

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 DAVID RIKER et al.,

4 Plaintiffs,

3:08-CV-00115-LRH-VPC

5 v.

6 JAMES GIBBONS et al.,

7 Defendants.

8 COURT APPROVED

9 **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**
10 *Riker v. Gibbons, Case No. 3:08-CV-00115-LRH-VPC (D. Nev.)*

11 **TO: ALL PRISONERS AT THE ELY STATE PRISON, ELY, NV**

12 **THE PURPOSE OF THIS NOTICE IS TO INFORM YOU OF:**

- 13
- 14 • **THE TERMS OF THE PROPOSED SETTLEMENT AGREEMENT**
 - 15 • **THE REASONS WHY CLASS COUNSEL BELIEVE THAT SETTLEMENT IS IN THE BEST INTERESTS OF THE CLASS**
 - 16 • **YOUR RIGHT TO OBJECT TO THE SETTLEMENT**

17 **BACKGROUND**

18 In March of 2008, a federal lawsuit was filed in the U.S. District Court for the District of Nevada
19 alleging inadequate medical care at Ely State Prison (ESP) in Ely, Nevada. An Amended
20 Complaint in this action was filed on or about April 16, 2008. Lawyers with the National Prison
21 Project of the American Civil Liberties Union Foundation (ACLU), the ACLU of Nevada, and
22 Holland & Knight, LLP appeared on behalf of the named plaintiffs in the lawsuit. Plaintiffs
23 requested that the lawsuit be recognized as a Class Action, so that the interests of all prisoners at
24 ESP would be represented. The Court subsequently granted class certification to a class of
25 prisoners defined as "all prisoners who are now, or in the future will be, in the custody of the
26 Nevada Department of Corrections at Ely State Prison in Ely, Nevada." The lawsuit did not ask
27 for any money damages. Instead, it asked that the Court declare that the medical care at ESP was
28 unconstitutional, and order Defendants to undertake changes to the provision of medical care at
the prison.

25 **PROPOSED SETTLEMENT AGREEMENT**

26 The Parties have agreed to settle this lawsuit on the terms stated below. The Proposed Settlement
27 Agreement does not constitute any admission of liability by the Defendants. Defendants deny the
28 truthfulness of the claims in this lawsuit and deny having engaged in any culpable conduct.

1 After much deliberation, Class Counsel have concluded that the terms and conditions of the
2 Proposed Settlement Agreement are in the best interests of the Class.

3 **1. *Why Class Counsel Support the Settlement***

4 In working on this case, Class Counsel have visited ESP many times. We have interviewed many
5 prisoners and corresponded with hundreds more about medical care at ESP. We have reviewed
6 many records. Two medical experts hired by Class Counsel, a medical doctor and a nurse
7 practitioner, inspected ESP for three days, interviewed prisoners and ESP medical staff, reviewed
8 records, and observed multiple aspects of care at the facility. In deciding to support a settlement
9 of this lawsuit, Class Counsel carefully weighed the benefits of the proposed settlement terms
10 against the risks of an unfavorable outcome in the litigation and the time needed to prosecute the
11 case through a trial and likely appeals. After considering all these issues, it is our professional
12 opinion that the Proposed Settlement Agreement will improve medical care for the Class more
13 quickly and comprehensively than any result the Class might obtain through further litigation of
14 this lawsuit.

15 **2. *A Summary of the Key Terms of the Proposed Settlement Agreement***

- 16 • The Parties agree to the appointment of an expert medical monitor for a term of two years.
17 The monitor shall inspect ESP three months after the Agreement is finalized and every six
18 months thereafter to evaluate Defendants' compliance with the terms of the Agreement.
19 If, at the end of two years, Defendants have achieved substantial compliance with the
20 terms of the Agreement, medical monitoring shall cease. If Defendants have not achieved
21 substantial compliance with the Agreement, Plaintiffs' counsel may bring Defendants'
22 alleged non-compliance to a mediator and the mediator shall determine whether or not
23 medical monitoring shall continue. The mediator's decisions are binding on both parties.
24 In this regard, Defendants shall achieve substantial compliance in the following areas, as
25 confirmed by the Monitor, according to the timetable set forth in the Agreement, and
26 summarized as follows¹:

