

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF TRENTON

C.F., et al., individually
and on behalf of all others
similarly situated

) HONORABLE ANNE E. THOMPSON

)

Plaintiffs,

) Civil Action No. 96-1840 (AET)

v.

)

JACK TERHUNE, et al.,

)

Defendants.

)

SETTLEMENT AGREEMENT

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THIS SETTLEMENT AGREEMENT dated May 1999 entered into by and among C.F., D.M., L.K., A.O. and J.W. individually and on behalf of all others similarly situated (the "Plaintiffs" or the "Class Members") and Commissioner of the New Jersey Department of Corrections Jack Terhune, Chief of Staff Mary Ellen Bolton, Assistant Commissioner Howard L. Beyer, Chief Disciplinary Hearing Officer Eugene F. O'Neill, Health Services Unit Supervisor Thomas Farrell and Director of Psychological Services Dr. Richard Cevasco, having been sued in their official capacity ("the Defendants"),

WITNESSETH THAT;

WHEREAS, Plaintiffs filed this class action suit on April 11, 1996 against the Defendants seeking wide-ranging injunctive relief on behalf of a class of mentally ill inmates; and

WHEREAS, an Amended Complaint was filed on July 16, 1997 (the "Amended Class Action Suit"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, the Amended Class Action Suit was brought pursuant to 42 U.S.C. §1983 seeking redress for alleged violations of the Eighth and Fourteenth Amendments of the United States Constitution, 29 U.S.C. §504 (the Rehabilitation Act), 42 U.S.C. §12132 (the Americans with Disabilities Act of 1990), and breach of contract; and

WHEREAS, the Amended Class Action Suit seeks declaratory and injunctive relief as well as the recovery of attorneys fees and costs; and

WHEREAS, Correctional Medical Services, Inc. ("CMS") commenced provision of medical services to inmates within DOC facilities on April 27, 1996; and

WHEREAS, Correctional Behavioral Solutions of New Jersey, Inc. ("CBS") commenced provision of mental health services to inmates within DOC facilities on August 17, 1996 pursuant to a subcontract with CMS; and

WHEREAS, the matter was certified as a class action on November 20, 1996 and the class was defined as:

all persons who suffer DSM IV, Axis I and/or Axis II disorders such that they are unable to meet the functional requirements of prison life without mental health treatment, who now or in the future will be confined within the facilities of the New Jersey Department of Corrections; and

WHEREAS, CMS and CBS were added as party defendants to the Amended Class Action Suit on July 16, 1997;

WHEREAS, Defendants, CMS and CBS have filed Answers in which they deny Plaintiffs' allegations; and

WHEREAS, the litigants have exchanged discovery including expert reports, and taken deposition testimony; and

WHEREAS, Plaintiffs have agreed to execute a Stipulation of Dismissal with prejudice as to CMS and CBS; and

WHEREAS, Plaintiffs and Defendants acknowledge that, to the extent possible, it is in their best interests to resolve the issues raised in this action by means other than litigation and, to this end, have on this day agreed to enter into this Settlement Agreement; and

WHEREAS, the "Settlement Agreement" incorporates this document, Exhibit A (the Amended Complaint), Exhibit B (the plan for enhanced mental health services, hereinafter referred to as the "Plan") and Exhibit C (the proposed amendments to the disciplinary regulations, hereinafter referred to as the "Regulations"); and

WHEREAS, the "Presumptive Class Membership" incorporates all inmates who are or in the future will be housed on the Stabilization Units ("SUs"), the Residential Treatment Units ("RTUs") and the Transitional Care Units ("TCUs") and all inmates who now or in the future will be listed on the special needs rosters and the mental health contact rosters; and

WHEREAS, the "special needs rosters" shall refer to a list of inmates who are receiving psychotropic medication or have refused psychotropic medication and shall include, but is not limited to, their diagnoses and medications. For all special needs rosters produced prior to the implementation of the DOC's Management Information System ("MIS"), housing locations will be provided when available and in accordance with the current practice. Special needs rosters produced after the implementation of the DOC's MIS will include housing locations; and

WHEREAS, the "mental health contact rosters" shall refer to a list of inmates who are not on the special needs rosters, are receiving mental health treatment and meet the class membership definition. Mental health contact rosters shall include diagnoses. Mental health contact rosters produced between July 1, 1999 and the implementation of the DOC's MIS will contain housing locations when

available. Mental health contact rosters produced after the implementation of the DOC's MIS will contain housing locations.

WHEREAS, "DOC" shall refer to the New Jersey Department of Corrections; and

WHEREAS, "medical and mental health services provider(s) under contract with the DOC" shall mean any medical and mental health services provider providing medical or mental health services under contract with the DOC, including CMS and CBS as long as they continue to provide medical and mental health services under contract with the DOC; and

WHEREAS, "medical record" shall include both medical and mental health records. Medical records shall also include any list of inmates receiving medical and/or mental health services; and

WHEREAS, "10A Information" shall mean any and all information, material or documentation, other than medical records, Internal Affairs records or voting records of classification committee members, that are produced to Plaintiffs and/or the monitor during the monitoring period and which contains information described in N.J.A.C. 10A:22-2.2. Prior to production of 10A Information, Defendants shall redact the names of any confidential informants, the targets of ongoing investigations, the manner in which the fruits of Internal Affairs investigations are compiled and filed and Internal Affairs investigatory techniques; and

WHEREAS, "confidential medical and mental health services provider(s) information" shall mean Continuous Quality Improvement "CQI" report form and verification provided in accordance with

Section IV(Q) (6) (p), monthly reports provided in accordance with Section IV(Q) (6) (n), the names of mental health staff personnel on the mental health staff charts provided in accordance with Section IV(Q) (6) (a) and invoices from the mental health services provider(s) reflecting the professional position, the contract FTEs and the hours per pay period (information related to payment for services shall be redacted) in accordance with Section IV(Q) (6) (b); and

WHEREAS, "monitoring period" shall mean the period commencing the date the Settlement Agreement is signed and ending on the date that this Settlement Agreement terminates in accordance with Section VII(2).

WHEREAS, "monitor's report" shall include the monitor's report and/or any appendices attached thereto; and

WHEREAS, "Classified Records" shall collectively refer to Internal Affairs records, voting records of classification committee members, 10A Information and confidential medical and mental health services provider(s) information; and

WHEREAS, "identifying information" shall include, but is not limited to, housing location, date of birth, social security number and physical description of the inmate; and

WHEREAS, the terms of the Amended Confidentiality and Protective Order entered by the Court on April 8, 1998, as amended by Order of the Federal Court in May 1999 (the "Confidentiality Order"), attached hereto as Exhibit D, remain in full force and effect as to any documents or information disclosed during the

course of the litigation through December 31, 1998, including, but not limited to documents Bates stamped DOC 1 - 815, DOC 6000 - 80707, FPH 1 - 1575, PR 1 - 136, CMS 1 - 39193, CMS PR 1 - 136, CBS PR 1-105 and TR 2102 - 4107; and

WHEREAS, the use, release and dissemination of documents and information produced to Plaintiffs and/or the monitor during the monitoring period shall be governed by the terms of this Settlement Agreement;

NOW, THEREFORE, Plaintiffs and Defendants do hereby set forth the understanding reached between them:

I. ENHANCED MENTAL HEALTH SERVICES

A. Funding:

In order to fully fund the Plan, Defendants hereby agree to the following:

1. Funds currently appropriated in the Fiscal Year 1999 budget for the implementation of the Plan, which are approximately \$2.1 million, will be utilized to fund the Plan;

2. Any in-kind services or cash equivalents, if any, obtained from the medical services provider(s) for the implementation of the Plan will be utilized to fund the Plan; and

3. The Governor of the State of New Jersey has recommended to the legislature that \$16,000,000 be appropriated to fund additional mental health treatment services.

4. Within thirty (30) days of the date the Settlement Agreement is signed, Defendants will provide a certification from

Commissioner Terhune stating that (a) to the best of his knowledge, after reasonable investigation, the \$16,000,000 recommended appropriation set forth in Section I(A)(3) is sufficient to implement the Plan, and (b) Commissioner Terhune will use his best efforts to obtain full funding for the Plan.

5. Defendants will notify Plaintiffs of the dates of any public hearings related to the funding of the Plan and will provide Plaintiffs with all public documents related to the funding of the Plan as soon as possible when they become available.

6. Defendants will provide Plaintiffs with any public documents related to the extension of any contract for the provision of medical and mental health services, if any, as soon possible when they become available.

7. Defendants shall inform Plaintiffs by affidavit as to the outcome of DOC's appropriation request within seven (7) calendar days from the date upon which Defendants learn the level of funding it has obtained, and whether or not such funding is adequate to fully implement the Plan. Defendants shall supply Plaintiffs with all public documents related to the DOC's funding request and the results thereof. Defendants will provide Plaintiffs with this information no later than July 9, 1999.

8. Plaintiffs and Defendants agree that the United States District Court for the District of New Jersey ("Federal Court") shall retain jurisdiction of this case until such time as Defendants certify that the DOC has obtained adequate funding or in-kind services necessary to fully implement the Plan for Fiscal

Year 2000, pursuant to Section I(A)(9) or Plaintiffs are deemed to have accepted a Modified Plan in accordance with Section I(A)(10).

9. In the event Defendants certify that the DOC has obtained \$16,000,000 as set forth in Section I(A)(3), the Plaintiffs and Defendants will jointly move before the Federal Court for a dismissal of this action with prejudice and shall propose the attached form of order (Exhibit G). DOC will thenceforth be bound to implement the Plan including the terms of the Plan set forth in Section 3 of this Settlement Agreement.

10. In the event that Defendants certify that DOC has not received \$16,000,000 as set forth in Section I(A)(3) and the budget has been approved and presented to the DOC by July 1, 1999, Defendants will inform Plaintiffs by July 26, 1999 as to the extent to which they will be able to implement the Plan in light of the funding they have received for fiscal year 2000. Plaintiffs may elect to accept this modified Plan by August 9, 1999, and in any event shall be deemed to have accepted the modified Plan if written notice of Plaintiffs' rejection of the modified Plan is not received by Defendants by August 9, 1999. In the event Plaintiffs agree to accept the modified Plan or are deemed to agree to accept the modified Plan, DOC will be bound to implement the Plan as modified, and to abide by the remaining terms of the Settlement Agreement after notification to the class and the Federal Court, after the class has been afforded an opportunity to comment on the modified plan and after the Federal Court has approved the modified Settlement Agreement. The parties will then move before the

Federal Court for dismissal with prejudice in the manner set forth in Section I(A)(9).

11. In the event that the DOC fails to obtain funding sufficient to implement the Plan for fiscal year 2000, and Plaintiffs elect to continue with this litigation, Defendants and Plaintiffs will jointly request that the Federal Court Clerk's Office place the pending summary judgment motion on the calendar for the next available motion date, and shall request a conference with the Federal Court to set expedited dates for final inspections and submission of the pre-trial order, and shall jointly request an expedited trial date.

12. No attorneys fees shall be paid to Plaintiffs' counsel until after the Order of Dismissal with prejudice has been entered by the Federal Court.

B. Timing:

Absent any delays in the implementation of the terms of the Plan caused by an unanticipated public hearing, Defendants agree to implement the Plan according to the following schedule:

1. Defendants agree that the training component of the Plan will be commenced by April 30, 1999. All corrections officers who will be assigned to work in the SUs, RTUs and TCUs will be trained by July 1, 1999.

2. Defendants agree that the construction component of the Plan will be commenced by April 30, 1999 and the SUs, RTUs and TCUs will be safe and operational by July 1, 1999.

3. Upon receipt of appropriate funding as set forth in Section I(A), the remaining components of the Plan will begin operation on July 1, 1999.

II. AMENDMENTS TO THE DISCIPLINARY REGULATIONS:

Absent any delays caused by an unanticipated public hearing, Defendants agree that the proposed amendments to the disciplinary regulations attached hereto as Exhibit B (the "Regulations") will be adopted by June 1, 1999 and implemented effective July 1, 1999.

III. POLICIES AND PROCEDURES

Defendants agree that the following policies and procedures will be created, if currently not existing, or reviewed, if currently existing, by June 1, 1999 and will be provided to the monitor. Plaintiffs' counsel may submit non-binding proposals regarding Defendants' policies and procedures to the Defendants without any cost to the Defendants. Defendants will implement the following policies and procedures to ensure continued compliance.

1. Policies and procedures consistent with the goals of the Plan and the amendments to the disciplinary regulations;

2. Involuntary medication policies and procedures, including those delineating between emergency and non-emergency involuntary medications;

3. Policies and procedures for use of force situations involving Class Members which provide for input and/or involvement from mental health staff;

4. Medication policies and procedures regarding medication administration, medication prescription, management of medication, inmate non-compliance and formulary lists.

5. Discharge planning for Class Members in anticipation of their release from DOC facilities planning will be required and, at a minimum, will include the following:

(a) Defendants will use their best efforts to schedule an appointment with a community mental health provider for a date within two (2) weeks after the Class Member has been released from a DOC facility;

(b) Defendants will provide the Presumptive Class Members with a two week supply of medication upon release;

(c) Defendants will modify the treatment plans of Presumptive Class Members to reflect mental health issues related to their discharge;

(d) Defendants will provide treatment in accordance with the Presumptive Class Members' revised treatment plans, with the understanding that the Defendants' obligation to provide treatment ends when each inmate leaves the care and custody of the New Jersey

Department of Corrections except as currently provided by the New Jersey Parole Board;

(e) Defendants will facilitate Class Members in obtaining benefits upon release from a DOC facility by providing each inmate with the name of the social services individual in the county in which he will be living after release who could assist in obtaining social service benefits and by providing copies of necessary applications; and

(f) Defendants will use their best efforts to develop contacts with community mental health providers and social service agencies within the county in which the facility is located to assist in discharge planning. Upon request of the community mental health service provider(s) on behalf of and with the consent of the Class Member, a discharge summary for the Class Member will be prepared and sent to the receiving community mental health provider(s).

6. Record Keeping policies and procedures to provide for a single multi-disciplinary medical record, including mental health records, for each inmate which shall be maintained in a secure location. Policies shall also include provisions for the creation of a management information system to track Class Members' mental health. Barring any unforeseen difficulties, implementation of the management information system will be completed by November 1, 1999.

IV. MONITORING

A. Identity of Monitor

1. Plaintiffs and Defendants stipulate to the appointment of a monitor, who shall be independent of the Plaintiffs and Defendants, to facilitate the implementation of the Settlement Agreement and to monitor compliance. Plaintiffs and Defendants agree that Dr. Raymond Patterson shall serve as the monitor during the life of the Settlement Agreement.

2. If Dr. Raymond Patterson is unable to serve as the monitor during the life of the Settlement Agreement, a person who is mutually agreeable to Dr. Dennis Koson and Dr. Joel Dvoskin, or their successors as experts to Plaintiffs and Defendants respectively, will be appointed to serve as a monitor. If the above experts are unable to agree on the identity of a monitor, each expert shall submit the name of one representative expert and the representative experts shall select the monitor. Except with the consent of counsel for Plaintiffs and Defendants, no person who has been associated with or served as an expert in any capacity in the underlying litigation or who has a business relationship with the medical or mental health services provider(s) under contract with the DOC may be appointed as a monitor.

3. Any monitor may be replaced in the event of death or unforeseen permanent unavailability, by written agreement of Plaintiffs and Defendants or on motion noticed by any of their counsel for good cause shown. For purposes of this subsection, "good cause shown" means a showing by clear and convincing evidence

of corruption or nonfeasance by a monitor which is so severe as to preclude effective implementation of the terms of this Settlement Agreement. The court shall replace the monitor with a person who is mutually agreeable to Dr. Dennis Koson and Dr. Joel Dvoskin, or their successors as experts to Plaintiffs and Defendants respectively. If the aforementioned experts are unable to agree on the identity of a monitor, each expert shall submit the name of one representative expert and the representative experts shall select the monitor.

4. Plaintiffs and Defendants agree that Dr. Raymond Patterson, or his successor, qualifies as a forensic psychiatric expert under New Jersey and federal law.

B. Cost of Monitoring

1. Defendants shall pay the monitor's reasonable fees and costs.

2. Plaintiffs and Defendants agree that, pursuant to this Settlement Agreement, Plaintiffs have the right to apply for attorneys' fees and costs for legal representation generated after the date of the Settlement Agreement which are necessary for the enforcement of the Settlement Agreement before the courts if

(a) they are successful; or

(b) Defendants' failure to present factual information to the monitor under the terms set forth in Section IV(K)(4) caused Plaintiffs to file the action for enforcement of the Settlement Agreement; or

(c) Plaintiffs and Defendants settle the dispute which forms the basis of the action to enforce the Settlement Agreement prior to judgment.

3. Any application for attorneys' fees and costs for legal representation generated after the date of the Settlement Agreement which are necessary for the enforcement of the Settlement Agreement shall be based on Mercer County attorney rates.

C. Length and Frequency of Inspections

1. The monitor may inspect the DOC's facilities four times per year, the first of which will occur after the date the Settlement Agreement is approved by the Federal Court. Each inspection shall presumptively last no longer than five business days. The inspections shall presumptively be conducted between the hours of 9:00 a.m. and 5:00 p.m. with the understanding that the inspections shall be conducted at the convenience of the Commissioner of the DOC and the monitor.

2. Entry to any facility or any portion thereof shall not be denied except for reasons of security including, but not limited to items such as riot, lockdown or unforeseen events requiring enhanced security measures. If the monitor is denied access to a facility or any portion thereof for reasons of security, the monitor shall be permitted access as soon as the circumstances which have caused the security concern have been abated. If time is lost due to an unforeseen interruption, the monitor will be able to make up the

lost time at a time mutually convenient to both the monitor and the Commissioner of the DOC.

3. If a monitor is denied access to a facility or any portion thereof for reasons of security, and the monitor is permitted access as soon as the circumstances which have caused the security concern have been abated, the fact that access has been denied will not, by itself, negatively affect the monitor's compliance finding. A general explanation for the denial of access due to security shall be forwarded to the monitor and Plaintiffs as soon as the Commissioner of the DOC determines that this disclosure would not negatively impact the security of the prison system.

D. Access to Inmates and their Medical and Classification Records

1. The monitor shall have access to and may review the medical and classification records of Presumptive Class Members for on-site review. The monitor may also review medical and classification files of inmates who have committed suicide and former Presumptive Class Members when the monitor has good reason to believe that the medical and classification file contains information relevant to the performance of the monitor's duties. Defendants shall redact the names of any confidential informants, targets of ongoing investigations, the manner in which the fruits of Internal Affairs techniques are compiled and filed and Internal Affairs investigatory techniques prior to the release of documents containing such information.

2. The monitor may review medical and classification records of inmates other than Presumptive Class Members if the monitor obtains an Authorization For Disclosure/Release of Health Information Including Alcohol And/Or Drug Use, HIV/AIDS and Psychiatric Records in the form attached hereto as Exhibit E.

3. If the monitor seeks to review medical and classification records of inmates other than Presumptive Class Members or inmates who have provided the monitor with a release, the DOC Health Services Unit representative accompanying the monitor shall make a determination, after a review of the inmate's records, whether the inmate falls within the class definition. The monitor shall be permitted to review his/her medical and classification records if the inmate falls within the class definition.

4. The monitor may conduct interviews with inmates in a manner mutually convenient to the monitor and the Administrator/Superintendent of the facility where the inmate is housed.

5. The monitor shall keep a record of all documentation reviewed and interviews conducted pursuant to the Settlement Agreement.

E. Representatives at Inspections, and Access to Custody, Medical and Mental Health Staff

1. Counsel will not accompany the monitor during on-site inspections.

2. Two attorneys for the Plaintiffs shall be permitted one opportunity to jointly tour each of the new SUs, RTUs and TCUs upon their opening and occupancy at a time convenient to the Superintendent of the DOC facility and the Commissioner of the DOC. Plaintiffs shall not charge Defendants for costs incurred as a result of the inspection, including legal fees.

3. A pre-inspection conference call shall be conducted with the monitor, Plaintiffs, Defendants, and the medical and mental health service provider(s) under contract with the DOC not less than one week prior to the beginning of the inspections. A post-inspection conference call with the monitor, Plaintiffs, Defendants and the medical and mental health service provider(s) under contract with the DOC shall be conducted at the discretion of the monitor. In any event, the monitor has the discretion to initiate a telephone conference call with Plaintiffs, Defendants and the medical and mental health service provider(s) under contract with the DOC at any other time the monitor deems necessary.

4. During the inspection, the monitor will be accompanied by a DOC custody escort and a representative from the DOC Health Services Unit.

5. During the inspection, the monitor may interview the following individuals:

(a) DOC Custody staff: the monitor may first seek to interview any DOC custody supervisor on any unit the monitor is touring. If, after attempting to interview the custody supervisor, the monitor has additional questions, the monitor may then seek to

interview other corrections officers who are assigned to the units the monitor is touring.

(b) DOC Social Workers: any DOC social worker assigned to the DOC facility where the monitor is inspecting.

(c) Administrative staff: any DOC Administrative staff member of the DOC facility where the monitor is inspecting.

