U.S. Department of Justice

Civil Rights Division

Special Litigation Section - PHB
950 Pennsylvania Avenue, NW
Washington, DC 20530

May 9, 2006

The Honorable David Hudson
Sebastian County Judge
Fort Smith Courthouse
35 South 6th Street, Room 106
Fort Smith, AR 72901

Re: Investigation of the Sebastian County Adult Detention Center, Fort Smith, Arkansas

Dear Judge Hudson:

On March 1, 2005, we notified you of our intent to investigate conditions at the Sebastian County Adult Detention Center ("SCADC"), pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997. Consistent with our statutory requirements, we write to report the findings of our investigation and to recommend remedial measures to ensure that SCADC meets federal constitutional requirements. See 42 U.S.C. § 1997b.

From May 9 through 12, 2005, we conducted an on-site inspection of SCADC with consultants in the fields of correctional management and correctional medical and mental health care. While on-site, we interviewed the Sheriff, jail staff, medical care providers, and inmates. Before, during, and after our on-site inspection we received and reviewed a large number of documents, including jail policies and procedures, incident reports, medical records, use of force records, inmate intake records, individual inmate records, and other records. Consistent with our commitment to provide technical assistance and conduct a transparent investigation, we provided an extensive debriefing at the conclusion of our inspection, in which our consultants expressed their initial impressions and concerns. We appreciate the full cooperation we received from County and SCADC officials throughout our investigation. We also wish to extend our appreciation to the Sheriff and his staff for their professional conduct and timely response to our requests.

Having completed our investigation of SCADC, we conclude that certain conditions at SCADC violate the constitutional rights of inmates confined there. As detailed below, we find that SCADC fails to provide for inmates' (1) serious medical needs; (2) serious mental health needs; (3) right to protection from physical harm; and (4) right to be confined in sanitary and safe environmental conditions.

I. BACKGROUND

A. DESCRIPTION OF SCADC

SCADC is located in Sebastian County, Arkansas, in the city of Fort Smith. The Sebastian County Sheriff is responsible for the operation of SCADC. The Quorum Court of the County is responsible for its funding. The facility is twelve years old, with a rated capacity of 266 pretrial and sentenced inmates. During our four-day visit in May, 2005, the facility had an average inmate population of 325 inmates per day. SCADC has seven housing areas, and segregation, disciplinary holding, suicide observation, and intake areas. The housing areas are of several different designs, providing either direct access from cells to the dayrooms, or having large twelve-person "cells" that access a day room. In addition, there are three inmate/family/professional visiting areas, and a multi-purpose room for school, hearings, and other programmed activities.

The length of stay at the facility varies from a few hours to nearly one year. The facility staff reports the average length of stay as 8.83 days for men, and 5.32 days for women, but our review of facility documents indicates an average length of stay of 39.8 days.

II. FINDINGS

A. MEDICAL CARE

The Eighth Amendment requires that inmates be provided humane conditions of confinement, and "[o]ne condition of confinement is the medical attention given to a prisoner." Weaver v. Clarke, 45 F.3d 1253, 1255 (8th Cir. 1995) (citing Wilson v. Seiter, 501 U.S. 294, 303 (1991)). Prison officials violate the Eighth Amendment when they act "deliberately indifferent *either* to a prisoner's *existing* serious medical needs *or* to conditions posing a substantial risk of serious *future* harm." Weaver, at 1255 (emphasis in original).

> To constitute an objectively serious medical need or a deprivation of that need, . . . the need or the deprivation alleged must be either obvious to the layperson or supported by medical evidence, like a physician's diagnosis.

Aswegan v. Henry, 49 F.3d 461, 464 (8th Cir. 1995). Deliberate indifference occurs if a jail official knows an inmate has a serious medical need but deliberately disregards it. Hartsfield v. Colburn, 371 F.3d 454, 458 (8th Cir. 2004). Intentional delay of medical care may also constitute deliberate indifference. Ruark v. Drury, 21 F.3d 213, 216 (8th Cir. 1997). Grossly incompetent or inadequate care can constitute deliberate indifference, as can a doctor's decision to take an easier and less efficacious course of treatment. Smith v. Jenkins, 919 F.2d 90, 93 (8th Cir. 1991) (internal citations omitted).

SCADC fails to provide inmates with medical care that complies with these constitutional requirements. We found the following deficiencies: (1) inadequate intake screening and lack of routine health assessments; (2) inadequate acute care; (3) lack of chronic care for inmates with complicated diseases such as diabetes or hypertension; (4) inadequate infection control; (5) improper administration and control of medications; (6) inadequate access to medical care; and (7) inadequate medical staffing.

1. Intake and Health Assessment

SCADC's intake process is constitutionally inadequate because it does not attempt to identify inmates' urgent or ongoing health needs. Compounding this deficiency, SCADC does not provide routine health assessments to determine the current health status or chronic health care needs of inmates.

