

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

BRAD H., ROBERT K., MICHAEL R., CARL A.,  
SUSAN T., KEVIN W. and PAUL D., on behalf of  
themselves and all others similarly situated,

Plaintiffs,

- against -

The CITY OF NEW YORK; Hon. Rudolph W. GIULIANI,  
Mayor of the City of New York; the NEW YORK CITY  
HEALTH AND HOSPITALS CORP.; Dr. Luis R. MARCOS,  
M.D., President of the New York City Health and Hospitals  
Corp.; the NEW YORK CITY DEPARTMENT OF  
HEALTH; the NEW YORK CITY DEPARTMENT OF  
MENTAL HEALTH, MENTAL RETARDATION AND  
ALCOHOLISM SERVICES; Dr. Neal L. COHEN, M.D.,  
Commissioner of the New York City Department of Health  
and Commissioner of the New York City Department of  
Mental Health, Mental Retardation and Alcoholism Services;  
the NEW YORK CITY DEPARTMENT OF CORRECTION;  
Mr. Bernard B. KERIK, Commissioner of the New York City  
Department of Correction; the NEW YORK CITY HUMAN  
RESOURCES ADMINISTRATION; Mr. Jason A. TURNER,  
Administrator of the New York City Human Resources  
Administration; ST. BARNABAS HOSPITAL; and Dr.  
Ronald GADE, M.D., President of St. Barnabas Hospital,

Defendants.

INDEX NO. \_\_\_\_\_

COMPLAINT

CLASS ACTION

Plaintiffs, by their attorneys, respectfully allege upon knowledge as to themselves  
and upon information and belief as to all other matters, on behalf of themselves and all  
others similarly situated, the following:

### PRELIMINARY STATEMENT

1. Plaintiffs bring this action on their own behalf and on behalf of a class, more specifically defined herein, consisting of similarly situated mentally ill inmates in New York City jails ("City Jails"). Plaintiffs seek declaratory and injunctive relief requiring Defendants to provide adequate discharge planning services as part of the mental health care that Plaintiffs and other class members receive during their incarceration.

Defendants' continuing failure to provide adequate discharge planning services to Plaintiffs and to other members of the class violates (a) New York Mental Hygiene Law § 29.15, (b) 14 NYCRR § 587, *et seq.*, and (c) the rights of Plaintiffs and other members of the class under Art. I, §§ 5 and 6 of the New York State Constitution.

2. "Discharge planning" refers to the practice whereby a provider of mental health care develops a plan for the continuation of a patient's treatment following the patient's discharge from the provider's care. A typical discharge plan addresses such issues as (a) whether and how a patient will receive needed psychotropic medication upon discharge from care, (b) whether and how a patient will continue to participate in individual and group therapy, and (c) whether and how a patient will obtain other necessary services such as supportive housing and public benefits. Depending on the context in which the patient was treated, adequate discharge planning may also require the care provider to follow up with a patient after discharge, so as to maximize the chances of that patient adhering to the discharge plan.

3. Discharge planning is specifically required by Mental Hygiene Law § 29.15 and 14 NYCRR § 587, *et seq.*

4. Discharge planning is also an essential component of mental health care rendered in accordance with widely accepted standards of psychiatric practice. By providing for continuity of care between different mental health care providers, discharge planning helps ensure that individuals with mental illnesses do not relapse upon discharge from one provider's care. Without proper discharge planning and transition to adequate subsequent care, individuals may relapse, act in a bizarre manner, have auditory or visual hallucinations, have diminished contact with reality, suffer from paranoia, withdraw from society, and run a higher risk than those remaining in care of needless suffering and deterioration leading to suicide or rearrest.

5. Approximately 25,000 pre-trial detainees, sentenced inmates and other individuals (collectively, "inmates"), including Plaintiffs herein, receive mental health care each year in City Jails. These services include the prescription of psychotropic medications that control the symptoms of mental illness as well as individual and group therapy. St. Barnabas Hospital ("St. Barnabas") provides inpatient and outpatient mental health care services in the majority of City Jails pursuant to a contract (the "St. Barnabas Contract") between it and the New York City Health and Hospitals Corporation ("HHC"). In the remaining City Jails, those services are provided by the staff of HHC.

6. Despite the compelling legal and medical reasons to provide discharge planning, Defendants systematically fail to provide adequate discharge planning services to the vast majority of inmates receiving mental health care in City Jails. As a result, when Plaintiffs and the other members of the class are released from City Jails to the community, they are unlikely to receive even the most basic assistance to ensure they continue their mental health care with community-based mental health care providers. In the vast

majority of cases, Defendants will release Plaintiffs and the other class members from City Jails without (a) helping them secure community-based mental health services where they can receive therapy, counseling and medication, (b) providing them temporary supplies of needed psychotropic medications or the means to obtain such medications before the reappearance of symptoms, or (c) helping them apply for Medicaid, other public benefits or appropriate housing.

7. Defendants themselves have admitted that discharge planning can help stop the cycle of arrest, rearrest and sporadic treatment that many individuals with mental illness experience. For example, in its response to the City's Request for Proposals to provide health services in City Jails, which is specifically incorporated into the St. Barnabas Contract, St. Barnabas stated:

An inmate's detention in jail is often one of the few opportunities that qualified health professionals have to identify serious health conditions and intervene through the establishment of a course of treatment and patient education. Without intervention and the establishment of a plan to ensure continuity of care, many detainees will return to the health system only after their conditions become severely worse . . .

