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FLOYD COUNTY CIRCUIT COURT
CASE NO. _____

96093

APPALACHIAN REGIONAL
HEALTHCARE, INC.,

and

ARH TUG VALLEY HEALTH SERVICES,
INC. d/b/a HIGHLANDS ARH REGIONAL
MEDICAL CENTER

PETITIONER/PLAINTIFF

v.

HON. TYLER GREEN
JUDGE, FLOYD DISTRICT COURT

AND

HON. JIMMY R. MARCUM
JUDGE, FLOYD DISTRICT COURT

AND

HON. KEITH BARTLEY
FLOYD COUNTY ATTORNEY

RESPONDENTS/DEFENDANTS

AND

COMMONWEALTH OF KENTUCKY

REAL PARTY IN INTEREST

SERVE: Hon. Russell Coleman
Office of Attorney General
700 Capital Avenue, Suite 118
Frankfort, Kentucky 40601

Hon. Keith Bartley
Floyd County Attorney's Office
149 S. Central Ave, BOX 1000
Prestonsburg, KY 41653

Hon. Jimmy R. Marcum
Floyd District Court Judge
127 S. Lake Dr.
Prestonsburg, KY 41653

Presiding Judge: HON. JOHNNY RAY HARRIS (631314)

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Hon. Tyler Green
Floyd District Court Judge
127 S. Lake Dr.
Prestonsburg, KY 41653

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**COMPLAINT AND PETITION FOR DECLARATION OF RIGHTS,
INJUNCTIVE RELIEF AND WRIT OF MANDAMUS**

Plaintiff petitions this Court for a Writ of Mandamus requiring the Defendants, who are public officers to discharge certain statutorily-mandated public duties. Plaintiff also seeks declaratory, injunctive and other legal and equitable relief.

THE PARTIES

1. Plaintiff, Appalachian Regional Healthcare, Inc. (“ARH”) is a not-for-profit, tax exempt Kentucky corporation operating a hospital in Perry County, Kentucky.

2. Plaintiff, ARH Tug Valley Health Services, Inc., d/b/a Highlands ARH Medical Center (“Highlands ARH”) is a subsidiary of ARH which operates a hospital located in Floyd County, Kentucky. (Collectively, ARH and Highlands ARH are hereafter referred to as “Plaintiffs”)

3. Defendants are the Hon. Tyler Green (“Judge Green”) and the Hon. Jimmy R. Marcum (“Judge Marcum”), (collectively, the “District Judges”) in their capacities as District Judges in Floyd County; and Kenneth Bartley, in his official capacity as the County Attorney in Floyd County, Kentucky (“County Attorney”), (collectively, the “Defendants”).

4. The District Judges and the County Attorney are named because injunctive and mandamus relief is sought requiring that the Defendants act in compliance with applicable law.

JURISDICTION AND VENUE

5. The Circuit Court of Floyd County, Kentucky has jurisdiction over this case in accordance with KRS 23A.010.

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6. Venue is proper in the Circuit Court of Floyd County, Kentucky pursuant to KRS 452.450 and KRS 452.405 as the conduct giving rise to this Petition and Complaint occurred in Floyd County, Kentucky.

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FACTS

BACKGROUND OF KRS §202A

7. The process for involuntary hospitalization of mentally ill persons is set forth in detail in KRS Chapter 202A. The criteria that must be met for a patient to be involuntarily hospitalized requires a showing that the person is (1) mentally ill; (2) “presents a danger or threat of danger to self, family or others as a result of the mental illness;” (3) that the patient “can reasonably benefit from treatment;” and (4) “hospitalization is the least restrictive alternative mode of treatment presently available” for the patient. KRS §202A.026.

8. A hospital may admit a patient involuntarily, if the patient meets the criteria for involuntary hospitalization and an “authorized staff physician” at the hospital “certif[ies] in the record of the individual that in his opinion the individual should be involuntarily hospitalized.” KRS §202A.031(1). This hospitalization, however can only last for a limited time and “any individual who has been admitted to a hospital [under this provision] shall be released from the hospital within seventy-two (72) hours (excluding weekends and holidays) unless further detained under the applicable provisions of this chapter.” KRS §202A.031(2).

9. Alternatively, if after an examination by a qualified mental health professional and a certification that a person meets the criteria for involuntary hospitalization, “a judge may order the person hospitalized for a period not to exceed seventy-two (72) hours.” KRS §202A.028(1).

