UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOUIS MILBURN, JESUS ALVAREZ, WILLIAM HARRIS, JOSEPH MACK, THOMAS BROUGHAL, RONALD DAVIDSON, CHARLES THOMAS, JOHNNY PINKNEY, VINCENT SCIABICA, ANTHONY BATTLE, MARCELLUS THOMAS, MEYER WEINER, and RAMON SEVILLA, on behalf of themselves and all other persons similarly situated,

Plaintiffs,

- against -

THOMAS A. COUGHLIN III, Commissioner of the New York State Department of Correctional Services; MARIO CUOMO, Governor of the State of New York; ROBERT GREIFINGER, Deputy Commissioner and Chief Medical Officer of the New York State Department of Correctional Services; CHARLES SCULLY, Superintendent of Green Haven Correctional Facility; SAUNDRA JOHNSON, Regional Health Services Administrator for Green Haven Correctional Facility; DARLY JEANTY, Facility Health Services Director at Green Haven Correctional Facility; and CHEREE LEMMERMAN, Nurse Administrator at Green Haven Correctional Facility, individually and in their official capacities,

Defendants.

STIPULATION FOR ENTRY OF MODIFIED FINAL JUDGMENT BY CONSENT

79 Civ. 5077 (RJW)

This action was brought on September 25, 1979, challenging the provision of health care services at Green Haven Correctional Facility ("Green Haven") as violative of prisoners' rights under the United States Constitution. The Court certified the case as a class action on December 16, 1980, the class consisting of all persons who are or will be incarcerated at Green Haven. Although defendants denied that plaintiffs' rights under the Constitution had been violated, the parties agreed that it was in the best interests of all the parties that the issues be resolved without further litigation and entered into a Stipulation for Entry of Final Judgment, dated June 23, 1982, and a Supplemental Stipulation, dated August 20, 1982, which the Court after a hearing approved and adopted as the Final Judgment of the Court on August 23, 1982. Since that time, the Final Judgment has been modified

or subject to additional Orders, Stipulations and Understandings on several occasions, including Orders of August 12, 1983; May 21, 1984; December 3, 1984; September 22, 1986; and October 24, 1988.

On October 6, 1989, plaintiffs filed a motion for contempt, modification of the Final Judgment, and the appointment of a Master. Defendants opposed this relief. On March 6, 1990, the Court appointed a Medical Auditor whose duties include reporting to the Court on the degree of compliance with the Final Judgment and making recommendations. The Medical Auditor's First Report was issued on June 8, 1990, and his Second Report was issued on January 23, 1991. The Medical Auditor found areas of non-compliance with the Final Judgment and recommended modifications of the Court's Orders.

On July 16, 1990, the Court commenced a hearing on plaintiffs' application for contempt and modification of the Final Judgment. Several witnesses testified concerning the delivery of health services to the plaintiff class. On July 27, 1990, the hearing was adjourned and thereafter the parties began settlement discussions.

However, the parties were unable to reach an agreement during those negotiations and therefore, the trial was resumed on April 9, 1991. Several additional witnesses testified about the health care being provided to the class. The trial was again adjourned on April 15, 1991, following the agreement of the parties to resume settlement discussions.

Subsequently, the parties agreed that it was in their best interest to resolve plaintiffs' motion without further litigation, and therefore, they entered into the August 1, 1991 Stipulation for Entry of Modified Final Judgment by Consent ("proposed Modified Final Judgment"). Notice of this proposed Modified Final Judgment was given to the class. Several members of the plaintiff class met with plaintiffs' counsel concerning the proposed Modified Final Judgment and submitted their objections to the Court and the parties.

On September 12, 1991, the Court held a hearing to consider the fairness and reasonableness of the proposed Modified Final Judgment and to consider the comments submitted by members of the plaintiff class. Based upon comments made by members of the plaintiff class to the Court and to plaintiffs' counsel, and after receiving a written submission from plaintiffs' counsel requesting an amendment to the proposed Modified Final Judgment, the Court at the September 12th hearing directed that paragraphs G and H of Section XIV and paragraph A of Section XV of the proposed Modified Final Judgment be amended.

The parties have incorporated the amendments directed by the Court on September 12, 1991 into the August 1, 1991 Stipulation for Entry of a Modified Final Judgment and therefore have

executed a new Stipulation of Terms of a Modified Final Judgment, dated September __, 1991, attached hereto ("amended Modified Final Judgment"). The parties further agreed that this amended Modified Final Judgment fully resolves plaintiffs' motion without further litigation. This amended Modified Final Judgment, as approved by the Court on September 12, 1991, supersedes with a single document the 1982 Final Judgment and its associated Orders, Modifications, Stipulations, and Understandings (except those pertaining to the Medical Auditor, entered March 6, 1990, October 22, 1990, and December 10, 1990). It also includes new modifications addressing issues raised by plaintiffs' motion of October 6, 1989 and the comments of the class concerning the proposed Modified Final Judgment. Upon entry of the amended Modified Final Judgment, plaintiffs' motion of October 6, 1989, will be withdrawn without prejudice.

Dated: New York, New York
September __, 1991

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOUIS MILBURN, et al.,

Plaintiffs,

- against - : 79 Civ. 5077 (RJW)

THOMAS A. COUGHLIN III, et al.,

Defendants.

INDEX TO THE MODIFIED FINAL JUDGMENT
MILBURN V. COUGHLIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOUIS MILBURN, JESUS ALVAREZ, WILLIAM HARRIS, JOSEPH MACK, THOMAS BROUGHAL, RONALD DAVIDSON, CHARLES THOMAS, JOHNNY PINKNEY, VINCENT SCIABICA, ANTHONY BATTLE, MARCELLUS THOMAS, MEYER WEINER, and RAMON SEVILLA, on behalf of themselves and all other persons similarly situated,	:	
Plaintiffs,	:	STIPULATION OF TERMS OF MODIFIED FINAL JUDGMENT BY CONSENT
- against -	:	
THOMAS A. COUGHLIN III, Commissioner of the New York State Department of Correctional Services; MARIO CUOMO, Governor of the State of New York; ROBERT GREIFINGER, Deputy Commissioner and Chief Medical Officer of the New York State Department of Correctional Services; CHARLES SCULLY, Superintendent of Green Haven Correctional Facility; SAUNDRA JOHNSON, Regional Health Services Administrator for Green Haven Correctional Facility; DARLY JEANTY, Facility Health Services Director at Green Haven Correctional Facility; and CHEREE LEMMERMAN, Nurse Administrator at Green Haven Correctional Facility, individually and in their official capacities,	:	79 Civ. 5077 (RJW)
Defendants.	:	

I. DEFINITIONS.

Unless otherwise stated, the following definitions apply throughout the Modified Final Judgment:

1. "Active medical record" means the patient health record in current use, the elements of which are set forth in ¶ XIII of this Modified Final Judgment.

2. "Business day" means Monday through Friday excluding holidays.

3. "Chronic illnesses" means the following diseases: asthma, diabetes, hypertension, cancer, seizure disorder, cardiac disease, HIV infection, and AIDS.

4. "Defendants" means those individuals named as defendants in this action as well as their successors, agents, employ-

ees, assigns and those acting in concert with them; this definition does not limit or enlarge the class of persons who are legally bound by the Judgment of the Court or who are subject to contempt for violation of the terms of the Judgment.

5. "Department" means the New York State Department of Correctional Services.

6. "Full-time" means 37½ hours for persons covered by the Civil Service Employees Association contract, and 37½ hours for persons covered by the Professional Employees Federation contract with the exception of dentists at Green Haven for whom "full-time" means 35 hours; "full-time equivalent" means the same number of position hours divided among two or more individuals.

7. "Green Haven" means the Green Haven Correctional Facility operated by the Department at Stormville, New York, for the maximum security confinement of approximately 2100 adult men.

8. "Health care provider" means any civilian employed by the Department to furnish health care services at Green Haven, including, but not limited to, physicians, physician's assistants, nurses and dentists.

9. "Infirmary" means the Green Haven In-Patient Component, utilized to provide sub-acute non-ambulatory care to Green Haven patients.

10. "Patient" means any class member seeking or receiving health care services.

11. "Routine sick call" means the procedure by which a health care provider comes to designated areas in Green Haven for health care encounters with patients who have requested to be seen for a health problem.

12. "Special Housing Unit" has the meaning set forth in 7 N.Y.C.R.R. § 300.2.

13. "Therapeutic device" means any item other than dentures ordered for a patient by a health care provider to replace a natural body part or to aid a patient in recovery, rehabilitation or treatment.

14. "Unit for the Physically Disabled" ("UPD") means a speciality care unit located at Green Haven to provide care for patients with multiple chronic health care problems and rehabilitation services to those patients with demonstrated need.

II. STAFFING.

A. Defendants shall maintain, at a minimum, the following staffing of the Green Haven health services units:

1. Administrator staffing: a Health Services Administrator ("HSA") on-site full-time at Green Haven from the entry of this Judgment until six months following the end of the term of the Medical Auditor, unless the Medical Auditor agrees to a reduction of the HSA's hours at some earlier date. At the end of this period of full time services, the HSA may be assigned to additional duties at

other facilities for a maximum of 12 hours per week.

