



**U.S. Department of Justice**

**Civil Rights Division**

*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

**AUG 26 2011**

**VIA E-MAIL AND U.S. MAIL**

Howard R. Bradley  
County Mayor  
501 S. Main Street  
Courthouse, Room 108  
Springfield, TN 37172

**Re: Investigation of Robertson County Detention Facility**

Dear Mayor Bradley:

We write to report the findings of the Civil Rights Division's investigation of conditions at the Robertson County Detention Center ("RCDF" or "Jail"), conducted pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 ("CRIPA"). The Civil Rights Division commenced its investigation at the request of the United States Attorney's Office for the Middle District of Tennessee, after that office received complaints from prisoners regarding RCDF's provision of nutrition and medical care. During our investigation, we assessed RCDF's compliance with the Constitution, which requires the Jail to provide detainees with humane conditions of confinement, including adequate medical and mental health care, food, clothing, and shelter.

While we found RCDF's practices with respect to nutrition, medical care, and environmental health and safety adequate or minimally adequate to comply with the Constitution, we found a pattern or practice of constitutional violations in RCDF's provision of mental health care. Specifically, RCDF's mental health practices place prisoners at a substantial and unreasonable risk of serious harm. In the other areas we investigated, we have serious concerns that do not yet rise to the level of constitutional violations, including numerous medical practices that could result in constitutional violations if left unremedied. By implementing the remedies set forth below, the County will fulfill its duty to uphold the Constitution and protect the health and safety of those in its custody.

In making these findings, we note that RCDF has been cooperative throughout our investigation and receptive to our preliminary findings and initial recommendations. We are thus

confident that RCDF will take appropriate measures to remedy the deficiencies we detail in this letter, and look forward to working cooperatively with RCDF as it does so.

## I. Summary of Findings and Conclusions

We have concluded that Robertson County (“the County”) fails to provide mental health care to prisoners at RCDF in violation of the Fourteenth Amendment to the Constitution. Addressing these deficiencies should be RCDF’s highest priority, as we believe that these lapses, if not corrected, have a strong likelihood of resulting in unnecessary injury and/or loss of life. Our specific findings of practices that do not comport with the requirements of the Constitution include:

- RCDF fails to protect prisoners from harm by permitting Licensed Practical Nurses (“LPNs”) – individuals with little or no mental health training – to independently manage suicide precautions. The Constitution requires the Jail to provide prisoners with mental health needs with access to medical personnel who are qualified to diagnose and treat mental illness.
- RCDF fails to provide prisoners with serious mental illnesses with timely and competent mental health care. Specifically, (a) prisoners with chronic mental illnesses who are not capable of requesting mental health care are effectively denied treatment; (b) prisoners who request mental health care experience delays that violate constitutional standards; and (c) nurses are responsible for providing mental health care beyond their training and qualifications.

While we do not find a current violation of the Constitution, we find that certain medical practices at RCDF may pose unreasonable risks to prisoners’ safety and health and, if left unremedied, may violate the Constitution. Additionally, we find that while the Jail’s nutrition and sanitation meet minimum constitutional requirements, certain of RCDF’s practices in these areas are deficient or cause us concern.

## II. Investigation

On July 13, 2010, we notified you that we were opening an investigation of conditions at RCDF pursuant to CRIPA. Based on the allegations and information we received from the United States Attorney’s Office, the initial focus of our investigation was the nutritional adequacy of the diet provided to RCDF prisoners. In 2009, Chief Judge Todd Campbell conducted a six-day evidentiary hearing to assess a prisoner’s claim that he had lost significant weight during his confinement at RCDF. *United States v. Williams*, No. 3:09-00090 (M.D. Tenn. 2009). During the course of the hearing, numerous RCDF inmates testified that they had also lost substantial amounts of weight while at the Jail.

On October 12-15, 2010, we conducted an onsite inspection of the Jail to assess RCDF’s provision of nutrition, medical care, and environmental health and safety. Expert consultants in all three of these areas accompanied us. We toured the facility, observed facility processes, interviewed staff and prisoners, and reviewed an array of documents, including policies and

procedures. Following our onsite inspection, we requested additional documents related to suicide prevention measures and mental health care at RCDF, including prisoners' mental health records, suicide precaution logs, and policies and procedures. An expert consultant in the area of correctional mental health care conducted an offsite review of these documents. Consistent with our pledge of transparency, and to provide technical assistance where appropriate, we conveyed our preliminary determinations regarding nutrition and diet, medical care, and environmental health and safety to RCDF administrators and staff during exit presentations at the close of our onsite visit.

We are confident that the new leadership at RCDF will take appropriate measures to address the deficiencies we detail in this letter. Sheriff Bill Holt and the entire RCDF staff have been helpful and professional throughout the course of our investigation. RCDF 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 RCDF's receptiveness to our consultants' onsite and post-tour recommendations, and note that at every opportunity, the Sheriff and RCDF's administration have expressed their commitment to working with the United States to provide prisoners with reasonably safe and humane conditions of confinement, as required by the Constitution. We expect we will continue to work with RCDF in a cooperative manner as the Jail addresses the issues we have identified both previously and in this letter.

### **III. Background**

RCDF is located in Springfield, Tennessee, approximately thirty miles north of Nashville. The Robertson County Sheriff's Office, headed by Sheriff Bill Holt, operates the Jail. After serving as Chief Deputy, Sheriff Holt was elected Sheriff in August 2010.

RCDF houses pre-trial federal and state detainees and sentenced state prisoners. At the time of our tour, the Jail housed 280 prisoners in a building that RCDF opened in July 2009. The Jail was in the process of renovating the former jail, originally constructed in 1997. Once renovations to that facility are complete, RCDF will have the capacity to house over 600 prisoners.