Incoming inmates should have an intake assessment by staff who have been trained to identify symptoms of drug and alcohol withdrawal, communicable diseases, acute or chronic illness (including mental illness), and potential suicide risk. SCADC's intake form only asks the inmate to provide information as to past or current health condition. SCADC officers are not required to note the signs and symptoms of serious illness or contagious diseases during the intake process, nor have they been trained to do so. Failure to identify the urgent health needs of inmates being admitted to the facility puts inmates at risk of serious harm or death, and may have contributed to the deaths of SCADC inmates in the past.

SCADC inmate RK[1] died on December 26, 2003 of delirium and methamphetamine intoxication. Both of these conditions are treatable if treatment is administered promptly. According to the facility's records, RK was hallucinating and paranoid on admission to SCADC on the evening of December 24 and on several occasions before his death on December 26. There is no evidence that jail officers ever attempted to obtain any medical or mental health care for RK prior to his suffering cardiac arrest after an altercation with jail officers on December 26.

Inmate AG died at SCADC on May 1, 2003. According to the autopsy report, he died of propoxyphene (a pain medication) intoxication. He was noted to be severely intoxicated or psychotic on his arrival at the jail. Despite his condition, he was not immediately referred to a hospital for evaluation and a professional medical judgment about his condition. Propoxyphene intoxication is also treatable; death can be prevented with prompt treatment.

Despite these inmate deaths, it appears that SCADC's practices have not changed. Although the jail's policy manual states that "all officers will be trained to detect the signs and symptoms of medical emergencies" such as those described above, and that all such training will be documented, we could find no documentation of such training during our tour. The nurse told us that she had no formal training in recognizing signs and symptoms of substance abuse and withdrawal. While not acceptable, to her credit, the nurse told us that she trains the officers during staff meetings by handing out information that she obtains from magazines and from the Internet.

Further, the jail's current intake screening instrument appears to be the same one used with inmates AG and RK in 2003. It does not require the intake officer to note whether the inmate has any current signs of visible illness, but instead only asks the officer "is the subject normal, M.I. [mentally ill], or intoxicated?" Most of the intake forms we reviewed had even this question left blank. Officers should be trained to observe inmates on intake for any signs of serious illness or disease and to take appropriate action to protect the health of the inmate.

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[1] Throughout this letter, when referring to a specific inmate, we use pseudonymous initials to protect the identity of the inmate. We are providing to the County under separate cover a key to the identity of the inmates referenced in this letter.

SCADC also does not routinely identify inmates with chronic illnesses at intake. On intake, inmates are asked to complete a "Medical Questionnaire" by checking off boxes indicating whether they have or have ever had a list of medical conditions. They are also asked to name any prescription medications that they currently take. Although the jail's policy manual states that the admitting officer is required to establish a medical record for each inmate containing the inmate's Preliminary Health Screening Form,[2] this policy is not practiced. The nurse told us that she is only provided with a copy of an inmate's Medical Questionnaire at the discretion of the admitting deputy. She said she then only opens a medical record for the inmate if she believes she needs to follow-up with the inmate.

SCADC inmates also do not receive a full initial health assessment within a reasonable period after their arrival at the jail. The accepted standard of care is to conduct a health assessment within fourteen days of admission to a correctional facility. Such an assessment typically includes a review of the intake information discussed above, the collection of a complete medical and mental health history, a physical examination, and screening for Tuberculosis and sexually transmitted diseases. Without this assessment, inmates cannot be appropriately evaluated, and thereby treated for chronic disorders, communicable disease and mental illness.

2. Chronic Care

SCADC fails to address the ongoing medical needs of inmates with chronic illnesses such as diabetes, asthma, hypertension, seizure disorder, hepatitis and HIV disease. Inmates who suffer from such medical conditions require ongoing, coordinated care and treatment to prevent the progression of their illnesses.

Inmate HN was admitted to SCADC in July 2002 and died at the jail in October 2002 of hypertensive arteriosclerotic cardiovascular disease and diabetes. On his Medical Questionnaire, HN noted that he had chronic high blood pressure, diabetes, and had had two strokes. He also brought personal medical records with him, as well as a list of prescription medications. Despite this extensive medical history, HN was never seen by a physician during his stay at SCADC.

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[2] We presume this refers to the "Medical Questionnaire" completed at intake.

Despite HN's death, the jail has not established policies and procedures for identifying and caring for inmates with chronic illnesses or diseases. As noted above, inmates with chronic illnesses are not routinely identified and assessed at intake or shortly thereafter. Therefore, no plan is made for their ongoing assessment and monitoring. There are no scheduled visits for chronic disease care or follow-up. We reviewed the medical charts of thirteen inmates who were currently taking medications typically indicated for chronic illnesses including diabetes, hypertension, seizure disorder, asthma, and hyperlipidemia. None of these inmates had been seen by a physician to evaluate the status of their health and the effectiveness of the medications they were taking for their chronic condition. We also identified numerous inmates who indicated on their medical intake questionnaire that they had a history of chronic diseases such as hypertension, high blood pressure, kidney disease, and mental illness. Despite this information, none of these inmates had a medical chart established, and none had been evaluated by a physician since admission to the jail. Because the jail does not conduct health assessments on inmates, we have no knowledge whether other inmates at the jail have chronic conditions that are undiagnosed and unmanaged.

