



PC-MA-001-001

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.	COPIES ISSUED	SUPERIOR COURT
	NOTICE SENT JUNE 24, 1992	CIVIL ACTION NO. 80352
	A. B. J. L. A.	
	B. B. M. M & M	
	S. L. H. P. C. K.	
	M. K. B. R. H.	
ROBIN MCDONALD, ET AL.,	(A.D.)	)
Plaintiffs		)
		)
v.		)
		)
MICHAEL V. FAIR, ET AL.,		)
Defendants		)

SUFFOLK, SS. *April 7 1992*

*John Flynn*

RECEIVED BY LEAVE OF COURT

*John Flynn*

AGREEMENT

Now come the parties in the above entitled action, and, upon review of their respective positions, without admitting the validity of any claims or defenses of law or fact asserted in this action, jointly, pursuant to Massachusetts Rule of Civil Procedure 41, enter into the following Agreement:

A. Definitions and Identification of Parties

1. As used herein, the following definitions of terms shall apply:
  - (a) "Action" means the above-entitled civil action, McDonald, et al. v. Fair, et. al., Suffolk Superior Court No. 80352.
  - (b) "Complaint" means the complaint together with any amendments filed or deemed filed in the Action.
  - (c) "Defendants" means Lawrence Dubois as he is the Commissioner of the Department of Correction, and Kathleen Dennehy, as she is the Superintendent of MCI-Framingham.

JUDGMENT ENTERED ON DOCKET June 24 19 92  
 PURSUANT TO THE RULES OF MASSACHUSETTS CIVIL PROCEDURE  
 AND NOTICE SENT TO PARTIES PURSUANT TO THE RULES OF MASSACHUSETTS CIVIL PROCEDURE AS APPENDED

- (d) "Counsel for the Defendants" means Michelle Kaczynski, Assistant Attorney General or her successor.
- (e) "DOC" means the Department of Correction of the Commonwealth of Massachusetts, its commissioners, its superintendents of M.C.I. Framingham, its agents and employees and their successors.
- (f) "Plaintiffs" means Robin McDonald, Frances Hill, Jacqueline Lopes and Mary Connolly, together with their heirs, executors, administrators and assigns.
- (g) "Class Member" means those persons designated as such by the Order of the Court dated contemporaneously with this Agreement.
- (h) "Pregnant inmate" means each person who is a class member and is specifically limited to only those inmates whose pregnancy has been determined by DOC medical personnel pursuant to the procedures of paragraph 25.
- (i) "Counsel for the Plaintiffs and Class members" means Anne Braudy and Barry Barkow, Massachusetts Correctional Legal Services, Inc. or their successors.
- (j) "Court" means the Suffolk Superior Court of the Trial Court Department of the Commonwealth of Massachusetts.
- (k) "M.C.I. Framingham" means the Massachusetts Correctional Institution at Framingham, Massachusetts.
- (l) "HSU" means the Health Services Unit at M.C.I Framingham.

(m) "ATU" means the Awaiting Trial Unit at M.C.I Framingham, and is distinguished from general population.

B. Binding Nature of Agreement

2. This Action, and all claims asserted herein in the Complaint by any plaintiffs against any named defendants, not limited to those defined in section "A", including all claims for attorneys' fees and costs which plaintiffs' may have a right to assert based upon this action, shall be dismissed with prejudice, without any finding of liability or other determination on the merits, subject to the approval of the Court as required by Rule 23 of the Massachusetts rules of Civil Procedure, upon and subject to the terms and conditions set forth below.

Plaintiffs do not waive attorneys fees and costs incurred in connection with seeking compliance of this agreement at any time by judicial action should this or any other court find that the defendants are not in compliance with the provisions of this Agreement.

The Court shall retain jurisdiction during the compliance period as set forth in paragraph 4 of this Agreement. Final Judgment in this matter shall enter at the end of such compliance period. This agreement shall continue in force after entry of final judgment and/or dismissal.