(d) DOC Central Office staff: any DOC Central Office staff member provided that the monitor provides notice of the request to interview the staff member one week prior to the interview, unless the parties otherwise agree.

(e) Medical Services Provider(s) -- any employee.

(f) Mental Health Services Provider(s) -- any employee.

F. Contact with the Monitor

Absent a mutual agreement between Plaintiffs and Defendants to the contrary or where otherwise provided in the Settlement Agreement, there shall be no oral or written communications between the monitor, Plaintiffs and Defendants aside from pre-inspection and post-inspection telephone conferences during which Plaintiffs, Defendants and the medical and mental health service provider(s) are participating.

G. Substance of the Monitor's Report

1. The purpose of the monitoring is to facilitate and ensure compliance with the terms of the Settlement Agreement. In addition to monitoring the creation and implementation of the policies and

procedures as set forth in Section III, the monitor shall create written objective criteria, based upon the Plan and the Regulations, on which Defendants' compliance with the Settlement Agreement shall be judged. The written objective criteria shall be organized according to the following categories:

- (a) Discipline
- (b) Reception Evaluations
- (c) SUs
- (d) RTUs and TCUs
- (e) Outpatient Care
- (f) Inpatient Care (with the understanding that the DOC will participate in the commitment process, but cannot guarantee that TPH will take the inmate upon the conclusion of the commitment process)
- (g) Construction
- (h) Training
- (i) Creation of Policies
- (j) Staffing

2. The monitor shall memorialize his or her findings by way of a written report following each set of inspections. Reports shall be organized according to the categories set forth in Section (G) (1) and shall contain the following:

(i) Steps taken by Defendants to implement the terms of the Settlement Agreement since the monitor's prior report and a systematic review of the progress regarding each of the written objective criteria formulated by the monitor since the monitor's prior report;

(ii) Changes in circumstances affecting Defendants' ability to provide the medical, mental health or custodial care provided for by the Settlement Agreement since the monitor's prior report;

(iii) Recommendations which may facilitate implementation of the terms of the Settlement Agreement, including a summary of any conversations between the monitor and representatives of the DOC or medical or mental health service providers under contract with the DOC concerning such recommendations that were conducted outside the presence of Plaintiffs' counsel;

(iv) A finding with respect to whether the Defendants are in Substantial Compliance or Non-Compliance as to each category set forth in Section IV(G)(1).

3. Unless otherwise agreed to by the Plaintiffs and Defendants, the monitor shall provide a copy of his report simultaneously to Plaintiffs and Defendants within 30 days of the conclusion of the on-site inspections which form the basis of the report.

H. Definition of Compliance

1. Substantial Compliance shall be determined on a category by category basis. The categories to be evaluated are those identified in Section IV(G)(1). Substantial Compliance for a specific category shall mean that Defendants have and may reasonably be expected to continue to substantially satisfy the written objective criteria set forth by the monitor for that category. To achieve Substantial Compliance the Defendants need

not be in perfect, 100%, compliance with each of the written objective criteria set forth by the monitor for that category. The monitor shall have the discretion to measure Substantial Compliance in each category by weighting the various written objective criteria.

2. Non-Compliance means efforts which do not meet the definition of Substantial Compliance for a particular category. Non-Compliance shall include Defendants' failure to permit the monitor to undertake inspections according to the terms set forth herein. A finding of Non-Compliance shall not be based on isolated, non-continuing instances of failure to substantially satisfy the objective criteria in the categories identified in Section IV(G) (1), nor shall a finding of Non-Compliance be based on omissions of a technical or unimportant nature.

3. An independent decision of any individual DOC employee or employee of any medical or mental health services provider(s) under contract with the DOC not to speak with the monitor shall not result in a finding of non-compliance so long as the monitor is able to obtain the information he/she is seeking from another source in a timely manner. The employees of the medical and mental health services provider(s) under contract with the DOC are required to communicate with the monitor except in the limited circumstance that a psychiatrist, psychologist, licenced social worker, licenced clinical social worker or psychiatric nurse (hereafter collectively referred to as "mental health clinicians") has a good faith belief that disclosure of information would be

detrimental to an inmate's mental health. In the event that a mental health clinician has such a belief, the mental health clinician shall provide the monitor with an explanation which forms the basis of their refusal to communicate with the monitor without revealing the nature of the confidential information.

I. Emergent Circumstances

If during the course of an inspection the monitor finds a circumstance which poses an imminent and significant health or safety risk to Class Member(s), the monitor shall immediately contact the DOC Health Services representative accompanying the monitor on the inspection and any other appropriate person to alleviate the perceived risk. If the monitor's concerns about any individual and/or any systemic problem are not satisfactorily addressed, the monitor shall initiate a telephone conference with Plaintiffs, Defendants, and the medical and mental health services provider(s) under contract with the DOC. Defendants shall have 24 hours from the conference call to address and/or remedy the circumstance which the monitor finds to pose an imminent and significant health or safety risk to Class Member(s). If the imminent and significant health or safety risk to Class Member(s) is not adequately addressed and/or remedied within 24 hours, Plaintiffs may file an application to remedy the emergent circumstance with the court.

J. Curing Non-Compliance

1. If the monitor finds Substantial Compliance in any category identified in Section IV(J) (5), Plaintiffs shall have 15 calendar days from receipt of the report to serve objections to the monitors' report on the monitor and the Defendants. Upon consideration of the Plaintiffs' objection, the monitor may revise his or her findings. If the monitor, upon consideration of the objections, revises his/her finding to one of Non-Compliance, the procedures set forth in Sections IV(J) (2), (3) and (6) below shall apply.

2. If the monitor finds Non-Compliance in any category identified in Section IV(J) (5), Defendants shall have:

(a) 20 calendar days from receipt of the report to serve objections to the monitors' report on the monitor and Plaintiffs. Plaintiffs shall have 7 calendar days from receipt of the objections to serve a response upon the monitor and Defendants. Upon consideration of any Defendants' objections and Plaintiffs' responses, the monitor may revise his or her findings. If the monitor, upon consideration of the objections and responses, revises his/her finding to one of Substantial Compliance, this finding shall relate back to the date of the last regular inspection and shall not negatively affect the period of continuous Substantial Compliance and shall not be counted as a "cure" for the purposes of Section IV(J) (5); and

(b) 30 calendar days from receipt of the report to cure any deficiencies noted in the report. For the purpose of counting the

30 calendar days, the time the monitor spends considering objections provided under Section IV(J)(2)(a), shall not be counted.

3. Plaintiffs and Defendants agree that Defendants shall be entitled to a prescribed number of opportunities within each compliance category to cure a finding of Non-Compliance without adversely affecting the period of continuous Substantial Compliance (hereinafter referred to as a "cure"). Thus, Defendants shall be deemed to remain in continuous Substantial Compliance notwithstanding the monitor's initial finding of Non-Compliance if Defendants remedy in a timely manner the deficiencies found by the monitor using one or more of their prescribed cures set forth in Section IV(J)(5).

4. If Defendants cure the deficiency which caused a finding of Non-Compliance by using one of the allotted "cures" set forth in Section IV(J)(5), the following shall apply:

(a) if the monitor can determine from written documentation provided by Defendants and copied to Plaintiffs that the deficiency has been cured to his or her satisfaction, then the monitor shall issue a revised finding of Substantial Compliance. The effective date of the revised finding of Substantial Compliance shall be the date of the inspection which gave rise to the initial finding of Non-Compliance; or

(b) if the monitor cannot determine from written documentation that the deficiency has been cured, such that an on-site inspection of the DOC facility is necessary, Defendants shall

have the option of paying for additional on-site inspection(s) at the facility/facilities where the deficiency occurred. If, after such additional on-site inspection(s), the monitor finds Substantial Compliance, the monitor shall issue a revised report that includes a revised finding of Substantial Compliance and the effective date shall be the date of the inspection which gave rise to the finding of Non-Compliance.

5. The number of cures which Defendants may use are set forth in the following table. In the event that the monitor determines that the deficiency has been cured, Plaintiffs and Defendants will accordingly adjust the table of cures to reflect the number of remaining cures available to Defendants in each compliance category.

Category	Number of Cures
Discipline	2
Reception Evaluations	2
SUs	2
RTUs and TCUs	2
Outpatient Care	3
In-Patient Care (that the DOC will participate in the commitment process, with no guarantee that TPH will take the inmate upon the conclusion of the commitment process)	2
Construction	2

Training	2
Creation of Policies	1
Staffing	1 (which may only used at the discretion of the monitor and when the overall staffing does not fall below 85%)

6. In the event that Defendants have exhausted all of the allotted cures for a category pursuant to Section IV(J)(5), Defendants may remedy a deficiency which caused a finding of Non-Compliance in such category and the following shall apply:

(a) if the monitor can determine from written documentation provided by Defendants and copied to Plaintiffs that the deficiency has been remedied to his or her satisfaction, then the monitor shall issue a finding of Substantial Compliance. The effective date of the finding of Substantial Compliance shall be the date of the remedy as identified on the documentation provided by Defendants and a new 12 month period of continuous Substantial Compliance shall begin for that category; or

(b) if the monitor cannot determine from written documentation that the deficiency has been remedied, such that an on-site inspection of the DOC facility is necessary, Defendants shall have the option of paying for additional on-site inspection(s) at the facility/facilities where the deficiency occurred. If, after such additional on-site inspection(s), the

monitor finds Substantial Compliance, the monitor shall issue a report that includes a finding of Substantial Compliance, of which the effective date shall be the date of the additional on-site inspection and a new 12 month period of continuous Substantial Compliance shall begin for that category.

K. Enforcement of the Settlement Agreement

1. Prior to bringing an action to enforce the Settlement Agreement, Plaintiffs and Defendants must wait until the last date to cure or remedy a deficiency has passed pursuant to Sections IV(I) or (J). Whoever objects to the monitor's finding shall bear the burden of proof in any action to enforce the Settlement Agreement.

2. The monitor's report and any documents reviewed or information obtained during the monitoring period may be used in any action to enforce the Settlement Agreement. Any discovery produced during the course of the Amended Class Action Suit may also be used in any action to enforce the Settlement Agreement subject to the terms of the Confidentiality Order.

3. Any redacted portions of documents or categories of evidence that Defendants have refused to give the monitor may not be offered by Defendants as evidence in opposition to an action to enforce the Settlement Agreement.

4. Any factual information not presented to the monitor in the course of the proceedings described herein will not be admitted as evidence unless the party offering the factual information can

demonstrate (a) the factual information had been overlooked in good faith or (b) the original document has been lost or destroyed.

L. Confidentiality of Monitor's Report

1. Until Plaintiffs file a report of the monitor with the court in connection with an action to enforce the Settlement Agreement, all reports of the monitor shall be designated confidential and shall be disclosed only to the following persons:

(a) Any medical and mental health services provider(s) under contract with the DOC;

(b) Any of the named Defendants, including their directors, officers, employees, agents and personnel or any administrative personnel of the DOC who is determined by Defendants to be necessary to assist in the implementing the Settlement Agreement;

(c) Counsel for the Plaintiffs, Defendants and medical and mental health services provider(s) under contract with the DOC including partners, associates, law clerks, law students, secretaries, paralegal assistants and employees of such counsel to the extent reasonably necessary to render professional services with respect to the Settlement Agreement; and

(d) Former employee witnesses, outside non-party consultants or experts retained for the purpose of assisting counsel regarding the Settlement Agreement.

2. Unless otherwise agreed to by Plaintiffs and Defendants or as set forth below, or ordered by the court, any monitor's

report, filed with the court is presumptively a public document with the following limitations:

(a) All references to Classified Records shall be redacted from the monitor's report before Plaintiffs publicly file the report with the court. Plaintiffs shall simultaneously file an unredacted copy of the Monitor's Report with the court under seal.

(b) Prior to filing the monitor's report with the court, the names, numbers and other identifying information of all inmates referred to in the monitor's report or in any medical records attached thereto shall be redacted. Plaintiffs and Defendants agree to use a key that permits the identification of the inmates by pseudonym. The names, numbers and other identifying information of all inmates referred to in the monitor's report or in any medical records attached thereto shall be filed with the court under seal.

3. All documents identified in this Settlement Agreement and produced to and reviewed by the monitor, with the exception of medical records and Classified Records, are deemed public documents.

4. If Plaintiffs decide to file a report of the monitor with the court in connection with an action to enforce the Settlement Agreement, Plaintiffs shall notify Defendants and the medical and mental health service provider(s) under contract with the DOC. Upon receipt of such notice: (i) the Defendants shall have three (3) business days to seek redaction of portions of the report which threaten security, contain the name, number and other identifying

information of the inmate who is the subject of the record (with the understanding that the sole purpose for redacting identifying information is to protect an inmate's privacy), or contain information set forth in Classified Records and (ii) the medical and mental health service provider(s) under contract with the DOC shall have three (3) business days to seek redaction of portions of the report which contain confidential medical and mental health services provider(s) information.

5. If Plaintiffs and/or Defendants and/or the medical services provider(s) and/or the mental health service provider(s) under contract with the DOC are able to mutually agree to the redactions, then those portions of the documents which are the subject of the redactions shall be filed with the court under seal.

6. If Plaintiffs and/or Defendants and/or the medical services provider(s) and/or the mental health service providers are unable to mutually agree to the redaction, then the party seeking the disputed redaction shall apply to the court for a Protective Order regarding the redacted portion(s) of the report within 10 business days of the date of the filing of the action to enforce the Settlement Agreement. Pending resolution of a party's motion for a Protective Order, any monitor's report filed with the court by Plaintiffs shall bear all requested redactions.

7. Any monitor's report, or portion thereof, which is not used during an action to enforce the Settlement Agreement shall remain confidential.

8. Until Plaintiffs file a report of the monitor with the court in connection with an action to enforce the Settlement Agreement, any person receiving the monitor's report shall be provided a copy of this Settlement Agreement and shall execute an acknowledgment in the form attached hereto as Exhibit F in which such person shall agree to be bound by the confidentiality provisions contained herein.

M. Confidentiality of Medical Records Reviewed by and Produced to the Monitor

1. Until Plaintiffs file either a report of the monitor containing medical records or medical records with the Court in connection with an action to enforce the Settlement Agreement, all medical records shall be designated confidential and shall be disclosed only to the following persons:

(a) Any medical and mental health services provider(s) under contract with the DOC;

(b) Any of the named Defendants, including their directors, officers, employees, agents and personnel or any administrative personnel of the DOC who is determined by Defendants to be necessary to assist in implementing the Settlement Agreement;

(c) Counsel for the Plaintiffs, Defendants or any medical or mental health services provider(s) under contract with the DOC, including partners, associates, law clerks, law students, secretaries, paralegal assistants and employees of such counsel to the extent reasonably necessary to render professional services with respect to the Settlement Agreement;

(d) Former employee witnesses, outside non-party consultants or experts retained for the purpose of assisting counsel regarding the Settlement Agreement; and

(e) The monitor selected in accordance with the terms of this Settlement Agreement.

2. If any medical records are filed with the court, including medical records in the monitor's report, they shall be redacted by the offering party to eliminate the name, number and other identifying information of the inmate who is the subject of the record. During any court proceeding, Plaintiffs and Defendants agree to use a key that permits the identification of the inmates by pseudonym.

3. If Plaintiffs decide to file medical records, including those contained in the monitor's report, with the court in connection with an action to enforce the Settlement Agreement, Plaintiffs shall notify Defendants and the medical and mental health service provider(s) under contract with the DOC. Upon receipt of such notice, Defendants shall have three (3) business days to seek redaction of portions of the report which threaten security, or contain the name, number and other identifying information of the inmate who is the subject of the record, with the understanding that the sole purpose for redacting identifying information is to protect the inmate's privacy.

4. If Plaintiffs and Defendants are able to mutually agree to the redactions, then those portions of the documents which are

the subject of the redactions shall be filed with the court under seal.

5. If Plaintiffs and Defendants are unable to mutually agree to the redaction, then such party seeking the disputed redaction shall apply to the court for a Protective Order regarding the redacted portion(s) of the report within 10 business days of the date of filing of the action to enforce the Settlement Agreement. Pending resolution of Defendants' motion for a Protective Order, any monitor's report filed with the court by Plaintiffs shall bear all requested redactions.

6. Persons obtaining access to medical records may show the inmate who is the subject of the record the contents of the record with the exception of diagnostic and evaluative information. However, factual information contained in the diagnostic and evaluative portion of any records may be verified by the specific inmate who is the subject of such medical record. In any event, no inmate shall be shown the content of any other inmate's medical records.

7. Except as provided for in Section IV(M)(6), any medical records, or portions thereof, including those contained in any monitor's report, which are not used during an action to enforce the Settlement Agreement shall remain confidential.

8. Any person receiving medical records, including those contained in a monitor's report, shall be provided a copy of this Settlement Agreement and shall execute an acknowledgment in the

form attached hereto as Exhibit F in which such person shall agree to be bound by the confidentiality provisions contained herein.

N. Confidentiality of Classified Records Reviewed by
and Produced to the Monitor

1. All Classified Records, including those contained in any monitor's report, which are to be used in connection with an action to enforce the Settlement Agreement, shall be filed with the court under seal.

2. Classified Records shall be disclosed only to the following persons:

(a) Any medical and mental health services provider(s) under contract with the DOC;

(b) Any of the named Defendants, including their directors, officers, employees, agents and personnel or any administrative personnel of the DOC who is determined by Defendants to be necessary to assist in implementing the Settlement Agreement;

(c) Counsel for Plaintiffs, Defendants or any medical or mental health services provider(s) under contract with the DOC, including partners, associates, law clerks, law students, secretaries, paralegal assistants and employees of such counsel to the extent reasonably necessary to render professional services with respect to the Settlement Agreement;

(d) Court officials involved in an action to enforce the Settlement Agreement;

(e) Court reporting personnel involved in taking or transcribing testimony in an action to enforce the Settlement Agreement;

(f) Any person that the court designates in the interest of justice, upon terms that the court deems proper;

(g) Former employee witnesses, outside non-party consultants or experts retained for the purpose of assisting counsel regarding the Settlement Agreement; and

(h) The monitor selected in accordance with the terms of this Settlement Agreement.

3. Persons obtaining access to Classified Records, including those contained in any monitor's report, shall not disclose information in the Classified Records to any named Plaintiff, any Presumptive Class Member or any other inmate; however, factual information contained in such records may be verified by the specific inmate who is the subject of such Classified Record.

4. Any Classified Records, or portions thereof, including those contained in any monitor's report, which are not used during an action to enforce the Settlement Agreement shall remain confidential.

5. Any person receiving Classified Records, including those contained in any monitor's report, shall be provided a copy of this Settlement Agreement and shall execute an acknowledgment in the form attached hereto as Exhibit F in which such person shall agree to be bound by the confidentiality provisions contained herein.

0. Limitation on Use of Monitor's Report, and Documents Reviewed by and Information Produced to the Monitor

1. The monitor's report may not be introduced as evidence in any other proceedings or form the basis of any other proceeding other than an action to enforce the Settlement Agreement pursuant to Section XIII(6) and (7).

2. Documents reviewed by and information produced to the monitor may not be used in any proceeding other than an action to enforce the Settlement Agreement pursuant to Section XIII (6) and (7).

3. If Plaintiffs, Defendants or the medical and mental health services provider(s) under contract with the DOC, receive a subpoena or other discovery request, except as provided in Section XIII(7), commanding production of the monitor's report or any documents reviewed by or information obtained during the course of the monitoring period, the entity or person receiving the subpoena or request shall immediately notify the Plaintiffs, Defendants and the medical and mental health services provider(s) under contract with the DOC of the service of the subpoena or request, so that they have the opportunity to object to the production of the information or documents and seek to quash the subpoena or have an appropriate protective order entered.

4. Neither Plaintiffs, Defendants nor the medical or mental health services provider(s) under contract with the DOC shall be permitted to oppose a motion to quash a subpoena for the above

referenced documents and information or a motion for a protective order relative to such documents in another proceeding.

P. Disclosure of Identities of Presumptive Class Members

1. Neither the DOC, the medical or mental health services provider(s) under contract with the DOC, nor their counsel shall reveal the name of any Presumptive Class Member or discuss the Presumptive Class Member's role in this case with any custody personnel or health care provider other than in connection with the delivery of health care services to such inmate or for the preparation of its defense in an action to enforce the Settlement Agreement. The DOC, the medical and mental health services provider(s) under contract with the DOC and their counsel shall inform any custody personnel or health care provider, to whom such disclosure is necessary for the preparation of their defense in an action to enforce the Settlement Agreement, that the identities and roles of all Presumptive Class Members must remain confidential.

2. Should any Presumptive Class Member voluntarily disclose his or her identity, Defendants may initiate a conference call with the court to determine whether and to what extent the confidentiality provisions of this Settlement Agreement shall continue to be applicable to this particular Presumptive Class Member.

Q. Reporting Requirements

(1) By May 19, 1999, Defendants shall provide the monitor and Plaintiffs with a report demonstrating that the training and construction contemplated by the Plan have been commenced in accordance with Section I(B).

