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Corizon Needs a Checkup: Problems with Privatized Correctional Healthcare

by Greg Dober

Corizon, the nation's largest for-profit medical services provider for prisons, jails and other detention facilities, was formed in June 2011 through the merger of Prison Health Services (PHS) and Correctional Medical Services (CMS).

In April 2013, the debt-rating agency Moody's downgraded Corizon's nearly \$360 million worth of debt to a rating of B2 – an indication the company's debt is highly speculative and a high credit risk. According to Moody's, the rating downgrade was due to an "expectation of earnings volatility following recent contract losses, margin declines from competitive pricing pressure on new and renewed contracts, and Moody's belief that Valitás [Corizon's parent corporation] will be unable to restore metrics to levels commensurate with the prior B1 rating over the near to intermediate term."

Valitás Health Services is majority owned by Beecken Petty O'Keefe & Company, a Chicago-based private equity management firm. Beecken's other holdings are primarily in the healthcare industry.

On September 23, 2013, Moody's again downgraded Corizon's debt rating and changed the company's rating outlook from "stable" to "negative." The following month Corizon announced that it had replaced CEO Rich Hallworth with Woodrow A. Myers, Jr., the former chief medical officer at WellPoint Health. Hallworth, who had been appointed Corizon's CEO in 2011, previously served as the president and CEO of PHS. At the same time that Hallworth was replaced, Corizon president Stuart Campbell also stepped down.

Prison Medical Care for Profit

According to Corizon's website, the company provides healthcare services at over 530 correctional facilities serving approximately 378,000 prisoners in 28 states. In addition, Corizon employs around 14,000 staff members and contractors. The company's corporate headquarters is located in Brentwood, Tennessee and its operational headquarters is in St. Louis, Missouri.

The 2011 merger that created Corizon involved Valitás Health Services, the parent company of CMS, and America Service Group, the parent company of PHS. The Nashville Business Journal reported the deal was valued at \$250 million.

"Corizon's vision is firmly centered around service – to our clients, our patients and our employees," Campbell said at the time. "To that we add the insight of unparalleled experience assisting our client partners, and caring professionals serving the unique healthcare needs of [incarcerated] patients."

Corizon has around \$1.5 billion in annual revenue and contracts to provide medical services for the prison systems in 13 states. The company also contracts with numerous cities and counties to provide healthcare to prisoners held in local jails; some of Corizon's larger municipal clients include Atlanta, Philadelphia and New York City (including the Rikers Island jail). Additionally, the company has its own in-house pharmacy division, PharmaCorr, Inc.

The prison healthcare market has flourished as state Departments of Corrections and local governments seek ways to save money and reduce exposure to litigation. [See: PLN, May 2012, p.22]. Only a few major companies dominate the industry. Corizon's competitors include Wexford Health Sources, Armor Correctional Health Services, NaphCare, Correct Care Solutions and Centurion Managed Care – the latter being a joint venture of MHM Services and Centene Corporation. Around 20 states outsource all or some of the medical services in their prison systems.

As Corizon is privately held, there is little transparency with respect to its internal operations and financial information, including costs of litigation when prisoners (or their surviving family members) sue the company, often alleging inadequate medical care.

For example, when Corizon was questioned by the news media in Florida during a contract renewal, the company initially tried to prevent the release of its litigation history, claiming it was a "trade secret."

In 2012, Corizon agreed to settle a lawsuit filed against PHS – one of its predecessor companies – by Prison Legal News, seeking records related to the resolution of legal claims against the firm in Vermont. Based on the records produced pursuant to that settlement, PHS paid out almost \$1.8 million in just six cases involving Vermont prisoners from 2007 to 2011. [See: PLN, Dec. 2012, p.16].

Companies like Corizon provide healthcare in prisons and jails under the HMO model, with an emphasis on cutting costs – except that prisoners have no other options to obtain medical treatment except through the contractor.

Arizona DOC

A former Corizon nurse had her license suspended and is currently under investigation by the Arizona State Board of Nursing for incompetence. In January 2014, nurse Patricia Talboy was accused of contaminating vials of insulin at three units at the ASPC-Lewis prison, potentially exposing two dozen prisoners to HIV or hepatitis.

Talboy reportedly used a needle to stick prisoners' fingers to check their blood sugar levels. She then used the same needle to draw insulin from vials of the medication utilized for multiple prisoners, possibly contaminating the insulin in the vials. After placing the vials back into inventory, other staff members may have unknowingly used them to dispense insulin.

"Every indication is that the incident is the result of the failure by one individual nurse to follow specific, standard and well-established nursing protocols when dispensing injected insulin to 24 inmates," Arizona Department of Corrections (ADC) director Charles L. Ryan said in a January 9, 2014 statement.

Talboy's failure to follow procedures was discovered after a prisoner told a different nurse about the issue. Corizon reportedly delayed three days before publicly reporting the incident; in a press release, the company admitted that one of its nurses had been involved in "improper procedures for injections." Talboy received her nursing license in August 2012 and became an RN in June 2013; as a rookie nurse, Corizon likely paid her less than more experienced nurses.

Following the insulin-related incident, the company was ordered to develop a comprehensive plan that includes "supplemental training and competency testing procedures for blood glucose testing and administration of insulin," as well as "nurse-peer reporting education to ensure professional accountability" and "patient awareness education on injection protocols."

Granted, Corizon isn't alone with respect to such incidents. In August 2012, a nurse employed by the ADC's previous medical services contractor, Wexford Health Sources, contaminated the insulin supply at ASPC-Lewis through improper injection protocols, potentially exposing 112 prisoners to hepatitis C. [See: PLN, July 2013, p.1].

Corizon has a three-year, approximately \$370 million contract to provide medical care in Arizona state prisons, which began in March 2013. The contract award generated controversy because former ADC director Terry Stewart was hired by Corizon as a consultant; current director Charles Ryan had previously worked under Stewart, raising a potential conflict of interest. Ryan denied any improprieties.

According to a report by the American Friends Service Committee released in October 2013, titled "Death Yards: Continuing Problems with Arizona's Correctional Health Care," medical services in Arizona prisons did not improve after Corizon replaced Wexford as the ADC's healthcare contractor. "Correspondence from prisoners; analysis of medical records, autopsy reports, and investigations; and interviews with anonymous prison staff and outside experts indicate that, if anything, things have gotten worse," the report stated.

Florida DOC

In 2013, the Florida Department of Corrections (FDOC) awarded Corizon a five-year, \$1.2 billion contract to provide medical services to state prisoners in north and central Florida. Wexford Health Sources was contracted to provide similar services in the southern region of the state for \$240 million. [See: PLN, June 2013, p.24]. The wholesale privatization of healthcare in Florida's prison system followed a 2011 legislative decision to disband the state's Correctional Medical Authority, which had oversight over prison medical care. [See: PLN, May 2012, p.30].

The contracts were part of the Republican administration's initiative to expand privatization of government services, including prison management and healthcare, in spite of previous setbacks. In 2006, PHS withdrew two months into an almost \$800 million contract to provide medical care to Florida prisoners; at that time, the company said the contract was not cost-effective and claimed it would lose money.

The 2013 contract awards to Corizon and Wexford followed a two-year legal fight. In 2011, AFSCME Florida and the Federation of Physicians and Dentists/Alliance of Healthcare and Professional Employees filed suit challenging the prison healthcare contracts, in an effort to protect the jobs of nearly 2,600 state workers.

On June 21, 2013 the First District Court of Appeals approved the privatization of medical care in FDOC facilities, overturning a ruling by the Leon County Circuit Court. The appellate court noted in its decision that “The LBC [Legislative Budget Committee] simply moved funds from different line items within the Department’s Health Services’ program, providing additional funds for contracts that the Department otherwise had the authority to enter.” See: *Crews v. Florida Public Employers Council 79*, 113 So.3d 1063 (Fla. Dist. Ct. App. 1st Dist. 2013).

Under the terms of the FDOC’s contract with Corizon, the company must provide medical care to Florida state prisoners for 7% less than it cost the FDOC in 2010. When entering into the contract, state officials apparently had few concerns about the numerous lawsuits previously filed against Corizon, and no hard feelings toward the company’s predecessor, PHS, when it terminated its 2006 contract to provide medical services to Florida prisoners because it wasn’t profitable.

“Most people feel, as long as they achieve their 7 percent savings who cares how they treat inmates?” noted Michael Hallett, a professor of criminology at the University of North Florida.

Florida Counties

In a September 6, 2012 unpublished ruling, the Eleventh Circuit Court of Appeals affirmed a \$1.2 million Florida jury verdict that found Corizon – when it was operating as PHS – had a policy or custom of refusing to send prisoners to hospitals. The Court of Appeals held it was reasonable for jurors to conclude that PHS had delayed medical treatment in order to save money. See: *Fields v. Corizon Health*, 490 Fed.Appx. 174 (11th Cir. 2012).

The jury verdict resulted from a suit filed against Corizon by former prisoner Brett A. Fields, Jr. In July 2007, Fields was being held in the Lee County, Florida jail on two misdemeanor convictions. After notifying PHS staff for several weeks that an infection was not improving, even with antibiotics that had been prescribed, Fields was diagnosed with MRSA. PHS did not send him to a hospital despite escalating symptoms, including uncontrolled twitching, partial paralysis and his intestines protruding from his rectum. A subsequent MRI scan revealed that Fields had a severe spinal compression; he was left partly paralyzed due to inadequate medical care.

The Eleventh Circuit wrote that PHS “enforced its restrictive policy against sending prisoners to the hospital,” and noted that a PHS nurse who treated Fields at the jail “testified that, at monthly nurses’ meetings, medical supervisors ‘yelled a lot about nurses sending inmates to hospitals.’” Further, PHS “instructed nurses to be sure that the inmate had an emergency because it cost money to send inmates to the hospital.”

At trial, the jury found that PHS had a custom or policy of deliberate indifference that violated Fields’ constitutional right to be free from cruel and unusual punishment. The jurors concluded that Fields had a serious medical need, PHS was deliberately indifferent to that serious medical need, and the company’s actions proximately caused Fields’ injuries. The jury awarded him \$700,000 in compensatory damages and \$500,000 in punitive damages. [See: PLN, March 2013, p.54; Aug. 2011, p.24].

More recently, the estate of a 21-year-old prisoner who died at a jail in Manatee County, Florida filed a lawsuit in October 2013 against the Manatee County Sheriff's Office and Corizon, the jail's healthcare provider. The complaint accuses the defendants of deliberate indifference to the serious medical needs of Jovon Frazier and violating his rights under the Eighth Amendment.

In February 2009, Frazier was incarcerated at the Manatee County Jail; at the time of his medical intake screening, staff employed by Corizon, then operating as PHS, noted that his health was unremarkable. Frazier submitted a medical request form in July 2009, complaining of severe pain in his left shoulder and arm, and a PHS nurse gave him Tylenol.

Throughout August and September 2009, Frazier submitted five more medical requests seeking treatment for his arm and shoulder. "It really hurts! HELP!" he wrote in one of the requests. PHS employees saw him and recorded his vital signs. Despite the repeated complaints, Frazier was never referred to a doctor or physician assistant; on September 9, 2009 his treatment was documented as routine but he was placed on the "MD's list."

An X-ray was taken on September 17, 2009 to rule out a shoulder fracture. The X-ray was negative for a fracture, and Frazier was not referred to a doctor. He submitted two more medical requests that month and five requests in October 2009 seeking treatment for his increasingly painful condition. The complaint alleges that in total, Frazier submitted 13 medical request forms related to pain over a period of three months; he was seen by a nurse each time but not examined by a physician.

On October 29, 2009, Frazier received an X-ray to determine if he had a tendon injury. An MRI was recommended and he was transported to a hospital where an MRI scan revealed a large soft tissue mass on his shoulder. A doctor at the hospital, concerned that the mass was cancerous, recommended additional tests.

After being diagnosed with osteosarcoma, a form of bone cancer, Frazier was returned to the jail and subsequently treated at the Moffitt Cancer Center, where he received chemotherapy, medication and surgery. Despite this aggressive treatment the cancer progressed and Frazier's left arm was amputated. The cancer continued to spread, however, and he was diagnosed with lung cancer in June 2011. He died within three months of that diagnosis, on September 18, 2011.

In a letter to the attorney representing Frazier's estate, Florida oncologist Howard R. Abel wrote that the lack of treatment provided by Corizon at the Manatee County Jail constituted "gross negligence and a reckless disregard to Mr. Frazier's right to timely and professionally appropriate medical care."

