U.S. Department of Justice
Civil Rights Division

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DJ 168-30-22

Special Litigation Section - PHB
950 Pennsylvania Ave, NW
Washington DC 20530

February 6, 2013

Joe Taylor
Grant County Attorney
101 North Main Street
Williamstown, KY 41097

Re: Grant County Detention Center inspection

Dear Mr. Taylor:

We write to provide you with our assessment regarding current conditions at the Grant County Detention Center ("Jail"). This assessment is in regards to Grant County ("County") efforts to comply with the August 3, 2009 settlement agreement ("Agreement") between the United States Department of Justice ("Department") and the County. To conduct our evaluation, we toured the Jail from October 11-12, 2012, reviewed documents produced both in advance of and during the tour, and interviewed staff and prisoners. Jail administration and staff cooperated with our inspection, and we again express our appreciation for their assistance.

We recognize that there has been a change in administration, and we appreciate Jailer Peeple's expressed willingness to work with us in his ongoing effort to improve Jail operations. We also acknowledge that the County has made some progress with the general medical provisions of the Agreement since Jailer Peeples retained a new medical contractor. Certain aspects of the chronic care program and physician services demonstrate real improvement.

Unfortunately, these changes have been insufficient to remedy serious, longstanding constitutional problems at the Jail. Many of the Agreement's provisions required a systemic approach so that past improvements would be institutionalized. That apparently never occurred. We remain especially concerned about an ongoing lack of prisoner access to qualified clinical staff (e.g. physicians and registered nurses), and mental health services in general. We now write to outline in more detail our remaining concerns and offer recommendations that if adopted, will facilitate county compliance efforts.

I. BACKGROUND

The Jail houses over 350 prisoners, which is twice the population at the time of one of our experts' original 2005 visit. Since our last site inspection, the County has retained a new medical contractor, Advanced Correctional Healthcare.

II. CONTINUING VIOLATIONS OF PRISONER RIGHTS

The Agreement between the County and the Department requires the provision of medical and health services to address the serious needs of Jail prisoners. To that end, the

Agreement mandates improvements to staffing, health screenings, record-keeping, medication practices, sick call, and chronic care. Below, we detail the extent of the County's compliance with each of the provisions of the Agreement.

1. The County will continue to ensure the adequate and timely identification of, and provide adequate and timely services to address the serious medical and mental health needs of all inmates regardless of ability to pay.

Rating: Partial Compliance.

The Jail staff conduct an initial booking assessment on all new prisoners, and a more comprehensive health assessment for prisoners serving longer periods of incarceration. The initial booking process could be improved with questions better tailored to flag serious potential medical problems, but is otherwise adequate. The more comprehensive medical assessment is more problematic. The County relies on licensed practical nurses (LPNs) to handle these medical assessments, and such nurses are not qualified to do so. To conduct a proper medical assessment, medical staff must be trained and credentialed to conduct exams and engage in the type of diagnostic process needed to identify serious medical needs. LPN's are generally not able to do so, which means that in the Grant County Jail, unqualified staff are serving as gatekeepers to medical care. The County needs to hire registered nurses, advanced practice nurses, or similarly credentialed individuals in order to conduct the comprehensive health assessments and to improve oversight of the LPN's.

The most serious breakdowns in Jail medical care involve mentally ill prisoners. Two of the most serious incidents actually resulted in the deaths of the prisoners. In April 2010, a prisoner had a history of suicidal ideation. The Jail staff placed the prisoner on a dose of anti-depressant medication that was likely too low to be effective. This was the only mental health treatment provided to the prisoner, as no one developed a treatment plan for more comprehensive care. The prisoner killed himself. In September 2010, a new prisoner arrived and told staff that he was going to kill himself. The Jail's course of intervention essentially consisted of putting the prisoner in a segregation cell. The Jail staff left the prisoner with a sheet, and the prisoner hung himself. Similar incidents, which have fortunately not resulted in death, have continued since 2010. During our tour, our consultant spoke with a prisoner on "critical" suicide watch who was not being seen with any reasonable frequency by a mental health professional. The prisoner was on an untherapeutic level of medication, and it appeared that no one was conducting the type of medication monitoring required. Notably, the prisoner is also blind and has other medical problems. Someone with such a complex medical situation cannot be treated safely just through occasional encounters with low level medical or mental health staff. They require an actual treatment plan, overseen by a physician, who can help guide staff at all levels in managing the prisoner's care.

