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Dec. 24, 1992
12:45 p.m.

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF UTAH, CENTRAL DIVISION

SANDRA HENRY, on behalf of herself and others similarly situated; Plaintiff, v. **GARY W. DELAND**, Director, Utah Department of Corrections; **O. LANE McCOTTER**, Director of Institutional Operations, Department of Corrections; **LYNN JORGENSON**, Warden, Utah State Prison; **DANIEL LEATHAM**, Bureau Chief of Support Services, Utah State Prison; **RUSSELL STEVENSON**, Director of Medical Facilities, Utah State Prison; **BLEN FREESTONE**, Assistant Director of Medical Facilities, Utah State Prison; **GERALD O'BRIEN**, Assistant Director of Medical Facilities, Utah State Prison; Defendants.	Civil No. 89-C-1124 J **STIPULATION OF SETTLEMENT OF MEDICAL AND DENTAL CLAIMS**

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Subject to its approval, the Court may enter an Order embodying the following provisions:

WHEREAS, this class action was commenced on December 18, 1989, by Plaintiff on her own behalf and on behalf of all inmates [or "Class Members"] who are confined, and who may be confined at the Utah State Penitentiary at Draper, Utah ["USP"], and who are seeking injunctive and declaratory relief regarding claimed constitutional inadequacies in medical and dental health care; and

WHEREAS, Plaintiff brought suit against Defendants in their official capacities, including all individuals subsequently acting in those capacities; and

WHEREAS, Defendants filed their answer on February 21, 1990; and

WHEREAS, class certification was granted by the Court on April 24, 1990; and

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

WHEREAS, this Stipulation deals only with the medical and dental care portion of the complaint and the parties agree that it is appropriate for the case and beneficial to the class to complete the medical and dental portion; and

WHEREAS, nothing in this Stipulation will be construed as evidence of an admission by Defendants of any violation of any law, regulation, rule or order, or construed as an agreement by

Defendants that the provisions of this Stipulation set forth the minimum standards for medical and dental services required by the United States Constitution or by Utah State law; and

WHEREAS, nothing in this Stipulation will be construed as evidence that Defendants maintained a policy or practice that was intended to result or, in fact, resulted in the deprivation of any rights, privilege or immunities of any member of the Plaintiff class;

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

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

IT IS HEREBY STIPULATED:

MISSION STATEMENT

1. Defendants [sometimes referred to as the "Department of Corrections" or the "USP"] adopt the following mission statement regarding its legal obligation to provide adequate medical and dental services to the inmate population:

a. To ensure access for all inmates to a health care program that is equivalent to that within the community;

b. To reduce the disabling effects of medical and dental problems; and

c. To provide a health care program that will function as a part of the overall prison system.

GENERAL APPROACH TO MISSION OF MEDICAL AND DENTAL SERVICES

2. A Bureau of Medical Services will have authority to administer, deliver, monitor, and implement changes necessary to accomplish the USP mission.

a. The Bureau of Medical Services will be under the direction of a single designated physician licensed within the state of Utah.

b. This physician will arrange for all levels of health care delivery and will have responsibility for assuring the quality and accessibility of all medical and dental services provided to inmates.

3. The Department of Corrections will provide the support necessary to allow access of inmates to medical and dental services in a timely manner and will provide the physical resources necessary for the delivery of the health care program.

4. Matters of clinical judgment will be within the sole province of each licensed health care provider, as set forth in Para. 21.

a. A written manual of policies and procedures will guide medical and dental services and will reflect current practices in rendering medical and dental services. A copy

of the current manual, TMF 06, Medical Operations, is attached as Exhibit 1 for reference.

b. To assure compliance with the written policies and procedures and to help identify trends or deficiencies, a Continuous Quality Improvement Program, as discussed in Paras. 52(g) and 58, will be implemented to monitor all aspects of the health care program. See TMF 06/04.08, TMF 06/14.00 through -14.03.

