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Shumate v. Wilson



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 13 48149280-CA95CX0144

14 UNITED STATES DISTRICT COURT

15 EASTERN DISTRICT OF CALIFORNIA

16 CHARISSE SHUMATE, et al.,) No. CIV S-95-0619 WBS JFM
)
 17 Plaintiffs,)
) SETTLEMENT AGREEMENT
 18 v.)
)
 19 PETE WILSON, et al.,)
)
 20 Defendants.)

21 PROCEDURAL BACKGROUND

22 I

23 A. History

24 1. This case is a class action filed under 42 U.S.C.
 25 § 1983, challenging policies and procedures with regard to the
 26 medical care afforded women prisoners by the California
 27 Department of Corrections (CDC) at the Central California Women's
 28

1 Facility in Cholla, California (CCWF) and the California
2 Institution for Women in Frontera, California (CIW). The
3 complaint was filed on April 4, 1995.

4 2. On January 12, 1996, the Court certified a
5 plaintiff class defined as all persons who suffer from, or are at
6 risk of developing, serious illness or injury, excluding mental
7 disorders, who are now or in the future will be confined at CCWF
8 and CIW. The Court also certified a subclass defined as all
9 persons who are now or in the future will be confined at CCWF and
10 CIW and who are diagnosed as HIV-positive with respect to
11 plaintiffs' challenge to defendants' policies and practices
12 regarding confidentiality of information about HIV status.

13 3. The parties have engaged in settlement
14 negotiations and have reached agreement as to all areas of
15 dispute. The terms of the agreement are set forth in Sections II
16 through IV.

17 B. Jurisdiction

18 4. Jurisdiction over the subject matter of this
19 litigation is conferred on this Court by 42 U.S.C. § 1343(3) in
20 that this is a civil action brought under 42 U.S.C. § 1983 to
21 redress deprivation of civil rights protected by law.

22 PROCEDURAL AGREEMENTS

23 II

24 A. Effect of Agreement

25 1. This Settlement Agreement is not a consent decree
26 nor do the parties intend for it to be construed as such. It
27 does not operate as an adjudication of the merits of the
28 litigation.

1 2 The Court's approval of this Settlement Agreement
2 is sought only to comply with the requirements of Rule 23 of the
3 Federal Rules of Civil Procedure and not to convert this
4 Agreement into a court order or otherwise convert this Settlement
5 Agreement into a consent decree.

6 3. Nothing in this Settlement Agreement is intended
7 to, nor shall it be construed as, an admission of liability of or
8 by any party.

9 4. The defendants' agreement to the provisions of
10 Section III and IV does not admit that current policy and
11 practice differ from policy and practice contemplated pursuant to
12 this Settlement Agreement.

13 5. If the Settlement Agreement is accepted by the
14 Court, this action shall be conditionally dismissed without
15 prejudice on the terms and conditions set forth below.

16 B. Assessment Provisions

17 6. The parties shall appoint an Assessor to assess
18 the degree to which the defendants have satisfied the agreements
19 set forth in Sections III and IV, infra.

20 7. The Assessor shall be Michael Keating, assisted by
21 experts, nominated and mutually approved by the parties. The
22 experts shall be B.J. Anno, Ph.D., Steven Spencer, M.D.;
23 Kim Thorburn, M.D.; and Joseph Fowkes, M.D. Mr. Keating and the
24 above experts constitute the survey team.

25 8. Eight months after the contemplated conditional
26 dismissal of this action pursuant to Fed. R. Civ. P. 23, the

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1 Assessor shall determine and report on the degree to which the
2 defendants have satisfied the agreements set forth in Section III
3 and IV, infra.

4 9. In order to conduct the assessment contemplated in
5 this Settlement Agreement, the survey team shall conduct on-site
6 inspections at CIW and CCWF. The survey team may review all
7 documents relevant to their inspection subject to the provisions
8 of the stipulated protective order entered by the Court on
9 February 23, 1996. Survey team members may speak to any
10 defendant staff member and may speak privately to any class
11 member. Survey team members shall be responsive to reasonable
12 security considerations. Counsel for plaintiffs and defendants
13 may have ex parte communications with survey team members.

