

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LOUISE TODARO, et al., and all :
other persons similarly situated, : STIPULATION AND ORDER:
 : SECOND MODIFIED JUDGMENT
Plaintiffs, :
-against- : 74 Civ. 4581 (RJW)
 :
THOMAS A. COUGHLIN, III, et. al., :
 :
Defendants. :
-----X

This case challenging as unconstitutional the provision of medical care at Bedford Hills was filed in 1974. In 1977 this Court issued a decision holding the system of delivering medical care unconstitutional. The decision was affirmed by the United States Court of Appeals for the Second Circuit on October 31, 1977. On September 14, 1988 plaintiffs moved for contempt of the Judgment for a fourth time and for modification of the Judgment to achieve its purposes. Following negotiations plaintiffs' motion was withdrawn without prejudice, and on August 18, 1989 the Judgment was modified by the Court based upon agreement reached between the parties.

Now, in order that the Modified Judgment be further clarified and supplemented, the parties hereby agree to additional modifications of the Modified Judgment. IT IS STIPULATED that the Judgment in this case is further modified, so as to ensure that defendants provide competent and adequate medical care to plaintiffs, consistent with contemporary medical standards, and the entire revised Second Modified Judgment is as follows:



TABLE OF CONTENTS

	PAGE
I. IN PATIENT COMPONENT.....	2
II. SICK CALL AND PHYSICIAN REFERRAL PROCEDURES..	7
III. IMPLEMENTATION AND TRACKING OF PHYSICIAN ORDERS AND PROVISION OF SPECIALTY CARE.....	12
IV. CHRONICALLY ILL INMATES.....	21
V. STAFFING.....	21
VI. MEDICAL RECORDS.....	25
VII. RECORD KEEPING PROCEDURES AND MECHANISMS FOR ASSESSING THE PROVISION OF CARE.....	26
VIII. AIDS TRAINING, COUNSELING AND PROTOCOLS.....	29
IX. RESTRAINTS DURING MEDICAL TRIPS.....	31
X. NOTICE AND POSTING OF MODIFIED JUDGMENT.....	32
XI. COMPLIANCE.....	32

I. IN PATIENT COMPONENT (IPC)

✓ A) IPC shall not be used for boarding any types of persons other than medically sick patients, except that psychiatric patients may be temporarily boarded in the event the mental hygiene satellite clinic is full. The provisions of this Judgment do not govern psychiatric care and treatment.

✓ B) No inmate shall be locked into her room while confined on IPC unless a health staff member (physician or nurse) has determined that such locking will not jeopardize the inmate's health or interfere with the delivery of prescribed care and:

1) the locking is at the request of the inmate who expresses concern for her personal safety; or

2) a health staff member determines that the inmate presents a danger to others; or

3) an inmate has been admitted to IPC from disciplinary segregation and the Deputy Superintendent for Security determines that the locking is necessary for security reasons.

In any case where an inmate's door is locked a health staff member shall personally observe the inmate every half hour. An entry including the name of the inmate and the basis for the decision to lock will be made in the IPC log referred to in subsection I(H).

✓ C) The solid door in the IPC corridor shall be used only as is necessary for fire safety and a grated door permitting visual observation of the entire corridor shall be employed at the end of the corridor.

J D) A nurse's station shall be established and maintained within or immediately adjacent to IPC and shall contain all necessary emergency equipment, medication and supplies which shall be immediately accessible to all health staff members.

✓ E) Defendants shall have a nurse stationed on IPC to observe and assist inmates, 24 hours a day, seven days a week. While on duty, this nurse shall not leave IPC for any significant period and shall have no duties which require leaving IPC for more than a few minutes or otherwise impair his or her ability to observe and assist IPC inmates. This nurse shall make rounds and

personally observe each inmate in IPC at least once every two hours and more often when required by a patient's medical condition, and such rounds will be recorded in the log book as required by paragraph I(H). Defendants shall ensure, to the extent possible, the continuity of the nursing staff in IPC so that staff remains familiar with the unit and can provide continuity of care. At least one registered nurse shall be present in the Health Services Building at all times, unless said nurse is providing emergency medical services in another part of the facility.

F) Defendants shall maintain at all times a functioning signal system for use in emergency situations which shall operate as follows:

- 1) The system must be operable by each inmate in IPC directly from her bed.

- 2) The signal shall be visible and audible to the nurse assigned to IPC.

- 3) The signal must be responded to by the nurse or other IPC health staff member expeditiously, and as soon as possible after the patient's call. Special attention shall be given to signals from inmates whose conditions are serious. If all IPC health care personnel are actively engaged in a medical emergency when a signal is sent, then the signal may be answered by a correction officer who shall then promptly communicate with health staff.

