

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Complaint with Jury Demand

Case No.

U.S. DISTRICT COURT
DISTRICT OF NH
FILED

2018 JUL 11 A 10:00

Nancy Heath (Guardian) pro se for Anthony Heath
Plaintiff(s)

v.

Helen E. Hanks, Commissioner of New Hampshire Department of Corrections

Defendant(s) Add Governor Christopher T. Sununu and Jeffrey A. Meyers Commissioner Department
of Health and Human Services in their official capacity.

1. Plaintiff should be approved for transfer to New Hampshire hospital (NHH). Plaintiff Anthony has not been violent at any time while at New Hampshire State Prison for men, Concord (NHSPM) Secure Psychiatric Unit (SPU) but no beds were available. This was confirmed by testimony of Deborah A. Robinson New Hampshire Department of Corrections (NHDOC) administrator II at the Superior Court Hearing March 9, 2018 case # 217-2018-CV-00098 in Merrimack County. TRUEBLOOD v. WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES CEO, Wilson v. Seiter, 501 U. S. 294.
2. Plaintiff requests that these federal claims for civil rights violations be allowed to move forward. General exhaustion of state remedies "is *not* a prerequisite to an action under § 1983," *Patsy v. Board of Regents of Fla.*, 457 U.S. 496, 501, 73 L. Ed. 2d 172, 102 S. Ct. 2557 (1982) (emphasis added), even an action by a state prisoner, *id.*, at 509.
3. Plaintiff has been assigned a job at the request of the guardian to show his ability to interact with others, however, has been paid wages equal to convicted persons¹ which is in violation of the Thirteenth Amendment of the US Constitution.
4. Plaintiff Anthony Heath has been incarcerated in a maximum security prison, while having never received appropriate mental health treatment in violation of ADA Title II established by section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, and NHDOC Policy and Procedure Directive (PPD)# 6-85² Plaintiff Anthony Heath was incarcerated in the prison while other civil committees were hospitalized in NHH. " We now have 11 Not Guilty by Reason of Insanity (NGRI) in New Hampshire Hospital." ³Plaintiff received unequal treatment. Plaintiff Anthony Heath was not moved to the least restrictive environment in 2017 (NHH), in violation of the Americans with Disabilities Act of 1990 (ADA). Congress described the isolation and segregation of individuals with disabilities as a serious and pervasive form of discrimination. 42 U.S.C. § 12101(a)(2), *OLMSTEAD V. L. C.* (98-536) 527 U.S. 581 (1999) 138 F.3d 893,. Plaintiff was denied equal opportunity as compared to other civil committees treated at NHH. The State has created 2 classes of civil committees. Indeed, people civilly committed to SPU have even less freedom than other prisoners confined at NHSPM, Concord. Unlike convicted criminals and pretrial detainees, civilly committed people at SPU are not allowed outside of the SPU, with recreational access limited to an outside concrete lined, caged space

1 Page 19 SPU Handbook

2 <https://www.nh.gov/nhdoc/policies/documents/6-85.pdf>

3 <http://nhpr.org/post/conversation-nh-dhhs-commissioner-jeffrey-meyers#stream/0>

Concord. Unlike convicted criminals and pretrial detainees, civilly committed people at SPU are not allowed outside of the SPU, with recreational access limited to an outside concrete lined, caged space for use by SPU only. They cannot participate in most recreational programs or organized activities that other prisoners do. The incarceration of citizens civilly committed to SPU amounts to the criminalization of mental illness, unnecessarily stigmatizing those who have an urgent medical need. Placing civilly committed people in prison, rather than an appropriate treatment facility, is traumatic and incompatible with professional judgment regarding the treatment of people with the disease of mental illness.⁴ It occurs only because New Hampshire has chosen not to establish an adequate number of treatment beds in New Hampshire Hospital or a separate forensic facility to meet the needs of civilly committed citizens.⁵

New Hampshire is the only state in the country that imprisons people for mental illness treatment.⁶ Treating Anthony Heath as a criminal instead of a person with a disability requiring professional inpatient care violates his right to substantive due process, guaranteed by the Constitution of the United States, and his rights under the Americans with Disabilities Act, 42 U.S.C. § 10841 et seq. (“ADA”).

