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August 1, 2022

Via First Class Mail and Fax (570) 546-2745
Superintendent Wendy K. Nicholas
Medical Director
SCI Muncy
P.O. Box 180
Route 405
Muncy, PA 17756

Dear Superintendent Nicholas and Medical Director:

We are writing on behalf of the Pennsylvania Institutional Law Project regarding our client, [redacted], who has been incarcerated at SCI Muncy since approximately 2014. Our review of Ms. [redacted] medical records, our conversations with Ms. [redacted] and her daughter, as well as our observations of her during our meeting with her raises serious concerns for us about her medical treatment at SCI Muncy. We are writing today to ask that you take immediate action to improve her care by implementing a care plan which fully takes into account Ms. [redacted]'s serious medical and mental health conditions. We ask that the care plan require medical staff to redirect and reorient Ms. [redacted] when she refuses to accept medical care and to pay close attention to Ms. [redacted]'s medical needs given her potential difficulties in advocating for herself. We also ask that Ms. [redacted]'s daughter be regularly updated and consulted with regard to Ms. [redacted]'s care. We believe that these changes are necessary and required under both the Eighth Amendment and the Americans With Disabilities Act ("ADA").

Ms. [redacted] is 79 years old and has long suffered from serious mental illness. In 2012, prior to entering DOC custody, she received inpatient psychiatric treatment at a mental health facility in Brookville, Pennsylvania. In 2013, she was involuntarily committed to Torrance State Hospital for a mental health evaluation as part of the pre-trial proceedings in her criminal case. During that commitment, the evaluating psychologist noted that Ms. [redacted] appeared to have cognitive deficits which were indicative of dementia. While in DOC custody, she has been diagnosed with Schizophrenia and is a "D Code" patient on the DOC's mental health roster.

Ms. [redacted] also has a number of serious chronic medical issues, including COPD, asthma, hyperlipidemia, kidney disease, and incontinence. She is on numerous medications for her physical conditions and is administered psychotropic medication ("Risperdal Consta") by injection for her mental health conditions. Ms. [redacted] has recently had a Pacemaker inserted at a local hospital. It is our understanding that Ms. [redacted] has been housed in the infirmary at SCI Muncy for much of the past two years and that she is considered a "long term care" patient.

Ms. [redacted]'s mental health conditions and cognitive limitations impact her ability to take care of her basic daily activities including hygiene, toileting needs and walking. She also has trouble communicating effectively with other people, which can make it difficult, if not impossible, for her to convey basic information to medical staff in connection with her care.

In addition to these obstacles to care, our review of her medical records reveals numerous instances of Ms. [redacted] allegedly refusing medical care and treatments – often without any documented apparent reason. For example, on one occasion, Ms. [redacted] asked medical staff for an ointment to treat a skin rash on her abdomen. Medical staff obtained the ointment and brought it to Ms. [redacted]'s cell later that same day. However, when they returned with the ointment, Ms. [redacted] apparently refused to accept it. The staff member then left the cell, and the ointment was not applied to Ms. [redacted]'s rash. Ms. [redacted] was noted to have "refused" the ointment and that was the end of the matter. Medical staff took no efforts to follow up on Ms. [redacted]'s rash or to offer the ointment again.

The refusal of the skin ointment is only one example of an ongoing pattern of refusals documented in Ms. [redacted]'s medical records, including refusals to have her vital signs taken, showers, to take prescribed medications, to use her inhaler, and to have her blood drawn in order for lab work to be done. The records also reflect instances when Ms. [redacted] has refused food and water, resulting in dramatic (and unhealthy) weight loss and the risk of dehydration. Given Ms. [redacted]'s many chronic medical conditions, these lapses in her care – over the course of time - can have profound and possibly fatal consequences. For example, her inconsistent use of Atorvastatin (for cholesterol management) and her inhaler can have serious adverse effects on her cholesterol levels and her ability to breathe.

Any refusal of care by Ms. [redacted] may be due to her mental illness or cognitive decline, or a combination of both. We note that some of Dr. Shafik's orders have implicitly acknowledged this potential issue and recommended a solution, as he has directed that medical staff attempt to "reorient" or "redirect" Ms. [redacted] as needed. Some medical staff members appear to have had success with this technique when providing treatment, medication, or showers. For example, there are many instances of a CNA offering a shower to Ms. [redacted] two or three times after the initial offer was rejected – and finally succeeding in having Ms. [redacted] take a shower. However, it does not appear that attempts to reorient Ms. [redacted] are employed in every instance when Ms. [redacted] allegedly refuses. The end result is that Ms. [redacted] does not receive the care that she needs and which she is entitled to under both the Eighth Amendment and the Americans With Disabilities Act (ADA).

