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3 **IN THE UNITED STATES DISTRICT COURT**
4 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

5 MARCIANO PLATA , et al.,)
6 Plaintiffs)
7)
8 v.)
9)
10 ARNOLD SCHWARZENEGGER,)
11 et al.,)
12 Defendants,)

NO. C01-1351-T.E.H.

**RECEIVER'S REPORT RE
PLAN OF ACTION**

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1
2 **I.**

3 **INTRODUCTION**

4 The Order Appointing Receiver ("Receivership Order") filed February 14, 2006 required
5 the Receiver to develop a "Plan of Action" detailing "the restructuring and development of a
6 constitutionally adequate medical health care delivery system" within the first 180-210 days of
7 assuming office. (Order at 2.) The Court further mandated that the Plan of Action include a
8 "proposed time line for all actions and a set of metrics by which to evaluate the Receiver's
9 progress and success." (Order at 2-3.) The Order also required the Plan of Action to include
10 recommendations to the Court regarding "which provisions of the (1) June 13, 2002 Stipulation
11 for Injunctive Relief, and (2) September 17, 2004 Stipulated Order re Quality of Patient Care and
12 Staffing Order and Injunction (and/or policies or procedures required thereby), should be carried
13 forward and which, if any, should be modified or discontinued due to changed circumstances."
14 (Order at 2.)

15 On November 13, 2006 the Receiver moved for an extension of time to file his Plan of
16 Action, arguing that it was premature, after a half-year of operation, to affix a formal plan for
17 corrective action because it might gloss over the interconnectedness and severity of the problems
18 concerning both access to and the quality of medical care within the California Department of
19 Corrections and Rehabilitation ("CDCR"). Citing four primary factors: multi-level remedial
20 challenges; state paralysis and trained incapacity; the intensification of overcrowding and its
21 negative impact on the Receiver's remedial efforts; and the need to proceed in a thoughtful and
22 fiscally appropriate manner, the Receiver proposed to submit an initial Plan of Action no later
23 than May 15, 2007 and a revised Plan of Action six months thereafter.

24 In an Order filed December 19, 2006 the Court found that the initial seven month
25 deadline for creating a Plan of Action was not realistic given the need to create the Receivership
26 from the ground up and the complexity of the remedial tasks. Therefore the Court granted the
27 Receiver's motion, ordering as follows:

1 The Receiver shall develop his first proposed detailed Plan of Action and
2 proposed metrics, designed to effectuate the restructuring and development of a
3 constitutionally adequate medical health system, no later than May 15, 2007. At
4 the same time he shall file a plan to establish the administrative structures to
5 document, accurately track, and report metrics. The Receiver shall thereafter file
6 a revised Plan of Action no later than November 15, 2007.

7 This report provides an overview of the Plan of Action and the administrative structures
8 that will be created to document, track and report necessary metrics.

9 **II.**

10 **PURPOSE OF THE PLAN OF ACTION**

11 The purpose of the Plan of Action is fourfold: to provide a comprehensive report to the
12 Court, State officials, and the public concerning the Receiver's long term plans as well as his
13 specific plans for the next two years; to outline a prison medical delivery system that will
14 encompass a continuum of medical care, ancillary, and support services necessary for optimal
15 outcomes, safety, and cost-effectiveness; to define strategies for achieving and sustaining timely,
16 effective, and efficient clinical services as well as responsible overall medical management and
17 operations; and to serve as a dynamic framework for prioritizing leadership activities and
18 communicating ongoing progress, successes, and challenges.

19 **III.**

20 **THE PLAN OF ACTION IN CONTEXT**

21 **A. Introduction.**

22 The Receiver has filed *three* Plan of Action related submissions: the Plan of Action, this
23 Report Re Plan of Action, and A Notice of Motion and Receiver's Motion For Order Pursuant to
24 FRCP 60(b)(5) And/Or FRCP 60(b)(6) For Order Modifying Stipulated Injunction And Other
25 Orders Entered Herein ("Motion to Modify Stipulated Orders"). As stated above, the Report re
26 Plan of Action provides an overview of the Plan. The Plan of Action, prepared not in a pleading
27 format but in the appropriate format for a Plan of Action, sets forth the Receiver's plan for
28 restructuring and developing a constitutionally adequate medical health system in California
prisons, and his plan to establish the administrative structures to document, accurately track, and

1 report metrics for that program. The Motion To Modify Stipulated Orders sets forth the
2 Receiver's recommendations regarding those provisions of the stipulations and orders in this
3 case that should be carried forward, and which should be modified or discontinued due to
4 changed circumstances

5 B. Contextual Overview.

6 It is important, when weighing the Plan of Action and the Motion to Modify Stipulated
7 Orders, to place them into context. Therefore, the Receiver requests that the Court consider the
8 following:

