

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
LAW DIVISION

SEAN GUNDERSON, ADRIAN WALDEN, MARC WEBBER, DONZELL THOMAS, and JAMES BAKER,)	
)	
Petitioners,)	No.
)	
v.)	
)	Hon.
THE ILLINOIS DEPARTMENT OF HUMAN SERVICES,)	Presiding Judge
)	
Respondent.)	

2014L004546
CASE ENDORSEMENT
TIME 09:00
Discovery

**VERIFIED PETITION PURSUANT TO SUPREME COURT RULE 224
FOR DISCOVERY BEFORE SUIT
TO IDENTIFY RESPONSIBLE PERSONS AND ENTITIES**

NOW COME THE Petitioners, Sean Gunderson ("Gunderson"), Adrian Walden ("Walden"), Marci Webber ("Webber"), Donzell Thomas ("Thomas") and James Baker ("Baker") (individually "Petitioner" and collectively "Petitioners") by and through their attorneys S. Randolph Kretchmar and Cecala Law Offices, P.C. with their Verified Petition Pursuant to Supreme Court Rule 224 for Discovery Before Suit to Identify Responsible Persons and Entities ("Rule 224 Petition") and in support of such petition, Petitioners state as follows:

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20 APR 14
CIRCUIT COURT OF COOK COUNTY
CLERK OF COURT
LAW DIVISION
5:09 PM

Petitioners have been damaged by unidentified persons responsible for the illegal enforcement of psychotropic medication in state-operated mental health facilities. Petitioners ask for an order authorizing discovery before suit, pursuant to Illinois Supreme Court Rule 224 for the purpose of identifying specific parties to be named. In

support, Petitioners state as follows.

I) **BACKGROUND COMMON TO ALL PETITIONERS**

1. Petitioners have each been adjudicated as not guilty by reason of insanity (“NGRI”) on felony charges in Illinois Circuit Courts, and committed pursuant to the Unified Code of Corrections, § 5-2-4 [730 ILCS 5/5-2-4], to the custody of the Illinois Department of Human Services (“Respondent”) for inpatient treatment at Elgin Mental Health Center. All Petitioners continue to involuntarily reside at Elgin Mental Health Center as recipients of inpatient services delivered under the control of the Respondent.

2. Petitioners have all been subjected to continuing, consistent and systematic denial of their clear statutory rights to adequate and humane care and services in the least restrictive environment, pursuant to the Illinois Mental Health and Developmental Disabilities Code.

3. “Adequate and humane care and services” is explicitly defined in Section 1-101.2 of the Mental Health and Developmental Disabilities Code as:

“... services reasonably calculated to result in a significant improvement of the condition of a recipient of services confined in an inpatient mental health facility so that he or she may be released or services reasonably calculated to prevent further decline in the clinical condition of a recipient of services so that he or she does not present an imminent danger to self or others.”

405 ILCS 5/1-101.2.

4. Under Section 2-102(a) the Petitioners, as involuntarily confined recipients of Respondent’s services, must be provided services,

“... in the least restrictive environment, pursuant to an individual services plan.... In determining whether care and services are being provided in the least restrictive environment, the facility shall consider the views of the recipient, if any, concerning the

treatment being provided.”

405 ILCS 5/2-102(a).

5. All of the Petitioners have repeatedly, clearly expressed their own personal views, that they had never experienced or no longer experienced therapeutic effects from psychotropic drugs including antipsychotic, antidepressant and/or mood-stabilizing medications, nor did they experience any positive effects on their emotional processes or moods, their ability to think rationally or perceive reality, or their judgment, behavior, or ability to cope with the ordinary demands of life; but on the contrary, they perceived that such drugs had caused or tended to cause specific negative effects and significant declines in their mental, emotional and/or physical health.

6. Despite their clearly and repeatedly expressed personal views, Petitioners have all been continuously and consistently subjected to overwhelming coercion to comply with treatment plans which make those very drugs to which they have objected the primary modality, and which relegate other treatment modalities, such as individual and group psychotherapy, general education, physical exercise, substance abuse or AA groups and other training, to secondary roles.

7. Petitioners have all been told, repeatedly and continuously, over many years, by various different clinical and non-clinical employees of the Respondent, inter alia:

- a) that they were sent to Elgin Mental Health Center by a criminal court judge who expects and intends that they be treated *with psychotropic drugs*;
- b) that unless they take psychotropic drugs they will never get out of Elgin

Mental Health Center before their *Thiem* dates¹;

- c) that psychotropic drugs correct chemical imbalances in their brains; and
- d) that their preferences for treatment without psychotropic drugs show lack of insight which is itself symptomatic of their mental illnesses.