St. Barnabas Contract, Attach. B, Ch. I, 28.

8. The failure to provide adequate discharge planning in City Jails causes irreparable harm to Plaintiffs and other members of the class. Upon admission to City Jails, many inmates with mental illnesses are destitute and/or homeless. Although the care provided in City Jails may stabilize their mental health, without discharge planning they are very likely to revert after release to their former conditions or worse. The failure to provide adequate discharge planning also makes it more likely that they will become homeless, more likely that they will become crime victims, and less likely that they will be

able to obtain proper treatment for any other illnesses or conditions they may have. Ultimately, inmates with mental illnesses who are released to the community without adequate discharge planning are more likely than others to act in ways that precipitate their return to jail or to a hospital.

### **JURISDICTION AND VENUE**

9. The Court has jurisdiction over this action pursuant to Article VI, § 7(a) of the New York State Constitution.

10. Venue is proper pursuant to CPLR § 504(3) and N.Y. Unconsol. Law § 7401(3).

### **CLASS ACTION ALLEGATIONS**

11. Plaintiffs bring this action individually and as a class action under CPLR Article 9, as representatives of a class (the "Class") consisting of themselves and of all other inmates (a) who are currently confined or who will be confined in City Jails, (b) whose period of confinement in City Jails lasts 24 hours or longer, and (c) who, during their confinement in City Jails, have received, are receiving or will receive treatment for mental illness. For purposes of defining the Class, "mental illness" means "an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking, or judgment to such an extent that the person afflicted requires care, treatment and rehabilitation." Mental Hygiene Law § 1.03(20).

12. This action is properly brought as a class action pursuant to CPLR Article 9 because:

a. The Class consists of thousands of people and is thus so numerous that joinder of all Class members is impracticable.

b. The claims of all Class members present common questions of law, which predominate over any questions affecting only individual Class members, including:

(i) whether Defendants violate their statutory and regulatory obligations to the Class by failing to provide Class members with adequate discharge planning before releasing them from City Jails;

(ii) whether Defendants violate Art. I, §§ 5 and 6 of the New York State Constitution by failing to provide Class members with adequate discharge planning before releasing them from City Jails; and

(iii) whether Plaintiffs are entitled to declaratory and injunctive relief requiring Defendants to provide adequate discharge planning to all Class members.

c. Plaintiffs' claims are typical of those of the Class.

d. Plaintiffs will fairly and adequately protect the interests of the Class, and Plaintiffs have retained attorneys experienced in class and complex litigation as their counsel.

e. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

(i) this action will cause an orderly and expeditious administration of the Class' claims; economies of time, effort and expense will be fostered; and uniformity of decision will be ensured; and

(ii) this action presents no difficulties impeding its management by the Court as a class action.

## **FACTS**

### **A. Plaintiffs**

#### **Brad H.**

13. Brad H. is 44 years old. He has been diagnosed with schizophrenia, chronic paranoid type, and alcohol dependence. He has been receiving periodic treatment for his mental illness since he was nine years old. From the ages of 9 through 18, he lived in a psychiatric hospital, and since then he has received inpatient mental health treatment in a number of other hospitals. He has been treated with many medications and therapies, including electroconvulsive therapy. He has been an inmate in City Jails approximately 26 times, and has received treatment for his mental illness on each of those occasions. On none of those occasions has he been provided with discharge planning.

14. Before his most recent arrest, for allegedly jumping a subway turnstile, Brad H. was homeless and living in subway stations. He is currently incarcerated on Rikers Island where he is once again receiving treatment for mental illness. As has happened on every prior occasion when he was discharged from jail, no one has discussed with Brad H. how he will receive medication and other mental health services upon his release or how he will obtain SSI or Medicaid benefits or supportive housing. Without such discharge planning, he is very unlikely to be able to obtain treatment on his own after he is released. Without continued treatment, the symptoms of Brad H.'s mental illness are likely to worsen -- in clinical terms, he will "decompensate" -- and he is likely to suffer the

associated adverse symptoms of decompensation. These symptoms often result in extreme emotional suffering and are very likely to significantly impair Brad H.'s ability to care for himself, to disrupt his interactions with others, and to reduce his opportunities to work.

**Robert K.**

15. Robert K. is 38. He began seeing a psychiatrist at the age of five or six, and began taking medication for his mental illness at age 16 or 17. He began a pattern of substance abuse in his early 20s, and since then he has been arrested approximately 30 times, at least twice on assault charges and frequently for alleged drug offenses. Robert K. has been diagnosed with schizophrenia, chronic paranoid type, and opiate and alcohol dependence. He hears voices in his head that command him to do things. He has attempted to commit suicide several times. Every time he has been arrested, he has received treatment for his mental illness.

16. Robert K. is currently incarcerated at Rikers Island. He has pled guilty to a charge of drug possession, and on August 31, 1999, he will be sentenced to several months in jail. At Rikers Island, he is once again receiving treatment for mental illness. Before his most recent arrest, Robert K. was enrolled in an intensive case management program for mentally ill individuals, which he had begun upon his release from state prison in 1995. However, two months before his most recent arrest, his case manager left the program, and without her assistance, he was unable to obtain the medication he needed for the treatment of his mental illness. Two weeks before his most recent arrest, Robert K. went to Jamaica Hospital, stayed there for two days and received medication for the treatment of his mental illness. After leaving Jamaica Hospital, he was unable to obtain

any of the medication he needed. Shortly thereafter, he was arrested on drug charges and sent to Rikers Island.

