



MR-NM-002-004

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW MEXICO

89 OCT 27 AM 9:13

[Signature] CLERK
ALBUQUERQUE

UNITED STATES OF AMERICA,)
)
 Plaintiff)
)
 v.)
)
 STATE OF NEW MEXICO: Garrey)
 Carruthers, Governor; NEW MEXICO)
 HEALTH AND ENVIRONMENT DEPARTMENT,)
 Dennis Boyd, Secretary, New Mexico)
 Health and Environment Department;)
 LOS LUNAS HOSPITAL AND TRAINING)
 SCHOOL, Miriam Brownstein, Acting)
 Administrator, Los Lunas Hospital)
 and Training School,)
)
 Defendants.)

Civil Action No.

CIV89-1165M

COMPLAINT

The UNITED STATES OF AMERICA, by and through its Attorney General, Dick Thornburgh, files this Complaint pursuant to the Civil Rights of Institutionalized Persons Act of 1980, 42 U.S.C. § 1997, to enjoin the named defendants from depriving persons residing at the Los Lunas Hospital and Training School ("LLHTS"), of rights, privileges or immunities secured or protected by the Constitution of the United States. Attached hereto, and incorporated herein by reference, is the Certificate of the Attorney General required by 42 U.S.C. § 1997b.

JURISDICTION, STANDING, AND VENUE

1. This Court has jurisdiction over this action under 28 U.S.C. § 1345.

2. The United States has standing to maintain this action pursuant to 42 U.S.C. § 1997a.

3. Venue in the District of New Mexico is proper pursuant to 28 U.S.C. § 1391. All claims set forth in the Complaint arose in said District.

4. Defendant STATE OF NEW MEXICO owns and operates LLHTS, which is a state residential mental retardation facility.

PARTIES

5. Defendant GARREY CARRUTHERS is the Governor of New Mexico, and, in this capacity, heads the Executive Branch of the State government and, among other duties, reviews and approves budget requests submitted by Executive Branch agencies. He selects and appoints the Secretary of the New Mexico Health and Environment Department ("HED").

6. Defendant HEALTH AND ENVIRONMENT DEPARTMENT is responsible for the administration and operation of LLHTS.

7. Defendant DENNIS BOYD is the Secretary of HED, and, in this capacity, exercises administrative control of, and responsibility for, LLHTS.

8. Defendant MIRIAM BROWNSTEIN is the Acting Administrator of LLHTS, and, in this capacity, has the responsibility for, and control of, the daily operation of LLHTS.

9. The individual defendants named in paragraphs 5, 7 and 8 above are officers of the executive branch of the State of New Mexico and are sued in their official capacities.

10. LLHTS, a State mental retardation facility administered and operated by HED, is an institution as that term is defined in 42 U.S.C. § 1997(1)(A) and (1), (B)(i), and is located in Los Lunas, New Mexico.

FACTUAL ALLEGATIONS

11. Defendants and their predecessors in office have been, and are currently, legally responsible, in whole or in part, for the operation of and conditions at LLHTS, as well as for the care and treatment of persons residing at that institution.

12. At all relevant times, defendants or their predecessors in office have acted or failed to act, as alleged herein, under color of state law.

13. Defendants are failing to provide adequate medical care and treatment to LLHTS residents.

14. Defendants are failing to provide patients residing at LLHTS with adequate care, treatment and training necessary to ensure that they are free from unreasonable risks of harm to personal safety and unreasonable use of bodily restraints and seclusion.

15. Defendants are failing to ensure that there is an adequate number of sufficiently trained staff to render and implement professional judgments regarding adequate medical care, psychiatric treatment and training to LLHTS patients.

16. Defendants are failing to ensure appropriate and timely review and evaluation of the medical status, treatment and training needs of patients who reside at LLHTS.

17. Defendants are failing to employ staff and practices needed to maintain professionally based recordkeeping and record review systems to ensure that patient records contain accurate, up-to-date and relevant information as is necessary to enable staff to exercise professional judgment regarding medical, treatment and training decisions.