2. Physician staffing: a physician Facility Health Services Director on-site at least 34 hours per week, plus at least 4 full time equivalent primary care physicians, each of whom shall be on-site for direct patient care at least 30 hours per week. This physician staffing shall provide at least 12 hours per week for primary care services for patients in the UPD.

3. Physician's assistant staffing: at least 2 full-time equivalent physician's assistants; however, defendants may substitute physician hours, in excess of those required by ¶ II-A-2, for physician's assistant hours at a ratio of 1.0 physician hour for every 1.5 hour of physician's assistant services in order to meet the requirement of 2 full-time equivalent physician's assistants, provided this is done on a temporary basis while defendants make best efforts to fill these physician's assistant positions. At any time defendants can substitute a physician for a physician's assistant, provided the same level of services is maintained.

4. Nurse staffing: a Nurse Administrator on-site full-time and 32 additional full-time equivalent nurses, of whom 20 must be registered nurses, to achieve the following deployment:

a. For routine sick call: 2 full time equivalent registered nurses trained in physical assessment at least five days per week.

b. For the clinic: 2 nurses on the 7-3 shift and 2 nurses on the 3-11 shift seven days per week and 1 nurse five days per week assigned to in-house specialty clinics.

c. For an infirmary of 29 beds: 3 nurses on the 7-3 shift, 2 nurses on the 3-11 shift, and 2 nurses on the 11-7 shift seven days per week, and 1 additional nurse on the 7-3 or 3-11 shift five days per week; at least 2 of the nurses on the 7-3 shift and 1 of the nurses on the 3-11 and 11-7 shifts shall be registered nurses.

d. For the UPD: 2 nurses on the 7-3 shift, 1 nurse on the 3-11 shift, and 1 nurse on the 11-7 shift seven days per week, subject to modification following the consultations required by Section

XXVIII.H; at least 1 of the nurses on the 7-3 and 3-11 shifts shall be a registered nurse.

e. However, defendants may reallocate nurses from that specified in subsections II.A.4 (a)-(d) based upon an increased or decreased need for services in any of the designated areas. Such reallocation shall be the decision of the Nurse Administrator in consultation with the Facility Health Services Director. If such reallocation extends for more than two weeks, defendants shall notify plaintiffs' counsel of the reallocation and the reason for such reallocation.

5. Dental staffing: at least 3 full-time equivalent dentists of whom at least one shall be a full-time dental director; two full-time equivalent dental assistants; and a dental hygienist.

6. Pharmacy staffing: 1.5 full-time equivalent pharmacists and 2 full-time equivalent pharmacy aides.

7. Laboratory and radiology staffing: a full-time equivalent laboratory technician, services of a radiologist as needed, and a full-time equivalent x-ray technician.

8. Medical records and clerical staffing: 6 full-time equivalent positions, including one full-time senior medical records clerk, one clerk for monitoring inventory and ordering supplies, one clerk for coordinating and maintaining the records and other documents required by this Modified Final Judgment.

9. Diet staffing: one full-time equivalent diet supervisor.

10. Physical therapy services: a half-time physical therapist, subject to modification following the consultations required by Section XXVIII.H, and a full-time assistant to the physical therapist.

11. Infectious disease services: a board certified or board eligible specialist in infectious disease on site at least 4 hours every other week for patient consultation, infirmary patient consultations and continuing medical education for staff, and defendants shall make best efforts to increase the hours of this specialist to 4 hours per week. In the event that defendants are unable to obtain the services of a physician board certified or board eligible in infectious disease, after making

a bona fide effort to do so, a physician suitably trained and experienced in the diagnosis and treatment of HIV-related illness shall be employed, subject to notice to plaintiffs' counsel and the Medical Auditor, during his Term, of this physician's training and experience.

12. Physiatric services: defendants shall make best efforts to provide physiatry services on-site at least 8 hours per week for direct patient care, subject to modification of these hours following the consultation required by Section XXVIII.H. In addition, defendants shall have a physiatrist on-site at least 4 hours per month for administrative duties and such additional hours as is required to perform the administrative duties described in defendants job description for the physiatrist.

13. Occupational therapy services: defendants shall make best efforts to have an occupational therapist available on a fee-for-service or other basis for patients in the UPD.

B. Defendants shall exert their best efforts to reduce reliance on agency, extra service, temporary or other specially employed health care staff (other than non-primary care physicians).

C. Defendants shall exert their best efforts to recruit staff fluent in both English and Spanish.

D. Defendants shall provide plaintiffs' counsel with quarterly reports showing the name and position of each member of the health care staff; the existence of any vacancies; and the use of any agency, extra service, temporary, or other specially employed health care staff. Defendants shall also report to plaintiffs' counsel changes in administrator, physician, physician's assistant, and physical therapy staffing within ten business days of such changes.

III. **EQUIPMENT**.

Defendants shall maintain medical and dental equipment in use on the date this Modified Final Judgment is entered as a Modified Final Judgment, including, but not limited to: two EKG machines; two resuscitators; one x-ray processor; one peak flow meter; one portable suction machine; one ultrasonic scaler; three dental operatories; and one copy machine. Defendants shall also maintain an x-ray machine with fluoroscopy; however, in the event this machine requires replacement, the x-ray machine shall be replaced but the capability for fluoroscopy shall only be

replaced if such has been ordered by the Court following a review by the Medical Auditor.

IV. **SICK CALL**.

For the purpose of providing access to the health care system for all inmates wherever confined in Green Haven, the parties agree as follows:

A. With respect to inmates in general population or assigned to the Green Haven farm, defendants shall:

1. Conduct routine sick call every business day by a registered nurse trained in physical assessment;

2. Provide a secure means by which patients may request sick call that includes utilization of a locked box for sick call request slips;

3. Provide review of sick call encounters by means of actual observation of such encounters by a physician every six (6) months and by a physician's assistant every three (3) months; one of the two yearly physician reviews shall be by the Facility Health Services Director;

4. Insure that, at the request of an inmate, a correctional officer shall call the medical staff until 8:00 A.M. so that the inmate may be added to that day's sick call;

5. Insure that, once commenced, daily sick call will be completed for all housing units regardless of the time factor involved, unless otherwise ordered by a supervising medical staff member or the duty Watch Commander after consultation with the supervising medical staff member; any such cancellations are to be so noted in the Watch Commander's log and in a file maintained in the office of the Facility Health Services Director, stating full particulars regarding said cancellation; where necessary, the duty Watch Commander is authorized to approve an outcount for those inmates being seen and/or waiting to be seen by the sick call nurse.

B. With respect to inmates in Special Housing Units, defendants shall:

1. Conduct daily sick call by a physician one (1) day a week, by a physician or physician's assistant four (4) days a week, and by a nurse two (2) days a week;

2. Insure that the health care provider making rounds in the Special Housing Units clearly announces his or her presence when entering each company of a Special Housing Unit and makes eye contact with each inmate if possible; and that the health care provider have with him or her during rounds the active medical record for each patient requesting sick call; and that the provider refers to the active medical record when evaluating complaints and documents each encounter therein;

3. Insure that security staff opens any bars separating the corridor from the individual cells and that the health care provider enters the space between unless:

a. The inmate makes no request; or

b. The inmate only requests over-the-counter medication; or

c. The inmate will be examined in the examination room in the Special Housing Unit area; or

d. The inmate has a recent history of assaultive behavior and as a result of that conduct the provider reasonably believes that entering beyond the bars at that time will endanger his or her health and safety.

4. Provide an examination room within the disciplinary Special Housing Unit where patients requesting medical attention or consultation may receive such services in a manner and with equipment equivalent to that used in conducting routine sick call; the provider shall make an individual determination who will be taken to the examination room, but, in general, patients who must be physically examined or treated and who cannot receive such care through cell bars and patients who require confidential communication with the provider outside of the hearing of other inmates shall be seen in the examination room;

5. Assure that adequate time is allowed in scheduling to permit the health care provider conducting sick call in the Special Housing Units to have up to four hours per day to complete this task;

6. Examine each inmate upon admission to a Special Housing Unit by the end of the shift during which the inmate is admitted to the Unit:

a. To assess the inmate's health;

b. To note the existence of any chronic disease or other special medical or dental condition; and

c. To follow up outstanding medical orders for special diets, specialist consultations, medications, or therapeutic devices.

V. **REFERRALS TO PHYSICIANS AND PHYSICIAN'S ASSISTANTS.**

A. Referrals from routine and emergency sick call. A patient referred to a physician or physician's assistant from sick call shall be seen and evaluated by a physician or physician's assistant on the same day as the referral for patients experiencing, or suspected of having, emergent or acute conditions. All other patients referred to a physician or physician's assistant from sick call, except patients designated to be seen by a particular physician, shall be seen and evaluated by a physician or physician's assistant within 2 business days. Patients without emergent or acute conditions who are designated to be seen by a particular physician shall be seen and evaluated at the next available appointment, which shall occur no later than one week after referral.

B. Referrals to physicians by physician's assistants. All patients shall have access to a physician upon referral by a physician's assistant. When in the opinion of the treating physician's assistant an appointment with a physician is not indicated, but the patient requests such an appointment, a review of the physician's assistant's decision shall take place in the following manner:

1. The treating physician's assistant shall present the case to a physician for review.

2. The physician shall review the patient's medical records and determine whether to see the patient.

3. In the event the physician decides not to see the patient, the decision shall be noted in the patient's active medical record, and the inmate shall be so informed.