The lawsuit filed by Frazier's estate claims that Corizon was aware of his serious medical condition but failed to provide adequate treatment. In addition, the complaint contends the company has a widespread custom, policy and practice of discouraging medical staff from referring prisoners to outside medical practitioners and from providing expensive medical tests and procedures. Finally, the lawsuit states that "Corizon implemented these widespread customs, policies and practices for financial reasons and in deliberate indifference to [the] serious medical needs of Frazier and other inmates incarcerated at Manatee County Jail."

On January 10, 2014, U.S. District Court Judge James Moody denied Corizon's motion to dismiss the case. The company had argued that the allegations in the lawsuit failed to assert sufficient facts to establish deliberate indifference, amounted only to medical negligence and were insufficient to establish gross negligence, and failed "to adequately allege a policy or custom that violated Frazier's rights." Judge Moody disagreed, finding the claims set forth in the complaint were "sufficient to establish a constitutional violation."

The Manatee County Sheriff's Office had better luck with its motion to dismiss. The Sheriff argued the complaint did not establish facts indicating that the jail had a similar practice – like Corizon – of providing deliberately indifferent medical care to prisoners. The court agreed and dismissed the claims against the Sheriff's Office; the claims against Corizon remain pending. See: *Jenkins v. Manatee County Sheriff*, U.S.D.C. (M.D. Fla.), Case No. 8:13-cv-02796-JSM-TGW.

Idaho DOC

In February 2013, the Idaho Department of Corrections (IDOC) announced it had reached a one-year extended agreement with Corizon to provide medical care in the state's prison system. However, the Idaho Business Review reported that the extension also resulted in a rate increase. Then-Corizon president Stuart Campbell informed the IDOC Board of Correction that the company wouldn't sign an extension for less money, stating the current contract had become too costly. During the preceding three years of the contract the IDOC had incurred approximately 20% in cumulative rate increases.

Both sides agreed that the contract would run through December 2013 and the IDOC would pay an additional \$250,000. It seems odd that Idaho was willing to continue contracting with the company, though, as the relationship between the IDOC and Corizon has been a rocky one.

The quality of medical care at the Idaho State Correctional Institution (ISCI) in Boise has been an ongoing issue for nearly three decades. The prison was the focus of a class-action lawsuit filed on behalf of prisoners alleging a variety of problems, including inadequate healthcare. The lawsuit was known as the Balla litigation after plaintiff Walter Balla.

In July 2011, after new complaints were filed regarding medical care at ISCI, U.S. District Court Judge B. Lynn Winmill appointed a special master, Dr. Marc F. Stern, to assess the situation at the facility. The court wanted Stern to confirm whether ISCI was in compliance with the temporary agreements established in the Balla case, and to investigate and report on "the constitutionality of healthcare" at the facility.

Dr. Stern, a former health services director for the Washington Department of Corrections who also had previously worked for CMS, one of Corizon's predecessor companies, issued a scathing report in February 2012. With the aid of psychiatrist Dr. Amanda Ruiz, Stern and his team reviewed ISCI over a six-day period and met with dozens of prisoners, administrators and Corizon employees.

Stern stated in the report's executive summary: "I found serious problems with the delivery of medical and mental health care. Many of these problems have either resulted or risk resulting in serious harm to prisoners at ISCI. In multiple ways, these conditions violate the rights of

prisoners at ISCI to be protected from cruel and unusual punishment. Since many of these problems are frequent, pervasive, long-standing, and authorities are or should have been aware of them, it is my opinion that authorities are deliberately indifferent to the serious health care needs of their charges.”

The report found that prisoners who were terminally ill or in long-term care were sometimes left in soiled linens, given inadequate pain medication and went for long periods without food or water. The findings regarding sick call noted instances in which prisoners’ requests either resulted in no care, delayed care or treatment that was deemed dangerous. Emergency care situations had insufficient oversight, delays or no response; inadequately trained medical staff operated independently during emergencies without oversight from an RN or physician. The report also found problems with the pharmacy and medication distribution at ISCI.

In one case, a prisoner with a “history of heart disease was inexplicably dropped from the rolls of the heart disease Chronic Care Clinic.” As a result, medical staff stopped conducting regular check-ups and assessments related to the prisoner’s heart condition. A few years later the prisoner went in for a routine visit, complaining of occasional chest pain. No evaluation or treatment was ordered and the prisoner died four days later due to a heart attack. In another case, Corizon staff failed to notify a prisoner for seven months that an X-ray indicated he might have cancer.

Dr. Stern’s report not only reviewed processes but also staff competency and adequacy. The report cited allegations that a dialysis nurse at ISCI overtly did not like prisoners, and routinely “failed to provide food and water to patients during dialysis, prematurely aborted dialysis sessions or simply did not provide them [dialysis] at all and failed to provide ordered medications resulting in patients becoming anemic.” Stern concluded that prison officials were aware of this issue and the danger it presented to prisoners, but “unduly delayed taking action.”

The mental health care provided by Corizon at ISCI was found to be deficient by Dr. Ruiz, who conducted the psychiatric portion of the court-ordered review. The report noted that the facility had 1) inadequate “screening of and evaluating prisoners to identify those in need of mental health care,” 2) “significant deficiencies in the treatment program at ISCI” which was “violative of patients’ constitutional right to health care,” 3) an “insufficient number of psychiatric practitioners at ISCI,” 4) incomplete or inaccurate treatment records, 5) problems with psychotropic medications, which were prescribed with no face-to-face visits or follow-up visits with prisoners and 6) inadequate suicide prevention training.

The report concluded: “The state of guiding documents, the inmate grievance system, death reviews and a mental health CQI [continuous quality improvement] system at ISCI is poor. While not in and of themselves unconstitutional, it is important for the court to be aware of this and its possible contribution to other unconstitutional events.”

In March 2012, shortly after Dr. Stern’s report was released over the objection of state officials, Corizon disagreed with its findings. The company retained the National Commission on Correctional Health Care (NCCHC) to review the report. Corizon described the review as an “independent assessment,” even though it was paying NCCHC accreditation fees.

The NCCHC review consisted of a three-person team assessing the facility over a two-day period in April 2012. Unlike Stern's assessment of medical and mental health care, the NCCHC team did not interview prisoners or include a psychiatrist. Regardless, the agency concluded that "The basic structure of health services delivery at ISCI meets NCCHC's standards."

Corizon stated in a press release that Dr. Stern's report was "incomplete, misleading and erroneous," and then-CEO Rich Hallworth appeared in a video defending the company. The NCCHC had previously accredited Corizon's healthcare services at ISCI, thus in essence the NCCHC's review was self-validating the organization's prior accreditation findings. Also, according to NCCHC's website, two Corizon officials sit on the agency's health professionals certification board of trustees.

Corizon's criticism of Dr. Stern's report is just one example where the company has objected to an independent, third-party assessment of its medical services. The Balla case settled in May 2012 after 30 years of litigation. [See: PLN, Feb. 2013, p.40].

Indiana DOC

Following a competitive bidding process, Corizon was selected to continue providing medical care to Indiana state prisoners under a three-year contract effective January 1, 2014. The contract has a cap of \$293 million, based on a per diem fee of \$9.41 per prisoner.

Three weeks later, a lawsuit filed in federal court named Corizon and the Indiana Department of Correction as defendants in connection with the wrongful death of prisoner Rachel Wood. Wood, 26, a first-time drug offender, died in April 2012; the suit, filed on behalf of her family, claims she was transferred from prison to prison and denied care for her serious medical conditions, which included lupus and a blood clotting disorder.

"Notwithstanding the duty of the prison medical staff to provide adequate medical care to Rachel and to treat her very serious life threatening conditions, prison medical staff willfully and callously disregarded her condition, and allowed Rachel to deteriorate and die," the complaint stated.

"That is just the attitude of these guys, is saving money rather than providing health care," said Michael K. Sutherlin, the attorney representing Wood's family.

Prison officials reportedly moved Wood among several different prisons and hospitals, and at one point lost track of her and claimed she had escaped even though she was still incarcerated.

"She died a horrible death and she died alone," stated her father, Claude Wood. The lawsuit remains pending. See: *Williams v. Indiana DOC*, Marion County Superior Court (IN), Case No. 49D05-1401-CT-001478.

Maine DOC

In an October 2013 Bangor Daily News article, Steve Lewicki, coordinator of the Maine Prisoner Advocacy Coalition, discussed the state of healthcare in Maine's prison system. "Complaints by prisoners are less," he said, noting that while medical services provided to prisoners are better

than in the past, there are still concerns. This relative improvement coincided with the end of the state's contract with Corizon. The contract, valued at approximately \$19.5 million, was awarded to another company in 2012.

A year earlier, the Maine legislature's Office of Program Evaluation and Government Accountability (OPEGA) completed a review of medical services in state prisons. The agency contracted with an independent consultant, MGT of America, to conduct most of the fieldwork, and the review included services provided under Corizon's predecessor company, CMS.

The OPEGA report, issued in November 2011, cited various deficiencies in medical care at Maine prisons – including medications not always being properly administered and recorded by CMS staff. Although the company was notified of the problem, no corrective action was taken. CMS employees did not follow policies related to medical intake and medical records; OPEGA reported that 38% of prisoners' medical files had inadequate or inaccurate documentation regarding annual physical assessments, and that files were not complete or consistently maintained. The report found 11% of sick calls reviewed were either not resolved timely or had no documented resolution. OPEGA also criticized CMS for inadequate staff training.

At a January 2012 legislative committee hearing, state Senator Roger Katz asked Corizon regional vice president Larry Amberger, "My question to you is in light of this history, why should the state seriously be considering any proposal your company might make to get this contract back again?"

In response, Amberger criticized the methodology used by MGT during the assessment and said he believed Corizon provided quality medical care. Questioning and challenging the findings of an independent reviewer is the same tactic the company used in Idaho. Regardless, Corizon's contract to provide medical care to Maine state prisoners is now a part of history.

Louisville, Kentucky

While some jurisdictions, like Maine, have chosen not to renew their contracts with Corizon due to performance-related problems, in 2013 the Metro Department of Corrections in Louisville, Kentucky (LMC) offered the company a chance to rebid for its \$5.5 million contract to provide medical care at the LMC jail. This time, however, it was Corizon that said "no thanks."

The rebid offer was made even though seven healthcare-related prisoner deaths occurred in a seven-month period in 2012 during Corizon's prior contract, which expired in February 2013. Nevertheless, LMC and Corizon agreed to extend the contract through July 30, 2013 on a month-to-month basis pending a formal rebid.

After the expiration of the month-to-month contract extension, Corizon notified LMC that it was no longer interested in providing services to the corrections department and would not seek to rebid the contract. LMC director Mark Bolton told the Courier Journal he was "surprised" by the company's decision. What seems more surprising is that LMC wanted to continue contracting with Corizon to provide medical services in spite of the number of prisoner deaths.

In April 2012, Savannah Sparks, 27, a heroin addict and mother of three, was arrested and held on shoplifting charges at the LMC jail. While withdrawing from heroin she vomited, sweat

profusely, could not sit up, could not eat or drink, and defecated and urinated on herself. Six days later she was dead. According to the medical examiner, her death was due to “complications of chronic substance abuse with withdrawal.”

A subsequent wrongful death suit alleged that Corizon and LMC employees were negligent in failing to provide treatment for Sparks’ opiate addiction and withdrawal. Corizon settled the suit under confidential terms. See: *May v. Corizon*, Jefferson County Circuit Court (KY), Case No. 13-CI-001848.

Four months after Sparks’ death, on August 8, 2012, another LMC prisoner, Samantha George, died. A lawsuit filed in Jefferson County Circuit Court claimed that George was moved from the Bullitt County Jail to the LMC facility on a charge of buying a stolen computer. According to the complaint, she told a Corizon nurse that she was a severe diabetic, needed insulin, and was feverish and in pain from a MRSA infection.

The nurse notified an on-call Corizon physician, who was not located at the facility and thus could not examine George in person, to decide if she should be taken to an emergency room. The doctor recommended monitoring George and indicated he would see her the next day. George’s condition rapidly deteriorated while she was monitored by staff at the jail; she was found unresponsive a few hours after being admitted to the facility and pronounced dead a short time later.

