IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

DAVID BREWSTER HECTOR SANTIAGO RICHARD SCHNEIDER DONALD GABOURY MARTIN WEINBERG ALBERT POTTER ELLA BAILEY THONNIE ROWELL, by his next friend STEPHEN FERRARONE MARY MC GUILLICUDDY, by her next friend CAROL BOOTH in behalf of themselves and all others similarly situated MASSACHUSETTS ASSOCIATION FOR MENTAL HEALTH, INC. MASSACHUSETTS ASSOCIATION FOR RETARDED CITIZENS, INC. Plaintiffs v. MICHAEL S. DUKAKIS Governor, Commonwealth of Massachusetts DR. ROBERT L. OKIN Commissioner, Department of Mental Health DR. MARY JANE ENGLAND Associate Commissioner for Programs, Department of Mental Health LINDA GLENN Assistant Commissioner for Mental Retardation Services, Department of Mental Health	*	CIVIL ACTION No. 76-4423-F

ROBERT W. MURPHY
Assistant Commissioner for Mental Health Services, Department of Mental Health

RAYMOND BRIEN
Regional Administrator of Region I, Department of Mental Health

EVELYN MC LEAN
Area Director of the Franklin-Hampshire Area, Department of Mental Health

ANDREW PHILLIPS
Area Director of the Holyoke Area, Department of Mental Health

FRANK ROBINSON
Area Director of the Springfield Area, Department of Mental Health

KERRY HOLLAND
Area Director of the Westfield Area, Department of Mental Health

JOSEPH VAN HOENACKER
Area Director of the Berkshire Area, Department of Mental Health

IRVING A. JACOBS
Superintendent, Northampton State Hospital

DR. JONATHAN FIELDING
Commissioner, Department of Public Health

JOHN R. BUCKLEY
Commissioner, Executive Office for Administration and Finance

All individually and in their official capacities,
Defendants

THIRD AMENDED COMPLAINT

I. NATURE OF THE ACTION

1. The Northampton State Hospital (hereinafter the Hospital) presently involuntarily confines more than 500 mentally disabled[1] persons and admits more than 1500 involuntary patients annually. Of both this fixed and revolving patient population, a significant number did not and do not belong in the Hospital and would benefit by being placed in alternative care facilities, including community mental health clinics, halfway houses, nursing homes, rest homes, group homes and other residential environments. However, only a tiny fraction of these patients have been or can be placed in such alternative facilities, either because there are not enough places in existing alternatives to handle the number of patients who are appropriate for placement or because the quality of treatment and supervision provided in many of the existing alternatives is inadequate and would harm rather than benefit patients placed there or because the Hospital has neglected to locate suitable placements. The absence of adequate and appropriate community placements is the result of a pattern and practice on the part of the defendants in failing to create such alternatives.

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[1]The term "mentally disabled," as used throughout this Complaint, refers to persons who are mentally ill or mentally retarded, or who have a combination of these handicaps.

2. The involuntary confinement of mentally disabled persons in a total institution such as the Northampton State Hospital results in a serious deprivation of liberty. Moreover, patients' constitutional rights of association, assembly, and travel as well as their freedom of speech and freedom of belief are seriously restricted if not fully curtailed in the Hospital. The abridgement of individuals' liberty and other fundamental rights must be accomplished by the least drastic means possible. Since placement in a less restrictive community setting or facility is appropriate and would benefit a significant number of patients at the Hospital, retention in the Hospital is unnecessary and unconstitutional.

3. The sole legitimate purpose for the confinement of persons at the Hospital is treatment. The limited treatment offered at the Hospital can be and routinely is administered in community clinics, halfway houses, nursing homes, rest homes, group homes, and other residential environments. This continuum of less restrictive alternatives also offers other modes of treatment which are not available in the Hospital and which would greatly further the patients' rehabilitation and their integration into the community. Where the treatment of a significant number of patients at the Hospital can be undertaken in a less restrictive setting or facility, and where the treatment provided at the Hospital often harms rather than benefits their mental condition, retention at the Hospital is inappropriate and unconstitutional.

4. The desirability of providing treatment in less restrictive community alternatives in order to avoid the resultant harm of institutionalization is now clearly a national policy incorporated in several recent Congressional enactments. The mandate to maintain a continuum of community treatment programs has been incorporated in every recent federal statutory scheme affecting the mentally disabled. Specifically, Congress has enacted five interrelated programs that provide the major portion of federal funds for mentally disabled persons and has conditioned receipt of such funds on the care, treatment, and rehabilitation of disabled persons in less restrictive alternatives. These programs include the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. §6001 et seq.; the Community Mental Health Center Amendments, 42 U.S.C. §2689; the Special Health Revenue Sharing Act, 42 U.S.C. §246; the Rehabilitation Act of 1973, 29 U.S.C. §794; and Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq. Taken together they reflect a clear federal policy to treat mentally disabled persons in appropriate, less restrictive alternatives and not to discriminate in the allocation of federal funds against any subgroup of such persons by virtue of their unnecessary institutionalization. Massachusetts has violated and continues to violate this policy by accepting federal monies pursuant to these programs but failing to place the plaintiffs and members of their class in such less restrictive alternatives.

