

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT  
EASTERN DIVISION**

<b>JAMES HANDWORK</b>	:	<b>CASE No.: 16 CV 00825</b>
	:	
<b>Plaintiff,</b>	:	
	:	<b>JUDGE SOLOMON OLIVER, JR.</b>
<b>v.</b>	:	
	:	
<b>THE OHIO DEPARTMENT OF</b>	:	
<b>REHABILITATION AND CORRECTIONS,</b>	:	
<i>et al.</i>	:	
	:	
<b>Defendant.</b>	:	

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**DEFENDANTS' FIRST MOTION FOR SUMMARY JUDGMENT**

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Defendants, The Ohio Department of Rehabilitation and Correction (“ODRC”) and Gary C. Mohr, Director ODRC, by and through undersigned counsel hereby move this Honorable Court for an Order granting summary judgment in their favor pursuant to Fed. R. Civ. P. 56(a). The undersigned *does not* represent nor appear as counsel for Lake Erie Correctional Institution (“LaeCI”).

Plaintiff has failed to join a necessary and indispensable party: LaeCI, and Corrections Corporation of America (“CCA”) and under Fed.R. Proc. 12(b)(7), and 19. Defendants contend that LaeCI is a privately operated prison, an independent contractor, operates its own in-house created medical review procedure and their Chief Medical Physician makes the final decision on medical matters, e.g., hearing aids, (as claimed herein).

Defendants contend that ODRC is not a suable entity and that Director Mohr does not have a medical license and was not involved in the medical decision regarding Plaintiff’s claims

for two hearing aids. Accordingly, Defendants assert that Plaintiff has failed to state a claim upon which this Honorable Court may grant relief. There is no genuine dispute of any material fact as to Plaintiff's claims against named Defendants or upon any issue that Plaintiff would bear the burden of proof at trial.

The attached Memorandum supports Defendants' Motion. Defendants are thus entitled to judgment as a matter of law.

**Respectfully submitted,**

**MICHAEL DEWINE (0009181)**  
**Ohio Attorney General**

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**MEMORANDUM IN SUPPORT OF DEFENDANTS'**  
**FIRST MOTION FOR SUMMARY JUDGMENT**

**I. INTRODUCTION**

Inmate Handwork, #440-602 (“Plaintiff”) admits he is a prisoner serving a 15-years-to-life sentence of incarceration with ODRC and was transferred to the Lake Erie Correctional Institution (“LaeCI”). (Complaint: Doc #: 1, PageID #: 1, ¶ 1, 4, 8, 11).

Plaintiff alleges the named Defendants herein refuse to meet his medical need for two functional hearing aids, claiming violation of the Americans with Disabilities Act, and the Eighth Amendment to the United States Constitution. (Complaint: Case: Doc #: 1, PageID #: 1, ¶ 1). Plaintiff alleges he is allegedly a hearing-disabled person. (Complaint: Doc #: 1, PageID #: 2, 10, ¶¶ 1, 3)

**II. STATEMENT OF FACTS**

Plaintiff admits that he has not had a single write-up of a rule violation since 2006: this is a significant point that belies Plaintiff’s assertions.

Plaintiff’s assertions are unsupported other than with self-serving statements: 1) that he cannot identify the direction a sound is coming from; 2) that he is unable to communicate effectively with other prisoners or prison staff; 3) that he cannot respond to the orders of corrections officers; 4) that he cannot hear warnings or fire alarms; 4) he cannot participate in prison programs that require hearing; and 6) that he cannot take advantage of recreational equipment available to other prisoners such as television. Defendants contend there is no evidence to support Plaintiff’s claims that he was denied the opportunity to live his life fully or safely. (Complaint: Doc #: 1, PageID #: 3-4, ¶¶ 10-11).

Plaintiff claims Defendant Gary Mohr is the Director of ODRC and is responsible for its practices and policies. Plaintiff believes that Defendants control LaeCI. Plaintiff believes that Defendants maintain a statewide policy of providing prisoners only one working hearing aid, even for prisoners who have a medical need for two. Plaintiff claims that ODRC is the state agency that “controls” all Ohio state prisons, whether they are State or privately managed. Finally, Plaintiff asserts that ODRC sets the policies and protocols that govern all inmate health services. (Complaint: Doc #: 1, PageID #: 3-5, ¶¶ 1, 4, 5, 6, 9, 14-16)

### **III. LAW AND ANALYSIS**

#### **A. Standard for Summary Judgment**

Rule 56(a) of the Federal Rules of Civil Procedure sets forth the standard for deciding a motion for summary judgment, providing, in pertinent part,

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(a).

Summary judgment practice uses a burden-shifting approach. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In describing this approach, the Court held “[O]f course, a party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material fact.” *Catrett, supra* at 323. Once the moving party has met its initial burden, the non-moving party then bears the burden of demonstrating, through specific facts, that there is a genuine issue of material fact that must be decided at trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). Upon the burden

successfully shifting to the non-moving party, the non-moving party may not resist summary judgment merely by resting upon the earlier pleadings or reasserting the same allegations. *Glover v. Speedway Super Am. LLC*, 284 F.Supp. 2d 858, 862 (S.D. Ohio 2003). Rather, the non-moving party must come forward with specific facts of the kind and quality as listed in Fed. R. Civ. P. 56(c)(1). Fed. R. Civ. P. 56(c)(1)'s requirements apply with equal force to both the moving party as well as the non-moving party in terms of the kind and quality of evidence that each must produce, either in support of their own motion for summary judgment, or conversely, in their attempts to defeat summary judgment brought against them. Fed. R. Civ. P. 56(c)(1).

Fed. R. Civ. P. 56(c)(1)(A) specifies "particular parts of the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(B) additionally permits a moving party or a resisting party to demonstrate that there is no genuine issue of material fact by "[s]howing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1)(B).

Summary judgment evidence must be viewed and construed "[i]n a light most favorable to the non-moving party." *Matsushita Elec. Industrial Co., Ltd, et al. v. Zenith Radio Corp., et al.*, 475 U.S. 574, 587 (1986); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157; *Anderson v. Liberty, Inc.*, 477 U.S. 242, 255. However, this deference to the non-moving party, that is viewing the evidence in a light most favorable to the non-moving party's position, occurs only after the non-moving party has discharged their duty to respond by identifying a material fact that is [genuinely] in dispute. *James v. Tunnell*, 2011 U.S. Dist. LEXIS 85911 at \*10-11, 24. [added]. And when considering the non-moving party's responses to a proper summary

judgment motion brought against him, a court is not obligated to, and indeed should not, rely on the non-movant's version where it is "so utterly discredited by the record" as to be rendered a "visible fiction."...The court's duty to view the facts in the light most favorable to the nonmovant does not require or permit the court to accept mere allegations that are not supported by factual evidence. *Chappell v. City of Cleveland*, 585 F.3d 901, 906 (6<sup>th</sup> Cir. 2009).

Further, and of particular significance here, a court entertaining a motion for summary judgment is not required to 'sift through the record in search of evidence to support a party's opposition to summary judgment'; rather, 'Rule 56 allocates that duty to the opponent of the motion, who is required to point out the evidence, albeit evidence that is already in the record, that creates an issue of fact.' *Williamson v. Aetna Life Ins. Co.*, 481 F.3d 369, 379-80 (6th Cir. 2007) (citation omitted); see also *Tucker v. Tennessee*, 539 F.3d 526, 531 (6th Cir. 2008) (citation omitted). Moreover, the non-moving party must show more than a scintilla of evidence to overcome summary judgment; it is not enough for the non-moving party to show that there is some metaphysical doubt as to material facts. *Matsushita Elec. Indus. Co.*, 475 U.S. at 586-87, 106 S.Ct. 1348; see also *Barr v. Lafon*, 538 F.3d 554, 574 (6th Cir. 2008). *Thomas v. Denno*, No. 4:10-cv-2723, 2012 U.S. Dist. LEXIS 24183 (N.D. Ohio Feb. 27, 2012).

Finally, in summary judgment practice a material fact is defined as a fact whose resolution will affect the outcome of the lawsuit. *Delaney v. City of Salem, Ohio*, 2008 U.S. Dist. LEXIS 31849, quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct 2505, 91 L.Ed. 2d 202 (1986). A genuine issue is defined as one in which a reasonable jury could return a verdict for the non-moving party. *Id.*

**B. Review or Screening of the Complaint**

The court may review the complaint to determine whether the complaint, or any portion of it, should be dismissed because it is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief (Prison Litigation Reform Act of 1995 § 804, 28 U.S.C. § 1915(e)(2)(B); § 805,28 U.S.C. § 1915A(b)].

A complaint may be dismissed as frivolous when the plaintiff cannot make any claim with a rational or arguable basis in fact or law. *Neitzke v. Williams*, 490 U.S. 319, 328-29 (1989); *see also Lawler v. Marshall*, 898 F.2d 1196, 1198 (6th Cir. 1990). Congress has authorized the *sua sponte* dismissal of complaints that fail to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915 (e)(2)(B)(ii) and 1915A(b)(l). A complaint filed by a *pro se* plaintiff must be "liberally construed" and "held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam)(quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

By the same token, however, the complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see also Hill*, 630 F.3d at 470-71 ("dismissal standard articulated in *Iqbal* and *Twombly* governs dismissals for failure to state a claim" under §§ 1915A(b)(l) and 1915(e)(2)(B)(ii)).

An action has no arguable legal basis when the defendant is immune from suit or when plaintiff claims a violation of a legal interest which clearly does not exist. *Neitzke*, 490 U.S. at 327. An action has no arguable factual basis when the allegations are delusional or rise to the level of the irrational or "wholly incredible." *Denton*, 504 U.S. at 32; *Lawler*, 898 F.2d at 1199.

The Court need not accept as true factual allegations that are "fantastic or delusional" in reviewing a complaint for frivolousness. *Hill v. Lappin*, 630 F.3d 468, 471 (6th Cir. 2010) (quoting *Neitzke*, 490 U.S. at 328).

Based on the arguments present herein: Defendants' immunity, respondeat superior, lack of involvement of control over the specific medical device assigned (hearing aid), independent operator of a prison facility and the contract, and the Plaintiff's failure to present any rights violated by the Defendants herein, the case should be dismissed.

**C. ODRC is Not a Legal Entity Subject to Suit**

Plaintiff, brings this § 1983 action for damages and injunctive relief against ODRC and the Director of ODRC, alleging his civil rights were violated: believing he is entitled to two hearing aids instead of the one he has been provided through LaeCI.

Defendants contend that ODRC should be dismissed as a defendant because it is not a "person" or legal entity capable of being sued under § 1983. *See, e.g., Wingo v. Tennessee Dep't of Carr.*, 499 F. App'x 453,454 (6th Cir. 2012) (per curiam) (affirming screening dismissal of complaint to the extent it "fail[ed] to state a plausible claim for relief against the [state] Department of Correction or the prison"); *Good v. Ohio Dep't of Rehab. & Carr.*, No. 1:15cv190, 2015 WL 2452444, at \*1, \*3 (S.D. Ohio May 21, 2015) (Dlott, J.; Bowman, M.J.) (and cases cited therein) (dismissing complaint against the ODRC at the screening stage on the ground that the ODRC "is not a 'person' or legal entity that may be sued under § 1983"); *McGlone v. Warren Carr. Inst.*, No. 1:13cv126, 2013 WL 1563265, at \*3 (S.D. Ohio Apr. 12, 2013) (Bowman, M.J.) (Report & Recommendation) (and numerous cases cited therein) (holding that the complaint against the ODRC and an Ohio prison was subject to dismissal at the screening stage because

"neither the state prison facility nor the state corrections department is an entity that is capable of being sued under § 1983"), *adopted*, 2013 WL 2352743 (S.D. Ohio May 29, 2013) (Dlott, J.).

Based on the case law and arguments herein, ODRC must be dismissed as a defendant in this action.

**D. 42 U.S.C. § 1983 and Respondeat Superior / Supervisory Liability**

Plaintiff claims that Defendant, Director Mohr of ODRC, is responsible for its practices and policies, and that allegedly while acting under color of law as an agent of ODRC, somehow he violated Plaintiff's rights. Plaintiff sues Defendant Mohr his official capacity and as a representative of ODRC. (Complaint: Doc # 1-1, PageID #: 1,2; ¶¶1, 6.)

Plaintiff brings his claims against Defendants under 42 U.S.C. § 1983, which provides, in part, as follows:

\*\*\* Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress. \*\*\*

42 U.S.C. § 1983.

In order to proceed under § 1983, a plaintiff must prove both that:

- (1) the perpetrator acted under color of state law; and
- (2) the conduct deprived the complainant of rights, privileges, or immunities secured by the Constitution or laws of the United States.

*Parratt v. Taylor*, 451 U.S. 527, 535 (1981); *Brandon v. Allen*, 719 F.2d 151, 153 (6th Cir.1983), *rev'd and remanded sub nom, Brandon v. Holt*, 469 U.S. 464 (1985).

As a general rule, a plaintiff proceeding under § 1983 must allege that the deprivation of his rights was intentional or at least the result of gross negligence. *Davidson v. Cannon*, 474 U.S. 344, 348 (1986). Mere negligence is not actionable under § 1983. *Chesney v. Hill*, 813 F.2d

754, 755 (6th Cir. 1987). Prison officials, whose only roles involve the denial of administrative grievances or the exercise of supervisory authority, are not liable under § 1983. *Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir.1999). To establish liability under § 1983, a plaintiff must plead and prove that a defendant is personally responsible for the unconstitutional actions which injured him. *Monell v. New York City Dept. of Soc. Servs.*, 436 U.S. 658, 694 (1978). *Respondeat superior* is not a basis for liability. *Polk Co. v. Dodson*, 454 U.S. 313, 325 (1981); *Rizzo v. Goode*, 423 U.S. 362, 371 (1976). Under 42 U.S.C. § 1983, a supervisor is not liable for “mere failure to act.” *Shehee*, 199 F.3d at 300.

Plaintiff’s Complaint contains no factual allegations that Defendant Mohr was directly involved in the alleged denial of medical care. Plaintiff somehow believes that Defendant Mohr personally supervises the decisions made by LaeCI.

Dr. Andrew Eddy’s Declaration provides key information regarding the lack of any supervision or decision making by ODRC or Defendant Mohr in the instant case. Dr. Eddy provides he is a Doctor of Medicine and so licensed for over thirty years. He states further that he is employed by ODRC and have held the position of the State Medical Director since January 2011. As State Medical Director for the ODRC, Dr. Eddy administers, supervises, and directs the delivery of medical services to all of Ohio’s prison inmates while they remain incarcerated in the state-managed correctional institutions. Importantly, Dr. Eddy provides that when an ODRC inmate transferred to a privately operated prison, (e.g., LaeCI), ODRC is not consulted regarding the day-to-day healthcare services or medical decisions for the inmates. Dr. Eddy further states that LaeCI is a privately operated prison, under the administration and direction of the Corrections Corporation of America (“CCA”). Though LaeCI staff follows ODRC prison rules, regulations and policies for ODRC inmates Dr. Eddy states that the delivery of healthcare

services and handling of medical issues are the responsibility the CCA for inmates housed at LaeCI and that LaeCI's Chief Medical Physician and CCA are responsible for the day-to-day healthcare decisions. Dr. Eddy adds that ODRC employed staff have been not involved in any review of healthcare services or medical decisions regarding Plaintiff since his transfer to LaeCI. (Dr. Eddy's Declaration, State's Ex: A, ¶¶ 1-10).

As to hearing aids, Dr. Eddy states the decision to purchase medical aids is solely the responsibility of CCA and that ODRC is not consulted or billed for any purchase of medical aids for ODRC inmates at LaeCI. Dr Eddy provides that he has not been requested to review, nor did he review any of Inmate Handwork's #440-603 medical records, nor had his professional opinion been solicited for a determination of the hearing aid needs of the Plaintiff. Dr. Eddy indicates that on one occasion, a Dr. Neau (LaeCI physician) did call me to confirm LaeCI's interpretation of an ODRC policy regarding medical aids. Dr. Eddy states he was not aware of the Plaintiff nor did he advise LaeCI that the Plaintiff was entitled to only one hearing aid, nor did he advise LaeCI regarding Plaintiff need for a hearing aid or hearing aids. Dr. Eddy states that a Dr. Neu did call him regarding medical aids, but that he did not indicate that Plaintiff is entitled to only one hearing aid. Importantly, Dr. Eddy declares the final decision on such matters would be the LaeCI's Chief Medical Physician and CCA. Dr. Eddy adds that ODRC Director Mohr is never consulted regarding healthcare decisions of individual inmate patients. (Dr. Eddy's Declaration, State's Ex: A, ¶¶ 4-13),

Concerning the Defendants herein, Plaintiff has provided no countervailing evidence regarding personal liability for the alleged denial of medical care. With respect to Defendants, ODRC and Director Mohr, there is no genuine question of material fact regarding their personal liability for the alleged constitutional violations. Plaintiff's claims must thereby fail.

#### **E. Immunity**

Plaintiff's demand for relief includes a request that Defendants pay compensatory, and punitive damages, attorney fees and costs. (Complaint, Doc #: 1, PageID#: 7).