VI. **DIAGNOSTIC TESTS AND X-RAYS.**

For the purpose of insuring that diagnostic testing and x-rays ordered by health care providers are carried out within the time ordered and that abnormal results are properly followed-up, the parties agree as follows:

A. The health care provider shall inform the patient if a test or x-ray is recommended and tell him to return by a date certain if the test has not been performed. Patients shall also be informed that they may obtain test or x-ray results at routine sick call.

B. Defendants shall record all ordered tests, x-rays and laboratory procedures in a permanent log book that includes the following entries:

1. The patient's name and identification number;

2. Name or type of test or x-ray;

3. The date the test or x-ray was ordered;

4. The date the test or x-ray was done; and

5. The date the results were received.

C. Upon receipt of test or x-ray reports one copy of the report shall be sent to the provider who requested the test or x-ray and another copy shall go to a physician for review. The copy returned to the requesting provider shall be dated, initialed and placed in a central file of laboratory results, and the copy reviewed by a physician shall be initialed, dated, and placed in the patient's active medical record for a period of at least one year; however, the provider may direct that the reports be retained in the active record for a longer period of time.

D. Defendants shall enter all results in the patient's active medical record with a plan for treatment or other appropriate follow-up of abnormal results.

E. Defendants shall maintain at least two refrigerators in the Green Haven laboratory so that "clean" and "dirty" laboratory items are separately stored.

VII. ACCESS TO SPECIALISTS.

For the purpose of insuring adequate access to specialists, the parties agree as follows:

A. Defendants shall reimburse specialists for their services at a reasonable compensation rate. Reasonable compensation shall include paying specialists at the rate specified by the "Empire Plan" for state civil service employees.

B. Defendants shall insure that all patients needing specialist care receive consultations with specialists in accordance with the severity of their health conditions, as follows:

1. Priority One Cases: Patients with emergency conditions who need specialist consultation shall

be seen by a specialist or transported to an emergency room without delay.

2. Priority Two Cases: Patients with urgent but not emergent conditions where prompt examination or treatment is necessary to prevent threat to the patient's life or risk of permanent harm or where more than a short delay would exacerbate the condition to the point of creating an emergency shall wait no more than two weeks from the date a specialist consultation is ordered by a Green Haven provider to the date the consultation occurs.

3. Priority Three Cases: Except as provided in ¶ VII-B-4, no other patient shall wait more than forty-five (45) calendar days from the date a specialist consultation is ordered by a Green Haven provider to the date the consultation occurs.

4. Priority Four Cases: Patients awaiting appointments with an optometrist or podiatrist who have stable conditions without risk of decline by delay and whose conditions are not painful and do not involve substantial impairment of function may wait up to seventy-five (75) calendar days for such appointments. Patients referred to optometry by a Green Haven health care provider shall be given an optometry appointment regardless of whether they have been seen by the optometrist within the last two years.

C. The median waiting period for all patients awaiting specialist consultations, except Priority Four cases, shall be thirty (30) days or less, from the date the consultation is ordered by a Green Haven provider to the date the consultation occurs.

D. In the event a specialist orders or requests that a patient return for additional evaluation or treatment, the patient shall be returned, subject to the approval of the Facility Health Services Director, as follows:

1. Within the limits stated in ¶¶ VII-B if no time for return is specified by the specialist;

2. As determined by the treating Green Haven health care provider if the specialist recommends a p.r.n. (or "as needed") return visit;

3. At the time ordered by the specialist if the specialist specifies a time for return, unless a more prompt return is required because the

patient's condition meets the criteria of ¶¶ VII-B-1 or VII-B-2.

E. Defendants shall assign at least two vehicles to health services for direct transportation to outside consultations, and at least two scheduled non-emergency trips shall occur each day the clinics are open and there are patients scheduled for appointments.

F. Defendants shall use a form for ordering specialist consultations that shall include the following:

1. Patient's name and identification number;

2. Clinic or provider referred to;

3. Date of the order;

4. The provider requesting the consultation;

5. Reasons for the consultation including history and findings appropriate to the order;

6. Laboratory test results, x-rays, and other documentation appropriate to the order, as attachments to the form;

7. Priority assigned to the appointment; and

8. Notation of medically-indicated restrictions on security restraints during transport, if any.

G. All orders for specialist consultations, including return visits, shall be dated and brought to the Facility Health Services Director, or designee, for approval no later than the first business day after origination. The Facility Health Services Director, or designee, shall promptly approve or disapprove such orders and the priority assigned to them and shall record in the active medical record the reasons for any disapprovals.

H. Defendants shall maintain in a permanent log or from a computerized record a list that includes the following entries:

1. Patient's name and identification number;

2. Date of origination of consultation;

3. Clinic or provider referred to;

4. Priority assigned;

5. Return-to-clinic date or time interval specified (if any);

6. Date patient seen;

7. Elapsed time between origination and date patient seen; and

8. Consultations cancelled and the reasons for such cancellations.

I. A Green Haven physician shall promptly review and initial all reports of specialists, after which they shall be placed in the patient's active medical record.

J. For Priority Three and Priority Four cases where an appointment does not occur because of a single unexpected cancellation of the appointment by the specialist, defendants shall immediately reschedule the appointment, and the appointment shall occur within four weeks of the date of the cancellation.

K. Defendants shall maintain a system for calling to the attention of the initiating provider those Priority Three cases in which more than thirty (30) days have elapsed since the origination of the consultation and the appointment has not yet occurred.

L. Defendants shall provide plaintiffs' counsel reports on a monthly basis that contain:

1. Copies of the documents required to be kept by ¶¶ VII-F and VII-H.

2. Copies of the reports, findings, and orders of specialists who see patients, except for optometry cases.

3. A list of any speciality clinics scheduled to be held but cancelled, and as to each: the reason for the cancellation, the names and numbers of the patients affected, and the date of rescheduling of the clinic.

4. Copies of any contracts between the Department and any providers of specialty care.

M. Optometry referrals are not subject to the requirements of ¶¶ VII-F, VII-G and VII-I.

N. In the event that defendants are unable to locate certain specialty services, although all good-faith, best efforts were used, defendants will immediately inform plaintiffs' counsel and the Court. Defendants shall advise the Court and plaintiffs' counsel of all efforts to locate adequate services and shall make all reasonable efforts to provide the needed care to the affected patients in a timely manner; and thereafter, with the consent of

either plaintiffs' counsel or the Court, defendants shall not be deemed to be non-compliant with the provisions of section VII.B.

VIII. HOSPITALIZATIONS.

For the purpose of insuring adequate and timely access to in-patient care in hospitals consistent with sound medical and dental practice, the parties agree as follows:

A. Patients needing hospitalization shall be hospitalized in accordance with the severity of their health conditions, as follows:

1. Emergencies: any condition that poses a substantial and immediate threat to the life or health of the patient. Admission for these conditions shall be immediate.

2. Urgent Conditions: any condition that poses a substantial threat to the life or health of the patient. Admission for these conditions shall be on a next available bed basis, but in no event shall a patient wait more than twenty-one (21) calendar days from the date this condition becomes urgent.

3. Unstable or Substantially Impaired Conditions: a non-urgent but unstable condition for which delay up to 120 days in hospitalization will not lead to permanent deterioration or reduced likelihood of a favorable outcome of a planned procedure; or a condition causing substantial difficulty functioning in a correctional facility that can be alleviated by treatment. Admission shall occur within 120 calendar days.

4. Stable Conditions with Impaired Function: a stable condition in which the patient experiences impairment of his ability to function fully in a correctional setting but which does not rise to the level of cases described in ¶ VIII-A-3. Admission shall occur within 180 calendar days.

5. Stable Conditions with Negligible Impact on Function: a stable condition with a negligible impact upon the patient's ability to function in a correctional setting. Admission shall occur within one year.

B. Defendants shall assign priorities for patients awaiting hospital admissions in the following manner:

1. The Facility Health Services Director shall promptly review requests for admission, assign

priorities, and record this decision in the patient's active medical record. In assigning priorities, the Director shall consider whether the patient's condition is one usually associated with persistent pain and whether the patient has complained of such pain.

2. The Facility Health Services Director shall consider any recommendation of a medical specialist regarding hospitalization and, in the event the recommendation of the specialist is not followed, the reasons therefor shall be recorded in the patient's active medical record.

3. Once priorities have been assigned, patients needing hospitalization shall be admitted in accordance with the deadlines set forth in ¶ VIII-A.

4. Defendants shall review the priorities assigned to patients awaiting admissions to determine whether the patient is assigned the correct priority by causing the patient to be examined by a health care provider at least weekly for patients with conditions described in ¶ VIII-A-2, at least every two weeks for patients with conditions described in ¶ VIII-A-3 and at least monthly for patients with stable conditions.

C. All patients awaiting admissions shall be informed of the priority to which they have been assigned, any changes thereof, and the admission deadlines incident thereto.

D. Defendants shall provide infirmary or other appropriate care for patients with urgent or unstable conditions or having substantial difficulty functioning.