9 1. The Receiver's remedial efforts did not begin on a level playing field. The challenges
10 ahead are extraordinary. No one disputes the fact that the medical delivery system in
11 California's prisons function below Constitutional minima. Likewise, no one disputes the fact
12 that medical delivery is so seriously broken and has remained in a state of terrible disrepair for
13 so long that the remedy of a Receivership was required. To correct this problem, an entirely new
14 and different medical delivery system must be created -- from the ground up. Given this, given
15 the massive size and the range of non-health problems which afflict the CDCR, and given the
16 scope of the effort that will be necessary, the Receiver should be afforded strong support from
17 both parties in the case, as well as wide ranging discretion concerning the implementation of his
18 Plan. In other words, the crisis is so serious that the Plan of Action should not be subject to
19 delay because of opinions of counsel or complaints on the part of the State agencies who have
20 allowed the unconstitutional conditions to arise and continue unabated for years.

21 2. The Receiver's Plan is completely different from the manner in which the State of
22 California attempts to plan, fund, and implement corrective actions. Indeed, if the Plan did not
23 differ significantly from the manner in which the State attempts to manage its prisons, it would
24 not have a chance for success. Therefore, criticism of the Plan in terms of normal State
25 procedures is not helpful.

26 3. Likewise, the Receiver's Plan is entirely different from the implementation programs
27 that were developed through the stipulation in this case. Following more than a year of
28

1 evaluation, the Receiver finds those programs to contain very fundamental flaws.¹ Therefore, to
2 put the Receiver's Plan of Action into context, it is important to spell out some of the major
3 problems of *Plata* itself:

4 a. The pre-determined, entire-system "roll-out" model of *Plata* implementation was
5 doomed from the start. The State proved entirely incapable of meeting its roll-out
6 mandates. In fact, given the size and complexity of California's sprawling prison system,
7 roll-outs of an entire medical care system will not be successful under any circumstances.
8 To correct this, the Plan of Action calls for a variety of alternative approaches to effective
9 change (*see* Plan of Action at page 40).

10 b. The original remedial stipulations contained no provisions for the State infrastructure
11 necessary to implement the stipulations themselves. For example, while *Plata* called for
12 the hiring of hundreds of doctors and nurses the salaries, recruitment programs, hiring
13 programs, training programs, and retention programs necessary to bring quality clinicians
14 into the prisons were neither contemplated nor developed. In direct contrast, the
15 Receiver's Plan begins with an essential infrastructure that will support a successful
16 remedial effort.

17 c. The stipulations called for a cumbersome and expensive physician-based medical
18 delivery system. In direct contrast the Receiver's Plan calls for a more appropriate team-
19 based system utilizing nursing, mid-level, and physician providers.

20 d. The original plan failed to provide essential elements of an adequate medical delivery
21 system, including information technology ("IT"), clerical support personnel,
22 transportation vehicles, custody access teams, speciality contract support programs, an
23 established network of speciality providers, etc. The Receiver's Plan of Action provides
24 for these essential services.

25
26 ¹ In making this finding the Receiver emphasizes that he realizes that the original Plata "roll-
27 outs" were a product of legal compromises. This finding is not intended as a criticism of the intent
28 of those involved with the initial remedial efforts in this case.

1 e. The original remedial plan failed to consider and coordinate different aspects of the
2 CDCR's health care delivery program, resulting in failed remedial efforts and increased
3 expenses. For example, until the Receivership was created, there had been no effort by
4 the parties to coordinate the hourly salaries offered to the "contract" doctors and nurses
5 who work inside California's prison with the salaries offered to full-time permanent State
6 doctors and nurses. By allowing contract hourly rates to be increased after State salary
7 increases, the incentives for State employment created by the salary increases were lost.
8 In direct contrast, the Receiver took prompt action to manage this situation, and his Plan
9 of Action calls for the complete restructuring of the CDCR's speciality services, registry
10 and hospital contracting program.

11 f. In actual practice, the original remedial processes in this case have worked to establish
12 "silos" of health delivery in California's prisons, driving up the overall cost of care and
13 creating unnecessary tensions between the medical, mental health, and dental disciplines.
14 The Receiver's Plan of Action, however, calls for coordination between his remedial
15 efforts in *Plata* with those in the *Coleman*, *Perez*, and *Armstrong* litigation. For example,
16 concerning several system-wide critical programs such as IT system development,
17 pharmacy services, credentialing, medical records, custody access teams, health care bed
18 construction, etc., the Receiver will work closely with the Special Masters and Court
19 experts in the other class actions to effectuate remedial programs that involve all health
20 care disciplines.