An autopsy concluded that George died due to complications from a severe form of diabetes compounded by heart disease. According to the lawsuit, the Corizon doctor never saw George; among other defendants, the suit named Corizon and LMC director Mark Bolton as defendants. The case was removed to federal court, then remanded to the county circuit court in October 2013. See: *George v. Corizon*, U.S.D.C. (W.D. Ky.), Case No. 3:13-cv-00822-JHM-JDM.

A few weeks after George’s death, Kenneth Cross was booked into the LMC jail on a warrant for drug possession. According to a subsequent lawsuit, upon Cross’ arrival at the jail a nurse documented that he had slurred speech and fell asleep numerous times during the medical interview. Several hours later he was found unconscious, then died shortly thereafter due to a drug overdose. The lawsuit filed by Cross’ estate alleged that employees at the LMC jail were deficient in recognizing and treating prisoners’ substance abuse problems and that the facility was inadequately staffed for such medical care.

After the deaths of Sparks, George, Cross and four other prisoners in 2012, LMC director Bolton said he believed Corizon took too long to evaluate and treat prisoners at the jail. According to the Courier-Journal, Bolton sent an email to his staff in December 2012 regarding the prisoners’ deaths, stating, “Mistakes were made by Corizon personnel and their corporation has acknowledged such missteps.” He further indicated that Corizon employees – not LMC staff members – were responsible for the care of the prisoners who died. Six Corizon employees at the LMC jail resigned in December 2012 during an internal investigation; they were not identified.

Bolton’s criticism was too little, too late to prevent the deaths of the seven LMC prisoners, though the jail has since made improvements to its medical services, including a full-time detox nurse and new protocols for prisoners experiencing withdrawal. One could speculate that LMC’s critique of Corizon might be a litigation tactic, to deflect responsibility. The fact remains that

seven deaths occurred under Corizon's watch and, notwithstanding those deaths, LMC was willing to renew its contract with the company.

In January 2014, the Louisville Metro Police's Public Integrity Unit concluded investigations into three of the deaths at the jail, and criticized both Corizon and LMC. The Commonwealth Attorney's Office found that Sparks' and George's deaths were preventable; however, no criminal charges were filed. Dr. William Smock, a forensic examiner who served as a consultant during the investigations, stated with respect to George's death: "There is compelling evidence of a significant deviation from the standard of care and medical negligence on the part of the medical providers."

"I'm glad to see that the government's investigation matches exactly what our investigation showed, which is that her death and others like hers is easily preventable," said Chad McCoy, the attorney representing George's estate.

Minnesota DOC

After providing medical care to Minnesota state prisoners for 15 years, Corizon was not selected when the contract was rebid in 2013 – despite having submitted the lowest bid. Instead, competitor Centurion Managed Care was to begin providing healthcare services in Minnesota's prison system effective January 1, 2014 under a two-year, \$67.5 million contract.

Corrections Commissioner Tom Roy said the contract with Centurion was expected to "deliver significant savings to taxpayers while improving the quality of care for offenders."

According to the Star-Tribune, nine prisoners died and another 21 suffered serious or critical injuries in Minnesota correctional facilities due to delay or denial of medical care under the state's previous contract, which had been held by Corizon or its predecessor, CMS, since 1998.

That contract was for a fixed annual flat fee of \$28 million. A flat fee contract provides an incentive for the contractor to tightly control costs, as a reduction in expenses results in an increase in profit. The Star-Tribune found that many of the staffing arrangements negotiated in the contract played a role in the deaths and injuries. For example, the contract allowed Corizon physicians to leave at 4:00pm daily and did not require them to work weekends. During off-hours there was only one doctor on call to serve the state's entire prison system, and many of the off-hour consultations were done telephonically without the benefit of the prisoner's medical chart. Under the contract, Corizon was not required to staff most facilities overnight.

The Minnesota Department of Corrections was held liable for nearly \$1.8 million in wrongful death and medical negligence cases during the period when the state contracted with Corizon or CMS.

In October 2012, a jury in Washington County awarded Minnesota prisoner Stanley Riley more than \$1 million after finding a Corizon contract physician, Stephen J. Craane, was negligent in providing medical treatment. The Star-Tribune reported that Riley suffered from what turned out to be cancer and had written a series of pleading notes to prison officials. One read, "I assure you that I am not a malingerer. I only want to be healthy again."

In May 2013, the state paid \$400,000 to settle a lawsuit over the death of a 27-year-old prisoner at MCF-Rush City. Xavius Scullark-Johnson, a schizophrenic, suffered at least seven seizures in his cell on June 28, 2010. Nurses and guards didn't provide him with medical care for nearly eight hours. According to documents obtained by the Star-Tribune, Scullark-Johnson was found "soaked in urine on the floor of his cell" and was "coiled in a fetal position and in an altered state of consciousness that suggested he had suffered a seizure." An ambulance was called several hours later but a nurse at the prison turned it away, apparently due to protocols to cut costs. Corizon settled the lawsuit for an undisclosed sum in June 2013. See: *Scullark v. Garin*, U.S.D.C. (D. Minn.), Case No. 0:12-cv-01505-RHK-FLN.

Philadelphia, Pennsylvania

In Philadelphia, Mayor Michael A. Nutter has been accused of being too loyal to his campaign contributors, including Corizon. The company donated \$1,000 to Nutter's 2012 campaign committee several months before the city renewed Corizon's contract to provide medical care to 9,000 prisoners in Philadelphia's prison system. Further, PHS donated \$5,000 to Nutter's mayoral campaign in 2008.

The contract renewal would have been routine except for the fact that Corizon's performance in Philadelphia has been far from stellar. In July 2012 the company agreed to pay the city \$1.85 million following an investigation that found Corizon was using a minority-owned subcontractor that did no work, which was a sham to meet the city's requirements for contracting with minority-owned businesses.

The renewed year-to-year Corizon contract, worth \$42 million, began in March 2013. Nutter's administration was accused of using the year-to-year arrangement to avoid having the contract scrutinized by the city council; the city's Home Rule Charter requires all contracts of more than one year to be reviewed by the council. Further infuriating opponents of the contract, Corizon was not the lowest bidder. Correctional Medical Care (CMC), a competitor, submitted a bid that would have cost the city \$3.5 million less per year than Corizon. Philadelphia Prison Commissioner Louis Giorla defended the city's decision to award the contract to Corizon at a council hearing; however, he declined to answer questions as to why the administration considered Corizon's level of care to be superior to that provided by CMC.

Three union contracts with Corizon covering 270 of the company's workers in Philadelphia's prison system expired on November 26, 2013. Corizon demanded benefit cuts, including changes in employee healthcare programs, to offset wage increases promised under the company's contract with the city. A strike was averted in December 2013 when the mayor's office intervened and both sides reached a settlement. The Philadelphia Daily News reported that the new union contracts provide wage increases but also include a less-generous health insurance plan for Corizon employees.

Since 1995, Corizon and its predecessor, PHS, have received \$196 million in city contracts. The company's contract was terminated for several months in 2002 as a result of complaints that a diabetic prisoner had died after failing to receive insulin. The city renewed the contract anyway, citing affordability and pledging increased oversight. The city's law department estimates that Philadelphia has paid over \$1 million to settle lawsuits involving claims of deficient prison

healthcare; the largest settlement to date is \$300,000, paid to a prisoner who did not receive eye surgery and is now partially blind.

Based upon the number of lawsuits filed against Corizon alleging inadequate medical care, its use of a sham subcontractor and the company's treatment of its own employees, it appears that maintaining the status quo – not best practices – may be the controlling factor in Philadelphia's continued relationship with Corizon.

Allegheny County, Pennsylvania

On September 30, 2013, a prisoner jumped from the top tier of a pod at the Allegheny County Jail. Following an investigation, authorities refused to make public their findings and declined to disclose the prisoner's injuries, citing medical privacy laws. The prisoner, Milan Karan, 38, was not transported to the hospital until the following day.

A spokesperson for Corizon, which provides medical care at the 2,500-bed jail, defended the nearly 24-hour delay by noting the prisoner "was under observation" before being sent to a hospital.

In December 2013, the Pittsburgh Post-Gazette reported that Corizon was having difficulty staffing the Allegheny County Jail. When the newspaper requested a comment from Corizon vice president Lee Harrington, Harrington claimed he had no knowledge of staffing problems – despite having previously received emails from the facility's warden about that exact issue.

The staffing problems resulted in prisoners not receiving their medication in a timely manner. In emails obtained by the Post-Gazette, Warden Orlando Harper wrote to Harrington in October 2013, noting, "We are continuing to experience issues pertaining to the following: 1. Staffing, 2. Medication distribution." Also, on November 17, 2013, Deputy Warden Monica Long sent an email to Corizon and jail staff. "I was just informed by the Captain on shift, the majority of the jail has not received medication AT ALL," she stated, adding, "Staffing is at a crisis."

That crisis had been ongoing since Corizon assumed the medical services contract at the facility on September 1, 2013. Before the \$62.55 million, five-year contract was awarded, Corizon vice president Mary Silva wrote in an email that it was imperative the jail have "adequate staffing on ALL shifts." That promise was made despite Corizon laying off many of the former employees of Allegheny Correctional Health Services, the jail's previous healthcare provider.

Allegheny Correctional had provided four full-time and one part-time physician during its contract tenure. Corizon reduced the number of doctors to one full-time and one part-time physician. Allegheny Correctional also employed three psychiatrists and one psychologist. Corizon's contract requires that it provide one full-time psychiatrist and a part-time psychologist.

In January 2014, the United Steelworkers union (USW) filed a petition with the National Labor Relations Board to unionize Corizon employees at the Allegheny County Jail, including nurse practitioners, RNs, physician assistants and psychiatric nurses. USW representative Randa Ruge indicated that the Corizon workers had approached the union for representation due to intolerable working conditions.

“Our folks [Corizon employees] are in danger of losing their licenses to practice by some of the things that the company has them doing,” she said. Ruge told the Post-Gazette that the jail had run out of insulin for more than a week and Corizon supervisors had “countermanded doctors’ orders.”

Several weeks after the USW filed the labor petition, a Catholic nun who worked as an RN at the jail was fired by Corizon, allegedly for union organizing activities. Sister Barbara Finch was dismissed after she openly expressed concerns about staffing, patient care and safety at the facility. The USW filed an unfair labor complaint against Corizon regarding Finch’s dismissal, claiming she was terminated in retaliation for her union activities.

“This is a clear case of intimidation and union-busting at its worst,” said USW President Leo W. Gerard. “Sister Barbara has been an outspoken advocate of change for these courageous workers and their patients, and this kind of illegal and unjust action, unfortunately, is par for the course with Corizon.”

On February 14, 2014, Corizon employees at the Allegheny County Jail voted overwhelmingly to unionize. “The next step is getting to the bargaining table and getting Corizon to bargain in good faith and get some changes made in the health system at the jail,” said Ruge.

The previous week, Allegheny County Controller Chelsa Wagner stated she had “grave and serious concerns” about medical care at the facility, including issues related to staffing and treatment for prisoners with certain mental health conditions. “I regard the current situation as intolerable and outrageous, and I fully expect necessary changes to be urgently implemented,” she wrote in a letter to Corizon.

Polk County, Iowa

On August 29, 2013, Ieasha Lenise Meyers, incarcerated at the jail in Polk County, Iowa on a probation violation, gave birth on a mattress on the floor of her cell. Her cellmates assisted with the delivery. Earlier, when Meyers, 25, had complained of contractions, a Corizon nurse called an offsite medical supervisor and was told to monitor the contractions and check for water breaking.

Despite Meyers having been twice sent to a hospital earlier the same day, and pleading that she was about to give birth, the nurse did rounds in other parts of the jail. Guards reportedly did not check on Meyers as required, even though the birth could be seen on a nearby security monitor. Only after the baby was born was medical care provided. Sheriff Bill McCarthy defended the actions of jail staff.

Corizon Employee Misconduct

Like most private contractors that provide prison-related services, Corizon tends to cut costs in terms of staffing and operational expenses. As noted above, this includes paying lower wages, providing fewer or inferior benefits and hiring less qualified workers who can be paid less. Sometimes, however, these practices result in employees more likely to engage in misconduct.

At the Pendleton Correctional Facility in Indiana, a Corizon nurse was arrested and charged with sexual misconduct, a Class C felony. The Herald Bulletin reported that in April 2013, when Colette Ficklin was working as a contract nurse for Corizon, she convinced a prisoner to fake chest pains so they could be alone in an exam room. A guard told internal affairs officers that she witnessed Ficklin and the prisoner engaging in sex acts in the prison's infirmary. [See: PLN, Sept. 2013, p.17].

