UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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| RODNEY FUSSELL, GARY ROBERTS, and JAMES LOVE<br><br>Plaintiffs,<br><br>vs.<br><br>REGINALD WILKINSON, KAY NORTHRUP, BRUCE MARTIN, PEDRO OBREGON, MONA PARKS, VICKI WARE, JAMES MCWEENEY, and CINDY LAWSON<br><br>Defendants. | Case No. C-1-03-704 (SSB)<br><br>**STIPULATION FOR INJUNCTIVE RELIEF** |

**STIPULATION FOR INJUNCTIVE RELIEF**
***FUSSELL V. WILKINSON*,**
**Case No. C-1-03-704 (SSB)**

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## A. General Provisions

1. This Stipulated Judgment is entered into by the parties to resolve all of the claims made in this action, wherein the Plaintiffs Rodney Fussell, Gary Roberts, and James Love, bring a number of claims on behalf of the class of all Ohio inmates, relating to the medical care they are all receiving from Defendants, who are employees of the Ohio Department of Rehabilitation and Corrections ("ODRC") or who are under contract.

2. This action was filed by Plaintiffs on October 14, 2003. The action alleged that the Plaintiffs are not receiving medical care which comports with the Eighth Amendment to the United States Constitution and which also varies from specified federal statutory law. On January 23, 2004, the court entered an Order certifying this case as a class action and naming Alphonse A. Gerhardstein and David Singleton, of the Ohio Justice and Policy Center (formerly known as the "Prison Reform Advocacy Center"), as class counsel. On April 2, 2004, the parties agreed to a fact-finding process whereby a jointly approved Medical Investigation Team (MIT), comprised of medical and legal experts in the area of correctional health care, would conduct a thorough, factual investigation of the medical services provided by the Defendants. On January 26, 2005, the MIT, headed by Fred Cohen, Esq., completed its work and issued a comprehensive Report detailing its findings and the factual basis for such findings. On March 10, 2005, the parties accepted the Report's findings and those findings are hereby incorporated herein. The Report served as the basis for extensive, informal negotiations that followed.

3. By entering into this Stipulation, the Defendants do not waive, and are not authorized to waive, the sovereign immunity of the State of Ohio, or the State's immunity from suit guaranteed by the Eleventh Amendment.

4. The parties have conducted extensive informal negotiations since the filing of the MIT Report. These negotiations have included the parties as well as legal and medical experts in correctional health care. These negotiations have been undertaken in good faith and at arm's length allowing the parties to reach agreement on the procedures and substantive criteria the parties will follow for ensuring the delivery of constitutionally adequate medical services. The parties freely and voluntarily, and with the advice of counsel, enter into this Stipulated Judgment for that purpose.

WHEREAS, a dispute exists between the parties as to the extent to which the Defendants' provision of medical care to inmates housed in facilities under the authority of ODRC meets constitutionally mandated, minimum standards;

WHEREAS, this dispute culminated in Plaintiffs filing this statewide, medical class action;

WHEREAS, the Defendants agree to use their best efforts to obtain the necessary funding to improve the medical care system and to otherwise comply with the standards of care included in this Stipulation; and,

WHEREAS, this Stipulation is narrowly drawn to meet those standards, the following terms and conditions are to serve as the basis for the injunctive relief encompassed herein.

**B. Glossary of Terms**

5. Chronic Illness. A "chronic illness" is one that affects a person's well being for an extended time, usually at least six (6) months, which is not usually curable but may be managed to optimize functioning.

6. Cluster System. "Cluster system" refers to the grouping of designated facilities for the purpose of sharing expressly described staff, services, and physical facilities. The "cluster system" in use for mental health services is referenced only by way of example.

7. Health Assessment. A "health assessment" is performed by medical staff to fully evaluate the health status of an individual and to create a plan for meeting the individual's health needs.

8. Infirmary. "Infirmary care" is care provided to patients whose diagnosis requires daily monitoring, medication, therapy, or assistance with activities of daily living requiring skilled nursing assistance. Infirmary care is less than hospital care and beyond what can be done in an outpatient setting.

9. Medical and Dental Care. Should the term "medical care" appear by itself in this document and it is evident that dental care also was intended to be included, then "medical care" also shall include "dental care."

10. Medical Records. The "medical record" is the complete documentation (including notations in electronic format, if any), of all the health encounters of an individual inmate and is designed to document medical care, facilitate communication among various care providers, and facilitate continuity of care.

11. Medical Screening. "Medical screening" is the immediate and general process designed to detect the need for early medical attention or the accelerated need for the more comprehensive health assessment.

12. Policy and Procedure. "Policy and Procedure" refers to a properly adopted and promulgated written set of administrative rules governing the goals, objectives, and standard operating procedures for the provision of correctional medical care. "Protocols" shall be considered within the meaning of "policy and procedure."

13. Primary Care. "Primary care" is that care provided by physicians specifically trained for and skilled in comprehensive first contact and continuing care for persons with any undiagnosed

sign, symptom, or health concern (the "undifferentiated" patient) not limited by problem origin (biological, behavioral, or social), organ system, or diagnosis. Primary care includes health promotion, disease prevention, health maintenance, counseling, patient education, diagnosis and treatment of acute and chronic. Primary care is performed and managed by an assigned physician who often collaborates with other health professionals, and uses consultation or referral as medical judgment dictates.

14. Primary Care Physician. "Primary care" physician is a specially trained, generalist physician who provides definitive care to the undifferentiated patient at the point of first contact and takes continuing responsibility for providing the patient's care.

15. Special Needs Population. "Special Needs Population," as used herein, refers to persons in custody whose inherent characteristics, (e.g., age, diagnosis) or readily observed physical conditions, (e.g., amputee) indicates the need for specialized housing or medically-related care including such things as exercise, diet, special medical examinations, and the like.

