



PC-CA-013-005

ACAVILLE

1 JAMES P. TURNER
 ARTHUR E. PEABODY, JR.
 2 BENJAMIN P. SCHOEN
 VERLIN HUGHES
 3 GAYLE D. FIDLER
 U.S. Department of Justice
 4 Civil Rights Division
 320 First Street, N.W.
 5 Washington, D.C. 20530
 (202) 272-6065
 6
 7 DAVID F. LEVI
 United States Attorney
 3305 Federal Building
 8 650 Capitol Mall
 Sacramento, California 95814
 9 (716) 551-2700
 10 Attorneys for the United States
 of America

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SEP 12 1989

CLERK, U. S. DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA
 BY _____

11 UNITED STATES DISTRICT COURT FOR THE
 12 EASTERN DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,)
)
 14 Plaintiff,)
)
 15 v.)
)
 16 STATE OF CALIFORNIA: HONORABLE GEORGE DEUKMEJIAN,)
 Governor of the State of California; JAMES)
 17 ROWLAND, Director, California Department of)
 Corrections; DR. NADIM KHOURY, Assistant Deputy)
 18 Director for Health Services, California)
 Department of Corrections; EDDIE YLST,)
 19 Superintendent, California Medical Facility; and)
 DR. KENNETH SHEPARD, Medical Director, California)
 20 Medical Facility,)
)
 21 Defendants.)
)

22
 23 CIVS- 89-1233 EJG- JFM
CONSENT DECREE

24 1. This case was instituted by the United States on
 25 SEP 12 1989, 1989, pursuant to the Civil Rights of
 26 Institutionalized Persons Act, 42 U.S.C. Section 1997.

1 2. This Court has jurisdiction over this civil action
2 pursuant to 28 U.S.C. §1345.

3 3. Venue is proper pursuant to 28 U.S.C. §1391(b).

4 4. The United States is authorized to institute this action
5 pursuant to 42 U.S.C. §1997a.

6 5. The Attorney General has met all prerequisites to
7 instituting this civil action prescribed by 42 U.S.C. §1997 et
8 seq.

9 6. The Defendants are the State of California; the
10 Honorable George Deukmejian, Governor; James Rowland, Director,
11 California Department of Corrections; Dr. Nadim Khoury, Assistant
12 Deputy Director, Health Services, California Department of
13 Corrections; Eddie Ylst, Superintendent, California Medical
14 Facility; and Dr. Kenneth Shepard, Medical Director, California
15 Medical Facility. The individual defendants are sued in their
16 official capacities.

17 7. The Defendants have the authority and responsibility for
18 the operation of the California Medical Facility and are officers
19 of the Executive Branch of the State of California.

20 8. On March 7, 1985, the United States Department of
21 Justice, by and through Assistant Attorney General Wm. Bradford
22 Reynolds, gave notice to Governor Deukmejian of its intention to
23 investigate alleged unlawful conditions of confinement at
24 California Medical Facility, Vacaville, California (hereinafter
25 CMF), pursuant to the Civil Rights of Institutionalized Persons
26 Act, 42 U.S.C. §1997 et seq.

1 9. Following a thorough investigation, the Attorney
2 General, by and through the Assistant Attorney General, Civil
3 Rights Division, informed California state officials of the
4 alleged conditions that deprived CMF inmates of rights secured to
5 them by the Constitution of the United States and the pattern or
6 practice of resistance to the full enjoyment of those rights, the
7 supporting facts giving rise to such conditions and the minimum
8 measures which he believes may remedy those conditions and the
9 pattern or practice.

10 10. It is recognized that, prior to entering into this
11 Consent Decree, the State of California voluntarily took
12 affirmative steps towards improvement of conditions at CMF,
13 including, but not limited to, increases in staffing for medical
14 and psychiatric services, improvements in inmate access to sick
15 call and specialized medical services, elimination of inmates
16 from the provision of direct patient services, renovation of
17 medical and psychiatric hospital facilities, provision for
18 staffing and operation of acute psychiatric services by the
19 California Department of Mental Health, improvements in staffing
20 and operation of the medical record system, and a decrease in the
21 number of inmates housed at CMF.