5. Plaintiff was denied his civil rights under due process clause of the 5th Amendment by being treated disparately from other civil committees, in a prison facility that is neither licensed nor accredited as a Hospital as NHH is where other NGRI civil committees are housed. Due Process Clause of the Fifth Amendment, 42 U.S.C. § 1981, and D.C.Code § 1-320. *Washington v. Davis*, 426 U.S. 229 (1976). *Bolling v. Sharpe*, 347 U.S. 497 (1954).

6. Plaintiff requests the federal court examine the constitutionality of New Hampshire sending civilly committed patients to the Secure Psychiatric Unit located within the NH State Prison for men. This action seeks declaratory and injunctive relief prohibiting Defendants from continuing the unlawful practice of confining men and women civilly committed to the SPU at the NHSPM, and requiring Defendants to provide these individuals with care and treatment for mental illness in a Department of Health and Human Services (“DHHS”) licensed and accredited health care facility and not in a facility managed by the Department of Corrections (“DOC”).

7. Plaintiff was initially treated by being placed in a single cell 23 hours per day for approximately 8 months. Plaintiff has requested medication formerly prescribed to him but unavailable at the NHSPM SPU due to the high contraband value of the same medication to prisoners. Plaintiff was housed with convicted felons but was in jeopardy of violating NH law by interacting with those same prisoners. Anthony Heath was housed adjacent to female civil committees. Plaintiff's 1st Amendment rights are being violated when he is unable to communicate with other civil committees. Plaintiff's Fourth Amendment rights were violated when DOC employees monitored his phone calls, read his personal correspondence, searched his cell and performed strip searches of him in front of female correctional officers.⁷ Staff at SPU treat individuals civilly committed as defacto prisoners, in violation of their 14th Amendment rights. Upon admission, the civilly committed are required to submit to a strip search, which includes a visual inspection of their oral and anal cavities. Their personal property is taken from them. They are issued prison uniforms. Once confined, they are co-mingled with convicted felons and pretrial detainees. They are subject to pat searches conducted by guards and cell “shakedowns.”

⁴ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2171048/>

⁵ Pg 17 <https://rockefeller.dartmouth.edu/report/secure-housing-and-treatment-options-non-criminal-mentally-ill-new-hampshire>

⁶ <http://www.nhbr.com/September-15-2017/A-state-of-contradictions-especially-if-you-are-mentally-ill/>
<http://indepthnh.org/2016/09/15/patients-families-allowed-to-speak-only-after-vote-involving-secure-psychiatric-unit/>

⁷ https://www.nh.gov/nhdoc/business/documents/fed_register_28cfr_pt115_prea.pdf

8. Examination of the handbooks issued to the SPU inmates by the prison, when compared to the handbook issued patients at NHH reveal stark differences when you compare the lettered passages below.

a. NHH The facilities at NHH were built in 1989 and offer a variety of treatment and recovery options.⁸

b. SPU Every day, men and women committed at NH SPU are warehoused in the state's oldest prison facility. The original state prison was built in 1812. A new facility was constructed in 1878. Following extensive renovations and new construction in the 1980s.⁹

c. NHH "You have the same rights, benefits and privileges at the Hospital as you do anywhere else. You also have the same responsibilities at the Hospital as you do anywhere else."¹⁰

d. SPU "You have a right to be safe from harm. The staff will provide a safe environment." "Your responsibility is to avoid harming yourself, other patients, or staff." "You have a right to live, work, and receive treatment in a clean, healthy environment. " "You may be assigned a job cleaning or maintaining other areas on or off your ward. Security staff is assigned to each ward to monitor the cleanliness of the ward."¹¹

e. NHH "You have the right to keep personal property, and you are responsible for taking care of it and protecting it from theft or loss. Valuable property should not be brought to the Hospital. You may ask the Hospital to store some things of value for safekeeping."¹²

f. SPU "Property you cannot have in your possession will be mailed out at your expense, donated or destroyed in accordance with PPD 9.02; Issuance and Control of Resident Property."¹³

g. NHH VISITORS. You have the right to receive or refuse visitors. You are free to communicate, associate, and meet alone with anyone of your choosing including your family and resident groups. The Hospital may impose reasonable restrictions on the number and time of visits and may limit visits that present a serious chance of physical or emotional harm to you or to other patients. Some visits may be supervised or visiting times limited according to your supervision status. A staff member will ask you to meet with your visitors in a designated area on your unit.¹⁴ Visiting hours in the APS building, including Units C, D, G, H and J are 12:00 PM to 8:00 PM daily.¹⁵

h. SPU POLICY: Visiting is governed by PPD 7.09;¹⁶

Visiting Policy. You are encouraged to read the policy. It is located in the SPU Law Library.