RCDF contracts with private companies to provide food and medical services to the Jail. ABL Management, Inc. ("ABL"), a food provider, manages the Jail's food services and Southern Health Providers, Inc. ("SHP"), a medical services provider, supplies onsite medical and mental health care to prisoners.

### **IV. Findings and Conclusions**

We conclude that RCDF fails to provide prisoners with constitutionally adequate mental health care and have serious concerns about medical care, nutrition, and environmental health. These findings are detailed below.

### **A. Legal Standards Governing Our Investigatory Conclusions**

The Eighth Amendment affords convicted prisoners protection from cruel and unusual punishment. U.S. Const. amend. VIII. While the constitutional rights of convicted prisoners and pre-trial prisoners are guaranteed by the Fourteenth Amendment, the Supreme Court has consistently held that pre-trial prisoners “retain at least those constitutional rights . . . enjoyed by convicted prisoners [under the Eighth Amendment].” *Bell v. Wolfish*, 441 U.S. 520, 545 (1979); *Danese v. Asman*, 875 F.2d 1239, 1243 (6th Cir. 1989). The Eighth Amendment requires prison officials to “provide humane conditions of confinement.” *Spencer v. Bouchard*, 449 F.3d 721, 727-28 (6th Cir. 2006) (quoting *Farmer v. Brennan*, 511 U.S. 825, 832 (1994)). Specifically, prison officials “must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must ‘take reasonable measures to guarantee the safety of the inmates.’” *Id.*

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 Farmer*, 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); *Blackmore v. Kalamazoo Cnty.*, 390 F.3d 890, 899 (6th Cir. 2004) (noting that the Constitution “does not require actual harm to be suffered”). The Supreme Court has clearly stated that “a remedy for unsafe conditions need not await a tragic event.” *Helling*, 509 U.S. at 33.

### **B. RCDF Provides Constitutionally Inadequate Mental Health Care**

Corrections officials violate the constitutional rights of prisoners if they are deliberately indifferent to their serious medical needs, including prisoners’ psychological needs. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Horn v. Madison Cnty. Fiscal Ct.*, 22 F.3d 653, 660 (6th Cir. 1994). Corrections officials act with deliberate indifference if they “(1) subjectively kn[ow] of a risk to the inmate’s health, (2) dr[aw] the inference that a substantial risk of harm to the inmate exist[s], and (3) consciously disregard[] that risk.” *Jones v. Muskegon Cnty.*, 625 F.3d 935, 941 (6th Cir. 2010). In essence, prison officials act with deliberate indifference by “‘denying or delaying access to medical care’ for a serious medical need.” *Phillips v. Roane Cnty., Tenn.*, 534 F.3d 531, 539 (6th Cir. 2008) (quoting *Estelle*, 429 U.S. at 104-05). Our investigation revealed that RCDF’s mental health care system fails to meet constitutional standards. By permitting unqualified personnel to manage suicide precautions for prisoners at risk of engaging in self-harm without supervision and failing to provide prisoners with serious mental illnesses with competent and timely mental health care, RCDF fails to provide constitutionally adequate mental health care.

1. *RCDF violates constitutional standards by permitting LPNs to manage suicide precautions.*

Prisoners have an “established right to medical attention once . . . prisoner[s]’ suicidal tendencies are known” to prison officials. *Comstock v. McCary*, 273 F.3d 693, 711 (6th Cir. 2002). Medical attention provided solely by nurses who are not qualified and trained to treat prisoners’ psychiatric needs is not sufficient to meet constitutional standards. Rather, prisoners with psychiatric needs have a right to “reasonable access to medical personnel *qualified to diagnose and treat*” mental illness. *Inmates of Allegheny Cnty. Jail v. Pierce*, 612 F.2d 754, 762 (3d Cir. 1979) (emphasis added). RCDF violates this basic tenet by permitting its LPNs – individuals with little or no mental health training – to both place prisoners on and remove them from suicide watch.<sup>1</sup>

The Sixth Circuit has recognized that prison officials may violate the Constitution by removing prisoners from suicide watch without first making a “reasoned assessment or evaluation of the patient’s suicide risk.” *Comstock*, 273 F.3d at 710-11 (finding constitutional violation where psychologist removed prisoner from suicide watch based on an “evaluation [that] was unreasonable and constituted deliberate indifference to the risk that [the prisoner] would harm himself when presented with the opportunity.”). Presently, RCDF’s sole physician is the only RCDF staff person qualified based on his training to conduct such a reasoned assessment. He is only onsite two hours each week and there is no psychiatrist on staff.<sup>2</sup> Despite his limited time onsite, the physician acts as the Medical Director and is responsible for overseeing RCDF’s entire clinical operation and for providing direct patient care for prisoners with medical or mental health care needs. To compensate for the lack of onsite physician time, the nursing staff provide clinical care that exceeds their licensure and training. RCDF’s policies recognize that LPNs are not qualified or trained to independently make a reasoned assessment or evaluation of a prisoner’s suicide risk. *See, e.g.*, SHP Chronic Care Protocol (protocol emphatically warns “*Remember, only the Medical Team Administrator, Psych Nurse or Psychiatrist can remove a prisoner from Suicide Observation.*”).<sup>3</sup>

RCDF’s use of LPNs to make determinations regarding suicide precautions deviates from minimum constitutional requirements, RCDF’s own policies, medical community practice, and the recommended guidelines of the National Committee for Correctional Health Care (“NCCHC”), and ultimately places prisoners at risk of serious harm. *See Ramos v. Lamm*, 639 F.2d 559, 576 (10th Cir. 1980) (finding that prison officials failed to provide constitutionally adequate medical care where non-physician medical staff were “being used as ‘physician substitutes’ and . . . being

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<sup>1</sup> There are two types of licensed nurses, LPNs and registered nurses, or RNs. Registered nurses have a more advanced degree and more training than LPNs. LPNs are supervised by registered nurses to carry out some clinical functions. A registered nurse can develop a nursing diagnosis, but not a medical diagnosis.

