

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION

DEC 14 1 30 PM '88

MILLER FRANK JOHNSON,
LLOYD KOGER, GAIL BJERKENES,
SANDRA GUINN and DANIEL FENNELL
on behalf of themselves and
all other similarly situated,
Plaintiffs,

vs.

CASE NO.: 87-369-Civ-T-10A

RICHARD INSLEY, in his individual capacity and as Administrator of G. PIERCE WOOD MEMORIAL HOSPITAL (G.P.W.), and GREGORY L. COLER in his individual capacity and as Secretary of FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, Defendants.

CLASS ACTION
INJUNCTIVE RELIEF REQUESTED

THIRD AMENDED COMPLAINT

A.

INTRODUCTION

1. By this action, plaintiffs challenge the administration of powerful psychotropic drugs to mental patients by unlicensed hospital aides, denial of access to the courts, violations of procedural due process, restrictions on liberty, and denial of adequate care, treatment, training, recreation, staffing and nutrition to mental patients at G. Pierce Wood Memorial Hospital in Arcadia, Florida.

2. In addition, plaintiffs challenge the placement of the 50 to 125 patients at G.P.W. who require treatment in alternative, less restrictive facilities in their home communities. The mental health of these patients, whom the

defendants label as "discharge ready," deteriorates significantly in the unnecessarily restrictive setting of hospitals such as G.P.W.

B.
JURISDICTION

3. This court has jurisdiction over plaintiffs' claims pursuant to 28 United States Code, Sections 1331, 1343(3), 2201(a), 2202.

4. The unlawful practices and policies alleged below were and are now being committed by the defendants against plaintiffs within the Middle District of Florida.

C.
PARTIES

5. Plaintiffs, MILLER FRANK JOHNSON, LLOYD L. KOGER, GAIL BJERKENES, SANDRA GUINN and DANIEL FENNELL are involuntarily committed psychiatric patients at G. Pierce Wood Memorial Hospital in DeSoto County, Florida.

6. Defendant, RICHARD INSLEY, is the Administrator of G. Pierce Wood Memorial Hospital, DeSoto County, Florida.

7. Defendant, GREGORY L. COLER, is the Secretary of the Florida Department of Health and Rehabilitative Services (HRS). HRS, through defendant COLER, has a duty to provide a comprehensive statewide program of mental health care and exercises executive and administrative supervision over all mental health facilities in the state of Florida, including G. Wood Memorial Hospital.

8. At all times material hereto, defendants were acting under color of state law and caused the constitutional deprivations described below.

D.
CLASS ALLEGATIONS

9. This action is brought pursuant to Fed.R.Civ.P. 23(a) and (b)(2) since defendants have acted in a manner generally applicable to the class as a whole.(Plaintiffs' Motion for Class Certification dated March 31, 1988 is incorporated by reference.)

10. The plaintiff class consists of all present and future patients at G. Pierce Wood Memorial Hospital.

11. The class also includes a sub-class of all present and future patients at G.P.W. who have been medically determined to be "discharge ready" for a period of 15 days or longer but who have not been released.

12. This action is properly brought as a class action because:

a. The class is so numerous that joinder of all members is impracticable.

b. Questions of law and fact common to the class include, but are not limited to, whether the defendants have deprived them of:

1) their right to movement;

2) their right to liberty, free from unreasonable restraint;

3) their right to the least restrictive appropriate treatment;

4) their right to communicate freely and privately with persons outside the facility and to use telephones;

5) their right to associate with other patients of their choice;

6) their right to access of the courts; and

7) their right to adequate care, treatment, training, recreation, staffing and nutrition.

c. The named plaintiffs' claims are typical of those of the class. Plaintiffs are patients at G. Pierce Wood Memorial Hospital who have been denied:

1) their right to movement and freedom from unreasonable restraint;

2) their right to the least restrictive appropriate available treatment;

3) their right to communicate freely and privately with persons outside the facility and to use telephones in the least restrictive manner;

4) their right to liberty, free from unreasonable restraint;

5) their right to associate with other patients of their choice;

6) their right to access to the courts; and

7) their right to adequate care, treatment, training, recreation, staffing and nutrition.

13. The named plaintiffs will fairly and adequately protect and represent the interests of the class since their claims are

identical to the claims of the class as a whole and the subclass in particular, and they have retained competent counsel to represent them and others similarly situated.

14. Defendants have acted or refused to act on ground generally applicable to the class as a whole.

E.
FACTS

15. Plaintiffs, MILLER FRANK JOHNSON, LLOYD KOGER, GAIL BJERKENES, SANDRA GUINN and DANIEL FENNELL are patients at G. Pierce Wood Memorial Hospital (G.P.W.), a state-operated psychiatric treatment facility housing over 800 patients like the plaintiffs, most of whom were involuntarily committed.

