

July 8, 2022

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Lawyers: DOC Continues to Be in Contempt of Court for Failing to Ensure Incarcerated New Yorkers' Access to Medical Care

New DOC Affidavit and Non-Production Data Fail to Demonstrate Compliance with Court Order

(NEW YORK, NY) - The Legal Aid Society, Brooklyn Defender Services and Milbank LLP filed an [affirmation](#) in [Agnew v. New York City Department of Correction](#), litigation filed in October 2021, responding to the New York City Department of Correction (DOC)'s claim that they were in substantial compliance with the Court's order to provide incarcerated New Yorkers' access to medical care in local jails. In May, a Court [found](#) DOC in [contempt](#) of a December order requiring DOC to remedy its unlawful failure to ensure incarcerated New Yorkers have access to medical services. The [contempt order](#) gave the City 30 days to demonstrate that it is no longer violating the Court's order or face a \$100 fine for each medical appointment missed from December 11, 2021 through January 2022.

On June 16, DOC submitted an [affidavit](#) ("the Thomson Affidavit") to the Court claiming that it had complied with the Order and should be purged of contempt. After Petitioners noted incongruities in the data provided to support that claim, DOC provided supplemental data with additional information about the reasons that people in custody were not produced to medical appointments in recent months. And on July 5th, DOC submitted to the Court a subsequent [affidavit](#) ("The Gaynor Affidavit") that continues to assert that it is in compliance with the Order. However, this documentation clearly shows the opposite is true, and DOC continues to be in contempt of the Court's Order.

The Gaynor Affidavit notes DOC recently began tracking several new categories of reasons for non-production to medical appointments, including "Maximum Safe Capacity." The Gaynor Affidavit explains that "Maximum Safe Capacity" refers to "the availability of safe space to wait for the scheduled appointment, when escort officers are available to bring individuals to the clinic."

The affidavit notes: “often there is inadequate space to safely hold more than a designated number of individuals while taking into consideration security concerns” and that “unless there is a steady flow of individuals in and out of the treatment areas, we have no choice but to return them to the housing area or not bring them down.” Nonetheless, non-productions in this new category are clearly attributable to DOC’s administrative failures.

The data show that DOC failed to produce people in its custody to necessary medical appointments due to “Maximum Safe Capacity” **1,441 times in May 2022** and **469 times between June 1 and June 15, 2022**.

Thus, in addition to [failing to provide escorts to bring people to scheduled medical appointments](#), these new data show that DOC is denying access to care through its failure to provide adequate space and security in the waiting areas of the clinics. These are almost 2,000 failures to produce that were not explained in the initial Thomson Affidavit, and which DOC having been called upon to explain, now argue should not be counted.

Gaynor argues in her affidavit that: “issues of physical space and related security considerations should not be deemed a ‘failure to produce,’ as DOC had ample escort staff, which was the focus of the Contempt Order.” DOC’s assertion that these non-productions should not be counted against compliance are disingenuous attempts to change the scope of DOC’s duty and of this Court’s Order.

The May Contempt Order finding that DOC is in contempt of this Court’s December Order directed DOC to comply with its pre-existing legal obligations to:

- Provide all class members with access to sick call on weekdays and make sick call available a minimum of five days per week within 24 hours of a request;
- Provide sufficient security to allow class members movement to and from health services in the jails;
- Not prohibit or delay class members’ access to care, appropriate treatment, or medical or dental services.

To achieve substantial compliance with this Court’s December Order and purge itself of the contempt finding, DOC must not be the cause of the denial of access to medical care. Whether that means providing additional escorts to bring people to the clinic, making additional space or security available in the clinic areas so that people are safe while waiting for their scheduled medical appointments, or taking any other action, it is incumbent on DOC to provide this access.

Although Petitioner’s access to information on the causes of recent deaths in NYC jails is limited, there is persuasive authority that many of the recent deaths are tied to deficiencies in DOC’s provision of access to medical care, and that these deficiencies are a direct result of its own mismanagement. In its recent report on the three deaths in custody in February and March 2022,

the Board of Correction found, among other relevant findings, that DOC failed to adequately staff its housing units, including the “dangerous practice” of not ensuring the presence of “B” post staff, did not possess a functional system for providing emergency medical care to people in its custody, and neglected to timely bring patients to medical appointments and provide medication.

In its filing, the Petitioners request that the Court find that DOC has not purged itself of this Court’s contempt finding and direct DOC to pay the compensatory fine of \$100.00 for each missed escort to the infirmary from December 11, 2021 through January 2022, as set forth in the May Contempt Order.

The Plaintiffs will appear **Monday, July 11th at 11:00 AM** before the Honorable Elizabeth Taylor in New York State Supreme Court - The Bronx for a status conference on this matter. Media and members of the public should contact the New York State Office of Court Administration for virtual access.

The Legal Aid Society, Brooklyn Defender Services and Milbank LLP stated, “DOC continues to claim compliance with the Court’s order by hiding behind red tape and careful language. But in reality, thousands of people incarcerated in NYC jails have been denied access to medical care because of DOC’s failures. As the Department touts ‘progress,’ people in its custody continue to suffer, and nine people have died so far this year. Rather than avoiding responsibility for the humanitarian crisis unfolding before its eyes, DOC must immediately resolve these failures.”

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