14 10. Within thirty days after the inspections
15 contemplated pursuant to Subsections II-8 and II-9, supra, the
16 Assessor shall prepare a Report to the parties.

17 11. The Report shall evaluate whether defendants have
18 reached substantial compliance with the provisions of Sections
19 III and IV of this Settlement Agreement. Each numbered
20 subsection in Sections III and IV of the Settlement Agreement
21 shall be evaluated separately, and the evaluation shall be
22 accompanied with a narrative briefly setting forth the Assessor's
23 rationale for the Assessor's conclusion.

24 12. In the event that the Report of the Assessor finds
25 that the defendants are not in substantial compliance with each
26 and every subsection of Section III at CIW and CCWF, the Assessor

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1 shall conduct a second evaluation eight months after the first
2 Report, and shall within thirty days thereafter prepare a second
3 Report to the parties.

4 13. In the event that the Report of the Assessor finds
5 that the defendants are not in substantial compliance with each
6 and every subsection of Section IV at CIW and CCWF, the Assessor
7 shall conduct a second evaluation eight months after the first
8 Report, and shall within thirty days thereafter prepare a second
9 Report to the parties.

10 14. In the event that preparation of a second Report
11 is necessary, the provisions of Subsections II-9 through II-11
12 shall also apply to the preparation of that Report.

13 15. If the eight month Report of the Assessor finds
14 that defendants are in substantial compliance with regard to the
15 undertakings in each and every subsection in Sections III and IV,
16 infra, only at CIW or only at CCWF, the Assessor shall not
17 conduct a second evaluation or report as to the institution that
18 the Report of the Assessor finds is in substantial compliance.

19 16. The Assessor shall use the following definition of
20 substantial compliance in the Report or Reports: Defendants are
21 in substantial compliance with a particular subsection of Section
22 III or Section IV of this Settlement Agreement when at the time
23 of the evaluation defendants have achieved, and may reasonably be
24 expected to continue to achieve, satisfaction of each essential
25 undertaking set forth in the specific subsection through
26 established policy and routine and reliable practice. A finding
27 of noncompliance shall not be based on isolated,

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1 non-continuing instances of noncompliance. Nor shall a finding
 2 of noncompliance be based on omissions of a technical or
 3 unimportant nature.

4 17. Plaintiffs and defendants shall split evenly the
 5 fees and expenses of Mr. Keating. Each party shall pay the fees
 6 and expenses of any expert nominated by that party.

7 C. Final Resolution of the Litigation

8 18. If a Report of the Assessor finds that defendants
 9 are in substantial compliance with regard to the undertakings in
 10 each and every subsection in Sections III and IV, infra, the
 11 defendants shall petition the Court for an unconditional
 12 dismissal of the case. Plaintiffs shall not oppose the petition.

13 19. If the eight month Report of the Assessor finds
 14 that defendants are in substantial compliance with regard to the
 15 undertakings in each and every subsection in Sections III and IV,
 16 infra, only at CIW or only at CCWF, defendants shall petition the
 17 Court for an unconditional dismissal of the case as to the
 18 institution that the Report of the Assessor finds is in
 19 substantial compliance. Plaintiffs shall not oppose the
 20 petition.

21 20. If the second Report of the Assessor finds that
 22 the defendants are not in substantial compliance with the
 23 undertakings in each and every subsection of Sections III and IV,
 24 the plaintiffs may petition the Court to restore the case to its
 25 active docket, and reopen the time for discovery and the filing
 26 of dispositive motions. Defendants shall not oppose the filing

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1 of plaintiff petition and the non-opi tion shall not be
2 deemed an admission of liability to the allegations of the
3 complaint.

4 D. Class Approval and Attorneys' Fees

5 21. Notice of the Settlement Agreement shall be
6 provided to the plaintiff class and subclass through posting at
7 CIW and CCWF in the same manner as contemplated pursuant to the
8 Stipulation dated April 30, 1997, and such other manner as the
9 parties may agree. The Court will hold thereafter whatever
10 hearing it deems appropriate regarding approval of the Settlement
11 Agreement.

