

**State Human Rights Committee
Meeting Minutes**
Region Ten CSB Administrative Offices
Large Conference Room
502 Old Lynchburg Road
Charlottesville, VA 22903
August 1, 2008

SPECIAL MEETING
10:00 a.m.

COMMITTEE MEMBERS PRESENT

Kirby Wright, Chair
Christina Delzingaro, Vice-Chair
Angela Brosnan
Carolyn M. DeVilbiss
Randy Johnsey
Joseph Lynch
Donald Lyons
Jannie Robinson

NOT PRESENT

Delores Archer

HUMAN RIGHTS STAFF PRESENT

Margaret Walsh, State Human Rights Director
Kli Kinzie, Executive Secretary
Charles T. Collins, Regional Human Rights Advocate, Region I
Mark Seymour, Child and Adolescent Advocate, Regions I & II

OTHER STAFF PRESENT

Allyson Tysinger, Senior Assistant Attorney General
Jack Barber, MD, Director, Western State Hospital
Gail Burford, Western State Hospital Director's Liaison to WSH LHRC
Cathy Hill, DMHMRSAS, Office of Inspector General

OTHERS PRESENT

Frank Blankenship, Affiliate Support Committee Chair, MindFreedom International
Sheri Gauthier, Compliance Program Manager, Region Ten CSB
Alison Hymes, President, Virginia Mental Health Planning Council
Josephene Johnsey, Interested Person
Jean Kane, President, Western State Hospital Advisory Council
Heather Peck, Program Director, VOCAL
Rhonda D. Tuck, Cavalier Reporting and Videography
Nathan Veldhuis, Tremblay & Smith, LLD, Representing CC

Welcome / Call to Order

The August 1, 2008, Special Meeting of the State Human Rights Committee was called to order by Mr. Kirby Wright, Chair. Mr. Wright asked committee members and all present to introduce themselves.

Mr. Wright thanked staff of Region Ten Community Services Board for hosting the committee meeting.

Variance

On July 11, 2008, in accordance with 12 VAC 35-115-220.D.1, the SHRC heard oral statements and accepted written comments regarding Western State Hospital's application for variances from the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Operated or Funded by the Department of Mental Health, Mental Retardation and Substance Abuse Services*, 12 VAC 35-115. Following is the SHRC's action regarding the application for variances on August 1, 2008.

Mr. Wright announced that the first order of business was to determine the threshold issue of whether the limited contact suite for CC at Western State Hospital is seclusion.

Upon a motion made by Christina Delzingaro and seconded by Randy Johnsey and Jannie Robinson the committee unanimously affirmed and agrees with the Western State Hospital Local Human Rights Committee that the suite of rooms in which CC resides, sometimes referred to as a limited contact suite (LCS), meets the definition of "seclusion" contained in 12 VAC 35-115-30.

Upon a motion made by Jannie Robinson and seconded by Joseph Lynch the State Human Rights Committee convened in Closed Session pursuant to Virginia Code, 2.2-3711(15), for the purpose of discussion or consideration of medical and mental records excluded from the Virginia Freedom of Information Act.

SHRC members Kirby Wright, Chair, Christina Delzingaro, Vice-Chair, Angela Brosnan, Carolyn M. DeVilbiss, Randy Johnsey, Joseph Lynch, Donald Lyons and Jannie Robinson were present . The SHRC was accompanied by Allison Tysinger,

Senior Assistant Attorney General and DMHMRSAS Special Counsel, Margaret Walsh, Human Rights Director, and Kli Kinzie, Human Rights Secretary. Jack Barber, Western State Hospital (WSH) Director, and Gail Burford, WSH Director's Liaison to the WSH LHRC, were present on behalf of the facility. At the request of Nathan Veldhuis, Rhonda D. Tuck, Court Reporter, Cavalier Reporting and Videography, was also present.

Upon reconvening in public session, the State Human Rights Committee unanimously certified that to the best of each State Human Rights Committee 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 SHRC considered all available information in making its decision. The committee strongly recommend that Western State Hospital move back into compliance with the human rights regulations as soon as possible.

The specific regulations to which WSH requested variances along with the decision of the SHRC are as follows:

Section 12 VAC 35-115-60.B.4.d: Review of every use of seclusion and restraint by a qualified professional who is not involved in providing services to the individual.

