

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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:
ROBERT LOVE, individually and on :
behalf of all persons similarly :
situated, and THE COALITION FOR :
THE HOMELESS, : Index No.
:
Plaintiffs, :
-against- : COMPLAINT
:
EDWARD I. KOCH, as Mayor of the City :
of New York, JO IVEY BOUFFORD, as :
President of the New York City :
Health and Hospitals Corporation, :
THE NEW YORK CITY HEALTH AND :
HOSPITALS CORPORATION, SARA L. :
KELLERMANN, as Commissioner of the New :
York City Department of Mental Health, :
Mental Retardation and Alcoholism :
Services, and RICHARD C. SURLES, as :
Commissioner of the New York State :
Office of Mental Health, :
:
Defendants. :
:
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Plaintiffs by their attorneys, Robert M. Hayes and
Gold, Farrell & Marks, for their complaint, allege the
following:

INTRODUCTION

1. Plaintiffs, a class of seriously mentally-ill
or mentally-disabled persons in need of psychiatric care and
treatment, bring this action seeking an injunction mandating the
City of New York to cease refusing appropriate care and

treatment to them. Routinely, despite an affirmative obligation to provide adequate care and treatment, the City and the State of New York refuse assistance to mentally-ill or mentally-disabled people by claiming a lack of facilities. The overwhelming majority of persons who appear at acute care psychiatric hospital emergency rooms operated by defendants are refused any assistance even though they are in need of it. Many people in need of psychiatric hospitalization are denied admission; many other seriously mentally-ill or mentally-disabled people in need of care and treatment in a residential facility other than a hospital are similarly denied care and are turned away.

2. In this action, plaintiffs seek an order mandating that the defendant City and State officials "ensure that mentally-ill or mentally-disabled persons in need of services receive appropriate care, treatment and rehabilitation," as is their explicit right under New York law. Plaintiffs also seek, among other things, declaratory relief.

II. BACKGROUND

3. Over the past 20 years, New York, and virtually every other state in the nation, has shifted its policy of caring for mentally-ill or mentally-disabled persons from a system based on country asylums to one, in theory, based

primarily on urban community care. Even where such community care is provided (and often it is not), many seriously mentally-ill or mentally-disabled persons periodically deteriorate and require episodic hospitalizations.

4. In the absence of appropriate and ongoing community care and support, the incidence of repeated hospitalizations increases markedly. Presently, two actions are pending in this Court to mandate the provision of such community care to mentally-ill or mentally-disabled persons in New York. (See Heard v. Cuomo, No. 26498/87 (Sup. Ct. N.Y. Cty. filed Oct. 27, 1987); Koskinas v. Boufford, No. 26499/87 (Sup. Ct. N.Y. Cty. filed Oct. 27, 1987)).

5. In most cases, persons in need of acute psychiatric hospitalization in New York City go to one of the municipal hospitals. If, after gaining admission to a municipal psychiatric hospital, the patient is deemed in need of long-term chronic care, he is transferred to a state psychiatric center.

6. Routinely, admitting physicians at municipal hospital psychiatric emergency rooms are unable to admit persons in need of hospitalization because there are no beds available.

7. According to the records of defendant New York City Health and Hospitals Corporation ("H.H.C."), psychiatric wards operated in fiscal year 1986 at an average occupancy rate

of 99.96 per cent. Most H.H.C. hospital psychiatric wards frequently operate well above capacity. Over 62,000 persons presented themselves for psychiatric care and treatment at H.H.C. municipal hospitals in 1986, and over 75 per cent of them were denied admission.

8. While some of these approximately 45,000 persons who sought, and were thereafter denied, care and treatment at municipal psychiatric hospitals required in-patient hospital care, others required treatment in residential facilities such as crisis residences or community residences. For most persons who sought assistance, no beds were available in either hospital or residential community facilities.

9. Upon information and belief, many seriously mentally-ill or mentally disabled persons are shackled or handcuffed to wheelchairs, or otherwise involuntarily restrained, for long periods of time, while awaiting admission. Others are left in hallways and makeshift wards for several days until they are admitted or denied admission.

