate responses by FCCW providers. (100%)
Specialty referrals (n=83)	83 total referrals with 78 timely reviews/appointments



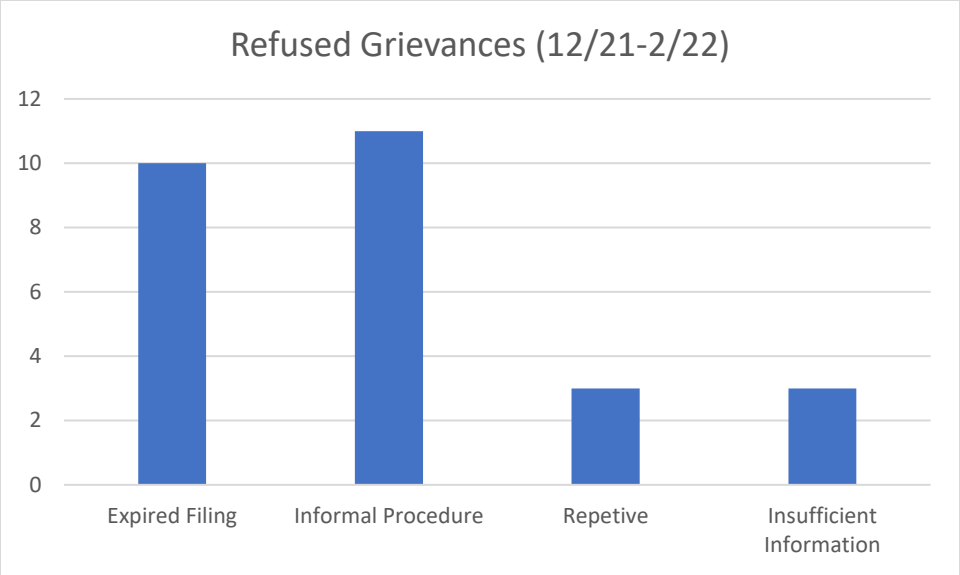


Medical Equipment

Information reviewed	Adequate response
Assistive device requests/complaints (n=11)	7 of 11 adequate, 1 had no response and 3 did not respond to issue raised (64%)

Medical Grievances

Data reviewed	Responses Adequate
Medical grievances (n=61)	61 grievances, one missing a response, all others timely and adequately responded to (98%)



Staff Training

Date Reported by Training Staff	12/31/21
Total security staff	158
On leave	2
New transfers	6
Staff required to complete RRNMA training	150
Staff out of compliance	0
Percent completed RRNMA	100%

Appendix 2. FCCW Compliance Monitoring in Scott v. Clark

Metric	**Prior Monitor**	**Round 1**
Provider Staffing	Compliant (10/20)	Compliant (5/22)
Intake screening	Compliant (10/20)	Compliant (10/21)
Comprehensive health assessments	Compliant (10/20)	Compliant (10/21)
Sick call/Access	Not compliant (10/20)	Not compliant (10/21)
Co-Pay	Compliant (10/20)	Compliant (5/22)
Diagnosis and treatment	Compliant (10/20)	Not compliant (5/22)
Emergency response	Compliant (10/20)	Compliant (5/22)
Infirmary care/conditions	Compliant (10/20)	Partially compliant (5/22)
Chronic care	Not compliant (10/20)	Not compliant (10/21)
Infectious disease/waste	Compliant (10/20)	Compliant (5/22)
Utilization Management	Compliant (10/20)	Compliant (5/22)
Medications	Not compliant (10/20)	Compliant (10/21)
Medical equipment	Compliant (10/20)	Not compliant (5/22)
Physical therapy	Compliant (10/20)	Compliant (10/21)
Medical grievances	Compliant (10/20)	Compliant (5/22)
Patient access to care information	Compliant (10/20)	Compliant (10/21)
Accommodation for special needs	Not compliant (10/20)	Not compliant (10/21)
Training	Not compliant (10/20)	Compliant (5/22)
Care/release terminally ill	Compliant (10/20)	Partially compliant (5/22)
Mortality Reviews	Compliant (10/20)	Compliant (10/21)
PM/CQI	Compliant (10/20)	Partially compliant (5/22)
VDOC Performance evaluation	Compliant (10/20)	Partially compliant (5/22)
Operational protocols/policies	Compliant (10/20)	Compliant (5/22)

Appendix 3. Clinic notice

ALERT

EVERY PROVIDER APPOINTMENT IS FOR A SPECIFIC REASON.

(SICK CALL, FOLLOW-UP, PENDING APPOINTMENT, ETC.)

IF A PATIENT USES ONE OF THESE APPOINTMENTS FOR ANOTHER REASON, YOU WILL BE CHARGED WITH:

206 – Lying or giving false information to an employee.

AND/OR:

205 – Intentionally delaying, hindering, or interfering with an employee in the performance of duties.

SICK CALLS MUST BE WRITTEN FOR NEW MEDICAL COMPLAINTS.

If you have medical questions, please use an IMS (Facility written request).