SHRC Decision: Variance unanimously denied

Section 12 VAC 35-115-110.C.9: Providers shall comply with all applicable state and federal laws and regulations, certification and accreditation standards, and third party requirements as they relate to seclusion and restraint.

SHRC Decision: Variance unanimously denied. With the approval of a portion of WSH's variance request, a variation from this regulation is not needed.

Section 12 VAC 35-115-110.C.15: Providers shall not issue standing orders for the use of seclusion or restraint for behavioral purposes.

SHRC Decision: Variance unanimously denied

Section 12 VAC 35-115-110.C.19: Providers may not use seclusion in a behavioral treatment plan.

SHRC Decision: Variance unanimously approved until December 5, 2008.

Section 12 VAC 35-115-110.C.3: Only residential facilities for children that are licensed under the Regulations for Providers of Mental Health, Mental Retardation, and Substance Abuse Residential Services for Children (12 VAC 35-45) and inpatient hospitals may use seclusion and only in an emergency.

SHRC Decision: Variance unanimously approved until December 5, 2008.

Section 12 VAC 35-115-110.C.13: Providers may use seclusion or mechanical restraint for behavioral purposes in an emergency only if a qualified professional involved in providing services to the individual has, within one hour of the initiation of the procedure:

- a. Conducted a face-to face assessment of the individual placed in seclusion or mechanical restraint and documented that alternatives to the proposed use of seclusion or mechanical restraint have not been successful in changing the behavior or were not attempted, taking into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently;
- b. Determined that the proposed seclusion or mechanical restraint is necessary to protect the individual or others from harm, injury, or death;
- c. Documented in the individual's services record the specific reason for the seclusion or mechanical restraint;
- d. Documented in the individual's services record the behavioral criteria that the individual must meet for release from seclusion or mechanical restraint; and
- e. Explained to the individual, in a way that he can understand, the reason for using mechanical restraint or seclusion, the criteria for its removal, and the individual's right to a fair review of whether the mechanical restraint or seclusion was permissible.

SHRC Decision: Variance unanimously approved until December 5, 2008.

Section 12 VAC 35-115-110.C.14: Providers shall limit each approval for restraint for behavioral purposes or seclusion to four hours for individuals age 18 and older, two hours for children and adolescents ages 9 through 17, and one hour for children under age nine.

SHRC Decision: Variance unanimously denied.

Section 12 VAC 35-115-110.C.17: Providers shall monitor the use of restraint for behavioral purposes or seclusion through continuous face-to-face observation, rather than by an electronic surveillance device.

SHRC Decision: Variance unanimously approved until December 5, 2008.

The SHRC imposed certain conditions and terms on the variances approved to Sections 12 VAC 35-115-110.C.19; 12 VAC 35-115-110.C.3; 12 VAC 35-115-110.C.13; and 12 VAC 35-115-110.C.17 as follows:

1. **The variance is approved for the period of August 1, 2008 through December 5, 2008.**
2. **Western State Hospital staff shall attend, either in person or via teleconference, the SHRC meetings scheduled on September 5, 2008; October 24, 2008; and December 5, 2008 to provide updates on CC.**
3. **Western State Hospital shall document and provide the SHRC the following information by the agenda deadlines (August 19, 2008;**

October 7, 2008; and November 18, 2008) for each of its upcoming meetings:

- a. The number and frequency of interactions between CC and other individuals, including staff members, outside of the suite per day.**
 - i. The number of times CC is offered time outside of his suite and the outcome (i.e. does he stay in the suite or leave).**
- b. The amount of time CC is not in seclusion per day to include the following details:**
 - i. The amount of time CC is outside of the suite per day;**
 - ii. The amount of time the suite is unlocked per day; and**
 - iii. The amount of time CC is not alone.**
- c. The number, date, time and description of acts of aggression committed by CC during the reporting time period.**
- d. The number, date, time and description of assaults committed by CC during the reporting time period.**
- e. Documentation of the use of seclusion or restraint.**

