



## West Virginia E-Filing Notice

CC-21-2024-P-10

Judge: Kurt W. Hall

**To:** Michael Folio  
mfolio@drowv.org

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# NOTICE OF FILING

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IN THE CIRCUIT COURT OF LEWIS COUNTY, WEST VIRGINIA

J. P. v. William R. Sharpe, Jr., Hospital

CC-21-2024-P-10

The following complaint was FILED on 5/8/2024 11:17:24 AM

Notice Date: 5/8/2024 11:17:24 AM

Beth A. Burkhart  
CLERK OF THE CIRCUIT COURT  
Lewis County  
117 Court Avenue  
WESTON, WV 26452

(304) 269-8210  
Beth.Burkhart@courtsww.gov

# COVER SHEET

E-FILED | 5/8/2024 11:17 AM  
CC-21-2024-P-10  
Lewis County Circuit Clerk  
Beth A. Burkhart

## GENERAL INFORMATION

IN THE CIRCUIT COURT OF LEWIS COUNTY WEST VIRGINIA

**J. P. v. William R. Sharpe, Jr., Hospital**

**First Plaintiff:**  Business  Individual  Government  Other

**First Defendant:**  Business  Individual  Government  Other

**Judge:** Kurt W. Hall

## COMPLAINT INFORMATION

**Case Type:** Miscellaneous Proceedings

**Complaint Type:** Other - Civil

**Origin:**  Initial Filing  Appeal from Municipal Court  Appeal from Magistrate Court

**Jury Trial Requested:**  Yes  No **Case will be ready for trial by:** \_\_\_\_\_

**Mediation Requested:**  Yes  No

**Substantial Hardship Requested:**  Yes  No

Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: Client is profoundly developmentally disabled

I am proceeding without an attorney

I have an attorney: Michael Folio, 5088 WASHINGTON ST W STE 300, CHARLESTON, WV 25313

## SERVED PARTIES

**Name:** William R. Sharpe, Jr., Hospital  
**Address:** 936 Sharpe Hospital Road, Weston WV 26452  
**Days to Answer:** 20                      **Type of Service:** Circuit Clerk - Certified Mail - Including Copy Fee

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**Name:** Michael Caruso  
**Address:** One Davis Square Suite 100, Charleston WV 25301  
**Days to Answer:** 20                      **Type of Service:** Circuit Clerk - Certified Mail - Including Copy Fee

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**Name:** Dr. Paramjit Chumber  
**Address:** 936 Sharpe Hospital Road, Weston WV 26452  
**Days to Answer:** 20                      **Type of Service:** Circuit Clerk - Certified Mail - Including Copy Fee

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**Name:** Patrick W. Ryan  
**Address:** 936 Sharpe Hospital Road, Weston WV 26452  
**Days to Answer:** 20                      **Type of Service:** Circuit Clerk - Certified Mail - Including Copy Fee

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**Name:** Cynthia A. Persily  
**Address:** One Davis Square, Charleston WV 25301  
**Days to Answer:** 20                      **Type of Service:** Circuit Clerk - Certified Mail - Including Copy Fee

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IN THE CIRCUIT COURT OF LEWIS COUNTY, WEST VIRGINIA

**J.P., a protected person unlawfully  
detained at William R. Sharpe, Jr.,  
Hospital,**

**Plaintiff,**

**vs.**

**CIVIL ACTION NO.**

**WILLIAM R. SHARPE, Jr., HOSPITAL, a  
state psychiatric hospital; PARAMJIT  
CHUMBER, M.D., in his capacity as Chief  
Medical Officer of William R. Sharpe, Jr.,  
Hospital; PATRICK W. RYAN, in his capacity  
as Administrator of William R. Sharpe, Jr.,  
Hospital; MICHAEL J. CARUSO, in his capacity  
as Secretary of the West Virginia Department  
of Health Facilities; and CYNTHIA A.  
PERSILY, in her capacity as Secretary of the  
West Virginia Department of Human Services,**

**Defendants.**

**PETITION FOR WRIT OF *HABEAS CORPUS* AND WRIT OF  
MANDAMUS & COMPLAINT FOR ABUSE AND NEGLECT**

**A. INTRODUCTION**

1. J.P. is an adult male with a developmental disability who was illegally discharged from the care of his community-based service provider, unlawfully civilly committed to William R. Sharpe, Jr., Hospital (“Sharpe Hospital”), battered and physically abused at Sharpe Hospital, and remains unlawfully detained at Sharpe Hospital. J.P. and multiple other similarly situated protected persons are being unlawfully detained by the Defendants.

2. Disability Rights of West Virginia (“DRWV”) is the federally mandated protection and advocacy system (“P&A”) for West Virginia. *See* 42 U.S.C. § 10801(b) and 42 U.S.C. § 15001(b)(2). DRWV has been West Virginia’s P&A since 1977. P&As were established by the United States Congress in 1975 to protect the rights of people with disabilities

and their families through legal support, advocacy, referral, and education. There are P&As in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&As are the largest provider of legally based advocacy services to people with disabilities in the United States.

3. DRWV also serves as the advocate and monitor as part of the West Virginia Department of Human Services' Intellectual and Developmental Disabilities program that is required by the state and federal court consent decrees in *E.H. v. Matin*, Civil Action 81-585, Kanawha County Circuit Court ("Hartley Decree") and *Medley vs. Ginsberg*, Civil Action 78-2099, U.S. Dist. Ct. WV. (1981) ("Medley Decree"). As the advocate and monitor for persons with disabilities under the Medley/Hartley Advocacy Program, DRWV is required to provide an array of services related to, among other areas, "***Abuse/Neglect***; Financial Exploitation; Other Exploitation; Rights Violation; Criminal Charges; Failure to Implement Individual Program Plan; ***Inappropriate Discharge***; Guardianship and Conservatorship; Medical Surrogate; ***Crisis Planning***; Housing; Division of Rehabilitation Services (ORS); Employment Issues; ***Institutionalization and Unmet Needs***." (emphasis added).

4. DRWV is the advocate, monitor, and counsel for J.P.

## B. JURISDICTION & VENUE

5. J.P. currently resides at Sharpe Hospital in Lewis County. This Court has jurisdiction in accordance with W.Va. Code §53-1-2 and W.Va. Code §53-4-1. *See also Sloan v. Wachtel*, 233 S.E.2d 137, syl. no. 2 (W.Va. 1977) ("Proceedings by writ of *habeas corpus ad subjiciendum*, pursuant to provisions of the Constitution and W.Va. Code 53-4-1, and W.Va.

Code 27-5-5 and 8, are available to a person involuntarily committed for mental illness on a showing that he has probable cause to believe that he is detained without lawful authority.”). Venue is appropriate in Lewis County pursuant to W.Va. Code §14-2-2(a) and W.Va. Code §56-1-1(a)(1). The joinder of writs and other forms of relief is appropriate in accordance with W.Va. R.C.P., Rule 71.B(b).