E. Defendants shall use a form for ordering hospitalization of patients that shall include the following:

1. Patient's name and identification number;

2. Date hospitalization is ordered;

3. Provider requesting hospitalization;

4. Priority assigned the hospitalization;

5. Condition necessitating hospitalization and the treatment or procedure to be performed; if the care is to be provided by a specific hospital or specialist, the name of that institution or provider;

6. Date reviewed by the Facility Health Services Director, and any changes made in the care to be provided or the prioritization of the case; and

7. A notation of all contacts with the hospital to facilitate the admission, including the name of the hospital contacted and the date, the provider contacting the hospital, the hospital's response thereto, and any information provided concerning bed availablity.

F. For all patients needing hospitalization, defendants shall maintain in a permanent log or from a computerized record a list that includes the following entries:

1. Patient's name and identification number;

2. The condition, treatment, or procedure for which the patient is to be hospitalized;

3. The specific hospital required, if any;

4. The date on which the Facility Health Services Director assigns an admission priority and any changes thereof;

5. The priority assigned to the patient and any changes thereof;

6. The date hospitalization occurs and the name of the hospital; and

7. The elapsed time between the assignment of the priority and the hospitalization of the patient.

G. A Green Haven physician shall promptly review and initial all patient hospitalization discharge summaries. Such summaries shall be entered in the patient's active medical record with plans for appropriate follow-up.

H. Defendants shall establish a protocol for nurses to follow in order to obtain discharge information when a patient is returned to Green Haven without a discharge summary. Before the end of the shift during which the patient returns, the patient's diagnosis, medication orders, need for isolation (if any), and general plan for follow-up shall be obtained. A complete discharge summary shall be obtained as soon as possible in accordance with a protocol.

I. Defendants shall forward on a monthly basis copies of the documents required to be maintained by ¶¶ VIII-E and VIII-F to plaintiffs' counsel.

IX. DENTAL CARE.

For the purpose of insuring appropriate delivery of dental care, the parties agree as follows:

A. Except for dental emergencies, for which treatment shall be provided without delay, defendants shall maintain a priority system by which patients are scheduled for treatment according to the severity of their dental needs. The priority system shall include the following terms:

1. Treatment shall begin within seven (7) days of the date in which the patient complains of or is diagnosed as having one or more of the following conditions:

a. Pain;

b. Infection;

c. Need for a full upper or lower prosthesis;

d. One or more teeth that are severely carious if delay in their restoration would lead to extraction;

e. Severe periodontal disease.

2. Treatment shall begin no later than ninety (90) days of the date on which the patient complains of or is diagnosed as having any other condition.

B. Defendants shall maintain an individual dental record for each dental patient that shall contain, but is not limited to, a chart of the patient's teeth; notations of all restorations and prostheses; medical history; periodontoclasia; an individualized treatment plan; and the date and description of each treatment, procedure or diagnosis.

C. Defendants shall provide preventive services, including oral prophylaxis. Dental floss shall be available to patients by written order of a dentist.

D. At least every three months a member of the Department's Dental Review Committee shall examine a random sample of at least ten dental records, at least one of which shall be the record of an inmate confined in a Special Housing Unit. Each record shall be reviewed for completeness and quality of care. The results shall be reduced to writing and each provider shall be apprised of the evaluation of his or her work with suggestions where appropriate for improvement and change.

X. INMATE ORIENTATION.

A. Defendants shall make available to each inmate upon his arrival at Green Haven a notice describing the contents of the Modified Final Judgment and stating that copies of the full Modified Final Judgment are available in the law library.

B. Defendants shall provide arriving inmates with a written and verbal orientation to the health services available at Green Haven, the procedure for requesting such services, the rights afforded class members by virtue of this Modified Final Judgment, and the method by which complaints about health services can be lodged, including the address of the Medical Auditor during his term. This information shall be available to non-English speaking inmates in a language they can understand.

XI. REVIEW OF RECORDS OF ARRIVING INMATES.

For the purpose of insuring continuity of care for inmates arriving at Green Haven, the parties agree as follows:

A. Defendants shall review medical records no later than the first business day after receipt, and shall record the following in the patient's active medical record:

1. The date on which the patient arrived and his age and prior correctional facility;

2. Any medications the patient is currently taking;

3. Any outstanding medical or dental orders, including but not limited to those for special diets, consultations with specialists, and therapeutic devices;

4. The date, and any abnormal results, of all tests or procedures required by Department policy to be conducted periodically and any tests or procedures that are due to be performed by Department policy;

5. Any mental or physical problems, including any chronic illnesses or allergies; and

6. A notation that the patient's Medical History, Physical Examination, Problem List or Flow Sheet is absent, if applicable.

B. In the event that the review of the medical records or an interview discloses outstanding medical or dental orders, overdue tests or procedures, incomplete Problem Lists or Flow Sheets or other missing documents, or failures to comply with the

requirements of ¶ XIII-A, defendants shall promptly follow up and remedy such situations.

C. All patients found to have chronic illnesses shall be examined by a physician or physician's assistant at the next available appointment.

D. Defendants shall promptly review dental records upon their receipt and shall complete all information necessary to conform to the requirements of ¶ IX-B of this Modified Final Judgment.

E. In the event an inmate arrives at Green Haven without his medical or dental record, health care personnel shall be so notified. All such inmates shall be promptly interviewed to elicit the information set forth in ¶ XI-A above.

XII. CHRONICALLY ILL PATIENTS.

For the purpose of insuring appropriate care of patients with chronic illnesses, the parties agree as follows:

A. Defendants shall assign a physician as the primary care provider for each person with a chronic illness and/or tuberculosis.

B. Defendants shall maintain a list of patients with chronic illnesses and/or tuberculosis and shall develop protocols or treatment manuals for at least the following conditions or symptoms:

1. Hypertension;

2. Asthma;

3. Tuberculosis;

4. Seizure disorder;

5. Diabetes;

6. Chest pain;

7. Arteriosclerotic heart disease;

8. Hyperlipidemia and Hypercholesterolemia; and

9. Hematemesis.

C. Defendants shall develop and maintain a manual for the recognition and treatment of HIV infection and AIDS. It shall include guidelines for initiation of appropriate therapies, for referral to infectious disease specialists, and for infirmary

care and hospitalization. It shall be updated as knowledge about HIV infection and AIDS increases.

D. Protocols shall include differential standards for referral of patients to physician's assistants and physicians, follow-up of abnormal laboratory tests, monitoring of serum drug levels, and the role of Flow Sheets; the protocols shall be integrated into defendants' quality assurance system.

XIII. MEDICAL RECORDS.

For the purpose of insuring maintenance of medical records that make possible continuity of care, the parties agree as follows:

A. Defendants shall maintain an individual medical record for each inmate and shall fully document in the record each encounter of the inmate with a health care provider. Each active record shall include:

1. A Problem List recording all major health problems diagnosed by a physician or consultant, the date on which the problem was diagnosed, and the date, if any, on which the problem was resolved; the Problem List shall not be used for any of the purposes assigned to the Flow Sheet below;

2. The most recent Medical History;

3. The most recent Physical Examination;

4. An Ambulatory Health Record containing documentation of health care encounters in chronological order;

5. Flow Sheets for patients suffering from conditions requiring continuous monitoring, follow-up or treatment; the Flow Sheets shall record all pertinent laboratory values relating to such conditions and the progress of the patient's care;

6. Admission and discharge summaries for the preceding 12 months from Departmental infirmaries;

7. Test and x-ray results for the preceding 12 months;

8. Consultation reports from specialists and fabricators of therapeutic devices for the preceding 24 months; and

9. Discharge summaries from all hospitalizations for the preceding 24 months.

B. Defendants shall conform all individual medical records to the requirements of ¶ XIII-A, using personnel properly trained for this process, as follows:

1. As new records arrive for newly arriving inmates;

2. Within six months of entry of this Modified Final Judgment for patients with chronic illnesses; and

3. Within one year of entry of this Modified Final Judgment for all other patients.

XIV. SECURITY INTERACTION WITH HEALTH CARE.

A. With regard to trips to outside health care consultations, medical orders, and therapeutic devices, the following procedures shall apply:

1. Security personnel shall not postpone a trip to an outside health care provider, countermand written medical orders in the possession of inmates, or confiscate any therapeutic device for which an inmate has written authorization in his possession, unless a security officer of the rank of lieutenant or above determines that such trip, compliance with the medical order or possession of the therapeutic device would pose a: 1) likelihood of escape; 2) risk to the safety of staff, inmates or the public; or 3) risk to the good order of the prison. Prior to making this determination the security officer must consult with a Green Haven physician or, in his or her absence, a designated physician's assistant. When a physician or physician's assistant is not in the facility, the medical provider on duty must consult by telephone with the physician or physician's assistant on call. The security officer shall make a written report explaining the reasons for the action taken. This report shall be kept in a file designated for this purpose and the inmate shall receive a receipt for any confiscated property.

2. The Green Haven provider consulted shall note the reasons for any postponement of a trip, countermanding of a written medical orders, or confiscation of a therapeutic device in the inmate's active medical record.

3. Upon countermanding of a medical order where an inmate does not have written confirmation in his possession or upon confiscation of a therapeutic device for which an inmate does not have written authorization in his possession, the inmate may go to emergency sick call to apply for written confirmation of the order.