In March 2013 at the Indiana State Prison in Michigan City, a Corizon practical nurse was charged with drug trafficking and possession with intent to distribute. Phyllis Ungerank, 41, was arrested and booked into the LaPort County Jail after attempting to smuggle marijuana into the facility. [See: PLN, July 2012, p.50].

A Corizon nurse at the Volusia County Branch Jail in Daytona Beach, Florida was fired after officials learned she was having sex with and giving money to a prisoner. Valerie Konieczny was terminated on December 18, 2012 when the jail was contacted by the brother of prisoner Randy Joe Schimp, who had written in a letter that a nurse was having sex with him and depositing money into his jail account. Investigators determined that Konieczny was the nurse who had sex with Schimp at both the Volusia County facility and another branch jail in 2011.

In New Mexico, Corizon physician Mark Walden was accused of fondling prisoners' genitals and performing prostrate exams that were "excessive and inappropriate in terms of length and method." At times, Walden reportedly did not wear gloves during the prostate exams. He was accused of sexually abusing 25 or more male prisoners while employed as a doctor at two privately-operated facilities, the Guadalupe County Correctional Facility in Santa Rosa and Northeast New Mexico Detention Facility in Clayton.

Lawsuits were filed against Walden, Corizon and private prison operator GEO Group, and Walden's medical license was suspended in December 2013. The suits claim that Corizon allowed Dr. Walden to work at the Clayton prison "despite knowing of the risk of sexual abuse and having the ability to know that [he] was repeatedly sexually abusing patients" at the Santa Rosa facility. [See: PLN, Sept. 2013, p.47].

The Privatization Model

Economics professors Kelly Bedard and H.E Frech III at the University of California at Santa Barbara examined the privatization of correctional medical services in their research study, "Prison Health Care: Is Contracting Out Healthy?," published in Health Economics in November 2009.

They concluded: "We find no evidence to support the positive rhetoric regarding the impact of prison health care contracting out on inmate health, at least as measured by mortality. Our findings of higher inmate mortality rates under contracting out are more consistent with recent editorials raising concerns about this method of delivering health care to inmates."

Today, five years after the Bedard-Frech report was published, it has the benefit of hindsight. Since the report was written, its findings and conclusions have been reaffirmed in prisons and jails across the nation that have contracted with private companies to provide medical care to prisoners. Cost reductions in the provision of correctional healthcare tend to result in greater

inefficiencies that lead to poorer outcomes. Consequently, for-profit medical contractors may actually be increasing morbidity and mortality in prison and jail populations.

Many governmental entities are willing to outsource correctional healthcare to private companies; reasons for doing so include cutting costs, risk management and removing healthcare duties from corrections departments. If Corizon's record with respect to providing medical care to prisoners seems dismal, the company can always defend its actions by stating it does what it has been hired to do: Cut costs for its customers. And those costs have been rising due to an increasingly aging, and thus medically-needy, prison population. [See: PLN, Nov. 2012, p.22; Dec. 2010, p.1].

With respect to risk management, litigation is not a compelling issue within the prison healthcare industry and Corizon views lawsuits as simply a cost of doing business. "We get sued a lot, but 95% or 97% of cases were self-represented cases," ex-CEO Rich Hallworth was quoted in an August 2013 article. He added that most lawsuits settle for an average of less than \$50. Of course it is difficult for prisoners to obtain representation to pursue litigation – unless it's a wrongful death case, and then usually their family or estate is doing the suing.

Nor are the public agencies that contract with private medical providers greatly concerned about their litigation records. In fact, when Florida contracted with Corizon and Wexford Health Sources to provide medical care for the state's entire prison system, the Florida Department of Corrections didn't ask the companies about their litigation histories – such as lawsuits raising claims of deliberate indifference, negligence and medical malpractice.

"What really troubles me about this is the fact that the department didn't ask these very basic, elemental questions any system would ask," observed ACLU National Prison Project staff attorney Eric Balaban. "These two vendors were taking over Florida's massive health care system and you'd think they would have asked hard questions to determine if these companies can provide these services within constitutional requirements."

Even worse, the downgrading of Corizon's debt rating by Moody's in 2013 creates a potential problem for the company's service delivery model. The majority of Corizon's revenue is derived from contracts with state and local agencies that are trying to reduce their budgetary expenses. Given those fiscal pressures and competition from Wexford, Armor, Centurion and other prison healthcare companies, Corizon cannot easily increase its revenue through contractual price increases. But the company's expenses are largely within its control.

Unfortunately for prisoners, in order to reduce costs Corizon will likely have to curtail the quality or quantity of healthcare services it provides. As noted above, this can be done by reducing employee wages or benefits; the company can also cut costs through understaffing and by limiting prescription medications or providing fewer referrals to hospitals and specialists. A growing trend is to use off-site medical staff who consult with prisoners through telemedicine. [See: PLN, Dec. 2013, p.34].

The correctional healthcare industry, comprised of only a few large companies, is highly competitive. When one company loses a contract, another is more than willing to step in and submit a bid. What really matters for most government agencies and policymakers is the bottom line cost.

According to Dr. Marc Stern, the court-appointed special master in Idaho, “whoever delivers prison healthcare is doing it on less than adequate funding because that’s how much municipalities, state legislatures and county commissions are allocating.” He noted that privatization can be good in some cases and bad in others, depending on the level of oversight by the contracting public agency.

When Corizon compromises medical care to save money, such as curtailing the use of ambulances for emergency transports, reducing the number of on-site doctors or sending fewer prisoners to outside hospitals for needed treatment, government officials typically fail to take corrective action and deny responsibility for the resultant deaths and injuries. Indeed, as with the Idaho Department of Corrections and LMC in Kentucky, they sometimes want to reward the company with renewed contracts.

Why? Because continuity maintains cost control, which is the driving force behind privatization of prison and jail medical services.

Conclusion

The intent of this article was to review Corizon’s performance and practices based on publicly-available information, including news reports and court records. Although the company was formed in June 2011, its two predecessor firms, PHS and CMS, littered the news and judicial dockets over the years with lawsuits and articles involving cases of inadequate healthcare. Thus, the sins of Corizon’s parents, CMS and PHS, are forever linked with the progeny of their merger.

Such past misdeeds could be explained away had Corizon adopted a new, post-merger culture that was removed from prior practices under PHS and CMS. However, many of Corizon’s mid-level and top executives – including ex-CEO Rich Hallworth, former president Stuart Campbell, chairman Richard H. Miles and a number of vice presidents – were previously executives with PHS or CMS. It was during their tenure at those companies that numerous cases involving deficient medical care occurred.

The corporate culture of Corizon, as well as its business model, appears to be largely the same as those of its predecessors. Therefore, the only thing that may have changed as a result of the merger that created Corizon is the company’s name.

Gregory Dober is a freelance writer in healthcare and ethics. He has been a contributing writer for PLN since 2007 and co-authored Against Their Will: The Secret History of Medical Experimentation on Children in Cold War America, published by Palgrave in 2013. [See: PLN, Nov. 2013, p.36].

Sources: *Bloomberg News, Forbes, www.businessweek.com, Philadelphia Inquirer, Philadelphia Daily News, The American Independent, Pittsburgh Tribune-Review, St. Louis Business Journal, www.browardbulldog.org, Miami Herald, WHAS-TV, The Tennessean, Courier-Journal, Idaho Business Review, Associated Press, The Arizona Republic, Maine Public Broadcasting Network, Bangor Daily News, WANE-TV, Raton Range, Des Moines Register, Star-Tribune, The Nation, The Florida Current, www.usw.org, KPHO-TV, WANE-TV, Tucson Citizen, WCAV-TV, www.wdrb.com, www.cochs.org, www.modernhealthcare.com, www.wndu.com, www.afsc.org, www.americanownnews.com*

Florida County Agrees to Pay \$4 Million to Deceased Prisoner's Estate

by Derek Gilna

Nicholas T. Christie, incarcerated at the Lee County jail in Ft. Myers, Florida, died on March 31, 2009 after being repeatedly pepper sprayed by deputies while strapped to a restraint chair. Following three years of litigation, Lee County officials agreed in May 2013 to pay a record settlement of \$4 million to Christie's estate.

The jail's for-profit medical contractor, Prison Health Services (PHS), now known as Corizon, was named as a defendant in the federal lawsuit and included in the settlement agreement.

The § 1983 suit raised claims related to Christie's death under the "Fourth, Eighth and/or Fourteenth Amendments to the United States Constitution, the laws of the United States, and the laws of the State of Florida."

The complaint alleged that Christie was "restrained to a chair with a hood over his head and face for several hours in the custody of the Lee County Sheriff, while being detained on a misdemeanor trespass charge," and that medical staff at the jail failed to provide him with adequate care after he showed signs of respiratory distress during and after that incident. Medical personnel, the lawsuit stated, "acted willfully, wantonly, maliciously, and with reckless and callous disregard for and deliberate indifference to the serious medical and mental health needs of Nick Christie, and in a manner that shocks the conscience and offends traditional notions of decency, all of which led to his wrongful and untimely death."

According to the complaint, prior to and during his placement in the restraint chair, Christie disclosed to jail staff that he had "certain serious medical conditions..., including, but not limited to, Chronic Obstructive Pulmonary Disease (COPD), a heart condition, cardiovascular disease, atrial fibrillation, obesity, gout, back pain, constipation, and umbilical hernia, all of which was recorded and documented in Mr. Christie's PHS medical chart/record."

Further, Christie's wife had contacted jail officials to advise them of her husband's medical conditions and to inform them he had not been taking his medication regularly, which often caused him to act in an erratic manner. When Christie was booked into the jail, officials confiscated the medications he had with him and failed to refer him for a proper medical intake evaluation that would have resulted in the jail reissuing his prescribed medications to replace those that were taken.

A report by Florida's state medical examiner found the cause of Christie's death was "hypoxic encephalopathy, following resuscitation for cardiac arrest, due to or as a consequence of cardiogenic shock with congestive heart failure, due to or as a consequence of physiologic stress, following restraint and noxious effects of Oleoresin Capsicum" – i.e., the pepper spray used by sheriff's deputies.

The often excessive and abusive use of “restraint chairs” by corrections officials has been criticized by prisoners’ rights groups and has resulted in litigation in other jurisdictions as well. Unfortunately for Christie, the failure of Lee County jail staff to follow proper procedures and the failure of PHS employees to provide adequate medical care led to his death. And unfortunately for the county and PHS, those failures resulted in a \$4 million settlement to resolve the subsequent lawsuit filed by Christie’s estate. See: *Christie v. Scott*, U.S.D.C. (M.D. Fla.), Case No. 2:10-cv-00420-UA-DNF.

Prison Legal News, Dec. 2013, p.38

The Invisible Crisis of Correctional Health Care

by Cara Tabachnick

After 33 years behind bars, Alvin Entzminger, who was released in March, needed immediate medical attention for a host of chronic illnesses.

“I went into prison a healthy individual and came out suffering,” claimed Entzminger, now in his late 50s.

Entzminger’s story was one of several poignant testimonies provided by ex-prisoners at an October 9, 2013 conference on the health care challenges facing corrections systems.

As their stories demonstrated, such care is desperately needed by former prisoners like Edwin Lopez, 59, who had cycled in and out of jails and prisons since he was in his teens following the death of his mother. When he left prison, his HIV was untreated.

The lack of care has consequences far beyond its effect on an individual prisoner, Lopez warned.

“The community forgets we won’t spend all of our life in prison – we will come home,” Lopez told the conference. “If there is no medical or other support, we mostly will turn to violence and crime.”

The prisoners were joined by correctional care physicians, researchers and academics from around the U.S. at the New York Public Library’s Schomburg Center for Research in Black Culture in New York for a conference entitled, “Making the Invisible Visible: Addressing the Health Needs of the Formerly Incarcerated.”

The conference, sponsored by the Spencer Cox Center for Health of St. Luke’s and Roosevelt Hospitals, covered the broad range of health issues affecting incarcerated populations, including mental illness, HIV/AIDS and substance abuse.

Almost 85 percent of the 2.3 million people currently incarcerated and the almost 7 million people under correctional supervision (parole and probation) in the United States have chronic medical conditions like HIV or diabetes when released from prison, said Yale Assistant Professor Dr. Emily Wang, founder and co-director of Transitions Clinic.

Almost 40 percent of individuals are first diagnosed behind bars, noted Dr. Wang, whose clinic provides treatment for individuals with chronic diseases recently released from prison.