5. The physician directing the Bureau of Medical Services will ensure that on-site health care providers are appropriately licensed or certificated, and that current licenses and certificates are on file in the facility. The Quality Improvement Committee, as discussed in Paras. 54 through 59, will monitor the practice of all on-site health care providers to ensure that licensed or certificated staff do not exceed the legal parameters of their license or certification, and that unlicensed or uncertificated staff do not render medical or dental services requiring licensure or certification. Off-site health care providers will be appropriately licensed.

6. USP medical and dental staff, as set forth in Para. 21, will provide medical and dental services on-site.

a. Inmates will not be used to provide direct medical or dental services.

b. Medical and dental services which are not available at USP will be obtained from off-site health care providers and facilities as clinically indicated. See TMF 06/03.07.

c. The Quality Improvement Committee will monitor referrals to off-site health care providers and facilities for timeliness, completeness, and appropriateness. The Quality Improvement Committee will similarly monitor all contracts awarded to outside agencies, i.e. laboratories, dental labs, or other services rendered by outside consultants.

d. The Quality Improvement Committee will monitor referrals to off-site health care providers and facilities to ensure that the USP provides continuity of care when such care is transferred back to the USP. If USP health care providers elect not to follow the recommendations of off-site health care providers, they will document their reasons for not doing so in the inmate's medical record.

7. Security and licensed medical staff will be available to the inmates twenty-four (24) hours per day so that necessary medical and dental services will be instituted in an appropriate and timely manner.

RECEPTION AND ORIENTATION

8. Initial Screening. Within twenty-four (24) hours of arrival, each inmate will be screened for existing medical and dental problems, ongoing treatment modalities and medications,

allergies, communicable diseases, and any urgent or emergent medical or dental problems. See TMF 06/03.01 through -03.02. The screening process will have the following elements:

a. Training: Adequately trained staff will complete the screening. Any inmate refusing to provide information during the initial screening will be referred to a physician ["MD"], nurse practitioner ["NP"], or physician's assistant ["PA-c"] for a private interview.

b. Standardization: The staff will use a standard approach to screening, including a questionnaire and will enter data into the medical computer system. The standard questionnaire will include past medical history, current medical history, medications, and any presenting medical or dental symptoms.

c. Initial screening will include the following areas:

i. Chronic Problems: During the initial screening process, inmates with chronic health problems will be identified. The supervising health care provider will manage the medical care of inmates with chronic health problems.

ii. Communicable Diseases: All inmates will be screened for communicable diseases, including tuberculosis ["TB"] and human immunodeficiency virus ["HIV"]. All inmates who test positive will be referred for further medical management and

such management will be consistent with current CDC or other public health guidelines.

iii. Medications: During the initial screening process, inmates taking or receiving prescription medications will be identified, and an MD, NP or PA-c will be consulted for immediate evaluation so that prescription medication can be continued without interruption, as indicated.

iv. Urgent or Emergent Problems: Appropriate medical and/or dental staff will be notified immediately of all medical and/or dental problems of an urgent or emergent nature.

d. Tracking. The computerized tracking program will track all inmates identified as having health problems, including those with chronic medical problems, communicable diseases, and those requiring prescription medications.

9. Physical Examination. All inmates should receive comprehensive physical examination within fourteen (14) days of arrival at the USP. During periods of high work load, all inmates will receive a comprehensive physical examination within at least twenty-one (21) days of arrival. See TMF 06/03.04, -04.04.

10. Medical and Dental Services Orientation. As a part of the inmates' initial reception and orientation to the USP, each inmate will receive written material, prepared in simple language

which explains USP medical and dental services. Such written material will be supplemented by a videotape presentation. See TMF 06/03.03.

a. Special attention will be devoted to insure that inmates understand the written and oral material.

b. Problems such as language barriers, or inmates who may have visual or hearing impairments will be resolved. Translators or foreign language versions of the written material and video will be provided for all inmates who are non-English speaking.