To the extent that the plaintiff seeks damages in the instant action, the Eleventh Amendment bars plaintiff's cause of action against the state agency defendant. *See, e.g., Wingo*, 499 F. App'x at 454; *Good, supra*, 2015 WL 2452444, at \*3 (and cases cited therein); *McGlone, supra*, 2013 WL 1563265, at \*3 (citing *Rodgers v. Michigan Dep't of Corr.*, 29 F. App'x 259, 260 (6th Cir. 2002); *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66-71 (1989)). In addition, plaintiff has failed to state an actionable claim under § 1983 to the extent he has alleged in the complaint that the Defendants "engaged in medical indifference " regarding his hearing aids. Complaint, Doc #: 1, PageID#: 1-7 , ¶¶ 1, 5, 6, 9, 12, 14-19, 20, 22, 24, 25, 27, 31-33, and 35-37, e.g. ).

To state a viable claim under § 1983, plaintiff must allege that he was deprived of "a right secured by the United States Constitution or a federal statute." *See Spadafore v. Gardner*, 330 F.3d 849, 852 (6th Cir. 2003). Mere negligence is insufficient to state a claim of constitutional dimension under § 1983.

Defendants oppose the claims as brought by the Plaintiff as they are immune from the instant suit. "Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). "Under the doctrine of qualified immunity, 'government

officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”” *Phillips v. Roane County*, 534 F.3d 531, 538 (6th Cir. 2008) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). “[Q]ualified immunity applies regardless of whether the government official’s error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.” *Id.* (internal quotation marks and citations omitted).

The determination of whether a government official is entitled to qualified immunity is a two-part inquiry. *Miller v. Sanilac County*, 606 F.3d 240, 247 (6th Cir. 2010). “First, viewing the facts in the light most favorable to the plaintiff, has the plaintiff shown that a constitutional violation has occurred? Second, was the right clearly established at the time of the violation?” *Id.* (internal quotation marks and citations omitted). The Court need not consider these questions sequentially. *Jones v. Byrnes*, 585 F.3d 971, 975 (6th Cir. 2009) (citation omitted). “Once it is determined that the right is clearly established, the [C]ourt must determine ‘whether the plaintiff has alleged sufficient facts supported by sufficient evidence to indicate what [the defendant] allegedly did was objectively unreasonable in light of [the] clearly established constitutional rights.’” *Dickerson v. McClellan*, 101 F.3d 1151, 1158 (6th Cir. 1996) (quoting *Adams v. Metiva*, 31 F.3d 375, 387 (6th Cir. 1994)).

Based on the foregoing analysis, Plaintiff has failed to assert any legal right to two hearing aids and failed to provide any facts supported by sufficient evidence to indicate what the Defendants allegedly did was objectively unreasonable in light of the clearly established constitutional rights. Accordingly, Plaintiff’s claims must fail.

**F. Medical Care / Eighth Amendment**

There is no established constitution right to the prescription medication of one's choice and by analogy a requirement or request for two hearing aids. *Apanovitch*, 643 F.3d 162, 169 (6th Cir. 2011) App'x at 707.

Defendants contend that no genuine issue of material fact exists as the medical care provided to Plaintiff constitutes deliberate indifference in violation of the Eighth Amendment and maintain that their action(s) or lack thereof, do not rise to the level of a constitutional violation. It is well established that “[t]he Eighth Amendment forbids prison officials from unnecessarily and wantonly inflicting pain on an inmate by acting with deliberate indifference toward [his] serious medical needs.” *Jones v. Muskegon Cnty.*, 625 F.3d 935, 941 (6th Cir. 2010) (internal quotations and citations omitted). A claim for deliberate indifference “has both objective and subjective components.” *Alspaugh v. McConnell*, 643 F.3d 162, 169 (6th Cir. 2011). The United States Court of Appeals for the Sixth Circuit has explained:

The objective component mandates a sufficiently serious medical need. [*Blackmore v. Kalamazoo Cnty.*, 390 F.3d 890, 895 (6th Cir.2004)]. The subjective component regards prison officials’ state of mind. *Id.*

Deliberate indifference “entails something more than mere negligence, but can be satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result.” *Id.* at 895–96 (internal quotation marks and citations omitted).

The prison official must “be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Id.* at 896 (internal quotation marks and citation omitted). *Barnett v. Luttrell*, 414 F. App'x 784, 787–88 (6th Cir. 2011). The Sixth Circuit has also noted that in the context of deliberate indifference claims:

[W]e distinguish between cases where the complaint alleges a complete denial of medical care and those cases where the claim is that a prisoner received inadequate medical treatment. Where a prisoner alleges only that the medical care he received was inadequate, federal courts are generally reluctant to second guess medical judgments. However, it is possible for medical treatment to be so woefully inadequate as to amount to no treatment at all. *Alspaugh*, 643 F.3d at 169 (internal quotations and citations omitted). Similarly, “[o]rdinary medical malpractice does not satisfy the subjective component.” *Grose v. Corr. Med. Servs., Inc.*, 400 F. App’x 986, 988 (6th Cir. 2010). Moreover, “a difference of opinion between [a prisoner] and the prison health care providers and a dispute over the adequacy of [a prisoner’s] treatment . . . does not amount to an Eighth Amendment claim.”

*Apanovitch v. Wilkinson*, 32 F. App’x 704, 707 (6th Cir. 2002).

With respect to the objective component, Defendants deny that Plaintiff was suffering from a sufficiently serious medical need with respect to his alleged need for two hearing aids. Plaintiff admits that he has not had a single rule violatation since 2006: this is a significant point that belies Plaintiff’ assertions. Plaintiff’s assertions are unsupported -- other than with self-serving statements: that he cannot identify the direction a sound is coming from; communicate effectively with other prisoners or prison staff; respond to the orders of corrections officers; hear warnings or fire alarms; participate in prison programs that require hearing; or take advantage of equipment available to other prisoners such as television. One would surmise that any failure to follow correctional officer’s instructions let alone failure to respond to warnings and fire alarms would be a violation of institutional rules.

Defendants contend there is no evidence to support Plaintiff’s claims that he was denied the opportunity to live his life fully or safely by Defendants herein. (Complaint: Doc #: 1, PageID #: 3-4, ¶¶ 10-11). Plaintiff states that in late 2015, he began to have trouble hearing from both hearing aids. At that time, an audiologist was retained by LaeCI – and determined that both

of Plaintiff's hearing aids had become worn out, obsolete and that the audiologist prescribed new hearing aids for both ears. (Complaint: Doc #: 1, PageID #: 3-4, ¶ 8).

Defendants contend that Plaintiff simply disagrees with the decision that LaeCI physicians made the decision to replace one hearing aid as opposed to two. At most, Plaintiff has demonstrated a disagreement regarding his preferred treatment plan. As explained above, "a difference of opinion between [a prisoner] and the prison health care providers . . . does not amount to an Eighth Amendment claim." *Apanovitch*, 32 F. App'x at 707.

Similarly, Defendants are entitled to qualified immunity with respect to their treatment of Plaintiff. Plaintiff has not adduced sufficient evidence to create a genuine issue of material fact as to whether Defendants acted objectively unreasonably in light of clearly established law. As set forth herein, Defendants had no role in treating Plaintiff's hearing aid issues. Defendants are entitled to qualified immunity; as such, Plaintiff's claims must fail.

**G. LaeCI /MCC is a Privately Operated Facility and a Necessary and Indispensable Party Herein**

Defendants contend that Plaintiff has sued the wrong Defendant(s). LaCI provided the medical services in the instant matter – not the named Defendants herein. LaCI and CCA is a necessary and indispensable party under the Federal Rules of Civil Procedure 12(B)(7) and 19.

Ms. Kelly Sanders (Deputy Director 5/ Chief Procurement Officer ["CPO"] ) affidavit provides she is responsible for planning, directing, and coordinating statewide procurement activities also planning, formulating and implementing comprehensive procurement policies and procedures. (Sanders' Affidavit, with attachments, Defendant's Ex.: B, B-1, B-2).

In addition, Ms. Sanders provides that LaeCI and or Corrections Corporation of America ("CCA"), is the contracting body for the institution and that the contract between CCA and

ODRC has been effective since August 31, 2011. The request for proposal (“RFP”) and contract for the CCA / Lake Erie Correctional Institution’s operation may be found at the DAS public records web site at [https://procure.ohio.gov/OrigContract/CSP901412\\_OC.pdf](https://procure.ohio.gov/OrigContract/CSP901412_OC.pdf) and the CCA / Lake Erie Correctional Institution’s contract renewal may be located at [https://procure.ohio.gov/RevisedContract/CSP901412\\_RC.pdf](https://procure.ohio.gov/RevisedContract/CSP901412_RC.pdf). Attached to her affidavit are two documents / records that refer to the status of CCA’s Lake Erie Correctional Institution as a private correctional facility. (Labeled DRC001, Rev. 07/01/15 and DRC001, Rev. 8/31/11). (Sander’s Affidavit, with attachments, Defendant’s Ex.: B, B-1, B-2). Specifically, the attachments referred to above in paragraphs 5, 6, and 7 accurately reflect the status of the CCA’s Lake Erie Institution is a privately run facility and not owned nor operated by the State of Ohio or ODRC. (Sanders’ Affidavit, with attachments, Defendant’s Ex.: B, B-1, B-2).

Ms. Linda Witt’s provides in her Declaration that since 1996, she has been a Registered Nurse licensed to practice in the State of Ohio and as a registered nurse, she us required maintain her license in accordance with the Ohio Nurse Practice Act. (Witt’s Declaration, Defendant’s Ex.: C, ¶2). Ms. Witt states that she serves as the Director of Nursing at LaeCI. Additionally, she states her duties include scheduling providers and nursing coverage and responding to inmate grievances related to their medical, mental health, and dental care and that at the present. Ms. Witt also provides and that during all relevant times, she was the Health Services Administrator (“HSA”) and as the HAS, is responsible for providing administrative day-to-day oversight of the medical, mental health, dental and medical records services at LaeCI. Witt’s Declaration, Defendant’s Ex.: C, ¶¶ 5, 6, 7).

In addition, Ms. Witt states she has been assigned to the Lake Erie Correctional Institution (“LaeCI”) since 2006 and that she was initially employed by Management and

Training Corporation and became an employee of Corrections Corporation of America (“CCA”) when CCA assumed operation of the (LaeCI) facility. (Witt’s Declaration, Defendant’s Ex.: C, ¶3).

Ms. Witt declares that LaeCI is a privately operated correctional institution that is managed by the Corrections Corporation of America, an independent contractor and that for inmates placed at LaeCI by the Ohio Department of Rehabilitation and Correction (ODRC), LaeCI adheres to the medical policies, treatment protocols, and requirements that also govern the ODRC operated institutions. (Witt’s Declaration, Defendant’s Ex.: C, ¶¶ 4, 5).

Ms. Witt states that she reviewed Plaintiff’s (Handwork’s #440-603) prison generated medical records, maintained at LaeCI and is aware of the lawsuit filed by the Plaintiff. (Witt’s Declaration, Defendant’s Ex.: C, ¶¶ 9, 11). Ms. Witt provides that Plaintiff now Inmate Handwork #440-603 currently has a working digital hearing aid, and has been fully instructed regarding the maintenance and operation of that hearing aid. In addition, she states that while at LaeCI, Plaintiff (Inmate Handwork) received appropriate medical care for many issues -- including his hearing aids, and that it appears that at some point in his entry into the prison system, Inmate Handwork #440-603 had two hearing aids. Ms. Witt states that Plaintiff Handwork #440-603 had several medical visits wherein he was instructed on how to clean and maintain his hearing aids and at some point Plaintiff Inmate complained his hearing aids were broken. (Witt’s Declaration, Defendant’s Ex.: C, ¶¶ 11, 12, 13).

Ms. Witt declares that Inmate Handwork #440-603 was fitted by LaeCI’s private contractor, third party provider Beltone, for a digital hearing aid – and it appears that he did not follow all instructions on its operation and he was taken back to Beltone recently to have the volume set and was provided instructions on how to maintain same. (Witt’s Declaration,

Defendant's Ex.: C, ¶ 26).

Ms. Witt provides that LaeCI, medical personnel scheduled Plaintiff Inmate Handwork #440-603 for an appointment with an outside audiologist and that based on statements provided to the audiologist by Inmate Handwork #440-603, the audiologist recommended that Inmate Handwork #440-603 should receive a replacement hearing aid for each ear. After such a recommendation, Ms. Witt states that the LaeCI Chief Medical Physician reviews the file and if, in his/her determination the proposed or recommended test, procedure, or medical aid is still medically necessary, they are then to submit the proposed request for Collegial Review. She adds that Medical staff at LaeCI reviewed the recommendation of the audiologist and Inmate Handwork's #440-603 hearing and daily living conditions during an internal collegial review. The Chief Medical Physician of LaeCI inmate healthcare services made the final determination that Inmate Handwork #440-603 was medically eligible to receive one hearing aid.

(Witt's Declaration, Defendant's Ex.: C, ¶¶ 14, 15, 16)

Ms. Witt describes further that the LaeCI Collegial Review is to ensure that provision of medically necessary, appropriate and evidenced-based healthcare is being provided to inmate-patients. She describes that evidence-based medical care is using the best available research evidence to guide clinical decision making in the care of the individual patient and that the Collegial Review is designed to facilitate discussion amongst the various medical professionals in CCA's employ to arrive at a medically necessary, medically appropriate and evidence-based management plan. Ms. Witt states that if the best, medically sound and medical-based evidence suggests that the requested or recommended procedure, test, or medical aid is warranted and appropriate, any expense or cost to the CCA that is to be incurred as a result is not considered in any decision-making discussion or process. Ms. Witt provides that if as a result of the Collegial

Review a proposed or recommended test, procedure, or medical aid is deemed medically unnecessary or not medically appropriate, an alternate plan of care (APOC) is always established and implemented to address the patient-inmate's underlying medical need. (Witt's Declaration, Defendant's Ex.: C, ¶¶ 17, 18, 19).

Ms. Witt further provides that (LaeCI) CCA, as a privately operated prison facility, implements and maintains their own internal healthcare review process and as LaeCI is an independent contractor, the medical decisions only involve the Chief Medical Physician and the Regional Medical Director selected and employed by CCA Dr. Payne, LaeCI's Chief Medical Physician, approved the purchase and fitting of one hearing aid for Inmate Handwork #440-603. The records reflect Dr. Neau was also involved in the decision making process. (Witt's Declaration, Defendant's Ex.: C, ¶¶ 20, 21).

Ms. Witt states she is not aware that there is any ODRC policy regarding that an inmate is required to have two hearing aids, regardless of the primary care physician's determination. The medical records reflect that Policy No. 68 MED 01. (Witt's Declaration, attachment State's Exhibit: C-1) was consulted regarding this hearing aid issue. Ms. Witt adds that for the operation of the prison regarding ODRC inmates, LaeCI follows ODRC policy as provided under the RFP ("request for proposal") and the contract and that there is one policy, ODRC 68 MED 14, (Witt's Declaration, attachment, State's Exhibit: C-2) that addresses hearing aids. However, as LaeCI is a subcontractor, any final decision regarding medically necessary hearing aids is made by LaeCI. (Witt's Declaration, Defendant's Ex.: C, ¶¶ 22, 23, 24).

Ms. Witt declares that LaeCI has no record of any "kites" or write-ups, regarding Plaintiff Handwork's inability to hear or failure to respond to commands nor have any observations or reports by corrections officers that Inmate Handwork was unable to participate in events and

respond to the daily requirements of a prisoner been submitted to inmate health services. She adds, that in fact, after reviewing Inmate Handwork's #440-603 conduct history, it appears that since April 6, 2010, Inmate has had no conduct reports (rule violations) --- indicative that he was functioning without any problems in the prison community, including without any failure to follow orders or to meet obligations such as bed count and other prison orders. (Witt's Declaration, Defendant's Ex.: C, ¶ 25).

Ms. Witt provides that Plaintiff Inmate Handwork's medical file contains records regarding various medical appointments and consultations and that nothing in the files indicate that Plaintiff Inmate Handwork had any difficulty communicating with any health services provider during any appointments, moreover Plaintiff Inmate Handwork has had long-standing problems regarding equilibrium. (Witt's Declaration, Defendant's Ex.: C, ¶ 27).

Based on the foregoing, Defendants were not the decision-making entity or person regarding Plaintiff's decision to have one hearing aid or two as Plaintiff as alleges. In fact, LaeCI provided the medical care relating to the hearing aid provided to Plaintiff. Also, among other things, Plaintiff did not receive any write-ups regarding his inability to follow correctional officer's orders or for failing to follow alarms or instructions. In fact, Plaintiff has had issues with his equilibrium before his complaint regarding the hearing aid. Additionally, Ms. Witt succinctly points out that it was LaeCI's decision, through their in-house medical process to provide one hearing aid and that there is no policy requiring an Inmate be provided two hearing aids by named Defendants.

Accordingly, Plaintiff has failed to state a claim upon which relief can be granted, therefore his claims must fail.

## **H. The Fourteenth Amendment Equal Protection Clause**

The Fourteenth Amendment to the United States Constitution states, in pertinent part:

No State shall...*deny to any person within its jurisdiction the equal protection of the laws.* U.S. Const., amend. XIV, § 1 (emphasis added).

