IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA, PLAINTIFF, v. PIEDMONT REGIONAL JAIL AUTHORITY, DEFENDANT.	)	Civil No. 3:13-cv-646

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Piedmont Regional Jail Authority ("Defendant"), and the United States of America (collectively, "the Parties") enter into this agreement ("Agreement") with the goal of ensuring that prisoners at the Piedmont Regional Jail ("Piedmont" or "Jail") are provided with constitutional medical and mental health care.

2. Through this Agreement, the Parties seek to ensure that prisoners' constitutional rights are protected. By providing for constitutional conditions at Piedmont, the Defendant will also provide for the safety of staff and promote public safety in the community.

3. The Civil Rights Division of the United States Department of Justice commenced an investigation of the conditions of confinement at the Piedmont Regional Jail after learning of a series of deaths at the jail. The United States of America, through the United States Department of Justice ("the United States"), notified the Piedmont Regional Jail Authority of its intention to investigate conditions of confinement at the Jail pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 ("CRIPA"). The United States' investigation included onsite interviews of Jail staff and prisoners, and a review of relevant Jail policies and procedures, reports, logs, and other relevant documents and data.

4. On September 6, 2012, the United States issued an investigative findings letter which concluded that certain conditions at the Jail violated the constitutional rights of prisoners detained or committed to the Jail ("Findings Letter") (attached as Appendix A). Specifically, the United States found a pattern or practice of constitutional violations in Piedmont's provision of medical care and mental health care.

5. From the beginning, and continuing throughout the United States' investigation of conditions of confinement at Piedmont, Defendant has pledged its cooperation to

address concerns the United States has raised with respect to conditions at the Jail. This Agreement memorializes the actions that Defendant will implement to address the United States' findings related to medical care and mental health care.

6. This Agreement shall be filed in the United States District Court, Eastern District of Virginia, and shall resolve the United States' claims that Piedmont is in violation of the Eighth and Fourteenth Amendments to the Constitution in its operation and management of the Jail.

7. The Court has jurisdiction over this action pursuant to 28 U.S.C. §1331; 28 U.S.C. § 1345; and 42 U.S.C. § 1997. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

8. The Agreement shall constitute the entire integrated Agreement of the Parties. Except for the United States' September 6, 2012, Findings Letter, no prior contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provisions of the Agreement in this litigation or in any other proceeding.

II. DEFINITIONS

As used in this Agreement, the following definitions apply:

a. "Piedmont" or "Jail" means the Piedmont Regional Jail in Farmville, Virginia, or any facility that is used to replace or supplement the Jail.

b. "Defendant" means the Piedmont Regional Jail Authority.

c. "United States" means the United States Department of Justice, including the Civil Rights Division and the United States Attorney's Office for the Eastern District of Virginia, which represents the United States in this matter.

d. "CNA" means Certified Nursing Assistant.

e. Consistent with, or in accordance with, the term "generally accepted correctional standards" means those industry standards accepted by correctional professionals or organizations in the relevant subject area.

f. "Corrections Officers" means those individuals employed by the Jail whose primary responsibility is to provide prison security or escort service.

g. "Effective Date" means the date the Agreement is signed and entered by the Court.

h. "Include" or "including" means "include, but not be limited to" or "including, but not limited to."

i. “LPN” means individuals licensed as Licensed Practical Nurses by the State of Virginia.

j. “Monitor” means an individual jointly selected by both Parties to assess and report on implementation of the Agreement.

k. “Prisoners” or “Prisoner” means one or more individuals detained at, or otherwise housed, held, in the custody of, or confined at Piedmont.

l. “Psychiatrist” means a medical or osteopathic doctor licensed to practice medicine or osteopathy in the State of Virginia, who has completed a residency in psychiatry in a program accredited by the American Association of Medical Colleges or the American Osteopathic Association.

m. “Psychotropic medication” means any medication prescribed by a physician that is used in the treatment of mental illness which exerts an effect on the brain and is capable of modifying mental activity or behavior.

n. “Qualified Health Professional” means a physician, physician assistant, nurse practitioner, registered nurse, or licensed practical nurse who is currently licensed by the State of Virginia and provides medical care and services to prisoners at Piedmont.

o. “Qualified Mental Health Professional” means a registered nurse with education and training in psychiatric nursing, or an individual with a minimum of a master’s level degree and training in psychiatry, psychology, counseling, or social work. The Qualified Mental Health Professional must be currently licensed by the State of Virginia to deliver those mental health services he or she has undertaken to provide.

p. “Restraints” means restraints used for medical or mental health purposes, including, but not limited to, 4-point restraints and restraint chairs.

q. “RN” means Registered Nurse.

r. “Serious Suicide Attempt” means any suicide attempt for which medical care is required, or which requires or should require transfer to a higher level of care.

s. “Substantial Compliance” means that Defendant has achieved material compliance with each substantive provision of this Agreement and has maintained such compliance for 18 consecutive months, except for minor occasional aberrational violations. Material compliance requires that, for each provision, Piedmont has developed and implemented a policy incorporating the requirement, that relevant personnel have been trained on the policy, and that Piedmont is complying with the requirement in actual practice. For example, provisions requiring that specific policies be developed require also that the Jail train relevant personnel on the requirements of that policy, and that the Jail act in accordance with that policy. Similarly, provisions requiring that the Jail implement particular practices require also that that the requirement be incorporated into Jail policy.

t. "Suicide precautions" means any level of watch, observation, or measures to prevent self-harm.

u. "Timely" means the provision of medical or mental health care consistent with generally accepted correctional standards of care, depending on the nature of the situation, such as emergency, urgent, or routine.

v. "Train" means to instruct in the noted skills to a level that the trainee has the demonstrated proficiency to implement those skills as and when called for. A person is "trained" if he or she is able to describe, demonstrate, and apply the noted skills.

III. SUBSTANTIVE PROVISIONS

Piedmont shall achieve substantial compliance with the substantive provisions of this Agreement listed below. These provisions are intended to ensure that prisoners receive proper medical and mental health treatment and do not experience unnecessary suffering or harm while incarcerated. The failure to provide necessary treatment not only harms prisoners, but affects public safety if prisoners' health deteriorates during incarceration. Accordingly, the Jail shall ensure constitutionally adequate intake, assessment, treatment, and monitoring of prisoners with medical and mental health needs. The Jail's adoption of the substantive provisions in this Agreement will satisfy the findings made by the United States in its letter dated September 6, 2012.

A. Medical Care

Piedmont shall ensure that prisoners with medical conditions and/or injuries receive treatment appropriate to their condition and adequate to prevent unnecessary suffering or risk of harm. To achieve this outcome, Piedmont shall implement the requirements below.

1. Staffing

a. Piedmont shall ensure that the Jail's medical staffing is sufficient to provide adequate care for prisoners' needs, fulfill constitutional mandates and the terms of this Agreement, and allow for the adequate operation of the Jail, consistent with constitutional standards. Piedmont shall achieve adequate medical staffing in the following manner:

(1) Within 180 days of the Effective Date, Piedmont shall ensure that there are at least 3.5 hours of physician time per week for every 100 prisoners, based on the highest monthly average census within the past three months. De minimis temporary deviations from this ratio will not necessarily result in a finding of non-compliance with this provision.

(2) Within 180 days of the Effective Date, Piedmont shall hire sufficient numbers of medical staff to provide adequate medical care. This medical staffing shall include at least one RN and six LPNs, provided the prisoner

count remains below 600, and that all health assessments are completed in a timely manner by either the physician or the RN. If the prisoner count exceeds 600, Piedmont shall hire two additional LPNs. If health assessments are not being completed within 14 days, Piedmont shall hire one additional RN.

(3) Once yearly thereafter during the term of this Agreement, Piedmont shall perform a medical staffing analysis, which it shall submit to the Monitor and DOJ for review and approval. If that analysis demonstrates that staffing ratios need to be increased to provide constitutionally adequate medical care, Piedmont shall increase staffing as necessary to ensure constitutional medical care.

b. Piedmont shall ensure that all persons providing medical treatment meet applicable state licensure and/or certification requirements, and practice only within the scope of their training and licensure.

c. CNAs shall not perform any tasks beyond support functions (e.g., taking vital signs, prepping patient charts, etc.).

d. Corrections Officers shall not provide any type of non-emergency medical care, and clear guidelines shall be in place for any individuals providing clinical support, with physician oversight.

2. Policies

a. Piedmont shall revise its policies and procedures to establish clear direction and expectations for all staff.

b. Piedmont shall create and adopt policies consistent with the 2008 National Commission on Correctional Health Care ("NCCHC") Jail Standards. At minimum, Piedmont shall draft policies consistent with those standards deemed essential by the NCCHC. NCCHC essential standards include:

- Access to Care
- Responsible Health Authority
- Medical Autonomy
- Administrative Meetings and Reports
- Policies and Procedures
- Continuous Quality Improvement Program
- Emergency Response Plan
- Communication on Patients' Health Needs
- Infection Control Program
- Credentialing
- Professional Development

- Health Training for Correctional Officers
- Medication Administration Training
- Inmate Workers
- Pharmaceutical Operations
- Medication Services
- Information on Health Services
- Receiving Screening
- Transfer Screening
- Initial Health Assessment
- Mental Health Screening and Evaluation
- Oral Care
- Nonemergency Health Care Requests and Services
- Emergency Services
- Segregated Inmates
- Continuity of Care During Incarceration
- Chronic Disease Services
- Patients with Special Health Needs
- Infirmary Care (currently inapplicable, but to be adopted should Piedmont construct an infirmary)
- Basic Mental Health Services
- Suicide Prevention Program
- Intoxication and Withdrawal
- Care of the Pregnant Inmate
- Health Record Format and Contents
- Confidentiality of Health Records
- Restraint and Seclusion (currently inapplicable, but to be adopted should Piedmont begin using restraints and seclusion)
- Emergency Psychotropic Medication

3. Intake Screening

a. Piedmont shall ensure that the medical screening aspect of the initial intake screening is performed by a Qualified Health Professional.

b. Piedmont shall ensure that all initial screenings are fully documented and available to medical staff in each prisoner's medical file.

c. Piedmont shall ensure that it adopts policies consistent with applicable professional standards providing guidance for when prisoners should be referred to a physician after initial screening.

4. Chronic Care

Piedmont shall promulgate and implement a policy establishing a chronic care program with disease-specific clinical guidelines that does the following:

i. defines illnesses that qualify for inclusion in the program;
ii. ensures that prisoners with chronic care issues are identified and examined by the physician;
iii. tracks prisoners in the program;
iv. schedules periodic assessments;
v. provides for diagnostic tests at an initial comprehensive visit;
vi. makes lab work available at appointments in order to determine the status of disease control; and
vii. outlines a clinical plan for each chronically ill prisoner.