### C. PARTIES

6. J.P. is a participant in West Virginia’s Intellectual/Developmental Disabilities Waiver program (“IDD Waiver”). J.P. previously resided in Wood County at a licensed IDD Waiver group home that is owned and operated by Westbrook Health Systems, Inc. (“Westbrook”), a comprehensive community mental health center and core provider for the West Virginia Department of Human Services. *See* W.Va. Code §27-2A-1. Westbrook was J.P.’s IDD Waiver service provider.

7. Sharpe Hospital is a state psychiatric hospital that was “established [and is] maintained and operated by the state....” *See* W.Va. Code §27-1-6. Sharpe Hospital is certified by the Centers for Medicare and Medicaid Services (“CMS”), accredited by The Joint Commission, and licensed by the Office of Health Facility Licensure & Certification (“OHFLAC”). Between April 2020 – June 2023, Sharpe Hospital has been cited for 73 separate regulatory violations by OHFLAC/CMS related to patient abuse, unsafe environment, mismanagement, improper governance, and substandard quality assurance. During FY 2020 through FY 2023, Sharpe Hospital incurred operating losses of more than \$357M.

8. Dr. Paramjit Chumber, M.D., is the chief medical officer of Sharpe Hospital. *See* W.Va. Code §27-1-13. Dr. Chumber is responsible for medical programs and medical care provided to patients at Sharpe Hospital. *See* Tags A-1690 and A-1693 of CMS’s State

Operations Manual Appendix A for Hospitals. Dr. Chumber is employed by West Virginia University Medical Corporation (“WVU”) and serves as CMO through a Clinical Program Services Agreement in which Sharpe Hospital pays WVU approximately \$11M annually to staff the hospital.

9. Patrick W. Ryan is the administrator of Sharpe Hospital and serves as its chief executive officer. *See* W.Va. Code §27-1-7. All persons employed by Sharpe Hospital except physicians “are under the jurisdiction and authority of the administrator...” *Id.* Mr. Ryan has the mandatory duty “to assure that each patient is informed of his or her rights and to make all necessary arrangements to allow the patient to exercise his or her rights.” *See* W.Va. C.S.R. §64-59-5.4. During the period August 2022 – January 2023, Mr. Ryan was one of only four CEOs in the entire U.S. to be cited for a substantial deficiency by CMS.

10. Michael Caruso is the Secretary of the Department of Health Facilities (“DHF”), and Secretary Caruso has the mandatory duty to “[m]anage, direct, control, and govern” Sharpe Hospital; operate Sharpe Hospital and adopt rules for its operation; and “[p]rotect the rights of clients...” *See* W.Va. Code §26-1-3(a)(2) – (4). Sharpe Hospital is “managed, directed and controlled by the Department of Health Facilities.” *See* W.Va. Code §27-2-1. During FY 2020 through FY 2023, DHF and/or its predecessor paid over \$366.4M to private psychiatric hospitals in West Virginia to divert psychiatric patients from the state’s two psychiatric hospitals.

11. Dr. Chumber, Mr. Ryan, and Secretary Caruso, individually and collectively, have immediate custody of J.P. as defined by W.Va. Code §53-4-4.

12. Cynthia Persily is the Secretary of the Department of Human Services (“DHS”) and acts as the “chief executive officer” of DHS. *See* W.Va. Code §9-2-2. DHS is comprised of the Bureau for Medical Services (“BMS”) and the Bureau for Behavioral Health (“BBH”),

among other agencies. *See* W.Va. Code §5F-2-1a(b). BMS oversees the IDD Waiver program and BBH oversees and contracts with core providers and the comprehensive community mental health centers, including Westbrook, to ensure the provision of services and placements to prevent institutional commitments at the state psychiatric hospitals and to provide after care when persons are discharged from a state psychiatric hospital.

13. As DHS's CEO, Secretary Persily has the mandatory duty to "[p]repare and submit state plans which will meet the requirements of federal laws, rules governing federal-state assistance [Medicaid], and federal assistance, and which are not inconsistent with state law...." *See* W.Va. Code §9-2-6(11). She has the mandatory duty to "[c]ontract with the federal government or its agencies, other states, political subdivisions of this state, corporations, associations, partnerships, or individuals..." *Id.* at (4). She has the mandatory duty to "[r]equire a provider, subgrantee, or other entity performing services on behalf of the department to comply with all applicable laws, rules, and written procedures pertaining to the program for which the entity is providing or coordinating services, including, but not limited to, policy manuals, statements of work, program instructions, or other similar agreements." *Id.* at (20). DHS data reveal that DHS has provided over \$245M in grant funding to comprehensive community mental health centers, including Westbrook, from FY '18 to FY '23, to provide essential services, including crisis-oriented services to treat patients at risk of involuntary institutionalization and to reduce involuntary commitments.

## **D. FACTS**

### **1. J.P.'s Unlawful Commitment**

14. On September 14, 2022, J.P. was involuntarily civilly committed to Sharpe Hospital upon an application by J.P.'s Westbrook care provider and a certification by a



Westbrook licensed social worker. Neither J.P.'s application nor certification by Westbrook employees demonstrates that J.P. had a documented mental illness or psychosis as required by W.Va. Code §27-5-2(a) ("a diagnosis of dementia, epilepsy, or intellectual or developmental disability alone may not be a basis for involuntary commitment to a state hospital.")

15. According to OHFLAC, Westbrook's care provider and licensed social worker falsely represented to the Wood County mental hygiene commissioner that J.P. "violently and aggressively attacked his roommate" to attempt to justify J.P.'s improper involuntary civil commitment. Tina Wiseman, the OHFLAC director who oversaw the investigation of the incident, has stated:

We did an investigation when I was at OHFLAC and what the provider wrote down on the commitment papers didn't take place. We watched it on the video, and it did not take place. There needs to be something that holds that provider accountable when they falsify commitment papers to get the person out of there. I mean they're stripping someone of their rights and there's just no accountability.... You never ever would have known, I mean they said he [J.P.] viciously attacked his roommate. He never touched him. He never touched him. It was pretty horrible."

16. On October 12, 2022, Sharpe Hospital determined that J.P. was "eligible for discharge and ... clinically stable." Sharpe Hospital determined that J.P.'s purported behaviors were related to his developmental disability and "not any psychosis." Sharpe Hospital further questioned the veracity of Westbrook's application and certification but neither Dr. Chumber, Mr. Ryan, nor Secretary Caruso have provided any information to date to suggest that they redressed the false application and certification with Westbrook, the Westbrook service provider, or the Westbrook social worker.

17. On or before October 12, 2022, Sharpe Hospital determined that Westbrook refused to accept J.P. if discharged and Sharpe Hospital further documented that "Westbrook's strict criteria [is] unrealistic and attainable for [J.P.], and what J.P. has exhibited at the hospital is

behavioral-related. There has been a question as to the original mental hygiene petition since the hospital has not observed what was reported in the petition.”

