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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA, HELENA DIVISION

* * * * *

IN THE MATTER OF LITIGATION
RELATING TO CONDITIONS OF
CONFINEMENT AT MONTANA
STATE PRISON

Cause No. CV 93-46-H-LBE

TERRY LANGFORD, ET AL,

Cause No. CV 92-13-H-LBE

Plaintiffs,

vs.

SETTLEMENT AGREEMENT

MARC RACICOT, ET AL.,

Defendants.

* * * * *

I. THE TRANSACTION AND SETTLEMENT

1. History

This action was filed concerning conditions at Montana State
Prison. On about December 30, 1993, the Plaintiffs filed their
Fifth Amended Complaint and on January 14, 1994, the action was
certified as a class-action by the Court. References to the action
or the Complaint refer to the Fifth Amended Complaint.

1. SETTLEMENT AGREEMENT

Langford v. Racicot



PC-MT-001-002

1 2. Settlement

2 This agreement is entered to settle claims made by the
3 Plaintiffs in the Fifth Amended Complaint as described in paragraph
4 4 below. The term "Plaintiffs" means all class members as
5 certified by the Court in its Order of 14 January 1994.

6 3. No Admission of Liability

7 In negotiating for and entering into this settlement
8 agreement, the Defendants do not admit or concede that any of the
9 Plaintiffs' rights under the United States or Montana Constitutions
10 or under any other law or regulations, are currently being or have
11 been in the past violated at Montana State Prison (MSP).

12 4. No Additional Relief

13 Except as otherwise provided in this agreement, the Plaintiffs
14 shall not seek additional relief as to any claims for injunctive
15 and declaratory relief on all issues specifically agreed to by the
16 parties in this agreement, except to recover reasonable and
17 necessary attorneys' fees, expenses, and costs incurred, including
18 those in negotiating or in future enforcement of the settlement
19 agreement. It is understood that the Defendants may contest any
20 and all such fee claims.

21 5. Admissibility of Settlement Agreement

22 This settlement agreement shall not be admissible in evidence
23 in any proceeding or trial other than for the sole and limited
24 purpose of enforcement of the agreement, and except for purposes of
25 claim preclusion.

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2. SETTLEMENT AGREEMENT

1 6. Construction of Agreement

2 This agreement is a document which all parties have negotiated
3 and drafted so the general rule of construction interpreting a
4 document against the drafter shall not be applied in future
5 interpretation of this settlement agreement.

6 7. Substantial Compliance

7 The Defendants shall be deemed to be in compliance with the
8 terms of this agreement when they have substantially complied with
9 it. Incidents of non-compliance do not necessarily prevent a
10 finding of substantial compliance. The determination of
11 substantial compliance shall take into account the extent to which
12 exceptions to substantial compliance are sporadic or isolated in
13 nature, are unintentional, are the temporary result of actions by
14 member of the Plaintiff class, and are addressed by corrective
15 action.

16 Provided that the Defendants make reasonable efforts to hire
17 professional staff and to fulfill the obligations of this
18 agreement, the inability to recruit professional staff shall not be
19 grounds for the Plaintiffs to seek an order of contempt of court.
20 The Plaintiffs, however, may seek a specific enforcement order or
21 other relief from the court to obtain compliance. For purposes of
22 this paragraph, professional positions are those of medical, dental
23 and mental health providers.

24 8. Emergencies

25 It may be necessary to temporarily suspend any provision of
26 this agreement in the event of an emergency. An emergency is an

1 event which makes the terms of this agreement impossible or
2 extraordinarily difficult, and is caused by riot, fire, weather
3 events, acts of God, warfare, strikes, labor disputes, or similar
4 events, not caused intentionally by the Defendants, their agents,
5 or employees.

6 Should the State Legislature take action making compliance
7 with the terms of this agreement impossible it shall not be grounds
8 for the Plaintiffs to seek an order of contempt of court. The
9 Plaintiffs, however, may seek a specific enforcement order or other
10 relief from the court to obtain compliance.

11 9. Modification

12 The parties recognize that change of some conditions or
13 practices may reduce the necessity of change of other conditions or
14 practices. The parties recognize that the Defendants are entitled
15 to substantial deference in their decision on how to improve
16 conditions. Therefore, the parties agree that it may be
17 appropriate that this agreement be modified from time to time.
18 After six months of operation under this agreement, the Defendants
19 may move to modify any portion of it. On a showing by Defendants
20 that such proposed modification will still adequately protect the
21 constitutional rights of the inmates the proposed amendment shall
22 be approved; provided that the modification insures substantially
23 the same level of rights and services as provided in this
24 agreement. Other modifications may be requested by Defendants
25 earlier but will be granted only on a showing of substantial

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1 hardship and that granting of the modification will not jeopardize
2 any of the constitutional rights of the inmates.

3 In addition, either party may seek modification of this
4 agreement under any circumstance allowed in Rufo v. Inmates of
5 Suffolk County, 502 U.S. ___, 112 S.Ct. 748, 116 L.Ed.2d 862, 867
6 (1992), and cases decided pursuant to its guidelines.

7 In addition, the Plaintiffs may seek modification on a showing
8 that conditions at MSP have deteriorated substantially from the
9 time when the complaint was filed.

