Hamilton v. Morial
JC-LA-003-020

IN THE UNITED STATES DISTRICT COURT FOR

THE EASTERN DISTRICT OF LOUISIANA

LOUIS HAMILTON, et al.,

Plaintiffs,

v.

ERNEST N. MORIAL, et al.

Defendants

CIVIL ACTION
NO. 69-2443
Section LLM (5) and
Consolidated Cases

AGREED ENTRY ON MEDICAL CARE

This class action, brought on behalf of all present and future offenders of the Orleans Parish Prison, alleges that certain conditions and practices at the institution violate the United States Constitution. The defendants herein are Charles C. Forti, Jr., Criminal Sheriff of Orleans Parish, Louisiana; Sidney Barthelemy, Mayor of the City of New Orleans; Leonard Simmons, the Chief Administrative Officer for the City of New Orleans; Dorothy Mae Taylor, Joseph J. Giarrusso, Peggy Wilson, James Singleton, Jackie Clarkson, Lambert Boissiere, Jr., and Johnny Jackson, all members of the City Council of the City of New Orleans and Bruce Lynn, Secretary of the Louisiana Department of Public Safety and Corrections. Among the allegations is that the level of medical care at the prison falls below constitutional levels. This agreement resolves this aspect of the case. Although the defendants categorically deny the allegations, they believe it will be in the best interests of the residents of New Orleans and Louisiana--including members of the plaintiff class--for there to be an expeditious, orderly, and comprehensive settlement of this case without the necessity of a trial. The plaintiffs share this

belief. As a consequence, the parties now agree to forego a trial on the merits of the medical issues and to bring this litigation to a conclusion on the medical issue by submitting this Agreed Entry on Medical Care to the Court for its review and ultimate approval.

It is expressly understood that the Sheriff of Orleans Parish agrees to perform the terms of this agreement.

With the full and informed consent of the parties, in order to resolve all claims asserted in this case, but without any acknowledgement or finding of liability or other determination on the merits, the parties and their successors agree to entry of the following as an order of the court.

I. A "Medical Director" shall be designated and employed by Sheriff Foti.

26 July 1991

A part-time interim Medical Director has been designated by Sheriff Foti.

When asked about recruitment of a full-time permanent Medical Director, Dr. Mary continued to be very vague saying they have looked over some c.v.'s. It is appropriate at this time that the Sheriff furnish the court evidence that an active search is taking place, i.e., public notice of the position via newspapers, journals, copies of letters sent to solicit applications, etc. (See Section III, A.1., for additional comments)

II. This "Medical Director" shall possess medical autonomy as to medical, dental, mental health, and dietetic matters.

26 July 1991

There is no clear evidence that medical autonomy has been achieved. Repeated verbal assurance have been made that autonomy exits, however the problem with working out an agreement with the Office of Public Health (see Section III, A.2.) illustrates the lack of autonomy. Autonomy also implies that a separate budget will be established for the activity

and this has not been done. The Sheriff should furnish the court with information concerning budget and expenditure information.

In reference to dental and mental health services, they remain separated.

We are still awaiting an update of the organizational chart.

III. ORLEANS PARISH PRISON MEDICAL CARE

A. <u>Organization of Health Services</u>

1. The Medical Director shall be board certified, hold an unrestricted license to practice medicine in Louisiana and shall be experienced in administering institutional health care program. The Medical Director shall be employed full time.

<u>26 July 1991</u>

1. Dr. Mary continues to function as a <u>part-time</u> interim Medical Director, even though full-time status is required. The current arrangement is no longer appropriate since it does not provide permanent continuing authority which is necessary if orderly program development is to be accomplished. No time limit for a full-time Medical Director was set in the consent decree however, under III A. 12, it was mentioned that 3 months after consent decree a medical director would have certain items accomplished. Inherent in that statement is the assumption that the full-time Medical Director would be on board almost from the beginning.

Eight months post consent agreement it is reasonable to expect that a permanent full-time Medical Director would be on board. A full-time permanent Medical Director should be named in the very near future.

2. The new director's immediate tasks shall be to establish the organization and chain of command for all health care services and to establish liaison with all external (e.g. Charity Hospital, Department of Health, DHH, etc.) and internal (dental, mental health, pharmacy and dietary) medical care services. In establishing the chain of command the Medical Director shall

designate someone on the staff as a director of nursing and someone as a medical administrator.