18. DHS/BBH had previously provided a grant to Westbrook of approximately \$500,000 to develop and operate a program for Adult Crisis Response Services for persons with developmental disabilities in response to AFA 7-2020 ID/DD. Westbrook accepted the grant funding and has never fully developed the program. Neither DHS nor BBH have enforced the grant and West Virginia’s taxpayers paid a half million dollars to Westbrook for a crisis program targeted for people like J.P. that has never been implemented and that has resulted in the unlawful commitment of persons with developmental disabilities.

19. Despite Sharpe Hospital having found that J.P. was clinically stable and eligible for discharge, Dr. Chumber filed an application with the Lewis County Circuit Court to finally civilly commit J.P. to Sharpe Hospital pursuant to W.Va. Code §27-5-4. On October 19, 2022, five days after Sharpe Hospital’s finding that J.P. was clinically stable and ready for discharge, the Honorable Brian W. Bailey held a hearing and entered an order that finally civilly committed J.P. to Sharpe Hospital. *See 22-MH-427-FC.*

20. Sharpe Hospital clinicians have shared that J.P. and other similarly situated persons with developmental disabilities have decompensated because of the commitment at Sharpe Hospital given the chaotic psychiatric hospital environment.

21. Sharpe Hospital’s clinical records and treatment plans reflect that J.P. is clinically stable and ready for discharge. J.P. remains unlawfully detained at Sharpe Hospital to this day. Westbrook has never fully developed the Adult Crisis Response Services for persons with developmental disabilities. DHS has never enforced its Adult Crisis Response Services grant with Westbrook which results in the unnecessary involuntary commitment of persons with

developmental disabilities and excessive costs to West Virginia’s taxpayers that has contributed to Sharpe Hospital’s exorbitant operating losses.

## 2. J.P.’s Unlawful Detainment & IDD Waiver Program

22. Medicaid is a State-administered program jointly funded by State and Federal Governments under Title XIX of the Social Security Act Amendments of 1965 (SSA), current version at 42 U.S.C. § 1396–1396w-7 (2023). Secretary Persily and DHS have the mandatory duty to administer the Medicaid programs, including the IDD Waiver program.

23. Under the program, the Federal Government approves DHS’ plan for the funding of medical services for the needy and then subsidizes a significant portion of the financial obligations the State of West Virginia has agreed to assume. Once the State of West Virginia voluntarily chooses to participate in Medicaid, Secretary Persily and DHS must comply with the requirements of Title XIX and applicable regulations. *Harris v. McRae*, 448 U.S. 297, 301 (1980), *see also Armstrong v. Exceptional Child Care Center, Inc.*, 135 S.Ct. 1378, 1382 (2015) (“Medicaid offers the States a bargain: Congress provides federal funds in exchange for the States’ agreement to spend them in accordance with congressionally imposed conditions.”).

24. The IDD Waiver program was created by the U.S. Congress to prevent institutionalization of vulnerable and protected persons. *See* 42 C.F.R. § 441.300 (“Section 1915(c) of the Act permits States to offer, under a waiver of statutory requirements, an array of home and community-based services that an individual needs to avoid institutionalization.”); *see also* 42 C.F.R. §440.230(c) (“The Medicaid agency may not arbitrarily deny or reduce the amount, duration, or scope of a required service under §§ 440.210 and 440.220 to an otherwise eligible beneficiary solely because of the diagnosis, type of illness, or condition.”).

25. The Medicaid program is intended to integrate persons with disabilities into the

community to avoid costly institutional psychiatric commitments. *See* 42 U.S.C. § 1396-1 (“For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish ... (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care....”); *see also* 42 C.F.R. § 440.230(b) (“Each service must be sufficient in amount, duration, and scope to reasonably achieve its purpose.”).

26. DHS and BMS proposed and CMS approved Chapter 513 Intellectual and Developmental Disabilities Waiver (“IDD Waiver Manual”). The IDD Waiver Manual defines Westbrook’s duties and J.P.’s rights, *inter alia*, to ensure the provision of IDD Waiver services avoid involuntary institutionalization:

a. Sec. 513.2 – The provider must “[e]nsure that a person is not discharged unless a viable discharge/transfer plan is in place that effectively transfers all services the person needs to another provider(s) and is agreed upon by the person and/or their legal representative and the receiving provider(s).”;

b. Sec. 513.2 – The provider must “[h]ire and retain a qualified workforce.”;

c. Sec. 513.2 – The provider must “[e]nsure that all agency staff providing direct care services are fully trained in the proper care of the person to whom they will be providing services prior to billing for services.”;

d. Sec. 513.8 Individual Program Plan (“IPP”) – “Central to the services that a person receives through the IDDDW Program is the person’s IPP.... A Crisis Plan must be completed for each person receiving services.”;

e. Sec. 513.8.1.3 Transfer/Discharge IDT Meeting – “This meeting is held when a person transfers from one IDDDW provider to another, chooses a different service delivery model or when the person no longer meets medical or financial eligibility. The transfer-from

agency is responsible for coordinating the meeting and documenting the transfer. The person or their legal representative, as well as the transfer-to agency, must agree to the transfer.”;

f. Sec. 513.8.1.4 Critical Juncture IDT Meeting – Critical Juncture occurs when a participant “goes into crisis placement” and a Critical Juncture IDT meeting must be held;

g. Sec. 513.10 Behavior Support; and

h. Sec. 513.25.1 Rights – “The member [J.P.] retains all rights afforded to them under the law....”

27. On January 30, 2023, Westbrook notified J.P.’s mother and guardian that Westbrook had discharged J.P., J.P. was prohibited from returning to his prior Westbrook residence, and that Westbrook would cease providing IDD Waiver services to him. Westbrook charged J.P. rent for a Westbrook residence from the time of his involuntary civil commitment until his discharge from Westbrook’s service even though J.P. maintained no occupancy and Westbrook refused to allow him to be in the Westbrook residence.

28. Westbrook has violated the foregoing IDD Waiver Manual provisions and Secretary Persily has failed to enforce the IDD Waiver Manual that has caused and/or contributed to J.P.’s unlawful involuntary commitment, ongoing unlawful detainment at Sharpe Hospital, and Westbrook’s unlawful discharge of J.P. as his IDD Waiver service provider.

### 3. DHS’s Dysfunctional IDD Crisis System Violates J.P.’s Rights

29. Effective March 15, 2023, DHS executed a \$100,000 contract with Marshall University for DHS to retain Robert Hansen to serve as the Special Assistant for IDD to DHS Deputy Secretary Christina Mullins to promote community integration and the discharge of persons with developmental disabilities from state psychiatric hospitals.

30. Mr. Hansen has decades of experience in West Virginia's behavioral health system and recently served as the Director of the Office of Drug Control Policy for the West Virginia Department of Health and Human Resources and Director of Addiction Services for Marshall Health.