16. Staffing Terminology. (1) "Medical staff" shall mean licensed physicians, licensed physician's assistants, nurse practitioners, and licensed nurses. (2) "Ancillary medical staff" shall mean x-ray technicians, phlebotomists, podiatrists, optometrists, pharmacists, and aides. (3) "Support staff" shall include medical records personnel and secretarial/clerical personnel.

17. Urgent Care. "Urgent care" is medical or dental care for an acute illness or unexpected health need that cannot be delayed until regularly scheduled opportunities to receive medical care.

18. Effective Date. The "effective date" of this Stipulation is the date the court approves the Order for Injunctive Relief.

## C. Scope

19. This Stipulation encompasses all inmates with serious medical and dental needs who are or will be incarcerated in prisons operated by or under the jurisdiction of the Ohio Department of Rehabilitation and Correction (ODRC). The serious medical and dental needs of the class are those that obviously require medical or dental attention, conditions that significantly affect an individual's daily life activities, or conditions that cause preventable pain, notable discomfort or a threat to health.

## D. General Principles

20. All persons in the custody of ODRC have a right of unimpeded access to a continuum of health and dental care services to insure that their medical and dental health care needs are met in a timely, professionally acceptable, dignified and efficient manner.

21. The foundation of the ODRC medical and dental system shall be timely access to needed care provided by appropriately trained, credentialed, and licensed personnel in a setting designed for the particular care.

22. The parties agree that many inmates reach ODRC with a health status well below that prevalent in the open society. ODRC gradually will provide medical and dental care in a manner that enhances the autonomy and responsibility of the inmate in achieving and maintaining better health. To that end, there shall be an ongoing program of health education, wellness information, healthy diets, healthy food choices in the commissary, and similar measures.

23. Recognizing that tobacco use and second-hand smoke are major causes of death and disability, ODRC will undertake special measures of education and accommodation of non-smokers with the ultimate goal of achieving a totally tobacco-free internal environment and will use its best efforts to obtain funds from the "tobacco settlement" as an aid to achieving this goal.

24. The parties agree that due to the abbreviated timeframe for the fact-finding, additional fact-finding and agreement on remedies will be described hereafter in the Stipulation and will be undertaken at various times after the effective date of the Stipulation.

**E. Cost Savings Projects**

25. The parties agree that certain measures designed to improve health care are likely also to result in significant, although not necessarily, immediate cost savings. Such measures include:

i. Bed utilization study and monitoring of the use of the facilities at the Ohio State University Hospital (OSU), Frazier, and the Correctional Medical Center where preliminary findings suggest there are now significantly longer stays than are medically required.

ii. Utilization of medical records specialists and technicians in lieu of far more expensive nursing staff who may then enlarge the scope of their patient care.

iii. Reassessment of the entire medication system from supply source and cost of medication to strategies to review and possibly reduce the number of prescriptions.

iv. Use of some version of the cluster system currently used by mental health for those medical services and staff that may be shared efficiently and in a professionally acceptable fashion. Examples include medical records staff, infirmary space, certain dental procedures and the like.

v. Restructuring of the contract and contracting process for physicians to require more oversight and accountability using in part, patient outcome measures to be fashioned by ODRC, Plaintiffs, and the MOC; to enhance care by emphasizing timely, quality contacts and care; to strengthen the leadership

role of Central Office and enhance the physician's knowledge of P & P and personal commitment to the patient.

26. It is agreed by the parties that whether to deliver services through civil service, private providers, contract workers, or through a cluster system is in the sole discretion of ODRC. The parties agree that whatever service delivery model is utilized, the terms of this agreement will apply and control any individual or collective agreements with such providers.

**F. Level of Care**

27. Medical and dental services are to be provided at a level within the framework of the Eighth Amendment and reasonably consistent with generally accepted medical science and of a quality acceptable within prudent professional standards. Where a range of acceptable treatments are available, the inmate-patient has no right to any particular treatment, to any particular caregiver, or to change any particular location for treatment deemed appropriate by the health care provider.

**G. Policies & Procedures**

28. All existing medical and dental Policies and Procedures (P&P) will be reviewed and revised as needed. The P&P will be designed to meet or exceed the minimum level of medical care required by the Eighth Amendment. However, it is the intent of this Stipulation to require Defendants to provide only the minimum level of medical and dental care required by the Eighth Amendment. The initial undertaking shall be initiated by ODRC officials working with members of the Medical Oversight Committee (MOC) and subject to review by class counsel.

29. The review and revision should be completed within a nine (9)-month period commencing with adoption of this Stipulation. Upon completion, the process of formal adoption and implementation by ODRC shall begin.

30. Following formal adoption, ODRC agrees to launch a training program designed to familiarize all medical and dental personnel with the P & P. To the extent possible, training on the revised P & P shall occur prior to implementation.

31. Training of officers shall be included in the annual in-service training and shall emphasize those aspects of the P & P specific to their role including emergency responses, referral procedures, first aid, recognizing certain signs and symptoms that necessitate an emergency response, dealing with infectious diseases and CPR. All ODRC training programs shall include provisions for testing those completing the training programs.

32. Implementation of the revised P & P shall be deemed to begin after formal adoption and the date when the actual practice thereunder is to begin.

33. Medical P & P shall be general and system-wide as well as site specific. Site-specific measures are deemed particularly important at facilities with a special medical mission (e.g., CMC, Frazier, and Hocking), and with a "special needs population" (e.g., ORW, Madison (juveniles)).

