

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEVEN ROSEN, et al	:	Civil Action No. 2000-CV-764
	:	
v.	:	
	:	
CITY of PHILADELPHIA	:	HON. PETRESE B. TUCKER
Defendant	:	

**SETTLEMENT AGREEMENT FOR INJUNCTIVE RELIEF**

A. Procedural Provisions

1. Plaintiffs and defendant City of Philadelphia, by and through their undersigned counsel, having met and conferred, do hereby agree to settle under the terms and conditions of this Agreement all claims for injunctive relief only that were or could have been asserted by plaintiffs in the instant case.

2. Plaintiffs and the City of Philadelphia agree that the Rule 23(b)(2) plaintiff class, for purposes of this Agreement, consists of all persons with diabetes who are or will be in police custody in the time period commencing from the date of approval of this Agreement by the Court until termination of the eighteen (18) month period set forth in paragraph 21 of the Agreement.

3. It is the express intent of the parties that persons with diabetes in Philadelphia Police custody receive medically appropriate and timely treatment and care. The City of Philadelphia and the Philadelphia Police Department have implemented, or are in the process of implementing, many of the policies and procedures relating to persons with diabetes set forth in this Agreement.

4. This Agreement is entered into by the City of Philadelphia without admission of liability or wrongdoing.

5. Nothing in this Agreement shall be deemed a waiver of any defense, which the City of Philadelphia or its employees may have to any claim now pending, including claims for damages, or any claim that may be brought in the future.

6. Nothing in this Agreement shall serve as a bar to prevent plaintiffs or any member of the class from instituting suit for injunctive or other relief at the close of the monitoring period.

7. Nothing in this Agreement shall be deemed to govern the rights of plaintiffs or any member of the Rule 23(b)(2) class to pursue damages as a member of the damages class or otherwise or to seek related fees and costs.

8. The parties enter into this Agreement for the Settlement of the Rule 23(b)(2) class with the intent to be bound by the terms and conditions hereof. This Agreement is not, nor is it to be construed as or enforced as, a Consent Decree and does not operate as an adjudication on the merits of this case.

9. The parties agree that, upon discontinuance of this lawsuit, the plaintiff class and their attorneys shall not seek any form of relief grounded in this litigation or this Agreement, other than as described in paragraph 6 or paragraph 10. If, in the future, the plaintiff class or their attorneys believe plaintiffs' legal rights are being violated, their sole enforcement remedy will be the filing of a new lawsuit alleging constitutional violations in a court of competent jurisdiction, separate and apart from this litigation or Agreement.

10. Upon approval of the Agreement, the United States District Court for the Eastern District of Pennsylvania shall retain jurisdiction over the enforcement of this Agreement for the sole purpose of enforcing Sections D, E and F of this Agreement. The parties agree not to seek enforcement of this Agreement by instituting any contempt proceeding. Relief in the form

of an order compelling performance of the terms set forth in Sections D, E and F of this Agreement will be appropriate.

11. Upon approval of this Agreement by the Court, plaintiffs' counsel shall sign a stipulation dismissing all claims for injunctive relief, with prejudice, pursuant to the terms and conditions of this Agreement.

B. Philadelphia Police Department Policy

12. Pursuant to Directive 82-Appendix "C", Directive 128 ("Directive") all adult detainees with diabetes, whether or not they use insulin, will be transported to the Main Offender Processing Unit (MOPU) for Processing and will undergo a medical evaluation by medically trained personnel, unless the detainee requests medical care or exhibits symptoms of diabetic illness (hypoglycemia or hyperglycemia). In such case, the detainee will be transported to the nearest hospital, and then upon discharge, be transported to the MOPU.

13. Pursuant to the Directives, any adult detainee with diabetes who is arrested for a summary offense or who is detained for a short period of time for investigation purposes will be transported to the nearest hospital for treatment by a physician if the detainee requests medical care or exhibits symptoms of diabetic illness (hypoglycemia or hyperglycemia).

14. Pursuant to the Directive, the City of Philadelphia shall complete a Detainee's Medical Checklist (75-605) for each adult detainee with diabetes, which shall accompany the detainee to any facility in which the detainee is held in the custody of the City of Philadelphia. The City of Philadelphia shall continue to maintain a list of all Detainees' Medical Checklists that indicate diabetes until this Agreement is terminated.

15. Pursuant to Directive 82, Appendix D, Section I.B.: "Any person taken into police custody, who states a medical need for nourishment, will be provided food as nearly as consistent as possible, in content and timing, with his/her prescribed diet." The City shall

ensure that the medical services provider's staff in the MOPU are informed of the presence of any individual with diabetes who is awaiting a breathalyzer examination, and the medical services provider's staff shall conduct blood glucose testing of that individual (promptly and without awaiting results of the breathalyzer examination) and provide all medical services deemed medically necessary by the medical services provider's staff, including but not limited to immediate transportation by the City of Philadelphia to the nearest hospital if the individual exhibits symptoms of diabetic illness (hypoglycemia or hyperglycemia) and the medical service provider's staff is unable to provide the care needed to alleviate these symptoms.