26 July 1991

2. Regarding agreements with external agencies and institutions, we were informed that no written agreements have been formalized with the exception of one with the Office of Public Health. The Office of Public Health was contacted and it was discovered that the Office of Public Health would not sign the agreement that had been proposed because Sheriff Foti would not allow the coordinator that had been designated to work in the jail.

At the time of the site visit, Mr. Towe was still functioning as Acting Medical Administrator; however, he indicated, as he has done several times in the past, that he would "only be there 2 more weeks." Chief Geerken however indicated that Mr. Towe would remain until "adequate" replacement was obtained. Since the time of the site visit we have been informed that Dr. Dileo, Director of the Dental Program, has been appointed Medical Administrator. The Sheriff should confirm the appointment and provide an up-to-date c.v.

Mr. McGregor, the designated nursing executive, appears to be functioning under severe constraints. For example, Mr. McGregor is not even allowed to prepare nursing schedules; they are being prepared by an employee of Dr. Mary. The degree to which he is able to exercise independent decision making appropriate to his position is questionable.

3. The Medical Director shall establish a system for supervision and clinical accountability, including review of consultations, laboratory tests, special studies, emergency room visits and hospitalizations. This review shall be noted in the medical record. The Medical Director shall approve all health care policies and procedures and review them annually.

26 July 1991

3. The quality assurance program developed by the nursing executive appears to be appropriate but no implementation has been instituted. Procedures have not been approved. The few medical records reviewed bear this out graphically.

4. The Medical Director shall establish monthly on-site continuing medical education, to include initial orientation, for all health care staff.

26 July 1991

4. Documentation of in-service sessions was available and appeared in order, but was not scrutinized in detail.

5. The Medical Director shall supervise the medical services and maintenance of charting systems, statistics and recordkeeping, ordering and maintaining equipment, budget preparation and the personnel system.

26 July 1991

5. No documentation is available. We were told that a new filing system "is to be installed." With this new filing system expert consultation on charts and records is supposed to be provided as part of the equipment purchase agreement.

6. The Medical Director shall be responsible for collecting, organizing and reporting statistical information on the health care program monthly. Statistical information is to include but not be limited to positive and negative tuberculin skin test, cases of tuberculosis, number of inmates on tuberculosis prophylaxis, positive syphilis serologies, number treated for venereal diseases, emergency transports, routine transports, number screened and seen at sick call, number of prescriptions filled, number in infirmary care, number hospitalized and length of stay.

Copies of all of the above reports shall be furnished to designated representatives of all parties within 10 days of written request therefore and to the court upon being rendered.

26 July 1991

6. Monthly reports have not been prepared. The statistical information provided at the last court session June 7 contradicts itself in certain areas. Accurate reliable statistics are essential for program monitoring and evaluation.

7. The Medical Director shall review all monthly reports and analyze all data and make changes in the program as necessary to ensure quality and accessibility of services.

26 July 1991

7. No monthly reports or analyses have been compiled according to information provided by the Interim Medical Director.

8. In addition to nursing in the infirmaries (see section F), on-site coverage by an R.N. or physician shall be provided 24 hours per day, 7 days per week. A physician shall be on call 24 hours per day. The necessity for a physician on site 24 hours per day will be reviewed and evaluated every 6 months by the Medical Director.

26 July 1991

8. Site visitors were shown staffing [illegible]erns which appeared to be appropriate; however due [illegible]me constraints in depth evaluation was not possible

9. The Sheriff agrees to provide medical personnel coverage in consultation with the Medical Director. All clinics and sick call will be performed by a physician with assistance from a LPN or RN.

26 July 1991

9. Sick call is being performed 7 days a week when you consider the entire prison complex as a whole; however, according to clinic outlines provided some areas have sick call as few as 2 times per week. While volume may be low the consent agreement calls for availability of sick-call 5 days per week. We were assured that in facilities where sick-call was not being conducted each day that inmates would be transported to the CCC "if needed." Further investigation will be necessary to confirm.

10. All corpsmen shall be appropriately trained and supervised, to include state licensure as an Emergency Medical Technician or other medical assistant.

26 July 1991

10. There are still corpsman who have not completed EMT training. We were informed that a new class is to begin in August for the remaining unlicensed corpsman.

11. Licenses of all medical personnel shall be up-to-date and maintained in their files.

26 July 1991

11. We are assured that current licensure is documented in personnel files. This was not checked due to time constraints. License documentation of all medical personnel in summary form has been promised.

