

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----Y
DANIEL REYNOLDS, et al.,

Plaintiffs,

- against -

ALLYN SIELAFF, et al.,

Defendants.
-----Y

81 Civ. 101 (PNL)
~~AND CONSENT JUDGMENT~~
ORDER APPROVING
CLASS ACTION
SETTLEMENT

(F.R. Civ. P. 23(e))

WHEREAS the parties have entered into a Stipulation, which is attached hereto, settling this class action lawsuit concerning the provision of psychiatric care and conditions of confinement at the Bellevue and Elmhurst Hospital prison psychiatric wards; conditions of confinement at the Kings County Hospital prison psychiatric ward; fire safety on the prison medical and psychiatric wards at all three hospitals; and the shackling of outposted prisoners and services to be provided to them at Bellevue, Elmhurst and Kings County Hospitals, and they have agreed to the entry of a judgment by consent incorporating the terms of the Stipulation, subject to the Court's approval after notice to the plaintiff class; and the Court having entered on August 14, 1990, an Order providing notice to the plaintiff class of the proposed settlement; and notice to the class having been provided as set forth in the August 14, 1990 order; and the Court having conducted a hearing on September 27, 1990 concerning the proposed settlement in which the Court considered the comments of members of the plaintiff class with respect to the settlement; and the Court having found that the terms of the proposed settlement are fair and reasonable and adequately protect the legal rights of all members of the plaintiff class;

ADJUDGED and DECREED

IT IS HEREBY ORDERED that the Stipulation, attached hereto,
is approved and adopted as a Judgment of this Court.

651

UNITED STATES DISTRICT JUDGE

DATED: NEW YORK, NEW YORK

October 1, 1990

APPROVED FOR ENTRY:

For Plaintiffs:



PHILIP WEINSTEIN, Esq.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DANIEL REYNOLDS, CARLOS CRUZ,
TYRONE McGRAW, MADRICK WALLACE,
LINDA GRIER, individually and on behalf of
all other persons similarly situated,

Plaintiffs,

-against-

ALLYN SIELAFF, Commissioner of
the Department of Correction of the City of
New York; J. EMILIO CARILLO, M.D., President
of the Health and Hospitals Corporation of
the City of New York; ESTA ARMSTRONG,
Director of Prison Health for
the Health and Hospitals Corporation;
WOODROW MYERS, M.D., Commissioner of
the Department of Health of the City of New
York; BILLY JONES, M.D., Commissioner of
the Department of Mental Health, Mental
Retardation and Alcoholism Services of the
City of New York; MICHAEL PASTENA,
JAMES BIRD and LEE MAJOR, Deputy
Wardens in Command of the prison wards at
Bellevue, Elmhurst and Kings County
Hospitals, respectively; DANIEL
SCHWARTZ, M.D., HENRY WEINSTEIN,
M.D., and ARTHUR CRONIN, M.D.,
Directors of the prison wards at Kings
County, Bellevue and Elmhurst Hospitals,
respectively; ALAN CHANNING, JAMES
BUFORD and PETE VELEZ, Executive
Directors, Bellevue Hospital Center, Kings
County Hospital Center and Elmhurst
Hospital Center, respectively; MICHAEL
TANNENBAUM, Acting Assistant
Commissioner for Prison Health Services of
the Department of Health of the City of New
York; DAVID DINKINS, Mayor of the City
of New York; individually and in their
official capacities,

Defendants.

STIPULATION AND OR-
DER OF SETTLEMENT

81 Civ. 107 (PNL)

-----X
WHEREAS, this action was commenced on January 9, 1981,

by a class of all pre-trial detainees who were or would be confined in the medical and psychiatric wards operated by the New York City Department of Correction and the Health and Hospitals Corporation then located at Bellevue, Kings County and Elmhurst Hospitals and all prisoners who, while under DOC custody, were or would be placed on civilian medical wards at any of these three hospitals, seeking declaratory and injunctive relief to remedy alleged violations of plaintiffs' rights under the First, Sixth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution; and

WHEREAS, defendants filed their answer on June 10, 1981, denying the allegations in the complaint; and

WHEREAS, class certification was granted on consent by this Court on February 2, 1981; and

WHEREAS, the Court certified a class of (1) all pre-trial detainees who are or will be confined on the medical ward at Bellevue or the psychiatric wards at Bellevue, Kings County and Elmhurst Hospitals, and (2) all prisoners (detainees and sentenced misdemeanants) who are "outposted" on the civilian medical wards at these hospitals. Persons are confined on these wards pursuant to N.Y. Crim. Pro. Law § 730 (competency evaluation), N.Y. Crim. Pro. Law § 390.30 (sentencing evaluations) or N.Y. Corr. Law § 508 (emergency medical or psychiatric treatment); and

WHEREAS, the parties agree that for the purposes of this stipulation, the class shall include inmate/patients on the Bellevue and Kings County forensic medical wards for purposes of all structural

fire safety claims which were raised or could have been raised in connection with these wards; and

WHEREAS, plaintiffs filed a first amended complaint on September 7, 1983; and

WHEREAS, plaintiffs filed a second amended complaint on June 26, 1986, to add new allegations that defendants were deliberately indifferent to the serious psychiatric needs of class members housed and to be housed on the forensic psychiatric wards at Bellevue ("19 West") and Elmhurst ("D-11") Hospitals; and

WHEREAS, defendants filed an answer to the second amended complaint on December 14, 1988 denying the allegations in that complaint; and

WHEREAS, the parties have exchanged relevant documents and have engaged in substantial discovery; and

WHEREAS, the parties agree that the Court has jurisdiction over this action and the parties, and that the Court has the authority to order the relief set forth in this stipulation; and

WHEREAS, the parties, without conceding any infirmity in their claims or defenses, have agreed that the terms of this stipulation are appropriate; and

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

WHEREAS, nothing in this stipulation shall be construed as evidence that defendants maintained a policy or practice that was intended to result or, in fact, resulted in the deprivation of any rights, privileges or immunities of any member of the plaintiff class;

IT IS HEREBY STIPULATED AND AGREED by the parties, subject to approval and entry as an order by the Court after notice is given to the plaintiff class, as follows:

Census

1. Defendants shall limit the census on D11 and 19 West to 18 and 40 patients, respectively. The parties recognize, however, that on occasion there may arise the need to temporarily exceed the census on either or both of these wards because of unanticipated emergency circumstances. In the event the census exceeds the above-stated levels for more than 72 hours, defendants agree to notify plaintiffs' counsel, and the independent monitor during his/her tenure (see paragraphs 73 to 80, infra), as to the reason for such excess and their plans to return the census to the level required by this stipulation on an expedited basis.

Treatment Services

2. The hospital staff assigned to wards D11 and 19 West shall provide services to inmate/patients on those wards in conformity with the written policies and procedures of their respective hospitals, and of the New York City Health & Hospitals Corporation.