10 10. Suspension of Discovery

11 From the date of approval of this agreement during the time
12 period covered by it, Plaintiffs and their counsel will not proceed
13 with litigation or discovery in either state or federal court on
14 the subjects addressed by the complaint and by this agreement.
15 Discovery in this action will be suspended. The suspension of
16 discovery will not preclude the Plaintiffs' counsel from meeting
17 with the Plaintiff inmates. Should the Defendants fail to comply
18 with this agreement, the Plaintiffs may revive this action,
19 including undertaking discovery, in accordance with the provisions
20 of paragraphs II, 5, and III, Continuing Jurisdiction.

21 11. Periodic Reports

22 Not less than quarterly following the approval of this
23 agreement, the Defendants will report to Plaintiffs' counsel the
24 status of implementation of this agreement. It is the expectation
25 of the parties that the Defendants will comply with this paragraph
26 by providing copies of the monthly reports from the Bureau Wardens

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1 to the Division Administrator deleting personnel masters. It is
2 understood that such reports will be held confidential by
3 Plaintiffs' counsel.

4 II. SUBSTANTIAL COMPLIANCE

5 1. Time for Compliance

6 Unless otherwise specifically provided, Defendants shall have
7 one year from the Court's approval of this agreement to come into
8 substantial compliance with its terms.

9 2. Selection of Impartial Experts

10 Defendants' substantial compliance with the terms of this
11 agreement will be assessed by not more than two impartial experts.
12 The impartial expert in general penal conditions will be selected
13 jointly by Plaintiffs' and Defendants' experts.

14 The parties agree that Defendants' expert, Ronald Shansky,
15 M.D., will be the impartial expert for judging substantial
16 compliance with medical, dental, and mental health provisions.

17 The Defendants' expert will be:

18 General Conditions - Gary Deland.

19 The Plaintiffs' expert will be: General Conditions - Eugene
20 Miller.

21 If the conditions experts cannot agree on an impartial
22 conditions expert, and the parties cannot agree on an impartial
23 conditions expert, they may request the Court appoint an impartial
24 conditions expert.

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6. SETTLEMENT AGREEMENT

1 3. Determining Compliance

2 Approximately six months after the court's approval of this
3 agreement, the Defendants shall arrange for the impartial experts
4 to conduct on-site visits of MSP. On-site visits will be up to two
5 days duration. All expenses and costs associated with the work of
6 the impartial experts shall be paid by the Defendants. The cost of
7 such on-site visit shall not exceed \$4,000.00. Each party may
8 select a designee to accompany each impartial expert during the on-
9 site visit. Each impartial expert may review all documents not
10 otherwise privileged, speak with any Defendants or staff member at
11 MSP, and may engage in private conversations with any class member.
12 Each such expert shall abide by all Court Orders regarding
13 confidentiality of prison files. Each such expert shall prepare a
14 written report of his or her findings within 30 days of each on-
15 site visit, and send a copy to Plaintiffs' counsel and Defendants'
16 counsel. The report shall include a statement indicating whether
17 or not the Defendants are making satisfactory progress in the
18 opinion of the monitors toward substantial compliance.

19 Approximately twelve months from the date of the court's
20 approval of this agreement, the Defendants shall arrange for a
21 second set of on-site visits. These visits shall be conducted in
22 accordance with the same terms as the initial visit. The report of
23 each expert shall include a statement indicating whether or not the
24 Defendants are in substantial compliance.

25 If after the initial site visit the impartial experts report
26 that in their opinion the Defendants are not making satisfactory

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1 progress toward substantial compliance, the Plaintiffs can seek
2 appropriate relief from the court.

3 4. Early Substantial Compliance

4 In the event Defendants' believe they are in substantial
5 compliance before the expiration of the one (1) year following the
6 Court's approval of this agreement, Defendants shall notify the
7 impartial experts and Plaintiffs' counsel in writing and the
8 impartial experts will conduct an on-site visit and report as noted
9 in paragraph 3 above. Defendants may seek a finding of partial
10 early substantial compliance as noted in paragraph 5 below.

11 5. Dismissal on Substantial Compliance

12 Should the impartial experts find the Defendants have achieved
13 substantial compliance, the impartial experts shall make one (1)
14 final on-site visit at the end of four (4) months following the
15 impartial experts' finding of substantial compliance. The
16 impartial experts' final on-site visit will be conducted according
17 to paragraph 3 above.

18 If, after the final on-site visit, the impartial experts find
19 the Defendants are still in substantial compliance, Defendants'
20 counsel may submit the impartial experts' reports to the Court and
21 request an early dismissal of the action.

22 If the impartial experts' reports the Defendants have not
23 achieved substantial compliance, the provisions regarding
24 continuing jurisdiction will become effective.

25 Either party may disagree with the impartial experts' reports
26 and seek relief by appropriate motion from a report of or against

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1 substantial compliance. The impartial experts' reports will be
2 considered as evidence, but not be binding on the Court which will
3 make the final determination of substantial compliance. The
4 parties may undertake discovery before the matter is submitted to
5 the court.

6 Should the impartial experts report substantial compliance in
7 some areas but not others, Defendants may seek dismissal of
8 portions of the action relating to those areas with which they
9 substantially comply.

10 III. CONTINUING JURISDICTION

11 1. Term; Burden of Proof

12 The Court shall retain jurisdiction over this action until a
13 period of four (4) months after the first report of substantial
14 compliance is reported for the purpose of enforcing the provisions
15 of this agreement. In the event of any motion for an order to
16 obtain relief based upon Defendants' alleged non-compliance,
17 Plaintiffs must establish by a preponderance of the evidence that
18 Defendants' failures or omissions to meet the terms of this
19 agreement are not minimal or isolated, but are substantial and
20 widespread.

