

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

KRISTINE FLYNN, *et al.*,

Plaintiffs,

v.

Case No. 06-C-0537

JAMES DOYLE, *et al.*,

Defendants.

SETTLEMENT AGREEMENT

WHEREAS on May 1, 2006, the Plaintiffs filed the above-captioned action alleging that: (1) Defendants' medical, mental health and dental care services at Taycheedah Correctional Institution (TCI) violated the Eighth Amendment's prohibition on cruel and unusual punishment; (2) Defendants' lack of inpatient mental health care capacity for female prisoners violated the Equal Protection clause of the Fourteenth Amendment; and (3) Defendants failed to provide reasonable accommodations to permit prisoners with disabilities to have equivalent access to programs and services in violation of the Americans with Disabilities Act and the Rehabilitation Act; and

WHEREAS on March 14, 2007, the Court granted Plaintiffs' motion for class certification, certifying a class of "all prisoners who are now or in the future will be confined at TCI" and a subclass of "all individuals with disabilities who are now or in the future will be confined at TCI;" and

WHEREAS the Parties have engaged in substantial discovery and litigation over plaintiffs' claims, including motions for a preliminary injunction and partial summary judgment; and

WHEREAS the Parties agree that it is in their mutual interest to resolve this case by agreement, rather than trial;

NOW THEREFORE, the Parties, by their Counsel, hereby agree to the following terms and conditions:

Definitions

"Agreement" or "Settlement Agreement" means this document and all of the terms set forth herein or as modified pursuant to the procedures set forth below.

"Audit Tools" are the instruments used to collect the data that are necessary to evaluate each Compliance Indicator.

"Class" or "Plaintiffs" means the class certified by the Court in its Order dated March 14, 2007 [Doc. No. 57].

"Compliance Indicators" are the defined, measurable variables for which data are audited to determine whether TCI is complying with the TCI Medical Care Standards.

"Compliance Thresholds" are the agreed-upon percentages that Compliance Indicators must meet for determinations of compliance.

"Consultant" refers to Dr. Marc Stern, M.D., who will be retained pursuant to Section I.A.2. of this Agreement, or any mutually-agreed upon successor selected by the Parties should Dr. Stern be unable to fulfill his duties as Consultant.

"Court" means the United States District Court for the Eastern District of Wisconsin.

"Date of Final Approval" means the date on which the Court enters an Order approving the Agreement pursuant to Fed. R. Civ. P. 23(e).

"Defendants" means the Parties listed as defendants in the Complaint dated May 1, 2006, as modified by subsequent substitution of Parties, and the successors of those Parties.

"Defendants' Counsel" or "Counsel for Defendants" means attorneys from the Wisconsin Department of Justice.

"Egregious Circumstances" is defined as systemic and gross deficiencies in staffing, facilities, equipment, or procedures such that plaintiffs are effectively denied access to adequate medical care, or frequent examples of negligent acts that disclose a pattern of deliberately indifferent conduct by medical staff.

"Explicit Compliance Indicators" are those for which compliance can be determined by mechanical application of mathematical formulas to data in audited records.

"Implicit Compliance Indicators" are those for which a determination of compliance requires the exercise of advanced clinical judgment.

"Initial Assessment Period" means the time between the Date of Final Approval and the completion of the process of developing Compliance Indicators, Audit Tools, and Compliance Thresholds (which are subject to modification pursuant to section

I.A.2.a.i.2). The Initial Assessment Period includes the Consultant's visit to TCI for the purpose of developing these measures, learning about TCI's health care system, and similar tasks.

"Medical Care" *excludes* care ordered by psychologists, psychiatrists, or other mental health staff for the purpose of treating an Axis-I or Axis-II disorder as defined in the *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR)*. Medical care *includes* medication administration, medication safety, the timeliness and accuracy of medication orders, and other medication-related issues for which relief was ordered by the Court in its preliminary injunction entered April 24, 2009.

"Parties" means Defendants and Plaintiffs.

"Plaintiffs' Counsel" means attorneys from the National Prison Project of the American Civil Liberties Union Foundation, the ACLU of Wisconsin Foundation, and Jenner & Block LLP, or any successor attorneys for the plaintiff class.

"TCI" or "the facility" means the Taycheedah Correctional Institution in Fond du Lac, Wisconsin.

"TCI Medical Care Standards" refers to the twelve standards set forth in Appendix A.

"USDOJ Consultant" refers to Dr. Jeffery Metzner, M.D., or any successor Consultant appointed pursuant to the USDOJ MOA in *United States v. Doyle*, No. 08-C-753 (E.D. Wis.).

"USDOJ MOA" refers to the Memorandum of Agreement signed in *United States v. Doyle*, No. 08-C-753 (E.D. Wis.).

"WDOC" means the Wisconsin Department of Corrections, including its employees and agents.