12 22. The parties have agreed that the defendants will
13 pay fees and costs of \$1,200,000 to the attorneys for the
14 plaintiff class and subclass. The distribution of the fees and
15 costs amongst the plaintiffs' attorneys shall be the sole
16 responsibility of the plaintiffs' attorneys. This agreement and
17 payment includes any claims for fees and costs that plaintiffs
18 could make pursuant to 42 U.S.C. § 1988 or any other federal
19 statute or rule of procedure for all work done and costs expended
20 in the litigation of the matter to the date of the approval by
21 the Court of this Settlement Agreement. The fees and costs shall
22 be paid within a reasonable time following the Court's entry of
23 the conditional dismissal.

24 SUBSTANTIVE CLASS PROVISIONS

25 III

26 A. Reception and Receiving

27 1. CIW and CCWF shall implement policies for medical
28 screening at Reception and Receiving that include screening for

1 contagious diseases, including tuberculosis and sexually
2 transmitted diseases, review and continuation of medications, and
3 timely referrals for inmates in need of physician review.

4 2. CIW and CCWF shall implement policies that
5 reasonably assure the privacy of medical information in the
6 screening process consistent with maintaining the security of the
7 institution.

8 3. Only Medical Technical Assistants (MTAs) or other
9 medical staff shall collect health information background forms
10 at Reception and Receiving.

11 B. Health Assessment

12 4. MTAs shall not make nursing assessments that
13 exceed the scope of their license and training or CDC policy.
14 CDC shall develop a training program as required pursuant to
15 state nursing regulations which became effective July 1, 1997.

16 5. As a supplement to the existing sick call system
17 at CCWF and CIW, a lock-box system shall be instituted so that
18 inmates can request sick call appointments or other medical or
19 counseling services confidentially in writing. Inmates in
20 lockdown units may submit such written requests to an MTA during
21 the MTA's daily rounds.

22 6. Written requests placed in the lock-box or given
23 to the MTA during daily rounds on locked units shall be triaged
24 for degree of urgency by a registered nurse (RN), nurse
25 practitioner, physician assistant or physician, within
26 twenty-four hours of deposit by the inmate. Inmates determined
27 to be in need of treatment or evaluation shall be scheduled on a
28 timely basis.

1 7. Only health care staff shall collect requests from
2 the lock-box.

3 8. CIW and CCWF shall review the existing health care
4 educating system with the objective of reducing waiting time for
5 sick call. CIW and CCWF shall explore other available reasonable
6 measures to attempt to assure that inmates are not required to
7 wait for sick call for prolonged periods of time under conditions
8 that adversely affect their health.

9 C. Emergency Care

10 9. CIW and CCWF shall maintain in good working order
11 emergency equipment including resuscitation equipment and
12 hospital gurneys. A specific list of emergency equipment
13 required for the Skilled Nursing Facility (SNF) license at CCWF
14 shall be determined by the CDC, and all such equipment shall be
15 maintained in good working order. At CIW and CCWF equipment
16 shall include at least that which is necessary for infant nasal
17 suction (bulb) and infant oxygen.

18 10. During those hours in which a physician is not
19 on-site at CIW and CCWF, the highest priority duty for RNs shall
20 be emergency care. MTAs shall not make nursing judgments in
21 connection with a possible emergency beyond the scope of their
22 license or CDC policy.

23 11. RNs at CIW who are responsible for emergencies
24 during the hours in which a physician is not on site shall
25 receive in-house training on precipitous births.

26 12. CIW and CCWF shall review ambulance response times
27 to emergency calls to assure that contractual commitments are met
28 and with the objective of maintaining consistency with community

1 standards. CIW and CCWF shall review the existing policies to
2 evaluate whether delays in emergency transport necessitated by
3 custody considerations can be minimized.

4 D. Skilled Nursing Facilities/Out-Patient Housing Unit

5 13. The Skilled Nursing Facility (SNF) at CCWF shall
6 comply with licensing requirements essential to patient care.

7 14. At the Out-Patient Housing Unit (OPHU) at CIW,
8 medical staff shall respond to call buttons; RNs shall make
9 regularly scheduled rounds; and a health assessment shall be
10 performed before patients are placed in the individual rooms
11 within the OPHU.

12 15. Placement of inmates in the OPHU shall conform to
13 the statewide "OPHU Policy" and be reviewed through the
14 Utilization Review Process.