34. Site-specific measures may not be inconsistent with the system-wide P & P.

35. Each P & P shall be reviewed initially, and revised as needed, by the health care authority and such review shall be documented in a designated file. The review shall not be pro forma and documentation will identify the participants, time spent, basis for the review, and the rationale for each change to be made and for the continuation of existing provisions left without change.

36. During the tenure of the MOC there shall be a written summary of subsequent reviews following the same criteria noted above for the initial, overall review.

37. This section requires overall review and revision of P & P and subsequent sections will contain more specific principles or content for particular areas.

## H. Medical Staffing: Physicians

38. The parties agree that ODRC initially will provide one full-time equivalent (FTE) physician per 900 inmates as the baseline for the entire ODRC inmate population. The parties further agree that institutions housing higher acuity patients will require more physicians per inmate than the 1 FTE physician per 900 inmates baseline. The system-wide distribution of physicians shall be at the discretion of ODRC taking into account security level, special mission, and special characteristics of the inmate population. The FTE calculation involves direct patient care and shall not include the medical director or any other central office physicians. ODRC agrees to provide the agreed upon physicians in a gradually phased-in process over a two-year period dating from the finalization of this Stipulation. See Appendix B, attached hereto.

39. Whether the provision of physicians is through private or civil service providers, or any mix thereof, shall be determined in the unreviewable discretion of ODRC.

40. To the extent feasible, ODRC agrees to fill each FTE physician position with a single physician. Where this is not possible, the FTE shall be accomplished with no more than two physicians.

41. In extraordinary circumstances ODRC may ask the MOC for a waiver of the "two physicians per FTE" requirement and supply a full statement of reasons therefore. Class counsel shall be informed and have an opportunity to be heard regarding any such requests and will be informed regarding the disposition thereof.

## I. Medical Staffing: Nurses, Ancillary & Support

42. The parties agree that all medical staffing shall be done in a series of four phases, each phase being twelve (12) months, with Phase 1 to begin with the court's approval of this Stipulation. Appendices A, B, C, and D attached hereto, and incorporated into this Stipulation,

represent the agreement of the parties as to the specific staff to be added for each facility and in accordance with the agreed upon four phases.

43. The four-year total for the medical staff to be added during that period is two hundred and ninety-six (296) positions, each position being described in the Appendices.

44. The parties agree that the agreed upon total number of physicians will all be added by the end of Phase 2. At the end of Phase 2 there are to be fifty-two and one-half (52.5) FTE positions filled. This represents an additional twenty-plus (20+) FTE physicians.

45. At the end of Phase 4 there will be four hundred and ten (410) Nurse I and Nurse II's (i.e., RN's), and one-hundred and forty-six (146) LPN's, a total of five-hundred and fifty-six (556) such positions filled.

46. This represents an additional fifty-four RN's and an additional seventy-nine (79) LPN's.

**J. Presumptive Acceptability of Agreed Upon Staffing**

47. The parties agree that the total medical staffing agreed upon, as described above and in the Appendices, are presumptively acceptable as the means to achieve the goals of this Stipulation. The MOC, in its oversight of this Stipulation, shall specifically address staffing in its various reports and should the MOC conclude that any additional medical staffing is required, the Defendants may request additional facts and reasoning for the proposed staffing change.

48. If the Defendants do not agree that the presumption of adequacy has been overcome then the parties agree to resolve any such dispute in accordance with Stipulated Judgment, Sec. NN "Dispute Resolution."

**K. Staff Implementation**

49. The parties agree that medical, ancillary medical, and support staff will be retained and placed in a coordinated fashion. With the exception of physicians and medical records staff,

agreed upon staffing shall be implemented in four phases as more fully described in Appendices A, B, C, and D. Physicians will be hired during Phase 1 and completed by the end of Phase 2.

50. Medical records staff for all institutions will be hired during the initial phase of the Stipulation, when all agreed upon staffing is put in place at the Category I institutions

51. The intent of this provision is to put in place for each grouping a medically viable team with the requisite training on P&P, support, equipment, and physical facilities as opposed to autonomous and uncoordinated undertakings.

**L. Training**

52. All health care staff shall participate annually in continuing education appropriate for their licensure. Such training generally shall consist of at least twelve (12) hours annually and may be conducted on a regional basis. All ODRC training shall include assessment of whether the trainee has learned the material.

53. Working knowledge of the P & P and advances made in the participant's area of practice shall be minimum requirements

54. During the life of this Stipulation the training material shall include an explanation of this lawsuit, the obligations incurred by this Stipulation, and the legal framework and principles governing this Stipulation.

**M. Orientation on Access to Care**

55. Upon arrival at the facility, whether initial entry or an inter-facility transfer, all inmates shall be informed, orally and in writing, about how to access health care services and the medical grievance system. This shall be done in a language the inmate understands and at a communicative level easily grasped.

56. Oversight shall include asking randomly selected, newly arrived inmates questions about their knowledge of gaining access to care and the grievance system and documenting the results in the MOC reports.

**N. Medical Reception and Screening**

57. Reception screening shall be performed on all inmates immediately upon their arrival at the reception facility. The goals are to identify inmates' medical conditions and needs; establish a baseline for continuity; identify those in need of chronic care; and initiate the development of a treatment plan that is age and gender specific.

58. The parties agree that this must be a unified process with as much existing medically relevant information available as possible at the time of reception screening. Inmates arrive at ODRC reception facilities too often without medically relevant information possessed by the jail authority. Defendants will propose rules amending the jail standards so that local jails shall be required to forward such information as a condition of ODRC's acceptance of such inmates.

59. The P & P on point should include the factors listed at ACA, Standards for Adult Correctional Institutions, Section 4-4362 (4th ed., July 1, 2003)(Hereafter, ACA Standards).