I. Medical Care

A. NCCHC Accreditation; Auditing and Duties of the Consultant

1. TCI will attain accreditation by the National Commission on Correctional Health Care (NCCHC).
2. The Parties agree that Marc Stern, M.D., M.P.H., will be jointly retained to serve as the Parties' jointly appointed Consultant for the purpose of reviewing Medical Care pursuant to the retainer agreement attached to this Agreement as Appendix B. Neither party, nor any employee or agent of either party, shall have any supervisory authority over the

Consultant's activities, reports, findings, or recommendations. Should Dr. Stern become unwilling or unable to act as consultant, the Parties will meet and confer to attempt to agree upon a replacement. Should the Parties be unable to agree on a consultant within 45 days of Dr. Stern's becoming unavailable, they will each recommend two potential consultants, from which the Court will select a replacement. The intention of the Parties is that TCI and WDOC health care staff will develop the capability to conduct quality assurance/quality improvement audits, and the Consultant will assist TCI in developing this capability. The Consultant will do the following with regard to the TCI Medical Care Standards (as set forth in Appendix A):

a. Compliance Indicators, Compliance Thresholds, and Audit Tools:

- i. Within four months of the Date of Final Approval, the Consultant and TCI health care staff, with input from Plaintiffs' Counsel, will complete the creation of Compliance Indicators and Audit Tools, Compliance Thresholds, and the review of policies and procedures. This period may be extended by agreement of the Parties if the Consultant and TCI health care staff require additional time to complete these tasks.
 1. During this period, the Consultant will conduct the Initial Assessment that will include a site visit at TCI. The length of the visit associated with the initial assessment will be determined by the Consultant but will not exceed five days.
 2. At the end of this period, Compliance Indicators and their corresponding Compliance Thresholds will be incorporated into the agreement as enforceable terms with the understanding that Compliance Indicators may be modified by the Consultant and TCI health care staff, with input from Plaintiffs' Counsel, to reflect operational needs of the institution. An addendum reflecting these modifications will be filed with the Court.
- ii. In the event that the Parties and Consultant are unable to arrive at agreement on Compliance Indicators, Compliance Thresholds, and Audit Tools or modifications thereto, the Parties will meet and confer prior to seeking resolution in Court.

b. Site Visits by the Consultant:

- i. During the first twelve months following the Date of Final Approval, the Consultant will conduct two site visits to TCI for the purpose of conducting auditing. These site visits are in addition to the Initial Assessment.

- ii. In the second and in any subsequent years following the Date of Final Approval, the Consultant will conduct two site visits at TCI. At the Consultant's discretion, he or she may conduct a third site visit.
- iii. The Consultant will have full access to TCI (e.g., ability to speak with TCI employees, access to relevant documents, access to facilities, ability to speak confidentially with prisoners).

c. Auditing of Compliance Indicators

- i. During the first site visit following the Initial Assessment, the Consultant will conduct audits of Implicit Compliance Indicators. He or she will be presumptively responsible for conducting audits of Explicit Compliance Indicators but may, at his or her discretion, delegate this responsibility to WDOC staff.
- ii. During second and subsequent site visits following the Initial Assessment, the Consultant will have the discretion to conduct audits of Implicit and Explicit Compliance Indicators or delegate this responsibility to WDOC staff.
- iii. At any point during the duration of the Agreement, the Consultant retains the discretion to replicate or re-do audits conducted by WDOC staff. The Consultant at his or her discretion may verify the results of audits conducted by WDOC staff to an extent and by means selected at his or her discretion and may do so by reviewing the same or different documents as those chosen by WDOC staff for their own audits.

d. Reporting of Findings:

- i. Following each site visit, the Consultant will prepare a draft written document reporting, at a minimum, the results of the audits conducted, his or her opinion regarding TCI's progress toward NCCHC accreditation, any Egregious Circumstances requiring remediation, and recommendations that TCI may consider to improve the performance of its health care system. The Consultant may, at his discretion, include other matters in his report. Within 14 days of receipt, the Parties may submit written comments on the report to the Consultant. The Consultant is under no obligation to incorporate or respond to the Parties' comments.
- ii. When discussing individual patients in his reports, the Consultant will use unique identifiers or take other reasonable steps to prevent the disclosure of personally identifying patient information to persons other than Plaintiffs' Counsel, Defendants' Counsel, and those employees or agents of Defendants authorized to access such information under WDOC policies in place at the time of the signing of this Agreement.