12. Within 3 months of a[illegible]ement consent decree, the Medical Director shall establish a [illegible]tem t[illegible]larly review staff responsibilities, documentation of care g[illegible] and the quality of care. Included in the medical staff's pe[illegible]nel files shall be current evaluations of their clinical work and performance.

26 July 1991

12. We were told this was being done but no documentation was provided.

B. Intake

15. All new arrestees shall receive medical screening, at the time of booking. Those judged in need of medical care will not be accepted in the jail until clearance is provided by a physician.

26 July 1991

15. The intake screening system is in place. A new form was provided and it appears to be functional. It should be noted that one medical record, examined in another part of the facility, indicated that information obtained at the time of the initial screening relative to medication the inmate was taking prior to incarceration, was not investigated for a period of 4 months.

16. The initial screening shall be done by medical personnel trained in the procedure and approved by the Medical Director. This initial screening shall be available 24 hours per day, 7 days per week and shall include observations and a directed history to determine acute problems, drug and alcohol use, chronic health problems, chronic mental health problems and suicide risk, medication, allergies and therapies. Vital signs (temperature, pulse rate, blood pressure, and respiratory rate) shall be taken and recorded. All initial screening and dispositions shall be reviewed by a physician within 24 hours. The physician on duty shall be notified of any urgent problems and direct the response.

26 July 1991

16. Due to time constraints we did not review the procedures. Screening is being done by EMT's. Modification of the form has been made since our previous visit.

17. A complete history and physical examination to include assessment of vital signs, neurological system, heart, lungs, abdomen and recent trauma, shall be done on all new admissions with 14 days. tuberculin skin-testing (or chest x-ray if indicated), urine dipstick for protein, white cell, blood and glucose, a hematocrit, and serological testing for syphilis shall be included. Women will be offered Pap smears, breast examination and pregnancy testing. This assessment shall be done by the physician.

26 July 1991

17. The history and physicals in the charts reviewed were not dated. It is impossible to determine when they were done. In June we were assured that all inmates in the facility would have had a history and physical by August 1. However, at the time of our visit we were informed that approximately 1,000 history and physicals still remain to be completed. The target date has now been moved to October 1.

18. Any inmate housed in the facility for more than one year shall have his or her medical records reviewed by a physician or physician designee and, upon recommendation, shall have a physical examination and/or laboratory test as appropriate.

26 July 1991

18. This is not appropriate at this time.

C. **Recordkeeping**

19. At admission, a medical record for each inmate shall be created. This record shall include: a problem list, admission history and physical examination, all laboratory and test results, consultations, progress notes, all clinical encounters, a working problem list, all mental health notes, all dental notes, and a

clear notation of allergies. Each progress note should be entered in a standard format (e.g., subjective and objective analysis, assessment and plan). Refusals of care shall be documented.

26 July 1991

19. A medical record for each inmate, initiated on admission, was documented. Standard format for medical records was not available.

20. Medical records shall be stored in a locked area that is not accessible to unauthorized personnel.

26 July 1991

20. A locked storage area is available but the medical records were not in that specific area. We were told that filing equipment "was to be installed next week." An intensive consultation on medical record format and handling is to be provided by the company supplying the equipment.

21. Records shall be deactivated upon discharge or transfer to another jurisdiction and maintained in a secure location. Readmission of the same person will result in reactivation of their record. Retention shall be according to State Law.

26 July 1991

21. No documentation regarding deactivation/reactivation can be determined from the minimal number of records reviewed.

No procedure for retention and/or destruction of records was noted. We informed the nursing executive that medical records in the jail environment in Louisiana must be maintained for a period of six years, with the exceptions as required for juvenile inmates, instead of the ten years as he assumed.

22. The Medical Director shall approve all forms and the format of the medical record.

26 July 1991

22. There is no medical record forms manual available.

D. **Sick Call**

23. Sick call shall be made available to all inmates Monday through Friday by a physician. No request shall take more than 24 hours to triage. The triage of sick call requests shall be based on a clinical assessment by a physician, registered nurse or licensed practical nurse that includes a brief history and evaluation of vital signs and physical condition. All sick call dispositions will be signed by a physician within 24 hours weekends excepted. The triaging process shall be done in clinical areas only and at a minimum include complete vital signs.

26 July 1991

23. As previously noted in III. 9., sick-call is being conducted somewhere in the complex 7 days a week. A schedule was provided showing sick-call times in each facility.