5. Health Assessments

Piedmont shall develop and implement a system to provide each prisoner with a comprehensive health assessment, conducted by a physician, physician assistant, nurse practitioner, or registered nurse under the supervision of a physician, within fourteen days of arrival. Piedmont shall ensure that any prisoner whose health assessment identifies a medical problem is referred to the physician for follow-up care.

6. Sick Call

a. Piedmont shall establish nursing protocols, signed by the medical director, for use during sick call, that will allow nurses to properly triage prisoners' medical needs and ensure that prisoners are referred for, and provided with, appropriate treatment in a timely manner. These protocols should address common symptoms, and should instruct nurses about the questions they should ask of prisoners with those symptoms, and the objectives they should accomplish in evaluating those prisoners.

b. Piedmont shall ensure that the physician provides oversight of the sick call process through a monthly review of the nurses performing sick call, in order to ensure that personnel are not practicing beyond their training. The review shall determine whether nurses are providing appropriate care and whether they are following facility policy and procedure.

7. Correctional Staff Training

a. Piedmont shall ensure that all officers are trained annually in providing first-responder medical care, and that all medical and security staff are basic cardiac life support ("BCLS")-certified. Piedmont shall submit the curriculum for these trainings to the Monitor and DOJ for review and approval prior to delivering this training.

b. Piedmont shall develop and implement comprehensive training on suicide prevention and mental health care, including an introductory training provided to new hires as well as annual in-service training, which will include training on basic mental health information (e.g., recognizing mental illness, specific problematic behaviors, additional areas of concern); identification, timely referral, and proper supervision of prisoners with serious mental health needs; appropriate responses to behavior symptomatic of mental illness; suicide prevention; and an annual refresher training on relevant topics. The training shall be conducted by Qualified Mental Health Professionals. The curriculum shall be submitted to the Monitor and DOJ for review and approval prior to delivery of the training.

8. Co-Pays

a. Piedmont shall exclude from co-payments all health care required by the Jail, including health assessments and mental health care, as well as necessary medical care, including chronic care and emergency visits.

b. Piedmont shall require only one co-payment fee to see a nurse, with no further fee assessed if the prisoner is referred to the doctor for further evaluation.

c. If follow-up care for a serious medical need is clinically indicated, no co-payment shall be required for that care, nor will a prisoner be charged multiple co-payments if he or she receives care more than one time during any 30-day period for the same serious medical need.

d. Piedmont shall not require a co-payment for health care if the co-payment would result in effectively denying care to the prisoner by dissuading the prisoner from seeking needed health care. For the purposes of this Agreement, the Parties have established the following co-payment schedule (subject to change to conform with Virginia law, provided that the Monitor and DOJ are informed of any changes and that the changes are constitutionally adequate) and have agreed that this co-payment shall be waived if it would cause the balance in a prisoner's account to go below $5.00.

Co-Payment Schedule: $2.00 to see a nurse; $3.00 to see a doctor; and $8.00 for an emergency visit (i.e. visit on an expedited basis) if it is determined that an expedited visit was medically unnecessary.

B. Mental Health Treatment

Piedmont shall ensure that prisoners suffering from mental illness receive treatment appropriate to their condition and adequate to prevent unnecessary suffering or risk of harm. Proper treatment will also assist prisoners in successfully reentering the community upon release. To achieve this outcome, Piedmont shall implement the requirements below.

1. Mental Health Staffing

Piedmont shall ensure that the Jail's mental health staffing is sufficient to provide adequate care for prisoners' serious mental health needs, fulfill constitutional mandates and the terms of this Agreement, and allow for the adequate operation of the Jail, consistent with constitutional standards. Piedmont shall achieve adequate mental health staffing in the following manner:

(1) Within 180 days of the Effective Date, Piedmont shall ensure that the Jail meets the following staffing level for Qualified Mental Health Professionals: Piedmont shall employ a full-time QMHP and a Psychiatrist who is onsite at the Jail no less than once per week for a number of hours sufficient to provide adequate medical care, provided that telemedicine and further in-person assessments will otherwise be provided by the Psychiatrist where clinically indicated.

(2) Beginning one year after the Effective Date, and then continuing once yearly thereafter during the term of this Agreement, Piedmont shall perform a mental health staffing analysis, which it shall submit to the Monitor and DOJ for review and approval. If that analysis demonstrates that staffing ratios need to be increased to provide adequate mental health care, Piedmont shall increase staffing as necessary to ensure constitutional mental health care.

2. Mental Health Policies

Piedmont shall implement comprehensive policies and protocols to ensure that the Jail delivers mental health services that are adequate in quality and array, as provided for in the NCCHC Jail Standards related to mental health care. These policies and protocols must require a treatment plan for prisoners with serious mental illness and contain mechanisms sufficient to measure whether care is being provided in a manner consistent with the Constitution. The policies and protocols shall:

a. Ensure that all prisoners are appropriately screened for mental illness using an appropriately validated screening instrument.

b. Ensure that all prisoners with a known or suspected mental illness are referred to the psychiatrist within 14 days of arrival, and that individuals with more acute needs are seen and treated as soon as Piedmont becomes aware of their condition.

c. Ensure that prisoners with chronic mental illness are placed on a chronic mental health list for follow-up every 30, 60, or 90 days, as clinically appropriate. Prisoners with chronic mental illnesses shall not be required to submit a request for mental health services in order to receive such services at regular intervals.

d. Ensure that prescriptions for psychotropic medications are reviewed by a psychiatrist on a regular, timely basis to assess whether each prisoner's prescribed regimen continues to be appropriate and effective for his or her condition. Whenever a psychotropic medication is discontinued, added, or changed, Piedmont will ensure that the psychiatrist or other qualified prescriber making such changes contemporaneously documents the reason for such change in the prisoner's health record.

e. Ensure that individuals receiving psychotropic medication are adequately monitored for potential negative side-effects of such medications, and that prisoners on such medications are evaluated by the psychiatrist within two weeks of starting any new medication.

3. Suicide Prevention

Piedmont shall implement comprehensive policies and protocols to ensure that prisoners at risk of self harm are identified, protected, and treated in a manner consistent with the Constitution. Piedmont shall continuously track and analyze prisoners' risk of self harm and implement measures to protect prisoners by reducing or eliminating the risk of harm. The policies and protocols shall:

a. Protect the safety of prisoners at risk for self-injurious behavior or suicide by providing timely and adequate access to Qualified Mental Health Professionals.

b. Ensure that prisoners on suicide watch are provided with the appropriate level of supervision. Actively suicidal prisoners shall be placed on constant observation, while potentially suicidal prisoners shall be monitored at staggered intervals not to exceed every 15 minutes. Correctional Officers shall document their checks in a format that does not have pre-printed times and staff shall document their visual verification of the prisoners' welfare accurately and completely. A supervisor shall conduct and document a review of all documents related to this provision before the end of the shift during which it occurred to ensure compliance with policy and this Agreement.

c. Ensure that all staff who have contact with prisoners have ready access to cut-down tools and are trained to use them effectively.

d. Ensure that a Qualified Mental Health Professional regularly, but no less than once per shift, reassesses prisoners on suicide precautions to determine whether the level of precaution or supervision should be raised or lowered. These reassessments shall be documented and recorded in the prisoners' medical charts. If no Qualified Mental Health Professional is present, the facility physician should provide such monitoring.

C. Quality Assurance

Piedmont shall develop, implement, and maintain a system to ensure that trends and incidents involving deficiencies in medical and mental health care are identified and corrected in a timely manner.

a. Within 180 days of the Effective Date, Piedmont shall develop and implement written Quality Assurance policies and procedures adequate to identify and address serious deficiencies in medical and mental health care, including sick call, health assessments, intake, chronic care, medication administration, emergency care, and infection control.

b. Within 180 days of the Effective Date, Piedmont shall implement monthly quality assurance mechanisms at the individual and system levels to prevent or minimize harm to prisoners. These quality assurance mechanisms shall track and analyze patterns and trends regarding the provision of medical and mental health care at Piedmont. Each monthly report shall include:

(1) relevant aggregate data, including:

i. the time elapsed between prisoners' requests for medical or mental health services and the provision of services by a Qualified Health Professional or Qualified Mental Health Professional, separated by the following categories:

i. nurse sick call;
ii. physician referral;

iii. psychiatrist referral;

ii. the number of health assessments performed and how many were reviewed by the physician, if performed by a registered nurse;

iii. a list of prisoners with chronic medical or mental illnesses, separated by disease or condition, and including the dates prisoners were treated by a Qualified Health Professional or Qualified Mental Health Professional;

iv. the number of prisoners sent to outside facilities for inpatient care, as well as the condition of each prisoner at the time he or she was sent to the outside facility;

v. the number of prisoners sent for specialty consultation, with the specialty service identified for each individual prisoner;

vi. the number of prisoners sent to the emergency room and the number admitted, with the reason admitted and the clinical outcome for each prisoner, as well as the reasons not admitted for those prisoners who were not admitted;

vii. the number of prisoners being treated for HIV;

viii. the number of prisoners pregnant and the number referred for obstetrics services;

ix. the number of prisoners who are PPD positive and the number of chest x-rays performed to assess for tuberculosis;

x. the number of prisoners treated for possible substance abuse withdrawal, with clinical outcomes listed;

xi. the number of prisoners prescribed psychotropic medications;

xii. the number of prisoners prescribed two or more psychotropic medications;

xiii. the average amount of time between visits with a Qualified Mental Health Professional for prisoners on psychotropic medications;

xiv. the number of prisoners placed on suicide watch;

xv. the average length of time prisoners are kept on suicide watch;

xvi. the number of times restraints were used;

xvii. for medical and mental health staff, the vacancy report with positions and days vacant, and the number of applicants for each position;

xviii. a list of new hires and terminations for medical and mental health staff;

xix. a list of all medical and security staff whose BCLS certifications will expire in the next two months;

xx. a list of all medical and security staff who have undergone any training required under this Agreement; and

xxi. the number of hours of training each staff member receives on suicide prevention and mental health matters each year.