- c. The Consultant may initiate or receive *ex parte* communications with either Party.
3. Defendants will pay the Consultant's reasonable fees and costs. The Parties recognize that WDOC needs to be able to anticipate the costs associated with the Consultant's services. The Parties also recognize that the reasonable activities of Dr. Stern or any replacement Consultant should not be unreasonably restricted by the hourly caps set forth in the following sections.
- a. The Parties have agreed that the Consultant's time will be capped as follows:
 - i. For the period that covers the Consultant's Initial Assessment and development of Audit Tools, Compliance Indicators, and Compliance Thresholds, the Consultant's billed time will not exceed 300 hours.
 - ii. For the two site visits following the Initial Assessment in the first year of the Agreement, the Consultant's total billed time for the two site visits (including all preparation and follow up) will not exceed 250 hours.
 - iii. For the second and any subsequent years, the Consultant's total time billed for conducting two site visits and all other activities under the Agreement will not exceed 200 hours.
 - iv. If, in the second or any subsequent years of the Agreement, the Consultant decides that he or she needs to conduct a third site visit in a given year, his or her total time billed for conducting three site visits and all other activities under the Agreement will not exceed 300 hours.
 - b. If the Consultant believes that additional hours are needed to complete the tasks required by the Agreement, he or she shall timely notify the Parties. The Parties will then meet and confer in an attempt to reach agreement on allocation of additional hours. If they are unable to do so, the Parties will access the dispute resolution process.

B. Associate Medical Director

- 1. Within six months of the Date of Final Approval, Defendants will hire a full-time physician board-certified in a primary care field (e.g., internal medicine, family medicine, etc.) to serve as Associate Medical Director. For the duration of this agreement, the Associate Medical Director will be in addition to the existing 0.5 FTE physician position currently allocated to TCI.
- 2. The Associate Medical Director will be located at TCI to provide patient care and administration of clinical care at TCI for the duration of the Agreement.
- 3. Duties of the Associate Medical Director will include:

- a. Approximately 0.7 FTE devoted to the direct care of patients at TCI;
 - b. For the remainder of the Associate Medical Director's time, he or she will be responsible for overseeing and supervising the provision of all clinical care at TCI. These duties may include, by way of example: development and implementation of and continuing involvement in the institution's Continuous Quality Improvement (CQI) program; evaluation of the performance of clinical staff; provision of routine clinical guidance to clinical staff; and provision of overall leadership to the medical program at TCI.
4. Defendants will take all reasonable steps to recruit a highly-qualified candidate within the time frame specified and shall provide monthly updates on the status of the hiring process to the Consultant.
 5. After six months following the start date of the Associate Medical Director, the Consultant may offer opinions on changing the allocation of the Associate Medical Director's time.

C. Medication Ordering and Administration

Health care staff (with the qualifications of an LPN or higher) will continue to administer medications to TCI patients for the duration of the Agreement.

D. Miscellaneous Terms Applicable to Medical Provisions Only

1. Plaintiffs' Counsel may attend the Consultant's site visits. Plaintiffs' Counsel may visit TCI to meet with clients and review charts at other times, as well, upon reasonable notice. The Consultant may meet with TCI health care staff without the presence of Plaintiffs' Counsel.
2. Upon receipt of a Consultant's report indicating non-compliance with Compliance Thresholds or Egregious Circumstances, the Parties will proceed as follows:
 - a. *Step 1:* The Party alleging non-compliance will notify the other Party in writing, setting forth the nature of the alleged non-compliance and the basis for that allegation.
 - b. *Step 2:* Within 30 calendar days of receiving the notice of alleged non-compliance, the Parties and the Consultant will confer to determine whether the Party is non-compliant, and, if so, attempt to agree to steps to bring the allegedly non-compliant Party into compliance. Should the Parties reach a resolution, they shall memorialize that resolution in a document that states, at a minimum, the specific actions to be taken to bring about compliance and a timetable for taking those actions. After they confer, the Parties may determine that the allegedly non-compliant Party is, in fact, compliant. If that is the case, no additional steps will be necessary.

- c. *Step 3*: If, after conferring among themselves, the Parties and the Consultant are unable to resolve the noncompliance to their satisfaction, either Party may move the Court to enforce compliance with the terms of the Agreement (including those developed in Section I.A.2) by appropriate order. In such proceedings, the Consultant may provide to the Court affidavits, testimony, and other submissions regarding compliance or noncompliance.
3. The dispute-resolution mechanism set forth in D.2. above will be used for other disagreements between the Parties before relief is sought in Court, subject to the exception set forth in Section IV.G below. The Consultant will not be involved in the dispute-resolution process unless the dispute relates to his substantive duties as Consultant.

E. Termination of Medical-Related Provisions

1. The Parties will move to dismiss with prejudice the medical-related claims in this action when all of the following have occurred:
 - a. TCI achieves NCCHC accreditation.
 - b. WDOC hires and continues to employ for the duration of the Agreement a full-time Associate Medical Director primarily located at TCI as set forth in Section I.B. above.
 - c. All of the TCI Medical Care Standards are "inactive" as set forth below.
 - i. A TCI Medical Care Standard becomes "inactive" when two of three consecutive audits show compliance with all Compliance Thresholds within that standard.
 - ii. Once a TCI Medical Care Standard becomes "inactive," further audits of Compliance Indicators under that standard will not be required.
 - iii. The Consultant will retain the discretion to conduct further audits of Compliance Indicators for "inactive" standards.
 - iv. If noncompliance is found in an audit of one or more Compliance Indicators for a standard that is currently inactive, the noncompliant Compliance Indicator will be audited again no later than the next scheduled site visit.
 - v. Auditing of a noncompliant Compliance Indicator within an "inactive" standard will continue until TCI again achieves compliance with that Compliance Indicator.
 - d. No un-remediated Egregious Circumstances exist.

