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Record No. 00-2865

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IN THE  
SUPREME COURT FOR OF THE  
COMMONWEALTH OF VIRGINIA

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THOMAS EDWARD PATTEN, III, Administrator  
of the Estate of Maura K. Patten,

*Appellant,*

v.

COMMONWEALTH OF VIRGINIA,

*Appellees.*

---

Appeal from the Circuit Court for the City of Staunton

---

JOINT APPENDIX

---

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ARLINGTON

THOMAS EDWARD PATTEN, III, Administrator  
of the Estate of Maura K. Patten,

Plaintiff,

v.

CL 99-122

COMMONWEALTH OF VIRGINIA

Serve: Mark Early, c/o Garland Bigley  
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MARY L. DOWNS, RN, PHD

MICHELE DECARR, RN

S. ARABI, RN

CAROL REYNOLDS, RNP

JUNE FRINKS, MSW

PATRICIA B. HIGGINS, MSW, LCSW

L. F. HARDING

JACK W. BARBER, MD

MARK D. MILLER, MD

### MOTION FOR JUDGMENT

Comes now the plaintiff, Theodore Edward Patten, III, Administrator of the Estate of Maura K. Patten, by counsel, and moves for judgment against the defendants on the grounds and in the amount hereinafter set forth.

### PARTIES

1. The plaintiff qualified and was duly appointed administrator of the estate of Maura K. Patten, deceased, by the circuit court of the city of Staunton, Virginia, on December 12, 1997.

2. Plaintiff's decedent, diagnosed with chronic undifferentiated schizophrenia, had been involuntarily committed to Western State Hospital intermittently from 1979, and continuously from February 1991 until the date of her death, July 7, 1997.

3. Defendant Western State Hospital (WSH) is a residential psychiatric facility located in Staunton, Virginia licensed and operated by the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services. It provided psychiatric and other health care services at all times relevant hereto.

4. Defendants Robert Leadbetter, MD, Stephen Nichols, MD, Timothy Kane, MD, Jon R Hammersberg, MD, R. Scott Pearce, MD, W. Harry Horner, MD, Jack W. Barber, MD and Mark D. Miller, MD were at all times relevant hereto, licensed to provide health care and/or psychiatric health care in the

Commonwealth of Virginia, and by information and belief, were employees of Western State Hospital.

5. By information and belief, defendants M. Shutty, PHD, Maria Elkins, RN, Mary L. Downs, RN, PhD, Michele DeCarr, RN, S. Arabi, RN, Carol Reynolds, RNP, June Frinks, MSW and Patricia B. Higgins, LCSW were at all times relevant hereto licensed to provide certain health care and or mental health care in the Commonwealth and as such, were acting as employees and/or agents of Western State Hospital.

6. By information and belief, defendants L. F. Harding, Jack W. Barber, MD and Mark D. Miller, MD were at all times relevant hereto in positions of administrative and executive authority, responsible for the administration and implementation of the policies and procedures governing activities and services provided at Western State Hospital, and as such were acting as employees and/or agents of Western State Hospital.

#### STATEMENT OF FACTS

7. Plaintiff's decedent, Maura K. Patten had been committed to WSH for treatment of chronic undifferentiated schizophrenia and for the safety and protection of a controlled and supervised environment.

8. Ms. Patten had a known medical history of obesity and chronic obstructive pulmonary disease (COPD), secondary to and exacerbated by cigarette smoking while a patient with WSH.

9. Throughout her residence at WSH, decedent's medical condition was entrusted to the defendants named herein, who assumed direct responsibility for her care and treatment.

10. Ms. Patten was hospitalized in September 1994 at the WSH medical center and then transferred to the University of Virginia Hospital following an episode of respiratory distress with cyanosis. She was subsequently diagnosed with respiratory failure, acute exacerbation of COPD and/or status asthmaticus for which she was treated with antibiotics, bronchodilators and steroids. These facts were or should have been known to the defendants.

11. Despite cigarette smoking behavior, Ms. Patten used inhalers/bronchodilators to help her breathe easier. This fact was known to the defendants.

12. In July 1996, Ms. Patten agreed to a change in anti-psychotic medication to a six month trial of clozapine. This change was authorized by her Authorized Representative.

13. Over the next six months, Ms. Patten suffered a noticeably large increase in weight as an associated side effect of her use of clozapine, which adversely impacted her cardio-vascular health.