(2) an assessment of trends and interventions, including:

i. the timeliness of medical and mental health services provided;
ii. referrals to outside care;
iii. whether prisoners with chronic medical and mental illnesses are receiving services at regular intervals without requesting such services, as measured by tracking logs;
iv. whether prisoners are receiving appropriate and adequate mental health counseling and therapy;
v. whether all concerns or deficiencies identified through the Quality Assurance process have been addressed through a corrective action plan, and what findings have been made under that plan;
vi. a review of any policies revised or developed as a result of any deficiencies identified through the Quality Assurance process;
vii. whether Quality Assurance audit tools have been developed for all provisions in this Agreement and performed monthly; and
viii. the effectiveness of interventions undertaken in response to identified trends from previous months.

c. Based on these monthly assessments, Piedmont shall recommend and implement changes to policies and procedures.

d. All monthly reports shall be provided to the Monitor, who will closely review the reports and consider them when determining whether constitutional care is being provided or whether any changes need to be made to policies and procedures.

e. The Jail shall ensure that all relevant facts and circumstances surrounding deaths are investigated and reviewed by a multidisciplinary team, consisting of medical, mental health, and corrections staff. This team shall identify any areas in which staff performance could be improved or jail procedures could be adjusted to improve the ability to provide care to prisoners. All reviews shall be documented and shall include the team's findings, concerns, recommendations and remedial actions.

IV. REPORTING REQUIREMENTS AND RIGHT OF ACCESS

A. Unless a different period is provided elsewhere in the Agreement, within 180 days of the Effective Date, Piedmont shall revise and/or develop as necessary other written documents such as screening tools, logs, handbooks, manuals, and forms, to effectuate the provisions of this Agreement. Piedmont shall send newly-drafted and revised policies and procedures to the United States and the Monitor for review and approval as they are promulgated. The United States reserves the right to withhold consent to any policies or procedures that are inconsistent with this Agreement. The United States will not unreasonably withhold approval. If the United States withholds consent, Piedmont will re-submit revised policies or procedures to the United States within 14 days of its receipt of notice of the withholding of consent from the United States. When disputes arise regarding policies and procedures, the United States may initiate judicial enforcement proceedings subject to the aforementioned 14-day cure period. Piedmont

shall provide initial and in-service training to all facility staff with respect to newly implemented or revised policies and procedures. Piedmont shall document employee review and training in policies and procedures. On an annual basis, Piedmont shall review all policies and procedures and submit them to the Monitor and the United States for review and approval.

B. Piedmont shall file with the Court bi-annual compliance reports, the first of which shall be filed within 180 days of the date of the Effective Date. Thereafter, the bi-annual reports shall be filed 15 days after the termination of each six-month period until this Agreement is terminated. The report shall summarize Quality Assurance activities and capture data that is tracked and monitored under the monthly reporting provisions.

C. Piedmont shall within 24 hours notify the Monitor and the United States upon the death of any prisoner, and upon any serious suicide attempt. Piedmont shall forward to the Monitor and the United States incident reports and medical and/or mental health reports related to deaths, autopsies, and/or death summaries of prisoners.

D. Each compliance report shall describe the actions Piedmont has taken during the reporting period to implement this Agreement and shall make specific reference to the Agreement provisions being implemented.

E. Piedmont shall maintain sufficient records to document that the requirements of this Agreement are being properly implemented and shall make such records available to the United States within two business days for inspection and copying. In addition, Piedmont shall maintain and provide, upon request, all records or other documents to verify that they have taken such actions as described in their compliance reports (e.g., census summaries, policies, procedures, protocols, training materials, investigations, and incident reports).

F. The United States and its attorneys, consultants, and agents shall have unrestricted access to the Jail, prisoners, staff, information, and documents as reasonably necessary to verify the Jail's substantial compliance with this Agreement.

V. <u>MONITORING</u>

A. Monitor Selection: The Parties have jointly selected James Welch to serve as the Monitor overseeing implementation of the Agreement. Should the monitor position become vacant and if the Parties cannot agree on a replacement, the Parties shall recommend candidates to the Court, and the Court will appoint the Monitor from the names submitted by the Parties. Neither Party, nor any employee or agent of either Party, shall have any supervisory authority over the Monitor's activities, reports, findings, or recommendations. The cost for the Monitor's fees and expenses shall be borne by Defendant. The selection of the Monitor shall be conducted solely pursuant to the procedures set forth in this Agreement, and will not be governed by any formal or legal procurement requirements. The Monitor may be terminated only for good cause,

unrelated to the Monitor's findings or recommendations, and only with prior notice to, and approval of, the Parties acting jointly or by Court order. Should the Parties agree that the Monitor is not fulfilling his or her duties in accordance with this Agreement, the Parties may petition the Court for the Monitor's immediate removal and replacement. One Party may unilaterally petition the Court for the Monitor's removal for good cause, and the other Party will have the opportunity to respond to the petition.

B. Monitor Qualifications: The Monitor shall be an individual of the highest ethics, and shall have appropriate experience and education or training related to the subject areas covered in this Agreement.

C. Monitor Access: The Monitor shall have full and complete access to the Jail, all Jail records, prisoner medical and mental health records, staff, and prisoners in order to assess the Jail's substantial compliance with this Agreement. Defendant shall direct all employees to cooperate fully with the Monitor. All non-public information obtained by the Monitor shall be maintained in a confidential manner.

D. Monitor Ex Parte Communications: The Monitor shall be permitted to initiate and receive ex parte communications with the Parties and the Court.

E. Limitations on Public Disclosures by the Monitor: Except as required or authorized by the terms of this Agreement or the Parties acting together, the Monitor shall not: make any public statements (at a conference or otherwise) or issue findings, except as required under paragraph F, listed below, with regard to any act or omission of Defendant or its agents, representatives, or employees, or disclose nonpublic information provided to the Monitor pursuant to this Agreement. Any press statement made by the Monitor regarding the monitoring of this Agreement or his or her employment as Monitor must first be approved in writing by the Parties. Unless required by law, the Monitor shall not testify in any other litigation or proceeding with regard to any act or omission of Defendant or any of its agents, representatives, or employees related to this Agreement, nor testify regarding any matter or subject that he or she may have learned as a result of his or her performance under this Agreement. Reports issued by the Monitor shall not be admissible against Defendant in any proceeding other than a proceeding related to the enforcement of this Agreement by Defendant or the United States. Unless such conflict is waived by the Parties, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against Defendant, its departments, officers, agents, or employees. The Monitor is not a State/County or local agency or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records subject to public inspection. Neither the Monitor nor any person or entity hired or otherwise retained by the Monitor to assist in furthering any provision of this Agreement shall be liable for any claim, lawsuit or demand arising out of the Monitor's performance pursuant to this Agreement. This provision does not apply to any

proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.

F. Monitor's Reports: The Monitor shall file with the Court and provide the Parties with reports describing the steps taken by Defendant to implement this Agreement and evaluate the extent to which Defendant has complied with each substantive provision of the Agreement. In the report, the Monitor shall also evaluate whether Defendant's compliance with the substantive provisions of the Agreement has resulted in the achievement of the Agreement's goal of providing constitutional health care. The Monitor shall issue an initial report 120 days after Defendant file its first compliance report, and then every 180 days thereafter. The reports shall be provided to the Parties in draft form for comment at least 14 days prior to their issuance. These reports shall be written with due regard for the privacy interests of individual prisoners and staff and the interest of Defendant in protecting against disclosure of non-public information.

G. Assessing Compliance with Goals of Agreement: In order to assess Defendant's progress toward achieving the Agreement's goal of ensuring that Piedmont provides prisoners with constitutional health care, within 120 days of appointment the Monitor shall develop qualitative and quantitative outcome measures, to be approved by the Parties. These outcome measures may include the data contained in Defendant's monthly quality assurance reports, as well as other relevant data, that assist the Monitor, the Parties, and the Court in evaluating the constitutionality of Piedmont's medical and mental health treatment. The Monitor shall include the outcome measures used, the data relied upon, and the Monitor's ultimate conclusions, based on its analysis of those outcome measures, in the Monitor's report.

H. Assessing Compliance with Agreement Provisions: In the Monitor's report, the Monitor shall evaluate whether Piedmont has attained material compliance with each provision of this Agreement. In order to assess compliance, the Monitor shall review a sufficient number of pertinent documents to accurately assess current condition and shall interview all necessary staff and prisoners. The Monitor shall also communicate with ex-prisoners, family members, and relevant community members to assist the Monitor's assessment of current conditions. The Monitor shall be responsible for independently verifying representations from Defendant regarding progress toward compliance and examining supporting documentation. Each Monitor's report shall describe the steps taken by the Monitor to analyze conditions and assess compliance, including documents reviewed and individuals interviewed, and the factual basis for each of the Monitor's findings.

I. Periodic Review of Agreement: The Monitor shall also review the provisions of the Agreement and assess whether any Agreement provision as drafted is not furthering the purpose of the Agreement or whether there is a preferable alternative that will achieve the same purpose. If so, the Monitor shall identify such provisions to the Parties. Where the Parties or the Monitor are uncertain whether a change to the Agreement is advisable, the Parties may agree to suspend the current Agreement requirement for a time period agreed upon at the outset of the suspension. During this suspension, the

Parties may agree to temporarily implement an alternative requirement. The Monitor shall assess whether the suspension of the requirement, and the implementation of any alternative provision, is as or more effective at achieving the purpose of the original Agreement requirement and the Parties shall consider this assessment in determining whether to jointly stipulate to make the suggested change, modification, or amendment. The Parties shall then confer and submit any proposed modifications to the Court for its approval.

J. Availability of Reports: The Defendant agrees to make the Monitor's Final Reports, which are filed with the Court, publicly available by electronic means on the Piedmont Regional Jail's website within 10 business days after the Reports are filed.

K. Compliance Coordinator: The Parties agree that Piedmont will assign a current employee to serve as the Piedmont Compliance Coordinator for the duration of this Agreement. The Compliance Coordinator will serve as a liaison between the Defendant and the Monitor and will assist with the Defendant's compliance with this Agreement. At a minimum, the Compliance Coordinator will: coordinate the Defendant's compliance and implementation activities; facilitate the provision of data, documents, materials, and access to the Defendant's personnel to the Monitor, the United States, and the public, as needed; ensure that all documents and records are maintained as provided in this Agreement; and assist in assigning compliance tasks to Piedmont personnel, as directed by the Superintendent or his designee. The Compliance Coordinator will take primary responsibility for collecting information the Monitor requires to carry out the duties assigned to the Monitor.

L. Monitor's Budget: Defendant shall provide the Monitor with a budget sufficient to allow the Monitor to carry out the responsibilities described in this Agreement.