(2) On a date convenient to Plaintiffs, Defendants and the monitor in or about May 1999, a conference call shall be held with the monitor, Plaintiffs and Defendants wherein Defendants shall provide a oral report on the status of the remaining aspects of the Plan.

(3) By June 1, 1999, Defendants shall provide the monitor and Plaintiffs with copies of the policies and procedures in accordance with Section I(B) and Section III.

(4) By July 1, 1999, Defendants shall provide the monitor and Plaintiffs with a report demonstrating that the remaining components of the Plan have begun operation in accordance with Section I(B).

(5) On May 19, 1999 and July 10, 1999, Defendants shall provide the monitor and Plaintiffs with the following reports with the understanding that these reports are being provided for informational purposes only:

(a) critical incident reports and Internal Affairs reports of suicides from January 1, 1999 through May 1, 1999 and May 2, 1999 through June 30, 1999;

(b) critical incident reports and Internal Affairs reports related to deaths of Class Members from January 1, 1999 through May 1, 1999 and from May 2, 1999 through June 30, 1999;

(c) critical incident reports of self-mutilation of Class Members which results in outside hospital care from January 1, 1999 through May 1, 1999 and from May 2, 1999 through June 30, 1999. When a self-mutilation of an inmate occurs, the DOC shall first cross reference the name of the inmate against the special needs rosters. If the name of the inmate appears on the special needs rosters, the critical incident report shall be provided. If the name of the inmate does not appear on the special needs rosters, the DOC shall review the inmate's medical and mental health file to determine whether the inmate falls within the class definition and, if so, the critical incident report shall be provided;

(d) the names of all inmates committed to Trenton Forensic Hospital from January 1, 1999 through May 1, 1999 and from May 2, 1999 through June 30, 1999; and

(e) all discharge summaries for inmates returning from Trenton Forensic Hospital from January 1, 1999 through May 1, 1999 and from May 2, 1999 through June 30, 1999.

(6) From July 1, 1999 until the end of the monitoring period or the time in which the monitor states that no further reporting is necessary pursuant to Section IV(Q) (9), whichever comes first, Defendants shall provide the following quarterly reports to the monitor and Plaintiffs in advance of the on-site inspections at a

time mutually agreeable to the monitor and the Plaintiffs and Defendants:

(a) monthly mental health staff charts which shall reflect staff assigned to each of the DOC's facilities, including the SUs, RTUs and TCUs;

(b) invoices from the mental health services provider(s) reflecting the professional position, the contract FTEs and the hours per pay period (information related to payment for services shall be redacted);

(c) monthly special needs rosters and monthly mental health contact rosters;

(d) monthly rosters of the inmates housed on the SUs, RTUs and the TCUs;

(e) monthly census rates for the SUs, RTUs and TCUs;

(f) statistical or narrative summary of training efforts undertaken since the last reporting period;

(g) critical incident reports related to Class Members who are housed on the SUs, RTUs and TCUs since the last reporting period;

(h) critical incident reports and Internal Affairs reports of suicides since the last reporting period;

(i) critical incident reports and Internal Affairs reports related to deaths of Class Members since the last reporting period;

(j) critical incident reports of self-mutilation of Class Members which results in outside hospital care since the last reporting period. When a self-mutilation of an inmate occurs, the

DOC shall first cross reference the name of the inmate against the names of the Presumptive Class Members. If the name of the inmate appears on one of the Presumptive Class Member lists, the critical incident report shall be provided. If the name of the inmate does not appear on one of the Presumptive Class Member list, the DOC shall review the inmate's medical and mental health file to determine whether the inmate falls within the class definition and, if so, the critical incident report shall be provided;

(k) documents related to the implementation of the involuntary medication policies and procedures since the last reporting period, including critical incident reports;

(l) the names of all inmates committed to Trenton Forensic Hospital since the last reporting period;

(m) all discharge summaries for inmates returning from Trenton Forensic Hospital since the last reporting period;

(n) any monthly statistical reports (including any narrative summaries) in accordance with current practice that describe programs and services available to Class Members and the utilization of such services;

(o) critical incident reports reflecting incidents arising from the use of restraints;

(p) the schedule of the CQI reports from the mental health services provider(s), the issues to be audited, the format of the CQI, and an affidavit that the CQI was completed;

(q) Quality Assurance reports of the defendants related to the implementation of the Plan, including, but not limited to the

administration of medication, with the understanding that (i) all conclusions and opinions shall be redacted, (ii) the facts set forth in the Quality Assurance reports cannot be referenced within the monitor's report and (iii) the facts set forth in the Quality Assurance reports cannot form the basis of the monitor's opinion; and

(r) Internal Affairs reports involving inmates housed on the SUs, the RTUs and the TCUs. Prior to the release of these reports, Defendants shall redact the name of any confidential informant, the targets of ongoing investigations, the manner in which the fruits of Internal Affairs investigations are compiled and filed and Internal Affairs investigatory techniques.

(7) From July 1, 1999 until the end of the monitoring period or the time in which the monitor states that no further reporting is necessary pursuant to Section IV(Q)(9), whichever comes first, Defendants shall, on a quarterly basis, provide the monitor and Plaintiffs, in advance of the on-site inspections at a time mutually agreeable to the monitor and the Plaintiffs and Defendants, disciplinary records of Class Members housed in administrative segregation as follows:

(a) On a date to be agreed upon by the Plaintiffs and Defendants prior to the next inspection, the DOC shall cross-reference the names of all inmates housed in administrative segregation units against the names of the Presumptive Class Members. A list of all Presumptive Class Members housed in administrative segregation units will be forwarded to the monitor

and an asterisk placed next to the name of any inmate placed in administrative segregation prior to the implementation of the Regulations.

(b) The monitor shall then select the names of inmates whose disciplinary records are requested. The monitor shall select no more than 40 names in the first reporting period. For subsequent reporting periods, the monitor shall select either 25 names or 15% of the class membership housed in administrative segregation, whichever is higher, but in no event more than 40 names.

(c) For each name selected by the monitor, Defendants shall provide (i) the disciplinary records which form the basis of the inmate's placement in administrative segregation, after having redacted the name of any confidential informant, the targets of ongoing investigations, the manner in which the fruits of Internal Affairs investigations are compiled and filed and Internal Affairs investigatory techniques; and (ii) any records related to the Special Administrative Segregation Review Committee ("SASRC") review of the inmate's continued confinement in administrative segregation.

8. From July 1, 1999 until the end of the monitoring period or the time in which the monitor states that no further reporting is necessary pursuant to Section IV(Q)(9), whichever comes first, Defendants shall, on a quarterly basis, provide the monitor with a list of the inmates on the SUs, RTUs and TCUs who have committed disciplinary infractions since the last reporting period. The monitor may then select names from this list for whom Defendants

shall provide the monitor with: (a) the records of that inmate's disciplinary action, after having redacted the name of any confidential informant, the targets of ongoing investigations, the manner in which the fruits of Internal Affairs investigations are compiled and filed and Internal Affairs investigatory techniques, and (b) any records related to the Special Administrative Segregation Review Committee ("SASRC") review of the inmate's confinement in administrative segregation.

(9) After each category has sunset, a conference call shall be held with the monitor, Plaintiffs and Defendants to discuss the reporting provisions set forth in Section IV(Q). During this conference call, the monitor shall advise Plaintiffs and Defendants which of the above referenced reporting documents are still relevant to the monitoring and should continue to be produced.

(10) The monitor can request, and Plaintiffs and Defendants shall negotiate, any other documents or reports which would assist the monitor in performing his/her duties under the terms of the Settlement Agreement.

(11) In the event that Defendants decide to produce a previously redacted document or previously withheld document, then this category of document will be produced thenceforth in the same manner.

V. INDIVIDUAL COMPLAINTS

The DOC Health Services Unit Supervisor shall have primary responsibility for responding to inmate complaints concerning mental health care and to whom Plaintiffs may forward inmates' concerns for action and for a response to counsel. All documents relating to complaints referred to and/or handled by the designees shall be forwarded by the DOC to the monitor, Plaintiffs, and the medical and mental health services provider(s) under contract with the DOC.

VI. NEW CONTRACTORS

The DOC shall incorporate the relevant terms of the Settlement Agreement related to programmatic requirements, policies and procedures and staffing in any subsequent Request for Proposal for medical or mental health care.

VII. TERM OF THE AGREEMENT

1. In his or her report, the monitor shall make a finding of Substantial Compliance or Non-Compliance for each category identified in Section IV(G)(1). As each category reaches 12 consecutive months of Substantial Compliance, it shall sunset and no longer be the subject of further monitoring.

2. Once each of the categories identified in Section IV(G)(1) have sunset, the Settlement Agreement will automatically terminate, without a need for a motion by any party.

3. In the event that Defendants remedy a finding of Non-Compliance in a category pursuant to Section (IV)(J)(6), the 12 month period of continuous Substantial Compliance will begin again for that category pursuant to the terms of Section (IV)(J)(6).

VIII. RETURN OF CONFIDENTIAL DOCUMENTS

1. Documents which have been marked "Confidential" during the course of this litigation, have been designated Confidential under the terms of the Confidentiality Order (hereinafter collectively referred to as the "pre-settlement documents") or have been reviewed by or produced to the monitor (the "monitor documents") shall be returned to the DOC within thirty (30) days of the termination of the Settlement Agreement.

2. Upon request of CMS or CBS, pre-settlement documents and monitor documents which have been produced by CMS or CBS shall be returned to CMS or CBS the earliest of (i) the date they are no longer the medical or mental health service provider under contract with the DOC (but in no event earlier than the date of the order of dismissal) or (2) the end of the monitoring period.

3. Until the pre-settlement and monitor documents have been returned to Defendants, CMS or CBS as provided in Sections VIII(1) and VIII(2), Sandra Cobden, Esquire, shall be responsible for maintaining the pre-settlement documents in a secure location. Plaintiffs' counsel shall maintain the monitor documents in a secure location.

4. Plaintiffs shall not charge Defendants, CMS or CBS any administrative costs related to the return of the pre-settlement or monitor documents. Defendants, CMS and CBS shall be responsible for any shipping costs associated with the return of their pre-settlement and monitor documents.

IX. ALTERATIONS

1. The terms and conditions reflected in this Settlement Agreement shall not be amended, changed or altered orally. Such terms and conditions may be amended, changed or altered only by written agreement between the parties through their respective counsel.

2. Should any party desire a modification of the confidentiality provisions at any time during the monitoring period, said party may apply to the court for a modification of these terms.

X. DISCLAIMER OF LIABILITY

Plaintiffs and Defendants expressly acknowledge and agree that this Settlement Agreement applies to the Amended Class Action Suit and does not constitute an admission of liability by Defendants or the DOC. This Settlement Agreement only affects Plaintiffs' claims raised in the Amended Class Action Suit in Exhibit A. Defendants have denied liability and expressly continue to deny liability despite their willingness to enter into this Settlement Agreement.

Except as otherwise provided herein, Plaintiffs and Defendants acknowledge and agree that this Settlement Agreement can be used for no purpose other than to set forth the understanding of the Plaintiffs and Defendants and may not be introduced as evidence in any other proceedings, nor form the basis of any other proceeding.

XI. DISSOLUTION AND SEVERABILITY

Plaintiffs and Defendants agree that if any provision or provisions of this Settlement Agreement are found to be contrary to law, the remaining provisions will not be affected and shall remain in full force and effect.

XII. DISSEMINATION

Defendants shall provide a copy of the Settlement Agreement, the Order Directing Notice of Proposed Settlement, the plain language summary in English and Spanish and the comment sheet with return envelope provided by Plaintiffs in a sealed envelope to each Presumptive Class Member listed on the special needs rosters on April 30, 1999. Dissemination to each of these Presumptive Class Members shall be made within thirty (30) days of the execution of this Settlement Agreement. A copy of the Settlement Agreement, the Order Directing Notice of Proposed Settlement, the plain language summary in both English and Spanish, the comment sheet and return envelope provided by Plaintiffs shall also be given to each of the inmate paralegals in all DOC facilities and posted in the

administrative segregation units and law libraries within thirty (30) days of the execution of this Settlement Agreement. Dissemination of the Settlement Agreement, the Order Directing Notice of Proposed Settlement, the plain language summary in both English and Spanish and the comment sheet with return envelope will be made by DOC Social Workers who may be supplemented by DOC custody supervisors when necessary.

XIII. ENFORCEMENT

1. Plaintiffs and Defendants agree that this is a mutually binding Settlement Agreement.

2. The Settlement Agreement is a contract permitted under 18 U.S.C. Sec. 362(c)(2)(B), enforceable under the law of contracts of the State of New Jersey.

3. Defendants have agreed to enter into this Settlement Agreement in consideration for Plaintiffs' agreement to accede to the dismissal of this litigation with prejudice.

4. Neither Defendants nor Plaintiffs shall challenge the validity of this Settlement Agreement on the ground that the signatories hereto lack the authority or capacity to contract or the ground that the Settlement Agreement is not supported by adequate consideration.

5. Plaintiffs' filing of a monitor's report that contains allegations of Defendants' breach of the Settlement Agreement with the court in connection with an action to enforce the Settlement

Agreement shall be deemed notice under the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-5, and Defendants shall not, under these circumstances, oppose an action to enforce the Settlement Agreement for failure to satisfy statutory notice requirements, including the 90 day waiting period.

6. Actions to enforce the Settlement Agreement shall be brought in the Superior Court of New Jersey, Chancery Division unless otherwise prohibited by law. Venue shall be in Mercer County unless prohibited by R. 4:3-2(a)(2) of the Rules Governing Civil Practice.

7. These provisions do not preclude the Plaintiff class from bringing a new action in federal court in the event that the monitor finds Defendants in Non-Compliance. In such an action, the Plaintiff class will be permitted to use the portion of the monitor's report which specifically refers to the finding of Non-Compliance, along with any documents supporting this specific finding. In addition, Plaintiffs may rely upon their knowledge of the monitor's report(s), the monitoring document(s), and the discovery produced pursuant to the Amended Class Action suit to formulate discovery requests. Use of any portion of the monitor's report or supporting documentation shall be governed by the remaining confidentiality provisions of the Settlement Agreement, including, but not limited to, the provisions governing when and how documents shall be filed with the court under seal.

8. The parties agree that the Settlement Agreement is not a contract for personal services and that, in the event of a breach,

the Settlement Agreement is capable of judicial enforcement by way of specific performance unless otherwise prohibited by law.

XIV. SURVIVAL OF CONFIDENTIALITY PROVISIONS

The confidentiality provisions and obligations of this Settlement Agreement shall survive the conclusion of this action.

XV. PLAINTIFFS' ATTORNEYS FEES

Defendants shall pay Plaintiffs' attorneys' fees and costs in the amount of \$1,220,000. Except as otherwise provided herein, Plaintiffs shall not make any further application for attorneys' fees and costs.

Debevoise & Plimpton

Seton Hall University
School of Law
Center for Social Justice

By: Sandra L. Cobden
Sandra Cobden, Esquire
Attorney for Plaintiffs

By: Patricia Perlmutter
Patricia Perlmutter, Esq.
Attorney for Plaintiffs

DATED: 5/12/99

DATED: 5/12/99

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By: Dianne M. Moratti
Dianne M. Moratti
Deputy Attorney General
Attorney for Defendants

DATED: 5/13/99

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Patricia P. Perlmutter (PP 1666)
Seton Hall University School of Law
Center For Social Justice
Inmate Advocacy Law Clinic
833 McCarter Highway
Newark, NJ 07102

----- X
D.M., L.K., A.O. and J.W., individually, and on :
behalf of all others similarly situated, :

PLAINTIFFS,

v.

WILLIAM F. FAUVER, GARY J. HILTON,
HOWARD L. BEYER, EUGENE F. O'NEILL,
JOHN FORKER, DR. THOMAS FARRELL,
DR. RICHARD CEVASCO, CORRECTIONAL MEDICAL :
SERVICES, INC., AND CORRECTIONAL BEHAVIORAL :
SOLUTIONS OF NEW JERSEY, INC. :

DEFENDANTS. :

----- X
Plaintiffs, by their attorneys, allege as follows, upon personal belief as
to themselves and on information and belief as to all other matters:

PRELIMINARY STATEMENT

1. This is a class action brought by plaintiffs on behalf of a class
consisting of themselves and all persons who suffer DSM IV, Axis I and/or Axis II
disorders such that they are unable to meet the functional requirements of prison life

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Exhibit A

without mental health treatment, who now or in the future will be confined within the facilities of the New Jersey Department of Corrections (the "Class"). The Court certified the Class in an order dated November 20, 1996.

2. The plaintiffs bring this action under 42 U.S.C. § 1983, the Eighth and Fourteenth Amendments of the United States Constitution, 29 U.S.C. § 504 (the Rehabilitation Act), and 42 U.S.C. § 12132 (the Americans with Disabilities Act of 1990). Defendants William F. Fauver, Gary J. Hilton, Howard L. Beyer, Eugene F. O'Neill, John Forker, Dr. Thomas Farrell and Dr. Richard Cevasco (hereinafter, collectively referred to as "the DOC defendants") are New Jersey State government officials who are responsible for the housing, treatment services, discipline and health care for Class members within the facilities of the New Jersey Department of Corrections ("DOC"). Defendant Correctional Medical Services, Inc. ("CMS") is responsible, pursuant to a contract with DOC, for carrying out DOC's obligation to provide medical, psychological and psychiatric services to Class members. Defendant Correctional Behavioral Solutions of New Jersey, Inc., ("CBS") is responsible under a subcontract with CMS for carrying out DOC's and CMS's obligations to provide psychological and psychiatric services to Class members. Plaintiffs seek declaratory and injunctive relief to remedy the illegal and unconstitutional conditions for which the DOC defendants, CMS and CBS (collectively the "Defendants") are responsible and to which Class members are or will be subjected. Due to the highly private and personal

nature of the facts surrounding the claims of the representative plaintiffs, only their initials are used herein to protect their dignity and privacy.

3. This action arises from DOC's policies and practice of imposing punishment, rather than providing treatment, when Class members violate prison rules and regulations. Through the DOC defendants' deliberate indifference, Class members are placed in facilities referred to as disciplinary detention and administrative segregation, where they are locked in their cells for over 23 hours a day for alleged disciplinary infractions resulting from their serious mental disorders. Class members assigned to administrative segregation remain there, isolated and virtually untreated, often for years at a time.

4. Even the most hardened offenders generally are able to adjust to prison life and avoid receiving administrative segregation time. Because Class members do not receive adequate mental health care, they find it extremely difficult or impossible to comply with institutional rules, the violation of which may subject them to discipline. Class members are often sentenced to disciplinary detention and/or administrative segregation after breaking those rules. Once confined in administrative segregation, these prisoners are even less able to conform to prison rules because their mental conditions worsen. As a result, they receive additional disciplinary charges and often additional administrative segregation time, leading to a further deterioration in their mental conditions. In addition, the accrual of disciplinary sanctions ultimately

causes Class members to spend more time in prison by delaying their parole eligibility date, thus reducing the likelihood that Class members will receive parole and delaying their ultimate release date.

5. In administrative segregation, Class members have minimal contact with other prisoners or with custody staff and may leave their cell only for a daily shower and a few hours of outdoor recreation each week. The most severely mentally ill prisoners are housed on the first floor of each of the units, known as "flats." Severely depressed or delusional prisoners are stripped of clothing (except for a paper gown) and bedding, sometimes for weeks at a time. Due to their mental disorders, some Class members become increasingly unable to care for themselves, fail to shower, and smear themselves and their cells with feces and urine.

6. Defendants have equipped each of the prisons with restraining chairs to punish psychotic behavior. Defendants permit untrained officers to administer these and other mechanical means of behavioral control without adequate supervision by trained mental health personnel.

7. Defendants fail to provide Class members with constitutionally adequate and appropriate mental health care. DOC's few designated housing units for mentally ill prisoners are insufficient in number, unavailable to female prisoners altogether, and generally not available to prisoners with records of disciplinary infractions.

8. The effects of this system of punishment have been devastating to the representative plaintiffs.

- Plaintiffs A.O., D.M. and J.W. have numerous scars from suicide attempts in administrative segregation.
- Plaintiff A.O. once resorted to swallowing a belt buckle and another time set herself on fire in a desperate plea for help.
- Plaintiff J.W., a twenty-one-year-old nonviolent offender, has spent the last five years in administrative segregation. When he is charged with a disciplinary infraction, he is often placed in a dry cell without lights, without a toilet that flushes and without water.
- Plaintiff D.M., now committed to FPH, is terrified at the prospect of being returned to administrative segregation. She is fearful of the corrections officers and the other prisoners in administrative segregation.
- Plaintiff L.K. has difficulty distinguishing persons trying to help him from those trying to hurt him. His mental disorder is such that traditional sanctions do not deter his behavior.

9. The DOC defendants have known for years that a substantial number of prisoners in administrative segregation have serious mental disorders. Indeed, as long as a decade ago, the New Jersey State legislature, recognizing both the prevalence of mental illness in State prisons and the lack of adequate mental health care therein, directed DOC to make adequate and appropriate treatment available. The DOC defendants have refused to modify DOC's disciplinary policies to take mental disorders into account, to provide the Class with treatment and housing that

accommodate their needs, or to provide adequate mental health staffing to deliver meaningful treatment to the Class.