B. With regard to the use of restraints by security personnel for the transport of patients to outside health care providers, the following procedures shall apply:

1. Defendants shall refrain from utilizing the "black box" or C & S, Inc., "lock protector" on any of the following patients: (1) paraplegics or quadriplegics; (2) patients missing an upper extremity; and (3) patients missing both lower extremities and not wearing functional prostheses.

2. A recommendation whether particular restraints are medically appropriate for patients other than patients described in ¶ XIV-B-1 shall be made in each case by medical personnel in accordance with a written medical department protocol on use of restraints. If the Facilty Health Services Director overrides the decision of the provider limiting the use of restraints, he/she must do so only after reviewing the patient's chart and must state in writing the reasons for overriding the initial provider's recommendation.

3. Except as provided in ¶ XIV-B-4, security personnel shall employ restraints in accordance with the health care provider's recommendation pursuant to ¶ XIV-B-2, which shall be noted on the envelope containing the order for the outside consultation.

4. In the event security personnel determine that compliance with the health care provider's recommendation on use of restraints would pose a: (1) likelihood of escape; or (2) risk to the safety of staff, inmates or the public, a security officer of the rank of lieutenant or above may override the provider's recommendation, but only after consultation with a Green Haven physician or, in his or her absence, a designated physician's assistant. When a physician or physician's assistant is not in the facility, the medical provider on duty must consult by telephone with the physician or physician's assistant on call. The security officer shall make a written report explaining the reasons for the action taken. This report shall be kept in a file designated for this purpose. The Green Haven provider consulted shall note the reasons for any

deviation from recommended restraints in the inmate's active medical record.

5. Defendants shall maintain a current list of patients who meet the criteria of ¶ XIV-B-1 or who have standing orders for less than full restraints on medical trips. This list shall be available at all times in the Watch Commander's office and shall be consulted when a patient about to leave for a medical trip asserts that full restraints were mistakenly authorized. If the patient is on the list, restraints shall be used in accordance with the restrictions specified.

6. Notwithstanding Department policy that during the transport of an inmate to outside hospital or outside medical/dental appointments, handcuff, restraint belt, and black box are normally used, security personnel shall give consideration to:

a. Removal of some or all security restraints when inmates are undergoing medical examinations if requested by a physician, subject to the security considerations in subsection e.

b. Use of one-hand restraint when inmates are eating meals;

c. Use of one-hand restraint when inmates are defecating;

d. Removal of one-hand restraint approximately every four (4) hours for range of motion.

e. Removal of restraints pursuant to subsections a-d is not required if the inmate is in transit, or the removal of specific restraints at that time and location would constitute a likely risk of escape or risk to the safety of staff, inmates or the public.

7. Any patient who believes that he has been subjected to medically inappropriate or physically painful restraints on outside medical trips may go to routine and/or emergency sick call and request an appointment with a physician or physician's assistant. The sick call nurse shall note the patient's complaint and any objective signs thereof in his active medical record and shall refer the patient to a physician or physician's assistant. In the event the physician or physician's assistant finds no medical contraindication to the restraints about which the patient complains, the patient

shall be informed that he may complain to the Deputy Superintendent for Security about the manner in which otherwise appropriate restraints were applied. The Deputy Superintendent for Security shall investigate such complaints to determine whether proper restraint procedures were followed.

C. No inmate shall be subject to any disciplinary action for attending routine sick call, nor for legitimately seeking access to health care services, including services guaranteed by this Modified Final Judgment. In any case where disciplinary action is taken against an inmate for an interaction with a health care provider, the disciplinary report shall be written by security staff and not by the health care provider.

D. Defendants shall allow inmates who for medical reasons are unable to work to request an excuse through routine and emergency sick call.

E. Defendants shall insure that patients confined in Special Housing or in keeplock status have access to health care services equivalent to that of inmates in general housing. Defendants shall provide escort service sufficient to meet this need and to insure that patients so confined are promptly brought to all health care appointments.

F. A memorandum to all block and Special Housing Unit officers shall be issued informing them that inmates under keeplock or Special Housing status or otherwise needing an escort are entitled to be escorted to all health care appointments. The memorandum shall also inform the officers of the means for securing necessary escort staff if none is immediately available and shall be posted at all Green Haven housing area control desks.

G. The medical clinic desk officer shall communicate with the housing unit in which keeplocked or Special Housing Unit patients who do not appear for scheduled appointments are confined in order to determine the reason for the patient's failure to keep the appointment. In the event the keeplocked or Special Housing Unit patient's failure to keep his appointment is caused by his keeplock status or the absence of a necessary escort, this fact shall be entered in a log of such unkept appointments, and the health care provider the patient was to see shall be so informed and shall note this information in the patient's ambulatory health or dental record. The officer's log shall contain:

1. The patient's name and number;

2. The date and time of the appointment;

3. The patient's cell location; and

4. The name of the health care provider this patient was scheduled to see.

The information logged pursuant to this paragraph shall be reported to the Deputy Superintendent for Security on a weekly basis for appropriate action to see that such failures do not recur. For inmates who miss their medical appointment due to their keeplock status or the absence of a necessary escort, their medical appointment shall be rescheduled to take place as soon as possible thereafter.

H. When a patient does not appear for a health care appointment with a specialist that is scheduled to occur at Green Haven, Green Haven health care staff shall communicate with the housing unit in which the patient is confined in order to determine the reason for the patient's failure to keep the appointment and shall note that reason in the patient's active medical record. In the event the patient's failure to keep his appointment is caused by his keeplock status or the absence of a necessary escort, defendants shall follow the recordkeeping and reporting provisions of ¶ XIV-G. For inmates who miss their medical appointment due to their keeplock status or the absence of a necessary escort, their medical appointment shall be rescheduled to take place as soon as possible thereafter.

I. Correction officers shall not enter the nurses' stations in the infirmary or the UPD except for official business.

J. Plaintiffs' counsel may communicate directly with the Superintendent of Green Haven regarding allegations of security interference with the health care process, as follows:

1. At any time, in writing, provided a copy of the communication is forwarded to the Office of the Attorney General of the State of New York; and

2. In emergencies by telephone, provided the substance of the communication is previously provided to the Office of the Attorney General of the State of New York and permission for communication in this manner is received, such permission not being unreasonably withheld.

The Superintendent shall thoroughly investigate such allegations and take such other actions as are deemed appropriate. The investigation shall not be delegated to an officer below the rank of sergeant. Defendants shall reduce the results of such investigations to writing.

K. Defendants shall maintain permanent files available for inspection by plaintiffs' counsel that shall contain:

1. The logs required by ¶¶ XIV.G and XIV.H and the written action taken thereon by the Deputy Superintendent for Security;

2. The communications and the results of the investigation thereof with respect to any allegations made pursuant to ¶ XIV-J;

3. Copies of inmate complaints to the Superintendent or the Deputy Superintendent for Security alleging security interference with health care or inappropriate use of restraints and results of investigations thereof; and

4. Trip authorizations, itineraries, and special orders for medical trips.

L. The Superintendent shall issue orders incorporating the procedures in ¶¶ XIV-A through XIV-K. The orders shall be provided to new security staff and shall be permanently posted in the Green Haven officers' line-up room. The orders shall be read at the officers' line-up at least every six months for a year and then annually thereafter.

XV. INMATE WORKERS.

For the purpose of insuring the provision of medical care by health care professionals, the parties agree as follows:

A. Inmate workers shall have written job descriptions and shall have no duties relating to delivery of health care services except the following:

1. Performing janitorial services, including maintaining orderliness of the health care areas;

2. Dispensing linen and supplies to patients admitted to the infirmary;

3. Changing patients' bedding;

4. Assisting patients with personal hygiene under supervision of a health care provider;

5. Lifting or moving patients under supervision of a health care provider;

6. Transporting carts containing medical records and supplies used at sick call under the direct supervision of a health care provider;

7. Posting identification signs on patients' beds in the infirmary; and

8. Assisting the optometrist, with duties limited to adjusting and repairing eyeglass frames.

All such inmate workers shall be adequately trained and supervised to perform the functions designated in this section.

B. Under no circumstances shall defendants permit inmate workers to do the following:

1. Perform evaluation or treatment, including the taking of vital signs;

2. Respond in place of a nurse to requests for nursing assistance made by patients in the infirmary or UPD;

3. Schedule health care appointments or otherwise determine access of other inmates to health care services;

4. Handle or have access to surgical instruments, syringes, needles, medications, appointment books or schedules, or medical or dental records; and

5. Assist in dressing changes in a manner that involves touching the patient except for lifting the patient on or off the examination table.

C. Inmate workers shall not be present in the room during daily sick call encounters, nor at any other health care encounters except in the immediate performance of duties permitted in ¶ XV-A. In any encounter where the presence of an inmate worker is necessary for the performance of a permitted task, the patient shall have an opportunity for consultation with the health care provider outside the presence of the inmate worker.

XVI. INFIRMARY CARE.

For the purpose of insuring that the Green Haven infirmary is available for those patients requiring its services and to enhance the treatment capacity of the infirmary, the parties agree as follows:

A. The Green Haven infirmary shall be used solely for the provision of sub-acute non-ambulatory medical services to Green Haven patients and not for the general confinement of inmates. The Facility Health Services Director shall have final authority to determine who shall be housed in the infirmary.