21 4. The Receiver's Plan of Action is not simple. The problems are not simple, ergo the
22 fixes are not simple. Bringing California's prison medical care up to Constitutional levels
23 requires careful planning, establishing priorities, the appropriate timing of specific remedial
24 efforts, and careful coordination, not only within the Plan itself, but also with *Coleman*, *Perez*,

1 and *Armstrong* remedial efforts.² Over time, the Receiver anticipates challenges that will require
2 special efforts by his staff to keep certain elements of his Plan on track. At the same time,
3 changing circumstances or specific failures may require modifying certain elements of the Plan.
4 The Plan of Action is a roadmap, and while there may be detours along the way, the objective
5 will not change: to bring prison medical care up to Constitutional standards.

6 5. The Receiver has, in the course of his first year of operation, not only established the
7 Office of the Receiver, but also implemented a number of priority remedial programs including
8 raising clinical salaries, establishing expedited clinical hiring processes, restructuring the CDCR
9 pharmacy delivery program through the Maxor Corporation, and restructuring the CDCR
10 specialty provider, registry, and hospital contract units through an IT driven pilot project. The
11 Plan of Action, therefore, incorporates these on-going remedial programs in addition to defining
12 future programs and pilot projects. To summarize, the Plan of Action is not a plan for a plan, it
13 represents a roadmap for change.

14 IV.

15 THE ADMINISTRATIVE STRUCTURE PROPOSED BY THE RECEIVER 16 TO ACHIEVE ACCURATE METRIC REPORTING

17 A. Introduction.

18 At present no one performs adequate and objective measurements of the systemic
19 performance of California's prison medical delivery system. For example, compliance with
20 *Plata* orders is not measured, nor is clinical quality evaluated on a systemic basis. This fact
21 should surprise no one. While various measurement programs have been announced by CDCR
22 officials, and while various compliance measurements systems have been established, no serious
23 metric process was ever implemented. There are a number of explanations for this, including the
24 following:

25
26 ² For this reason, the pending motions for the waiver of State law are especially important in that
27 many crucial elements of the Plan of Action depend on the programs established through the
28 motions.

- 1 1. The State has not funded the positions necessary to support a true metrics operation.
- 2 2. Adequate IT systems do not exist to compile and provide metrics.
- 3 3. The CDCR's prisons have no IT connectivity.
- 4 4. Turnover among CDCR officials, and a resulting failure to provide consistent
- 5 direction re metrics.
- 6 5. A lack of clinical competency (including the lack of adequate numbers of trained
- 7 physicians necessary to perform mortality reviews).
- 8 6. An adversarial and increasingly frustrated relationship between counsel for the parties,
- 9 which (combined with a lack of objective data) has lead to an increasingly expensive and
- 10 cumbersome practice of conducting prison inspections based not on objective measurements but
- 11 on the impressions of counsel.

12 B. The Receiver's Plan for Metrics.

13 The Plan of Action recognizes that an essential strategy for health care transformation is

14 the incorporation of performance and outcome measurements for improvement and

15 accountability (*see* Plan of Action Goal C, *see also* pages 43- 50). Thus, the Plan proposes four

16 major categories of metrics:

17 1. *Clinical quality related metrics* (Plan of Action at page 30): The Receiver and

18 his staff recognize the importance of evaluating the quality of care provided to prisoner/patients.

19 2. *Plata compliance related metrics* (Plan of Action at pages 4 - 9, 47): The

20 accurate and objective measurement of Plata performance standards is essential not only for

21 compliance purposes but also to measure the success of the Receivership itself.

22 3. *Mortality reviews* (Plan of Action at pages 31, 48 - 49): The Receiver believes

23 that, given the findings of the Court, that accurate and adequate mortality reviews should be a

24 priority metric.

25 4. *Organization culture and satisfaction reviews* (Plan of Action at pages 31, 49):

26 The effectiveness of any health care delivery system cannot be measured by patient outcomes

27 alone, it is also necessary to evaluate the delivery system, including the attitudes and

1 performance of health care personnel.

2 C. The Receiver's Plan for Accurate Metric Reporting.

3 1. *Introduction.*

4 Implementing a plan for accurate metrics poses a challenge reminiscent of "what comes
5 first, the cart or the horse?" As of today, accurate metrics are not possible due to a shortage of
6 competent personnel including clinicians, no information technology, no prison connectivity,
7 and no accurate manual systems of control. On the other hand, it is imperative that vital
8 information be provided to the Court, counsel, and the Receivership itself. Therefore, an
9 administrative structure that will provide accurate systemic metrics should be established as
10 soon as possible. It must be understood, however, the some of the resource devoted to metrics
11 (including competent clinicians) will of necessity be diverted from patient care and remedial
12 programs.

