LITIGATION FILE

JUDGE MUNSON

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

COPY

JOHN S. and JOHN R. by their next friend, BONNIE H. SHOULTZ; and PATRICIA R., by her sister, MARY ALICE B.,

Individually, and on behalf of all other similarly situated individuals,

Plaintiffs,

-against-

MARIO CUOMO, as Governor of the State of New York; RICHARD C. SURLES, as Commissioner of New York State Office of Mental Health; Ms. Elin Howe, as Commissioner of the New York State Office of Mental Retardation & Developmental Disabilities; RICHARD M. HEATH, as Director of the Mohawk Valley Psychiatric Center; DWIGHT RHODES, as Director of the Binghamton Psychiatric Center, and JOHN R. SCOTT, as Director of Hutchings Psychiatric Center,

Defendants.

90 -CV- 294
No.

COMPLAINT
CLASS ACTION

PRELIMINARY STATEMENT

1. Plaintiffs bring this class action to challenge defendants' failure to provide plaintiffs with appropriate care and treatment. Plaintiffs also challenge defendants' failure to have plaintiffs evaluated and assessed by professionals knowledgeable in the field of developmental disabilities.

2. The plaintiffs are adult residents of Mohawk Valley, Binghamton, and Hutchings Psychiatric Centers who have a diagnosis or history of mental retardation.

3. Mohawk Valley, Binghamton and Hutchings, as psychiatric centers, are not currently staffed or otherwise prepared to provide services, programs or training to persons with mental retardation.

4. Once plaintiffs were admitted to state custody, the defendants obligated themselves to protect their constitutional and other rights.

5. Plaintiffs do not seek to compel the defendants to exercise their discretion in a particular way. Plaintiffs seek relief mandating that defendants implement the judgment of their own professionals with regard to the plaintiff class. Plaintiffs seek injunctive relief mandating that the defendants provide plaintiffs with care, treatment and training suitable for persons with mental retardation, either in a facility for persons with mental retardation or by providing appropriate services at the psychiatric center.

JURISDICTION AND VENUE

6. The Court has jurisdiction over this action pursuant to 28 U.S.C. §1331, 1343(3) and 42 U.S.C. §1983. Pursuant to 28 U.S.C. §1391(b), the venue for this action lies in the United States District Court for the Northern District of New York

because the claims arose there and it is the judicial district where all the defendants reside.

7. Plaintiffs have joined pendent claims under state law arising from the same factual situation. Plaintiffs invite defendants not to assert any Eleventh Amendment privilege, if any exists, so as to resolve all issues between the parties in this action and to avoid duplicative actions in federal and state courts.

PARTIES

8. Plaintiff, John R. is 32 years old and was admitted to Binghamton Psychiatric Center in September, 1978. He is disabled by reason of moderate mental retardation with behavioral symptoms. He brings this action by Bonnie H. Shoultz as guardian ad litem. John R. brings this action anonymously to avoid invasion of his privacy. His true name will be filed under seal with this Court.

9. Plaintiff John S. is 56 years old and was admitted to Mohawk Valley Psychiatric Center in 1971. John S. has been a resident of state psychiatric centers since 1954 when he was admitted to Harlem Valley Psychiatric Center. John S. has been "dually diagnosed" with schizophrenia as his primary mental impairment, with a secondary diagnosis of moderate mental retardation. He brings this action by Bonnie H. Shoultz as guardian ad litem. John S. brings this action anonymously to avoid

invasion of his privacy. His true name will be filed under seal with this Court.

10. Plaintiff Patricia R. is 33 years old and was first admitted to Hutchings Psychiatric Center in 1975. Patricia R. has been "dually diagnosed" with schizophrenia and mild mental retardation. She brings this action by her sister, Mary Alice B. Patricia R. brings this action anonymously to avoid invasion of her privacy. Her true name will be filed under seal with this Court.

11. Bonnie H. Shoultz serves herein as guardian ad litem to plaintiffs, John S. and John R. These plaintiffs are moderately mentally retarded and are not capable of making informed decisions with regard to their care or treatment or prosecution of legal claims. John S. does not have parents or other relatives actively supervising or participating in decisions being made concerning his care or treatment. John R.'s mother is also disabled by reason of mental retardation and, therefore, a guardian ad litem is necessary to adequately protect John R.'s interests in this action.