It is well established that deliberate indifference by a prison official to a prisoner's serious medical needs constitutes the "unnecessary and wanton infliction of pain," in violation of the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Chronic medical conditions such as those suffered by Ms. [redacted] constitute serious medical needs under the *Estelle* standard.

In addition to the Constitution, Ms. [redacted]'s physical and mental disabilities entitle her to the protection of Title II of the ADA, which prohibits public entities, including prisons, from discriminating against qualified individuals with disabilities in the provision of programs, services, and activities. *See* 42 U.S.C. § 12132, *et seq.* Virtually all programs offered by a prison, including

medical care, mobility, and hygiene qualify as "services, programs or activities" under Title II. *See United States v. Georgia*, 546 U.S. 151, 157 (2006) (quoting 42 U.S.C. § 12132); *Yeskey v. Pennsylvania Dept. of Corrections,* 118 F.3d 168, 170 (3d Cir. 1997). Public entities have an affirmative duty under the ADA's implementing regulations to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability. . ." *See* 28 C.F.R. § 35.130(b)(7). These regulations also require a public entity to "take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others" and to provide "appropriate auxiliary aids and services" so that individuals with disabilities have "an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity." *See* 28 C.F.R. § 35.160(a)(1), (b)(1).

Effective communication is an integral component of Ms. [redacted]'s access to health care. As described above, Ms. [redacted]'s alleged "refusals" of medical care, which may stem from her mental illness or cognitive impairment, result in her being denied medical services and treatments (as well as other related services, such as showers or incontinence care) which she is entitled to. To remedy this situation, we ask that all medical staff modify the way they communicate with Ms. [redacted] when presenting her with medical (or other) treatments and services. In particular, we ask that medical staff consistently "reorient" or "redirect" Ms. [redacted] if she initially refuses medical care. We believe that this accommodation – which has already been ordered by Dr. Shafik and implemented on some occasions - would make communication with Ms. [redacted] more effective and would enable her to receive the care she is entitled to receive, in accordance with ADA and its implementing regulations. We ask that this change be incorporated into Ms. [redacted]'s care plan, that staff be trained on how to carry it out, and that staff's efforts to "reorient" or "redirect" Ms. [redacted] be documented in every instance in her medical records.

In addition, Ms. [redacted]'s daughter, [redacted], has suggested that when medical staff's efforts to redirect or reorient her mother are not successful, she is more than willing to speak with her mother by phone in order to encourage her to accept treatment and cooperate with staff. If Ms. [redacted] can speak with her mother *as close as possible to the time of the refusal* – before too much time passes and Ms. [redacted]'s memory fades – we believe it will be most effective. We ask that you seriously consider this option if medical staff's attempts to redirect Ms. [redacted] are not successful. Along this same line, we ask that Ms. [redacted] be provided with regular weekly phone calls with her daughter, with assistance from staff if necessary. We believe that this, too, could be very helpful as it would be another way for Ms. [redacted] to encourage her mother to accept medical treatment. Not only is such assistance a practical approach to resolving Ms. [redacted]s communication problems, it is also contemplated by the ADA's implementing regulations. *See* 28 C.F.R. § 35.160(c)(1), (2) (permitting the facilitation of communication by another individual when the person with the disability requests this and the third party agrees to provide such assistance, and reliance on such assistance is appropriate under the circumstances).

In addition to reorienting and redirecting patients with cognitive limitations, medical providers in other settings frequently employ techniques such as ensuring that care is provided by the same person, at the same time, and in the same manner every day – because establishing and maintaining a routine lessens the patient's agitation and resistance to requests from medical providers. To the extent SCI Muncy can make arrangements to provide care in this manner, we

ask that this be done.

Finally, we are aware that the DOC recently opened a Neuro Cognitive CARE Unit at SCI Rockview for men who have dementia. We assume that there may be practices in place in that unit which would be appropriate and useful for Ms. [redacted]'s care at SCI Muncy. Indeed, we note that if Ms. [redacted] were a man, she would likely be eligible for placement in the SCI Rockview unit, and that the lack of a similarly focused unit or program for women may raise Equal Protection concerns.

In addition to the overarching issue of the challenges arising from Ms. [redacted]'s "refusals" of care, we have a number of other concerns with her care, as described below.

Dementia or Alzheimer's Disease Screening

As mentioned above, prior to her DOC admission in 2014, Ms. [redacted] was noted by an evaluating psychologist as having signs of dementia. It is not clear from our review of Ms. [redacted]'s DOC records whether she has been screened for dementia, Alzheimers Disease, or any other neurocognitive disorder. We ask that such screening be done, so that if Ms. [redacted] is suffering from dementia or Alzheimers Disease, her treatment needs are being met for those conditions and any necessary adjustments to her current medications and care plan can be made.