Yet while primary healthcare is a constitutional right in prisons and jails, the population is mostly served by a patchwork of providers and many don’t have access to consistent care, the conference was told.

Burden on Hospitals

Over 85 percent of recently released prisoners are uninsured. Most utilize hospital emergency rooms for chronic care, severely overburdening public hospitals.

“There are significant health-related barriers to people returning home from prison,” said Wang. “Often there is no discharge planning and short or no amounts of necessary medications upon release.”

Sometimes those barriers result in tragedies.

In Albany, New York, a lawsuit was filed against Correctional Medical Services, Inc. (which has since merged with Prison Health Services to become Corizon, the largest prison health care provider in the country) in the case of Irene Bamenga, who died at the Albany County Correctional Facility while awaiting deportation to France. She had a severe heart condition and never saw a doctor the week she was there.

While programs like Transitions Clinic and the Coming Home Project (based at the Spencer Cox Center) help reduce emergency room visits, some consistent issues in correctional health care can be easily resolved, said Lopez, who is now a peer supporter at Spencer Cox.

For example, he noted that people who cycle through prison and/or jails often lose their Medicaid or Medicare eligibility.

“We take it out on who?” he asked rhetorically. “We take it out on the community.”

Once prisoners are released into the community, they have to reapply for health care – a process that can take up to three months, possibly endangering their health and that of their families and neighbors.

Dr. Homer Venters, medical director for New York City’s Department of Health and Mental Hygiene (DOHMH) at Rikers Island jail and Bellevue/NYU Program for Survivors of Torture, said keeping adequate electronic records is crucial in order to provide continuity of care at community clinics and hospitals.

“Jails are chaotic,” said Venters. “There is not a lot of time to sort out these things with resources, and most jails don’t have resources.”

Venters touched on the other major concerns of medical professionals involved in correctional healthcare, such as not giving wrong medications and dosages – which is why correct information is so important.

He noted the dual loyalties of doctors and nurses: in a correctional setting, security is often a more important issue than patient care.

Another challenge is to maintain health and discharge plans for patients reentering the community.

Treating Addiction

Other speakers discussed treating substance abuse addiction, prevalent in many prisoners in the correctional system.

Dr. Joshua Lee, Assistant Professor at New York University Medical Center and a jail physician, spoke about different types of treatment for opiate addicts.

He mentioned a new medicine, naltrexone, which when injected every 4 weeks shows great promise for managing addiction.

“We need to start treatment in jail and continue afterwards in community,” said Lee, adding that Rikers has a long-successful methadone program while other major jails such as those in Baltimore and Newark do not.

Panelists also discussed aging in prison, HIV/AIDS in the correctional population and the effect on families and communities.

Soffiyah Elijah, Executive Director of the Correctional Association of New York, which monitors conditions in state prisons, was accompanied by Muhjahid Farid, who spent time in the corrections system and started the program Release of Aging People in Prison (RAPP) to advocate for the release of elderly and sick prisoners.

Elijah noted the high cost of care – approximately \$240,000 annually per prisoner – to imprison elderly patients, while Farid spoke about the emotional costs of being separated from family while incarcerated, old and sick.

“If the risk is low, let them go,” he said.

Cara Tabachnick is Managing Editor of The Crime Report. An earlier version of this article appeared in The Crime Report (www.thecrimereport.org), the nation’s most comprehensive source of criminal justice news and resources, on October 11, 2013. It is reprinted with permission, with minor revisions.

New Mexico Prison Doctor Fingering in Lawsuits

Two lawsuits filed in March 2013 seek compensatory and punitive damages against former prison physician Mark E. Walden, GEO Group, Corizon, wardens Erasmo Bravo and Timothy Hatch, and health administrator Sherry Phillips. The suits allege that numerous prisoners were fondled or received intrusive rectal exams by Dr. Walden, a Corizon employee, at the GEO Group-operated Guadalupe County Correctional Facility in Santa Rosa and New Mexico Detention Facility in Clayton.

Suspensions arose due to a substantial increase in unnecessary, prolonged rectal exams, including some conducted without gloves, and Walden's refusal to have a nurse or other third party present during the exams. In one case, a prisoner with a knee injury received a rectal exam; in another, a prisoner claimed that Walden penetrated his anus using his entire hand.

A third lawsuit was filed against Dr. Walden, GEO Group, Corizon and various prison officials on July 12, 2013, alleging that Walden had "sexually abused at least 25 victims" by performing unnecessary rectal exams or fondling them. The suits remain pending. See: *F.M. v. Walden*, U.S.D.C. (D. NM), Case No. 1:13-cv-00264-ACT-RHS; *R.J. v. The GEO Group*, U.S.D.C. (D. NM), Case No. 1:13-cv-00265-ACT-RHS; *H.R. v. The GEO Group*, U.S.D.C. (D. NM), Case No. 1:13-cv-00647-ACT-KBM.

The New Mexico Medical Board is investigating Dr. Walden for having "touched or attempted to touch these inmates in an inappropriate, sexual manner," and his medical license has been suspended.

Additional source: *Associated Press*

Eleventh Circuit: Corizon Policy Led to Prisoner's Paralysis; \$1.2 Million Verdict Upheld

In a September 6, 2012 unpublished ruling, the Eleventh Circuit Court of Appeals affirmed a jury verdict that found Corizon Health, Inc., formerly Prison Health Services (PHS), had a policy or custom of refusing to send prisoners to hospitals. The appellate court also held it was reasonable for the jury to conclude that PHS delayed treatment in order to save money.

At issue was the appeal of Corizon, which had a contract to provide medical services to prisoners at Florida's Lee County Jail when the company was still known as PHS. The appeal followed a jury verdict that awarded \$1.2 million to former prisoner Brett A. Fields, Jr., who also received \$189,051 in attorney fees and costs.

When Fields, 24, entered the jail on July 6, 2007 to serve time on two domestic violence misdemeanor charges, he was by all accounts healthy except for a bump about half the size of a tennis ball caused by a spider bite. Medical staff sent him to an isolated part of the jail and he was treated for a staph infection.

On July 14, the lesion remained open and Fields complained. He again complained on July 24 that the medication he was prescribed was "not helping the open wound." The reason for that was because Fields had MRSA, and standard antibiotics were ineffective. He was then sent to an area of the jail that dealt with MRSA infections, where he continued to receive "lax treatment."

Fields felt his back grow sore and numb on August 6, 2007. "At first, as the young and healthy are apt to do, Mr. Fields swiped all concerns away," the Eleventh Circuit wrote.

The next day he experienced uncontrollable twitching affecting his legs, and dealt with the pain for six hours. A little after midnight Fields could no longer stand the pain, and he and his cellmate hit the cell's emergency call button "hundreds of times." A nurse finally showed up, but she told Fields she could do nothing until a doctor examined him in the morning. When Fields and his cellmate kept pushing the emergency button to get help, a guard ordered them to stop.

On the morning of August 8, 2007, Fields dragged himself to the shower. He collapsed when his legs gave out as he tried to return to his cell. When he was unable to get up, other prisoners summoned help; guards and nurses appeared, and Fields was hoisted into a wheelchair and taken to the medical unit.

A nurse examined him, noting he complained he could not walk. Physician's Assistant Joseph A. Richards, Jr. also examined Fields and found he had no reflex or pain reaction in his legs or feet. Although he realized it was a medical emergency, Richards merely gave Fields some Tylenol and, upon a nurse's recommendation, placed him in a medical cell.

Fields explained his symptoms and begged every nurse that came by his cell that day for help. "Like clockwork, or maybe as if by pact, all the nurses agreed on the same approach: they did nothing," the Eleventh Circuit noted.

Shortly after midnight on August 9, 2007, Fields tried to use the bathroom for the first time in days. Nurse Bettie Joyce Allen responded to Fields' pleas for help after he felt his intestines protruding from his rectum as he crawled to the toilet. Allen "jerked Mr. Fields' body, obtained some K-Y Jelly, and pushed the intestines back in."

Allen called Fields a liar when she was done because she said he should feel pain if he had not used the restroom when she moved his legs. Fields told her he was numb from the waist down. He was then moved to an observation room, but Allen said she did not examine him further. It was not until later that morning that Fields was seen by Dr. Noel Dominguez, who immediately ordered him to be taken to an emergency room. It was another two hours, however, before an ambulance was called.

Emergency room doctors ordered an MRI, which revealed an abscess was compressing Fields' spine. Within hours it was removed by surgery. By then permanent nerve damage had resulted and Fields was partially paralyzed from the waist down. An expert witness agreed that an abscess that compresses the spine must be removed within 24 hours for a patient to stand a good chance of recovery from paralysis.

Fields subsequently filed suit against PHS, Allen and Richards, and a jury awarded \$700,000 in economic damages and \$500,000 in punitive damages against PHS on March 17, 2011. The jury found the company had a custom or policy of refusing to treat prisoners in order to save money. [See: PLN, Aug. 2011, p.24; April 2010, p.19].

On appeal, the Eleventh Circuit found Allen's definition of emergency, which the rest of PHS's staff also followed, was restricted to life-or-death situations. The jury could reach this conclusion based on the nurses' failure to respond to emergency call buttons, refusal to treat Fields until a doctor examined him, and evidence that other prisoners with partial paralysis were placed in observation cells to await a doctor.

The Court of Appeals held that paralysis is a serious emergency that constitutes a serious medical need. The fact that PHS supervisors yelled at nurses because they sent prisoners to the hospital allowed the jury to conclude that delayed treatment was to save money by reducing costs. Thus, the jury could also conclude PHS had "implemented a policy while knowing that the policy would exacerbate [an] inmate's paralysis," making the company deliberately indifferent to prisoners' serious medical needs.

The testimony at trial indicated that Fields' paralysis could have been avoided had PHS treated him in a timely manner. Indeed, "The doctors at trial testified that no medical justification existed for not sending Mr. Fields to a hospital and that any person with medical training would have known that Mr. Fields required medical help." As such, the Eleventh Circuit affirmed the lower court's judgment and the \$1.2 million jury award. Fields was represented by Ft. Lauderdale attorney Gregg M. Lauer. See: *Fields v. Corizon Health*, 490 Fed.Appx. 174 (11th Cir. 2012) (unpublished).

Prison Legal News, April 2013

Report Critical of Maine DOC's Medical Contractors

by Joe Watson

For nine years, Corizon had a lucrative monopoly on prison healthcare in Maine. But after a November 2011 state agency review cited persistent “deficiencies,” the company appears headed for a bidding war.

After reviewing medical files for at least two dozen prisoners at the Maine Correctional Facility and Maine State Prison, the state’s Office of Program Evaluation and Government Accountability (OPEGA) reported that prisoners are being denied their prescribed medications and providers are effectively unresponsive to sick-call requests.

The inspected files also indicate that half of the prisoners surveyed aren’t receiving their required annual physicals or, at least, they aren’t consistently tracked. Staff training, OPEGA reported, has been insufficient and poorly documented. And Maine’s Department of Corrections (MDOC) has failed to hold Corizon, as well as pharmacy contractor CorrectRX, accountable on most of these issues, thanks to their non-competitive state contracts worth millions of dollars.

Now both companies will have to bid for those coveted contracts like everyone else.

“The long-term relationship between MDOC and its contractors appears to be a contributing factor,” according to OPEGA’s review, “as the delivery of health care has become more of a partnership than an arms-length arrangement.”

But under Commissioner Joseph Ponte, who took over MDOC in 2011, the department is now “taking positive steps toward improvements in the quality and cost of prisoner health care,” OPEGA reported. For Republican state Senator Roger Katz, the chairman of the legislature’s Government Oversight Committee, the only way forward is by refusing to renew Corizon’s \$12 million annual contract.

“My question to you is in light of this history, why should the state seriously be considering any proposal your company might make to get this contract back again?” Katz asked Corizon Regional VP Larry Amberger at a committee meeting in January 2012.

Amberger responded that, in spite of the OPEGA report, he believes that Tennessee-based Corizon has provided a high quality of service. He also challenged OPEGA’s methodology – claiming the agency’s review of medical files was too stringent – and implied that state investigators appeared too willing to cite Corizon’s problems as “systemic.”

OPEGA, however, stressed the importance of attention to detail in prison healthcare.

“Prisoners have legal rights to receive adequate and timely care,” the report stated. “The prisoner population tends to have issues that make delivery of health services in a correctional setting more challenging than in a community setting.”