“The Equal Protection Clause prohibits discrimination by government which either burdens a fundamental right, targets a suspect class, or *intentionally treats one differently than others similarly situated without any rational basis for the difference.*

*Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 312 (6th Cir. 2005).” *Rondingo, L.L.C. v. Township of Richmond, et al.*, 641 F.3d 673, 681-82 (6th Cir. 2011). (emphasis added).

Here, Plaintiff’s claim fails to allege, and Plaintiff cannot prove, that ODRC and Director Mohr, by their actions, burdened a fundamental right.

## **I. Plaintiff’s Eighth Amendment Does Not Apply in this Case.**

There is no evidence to support Plaintiff’s claims that the Defendants have violated, his right to be free from deliberate indifference to serious medical needs (“cruel and unusual punishment”) under the Eighth Amendment’s jurisprudence.

“The Equal Protection Clause of the Fourteenth Amendment applies to states and requires ‘that all persons similarly situated should be treated alike.’ *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985); U.S. Const. amend. XIV. To state an equal protection claim in the prison context, a plaintiff must allege that he was treated differently than other similarly situated prisoners. See *McCleskey v. Kemp, Supt. Ga. Diagnostic and Class. Center*, 481 U.S. 279, 292-93, 107 S. Ct. 1756, 95 L. Ed. 2d 262 (1987). Moreover, in order to prevail on an equal protection claim, a plaintiff must establish that a government official’s discrimination against him was intentional. *Id.* (citing *Henry v. Metropolitan Sewer Dist.*, 922 F.2d 332, 341 (6th Cir. 1990)). *Dentigance v. Eberlin*, No. 2:06-cv-486, 2008 U.S. Dist. LEXIS 16152 (S.D. Ohio March 3, 2008), at \*13-14. Finally, in the prison context, a plaintiff must

allege and prove that the treatment he or she was afforded was different than other similarly situated prisoners *in all relevant respects.* *Henderson v. Bredesen*, Case No. 05-6402, 2006 U.S. App. LEXIS 32736 (6th Cir. 2006). (Emphasis added)

Plaintiff should not be permitted to proceed on his portion of his complaint relating to the Eighth Amendment nor the Equal Protection clause. Plaintiff fails to provide evidence to suggest or prove that any statute, rule, policy, procedure, practice, custom, or other authority of the Defendants that entitled him to two hearing aids.

Plaintiff cites, but does not provide 68-MED14, an ODRC policy pertaining to ODRC operations of its facilities. Plaintiff alleges that the CCA employed medical director determined that only one hearing aid would be approved; Plaintiff alleges ODRC agreed with this action. (Complaint: Doc # 1, PageID #: 4, ¶12).

As Discussed herein, ODRC is not an entity subject to suit. In essence, Plaintiff believes that Defendants somehow were involved in the decision-making process regarding his hearing aids, e.g., deliberate indifference to his serious medical needs. Plaintiff cites an electronic mail (“e-mail), from Attorney Trevor Clark, Assistant Chief Counsel for ODRC, as support of their allegations. (Complaint: Doc # 1, PageID #: 20, and ¶¶ 9, 15).

In the e-mail, dated March 4, 2016, to Plaintiff’s counsel, Ms. Levenson, Attorney Clark provided:

“Please be advised that this issue was reviewed from a general policy standpoint for ODRC facilities based upon your letter. However, Lake Erie Correctional Institution is a private prison with its own medical providers and specialty consult review processes. ODRC physicians were not involved in the specialty consult requests or approvals for Mr. Handwork's specific case. If you wish to place someone on notice for a lawsuit, you will need to advise counsel for CCA.

ODRC has reviewed its own procedures for providing hearing aids to inmates. As I indicated to you previously, our physicians determine the number of necessary hearing aids based upon the specific needs of the inmate. We do not have a "one size fits all rule" as described in your letter. Our review of applicable court cases

indicates that a physician using his judgment on a case by case basis does not constitute an 8th Amendment violation.” (Emphasis added).

The above-cited e-mail fails to support Plaintiff’s assertions – in fact the e-mail contradicts the entire premise of Plaintiff’s claim. Attorney Clark communicated to Plaintiff’s counsel several important items (highlighted above) – that LaeCI is a private institution with its own medical consultation review process and that ODRC’s physicians were not a part of the decision to provide the Plaintiff with one hearing aid.

Plaintiff has failed to provide evidence that Defendant’s actions constituted deliberate indifference, accordingly his claim must fail.

### **I. The Americans with Disability and Rehabilitation Acts**

An action filed pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12131 (“ADA”) against a government official in his official capacity seeking money damages is barred if it sounds in equal protection. *Id.* at 1044-45. Plaintiff alleges Defendants in essence treated Plaintiff differently from other hearing-impaired inmates at LaeCI without a rational basis for the disparate treatment. Because Plaintiff’s claim is essentially that he was treated differently from other disabled individuals, and, thus, sounds in equal protection. Accordingly, Plaintiff’s official capacity ADA claims against Defendants herein, must be dismissed. *Id.* at 1046 (dismissing plaintiff’s official capacity ADA claims because they sounded in equal protection).

Plaintiff’s Complaint also alleges official capacity Rehabilitation Act claims against the Defendant. However, Section 504 provides:

“No otherwise qualified individual with a disability shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

29 U.S.C. § 794(a).

Thus, to sustain an action under the Rehabilitation Act, Plaintiff bears the burden to show:

- 1) he is a handicapped person under the Act;
- 2) he is otherwise qualified for participation in the program;
- 3) he is being excluded from participation in, or being denied the benefits of, or being subjected to discrimination under the program solely by reason of his handicap; and
- 4) the relevant program or activity is receiving Federal financial assistance.

*R.K. v. Bd. of Educ. of Scott Cty, Ky.*, No. 5:09-CV-344-JMH, 2014 WL 4277482 (6th Cir. 2014) (citing *Campbell v. Bd. of Educ. of Centerline Sch. Dist.*, 58 F. App'x. 162, 165 (6th Cir. 2003)).

Leaving aside the question of the severity of Plaintiff's disability and whether any program receives any Federal financial assistance, nowhere does the Complaint suggest, much less does it allege, Plaintiff was excluded from participation in, denied the benefits of, or subjected to discrimination under *any* program or activity. However, the accommodation afforded by an entity to enable participation by a disabled person need only be reasonable. *Id.*

Equally important, Plaintiff must prove Defendant acted with deliberate indifference to recover damages under the Rehabilitation Act. *Id.* In the context of a § 504 action, deliberate indifference requires both knowledge that a harm to a federally protected right is substantially likely, and a failure to act upon that likelihood. *Id.* (citing *City of Canton v. Harris*, 489 U.S. 378, 389 (1988)).

For all of these reasons, Plaintiff's claims under the ADA and the Rehabilitation Act must be dismissed. Applying these principles to the facts here, the evidence provided by Plaintiff cannot demonstrate that the treatment and medical care provided him was without any rational basis.

**J. Prison Litigation Reform Act**

This matter is before the Court for a *sua sponte* review of the complaint to determine whether the complaint, or any portion of it, should be dismissed because it is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief *See Prison Litigation Reform Act of 1995 § 804, 28 U.S.C. § 1915(e)(2)(B); § 805, 28 U.S.C. § 1915A(b).*

Section 1997e. Suits by prisoners provides:

(a) Applicability of administrative remedies. No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

(b) Failure of State to adopt or adhere to administrative grievance procedure . The failure of a State to adopt or adhere to an administrative grievance procedure shall not constitute the basis for an action under section 1997a or 1997c of this title.

(c) Dismissal.

(1) The court shall on its own motion or on the motion of a party dismiss any action brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.

(2) In the event that a claim is, on its face, frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies.

(e) Limitation on recovery. No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury. (Emphasis added).

A complaint may be dismissed as frivolous when the plaintiff cannot make any claim with a rational or arguable basis in fact or law. *Neitzke v. Williams*, 490 U.S. 319, 328-29 (1989); *see also Lawler v. Marshall*, 898 F.2d 1196, 1198 (6th Cir. 1990). An action has no arguable legal basis when the defendant is immune from suit or when plaintiff claims a violation of a legal interest which clearly does not exist. *Neitzke*, 490 U.S. at 327. An action has no arguable factual basis when the allegations are delusional or rise to the level of the irrational or "wholly incredible." *Denton*, 504 U.S. at 32; *Lawler*, 898 F.2d at 1199. The Court need not accept as true factual allegations that are "fantastic or delusional" in reviewing a complaint for frivolousness. *Hill v. Lappin*, 630 F.3d 468, 471 (6th Cir. 2010) (quoting *Neitzke*, 490 U.S. at 328).

Congress also has authorized the *sua sponte* dismissal of complaints that fail to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915 (e)(2)(B)(ii) and 1915A(b)(l). The complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see also Hill*, 630 F.3d at 470-71 ("dismissal standard articulated in *Iqbal* and *Twombly* governs dismissals for failure to state a claim" under §§ 1915A(b)(l) and 1915(e)(2)(B)(ii)).

As discussed above, Defendant ODRC should be dismissed as a defendant because it is not a "person" or legal entity capable of being sued under § 1983. *See, e.g., Wingo v. Tennessee Dep't of Corr.*, 499 F. App'x 453,454 (6th Cir. 2012) (per curiam) (affirming screening dismissal of complaint to the extent it "fail[ed] to state a plausible claim for relief against the [state] Department of Correction or the prison"); *Good v. Ohio Dep't of Rehab. & Corr.*, No. 1:15cv190, 2015 WL 2452444, at \*1, \*3 (S.D. Ohio May 21, 2015) (Dlott, J.; Bowman, M.J.) (and cases

cited therein) (dismissing complaint against the ODRC at the screening stage on the ground that the ODRC "is not a 'person' or legal entity that may be sued under§ 1983"); *McGlone v. Warren Corr. Inst.*, No. 1:13cv126, 2013 WL 1563265, at \*3 (S.D. Ohio Apr. 12, 2013) (Bowman, M.J.) (Report & Recommendation)(and numerous cases cited therein)(holding that the complaint against the ODRC and an Ohio prison was subject to dismissal at the screening stage because "neither the state prison facility nor the state corrections department is an entity that is capable of being sued under§ 1983"), *adopted*, 2013 WL 2352743 (S.D. Ohio May 29, 2013) (Dlott, J.).

Moreover, to the extent that the plaintiff seeks damages in the instant action, the Eleventh Amendment bars plaintiffs cause of action against the state agency defendant. *See, e.g., Wingo*, 499 F. App'x at 454; *Good, supra*, 2015 WL 2452444, at \*3 (and cases cited therein); *McGlone, supra*, 2013 WL 1563265, at \*3 (citing *Rodgers v. Michigan Dep't of Corr.*, 29 F. App'x 259,260 (6th Cir. 2002); *Will v. Michigan Dep 't of State Police*, 491 U.S. 58, 66-71 (1989)).

To state a viable claim under § 1983, plaintiff must allege that he was deprived of a right secured by the United States Constitution or a federal statute." *See Spadafore v. Gardner*, 330 F.3d 849, 852 (6th Cir. 2003).

Mere negligence is insufficient to state a claim of constitutional dimension under § 1983. *See, e.g., Warren v. Doe*, 28 F. App'x 463, 464 (6th Cir. 2002) (citing *Ritchie v. Wickstrom*, 938 F.2d 689, 692 (6th Cir. 1991 ), as support for holding that "the district court properly dismissed [the plaintiffs] case because his allegations involved mere negligence that is not actionable under§ 1983"). *Cf Quinn v. Esham*, No. 1:13cv864, 2014 WL 4774604, at \*2 (S.D. Ohio July 23, 2014) (Bowman, M.J.) (Report & Recommendation) (pointing out that the plaintiff's original allegations of "negligent behavior" by prison staff "failed to state any claim under § 1983 and therefore were subject to dismissal at the screening stage"), *adopted*, 2014 WL 4 774621 (S.D.

Ohio Sept. 24, 2014) (Weber, J.); *Sexton v. Neil*, No. I :14cv26, 2014 WL 1418298, \*1, \*5 (S.D. Ohio Apr. 14, 2014) (Dlott, J.; Bowman, M.J.) (dismissing at screening stage claims of "negligence" by defendants in failing to protect the plaintiff from inmate assault).

Furthermore, the Defendants cannot be held vicariously liable under § 1983 based on the theory of "negligent supervision" or *respondeat superior* for injuries inflicted by their employees or agents. Cf *Hughes v. Donini*, No. 1:13cv569, 2013 WL 5521671, at \*1, \*3 (S.D. Ohio Oct. 3, 2013) (Dlott, J.; Bowman, M.J.) (and cases cited therein) (dismissing the complaint at the screening stage to the extent that the plaintiff suggested that the defendants "may be held liable for damages under § 1983 simply on the basis of ... 'negligent supervision'").

Named Defendants should be dismissed based on the reasoning and law provided herein.

#### **IV. CONCLUSION**

Based on the foregoing law, analysis, attached declaration and affidavits with exhibits, Plaintiff's claims fail for several reasons. Plaintiff has failed to set forth a complaint up on which relief can be granted. ODRC is not an entity subject to suit, and Defendants have immunity under PLRA and 42 U.S.C. § 1983. Additionally, in this case the legal principle of *respondeat superior* / lack of supervisor liability applies and Defendants are not liable thereunder. Plaintiff fails to show any violation of the Eighth and Fourteenth amendment's equal protection or a fundamental right. Defendants did not engage in any deliberate indifference as to medical service provided to Plaintiff. Plaintiff failed to include a necessary and indispensable party under the Federal Rules of Civil Procedure 12(B)(7) and 19.

For the reasons stated above, Defendants move this Honorable Court to dismiss Plaintiffs claims with prejudice, and provide them with any other relief to which they may be entitled.

Respectfully submitted,

**MICHAEL DEWINE (0009181)**  
**Ohio Attorney General**

*s/ George Horváth*  
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*Trial Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing, ***DEFENDANTS' FIRST MOTION FOR SUMMARY JUDGMENT*** was electronically filed with the District Court Clerk on July 28, 2016. The Court's electronic filing system will provide Notice of this filing all parties. Parties may access this filing through the Court's electronic filing system.

*s/ George Horváth*  
GEORGE HORVÁTH (0030466)  
Assistant Attorney General

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT  
EASTERN DIVISION

JAMES HANDWORK : CASE No.: 16 CV 00825

Plaintiff, :  
v. : JUDGE SOLOMON OLIVER, JR.  
:

THE OHIO DEPARTMENT OF :  
REHABILITATION AND CORRECTION, :  
*et al.* :  
:

Defendants. :  
:

**DECLARATION OF ANDREW D. EDDY. M.D.**

I, Andrew Eddy, M.D., pursuant to 28 U.S.C. § 1746 make this unsworn declaration under penalty of perjury and declare that the statements made below are true:

1. I have personal knowledge of the information set forth in this declaration, and I am competent to testify to the matters stated herein.
2. I am a licensed Doctor of Medicine in good standing with the Ohio Medical Board and have been so licensed for over thirty (30) years. I am board certified in Internal Medicine and have been board certified since 1989.
3. I am currently employed by the Ohio Department of Rehabilitation and Correction (“ODRC”) and have held the position of the State Medical Director since January 2011. As State Medical Director for the ODRC, I administer, supervise, and direct the delivery of medical services to all of Ohio’s prison inmates while they remain incarcerated in the state’s correctional institutions. I currently administer, supervise, and direct a staff of approximately eighty (80)



medical personnel including physicians, physician's assistants and advanced-level providers, including certified nurse practitioners.

4. Once an ODRC inmate is placed at a privately operated prison, ODRC is not consulted regarding the day-to-day healthcare services or medical decisions for the inmates.

5. Lake Erie Correctional Institution ("LaeCI") is a privately operated prison, under the administration and direction of the Corrections Corporation of America ("CCA").

6. LaeCI staff follows ODRC prison rules, regulations and policies for ODRC inmates; however, the delivery of healthcare services and handling of medical issues are the responsibility of the CCA for inmates housed at LaeCI.

7. LaeCI's Chief Medical Physician and CCA are responsible for the day-to-day healthcare decisions.

8. ODRC employed staff have been not involved in any review of healthcare services or medical decisions regarding Inmate Handwork #440-603 since his transfer to LaeCI.

9. The decision to purchase medical aids is solely the responsibility of CCA. ODRC is not consulted or billed for any purchase of medical aids for ODRC inmates at LaeCI.

10. I have not been requested to review, nor have I reviewed any of Inmate Handwork's #440-603 medical records, nor has my professional opinion been solicited for a determination of the hearing aid needs of Inmate Handwork #440-603.

11. On one occasion, a Dr. Neau did call me to confirm LaeCI's interpretation of an ODRC policy regarding medical aids. I was not aware of the particular inmate in question nor did I advise LaeCI that Inmate Handwork #440-603 was entitled to only one hearing aid, nor did I advise LaeCI regarding Inmate Handwork's #440-603 need for a hearing aid or hearing aids.

did I advise LaeCI regarding Inmate Handwork's #440-603 need for a hearing aid or hearing aids.

12. According to ODRC policy, such matters should be made on a case-by-case basis, and I informed Dr. Neau of this. The final decision on such matters, as stated above, would be the LaeCI's Chief Medical Physician and CCA.
13. ODRC Director, Gary Mohr is never consulted regarding healthcare decisions of individual inmate patients.

