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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Shawn Jensen, et al, on behalf of themselves and all
others similarly situated; and Arizona Center for
Disability Law,

Plaintiffs,

v.

David Shinn, Director, Arizona Department of
Corrections, Rehabilitation and Reentry; and Larry
Gann, Assistant Director, Medical Services Contract
Monitoring Bureau, Arizona Department of
Corrections, Rehabilitation and Reentry, in their
official capacities,

Defendants.

No. CV 12-00601-PHX-ROS

**[PROPOSED] PERMANENT
INJUNCTION**

Based on the Findings of Fact and Conclusions of Law filed herewith and pursuant
to Rule 65(d) of the Federal Rules of Civil Procedure,

IT IS HEREBY ORDERED that Defendants, their agents, servants, employees,
and attorneys, and any other persons who are in active concert or participation with them
shall comply fully and completely with the following provisions:

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2 I. **Substantive Remedies for Health Care (Medical and Mental Health Care)**

3 a. *Short-term*

4 1. Defendants shall fill all vacant health care positions in the current staffing
5 matrix within 60 days,¹ using every practical means to fill the vacancies with permanent
6 staff, including raising salaries to the level necessary to attract sufficient staff.

7 2. Defendants shall hire one additional full-time physician and one additional
8 full-time psychiatrist at Eyman, Lewis, Perryville, Phoenix, Tucson, and Yuma within 30
9 days to supervise the sick call process, and to supervise nurse practitioners, physician
10 assistants, psych associates, psychologists, and other staff. Each inpatient or residential
11 mental health unit shall have at least one licensed mental health staff person physically
12 on-site at all times.

13 3. Defendants shall develop within 30 days a robust and effective process for
14 improving the mortality review and psychological autopsy process that includes detailed
15 findings, specific action items or recommendations, and a process to ensure that the action
16 items/recommendations are implemented in a timely manner, with accountability and,
17 when appropriate, discipline.

18 4. Within 30 days, the parties shall nominate an independent person or entity
19 to conduct a staffing analysis of both clinical and custody positions at each prison. If the
20 parties do not agree, the Court shall select the person/entity to conduct the analysis, and
21 direct that the staffing analysis be filed with the Court within six months of appointment
22 by the Court. This person or entity shall be paid by Defendants. The report shall contain
23 recommendations that shall be reviewed and, if approved, ordered by the Court. Any
24 objections to the report and recommendations shall be filed within 10 days and any
25 response to the objections shall be filed within 10 days thereafter.

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¹ Unless otherwise stated, all references to “days” refer to calendar days.

1 parties do not agree, the Court shall select the person/entity to conduct the review, and
2 direct that the review be filed with the Court within three months of appointment by the
3 Court. This person or entity shall be paid by Defendants. The report shall contain
4 recommendations that shall be reviewed and, if approved, ordered by the Court. Any
5 objections to the report and recommendations shall be filed within 10 days and any
6 response to the objections shall be filed within 10 days thereafter.

7 10. Within 90 days, the parties shall retain one or more experts to develop a
8 plan to reduce the incidence of self-harm and suicide. If the parties do not agree, the Court
9 shall select the expert(s), and direct that the proposed plan be filed with the Court within
10 three months of appointment by the Court. The expert(s) shall be paid by Defendants. The
11 proposed plan shall be reviewed and, if approved, ordered by the Court. Any objections to
12 the proposed plan shall be filed within 30 days and any response to the objections shall be
13 filed within 20 days thereafter.

14 11. Within twelve months, Defendants shall install and implement an electronic
15 medical record system that permits the creation of real-time tracking of all patients, and
16 allows for improved reporting and accountability. Defendants shall ensure that medical
17 records contain the necessary health information and are accurate.

18 12. Defendants shall ensure that patients receive timely medical appointments
19 for provider visits, specialists, and other services such as x-rays or labs consistent with
20 any orders by a provider or registered nurse.

21 a. Emergent specialty consultations shall be scheduled and completed
22 within two (2) days of the request, unless the provider concludes that the
23 patient should be sent off-site immediately. Any Utilization Management
24 (UM) review of an emergent specialty consultation request must be
25 completed within eight (8) hours of the emergent request.
Documentation of UM's approval/denial, with reasons for a denial, shall
be provided to the requesting provider within 24 hours of UM's decision,
and documented in the patient's medical record.