12. Defendant Mario Cuomo, the Governor of the State of New York, is sued here in his official capacity. Governor Cuomo has overall responsibility to ensure that the agencies of the executive department of the New York State government, including the Office of Mental Health and the Office of Mental Retardation and

Developmental Disabilities, act in full compliance with the New York and United States Constitutions, the laws of New York, and agency regulations. Specifically, Governor Cuomo has the overall responsibility to ensure that all persons in "state-custody" are safe and receive care, treatment, programs and services suited to their individual needs as recommended by defendants' professionals and as required by state law and regulations.

13. Defendant Richard C. Surles, the Commissioner of New York State Office of Mental Health (OMH) is sued here in his official capacity. Commissioner Surles is the chief executive officer responsible for the overall operation of the Mohawk Valley, Binghamton and Hutchings Psychiatric Centers, and for ensuring that all residents of these facilities, including plaintiffs, are safe, and receive care, treatment, programs and services suited to their individual needs as recommended by defendants' professionals and as required by state law and regulations.

14. Defendant Elin Howe, the Commissioner of the New York State Office of Mental Retardation and Developmental Disabilities ("OMRDD"), is sued here in her official capacity. Commissioner Howe is the chief executive officer responsible for ensuring that plaintiffs, who are persons with mental retardation in state custody, are safe and receive care, treatment, programs and services suited to their individual needs as recommended by defen-

dants' professionals and as required by state laws and regulations.

15. Commissioners, Surles and Howe, pursuant to New York State Mental Hygiene Law, its implementing regulations, and a cooperative agreement between OMH and OMRDD, are authorized and expected to work together to ensure that the care, treatment, programs and services provided by the State's psychiatric centers to plaintiffs are planned, developed and implemented comprehensively, that gaps in services to the multiply disabled are eliminated, and that no plaintiff is denied treatment and services because he or she suffers from more than one disability. N.Y. Mental Hygiene Law §5.05(b).

16. Defendant Richard M. Heath, the Director of Mohawk Valley Psychiatric Center,defendant Dwight Rhodes, the Director of Binghamton Psychiatric Center, and John R. Scott, the Director of Hutchings Psychiatric Center, are sued here in their official capacity. Richard M. Heath is the chief executive officer responsible for the operation of Mohawk Valley Psychiatric Center, Dwight Rhodes is the chief executive officer responsible for the operation of Binghamton Psychiatric Center, and John R. Scott is the chief executive officer responsible for the operation of Hutchings Psychiatric Center. Specifically, Mssrs. Heath, Rhodes, and Scott have the duty to ensure that all plaintiffs are safe, and receive care, treatment, programs and ser-

vices suited to their individual needs as recommended by defendants' professionals and as required by federal and state law and regulations.

CLASS ALLEGATIONS

17. Plaintiffs John S., John R. and Patricia R. bring this action on their own behalf and as a class action pursuant to Rule 23(a) and 23 (b)(2) of the Federal Rules of Civil Procedure.

18. The Plaintiff class consists of all current and future patients at Mohawk Valley Psychiatric Center, Binghamton Psychiatric Center, and Hutchings Psychiatric Center who are mentally retarded, and/or diagnosed as mentally retarded, and/or who have been regarded as mentally retarded, and (a) who never have been evaluated by defendants' professional staff to determine whether they require treatment, habilitation and services to respond to that impairment, or (b) who have been evaluated and determined to require treatment, habilitation or services but who have not received such treatment, habilitation or services, or (c) who have been evlaluated and determined to require treatment, habilitation or services but whose programs and services are not in accordance with accepted professional judgment, practice or standards.

19. Upon information and belief, the class is so numerous that joinder of all members is impractical.

20. There are questions of law and fact common to the class,

specifically: whether the defendants have failed or refused to provide appropriate care and treatment to individuals residing in pyschiatric centers who are mentally retarded, and/or diagnosed as mentally retarded, and/or who have been regarded as mentally retarded.

21. The claims or defenses of the plaintiffs are typical of the claims of the class. Plaintiffs are class members and have no conflict of interest with other members of the class, all of whom would benefit from the ruling sought. The named plaintiffs have a significant stake in the outcome of the action, identical to that of all class members.