G) Physician rounds:

1) shall be conducted five days a week, irrespective of holidays. There shall be no more than two consecutive days without rounds being held. On any day preceding a day in which rounds are not to be conducted, the facility Medical Director, or a physician designated by the director, must examine each IPC patient and review her chart, and based upon this examination and review, certify whether each patient must be seen by a physician on the following day or days in which rounds will not be conducted. In making this determination, the certifying physician will use his or her best medical judgment, giving special attention to persons with AIDS related illness. An entry regarding this review and certification shall be made in each patient's chart; and

2) shall be conducted by the facility Medical Director or a physician designated by the director, who shall have appropriate training and expertise to care competently for all patients confined in IPC. These rounds shall be conducted in conformity with accepted medical standards, and in accordance with a protocol which shall be created, maintained and followed by medical staff. At a minimum this protocol shall require that rounds consist of a face to face encounter between the physician and patient, appropriate physical examinations, and the review of each patient's chart, with appropriate entries being made.

H) A log book will be kept, separate from the patients' charts, reflecting all rounds of IPC conducted by medical personnel, which at a minimum shall include the date and time of each round, and the signature of the person making the round.

I) Defendants shall have sufficient space available in IPC so that infirmary care will be available to all inmates requiring such care. IPC will be maintained in a sanitary, well ventilated and healthful manner. All necessary measures will be taken on a regular basis to keep the IPC free of insects, vermin and rodents.

J) All medical staff assigned to IPC shall be authorized by defendants to call directly for an ambulance or other immediate transportation to a hospital when such transportation is deemed necessary.

K) Upon the termination of sub-sections I(A)-(J) in accordance with sub-section XI(B), the following provisions shall apply: IPC shall be used for medically sick inmates, shall have sufficient space so that infirmary care is available to all inmates requiring it, shall be maintained in a healthful manner, and shall have a nurse's station within it or immediately adjacent to it which will be connected to a functioning room signal system for patient use in emergencies. Physician rounds of the IPC shall be conducted five days per week, and more often when medically indicated. There shall be a nurse assigned to the IPC 24 hours a day, seven days a week, who shall conduct regular rounds, and who shall have no duties outside of IPC which require leaving IPC for any significant period or otherwise impair his or her ability to observe and assist IPC inmates. Physician and nurse rounds shall be conducted in accordance with medically accepted standards and all medical staff assigned to IPC shall

have the authority to summon immediate transportation to move a patient to a hospital.

II. SICK CALL AND PHYSICIAN REFERRAL PROCEDURE

A) In the absence of a functioning evaluative screening procedure as defined in sub-section II(B), below, all inmates who request to be seen by a physician must be seen by a licensed physician by the next day.

B) In the absence of automatic access to a physician as provided for in sub-section II(A), above, inmates who seek medical attention must be medically evaluated and screened and physician appointments scheduled according to the urgency of need, consistent with the following procedures:

- 1) Medical evaluation and screening (hereinafter screening) shall be performed at a place separate from the administration of medication. In the event any part of screening is conducted at the same time as any part of medication administration, defendants shall ensure that inmates have access to both services on any given day.

- 2) Screening shall be conducted by licensed medical personnel, with training at least equivalent to that of a registered nurse, who have received special training in the techniques of physical assessment, and in the recognition, diagnosis and treatment of infectious diseases consistent with Section VIII, below.

- 3) Any person conducting screening must be certified by the facility's Medical Director as having received this

requisite training in physical assessment and infectious diseases. In the event no person so certified is available to conduct screening, there shall be direct access to a physician within 24 hours of an inmate's request, as set forth in subsection II(A), above. A licensed physician shall either be present in the facility or on call, during screening, to provide needed assistance.

4) Specific written protocols, defining the evaluation procedures to be followed at screening and the treatment which the screening staff member may provide, shall be established by the facility's Medical Director, shall be available to the screening staff member, and shall be followed by medical staff. Such protocols shall include, but not be limited to the recognition and treatment of chronic and complex conditions such as HIV related illness, shall govern the scheduling of physician appointments according to the urgency of need, and shall be consistent with contemporary standards of care and all aspects of this Court's Order and Judgment.

5) Defendants shall conduct screening five days a week, irrespective of holidays. There shall be no more than two consecutive days without screening being held. Screening shall be readily available to all members of the plaintiff class and shall be conducted at the first screening session following the inmate's request. An inmate shall request screening by placing her name on a screening sign-up list which shall be available to all inmates in their housing areas.

6) Defendants shall create, maintain and follow a protocol governing the provision of medical care between screening sessions to inmates. At a minimum this protocol will include the following:

a) When an inmate requests care between screening sessions, a corrections officer will telephone a member of the health staff and shall provide the details of the inmate's condition. The health staff member shall conduct a medically pertinent inquiry into the inmate's condition, and determine whether the inmate should be seen by a member of the health staff prior to the next screening session. Whenever an inmate complains of pain or discomfort the health staff member must conduct a face to face evaluation of the inmate and provide appropriate care.