8. None of these continuously repeated statements are true, nor do any of these statements have any scientific, medical validity or any basis in the spirit or letter of the law. The statements were and are *clearly* intended to deceive and coercively persuade the Petitioners to take psychotropic drugs, presumably for the mere convenience, economic and/or existential benefits of Respondent, or individuals whom Respondent employs or under whose sway Respondent conducts official state work. As such, the statements demonstrate a uniform policy or pervasive custom to deny Petitioners' statutory rights to adequate and humane care and services in the least restrictive environment.

9. All Petitioners have been discouraged or prevented from stating any personal opinions, asking relevant questions, or mentioning any medical/scientific evidence, which could suggest that psychotropic medications may not always be a universally good primary treatment for all patients, despite an increasingly intense debate about exactly this subject among mental health professionals around the world and in the public media.

10. All Petitioners have suffered serious, negative physical, emotional and mental effects and damages as a direct and proximate result of the actions of

¹ The maximum period of time that an NGRI acquittee can be involuntarily committed, which may not exceed the maximum length of time that he would have been required to serve, less credit for good behavior, before becoming eligible for parole had he been convicted of and received the maximum sentence for the most serious crime for which he was found not guilty by reason of insanity. See: 730 ILCS 5/5-2-4(b); *People v. Thiem*, 82 Ill. App. 3d 956 (1980).

unknown defendants who formulate, direct and oversee the enforcement of the above unlawful violations of both statutory and common law rights of the Petitioners.

II) **SPECIFIC FACTUAL ALLEGATIONS BY INDIVIDUAL PETITIONERS**

11. In September, 2011, Petitioner Gunderson's psychiatrist (Respondent's staff) was making him take antipsychotic medication in powdered form mixed into Gunderson's food, because Respondent's staff distrusted Gunderson's compliance. The Respondent's staff psychiatrist imposed an unlawful choice upon Gunderson, between basic nutrition and freedom from forced ingestion of unwanted antipsychotic medications. Such a cruel and unusual administration of drugs merely constitutes a method of both physical and psychological torture. Gunderson suffered the emotional effect of humiliation from this extremely personal administration of antipsychotic medication without consideration for his views on the treatment services plan, and in direct violation of his deepest sensibilities and his statutory rights. Gunderson requested an estimated schedule for how long this humiliation might need to continue before a more collaborative relationship would be possible. The Respondent's staff psychiatrist disavowed any interest in collaboration and implied that he might summarily transfer Gunderson to a distant maximum-security facility instead. The Respondent's staff psychiatrist flatly stated his intention to use his authority and all possible contrivances to keep Gunderson on psychotropic medication for as long as he could, perhaps for life, no matter what Gunderson wanted. These tactics constitute institutionalized excessive use force, under color of law, in direct

contravention of Gunderson's Fourth Amendment rights.

12. During the summer of 2013, Petitioner James Baker was actually *goaded* by his treating psychiatrist into discussions to provoke long-forgotten, long-ignored, purported "delusions" regarding a "king of Egypt", in order to create "symptoms" which might justify the psychiatrist's unreasonable predilection in favor of antipsychotic drugs regardless of actual symptoms, risks or benefits for Petitioner Baker. Distortions and falsehoods about this were subsequently written into Mr. Baker's psychiatric chart, and in reports to the criminal court, to punitively discourage and diminish his opportunity for a conditional release.

13. In late-summer or early-fall of 2013, Petitioner Marci Webber repeatedly requested medical advice and help toward gradually weaning herself off psychotropic medications. Her psychiatrist refused to give her any advice at all regarding the continued use of psychotropic medications, or to refer her to anyone else for help with this potentially dangerous drug withdrawal process. Petitioner Webber's social worker explicitly threatened her with much longer involuntary confinement should she attempt to stop taking the drugs, despite the fact that they were causing unpleasant, potentially dangerous and unwanted "side" effects and a serious and permanently damaging decline in her mental and physical health, without any discernible benefit whatsoever.

14. In November 2013, Petitioner Adrian Walden was forced to respond to a frivolous petition for involuntary medication (forced psychiatric drugging) after he informed his psychiatrist that he would thenceforward refuse prescribed psychotropic medications from which he could perceive no benefit, but which

were causing significant physical and mental pain and disability. The petition, brought by Walden's treating psychiatrist (Respondent's staff), was deficient as a matter of law, lacking any factual basis to allege the required elements under the Illinois Code of Mental Health and Developmental Disabilities. This frivolous petition was withdrawn and the psychiatrist retired the moment she realized that Mr. Walden would mount a competent legal defense which would include her discovery deposition.