10. In either case, if the patient is to be involuntarily hospitalized beyond the seventy-two hours prescribed in KRS §202A.031, a formal process must be initiated as outlined in KRS

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§202A.051. This process requires the proceedings “be initiated by the filing of a verified petition in District Court.” KRS §202A.051(1).

11. In instances where a patient presents at a hospital for a 72 hour hold, if the hospital does not have vacant beds within their psychiatric unit, or is otherwise above census in their psychiatric unit, the patient may be transferred to another hospital where sufficient vacancy in an appropriate psychiatric unit is available. KRS §202A.028(3). In such cases, the patient is to be “transported from the person’s home county by the sheriff or other peace officer as ordered by the court.” *Id.* However, KRS §202A does not afford the ability to transport a patient to a facility that has sufficient occupancy where the seventy-two hour hold is initiated solely by the hospital as an emergency admission under KRS §202A.031(1). Instead such transfers and transportation are only permissible while the patient’s hospitalization is court-ordered pursuant to KRS §202A.028(1).

12. The county attorney is required by law to oversee the administration of the KRS 202A process. Specifically, KRS §202A.016 dictates that “in all proceedings [under 202A], it shall be the duty of the county attorney to assist the petitioner and represent the interests of the Commonwealth and to assist the court in its inquiry.”

THE DEFENDANTS HAVE VIOLATED KRS §202A

13. On October 3, 2023, District Judges issued a *sua sponte* Order entitled “Protocol for Mental Health Petitions” which requires that “any person who is present at or presented at Highlands ARH Regional Medical Center shall be assessed by a staff physician of ARH. It will be the decision of said staff physician whether to authorize a 72-hour emergency admission, as authorized by [KRS 202A.031]. *The Court will not review petitions of individuals in situations*

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where the staff at Highlands ARH have the authority to order 72-hour emergency admission.”

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[EX 1 (Order) (emphasis added).]

14. This “Protocol” was not issued in connection with any ongoing case, but was issued *sua sponte* by the District Judges. Likewise the Order and its Protocol was not drafted or issued with the assistance of any appropriate committee, nor was it filed with the Supreme Court Clerk or properly distributed as required under Ky. R. Sup. Ct. 1.040(3) to be considered a binding or appropriately enacted local rule of the District Court.

15. Further, the Protocol singles out Highlands ARH, mandating action from Highlands ARH unilaterally, as opposed to any other provider, and mandates actions from Highlands ARH without affording any hearing or opportunity to respond.

16. Compliance with the Order of the Court’s Protocol is especially challenging for the Plaintiffs as Highlands ARH has a limited number of beds in its psychiatric unit and routinely runs at full occupancy. On the other hand, other ARH hospitals such as Harlan ARH Regional Medical Center, often have vacant psychiatric beds. However, as noted above, Highlands ARH cannot unilaterally transfer a patient who is being held under an emergency 72 hour hospitalization. Patients may only be transported by the sheriff or by law enforcement, may only be transported upon order of the court, and only when the patient is being held under a court order of involuntary hospitalization pursuant to KRS §202A.028(1). KRS §202A.028(3).

17. As a result of the District Judges’ Order and Protocol, Highlands ARH has, on several occasions, had persons presented at the hospital who have been in psychiatric distress, requiring 72-hour emergency admission. Unfortunately, frequently, on these occasions, Highlands ARH has not had occupancy in their psychiatric unit. As a result, Highlands ARH has had to house these patients in their emergency department until a bed in the psychiatric unit becomes open. In many cases, this has taken as long as nineteen (19) hours. During this time,

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the patient has remained in psychiatric distress in an unlocked unit without the presence of law enforcement, placing Highlands ARH staff and patients in danger of harm. Likewise, the patient remains a danger of harm to self or others and not able to receive psychiatric care because they have not been transported to an appropriate facility with the necessary occupancy to treat the patient.

18. In one such instance, a county inmate was presented to Highlands ARH accompanied by law enforcement. Judge Green contacted an employee of ARH's psychiatric services seeking an update regarding the placement of the inmate. After the ARH employee informed Judge Green that Highlands ARH's psychiatric unit was at full occupancy and that the inmate would have to be kept at the emergency department until a bed became available, Judge Green responded that he was "not keeping my officer down there all day" and that he was sending law enforcement home. Judge Green also stated that he was going to issue a show cause order for the ARH employee, implying that she would have to come to court to explain why she was not complying with the District Judges' previous Order and Protocols before stating that he was "sending the police home. He is an ARH patient now."