3. Acute Care

SCADC fails to provide reasonable medical treatment to inmates with serious or potentially serious acute medical conditions. The jail has no physician on-call to consult in an emergency, and because of the jail's "fee-for-service" system, the issue of who will pay for treatment is often a determining factor in whether care, even serious acute care, will be provided. We found that care is often delayed while a payment source is identified. For example, during our tour, the nurse examined an inmate with a rapidly growing groin lesion that she felt needed urgent attention. The physician who comes to SCADC to see patients does not take emergency calls from the jail and was not available to come to the jail to see the inmate until the next week. After multiple phone calls, the nurse was able to get an appointment for the inmate at a local walk-in clinic. When the inmate arrived at the clinic he was denied service because he was unable to pay for it. The nurse again made multiple calls and finally was successful in arranging care for the inmate at another clinic. The nurse told us that this problem of finding acute care for inmates is typical.

4. Infection Control

SCADC has no formal written plan to prevent exposure of inmates and staff to an inmate who has a contagious disease. The crowded conditions at SCADC and the constant exposure of inmates to each other and jail staff present a serious risk of the spread of infectious respiratory diseases.

For example, pulmonary Tuberculosis (TB) is a potentially lethal respiratory disease commonly found in corrections facilities whose transmittal to other inmates and jail staff can be prevented or controlled. On intake, inmates with signs and symptoms of TB disease can be identified and isolated until TB is ruled out. As noted above, SCADC does not attempt to screen inmates with TB symptoms and isolate them. Although SCADC has a cell designated for isolating inmates for medical reasons, this cell is not designed to have a reverse airflow, thus making it ineffectual for isolating persons with suspected TB.

Active and inactive TB can be identified by a skin test. If the skin test is positive, a chest x-ray is performed to rule out active TB. Meanwhile, the inmate can be isolated to prevent potential spread of the disease. SCADC does not systematically administer a TB skin test to all inmates. As a result, inmates and staff risk exposure to TB.

The nurse told us that inmates from the U.S. Marshals Service housed at SCADC receive TB skin tests because the U.S. Marshals Service rules require it. She said that she tests other inmates on a random basis at her convenience, but that not all inmates receive the test. She said that inmates with positive skin tests were referred to the local health department for chest x-rays, and she noted that the results of x-rays were often delayed because the volunteer who reads chest x-rays for the jail only does so once per month.

SCADC's failure to have effective infection control policies and procedures has potentially resulted in inmates and staff being exposed to active TB. During our tour, the nurse saw inmate BD, who had been incarcerated at SCADC before he was tested for TB for approximately two months. BD tested positive, and was referred to the local health department for a chest x-ray. The nurse had just learned on the day of our tour that BD's chest x-ray was consistent with active pulmonary TB disease. The Health Department ordered that the inmate be isolated, and that additional tests and medications be administered. At the time of our tour, this inmate had only just been placed in an isolation cell. Although BD had been housed in general population, we were

told that the jail had no plans to test any other inmates or staff potentially exposed to the disease. Further, the facility's isolation cell, where BD was placed, is not a reverse airflow isolation cell necessary to prevent airborne spread of TB, thus risking further exposure.

5. Administration and Control of Medication

SCADC inmates who take prescription medications are at significant risk of harm because there is no licensed physician responsible for approving all prescription medications dispensed at the jail and ensuring that inmates receive all approved medications regardless of their ability to pay.

We found that prescription medications are provided to inmates in various ways. The nurse told us that if an inmate arrives with medication, she attempts to contact the prescribing physician to verify the prescription and, if verified, the medication is administered to the inmate by the officers under the supervision of the nurse. If an inmate states that he/she is taking prescription medication but does not have it with him/her, attempts are made to reach the inmate's family to have them bring in the medication. These attempts may or may not be successful. If the physician who sees inmates at SCADC prescribes medication for an inmate, that medication may be provided from "stock" medications kept in the clinic (for a $15 co-pay) or obtained from a local pharmacy, and charged to the inmate's commissary account.

The nurse told us that if the inmate does not provide his own medication or is unwilling or unable to pay for medication, she "uses her best judgment" to decide if the medication will be purchased by the jail and provided to the inmate. This is a decision that is outside the scope of a nurse's authority and can only be made by a licensed physician. The physician who sees patients at the jail told us that he has no obligation to oversee medication services to inmates and that he is only responsible to write prescriptions for the inmates that he sees.