3. These treatment services shall include:

a. Each inmate/patient upon admission to D11 or 19 West shall be evaluated by a psychiatrist, who shall interview the

inmate/patient daily for the first five business days after admission and at least three times a week thereafter. Such interviews shall be conducted in a confidential setting, unless such a setting is clinically contraindicated or would pose a physical danger to the staff as documented in the inmate/patient's chart, in which case the presence of other hospital staff will be effected in a manner which minimizes the intrusion into the patient/psychiatrist relationship. The length of these interviews shall be determined by the treating professional in accordance with his/her medical judgment, but shall be maximized to increase the likelihood the patient will benefit from these interviews. In the event an inmate/patient is assessed to be at risk of suicide, including, but not limited to, those inmate/patients on suicide watch, he/she shall be interviewed by a psychiatrist at least daily. Where an inmate/patient is actually seen and interviewed by a psychiatrist during a team meeting (see paragraph "3.d.," infra), such contact shall count as a psychiatrist interview under this sub-paragraph.

b. Each inmate/patient on D11 and 19 West shall receive a full admission physical examination within 24 hours of his/her admission to the ward. Laboratory tests and x-rays shall be ordered, as appropriate, and the results shall be followed up in a timely and appropriate manner by the physician responsible for the inmate/patient's treatment. Appropriate medical consultations, including, but not limited to, nutritional assessments, shall be ordered by the treating physician, who shall ensure that such consultation occurs within a medically appropriate time frame and that

the consultant's recommendations for treatment are followed by the staff of D11 or 19 West.

c. Each inmate/patient on D11 and 19 West shall be seen and assessed by a member of the hospital's social service staff within five days following his/her admission. Thereafter, the member of the social service staff shall interview the inmate/patient at least once a week. Such weekly interview shall be in addition to any contact with the inmate/patient at the weekly treatment team meeting. The social service staff member shall collect psychosocial information, including relevant data from family members and significant others, law enforcement organizations and other components of the criminal justice system and other appropriate sources. Social service staff assigned to the wards shall also provide appropriate concrete and referral services to inmate/patients and significant others and group and individual therapy and counseling as appropriate. The length of such sessions shall be determined by the social service staff member assigned to the ward in accordance with his/her clinical judgment, but shall be maximized to increase the likelihood that the patient shall benefit from these meetings. The unit social service staff shall also be responsible to serve as the liaison with 1) the inmate/patient's defense attorney, when appropriate; and 2) DOC in cases where an inmate/patient is eligible for a supervised off-ward visit to a significant family event pursuant to DOC Directive 4012 (attached as Exhibit 1), or its successors. Such visits shall be permitted unless the inmate/patient's treating psychiatrist determines that such visit is

clinically contraindicated. Such a determination shall be documented in the inmate/patient's chart.

d. Treatment of inmate/patients on D11 and 19 West shall be provided by a treatment team comprised of a psychiatrist, psychologist, social worker, nurse and activity therapist, who shall meet together, with the inmate/patient when appropriate, to plan for treatment and assess its efficacy. Individualized treatment plans consistent with professional standards and tailored to each patient's needs shall be formulated and followed, and inmate/patients shall not be discharged unless the discharge is consistent with the treatment plan and is clinically appropriate. Treatment plans shall be based on physical, emotional, behavioral and social assessments which are consistently and thoroughly conducted for each patient. An Initial Treatment Plan shall be created within three business days following the patient's admission, and a Comprehensive Treatment Plan shall be formulated no later than ten days after admission. Thereafter, the treatment team shall meet at least weekly, with the inmate/patient where appropriate, to measure the patient's progress and modify the treatment plan when necessary. Each inmate/patient shall have a primary therapist with whom the inmate/patient shall meet one-on-one as frequently as medically appropriate, but no less than two times each week in a setting which affords a reasonable level of privacy. The length of these meetings shall be determined by the primary therapist in accordance with his/her clinical judgment, but shall be maximized to increase the likelihood that the patient shall benefit from these meetings.

e. Group therapies, as appropriate, shall be available to inmate/patients on D11 and 19 West for no less than six (6) hours per week. Such group sessions on both wards shall include a community meeting held at least once a week and substance abuse groups.

Recreation/Activity Therapy

4. HHC shall provide appropriate types of structured recreational/activity therapy on the three forensic psychiatric wards amounting to at least an average of four hours per day, seven days a week, which amount shall include on 19 West and the KCHC forensic psychiatric ward any outdoor recreational activities. In no event shall fewer than two hours of structured activities be provided on any given day. This amount shall be exclusive of time required for individual inmate/patient charting.

5. Defendants shall make available on 19 West and the KCHC forensic psychiatric ward a minimum of seven hours of outside recreation, weather permitting, each week. Access to such outside recreation shall be afforded at least four days a week. Defendants shall ensure that any replacement space for D11 includes outdoor recreational space, to which inmate/patients shall have access at least seven hours each week, weather permitting.

6. In addition to the structured activities referred to in paragraphs 4 and 5, supra, defendants shall make available on the three forensic psychiatric wards several forms of unstructured activities, including board games and cards, movies, television and radio, as appropriate, so that during hours when no structured

activities are scheduled, inmate/patients can avail themselves of such alternate activities.

7. Defendants shall maintain suitable indoor exercise equipment for the use by inmate/patients on the three forensic psychiatric wards and shall provide no less than one hour per day of exercise to inmate/patients. Inmate/patients on the KCHC forensic psychiatric ward shall be accorded at least one hour per day of exercise, either in the gymnasium or in the outdoor facility. Inmate/patients on 19 West shall be given access to the indoor exercise equipment maintained on the ward for at least 14 hours per week and no less than one hour per day. Inmate/patients on D11 shall have access to the indoor exercise equipment maintained on the ward for no less than one hour per day. In addition, HHC agrees to give access to the inmate/patients on D11 to either an exercise bicycle or an equivalent piece of equipment during the hours between 8:00 a.m. and 11:00 p.m. each day. Such access may be restricted during routine ward activities and meals, if the conduct of which would be disturbed by the use of such equipment. HHC agrees to maintain the indoor exercise equipment currently available to the three forensic psychiatric wards, including the following specific items: 19 West-- one universal gym, two rowing machines, one exercise bicycle, one tread mill, one sit-up bench; D11-- one rowing machine, one stereo cassette player, three exercise mats, one treadmill, one exercise bicycle, in good repair and shall repair or replace with equivalent equipment any item which breaks.

Staffing

8. Defendants agree to provide funding sufficient to maintain at least the following staff:

- 19 West -- 1 Unit Chief (psychiatrist)
- 4 FTE psychiatrists
- 2 FTE psychologists
- 2.5 FTE social workers
- 3 recreational therapists
- D11 -- 3 half-time psychiatrists, one of
whom serves as unit chief
- 1 FTE psychologist
- 1 FTE social worker
- 1.5 FTE recreational therapists
- 1 FTE psychiatric resident

For purposes of this agreement, FTE ("full time equivalent") for all clinical staff members, except psychiatrists and psychiatric residents, shall mean the provision of services on the ward for 35 hours per week. A full time psychiatrist line on 19 West means the provision of services on the ward for 30 hours per week. Each half time psychiatrist line on D11 represents the provision of services on the ward for 20 hours per week. A full-time psychiatric resident line on D11 means the provision of services on the ward for 25 hours per week.

9. HHC shall endeavor to keep all the positions identified in paragraph 8, supra, filled at all times. Vacancies shall be filled

expeditiously, and HHC shall temporarily replace absent staff on D11 and 19 West where possible.

10. Notwithstanding the provisions of paragraph 8, supra, HHC may raise the number of employees in one discipline and lower the number in another discipline. HHC shall ensure that any such change does not adversely affect the treatment services to be provided pursuant to paragraphs 2 through 7, supra. In the event HHC elects to make such a change, defendants shall first notify plaintiffs' counsel. HHC shall also notify the monitor if such staffing changes are contemplated during his/her tenure.

11. HHC shall make a good faith effort to fill expeditiously any vacant allocated lines on the nursing staffs of D11 and 19 West, including utilization of overtime and per diem nurses. Defendants agree to continue to allocate funds for the hiring of nursing staff at a level which meets 95% of the HANYS Standard for the average daily census at each ward.

12. At no time shall either D11 or 19 West be without a registered nurse physically present on the ward during all tours, seven days a week. At least one nursing professional shall be present in the patient areas on D11 at all times.

13. HHC shall endeavor to minimize the temporary reassignment of D11 or 19 West staff. Such staff shall not be temporarily reassigned to other wards unless such temporary reassignment is deemed essential to address an unanticipated, emergency situation on another ward. HHC shall not rely disproportionately on the temporary reassignment of D11 or 19 West

staff to handle such unanticipated emergency situations and shall make every effort to terminate D11 or 19 West staff's temporary reassignment as soon as possible. HHC shall notify plaintiffs' counsel, and the monitor during his/her tenure, whenever any D11 or 19 West staff has been reassigned pursuant to this paragraph for two consecutive days. Should the second consecutive day fall on a weekend or holiday, notice shall be provided on the next business day. Nothing in this paragraph shall allow HHC to provide treatment services in a quantity less than required by paragraphs 2 through 7, supra.