17. Since his arrival at Rikers Island, no one has assisted Robert K. in determining how he will continue his treatment upon release. Without such discharge planning, Robert K. is unlikely to be able to obtain treatment on his own. Without treatment he is likely to decompensate and may be rearrested or try to commit suicide again.

**Michael R.**

18. Michael R. is 19. Until recently, he lived in the western United States, where he received inpatient and outpatient mental health treatment for approximately six years. He had been in New York for a few days, living on the streets, when he was arrested for allegedly stealing a cellular telephone. He has yet to stand trial. Initially, he was incarcerated on Rikers Island; he is currently incarcerated in the Forensic Psychiatric Ward at Bellevue Hospital, where he is receiving medication and therapy for his mental illness. Michael R. suffers from a serious mental illness that doctors believe is probably schizophrenia, chronic paranoid type. It also appears that Michael R. suffers from a substance abuse disorder. He has attempted suicide on at least one occasion and repeatedly mutilates himself by cutting his hands and arms.

19. Upon release, Michael R. will need assistance obtaining housing, psychiatric treatment and benefits. Without discharge planning, Michael R. is unlikely to be able to obtain treatment on his own after he is released. He is therefore likely to decompensate, and, based on his medical history, he may attempt to commit suicide or mutilate himself again.

Carl A.

20. Carl A. is 44 and was diagnosed with schizophrenia in 1980. He experiences auditory and visual hallucinations, and has paranoid delusions and delusions of grandeur. He also has a history of arrests; his most recent arrest was for attempted murder. Before his arrest, Carl A. lived in a rented room in Rockaway Park, which he has probably lost as a result of nonpayment of rent since his arrest in April.

21. Carl A. is currently incarcerated at Rikers Island, where he is receiving inpatient treatment for his mental illness. Upon release, Carl A. will need help in obtaining housing and treatment. No one at Rikers Island, however, has discussed a discharge plan with him. Carl A. is unlikely to be able to obtain adequate treatment on his own after his release. Without discharge planning, it is likely his psychiatric symptoms will reappear after he is released.

Susan T.

22. Susan T. is 43, and she is currently incarcerated at Rikers Island, where she is receiving treatment for mental illness. Susan T. has been arrested numerous times on charges of violating an order of protection obtained by her husband. She also has a substance abuse disorder. Before she was arrested, she was homeless and lived in a shelter for women. Susan T. has only recently started receiving treatment for mental illness while incarcerated. She previously received some treatment in the community, but when her Medicaid card "stopped working," so did the treatment.

23. Although Susan T. has received treatment for mental illness during her current incarceration, no one has discussed with her where she might live, how she should obtain public assistance and Medicaid and what treatment she might need upon her

release. On her own, Susan T. is unlikely to be able to obtain the medication and other psychiatric services that she needs. Without discharge planning, she is likely to decompensate after her release and continue the behavior that has led to her repeated incarcerations.

**Kevin W.**

24. Kevin W. is 36. He has been arrested approximately 15 times, often on charges of drug possession. His most recent arrest was for allegedly wielding a knife in the subway. He has been diagnosed with schizophrenia, chronic undifferentiated type, and suffers from cocaine dependency. Kevin W. has never received Medicaid insurance as an adult, so despite three episodes of inpatient treatment during prior incarcerations, he has never been able to continue his treatment after discharge.

25. Kevin W. is currently incarcerated at Rikers Island, where he is receiving inpatient treatment for mental illness. He has told mental health staff that voices have been screaming loudly at him in the mornings. No one at Rikers Island has discussed with Kevin W. how he will continue his treatment upon his release. It is very unlikely that, absent discharge planning, he will be able to obtain treatment on his own. Without such discharge planning, it is likely that he will decompensate upon release and be rearrested.

**Paul D.**

26. Paul D. is 33 and is currently incarcerated on Rikers Island. Before his arrest for allegedly violating an order of protection, he was homeless and sleeping in shelters. He has a history of repeated arrests for alleged harassment. Paul D. has been diagnosed with psychosis NOS (not otherwise specified) and cocaine dependence. He has an extensive history of psychiatric treatment, including treatment for auditory

hallucinations. He has, in the past, attempted to commit suicide. During his previous and current incarcerations, he has received treatment for his mental illness.

27. Upon release, Paul D. will need help in obtaining treatment, housing and public assistance. Without that help, it is likely he will decompensate and continue the behaviors that resulted in his previous arrests.

#### **B. Defendants**

28. Defendants are the individuals, corporate bodies and public agencies responsible for providing mental health services in City Jails, and for ensuring that, upon release, inmates of City Jails receive the public assistance to which they are entitled.

29. The City of New York (the "City") is ultimately responsible for the welfare of inmates held in City Jails. Through the New York City Charter ("City Charter"), the City has delegated that responsibility to various agencies. Rudolph W. Giuliani is the Mayor of the City.

30. Section 556(k) of the City Charter requires the New York City Department of Health (the "Department of Health"), except as otherwise provided by law, to "promote or provide medical and health services for the inmates of prisons maintained and operated by the City." The New York City Department of Mental Health, Mental Retardation and Alcoholism Services (the "Department of Mental Health") is the City agency responsible for supervising and monitoring the provision of mental health services.