22. The representative plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs are represented by Legal Services of Central New York, Inc. which is experienced in class actions and litigation involving persons with disabilities. Legal Services of Central New York, Inc. has been designated by the New York State Commission on Quality of Care to provide protection and advocacy services to persons with disabilities in Central New York.

23. Defendants have acted on grounds generally applicable to the class by violating their constitutional and statutory right to appropriate care and treatment.

24. This common conduct makes injunctive or corresponding declaratory relief as to the class appropriate under Rule

23(b)(2) of the Federal Rules of Civil Procedure. If class certification is not granted, individuals must bring separate actions, thereby causing a waste of judicial and governmental resources. Further, the very nature of the plaintiffs' mental retardation and their institutionalization makes the bringing of individual suits unlikely. Upon information and belief, many patients do not have parents or guardians actively in contact with them, making joinder difficult. Without class certification, these individuals' rights would go unprotected.

STATUTORY AND REGULATORY BACKGROUND

25. The type of facility and range of services appropriate for persons with mental retardation meet the standards applicable to Intermediate Care Facilities for the Developmentally Disabled ("ICF"). ICF level care is appropriate for persons who have, inter alia, mental retardation, and habilitative and/or rehabilitative needs, evidenced by a moderate or severe deficit in their communication, learning, mobility, ability to live independently, self-control or behavior. ICF level care provides training to permit the maximal development of skills that will enable its recipients to function as independently as their handicapping conditions will permit.

26. The standards for care and treatment of mentally retarded persons in an ICF are set for in the 42 C.F.R. §§442.400 et. seq. and in the New York Mental Hygiene regulations at Part

681. Among other things, these standards restrict the persons who may live together, and state the intensity and type of programs that must be offered and the size and qualifications of the facilities' staff. 42 C.F.R. §§442.434-35 and 442.446 and 14 N.Y.C.R.R. §§681.6 and 681.7(b) also require defendants to develop an individual program plan for each plaintiff, and to develop sufficient programs and services to carry out each plaintiff's program plan.

27. Persons in need of ICF level care must be placed with other persons who have similar ages and functioning levels. 42 C.F.R. §442.444 and 14 N.Y.C.R.R. §681.4(c)(3)(xii)(a) prohibit housing persons who are of widely divergent ages, developmental levels and social needs in close proximity to one another unless there is a written plan stating how such a grouping will promote the growth and development of all the persons living together. One purpose of this requirement is to allow these persons to participate jointly in programs, recreation and other activities, and to allow them to serve as role models for, and to learn from each other.

28. Persons in need of ICF level care must receive "active treatment." The Mental Hygiene regulations state that active treatment requires an individual program that prescribes an integrated program of activities, experiences or therapies necessary for the client to reach program goals or

objectives with the overall purpose to help the client function at the greatest physicial, intellectual, social or vocational level he or she can presently or potentially receive. 14 N.Y.C.R.R. §681.13 and 42 C.F.R. §442.435.

29. Active treatment must be delivered in a manner which is normalizing and conducive to individual growth. Individual program plans are required to reflect this goal. 42 C.F.R. §442.456 and 14 N.Y.C.R.R. §681.1(b).

30. Among the programs and services that constitute active treatment are a specific "core" of services that must be provided on a daily basis. The Mental Hygiene regulations identify these services which include inter alia, nutrition, recreation, self-care, and vocational training and habilitation services. 14 N.Y.C.R.R. §§681.7, 681.13(dd) and 42 C.F.R. §442.435 and §443.464.

31. Nutrition services are required to make meals a time for learning rather than simply for eating. Recipients of these services must be given utensils appropriate for their functioning levels, receive training on how to use those utensils and to eat appropriately, and be supervised by an adequate number of specifically trained staff who will promote proper eating habits and skills. 42 C.F.R. §442.472 and 14 N.Y.C.R.R. §681.7(d)(2).

32. Recreation must be a time for learning. Each person requiring ICF level care must have the opportunity to participate

in planned programs of leisure or recreation activities on a daily basis. This recreational time must be in addition to the time spent in active treatment. 42 C.F.R. §442.491 and 14 N.Y.C.R.R. §681.7(d)(3). Each facility is required to have adequate capacity to provide transportation to and from recreation programs. 42 C.F.R. §442.491 and 14 N.Y.C.R.R. §681.7(d)(6).