Further, we found that the facility routinely fails to follow its own written policy with respect to administration of prescription medication to inmates being admitted to the facility. The facility's policy is that if a newly admitted inmate is carrying prescription medication, the admitting officer is required to contact the facility's health care provider immediately to verify the medication. The facility's failure to follow this policy resulted in the serious illness of an inmate during our tour. On the afternoon of May 10, inmate EM was

transferred to SCADC from another jail. EM had a record of a previous incarceration at SCADC which indicated that he is diabetic. At intake, he reported that he is diabetic and that he had his insulin with him. In accordance with SCADC's policy, EM's insulin was locked in a medicine cabinet. EM later told us that throughout the evening he repeatedly requested that officers give him his insulin, but they did not. Early the next morning, he was ordered to work in the kitchen. By 9:30 am, the kitchen supervisor was so alarmed at EM's deteriorating condition that she summoned the nurse. The nurse tested EM's blood sugar level, which at that time was over 500 (100 is normal). EM had to be transported to the hospital, where he reported that his blood sugar level eventually soared to over 900 before aggressive treatment brought it back to normal levels.

The full-time nurse verified that on the evening of EM's arrival at the jail, the part-time evening nurse was present and on duty but was not contacted about this inmate's arrival at the jail, nor his request for medication, contrary to SCADC policy.

6. Access to Medical Care

SCADC requires inmates to pay for all medical services. While this "fee-for-service" system is not unconstitutional per se, the practice of charging inmates fees to access medical care, as implemented at SCADC, is unconstitutional because it has the effect of deterring access to necessary medical care. Cf. Scher v. Ortwerth, 2004 WL 3622037, E.D. Mo., July 12, 2004 (the court noted that although co-payments are charged to inmate accounts, medical care is rendered as needed, regardless of the inmate's account balance). SCADC's policy is flawed because it creates a financial disincentive for inmates to seek treatment for chronic and pre-existing conditions, even those which are life-threatening or a threat to the health and safety of others; the policy is not conveyed clearly to inmates; and there is no mechanism to waive the co-payment fees for indigent inmates.

Inmates request medical services by completing a "Medical Division Charge Sheet."[3] The Charge Sheet lists the following co-payments charged for each service:

- Nurse call – $10.00
- Transportation fee – $25.00
- Over-the-counter stock medications – $3.00
- Dental appointment – "financial arrangements to be set up by family with local dentist then dentist office to call and set up appointment with jail nurse. Transport fee will be deducted prior to appointment."
- Physician evaluation (after evaluation and approval by the nurse) – $60.00
- "Routine" pregnancy test – $20.00 (which must be paid in advance, no negative balances allowed)[4]
- Request release from suicide watch – $10.00[5]

Inmates or their families must provide their own prescription medications. New prescriptions require a physician visit. Before submitting the Charge Sheet, the inmate must sign a statement saying:

> I understand that the above co-payment fees will be deducted from my commissary account for each service requested/rendered. If I am indigent I understand a

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[3] We also found that SCADC fails to clearly articulate a consistent policy regarding provision of medical services to the inmates. We observed at least three different versions of SCADC's Inmate Handbook – one provided to us in response to our document request, and two posted on the walls in the housing areas – each of which had a different list of fees for services. The fact that the form that inmates use to request medical service is called a "Medical Charge Sheet" only underscores the inmates' conclusion that if they cannot afford to pay for medical services they will not be provided.

[4] "Routine" is not defined on the charge sheet.

[5] In the more than 25 years since CRIPA was enacted we have never encountered a facility which charges for the release from suicide care.

negative balance will be placed on my commissary account waiting funds.

We found that inmates in need of medical services were not requesting them because they believed services would not be provided if they could not pay. One inmate we interviewed, VC, stated that she had missed a menstrual period, experienced side pain, vaginal spotting and believed she was pregnant, but did not request a medical visit because she could not afford the co-payment for the sick call visit, as well as the $20 charge for a pregnancy test. VC said that other inmates told her that if she had a "negative balance" on her commissary account, she could not be released from the jail until the balance was paid. In fact, during our tour, several inmates told us that they were pregnant or believed they were pregnant but had not requested medical services because they could not afford the co-payments and the $20 charge for the test. When we asked the nurse why inmates were charged $20 for a urine pregnancy test she said the charge had been imposed to discourage inmates from asking for the test "just because they might be pregnant."

The facility's policy of requiring inmates to pay for their own prescriptions also creates a dangerous barrier to care for inmates with chronic medical conditions. For indigent inmates, the decision whether to obtain prescription medications becomes a financial decision, rather than a medical one. Inmates cannot be expected to make a medical decision as to whether it is safe for them to discontinue prescription medications. This problem is compounded at SCADC, where there is no health assessment to determine whether inmates suffer from chronic conditions, and there are no procedures in place for providing care for self-identified chronic conditions. We found numerous examples of inmates who indicated on their medical intake forms that they had a history of chronic illnesses such as high blood pressure, heart disease, kidney disease, or mental illness who were not currently taking any prescription medications.