14. In October 1996, Ms. Patten's sister and authorized representative (AR) discussed her concern for Ms. Patten's condition, both physically and psychiatrically, and requested a medical consultation be arranged.

15. In November 1996, Ms. Patten's medical evaluation, performed by the defendants, determined that she was at an above average risk for cardiac disease associated with her use of clozapine.

16. From July 1996 through December 1996, decedent gained a total of twenty-nine (29) pounds, complicating her known history for obesity and COPD.

17. At the completion of the six month trial of clozapine decedent requested that this medication be changed out of concern for her worsening physical problems of obesity and labored breathing.

18. Plaintiff also requested that decedent be taken off the clozapine due to concerns for decedent's health.

19. In December 1996, defendant Dr. Leadbetter determined that Ms. Patten derived little or no benefit from the use of clozapine with an added decline in functioning and marked increase in weight with possible exacerbation of pulmonary problems, drooling and poor motivation.

20. Defendant physicians tapered the dosage down, but did not remove plaintiff's decedent from the medication clozapine.

21. In May 1997, defendant physicians added another medication to decedent's daily regimen of drugs; sertraline or zoloft. This change in medication was not authorized by decedent's AR at the time.

22. Plaintiff's decedent suffered two episodes of vomiting during June 1997 which was an indication of her

worsening physical status. No medical follow up was provided despite the defendants' awareness of the decedent's worsening condition.

23. On or about June 30, 1997, Ms. Patten met with members of her treatment team and told them she did not feel well on the medications clozapine and sertraline, especially with regards to her large weight gain.

24. In July 1997, Ms. Patten's weight was recorded at 274 pounds, a total increase of 37 pounds from the initiation of clozapine in July 1996.

25. Despite the stated requests and concerns by plaintiff and decedent for her complaints of illness and concern for worsening health status, defendant physicians failed to take decedent off of the medication clozapine.

26. On or about July 2, 1997, Ms. Patten called her family and friends with the complaint that she felt like she was dying.

27. On July 3, 1997, decedent's sister and AR, Margaret Keller called WSH to discuss her concerns for Ms. Patten's heavy, labored breathing, obesity, feelings of eminent death, and overall worsening condition. Ms. Keller requested a full and complete medical work up for Ms. Patten.

28. Defendant J. Frinks, MSW spoke with Ms. Keller and indicated that she would request a full medical work up once the holiday weekend of July 4<sup>th</sup> was completed.



29. From July 3, 1997 to July 7, 1997, a holiday weekend, no information of any kind, outside of medication administration, was entered into Ms. Patten's medical chart. No medical attention was provided to Ms. Patten during this time period.

30. On July 7, 1997, Ms. Patten was found unconscious in her bed. CPR was initiated without success and Ms. Patten was pronounced dead after approximately 30 minutes.

31. The final autopsy report for Ms. Patten of October 29, 1997 determined the cause of death to be coronary insufficiency due to coronary atherosclerosis and cardiomegaly due to hypertension.

32. From Ms. Patten's hospitalization for respiratory failure in 1994 to the date of her death, July 7, 1997, Ms. Patten never received a full and complete cardiovascular or pulmonary evaluation, despite clear indications for such evaluations.

33. Defendant physicians owed a duty to the decedent to thoroughly examine, evaluate and treat her in accordance with recognized and acceptable standards of care.

34. Defendant health care providers, including nurses, mental health technicians, social workers and other employees or agents of WSH owed a duty to plaintiff's decedent to ensure that she receive the appropriate medical care in accordance with recognized and acceptable standards of care.

35. More specifically, defendant physicians negligently failed to modify Ms. Patten's medication regimen in a timely fashion to respond to her worsening physical condition and chronic complaints of ill health and fear of death; failed to carefully monitor and respond to her increasing obesity and labored breathing; failed to procure appropriate and regular medical evaluations to prevent or monitor cardiovascular and pulmonary deterioration; failed to provide medical follow up when decedent became ill with vomiting; and otherwise negligently failed to conform to the applicable standards of care.

36. The death of plaintiff's decedent, and the failure to provide prompt and adequate medical care for her, was due to and proximately caused by the negligent actions and omissions of the defendants named herein.

37. The actions and omissions complained of herein, including the failure to adequately diagnose and treat Ms. Patten in an appropriately timely manner constitute a breach of the duties defendants owed to the decedent, and also constitute deviations from the applicable standard of care.