A staff member will be available to further explain the medical and dental services and to answer questions.

11. Monitoring. The Quality Improvement Committee will monitor reception and orientation functions and ensure that tasks are adequately accomplished, including the provision that adequately trained staff will be provided.

TRAINING

12. A multi-disciplinary approach is adopted so that all staff members, including medical and dental staff and correctional staff will work together to maximize appropriate medical and dental services for inmates. Because all staff members may be called upon to identify and initiate medical or dental services, all such staff will receive special pre-service training, followed up by regular in-service training, in the following areas:

a. Recognition of the signs and symptoms of serious medical and dental problems within the inmate population with specific instructions on how to contact the appropriate health care provider and take appropriate action; and

b. Instruction to inmates on how to access medical and dental services on a routine and emergent basis.

13. Recording and Monitoring. All such training will be a matter of record and such record will indicate the individual's attendance and course contents. The Quality Improvement Committee will monitor all training.

REFERRAL SYSTEM

14. Inmates identified in the reception and orientation process as having medical or dental problems will be referred to the appropriate providers.

a. Self-referral and Sick Call Forms: In addition, the inmate may "self refer" by utilizing the policies outlined in TMF 06/03.05, and completing an appropriate sick call form. Specifically, the inmate can refer himself or herself to sick call, dental, or ophthalmology services. Sick call forms will be picked up and screened daily and assigned a priority based upon the information supplied.

15. Monitoring. The Quality Improvement Committee will log and monitor all referrals and self-referrals to ensure completion in a timely manner, and to identify trends or deficiencies within the health care system.

HEALTH CARE SERVICES: GENERAL

16. Recognizing the various levels of health care services that inmates will need, the USP will address the acute, chronic, and preventive health care needs of all inmates. Individualized treatment plans will be created for each inmate with a chronic health problem to assure periodic regular health assessments and continued maintenance. See TMF 06/3.04, -03.05, -03.06, -03.09, -03.10, -03.12.

17. Inmates will receive periodic health reviews. These reviews will reflect current community standards.

18. The USP will provide equipment and supplies necessary for the on-site delivery of health care services, as determined by the physician directing the Bureau of Medical Services.

19. Off-site health care providers will be used to supplement health care services and to provide those services not available on-site. See TMF 06/03.07. Off-site health care providers will also provide consultation to USP health care providers. Reasons for deviating from the recommendations of off-site health care providers will be documented in the medical chart.

STAFFING

20. Separation of Functions. Health care providers will not perform correctional staff functions such as body cavity searches, except in accordance with established USP policies and procedures.

21. Defendants agree to staff the USP with the following full time equivalents as follows:

Bureau Level Staff:

FTE	
1	Bureau Chief (who will be a licensed physician)
1	Correctional Medical Administrator
1	Office Manager
1	Office Technician II
1	MSC Budget
2	Registered Nurses [RN]
1	Certified Medical Records Manager
1	Computer (LAN) Administrative Specialist I
16.5	Social Worker [MSW]

Medical & Dental Staff:

1	Medical Administrator
1	Assistant Medical Administrator
11.5	Physicians [MD], Nurse Practitioners [NP]), Physician's Assistants [PA-c]*
3.5	Dentists [DDS]
1	Dental Assistant Office Manager
7	Dental Assistants
8	Secretaries (one of which will be an office manager)
.5	Optometrist
2.5	Pharmacists
2	Pharmacy Technicians
1	HIV Coordinator [Phlebotomist]
1	Supervisory Registered Nurse [RN]
4	Registered Nurses [RN]
22	Correctional Medical Assistants [CMA]
1	Radiology Technician [RT]
2	Custodian I
.66	Correctional Technician
1	Material Service Manager
.5	Physical Therapist [PT]

*Physician staff will consult with NP's, and will supervise PA-c's, in ratios allowed by Utah state law.