31. On February 1, 2024, Mr. Hansen appeared before a meeting of West Virginia's Olmstead Council that was created to implement and oversee compliance with *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999) and offered this analysis about DHS' "crisis system" for persons with developmental disabilities:

... We really have no crisis system for people with IDD that is functional. The state funds two crisis residential units. One is at Westbrook and one is at Southern Highlands. Southern Highlands has been closed, but really neither of them provide crisis services.... You know, it's almost like, well, we can't serve them [persons with developmental disabilities]. So our mental health crisis system such as it is, is generally not helpful and specialized crisis services are pretty much non-existent....

32. The lack of specialized crisis services, DHS's dysfunctional IDD crisis system, and DHS's failure to enforce its grant agreement with Westbrook that requires Westbrook to provide required crisis services has caused and/or contributed to J.P.'s unlawful civil commitment and J.P.'s unlawful involuntary hospitalization at Sharpe Hospital.

33. Mr. Hansen offered an assessment about providers like Westbrook that refuse to accept persons with developmental disabilities once they are placed at a state psychiatric hospital:

When they [persons with development disabilities] come back into or come to the state hospital, then there's a propensity, not all the time, but community agencies say they are no longer going to serve that person. And so we're we're kind of, you know, stuck.

34. Westbrook refuses to serve J.P. and J.P. remains unlawfully stuck in Sharpe Hospital because Secretary Persily has failed and continues to fail to enforce the IDD Waiver

Manual even though Sharpe Hospital has determined that “Westbrook’s strict criteria [is] unrealistic and attainable for [J.P.], and what J.P. has exhibited at the hospital is behavioral-related.”

35. Mr. Hansen offered this observation about how providers like Westbrook give false hope to persons with developmental disabilities like J.P. who remain institutionalized:

People with IDD in the two hospitals get excited that they're going to leave and the community agency is really nice in assessing them. But then what happens is we don't hear back and so over and over again we've had, the people have had multiple interviews for the potential of being served by a community agency and it doesn't pan out, so we kind of give this false hope to our consumers and that's painful to see.

36. J.P. was given false hope over 570 days ago when Sharpe Hospital determined that he was clinically stable and ready for discharge. J.P.’s Sharpe Hospital records reveal that J.P.’s behaviors escalate over his frustration of remaining at Sharpe Hospital and he repeats, “Go home, go home.” Deputy Secretary Christina Mullins appeared before the House of Delegates Committee on Health and Human Resources on January 23, 2024, and testified under oath that the behaviors exhibited by persons with developmental disabilities is related to their “frustration.” Secretaries Caruso and Persily, through their malfeasance, have created a culture that promotes and permits the precise frustrations to attempt to justify the unlawful involuntary institutionalization of persons with developmental disabilities.

37. Secretary Persily has contracts and grants in place to provide community placement for persons with developmental disabilities so people like J.P. can go home and not remain unlawfully institutionalized in a psychiatric hospital.

38. Mr. Hansen offered this analysis about deficient discharge planning at the state psychiatric hospitals, including Sharpe Hospital, that results in improper institutional commitments and impermissible barriers to discharge for persons with developmental

disabilities:

[W]e should be a continuum of services and there should be a variety of transitional steps leading to successful placement. Providers feel that if they take somebody from the two hospitals that boom as soon as they get them the hospital is done with it and there's no support for that community provider. So what we're working on now is more of an individualized process versus having discharge planning being event. We've had some very serious horror stories because it was treated like an event and when discharge planning fails there's a lot of finger pointing.

39. CMS's State Operations Manual requires specific individualized discharge planning that is not being provided according to IDD Special Assistant Hansen. *See* Tag A-0799 (§482.43 Condition of Participation: Discharge Planning). The lack of required discharge planning coupled with the lack of coordination and communication among the Defendants, individually and collectively, has resulted in J.P.'s unlawful commitment and J.P.'s ongoing unlawful detainment at Sharpe Hospital.

#### 4. J.P. Was Battered & Abused at Sharpe Hospital

40. On or about June 9, 2023, while unlawfully detained at Sharpe Hospital, it was substantiated that one or more unknown Sharpe Hospital employees abused and physically assaulted J.P. according to an investigation by Legal Aid of West Virginia ("LAWV"). LAWV is the advocate required by the Hartley Decree and W.Va. C.S.R. §64-59-20. LAWV obtained a statement from Dr. Abid Rizvi, J.P.'s primary treating psychiatrist, and Dr. Rizvi opined that J.P. was physically abused. *See* Exhibit A. LAWV obtained photographs regarding the abuse. *See* Exhibit B.

41. In response to Dr. Rizvi's statement and LAWV providing information to DRWV about the incident, Mr. Ryan attempted to unlawfully conceal and/or impede DRWV's access to documents and information within the scope of its federally mandated duty as the state's P&A. Mr. Ryan, his immediate supervisor, and others within the former DHHR have undertaken



similar retaliatory actions against DRWV, Sharpe Hospital staff, reporters, and informants.<sup>1</sup>

42. Mr. Ryan and Secretary Caruso have stated that J.P. was not abused or assaulted in direct contradiction to Dr. Rizvi's statement to LAWV. Neither Mr. Ryan nor Secretary Caruso are physicians. Upon information and belief, Mr. Ryan and Secretary Caruso elicited the Independent Mental Health Ombudsman authorized pursuant to W.Va. Code §16B-12-2 to undermine or attempt to undermine the clinical opinion of Dr. Rizvi that J.P. was physically abused. Upon information and belief, Mr. Ryan and the Independent Mental Health Ombudsman took action to undermine the results of LAWV's investigation and engaged in threats of potential retaliatory action against LAWV because of LAWV's investigation of J.P.'s substantiated abuse and LAWV's communication regarding the same with DRWV. Upon information and belief, Mr. Ryan and the Independent Mental Health Ombudsman have targeted LAWV advocates. The Independent Mental Ombudsman is not a physician and lacks the education, training, licensure, and experience to impeach Dr. Rizvi.

43. Sharpe Hospital, Dr. Chumber, Mr. Ryan, and Secretary Caruso have promoted an unsafe environment at Sharpe Hospital that has fostered patient abuse and neglect:

a. Sharpe Hospital staffer and former MMA fighter was arrested and charged with first degree murder, conspiracy to commit a felony, and use of a firearm in the commission of a felony;<sup>2</sup>

b. Sharpe Hospital staffer has been charged with forcing a patient to have

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<sup>1</sup> <https://wvpublic.org/reports-show-people-with-disabilities-are-abused-in-state-care/>

<https://www.cbsnews.com/news/amelia-knisely-loses-job-reporting-abuse-allegations-west-virginias-foster-care-psychiatric-facilities/>

<sup>2</sup> <https://www.wboy.com/news/crime/4-more-charged-with-first-degree-murder-in-2022-gang-related-shooting-death/>

multiple involuntary sexual encounters months after Sharpe Hospital female staffers had reported to Sharpe Hospital management being the victims of sexual harassment by the same person;<sup>3</sup>

c. Sharpe Hospital's Therapeutic Program Director and a member of Mr. Ryan's leadership team was involved in a 2:00 a.m. Sunday morning gun fight at The Good Times Bar in Clarksburg that resulted in the emergency hospitalization of the Director and two gentlemen;<sup>4</sup>

d. Sharpe Hospital RN has been charged with murdering her own son;<sup>5</sup>

e. Sharpe Hospital employee was recently arrested for attempted murder;<sup>6</sup>

f. Sharpe Hospital continued to employ an RN who had a professional license stripped for unethical conduct and at least two substantiated patient abuse complaints involving Sharpe Hospital patients;

g. OHFLAC recently found that roughly 40 Sharpe Hospital staffers have complained to OHFLAC that Sharpe's assistant CEO has engaged in retaliatory conduct; and

h. Sharpe Hospital has been cited for deficient patient treatment plans which is the same issue that resulted in the revocation of Sharpe Hospital's CMS certification in 2017.