38. During such period from 1994 to July 1997, and more specifically from July 1996 through July 1997, the decedent clearly and unmistakably presented symptoms of worsening cardiovascular and pulmonary health, a life threatening condition. The defendants negligently failed to properly respond to the decedent's worsening cardiovascular and pulmonary symptoms.

39. The actions and omissions of the defendants in failing to timely diagnose and adequately treat Ms. Patten evidenced such indifference to her health and safety as to constitute an utter disregard of caution, amounting to complete neglect of the protection of Ms. Patten's health and safety. As such, defendants' actions and omissions, constitute gross negligence.

40. Plaintiff is entitled to maintain this action pursuant to Virginia Code Section 8.01-50 (as amended). Plaintiff seeks to recover for financial and pecuniary loss as a result of the death of Ms. Patten and damages suffered due to the loss of Ms. Patten's company, counsel, comfort, and any and all other damages pursuant to Virginia Code Section 8.01-52 (as amended).

#### COUNT I

41. Plaintiff repeats and realleges all allegations set forth above.

42. Defendants Leadbetter, Nichols, Kane, Hammersberg, Pearce, and Horner breached the appropriate standards of care in failing to appropriately diagnose and treat decedent's condition in a timely manner.

#### COUNT II

43. Plaintiff repeats and realleges all allegations set forth above.

44. Defendants Shutty, Elkins, Downs, DeCarr, Arabi, Reynolds, Frinks, Higgins, Harding, Barber, and Miller

negligently failed to ensure the delivery of appropriate and reasonable health care to the decedent.

COUNT III

45. Plaintiff repeats and realleges all allegations set forth above.

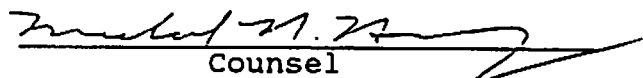
46. All defendants breached their responsibilities to the decedent in violation of the Eighth and Fourteenth Amendments to the United States Constitution, as made actionable by 42 U.S.C. Section 1983, in that the actions and omissions alleged herein rise to the level of deliberate indifference.

WHEREFORE, the plaintiff demands judgment against the defendants, jointly and severally in the amount of \$1,000,000.00 (One Million Dollars) for compensatory damages and in the amount of \$5,000,000.00 (Five Million Dollars) for punitive damages, together with his costs and attorney's fees in this behalf expended.

A trial by jury is demanded.

THOMAS EDWARD PATTEN, III,  
Adminstrator of the estate of Maura  
K. Patten

By:

  
Counsel

Stephen W. Bricker, Bar #14564  
Michael N. Herring, Bar #31630  
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VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF ARLINGTON

THOMAS EDWARD PATTEN, III.  
Administrator of the Estate of  
MAURA K. PATTEN.

*Plaintiff,*

v. .

At Law No.: CL99-522

COMMONWEALTH OF VIRGINIA, *et al.*

*Defendants.*

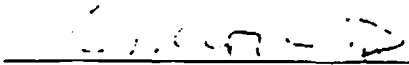
**PLEA OF SOVEREIGN IMMUNITY**

Defendant Commonwealth of Virginia, by counsel, states that it is immune from plaintiff's action on the basis of sovereign immunity. Specifically, all of the acts or omissions alleged in the motion for judgment occurred while the Commonwealth's employees were lawfully engaged in executing a court order. See, Baumgardner v. Southwestern Virginia Mental Health Institute, et. al., 247 Va. 486, 489-90, 442 S.E. 2d 400 (1994).

COMMONWEALTH OF VIRGINIA

By Counsel

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P. O. Box 108  
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phone: 540/885-1517  
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By:   
C. J. Steuart Thomas, III  
VSB # 26279

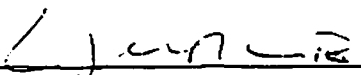
LAW OFFICES  
TIMBERLAKE SMITH  
THOMAS & MOSES, P.C.  
STAUNTON, VIRGINIA  
540 885 1517  
fax 540-885 4537

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed, postage prepaid, on

July 13, 1999, to:

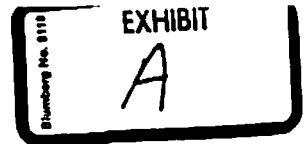
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C. J. Steuart Thomas, III

1-61 ST DR M PATTEN S L MOT

LAW OFFICES  
\* WERBLAKE SMITH  
\* THOMAS & MOSES P C  
\* TAUNTON VIRGINIA  
\* 540 885 1517  
\* 540 885 4537

CERTIFICATE OF ID ORDER FOR INVOLUNTARY  
TO A PUBLIC OR LICENSED PRIVATE FACILITY



COMMONWEALTH OF VIRGINIA

City  
County of Staunton

To the sheriff or other authorized officer of said county or city and to the director of

Western State Hospital, P.O. Box 2500, Staunton, Va. 24402

Facility

Address

Greetings.

