

**STATE HUMAN RIGHTS COMMITTEE
MEETING MINUTES**

Northern Virginia Training Center
Building 4
9901 Braddock Road
Fairfax, Virginia 22032-1941
Friday, April 19, 2002

ADVOCATES' FORUM

8:00 a.m.

ADVOCATES PRESENT

Mary W. Towle, Regional Human Rights Advocate, Region II
Nancy C. Neese, Regional Human Rights Advocate, Region III
James O. Bowser, Jr., Regional Human Rights Advocate, Regional IV
Ann Petrie, Facility Human Rights Advocate, NVMHI

COMMITTEE MEMBERS PRESENT

Jim Harper, Co-Chairman
Peter McIntosh, Co-Chairman
Jim Briggs
Angela Brosnan
Carol Gittman
Michael Marsh
Linda Martin
Loretta Redelman

OTHER STAFF PRESENT

Margaret Walsh, State Human Rights Director
Musa Ansari, Assistant State Human Rights Director
Kli Kinzie, Executive Secretary

Human Rights Advocates introduced themselves to the new SHRC Member, Dr. Angela Brosnan. Co-Chair Harper thanked Loretta Redelman for hosting a social hour the previous

evening.

Mary Towle introduced Dr. Mark Diorio, Facility Director of Northern Virginia Training Center (NVTC), to the Committee. NVTC has been recognized by the Surgeon General for providing free medical services to clinics in the surrounding area. After speaking about the various services offered by the training center, Dr. Diorio offered the Committee a guided tour of the facility following the day's meeting.

Advocates and Committee members spoke about current departmental issues.

REGULAR MEETING

10:15 a.m.

COMMITTEE MEMBERS PRESENT:

Jim Harper, Co-Chairman
Peter McIntosh, Co-Chairman
Jim Briggs
Angela Brosnan
Carol Gittman
Michael Marsh
Linda Martin
Loretta Redelman

STAFF PRESENT:

Margaret Walsh, State Human Rights Director
Musa Ansari, Assistant State Human Rights Director
Kli Kinzie, Executive Secretary
Mary W. Towle, Regional Human Rights Advocate, Region II
Nancy C. Neese, Regional Human Rights Advocate, Region III
James O. Bowser, Jr., Regional Human Rights Advocate, Regional IV
Ann Petrie, Facility Human Rights Advocate, NVMHI
Ophelia Okafor, Facility Human Rights Advocate, NVTC

OTHERS PRESENT:

Dana M. Johnson, Assistant Attorney General
Mark Diorio, Facility Director, NVTC
AR, Client, NVMHI
AR's Sister
Davey Zellmer, Chair, NVTC LHRC
Mohamed El-Sabaawi, Executive Director, NVMHI
Lou Rosato, Director of Community Services and Social Work, NVMHI
Carolyn Rowe, Social Worker, NVMHI
Bill Yolton, Consumer Advocate
Betty Bingham, Manager of the Office of Consumer Affairs, BRBH
Mike Roebuck, Coordinator of Melrose Group Home
Eddie Blair, Director of Substance Abuse Residential Services, BRBH

CALL TO ORDER:

The April 19, 2002, meeting of the State Human Rights Committee was called to order by Co-Chairman Jim Harper. Mr. Harper lead the members in introducing themselves. Advocates and staff of the Office of Human Rights introduced themselves. Mr. Harper recognized new Committee member, Dr. Angela Brosnan. Mary Towle introduced Davey Zellmer, Chair of the Northern Virginia Training Center Local Human Rights Committee.

MINUTES:

The minutes of the March 8, 2002 State Human Rights Committee meeting were approved as submitted, with one abstention.

APPEAL:

The SHRC heard an appeal of a decision of the Northern Virginia Mental Health Institute (NVMHI) Local Human Rights Committee (LHRC). Mary W. Towle, Regional Human Rights Advocate, Region II, represented A.R., Complainant. Dr. Mohamed El-Sabaawi, Facility Director, Dr. Lou Rosato, Director of Community Services and Social Work, and Carolyn Rowe, Social Worker, were present to represent the facility.

