

BRIEF BANK

Miscellaneous of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LOUIS MILBURN, et al.,	:
Plaintiffs,	:
- against -	:
THOMAS A. COUGHLIN III, et al.	:
Defendants.	:
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NOTICE OF PROPOSED
MODIFIED FINAL
JUDGMENT

79 Civ. 5077 (RJW)

In 1982 United States District Court Judge Robert J. Ward approved and adopted a Final Judgment of the Court addressing the delivery of medical care at Green Haven Correctional Facility. On October 6, 1989, the Prisoners' Rights Project of the Legal Aid Society, who are your lawyers in this class action case, filed a motion for contempt of the Final Judgment because of defendants' failure to comply with the terms of the 1982 Final Judgment and a motion for modification of that Judgment to change the terms of the Final Judgment to improve the delivery of medical care at Green Haven.

Your lawyers and the lawyers for the defendants have now reached an agreement about how to change the 1982 Final Judgment. This agreement is called a Stipulation of Terms of Modified Final Judgment by Consent ("Proposed Modified Final Judgment"), and if approved by you and the Court, it will resolve plaintiffs' motion for contempt and modification.

Milburn v. Coughlin



PC-NY-006-001

The Proposed Modified Final Judgment will make important changes in the system for the delivery of medical care at Green Haven. Therefore, you have a right to comment on or object to the Proposed Modified Final Judgment before the Court rules on whether it will accept the Proposed Modified Final Judgment as resolving the motion filed by your lawyers.

So that you can become familiar with the terms of the Proposed Modified Final Judgment, a copy of it is attached to this Notice. A copy will also be posted in the law library, Infirmary (IPC) and the Unit for the Physically Disabled (UPD). You can also get a copy from your lawyers, whose address is listed at the end of this Notice.

John A. Beck and Dori A. Lewis are lawyers employed by the Prisoners' Rights Project of the Legal Aid Society of New York, and they represent you in this case. They will be visiting Green Haven on August 19 and 20, 1991 to talk with you about the terms of this Proposed Modified Final Judgment, the status of the motion they made on your behalf and to answer any questions you might have about this case. Inmates who wish to talk with these lawyers about this case will have an opportunity to sign up for a meeting.

Listed below are sections of the Proposed Modified Final Judgment and a brief description of the contents of each section. The descriptions are not complete and are only intended to give you some idea of the more important parts of each section. To be certain of the actual requirements of the Proposed Modified Final Judgment, you must read the actual document.

I. DEFINITIONS - Defines important terms used throughout the Modified Final Judgment.

II. STAFFING - Sets forth the amount of medical staffing, including doctors, physician's assistants ("PA"), nurses, clerical staff and specialists, that the prison must have. The new agreement substantially increases the amount of medical staff at the prison.

III. EQUIPMENT - Defines certain medical equipment that the prison must have.

IV. SICK CALL - Sets forth the procedures to follow for sick call both for general population inmates and those in special housing. It requires that sick call for general population be performed 5 days a week by a trained nurse. Sick call in SHU is to be done every day and the Judgment requires that a doctor comes at least once a week to the unit. In SHU, the sick call provider should have each inmate's medical record, if the inmate signed up for sick call. The provider is permitted to examine the patient in a separate examination room on the unit, if the provider determines that is necessary. New admissions to the SHU must be examined during the shift they are admitted to the unit.

V. REFERRALS TO PHYSICIANS AND PHYSICIAN'S ASSISTANTS - Requires that a patient referred by a sick call nurse to a follow-up appointment with a doctor or PA be seen the same day for emergencies or acute conditions, or within 2 business days for most other appointments, unless the inmate has an appointment with a particular doctor.

VI. DIAGNOSTIC TESTS AND X-RAYS - Requires that a patient be told if a test or x-ray is recommended and a date when he should return to the clinic if the test has not been performed. The patient can receive the results of his test during sick call. All test results must be reviewed by a doctor and appropriate follow-up treatment must be provided for abnormal results.