15 16. Medical vehicle attendants shall not perform
16 medical tasks in the OPHU. Medical vehicle attendants may,
17 however, perform non-medical functions determined by CDC.

18 17. Placement of an inmate in the SNF or OPHU shall be
19 a medical judgment.

20 E. Diagnostic Follow-Up

21 18. CIW and CCWF shall implement policies providing
22 that diagnostic test results are given appropriate review and
23 follow-up, including the documentation of abnormal results
24 through a progress note and the timely communication of abnormal
25 results to the patient.

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1 19. Inmates may request test results by signing up for
2 sick call or by submitting a written health care request.

3 Inmates shall not be charged a co-pay fee for health services
4 limited to the report of a test result.

5 **F. Chronic Diseases**

6 20. CIW and CCWF shall implement appropriate chronic
7 disease guidelines, including medically necessary patient
8 education provisions. Implementation of the CDC Chronic Care
9 Program shall constitute substantial compliance with this
10 subsection.

11 21. Inmates with serious chronic diseases that do not
12 fall within one of the existing chronic care guidelines shall be
13 reviewed by the attending physician and/or the Chief Medical
14 Officer for inclusion in the Chronic Care Program.

15 **G. Tuberculosis**

16 22. CIW and CCWF shall implement the California
17 Department of Corrections Tuberculosis Control Guidelines. In
18 the event that the California Department of Corrections revises
19 the 1995 Tuberculosis Control Guidelines, implementation of such
20 guidelines shall constitute substantial compliance with this
21 subsection.

22 23. CIW and CCWF shall each continue to have a public
23 health RN and an infectious disease physician consultant.

24 **H. Staff**

25 24. CIW and CCWF shall take reasonable steps to
26 maintain the full complement of authorized health care staff

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1 25. CIW and CCWF shall continue to maintain
2 twenty-four hour, seven-day on-call physician coverage, with
3 on-call physicians providing on-site coverage as medically
4 necessary.

5 I. Co-Pay and Utilization Management

6 26. Appropriate CDC staff shall distribute a
7 memorandum regarding palliative treatment elaborating on the
8 Administrative Bulletin on Standards of Care dated
9 March 14, 1995.

10 27. CIW and CCWF shall implement policies providing
11 that decisions made by the Medical Authorization Review Committee
12 shall be documented in the medical record of the patient, and
13 that the patient shall be informed of the Committee's decision.

14 28. CIW and CCWF shall ensure that the poster entitled
15 "Important Information About Your Health Care Visit" is posted in
16 the Reception and Receiving area, the SNF, the OPHU, the
17 emergency rooms and all health care clinics.

18 J. Medical Records

19 29. CIW and CCWF shall complete the conversion of all
20 current medical records to the unit health record format in
21 accordance with the schedule for their conversion by
22 January 1, 1998.

23 30. Medical records filing shall take place with
24 reasonable promptness and accuracy.

25 31. CIW and CCWF shall implement policies providing a
26 means for health care staff to seek outside medical records
27 through the use of a standardized form for requesting such
28 medical records when medically necessary.

1 K. Medication

2 32. CIW and CCWF shall implement policies that provide
3 for the continuity of provision of necessary medications,
4 including over-the-counter and non-formulary medications.
5 Implementation of CDC policies for the continuity of necessary
6 medications shall constitute substantial compliance with this
7 subsection.

8 L. Medical Equipment and Special Needs

9 33. CIW and CCWF shall implement policies providing
10 that necessary medical supplies are available and that necessary
11 medical equipment is available and in good working order.

12 34. CIW and CCWF shall make available medically
13 necessary physical therapy.

14 35. Special medical diets shall be provided in the SNF
15 as required by its license. A diet restriction, which is
16 prescribed by a medical doctor for specific conditions, shall be
17 recognized and inmates with such prescriptions shall be permitted
18 to adjust their food intake accordingly, within the range of food
19 generally made available by the institution daily. This shall
20 include the opportunity for additional helpings of specific foods
21 such as snacks for inmates who are HIV+, pregnant, or diabetic.