60. When a referral for emergent care is clinically indicated, inmates' access to the appropriate care shall be immediate. Access to further evaluation shall be in a timely manner indicated by the nature of the referral.

**O. Health Assessments**

61. Initial. Within seven (7) calendar days after an inmate initially arrives at a reception facility an initial health assessment, including a comprehensive physical examination, shall be completed in accordance with the relevant P & P. This process is to evaluate the health status of the inmate in accordance with the examining physician's best medical judgment. These

evaluations will be conducted in clinical settings with adequate space, lighting, medical equipment and supplies, and adequate access to hand-washing facilities.

62. Periodic. Each inmate shall be regularly reassessed (including, when appropriate a comprehensive physical examination) with the age, gender, and specific health needs of the inmate determinative of the frequency and scope of such reassessments.

**P. Transfer Screening**

63. All inmates transferred from one facility to another shall have a health screening by a qualified medical staff member within twelve (12) hours of arrival. No intra-system transfer shall occur until the responsible officers at the sending facility ascertain and record that the appropriate medical information, including a transfer summary and the medical record itself, will accompany the inmate. The Defendants shall develop a procedure protective of the confidentiality of the medical records while also ensuring the inclusion of the requisite medical record. The MOC shall review and ultimately accept the procedure referenced here.

64. The purpose of such screening is to ensure continuity of care with respect to medications, chronic illness care, specialty services, other necessary medical care, and the avoidance of needlessly repetitive testing.

**Q. Chronic Illness Care**

65. Goals. The P & P will be revised to reflect as the goals for the chronic disease program the identification of patients with such diseases; an appropriate and regularly revised treatment plan; physician contact scheduled based on the severity of the illness or the patient's control of the disease; laboratory tests scheduled and completed in coordination with the physician visit, and the physician contact (or visit) fully documented and consistent with good clinical practice.

Coverage. The P & P will include, but not necessarily be limited to:

i. Asthma;

ii. Diabetes;

iii. High blood cholesterol;

iv. HIV;

v. Cardiac/Hypertension;

vi. Seizure disorder; and

vii. Tuberculosis

viii. General Medicine (e.g., thyroid and autoimmune disorders)

66. Standards Reference. The parties agree that in the formulation of the P & P in this area, reference shall be made to the National Commission on Correctional Health Care's (NCCHC) most recent standards on point and other recognized expert panels and organizations such as the Centers for Disease Control and Prevention (CDC). In the event that the P & P in this area is silent on a particular issue the relevant NCCHC standard shall presumptively govern the matter.

**R. Consultations (Referrals)**

67. The parties agree that a certain number of inmates will require timely access to medical specialists. P & P must be designed to require timely scheduling; minimize cancellations; assure the timely flow and utilization of information from the sending and receiving entities; that the primary care physician has the primary responsibility for the referral and for the care required post-referral; that records are complete, timely and properly utilized; and that the inmate-patient is informed about every step of the process.

68. Quality assurance follow-up shall include monitoring the efficacy of the referral and physician follow-up, an assessment of the proper utilization of hospital bed space for such

referrals, the physicians' assumption of the primary role in this process, and other relevant P & P requirements.

69. The parties agree that not all inmates need to be fully restrained while celled at CMC for consultations. ODRC agrees to complete a study of alternative ways to meet its security needs in this setting and then consult with Plaintiffs and the MOC on a satisfactory solution.

**S. Medication**

70. Medication is to be prescribed only by staff licensed to do so. Inmates must receive their medication in a timely fashion and this must be promptly documented on the health care record.

71. Medication services, including dispensation and the pharmaceutical operation, must be clinically appropriate and provided in a timely, safe, and sufficient manner. Privacy as to distribution shall be maximized to the extent physically and operationally possible.

72. ODRC will undertake a study of medication compliance in chronic care clinic designed to establish various compliance rates and determine how to improve such rates. Simultaneously, there shall be a study of the acceptability of areas used to store and/or dispense medication to determine safety, sanitation and security.

73. The NCCHC Standards on pharmaceutical operations (P-D-01) and medication services (P-D-02), as well as pages 26-29 of the MIT report, shall be referred to for guidance in the revision of the P & P.

**T. Consent**

74. Inmates have the right to receive from a physician the material facts about the nature, consequences, and risks of any proposed treatment, examination, or procedure as well as any alternatives and the prognosis if the undertaking is not agreed to.

75. With informed consent the inmate may refuse a health examination or treatment unless loss of life or the threat of serious and irreversible harm is imminent and appropriate policy and procedure is followed.

76. P & P shall address all aspects of consent including when consent by a third-party may, or must, be obtained and when a medical emergency may excuse the need for initial informed consent.

**U. Urgent (Emergency) Services**

77. ODRC will continue to provide access to twenty-four (24)-hour emergency medical and dental services from all of its facilities.

78. ODRC will study, and improve where needed, the emergency care training of correctional officers, including CPR. ODRC will pursue all steps necessary to require that all officers administer CPR when the need arises.

79. ODRC will ensure that each facility has appropriate and functioning emergency equipment and will assure the ready availability of automated external defibrillators at each facility.

**V. Sick Call**

80. Sick call is the mechanism by which inmates may access health care services. The function of sick call is the timely evaluation and treatment of ambulatory patients in a clinical setting by an appropriately trained health care professional.

81. Review and revision of the existing P & P and nursing protocols are the necessary first steps. Such revision must encompass timeliness, scheduling issues, criteria for referral, the conduct of the physician after referral, and close monitoring of the process.

82. Written requests must be triaged within twenty-four (24) hours by a nurse, and doctor referrals must be timely as dictated by the medical problem.

## W. Infectious Diseases

83. Infectious diseases encompassed by this Stipulation include but are not limited to TB infection, Hepatitis C, HIV and Methicillin Resistant Staphylococcus Aureus Infection (MRSA).

