

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JIMMY (BILLY) MCCLENDON, et al.,

Plaintiffs,

vs.

No. CV 95-24 JAP/KBM

CITY OF ALBUQUERQUE, et al.,

Defendants.

vs.

**E.M., R.L., W.A., D.J., P.S., and N.W., on behalf
of themselves and all others similarly situated,**

Plaintiff-Intervenors.

**AMENDED ORDER INSTRUCTING COURT-APPOINTED MEDICAL EXPERT
ROBERT GREIFINGER, M.D. TO EVALUATE MEDICAL SERVICES
AT THE BERNALILLO COUNTY METROPOLITAN DETENTION CENTER**

1. This action was commenced on January 10, 1995 by Plaintiffs on behalf of all persons who are or who will be confined at the Bernalillo County Detention Center.

2. Plaintiffs alleged in their complaint that conditions at the Bernalillo County Detention Center violated the United States Constitution, the statutory laws of the United States, the New Mexico Constitution, and the statutory laws of the State of New Mexico. Plaintiffs sought Declaratory and Injunctive Relief on behalf of the class.

3. After the suit was filed, a group of individuals with mental and/or developmental disabilities who are or will be confined at the Bernalillo County Detention Center intervened ("Plaintiff-Intervenors"). [*Doc. No. 113*]. The Court granted Plaintiff-Intervenors permission to intervene on October 26, 1995. [*Doc. No. 137*].

4. The Bernalillo County Detention Center was located in downtown Albuquerque, and is no longer used for the incarceration of Plaintiffs or Plaintiff-Intervenors. The inmates in the Plaintiff and Plaintiff-Intervenors classes are now housed at the Metropolitan Detention Center (“MDC”), located at 100 Deputy Dean Miera Dr., SW, Albuquerque, NM 87151.

5. On July 11, 2003, the Court entered an order clarifying the class and sub-class to include inmates incarcerated at MDC. [*Doc. No. 416*].

6. On December 7, 2011, the Court appointed Robert Greifinger, M.D., as the Court’s expert to continue his evaluation of the medical services provided at MDC. [*Doc. No. 909*].

7. Pursuant to the December 7, 2011 Order, the Court directed Dr. Greifinger “to evaluate whether MDC is in compliance with the standards described in the Plaintiffs’ SSA, [*Doc. No. 515*] regarding item 15 on page 3 of the Plaintiffs’ SSA, which concerns the provisions of medical services to class and sub-class members.” [*Doc. No. 909, pp. 2-3*]. The 2005 SSA [*Doc. No. 515*] instructed the medical auditor to “evaluate the Defendants’ compliance with the policies and procedures of the Metropolitan Detention Center, the United States Constitution, the advisory standards set forth in the American Correctional Association’s Standards for Adult Detention Centers,” along with “good faith efforts to comply with the advisory Guidelines of the National Commission on Correctional Health Care.”

8. To ensure compliance with this Court’s orders, Dr. Greifinger will evaluate Defendants’ compliance with the Court’s extant orders that are currently relevant to MDC. Those provisions include the following:

- A. Whether MDC’s provision of medical services complies with MDC’s medical policies and procedures;

- B. Whether MDC is in compliance with the advisory standards set forth in the American Correctional Association's Standards for Adult Detention Centers;
 - C. Whether MDC has made and is making good faith efforts to comply with the advisory Guidelines of the National Commission on Correctional Health Care;
 - D. Whether MDC is conducting and completing a history and physical exam of each inmate in a timely manner, i.e., within 72 hours for inmates with serious medical needs identified at booking and no later than 14 days otherwise;
 - E. Whether MDC inmates who complain orally or in writing of serious acute illness or serious injury are given immediate medical attention;
 - F. Whether all inmate requests for medical care are timely communicated to medical personnel for appropriate treatment.
 - G. Whether MDC has made necessary revisions to existing policies, procedures and practices for any deficiencies identified by MDC or the monitors regarding the provision of timely access to appropriate medical care and is following the revised policies, procedures and practices.
9. MDC's Quality Improvement Process:
- A. Whether MDC operates an adequate Quality Assurance/Improvement system regarding medical care, its medical and health care policies and procedures, including but not limited to those identified in NCCHC standards and MDC policy and has implemented appropriate corrective

action.

