



JC-NY-013-002

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**ERIC VEGA, et al.,**

**Plaintiffs,**

**-against-**

**ALLYN SIELAFF, et al.,**

**Defendants.**

**STIPULATION AND  
ORDER**

**82 Civ. 6475 (MEL)**

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**WHEREAS** this action was brought on September 29, 1982 challenging certain conditions of confinement and the provision of health care services at Rikers Island Hospital ("RIH") as violative of the rights of the plaintiffs and the plaintiff class under the Eighth and Fourteenth Amendments of the United States Constitution; and

**WHEREAS** defendants answered on December 15, 1982 and denied that the provision of health care services at RIH violates the rights of the plaintiffs and the plaintiff class under the Eighth and Fourteenth Amendments of the United States Constitution; and

**WHEREAS** this case was certified as a class action by order of the Court on October 27, 1982; and

**WHEREAS**, on May 12, 1988, the parties agreed to a partial settlement of certain claims related to environmental conditions and medical screening for plaintiffs with acquired immune deficiency syndrome; and

**WHEREAS** subsequent to the commencement of this lawsuit, plaintiffs were transferred from RIH to other Department of Correction facilities, with the majority of those plaintiffs requiring

infirmary level medical care being transferred to a newly renovated and equipped facility known as the North Infirmary Building and an attached modular structure (collectively "NIB"); and

WHEREAS defendants have contracted with the Montefiore Medical Center to provide on-site medical services to persons requiring medical care who are housed at NIB; and

WHEREAS defendants have at present contracted to provide physical rehabilitation services at NIB and on-site renal dialysis services at the Manhattan Detention Complex ("MDC") for dialysis patients, who would have been housed at RIH at the commencement of this action and are currently housed at MDC, and are currently providing these services which are devoted solely to DOC usage; and

WHEREAS the parties now agree, without conceding any infirmity in their claims or defenses, that the claims in the Complaint concerning medical care, specialty clinic care and the transportation involved in the provision of specialty care, should be resolved without further litigation; and

WHEREAS nothing in this Stipulation shall be construed as evidence of an admission by defendants of a violation of any law, regulation, rule or order, or of an agreement by defendants that the provisions of this Stipulation set forth the minimum standard for medical care required by the United States Constitution or by New York State law;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the undersigned parties through their counsel, subject to

approval by the Court after notice is given to the plaintiff class, as follows:

1. For purposes of this Stipulation and Order regarding medical care, specialty clinic care and the transportation involved in the provision of specialty care, the definition of the plaintiff class is modified so that it is now defined as: All inmates who are or will be housed at NIB, or any replacement facility for NIB, who, because of their medical condition, would have been housed at RIH prior to the opening of NIB. All references to patients in this Stipulation and Order are to patients in the plaintiff class, as defined herein.

2. Defendants shall establish and maintain a system for the provision of medical care to plaintiffs in medically appropriate facilities that are adequately equipped, maintained and staffed with qualified personnel who will address the medical needs of the plaintiffs in a timely and medically appropriate manner. As part of the medical care system, defendants shall provide patients with specialty clinic care in a timely and medically appropriate manner and, to that end, shall take the following actions:

A. Specialty Clinic Appointments:

i. Defendants shall institute and maintain a system to coordinate, schedule and track specialty clinic appointments, which to the extent possible, will avoid conflicts between appointments and scheduled court appearances.

ii. A patient's primary care physician, or the NIB Chief Physician, or in instances where the patient has previously been treated by the specialty clinic physician, the specialty clinic

physician, shall determine the medically appropriate time period within which each patient is to be seen at the specialty clinic and indicate the time period in writing on the referral request form.

iii. Defendants shall offer the patient an appointment within the time period described in paragraph A (ii). Provided, however, in instances where the specialty clinic physician determines the time period or the date for a follow-up appointment, the primary care physician or the NIB Chief Physician, based upon his professional evaluation of the patient's condition, may alter that time period or date whenever medically necessary, or once when otherwise necessary, provided this change in time period is not medically inappropriate and shall, without referring to a specific date, inform the patient of the proposed change. When the change in time period is not based upon medical necessity, the appointment shall be the next regularly scheduled clinic, or in the alternative, the new clinic appointment date shall not be scheduled for a time period greater than the original time period (e.g., if original time period was "within two weeks" the postponed clinic appointment must be offered within two weeks of the postponement). When the primary care physician or the NIB Chief Physician alters the time period or date for an appointment, he shall record the following information in the patient's medical record at NIB: the reason for changing the time period or date for the specialty clinic appointment, the new time period or date, the physician's professional evaluation of the patient's medical condition, any attempts to consult with the specialty clinic physician, and the substance of those consultations. Should a specialty clinic

appointment be postponed, the primary care physician shall monitor the patient's medical condition during the postponement and shall document the monitoring and record the patient's medical condition in the patient's medical record.

iv. Defendants shall afford each patient the opportunity to keep any specialty clinic appointment, which was scheduled while any such patient was housed at NIB, notwithstanding the subsequent transfer of the patient from NIB to any other DOC facility.