Requests for sick-call are still being collected by deputies and being held by watch commanders for periods as long as one week based on our observations and anecdotal information furnished by the staff. During chart review, time spans between complaint and physician evaluation were greater than one week in several instances. It should be noted that no triage system appears to exist therefore physicians see everyone entering a complaint whether it is athletes foot or a more significant medical problem. This results in excessive utilization of physician time and greatly inflates program cost since physician time is the most expensive personnel item.

24. Sick call requests and dispositions shall become part of the inmates medical record. If an inmate requests sick call, but then refuses to appear, a refusal form shall be completed and signed in the presence of medical personnel.

26 July 1991

24. The refusal form being used was presented at the time of site-visit but no documentation of use was noted in the records review. There seems to be confusion regarding appropriate use of refusal forms in instances other than refusing to go to Charity Hospital.

E. **Follow-up**

25. A follow-up system shall be organized for inmates with chronic problems (e.g. hypertension, diabetes, HIV disease), with abnormal laboratory results or with prolonged acute problems (e.g., recovery from surgery, healing for broken bones or muscle injuries).

26 July 1991

25. A list of specialty clinics was provided. No clinic protocols were available.

26. An inmate shall be permitted to refuse a follow-up visit only in the presence of medical staff. The inmate shall sign a refusal form which shall be placed in his or her medical record. Refusal to sign a refusal form shall be documented and witnessed.

26 July 1991

26. Refer to number 24.

27. If an inmate is unavailable for the follow-up visit, a chart entry shall be made and shall be noted and the appointment shall be rescheduled.

26 July 1991

27. No documentation was noted in the records reviewed.

F. **Clinic and Infirmary**

28. The examination areas of all clinics shall be physically arranged as determined by the Medical Director. Each clinic shall have adequate space for records, medication storage examination tables. ophthalmoscope and blood pressure cuffs. Privacy for confidential examination shall be assured.

26 July 1991

28. Male infirmary appears to be in reasonable shape. The female infirmary is not completed. We were informed it will be completed September 15th.

29. Hot water shall be provided in all clinics.

26 July 1991

29. I was assured this is available in all clinics.

30. Infirmaries shall be established for male and female inmates. Admission will be by physician order only. the infirmaries shall have 24-hour nursing coverage. Daily beside visitation by a physician shall be available and progress notes made for all visits. The nurse shall have access to observe and monitor the infirmary inmates 24 hours per day. The inmates will have access to urinals and toilets 24 hours per day. For inmates not in direct view, a buzzer or alert system shall be installed and maintained.

26 July 1991

30. Time constraints prohibited documentation.

31. All inmates in the infirmaries shall have a bed, mattress and appropriate clean bedding linens.

26 July 1991

31. Confirmed.

32. The wheel chair bound patients should have infirmary housing that is wheel chair compatible (i.e., ramps for bathroom, toilets, shower, etc.)

26 July 1991

32. Confirmed.

32(a). The Medical Director shall establish appropriate medical isolation areas for persons with airborne infectious diseases.

26 July 1991

32(a). Isolation areas are provided.

32(b). Physical therapy, as prescribed by a physician, laboratory work, and x-ray services shall be available on a timely basis.

26 July 1991

32(b). We were informed that physical therapy is provided by nursing personnel as ordered by the physician.

33. A medical reference library shall be available to include but not be limited to general medical and surgical texts, Physician Desk Reference, emergency medical care reference works, and obstetrical-gynecological texts.

26 July 1991

33. New medical reference books and video cassettes were observed in the medical clinic area in the CCC. I was informed that the interim medical director had spent $7,000 on the materials and that he had gone to New York to search for and purchase these items. A complete list will be provided. Texts called for are available in bookstores in New Orleans.

34. Special diets shall be available for all inmates as medically needed and prescribed by the physician. All menus will be reviewed by a dietitian at least every six months.

26 July 1991

34. A list of special diets was provided. Menus with dietician signature and dates were observed but not reviewed extensively. No regular diet menu was noted.

During the site visit large boxes containing sandwiches were noted mid-afternoon in various parts of the complex. Health Department checks for basic sanitation should be obtained. Since the prison provides only one hot meal each day, compliance with special diets must be carefully scrutinized.

35. Portable emergency response bags containing blood pressure cuff, tourniquet, bandages and medication as determined by the Medical Director should accompany all medical responses for emergency care in housing areas. Also available in the institution shall be portable stretchers, neckbraces, portable oxygen, ambu-bag and IV fluids.