- e. TCI continues to use health care staff with credentials equivalent to or greater than those of LPNs to administer medications.

II. Mental Health Care

A. Access to the USDOJ Consultant for Plaintiffs' Counsel

1. Plaintiffs' Counsel shall be permitted to communicate with Dr. Jeffery Metzner, the Consultant for the settlement with the U.S. Department of Justice in *United States v. Doyle*, 08-C-753 (E.D. Wis.), and any successor Consultant, only as described below:
 - a. Plaintiffs' Counsel may, prior to each scheduled visit by the USDOJ Consultant, communicate with the USDOJ Consultant in writing regarding any matter within the scope of the USDOJ MOA, TCI Standards and TCI Action Plan, which constitute the substantive terms of the settlement of *United States v. Doyle*. Plaintiffs' Counsel will also receive the USDOJ Consultant's draft reports and have an opportunity to comment on such reports prior to their finalization by the USDOJ Consultant. Plaintiffs' Counsel will also receive the USDOJ Consultant's final reports on the results of his site visits. All communications with the USDOJ Consultant will be copied to Defendants' Counsel and the chief legal Counsel of the Wisconsin Department of Corrections.
 - b. Plaintiffs' Counsel may, at any time after the Date of Final Approval, obtain and/or review forms DOC-9, DOC-3509, Individual Care Plans for release from segregation, and other documents related to the imposition of discipline on TCI prisoners with serious mental illnesses (SMI). In addition to the communication with the USDOJ Consultant prior to scheduled visits and the opportunity to comment on the USDOJ Consultant's draft reports (discussed above), Plaintiffs' Counsel may also provide an initial, one-time report on discipline of prisoners with SMI to the USDOJ Consultant. This report shall be provided to the USDOJ Consultant and Defendants' Counsel no later than 5 months after the Date of Final Approval. The Plaintiffs may discuss this initial report with the USDOJ Consultant *ex parte*, at the USDOJ Consultant's discretion. Plaintiffs may comment on the USDOJ Consultant's response, if any, to the report in writing, copied to the Defendants.

B. Access to TCI by Plaintiffs' Counsel

Plaintiffs' Counsel may, upon reasonable notice to Defendants' Counsel, enter TCI for the purpose of interviewing class members in a confidential setting and reviewing class members' medical, psychological services, social services and related records. Defendants will also provide reasonable opportunities for Plaintiffs' Counsel to communicate by telephone with class members on a confidential phone line.

C. Construction of and Initiation of Services at TCI Annexes

WDOC shall complete construction of and initiate services at planned annexes at TCI (as set forth in Attachment B to the Memorandum of Agreement between USDOJ and WDOC in *United States v. Doyle*) to provide space for out-of-cell therapeutic activities and group and individual therapy for prisoners with serious mental illnesses no later than June 1, 2012.

D. Construction of and Initiation of Services at the Wisconsin Women's Resource Center

WDOC shall complete construction of and begin accepting prisoners from TCI who need inpatient-level psychiatric services at the planned Wisconsin Women's Resource Center no later than June 1, 2012.

E. Miscellaneous Terms Applicable to Mental Health Provisions Only

1. With regard to this Section (Mental Health Care) only, upon a Party's allegation that the other Party has failed to comply with the terms of this section, the Parties will attempt to resolve the matter as follows:
 - a. *Step 1:* The Party alleging non-compliance will notify the other Party in writing, setting forth the nature of the alleged non-compliance and the basis for that allegation.
 - b. *Step 2:* Within 30 calendar days of receiving the notice of alleged non-compliance, the Parties will confer to determine whether the Party is non-compliant, and, if so, attempt to agree to steps to bring the allegedly non-compliant Party into compliance. Should the Parties reach a resolution, they shall memorialize that resolution in a document that states, at a minimum, the specific actions to be taken to bring about compliance and a timetable for taking those actions. After they confer, the Parties may determine that the allegedly non-compliant Party is, in fact, compliant. If that is the case, no additional steps will be necessary.
 - c. *Step 3:* If, after meeting and conferring, the Parties are unable to resolve the noncompliance to their satisfaction, either Party may move the Court to enforce compliance by appropriate order.
2. The provisions of this Agreement relating to Plaintiffs' Counsel's access to the USDOJ Consultant will end on September 5, 2012.
3. The remainder of the mental health-related provisions of this Agreement will continue until the later of (1) September 5, 2012 or (2) when both of the following occur:
 - a. Defendants complete construction of and open the TCI annexes so that they are ready to receive prisoners; and

- b. Defendants complete construction of and open the Wisconsin Women's Resource Center so that it is ready to receive patients.
4. Upon compliance with all mental health-related terms in this Agreement, the Parties will seek dismissal with prejudice of the mental health-related claims in this action.