07/27/2016  
Date

  
ANDREW D. EDDY, M.D.  
ODRC State Medical Director



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT  
EASTERN DIVISION

JAMES HANDWORK	:	CASE No.: 16 CV 00825
Plaintiff,	:	
v.	:	JUDGE SOLOMON OLIVER, JR.
THE OHIO DEPARTMENT OF	:	
REHABILITATION AND CORRECTION,	:	
<i>et al.</i>	:	
Defendant.	:	

AFFIDAVIT OF KELLY SANDERS

STATE OF OHIO :  
: ss.  
COUNTY OF FRANKLIN :

I, KELLY SANDERS, having been first duly sworn under oath, and states and affirms as follows:

1. I have personal knowledge of the information set forth in this Affidavit, and I am competent to testify to the matters stated herein.
2. I am a Deputy Director 5/ Chief Procurement Officer (appointed July 12, 2015), previously served as State Purchasing Contracts Manager at the Ohio Department of Administrative Services (“DAS”) from January 26, 2015 through July 11, 2015.



3. As CPO, I am responsible for planning, directing, and coordinating statewide procurement activities also planning, formulating and implementing comprehensive procurement policies and procedures.

4. As part of my office and job function I maintain and keep records of contracts and items related thereto are public records.

5. Lake Erie Correctional Institution (Corrections Corporation of America or CCA's- the contracting body for the institution) contract has been effective since August 31, 2011.

6. The CCA / Lake Erie Correctional Institution's contract may be found at the DAS procurement web site at [https://procure.ohio.gov/OrigContract/CSP901412\\_OC.pdf](https://procure.ohio.gov/OrigContract/CSP901412_OC.pdf).

7. Also the CCA /Lake Erie Correctional Institution's contract renewal may be located at [https://procure.ohio.gov/RevisedContract/CSP901412\\_RC.pdf](https://procure.ohio.gov/RevisedContract/CSP901412_RC.pdf).

8. I have attached to my affidavit two documents / records that refer to the status of CCA's Lake Erie Correctional Institution as a private correctional facility. (Labeled DRC001, Rev. 07/01/15 and DRC001, Rev. 8/31/11). Exhibits A-1 and A-2.

9. The attachments referred to above in paragraphs 5, 6, and 7 accurately reflect the status of the CCA's Lake Erie Institution is a privately run facility and not owned nor operated by the State of Ohio or Ohio's Department of Rehabilitation and Correction.

FURTHER, AFFIANT SAYETH NAUGHT.



KELLY SANDERS, CPPO, CPPB  
Chief Procurement Officer,  
in my official capacity

**NOTARY**

Sworn to in my presence and subscribed before me this 24<sup>th</sup> day of May, 2016, in the County of Franklin, in the City of Columbus, in the State of Ohio.



SW  
STEPHANIE WARNER ~~REED~~  
ATTORNEY AT LAW  
Notary Public, State of Ohio  
My Commission Has No Expiration  
Section 147.03 R.C.

  
NOTARY PUBLIC

My Commission Expires: N/A





STATE OF OHIO  
 DEPARTMENT OF ADMINISTRATIVE SERVICES  
 GENERAL SERVICES DIVISION  
 OFFICE OF PROCUREMENT SERVICES  
 4200 SURFACE ROAD, COLUMBUS, OH 43228-1395

**MANDATORY USE CONTRACT FOR: Operation, Management and Purchase of Correctional Facilities**

CONTRACT NUMBER: CSP901412

EFFECTIVE DATES: 8/31/11 TO 6/30/13

The Department of Administrative Services has accepted Proposals submitted in response to Request for Proposal (RFP) No. CSP901412 that opened on July 1, 2011. The evaluation of the Proposal responses has been completed. The Offeror listed herein has been determined to be the highest ranking Offeror and has been awarded a Contract for the services listed. The respective Proposal response including, Contract Terms & Conditions, any Proposal amendment, special Contract Terms & Conditions, specifications, pricing schedules and any attachments incorporated by reference and accepted by DAS become a part of this Services Contract.

The agency listed herein is eligible to make purchases of the contracted services in any amount and at any time as determined by the agency. The State makes no representation or guarantee that department will purchase the volume of services as advertised in the Request for Proposal.

This Requirements Contract is effective beginning and ending on the dates noted above unless, prior to the expiration date, the Contract is renewed, terminated, or cancelled in accordance with the Contract Terms and Conditions.

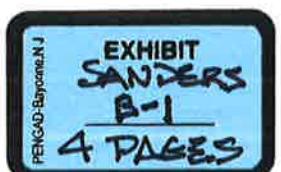
This Requirements Contract is available to the Ohio Department of Rehabilitation and Correction as applicable.

Questions regarding this and/or the Services Contract may be directed to:

Ross Leider, CPPB  
 ross.leider@das.state.oh.us

This Requirements Contract and any Amendments thereto are available from the DAS Web site at the following address:

<http://www.ohio.gov/procure>



**ATTACHMENT SEVEN**  
**COST SUMMARY FORM**

Title: Operation, Management, and Purchase of Correctional Complexes

Lake Erie Correctional Complex  
 Corrections Corporation America (CCA)

OAKS ID Number: 19546

Correctional Complexes	Designated Bed Capacity	Description of Cost	Cost Amounts
Lake Erie Correctional Institution (LaECI) /Lake Erie Correctional Complex	1,798	Operation and Management per Contract requirements, in Per Diem dollars:	\$ 44.25
		Annual Ownership Fee (AOF) per Contract requirements, in annual dollars:	\$ 3,800,000.00
		Purchase Price (One-time payment)	\$ 72,770,260.00

North Central Correctional Complex  
 Management and Training Corporation (MTC)

OAKS ID Number: 19545

Correctional Complexes	Designated Bed Capacity	Description of Cost	Cost Amount
North Central Correctional Institution (NCCI) and North Central Correctional Institution Camp (NCCI Camp)/ North Central Correctional Complex	2,706	Operation and Management per Contract requirements, in Per Diem dollars:	\$ 41.20

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Rev.: 8/31/11  
Page No. 6

CONTRACTOR INDEX

CONTRACTOR AND TERMS:

CONTRACT NO: CSP901412-1 (06/30/13)

195013  
Corrections Corporation of America (CCA)  
10 Burton Hills Boulevard  
Nashville, TN 37215

Remit to Address:

Corrections Corporation of America (CCA)  
Attn: Amy Fuqua  
Director, Treasury  
10 Burton Hills Boulevard  
Nashville, TN 37215

Net 30 Day

CONTRACTOR'S CONTACT: Michelle Barker

Telephone (615) 263-3076  
Fax (615) 263-3090  
Email Michelle.Barker@cca.com

CONTRACTOR INDEX

CONTRACTOR AND TERMS:

CONTRACT NO: CSP901412-2 (06/30/13)

88267  
Management and Training Corporation  
500 North Marketplace Drive  
Centerville, UT 84014

Remit to Address:

Net 30 Day

Electronic Wire Transfer Payment  
Management and Training Corporation  
500 North Marketplace Drive  
Centerville, UT 84014

CONTRACTOR'S CONTACT: Al Murphy

Telephone (801) 693-2861  
Fax (815) 693-2900  
Email Al.Murphy@mtctrains.com

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ATTACHMENT ONE  
CONTRACT

This Contract, which results from RFP CSP901412, entitled Operation, Management, and Purchase of Correctional Facilities is between the state of Ohio, through the Department of Administrative Services, Office of Procurement Services, on behalf of the Ohio Department of Rehabilitation and Correction (the "State") and

CCA

(the "Contractor").

If this RFP results in a contract award, the Contract will consist of this RFP including all attachments, written addenda to this RFP, the Contractor's Proposal, and written, authorized addenda to the Contractor's Proposal. It will also include any materials incorporated by reference in the above documents and any purchase orders and change orders issued under the Contract. The form of the Contract is this one (1) page attachment to the RFP, which incorporates by reference all the documents identified above. The general terms and conditions for the Contract are contained in another part of the RFP. If there are conflicting provisions between the documents that make up the Contract, the order of precedence for the documents is as follows:

1. This RFP, as amended;
2. The documents and materials incorporated by reference in the RFP;
3. The Contractor's Proposal, as amended, clarified, and accepted by the State; and
4. The documents and materials incorporated by reference in the Contractor's Proposal.

Notwithstanding the order listed above, change orders and amendments issued after the Contract is executed may expressly change the provisions of the Contract. If they do so expressly, then the most recent of them will take precedence over anything else that is part of the Contract.

This Contract has an effective date of the later of December 31, 2011 or the occurrence of all conditions precedent specified in the General Terms and Conditions.

**IN WITNESS WHEREOF**, the parties have executed this Contract as of the dates below.

CCA

(Contractor)

(Signature)

Lucibeth Mayberry

(Printed Name)

Vice President and Deputy

Chief Development Officer

(Title)

(Date)

June 29, 2011

Department of Administrative Services

(State of Ohio Agency)

Robert Blair /gw

(Signature)

Robert Blair

(Printed Name)

Director, Department of Administrative Services

(Title)

8-31-11

(Date)





STATE OF OHIO  
 DEPARTMENT OF ADMINISTRATIVE SERVICES  
 GENERAL SERVICES DIVISION  
 OFFICE OF PROCUREMENT SERVICES  
 4200 SURFACE ROAD, COLUMBUS, OH 43228-1395

**MANDATORY USE CONTRACT FOR: Operation, Management and Purchase of Correctional Facilities**

CONTRACT NUMBER: CSP901412-3

EFFECTIVE DATES: 8/31/11 TO 6/30/13  
 \*Renewal through 06/30/17

The Department of Administrative Services has accepted Proposals submitted in response to Request for Proposal (RFP) No. CSP901412 that opened on July 1, 2011. The evaluation of the Proposal responses has been completed. The Offeror listed herein has been determined to be the highest ranking Offeror and has been awarded a Contract for the services listed. The respective Proposal response including, Contract Terms & Conditions, any Proposal amendment, special Contract Terms & Conditions, specifications, pricing schedules and any attachments incorporated by reference and accepted by DAS become a part of this Services Contract.

The agency listed herein is eligible to make purchases of the contracted services in any amount and at any time as determined by the agency. The State makes no representation or guarantee that department will purchase the volume of services as advertised in the Request for Proposal.

This Requirements Contract is effective beginning and ending on the dates noted above unless, prior to the expiration date, the Contract is renewed, terminated, or cancelled in accordance with the Contract Terms and Conditions.

This Requirements Contract is available to the Ohio Department of Rehabilitation and Correction as applicable.

Questions regarding this and/or the Services Contract may be directed to:

Geraldine Berry, CPPB  
 geraldine.berry@das.state.oh.us

This Requirements Contract and any Amendments thereto are available from the DAS Web site at the following address:

<http://www.ohio.gov/procure>

\* Renewal of contract for MTC through 06/30/17.



**ATTACHMENT SEVEN**  
**COST SUMMARY FORM**

Title: Operation, Management, and Purchase of Correctional Complexes

Lake Erie Correctional Complex  
 Corrections Corporation America (CCA)

OAKS ID Number: 19546

Correctional Complexes	Designated Bed Capacity	Description of Cost	Cost Amounts
Lake Erie Correctional Institution (LaECI) /Lake Erie Correctional Complex	1,798	Operation and Management per Contract requirements, in Per Diem dollars:	\$ 45.13
		Annual Ownership Fee (AOF) per Contract requirements, in annual dollars:	\$ 3,800,000.00
		Purchase Price (One-time payment)	\$ 72,770,260.00

North Central Correctional Complex  
 Management and Training Corporation (MTC)

OAKS ID Number: 19545

Correctional Complexes	Designated Bed Capacity	Description of Cost	Cost Amount
North Central Correctional Institution (NCCI) and North Central Correctional Institution Camp (NCCI Camp)/ North Central Correctional Complex	2,706	Operation and Management per Contract requirements, in Per Diem dollars:	\$ 42.28
North Central Correctional Institution (NCCI) And North Central Correctional Institution Camp (NCCI Camp)/North Central Correctional Complex	2707 to 2906	Operation and Management per Contract requirements, in Per Diem dollars:	\$ 21.55*

\* Addition of 200 beds O & M Per Diem effective April 1, 2016

CONTRACTOR INDEX

CONTRACTOR AND TERMS:

213928  
Corrections Corporation of America (CCA)  
10 Burton Hills Boulevard  
Nashville, TN 37215

CONTRACT NO: CSP901412- 5 (06/30/32)

Remit to Address:

Corrections Corporation of America (CCA)  
Attn: Amy Fuqua  
Director, Treasury  
10 Burton Hills Boulevard  
Nashville, TN 37215

Net 30 Day

CONTRACTOR'S CONTACT : Michelle Barker

Telephone (615) 263-3076  
Fax (615) 263-3090  
Email Michelle.Barker@cca.com

CONTRACTOR INDEX

CONTRACTOR AND TERMS:

\*CONTRACT NO: CSP901412-3 (06/30/17\*)

69506  
Management and Training Corporation  
500 North Marketplace Drive  
Centerville, UT 84014

Remit to Address:

Net 30 Day

Electronic Wire Transfer Payment  
Management and Training Corporation  
500 North Marketplace Drive  
Centerville, UT 84014

\*\* CONTRACTOR'S CONTACT : Virleen Ferre

Telephone (801) 693-2751  
Fax (801) 693-2900  
Email Virleen.Ferre@mtctrains.com

\* Renewal of contract for MTC through 6/30/17.

\*AMENDMENT 3- CHANGES AND CLARIFICATIONS  
CORRECTIONS CORPORATION OF AMERICA (CCA)  
CSP901412-1

This amendment for the Corrections Corporations of America contract CSP901412-1 provides for the following:

1. INSTITUTION ACCESS - Amend the contract to include language from the LAECI purchase agreement regarding law enforcement access and access to the MARCS equipment as granted in the executed license agreement:

**6.4 INSTITUTION ACCESS**

Without notice from the ODRC, the Contractor shall permit unlimited access to the Institution by ODRC staff for inspections, internal management audits, clear-outs, critical incident management and other official purposes. The Contractor shall participate in all inspections and audits of the Institution deemed necessary by the ODRC.

The Contractor shall permit unlimited access to regulatory officials, the Governor, members of the Ohio General Assembly, including the Correctional Institution Inspection Committee, and other elected officials for inspections and other official purposes.

Corrections Corporation of America (CCA), with standing to consent or object; shall and hereby do consent to and authorize, and in all aspects otherwise permit, access, at all times and on all days, for law enforcement purposes. Said access shall be granted to all authorized law enforcement, to –wit: Conneaut Police Department, as well as its agents or assigns, including the Ohio State Highway Patrol; and said access shall pertain to all premises, property, personnel, inmates, and information contained in or on documents, records and electronic devices, including but not limited to computers, communications and surveillance devices, owned or controlled by said owners. Access for the law enforcement purposes granted to Ohio State Highway patrol shall in all ways continue in the same manner as provided prior to the purchase or acquisition of the Lake Erie Correctional Institution by CCA.

CCA shall grant to State a permanent right of entry to access and maintain the Multi-Agency Radio Communications System equipment located on the Property pursuant to the attached and herein incorporated license.

2. INMATE WORK PROGRAM ASSIGNMENTS – Amend the contract to provide clarification of language:

6.37.1 The Contractor shall be responsible for paying all eligible inmate workers according to rules of the OAC and ODRC policies. The ODRC shall reimburse the Contractor for these payments.

3. WAIVER REQUESTS –list of waivers at release of the RFP along with addition waivers provided for contractor.

Since the inception of the contract, CCA has submitted requests for waivers in accordance with Section 6.3 Waiver Requests of the contract. The requests have been reviewed and either approved or denied by the appropriate subject matter expert within DRC. In order to track the approved waivers and the date of approval, we would like to attach a document to the contract on the DAS website so it is accessible to all parties for audit purposes. The state has attached an updated version of Attachment Twelve which includes the policies and rules that were waived at release of the RFP along with the additional waivers approved for CCA.

Attachment Twelve - Updated versions

- a. [CCA Approved Waivers](#) (click on names to see document)
- b. [CCA Exemption Request \(2\)](#)
- c. [MARCS License Agreement](#)
- d. [CCA Policy Waivers Attach 12 Rev 030612](#)

\*This page is added for additional information purposes effective 12/3/12.

**\*AMENDMENT 3- CHANGES AND CLARIFICATIONS  
MANAGEMENT AND TRAINING CORPORATION (MTC)  
CSP901412-3**

This amendment is to the Management and Training Corporation (MTC) contract CSP901412-3 provides required clarification and revisions:

1. **INMATE WORK PROGRAM ASSIGNMENTS** -Clarification of language in the original RFP CSP901412 Section 6.37.1 page 42. The section should read as follows:

6.37.1 - The Contractor shall be responsible for paying all eligible inmate workers according to rules of the OAC and ODRC policies. *The ODRC shall reimburse the Contractor for these payments.*
2. **MANDATORY MINIMUM STAFFING REQUIREMENTS/ UNIT MANAGEMENT** - Updates and clarifications to the approved institution staffing plan in the CSP901412 RFP Section 6.8.1. (page 23) and Section 6.18.2 (page 26).