M. Technical Assistance by the Monitor: The Monitor shall provide Defendant with requested technical assistance as consistent with its responsibilities as Monitor. Technical assistance should be reasonable and should not interfere with the Monitor's ability to assess compliance.

VI. ENFORCEMENT

A. During the period that the Agreement is in force, if the Monitor or the United States determines that Defendant is not in substantial compliance with the Agreement, and such failure constitutes a violation of prisoners' constitutional rights, the United States may initiate contempt or enforcement proceedings for an alleged failure to fulfill an obligation under the Substantive Provisions of this Agreement in Court subject to the cure provisions set forth in this Section VI.

B. Prior to taking judicial action to initiate contempt or other enforcement proceedings, the United States shall give Defendant written notice of its intent to initiate such proceedings, and the Parties shall engage in good-faith discussions to resolve the

dispute. The written notice from the United States to the Defendant shall itemize each alleged failure to fulfill an obligation under the Substantive Provisions of the Agreement to allow Defendant to remedy the alleged deficiencies.

C. Defendant shall have 30 days from the date of such notice to cure the failure (or such additional time as is reasonable due to the nature of the issue and agreed upon by the Parties) and provide the United States with sufficient proof of its cure. At the end of the 30-day period (or such additional time as is reasonable due to the nature of the issue and agreed upon by the Parties), in the event that the United States reasonably determines that the failure has not been cured, the United States may initiate contempt proceedings without further notice. The United States agrees to work in good faith with Defendant to avoid enforcement actions.

D. In case of an emergency posing an immediate threat to the health or safety of any prisoner or staff member at the Jail, however, the United States may omit the notice and cure requirements and seek immediate enforcement of the Agreement.

VII. <u>CONSTRUCTION, IMPLEMENTATION, AND TERMINATION</u>

A. The implementation of this Agreement can begin at any time but shall begin no later than the Effective Date.

B. Except where otherwise agreed to under a specific provision of this Agreement, Defendant shall implement all provisions of this Agreement within 180 days of the Effective Date.

C. The Court shall retain jurisdiction of this action for all purposes until Piedmont has achieved substantial compliance with each provision of the Agreement, provides constitutional medical and mental health care to prisoners, and has maintained substantial compliance and provided constitutional medical and mental health care for a period of 18 months. If both Parties agree that substantial compliance has been maintained, and constitutional medical and mental health care has been provided, for a period of 18 months, the Parties will jointly stipulate to dismissal of the case within 30 days.

D. Failure by any Party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines or provisions of this Agreement.

E. If any unforeseen circumstance occurs that causes a failure to comply with any requirements of this Agreement in a timely manner, Defendant shall notify the United States in writing within five days after Defendant becomes aware of the unforeseen circumstance and its impact on the Defendant's ability to perform under the Agreement. The notice shall describe the cause of the failure to perform and the measures taken to

prevent or minimize the failure. Defendant shall implement all reasonable measures to avoid or minimize any such failure.

F. The Agreement shall be binding upon the Parties and their successors, and applicable to acts of their officers, agents, employees, and assigns.

G. Each Party shall bear the cost of its fees and expenses incurred in connection with this cause.

H. If any provision of this Agreement is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Agreement.

I. No person or entity is intended to or shall be a third-party beneficiary of the provisions of this Settlement Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Settlement Agreement. This Settlement Agreement is not intended to impair or expand the right of any person or organization to seek relief against Piedmont, its employees, or agents for their past or future conduct; accordingly, this Agreement does not alter any legal standards governing any such claims, including those under any federal or Virginia law.

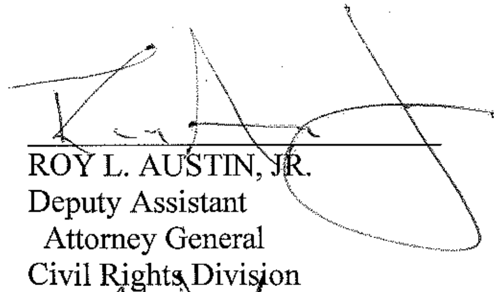
J. The Parties agree that litigation in this matter is not reasonably foreseeable or anticipated. Accordingly, the Parties agree that they are not obligated to preserve potentially discoverable information.

VIII. STIPULATION PURSUANT TO THE PRISON LITIGATION REFORM ACT, 18 U.S.C. § 3626

The Parties stipulate that this Agreement complies in all respects with the provisions of 18 U.S.C. § 3626(a). The Parties further stipulate and agree and the Court finds that the prospective relief in this Agreement is narrowly drawn, extends no further than necessary to correct the violations of federal rights as set forth by the United States in its Complaint and Findings Letter, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system. Accordingly, the Parties agree and represent that the Agreement complies in all respects with the provisions of 18 U.S.C. § 3626(a).

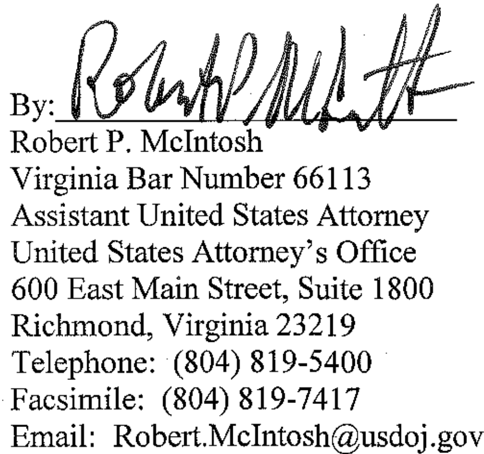
Respectfully submitted, this ____ day of ____________, ________,

FOR THE UNITED STATES:



ROY L. AUSTIN, JR.
Deputy Assistant
Attorney General
Civil Rights Division

KATHLEEN M. KAHOE
ACTING UNITED STATES ATTORNEY



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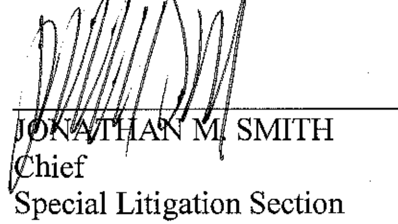
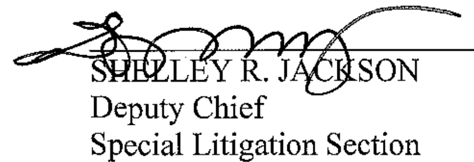


JONATHAN M. SMITH
Chief
Special Litigation Section



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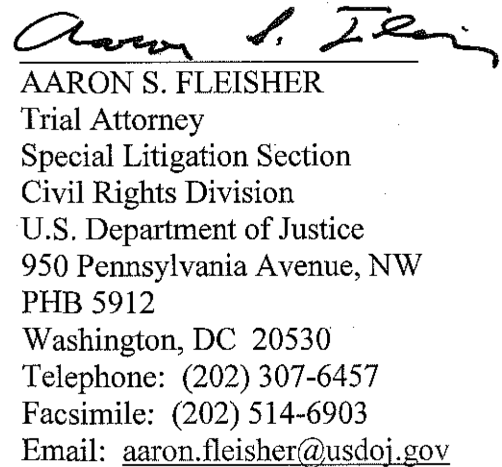

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FOR THE PIEDMONT REGIONAL JAIL AUTHORITY:

James Garnett

James Garnett
Chairman, Board of Directors,
Piedmont Regional Jail

APPENDIX A

U. S. Department of Justice

Civil Rights Division

Assistant Attorney General

Washington, D.C. 20530

SEP - 6 2012

VIA U.S. MAIL

Mr. James Garnett
Chairman, Board of Directors
Piedmont Regional Jail
801 Industrial Road
Farmville, VA 23901

Re: Investigation of Piedmont Regional Jail, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, and the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA")

Dear Mr. Garnett:

The Civil Rights Division of the United States Department of Justice has concluded its investigation of conditions at the Piedmont Regional Jail ("Piedmont," "the Facility," or "the Jail"), pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 ("CRIPA"), and the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA").

Our investigation found reasonable cause to believe that the Jail is denying necessary medical and mental health care, and consequently places prisoners at an unreasonable risk of serious harm, in violation of the Constitution. These lapses, if not corrected, have a likelihood of resulting in unnecessary injury and/or loss of life. By implementing the corrective measures set forth below, the Jail will fulfill its duty to protect the health and safety of those in its custody.

We also found that the Jail does not currently violate RLUIPA. During our tour, we identified practices that may have created a substantial burden on the religious exercise of prisoners. The Jail immediately made changes in response to our recommendations that resolved the issue.

During our exit briefing, the Piedmont leadership expressed a desire and intent to rectify any problems identified by the investigation. We look forward to discussing our findings with you after you have had the opportunity to review this letter. The Jail is an integral part of the public safety system. The remedies we propose will ensure respect for the rights of prisoners

confined there and will also provide for the safety of staff and promote public safety in the community.

I. Investigation

On March 4, 2011, we notified you that we were opening an investigation of Piedmont pursuant to CRIPA and RLUIPA. Our initial inquiry was prompted, in part, by a series of allegedly preventable deaths in the Jail between 2006 and 2009.[1] We learned from our inquiry that the circumstances of some of these deaths indicated a possible pattern of deliberate indifference to prisoners' serious medical needs and we thus opened a formal investigation. In addition, we had received information that Piedmont was placing undue burdens on Muslim prisoners' ability to observe the tenets of their religion.

We requested and reviewed documents provided by Piedmont and, on June 16-17, 2011, we conducted an onsite inspection of the Jail. During our onsite inspection, we were accompanied by a correctional medical care consultant. We toured the Facility, observed Facility processes, interviewed staff and prisoners, and reviewed an array of documents, including policies, procedures, and medical records. Consistent with our pledge of transparency, and to provide technical assistance where appropriate, we conveyed our preliminary determinations to Piedmont administrators during a telephonic exit presentation following our onsite visit. We conducted a brief follow-up site-visit on March 6, 2012.

Piedmont leadership was cooperative and professional throughout our investigation. We are particularly grateful to Superintendent Ernest Toney and the entire Piedmont staff. Piedmont has provided us with access to prisoner records and personnel, and responded to our requests before, during, and after our onsite visit in a transparent and forthcoming manner. We also appreciate Piedmont's receptiveness to our consultant's onsite and post-tour recommendations, and note that the Piedmont administration has, to date, consistently followed through on its expressed commitment to working with the United States to provide prisoners with reasonably safe and humane conditions of confinement, as required by the Constitution.

II. Background

Piedmont is a minimum to high-security facility located in Farmville, Virginia, situated between the cities of Richmond and Lynchburg. The Jail serves six counties (Amelia, Buckingham, Cumberland, Lunenburg, Nottoway, and Prince Edward), and is administered by a board consisting of two members from each county. The current Superintendent of the Jail is Ernest Toney.