26 July 1991

35. In place and documented.

G. Emergency Staffing and Procedures

36. There shall be 24-hour on-site medical coverage available to all inmates of the Orleans Parish Correctional system.

26 July 1991

36. Staffing schedule for 24 hour physician coverage was available but not scrutinized. The sleep area designated for physician use was seen.

37. The policy manual shall contain a clearly written emergency response plan, ambulance and hospital backup procedure and disaster response plan.

26 July 1991

37. A list of the 16 procedures available was provided. These procedures were not reviewed because of time constraints. Compliance by the program with this aspect of the consent decree is questionable at the present time.

38. Within 12 months of agreement or consent decree, all health care staff shall have current BLS certification with documentation kept on file.

26 July 1991

38. Not applicable at this time.

39. The following equipment shall be maintained in working order: defibrillator with monitor, one only, portable oxygen, EKG machine, emergency medicines, a portable emergency response bad, intubation equipment, central intravenous line equipment, intravenous catheters, intravenous solutions, hand-held peak-flow meter, ambu-bag, and tracheotomy equipment.

26 July 1991

39. Equipment is on-site but was locked up and therefore inaccessible. It should be noted that at the time of the site visit the crash cart was locked in a room in the clinic area and the defibrillator was in another room several feet away.

40. Emergency supplies and equipment shall be monitored and documented at least monthly. The oxygen tanks shall be checked for proper functioning daily.

26 July 1991

40. Documentation of check lists was not done due to time constraints.

41. The Medical Director will develop policies regarding emergency runs to hospitals.

26 July 1991

41. Not provided.

H. **Consultations and Referrals**

42. The Sheriff shall provide adequate correctional staff so that the inmates are transported as scheduled to consultation services. It is the City's position that the cost of such staff should not be deemed a medical expense for purposes of this litigation. The Sheriff's position is that the cost of such staff is a medical expense. This issue is not resolved by this agreement.

26 July 1991

42. On-site specialty clinics have been instituted decreasing the need for transport to Charity Hospital.

43. All consultations shall be returned with appropriate documentation of finds and recommendations if made. A physician shall review the consultations and initiate orders either noting, modifying or approving the consultant's recommendations.

26 July 1991

43. This will require additional investigation and documentation.

44. Non-acute special studies and procedures shall be completed in a timely fashion.

26 July 1991

44. We were informed that problems with Charity Hospital are being investigated and methods to correct the difficulties are being sought. However, this is an area that apparently needs considerable attention.

I. Pharmacy

45. Pharmacy services shall be utilized daily to dispense medicines. All administration of medication shall be done by medical staff, designated by the Medical Director, who have completed a training program.

26 July 1991

45. Pharmacy services continue to be supplied by Charity Hospital. No pharmacy services are available on Saturday or Sunday necessitating supplying medications for the entire weekend on Friday. Some floor stock is available. However it appears that a significant gap in patient treatment theoretically exists.

Distribution of medication and the procedures for patient compliance appear to need major overhaul especially in light of a recent newspaper article. (copy attached)

46. The medical record shall reflect allergies, medication usage, drug reaction and drug interaction.

26 July 1991

46. Random check of records did not reveal drug allergies being prominently noted on front of the record. Some records were stamped with allergy stamp but no entry in blank was made regarding allergy or lack of same.

47. A formulary shall be maintained and a method established for access to non-formulary items.

26 July 1991

47. I was informed that they are currently using Charity Hospital formulary.

48. "Floor stock" shall be available 24 hours per day for dispensing medications (i.e., insulin, hypertension medication, antibiotics) needed prior to the next routine filling of prescriptions.

26 July 1991

48. Floor stock is available.

49. Vaccines shall be made available on physician order.

26 July 1991

49. Tetanus Toxoid is the only vaccine available. Pneumovax is not available.

J. **Women's Health Needs**

50. All pregnant women shall receive prenatal care according to protocols developed and approved by an obstetrician. Physician care shall be provided at the prison.

26 July 1991

50. We were previously informed an OB clinic was functioning at the prison. We are now being informed that all pregnant females are being sent at Charity Hospital OB Clinic.

51. All pregnancy inmates shall receive nutrition supplements and diet as prescribed by the treating physician.

26 July 1991

51. High protein diet is noted on dietary form provided.

52. The Corrections administration shall provide pregnant inmates with housing assignments, appropriate exercise and reduced work schedules as recommended by the treating physician. Housing must provide 24-hour a day access to a toilet. Pregnant inmates shall not be assigned to an upper bunk or to a mattress on the floor.

