UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DANIEL REYNOLDS, et al.,

Plaintiffs,

-against-

DORA SCHRIRO, et al.,

Defendants.

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STIPULATION AND ORDER OF SETTLEMENT

81 Civ. 107 (RJS)

WHEREAS, Plaintiffs commenced this action on or about January 9, 1981;

WHEREAS, the parties subsequently settled this action by Stipulation and Order of Settlement, dated August 1, 1990;

WHEREAS, by Notice of Motion dated October 2, 2008, Defendants moved to terminate the Stipulation and Order pursuant to the Prison Litigation Reform Act, 18 U.S.C. §3626(b);

WHEREAS, by Order dated August 3, 2009, this Court denied Defendants' motion without prejudice to allow Plaintiffs to pursue discovery related to Defendants' motion;

WHEREAS, by Orders dated February 25, 2010, May 28, 2010, August 3, 2010, and October 19, 2010, this Court suspended discovery proceedings to allow settlement negotiations to proceed;

WHEREAS, the parties agree that the remedies set forth in this Stipulation and Order of Settlement ("Stipulation") are narrowly drawn, extend no further than necessary to correct the alleged violations of the federal rights of the plaintiff class and are the least intrusive means necessary to correct the alleged violations of those federal rights;

WHEREAS, nothing in this Stipulation shall be construed as evidence of an admission or concession of any liability or wrongdoing by Defendants; and

WHEREAS, the parties now wish to resolve the motion, it is hereby

STIPULATED AND AGREED as follows:

1. The Stipulation and Order of Settlement, dated August 1, 1990, is terminated and is replaced by the instant Stipulation.

2. The duration of this Stipulation shall be thirty months following the date of entry by the Court of this Stipulation.

3. The Court shall retain jurisdiction over the parties and this action solely for the purpose of enforcement of this Stipulation until thirty months following the date of entry of this Stipulation, whereupon the Court's jurisdiction over this action shall terminate.

Definitions

4. The following definitions shall apply herein:

a. "Inmate-patients" refers to (a) all pre-trial detainees who are or will be confined on the medical and/or forensic mental health units jointly operated by the New York City Department of Correction ("DOC") and the New York City Health and Hospitals Corporation ("HHC) currently located at Bellevue Hospital Center ("Bellevue") and Elmhurst Hospital Center ("Elmhurst"), and (b) all pre-trial detainees and sentenced misdemeanants who are or will be confined on the civilian medical wards at these hospitals for the purposes of medical treatment ("outposted" inmate-patients).

b. "New York City Department of Health and Mental Hygiene ("DOHMH"), or its vendor" refers to the agency and personnel, whether

employees or contractors, providing medical and mental health care to DOC inmates while incarcerated at DOC correctional facilities other than the Bellevue Hospital Prison Ward or Elmhurst Hospital Prison Ward.

c. "Forensic unit" refers to a forensic mental health unit jointly operated by DOC and HHC and located within an HHC hospital.

Mental Health Treatment Services by HHC

5. HHC will assure that the care and treatment of inmate-patients shall be provided according to generally accepted professional practice and in conformity with all applicable federal, state, and local laws and regulations, including New York Mental Hygiene Law § 9.03, *et seq.*, Title 14 of the Codes, Rules, and Regulations of the State of New York, and the policies and procedures of HHC. The treatment services provided to each inmate-patient will include, but not be limited to:

a. An initial assessment by a psychiatrist within 24 hours of admission in an appropriate setting and of appropriate length, and a reassessment by a psychiatrist within 5 days of admission, and then weekly thereafter. In the event an inmate-patient is on a one-to-one suicide watch, she/he shall be interviewed by a psychiatrist at least daily.

b. A full admission physical examination within 24 hours of admission that includes, but is not limited to, laboratory tests, x-rays, and other appropriate medical consultations as needed.

c. An appropriate assessment of appropriate length by social service staff within five days of admission, and then weekly thereafter. Such assessments shall be consistent with generally accepted professional practices and include

collection and assessment of collateral source information. Social service staff shall also provide referral services and group and individual therapy and counseling of appropriate length and frequency as needed.