**B. Specialty Clinic Physicians' Treatment Recommendations:**

i. Defendants shall provide each patient with follow-up care in accordance with the treatment recommendations of the specialty clinic physician. Provided, however, if the patient's primary care physician or the NIB Chief Physician determines in his medical judgment that the recommended treatment is either medically inappropriate or medically not indicated, or where there is a medically acceptable alternative, the doctor may modify the treatment plan. In such instances, the primary care physician or the NIB Chief Physician shall record the following information in the patient's medical record at NIB: the modification, the reason for the modification, the physician's professional evaluation of the patient's medical condition, any attempts to consult with the specialty clinic physician, and the substance of those consultations. The patient will be informed of the modification and the reasons for the modification and upon the patient's return, if any, to the specialty clinic for

follow-up care, the specialty clinic shall be informed of the modification and the reasons for the modification.

ii. In the event that a specific course of treatment or medication recommended by the specialty clinic physician is not available, the primary care physician or the NIB Chief Physician shall direct that an equivalent be substituted. The substance of the substitution and the reasons for it shall be recorded in the patient's medical record by the physician who ordered the substitution.

C. Second Opinions When Patient Disputes Changes in Appointment Dates or Treatment Recommended by the Specialty Clinic Physician:

i. If the patient disputes either (a) a change in the time period or date for a follow-up appointment (referred to in paragraph A(iii)), or (b) a modification of the treatment recommendations of the specialty clinic physician (referred to in paragraph B(i)), the patient shall be verbally informed that he has the right to a second opinion. Notice of this right to a second opinion shall also be posted in all areas at NIB. If the patient requests a second opinion, a second opinion shall be obtained from the NIB Chief Physician or, where the NIB Chief Physician has made the initial decision, his immediate supervising physician, who shall make a decision based upon his medical evaluation of the patient's medical needs. The patient shall be informed of the second opinion, and the basis for that opinion shall be recorded in the patient's medical record.

**D. Preparation for Clinics:**

i. Defendants shall ensure that appropriate NIB medical and/or nursing staff and the patient are notified in a timely manner of any special procedures that must be taken to prepare a patient for specialty clinic appointments and that the procedures are arranged and performed, unless the patient refuses.

**E. Medical Records and Test Results:**

i. Defendants shall maintain procedures to ensure that appropriate medical documentation including, where appropriate, medical records (or parts or summaries thereof), results of diagnostic tests, duplicate X-rays and X-ray reports shall be available to the specialty clinic personnel at the time of the specialty clinic appointment.

ii. All HHC test results will be provided to and reviewed expeditiously by a qualified nurse, nurse practitioner, physician's assistant, or physician, and normal results will be placed in a patient's chart for review by a specialty clinic physician at the time of the next clinic visit. Clinically relevant abnormal results will be expeditiously provided to an HHC specialty clinic physician. Defendants shall maintain procedures to assure that clinically relevant results are communicated to the NIB physician on the consultation sheet, if test results are available at the time of the consultation, or, by other means, within a medically appropriate time period.

iii. With respect to tests ordered by a specialist seeing patients on-site at NIB, or by a NIB physician, all test results shall be expeditiously provided to, reviewed by, and acted upon as

necessary by the primary care physician, or the NIB Chief Physician, before being incorporated into the medical record. Upon review, the physician who reviews the results shall initial or sign the results and indicate the date. All test results shall routinely be discussed with patients at their next regular encounter with the NIB physician.

**F. Holding Areas:**

i. Defendants shall maintain holding areas for patients attending specialty clinics in a sanitary manner, with proper ventilation and sufficient amounts of heat in the cold season and cool air in the warm season, proper lighting, seating for each patient on benches or chairs, sinks and properly functioning toilets, which allow for privacy consistent with security concerns, and access to facilities to lie down, if medically necessary. These facilities shall be handicapped and wheelchair accessible as needed.

ii. While patients are absent from NIB for specialty clinic appointments, they shall be provided with medication and diets, as prescribed. Procedures shall be developed which provide that the Department of Health ("DOH"), or its contractor, informs HHC or any other specialty clinic provider of any medication or special dietary needs in a timely manner.