3. This Agreement shall not be interpreted to restrict the constitutional, regulatory and statutory authority or

duties of any of the defendants, nor shall this Agreement be interpreted to create statutory or constitutionally recognized duties, so as to allow suit pursuant to 42 U.S.C. §1983 by any person. This Agreement sets forth the duties of the defendants, except where their duties are supplemented by constitutional, regulatory and statutory provisions. This Agreement is not meant to restrict or prohibit additional benefits or programs which the DOC may choose to provide.

4. This Agreement shall not be interpreted to prejudice or otherwise restrict plaintiffs' rights to seek additional relief not the subject of this Agreement, from this Court against the defendants based upon events occurring after the date of this Agreement to gain access to prenatal and postpartum care, in order to remedy deprivations of care that violate constitutional, statutory or regulatory standards. The defendant shall continue to be subject to the Compliance Plan set forth herein, for a period ending one year from the date of entry of this Agreement.

5. This Agreement may be executed in several counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument, and each of which shall contain the signatures of counsel for the plaintiffs, counsel for the defendants ~~and at least one of the defendants, or their successor in office.~~ WCR AB

6. All parties to this Agreement, and their respective counsel of record, agree that they shall use their best efforts to obtain all necessary approvals of this Agreement, and the

compromise and settlement evidenced hereby, by the Court.

7. This Settlement Agreement shall be applicable to and binding upon all of the parties, their officers, agents, servants, employees, assigns, and their successors and, subject to the Court's approval, shall be entered as an order by the Court.

8. The overall goal of this Agreement is to promote compliance with statutory and constitutional obligations regarding the treatment of women committed to MCI-Framingham who are pregnant. The plaintiffs agree not to seek court action for deviations from this agreement due to unforeseen or unavoidable circumstances, so long as the defendants are making good faith efforts to meet these requirements.

9. Within ten (10) business days after the execution of this Agreement, application shall be made to the Court by the parties for an order providing for a hearing to approve this Agreement.

C. Diet and Vitamins

10. Once pregnancy has been confirmed, the HSU shall notify the Food Services Unit who shall place the inmate on the pregnancy diet (Exhibit A, which is MCI-Framingham's pregnancy diet as it presently exists). For each pregnant inmate, a consult request shall also be forwarded to a dietician within two working days of receiving confirmed diagnosis of pregnancy.

11. The dietician's consult form shall be part of the medical record of each pregnant inmate.

12. Where pregnant inmates have medically based additional dietary needs or restrictions, those requirements shall also be provided by the dietician to the Food Services Unit in writing, and written into the pregnant inmate's medical file.

13. Whenever a pregnant inmate believes that a meal does not conform to the required diet, she should report this to the Institutional Grievance Coordinator on the institutional grievance form. This is not meant to imply that inmates, if they so choose, may not approach food service personnel, shift commanders and others to voice dietary concerns or problems immediately.

Institutional grievance forms on these matters will be maintained in the inmate's six part folder, and, in the office of the grievance coordinator in the same manner as the institution normally maintains all such grievance forms.

14. The DOC shall maintain a procedure whereby the name of each pregnant inmate shall be placed on the "Diet Roster" maintained in the Food Services Unit. A copy of the "Diet Roster" shall be maintained in the Food Services Unit for at least three years.

15. Pregnant inmates will be provided prenatal vitamins and iron pills as prescribed by on-site medical personnel.

#### D. Exercise

16. The minimal recreation time offered to a pregnant inmate shall be one hour per day unless medically contraindicated.

E. Prenatal and Postpartum Counselling

17. The DOC shall offer pregnant inmates access to weekly prenatal classes providing prenatal counselling and education.

18. The DOC shall maintain weekly prenatal clinics at MCI-Framingham. Each pregnant inmate shall be given access monthly at such clinics, or more frequently if medically necessary.

19. The DOC shall have available for inmates access to mental health counselling and HIV counselling.

20. DOC shall offer inmates contact, including telephone access, with the Department of Social Services if her child is to be placed in Department of Social Services custody.

