

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF LOUISIANA

LOUIS HAMILTON, et al.,)
)
Plaintiffs,)
)
v.)
)
ERNEST N. MORIAL, et al.,)
)
Defendants.)

CIVIL ACTION
NO. 69-2443
Section LLM (5) and
Consolidated Cases

ORDER

AND NOW, this 10th day of JUNE, 1991, upon consideration of plaintiffs' Motion to Approve Settlement, it is hereby ordered that the attached Notice of the Agreed Entry on Medical Care shall issue in the manner agreed to by the parties and as specified in the Motion which is the subject of this Order. It is further ordered that the time for filing objections to the proposed settlement with the Court will end ^{July 10} ~~May 31~~ 1991, and that the Court will, if necessary, convene a hearing to consider those objections, ^{LR-1} ~~on June 5, 1991~~.

Louisa L. Mitchell
United States District Judge

June 10, 1991
Date

Hamilton v. Morial



JC-LA-003-007

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Plaintiffs,

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Defendants.

CIVIL ACTION
NO. 69-2443
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AGREED ENTRY ON MEDICAL CARE

This class action, brought on behalf of all present and future offenders of the Orleans Parish Prison, alleges that certain conditions and practices at the institution violate the United States Constitution. The defendants herein are Charles C. Foti, Jr., Criminal Sheriff of Orleans Parish, Louisiana; Sidney Barthelemy, Mayor of the City of New Orleans; Leonard Simmons, the Chief Administrative Officer for the City of New Orleans; Dorothy Mae Taylor, Joseph J. Giarrusso, Peggy Wilson, James Singleton, Jackie Clarkson, Lambert Boissiere, Jr., and Johnny Jackson, all members of the City Council of the City of New Orleans and Bruce Lynn, Secretary of the Louisiana Department of Public Safety and Corrections. Among the allegations is that the level of medical care at the prison falls below constitutional levels. This agreement resolves this aspect of the case. Although the defendants categorically deny the allegations, they believe it will be in the best interests of the residents of New Orleans and Louisiana--including members of the plaintiff class--for there to be an expeditious, orderly, and comprehensive settlement of this

case without the necessity of a trial. The plaintiffs share this belief. As a consequence, the parties now agree to forego a trial on the merits of the medical issues and to bring this litigation to a conclusion on the medical issue by submitting this Agreed Entry on Medical Care to the Court for its review and ultimate approval.

It is expressly understood that the Sheriff of Orleans Parish agrees to perform the terms of this agreement.

With the full and informed consent of the parties, in order to resolve all claims asserted in this case, but without any acknowledgment or finding of liability or other determination on the merits, the parties and their successors agree to entry of the following as an order of the court.

I. A "Medical Director" shall be designated and employed by Sheriff Foti.

II. This "Medical Director" shall possess medical autonomy as to medical, dental, mental health, and dietetic matters.

III. ORLEANS PARISH PRISON MEDICAL CARE

A. Organization of Health Services

1. The Medical Director shall be board certified, hold an unrestricted license to practice medicine in Louisiana and shall be experienced in administering institutional health care program. The Medical Director shall be employed full time.

2. The new director's immediate tasks shall be to establish the organization and chain of command for all health care services and to establish liaison with all external (e.g., Charity Hospital, Department of Health, DHH, etc.) and internal (dental, nm

mental health, pharmacy and dietary) medical care services. In establishing the chain of command the Medical Director shall designate someone on the staff as a director of nursing and someone as a medical administrator.

3. The Medical Director shall establish a system for supervision and clinical accountability, including review of consultations, laboratory tests, special studies, emergency room visits and hospitalizations. This review shall be noted in the medical record. The Medical Director shall approve all health care policies and procedures and review them annually.

4. The Medical Director shall establish monthly on-site continuing medical education, to include initial orientation, for all health care staff.

5. The Medical Director shall supervise the medical services and maintenance of charting systems, statistics and recordkeeping, ordering and maintaining equipment, budget preparation and the personnel system.