III. Access for Prisoners with Disabilities

A. Interpreters/Readers for Prisoners with Hearing and/or Vision Impairments

1. Defendants will adopt a policy providing that prisoners with hearing disabilities will be provided with qualified sign language interpreters (who abide by the National Association of the Deaf/Registry of Interpreters for the Deaf Code of Professional Conduct) and/or other accommodations as necessary to make available core programs and services, including medical and mental health visits, disciplinary and grievance hearings, educational classes, tests used to assign prisoners to classes or programs, and treatment programs.
2. Defendants will adopt a policy providing that prisoners with vision disabilities will be provided with reading assistants, Braille materials, and/or other accommodations as necessary to make available core programs and services, including medical and mental health visits, disciplinary and grievance hearings, educational classes, tests used to assign prisoners to classes or programs, and treatment programs.

B. Accommodations for Hearing Impaired Prisoners

Prisoners with hearing impairments shall have access to adaptive hearing devices to permit them to place and receive telephone calls with the same ability as prisoners without hearing impairments. Prisoners using adaptive devices for telephone calls will be allowed three times the amount of time usually permitted for telephone calls. TCI shall ensure that visual alarms and/or other means of notifying deaf or hard of hearing prisoners of such things as emergencies, counts, and announcements shall be utilized. TCI shall ensure that closed captioning is available on all facility televisions for the viewing of television programs for which closed captioning is available. Accommodations may include a qualified sign language interpreter or other auxiliary aids, services, and devices.

C. Clarification of ADA Accommodation Request Policy

Consistent with DAI Policy & Procedure # 300.00.35 (part III, effective March 26, 2010), the ADA coordinator shall forward any requests for accommodation to the appropriate staff with the authority to grant or deny the accommodation. Defendants will provide Plaintiffs' Counsel with a copy of DOC Form 2530. Plaintiffs' Counsel may comment on the form and Defendants may act on any comments at their complete discretion.

D. Access to Disability-Related Prisoner Grievances

Counsel for Plaintiffs may, upon request, obtain and review disability-related grievances.

E. Safety of Facility Paths

TCI shall maintain paths, walkways, and thoroughfares between buildings in a state of repair sufficient to ensure access to core programs and services for prisoners with mobility disabilities. Obstructions or impediments in paths that pose safety hazards to prisoners with mobility impairments will be clearly marked with a sign stating, in substance: "CAUTION: Wheelchair Users Should Use Other Route." The sign will be made of a durable material. TCI shall provide position descriptions and training for wheelchair pushers (or mobility assistants) emphasizing safety, and training shall be documented.

F. Access to Dining Hall for Mobility-Impaired Prisoners

Prisoners with mobility disabilities shall be permitted to eat in the dining hall at the same time as their non-disabled peers. Defendants represent that, currently, nondisabled prisoners may not elect whether or not to eat in the dining hall, because kitchen staff needs to be able to predict the number of prisoners who will eat in the dining hall. In reliance and understanding of these representations, prisoners with mobility disabilities may be required to make a prospective commitment to eating in the dining hall of no more than three months.

G. Discipline of Prisoners with Hearing Disabilities.

Defendants shall adhere to DAI Policy & Procedure # 300.00.35 (effective date March 26, 2010), sections II.E. (determining whether disability prevented a prisoner from following institution rules) and II.F.2. (ensuring that the institution uses visual alarms or manual means of notifying hearing impaired prisoners of emergencies, counts and announcements), in disciplining prisoners with hearing disabilities for the duration of this agreement. Plaintiffs' Counsel may, upon request, obtain documentation of disciplinary proceedings against prisoners with hearing disabilities.

H. Availability of Accessible Cells in Medium-Security Housing Units

Defendants shall conduct a review or study comparing the waiting times for cells in TCI medium security units for prisoners with disabilities with the waiting time for such cells for prisoners without disabilities to help inform decision-making about any future construction or retrofitting of cells at TCI to make them accessible to disabled prisoners. Defendants will provide the results of this review or study to Plaintiffs' Counsel, but Plaintiffs may not use the results of this review or study in an enforcement action or to establish further liability.