44. J.P. and similarly situated patients remain in an unsafe environment at Sharpe Hospital. DRWV has reported these issues multiple times to Secretary Caruso, Deputy Secretary Christina Mullins, and IDD Special Assistant Hansen and, upon information and belief, no corrective action has been taken and the same Sharpe Hospital leadership team that has incurred

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<sup>3</sup> <https://www.wboy.com/news/crime/sharpe-hospital-employee-charged-with-sexual-offense-against-patient/>

<sup>4</sup> <https://www.wdtv.com/2023/04/24/police-id-victims-clarksburg-bar-shooting/>

<sup>5</sup> <https://westvirginiawatch.com/2023/11/15/multiple-employees-at-a-state-run-hospital-have-been-charged-with-crimes-this-year/>

<sup>6</sup> <https://www.wdtv.com/2024/03/14/shots-fired-upshur-county-man-charged-with-attempted-murder/>

millions in operating losses, engaged in conduct that resulted in Sharpe Hospital's prior CMS certification, and oversaw serial violations of regulatory standards remain in place. A review of the West Virginia Auditor's checkbook reveals that Mr. Ryan has been rewarded and received a substantial 25 percent salary increase.

5. Secretary Caruso, Dr. Chumber, and Mr. Ryan Are Squandering West Virginia Taxpayer Dollars By Unlawfully Detaining J.P.

45. Deputy Secretary Christina Mullins and her Deputy Commissioner Alex Alston have conducted an internal DHS analysis that reveals that the daily cost of institutionalization per patient at Sharpe Hospital is approximately \$990.00 and the daily of cost of community placement per patient is approximately \$390.00.

46. West Virginia taxpayers save roughly \$600.00 per day per patient by providing community placements for people like J.P. rather than keeping them unlawfully detained in a state psychiatric hospital.

47. Secretary Persily and BMS conducted a Waiver/Institutional Cost Variance Analysis during the 2024 West Virginia Legislative session that identified 1,869 at risk IDD Waiver participants such as J.P. The analysis demonstrates that the average cost savings for West Virginia's taxpayers is approximately \$58,660 per person per year by providing community placements such as J.P.'s former Westbrook group home rather than J.P.'s current unlawful detention at Sharpe Hospital.

**COUNT I – Writ of *Habeas Corpus* – Unlawful Commitment & Unlawful Detainment**

48. J.P. repeats and reasserts by reference each of the allegations set forth in paragraphs one through 47 hereinabove as if fully set forth in this count.

49. W.Va. Const. Art. 3, § 10 provides that “[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers.” W.Va. Const.

Art. 3, § 4 guarantees that “[t]he privilege of the writ of habeas corpus shall not be suspended.” *See also Sloan v. Wachtel*, 233 S.E.2d 137, syl. no. 2 (W.Va. 1977). J.P. was unlawfully involuntarily committed and remains unlawfully detained at Sharpe Hospital.

50. A probable cause hearing shall be held upon application and certification that the person requires involuntary commitment. *See* W.Va. Code §27-5-3(f). However, West Virginia law does not require, and J.P. is unaware of, any recording or record having been made or preserved of the probable cause hearing. The absence of any statutory requirement to maintain a record of a hearing in which one’s liberty and medical history is at stake violates W.Va. Const. Art. 3, § 10 and permits the improper application and certification of persons unlawfully as recounted by former OHFLAC Director Tina Wiseman who oversaw OHFLAC’s investigation of Westbrook’s commitment of J.P. *See* ¶ 15 hereinabove.

51. While detained at Sharpe Hospital, J.P. “shall receive care and treatment that is suited to his or her needs and administered in a skillful, safe and humane manner with full respect for his or her dignity and personal integrity.” *See* W.Va. Code §27-5-9(b). J.P. is not receiving the care and treatment suited to his needs because he is clinically stable and should be in a community placement. J.P.’s ongoing unlawful commitment violates his dignity and personal integrity.

52. J.P. has “the right to access treatment in the least restrictive setting. The goal of treatment for a patient [at Sharpe Hospital] shall be to address needs so as to permit the patient to be in the least restrictive setting.” *See* W.Va. C.S.R. §64-59-5.6. Sharpe Hospital has determined that J.P. is clinically stable and should be placed back at Westbrook. Westbrook is the least restrictive setting. J.P. is being unlawfully detained in the most restrictive setting in violation of West Virginia law.

53. It is well settled that “[n]o person who can be treated as an outpatient at a community mental health center may be admitted involuntarily into a state hospital.” *See* W.Va. Code §27-2A-1(b)(4). Sharpe Hospital has determined that it questions the accuracy of Westbrook’s certification for commitment and has not observed the behaviors reported in Westbrook’s application and certification. The unlawful commitment and detainment of J.P. violates J.P.’s rights and allowed Westbrook to dump J.P. at Sharpe Hospital upon a false application and certification according to Tina Wiseman.

54. Community mental health centers have the mandatory duty to “[r]ender outpatient services in the aftercare of any patient discharged from an inpatient hospital, consistent with the needs of the individual.” *See* W.Va. Code §27-2A-1(b)(4). Sharpe Hospital has determined that Westbrook’s criteria for accepting J.P. as a patient is unrealistic and unattainable. Westbrook dumped J.P. and refuses to take him back based on what Sharpe Hospital has determined is inappropriate clinical criteria. By establishing arbitrary and unrealistic standards for J.P.’s discharge, Westbrook is effectively refusing to provide necessary and appropriate outpatient services to J.P. The unlawful detainment of J.P. violates J.P.’s rights and permits Westbrook and other community mental health centers to willfully evade their legal duty to provide treatment on an outpatient basis that results in the unlawful detention of J.P. and similarly situated people.