<sup>2</sup> SHP policies reflect the need for a psychiatric provider at RCDF. For example, the Chronic Care Protocols state that after the medical staff and psychiatric nurse screen an inmate, “a referral may be made to see the Psychiatrist.”

<sup>3</sup> The SHP Chronic Care Protocol alternately refers to the “Psych Nurse” as the “Psych RN.” The current psychiatric nurse is a registered nurse.

forced to make decisions and perform services for which they are neither trained nor qualified.”). The following example demonstrates RCDF’s constitutionally infirm practice of removing prisoners from suicide watch without providing a reasoned and comprehensive evaluation of their suicide risk by a trained mental health professional:

- On October 10, 2010, RCDF staff placed Prisoner A on suicide watch and started him on an antidepressant. There was no progress note in his record documenting the rationale for placing him on suicide watch or ordering the antidepressant. Two days later, an LPN removed him from suicide watch. Neither the psychiatric RN nor the physician conducted a mental health assessment of Prisoner A before the LPN removed him from suicide watch. Nevertheless, the LPN ordered that Prisoner A be placed on razor restriction and prohibited him from having sheets in his cell, indicating that the nurse believed that Prisoner A was still at risk of engaging in self-harm.

Our review also revealed numerous instances where RCDF nurses removed prisoners from suicide watch after prisoners signed contracts essentially promising not to harm themselves. For someone with suicidal ideation or who is actively suicidal, these “contracts for safety” have little protective validity, yet RCDF is using them in place of an evaluation by a qualified mental health practitioner. The following examples illustrate this practice:

- On September 16, 2010, RCDF staff placed Prisoner B in isolation.<sup>4</sup> According to a nurse’s notes, Prisoner B was removed from isolation after signing a contract promising not to engage in self-harm. This occurred although the psychiatric RN had specifically noted that Prisoner B should not be permitted to contract for safety.
- Prisoner C was placed on suicide watch on August 29, 2010, due to suicidal ideation. The next day, an LPN removed Prisoner C from suicide watch after she signed a contract. The psychiatric nurse saw Prisoner C for the first time ten days later.
- On April 28, 2010, RCDF staff placed Prisoner D on suicide observation after he used a pencil to engage in self-injurious behavior. Two days later, RCDF staff removed Prisoner D from observation after he signed a contract promising not to engage in self-harm. RCDF did not conduct a formal mental health assessment of Prisoner D before removing him from observation.

This practice falls below constitutional standards. *See Comstock*, 273 F.3d at 710-11 (psychologist placed prisoner at risk of harm by removing him from suicide watch based on an evaluation that “left him no way to corroborate [the prisoner’s] self-serving statement that he was feeling better”); *see also Farmer*, 511 U.S. at 843 n. 8 (A prison official may “not escape

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<sup>4</sup> In order to do so, RCDF staff removed another inmate with a mental health condition from isolation, indicating problems with crowding in the cells designated for mental health observation.

liability if the evidence show[s] that he merely refused to verify underlying facts that he strongly suspected to be true, or declined to confirm inferences of risk that he strongly suspected to exist.”).

The physician and psychiatric nurse have little or no involvement in the management of suicide precautions. During the first day of our onsite tour, we were told that there were not any prisoners on suicide watch. However, we observed two prisoners in suicide smocks (commonly called “turtle suits”). These two prisoners were in isolation cells and had all of their clothes removed except for the soft upper body cloth suit. Neither the medical staff, including the physician, nor the psychiatric nurse was able to provide information regarding the status of these two prisoners.

Our review of prisoners’ records confirmed our onsite observations that prisoners on suicide watch are not adequately supervised or monitored. Prisoners on suicide watch often had no clear documentation in their chart outlining when and why they were placed on a suicide watch, or when they were removed. Suicide precaution logs revealed that these forms often appeared to be completed in advance, indicating that RCDF staff did not conduct intermittent checks. Moreover, we discovered numerous cases where either more than fifteen minutes elapsed between checks or checks were not staggered. RCDF’s failure to adequately monitor and supervise prisoners on suicide watch contravenes RCDF’s own policy and the constitutional requirement that, at a minimum, correctional mental health programs must include “a basic program for the identification, treatment, and supervision of inmates with suicidal tendencies.” *Ruiz v. Estelle*, 403 F. Supp. 1265, 1339 (S.D. Tex. 1980), *aff’d in part and rev’d in part on other grounds*, 679 F.2d 1115 (5th Cir. 1982); *see* SHP Suicide Prevention Policy (requiring staggered checks every 10-15 minutes); *see also* Lindsay M. Hayes, *Guide to Developing and Revising Suicide Prevention Protocols Within Jails and Prisons*, Nat’l Ctr. on Insts. & Alternatives 5 (2011) (recommending that a prisoner who is actively suicidal should be observed “on a continuous, uninterrupted basis,” and a prisoner who is “not actively suicidal, but expresses suicidal ideation . . . and/or has a recent prior history of self-destructive behavior” should be observed “at staggered intervals not to exceed every 10 minutes (e.g., 5, 10, 7 minutes)).”