Appeal

Western State Hospital CC v Jack Barber

This case originally came before the State Human Rights Committee (SHRC) on July 11, 2008 on appeal of a decision of the Western State Hospital (WSH) Local Human Rights Committee (LHRC). Mr. Nathan J.D. Veldhuis, M.A., brought the case forward on behalf of CC and his family. The appeal was held in open session. Members present were Kirby Wright, Christina Delzingaro, Delores Archer, Donald Lyons, Joseph Lynch, Dr. Angela Brosnan, M.D., Randy Johnsey, Jannie Robinson and Carolyn M. DeVilbiss. Upon convening it was discovered that the SHRC was not in possession of a complete record of the local human rights committee hearing. Specific information missing included a DVD, two photos and the transcript of testimony from the morning of April 28, 2008. The parties agreed that the missing information is necessary for the SHRC to render its decision. As such, the SHRC determined to proceed to hear oral arguments but to delay its decision on the matter pending review of the complete record. Deliberation of the appeal was postponed until August 1, 2008.

On August 1, 2008, the SHRC met and considered all available information on the case. The appeal was held in open session. Members present were Kirby Wright, Christina Delzingaro, Donald Lyons, Joseph Lynch, Dr. Angela Brosnan, M.D., Randy Johnsey, Jannie Robinson and Carolyn M. DeVilbiss.

On July 11, 2008, Nathan Veldhuis, on behalf of Clara Ramos, sister of CC, raised an objection to the Director's Appeal for non compliance with of 12 VAC 35-115-210(C), which provides: "C. Step 2: If the director is appealing, the individual may file a written statement with the SHRC within five working days after receiving a copy of the appeal. If the individual is appealing, the director shall file a written statement with the SHRC

within five working days after receiving a copy of the appeal.” Mr. Veldhuis contends that WSH did not file a written statement as required and as such should forfeit its appeal and the appeal of CC should be granted in full. The SHRC delayed ruling on this objection until August 1, 2008.

On August 1, 2008, upon a motion made by Joseph Lynch and seconded by Angela Brosnan, the SHRC unanimously overruled the objection related to 12 VAC 35-115-210 (C).

WSH raised the following issues on appeal:

WSH appeals the conclusion that treatment in the “limited containment suite” constitutes “seclusion” as defined by 12 VAC 35-115-30.

WSH appeals the conclusion that WSH violated 12 VAC 35-115-60.4.B (correct citation is to 12 VAC 35-115-60.B.4.b).

WSH appeals the conclusion that WSH violated 12 VAC 35-115-60.4.D (Correct citation is to 12 VAC 35-115-60.B.4.d).

WSH appeals the conclusion that WSH violated 12 VAC 35-115-110.C.9.

WSH appeals the conclusion that WSH violated 12 VAC 35-115-110.C.15.

WSH appeals the conclusion that WSH violated 12 VAC 35-115-110.C.19.

Clara Ramos raised the following issues on appeal:

Ms. Ramos appeals the conclusion that WSH did not violate 12 VAC 35-115-60.2 (correct citation is to 12 VAC 35-115-60.B.2).

Ms. Ramos appeals the conclusion that WSH did not violate 12 VAC 35-115-50.

Ms. Ramos appeals the conclusion that WSH did not violate 12 VAC 35-115-100.

The State Human Rights Committee affirmed the Variance motion made previously regarding the threshold issue of whether the suite of rooms in which CC resides, sometimes referred to as a limited contact suite (LCS), meets the definition of “seclusion” contained in 12 VAC 35-115-30. The SHRC agrees with the Western State Hospital Local Human Rights Committee’s decision.

Upon a motion made by Randy Johnsey and seconded by Carolyn DeVilbiss the SHRC unanimously upholds the WSH LHRC finding of violation of Section 12 VAC 35-115-60 B4b, *Preparation, implementation, and appropriate changes to an individual’s services plan based on the ongoing review of the medical, mental and behavioral needs of the individual.*

Christina Delzingaro added the recommendation that CC's treatment plan and rights notification be presented to him in Spanish. Carolyn DeVilbiss asked that it be documented that CC receives his treatment plan and rights notification in Spanish.

Upon a motion made by Christina Delzingaro and seconded by Jannie Robinson the SHRC unanimously upholds the WSH LHRC finding of violation of Sections 12 VAC 35-115-60 B4d, *Review of every use of seclusion or restraint by a qualified professional who is involved in providing services to the individual as indicated by the denial of a variance to this section of the regulations.*

Joseph Lynch recommended that conducting the review not be limited to Psychiatrists. Spanish speaking mental health providers licensed by the Department of Health Professions may conduct the review.

