

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

_____)	
John Doe, on behalf of himself and all others)	
similarly situated, <i>et al</i> ,)	
)	
v.)	Civil Case. No. 1:18-CV-01039-JD
)	
JEFFREY A. MEYERS, Commissioner of the New)	
Hampshire Department of Health and Human)	
Services, in his official capacity)	
_____)	

INTERVENORS’ AMENDED COMPLAINT

Intervenor Plaintiffs New Hampshire Hospital Association, Alice Peck Day Memorial Hospital, Androscoggin Valley Hospital, Catholic Medical Center, Cheshire Medical Center, Concord Hospital, Cottage Hospital, Elliot Hospital, Frisbie Memorial Hospital, HCA Health Services of New Hampshire (Parkland Medical Center and Portsmouth Regional Hospital), Huggins Hospital, Littleton Hospital Association (Littleton Regional Healthcare), LRGHealthcare (Franklin Regional Hospital and Lakes Region General Hospital), Mary Hitchcock Memorial Hospital, Monadnock Community Hospital, New London Hospital, Southern New Hampshire Medical Center, Speare Memorial Hospital, Upper Connecticut Valley Hospital, Valley Regional Hospital, and Weeks Medical Center (collectively, “the Hospitals”) file this Intervenor’s Amended Complaint against Jeffrey A. Meyers, Commissioner, New Hampshire Department of Health and Human Services (“DHHS”), in his official capacity.

The Hospitals seek redress under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and Part I, Articles 2 and 12 of the New Hampshire Constitution for DHHS’s unconstitutional seizure and taking of the Hospitals’ property, and DHHS’s violations of the Hospitals’ due process rights. The Hospitals seek declaratory and injunctive relief against DHHS pursuant to the Declaratory Judgments Act, 28 U.S.C. §2201, the Civil Rights Act of

1871, 42 U.S.C. §1983, and RSA 135-C *et seq.*

INTRODUCTION

This action was filed by ACLU-NH on behalf of John Doe and other similarly situated individuals subject to involuntary emergency admission certificates (“IEA patients”). Plaintiff’s Complaint correctly identifies many of the fundamental deficiencies of a State mental health system that fails to provide timely access to mental health care services for many IEA patients who need them. ACLU-NH accurately states that “the State is avoiding its obligations to make treatment ‘immediately’ available to these individuals in DRF facilities¹—responsibilities that are exclusively reserved to it—by delegating them to non-DRF facilities. ... Simply put, non-DRF facilities ... are compelled to provide State functions through this boarding.” The “non-DRF facilities” that are compelled to hold and provide services to IEA patients instead of transporting them to a DRF are the Hospitals’ emergency room departments (“EDs”).

Despite recognizing the burden placed on the Hospitals to provide exclusively State functions, Plaintiff’s Complaint seeks to correct only a single and narrow unlawful practice, the failure to provide IEA patients with timely probable cause hearings. ACLU-NH’s action will not achieve medical benefits for most present and future IEA patients or remedy the burden placed on the Hospitals. The purpose of the Intervenor’s Amended Complaint is to effectively address the fact that DHHS’s practice and conduct ignore the core principle of the state’s statutory scheme involving IEAs - that an IEA places the IEA patient in the care and custody of the state mental health services system: “The involuntary emergency admission of a person **shall be to the state mental health services system under the supervision of the [DHHS] commissioner.**” RSA 135-C:28, I. DHHS’s practice and conduct also ignore the plain statutory

¹ A DRF is “a treatment facility which is designated by the commissioner to accept for care, custody, and treatment persons involuntarily admitted to the state mental health services system.” RSA 135-C:2, XIV.

directive that upon completion of an IEA certificate the IEA patient must be **immediately** delivered to a DRF. Instead of fulfilling its statutory obligations and providing the specialized mental health treatment that IEA patients need, DHHS requires the Hospitals to hold IEA patients in their EDs, typically for days, sometimes weeks, until DHHS directs the Hospital that it may transport the IEA patient to a DRF.

The Hospitals seek a declaration that DHHS's practice of forcing them to fulfill the State's statutory obligations to IEA patients is unlawful. Specifically, the Hospitals seek a declaration that DHHS's failure to immediately transfer IEA patients to a DRF, as required by the plain language of the applicable statutory provision and thereby forcing the Hospitals, where IEA patients typically remain for days or weeks to: (a) hold IEA patients in violation of their constitutional and statutory rights, (b) provide services in lieu of the specialized mental health services the state is obligated to provide; and (c) require hospital ED personnel to file successive IEA petitions violates the Takings and Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution, the Fourth Amendment's protection against unreasonable seizures, the Civil Rights Act, 18 U.S.C. §1983, Part I, Articles 2 and 12 of the New Hampshire Constitution, and New Hampshire RSA 135-C *et seq.* The Hospitals also seek injunctive relief requiring DHHS to cease its unlawful practice and to fulfill its statutory obligations under RSA 135-C:27-33.