VII. ACCESS TO SPECIALISTS - Requires that defendants pay specialists at a higher rate than they were paid before this year so that the prison can recruit more specialists to serve Green Haven patients. Patients being sent to a medical specialist must be seen according to the priority system outlined in this section: emergencies are to be seen immediately; patients with urgent conditions within 2 weeks; and patients with most other conditions within 45 days (except that patients with stable and not painful conditions who are to see an optometrist or podiatrist must be seen within 75 days). Patients who are given a follow-up appointment with a specialist must be seen at the time requested by the specialist. All specialist consultations must be reviewed promptly by a doctor at Green Haven.

VIII. HOSPITALIZATIONS - Patients needing hospitalization must be sent to a hospital according to the priority system outlined in this section: emergencies must be sent immediately; patients with urgent conditions must be hospitalized within 21 days; patients with unstable conditions within 120 days; those with stable conditions with impaired function within 180 days and those with stable conditions with negligible impact on functioning within 1 year. Patients shall be informed of their priority, and their medical condition must be reviewed periodically to determine if it has changed.

IX. DENTAL CARE - This section establishes a priority system for the treatment of dental conditions. Emergencies must be treated without delay; for conditions involving pain or infection, treatment must begin within 7 days; and for other conditions, treatment must begin within 90 days. The prison is also required to provide preventive dental services.

X. INMATE ORIENTATION - Requires that each inmate entering Green Haven be given notice of the contents of the Modified Final Judgment and the system of accessing medical care.

XI. REVIEW OF RECORDS OF ARRIVING INMATES - Medical records of all inmates coming to Green Haven must be reviewed on the first business day after receipt of the records. If the patient has an outstanding medical or dental problem, the prison must promptly follow up on the situation. Patients with chronic illnesses must be examined promptly by a doctor or PA.

XII. CHRONICALLY ILL PATIENTS - Defendants must develop and follow procedures to monitor patients with chronic illnesses. A doctor will be responsible for the primary care of patients' with chronic illnesses.

XIII. MEDICAL RECORDS - Defines what the prison must do to maintain adequate medical records.

XIV. SECURITY INTERACTION WITH HEALTH CARE - Security staff can override a medical trip or order, or confiscate a therapeutic device, only after consultation with the medical staff, and only if they conclude that such order or device would pose a likelihood of escape, a risk to the safety of inmates or others, or a risk to the good order of the facility. The section describes when the black box can be used and when it must be removed. Inmates cannot be subjected to disciplinary action for legitimately seeking access to medical care. SHU and keeplock inmates must have access to medical care equivalent to that of general population inmates.

XV. INMATE WORKERS - In order to protect the privacy of patients and to assure medical care by health care professionals, inmate workers are prohibited from performing evaluations or treating patients. The section lists specific tasks inmate workers can perform for medical patients, including changing

patients' bedding, assisting with personal hygiene and moving patients under the supervision of a health care provider.

XVI. INFIRMARY CARE - This section requires that the infirmary be expanded to 29 beds and include an enclosed dayroom. Each patient admitted to the IPC must be examined by a physician and a treatment plan must be developed and updated weekly. Joint doctor-nurse rounds must be performed six days per week. Weekly rounds by mental health professionals will be tried for 6 months to see if they are needed.

XVII. UNIT FOR THE PHYSICALLY DISABLED - This section is entirely new and requires that the UPD have cells that are properly equipped with handicapped accessible sink and toilet, trapeze and gripbar and a bed that permits reasonable access from a wheelchair, if these items are needed. Appropriate exercise equipment, showers, a nurses' station and a treatment area must be maintained. Each UPD patient shall be assigned to a physician. Protocols for the treatment of UPD patients must be developed and updated. Detailed discharge plans must be developed for any patient released from the unit. Defendants shall attempt to place all UPD patients in appropriate educational, vocational or job programs consistent with their medical condition.

XVIII. PHARMACY - Requires that inmates be provided with medications in a prompt and secure manner. Defendants must maintain for each patient a profile of the medications he is receiving. The section also requires that the facility computerize its pharmacy system.

XIX. THERAPEUTIC DIETS - Requires that therapeutic diets ordered by the medical staff be provided to patients requiring them.