I. Miscellaneous Terms Applicable to Disability Provisions Only

1. With regard to this Section (Access for Prisoners with Disabilities) only, upon a Party's allegation that the other Party has failed to comply with the terms of this section, the Parties will attempt to resolve the matter as follows:

- a. *Step 1:* The Party alleging non-compliance will notify the other Party in writing, setting forth the nature of the alleged non-compliance and the basis for that allegation.
 - b. *Step 2:* Within 30 calendar days of receiving the notice of alleged non-compliance, the Parties will confer to determine whether the Party is non-compliant, and, if so, attempt to agree to steps to bring the allegedly non-compliant Party into compliance. Should the Parties reach a resolution, they shall memorialize that resolution in a document that states, at a minimum, the specific actions to be taken to bring about compliance and a timetable for taking those actions. After they confer, the Parties may determine that the allegedly non-compliant Party is, in fact, compliant. If that is the case, no additional steps will be necessary.
 - c. *Step 3:* If, after meeting and conferring, the Parties are unable to resolve the noncompliance to their satisfaction, either Party may move the Court to enforce compliance by appropriate order.
2. The provisions of this Agreement relating to Disability Access shall terminate upon the termination of the Medical and Mental Health provisions and the Parties will seek dismissal of the Disability Access claims in this action at that time.

IV. Miscellaneous Terms Applicable to Entire Agreement

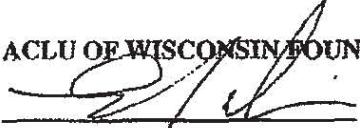
- A. The Court will retain jurisdiction over this action until the Agreement ends and all claims in the Action have been dismissed.
- B. The Parties stipulate that the relief set forth in this Agreement is narrowly drawn, extends no further than necessary to correct violations of federal rights, and is the least intrusive means necessary to correct violations of federal rights, and the Parties shall jointly request that the Court make these findings.
- C. Defendants agree not to unilaterally move to terminate or modify this agreement under 18 U.S.C. § 3626(b) until the Agreement ends according to its terms.
- D. No termination hearing shall be required.
- E. Plaintiffs will seek reasonable attorneys' fees and costs for work performed up to and through the Date of Final Approval of this Agreement. The Parties will attempt to reach an agreement regarding the amount of fees and costs after negotiations regarding the substantive terms of this Agreement have concluded. Plaintiffs will seek reasonable attorneys' fees and costs for facilitating and monitoring the implementation of this Agreement for the duration of the Agreement.
- F. Plaintiffs' Counsel may send in writing to Defendants' Counsel time-sensitive concerns about the health of individual prisoners. Defendants' Counsel agrees to make reasonable

efforts to investigate these concerns and respond in writing to Plaintiffs' Counsel within a reasonable period of time.

- G. In the event of circumstances threatening to cause immediate or irreparable harm to the class or any portion of the class, Plaintiffs may seek immediate judicial relief.
- H. The Consultant's reports and his findings shall not be admissible for any reason in any action other than *Flynn v. Doyle*.
- I. The Parties will work together to ensure the timely preparation and filing of all motions, briefs, and documents necessary to obtain preliminary and final approval of this Agreement pursuant to applicable rules and statutes.
- J. This Agreement supersedes all other agreements made between the Parties and all preliminary orders issued during the course of this litigation regardless of form.
- K. This Agreement constitutes the final written expression of all of the terms of the settlement between the Parties and is a complete and exclusive statement of those terms, except that:
 - a. The Agreement will be modified by incorporating the Compliance Indicators, Audit Tools, Compliance Thresholds and related terms developed during the Initial Assessment Period, defined in more detail in Section I.A.2 above;
 - b. The Agreement may be modified at any time by a written and signed document executed by mutual agreement of Plaintiffs' Counsel and Defendants' Counsel;
 - c. Plaintiffs' attorneys' fees and costs, when agreed upon, will be incorporated as a term of this Agreement.
- L. All modifications to this Agreement will be filed with the Court.
- M. This Agreement may be signed in counterpart originals.

Dated: June 15, 2010

ACLU OF WISCONSIN FOUNDATION


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Dated: June 15, 2010

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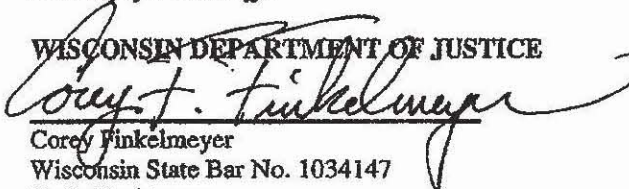


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Dated: June 17, 2010

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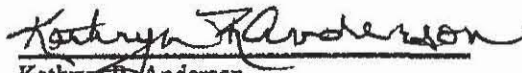
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Dated: June 15, 2010

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Dated: June 17, 2010

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APPENDIX A: TCI MEDICAL CARE STANDARDS

NONEMERGENCY HEALTH CARE REQUESTS AND SERVICES

All inmates have the opportunity daily to request health care. Their requests are documented and reviewed for immediacy of need and the intervention required. Sick call and clinicians' clinics are conducted on a timely basis and in a clinical setting by qualified health care professionals. Patients referred to a provider from sick call are seen timely as clinically indicated. (See NCCHC Standard P-E-07)

NURSING ASSESSMENTS

Nurses assessing patients utilize WDOC nursing protocols or professional judgment to determine information to be collected to make an adequate assessment and an appropriate referral if indicated in accordance with DOC Policy and Procedure 300:18 ("Nursing Protocols," effective 12/8/07) or any subsequent, substantially similar version of that policy and procedure.