d. Treatment by a treatment team comprised of a psychiatrist, psychologist, social worker, nurse, and activity therapist, who shall meet with the inmate-patient at least weekly.

e. Individualized treatment plans that are formulated within one week of the inmate-patient's admission consistent with professional standards and tailored to each inmate-patient's needs.

f. One-on-one meetings with a primary therapist at least three times a week in an appropriate setting, of appropriate length.

g. Group therapy as appropriate, for no less than six hours per week. Such group therapy shall include a community meeting held at least once a week.

h. Appropriate types of structured recreational/activity therapy provided seven days per week, with at least four hours of activities provided on average each day. Such recreational/activity therapy shall include exercise and, at Bellevue, shall include daily outdoor recreation unless the weather is inclement.

6. When appropriate, HHC shall designate an individual to serve as the liaison with the inmate-patient's counsel and, if applicable, with DOC staff to facilitate a supervised off-ward visit pursuant to DOC Directive 4012R-B, or its successors. Supervised off-ward visits shall be permitted to an eligible inmate-patient, unless the inmate-patient's treating psychiatrist determines that such visit is contraindicated. Such a determination shall be documented in the inmate-patient's chart.

7. Inmate-patients shall be allowed to retain their personal clothing and shall be allowed to wear such clothing at all times, unless clinically contraindicated.

8. No inmate-patient shall be discharged except as clinically appropriate and in accordance with the treatment plan.

Admission and Discharge

9. In making psychiatric admission determinations for inmate-patients, HHC shall assess inmate-patients according to the criteria set forth in New York Mental Hygiene Law § 9.03, *et seq.*, including but not limited to MHL §§ 9.17 and 9.21, and all applicable federal, state, and local laws and regulations. The determination whether to admit or not admit an inmate-patient who is referred by a clinician employed by the New York City Department of Health and Mental Hygiene ("DOHMH"), or its vendor, and who does not object to admission, shall include a consideration of that inmate-patient's need for treatment, the effects of the environment of the correctional facility to which the inmate-patient would be returned, and the effects of hospitalization on the inmate-patient's condition.

10. All admission and discharge dispositions require a signed note by an attending physician. Prior to making a determination not to admit, the hospital clinician shall make all reasonable efforts to consult the prior treating clinician at DOHMH (or its vendor) or, if the treating clinician is not available, his/her supervisor or designee, and shall maintain documentation of the consult. In the event such a consultation with the prior treating clinician, supervisor, or designee does not take place and the inmate-patient is not admitted, a forensic attending must call the prior treating clinician at DOHMH (or its vendor) the next business day, and maintain documentation of the call. A list of inmates not admitted shall be maintained, and

decisions not to admit shall be reviewed at the peer review and/or other supervisory meetings as referenced in paragraph "16" below.

11. Clinicians who determine that an inmate does not meet involuntary admission criteria, but who determine that the inmate suffers from a mental illness for which inpatient care and treatment in a hospital is appropriate, shall encourage the inmate to accept treatment as a voluntary patient.

12. A person who is suitable for admission on voluntary status shall be admitted only on that status.

13. Consistent with generally accepted professional practice, admission and discharge decisions shall be based on clinical observations, review of prior records to the extent that they are available, conversations with prior treating clinicians, including clinicians at DOHMH (or its vendor), and information from other collateral sources to the extent that such information is available. Such observations, review, conversations, and other contacts shall be noted in the medical record.

14. Discharge planning shall include a consideration of the environment to which the inmate-patient shall be returned to the extent that the future environment is known. HHC staff, to the extent practicable, shall consult with the prior treating clinician or a supervisor at DOHMH (or its vendor). HHC clinicians may make housing recommendations to clinicians at DOHMH (or its vendor) consistent with generally accepted professional practices.