19. Leaving an inmate in psychiatric distress unaccompanied in a hospital's emergency department places the hospital, the patient, and the public in risk of severe danger. Not only that, but it violates Kentucky law. In the instance described above, the inmate was in the custody of law enforcement when he was presented to Highlands ARH. KRS §441.045(15)(b) requires that "a peace officer or correctional officer having custody of a person may take the person to a health care facility or health care provider for the purpose of receiving treatment if a correctional officer remains with the person during the time the person is on the premises of the health care facility or health care provider, unless the facility or provider consents to the absence of the officer."

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20. Highlands ARH did not consent to having an inmate who was in active psychiatric distress, who had been found to be a danger to himself or others, left unaccompanied in its emergency department while it waited for a bed to open up on the psychiatric unit. As such, the removal of law enforcement was a clear violation of KRS §441.045(15)(b).

21. By refusing to review petitions for involuntary hospitalization orders as required by KRS §202A.028(1), the District Judges have created an intolerable situation. Psychiatric patients, including inmates, are being abandoned by law enforcement in Highlands ARH's emergency department for extended periods of time. These patients should be transported to hospitals that have psychiatric units with available occupancy, as required by KRS §202A.028(3). However, such transportation cannot occur without a court-ordered hospitalization, which the District Judges are refusing to order. The situation is further exacerbated by the District Judges ordering law enforcement to leave a psychiatric patient unattended at the hospital, in violation of KRS §441.045(15)(b)'s mandate that law enforcement remain with the patient until the hospital agrees to take custody of the patient.

22. These violations of law have placed Highlands ARH, its staff, and its patients, at serious risk. In one recent instance, a patient in active psychiatric distress was left at Highlands ARH's emergency department for nineteen (19) hours. The patient remained in Highlands ARH's emergency department because Highlands ARH did not have any open beds in its psychiatric unit at the time. During that time, the patient's behavior required two separate interventions by hospital security because of dangerous and threatening behaviors.

23. Defendants are not fulfilling their statutorily-mandated duties. In the case of the County Attorney, the General Assembly has mandated that in involuntary hospitalization proceedings, "it shall be the duty of the county attorney to assist the petitioner and represent the interests of the Commonwealth and to assist the court in its inquiry." KRS §202A.016. In the

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present case, the County Attorney has not assisted Mountain Comprehensive Care Corporation, the qualified mental health professional contracted with the Commonwealth to complete the evaluations and file involuntary hospitalization petitions, with the prosecution of any filed petitions. Instead, the County Attorney has failed to intervene or otherwise protest while the District Judges refuse to entertain involuntary petitions. In doing so, the County Attorney has generally not represented the interest of the Commonwealth.

24. The Plaintiffs continue to be harmed by the Defendants' non-compliance with KRS Chapter 202A. Further, because the District Judges' October 2023 Order was not a final and appealable order, and because the District Judges have refused to review petitions for involuntary hospitalization, the Plaintiffs have no adequate alternative remedy aside from the extraordinary relief of mandamus.

COUNT ONE
(Mandamus)

25. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 24 of the Complaint.

26. Mandamus is an appropriate remedy to compel a public officer to perform his duties.

27. A writ of mandamus is needed to compel the District Judges to rescind their October 2023 Order and Protocol, to comply with KRS §202A.028, and to review petitions for involuntary hospitalization.

28. Likewise, a writ of mandamus is needed to compel the County Attorney to comply with their statutory obligations under KRS §202A.016.

29. In the absence of such a writ, Plaintiffs will continue to suffer irreparable harm and great injustice for which they will have no adequate remedy by appeal.

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COUNT TWO
(Injunctive Relief)

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30. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 29 of the Complaint.

31. Injunctive relief is an appropriate remedy to prohibit a public officer from unfairly and unreasonably performing his duties.

32. An injunction is needed prohibiting the District Judges from enforcing the Order and Protocol they unilaterally established, in violation of Ky. R. Sup. Ct. 1.040(3)'s procedures for establishing local rules, and in direct contradiction of KRS §202A.028.

33. This injunction is also needed to make sure patients receive needed care in a timely manner. When availability of treatment is not presently available in the person's county of residence, KRS §202A.028(3)'s transportation provision can only be utilized for persons hospitalized pursuant to court order, not hospital initiated holds.