31. Dr. Neal L. Cohen is the Commissioner of the Department of Health and the Department of Mental Health. As Commissioner of the Department of Mental Health, he is charged with:

*establishing coordination and cooperation among all providers of services, coordinating the department's program with the program of the state department of mental hygiene so that there is a continuity of care among all providers of services, and seeking to cooperate by mutual agreement with the state department of mental hygiene and its representatives and with institutions in such department and their representatives in pre-admission screening and in post-hospital care of persons suffering from mental disability.*

City Charter, §593(j) (emphasis added).

32. HHC is a public benefit corporation created by the New York City Health and Hospitals Corporation Act. Its functions include the provision and delivery of mental health care to the inhabitants of the City. Dr. Luis R. Marcos is the President of HHC.

33. Pursuant to section 623 of the City Charter, the Department of Correction, through its Commissioner, Mr. Bernard B. Kerik, has "all authority, except as otherwise provided by law, concerning the care and custody" of those confined in City jails. In particular, Mr. Kerik is responsible for the "[c]harge and management of all institutions of the city, including all hospital wards therein for the care and custody of [inmates] who require hospital care, including those requiring psychiatric observation or treatment."

34. The Departments of Health, Mental Health and Correction, the City of New York and HHC entered into an Agreement dated as of July 1, 1998, wherein HHC agreed to administer health care to inmates in City Jails. That contract, which is similar to agreements that had been in force prior to July 1, 1998, specifies the scope of mental health services that must be provided.

35. Pursuant to the St. Barnabas Contract, HHC subcontracted the majority of City Jail health care services to St. Barnabas. Dr. Ronald Gade is the President of St. Barnabas. Under the St. Barnabas Contract, which became effective January 1, 1998, St.

Barnabas assumed the responsibility for providing mental health services to inmates detained on Rikers Island, in the Manhattan Detention Center and in the Vernon C. Bain Center in the Bronx. Mental health services at the remaining City Jails are provided by Correctional Health Services, a division of HHC.

36. The New York City Human Resources Administration ("HRA") is responsible for the administration of public assistance and Medicaid in the City of New York. Pursuant to Mental Hygiene Law § 29.15(n), HRA is charged with cooperating with mental health facilities in City Jails in the preparation and implementation of discharge plans required for inmates who will be released. Mr. Jason A. Turner is Administrator of the HRA.

### **C. Mental Health Care Provided in the New York City Jail System**

37. New York City's jail system is composed of "borough houses" of detention in Manhattan, Brooklyn, the Bronx and Queens, secure hospital units, and ten separate jails on Rikers Island, including facilities for women and adolescents. According to the City's internet website, in its 1999 fiscal year (through April 8, 1999), the City Jails had an average daily population, or "census," of 17,897 inmates. In 1998, the City Jails had an annual total of 129,998 inmate admissions, and approximately two-thirds of the inmates in the City Jails were pre-trial detainees. The average length of stay for pre-trial detainees in fiscal year 1999 (through March) was 43.1 days; for prisoners sentenced to serve time in City Jails, it was 33.2 days.

38. According to the St. Barnabas Contract, the rate of mental health care utilization in City Jails is nearly five times as high as that among the non-incarcerated

population. In 1997, approximately 33,300 inmates — or about 25% of the total annual population — received mental health treatment in City Jails.

39. In testimony provided to the City Council Subcommittee on Mental Health, Mental Retardation, Alcoholism and Drug Abuse Services on April 22, 1998, Dr. Arthur Lynch, then-Director of CHS Mental Health Services, stated that there were 192,228 mental health visits in City Jails during Fiscal Year 1997. Dr. Lynch also stated that the most prevalent psychiatric diagnoses in City Jails are schizophrenia and mood disorders, including bipolar disorder and major depression.

40. On March 5, 1998, *The New York Times* reported that, of the City Jail inmates who received treatment for mental illness in 1997, approximately 15,000 were treated for serious mental disorders. The *Times* also reported that on average, inmates who receive treatment for mental illnesses spend 215 days in City Jails as opposed to 42 days for those without mental illnesses.

41. Many mentally ill inmates also suffer from serious medical conditions, including tuberculosis and HIV/AIDS. In addition, according to Dr. Lynch, up to 75% or 80% of the City Jail population at any given time suffers from a drug or alcohol dependency. All of these conditions complicate the provision of treatment for mental illnesses, both during incarceration and upon release.

42. To serve the thousands of inmates requiring mental health care each year, City Jails provide a variety of different mental health services on both an inpatient and outpatient basis.

43. Inpatient psychiatric services in the City Jails are provided in "segregated

mental health units," that is, wards that are segregated from the facilities where most prisoners live and are reserved specifically for mentally ill inmates.

44. One type of segregated mental health unit is a Mental Observation Unit ("MOU"). There are nine MOUs, together capable of housing up to 625 inmates at a time. The St. Barnabas Contract provides for inmates to be assigned to MOUs if they are seriously or persistently mentally ill, at a high risk for suicide, and/or seriously depressed. After receiving psychiatric evaluations, those inmates engage in individual and group therapy sessions with the mental health staff, are subject to extensive suicide prevention measures, and are prescribed and administered psychotropic medication as appropriate. The St. Barnabas Contract recites that the average length of stay in MOUs is 40 days, and that the nine MOUs handle approximately 5,300 inmates a year.