21 2. Non-Compliance

22 Should the plaintiffs establish that the Defendants are not in
23 substantial compliance, as set forth above, Plaintiffs may only
24 seek the following relief from the Court:

25 a. An order requiring Defendants to file "Progress Reports"
26 and continue the on-site visits by the impartial experts for the

9. SETTLEMENT AGREEMENT

1 sites or functions found to be out of compliance at such intervals
2 as may be appropriate;

3 b. An order extending the compliance period, but only for
4 the sites or functions found to be out of compliance and by no more
5 than one (1) year increments;

6 c. An order extending its jurisdiction over this action, but
7 by no more than four (4) months beyond the date that Defendants are
8 in substantial compliance with this agreement; or

9 d. An order seeking specific performance, or other relief,
10 but not an order holding any Defendant in contempt or imposing a
11 fine on any Defendant.

12 Defendants shall bear the costs of any additional on-site
13 visits required by Defendants' non-compliance with this agreement.

14 IV. DISPUTE RESOLUTION

15 In the event a dispute arises as to whether Defendants have
16 failed to substantially comply with the terms of this agreement,
17 counsel for the parties shall proceed as follows:

18 a. Counsel for the parties shall make a good faith effort to
19 resolve any difference which may arise between them over matters of
20 compliance. Prior to the initiation of any proceeding before the
21 Court to enforce the provisions of this agreement, Plaintiffs'
22 counsel shall notify Defendants' counsel in writing of any claim
23 that Defendants are in violation of any provision of this
24 agreement.

25 b. Within twenty (20) business days of the receipt of this
26 notice, counsel for Plaintiffs and Defendants shall meet in an

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1 attempt to arrive at an amicable resolution of the claim. If after
2 twenty (20) business days following such meeting, the matter has
3 not been resolved, Defendants' counsel shall be so informed by
4 Plaintiffs' counsel, in writing, and Plaintiffs may then have due
5 recourse to the Court.

6 V. TERMS ADDRESSING SUBSTANTIVE ALLEGATIONS

7 The terms and conditions of this part of the agreement are
8 couched in terms of future acts. The Defendants contend that they
9 have implemented many of the terms contained in this part of the
10 agreement, a contention with which the Plaintiffs do not
11 necessarily agree. The use of prospective terms in this portion of
12 the agreement is without prejudice to the Defendants' claims that
13 the programs described have already been implemented.

14 SECTION 1 - MEDICAL

15 A. Medical Director - The Defendants agree to appoint a
16 Medical Director who is responsible for making recommendations for
17 the development of medical policies and procedures which, when
18 adopted, will be largely in compliance with the National Commission
19 on Correctional Health Care Guidelines as they currently exist
20 except as otherwise provided in this agreement. These policies and
21 procedures would include, but not be limited to, such issues as
22 quality assurance, programs for chronic care, special-needs
23 inmates, admission to and administration of the infirmary, and a
24 peer review of the practitioners who are contracting with the State
25 of Montana. The Medical Director shall be responsible for imple-
26 menting the medical policies and procedures, as well as the duties

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1 set forth in Exhibit A. Day-to-day supervision and management
2 would be provided by a manager contracted by the Defendants.

3 B. Physicians - Defendants shall ensure that, in addition to
4 the Medical Director, one or more licensed physicians shall provide
5 medical services as described in Exhibit B. Additionally,
6 Defendants shall ensure two (2) physician assistants or the
7 equivalent, each on a 40-hour week.

8 C. Nurses - Defendants shall provide adequate nursing staff
9 to cover sick call, the chronic care program, patient follow-up,
10 and to be responsive to any routine or emergent medical situation
11 which may arise on a day-to-day basis. Defendants shall ensure 24-
12 hour nursing coverage of the infirmary.

13 D. Nursing Protocols - Defendants shall establish and
14 implement standing orders or protocols for the treatment of common
15 conditions by nurses performing sick call. Such standing orders
16 shall be reviewed and approved by the prison Medical Director.

17 E. TB Screening - Defendants shall conduct TB screening of
18 inmates in conformance with Center for Disease Control Guidelines.
19 Most notably, this shall include a skin-test (PPD) of each inmate
20 upon entry (except any inmate providing documentation of already
21 testing positive for TB), to be administered and read by
22 appropriately trained personnel and recorded in the inmate's
23 medical record. Any inmate with positive skin-test reactions, or
24 with symptoms suggesting TB (e.g., cough, anorexia, weight loss,
25 fever), should be provided a chest x-ray within 72 hours of the
26 skin-test reading or identification of symptoms. Further, all

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1 inmates with negative skin-tests shall be administered a repeat
2 skin-test on an annual basis.

3 F. Intake Screening - Defendants shall conduct an intake
4 screening of each incoming inmate within 24 hours of admission,
5 excluding weekends and holidays. The screening shall entail
6 conducting a preliminary history and physical, including the taking
7 of vital signs. Initial assessments shall be performed by nursing
8 staff, and for every inmate shall be followed with a comprehensive
9 physical examination to be completed by a physician assistant
10 and/or a physician. Such physical examination shall be completed
11 within the first 14 days of an inmate's admission into the prison.
12 At the discretion of MSP health officials, returnees within one (1)
13 year of their last separation may be exempted from the PE
14 requirements.

