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9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF ARIZONA

11 Fred Graves, Isaac Popoca, on their  
12 own behalf and on behalf of a class of  
all pretrial detainees in the Maricopa  
13 County Jails,

14 Plaintiffs,

15 vs.

16 Joseph Arpaio, Sheriff of Maricopa  
County; et al.;

17 Defendants.  
18

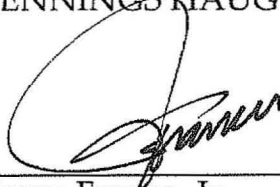
Case No. CV-77-0479-PHX-NVW

**NOTICE OF FILING SIXTH  
REPORTS OF DR. LAMBERT N.  
KING AND DR. KATHRYN A.  
BURNS**

19 Pursuant to this Court's Order dated January 28, 2009 (#1769), defendants  
20 Fulton Brock, Don Stapley, Andrew Kunasek, Max Wilson and Mary Rose Wilcox,  
21 through undersigned counsel, hereby give notice of filing the sixth reports of  
22 Lambert N. King, M.D., Ph.D., F.A.C.P. dated March 31, 2011 and Kathryn A. Burns,  
23 M.D., M.P.H. dated April 2011. The reports are attached hereto.  
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28

1 DATED this 6<sup>th</sup> day of April, 2011.

2  
3 JENNINGS HAUG & CUNNINGHAM, L.L.P.

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10 Stapley, Andrew Kunasek, Max Wilson and  
11 Mary Rose Wilcox  
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CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2011, I electronically transmitted **NOTICE OF FILING SIXTH REPORTS OF DR. LAMBERT N. KING AND DR. KATHRYN A. BURNS** to the Clerk's Office for the United States District Court, District of Arizona, using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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1 I further certify that on April 7<sup>th</sup> 2011, a copy of the attached document was  
2 delivered to:

3 The Honorable Neil V. Wake  
4 United States District Court, District of Arizona  
5 401 W. Washington Street, SPC 52  
6 Suite 524  
7 Phoenix, AZ 85003-7640

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**Sixth Report on Medical Compliance with Second Amended Judgment**

*Graves v. Arpaio*

**No. CV – 77-0479-PHX-NVW**

**Lambert N. King, MD, PhD, FACP**

**March 31, 2011**

**Part A - Background**

On January 25, 2011 and February 28-March 1, 2011, I conducted site visits of Correctional Health Services (CHS) in the Maricopa County Jail (MCJ) system. This report is a summary of my recent observations and updated recommendations concerning medical services in the Maricopa County Jail system. It is hereby respectfully submitted to Honorable Judge Neil V. Wake of the United States District Court for the District of Arizona, in response to the requirements of the Second Amended Judgment (SAJ) issued by Judge Wake on October 22, 2008.

Since my first site visit to Maricopa County Jail on March 30 to April 1, 2009, I have submitted five prior reports to Judge Wake. I also prepared and submitted a report titled **Expert's Report on Compliance with Medical Provisions of Second Amended Judgment** on August 20, 2010. For this Sixth

Report, I considered prior findings and recommendations and have updated and revised many of them in the form of a Corrective Action Plan (CAP). This CAP is responsive to the requirements of Paragraphs 6, 7 and 8 of Judge Wake's Second Amended Judgment. These requirements are the following:

Paragraph 6: "Defendants shall provide a receiving screening of each pretrial detainee, prior to the placement of any pretrial detainee in the general population. The screening will be sufficient to identify and begin necessary segregation, and treatment of those with mental and physical illness and injury; to provide necessary medication without interruption; to recognize, segregate, and treat those with communicable diseases; to provide medically necessary special diets; and to recognize and provide necessary services to the physically handicapped."

Paragraph 7: "All pretrial detainees confined in the jails shall have ready access to care to meet their serious medical and mental health needs. When necessary, pretrial detainees confined in jail facilities which lack such services shall be transferred to another jail or location where such services or health facilities can be provided or shall otherwise be provided with appropriate alternative on-site medical services."

Paragraph 8: “Defendants shall ensure that pretrial detainees’ prescription medications are provided without interruption where medically prescribed by correctional medical staff.”

In an Order dated January 3, 2009, Judge Wake ordered, “upon stipulation of the parties, that medical expert Dr. Lambert King and mental health expert Dr. Kathryn Burns are appointed to serve as independent evaluators of the Defendants’ compliance with the medical and mental health provisions of the Second Amended Judgment and to be compensated by Defendants for their services.” The same Order also specified that the “Experts will evaluate the delivery of medical and mental health care at Maricopa County Jails, identify deficiencies, assist Correctional Health Services (“CHS”) in developing a corrective action plan, if needed, to achieve compliance with the Second Amended Judgment, and submit reports on compliance to the court at 120-day intervals.”

