

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JAMES L. RADTKE, JR.,)	JURY TRIAL DEMANDED
)	
Plaintiff,)	
)	
v.)	
)	
REBECCA WINZEN,)	Case No. 4:13-00213-ERW
)	
ARTURO CALVO TACA, JR., M.D.,)	
)	
MERCY HEALTH,)	
)	
AMANDA WILHELM,)	
)	
ST. LOUIS COUNTY,)	
)	
ALLEN FRANCES, M.D., and)	
)	
AMERICAN PSYCHIATRIC)	
ASSOCIATION,)	
)	
Defendants.)	

AMENDED COMPLAINT

Plaintiff, by and through his attorney, S. Randolph Kretchmar, complains against the defendants and states as follows:

Jurisdiction and Venue

1. This court has jurisdiction over the claims in this case pursuant to 28 U.S.C. §§ 1331, 1343, 1367, and 42 U.S.C. §§ 1983 and 1985.
2. Venue is proper in the Eastern District of Missouri under 28 U.S.C. § 1391(b)(2).

Parties

3. Plaintiff is an individual residing in St. Louis County, Missouri.
4. Defendant REBECCA WINZEN (hereafter WINZEN) is an individual residing in St. Charles County, Missouri. Further, upon information and belief, Defendant WINZEN was at all relevant times an employee or contractor of St. Johns Mercy Medical Center. Plaintiff alleges claims herein against WINZEN in any relevant official capacity, and also separately against this defendant as an individual.
5. Defendant ARTURO CALVO TACA, JR., M.D. (hereafter TACA) is an individual residing in St. Louis County, Missouri. Further, upon information and belief, Defendant TACA was at all relevant times an employee or contractor of St. Johns Mercy Medical Center. Plaintiff alleges claims herein against TACA in any relevant official capacity, and also separately against this defendant as an individual.
6. Defendant MERCY HEALTH (hereafter MERCY) is a health care provider incorporated in Missouri, also known, and “Sisters of Mercy Health System”. MERCY operates St. Johns Mercy Hospital, a general medical and surgical hospital located at 641 N. New Ballas Rd., in St. Louis, which includes a behavioral health care unit.
7. Defendant AMANDA WILHELM (hereafter WILHELM) is an individual residing in St. Louis County, Missouri. Further, upon information and belief, Defendant WILHELM was at all relevant times a police officer employed by the St. Louis County Police Department. Plaintiff alleges claims herein against WILHELM in any relevant official capacity, and also separately against this defendant as an individual.
8. Defendant ST. LOUIS COUNTY (hereafter POLICE) is, upon information and belief, a municipal corporation in the State of Missouri which operates the St. Louis

County Police Department.

9. Defendant ALLEN FRANCES, M.D. (hereafter FRANCES), is an individual residing in San Diego County, California. Plaintiff alleges claims herein against FRANCES in any relevant official capacity, and also separately against this defendant as an individual.

10. Defendant AMERICAN PSYCHIATRIC ASSOCIATION (hereafter APA) is a professional society incorporated in the District of Columbia and headquartered in Arlington, Virginia.

Complaint Narrative

11. For approximately five decades, Defendant APA has artfully constructed, and continuously and energetically promoted via the media and myriad influences, a portrayal of a supposed public health issue of “mental illness”, wherein many normal human emotions, reactions and travails are said to be diagnosable medical conditions caused by known brain malfunctions or genetic predispositions, which need and respond to treatment with drugs.

12. For many years or decades, Defendant APA knew or should have known that its portrayals and “diagnoses” of mental illness were without scientific validity, likely to be misused, likely to contribute to false epidemics and capture patients who would be better off never entering the mental health system, and very likely to provoke widespread deprivation of individuals’ civil rights.

13. Defendant FRANCES is personally and uniquely responsible for the creation, ongoing prevalent uses, and continuing omnipresent authority of the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition* (aka, *DSM-IV*), a publication of

Defendant APA purporting to define and delineate “diagnoses” of mental illnesses.

14. Defendant FRANCES knew or should have known that Defendant APA’s portrayals of mental illness combined with the prevalent uses and nearly exclusive authority of *DSM-IV* in “diagnosis” were dangerous, likely to be misused, and likely to provoke widespread violations of civil and human rights.

15. On the morning of February 5, 2011, Plaintiff was forcibly removed from his home, under duress and despite his repeated and continuing protests, by Defendants WILHELM and POLICE, without warrant for arrest or formal charge.