26 b. Urgent specialty consultations shall be scheduled and completed within
27 30 days of the consultation request from the provider. Any UM review
28 of an urgent specialty consultation request must be completed within
three (3) days of the urgent request. Documentation of UM's
approval/denial, with reasons for the denial, shall be provided to the

1 requesting provider within 24 hours of UM's decision, and documented
2 in the patient's medical record.

- 3 c. Routine specialty consultations shall be scheduled and completed within
4 60 days of the consultation request from the provider. Any UM review
5 of a routine specialty consultation request must be completed within
6 seven (7) days of the routine request. Documentation of UM's
7 approval/denial, with reasons for the denial, shall be provided to the
8 provider in writing within 24 hours of UM's decision, and documented
9 in the patient's medical record.

10 Patients shall be informed in writing within seven (7) days of UM's decision of any
11 denials of specialty requests, including the stated reason for the denial.

12 13. Within 90 days, Defendants shall develop and implement a plan to identify and
13 track on an on-going basis all patients who are not fluent in English and to ensure that
14 each health care encounter for those patients is either conducted by a qualified health care
15 practitioner who is proficient in the patient's primary language or with the assistance of a
16 qualified interpreter (not to include custody staff or other incarcerated people). The plan
17 shall include the following components: (a) identification of patients not fluent in English
18 at intake; (b) documentation of each patient's English fluency and primary language that
19 is visible on all screens in the electronic medical record; (c) documentation of whether
20 appropriate language services were provided during each health care encounter; (d)
21 accessible outreach to non-English speaking patients on the availability of interpretation
22 services for health care encounters; and (e) evaluation and documentation of the spoken,
23 written, and signed non-English language proficiency of health care practitioners,
24 including the ability to explain medical concepts and use medical terminology in a non-
25 English language.

26 14. Defendants shall provide timely access to sick call. All patients shall have
27 access to Health Needs Request (HNR) forms, either in paper or electronic format. The
28 forms shall be treated as confidential correspondence between the patient and health care
29 staff, and security staff may not have access to completed HNRs. Health care staff will
30 pick up paper HNRs daily, including on holidays and weekends. The day the HNR is
31 received (whether electronically or on paper), a nurse will sort and classify the patients'

1 requests to determine priority and routing of request. If the HNR describes an emergent
2 medical, dental or mental health condition, the patient shall be seen for a face to face
3 encounter by a Registered Nurse (RN) immediately. If the HNR documents an urgent
4 medical, dental or mental health condition, the patient shall be seen for a face to face
5 encounter by an RN the same day the HNR is received. For routine HNRs, the patient
6 shall be seen for a face to face encounter by the RN within 24 hours of receipt of the
7 HNR.

8 15. Defendants shall ensure that patients receive their medications as prescribed
9 and in a timely manner. Defendants shall develop and implement a plan to ensure there
10 are sufficient health care and custodial staff to distribute such medications during pill
11 lines, at the cell front and any other location where medications are normally distributed.

12 16. All patients who are taking psychotropic medications, chronic care
13 medications, or antibiotics upon reception into ADCRR shall be seen by a provider within
14 24 hours to determine whether they should be provided “bridge” medication to ensure
15 uninterrupted provision of their medications until they can see a prescribing provider. Any
16 patient prescribed psychotropic medication at the time of intake shall be seen by a mental
17 health provider within three days of intake for an evaluation of the medication; any patient
18 prescribed chronic care medication or antibiotics at the time of intake shall be seen by a
19 medical provider within three days of intake for an evaluation of the medication.

20 17. Defendants shall ensure that patients prescribed medication are timely and
21 appropriately monitored for therapeutic levels and side effects.

22 18. Defendants shall ensure that all laboratory and radiology results are
23 reviewed by a provider in a timely manner.

24 19. Defendants shall hire a physician who is board certified in internal medicine
25 whose sole responsibility shall be to monitor and improve the care provided to patients
26 with chronic diseases and to ensure proper pain management.

27 20. Defendants shall ensure that patients are provided access to preventative
28 care screenings and tests as appropriate for the patient’s age, medical history, and gender.