Training and Supervision

15. HHC shall assure the professional competency of each clinical discipline, by means of appropriate training, peer review, supervision, and assessment. This assurance will include, but not be limited to, regular and scheduled supervision of all clinical staff within their

respective disciplines and regular (at least monthly) multi-disciplinary training on such topics as violence reduction and clinical care.

16. Staff, peer review and/or leadership meetings of forensic unit professionals concerning issues unique to forensic patients shall occur at least every other month. These meetings shall include reviews of decisions not to admit inmate-patients to, or to discharge inmate-patients from, the forensic units, particularly in those cases in which the inmate-patient was then returned to a forensic unit; consideration of the environment and treatment available at Rikers Island; and appropriate modalities for the diagnosis and treatment of disruptive, manipulative, and violent patients. HHC shall maintain documentation of these meetings.

17. HHC shall meet every other month with staff at DOHMH (or its vendor) and other appropriate employees of the City of New York to discuss issues related to the care and treatment of inmate-patients.

18. HHC psychiatrists and psychologists who are regularly assigned to a forensic unit shall receive training about the facilities referring inmate-patients. Within three months of their assignment to the forensic mental health unit(s), they shall tour the housing units for mentally ill inmates at Rikers Island, and shall meet at least twice per year with clinical staff at DOHMH (or its vendor), who shall describe environmental and other conditions that may affect the care and treatment of inmate-patients.

Role of DOC Staff

19. The role of DOC staff who are assigned to a forensic unit shall be limited to maintaining security. All clinical and programmatic functions, including but not limited to the administration of medication, the confinement of an inmate-patient to a room, the distribution of pencils, paper, clothing, and other supplies, and restraining violent or agitated inmate-patients,

shall be the responsibility of hospital staff. To that end, HHC shall ensure that sufficient hospital staff is available to:

a. respond to violent actions by inmate-patients;

b. restrain such inmate-patients;

c. place such inmate-patients in restraints or seclusion; and

d. assist in the administration of medication over objection.

20. Correction officers shall not be used to escort inmate-patients to and from activities within a forensic unit.

21. Where the available hospital staff cannot maintain the safety or security of a forensic unit, correction staff shall be permitted in an emergency to physically intervene in situations where immediate action is required to prevent injury to persons or serious damage to property.

22. Where a forensic unit has a nurses' station, correction officers shall not be stationed at or near the nurses' station. The purpose of this requirement is to avoid, as much as possible, the concentration of nursing and correction personnel in one location on the unit.

23. All correction staff assigned to a forensic unit shall receive mental health training from DOC within 90 days of their assignment, if they have not already received such training. Upon their assignment to a forensic unit, correction officers shall receive an orientation concerning their role pursuant to this Stipulation, and thereafter HHC shall provide periodic training to such officers to reinforce the information provided at orientation.

24. No correction officer shall be assigned to a forensic unit without having been personally interviewed by the commanding officer of the hospital ward to which the officer is assigned. No correction officer shall be assigned to a forensic unit if the officer (a) has

charges pending alleging unnecessary or excessive use of force or failure to report use of force or failure to accurately report use of force; or (b) within the three years prior to the officer's proposed assignment, has been referred for retraining pursuant to Directive 5003, or its successors, or has been found guilty of departmental charges of unnecessary or excessive use of force or failure to report use of force or failure to accurately report use of force.

25. DOC agrees to install video cameras in the Bellevue intake areas. Three cameras will be installed as follows: two cameras shall be positioned so as to provide visual access to the interior of two intake cells (but to protect inmate privacy, not the bathroom areas) and one camera will be positioned so as to provide visual access to the corridor adjacent to and leading into the intake cells.