22. Staff will be licensed in accordance with the Utah Code governing occupational and professional licensure.

23. The health care program agreed to, including the variety of medical and dental services to be provided, and the staffing for such medical and dental services, is based on a USP population of 3,000 inmates.

a. Significant increases or decreases in prison population will either require a commensurate increase, or allow a commensurate decrease, in the agreed upon medical and dental staff and services.

b. Should the average monthly resident inmate population exceed by twenty percent (20%) of the current population, then Defendants agree to notify the designated Plaintiff's counsel who will also be notified of the details of the plan designed to meet the expected increased demand for medical and dental services. Any proposed decrease in staffing or services may be instituted in the same fashion and subject to the same process. Any dispute concerning the implementation of this paragraph will be resolved in accordance with Para. 74.

24. Monitoring. The Quality Improvement Committee will monitor staffing to ensure that staffing is sufficient for the medical and dental services being provided.

IN-PATIENT BEDS

25. The USP will provide on-site infirmary beds for those cases and conditions that are determined by the treating health care provider to be appropriate for the level of care available at the on-site infirmary.

26. In addition, the USP will contract with the University of Utah Medical Center or other community facilities for in-patient care. Inmates will be transferred to an off-site health care facility by the treating MD, NP, or PA-c, as clinically indicated.

27. Monitoring. The Quality Improvement Committee will monitor the provision of in-patient beds to ensure that in-patient beds are sufficient in number and staffing for the medical and dental services being provided.

ACCESS TO CARE

28. Daily Access. All inmates will have daily on-site access to licensed health care professionals for assessment, triaging and, as clinically indicated, treatment or referral of health care complaints. See TMF 06/03.05, -03.07, -04.03.

29. Sick Call. An MD, NP, or PA-c will conduct sick call five days per week. See TMF 06/03.05.

30. Inmates in Punitive Isolation. In addition to sick call, inmates in punitive isolation or disciplinary segregation will be visited daily.

31. Twenty-four Hour Coverage. Licensed health care professionals will be on-site twenty-four (24) hours per day, including at least one (1) RN. In addition, at least one (1) MD and one (1) NP or PA-c will be on-call evenings, weekends and holidays.

32. Emergency Services. Inmates will have prompt access to emergency services. Emergency services may be initiated by any appropriate staff member and will include treatment modalities as deemed clinically appropriate by USP health care providers. See TMF 06/03.08, -04.06.48.

33. Monitoring. The Quality Improvement Committee will monitor inmates access to care to ensure that access to care is provided according to standard.

MEDICAL SERVICES

34. Communicable Disease Screening: Inmates who are TB test negative upon entry into the USP will receive annual TB testing with follow-up for positive results. Screening or surveillance for other communicable diseases, and management of identified communicable diseases, will be conducted consistent with current CDC or other public health guidelines.

35. Routine Medical Services. Routine medical services will be provided according to TMF 06. As part of the periodic health review, the USP will conduct screening for health problems, i.e., periodic complete physical exams, pap smears, breast examination

and/or mammography, and appropriate screening lab tests. See TMF 06/03.04.

36. Chronic Medical Problems. The USP will identify and monitor those inmates with chronic medical problems who will require ongoing treatment. These conditions include but are not limited to hypertension, heart disease, diabetes mellitus, asthma, immunocompromised conditions, and epilepsy. See TMF 06/03.12. The USP will establish protocols that reasonably assure follow-up of chronic medical problems, including treatment intervals, documentation of failures to refill and take medications, and the reasons for such failures. See TMF 06/03.05.

37. Women's Health Care: In addition to routine health care, pregnant inmates will receive pre-natal care and counseling. Generally, obstetrical medical services will be managed and provided by off-site health care providers and facilities.