16. Plaintiffs' ability to move freely about G.P.W.'s grounds is governed by whether they possess grounds privileges.

17. Grounds privileges are granted by a treatment team of mental health professionals but are routinely suspended or revoked in order to coerce patients to follow hospital rules, to discipline patients for not following hospital rules, or to coerce them into accepting treatment which they have the right to refuse.

18. While patients are verbally advised of some hospital rules upon admission, no rules are posted, and no written copies of the rules are provided to patients. Other rules are arbitrarily created and enforced by staff without adequate notice to plaintiffs.

19. Grounds privileges are routinely revoked or suspended without affording patients adequate notice, hearing, written

explanation of evidence in support of revocation or suspension, and assistance at a hearing.

20. The plaintiffs have been deprived of access to public telephones because there are no telephones on the wards and because of arbitrary restrictions, not related to their treatment, placed on the use of other telephones.

21. The hospital does not allow visits by anyone under age twelve.

22. Hospital rules prohibit consensual hugging or kissing, in private or public, among male and female patients or visitors.

23. Most patients, including the named plaintiffs, are indigent.

24. There is no adequate law library available to plaintiffs and they do not have adequate access to attorneys.

25. The food served to plaintiffs is bland and inadequate to satisfy the essential nutritional needs of plaintiffs.

26. The vocational, recreational, and educational facilities at G.P.W. are grossly inadequate to meet patient needs.

27. The treatment plans for many patients vary little if any over time reflecting either a lack of training on the part of the staff or as gross inadequacy of treatment.

28. Patient-on-patient and patient-on-staff violence is frequent and results from grossly inadequate staffing and training of staff.

29. Over one year ago Plaintiff, MILLER FRANK JOHNSON, was determined to be discharge ready from G.P.W.

30. Mr. JOHNSON has not been discharged, in part, because of a lack of alternative treatment services in the communities served by G.P.W.

31. Plaintiff, LLOYD KOGER, was committed to G.P.W. in April, 1987.

32. Mr. KOGER is not currently discharge ready.

33. Mr. KOGER has been sued by HRS for care and maintenance but was unable to afford an attorney.

34. Plaintiff, GAIL BJERKENES, was committed to G.P.W. in January, 1986.

35. She was determined to be discharge ready on August 4, 1986.

36. She was not discharged due to the lack of less restrictive treatment facilities.

37. Sometime between March 5 and May 20, 1987, she regressed to the point where she was no longer discharge ready.

38. She is not considered to be discharge ready at this time.

39. Plaintiff, SANDRA GUINN, was involuntarily committed in November, 1987.

40. Ms. GUINN is not discharge ready.

41. On at least one occasion, her grounds privileges were revoked for reasons unrelated to treatment.

42. Plaintiff, DANIEL FENNELL, was committed to G.P.W. on November 16, 1973.

43. Mr. FENNELL has been discharge ready since June 1, 1987.

44. Although he has been recommended for placement in a group home or similar facility, the lack of such facilities in the communities served by G.P.W. has resulted in his not being discharged.

F.
CLAIMS FOR RELIEF

Count I - Denial of Less
Restrictive Treatment

45. Plaintiffs allege paragraphs 1 through 44.

46. Plaintiffs MILLER FRANK JOHNSON, LLOYD L. KOGER, GAIL BJERKENES, SANDRA GUINN, and DANIEL FENNELL are psychiatric patients confined to G.P.W.. They are or have been considered "discharge ready" by defendants.

47. G.P.W. is not designed to, nor does it provide the appropriate, less restrictive treatment, services and training appropriate for discharge ready patients.

48. Due to lack of appropriate, less restrictive treatment alternatives, plaintiffs' care at G.P.W. is at best custodial and inadequate to maintain or develop the skills necessary to enable plaintiffs to function in a less restrictive setting.

49. By subjecting plaintiffs to confinement for reasons other than treatment, and by subjecting them to conditions which have resulted and will continue to result in a loss of skills, defendants have violated and continue to violate plaintiff's rights under the Fourteenth Amendment to the United States Constitution.

Count II - Denial of Procedural Due Process

50. Plaintiffs reallege paragraphs 1 through 49.

51. Unlike comparable institutions, plaintiffs are confined to locked wards. Plaintiffs' ability to move about freely is dependent on their ability to obtain grounds privileges. Grounds privileges are routinely revoked without opportunity for hearing and without established criteria, resulting in arbitrary revocation or suspension of these privileges.