7. Inadequate Staffing, Policies, Procedures and Protocols.

The deprivations of required medical care outlined above are caused in part by: the absence of a physician acting as Health Authority for SCADC to plan, supervise, and monitor appropriate medical care for inmates; inadequate nurse staffing; and inadequate protocols, policies and procedures.

a. Physician Staffing

Much of the inadequate medical care at SCADC appears to result from the fact that the facility has no contractual relationship with a physician responsible for the medical care of the inmates housed there. A local physician sees inmates at the jail at the request of the nurse and at his convenience, approximately one-half day every other week, and will not take emergency calls from the jail. This is clearly insufficient to provide the medical care required for an institution the size of SCADC. Facilities of this size typically require ten to twelve hours of physician coverage per week.

b. Nurse Staffing

Similarly, the forty hours of daytime nursing coverage at SCADC, especially given the low number of physician hours and the fact that the nurse also performs health services administration duties, do not allow the provision of adequate care.

c. Policies and Procedures

We found that in numerous instances SCADC's Policies and Procedures manual sets out policies which, if implemented properly, should result in inmates receiving constitutionally adequate medical care. Unfortunately, we found that virtually none of these policies and procedures are being followed. For example, the manual calls for the development of a written Facility Medical Plan that complies with Arkansas Jail Standards, and which is to be reviewed and updated on at least an annual basis by the jail administrator, and approved by the Sheriff. This Facility Medical Plan is supposed to address, among other things, health screening of inmates upon admission, procedures for handling of inmates with chronic illnesses or known communicable diseases, and procedures for handling of intoxicated inmates admitted to the facility. No such Facility Medical Plan exists. The Policies and Procedures manual also states that

> the Sheriff . . . will ensure that county officials have completed a contract between the jail facility and a local physician(s) or medical group to provide health care services to inmates housed at the jail.

No such contract exists.

In addition, there are no protocols for the nurse or the correctional staff to use to ensure timely access to a physician when presenting symptoms require physician care. For

example, as discussed above, there is no regularly scheduled care for inmates with chronic diseases such as HIV, hypertension, diabetes, asthma, and elevated blood lipids, even though patients with these conditions should be seen by a physician at least once every three months. The facility lacks any clinical guidelines for treatment of these conditions. The facility should have guidelines based on generally accepted standards.

B. MENTAL HEALTH CARE

Jail officials violate the Eighth Amendment when they exhibit deliberate indifference to inmates' serious mental health needs. Smith, 919 F.2d at 92-93. Deliberate indifference may include intentionally denying or delaying access to medical care, or intentionally interfering with treatment or medication that has been prescribed. Id.

SCADC fails to meet this constitutional minimum standard because it does not provide any mental health care for its inmates, not even for those inmates identified as suicidal or who are suffering from serious mental illness. We noted many instances of inmates who had threatened or attempted suicide, were suffering from hallucinations and/or delusions, had indicated on their intake forms that they suffer from mental illness and/or were taking psychiatric medications, who had never been evaluated by a mental health care provider. The following examples are illustrative.

During our tour, we observed inmate JM hitting her head on the window of her cell and talking with slurred speech. She was housed in a Hospital cell under suicide watch. She spoke of seeing angels and said that she was afraid her cellmate, (who was in the advanced stages of pregnancy), was trying to harm her.[6] She had been at SCADC for approximately one month prior to our visit. JM stated on her intake form that she had previously been treated at a mental hospital in Little Rock and that she had been

[6] According to SCADC Incident Reports, inmate JM had been "repeatedly warned" not to hit her cellmates, and had been sprayed with OC spray at least two times during her incarceration for doing so. Inexplicably, JM was still being housed with a cellmate when we toured in May 2005. When we asked the nurse why the cellmate had been placed with JM, she said that the cellmate was the only person that had been able to calm JM down, and because the cellmate needed to be separated from the general population because she was not able to get along with the other inmates.

seen at a local hospital in January 2005 for seeing "spiritual things." Shortly after her admission to SCADC, she was placed on suicide watch for making statements about going to sleep and not getting up and "not caring if she was alive or not." Her medical record notes numerous instances of "talking wildly" and "talking to herself." She told us that she had a history of hypothyroidism and told us the names of various psychiatric medications that she had been taking before being admitted to SCADC. Throughout our tour, we could hear JM moaning and crying, and at times screaming. In spite of all this, this inmate was never evaluated by a mental health care provider. We were told that she was not started on any psychiatric medications or sent to the local hospital because she did not have the ability to pay.

In another example, we observed the nurse evaluate an inmate who told the guards that he intended to harm himself. He told the nurse that he had a history of bipolar disorder. He said that he was intimidated by the other inmates in his cell, who steal his food. The nurse did not conduct a mental status exam, a suicide risk assessment or detailed history of mental illness. Although the inmate indicated mental illness on his Medical Questionnaire at intake, he was not referred to the nurse at intake, nor was a medical chart established until he saw the nurse during our tour.