10. The DOC defendants are aware that their disciplinary policies and practices exacerbate the mental disorders of Class members. Yet they continue to abdicate their statutory obligations and to violate the constitutional rights of Class members by failing to provide them with adequate and appropriate care and treatment.

JURISDICTION

11. This Court has jurisdiction over the subject matter of this lawsuit pursuant to 28 U.S.C. §§ 1331, 1343(a) and 1367(a).

12. Venue in the District of New Jersey is proper. Plaintiffs reside in the District of New Jersey, and all events relevant to this action occurred in the District of New Jersey.

PARTIES

Representative Plaintiffs

13. The representative plaintiffs are citizens of the United States with serious mental disorders who are confined in New Jersey state prisons. These facilities are operated by and under the control of the DOC, CBS and CMS.

14. The representative plaintiffs are "handicapped" individuals as that term is defined in 29 U.S.C. § 706(8)(B) and 42 U.S.C. § 12102.

15. DOC receives federal financial assistance.

16. A.O. is a prisoner currently confined to Northern State Prison's administrative segregation unit for women in Newark, New Jersey. A.O. has been diagnosed by DOC psychiatrists as suffering from schizophrenia, adjustment disorder and multiple personality disorder, and she also suffers from seizures as a result of a stroke which she experienced at age fifteen. Her mental illness makes it difficult for her to control her behavior. She has received numerous disciplinary charges, including several for self-mutilation, drug overdoses and assaults on correctional staff. While housed in administrative segregation at Northern State Prison -- for over four of the last five years -- A.O. has attempted suicide or engaged in self-mutilation approximately 15 times. Although she attempted to explain the role her mental disorder played in her suicidal behavior at her disciplinary hearings, she received additional time in both disciplinary detention and administrative segregation as a result of her suicidal behavior. On several occasions, A.O.'s behavior reached an acute crisis and she was transferred to the Forensic Psychiatric Hospital ("FPH") in Trenton, New Jersey, only to be returned to administrative segregation upon release from FPH.

17. J.W. is a prisoner currently assigned to the administrative segregation unit of New Jersey State Prison in Trenton, New Jersey. Except for brief commitments to the FPH, J.W. has been in virtual isolation in administrative segregation for nearly six years, since he was 16 years old. He suffers from schizo-affective disorder, a borderline personality disorder and an antisocial personality

disorder. While incarcerated at New Jersey State Prison, J.W. has received no psychiatric or psychological treatment except for psychotropic medications. He has attempted suicide on numerous occasions, and has been committed to FPH approximately eight times. As a result of actions stemming from J.W.'s inability to control his frustration and anger at being isolated, he has on several occasions been placed by prison officials in a "dry cell" -- a cell without lights or running water from which urine and feces are removed on approximately a weekly basis -- for generally two to three weeks at a time. On other occasions, prison officials have responded to his suicide attempts by transferring him to a "strip cell", an empty cell where no clothes are permitted, or to a "restraining chair" where his hands are cuffed either to his sides or behind his back and his feet are shackled to the chair.

18. L.K. is a prisoner currently assigned to the administrative segregation unit of New Jersey State Prison in Trenton, New Jersey. He has been diagnosed with schizoaffective disorder, antisocial personality disorder, organic mood disorder, explosive personality disorder and paranoid personality disorder. As a result of his mental condition, L.K. has on several occasions struck corrections officers believing that the officers intended to harm him. Prison officials have committed L.K. to FPH on five occasions, yet have failed to provide L.K. with appropriate follow-up treatment upon his release from FPH.

19. D.M. is a prisoner currently assigned to the administrative segregation unit of Northern State Prison in Newark, New Jersey. She has been diagnosed by psychiatrists at FPH as suffering from recurrent major depression, adjustment disorder, histrionic personality disorder, borderline personality disorder and acute paranoid disorder. Since her transfer to administrative segregation, she has mutilated her arms and wrists with sharp objects on at least eight occasions and has been placed in a restraining chair and in a strip cell as punishment. She also has been committed repeatedly to FPH where she currently remains.

Defendants

20. Defendant William F. Fauver is the Commissioner and Chief Executive Officer of DOC and is sued herein in his official capacity. DOC is obligated under State law to provide for the custody, care, discipline, training and treatment of persons committed to State correctional institutions, N.J.A.C. 10A:1-1.1(a)(i), including the provision of constitutionally adequate psychiatric care to prisoners with serious mental illnesses. N.J.A.C. 10A:16-2.1(4)(5), 16-13.1(a). In addition, DOC is responsible for providing an environment for incarcerated persons that encourages rehabilitation and reintegration into the community. N.J.S.A. 30:1B-3(b); N.J.A.C. 10A:1-1.1(a)(2)(7). Defendant Fauver, as Commissioner and Chief Executive Officer of DOC, is responsible for determining all matters of policy and for formulating, adopting, issuing and promulgating rules and regulations for DOC institutions.

N.J.S.A. 30:1B-6(e), (g); N.J.A.C. 10A:1-2.4(a)(b). Defendant Fauver has refused to adopt or to ensure the implementation of rules, regulations and policies to provide: (1) adequate screening procedures to identify prisoners with mental disorders; (2) training for correctional officers in recognizing and dealing professionally with prisoners with mental disorders; (3) disciplinary procedures which in practice take account of the role that Class members' mental disorders play in prison infractions; (4) adequate mental health care for Class members in disciplinary detention and administrative segregation; and (5) adequate and appropriate inpatient facilities for Class members.

21. Defendant Gary J. Hilton is the DOC's Chief of Staff and is sued herein in his official capacity. He reports directly to Commissioner Fauver on all significant policy matters within DOC. Defendant Hilton has direct oversight and responsibility for creating and implementing policy with regard to the operation of DOC's prisons and the disciplinary process in those prisons. He is responsible for the living conditions in, and for the assignment of Class members to, disciplinary detention and administrative segregation. Prior to 1994, defendant Hilton served as the Assistant Commissioner for Adult Institutions, which included DOC's administrative segregation facilities.

22. Defendant Howard L. Beyer is the Assistant Commissioner, Division of Operations, of DOC pursuant to N.J.A.C. 10A:1-2.2 and is sued herein in his official capacity. See N.J.S.A. 30:1B-5(a), (b). Defendant Beyer has primary

responsibility for directing and supervising the major operational and programmatic activities for the State's prisons as well as the training of custody staff. He, along with defendants Fauver and Hilton, is responsible for both the living conditions in disciplinary detention and administrative segregation, and for the assignment of Class members to those facilities.

23. Defendant Eugene F. O'Neill is the Chief Hearing Officer for DOC and is sued herein in his official capacity. Defendant O'Neill is responsible for overseeing the individual hearing officers at New Jersey's State prisons and ensuring that DOC's disciplinary procedures are followed. Defendant O'Neill is responsible for DOC's failure to adequately supervise hearing officers and its refusal to promulgate disciplinary policies and procedures which take account of the problems of those prisoners with serious mental disorders.

24. Defendant John Forker is the Director of the Office of Institutional Support Services (O.I.S.S.) for DOC and is sued herein in his official capacity. Among defendant Forker's responsibilities is the development of health care policies for mentally ill prisoners. Defendant Forker is responsible for DOC's policy of assigning Class members to disciplinary detention and administrative segregation facilities, and for DOC's refusal to provide adequate and appropriate special housing units for Class members. In addition, defendant Forker is responsible for failing to ensure defendant CMS's compliance with the terms of its contract with DOC.

25. Defendant Thomas Farrell is the Director of Medical Services in the O.I.S.S. and is sued herein in his official capacity. Defendant Farrell has special training in clinical psychology and is responsible for formulating directives and policies for the operation of the medical programs within DOC pursuant to N.J.A.C. 10A:16-22. Defendant Farrell is also responsible for failing to ensure defendant CMS's compliance with the terms of its contract with DOC.

26. Defendant Dr. Richard Cevasco is the Director of Psychological Services for DOC, serving in the O.I.S.S., and is sued herein in his official capacity. Defendant Cevasco is a psychology consultant to DOC. As such, he provides professional review, evaluation and guidance for all DOC psychological programs and activities pursuant to N.J.A.C. 10A:16-4.1 and monitors the performance of the mental health services portion of the contract between DOC and CMS. Defendant Cevasco is responsible for failing to ensure defendant CMS's compliance with the its contract with DOC.

27. Defendant CMS is a private corporation, incorporated in Missouri, which provides health care to prisoners in prisons and jails. Defendant CMS is doing business in New Jersey and has corporate offices at 3000 Atrium Way, Mount Laurel, N.J. 08054. CMS offers "managed health care services." Managed health care is a system of health care delivery with the principal goal of reducing health care cost by imposing limits on access to non-contracted care providers. Defendant CMS

has entered into a contract with DOC, pursuant to which CMS is responsible for carrying out DOC's responsibilities to provide medical, psychological and psychiatric services for prisoners in DOC's facilities. Defendant CMS has breached its contract with DOC and, acting under color of state law, has continued DOC's practices of providing inadequate mental health care to Class members since it assumed responsibility for providing all psychiatric and psychological services to prisoners confined in DOC facilities.

28. Defendant CBS is a private corporation, incorporated in New Jersey, which provides behavioral health services to prisoners in jails and prisons. Defendant CBS has its corporate offices at 3000 Atrium Way, Mt. Laurel, NJ 08054. CBS has entered into a subcontract with defendant CMS pursuant to which CBS is responsible for carrying out defendant CMS's and DOC's responsibilities to provide mental health services to prisoners in DOC's facilities. Defendant CBS has breached its subcontract with CMS and, acting under color of state law, has continued DOC's practices of providing inadequate mental health care to Class members since its assumption on August 19, 1996 of responsibility for providing all mental health services to prisoners confined in DOC facilities.

CLASS ALLEGATIONS

29. Pursuant to Rule 23 (a) and (b) of the Federal Rules of Civil Procedure, the representative plaintiffs bring this action on their own behalf, and on

behalf of the Class, consisting of all persons who suffer DSM IV, Axis I and/or Axis II disorders such that they are unable to meet the functional requirements of prison life without mental health treatment, who now or in the future will be confined within the facilities of the New Jersey Department of Corrections.

(a) There are approximately 22,000 state prisoners incarcerated in state prison facilities managed by DOC. Numerous studies have been conducted to determine the prevalence of mental disorders among prison inmates in the United States. The most recent prevalence studies have found that between eight and nineteen percent of the total prison population have significant psychiatric or functional disabilities. See Jeffrey L. Metzner, *Guidelines for Psychiatric Services In Prisons*, *Criminal Behavior and Mental Health*, 3, 252-267 (Whurr 1993). Thus, it is estimated that there are approximately 1700 to 4100 persons in DOC facilities who have serious mental disorders. Many of these mentally ill prisoners have been, currently are, or will in the foreseeable future be, confined in DOC's disciplinary detention and/or administrative segregation facilities, often as a result of the DOC defendants' failure to modify DOC's disciplinary system to adequately address the special circumstances of mentally ill prisoners, and to provide adequate and appropriate mental health care and special needs housing. The Class is thus so numerous that joinder of all members is impracticable.

(b) The conditions, practices and omissions that form the basis of this Complaint are common to all Class members, and the relief sought will apply to all of them.

(c) The claims of the representative plaintiffs are typical of the claims of the entire Class. The representative plaintiffs and Class members all have serious mental disorders, have been, currently are, or will in the foreseeable future be confined within DOC's disciplinary detention and administrative segregation units, and are not receiving adequate mental health care and treatment or rehabilitative activities in violation of the Americans With Disabilities Act, the Rehabilitation Act, and the Eighth and Fourteenth Amendments to the United States Constitution.

(d) The representative plaintiffs are capable, through counsel, of fairly and adequately representing the Class and protecting its interests.

(e) The prosecution of separate actions by individual Class members would create a risk of inconsistent and varying adjudications which would establish inconsistent and incompatible standards of conduct for Defendants.

(f) Defendants have acted or refused to act on grounds generally applicable to the Class, making appropriate injunctive and declaratory relief with respect to the Class as a whole.

(g) There are questions of law and fact common to Class members, including Defendants' violation of the Americans With Disabilities Act, the

Rehabilitation Act, and the Eighth and Fourteenth Amendments to the United States Constitution by (1) failing to identify prisoners with serious mental disorders; (2) punishing Class members for actions which are manifestations of their mental disorders without taking into account the role that their disorders play in the charged conduct; (3) subjecting Class to disciplinary hearings notwithstanding their incompetency to participate in such hearings; (4) placing Class members in disciplinary detention and administrative segregation units despite DOC's knowledge that the conditions of disciplinary detention and administrative segregation are counter-therapeutic and lead to the deterioration of the mental conditions of Class members; (5) failing to provide Class members with adequate and appropriate mental health treatment; (6) failing to train corrections officers to recognize the signs of mental illness and respond professionally to the special needs of Class members; (7) failing to provide adequate and appropriate special needs housing for Class members; (8) failing to enforce DOC's contract with defendants CBS and CMS; and (9) failing to perform the duties set forth in the CMS contract and the CBS subcontract.

FACTUAL ALLEGATIONS

30. As set forth in paragraphs 31 through 82 below, the DOC defendants' disciplinary and behavioral control practices and procedures, administered without regard to their effect on the mental health condition of Class members, combined with Defendants' failure to provide adequate mental health care to Class

members while they are confined to administrative segregation and disciplinary detention facilities, result in intolerable suffering, deterioration in the mental health status of Class members, and the unnecessary and wanton infliction of pain.

Disciplinary Process

31. All prisoners within DOC facilities are required to abide by a series of prison rules. If a prisoner violates a rule, corrections officers must complete a Disciplinary Report and submit the report to the appropriate supervisor. N.J.A.C. 10A:4-9.1(a). In the case of "serious" offenses, the supervisor then forwards the report to the facility's Disciplinary Hearing Officer or Adjustment Committee ("hearing officers"). N.J.A.C. 10A:4-9.1(b). A prisoner so charged is entitled to a prompt hearing before a hearing officer to explain his or her version of the facts leading to the disciplinary charge. N.J.A.C. 10A:4-9.8(b); N.J.A.C. 10A-9.8(c); N.J.A.C. 10A-9.14.

32. Hearing officers, who are employees of DOC and are acting under the direction of, and pursuant to policies set by, defendants Fauver and O'Neill, may "sentence" prisoners to one or more regulatory punishments, depending on the severity of the offense, including: verbal reprimand; loss of privileges; disciplinary detention; administrative segregation; and loss of commutation time which is awarded for good behavior. N.J.A.C. 10A:4-5.1. DOC's disciplinary detention and

administrative segregation facilities house prisoners charged with or found guilty of "serious" disciplinary infractions.

33. When considering a disciplinary charge against a prisoner, hearing officers are required to make individualized determinations that take into account the circumstances surrounding the prisoner's adverse behavior, the prisoner's accountability for such behavior and the underlying reasons for the prisoner's noncompliance with prison rules. N.J.A.C. 10A:4-9.17. Despite this mandate, hearing officers routinely fail to assess the role that mental illness has played in the conduct at issue or to take the mental health status of the prisoner into account in determining either guilt or the appropriate sanction.

34. In some cases, hearing officers have acknowledged the role that a prisoner's mental disorder played in the conduct charged, but nevertheless imposed substantial sanctions anyway, including disciplinary detention and administrative segregation.

35. As a result of DOC's disciplinary procedures and practices, Class members have been punished for displaying symptoms of their disorders and for conduct over which they have no control. For example:

(a) Plaintiff A.O. has been repeatedly sentenced to disciplinary detention and administrative segregation for self-mutilation and suicide attempts.

(b) In another case which is the subject of a pending federal court lawsuit, a member of the Class alleges that he sought professional assistance because he heard voices telling him to leave the perimeter of the prison. Instead of receiving mental health treatment, the prisoner was punished with administrative segregation for planning an escape.

(c) Another prisoner incurred a series of disciplinary charges resulting in administrative segregation time after being denied his prescribed psychotropic medications for three weeks.

Disciplinary Detention and Administrative Segregation Facilities

Disciplinary Detention

36. As described in paragraph 32, prisoners who are found guilty of prison infractions deemed "serious" are subject to a number of potential punishments, including disciplinary detention and administrative segregation. All DOC prisons contain disciplinary detention units. See N.J.A.C. 10A:5-1.3. In most prisons, the disciplinary detention units are separate from the general prison population. Those prisons without a separate disciplinary detention area utilize the prisoner's own cell as a disciplinary detention unit. N.J.A.C. 10A:4-10.1-10.3.

37. Disciplinary detention facilities are used to house prisoners temporarily after they have been charged with or found guilty of an infraction. N.J.A.C. 10A:4-10.1, 10.2. Prisoners may be sentenced to 15 days in disciplinary

detention for each offense, N.J.A.C. 10A:4-5.4; N.J.A.C. 10A:4-10.2, provided that the total time served does not exceed 30 days. N.J.A.C. 10A:4-5.4(a)(1); N.J.A.C. 10A:4-10.2.

38. While in disciplinary detention, prisoners are kept in isolation and are permitted to shower only once every three to four days. N.J.A.C. 10A:4-10.6. They are not permitted visitors, contact with other prisoners, telephone calls, personal possessions or to leave their cells for meals. N.J.A.C. 10A:4-10.6; N.J.A.C. 10A:4-10.13.

Administrative Segregation

39. Administrative segregation units are used for the confinement of prisoners who have been found guilty of disciplinary infractions. See 10A:5-1.3. Unlike disciplinary detention, however, prisoners can be sentenced to administrative segregation for up to a year for each disciplinary offense. N.J.A.C. 10A:4-5.1(a). Once confined to administrative segregation, it is not unusual for Class members to incur additional disciplinary charges. As a result, some Class members are confined in administrative segregation for years at a time.

40. DOC administrative segregation units are located at Northern State Prison in Newark, New Jersey, East Jersey State Prison in Rahway, New Jersey, New Jersey State Prison in Trenton, New Jersey and the Albert Wagner Youth Correctional Facility in Bordentown, New Jersey. The sole women's administrative

segregation unit is located within the men's prison at Northern State Prison. DOC has a total of approximately 1100 administrative segregation cells at these four facilities.

41. Although prisoners within administrative segregation are allowed certain privileges not permitted prisoners in disciplinary detention such as daily showers and some recreational time, the conditions in the two facilities are similar in many other ways. Like prisoners in disciplinary detention, prisoners confined in administrative segregation are left idle with minimal sensory stimulation. They are confined in small cells for all but three or four hours per week. A typical cell holds a metal bed, a mattress, a toilet, a sink and a footlocker. Some of the beds are equipped to permit custody staff to place prisoners in four-point restraints by shackling the prisoner's arms and legs to the bed. There is a narrow window in the cells for natural light at all of the facilities except for New Jersey State Prison, where the cells have no natural light at all.

42. Prisoners in administrative segregation have very little contact with other human beings. They are not permitted to work at their normal prison jobs or to attend programs or other rehabilitative and vocational activities, and they must eat all their meals alone in their cell. In addition, prisoners in administrative segregation are permitted visitors on a more limited basis than the general prison population, may not participate in organized religious services and have very limited library access. The only time they are permitted outside their cells is for a daily shower and for an

hour or two of recreation two or three times per week. Recreation generally consists of access to a small concrete yard with a basketball net.

43. Prisoners in administrative segregation have very little contact even with corrections officers. Corrections officers open and shut the cell doors using remote automatic controls and pass prisoners' meals through slots in the cell door called food ports. Likewise, medications, including psychotropic drugs are delivered through the food port.

44. In most administrative segregation units, cell doors are solid so that prisoners may speak to other prisoners only through vents or by shouting -- behavior which may lead to further disciplinary charges.

45. Prisoners in administrative segregation are completely dependent upon custody staff for every need. Some Class members must depend on corrections officers even to flush their toilets.

46. Due to their mental disorders, some Class members never leave their cells, never shower, and smear their cells with urine and feces.

Effect of Administrative Segregation and Disciplinary Detention on Class Members

47. The effects of administrative segregation and disciplinary detention on Class members are profound. Placement of prisoners with serious mental

disorders in disciplinary detention and/or administrative segregation exacerbates their underlying mental disorders, induces psychosis, and increases the risk of suicide.

48. Even when Class members are transferred to FPH -- the State institution used for the confinement of the criminally insane and certain acutely mentally ill prisoners -- they do not receive long-term psychiatric care. Instead, because of insufficient space at FPH and the lack of any other appropriate prison facilities for the treatment and housing of Class members, DOC employees, under the supervision and control of defendants Fauver, Hilton and Beyer, generally reassign Class members to administrative segregation once they are returned to the prison. Once returned to administrative segregation, Class members are not permitted to participate in rehabilitative programs, despite FPH discharge instructions that often recommend such participation. Typically, the mental condition of such prisoners further deteriorates with each return to administrative segregation.

49. Although DOC does operate designated housing units for mentally ill male prisoners at Northern State Prison and New Jersey State Prison, Class members are generally not eligible for such housing because of their disciplinary infractions. Although these designated housing units are not punitive, prisoners in these units similarly do not receive constitutionally adequate mental health care. Nor do the corrections officers who work in these units receive any special training in dealing with the mentally ill.