55. Dr. Chumber has a mandatory duty to discharge J.P. when conditions that require involuntary commitment cease. *See* W.Va. Code §27-7-1 (“...whenever it is determined that the conditions justifying involuntary hospitalization no longer exist or that the individual can no longer benefit from hospitalization, the chief medical officer **shall discharge** the patient, and forward a copy of the patient's discharge to the clerk of the circuit court or mental hygiene

commissioner of the county in which the involuntary hospitalization was ordered and to the circuit court or mental hygiene commissioner of the county wherein the individual is a resident.”). (emphasis added)

56. Dr. Chumber’s application for J.P.’s final civil commitment violates W.Va. Code §27-5-4(c)(2) and (4) (“The application shall contain statements by the applicant that the individual is likely to cause serious harm to self or others due to what the applicant believes are symptoms of mental illness or substance use disorder.... [T]he applicant shall state in detail the recent overt acts upon which the clinical opinion is based.... “Applications shall be denied for individuals as provided in § 27-5-2(a) of this code.”). Given that Sharpe Hospital had determined that J.P. was clinically stable and ready for discharge five days before J.P.’s final civil commitment and J.P. had no psychosis, Dr. Chumber’s application and certification sought and facilitated an unlawful final civil commitment.

57. J.P. has been battered and abused at Sharpe Hospital and Sharpe Hospital’s environment is unsafe and chaotic that promotes behaviors that prevent J.P. from being discharged into a less restrictive setting. Sharpe Hospital clinicians have advised that J.P. and similarly situated people are decompensating at Sharpe Hospital and their continued unlawful detention creates a substantial health risk, irreversible trauma, and a loss of liberty.

58. Dr. Chumber is in violation of his duty to J.P. under W.Va. Code §27-7-1, Pat Ryan is in breach of his duty to J.P. under W.Va. C.S.R. §64-59-5.4, and Secretary Caruso is acting in derogation of his duty under W.Va. Code §26-1-3(a)(4). These Defendants have a duty to promote and protect the rights of J.P. and, through their actions of commission and omission, they have individually and collectively suppressed and violated J.P.’s rights by unlawfully detaining him.

59. J.P. is in custody and detained in violation of the West Virginia Constitution and applicable West Virginia law.

60. J.P., through the applicant Stephanie Thorn, respectfully requests that this Court notice a hearing, take judicial notice of available records and evidence, and upon conclusion thereof issue a writ of *habeas corpus* ordering Sharpe Hospital, Dr. Chumber, Pat Ryan, and Secretary Caruso to immediately release J.P. and discharge him to a safe and appropriate community setting at which he may receive the necessary and appropriate IDD Waiver services.

**COUNT II – Writ of Mandamus – Defendants’ Failure to Perform Their  
Mandatory Duties**

61. J.P. repeats and reasserts by reference each of the allegations set forth in paragraphs one through 60 hereinabove as if fully set forth in this count.

62. J.P. has a clear legal right to be in the less restrictive setting, receive IDD Waiver services, not be discharged from his IDD Waiver provider, receive the benefits and services outlined in the IDD Waiver Manual, remain free to exercise his liberty and ensure his personal dignity, receive appropriate care and treatment at Sharpe Hospital, be discharged when clinically stable, be free of abuse and neglect, and to receive safe and humane treatment.

63. J.P.’s clear legal rights have been violated and he remains unlawfully detained in Sharpe Hospital where J.P. continues to decompensate.

64. As Sharpe Hospital’s chief medical officer, Dr. Chumber is responsible for medical programs and medical care provided to patients at Sharpe Hospital, including J.P. Dr. Chumber has a nondiscretionary legal duty to ensure that J.P. receives the care best suited for his needs, is placed in the least restrictive setting, will be discharged when clinically stable and meets discharge criteria, after care and outpatient care is coordinated with the responsible comprehensive community mental health center, proper discharge planning is conducted, and

that J.P.'s legal rights are protected.

65. Mr. Ryan has a nondiscretionary legal duty to ensure that Sharpe Hospital and its providers comply with West Virginia law, CMS standards, The Joint Commission standards, and OHFLAC rules. Mr. Ryan has a nondiscretionary legal duty to oversee compliance with W.Va. Code §27-5-1 *et seq.*, to ensure that the rights of patients are protected, patients receive care suited to their needs, patients are discharged when clinically stable and meet discharge criteria, patient after care is coordinated with the responsible comprehensive community mental health center, proper discharge planning is conducted, and that J.P.'s legal rights are protected.

66. Secretary Caruso has a nondiscretionary legal duty to protect the rights of patients at Sharpe Hospital and oversee Sharpe Hospital's compliance with West Virginia law, CMS standards, The Joint Commission standards, and OHFLAC rules. Mr. Caruso has a nondiscretionary legal duty to ensure that Dr. Chumber and Mr. Ryan comply with applicable law and fulfill their legal obligations.

67. J.P. remains detained at Sharpe Hospital even though Sharpe Hospital has determined that J.P. is "clinical stable", has no "psychosis" otherwise required to justify involuntary institutionalization, J.P.'s responsible comprehensive community mental center that is required to provide aftercare and outpatient care to J.P. has established "unrealistic" discharge criteria that is "unattainable", and J.P. is decompensating at Sharpe Hospital.

68. Secretary Persily has a nondiscretionary legal duty to "[r]equire a provider, subgrantee, or other entity performing services on behalf of the department to comply with all applicable laws, rules, and written procedures pertaining to the program for which the entity is providing or coordinating services, including, but not limited to, policy manuals, statements of work, program instructions, or other similar agreements." *See* W.Va. Code §9-2-6(20).



69. Secretary Persily has willfully and knowingly failed to enforce the applicable standards and laws for the IDD Waiver program, the IDD Waiver Manual, the Adult Crisis Response Services for persons with developmental disabilities in response to AFA 7-2020 ID/DD, W.Va. Code §27-2A-1(b)(4) that prohibits the involuntary commitment of a person into a state hospital who can be treated as an outpatient, W.Va. Code §27-2A-1(b)(4) that requires DHS's grantees to provide aftercare and outpatient care to persons who have been involuntarily committed to a state psychiatric hospital, and DHS' contracts and grants that require comprehensive community mental health centers to serve as regional "anchors" and providers of services for persons in crisis.

70. The Defendants, individually and collectively, have failed to perform their mandatory legal duties and deprived J.P. of his rights, privileges, and protections by their acts of commission and omission. Defendant Persily has willfully and knowingly failed to enforce applicable grants, contracts, and laws that have resulted in J.P.'s unlawful involuntary commitment and unlawful detention.

71. J.P. is a protected person who has no other adequate remedy at law.

72. J.P. respectfully requests that the Court issue a rule to show cause to each of the Defendants Sharpe Hospital, Dr. Chumber, Mr. Ryan, Secretary Caruso, and Secretary Persily why the petitioner's request for a writ of mandamus should not be granted.

### **COUNT III – Abuse & Neglect – Battery of J.P. at Sharpe Hospital**

73. J.P. repeats and reasserts by reference each of the allegations set forth in paragraphs one through 72 hereinabove as if fully set forth in this count.