Outposted Inmate-Patients

26. DOC will not place mechanical restraints on an outposted inmate-patient where a doctor determines that: (1) the inmate-patient is pregnant and is admitted for delivery of the baby and/or post-partum recovery; (2) the inmate-patient is intubated, dependent on a ventilator or respirator, or in the intensive care unit; (3) the inmate-patient is terminally ill with no expectation of recovery and seriously debilitated; (4) the inmate-patient is so weak from his/her illness that he/she cannot walk without assistance; or (5) the use of mechanical restraints is medically contraindicated. A list of conditions for which the use of restraints is medically contraindicated is annexed to this Stipulation. This list shall be disseminated to all doctors who have responsibility for the care and treatment of outposted inmate-patients. Inmate-patients with these conditions will not be mechanically restrained at any time in or out of bed unless DOC can articulate a clear and convincing reason why the inmate-patient poses a present danger of escape or injury to others.

27. DOC will not place mechanical restraints on an outposted inmate-patient during ambulation where a doctor determines that the use of mechanical restraints while ambulating is medically contraindicated unless DOC can articulate a clear and convincing reason why the inmate-patient poses a present danger of escape or injury to others.

28. After consultation with the outpost monitor referred to below (Steve Martin) and within three months of the Court ordering this Stipulation, DOC will develop an objective instrument to determine an inmate-patient's security status for the purpose of the use of mechanical restraints while outposted at an HHC hospital. Among the factors that the objective instrument shall include and that DOC shall review are: the inmate's charges, bail or remand status, correction history, sentence, time remaining to be served on a sentence, parole status, prior criminal history, escape history, location of hospital room (including whether the inmate-patient is confined in a secure ward), and the presence of civilian patients in the inmate-patient's hospital room. In the development of the objective instrument, DOC will also consider including whether the hospital maintains a separate security system and whether the inmate-patient ambulates at a normal pace as factors for review. DOC shall complete the objective instrument for each inmate-patient at the time of admission, and at any time information relevant to the factors on the objective instrument changes. When the objective instrument indicates that an inmate-patient's security status does not necessitate the use of mechanical restraints, DOC shall not use mechanical restraints at any time in or out of bed, unless DOC can articulate a clear and convincing reason why the inmate-patient poses a present danger of escape or injury to others.

29. For all inmate-patients other than those described in paragraph "26" above, DOC will not routinely use mechanical restraints, but will decide whether to use

mechanical restraints on a case-by-case basis, utilizing the objective instrument described in paragraph "28" above.

30. Physicians will review the medical condition of each inmate-patient each day, and shall determine whether the inmate-patient falls into one of the five categories listed in paragraph "26" above and whether the use of mechanical restraints while ambulating is contraindicated as described in paragraph "27" above. The physician will record this information on a form and provide this form to DOC on a daily basis.

31. Absent a medical order that an inmate-patient remain on bed-rest, no later than the 7th day following admission, each outposted inmate-patient shall be provided the opportunity to ambulate each day, although such an opportunity shall be provided earlier if medically appropriate. The use of mechanical restraints during ambulation shall be governed by paragraphs "26" through "30" above.

32. DOC will maintain appropriate documentation on an inmate-patient's security status, whether the use of mechanical restraints is medically contraindicated, and whether mechanical restraints were used while in bed and/or while ambulating. As part of such documentation, DOC shall maintain a written record of all decisions to use mechanical restraints in accordance with the provisions of this Stipulation.

33. Upon completion, the forms described in paragraph "30" above shall be provided to a supervising physician on a weekly basis for review. A supervising physician shall review those forms indicating that an inmate-patient did not have a condition precluding the use of mechanical restraints whenever such forms have not been completed by an attending physician. When appropriate, the supervising physician shall consult with physicians concerning

the appropriateness of their decisions about the use of mechanical restraints. HHC shall maintain documentation of these consultations.

34. All doctors providing care and treatment to outposted inmate-patients shall receive training in the medical contraindications to the use of mechanical restraints.

35. No outposted inmate-patient shall remain in mechanical restraints while in a shower unless the Department of Correction articulates, in writing, a clear and convincing reason why the inmate-patient poses a present danger of escape or injury to others. Such use of mechanical restraints on an inmate-patient while in the shower must be documented, and must be personally approved by the commanding officer or tour commander.