84. The parties agree that there is particular urgency to the review and revision of the P & P in this area. The overall goal of such P & P is to provide timely and appropriate measures of care, prevention and intervention. Care shall be enhanced through a comprehensive education and prevention program that includes concern for public health when inmates are released into the community.

85. The parties agree further that every issue of concern raised in the MIT Report, pp. 34-40 shall be addressed and resolved in the revised P & P.

86. ODRC will develop and implement surveillance studies; that is, the routine and orderly collection of information regarding the occurrence of an infectious disease. Data collected in this fashion shall be used to identify endemic rates and high and low risk areas to the overall end of controlling the spread of disease.

## X. Infection Control Program

87. ODRC agrees to review its infection control program and implement changes as needed. Such review will be subject to further review by the MOC and Plaintiffs. The objective of such program is to minimize the incidence of infectious and communicable diseases among inmates and staff.

88. The infection control program as implemented will be in compliance with NCCHC Standards, Standard P-B-01, "Infection Control Program."

## Y. Infirmary

89. In the discretion of ODRC, infirmary care may be provided at various levels. ODRC hereby agrees in P & P to specify the levels of care to be provided along with appropriate P & P on point. Infirmary care may be for observation as well as treatment.

90. The care provided generally will meet or exceed twenty-four hours and must include having the patient within constant sight or sound of a licensed health care provider who shall be on the premises and in close proximity to the area or areas designated for infirmary care.

91. P & P in this area will be reviewed and revised with particular attention given to medical criteria for placement, requiring nurses to routinely notify the physician to obtain orders such as vital signs, medication, guidance as to what clinical criteria will call for physician renotification, the documentation of physician and nurse encounters, and admission and discharge documentation.

92. ODRC, in collaboration with the MOC, shall conduct a system-wide survey of infirmary physical conditions, sanitation, and utilization. The results of such study shall be shared with class counsel and agreement reached as to necessary (must be done) and desirable (may be done) changes.

93. ODRC agrees to study and report to class counsel and the MOC on desirability of providing some infirmary care and space on a shared-cluster basis using the existing mental health clusters as a point of reference.

## Z. Medical Equipment

94. ODRC agrees to perform a thorough survey and inspection of available medical equipment at all of its facilities with priority given to those facilities with special needs

populations. The resulting report shall be submitted to class counsel and the MOC for review and acceptance.

95. The NCCHC P-D-03 "Clinic Space, Equipment and Supplies" for determining the standards for this area is hereby incorporated into this Stipulation

**AA. Medical Records**

96. Existing P & P concerning medical records shall be reviewed and revised accordingly with a focus on standardized forms; timely, legible and accessible entries; provisions for confidentiality, transfer and retention.

97. ODRC agrees to improve on the timeliness in retrieving and filing of various laboratory and consultant reports given the serious and systemic problems described in the MIT Report. The changes shall be reviewed and subject to oversight by the MOC.

98. The problems in this area are such that revision and review shall be among the first areas of change.

**BB. Mortality Reviews**

99. The parties agree that the ultimate goal of the mortality review process is to identify those aspects of the medical care delivery system that may be improved. ODRC agrees to undertake the training of those medical personnel who will conduct and/or participate in such reviews. Mortality reviews shall not be led by physicians involved in the care of the deceased although, such physicians may be called upon to participate in such reviews.

100. P & P shall be reviewed, revised, and consistently enforced recognizing that this is an important aspect of the medical quality assurance program. The P & P shall encompass:

- The uniform collection of individualized mortality information
- The inclusion of autopsy reports

- The maintenance and tracking of mortality data using statistical measures that allow for comparison with local and national death rates and with other correctional systems
- Written P & P that direct the mortality review process
- An established mortality review committee that functions under the auspices of the quality improvement and assurance program
- An ongoing process that monitors the implementation of recommendations for improvement made by the mortality review committee and ongoing compliance with these recommendations

**CC. Credentialing**

101. ODRC agrees to continue to utilize only those physicians who are currently licensed by the State of Ohio to practice medicine in that state. The Office of Health Care agrees to review licensure annually.

102. The parties agree that physicians who practice in the area of primary care shall have a residency in primary care subject to waiver based on extensive primary care experience upon review by the Office of Health Care. Physicians who practice at a facility with a special medical mission such as CMC, Hocking, and Frazier, must be board certified as to primary care subject to waiver based on extensive primary care experience upon review by the Office of Health Care. Defendants agree to develop with the MOC Policies and Protocols regarding residency and board certification requirements for institutional physicians including what experience will be acceptable in lieu of such certifications.

## DD. Physician Leadership & Monitoring

103. The parties agree that it is essential to establish physician leadership in the provision of medical care and that Central Office will establish a physician-led medical monitoring program as soon as possible but not later than twelve (12) months from the date of this Stipulation.

104. The Central Office medical monitoring team will serve as the vanguard for the overall quality assurance program of the Department. ODRC, in collaboration with the MOC, will develop a clinical monitoring and quality improvement policy for the team. The team's responsibilities will include establishing and maintaining a consistent presence in the field through regular visits by officials, conferences, training, and the like. The team's responsibilities will also include, but not necessarily be limited to, providing leadership for institutional continuing quality improvement efforts, and the regular review of data on inmate hospitalization rates, grievances, and other indicia of quality of care.

105. ODRC agrees to prepare a written plan of action regarding the Central Office medical monitoring program and provide it to class counsel and the MOC within six (6) months of the effective date of this Stipulation. The parties agree to engage in good faith negotiations to achieve an agreement regarding the Central Office medical monitoring program.

