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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Victor Antonio Parsons, et al.,

10 Plaintiffs,

11 v.

12 Charles L Ryan, et al.,

13 Defendants.
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No. CV-12-00601-PHX-ROS

ORDER

15 The Court has monitored Defendants' compliance with the Stipulation's
16 Performance Measures and has observed that unacceptable levels of noncompliance remain
17 in three critical respects.

18 The first group of noncompliant PMs are a subset of PMs over which Judge Duncan
19 ordered Defendants to Show Cause in October 2017 and, ultimately, imposed sanctions in
20 June 2018 stemming from their failure to meet the standard to discharge their contempt.
21 Nine PMs at Eyman, Lewis, Florence, and/or Tucson Complex remain substantially
22 noncompliant nearly one year after sanctions were imposed. Defendants' continued
23 excuses for noncompliance do not reflect the seriousness of their prolonged breach of the
24 Stipulation or the ramifications of their failure to meet their obligations in the affected
25 fundamental aspects of health care delivery.

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PM Noncompliance from October 2017 OSC	January 2019	February 2019
PM 11—Are newly prescribed provider-ordered formulary medications provided to the inmate within two (2) business days after prescribed, or on the same day, if prescribed STAT?	Eyman 84%	Eyman 84%
PM 35—For intersystem transfers (complex to complex), are all inmate medications (KOP and DOT) transferred with and provided to the inmate or otherwise provided at the receiving prison without interruption?	Eyman 78% Lewis 78%	Eyman 60%
PM 39—Are routine provider referrals being addressed by a medical provider and referrals requiring a scheduled provider appointment being seen within fourteen (14) calendar days of the referral?	Lewis 70%	Lewis 0%
PM 44—Are inmates that are returning from an inpatient hospital stay or ER transport with discharge recommendations from the hospital having the hospital's treatment recommendations reviewed and acted upon by a Medical Provider within 24 hours?	Eyman 44%	Eyman 40%
PM 47—Are Medical Providers communicating the results of the diagnostic studies to the inmate upon request and within seven (7) calendar days of the date of the request?	Eyman 47% Lewis 15%	Eyman 41% Lewis 0%
PM 50—Are Medical Providers reviewing the diagnostic report, including pathology reports, and acting upon the reports with abnormal values within five (5) calendar days of receiving the report at the prison?	Florence 53%	Florence 43%
PM 51—Are routine consultations being scheduled and completed within 60 calendar days of the consultation being requested by the provider?	Eyman 50% Florence 76% Tucson 81%	Eyman 45% Florence 69% Tucson 69%
PM 52—Are specialty consultation reports being reviewed and acted on by a provider within seven (7) calendar days of receiving the report?	Florence 59%	Florence 71%
PM 66—Are medical provider encounters occurring at a minimum of every 72 hours for IPC inmates?	Florence 40% Tucson 70%	Florence 70% Tucson 60%

In addition to the failure to bring the OSC PMs into compliance, a second category of PMs are currently substantially noncompliant and have been for at least 3 of the last 6 months. These PMs also involve the provision of prescription medication, referrals to appointments with health care providers, and follow-through on hospital discharge instructions.

Other PMs Noncompliant for 3+ months in the last 6 months	
PM 15—Are Inmates who refuse prescribed medication (or no show) being counseled by a QHCP after three consecutive refusals?	Lewis Noncompliant since January 2018 (except 3 months)
PM 19—Perpetual inventory medications will be signed off on the Inmate's individual MAR.	Lewis Noncompliant since January 2018 (except 1 month)
PM 24—Are emergency medical response bags checked daily, inventoried monthly, and contain all required essential items?	Lewis Noncompliant since February 2018 (except one month)
PM 37—Is the inmate being seen on sick call by an RN within 24 hours after the HNR is received (or immediately if identified with an emergent need, or the same day if identified as having an urgent need)?	Lewis Noncompliant since July 2018
PM 42—Is a follow-up sick call encounter occurring within the time frame specified by the Medical or Mental Health Provider?	Florence Noncompliant since January 2018 (except 3 months)
PM 44—Are inmates that are returning from an inpatient hospital stay or ER transport with discharge recommendations from the hospital having the hospital's treatment recommendations reviewed and acted upon by a Medical Provider within 24 hours?	Florence Noncompliant since January 2018 (except one month)
PM 44—Are inmates that are returning from an inpatient hospital stay or ER transport with discharge recommendations from the hospital having the hospital's treatment recommendations reviewed and acted upon by a Medical Provider within 24 hours?	Lewis Noncompliant since January 2018 (except four months)
PM 49—Are patients for whom a provider's request for specialty services is denied told of the denial by a Medical Provider at the patient's next scheduled appointment, no more than 30 days after the denial, and the Provider documents in the patient's medical record the Provider's follow-up to the denial?	Florence Noncompliant since July 2018