22 11. The parties agree that the confinement of inmates at
23 CMF implicates rights secured and protected by the Constitution
24 of the United States and, recognizing these constitutional
25 interests and for the purpose of avoiding protracted and
26

1 adversarial litigation, agree to the provisions set forth in this
2 Consent Decree.

3 12. In entering into this Consent Decree, the Defendants do
4 not admit any violation of law and this Consent Decree may not be
5 used as evidence of liability in any other proceeding.

6 13. The provisions of this Consent Decree are a fair,
7 equitable and appropriate resolution of this case.

8 14. The provisions of this Consent Decree and the plans
9 submitted herewith resolve all matters under the investigation
10 commenced by the United States on March 7, 1985.

11 15. This Consent Decree shall be applicable to and binding
12 upon all of the parties, their officers, agents, employees,
13 assigns, and successors.

14 I. Purpose and Objective

15 The State of California and the United States stipulate and
16 agree that the purpose and objective of this Consent Decree is to
17 establish as promptly as practicable medical, dental, and
18 psychiatric care the adequacy and timeliness of which do not
19 demonstrate deliberate indifference to the serious medical,
20 dental, and psychiatric needs of inmates at CMF, in order to
21 ensure that they are not being deprived of rights,
22 privileges or immunities secured to them by the Constitution of
23 the United States.

24 II. Definitions

25 As used in this Consent Decree, the following terms are
26 defined as follows:

1 1. "Facility": California Medical Facility (CMF), located
2 in Vacaville, California.

3 2. "Outpatient": Any CMF inmate who is a Category J, K, T,
4 or Psychiatric Attention inmate, as those terms are defined in
5 the plans submitted with this Decree. This definition excludes
6 any CMF inmate who has been admitted to the Vacaville Psychiatric
7 Program (VPP) and who receives psychiatric care at CMF in areas
8 under the control and supervision of the Department of Mental
9 Health (DMH).

10 3. "Physician": A medical doctor lawfully entitled to
11 practice medicine.

12 4. "Psychiatrist": A physician who is certified by or is
13 eligible for certification by the American Board of Psychiatry
14 and Neurology or who has successfully completed an approved
15 residency program in psychiatry and upon completion of post
16 residency requirements will become eligible for examination for
17 such certification.

18 5. "Psychologist": A person who has attained at least a
19 master's degree in the field of psychology.

20 6. "State": The Executive Branch of the Government of the
21 State of California, specifically including the Governor of the
22 State of California, the State Department of Corrections, and any
23 and all of their officials, agents, employees, or assigns.

24 III. Staffing

25 The State agrees to consistently maintain at least eight (8)
26 psychiatrists and eleven (11) psychologists on staff to provide

1 services to outpatient inmates, as outpatient is defined in
2 Section II (2). In no event shall the State permit the
3 staff-to-inmate ratios at CMF to fall below 1:150 for
4 psychiatrists and 1:100 for psychologists.

5 IV. Plans

6 The State of California has drafted the attached plans to
7 implement this Decree. Such plans set forth:

- 8 1. The measures that will be undertaken to provide and
9 insure psychiatric care to out-patient inmates,
10 including medical monitoring of drugs, periodic follow-
11 up for discharged inpatients, periodic review and/or
12 assessment of inmates receiving psychiatric care at
13 CMF, and the recordkeeping procedures to be used to
14 provide complete documentation in the inmate's file of
15 psychiatrists' and psychologists' orders, with
16 appropriate written justification for any delay in or
17 denial of access to psychiatric care.
- 18 2. The policies and procedures to be utilized to insure
19 timely access by seriously ill inmates to medical
20 services and treatment, on-site or elsewhere as
21 necessary, including measures to insure that
22 specialized medical services, diagnostic tests, and
23 appropriate follow-up care are administered in a timely
24 manner, as necessary, and the recordkeeping procedures
25 to be used to provide complete documentation in the
26

1 inmate's file of physicians' orders, with appropriate
2 written justification for any delay in or denial of
3 access to medical care.