13 2. *The Receiver's Office of Evaluation, Measurement and Compliance.*

14 To proceed to accurate metric reporting the Plan calls for a three prong intermediate
15 program comprised of the following processes, all of which the Receiver plans to have
16 operational at the time of the filing of his November 15, 2007 modified Plan of Action:

- 17 (1) a system to objectively measure the basics of *Plata* remedial plan compliance at no
18 less than six pilot prisons;
19 (2) an accurate and objective system of mortality reviews;
20 (3) a pilot program for institutional inspections and *Plata* remedial plan compliance
21 developed with California's Office of the Inspector General.³

22 To effectuate this program, as well as to manage the development of the more
23 sophisticated longer term evaluation, measurement and *Plata* compliance programs set forth in
24 the Plan of Action, the Receiver will establish a new administrative structure within the
25 California Health Care Prison Receivership, an Office of Evaluation, Measurement and
26

27 ³ There may be obvious and well founded overlap between metrics objectives one and three.
28

1 Compliance. This Office will be operational prior to the filing of the November 15, 2007
2 modified Plan of Action.

3 **V.**

4 **PROVISIONS OF THE STIPULATIONS AND ORDERS; THOSE WHICH SHOULD BE**
5 **CARRIED FORWARD AND THOSE WHICH SHOULD BE MODIFIED OR**
6 **DISCONTINUED DUE TO CHANGED CIRCUMSTANCES**

7 A. Introduction.

8 The Order of February 14, 2006 referenced two *Plata* Orders, the (1) June 13, 2002
9 Stipulation for Injunctive Relief (“Stipulated Injunction”), and (2) September 17, 2004
10 Stipulated Order re Quality of Patient Care and Staffing Order and Injunction (“Patient Care
11 Order”). There is, however, a third relevant *Plata* order, the Order re Interim Remedies Relating
12 to Clinical Staffing, filed December 1, 2005 (“Clinical Staffing Order”). The Receiver has,
13 therefore, included the provision of that order in the summary of provisions set forth below.

14 B. Provisions.

15 1. Health screening: A process for screening all patients for communicable disease, such
16 as tuberculosis and sexually transmitted disease, and chronic disease, such as diabetes, renal
17 disease, seizure disorders, cardiovascular disease, and pulmonary disease; screening for cancer;
18 review of vital signs, blood pressure, pulse, and weight; review of current medications; and nurse
19 review and referral for patients with urgent or acute conditions; history and physical examination
20 for all patients within 14 days of arrival at Reception Center; and routine laboratory tests, such as
21 serum pregnancy, cholesterol screening, and optional HIV testing. (Stipulated Injunction ¶ 4)

22 2. Health transfer: Process to ensure continuity of care when patients transfer to another
23 institution, transfer between levels of care, or are paroled, including continuity of medications,
24 specialty referrals, and other treatment. (Stipulated Injunction ¶¶ 4, 6)

25 3. Access to Primary Care (Sick Call): System that allows patients to self-refer for
26 medical treatment, including nurse review to identify the need for immediate referral to urgent or
27 emergency treatment, an urgent walk-in procedure, and follow-up services; policies require face-

1 to-face nurse triage for patients with symptoms within 24 hours, and an appointment with a
2 primary care provider within 5 days for patients classified as urgent and within 14 days for
3 patients classified as routine. (Stipulated Injunction ¶ 4)

4 4. Priority Ducat System: System for ensuring that custody staff treat health care
5 appointments as high-priority. (Stipulated Injunction ¶¶ 4, 6)

6 5. Patient Health Care Education: Program to provide patients with instruction in
7 wellness, lifestyle changes, disease prevention, newly diagnosed illness or disease, treatment
8 plans or procedures, pre- and post-operative care, chronic care morbidity reduction. (Stipulated
9 Injunction ¶ 4)

10 6. Preventive Services: Services to prevent disease and mitigate morbidity and mortality
11 due to existing disease provided to select patient populations based upon risk factors, such as age
12 and chronic conditions, that include cancer screening, immunizations, and health education
13 (education regarding diet, exercise, smoking cessation, etc.). (Stipulated Injunction ¶ 4)

14 7. Outpatient Specialty Services: Program for providing specialty services, including
15 procedures for urgent and routine referrals and required follow-up; policies require that high-
16 priority consultations or procedures occur within 14 calendar days and routine consultations or
17 referrals within 90 calendar days, with follow-up by a primary care provider within 14 calendar
18 days after the consultation or procedure. (Stipulated Injunction ¶ 4)

19 8. Physical Therapy: Program to ensure timely access to physical therapy services,
20 including specifications for the follow-up by primary care providers and provisions for
21 transferring to an institution with these services if the home institution does not provide them.
22 (Stipulated Injunction ¶ 4)