7) Screening shall be conducted in a manner and location permitting both confidential communication between the inmate and the screening medical staff member, and private physical examinations relevant to the physical complaints presented by the inmate.

8) The screening staff member shall have immediately available for use during screening a thermometer, a sphygmomanometer, a tongue depressor, an otoscope, a stethoscope, materials for taking cultures, a scale, a sufficient supply of all medications required by the protocols established in accordance with paragraph II(B)(4), and any additional equipment and supplies which the defendants deem necessary to conduct screening.

9) The medical record of the inmate being screened shall be maintained in a confidential manner, and shall be available to the health care provider at the time of screening. At the time of screening, the screening staff member shall make an entry in the inmate's individual medical record, which shall include a description of the inmate's health complaint and condition, an indication of the staff member's recommendations, and whether a doctor's appointment should be scheduled. A brief statement of this information shall be placed on either a separate screening roster or on the screening sign up list.

10) When a physician appointment is to be scheduled for an inmate, the screening staff member shall enter a written notation of the need for the appointment either on the screening sign up list or the screening roster. The list or roster shall be transmitted to the staff member responsible for scheduling physician appointments, who will place the inmate's name on the appropriate physician's appointment list. Excluding ophthalmology, podiatry and dermatology, physician appointments shall be scheduled for within 14 calendar days of the screening date, except where an inmate's condition requires a physician's appointment sooner, in which case the screening staff member shall indicate this need on the screening list or roster, and the staff member responsible for scheduling physician appointments shall schedule the appointment according to the stated recommendation.

a) Regardless of the recommendation of the screening staff member, if an inmate requests a physician

appointment, one shall be scheduled no more than 14 calendar days from the request;

b) Unless the appointment is to be scheduled for the same or next day, the staff member preparing the physician appointment list shall inform the inmate of the date and time of the appointment by providing the inmate with a written appointment slip, signed by this staff member and setting forth the inmate's name, and the date and time of the doctor's appointment. The signed appointment slip shall be provided to the inmate in sufficient time to provide adequate notice of and preparation for the appointment.

11) Any inmate who is known to be HIV+ or has a history consistent with HIV positivity and who presents at screening with possible symptoms of an opportunistic AIDS infection, as set forth in the AIDS protocol referred to in Section VIII, shall be examined by a licensed physician who shall have expertise in the treatment of AIDS related illness as set forth in sub-section V(A), that day, and when appropriate by the infectious disease specialist the next time this specialist is in the facility. In the event the inmate's condition constitutes an emergency she must be seen within one hour by a facility physician and she must be examined by the infectious disease specialist the next time this specialist is in the facility, or be immediately transported to an outside hospital.

C) Upon the termination of sub-sections II(A) and (B) in accordance with sub-section XI(B), the following provisions shall apply: Medical evaluation (screening) shall be conducted in a

professionally sound, orderly and confidential manner in accordance with protocols. It shall be conducted at least five days per week by capable medical staff appropriately trained in physical assessment and recognition and diagnosis of infectious diseases. Inmates who seek medical attention must be medically evaluated at the next screening session following their request and there shall be a system for the provision of emergency medical care between screening sessions. Screening staff must make appropriate notations regarding the screening encounter in the inmate's medical record. Physician appointments shall be scheduled within 28 calendar days of the inmate's request for medical attention, or in a shorter time if medically required. Inmates will be provided with adequate notice of physician appointments.

III. IMPLEMENTATION AND TRACKING OF PHYSICIAN ORDERS AND PROVISION OF SPECIALTY CARE

A) Defendants shall institute, maintain and follow a system to coordinate the implementation and tracking of all physician orders so that care shall be provided within the time ordered, if any, and in any event in a timely fashion. Such orders include outside consultations, specialty care, inpatient stays, x-rays, and diagnostic and laboratory tests and procedures, regardless of whether these orders are to be filled inside or outside the facility. This system shall be reflected in written procedural guidelines, a copy of which shall be provided to the monitor and counsel for plaintiffs. Defendants may modify this system to reflect changes in diagnostic or treatment modalities accepted by

the medical community. In the event of any such modifications, defendants shall make best efforts to notify plaintiffs' counsel in writing within thirty (30) days of the change, and in any event, shall notify plaintiffs' counsel in writing within sixty (60) days of the change. Orders for medication are not to be tracked under this system.

B) At a minimum this system shall include the following:

1) When appropriate, the physician making an order will designate a date, consistent with accepted medical standards, by which the ordered care must be completed and should enter such date in the inmate's chart. This date will be known as the "outside date."