Some of those issues, according to OPEGA's report, include a lack of good preventive medical or dental care for many prisoners prior to their incarceration; prisoners' high-risk lifestyles, which lead to the early on-set of medical conditions; prisoners seeking narcotic-level pain meds because of their histories of substance abuse; some prisoners' distrust of medical caregivers; and the challenge of establishing a continuum of patient care after prisoners are released.

The report also recommended that the MDOC develop a better monitoring system for private contractors and offer better staff training.

"MDOC has not had a strong and effective system for monitoring contractor performance and compliance or held the contractor sufficiently accountable for resolving issues when they were identified," the report said.

Although OPEGA praised the MDOC's new leadership, prisoner advocates have already taken issue with Ponte's focus on cost reduction, potentially at the expense of quality care. John Patterson, president of the Maine chapter of the American Civil Liberties Union, told the state's oversight committee that, based on OPEGA's report, he believes the MDOC is denying prisoners their constitutional right to medical care.

"The Eighth Amendment prohibits infliction of cruel and unusual punishment on convicted prisoners," Patterson said, "which has been interpreted to include deliberate indifference to basic human needs such as medical care."

Certain medical procedures for prisoners have already been discontinued, including knee replacement surgery. And previously, prisoners averaged seven prescribed medications each. Since Ponte took over, that has been reduced to five. Whether that's a byproduct of Ponte's commitment to stem wasteful spending or indifference toward prisoner care is debatable.

Sources: *Office of Program Evaluation & Government Accountability of the Maine State Legislature, November 2011 Final Report. "Health Care Services in State Correctional Facilities,"* www.maine.gov/legis/op, www.mpbn.net, *Bangor Daily News*, www.bangordailynews.com

Idaho DOC Settles 30-year-old Class-action Lawsuit

Idaho officials first tried to suppress what they called an “inflammatory” and “libelous” report filed by a court-appointed expert in a longstanding suit involving the state’s prison system. They then finally agreed to settle the 30-year-old litigation based upon the report’s findings.

In 1981, a flood of federal lawsuits was filed by prisoners at the Idaho State Correctional Institution (ISCI) in Boise, alleging that they were victims of violence and rape by fellow prisoners, had been denied adequate medical care and were subjected to extreme overcrowding.

A judge combined all the cases into a single class-action lawsuit which became known as the Balla litigation after lead plaintiff Walter Balla.

Over the next three decades, Idaho prisoners secured several major victories in the case, including court orders requiring state prison officials to stop overcrowding; reduce levels of violence; provide warm clothing; improve medical and mental health treatment and rehabilitative programs; and take other measures to ensure that ISCI would cease being “an extremely violent place to live,” as former U.S. District Court Judge Harold Ryan once described the facility.

Despite these important victories, however, prison officials continued to deprive prisoners of adequate medical treatment. This prompted U.S. District Court Judge B. Lynn Winmill to issue an order in July 2011 appointing Dr. Marc Stern, a correctional health care expert, to review the medical system in the Idaho Department of Correction (IDOC).

Prison officials did not like what Dr. Stern had to say and didn’t want anyone to see his February 2012 report. They moved to seal the report in March 2012, claiming it was “inflammatory,” “libelous” and might spark an “unjustified public scandal.”

“The public, and the inmate class members in particular, will likely not understand that at this stage of the proceedings the Report is merely a communication which does not constitute an opinion of the Court,” claimed Idaho Deputy Attorney General Colleen Zahn.

Dr. Stern’s report contained “serious deficiencies” which “resulted in inflammatory and unsupported legal findings accusing the Department and its third-party medical contractor, Corizon, Inc., of serious constitutional violations,” Zahn wrote. She even claimed that dissemination of Stern’s findings would amount to libel.

However, lead plaintiffs’ attorney Allison Blackman noted that the state failed to offer any compelling reason to seal the report other than the fact they didn’t like what it had to say.

“In reality, it appears defendants bring their motion based on fear that unsealing the report might subject them to embarrassment, incrimination, or additional litigation,” Blackman wrote.

Dr. Stern stated in his report, which was unsealed on March 19, 2012, that he found significant problems with medical care in the IDOC – including nursing mistakes that may have resulted in some prisoners’ deaths; overcrowding at the pharmacy site where prisoners receive their daily

medications; and terminally ill prisoners sometimes being denied food, water and pain medication, and left lying in soiled linens.

Although the IDOC and its Brentwood, Tennessee-based medical contractor, Corizon, claimed that Dr. Stern's report was inaccurate, it apparently brought them to their senses. That, and perhaps the fact that in 2010 and 2011 the state had fined Corizon, then operating as Correctional Medical Services, over \$382,500 for failing to meet contractual obligations related to the provision of medical care.

On May 15, 2012, the plaintiffs and IDOC officials signed an agreement designed to finally end the 30-year-old case, contingent upon legislative approval of more than \$1.6 million in staffing increases and other state prison system costs.

The agreement requires more nurses and other medical staff at ISCI, as well as improvements to the prison pharmacy and increased oversight. The IDOC is expected to add approximately 12 full-time staff positions while Corizon will add the equivalent of more than 10 full-time positions. Corizon's contract with the IDOC will cover the cost of the additional employees; the company was not a defendant in the case.

IDOC Director Brent Reinke said he was confident the state legislature would approve the budget increase. "I think they're going to be quite supportive once we explain to them why it's important and what we're trying to accomplish in this settlement," he stated.

The district court will retain oversight of other rulings in the case, including an order imposing prison population caps. See: *Balla v. Idaho State Board of Corrections*, U.S.D.C. (D. Idaho), Case No. 1:81-cv-01165-BLW.

Separately, on April 17, 2012, the Ninth Circuit Court of Appeals upheld the district court's award of \$76,185.60 in attorney fees, \$1,249.20 in costs and \$46.94 for postage and office supplies in *Balla*.

During the protracted litigation, in an effort to relieve overcrowding, Idaho had transferred hundreds of state prisoners to facilities in Texas, Oklahoma and Minnesota. [See, e.g., PLN, March 2010, p.34; Nov. 2006, pp.38, 27]. Idaho subsequently terminated the Texas contract in October 2008 in order to return 300 of its out-of-state prisoners. To make room for them, IDOC officials elected to convert an old prison warehouse into a dormitory.

After reading newspaper accounts of the warehouse plan, the law firm of Stoel Rives, which served as class counsel in *Balla*, informed the state that its plan would violate the district court's injunction in the case.

The IDOC implemented the plan anyway, moving 200 prisoners into the warehouse and requiring them to share four toilets, three urinals and four sinks. They had to be transported to other units for showers. Warehouse conditions were worse than in other units, and prisoners were not allowed to retain valuable property due to a lack of secure storage space.

"The State's plan failed immediately, even before the prisoners returning from Texas arrived," the appellate court noted. On January 2, 2009, "within a few hours of being moved to the

warehouse, the 200 inmates rioted. The prison lost control. The riot ‘tore the place apart.’”

Even though the prison was overcrowded and the warehouse destroyed, the 300 state prisoners housed in Texas were flown back to Idaho anyway.

On January 5, 2009, the state admitted to class counsel and the district court that it was in violation of the injunction. The defendants asserted that it was “‘reasonable’ and ‘realistic’ considering ‘the realities of prison management’” to take at least two months to correct the violation.

Class counsel disagreed and moved to hold the state in contempt on January 16, 2009. “Evidently, what was ‘realistic’ considering ‘the realities of prison management’ changed when the state received the contempt motion,” the Ninth Circuit wrote. The state brought itself into compliance with the injunction by the date of the contempt hearing, so the district court did not hold the defendants in contempt or impose sanctions for their admitted violations.

Class counsel moved to recover its costs for dealing with the injunction violations and for two years of monitoring the case, from December 11, 2007 through June 22, 2009. In all, Stoel Rives sought \$77,608.20 in attorney fees, \$2,249.20 in costs and expenses, and \$269.10 in postage and office supplies for the class representative. The district court reduced the requested amounts and awarded \$76,185.60 in attorney fees, \$1,249.20 in costs and \$46.94 for postage and supplies.

The Ninth Circuit affirmed on appeal, rejecting the state’s argument that the district court had abused its discretion by awarding fees related to the contempt motion when the court denied that motion. “The object of the motion was to obtain compliance, not to win an order hopefully leading to compliance,” the appellate court explained. “The object was attained. If in a battle to take a hill, the adversary flees instead of fighting to a bloody defeat, the taking of the hill makes the battle a victory.”

As such, the Court of Appeals held that “the district court acted within the bounds of its discretion in awarding fees in a reasonable amount for bringing about the conformity with the injunction.” See: *Balla v. Idaho*, 677 F.3d 910 (9th Cir. 2012). Since the resolution of the case, class counsel has filed a motion seeking another \$182,640.10 in attorney fees and \$1,994.29 in costs, which remains pending.

Additional sources: *Associated Press*, www.therepublic.com, *Washington Examiner*

PLN Settles Public Records Suit Against PHS in Vermont, Obtains Settlement Payout Information

by Alex Friedmann

On February 21, 2012, Prison Legal News settled a public records lawsuit filed in Vermont state court against Prison Health Services (PHS, now operating as Corizon Health, Inc.). As part of the settlement PHS agreed to produce records related to its resolution of legal claims against the company in Vermont, which included a total of \$1.8 million in six cases.

PLN had filed suit against PHS on August 26, 2010 after the for-profit company, which provided medical care for Vermont state prisoners until the end of 2009, refused to produce documents pursuant to a public records request.

PLN requested copies of PHS's contracts with government agencies in Vermont, records related to settlements and judgments that PHS had paid as a result of lawsuits and civil claims, and documents concerning costs incurred by PHS to defend against claims or lawsuits.

One of those claims involved the August 16, 2009 death of Ashley Ellis, 23, a Vermont prisoner who died at the Northwest State Correctional Facility just three days into a 30-day sentence. PHS employees had failed to give her potassium despite her repeated pleas for medical care and an order from her doctor. The medical examiner cited "denial of access to medication" as a contributing cause of her death. [See: PLN, April 2010, p.32].

Although PHS is a private company, PLN argued it was the functional equivalent of a public agency because it provided health care to prisoners – a function that public employees would have to provide if the state did not contract with PHS – and thus was subject to Vermont's public records law. The "functional equivalency" test has been applied to private companies that perform public duties in at least eight states, including Florida, Tennessee, Maryland, North Carolina, Oregon, Kansas, Ohio and Connecticut.

PHS denied PLN's public records request, claiming that as "a private corporation" the company "does not qualify as a 'public agency'" within the meaning of Vermont's public records statute.

"The state can outsource public functions and services such as health care for prisoners," said PLN editor Paul Wright, "but it cannot contract out the public's fundamental right to know how their tax dollars are being spent and the quality of services the public is getting for its money." He also questioned "why PHS refuses to release records that state agencies would have to produce if the state were providing prison medical care."

PLN's public records lawsuit contended that "Prison Health Services, by virtue of its contractual relationship with the Vermont Department of Corrections, was a public agency subject to Vermont's public records statute" because it was an "instrumentality" and functional equivalent of a government agency. Further, PHS's funding for its Vermont contract came "exclusively from the Vermont DOC, and hence, the taxpayers."

In settling the case in February 2012, PHS agreed to produce unredacted copies of “the general releases it secured to settle claims or potential claims arising out of PHS’s provision of medical care to inmates in the custody of the Vermont Department of Corrections” in six cases responsive to PLN’s records request, including the Ashley Ellis case. The company further agreed to pay \$5,350 in attorney fees to the ACLU of Vermont but did not admit liability or wrongdoing.

According to the records produced by PHS, the company paid \$700,000 in February 2010 in a pre-litigation settlement to resolve claims related to the death of Ashley Ellis. Ellis’ estate, represented by Rutland attorney Shannon A. Bertrand, is also pursuing a separate lawsuit against the State of Vermont, the Vermont DOC and various state employees. See: *Gipe v. State of Vermont*, Vermont Superior Court, Rutland Unit, Case No. 515-7-11.

Additionally, in October 2010, PHS agreed to pay \$950,000 to settle a federal lawsuit filed by Christopher Barrett, a state prison guard who was attacked and injured by a prisoner in 2005 at the Northern State Correctional Facility; PHS allegedly did not give the prisoner his prescribed medication for a mental health condition, which resulted in the assault. Barrett was represented by attorney David J. Williams. See: *Barrett v. Prison Health Services*, U.S.D.C. (D. VT), Case No. 5:08-cv-00203-cr-jmc.