5. All of the patients in the Hospital are confined there pursuant to Stat. 1970, c. 888, codified as M.G.L. c. 123. The fundamental goal of that statute is to return the mentally ill, through suitable rehabilitation and treatment, to a full, productive, and autonomous life in the community as soon as possible and insofar as possible. In revising this statute, the legislature was particularly concerned with the rights of mental patients and mentally retarded residents after they were confined in institutions. Among the most important of those rights to which mental patients are entitled after confinement are the rights to be confined and treated in the least restrictive environment. Therefore, the legislature was aware that many mental patients stagnated in large mental institutions and did not receive suitable treatment in an often inhumane environment that impeded the person's physical or psychological recovery. The legislature was also especially sensitive to the reality that confinement in a mental hospital often impaired the basic constitutional rights to liberty, to travel, to privacy and to association. In order to minimize any infringement on these constitutional rights, the legislature provided that persons confined under M.G.L. c. 123 be placed in the least restrictive setting consistent with suitable treatment. It contemplated that persons confined in the Hospital should have available to them a continuum of phased treatment settings ranging from large

institutions such as the Hospital to smaller, less restrictive facilities that would promote the patients' early reintegration to a normal life in the community. As the need for any restriction on a person's liberty decreased and the patient's level of function improved, the legislature intended that they should move along that continuum of alternatives.

6. This class action, arising under the United States Constitution and its statutes and the laws of the Commonwealth of Massachusetts, is brought by patients confined under the control of the Department of Mental Health at the Northampton State Hospital and other facilities in Region I of the Commonwealth of Massachusetts established to provide treatment to the mentally ill and mentally retarded of that area. The plaintiffs seek to compel the defendants not to deprive them of their liberty, their rights of association, assembly, speech, belief, travel, and privacy, and their right to treatment and rehabilitation, except under the least restrictive conditions necessary, as guaranteed by the First, Eighth, Ninth, and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §6010, 42 U.S.C. §2689, 42 U.S.C. §246, 42 U.S.C. §1396 et seq., 29 U.S.C. §794, and M.G.L. cc. 19 and 123. Specifically this action seeks to compel the defendants to create sufficient and adequate treatment settings or facilities which are less restrictive than the Hospital as

presently constituted, and to place the plaintiffs therein. Such settings or facilities include but are not limited to community clinics, halfway houses, nursing homes, rest homes, group homes, and other residential environments.

II. JURISDICTION

7. This action arises under the Civil Rights Act, 42 U.S.C. 1983, the First, Eighth, Ninth, and Fourteenth Amendments to the United States Constitution, Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. §6010; Community Mental Health Center Amendments, 42 U.S.C. §2689; Special Health Revenue Sharing Act, 42 U.S.C. §246; Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq., Rehabilitation Act, 29 U.S.C. §794, and, pursuant to the Court's pendent jurisdiction, under M.G.L. cc. 19 and 123. The jurisdiction of this Court is based upon 28 U.S.C. §§1331, 1343(3) and (4). Declaratory relief is sought pursuant to 28 U.S.C. §§2201-2. The amount in controversy exceeds Ten Thousand Dollars ($10,000) exclusive of interest and costs, for each plaintiff.

III. PLAINTIFFS

8. David Brewster is a 24 year-old resident of the Northampton State Hospital. Mr. Brewster was brought to the

Hospital in 1968 at the age of sixteen and has remained there without interruption. He has spent the greater part of the last eight years locked on his ward with virtually no treatment, recreation, or exercise, despite the absence of evidence in the medical records of any violent or disruptive behavior. No education has ever been provided for Mr. Brewster, despite numerous requests by him for reading instruction. At the most recent judicial review of his confinement in September 1976, the staff determined that placement in a less restrictive alternative setting or facility was necessary for Mr. Brewster's treatment needs, that he had in fact regressed during his confinement at the Hospital, but that no setting or facility existed appropriate for Mr. Brewster. Therefore, no effort at placement has been made or is reasonably expected to be made.

9. Hector Santiago is a 29 year-old Puerto Rican resident at the Northampton State Hospital. Mr. Santiago has been confined intermittently since 1973. Mr. Santiago speaks primarily Spanish and has great difficulty in communicating with any Hospital employee on his ward or unit because no staff member is able to converse in Spanish. Furthermore, no psychological tests or psychotherapy has been administered because of this language barrier. His most recent psychiatric evaluation, completed in June 1976, recommends placement in a community setting, with appropriate treatment and supervision.

Mr. Santiago has been recommended for this placement since 1973. There is no evidence in his records that the Hospital has ever taken any action to secure a suitable community placement for Mr. Santiago. Instead he has been released periodically to his home, which lacks any suitable support, supervision, or treatment. Due to the absence of a suitable community facility, and the inadequacies of existing community settings, Mr. Santiago has been involuntarily returned to the Hospital, each time in a regressed condition.

10. Richard Schneider is a 26 year-old resident of the Northampton State Hospital. Mr. Schneider has been confined since 1973. He was once released on convalescent leave status from the Hospital to a boarding house that did not have any support, supervision, or treatment. Mr. Schneider was returned in eighteen days from this placement in a deteriorated and regressed condition. Due to the absence of suitable community facilities and the inadequacies of existing alternative facilities, no effort has been made to place Mr. Schneider in a community setting, although he would benefit by placement in a suitable community alternative.

11. Donald Gaboury is a 25 year-old resident of the Northampton State Hospital. Mr. Gaboury was confined at the age of five at the Belchertown State School for the Retarded

from which he was transferred in 1970 to the Hospital along with 200 other retarded persons after the filing of a lawsuit in the United States District Court challenging the conditions of confinement and the overcrowding at the School. There is absolutely no evidence in the records that he is mentally ill. Mr. Gaboury was locked in seclusion from July 9, 1971 to February 9, 1973, every evening without interruption, although there is no evidence in the records of any serious threats of violence or significantly disruptive behavior during the time he has been confined at the Hospital. A social services report, completed in 1974, recommends that Mr. Gaboury be placed in a group home for retarded persons since the Hospital has no staff or facilities to devise or implement any treatment program for such persons. No such placement has ever been effected due primarily to the absence of a suitable community facility available to patients at the Hospital.

