

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

ANTONIO LEATHERWOOD, ERIC)
HOWARD, JERRY SANFORD, JOHN)
LEVINS, MICHAEL PATRICK, and,)
individually and on behalf of all present and)
future HIV-positive inmates in the Limestone)
Correctional Facility in Capshaw, Alabama,)

Plaintiffs,)

v.)

DONAL CAMPBELL, Commissioner of the)
Alabama Department of Corrections, RONALD)
CAVANAUGH, Director of Treatment Alabama)
Department of Corrections, BILLY MITCHEM,)
Warden of Limestone Correctional Facility,)
DAVID WISE, Deputy Warden,)

Defendants.)

CIVIL ACTION

No. CV-02-BE-2812-W

CLASS ACTION

MOTION FOR AN ORDER TO SHOW CAUSE
WHY DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT

Plaintiffs, the present and future HIV infected prisoners at the Limestone Correctional Facility ("Limestone") in Harvest, Alabama, move this Court to enter an *Order to Show Cause* why defendants should not be held in civil contempt for their failure to comply with numerous provisions of the *Settlement Agreement* (DOC #159) in this case. Ten months since the parties signed the *Settlement Agreement* on April 29, 2004, and eight months since the *Order* adopting the *Settlement Agreement* on June 26, 2004 (DOC #165), and the defendants' innumerable assurances to this Court that during the course of this litigation the "DOC was making

improvements” in the medical care and housing provided to HIV prisoners, compliance with the provisions of the *Agreement* is no more closer than the day the document was signed.¹

Defendants’ inactions not only threaten the health and endangers the lives of the

¹ In their *Brief in Opposition to Fees/Expenses*, defendants assured this Court that the Alabama Department of Corrections was enacting needed changes in the medical care for HIV prisoners at Limestone, or had implemented changes in the contract with the newly contracted medical provider. In their *Brief in Opposition to Fees/Expenses*, the defendants asserted:

However, as pointed out by the court in *Reedy*, the desirable settlement was the result, just as importantly, of the circumstances of the case: namely, light opposition from the Commissioner of Corrections, who voluntarily stepped in and drastically changed the housing arrangements, terminated an inadequate health care contractor and hired a competent one, and then agreed to a set of standards, many of which were already included in the new provider’s contract, and were in process of implementation, and others which the DOC simply felt ought to be adopted and were perfectly willing to agree to.

See DOC #173, Alabama Department of Corrections’ Brief in Opposition to Fees/Expenses of \$866,00, at 4. In their *Opposition Brief*, defendants’ continued to assure this Court that they had hired a new, “competent” medical provider to provide adequate medical care to HIV prisoners:

These defendants do not deny that there were constitutional inadequacies, but, as hereafter related in more detail, the defendants themselves began a self study which became an important basis for the plaintiffs’ lawsuit, the defendants themselves drastically changed the housing arrangements, fired the inadequate health care provider and replaced it with a competent one, and voluntarily entered into a satisfactory settlement of this case.

Id. at 5 (emphasis in original).

Yet, these assurances of change in the medical care for HIV prisoners did not cease there. In fact, the defendants indicated to this Court that most of the provisions in the *Settlement Agreement* were going to be “voluntarily followed even without litigation.” Id. at 7-8 (“There was simply no reason to subject the taxpayers to the fees and costs of litigating over a set of standards, most of which would be voluntarily followed even without litigation.”). Nevertheless, since the inception of the *Settlement Agreement*, the defendants have woefully failed to comply with the terms of the *Settlement Agreement*. Defendants have **mised** this Court and they have misled us.

plaintiffs, but breaches their commitment to this Court who has expended considerable time, attention, and effort to attempt to ensure that HIV infected prisoners are provided minimal medical care and housing guaranteed by the Eighth Amendment of the United States Constitution.

In support of this Motion, plaintiffs submit the *Quarterly Reports* from the neutral medical consultant -- Dr. Joseph Bick², the letters of Dr. Valda M. Chijide, M.D., the former HIV Specialist at Limestone³, and declarations from individual HIV prisoners at Limestone⁴. In addition, plaintiffs state the following:

1. This civil rights case addresses the medical treatment and living conditions provided to the HIV prisoners confined at Limestone. On April 29, 2004, both parties in this case signed a comprehensive *Settlement Agreement*. On June 24, 2004, this Court approved and entered an *Order* adopting the *Settlement Agreement* (DOC #165).