6. The Medical Director shall be responsible for collecting, organizing and reporting statistical information on the health care program monthly. Statistical information is to include but not be limited to positive and negative tuberculin skin tests, cases of tuberculosis, number of inmates on tuberculosis prophylaxis, positive syphilis serologies, number treated for venereal diseases, emergency transports, routine transports, number screened and seen at sick call, number of prescriptions filled, number in infirmary care, number hospitalized and length of stay.

Copies of all of the above reports shall be furnished to designated representatives of all parties within 10 days of written request therefor and to the court upon being rendered.

7. The Medical Director shall review all monthly reports and analyze all data and make changes in the program as necessary to ensure quality and accessibility of services.

8. In addition to nursing in the infirmaries (see section F), on-site coverage by an R.N. or physician shall be provided 24 hours per day, 7 days per week. A physician shall be on call 24 hours per day. The necessity for a physician on site 24 hours per day will be reviewed and evaluated every 6 months by the Medical Director.

9. The Sheriff agrees to provide medical personnel coverage in consultation with the Medical Director. All clinics and sick calls will be performed by a physician with assistance from a LPN or RN.

10. All corpsmen shall be appropriately trained and supervised, to include state licensure as an Emergency Medical Technician or other medical assistant.

11. Licenses of all medical personnel shall be up-to-date and maintained in their files.

12. Within 3 months of agreement or consent decree, the Medical Director shall establish a system to regularly review staff responsibilities, documentation of care given, and the quality of care. Included in the medical staff's personnel files shall be current evaluations of their clinical work and

performance.

B. Intake

15. All new arrestees shall receive medical screening, at the time of booking. Those judged in need of medical care will not be accepted in the jail until clearance is provided by a physician.

16. The initial screening shall be done by medical personnel trained in the procedure and approved by the Medical Director. This initial screening shall be available 24 hours per day, 7 days per week, and shall include observations and a detailed history to determine acute problems, drug and alcohol use, chronic health problems, chronic mental health problems and suicide risk, medication, allergies and therapies. Vital signs (temperature, pulse rate, blood pressure, and respiratory rate) shall be taken and recorded. All initial screening and dispositions shall be reviewed by a physician within 24 hours. The physician on duty shall be notified of any urgent problems and direct the response.

17. A complete history and physical examination to include assessment of vital signs, neurological system, heart, lungs, abdomen and recent trauma, shall be done on all new admissions within 14 days. Tuberculin skin-testing (or chest x-ray if indicated), urine dipstick for protein, white cell, blood and glucose, a hematocrit, and serological testing for syphilis shall be included. Women will be offered Pap smears, breast examination and pregnancy testing. This assessment shall be done by a physician.

18. Any inmate housed in the facility for more than one year shall have his or her medical records reviewed by a physician or physician designee and, upon recommendation, shall have a physical examination and/or laboratory test as appropriate.

C. Recordkeeping

19. At admission, a medical record for each inmate shall be created. This record shall include: a problem list, admission history and physical examination, all laboratory and test results, consultations, progress notes, all clinical encounters, a working problem list, all mental health notes, all dental notes, and a clear notation of allergies. Each progress note should be entered in a standard format (e.g., subjective and objective analysis, assessment and plan). Refusals of care shall be documented.

20. Medical records shall be stored in a locked area that is not accessible to unauthorized personnel.

21. Records shall be deactivated upon discharge or transfer to another jurisdiction and maintained in a secure location. Readmission of the same person will result in reactivation of their record. Retention shall be according to State law.

22. The Medical Director shall approve all forms and the format of the medical record.

D. Sick Call

23. Sick call shall be made available to all inmates Monday through Friday by a physician. No request shall

take more than 24 hours to triage. The triage of sick call requests shall be based on a clinical assessment by a physician, registered nurse or licensed practical nurse that includes a brief history and evaluation of vital signs and physical condition. All sick call dispositions will be signed by a physician within 24 hours weekends excepted. The triaging process shall be done in clinical areas only and at a minimum include complete vital signs.