12. Martin Weinberg is a 34 year-old resident of the Northampton State Hospital. Mr. Weinberg was confined in 1959 at the Paul A. Dever State School for the Retarded from which he was transferred in 1967 to the Hospital. There is absolutely no evidence in the records that he is mentally ill. Mr. Weinberg has continually regressed during this eighteen years of confinement due to the lack of treatment for his condition. At the most recent periodic review in August 1976, placement

in a community facility for the retarded was recommended since the Hospital has no staff or facilities to devise or implement any treatment program for such persons. No such placement has ever been effected, due primarily to the absence of a suitable community facility available to patients at the Hospital.

13. Albert Potter is a 34 year-old resident of the Northampton State Hospital. Mr. Potter has been confined since 1962. He has been released periodically from the Hospital, but has been involuntarily returned on seventeen separate occasions. On each occasion, Mr. Potter has been released to live in an apartment by himself, with no provision for suitable support, supervision, or treatment. Within the past two years, he has been readmitted to the Hospital six times, always in a regressed condition. During each hospitalization and prior to discharge, the Hospital staff recommended a placement in a supervised community setting where Mr. Potter can receive suitable treatment. At no time has such placement ever been effected. Due to the absence of suitable community facilities and the inadequacies of existing alternative facilities, no effort is presently being made or can reasonably be expected to be made to place Mr. Potter in a less restrictive alternative.

14. Ella Bailey is a 73 year-old resident of the Northampton State Hospital. Ms. Bailey has been confined since

1950. During the past seven years, Ms. Bailey has been permitted to live outside the Hospital in a nursing home. She has, however, been returned to the Hospital due to the inadequacies in existing alternative facilities. In September 1976, the social service staff recommended placement in an appropriate nursing home. The Hospital has not effected this placement, due primarily to the absence of a suitable community facility.

15. Thonnie Rowell is a 62 year-old resident of the Northampton State Hospital. Mr. Rowell has been confined since 1940. The medical notes in his record comprise only eight pages for the entire 36 years of his hospitalization. In a psychiatric evaluation in July 1974, placement in a rest home was recommended. No effort was made to accomplish this placement at that time. In a subsequent psychiatric evaluation in July 1976, placement in a community setting was again recommended but deemed impossible because of the lack of a birth certificate for Mr. Rowell. The lack of suitable treatment within the Hospital and the failure of the Hospital to place him in an appropriate less restrictive alternative have resulted in a serious regression of Mr. Rowell's condition. Due to the absence of an appropriate community facility and the inadequacies of existing community settings, Mr. Rowell continues to be confined at the Hospital. Stephen Ferrarone,

his next friend, is a paralegal with the Mental Patients Advocacy Project at the Northampton State Hospital and has assisted Mr. Rowell in other matters. Mr. Rowell has no other family or friends.

16. Mary McGuillicuddy is a 70 year-old resident of the Northampton State Hospital. Ms. McGuillicuddy has been confined without interruption since 1935. Immediately after her transfer from the Foxboro State Hospital to Northampton in August 1975, placement in a nursing home was recommended by the Hospital staff. No effort was made to accomplish this placement. At her most recent psychiatric review in February 1977, such placement was again recommended. Despite repeated notations in her medical records suggesting the need for nursing care, no effort has yet been made to locate a suitable nursing home for Ms. McGuillicuddy. Due to the absence of suitable community facility and the inadequacies of existing alternative facilities, Ms. McGuillicuddy remains confined to her ward at the Hospital. Carol Booth, her next friend, is a paralegal with the Mental Patients Advocacy Project at the Northampton State Hospital and has assisted Mr. McGuillicuddy in other matters. Ms. McGuillicuddy has no other family or friends.

17. The Massachusetts Association for Mental Health, which sues on its own behalf and on behalf of its members, is

an organization concerned with the care and general welfare of mentally ill citizens of the Commonwealth of Massachusetts. The Association has twenty-six affiliated chapters throughout Massachusetts with a combined membership of approximately ten thousand persons. Two of its affiliated chapters, the Springfield Mental Health Association and the Hampshire-Franklin Mental Health Association, serve the geographic areas in which patients at Northampton State Hospital resided before their institutionalization. These affiliates also provide or seek to provide community mental health services to former Hospital patients by managing or seeking to manage halfway houses in their respective areas. The Association members are citizens concerned with the issue of mental health, including former mental patients, relatives, and friends of mentally ill persons, lay mental health volunteers, and mental health professionals in the areas of psychiatry, psychology, social work, law and other specialties. The Association advocates on behalf of the approximately four thousand persons in state mental health institutions, the approximately eighty thousand persons who annually use community mental health services in Massachusetts, and those other persons in the general community who may at some time need such services. The Association's activities include dissemination of information about state and federal programs for the mentally ill, participation in public policy through its evaluation of state and federal agencies for the

mentally ill, review of pending and enacted state mental health legislation, and independent citizen review of the conditions at various mental health institutions in Massachusetts. The nature, purpose, and activities of the Association make it a proper party to vigorously represent the interests of the mentally ill persons presently confined in Northampton State Hospital. The Association is a nonprofit corporation organized pursuant to the laws of Massachusetts with its principal office in Boston, Massachusetts.