74. Patient abuse is prohibited by CMS, the Joint Commission, and OHFLAC.

75. The OHFLAC legislative rule that governs Sharpe Hospital defines "physical

abuse” as follows:

Actions of omission or commission within the meaning of W. Va. Code §9-6-1(2), that violate 42 C.F.R. § 482.13, or that constitute a breach of the applicable standard of care. Physical abuse includes, but is not limited to, the infliction or threat to inflict physical pain or injury on, or the imprisonment of any patient, including pain associated with mental abuse, verbal abuse, sexual abuse, involuntary seclusion or any physical or chemical restraint not required to treat the patient’s clinical symptoms, regardless of the patient’s ability to understand or recognize the abuse or the willful infliction of injury, unreasonable confinement, intimidation, or punishment, with resulting physical harm, pain, or mental anguish, including staff neglect or indifference to infliction of injury or intimidation of one patient by another. *See* W.Va. C.S.R. §64-59-3.13.

76. Dr. Rizvi, J.P.’s treating psychiatrist, gave the attached statement to LAWV regarding its investigation of suspected patient abuse of J.P. while involuntarily committed at Sharpe Hospital.

77. Dr. Rizvi opined that J.P. was the victim of physical abuse as defined by the applicable OHFLAC legislative rule.

78. J.P. would never have been the victim of physical abuse had the Defendants Sharpe Hospital, Dr. Chumber, Mr. Ryan, and Mr. Caruso discharged J.P. as required by law given Sharpe Hospital’s determination that J.P. was clinically stable, had no psychosis, and exhibited behaviors related to his developmental disability. Likewise, J.P. would never have been the victim of physical abuse had Defendant Persily enforced the IDD Waiver standards, the IDD Waiver Manual, and DHS’ grant agreements and contracts with J.P.’s community-based provider.

79. The failure of the Defendants, individually and collectively, to perform their legal duties resulted in prohibited patient abuse of J.P. and the Defendants’ failure to perform their legal duties constitutes unlawful patient neglect:

Actions of omission or commission within the meaning of W. Va. Code §9-6-1(3), that violate 42 C.F.R § 482.13, or that constitute a breach of the applicable

standard of care, including the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

80. The Defendants had a duty to provide services to or for the benefit of J.P. The Defendants' failure to provide the required services constitutes neglect and resulted in J.P. being in an unsafe environment that resulted in his physical abuse.

81. J.P.'s physical abuse was intentional, a battery, and "[m]ore liberal rules are applied as to the consequences for which [intentional tortfeasors] will be held liable, the certainty of proof required, and the type of damage for which recovery is to be permitted, as well as the measure of compensation." *McKenzie v. Sevier*, 854 S.E.2d 236, 246 (W.Va. 2020), citing *Prosser on Torts* § 7 (1971).

#### **PRAYER FOR RELIEF**

WHEREFORE, J.P. respectfully requests that the Court grant the following relief:

1. Notice a hearing, take judicial notice of available records and evidence, and upon conclusion thereof issue a writ of *habeas corpus* ordering Sharpe Hospital, Dr. Chumber, Pat Ryan, and Secretary Caruso to immediately release J.P. and discharge him to a safe and appropriate community setting at which he may receive the necessary and appropriate IDD Waiver services;

2. Issue a rule to show cause to each of the Defendants Sharpe Hospital, Dr. Chumber, Mr. Ryan, Secretary Caruso, and Secretary Persily why the petitioner's request for a writ of mandamus should not be granted;

3. Enter a Scheduling Order regarding J.P.'s Count for Abuse & Neglect – Battery at Sharpe Hospital;

4. Award J.P. costs and attorneys fees in this action; and

5. Grant J.P. such other relief that the Court deems just and proper.

**J.P., a protected person,**

**By Counsel**

/s/ Michael J. Folio

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VERIFICATION

I, Stephanie D. Thorn, Medley/Hartley Program Manager at Disability Rights of West Virginia and Applicant, being first duly sworn, state that the factual representations contained herein are true, except so far as they are stated to be on information and belief, and that insofar as they are so stated, I believe them to be true.

*Stephanie D Thorn*

Stephanie D. Thorn

Sworn to before and subscribed to in my presence this 8<sup>th</sup> day of May, 2024.

[SEAL]

*Kaitlyn Ann Stowers*  
Notary Public



# Exhibit A

## Interview Summary

**Abid Rizvi, Psychologist**, was interviewed in person, in the advocates' office, on June 22, 2023, at 9:16 a.m. Dr. Rizvi was oriented to the interview's nature and was asked to describe the incident. Dr. Rizvi said, "In the morning rounds, when I was meeting the patient [REDACTED] I normally evaluate the exposed part, in which [REDACTED] has the tendency to self-harm, like he [REDACTED] bites himself when he's upset. Every situation of being upset starts by him repeating the phrase, 'Go home, get out.' That leads to full-blown self-injury behavior. So, I was evaluating him. I generally look at his hands which he commonly bites, at his head where he bangs, and at his chin. Then, I evaluate for any other sign of injury in case he had any kind of bruising or anything. On that particular day, I was very surprised at the bruising present, because I, um, he [REDACTED] has a tendency of having abdominal issues, either pain or constipation, so I also take a look at his abdomen. So, when I exposed his abdomen, initially, there was some bruising present on the side, his right side of the chest. So, that led me to a complete examination of his back. When I exposed himself, there was bruising present on this side (Dr. Rizvi motioned towards his own right side), and there was bruising present on the other side, and there was a very peculiar bruising present on the back which looked like it was an impression mark of something, most likely a shoe. Can I take a look at the pictures just to recall?"

The investigator showed pictures (see attached), which were obtained from [REDACTED] [REDACTED] electronic medical record, that depicted the injuries to [REDACTED] back and sides. Dr. Rizvi said, "I'm not a forensic psychiatrist, and I don't have any training in forensic medicine, so I cannot say for sure, like, what object, uh, certainly this does not look like a self-inflicted, it is very difficult to inflict one's back with such force and impression as to get this mark, but even a laymen can tell this is an impression of a shoe. This was very disheartening, or let's say, not very good to see. That led to the filing of the APS. We examined him [REDACTED] just to make sure there was no internal bleeding or injury, so I completely examined him. There was no sign of internal bleeding present. He was stable, so we just, uh, monitored it. Right now, the bruising has resolved. There were some telltale signs, but most of it has resolved." The investigator asked Dr. Rizvi if he was confident the bruise on [REDACTED] back came from a shoe. Dr. Rizvi replied, "The shape is very peculiar. It is a shoe-shape. I don't know what else, object on the unit, can be used to produce that. I'm just, you know, I'm sure. It looks like a shoe impression. I mean, this is the front of the shoe, this is the back of the shoe (Dr. Rizvi traced the shoe pattern on the picture with his finger)." The investigator indicated the bruise pattern on [REDACTED] [REDACTED] back had the same distinct tread pattern as the bruise on [REDACTED] side. Dr. Rizvi said, "Right."