33. Self-care training is required to improve the person's ability to independently perform routine activities of daily living. The regulations require residents to receive training in bathing, brushing teeth, shampooing and grooming hair, shaving and nail care. 14 N.Y.C.R.R. §681.7(d)(4); and 42 C.F.R. §442.494, §§442.433, 442.478 and 442.494.

34. Habilitation services and vocational training programs are required to teach skills that will be necessary for living and working in the community. This training and services must be appropriate to the person's chronological age and his or her level of functioning, and designed to meet the objectives of the person's individual treatment plan. It may include training related to performing household chores, as well as vocational or pre-vocational skills that will be needed for participation in day-training or employment in a sheltered workshop or in the competive economy. 14 N.Y.C.R.R. §681.7(d)(5); §681.13(dd)(1)(v).

35. In addition to the core services, the regulations identify services that must be provided on a "routine" basis.

Routine services must be provided regularly, but not necessarily on a daily basis. They include social services, which must be designed to maximize the person's social functioning. The regulations also identify "special" services, which must be provided when they are specified in a person's treatment plan, including speech, physical and occupational therapy. 42 C.F.R. §§442.486 - 442.498 and 14 N.Y.C.R.R. §§681.7(e) and (f).

36. The regulations identify the types of staff and staff ratios that must be present to provide the required programs and services. The number of staff for each core, routine and special service as well as direct care staff is stated in the regulations, and is dependent upon the mix of characteristics present among persons who are mentally retarded and persons who are multiply-handicapped persons. The regulations also mandate that all staff must undergo periodic training programs to update and improve their skills. 42 C.F.R. §§442.431, 442.445, 442.462, 442.464, 442.480, 442.490, 442.493, 442.498 and 14 C.F.R. §§681.2 and 681.8.

37. All mentally retarded and multiply handicapped persons who are patients in facilities operated by the Office of Mental Health ("OMH"), including plaintiffs, have a right to individualized care and treatment. The Mental Hygiene Law ("MHL") at §33.03(a) states "[e]ach patient in a facility and each person receiving services for mental disability shall

receive care and treatment that is suited to his needs, and skillfully, safely and humanely administered....."

38. The New York State Mental Hygiene Law (MHL) and Mental Hygiene regulations (14 New York Code, Rules and Regulations) mandate that OMH work cooperatively with OMRDD to plan for, develop and implement a comprehensive system of programs and services to meet plaintiffs' identified needs. MHL at §§7.07(a) and 13.07(a). Their joint efforts are to ensure both the comprehensiveness and quality of the programs and services that are provided. Mental Hygiene Law at §§7.09(a) and 7.15(b) and 13.09(a) and 13.15(b) authorizes Commissioners Surles and Webb, respectively, to enter into agreements for the conduct and provision of services. The Mental Hygiene regulations at §561.1(a) authorize the two Commissioners to allow OMRDD to operate programs for the mentally retarded and developmentally disabled in OMH facilities. Mental Hygiene Law at §5.05(a) directs the Commissioners of OMH and OMRDD to jointly visit and inspect all facilities providing care and treatment to the mentally disabled. Mental Hygiene Law §5.05(b); 5.07; 7.05; and 13.05, directs the Commissioners of OMH and OMRDD to work together to develop long range plans for the care and treatment of the mentally disabled. The Mental Health regulations at §27.3(d) require OMRDD to ensure that service plans for the mentally disabled are periodically evaluated. OMH and OMRDD have

entered into agreements to carry out these statutory responsibilities.

39. The Mental Hygiene Law at §29.13(a) and the Mental Hygiene regulations at §27.3(aa) direct defendant Richard M. Heath, as Director of Mohawk Valley Psychiatric Center, defendant Dwight Rhodes, as Director of Binghamton Psychiatric Center, and John R. Scott as Director of Hutchings Psychiatric Center to develop a written individualized treatment plan for every plaintiff in the three facilities.