24. Sick call requests and dispositions shall become part of the inmates's medical record. If an inmate requests sick call, but then refuses to appear, a refusal form shall be completed and signed in the presence of medical personnel.

E. Follow-up

25. A follow-up system shall be organized for inmates with chronic problems (e.g. hypertension, diabetes, HIV disease), with abnormal laboratory results or with prolonged acute problems (e.g., recovery from surgery, healing of broken bones or muscle injuries).

26. An inmate shall be permitted to refuse a follow-up visit only in the presence of medical staff. The inmate shall sign a refusal form which shall be placed in his or her medical record. Refusal to sign a refusal form shall be documented and witnessed.

27. If an inmate is unavailable for the follow-up visit, a chart entry shall be made and this shall be noted and the appointment shall be rescheduled.

F. Clinic and Infirmary

28. The examination areas of all clinics shall be physically arranged as determined by the Medical Director. Each clinic shall have adequate space for records, medication storage examination tables, ophthalmoscope and blood pressure cuffs. Privacy for confidential examination shall be assured.

29. Hot water shall be provided in all clinics.

30. Infirmarys shall be established for male and female inmates. Admission will be by physician order only. The infirmarys shall have 24-hour nursing coverage. Daily bedside visitation by a physician shall be available and progress notes made for all visits. The nurse shall have access to observe and monitor the infirmary inmates 24 hours per day. The inmates will have access to urinals and toilets 24 hours per day. For inmates not in direct view, a buzzer or alert system shall be installed and maintained.

31. All inmates in the infirmarys shall have a bed, mattress and appropriate clean bedding linens.

32. The wheel chair bound patients should have infirmary housing that is wheel chair compatible (i.e., ramps for bathroom, toilets, shower, etc.).

32(a). The Medical Director shall establish appropriate medical isolation areas for persons with airborne infectious diseases.

32(b). Physical therapy, as prescribed by a physician, laboratory work, and x-ray services shall be available on a timely basis.

33. A medical reference library shall be available to include but not be limited to general medical and surgical texts, Physician Desk Reference, emergency medical care reference works, and obstetrical-gynecological texts.

34. Special diets shall be available for all

inmates as medically needed and prescribed by the physician. All menus will be reviewed by a dietitian at least every six months.

35. Portable emergency response bags containing blood pressure cuff, tourniquet, bandages and medication as determined by the Medical Director should accompany all medical responses for emergency care in housing areas. Also available in the institution shall be portable stretchers, neckbraces, portable oxygen, ambu-bag and IV fluids.

G. Emergency Staffing and Procedures

36. There shall be 24-hour on-site medical coverage available to all inmates of the Orleans Parish Correctional system.

37. The policy manual shall contain a clearly written emergency response plan, ambulance and hospital backup procedure and disaster response plan.

38. Within 12 months of agreement or consent decree, all health care staff shall have current BLS certification with documentation kept on file. During each 24 hour period there shall be one ACLS certified person on duty at all times in the Orleans Parish Prison System.

39. The following equipment shall be maintained in working order: defibrillator with monitor, one only, portable oxygen, EKG machine, emergency medicines, a portable emergency response bag, intubation equipment, central intravenous line equipment, intravenous catheters, intravenous solutions, hand-held peak-flow meter, ambu-bag, and tracheotomy equipment.

40. The defibrillator and monitor and emergency supplies and equipment shall be monitored and documented at least monthly. The oxygen tanks shall be checked for proper functioning daily.

41. The Medical Director will develop policies regarding emergency runs to hospitals.

II. Consultations and Referrals

42. The Sheriff shall provide adequate correctional staff so that the inmates are transported as scheduled to consultation services. It is the City's position that the cost of such staff should not be deemed a medical expense for purposes of this litigation. The Sheriff's position is that the cost of such staff is a medical expense. This issue is not resolved by this agreement.