Based on the population of the facility, Management & Training Corporation (MTC) is required to add .412 FTE of a Unit Manager and .412 of a Unit Clerk to be in compliance with the required ratio of Unit Managers and clerical support to not exceed 500 inmates per caseload. The parties have agreed to combine these positions into .824 Unit Manager. The attached staffing plan which is Appendix D Staffing Plans of the MTC proposal, has been updated to reflect this additional position as Unit Manager 5.

Attachment – Appendix D. Staff Plans – NCCC Staffing Plan--[Click here to view.](#)

3. **TRANSPORTATION OF INMATES** – Address how administrative transfer will be transported. Change will be effective 12/3/2012.

6.16.1 - The ODRC shall transport newly assigned reception inmates and inmates assigned from other institutions to the Institution. The Contractor shall be required to transport inmates to necessary appointments (e.g., medical, dental, court, etc.). The Contractor shall be required to transport inmates who are subject to administrative transfer to the Lorain Correctional Institution Franklin Medical Center (FMC) except as indicated in Section 6.31.2. The Contractor has agreed to pick up administrative transfers from other institutions scheduled for placement at North Central Correctional Complex from FMC. ODRC has agreed to schedule the NCCC transfers on Wednesdays unless there is operational need for transfer on a different day or through a different method. The Contractor shall provide transportation of inmates' incidental to release and any other transportation of inmates as directed in Section 6.50.

6.16.2 - The Contractor agrees that, if an inmate is scheduled to be transferred to one of the two ODRC prisons closest in distance to Contractor's Institution Marion Correctional Institution then they shall transport the inmate directly to that prison without utilizing Franklin Medical Center the Lorain Correctional Institution or Correctional Reception Center.

\*AMENDMENT 4- CHANGES  
CORRECTIONS CORPORATION OF AMERICA (CCA)  
CSP901412-1

This amendment for the Corrections Corporations of America contract CSP901412-1 reflects revisions to Section Six (6) Contract Staffing Patterns of the original proposals.

HEALTH SERVICES STAFFING PLAN (page 3) - Amend the contract to reflect changes:

- a. Mental Health Coordinator – part-time (0.3) change to Mental Health Specialist – part-time (0.3)
- b. Nursing Assignments change to 12-hour shifts to which some of the Facility's Nurses are assigned.
- c. Medical Records Staff – change shift staffing from 2 -1 to 3-0
- d. Days covered changes for the following: CMA from 5 to 4, Dental Hygienist from 5 to 2, and Psychologist position from 5 to 4.

\* Revised LECI Staffing Plan--[Click here to view](#)

\* Correct the label on the link on page 6 from "Revised NCCC Staffing Plan" to "Revised LECI St

**\*AMENDMENT 8 - CHANGES**  
**CORRECTIONS CORPORATION OF AMERICA (CCA)**  
**MANAGEMENT AND TRAINING CORPORATION (MTC)**

This amendment is issued to insert the language required for the Prison Rape Elimination Act (PREA), National Standards to Prevent, Detect and Respond to Prison Rape (28 C.F.R. Part 115) into both the Corrections Corporation of America (CCA) CSP901412-5 and Management and Training Corporation (MTC) CSP901412-3 contracts. The Section 6.1 should read as follows:

**6.1     COMPLIANCE WITH LAWS, RULES, POLICIES, PROTOCOLS, PROCEDURES, AND STANDARDS**

The ODRC intends for the Contractor to implement and comply with all Federal and Ohio laws, rules of the Ohio Administrative Code (OAC), and ODRC policies, Protocols and Standard Operating Procedures (SOP) of the ODRC, ODRC internal management audit standards, American Correctional Association standards pertaining to the O&M of its institutions, as required by ORC Section 9.06 (B)(3), as those laws, rules, policies, and standards are currently enacted and promulgated and as they may subsequently be amended and adopted. In order of precedence, the controlling authority is 1) federal law, 2) the ORC and Ohio court decisions, 3) rules of the OAC, 4) ODRC policy, 5) ODRC protocols and SOPs, 6) the ODRC audit standards, and 7) the ACA standards. In the event of any conflict of authorities at the same level of precedence, the Contractor shall submit a written request for clarification to the ODRC director or designee who shall provide written direction. In the event of any conflict of authorities, at different levels of precedence, the higher standards shall prevail. All Proposals must contain the following paragraph in order to be considered for an award of the Contract:

"The Offeror will provide services that comply with the requirements of all rules of the Ohio Administrative Code (OAC) and ODRC policies applicable to an ODRC-operated correctional institution, except those identified as not applicable in Attachment Twelve which is incorporated herein and hereby made a part hereof. In the event that the Offeror is awarded the Contract, the Offeror agrees that the Federal and Ohio laws, rules of the OAC and ODRC policies, Protocols and Standard Operating Procedures of the ODRC Office of Correctional Healthcare, ODRC management audit standards, ACA standards pertaining to the O&M of the ODRC institutions shall be complied with and controlling in the event of any conflict between the same and any provision in the Proposal, the Contract, or the Contractor's operational manual, policy, practice or procedure at Institution. Any law, rule or policy applicable to an ODRC-operated correctional institution shall not be exempted unless such exemption is expressed in writing, citing and identifying the specific law, rule or policy to be exempted, and stating the express intent of the ODRC to exempt the applicability of the cited law, rule or policy."

Updated ODRC policies may be accessed on-line at [http://www.drc.ohio.gov/web/drc\\_policies/drc\\_policies.htm](http://www.drc.ohio.gov/web/drc_policies/drc_policies.htm).

\* The Contractor shall adopt and comply with the Prison Rape Elimination Act, National Standards to Prevent, Detect, and Respond to Prison Rape (28 C.F.R. Part 115). The ODRC shall monitor that Contractor to ensure such compliance. The ODRC shall ensure that Contractor has been trained on their responsibilities under ODRC's Policy on sexual abuse and sexual harassment prevention, detection and response.

\*insert language required for the PREA.

**AMENDMENT 9 - CHANGES  
CORRECTIONS CORPORATION OF AMERICA (CCA)  
CSP901412-1**

This amendment for the Corrections Corporations of America contract CSP901412-1 reflects revisions to Section Six (6) Contract Staffing Patterns of the original proposals.

**SECURITY/OPERATIONS (page 1) - Amend the contract to reflect change the designation of SCO-STG to:**

.. SCO-STG/K9

Revised LECI Staffing Plan—[Click here to view](#)

AMENDMENT 10 - CHANGES  
CORRECTIONS CORPORATION OF AMERICA (CCA)  
CSP901412-1

This amendment for the Corrections Corporation of America contract CSP901412-1 reflects revisions to Section Six (6) Contract Staffing Patterns of the original proposals.

This is not a request to change the total staffing number; however, the changes will reassign some staff members to different post and some staff from an 8 hour shift to a 12 hour shift or vice versa, as appropriate. This amendment is not a request to change the total staffing number; but to provide staffing allocations that is better suited for this facility

\* Revised LECI Staffing Plan – [Click here to view](#)

AMENDMENT 11- CHANGES  
CORRECTIONS CORPORATION OF AMERICA (CCA)  
CSP901412-1

This amendment for the Corrections Corporation of America contract CSP901412-1 reflects revisions to Section 6.29.9 Ancillary Services of the original proposal by mutual agreement between the agency and the Contractor. The revised section 6.29.9.3 will now read:

6.29.9.3 The Contractor shall supply an Ohio licensed technician with AART certification for x-ray service. Inmates requiring emergent (stat) x-rays, as indicated on the physician's order, will be sent off site to have x-rays taken. Non-emergent x-rays, as indicated in the physician's order, will be scheduled for and taken on the next on-site x-ray date, not to exceed one week after the date of the order. For most non-emergency situations, interpretation should be complete within two working days. All radiological examinations must be interpreted by an Ohio licensed, Board Certified Radiologist.

A report dictated by the interpreting radiologist must be on file in each patient's chart. X-ray films taken at the institution will remain the property of DRC. If x-ray examinations are performed at another health care institution or by a mobile x-ray service a clear notation must be made in the patient's chart indicating the company name, address and business telephone number where those films can be accessed.

**AMENDMENT 13 – CHANGES  
MANAGEMENT TRAINING CORPORATION  
CSP901412 – 3**

This amendment is issued to insert the following language regarding Transitional Control (TC) into the Management and Training contract CSP901412-3.

**6.31.5 Transitional Control (TC)**

The Contractor agrees to provide mental health services to the offenders in the three (3) month Transition Control (TC) program based on the following terms and price:

- a. Offenders diagnosed with mental health needs, will be given 90 days of psychotropic medication.

All medical costs will be the responsibility of ODRC. If available, psychotropic medication will be procured through the ODRC central pharmacy. In the event medication is not available through the central pharmacy, MTC will provide the medication through other sources. In this event, ODRC will reimburse MTC for all actual medication costs which may include pharmacy fees, packaging and shipping costs.

- b. MTC will write scripts and refills.

- c. Each TC offender will receive up to three Psychiatrist consultations during the three month period. Each consultation will be 30 minutes in duration.

Each 30 minute visit will be billed at a rate of \$125.00. Additional consultation time will be billed at a pro rata basis for time in excess of 30 minutes (i.e. a 35 minute visit would be reimbursed at \$125.00 plus \$20.83 for the additional 5 minutes).

- d. This agreement can be terminated by either party with a 30 days written notice.

- e. MTC agrees to accept back inmates should the inmate be terminated from TC status and returned to prison, in order to maintain continuity of care.

AMENDMENT 14- CHANGES

CORRECTIONS CORPORATION OF AMERICA (CCA)  
CSP901412-1

and

MANAGEMENT AND TRAINING CORPORATION  
CSP901412-3

This amendment for the Corrections Corporation of America contract CSP901412-1 and Management Training Corporation CSP901412-3 reflects revisions to Section 6.29.3 Sick Call of the original proposal by mutual agreement between the agency and the Contractor(s). The revised section 6.29.3.3 will now read:

**6.29.3.3** A physician or licensed physician extender (Physician Assistant or Nurse Practitioner) shall be on site at Institution through the completion of sick call and treatments and be on-call 24 hours a day, seven days a week. The Contractor shall provide physician and extender services sufficient to meet Doctor's Sick Call demand without incurring a backlog exceeding \*five (5) days. If an inmate's custody status precludes attendance at a sick call session, arrangements must be made to provide sick call services at the place of the inmate's confinement. If the Contractor utilizes physician extenders, the medical director must provide on-site services at least once a week or as required by any supervision plans approved by the Ohio Medical Board.

\* Change of language on Doctor's Sick Call from two working days to five (5) days.

SUMMARY OF AMENDMENTS

Amendment Number	Effective Date	Description
15	04/01/16	This amendment is issued to reflect the addition of 200 beds for the North Central Correctional Institution effective 04/01/2016.
14	10/09/15	This amendment is issued to update the Corrections Corporation of America's and the Management and Training Corporation contract(s) to reflect revisions to Section 6.29.3.3 Sick Call.
13	08/01/15	This amendment is issued to update the Management and Training Corporation's contract inserting Section 6.31.5 Transitional Control, increasing the MTC per diem rate and repaginating last page of document.
12	07/01/15	This amendment is issued to extend the contract by mutual agreement between the State and Management and Training Corporation (MTC) for an additional twenty four (24) months. In addition, the amendment will reflect an increase in the contract Per Diem Rate for Correction Corporation of America (CCA) effective with all orders on or after 07/01/15.
11	02/23/15	This amendment is issued to update the Corrections Corporation of America's contract to reflect revisions to Section 6.29.9.3 Ancillary Services and repaginate last page of document.
10	01/23/15	This amendment is issued to revise the Lake Erie Correctional Institution's Staffing Plan, by mutual agreement between the agency and the Contractor, effective 01/23/15; and, repaginate last page.
9	01/15/14	This amendment is issued revise the Lake Erie Correctional Institutional Health Services Staffing Plan by mutual agreement between the agency and the Contractor effective immediately and repaginate last page.
8	09/27/13	This amendment is issued to reflect a change in Corrections Corporation of America (CCA) OAKS ID Number and Contract Number, to change the contact name and phone number for MTC and to insert the language required for the PREA, National Standards to Prevent, Detect and Respond to Prison Rape (28 C.F.R. Part 115)..
7	06/05/13	This amendment is issued to correct the OAK Vendor ID Number for the contractor (Management and Training Corporation) to reflect the Centerville, Utah address.
6	07/01/13	This amendment is issued to renew the contract by mutual agreement between the state of Ohio and the contractor (Management and Training Corporation) for an additional 24 months effective 07/01/13 through 06/30/15.
5	04/12/13	This amendment is issued to correct the label on the link on page 6 from "Revised NCCC Staffing Plan" to "Revised LECI Staffing Plan".
4	03/28/13	This amendment is issued revise the Lake Erie Correctional Institutional Health Services Staffing Plan by mutual agreement between the agency and the Contractor effective immediately and repaginate last page.
3	12/03/12	This amendment is issued to include language from the Lake Erie Correctional Institution (LAECI) purchase agreement regarding institution access, inmate work program assignments and waiver request. Additionally, the amendment will clarify language for the Management and Training Corporation (MTC) contract and to address inmate work program assignments, unit management staffing and transportation of inmates. Finally, the amendment will reflect the reassignment of the contract to a new analyst, Geraldine Berry, CPPB.
2	1/13/12	Change the Contract expiration date for Corrections Corporation of America to be in accordance with the Request for Proposal, page 2 paragraph 3, from 6/30/2013 to 6/30/2032.
1	12/28/11	Change Contract number for Management and Training Corporation from CSP901412-2 to CSP901412-3.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT  
EASTERN DIVISION

**JAMES HANDWORK**

: **CASE No.: 16 CV 00825**

**Plaintiff,**

: **JUDGE SOLOMON OLIVER, JR.**

**v.**

:

**THE OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION,  
*et al.***

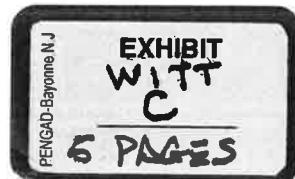
: **DECLARATION OF LINDA WITT**

**Defendants.**

:

I, Linda Witt, pursuant to 28 U.S.C. § 1746 make this unsworn declaration under penalty of perjury and declare that the statements made below are true:

1. I am over the age of 18 years and am competent to provide testimony. I have personal knowledge of the facts stated herein and am authorized to provide this Declaration in support of Defendants' Motion for Summary Judgment.
2. Since 1996, I have been a Registered Nurse licensed to practice in the State of Ohio. As a registered nurse, I am required to complete and report 24 hours of continuing education every two years to renew my license in accordance with the Ohio Nurse Practice Act.
3. I have been assigned to the Lake Erie Correctional Institution ("LaeCI") since 2006. I was initially employed by Management and Training Corporation and became an employee of Corrections Corporation of America ("CCA") when CCA assumed operation of the facility.
4. LaeCI is a privately operated correctional institution that is managed by the Corrections Corporation of America, an independent contractor.



5. For inmates placed at LaeCI by the Ohio Department of Rehabilitation and Correction (ODRC), LaeCI adheres to the medical policies, treatment protocols, and requirements that also govern the ODRC operated institutions.

6. My duties include scheduling providers and nursing coverage and responding to inmate grievances related to their medical, mental health, and dental care.

7. At the present, and during all relevant times, I was the Health Services Administrator (“HSA”). As HSA, I am responsible for providing administrative day-to-day oversight of the medical, mental health, dental and medical records services at LaeCI. I also serve as the Director of Nursing.

8. ODRC requires that there be four separate files relating to inmate health care. There is a separate medical file; mental health file; dental file; and substance abuse recovery file maintained for every inmate.

9. Inmates at LaeCI receive a medical evaluation upon their arrival at the facility. Inmates with chronic medical conditions are regularly seen by a provider in accordance with ODRC protocols and the provider’s judgment. I have reviewed Inmate Handwork’s #440-603 prison generated medical records as the file is maintained at LaeCI.

10. Inmates who need additional medical, dental or mental health care, are to submit a Health Services Request. Once completed, the inmates deposit the form in the locked box in their housing unit. A nurse collects all of the requests from the housing units daily, triages them, and schedules the inmates as appropriate.

11. I understand that Inmate Handwork #440-603 has filed a lawsuit regarding a claim that he is entitled to two hearing aids. Inmate Handwork #440-603 currently has a working digital

hearing aid, and has been fully instructed regarding the maintenance and operation of that hearing aid.

12. At LaeCI, Inmate Handwork received appropriate medical care for many issues including his hearing aids. It appears that at some point in his entry into the prison system, Inmate Handwork #440-603 had two hearing aids. Inmate Handwork #440-603 had several medical visits wherein he was instructed on how to clean and maintain his hearing aids.

13. At some point, Inmate Handwork #440-603 complained that his hearing aids were broken.

14. LaeCI, medical personnel scheduled Inmate Handwork #440-603 for an appointment with an outside audiologist. Based on statements provided to the audiologist by Inmate Handwork #440-603, the audiologist recommended that Inmate Handwork #440-603 should receive a replacement hearing aid for each ear.

15. After such a recommendation, the LaeCI Chief Medical Physician reviews the file and if, in his/her determination the proposed or recommended test, procedure, or medical aid is still medically necessary, they are then to submit the proposed request for Collegial Review.