## EE. Special Populations: Older & Younger Inmates, Females, OSP

106. The parties agree that further study must be given to older (over age 55) inmates, juveniles (18 or under), females, and inmates confined at the Ohio State Penitentiary (OSP) as well as inmates held in disciplinary segregation.

107. Each group presents a series of different medically related challenges ranging from diets to pap smears to preventive dental care. ODRC agrees to study and report on each group's

special medical needs and to present such report within twelve (12) months of the date of this Stipulation to class counsel and the MOC.

108. P & P will then be designed and implemented to fulfill the agreed upon special medically related needs of each group.

**FF. Dental**

109. The parties hereby agree to incorporate within this Stipulation the "Report: ODRC-Dental Services" by the MIT dated January 26, 2005.

110. In addition, ODRC will review all of its dental P & P and revise as needed subject to review by class counsel and the MOC. The basic goals of the dental program to be expressed and implemented through P & P are to identify dental problems at intake and then provide relief from pain, eliminate infection and disease, restore functioning, and provide preventive information and opportunity.

111. The P & P will categorize emergency/urgent care, interceptive care (i.e., early treatment for emergent conditions), corrective care (i.e., restoration, extraction, long-term management), and any elective care to be made available.

112. The parties shall identify and agree upon an expert, or experts, in correctional dental care who shall perform an in-depth study of the existing dental program, identify areas of need, and make recommendations. Such expert, or experts, shall perform this work with the cooperation of ODRC and the MOC.

113. The expert, or experts, shall be selected within two (2) months of the date of this Stipulation and complete the study nine (9) months after its initiation. The parties will then reach agreement on the implementation of the recommendations with the MOC's review decision being presumptively valid. When such agreement is reached, the area of need and

recommendations for implementation shall be incorporated into this Stipulation and become binding and enforceable in the same fashion as all other provisions contained herein.

**GG. Grievance**

114. The existing P & P on grievances have been reviewed and the parties agree that a grievance system for inmates' complaints about medical care is an essential component of the medical care system and inmates are entitled to reasonable access to the grievance mechanism, a timely and individualized response, freedom from retaliation for grieving and reasonable access to appeal. ODRC agrees to hire an additional assistant chief inspector who shall be a registered nurse and who will review only medical, mental health, and dental grievances and perform such other related tasks as are assigned.

115. The grievance mechanism shall be considered an important aspect of the quality assurance program and designed to so function.

**HH. Emergency Response Plan**

116. The parties agree that the health aspects of a facility's emergency response plan must be clearly articulated in the P & P and there must be regular mass disaster and "man down" drills.

In the review and revision, the applicable P & P must include:

i. responsibilities of correctional and health care staff;

ii. procedures for triage;

iii. predetermination of the site for care;

iv. telephone numbers and procedures for calling health staff and the community emergency response system (e.g., hospitals, ambulances);

v. procedures for evacuating patients; and,

vi. alternate backups for each plan's elements

## II. Privacy

117. All clinical encounters are to be conducted in such place and in such manner as to maximize the inmates' right to privacy. Security staff may be present only if the inmate poses a well-founded and demonstrable threat to the safety of the health care provider or others.

118. When a security staff member's presence is required, then such presence will be at the furthest physical and auditory location consistent with the nature of the threat and the staff member will be instructed on confidentiality.

119. P & P will assure the confidentiality of the patient's written or electronic health care record; that health records are securely maintained; that access to such records is controlled by the health authority; that records are sealed during transfer; and that staff receives instructions which are regularly reviewed on maintaining patient confidentiality.

120. Breaches in patient confidentiality shall be subject to disciplinary sanction and, when appropriate, referral to outside authorities for appropriate action.

## JJ. Diet

121. Inmates have a right to receive medically ordered diets, and when such ordered diets are willfully ignored disciplinary action is appropriate. ODRC will immediately take the steps necessary to assure the regular provision of such diets and report on those steps to the MOC for review.

122. In addition to medically required diets, ODRC shall undertake generally to provide healthier diets, both in the regular food service and in the commissary, consistent with the General Principles (Section G., supra). Within nine (9) months of the date of this Stipulation a registered or licensed dietician will have prepared system-wide diets that incorporate the

principles in the U.S. Department of Agriculture and the Department of Health and Human Services' "Food Guide Pyramid," and also meet age appropriate dietary allowances.

**KK. Discharge Planning**

123. The parties agree that re-entry planning should begin early in the inmate's confinement and follow the released inmate into the community. At a minimum, discharge planning shall include an appropriate allowance of needed medication and providing the releasee with appropriate guidance concerning health services in the community.

124. P & P on point shall be reviewed and expanded as needed to encompass the above points. NCCHC Standards, Sec. P-E-13 shall serve as guidance in this area.

**LL. CoPay**

125. The parties agree to undertake revisions of the co-pay P & P directed at ensuring that inmates are not discouraged from seeking needed care; that the list of co-pay-exempt medical conditions is not overly narrow; that the indigency criteria for exemption be refined and expanded; that inmates are not charged co-pays for follow-up or re-scheduled appointments; that other plaintiff concerns identified in the course of the revisions are addressed as appropriate.

**M. Stipulation Oversight**

126. Fred Cohen, L.L.B., L.L.M., Professor Emeritus of the School of Criminal Justice, S.U.N.Y at Albany, is hereby appointed as Independent Consultant (I.C.) and head of the MOC, which is hereby constituted to serve as consultants to provide oversight of the provisions of this Stipulation.

127. Professor Cohen will retain as the professional staff of the MOC, the four present members of the MIT (Ronald Shansky, M.D.; Mike Puisis, D.O.; Madie LaMarre, MN, A.P.R.N., B.C.; and Barbara Peterson, R.N.), a qualified dentist agreed to by the parties, and any

other staff required to conduct the oversight. The Defendants agree to pay for all agreed-upon costs associated with said oversight.