45. Another type of segregated mental health unit is the 200-bed Mental Health Center at the Anna M. Kross Center on Rikers Island ("C-71"). This facility provides full-time, around-the-clock psychiatric, medical and nursing care for actively disturbed male inmates too ill for the MOUs. C-71 provides treatments for mental illness similar to those provided in the MOUs, but on a more intensive basis. According to the St. Barnabas Contract, the average length of stay in C-71 is 60 days, and C-71 handles approximately 1,200 inmates a year. St. Barnabas has contracted to build the Women's Mental Health Center at Rose M. Singer Center that will provide similar care to severely mentally ill female inmates.

46. A third type of segregated mental health unit is the 24-bed Behavioral Management Unit ("BMU"), located in the Bronx, and operated by St. Barnabas in which mental health staff work exclusively with unusually aggressive, mentally ill men. The

average length of stay in the BMU is 60 days, and the BMU handles approximately 150 inmates a year.

47. Finally, inmates who cannot be stabilized in the segregated mental health units may be referred for treatment at one of three forensic hospital wards located in HHC hospitals.

48. Mentally ill inmates who do not meet the criteria for referral to one of the segregated mental health units described above receive mental health care treatment within City Jails while remaining part of the general population. According to the St. Barnabas Contract, these inmates may receive psychiatric evaluations, psychotropic medication and/or counseling services in addition to other appropriate psychiatric treatment.

49. The mental health treatment provided to inmates in the general population is at least equivalent to that provided to non-incarcerated mentally ill persons by outpatient, community-based mental health programs.

**D. How Inmates Are Discharged from Care**

50. City Jails release approximately 25,000 mentally ill inmates each year. When mentally ill inmates who have served a sentence are released from Rikers Island, where the vast majority of inmates are housed, jail officials simply put them on a bus with all the other inmates being released that day, drive them to Queens Plaza and release them between 2 a.m. and 6 a.m. Each inmate released is provided with \$1.50 and two subway tokens.

51. Pre-trial detainees are processed differently. Those who accept a plea bargain or who are convicted serve their sentence either on Rikers Island or in the New

York State prison system. Many pre-trial detainees, however, are released directly from court. They must then make their way back to Rikers Island to collect whatever possessions they surrendered on admission (which can include wallets, watches and clothes).

52. As a matter of practice, when releasing mentally ill inmates from City Jails and from courts, Defendants do not provide those inmates with (a) written discharge plans to facilitate the continuation of their necessary mental health care, (b) interim supplies of medication or prescriptions for medication until they can obtain and fill a prescription in the community, (c) referrals and linkages to community mental health service providers, or (d) arrangements for appropriate supportive housing or shelter.

53. Despite its statutory mandate to do so, HRA does not work with other Defendants to ensure that mentally ill inmates have Medicaid coverage and public assistance upon release from City Jails. Other Defendants also fail, as a matter of practice, to make reasonable pre-discharge efforts to assist inmates to secure Medicaid and public assistance which they will need and for which they are likely to be eligible.

54. Defendants' failure to help inmates with mental illness apply for Medicaid and public assistance before they are released causes Plaintiffs and the Class significant injury. Many mentally ill arrestees have no insurance or income when they are arrested. Inmates lose their eligibility for Medicaid and public assistance at the time they are incarcerated and need to apply or reapply when they are released. It takes at least six to eight weeks to obtain Medicaid benefits and public assistance once released. Having neither insurance nor income, a mentally ill person released from jail lacks coverage to obtain the medications and/or therapy she or he needs to remain stable.

55. Defendants have acknowledged the importance of discharge planning for mentally ill inmates by establishing a discharge planning program known as "NYC-LINK." In Fiscal Year 1997, however, the program served at most 1,200 adults and 125 adolescents per year selected from City Jails *and* from the New York State prison system. Thus, NYC-LINK provides services to a small fraction of the approximately 25,000 mentally ill inmates discharged from City Jails each year. Further, in the majority of cases, the level of discharge planning provided by NYC-LINK did not comport with accepted psychiatric standards.

56. In sum, Defendants fail to discharge most mentally ill inmates pursuant to a written discharge plan, and they have failed to develop a plan for assuring continuity of care between mental health care provided in City Jails and mental health care available from community-based providers.

**E. Without Discharge Planning, Plaintiffs Suffer Irreparable Harm**

57. Without discharge planning, Plaintiffs and other Class members will suffer irreparable harm. For many individuals with mental illnesses, the structure imposed by incarceration leads to improvements in their mental health. The symptoms of their illness are often effectively controlled through the therapy and medication provided in jail.

58. Abrupt termination of psychotropic medication and psychiatric treatment along with the inmate's sudden release into an unstructured environment produces three extremely undesirable results: (a) it significantly increases the risk that the inmate will suffer a relapse, (b) it increases the likelihood that the inmate will commit suicide, and

(c) it may cause significant discomfort associated with withdrawal symptoms. Further, inmates with substance abuse disorders are far more likely to return to abusing addictive substances if the treatment program for their mental illness is interrupted.

59. An individual who relapses may experience symptoms such as bizarre behavior, poor contact with reality, auditory or visual hallucinations, social withdrawal, paranoia and psychotic thinking. These symptoms result in severe emotional suffering and impair the ability to care for oneself, the ability to find or keep a job and the ability to interact with others. For some inmates, relapses may also lead to aggressive or violent behavior and re-arrest.