2. The *Settlement Agreement* provides a comprehensive process to informally resolve acts of noncompliance. The steps include:

(1) first, upon any report or observation of noncompliance, the plaintiffs will submit a written description to the defendants addressing the noncompliant act;

(2) second, upon receiving the written complaint from the plaintiffs, the defendants will

²Dr. Joseph Bick's, the neutral medical consultant, *Quarterly Reports* are contained in Exhibits 5 and 6 to this Motion. Dr. Bick's appointment as the neutral medical consultant stems from section 26.1, page 15 of the *Settlement Agreement* and was endorsed and approved by this Court in an Order on June 24, 2004 (DOC #165). Among his court approved duties, Dr. Bick authors a written quarterly report following a one week on-site inspection and examination of all facets of the delivery of medical care to HIV and AIDS prisoners -- Plaintiffs -- at Limestone.

³Dr. Valda Chijide's letters are contained in Exhibits 8, 9, 10, and 11 to this Motion.

⁴HIV prisoner declarations are all contained in Exhibit 12 to this Motion.

have fifteen days to resolve the dispute;

(3) third, if after fifteen days, the dispute has not been adequately resolved, the plaintiffs may petition the Special Master for a finding of fact addressing noncompliance.⁵

See §§ 28.1, 28.3, and 28.5 of *Settlement Agreement*, at 18 (DOC #159). Plaintiffs have pursued the informal resolution process described in the *Agreement*. Nevertheless, defendants have chosen not to participate in the process.

3. On December 20, 2004, plaintiffs notified defendants that they were in violation of numerous provisions of the *Settlement Agreement* including: gaps and delays in medication distribution (*Id.*, § 7.1, at 6); waiting several months for routine checkups with the HIV Specialist (*Id.*, § 5.1, at 5); not able to see the doctor for urgent medical needs (*Id.*, § 3.4, at 3); newly arrived HIV prisoners are not being seen by the HIV Specialist when urgent medical needs are identified at intake (*Id.*, § 11.2, at 8); broken windows in the HIV dorms (*Id.*, § 19.1, at 12); inadequate responses to medical emergencies arising in the Health Care Unit (*Id.*, § 3.4, at 3); and no treatment for HIV prisoners co-infected with Hepatitis C (*Id.*, § 8.3, at 7).⁶ Defendants have never responded to these noncompliance issues.

4. On January 12, 2005, plaintiffs again notified defendants that they were in violation of the *Settlement Agreement*.⁷ In the beginning of January 2005, Dr. Wyndol Hamer, the primary physician at Limestone, left the facility. Plaintiffs notified defendants that Dr. Hamer's absence violated section 3.1 of the *Settlement Agreement*. See § 3.1 of *Settlement Agreement* (DOC

⁵See §§ 28.1-28.5 of *Settlement Agreement*.

⁶See Exhibit 1, letter from plaintiffs to defendants, dated December 20, 2004.

⁷See Exhibit 2, letter from plaintiffs to defendants, dated January 12, 2005.

#159) (“An HIV Specialist **and** a medical doctor shall provide medical treatment at Limestone Correctional Facility.”) (emphasis added). Defendants have never responded to these noncompliance issues.

5. On January 27, 2005, plaintiffs again notified defendants that they were violating numerous provision of the *Settlement Agreement*. Plaintiffs’ notification was attached to a letter written by Dr. Valda Chijide, M.D., the HIV Specialist at Limestone.⁸ Dr. Chijide’s letter provided a detailed description of numerous acts of noncompliance by the defendants. Defendants have never responded to these noncompliance issues.

6. On February 1, 2005, plaintiffs yet again notified defendants that they were violating the provisions of the *Settlement Agreement*.⁹ Plaintiffs notified defendants that Dr. Chijide’s placement on administrative leave without an adequately trained replacement, violated section 3.1 of the *Agreement*. See § 3.1 of *Settlement Agreement*, at 2-3 (“An HIV Specialist and a medical doctor shall provide medical treatment at Limestone Correctional Facility.”). Defendants did not respond to this letter. In fact, defendants have **never** responded to any of the plaintiffs’ noncompliant written complaints:

- (1) letter of December 20, 2004. See Exhibit 1;
- (2) letter of January 12, 2005. See Exhibit 2;
- (3) letter of January 27, 2005. See Exhibit 3;
- (4) letter of February 1, 2005. See Exhibit 4.

7. Some limited progress has been made at Limestone. Nevertheless, substantial and very

⁸See Exhibit 3, letter from plaintiffs to defendants, dated January 27, 2005.

⁹See Exhibit 4, letter from plaintiffs to defendants, dated February 1, 2005.

serious medical care and housing problems exist which endanger the health, safety and lives of the HIV prisoners at Limestone. These problems include: (1) the absence of an HIV Specialist (§ 3.1 of *Settlement Agreement*, at 2-3); the absence of a full time physician (§§ 3.1 and 3.7 of *Settlement Agreement*, at 3); the failure to treat HIV prisoners co-infected with Hepatitis C (§ 8.3 of *Settlement Agreement*, at 7); gaps in the provision of medication (§ 7.1 of *Settlement Agreement*, at 6); inadequate HIV prisoner access to outside specialist medical care (§ 4.4 of *Settlement Agreement*, at 4); and a shortage of nursing staff (§ 3.7 of *Settlement Agreement*, at 4). In each of these areas, defendants are violating the provisions of the *Settlement Agreement*.