52. By subjecting plaintiffs to inappropriate confinement and revoking grounds privileges without due process, defendants have denied plaintiffs their rights under the Fourteenth Amendment to the United States Constitution.

Count III - Denial of Visitation

53. Plaintiffs reallege paragraphs 1 through 52.

54. Plaintiffs are confined on locked wards where no telephone facilities are available and are thereby deprived of their liberty and freedom of association.

55. Defendants have a policy prohibiting visitors under the age of twelve years.

56. Defendants have prohibited consensual kissing and hugging between male and female patients and visitors. These policies, practices and procedures deprive plaintiffs of their right to liberty and the right to associate with others.

57. By these practices defendants have denied plaintiffs' rights under the First, Ninth and Fourteenth Amendments to the United States Constitution.

Count IV - Denial of Access to Courts

58. Plaintiffs reallege paragraphs 1 through 57.

59. Plaintiffs are denied access to an adequate law library.

60. Because of their confinement at G.P.W., plaintiffs have no reasonable access to attorneys to assist them with domestic relations problems, civil rights claims, law suits filed by defendants against patients for care and maintenance, and other legal problems.

61. Because of their confinement at G.P.W., plaintiffs are unable to secure meaningful access to the courts without legal assistance.

62. By failing to provide legal assistance defendants have denied to plaintiffs' rights under the First, Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

Count V - Denial of Adequate Training,
Recreation, Staffing and Nutrition

63. Plaintiffs reallege paragraphs 1 through 62.

64. Due to a lack of appropriate programs, services and trained staff, plaintiffs' care at G.P.W. is inadequate.

65. Due to a lack of trained medical staff, unlicensed aides administer powerful psychotropic drugs to patients.

66. Due to a lack of appropriate programs and trained staff, plaintiffs are not provided meaningful vocational training.

67. Due to a lack of appropriate programs and trained staff, plaintiffs are deprived of meaningful therapeutic recreation.

68. Due to lack of funds and staffing, plaintiffs are deprived of adequate nutrition.

69. Due to a lack of staffing, defendants are unable to control violent patients, creating an atmosphere detrimental to patient recovery.

70. By subjecting plaintiffs to inappropriate care and treatment, defendants have violated and continue to violate plaintiffs' rights under the Fourteenth Amendment to the United States Constitution.

G.
IRREPARABLE HARM

71. Plaintiffs have no plain, speedy, or adequate remedy at law to secure redress. Unless restrained and enjoined by this Court, defendants will continue to deny plaintiffs their rights under the Constitution of the United States as described in Paragraphs 1-64. By virtue of the foregoing, plaintiffs have suffered and will continue to suffer immediate and irreparable injury.

H.
PRAYER FOR RELIEF AS TO ALL CLAIMS

WHEREFORE, plaintiffs request that this Court:

- a) Certify this action as a class action;
- b) Grant a jury trial on all issue on which plaintiffs are entitled as a matter or right;

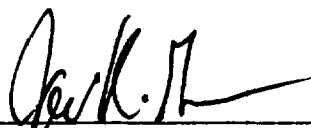
c) Declare that defendants' confinement and restrictions of patients violate their rights as guaranteed by the First, Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

d) Grant preliminary and permanent injunctive relief restraining and enjoining the defendants, their officers, agents, employees, attorneys, and successors in office, and all other persons in active concert and participation with them, from any further confinement or restrictions of plaintiffs in violation of their constitutional rights;

e) Award plaintiffs' costs and reasonable attorneys' fees and costs pursuant to 42 United States Code, Section 1988; and

f) Grant any other relief the Court deems equitable.

Respectfully submitted,



JAMES K. GREEN, Esquire
Green, Eisenberg and Cohen, Lawyers
301 Clematis Street, Suite 200
West Palm Beach, Florida 33401
Telephone: (407) 659-2009

KAREN I. MEEKS, Esquire
FLORIDA RURAL LEGAL SERVICES, Inc.
200 South Indian River Drive
Suite 103
P.O. Box 4428
Ft. Pierce, FL 34948-4428
Telephone: (407) 466-4766

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing THIRD AMENDED COMPLAINT has been furnished by regular U.S. mail to ERIC TAYLOR, Assistant Attorney General, Office of the Attorney General, The Capitol Suite 1501, Tallahassee, Florida 32399-1050; and ANTHONY N. DELUCCIA, JR., District Counsel, Department of Health and Rehabilitative Services, District Eight, P.O. Box 06085, Fort Meyers, Florida 33906 on the 1st day of August, 1988.



JAMES K. GREEN