60. Furthermore, there is an increased risk of homelessness for inmates with mental illnesses during the period immediately following incarceration. The lack of adequate discharge planning makes it extremely unlikely that such inmates will be able to access appropriate supportive housing upon release.

61. Discharge planning is an integral part of psychiatric care, and is recognized as such by the New York State Board of Regents, the American Psychiatric Association, the American Association of Correctional Psychologists, the National Commission on Correctional Health Care and the Joint Commission on Accreditation of Health Care Organizations. Failure to provide discharge planning services departs from these accepted standards of psychiatric care.

62. In his April 28, 1998 testimony before the City Council Subcommittee on Mental Health, Mental Retardation, Alcoholism and Drug Abuse Services, Dan H. Still, First Deputy Commissioner of the Department of Mental Health, characterized discharge planning as "perhaps one of the most important aspects" of care provided to mentally ill

inmates, and stated that without adequate discharge planning, "even the best of mental health care services provided in confinement will have little or no lasting effect when the client returns to the community."

**First Cause of Action**  
**Mental Hygiene Law § 29.15**  
**(As to All Defendants)**

63. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

64. Defendants provide psychiatric inpatient services to mentally ill inmates in City Jails, including Plaintiffs and other members of the Class. Those services are subject to licensure by the New York State Office of Mental Health.

65. Defendants have failed to create and implement adequate discharge plans for Plaintiffs and other Class members in accordance with Mental Hygiene Law § 29.15. As a result, Plaintiffs and other Class members will be released from City Jails without any provision for the continuation of necessary mental health care after their release.

66. Defendants, through the acts and omissions described above, deprive Plaintiffs and other Class members of their rights under Mental Hygiene Law §29.15.

67. Declaratory relief is appropriate pursuant to CPLR § 3001 because there is a justiciable controversy as to whether Defendants deprive Plaintiffs and other Class members of their rights under Mental Hygiene Law § 29.15 by failing to provide adequate discharge planning.

68. Defendants' failure to provide adequate discharge planning has caused and is causing irreparable injury to Plaintiffs and other Class members, and, unless enjoined, will

cause further irreparable injury, leaving Plaintiffs and other Class members with no adequate remedy at law.

**Second Cause of Action**  
**New York Code of Rules and Regulations**  
**Title 14, Chapter XIII, §587, et seq.**  
**(As to All Defendants Except New York City Human Resources Administration and**  
**Mr. Jason A. Turner)**

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69. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

70. Defendants provide nonresidential psychiatric outpatient services to mentally ill inmates in City Jails, including Plaintiffs and other Class members. The programs through which those services are provided are subject to the certification requirements of section 31.02 of the Mental Hygiene Law.

71. Defendants have failed to create and implement adequate discharge plans for Plaintiffs and other Class members in accordance with 14 NYCRR § 587, et seq. As a result, Plaintiffs and other Class members will be released from City Jails without any provision for the continuation of necessary mental health care after their release.

72. Defendants, through the acts and omissions described above, deprive Plaintiffs and other Class members of their rights under 14 NYCRR § 587, et seq.

73. Declaratory relief is appropriate pursuant to CPLR § 3001 because there is a justiciable controversy as to whether Defendants deprive Plaintiffs and other Class members of their rights under 14 NYCRR § 587, et seq. by failing to provide adequate discharge planning.

74. Defendants' failure to provide adequate discharge planning has caused and is causing irreparable injury to Plaintiffs and other Class members, and, unless enjoined, will

cause further irreparable injury, leaving Plaintiffs and other Class members with no adequate remedy at law.

**Third Cause of Action  
Constitutional Violations  
(As to All Defendants Except New York City Human Resources Administration  
and Mr. Jason A. Turner)**

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75. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs as if fully set forth herein.

76. Plaintiffs and other members of the Class have a serious medical need for adequate discharge planning. Without adequate discharge planning during their incarceration, Plaintiffs and other Class members likely will have, no release, no access to medication or other psychiatric services that they have received while incarcerated. Absent medication or treatment, Plaintiffs are more likely to decompensate upon release and suffer significant and irreparable injury.

77. Through their policy and practice of failing to provide adequate discharge planning, Defendants act with deliberate indifference to the serious medical needs of those Plaintiffs and other Class members who are sentenced inmates, in violation of their rights under Art. I, § 5 of the New York State Constitution.

78. Through their policy and practice of failing to provide adequate discharge planning, Defendants act with deliberate indifference to the serious medical needs of those Plaintiffs and other Class members who are pre-trial detainees, in violation of their rights under Art. I, § 6 of the New York State Constitution.

79. Defendants act with a culpable state of mind in that they know of and disregard the excessive risks to inmate health and safety caused by the failure to provide adequate discharge planning.

80. Defendants' systemic failure to provide adequate discharge planning constitutes a substantial departure from accepted professional judgment and violates national and state professional standards for mental health care.

81. Further, the harm to pre-trial detainee Plaintiffs and other Class members resulting from the lack of discharge planning significantly outweighs any governmental interest in denying them these services.

82. Declaratory relief is appropriate pursuant to CPLR § 3001 because there is a justiciable controversy as to whether Defendants deprive Plaintiffs and other Class members of their rights under Article I, §§ 5 and 6 of the New York State Constitution by failing to provide adequate discharge planning.

