

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JAMES BENJAMIN, et al.,

Plaintiffs,

- against -

AMENDED

ORDER

75CV3073(HB)

MARTIN F. HORN, et al.,

Defendants.

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Hon. HAROLD BAER, JR., District Judge:

WHEREAS this Court held hearings pursuant to the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626(b)(3), including a hearing conducted in May 2000 (the "May Hearing") as to the constitutionality of certain of the Consent Decree provisions; and

WHEREAS following the May Hearing, this Court issued an order dated April 26, 2001 ("April 26, 2001 Order") in which the Court found that certain of Defendants' practices concerning environmental health in various correctional facilities operated by Defendants were constitutional and others were unconstitutional; and

WHEREAS the April 26, 2001 Order required the Department of Correction ("the Department" or "DOC") to take certain steps to address deficiencies in the environmental conditions of those facilities, specifically including extreme temperature conditions in the applicable facilities; and

WHEREAS by Order dated July 18, 2003, this Court authorized the Office of Compliance Consultants ("OCC") to retain Susi Vassallo, M.D., to assist the parties on issues related to heat-related illness and as a consequence of her report, this Court finds that prolonged exposure to conditions of extreme heat for anyone, but particularly for certain persons whose medical conditions impair their natural ability to keep cool, can cause serious illness even death and;

WHEREAS Dr. Vassallo, the Court's expert, has made certain recommendations to reduce health risks for inmates believed to be particularly vulnerable to a heat-related illness, and while many of said recommendations have been agreed to by the parties, the need for others has been disputed by medical experts within the New York City Department of Health and Mental Hygiene; and

**WHEREAS** based on the above-mentioned concerns and extensive communications from the parties, the Court entered an Order on July 26, 2004 ("the Heat Order") with respect to DOC's future treatment of at-risk inmates during periods of high heat; it is hereby

1. **ORDERED** that, following additional input from the parties, Dr. Vassello, and OCC, the Heat Order is hereby amended and supplemented as set forth below; and it is further

2. **ORDERED** that the Department shall continue to take the following general measure to increase inmate safety during warm weather:

- a. Encourage inmates to drink fluids liberally;
- b. Encourage additional rest periods;
- c. Encourage inmates to take cool showers periodically and other appropriate measure to control body temperature;
- d. Advise Department staff to refer to medical services any inmates observed to be experiencing extreme weakness, headaches, lethargy, profuse sweating, vomiting and/or confusion, which may be a result of heat exhaustion; and
- e. Display heat alert posters, which advise Department staff of precautions to be taken for the prevention of heat-related illnesses, throughout each housing facility where inmates are housed, to provide heat-related information to the inmate population and it is further

3. **ORDERED** that the New York City Department of Health and Mental Hygiene, or its vendor (collectively, "DOHMH") will continue to use its heat screening form during the initial medical intake exam for all new inmates and where one or more of the conditions set out in the fifth ordered paragraph exist:

- a. where temperatures exceed 85°F at the time of the intake exam or are forecast to do so within 48 hours thereafter, will immediately place the inmate in air conditioned housing; and
- b. where the temperature is below 85°F at in-take and is not forecast to reach 85°F within the following 48 hours, will flag the file so that air conditioned housing will be provided as soon as possible after the temperature reaches 85°F in the area occupied by the affected inmate; and

When an inmate needs to be placed in air conditioned housing under the circumstances described in subparagraph a or b, such housing will be provided within two hours when it is available within the same jail in which the inmate is being housed and within eight hours when it requires that the inmate be transferred to another jail, whether on Rikers or in a borough facility, provided, however, that in the event of an off-Rikers or other inter-facility transfer, DOC shall, upon arrival,

complete the intake process expeditiously and in an air-conditioned area where possible; and it is further

4. **ORDERED** that with respect to all inmates previously examined, those files will be reviewed between the date hereof and August 16, 2004 and where appropriate (i.e., a paragraph 5 malady is detected) a direction will be given that the inmate be transferred to air conditioned housing within 24 hours thereafter and where the temperature is below 85°F at the time the file is reviewed but a paragraph 5 malady is detected, the file will be flagged for such transfer to be directed when the temperature reaches 85°F; and it is further