15 G. Sick Call - Defendants shall conduct a daily sick call,
16 except weekends and holidays. The sick call clinics shall be
17 conducted in the satellite (out-patient) infirmaries by an on-site
18 nurse and/or physician's assistant. In conducting these clinics,
19 health care staff shall utilize triage protocols and shall ensure
20 all appropriate follow-up care is provided. Further, Defendants
21 shall ensure all inmates are seen at sick call, by a nurse and/or
22 physician's assistant, within 48 hours of their submission of a
23 request for health care services.

24 H. Sick Call/Maximum Security - Defendants shall conduct
25 daily sick call, except weekends and holidays, in the Maximum
26 Security Unit, with assessments to be done by the nursing staff and

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1 appropriate follow-up care to be provided on a day-to-day basis.
2 The Defendants shall provide an examination area within the Maximum
3 Security building that is properly equipped and lighted for
4 physical examinations and assessments, excluding weekends and
5 holidays.

6 I. Patient Referrals - Defendants shall schedule referrals to
7 primary care physicians according to clinical priority, but
8 patients needing to see a physician shall be seen in no more than
9 five (5) days. Patient referrals to specialists outside the prison
10 shall be made by physicians timely, subject to review by the
11 facility's medical review panel in appropriate cases. Medical
12 Review Panel decisions shall be made consistent with DOC's level of
13 therapeutic care policy number 528 attached as Exhibit C.

14 J. Over-the-Counter Medications - Defendants shall revise the
15 current over-the-counter medication policy and implement such
16 revised policy so that any over-the-counter medication that is
17 authorized by a licensed health care provider shall be provided by
18 the Defendants for the period of time recommended by the health
19 care provider, and in any other instance over-the-counter
20 medications shall be available for purchase to the inmate
21 population through the canteen. The policy shall set forth under
22 what conditions or circumstances over-the-counter medication is
23 considered medically indicated. It is the expectation of the
24 parties that over-the-counter medications shall be provided for
25 common ailments when medically appropriate.

26

1 K. Annual Physicals - Defendants shall develop and implement
2 a policy to ensure all inmates over the age of 50 shall be offered
3 a physical exam annually, and all inmates over the age of 40 shall
4 be offered a physical exam bi-annually.

5 L. Medication Distribution - With respect to distribution of
6 medication, Defendants shall comport with state law and the
7 Administrative Rules of Montana - Board of Nursing Guidelines.

8 M. Chronic Care Patients - Defendants shall develop and
9 implement a program for the care of chronic care inmate/patients.
10 The chronic care provided shall entail a clinic or examination for
11 each chronic care patient at least once every four (4) months, and
12 at greater intervals where medically indicated. Inmates who are
13 considered to be chronic care patients shall include, but not be
14 limited to, inmates who are: diabetic, asthmatic, HIV+, TB+,
15 hypertensive, and epileptics.

16 N. Eye Care - The Defendants shall provide eyeglasses to
17 those inmates who need them. Should an inmate break his eyeglasses
18 through no fault of his own, the same shall be replaced at
19 Defendants' expense. If an inmate's eyeglasses are broken through
20 the inmate's fault, the Defendants shall replace the eyeglasses at
21 the inmate's expense, provided that should an inmate be indigent,
22 as defined in the indigency policy, the Defendants shall
23 nevertheless replace the inmate's eyeglasses, billing the cost to
24 his account. The Bureau Warden shall have the discretion to
25 determine whether or not to replace an indigent inmate's eyeglasses
26 more than one (1) time in one (1) year.

15. SETTLEMENT AGREEMENT

1 **SECTION 2 - DENTAL**

2 The Defendants shall provide adequate dental care to its
3 inmate population.

4 A. Dentist - Defendants shall retain or contract for dental
5 staff who shall provide adequate dental services within 60 days of
6 any routine or non-urgent request made regarding dental health care
7 within the institution. If Defendants cannot provide such
8 services within 60 days, Defendants shall add additional resources
9 so as to reduce the inmate waiting period to within 60 days.

10 B. Emergency Dental Care - The Defendants shall ensure timely
11 provision of emergency dental care to inmates.

12 C. Elimination of Backlog - Defendants shall contract with
13 health care providers to eliminate the backlog of requests for
14 dental health care. The backlog shall be eliminated within one (1)
15 year of the date of the signing of this agreement. In the process
16 of eliminating the backlog, the Defendants shall prioritize cases
17 according to clinical priority. The Defendants shall re-evaluate
18 the current level of staffing once every six (6) months to
19 determine if additional dental staff is needed. Once the backlog
20 has been eliminated, the Defendants shall initiate a program to
21 provide dental hygiene services.

22 **SECTION 3 - MENTAL HEALTH**

23 The Plaintiffs' mental health expert, Jeffrey Metzner, M.D.,
24 and the Department of Corrections and Human Services psychiatrist,
25 David Schaeffer, M.D., shall recommend a plan to the parties for
26 provision of mental health care services to the inmate population

1 at MSP. MSP shall have a psychiatrist more than half time (more
2 than 20 hours per week) to provide clinical and administrative
3 leadership, as well as treatment. If the doctors cannot agree on
4 recommendations, the matter shall be submitted to the parties under
5 the dispute resolution provisions of this agreement.

6 **SECTION 4 - OVER-CROWDING PHYSICAL PLANT**

7 A. Out of Cell Time - As used in this agreement the term
8 "general population" or "general population inmates" means inmates
9 of Montana State Prison who are housed inside the prison security
10 perimeter fence and specifically excludes inmates in maximum
11 security, reception, temporary lock-up, detention, disciplinary
12 restriction, or patients in the infirmary. The Defendants agree to
13 provide the opportunity for all inmates in general population to
14 spend at least eight (8) hours out of cell time on a daily basis.