Piedmont opened in 1988 with capacity for approximately 100 prisoners, but has expanded over the years. The Jail's capacity is now approximately 800, and at the time of our onsite tour, there were approximately 660 prisoners housed at Piedmont. Piedmont houses pre-trial detainees and convicted prisoners.

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[1] It is our understanding that after the last death during this time period, the U.S. Immigration and Customs Enforcement ("ICE") concluded that medical practice at Piedmont was below accepted community standards, and determined that the Facility could no longer be used to house ICE detainees.

III. Findings

We find that deficiencies in the medical and mental health care provided to prisoners at Piedmont place prisoners at a substantial risk of serious harm. We further find that, during our investigation, the Jail acknowledged and began respecting the religious rights of all prisoners. Our findings are detailed below.

A. Medical Care at Piedmont Is Deficient and Creates Substantial Risks

Piedmont's system for the delivery of medical services places prisoners at an unreasonable risk of harm. The Eighth Amendment affords convicted prisoners protection from cruel and unusual punishment. U.S. CONST. amend. VIII. The constitutional rights of pre-trial detainees are guaranteed by the Fourteenth Amendment, which, the Supreme Court has consistently held, provides protection at least equal to the Eighth Amendment. *Bell v. Wolfish*, 441 U.S. 520, 545 (1979). The Eighth Amendment requires prison officials to "provide prisoners with adequate food, shelter, clothing, and medical care." *Smith v. Davis*, No. 7:10-cv-00263, 2011 WL 3880944 (W.D. Va. Sept. 1, 2011) (citing *Farmer v. Brennan*, 511 U.S. 825, 832 (1994)).

The Constitution protects prisoners not only against ongoing harms, but also against the risk of future harm. *Helling v. McKinney*, 509 U.S. 25, 33 (1993) ("That the Eighth Amendment protects against future harm to inmates is not a novel proposition . . . . It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them."). Conditions posing a substantial risk of serious harm to prisoners therefore violate the Constitution, even if no prisoner has suffered actual harm at the time the violation is found. *See Farme*r, 511 U.S. at 845-47; *Helling*, 509 U.S. at 35 (finding that risk of future harm to prisoner's health stated a cause of action under the Eighth Amendment); *Harden v. Green*, No. 01-6393, 27 Fed. App'x. 173, 177 (4th Cir. 2001) (noting that the Eighth Amendment "embraces the treatment of medical conditions which may cause future health problems"). The Supreme Court has clearly stated that "a remedy for unsafe conditions need not await a tragic event." *Helling*, 509 U.S. at 33.

Many of the lapses we identify below are directly related to Piedmont's inadequate medical staffing. There is too little onsite coverage by properly licensed staff members, forcing certified nursing assistants (CNAs) to practice and provide medical care beyond their training and licensure. The lack of sufficiently trained and available medical staff for the management and evaluation of serious medical conditions places prisoners at risk of unnecessary harm and is deliberately indifferent to prisoners' serious medical needs. Prison officials, including doctors, "violate the civil rights of inmates when they display 'deliberate indifference to serious medical needs.'" *Gordon v. Kidd*, 971 F.2d 1087, 1094 (4th Cir. 1992) (citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). Prison officials knowingly disregard, or act with deliberate indifference to, prisoners' rights by "intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed." *Smith v. Smith*, 589 F.3d 736, 738-39 (4th Cir. 2009) (citing *Estelle*, 429 U.S. at 104-05). Officials also violate the Constitution when they are deliberately indifferent to "an unreasonable risk of serious damage to . . . [a prisoner's] future health." *Helling*, 509 U.S. at 35.

1. *Piedmont exposes prisoners to risk of harm by relying on unqualified staff to perform essential medical functions.*

Perhaps the most significant single concern we have with the provision of medical and mental health care at the Facility is that staff members routinely perform medical services beyond what they are trained and credentialed to do. Piedmont's failure to ensure properly trained and credentialed staffing is to be expected, given its physician's indifference to such standards: while testifying under oath in March 2012, he stated that he was not aware of the staffing standards mandated by Virginia regarding medical staff at correctional facilities. Our finding is also consistent with the findings of other experts and inspecting bodies, who have made similar findings in recent reviews of Piedmont's medical services.

The Facility has one physician and two Licensed Professional Nurses (LPNs). The lead LPN is the primary liaison for medical services at the Jail. The rest of the medical staff consists of eight CNAs, and one mental health counselor. CNAs are not nurses, and must not be substituted for nursing staff. Per the Virginia Nursing Board, CNAs cannot be used to perform the following: activities involving nursing assessment, problem identification, or outcome evaluation requiring independent nursing judgment; coordination or management of care involving collaboration, consultation and referral; and emergency and nonemergency triage. Despite these prohibitions, CNAs perform many of these tasks at Piedmont, including receiving verbal medication orders. This is a dangerous practice that violates state licensure laws. CNAs' activities should be limited to taking vital signs, prepping patient charts, and other support functions.

A further concern involves "medical" security officers. We reviewed several incidents in which security staff were used to evaluate prisoner injuries, and cleared the prisoners without any medical input or consultation. Any clinical support by corrections officers must be limited, must be overseen by the medical department, and must be guided by clear protocols. Corrections officials may, and in fact, should, respond to medical emergencies in acute, life-threatening situations and be properly trained to do so. They should never, however, evaluate prisoners for medical reasons, perform sick call, or provide any type of non-emergency care. There are no protocols in place at Piedmont to guide corrections officers in the very limited medical tasks they may perform, and the current level of medical department oversight of officers is insufficient.

CNAs and nurses are forced to practice beyond their licenses because properly credentialed staff are simply not onsite for adequate hours to provide sufficient care for the prisoner population. The National Commission on Correctional Health Care (NCCHC) recommends that for every 100 prisoners, there should be at least 3.5 hours of physician time each week. Based on that recommendation and the census at the time of our visit to the Facility, there should be roughly 23 hours of physician time each week at Piedmont. The physician, however, is only onsite for 15 hours each week. As a result, he is not able to see all the prisoners that require physician care. While the physician asserted that he is available on an "on call" basis 24 hours per day, 365 days per year, the bulk of our review did not support this assertion.

When unlicensed staff members are permitted to play a key role in the delivery of health care, the probability for harm is greatly increased. Medical staff members are not

interchangeable. Registered Nurses (RNs), for instance, can perform functions that LPNs cannot, and LPNs can perform functions that CNAs cannot. While highly trained and supervised nurses are the foundation of most effective correctional medical programs, a physician provides the medical program with clinical leadership and direction. A nurse cannot independently make a medical diagnosis. It is critical that nurses, or any other staff members, are not placed in positions in which they find themselves delivering health care that is beyond their scope of training. This concern arises in numerous areas at Piedmont, including, for example, practices related to prisoners experiencing alcohol withdrawal, who should be closely monitored by a physician to ensure their safety. Although Piedmont does have an alcohol withdrawal protocol, nurses implementing the protocol are not supervised by the physician.

These concerns should be addressed as soon as possible. Current practice, in which health support personnel are functioning well beyond their qualifications, compromises access to care for prisoners and puts prisoners at risk of injury or even death. Current practices also put staff members at risk of losing their licenses, and both staff and the Jail at risk of legal liability. Where medical staff members "are continually called upon to perform services for which they have not been trained and for which they are not qualified," a correctional facility effectively denies prisoners access to medical care. *Newman v. Alabama*, 349 F. Supp. 278, 283 (M.D. Ala. 1972), *aff'd in part*, 503 F.2d 1320 (5th Cir. 1974), *vacated in part on other grounds*, 522 F.2d 71 (5th Cir. 1975) (en banc); *see also Ramos v. Lamm*, 639 F.2d 559, 575-76, 578 (10th Cir. 1980) (affirming district court's finding that use of non-physician medical personnel to make decisions and perform services for which they were neither trained nor qualified demonstrated deliberate indifference to serious medical needs and constituted effective denial of access to adequate medical care); *Garner v. Winn Corr. Ctr.*, No. 1:08-CV-01977, 2011 WL 2011502, at *5 (W.D. La. May 18, 2011) (providing LPN to evaluate and "diagnose" prisoners "is a failure to provide appropriate medical care to the inmates for which responsible prison officials may be liable"); *Gibson v. County of Washoe, Nev.*, 290 F.3d 1175, 1187 (9th Cir. 2002) ("In order to comply with their duty not to engage in acts evidencing deliberate indifference to inmates' medical and psychiatric needs, jails must provide medical staff who are 'competent to deal with prisoners' problems.'"), *citing Hoptowit v. Ray,* 682 F.2d 1237, 1253 (9th Cir.1982).

Piedmont should adjust staffing to increase the number of higher-trained staff, such as LPNs and RNs, as well as the number of hours that nurses and the doctor are onsite. Specifically, the Facility should hire at least two RNs, and add 6 LPNs, thus reducing the need for CNAs. In addition, the physician should be onsite no fewer than 23 hours per week. Further, corrections officers should never evaluate prisoners for medical needs, except as necessary to provide emergency care. Finally, Piedmont should revise its policies and procedures to establish clearly the expectations for all medical staff.

2. *Piedmont's medical policies lack specificity and thoroughness.*

While Piedmont does have a medical manual, many of the policies are lacking in detail or specificity. There are no policies on chronic care, infection control, or quality assurance. The policies related to mental health care, and specifically those regarding potentially suicidal prisoners, do not provide the guidance necessary to prevent harm. Furthermore, Piedmont's policy to address the health concerns of pregnant women is limited in scope. In addition, the

policy and protocol related to alcohol withdrawal are deficient. Problems related to medical policies and procedures at Piedmont are underscored by the recent, troubling testimony of Piedmont's physician, under oath, in which he confirmed that he has not reviewed medical policies and procedures for several years, despite the fact that he has signed forms stating that he did review them.

The Facility should review the 2008 NCCHC Jail Standards and use those standards as an outline to create and adopt policies specific to the Facility, focusing from the outset on the standards deemed "essential" by the NCCHC and supplementing those as necessary to meet the medical needs of prisoners at Piedmont. Piedmont should also consider implementing an assessment tool, such as the Clinical Institute Withdrawal Assessment tool, which would set up parameters for nurses who need to monitor prisoners placed under observation.