XX. THERAPEUTIC DEVICES - Defendants are required to provide therapeutic devices within time limits defined in this section, depending on whether the item is in stock or must be custom made.

XXI. EMERGENCIES - All Green Haven inmates must have immediate access to a health care provider in the event of emergencies. All health services professional staff must be certified in CPR.

XXII. INFECTION CONTROL - In order to control the spread of infection at Green Haven, this section requires that defendants have an infection control officer who will monitor cases of tuberculosis and other contagious diseases. There shall be at least four respiratory isolation rooms in the infirmary.

XXIII. PATIENT CONFIDENTIALITY - Requires that security staff remain sufficiently distant from the place of health care encounters so that quiet conversations between patients and the medical staff cannot be overheard, unless the provider requests otherwise. Patients' confidential medical information is not to be discussed with other inmates or non-medical personnel. Parti-

tions must be constructed in the clinic area in rooms where two patients are seen.

XXIV. QUALITY ASSURANCE - Requires that Green Haven medical staff perform monthly reviews of 10 charts to monitor the quality of health care at the prison. A quality assurance program must also be developed for the infirmary and UPD. In addition, an assessment of Green Haven medical care must be done periodically by non-Green Haven employees according to the Department's manual on quality assurance.

XXV. MONITORING BY PLAINTIFFS' COUNSEL - Plaintiffs' counsel are allowed to inspect Green Haven at least 4 times per year. They can get medical records without a release, provided that the records are maintained confidential.

XXVI. CONTINUING EDUCATION - Requires that the Green Haven medical staff receive continuing medical education at least monthly.

XXVII. CONTINUITY OF CARE UPON TRANSFER FROM GREEN HAVEN - Sets forth limits on the transfer of inmates who are awaiting a specialty appointment, hospitalization or a therapeutic device. When an inmate is transferred to another correctional facility, the new facility shall be notified of the inmate's health problems and medications, if any.

XXVIII. ADMINISTRATIVE PROVISIONS - This Modified Final Judgment replaces the 1982 Final Judgment. Defendants will not be subject to contempt for time requirements in the Modified Final Judgment if the inmate refuses care. Certain issues of staffing and construction for the new UPD have not been fully resolved and will be discussed by Dr. Sverdlik (plaintiffs' rehabilitation medicine doctor) and Dr. Moldover (doctor overseeing care in the UPD).

XXIX. MODIFICATION, ENFORCEMENT AND DURATION OF MODIFIED FINAL JUDGMENT - Sets forth the duties of Dr. Cohen, the medical auditor appointed by the Court to monitor compliance with the Proposed Modified Final Judgment. Dr. Cohen shall have a term of 3 years and he shall prepare regular reports at least during the first 2 years. One year after the term of the Medical Auditor ends the case will be placed on the Court's suspense docket. One year later, defendants can request that the Court terminate the Judgment.

After reading the Proposed Modified Final Judgment, if you have any comments or objections, please put them in writing and send them by September 5, 1991 to:

The Hon. Robert J. Ward
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

In addition, if you have any questions about the Proposed Modified Final Judgment you can write to your lawyers:

John A. Beck
Dori A. Lewis
Prisoners' Rights Project
The Legal Aid Society
15 Park Row - 23rd Floor
New York, New York 10038
(212) 577-3530

Before determining whether to approve the Proposed Modified Final Judgment or any portion of it, the Court will hold a hearing where it will consider all comments or objections received from inmates. This hearing will be held on September 12, 1991 at 10:30 a.m. at the United States Courthouse, Foley Square, New York, New York, or at some other place that the Judge decides is appropriate.

Please remember that the Proposed Modified Final Judgment, which has been agreed upon by the lawyers, is not yet a Court order. Therefore, prison officials are not yet required to follow it. They will be required to follow it after you and the Court have had a chance to review and approve its terms. Your lawyers will notify you if and when that happens. Once the Proposed Modified Final Judgment is approved by the Court, however, prison officials will be required to follow its terms. If they fail to do so, your lawyers can go to Court to make sure it is obeyed.