Finally, RCDF uses seclusion and restraint inappropriately and without necessary safeguards when responding to the risk of suicide. Specifically, RCDF nurses and custody staff use the restraint chair as a form of “suicide watch” without an order from the physician. The records we reviewed demonstrated that RCDF staff place prisoners in the restraint chair, confine them to the chair for hours at a time, and then remove them, without ever providing the prisoner with a face-to-face evaluation by the physician. The following examples illustrate this practice:

- Prisoner E entered RCDF on September 11, 2010, with a dual diagnosis of mental illness and substance abuse. Custody and nursing staff placed Prisoner E in restraints and subsequently placed him on suicide watch. The psychiatric nurse did not evaluate Prisoner E until after he had been on suicide watch for 48 hours and had been at the Jail for more than two weeks. Even then, she did not conduct a comprehensive mental health evaluation or develop an adequate treatment plan.

- On May 15, 2010, Prisoner F entered RCDF. Based on his previous admission to RCDF, it was clear that Prisoner F had a history of suicidal ideation. The day of his admission, RCDF staff placed him in the restraint chair without a physician's order or a face-to-face evaluation. According to his chart, on May 28, 2010, custody staff observed Prisoner F consume a handful of pills. As a result of this suicide attempt, staff transferred Prisoner F to a hospital critical care unit. The psychiatric nurse did not see Prisoner F until a week after his return from the hospital. Prisoner F never received follow-up care by the physician.

RCDF does not maintain complete records regarding the use of seclusion or the restraint chair. Moreover, RCDF does not have a medical or mental health policy specific to the use of involuntary psychotropic medication or restraints. The use of restraint and seclusion are safety interventions only and do not constitute a valid form of mental health treatment. The use of restraint and seclusion may lead to the worsening of a mentally ill individual's symptoms and carries the risk of physical injury.<sup>5</sup>

2. *RCDF violates the Constitution by failing to provide seriously mentally ill prisoners timely and competent mental health care.*

In order to meet the minimum required by the Constitution, a correctional mental health care program must include "the participation of trained mental health professionals, who must be employed in sufficient numbers to identify and treat in an individualized manner those treatable inmates suffering from serious mental disorders." *Ruiz*, 403 F. Supp. at 1339. Moreover, this treatment must be provided in a timely manner. *See Phillips*, 534 F.3d at 539 (prison officials violate constitutional standards by "denying or delaying" prisoner's access to treatment for a serious medical need); *Blackmore*, 390 F.3d at 900 (noting that a "delay alone in providing medical care creates a substantial risk of serious harm"). RCDF fails to provide prisoners identified as seriously mentally ill or suicidal with timely and competent mental health care. Specifically, prisoners with chronic mental illnesses who are not capable of requesting mental health care are effectively denied treatment, prisoners who request mental health care experience unreasonable delays, and nurses are responsible for providing mental health care beyond their training and qualifications.

- a. RCDF does not provide prisoners with chronic mental illnesses with adequate mental health care and treatment.

Despite the existence of a policy entitled "Chronic Care Protocols: Diagnosed Mentally Ill Patients," RCDF does not have an established system for providing chronic care to psychiatric

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<sup>5</sup> *See, e.g.,* Nat'l Ass'n of State Mental Health Program Dirs. ("NASMHPD"), *NASMHPD's Position Statement on Seclusion and Restraint*, at 1 (July 15, 2007), [http://www.nasmhpd.org/position\\_statement.cfm](http://www.nasmhpd.org/position_statement.cfm). NASMHPD is an organization made up of directors of state public mental health systems. According to NASMHPD, "seclusion and restraint are safety interventions of last resort and are not treatment interventions." *Id.* NASMHPD's Position Statement emphasizes that "[t]he use of seclusion and restraint creates significant risks for all individuals involved . . . includ[ing] serious injury or death . . ." *Id.*



patients. Mental health services at RCDF are primarily provided at the request of the prisoners.<sup>6</sup> As a result, prisoners who are too ill to write a request for an appointment are, in effect, denied constitutionally adequate mental health care. *See Casey v. Lewis*, 834 F. Supp. 1477, 1550 (D. Ariz. 1993) (finding prison officials deliberately indifferent where “severely mentally ill inmates cannot make their needs known to mental health staff.”); *see also Hoptowit v. Ray*, 682 F.2d 1237, 1253 (9th Cir. 1982) (Jail officials must provide prisoners with a mechanism “to make their medical problems known to the medical staff.”). This practice places seriously mentally ill prisoners at considerable risk of harm, including decompensation.

We did not review a single record that contained an appropriate treatment plan. The following example demonstrates the constitutionally inadequate mental health care RCDF provides to prisoners with severe and chronic mental illnesses:

- Prisoner G entered the Jail on July 21, 2010, with a history of severe mental illness and prior suicide attempts. Despite these risk factors, intake staff never referred Prisoner G to mental health services. Prisoner G did not receive mental health care until August 11, 2011, after he engaged in self-harm by inserting a foreign object into his urinary and digestive tracts. Even then, he was not referred to the physician. Instead, he was seen in an intermittent fashion by the psychiatric nurse, who conducted visits cell-side, preventing confidential communications. This is the only form of mental health treatment RCDF provided to Prisoner G.

Indeed, instead of providing seriously mentally ill prisoners with chronic care, RCDF essentially relies on “therapeutic lockdown,” in which a detainee is isolated in his or her cell and denied any staff interaction, including contact with mental health staff. This use of long-term seclusion is contrary to generally accepted professional standards of mental health care and the Constitution. While the psychiatric nurse provides these prisoners with minimal medication management, RCDF provides no other treatment modalities. In order to provide constitutionally adequate mental health care, “the prescription of [psychotropic] drugs cannot supplant the necessity of psychiatric counseling.” *Balla v. Idaho State Bd. of Corr.*, 595 F. Supp. 1558, 1577 (D. Idaho 1984); *see also Coleman v. Wilson*, 912 F. Supp. 1282, 1298 n.10 (E.D. Cal. 1995) (a constitutionally adequate mental health care system includes, at a minimum, “a treatment program that involves more than segregation and close supervision of mentally ill prisoners”).