WHEREAS, I David McCaskey Judge or Special Justice of

count of the said county or city have observed the person named in the foregoing petition, alleged to be in need of care and treatment in a hospital, and have reviewed the medical certifications and statement of facts upon which such certifications are based and have this day found that the person named in the foregoing petition:

- ☐ 1. Presents an imminent danger to himself as a result of mental illness.
- ☐ 2. Presents an imminent danger to others as a result of mental illness.
- ☒ 3. Has otherwise been proved to be so seriously mentally ill as to be substantially unable to care for himself.

Furthermore: (check one and complete)

- ☐ A. The alternatives to involuntary hospitalization and treatment were investigated and were deemed suitable. I have found that there is a less restrictive alternative to involuntary hospitalization and treatment in this case. I therefore, direct that the person named in the foregoing petition receive treatment in accord with the following order:

- ☒ B. The alternatives to involuntary hospitalization and treatment were investigated and were deemed unsuitable. I have found that there is no less restrictive alternative to involuntary hospitalization and treatment in this case.

I therefore, command you, the said sheriff, other authorized officer or responsible person, to make provision for the suitable and proper care of the person named in the foregoing petition and to deliver such person to the director of

Western State Hospital, P.O. Box 2500, Staunton, Va. 24402

Address

for involuntary hospitalization and treatment not to exceed 180 days from this date. Furthermore, if admission is denied pursuant to §§37.1-68 or 37.1-70, you are hereby authorized to return the person named in the foregoing petition to this jurisdiction.

Given under my hand and seal this 28th day of April 19 97

Judge or Special Justice

Name David McCaskey

Title Special Justice

Address Staunton, VA 24401

Type  
or  
Print

CER. CAT .ND ORDER FOR INVOLUNTARY MI: 1  
TO A PUBLIC OR LICENSED PRIVATE FACILITY

COMMONWEALTH OF VIRGINIA

City ~~XXXX~~ Staunton

To the sheriff or other authorized officer of said county or city and to the director of

Western State Hospital, P. O. Box 2500, Staunton, VA 24402

Facility

Address

Greetings:

WHEREAS, I J. Forester Taylor Judge or Special Justice of \_\_\_\_\_

court of the said county or city have observed the person named in the foregoing petition, alleged to be in need of care and treatment in a hospital, and have reviewed the medical certifications and statement of facts upon which such certifications are based and have this day found that the person named in the foregoing petition:

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\_\_\_\_\_  
\_\_\_\_\_

- ☒ B. The alternatives to involuntary hospitalization and treatment were investigated and were deemed unsuitable. I have found that there is no less restrictive alternative to involuntary hospitalization and treatment in this case.

I, therefore, command you, the said sheriff, other authorized officer or responsible person, to make provision for the suitable and proper care of the person named in the foregoing petition and to deliver such person to the director of \_\_\_\_\_

Western State Hospital, P. O. Box 2500, Staunton, VA 24402

Address

for involuntary hospitalization and treatment not to

exceed 180 days from this date. Furthermore, if admission is denied pursuant to §§37.1-68 or 37.1-70, you are hereby authorized to return the person named in the foregoing petition to this jurisdiction.

Given under my hand and seal this 13th day of November 19 96

  
Judge or Special Justice

Name J. Forester Taylor

Title Special Justice

Address Staunton, VA 24401

Type  
or  
Print



COMMONWEALTH OF VIRGINIA

City Staunton  
County of \_\_\_\_\_

To the sheriff or other authorized officer of said county or city and to the director of

Western State Hospital, P.O. Box 258, Staunton VA 24402  
Facility Address

Greetings: WHEREAS, I David McCook Judge or Special Justice of \_\_\_\_\_

court of the said county or city have observed the person named in the foregoing petition, alleged to be in need of care and treatment in a hospital, and have reviewed the medical certifications and statement of facts upon which such certifications are based and have this day found that the person named in the foregoing petition:

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\_\_\_\_\_

- ☒ B The alternatives to involuntary hospitalization and treatment were investigated and were deemed unsuitable. I have found that there is no less restrictive alternative to involuntary hospitalization and treatment in this case.