16. The City of Philadelphia agrees to make a source of sugar in the form of soft drinks available in the MOPU and in all Police Districts and Units. Any person with diabetes who requests a source of sugar to treat his/her diabetes will be permitted to purchase such soft drinks and, where the person is unable to purchase soft drinks, the soft drinks will be provided without charge. All such requests shall be documented on the detainee's Computerized Detainee Medical Checklist (75-605) where feasible.

C. Health Services Provisions

17. As part of the City of Philadelphia's efforts to improve the delivery of services to persons with diabetes who are in the custody of the Philadelphia Police Department the City of Philadelphia has contracted with Prison Health Services (PHS) to provide medical treatment to persons who are in the custody of the Philadelphia Police Department, and specifically those prisoners who are located in the MOPU.

18. Pursuant to the contract between the City of Philadelphia and PHS, PHS is required to provide medical triage and evaluation staff, on-call physician response, and the regular administration of medication (including but not limited to, insulin or other prescription

medication for the treatment of diabetes), by a registered nurse to detainees with diabetes located in the MOPU.

19. Pursuant to the contract between the City of Philadelphia and PHS, each detainee with diabetes at the MOPU shall be provided the following by the medical services provider's staff: (1) blood glucose testing upon arrival at the MOPU, and also if requested by the detainee or when deemed medically necessary by the medical services provider's staff; (2) medically appropriate sources of glucose for treatment of low blood sugar levels, including, in the case of emergencies, glucagon, when deemed medically necessary by the medical services provider's staff; (3) prescription medication including insulin and oral medication for the treatment of diabetes, when deemed medically necessary by the medical services provider's staff; (4) medically appropriate food, when deemed medically necessary by the medical provider's staff; and (5) immediate transportation to the nearest hospital if the detainee with diabetes exhibits symptoms of diabetic illness (hypoglycemia or hyperglycemia) and PHS staff is unable to provide the care needed to alleviate these symptoms.

20. In the event that the contractual relationship between the City of Philadelphia and PHS is terminated, the provisions contained in paragraphs 17-19 of this Agreement shall remain in full force and effect and applicable to any other health provider providing services in the MOPU, unless prohibited by federal law.

D. Monitoring Provisions

21. The parties agree to an eighteen (18) month monitoring period commencing on the first day of the second month following approval of this Agreement by the Court.

22. During the eighteen (18) month monitoring period the Philadelphia Police Department agrees to provide, on a monthly basis, the following documents to the American Diabetes Association:

a. Computer data exported from the PARS database for all persons in police custody who are identified as having diabetes. The data shall be provided in a computerized form and shall contain the following:

i. Computerized Detainee Medical Checklists (75-605) for all detainees with diabetes (including, without limitation, the checklists for all individuals detained for investigation or summary offenses);

ii. Location information from arrest through release or transfer to prison, including times of transfer, for all detainees with diabetes;

iii. Names, addresses, phone numbers and police photo numbers (PPN/PID) for all detainees with diabetes.

b. Hospital Case Database records (including names, addresses, phone numbers, and police photo numbers (PPN/PID)) in electronic format for all detainees with diabetes that appear in the Hospital Case Database.

c. Copies of any Internal Affairs investigations involving care and treatment of persons with diabetes and/or violations of Directive 82 involving persons with diabetes completed during the monitoring period.

d. Documents evidencing all specially ordered meals provided detainees with diabetes pursuant to § 1B. of Appendix “D” to Directive 82.

e. All diabetes related training materials, Directives, Commissioner’s Memoranda, Teletype Messages, Assist officers or other similar documents relating to the care and treatment of persons with diabetes.

f. In the event counsel for plaintiffs require hard copies of computerized Detainee Medical Checklists (75-605), or Incident Reports (75-48) on transportation of detained persons with diabetes to hospitals and/or the MOPU, counsel for plaintiffs shall confer in good faith with counsel for the City and set forth (1) the need for the information; and (2) the provision of this Agreement being monitored for which the information is required. In the event that counsel for the City is unable to resolve the monitoring issues identified by counsel for plaintiffs, the City shall provide the requested information within fourteen days of the request.

g. The City shall request its medical services provider to provide the City with all Medical Administration Records of all detained persons with diabetes (or any equivalent record documenting the administration of food and medicine to detained persons with diabetes) each month of the term of this Agreement, and the City shall produce such records to counsel for plaintiffs. If the City enters into a new contract or amends its current contract with its medical services provider, the City shall impose a requirement that these records be provided to the City upon request. In the event the medical services provider refuses to provide such records to the City as provided in this paragraph, plaintiffs may request the Court to issue a subpoena or other order directed to the medical services provider, which the City shall not oppose, requiring the production of such records directly to counsel for the plaintiffs.

E. Training Provisions

23. Representatives of the American Diabetes Association, upon request, may observe training or view Police Department practices and procedures in any other area covered by this Agreement. The City of Philadelphia reserves the right to limit access if compliance with the request would undermine security.

24. The American Diabetes Association, in consultation with the Philadelphia Police Department, agrees to design a poster to be paid for by the City of Philadelphia describing diabetes, its symptoms and appropriate treatment, which shall be placed and maintained in each area where prisoners are detained.