26 July 1991

52. Due to time constraints we did not visit any housing areas but were assured repeatedly that all pregnant females are on lower bunks.

K. **HIV Disease**

53. Inmates who have been clinically diagnosed as being HIV positive shall be evaluated and followed according to the current evaluation and treatment guidelines in effect at Charity Hospital.

26 July 1991

53. According to Dr. Mary care of HIV inmates continues at Charity Hospital.

54. Upon physician recommendation an inmate shall be screened for HIV disease. Upon receiving the results of HIV tests,

inmates shall receive post-test counseling from health care professionals trained to provide this service. Medical files containing HIV positive diagnosis shall not be accessible to non-medical personnel.

26 July 1991

54. We were informed that Dr. Super is doing the HIV counseling. No documentation available. Dr. Super's c.v. should be submitted so that his qualifications can be examined.

55. Every inmate shall receive educational materials and counseling on HIV disease and have access to an ongoing risk reduction program.

26 July 1991

55. Video cassettes have been purchased. Cable TV will be prominently used for inmate education. Documentation is necessary.

56. During orientation there shall be educational sessions for the Sheriff's staff (i.e., the deputies) on HIV and other communicable diseases.

26 July 1991

56. Due to time constraints we were unable to document at this on-site visit.

57. If Aerosolized pentamidine is provided on physician's order, a room that is properly ventilated to the outside must be provided.

26 July 1991

57. Not applicable at this time.

L. **Disciplinary Segregation**

58. Health care personnel shall visit and screen for sick call in disciplinary areas daily and record the visits.

26 July 1991

58. Due to time constraints we were unable to document at this on-site visit.

M. **Quality Assurance**

59. Within 12 months of agreement or consent decree, the Medical Director shall establish a program of objective evaluation and documented corrective action for the health services, including clinical medical records, mental health, pharmacy and therapeutics, morbidity and mortality and infection control.

26 July 1991

59. Observation at the time of the site visit indicate little action toward implementation has been instituted as indicated by the gaps in continuity of care and/or follow through noted when reviewing a small number of medical records in CCC.

60. With 12 months of agreement or consent decree, a policy and procedure manual for the health services shall be developed and signed by the Medical Director. This manual shall be reviewed by the Director at least yearly. The policy and procedure manual shall include a specific written quality assurance plan, emergency response plan, sick call, and follow-up plan. An infirmary routine shall be included as well as protocols for commonly treated diseases (e.g., tuberculosis, hypertension, diabetes, seizure disorders, gonorrhea and syphilis). There shall also be a policy and plan for obstetrical care.

60. Minimal progress toward this objective has been realized, see III. 37.

P. Implementation, Compliance, Monitoring, and Other Provisions

61. Implementation will be the function of the Medical Director. Progress shall be reviewed at quarterly intervals (or more frequently if necessary) by a court appointed expert until such time as the program achieves accreditation from the National Commission on Correctional Health Care. All defendants agree to pay a one-third (1/3) portion of the court appointed expert fees at the direct request of the court. All parties will have the right to review and make objections to the experts billing invoices prior to payment.

62. The Court shall retain active jurisdiction and supervision of this case for a period of at least two years from the time this agreement is entered as an order. At that time, the Court shall terminate supervision and transfer this case to its inactive docket unless the plaintiffs move for the continuation of the jurisdiction and active supervision due to an alleged failure by defendants to fully implement and comply with the terms of this agreement. In that event, there shall be a hearing to determine whether or not jurisdiction and supervision shall continue. If the Court determines not to close the case, it shall retain jurisdiction until this agreement is fully implemented and compliance has been demonstrated by the defendants in all substantive areas. At such time, the defendants may move the Court

to terminate its supervision and transfer this case to the inactive docket, subject to plaintiffs moving at a later time for reinstatement of this action based upon an alleged failure by defendants to maintain compliance with the terms of the decree and underlying agreement. However, prior to initiating any court action to revive the case, plaintiffs' counsel shall bring any allegations of non-compliance to the attention of the defendants' counsel so that the parties can first attempt in good faith to resolve all such disputes between themselves.

63. All parties shall be notified in advance of any attempt to modify the court decree that implements this agreement. The parties shall then attempt to resolve all disputes concerning the proposed modification(s) before resort is made to the Court.