50. Sentencing seriously mentally ill prisoners to disciplinary detention and/or administrative detention has other adverse effects. Time spent in administrative segregation delays a prisoner's parole eligibility date because it results in the loss of commutation or "good behavior" time, N.J.A.C. 10A:9-5.3. See N.J.S.A. 30:4-123.51. In addition, disciplinary charges reduce a prisoner's chances of being paroled at all. N.J.A.C. 10A:71-3.11(b)(2), (7), (10). For example, following the failure of Riverfront State Prison to provide one prisoner with his psychotropic medications for a three-week period, the prisoner broke a number of prison rules and received administrative segregation time. Because of these disciplinary infractions, the New Jersey Parole Board then rescinded the prisoner's previously approved parole date.

51. The inability of prisoners in administrative segregation to participate in jobs and rehabilitative programs also adversely affects an individual prisoner's parole decision, N.J.A.C. 10A:71-3.11(8), (11), no matter that the failure was involuntary. The failure to participate in rehabilitative programs is often cited by the New Jersey Parole Board as a reason for denying parole to Class members who have been assigned to administrative segregation. Thus, Class members are more likely to be required to serve their maximum sentences than are other prisoners as a result of Defendants' policy of punishing rather than treating prisoners with serious mental disorders.

52. Finally, the consequences of placement in administrative segregation do not end when Class members are released from prison. Because such prisoners often serve their entire terms and are not paroled, they are unable to take advantage of the mental health services afforded parolees. Without post-release mental health services, Class members have difficulty adjusting to life outside prison, are unlikely to find employment, and, as a result, are more likely to return to prison.

Lack of Treatment Opportunities and Inadequate Staffing

53. The deterioration in the mental health condition of Class members caused by the isolation of administrative segregation and disciplinary detention facilities is exacerbated by Defendants' failure to provide adequate mental health care to such prisoners before, during, and after that confinement.

54. As a result of the Defendants' policies and procedures, Class members have been and will in the future be deprived of necessary mental health services in numerous ways, including, but not limited to, those identified in paragraphs 55-69 below.

55. There are insufficient resources, including professional staffing, to provide appropriate mental health care for prisoners. Despite a doubling of the general prison population since 1986 and a corresponding increase in the number of mentally ill prisoners, the DOC defendants significantly reduced psychiatric staffing at DOC facilities over the last five years. An August 1993 article in the Bergen Record

reported that at New Jersey State Prison, for example, one psychiatrist -- one of only three full-time psychiatrists employed by DOC statewide at that time -- supervised medication for about four hundred patients, a caseload that did not permit adequate time for proper monitoring of medication, let alone provision of any other treatment. Today, mental health staffing is so minimal that the professional staff must spend much of their time responding to medical emergencies, preparing parole and institutional assessments, and providing minimal monitoring of the administration of medication.

56. Inadequate professional staffing and lack of proper procedures prevent Defendants from properly identifying prisoners with serious mental disorders.

57. Inadequate staffing has and continues to cause Class members who seek access to psychiatric care to experience delays in receiving that care, causing severe harm to their mental conditions. The Department of the Public Advocate (the "Public Advocate") reported that in July 1993, for example, a prisoner in administrative segregation at East Jersey State Prison remained in his cell for three days eating his own feces. During this time, DOC did nothing to help him because the sole prison psychiatrist was away on vacation. Only after the intervention of an attorney from the Public Advocate did the prison arrange for the prisoner's commitment to FPH.

58. There is no comprehensive, systematic mental health quality assurance program in DOC's individual prisons, let alone in its administrative

segregation facilities. Consequently, errors in treatment and diagnosis are not systematically identified or corrected. Also, prison mental health staff under the supervision of Defendants do not routinely prepare mental health treatment plans, and those that are prepared are inadequate. Moreover, mental health records often lack essential elements, such as recommended action, laboratory test results and frequency of needed follow-up care. In addition, contacts between professional staff and prisoners are often not documented, and mental health records are rarely reviewed or updated because of a lack of clerical support.

59. Defendants do not maintain a current central database to track the mental health treatment and placement for even the most severely mentally ill prisoners.

60. DOC has not allocated sufficient physical facilities and resources to provide the necessary care and treatment for Class members. Due to the lack of appropriate mental health facilities within DOC prisons and a severe shortage of beds at the FPH, defendants CMS and CBS fail to commit Class members to the FPH until a Class member's condition constitutes an acute crisis. Those prisoners committed to FPH are often discharged before it is medically appropriate to do so. In addition, because of the lack of sufficient space at FPH, even an acute crisis does not always lead to a prisoner's transfer to FPH.

61. Mentally ill prisoners who are prematurely discharged from FPH and returned to administrative segregation often suffer from renewed psychosis or some other form of psychological deterioration. For example, the Public Advocate reported in a letter to defendant Beyer, dated April 5, 1994, that in late November 1993 a member of the Class confined in East Jersey's administrative segregation facility set himself on fire, suffering third-degree burns over thirty percent of his body. He required hospitalization in a burn unit for many months. Upon release from the burn unit, the prisoner, who suffered from severe schizophrenia, was nonetheless returned to administrative segregation where he remained, incoherent, severely mentally ill, in a cell especially designed to prevent him from setting additional fires, for nearly three years until he completed his term. It was only at that time -- when he was to be released to the community -- that the prisoner was committed to FPH, where he currently remains.

62. DOC's facilities for female Class members are even more inadequate than those afforded male Class members. Despite the fact that a substantial number of the women in administrative segregation at Northern State Prison have serious mental disorders, Edna Mahan Correctional Facility ("EMCF") -- DOC's only women's prison -- does not have a designated housing unit for mentally ill female prisoners. Thus, although plaintiff D.M.'s mental health needs are such that she is similarly situated to the male prisoners with mental disorders housed in designated

housing units at Northern State Prison and New Jersey State Prison, she was assigned to general population at EMCF, rather than to a designated housing unit. While assigned to the general population, she incurred disciplinary charges, was transferred to administrative segregation, and experienced a devastating deterioration in her mental health condition. Were EMCF to establish a designated unit, some of the mentally ill women currently confined in administrative segregation cells could be diverted to more appropriate and therapeutic housing. Defendants are aware of the need for designated housing for female Class members but have deliberately failed to take the necessary steps to establish an appropriate long-term alternative to administrative segregation.

63. The dearth of outpatient therapy or other appropriate services for Class members contributes to their psychological deterioration. Defendants' failure to plan and budget for outpatient mental health services is inconsistent with proven, acceptable mental health practices in the community and in other prison systems.

64. The mental health care available to Class members in administrative segregation and disciplinary detention consists almost exclusively of psychotropic medication – medication which, by acting on the mind, is intended to treat the symptoms of mental illness. Even this limited treatment, however, is provided in an inadequate manner. Defendants CMS and CBS and employees subject to their supervision and control fail to explain either the necessity or side effects of psychotropic medications to Class members. Many prisoners receiving such medication

therefore refuse it either because of the medication's side effects, or out of fear that the medication will render them vulnerable to other prisoners and corrections officers. The serious, oftentimes painful and potentially fatal side-effects of psychotropic medications are exacerbated by defendants' CMS's and CBS's failure to adequately monitor the administration of medication to ensure that Class members are correctly taking their prescribed medications and that the medications are having their intended effect.

Although many side effects of psychotropic medications may be successfully prevented or treated with medication, A.O., L.K., J.W. and D.M. have not received the proper medications in appropriate dosages to offset these adverse effects. Because of the lack of an effective quality assurance program with respect to mental health care, as well as insufficient staffing, the problems that Class members experience in taking psychotropic medications frequently go undetected and uncorrected.

65. Defendants also fail to make appropriate psychotropic medications available to Class members. In October 1995, for instance, psychiatrists at FPH determined that plaintiff A.O. should be treated with Clozaril, a medication which the FDA has approved for the treatment of schizophrenia. However, because Northern State Prison does not stock Clozaril, the FPH staff decided not to begin a therapy which could not be continued upon A.O.'s return to the prison. A.O. was thereby deprived of appropriate mental health care treatment. Defendant CBS likewise does not include Clozaril on its list of available medications for Class members. More broadly,

defendant CBS has recently begun changing Class members' medications by substituting less expensive drugs, despite the fact that these cheaper drugs are less effective, are associated with greater side effects, and are therefore less safe than the drugs formally used.

66. Unnecessary deaths and injuries occur because of the absence of sufficient staff and adequate practices to identify and monitor Class members who are at risk of committing suicide. Prisoners kept in isolation attempt to commit suicide at a significantly higher rate than prisoners in the general prison population. Defendants Fauver, Hilton, Beyer, Forker, Farrell and Cevasco have failed to take necessary and appropriate measures to prevent suicide attempts among prisoners in administrative segregation and disciplinary detention, including providing corrections officers with adequate training in the area of suicide prevention and providing a physically safe environment for prisoners at risk of suicide.

67. Inadequate and improper policies and practices, adopted by Defendants, are used by DOC custody staff to restrain Class members in either strip cells or mechanical restraints such as restraining chairs and so-called "four point" restraints. The decision to so restrain Class members is often made by prison administrators and custody staff, sometimes without adequate input by mental health professionals. As a result, the mental health of these prisoners is not adequately considered in this decision. The use of such restraining devices often results in the

further deterioration of the already fragile mental conditions of Class members. An inmate in administrative segregation at East Jersey State Prison, for example, had a history of self-mutilating behavior. He was placed in a restraining chair for four hours on April 5, 1995, after which he was returned to his administrative segregation cell. He proceeded to tear out his eyeball and throw it at a corrections officer.

68. Defendants Fauver, Hilton and Beyer have also failed to adequately train corrections officers to recognize the signs of mental illness among prisoners in the general population as well as in disciplinary detention and administrative segregation. Custody staff assigned to disciplinary detention and administrative segregation facilities do not receive any special training, despite the high concentration of mentally ill prisoners in these facilities. The failure to train corrections officers on how to respond appropriately to prisoners whose mental disorders cause them to engage in extremely bizarre and uncontrolled behaviors places Class members in jeopardy of physical and verbal abuse from the officers. In addition, their lack of training leaves corrections officers unable to determine which prisoners are in urgent need of psychiatric assistance. Consequently, Class members often do not receive any mental health attention until they have suffered further psychological or physical injury.

69. As a result of Defendants' deliberate indifference to these deficiencies in mental health treatment, staffing, training and housing, as well as the

conditions of isolation and sensory deprivation in disciplinary detention and administrative segregation facilities, Class members presently suffer unnecessary physical pain, mental anguish and temporary or permanent exacerbation of their mental disorders while confined in administrative segregation and disciplinary detention.

DOC's Abdication of Responsibility for Medical Care to CMS

70. On July 2, 1995, DOC issued an advertised bid proposal to privatize medical, dental, psychiatric and psychological services provided to prisoners incarcerated in DOC-operated facilities. A copy of the portion of the proposal relating to mental health services is attached hereto as Exhibit A. Defendant CMS submitted its bid on September 29, 1995, which DOC accepted. A copy of the portion of the bid relating to mental health services is attached hereto as Exhibit B.

71. The advertised bid proposal and CMS's bid proposal together comprise the contract ("CMS contract") pursuant to which defendant CMS is providing health care services. DOC agreed to pay defendant CMS approximately \$62.4 million per year for a three-year contract.

72. DOC's purpose in privatizing medical services was to reduce DOC expenditures on health care for prisoners. In a press release issued on November 28, 1995, by DOC, defendant Fauver and Governor Christie Whitman announced that the contract with defendant CMS would result in an annual savings of \$20 million. Defendant Fauver and Governor Whitman also announced that under the CMS contract,

DOC would reduce annual health care expenditures per prisoner from about \$3,800 to \$2,800.

73. The formula for determining defendant CMS's compensation is based on the number of prisoners housed in state correctional facilities, regardless of the amount of or cost of the medical, dental, psychological and psychiatric services which defendant CMS provides. Thus, under the managed care CMS contract, CMS's profit is increased by providing the least expensive services to DOC prisoners, including Class members.

74. The CMS contract obligates CMS to provide extensive services to Class members, including the following, which are set forth in full in Exhibits A and B:

- (a) psychiatric evaluations of every prisoner housed in administrative segregation and disciplinary detention within three days of their arrival and afterwards, every ten days;
- (b) psychiatric evaluations of prisoners within 24 hours of the onset of their exhibiting unusual behavior;
- (c) psychiatric and psychological crisis care and prompt referrals of prisoners requiring greater care than the State correctional facilities are able to offer;

- (d) psychiatric monitoring of prisoners receiving psychotropic medication;
- (e) psychological evaluation within 24 hours of prisoners with difficulties adjusting to prison or who request psychological services;
- and
- (f) psychological case management, including therapy and crisis care, for mentally ill prisoners.

75. Defendant CMS subcontracted certain of the responsibilities described in paragraph 74 to CBS for approximately \$376,341 per month ("the subcontract").

76. Defendants CMS and DOC entered into the CMS contract with the intention that Class members would benefit from the services which CMS agreed to provide. Class members are also the intended beneficiaries of the CBS subcontract.

77. On April 27, 1996, defendant CMS began providing medical and psychiatric services to Class members, pursuant to the CMS contract. The takeover of psychological services by defendant CMS and defendant CBS occurred on August 29, 1996.

78. Since defendant CMS assumed responsibility for prisoners' medical and psychiatric care, defendant CMS has failed to perform the functions

required by the CMS contract and specifically, the functions described in paragraph 74, supra.

79. Since defendant CBS assumed responsibility for prisoners' medical and psychiatric care, defendant CBS has failed to perform the functions required by the CMS contract, the subcontract, and specifically, the functions described in paragraph 74, supra.

80. The privatization of mental health services has not remedied the grossly inadequate mental health care which Class members receive in large part because defendants CMS and CBS have continued DOC's practice of failing to provide adequate mental health professional staff. At New Jersey State Prison, for example, a single psychiatrist is responsible for providing all psychiatric care for all mentally ill prisoners housed in the prison's approximately 2000 bed facility, all while working just half the time of a full-time employee. He reported that the prison required four times the current psychiatric coverage to provide adequate care.

81. As a result of defendants CMS and CBS's failure to provide sufficient professional mental health staff, Class members remain incarcerated in administrative segregation without access to essential mental health treatments. Defendants CMS and CBS are unable to even identify prisoners receiving treatment or those in need of treatment, much less provide the necessary care. Consequently, grossly

psychotic and dysfunctional Class members have been all but abandoned by the skeleton staff of mental health professionals now employed by defendants CMS and CBS.

82. Despite the obvious failure of defendants CMS and CBS to perform the mental health services required under their respective agreements, defendants Fauver, Hilton, Beyer, Forker and Farrell have failed to take the necessary measures to enforce these agreements to ensure that Class members receive the services promised by the advertised bid proposal and CMS's proposal as well as those services that are constitutionally required.

Defendants' Awareness and Deliberate Indifference to the Inadequacies in DOC's Disciplinary Process and Mental Health Care With Regard to Prisoners With Serious Mental Disorders

83. The DOC defendants are aware that Class members' mental disorders are exacerbated by placing them in administrative segregation and disciplinary detention. Despite this knowledge, the DOC defendants and State employees under their supervision continue to place such prisoners in those facilities, sometimes for years at a time.

84. DOC defendants are also aware that DOC's disciplinary process fails to take account either of the role a prisoner's mental disorder plays in a given infraction or whether the prisoner is competent to understand the infraction charged. In August 1993, a prisoner at New Jersey State Prison filed a Petition for Rulemaking pursuant to N.J.A.C. 10A:1-1.2. The Petition sought an amendment to the rules

governing prisoner discipline. N.J.A.C. 10A:4-9.15. The proposed amendment provided that where an prisoner is charged with a disciplinary infraction while under the care of a psychologist or psychiatrist or the prisoner has been placed in an observation cell as a result of alleged misconduct, the treating physician must report to the hearing officer as to: (1) the prisoner's competency, i.e., whether the prisoner's current mental status precludes participation in the disciplinary process; (2) whether the prisoner's mental status contributed to the alleged disciplinary offense; and (3) whether the prisoner's mental disorder contraindicates any particular form of punishment.

85. Defendant Fauver, following consultation with defendants Hilton, Beyer, O'Neill, rejected the Petition in its entirety on October 18, 1993.

86. The Public Advocate, on numerous occasions during 1993 and 1994, brought to the attention of defendants Fauver and Beyer DOC's failures with regard to the provision of adequate mental health care for prisoners in New Jersey's state prisons.

87. In 1994, the Public Advocate, through the Office of Inmate Advocacy and the Division of Mental Health Advocacy, informed defendants Fauver, Hilton and Beyer of the special problems of mentally ill prisoners in administrative segregation. In a report dated April 5, 1994, which is annexed hereto as Exhibit C, the Public Advocate asserted that approximately one-third of the prisoners housed in administrative segregation units were mentally ill, in need of psychiatric treatment, and

had been punished and placed in isolation for displaying symptoms of their illness. The report also noted that DOC had failed to train corrections officers to recognize the signs of mental illness and to respond to those needs.

88. Defendants Fauver, Hilton and Beyer received the report described in paragraph 87, supra. Defendants failed to correct any of the reported inadequacies concerning the punishment and treatment of mentally ill prisoners confined in administrative segregation.

89. On April 5, 1994, Susan Remis Silver, the director of the Office of Inmate Advocacy, informed defendant Beyer by letter:

"Unfortunately, neglect of the mentally-ill inmates in the ACSU [Administrative Close Segregation Unit] has continued to be a serious problem without any improvement in the conditions. Our investigation has revealed that, in many cases, inmates are not being screened to determine a need for hospitalization. Nor are inmates provided with even minimal mental health care. Since only a few hospital beds exist in the Forensic Psychiatric Hospital for the entire population of mentally ill inmates in ACSU (as well as other prisons) the prison psychiatrists are not hospitalizing even severely ill patients. The result of this has been inmate injury and death."

A copy of the letter, which is annexed hereto as Exhibit D, was forwarded to defendant Fauver.

90. In a subsequent meeting on May 24, 1994, between Ms. Silver and defendant Beyer, defendant Beyer acknowledged the existence of many of the problems outlined in Ms. Silver's letter of April 5, 1994. Nevertheless defendants

have never implemented any of the proposals relating to the punishment and treatment of mentally ill prisoners set forth in Exhibits C and D to this Complaint.

91. On July 1, 1994, the New Jersey state legislature abolished the Public Advocate's office, including the Office of Inmate Advocacy and the Division of Mental Health Advocacy. There is currently an Inmate Advocacy Unit in the Office of the Public Defender. However, its attorney is not permitted to bring litigation concerning the punishment and treatment of mentally ill prisoners. See N.J.S.A. 2A:158A-7(n); N.J.S.A. 52:27E-50 et seq.

92. Defendants, with the exception of defendant O'Neill, are aware that Class members are not receiving appropriate mental health services. Defendants, with the exception of defendant O'Neill, are aware that Class members suffer unnecessarily from the untreated or poorly treated symptoms of their mental illnesses.

CAUSES OF ACTION

I.

Cruel and Unusual Punishment in Violation of the Eighth and Fourteenth Amendments to the United States Constitution

93. Plaintiffs repeat and reallege paragraphs 1 through 92 above as if the same had been set forth herein.

94. By their policies, practices and acts, Defendants have with deliberate indifference violated the rights of Class members to be free from cruel and unusual punishment as guaranteed by the Eighth and Fourteenth Amendments to the

United States Constitution. These policies and practices established and permitted by Defendants violate 42 U.S.C. § 1983 as follows:

(a) Class members are subjected to disciplinary hearings even if they are incompetent to participate in such hearings;

(b) Class members have been punished for actions for which they were not responsible due to mental illness;

(c) DOC hearing officers have punished Class members without obtaining an assessment from their mental health care providers to determine the role that their mental disorders played in the charged behavior;

(d) Class members are placed in administrative segregation units despite DOC's knowledge that the conditions of administration are counter-therapeutic and lead to the deterioration of Class members' mental conditions;

(e) the Defendants fail to provide adequate mental health treatment to Class members while they are housed in either disciplinary detention, administrative segregation or within the general prison population.

II.

Violation of the Americans with Disabilities Act of 1990

95. Plaintiffs repeat and reallege paragraphs 1 through 94 above as if the same had been set forth herein.

96. Defendants have discriminated against Class members in violation of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132 by: (a) failing to reasonably accommodate Class members' handicaps by not providing adequate mental health care; (b) adjudicating disciplinary charges without reference to relevant mental health records; (c) adjudicating disciplinary charges without regard for the competency of Class members; (d) denying Class members access to mental health treatment, prison jobs and rehabilitative programs; and (d) deducting commutation time from Class members.

III.

Violation of Section 504 of the Rehabilitation Act of 1973

97. Plaintiffs repeat and reallege paragraphs 1 through 96 above as if the same had been set forth herein.

98. Defendants have discriminated against Class members in violation of § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended by the Civil Rights Restoration Act of 1987 by (a) failing to reasonably accommodate Class members' handicaps; (b) not providing adequate mental health care; (c) adjudicating disciplinary charges without reference to relevant mental health records; (d) adjudicating disciplinary charges without regard for the competency of Class members; (e) denying Class members access to mental health treatment, prison jobs and rehabilitative programs; and (f) deducting commutation time from Class members.