Co-Chairman Harper summarized the appeal procedure before soliciting opening comments. At the request of the complainant the appeal was held in open session.

A.R.'s Complaint as presented to the NVMHI LHRC alleged a violation of the following rights:

Title XII, Chapter 115, Part III - the right to confidentiality (12 VAC-35-115-80(B)(3)); and, the right to meaningful participation in decision making (12 VAC-35-115-70(A)(1)) of the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services*.

The LHRC conducted a hearing on July 24, 2001 and issued the following findings:

1. A.R.'s right to confidentiality was not violated.
2. A.R.'s right to meaningfully participate in her discharge plans were not violated (3-3 vote of the LHRC);
3. A.R.'s right that her preferences and needs be reflected in her discharge plan was violated.

The LHRC made the following recommendations:

- A. If there is an apparent conflict between a CSB aftercare worker and a patient, treatment team members may want to intervene to suggest a replacement of the CSB worker or to otherwise seek conflict resolution between the two parties.
- B. Discharge planning paperwork should reflect the criteria of the Mental Health Code of Virginia. (Code of Va., Section 37.1-197.A.3) (Attachment 7).

- C. All participants of a treatment team meeting should be asked to sign the treatment/discharge plan, including clients and their family members.
- D. The code demands that the client not only be included in discharge plans but that her needs and preferences be respected. It was not clear that this was true from the beginning of the discharge process. (Code of Va., Section 37.1-197.A.3).
- E. The LHRC urges the CSBs to continue efforts to expand the availability of appropriate housing for all clients. Ms. R. found housing options very limited and accessibility fraught with extensive waiting lists.
- F. When a conflict between the CSB aftercare worker and the client exists, a change in the aftercare worker is advised.
- G. It was not clear that the client was clearly informed about the availability of independent living situations available through Pathways or Pact.
- H. The client did not fit the Pact criteria. Why was an exception made for her? Do these criteria need to be adjusted or do they indeed not intend to address the needs presented by this client? (Attachment AR 3a, 3b and 3c).

This case came before the State Human Rights Committee on April 19, 2002 because A.R. does not agree with the LHRC findings numbers 1 and 2 above, and continues to allege that her rights were violated as to confidentiality and the right to meaningfully participate in her discharge planning. The Committee heard statements and asked questions of the parties involved.

The motion was made and passed that the State Human Rights Committee go into closed session pursuant to Virginia Code §2.1-344 A for the purpose of seeking legal advice. All persons were recused except the SHRC members, Margaret Walsh, State Human Rights Director, Musa Ansari, Assistant State Human Rights Director, and Kli Kinzie, Secretary.

Upon reconvening in public session, the State Human Rights Committee unanimously certified that to the best of each member's knowledge, only public business matters lawfully exempt from statutory open meeting requirements, and only public business matters identified in the motion to convene the closed session were discussed in the closed session.

The motion was made and unanimously passed to consider two descending opinions that were included in the package which was mailed to the committee before the meeting.

Representatives for the NVMHI declined to make additional comments for the record.

The motion was made and unanimously passed that the SHRC determines the fact finding of the Northern Virginia Mental Health Institute LHRC to be adequate, and will therefore limit its actions to an appellate review of the findings and consideration of the two additional descending opinions.

A.R. presented her petition for appeal of the July 24, 2001 LHRC decision citing evidence from the record supporting her arguments and petition. Mary Towle was present to

answer questions of the Committee and to assist A.R. Dr. Mohamed El-Sabaawi and Dr. Lou Rosato provided arguments and citations to the record supporting NVMHI's position on this appeal.

The State Human Rights Committee hereby issues the following findings:

1. All discussions regarding A.R.'s discharge were between NVMHI staff and the CSB aftercare worker and were authorized by statute and policy. Any discussions by the CSB aftercare worker with shelter staff did not identify A.R.
2. The record of A.R. from NVMHI, including social work progress notes and aftercare/discharge planning notes, reflect that continual discussion occurred regarding A.R.'s discharge beginning as early as January 2001. A.R. and family members were included in all meetings except one which occurred on May 10, 2001.
3. A.R. desired housing placement which was beyond her financial capacity and beyond the capacity of the NVMHI to provide.
4. As of the time of the LHRC hearing, neither the Virginia Code nor applicable rules and regulations required the discharge plan to be in writing or signed by the patient.