Visiting is a privilege. It is the policy of the NH Department of Corrections and the Secure Psychiatric Unit to provide time and facilities for visitations in order to support and maintain relationships between inmates/patients and significant people in their lives, and to be no more restrictive toward visitors than necessary for the security of the visitation, the welfare of the residents and staff and to exclude contraband.¹⁷

i. SPU visiting hours are Saturdays, 12:00 pm to 3:00 pm and Sundays, 7:00 am to 11:00 am.

Visitation is allowed on all holidays. The dates and times of holiday visits are posted on your ward. .

8 <https://www.dhhs.nh.gov/dcbcs/nhh/index.htm>

9 <https://www.nh.gov/nhdoc/facilities/concord.html>

10 Page 12 NHH Handbook <https://www.dhhs.nh.gov/dcbcs/nhh/documents/rights-responsibilities.pdf>

11 Page 1 SPU Handbook

12 Page 12 NHH Handbook <https://www.dhhs.nh.gov/dcbcs/nhh/documents/rights-responsibilities.pdf>

13 Page 9 SPU Handbook

14 Page 2 NHH Handbook <https://www.dhhs.nh.gov/dcbcs/nhh/documents/rights-responsibilities.pdf>

15 <https://www.dhhs.nh.gov/dcbcs/nhh/visitors.htm>

16 Page 19 SPU Handbook <https://www.nh.gov/nhdoc/policies/documents/7-09.pdf>

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You are allowed 3 visitors at one time. Children must be accompanied by their parent or legal guardian. Non-contact visits will be required if the resident is on Acute Care status or as deemed necessary by security. Non-contact visits can also be a part of the resident's individual treatment plan. In order to assure the opportunity for visits to all eligible residents in an orderly, manageable, and safe manner, the following procedure will be followed:

accordance with COR 305.02. A visitor cannot appear on more than one resident's approved visitor list unless the residents are related to each other and the visitor is under the immediate family description. Immediate family for the purpose of this policy means mother, father, children, spouse, legal civil partner, brother, sister, grandparents, aunts, uncles, sister-in-law and brother-in-law (COR 305.02). Visitors being taken off a resident's list will be removed immediately and cannot be added to any patient/inmate's visiting list for a one-year period. Everyone on prison grounds, their vehicles, possessions and persons are subject to search without warning. Residents must request that a prospective visitor be placed on the approved visitor list. The resident must request their prospective visitors complete the Visitor Authorization Affidavit Form authorizing the Department of Corrections to complete a criminal background check. The prospective visitor then returns the form to the resident via US Mail. The resident will then attach the form to the Visitor Request Slip for processing.¹⁸

j. NHH PAYMENT FOR WORK. You have the right to be paid for work you agree to do. If you are offered a job and agree to do it, you will be paid for the work performed. You will not be paid for personal housekeeping chores such as making your own bed.¹⁹

k. SPU It is the policy of Department of Corrections to provide pay for all SPU residents who work at an assigned job, recognize essential jobs with enhanced pay and reduced pay to SPU residents authorized not to work. The following is the pay system for SPU workers.²⁰

\$.85 per day x 5days per week SPU Infirmary

\$.85 per day x 5days per week E-Ward

\$ 1.00 per day x 5 days per week SPU UST

\$ 2.00 per day x 7 days per week SPU Laundry

\$ 1.00 per day x 7 days per week SPU Dining Cleaner

No Pay will be given for: Refusal to work Not reporting for work Quitting a job without authorization

l. NHH "A HEALTHY ENVIRONMENT. You should have good light, enough heat, fresh air, hot and cold water, a bathroom with privacy, a bed and a dresser or locker. The space you occupy at New Hampshire Hospital should be clean and free of unpleasant odors."²¹

m. SPU "It is the policy of the Department of Corrections to establish and maintain a safe environment for staff and offenders at all secure correctional facilities, community corrections centers, transitional housing units or contracted offender housing, offender work release or job assignments, and for offenders being supervised in the community. The Department has a zero tolerance policy and investigates all allegations of sexual assault and misconduct whether reported by staff, offender, family member, Chaplain, contractor or volunteer. The Department investigates allegations against staff members with the same vigilance it investigates allegations against