15 B. Preventive Maintenance - The Defendants agree to
16 establish and maintain a preventive building maintenance program.

17 C. Work Orders on Housing Units - The Defendants agree to
18 make work orders affecting the housing units and pertaining to a
19 violation of public health codes and/or fire safety codes priority
20 projects, and the Defendants will respond to them within 48 hours,
21 weekends and holidays excepted.

22 D. Compliance With Building Codes - The Defendants agree to
23 comply with State building, Public Health and Fire Codes.

24 **SECTION 5 - CLASSIFICATION AND TREATMENT**

25 A. Objective Classification - The Defendants agree to
26 implement an Objective Classification System largely in compliance

1 with that prepared by Trisha L. Hardyman of the National Council on
2 Crime and Delinquency of December, 1993 for the Department of
3 Corrections and Human Services, and which is currently in force.

4 B. Coordination With Parole Board - The Defendants agree to
5 work with the Parole Board in coordinating the development of
6 treatment plans for all Reception inmates, if admission occurs more
7 than one year from the date of last separation.

8 C. Annual Review of Treatment Plans - The Defendants agree
9 to conduct annual reviews of treatment plans for the inmate
10 population.

11 D. Priority for Treatment Programs - The Defendants agree to
12 give priority for access to treatment programs to inmates who are
13 nearest to parole eligibility and to inmates who have parole
14 conditioned on their completion of specific treatment programs.
15 The Defendants will keep rosters of parole eligibility requirements
16 and projected discharge dates to prioritize enrollment.

17 E. Disciplinary Handbook - The Defendants agree to develop,
18 implement and make available for all prisoners a disciplinary
19 handbook that describes offenses, penalties, and proceedings
20 relative to the disciplinary process.

21 F. Temporary Lockup in Maximum Security - The Defendants
22 agree that any temporary lock-up situation that would place an
23 inmate in Maximum Security must receive prior approval from the
24 Unit Manager and/or his designee (the next person in the chain of
25 command) or higher authority prior to placement in the Maximum
26 Security Building. The Defendants also agree that a due process

1 hearing will occur within 72 hours (except weekends and holidays)
2 unless additional investigation is needed to complete the case.
3 The Defendants agree not to transfer any inmate to Maximum Security
4 based solely on information obtained from a single confidential
5 informant.

6 SECTION 6 - SECURITY

7 A. NIC Recommendations - The Defendants agree to implement
8 those listed recommendations of the NIC Audit Team in Exhibit D.

9 B. Intercom - The Defendants agree to repair and maintain an
10 all-unit intercom or similar system within the housing units inside
11 the perimeter security fence at Montana State Prison.

12 C. Supervision and Training - The Defendants agree to
13 provide appropriate supervision and security for the population of
14 Montana State Prison consistent with the mission and quality
15 management philosophy. Defendants shall insure provision of a
16 staff training program for corrections officers both pre-service
17 and in-service.

18 SECTION 7 - MAXIMUM SECURITY

19 A. Use of Force and Follow-up - The Defendants agree to
20 maintain and adhere to Department of Corrections and Human Services
21 use of force policy number 09-010 and MSP's Maximum Security
22 policy.

23 B. General Population Maximum - Inmates who have moved
24 satisfactorily through the stratification system within the Maximum
25 Security Unit and have spent 60 days on Level IV with clean
26 conduct are eligible for consideration as "Maximum Security-General

1 Population* (GP Max). The determination whether an inmate is
2 classed as GP Max is in the discretion of the Maximum Security Unit
3 Management Team. Inmates classified as GP Max will be allowed at
4 least 26 hours out-of-cell per week, including one meal per day
5 outside the cell, and 1 1/2 hours of recreation time every other
6 day. It is the expectation of the parties that some inmates in
7 this classification may be able to be outside the Maximum Security
8 building but within the Maximum Security compound to perform work
9 or recreation.

10 C. Programs in Maximum - The Defendants agree to preserve
11 the current stratification program and offer inmates in the Maximum
12 Security Unit cell study and Anger Management.

13 D. Mental Health in Maximum - The Defendants agree to
14 conduct mental health rounds on a weekly basis in the Maximum
15 Security Unit.

16 **SECTION 8 - GOOD TIME**

17 A. Revision of Good Time Statutes - The Administrator of the
18 Corrections Division and Director of the Department of Corrections
19 and Human Services agree to recommend to the Governor legislation
20 in 1995 establishing a day-for-day good time allowance. In the
21 event such legislation fails, the Defendants will work jointly with
22 Plaintiffs to issue a memorandum to the population describing the
23 good-time policy and explaining the nuances relative to this policy
24 and to develop a simplified format for calculating good-time. If
25 the parties are unable to agree on the memo or the format this
26

20. **SETTLEMENT AGREEMENT**

1 issue shall be severed and dismissed without prejudice to its
2 refiling.

3 B. Request for Additional Administrative Staff - The
4 Defendants agree to make a request for additional administrative
5 staff to perform the work required of the Records Department.

6 **SECTION 9 - ADA COMPLIANCE**

7 Defendants shall ensure that inmates with disabilities are not
8 excluded from participation in, or denied the benefits of housing,
9 services, facilities and programs because of their disabilities.

10 The Defendants shall develop and implement plans to integrate
11 the disabled inmates into the mainstream of the institution.