18. Defendants are failing to prescribe and administer psychotropic medication safely and pursuant to the exercise of professional judgment by appropriately qualified staff.

19. Defendants are failing to employ effective monitoring and quality assurance measures necessary to identify and correct the deficiencies described in paragraphs 13 through 18.

VIOLATIONS ALLEGED

20. The acts and omissions alleged in paragraphs 13 through 19 constitute patterns or practices of resistance to the full enjoyment of rights, privileges or immunities secured or protected by the Constitution of the United States, and deprive patients who reside at LLHTS of such rights, privileges or immunities.

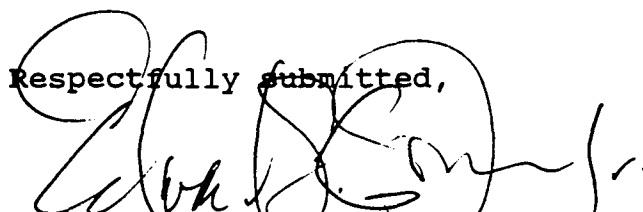
21. Unless restrained by this Court, Defendants will continue to engage in the conduct and practices set forth in paragraphs 13 through 19 above that deprive residents of LLHTS of rights, privileges, or immunities secured or protected by the Constitution of the United States, and cause irreparable harm to LLHTS residents.

PRAYER FOR RELIEF

22. The Attorney General is authorized under 42 U.S.C. § 1997 to seek only equitable relief.

WHEREFORE, the United States prays that this Court enter an order permanently enjoining defendants, their agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts, practices and omissions at LLHTS set forth in paragraphs 13 through 19 above, and to require defendants to take such action as will provide constitutional conditions of care to persons who reside at LLHTS. The United States further prays that this Court grant such other and further equitable relief as it may deem just and proper.

Respectfully submitted,



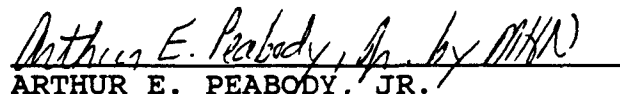
EDWARD S. G. DENNIS, JR.
Acting Attorney General of
the United States



WILLIAM A. LUTZ
United States Attorney
District of New Mexico



JAMES P. TURNER
Acting Assistant Attorney General
Civil Rights Division



ARTHUR E. PEABODY, JR.
Chief
Special Litigation Section

Mellie H. Nelson

MELLIE H. NELSON
Deputy Chief
Special Litigation Section

[Handwritten signature]

JEREMY I. SCHWARTZ
VERLIN HUGHES
CYNTHIA KATZ
Attorneys
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
320 First Street, NW
Washington, D.C. 20530
(202) 272-6055



Office of the Attorney General
Washington, D. C. 20530

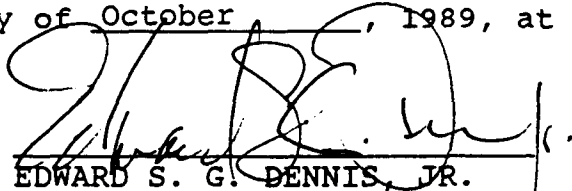
CERTIFICATE OF THE ATTORNEY GENERAL

I, Edward S. G. Dennis, Jr., Acting Attorney General of the United States, certify that with regard to the foregoing Complaint, I have complied with the provisions of 42 U.S.C. § 1997b(a)(1), (2). As required by 42 U.S.C. § 1997b(a)(3), I further certify that I believe that this action by the United States, regarding conditions of confinement at the Los Lunas Hospital and Training Center, Los Lunas, New Mexico, is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution of the United States.

Accordingly, having determined that the action here initiated is fully consistent with section 1997a, I have, pursuant to subsection 1997a(c), personally signed the foregoing Complaint. As required under subsection 1997b(b), I also have personally signed this Certificate.

Finally, I certify that all things that must be done as prerequisites to my initiating suit under 42 U.S.C. § 1997 have been done.

Signed this 16th day of October, 1989, at
Washington, D.C.


EDWARD S. G. DENNIS, JR.
Acting Attorney General of
the United States