10. In most cases, defendants fail to provide any care or treatment to mentally-ill or mentally-disabled persons seeking assistance at municipal psychiatric hospitals, either at the hospital or elsewhere.

11. It is well known that mentally-ill or mentally-disabled persons who are denied needed assistance are likely to become even more dysfunctional. Some, if denied early treatment, become homicidal or suicidal.

12. Many mentally-ill or mentally-disabled persons who are denied appropriate care and treatment are likely to deteriorate and then require involuntary (and possible long-term) commitment to a mental institution.

13. Mentally-ill or mentally-disabled persons denied adequate care and treatment are irreparably harmed; in some instances they die. In addition to the harm suffered by plaintiffs, the public interest is endangered by defendants' failure to provide appropriate care and treatment to seriously mentally-ill or mentally-disabled persons.

14. The public cost of long-term hospitalization or incarceration is substantially higher than the timely provision of adequate psychiatric care and treatment.

III.

THE PARTIES

A. Plaintiffs

15. Plaintiff ROBERT LOVE is a 35 year old seriously mentally-ill and mentally-disabled New Yorker who has been and is in need of appropriate psychiatric care and treatment.

16. THE COALITION FOR THE HOMELESS is a not-for-profit corporation organized under the laws of the State of New York. It advocates for, and provides direct services to, homeless persons, many of whom suffer from mental illness or disability. The Coalition expends substantial resources in serving persons denied care and treatment by defendants.

B. The Defendants

17. Defendant EDWARD I. KOCH is the duly elected Mayor of the City of New York responsible for the enforcement of the laws and the provision of mandated municipal services.

18. Defendant JO IVEY BOUFFORD is a member of the board of directors and President of defendant H.H.C. As chief executive officer of the H.H.C., she is responsible for the creation and administration of policies to ensure the provision and delivery of comprehensive care and treatment for the mentally and physically ill and infirm at H.H.C. hospitals.

19. Defendant H.H.C. was created by the New York State Legislature as a response to serious shortages in personnel and facilities necessary to provide adequate care and treatment to New York City's mentally and physically ill.

20. The specific purpose for the creation of the H.H.C. was, inter alia, to provide a comprehensive, integrated system of treatment and rehabilitative services for the mentally and physically ill and infirm residents of the City of New York. Such services and treatment were legislatively found to be "of vital and paramount concern and essential to the protection and promotion of the health, safety and welfare of the inhabitants of the state of New York and the city of New York." (New York City Health and Hospitals Corporation Act New York, N.Y. Consol. Laws §7382).

21. Pursuant to section 2 of the New York City Health and Hospitals Corporation Act, defendant H.H.C. is responsible for providing care and treatment to physically and mentally-ill persons in New York City.

22. Defendant SARA L. KELLERMANN is the duly appointed Commissioner of the City Department of Mental Health. In her capacity as Commissioner, pursuant to Chapter 23 of the New York City Charter, she is, among other things, charged with the responsibility to determine the needs of the mentally ill in New York City and engage in short-range, intermediate-range and long-range mental hygiene planning meeting the mental hygiene needs of the City of New York.

23. Defendant RICHARD C. SURLES is the duly appointed Commissioner of the New York State Office of Mental Health. Pursuant to sections 7.07 and 7.15 of the New York Mental Hygiene Law, he is charged with the affirmative obligation of developing and implementing comprehensive plans, programs, services, care and treatment for the mentally ill. In addition, defendant Surles is responsible for the administration of health care services to the mentally ill in this state.

IV.

VENUE

24. Venue is proper in New York County since each of the defendants has their office there or operate facilities there, and the causes of action arose within New York County.

V.

STATUTORY AND CONSTITUTIONAL FRAMEWORK

A. New York Law

25. Article XVII, section 4 of the New York Constitution and the judicial interpretations thereof provide that state and local authorities have a mandatory, non-discretionary obligation to provide care and treatment for persons suffering from mental disorders or defects and to

protect the mental health of the inhabitants of the State of New York.