12

13 STATE OF MONTANA
14 DEPARTMENT OF CORRECTIONS
15 AND HUMAN SERVICES
1539 11th Avenue
Helena, Montana 59601

16 BY: [Signature]
17 Its Director
For the Defendants

18 DATED: 10/16/94

19

20 TERRY LANGFORD, ET AL.

21 BY: [Signature]
22 Mark J. Lopez
23 National Prison Project ACLU
1875 Connecticut Avenue, NW
Washington, DC 20009
For the Plaintiffs

24 DATED: 10/21/94

25

26

David L. Ohler
Department of Corrections
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BY: [Signature]
David L. Ohler
Attorney for Defendants

DATED: 10/24/94

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BY: [Signature]
P. Keith Keller
Attorneys for Defendants

DATED: 10/26/94

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7 DATED: 10/21/84

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13 DATED: 10/21/84

EXHIBIT "A"

Duties of Medical Director as defined in contract of August 4, 1994.

To develop quality assurance plans which may include, but are not limited to, medical audit and medical chart review procedures, develop written medical protocols which may include, but are not limited to, medical specialty referral procedures, nursing and mid-level provider duties, and provide effective medical oversight and medical administration which will result in improving the quality and effectiveness of the delivery of health care at the Montana State Prison Infirmary through the Montana State Prison HMO. The Director shall also serve as liaison between any contract, infirmary management and the Department of Corrections & Human Services in matters concerning medical administration issues. The Medical Director shall also serve as preceptor for any physician assistants employed by the Department at Montana State Prison Infirmary.

EXHIBIT "B"

Responsibilities of Physicians as defined in contract of July 29, 1994.

To provide medically adequate primary health care services to the patients, including:

- (a) completion of appointments as scheduled;
- (b) on-call services shall be provided as part of 24-hour health care;
- (c) if an inmate's custody status precludes his attendance at the Infirmary, physician shall provide services at the inmate's unit and/or at a satellite infirmary;
- (d) the Primary Care Physician shall be responsible for coordinating, directing and managing the inmate's total health care needs, including referral for nonprimary care services. The physician shall be expected to treat inmate patients and Infirmary staff with professionalism and respect. PCP services include, but will not necessarily be limited to:
 - 1) examining and treating inmate patients on sick call at the MSP Infirmary;
 - 2) ordering prescription medication through the Department's pharmacy contractor, HPI;
 - 3) prescribing diet, and other ancillary services as may be appropriate;
 - 4) ordering laboratory tests and analyses, and x-ray services as may be appropriate;
 - 5) performing minor surgery, administering local anesthetics;
 - 6) where determined medically appropriate, ordering inpatient and/or outpatient hospital care and services and in such circumstances assure continuity of care by following patient through their inpatient and/or outpatient status at PCMH and on patient's return to Infirmary;
 - 7) consulting with the contractor's Medical Director concerning cases which in the opinion of the PCP, may require referral to a medical specialist and a hospital setting other than PCMH;

- 8) preparing a referral form for cases which require services by a nonprimary care specialist physician or other licensed health care professional;
- 9) giving direction and instruction to infirmary nursing personnel;
- 10) providing chronic care monitoring for those inmates who in the PCP's opinion require regular monitoring for e.g., diabetes, asthma, hypertension, the frequency of which will be determined by patient health status and the opinion/recommendation of the PCP;
- 11) completing patient encounter documentation which is sufficient to meet HCFA 1500 requirements; encounter data shall be transmitted by the contractor to the Department's agent, BCBSM, using the HCFA 1500 electronic claim format;
- 12) maintaining clinical records of all patient contacts according to medical record standards and requirements.

(e) All PCP's will participate in a preservice training program provided by the Department to ensure they are familiar with operational protocol of Montana State Prison.

(f) All PCP's agree to serve as alternate preceptors to the Department's P.A.'s.

Department of Corrections and Human Services Policies and Procedures for Corrections Division		Policy Subject: LEVEL OF THERAPEUTIC CARE		
Signature of Responsible Person	Original Policy Yes (X) No ()	Effective Date	Page 1 of 4 Pages	Policy No. 528
Date	Revision Date			

POLICY:

The policy of the Montana Corrections Division is to provide those health care services that preserve and maintain the health status of inmates during incarceration. The level of health care service provided by the Corrections Division will be consistent with the standard for such services in the community. This means that health care procedures will be conducted in a clinically appropriate manner and setting by qualified personnel.

PROCEDURE:

A. Levels of Care

1. Medical care and treatment is prioritized into levels with authorizations for each level specified:
 - a. Medically Mandatory: Level 1; routinely provided to all inmates by the Corrections Division. Authorization by any health services staff and in an emergency situation, by any authorized staff of the facility.
 - b. Presently Medically Necessary: Level 2; may be provided to Montana Corrections Division inmates subject to periodic utilization review and authorization by a Corrections Division prescribing practitioner.
 - c. Medically Acceptable but not Medically Necessary: Level 3; provision of services to inmates will be decided on a case by case basis.
 - o Acute/On-site - Authorized by attending practitioner and/or Chief Medical Officer.
 - o Chronic/Off-site - Authorized by Medical Review Panel.
 - d. Of Limited Medical Value: Level 4; generally will not be provided to inmates by the Corrections Division.
2. Recommended elective medical or surgical procedures or therapies must be reviewed by the Medical Review Panel. If a delay in treatment would cause irreparable harm, excessive risk or be in clear violation of sound medical principles, the review may be conducted after treatment has been initiated.
3. The levels of care are general categories of diagnosis, therapies and procedures. In some cases, additional factors may need to be considered in deciding whether or not the Corrections Division will provide a given procedure or therapy.
4. Access of an inmate to adequate diagnosis and review by appropriate medical personnel is essential and is not abridged by this policy.
5. The final authority in all review appeals will be the Director of the Department of Corrections and Human Services or his designee(s) in consultation with appropriate medical personnel.