43. All consultations shall be returned with appropriate documentation of finds and recommendations if made. A physician shall promptly review the consultations and initiate orders either noting, modifying or approving the consultant's recommendations.

44. Non-acute special studies and procedures shall be completed in a timely fashion.

I. Pharmacy

45. Pharmacy services shall be utilized daily to dispense medicines. All administration of medication shall be done by medical staff, designated by the Medical Director, who have completed a training program. Prescribed medication shall be administered in a timely basis.

46. The medical record shall reflect allergies, medication usage, drug reactions and drug interactions.

47. A formulary shall be maintained and a method established for access to non-formulary items.

48. "Floor stock" shall be available 24 hours per

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day for dispensing medications (i.e., insulin, hypertension medication, antibiotics) needed prior to the next routine filling of prescriptions.

49. Vaccines shall be made available on physician order.

J. Women's Health Needs

50. All pregnant women shall receive prenatal care according to protocols developed and approved by an obstetrician. Physician care shall be provided at the prison.

51. All pregnant inmates shall receive nutrition supplements and diet as prescribed by the treating physician.

52. The Corrections administration shall provide pregnant inmates with housing assignments, appropriate exercise and reduced work schedules as recommended by the treating physician. Housing must provide 24-hour a day access to a toilet. Pregnant inmates shall not be assigned to an upper bunk or to a mattress on the floor.

K. HIV Disease

53. Inmates who have been clinically diagnosed as being HIV positive shall be evaluated and followed according to the current evaluation and treatment guidelines in effect at Charity Hospital.

54. Upon physician recommendation an inmate shall be screened for HIV disease. Upon receiving the results of HIV tests, inmates shall receive post-test counseling from health care professionals trained to provide this service. Medical files

containing HIV positive diagnosis shall not be accessible to non-medical personnel.

55. Every inmate shall receive educational materials and counseling on HIV disease and have access to an ongoing risk reduction program.

56. During orientation there shall be educational sessions for the Sheriff's staff (i.e., the deputies) on HIV and other communicable diseases.

57. If Aerosolized pentamidine is provided on physician's order, a room that is properly ventilated to the outside must be provided.

L. Disciplinary Segregation

58. Health care personnel shall visit and screen for sick call in disciplinary areas daily and record the visits.

M. Quality Assurance

59. Within 12 months of agreement or consent decree, the Medical Director shall establish a program of objective evaluation and documented corrective action for the health services, including clinical medical records, mental health, pharmacy and therapeutics, morbidity and mortality and infection control.

60. Within 12 months of agreement or consent decree, a policy and procedure manual for the health services shall be developed and signed by the Medical Director. This manual shall be reviewed by the Director at least yearly. The policy and procedure manual shall include a specific written quality assurance

plan, emergency response plan, sick call, and follow-up plan. An infirmary routine shall be included as well as protocols for commonly treated diseases (e.g., tuberculosis, hypertension, diabetes, seizure disorders, gonorrhea and syphilis). There shall also be a policy and plan for obstetrical care.

P. Implementation, Compliance, Monitoring, and Other Provisions

61. Implementation will be the function of the Medical Director. Progress shall be reviewed at quarterly intervals (or more frequently if necessary) by a court appointed expert until such time as the program achieves accreditation from the National Commission on Correctional Health Care. ^{All defendants agree to pay a one-third (1/3) portion of the}

62. The Court shall retain active jurisdiction and ^{Court.} supervision of this case for a period of at least two years from ^{appointed expert fee} the time this agreement is entered as an order. At that time, the ^{at the due request of} Court shall terminate supervision and transfer this case to its ^{the Court.} inactive docket unless the plaintiffs move for the continuation of ^{All parties will have the right to review and make objections to the expert billing invoice prior to payment.} jurisdiction and active supervision due to an alleged failure by defendants to fully implement and comply with the terms of this agreement. In that event, there shall be a hearing to determine whether or not jurisdiction and supervision shall continue. If the Court determines not to close the case, it shall retain jurisdiction until this agreement is fully implemented and compliance has been demonstrated by the defendants in all substantive areas. At such time, the defendants may move the Court to terminate its supervision and transfer this case to the inactive docket, subject to plaintiffs moving at a later time for

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reinstatement of this action based upon an alleged failure by defendants to maintain compliance with the terms of the decree and underlying agreement. However, prior to initiating any court action to revive the case, plaintiffs' counsel shall bring any allegations of non-compliance to the attention of the defendants' counsel so that the parties can first attempt in good faith to resolve all such disputes between themselves.