36. DOC shall allow all outposted inmate-patients access to toilets immediately upon request unless the inmate-patient's physician has ordered the use of bed pans instead, in which case an order to that effect must be noted in the inmate-patient's medical chart.

37. If the inmate-patient is mechanically restrained and he/she complains of pain or discomfort from the mechanical restraints, medically reasonable steps shall be taken to address these concerns and shall be documented in the inmate-patient's medical record.

38. Under no circumstances shall two-point mechanical restraints be used on any inmate-patient. If a patient is permitted to be mechanically restrained to his/her bed under the terms of this Stipulation, the patient shall be restrained only by one ankle to the bed. For those inmates for whom the use of mechanical restraints is permitted consistent with this Stipulation, a wrist restraint may be used but only 1) if an ankle restraint is determined, in writing by the patient's physician, to be medically contraindicated and 2) if the Department of Correction articulates, in writing, a clear and convincing reason why the inmate-patient poses a present danger of escape or injury to others. Such use of mechanical restraints on an inmate-

patient's wrist must be documented, and must be personally approved by the commanding officer or tour commander except when immediate action is required to prevent injury to persons or serious damage to property.

39. If medical or psychiatric restraints are being used on an inmate-patient, mechanical restraints shall not be used unless DOC can articulate a clear and convincing reason why such use of mechanical restraints is also needed to prevent escape or injury to others. In no event shall the use of mechanical restraints serve as a replacement for medical or psychiatric restraints. All requirements of federal and state law concerning the use of medical and psychiatric restraints shall be followed.

Monitoring

40. In order to monitor compliance with this Stipulation, a forensic mental health expert, Dr. Robert Berger, a correction expert, Steve J. Martin, and a medical expert, Dr. Jack Raba, shall assist the parties and the Court in the implementation of this Stipulation for a period of thirty months from entry of this Stipulation as an order of the Court.

41. Dr. Berger ("the forensic monitor") shall be responsible for monitoring compliance with the terms set forth in paragraphs "5" through "25" above, and shall review the provision of treatment to inmate-patients on the forensic units at Bellevue and Elmhurst pursuant to these paragraphs, including but not limited to the adequacy of defendants' admission/discharge policies, staffing and supervision policies, training programs, and any other procedures and practices addressed by these paragraphs. The correction expert, Mr. Martin, shall also monitor compliance of the terms set forth in paragraphs "19" through "25" above related to the role of DOC staff.

42. Mr. Martin and Dr. Raba ("the outpost monitors") shall be responsible for monitoring compliance with the terms set forth in paragraphs "26" through "39" above, and shall review the use of mechanical restraints on inmate-patients outposted at Bellevue and Elmhurst including but not limited to whether restraints were applied to inmate-patients for whom they were medically contraindicated; an assessment of the restraint determinations made using DOC's objective instrument; whether DOC has used mechanical restraints in accordance with the terms of this Stipulation and has maintained documentation thereof; staffing and supervision policies with respect to the use of mechanical restraints; training programs; and any other procedures and practices addressed by these paragraphs.

43. The forensic and outpost monitors (together, "the monitors") shall be paid by the defendants at rates agreed by them, and shall be reimbursed by defendants for any costs and expenses reasonably incurred by them in the performance of their duties under this Stipulation. Defendants shall take all steps necessary to secure approval of the relevant agreements so that such compensation and expenses can be paid to the monitors in a timely manner.

44. The monitors shall perform their functions by conducting periodic site visits at Bellevue and Elmhurst and/or reviewing documents concerning inmate-patients and procedures at Bellevue and Elmhurst. Counsel may accompany the monitors at the monitors' request or be present during a monitor's interactions with a specific individual at that individual's request.

45. As requested by the monitors, defendants shall allow the monitors reasonable access to the premises and the records of Bellevue and Elmhurst for inspection and/or audit purposes as set forth in this Stipulation, and with reasonable advance notice. An initial

two-day site visit by the monitors shall take place within a reasonable time after entry of this Stipulation. Subsequent site visits shall occur no more than once per six-month period, and each site visit shall be limited to no more than two days at each hospital.