27 • **MEDICATIONS**

- 28 ○ The Monitor will evaluate and propose any necessary changes to the timely
dispensing and administration of medications at ESP, as well as increased
oversight and accountability mechanisms that may be necessary in the opinion of
the Monitor, for the safe and timely administration and dispensing of medication at
ESP. Defendants will set-up a medication dispensing and administration system
that complies with the Monitor's recommendations.
○ Defendants shall ensure that patients refusing medication are provided counseling
regarding the consequences of incomplete adherence; and shall ensure that both
the refusal and the counseling is documented and in-person.
○ When three consecutive doses are refused by the patient, a practitioner shall be
notified. Subsequently, the practitioner shall meet with the patient and discuss his
refusal to take the medication, whereupon the medication shall be discontinued or
the patient shall agree to take the medication. Defendants shall ensure that if
medication is not administered to a patient, the reason is documented and signed
by the health staff responsible for medication administration.
○ ESP staff shall ensure that refills or renewals of nurse-administered medications

¹ This summary is not intended to act as a substitute for the terms of the Settlement Agreement.

1 are done in a timely manner. Patients shall be responsible for requesting "keep-
2 on-person" (KOP) refills or renewals of their refillable medications, in a timely
3 manner and ESP medical staff shall ensure that timely KOP refills are renewed
4 before the patients' prescription supply runs out.

- 5 ○ Defendants shall develop protocols for the treatment of acute and chronic pain,
6 including the safe administration of narcotics, if and where appropriate, for KOP
7 medications, outside the infirmary and treatment of acute pain that does not
8 involve placement of the patient in the infirmary.
- 9 ○ In consultation with the monitor, Defendants shall ensure that medication is
10 administered at a medically appropriate time and in a medically appropriate
11 manner, including dietary considerations.

12 • CHRONIC CARE

- 13 ○ The Monitor shall evaluate the chronic disease management process, and propose
14 any necessary changes to that process, including enrollment and follow-up care at
15 ESP.
- 16 ○ In consultation with the Monitor, Defendants shall ensure that for each individual
17 identified with a chronic illness requiring ongoing medical care, a health care
18 treatment plan shall be developed that includes, at a minimum, the following: a
19 written initial evaluation containing a plan to achieve good disease control by a
20 practitioner; regular check-ups at least once every three (3) months by a
21 practitioner; a yearly check-up with a physician only if the patient is in poor
22 control of his disease and/or if determined necessary by the practitioner; and
23 baseline and yearly laboratory work, and other diagnostics appropriate for the
24 disease as needed. The treatment plan's short and long range goals will be
25 reviewed and updated at least annually in a face-to-face assessment by the
26 practitioner or more frequently as determined by the practitioner. Any patient with
27 more than one chronic disease will not require separate chronic care clinic visits
28 for each disease, but should be treated for all diseases during his annual chronic
care visit or as directed by the practitioner.

19 • SICK CALL

- 20 ○ The Monitor shall evaluate and propose any necessary changes in the Sick Call
21 process at ESP and Defendants shall implement those changes. Defendants will
22 ensure that Licensed Practical Nurses (LPNs), Registered Nurses (RNs) and mid-
23 level practitioners, such as Advanced Practitioners of Nursing (APNs), perform
24 only functions within the scope of their state professional licenses and according to
25 proper protocols, and that each is properly supervised according to the scope of
26 his/her license. The Monitor shall assess the sufficiency of the medical staffing to
27 meet the medical-staffing needs at ESP, and to make recommendations for any
28 changes, where indicated, and Defendants shall ensure that any indicated changes
are implemented. In no event, shall a medical doctor be available less than two (2)
days per week.
- Defendants shall ensure that sick call will be available seven days per week to
patients in all areas of the population at ESP, including general population,
segregation units or "lock-up cells," isolation units, the condemned mens' unit and
special management units. Medical kites will be picked up by nurses on a daily

1 basis from each unit and triaged by a nurse or higher level staff no later than
2 twenty-four (24) hours after receipt. A patient requesting medical care shall be
3 seen by a Registered Nurse (RN) or higher level practitioner within 48 hours.