1 21. Defendants shall ensure that providers obtain relevant hospital records and
2 timely review discharge orders from hospitals.

3 22. Within one year Defendants shall offer treatment for hepatitis C (HCV) to
4 all patients with a score of F1 or F2.

5 23. Within one year Defendants shall expand the Medication Assisted
6 Treatment program to new intakes who were receiving such services in the community or
7 in jail, to people who are within 18 months of their release date and have a high need for
8 such services, and to people who are at high risk of overdosing given their history.

9 24. Defendants shall ensure that people with disabilities are provided with
10 medically necessary care, supplies, and assistive devices or medical equipment.

11 25. Defendants shall ensure that patients have reasonable access to their medical
12 information, including diagnosis and treatment options from specialists.

13 26. Within 180 days Defendants shall end the practice of using unlicensed
14 psychology associates to provide clinical care.

15 27. Within 180 days Defendants shall use only licensed mental health clinicians
16 to lead psychoeducational and psychotherapeutic group treatment.

17 28. Within 180 days Defendants shall use only licensed mental health clinicians
18 to conduct health and welfare checks on all persons in isolation units or on mental health
19 watch. Mental Health Registered Nurses may be used to conduct health and welfare
20 checks on weekends and holidays.

21 29. Any decision to remove a patient's classification as Seriously Mentally Ill
22 (SMI) must be made by a treatment team, including at a minimum, the patient, the
23 facility's mental health lead, the patient's treating mental health clinician, and the
24 psychiatric provider. The reason for the removal of the designation must be documented
25 in writing by the treatment team in the patient's medical record and be provided in writing
26 to the patient within 24 hours of the treatment team's decision. If the patient disagrees
27 with the removal of SMI designation, the patient can request within 14 days of receiving
28 the written notification of de-designation that the regional mental health director review

1 this determination. Within 90 days, Defendants shall develop a system to track and
2 monitor all decisions to change a patient's SMI designation.

3 30. Defendants shall provide confidential, out-of-cell mental health therapeutic
4 treatment, not merely monitoring, to persons on mental health watch.

5 31. Within 240 days all custody staff assigned to work at mental health
6 residential treatment units or mental health inpatient treatment units must have first
7 completed specialized training on interacting with people with severe mental illness and /
8 or cognitive disabilities. Such training shall be in addition to any onboarding or continuing
9 training provided to all custody staff.

10 32. Within 240 days Defendants shall develop and require additional training
11 for all custody staff assigned to work in mental health watch units, regarding interacting
12 with people with severe mental illness and/or cognitive disabilities, and de-escalation
13 techniques.

14 33. Prior to any use of force (including chemical agents) on an incarcerated
15 person who is engaging in self-harm and/or is on mental health watch, custody staff will
16 immediately contact mental health staff to come to the unit, and will use de-escalation
17 techniques prior to using physical or chemical force on the incarcerated person. The only
18 exception to this requirement is in the event that the self-harming behavior poses an
19 immediate and obvious risk of death to the incarcerated person.

20 34. Any allegation of verbal or physical abuse of a person on mental health
21 watch, including any allegation of custody or health care staff encouraging incarcerated
22 people on watch to harm themselves or providing incarcerated people with items that
23 could be used for self-harm, will be jointly investigated and reviewed by the facility's
24 Deputy Warden of Operations and the facility's Mental Health lead. Such an investigation
25 shall be completed within 14 days of receipt of the allegation. All conclusions reached in
26 the investigation shall be provided in writing within seven (7) days to the patient, the
27 facility's Warden, ADCRR's mental health program director, and any contracted vendor's
28 regional mental health director. Within 90 days, Defendants shall develop a system to

1 track and monitor all such allegations and investigations, in order to track and identify any
2 custody or health care staff with multiple or ongoing allegations, in order to identify staff
3 who may need to be reassigned, be provided additional education, and/or face progressive
4 discipline.

5 35. Defendants shall develop and implement a process to track and monitor, in
6 real time, the length of stay of all people placed on mental health watch. Defendants shall
7 ensure that if a person is maintained on mental health watch for 14 days, that person shall
8 be transferred to a higher level of mental health care, unless a psychiatrist or psychologist,
9 exercising clinical judgment and after an in-person assessment in a confidential setting,
10 determines that such transfer is not clinically indicated. Any person remaining on mental
11 health watch after 14 days and not transferred to a higher level of care shall be assessed in
12 person, in a confidential setting, by a psychiatrist or psychologist, every day until the
13 person is either discharged from mental health watch or transferred to a higher level of
14 care.