23 9. Diagnostic Services: Program for the appropriate processing of laboratory tests and
24 other diagnostic testing, including procedures for prioritizing the urgency of laboratory orders
25 (STAT, critical, urgent, routine) and required timeframes for review and follow-up of results
26 (routine laboratory tests processed within 14 days of order, x-ray examinations completed within
27 30 days of order, primary care provider review of lab results within two business days of receipt,
28

1 notification of patient of results within 14 days of receipt). (Stipulated Injunction ¶ 4)

2 10. Medication Management: Services to dispense, administer, and distribute
3 pharmacotherapeutic treatments, including provisions for medication error reporting, medication
4 follow-up counseling, medication renewals and refills, medication for parole, and continuity of
5 medication upon transfer; policies require that prescriptions for formulary medications be filled
6 by the following day and that “stat” medications be issued within 1 hour. (Stipulated Injunction ¶
7 4)

8 11. Urgent / Emergent Response: Program for the provision of urgent care services and
9 24-hour emergency medical treatment that includes basic life support, emergency response, and
10 physician on-call services; policies require follow-up within five days for patients whose urgent
11 encounter was due to chronic disease. (Stipulated Injunction ¶¶ 4, 6)

12 12. Medical Emergency Response Documentation and Review: Process for the review
13 of deaths, suicide attempts, and calls for emergency assistance to determine compliance with
14 existing policies and procedures, adequacy of response time, and appropriateness of custody and
15 medical response and patient treatment, with follow-up actions to address identified deficiencies.
16 (Stipulated Injunction ¶ 4)

17 13. Outpatient Housing Unit and Licensed Care: Specialized treatment services for
18 varying levels of acuity, including outpatient services requiring specialized housing (Outpatient
19 Housing Unit care), licensed skilled nursing facility care (Correctional Treatment Center care),
20 General Acute Care Hospital care, and palliative care; policies require physician evaluation
21 within 24 hours of admission to a Correctional Treatment Center and an evaluation by a primary
22 care provider within 5 days for all patients returning from an inpatient acute care facility.
23 (Stipulated Injunction ¶ 4)

24 14. Outpatient Therapeutic Diets: Program for the provision of nourishments and
25 supplements for patients who are pregnant, diabetic, immunocompromised, malnourished, or
26 have oropharyngeal conditions causing difficulty eating regular diets and special diets for
27 patients with renal failure or hepatic failure, or who require a Heart Healthy diet, gluten-free
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1 diet, or diet to preclude food allergies. (Stipulated Injunction ¶¶ 4, 6)

2 15. Medical Report of Injury or Unusual Occurrence: Process for documentation of
3 patients' on-the-job injuries, physical contact with a staff member during an incident, and any
4 self-reported injury due to self-injury or altercation, Administrative Segregation Unit placement,
5 use of force, or other medical emergency situation. (Stipulated Injunction ¶ 4)

6 16. OC Contraindications: Process for the evaluation and treatment of patients prior to
7 or after the use OC. (Stipulated Injunction ¶ 4)

8 17. Medical Evaluation of Patients Involved in Assaults: Process for the evaluation of
9 patients who have been involved in the use of force, including review of the patient's mental
10 health record. (Stipulated Injunction ¶¶ 4, 6)

11 18. Hygiene Intervention: Process for the identification, evaluation, and referral of
12 patients who demonstrate poor hygiene or whose hygiene compromises the sanitation/hygiene of
13 their personal and immediate housing area. (Stipulated Injunction ¶ 4)

14 19. Inmate Hunger Strike: Process for the identification, evaluation, and treatment of
15 inmates on hunger strike, including required coordination and reporting between custody and
16 health care staff. (Stipulated Injunction ¶ 4)

17 20. Comprehensive Accommodation Chrono: Process for the authorization and review
18 of special equipment, housing accommodations, or other accommodations that are medically
19 necessary or are required under the Americans with Disabilities Act. (Stipulated Injunction ¶ 4)

20 21. Pregnant Patient Care and the Birth of Children: Prenatal care and post-delivery
21 services, including required screenings, frequency of prenatal treatment visits, vitamin and
22 nutritional requirements, referrals for child placement services, and post-partum follow-up;
23 policies require that patients be seen by a obstetrics provider within 7 calendar days of
24 determination of pregnancy that each patient be provided six-weeks post-delivery for follow-up.
25 (Stipulated Injunction ¶ 4)

26 22. Nursing Services and Protocols: Clinical protocols for nurses in the appropriate
27 evaluation and treatment of patients presenting with specific systemic conditions or complaints.

