

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 THE STATE OF SOUTH CAROLINA; )  
 the SOUTH CAROLINA DEPARTMENT )  
 OF MENTAL HEALTH, and the C.M. )  
 TUCKER, Jr. NURSING CARE CENTER, )  
 )  
 )  
 Defendants. )

CIVIL NO. 3:09-cv-98

**COMPLAINT**

PLAINTIFF, THE UNITED STATES OF AMERICA ("Plaintiff"), by its undersigned attorneys, hereby alleges upon information and belief:

1. The Attorney General files this Complaint on behalf of the United States of America pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, to enjoin the named Defendants from depriving residents of the C.M. Tucker, Jr. Nursing Care Center ("Tucker Center"), located in Columbia, South Carolina, of rights, privileges, or immunities secured and protected by the Constitution and laws of the United States.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action under 28 U.S.C §§ 1331 and 1345.

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3. The United States is authorized to initiate this action pursuant to 42 U.S.C. § 1997a.

4. The Attorney General has certified that all pre-filing requirements specified in 42 U.S.C. § 1997b have been met. The Certificate of the Attorney General is appended to this Complaint and is incorporated herein.

5. Venue in the District of South Carolina is proper pursuant to 28 U.S.C. § 1391.

#### **DEFENDANTS**

6. Defendant State of South Carolina ("State") owns and operates Tucker Center, and as such has responsibility for the services and supports provided to individuals residing there.

7. Defendant South Carolina Department of Mental Health ("SCDMH") has responsibility for overseeing the operation of Tucker Center.

8. Defendant C.M. Tucker, Jr. Nursing Care Center is a state nursing home located in Columbia, South Carolina, which provides skilled and long-term nursing care and related services for residents who require medical or nursing care, and rehabilitation services for injured, disabled, or sick persons who require such services. Tucker Center also includes any building or facilities constructed, renovated, added to replace any Tucker Center building existing at the time this Complaint is filed, and/or designated as part of the facility in the future.

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**FACTUAL ALLEGATIONS**

9. Defendants are legally responsible, in whole or in part, for the operation of Tucker Center, and for the health and safety of persons residing at Tucker Center.

10. Tucker Center is an institution within the meaning of 42 U.S.C. § 1997(1). Tucker Center is a nursing home that provides custodial or residential, intermediate or long-term, skilled nursing care.

11. Defendants are obligated to operate Tucker Center in a manner that does not infringe upon the federal rights of individuals residing at Tucker Center, as protected by the Fourteenth Amendment to the Constitution of the United States and by other federal law.

12. Defendants are obligated to provide services and activities to individuals residing at Tucker Center in a manner and environment consistent with Title XVIII and Title XIX of the Social Security Act and implementing regulations.

42 U.S.C. § 1395i-3, 42 U.S.C. § 1396r, 42 C.F.R. § 483.

13. Defendants are obligated to provide services, programs, and activities to individuals residing at Tucker Center consistent with the Americans with Disabilities Act and implementing regulations. 42 U.S.C. § 12132, 28 C.F.R. § 35.130(d).

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14. At all relevant times, Defendants have acted or failed to act, as alleged herein, under color of state law.

15. Individuals are admitted to Tucker Center because they require skilled and long-term nursing care and related services and/or rehabilitation services for injuries, disabilities or sickness and require residential medical or nursing care, rehabilitation services, or health care and services for the treatment of such conditions.

16. Tucker Center's supports and services substantially depart from generally accepted professional standards of care, thereby exposing individuals residing at Tucker Center to significant risk and, in some cases, to actual harm.

17. Tucker Center's supports and services substantially depart from generally accepted professional standards of care in the following specific respects, among others:

- a. the implementation and review of comprehensive healthcare plans;
- b. the proper diagnosis and treatment of psychiatric illness, and the proper use of psychotropic medication;
- c. the appropriate management of pain and suffering;
- d. the implementation of adequate measures to ensure a safe environment and to prevent injury from falls;

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- e. the provision of adequate nutritional and hydration services;
- f. the provision of adequate activities for physical and mental stimulation; and
- g. safe and sanitary living conditions.

18. Defendants have failed to assess individuals residing at Tucker Center to ascertain whether these individuals are receiving adequate treatment, supports, and services in the most integrated setting appropriate to their individual needs; to ensure that those individuals whom professionals determine should be served in the community are served in the community, when appropriate; and to make certain that these individuals are served in the most integrated setting appropriate to their needs.

#### **VIOLATIONS ALLEGED**

19. The United States incorporates by reference the allegations set forth in Paragraphs 1 through 18 as if fully set forth herein.

20. The acts and omissions alleged in Paragraphs 16 and 17 constitute a pattern or practice that violates the federal rights of individuals residing at Tucker Center, as protected by the Fourteenth Amendment to the Constitution of the United States and by other federal law.

22. The acts and omissions alleged in Paragraphs 16 and 17 violate Title XVIII and Title XIX of the Social Security Act and

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implementing regulations. 42 U.S.C. § 1395i-3, 42 U.S.C. § 1396r, 42 C.F.R. § 483.

23. The acts and omissions alleged in Paragraph 18 violate the Americans with Disabilities Act and implementing regulations. 42 U.S.C. § 12132, 28 C.F.R. § 35.130(d).

24. Unless restrained by this Court, Defendants will continue to engage in the acts and omissions set forth in Paragraphs 16 through 18 that deprive Tucker Center residents of rights, privileges, or immunities secured or protected by the Constitution of the United States and by other federal law, and will cause irreparable harm to these residents.

**PRAYER FOR RELIEF**

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

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WHEREFORE, the United States prays that this Court:

- a. permanently enjoin Defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts, omissions, and practices set forth in Paragraphs 16 through 18 above, and require Defendants to take such actions as will bring Defendants into compliance with federal law and ensure that adequate protections, supports, and services are afforded to Tucker Center residents, including the provision of adequate treatment in the most integrated setting appropriate to their individual needs; and
- b. grant such other and further equitable relief as this Court may deem just and proper.

Respectfully submitted,


UNITED STATES OF AMERICA, Plaintiff

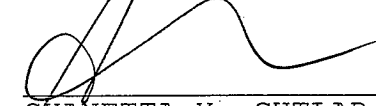


MICHAEL B. MUKASEY  
Attorney General of the United  
States

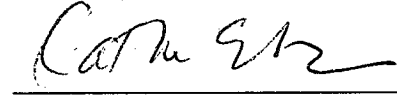
s/ W. Walter Wilkins  
W. WALTER WILKINS  
United States Attorney  
District of South Carolina

s/ Kevin F. McDonald  
KEVIN F. McDONALD (#5934)  
First Assistant United  
States Attorney  
District of South Carolina

  
GRACE CHUNG BECKER  
Acting Assistant  
Attorney General  
Civil Rights Division

  
SHANETTA Y. CUTLAR  
Chief  
Special Litigation Section

  
JUDY C. PRESTON  
Deputy Chief  
Special Litigation Section

  
CATHLEEN S. TRAINOR  
SHERIDAN L. ENGLAND  
Trial Attorneys  
Civil Rights Division  
Special Litigation Section  
U.S. Department of Justice  
950 Pennsylvania Avenue  
Washington, DC 20530  
(202) 616-9009  
cathleen.trainor@usdoj.gov