26. Section 7.01 of the New York Mental Hygiene Law charges the State of New York and its local governments with the responsibility for the "prevention and early detection of mental illness and for the comprehensively planned care, treatment and rehabilitation of their mentally ill citizens."

27. Section 7.01 of the New York Mental Hygiene Law also establishes the Office of Mental Health and charges it with the affirmative obligation to "ensure that mentally-ill persons in need of services receive appropriate care, treatment and rehabilitation close to their families and communities."

28. Furthermore, pursuant to section 7.07 of the New York Mental Hygiene Law, defendant Surles is charged with the mandatory, non-discretionary duty to see that "mentally-ill persons are provided with care and treatment" and that such care and treatment is of high quality and effectiveness.

29. The Preamble and Legislative Findings for the 1977 Reorganization of the Department of Mental Health further evidence the strong intent of the legislature to create an affirmative duty on the part of the state and local governments of New York to provide care and treatment to its mentally-ill or mentally-disabled citizens by establishing that "[i]t is the

policy of the state of New York that all of its residents who are disabled will receive services according to their individualized needs."

30. Because the State bears the ultimate responsibility, in the form of a statutorily created affirmative obligation, to provide adequate care and treatment to its mentally-ill or mentally-disabled citizens pursuant to sections 7.01 and 7.07 of the New York Mental Hygiene Law, and because the State has delegated its responsibility to defendant H.H.C., the acts and omissions of defendant H.H.C. are imputed to the State.

31. Pursuant to section 31.19(a) of the New York Mental Hygiene Law, defendant H.H.C. is prohibited from "inadequately" caring for any "individual" who is or appears to be mentally disabled.

32. Pursuant to sections 1.03(4) and 33.03 of the New York Mental Hygiene Law, any person receiving "services for mental disability" -- which includes any examination, diagnosis, care, treatment or rehabilitation -- shall receive care and treatment that is skillfully, safely and humanely administered and is suited to his or her needs.

33. Section 9.47 of the New York Mental Hygiene Law imposes upon the "health officers" of defendant H.H.C. the duty

to see that all mentally-ill persons within their respective communities "who are in need of care and treatment at a hospital" are admitted to a hospital.

34. It is well settled under the common law that when a hospital undertakes to render aid, such as that aid which a person waiting in a psychiatric emergency room may receive, a duty on the part of that hospital to provide adequate treatment arises.

35. Section 2 of the New York City Health and Hospitals Corporation Act (N.Y. Unconsol. Laws § 7382 (McKinney's 1978)), establishes the defendant H.H.C. for the explicit purpose of delivering comprehensive care and treatment for the physically and mentally ill and infirm residents of the City of New York.

36. Article I, section 11 of the New York State Constitution mandates that no person be denied the equal protection of the laws.

B. Federal Law

37. The Fifth and Fourteenth Amendments of the United States Constitution provide that no person may be deprived of the equal protection of the laws.

38. Section 9121 of the Consolidated Omnibus Budget Reconciliation Act of 1986 (42 U.S.C.A. 1395dd) provides that all hospitals having any emergency department and participating in the Medicare program must provide for an appropriate medical screening examination for any person who comes to the emergency department and makes a request, or has a request made on his behalf, for such a screening examination. If it is determined that the person has an "emergency medical condition," defined broadly as any condition manifesting itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in, inter alia, "placing the patient's health in serious jeopardy," then the person must be provided either such treatment required to "stabilize" his condition or a transfer, subject to certain limitations, to an appropriate facility.

VI.

FACTUAL ALLEGATIONS OF THE
INDIVIDUAL NAMED PLAINTIFFS

39. Plaintiff LOVE is a seriously mentally-ill and mentally-disabled man who has been repeatedly denied care and treatment by defendants.

40. Plaintiff LOVE suffers from chronic mental illness characterized by severe depressions and suicidal ideation. He has attempted suicide and presently is both suicidal and homicidal. Plaintiff LOVE has been institutionalized in long-term psychiatric hospitals for many years.