14. Notwithstanding the provisions of paragraph 13, supra, HHC reserves the right to temporarily reassign any psychiatrist on 19 West, the evaluating psychiatrists on D11, and social service staff and psychologists on both D11 and 19 West, should the daily census fall below 9 on D11 and 25 on 19 West. Should either hospital choose to exercise this right, HHC shall notify plaintiffs' counsel, and the monitor during his/her tenure, as to the amount and category of staff resources to be temporarily diverted and the justification for such diversion. Should the census return to 9 or 25 or above, diverted staff resources shall be returned to D11 or 19 West immediately. Nothing in this paragraph shall allow HHC to provide treatment services in a quantity less than required by paragraphs 2 through 7, supra. In no event shall any individual staff member be placed on another ward for more than three hours per day. Defendants may avail themselves of the provisions of this paragraph during the first two years following the entry of this

stipulation as an order of the Court. During this period, the monitor may evaluate the impact of this paragraph on the provision of the services required by paragraphs 2 and 3, supra. If the monitor determines that diversion of staff resources pursuant to this paragraph has resulted in a decrease in the treatment services required to be provided pursuant to paragraphs 2 and 3, supra counsel for plaintiffs may make an application to the Court to strike this paragraph from the agreement. If, however, the monitor does not find that the diversion of resources pursuant to this paragraph has resulted in a decrease in the treatment services required to be provided by this stipulation, defendants shall be relieved of their obligation to notify plaintiffs' counsel, and the monitor during his/her tenure, of their decisions to exercise their rights under this paragraph.

15. Each of the three forensic psychiatric wards shall have a unit chief who shall be responsible for ensuring that the following are performed and/or utilized in conformity with appropriate medical standards including, but not limited to hospital policy and procedure manuals, State and JCAHO standards and this agreement: adequate treatment to patients; timely and individualized admission work-ups and treatment planning; obtaining of charts of previous hospital admissions; the provision of medical services, including timely admission physicals, prompt laboratory work and follow-up of abnormal results, and appropriate consults with other services of the hospital when needed; assessment of suicidality and assaultiveness; timely and appropriate contacts with inmate/patients (and others,

when appropriate) by all disciplines; formulation of appropriate admission and discharge criteria; professionally and clinically appropriate use of seclusion and restraint; professional and clinically appropriate use of medication; and the documentation of all of these services and contacts as appropriate. In addition, this person shall be responsible for the proper performance and appropriate attendance by staff in all disciplines and shall assist the Chief of Psychiatry in the timely conduct of peer and quality assurance reviews. The unit chief shall also assist the Chief of Psychiatry to ensure that his/her ward has appropriate space, staff and supplies.

Separation of Treatment and Evaluation Services

16. HHC shall endeavor to ensure that psychiatrists on D11 and 19 West who conduct specific evaluations pursuant to New York Criminal Procedure Law § 730 shall not also be involved in the provision of treatment services to inmate/patients they evaluate. However, in an emergency, and during the annual and sick leave of the treating psychiatrists, any psychiatrist may provide treatment to any inmate/patient regardless of the psychiatrist's involvement in a "730 evaluation."

Physician's Orders

17. Orders written by physicians shall be followed as written and watches shall be conducted as ordered. Only physicians may modify such orders. HHC recognizes that one-to-one watches are at times clinically appropriate and should be ordered when indicated.

Seclusion & Restraint

18. The modalities of seclusion and restraint shall be utilized on the three forensic psychiatric wards in strict conformity with State law and the policies and procedures of the hospitals. These modalities shall not be used for ward management, punishment, or as a substitute for an appropriate watch. Medical staff shall carefully note in the inmate/patient's medical chart the specific reasons and justifications for orders for seclusion or restraint.

19. The unit chiefs on the three forensic psychiatric wards shall be responsible for reviewing each use of seclusion or restraint within 24 hours of the time the procedure was initiated, or, if the 24 hour period ends on a weekend or holiday, as soon as the unit chief returns to the ward. Such reviews are intended to ensure the procedure was ordered appropriately and that the chart reflects adequate justification for its use.

20. An inmate/patient in seclusion or restraint shall be observed every 15 minutes by mental health staff and the condition and behavior of the inmate/patient shall be noted in his/her chart. Inmate/patient in restraints shall have their limbs massaged and exercised every two hours and this shall be noted in the patient's chart.

21. Inmate/patients in seclusion or restraints shall be afforded access to a bathroom upon their request. Bed pans shall not be utilized as an alternative to such access, unless the inmate/patient is too agitated to be safely allowed such access, in which case use of the bed pan shall be noted in the inmate/patient's chart.

22. Medical and nursing staff assigned to D11 and 19 West shall receive appropriate training concerning the proper utilization of seclusion and restraint and annual, in-service re-training. Such training shall at a minimum address the requirements of New York State law set forth at 14 N.Y.C.R.R. 27.7.

23. Any person in seclusion on D11 for 12 continuous hours shall be personally examined, and the need for continued seclusion evaluated, by an attending physician. Any person in seclusion for 24 continuous hours shall be personally examined, and the need for continued seclusion evaluated, by the unit chief.

24. Any person in restraints on D11 for six continuous hours shall be personally examined, and the need for continued restraint evaluated, by an attending physician. Any person in restraints for 12 hours shall be personally examined, and the need for continued restraint evaluated, by the unit chief.

25. In the event the time periods set out in paragraphs 23 and 24, supra, relating to the requirement of a personal examination by the unit chief end during non-business hours or at a time when the unit chief is not scheduled to be on the ward, an appropriate attending physician shall examine the inmate/patient and evaluate the need for continued seclusion or restraint. The unit chief shall personally examine the inmate/patient, and evaluate the need for continued seclusion or restraint, at the beginning of his/her next day on the ward.

26. The obligations set forth in paragraphs 23-25, supra, shall cease after two years from the date of entry of this stipulation as an order of the court.

Use of Psychotropic, Tranquillizing and Sedating Medication

27. Medication shall not be administered or threatened as a means for exercising ward management. Medication over objection on the three forensic psychiatric wards shall be administered only pursuant to court order, see Rivers v. Katz, 67 N.Y.2d 485 (1986) (also see 14 N.Y.C.R.R. 527.8), or in emergencies as defined by State law, specifically 14 N.Y.C.R.R. 527.8(c)(1).

28. P.R.N. orders for psychotropic, tranquillizing or sedating medication shall be written only when medically appropriate, and the writing of such orders shall be monitored carefully by the unit chiefs on D11 and 19 West on a frequent and regular basis, but not less than weekly, to ensure that they are written appropriately. No psychotropic, tranquillizing or sedating medication orders shall be written "p.o., but if refuse, i.m."

29. Before administering psychotropic, tranquillizing or sedating medication pursuant to a PRN-IM order to a non-objecting inmate/patient on D11 or 19 West, nursing staff must make its best efforts to have the inmate/patient first assessed by the inmate/patient's psychiatrist or another psychiatrist responsible for providing services to D11 or 19 West. This psychiatrist shall interview the inmate/patient, assess the need for the medication and document this information in the inmate/patient's chart. In the event that a psychiatrist is not available within a reasonable time under the

circumstances of the situation to interview and assess the inmate/patient's need for the medication, nursing staff may administer the PRN-IM medication and must document the following information in the inmate/patient's chart:

- a. the specific evidence establishing the need for the PRN medication;
- b. a description of the inmate/patient's behavior;
- c. an account of alternative modalities explored prior to the administration of the medication;
- d. the inmate/patient's consent, including his/her signature, if the inmate/patient can provide it, and a notation that the inmate/patient was made aware of his/her right to object to the medication; and
- e. a description of all efforts made to secure the presence of a psychiatrist, including an explanation of why a psychiatrist was determined to be unavailable to come to the ward within a reasonable time.