Uncontrolled shaking

Throughout our visit with her, Ms. [redacted]'s hands were constantly shaking. Both Ms. [redacted] and her daughter have informed us that this shaking has been happening for a long time, and our review of the medical records confirms this. We have not seen any evidence in the records that this has been addressed by a physician, although we have seen notations that attribute the shaking to the Risperdol injections. The records we have reviewed do not indicate that any action has been taken to review or adjust her Risperdol or other medications to resolve this issue. Along similar lines, we have not seen any documents, among those we have reviewed, reflecting that regular assessments of involuntary movement (AIMS) have been done, as is standard practice for patients such as Ms. [redacted] who are taking certain psychotropic medications.

Immobility / lack of exercise / lack of social interaction

Ms. [redacted] was in a wheelchair when we met with her in February 2022. Her immobility appears to be a relatively recent development over the past year and it does not seem to be improving. We are seriously concerned about the impact this immobility is having on Ms. [redacted]'s health. Over the course of the past year she has been bed ridden at times and appears to have developed pressure sores as a result. In response to this issue, at the beginning of 2022, Dr. Shafik entered an order that Ms. [redacted] be moved from her bed to a Geri-chair several times per day. We have also been told that she saw a physical therapist just before we visited her in February 2022. While these are steps in the right direction, we remain concerned by Ms. [redacted]'s lack of mobility. We ask that she be given more time not only out of her bed, but out of her room - with regular trips to the common room to interact with other people and to yard – to get fresh air and sunshine. We also ask that she be provided with regular physical therapy. It is our understanding

that the physical therapy order was discontinued based on Ms. [redacted]'s alleged refusal to participate. We ask that the physical therapy program be restarted and that every effort be made, including reorientation / redirection as discussed above, to encourage Ms. [redacted] to participate.

Incontinence and poor hygiene

Ms. [redacted] has had a longstanding problem with incontinence and must use protective undergarments. Because she does not have access to such supplies on her own, she must rely on medical staff not only to provide her with these items but also to make sure that they are properly worn and changed as necessary. In addition, because Ms. [redacted] may not always be aware of the need to change her undergarments when they are soiled, it is insufficient for staff merely to ask her whether she needs to change them – this must be checked. The medical records also reflect instances when Ms. [redacted] is provided with a change of underwear but then "refuses" help in putting them on. We ask that medical staff employ the reorientation/ redirection strategy in these situations to ensure that the underwear changes occur in a timely manner and Ms. [redacted]'s hygiene is maintained.

Lack of fitting dentures and prescribed eyeglasses

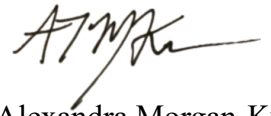
There are several references to Ms. [redacted]'s ill-fitting dentures in her medical records from 2021. Ms. [redacted] has informed us that her mother is still having trouble with the dentures, which often fall out of her mouth and impact her ability to chew properly. Similarly, although it was noted after her January 2022 eye examination that she needed updated eyeglasses, as of April 2022 the records do not reflect that she has received new prescription eyeglasses.We ask that these basic healthcare and daily living necessities be addressed immediately.

In conclusion, and in view of the serious Eighth Amendment and ADA violations described above, we ask that you take immediate action on Ms. [redacted]s behalf. Specifically, we ask that you implement a new care plan which requires staff to reorient or redirect Ms. [redacted] in the event that she initially refuses medical care; ensure that medical staff are sufficiently trained in how to redirect or reorient her; ensure that staff's efforts to reorient or redirect are documented in Ms. [redacted]'s medical records; enlist the assistance of Ms. [redacted]'s daughter in communicating with Ms. [redacted] regarding medical care and provide a weekly update to her about Ms. [redacted]'s status and condition; screen Ms. [redacted] for neurocognitive disorders such as dementia and Alzheimers disease and modify the care plan in accordance with any findings; address Ms. [redacted]'s ongoing problem of physical shaking; provide ongoing physical therapy to address Ms. [redacted]'s mobility issues; provide Ms. [redacted] with regular periods of outdoor time and social interaction; and ensure that Ms. [redacted] is provided with both fitting dentures and prescription eyeglasses.

We ask that you respond in writing to this letter within thirty days. If we do not receive a response, we may take further action. If you have any questions or concerns, you may contact Alexandra Morgan-Kurtz and Jennifer Tobin. In addition, we think that a discussion with Ms. [redacted]'s providers, with her daughter present, may be helpful in resolving these issues. If you are amenable to that idea, please let us know. Thank you for your time and consideration.

Sincerely,

Jennifer J. Tobin
Consulting Attorney



Alexandra Morgan-Kurtz
Managing Attorney

cc: Ms. [redacted]
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Chase DeFelice, Esq., Pennsylvania Department of Corrections (via email only)