128. The I.C. agrees to submit to counsel for both parties the curriculum vitae of any additional proposed clinical and administrative experts and to seek their advice and consultation prior to their retention.

129. In the normal course of medical site visits by the MOC the team will consist of the I.C., one physician and one nurse. The existing MIT experts will make medical site visits and perform other functions on a rotating basis as scheduled by the I.C. Site visits for dental oversight may be conducted jointly with medical site visits or independently as determined by the I.C.

130. Should the Defendants during the life of this Stipulation deny to the I.C. any request of his relating either to the budget or staff required for the oversight, the Defendants shall notify the Plaintiffs' counsel in writing of such denial and provide a brief explanation of the reason for the denial.

131. The I.C. and any experts or other staff, full- or part-time who are retained hereunder in connection with the oversight function shall contract for their services directly with ODRC and shall in all relevant respects be governed by existing ODRC rules and regulations regarding such employment; and especially relating to compensation and expenses.

132. The general principles for such oversight include:

i. The reporting and on-site aspects of the oversight shall be more intensive at the outset and likely decrease as compliance is neared and achieved;

ii. Oversight shall consist of a combination of empirical data, written reports from the Defendants, on-site inspections, oral and written reports from the I.C., and appropriate consultation in aid of compliance;

iii. The I.C.'s role shall include the gathering of appropriate data and statistics and on-site inspections as well as the general duty of assuring that required P & P are prepared in a timely fashion and meet the objectives of this Stipulation; and where disputes between the parties occur or where there appears to be non-compliance, the I.C. shall attempt to resolve such matters in the most expeditious and nonadversarial fashion possible; and

iv. Minimizing interference with the mission of ODRC, or any other state agency involved, while at the same time having timely and complete access to all relevant files, reports, memoranda, or other relevant documents within the control of the Defendants or subject to access by the Defendants; having unobstructed access during announced and unannounced on-site tours and inspections to the institutions encompassed by this Stipulation as well as any administrative offices; having unobstructed access to staff and inmates and other persons having information relevant to the implementation of this Stipulation; and having the authority to engage in private conversation with any party hereto and their counsel.

133. A review of records by any member of the MOC shall not constitute a waiver of ODRC's or any other agency's quality assurance privilege. Moreover, any such disclosures shall not constitute a waiver or serve as precedent for other legal proceedings with respect to the aforementioned quality assurance privilege. In addition, the MOC agree to keep said

documentation confidential and not to disclose, publish or use for public consumption any of the records reviewed by the MOC.

134. In addition to the quality assurance privileges described above, other records or information whose disclosure is objected to by either party based on a claim of privilege, confidentiality, or relevance to the implementation of this Stipulation shall not be disclosed by the I.C. Such material shall be made available for inspection by the Court, along with a precise statement of the objection or objections to disclosure prepared by the objecting party, and the Court shall render a decision on the matter.

135. In conjunction with the overall revision of the P & P, the MOC, in consultation with Central Office staff, will prepare an audit instrument to be used as a guide during site visits. Counsel for the parties will be asked to review and comment on the instrument whose primary objective is to achieve consistency during the site visits. The MOC also will prepare data request forms for Central Office and the various facilities that will be required to submit pre-site visit data to the MOC.

136. The I.C. shall submit an annual comprehensive report on overall compliance to the parties as well as other regular interim reports noting the areas of progress or lack thereof. The annual comprehensive report shall include data on hospitalization rates, inmate complaints, and other indicia of quality of care.

137. In the event that Professor Fred Cohen is unable or unwilling to serve as the I.C., the parties agree to appoint another I.C.

138. The I.C. shall not be subject to dismissal except upon good cause and the agreement of both parties or by the Court upon motion of one of the parties and a showing of good cause.

139. Oversight shall continue for five (5) years following the entry of this Stipulation unless sooner terminated on motion to the Court by the Defendants, with the concurrence of the I.C., that compliance has been achieved earlier.

**NN. Dispute Resolution**

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

i. Counsel for the parties shall make a good faith effort to resolve any difference that may arise between them over matters of compliance utilizing the I.C. initially in an effort to resolve such dispute. Prior to the initiation of any proceeding to enforce the provisions of this Stipulation, Plaintiffs' counsel shall notify Defendants' counsel in writing of any claim that Defendants are in violation of any provision of this Stipulation.

ii. Within thirty (30) business days of the receipt of this notice, counsel for Plaintiffs and Defendants shall meet in an attempt to arrive at an amicable resolution of the claim. Either party may request the attendance and involvement of the I.C. at such meeting. If, after twenty (20) business days following such meeting, the matter has not been resolved, Defendants' counsel and the I.C. shall be so informed by Plaintiffs' counsel, in writing, and Plaintiffs may then have due recourse to any appropriate legal proceeding or agree that the I.C. may render a final and binding decision.

141. Any complaints by inmates objecting to any provisions encompassed by this Stipulation shall be addressed through institutional grievance procedures under Ohio Administrative Code, Section 5120-9-31. Exhaustion of such institutional grievance procedures through appeal to the

chief inspector shall be a condition precedent to any legal action by an inmate. During the pendency of this Stipulation, copies of any such complaints resulting in decisions by the chief inspector and related documents shall be provided on request to Plaintiffs' counsel and the I.C. on a quarterly basis.

142. No legal action seeking equitable relief relating to the issues resolved herein, including a motion to enforce the terms of this Stipulation, shall be filed on behalf of the Plaintiff class or by a member of the Plaintiff class without first resorting to the dispute resolution mechanisms set out in this Stipulation advising the Defendants of the issue and making a good faith effort to resolve said issue extrajudicially.