- b. RCDF does not respond to requests for mental health care in a timely manner.

RCDF’s mental health care system fails to provide timely treatment in violation of the Constitution. *See LeMarbe v. Wisneski*, 266 F.3d 429, 439 (6th Cir. 2001) (“[A] deliberately indifferent delay in giving or obtaining treatment may also amount to a violation under the Eighth Amendment.”). Even those prisoners who are able to request mental health services must wait significant periods of time before seeing the psychiatric nurse. The psychiatric nurse works at the facility one day per week for six to eight hours and essentially acts as the sole provider of mental

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<sup>6</sup> SHP policy expressly permits this practice. *See Chronic Care Protocols* (“At all times, Inmates must complete and submit a sick call request form to see the Psych RN or Psychiatrist.”).

health care to RCDF prisoners. Our review revealed that, on average, it takes approximately two to three weeks for the psychiatric nurse to respond to a prisoner referral. Delays of two weeks or more for mental health care effectively deny prisoners access to medical care in violation of the Constitution. *See Ramos*, 639 F.2d at 578 (staff shortages leading to prisoners being placed on waitlist of two to five weeks constitutes effective denial of mental health care and demonstrates deliberate indifference). Shorter delays also deny prisoners access to medical care when the need is urgent. *See, e.g., Fitzke v. Shappell*, 468 F.2d 1072, 1076-77 (6th Cir. 1972) (delay of 12-17 hours in receiving treatment where circumstances indicated prompt need for medical attention stated a cause of action for denial of medical care). The following examples demonstrate RCDF's delays in providing mental health care:

- Prisoner C was placed on suicide watch on August 29, 2010, due to suicidal ideation. On August 30, 2010, a nurse removed Prisoner C from suicide watch after she signed a contract. The psychiatric nurse saw Prisoner C for the first time ten days later, on September 9, 2010. On November 3, 2010, Prisoner C again requested to see the psychiatric nurse. Despite Prisoner C's depression and suicidal ideation, the psychiatric nurse did not respond to her request for more than two weeks.
- Upon his admission in July 2010, Prisoner H reported his history of mental illness and treatment with Seroquel. Outside records documented that Prisoner H had, in fact, been receiving this medication prior to his arrival at RCDF. Despite his request to receive this medication, RCDF staff did not provide Prisoner H with Seroquel until two months after his admission.
- Prisoner I had a known history of mental illness and suicidal ideation. Specifically, Prisoner I cut her arms with a razor blade while on suicide observation at RCDF. Prisoner I had also attempted suicide prior to her incarceration by stabbing herself in the stomach. An RCDF nurse noted in Prisoner I's record that "it is felt by staff that [Prisoner I] is trying to end her own life due to the serious charges she faces." On April 8, 2010, Prisoner I submitted a request for mental health care. Despite her risk factors, the psychiatric nurse did not see Prisoner I until nearly one week after her request for mental health services.
- Prisoner J entered RCDF on March 6, 2010. Ten days later, Prisoner J was placed on suicide watch due to suicidal ideation, auditory hallucinations, and engaging in self-harm. Prisoner J filed multiple sick call requests in order to be seen for adjustment of his psychotropic medication. On average, the psychiatric nurse took about three weeks to respond to his requests. During these delays, he was placed in restraints and subject to uses of force by custody staff.

RCDF's practice of permitting two to three weeks – or more – to elapse between a prisoner's request for mental health care and the provision of care does not meet constitutional standards.

- c. RCDF permits nurses to provide mental health care beyond their training and qualifications.

RCDF's practice of permitting nurses who are not trained and qualified to provide mental health care to manage psychotropic medications and treat prisoners with serious mental health needs violates the Constitution and generally accepted practices. *See, e.g., Inmates of Allegheny Cnty. Jail*, 612 F.2d at 762; *Balla*, 595 F. Supp. at 1577 (finding that "minimally adequate psychiatric care" includes adequate coverage by a psychiatrist to "provide treatment to those inmates capable of deriving benefit").

The "appropriate supervision and periodic evaluation" of prisoners on psychotropic medications is "constitutional minima . . . specific to mental health care." *Madrid v. Gomez*, 889 F. Supp. 1146, 1258 (N.D. Cal. 1995). RCDF prisoners are being treated with anti-psychotics and major mood stabilizers. Yet, the physician does not consistently evaluate prisoners on psychotropic medications, nor does he review the prescribed psychotropic medications to ensure their appropriateness and to prevent negative interactions with other medications.<sup>7</sup> Instead, the psychiatric nurse essentially prescribes and manages medications for patients with mental health conditions, responsibilities that are beyond the scope of a nurse's training. The following examples demonstrate RCDF's practice of permitting staff to provide mental health care beyond their licensure and training:

- Prisoner K entered the Jail on September 7, 2010, with a history of mental illness. The psychiatric nurse saw Prisoner K two weeks after he requested an appointment. Prisoner K reported to the nurse that, prior to arriving at RCDF, he was prescribed Cymbalta, a drug commonly used to treat depression. The psychiatric nurse independently gave Prisoner K permission to take Cymbalta if his family was able to provide the medication. The psychiatric nurse never referred Prisoner K to the physician for an evaluation or an alternative drug. Moreover, the prisoner's family should not be responsible for his medical or mental health care while in the custody of the Jail.
- Prisoner L entered RCDF on July 30, 2010, with a history of anxiety and treatment with psychotropic medication. RCDF intake staff did not refer Prisoner L to a qualified mental health professional within 14 days of arrival as required by the standard of care. Instead, an LPN managed his treatment with preformatted treatment protocols and telephone orders.
- On May 15, 2010, Prisoner F entered RCDF. The psychiatric nurse mismanaged the doses of Prisoner F's psychotropic medications, causing Prisoner F to be overly sedated and lethargic. Prisoner F never received follow-up care by the physician.