In yet another example, inmate MC had been at SCADC for one month prior to our tour. She indicated on her medical intake questionnaire that she had never attempted suicide in the past. This inmate came to our attention because our review of the files indicated that she attempted to hang herself during a previous incarceration at SCADC ten months previously. When we pointed this out to the nurse, she admitted she was not aware of the earlier incident, and that it is not SCADC policy to retrieve medical files from previous incarcerations. MC had not received a mental health evaluation during this incarceration.

As the above examples illustrate, SCADC fails to appropriately identify inmates with serious mental health needs at intake and to address such needs during their confinement. These deficiencies contribute to unsafe conditions and unnecessary suffering. Our investigation revealed that, if on intake an inmate appears to be suffering from some sort of mental illness, the jail's practice is to isolate these inmates for a short time and then transfer them into the general population or place them in administrative segregation due to their mental illness. It is not uncommon that such inmates, due to their untreated mental illnesses, get into altercations with security

staff or other inmates and are at times subjected to uses of force by security staff.

SCADC staff also told us that inmates who have been committed to Arkansas State Hospital sometimes must stay at SCADC for months before there is a bed available at the hospital. Although these inmates are clearly in need of ongoing psychiatric care, they do not receive psychiatric services or medications during this time unless they can afford the cost.

The inadequate mental health care at SCADC is caused in large part by its failure to contract with a mental health provider to provide psychiatric services to those inmates that need them. At a minimum, SCADC will require the services of a full-time master's level psychologist on staff at the jail, and psychiatric services, either on site at the jail or at a local mental health center, of up to eight hours per week.

C. PROTECTION FROM HARM

The Eighth Amendment protects inmates from the unnecessary and wanton infliction of pain by correctional officers, Whitley v. Albers, 475 U.S. 312, 319 (1986). Correctional officers may use force reasonably "in a good faith effort to maintain or restore discipline, but force is not to be used maliciously and sadistically to cause harm." Hudson v. McMillan, 503 U.S. 1, 7 (1992).

> Factors to be considered in deciding whether a particular use of force was reasonable are whether there was an objective need for the force, the relationship between any such need and the amount of force used, the threat reasonably perceived by the correctional officers, any efforts by the officers to temper the severity of their forceful response, and the extent of the inmate's injury.

Treats v. Morgan, 308 F.3d 868, 872 (8th Cir. 2002).

1. Uses of Force

SCADC security staff do not meet these constitutional standards when they use force on inmates. In particular, we found a pattern of unreasonable uses of oleoresin capsicum ("OC") spray on SCADC inmates.[7] Correctional officers are not justified

[7] Another serious problem we found is in the documentation of uses of force. We compared SCADC incident reports and the facility Use of Force log for January through March, 2005 and

in using pepper spray "every time an inmate questions orders or seeks redress for an officer's actions." Treats, 308 F.3d at 872. "The test is whether the officer's use of force was reasonable under the circumstances, or whether it was punitive, arbitrary, or malicious." Id. at 873.

Our investigation revealed incidents in which SCADC security staff use OC spray unreasonably and inappropriately in interactions with inmates during intake and with inmates who are mentally ill. For example, we reviewed incidents in which SCADC officers sprayed inmates with OC because they refused to remove their pants or underwear to be searched during intake. SCADC staff also inappropriately sprayed inmates on suicide watch with OC for such conduct as failing to remove their pants (which had been used in a previous hanging attempt) and failing to remain seated so as to be monitored by the video camera. In another incident, SCADC staff sprayed a female inmate for refusing to sit down after an officer entered the cell. The officer was summoned to the cell because the inmate was screaming loudly that she was losing her baby. These incidents are illustrative of the unreasonable use of OC spray by SCADC officers. The pattern of unconstitutional use of force that we found at SCADC is caused in part by: inadequate staffing, and inadequate management review and investigation of uses of force.

a. Insufficient Numbers of Staff

The jail's authorized staffing consists of forty-three sworn staff, three administrators, and thirteen civilian positions. On the day of our tour, fourteen staff were assigned to be working at the jail that day, but only eight were actually working. One had called in sick; two were attending the basic law enforcement academy several hours drive away, one was away on an inmate transport, and two were new employees who could not yet work unsupervised. We were told that the jail has seven mandatory posts – one in the control center, one in intake, and five pod officers for each shift. The staffing plan for the jail does not include a provision for a staffing relief factor, the purpose of which is to ensure that there is sufficient staff to operate the facility during expected staff absences due to vacation, training, sick leave, and other absences. Nor is any overtime funding allocated to fill vacant posts. Jail staff reported that due to illness, transports and other circumstances, the staff has worked with as few as four officers on the night shift.

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found that at least 64% of the uses of force documented in Incident Reports were not logged on the Use of Force log.