30. No medication shall be administered to an inmate/patient on D11 or 19 West pursuant to a standing or PRN order over the inmate/patient's objection unless (1) the conditions in paragraph 27, supra, are met; and (2) nursing staff has first made its best efforts to have the inmate/patient seen by the patient's psychiatrist or, in his/her absence, a psychiatrist responsible for providing services to D11 or 19 West to determine that such administration is clinically appropriate. In the event that a psychiatrist is not available within a reasonable time under the

circumstances of the situation to assess the inmate/patient and his/her need for medication over objection, nursing staff may administer the medication and must document the following information in the inmate/patient's chart:

a. the specific evidence establishing the need for the medication, including a statement indicating that the medication is being administered over objection because of an emergency, as defined in 14 NYCRR §527.8;

b. a description of the inmate/patient's behavior, including a detailed explanation of any dangerous condition justifying medication over objection;

c. an account of alternative modalities explored prior to the administration of the medication; and

d. a description of all efforts made to secure the presence of a psychiatrist, including an explanation of why a psychiatrist was determined to be unavailable to come to the ward within a reasonable time.

31. Each administration on D11 and 19 West of psychotropic, tranquilizing or sedating medication pursuant to a PRN-IM order where a psychiatrist did not interview and assess the patient immediately prior to the administration shall be reviewed during the next business day by each hospital's Director of Psychiatry or his/her designee to ensure that such administration was appropriate. Such review may include, should the reviewer believe them to be necessary, interviews with the involved staff and patients. The determination of appropriateness shall be documented in the

patient's chart. This review shall continue during the monitoring period set out in paragraphs 73, 83 and 127, infra. During the monitoring period, plaintiffs' counsel shall be provided monthly with copies of the chart notes reflecting each occasion when medication is administered pursuant to PRN-IM orders as well as any review of such administrations. The parties agree that plaintiffs' counsel shall be permitted to depose members of the plaintiff class at the hospitals to preserve testimony alleging violations of paragraphs 29 and 30, supra, during the monitoring period. After the end of the first year from the date of the entry of this stipulation as an order of the Court, plaintiffs may request, at any time during the remainder of the monitoring period, that the Court conduct a hearing concerning defendants' compliance with the terms of paragraphs 29 and 30, supra. If such a hearing is ordered to be held, the Court shall allow the parties to conduct reasonable discovery limited to the issues to be decided at the hearing. Should plaintiffs prove that, on either D11 or 19 West defendants have engaged in a pattern of abusive administration of medication pursuant to PRN-IM orders, the parties agree to the entry of an order modifying this stipulation to prohibit the writing of PRN-IM orders for a period of seven and a half years from the entry of the Court's modification order. Such modification shall apply only to the ward concerning which the Court has found a pattern of abuse. Should the monitoring period end without such a modification being ordered, nursing staff shall continue to comply with the substantive requirements of paragraphs 29 and 30, supra and be required to write a professionally appropriate note, reflecting

the inmate/patient's behavior, his/her need for the medication and the nurse's best efforts to secure the presence of a psychiatrist prior to the administration of the medication each time medication is administered as set forth in paragraphs 29 and 30, supra, but nursing staff shall be relieved of the additional specific charting obligations set forth in those paragraphs.

Charting

32. HHC shall ensure that all medical staff record significant contacts with an inmate/patient housed on D11 or 19 West in his/her medical chart, in accordance with professional standards and the written policies and procedures of the hospitals. These chart entries must include, but need not be limited to, the following:

a. Psychiatrists shall prepare a unit admission note and thereafter shall record each of their daily contacts with an inmate/patient during the first five business days after admission, and each of the thrice weekly contacts thereafter described in paragraph 3.a., supra. Such documentation must address at a minimum the inmate/patient's mental status, response to treatment plan and any unresolved medical problems. A descriptive entry in the treatment plan, where the inmate/patient was seen by the team at its meeting, may, for the purposes of this agreement, constitute one of the three weekly chart notes. In addition, psychiatrists shall chart each daily contact made with an inmate/patient who has been assessed as a suicide risk.

b. Unit social service staff shall record their weekly contact with each inmate/patient.

c. Should an inmate/patient's primary therapist be a clinical staff member other than a psychiatrist, that person shall record each treatment contact with the inmate/patient in the patient chart.

d. Nursing staff shall be responsible for at least one note per tour for the first 72 hours after admission and thereafter at least one note in each inmate/patient's chart each day.

e. HHC shall endeavor to ensure that all notes made in patient's charts on D11 and 19 West are legible.

33. As set forth in paragraphs 18, 28 and 30, supra, all uses of seclusion or restraint and administrations of medication over objection shall be noted in the inmate/patient's chart in a manner which provides a clear description of the reasons and justifications for the use of such modalities.

34. HHC shall also maintain the following records on D11 and 19 West:

a. Logs reflecting inmate/patient attendance at treatment groups referred to in paragraph 3.e., supra.

b. Logs reflecting inmate/patient attendance at recreation/activity therapy groups referred to in paragraphs 4 and 5, supra.

c. Logs required to be maintained by State law.

d. Logs showing the names of inmate/patients secluded and/or restrained and the date on which such modalities were utilized.

35. The obligation to maintain the logs described in paragraph 34(a), (b) and (d), supra, shall cease at the end of the

fifth year following the entry of this stipulation as an order of the Court unless the monitoring period set forth in paragraphs 73-84, infra, is extended by the Court pursuant to paragraph 127, infra. In that event, HHC's obligation to maintain these logs shall continue until the end of the monitoring period ordered by the Court.

Quality Assurance

36. HHC shall ensure that there is in place adequate quality assurance programs at Elmhurst, Kings County and Bellevue Hospitals to regularly and periodically each year review the adequacy of medical and psychiatric care, including charting, and other aspects of care referred to in this stipulation on the three forensic psychiatric wards.

Physical Environment

37. Each inmate/patient on D11 and 19 West shall be provided with lockable storage space in which his/her personal belongings may be kept. Each inmate/patient shall have unmediated access to his/her locked storage space unless such access is clinically contraindicated and the basis of such contraindication is noted in the inmate/patient's chart. Where patients require assistance in obtaining access to their property, such assistance shall be provided by clinical staff. Should defendants choose to replace the current storage space for inmate/patients at the KCHC forensic psychiatric ward, such replacement space shall be lockable.

38. HHC shall furnish the three forensic psychiatric wards in a manner appropriate for acute in-patient psychiatric wards and shall endeavor to maintain appropriate climate control.

39. HHC shall maintain the three forensic psychiatric wards in a state of cleanliness and hygiene that meets appropriate standards for hospitals, including the control of rodents, insects and other vermin.

Lock-in and Lock-out

40. Inmate/patients on D11 and 19 West shall not be locked in their rooms for any reason at any time, except as provided in paragraph 42, infra. Should a physician order that an inmate/patient be placed in his/her room with a direction not to come out at any time other than during the eight hour sleeping period each night, the medical staff must comply with the requirements for the utilization and charting of seclusion, as set forth in State law and this agreement. The practice of lock-in/feed-in status on 19 West shall be prohibited. Inmate/patients on 19 West may be temporarily removed to the holding cells adjacent to the ward only upon a physician's order and shall be provided with a one-to-one watch by nursing staff during the time they are in the cell. Such removal pursuant to a doctor's order shall be treated as a use of seclusion and shall be entered in the inmate/patient's chart as such, and shall be recorded on the log required to be maintained pursuant to paragraph 34.d., supra. The notation on the log shall indicate the use of the holding cell for the purposes of seclusion.

41. Inmate/patients on the KCHC forensic psychiatric ward shall not be denied access to their dormitory areas during lock-out unless a clinician orders lockout for a specific inmate/patient. Night

lock-in on the KCHC forensic psychiatric ward may not exceed eight hours.

42. DOC maintains the right to lock inmate/patients in their rooms or dormitory areas in emergencies as set forth in DOC Directive 4009 (attached as Exhibit 2), or its successors.