During the past two years, Dr. Burns and I have consistently fulfilled the responsibilities of the Court’s appointed experts, as specified in Judge Wake’s Order of January 28, 2009. Litigation in the case of *Graves vs. Arpaio* has been underway for decades prior to the appointment of the Court’s Experts in medical and mental health care. Prior to appointment of the medical and mental health experts by Judge Wake, evidence

was presented concerning systematic deficiencies in standards of medical care in the Maricopa County Jails. Concerning the duration of this litigation, Judge Wake said during a hearing in this matter on January 21, 2011, "We don't have that same level of stress here except this is an old case. The judgment's been around. I'm trying to avoid unnecessary difficulties for anybody consistent with moving this along diligently." Judge Wake further stated that Plaintiffs and Defendants "have done a good job and I expect that to continue to focus on things that are useful and not create unnecessary burdens for either side."

The CHS medical care program in the Maricopa County Jails was evidently substandard and troubled prior to Judge Wake's Order of January 28, 2009. This was no small problem, since CHS is responsible each year for the medical evaluation of more than 115,000 intake medical evaluations and a daily inmate population of over 7,200 men and women, many of whom have complex acute and chronic medical conditions. Moreover, CHS staffs six jails and nine health care locations in the MCJ system. Over the past two years, I have acknowledged a number of improvements CHS has made in scope and quality of its medical care services. These improvements have been documented in my previous reports to the Court. Over the past six months, the executive leadership of CHS has been fundamentally changed, whereby the Executive Director,



Medical Director and Nursing Director positions have been filled by health care professionals whose qualifications and prior experience make them well-suited to take those timely and complex actions necessary to achieve full compliance with the requirements of the SAJ. Based on extensive conversations with them, I believe these three CHS leaders are working diligently and in good faith to ensure that medical care of persons admitted and confined in the Maricopa County Jails will meet all requirements of the Court's Second Amended Judgment.

Although CHS has made progress toward compliance, there is evidence, based mainly on review of selected medical records, that further major actions are necessary to fulfill the requirements of Paragraphs 6, 7 and 8 of the Court's Second Amended Judgment. While perhaps seemingly paradoxical, the foregoing two observations are not surprising in view of the status of medical care in Maricopa County Jails only a few years ago and the complexity and acuity of illness among the large population that CHS serves.

In Part E of this Sixth Report (Corrective Action Plan), I have updated and revised several of the "Remedies" that I recommended in my August 20, 2010 **Expert's Report on Medical Compliance with Medical Provisions of Second Amended Judgment**. This Corrective Action Plan represents

my best efforts to assist the new leadership of CHS as they work toward compliance with the medical requirements of the SAJ. At the same time, a corrective action plan, if it is to be successful, cannot be totally static or written in stone. For example, provision of more appropriate medications to treat patients suffering from withdrawal from heroin abuse involves processes and medications that are intensively regulated by state and federal agencies such as the Drug Enforcement Administration. Thus, the pathway to an appropriate corrective action may involve sequential alternative actions, with the outcome of each next step being dependent on securing prior regulatory approvals.

Fundamentally, neither the ten remedies I previously recommended or the Corrective Action Plan contained in this Sixth Report are intended to replace Judge Wake's articulation of Paragraphs 6, 7, and 8 of the Second Amended Judgment as the definitive measure of medical care compliance. Plaintiffs' and Defendants' Counsel and CHS have expressed agreement with many aspects of my prior recommendations, most of which are adapted in whole or in part in the Corrective Action Plan proposed in this Sixth Report. If differences remain on the part of Plaintiffs or Defendants, I am readily available to discuss and address them jointly with both parties. I will also continue to encourage Plaintiffs and Defendants representatives to join me and the leaders of CHS

in meeting regularly together to review medical records, policies and procedures, and ongoing plans and efforts to improve medical services consistent with SAJ requirements.

## **Part B – List of Sources and Documents Reviewed**

The content of this report was informed by the following sources and methods:

1. Continued reviews of CHS policies and procedures pertaining to the objectives of the Second Amended Judgment (SAJ).
2. Discussions with executive and clinical leaders of CHS about their current and anticipated actions to assure access to and provision of proper medical care as stipulated in Paragraphs 6, 7 and 8 of the SAJ.
3. On January 25, February 28 and March 1, 2011, I reviewed 38 medical records, all of which were among a list of medical charts that CHS had provided for review by Plaintiffs' Counsel. Thirty of these records were among those that by Plaintiffs' Counsel had reviewed and critiqued in written reviews in advance of my recent site visits.
4. I reviewed the detailed professional resumes of the CHS Executive Staff including the Department Director, Thomas Tegeler , RN, MPH, CCHP, NEA-BC; Medical

Director, Jeffrey J. Alvarez, MD, CCHP; Director of Nursing, Katie Wingate, RN, MSN, CCHP; Finance Manager, Lisa A. Gardner, BS; HR Consultant, Diane M. Shook, MBA, SPHR; and Don J. Wright, BS, MBA, Clinical IT Director .