The jail employs too few security staff given the number of inmates and the architectural design of the jail. This understaffing has resulted in an unusually high number of uses of force. Our review of the facility's use of force records for the period January to April 2005 indicated that SCADC staff used force seventy-six times, which our expert consultant found to be unusually high for a facility of this size. Because of the lack of staff, when problems arise, staff have few alternatives other than OC spray or Tasers to subdue arrestees and inmates. In one incident, staff used the threat of OC spray to manage inmates.[8] Of the seventy-six use of force incidents that took place during this period, thirty-one occurred in the intake area – more than in any other part of the jail. As noted above, only one security officer is assigned to the intake area at any given time. In the majority of these incidents in the intake area, additional security staff were called away from other duties to assist. Understaffing also compromises inmate supervision, which can itself result in the unnecessary resort to use of force by staff. Inmates are locked down for unreasonable periods,[9] more fights occur, it takes longer for jail staff to respond, and the likelihood of serious harm is increased.

b. Inadequate Management Review of Uses of Force

SCADC's deficiencies are also caused by inadequate management review and investigation of uses of force. The purpose of a management review and investigation of each use of force is to ensure that facility procedures have been followed, that no remedial training is necessary, and that no review or change in policies is required. Current SCADC policies require only that the jail administrator review all use of force incident reports for the purpose of recommending to the Sheriff whether to discipline an officer, but we found that even this policy is not being followed at SCADC. The incident reports are signed by the shift supervisor, but there is no indication that the jail administrator conducts his own review. As a result, even obvious violations of SCADC's use of force policy, as listed above, are not identified.

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[8] On February 19, 2005, a detention officer, responding to a verbal confrontation in a housing area, refused an inmate's request to be moved "in order to cool off," and advised all of the inmates in the room "that if we [security staff] had to come up there because there was a problem, they would be maced."

[9] Inmates at SCADC are often locked down at all times except for meal time.

D. ENVIRONMENTAL HEALTH AND SAFETY AND SANITATION

Prison officials must ensure that inmates receive adequate food, clothing, and shelter, Farmer v. Brennan, 511 U.S. 825, 832 (1994), and that prisoners are not "deprive[d] . . . of the minimal civilized measure of life's necessities." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Accordingly,

> a prison official may be liable under the Eighth Amendment if he or she knows that an inmate faces a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.

Coleman v. Rahija, 114 F.3d 778, 785 (8th Cir. 1997).

1. Biohazards

SCADC fails to protect inmates adequately from contact with potential biohazards such as blood, feces, vomit, and urine. SCADC has policies or procedures for the clean up of such biohazards, but inmates routinely asked to clean up these spills are not provided protective equipment or training. The cleanup materials and/or refuse are not disposed of in red biohazard bags. Additionally, biohazard kits are not available to staff. Notably, the nurse reported to us that there are red biohazard bags in the medical unit, but no one else on the staff was aware that they existed prior to our tour.

Inmates working in the laundry report that they wash bloodied clothing, towels, and sheets along with the rest of the laundry. One inmate reported having to wash clothes contaminated with feces together with other clothes. When an inmate arrives at the jail in clothing that constitutes a biohazard (i.e., contaminated with blood, drugs, vomit, feces, etc.) that clothing is washed in the jail laundry rather than being discarded. When asked why this clothing was not discarded as a biohazard, the staff reported that they had no other clothing to give the inmate upon release. This is a gross departure from generally accepted safety precautions, which require that all potentially biohazardous materials be handled separately from the regular laundry, that inmates working in the laundry be supervised and specially trained in how to handle and/or dispose of biohazardous materials, and that they be provided with appropriate protective gear to prevent exposure to biohazardous materials.

The jail does not have a protocol to assure that arrestees from methamphetamine labs are thoroughly decontaminated prior to their arrival at the jail. A Sheriff's Office CID investigator

reported that current practice is that the arrestee is decontaminated only if they believe that there was a "major lab." This is unacceptable. Failure to decontaminate arrestees can result in serious harm to staff and inmates. It is well-known within the correctional setting that residue from substances associated with methamphetamine production can be transferred not only to jail personnel, but also to surfaces where the arrestee's clothing and personal items are stored, and to the cell where the arrestee is ultimately housed. Repeated contact with these toxic materials over a long period of time can have serious adverse health implications, particularly for booking staff.

2. Tool and Chemical Control

SCADC inmates risk serious injury as a result of SCADC's failure to adequately control its cleaning implements and chemicals. SCADC keeps no records of the amount of cleaning chemicals transferred from the maintenance building to the janitor's closet, nor is there a record kept of the cleaning chemicals transferred from the janitor's closet to the housing units. During our tour, we observed unlabeled plastic jugs of cleaning solution placed on the floor outside housing units. In addition, an incident report noted that a "bottle of cleaner" was found in a residential unit. Cleaning solution is dangerous if in the hands of a suicidal inmate. In the two years before our tour, at least two inmates attempted suicide by drinking cleaning solution.