15. In February, 2014, Petitioner Gunderson was required by Respondent's staff to remove a copy of a blog article posted on his door, written by the Director of the National Institute of Mental Health, Dr. Thomas Insel. Gunderson was specifically told by staff of the Respondent that the order came from Jeff Pharis, Forensic Director of Elgin Mental Health Center. He was also told by Respondent's staff that the content of the article had to be regulated, because it might be inconsistent with a need to keep almost everyone on psychotropic medication. Petitioner Gunderson was denied the opportunity to express his First Amendment rights, consistent with his right to participate in treatment and formulate objections to psychotropic drugging consistent with a leading authority on drugging and mental health.

16. Petitioner Thomas asserted on numerous occasions over several years that he would prefer to stop taking psychotropic medications due to unpleasant and debilitating side effects. However his treatment team (staff of the Respondent) consistently demanded that he continue on the hated drugs, threatening to transfer him to a downstate maximum-security facility and insisting that he give

frequent blood samples to prove that he was taking medication as prescribed. Staff of Respondent further made false statements in this Petitioner's psychiatric record indicating that he continues to have a negative attitude toward psychiatric treatment *in general*, merely because he wishes to stop taking specific medications which are harmful to him. These statements were meant to punitively prolong the Petitioner's involuntary commitment and prevent him from obtaining court authorized privileges. The tactics employed by the Respondent's staff were designed, under color of law, to exert excessive force to humiliate and obtain compliance from the Petitioner by serious emotional duress, with a plan of treatment based on unwanted and harmful drugs in direct contravention of the Illinois Mental Health Code, the Petitioner's Due Process Rights, and his rights guaranteed under the Fourth Amendment to the United States Constitution.

17. In early March, 2014, Petitioner Gunderson was handed a letter from his legal counsel who is well known to defend patients at Elgin Mental Health Center against coerced drug treatment. The two staff members who gave him the letter attempted to insist that he open it in their presence. Gunderson gave it back and asked for a written justification for the denial of the attorney-client confidentiality privilege. The staff responded with affected conversation between themselves, clearly for Gunderson's benefit: "Do you think we should *chart him* for this..?" "Yes, I think we probably should make a chart entry...." Threats of negative comments, via "progress notes" in a patient's psychiatric chart, which are presumed to be written as though under oath and accepted without question by most courts as official *medical records*, are a near-universal control tactic. In this

instance the intent was transparent: to signal disapproval of a patient's choice of an attorney who does not reflexively support an orthodox model of institutionally coerced drug treatment. The intentional and transparent threat to report negative inferences in the Petitioner's "medical chart" concerning his desire to freely and privately communicate with his legal counsel violated Petitioner's Due Process rights and his Right to Counsel guaranteed under the Sixth Amendment.

18. During the pendency of the action for forced medication against Petitioner Walden, the treatment team psychiatrist (staff of Respondent) who filed that action repeatedly abused her authority, and her constant access and involuntary custody of Petitioner, by attempting to make Petitioner report to her the details of his communications with his legal counsel, and by repeatedly attempting to alienate Petitioner Walden from his counsel and discourage him from having any confidence in his counsel's legal advice.

III) **Violations of Petitioners' Eighth, Fourth, First, Sixth, Fourteenth Amendment rights and Common Law rights pursuant to 42 USC § 1983 and § 1985.**

19. The background and specific factual allegations as outlined herein constitute violations of the Petitioners' rights as guaranteed by United States Constitution and the laws of the State of Illinois. The Petitioners have further outlined certain deprivations of rights that have resulted in serious damages to each and all of them, and that have been occasioned by unknown individuals formulating the policy under which such deprivations of the Petitioners' rights have occurred. The formulation of the official policy of the Respondent that has created the deprivation of the Petitioners' constitutional rights, on information

and belief, has been involved both staff of the Respondent as well as private citizens. As such, 42 USC Section 1985 provides that if two or more persons conspire, or go in disguise for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities from giving or securing to all persons the equal protection of the laws; the party so injured or deprived may have an action for the recovery of damages, occasioned by such an injury or deprivation, against any one or more of the conspirators. 42 USC Section 1985. Once the petitioners are permitted to conduct discovery, both the Respondent staff as well as private citizens who act in concert for the enforcement of such unconstitutional policy shall be specifically named by the Petitioners, along with the capacity in which these unknown defendants shall be sued.