15 36. All persons who are removed from mental health watch shall be evaluated
16 within seven (7) days of their removal by a mental health treatment team for possible
17 transfer or placement in a residential or inpatient mental health program.

18 37. Defendants shall ensure that patients who are prescribed psychotropic
19 medications are housed in areas where the temperature does not exceed 85 degrees
20 Fahrenheit.

21 38. Defendants shall provide mental health treatment as clinically indicated to
22 all persons requiring it. Such treatment shall be provided at least with the frequency set
23 forth in Defendants' Mental Health Technical Manual, revised December 24, 2019
24 (Ex. 3025). Defendants shall not reduce these frequencies without the advance permission
25 of the Court.

26 39. To count toward the provision of care listed above, an encounter with
27 mental health staff must be at least 10 minutes in duration for a watch-related encounter
28 and at least 30 minutes in duration for all other encounters, unless a shorter encounter is

1 determined by a psychiatrist exercising clinical judgment to be clinically appropriate and
2 meaningful.

3 **II. Substantive Remedies for Isolation**

4 ***a. Short-term***

5 1. Within 15 days, Defendants shall ensure that all persons in isolation are
6 provided with three meals a day in a quantity and quality that is the same as the meals
7 provided to people who are not in isolation.

8 2. Within 15 days, Defendants shall ensure that all persons in isolation are
9 provided the opportunity to shower no less than three days per week.

10 3. Within 30 days, Defendants shall not house in isolation any person
11 diagnosed with a serious mental illness, including but not limited to persons designated as
12 Seriously Mentally Ill (SMI), as that term is defined under A.R.S. §§ 36-550(4), 36-
13 501(25).

14 4. Within 30 days, the parties shall retain one or more experts to develop
15 Policies and Procedures to eliminate the use of isolation for more than four hours for
16 persons under the age of 18. If the parties do not agree, the Court shall select the expert(s),
17 and direct that the proposed Policies and Procedures be filed with the Court within three
18 months of appointment by the Court. The expert(s) shall be paid by Defendants. The
19 proposed Policies and Procedures shall be reviewed and, if approved, ordered by the
20 Court. Any objections to the proposed Policies and Procedures shall be filed within 30
21 days and any response to the objections shall be filed within 20 days thereafter.

22 5. Within 30 days, the parties shall retain one or more experts to develop
23 Policies and Procedures to eliminate the use of isolation for persons with mental illness. If
24 the parties do not agree, the Court shall select the expert(s), and direct that the proposed
25 Policies and Procedures be filed with the Court within three months of appointment by the
26 Court. The expert(s) shall be paid by Defendants. The proposed Policies and Procedures
27 shall be reviewed and, if approved, ordered by the Court. Any objections to the proposed
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1 Policies and Procedures shall be filed within 30 days and any response to the objections
2 shall be filed within 20 days thereafter.

3 6. Within 30 days, the parties shall retain one or more experts to develop
4 Policies and Procedures to eliminate the use of isolation for more than 15 days. If the
5 parties do not agree, the Court shall select the expert(s), and direct that the proposed
6 Policies and Procedures be filed with the Court within three months of appointment by the
7 Court. The expert(s) shall be paid by Defendants. The proposed Policies and Procedures
8 shall be reviewed and, if approved, ordered by the Court. Any objections to the proposed
9 Policies and Procedures shall be filed within 30 days and any response to the objections
10 shall be filed within 20 days thereafter.

11 7. Within 30 days, Defendants shall ensure that any person whose mental
12 health deteriorates while in isolation is removed from isolation within 24 hours of the time
13 the issue is brought to the attention of mental health staff.

14 ***b. Intermediate and Long-Term***

15 8. Within 90 days, Defendants shall rescind the policy requiring persons with a
16 life sentence to spend no less than two years in isolation. Defendants shall not enforce any
17 policy requiring a person's placement or retention in isolation based solely upon his or her
18 commitment offense or sentence.