38. Emergency Services. Health care providers on-site will be trained to respond to urgent and emergent situations. Emergency services will have the following elements:

a. While emergency services may be initiated by any appropriate staff member, the initial assessment and response during an emergency will be conducted by at least an RN or CMA. See TMF 06/03.08.

b. MD's, NP's and PA-c's will be certified in Advanced Cardiac Life Support and may institute these advanced techniques on-site.

c. All licensed medical and dental staff will be certified in Basic Cardiac Life Support and may institute these measures on-site.

d. All correctional staff will be instructed and trained in basic first aid and life-saving techniques, and capable of performing basic first aid and life-saving techniques.

e. Paramedics and EMT's will be available, using community resources as necessary.

f. The most qualified health care provider on-site at the time of an emergency will determine the type and need for transportation to an off-site facility.

39. In all emergencies, a USP MD, NP, or PA-c will be contacted. The MD, NP, or PA-c will provide direct emergency care, consultation, or follow-up, as they deem appropriate.

40. Tracking and Monitoring. The USP will track inmates with medical problems using a computerized tracking system. The Quality Improvement Committee will monitor all medical services to ensure that care is administered to standard, that follow-up on inmates' failures to keep appointments and to refill prescriptions is documented in the medical record, and to identify trends or deficiencies within the health care program.

DENTAL SERVICES

41. Inmates entering the USP will receive an oral hygiene evaluation as part of their reception and orientation screening. See TMF 06/04.04. Dental problems will be prioritized and dental services delivered in a timely manner. See TMF 06/04.01 to -04.11. Inmates may request dental services on the dental request form.

42. Routine dental services will be provided 5 days a week, excluding holidays. No inmates will be required to wait longer than forty-five (45) working days for routine dental services.

43. Care for urgent/emergent dental problems will reflect community standards. Urgent dental problems will be seen Monday through Friday at the first available dental clinic following submission of a dental request form and validation of the complaint.

a. Inmates who have pain caused by a dental problem when there is no dentist on site, will be seen and treated appropriately for the relief of pain by a health care provider.

b. Dental problems will be referred off-site as clinically indicated. If urgent dental problems cannot be seen within seventy-two (72) hours, inmates will be referred to outside dental services.

44. Follow-up. The USP will establish appropriate protocols for follow-up treatment of dental problems, including treatment intervals.

45. Tracking and Monitoring. The USP will track inmates with dental problems using a computerized tracking system. The Quality Improvement Committee will monitor all dental services to ensure quality of care, and to identify trends or deficiencies within the health care system.

SUPPORT SERVICES

46. Diets. Inmates will be provided with special diets as clinically determined by the health care provider. See TMF 06/03.10.

47. Pharmacy. The pharmacy will fill prescriptions on a routine basis, five days a week except holidays.

a. Each prescribing health care provider will be responsible for monitoring the medications they prescribe, including follow-up on inmates who fail to report to the pill line or to obtain prescriptions as scheduled. All medications will be continued for as long as deemed clinically necessary by the health care provider, but no longer than three months without clinical review.

b. Inmates will be instructed about possible adverse effects of their medication by the prescribing health care provider. The pharmacy will maintain profiles of each

inmate's current medications so as to identify potential adverse drug interactions.

c. Pharmacy services will be available "on-call" to fill prescriptions deemed urgent by the prescribing health care provider. Such prescriptions will be filled within no more than twelve (12) hours of the call. See TMF 06/06.0.

48. Monitoring. The Quality Improvement Committee will monitor all support services to ensure that such services are administered to standard. In particular, the Quality Improvement Committee will monitor the drug delivery system to assess the correct and timely delivery of medication to inmates.

HEALTH EDUCATION PROGRAM

49. The Defendants agree that healthy life-styles are desired but are not constitutionally mandated. Efforts, however, will be undertaken to educate the general population in proper health maintenance and modified life-style behaviors to promote health. Programs such as stopping smoking, reducing cholesterol, losing weight, and preventing medical and dental problems, will be offered as the staffing levels allow.

MEDICAL RECORDS

50. The Bureau of Medical Services will maintain the confidentiality of the medical and dental records, both electronic and paper, in accordance with Utah law. The Quality Improvement Committee will periodically review the medical and

dental records based on specific criteria and studies, as it deems necessary.