IV.

**Sex Discrimination in Violation of the Fourteenth
Amendment to the U.S. Constitution**

99. Plaintiffs repeat and reallege paragraphs 1 through 98 above as if the same had been set forth herein.

100. Defendants have discriminated against plaintiff D.M. and other female Class members because of their sex in violation of the rights guaranteed under 42 U.S.C. § 1983 and the Equal Protection Clause of the Fourteenth Amendment.

V.

Violation of the Due Process Clause of the Fourteenth Amendment

101. Plaintiffs repeat and reallege paragraphs 1 through 100 above as if the same had been set forth herein.

102. Defendants have violated Class members' due process rights under the Fourteenth Amendment by: (a) failing to ensure that Class members are mentally competent to participate in disciplinary hearings; (b) sentencing Class members to administrative segregation and disciplinary detention without examining the role that their mental disorders played in the charged conduct; and (c) confining Class members to administrative segregation, often for years at a time.

VI.

Breach of Contract, Pursuant to N.J.S.A. 2A:15-2

103. Plaintiffs repeat and reallege paragraphs 1 through 102 above as if the same had been set forth herein.

104. Defendant CMS has breached its contract with DOC by failing to provide the mental health services required by the contract, thereby causing injury to plaintiffs and Class members, who are intended third-party beneficiaries of the contract.

VII.

Breach of Contract, Pursuant to N.J.S.A. 2A:15-2

105. Plaintiffs repeat and reallege paragraphs 1 through 106 above as if the same had been set forth herein.

106. Defendant CBS has breached its subcontract with CMS by failing to provide the mental health services required by the subcontract, thereby causing injury to plaintiffs and Class members, who are intended third-party beneficiaries of the subcontract.

PRAYER FOR RELIEF

107. Class members have no adequate remedy at law to redress the wrongs set forth in this Complaint. Class members have suffered and will continue to suffer irreparable injury as a result of the unlawful acts, omissions, policies, and

practices of the Defendants as alleged herein, unless they are granted the relief they request.

108. Wherefore, plaintiffs request that this Court grant them the following relief:

(a) adjudge and declare that the acts, omissions, policies, and practices of the Defendants with regard to Class members violate 42 U.S.C. § 1983; the Eighth and Fourteenth Amendments to the United States Constitution; the Rehabilitation Act, 29 U.S.C. § 794; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132;

(b) enjoin Defendants, their agents, officials, employees, and all persons acting in concert with them, under color of State law or otherwise, from continuing the unconstitutional and illegal acts, conditions, and practices described in this Complaint;

(c) order Defendants, their agents, officials, employees, and all persons acting in concert with them, under color of State law or otherwise, to take all necessary actions to: (1) conduct a mental disorder prevalence study to determine the numbers and mental health needs of prisoners with serious mental disorders; (2) conduct comprehensive mental health screening examinations upon an prisoner's entry into DOC's custody to identify effectively those prisoners in need of mental health care; (3) establish and implement, both at the institutional and system-wide level, a

continuous quality improvement program with respect to the provision of mental health care; (4) provide Class members in administrative segregation with adequate mental health care, including, but not limited to, effective and appropriate psychotropic medications free of charge; (5) provide the most seriously mentally ill Class members, who require more intensive mental health care than could realistically be provided within administrative segregation, with adequate mental health treatment in a special housing unit dedicated solely to mental health use; (6) mandate mental health evaluation of Class members charged with disciplinary infractions to determine whether such prisoners are capable of undergoing DOC's disciplinary process, responsible for the charged conduct, and whether the Class member's disciplinary sentence should be mitigated as a result of his or her mental disorder; (7) cease punishing Class members for exhibiting symptoms of their mental disorders; (8) teach DOC corrections officers during pre-service and in-service training programs to recognize the signs and symptoms of mental illness and to prevent suicides, and to provide advanced training to corrections officers assigned to medical, mental health and high risk settings, including disciplinary detention and administrative segregation facilities, in suicide prevention and in the management of mentally ill prisoners; (9) adequately supervise DOC corrections officers to prevent recurrences of active abuse of prisoners by such officers; (10) take necessary and appropriate measures to prevent suicide attempts among Class members in disciplinary detention and administrative segregation, including providing

corrections officers with suicide prevention training, providing a physically safe environment for potentially suicidal Class members and providing adequate and appropriate mental health care to those Class members; (11) conduct a retrospective review of the records of Class members currently housed in administrative segregation to ensure that those prisoners are not being disciplined for offenses attributable to their mental illnesses; and (11) provide the services set forth in the advertised bid proposal, the CMS contract and the CBS subcontract with respect to mental health care.

(d) retain jurisdiction in this case until the unlawful and unconstitutional conditions and practices as alleged herein no longer exist and the Court is satisfied that they will no longer occur;

(e) grant plaintiffs the costs and expenses of maintaining this action, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and 42 U.S.C. § 12205; and

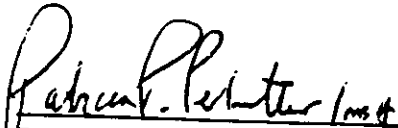
(f) grant any other relief that the Court deems just and proper.

Dated: June 23, 1997

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EXHIBIT B

MODEL FOR ENHANCED MENTAL HEALTH SYSTEM

A. SCOPE OF ENHANCED MENTAL HEALTH SERVICES:

This Plan is a comprehensive program developed to address the mental health needs of incarcerated individuals who fall under the auspices of the New Jersey Department of Corrections ("DOC"). This Plan, including the new units, will be designed to accommodate all types of mentally ill inmates, including the subset of mentally ill inmates who exhibit aggressive tendencies. The Plan has seven major components:

- (1) Reception Evaluations
- (2) Stabilization Units, (SU)
- (3) Residential Treatment Units, (RTU)
- (4) Transitional Care Units, (TCU)
- (5) Outpatient Care,
- (6) Inpatient psychiatric care, and
- (7) Construction

The DOC has in place at all of its facilities a policy on the Involuntary Administration of Psychotropic Medication. This policy, combined with the establishment of Stabilization Units, Residential Treatment Units and Transition Care Units places the DOC in a position to more effectively manage and treat those inmates who suffer from mental illness.

1. RECEPTION EVALUATIONS

One important factor is how the DOC will track inmates with mental illness to ensure that they receive the mental health services they need. This also includes discharge planning upon release from the DOC. An important aspect of this tracking system is the early identification and intervention of those inmates who suffer from mental illness. Enhanced evaluation services for the early identification of mental illness and suicidal behavior with quick access to intervention is necessary.

Reception evaluations will be psychological evaluations that will address the DOC's needs in two ways. The first goal of these evaluations will be to provide a comprehensive history of the inmate's mental health along with treatment recommendations. The second goal of these evaluations will be to provide the Classification Committee with useful information regarding the inmate's appropriateness for custody status and any specialized treatment that would benefit the inmate while incarcerated.

These reception evaluations will be completed within 72 hours of the inmate arriving at a reception facility. It is noted that nursing will be required to complete a nursing assessment, which will include a brief mental health assessment, to be conducted immediately upon arrival (in no cases longer than 4 hours after arrival) at a reception facility. When nursing identifies an inmate with a history of mental illness or suicidal intention, an immediate referral will be made to mental health. This referral will include a written assessment along with verbal communication

to the lead psychologist. If the nursing assessment is conducted after hours, the on-call psychiatrist will be contacted.

If placement on a SU or RTU is warranted, nursing and mental health will make the necessary arrangements to effectuate a transfer to an appropriate unit. When an inmate who has been identified at Central Reception & Assignment Facility ("CRAF") as being a "Special Needs" inmate is transferred to his parent institution, the lead psychologist at CRAF will contact the lead psychologist at the receiving institution and inform the psychologist of the transfer. This will ensure continuity of care.

Reception Staff

Staff to complete evaluations should be sufficient enough so that the mental health staff (psychologists) are not completing more than 15 evaluations per eight hour day. Additional Social Worker staff will be needed to provide the on-going treatment needs of inmates housed in reception facilities.

2. STABILIZATION UNITS

Stabilization Units (SU) for psychiatric/psychological emergencies will be established at Northern State Prison ("NSP"), New Jersey State Prison ("NJSP"), and Edna Mahan Correctional Facility for Women ("EMCFW"). These units will be regionalized to provide coverage for all 14 DOC facilities.

The goal of these units will be to provide short term (3 - 10 days), intensive mental health care to reduce acute symptoms,

stabilize the inmate or transfer the inmate to the Forensic Psychiatric Hospital ("FPH"). These units will be established so as to provide 24 hour nursing coverage. Psychiatric coverage will be on call 24 hours a day.

Suicide Watch Procedures will happen on these units when it is deemed that the inmate cannot be managed on his/her regular housing unit.

A. Bed Space

Bed space allocated for Stabilization Units will need to be fluid and flexible enough to expand and collapse as inmate needs vary. The institutions outlined below offer the most flexibility with regard to housing space availability.

I. New Jersey State Prison

NJSP will have access to 16 beds for females and 48 beds for males. Female inmates will be housed on 1GG, which has 16 beds available. It is likely that not all of these beds will be utilized at the same time. Bed space that is not being utilized for SU beds will be used as transitional housing for discharge from the SU.

Male inmates will be housed in the South Compound at NSJP. These housing units are set up in 48 bed units that can be separated into two 24 bed units. This flexibility will allow the DOC to designate one of these 24 bed units as a SU and the other to

serve as an overflow unit if needed. It will also make expansion of SU easier in the future.

II. Northern State Prison

NSP has a 30 bed unit adjacent to the hospital area that will be designated as an SU. It is a two-tiered unit that will also afford flexible housing. It is reasonable to assume that at least 15 of these beds will be utilized at any one time. The cells on the first tier would be designated as SU cells. The cells on the second tier would be used for either SU cells or transitional housing cells for mentally ill offenders.

III. Edna Mahan Correctional Facility

EMCFW will need to establish a small SU or two or three cells. These cells would be holding cells used prior to the inmate being transferred to NJSP's SU for females.

B. Treatment Review Committee

Each SU will establish a Treatment Review Committee which will be comprised of the treating psychiatrist, treating psychologist, nurse for the unit and correction officer representative. This committee will be responsible for directing an inmate's treatment while on the unit and discharge from the unit.

C. Criteria for Admission to a SU

- (1) Suicidal thought or other indicators of imminent self injurious behavior;
- (2) Exhibition of signs of emotional instability;
- (3) Abrupt behavioral changes in behavior that require close monitoring;
- (4) Exhibition of behavior that is not appropriate for the inmate's regular housing unit which may be an indication of underlying emotional disturbance;
- (5) Psychological/Psychiatric decompensation due to medication non-compliance;
- (6) Inmate is in need of Suicide Watch and it would best be accomplished on a SU rather than the inmate's regular housing unit.

Professional staff will clinically drive admission to a SU. All inter-institutional transfers into a SU will have the inmate's Medical/Dental record accompany the inmate to the SU. A nursing evaluation will be completed within 1 hour of placement of a SU. Nursing assessment will include relevant medical, mental health and medication issues. After placement on the SU, the RN assigned to the SU will contact the psychiatrist and obtain all necessary orders for medications, clothing articles, etc. The order will be documented in the inmate's Medical/Dental record.

A psychiatric evaluation will be completed within 24 hours of placement on a SU. A comprehensive treatment plan will be formulated and documented within 48 hours of placement on the SU.

This treatment plan will clearly outline relevant clinical issues and proposed treatment modalities to ameliorate the current crisis.

After hours placements will be done with the approval of the on-call Administrator.

D. Treatment Services While on the SU

Nursing coverage will be 24 hours a day. At a minimum, while on the SU, the inmate will be seen daily by the psychiatrist and the psychologist (Monday - Saturday). Treatment will center on those issues generated by the treatment plan. The primary mode of treatment will be individual psychotherapy. Mental health coverage will be Monday - Friday, 9 a.m. - 8 p.m. Saturday coverage will include 8 hours by mental health staff.

E. Discharge from a SU

The Treatment Review Committee will determine when the inmate is sufficiently stabilized to be either returned to his/her regular housing unit or a Residential Treatment Unit. Upon discharge, the Treatment Review Committee will outline additional mental health or medical services that are to be provided to the inmate upon discharge from the SU. These findings will be documented in the inmate's Medical/Dental record. The Treatment Review Committee chairperson will be responsible for notifying the lead mental health staff person of the facility where the inmate is to be transferred of the relevant clinical issues.

Inmates returned from FPH will be placed on a SU and then discharged to a Residential Treatment Unit when clinically appropriate.

E. Staff

Psychiatrists 1 (FTE): 35 inmates

Psychologists 1 (FTE): 50 inmates

Licensed Clinical Social Worker 1 (FTE): 25 inmates

Psychiatric nurse per unit: One nurse first shift (7 days per week)

Two Psychiatric nurses on second shift Monday - Friday

One Psychiatric nurse on second shift for both Saturday and Sunday

RN nursing staff coverage per unit (1 FTE) for third shift when psychiatric nurses are relieved.

Total possible beds: 97

3. RESIDENTIAL TREATMENT UNITS AND TRANSITIONAL CARE UNITS

The Residential Treatment Units and Transitional Care Units (step-down) share similar goals. Their objective is to stabilize, support and ensure positive reintegration of the inmate into a regular housing unit. On these units, there will be intensive, multi disciplinary programming available to the inmates. Admission

to and discharge from these units will be based on clinical decisions, supported by documentation in the medical record.

A. Goals of Residential Treatment Units (RTU)

The Residential Treatment Units will have two main objectives: (1) further stabilization of the inmate after the "crisis" has passed, and (2) provide meaningful programming aimed at aiding the inmate's adjustment to general population housing. It is reasonable to expect that some of these inmates may never develop the coping skills necessary to adjust to general population and, therefore, may never transfer out of an RTU.

B. Goals of Transitional Care Unit (TCU)

TCU will be a designation utilized for those inmates who are higher functioning and who have the potential to adjust to the general population housing. This unit will allow these inmates to make a gradual adjustment to general population.

C. Criteria for Admission to an RTU or TCU

Admissions determinations will be directed by mental health staff using the following criteria.

(1) Discharge from a SU

(2) Chronic mental illness with a poor adjustment to general population

(3) Abrupt behavioral change, but not severe enough to warrant Suicide Watch Procedures

- (4) Vague suicidal ideation (not actively self-injurious)

D. Programming Services

Within 24 hours of placement on an RTU, nursing staff will complete a nursing assessment, documenting relevant findings on the inmate's Mental/Dental record. Within 48 hours of placement on an RTU, the inmate will be interviewed by the psychiatrist and psychologist and have a treatment plan developed outlining short-term and long-term treatment goals. The treatment plan will also recommend appropriate programming. A day treatment program model will be utilized. The program staff will be multi disciplinary in nature (psychiatric nurses, teachers, recreation staff and occupational therapists). Program will be provided 8 a.m. - 8 p.m. Monday through Friday and 8 hours on Saturday and Sunday. Staff should be scheduled in such a way as to provide on site coverage by at least one mental health worker per unit, seven days a week. The inmate assigned to one of these units will be programmed with as much out of cell time as is clinically directed by the treatment plan.

E. Location of Units

1. New Jersey State Prison: NJSP will have two 48 bed units dedicated as an RTU. These units will ideally be in the South Compound and as close to the SU as is possible.
2. Northern State Prison: NSP will have two 40 bed units.

3. Southwoods State Prison: SWSP will house 127 inmates. These beds will be utilized by "higher functioning" inmates with mental illness who are programming at a higher level and who are more capable of making a suitable adjustment to general population. It is likely that due to the size of this unit there will be a mixture of inmates with regard to their stability. SWSP's program will be somewhat more flexible than NSP's or NSJP's because SWSP is classified as a Medium Security facility.

4. Edna Mahan Correctional Facility: EMCFW will have 15 beds designated as a RTU. These beds will be utilized for inmates who can be managed at EMCFW. Those inmates who cannot be managed within the confines of EMCFW will be transferred to NJSP for assignment in their RTU.

E. Staff

Psychiatrists 1 (FTE): 75 inmates

Psychologists 1 (FTE): 30 inmates

Licensed Clinical Social Worker 1 (FTE): 25 inmates

Occupational Therapists 1 (FTE): 30 inmates

Psychiatric nurse per unit: One nurse first shift (7 days per week)

Two Psychiatric nurses on second shift Monday - Friday

One Psychiatric nurse on second shift for both Saturday and Sunday

RN nursing staff coverage per unit (1 FTE) for third shift when psychiatric nurses are relieved.

In addition, SWSP will add an extra RN on each shift (7 days per week) due to the population of this unit.

Total possible beds: 318

G. Discharge Procedures

Every inmate on an RTU or TCU will be reviewed by the Treatment Review Committee at least monthly to document the inmate's progress towards treatment plan goals. These reviews will be documented in the inmate's Medical/Dental record. When the committee feels that the inmate has maximized treatment benefit a recommendation will be made to have the inmate returned to a regular housing population unit.

Once discharged from this unit, the chairperson of the Treatment Review Committee will be responsible for contacting the lead psychologist of the institution the inmate will be transferred to so as to ensure continuity of care.

4. OUTPATIENT SERVICES

Out patient services need to be sufficient enough so that inmates discharged from RTU's will have ample programming available to them in general population, as well as having enough staff available to provide mental health services to the rest of the

general population of inmates who may not suffer from a diagnosable mental illness. The ratios below reflect this intention. This will include mental health rounds in the Administrative Segregation Units. These rounds will be scheduled to ensure that every inmate in Administrative Segregation is seen at least once every 10 days by a mental health professional.

The staff below does not include psychological staff to complete Psychological Evaluations for the N.J. State Parole Board or for the Institutional Classification Committees.

A. Staff

1 FTE Psychiatry: 125 inmates on case load

1 FTE Psychologist or Licensed Social Worker: 50 inmates on case load

5. INPATIENT SERVICES

Inpatient Psychiatric Care will continued to be provided through the civil commitment process at FPH.

6. TRAINING

A. Correction Officer Training

Correction Officer staff will need enhanced training. This will involve 2 different focuses. The first will be to train every officer on the early warning signs of mental illness and how it can be manifested in a correctional environment. This will be very similar to what the recruits receive at the Correction Officer

Training Academy. Every Officer should have yearly training as a refresher on mental health issues. It is conceivable that a 3 or 4 year cycle of training can be established so that it is not repetitive.

The second focus involves those officer and supervisory staff who will be responsible for working on the SU and RTU housing units. This training will need to be more involved and extensive than that given to the corrections officer who is not working on one of these units. Training components will be: understanding mental illness, the different types of mental illness, how to manage a mentally ill inmate, disciplinary procedures for mentally ill inmates when they are housed on SU and RTU, crisis intervention strategies, early warning signs of suicide, stress management and training on new policies and procedures that will be generated due to the creation of these units.

At a minimum, all corrections officers should receive 4 - 7 hours of mental health training per year. An additional 7 hours is appropriate for those officers who are working on the SU and RTU.

B. Other Staff Training

Internal Affairs investigators will need training similar to correction officer training with a special focus on investigating a charge or other serious incident given an inmate's mental illness.

Disciplinary Hearing Officers will need additional and on-going training.

Administrators and their staff will also need on-going training on managing the mentally ill inmate.

The extensiveness of this training is justifiable because the literature in this area indicates that these types of units ultimately reduce disciplinary problems and staff assaults. There are also less emergencies because staff have a better awareness of inmates' problems and are able to step in quicker to resolve potential problems. Better-trained staff should translate into quicker identification of potential problems and therefore quicker intervention by mental health staff.

7. CONSTRUCTION

Renovations to EMCFW's C Cottage may be necessary. Anticipated renovations include security to allow programming in the basement of C Cottage along with new windows in this cottage to allow for better airflow. Modifications to existing beds will also be necessary to prevent suicide attempts. New security doors, cameras and additional correction officer staff may be needed to ensure an adequate treatment program.

NSP could benefit from some modification to the SU. It would make sense to convert 2 cells in this unit to be able to handle Close Watch cases. These modifications can include cameras, and cell modification in minimize suicidal acting out. Minor modifications to existing space to make it more user friendly to treatment staff is also needed. On the RTU, some additional caging

may be needed to allow more programming opportunities for inmates on these units.

SWSP may need to convert 2 to 3 cells on the first tier to be able to provide for inmates on Close Watch Procedures on the RTU.

NJSP and SWSP could benefit from caged areas to allow for more program space. It is not believed that there will be major construction issues at these 2 facilities.

The DOC will provide facilities for confidential mental health treatment of inmates who require such services. Confidential settings for mental health treatment will be created in administrative segregation units, stabilization units, residential treatment units and transitional care units.

the Settlement Agreement is capable of judicial enforcement by way of specific performance unless otherwise prohibited by law.

XIV. SURVIVAL OF CONFIDENTIALITY PROVISIONS

The confidentiality provisions and obligations of this Settlement Agreement shall survive the conclusion of this action.