20. The Petitioners have also alleged sufficient facts under which they have been subjected to cruel and unusual punishment which conduct is specifically prohibited by the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution. The Petitioners have also alleged sufficient facts of actions by Respondent's staff in individual capacities, in violation of the Petitioners' Fourth Amendment rights to be free from the excessive use of force, false imprisonment and battery. To be sure, the Petitioners have stated that persons, under color of law of the State of Illinois, have caused the Petitioners to be subjected to the deprivation of the above rights, privileges and immunities secured by the Constitution and that those

individuals are responsible to the Petitioners in an action at law pursuant to 42 USC Section 1983.

21. Petitioners may prevail in their claims under Section 1983 because they can establish that: 1) the Petitioners have constitutionally protected rights; 2) Petitioners were deprived of these rights in violation of the Constitution; 3) the unknown defendants intentionally caused the deprivation; and 4) the unknown defendants acted under the color of state law.

22. The Petitioners have alleged claims due to the personal involvement of Respondent's officials against yet-to-be-named individuals who have:

- (A) directly participated in the constitutional deprivation;
- (B) acted or failed to act with intentional disregard of the Petitioner's constitutional rights; and
- (C) deprived the Petitioners of their constitutional rights with knowledge and consent, whereby such officials knowingly, willfully and with obduracy and wantonness, and not mere inadvertence or error in good faith, acted in such a way so as to fail to attend to the medical needs of the Petitioners who have been confined and under the control of the Respondent.

23. To be sure, the allegations as presented by the Petitioners do not constitute mere medical malpractice, inadvertent failure to provide adequate medical care, or simple negligence. The allegations contained herein constitute deliberate indifference to the serious medical, emotional and mental state while the Petitioners have been confined to a prison environment, thereby triggering protections under the Eighth Amendment Cruel and Unusual Punishment Clause,

the First Amendment Right to Freedom of Expression and the Sixth Amendment Right to Counsel and to Confrontation of one's accusers, through the Due Process Clause of the Fourteenth Amendment.

24. The Petitioners' factual allegations more than adequately allege criminal recklessness on behalf of yet-to-be-named defendants, both staff of Respondent and potentially, private citizens, wherein the subjective mental state of the yet-to-be-named defendants may clearly demonstrate: 1) that the actual knowledge by the defendants of the impending serious harm by forcibly drugging the Petitioners was so easily preventable such that a conscious, culpable refusal to prevent the harm can be inferred from the yet-unnamed defendants' failure to prevent it; and 2) that certain of the defendants deliberately and intentionally amplified, provoked and otherwise contrived the facts so as to deliberately cause the Petitioners to be forcibly drugged.

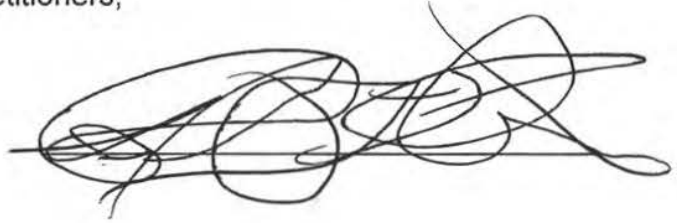
WHEREFORE, Petitioners respectfully ask this Honorable Court for an order authorizing discovery before suit pursuant to Illinois Supreme Court Rule 224, for the purpose of identifying specific parties responsible for the policy or custom of uniformly enforcing treatment with psychotropic medications regardless of the views of any recipient of services in violation of the Illinois Mental Health and Developmental Disabilities Code [405 ILCS 5/1-100 et seq.], and to identify the specific party(ies) responsible for the individual acts, under color of law, which has caused Petitioners' damage and violated their Constitutional rights as outlined supra. Specifically, Petitioners seek the following:

- a. three discovery depositions, of officials or employees of the

Respondent, pursuant to subpoena's to be issued simultaneously with the Court's order; and

- b. further written discovery and document production consistent with the data obtained from Petitioners' depositions.

Respectfully submitted by counsel for the Petitioners,

A handwritten signature in black ink, appearing to be "S. Randolph Kretchmar", written over a horizontal line.

S. Randolph Kretchmar
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ARDC 6275303

A handwritten signature in black ink, appearing to be "Joseph Cecala", written over a horizontal line.

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ARDC 6228989

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
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MARCIE WEBBER, ~~ROBERT SAWICKI~~,)
DONZELL THOMAS, and JAMES BAKER,)

Petitioners,)

v.)

THE ILLINOIS DEPARTMENT OF)
HUMAN SERVICES,)

Respondent.)

No.