4 3. The policies and procedures to be utilized to insure
5 timely access by inmates to dental care, including the
6 measures the State will take and the procedures to be
7 utilized to ensure timely identification, evaluation
8 and treatment of and follow-up care for inmates' dental
9 needs, and the recordkeeping procedures to be used to
10 provide complete documentation in the inmate's file of
11 dental orders, with appropriate written justification
12 for any delay in or denial of access to dental care.

13 4. The plans state the specific date or dates by which
14 each shall be implemented in toto. The plan shall be
15 fully implemented no later than one year after entry of
16 this Consent Decree.

17 V. Construction and Implementation

18 In construing and implementing the terms of the Consent
19 Decree, the following are agreed to by the parties:

20 1.(a) If State officials seek to modify the plan submitted
21 herewith or any portion thereof, State officials shall serve the
22 Court and the United States with a copy of the proposed
23 modification. The United States shall have sixty (60) days from
24 the receipt of any proposed modification in which to file with
25 the Court a response to the proposed modification. If the United
26 States objects to the modification sought, State and Federal

1 officials shall meet or otherwise confer in a good faith effort
2 to resolve their differences concerning the proposed
3 modification. If State and Federal officials are unable to
4 resolve their differences through negotiation, the adequacy of
5 the proposed modification to achieve the purposes and objectives
6 set forth in Part I of this Consent Decree shall be determined by
7 the Court. The Defendants shall have the burden to persuade the
8 Court that the modified plan is adequate under this standard.

9 (b) Any such modifications to which the United States does
10 not object within 60 days of such service shall be deemed moved
11 for approval by the Court.

12 2. All plans submitted with this Decree are part of the
13 Decree and are enforceable as orders of this Court.

14 3.(a) The State shall submit periodic compliance reports to
15 the United States and the Court setting forth the progress the
16 State is making towards implementing its plans. A compliance
17 report shall be filed 60 days after the entry of this Consent
18 Decree and every 60 days thereafter, continuing until such time
19 as this Consent Decree is terminated.

20 (b) The format of these compliance reports shall be
21 within the discretion of the State. The content of the reports
22 shall include specific information with regard to implementation
23 of each of the State's plans and a specific assessment of the
24 State's progress towards meeting the conditions set forth in
25 Part I. The United States may from time-to-time request that the
26 State include additional information in the Compliance reports.

1 4. The United States and its attorneys, consultants and
2 agents shall have reasonable access to CMF, its facilities,
3 records, inmates, and employees upon reasonable notice to the
4 State for the purpose of ascertaining compliance with the Decree.
5 Such access shall continue until this Consent Decree is
6 terminated.

7 5. All confidential records or other confidential documents
8 provided to the United States are to be treated as confidential
9 and may not be disclosed by either the United States or the State
10 without the consent of both parties or on order of the
11 appropriate Court, unless authorized by law. Disclosure of such
12 records or documents to the United States shall not be deemed a
13 waiver of any privileges applicable to such records or documents
14 provided by the State in compliance with the Consent Decree.

15 6. Within 20 days of receipt, the State shall provide to
16 the United States specific written answers to specific written
17 questions by the United States regarding the State's compliance
18 reports or the status of implementation of its plans.

19 7. All parties shall bear their own costs of this action,
20 including attorney fees.

21 VI. Termination of Decree

22 1. The Defendants shall fully and faithfully implement all
23 provisions of this Consent Decree and the plans submitted
24 herewith no later than one year from date of entry of this
25 Decree.
26

1 2. The Court shall retain jurisdiction of this action for
2 all purposes under this Consent Decree until the Defendants shall
3 have fully and faithfully implemented all provisions of the
4 Consent Decree and plans submitted herewith and until the
5 judgment be discharged.