3. Definition of Levels of Care and Treatment and Authorization to Proceed.

1. **Medically Mandatory: Level 1**

- a) **Definition:** Care that is essential to life and health, without which rapid deterioration may be an expected outcome and where medical surgical intervention makes a very significant difference and/or has a very high cost effectiveness. Examples include but are not limited to:
 - 1) Acute problems, potentially fatal, where treatment prevents death and allows full recovery, e.g. appendectomy for appendicitis, arterial and venous lacerations, myocarditis, myocardial infarction, etc.
 - 2) Acute problems, potentially fatal, where treatment prevents death but does not necessarily allow for full recovery, including burn treatment, treatment for severe head injuries, myocardial infarction.
 - 3) Maternity care, including monitoring, delivery, hypertension of pregnancy, etc.
- b) **Authorization:** Any health service staff and in an emergency situation by any authorized staff of the facility.
- c) **Medically mandatory care** is frequently urgent or emergency care and as such is best initiated by medical personnel at the time of intervention and is routinely authorized, provided and paid for by the Corrections Division.

2. **Presently Medically Necessary: Level 2**

- a) **Definition:** Care without which the inmate could not be maintained without significant risk of further serious deterioration of the condition, significant reduction of the chance of possible repair after release or without significant pain or discomfort. Examples include:
 - 1) Chronic, usually fatal conditions where treatment improves life span and quality of life, including medical management of insulin dependent diabetes mellitus, surgical treatment for treatable cancer of the uterus, medical management of asthma, hypertension.
 - 2) Comfort care such as pain management and hospice type care for the end stage of diseases such as cancer and AIDS.
 - 3) Essential preventive care for adults, including mammograms, pap smears, tuberculosis screening.
 - 4) Acute non-fatal conditions where treatment may prompt a return to previous state of health, including medical treatment of various infectious disorders.
 - 5) Acute no -fatal conditions where treatment allows the best approximation of return to previous health including relocation of dislocated elbow, repair of corneal laceration.
- b) **Authorization:** Any Corrections Division prescribing practitioner. Subject to periodic review and limitation by the Medical Review Panel.
- c) **Level 2:** Presently Medically Necessary care, when not of an emergency nature, should undergo periodic utilization review for appropriateness but in general will be routinely provided and paid for by the Corrections Division.

3. **Medically Acceptable but not Medically Necessary: Level 3**

- a) **Definition:** Care for non-fatal conditions where treatment may improve the quality of life for the patient, including but not limited to routine non-incarcerated hernial repair, treatment of non-cancerous skin lesions.

b) **Authorization:**

- 1) Medical and surgical procedures and therapies which can be appropriately completed on premises in a routine clinic and are within the skills of the attending physician may be offered at the discretion of the attending practitioner and/or Chief Medical Officer.
- 2) Off-site procedures and therapies for chronic diseases if deemed appropriate for treatment by the Chief Medical Officer or attending practitioner, may be referred to the Medical Review Panel for consideration prior to authorization.

c) **Clinical Review:**

- 1) Medical Review Referral Form, must be completed by the assigned medical authority or designee and submitted to the Medical Review Panel for clinical review. Factors that will be considered when deciding if a clinical service should be provided include:
 - i. The urgency of the procedure and the length of the inmate's remaining sentenced stay, i.e. length of time for rehabilitation and follow-up necessary for projected recovery.
 - ii. Whether the surgery/procedure could be or could not be reasonable delayed without causing a significant progression, complication, or deterioration of the condition and would not otherwise be in clear violation of sound medical principles.
 - iii. The necessity of the procedure/therapy:
 - a. Any relevant functional disability and the degree of functional improvement to be gained.
 - b. Medical necessity - the overall morbidity and mortality of the condition if left untreated.
 - iv. Pre-existing conditions, whether the condition existed prior to the inmate's incarceration and what kind of treatment was previously obtained or where treatment was not obtained prior, the reasons for not obtaining treatment. The inmates unwillingness to release this information shall operate as a waiver of the requested surgeries.
 - v. The probability the procedure/therapy will have a successful outcome given relevant risks.
 - vi. Alternative therapy/procedures which may be appropriate.
 - vii. Patient's desire for the procedure and the likelihood of the patient's cooperation in the treatment efforts.
 - viii. Risk/Benefits if known.
 - ix. Cost/Benefits if known.

4. **Limited Medical Value: Level 4**

- a) **Definition:** Care that is appropriate to certain individuals but significantly less likely to be cost effective or to produce substantial long term gain. This includes treatment of minor conditions where treatment merely speeds recovery, where treatment gives little improvement in quality of life, offers minimal palliation of symptoms, or is primarily for the convenience of the individual. Examples include but are not limited to:

Tattoo removal, minor nasal reconstruction, oral aphthous ulcers, elective circumcision, common cold, surgery for gynecomastia.

- b) Will not be authorized by the Corrections Division as lack of this level of care does not apply to the basic health of an inmate.

5. Exceptions

- a) There will be occasions when the level of care of a certain disorder will be unclear or when it is not appropriate to apply the levels of care to an individual patient.
- b) Any individual case or proposed therapy can be reviewed for appropriateness, second opinion, approval or denial of coverage by submitting a "Medical Review Referral Form" to the Medical Review Panel.