PM 67—In an IPC, do registered nurses will conduct and document an assessment at least once every shift? Graveyard shift assessments can be welfare checks.	Tucson noncompliant since January 2018
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Finally, performance generally at the Eyman Complex is woefully deficient and reflects a wholesale breakdown in the medical unit's operations.

<u>Eyman Noncompliant Performance Measures</u>	January 2019	February 2019
PM 6—Are provider orders noted daily with time, date, and name of person taking the orders off?	76%	78%
PM 11—Are newly prescribed provider-ordered formulary medications provided to the inmate within two (2) business days after prescribed, or on the same day, if prescribed STAT?	84%	84%
PM 12—Do Medical records contain documentation of refusals or “no shows”?	85%	78%
PM 14—Are refills for chronic care or requested by a prisoner between three and seven business days prior to the prescription running out completed in a timely manner such that there is no interruption or lapse in medication?	54%	84%
PM 15—Are Inmates who refuse prescribed medication (or no show) being counseled by a QHCP after three consecutive refusals?	92%	70%
PM 35—For intersystem transfers (complex to complex), are all inmate medications (KOP and DOT) transferred with and provided to the inmate or otherwise provided at the receiving prison without interruption?	78%	60%
PM 37—Is the inmate being seen on sick call by an RN within 24 hours after the HNR is received (or immediately if identified with an emergent need, or the same day if identified as having an urgent need)?	22%	24%
PM 39—Are routine provider referrals being addressed by a medical provider and referrals requiring a scheduled provider appointment being seen within fourteen (14) calendar days of the referral?	32%	66%
PM 40—Are urgent provider referrals being seen by a Medical Provider within 24 hours of the referral?	63%	100%
PM 42—Is a follow-up sick call encounter occurring within the time frame specified by the Medical or Mental Health Provider?	52%	34%

1	PM 44—Are inmates that are returning from an inpatient	44%	40%
2	hospital stay or ER transport with discharge		
3	recommendations from the hospital having the hospital's		
4	treatment recommendations reviewed and acted upon by a		
5	Medical Provider within 24 hours?		
6	PM 47—Are Medical Providers communicating the	47%	41%
7	results of the diagnostic studies to the inmate upon request		
8	and within seven (7) calendar days of the date of the		
9	request?		
10	PM 49—Are patients for whom a provider's request for	52%	56%
11	specialty services is denied told of the denial by a Medical		
12	Provider at the patient's next scheduled appointment, no		
13	more than 30 days after the denial, and the Provider		
14	documents in the patient's medical record the Provider's		
15	follow-up to the denial?		
16	PM 51—Are routine consultations being scheduled and	50%	45%
17	completed within 60 calendar days of the consultation		
18	being requested by the provider?		
19	PM 52—Are specialty consultation reports being	71%	68%
20	reviewed and acted on by a provider within seven (7)		
21	calendar days of receiving the report?		
22	PM 72— Do inmates who refuse prescribed diets for more	94%	6%
23	than 3 consecutive days receive follow-up nutritional		
24	counseling by a QHCP?		

For the last several years, all three of these categories of failures have been the subject of scrutiny by the Court and multiple remedial plans by Defendants. Most recently, the Court engaged Dr. Marc Stern to evaluate certain specific failures and to recommend corrective measures to bring certain PMs at certain complexes into compliance. But while the Court expert's analysis and opinion are pending, the potential of further contempt sanctions is also appropriate because of Defendants' failure to honor its obligations under the Stipulation and to the prisoners in their charge.

Accordingly, pursuant to the Court's contempt power under 18 U.S.C. § 401 and the Stipulation (Doc. 1185-1 at ¶ 36 ("the Court shall retain the power to enforce this Stipulation through all remedies provided by law")), Defendants' must bring the following Performance Measures at the following complexes into compliance no later than July 1,

2019.