XV. PLAINTIFFS' ATTORNEYS FEES

Defendants shall pay Plaintiffs' attorneys' fees and costs in the amount of \$1,220,000. Except as otherwise provided herein, Plaintiffs shall not make any further application for attorneys' fees and costs.

Debevoise & Plimpton

Seton Hall University
School of Law
Center for Social Justice

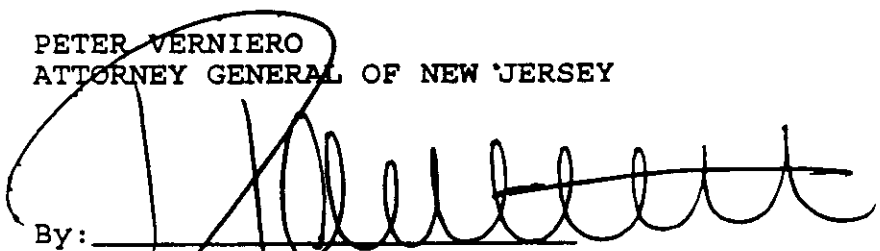
By: _____
Sandra Cobden, Esquire
Attorney for Plaintiffs

By: _____
Patricia Perlmutter, Esq.
Attorney for Plaintiffs

DATED:

DATED:

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By: 
Dianne M. Moratti
Deputy Attorney General
Attorney for Defendants

DATED: 5/12/99

PROPOSALS

CORRECTIONS

CORRECTIONS

(a)

THE COMMISSIONER

Definitions; Forms; Schedule of Sanctions for Prohibited Acts Committed at the Prison Complex; Schedule of Sanctions for Prohibited Acts Committed at the Youth Complex; Investigation; Disciplinary Sanctions; Placement in Disciplinary Detention; Medical and Psychiatric Services; Investigation of Appeal; Special Administrative Segregation Review Committee (S.A.S.R.C.)

Proposed Amendments: N.J.A.C. 10A:1-2.2; 10A:4-1.4, 5.1, 5.2, 9.5, 9.17, 10.2, 10.8 and 11.4; and 10A:5-3.2

Authorized By: Jack Terhune, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6, 30:1B-10 and *C.F. vs. Terhune et al.*, Civil Action No. 96-1840 (AET).

Proposal Number: PRN 1999-97.

Submit comments by May 5, 1999 to:
Kathleen C. Wlochuk, Special Assistant
Office of the Commissioner
Department of Corrections
PO Box 863
Trenton, New Jersey 08625-0863

The agency proposal follows:

Summary

In compliance with *C.F. v. Terhune et al.*, Civil Action No. 96-1840 (AET), the amendments proposed herein represent the efforts of the New Jersey Department of Corrections to ensure that the Departmental disciplinary procedures provide for consideration of the mental health needs of inmates.

The Commissioner of the Department of Corrections has directed that correctional facility Superintendents shall be known as Administrators; accordingly, all references to Superintendent have been amended throughout the text.

A definition for "special needs inmate" has been added to N.J.A.C. 10A:1-2.2 to establish a statement of meaning for interested individuals.

N.J.A.C. 10A:4-1.4 has been amended to include a new form related to inmate discipline that will be used by staff to request a psychological/psychiatric evaluation.

New paragraphs have been added to N.J.A.C. 10A:4-5.1(a) and (b) and 5.2(a) and (b) to address the mental health needs of special needs inmates. In N.J.A.C. 10A:4-5.2(d)(7), the cite for disposal of contraband personal property seized within a correctional facility has been corrected.

To help ensure that a determination as to whether or not an inmate is a special needs inmate is provided to the Disciplinary Hearing Office/Adjustment Committee, additional responsibilities for the coordinator of investigations have been added to N.J.A.C. 10A:4-9.3(c). New subsection (d) has been added to the investigation process to establish a procedure for the Disciplinary Hearing Office/Adjustment Committee to determine the need to obtain a psychological/psychiatric evaluation, to set forth the handling of Form HSU-010, and to establish the requirement that the Disciplinary Hearing Office/Adjustment Committee consider the evaluation along with other information gathered during the investigation.

The requirement that the disciplinary action be individualized by considering the history or presence of mental illness of an inmate has been added to N.J.A.C. 10A:4-9.17(a). New subsection (f) has been added to N.J.A.C. 10A:4-10.2 to ensure that appropriate intervention services are provided to the inmate and to ensure that the Administrator is immediately informed when mental health staff become aware of the mental decompensation of an inmate confined in Disciplinary Detention.

The references to "medical staff" and "medical person" respectively in N.J.A.C. 10A:4-10.8(a) and (b) have been amended to health care staff for consistency with language throughout the proposed amendments. New language has been added to N.J.A.C. 10A:4-10.8(c) to establish provisions for the Administrator or designee to receive documentation of evaluation findings

in a timely manner. Additionally, a new provision requires that the documentation of evaluation findings be placed in the inmate's medical/dental record.

To ensure that the appeal review process includes the consideration of the history or presence of mental illness of an inmate, new paragraph (e)4 has been added to N.J.A.C. 10A:4-11.4. In N.J.A.C. 10A:5-3.2, new paragraph (1)5 has been added to establish that an inmate whose mental health is decompensating should be released from Administrative Segregation.

Social Impact

The proposed amendments represent the intent of the Department of Corrections to consider the mental health needs of special needs inmates who are unable to meet the functional requirements of prison life without mental health treatment. The proposed amendments are necessary to identify inmates with mental illness who are subject to disciplinary action due to a finding of guilt to a prohibited act. This identification is necessary to ensure that special needs inmates are referred to the Mental Health Unit for appropriate care/treatment, potential mental decompensation is appropriately handled in Disciplinary Detention and Administrative Segregation Units and factors considered in an appeal review, include a history or presence of mental illness.

The Department anticipates a positive social impact as a result of the adoption of these amendments because enhanced evaluation services for early identification of mental illness and early care/treatment will enable the Department to more effectively manage and treat those inmates who suffer from mental illness.

Economic Impact

The proposed amendments should not result in any economic impact because additional funding is not necessary to implement or maintain the requirements of the amendments.

Federal Standards Statement

A Federal standards analysis is not required for the proposed amendments because the rulemaking requirements of the Department of Corrections are governed by N.J.S.A. 30:1B-6 and 30:1B-10. The proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The adoption of the amendments proposed will cause neither the generation nor the loss of any jobs.

Agriculture Industry Impact

The adoption of the amendments proposed will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments affect inmates, the New Jersey Department of Corrections and governmental entities responsible for the enforcement of the rules.

Full text of the proposal follows (additions indicated in boldface; text deletions indicated in brackets (this)):

10A:1-2.2 Definitions

The following words and terms, when used in N.J.A.C. 10A:1 through 10A:30, shall have the following meanings:

"Special needs inmate" means an inmate who suffers a DSM IV, axis I and/or axis II disorder which interferes with the inmate's ability to meet the functional requirements of prison life without mental health treatment.

10A:4-1.4 Forms

(a)-(b) (No change.)

(c) The following form related to inmate discipline shall be reproduced by each correctional facility from an original that is available by contacting the Health Services Unit:

L. HSU-010 Request for Psychological/Psychiatric Evaluation.

10A:4-5.1 Schedule of sanctions for prohibited acts committed at the Prison Complex

(a) A finding of guilt for any offense preceded by an asterisk (*) shall render the offender subject to one or more of the following sanctions:

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1.-3. (No change.)

4. Loss of commutation time up to 365 days, subject to confirmation by the [Superintendent] Administrator;

5.-8. (No change.)

9. Up to 14 hours extra duty, to be performed within a maximum of two weeks; [and/or]

10. Up to two weeks confinement to room or housing area; and/or

11. Referral to the Mental Health Unit for appropriate care/treatment.

(b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions:

1.-2. (No change.)

3. Up to 60 days loss of commutation time, subject to confirmation by the [Superintendent] Administrator;

4.-8. (No change.)

9. Up to 14 hours extra duty, to be performed within a maximum of two weeks; [and/or]

10. Up to two weeks confinement to room or housing area; and/or

11. Referral to the Mental Health Unit for appropriate care/treatment.

(c) (No change.)

(d) In addition to the sanctions in (a), (b) and (c) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the [Superintendent] Administrator. Such administrative action may include, but not be limited to, the following:

1.-8. (No change.)

10A:4-5.2 Schedule of sanctions for prohibited acts committed at the Youth Complex

(a) A finding of guilt for prohibited acts preceded by an asterisk (*) shall render the offender subject to one or more of the following sanctions:

1.-8. (No change.)

9. Loss of commutation time up to 365 days, subject to confirmation by the [Superintendent] Administrator ([Inmates] inmates serving indeterminate sentences are not subject to this sanction, but inmates housed in the youth complex who are serving prison terms are subject to this sanction); and/or

10. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days; and/or

11. Referral to the Mental Health Unit for appropriate care/treatment.

(b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions:

1.-2. (No change.)

3. Up to 60 days loss of commutation time subject to confirmation by the [Superintendent] Administrator (inmates serving prison terms);

4.-8. (No change.)

9. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7); [and/or]

10. Suspension of one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days; and/or

11. Referral to the Mental Health Unit for appropriate care/treatment.

(c) (No change.)

(d) In addition to the sanctions in (a), (b) and (c) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the [Superintendent] Administrator. Such administrative action may include, but not be limited to, the following:

1.-6. (No change.)

7. Disposal of an item(s) in accordance with the provisions of N.J.A.C. 10A:3-6.3 and 6.4(b)2, 3 and 4).

10A:4-9.5 Investigation

(a) (No change.)

(b) The [Superintendent] Administrator shall appoint a coordinator of investigations who shall be an employee of supervisory level. The

[Superintendent] Administrator may also appoint one or more investigating officers who shall ordinarily be employees of supervisory level who have not been involved in the particular incident to be investigated.

(c) The coordinator shall be responsible for [all]:

1. All investigations of disciplinary charges. The coordinator may assign individual investigations to an investigating officer who shall be responsible to the coordinator for completing the assignments[.];

2. Forwarding a list of all inmates who have a pending disciplinary infraction to the Mental Health Unit for a determination as to which inmates should be considered special needs inmates; and

3. Ensuring that the Mental Health Unit provides said determination and providing this information to the investigator and Disciplinary Hearing Officer/Adjustment Committee.

(d) The Disciplinary Hearing Officer/Adjustment Committee shall determine the need to obtain a psychological/psychiatric evaluation based upon the nature of the infraction, the determination from the Mental Health Unit regarding whether the inmate is a special needs inmate and/or any other relevant information.

1. In those cases where a psychological/psychiatric evaluation is necessary, the Disciplinary Hearing Officer/Adjustment Committee shall forward Form HSU-016, Request for Psychological/Psychiatric Evaluation to the Lead Psychologist.

2. Upon completion and receipt of the evaluation report from the Lead Psychologist, the Disciplinary Hearing Officer/Adjustment Committee shall consider the information provided in the evaluation report along with any other information gathered during the investigation.

Recodify existing (d)-(g) as (a)-(h) (No change in text.)

10A:4-9.17 Disciplinary sanctions

(a) The disciplinary action may be individualized [in keeping with] by considering such factors as the:

1.-3. (No change.)

4. Underlying reasons for noncompliance with regulations; [and]

5. Correctional goals set for the inmate[.]; and

6. The inmate's history or presence of mental illness.

(b)-(c) (No change.)

10A:4-10.2 Placement in Disciplinary Detention

(a)-(e) (No change.)

(f) If at any time during the inmate's confinement in Disciplinary Detention, the mental health staff become aware of the mental decomposition of an inmate, the health care staff shall immediately provide appropriate intervention services and refer the matter to the correctional facility Administrator or designee.

10A:4-10.8 Medical and psychiatric services

(a) Inmates in Disciplinary Detention shall receive a daily visit by a member of the [medical] health care staff which can be a nurse, paramedic, doctor or other authorized health care personnel.

(b) Medical and psychiatric emergencies shall be attended to immediately. Requests for medical attention for inmates in nonemergency situations shall be responded to by the physician, or a [medical person] health care staff member designated by the physician within 24 hours.

(c) Whenever it shall appear that an inmate is suffering from an emotional or psychiatric disturbance, arrangements shall be made for a psychiatric or psychological evaluation. Documentation of the evaluation findings shall be forwarded to the Administrator or designee by the health care staff member who conducted the evaluation prior to completion of the shift of the health care staff member on the day the evaluation is conducted. A copy of the evaluation findings documentation shall be placed in the inmate's medical/dental record.

10A:4-11.4 Investigation of appeal

(a) The [Superintendent or his or her] Administrator or designee may order an independent investigation of the charge and proceedings of the disciplinary hearing in those instances in which the inmate's appeal and information furnished after the initial disciplinary hearing appear to warrant such action.

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(b) The [Superintendent] Administrator shall have the option to request a total or partial reinvestigation of the charge or proceedings of the hearing. The reinvestigation may be conducted by any person or unit designated by the [Superintendent] Administrator, provided, however, that the individual shall have had no contact with the issuance of the first investigation of the charge.

(c) (No change.)

(d) If on the basis of new evidence, the [Superintendent] Administrator may also request a polygraph examination as part of the reinvestigation. Such requests shall be in accordance with N.J.A.C. 10A:3-7, Polygraph Examinations.

(e) In reviewing an appeal the following factors shall be considered:

1.-2. (No change.)

3. Whether the sanction imposed was proportionate to the offense in view of the inmate's recent disciplinary history and present custody status except in the case of a termination of contact visits sanction as established in N.J.A.C. 10A:4-5.1(c) or 5.2(c); [and/or]

4. Whether the inmate has a history or presence of mental illness; and/or

[4].5. Whether extenuating circumstances were considered.

10A:5-3.2 Special Administrative Segregation Review Committee (S.A.S.R.C.)

(a)-(b) (No change.)

(i) Upon review of the inmate's behavior, the S.A.S.R.C. may determine that the inmate should be released from the Administrative Segregation Unit. The S.A.S.R.C. shall determine that an inmate should be released from the Administrative Segregation Unit when it concludes that:

1.-2. (No change.)

3. The inmate's presence in the general population will not pose a threat to the safe, secure and orderly operations of a correctional facility; [and]

4. The inmate's presence in the general population prior to completion of the sanction as specified by the Disciplinary Hearing Officer/ Adjustment Committee would not adversely affect the goals of a correctional facility; and/or

5. The inmate has a history or presence of mental illness and continued confinement in Administrative Segregation is likely to add to the inmate's mental decompensation.

(j)-(p) (No change.)

(a)

THE COMMISSIONER

Mail, Visits and Telephones

Scope; Correspondence To or From Other Inmates;

Limitation on Source of Publications; Publications

To or From Other Inmates; Limitation on

Packages; and Inspection of Incoming Packages

Proposed Amendments: N.J.A.C. 10A:18-1.2, 2.5, 4.2, 5.2 and 5.3

Proposed Repeal: N.J.A.C. 10A:18-4.4

Authorized By: Jack Tarlone, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRM 1999-93.

Submit comments by May 5, 1999 to:

Kathleen C. Wolski, Special Assistant
Office of the Commissioner
Department of Corrections
PO Box 863
Trenton, New Jersey 08625-0863

The agency proposal follows:

Summary

The provisions regarding packages established in subchapter 5 apply to inmates housed in facilities, other than county jails in accordance with contractual agreements with the Department of Corrections; therefore, the scope of the chapter has been amended and reformatted as N.J.A.C. 10A:18-1.2.

N.J.A.C. 10A:18-2.5 regulates correspondence to or from other inmates and has been reformatted into two subsections. For security purposes, new subsection (b) has been added to stipulate correspondence to or from other inmates may be limited as authorized by designated administrative staff.

N.J.A.C. 10A:18-4.2 establishes the limitations on sources of publications. N.J.A.C. 10A:18-4.2(a) has been amended to state an inmate shall be permitted to receive hardcover books, paperback books, magazines and other softcover publications from the publisher or source of sale only. Subsection (b) has been deleted. These proposed amendments are necessary for consistency with N.J.A.C. 10A:18-5.2. The words "by the inmate" have been deleted from existing subsection (e), reclassified as (d), because the intent of the rule is to require prepayment rather than stipulating by whom.

N.J.A.C. 10A:18-4.4 has been deleted to comply with the proposed amendments at N.J.A.C. 10A:18-4.2 that stipulate publications shall be permitted from the publisher or source of sale only.

To help ensure proper inmate notification, language has been added to N.J.A.C. 10A:18-5.2(a)1 to require the promulgation of correctional facility internal management procedures regarding the limitations on packages. Since all packages must now be received from source of sale only, the unnecessary statement "received from source of sale" has been deleted from subsection (d). N.J.A.C. 10A:18-5.3(a) has been amended to include an exception for those packages that shall be returned to the sender unopened. Subsection (c) has been amended for purposes of clarification.

Social Impact

The proposed amendments and repeal to limit inmate-to-inmate correspondence, the source of publications and permissible items for inmate receipt in packages are necessary for security purposes.

The limitations set forth in these amendments should help reduce instances of contraband being concealed and introduced into correctional facilities while allowing inmates to receive certain beneficial items. The Department of Corrections is aware that whenever privileges are limited there will be opposition. However, the intent of the Department is to provide an environment for incarcerated persons which encourages rehabilitation while ensuring the safe, secure and orderly operation of correctional facilities. The privilege of permitting inmates to receive packages from any source has been problematic and costly to the Department and the State because there have been many instances of contraband being concealed in packages. Therefore, the Department believes it is in the best interest of the State to implement the proposed limitations on the source from which publications and packages can be received.

Economic Impact

The proposed amendments and repeal should not result in any increased economic impact because additional funding will not be necessary to implement or maintain the proposed amendments. The Department of Corrections believes that the proposed amendments will have a positive economic impact because the ability to deter the introduction of contraband into correctional facilities reduces the possibility for destructive behavior associated with contraband items. Such behavior can result in injury to persons and destruction or damage to property where State funds must then be utilized.

Federal Standards Statement

A Federal standards analysis is not required for the proposed amendments and repeal because the rulemaking requirements of the Department of Corrections are governed by N.J.S.A. 30:1B-6 and 30:1B-10. The proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The adoption of the amendments and repeal proposed will cause neither the generation nor the loss of any jobs.

Agriculture Industry Impact

The adoption of the amendments and repeal proposed will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments and repeal do not impose reporting, recordkeeping or other

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CRIMINAL FILED

APR 08 1998

C.F., D.M., L.K., A.O. and J.W.,
individually, and on behalf of all
others similarly situated,

PLAINTIFFS,

v.

GARY J. HILTON,
HOWARD L. BEYER, EUGENE F. O'NEILL,
JOHN FORKER, DR. THOMAS FARRELL,
and DR. RICHARD CEVASCO, CORRECTIONAL
MEDICAL SERVICES, INC. AND
CORRECTIONAL BEHAVIORAL
SOLUTIONS, INC.

DEFENDANTS.

Civil Action No. 96-1840 (AET)

Magistrate Judge
John J. Hughes

**AMENDED CONFIDENTIALITY
AND PROTECTIVE ORDER**

~~THIS MATTER~~ having been opened to the Court by Kalison & McBride, P.A., attorneys for Defendant, Correctional Behavioral Solutions of New Jersey, Inc. ("CBS") (Paul R. Murphy, Esq. appearing), and Lally, Holtzman, Gilligan, Duffin & Quasti, attorneys for Defendant Correctional Medical Services, Inc. ("CMS") (Stephen D. Holtzman, Esq. appearing), and consent having been obtained from Plaintiffs through their counsel Debevoise & Plimpton (Mary Beth Hogan, Esq. and Sandra Cobden, Esq. appearing), Seton Hall University School of Law Center for Social Justice (Patricia Perlmutter, Esq. appearing) and Loughlin & Latimer (Stephen Latimer, Esq. appearing), and from the remaining Defendants through Peter Verniero, Attorney General of the State of New Jersey (Dianne M. Moratti, D.A.G. and Andrew Sapolnick, D.A.G. appearing); and the Court having balanced the interests of the Plaintiffs in obtaining medical records of certain inmates at various correctional institutions in the State, confidential proprietary information and certain information described in N.J.A.C. 10A:22-2.2 from Defendants as well as the public's interest in open proceedings as set forth in Patsy v. Borough of Stroudsburg, 23 F.3d 772 (3rd Cir. 1994) and Glenmede Trust Co. v. Thompson, 56 F.3d 476 (3rd Cir. 1995), against the interests of such inmates in preserving the



confidentiality of their medical records and the interests of Defendants in preserving the confidentiality of their confidential proprietary information and complying with their obligations under N.J.A.C. 10A:22-2.2, and in complying with their obligations under federal and state law to preserve the confidentiality of medical records, including but not limited to the confidentiality obligations imposed on health care providers in the following New Jersey licensing regulations: N.J.A.C. 13:35-6.5 (physicians and psychiatrists); N.J.A.C. 13:42-8.5 (psychologists); N.J.A.C. 13:44G-12.3 (social workers), and the confidentiality obligations imposed in various state and federal confidentiality statutes and regulations, including but not limited to N.J.S.A. 26:5G-7 (AIDS Assistance Act); N.J.S.A. 2A:84-22.1 et seq. (physician-patient privilege in New Jersey Evidence Rule 506); N.J.S.A. 45:14B-28 (psychologist privilege in New Jersey Evidence Rule 505, including social workers as extended in Jaffee v. Redmund, 64 U.S.L.W. 4490 (1996)); 42 U.S.C.A. §290dd-2 and 42 C.F.R. §2.11 et seq. (substance abuse records); N.J.S.A. 30:4-82.4 (mental health records of inmates in correctional institutions in need of involuntary commitment); and N.J.A.C. 10A:16-2.18 and N.J.A.C. 10A:22-2.2 (medical records of inmates in correctional institutions); (the foregoing laws and regulations, collectively the "Confidentiality Laws"); and the Court having determined that the Stipulation of Confidentiality and Protective Order entered on May 28, 1996 should be superseded in the interests of justice; and good cause having been shown, and the Court having found that the medical records of various inmates should be disclosed because:

1. The claims are being asserted pursuant to federal law, and certain state statutory privileges may not necessarily apply.
2. The medical records sought are necessary for a full development of the facts in this litigation.
3. Plaintiffs' counsel are acting for the benefit of inmates who are, or may become, Class Members in this litigation.