The State Human Rights Committee unanimously passed the following motions:

1. **Based on finding number 1, the SHRC determines that A.R.'s right to confidentiality was not violated and the LHRC's decision is therefore upheld.**
2. **Based on finding numbers 2, 3 and 4, the SHRC decided unanimously that A.R.'s right to meaningfully participate in her discharge planning was not violated. Thus, the decision of the LHRC (3-3 tie vote) is upheld.**

The SHRC, having reviewed the recommendations of the LHRC, makes its recommendations as follows.

1. Discharge planning paperwork should reflect the criteria of the Mental Health Code of Virginia. (Code of Va., Section 37.1-197.A.3).
2. All participants of a treatment team meeting should be asked to sign the treatment/discharge plan, including clients and their family members.
3. The SHRC urges the CSB to continue efforts to expand the availability of appropriate housing for all clients. A.R. found housing options very limited and accessibility fraught with extensive waiting lists.

VARIANCES:

Blue Ridge Behavioral HealthCare

Nan Neese, Regional Advocate, introduced Betty Bingham, Manager of the Office of Consumer Affairs, Mike Roebuck, Coordinator of Melrose Group Home, and Eddie Blair, Director of Substance Abuse Residential Services. Blue Ridge Behavioral HealthCare submitted applications for Variance to the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse*

Services, 12 VAC 35-115, as follows:

1. Section 12 VAC 35-150. Dignity. C. 7. (access to the telephone), C.8. (visitation) and the corresponding paragraphs E. 4.b & c and 5.: *C. In services provided in residential settings, each individual has the right to: 7. Communicate privately with any person by mail or telephone and get help in doing so. 8. Have or refuse visitors.*
 - E. *Exceptions and conditions to the provider's duties.*
 4. *Providers may limit the use of a telephone in the following ways:*
 - b. *Providers may limit use by individuals receiving services for substance abuse, but only if sound therapeutic practice requires the restriction and the human rights advocate is notified.*
 - c. *Providers may limit an individual's access to the telephone if communication with another person or persons will result in demonstrable harm to the individual and is significantly impacting treatment in the judgment of a licensed physician or doctoral level psychologist. The reasons for the restriction shall be noted prior to implementation.*
 5. *Providers may limit or supervise an individual's visitors when, in the judgment of a licensed physician or doctoral level psychologist, the visits result in demonstrable harm to the individual and significantly impact the individual's treatment; or when the visitors are suspected of bringing contraband or in any other way are threatening harm to the individual. The reasons for the restriction shall be documented in the individual's service record, and the human rights advocate shall be notified prior to implementation.*

And

2. Section 12 VAC 35-110. Use of seclusion, restraint, and time out, as follows:
 - B. Provider Duties. 10. Providers of services delivered in settings *other than inpatient hospital settings shall not use seclusion.*

Mr. Mike Roebuck presented an overview of the services provided by Melrose Group Home and described the population served by the program. He answered questions from the SHRC while the Committee reviewed the documents before them and discussed the intent of the regulation and the importance of maintaining the integrity of standards. In describing the challenging behavior demonstrated by some of the residents of the program, Mr. Roebuck testified that the infrequent short-term use of seclusion had served to maintain residents' community placement when other less restrictive means had failed.

The motion was made and unanimously passed to conditionally approve the BRBH's request for Variance to Section 12 VAC 35-110, Use of seclusion, restraint, and time out, for a period of time not to exceed the date of the next meeting provided that:

- 1. BRBH provides data regarding the use of seclusion during the last year.**
- 2. BRBH contact a reasonable number of similar programs and gather information regarding alternate methods of treatment for episodes similar to those that lead to the use of seclusion at BRBH.**

Mr. Eddie Blair, Director of Substance Abuse Residential Services, presented a request for Variance to Section 12 VAC 35-150. Dignity. C. 7. (access to the telephone), and C.8. (visitation). Mr. Blair provided an historical perspective on residential substance abuse services referred to as “therapeutic communities” and presented an overview of the services provided by the BRBH programs Shenandoah Recovery Center and Hegira House. Mr. Blair then responded to questions from the Committee.