PHS paid \$47,500 in December 2010 to settle the negligence and medical malpractice claims of Agim and Fexhrije Sulejmani, related to Agim’s health care while he was incarcerated in 2006. Despite repeatedly seeking treatment for a preexisting throat condition, PHS staff failed to provide adequate medical care or diagnose Agim’s laryngeal cancer, which required him to have an emergency tracheotomy and surgery after he was released from prison. The Sulejmanis were represented by Hinesburg attorney Beth A. Danon. See: *Sulejmani v. Prison Health Services*, Vermont Superior Court, Chittenden Unit, Case No. S1237-09.

In October 2011, PHS paid \$45,000 to settle a lawsuit filed by Vermont prisoner Edward Truszkowski, Jr., who claimed that PHS had failed to provide prescribed medication for his Gastroesophageal Reflux Disease while he served a 30-day sentence at the Southern State Correctional Facility. Truszkowski was represented by attorney Brian R. Marsicovetere. See: *Truszkowski v. Hofman*, U.S.D.C. (D. VT), Case No. 5:11-cv-00006-cr-jmc.

PHS agreed in November 2007 to pay \$32,500 to the estate of Robert C. Nichols due to Nichol’s 2004 death at the Chittenden Regional Correctional Facility. Although he was suffering from heroin withdrawal and had ingested 80 bags of heroin soon after he was incarcerated, Nichols was “not given immediate medical attention,” according to a lawsuit filed by his estate, which led to his death. Nichols’ estate was represented by Peter F. Langrock with the law firm of Langrock Sperry & Wool, LLP. See: *Nichols v. State of Vermont*, Vermont Superior Court, Rutland Unit, Case No. 546-10-06.

Lastly, on June 1, 2007, PHS paid \$25,000 to settle a pro se federal lawsuit filed by Vermont state prisoner Peter Goodnow, who alleged inadequate medical care for a broken hand and painful tooth while he was housed at the CCA-operated Lee Adjustment Center in Kentucky. See: *Goodnow v. Hofman*, U.S.D.C. (D. VT), Case No. 1:06-cv-00124-jgm-jjn.

The settlements in the six cases totaled \$1.8 million. This was the first known time that PHS had produced records related to its resolution of legal claims against the company, which typically include confidentiality provisions. PHS's defense counsel in Vermont includes the Burlington law firm of Dinse, Knapp & McAndrew, P.C. One of the firm's attorneys, Shapleigh Smith, Jr., is the current Speaker of the state's House of Representatives.

PLN was initially represented in its public records lawsuit by attorney David C. Sleight with the law firm of Sleight & Williams, P.C., and subsequently by Dan Barrett with the ACLU of Vermont. See: *Prison Legal News v. Prison Health Services*, Vermont Superior Court, Washington Unit, Case No. 622-8-10.

Private Prison Health-care Industry Grows as States Cut Costs, Bringing in Millions of Dollars

by Yana Kunichoff

Aleshia Napier was 18 years old in 2006 when she hung herself with a bed sheet at the Broward Correctional Institution in Fort Lauderdale, Florida, after being placed in solitary confinement despite her diagnosis of clinical depression and bipolar disorder.

The attorney hired by the young woman's devastated family, Randall Berg, Jr., the executive director of the Florida Justice Institute, points to two culprits for ignoring the medical and mental health needs of Napier: the private prison health-care companies PHS Correctional Healthcare and MHM Services.

Napier's family settled with the companies for \$500,000, but Berg said this case is part of a larger trend.

"My main concern is the profit motive taking precedence over patient care," said Berg, who has taken out more than ten lawsuits against private health care companies. "The second one is that once the government entity contracts with the private provider, the government entity doesn't provide any oversight."

The outsourcing of health care in prisons to private companies is just one multi-billion dollar industry that has grown up around incarceration in the U.S. With that expansion has come mounting evidence of injury or death from improper medical care, or under-qualified or understaffed medical teams at prisons.

Mel Wilson, assistant director of Officer Workforce Studies at the National Association of Social Workers, says he is aware of "a lot of gaps in services" in for-profit private health care in prisons, especially for prisoners with chronic conditions like HIV. Prisoners with HIV were found to die of the disease at twice the rate than that of the general population, according to HIV Symptoms, an information site on HIV.

The federal government outsources at least some aspects of its health-care operations, according to a spokesperson from the Bureau of Prisons, but doesn't completely hand over entire health-care operations in any of its facilities.

On the state level, however, the outsourcing of all health-care needs in a facility is more widespread. Those states include: Alabama, Connecticut, Delaware, Georgia, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New Mexico, New York, Pennsylvania, Tennessee, Texas, Utah, Ohio, Louisiana, Colorado, Indiana, Florida, Illinois, Alaska, Mississippi, Kansas, Nevada and Virginia.

The Models of Companies Big and Small

The companies that take these contracts are diverse in size, including small contractors, subsidiaries of larger private prison firms and products of large-scale mergers. They include Corizon Healthcare, the result of combining PHS Corrections and Correctional Medical Services; MHM Services Inc.; Armor Correctional Health Services Inc.; Correct Care Solutions; the Birmingham, Alabama-based NaphCare and GEO Group's GEO Care.

The recent merger that created Corizon Healthcare shows the scope of the industry. Prior to the merger, PHS Corrections had 57 contracts in 150 prisons and jails across 19 states, serving about 165,000 prisoners, and Correctional Medical Services served 250,000 prisoners in 19 states. Since the two companies merged, Corizon Healthcare has become the largest prison health-care provider in the country. It "provides quality healthcare services at over 400 correctional facilities across the country serving approximately 400,000 inmates in 31 states."

The smaller private health-care companies also have no shortage of clients. MHM Services provides care for over 280,000 individuals in 14 states; GEO Care is in more than 60 facilities in more than 20 states and Correct Care Solutions "cares for more than 57,000 lives" in 17 states.

Alex Friedmann, associate editor at the anti-privatization Prison Legal News, said there are two funding models for privatized health care in prisons. There is the cost-plus model, in which a vendor is reimbursed at a specific rate that includes actual costs and profit, and the flat-fee model, under which a company is given a flat-rate amount of money and everything they don't use is profit, giving them the most incentive to cut costs.

"Medical care in public prisons isn't great either," said Friedmann. "Prison medical care in general is pretty abysmal, just even more abysmal in the private sector."

Martin Ricketts, deputy director of Rehabilitation Programs at the New York City Department of Health and Mental Hygiene and a contracted clinical social worker with a New York-based private prison health-care firm, said many of the people entering prison have had little or no health care throughout their lives.

Though privatized health care is not a new concept for American society – 70 percent of Americans get their health coverage through some form of private insurer – what makes the risks of privatized health care in prisons particularly worrisome is that prisoners have no other options.

"If you take all the bad parts of the HMO [Health Maintenance Organization] and put it in a monopoly situation, then you have the private prison medical-care industry," said Friedmann. "But prisoners can't go to another clinic, can't pick a plan."

Though Ricketts said the profit motive in private prison health care does disturb him, he sees the move to private care happening now because "the system is in transition anyhow."

"Our whole system is more profit-driven than it used to be," said Ricketts, who has been with the New York City Department of Health and Mental Hygiene for 25 years. "And health providers are being squeezed especially hard by the government as there are cuts in programs like Medicare and Medicaid."

Garnering Contracts in an Age of Cost-cutting

According to the ACLU National Prison Project, it costs some states up to \$47,000 to house a prisoner, and in a time of budget crisis, some legislators argue that outsourcing health-care services is cost efficient. Most recently, the Michigan Department of Corrections floated a proposal to privatize its entire prison health-care services, hoping to save up to \$20 million.

“As a result of the economic downturn, states are taking steps to reduce their expenditures,” said Friedmann, though he doesn’t think it’s ever been proven or shown that costs are reduced by privatizing health care.

The New York Department of Corrections (NYDC), for example, signed a 6-year contract with Correctional Medical Services in 2005 for \$5,419,000, and then extended the contract for six months in February 2011 for \$2,910,480, according to its contracts site. Not long after the CMS contract, NYDC also signed two contracts with NaphCare, Inc. in 2006 for more than \$1 million each, and extended them at the start of 2011 for more than \$1 million each.

The Correctional Medical Services contract was signed in 2005, only a year after a New York Times article exposed widespread abuses and deaths of prisoners at Rikers Island under the care of Prison Health Services.

In Texas, the state is looking for a cheaper alternative to contracting prison health care with the University of Texas, the Texas Independent reported, but “the idea didn’t get too far with the Texas Legislature, in part because state Rep. Jerry Madden (R-Plano) kept reminding everyone there was no evidence privatization would save any money at all.” Because there are “very few companies in competition,” said Friedmann, “they just gain other contracts” when one state kicks them out.

Prison Health Services (PHS) got its largest contract ever in 2000, \$253 million for three years, from New York City after both Florida and Pennsylvania began official investigations of PHS into treatment of those states’ prisoners. At the same time it received the contract, PHS was paying millions in legal fees.

Expansion

The range of health-care services provided by private companies has continued to broaden. PHS and Corizon also run nationwide pharmacies to supply their respective operations.

This makes cases like that of Ashley Ellis, who died in a PHS-contracted facility in Vermont from a lack of a vitamin that could be bought over the counter, all the more sad. Ellis, 23, died on August 16, 2009, three days into her 30-day sentence. PHS did not have potassium in stock at the prison, and during Ellis’ stay there was no doctor on staff and only one registered nurse, during just one shift. [See: PLN, Feb. 2011, p.36].

Prison Legal News is currently involved in a lawsuit with PHS to release details of any lawsuits PHS has settled in Vermont, including the case of Ashley Ellis. PHS left the state in January 2010. The Northfield News reported Vermont was then off to look for its fifth private company in 14 years to run its prison health-care system.

“It’s tragic,” Friedmann said of Ellis’ death, “but illustrates that these companies are interested in only one thing.”

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PHS Hit with \$312,000 Verdict for Inadequate Care of Pennsylvania Prisoner

On February 17, 2012, a Pennsylvania state jury slapped Prison Health Services (PHS) with a \$400,000 verdict for inadequate medical care of a prisoner at State Correctional Institution (SCI) Albion. The award was reduced to \$312,000 because the jury found that prisoner Derrick Jones, also known as Derrick Alexander, was 22% responsible for his injuries.

Jones, 41, was hurt at SCI Albion on March 12, 2006 after he jumped off a bunk and landed on a boot. PHS failed to take an X-ray for five days, after which time it was discovered that Jones had broken his ankle. The ankle was set with surgical pins and placed in a cast, but Jones was ordered to return to his top-tier cell.

That required him to climb up and down metal stairs for meals and medical treatment. On March 19, 2006, Jones fell down 15 steps, injuring his neck, back and left knee. PHS did not provide him with an MRI to determine the extent of the injuries. Jones obtained an MRI after his release from prison in 2008, which confirmed that he had suffered herniated discs and torn knee ligaments.

PHS argued in court that it had provided appropriate care, and any lingering problems that Jones experienced were due to degeneration. "PHS similarly did not cause any of Mr. Jones' claimed injuries or damages," PHS attorney Kathryn Kenyon wrote in court pleadings.

Jones' expert, a prison medical specialist, disagreed, finding that PHS's care fell below acceptable standards. Another expert predicted Jones would have "permanent limitations on future employment," as in addition to his injuries he had dropped out of school in the 10th grade and only had job experience as a janitor and in construction and demolition.

Jones' attorney, Stuart M. Niemtow, said he was "quite pleased" with the verdict. "Prison Health Services dropped the ball many times in caring for Derrick over a two-year period," he said. The verdict will, sadly, be enjoyed by Jones from a jail cell, as several years after his release he was arrested on new charges.

Following the verdict, the trial court ordered a reduction of damages for future medical care to their present value under the state's MCARE Act, after finding that PHS qualified as a health care provider under the Act. Niemtow said he intends to appeal the court's reduction of damages. See: *Jones v. PHS*, Court of Common Pleas for Erie County (PA), Case No. 15262-08.

PHS has since merged with Correctional Medical Services to become Corizon.

The same day that the jury entered the verdict against PHS in Jones' case, the Huffington Post, an online news site, published an interview with retired SCI Albion guard Kevin Barwell, who criticized poor medical treatment at the facility. Barwell cited the January 1, 2012 death of prisoner Dennis Austin, 48, who suffered from cancer and died with severe bedsores that covered his body.