IT IS THEREFORE ORDERED that Defendants bring the following performance measures into substantial compliance no later than July 1, 2019:

- Performance Measure 6 (Are provider orders noted daily with time, date, and name of person taking the orders off?) at Eyman;
- Performance Measure 11 (Are newly prescribed provider-ordered formulary medications provided to the inmate within two (2) business days after prescribed, or on the same day, if prescribed STAT?) at Eyman;
- Performance Measure 12 (Do Medical records contain documentation of refusals or “no shows”?) at Eyman;
- Performance Measure 14 (Are refills for chronic care or requested by a prisoner between three and seven business days prior to the prescription running out completed in a timely manner such that there is no interruption or lapse in medication?) at Eyman;
- Performance Measure 15 (Are Inmates who refuse prescribed medication (or no show) being counseled by a QHCP after three consecutive refusals?) at Eyman and Lewis;
- Performance Measure 19 (Perpetual inventory medications will be signed off on the Inmate’s individual MAR.) at Lewis;
- Performance Measure 24 (Are emergency medical response bags checked daily, inventoried monthly, and contain all required essential items?) at Lewis;
- Performance Measure 35 (For intersystem transfers (complex to complex), are all inmate medications (KOP and DOT) transferred with and provided to the inmate or otherwise provided at the receiving prison without interruption?) at Eyman and Lewis;
- Performance Measure 37 (Is the inmate being seen on sick call by an RN within 24 hours after the HNR is received (or immediately if identified with an emergent need, or the same day if identified as having an urgent need?) at Eyman and Lewis;
- Performance Measure 39 (Are routine provider referrals being addressed by a medical provider and referrals requiring a scheduled provider appointment being seen within fourteen (14) calendar days of the referral?) at Eyman and Lewis;
- Performance Measure 40 (Are urgent provider referrals being seen by a Medical Provider within 24 hours of the referral?) at Eyman;
- Performance Measure 42 (Is a follow-up sick call encounter occurring within the time frame specified by the Medical or Mental Health Provider?) at Eyman and Florence;
- Performance Measure 44 (Are inmates that are returning from an inpatient hospital stay or ER transport with discharge recommendations from the hospital having the

hospital's treatment recommendations reviewed and acted upon by a Medical Provider within 24 hours?) at Eyman, Florence, and Lewis;

- Performance Measure 47 (Are Medical Providers communicating the results of the diagnostic studies to the inmate upon request and within seven (7) calendar days of the date of the request?) at Eyman and Lewis;
- Performance Measure 49 (Are patients for whom a provider's request for specialty services is denied told of the denial by a Medical Provider at the patient's next scheduled appointment, no more than 30 days after the denial, and the Provider documents in the patient's medical record the Provider's follow-up to the denial?) at Eyman and Florence;
- Performance Measure 50 (PM 50—Are Medical Providers reviewing the diagnostic report, including pathology reports, and acting upon the reports with abnormal values within five (5) calendar days of receiving the report at the prison?) at Florence;
- Performance Measure 51 (Are routine consultations being scheduled and completed within 60 calendar days of the consultation being requested by the provider?) at Eyman, Florence, and Tucson;
- Performance Measure 52 (Are specialty consultation reports being reviewed and acted on by a provider within seven (7) calendar days of receiving the report?) at Eyman and Florence;
- Performance Measure 66 (Are medical provider encounters occurring at a minimum of every 72 hours for IPC inmates?) at Florence and Tucson;
- Performance Measure 67 (PM 67—In an IPC, do registered nurses will conduct and document an assessment at least once every shift? Graveyard shift assessments can be welfare checks.) at Tucson; and
- Performance Measure 72 (Do inmates who refuse prescribed diets for more than 3 consecutive days receive follow-up nutritional counseling by a QHCP?) at Eyman.

IT IS FURTHER ORDERED that, by Friday, July 19, 2019, Defendants shall provide June compliance scores to the Court for review.

IT IS FURTHER ORDERED that, on Friday, July 26, 2019, Defendants shall show cause as to why the Court should not impose a civil contempt sanction of \$50,000 per Performance Measure per complex.

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1 **IT IS FURTHER ORDERED** that Plaintiffs may file a response no later than
2 Friday, August 16, 2019. Defendants may file a reply no later than Friday, August 30,
3 2019.

4 Dated this 3rd day of May, 2019.

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Honorable Roslyn O. Silver
Senior United States District Judge