**G. Transportation**

i. Defendants shall develop procedures and provide appropriate types and quantities of vehicles and adequate staff, so that: (a) patients are delivered to specialty clinics on time, (b) each stage of the specialty clinic production and return process is done promptly, and without inordinate, avoidable delays, and (c) the

patients are returned from HHC emergency services promptly and without inordinate, avoidable delays. The stages of the specialty clinic production and return process shall include actual transport to and from specialty clinics, escort to and from holding areas and clinics, time spent in holding areas, and the unloading and loading of patients on transport vehicles.

ii. With respect to actual transport, defendants shall provide at a minimum:

1. Patients shall not be awakened earlier than is necessary to prepare them for clinic departure and shall not be brought to the NIB holding pen earlier than necessary to insure their presence in the holding area when the bus departs, and in any event, no more than forty-five minutes before clinic departure.

2. Off-island specialty clinic runs shall be scheduled so that: a) there are different departure times from NIB for patients scheduled for morning and afternoon clinics, which will include a midday trip for all patients with afternoon appointments; b) in the morning, there are separate vehicles transporting patients to each clinic location for morning appointments, and, in the afternoon, there are separate vehicles for some return trips transporting patients from each clinic location; c) there are multiple, staggered return trips from each clinic location throughout the afternoon until the clinics are scheduled to close, or earlier if the patients have completed their appointments, and, if necessary, unscheduled trips until all NIB patients are returned, to avoid long waits in hospitals upon completion of clinic appointments; d) NIB patients are the last

group of patients to be picked up on Rikers Island and the first group to be dropped off upon return to Rikers Island; e) at least one scheduled trip each day shall be direct to and from one clinic location, and for all other trips there shall not be more than one off-island stop, scheduled after NIB patients are picked up from NIB or any clinic location, which stop is on a direct route, or a route that is convenient to the clinic location so that the length of the trip is not unreasonable, and, in any case, is less than two hours.

iii. All DOC vehicles that are used to transport NIB patients for emergency or specialty clinic care shall be clean and safe. Patients in wheelchairs or on stretchers shall be transported in vehicles equipped to accommodate wheelchairs or stretchers. Staff and appropriate vehicles will be available, when needed, for the routine and emergency medical transport of the plaintiff class.

#### H. Renal Dialysis and Physical Therapy Services:

Notwithstanding the provisions of paragraph 10 concerning the settlement and compromise of claims:

i. If in the future defendants reduce the level of services in relation to the demand for services or discontinue existing on-site physical rehabilitation or renal dialysis services, they shall give written notice of their decision to plaintiffs' counsel not less than 45 days prior to implementing such change, unless the change is the result of unforeseeable circumstances in which case defendants shall give reasonable notice.

ii. Within 10 days of such notice defendants shall provide plaintiffs' counsel with a written plan which explains how

defendants will provide services in the future and details the measures which defendants will take to assure that patients in need of those services will have access to those services.

iii. If plaintiffs' counsel dispute the adequacy of the plan, then within 5 days of the receipt of the plan, plaintiffs and defendants shall meet in an attempt to arrive at an amicable resolution of the differences. If after five days following the meeting the matter has not been resolved to plaintiffs' satisfaction, defendants shall be informed by plaintiffs' counsel, and then plaintiffs' counsel and plaintiffs may petition the court to review the adequacy of defendants' proposal and plans and seek further relief from the Court.

I. Quality Assurance:

i. Defendants shall maintain an ongoing quality assurance program to monitor and evaluate the quality and appropriateness of the medical and specialty clinic care provided patients.

NON-ADMISSION CLAUSE

3. In no event shall anything in this Stipulation and Order be construed as evidence of an admission by defendants of a violation of any law, regulation, rule or order, or of an agreement by defendants that the provisions of this Stipulation and Order set forth the minimum standard for medical care required by the United States Constitution or by New York State law.

## PATIENT COMPLAINT RESOLUTION

4. Defendants shall promptly respond to individual patient's inquiries or complaints concerning medical care and specialty clinic care. In instances where plaintiffs' attorneys seek to assist plaintiffs in resolving medical complaints, plaintiffs' attorneys shall forward the complaints in writing to the designee of the Commissioner of the Department of Health and the designee of any contractor providing health care at NIB and defendants shall respond to those complaints in a timely manner.

## MONITORING

5. Defendants shall maintain a system to track (1) the scheduling of specialty clinic appointments for members of the plaintiff class and (2) the transportation provided to and from the appointments.

i. The tracking system shall monitor and record the following information: the date of the request for the specialty clinic consultation, the name of the clinic, the name of the patient, the name of the requesting physician, the nature of the consultation requested, the time period within which the patient must be seen as set by the referring physician, the date scheduled for the patient to be seen at the specialty clinic, any changes in the date or time period to be seen, the date seen, the dates the patient is to return to the clinic, if any, and any recorded follow-up information. Scheduled court dates will also be recorded.

ii. Defendants shall maintain accurate and complete records of the arrival time of buses at clinic facilities and the arrival

and departure times of specialty clinic patients to and from NIB, the holding areas and the specialty clinics.