18. The Massachusetts Association for Retarded Citizens, which sues on its own behalf and on behalf of its members, is an organization concerned with the care and general welfare of mentally retarded citizens of the Commonwealth of Massachusetts. The Association has twenty-six affiliated chapters throughout Massachusetts with a combined membership of approximately eleven thousand persons. Three of its affiliated chapters, the Franklin Association for Retarded Citizens, the Hampshire Association for Retarded Citizens, and the Berkshire Association for Retarded Citizens, serve the geographic areas in which retarded residents at the Northampton State Hospital resided before the institutionalization. The Association members are citizens concerned with the issue of mental retardation, including parents, relatives, and friends of mentally retarded persons, lay mental retardation volunteers, and mental retardation professionals in the areas of psychiatry, psychology, social work, law, and other specialties. The Association advocates on behalf of approximately five-

thousand persons in state mental retardation and mental health institutions and the approximately one-hundred and fifty-thousand persons who annually use community mental retardation services. The Association's activities include dissemination of information about state and federal programs for the mentally retarded, participation in public policy through its evaluation of state and federal agencies for the mentally retarded, review of pending and enacted state mental retardation legislation, and independent citizen review of the conditions at various mental retardation institutions in Massachusetts. The nature, purpose, and activities of the Association make it a proper party to vigorously represent the interests of the mentally retarded persons presently confined at the Northampton State Hospital. The Association is a nonprofit corporation organized pursuant to the laws of Massachusetts, with its principal office in Newton, Massachusetts.

IV. CLASS ACTION ALLEGATIONS

17. Plaintiffs David Brewster, Hector Santiago, Richard Schneider, Donald Gaboury, Martin Weinberg, Albert Potter, Ella Bailey, Thonnie Rowell, and Mary McGuillicuddy sue on their own behalf and pursuant to Rules 23(a), 23(b)(1) and 23(b)(2) of the Federal Rules of Civil Procedure, on behalf

of that class of persons who are or who may be hospitalized in the Northampton State Hospital pursuant to M.G.L. c. 123, and who now or may, in the future, need placement in a least restrictive setting, consistent with suitable care and treatment, and including those who now or may be placed on leave status by the Hospital. As persons confined in the Northampton State Hospital who need placement in a least restrictive setting, plaintiffs David Brewster, Hector Santiago, Richard Schneider, Donald Gaboury, Martin Weinberg, Albert Potter, Ella Bailey, Thonnie Rowell, and Mary McGuillicuddy can fairly and adequately represent and protect the interests of this class. The class represented by the named plaintiffs is so numerous that joinder of all members is impractical. The questions of law and fact presented in this action are common to members of the class. The claims of the representative parties are typical of the claims of the class. Prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the defendants. The prosecution of separate actions would also create a risk of adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

18. The defendants have refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; that is, the defendants have refused to provide the class with suitable treatment in the least restrictive setting as required by the United States Constitution, 42 U.S.C. §6010, 42 U.S.C. §2689, 42 U.S.C. §246, 42 U.S.C. §1396 et seq., 29 U.S.C. §794, and M.G.L. cc. 19 and 123.

V. DEFENDANTS

19. Michael S. Dukakis is Governor of the Commonwealth of Massachusetts and as such has overall responsibility for the operation of the government of the Commonwealth of Massachusetts and the administration of its laws. Pursuant to M.G.L. c. 19, §1, he appoints the Commissioner of Mental Health and has final approval of the site of any new mental health facility and of any land to be taken for such facility. Pursuant to M.G.L. c. 17, §2, he appoints the Commissioner of Public Health and has final approval of all funds to be spent on licensing and enforcing standards of care in facilities under the jurisdiction of the Department of Public Health. Pursuant to M.G.L. c. 7, §4, he appoints the Commissioner of

Administration and Finance, and has final approval of all funds to be spent on the construction and operation of mental health facilities, including community residences and programs.

20. Dr. Robert L. Okin is the Commissioner of the Department of Mental Health of the Commonwealth of Massachusetts. Pursuant to M.G.L. c. 19, §2, he has exclusive supervision and control of the Department and its facilities, including responsibility for all persons received into any of the facilities of the Department. In his capacity as Commissioner, he has the power to develop additional mental health facilities and/or to contract with private institutions, organizations or agencies to furnish mental health services to those persons who need such care and treatment.

21. Dr. Mary Jane England is the Associate Commissioner for Programs of the Department of Mental Health. Pursuant to M.G.L. c. 19, §4, she has the duty to assist the Commissioner in the establishment and supervision of all mental health services in the Commonwealth. Until November 1, 1976 she was chiefly responsible for the planning and development of community programs within the Department.

22. Linda L. Glenn is the Assistant Commissioner for Mental Retardation Services for the Department of Mental Health.

Pursuant to M.G.L. c. 19, §4, she is responsible for assisting the Commissioner in the supervision and planning of mental retardation programs and services.

23. Robert W. Murphy is the Assistant Commissioner for Mental Health Services of the Department of Mental Health. Pursuant to M.G.L. c. 123, §4, he has the duty to assist the Commissioner in the establishment and supervision of all mental health services in the Commonwealth. Until November 1, 1976, he was directly responsible for the licensing and quality review of community programs within the department.

24. Raymond Brien is the Regional Mental Health Administrator for Region I, an administrative subdivision of the Department of Mental Health consisting of five separate Areas: Franklin-Hampshire, Berkshire, Holyoke, Springfield, and Westfield. In his capacity he is responsible for the administration of all mental health services within Region I, including development of community programs and the review and approval of all Area budgets for the Region, as authorized by M.G.L. c. 123, §§19, 20.