I. AREAS OF NONCOMPLIANCE

A. Healthcare Staff.

8. Section 3.1 of the *Settlement Agreement* states that “[A]n HIV Specialist **and** a medical doctor shall provide treatment at Limestone Correctional Facility (‘Limestone’).” The Defendants are in violation of section 3.1, one of the core provisions of the *Agreement*. Dr. Valda Chijide, the HIV Specialist at Limestone, was placed on administrative leave and subsequently resigned on February 8, 2005 as the HIV Specialist at Limestone stating:

Pursuant to previous memos you have received and due to lack of organizational and administrative support from Prison Health Services as well as personal abuses I have received, I resign effectively immediately.¹⁰

Her position has not been replaced. Because Dr. Chijide was placed on administrative leave and then resigned, most HIV prisoners have not seen the HIV Specialist for two weeks or longer. In fact, the lengthy delays in not being examined by the HIV Specialist have caused many HIV

¹⁰See Exhibit 11, letter from Dr. Chijide dated January 31, 2005.

prisoners to not be seen in conformance with section 5.1 of the *Settlement Agreement*.¹¹ The physician positions at Limestone are understaffed which violates numerous provisions of the *Agreement*: section 3.1, pp. 2-3; section 3.7, p. 4.

9. Section 3.4 states that “[P]risoners shall not provide emergency medical treatment to other prisoners.” Medical emergencies that arise in the Limestone Health Care Unit (“HCU”), are often first responded too by prisoner runners. The prisoner runners ask the HIV prisoner in need of medical treatment for a description of their symptoms. The prisoner runner then decides if the HIV prisoner needs to see a nurse. Prisoner runners do not have the necessary training to make these medical decisions. In his November 2004 report, Dr. Bick describes the system:

To call a nurse, the patients use the call system. Because the nurse is not actually in the infirmary, an officer or inmate must be relied upon to go get the nurse. In effect, inmates and correctional staff control access to nurses in the infirmary.

See Exhibit 6, Dr. Joseph Bick November Report 2004, at the *Information Concerning the Infirmary* section. Such actions jeopardize the health, safety, and lives of HIV prisoners and violates the *Settlement Agreement*.

10. Section 4.2 states that all registered nurses and licensed practical nurses shall not make medical decisions outside the scope of their license. Decisions made outside the scope of a person’s medical license threatens the health and lives of HIV prisoners at Limestone.

11. Section 3.7 requires that all staffing levels conform to NCCHC P-C-07 (2003).

¹¹ Section 5.1 states:

The HIV Specialist shall see all HIV infected prisoner at least quarterly, or more frequently as medically necessary, which will include: a history, physical examination, and evaluation of current CD4+ levels and viral load. All prisoners with AIDS shall be seen every sixty (60) days.

According to Dr. Bick's November report, medical staff at Limestone is understaffed and fails to comply with the provisions of the *Settlement Agreement*. See Exhibit 6, Dr. Joseph Bick November Report 2004, at section 3.7. ("Because of the intensity of the medical mission at Limestone, I do not believe that the existing physician and RNP staffing conforms to NCCHC P-C-07.").

12. Section 4.4 of the *Settlement Agreement* states that "[I]f Limestone lacks adequate resources for the medical treatment of an HIV infected prisoner, then the prisoner shall be sent to an outside specialist in a timely manner." Defendants are in violation of section 4.4. For example, HIV prisoners have not received physician ordered eye exams and EKG's.¹² Such inadequate access to outside medical specialists and emergency medical care jeopardizes the lives of the HIV prisoners at Limestone.

B. HIV Medical Treatment at Limestone.

13. Section 5.1 of the *Settlement Agreement* requires the HIV Specialist to see all HIV prisoners at least quarterly, and sometimes more often if needed, and all AIDS prisoners every sixty days. Defendants continue to violate this provision of the *Settlement Agreement*. Dr. Bick's November 2004 report indicates that HIV and AIDS prisoners are not seen by the HIV Specialist within these time frames. See Exhibit 6, Dr. Bick's November 2004 report, at section 5.1.

14. Section 6.2 of the *Settlement Agreement* provides that: "All prisoners who have, or are suspected to have, contagious tuberculosis, shall be placed in respiratory isolation until they

¹²See Exhibit 12, Declaration of Paul Edwards, at 2 (received an order for an eye exam and EKG on December 5, 2004 and has not received either an eye exam or EKG as of February 10, 2005)