6. Inmate or Third Party Liability

- a) Insurance or other third party resources including workers compensation benefits will be utilized as the resources of first resort. (Inmate personal liability may be imposed when it is determined that injury or medical condition occurred prior to incarceration (level 3).)

7. When an inmate wants to choose a physician and arrange to pay the physician through insurance or other resources:

- a) Refer to the Medical Review Panel
- b) Medical Review Panel reviews the source of payment, and reasons another physician is sought, credentials of physician to whom the inmate has been referred and determines if referral is appropriate.
- c) If authorized by the Medical Review Panel, charges must be prepaid or insurance company involved must acknowledge in writing, inmate status of patient and assurance the procedures will be fully paid. In addition, inmate must pre-pay costs of transportation to physician's office, clinic, hospital, or other point of service, and all costs of security, including staff time.

CHIEF MEDICAL OFFICER

DATE

DIVISION ADMINISTRATOR

DATE

DIRECTOR OF DESIGNEE

DATE

October 18, 1994

EXHIBIT "D"

In section XII of its report, Riot at Max, the NIC Administrative Inquiry Team made certain recommendations. The Defendants have implemented some of those recommendations as follows:

A. RIOT-RELATED

1. That PC inmates be moved out of the Max unit permanently.

Response: Done. There is no PC classification.

2. That restrictions imposed on the general population after the riot be re-examined for necessity and purpose.

Response: Done.

3. That the State Attorney General's office, or the Federal Department of Justice, be requested to investigate possible staff violations of inmates Civil Rights.

Response: Done.

B. ORGANIZATIONAL CONSIDERATIONS

1. That the Mission and Goals of the Institution be carefully considered, articulated, and thoroughly disseminated.

Response: Done.

2. That the organizational structure and chain of command issues be clarified and thoroughly disseminated.

Response: Done.

3. That a comprehensive plan to increase staff professionalism be developed.

Response: Done by implementation of unit management.

4. That MSP consider a unit management system for running the institution.

Response: Done.

October 13, 1994

C. OPERATIONS

1. That technical assistance be arranged for an analysis to determine whether the inmate population is generally over-classified.

Response: An objective classification system was adopted and is being implemented.

2. That managers and supervisors be involved in reviewing and rewriting policies, procedures, and post orders.

Response: Done.

3. That the inmate Grievance System be redesigned with appropriate checks, balances, controls, and safeguards. Hold staff accountable to administer the new system with scrupulous fairness and consistency.

Response: Done.

4. That the Inmate Disciplinary System be rewritten so that offenses are objectively defined. Serious and minor offenses should constitute different offense categories. Review several other state disciplinary systems as models. Develop a plan to eliminate inmate back-log awaiting space for a lock-up.

Response: Done. Policy is being rewritten.

5. That staff be disciplined for taunting, swearing, demeaning or otherwise engaging in clearly unprofessional conduct with inmates.

Response: Done.

6. That a thoughtful, complete Use-of-Force Policy be developed. Train all staff, security and civilian, in its meaning and application. Develop a review procedure for use of force incidents.

Response: Done.

D. EMERGENCY PREPAREDNESS

1. That MSP develop simple, basic emergency plans as quickly as possible to be used on an interim basis until comprehensive emergency preparedness can be completed.

Response: Done.

October 18, 1994

E. SECURITY

1. That the institution engage a security expert to conduct a full-scale security audit.

Response: Done.

2. That some person or method for coordinating intelligence across shifts and across living units be developed.

Response: Done.

3. That a policy be developed that requires video taping of any critical incident or use-of-force situation in which time allows video tape equipment to be brought into position. Make the use of the video tape a supervisory responsibility.

Response: Done.

4. That recreation be actively and regularly supervised for Max inmates.

Response: Done.

5. That technical assistance be arranged for an analysis of post positions and staffing needs.

Response: Done.

6. That a psychological autopsy of any inmate suicide be mandated.

Response: Done.

7. That an appropriate analysis of every serious security threat or violent incident be prepared, even if it is a criminal act for which the AG has primary investigative responsibility

Response: Done. The use-of-force policy requires review of any use of force.

F. INMATE PROGRAMS/SERVICES

1. That the amount of individual counseling time available to inmates within the living units be increased.

Response: Being improved as unit management is implemented.

October 18, 1994

2. That more inmate pay jobs for maintenance and clean-up be organized, both inside and outside the living units.

Response: Done.

3. That a medium-ranged strategy to increase inmate programming opportunities and decrease idleness be developed.

Response: This is being done.

4. That a thorough audit of MSP medical services be conducted using outside medical experts.

Response: Done.

5. That the food service operation be reviewed with particular attention to sanitation, the food preparation area, presentation and temperature standards.

Response: Done.

6. That increased mental health programming be provided; develop medium-range plans for housing and services for special needs offenders, e.g., geriatric inmates, physically disabled inmates, etc.

Response: This is being done through the addition of additional psychiatric services.

7. That MSP plan to provide programming for Max inmates.

Response: A limited amount of programming is done for Max inmates and through stratification.

8. That the institution provide inside recreation space within Max (perhaps on the various blocks) and provide some recreation equipment or games that can be used for outside recreation.

Response: A limited amount of recreation space and equipment is available.

G. TRAINING

1. That some minimum amount of corrections-specific supervisory training and management be established as mandatory for those two groups of staff.

Response: A training program curriculum is being developed.

October 18, 1994

2. That supervisors and mid-managers be trained in report writing and other documentation requirements.

Response: Done.