63. All parties shall be notified in advance of any attempt to modify the court decree that implements this agreement. The parties shall then attempt to resolve all disputes concerning the proposed modification(s) before resort is made to the Court.

64. Beginning April 1, 1991, the Sheriff shall provide to the Court and all parties written progress reports detailing the steps taken to comply with the respective provisions of this Agreed Entry on Medical Care. The reports shall be made every four (4) months for the first year and every six (6) months thereafter until the Court's jurisdiction over this case ends.

65. The existing complaint in this action, which was drafted prior to the completion of discovery, does not raise a number of issues that are addressed and resolved by this agreement. To avoid the necessity of again amending the complaint in order to reflect the full scope of this case, the complaint shall be deemed or treated as though it has been amended to cover all of the issues contained in the agreement.

66. The parties to this agreement shall promptly submit to the Court for its approval and entry a consent decree.

67. The parties, shall attempt to negotiate a settlement on attorneys' fees and costs. However, should the parties be unable to reach a settlement as to attorneys' fees and costs within 60 days of entry of the decree, the matter shall be submitted to the Court for its determination; provided, however, that this time period may be extended by stipulation of the parties if approved by the Court. All defendants deny any liability for any other parties attorney's fees or costs and reserve their rights to litigate these issues and the issue of "prevailing party." Bruce Lynn takes the position for the reasons stated in his 12(b)(6) motion that he is not liable for attorney's fees. All other parties disagree with this position.

68. Implementation of this agreement will begin January 1, 1991. Full implementation of this agreement will be accomplished by June 1, 1991. The Medical Director shall be in place by March 1, 1991 and shall file a report by April 1, 1991 detailing progress toward full implementation. The relief contained in the interim medical program set forth in the joint Motion for Continuance entered into in August, 1990, shall continue until January 1, 1991. The Sheriff shall employ a full time Medical Director on or before February 1, 1991. If the Sheriff is unable to obtain the service of a Medical Director by said date, he shall report this to all parties and seek an extension from the Court. From January 1, 1991 to the date of hiring the permanent Medical Director the Sheriff shall employ a full time interim

Medical Director who may meet all or part of the qualifications set forth herein, and shall continue the screening program currently in effect.

69. Funding of this program by the City of New Orleans will commence on January 1, 1991 and funding of this program by the State of Louisiana will commence on January 1, 1991. Funding shall be as follows:

CITY

The City of New Orleans will provide \$1,000,000.00 operational funds and \$200,000.00 capital funds for the calendar year 1991. The operational funds will be payable in equal monthly installments starting January 1, 1991 and the capital funds will be payable on February 1, 1991.

STATE

The State recognizes that a portion of this plan will be funded by funds paid to the Criminal Sheriff for reimbursement of medical expenses paid in accordance with LA-R.S. 15:824. Additionally, pursuant to LA-R.S. 15:824, the State will continue to reimburse the Criminal Sheriff of Orleans Parish for actual medical expenses incurred in treating those prisoners sentenced to the custody of the Louisiana Department of Public Safety and Corrections who are in the physical custody of the Criminal Sheriff of Orleans Parish.

The State agrees that beginning January 1, 1991 and for the balance of the fiscal year ending July 10, 1991, the reimbursement to Sheriff Foti shall be \$2.00 per day per state

inmate housed by Sheriff Foti. Payments will be made monthly. The State and the Criminal Sheriff of Orleans Parish agree that credit will be given to the State for funds previously expended in FY 1990-1991 for medical care provided to state inmates. This credit will not decrease the \$2.00 per inmate per day payment to be made from January 1, 1991 to June 30, 1991.