40. The Mental Hygiene regulations at §27.1(b), implementing the MHL provisions, state that the purpose of the individual treatment plan is to provide all mentally disabled persons with an "individualized program of services which will maximize their ability to cope with their environment, will foster social and vocational competence and will enable them to live as independently as possible." Under Mental Hygiene regulations §27.3(c), the plan's contents must describe the plaintiffs' treatment goals, and the methods, procedures, techniques and activities to be used to meet those goals. Both the plaintiffs and their plans must be re-assessed at regular intervals, to ensure the adequacy of the programs, treatment and therapies employed. 14 N.Y.C.R.R. §27(d).

STATEMENT OF FACTS

A. Plaintiff Class Has Been Denied Care and Treatment Appropriate for Person With Mental Retardation.

1. Plaintiff class members do not reside with persons who are of similar ages and functional levels

41. At Binghamton Psychiatric Center, Mohawk Valley Psychiatric Center, and Hutchings Psychiatric Center, adult patients are not placed in a particular ward because of their particular developmental levels, ages or social needs. Plaintiff class members do not reside with other persons who have similar developmental levels and social needs. The mix of persons who reside with the plaintiffs is too divergent to promote plaintiffs' functional growth or development or maintain their level of skill and functioning at the time of their entry into the institution.

42. At Binghamton Psychiatric Center, John R. resides on a ward with long-term chronic patients of widely divergent ages whose primary diagnosis is mental illness. John R. is 32 years old. John R. is not mentally ill.

43. At Mohawk Valley Psychiatric Center, John S. resides on a unit where, upon information and belief, the majority of persons have a primary diagnosis of mental illness. John S. has been "dually diagnosed" with impairments of both mental retardation and mental illness.

44. Plaintiff John S. has resided in a geriatric unit, designed for older persons, since age 52.

45. Plaintiff Patricia R. age 33, resides on a unit where upon information and belief, the majority of patients do not have mental retardation. Patricia R. has been "dually diagnosed" with impairments of both mental retardation and mental illness. Patricia R. currently resides on a unit where the patients are of widely divergent ages.

46. Upon information and belief, class members do not reside with persons who are of similar ages and developmental levels in accordance with federal and state regulations. 42 C.F.R. §442.444 and 14 N.Y.C.R.R. §681.4(c)(3)(xii)(a).

2. Plaintiff class members do not receive programs and services appropriate to their individual needs

47. Binghamton Psychiatric Center, Mohawk Valley Psychiatric Center, and Hutchings Psychiatric Center fail to provide programs and services that are appropriate to class members' individual needs, or that are necessary to maintain the level of skill and functioning of the class members at the time of their entry into the psychiatric center. Instead, upon information and belief, the lives of the class members' are marked by an unchanging daily routine largely filled with idle time. None of the plaintiffs receives care and treatment that will permit achievement of the functional goals stated in the federal and state regulations.

48. "Active treatment" required by the Mental Hygiene regulations is not provided to plaintiffs. 14 N.Y.C.R.R.§681.13(a).

49. The failure to provide sufficient programs and services to constitute "active treatment" also deprives plaintiffs of the "core" services to which they are entitled. Plaintiffs do not receive nutrition, recreation, self-care, or training and habilitation programs and services to meet their individual needs. Nutrition services which train plaintiffs in appropriate eating habits and use of utensils are not provided. OMH staff at times assist plaintiffs in eating, but class members have no structured learning programs for developing proper eating skills.

50. Appropriate recreation services are not provided. Class members' participation in community activities through recreation activities is not encouraged. Recreation, when provided, is not part of a program to achieve behavorial goals in plaintiffs' program plans. At Mohawk Valley, it is noted in his clinical record that John S. spends his days wandering the ward.

51. At Hutchings Psychiatric Cneter, it is frequently noted in Patricia R.'s clinical record that she spends her time pacing and wandering about the wards.

52. Class members do not receive self-care training which teaches them to maintain their skills in performing daily living activities such as bathing, grooming, and dressing or to achieve greater independence. These skills are necessary for class members to attend programming and live in the community away from

the institution.

53. All of the class members require, but do not receive, self-care training suited to their individual needs. Their individual needs vary, but as to all of the plaintiffs, the Binghamton, Mohawk Valley and Hutchings Psychiatric Center staff are only able to supervise and at times assist plaintiffs with these tasks. These staff efforts do not provide training that will lead to achieving the behavorial goals stated in any of the plaintiffs' program plans or to maintain their level of skill and functioning.