2) Excluding orders for laboratory tests, all physician orders for the entire Bedford Hills medical staff will also be entered in one central file, record, or log (the "Ordered Care File"). The entries in the Ordered Care File shall contain the inmate's name, the ordering physician's name, the date of the order, the date and nature of the scheduled appointment or other service, a brief description of the patient's condition, the outside date (if any), and an indication whether the appointment or service was completed, or the reason why the appointment or service was not successfully completed.

3) Orders for laboratory tests shall be maintained in a separate Laboratory Order Book which shall contain the same categories of information as the Ordered Care File.

4) Inmates are to be timely advised of any necessary preparation for any test, examination or procedure to be

conducted inside or outside the facility and the appropriate medical records shall accompany each inmate on outside medical trips.

5) All facility physicians, whether full or part time, will check the Ordered Care File and Laboratory Order Book at least once per week to determine if their orders have been carried out. If physicians are in the facility less than one time per week, they must check the Ordered Care File and Laboratory Order Book each time they are in the facility.

6) The facility's Medical Director or physician designee will monitor the Ordered Care File and Laboratory Order Book on a regular basis to ensure that orders have been completed by the ordered date, or if no ordered date was assigned, within sixty days of the order. In the event that an order has not been completed by the outside date, or within 60 days from the order if no outside date is indicated, it shall be the responsibility of this physician to notify the ordering physician, who shall take steps, as appropriate to ensure the provision of care, renew the order and if appropriate set a new outside date so as to assure continued monitoring as provided in this Section. Any such renewed order is subject to all of the provisions of this Section.

7) With the exception set forth below in paragraph III(B)(7)(a), the facility's Medical Director or physician designee must review all medical paper work which accompanies an inmate back from an outside medical trip, and all results of lab tests or other records of ordered care on the date they arrive in

the facility. If the Medical Director determines that review by the physician who ordered the care is necessary before the next scheduled appointment with this physician, then this physician must review and initial these papers on his or her next day in the facility. If indicated by the results, either of these physicians shall take immediate action if necessary.

a) The facility's Medical Director may designate a registered nurse to review all normal laboratory results which are provided to the facility in the form of a computer printout.

8) Inmates will receive written notice of results of laboratory or diagnostic tests which are of no clinical significance within fourteen (14) calendar days of the receipt in the facility of the results of such test.

9) In the case of non-emergency abnormal laboratory or diagnostic tests results of clinical significance, the inmate will be seen by the ordering physician, or if that physician is unavailable, by the Medical Director, within 14 calendar days of the receipt in the facility of the results of such test. At such time the physician will explain the result to the patient and order such follow up care as is appropriate. In the case of emergency abnormal results, either of these physicians shall take immediate and appropriate action.

C) Nothing contained in this Judgment shall prevent Bedford Hills Correctional Facility from participating in a Department-wide computerization of medical records, even if such participation requires departures from some of the record keeping requirements of this Section; provided that such participation

shall not diminish the facility's capacity to track physician orders, to deliver ordered care on a timely basis or to deliver a competent level of medical care.

D) Defendants shall provide gynecological specialty care within the time frames and in a manner consistent with a gynecological protocol unless a physician determines that in his or her medical judgment it is not medically appropriate for such care to be provided in accordance with the protocol, in which case the reasons for this determination shall be entered in the patient's medical record. At a minimum, this protocol concerning the provision of gynecological care shall include the following provisions and requirements:

1) Pap tests shall be offered and made available to women at Bedford Hills every year. A pap test shall be offered and made available to women who are HIV positive, women with health histories indicative of HIV infection, and women with histories of high risk behavior every six months.

2) Defendants shall maintain a list of abnormal pap results.

3) For class II and class IIR pap results (also known as inflammatory atypia, atypical cells or non-dysplastic cells), definitive treatment as appropriate shall be offered and made available. Within three months of the initial pap, a repeat pap shall then be offered and made available. In the event the repeat pap shows atypia or other significant abnormality, a colposcopy shall be offered and made available within six weeks of the results of the repeat pap.

4) For class III pap results (also known as mild dysplasia (CIN I) possibly coexistent with condyloma and as low grade squamous intraepithelial lesion), a repeat pap shall be offered and made available every three months for a year after the completion of any definitive treatment, and every six months thereafter. In the event a pap conducted after treatment shows continued dysplasia, a colposcopy shall be offered and made available within two to four weeks of the pap showing the abnormality. If the pap following treatment shows atypia or other significant abnormality, a colposcopy shall be offered and made available within six weeks of the results of the repeat pap.

5) For class IV pap results (also known as moderate or severe dysplasia (CIN III) and as high grade squamous intraepithelial lesion), a colposcopy shall be offered and made available within two to four weeks of the pap result.

6) Definitive treatment (e.g. laser, LEEP, cone biopsy) shall be offered and made available within a medically appropriate time frame after receipt of a pathology report from a colposcopy showing mild dysplasia or other abnormality, and within two weeks of a pathology report showing moderate or severe dysplasia.