B. Within six months of the entry of this Modified Final Judgment as a Modified Final Judgment, defendants shall expand the capacity of the infirmary at Green Haven to at least 29 beds. The expanded infirmary shall provide an enclosed dayroom. Physi-

cal plans for the expanded infirmary shall be provided to the Medical Auditor and plaintiffs' counsel for their comments prior to the implementation of the renovations.

C. Every patient admitted to the infirmary shall be given a complete physical examination by a physician, who shall write an individual treatment plan for the patient. The treatment plan shall be reviewed and updated weekly.

D. Joint physician-nurse infirmary rounds shall be conducted in the infirmary for all patients at least six days per week and these shall be documented in the patient's infirmary records. At least every other week, a specialist on infectious disease shall consult with the infirmary physician concerning infirmary patients with infectious diseases and, when appropriate, shall examine those patients.

E. Defendants shall provide for rounds by mental health professionals at least weekly for patients in the infirmary with HIV infection or mental health problems. The effectiveness of such rounds shall be evaluated in six months to determine whether such rounds should be continued.

F. A discharge summary shall be written by a physician for all patients discharged from the infirmary.

G. Within one year of the entry of this Modified Final Judgment, defendants shall complete construction of exterior fire stairs to grade level at each end of the infirmary. Within three months of the entry of this Modified Final Judgment, the doors to interior stairway 2-5 shall be equipped with automatic self-closers and positive latches. These doors shall be held open only by approved magnetic holders that are released by activation of the fire alarm system and by a smoke detector at each door.

XVII. UNIT FOR THE PHYSICALLY DISABLED.

A. Defendants shall maintain the UPD at Green Haven with a capacity to provide services for at least 44 patients.

B. Defendants shall assign each patient in the UPD to a physician for management and coordination of his care under the supervision of the physiatrist and the Facility Health Services Director.

C. Defendants shall establish an Interdisciplinary Committee for the UPD, which shall meet at least monthly to (1) assist in the administration of the UPD, (2) review admission and discharge decisions, and (3) develop and review programs, policies and procedures for the UPD. The Interdisciplinary Committee shall be chaired by the physiatrist and shall include all physicians providing services on the UPD, the Facility Health Services Director, the UPD charge nurse, the physical therapist, and a programs counsellor.

D. Defendants shall develop and update protocols for the UPD that describe the appropriate diagnostic and treatment procedures to be employed for commonly encountered medical problems experienced by the UPD patient population, including those identified following the consultation required by Section XXVIII.H. These protocols shall be submitted to plaintiffs' counsel for comment by their experts.

E. Defendants shall develop policies and procedures for the admission and discharge of UPD patients, and no patient shall be discharged without a detailed discharge plan that includes a description of the patient's medical condition, his specific requirements for handicapped accessible facilities, and a detailed care plan. A protocol shall be issued describing the specific duties of the treating physician, physiatrist, physical therapist and nursing staff in the development of the discharge plan. All admissions and discharges from the UPD shall be reviewed and approved by the Department's Deputy Commissioner and Chief Medical Officer or his or her designee.

F. Each disabled patient confined in the UPD shall be placed in a cell or room that is equipped with a handicapped accessible sink and toilet, trapeze and grip bars, and a bed that permits reasonable access from a wheelchair, if needed.

G. The UPD shall have the following facilities:

1. Sufficient number of handicapped accessible showers and shower chairs for this population.

2. An outdoor recreation area that is handicapped accessible with a surface that permits safe use by handicapped inmates.

3. Exercise equipment that is safe and appropriate for use by this patient population.

4. A call button system in the cell of any patient who is at substantial risk of experiencing a medical emergency.

5. A nurses' station that will permit UPD patients to have reasonable access to the nurses during all out-of-cell time.

6. A treatment room that has a sink and two private treatment areas each containing an examination table, one of which much be an adjustable examination table, subject to modification following the consultation required by Section XXVIII.H.

7. Adequate heating and ventilation to maintain the housing area and rooms at a reasonable temperature throughout the year.

H. In the event of interruptions in physical therapy staffing at Green Haven that curtail patient services, a physiatrist shall assess all patients previously receiving physical therapy services and those referred for physical therapy services during this interruption in services. The physiatrist shall prepare written interim treatment plans for all patients and shall determine which patients must continue to receive physical therapy services (1) for treatment of acute needs that require prompt physical therapy intervention, or (2) to prevent deterioration, or (3) to avoid permanent impairment or loss of function. Defendants shall provide out-patient physical therapy services for all patients whose physical therapy needs cannot be met by self care and/or nursing care. The physiatrist shall periodically review each patient not receiving out-patient services for changes in level of functioning and need for physical therapy services.

I. Defendants shall attempt to place all UPD inmates in appropriate educational, vocation or job programs consistent with the patients' medical conditions. No otherwise qualified inmate shall be denied educational, vocational or job programs at Green Haven because of disability.

XVIII. PHARMACY.

A. Defendants shall maintain a system of dispensing medication and medical supplies that results in delivery of such items to patients in a prompt and secure manner.

B. Defendants shall keep for each patient a profile listing all medications dispensed to each patient.

C. Defendants shall maintain a computerized purchasing and inventory control system for the pharmacy. This system shall be capable of providing drug usage summaries.

D. Defendants shall maintain an adequate quantity of medical supplies regularly used by patients or health staff at Green Haven. Defendants shall issue a protocol that describes procedures for projecting the supply needs of patients in the infirmary and the UPD to assure that such supplies are purchased in a timely manner.

E. Defendants shall have a written system for emergency purchasing of drugs and medical supplies, and documentation of this system shall be available to plaintiffs' counsel.

XIX. THERAPEUTIC DIETS.

For the purpose of insuring that therapeutic diets ordered by Green Haven health care providers are accurately prepared and appropriately provided, the parties agree as follows:

A. Defendants shall provide diets ordered by a Green Haven health care provider or by a specialist unless, in the opinion of the Facility Health Services Director, documented in the patient's medical record, such diet is unnecessary or contraindicated.

B. Defendants shall maintain a list of patients for whom therapeutic diets have been ordered pursuant to ¶ XIX-A and shall note each patient's diet thereon.

C. In addition to providing diets as approved by the Facility Health Services Director, defendants shall provide the following diets at Green Haven:

1. Low sodium;

2. Low cholesterol;

3. Low fat;

4. 2000 calorie diabetic;

5. 2500 calorie diabetic;

6. High calorie/high protein;

7. High fiber;

8. Low fiber; and

9. Mechanically soft.

D. Defendants shall employ a civilian full-time to supervise the preparation and delivery of therapeutic diets, including those for inmates confined in Special Housing Units, and shall instruct such person in basic nutritional requirements.

E. Defendants shall maintain a system for delivery of medically necessary nutritional meals and meal supplements at times when the cafeteria is closed or the patient is in transport.

XX. THERAPEUTIC DEVICES.

For the purpose of providing therapeutic devices to patients in a timely fashion, the parties agree as follows:

A. Durable stock items ordered for patients shall be delivered to the patient within two weeks of the order.

B. Standard wheelchairs ordered for patients shall be delivered to the patient within two months of the order. Custom made wheelchairs shall be delivered within four months.

C. With respect to prostheses, custom braces and orthotics, hearing aids, special shoes, and other items requiring fitting, defendants shall:

1. Insure that all patients determined by a Green Haven health care provider to have a presumptive need for such a device or repair or replacement of one are evaluated by the appropriate specialist within the deadlines of ¶ VII-B after the time presumptive need is determined;

2. Deliver such device to the patient within two months after the appropriate specialist determines that the patient is ready to have the device fabricated, repaired or replaced; however, the time limitation provided herein shall be subject to modification following the consultations required by Section XXVIII.H;

3. Maintain at all times back-up vendors for devices fabricated on a regular basis.

D. Defendants shall maintain a permanent log for all therapeutic devices, stating the patient's name and number, the therapeutic device ordered, the date the patient saw a specialist (for devices covered by ¶ XX-C), the date the device was ordered, and the date the patient received the device.

E. Defendants shall forward to plaintiffs' counsel on a monthly basis copies of the therapeutic device log and copies of all referrals to specialists for evaluation for therapeutic devices.

XXI. EMERGENCIES.

A. Defendants shall provide all Green Haven inmates immediate access to a health care provider in the event of emergencies. Defendants shall insure that requests for emergency sick call are promptly transmitted to a health care provider.

B. A vehicle shall always be available to transport inmates to a hospital emergency room.

C. Defendants shall assure that patients needing emergency ambulance transportation are not delayed in departure from Green Haven by administrative or security processing.

D. All health services professional staff shall be certified in CPR and the facility shall have appropriate equipment such as ambu bags and masks to provide for resuscitation of patients, including HIV-infected patients.

E. Defendants shall adopt and enforce a protocol for documentation of medical emergencies that requires, at a minimum, notation of the nature of the emergency and the time it arose; the persons present; the time resuscitation was attempted, continued, or failed; the time and substance of contact with physicians or physician's assistants; a description of any significant changes in the patient's condition and the time thereof; and the time an ambulance was called, arrived and departed Green Haven.