POLICIES AND PROCEDURES: COMMITMENT TO ADOPT

51. Defendants believe that the adoption and regular review of policies and procedures relating to prison administration, including medical and dental services, is an administratively sound practice. It is agreed, however, that procedures per se are not constitutionally mandated and this agreement to adopt these measures does not constitute a basis for subsequent review by a court.

52. Where policies and procedures do not exist or are in the process of revision, the Defendants will develop and adopt policy and procedures encompassing the following areas:

a. Chronic medications.

b. Chronically ill.

c. Terminally ill.

d. Immunocompromised patients.

e. Maintenance of professionally sound medical and dental records.

f. Discharge planning.

g. Continuous Quality Improvement Program.

h. Transfer of inmates between housing units.

i. Education and training of correctional, medical and dental services staff.

j. Medical supplies.

k. Inmates with severe physical disabilities whose adaptation to the correctional environment may be significantly impaired.

l. Health care preventive screen to include, but not be limited to pap smears, mammography, etc.

m. Periodic physicals for inmates at high risk for health problems;

n. Medical staff assistance in body cavity searches;

o. Infirmary care; and

p. Documentation of inmate deaths.

See TMF 06.00.

53. Monitoring. The Quality Improvement Committee will review policies and procedures to ensure that such policies and procedures reflect applicable standards, and that such policies and procedures are implemented.

QUALITY IMPROVEMENT COMMITTEE

54. The Quality Improvement Committee will be minimally comprised of, but not limited to, an administrative representative, an MD representative, an NP or PA-c representative, a DDS representative, a pharmacy representative, and a mental health representative. The Quality Improvement Committee will be chaired by a quality assurance nurse. See TMF 06/14.00.

55. The Quality Improvement Committee will meet at least monthly. Its responsibilities will include reviewing all unexpected or poor outcomes, regularly reviewing services by off-site health care providers, monitoring inmate visits to health care providers, and conducting, as it deems necessary, initial prospective studies.

56. The Quality Improvement Committee will monitor, at random and on a continuous basis, a minimum of five percent (5%) of all inmate written sick call requests to evaluate:

a. A timely and appropriate response;

b. Clinical diagnosis; and

c. Treatment.

57. It will be the responsibility of the Quality Improvement Committee to monitor inmate grievances to identify trends in the complaints that may indicate problem areas in the health care delivery system.

58. The Quality Improvement Committee will have authority to investigate quality assurance issues and recommend action as needed. The Quality Improvement Committee will implement the Continuous Quality Improvement Program, including:

a. Identification of important aspects of care;

b. Establishment of monitoring indicators;

c. Establishment of monitoring criteria;

d. Establishment of method for data collection;

e. Responsibility for data review;

f. Implementation of recommendations to improve the quality of care; and

g. Follow-up monitoring to assure compliance.

59. The Quality Improvement Committee will prepare reports of its activities. Such reports, and specific minutes, notes and incidents are confidential and their confidentiality will be maintained. The Impartial Expert, as described in Para. 60, will have access to all quality assurance information to assess compliance, but will maintain its confidentiality. Nothing in this paragraph will constitute a waiver by either party of its right to seek or to object to further disclosure of such information in any further proceedings in this case.

TWO YEAR COMPLIANCE

60. Defendants have two (2) years from the Court's approval of this Stipulation [the "Order"] to come into compliance with the provisions of this Stipulation.

a. Defendants' compliance with this Stipulation will be assessed by an Impartial Expert ["Impartial Expert"].

b. The Impartial Expert will be selected jointly by Plaintiff's medical expert and Defendants' medical expert, to carry out the responsibilities set forth in this Stipulation.

c. If the Impartial Expert is unable to fulfill his or her responsibilities under this Stipulation,

Plaintiff's medical expert and Defendants' medical expert will jointly select another Impartial Expert to do so.