83. Defendants' failure to provide adequate discharge planning has caused and is causing irreparable injury to Plaintiffs and other Class members, and, unless enjoined, will cause further irreparable injury, leaving Plaintiffs and other Class members with no adequate remedy at law.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Brad H., Robert K., Michael R., Carl A., Susan T., Kevin W. and Paul D., on behalf of themselves and members of the Class, respectfully pray that this Court enter judgment:

1. Certifying the Class described herein pursuant to CPLR Article 9;

2. Declaring pursuant to CPLR § 3001 (a) that Defendants, as specified in the causes of action, violate Mental Hygiene Law § 29.15, 14 NYCRR § 587, *et seq.*, and Art. I, §§ 5 and 6 of the Constitution of the State of New York by failing to provide adequate discharge planning to Plaintiffs and other Class members, and (b) that Plaintiffs and other Class members have a right to such discharge planning;

3. In respect of Plaintiffs and Class members who have received, are receiving or will receive treatment for a mental illness on an inpatient basis, granting preliminary and permanent injunctive relief that would require Defendants:

a. to provide each such Class member with a written discharge plan that complies with Mental Hygiene Law § 29.15, professional psychiatric standards and the relevant provisions of the St. Barnabas Contract, and to implement that plan in accordance with Mental Hygiene Law § 29.15;

b. to make arrangements for follow-up as required and in compliance with Mental Hygiene Law § 29.15; and

c. to provide discharge planning services otherwise in compliance with Article I, §§ 5 and 6 of the New York State Constitution;

4. In respect of Plaintiffs and Class members who have received, are receiving or will receive treatment for a mental illness on an outpatient basis, granting preliminary and permanent injunctive relief that would require Defendants:

a. to provide each such Class member with a written discharge plan in accordance with 14 NYCRR § 587, professional psychiatric standards and the relevant provisions of the St. Barnabas Contract;

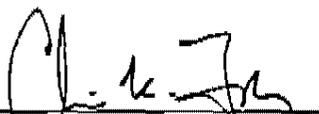
- b. to identify in each such discharge plan the resources and supports needed for transition of each Class member to programs outside the correctional system; and
  - c. to discharge each Class member in accordance with the terms of such discharge plan, and to make all necessary referrals, including linkages for treatment, rehabilitation and support services, based on an assessment of each Class member's mental status, strengths, weaknesses, problems, service needs, the demands of the Class member's post-discharge living, working and social environment, and the Class member's own goals, needs and desires; and
  - d. to provide discharge planning services otherwise in compliance with Article I, §§ 5 and 6 of the New York State Constitution;
5. Awarding Plaintiffs costs and disbursements, including reasonable attorneys' fees incurred in this action; and

6. Granting such other and further relief as is just and proper.

Dated: New York, New York  
August 24, 1999

Respectfully submitted,

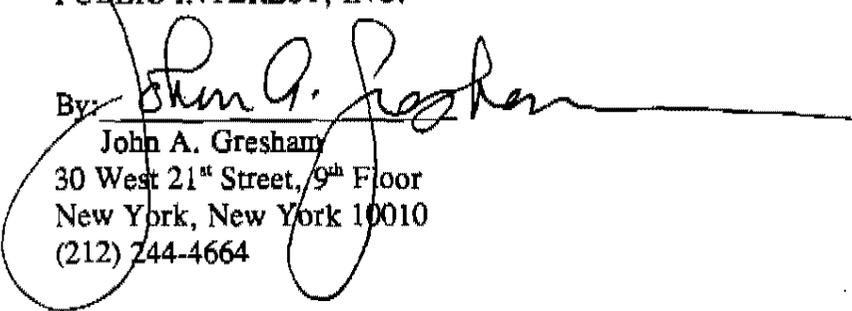
DEBEVOISE & PLIMPTON

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NEW YORK LAWYERS FOR THE  
PUBLIC INTEREST, INC.

By:   
John A. Gresham  
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(212) 244-4664

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

BRAD H., ROBERT K., MICHAEL R., CARL A.,  
SUSAN T., KEVIN W. and PAUL D., on behalf of  
themselves and all others similarly situated,

Plaintiffs,

- against -

The CITY OF NEW YORK; Hon. Rudolph W. GIULIANI,  
Mayor of the City of New York; the NEW YORK CITY  
HEALTH AND HOSPITALS CORP.; Dr. Luis R. MARCOS,  
M.D., President of the New York City Health and Hospitals  
Corp.; the NEW YORK CITY DEPARTMENT OF HEALTH;  
the NEW YORK CITY DEPARTMENT OF MENTAL  
HEALTH, MENTAL RETARDATION AND ALCOHOLISM  
SERVICES; Dr. Neal L. COHEN, M.D., Commissioner of the  
New York City Department of Health and Commissioner of the  
New York City Department of Mental Health, Mental  
Retardation and Alcoholism Services; the NEW YORK CITY  
DEPARTMENT OF CORRECTION; Mr. Bernard B. KERIK,  
Commissioner of the New York City Department of Correction;  
the NEW YORK CITY HUMAN RESOURCES  
ADMINISTRATION; Mr. Jason A. TURNER, Administrator of  
the New York City Human Resources Administration; ST.  
BARNABAS HOSPITAL; and Dr. Ronald GADE, M.D.,  
President of St. Barnabas Hospital,

Defendants.

Index No. \_\_\_\_\_

SUMMONS

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this  
action and to serve a copy of your answer on Plaintiffs' attorneys within 20 days after

service of this summons, exclusive of the date of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York) and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

New York County is designated as the place of trial. Venue properly lies in New York County pursuant to CPLR § 504(3) and N.Y. Unconsol. Law § 7401(3) because the events complained of arose in New York County.