- 4 ○ Any patient who is seen by a nurse two consecutive times for the same symptoms
5 will be referred to a higher level practitioner without incurring an additional co-
6 pay charge for a medical visit. This does not require two sick calls before a patient
7 can be referred to a higher level practitioner; a registered nurse may make such a
8 referral after a single sick call in accordance with appropriate triage protocols.
- 9 ○ Patients presenting symptoms or patients having symptoms reported on their
10 behalf, requiring emergency or infirmary care shall be given timely and
11 appropriate medical care.

12 • **INTRA-SYSTEM TRANSFERS AND ASSESSMENTS**

- 13 ○ The Monitor will evaluate and propose appropriate changes in the medical
14 assessments and evaluation process performed as a result of intra-systems transfers
15 into ESP. In particular, all prisoners entering ESP should be medically screened
16 by a registered nurse or higher level practitioner within 12 hours, but in no event
17 shall such screening occur later than 24 hours of admission. Such screening shall
18 take place in a confidential setting and the records of HIV positive patients shall be
19 labeled in such a manner as to prevent inadvertent disclosure of a patient's HIV
20 status. The results of this screening shall be documented in each patient's medical
21 record. The minimum components of the screening shall include, but shall not be
22 limited to, the following: documented inquiry into current illness, communicable
23 diseases, current tuberculosis status, allergies, current medications, dental status,
24 current mental health problems, suicidal ideation, chronic health problems,
25 pending specialty appointments, signs of trauma, and a documented explanation of
26 the procedures for access to medical services.
- 27 ○ In addition to explaining the procedures for accessing care, ESP staff shall provide
28 all patients at intake with a written description of these procedures that the patients
may keep.

• **SCHEDULED OFF-SITE SERVICES**

- The Monitor shall evaluate and propose any necessary changes in the system for
referring ESP patients for off-site medical consultations and Defendants will
ensure that the changes are implemented.
- Defendants shall ensure that patients requiring necessary medical services that
cannot be provided at ESP in a timely manner or at all, shall be provided timely
access to an outside specialist for diagnostic services or medical care, according to
the priority or urgency of the ordering clinician. Where approval or other response
by the Utilization Review Panel is required for specialty care, including for follow-
up care, such approval or other response shall timely be documented in a tracking
system.
- A member of the NDOC health staff shall be designated to track all requests for
specialty and off-site care, the status of such requests, provision of care, and any
necessary follow-up or after care ordered for ESP patients. That same staff
member will work with other health care staff and custody staff to ensure that the
ordered care is provided. Subject to any required approval by the Utilization

1 Review Panel, treatment orders shall be carried out in the manner prescribed by
2 the specialist, unless a deviation or override is ordered by the practitioner at the
3 facility. Such a deviation or override must be affirmatively medically justified and
4 documented in the medical record of the patient.

4 • **INFIRMARY CARE**

- 5 ○ Under the guidance of the Monitor, Defendants will ensure that ESP provides
6 adequate infirmary care for patients requiring close medical monitoring and/or
7 nursing assistance.
8 ○ All infirmary patients must be within sight or sound of nursing or other health care
9 staff at all times. Physician and/or mid-level practitioner rounds shall be
10 conducted on a daily basis or as specified by the categories of care being provided,
11 and an RN or higher level medical provider shall be present at the infirmary each
12 day with a minimum of eight (8) hours of RN care and sixteen (16) hours of LPN
13 care per day. Custody staff will not provide any routine medical care or medical
14 observation in the infirmary. Patients admitted in the infirmary will not have to
15 "kite" (submit a medical request form) for medical care.

11 The above summary does not include all the terms and conditions of the Proposed Settlement
12 Agreement. The only complete statement of the terms of the proposed settlement is found in the
13 actual Proposed Settlement Agreement. You may obtain a copy of the Proposed Settlement
14 Agreement by writing to:

14 Amy Fetting
15 ATTN: RIKER V. GIBBONS, 3:08-cv-00115-LRH-VPC
16 ACLU National Prison Project
17 915 15th St., NW, 7th Floor
18 Washington, DC 20005

17 3. ***The Settlement Must Be Approved By The Court Before It is Final.***

18 Under federal class action rules, before this lawsuit can be settled, the Court must find that the
19 settlement terms are fair, reasonable, and adequate to all Parties. Court approval is an additional
20 level of protection for all class members. While Class Counsel strongly believe that this
21 settlement is in the best interests of all current and future prisoners at ESP, we recognize that
22 some class members may not support the settlement. If you do not think this settlement is a good
23 idea, you have the right to file a formal objection with the Court.