7) For class V pap results (also known as positive for malignant cells or malignant neoplasm), a colposcopy shall be offered and made available within one to two weeks of the pap result. A follow up appointment with a board-certified or board-eligible gynecological oncologist shall be offered and made available within one to two weeks after the receipt of the

pathology report from the colposcopy. Follow up care shall be provided as recommended by the gynecological oncologist, and shall be offered and made available to the woman within one to two weeks.

8) Defendants may modify this protocol to reflect changes in diagnostic or treatment modalities accepted by the medical community. In the event of any such modifications, defendants shall make best efforts to notify plaintiffs' counsel in writing within thirty (30) days of the change, and in any event, shall notify plaintiffs' counsel in writing within sixty (60) days of the change.

E)

1) In the event defendants are unable to identify and secure certain needed medical care, including specialty care, to diagnose or treat class member(s)' serious medical needs in a medically appropriate time frame, the Facility Medical Director shall notify the Department of Correctional Services' Deputy Commissioner/Chief Medical Officer in writing of the situation as soon as practicable. The Deputy Commissioner/Chief Medical Officer shall review the facts and circumstances of the situation and determine the appropriate medical action to be taken to alleviate significant pain, attempt to restore function, prevent progression of illness, avoid permanent disability or injury, or avoid predictable complications. If he/she determines that action is medically reasonable and necessary, he/she must take all appropriate steps to obtain such services, which may include

a direct appeal to the Division of Budget. These services shall be provided in a medically appropriate time.

2) In the event the Facility Medical Director advises the Deputy Commissioner/Chief Medical Officer as set forth above that services will not be identified and secured within a medically appropriate time, defendants shall immediately advise plaintiffs' counsel, including providing the inmate(s) name(s), condition(s) and type of treatment required and shall immediately make available the inmate(s) medical chart for the previous nine months, including any completed or pending requests for specialty services. Thereafter, on request defendants shall make available to plaintiffs' counsel the class member(s)' medical records until such time as plaintiffs' counsel is notified that the care has been rendered or that a decision has been made that care is not needed.

F) Upon the termination of sub-sections III(A), (B), (C), and III(D)(2)-(4) but not III(D) or III(D)(1), (5), (6), (7) or (8) in accordance with sub-section XI(B), the following provisions shall apply: Defendants shall institute and maintain a system to coordinate the implementation and tracking of all physician orders so that care shall be provided in a timely and complete fashion. Such orders include outside consultations, specialty care, inpatient hospitalizations, x-rays, and diagnostic tests and procedures, regardless of whether these orders are to be filled inside or outside the facility. Physicians making such orders (excluding medication orders) will, when appropriate, assign an outside date by which such order must

be reviewed, and if no such outside date is assigned to an order, it must be reviewed within sixty (60) days. If care is not delivered within the time ordered, or within 60 days if applicable, physicians must renew the order if appropriate, and take steps, as appropriate to ensure the provision of care. Inmates must be advised in a timely manner of necessary preparations prior to the delivery of care. All pertinent medical records will accompany inmates on outside medical trips. Inmates shall be notified within a medically appropriate time of the results of all laboratory work and diagnostic tests, and such results shall be reviewed by medical staff as soon as available and follow-up care shall be provided within a professionally appropriate time as dictated by the tests results. Defendants shall provide gynecological specialty care in a manner and within time frames accepted as appropriate by the medical community.

G) From entry of this Judgment until December 1, 1996, defendants shall provide plaintiffs' counsel with a copy of the Ordered Care File (or comparable documents) for a period not to exceed 120 days within each calendar year. Plaintiffs' counsel may request and receive this information in increments of not less than 30 days and no more than four times per calendar year. At any time during this period, if plaintiffs' counsel identifies any systemic deficiencies in the tracking or provision of care, they shall advise defendants' counsel in writing who, if in agreement, shall attempt to remedy such deficiencies. If plaintiffs' counsel believes the systemic deficiency is not resolved, they shall seek assistance from the Court prior to

December 15, 1996. Plaintiffs' counsel shall make best efforts to advise defendants' counsel in writing as soon as possible of any systemic deficiencies identified.

IV. CHRONICALLY ILL INMATES

A) Defendants will ensure the regular monitoring by health care personnel of all chronically ill inmates including, but not limited to, persons suffering from:

- 1) AIDS
- 2) hypertension
- 3) heart disease
- 4) diabetes
- 5) cancer
- 6) asthma
- 7) tuberculosis
- 8) lupus
- 9) seizure disorders
- 10) kidney disease
- 11) Hodgkin's disease.

B) This monitoring shall include pertinent observations and appropriate testing and adjustments of medication.