2. The County will continue to provide sufficient on-site physician, mental health care provider, and nursing staff to ensure adequate medical care (including chronic and acute care). The County also will continue to provide sufficient on-site physician staffing to adequately supervise nursing staff.

Rating: Non-compliance.

The County continues to provide limited physician and nursing services. A physician comes on-site 2-3 hours per week. The Jail does not provide any psychiatrist care. This level of physician coverage is substantially less than required given the needs of the Jail. When combined with an over-reliance on licensed practical nurses, the medical staffing deficiencies pose an unreasonable risk of harm to prisoners.

Only physicians, and some advanced practice nurses, can prescribe medications and conduct complex health assessments. The Jail, however, instead relies on licensed practical nurses to provide nearly all medical care at the facility. The Jail supplements these nurses with a single mental health worker, who is only licensed to serve as a clinical counselor, a telephone hotline, and some prisoners who serve as suicide monitors. As we have indicated on past tours, the hotline is not an appropriate substitute for on-site staff, and does not give mentally ill prisoners access to the type of ongoing face-to-face assessment and care required. We have also previously warned that prisoners should never be given supervisory responsibilities over other prisoners. More generally, the nurses and counselor are routinely being asked to provide care that they are not actually trained or licensed to provide. For instance, they assess and screen prisoners for additional care, but given their level of credentialing, they should not be serving in such a diagnostic or gate keeping role. We found several serious incidents associated with inadequate medical coverage and weak clinical oversight. For example:

1) Jail staff subjected at least 12 mentally ill/suicidal patients to restraint chairs and/or conductive electrical devices (i.e. Tasers) in order to manage their behaviors, but then failed to provide follow-up psychiatrist care. One of these patients was unresponsive at intake, but he was not even assessed by a nurse, let alone a physician.

2) Jail staff placed a sick patient on critical suicide watch because they were very concerned about the patient's mental state. Yet, there was no follow-up. The patient never received a proper physician mental health assessment.

3) Jail nursing staff left a multiple sclerosis patient without her medication for seven days. After finally restarting the patient's medications, they did not include the patient on the physician's chronic care caseload.

3. The County will continue to evaluate the adequacy of all medical and mental health policies and procedures on a regular basis and, where necessary, make revisions to address any gaps identified.

Rating: Non-compliance.

The County has not been conducting periodic evaluations of medical and mental health policies.

4. The County will continue to provide receiving screens by health services staff for new inmates, and inmates transferring from other correctional institutions, within twenty four (24) hours of each inmate's arrival at the facility. The County will ensure that health

services staff performing receiving screens are trained to complete the assessments. For this receiving screen, health services staff record and seek the inmates' cooperation to obtain: (1) medical, surgical, and mental health history, including current or recent medications; (2) current injuries, illnesses, evidence of trauma, and vital signs, including recent alcohol and substance use; (3) history of substance abuse and treatment; (4) pregnancy; (5) history and symptoms of communicable disease; (6) suicide risk history; and (7) history of mental health treatment, including medication and hospitalization. Health services staff also will attempt to elicit the amount, frequency and time of the last dosage of medication from every inmate reporting that he or she is currently or recently on medication, including psychotropic medication. The information obtained through the receiving screen will be made a part of an inmate's medical record.

Rating: Partial Compliance

See 1 and 2 above.

5. The County will continue to conduct fourteen-day health assessments and examinations and will make appropriate referrals for treatment or evaluation. As part of the fourteen-day health assessment, the County will screen inmates for infectious diseases, including tuberculosis and sexually transmitted diseases. The health assessment will include a review of the receiving screen, a complete medical and mental health history, a physical examination, and a mental health assessment. Appropriate plans will continue to be developed and implemented with this information.