54. Habilitation and vocational training programs, which should teach class members the skills they will require to live in the community away from the institution are not provided. These include training related to performing household chores, as well as vocational or pre-vocational tasks that plaintiffs will require to participate in community based day programming, sheltered workshop employment, or employment in the competitive economy. None of the plaintiffs receives habilitation and vocational training programs that are designed to achieve behavioral goals in their program plans.

55. In addition to not providing the core services, Binghamton, Mohawk Valley, and Hutchings do not provide the "routine" and "special" services to which plaintiffs are entitled. Class members require extensive social services to

modify and improve their inappropriate behaviors and their isolation on the wards.

56. At Mohawk Valley Psychiatric Center, plaintiff John S. exhibits the problem of pica. John S. eats cigarette butts and ashes, eats and plays with feces, drinks from urinals, and eats paper and other waste basket items. OMH staff note that counseling has been ineffective in reducing pica. However, John S. is not engaged in an active program to modify this behavior.

57. Plaintiff John R. exhibits self-abusive and aggressive behavior and is teased and injured by other patients. However, none of these behaviors is being addressed by a behavior modification program.

58. It is noted in Plaintiff Patricia R.'s clinical record that she exhibits inattention to hygiene, poor dining habits, scavenging for cigarette butts and probable polydipsia as a result of her long-term institutionalization.

59. Upon information and belief, plaintiff class members are isolated on their wards, with little or no interaction with residents on other wards. Upon information and belief, the class members' isolation on the wards is reinforced by their limited communication skills, yet none receive communication training as a special service to address these deficits.

60. It is noted in Plaintiff Patricia R.'s clinical record that her speech is slurred at frequent intervals, and that as an

apparent result of her mental retardation she appears to have difficulty understanding the staff.

61. Upon information and belief, the defendants' failure to provide appropriate programs and services to class members has resulted in a deterioration in each class member's level of skill and functioning.

3. Plaintiff class members are not provided with care and treatment that will enable them to become de-institutionalized

62. In total, Binghamton Psychiatric Center, Mohawk Valley Psychiatric Center, and Hutchings Psychiatric Center do not provide care, treatment, programs and services to the plaintiffs in a manner which is normalizing and conducive to their individual growth as required by the Mental Hygiene regulations at §§25.1(b) and 681.1(b). Plaintiffs are not being taught the skills and behaviors they will need to live in the community away from the psychiatric centers. In several instances it is noted in the clinical records that plaintiffs John S. and John R., and Patricia R. have adopted institutionalized behavior and "culture".

63. None of the plaintiff class members is so handicapped as to require lifelong institutionalization. Persons with a degree of mental retardation equal to that of any of the class have been successfully placed in community-based residential settings. But

absent the programs and services necessary to teach plaintiff class members the essential skills for community living, they will be forced to remain in institutional settings.

4. Binghamton Psychiatric Center, Mohawk Valley Psychiatric Center, and Hutchings Psychiatric Center do not have sufficient numbers of appropriately trained staff to provide plaintiff class members with care, treatment, programs and services they require to maintain their skills and developmental levels, and protect them from bodily harm.

64. Binghamton, Mohawk Valley, and Hutchings do not have sufficient staff to provide care and treatment suited to plaintiff class members' individual needs. Upon information and belief, for much of the training plaintiff class members require, staff must work individually with each plaintiff class member, while providing verbal and physical assistance, or hand-over-hand demonstrations of activities, and extensive repetition of each activity. The Mental Hygiene regulations at §681.12 identify the staff-to-patient ratios that are required for these programs and services. Upon information and belief, the staff-to-patient ratios in the plaintiff class members' wards at Binghamton, Mohawk Valley, and Hutchings do not meet the criteria required by the regulations. OMRDD does not generally make its staff available to the psychiatric centers, and neither OMH nor OMRDD has contracted to have the staff of a community based service

provider work with plaintiff class members at the psychiatric center.