18 Page 20 SPU Handbook

19 Page 3 NHH Handbook <https://www.dhhs.nh.gov/dcbcs/nhh/documents/rights-responsibilities.pdf>

20 Page 19 SPU Handbook

21 Page 1 NHH Handbook <https://www.dhhs.nh.gov/dcbcs/nhh/documents/rights-responsibilities.pdf>

offenders. It takes a proactive approach to preventing sexual abuse and sexual misconduct by offender and by staff. It addresses the needs of offenders who have been sexually victimized. Any and all violators of this policy shall be subject to disciplinary action and potential criminal prosecution, as appropriate. All applicable DOC policies will be revised to include appropriate references to PREA requirements as outlined in this policy during annual policy reviews.”²²

n. NHH “FREEDOM FROM ABUSE AND NEGLECT. You have the right to be free from physical, emotional and sexual abuse and from neglect while you are at New Hampshire Hospital.”²³

o. SPU “PRISON RAPE ELIMINATION ACT (PREA) PPD 5.19; Prison Rape Elimination Act Procedures establishes uniform guidelines and procedures to reduce the risk of and guide the response to all types of prison sexual assault, sexual victimization and staff sexual misconduct aimed at persons under the care and custody of the NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS (NHDOC). In keeping with the intent of the federal statute (PREA, P.L. 108-79), NHDOC is committed to a zero-tolerance standard for prison sexual assault and sexual victimization, including both offender-on-offender sexual victimization and staff sexual misconduct. This policy makes the prevention of offender on offender sexual assault and staff sexual misconduct a top priority. The Department will immediately respond to, investigate, and support the prosecution of sexual assault, victimization and misconduct through both internal and external processes in partnership with state police, local law enforcement, county prosecutors and the NH Office of the Attorney General.”²⁴

p. NHH “PROTECTING YOUR RIGHTS THE PATIENT RIGHTS’ INVESTIGATOR
You have the right to see a Patient Rights’ Investigator about any problems or concerns you have. You may call or visit the Patient Rights’ Investigator any time Monday through Friday between 8:00 a.m. and 4:30 p.m. You may also write to the Patient Rights’ Investigator. Complaint forms and boxes are located on each unit of the Hospital. In the APS building the forms are available for your convenience next to the public phone on each unit. The drop box for completed complaint forms is just below the phone on the left side. Staff members will help you fill out the form if you wish. The Patient Rights’ Investigator checks the complaint box regularly. You may also contact the Patient Rights’ Investigator through the US Mail or by phone at:

New Hampshire Hospital
36 Clinton Street
Concord NH 03301
271-5918

After receiving your complaint, the Patient Rights’ Investigator will meet with you to determine best how to manage your complaint. There are informal and formal resolution processes depending on the nature of the complaint. If you or your guardian is not satisfied with the resolution, you may appeal within 30 days to the Administrative Appeals Unit. The Hearings Officer can request either a review or hearing on your complaint and will submit a written final decision within 30 days of receiving your request for an appeal.

The Patient Rights’ Investigator will contact your court-appointed guardian if you have one to discuss your complaints. Your guardian may also request to be present when you are interviewed by the Patient Rights’ Investigator.”²⁵

q. SPU ”Handling: Complaints should be addressed to the lowest level staff person with the authority to address the issue raised. This may be a Correctional Officer or other unit staff up to the SPU Security Lieutenant or SPU