Rating: Partial compliance.

See 1 and 2 above.

Medical and mental health records did not include any formal, written, treatment plans. Prisoners with chronic conditions, including mental illness, require a plan of care that includes a clear description of the treatment program, proper monitoring, and follow-up.

6. The County will continue to ensure that inmates are seen by health services staff in a timely manner after submission of a sick call slip.

Rating: Non-compliance.

See 1, 2, and 5 above.

Several major access barriers prevent prisoners from obtaining all necessary care. These barriers include – 1) a lack of physician and nursing (registered nurse) coverage, 2) a co-pay policy that is applied so broadly and imposes such high fees, that it impedes access to necessary care (especially chronic care),and 3) a sick call procedure that violates patient privacy by allowing security staff to collect sick call requests. The incidents described previously, where prisoners with serious medical needs apparently never see, or only rarely see, a physician illustrates these problems. We also received direct complaints from prisoners that they were reluctant to seek care because of facility policies imposing unusually high co-pays.

While facilities may use co-pay and triage procedures to ensure that medical resources are expended wisely, the Jail's written procedures substantially depart from accepted practices, in that they impose unnecessarily high barriers to care for the indigent and those with chronic conditions. Such barriers can be counter-productive, especially for mentally ill prisoners. A mentally ill prisoner may have difficulty as it is trying to access medical services. When the prisoner must also navigate a problematic sick call process that imposes high costs and violates patient privacy, it becomes more likely the prisoner will not seek treatment at all. The prisoner may then become a security issue, and as his behavior deteriorates, staff resort to restraints or other highly restrictive approaches to try to manage the prisoner.[1]

7. The County will continue to ensure that all inmates with serious or potentially serious acute medical conditions receive necessary examination, diagnosis, monitoring, and treatment, including referrals to appropriate outside medical professionals when clinically indicated.

Rating: Partial Compliance.

See 1, 2, 5, and 6 above.

We note that the Jail may not be recognizing the number of prisoners who may be mentally ill. The Jail staff's mental health caseload basically consists of everyone already receiving psychotropics, but for many reasons, this is not an appropriate way to gauge the prisoners' actual needs. For example, if facility staff are not conducting effective health assessments, their screening process may not catch many individuals who do not self-report or openly exhibit mental health issues. Certainly, we are concerned that the percentage of Jail prisoners currently included on the mental health caseload, roughly 17% of the total population, is facially troubling. National rates of mental illness in jails typically run in the 25-35% range, which suggests that the County may be missing many sick prisoners.

8. The County will continue to implement appropriate clinical guidelines for the management of chronic diseases such as HIV, hypertension, diabetes, asthma, elevated lipids, and mental illnesses.

Rating: Partial compliance.

See 1, 2, 5, and 6 above.

The County provides chronic care for several major categories of illness, such as diabetes and seizure disorders. This is one area where the County has made significant improvements in care since our last tour. Current guidelines utilized by staff more closely match generally accepted standards than in the past. For prisoners with chronic conditions covered by these guidelines, the physician and nursing staff are generally providing treatment and monitoring the prisoners' conditions. As noted elsewhere in this letter, however, there is a notable lack of such treatment planning and follow-up for individuals with certain significant problems, such as

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1 Generally accepted standards require medical providers to take appropriate steps to protect the privacy of their patients. See e.g. Health Insurance Portability and Accountability Act of 1996, Pub.L. 104-191.

serious mental health conditions and multiple sclerosis. We should also note that some of the improvement appears to be a result of idiosyncratic Jail practices, such as the fact that the Jail physician has been putting in extra time to accommodate chronic care demands. That does not necessarily mean the Jail has a fully institutionalized system of chronic care. Additional demands on the physician or other staff (e.g. by requiring them to better supervise mentally ill prisoners) could easily affect the level of chronic care.

9. The County will continue to ensure that inmates with chronic illnesses, including mental illnesses, receive necessary examination, diagnosis, monitoring, and treatment. The County will provide and document routine tests and follow-up appointments.