By unanimous vote SHRC upholds the decision of the WSH LHRC finding of no violation of Section 12 VAC 35-115-60 B2, *Providers shall insure that all services, including medical services and treatment, are at all times delivered in accordance with sound therapeutic practice.*

By unanimous vote the SHRC upholds the WSH LHRC finding of violation of Section 12 VAC 35-115-110 C9, *Providers shall comply with all applicable state and federal laws and regulations, certification and accreditation standards, and third party requirements as they relate to seclusion and restraint* as indicated by the approval of a variance to some requirements of seclusion for the use of the limited contact suite, but holds that this issue is now currently moot based on the decision of the SHRC regarding WSH's variance request.

By unanimous vote the SHRC upholds the WSH LHRC finding of violation of Section 12 VAC 35-115-110 C15, *Providers shall not issue standing orders for the use of seclusion or restraint for behavioral purposes*, but rules that this issue is now currently moot based on the decision of the SHRC regarding WSH's variance request.

By unanimous vote the SHRC upholds the WSH LHRC finding of violation of Section 12 VAC 35-115-110 C19, *Providers may not use seclusion orders for the use of seclusion or restraint for behavioral purposes* as indicated by the approval of a variance to this section of the regulations, but rules that this issue is now currently moot based on the decision of the SHRC regarding WSH's variance request.

Upon a motion made by Randy Johnsey and seconded by Jannie Robinson the SHRC unanimously determined to request that WSH LHRC enumerate the findings of fact which lead to its conclusions that WSH did not violate section 12 VAC 35-115-50, Dignity, or section 12 VAC 35-115-100, Restrictions on freedoms of everyday life. Decision is deferred to September 5, 2008.

The committee watched a DVD video provided by Nathan Veldhuis. Donald Lyons commented that the video affirms the decisions previously made. The SHRC made no changes to the motions or recommendations.

Christina Delzingaro recommended that WSH consider placing staff who do not have past relationships with CC in charge of his care so he may form new relationships with other staff. The hospital is asked to provide training to staff who will work with CC.

Angela Brosnan asked that the staff and hospital recognize that CC is developing and changing as all people do.

The Western State Hospital Local Human Rights Committee made the following recommendations:

1. That CC be transferred to a facility operated by DMHMRSAS that is closer in proximity to the family so that they may be involved with his treatment on a weekly basis.
2. That CC be treated by a Spanish speaking psychiatrist and/or psychologist.
1. That Spanish speaking staff be present not only on first shift, but second and third shift at WSH.
2. That a treatment plan be developed that includes increasing increments of time out of the locked containment area while at WSH.
3. That WSH follows all guidelines and laws pertaining to seclusion.
4. That WSH provide documentation of approval for the use of the locked containment area.
5. If the family wishes for CC to have dentures they may make such appointment and CC will be given a day/overnight pass for the family to take him to the appointment.

Upon a motion made by Randy Johnsey and seconded by Carolyn DeVilbiss the SHRC unanimously approved the WSH LHRC recommendations with the amendment of LHRC recommendation #2 as follows:

- 1. That CC be treated by Spanish speaking mental health providers licensed by the Department of Health Professions.**
- 2. That CC be provided his treatment plan, and other documents including his rights, in Spanish.**
- 3. That all efforts to communicate in Spanish to CC be documented in the record.**
- 4. That WSH consider all approaches to increasing the recovery orientation of the treatment environment surrounding CC including potential staff changes, staff training and consultation.**

Chairman Wright thanked all parties involved for their time and efforts on behalf of CC. The SHRC thanks the Western State Hospital Local Human Rights Committee for its time, careful consideration and effort in conducting its hearing.

The SHRC will consider the appeals to Sections 12 VAC 35-115-50 *Dignity* and 12 VAC 35-115-100 *Restriction on freedoms of everyday life* at the meeting on September 5, 2008.

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

Respectfully submitted,

A handwritten signature in cursive script that reads "Kirby Wright". The signature is written in black ink and is positioned above the printed name.

Kirby Wright, Chair