25. Evelyn McLean is the Area Director for the Franklin-Hampshire Area of the Department of Mental Health. Pursuant to M.G.L. c. 19, §18, she is charged with the duty of preparing an

annual plan and budget for the operation and development of all mental health programs within the Franklin-Hampshire Area. That statutory provision further requires that "such a plan shall provide, as far as practicable, a comprehensive community program in mental health and retardation services."

26. Andrew Phillips is the Area Director for the Holyoke Area of the Department of Mental Health. Pursuant to M.G.L. c. 19, §18, he is charged with the duty of preparing an annual plan and budget for the operation and development of all mental health programs within the Holyoke Area. That statutory provision further requires that "such a plan shall provide, as far as practicable, a comprehensive community program in mental health and retardation services."

27. Frank Robinson is the Area Director for the Springfield Area of the Department of Mental Health. Pursuant to M.G.L. c. 19, §18, he is charged with the duty of preparing an annual plan and budget for the operation and development of all mental health programs within the Springfield Area. That statutory provision further requires that "such a plan shall provide, as far as practicable, a comprehensive community program in mental health and retardation services."

28. Kerry Holland is the Area Director for the Westfield Area of the Department of Mental Health. Pursuant to

M.G.L. c. 19, §18, he is charged with the duty of preparing an annual plan and budget for the operation and development of all mental health programs wtihin the Westfield Area. That statutory provision further requires that "such a plan shall provide, as far as practicable, a comprehensive community program in mental health and retardation services."

29. Joseph Van Hoenacker is the Area Director for the Berkshire Area of the Department of Mental Health. Pursuant to M.G.L. c. 19, §18, he is charged with the duty of preparing an annual plan and budget for the operation and development of all mental health programs within the Berkshire Area. That statutory provision further requires that "such a plan shall provide, as far as practicable, a comprehensive community program in mental health and retardation services."

30. Irving A. Jacobs is the Superintendent of the Northampton State Hospital. The Hospital is the only state mental hospital for persons residing within the geographical boundaries of Region I of the Department of Mental Health. In this capacity he is responsible for the supervision and operation of the Hospital and, pursuant to M.G.L. c. 123 and the Regulations enacted thereunder, for the admission, release, and administration of suitable treatment to all persons admitted or committed to the Hospital.

31. Dr. Jonathan Fielding is the Commissioner of the Department of Public Health. Pursuant to M.G.L. c. 111, §2, he is responsible for administering all laws relative to the general health of the Commonwealth and the regulations of the Department, including but not limited to the licensing of nursing homes and rest homes and the establishments of standards for the operation of such facilities, as required by M.G.L. c. 111, §§71, 72.

32. John R. Buckley is the Commissioner of the Executive Office for Administration and Finance. Pursuant to M.G.L. c. 7, §4, he represents the Governor in the financial, planning, and policy coordination between all Departments of the Commonwealth, including the approval of all budget requests of each Department. In this capacity he is also responsible for the promulgation of rules, regulations, and procedures governing all state contracts, pursuant to M.G.L. c. 7, §22. Such rules, regulations, and procedures apply to all contracts with private mental health facilities, including community clinics, halfway houses, nursing homes, rest homes, group homes, and other residential environments.

VI. DUTIES

33. Under the Fourteenth Amendment to the United States Constitution, the defendants have the duty not to deprive the

patient plaintiffs of their liberty in other than the least restrictive setting.

34. Under the Fourteenth Amendment to the United States Constitution, the defendants have the duty to provide the patient plaintiffs with suitable treatment under the least restrictive conditions.

35. Under the First Amendment to the United States Constitution, the defendants have the duty not to abridge the patient plaintiffs' rights of association, assembly, speech, belief, and travel except with the least drastic means available and in the least restrictive setting appropriate for the plaintiffs' condition.

36. Under the First, Ninth, and Fourteenth Amendments to the United States Constitution, the defendants have the duty not to infringe upon the patient plaintiffs' right of privacy by confining them in other than the least restrictive setting.

37. Under the Eighth Amendment to the United States Constitution, the defendants have the duty not to confine the patient plaintiffs in a setting more restrictive than is necessary to provide them with suitable treatment consistent with their needs.

38. Under the Fourteenth Amendment to the United States Constitution, the defendants have the duty not to deny the patient plaintiffs or any subclass of the patient plaintiffs the equal protection of the law by discriminating against them in the allocation of benefits pursuant to federal statutory programs.

39. Under the Developmental Disabilities Act, 42 U.S.C. §6010, the defendants have a duty to use any federal funds received under the Act to provide the plaintiffs with appropriate treatment under the least restrictive conditions.

40. Under the Community Mental Health Center Amendments of 1975, 42 U.S.C. §2689, the defendants have a duty to provide a complete continuum of mental health services for the patient plaintiffs that is designed to avoid unnecessary institutionalization and to provide treatment in alternative community facilities.

41. Under the Special Health Revenue Sharing Act, 42 U.S.C. §246, the defendants have a duty to eliminate the inappropriate institutionalization of the patient plaintiffs and to insure the availability of appropriate community programs.

42. Under Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq., the defendants have a duty to insure

that funds appropriated pursuant to the Act are expended to provide care and treatment in noninstitutional facilities whenever appropriate for the needs of the patient plaintiffs.

43. Under the Rehabilitation Act, 29 U.S.C. §794, the defendants have the duty not to discriminate against any handicapped person or class of persons in the provision of federally assisted programs.

44. Under M.G.L. c. 123, the defendants have the duty to return the mentally ill to a full, productive, and autonomous life in the community as soon as possible and insofar as possible.