3. *Intake screening procedures do not promptly identify medical problems.*

Jails must provide a prompt medical screening upon intake, and refer prisoners with medical needs to doctors and nurses for further evaluation and treatment. *See Dawson v. Kendrick*, 527 F. Supp. 1252, 1307 (S.D. W. Va. 1981) ("It is generally recognized that prompt medical screening is a medical necessity in pre-trial detention facilities."). Failure to properly screen prisoners for communicable diseases may constitute deliberate indifference in violation of the Eighth Amendment. *See Portee v. Tollison*, 753 F. Supp. 184, 186 (D. S.C. 1990), *citing with approval Smith v. Sullivan*, 553 F.2d 373 (5th Cir. 1977); *Madrid v. Gomez*, 889 F. Supp. 1146, 1257 (N.D. Cal. 1995) ("The facility should screen newly arrived inmates to identify potential medical problems and communicable diseases."), *citing Lightfoot v. Walker*, 486 F. Supp. 504, 524 (S.D. Ill. 1980) ("Health care admission screening procedures, including a physical examination performed by a physician, are an essential element of a constitutionally adequate system.").

The intake screening is the jail's first opportunity to identify the needs of new prisoners and consider treatment options. Without a proper screening mechanism, prisoners may be improperly denied necessary care or medication. Absent screening, prisoners may also enter the jail with communicable diseases that can, if undiagnosed upon arrival, spread to the rest of the population.

Although Piedmont conducts some initial screening, the screening provided is inadequate, those conducting the screening are often not properly trained, and the results of the screening are documented inadequately, if at all. Some prisoners at the Facility are initially screened only by corrections officers, who are not trained in identifying medical or mental health needs and are not provided guidance regarding referrals to physicians. While corrections officers may perform an initial screening in rare, limited circumstances—such as during one or two quiet overnight shifts each week where medical personnel are not present—those officers must be adequately trained, and the screening must be followed by a full screening conducted by a member of the medical staff within hours.

Proper documentation, including any referrals for further evaluation, is vital for determining future treatment plans and ensuring that prisoners can be monitored. We reviewed

numerous medical records that did not contain any documentation reflecting the results of the initial screening. While we did observe some screenings, and received assurances that screenings are regularly conducted, it was impossible for us to verify that the Jail does indeed conduct a screening of each new prisoner.

We also found problems with subsequent screening for access to medical care. Like corrections officers, nurses, too, require guidance regarding which situations necessitate referrals to the physician, but Piedmont has not promulgated policies that would provide such guidance. Indeed, this deficiency was confirmed by the physician in March 2012, when he conceded that Piedmont currently has no medical manual of protocols available for the medical staff to consult. Finally, as noted earlier, Piedmont permits CNAs to perform medical screening, which they should not be doing.

In order to correct these deficiencies, Piedmont should develop and implement an intake screening system that instructs screeners regarding which prisoners should be referred to physicians and when; ensures documentation of all information obtained through the screening process; and ensures that individuals conducting screenings and controlling access to medical care are appropriately trained and qualified.

4. *Piedmont's lack of a chronic care program places prisoners at risk of harm.*

Piedmont's lack of a chronic care program places prisoners at an unreasonable risk of harm. A chronic care program is crucial to ensure that prisoners with known medical and mental health illnesses are identified and seen for an initial comprehensive evaluation, and then tracked to ensure periodic follow-up. A correctional institution's failure to implement policies and procedures that ensure that prisoners with chronic illnesses are identified and appropriately treated exposes prisoners to serious risks of future harm. *See Shepherd v. Dallas County*, 591 F.3d 445, 453-54 (5th Cir. 2009) (finding that jail's lack of chronic care exposed detainee to risk of serious injury and death); *Scinto v. Preston*, 170 Fed. App'x. 834 (4th Cir. 2006) (failure to provide adequate treatment for chronic diabetes constitutes deliberate indifference). The NCCHC categorizes a chronic care program as an essential element of correctional medical care, and has developed guidelines for disease control for diabetes, hypertension, HIV, pulmonary diseases, and seizures.

Chronic care programs prevent avoidable injuries and deaths by keeping chronically ill individuals medically stable through mechanisms such as routine, scheduled clinic visits. At present, Piedmont has no defined systems in place to track or manage prisoners with chronic conditions. By the Facility physician's own admission, medical care at Piedmont is episodic or complaint-driven, rather than proactive. For example, a prisoner who suffers from migraines and had been at the Facility for over six months at the time of our visit, had to be sent to the hospital after experiencing numbness in his body, but after returning to the Facility, had never been checked by the physician. This case reveals weaknesses in both physician coverage and chronic care follow-up. Piedmont's lack of preventative/chronic care can result in harm or risk of harm to prisoners. The following examples are illustrative:

- Prisoner A[2] entered the Jail with a history of seizures. He was placed on Dilantin, a drug that can cause both neurological and cardiac side effects, but, despite the fact that he had been at the Jail for over eight months at the time of our inspection, was never evaluated for proper medication dosage or toxicity level.

- Prisoner B reported a history of chronic obstructive lung disease and hypertension upon entering the Jail on March 18, 2010. He was placed on Theophylline, a toxic medication that should be used with caution, yet at the time of our review, he had never had a drug level to assess the toxicity and therapeutic levels of the medication, and had never been evaluated for complications associated with hypertension or cardiac risks, as would be expected. In fact, he had not had a visit with the physician to address his chronic conditions at all. Prisoner B was evaluated by a CNA on May 21, 2010 for chest pain, and was eventually sent to the hospital for his pain, yet he never had a follow-up visit with the physician for his chest pain.

- Prisoner C, at Piedmont since March 30, 2010, was placed on Coumadin, a potent blood thinning medication, for heart disease, and Simvastatin for high cholesterol. Both of these medications can be toxic and need to be monitored for therapeutic effect. At the time of our review, no drug tests had been conducted and the physician had not scheduled any chronic care visits with Prisoner C.

- Prisoner D entered the Jail with a history of hypothyroidism, mental illness, and hypertension. He was given medications to address these conditions, but no blood work was ever done to determine if his thyroid condition was responding to the medication or if he received the proper dosage. Piedmont medical staff also failed to monitor the drug used to adjust Prisoner D's cholesterol level, which placed him at great risk for undetected liver toxicity.

As the above examples illustrate, Piedmont's lack of a chronic care program exposes prisoners to a substantial risk of significant harm. To remedy this, Piedmont should establish a chronic care program that defines what illnesses qualify for inclusion in the program (for example: diabetes, hypertension, dyslipidemia, HIV, cardiovascular diseases, seizure, pulmonary illness, and mental illness); ensures that prisoners with chronic care issues are identified and examined by the physician; tracks prisoners in the program and schedules periodic assessments; provides for diagnostic tests at an initial comprehensive visit; makes lab work available at appointments in order to determine the status of disease control; and outlines a clinical plan for each chronically ill prisoner.

5. *The lack of comprehensive health assessments places prisoners at risk.*

Comprehensive health assessments, conducted within fourteen days of arrival, are an integral part of a correctional medical system, because they may identify medical problems that were not discovered during the initial screening process. *See, e.g. Roberts v. Mahoning County*,

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[2] Prisoners are referred to by letter to protect their privacy.

495 F. Supp. 2d 719, 769 (E. D. Ohio 2007) (consent judgment requiring that new medical providers contracted by jail conduct comprehensive health assessments within fourteen days of prisoners' arrival at the jail).

Thorough health assessments, conducted after the prisoner has adjusted to the jail setting, are an essential tool for jail clinicians. Such assessments, in addition to identifying problems that were not raised or addressed in the initial screening, allow medical staff to develop more complete treatment plans for prisoners with known medical problems, including, for example, diabetes, asthma, and depression. Without a detailed evaluation of each prisoner, chronic or less immediately apparent problems can go undiagnosed or mistreated. The evaluation further allows medical staff to develop a medical baseline for each prisoner. Moreover, health assessments can assist in identifying and treating the spread of communicable diseases that can impact prisoners, staff, and the wider community. Deficiencies related to health assessments have been a subject of concern for other experts and inspecting bodies reviewing Piedmont's medical services in the past.

Piedmont should develop and implement a system to provide a comprehensive health assessment within fourteen days of the arrival of each prisoner. A physician, physician assistant, or nurse practitioner should conduct the health assessments. However, RNs could perform health assessments, provided that a physician provides documented supervision and training.

6. *Piedmont's sick call system places prisoners at risk of harm.*

Sick call systems are essential to the provision of adequate correctional medical care. *Todaro v. Ward*, 431 F. Supp. 1129, 1146 (S.D.N.Y. 1977) ("Courts have held that a sick call procedure for prompt referrals of those in need to a physician is constitutionally required."), *aff'd sub nom. Todaro v. Coughlin*, 652 F.2d 54 (2d Cir. 1981), and *aff'd*, 565 F.2d 48 (2d Cir. 1977) (citations omitted). The sick call system must be run by medical personnel who are appropriately trained in meeting the medical needs of the prisoner population. *Madrid,* 889 F. Supp. at 1258 ("While medical technical assistants or their equivalent may permissibly be the first to examine inmates with physical ailments, they must be properly trained to perform this function and adequately supervised.").

Prisoners rely on a jail's sick call system as an entry point to medical care within the facility, and jails rely on a sick call system to ensure that medical problems are addressed as early as possible to prevent unnecessary suffering, avoidable injury or death, and the increased medical costs associated with illnesses that have been allowed to linger and worsen.

Currently, Piedmont's sick call system places prisoners at an unreasonable risk of harm, because under-qualified LPNs and CNAs manage the sick call system without the supervision of a physician. CNAs are not sufficiently credentialed to perform sick call or evaluate prisoners. The LPNs at Piedmont, although credentialed, currently lack the training necessary to develop long-term treatment plans. Furthermore, Piedmont lacks standardized forms for nurses to use in their evaluations. These forms, if properly developed, would guide nurses and establish protocols for referrals to the physician. Indeed, this deficiency was confirmed by the physician when he testified in March 2012 that Piedmont currently has no medical manual of protocols

available for the medical staff to consult. Problems with Piedmont's sick call system are longstanding, and have been noted by other experts and inspectors in the past.

While changes to the current sick call system are required, we do note with approval that prisoners seem to be able to access the medical staff when necessary. Most prisoners we spoke with reported being seen by someone on the medical staff within days of submitting a sick call slip, and none reported problems accessing medical care for true emergencies. Our concern is whether prisoners' initial contact with medical staff via the sick call system routinely results in the prisoner being referred for the appropriate level of care based on the prisoner's medical needs. Nonetheless, prisoners' ready access to sick call and emergency medical care is a positive development, and seems to represent improvement, as a lack of access to care allegedly led to several deaths and numerous other issues at the Facility in the past.