Dated: New York, New York  
August 24, 1999

Yours,

DEBEVOISE & PLIMPTON

By: 

Christopher K. Tahbaz

John Beaglehole

Eileen E. Sullivan

Faune P. Devlin

Jeffrey K. Powell

875 Third Avenue

New York, New York 10022

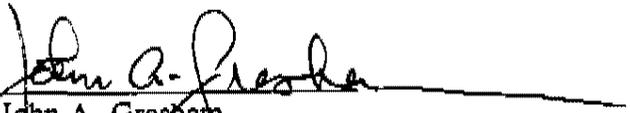
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Attorneys for the Plaintiffs

# REQUEST FOR JUDICIAL INTERVENTION

UCS-340 R27 14

For Clerk Only

Supreme COURT, New York COUNTY

INDEX NO.  
DATE PURCHASED

8/24/99

**PLAINTIFF(S):**

Brad H., Robert K., Michael R., Carl A., Susan T., Kevin W., and Paul D., on behalf of themselves and all others similarly situated,

**DEFENDANT(S):**

The City of New York, et al.,

IAS entry date

Judge Assigned

RJI Date

Date issue joined: N/A Bill of particulars served:  Yes  No

**NATURE OF JUDICIAL INTERVENTION (check ONE box only AND enter information)**

- Request for preliminary conference
- Note of issue and/or certificate of readiness
- Notice of motion (return date \_\_\_\_\_)  
Relief sought \_\_\_\_\_
- Order to show cause (clerk enter return date \_\_\_\_\_)  
Relief sought \_\_\_\_\_
- Other ex parte application (specify \_\_\_\_\_)
- Notice of petition (return date \_\_\_\_\_)  
Relief sought \_\_\_\_\_
- Notice of medical or dental malpractice action (specify \_\_\_\_\_)
- Statement of net worth
- Writ of habeas corpus
- Other (specify \_\_\_\_\_)

**NATURE OF ACTION OR PROCEEDING (Check ONE box only)**

**MATRIMONIAL**

- Contested -CM
- Uncontested -UM
- COMMERCIAL**
- Contract -CONT
- Corporate -CORP
- Insurance (where insurer is a party, except arbitration) -INS
- UCC (including sales, negotiable instruments) -UCC
- \*Other Commercial \_\_\_\_\_ -OC

**REAL PROPERTY**

- Tax Certiorari -TAX
- Foreclosure -FOR
- Condemnation -COND
- Landlord/Tenant -LT
- \*Other Real Property \_\_\_\_\_ -ORP

**OTHER MATTERS**

- \*Prisoners' Rights LitigationOTH

**TORTS**

- Malpractice**
- Medical/Podiatric -MM
- Dental -DM
- \*Other Professional \_\_\_\_\_ -OPM
- Motor Vehicle -MV
- \*Products Liability \_\_\_\_\_ -PL
- Environmental -EN
- Asbestos -ASB
- Breast Implant -BI
- \*Other Negligence \_\_\_\_\_ -OTN
- \*Other Tort (including intentional) \_\_\_\_\_ -OT

**SPECIAL PROCEEDINGS**

- Art. 75 (Arbitration) -ART75
- Art. 77 (Trusts) -ART77
- Art. 78 -ART78
- Election Law -ELEC
- Guardianship (MGL Art. 81) -GUARD81
- \*Other Mental Hygiene \_\_\_\_\_ -MHTO
- \*Other Special Proceeding \_\_\_\_\_ -OSP

\*If asterisk used, please specify further.

Check "YES" or "NO" for each of the following questions. Is this action/proceeding against a:

YES  NO Municipality: (Specify City)  YES  NO Public Authority: (Specify: \_\_\_\_\_  
~~of New York et al., see~~  
attached schedule)

YES  NO Does this action/proceeding seek equitable relief?  
 YES  NO Does this action/proceeding seek recovery for personal injury?  
 YES  NO Does this action/proceeding seek recovery for property damage?

All Cases Except Contested Matrimonials:

Estimated time period for case to be ready for trial (from filing of RJI to filing of Note of Issue)

0-12 months  12-15 months

Contested Matrimonial Cases Only: (Check and give date)

Has summons been served?  No  Yes, Date \_\_\_\_\_

Was a Notice of No Necessity filed?  No  Yes, Date \_\_\_\_\_

ATTORNEY(S) FOR PLAINTIFF(S):

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>
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See attached schedule.

ATTORNEY(S) FOR DEFENDANT(S):

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>
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Parties appearing pro se (without attorney) should enter information in space provided above for attorneys.

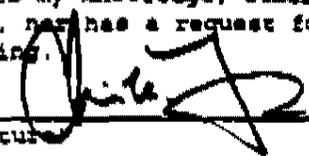
INSURANCE CARRIERS:

RELATED CASES: (if NONE, write "NONE" below)

<u>Case</u>	<u>Index #</u>	<u>Court</u>	<u>Nature of Relationship</u>
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I affirm under penalty of perjury that, to my knowledge, other than as noted above, there are and have been no related actions or proceedings, nor has a request for judicial intervention previously been filed in this action or proceeding.

Dated: 8/24/99



\_\_\_\_\_  
 (Signature)  
Christopher K. Tahbaz  
 (Print or type name)  
Plaintiffs  
 (Attorney for)