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After Three Years Of Failures, Federal Judge Says Prison Health Care Settlement Is Falling Apart

"Here we are, in May of 2018 and the failures ... continue," Magistrate Judge David Duncan lamented in federal court Wednesday. "The excuses sound the same." Duncan oversees the Parsons v. Ryan prison health care settlement, which has now stretched on for more than three years. At the most recent monthly status hearing in the case, attorneys for the Arizona Department of Corrections went through a list of agreed upon health care performance measures that have still not been met. The latest numbers show people in Arizona prisons are not receiving of diagnostic studies in a timely fashion. Patients with urgent medical referrals are not being seen within 24 hours by a medical provider. Hospital discharge recommendations are being ignored. Duncan said the continued failures show the prison health care system, operated by the state's contractor Corizon Health, is stretched too thin. "The whole thing is falling apart on a continual basis," Duncan said. "I just don't think anyone contemplated, at the time the settlement was reached, there would be such a broken system so many years into it." Duncan said it was especially frustrating because the performance measures are so basic. "It's not as if we're asking somebody to fly to Mars," Duncan said. "We're saying 'provide the health care you agreed to provide.'" The judge suggested the state had lost sight of the human element behind the monthly numbers. "I think the frustration that I have felt in this case must just be so small compared to the suffering that seems to occur out in the prison yard because people are not getting this basic health care," Duncan said. "It makes me think that at some point we have lost the connection to the fact that there are lives hanging in the balance." Judge Duncan said he was still working on a contempt order which could end up costing the state millions of dollars based on the failure to comply with specific measures in the settlement. Duncan suggested, as he has in the past, that money from fines imposed on the state could be used to appoint an independent expert to monitor the state's compliance. Currently, the Arizona Department of Corrections monitoring team oversees compliance with the settlement agreement. But testimony and reporting inaccuracies flagged by plaintiff attorneys have brought the integrity of that process into question. "There are so many examples of where it appears the monitoring program is unmoored to any kind of verifiable and examinable analysis," Duncan said. "I am concerned that we have incomplete information." Duncan told the court he had recently suffered a series of strokes that have significantly impacted his vision. "I cannot read out of my left eye any more at all, and I have a very small area that I can read out of in my right eye," Duncan explained, saying he would retire June 22. "Before then, and in that time period that remains, I will do my work as best I can." Duncan said one thing he hoped to accomplish before turning the case over to another judge was to go on another prison tour, to see the conditions plaintiff class members had told their attorneys about. Plaintiff attorney David Fathi told Duncan he was "dreadfully sorry" to hear about his medical problems and pending retirement. "On behalf of all of us on the plaintiff side and the 34,000 men, women and children we represent, we want to send our good wishes to you during what I'm sure is a very difficult time," Fathi said. "I will be fine," Duncan replied. "I'm one of those very lucky people who has had a life that has given me a lot of experiences and a lot things that have helped me understand that, even though bad things do happen, good things can come out of it."