22 Page 3 SPU Handbook

23 Page 1 NHH Handbook <https://www.dhhs.nh.gov/dcbcs/nhh/documents/rights-responsibilities.pdf>

24 Page 3 SPU Handbook

25 Page 6 NHH Handbook <https://www.dhhs.nh.gov/dcbcs/nhh/documents/rights-responsibilities.pdf>

Administrator, Medical or Mental Health Staff. departmental staff below the director's level outside the unit such as the Dietician. The officer receiving request slips will forward the request to the person to whom it is addressed. Request slips addressed to the Warden or Commissioner, or that does not specify an addressee, will be given to the SPU Security Lieutenant or SPU Administrator. When a staff member receives a request slip from an identified inmate/resident about any of the circumstances surrounding his/her confinement, the staff member will immediately ascertain the nature of the complaint and determine if it is within the staff member's authority to rectify the situation or to respond to the complainant. If the complaint exceeds the recipient's authority, it will be forwarded through the chain of command to the SPU Security Lieutenant or SPU Administrator. Any staff member between the recipient and the SPU Security Lieutenant or SPU Administrator who is authorized to deal with the issue raised can and should do so. A valid response includes but is not limited to: a. Granting the request; b. Denying the request; or c. Referring the inmate/resident to the person or Department outside the unit that can grant or deny the relief requested. d. If the SPU Security Lieutenant or SPU Administrator or other department level staff are not authorized to deal with the issue, they shall immediately respond to the inmate/resident, advising them that the request cannot be dealt with at the unit level and that they can appeal through the grievance process to the Division Director. Complaints should be submitted to the lowest organizational level with the authority to resolve the issue. " 26

9. In 13 years, two legislative advisory panels have recommended terminating the policy of incarcerating civilly committed individuals to SPU. Defendants have failed to implement any of those recommendations. The Defendants persist in transferring and housing civilly committed individuals in SPU in violation of 42 USC 1983 under color of law. The State of NH Legislature has failed to protect the constitutional and civil rights protections of its mentally ill citizens. There are 2 reports from the NH Legislature one in 2005 (HB 2) which was incorporated into the 2010 study (2005 study) pg 32/93 states, " The continued co-mingling of such populations will create opportunities for future legal challenges and adverse court orders." 27 The report in 2010 (final report) investigates co-mingling convicted felons, sexually violent predators, civilly committed persons not adjudicated for crimes, NGRI and incompetent to stand trial. 28 In August 2016 a complaint was filed with US Dept of Justice Civil Rights Division (USDOJ) by the Treatment Advocacy Center (TAC) of Arlington Va. regarding civilly committing individuals to the prison. 29 In 2017 a report by The Nelson A. Rockefeller Center at Dartmouth College was released examining SPU. The report indicated there were 51 transfers from NHH to SPU in 2015. 30 This number shows the pervasiveness of transferring civilly committed persons from NHH to SPU.

Date: 05/02/2018

Signature Nancy Heath (Guardian) pro se for Anthony Heath

MEMORANDUM OF LAW

Pursuant to LR 7.1(a)(2), every motion shall be accompanied by a memorandum with citations to supporting authorities or a

26 Page 14 SPU Handbook <https://www.nh.gov/nhdoc/policies/documents/6-37.pdf>

27 http://mediad.publicbroadcasting.net/p/nhpr/files/final_report_2010_study_committee2.pdf

28 http://mediad.publicbroadcasting.net/p/nhpr/files/final_report_2010_study_committee2.pdf

29 <http://indepthnh.org/wp-content/uploads/2016/08/DOJ-8.3.16-1.pdf>

<http://www.unionleader.com/2-populations:-Mental-health-patients-can-be-housed-with-inmates-who-have-committed-murder>

30 <https://rockefeller.dartmouth.edu/report/secure-housing-and-treatment-options-non-criminal-mentally-ill-new-hampshire>

statement explaining why a memorandum is unnecessary.

I have attached a supporting memorandum of law to this motion.

I have NOT attached a memorandum of law because none is required (explain your reasoning below).

CONCURRENCES SOUGHT

Pursuant to LR 7.1(c), any party filing a motion other than a dispositive motion (a dispositive motion seeks an order

disposing of one or more claims in favor of the moving party, for example, a motion to dismiss or a motion for summary

judgment) shall certify to the court that a good faith attempt has been made to obtain concurrence/agreement in the relief sought.

If concurrence is obtained, the moving party shall so note.

I certify the following (choose one):

All parties have assented/agreed to this motion.

I made a good faith attempt, but was unable to successfully obtain concurrence/agreement from all parties.

I have NOT attempted to obtain concurrence/agreement because it is not required.

CERTIFICATE OF SERVICE

I hereby certify that this motion was served on the following persons on the date and in the manner specified below:

Person(s) served electronically (via ECF):

Person(s) served by mail. Please include address(es):

Person(s) served by hand:

Date of Service: 7/10/18

Signature: Nancy Heath

Name: Nancy O'Heath

Address: 534 E. Side River Rd. Milan NH 03588

Phone: 603-723-0151

Subject:**From:** pantcy@yahoo.com**To:** pantcy@yahoo.com**Date:** Friday, July 6, 2018, 5:57:24 PM EDTDISTRICT OF NH
FILED

2018 JUL 11 A 10:00

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