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<sup>7</sup> Certain medications, including Depakote and Lithium, require monitoring by diagnostic blood tests to ensure that the medications are not causing harm to the patient.

The physician is the only RCDF medical professional who is equipped by his training and licensure to manage and treat patients with a medical and/or mental health diagnosis. In order to ensure that prisoners receive constitutionally adequate mental health care, RCDF must ensure that a physician is available to train nursing staff and to provide oversight. RCDF must increase its mental health staffing to meet the needs of its population and limit the psychiatric nurse's and LPNs' job responsibilities to those services they are trained and licensed to perform.

### **C. RCDF's Medical Care Is Deficient and Creates a Risk of a Constitutional Violation**

RCDF provides prisoners with medical care minimally adequate to comply with the Constitution. We did not identify a pattern or practice of incidents in which prisoners suffered harm due to RCDF's medical practices, or in which RCDF's medical practices placed prisoners at an unreasonable risk of harm. Nonetheless, we identified numerous practices in the area of medical care that could result in constitutional violations if left unremedied. The Constitution protects a prisoner's "right not to have his serious medical needs disregarded by his doctors." *LeMarbe*, 266 F.3d at 440. Prison officials knowingly disregard, or act with deliberate indifference to this right by "'denying or delaying access to medical care' for a serious medical need." *Phillips*, 534 F.3d at 539 (quoting *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.

Our review revealed that RCDF's medical practices place prisoners at risk of receiving delayed or deficient medical care. Specifically, RCDF permits unqualified staff to conduct health assessments, provides poor medication management, and lacks a chronic care program. In addition, RCDF should improve its management of infectious diseases. Although we did not identify any instances of serious harm from these systemic deficiencies during our review, these deficiencies could place prisoners at risk of harm, and, if left unremedied, may result in constitutional violations.

As discussed in our assessment of mental health care, many of these lapses are directly related to RCDF's inadequate medical staffing. Due to the inadequate physician support at RCDF, nurses practice and provide medical care beyond their training and licensure. Specifically, nurses make decisions regarding which drugs should be prescribed and conduct health assessments with little or no oversight. Moreover, nurses are permitted to use "medical protocols" to prescribe medications. The use of inappropriate health staff for the management and evaluation of serious medical conditions could place the prisoners at risk for both unnecessary morbidity and mortality.

Specific deficiencies we observed included the following:

- LPNs conduct comprehensive medical assessments of prisoners, a function LPNs are not licensed or qualified to perform.
- RCDF dispenses medications to prisoners without any supporting medication orders or progress notes. Dispensing medications without a progress note,

physician order, or other documentation is dangerous and can have a lethal outcome for the patient.

- RCDF's medication verification procedures result in unnecessary and unreasonable delay in providing medication to prisoners.
- RCDF lacks a defined system to track or manage prisoners with chronic medical conditions.
- RCDF does not have a procedure in place to test prisoners annually for tuberculosis and does not track Methicillin-resistant *Staphylococcus aureus*<sup>8</sup> or any other infectious disease information.

If left unremedied, RCDF's provision of medical care by unqualified staff may result in a denial of care and violate the Constitution.

#### **D. RCDF Provides Prisoners with Adequate Nutrition**

We found that RCDF provides prisoners with constitutionally adequate nutrition. All prisoners must receive adequate food and water. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994); *Helling*, 509 U.S. at 31-32. To be adequate, the food provided must be sufficient to maintain normal health. *Cunningham v. Jones*, 567 F.2d 653, 660 (6th Cir. 1977). For prisoners to maintain normal health, the food they receive must contain both adequate nutrients and calories. *See, e.g., Hutto v. Finney*, 437 U.S. 678, 683, 686-87 (1978) (discussing caloric intake); *Phelps v. Kapnolas*, 308 F.3d 180, 187 (2d Cir. 2002) (diet must be nutritionally adequate).

On December 22, 2010, we provided RCDF with our preliminary findings regarding the nutritional adequacy of the meals that the Jail provides. In that letter, we stated that we had found information to support prisoners' claims that, in 2008 and part of 2009, they were not receiving enough food, likely due to the actions of a former food service contract employee. While we conclude here that RCDF has resolved its issues related to the provision of adequate nutrition, we note that this incident underscores how important it is for the Jail to supervise kitchen operations, and more broadly, the operations of all of its contractors.

Although our review indicates that RCDF's menu is constitutionally adequate, we have some concerns regarding RCDF's food preparation, portioning, and service practices that can

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<sup>8</sup> MRSA is a potentially dangerous drug-resistant bacteria that can cause serious systemic illness, permanent disfigurement, and death. A MRSA infection is sometimes confused by detainees and medical staff for a spider or insect bite, causing delays in treatment while the infection worsens or spreads. MRSA is resistant to common antibiotics, such as methicillin, oxacillin, penicillin, and amoxicillin. MRSA is usually spread by direct physical contact, but may also spread through indirect contact, by touching objects such as towels, sheets, wound dressings, and clothes. MRSA can be difficult to treat and can develop into life-threatening blood or bone infections. *See generally* Ctrs. for Disease Control & Prevention, Methicillin-resistant *Staphylococcus Aureus* (MRSA) Infections, <http://www.cdc.gov/mrsa/index.html> (last updated Apr. 8, 2011).

impact the adequacy of nutrition provided to prisoners. We discuss these practices and some recommended actions below. As a general proposition, however, RCDF should consider developing a standing committee devoted to food and food related issues in order to identify issues and implement corrective actions where needed. This committee should be comprised of RCDF administrative staff, first line jail supervisors, correctional officers, kitchen employees, and medical representatives, and include a mechanism for prisoner feedback.