46. The monitors shall be permitted to meet privately with members of the plaintiff class and shall be allowed to observe any actions required by this Stipulation related to the specific terms they are responsible for monitoring compliance with, except that they may not observe the inter-agency meetings referenced in paragraph "17" above, and may not observe individual or group therapy sessions or treatment team meetings without the permission of any and all inmate-patients present at such sessions or meetings. The monitors shall also be permitted to speak informally with officials, staff members, and employees of DOC, HHC, and DOHMH (or its vendor) provided that such conversations pertain only to practices addressed by this Stipulation, but shall otherwise notify defendants' counsel, reasonably in advance of any site visit, of those individuals with whom the monitors wish to conduct interviews, meetings, or conferences. Counsel shall facilitate all reasonable requests for such interviews, meetings, or conferences.

47. The monitors shall receive, at their request, copies of any record or document required to be maintained or prepared by this Stipulation at Bellevue and Elmhurst, except as otherwise set forth in this Stipulation. In addition, the forensic monitor shall be provided upon request with the following documents, insofar as such documents are generated and maintained by DOC or HHC at Bellevue or Elmhurst in the regular course of business: inmate-patient charts, excluding substance abuse information that is confidential under 42 C.F.R. § 2.12 insofar as such information is contained in these inmate-patient charts; logs reflecting attendance at group activities and group therapies; logs reflecting use of seclusion and restraint;

minutes of staff, peer review and leadership meetings; minutes of meetings between HHC staff and staff at DOHMH (or its vendor); logs of inmates not admitted and the documentation referenced in paragraph "10" above; and any other logs or reports maintained by DOC and HHC on these wards. The outpost monitors shall be provided upon request with the following documents, insofar as such documents are generated and maintained by DOC or HHC at Bellevue or Elmhurst in the regular course of business: inmate-patient charts, excluding substance abuse information that is confidential under 42 C.F.R. § 2.12 insofar as such information is contained in these inmate-patient charts; logs reflecting the use of mechanical restraints; documents reflecting an inmate-patient's security status; documents reflecting training concerning the medical contraindications of the use of mechanical restraints; and copies of the security and restraint forms. In addition, the monitors shall receive, at their request, copies of any quality assurance reports or minutes, or reports of other monitoring agencies involving the forensic or medical units at Bellevue and Elmhurst. Substance abuse information that is confidential under 42 C.F.R. § 2.12 may be disclosed upon compliance with the procedures set forth in the federal regulations governing the confidentiality of alcohol and drug abuse patient records (42 C.F.R. §§ 2.1-2.67).

48. The monitors shall have access to the documents described in paragraph "47" above without redaction and without demand for releases (with the exception of substance abuse information that is confidential under 42 C.F.R. § 2.12) provided that the monitors comply with the Court's February 19, 2009 Stipulated Protective Order ("Protective Order") in this Action and complete the form annexed as Exhibit A to the Protective Order. Inmate-patient names, personally-identifiable information about inmates, and other confidential and/or privileged information shall not be disclosed except as consistent with the Protective Order. All

disclosure shall be only to the minimum extent necessary to monitor defendants' compliance with this Stipulation or to enforce Plaintiffs' rights thereunder. All documents that include confidential or privileged information shall be sealed if filed with the Court pursuant to paragraph "10" of the Protective Order.

49. Each monitor shall prepare a report detailing his findings and conclusions as he determines appropriate or when requested by plaintiffs' and defendants' counsel. Copies shall be provided to plaintiffs' and defendants' counsel, who shall have an opportunity to comment on and/or seek modifications to the proposed report. Subsequent to the receipt of any comments and/or proposed modifications, each monitor shall issue a final report, to be provided to counsel for plaintiffs and defendants. Counsel for the parties reserve the right to submit a supplemental report in response to any such final report.