64. Beginning April 1, 1991, the Sheriff shall provide to the Court and all parties written progress reports detailing the steps taken to comply with the respective provisions of this Agreed Entry on Medical Care. The reports shall be made every four (4) months for the first year and every six (6) months thereafter until the Court's jurisdiction over this case ends.

65. The existing complaint in this action, which was drafted prior tot he completion of discovery, does not raise a number of issues that are addressed and resolved by this agreement. To avoid the necessity of again amending the complaint in order to reflect the full scope of this case, the complaint shall be deemed or treated as though it has been amended to cover all of the issues contained in the agreement.

66. The parties to this agreement shall promptly submit to the Court for its approval and entry a consent decree.

67. The parties, shall attempt to negotiate a settlement on attorneys' fees and costs. However, should the parties be unable to reach a settlement as to attorneys' fees and costs within 60 days of entry of the decree, the matter shall be submitted to the Court for its determination: provided, however, that this time period may be extended by stipulation of the parties if approved by the Court. All defendants deny any liability for any other parties attorney's fees or costs and reserve their rights to litigate these issues and the issue of "prevailing party." Bruce Lynn takes the position for the reasons stated in his 12(b) (6) motion that he is not liable for attorney's fees. All other parties disagree with this position.

68. Implementation of this agreement will begin January 1, 1991. Full implementation of this agreement will be accomplished by June 1, 1991. The Medical Director shall be in place by March 1, 1991. The Medical Director shall be in place by April 1, 1991 detailing progress toward full implementation. The relief contained in the interim medical program set forth in the joint Motion for Continuance entered into in August, 1990, shall continue until January 1, 1991. The Sheriff shall employ a full time Medical Director on or before February 1, 1991. If the Sheriff is unable to obtain the service of a Medical Director by said date, he shall report this to all parties and seek an extension from the Court. From January 1, 1991 to the date of

hiring the permanent Medical Director the Sheriff shall employ a full time interim Medical Director who may meet all or part of the qualifications set forth herein, and shall continue the screening program currently in effect.

69. Funding of this program by the City of New Orleans will commence on January 1, 1991 and funding of this program by the State of Louisiana will commence on January 1, 1991. Funding shall be as follows:

CITY

The City of New Orleans will provide $1,000,000.00 operational funds and $200,000.00 capital funds for the calendar year 1991. The operational funds will be payable to the Sheriff in equal monthly installments starting January 1, 1991 and the capital funds will be payable to the Sheriff on February 1, 1991.

STATE

The State recognizes that a portion of this plan will be funded by funds paid to the Criminal Sheriff for reimbursement of medical expenses paid in accordance with LA-R.S. 15:824. Additionally, pursuant to LA-R.S. 15:824, the State will continue to reimburse the Criminal Sheriff of Orleans Parish for actual medical expenses incurred in treating those prisoners sentenced to the custody of the Louisiana Department of Public Safety and Corrections who are in the physical custody of the Criminal Sheriff of Orleans Parish.

The State agrees that beginning January 1, 1991 and for the balance of the fiscal year ending July 30, 1991, the reimbursement

to Sheriff Foti shall be $2.00 per day per state inmate housed by Sheriff Foti. Payments will be made monthly. The State and the Criminal Sheriff of Orleans Parish agree that credit will be given to the State for funds previously expended in FY 1990-1991 for medical care provided to state inmates. This credit will not decrease the $2.00 per inmate per day payment to be made from January 1, 1991 to June 30 , 1991.

For fiscal year 1991-92, the State of Louisiana through the Division of Administration will support and place in the Executive Budget for the fiscal year a recommendation that there be appropriate for payment of this reimbursement funds equal to $2.00 per day per state inmate housed in the OPPS during that fiscal year.

The Department of Public Safety and Corrections through Charity Hospital New Orleans (CHNO) will continue to provide medical services to those inmates in need of emergency care and hospitalization only.

However, the Department of Public Safety and Corrections through CHNO will not continue to provide laboratory work, x-ray services, physical therapy, pharmacy, or any other specialty services for inmates except in emergencies.

The Department of Public Safety and Corrections will continue to provide medical services for chronically ill state inmates until such time as they can be expeditiously transferred into the physical custody of the Department of Public Safety and Corrections.

The Department of Public Safety and Corrections through CHNO will continue to provide medical services at CHNO specialty clinics to those inmates in need of emergency medical treatment at those specialty clinics, but not for routine out-patient treatment.