65. The Binghamton, Mohawk Valley, and Hutchings staff also are not trained to provide the full range of programs and services that the plaintiff class members require. Ongoing staff training programs are required by the Mental Hygiene regulations at §681.8(b)(13);(14) but upon information and belief, there is no training in the care and treatment of persons with mental retardation for the staff at these facilities.

66. Defendants have failed to provide the environment and the training for plaintiff class members that protects them against physical harm and preserves their basic self-care skills.

67. Since August, 1989, plaintiff Patricia R. has suffered a broken arm, an assault by fellow patients and a broken leg. Upon information and belief, the lack of sufficient numbers of staff was a contributing factor in these occurences.

68. The lack of sufficient numbers of staff to provide programs and services to mentally retarded persons makes it impossible for the members of the plaintiff class to receive care and treatment that is suited to their individual needs or needed to maintain their level of skill and development, and to protect them from bodily harm.

5. Plaintiffs have been denied care and treatment as recommended by defendants' professionals.

69. The professional staff at Binghamton Psychiatric Center, Mohawk Valley Psychiatric Center and Hutchings Psychiatric Center

who are involved with plaintiffs' care have stated that they require care and treatment that addresses the learning and independent functioning deficits caused by plaintiffs' mental retardation and that they require care, treatment and programs appropriate for persons with mental retardation.

70. In the case of plaintiffs John S., John R. and Patricia R., it is the judgment of defendants' professionals that continued residence at facilities operated by OMH is detrimental to those plaintiffs, and that a placement providing care, treatment and programs appropriate for persons with mental retardation is necessary to prevent further deterioration in their skills and development.

71. The professional staff at Binghamton Psychiatric Center and Hutchings Psychiatric Center has sought to obtain care and treatment for John R. and Patricia R. by referring these plaintiffs to OMRDD. OMRDD is the New York State government agency responsible for the care and treatment of persons who are mentally retarded.

72. The professional staff at Mohawk Valley Psychiatric Center has recommended that John S. be placed in a setting specifically designed for the implementation of behavior modification programs.

73. Defendants have not transferred plaintiffs, John S., John R. and Patricia R. to settings with programs appropriate for

persons with mental retardation and/or to settings with behavior modification programs as recommended by defendants' professionals. Defendants have continued the plaintiffs in psychiatric facilities lacking the staff, programs and ability to provide appropriate care and treatment to persons with mental retardation.

74. Defendants have failed to provide to plaintiffs John R., John R. and Patricia services and programs suitable to their diagnosis of mental retardation at the psychiatric facilities where they now reside.

75. Upon information and belief, the defendants have engaged in and continue to engage in a pattern and practice of failing to implement the recommendations of their own professionals with regard to the care, treatment, programs and services provided to plaintiff class members.

B. Plaintiff Class Members are not Receiving Care and Treatment Required by State Law and Regulations

76. Plaintiff class members have not received care and treatment suited to their needs, and have not received treatment in a skillful or safe manner.

77. Upon information and belief, Binghamton, Mohawk Valley and Hutchings Center do not have written plans stating how plaintiffs' functional growth or development will be further

enhanced either by the services they currently receive or by their current residential placement.

78. The class members' treatment plans do not meet the requirements of the Mental Hygiene regulations. The plans do not comprehensively describe how each of plaintiffs' functional deficits will be addressed, or identify the goals that are to be achieved.

79. The OMH staff at Binghamton Psychiatric Center, Mohawk Valley, and Hutchings Psychiatric Center have not been trained to write a treatment plan or provide services adequate to address the individual needs of the class members. The OMH staff at the psychiatric centers is trained to evaluate, plan for and provide care, treatment and rehabilitation to persons with acute and chronic mental illnesses. The Mental Hygiene regulations at §82.1(b) governing the operation of the psychiatric centers states the methods, procedures and practices used to provide care, treatment and rehabilitation to persons with mental illness. Mental illness is an impairment distinct and different from mental retardation. The treatment provided in response to mental illness is not the same as those used to provide training and rehabilitation to persons with mental retardation. Developing a treatment plan for plaintiffs requires specialists in mental retardation with training experience in that field; such specialists are not present at Binghamton, Mohawk Valley or

Hutchings Psychiatric Center.