F. Prenatal Clothing

21. The DOC shall provide pregnant inmates with maternity tops, maternity slacks or jeans and larger sizes of underwear.

G. Medical Screening

22. The on-site medical personnel shall perform a Medical Entrance Screen upon each inmate upon her entrance for confinement into M.C.I. Framingham, whether she is awaiting trial or sentenced. Before each inmate entering M.C.I. Framingham is placed in any housing area, the Medical Entrance Screen shall be completed.

23. Pursuant to the Medical Entrance Screen, any inmate suspected of having a communicable disease which is required to be reported to the State Department of Public Health by statute or regulations, which is capable of spreading by casual contact, and which could adversely impact pregnancy, shall be

quarantined in the Health Services Unit, and shall not be permitted to have contact with any other inmate at M.C.I. Framingham.

24. The Medical Entrance Screen shall be conducted by a nurse. Within 48 hours of entrance into MCI-Framingham, the pregnant inmate shall be seen by a physician, or nurse practitioner, or perinatal nurse coordinator, who shall inquire into the following areas:

- a) unusual bleeding or vaginal discharge;
- b) presence of an I.U.D.;
- c) breast masses or nipple discharge.

25. The Medical Entrance Screen shall also include administration of a pregnancy test to any inmate who: a) requests pregnancy testing; or, b) may be pregnant according to the assessment of the nurse conducting the Medical Entrance Screen.

26. After medical screening, pregnant inmates admitted to M.C.I. Framingham without medical or mental health issues other than pregnancy will not be placed in the HSU with unscreened inmates and will not be placed in other areas with unscreened inmates. Awaiting trial pregnant inmates admitted to M.C.I. Framingham without medical or mental health issues other than pregnancy will be placed in the Smith Building in ATU East or ATU West, in an area where all inmates shall have been medically screened. Sentenced pregnant inmates admitted to M.C.I. Framingham without medical or mental health issues other than pregnancy will be placed in the orientation unit for



classification to the general population. Nothing in this paragraph is meant to prohibit the Department of Correction from placement of pregnant inmates in other areas because of disciplinary action, or for other reasons, to the same extent and manner as is applicable to non-pregnant inmates.

27. After medical screening, pregnant inmates admitted to M.C.I. Framingham who have health or mental health issues aside from pregnancy, shall be placed in the HSU, where they shall be confined with other medically screened inmates. They shall not come into physical contact with inmates who are quarantined.

#### H. Transportation

28. During the third trimester, as determined by the treating physician, pregnant inmates who are serving state prison sentences, when transported by vehicles of the DOC, will be transported by a motor vehicle on regular car seats. They may be handcuffed. No waist chains shall be used on pregnant women during the third trimester. Ankle restraints may be used. Nothing in this paragraph is meant to prohibit the Department of Correction from applying this paragraph to an inmate in the second trimester of pregnancy.

29. Waist chains, if used during the first and second trimester, must be sufficiently loose so as to not restrict pregnant inmates' circulation.

30. For women in labor, only one wrist cuff at most attached to the stretcher or bed may be used, unless greater restraint is indicated because of serious medical or overriding security issues. In the case where use of greater restraint is

necessary, its use must be approved by the Superintendent or her designee, and must not continue beyond the point at which the danger has passed.

31. The DOC shall ensure that pregnant women being transported to outside medical care, or courts or hospitals, receive the total dietary intake specified by section "C" of this agreement.

I. Prenatal and Postpartum Medical Examinations

32. Pregnant inmates shall be provided with regular prenatal and postpartum medical examinations and treatment as medically indicated.

33. The designation of "high risk" status shall be determined by an obstetrician and the Department of Correction agrees to follow all medical recommendations which are confirmed by the on-site medical personnel of MCI-Framingham.

J. Timetable and Compliance Plan with Reports

34. A. The defendants shall on or before three months after the execution of this Agreement, file in court a written report of their compliance with this Agreement, stating separately for each of the sections the manner in which compliance has been or has not been achieved, and shall every three months during the pendency of this action submit to the plaintiff's counsel written status reports of their continuing compliance with the Agreement.