22 M. Dental Care

23 36. CDC staff shall issue an explanatory memorandum
24 regarding the Dental Standards of Care stating that dental
25 patients may receive prostheses necessary for chewing when
26 determined to be medically necessary by the dentist, subject to
27 review by the Chief Dentist.

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1 maintaining a confidentiality of inmates' HIV+ status. The
2 training shall address situations where breaches of
3 confidentiality are likely to occur and how employees can avoid
4 breaching confidentiality. Solely by way of example, such
5 situations may include staff handling of medical documents,
6 supervising documents and files that inmate clerks see, making
7 public announcements about inmates, and discussing inmate medical
8 information in the presence of others.

9 **B. Weekly HIV+ "Need to Know" List**

10 2. Procedures for the statutorily required "need to
11 know" list shall be revised to include all infectious diseases
12 covered by the statute.

13 3. CCWF and CIW shall re-examine distribution of the
14 weekly "need to know" list with the goal of reducing the number
15 of individuals to whom the list is distributed.

16 4. CCWF and CIW shall review where and how recipients
17 maintain the "need to know" list in order to ensure that copies
18 are kept and discarded in a confidential manner consistent with
19 the statute.

20 5. CCWF and CIW shall instruct staff, determined to
21 have a need to know, that the list shall be kept confidential and
22 that no information on the list shall be shared with any inmate
23 or unauthorized person.

24 **C. Medical Clearance Forms**

25 6. The 128C medical chronos shall not contain specific
26 diagnoses (conforming to the same policy as for 128C mental
27 health chronos) but shall be completed in terms of medical
28 restrictions or alerts in language sufficient for classification

1 and placement decisions, but conforming to medical
2 confidentiality concerns.

3 **D. HIV Peer Counselors and Testing**

4 7. Policies shall be established and implemented to
5 ensure that Peer Counselors neither provide HIV test results to
6 inmates nor have access to information about inmate test results.

7 **E. Pill Line**

8 8. Policies for "pill lines" shall be established and
9 enforced to safeguard the confidentiality of medical information;
10 specifically, such policies shall provide that medical staff
11 shall not volunteer the types of medication being dispensed for
12 specific inmates within earshot of other inmates, and shall also
13 provide for pill line boundaries where medications are dispensed
14 to protect the confidentiality of the process.

15 **F. Daily Movement Sheet**

16 9. CCWF and CIW shall review the use of the Daily
17 Movement Sheet. Consistent with security limitations, the Daily
18 Movement Sheet shall not include information that would identify
19 an inmate's HIV+ status.

20 **G. Medical Screening**

21 10. Medical interviews shall be conducted in a
22 confidential manner, subject to security concerns. CCWF and CIW
23 shall review the process of medical screening at Reception and
24 Receiving at CCWF and CIW, at nurse's sick call at CIW, and at
25 doctors' interviews at CCWF to ensure the above policy regarding
26 medical interviews is implemented.

27 **H. Medical Files and Records**

28 11. CCWF and CIW shall take steps to enforce policies

1 and procedur for keeping medical files and information
 2 confidential and specifically those policies and procedures that
 3 preclude inmates and other unauthorized persons from having
 4 access to these records.

5 I. HIV Counselor

6 12. CCWF shall inform inmates that they may see an HIV
 7 Counselor at the office of the HIV Counselor or at another
 8 location which takes into account the privacy concerns of the
 9 inmates as well as the security concerns of CCWF.

10 13. CCWF shall inform inmates that, among other means,
 11 inmates can request a counseling session with an HIV Counselor at
 12 either location through the sick call procedures described in
 13 Subsection III.B.

14 J. Inmate Jobs

15 14. CCWF and CIW shall review the clerical and other
 16 jobs performed by inmates, and, based on that review, shall take
 17 reasonable steps to ensure that inmates do not have access to
 18 documents containing medical information about an inmate's
 19 medical condition or treatment.


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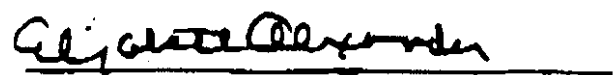
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19. HIV+ inmates at CCMF may request housing in facilities other than Facility "C" pursuant to CDC policies and procedures.


DATED: August 11, 1997


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DATED: August 11, 1997


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SETTLEMENT AGREEMENT

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TOTAL P. 19

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