The investigator asked Dr. Rizvi if he believed the bruises on [REDACTED] back and the bruises on [REDACTED] sides were inflicted at the same time. Dr. Rizvi

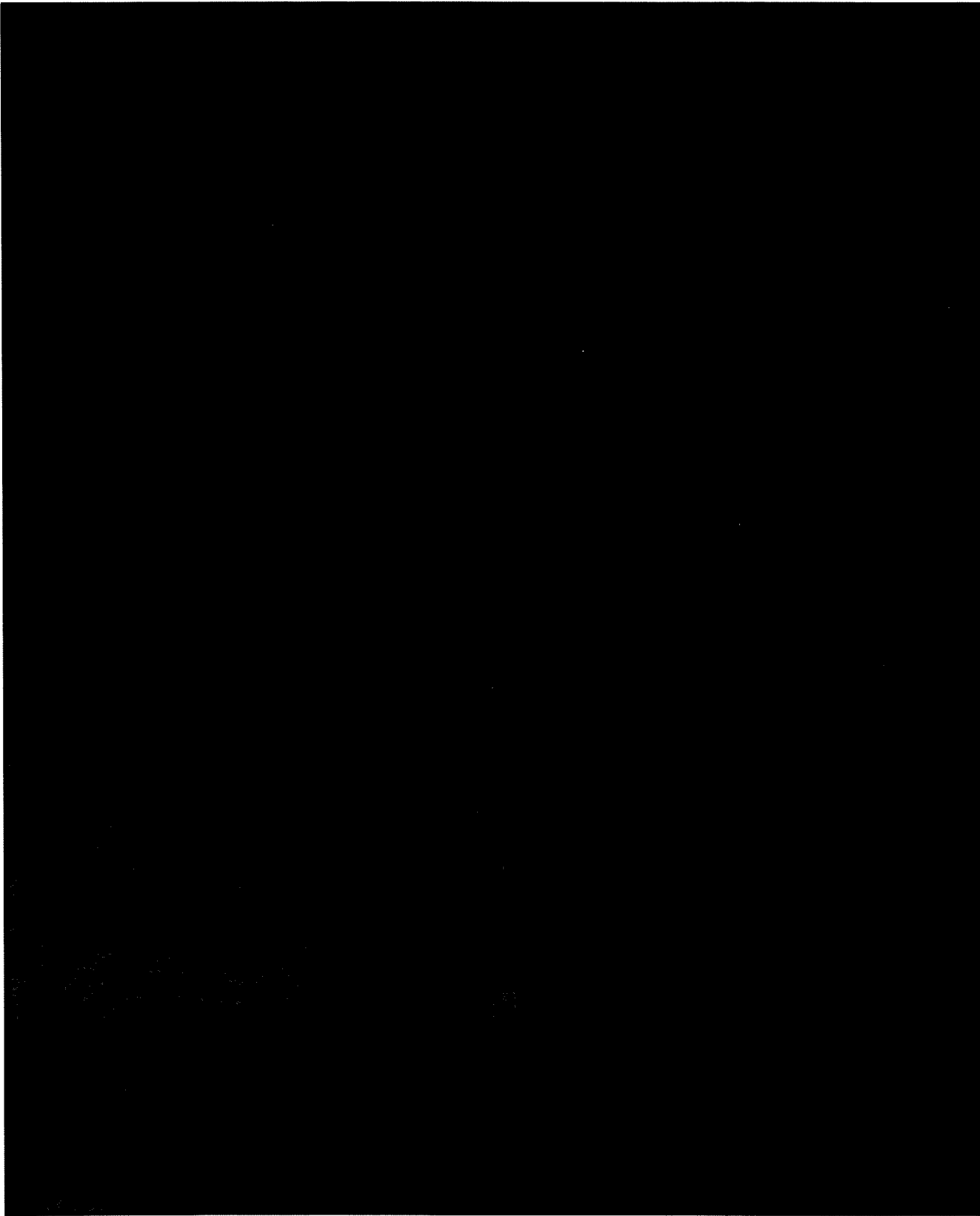
said, "The bruises did not look absolutely fresh, because the tread mark, if you take a look at this (Dr. Rizvi pointed to the bottom part of the shoe pattern on the picture of ██████ back), this had some, you know, abrasion, after the injury there was a crust formation. There was some crust formation on this. There was some discoloration here, so, I wouldn't say it was absolutely fresh. All the three looked to me as if they had been inflicted at the same time, because none of them looked absolutely fresh. I would say they were at the same one incident in which all three (bruises) were made. You'd have to be an expert in that field." The investigator asked Dr. Rizvi, "With your experience in seeing injuries in the past, how old do you think these injuries are? Do you think it was a couple of days?" Dr. Rizvi replied, "I would say definitely less than a week, maybe two or three days." The investigator asked Dr. Rizvi if he was aware of any incidents that occurred that could have caused the injuries to ██████ back and sides. Dr. Rizvi stated there was an incident that occurred on June 7, 2023, where ██████ became "extremely agitated." Dr. Rizvi said, "When he ██████ gets really agitated, he throws himself on the floor. Now, here I am not, uh, don't mis- um, I mean don't want to, um, you know, throw any opinion, but this is what could have happened, that he ██████ throws himself on the floor, because I have seen him in this state, and he is sitting there, and he do like this (Dr. Rizvi imitated ██████ by bouncing his back against his chair). Many times, I have seen him ██████ bumping in the two-to-one staff's feet. That would be one situation where somebody may have tripped and stepped on him ██████ but I think it is difficult to explain how one can step on three different sides, you know what I mean? I mean, one side can explain that situation, but three different sides, I am unsure of how that would happen."

The investigator asked Dr. Rizvi if incidents involving ██████ throwing himself on the floor generally happen in ██████ room. Dr. Rizvi said, "His ██████ room is padded, so even if it happens outside, we take him to his room because the chance of injury in his room is less than compared to outside, because his room is padded." The investigator asked Dr. Rizvi if ██████ would be able to comprehend questions about the incident and tell the investigator how he received the injuries. Dr. Rizvi said, "I don't think he would have any idea." Dr. Rizvi explained that ██████ is "severely to profoundly cognitively disabled" and has cognitive abilities that are comparable to those of a two-year-old child.

The investigator asked Dr. Rizvi if he suspected who might have injured ██████. Dr. Rizvi said, "I have no idea." The investigator asked Dr. Rizvi how long he had been treating ██████. Dr. Rizvi said he started seeing ██████ approximately one year ago. The investigator asked Dr. Rizvi if he had ever seen injuries similar to the ones that led to the filing of the APS. Dr. Rizvi said, "I have seen injuries of, like, self-inflicted injuries – a lot of them. But these are the first time I strongly suspected these were not self-inflicted. These cannot be

self-inflicted, you know. It is physically not possible for him [REDACTED] to self-inflict this injury.”

The investigator asked Dr. Rizvi to read the definition of physical abuse from Title 64-59, and asked him if, according to the definition, he believed [REDACTED] was physically abused. Dr. Rizvi replied, “I believe so.”





# Exhibit B