C) A recall file shall be maintained of all chronically ill inmates which shall include the inmate's name, condition(s), the type(s) of monitoring required, the period(s) within which the inmate must be recalled, and the dates the monitoring is actually performed.

D) Defendants shall formulate protocols for chronic illnesses which shall be available at screening and in IPC.

V. STAFFING

A) Defendants shall employ at least one full time physician who is not a gynecologist, podiatrist or ophthalmologist who

shall work on-site at Bedford Hills at least 34 hours per week. This physician must possess experience in the treatment of persons with HIV related illness. Defendants shall employ additional primary care physicians, excluding specialists, who shall work on site at Bedford Hills an additional minimum of 76 hours per week, and will employ a gynecologist on site at Bedford Hills a minimum of 25 hours per week. For purposes of this subsection the phrase "work on site at Bedford Hills" may include work performed off site if such work is directly related to the provision of medical care to the facility, but does not include hours when the physician is off site and on call to the facility.

B) A full time physician working at least 34 hours a week on site at Bedford Hills, as defined in sub-section V(A), will be designated as the facility Medical Director, and as such will be responsible for the overall coordination and delivery of health care at the facility. The specific duties of the Medical Director will consist of responsibility for at least the following:

- 1) Administration of IPC, including conducting daily rounds or designating a capable and trained substitute physician to conduct rounds; ensuring the overall quality of screening; keeping informed of the nature of inmate complaints pertaining to medical care; and overseeing a system of peer review.

- 2) Certification of medical staff to conduct screening and continuing supervision of the screening process.

- 3) The review of all inmate deaths.

4) The supervision and review of the Ordered Care File and Laboratory Order Book.

5) The review of all medical paper work from outside medical trips, inpatient stays, or laboratory or diagnostic tests.

6) All other duties imposed by this Judgment on the Medical Director.

C) In addition to the physician staffing requirements set forth in sub-section V(A) & (B), and except as provided below, defendants shall employ a physician, board certified in infectious disease, at Bedford Hills:

1) This physician will work on site at Bedford Hills a minimum of 4 hours per week, and more if necessary to adequately meet the medical needs of plaintiffs. For purposes of this paragraph the phrase "work on site" shall have the same meaning as set forth in sub-section V(A).

2) In the event defendants are unable to obtain the services of a physician board certified in infectious disease, after making a bona fide effort to do so, a physician suitably trained and experienced in the diagnosis and treatment of HIV related illness shall be employed. In this event the monitor must approve the adequacy and suitability of his or her training and experience. In the event that this contingency arises at a time when the monitor is no longer assisting the Court with this litigation, defendants will notify counsel for plaintiffs of the qualifications of this physician.

3) As an alternative to the infectious disease physician, defendants may secure the services of an outside medical facility to conduct an infectious disease clinic at Bedford Hills, provided that such clinic affords infectious disease care at least equivalent, in time and quality, to that offered by the physician.

4) This physician, or a physician associated with the alternative infectious disease clinic, shall be on call for consultation at all times.

5) The infectious disease physician or alternative clinic must keep a separate appointment book.

D) Defendants shall employ at Bedford Hills a minimum of one nurse administrator and 22 full time nurses, no more than two of whom may be licensed practical nurses. In the event defendants find it impossible to employ a sufficient number of registered nurses, no more than four of the 22 full time nurse positions may be filled by licensed practical nurses. Defendants may utilize part time nurses to fulfill this requirement. Defendants shall maintain at least two per diem nurse lines, to be used in the event that fewer than all of these full time positions are filled. If the two per diem nurse lines are not adequate to meet staffing vacancies, defendants may then utilize agency nurses to meet their staff obligations under this subsection.

E) Defendants shall use their best efforts to avoid the use of agency or per diem nursing services and shall resort to these services only when bona fide attempts to fill vacant nursing

positions have failed. In the event that agency or per diem nurses are utilized, defendants will ensure that they are properly trained and certified as set forth in paragraph II(B)(3), and will attempt to ensure the continuity of nurses assigned to the facility.

F) In accordance with sub-section XI(B), sub-section V(B)(4) shall terminate on December 15, 1994.

VI. MEDICAL RECORDS

A) Defendants shall maintain such medical records as are necessary for the competent and professional delivery of health care to the plaintiff class.

B) Defendants will:

1) use one medical record for each patient which will be arranged topically and chronologically, which will document each encounter with a health care provider, and which will utilize a problem list and problem oriented assessment.

2) discontinue the use of a separate medical record for patients admitted to IPC.

3) discontinue the use of the present Ambulatory Health Record (AHR, form number 3105).

4) discontinue the use of an active/inactive patient file; however, in the event a medical chart becomes so voluminous as to be unwieldy, additional volumes may be used. Nothing in this provision shall require defendants to reintegrate files which were separated prior to the entry of this Judgment.

5) require that all health care personnel write legibly.