80. OMRDD has not provided training to the OMH staff so that they will be able to evaluate and write treatment plans for the class members. Upon information and belief, OMRDD has not sent its own staff to Binghamton, Mohawk Valley or Hutchings Psychiatric Centers to perform these tasks directly. Neither OMH nor OMRDD has contracted for the class members to be evaluated and have their treatment plans written by a qualified community based service provider.

FIRST CLAIM FOR RELIEF

81. Defendants have violated plaintiffs' right under the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States and 42 U.S.C. §1983 by failing to provide services and programs and/or placements to which members of the plaintiff class are entitled.

SECOND CLAIM FOR RELIEF

82. Defendants have violated plaintiff class members' rights under the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States and 42 U.S.C. §1983 by failing to provide adequate care and treatment to keep plaintiff class free from bodily harm.

THIRD CLAIM FOR RELIEF

83. Defendants have violated plaintiff class members' rights under the Due Process Clause of the Constitution of the United

States and 42 U.S.C. §1983 by engaging in a pattern and practice of failing to provide care and treatment which defendants' professionals have determined to be necessary for the adequate training and habilitation of said class members.

FOURTH CLAIM FOR RELIEF

84. Defendants have violated plaintiff class members' rights under the Due Process Clause of the Constitution of the United States and 42 U.S.C. §1983 by failing to provide the care and treatment necessary to preserve plaintiff class members basic self-care skills and to prevent deterioration thereof.

FIFTH CLAIM FOR RELIEF

85. Defendants have violated plaintiff class members' rights guaranteed by the New York Mental Hygiene Law and regulations thereunder by:

(a) failing to provide plaintiff class members with the care and treatment stated in their individual treatment plans;

(b) failing to provide care, treatment programs and services appropriate to persons with mental retardation;

(c) failing provide the care and the treatment defendants' professionals determined that plaintiff class members require, and

(d) failing to provide appropriate numbers of adequately trained staff to provide the programs and services required to implement plaintiff class members' individual

treatment plans.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that the Court grant the following relief:

1. Certify this action as a class action, and certify a class consisting of all current and future patients at Mohawk Valley Psychiatric Center, Binghamton Psychiatric Center, and Hutchings Psychiatric Center who are mentally retarded, and/or diagnosed as mentally retarded and/or who have been regarded as mentally retarded; and (a) who never have been evaluated by defendants' professional staff to determine whether they require treatment, habilitation and services to respond to that impairment, or (b) who have been evaluated and determined to require treatment, habilitation or services but who have not received such treatment, habilitation or services, or (c) who have been evlaluated and determined to require treatment, habilitation or services but whose programs and services are not in accordance with accepted professional judgment, practice or standards; and

2. Declare that defendants' failure to provide such training and placement as is necessary to implement the judgment of defendants' professional staff concerning plaintiff class members' training and placement needs violates their liberty interest which is guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and 42

U.S.C. §1983 and 28 U.S.C. §2201 and §2202; and

3. Declare defendants failure to provide training and an environment for class members that protects them against physical harm and preserves their basic self-care skills violates plaintiffs liberty guaranteed by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. §1983; and

4. Direct, through a permanent injunction, that defendants provide to plaintiffs services and programs in the psychiatric centers suited to diagnosis of mental retardation or, that they be placed in another facility where they will receive programs and services that will provide them with appropriate care and treatment; and

5. Direct, through permanent injunction, that defendants provide class members with the training and environment necessary to protect class members from physical harm and to preserve their basic self-care skills; and

6. Declare that defendants have failed to provide plaintiff class members with care and treatment suited to their individual needs, based upon an individualized treatment plan, and that defendants have failed to provide the staff, programs and services required to meet the goals and objectives stated in those plans, and that such failures violate plaintiff class members' rights to care and treatment guaranteed by the New York

Mental Hygiene Law and regulations; and

7. Permanently enjoin defendants immediately to commence to provide all class members with care and treatment suited to their individual needs based on an individualized assessment and treatment plan; and immediately to commence providing the staff, programs and services required to meet the goals and objectives stated in those plans; and

8. Direct defendants to pay to plaintiffs' their litigation costs and reasonable attorneys' fees pursuant to 42 U.S.C. §1988; and

9. Grant such other and further relief as the Court may deem just and proper.

Dated: Syracuse, New York
March 14, 1990

Respectfully submitted,

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