34. Further, this injunction is also needed to compel the District Judges to comply with KRS §441.045(15)(b) and require peace officers or correctional officers to remain with inmates brought to Plaintiff health care facilities for treatment during the time the inmate is on the Plaintiff's premises until such time as they are admitted or Plaintiff consents to the release of the officer.

35. Finally, this injunction is also needed to compel the County Attorney to comply with its statutorily mandated duties in KRS §202A.016.

36. An injunction can "mandatorily direct the doing of an act." CR 65.01. An injunction against the Defendants requiring them to comply with KRS Chapter 202A will not harm the Defendants as they are required to comply with that statute by law. No irreparable harm will occur to any Party if injunctive relief is provided.

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37. In addition, the public interest will be served by granting an injunction. The Defendants' failure to comply with the law has placed the public at serious risk for the reasons previously mentioned, above.

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38. Plaintiffs have raised a substantial question and has a substantial likelihood of success on the merits of this case. The Defendants have no justification for taking actions directly contrary to KRS Chapter 202A.

39. An actionable and justiciable controversy and dispute now exists between the parties.

40. Unless such injunctive relief is issued, Plaintiffs will continue to suffer irreparable harm and great injustice for which they will have no adequate remedy by appeal.

COUNT THREE
(Declaratory Relief)

41. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 40 of the Complaint.

42. An actionable and justiciable controversy and dispute now exists between the parties.

43. The Plaintiffs are entitled to a declaration that the District Judges are required to comply with KRS §202A.028, review petitions for involuntary hospitalization, and to order transport of involuntarily hospitalized persons when no psychiatric treatment is presently available in the person's county of residence.

44. The Plaintiffs are entitled to a declaration that the County Attorney is required to fulfill his statutorily-mandated duties of KRS §202A.016, assist petitioners who seek the hospitalization of persons who have been certified as meeting the criteria for involuntary hospitalization, and to represent the interests of the Commonwealth.

PRAYER FOR RELIEF

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WHEREFORE, Plaintiffs pray for the following relief:

A. That the Court immediately declare that the District Judges' Order and Protocol of October 2023 is hereby stricken, that District Judges are required to comply with KRS §202A.028, and to order transport of involuntarily hospitalized persons when no psychiatric treatment is presently available in the county of residence;

B. That the Court immediately declare that the County Attorney be required to fulfill his statutorily-mandated duties set forth in KRS 202A.016 and assist petitioners seeking the hospitalization of persons who have been certified as meeting the criteria for involuntary hospitalization, and to represent the interests of the Commonwealth, including assuring that persons who require involuntary hospitalization are not left unattended in an hospital emergency department, but are transported to a properly-equipped psychiatric unit when one is otherwise not available in the person's county of residence;

C. That a Writ of Mandamus be issued directing the District Judges to comply with KRS §202A.028 and review petitions for involuntary hospitalization and to order transport of involuntarily hospitalized persons when no psychiatric treatment is presently available in the county of residence;

D. That a Writ of Mandamus be issued directing the County Attorney to fulfill his statutorily-mandated duties set forth in KRS 202A.016 and assist petitioners seeking the hospitalization of persons who have been certified as meeting the criteria for involuntary hospitalization, and to represent the interests of the Commonwealth, including assuring that persons who require involuntary hospitalization are not left unattended in an hospital emergency department, but are transported to a properly-equipped psychiatric unit when one is otherwise not available in the person's county of residence;

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- E. That the Plaintiffs be awarded its attorneys' fees, costs and expenses herein; and
- F. That the Court grant Plaintiffs any other relief to which it may be entitled.

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VERIFICATION

Carrie Rudzik, being first duly sworn, deposes and says that she is the Vice president of Ancillary Services at ARH, one of the complainant corporations, and that the foregoing Complaint is true of her own knowledge.

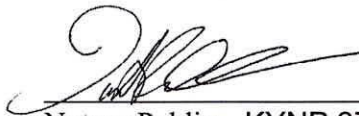


 Carrie Rudzik

COMMONWEALTH OF KENTUCKY)
) :SS
 COUNTY OF Perry)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 27 day of February, 2024, by Carrie Rudzik.

My commission expires: October 4, 2025



 Notary Public KYNP 37953

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Respectfully submitted,



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