Additionally, in order to avoid any issues before they develop, RCDF should take a more active role managing its food service operation. While a contractor provides RCDF's food service, the Sheriff and RCDF are ultimately responsible for the food service operation. In particular, RCDF should regularly review key documents and observe kitchen operations. Such oversight will ensure that RCDF's food contractor meets its contractual obligations and provides safe and nutritious meals as required by the Constitution.

1. *RCDF's menu provides nutritionally adequate meals.*

RCDF appears to provide nutritionally adequate meals. RCDF should ensure, however, that a qualified dietician approves its menus in advance. RCDF utilizes a four-week cycle menu, ostensibly approved by a dietician on staff with RCDF's food contractor. At the time of our tour, the menu had been changed several months prior to our visit, yet the kitchen staff did not have an updated, dietician-approved menu reflecting the changes. Additionally, RCDF staff informed us that a new menu was scheduled to go into effect in the month following our tour. To prevent the reoccurrence of the concerns that initially prompted our investigation, it is vital that a qualified, credentialed dietician reviews all menus prior to their implementation so that the Jail is assured that the menu it serves is calorically and nutritionally adequate. This is especially important at RCDF, where no commissary is available to prisoners, as RCDF's kitchen provides prisoners' only source of nutrition.

Following our visit to the Jail, RCDF provided us with a copy of RCDF's revised, dietician-approved menu (hereinafter the "October 2010 menu"), and a nutritional analysis of that menu. Based on our expert dietician's review, the October 2010 menu – currently in effect at RCDF – should provide prisoners with adequate nutrients and calories to maintain normal health, assuming it is implemented as written.

Specifically, the nutritional analysis for the October 2010 menu indicates that RCDF served an average of 2,900 calories/day per prisoner during the menu's four-week cycle. Daily caloric needs are predicted by an individual's Estimated Energy Requirement ("EER"), which varies by age, gender, weight, height, and level of physical activity. Our expert dietician evaluated the EER for two reference individuals, a male and a female between the ages of 19-30, who engage in low levels of physical activity, as representative of the energy needs of a majority of RCDF prisoners. Based on these reference individuals, the October 2010 menu is adequate to meet the maintenance energy needs of the majority of prisoners at RCDF. The October 2010 menu also meets the major nutrient requirements for men and women aged 19 to 70 and pregnant women.

2. *RCDF's food preparation, portioning, and service practices impact nutritional adequacy.*

In addition to a nutritionally sufficient menu, nutritional adequacy requires RCDF to prepare and portion meals in a manner consistent with the menu's requirements, and to provide every prisoner with his or her prescribed diet. Overall, our investigation indicated that RCDF prisoners were receiving adequate nutrition in accordance with the Jail's menu and the Constitution. We observed, however, several practices that could impact the level of nutrition each prisoner actually receives.

As we stated in our December 22, 2010 letter, to reduce the need for any variances from standardized recipes, the food contractor should provide, and the kitchen staff should follow, standardized recipes scaled to the number of meals needed. These recipes should be updated when RCDF's population changes significantly, or when suppliers or ingredients change. Facilities commonly either maintain copies of recipes scaled to their particular needs or use computer software to generate recipes adjusted to the needed number of meals. These tools reduce reliance on quick estimates, and increase the accuracy of the nutritional analysis of the menu in use. Finally, kitchen staff should record the recipe number used on the daily food production schedule to ensure compliance with the menu, and the food contractor's regional supervisor and food service director should monitor both the adequacy of the documentation and the cooking for compliance with the standardized recipes.

Additionally, for prisoners to receive the benefits of RCDF's menu, the Jail must provide each prisoner with the correct tray at every meal. To ensure that RCDF is doing so, the Jail should develop and implement a policy and procedure to ensure that correctional officers consistently document receipt of meal trays. Each officer responsible for distributing meals should confirm a prisoner's identity by checking his or her wrist identification band before handing the food tray to the prisoner, and then document the fact that the prisoner received his or her meal. This documentation should include any meal refusals.

**E. Environmental Health and Safety at RCDF Comport with Constitutional Standards**

We found that the environmental conditions at RCDF did not violate the Constitution. In certain areas, however, RCDF's practices fall below national standards. The Eighth Amendment guarantees that prisoners will not be "deprive[d] of the minimal civilized measure of life's necessities." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). As the Due Process Clause of the Fourteenth Amendment affords at least the same protections to a pre-trial detainee in a jail, RCDF must be sure that it does not deprive prisoners of the minimal civilized measures of life's necessities. Accordingly, RCDF must provide essential sanitation and meet prisoners' basic hygiene needs. *Flanory v. Bonn*, 604 F.3d 249, 253-55 (6th Cir. 2010). Conditions violate the Constitution when they pose an unreasonable risk of serious harm to a prisoner's current or future health, and where the risk is so grave that it offends contemporary standards of decency to expose anyone unwillingly to that risk. *Helling*, 509 U.S. at 33-36; *Flanory*, 604 F.3d at 255 (citing *Helling*).

At the time of our tour, RCDF was undergoing extensive remodeling of its facility following the construction of a new addition that had been open for approximately one year. As a result, the facility is clean and in generally excellent condition. Nonetheless, RCDF must remain attentive to issues of food safety, chemical control, pest control, fire safety, and other issues of cleanliness and sanitation, all of which may pose unnecessary risks to prisoner health and safety without the implementation of effective programs and services. We identified many of our concerns and provided guidance as to how to address them during our tour, and so discuss these issues only briefly here.