Role of Correction Staff

43. The role of DOC staff on D11 and 19 West shall be limited to maintaining security. All clinical and programatic functions, including but not limited to the administration of medication, the confinement of an inmate/patient to a room, the distribution of pencils, paper, clothing, and other supplies, and restraining violent or agitated inmate/patients, shall be the responsibility of hospital staff. To that end, HHC shall ensure that sufficient hospital staff is available to:

- a. respond to violent actions by inmate/patients;
- b. restrain such inmate/patients;
- c. place such inmate/patients in restraints or seclusion; and
- d. assist in the administration of medication over objection.

44. Correction Officers shall not be utilized to escort patients to and from activities within the confines of 19 West and D11 proper.

45. Where the available hospital staff cannot maintain the safety or security of the ward, correction staff shall be permitted in an emergency to physically intervene in situations where immediate

action is required to prevent injury to persons or serious damage to property.

46. Correction officers assigned to posts on the D11 ward proper shall not be stationed at or near the nurses' station. The purpose of this requirement is to avoid, as much as possible, the concentration of nursing and correction personnel in one location on the unit.

47. All correction staff receiving assignments to the three forensic psychiatric wards shall receive mental health training from DOC within 90 days of their assignment, if they have not already received such training. Upon their assignment to one of the three forensic psychiatric wards, correction officers shall receive an orientation concerning their role pursuant to this agreement. HHC shall provide periodic training to correction officers assigned to the three wards in order to reinforce the information provided at orientation.

48. No correction officer shall be assigned to any of the three forensic psychiatric wards without having been personally interviewed by the commanding officer of the hospital ward to which the officer is to be assigned. No correction officer shall be assigned to any of the three wards 1) who has charges pending alleging unnecessary or excessive use of force or failure to report use of force or failure to accurately report use of force; or 2) who, within the three years prior to the officer's proposed assignment, has been referred for retraining pursuant to Directive 5003, or its successors, or has been found guilty of departmental charges of unnecessary or

excessive use of force or failure to report use of force or failure to accurately report use of force.

Inmate/Patient's Property

49. Inmate/patients on each of the three forensic psychiatric wards shall be permitted to store a reasonable amount of personal property as determined by the space available on the prison wards for such storage. The types of personal property inmate/patients shall have access to shall be the same as that permitted to patients on the civilian psychiatric wards at each hospital, but limited by any restrictions in DOC Operations Order 81/88 (attached as Exhibit 3).

50. Inmate/patients on all three forensic psychiatric wards shall be allowed to keep in their personal possession, unless clinically contraindicated, personal hygiene items in accordance with 14 N.Y.C.R.R. §15.2(a). Any such clinical contraindication must be documented in the patient chart by the primary therapist. Such personal hygiene items shall not include razors, nail files, scissors or other sharp instruments. Any items not allowed to be retained by inmate/patients shall be provided by nursing staff. No razor blade shall be utilized by more than one individual.

51. Inmate/patients on D11 shall receive up to three sanitary napkins at a time upon request unless clinically contraindicated as documented in the inmate/patient's chart. Inmate/patients on all three forensic psychiatric wards shall have unmediated access to toilet paper in the bathroom.

52. Inmate/patients on all three forensic psychiatric wards shall be allowed to retain their personal clothing and shall be allowed to wear such clothing at all times, unless clinically contraindicated. HHC shall make provisions on the three wards so that inmate/patients' clothes can be regularly laundered and shall ensure that inmate/patients are permitted to take showers on a daily basis. Should wearing of non-hospital clothing be clinically contraindicated, the treating physician must specifically note such prohibition and the reason for it in the inmate/patient's chart. Inmate/patients shall not be required to change into hospital clothing upon admission to the wards. Defendants shall supply indigent inmate/patients with a reasonable amount of clean civilian clothing upon request.

53. HHC shall maintain an adequate supply of underwear, pajamas, slippers, linens, blankets, pillows, towels and soap for the use of inmate/patients on the wards in accordance with hospital policy and practice.

Ward Rules

54. HHC shall post a clear list of applicable hospital rules and regulations, including but not limited to the right to refuse medication, the right to wear civilian clothes, the visiting policy, and the smoking policy, in a prominent, accessible location on all three forensic wards. In addition, DOC shall maintain a copy of the rule book given to members of the plaintiff class upon their entrance into the jail system, and of the Board of Correction Minimum Standards, in each law library which services each of the three forensic psychiatric wards. A notice shall be prominently displayed on each forensic

psychiatric ward advising members of the plaintiff class that a federal court order governs certain conditions and practices on the ward including: access to psychiatrists and other professional staff, the right to refuse medication, appropriate use of seclusion and restraint, the role of correction staff, the right to wear civilian clothing, activities, including recreation, visits and the possession of personal property. Such notice shall further advise members of the plaintiff class that a copy of this stipulation, as ordered by the Court, is maintained in each ward law library for reference purposes and that questions concerning this stipulation may be directed to plaintiffs' counsel at the Prisoners' Rights Project of the Legal Aid Society.

55. Inmate/patients on D11 and 19 West shall not be prohibited from talking in normal voices at meals.

56. Inmate/patients on D11 and 19 West will not be required to have their fingernails trimmed upon admission to the wards. Defendants retain the right, however, to cut the fingernails of any inmate/patient where such action is necessary for medical reasons as determined and documented by a physician or to prevent a repetition of seriously injurious conduct.

57. Cigarettes shall be made available to inmate/patients on the three forensic psychiatric wards unless medically contraindicated or prohibited by hospital-wide rules.

Inmate/Patient Grievances

58. HHC shall make known to each inmate/patient upon admission to any of the three forensic psychiatric wards the existence and purpose of the hospital's patient advocate responsible for the

forensic psychiatric ward. A procedure shall be maintained so that inmate/patients can confidentially submit any complaint or allegation of physical or verbal abuse by hospital staff to such patient advocate, who shall investigate such complaint or allegation with a view to resolving it. Should the inmate/patient be dissatisfied with the proposed resolution, he/she may notify the hospital's Executive Director, or his/her designee, of his/her dissatisfaction. The Executive Director or his/her designee shall conduct whatever investigation he/she deems necessary; his/her determination is final. HHC shall make available to plaintiffs' counsel for inspection copies of any grievances filed by inmate/patients and the resolutions of such grievances during the monitoring period set forth in paragraphs 73-84 of this stipulation.

59. a. DOC shall establish and maintain Inmate Grievance Procedures at each of the three hospitals which have been approved by the New York City Board of Correction.

b. All allegations of excessive use of force by DOC staff shall be handled in accordance with DOC Directive No. 5004, or its successors. In addition, all use of force incidents occurring on the Bellevue Hospital Prison Ward that are not initially chosen for an IAD investigation shall be reviewed by a Captain assigned to the Incident Review Team and then by the attorney assigned to the Incident Review Team to determine if an IAD investigation is required.

c. DOC shall ensure that each use of force is thoroughly documented. In addition, the supervising officer

reviewing use of force reports shall make recommendations, where appropriate, to the correction officer[s] involved as to how the incident might have been prevented and/or how the level of force might have been minimized.

d. Any correction officer who is found guilty of or pleaded guilty or no contest to unnecessary or excessive use of force, failure to report use of force, or failure to accurately report use of force shall be transferred forthwith from the hospital wards.

Transfer of Funds, Personal Property and Commissary

60. Inmate/patients admitted to any of the three forensic psychiatric wards whose stay in the hospital lasts, or is anticipated to last, more than one week may request that DOC staff transfer their funds from the sending facility to the hospital or the DOC facility responsible for providing commissary to the prison ward and transfer their personal property from the sending facility to the hospital. Inmate/patients may make such requests of hospital staff who shall promptly convey the request to DOC staff. Inmate/patients may be required to sign a form requesting such transfer. DOC will endeavor to transfer such funds and personal property within one (1) business day of such request. Visitors shall be permitted to deposit funds in inmate/patients' accounts.

61. Inmate/patients who have funds in their hospital accounts shall be given access to the commissary available for each hospital prison ward.

62. At no time shall the personal property transferred to, and received from visitors at, the three forensic psychiatric wards

exceed the limits outlined in the existing institutional orders at each prison ward. A summary of the procedures governing the transfer of property and funds and receipt of packages shall be posted in the dayrooms at each of the three forensic psychiatric wards.

