

Andrew H. Lemke, Sr. (WSB No. 7-4988)  
Supervising Attorney  
Protection & Advocacy System, Inc.  
7344 Stockman Street  
Cheyenne, Wyoming 82009  
Telephone: (307) 632-3496  
email: lawpanda@wypanda.com

FILED  
U.S. DISTRICT COURT  
DISTRICT OF WYOMING

2022 JAN 18 PM 12:59

MARGARET BOTKINS, CLERK  
CHEYENNE

**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF WYOMING**

PROTECTION & ADVOCACY )  
SYSTEM, INC., )

*Plaintiff* )

v. )

STEFAN JOHANSSON, in his official )  
capacity as Interim Director of the )  
Wyoming Department of Health, and )  
PAUL MULLENAX, in his official )  
capacity as Administrator of the )  
Wyoming State Hospital, )

*Defendants* )

Case No. 22-CV-10-KHR

**Complaint for Declaratory  
and Injunctive Relief**

Comes Now Plaintiff, Protection & Advocacy System, Inc. ("P&A"), and for its Complaint against Defendants, states and alleges as follows:

**Introduction**

1. This is a civil action for injunctive and declaratory relief pursuant to 28 U.S.C. §§2201 and 2202, and for injunctive and declaratory relief under 42 U.S.C. §1983 to redress ongoing deprivations of Plaintiff's federal rights and to prevent the Defendants from restricting full, complete, and meaningful access by Plaintiff to patients of the Wyoming

State Hospital, as mandated by the Protection and Advocacy for Individuals with Mental Illness Act, codified at 42 U.S.C. §§10801 et seq. and its federal regulations, codified at 42 C.F.R. Part 51, and the Developmental Disabilities Assistance and Bill of Rights Act, codified at 42 U.S.C. §§15001, et seq. and its federal regulations, codified at 45 C.F.R. Part 1326.

2. This action is directly and materially related to this Court's declaration of the same rights under the same statutes and between the same parties in *Protection & Advocacy System, Inc. v. Freudenthal et al.*, Civil Action No. 05-CV-014-J, reported at 412 F. Supp. 2d 1211 (D. Wyo. 2006).
3. Plaintiff has not brought this case to seek new or different rights. Plaintiff has brought this case to seek Court enforcement of Plaintiff's existing clearly-established access rights under federal law, as previously declared by this Court, in order to stop and deter Defendants' recurring and ongoing violations of those rights.

#### **Jurisdiction and Venue**

4. Subject matter jurisdiction is vested with the Court under 28 U.S.C. § 1331, as this dispute arises under the laws of the United States including, but not limited to:
  - a. 28 U.S.C. §§ 2201 and 2202,
  - b. The Protection and Advocacy for Individuals with Mental Illness Act, codified at 42 U.S.C. §§ 10801, et seq., and its federal regulations, codified at 42 C.F.R. Part 51, (hereinafter collectively referred to as the "PAIMI Act"), and

- c. The Developmental Disabilities Assistance and Bill of Rights Act, codified at 42 U.S.C. §§ 15001, et seq., and its federal regulations, codified at 45 C.F.R. Part 1326 (hereinafter collectively referred to as the “DD Act”).
5. Venue is proper in this district pursuant to 28 U.S.C. §1391(b). All events, acts, or omissions giving rise to the claims occurred in the State of Wyoming, particularly in Unita County or Laramie County, Wyoming. All Defendants reside in the State of Wyoming, and at all times acted under color of state law of the State of Wyoming.

### **Parties**

6. Plaintiff, Protection & Advocacy System, Inc., located at 7344 Stockman Street, Cheyenne, Wyoming 82009, is a private, nonprofit Wyoming corporation authorized by Congressional mandate to investigate incidents of abuse and neglect of persons with developmental disabilities and mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred. Congress has, pursuant to the PAIMI Act and the DD Act, explicitly authorized protection and advocacy systems, such as Plaintiff, to pursue administrative, legal and other remedies to ensure the protection of persons with developmental disabilities and mental illness. Plaintiff has served as Wyoming’s protection and advocacy agency since 1977. Plaintiff is a “person” for purposes of 42 U.S.C. §§ 1983 and 1988 and other applicable federal laws. Plaintiff is funded substantially by federal dollars. Plaintiff does not report to any state governmental entity regarding its work and no state governmental entity directs Plaintiff

or participates in Plaintiff's decision-making process.

7. Defendant Stefan Johansson (hereinafter "Defendant Johansson") is being sued in his official capacity as Interim Director of the Wyoming Department of Health. Pursuant to Wyo. Stat. §§9-2-101, et seq., as Interim Director of the Department of Health, Defendant Johansson is the chief administrative officer and immediate supervisor of all administrators and heads of agencies and institutions that are assigned to the Department of Health, including the Wyoming State Hospital (hereinafter "WSH"). Defendant Johansson's responsibilities include, but are not limited to, administering state programs for mental health and developmental disabilities services, coordinating a network of programs and facilities for those services, establishing standards, policies, procedures, rules and regulations for the delivery of those services, and disbursing and administering state and federal funds or other monies allotted to the Department of Health.
8. Defendant Paul Mullenax (hereinafter "Defendant Mullenax") is being sued in his official capacity as Administrator of the WSH. As Administrator, or agency head, of the WSH, Defendant Mullenax's responsibilities include, but are not limited to, administering state programs for mental health and developmental disabilities services at the WSH, coordinating a network of programs and facilities for those services, establishing and ensuring compliance with standards, policies, procedures, rules and regulations for the delivery of those services, disbursing and administering state and federal funds or other monies allotted to the WSH, operating the WSH, and protecting, caring for, and treating patients at that facility.

9. Defendants Johansson and Mullinax represent the State of Wyoming and are responsible for actions taken under color of state law that deny and restrict full, complete and meaningful access by Plaintiff to patients of the WSH as required by Federal law. At all times and events relevant to this action and its underlying events, Defendants Johansson and Mullinax acted under color of state law.

#### **Procedural Prerequisites**

10. P&A duly submitted a notice of claim pursuant to the Wyoming Governmental Claims Act to the Wyoming Department of Administration and Information on December 6, 2021. A true and correct copy of the Notice of Claim is attached to this Complaint as “Exhibit A.”

#### **Factual Allegations**

11. Recognizing the vulnerability of persons admitted to in-patient psychiatric facilities, the pervasiveness of harm, and the power and control of facility operators over the vulnerable population, Congress created a nationwide system of protection and advocacy agencies. 42 U.S.C. §§ 10801(a) and 15001(a).
12. Congressional intent is mandated in both the PAIMI Act and the DD Act as two-fold: protect the federal interest in the health and safety of persons who are eligible under the PAIMI Act or under the DD Act, and require that the protection and advocacy agencies be free from state interference.

# 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.