1 (Stipulated Injunction ¶¶ 4, 6)

2 23. Health Record Services: Provisions for the management, content, and archiving of
3 patient health records, including policies for disclosure of information. (Stipulated Injunction ¶
4 4)

5 24. Chronic Care Program: Diagnosis and management of chronic disease (diseases
6 lasting longer than 6 months), including identification and treatment of high-risk patients;
7 policies require an initial intake evaluation within 30 days for patients referred to the Chronic
8 Care Program, and ongoing evaluations every 90 days. (Stipulated Injunction ¶¶ 4, 6; Patient
9 Care Order ¶¶ 13-15)

10 25. Pharmacy Services: Provisions governing pharmacy operations, including pharmacy
11 licensing, emergency drug supplies, drug storage, consultation with a pharmacist, prescription
12 requirements, and the ordering, stocking, and receiving of medications. (Stipulated Injunction ¶
13 4)

14 26. Public Health and Infection Control: Program for infection control, communicable
15 disease reporting, and bloodborne pathogen control. (Stipulated Injunction ¶ 4)

16 27. Telemedicine Services: Program for the provision of specialty services through
17 videoconferencing. (Stipulated Injunction ¶ 4)

18 28. Utilization Management: System to facilitate appropriate use of resources for
19 patients requiring higher levels of care and select specialty services and medications, including
20 reviews to determine placement at appropriate level of care and appropriate utilization of
21 specialty care and pharmacy resources. (Stipulated Injunction ¶ 4)

22 29. Implement Inmate Medical Services Program (IMSP) Policies and Procedures in
23 accordance with multi-year roll out schedule. (Stipulated Injunction, ¶¶ 4-5)

24 30. Institution and patient monitoring by plaintiffs' counsel and institutional information
25 access and reporting to plaintiffs' counsel. (Stipulated Injunction, ¶¶ 7, 9-15)

26 31. Implement the following requirements regardless of roll out status: 24 hour-
27 coverage by RNs in emergency clinics, intrasystem transfers per policy, treatment protocols

1 implemented as resources allow, priority ducat system implemented, outpatient special diets
2 available for patients with liver and kidney end-stage failure. (Stipulated Injunction, ¶¶ 6a-6e)

3 32. Institute Director's level review for inmate appeals. (Stipulated Injunction, ¶ 7)

4 33. Audit each prison's compliance with IMSP Policies and Procedures consistent with
5 rollout schedule; develop audit instrument and file it with the court; achieve 85% overall
6 compliance with IMSP Policies and Procedures and conduct minimally adequate death reviews
7 and quality management proceedings to reach substantial compliance. (Stipulated Injunction, ¶¶
8 19-23)

9 34. Engage an independent entity to evaluate and train CDCR physicians; complete
10 evaluations for physicians at 2003-2005 rollouts by 12/31/05; ensure providers who are Category
11 2 are promptly provided remedial training and assigned positions in manner consistent with
12 evaluation results; remove Category 3 physicians from patient care; use evaluators to determine
13 physicians competent to treat high-risk patients; ensure that every physician hired from 1/1/05
14 through 12/31/08 complete the evaluation process and any remedial training within first four
15 months of employment. (Patient Care Order ¶¶ 1,3,6,7,9,10 (pp. 1-3))

16 35. Develop a plan to assess and train nurse practitioners and physician assistants.
17 (Patient Care Order ¶ 2)

18 36. Hire only physician contractors who are board-eligible or board-certified in Internal
19 Medicine or Family Practice. (Clinical Staffing Order ¶ 2(a)(2) (p. 6))

20 37. Develop criteria and method to identify high-risk patients; identify all patients who
21 meet high-risk criteria, beginning with 2003 rollout institutions, and complete a plan for
22 identifying patients at all other institutions for court review; ensure that high-risk patients are
23 treated by qualified primary care providers; provide nursing and administrative support
24 necessary to assist court-approved independent physicians in evaluating and treating high-risk
25 patients at SAC, COR, CCWF, and SVSP by 11/15/04. (Patient Care Order, ¶¶ 13-16)

26 38. Submit proposal to control agencies to reclassify all physician categories, including a
27 Regional Medical Director classification, complete a salary survey prior to submission of the
28

1 proposal, address the need for salary adjustments in the proposal, and hire additional central
2 office and regional medical directors while the proposal is considered by control agencies;
3 submit a plan to the court to hire and retain central office and regional medical directors; submit
4 a proposal to control agencies for a director of nursing and regional directors of nursing;
5 establish and fill these positions on an interim basis. (Patient Care Order, ¶¶ 17-18)
6 Submit a plan to the court to change the hiring process for local process to central or regional
7 process for physician, NP, and PA positions. (Patient Care Order, ¶ 19)