16. The police had been called to the home by Plaintiff’s parents, who felt compelled by unfounded fears that Plaintiff might suffer from a mental illness caused by brain disease, or that he might be genetically predisposed to attempt suicide.

17. Plaintiff was taken in the custody of Defendants WILHELM and POLICE directly to a hospital emergency room operated by Defendant MERCY.

18. Despite Plaintiff’s repeated and continuing protests that he did not need or want medical or hospital services, but simply wished to return home, and despite a clear and obvious factual absence of any medical emergency, Plaintiff was held in the emergency room under guard, originally by Defendants WILHELM and POLICE, subsequently by Defendant MERCY, and prevented from leaving.

19. At no time before, on or after February 5, 2011, did Plaintiff ever present any actual, apparent or reasonably discernible threat of harm to himself or to anyone else.

20. After several hours, Defendant WINZEN contrived to arrange Plaintiff’s involuntary “admission” as a psychiatric patient in Defendant MERCY’S behavioral health unit by knowingly fraudulent devices, including attempted subornation of perjury

and coercion of a false affidavit from Plaintiffs' mother by unreasonable, manufactured fears that Plaintiff might be in some (objectively non-existent) medical danger.

21. Defendants WINZEN, WILHELM and POLICE acted without justification under color of law to deprive Plaintiff of his liberty and to force him to become an unwilling psychiatric patient, even going so far as to make him walk without shoes in the snow when he was transferred from the emergency room to Defendant MERCY's behavioral health unit.

22. After his contrived involuntary "admission" to the hospital, Plaintiff was held continuously against his will by Defendant MERCY by the direct orders of Defendant TACA, until he was finally released on February 7, 2011.

23. During the period of Plaintiff's imprisonment in Defendant MERCY's behavioral health unit, Defendant TACA inserted false and defamatory statements into Plaintiff's medical records and ordered the "medication" of Plaintiff with strong psychiatric drugs for which Plaintiff did not give informed consent.

24. Defendants WINZEN, WILHELM, POLICE, TACA and MERCY, to deprive Plaintiff of his liberty and force him to become a psychiatric patient, fundamentally relied on Defendant APA's characterizations of "mental illness" or "mental disorder", and especially on the authority of *DSM-IV*, created by Defendant FRANCES and published and marketed by Defendant APA, to force Plaintiff into the role of a psychiatric patient and deprive him of his rights under color of law.

25. Defendant APA's massively financed and continuous political advocacy, along with the marketing of *DSM-IV* and medical theories of mental illness by Defendants APA and FRANCES, were a primary, vital facilitation and encouragement of the deprivations

by Defendants WINZEN, WILHELM, POLICE, TACA and MERCY of Plaintiff's rights under color of law, because the law explicitly requires that involuntary psychiatric hospitalization and treatment be based upon a patient's dangerousness to self or others *due to mental illness*.

26. The Plaintiff has suffered specific financial losses and losses of future business opportunity and reputation as a direct result of his false arrest, imprisonment and enforced role as a psychiatric patient.

27. The Plaintiff has suffered severe emotional and psychological distress as a direct result of his false arrest, imprisonment and enforced role as a psychiatric patient.

28. The Plaintiff has incurred attorney's fees and costs in the prosecution of this lawsuit. He requests an award of fees and costs pursuant to Section 1988.

Count I – False Arrest
Verses Defendant WILHELM

In support of this Count of his complaint, Plaintiff restates and re-alleges paragraphs 11 through 28.

29. At all times relevant Defendant WILHELM acted under color of law, both as an individual and in her official capacity as a police officer.

30. Defendant WILHELM arrested the Plaintiff and forcibly removed him from his home to defendant MERCY's emergency room allegedly for being dangerous to himself or others due to mental illness.

31. At the time of the arrest Defendant WILHELM had no probable cause to arrest the Plaintiff. WILHELM conducted herself in a manner shocking to the conscience with deliberate indifference to or reckless disregard for Plaintiff's constitutional rights, and thereby violated Plaintiff's Fourth Amendment right against unreasonable seizure.

WHEREFORE, the Plaintiff prays for judgment in his favor and against Defendant WILHELM, an award of damages, punitive damages, attorney's fees and costs, and any other relief to which he may be entitled.

Count II – False Arrest
Verses Defendant POLICE

In support of this Count of his complaint, Plaintiff restates and re-alleges paragraphs 11 through 28.

32. Defendant POLICE has the duty to train and control employees to conduct themselves in such manner as to respect and protect the constitutional rights of those members of the public with whom they come into contact.