The motion was made and passed by a vote of 5:1 with 1 abstention to approve the request for Variance to Section 12 VAC 35-150. Dignity. C.8. (visitation) for Higer House and the Shenandoah Recovery House.

The motion was made and passed by a vote of 5:1 with 1 abstention to approve the BRBH’s Shenandoah Recovery Center and Hegira request for Variance to Section 12 VAC 35-150. Dignity. C. 7. (access to the telephone) with the corrections noted in the proposed policies and procedures.

LHRC MEMBERSHIP:

The motion was made and passed that the State Human Rights Committee go into closed session pursuant to Virginia Code §2.1-344 A (15) for the purpose of reviewing Local Human Rights Committee nominations.

Upon reconvening in open session, the Committee unanimously passed a motion to appoint the following applicants to their respective Local Human Rights Committees.

New River Valley CSB

Appointment

Jacqueline F. Myal

Chesterfield

Appointment

Hasan Zarif

St. Joseph’s Villa

Appointments

Sean L. Bates

Cindy Covey

Laura L. Hill

David E. Levine

Central Virginia Community Services

Appointments

Robert Cardwell

Sarah Coppola

Eastern State Hospital

Reappointments

John R. McMahon

Mary Ellen Rickman
Appointments
Charles Lounderman
Robin Bristow

Williamsburg Community Hospital
Appointment
Jan M. Brown

Valley Community Services Board
Reappointment
Barbara Jean Fitch

Rappahannock Area Community Services Board
Reappointments
Deborah Lincoln
Beatrice Kerr
Mickie Galik

Southeastern Virginia Training Center
Reappointment
Diane C. Watkins

Northern Virginia Mental Health Institute
Appointment
Surgit Kaur

Assignment of Human Rights Committee for Lumzy's Together Residential Services

James O. Bowser, Jr., Regional Human Rights Advocate, Regional IV, described the Lumzy's Together Residential Services program to the Committee. This 6-bed residential facility is in the process of obtaining licensure and they seem to be in compliance with the regulations. The program has applied for affiliation with an LHRC but the local committee could not move on their request because of the lack of a quorum at their last meeting. Mr. Bowser requested the SHRC temporarily serve as the human rights committee for this program until formal acceptance at the local level can be obtained.

The motion was made and unanimously passed to temporary affiliate with Lumzy's Together Residential Service.

SHRC Membership

The Committee agreed to recommend the State Mental Health, Mental Retardation and Substance Abuse Services Board appoint Davey Zellmer and Carmen Anne Thompson to the State Human Rights Committee.

State Human Rights Director Report

Margaret Walsh updated the Committee on current activities of the Department.

- Copies of the Commissioner's response to Case 02-01 (CSH) were provided.
- Doug Suttle, Southern Virginia Training Center LHRC Chairman, responded to John Holland regarding Removal vs Time Out. Copies of the response were provided to the Committee.
- Copies of the Commissioner's response to Bill Yolton, former Chair of the NVMHI LHRC, were provided.

Ms. Walsh presented the draft 2001 Report of the SHRC to the Committee. Ms. Walsh stated that with the Committee's approval, the report will be finalized and presented to the State MHMRSAS Board at the April 26 meeting in Richmond.

The motion was made and unanimously passed to accept the draft of the 2001 Annual Report of the SHRC and to approve Ms. Walsh's presentation of the final document to the State Mental Health, Mental Retardation and Substance Abuse Services Board at the April 27, 2002 State MHMRSAS Board meeting.

Having no further business to discuss, the motion was made and passed to adjourn the meeting.

Respectfully submitted,

James H. Harper, Co-Chair

Peter McIntosh, Co-Chair
State Human Rights Committee