Referrals to CHNO must abide by its medical staff and hospital protocol and policies.

All medical services provided prior to this agreement to inmates other than State inmates will not be affected by this agreement.

In the event Charity Hospital in New Orleans fails to provide the services outline above, the State shall, on a monthly basis, reimburse to the Sheriff the full costs of providing these services, supplies and medication in addition to the $2.00 per day per inmate payment set fourth hereinabove.

70. If the parties cannot reach an agreement as to funding after December 30, 1991 (City) and June 30, 1991 (State), hearings on these issues will be scheduled by the Court. These hearings will be completed sufficiently in advance of the cut-off dates of December 30, 1991 and June 30, 1991 so as to avoid any interruption of funding by the City or the State.

71. The Sheriff shall maintain records of financial expenditures for the program in such a manner as to allow a financial audit with respect thereto. The City and State shall have the right to audit these financial records.

72. The plaintiffs herein do not, by signing this judgment, endorse or approve the funding levels to be paid by the City and State. The plaintiffs approve only the program and the terms of this agreement even if the levels of funding provided for herein prove to be inadequate or are not funded by the City and or the State.

72. The Sheriff is aware of and in agreement with the plan set forth in this document. He is also aware of the funding provided for herein and believes, in good faith, that the funding provided to him is sufficient to implement the program described above.

Agreed to this _____ day of _____ 1990.

Suicide try sidetracks murder trial

By DAN BENNETT
Staff writer

The judge, jury and lawyers were ready in criminal court Tuesday morning for the second day of Joseph Dejean's trial on first-degree murder charges. But Dejean was not present.

"The defendant tried to self-impose the capital punishment," prosecutor Hans Sinha said after the jury was dismissed.

Dejean, 29, apparently attempted suicide in Parish Prison during the night and was taken to Charity Hospital to have an overdose of prescription drugs pumped from his stomach, court officials said. He was in fair condition Tuesday afternoon.

Judge Dennis Waldron declared a mistrial.

Dejean is accused of slashing his girlfriend's face with a kitchen knife and then stabbing her aunt to death Oct. 26, 1989, in a Thalia Street apartment. He faces a possible death sentence if convicted.

Sinha said Dejean overdosed on Benadryl, an antihistamine, and Sinequan, an anti-depressant.

A sheriff's deputy said Dejean may have been storing up his medication rather than taking it on the prescribed schedule. "We can't watch it go down," the deputy said.

Dejean was found incompetent to stand trial between January and November 1990 and was sent to the Feliciana Forensic Facility in Jackson, La.

Tulane University Medical Center

Program in Community Medicine
School of Medicine
1430 Tulane Avenue
New Orleans, Louisiana 70112
(504) 588-5571

August 14, 1991

Ms. Alma L. Chasez, Magistrate
U.S. District Court
Eastern District of Louisiana
500 Camp Street
New Orleans, Louisiana 70130

Dear Magistrate Chasez:

Attached you will find my comments as to the status of the medical program at the Orleans Parish Prison complex. These comments were formulated following my visit to the complex on July 26, 1991 and take into account the data and documentation we have been able to obtain from Dr. Mary and his staff. Based on my observations I regret to inform you that much of the information orally supplied by Dr. Mary to me on June 5, and to the court at the June 7 conference, cannot be verified.

It should be noted that a number of changes have been made since the first site-visit; unfortunately, many of the changes appear to be cosmetic in nature and have little impact on the provision of good medical care. Top of the line equipment has been acquired for the clinics but the basic delivery of health services, based a random examination of medical records, continues to be much less than optimal.

Monthly reports and statistical data as required by Section III, items 5, 6, and 7 of the "Agreed Entry on Medical Care" have not been provided.

In summary the basic problems are:

1) lack of a full-time permanent medical director; (required under Section III, A, 1)

2) lack of a full-time medical administrator; (required under Section III, A, 2)

3) apparent inability of the current nursing executive to function effectively under existing constraints; (required under Section III, A, 2)

4) lack of medical autonomy, (required under Section II)

5) lack of substantial progress in the development and institution of uniform policies and procedures covering the various areas of program operation. (required under Section III, items 37 and 60)

The administrative structure specified in the "Agreed Entry on Medical Care" should be implemented without further delay, and the automony called for insured.

I am attaching a copy of the "Agreed Entry on Medical Care" with my comments and observations inserted at each appropriate point.

Sincerely,

J. T. Hamrick, M.D., M.P.H.

JTH:elb

Attachment