For fiscal year 1991-92, the State of Louisiana through the Division of Administration will support and place in the Executive Budget for that fiscal year a recommendation that there be appropriated for payment of this reimbursement funds equal to \$2.00 per day per state inmate housed in the OPPS during that fiscal year.

The Department of Public Safety and Corrections through Charity Hospital New Orleans (CHNO) will continue to provide medical services to those inmates in need of emergency care and hospitalization only.

However, the Department of Public Safety and Corrections through CHNO will not continue to provide laboratory work, x-ray services, physical therapy, pharmacy, or any other specialty services for inmates except in emergencies.

The Department of Public Safety and Corrections will continue to provide medical services for chronically ill state inmates until such time as they can be expeditiously transferred into the physical custody of the Department of Public Safety and Corrections.

The Department of Public Safety and Corrections through CHNO will continue to provide medical services at CHNO specialty clinics to those inmates in need of emergency medical treatment at those specialty clinics, but not for routine out-patient treatment.

Referrals to CHNO must abide by its medical staff and hospital protocol and policies.

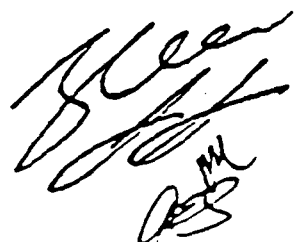
All medical services provided prior to this agreement to inmates other than State inmates will not be affected by this agreement.

In the event Charity Hospital in New Orleans fails to provide the services outlined above, the State shall, on a monthly basis, reimburse to the Sheriff the full costs of providing these services, supplies and medications in addition to the \$2.00 per day per inmate payment set forth hereinabove.

70. If the parties cannot reach an agreement as to funding after December 30, 1991 (City) and June 30, 1991 (State), hearings on these issues will be scheduled by the Court. These hearings will be completed sufficiently in advance of the cut-off dates of December 30, 1991 and June 30, 1991 so as to avoid any interruption of funding by the City or the State.

71. The Sheriff shall maintain records of financial expenditures for the program in such a manner as to allow a financial audit with respect thereto. The City and State shall have the right to audit these financial records.

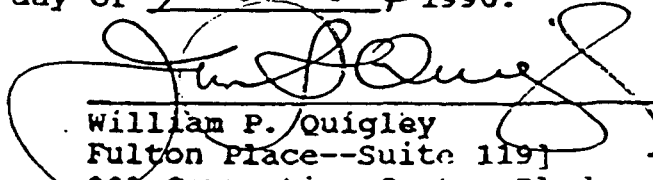
72. The plaintiffs herein do not, by signing this

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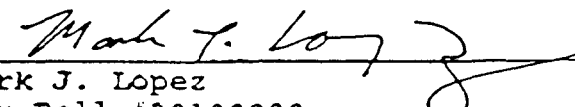
judgment, endorse or approve the funding levels to be paid by the City and State. The plaintiffs approve only the program and reserve all rights to enforce the program and the terms of this agreement even if the levels of funding provided for herein prove to be inadequate or are not funded by the City and or the State.

73. The Sheriff is aware of and in agreement with the plan set forth in this document. He is also aware of the funding provided for herein and believes, in good faith, that the funding provided to him is sufficient to implement the program described above.

Agreed to this 30 day of November, 1990.



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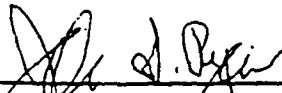
Attorneys for Plaintiffs



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Commissioner of
Administration



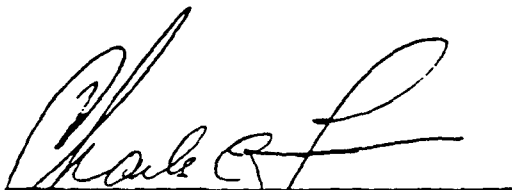
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