XXII. INFECTION CONTROL.

For the purpose of assuring adequate control of the spread of infection at Green Haven, the parties agree as follows:

A. Defendants shall designate an infection control officer, who shall be trained in the principles of infection control and be given adequate time, space, and equipment to perform his or her duties.

B. A manual for infection control shall be developed and maintained.

C. Until full compliance is achieved, at least monthly inspections shall be conducted to assess adherence to proper standards of infection control, including proper disposal of medical waste. Thereafter, inspections shall be conducted at least four times per year.

D. Defendants shall monitor cases, or suspected cases, of tuberculosis and other airborne contagious diseases posing a substantial risk to the health of the Green Haven population for the possibility of transmission and conduct contact investigations of inmates and staff who may have been exposed to these diseases.

E. Defendants shall maintain at least four rooms for the provision of respiratory isolation. Such rooms shall have negative air pressure and provide for six to eight exchanges of air per hour.

F. Rooms used for the administration of aerosolized pentamidine shall comply with the isolation standards specified in ¶ XXII-E.

G. All areas used for the provision of health care services, including sick call, shall have sinks equipped with wrist blades or foot pedals, and soap and towel dispensers.

H. Written records of infection control standards, inspections, tracings, and activities shall be maintained and available to plaintiffs' counsel.

XXIII. PATIENT CONFIDENTIALITY.

A. Defendants shall insure the privacy and security of patient health records as follows:

1. Except as provided in ¶ XXIII-A-2, only health care employees shall have access to health records;

2. Patient medical records shall be released to persons other than members of the health care staff solely in accordance with applicable statutes, regulations and directives, including 7 N.Y.C.R.R. § 5.24;

3. All health care records shall be securely stored when not in use.

B. Unless otherwise requested by a health care provider, security staff shall remain sufficiently distant from the place of health care encounters, including sick call encounters in Special Housing Units, that quiet conversation between the patient and the health care provider cannot be overheard. During sick call encounters, security staff shall remain outside the threshhold of the sick call room unless otherwise requested by a health care provider.

C. Defendants shall provide patients with visual and audio privacy when more than one patient is being seen or treated by health care providers in the same room. Within six months of entry of this Modified Final Judgment, partitions or other barriers shall be constructed in treatment rooms in the clinic area so that quiet conversation between the patient and the health care provider cannot be overheard and visual privacy is maintained consistent with security needs.

D. Defendants shall assure that patients' confidential medical information is not discussed with other inmates or non-medical personnel. Patients shall not be required to reveal their medical condition or illness to security staff in making requests for emergency sick call, but they can be required to identify in general terms the nature of their complaint and sypmtoms, provided that this disclosure will not reveal their diagnosis.

E. Patients shall be permitted to receive aerosolized pentamidine or other conspicuous HIV-related treatment out of the view of non-medical personnel, as much as possible, and other inmates.

F. Defendants shall keep a record of all grievances filed by inmate patients pursuant to Correction Law Section 139 and of all written inmate complaints filed with the security or medical administrative staff at Green Haven regarding alleged breaches of medical confidentiality. Such grievances and written complaints and the record of their resolution and/or the Department's response shall be made available to plaintiffs' counsel upon request. In addition, any inmate complaints alleging a violation of Article 27-F of the Public Health Law which were referred from the Department of Health to defendant's counsel's office for investigation and response shall be made available to plaintiffs' counsel upon request.

XXIV. QUALITY ASSURANCE.

For the purpose of providing ongoing quality assurance of the health care services at Green Haven, the parties agree as follows:

A. A committee of health care providers, at least one of whom shall be a physician, shall review a random sample of at least ten (10) ambulatory health care records every month. At least one of the records shall be that of an inmate in a Special Housing Unit. Every three months the sample shall be chosen from among records of patients with one type of chronic illness.

B. The committee shall examine each record for at least the following:

1. The presence of documents required to be maintained by ¶ XIII-A, and the completeness of entries on these documents;

2. The adequacy of physical examination and histories taken at each encounter for the past three months and the propriety of treatment and referral at these encounters;

3. Compliance with protocols and other policies and procedures.

D. When reference is made on the patient's medical record to laboratory or x-ray tests or specialty consultations, the committee shall review the applicable records and logs to assess the appropriateness of documentation and care.

E. The committee shall reduce its findings to writing and each provider shall be apprised of the evaluation of his or her work with suggestions where appropriate for improvement and change.

F. Defendants shall implement and maintain a system of quality assurance for services for patients in the infirmary and in the UPD, and for the care of patients referred to specialists.

Quality assurance of these services shall occur at least quarterly.

G. At least twice yearly for a two year period and thereafter on a yearly basis, defendants shall conduct quality assurance assessments of Green Haven's health care system by non-Green Haven employees in accordance with a Departmental manual for quality control. These assessments shall include, as appropriate, interviews and examinations of a sample of Green Haven patients receiving ongoing health care services.

H. Written records shall be kept of all quality assurance activities and made available to plaintiffs' counsel.

XXV. MONITORING BY PLAINTIFFS' COUNSEL.

A. Plaintiffs' counsel shall have the right on 72 hours notice to defendants, to inspect all health care areas of Green Haven with their experts, and to review health care records and documents required to be maintained by this Modified Final Judgment. Inspections of the health care areas shall take place no more than four (4) times a year, and counsel shall make every effort not to interfere with the orderly operation of Green Haven.

B. Plaintiffs' counsel shall have access to health care information about individual patients without redaction and without demand for releases, except as to class members who have been permitted to "opt out" of the class. Inmate names and personally-identifiable information about inmates shall not be disclosed except to the Court; to the Medical Auditor and his assistants during the term of the Medical Auditor; to the parties, their agents and employees; and to the parties' attorneys and the attorney's consultants, expert witnesses, and staff. All disclosure shall be only to the minimum extent necessary to monitor defendants' compliance with this Modified Final Judgment or to enforce plaintiffs' rights thereunder. All documents that include inmate names and personally-identifiable information about inmates (including inmates' numbers) shall be sealed if filed with the Court. Further release of such information shall occur only upon Court approval or if the inmate names and personally-identifiable information are redacted.

C. Plaintiffs' counsel shall have access to class members' mental health and hospital records in accordance with the Court's Order of December 10, 1990.

XXVI. CONTINUING EDUCATION.

A. The Green Haven health services unit shall conduct continuing medical education on at least a monthly basis. All health care providers shall be present at each meeting, if possible.

B. All current and incoming health care providers shall receive an orientation to the nature of health care delivery in a prison setting, to the general operating procedures at Green Haven, and to the requirements of the Modified Final Judgment.

C. Each of the Green Haven health care providers shall be instructed in the purpose and functioning of the problem oriented records system.

D. There shall be a library of medical and dental literature at Green Haven available to all providers. This shall include literature on prison health care.

XXVII. CONTINUITY OF CARE UPON TRANSFER FROM GREEN HAVEN.

A. When an inmate is transferred from Green Haven to another correctional facility operated by the Department, defendants shall notify the receiving correctional facility in writing if the inmate being transferred:

1. Has any health problems or conditions of which the receiving facility should be apprised; and

2. Is receiving any medications.

B. Defendants shall not transfer an inmate out of Green Haven to another correctional facility or require an inmate to reside at another correctional facility, if such inmate is awaiting or receiving: (1) an initial specialist appointment; or (2) a hospital admission within the next 120 days; or (3) a therapeutic device for which a fitting is required; or (4) a follow-up specialist appointment, or follow-up care at a hospital or other outside health care facility, within the next 90 days, when such follow-up care is for treatment or diagnostic evaluation; however, when a patient, whose medical condition has been stabilized, is scheduled for follow-up care at an outside health care facility solely for monitoring of his medical condition, such patient shall be excluded from this restriction on transfer. Nothing contained herein shall preclude the temporary transfer of an inmate to another facility for the purpose of receiving necessary medical treatment when defendants have been unable, following best efforts, to provide such medical treatment while the inmate continues to reside at Green Haven and when the inmate has executed a written consent to such temporary transfer for the purpose of receiving such medical treatment. A record of all such temporary transfers on consent shall be separately maintained at Green Haven and shall be available for inspection by the Medical Auditor and by counsel for plaintiffs.

XXVIII. ADMINISTRATIVE PROVISIONS.

A. This Modified Final Judgment does not cover damage claims or health care during lockdowns, within the scope of McLeod v. Coughlin, 81 Civ. 3139 (RLC).

B. Statements of purpose in this Modified Final Judgment are solely explanatory and are designed to aid in construction of the substantive provisions.

C. The provisions of this Modified Final Judgment relate solely to Green Haven and are not admissions by the defendants of minimum standards for correctional health care or of any faults, failures, or constitutional inadequacies in health care at Green Haven. The Modified Final Judgment, if approved by the Court after notice to the plaintiff class, will supersede with a single document the 1982 Final Judgment and its associated Orders, Modifications, Stipulations, and Understandings (except those pertaining to the Medical Auditor, entered March 6, 1990, October 22, 1990, and December 10, 1990).

D. Defendants shall not be subject to contempt for failure to comply with any requirement of this Modified Final Judgment where such failure is caused by riot, civil insurrection, strike, catastrophic fire, or other force majeure beyond the control of defendants; but defendants cannot invoke this paragraph unless they have notified plaintiffs in writing of the nature of the force majeure and of the terms with which they cannot comply before the initiation of any enforcement proceedings.