Law Library Access

63. DOC shall maintain a mini-law library at each of the three forensic psychiatric wards. These libraries shall be maintained and equipped, and inmate/patients shall be afforded access to such libraries, in accordance with Institutional Orders currently in place at the hospital prison wards. These orders are attached as Exhibits 4(a), 4(b), and 4(c).

64. The Code of Conduct governing use of the law libraries, the law library schedule, and a list of the books and equipment available with a brief description of those books and notice that additional materials and assistance may be requested from other DOC law libraries shall be posted continuously in the dayroom area on the three forensic psychiatric wards and, on 19 West, in the law library.

Newspapers, Magazines, Books and Writing Supplies

65. Defendants shall make available a reasonable quantity of magazines and books and English and Spanish newspapers on a daily basis to the inmate/patients on the three forensic psychiatric wards. Inmate/patients shall be provided with writing paper, envelopes and writing instruments upon request, unless clinically contraindicated as documented in the inmate/patient's chart.

Packages

66. Inmate/patients on the prison psychiatric wards shall be permitted to receive packages in accordance with DOC Operations Order No. 81/88.

Religious Services

67. Defendants shall ensure that religious needs of inmate/patients on the prison psychiatric are appropriately met by communal services as available and individual counselling.

Telephone Calls

68. Inmate/patients on the three forensic psychiatric wards shall be permitted to make and receive telephone calls in accordance with DOC Directive 4007 (attached as Exhibit 5), or its successors.

69. Access to the telephones shall be permitted during the day and evening, subject to reasonable limitations to allow for routine ward activities such as meals, medication and count, provided, however, that such access does not constitute a threat to the safety or security of the prison ward.

70. Telephone messages from family or friends of an emergency nature will be conveyed as soon as possible by HHC staff to the inmate/patient, unless his/her psychiatric condition as assessed without delay by a mental health professional warrants delay. However, in no event will the inmate/patient be denied knowledge of such a phone call. Inmate/patients shall be notified of a telephone call from an attorney as soon as possible and shall be permitted to return such calls on the same day except, however, where the attorney phone call is received after 11:00 p.m., in which event the

inmate/patient shall be permitted to return such call the following day.

Visits

71. Inmate/patients on the three forensic psychiatric wards will be permitted visits in accordance with the current DOC visiting policy, as limited by the visiting policy of each hospital. Children younger than the age set by hospital visiting policy shall be permitted to visit unless, after appropriate consultation with the inmate/patient's primary therapist, such a visit is determined to be clinically contraindicated. Notice of the visiting rules, including the provision concerning young children, shall be posted in the dayroom and the visit area.

72. Attorney visiting at Bellevue Hospital shall be conducted at all times in a confidential setting. At Elmhurst and Kings County Hospitals, attorney visits shall be conducted in as confidential a setting as can be arranged.

Monitoring

73. In order to monitor compliance with the foregoing paragraphs of this agreement the parties agree to select within thirty days of entry of this stipulation as an order of the court an impartial, independent forensic mental health professional ("the monitor") who shall be responsible for monitoring compliance with the terms set forth in the foregoing paragraphs of this agreement and to review the provision of treatment to inmate/patients on 19 West and D11 during the first three years following the entry of this stipulation as an order of the Court. If the parties cannot, within

thirty days, agree on the selection of a monitor, each side shall submit up to three names to the Court which shall then choose the monitor from among those submitted.

74. The parties anticipate that the monitor may perform his/her function by conducting periodic site visits accompanied by the counsel for the parties on D11 and 19 West and/or auditing documents concerning inmate/patients and procedures on D11 and 19 West.

75. Defendants shall allow the monitor free access to the premises and the records of D11 and 19 West for inspection and/or audit purposes. During the first two years following entry of this stipulation as an order of the Court, these audits or site visits on D11 and 19 West shall not exceed a total of five for each ward, no more than two of which may be unannounced site visits. Each site visit shall be limited to no more than two days on each ward. Upon notice to the parties by the monitor based upon articulated need, the monitor may conduct up to 2 additional site visits on D11 and 19 West of no more than one day on each. During the third year following entry of this stipulation as an order of the Court, the monitor may conduct up to two scheduled site visits and/or audits on D11 and 19 West, with each site visit lasting no more than two days on each ward. In addition, upon notice to the parties by the monitor, based upon articulated need, the monitor may conduct one additional site visit to D11 and 19 West of no more than one day on each.

76. On each of the monitor's visits to D11 and 19 West, defendants shall provide him/her with a private setting in which the monitor can meet alone with members of the plaintiff class; and shall

allow the monitor to have confidential discussions with the members of each discipline assigned to the wards, as well as with relevant hospital administrators. The monitor shall also be allowed to observe treatment and activity groups. Counsel shall not be present during any of the monitor's activities conducted pursuant to this paragraph.

77. The monitor shall receive, at his/her request, copies of any record maintained or prepared on D11 or 19 West, including but not limited to: inmate/patient charts; logs reflecting attendance at group activities and group therapies; logs reflecting use of seclusion and restraint; and logs and reports maintained by DOC and HHC on these wards. In addition, the monitor shall receive, at his/her request, copies of any quality assurance reports or minutes, or reports of other monitoring agencies relevant to D11 or 19 West.

78. Subsequent to each audit and/or visit, the monitor may prepare a report detailing his/her findings and conclusions. If such report is prepared, copies shall be provided to plaintiffs' and defendants' counsel, who shall have the opportunity to comment on and/or seek modifications to the report. Subsequent to the receipt of any comments and/or proposed modifications, the monitor shall issue a final report, to be provided to counsel for plaintiffs and defendants.

79. Plaintiffs' counsel shall be entitled to receive, at their request, copies of defendants' documentation reviewed by the monitor in connection with any of his/her audits or site visits. Such documentation shall be made available within ten working days after the monitor's receipt of such documentation or the conclusion of the monitor's site visit.

80. At the end of the third year following the entry of this stipulation as an order of the Court, the monitor shall be relieved of any further obligations under this agreement unless the Court, pursuant to paragraph 127, infra, orders an extension of the monitor's term.

81. Defendants shall pay the compensation and expenses incurred by the monitor in pursuit of his/her responsibilities under this agreement. Defendants shall take all steps necessary to secure approval of the relevant agreements so that such compensation and expenses can be paid to the monitor in a timely manner.

82. During the three years during which the monitor performs his/her duties, plaintiffs' counsel shall be allowed to conduct a total of four site visits on each of the three forensic psychiatric wards, of no longer than one day on each ward, at which time they may review any of the types of documentation made available to the monitor in paragraph 77, supra.

83. During the two years following the conclusion of the monitor's duties under this agreement, plaintiffs' counsel shall be entitled to conduct up to four scheduled site visits on each of the three forensic psychiatric wards, of no longer than one day at each ward, at which time they may review any of the types of documentation made available to the monitor in paragraph 77 of this stipulation.

84. Plaintiffs' counsel shall be permitted at any time during the life of this agreement to confer confidentially with any individual member of the plaintiff class during attorney visit hours.

Should plaintiffs' counsel wish to confer confidentially with more than one member of the class simultaneously such consultation shall be permitted during attorney visit hours, subject to defendants' right to schedule such consultations to accord with the operational and security needs of the wards. In addition, during the periods described in paragraphs 73 and 83, supra, plaintiffs' counsel may obtain copies of a reasonable number of patient charts and observe the provision of treatment services and activities on D11 and 19 West, with the limitation that they may not observe individual or group therapy sessions or treatment team meetings at which an inmate/patient is present, unless that inmate/patient gives his/her permission.