8 39. Develop a plan to establish program for on-site clinics through a residency program
9 affiliation to provide care for patients with complex medical conditions. (Patient Care Order, ¶
10 20)

11 40. Complete statewide health care bylaws, credentialing policy, and peer review policy
12 and scheduled plan for implementation. (Patient Care Order, ¶¶ 21-22)

13 41. Fund, establish, and begin to fill one position at each institution for support of the
14 SATS-LITE system. (Patient Care Order, ¶ 23)

15 42. Fund, establish, and begin to fill no less than nine additional QMAT positions.
16 (Patient Care Order, ¶ 24)

17 43. Establish recruitment and retention differentials for physicians, mid-level providers,
18 and registered nurses, in addition to all existing recruitment and retention differentials; modify
19 all written and digital recruitment documents accordingly. (Clinical Staffing Order, ¶¶ 2a-2c (pp.
20 6-10))

21 44. Establish a program to process physician, mid-level practitioner, and registered nurse
22 job applicants within 5 business days from receipt of application; establish a monitoring program
23 to ensure standard is met for 90% of all applicants. (Clinical Staffing Order, ¶ 3a (pp. 10-11))

24 45. Establish a program to interview, evaluate, and render a hiring decision to all
25 physician, mid-level practitioner, and registered nurse job applicants within 10 business days
26 from receipt of application; establish a monitoring program to ensure standard is met for 90% of
27 all applicants. (Clinical Staffing Order, ¶ 3b (p. 11))

1 46. Establish and implement model statewide primary care NP and PA duty statements.
2 (Clinical Staffing Order, ¶4a, 4b (p. 11))

3 47. Establish and implement policies and procedures for supervision of NPs and PAs.
4 (Clinical Staffing Order, ¶4c (p. 11))

5 48. Establish and implement salary scale for PAs commensurate with what is offered to
6 NPs. (Clinical Staffing Order, ¶4d (p. 11))

7 49. Modify, within 10 business days of date of order, every vacant Physician and
8 Surgeon position to allow for the hiring of a PA, NP, or physician to fill the vacant position
9 (Clinical Staffing Order, ¶4e (p. 12))

10 50. Commence advertising and begin hiring mid-level practitioners. (Clinical Staffing
11 Order, ¶4f (p. 12))

12 51. Establish and implement a policy requiring that recently hired physicians be
13 supervised by the regional medical Director when the physician is hired at an institution where
14 the CMO and Chief Physician and Surgeon positions are vacant. (Clinical Staffing Order, ¶4a (p.
15 12))

16 52. Establish and implement an adequate orientation program for new civil service and
17 contract physicians, mid-level practitioners, and registered nurses. (Clinical Staffing Order, ¶4b
18 (p. 12))

19 53. Establish and implement a program to hire physicians, mid-level practitioners, and
20 registered nurses on a regional basis to allow for placement at prisons with the most need.
21 (Clinical Staffing Order, ¶ 5c (p. 12))

22 54. Modify existing contracts with CMG and NOAH to provide an hourly rate adequate
23 to attract physicians and mid-level providers who meet CDCR standards. (Clinical Staffing
24 Order, ¶ 6a (p. 13))

25 55. Ensure that CMG and NOAH are reimbursed appropriately for all billed services
26 within 30 days of receipt of billing. (Clinical Staffing Order, ¶ 6c (p. 13))

1 56. Verify credentials, licensure, and security clearance of all contract providers on a
2 provisional basis within 2 business days of presentation by CMG and NOAH; complete final
3 verification within 5 business days. (Clinical Staffing Order, ¶ 6d (p. 13))

4 57. Complete hiring interview and make provisional decision to hire or reject CMG or
5 NOAH contract providers within 4 days of submission for 90% of applicants. (Clinical Staffing
6 Order, ¶ 6e (p. 13))

7 58. Establish and implement an orientation program for contract physicians and mid-
8 level providers (Clinical Staffing Order, ¶ 6f (p. 14))

9 59. Establish an adequate program to monitor prisoner health services provided by
10 CMG/MHA/Staff Care (Clinical Staffing Order, ¶ 6g (p. 14))

11 60. Designate an individual who has the authority to implement the recommendation in
12 the court order and is accountable for such implementation. Ensure that designated individual
13 meets with the Correctional Expert, the Medical Experts, and counsel and soon as is practicable
14 to develop a plan to monitor compliance with the order and the designated individual shall file
15 no later than December 15, 2005 an initial status report describing the status of each item in this
16 Order. (Clinical Staffing Order, ¶ 7 (p. 14))

17 61. Court medical experts to conduct on-site inspections during January and February
18 2006 of those prisons which parties agree are in greatest need with respect to staffing. (Clinical
19 Staffing Order, ¶ 8 (p. 15))

20 C. Analysis of the Provisions of Plata Orders.

21 For discussion's sake, the 63 provisions summarized above can be divided into three
22 general categories: (1) substantive provisions that set forth standards of care; (2) implementation
23 or procedural provisions which instruct the CDCR how to achieve specific elements of the
24 standards of care;⁴ and (3) monitoring related provisions.