iii. Upon plaintiffs' counsel's request, defendants shall provide plaintiffs' counsel with access to and copies of the documents listed below and reasonable access to other documents (including computerized records) concerning the operation of the medical and specialty care system for the plaintiffs, when requested:

the DOC "Specialty Clinic Appointment Tracking Form" with attached "Specialty Clinic Refusal Form" established by the DOC Operations Order 33/89, and any documents showing the arrival time of buses at the specialty clinic location;

the consultation request forms;

the DOH documents tracking specialty clinic appointments;

either the DOC or HHC clinic utilization forms;

a reasonable number of patient medical records subject to the terms and conditions of the confidentiality order of this Court, entered on April 6, 1990, or any subsequent order of this court concerning confidentiality;

quality assurance audits and reports except those deemed confidential in accordance with New York Public Health Law §2805 (j)(k)(l) and (m);

documents concerning the physical and sanitary conditions of the specialty clinic holding pens.

iv. Nothing in paragraph 5(i) or 5(ii) shall preclude the defendants from utilizing the tracking system to monitor and record information additional to that set forth in paragraph 5(i).

v. To the extent that defendants alter or modify the tracking system and/or the forms referred to in paragraphs 5(ii) and 5(iii), defendants shall provide plaintiffs with sufficient equivalent information to enable plaintiffs to monitor the system.

6. Upon reasonable notice, plaintiffs' counsel and/or their expert consultants shall be permitted the opportunity to conduct a reasonable number of on-site visits of the facilities where the plaintiff class is housed and/or treated.

7. Upon request of either party, periodic meetings (but not more often than quarterly) shall be held between the plaintiffs' representatives and defendants' representatives, as designated by defendants, including responsible agency personnel, concerning issues related to compliance with the provisions of this Stipulation and Order.

8. After three years from the entry of this Stipulation as an Order of the Court, the scope, frequency and duration of plaintiffs' active monitoring shall be limited according to the following schedule, unless, upon a satisfactory showing by plaintiffs, the Court determines that the defendants' record of noncompliance indicates that monitoring efforts should not be limited.

|          | Documents         | On-site Visits | Periodic Meetings |
|----------|-------------------|----------------|-------------------|
| 4th year | Every four months | Semi-annually  | Semi-annually     |
| 5th year | Semi-annually     | Semi-annually  | Semi-annually     |

Thereafter, the active monitoring permitted by this Order shall end, provided however that the plaintiffs may petition the Court to extend active monitoring upon a satisfactory showing that the record of defendants' noncompliance is such that continued monitoring is warranted. Extensions of monitoring shall be granted for no more than one year at a time.

## DISPUTE RESOLUTION

9. In the event that a dispute arises as to whether any defendant is in compliance with the terms of this stipulation, the parties shall proceed as follows:

i. Both parties shall make a good faith effort to resolve any differences which may arise between them over such terms. Prior to the institution of any proceeding before the Court to enforce the provisions of this Stipulation, plaintiffs' counsel shall notify defendants' counsel, counsel for the Department of Correction, counsel for the Department of Health and counsel for the Health and Hospitals Corporation in writing of any claim by plaintiffs that defendants are in violation of any provision thereof.

ii. Within five business days of the receipt of the notice, plaintiffs and defendants shall meet in an attempt to arrive at an amicable resolution of the claim. If after ten days following the meeting the matter has not been resolved to plaintiffs' satisfaction, defendants shall be so informed by plaintiffs' counsel and plaintiffs may then have due recourse to the Court.

iii. However, where plaintiffs' counsel asserts a claim that involves a threat to the immediate physical well-being of any member of the plaintiff class, plaintiffs shall have due recourse to the Court within 24 hours of notification to defendants' counsel of such claim.

10. Approval of this Stipulation as an Order of the Court will settle and compromise with prejudice all remaining claims in the Complaint in this action relating to medical care and specialty clinic

care, and the transportation involved in the provision of specialty care.

Dated: New York, New York  
July 20, 1990

Marcia Levy  
PHILIP L. WEINSTEIN  
MARCIA LEVY  
DALE WILKER  
THEODORE H. KATZ  
Attorneys for Plaintiffs  
The Legal Aid Society  
Prisoners' Rights Project  
15 Park Row -- 7th floor  
New York, New York 10038  
212-577-3530

VICTOR A. KOVNER  
Corporation Counsel of the  
City of New York  
Attorney for Defendants  
100 Church Street  
New York, New York 10007  
212-566-2515  
JO2395

BY:

Julie E. O'Neill  
JULIE E. O'NEILL  
CHLARENS ORSLAND  
JOSEPH A. TRANFO  
Assistant Corporation Counsel

SO ORDERED:

HON. MORRIS E. LASKER