C) Defendants shall employ a medical records supervisor who is specifically trained in the maintenance of medical records and three other medical records clerks.

D) The medical records supervisor and the medical records system shall be evaluated by the supervising medical record administrator of the Department of Correctional Services every two years, who will conduct inservice training as needed.

E) In accordance with sub-section XI(B), sub-sections VI(B) & (D) shall terminate on December 15, 1994.

VII. RECORD KEEPING PROCEDURES AND MECHANISMS FOR ASSESSING THE PROVISION OF CARE

A) Defendants shall maintain such records as are necessary for effective and meaningful auditing of the performance of the medical care delivery system at Bedford Hills, including any record required by this Judgment.

B) At a minimum, these records shall include:

- 1) the IPC rounds record mandated by sub-section I(H),
- 2) the screening sign-up list and screening roster referred to in paragraph II(B)(10),
- 3) the Ordered Care File and Laboratory Order Book mandated by paragraphs III(B)(2) & (3),
- 4) the chronically ill recall file mandated by sub-section IV(C),

5) Division of Health Services form HS-50 "Request for Consultation/Report of Outside Consultation," and

6) The appointment book maintained by the infectious disease specialist, or the alternative infectious disease clinic as required by paragraph V(C)(5).

7) Information reflecting abnormal pap results, which will be maintained either in the separate pap log mandated by paragraph III(D)(2) or in the Ordered Care File mandated by paragraph III(B)(2).

C) The above listed forms and records will be made available to the monitor upon his request. At reasonable intervals of not less than three months, upon request of plaintiffs' counsel, defendants will copy or make available to plaintiffs' counsel (as agreed to by the parties) the following documents:

1) Portions of the documents listed in sub-sections VII(B)(1) through VII(B)(5) as requested by plaintiffs, representing a time period not exceeding two weeks.

2) The entire infectious disease physician appointment book, or portions thereof, listed in sub-section VII(B)(6).

3) All medical documents related to the diagnosis and care provided to up to twelve class members with abnormal gynecological conditions, including the log listed in sub-section VII(B)(7).

D) Upon request, defendants will make plaintiffs' medical charts available to plaintiffs' counsel. Defendants will notify the monitor and plaintiffs' counsel of any inmate death at Bedford Hills or at an outside hospital, and will provide the

monitor with a copy of the inmate's chart within ten days of the death and the autopsy report within ten days of its receipt by the facility. Nothing in this section or sub-section VII(C) shall be construed to govern whatever rights plaintiffs have to discovery under the Federal Rules of Civil Procedure or to obtain documents under the New York State Freedom of Information Law.

E) A problem solving group shall be formed and shall meet regularly at least every three months, unless all members agree to a different schedule. This group shall consist of the monitor or his designee, the facility's Medical Director or physician designee, the Superintendent or his or her designee, the plaintiff class through counsel, counsel for defendants, and the Assistant Commissioner of Health Services or his designee. It shall be the purpose of this group to review both systemic problems in the delivery of health care and individual inmate health care problems. This group shall also convene at the request of a member when important questions arise which cannot be resolved informally and cannot wait until the next-scheduled meeting. If the parties cannot agree on whether to convene a session of this group, this disagreement will be resolved by the Court's monitor.

F) Individual class members have the right to lodge medical complaints through counsel directly to defendants with a copy simultaneously delivered to defendants' counsel. Before such a complaint is lodged, plaintiffs shall make reasonable efforts to resolve the complaint by presenting it to a medical staff member either at screening or at another encounter with medical staff,

or through the facility's administrative remedies program, i.e., inmate grievance resolution committee. Plaintiffs' counsel shall use their best efforts to confirm that such efforts have been made before submitting a written complaint. Defendants' counsel will make their best efforts to respond about the complaint, either orally or in writing, as they choose, to plaintiffs' counsel within ten days of the receipt of the complaint. In the event that a complaint is in regard to an urgent situation, the complaint may be made without resort to the above described dispute resolution mechanisms; the emergency complaint may be made orally or in writing and defendants' counsel will make their best efforts to provide an oral or written response within 24 hours. Plaintiffs agree to hold defendants' counsel harmless for contempt for any failure to perform a duty imposed upon them by this sub-section.

G) In accordance with sub-section XI(B), sub-sections VII(B)-(F) shall terminate on December 15, 1994.

VIII. AIDS TRAINING, COUNSELING AND PROTOCOLS

A) Defendants will prepare, maintain and follow a protocol concerning the professionally sound treatment of inmates with HIV related illness. A copy of the protocol will be provided to the monitor and plaintiffs' counsel. At a minimum this protocol shall provide:

- 1) For weekly monitoring of IPC inmates who are diagnosed as having AIDS or ARC, and for systematic examinations of other inmates who are so diagnosed, by the physician described

in sub-section V(C). This physician shall also be kept informed of the status of other HIV+ inmates and of all patients admitted to and confined in IPC.