41. Until February 1988, plaintiff LOVE shared an apartment with a friend in New York City. The friend forced plaintiff LOVE to leave the apartment after plaintiff LOVE began playing with a knife.

42. Plaintiff LOVE initially stayed at a municipal shelter but found his mental condition deteriorating there. Recently, he has been living in and around the Port Authority Bus Terminal.

43. In December 1987, the New York police took plaintiff LOVE to Bellevue Hospital ("Bellevue"), an H.H.C. hospital, as an involuntary psychiatric patient. Plaintiff LOVE was handcuffed to a wheelchair, but never admitted to the hospital. He was discharged without care and treatment.

44. During January 1988, plaintiff LOVE was taken to Bellevue twice by the police. He was not admitted.

45. In early February 1988, plaintiff LOVE sought psychiatric care and treatment at Bellevue after attempting to

kill himself by slashing his wrists. Although his wrists were bandaged at the hospital, he was denied psychiatric care and treatment.

46. On March 3, 1988, plaintiff LOVE went to Bellevue to seek psychiatric care and treatment. He was depressed, suicidal and homicidal. When he arrived at the Bellevue emergency room, 37 patients were waiting for assistance ahead of him. Plaintiff LOVE was denied an examination by a psychiatrist and was denied care and treatment.

47. Plaintiff LOVE has been injured and is being injured irreparably by the refusal of defendants to provide him with appropriate care and treatment. There is no adequate remedy at law for plaintiff LOVE.

VII.

CLASS ACTION ALLEGATIONS

48. In addition to bringing this action on their own behalf, plaintiffs bring this action as a class action under Article 9 of the New York Civil Practice Law and Rules ("CPLR") as representatives of the class described herein.

49. Plaintiff LOVE represents a class of seriously mentally-ill or mentally-disabled persons who, at the present time or in the future, are or will be in need of appropriate

psychiatric care and treatment, who seek such assistance by presenting themselves at municipal psychiatric emergency rooms, and who are not provided with adequate and appropriate care and treatment.

50. The number of persons in the class is so numerous as to make joinder impracticable. On information and belief, the members of the class number in the thousands.

51. The named plaintiff, as a representative of the class, will fairly and adequately protect the interests of the class. Such representative is aware of no conflict of interest among members of the class.

52. The questions of law and fact raised in this complaint are common to all members of the class in that the defendants have, for an extended period of time, failed to adequately treat such class members in need of appropriate psychiatric care and treatment in violation of the New York Mental Health Law, the common law and the New York State and the United States Constitutions.

53. A class action is the most appropriate and expedient means for a fair and efficient adjudication of the controversy asserted by the class.

VIII.

COUNTS

FIRST CAUSE OF ACTION

54. Plaintiffs repeat and reallege paragraphs 1 through 53 hereof.

55. Defendants, through their acts and omissions, have failed to provide adequate and appropriate care and treatment to plaintiffs in violation of their mandatory, non-discretionary duties established in sections 7.01 and 7.07 of the New York Mental Hygiene Law, section 2 of the New York Health and Hospitals Corporation Act and Article XVII, section 4 of the New York State Constitution and in violation of the rights of the plaintiffs created by such statutory and constitutional provisions.

SECOND CAUSE OF ACTION

56. Plaintiffs repeat and reallege paragraphs 1 through 53 hereof.

57. Defendants have failed to provide adequate care and treatment for plaintiffs, who are or appear to be mentally ill or mentally disabled, in violation of plaintiffs' rights under section 31.19(a) of the New York Mental Hygiene Law.

THIRD CAUSE OF ACTION

58. Plaintiffs repeat and reallege paragraphs 1 through 53 hereof.

59. Defendants, through their acts and omissions, have failed to provide plaintiffs with skillfully, safely and humanely administered care and treatment which is suited to their needs in violation of the rights of plaintiffs created under section 33.03(a) of the New York Mental Hygiene Law.