33. Defendant POLICE breached their duty to the plaintiff by failing to train and control their employees including Defendant WILHELM, and/or by execution of policies or customs which include deliberate indifference to the rights of persons with whom their employees come into contact.

34. Said breach of duty by Defendant POLICE was a proximate cause and cause in fact of the deprivation of the Plaintiff's constitutional right to freedom from unreasonable seizure, and consequently of his mental anguish and trauma, humiliation, embarrassment, fear of indefinite confinement and fear of abusive or hazardous treatment, and injury to his reputation and standing in the community as a result of such confinement, including injury to business reputation and standing, loss of future income, loss of business contracts, and damage to credit standing.

WHEREFORE, the Plaintiff prays for judgment in his favor and against Defendant POLICE, an award of damages, punitive damages, attorney's fees and costs, and any other relief to which he may be entitled.

Count III – False Imprisonment
Verses Defendants WINZEN, TACA and MERCY

In support of this Count of his complaint, Plaintiff restates and re-alleges paragraphs 11 through 28.

35. Defendants WINZEN, TACA and MERCY, conducting themselves in a manner shocking to the conscience and with deliberate indifference to or reckless disregard for Plaintiff's human and constitutional rights, imprisoned the Plaintiff for three days without reasonable grounds to believe that any offense was committed by the plaintiff or that he was any threat whatsoever, to himself or anyone else.

36. In depriving Plaintiff of his liberty, WINZEN, TACA and MERCY abused powers which they possessed entirely by virtue of state law or which were only possible because the defendants were clothed with the authority of state law.

WHEREFORE, the Plaintiff prays for judgment in his favor and against Defendants WINZEN, TACA and MERCY, an award of damages, punitive damages, attorney's fees and costs, and any other relief to which he may be entitled.

Count IV – Battery
Verses Defendants TACA and MERCY

In support of this Count of his complaint, Plaintiff restates and re-alleges paragraphs 11 through 28.

37. During his contrived "admission" in Defendant MERCY's Behavioral Health Unit, Plaintiff was willfully given unwanted and offensive bodily treatments, including but not limited to psychotropic drugs, without his informed consent.

38. Plaintiff was made to understand by employees of Defendant MERCY that he would not be allowed to refuse the aforesaid unwanted and offensive bodily treatments,

which were coerced or forced as ordered in writing by Defendant TACA.

WHEREFORE, the Plaintiff prays for judgment in his favor and against Defendants TACA and MERCY, an award of damages, punitive damages, attorney's fees and costs, and any other relief to which he may be entitled.

Count V – Conspiracy to Interfere With Civil Rights
Verses All Defendants

In support of this Count of his complaint, Plaintiff restates and re-alleges paragraphs 11 through 28.

39. Two or more of the defendants conspired for the purpose of impeding, hindering, obstructing or defeating the due course of justice in the State of Missouri, with intent to deny the Plaintiff his constitutional rights under the Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution, and the equal protection of the laws, by falsely pathologizing his normal human emotions and reactions, which they knew or should have known to pose no actual medical emergency.

40. Two or more of the defendants conspired for the purpose of impeding, hindering, obstructing or defeating the due course of justice in the State of Missouri, to manufacture false legal evidence, apparently but not truly justifying the Plaintiff's arrest and involuntary "hospitalization" (false imprisonment).

41. Two or more of the defendants conspired to deter the Plaintiff by intimidation or threat, from becoming a witness in court and/or from testifying freely, fully and truthfully on matters pertinent to this complaint.

WHEREFORE, the Plaintiff prays for judgment in his favor and against all Defendants, an award of damages, punitive damages, attorney's fees and costs, and any other relief to which he may be entitled.

**Count VI – (Non-medical) Negligence
Verses Defendants APA and FRANCES**

In support of this Count of his complaint, Plaintiff restates and re-alleges paragraphs 11 through 28.

42. Law abiding individuals may only be deprived of their liberty and forcibly “treated” with psychiatric drugs under the law when and if they are deemed dangerous to themselves or others as a result of mental illness.

43. Through an effective monopoly on the definitions and diagnoses of mental illness with *DSM-IV*, Defendants APA and FRANCES have extraordinary influence or effective control over the decisions of courts and communities regarding the potential involuntary psychiatric hospitalization and treatment of any law abiding individual.

44. APA and FRANCES have been well aware of their extraordinary influence or effective control over the possible deprivation of individuals’ liberty and privacy via *DSM-IV*, and have continuously derived massive economic and other benefits thereby, and from *DSM-IV* itself, since at least 1994.