Outposted Inmate/Patients

85. Defendants shall utilize mechanical security restraints on inmates receiving medical care on civilian hospital wards ("outposted inmates"), as set forth below, in accordance with DOC Directive 4202, dated August 1, 1990 (attached as Exhibit 6; see paragraph 134, infra). Defendants' responsibilities with respect to implementation of subparagraphs (a) to (h) of this paragraph shall be governed by this directive.

a. DOC will not place mechanical restraints on an outposted inmate where a doctor determines that the inmate: (1) is pregnant and is admitted for delivery of the baby; (2) is dependent on a ventilator or respirator; (3) is in imminent danger or expectation of death; or (4) where the use of mechanical restraints is medically contraindicated. Inmates in these categories will not be shackled when

in bed, or when out of bed to ambulate, unless the inmate while at the hospital has attempted to escape or has engaged in violent behavior which presents a danger of injury.

b. For all other inmates, DOC will not routinely use mechanical restraints but will decide whether to use mechanical restraints on a case-by-case basis, following a review of the inmate's medical condition and security status.

c. For all outposts, a physician responsible for the inmate's medical care is required to inform DOC in writing of the inmate's medical condition on admission and each day. This information will include whether, in the physician's opinion, the inmate falls into one of the four categories listed in paragraph 85.a., supra, or whether the inmate is so weak from his/her illness that he/she cannot walk without assistance, or whether the inmate should not be put in mechanical restraints when he/she ambulates. This information will be reviewed daily by the commanding officer or his designee at each hospital prison ward.

d. Based upon the information provided by the medical staff, and upon the nature of the charges pending against the inmate and his or her criminal and institutional history, DOC will decide on an individual, case-by-case basis whether to put mechanical restraints on an outposted inmate when the inmate does not fall into one of the four categories listed in paragraph 85.a., supra. Among the factors DOC will consider are whether an inmate can ambulate without assistance, the seriousness of the inmate's charges (felony or misdemeanor), the nature of the charge (violent or non-violent), bail

or remand status, infraction history, time remaining to be served on a sentence, parole status, and prior criminal history. With respect to parole violators, DOC shall make best efforts to obtain information concerning the circumstances of the parole violation and the underlying charge. DOC will ensure that a system is in place to routinely provide records and documents necessary to make these determinations. Pending receipt of this information, inmates who are not identified by the medical staff as falling into one of the four categories listed in paragraph 85.a., supra, may be placed in mechanical restraints. In making the decision whether to use mechanical restraints, DOC may also consider the presence of other patients in the room, the proximity of the room to exits and other means of egress and the accessibility to the public.

e. DOC may apply mechanical restraints to an inmate when he/she leaves his/her bed, unless the inmate falls into one of the four categories listed in paragraph 85.a., supra.

f. The ultimate decision to apply mechanical restraints will be made by DOC's Office of Operations.

g. If the medical condition or security status of an outposted inmate should change, DOC may remove mechanical restraints from an inmate who has not been restrained or may apply mechanical restraints to an inmate who had not been previously restrained. In addition, in those cases where an inmate has not been restrained but suddenly evidences behavior or becomes the subject of information which indicates a requirement for such restraints, the

officer guarding the inmate may place mechanical restraints on the inmate pending review by DOC supervisors.

h. A record shall be maintained of the Office of Operations' approval to place mechanical restraints on an outposted inmate. Such record shall include the reasons for the approval, the time and date of the approval, the name of the person giving the approval, and the inmate's name, book and case number and medical status.

86. The provisions of paragraphs 88 to 97, infra, shall apply only to inmates hospitalized at hospitals at which there is a permanent prison ward. Plaintiffs' and defendants' counsel shall prepare a one page notice to be provided by DOC to all outposted inmates by the next business day following their outposting which will advise them of the provisions of this stipulation set forth in paragraphs 85, supra, and 88 to 97, infra.

87. During the first two years after entry of this stipulation as an order of the Court defendants shall provide plaintiffs' counsel, on a bi-monthly basis, with copies of the DOC logs maintained at each prison ward setting forth the name, book and case number, criminal charge, medical condition, mechanical restraint status and reason for mechanical restraint status. During the third through fifth year after entry of this stipulation as an order of the Court defendants shall provide plaintiff's counsel with copies of such logs on a quarterly basis.

88. DOC shall allow all outposted inmates access to toilets immediately upon request unless the inmate's physician has ordered

that bed pans be used instead, in which case an order to that effect must be noted in the inmate's medical chart.

89. No outposted inmate shall remain in mechanical restraints while in a shower. Nothing in this paragraph shall restrict DOC's right to utilize mechanical restraints on an inmate/patient while in a shower where such inmate/patient has been classified "maximum security" pursuant to due process procedures promulgated by DOC in connection with the designation of certain inmates as maximum security.

90. Outposted inmates shall be provided telephone privileges, including the making of long distance collect calls, in accordance with DOC Directive 4007 and its successors; provided, however, such privileges need not be provided to inmates outposted in areas of a hospital in which civilian patients are not permitted access to telephones because of the severity of their illness, such as ICUs and CCUs. Should an inmate be outposted to such a location, a member of the hospital's social service staff shall make best efforts to notify the inmate's family.

91. Correction officers responsible for maintaining security over an outposted inmate shall allow the inmate reasonable privacy during the inmate's telephone calls.

92. Messages from attorneys or from families and others shall be taken by DOC or HHC employees and shall be conveyed to the outposted inmate as soon as possible. The outposted inmate shall be allowed to return the call as soon as possible.

93. Outposted inmates shall be advised as soon as possible after the commencement of the outpost that they may have access to

the mini-law library maintained on the prison ward. DOC shall provide materials from these law libraries to the outposted inmates within 24 hours of a request for these materials.

94. Outposted inmates shall be permitted to receive and mail letters daily. In addition, outposted inmates shall be provided with writing paper, envelopes and writing instruments upon request.

95. HHC shall provide outposted inmates with access to daily newspapers seven days a week and magazines and other reading materials on a daily basis.

96. Outposted inmates shall have the same commissary privileges as the inmate/patients on the respective prison psychiatric wards. See paragraphs 60 and 61, supra.

97. Members of the hospital's social service staff shall visit each outposted inmate at least once per week to provide assistance in contacting family members and defense attorneys, and to ensure that the outposted inmates are receiving the services to which they are entitled pursuant to paragraphs 88 to 97 of this agreement. Members of the hospital's social service staff shall direct an outposted inmate who has any questions concerning DOC's mechanical restraint policy to the appropriate DOC supervisor or to the inmate's treating physician.

FIRE SAFETY

98. Polyurethane foam mattresses with flame retardant ticking shall be used on all three forensic psychiatric wards and on the prison medical wards at Bellevue and KCHC.

ELMHURST HOSPITAL

99. The lobby into which the back stairway at D11 discharges will be sprinklered as part of Elmhurst Hospital's Major Modernization Project. The sprinklers shall be operative by January 1994.

100. File cabinets shall not obstruct the main corridor of D11. Two desks, one in the corner at the front of D11 and one at the door to the visiting area will remain in the corridor. Any furniture or other objects in the main corridor will be situated so as not to block egress.

101. The door to the back stairway of D11 shall be a Fireproof Self-Closing ("F.P.S.C.") door approved by Underwriter's Laboratories ("U.L.") and equipped with self-latching hardware and a special magnetic electronic locking system.

102. The doors to the vertical shafts on D11 housing the chimney and vertical pipes running the height of the building shall be a U.L. approved F.P.S.C. door.

103. On D11, locker rooms, utility room, linen storage, janitor's closet and kitchen shall be enclosed by 1 1/2 hour Class "A" rated fire doors.

104. HHC shall maintain a contract to ensure that the New York City Fire Department ("Fire Department") will be automatically notified by an approved central station of fire alarms at Elmhurst Hospital.

105. Smoke detectors interconnected with the Elmhurst Hospital's fire alarm system installed in the corridor on D11 shall be maintained.

106. The smoke barrier dividing D11 into two smoke compartments of approximately equal size shall be maintained.

107. Inmate/patient rooms on D11 shall be equipped with self-latching psychiatric doors with a fire rating of 1 1/2 hours.

108. The smoke detector in the air conditioning unit for the D11 dayroom shall be maintained to stop the operation of the air conditioner at the first indication of smoke.