Specific deficiencies we observed included the following:

- RCDF staff lack control over many kitchen tools and implements that could be used as weapons.
- RCDF's food service manager and staff lack basic food safety training.
- RCDF kitchen sanitation is inadequate in certain areas.
- RCDF fails to screen food service employees and inmate staff for communicable diseases that could be transmitted by foods.
- RCDF has no documented program or process for maintaining and controlling the chemicals used throughout the facility. These unsecured chemicals can be used as weapons or, if ingested, may pose a suicide risk.
- RCDF lacks a written emergency plan including evacuation routes and secure areas for prisoners to be housed in the event of an emergency.
- RCDF lacks control over items in the medical clinic, including medical sharps and biohazard waste, that may pose a risk to prisoners and staff.

## **V. Summary of Remedial Measures**

To remedy its failure to provide constitutionally adequate mental health care to RCDF prisoners, the County should promptly implement the minimum remedial measures set forth below. Specifically, RCDF should:

- Gain access to a qualified provider or contract psychiatrist(s) at least every two weeks;
- Modify the psychiatric nurse's job description and job responsibilities to prohibit her from independently prescribing medications and practicing medicine;
- Require the medical director, or any contract psychiatrist RCDF hires, to supervise the psychiatric nurse on a regular basis;



- Ensure that appropriate mental health assessments are conducted within 24 hours of a prisoner's arrival at RCDF, or sooner if clinically appropriate for prisoners identified as potentially suicidal (and ensure that those prisoners identified as potentially suicidal are on constant watch until they receive their mental health assessment);
- Develop more defined referral parameters to ensure that prisoners with mental health needs are referred to the physician. Intake staff and nurses must be provided with clear guidance regarding which prisoners should be referred to the physician and how quickly that referral should take place. These guidelines should require an immediate referral for emergent issues, a referral within 24 hours when an expedited evaluation is necessary, and a referral within 72 hours for a routine evaluation;
- Ensure that LPNs are not permitted to remove prisoners from suicide watch;
- Ensure that there is no ambiguity regarding the status of a prisoner who is on suicide watch. Qualified medical staff should determine the appropriate level of care and/or housing based on the clinical status of the prisoner and additional information provided by the security staff. Prisoners on suicide watch should be evaluated daily and the medical staff must be aware of all prisoners on a watch;
- Enhance communication between custody and medical staff and implement policies and procedures that provide for the timely treatment and regular monitoring of prisoners on suicide watch;
- Develop and implement written policies for the use of restraints on prisoners with mental illness, requiring written approval by a qualified mental health professional prior to use of restraints, monitoring, and documentation;
- Ensure that all custody and medical staff are trained on the policies and procedures governing appropriate use of restraints on prisoners with mental illness;
- Ensure that prisoners who request mental health care through the sick call system for urgent needs are seen by a qualified mental health professional within 24 to 72 hours;
- Require the RCDF physician to conduct a screening evaluation and comprehensive evaluation of all prisoners taking psychotropic medications within 30 days of their arrival at the Jail. The physician should monitor these prisoners periodically to ensure they are stable, that the medications are working effectively, and that the medications are not causing unwanted toxic or metabolic side effects;

- Develop procedures to ensure that prisoners who are prescribed psychotropic medications that require blood tests are closely monitored;
- Develop a system to conduct qualitative reviews of adverse events performed from a mental health perspective;
- Document all medications, including psychotropic medications, ordered for prisoners on the medication order form. Progress notes should support the order to dispense the medication; and
- Institute a chronic care program to address the needs of prisoners with serious mental illnesses. Prisoners with chronic mental illness should be placed on a chronic mental health list for follow-up as clinically appropriate every 30, 60, or 90 days without having to request follow-up. Basic services must include, at a minimum:
  1. Identification and referral of inmates with mental health needs;
  2. Crisis intervention services;
  3. Psychotropic medication management, when indicated;
  4. Individual counseling, group counseling, psychosocial/ psycho-educational programs; and
  5. Treatment documentation and follow-up.

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We hope to continue working with the County in an amicable and cooperative fashion to resolve our outstanding concerns regarding conditions at RCDF. Since our onsite visit, RCDF has reported that the Jail has taken various steps to address many of the concerns we raised at our exit presentation at the close of that visit. We appreciate the Jail's proactive efforts, and are confident that the Jail will be able to resolve all the matters we raised.

CRIPA obligates us to advise you that, in the event we are unable to reach a resolution regarding our concerns, the Attorney General may initiate a lawsuit pursuant to CRIPA to correct the constitutional deficiencies we have identified in this letter 49 days after the appropriate officials have been notified of them. 42 U.S.C. § 1997b(a)(1). We would prefer, however, to resolve this matter by working cooperatively with you and are confident that we will be able to do so in this case. The lawyers assigned to this investigation will be contacting you to discuss this matter in further detail.

Please note that this letter is a public document. It will be posted on the Civil Rights Division's website. As a matter of courtesy, we will not post this letter to the website until five business days from the date of this letter. We will also provide a copy of this letter to any individual or entity upon request.

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,

A handwritten signature in black ink, appearing to read 'T. E. Perez', with a stylized flourish at the end.

Thomas E. Perez  
Assistant Attorney General

Enclosures

cc: Sheriff Bill Holt  
Robertson County

Captain Tony Crawford  
Jail Administrator  
Robertson County Detention Facility

Clyde W. Richert III  
County Attorney

The Honorable Jerry E. Martin  
United States Attorney  
Middle District of Tennessee

U.S. Marshal Denny W. King  
U.S. Marshals Service  
Middle District of Tennessee