CONTINUITY OF CARE

Patients receive treatment and diagnostic tests ordered by clinicians; inmates returning from offsite care receive appropriate treatment and follow-up. (See NCCHC standard P-E-12)

CHRONIC DISEASE

Patients with *chronic diseases* are identified and enrolled in a *chronic disease program* to decrease the frequency and severity of the symptoms, prevent disease progression and complication, and foster improved function. (See NCCHC standard P-G-01)

EMERGENCY SERVICES

The facility provides 24-hour *emergency* medical services. (See NCCHC standard P-E-08)

HOSPITAL & SPECIALTY CARE

Arrangements are made to provide hospitalization and specialty care to patients in need of these services. This standard intends that prisoners have access to necessary hospitalization and specialty services. Clinical need dictates the time required to receive the ordered service. (See NCCHC standard P-D-05)

RECEIVING SCREENING

Receiving screening is performed on all prisoners on arrival ... to ensure that emergent and urgent health needs are met. (See NCCHC standard P-E-02)

INITIAL HEALTH ASSESSMENTS

Prisoners receive timely and appropriate initial health assessments. (See NCCHC standard P-E-04)

PHARMACEUTICAL OPERATIONS

Pharmaceutical operations are sufficient to meet the needs of the facility and are in accordance with legal requirements. (See NCCHC standard P-D-01)

MEDICATION SERVICES

Medication services are clinically appropriate and provided in a timely, safe, uninterrupted and sufficient manner, in accordance with WDOC Policy & Procedure 800:02 and its appendices (eff. 10/1/04). In addition, medication orders written as code 2 or routine shall be filled accurately and administered within 72 hours and any medication necessary to prevent life-threatening or serious adverse health outcomes shall be filled accurately and administered immediately or same day as clinically indicated by the prescribing practitioner. (See NCCHC standard P-D-02)

INFIRMARY CARE

Patients in need of infirmary level care, as defined in NCCHC Standards for Health Services In Prisons (2008) P-G-03, shall have timely and appropriate access to infirmary services. (See NCCHC standard P-G-03)

CONTINUOUS QUALITY IMPROVEMENT PROGRAM

TCI's continuous quality improvement (CQI) program shall monitor and improve health care delivered in the facility. (See NCCHC standard P-A-06)

APPENDIX B: RETAINER AGREEMENT: DR. MARC STERN, MD, MPH

Flynn, et al. v. Doyle, et al., No 06-cv-0537-RTR (E.D. Wis.)

1. This Retainer confirms that Defendants and Plaintiffs (the "Parties"), through their counsel, jointly retain Dr. Marc Stern, M.D., M.P.H. ("You") to serve as Consultant in the civil action captioned *Flynn, et al. v. Doyle, et al.*, No. 06-cv-0537-RTR (E.D. Wis.) pursuant to the terms set forth below.
2. You will perform the duties of Consultant as forth in the Settlement Agreement ("Agreement") signed by the Parties and intended to be submitted to the Court for approval pursuant to Fed. R. Civ. P. 23(e). The duties of the Consultant, as set forth in Section I of the Agreement, as may be amended pursuant to the Agreement, are hereby incorporated into this Retainer.
3. You will be compensated by Defendants at a rate of \$___ per hour, billable in fifteen-minute increments, for time spent in furtherance of your duties as Consultant. Compensation will be limited as set forth in Section I.A.3. of the Settlement Agreement.
4. You will be reimbursed for reasonable costs and expenses incurred in furtherance of your duties as Consultant. First-class air travel or other extraordinary expenses will not be reimbursed without prior written approval by Defendants.
5. Should the Parties, by mutual agreement memorialized in writing, amend and/or dissolve the Agreement prior to an Order of the Court granting final approval of the Settlement, this Retainer will be null and void.
6. Should the Court deny final approval to the Agreement pursuant to any rule or statute, this Retainer will be null and void.
7. You are not authorized to commence billable work until you receive written instructions signed by the Parties.
8. You will submit every ___ months to the Parties an itemized invoice for time spent and expenses incurred. Defendants agree to remit payment within ___ days by a means mutually agreed upon by You and Defendants and/or their counsel.
9. This Retainer constitutes the final written expression of the agreement between You and the Parties except that the terms of the Retainer may be modified from time to time by Your

written consent and the written consent of the Parties.