45. Due to their explicit knowledge, control and continuing derived massive economic benefits, Defendants APA and FRANCES have long had a duty to warn police departments, court systems and legal professionals, and public and private behavioral health delivery organizations, that their diagnostic system has little or no validity for specific legal determinations of individual responsibility, individual control over behavior, risk of violence to self or others, disability or competency. In short, APA and FRANCES had a duty to warn the public that *DSM-IV* diagnoses are not valid and should not be used to justify forced psychiatric hospitalization or treatment.

46. APA and FRANCES breached their aforesaid duty to warn by continuous,

massively financed public statements and advocacy to falsely convince the public that mental illnesses and their diagnosis per DSM-IV, are issues primarily or exclusively understood and defined by medical experts, and that medical psychiatrists are the most appropriate experts to inform social or legal decisions regarding individual responsibility and control, risk of violence, disability and competency.

47. The aforesaid breach by Defendants APA and FRANCES proximately caused the Plaintiff to suffer financial, future business opportunity and reputational losses, as well as severe emotional and psychological distress, from his forced hospitalization and treatment as an unwilling psychiatric “patient” from February 5-7, 2011, which were justified by a false allegation that he was dangerous to himself due to one or more mental disorders defined in and diagnosed according to *DSM-IV*.

WHEREFORE, the Plaintiff prays for judgment in his favor and against Defendants APA and FRANCES, an award of damages, punitive damages, attorney’s fees and costs, and any other relief to which he may be entitled.

Count VII – Defamation
Verses Defendants WINZEN, TACA, and MERCY

In support of this Count of his complaint, Plaintiff restates and re-alleges paragraphs 11 through 28.

48. Between February 5-7, 2011, Defendants WINZEN, TACA, and MERCY created documents, including hard copies and digital records, falsely stating that the Plaintiff was suicidal, mentally ill, deluded, behaving bizarrely or irrationally, and/or hallucinating.

49. According to information and belief, during and subsequent to Plaintiff’s false imprisonment in Defendant MERCY’s behavioral health unit, the existence and general false and defamatory contents of said hard copy and/or digital records and statements

about the Plaintiff were communicated to certain third parties beyond the regular course of any business in which the Defendants or their organizations were engaged.

50. The existence and general false and defamatory contents of the created records about Plaintiff were communicated by the Defendants to third parties negligently and maliciously, with knowledge that the information about the Plaintiff was false, or with reckless disregard for whether it was true or false, at a time when the Defendants had serious doubts about whether it was true.

51. The Plaintiff's reputation with his own family, and with particular parties to potential business contracts, was damaged as a result of the Defendants' communication of the defamatory information.

WHEREFORE, the Plaintiff prays for judgment in his favor and against Defendants WINZEN, TACA, and MERCY, an award of damages, punitive damages, attorney's fees and costs, and any other relief to which he may be entitled.

Count VIII – Strict Product Liability
Verses Defendant APA

In support of this Count of his complaint, Plaintiff restates and re-alleges paragraphs 11 through 28.

52. Defendant APA, while situated in the chain of commerce of the provision of mental health services, has sold and continuously offered for sale the book *DSM-IV*, and/or its revision, *DSM-IV-TR*.

53. Since 1994, Defendant APA has known and/or reasonably anticipated that *DSM-IV* was used, and would be widely used, to define and diagnose mental illness in individuals by professionals in the fields of behavioral health, public safety and law enforcement, including psychiatrists, police officers, and hospital employees.

54. *DSM-IV* was defective and unreasonably dangerous, and damaged Plaintiff by suggesting false labels or conditions of mental illness which were too easily and arbitrarily applied to him without any scientific or medical validity, thereby justifying his false arrest, forced hospitalization and treatment, when *DSM-IV* was used between February 5-7, 2011, by Defendants WINZEN, TACA, MERCY, WILHELM and POLICE.

55. *DSM-IV* was unreasonably dangerous, and damaged Plaintiff by suggesting false labels or conditions of mental illness which were applied to him, thereby justifying his false arrest, forced hospitalization and treatment, when *DSM-IV* was used by Defendants between February 5-7, 2011, without knowledge that it lacked all medical and scientific validity, and with no warning of this fact, from APA.

WHEREFORE, the Plaintiff prays for judgment in his favor and against Defendant APA, an award of damages, punitive damages, attorney's fees and costs, and any other relief to which he may be entitled.

PLAINTIFF REQUESTS TRIAL BY JURY.

Respectfully submitted,

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