Rating: Partial compliance.

See 1, 2, 5, 6, and 8 above.

10. The County will continue to provide appropriate special medical diets when medically required.

Rating: Compliance.

The County provides an adequate diet for prisoners, including those with special medical needs.

11. The County has contracted with a mental health care provider to provide all services for inmates' mental health treatment. The County will continue to ensure that the mental health care provider will continue to promptly perform a comprehensive mental health evaluation of any inmate whose history or responses to initial screening questions indicate a need for such an evaluation. The comprehensive mental health evaluation shall include, if indicated, a recorded diagnosis section conforming to generally accepted professional standards.

Rating: Non-compliance.

See 1, 2, 5, 6, and 8 above.

Mental health care at the Jail has actually declined since our last tour. In the 13 months that the medical provider has been in place, no inmate has seen a psychiatrist. Provisions for at least some psychiatrist care that reportedly existed in the past are no longer included in the current contract. We have some indication that the last administration may have actually erred in claiming that such care existed. In any case, at present, the Jail physician provides some mental health care, mostly through medication orders. However, psychiatric care is a specialty, and a jail cannot rely only on general medical practitioners to cover such a specialized need. The Jail physician either cannot, or does not, conduct mental status exams. Moreover, a review of medication orders revealed numerous problems with psychotropic medication use including: 1) dosages that are too low to be considered therapeutic, 2) changes to existing prescriptions without a sufficiently documented clinical foundation, 3) a lack of laboratory testing and monitoring of medications with serious side effects, and 4) a lack of mental health follow-up

after significant changes in patient condition, including for instance, erratic behavior requiring the use of restraints and other interventions.

12. The County will continue to provide appropriate mental health treatment to any inmate whose evaluation indicates a serious mental health condition that requires such treatment. Where possible, and where consistent with security concerns, the County will provide an appropriate confidential environment for psychological testing and counseling.

Rating: Non-compliance.

See 1, 2, 5, 6, 8, and 11 above.

13. The County will continue to provide sufficient on-site staffing by mental health care providers to ensure adequate mental health care. The County will ensure that the mental health prescribing practitioner is adequately trained and supervised by a psychiatrist.

Rating: Non-compliance.

See 1, 2, 5, 6, 8, and 11 above.

14. The County will continue to ensure that appropriate psychiatric evaluations are conducted any time psychotropic medications are prescribed or changed.

Rating: Non-compliance.

See 1, 2, 5, 6, 8, and 11 above.

15. The County will continue to ensure that an appropriate individual mental health treatment plan is prepared in a timely manner by a mental health care provider for each inmate requiring treatment for mental illness.

Rating: Non-compliance.

See 1, 2, 5, 6, 8, and 11 above.

16. The County will continue to maintain on site complete, confidential, and appropriately organized medical and mental health records for each inmate. The County will continue to ensure that such records include sufficient information (including symptoms, the results of physical evaluations, and medical staff progress notes) to ensure that health services staff have all relevant information available when treating inmates.

Rating: Partial Compliance.

While the County does maintain a medical record, critical missing elements prevent us from finding full compliance with the Agreement. Among other things, the records do not include treatment plans for prisoners with some chronic or mental health conditions. Such

omissions mean that the records lack sufficient information for health services staff to address prisoners' serious conditions.

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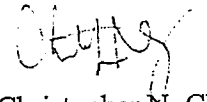
As we have previously agreed, we affirm that no person or entity is intended to be a third-party beneficiary of the provisions of the Agreement for purposes of any civil, criminal, or administrative action. Accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under the Agreement. The Agreement is not intended to impair or expand the right of any person or organization to seek relief against Grant County or its officials, employees, or agents for their conduct; accordingly, the Agreement does not alter legal standards governing any such claims, including those under Kentucky law.

I will be calling you shortly to discuss this matter further. Thank you for your continued cooperation. If you have any questions or concerns, please do not hesitate to contact me at 202-514-8892.

Sincerely,



Christopher N. Cheng
Attorney