5. **Correctional Health Services Standard Operating Procedure** titled INFIRMARY ADMISSION/CARE DELIVERY/NURSING ACUITY AND DISCHARGE, as revised on 01/03/11.
6. CHS Clinical Policy, titled GRIEVANCE MECHANISM FOR HEALTH COMPLAINTS, as revised 10/12/10.
7. **Maricopa County Correctional Health Services Special Needs Treatment Plan Guidelines: Diabetes Mellitus**, September 29, 2010.
8. Minutes and appended documents of the monthly meetings of the Maricopa County Correctional Health *Services Quality Improvement Council from August for 2010*.
9. Team Charter and minutes of the CHS Patient Health Care Request CQI Team from August through November, 2010.
10. Team Charters and minutes of the Health Assessment CQI Teams for the LBJ, Durango, and 4<sup>th</sup> Avenue facilities. These minutes document meetings from September through November, 2010.

11. "Grievance Drill Down" annual report, dated December 31, 2010.
12. CHS Health Needs Request Reports, for October, November and December, 2010
13. CHS Health Assessment Audits for April, July, August, September October, and November, 2010.
14. CHS/MCSO Statistical Monthly Report for July 2010 – December 2010.
15. List of 4<sup>th</sup> Avenue Intake Pre-Booking Refusals for January and February, 2011.
16. Maricopa County Correctional Health Services, Continuous Quality Improvement Plan, July 1, 2010 – June 30, 2011.
17. Maricopa County Correctional Health Services, Continuous Quality Improvement Program, FY 2010 Annual Evaluation.
18. Maricopa County Correctional Health Services, Continuous Quality Improvement Annual Plan, July 1, 2010 – June 30, 2011.
19. CHS, Patient Satisfaction Survey Results, for LBJ Outpatient, 4<sup>th</sup> Avenue, Towers, Tents, MHU, Estrella, Durango. These anonymous surveys were completed by patients seen in CHS Clinics on a particular day in late January or early February 2011.
20. CHS I-EHR PROGRAM TIMELINE, as of January 2011.

21. National Commission on Correctional Health Care, Technical Assistance Report of the Health Care Services at Maricopa County Sheriff's Office, December 22, 2010.
22. **PLAINTIFFS' STATEMENT REGARDING DISCOVERY DISPUTE**, filed with the Court on March 9, 2010.
23. **DEFENDANT MARICOPA COUNTY BOARD OF SUPERVISOR'S STATEMENT RE: DISCOVERY DISPUTE**, filed with the Court on March 10, 2011.
24. Judge Wake's **ORDER** of March 10, 2011.
25. **RESPONSE TO DEFENDANTS' STATEMENT RE DISCOVERY DISPUTE**, filed with the Court on March 18, 2011.
26. **DEFENDANT MARICOPA COUNTY BOARD OF SUPERVISOR'S MOTION TO VACATE JUNE 14, 2011 EVIDENTIARY HEARING**, filed with the Court on march 21, 2011.

## **Part B - Observations and Findings**

1. During the past six months, CHS appointed a new Executive Director (Thomas J. Tegeler, RN, MPH, CCHP, NEC-BC); new Medical Director (Jeffrey Alvarez, MD,

CCHP); and new Director of Nursing (Katie Wingate, RN, MSN, CCHP). All three of them are highly qualified in their respective professional disciplines and bring substantial experience in correctional health care, public health, hospital and ambulatory care.

2. To the best of my knowledge, this is the first time the Maricopa County Board of Supervisors has appointed a CHS Executive Director who has extensive qualifications and experience in nursing services. Mr. Tegeler's prior work included service as the Chief Nurse Executive of the Davis Grant Medical Center at the Travis Air Force Base in California. The previous executive director had considerable administrative experience in Maricopa County government but lacked the great advantage possessed by a capable executive who is also a highly qualified and experienced health care professional.
3. As the new CHS Medical Director, Dr. Jeffrey Alvarez brings Board Certification in a primary care specialty – Family Medicine – recognized by the American Board of Medical Specialties (ABMS). Neither of the two previous CHS Medical Directors was certified in an ABMS-recognized specialty. Prior to being appointed as the CHS Medical Director, Dr. Alvarez provided direct patient care of excellent quality to patients in the CHS Estrella Jail Clinic. Finally, it is important to note that Dr. Alvarez is bilingual. This is a

very useful asset in communicating with and caring for Spanish-speaking MCJ patients.

4. As the new CHS Director of Nursing, Katie Wingate brings many years of prior experience in nursing care, care of persons who have mental illness, care of the elderly, and correctional health care. Before joining CHS, she was the Nursing Program Manager for the Arizona Department of Corrections. Her span of responsibilities in this position included supervision of 11 nursing supervisors in ten prison complexes and direct clinical supervision of 34 psychiatric nurses.
5. With the appointment of Thomas Tegeler as Executive Director and Katie Wingate as Director of Nursing, it is apparent that CHS leadership team now possesses greater authority and expertise to identify, assess and improve any nursing-related problems affecting compliance with the SAJ. For this reason, I do not believe that the selection and employment of a correctional health care nursing specialist is necessary to assist me in monitoring compliance or to advise CHS on improvement of nursing components of the MCJ health care system.
6. The CHS Health Assessment Audits for 2010 show a notable increase in the percentage of patients whose Health Assessment/Physical Examination and tuberculin skin test (PPD) was completed within 14 days of their booking date.