10. Plaintiffs and their counsel are under no obligation to pay you and any recourse you have for non-payment shall be solely against Defendants.
11. You agree to maintain the confidentiality of patient health information in accordance with the terms of the Agreement.
12. You agree to attempt to resolve all disputes arising from this Retainer by means other than litigation prior to seeking judicial relief.
13. This Retainer will be enforced under the laws of the State of Wisconsin. It is the intention of the Consultant and the Parties that the jurisdiction of the Court in *Flynn v. Doyle* not extend to disputes arising under this retainer notwithstanding the amount in controversy.
14. If any portion of this Retainer is held to be invalid, the surviving portions shall remain in effect.
15. This Retainer may be executed in counterparts and by facsimile signatures.
16. This Retainer shall remain in full force and effect until all claims in *Flynn v. Doyle* have been dismissed and all obligations of the Parties and Consultants have been satisfied.

Dated:

Dr. Marc Stern, M.D., M.P.H.

**NATIONAL PRISON PROJECT OF ACLU
FOUNDATION**

Dated:

Gabriel B. Eber
Staff Counsel

ACLU OF WISCONSIN FOUNDATION

Dated:

Laurence J. Dupuis
Legal Director

WISCONSIN DEPARTMENT OF JUSTICE

Dated:

Corey Finkelmeyer
Assistant Attorney General

**WISCONSIN DEPARTMENT OF
CORRECTIONS**

Dated:

Kathryn R. Anderson
Chief Legal Counsel

Flynn, et al. v. Doyle, et al.

Addendum 1 to Settlement Agreement

The Parties agree to this Addendum to the Settlement Agreement pursuant to paragraph IV.E:

1. Defendants agree to pay Plaintiffs' counsel the sum of nine hundred fifty thousand dollars (\$950,000) in full satisfaction of all claims for fees and costs for work done by plaintiffs' counsel through June 16, 2010, in connection with this litigation. Payment shall be made within twenty (20) days of the Court's entry of an Order granting Final Approval to the Settlement Agreement.
2. Defendants agree to pay Plaintiffs' Counsel's reasonable expenses and fees for time reasonably spent on this case from June 17, 2010, through the date of the Court's entry of an Order granting Final Approval to the Settlement Agreement. The Parties agree that plaintiffs shall be compensated for their time at the rate of \$208.50/hour (the current Prison Litigation Reform Act cap). Such payment shall be in full satisfaction of all claims for fees and costs for work done by plaintiffs' counsel in connection with this litigation from June 17, 2010, through the date of the Court's entry of an Order granting Final Approval to the Settlement Agreement.
3. Defendants agree to pay Plaintiffs' Counsel's reasonable expenses and fees for time reasonably spent on this case from the date of the Court's entry of an Order granting Final Approval to the Settlement Agreement. The Parties agree that Plaintiffs shall be compensated for their time at the highest rate permitted by the Prison Litigation Reform Act at the time each request for fees is submitted to Defendants.
4. Submissions for fees and costs shall be made as follows: Plaintiffs' counsel shall submit to defendants' counsel documentation of fees and costs from time-to-time. Defendants may review the documentation and, within twenty (20) days of receiving such documentation, either pay the amount sought in full or provide Plaintiffs' Counsel with a written response identifying amounts objected to as unreasonable. The Parties will attempt to resolve all disputes among themselves, with payment to be made within ten (10) days of resolution. If the parties are unable to resolve their differences, the parties agree that the dispute shall be submitted to the District Court or a magistrate judge for a determination of whether and to what extent plaintiffs' counsel's claimed fees and costs are reasonable under the circumstances. The parties agree to abide by the determination of the District Court or magistrate judge, and defendants shall pay the amount determined to be reasonable within ten (10) days of the determination.
5. This Addendum may be modified at any time by a written and signed document executed by mutual agreement of Plaintiffs' counsel and Defendants' counsel. All modifications to this Addendum will be filed with the Court.

6. This Addendum may be signed in counterpart originals.

Dated: August 16, 2010

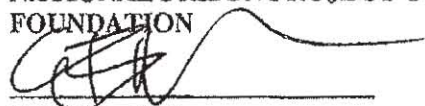
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Dated: August 16, 2010

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Dated: August 16, 2010

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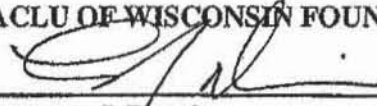
Dated: **8/18/10**


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6. This Addendum may be signed in counterpart originals.

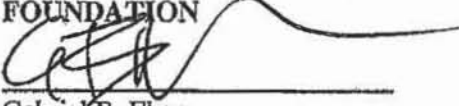
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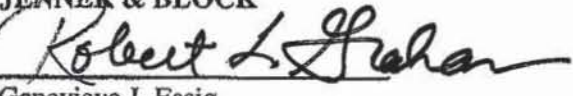
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