45. Specifically, M.G.L. c. 123, §4, requires the defendants to periodically review the condition of every person within the care of the Department to determine whether placement in a community setting is appropriate or whether continued hospitalization is required.

46. In addition, M.G.L. c. 123, §2, and the Regulations enacted thereunder provide that the defendants must establish the highest practicable professional standards for the treatment of mentally ill persons including, but not limited to the provision of treatment in halfway houses, family care,

aftercare and home treatment settings. The treatment which the defendants have a duty to provide must be suitable to the rehabilitation of the patient plaintiffs as to result in their earliest possible return to the community or to the highest level of function which the plaintiffs can reasonably attain.

47. To fulfill its constitutional and statutory responsibilities, the defendants must explore all alternative treatment settings or facilities and promptly place the patient plaintiffs in the alternatives reasonably suited to their needs. Records must be kept of all consideration given at periodic reviews to alternative placements and the reason why any alternative was rejected.

48. Pursuant to M.G.L. c. 19, §24, the defendants are mandated to develop and maintain comprehensive mental health and mental retardation services including, but not limited to, inpatient, outpatient, and partial hospitalization services. Such services must be established to provide preventive, precare and aftercare treatment consistent with the treatment needs of persons residing in Region I which include the patient plaintiffs and members of the plaintiff class.

49. Therefore, the defendants are constitutionally and statutorily required to provide, as alternatives to the

Northampton State Hospital as presently constituted, smaller, more suitable, and less restrictive treatment settings or facilities such as community clinics, halfway houses, nursing homes, rest homes, group homes, day houses, night houses, and other appropriate residential environments. To the extent that such least restrictive alternatives do not presently exist, the defendants have the duty to create new alternative facilities or to upgrade and restructure existing but inadequate alternative facilities so that all the patient plaintiffs may be placed in alternative facilities to their benefit.

VII. STATEMENT OF FACTS

50. Plaintiffs David Brewster, Hector Santiago, Richard Schneider, Donald Gaboury, Martin Weinberg, Albert Potter, Ella Bailey, Thonnie Rowell, and Mary McGuillicuddy should no longer be confined in the Hospital but instead should be placed in lesser restrictive settings where suitable treatment can be provided and where there is significantly less abridgement of their rights of association, assembly, speech, travel, and privacy. According to M.G.L. c. 123 and the Regulations of the Department of Mental such less restrictive alternatives include, but are not limited to, community mental health clinics, halfway houses, nursing homes, rest homes, group homes,

and other residential environments. The named plaintiffs have not been placed by the defendants in such alternative facilities which will provide suitable treatment and instead have continually been confined at the Hospital, in violation of the First, Eighth, Ninth, and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §6010, 42 U.S.C. §2689, 42 U.S.C. §246, 42 U.S.C. §1396, 29 U.S.C. §794, and M.G.L. cc. 19 and 123.

51. A significant portion of the present and annual population of the Hospital, including the named plaintiffs and constituting the plaintiff class, should no longer be confined in the Hospital but instead should be placed in lesser restrictive settings where suitable treatment can be provided and where there is significantly less abridgement of their rights of association, assembly, speech, travel, and privacy. Such alternatives include, but are not limited to, community mental health clinics, halfway houses, nursing homes, rest homes, group homes, and other residential environments. In violation of the guarantees of the First, Eighth, Ninth, and Fourteenth Amendments to the United States Constitution and M.G.L. cc. 19 and 123, the members of the plaintiff class have not, however, been placed by the defendants in suitable, less restrictive alternative facilities.

52. Inappropriate and unnecessary institutionalization of mentally disabled persons often results in their intellectual, emotional, physical, and social regression as well as the loss of those skills necessary to regain their self-sufficiency. Plaintiffs David Brewster, Hector Santiago, Richard Schneider, Donald Gaboury, Martin Weinberg, Albert Potter, Ella Bailey, Thonnie Rowell, and Mary McGuillicuddy have suffered such regression and loss of self-sufficiency as a consequence of their prolonged and unnecessary institutionalization. Their ties and communication with their families and friends have become weaker, thereby fostering further dependence. Because they are denied any opportunity to reintegrate into the mainstream of society through placement in a residential community treatment program, their mental conditions continue to deteriorate while they remain confined in an institution.

53. Several community mental health centers presently serve mentally ill persons residing in certain areas of Region I in Western Massachusetts. Pursuant to the provisions of the Community Mental Health Center Amendments, 42 U.S.C. §2689 and its predecessor, these centers are mandated to provide preventive services to persons who otherwise would be hospitalized and aftercare services to discharged hospital patients who might otherwise be forced to return to a hospital. In addition, the centers are required to provide a continuum of mental health services including the creation of community residential

treatment programs, in order to avoid or eliminate inappropriate institutionalization. The centers are further required to assist local courts in the evaluation of individuals within their jurisdiction for the purpose of assessing whether in-patient hospitalization is necessary.

54. Plaintiffs David Brewster, Richard Schneider, Albert Potter, Mary McGuillicuddy, and other members of the plaintiff class are entitled to receive services from these community mental health centers and could benefit from such services, including placement in a less restrictive community setting. None of the patient plaintiffs have ever received the services offered by these centers nor benefited by the federal funds expended pursuant to the Community Mental Health Center Amendments, due primarily to their inappropriate confinement at the Northampton State Hospital. Many members of the plaintiff class, although otherwise eligible for such services, have never been evaluated by these centers as to the necessity for hospitalization and have therefore been needlessly institutionalized when treatment in a less restrictive setting was more appropriate for the individual's treatment needs.

