

**IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
OF VIRGINIA ALEXANDRIA DIVISION UNITED STATES OF AMERICA,
PLAINTIFF V. THE COMMONWEALTH OF VIRGINIA; THE HONORABLE
GEORGE F. ALLEN, GOVERNOR OF VIRGINIA; TIMOTHY A. KELLY,
COMMISSIONER OF THE**

COMPLAINT

1. The Attorney General of the United States brings this action on behalf of the United States of America, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. §§ 1997-1997j, to enjoin the named Defendants from depriving persons residing at the Northern Virginia Mental Health Institute ("NVMHI") in Falls Church, Virginia, of rights, privileges or immunities secured or protected by the laws and Constitution of the United States.

JURISDICTION, STANDING AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345.

3. The United States has standing to maintain this action pursuant to 42 U.S.C. § 1997a.

4. The Attorney General has certified that all pre-filing requirements specified in 42 U.S.C. § 1997b have been met and that she has the "reasonable cause to believe" set forth in 42 U.S.C. § 1997a. The Certificate of the Attorney General is appended to this Complaint and is incorporated herein.

5. Venue in the United States District Court for the Northern District of Virginia is proper pursuant to 28 U.S.C. § 1391.

DEFENDANTS

6. Defendant COMMONWEALTH OF VIRGINIA ("Virginia" or "State") owns and operates NVMHI, a facility for the mentally ill.

7. Defendant GEORGE F. ALLEN is the Governor of the Commonwealth of Virginia, and, in this capacity, heads the Executive Branch of the State's government and, among other duties, reviews and approves budget requests submitted by Executive Branch agencies regarding state institutions. He selects and appoints the Commissioner of the Department of Mental Health, Mental Retardation, and Substance Abuse Services.

8. Defendant TIMOTHY A. KELLY is the Commissioner of Virginia's Department of Mental Health, Mental Retardation, and Substance Abuse Services ("DMHMRSAS") and, in this capacity, exercises administrative control of, and responsibility for, the institutions.

9. Defendant ANTONI SULIKOWSKI is the Director of NVMHI, and is responsible for the administration and day-to-day operations of NVMHI.

10. The individual Defendants named in paragraphs 7, 8, and 9 are officers of the Executive Branch of the Commonwealth of Virginia and are sued in their official capacities.

11. NVMHI is an "institution" as that term is defined in 42 U.S.C. § 1997(1)(A), (1)(B)(i) and (1)(B)(v).

12. Persons residing at the institution are "qualified individual[s] with a disability" under the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101, 12131.

13. The Commonwealth of Virginia, DMHMRSAS, and NVMHI are "public entities" under Title II of the ADA, 42 U.S.C. § 12131.

14. Defendants are legally responsible, in whole or in part, for the operation of and conditions at the institution, as well as for the care and treatment of persons residing at the institution.

15. At all relevant times, Defendants have acted or failed to act, as alleged herein, under color of state law.

FACTUAL ALLEGATIONS

16. Defendants have failed and are continuing to fail to provide reasonably safe conditions and to ensure the reasonable safety of the NVMHI patients.

17. Defendants have failed and are continuing to fail to provide adequate medical and mental health care to patients.

18. Defendants have failed and are continuing to fail to ensure that NVMHI patients are free from undue or unreasonable restraint and seclusion.

19. Defendants have failed and are continuing to fail to ensure that use of restraint and seclusion at NVMHI is authorized by appropriately qualified professionals in keeping with accepted professional standards, and is not used as punishment, in lieu of treatment, or for the convenience of staff.

20. Defendants have failed and are continuing to fail to ensure that medications are prescribed and administered to NVMHI patients by appropriately qualified professionals in keeping with accepted professional standards, and are not used as punishment, in lieu of treatment, or for the convenience of staff.

21. Defendants have failed and are continuing to fail to provide NVMHI patients with that level of treatment and training necessary to protect the patients' liberty interests, including their right to treatment and training sufficient to ensure safety and freedom from undue restraint.

22. Defendants have failed and are continuing to fail to provide a sufficient number of adequately trained staff to render the essential care, treatment and training outlined above in paragraphs 16 through 21 as required by the laws and Constitution of the United States.

23. Defendants have failed and are continuing to fail to maintain professionally based record keeping and record review systems to ensure that patient records contain accurate, up-to-date and relevant information necessary to enable staff to provide adequate care, treatment, and training to NVMHI patients.

24. Defendants have failed and are continuing to fail to ensure that NVMHI patients are adequately evaluated for community placement, that those individual patients who professionals determine should be placed in community programs are placed in such programs, and that all patients are served in the most integrated setting appropriate to each patient's individual needs.

25. Defendants have failed and are continuing to fail to meet the requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*, and the regulations promulgated pursuant thereto, by excluding the persons living at NVMHI, by reason of their disability, from participation in or by denying them the benefits of services, programs, or activities, or by subjecting them to discrimination, and by failing to administer services, programs, and activities in the most integrated setting appropriate to their needs.

VIOLATIONS ALLEGED

26. The acts and omissions alleged in paragraphs 16 through 25 infringe upon the patients' legal rights and substantive liberty interests and constitute resistance to their full enjoyment of rights, privileges or immunities secured or protected by the laws and Constitution of the United States, and deprive NVMHI patients of such rights, privileges or immunities.

27. Unless restrained by this Court, Defendants will continue to engage in the conduct and practices set forth in paragraphs 16 through 25 that deprive NVMHI patients of rights, privileges, or immunities secured or protected by the laws and Constitution of the United States, and cause irreparable harm to those patients.

PRAYER FOR RELIEF

28. The Attorney General is authorized under 42 U.S.C. § 1997a to seek only equitable relief.

WHEREFORE, the United States prays that this Court enter an order permanently enjoining Defendants, their agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts, practices and omissions at the institutions set forth in paragraphs 16 through 25, and to require Defendants to take such action as will bring Defendants into compliance with federal law and provide constitutional conditions of care to persons who reside at NVMHI. The United States further prays that this Court grant such other and further equitable relief as it may deem just and proper.

Respectfully submitted,

JANET RENO, Attorney General of the United States

HELEN FAHEY, United States Attorney, Eastern District of Virginia

ISABELLE KATZ PINZLER, Acting Assistant Attorney General, Civil Rights Division

STEVEN H. ROSENBAUM, Chief, Special Litigation Section

ROBINSUE FROHBOESE, Deputy Chief, Special Litigation Section

DAVID DEUTSCH

CHRISTOPHER CHENG

Trial Attorneys

U.S. Department of Justice

Civil Rights Division

Special Litigation Section

950 Pennsylvania Ave., N.W.

Washington, D.C. 20530

(202) 514-6270

(202) 514-8892 >