2) For examinations by the physician described in sub-section V(C) of other HIV+ inmates who present to medical staff with possible symptoms of opportunistic AIDS infection.

3) For the appropriate counseling of all inmates during inmate orientation regarding HIV testing, of inmates who are HIV+, of inmates pre and post HIV testing and for appropriate notification of HIV test results.

4) For programs of inservice training for facility nurses, within a reasonable time of their appointment at Bedford Hills, which focus on diagnoses and treatment of HIV related illness. Any nurse who has not received this inservice training will not be permitted to make critical medical decisions regarding the evaluation or course of treatment of any inmate who is HIV+, unless said nurse has been certified by the facility Medical Director as having had comparable and suitable other training or experience in the treatment of HIV related illness.

5) Written medical guidelines concerning HIV related illness, its diagnosis, treatment, use of medications including AZT and pentamidine, and recognition and treatment of opportunistic infections. Such guidelines shall be available in IPC and during screening.

6) Defendants may modify this protocol to reflect changes in diagnostic or treatment modalities accepted by the medical community. In the event of any such modifications,

defendants shall make best efforts to notify plaintiffs' counsel in writing within thirty (30) days of the change, and in any event shall notify plaintiffs' counsel in writing within sixty (60) days of the change.

B) All correction officers at the facility will participate in Departmental training on AIDS as required by the Department of Correctional Services.

C) Upon the termination of sub-sections VIII(A) & (B) in accordance with the provisions of sub-section XI(B), the following provisions shall apply: Defendants shall maintain and follow a protocol concerning the appropriate diagnosis, treatment and care of inmates with HIV related illness by the physician described in sub-section V(C), and for the training of other medical staff in the recognition, diagnosis and treatment of persons with HIV related illness. This protocol will also address necessary inservice training for medical staff regarding HIV related illness and will provide for the counseling of inmates about AIDS and HIV testing.

IX. RESTRAINTS DURING MEDICAL TRIPS

If a member of the facility medical staff determines that the use of a particular restraint is medically contra-indicated for a medical trip, he or she shall inform the Deputy Superintendent for Security of his or her concerns. Defendants shall not use the "black box" unless the Deputy Superintendent for Security or his designee believes it is necessary for reasons of security. Nothing in this Section shall have any preclusive

effect on any legal or administrative challenges made by any plaintiff to the use of restraints during medical trips.

X. NOTICE AND POSTING OF MODIFIED JUDGMENT

A) A simplified explanation of this Second Modified Judgment agreed to by the parties available in English or Spanish as appropriate shall be:

1) distributed to all inmates currently incarcerated at Bedford Hills;

2) distributed to all incoming Bedford Hills' inmates at their orientation.

B) A copy of this Second Modified Judgment shall be given in English or Spanish as appropriate to any inmate who requests a copy from law library staff, shall be available for consultation with Bedford Hills' medical personnel, and shall be posted in the hospital building, IPC, and the law library.

C) Upon the termination of sub-sections X(A) and (B) in accordance with sub-section XI(B), a simplified document reflecting the surviving terms of this Judgment shall be distributed in accordance with paragraphs X(A)(1), and (2). This document shall consist of a verbatim listing of the surviving portions of the Judgment and shall contain an additional portion identifying counsel for plaintiffs.

XI. COMPLIANCE

A) In the event that plaintiffs' counsel believes that defendants are not in compliance with this Judgment, plaintiffs'

counsel shall bring the facts supporting that belief to the attention of defendants' counsel and give defendants an opportunity to correct the alleged problem prior to counsel's filing of any motion concerning such alleged non-compliance.

B) On December 15, 1994, unless this date is extended by the Court based upon an assessment that defendants have not been in compliance with this Judgment, or cannot reasonably be expected to maintain compliance, and then at the conclusion of that extended period, the Court will terminate its orders of December 1, 1980 and April 8, 1981 appointing a monitor to assist the Court in measuring defendants' compliance with the terms of this Judgment, and all subsequent orders regarding appointment and reimbursement of the monitor and the monitor's assistants, and the duties of the court's monitor and his assistants will terminate, and those requirements of this Judgment that are referenced within this Judgment as terminating shall cease to bind the defendants as well as their successors, agents, employees, assigns and those acting in concert with them.

C) For any motion brought by either party, the fact that this Judgment was entered by consent will not affect the Court's standard of review.

D) The terms of this Judgment are a product of the particular circumstances surrounding the delivery of medical care at Bedford Hills Correctional Facility. They do not apply to any other facility.

E) In the event defendants alter the medical care facilities at Bedford Hills, the standard and the delivery of medical care,

as set forth in this Second Modified Judgment, shall remain the same.

Dated: New York, New York

October __, 1993

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