61. Defendants agree to provide the Impartial Expert and Plaintiff's counsel with written progress reports ["Progress Reports"] in six (6) month intervals during the first two (2) years following the Court's approval of this Stipulation, plus a final Progress Report at the end of the third year following the Court's approval of this Stipulation. Such Progress Reports will describe the Defendants' progress toward compliance with this Stipulation.

62. The Impartial Expert and Plaintiff's designee, will be permitted to conduct a total of three (3) on-site visits to the USP during the first two (2) years following the Court's approval of this Stipulation. Such on-site visits will occur at intervals to be determined by the Impartial Expert, but in no case more frequently than every six (6) months, or less frequently than every one (1) year. In addition, the Impartial Expert and Plaintiff's designee will be permitted a final on-site visit at the end of the third year following the court's approval of this Stipulation.

63. On-site visits will be up to two (2) days in duration. All expenses and costs associated with the work of the Impartial Expert will be paid by Defendants. All parties will cooperate to

ensure that the Impartial Expert may complete the on-site visits within the two (2) day period allotted for such visits.

a. Costs of the four (4) on-site visits will not exceed thirty thousand ($30,000).

b. If the completion of the on-site visit is delayed due to natural events, events relating to the operation of the prison, or conduct of Defendants or their personnel, any of which would have a material effect on the Impartial Expert's ability to conduct the on-site visit, the length of the on-site visit will be extended accordingly, at Defendant's additional expense.

c. Otherwise, if Plaintiff believe the two (2) day on-site visit is not satisfactory, it will be the financial obligation of the Plaintiff to pay for any additional expenses and costs of the Impartial Expert, not to exceed one (1) additional day.

64. The Defendants may select a designee to accompany the Impartial Expert and Plaintiff's designee during the on-site visit. Neither Plaintiff's designee nor Defendants' designee need be the same person for each on-site visit.

a. During such on-site visits, the Impartial Expert may review all matters referred to in this Stipulation, and that are not otherwise legally privileged.

b. The Impartial Expert, accompanied by Plaintiff's designee and Defendants' designee, may speak with any Defendant or staff member of the USP.

c. The Impartial Expert may engage in private conversations with any Class Member.

d. The Impartial Expert will abide by all Court orders regarding confidentiality of individual inmate prison files and medical, dental and mental health files.

65. The Impartial Expert will prepare a written report of his or her findings, within thirty (30) days of each on-site visit and send a copy to Plaintiff's and Defendants' counsel.

66. The role of the Impartial Expert will be advisory on matters of compliance. Should the Impartial Expert have the opinion at any time that Defendants are not in substantial compliance with any matter herein, then the Impartial Expert will notify Plaintiff's and Defendants' counsel in writing of such opinion.

CONTINUING JURISDICTION

67. The Court will retain jurisdiction over this action for a period of three (3) years for the purpose of enforcing the provisions of this Stipulation. In the event of any motion for relief based upon Defendants' alleged non-compliance, Defendants will be considered to be in compliance with the provisions of this Stipulation unless Plaintiff makes a showing by a preponder-

ance of the evidence that Defendants' failures or omissions to meet the terms of this Stipulation are not minimal or isolated, but are substantial and widespread.

68. Should Plaintiff establish that Defendants are not in compliance, as set forth above, the Court may:

a. Alter the frequency or extend the period of Defendants' "Progress Reports" and the on-site visits by the Impartial Expert for the sites or functions found to be out of compliance;

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

c. extend its jurisdiction over this action, but by no more than one (1) year beyond the date that Defendants are in compliance with this Stipulation.

Defendants will bear the costs of any additional on-site visits required by Defendants' non-compliance with this Stipulation. However, such additional costs will be subject to a cost limitation proportionate to that set forth in Para. 62, as adjusted for inflation. For example, if two additional visits are required by Defendants' noncompliance, the cost of such visits will not exceed $15,000, plus additional amounts, if any, for inflation.