SCADC also does not provide controls for cleaning implements, such as mops and brooms. In one particular case, an unlocked janitor's closet located in the kitchen held un-inventoried dangerous chemicals and cleaning implements. Inmates who work in the kitchen have relatively unsupervised access to this closet and can remove the chemicals and cleaning implements and fashion them into weapons without SCADC's knowledge. For example, an incident report noted that an inmate threatened to "shank or beat" another inmate with a mop ringer. Although we are unaware whether the mop ringer in this incident was from the kitchen, the incident underscores how cleaning implements can be fashioned into a weapon.

III. RECOMMENDED REMEDIAL MEASURES

In order to address the constitutional deficiencies identified above and protect the constitutional rights of inmates, we suggest that SCADC should implement, at a minimum, the following measures:

A. MEDICAL CARE

1. Retain the services of a medical doctor, whose responsibilities will include: supervising all medical care rendered to inmates; monitoring care of serious and/or chronic conditions; ensuring that all inmates receive a health assessment within fourteen days of intake; reviewing and approving all prescription medication dispensed at the jail; approving revised medical intake screening forms and processes; and annually reviewing all policies and procedures concerning medical or mental health screening and/or the provision care.

2. Develop and implement a program to train all staff to identify on intake symptoms of drug and alcohol withdrawal, communicable diseases, acute or chronic illness (including mental illness), and potential suicide risk.

3. Develop and implement an appropriate medical intake screening instrument that identifies observable and non-observable medical needs, including infectious diseases, and ensure timely access to the physician when presenting symptoms require such care.

4. Ensure that medical intake information sheets are reviewed in a timely manner by trained medical care providers.

5. Revise the fee-for-service policy to remove the disincentives to an inmate's seeking and receiving necessary medical care for chronic, pre-existing and/or life-threatening conditions.

6. Establish contractual agreements with local medical care providers to provide immediate treatment to inmates with serious or potentially serious acute medical conditions when appropriate, regardless of the inmate’s ability to pay.

7. Conduct a sufficient initial health assessment, including screening for Tuberculosis and sexually transmitted disease, of all inmates in a timely fashion.

8. Adopt and implement appropriate clinical guidelines for chronic diseases such as HIV, hypertension, diabetes, asthma, and elevated blood lipids, and policies and procedures on, *inter alia*, timeliness of access to medical care, continuity of medication, infection control, medicine dispensing, intoxication/detoxification, record-keeping, disease prevention, and special needs.

9. Adopt and implement a formal written plan to prevent exposure of inmates and staff to contagious diseases.

10. Ensure that nurse staffing is adequate for inmates' medical needs.

B. MENTAL HEALTH CARE

1. Retain the services of a licensed mental health provider or community mental health clinic whose responsibilities will include supervising the mental health care of inmates.

2. Develop and implement an appropriate intake screening instrument that identifies mental health needs, and ensure timely access to the mental health professional when presenting symptoms require such care.

C. PROTECTION FROM HARM

1. Ensure that staffing levels are appropriate to adequately supervise inmates.

2. Develop and implement policies and procedures for supervisory and/or management review and investigation for all uses of force, to determine whether force was appropriately used, whether remedial training is necessary, or whether facility policies should be revisited.

3. Ensure that all staff are regularly trained regarding the facility's use of force policy and use of force continuum.

D. ENVIRONMENTAL HEALTH AND SAFETY AND SANITATION

1. Develop and implement policies and procedures for the handling and disposal of biohazardous materials and potentially contaminated arrestee clothing, including appropriate use of red biohazard bags.

2. Ensure that any inmate asked to clean up a biohazard be properly outfitted with protective materials and trained before cleaning.

3. Develop and implement a policy for washing and drying of laundry, including prohibitions against washing contaminated clothing.

4. Immediately implement the facility's current tool policy.

5. Develop and implement policies and procedures for the control of chemicals in the facility and supervision of inmates who have access to these chemicals.

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We hope to work with the County in an amicable and cooperative fashion to resolve our outstanding concerns regarding SCADC. Assuming there is a spirit of cooperation from the County and SCADC, we also would be willing to send our expert consultants' evaluations of the facility under separate cover. Although the expert consultants' evaluations and work do not necessarily reflect the official conclusions of the Department of Justice, their observations, analysis, and recommendations provide further elaboration of the issues discussed in this letter and offer practical, technical assistance in addressing them.

We are obligated by statute to advise you that, in the unexpected event that we are unable to reach a resolution regarding our concerns, the Attorney General may institute a lawsuit pursuant to CRIPA to correct deficiencies of the kind identified in this letter forty-nine days after 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 we are confident that we will be able to do so in this case. The lawyers assigned to this investigation will be contacting the facility's attorney to discuss this matter in further detail. If you have any questions regarding this letter, please call Shanetta Y. Cutlar, Chief of the Civil Rights Division's Special Litigation Section, at (202) 514-0195.

Sincerely,

Wan J. Kim
Assistant Attorney General

cc: Stephen Tabor
Sebastian County Prosecutor

Frank Atkinson
Sebastian County Sheriff

Robert C. Balfe
United States Attorney
Western District of Arkansas