E. Defendants shall not be subject to contempt for failure to adhere to the time deadlines in this Modified Final Judgment where the patient has refused care, but no patient shall be deemed to have refused care unless he, or a facility staff member witnessing his refusal, so states in writing. In the event that the care that was refused is reordered, the deadlines run anew.

F. Defendants shall, within thirty (30) days of the entry of this Modified Final Judgment, provide to every employee of the Department of Correctional Services assigned to Green Haven and having some involvement with the delivery of health care a copy of the Judgment. Defendants shall provide such a copy and notice to any employee who is in the future assigned to Green Haven and has some involvement with the delivery of health care to the plaintiff class at the time of such assignment or involvement.

G. Unless otherwise stated, the provisions of this Modified Final Judgment are effective upon entry of this Modified Final Judgment.

H. The parties agree to refer the following areas to Drs. Samuel Sverdlik and Jonathan Moldover:

1. Section II.A.4.d. (UPD nursing) -- whether in addition to 2-1-1 nursing staffing, there should be an additional nurse five days a week assigned to the UPD.

2. Section II.A.10 (Physical therapy) -- whether, and if so how much, additional physical therapist services are required beyond a half-time position, provided that it does not exceed a full-time position.

3. Section II.A.12 (Physiatrist) -- whether, and if so how much, additional physiatry services for direct patient care are required beyond eight hours per week, provided it does not exceed twelve hours per week.

4. Section XVII.D (UPD protocols) -- what protocols should be issued for the UPD.

5. Section XX.C.2 (therapeutic devices) -- what is an appropriate time period within which therapeutic devices shall be provided.

6. Section XVII.G.6 (UPD treatment area) -- whether two treatment areas are required and the configuration of and equipment in those areas.

Drs. Sverdlik and Moldover shall consult and shall attempt in good faith to make a joint recommendation to the parties on each issue based upon a review of all relevant information. If Drs. Sverdlik and Moldover mutually agree upon a recommendation, the parties agree to incorporate such joint recommendations in this judgment.

XXIX. MODIFICATION, ENFORCEMENT AND DURATION OF MODIFIED FINAL JUDGMENT.

A. No party shall bring a motion in court with respect to the Modified Final Judgment entered upon this Stipulation before trying in good faith to resolve the matter in question with the other party.

B. For the purposes of this Modified Final Judgment and any motion for systemic relief based upon defendants' alleged non-compliance with its substantive requirements, defendants shall be deemed to be in compliance with the provisions of this Modified Final Judgment unless plaintiffs make a clear and convincing showing that defendants' failures or omissions to meet the terms of this Modified Final Judgment were not minimal or isolated but were substantial and sufficiently frequent or widespread as to be systemic.

C. In the event that plaintiffs believe at any time that defendants are not in compliance with this Modified Final Judgment as defined in ¶ XXIX-B, plaintiffs' counsel shall bring the facts supporting that belief to the attention of defendants' counsel prior to the filing of any motion to enforce the terms of this Modified Final Judgment. Upon receipt of plaintiffs' notice

by defendants' counsel, defendants shall either remedy the alleged problem and so notify plaintiffs' counsel in writing, or provide a written explanation within five (5) days, or an oral response within five days followed by a written confirmation within seven days, for emergencies and within forty-five (45) days for other care. At the end of such period, if the issue is not resolved, plaintiffs may seek relief from the Court in accordance with ¶ XXIX-B.

D. In the event of individual cases of class members in which health care was not provided in accordance with this Modified Final Judgment, despite defendants' compliance with the Modified Final Judgment, plaintiffs or plaintiffs' counsel shall bring such cases to the attention of defendants' counsel prior to the filing of any motion to enforce the terms of this Modified Final Judgment. Upon receipt of plaintiffs' notice by defendants' counsel, defendants shall either remedy the alleged problem and so notify plaintiffs' counsel in writing or provide a written explanation within five (5) days for emergencies and within thirty days (30) days for other care. At the end of such period, if the issue is not resolved, the class members shall have the right to seek from the Court individual injunctive relief as well as any other remedies available in this Court under the law.

E. A problem solving group shall be formed and shall meet regularly at least every three months, unless all members agree to a different schedule. This group shall consist of the Medical Auditor during his term, the Facility Health Services Director or physician designee, the Superintendent or his designee, plaintiffs' counsel, defendants' counsel and the Assistant Commissioner of Health Services or his designee. It shall be the purpose of this group to review both systemic problems in delivery of health care and individual inmate health care problems. This group shall also convene at the request of a member of the group when important questions arise that cannot be resolved informally and cannot wait until the next-scheduled meeting. If the parties cannot agree on whether to convene a session of this group, this disagreement will be resolved by the Medical Auditor, or if the duties of the Medical Auditor have ceased in accordance with Section XXIX.G, the Court will resolve this issue. The problem solving group shall cease to function when the case is placed upon the suspense docket of the Court as provided for in paragraph XXIX.H herein.

F. Dr. Robert L. Cohen shall continue as the Medical Auditor, having originally been appointed by the Order dated March 6, 1990. His compensation, at defendants' expense, shall be established in a separate order. The Medical Auditor shall operate in accordance with this Modified Final Judgment; his authority, duties and procedures shall be determined solely by this Modified Final Judgment and the March 6, 1990 Order is hereby superseded. The Medical Auditor shall be empowered to perform the following acts:

1. Prior to issuing a report to the Court, the Medical Auditor shall: (1) convene a meeting of the problem solving group, pursuant to Section XXIX.E, at which time he will discuss his observations and recommendations concerning compliance with the Modified Final Judgment; and (2) issue a draft version of his written report to the parties and afford them a reasonable opportunity to comment upon his findings and recommendations prior to submitting a report to the Court.

2. The Medical Auditor shall have access to all records required to be maintained by the Modified Final Judgment and any other records needed in the Medical Auditor's discretion to assess compliance with the Modified Final Judgment. The Medical Auditor shall have access to such records without demand for patient releases, but shall not disclose inmate names and personally identifiable information about inmates except to the Court and to the parties, as provided in ¶ 3 of the Order of January 11, 1990.

3. Upon providing the Superintendent or his designee with 24 hour notice, the Medical Auditor may visit the prison; observe the operation of all aspects of the health care system; receive, assess, and investigate inmates complaints; and confer privately with any member of the plaintiff class and any member of the institutional staff, as he deems necessary. Members of the plaintiff class may also correspond directly with the Medical Auditor, and these communications shall be treated as if they had been made to the Court. The Medical Auditor shall provide counsel to the parties copies of all correspondence received from the Court, class members, or Department officials, and the responses to such correspondence.

4. The Medical Auditor may communicate with officials in the Department or other branches of government to convey or obtain information regarding compliance with the Modified Final Judgment and, with notice to the parties, may attempt to resolve informally obstacles to full compliance that can be addressed without formal involvement of the Court.

5. The Medical Auditor shall periodically report to the Court and to the parties as to the degree of compliance with the Modified Final Judgment, the reasons for less than full compliance, the adequacy of defendants' responsive measures, and his recom-

mendations as to the means of achieving full compliance.

6. The defendants shall review the reports of the Medical Auditor and issue their responses to the Court, the Medical Auditor and plaintiffs' counsel, including the areas of agreement with the reports, areas of disagreement and proposals for resolution or alternative solutions to the recommendations of the Medical Auditor.

7. On notice to the parties, the Medical Auditor may request from the Court at any time permission to obtain at defendants' expense such technical or other assistance as he deems necessary to assist him in carrying out his responsibilities, including assessing and investigating inmate complaints and attempting to resolve complaints with the parties. Either party may contest such requests for good cause and shall have an opportunity to be heard. The Medical Auditor's assistants shall have access to records, to the institution, and to inmates, health staff and other officials as set forth in subparagraphs (2)-(4) herein, as determined by the Medical Auditor.

8. The Medical Auditor shall not unduly interfere with the delivery of health care at Green Haven. Either party may move for removal of the Medical Auditor upon a showing of good cause.

G. The term of the Medical Auditor shall end three years after either (1) July 1, 1992, or (2) the date of an entry of an Order of the Court finding defendants in compliance with the Modified Final Judgment, whichever date is sooner. From entry of the Modified Final Judgment and during the first two years of this three year period, the Medical Auditor shall continue to monitor compliance and make regular reports to the Court and the parties as required by Section XXIX.F. Thereafter, upon a motion by either party, or by a request from the Court itself, the Court may order that the Medical Auditor continue to monitor compliance with the Modified Final Judgment for an additional year and order that during this year the Medical Auditor provide the Court and the parties up to two additional reports concerning compliance with the Modified Final Judgment.

H. One year after the Term of the Medical Auditor ends, pursuant to Section XXIX.G, the Milburn v. Coughlin case shall be placed on the suspense docket of the Court. One year thereafter, any party may file a motion to modify or vacate the Modified Final Judgment. The opposing party shall have an opportunity to respond and to be heard by the Court. Any decision by the Court in response to such a motion may be appealed by either party. Nothing herein is intended to preclude any party from moving to

modify the terms of the Modified Final Judgment at any time after entry of the Judgment consistent with the Federal Rules of Civil Procedure.

Dated: New York, New York
September 27, 1991

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