Although DHHS's unlawful practice has existed for years, the Hospitals do not seek compensatory damages for being required to fulfill the State's obligations to IEA patients. Instead, the Hospitals only seek nominal damages and recovery of their attorneys' fees for having to pursue litigation to force the State to cease its practice of requiring the Hospitals to unlawfully hold IEA patients in their EDs and to bear the burden of the State's systemic failure

to accept its responsibility to provide mental health services to IEA patients as required by law.

THE PARTIES

1. Plaintiff New Hampshire Hospital Association (“NHHA”) is a non-profit corporation with a principal place of business at 125 Airport Road, Concord, New Hampshire 03301. NHHA provides leadership through advocacy, education and information in support of its member hospitals and health care delivery systems. The Hospitals are NHHA members.

2. Plaintiff Alice Peck Day Memorial Hospital (“APD”) is a New Hampshire not-for-profit corporation and healthcare charitable trust with a principal place of business at 10 Alice Peck Day Drive, Lebanon, New Hampshire 03756. APD is not a DRF.

3. Plaintiff Androscoggin Valley Hospital (“Androscoggin”) is a New Hampshire not-for-profit corporation and healthcare charitable trust with a principal place of business at 59 Page Hill Road, Berlin, New Hampshire 03570. Androscoggin is not a DRF.

4. Plaintiff Catholic Medical Center (“CMC”) is a New Hampshire not-for-profit corporation and healthcare charitable trust with a principal place of business at 100 McGregor Street, Manchester, New Hampshire 03102. CMC is not a DRF.

5. Plaintiff Cheshire Medical Center (“Cheshire”) is a New Hampshire not-for-profit corporation and healthcare charitable trust with a principal place of business at 580 Court Street, Keene, New Hampshire 03431. Cheshire is not a DRF.

6. Plaintiff Concord Hospital (“Concord”) is a New Hampshire not-for-profit corporation and healthcare charitable trust with a principal place of business at 250 Pleasant Street, Concord, New Hampshire 03301. Concord is not a DRF.

7. Plaintiff Cottage Hospital (“Cottage”) is a New Hampshire not-for-profit corporation and healthcare charitable trust with a principal place of business at 90 Swiftwater Road, Woodsville, New Hampshire 03785. Cottage is not a DRF.

8. Plaintiff Elliot Hospital (“Elliot”) is a New Hampshire not-for-profit corporation and healthcare charitable trust with a principal place of business at 1 Elliot Way, Manchester, New Hampshire 03103. There is a 14-bed DRF located at Elliot.

9. Plaintiff Frisbie Memorial Hospital (“Frisbie”) is a New Hampshire not-for-profit corporation and healthcare charitable trust with a principal place of business at 11 Whitehall Road, Rochester, NH 03867. Frisbie is not a DRF.

10. Plaintiff HCA Health Services of NH, Inc. (Parkland Medical Center [“Parkland”] and Portsmouth Regional Hospital [“Portsmouth”]) is a New Hampshire corporation with a principal place of business at One Park Plaza, Nashville, Tennessee 37203. Parkland is not a DRF. There is a 12-bed DRF located at Portsmouth.

11. Plaintiff Huggins Hospital (“Huggins”) is a New Hampshire not-for-profit corporation and healthcare charitable trust with a principal place of business at 240 South Main Street, Wolfeboro, New Hampshire 03894. Huggins is not a DRF.

12. Plaintiff Littleton Hospital Association (Littleton Regional Healthcare [“LRH”]) is a New Hampshire not-for-profit corporation and healthcare charitable trust with a principal place of business at 600 St. Johnsbury Road, Littleton, New Hampshire 03561. LRH is not a DRF.

13. Plaintiff LRGHealthcare (Franklin Regional Hospital and Lakes Region General Hospital) (“LRG”) is a New Hampshire not-for-profit corporation and healthcare charitable trust with a principal place of business at 80 Highland Street, Laconia, New Hampshire 03246. Lakes Region General Hospital is not a DRF. There is a 10-bed DRF located at Franklin Regional Hospital.

14. Plaintiff Mary Hitchcock Memorial Hospital (“Mary Hitchcock”) is a New

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.