FOURTH CAUSE OF ACTION

60. Plaintiffs repeat and reallege paragraphs 1 through 53 hereof.

61. Defendants, by their acts, have established a special relationship with the plaintiffs and those members of the class who have presented themselves at the psychiatric emergency rooms of defendant H.H.C. hospitals and have received any services. Defendants therefore have affirmatively and voluntarily assumed a duty of care in providing plaintiffs and such members of the class with appropriate care and treatment.

62. Defendants, by failing to treat adequately plaintiffs and members of the class, have breached their common law duty of care.

FIFTH CAUSE OF ACTION

63. Plaintiffs repeat and reallege paragraphs 1 through 53 hereof.

64. Defendants meet their statutory, common law and constitutional obligations with regard to some mentally-ill or mentally-disabled persons who present themselves at the psychiatric emergency rooms of defendant H.H.C. hospitals by providing such persons with adequate care and treatment either in the form of admission to the hospital or otherwise.

65. Although the named plaintiff and members of the class are in all relevant aspects similarly situated to those mentally-ill or mentally-disabled persons referred to in paragraph 64 above, they have not received similar treatment.

66. By failing to provide the named plaintiff with appropriate care and treatment, defendants have violated and are continuing to violate plaintiffs' rights, and the rights of members of the class, to the equal protection of the laws as guaranteed by Article I, section 11 of the New York State Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.

SIXTH CAUSE OF ACTION

67. Plaintiffs repeat and reallege paragraphs 1 through 53 hereof.

68. On information and belief, plaintiff LOVE arrived at the psychiatric emergency room in need of immediate hospitalization.

69. Defendants, by failing to provide plaintiffs with immediate hospitalization and adequate care and treatment have breached their duty under section 9121 of the Consolidated Omnibus Budget Reconciliation Act of 1986 and have violated the rights of the plaintiffs created under this statutory provision.

IX.

PRAYER FOR RELIEF

WHEREFORE, plaintiff LOVE, on behalf of himself and others similarly situated, and the Coalition for the Homeless, respectfully pray that this Court enter judgment:

1. certifying the class, pursuant to CPLR article 9;
2. declaring that defendants have violated sections 7.01, 7.07, 31.19(a), 33.03(a) and 9.47 of the New York Mental Hygiene Law, section 7382 of the New York Health and Hospitals Corporation Act, section 9121 of the Consolidated Omnibus Reconciliation Act of 1986, the common law and the equal protection clauses of the New York State and United States Constitutions;
3. declaring that the defendants have breached their statutory and common law duties of care owed to the individual

plaintiffs herein, thereby causing severe injuries in the form of emotional and psychological distress and physical discomfort;

4. granting a preliminary and permanent injunction requiring defendants:

(a) to comply with their mandatory, non-discretionary duties established by sections 7.01 and 7.07 of the New York Mental Hygiene Law, section 2 of the New York Health and Hospitals Corporation Act, and Article XVII, section 4 of the New York State Constitution, and provide plaintiffs and the members of the certified class with appropriate and adequate psychiatric care and treatment:

(b) to comply with section 33.03(a) of the New York Mental Hygiene Law and provide each plaintiff and each member of the certified class with adequate, skillful and safe care and supervision that is suited to his or her needs;

(c) to comply with section 31.19(a) of the New York Mental Hygiene Law and refrain from "inadequately" caring for any individual who is or appears to be mentally ill or mentally disabled;

(d) to comply with section 9121 of the Consolidated Omnibus Budget Reconciliation Act of 1986 and provide emergency care and treatment to those determined to be in need of such treatment;

(e) to otherwise provide plaintiffs and each member of the certified class with appropriate and adequate care and treatment in a non-discriminatory fashion, pursuant to defendants' common law duties of care and the equal protection clauses of the New York State and United States Constitutions.

5. awarding plaintiffs costs, including reasonable attorneys' and experts' fees incurred in this action; and

6. granting such other, further and different relief as is just and proper.

Dated: New York, New York
March 3, 1988

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