I, therefore, command you, the said sheriff, other authorized officer or responsible person, to make provision for the suitable and proper care of the person named in the foregoing petition and to deliver such person to the director of \_\_\_\_\_

Western State Hospital  
Staunton VA 24402 for involuntary hospitalization and treatment not to  
Address

exceed 180 days from this date. Furthermore, if admission is denied pursuant to §§37.1-68 or 37.1-70, you are hereby authorized to return the person named in the foregoing petition to this jurisdiction.

Given under my hand and seal this 17 day of June 1996

David McCook  
Judge or Special Justice  
Name David McCook  
Title Special Justice  
Address Staunton VA 24402

Type  
or  
Print

COMMONWEALTH OF VIRGINIA

City Staunton  
County Stafford

To the sheriff or other authorized officer of said county or city and to the director of

Western State Hospital, P.O. Box 2500, Staunton, Va 24401  
Facility Address

Greetings:

WHEREAS, I J. Forester Taylor Judge or Special Justice of \_\_\_\_\_

court of the said county or city have observed the person named in the foregoing petition, alleged to be in need of care and treatment in a hospital, and have reviewed the medical certifications and statement of facts upon which such certifications are based and have this day found that the person named in the foregoing petition:

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I therefore, command you, the said sheriff, other authorized officer or responsible person, to make provision for the suitable and proper care of the person named in the foregoing petition and to deliver such person to the director of \_\_\_\_\_

Western State Hospital  
Staunton, VA 24401  
Address

\_\_\_\_\_ for involuntary hospitalization and treatment not to

exceed 180 days from this date. Furthermore, if admission is denied pursuant to §§37.1-68 or 37.1-70, you are hereby authorized to return the person named in the foregoing petition to this jurisdiction

Given under my hand and seal this 08 3rd 10th day of January 19 96

J. Forester Taylor  
Judge or Special Justice

Name J. Forester Taylor  
Title Special Justice

Type  
or  
Print

Address Staunton, VA 24401

COMMONWEALTH OF VIRGINIA

City Staunton  
County of \_\_\_\_\_

To the sheriff or other authorized officer of said county or city and to the director of  
Western State Hospital, Box 2500, Staunton, Virginia 24401  
Facility Address

Greetings.  
WHEREAS, I Charles N. Bishop, Jr. Judge or Special Justice of \_\_\_\_\_

court of the said county or city have observed the person named in the foregoing petition, alleged to be in need of care and treatment in a hospital, and have reviewed the medical certifications and statement of facts upon which such certifications are based and have this day found that the person named in the foregoing petition:

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I, therefore, command you, the said sheriff, other authorized officer or responsible person, to make provision for the suitable and proper care of the person named in the foregoing petition and to deliver such person to the director of \_\_\_\_\_

Western State Hospital  
Staunton, Virginia 24401  
Address

for involuntary hospitalization and treatment not to exceed 180 days from this date. Furthermore, if admission is denied pursuant to §§37.1-68 or 37.1-70, you are hereby authorized to return the person named in the foregoing petition to this jurisdiction.

Given under my hand and seal this 9th day of August 19 95

Charles N. Bishop, Jr.  
Name  
Special Justice  
Title  
Staunton, Virginia 24401  
Address

Type  
or  
Print

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF STAUNTON

THOMAS EDWARD PATTEN, III,  
Administrator of the Estate of  
MAURA K. PATTEN,

*Plaintiff,*

v.

At Law No.: CL99-94

COMMONWEALTH OF VIRGINIA, *et al.*

*Defendants.*

**ORDER**

This cause came to be heard this 17<sup>th</sup> day of July, 2000, upon the plea of sovereign immunity filed by the Commonwealth of Virginia. After reviewing the pleadings and memoranda filed and hearing the arguments of counsel, the Court ruled orally in favor of the Commonwealth of Virginia and directed counsel for the Commonwealth to prepare an Order. Subsequently, a dispute arose regarding the language of the Order dismissing the Commonwealth, and the parties appeared again on September 5, 2000, for a hearing on the entry of this Order.

Having reviewed the above and heard the arguments of counsel today, it is hereby ORDERED that the Commonwealth of Virginia's plea of sovereign immunity be, and hereby is GRANTED, and that the Commonwealth of Virginia is DISMISSED from this case with prejudice. All of plaintiff's objections to this Order are noted and preserved.