BELLEVUE HOSPITAL

109. Smoke detectors installed in the ceiling in each sleeping room and corridor on 19 West and 19 South shall remain connected to the main fire alarm in the Engineering office on the 13th floor Mechanical Room. Engineers shall be on duty 24 hours a day to respond to alarms and communicate with the Fire Department.

110. The windows currently installed on the corridor sides of rooms on 19 West and 19 South shall be replaced with fire-rated wire glazing by August 31, 1990.

111. A new sprinkler system shall be installed in those locker and storage areas on 19 West and 19 South which do not presently have a sprinkler system by March 1992. Sprinklers located in corridors and in other major storage areas and locker rooms shall be maintained in working condition.

112. The laminated plastic vision panels on rooms 19W50 and 19S6 shall be replaced with 1/4" thick wired glass and one layer of 1/4" thick plexiglass by August 31, 1990.

KINGS COUNTY HOSPITAL

113. A 2 hour enclosure from the stairway at the center of Ward A31 to the exterior wall of the building will be constructed by June 30, 1991.

114. Doors to the stairs and linen chutes on A31 shall be 1 1/2 hour Class "B" U.L. labeled, equipped with automatic closing devices and positive latching locksets.

115. The doors to the pipe shafts on A31 which are missing U.L. labels shall be tested by an independent laboratory for fire rating classification. If the doors do not meet code requirement, they will be replaced with appropriately labelled 1 1/2 hour Class "B" rated doors by June 30, 1991.

116. On A31, locker rooms, storage rooms, nourishment station which are non-UL labelled or are presently equipped with louvers shall be replaced with 1 hour fire rated self-closing doors by June 30, 1991.

117. At KCHC, a fire alarm system which transmits an automatic signal to the switchboard room where it is transmitted to the Fire Department shall be maintained. The switchboard shall be manned 24 hours per day, 7 days per week.

118. Battery operated smoke detectors shall be maintained in all sleeping areas on A31 and G-6.

119. Plain glass and plastic vision panels in doors and corridor walls on A31 shall be replaced by June 30, 1991 with 1/4" thick wired glass sandwiched between 2 layers of 1/4" thick plexiglass.

120. The plexiglass in the door separating A31 from the elevator lobby shall be replaced with 1/4" thick wired glass sandwiched between two layers of 1/4" thick plexiglass.

121. Desks and support file cabinets in the main corridor of G-6 shall be situated so as not to block legally required egress.

122. The doors to the stairways on G-6 shall be UL labelled 1 1/2 hour Class "B" doors equipped with automatic closing devices. Doors to the pipe shafts on G-6 shall be replaced with 1 1/2 hour Class "B" doors by June 30, 1991. Vision panels in all doors shall be replaced with 1/4" thick wire glass sandwiched between 2 layers of 1/4" thick plexiglass by June 30, 1991.

123. The locker rooms, kitchen, linen storage, utility room, pipe chase, and clothing room stationary storage on G-6 shall be enclosed in 1-hour fire rated construction by June 30, 1990.

124. Plain glass and plastic vision panels on G-6 shall be replaced by June 30, 1991 with 1/4" wire glass sandwiched between 2 layers of 1/4" plexiglass.

Dispute Resolution

125. In the event that a dispute arises as to whether defendants are out of compliance with the terms of this stipulation, counsel for the parties shall proceed as follows:

a. Counsel for the 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 and, during the first three years after entry of this stipulation as an order, the monitor in cases of alleged violations of the provisions set forth in paragraphs 1 to 72, supra, in writing of any claim that defendants are in violation of any provision of this agreement.

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

c. 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.

d. At the time of recourse to the Court, under this paragraph, either party may submit any or all of the reports of the monitor prepared pursuant to paragraph 78, supra.

Continuing Jurisdiction

126. The Court shall retain jurisdiction over this action for the purpose of enforcing the provisions of this stipulation. In the event of any motion for systemic relief based upon defendants' alleged non-compliance with the substantive requirements of this stipulation, defendants shall be considered to be in "compliance" with the provisions of this stipulation unless plaintiffs make a clear and convincing showing that defendants' failures or omissions to meet the terms of this stipulation were not minimal or isolated, but were substantial and sufficiently frequent or widespread as to be systemic.

127. The Court, upon motion and based upon proof of defendants' failure to substantially comply with all or a significant part of this stipulation with respect to D11 or 19 West, may alter the frequency of the monitoring or extend the monitoring periods only for the ward found to be substantially out of compliance by periods of no more than one year for each extension.

Modification of the Terms of the Stipulation

128. Should defendants, during the life of this agreement, desire to modify any substantive provision of this stipulation, they must, in writing, give notice to plaintiff's counsel as to the proposed modification and its rationale.

129. Within five business days, plaintiffs' counsel must respond to the proposed modification in writing to the Corporation

Counsel by indicating their consent or their intent to oppose the proposed modification. If plaintiffs' counsel refuses to consent to the proposed modification, defendants may move, pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, for an order modifying the relevant terms of this stipulation.

130. If the proposed modification is made while the monitor is still performing his/her responsibilities pursuant to this agreement, the Court may request an advisory report from the monitor pursuant to Rule 706 of the Federal Rules of Evidence.

Miscellaneous

131. The parties agree that the terms set forth in paragraphs 1, 7 (except the first sentence), 8, 9 (except the second sentence), 23-26, 43 (to extent it prohibits correction staff involvement in programmatic activities), 46, 59(b) (second sentence), and 99-123, shall not apply to any new facility, including any ward of any hospital, which shall, in the future, house inmate/patients who otherwise would have been held in facilities that are the subject of this litigation. All other provisions shall apply to any replacement facility. Moreover, defendants agree that in the event that inmate/patients who would have been housed on any of the three forensic psychiatric wards that are the subject of this litigation are instead housed in substitute or replacement facilities they shall be provided with the same range and frequency of services that are required by this stipulation with sufficient staff in each discipline to provide these services.

132. The fact that certain provisions of the stipulation do not directly refer to the forensic psychiatric ward at Kings County Hospital is not intended to suggest that the parties have reached an agreement that the activity or services addressed by the particular provisions are presently provided at Kings County Hospital in a manner or frequency satisfactory to plaintiffs. Those activities and services at the Kings County Hospital forensic psychiatric ward which are not addressed in this stipulation have not been the subject of this litigation, and the extent to which there are constitutional or other deficiencies in these areas, if such deficiencies do exist, is reserved for other litigation.

133. Approval of this stipulation as an order of the Court will settle and compromise all claims raised in the complaints filed in this action, as well as all claims for injunctive and declaratory relief which could have been made prior to the date this stipulation is ordered by the Court concerning a pattern and practice of correction officer misconduct on the three forensic psychiatric wards. However, the parties agree that this stipulation does not resolve plaintiffs' claims, made in this action, that defendants are obligated to: (1) separate the sleeping areas on the Kings County forensic psychiatric ward from the corridors by 1-hour fire rated construction; (2) eliminate the dangers plaintiffs allege to be presented by the "dead end" corridor on the Kings County prison medical ward; and (3) provide mattresses with flame retardant cores on all three forensic psychiatric wards. Plaintiffs reserve the right to litigate these claims

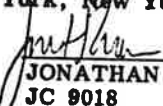
before the Court. Defendants shall have the right to present expert testimony on their behalf in connection with the litigation of any or all of these claims.

134. DOC Directive 4202, annexed to this stipulation as Exhibit 6, shall be maintained under seal by the Clerk of this Court. Plaintiffs' counsel agrees that until the question of whether Directive 4202 is properly disclosable is resolved in this or other litigation, including a proceeding pursuant to New York Public Officers' Law §84 et seq. (FOIL) or by other means, they shall not disclose any copy of this directive. The fact that plaintiffs' counsel has entered into this agreement to maintain this directive under seal to facilitate a

resolution of this proceeding shall not be construed as a concession by plaintiffs or as resolving the question of whether the directive is discoverable in this or other litigation or disclosable under FOIL.

Dated: New York, New York
August 1, 1990

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SO ORDERED:


United States District Judge

Date

10-1-90