In order to address the problems related to sick call, Piedmont should establish standardized tools for use during sick call evaluations. These tools will allow nurses to properly triage prisoners' medical needs and ensure they are referred for and provided appropriate treatment in a timely manner. CNAs should not be allowed to perform clinical evaluations, and their role in the sick call process should be limited to prep work, such as taking vital signs. Further, the physician should provide oversight of the sick call process by periodically reviewing the nurses performing sick call, in order to ensure that personnel are not practicing beyond their clinical training.

7. *The lack of any quality assurance program at Piedmont puts prisoners at risk of harm.*

Quality assurance ("QA"), or quality improvement, is an important tool for any correctional medical staff. *See, e.g., Cody v. Hillard*, 599 F. Supp. 1025, 1058 (D. S.D. 1984) ("Several courts have held the lack of quality control over medical care, when considered among other health care deficiencies, unconstitutional under the Eighth Amendment."), *aff'd*, 799 F.2d 447 (8th Cir. 1986) *on reh'g*, 830 F.2d 912 (8th Cir. 1987).

A functioning, effective QA program will identify problems in the delivery of medical care, and create mechanisms to rectify those problems. One of the major components of a QA system is to share findings with staff so that they can learn from past mistakes. QA often involves the physician reviewing and analyzing nursing assessments and other critical clinical activities, such as chronic care and sick call. It should also involve the review of all deaths at the Facility, in order to ascertain compliance with the standard of care and educate staff about trends and causes of prisoner deaths. An effective QA process will improve the clinical care provided and reduce poor outcomes.

Piedmont currently has no QA program, which means that it cannot be proactive in identifying problem areas before a poor clinical outcome occurs. The Facility should develop a QA program to review the clinical performance of sick call, health assessments, intake, chronic care, medication administration, and emergency care. This QA program should include a comprehensive and documented mortality review and response after any deaths.

8. *Training gaps increase the likelihood of harm.*

As noted above, we reviewed several incidents in which security staff were used to evaluate prisoner injuries, and cleared the prisoners without any medical input or consultation. Corrections officials may and should respond to medical emergencies in acute, life-threatening situations. But they must be properly trained to do so and should not be asked to make the clinical-level evaluations they are asked to make at Piedmont A failure to train security and medical staff can cause serious medical harm and subject an agency to legal liability. *See, e.g., Doe v. Broderick*, 225 F.3d 440, 456 (4th Cir. 2000). While Piedmont does conduct training for medical and security staff, the training on suicide prevention and mental health is severely lacking. Training is necessary even where officers can call medical staff at any time, as officers are nearly always the first responders to a medical crisis and, with proper training, may be able to prevent more serious injury or even save a life.

Piedmont should ensure all officers are trained in providing first-responder medical care. The Facility should also develop and implement training for suicide prevention and mental health.

9. *Piedmont's co-pay system can result in denial of access to care.*

Policies which require that a prisoner pay a co-payment for health care do not constitute *per se* deliberate indifference to a serious medical need in violation of the Eighth Amendment. However, such co-payment policies can rise to the level of a constitutional violation where prisoners are denied access to necessary health care due to their inability to pay. *See Johnson v. Dep't of Pub. Safety & Corr. Services*, 885 F. Supp. 817, 820 (D. Md. 1995); *Gonzales-Reyna v. Ellis*, No. 1:09-cv-522-AJT/TCB, 2009 WL 2421482, at *3 (E.D. Va. July 27, 2009); *Collins v. Romer*, 962 F.2d 1508, 1513 (10th Cir. 1992). Therefore, while jails may charge small co-pays for medical care, co-payment policies must be flexible to enable indigent and chronically ill prisoners to access health care without imposing unnecessary hardship. *See Johnson*, 885 F. Supp. 817, 820. Where these exceptions are not in place, even relatively small co-pays can create barriers to access to necessary health care.

At Piedmont, prisoners are required to pay considerable fees for most clinical services. Piedmont prisoners pay $12.50 to see a nurse and $20.00 to see the doctor, while emergency visits cost $50.00. Prisoners are charged $10.00 per month for medication. The amounts Piedmont charges far exceed the generally accepted co-payment amounts across the country. Most state correctional systems charge co-pays in the two to five dollar range, and rarely are they more than $10. *See, e.g.*, http://www.michigan.gov/documents/corrections/03_04_101_268638_7.pdf ($5 co-pay in Michigan prisons); http://www.drc.ohio.gov/web/medical.htm ($3 co-pay in Ohio prisons); http://www.portal.state.pa.us/portal/server.pt/document/919468/820_co-payment_for_medical_services_pdf ($5 co-pay in Pennsylvania prisons). In fact, the Virginia Department of Corrections charges a five dollar co-pay for most medical services. Virginia Dept. of Corrections, *Operating Procedure 720.4: Co-Payment for Health Care Services*, (amended Nov. 15, 2011), www.vadoc.state.va.us/about/procedures/documents/700/720-4.pdf. Moreover, the co-pays charged by Piedmont are well in excess of most fees which have

previously been found constitutional. *See Johnson*, 885 F. Supp. at 818 (co-pay of two dollars constitutional); *Collins*, 962 F.2d at 1517 (three dollar co-pay constitutional); *Gonzales-Reyna*, 2009 WL 2421482, at *3 (five dollar co-pay constitutional).

While the Piedmont inmate/detainee handbook and medical protocols make clear that prisoners cannot be denied access to medically necessary services based upon their inability to pay, there can be no doubt that, in actuality, inability to pay impacts whether prisoners request medical care. Numerous prisoners we spoke with said that the co-pay fees adversely affected their decisions whether to seek needed medical care, especially when paying for a medical appointment would mean foregoing hygienic or other items that the prisoner could otherwise purchase with the money he or she would have to use as a co-pay. Universally, the prisoners we spoke with who had been incarcerated at multiple facilities told us that Piedmont has the highest co-pays of any facility they had encountered.

The NCCHC has recognized numerous problems, like that illustrated above, created by medical co-pays, all of which are only exacerbated when the co-pays are exceedingly high, as they are here. For example, co-pays place prisoners in the position of having to choose between paying for other much needed items, such as hygienic products, or receiving medical attention. Nat'l Comm'n on Corr. Health Care, *Position Statement: Charging Inmates a Fee for Health Care Services* (Oct. 2005), http://www.ncchc.org/resources/ statements/healthfees.html. Further, when prisoners avoid medical care for what may initially be minor situations, those situations may deteriorate, leading to serious consequences for the inmate or the infection of others. *Id.* Accordingly, the NCCHC has recommended a number of guidelines, including the following:

- Only services initiated by the inmate should be subject to a fee or other charges. No charges should be made for the following: admission health screening (medical, dental, and mental) or any required follow-up to the screening; the health assessments required by facility policy; emergency care and trauma care; hospitalization; infirmary care; prenatal care; in-house lab and diagnostic services; pharmacy medications to maintain health; diagnosis and treatment of contagious disease; chronic care or other staff-initiated care, including follow-up and referral visits; and mental health care including drug abuse and addiction.
- The assessment of a charge should be made after the fact. The health care provider should be removed from the operation of collecting the fee.
- Charges should be small and not compounded when a patient is seen by more than one provider for the same circumstance.
- No inmate should be denied care because of a record of non-payment or current inability to pay for same.
- The system should allow for a minimum balance in the inmate's account, or provide another mechanism permitting the inmate to have access to necessary hygiene items (shampoo, shaving accessories, etc.) and over-the-counter medications. *Id.*

It remains an open question whether a $50 co-pay for emergency visits is *per se* unconstitutional. But even lower co-pays may be unconstitutional if they are shown to effectively deter legitimately needed medical treatment. At Piedmont, the exceedingly high co-

pay fees, in combination with information indicating that they may be serving as a barrier to prisoners receiving necessary medical care, may well run afoul of constitutional requirements.

Accordingly, Piedmont should immediately revise the co-pay policy to exclude all health care required by the Facility, including health assessments and mental health care. In addition, Piedmont should establish exceptions to the co-pay requirement for necessary medical care, including chronic care and emergency visits, so that prisoners are not dissuaded from seeking and receiving care that is essential to their health. Furthermore, the Jail should require only a single, lower co-pay fee to see a nurse, with no further fee to see the doctor if the prisoner is referred for further evaluation. In addition, Piedmont should establish a minimum balance in the prisoner's account, in order to ensure that a prisoner who is charged a co-payment will retain the ability to purchase hygiene items and over-the-counter medications.

B. Mental Health Care at Piedmont is Sub-Standard and Places Prisoners at Risk of Harm

Jails are constitutionally required to treat prisoners with mental health needs. *Estelle*, 429 U.S. at 104. Failure to properly treat and monitor individuals with suicidal thoughts or behaviors is a violation of the Eighth Amendment. *Buffington v. Baltimore County, Md.*, 913 F.2d 113, 120 (4th Cir. 1990) ("where police know that a pretrial detainee is on the verge of suicide, that psychological condition can constitute the kind of serious medical need to which state officials must, under the due process clause, not be deliberately indifferent"). Officials are also required to provide appropriate psychiatric services, including evaluation, treatment, and supervision, to protect prisoners from harming themselves or others. *De'Lonta v. Angelone*, 330 F.3d 630 (4th Cir. 2003) (protection against self-mutilation is serious medical need to which prison officials may not be deliberately indifferent); *Dawson*, 527 F. Supp. at 1308 (". . . failure to provide timely access to . . . psychiatric or psychological personnel" contributes to deliberate indifference).

Without proper evaluation and treatment, prisoners with serious mental illness may needlessly suffer and cause significant security challenges, becoming actively psychotic, aggressive, violent, or difficult to control.

While many mental illnesses are treatable with the right medications and therapy, a disjointed mental health system places prisoners at risk of injury and illness from improper medication or dosage levels, suffering the ongoing impact of untreated serious mental illness, and self-harm.

Piedmont's mental health care system is deficient in a number of ways:

Inadequate Psychiatric Staff: The Jail has no psychiatrist available to prescribe psychotropic medications or evaluate their effects. This is a gross violation of standard medical practice. Instead, a clinical counselor, who is not a trained or licensed physician, serves as the sole mental health staff member, and is only present at the Jail for one day per week. She meets with patients only upon their request or upon a report of suicidal ideation or a suicidal act. Prisoners who are given psychotropic medication are not monitored for side effects or proper

dosages. The American Psychiatric Association recommends that there be one full-time psychiatrist for every 75-150 patients with serious mental illness on psychotropic medication in prison. At the time of our visit, there were 75 prisoners on mental health medications in the Facility, indicating the need for at least 20-40 hours of onsite psychiatric care. The Jail, in contrast, provides none.