5. **ORDERED** that the following maladies will be used to identify inmates for air conditioned housing and will necessitate immediate assignment or transfer to air conditioned housing:

- a. Patient receives lithium
- b. Patient has Parkinson's disease;
- c. Patient requires infirmary care;
- d. Patient is 65 years of age or older;
- e. Patient has documented history of hospitalization for heatstroke;
- f. Patient receives one or more of the drugs raising risk of heat-related illness. See Exhibit 1.
- g. Patients with Type I or Type II diabetes, 60 years or older;
- h. Patients who appear confused, have dementia, suicidal tendencies, depression, or mental retardation; and
- i. Patients with a history of congestive heart failure or myocardial infarction; it is further

6. **ORDERED** that DOHMH may, in the future, add or delete other conditions from this list to identify inmates for air-conditioned housing as they are determined to be medically warranted, upon prior notification to OCC, plaintiffs' counsel and DOC and it is further

7. **ORDERED** that DOHMH shall disseminate to DOC a notification form of need for air conditioned housing for each inmate identified by DOHMH as requiring such housing during periods of high heat, i.e., 85°F or above that this notification form will be prepared and disseminated forthwith and it is further

8. **ORDERED** that to the extent that DOC is unable to provide prisoners held in punitive segregation housing ("CPSU") with every measure to increase inmate safety during hot weather, the Department and/or DOHMH shall, when the ambient temperature exceeds 85°F in the applicable housing areas, take the following additional measures:

- a. Increased monitoring of inmates by staff to determine if any inmate is experience extreme weakness, headaches, lethargy, profuse sweating, vomiting and/or confusion, which may be a result of heat exhaustion;
- b. In the event a determination is made that CPSU inmate may be suffering from heat exhaustion, medical attention shall be promptly provided; and
- c. Extra water and ice shall be provided to all inmates at every meal.
- d. Within 60 days from the date hereof, DOC will present to OCC the plaintiff and this Court, a plan, which, while taking the need for security into consideration, will provide adequate ventilation and cooling in punitive segregation areas, including, but not limited to, CPSU at OBCC and MHAV II at GRVC; and it is further

9. **ORDERED** that OCC shall monitor defendant's compliance with the requirements of this Order. This order shall automatically terminate on October 15, 2005 if OCC does not find any evidence of current and ongoing constitutional violations of plaintiffs' federal rights. This order shall be subject to review and to further order of this Court; and it is further


10. **ORDERED** that this procedure is effective immediately but for ordered paragraphs 3 and 4, which are to be operational, if they are not already, on or before August 2, 2004 with respect to intake examinations and with respect to the file review on or before August 16, 2004; and it is further

11. **ORDERED** that the contents of this Order will be disseminated to inmates:
- a. At orientation for new inmates during the months of May, June, July, August, and September of each year;
  - b. By OCC staff members during their attendance at inmate counsel meetings; and
  - c. Any other method that OCC, in consultation with the Court and the parties, deems appropriate; and it is further

12. **ORDERED** that I find that this relief is narrowly drawn, extends no further than necessary and is the least intrusive means necessary to correct the violation of those federal rights that formed the basis for the May 2000 hearing.

**SO ORDERED.**

December 22, 2004



Hon. Harold Baer, Jr.  
USDJ

## EXHIBIT I

### Antiparkinsonian agents:

Benztropine  
Trihexyphenidyl

### Cardiac agents:

#### 1. Calcium channel antagonists

Amlodipine  
Diltiazem  
Nifedipine  
Verapamil

#### 2. Beta-adrenergic antagonists

Metoprolol  
Atenolol  
Propranolol

#### 3. Diuretics

Furosemide  
Hydrochlorothizide

### Antipsychotics:

Chlorpromazine (Thorazine)  
Fluphenazine (Prolixen)  
Haloperidol (Haldol)  
Thioridazine (Mellaril)  
Thiothixene (Navane)  
Mesoridazine (Serentil)