50. Problem solving meetings shall be held twice annually during the duration of this Stipulation, unless the monitors and counsel for the parties agree to a different schedule. At the request of the monitors, a separate forensic problem solving meeting and a separate outpost problem solving meeting may be held. These problem solving meetings shall be attended by the monitors, the Unit Chiefs or chief psychiatrists or their designees if unable to attend (for the forensic problem solving meeting), the supervising physician from each hospital or his/her designee if unable to attend (for the outpost problem solving meeting), the commanding officer of the forensic units or his/her designee, a representative from DOHMH (or its vendor) (for the forensic problem solving meeting), and counsel for plaintiffs and defendants, among others as needed. This group shall review both systemic and individual problems and shall attempt to resolve any problems or issues identified by the monitors or by counsel.

51. Plaintiffs' counsel shall be entitled to receive, at their request, copies of defendants' documentation received by the monitors as provided in paragraph "47" above and as consistent with the Protective Order. Such documentation shall be made available within ten working days after the monitors' receipt of such documentation.

52. Thirty months after the entry of this Stipulation as an order of the Court, the monitors shall be relieved of any further obligations under this Stipulation unless the Court, pursuant to paragraph "59" below, orders an extension of the monitors' term.

53. Plaintiffs' counsel shall be permitted at any time during the life of this Stipulation to confer confidentially with any individual member of the plaintiff class during attorney visit hours. Should plaintiffs' counsel wish to confer confidentially with more than one member of the class simultaneously such consultation shall be permitted during attorney visit hours, subject to defendants' right to schedule such consultations to accord with the operational and security needs of the wards. Plaintiffs' counsel may also obtain copies of patient charts not already provided pursuant to paragraph "51" above, provided that counsel obtain releases from those patients whose charts they seek to obtain.

Dispute Resolution

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

55. Counsel for the parties shall make a good faith effort to resolve any differences which may arise between them over the terms or implementation of the Stipulation. Prior to the institution of any proceedings before the Court to enforce the provisions of this Stipulation, plaintiffs' counsel shall notify defendants' counsel in writing of any claim by plaintiffs that defendants are in violation of any provision of this Stipulation.

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

57. However, where plaintiffs' counsel asserts a claim that involves a threat to the immediate physical well-being of any member of the plaintiff class, plaintiffs shall have due recourse to the Court upon notification to defendants' counsel of such claim.

Continuing Jurisdiction

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

59. The Court, upon motion and based upon proof of defendants' failure to substantially comply with all or a significant part of this Stipulation may alter the frequency of the monitoring or extend the monitoring periods only for the specific hospital unit found to be substantially out of compliance by periods of no more than one year for each extension.

Termination of Prospective Relief

60. The provisions of this Stipulation shall terminate thirty months after the date this Stipulation is entered as an order of the Court, unless upon plaintiffs' motion, the Court

makes written findings, based on the record, that prospective relief (a) remains necessary to correct a current and ongoing violation of the plaintiff class's constitutional rights; (b) extends no further than necessary to correct such violation; and (c) is narrowly drawn and the least intrusive means to correct such violation.

Miscellaneous

61. This Stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations, except to enforce the terms hereof.

62. This Stipulation contains all of the terms and conditions agreed to by the parties. No oral agreement entered into at any time, nor any written agreement entered into by these parties prior to the execution of this Stipulation regarding the subject matter of the instant proceeding, shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

63. This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all parties or their successors-in-interest, or by order of the Court.

64. Nothing contained herein shall be deemed to be an admission by any defendant that it has in any manner or way violated plaintiffs' rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, charters, bylaws, rules or regulations of the United States, the State of New York, or the City of New York, or any other rules, regulations, or bylaws of any department or subdivision of the City of New York, HHC, DOC, or DOHMH.

65. This Stipulation may be signed in counterparts, each of which shall constitute a duplicate original.

Dated: New York, New York
November 18, 2010

THE LEGAL AID SOCIETY

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Counsel for Defendants

SO ORDERED:

_____
Richard J. Sullivan, U.S.D.J.

11/19/10