16. Medical staff at LaeCI reviewed the recommendation of the audiologist and Inmate Handwork's #440-603 hearing and daily living conditions during an internal collegial review. The Chief Medical Physician of LaeCI inmate healthcare services made the final determination that Inmate Handwork #440-603 was medically eligible to receive one hearing aid.

17. The collegial review is to ensure that provision of medically necessary, appropriate and evidenced-based healthcare is being provided to inmate-patients. Evidence-based medical care is using the best available research evidence to guide clinical decision making in the care of the individual patient.

18. The Collegial Review is designed to facilitate discussion amongst the various medical professionals in CCA's employ to arrive at a medically necessary, medically appropriate and evidence-based management plan. If the best, medically sound and medical-based evidence suggests that the requested or recommended procedure, test, or medical aid is warranted and appropriate, any expense or cost to the CCA that is to be incurred as a result is not considered in any decision-making discussion or process.

19. If as a result of the Collegial Review a proposed or recommended test, procedure, or medical aid is deemed medically unnecessary or not medically appropriate, an alternate plan of care (APOC) is always established and implemented to address the patient-inmate's underlying medical need.

20. CCA, as a privately operated prison facility, implements and maintains their own internal healthcare review process. As LaeCI is an independent contractor, the medical decisions only involve the Chief Medical Physician and the Regional Medical Director selected and employed by CCA

21. Dr. Payne, LaeCI's Chief Medical Physician, approved the purchase and fitting of one hearing aid for Inmate Handwork #440-603. The records reflect Dr. Neau was also involved in the decision making process.

22. I am not aware that there is any ODRC policy regarding that an inmate is required to have two hearing aids, regardless of the primary care physician's determination. The medical records reflect that Policy No. 68 MED 01 [Declaration, attachment State's Exhibit C-2] was consulted regarding this hearing aid issue.

23. For the operation of the prison regarding ODRC inmates, LaeCI follows ODRC policy as provided under the RFP ("request for proposal") and the contract.

24. There is one policy, ODRC 68 MED 14, [Declaration, attachment State's Exhibit C-2] that addresses hearing aids. However, as LaeCI is a subcontractor, any final decision regarding medically necessary hearing aids is made by LaeCI.

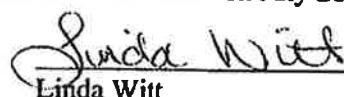
25. LaeCI has no record of any "kites", or write-ups, regarding his inability to hear or failure to respond to commands nor have any observations or reports by corrections officers that Inmate Handwork was unable to participate in events and respond to the daily requirements of a prisoner been submitted to inmate health services. In fact, after reviewing Inmate Handwork's #440-603 conduct history, it appears that since April 6, 2010, Inmate has had no conduct reports (rule violations). This would be indicative that he was functioning without any problems in the prison community, including without any failure to follow orders or to meet obligations such as bed count and other prison orders.

26. Inmate Handwork #440-603 was fitted by LaeCI's private contractor, third party provider Beltone, for a digital hearing aid – and it appears that he did not follow all instructions on its operation and he was taken back to Beltone recently to have the volume set and was provided instructions on how to maintain same.

27. Additionally, Inmate Handwork's medical file contains records regarding various medical appointments and consultations. Nothing in the files indicates that Inmate Handwork had any difficulty communicating with any health services provider during any appointments. In addition, he has had long-standing problems regarding equilibrium.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in Davidson County, STATE of Tennessee on July 28, 2016.

  
\_\_\_\_\_  
Linda Witt



**STATE OF OHIO**  
**DEPARTMENT OF REHABILITATION  
AND CORRECTION**

SUBJECT: <b>Medical Services</b>	PAGE <u>1</u> OF <u>16</u> NUMBER: 68-MED-01
RULE/CODE REFERENCE:	SUPERSEDES: 68-MED-01 dated 04/18/11
RELATED ACA STANDARDS: 4-4143; 4-4344; 4-4346; 4-4347; 4-4348; 4-4350; 4-4352; 4-4359; 4-4361; 4-4363; 4-4366; 4-4367; 4-4375; 4-4380; 4-4381; 4-4382; 4-4388; 4-4389; 4-4392; 4-4393; 4-4394; 4-4396; 4-4400; 4-4403; 4-4403-1; 4-4407; 4-4408; 4-4412; 4-4414; 4-4422; 4-4423; 4-4424; 4-4426; 4-4427; 2-CO-4E-01	EFFECTIVE DATE: April 2, 2015
	APPROVED: 

## I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

## II. PURPOSE

The purpose of this policy is to establish standard procedural guidelines for the delivery of medical services and the provision of unimpeded access to medical care for offenders under the jurisdiction of the Department of Rehabilitation and Correction.

## III. APPLICABILITY

This policy applies to all persons employed by or under contract with the Department of Rehabilitation and Correction (excluding DPCS, CTA, and OPI staff) and to all offenders confined to institutions within the Department.

## IV. DEFINITIONS

**Advanced Level Provider (ALP)** - A medical professional who is approved to practice as a Physician, an Advanced Practice Nurse under Ohio Revised Code section 4723.43, or a Physician's Assistant under Ohio Revised Code section 4730.

**Chief Medical Officer (CMO)** - The physician responsible for the day-to-day medical care of offenders at the institution level. The Chief Medical Officer is the ultimate medical authority at the institution.

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**Health Care** - A discipline that includes medical, mental health, and recovery services.

**Health Care Administrator (HCA)** – The administrator responsible for the day-to--day operations of medical services at the institution level. The HCA is the health authority of the institution.

**Intrasytem Transfer** - The transfer of an offender from one institution or program to another within the Ohio Department of Rehabilitation and Correction.

**Medical Emergency** - Serious life threatening or disabling condition(s) manifested by severe symptoms occurring suddenly and unexpectedly which would result in serious physical impairment or loss of life if not treated immediately.

**State Medical Director** - The responsible physician and the medical authority for the Department. The State Medical Director is responsible for the overall planning, design, implementation, monitoring, utilization management, and evaluation of medical services provided within the Ohio Department of Rehabilitation and Correction.

## V. POLICY

It is the policy of the Department of Rehabilitation and Correction to provide medical services and continuity of care to incarcerated offenders. Continuity of care is provided from admission to transfer or discharge from the facility, and shall include referral to community-based providers when indicated. These services are to be accessible to all offenders, include an emphasis on disease prevention, and reflect a holistic approach in accordance with approved levels of care.

## VI. PROCEDURES

### A. Governance and Administration

1. Responsibilities of the Bureau of Medical Services (BOMS)
  - a. The State Medical Director shall serve as the responsible physician and the medical authority for the Department and the medical services programs. The State Medical Director is responsible for the overall supervision of medical services.
  - b. BOMS shall assist institution medical departments in the coordination of institution medical services.
  - c. With input from institution field staff, BOMS shall utilize a health care staffing analysis to identify the types of health care providers necessary to provide the determined scope of services and essential positions needed to perform the health services mission in each institution.
  - d. BOMS shall provide operational and fiscal support for all DRC institution medical service programs.

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- e. BOMS shall coordinate all medical continuous quality improvement activities within DRC institutions.
  - f. BOMS shall manage equipment requests for institution health services.
  - g. BOMS will coordinate the credentialing process for all ALPs including all physicians, dentists, ophthalmologists, podiatrists, nurse practitioners, and physician assistants.
2. Institution Health Authority
- a. The Health Care Administrator (HCA) shall serve as the institution health authority;
  - b. Responsibilities of the institution health authority shall include, but not be limited to, the following:
    - i. Decisions about the deployment of health resources and the day-to-day operations of the medical services program;
    - ii. Development of a mission statement that defines the scope of medical services;
    - iii. Development of mechanisms, including written agreements when necessary, to ensure that the scope of services is provided and properly monitored;
    - iv. Development of institution medical procedures, when necessary, to address needs not addressed in departmental policies. Each institution procedure and program in the institution's health care delivery system shall be reviewed, revised, if necessary, and signed at least annually by the HCA;
    - v. Establishment of systems for the coordination of care among multidisciplinary medical providers;
    - vi. Development of an institutional Continuous Quality Improvement program;
    - vii. Coordination with institution administration to ensure that there is adequate space made available for administrative, direct care, professional, and clerical staff. Such space shall include access to a conference area, a records storage area, a public lobby and toilet facilities;
    - viii. Determination of equipment, supplies, and materials necessary for health services.
  - 1) Institution HCAs shall follow the purchase procedures outlined in Department Policy 22-BUS-09, Procurement Procedures.
  - 2) If the institution's medical budget is exhausted, yet additional equipment essential to the provision of quality medical care is needed, a Request To Purchase (RTP), an Equipment Justification, and a Budget Authority Adjustment for such equipment must be forwarded to BOMS.

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- c. The HCA shall be available to provide clinical and administrative supervision to institution medical staff 24 hours per day, 7 days per week. In the event that the HCA is not available to provide such supervision, then the HCA shall arrange for back-up clinical and administrative supervision as follows:
  - i. Designate the Continuous Quality Improvement Coordinator to provide clinical and administrative supervision as acting HCA, or
  - ii. Designate the Assistant HCA or arrange with the appropriate institution Deputy Warden to provide administrative supervision of the institution medical staff as acting HCA and designate an experienced staff nurse to provide clinical supervision; or
  - iii. Arrange with the HCA of a nearby DRC institution for provision of clinical guidance and arrange with the appropriate institution Deputy Warden to provide administrative supervision of the institution medical staff.

3. Responsibilities of the Chief Medical Officer (CMO)

- a. The CMO shall have sole responsibility for all matters involving purely clinical judgment. The CMO shall provide clinical leadership for the provision of medical services in conjunction with the HCA.
- b. Additional responsibilities of the CMO include, but are not limited to:
  - i. Coordinating on-call physician coverage 24 hours per day, 7 days per week - provides and shares on-call responsibilities;
  - ii. Conducts peer review/monitoring on institutional Advanced Level Providers (ALP);
  - iii. Clinical care of the inmate population;
  - iv. Evaluation of inmates for referral consultations;
  - v. Participation in collegial review process, per Medical Protocol B-1, Consultation Referrals;
  - vi. Review of the recommendations of the specialty consultants with approval, disapproval, or modification of their recommendations;
  - vii. Monthly review of outstanding consults with the HCA;
  - viii. Review of all medical emergency transfers to outside hospitals;
  - ix. Provision of medical information/education to the health care and institutional staff;
  - ix. Provision of medical summaries or other written information;

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x. Attendance and participation in institution and departmental meetings and committees, including the Pharmacy and Therapeutics committee, Continuous Quality Improvement committee, and quarterly administrative meetings;

xi. Health care policies and protocols review on an annual basis;

xii. And all other duties as assigned by BOMS.

4. Department Medical Policy And Protocol

a. BOMS shall develop, coordinate, and enforce system-wide medical service policies and protocols and shall provide direction related to health care issues.

c. The State Medical Director shall be responsible for the review and revision of medical policies and protocols.

d. BOMS shall be responsible for providing specific guidance and training to all relevant field staff about substantive changes in medical policy or protocol. Each HCA will ensure all institutional healthcare staff receives training about new and revised medical policies and protocols.

e. The institution HCA and the CMO are responsible for ensuring that each policy and protocol is implemented in accordance with DRC guidelines.

f. The Managing Officer or designee will be responsible for reviewing and revising any institution post orders required ensuring compliance with the policy or protocol.

5. Institution Medical Strategic Planning

a. As a part of the institution's medical strategic planning process, each HCA and CMO shall develop measurable goals and objectives that shall be reviewed annually and updated as needed.

b. During the annual review, each HCA shall assess the achievement of established goals and objectives and document findings. Program changes shall be implemented, as necessary, in response to findings.

c. As detailed in Department Policy 08-MAU-01, Facility Internal Management Audits, the internal management audit system shall be used to monitor compliance with department policies and established standards.

6. Institution Administrative Meetings and Reporting Requirements

a. Each institution HCA and CMO shall meet with the Managing Officer, appropriate Deputy Warden, and a security representative at least quarterly to address infection control issues, issues pertinent to medical services and the health environment and shall develop plans to address issues raised. Additionally, the HCA shall review with

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the Managing Officer and appropriate Deputy Warden any newly adopted or revised policies and protocols.

- b. Each institution HCA shall submit reports to the Managing Officer at least quarterly that outline issues pertinent to the health services system and the health environment and any plans that address these issues.
- c. Each institution HCA shall prepare and submit electronic monthly reports that include, but are not limited to, the following:
  - i. Referrals to specialists;
  - ii. Prescriptions written;
  - iii. Laboratory and x-rays completed;
  - iv. Infirmary admissions;
  - v. Off-site transports;
  - vi. Transports to outside emergency departments and FMC Urgent Care;
  - vii. Hospital admissions;
  - viii. Serious injuries or illnesses; and/or
  - ix. Deaths.

#### 7. Credentials Review

- a. The HCA shall verify the licensure status of each licensed or certified employee annually, as outlined in Medical Protocol G-8, Credentialing. Verification of current credentials and job descriptions shall be maintained on file in each facility.
- b. The designated background investigation coordinator in each institution shall conduct a background investigation on all contractors, as outlined in Department Policy 34-PRO-07, Background Investigations. The results of this investigation shall be maintained in the contractor's file.

#### B. Offender Care And Treatment

- 1. A complete medical, dental, and mental health screening will be performed on each offender, excluding intrasystem transfers, at the time of the offender's arrival at one of the Department's reception centers in accordance with Department Policy 52-RCP-06, Reception Intake Medical Screening.
- 2. Health appraisal data collection and recording will include the following:
  - a. A uniform process as defined by the Bureau of Medical Services;
  - b. Health history and vital signs collected by health trained or qualified health care personnel;
  - c. Collection of all other health appraisal data performed only by qualified health professionals;

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- d. Review of results of the medical examination, tests, and identification of health-related problems is performed by an ALP.

3. Detoxification

- a. Detoxification of alcohol, opiates, hypnotics, other stimulants, and sedative hypnotic drugs is conducted only under medical supervision at the facility or in a hospital setting when conditions warrant. Detoxification procedures shall be implemented in accordance with Medical Protocol B-24, Medical Detoxification Guidelines.

- b. Offenders experiencing severe, life-threatening intoxication (an overdose), or withdrawal are transferred under appropriate security conditions to a facility where specialized care is available.

4. Intrasystem Transfer Procedures – as referenced in Medical Protocol B-12, Intrasystem Transfer and Receiving Process.

- a. Prior to any intrasystem or interagency (i.e. DRC to county jail or other correctional agency) transfer, an Intrasystem Transfer and Receiving Health Screening form (DRC5255) shall be completed on all offenders to maintain the provision of continuity of care.

- i. The form shall include information about the patient's health condition, treatments, allergies, scheduled appointments, pertinent test results and prescribed medication.

- ii. The medical evaluation shall include a determination of the patient's suitability for travel, with particular attention given to communicable disease clearance.

- b. All prescribed essential medication shall be prepared in accordance with procedures outlined in Medical Protocol E-32, Preparation of Medication for Intra-system Transfers.

- c. Medical records shall be transferred with the patient and be handled in such a manner as to ensure confidentiality.

- i. Completed intrasystem transfer forms shall be placed in a sealed envelope and transported with the offender records to the receiving institution.

- ii. The envelopes containing the intrasystem transfer forms and all medications that are transported shall be forwarded to the medical staff in the medical intake area upon the offender's arrival at the receiving institution.

- d. Upon arrival at a new institution, all offenders will be provided both oral and written instruction concerning access to medical care, the grievance process, and mental health services within the institution.

- i. Arrangements shall be made to provide this information to non-English speaking offenders in a language they can understand.

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- ii. When literacy or other communication problem exists, a staff member will assist the offender in understanding the information.
  - e. Receipt of orientation information given to patients shall be documented on the Intrasystem Transfer and Receiving Health Screening form (DRC5255).
5. A Registered Nurse (RN) or ALP shall conduct a health screening on each patient upon arrival which includes, at a minimum, those items needed to complete the Intrasystem Transfer and Receiving Health Screening form (DRC5255) within 8 hours of arrival at the receiving institution. Consistent with Department Policy 67-MNH-02, Mental Health Screenings and Assessment Activities, and Department Policy 52-RCP-06, Reception Intake Medical Screening, the initial mental health screening will also be completed at this time.
6. Medical Needs During Transport
- a. Correction officers shall not provide nurse-administered medications and medical treatments during transport of a patient.
  - b. The patient will be permitted to retain certain self-carried medications in his or her possession, such as Albuterul and nitro-glycerin tablets, in accordance with Department Policy 310-SEC-03, Inmate Transportation and Medical Protocol E-32, Preparation of Medication for Intra-system Transfers.
  - c. If the patient has a medical condition that requires a modification to the restraint procedures or any other special accommodations or precautions during transport, this information shall be forwarded to the chief security officer, with a copy to the Managing Officer.
  - d. The chief security officer or designee shall ensure all special precautions are followed, including any required use of masks, gloves, or other protective equipment. Such notification should also be made any time during a patient's incarceration when the treating physician diagnoses a medical condition requiring such accommodation.
7. General Medical Services
- a. An ALP shall be on call 24-hours per day.
  - b. Patients who have complaints about medical issues shall follow the procedures outlined in Administrative Rule 5120-9-31, Inmate Grievance Procedure.
8. Sick Call Services
- a. Offenders shall be able to place requests for health services on a daily basis. Such requests shall be reviewed daily by medical staff, as outlined in Medical Protocol A-2.35, Nursing Sick Call Access.