55. Several of the named plaintiffs and members of the plaintiff class are developmentally disabled and reside at the Northampton State Hospital solely as a result of being

transferred from the Belchertown State School. Pursuant to the provisions of the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. §6010, they are entitled to adequate treatment that is designed to maximize their developmental potential and that is administered in the least restrictive alternative. The named plaintiffs and members of the plaintiff class should no longer be confined in the Hospital, which provides no treatment, no specialized services, no rehabilitation program, and no vocational training for developmentally disabled persons, but instead should be placed in lesser restrictive settings where suitable treatment can be provided and where there is significantly less abridgement of their rights of liberty, association, assembly, speech, travel, and privacy. Other developmentally disabled persons do receive such treatment, services, and training in less restrictive environments, but no federal funds pursuant to this Act are expended for those persons residing at the Hospital. Such alternatives include, but are not limited to, halfway houses, group homes, rest homes, shared apartments, and other residential environments. In violation of the guarantees of the First, Eighth, Ninth, and Fourteenth Amendments to the United States Constitution, the Developmental Disabilities Act, 42 U.S.C. §6010, the Rehabilitation Act, 29 U.S.C. §794, and M.G.L. cc. 19 and 123, the plaintiffs and members of the plaintiff class have not, however, been placed by the defendants in suitable less restrictive alternative facilities.

56. The named patient plaintiffs and the members of the plaintiff class have not been and cannot reasonably expect to be placed in less restrictive alternatives where suitable treatment is provided, because, inter alia:

a. There is poor record keeping at the Northampton State Hospital, which impedes a determination of whether a patient should be placed in a less restrictive setting and includes no documentation of the consideration given to placement in a community setting or facility;

b. The defendants regularly fail to explore and investigate less restrictive alternative settings;

c. The defendants have not established adequate placement procedures for patients at the Hospital;

d. The defendants have no procedures for referring prospective patients to less restrictive alternative settings prior to admission;

e. There is not adequate deployment of staff by the defendants to effect proper placements;

f. There is not adequate deployment of staff to monitor and supervise existing placements and to facilitate the transition from the Hospital to a less restrictive setting;

g. The defendants have not provided enough places in existing alternative facilities in Region I to give the named plaintiffs and the plaintiff class suitable treatment in the least restrictive setting. For instance, there is not one supervised residential halfway house in the entire Springfield Area, although the city of Springfield is the second largest city in Massachusetts;

h. The quality of care provided or approved by the defendants in the few existing alternative facilities in Region I is so low that the patient plaintiffs and the plaintiff class would be harmed and not benefited if placed in such alternative facilities;

i. The defendants have failed to establish or enforce minimum standards for alternative facilities that will insure that persons placed in such facilities are benefited and not harmed;

j. The defendants have failed to allocate the necessary resources and to supervise the establishment of a continuum of less restrictive alternatives that will provide suitable treatment for a broad range of patients' conditions;

k. The defendants have failed to make full use of the evaluation, preventive care, and aftercare services of community mental health centers and to coordinate its admission and discharge policies with the practices of these facilities;

l. The defendants have failed to allocate any places in existing less restrictive alternative facilities for retarded persons or to establish any new less restrictive alternatives in order to provide suitable treatment for retarded persons confined in the Hospital;

m. The defendants have failed to coordinate and implement any comprehensive plan for the establishment and maintenance of an adequate number of suitable, less restrictive alternative settings.

57. The defendants' failure to provide an adequate number of appropriate community placements consistent with the treatment needs of the patient plaintiffs results from a pattern and practice of disregarding their duty to develop and establish a continuum of less restrictive alternatives, all in violation of the United States Constitution, 42 U.S.C. §6010, 42 U.S.C. §2689, 42 U.S.C. §246, 42 U.S.C. §1396, 29 U.S.C. §794, and M.G.L. cc. 19 and 123.

VIII. CAUSES OF ACTION

58. The defendants have, in violation of their duty under the Fourteenth Amendment to the United States Constitution, deprived the named plaintiffs and members of the plaintiffs class of their liberty by failing to place them in the least restrictive alternative settings.

59. The defendants have, in violation of their duty under the Fourteenth Amendment to the United States Constitution, failed to provide the named plaintiffs and the members of the plaintiff class with suitable treatment, under the least restrictive conditions consistent with the patients' treatment needs.

60. The defendants have, in violation of their duty under the First Amendment to the United States Constitution, abridged the patient plaintiffs' rights of association, assembly, speech, belief, and travel by not placing the named plaintiffs and members of the plaintiff class in less restrictive alternative settings.

61. The defendants have, in violation of their duties under the First, Ninth, and Fourteenth Amendments to the United States Constitution, abridged the plaintiffs' right of privacy

by not placing the named plaintiffs and members of the plaintiff class in less restrictive, alternative settings.

62. The defendants have, in violation of their duty under the Eighth Amendment to the United States Constitution, confined the named plaintiffs and members of the plaintiff class under conditions which are more restrictive than necessary to provide suitable treatment and which have harmed rather than benefited the plaintiffs.

63. The defendants have, in violation of their duty under the Fourteenth Amendment, deprived the named plaintiffs and members of the plaintiff class of their right to the equal protection of the laws by denying them the benefits of several federal statutory programs for the mentally disabled solely because of their confinement at the Northampton State Hospital.

64. The defendants have, in violation of their duty under the Community Mental Health Center Amendments of 1975, 42 U.S.C. §2689, received federal funds or otherwise endorsed the receipt of federal funds by other nonprofit corporations operating under the Amendments, but failed to provide the named plaintiffs and members of the plaintiff class with appropriate evaluation, preventive care, and aftercare services designed to eliminate unnecessary institutionalization.