“It’s happened before. This is a pattern that’s been ongoing,” said Barwell, who added that Austin’s death was “a direct result of negligence. They’re not doing their job.”

Barwell, who had retired from the prison system in 2008, stated he was familiar with the medical unit at SCI Albion. “We had one inmate who was in the infirmary who was paralyzed from the waist down,” he said. “He had bedsores right down to the bone on his buttocks. I saw them, and I could actually smell the flesh. He needed [rolling] several times a day.”

Austin’s family, through their attorney, has called for an investigation into his death.

Sources: *Erie Times-News*, *Huffington Post*

Not published in Prison Legal News

<http://america.aljazeera.com/watch/shows/america-tonight/articles/2014/5/27/whistleblower-arizonainmatesaredyingfrominadequatehealthcare.html>

Whistleblower: Arizona inmates are dying from inadequate health care

An America Tonight investigation found dozens of cases of neglect in Arizona's privatized prison health care system

May 28, 2014 3:45PM ET

by Abigail Leonard & Adam May

SAFFORD, Ariz. — Regan Clarine found out she was pregnant just two days before she was sentenced to two and a half years behind bars for possessing a narcotic for sale. Giving birth to her baby daughter while she was incarcerated at the state prison complex near Tucson was an experience she says nearly killed them both.

Clarine says her first indication things were not right with her health care was when she asked prison officials for an ultrasound. She was worried she wasn't gaining enough weight, but they never gave her one. Instead, Clarine said that after about nine months, prison doctors sent her to the hospital to induce labor, but when the baby still didn't come, they performed a cesarean section against her wishes.

When Clarine went back to her cell, her C-section wound re-opened.

“It was big enough for me to put my fist in there,” she said. “It was the worst pain I'd ever been through in my life.”

Clarine said she alerted guards, but they refused to let her see a doctor, leaving her on the prison yard with a gaping wound for two weeks. When she finally saw medical staff, she said they told her that she was lucky to be alive. They treated her with a wound vacuum. Then, she said, they employed an antiquated medical treatment.

“They decided to use sugar ... like McDonald's sugar,” she said. “They would open it and pour it inside [the wound] and put gauze over and tape it up. And I had to do that for like three weeks.”

Clarine's story is one of dozens. Like many other states, Arizona privatized its prison health care system two years ago. In a six-month investigation, “America Tonight” found disturbing cases of inadequate treatment, and evidence that Wexford Health Sources, the first private company Arizona contracted to provide prison health care, was aware that it was violating prisoners' constitutional rights.

Arizona's system is currently run by Corizon Health, the largest private prison health care provider in the country. Now, for the first time ever, one of its former employees is blowing the whistle about its failures.

Going unfed

Teresa Short was a patient care technician for Corizon, but lost her job in late March for refusing to go to work while suffering from a case of scabies she caught from a prisoner. Short said she thought it would be unethical to treat patients while she was still contagious. She had already infected a family member, she said, and feared her son could contract it and bring it to his high school. According to Short, Corizon and Arizona prison officials have been trying to cover up the outbreak, which now includes the original prisoner and seven staff members. (Read Corizon's response.)

But the most persistent problem at Corizon, Short said, was staffing.

"We have a lot of dementia patients that take time in feeding," she said, "and because of the short staff we'd have to stand there for hours to try to feed them and it was just not permitted."

Sometimes, those patients would go unfed, she said. Others who were incontinent would sit for hours in their own feces, she said. And still others died.

Short described one dementia patient who had a vascular catheter in his arm for dialysis treatments. He didn't understand what it was and kept playing with it, she said, so she repeatedly told senior staff he needed additional supervision. Instead, they sent him back to his cell, alone. At 5 a.m., she went in to check on him.

"[I] could smell blood before I even went into the room," she said. "And when I turned on his light, it looked like somebody had been murdered. There was blood all over the room. I screamed for help."

Short said the man had unplugged the catheter and quickly bled out. If Corizon had employed more staff to monitor patients, she said, he might still be alive.

There are some numbers to back up Short's claims. Since the state privatized its prison health care, medical spending in prisons dropped by \$30 million and staffing levels plummeted, according to an October report from the American Friends Services Committee, a Quaker social justice organization. It also found a sharp spike in the number of inmate deaths. In the first eight months of 2013, 50 people died in Arizona Department of Corrections custody, compared with 37 deaths in the previous two years combined.

According to a 2012 lawsuit filed by the American Civil Liberties Union, the health care in Arizona's prisons now amounts to cruel and unusual punishment, with prisoners at serious risk of "pain, amputation, disfigurement and death." The suit cites examples of Arizona health

officials telling prisoners to pray to be cured and drink energy shakes to alleviate cancer symptoms.

“People are often sent to prison for two-year, three-year sentences that have turned into death sentences because of the absence of the basic minimal care,” said Dan Pochoda, legal director for the ACLU in Arizona. He said in his 40-year career, he’s never seen a worse prison health care system.

In an emailed statement, Corizon spokeswoman Susan Morgenstern said that the company could not discuss individual cases because of privacy laws, but that “the vast majority of our current staff levels exceed contract requirements,” and that their care follows the guidelines of the National Commission on Correctional Health Care and the American Correctional Association.

“Our goal is always to provide quality care while being good stewards and making the best use of public funds,” she wrote.

“As for lawsuits, we treat hundreds of thousands of patients in millions of healthcare encounters each year,” she added. “... The majority of lawsuits are brought by inmates without an attorney representing them and are dismissed or resolved prior to trial.” (Read the company’s full statement.)

'He had plans'

Tony Brown is another inmate who died since Arizona privatized its prison health care. He was serving a 10-year sentence for aggravated assault and was due to be released last September.

“They were supposed to come down for Thanksgiving this year,” his daughter Jenna Jumper said. “He never got to meet my husband and he wasn’t there when I got married, so they were going to come visit.”

Brown was in remission from esophageal cancer, according to his medical records, and had been prescribed morphine for the pain. But in October 2012, the prison ran out of the drug. Medical staff switched him to Lortab, a weaker painkiller.

In a video taken by prison guards and obtained by “America Tonight,” Brown is seen just after he was put on the new medication, writhing in pain while handcuffed to a gurney. His medical records show that guards told nurses his condition was worsening and that he “needed to be checked out.” But there is no record of medical staff visiting his cell.

In another video taken two days later, a prison chaplain checks on Brown at his wife’s request.

“Inmate Brown, I spoke with your wife earlier today,” the chaplain is heard saying. “Can you communicate with me please? I’d like to speak with your wife later on. Is there something I can tell her?”

Brown, face down on a bunk, barely moves and doesn't respond. A guard can be heard saying, "Is it me or does this just not feel right to anybody else?"

The guards started CPR and nurses came to assist, but 40 minutes passed before they realized no one had called an ambulance.

He died in a hospital the next day. Two days later, his widow Jami Brown said she finally received a call back from Wexford, the private prison health care company in charge at the time.

"My biggest thing is that if people would stop to realize that he did have family," his daughter said, "and that he did have a child and he did have a wife and he had plans."

The official cause of death was listed as complications from cancer. But Brown's family is suing Wexford, claiming he died from lack of adequate medical care.

In a statement, Wexford attorney Ed Hochuli said he couldn't discuss details of the case because of the lawsuit and health care privacy laws, but wrote: "Based on the limited information we have at this time, though, I am very confident Wexford Health and its employees acted appropriately, and further investigation of this claim will demonstrate and prove the lack of any wrongdoing or negligence by Wexford Health."

But there are signs that Wexford was aware of problems.

"America Tonight" obtained a copy of a PowerPoint presentation written by top Wexford executives for a meeting with the Arizona governor's office in November 2012 – four months after the company started providing care in the state. It warned that the care it and the Department of Corrections were providing was "not compliant with ... requirements" and that "the current class action lawsuits are accurate." It recommended an overall operational cleanup, staffing reassessment and the appointment of a governor's office liaison.

The PowerPoint presentation also says that the department's "transparency" policy with the media could "encourage negative press."

'A grain of sugar'

Prison officials deny any problems with privatized care. Richard Pratt, the interim director of the health services division of Arizona's Department of Corrections, told "America Tonight" that staffing levels since privatization were "basically the same."

"Corizon staffing levels have been coming up on a monthly basis to the point even last month the hours that they were working with their existing staff exceeded the contract requirements," he said. He also denied there was a scabies outbreak, as Teresa Short had charged.

But Pratt emphasized that privatizing health care wasn't a decision made by the Department of Corrections.

“It was legislated and mandated and it was the law,” he said. “So we were forced to do this.”

Legislators who supported the privatization promised that it would save taxpayers money, while maintaining adequate levels of care for inmates. The majority of states have privatized prison health care, rewarding private companies for keeping costs down.

“I mean, people die in prisons,” said state Rep. John Kavanagh, who wrote the legislation that privatized the state’s prison health care. “I receive a lot of handwritten notes from prisoners. I receive emails from prison families with all sorts of allegations of crazy behavior. And then, you call the prison people up and they usually have a reasonable explanation for it.”

Kavanagh said Clarine’s story about being treated with sugar didn’t seem like a “true allegation,” adding that it “sounds ridiculous.”

“You know prisoners have 24/7 to think up allegations and write letters,” he said. “I’m not saying that some of them can’t have a basis in fact. But you got to take them with a grain of salt or in the case of the hospital, with maybe a grain of sugar.”

Kavanagh was also dismissive of the ACLU lawsuit. “I think most people who get into [class-action lawsuits] wind up with nothing and the lawyers walk away in limousines with their trunks full of cash,” he said.

No bid, nothing

Before Tony Brown’s death, Wexford was already coming under fire after a contract nurse exposed more than 100 inmates to hepatitis C by using dirty needles to deliver medication, according to the Department of Corrections. Four months later, Arizona severed ties with Wexford and awarded the three-year, \$369 million contract to Corizon, which has similar contracts in 28 states, according to its website. But it has faced problems in many of them; in the last five years, Corizon has been sued for malpractice 660 times.

Arizona Democratic House Minority Leader Chad Campbell said the Legislature didn’t properly vet Corizon before signing the contract.

“No bid. Nothing,” he said. “It was deemed an emergency situation by Department of Corrections so they didn’t have to go through the normal process.”

Campbell also noted that Corizon had just hired the former head of the Department of Corrections, who was the mentor of the current head of the department.

That’s not the only tie that members of the state government have to private prisons. Charles Coughlin, the former campaign strategist for Gov. Jan Brewer, runs a lobbying firm called HighGround Public Affairs Consultants, which represented one of the country’s largest private prison companies. HighGround donated \$5,000 to Jan PAC, Brewer’s super PAC.

Then in late March, Kavanagh allocated \$900,000 in state funding to the private prison company GEO Group Inc., even though the Department of Corrections said it wasn't needed, according to the Arizona Republic.

"They're profiting on taxpayer dollars and to me, if I'm going to hand out money to a private entity, I want to make sure it's being spent wisely," said Campbell, who is now calling for an investigation.

The governor's office declined a request from "America Tonight" for an interview and referred us back to Kavanagh, who said the allegations that Brewer accepted bids because of personal relationships were "baseless."

"I think they're propaganda," he said. "I mean, people say to me I've gotten campaign contributions from private-prison people. Well, yeah. I got from a lobbyist who represents them but that lobbyist also represents 40 other clients in different industries. It's smoke and mirrors. It's a façade."

In the meantime, allegations of wrongdoing continue to mount. According to the American Friends Service Committee report, an inmate at the Whetstone Unit of the Arizona State Prison Complex tested positive for tuberculosis in August. But Corizon did not test other prisoners, even those who were doing community service outside the complex.

A healthy baby

Earlier this month, Regan Clarine completed her sentence. "America Tonight" met her as she was released into the waiting arms of her father, Paul.

"It's one of the happiest days of our life," he said. "Hopefully we'll never have to do this again."

They drove to a nearby hotel to reunite with the rest of the family, including her 11-month-old daughter, Rylan.

They'd met a handful of times on brief prison visits, but Rylan didn't recognize her mother. Still, Clarine was happy to see her so healthy.

She responded to Kavanagh's allegation that she was probably making up her story with a laugh, saying, "That's crazy. I don't think I could even come up with something like that ... Sugar?"

To add insult to injury, her mother, Lori, said the prison has billed her \$2,000 for Rylan's birth. She is disputing the charges but fears it could hurt her credit if she doesn't pay them. She says privatized prison health care simply isn't working.

"You know, she got her just punishment," Lori said. "But, oh my goodness, they're still human beings. Take care of them."