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- b. A priority system shall be used to schedule clinical services, which shall be available to patients in a clinical setting at least five days a week, including nurses and physicians sick call.
  - c. Clinical services shall be available to all offenders in a clinical setting at least five days a week by an ALP or other qualified healthcare professional.
  - d. No member of the correctional staff shall disapprove an offender's request for attendance at sick call.
  - e. All health care encounters shall be conducted in a setting that respects patient privacy. Unless there is a known threat to the safety of healthcare staff, security staff shall maintain sound privacy by standing outside of the consultation area.
  - f. Licensed medical personnel are expected to practice within their respective scopes of practice at all times.
  - g. A medical resource library for staff use will be maintained by each medical services department.
9. Segregation
- a. Security staff shall immediately notify medical staff when an offender is transferred to a segregation unit. The institution medical staff must approve the transfer of an offender housed in the infirmary to a segregation unit.
  - b. Medical staff shall provide review and assessment of each offender housed in segregation and log it.
    - i. The Monthly Emergency Telephone Log (DRC5372) must be used, as outlined in A-2.36, Telephone Triage.
    - ii. In the incidence of an in-person review of the offender, a log of the institution's design must be utilized.
  - c. Unless medical attention is needed more frequently, each offender in segregation shall receive a daily visit from a nurse.
    - i. The visit ensures that offenders have access to the health care system.
    - ii. The presence of the nurse in segregation shall be announced and recorded in the correction officer's log.
    - iii. Nursing rounds and nurses sick call shall be conducted in each segregation unit as outlined in Medical Protocol A-2.35, Nursing Sick Call Access.
  - d. Doctor's sick call shall be provided on a schedule that is determined by the HCA.

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- e. Medical appointments, diagnostic tests or other medical procedures shall not be cancelled or rescheduled because of segregation admission without the approval of the Chief Medical Officer.

10. Infirmary Care

- a. All institutions shall provide access to infirmary care either on-site or via transport to another facility. Specific procedural guidelines for infirmary care are outlined in 68-MED-21, Infirmary Care.

11. Chronic Disease Management

- a. When offenders are diagnosed with a chronic illness, institution ALPs shall develop a treatment plan that addresses the monitoring of medications, laboratory testing, health record forms, the frequency of specialist consultations and other guidelines outlined in the appropriate chronic care clinic protocol.
- b. An offender who requires close medical supervision, including chronic disease and convalescent care, shall have an individualized treatment plan developed that includes directions to medical and other personnel regarding their roles in the care and supervision of the patient, and that is approved by the appropriate ALP.
- c. Chronic disease management strategies are outlined in Department Policy 68-MED-19, Chronic Disease Management, and in the chronic care clinic protocols.

12. Medical Emergency Services

- a. Each institution shall have a plan that assures that emergency medical, mental health, and dental services are available 24-hours per day.
- b. All correctional and healthcare personnel shall be trained to respond to health-related emergencies within a 4-minute response time. The training program is conducted on an annual basis and includes instruction on the following:
- i. Recognition of signs and symptoms, and knowledge of action that is required in potential emergency situations;
  - ii. Administration of basic first aid;
  - iii. Certification in cardiopulmonary resuscitation (CPR) in accordance with the recommendations of the certifying health organization;
  - iv. Methods of obtaining assistance;
  - v. Signs and symptoms of mental illness, violent behavior, and acute chemical intoxication, and withdrawal;
  - vi. Procedures for patient transfers to appropriate medical facilities or health providers; and
  - vii. Suicide intervention.
- c. Specific procedural guidelines for provision of emergency services and emergency response training are outlined in Department Policy 68-MED-20, Emergency Services, Medical Protocol B-8, Guidelines for Assessment and Processing of

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Medical Emergencies, and Medical Protocol B-32, CPR Standards for Health Care Staff.

13. Sexual Assault

- a. When an offender reports or is suspected of being the victim of a sexual assault, he/she shall be referred, under appropriate security provisions, to a community facility for treatment and gathering of evidence
- b. Specific guidelines for the management of a suspected sexual assault are outlined in Department Policy 79-ISA-01, Prison Rape Elimination, and Medical Protocol B-11, Medical Care Guidelines for Sexual Conduct or Recent Sexual Abuse.

14. Pre-Release Guidelines

- a. The records office shall notify the medical department, in writing, of an offender's expiration of sentence or pending placement for the following month. Immediate notification shall be given on those occasions when an offender is ordered released on a same day basis.
- b. Prior to release, the offender's medical record shall be reviewed, and a licensed nurse will complete a Release Medical Summary (DRC5179) for all offenders who are released.
- c. The appropriate ALP shall order a 14-day supply of prescribed medical and mental health medication(s) that shall be issued to the offender, excluding Seriously Mentally Ill (SMI) offenders, upon release from a DRC institution as outlined in Medical Protocol E-25, Dispensing Medication for Inmate Transfers. If the patient is prescribed insulin or other injectable medication, the appropriate number of needles and syringes shall be issued to the patient as well.
- d. Offenders having been identified by Mental Health Services as being SMI shall be prescribed a 30 day supply of mental health and medical medications, excluding Over-The-Counter (OTC) and PRN medications, and two refills for a maximum of 90 days of medication, as outlined in Medical Protocol E-25, Dispensing Medication for Inmate Transfers.
  - a. Each institution health services department shall develop an institution specific procedure that promotes continuity of care after release. A list of referral sources, available on the DRC Internet, shall be given to patients who require medical follow-up after release.

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PAGE 12 OF 16**C. Health Care Services And Support**

## 1. Specialty Health Services

- a. The Chief Medical Officer shall determine if an offender needs specialized healthcare services not available within the institution.
- b. Offenders, who need specialized health care beyond the resources available in the institution, as determined by the responsible physician, shall be transported under appropriate security provisions to a facility where such care is scheduled, on call or available 24-hours per day.
- c. Each institution shall develop a written list of referral sources, to include emergency and routine care. This list shall be reviewed and updated annually by the HCA.
- d. If the Chief Medical Officer determines that medical services are needed that are beyond the scope provided by the medical department of the parent institution, he/she shall make the appropriate referral, as outlined in Department Policy 68-MED-13, Medical Classification.
- e. Hospital inpatient and specialty health services are provided by community providers, as outlined in Department Policy 68-MED-14, Specialty Health Services.

## 2. Ancillary Services

- a. Laboratory services: The DRC-contracted lab provides full service, high complexity laboratory testing for all institutions.
- b. x-ray services are available either on-site, at the Franklin Medical Center, in community facilities contracted by DRC, or at institutions with privatized medical services.
- c. Dental services are available to every offender, as outlined in Department Policy 68-MED-12, Dental Services.
- d. Pharmacy services are provided for each institution as outlined in Department Policy 68-MED-11, Pharmacy Services.
- e. Exercise areas shall be available in each institution to meet the exercise and physical therapy requirements of individual offender treatment plans.
- f. Medical and/or dental adaptive devices (eyeglasses, hearing aids, dentures, wheelchairs, or other prosthetic devices) shall be provided when medically necessary, as determined by the responsible health care practitioner and through the collegial review process, as outlined in Medical Protocol B-1, Consultation Referrals.

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3. Medical Transportation

- a. The safe and timely transportation of offenders for emergency and routine medical, mental health, and specialty clinic appointments, both inside and outside the institution is the joint responsibility of the Managing Officer or designee and the HCA.
- b. Each institution shall provide for transportation that assures access to medical services that are only available outside of the institution in accordance with Department Policy 310-SEC-03, Inmate Transportation Procedures, and Department Policy 68-MED-20, Emergency Services. Decisions concerning transportation will incorporate the following requirements:
  - i. Prioritization of medical need: Referrals to specialty consults shall be designated as routine or to be scheduled within a specific timeframe on a Consultation Request (DRC5244) and processed in accordance with Department Policy 68-MED-14, Specialty Health Care Services and Medical Protocol B-1, Consultation Referrals.
  - ii. The urgency of the medical need for ambulance versus standard transport as designated by the institutional physician or other health care designee.
  - iii. Medical escort will be used to accompany security staff if necessary. If medical escort is required, ambulance transport must be used. Institutional medical staff will not act as the medical escort.
  - iv. The transfer of medical information will be followed as outlined in Medical Protocol B-8, Guidelines for Assessment and Processing of Medical Emergencies, and Department Policy 68-MED-14, Specialty Health Services.

D. Health Promotion and Disease Prevention

1. Each institution shall offer an ongoing program of health education and wellness information to all offenders.
2. Each institution shall also offer an inmate health fair annually, which may include informational booths, seminars, and access to free health screenings for cholesterol, diabetes, and blood pressure monitoring. Participation of other disciplines is strongly encouraged, including but not limited to mental health and recovery services.
3. Periodic Examinations
  - a. Every institution shall make periodic physical examinations available to all offenders as outlined in Medical Protocol B-5, Health Examination Guidelines for Inmates.
  - b. A refusal form must be signed and filed in the medical record if the applicable periodic physical exam is declined. The Physical Examination Authorization form (DRC5150) will be used for this purpose.

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- c. The nature of the physical exam will be determined by the Chief Medical Officer of each institution but must conform to standards set forth by the *U.S. Preventive Services Task Force* and as outlined in Medical Protocol B-5, Health Examination Guidelines for Inmates. Height, weight, and blood pressure shall be recorded on all offenders.
- d. Appropriate patient education regarding health maintenance and disease prevention shall be made available to offenders during the physical examination.

#### **E. Personnel and Training**

##### 1. Institution Medical Staffing

- a. A staffing plan for each institution shall be developed through BOMS from a staffing analysis that defines the scope of services to be provided and determines the essential positions needed to perform the medical services mission. The HCA shall review this staffing plan annually to determine if the number and type of staff is adequate.
- b. Adequate health care personnel shall be available within the institution for health assessments, medication administration, triaging of complaints and problems, chronic care, management of emergencies, and follow-up services.
- c. Written job descriptions shall be prepared for each employee category and approved by the HCA. These job descriptions are reviewed with each employee upon hire and annually at the time of the employee's performance evaluation.
- d. The specific duties and responsibilities of health care staff shall be clearly defined and delineated.
- e. Work assignments shall be developed in compliance with the licensee's scope of practice.
- f. Nursing students, medical students, and interns delivering medical care in the institution shall work, commensurate with their level of training, under the direct supervision of a clinical instructor who is responsible to the HCA.
  - i. There shall be a written agreement between the institution and the training or educational facility that covers the scope of work, length of the agreement, and any legal or liability issues.
  - ii. Students or interns shall agree in writing to abide by all facility policies including those relating to the security and confidentiality of information.
- g. Inmate workers are restricted to defined job duties within the health care area and will work under the supervision of the custody staff. Inmates shall not be used for the following:
  - i. Performing direct patient care services;

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- ii. Any duties that allow direct or indirect access to confidential medical information;
  - iii. Scheduling health care appointments;
  - iv. Any activity that determines access of other inmates to health care services;
  - v. Handling or having access to surgical instruments, syringes, needles, medications or health care records; or
  - vi. Operating diagnostic or therapeutic equipment.
- h. Upon receiving appropriate training, inmate workers may perform the following duties:
- i. Peer support and education;
  - ii. Hospice activities, including service as a companion, letter writing, and reading;
  - iii. Assist impaired inmates on a one-to-one basis with activities of daily living;
  - iv. Optometric assistance; or
  - v. Denture fabrication.
2. Continuing Education and Staff Development
- a. The HCA shall work with the institution training department and the chief of security to ensure that all health care personnel are trained in the implementation of the institution's medical emergency plans.
  - b. Health care personnel must participate in annual training drills of the medical services delivery aspects of the critical incident management plan.
  - c. Medical staff is encouraged to take advantage of the various medical in-service training classes offered by the department. Staff development classes are regularly offered at the Corrections Training Academy (CTA). A schedule of these classes is available in the CTA catalog of class offerings.
  - d. Medical staff shall review and be tested on current medical-related policy and protocol

## F. Special Medical Considerations

### 1. Security of Medical and Dental Equipment

- a. Security of all medical and dental equipment and instruments is of paramount importance. Medical and dental staff shall conform to the procedures outlined in Department Policy 310-SEC-36, Tool Control, and to each institution's specific tool control procedures.
- b. All medical and dental staff shall adhere to the procedures outlined in Medical Protocol E-2, Pharmacy Administrative Operations.

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## 2. Second Opinions/Private Pay

- a. Offenders do not have the option to receive a second opinion in medical matters. Likewise, a "private physician" is not permitted to examine or treat an offender while incarcerated.
- b. Offenders generally do not have the option to purchase or receive prescription medication or medically related items from outside sources. Certain medically indicated devices may be authorized on a case-by-case basis. Such exceptions may include, but are not limited to:
  - i. Back or knee braces;
  - ii. CPAP machines;
  - iii. Nebulizer compressors;
  - iv. Eyeglasses (note: DRC does not provide contact lenses to offenders unless medically indicated);
  - v. Specialized wheelchairs; and
  - vi. Other medically necessary equipment that meets security requirements, if authorized by the institution's chief of security, the HCA and Chief Medical Officer.
- c. Health care insurance programs in place prior to the offender's incarceration may be accessed for medical services while the offender is incarcerated by the Ohio Department of Rehabilitation and Correction. Decisions about seeking reimbursement from third party payers shall rest with BOMS and shall be considered on a case-by-case basis.

**Related Department Forms:**

Physical Examination Authorization	DRC5150
Release Medical Summary	DRC5179
Consultation Request	DRC5244
Intrasystem Transfer and Receiving Health Screening	DRC5255
Monthly Emergency Telephone Log	DRC5372

STATE OF OHIO

DEPARTMENT OF REHABILITATION  
AND CORRECTION

SUBJECT: <b>Specialty Health Care Services</b>	Page 1 of 12
	NUMBER: 68-MED-14
RULE/CODE REFERENCE: 5120-9-06	SUPERCEDES: 68-MED-14 dated 5/23/12
RELATED ACA STANDARDS: 4-4349; 4-4357; 4-4398; 4-4144;	EFFECTIVE DATE: August 19, 2014
	APPROVED: 

**I. AUTHORITY**

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

**II. PURPOSE**

The purpose of this policy is to establish standard procedural guidelines for the delivery of specialty health care services to inmates incarcerated under the jurisdiction of the Department of Rehabilitation and Correction (DRC).

**III. APPLICABILITY**

This policy applies to all persons employed by, or under contract with, the Department of Rehabilitation and Correction, and specifically to those involved in the provision of medical care, and to all inmates incarcerated under the jurisdiction of the Department of Rehabilitation and Correction.

**IV. DEFINITIONS**

**Cosmetic Services** - Procedures, treatments, or surgery designed to enhance the inmate's appearance, but which are non-essential to the maintenance of the inmate's basic health.

**Medical Protocol** - An official clinical statement that defines a medical procedure or course of action. These guidelines shall be reviewed and revised, if necessary, on an annual basis by the Bureau of Medical Services and the Medical Policy Review Committee to maintain consistency with professional standards of practice for licensed medical professionals.

**Physician Consultant** - A medical doctor who is trained in a specific medical specialty, and who has agreed to evaluate and recommend treatment for certain medical conditions, as requested by the primary physician. It should be emphasized that the final decision about any treatment protocol or subsequent management rests entirely with the institution Chief Medical Officer.

**Telemedicine** - A two-way interactive videoconferencing system that allows for visual and limited physical examination of an inmate by a physician specialist while the inmate remains at his/her prison setting and the physician specialist remains at the health care facility. It also includes educational and administrative uses of this technology in the support of health care, such as distance learning, nutrition counseling and administrative videoconferencing.

## V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction when any incarcerated inmate under its supervision requires health care interventions beyond the resources available at an institution, these inmates shall be referred to the appropriate resource for such care. Such resources may include the utilization of specialty services as well as chronic, hospice, and convalescent care.

## VI. PROCEDURES

### A. Franklin Medical Center (FMC) Services

1. Long term, skilled care:
  - a. Long term medical care is available at the Franklin Medical Center (FMC) for those patients who are designated as medical level four and who cannot perform two or more activities of daily living.
  - b. Placement into the FMC long-term care unit is a medical decision that shall be made by the FMC Chief Medical Officer (CMO) or DRC State Medical Director/designee.
  
2. Acute, skilled care:
  - a. Acute skilled medical care is available to all patients who have been discharged from an acute unit at a local hospital or from the Ohio State University Medical Center (OSUMC) or whose needs temporarily surpass the level of services offered at the institution. Such services include, but are not limited to:
    - i. Sustained IV therapy;
    - ii. Blood transfusions;
    - iii. Initiation of chemotherapy;
    - iv. Pre and post-operative care;
    - v. Stabilization of a new insulin dependent diabetic;
    - vi. Evaluation and treatment of active tuberculosis; and
    - vii. Frequent physical therapy.
  - b. Patients may be directly admitted to FMC for evaluation or treatment if their medical needs have temporarily surpassed the level of services available at the parent institution, i.e. stabilization of a newly diagnosed diabetic, initiation of treatment of active tuberculosis. Direct admissions to FMC must be coordinated between the parent institution's CMO and the FMC CMO.