Hon. ,
Presiding Judge

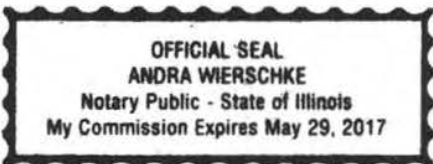
VERIFICATION BY PETITIONER

I, Sean Gunderson, being of sound mind, do hereby state
under penalty of perjury:

- I have read the attached VERIFIED PETITION PURSUANT TO SUPREME COURT RULE 224 FOR DISCOVERY BEFORE SUIT TO IDENTIFY RESPONSIBLE PERSONS AND ENTITIES;
- said Petition is filed by counsel on my behalf;
- to the best of my knowledge and belief all statements of fact in the Petition are true.

Sean Gunderson
PETITIONER

Andra Wierschke
NOTARY 4-2-14



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
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DONZELL THOMAS, and JAMES BAKER,

Petitioners,

v.

THE ILLINOIS DEPARTMENT OF
HUMAN SERVICES,

Respondent.

No.

Hon. ,
Presiding Judge

VERIFICATION BY PETITIONER

I, Adrian Walden, being of sound mind, do hereby state
under penalty of perjury:

- I have read the attached VERIFIED PETITION PURSUANT TO SUPREME COURT RULE 224 FOR DISCOVERY BEFORE SUIT TO IDENTIFY RESPONSIBLE PERSONS AND ENTITIES;
- said Petition is filed by counsel on my behalf;
- to the best of my knowledge and belief all statements of fact in the Petition are true.

Adrian Walden
PETITIONER

Andra Wierschke
NOTARY 4-1-17



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
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SEAN GUNDERSON, ADRIAN WALDEN,
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DONZELL THOMAS, and JAMES BAKER,

Petitioners,

v.

THE ILLINOIS DEPARTMENT OF
HUMAN SERVICES,

Respondent.

No.

Hon. ,
Presiding Judge

VERIFICATION BY PETITIONER

I, Marcie Marie Webber, being of sound mind, do hereby state under penalty of perjury:

- I have read the attached VERIFIED PETITION PURSUANT TO SUPREME COURT RULE 224 FOR DISCOVERY BEFORE SUIT TO IDENTIFY RESPONSIBLE PERSONS AND ENTITIES;
- said Petition is filed by counsel on my behalf;
- to the best of my knowledge and belief all statements of fact in the Petition are true.

Marcie Marie Webber
PETITIONER

Andra Wierschke
NOTARY 4-1-14



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
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Petitioners,

v.

THE ILLINOIS DEPARTMENT OF
HUMAN SERVICES,

Respondent.

No.

Hon. ,
Presiding Judge

VERIFICATION BY PETITIONER

I, DONZELL THOMAS, being of sound mind, do hereby state
under penalty of perjury:

- I have read the attached VERIFIED PETITION PURSUANT TO SUPREME COURT RULE 224 FOR DISCOVERY BEFORE SUIT TO IDENTIFY RESPONSIBLE PERSONS AND ENTITIES;
- said Petition is filed by counsel on my behalf;
- to the best of my knowledge and belief all statements of fact in the Petition are true.

Donzell Thomas
PETITIONER

Andra Wierschke
NOTARY



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v.

THE ILLINOIS DEPARTMENT OF
HUMAN SERVICES,

Respondent.

No.

Hon. ,
Presiding Judge

VERIFICATION BY PETITIONER

I, JAMES BAKER, being of sound mind, do hereby state
under penalty of perjury:

- I have read the attached VERIFIED PETITION PURSUANT TO SUPREME COURT RULE 224 FOR DISCOVERY BEFORE SUIT TO IDENTIFY RESPONSIBLE PERSONS AND ENTITIES;
- said Petition is filed by counsel on my behalf;
- to the best of my knowledge and belief all statements of fact in the Petition are true.

James Baker
PETITIONER

Andra Wierschke
NOTARY



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Petitioners,)	No.
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v.)	
)	
THE ILLINOIS DEPARTMENT OF)	Hon. ,
HUMAN SERVICES,)	Presiding Judge
)	
Respondent.)	

VERIFICATION BY PETITIONER

I, S. Randolph Kretchmar, as attorney for the Petitioners, do hereby state under penalty of perjury:

- I wrote the attached VERIFIED PETITION PURSUANT TO SUPREME COURT RULE 224 FOR DISCOVERY BEFORE SUIT TO IDENTIFY RESPONSIBLE PERSONS AND ENTITIES;
- said Petition is filed on behalf of the named Petitioners with whom I have closely consulted, and for whose best interests I do zealously advocate;
- to the best of my knowledge and belief all statements of fact in the Petition are true, and the legal arguments are based in valid law.



COUNSEL FOR PETITIONERS

4/24/14

DATE