25. The American Diabetes Association, in consultation with the Philadelphia Police Department and the Philadelphia Health Department, agrees to co-produce a video to be paid for by the City of Philadelphia on diabetes and the needs of people with diabetes in custody. The Philadelphia Police Department agrees to incorporate the video into Police Recruit training. The Philadelphia Police Department agrees to make reasonable efforts to ensure that the video is viewed by all police officers on a biannual basis, through roll-call training or other training identified by the City. Detention Unit personnel and officers designated as “turnkeys” shall view the video on an annual basis.

26. The Philadelphia Police Department agrees to recommend to the Pennsylvania Municipal Police Officers Training and Education Commission the inclusion of the video and its contents in the Pennsylvania Municipal Police Officers Training and Education Commission Basic Curriculum and Annual In-Service Training.

F. Fees and Costs Provisions

27. The City of Philadelphia agrees to pay plaintiffs’ counsel fees and costs accrued at the time of the Court’s approval of this Agreement in the amount of \$42,500.00. The



plaintiffs hereby specifically waive any claim for attorneys' fees and costs during the eighteen-month monitoring period relating to the City's performance of the monitoring and training provisions of this Agreement (sections D and E).

G. Termination and Dismissal

28. This Agreement shall expire eighteen (18) months from the first day of the second month following approval of this Agreement by the Court. Upon expiration of this Agreement, the Court will automatically enter an Order dismissing all injunctive relief claims asserted against the City under the Rule 23(b)(2) Class from the *Rosen, et al. v. City of Philadelphia* case. The parties agree that the United District Court for the Eastern District of Pennsylvania shall retain jurisdiction over the enforcement of this agreement for the sole purpose of enforcing Sections D, E and F of this Agreement.

H. Release

29. Subject only to the final approval of the Agreement by the Court, plaintiffs, individually and on behalf of each member of the Rule 23(b)(2) class, and on behalf of the respective heirs, executors, administrators, personal representatives, successors and assigns of each of themselves and each of the members of the Rule 23(b)(2) class ("Settling Plaintiffs"), hereby jointly and severally acquit and forever discharge on the merits and with prejudice City, present or former directors, officers and employees of City, and present or former counsel, auditors, accountants, agents and consultants of City, and their respective heirs, executors, administrators, personal representatives, transferees, successors and assigns (collectively "Settling Defendant"), and each of them, of and from any and all manner of equitable actions, costs, expenses and attorneys' fees and expert fees (except as provided in Section F, herein), whether known or unknown, foreseen or unforeseen, matured or unmatured, accrued or not accrued, direct or indirect, that plaintiffs and the members of the Rule 23(b)(2) class, and each of

them, in their individual or class representative capacities, ever had, now has, or have, or can, shall or may hereafter have against City, or any of them, either alone or in combination with others, for, by reason of, involving, concerning, arising from or in any way relating to any equitable claim which is or could have been stated against City in the Complaint and Third Amended Complaint filed in this Action arising from the facts alleged in the Complaint and Third Amended Complaint.

30. In addition to the provisions of paragraph 29, Settling Plaintiffs further release Settling Defendant from any and all claims based solely upon the provision of individual identifying information (names, addresses, and/or telephone numbers) of class members to the American Diabetes Association (or its counsel) required by Section D of this Agreement.

I. Use Of Data

31. The plaintiffs and their counsel agree that any and all data produced by the City of Philadelphia is the property of the City of Philadelphia and the Philadelphia Police Department. The plaintiffs and their counsel agree that the data cannot be used in a study or publication without the express permission of the City of Philadelphia and the Philadelphia Police Department, except to the extent such data may be used in any report by plaintiffs and their counsel to the Court. In the event that plaintiffs and their counsel intend to use any data in any report to the Court, counsel for plaintiffs shall inform the City of their intent and identify the data plaintiffs intend to use no later than seven (7) business days before any such report. Within five (5) business days of such notice, the City may request in writing to counsel for plaintiffs that the data be filed with the Court under seal. Nothing in this paragraph precludes use of the data in any hearing before the Court, or any motion by plaintiffs to file data publicly or to remove any seal for previously filed data.

32. If one or more plaintiffs initiate any litigation relating to the treatment of detained persons with diabetes by the City of Philadelphia within six months after the expiration of this Agreement, those plaintiffs may use any and all data produced by the City of Philadelphia and the Philadelphia Police Department pursuant to this Agreement without restriction. If no plaintiff initiates any such litigation within six months after the expiration of this Agreement, all data supplied by the City of Philadelphia and the Philadelphia Police Department during the monitoring period shall be returned to the City of Philadelphia in its original form promptly after the expiration of this Agreement, and upon return of such information, the plaintiffs and/or their counsel further agree that they shall certify in writing that they have not disseminated the data to any person, organization or entity not subject to the terms of this Agreement.

J. Amendment and Modification

33. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by both the City and counsel for plaintiffs.

WHEREFORE, intending to be legally bound, the parties have executed this Agreement.

**NELSON A. DIAZ**  
**CITY SOLICITOR**

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Dated: March 13, 2003