21 After reviewing all timely objections, the Court will hold a Fairness Hearing on
22 October 25, 2010 at 10:00 am in the Bruce R. Thompson Federal Building and U.S.
23 Courthouse in Reno, Nevada, to decide whether or not to approve the Proposed Settlement
24 Agreement. If the Court decides that the settlement terms are fair, reasonable, and adequate, then
25 the Proposed Settlement Agreement will become final. If the Court approves the Proposed
26 Settlement Agreement, the parties will jointly move for the case to be dismissed with prejudice.
27 Thereafter, any disputes regarding implementation of the Agreement will be handled through the
28 dispute resolution mechanism set forth in the Agreement and/or state court.

26 If the Court decides not to approve the Proposed Settlement Agreement, the settlement will be
27 voided and will have no further effect. The case will not be settled, but will go to trial. If that
28 happens, there is no assurance that any decision at trial will be in favor of the class members, or
would be upheld on appeal; or that, even if there is a favorable trial decision, it will be as
favorable to class members as the Proposed Settlement Agreement would have been.

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4. You Have the Right to Object to the Settlement.

If you have no objection to the Proposed Settlement Agreement, you do not have to do anything.

If, however, you believe the Court should not approve the settlement because you object for any reason to the terms of the Proposed Settlement Agreement, you may object. You must submit your objection in writing to the Court. Any objection must contain the following information:

- a. The case name and number: **RIKER V. GIBBONS, 3:08-cv-00115-LRH-VPC**
- b. Your full name and NDOC number
- c. A concise explanation of why you object to the Proposed Settlement Agreement

For your objection to be considered by the Court, you must mail it by Sept. 10, 2010 to the Clerk of the Court, with a copy to all Counsel, at the following addresses:

<p>Clerk of the Court ATTN: RIKER V. GIBBONS, 3:08-cv-00115-LRH-VPC Bruce R. Thompson Federal Building and U.S. Courthouse United States District Court District of Nevada – Reno 400 S. Virginia Street Reno, NV 89501</p>	<p>Amy Fettig Staff Counsel ATTN: RIKER V. GIBBONS, 3:08-cv-00115-LRH-VPC ACLU National Prison Project 915 15th St. NW, 7th Floor Washington, DC 20005</p>
<p>Michon Martin Deputy Attorney General Nevada Attorney General ATTN: RIKER V. GIBBONS, 3:08-cv-00115-LRH-VPC 100 North Carson Street Carson City, NV 89701-4717</p>	

5. Money Issues

This lawsuit does not involve money damages, so whether or not this case settles or goes to trial, no class member will obtain money from the Defendants.

The proposed settlement provides that Defendants shall pay Plaintiffs' Counsel a one-time lump sum of \$325,000 to cover their fees and costs for the last three years. Any fees and costs incurred by Plaintiffs' Counsel during the monitoring period of this settlement agreement shall be covered solely by Plaintiffs' Counsel.

6. Effect on Pending Lawsuits Regarding Medical Care at ESP

1 The Proposed Settlement Agreement will not preclude individual damages claims by ESP
2 prisoners.

3 The Proposed Settlement Agreement will not preclude equitable claims for injunctive or
4 declaratory relief tailored to the specific circumstances of the individual prisoner that are filed
after the dismissal of *Riker v. Gibbons* lawsuit with prejudice.

5 However, individual equitable claims for injunctive or declaratory relief for medical care issues
6 filed before the *Riker v. Gibbons* lawsuit is dismissed with prejudice may be affected by the
settlement of this case.

7
8 **7. Questions About the Proposed Settlement Agreement**

9 If you have any questions about the proposed settlement, you may contact Class Counsel by
writing to:

10 Amy Fetting
11 Staff Counsel
12 ATTN: RIKER V. GIBBONS, 3:08-cv-00115-LRH-VPC
13 ACLU National Prison Project
14 915 15th St. NW, 7th Floor
15 Washington, DC 20005
16
17
18

19 **ORDER**

20 **APPROVED:**

21 **DATED** this 28th day of July, 2010.



22
23 **LARRY R. HICKS**
24 **UNITED STATES DISTRICT JUDGE**
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