EARLY COMPLIANCE

69. In the event Defendants believe they are in full compliance prior to the expiration of the two (2) years following the Court's approval of this Stipulation, Defendants will notify the Impartial Expert and Plaintiff's counsel in writing of such belief.

70. Within ninety (90) days thereafter, the Impartial Expert will conduct an on-site visit of up to three (3) days in duration. This on-site visit will not be counted as one of the four on-site visits under Paras. 61 and 62 above. Costs for this on-site visit, including time and expenses for the Impartial Expert to prepare his or her report, will be paid by Defendants and will not exceed $5,000.

a. If the completion of the on-site visit is delayed due to natural events, events relating to the operation of the prison, or conduct of Defendants or their personnel, any of which would have a material effect on the Impartial Expert's ability to conduct the on-site visit, the length of the on-site visit will be extended accordingly, at Defendant's additional expense.

b. Otherwise, if Plaintiff believe the two (2) day on-site visit is not satisfactory, Plaintiff will be responsible for any additional expenses and costs of

the Impartial Expert, not to exceed one (1) additional day.

71. The Impartial Expert's on-site visit will be conducted according to Para. 63.

72. The Impartial Expert will prepare a written report within forty-five (45) days of the on-site visit either affirming or rejecting Defendants' assertion of full compliance, and will send a copy to Plaintiff's and Defendants' counsel.

73. In the event the Impartial Expert finds the Defendants have achieved early full compliance, the Impartial Expert and Plaintiff's designee will make one (1) final on-site visit at the end of one (1) year following the Impartial Expert's finding of early full compliance. The Impartial Expert's final on-site visit will be conducted according to Paras. 63 and 69. The Impartial Expert will prepare and send a written report according to Para. 71.

74. If, after the final on-site visit, the Impartial Expert finds the Defendants are still in full compliance, Defendants' counsel may submit the Impartial Expert's determination to the Court and request an early dismissal of the action.

75. If the Impartial Expert finds, during either of the on-site visits, the Defendants have not achieved early full compliance, the provisions regarding two (2) year compliance and continuing jurisdiction (i.e., Paras. 60 through 69) will be fully reinstated.

DISPUTE RESOLUTION

76. In the event a dispute arises as to whether Defendants have failed to comply with the terms of this Stipulation, counsel for the parties will proceed as follows:

a. Counsel for the parties will make a good faith effort to resolve any difference which may arise between them over matters of compliance. Prior to the institution of any proceeding before the Court to enforce the provisions of this Stipulation, Plaintiff's counsel will notify Defendants' counsel in writing of any claim that Defendants are in violation of any provision of this Stipulation.

b. Within ten (10) business days of the receipt of this notice, counsel for Plaintiff and Defendants will meet in an attempt to arrive at an amicable resolution of the claim. If after ten (10) business days following such meeting, the matter has not been resolved, Defendants' counsel will be so informed by Plaintiff's counsel, in writing, and Plaintiff may then have due recourse to the Court.

77. This Stipulation is binding on all Class Members and will settle and compromise all injunctive and declaratory medical and dental health claims raised in any complaints that may have been filed in this action, as well as all similar systemic claims for injunctive and declaratory relief which could have been made,

known or unknown, prior to the date the Order is signed by the Court.

MODIFICATION OF THE TERMS OF THE STIPULATION

78. Should either party, during the life of this agreement, desire to modify any substantive provision of this Stipulation, they must, in writing, give notice to opposing counsel as to the proposed modification and its rationale.

79. Within five (5) business days, opposing counsel must respond to the proposed modification in writing by indicating their consent or their intent to oppose the proposed modification. If opposing counsel refuses to consent to the proposed modification, the petitioning party may move, pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, for an order modifying the relevant terms of this Stipulation.

80. Unless the party petitioning for modification makes a clear and convincing showing that the circumstances justify such modification, this Stipulation will not be altered.

81. The parties agree to an Order implementing this Stipulation in the form attached hereto.

DATED this ____ day of _____ 1992.

W. Cullen Battle
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