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3. Palliative care:
  - a. The care unit at FMC provides a hospice-type program of patient and family focused care to meet the social, emotional, and spiritual needs of terminally ill patients.
  - b. The care unit consists of six beds set aside for this purpose. Four beds are designated for patients who are still receiving curative treatments. Two beds are reserved for patients who have agreed to receive comfort care and support.
  - c. All patients shall be evaluated and approved by the FMC CMO for admission to the care unit. Admission criteria for the care unit include:
    - i. The patient must have a terminal diagnosis;
    - ii. The patient's prognosis must be six months or less;
    - iii. All patients admitted to the palliative care room must have completed advanced directives for health care, including a living will and/or a Do Not Resuscitate (DNR) order.
4. When patients are admitted to FMC or the Ohio State University Medical Center (OSUMC), either for acute or palliative care, Patient One View will be referenced for the patient's current medications.
5. Audiology services are available at FMC. Referrals to Audiology can be made either from the Ear, Nose and Throat (ENT) clinic or from the institution CMO. Audiology services include:
  - a. Audiograms;
  - b. Hearing aid fittings; and
  - c. Hearing aid repair or replacement.
6. Prosthetics and Orthotics:
  - a. A full range of prosthetic and orthotic services are available. The institution CMO, or a consulting specialist with the approval of the CMO, may refer patients to this clinic.
  - b. The patient must be evaluated by Physical Therapy prior to his/her first visit to the Prosthetics clinic.
  - c. Each recommendation for prosthesis shall be reviewed through Collegial Review.
  - d. A completed consult must accompany each patient to every visit. Supporting documentation (i.e. orthopedic consult) should be attached.

- e. Prosthetic devices can take several months to build. The patient's discharge date should be considered when scheduling Prosthetic clinic because the prosthetic device will not be sent to the patient's home address.
  - f. Prosthetic and orthotic devices shall be replaced under the following circumstances only:
    - i. The device is no longer functional and/or is unsafe to use;
    - ii. It has been determined (e.g. RIB) that the prosthetic device was lost or destroyed by someone other than the patient owning the device; or
    - iii. A change in the patient's physical condition renders the device non-functional.
  - g. Prosthetic or orthotic devices shall not be replaced if it is determined that the device was willfully destroyed, lost, or mutilated by the patient. Replacement in such cases shall be the sole responsibility of the patient or his/her family.
7. Outpatient services include:
- a. Laboratory services;
  - b. Radiology services;
  - c. Physical therapy; and
  - d. Specialty clinics.

## **B. Frazier Health Center Services**

1. Long term, assisted living services:
  - a. Long term assisted living services are available for male patients with long-term medical conditions who can perform all but one of the basic activities of daily living as outlined on the Advanced Medical Placement Form (DRC5330). Such services include, but are not limited to:
    - i. Continuous intermediate nursing care including wound and skin care, continuous oxygen therapy, etc;
    - ii. Short term skilled nursing care including iv therapy, blood transfusions and adjunctive tube feedings;
  - b. Infirmary level care is available to all Pickaway Correctional Institution (PCI) Frazier Health Center patients who have short term acute care needs, but do not require the level of care provided at FMC or the OSUMC.
2. Long term dialysis services:
  - a. Acute dialysis needs are managed in cooperation with the OSUMC. Those-patients requiring long-term dialysis shall be transitioned for treatment at PCI Frazier Health Center when deemed appropriate by the OSUMC nephrology specialists.

- b. Long-term dialysis treatments are available to male and female patients.
  - i. Security level 1 and 2 male patients in need of renal dialysis shall be housed at the Pickaway Correctional Institution.
    - 1) Suitability of placement of higher security level male patients at the PCI shall be determined on a case-by-case basis by the DRC State Medical Director.
    - 2) Any patient requiring dialysis who is deemed unsuitable for placement at PCI due to specific security concerns shall receive dialysis treatments by alternative means.
  - ii. Female patients and those male patients not housed at PCI may be transported round trip by their parent institutions. As an alternative, onsite contractual dialysis programs may be provided at designated institutions as determined by the Office of Correctional Health Care - Bureau of Medical Services for patients requiring dialysis.

#### **C. Specialty Services Provided at the Institutional Level**

- 1. Optometry Services: Each institution shall provide, or shall have easy access to, Optometry services. A consulting Ophthalmologist shall be available for consultation if deemed necessary by the Institution CMO or consulting Optometrist.
  - a. Glaucoma checks, if medically indicated by the consulting ophthalmologist or advanced level practitioner.
  - b. Glasses (frames and lenses) shall be provided once every four years as needed or at anytime there is a significant change in the patient's visual acuity, as determined by the institution optometrist. Lost/damaged frames or lenses shall be replaced at the patient's expense unless, in the opinion of the Institutional Inspector, there are extenuating circumstances.
  - c. Clear contact lenses may be prescribed only when deemed to be medically necessary; contact lenses shall not be for cosmetic reasons.
    - i. Inmates who have clear contact lenses at the time of incarceration shall be permitted to wear them for up to 6 months or may be permitted to receive them through the mail for 6 months; all maintenance costs shall be the inmate's responsibility. Those inmates serving a sentence of greater than 6 months shall be referred to the institution optometrist within 3 months.
    - ii. Colored contact lenses are not permitted.
  - d. Inmates may request glasses be sent from home; this may include an existing set of glasses or inmates may request that the institution optometrist provide a prescription

that can be filled by an outside optometry department at the inmate's or family's expense and sent to the institution.

- i. Glasses sent in from an outside optometrist must be authorized by the Health Care Administrator (HCA) and must meet security requirements.
- ii. Glasses sent in from an outside optometrist shall not exceed \$150.00 in price. A receipt must accompany the glasses to verify the cost.
- e. An optometrist shall prescribe sunglasses or tinted lenses only when medically necessary. All other sunglasses, if permitted by institutional rules, must be purchased through the commissary or obtained according to security regulations.

2. **Podiatry Services**

- a. Podiatry services are available upon referral by the institution physician when deemed to be medically necessary.
- b. Provision of properly fitted footwear is the responsibility of the institution quartermaster.
  - i. Patients shall not be referred to the podiatrist for prescription of special footwear unless a significant physical deformity of the foot is present.
  - ii. Patients requiring soft or cloth footwear due to neuropathy related to diabetes or peripheral vascular insufficiency shall likewise be referred to the institution quartermaster for provision of appropriate footwear.
- c. The institution podiatrist may refer patients requiring orthotics or orthopedic services that are beyond the scope of services available at the institution. The institution CMO must approve all such referrals.

**D. Specialty Clinic Services**

1. The institution CMO shall determine the level of medical care needed by each patient. If the CMO determines that specialty medical services are needed which are beyond the scope provided by the parent institution, he/she shall make the appropriate referral.
2. If specialty consultation is needed for diagnosis or management, the patient shall be referred to the appropriate specialty clinic at FMC or to the OSUMC. The Consultation Request Form (DRC5244) must be completed according to the Office of Correctional Health Care (OCHC) Clinic Scheduling Guidelines (located on the DRC Intranet Correctional Health Care – Medical page) and Medical Protocol B-1, Consultation Referrals.

3. As detailed in Medical Protocol B-1, Consultation Referrals, the staff responsible for medical scheduling at each institution shall appropriately update and track consults on the Consult/Referral Flowsheet (DRC5535).
  - a. An electronic/computerized consult tracking database may be utilized in lieu of the Consult/Referral Flowsheet (DRC5535) as long as it includes all of the elements of the form identically.
  - b. If utilized, the electronic/computerized consult tracking database must still be printed, reviewed, and signed by the HCA and CMO on a monthly basis, as detailed in Medical Protocol B-1, Consultation Referrals.
4. Utilization Review:
  - a. Designated clinics and test referrals are reviewed to ensure that the referral is appropriate and complete. Refer to Medical Protocol B-1, Consultation Referrals, for details.
  - b. All referrals that are designated must be submitted and be approved before the appointment is scheduled.
5. Health care staff shall collaborate with security personnel when determining conditions of transportation and security precautions when a patient needs to be transported to another facility or clinic.
6. Patients shall be evaluated by the OSUMC specialty consultants in a timely manner. Please see Medical Protocol B-1, Consultation Referrals for details regarding processing consultation requests.

#### **E. Telemedicine Services**

1. Upon mutual agreement between the DRC and the OSUMC, specialty clinics may be conducted utilizing the DRC telemedicine network.
  - a. Referrals to telemedicine clinic and the processing of the consultant recommendations should follow the guidelines in Medical Protocol B-1, Consultation Referrals, and the OCHC Clinic Scheduling Guidelines.
2. The following medical personnel may present patients via telemedicine:
  - a. Physicians;
  - b. Nurse practitioners;
  - c. Physician assistants;
  - d. Registered nurses;
  - e. Licensed practical nurses.
3. The OCHC Clinic Scheduling Guidelines and Medical Protocol B-1, Consultation Referral, outline how the patients will be referred for a telemedicine specialty consult,

the information that should generally be provided, the physical assessment skills likely to be utilized, and how to process for consultant recommendations.

- a. Telemedicine specialty consults shall be handled in the same manner as in-person specialty consults, as detailed in Medical Protocol B-1, Consultation Referral, in regard to ensuring the patient's consent and documentation.
- b. The telemedicine specialty consult shall be considered confidential and the report integrated into the patient's medical chart in accordance with Medical Protocol B-7, Medical Records Format, and Department Policy 07-ORD-11, Access and Confidentiality of Medical, Mental Health, and Recovery Services Information.
- 4. The OSUMC telemedicine manager or FMC clinic nurse shall fax the completed recommendations to the institutional medical department, along with the name of the attending physician and the division phone number where the consultant can be reached for questions.
- 5. Patients requiring physical examinations beyond the scope of telemedicine shall be referred to the OSUMC outpatient clinics or the FMC outpatient clinic area. If the need is emergent, the patient should be referred to the emergency department.
- 6. As with any patient, the institutional physician may utilize the OSUMC consult line at 1-800-293-5123 if there are questions concerning the plan of care.
- 7. The DRC telemedicine network is part of the larger DRC videoconferencing network. The maintenance of the videoconferencing equipment, transmission lines, and bridging services are under the auspices of the Bureau of Information & Technology Services. The videoconferencing administrator, in conjunction with the Office of Correctional Health Care - Bureau of Medical Services, shall approve any changes to the telemedicine network.

#### **F. Surgery**

- 1. The consulting specialist shall determine the need for and recommend surgery.
  - a. The specialist shall then complete the Pre-admission Testing and Order form (DRC5296), designating both the level of need and preoperative orders.
  - b. All surgeries recommended by any consulting physician must be pre-approved prior to submission to OSU Corrections Scheduling. Refer to Medical Protocol B-1, Consultation Referrals, for details.
- 2. Designated levels of care have been established by the Office of Correctional Health Care - Bureau of Medical Services to assure provision of necessary medical care to patients with serious medical conditions. The following levels have been established to define the level and extent of care available, particularly in regards to surgical intervention and invasive procedures.

- a. Medically Mandatory: This includes emergency care and cases where urgent medical intervention is required i.e. heart attack, appendectomy, etc.
  - b. Medically Necessary: Care without which the patient could not be maintained without significant risks of either further serious deterioration of the condition or significant reduction in the chance of possible repair after release, or without significant pain or discomfort.
  - c. Medically Acceptable: Care that is not medically necessary, and is considered to be elective i.e. non-cancerous skin lesions, etc.
  - d. Cosmetic: Care that is not considered medically necessary. This may include, but is not limited to, cases such as tattoo removal, elective circumcision, minor nasal reconstruction and other cosmetic surgery.
    - i. Cases that fall within Medically Mandatory and Medically Necessary levels are generally eligible for provision of medical or surgical procedures.
    - ii. Cases that fall within the Medically Acceptable and Cosmetic levels will generally not result in provision of medical or surgical services.
      - a) Medically Acceptable cases may result in the provision of services where a special need or situation exists on a case-by-case basis.
      - b) Procedures that fall under the Cosmetic level shall require the approval of the DRC State Medical Director.
3. If the institution CMO disagrees with any recommendation of the physician specialist, he/she shall document the rationale for the disagreement and recommend an alternative treatment plan.
  4. All surgeries that have been pre-approved must be submitted to OSU Corrections Scheduling by fax to 614-445-7043. The specialist shall also take a copy of the preadmission form to his/her service at OSUMC to be scheduled by that service.
  5. Patients are admitted to FMC on the working day before the scheduled surgery for preoperative lab testing. A history and physical exam is completed either preoperatively at the specialty clinic or at OSUMC on the day of surgery.

#### **G. Physical Therapy**

1. Either a consulting specialist or the institution CMO may refer patients for Physical Therapy.
  - a. Physical Therapy is available at FMC.

- b. For further details regarding the services available, please see the OCHC Clinic Scheduling Guidelines.
2. As with all Specialty Services, a completed consult and a medical plan of care must accompany the patient.
3. Patients with the need for special treatment or medical rehabilitation, such as extended physical therapy, may be placed at FMC transiently or permanently, depending on the nature of the medical condition and the custody level of the patient.

**H. Respiratory Therapy**

1. Either a consulting specialist or the institution CMO may refer patients for Respiratory Therapy.
2. As with all Specialty Services, a completed consult and a medical plan of care must accompany the patient.
3. Respiratory Therapy is available at FMC and PCI Frazier Health Center.

**I. Support Services for Inmates with Disabilities**

1. Each institution shall provide the equipment, facilities, and support necessary for inmates to perform self-care activities in a reasonably private environment.
2. The institution shall ensure that any necessary education is provided to disabled inmates so that they may perform self-care activities. Such education may include training for proper use of equipment or the correct procedure for self-care activities.

**J. Transportation and Scheduling**

1. All scheduled hospitalizations and diagnostic tests at OSUMC shall be scheduled through the OCHC Central Scheduling and/or OSU Corrections Scheduling.
2. If a patient is scheduled for a clinic or surgery appointment, any transfers from his/her present institution to another should be delayed until after the appointment is completed, if possible.
3. The following guidelines shall be followed by all institutions for medical trips.
  - a. Upon approval of the consult and prior to the scheduled appointment, each patient is to be contacted and asked if he/she still wishes to be seen or have the scheduled procedure or surgery. The reason for the trip shall be explained.

- i. The Notification of Medical Appointment form (DRC5082) shall be completed at this time.
  - 1) A patient's signature on the main section of the Notification of Medical Appointment form (DRC5082) indicates agreement of the medical trip.
  - 2) A patient's signature in the Refusal section of the Notification of Medical Appointment form (DRC5082) indicates a refusal of the medical trip.
    - a. The patient shall immediately be referred to a nurse or ALP to discuss the refusal; and
    - b. A Release of Responsibility form (DRC5025) shall be signed by the patient; and
    - c. The patient's name shall be removed from the trip list.
- b. If the patient agrees to the appointment by signing the main section of the Notification of Medical Appointment form (DRC5082) and then refuses on the day of the trip, the following shall occur:
  - i. A Release of Responsibility (DRC5025) shall be signed by the patient; and
  - ii. The patient shall be removed from the trip list; and
  - iii. The patient shall be re-evaluated by an institutional ALP to discuss the refusal of the medical trip. If the need is established, the trip may be rescheduled; and
  - iv. A Conduct Report (DRC4018) shall be written.
    - 1) Refer to section J-3-d below for exceptions.
    - 2) The Rules Infraction Board (RIB) shall consider discipline, and a \$20.00 administrative fee may be charged for the late cancellation.
    - 3) The RIB panel shall consider excuses and mitigating circumstances.
- c. Inmates refusing trips must be re-evaluated by an institution ALP and if the need is established, the trip may be rescheduled.
  - i. If the problem is subsequently resolved and/or the trip is otherwise deemed unnecessary, the ALP shall document this fact in the medical record.
  - ii. The trip shall not be rescheduled unless the inmate reports to the Medical Department that the problem has recurred.

- d. Cancellations and re-scheduling of medical trips shall be done in the following circumstances with proper documentation. A conduct report shall not be written under these circumstances:
  - i. Attorney visit;
  - ii. Parole Board Hearing;
  - iii. GED testing; or
  - iv. Out of state visit.
  
- 4. If the medical treatment which is being refused is considered to be essential to maintenance of life (i.e., chemotherapy, dialysis, etc.), the CMO or HCA shall follow the steps outlined in Department Policy 68-MED-24, Consent To & Refusal of Medical Treatment.
  
- K.** The DRC contracts with various agencies to provide health care services to its inmate population. In general, these agencies must follow DRC policy requirements. However, these agencies may develop specific protocols and guidelines to deliver health care to inmates, which may vary from DRC procedures. Such variances may include:
  - 1. Use of facilities and services other than those provided by OSUMC or FMC for specialty health care;
  - 2. Use of facilities other than OSUMC or FMC for surgical procedures; and/or
  - 3. Use of transportation and scheduling procedures other than those provided by DRC HUB transportation and OCHC Central Scheduling.

**Related Department Forms:**

Conduct Report	DRC4018
Release of Responsibility Form	DRC5025
Notification of Medical Appointment Form	DRC5082
Consultation Form	DRC5244
Pre-Admission Testing and Order Form	DRC5296
Advanced Medical Placement Form	DRC5330
Consult/Referral Flowsheet	DRC5535
Health Services Request	DRC5373