19 9. Within 90 days, Defendants shall ensure that all persons in isolation are
20 offered at least two hours of out-of-cell time every day. The only exception to this shall be
21 if a person is on mental health watch and a psychiatrist or psychologist affirmatively
22 determines on a given day that such out-of-cell time is clinically contraindicated on that
23 day.

24 10. Within 90 days, Defendants shall end the practice of nocturnal illumination
25 in cells in isolation units.

26 11. Within 120 days, isolation shall be used only when no alternative
27 disposition would be adequate to control the incarcerated person's behavior and only in
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1 circumstances where no other available form of housing will accomplish the required
2 levels of safety and stability.

3 12. Within 180 days, no person with mental illness shall be placed into
4 isolation.

5 13. Within 180 days, no person under the age of 18 shall be kept in isolation for
6 more than 4 hours.

7 14. Within 180 days, no person shall be kept in isolation for more than 15 days.

8 15. Within 120 days, Defendants shall have in place procedures to ensure that
9 effective security checks are completed in every isolation unit twice every hour, no more
10 than 40 minutes apart.

11 16. Within 180 days, Defendants shall have in place procedures to protect
12 persons who are engaging in self-harm without the use of force.

13 17. Within 180 days, Defendants shall ensure that all persons in isolation have
14 adequate light (including natural light), ventilation, nutrition, and sanitation.

15 **III. Procedural Remedies**

16 1. The Court shall appoint a Receiver to manage the health care operations of
17 ADCRR. The Receiver shall have all the powers of the Director of ADCRR that relate to
18 health care, including the power to hire, terminate, and contract for personnel and to
19 submit budget requests to the Legislature. Within 30 days the parties shall nominate up to
20 two candidates for this position and shall submit a CV for each person nominated as well
21 as a proposed order appointing the Receiver. Upon appointment, the Receiver shall
22 develop and implement a plan to comply with this Injunction in order to remedy the
23 constitutional violations in the least intrusive and least expensive manner reasonably
24 possible, provided that the Receiver shall have the discretion to decide whether to hire the
25 experts required by paragraphs I.7-10 and to determine which experts to employ. If the
26 Receiver determines that any existing Arizona state laws will prevent Defendants from
27 providing Plaintiffs the relief to which they are entitled under Federal law, the Receiver
28 shall so report this to the Court within 30 days of making such a determination.

1 2. The Court shall appoint an expert pursuant to Federal Rules of Evidence,
2 Rule 706 to report to the Court on Defendants' progress in meeting the provisions of the
3 Injunction with regard to isolation and, if the Court does not appoint a Receiver, with
4 regard to health care. The expert shall develop a plan for monitoring this Injunction,
5 including the necessary personnel, if any. The plan shall be submitted within 60 days of
6 appointment.

7 3. Plaintiffs' counsel shall have regular access to facilities, documents and
8 staff necessary to monitor Defendants' compliance with this injunction. Such access shall
9 be no less than that provided in the parties' Stipulation, Doc. 1185.

10 4. Plaintiffs' counsel shall have regular and continuing access to confidential
11 phone calls and meetings with class members.

12 5. Plaintiffs' counsel shall continue to have remote, read-only access to
13 Defendants' electronic health records system.

14 6. The parties shall agree on the content of a monthly document production
15 from Defendants. If the parties are unable to agree, the matter shall be submitted to the
16 Court for resolution.

17 7. As the prevailing parties, Plaintiffs are entitled to fees and costs consistent
18 with applicable law. The parties shall attempt to negotiate and resolve the amount of fees
19 and costs within 60 days of this Injunction. If negotiations fail, Plaintiffs shall bring a
20 motion for attorneys' fees within 120 days from the date of the Injunction.

21 8. The Court finds that the foregoing relief is narrowly drawn, extends no
22 further than necessary to correct the violation of the Federal right, and is the least intrusive
23 means necessary to correct the violation of the Federal right. To the extent any relief may
24 violate state law, the Court finds Federal law requires such relief to be ordered in violation
25 of State law, the relief is necessary to correct the violation of a Federal right, and no other
26 relief will correct the violation of the Federal right.

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9. This Court shall retain jurisdiction over this action until such time as the Court is satisfied that all constitutional violations found herein have been fully, effectively, and durably remedied.