65. The defendants have, in violation of their duty under the Special Health Revenue Sharing Act, 42 U.S.C. §246, received federal funds but failed to eliminate inappropriate institutionalization and to insure the availability of less restrictive community treatment programs for the named plaintiffs and members of the plaintiff class.

66. The defendants have, in violation of their duty under Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq., received federal funds pursuant to the Medicaid program but failed to determine, both upon admission and regularly throughout the period of hospitalization, whether treatment could be provided in a less restrictive, noninstitutional setting and to place the named plaintiffs and members of the plaintiff class in such alternative programs.

67. The defendants have, in violation of their duty under the Developmental Disabilities Act, 42 U.S.C. §6010, received federal funds appropriated pursuant to the Act but failed to provide the named plaintiffs and members of the plaintiff class with adequate treatment, under the least restrictive conditions consistent with the patients' treatment needs.

68. The defendants have, in violation of their duty under the Rehabilitation Act, 29 U.S.C. §794, discriminated in

the provision and administration of treatment, rehabilitation, and vocational training programs receiving federal financial assistance, by failing to create and maintain such programs for the named plaintiffs and members of the plaintiff class.

69. The defendants have, in violation of their constitutional and statutory duties, failed to provide an adequate number of places in alternative settings where the named plaintiffs and the members of the plaintiff class could receive suitable treatment.

70. The defendants have violated their constitutional and statutory duties by failing to establish, maintain, and enforce minimum standards governing the administration of alternative treatment settings or facilities which would insure that the named plaintiffs and members of the plaintiff class would be benefited and not harmed by their placement in such least restrictive settings or facilities.

71. The defendants have violated their constitutional and statutory duties by failing to develop a comprehensive plan for community mental health services, which includes the establishment of a sufficient number of less restrictive alternative placements to provide suitable treatment consistent with the needs of the patient plaintiffs and members of their class.

IX. PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Determine that this action may be properly maintained as a class action and make such orders for notice as the Court may deem just and proper.

2. Declare, adjudge and hold that the defendants have, by acts of commission and omission, violated the United States Constitution, 42 U.S.C. §6010, 42 U.S.C. §2689, 42 U.S.C. §246, 42 U.S.C. §1396, 29 U.S.C. §794, and M.G.L. cc. 19 and 123 by failing:

a. to place the patient plaintiffs and members of the plaintiff class in the least restrictive alternative settings or facilities suitable to their needs;

b. to create and to maintain an adequate number of such alternative settings or facilities;

c. to establish, maintain, and enforce minimum standards to insure that the patient plaintiffs and members of the plaintiff class are benefited by their placement in such alternative settings or facilities;

d. to provide the patient plaintiffs and members of the plaintiff class with suitable treatment, under the least restrictive conditions consistent with their treatment needs;

e. to carry out their legal obligations in other particulars as described above.

3. Issue a preliminary and permanent injunction enjoining the defendants from violating their duties in the particulars described above and directing the defendants to assist in the drafting, submission, and implementation of a plan that satisfies the requirements of the Constitution, 42 U.S.C. §6010, 42 U.S.C. §2689, 42 U.S.C. §246, 42 U.S.C. §1396, 29 U.S.C. §794, and M.G.L. cc. 19 and 123 by securing the right of the patient plaintiffs and members of the plaintiff class to placement in less restrictive alternative settings and facilities which provide suitable treatment consistent with the patients' treatment needs. Such plan should include, inter alia:

a. a complete medical and psychiatric evaluation of each patient plaintiff and member of the plaintiffs' class to determine the appropriateness of placement in a less restrictive setting or facility and the particular type of alternative consistent with his/her treatment needs;

b. a full description of each type of alternative setting or facility, including staffing, degree of supervision, activities, treatment modalities, and desirable patient population necessary for the patient plaintiffs and members of the plaintiff class;

c. the number, type, and location of alternative settings or facilities necessary to accommodate the patient plaintiffs and members of the plaintiff class;

d. the measures to be taken to create such necessary settings or facilities;

e. minimum standards for maintenance of suitable treatment in such settings or facilities;

f. the deployment of staff and procedures for insuring placement and follow-up of the plaintiffs in proper alternative settings or facilities;

g. the precise responsibilities of various officials of the Department of Mental Health, the Northampton State Hospital, the respective Area Boards, and other governmental agencies and organizations in implementing such plan;

h. a timetable for prompt implementation.

4. Appoint, or supervise the appointment of a Review Panel charged with the responsibility for drafting and overseeing the implementation of the above described plan. The Review Panel should be given the appropriate authority necessary to satisfy its responsibilities, including the necessary funding to be provided by the defendants for permanent staff, consulting fees, and administrative expenses.

5. Retain jurisdiction over this matter until the above plan has been completely implemented.

6. Grant such other and further relief as shall be deemed necessary and appropriate, including but not limited to an award of attorneys' fees and costs to the plaintiffs.

Respectfully submitted,

Steven J. Schwartz
Mental Patients Advocacy Project
Western Massachusetts Legal Services
Northampton State Hospital
Northampton, Massachusetts 01060
413-584-1644, ext. 265

Jan C. Costello
Mental Patients Advocacy Project
Western Massachusetts Legal Services
Northampton State Hospital
Northampton, Massachusetts 01060
413-584-1644, ext. 265

Thomas B. Lesser
Lesser and Newman
39 Main Street
Northampton, Massachusetts 01060
413-584-7331

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