25 _____
26 ⁴ Not surprisingly, after the State failed to comply with many provisions of the 2002 stipulations
27 and orders, the parties began to approach the Court to request additional implementation related
28 orders. Unfortunately, as explained in the Motion to Modify Stipulated Orders many of the orders
were not implemented in a timely or successful manner.

1 1. *Substantive Provisions.*

2 The Receiver does not propose amending those provisions which set forth standards of
3 care for prisoner/patients. While at some time in the future, following the implementation of his
4 Plan, changes may be proposed, at this point in time the Receiver regards these standards to
5 establish what the parties believe are appropriate standards for prison medical delivery. The
6 Plan of Action is geared to implement these standards. Thus, the Receiver does *not* propose to
7 modify or eliminate the following provisions: 1 - 28

8 2. *Implementation Provisions.*

9 The Receiver moves to eliminate certain, although not all, of the implementation
10 provisions. Certain implementation orders have been complied with. In most cases the
11 implementation provision which the Receiver seeks to eliminate has (1) never in fact been
12 implemented, or; (2) has not proven to be an effective remedial action; or; (3) conflicts with the
13 Receiver's Plan of Action, or (4) all three of the above. Provision by provision justification for
14 the elimination of specific orders is set forth in the Motion to Modify Stipulated Orders. To
15 summarize, the Receiver moves to eliminate the following provisions only: 29, 31, 32, 33, 37,
16 38, 39, 41, 42, 43, 44, 45, 51, 53, 56, 57, 59.

17 3. *Monitoring Provisions.*

18 The Receiver moves to modify aspects of the provisions of *Plata* which provide for
19 monitoring. As explained in the Motion to Modify Stipulated Orders, given the change of
20 circumstance of the Receivership itself, existing monitoring provisions are not conducive to
21 effective and objective measurement of Plata remedial requirements. To the contrary, some
22 provisions have become unduly burdensome to CDCR staff working under the direction of the
23 Receiver and have proven to be unnecessarily expensive and not adequately objective.

24 As set forth in the Motion to Modify Stipulated Orders, the Receiver proposed to proceed
25 carefully in this regard. In essence, he moves to establish a pilot project in cooperation with
26 California's Office of the Inspector General to commence a more objective, clinically
27 appropriate, and metric-oriented monitoring program which will provide monitoring information
28

1 relevant to the Receiver, the Court, and counsel for the parties. To effectuate this, the Receiver
2 moves to modify provision 30 only.

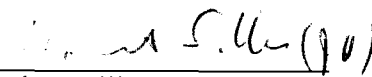
3 **VI.**

4 **CONCLUSION**

5 The process of raising the delivery of medical care in California's prisons to
6 constitutional levels, as described in this Plan of Action, will be a daunting challenge, requiring
7 thoughtful planning, careful coordination, and a number of time-phased inter-related remedial
8 programs. As the Receiver has repeatedly emphasized, there are no quick fixes. The Plan of
9 Action is a living document, subject to revision and additional detail as it is developed. At this
10 point in time it is not possible to set forth a proposed time line for all future remedial actions, nor
11 is it possible to describe all future budgetary impacts of the Plan. This information, however,
12 will be presented in future iterations of the Plan as various elements of the Plan are put into
13 action.

14 Based on the above, and based on the Plan filed concurrently with this Report, the
15 Receiver requests that the Court approve his Plan of Action. The Receiver will submit for the
16 Court's review an updated Plan of Action no later than November 15, 2007.

17
18 Dated: May 10, 2007.

19
20 
21 Robert Sillen
22 Receiver
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1 **PROOF OF SERVICE BY MAIL**

2 I, Kristina Hector, declare:

3 I am a resident of the County of Alameda, California; that I am over the age of eighteen (18)
4 years of age and not a party to the within titled cause of action. I am employed as the Inmate
Patient Relations Manager to the Receiver in *Plata v. Schwarzenegger*.

5 On March 10, 2007 I arranged for the service of a copy of the attached documents described
6 as RECEIVER'S REPORT RE PLAN OF ACTION on the parties of record in said cause by
7 sending a true and correct copy thereof by pdf and by United States Mail and addressed as
follows:

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19 MICHAEL BIEN
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21

22 I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct. Executed on May 10, 2007 at San Francisco, California.
23

24 
25 Kristina Hector

26

27

28