Inadequate Assessments and Follow-up: Additionally, no routine mental health evaluations are performed, even for prisoners with a history of mental illness or those on psychotropic medications, and there are no documented assessments or treatment plans for prisoners with mental illness. Diagnostic blood tests, which are needed when certain medications are prescribed, are not routinely conducted or properly documented. For example, Prisoner E was prescribed Tegretol and Lithium for his mental illness. Both of these medications require periodic drug levels, due to their toxicity. Lithium, in particular, can be lethal if not managed correctly. Nevertheless, no drug levels were taken and Prisoner E had not, at the time of our review, had any follow-up to assess his mental status. We also reviewed the records of several other prisoners prescribed Lithium without blood work or other follow-up being performed.

Inadequate Suicide Prevention: Prisoners at Piedmont who exhibit suicidal behavior or express suicidal thoughts are dealt with inappropriately. Prisoner F, who reported a history of suicidal ideation, was prescribed Haldol, but never received a comprehensive mental evaluation or any follow-up on the effects of the medication. Other suicide precautions are also lacking, such as staggered 15-minute checks of prisoners on suicide watch, and the availability of cut-down tools for officers. Significantly, because prisoners can only be released from suicide watch after being seen by the counselor, who works only one day a week, prisoners can be—and have been—on suicide watch for up to a full week unnecessarily. Maintaining prisoners on suicide watch unnecessarily is punitive and can discourage those who truly need help from seeking it. The physician should be actively involved in evaluating prisoners on suicide watch, but currently is not. For example, Prisoner G was placed on observation for almost a week with no physician evaluation, and there were no notes or documentation in her file regarding her treatment or progress.

To remedy these problems, Piedmont should ensure that prisoners with mental health needs are properly evaluated, treated, and monitored by a licensed psychiatrist who is onsite at least 20 hours per week. That psychiatrist should be supported by the clinical counselor, who could work in conjunction with a nurse practitioner to provide a sufficient number of hours of coverage each week. All prisoners with a known mental illness should be referred to the psychiatrist within fourteen days of arrival, assuming an initial screening is completed, and individuals with more acute needs—such as those who are suicidal or grossly psychotic—should be seen and treated as soon as the Facility becomes aware of their condition. Prisoners who are prescribed psychotropic medication should also be evaluated by the psychiatrist within two weeks of starting a new medication. Piedmont should develop and implement policies to ensure monitoring of individuals with chronic mental health illness, and completion of blood work and other follow-up as necessary. Finally, all prisoners on suicide watch should be actively monitored to ensure that no prisoner is restricted longer than necessary.

C. RLUIPA

We note, as a general matter, that we were pleased to see a number of recent changes that Piedmont has made to ensure that it is in compliance with RLUIPA. These changes should be maintained, as they are both necessary under the law and beneficial to the Facility and society at large. Prisoners who are permitted to practice their religion are less likely to engage in misbehavior or otherwise cause disruptions to the jail environment, and religious worship supports rehabilitation. *See* 146 CONG. REC. S6678-02, at S6689 (daily ed. July 13, 2000).

RLUIPA provides that no institution owned or operated by, or on behalf of, any State or local government, including correctional facilities, "shall impose a substantial burden on the religious exercise of a [resident]." 42 U.S.C. § 2000cc-1(a). This prohibition includes a substantial burden on religious exercise resulting from a rule of general applicability. *Id.* "Religious exercise" is defined to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A). In order to overcome this prohibition on burdening religious exercise, a government must demonstrate that imposition of the burden is: (1) "in furtherance of a compelling governmental interest"; and (2) "the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc-1(a). The Fourth Circuit, in interpreting RLUIPA, has held that a substantial burden occurs when an act or omission "put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs." *Lovelace v. Lee*, 472 F.3d 174, 187 (4th Cir. 2006) (quoting *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 718 (1981)).

Below, we briefly address our observations about several discreet issues within the RLUIPA context. Because allegations we had previously received focused mainly on the denial of religious rights to Muslim prisoners, our comments center largely on that population.

1. Religious Meals

Piedmont serves a pork-free diet, which allows it to meet the needs of many of those prisoners who may adhere to a religious diet. Piedmont also provides special meal service to those observing Ramadan.

While the food service at Piedmont for religious observers thus seems to be adequate at present, the Jail should be aware that simply providing a pork-free diet may not be sufficient to accommodate all prisoners' religious exercise. Piedmont should ensure that prisoners can at least purchase from the commissary religiously acceptable foods to augment the diet provided.

2. Religious Services

Piedmont currently permits Muslim prisoners to participate in a Ju'mah service each Friday. This practice began shortly after we issued our Notice Letter informing the Facility that we were opening our investigation. Piedmont should continue to allow Ju'mah services to ensure it is not in violation of RLUIPA. We observed the Ju'mah service, in which the Jail's chaplain participated, and we appreciate his commitment to allowing prisoners of all faiths to practice their religions while incarcerated.

3. Religious Possessions

After our investigation began, Piedmont started permitting Muslim prisoners to possess Korans. Prayer rugs, we were informed, are sold in the commissary, and we saw several prayer rugs being used during the Ju'mah service. Piedmont has fulfilled its legal obligation by permitting prisoners to practice their religion with the appropriate possessions. Piedmont should continue this practice to maintain compliance with federal law.

4. Religious Headwear

During our investigative tour, several Muslim prisoners informed us that, while they were allowed to wear religious headgear (the kufi) in their housing units, they were not permitted to wear them outside of those units. A Piedmont official confirmed to us that this accurately represented policy.

After we raised this issue, Piedmont changed the policy so that religious headgear can now be worn throughout the Facility, but when a prisoner wearing such headgear enters or leaves a housing area or any Jail program, the headgear will be searched for contraband. Jail directives also now provide that prisoners shall have access to religious headwear. These policy changes should also remain in place, as they are necessary to ensure that the Facility is in compliance with its obligations under federal law.

IV. Summary of Remedial Measures

To remedy the deficiencies identified above, Piedmont should promptly implement the minimum remedial measures set forth below. Specifically, the Facility should:

- Review the 2008 NCCHC Jail Standards and use those standards to create and adopt facility-specific policies, focusing from the outset on the standards deemed "essential" by the NCCHC.

- Revise medical policies to include policies on chronic care, infection control, and quality assurance.

- Increase medical staffing by hiring additional staff with higher credentials (e.g. RNs, LPNs, and a psychiatrist) and increasing the hours that current staff—most especially the doctor—are onsite. Specifically, hire at least two RNs; add 6 LPNs, which will allow for a reduction in the number of CNAs; increase the physician's onsite hours to at least 23 hours per week, and, in conjunction with hiring a psychiatrist, increase the mental health counselor's hours or hire a nurse practitioner to cover additional hours.

- Limit the tasks that CNAs undertake to those that they are credentialed to perform, and ensure that proper physician supervision is provided. Specifically, among other things, CNAs should not be performing intake screenings or clinical evaluations, and should not take medication orders.

- Ensure that security officers are not rendering medical decisions regarding prisoners' care, and make sure that there are clear guidelines in place for any security officers providing clinical support, with physician oversight.

- Ensure that all initial screenings are performed by trained staff and documented electronically, including documentation of any referrals to the physician.

- Implement a policy that provides guidance to nurses about when to refer prisoners to the physician following screening, sick call, or emergency visits.

- Conduct comprehensive health assessments of all prisoners within fourteen days of their arrival, with a physician either conducting the screening or overseeing RNs who conduct the screening.

- Provide for physician oversight, including periodic review, of sick call, with nursing protocols and clinical assessment forms that guide the nurses performing sick call.

- Develop a detox procedure that includes the Clinical Institute Withdrawal Assessment tool for prisoners at risk of alcohol withdrawal and requires physician input before nurses can treat prisoners withdrawing from abused substances.

- Implement a chronic care program that identifies prisoners for enrollment; defines illnesses to be included; ensures that enrolled prisoners are tracked and scheduled for periodic assessments; requires diagnostic tests; and ensures that all prisoners with known medical or mental health issues are scheduled for routine visits with the physician or a psychiatrist as appropriate for their condition.

- Review and revise the co-pay policy to ensure that it does not prevent prisoners from accessing health care. The review should assess the co-pay amount to determine whether it is a deterrent to seeking care and make provisions for indigent prisoners and prisoners with chronic illness.

- Provide routine evaluations to prisoners with a history of mental illness and those on psychotropic medication, with documented treatment plans, within 14 days of arrival.

- Provide immediate treatment to prisoners who are suicidal or psychotic, as soon as those conditions are known to the Facility.

- Ensure that the physician provides follow-up visits to prisoners on psychotropic medications, including diagnostic blood tests for prisoners on certain mental health drugs, based on the toxicity profile of the medication.

- Ensure that the physician sees prisoners on suicide watch when the mental health staff is not present, and ensure that prisoners are not kept on watch longer than necessary.

- Ensure that 15-minute watches for prisoners on suicide watch are staggered, and ensure that all officers have cut-down tools.

- Institute a quality assurance program that, among other things, reviews the clinical performance of sick call, the health assessment process, the intake process, the chronic care program, medication administration, and emergency care, and includes mortality reviews after any deaths.

- Implement training on first-responder medical care, mental health and suicide prevention for security staff.

- Continue to serve meals that allow prisoners to adhere to a religious diet, including special meal service for religious holidays, and establish a plan to meet the needs of prisoners who may require more than a pork-free diet in order to meet the dictates of their religion.

- Continue to permit prisoners to participate in religious services, possess religious books and other materials (such as prayer rugs), and wear religious headgear throughout the Facility.

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We hope to continue working with Piedmont in an amicable and cooperative fashion to resolve the above-outlined concerns regarding conditions at the Facility. We know that, since our onsite visit, Piedmont has committed to taking various steps to address many of the issues we raised at our exit presentation. We appreciate the Jail's proactive efforts, which give reason to believe that the Jail will be able to resolve all the matters about which we have expressed concern.

We look forward to learning of the progress Piedmont has made thus far, and to discussing the above findings with the Jail. As always, we remain available to discuss any questions or concerns that you might have regarding our investigation.

Please note that this letter is a public document. It will be posted on the Civil Rights Division's website.

Should you have any questions or concerns regarding this letter, please feel free to contact Jonathan M. Smith, Chief of the Civil Rights Division's Special Litigation Section, at (202) 514-5393.

Sincerely,

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