**OO. Compliance and Termination**

143. The parties agree that a five (5) year period is presumptively required to retain, train and oversee the additional medical staff agreed upon in this Stipulation. The parties acknowledge the provision of the P.L.R.A., 18 U.S.C.A. § 3626 (F)(b)(1), making prospective relief terminable two (2) years after a court has approved such prospective relief.

144. Notwithstanding the Prison Litigation Reform Act or any other law, Defendants may move to terminate this Stipulation and dismiss the case on the ground that all institutions subject to this stipulation have been found to be in substantial compliance.

**PP. Stipulation Emergencies**

145. It may be necessary to temporarily suspend any provision of this Stipulation in the event of an emergency. An emergency is an event which makes compliance with the terms of this Stipulation impracticable, impossible or extraordinarily difficult, and is caused by riot, fire, weather events, natural disasters, warfare, strikes, labor disputes, or similar events, not caused intentionally by the Defendants.

146. Counsel for Plaintiffs shall be notified of any such emergencies as soon as practicable.

**QQ. Stipulation Modification**

147. The parties recognize that the change of some conditions or practices may reduce the necessity of change of other conditions or practices. The parties also recognize that the Defendants are entitled to substantial deference in their decision on how to improve medical services. Therefore, the parties agree that it may be appropriate that this Stipulation be modified from time to time. After one (1) year of operation under this Stipulation, the Defendants may ask the I.C. to review a proposed modification to any portion of this Stipulation. Defendants shall first present the proposed modification to the Plaintiffs for review and negotiation.

148. The I.C. will submit a written opinion on such proposal to both parties which will bind the parties.

**R.R. Enforcement**

149. The court shall find that this Stipulation satisfies the requirements of 18 U.S.C.A. § 3626 (a)(1)(A) and shall retain jurisdiction to enforce its terms. The court shall have the power to enforce the Stipulation through specific performance and all other remedies permitted by law. Neither the fact of this Stipulation nor any statements contained herein may be used in any other case or administrative proceeding, except that Defendants reserve the right to use this Stipulation and the language herein to assert issue preclusion and res judicata in other litigation seeking class or systemic relief. When these legal defenses are raised, Defendants will send copies of such complaints to Plaintiffs' counsel.

**SS. Miscellaneous Provisions**

150. In entering this Stipulation, the parties agree and represent that this Stipulation is fair, reasonable, and adequate to protect the interests of the class of Ohio inmates and all parties.

151. This Stipulation is binding upon the Defendants named in this lawsuit, the Defendants' successors in office, employees and agents, and the Plaintiffs.

152. Except where otherwise provided, the Defendants shall be obligated to perform their obligations under this Stipulation upon the date of the filing of the Court's approval of the Order for Injunctive Relief in this matter.

153. The Plaintiffs shall not seek an order of contempt unless and until (1) the Plaintiffs have sought to enforce this Stipulation by filing an appropriate motion with the Court and (2) the Court has issued a clear and unambiguous order of specific performance to the Defendants.

154. Only the Plaintiffs named in this Stipulation shall have standing to file a motion seeking enforcement of any of the terms and conditions of this Stipulation. As class representatives, Plaintiffs can adequately represent the interest of the class of Ohio inmates. This Stipulation does not confer, and is not intended to confer, any rights upon any other party.

155. This Stipulation in no way waives or otherwise affects, limits, or modifies the obligations of inmates to comply with the exhaustion requirements of the Prison Litigation Reform Act, any current or future state or federal law governing the rights and obligations of incarcerated persons, and the Ohio Administrative Code and other applicable policies, procedures, or regulations.

156. The Defendants agree that at the present time they are not aware of any conflict between this Stipulation and the Laws of the State of Ohio or any presently existing collective bargaining agreements to which the State is a party. The Defendant ODRC Officials further agree that they will not seek any new laws or the execution of new collective bargaining agreements, or any changes or amendments to existing laws or collective bargaining agreements that would undermine the obligations taken in this Stipulation.

## TT. Attorneys' Fees

157. Plaintiffs may apply for reasonable attorneys' fees to which they are entitled. Plaintiffs' attorney's fees shall be limited to the hourly rates permitted under the Prison Litigation Reform Act.

## UU. Construction of Stipulation

158. This Stipulation reflects the entire agreement of the parties and supersedes any prior written or oral agreements between them. No extrinsic evidence whatsoever may be introduced in any judicial proceeding to provide the meaning or construction of this Stipulation.

159. The language of this Stipulation shall be construed as a whole and in accordance with its fair meaning.

160. The obligations governed by this stipulation are severable and, if for any reason any part of this Stipulation is determined to be invalid or unenforceable, such a determinations shall not affect the remainder.

## VV. Individual Class Representative Relief

161. The parties agree that the I.C. will review the facts of each of the class representative's damages claims and propose a resolution with respect to individual relief that shall include economic and noneconomic terms. Such determination shall be binding upon the Parties. The Monitor's review shall not take place until after the fairness hearing approving this Stipulation, so that no conflicts of interest can exist between the class representatives and class members.

IT IS SO STIPULATED AND AGREED

So ORDERED this _____ day _____, 2005,

_____
United States District Court Judge,
Sandra Beckwith

_____
Alphonse Gerhardstein (023484)
Trial Attorney for Plaintiff Class

Dated:_____

_____
Joseph M. Mancini (0022419)
Attorney for the Defendants

Dated:_____

_____
David A. Singleton (0074556)
Attorney for Plaintiffs
Ohio Justice & Policy Center

Dated:_____

_____
Gregory Trout (0022726)
Attorney for the Ohio Department of
Rehabilitation and Correction

Dated:_____