B. The DOC defendants, shall, throughout the pendency of the compliance period, upon reasonable notice, agree to post notices provided to them by the plaintiffs'

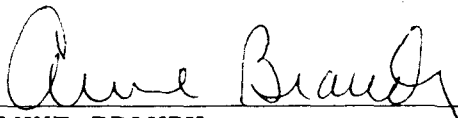
counsel as often as every three months, which notices will also advise when plaintiffs' counsel will be at MCI-Framingham and available to speak to any pregnant inmate. The DOC defendants shall permit plaintiffs' counsel to speak to any pregnant inmate so desiring in the Library area or other area agreeable to the DOC defendants, and to inspect all facilities used for the provision of the care required in sections C through G of this Agreement at MCI-Framingham. No inmate would be compelled to talk to plaintiffs' attorney.

35. At any time, during the compliance period and after entry of final judgment and/or dismissal, in the event that there is evidence of noncompliance with the terms of sections C through I of this Agreement, the Agreement may be enforced only as set forth in this paragraph. The plaintiffs will inform the defendants in writing and afford them twenty days to remedy the problem. During this period the parties will make reasonable, good faith efforts to discuss any identified compliance issues and to resolve these matters through negotiation. In the event that such dispute resolution efforts are not successful, the plaintiffs may enforce this Agreement by seeking an injunction mandating compliance with the provisions of the Agreement which are in dispute. If at any time the court finds that the defendants have not substantially complied with the terms of this Agreement as outlined in section C through I, the court may grant such relief as it deems appropriate in the circumstances to achieve compliance with the terms of this Agreement.

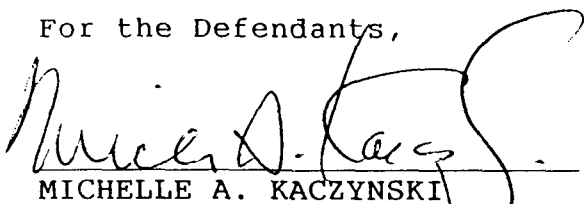
The defendants may oppose entry of, or move to vacate or modify such an injunction or other relief, based upon the standards as enunciated in Rufo v. Inmates of the Suffolk County Jail, 60 LW 4100, January 15, 1992, \_\_\_ U S \_\_\_, \_\_\_ L Ed 2d \_\_\_, \_\_\_ S Ct \_\_\_ (1992). The defendants reserve their right to request a modification of the Agreement on the same conditions. Nothing in this Agreement limits the parties' rights under Mass. R. Civ. P. 60. The Agreement shall not be enforcable by contempt, but shall be enforcable by an action for specific performance.

36. This Agreement shall be posted in the A.T.U. and the H.S.U. and a copy shall be maintained in the law library.

For the Plaintiffs,

  
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Date: April 7<sup>th</sup>, 1992

SECTION I: NORMAL NUTRITION

C. DIET IN PREGNANCY (continued)

NUTRITIONAL RISK FACTORS DURING PREGNANCY: (continued)

A woman is likely to be at nutritional risk if one of the following occurs during the pregnancy:

1. Low or deficient hemoglobin/hematocrit.
2. Inadequate weight gain or any weight loss.
3. Excessive weight gain (more than 2 pounds per week).

DAILY FOOD GROUP GUIDELINES:

FOOD GROUP	ADULT	TEEN
milk and milk products (women with multiple gestation - 6 or more serv/day)	4 serv/day	5-6 serv/day
meat and meat substitutes	3 serv/day	3 serv/day
fruits (at least one good source of vitamin C)	2 serv/day	2 serv/day
vegetables (at least one good source of vitamin A)	2 serv/day	2 serv/day
bread and cereals	6 serv/day	6 serv/day
fluids	6-8 glasses/day	6-8 glasses/day

*means  
6-8 oz  
daily  
including  
all day*

~~2 serv/day~~

These guidelines should meet the minimum requirements for a pregnant woman.

*Fresh Fruit and Canned Fruit are equal  
in nutritional value - Cyphons (Pg 71)*