6 3. On or after the date on which the Defendants have fully
7 and faithfully implemented all provisions of this Consent Decree
8 and plans submitted herewith, the Defendants may move that the
9 injunctions entered herein be dissolved, the judgment discharged,
10 jurisdiction terminated, and the case closed and dismissed with
11 prejudice, on grounds that the Defendants have fully and
12 faithfully implemented and maintained all provisions of this
13 Consent Decree and plans submitted pursuant thereto; Provided
14 that no such motion may be filed prior to eight months from the
15 date of entry of this Decree.

16 4. Dismissal shall be granted unless, within sixty (60)
17 days after receipt of the Defendants' motion, the United States
18 objects to the motion. If such an objection is made with
19 particularity, the Court shall hold a hearing on the motion and
20 the burden shall be on the United States to demonstrate that the
21 Defendants have not fully and faithfully implemented all
22 provisions of this Consent Decree or the plan(s) or any part
23 thereof and, if objection is based upon failure to implement any
24 plan or part thereof, that such plan or part thereof is essential
25 to the achievement of the purpose and objective set forth in Part
26 I of this Consent Decree. If the United States fails to meet

1 this burden, the injunctions shall be dissolved, the judgment
2 shall be discharged, jurisdiction shall
3 be terminated forthwith, and the case shall be closed and
4 dismissed with prejudice.

5 CONSENTED TO BY THE UNDERSIGNED:

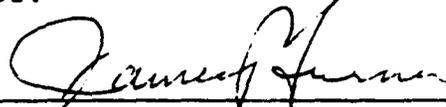
6 FOR THE STATE OF CALIFORNIA

FOR THE UNITED STATES OF AMERICA

7 BY:

BY:

8



9

JOE G. SANDOVAL
Secretary
Youth and Adult Correctional
Agency

JAMES P. TURNER
Acting Assistant Attorney General
Civil Rights Division

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JAMES ROWLAND
Director
California Department of
Corrections

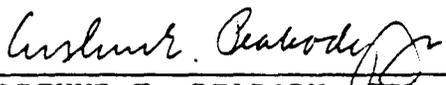
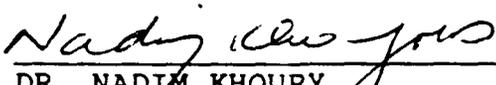
DAVID F. LEVI
United States Attorney
Eastern District of California

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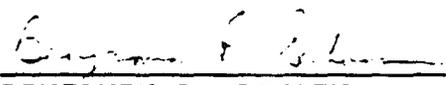
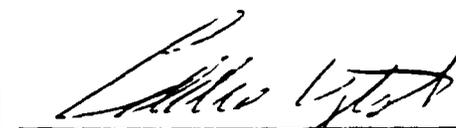
DR. NADIM KHOURY
Assistant Deputy Director
Health Services
California Department of
Corrections

ARTHUR E. PEABODY, JR.
Chief
Special Litigation Section

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EDDIE YLST
Superintendent
California Medical Facility

BENJAMIN P. SCHOEN
Deputy Chief
Special Litigation Section

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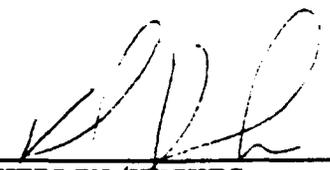
DR. KENNETH SHEPARD
Medical Director
California Medical Facility

GAYLE D. FIDLER
Attorney
Special Litigation Section

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JAMES B. CUNEO
Deputy Attorney General
Correctional Law Section


VERLIN HUGHES
Attorney
Special Litigation Section

WHEREFORE, the parties to this action having agreed to the provisions in the Consent Decree set forth above, and the Court being advised in the premises, this Consent Decree is hereby entered as the JUDGMENT of this Court.

IT IS SO ORDERED, this ____ day of _____, 1989, at Sacramento, California.

UNITED STATES DISTRICT JUDGE