- B. Whether MDC has a committee that reviews individual and system data about triggers and thresholds, and determines whether these data indicate trends either for individuals or for the adequacy of treatment overall;
- C. Whether MDC's Quality Improvement Committee conducts analyses of the medical and health care processes and makes recommendations on changes and corrective actions;
 - 1) Provides oversight of the implementation of medical policies, procedures, guidelines and support plans;
 - 2) Reviews policies, training, and staffing levels;
 - 3) Monitors implementation of recommendations and corrective actions;
 - 4) Reports its findings and recommendations to appropriate County officials periodically; and
 - 5) Refers appropriate incidents to the Morbidity/Mortality Committee for review, as necessary.

With respect to each of the standards set forth in this paragraph, Dr. Greifinger will notify the Court and the parties whether MDC is in compliance, partial compliance, or non-compliance. Whenever feasible, Dr. Greifinger should present his findings in a quantifiable manner, such as numerically or as a percentage.

10. If Dr. Greifinger determines that MDC has met the standards set forth in paragraph 8 and 9 of this Order, Dr. Greifinger will determine, when practicable, the date when compliance began.

11. To assist the Court with its determination as to whether MDC is providing constitutionally adequate medical care, Dr. Greifinger will determine the following:

- A. Whether the medical care provided by MDC to its inmates evidences repeated examples of negligent acts, which disclose a pattern of conduct by MDC medical staff;
- B. Whether the examples of negligent acts disclose a pattern of conduct by MDC medical staff that effectively denies inmates access to adequate medical care;
- C. Whether there are systematic and gross deficiencies in staffing, facilities, equipment, or procedures; and
- D. Whether the systematic and gross deficiencies effectively deny the inmate population access to adequate medical care.

With respect to each of the above standards, Dr. Greifinger will notify the Court and the parties whether MDC is in compliance, partial compliance, or non-compliance. Whenever feasible, Dr. Greifinger should set forth his findings in a quantifiable way, such as numerically or as a percentage.

12. If Dr. Greifinger determines that MDC has provided adequate medical care as set forth in paragraph 10 of this Order, Dr. Greifinger will determine, when practicable, the date when compliance began.

13. To assist the Court with its determination as to whether MDC is complying with the Americans with Disabilities Act, Dr. Greifinger will determine the following:

- A. Whether adequate communication occurs between MDC administration and treating health care professionals regarding an inmate's significant

health needs that must be considered in classification decisions in order to preserve the health and safety of that inmate, other inmates, or staff;

- 1) Whether MDC security staff is advised of inmates' special medical needs that may affect housing, work, program assignments, disciplinary measures, and admissions to and transfers from institutions.
- 2) Whether health care and security staff communicate about inmates with special needs conditions.

B. Whether MDC follows a proactive program which provides care for special needs patients who require close medical supervision or multidisciplinary care.

- 1) Whether individual treatment plans are developed by a physician or other qualified clinician at the time the condition is identified and updated when warranted.
- 2) Whether the treatment plan includes, at a minimum:
 - a) The frequency of follow-up for medical evaluation and adjustment of treatment modality;
 - b) The type and frequency of diagnostic testing and therapeutic regimens; and
 - c) When appropriate, instructions about diet, exercise, adaptation to the correctional environment, and medication.

C. Whether medical and dental orthoses, prostheses, and other aids to impairment are supplied in a timely manner when the health of the inmate

would otherwise be adversely affected, as determined by the responsible physician or dentist.

- 1) Whether health records confirm that patients receive prescribed aids to impairment.
- 2) Where the use of specific aids to impairment is contraindicated for security reasons, whether alternatives are considered so the health needs of the inmate are met.

D. Whether the medical care provided to subclass members is adequate and whether the medical care provided to sub class members is at least equivalent in quality to the medical care provided to others;

E. Regarding inmates who are qualified individuals with disabilities under the ADA, whether the Defendants have made modifications to their policies, procedures and practices that are necessary to provide inmates with disabilities with medical care which is equivalent in quality to the care provided to inmates without disabilities.

With respect to each of the above questions, Dr. Greifinger will notify the Court and the parties whether MDC is in compliance, partial compliance, or non-compliance. Whenever feasible, Dr. Greifinger should set forth his findings in a quantifiable way, such as numerically or as a percentage.

14. If Dr. Greifinger determines that MDC has complied with the provisions set forth in paragraph 13 of this Order, Dr. Greifinger will determine, when practicable, the date when compliance began.

15. For the purpose of preparing a report to this Court and the parties, Dr. Greifinger

will visit MDC and complete an evaluation of the medical services provided to MDC class and sub-class members. Within six (6) months of the filing of this Order, Dr. Greifinger will submit an initial report of his findings and recommendations to the parties.



SENIOR UNITED STATES DISTRICT JUDGE

APPROVED:

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