PURSUANT TO THE RECORD OF MARCH 11, 1998
AND THE ORDER FILED 4/9/98 :

4. The medical information sought is not available through any source other than the medical records of the inmates.

5. Obtaining the individual informed consent of each inmate may be impractical and unreliable in this case given the vast number of inmates who would have to consent to disclosure and the alleged mental conditions of those inmates who are or may become subject to this litigation.

IT IS THEREFORE ORDERED this ___ day of April, 1998, pursuant to Federal Rule of Civil Procedure 26 that Defendants shall produce inmate medical records, confidential proprietary information and 10A Information (all as are defined below) subject to the following provisions which shall govern medical records, confidential proprietary information and 10A Information produced in discovery in this litigation:

1. Definitions

For the purpose of this Order:

A. "Medical records" means any written records or documentation of the medical and/or mental health services provided to any inmate, including but not limited to those medical records deemed to be confidential pursuant to N.J.A.C. 10A:22-2.2(a)(1). Medical records shall also include any list of inmates receiving medical and/or mental health services.

B. "Confidential proprietary information" means any and all information, material or documentation, other than medical records, that has been or will be produced by CBS or CMS at any time during the course of this litigation and which contain confidential business information or trade secrets.

C. "10A Information" means any and all information, material or documentation, other than medical records, internal affairs records or voting records of classification committee members, that have been or will be produced by the DOC Defendants at any time during the course of this litigation and which contains information described in N.J.A.C.

10A:22-2.2. Prior to production of 10A Information under this Order, the DOC defendants shall redact the names of any confidential informants, the targets of ongoing investigations, the manner in which the fruits of Internal Affairs investigations are compiled and filed and Internal Affairs investigatory techniques.

D. "Health care provider" means any physician (including any psychiatrist), psychologist, clinical social worker, social worker, nurse, records clerk or other administrator or employee, who is or was employed by, or under contract with the New Jersey Department of Corrections and/or Defendants Correctional Medical Services or Correctional Behavioral Solutions and who is or was involved in the provision or administration of medical or mental health care to inmates.

E. "Mental health service" means any psychiatric, psychological or social work service provided by, or under the supervision of, a psychiatrist, psychologist, clinical social worker or social worker.

F. "Correctional Medical Services, Inc." or "CMS" is the corporation which contracted with the New Jersey State Department of Corrections to provide medical services to inmates commencing April 27, 1996, and which contracted for the provision of mental health services to inmates on August 17, 1996 and subcontracted the provision of mental health services to inmates to Correctional Behavioral Solutions on that same date.

G. "Correctional Behavioral Solutions, Inc." or "CBS" is the corporation which provides mental health services to inmates pursuant to a subcontract with Correctional Medical Services commencing on August 17, 1996.

H. "Class Member" means all persons who suffer DSM IV, Axis I and/or Axis II disorders such that they are unable to meet the functional requirements of prison life without mental health treatment, who now or in the future will be confined within the facilities of the New Jersey Department of Corrections, as certified by Order of the United States District Court for the District of New Jersey dated November 20, 1996.

2. Confidentiality Designations

A. Medical Records: Except as permitted under Paragraph 8A, all medical records shall be deemed "Confidential". If any medical records are filed with the Court, they shall be redacted by the offering party to eliminate the name, number and other identifying information of the inmate who is the subject of the record. During depositions and at trial, the parties agree to use a key that permits the identification of the named plaintiffs and other class members by pseudonym.

B. Those parts of trial or deposition testimony, deposition transcripts, exhibits, memoranda of law, certifications and affidavits which refer to, or consist of, confidential proprietary information or 10A information shall be deemed "Confidential." If any such items are filed with the Court, they shall be filed under seal.

C. Confidential Proprietary Information and 10A Information:

(i) Within thirty (30) days of the date of this Order, Defendants will notify Plaintiffs which, if any, of the documents previously produced shall be designated as "Confidential." The producing party's failure to so notify Plaintiffs will result in the automatic removal of the Confidentiality designation.

(ii) Prior to producing any document which Defendants believe contain confidential proprietary information or 10A information, the producing party may designate the document as "Confidential". Documents designated as "Confidential" must be sent to Plaintiffs' counsel under separate cover accompanied by a letter clearly indicating that the documents have been

designated as "Confidential".

(iii) Plaintiffs' counsel will review any document designated as "Confidential" under (i) or (ii) to determine whether they consent to such designation and will notify the producing party of their decision.

(iv) If Plaintiffs' counsel does not consent to the designation of a document as "Confidential" then Plaintiffs' counsel may seek further relief from the Court within thirty (30) days by letter application and conference telephone call with the Court. Prior to such application, Plaintiffs' counsel shall confer with the affected Defendant in accordance with L.Civ.R.37.

(v) Until the later of the expiration of the thirty (30) day period without application to the Court or an Order of the Court entered on an application under (iv), the documents shall be treated as "Confidential" and entitled to the benefits of this Order.

D. Internal Affairs Records and Voting Records of Classification Committee Members: Internal Affairs records and voting records of classification committee members shall be deemed confidential. If any such items are filed with the Court, they shall be filed under seal. Prior to producing internal affairs records and voting records of classification committee members, the DOC defendants shall redact the name of any confidential informant, the targets of ongoing investigations, the manner in which the fruits of Internal Affairs investigations are compiled and filed and Internal Affairs investigatory techniques.

3. Production of Medical Records

A. The New Jersey Department of Corrections shall produce medical records of inmates to Plaintiffs' counsel in the following instances:

(1) medical records of the named plaintiffs herein shall be produced without obtaining the consent of such named plaintiffs;

(2) medical records of inmates who have been determined to be Class Members shall be produced without obtaining the consent of such Class Member;

(3) medical records of any inmate who committed suicide while incarcerated from and after April 11, 1996;

(4) medical records of any inmate, who is neither a named plaintiff nor a Class Member, shall be produced upon the execution of the Authorization For Disclosure/Release of Health Information Including Alcohol And/Or Drug Abuse, HIV/AIDS and Psychiatric Records in the form attached hereto as Exhibit A, or upon further Order of this Court.

(5) medical records of any inmates who, prior to the date of this Order, have executed a release prepared by Plaintiffs' counsel. The Court finds that these previously executed releases satisfy the requirements of the Confidentiality Laws and good cause exists to give effect to such releases until entry of a final, non-appealable Order in this case, subject to the terms of this Order and the inmate's right to revoke such release.

4. Use of Medical Records, Confidential Proprietary Information and 10A Information

Except as permitted under Paragraph 8A, all persons obtaining access to medical records under this Order shall use the records or information only for preparation and trial of this action, including any appeal or retrial, and shall not use such records or information for any other purpose. All persons obtaining access to confidential proprietary information or 10A Information

under this Order shall use the records or information only for the preparation and trial of this action, including any appeal or retrial, and shall not use such records or information for any other purpose.

5. Disclosure of Medical Records, Confidential Proprietary Information and 10A Information

A. Except as permitted under Paragraph 8A, medical records may be disclosed only to the following persons. Confidential proprietary information and 10A Information shall be disclosed only to the following persons:

(1) Any health care provider;

(2) Any of the named defendants, including their directors, officers, employees, agents and personnel or any administrative personnel of the New Jersey Department of Corrections who is determined by defendants to be necessary to assist in the defense of this action.

(3) Counsel for the parties to this action or counsel for any health care provider, including partners, associates, law clerks, law students, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in this action;

(4) Court officials involved in this action;

(5) Court reporting personnel involved in taking or transcribing testimony in this action;

(6) Any person that the Court in this action designates in the interest of justice, upon terms that the Court deems proper; and

(7) Former employee witnesses, outside non-party consultants or experts retained for purpose of assisting counsel in this action.

B. Neither the New Jersey Department of Corrections, CMS, CBS nor their counsel shall reveal the name of any class member or discuss the class member's role in this case

with any custody personnel or health care provider other than in connection with the delivery of health care services to such inmate or for the preparation of its defense in this case. The New Jersey Department of Corrections, CMS, CBS and their counsel shall inform any custody personnel or health care provider, to whom such disclosure is necessary for the preparation of their defense in this case, that the identities and roles of all class members must remain confidential.

C. Persons obtaining access to 10A Information or diagnostic or evaluative information set forth in medical records shall not disclose 10A Information or the substance of the diagnostic or evaluative information to any named Plaintiffs, any Class Members or any other inmate; however, factual information contained in such records may be verified by the specific Class Member who is the subject of such 10A Information or medical record.

D. Should any Class Member voluntarily disclose his or her identity, the defendants may initiate a conference call with the Court to determine whether and to what extent the provisions of this Amended Confidentiality and Protective Order shall continue to be applicable.

E. Any person receiving information under this Paragraph 5.A. or 8.A. shall be provided a copy of this Order and shall execute an acknowledgment in the form attached hereto as Exhibit B in which such person shall agree to be bound by the terms hereof.

6. Deposition and Trial Testimony

Deposition and trial testimony by health care providers shall be permitted regarding any inmate who is subject to Paragraph 3. For the purpose of providing deposition testimony only, the parties agree that any inmate who has a prescription for any of the medications set forth on Exhibit C or is the subject of a forced medication order is presumably a class member. CMS agrees that it will use its best efforts to update such lists every thirty (30) days during the conduct of depositions.

7. Subpoenas or Other Discovery Requests Seeking Medical Records Or Confidential Proprietary Information

If any party or person that has obtained medical records, confidential proprietary information or 10A Information under the terms of this Order receives a subpoena or other discovery request commanding the production of any such records or information, such party or person shall immediately notify the party or person that produced the medical records or confidential proprietary information of the service of the subpoena or request, so that such party may object to the production of the medical records or confidential proprietary information, and seek to quash the subpoena or have an appropriate protective order entered.

8. Miscellaneous

A. Nothing in this Order shall preclude or prevent an inmate who is the subject of a medical record from expressly consenting to a specific, broader or wider dissemination of his or her own medical records through Plaintiffs' counsel. Plaintiffs' counsel shall give Defendants ten (10) days written notice of any such proposed dissemination. If Defendants do not consent to such dissemination, Defendants may seek further relief from the Court within ten (10) days by letter application and conference telephone call with the Court. Prior to such application, Defendants' counsel shall confer with Plaintiffs' counsel in accordance with L.Civ.R.37. In no event shall any diagnostic or evaluative parts of the medical records be disclosed directly to the inmate who is the subject of the record or to anyone who could reasonably be acting as the inmate's agent. The name of any person who makes a mental health diagnostic evaluation shall not be disclosed, other than as permitted under Paragraph 5(A).

B. Nothing herein shall affect any party's or person's right to object to any discovery request, including the right to assert that no discovery should be had of certain documents or information.

C. The confidentiality provisions and obligations of this Order shall survive the conclusion of this action.

D. Should any party desire a modification of this Amended Confidentiality and Protective Order at any time during this litigation, said party may apply to the Court for a modification of its terms.


Hon. John J. Hughes, U.S.M.J.

EXHIBIT A

**AUTHORIZATION FOR DISCLOSURE/RELEASE OF HEALTH INFORMATION INCLUDING
ALCOHOL AND/OR DRUG ABUSE, HIV/AIDS AND PSYCHIATRIC RECORDS**

To: The N.J. Department of Corrections, Correctional Medical Services, Inc. and Correctional Behavioral Solutions, Inc.

I, _____ authorize you to disclose and provide to the
Name

attorneys, law students and other staff of the Seton Hall University School of Law Civil Litigation Clinic and the law firms of Debevoise & Plimpton and Laughlin & Latimer, any and all information relating to my incarceration, including, but not limited to, medical and psychiatric records, disciplinary reports, classification documents, criminal records and parole reports. This authorization extends to all documents in your possession, regardless of their original source. It also permits you and your employees or consultants and my mental health care provider to give deposition or trial testimony about this information and all medical and mental health information about me received during the course of my mental health treatment.

I understand that this authorization can include but is not limited to the release of information concerning drug and/or alcohol use, venereal disease, AIDS, HIV infection, Tuberculosis, Hepatitis, psychosocial history and treatment recommendations.

I understand that at any time I may revoke this authorization, except to the extent action has already been taken, by a written notice to Debevoise & Plimpton, Laughlin & Latimer, Seton Hall University School of Law Civil Litigation Clinic, the New Jersey Department of Corrections, Correctional Medical Services, Inc. or Correctional Behavioral Solutions, Inc. This consent is effective immediately. I hereby release the New Jersey Department of Corrections, Correctional Medical Services, Inc., and Correctional Behavioral Solutions, Inc., their employees, personnel, officers, directors and physicians and mental health professionals from any and all legal responsibility or liability resulting from the release of the above information to the extent indicated and authorized herein.

Signature: _____

Prison or Jail: _____

Inmate Identification No.: _____

Date: _____

EXHIBIT B

Acknowledgment

The undersigned acknowledges receipt of a copy of, has read and agrees to be bound by the terms of, the Amended Confidentiality and Protective Order dated _____, 1998 entered in the United States District Court for the District of New Jersey by Honorable John J. Hughes, U.S.M.J. in the matter of C.F. v. Hilton, Civil Action No. 96-1840 (AET).

EXHIBIT C

<u>Brand Name</u>	<u>Generic Name</u>
Clausiril	N/A
Clorazil	Clozapine
Haldol	Haloperidol
Lithane. Lithobid. Eskalith	Lithium
Mellaril	Thlorodazine
Navane	Thlothlxine
Norpramin	Desipramine
Paxil	Paroxetine
Prollxin	Fluphenazine
Prozac	Fluoxetine Hcl
Risperdol	Risperidone
Stelazine	Trifluoperazine
Thorazine	Chlorpromazine
Tofranll	Imipramine
Triavll, Etrafon	Perphenazine/Amitriptyline
Trilafon	Perphenazine
Zyprexa	N/A

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PETER VERNIERO
Attorney General of New Jersey
Attorney for Defendants Jack Terhune, Mary Ellen Bolton,
Howard Beyer, Eugene O'Neill,
Thomas Farrell and Dr. Richard Cevalasco
R.J. Hughes Justice Complex
Post Office Box 112
Trenton, New Jersey 08625

By: Dianne M. Moratti
Deputy Attorney General
(609) 633-3985

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF TRENTON

C.F., et al.)	HONORABLE ANNE E. THOMPSON, Chief, U.S.D.J.
Plaintiffs,)	Civil Action No. 96-1840 (AET)
v.)	ORDER
JACK TERHUNE, et al.,)	
Defendants.)	

This matter having come before the Court upon the joint application of Sandra L. Cobden, Esq., and Patricia P. Perlmutter, Esq. on behalf of the plaintiffs, and by Peter Verniero, Attorney General of New Jersey, Deputy Attorney General Dianne M. Moratti appearing, on behalf of defendants Jack Terhune, Mary Ellen Bolton, Howard Beyer, Eugene O'Neill, Thomas Farrell, and Dr. Richard Cevalasco, and by Stephen Holtzman, Esq. appearing on behalf of defendant Correctional Medical Services, Inc., and by Paul Murphy,

Esq. appearing on behalf of defendant Correctional Behavioral Solutions of New Jersey, Inc., and for good cause shown;

IT IS on this day of , 1999;

ORDERED that provision #4 on page 7 of the Amended Confidentiality and Protective Order entered by the Court on April 8, 1998 is hereby amended to permit plaintiffs to use medical records, Internal Affairs records, voting records of classification committee members, 10A Information and confidential medical and mental health services provider(s) information disclosed during the course of the litigation in any action to enforce the settlement pursuant to Sections IV(K)(2) and XIII of the Settlement Agreement between plaintiffs and the DOC defendants.

John J. Hughes, U.S.M.J.

**AUTHORIZATION FOR DISCLOSURE/RELEASE OF HEALTH
INFORMATION INCLUDING ALCOHOL AND/OR DRUG
ABUSE, HIS/AIDS AND PSYCHIATRIC RECORDS**

To: The N.J. Department of Corrections, Correctional Medical Services,
Inc and Correctional Behavioral Solutions, Inc.

I, _____, authorize you to disclose and provide to the
(Name)

attorneys, law students and other staff of the Seton Hall University School of Law Civil Litigation Clinic, the law firm of Debevoise and Plimpton, and Dr. Raymond Patterson, any and all information relating to my incarceration including, but not limited to, medical and psychiatric records, disciplinary reports classification documents, criminal records and parole reports. This authorization extends to all documents in your possession, regardless of their original source. It also permits you and your employees or consultants and my mental health care provider to give court testimony and information to the monitor about this information and all medical and mental health information about me received during the course of my mental health treatment.

I understand that this authorization can include, but is not limited to the release of information concerning drug and/or alcohol use, venereal disease, AIDS, HIV infection, Tuberculosis, Hepatitis, psychosocial history and treatment recommendations.

I understand that at any time I may revoke this authorization, except to the extent action has already been taken, by a written notice to Debevoise & Plimpton, Seton Hall University School of Law Civil Litigation Clinic, the New Jersey Department of Correction, Correction Medical Services, Inc. or Correctional Behavioral Solutions, Inc. This consent is effective immediately. I hereby release the New Jersey Department of Correction, Correction Medical Services, Inc. and Correctional Behavioral Solutions, Inc., their employees, personnel, officers, directors and physicians and mental health professionals from any and all legal responsibility or liability resulting from the release of the above information to the extent indicated and authorized herein.

Signature: _____

Prison or Jail: _____

Inmate Identification Number: _____

Date: _____

EXHIBIT F

C.F. v. Terhune
Civil Action No. 96-1840(AET)

ACKNOWLEDGMENT OF TERMS OF SETTLEMENT AGREEMENT

I, _____, hereby acknowledge receipt of the Settlement Agreement in the matter of C.F. v. Terhune, Civil Action No. 96-1840(AET) and agree to be bound by the terms set forth therein including, but not limited to, the confidentiality provisions set forth in Sections IV(L), (M), (N), (O), and (P).

Signature

Printed Name

Date:

PETER VERNIERO
Attorney General of New Jersey
Attorney for Defendants
Jack Terhune, Mary Ellen Bolton,
Howard L. Beyer, Eugene F. O'Neill,
Thomas Farrell and Dr. Richard Cevalasco
R.J. Hughes Justice Complex
25 Market Street
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Trenton, New Jersey 08625

By: Dianne M. Moratti
Deputy Attorney General
(609) 633-3985
DM 7667

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF TRENTON

C.F., D.M., L.K., A.O. and J.W.,) HONORABLE ANNE E. THOMPSON
individually and on behalf of)
all others similarly situated)

Plaintiffs,) Civil Action No. 96-1840 (AET)
v.)
JACK TERHUNE, et al.) ORDER ENTERING JUDGMENT AND
Defendants.) DISMISSAL WITH PREJUDICE
)

The claims in this action having been settled and resolved by and between C.F., D.M., L.K., A.O. and J.W. individually and on behalf of all others similarly situated ("the Plaintiffs") and Commissioner of the New Jersey Department of Corrections Jack Terhune, Chief of Staff Mary Ellen Bolton, Assistant Commissioner Howard L. Beyer, Chief Disciplinary Hearing Officer Eugene F. O'Neill, Health Services Unit Supervisor Thomas Farrell and Director of Psychological Services Dr. Richard Cevalasco, having been sued in their official capacity ("the Defendants"); and

WHEREAS, the Court having reviewed the affidavit of Plaintiffs' expert, Dr. Dennis Koson and any comments received by Defendants' expert; and

WHEREAS, pursuant to Fed.R.Civ.P. 17(c) and 23(e), the Court having reviewed the Settlement Agreement, the comments of the individual class members and counsels' submissions to the Court, with heightened scrutiny in light of the mental disabilities of the Plaintiff class and having found that the Settlement Agreement is fair and reasonable; and

WHEREAS, the Settlement Agreement provides for the payment of \$1,220,000 in attorneys' fees and costs to the Plaintiffs' counsel.

IT IS on this day of July, 1999

ORDERED that this action and the claims asserted herein by the Plaintiffs against the Defendants shall be dismissed with prejudice in accordance with the Settlement Agreement between the aforementioned parties.

Honorable John J. Hughes, U.S.M.J.