

State Human Rights Committee

Meeting Minutes

Department of Behavioral Health and Developmental Services (BHDS)

October 23, 2009

Southeastern Virginia Training Center

2100 Steppingstone Square

Building 3, Room 118

Chesapeake, Virginia, 23320

Administrative Meeting

Committee Members Present Kirby Wright, Chair; Christina Delzingaro, Vice-Chair,
Carolyn M. DeVilbiss, Randy Johnsey, Joseph Lynch, Donald Lyons,
Jannie Robinson

Members Excused Delores Archer, Frank Royal

Human Rights Staff Margaret Walsh, State Human Rights Director
Kli Kinzie, Executive Secretary
Michael Curseen, Human Rights Manager, Central State Hospital
Reginald T. Daye, Regional Human Rights Advocate
Carrie Flowers, Human Rights Advocate, CSH Forensics, and Hiram
Davis Medical Center
Beverly W. Garnes, Human Rights Manager, Southside Virginia Training
Center
Deb Lochart, Regional Human Rights Advocate
M. Ansley Perkins, Human Rights Advocate, Central State Hospital
Stewart Prost, Human Rights Advocate, Southeastern Virginia Training
Center

Other Staff Karen DeSousa, DBHDS Special Counsel
Robert Shrewsbury, Facility Director, SEVTC

Others David DeVilbiss, interested Person
Vonda Harrison, Director of Performance Improvement and Risk
Management of the PSI, The Pines Residential Treatment Center

Arin Haw, Disability Rights Advocate, Va Office for Protection and Advocacy
Josephine Johnsey, Interested Person
Elizabeth Nagji, Disability Rights Advocate, Va Office for Protection and Advocacy
Shawnell Whitehead, Director of Clinical Services, The Pines Residential Treatment Center
Thelma Wright, Interested Person

Call to Order Mr. Kirby Wright, Chair, opened the administrative session of the State Human Rights Committee meeting at 8:35 a.m. After introductions Chairman Wright shared a note from Dr. Angela Brosnan.

2010 Meeting Schedule The Committee discussed the draft 2010 SHRC meeting schedule. A new draft will be provided in December.

SHRC Workplan Members confirmed that the committee is up to date with Workplan goals.

Subcommittee Report Margaret Walsh suggested that the SHRC may wish to begin recruitment for new members now so that appointments can be made before the term begin date of July 1, 2010. Kirby appointed Christina Delzingaro, Carolyn DeVilbiss and Randy Johnsey to the membership committee. Christina Delzingaro will serve as Chair.

The Office of Human Rights will post information on the department's web site regarding recruitment to fill the upcoming vacancies. The SHRC will lose two providers; one from the Danville area and one from Richmond. As there continues to be an imbalance of members from the Richmond area, the positions should be filled by individuals in other locations.

Correspondence and Informational Items The SHRC reviewed a letter from the Central State Hospital LHRC regarding the loss of the secretary position in the human rights office at CSH. Michael Curseen, Human Rights Manager, expressed his concern that the loss of this position will adversely affect the office's operation. The secretary, Ms. Rose Mitchell, covers many of the calls and faxes coming in to the office herself. Mr. Curseen said that the secretary at Southside Virginia Training Center will help to cover some of the duties but emphasized that the office would surely feel the loss of Ms. Mitchell.

Christina Delzingaro suggested sending a letter to the LHRC asking for their patience and perseverance as we continue to deal with budget issues.

Christina Delzingaro asked how the budget cuts have impacted the office

in other areas. The office will lose W. Jerry Thomas, Advocate for the patients at Western State Hospital and Mary Towle's P-14 position at Northern Virginia Training Center has been eliminated again. Also, Adrien Monti, Human Rights Advocate for Catawba Hospital and the Roanoke Valley, has resigned. The office will not be allowed to fill these positions.

Deb Jones, Human Rights Advocate at Southwestern Virginia Mental Health Institute, did resign her position but, fortunately, Ms. Jones has rescinded her resignation.

Margaret Walsh reported also that staff were instructed to turn in state cars and cell phones.

Christina Delzingaro asked about the status of developing a new model for the human rights program. Ms. Walsh reported that the office is looking closely at LHRC structure in an effort to increase efficiency. Reginald Daye, Regional Advocate for Region 5, is working in collaboration with the Office of Licensing.

Also, Ms. Walsh reported that given the budget situation Commissioner Reinhard has tasked some of the deputy's with looking at ways of increasing efficiency in the running of the department.

Welcome

Dr. Robert Shrewsberry, Facility Director, welcomed the committee to Southeastern Virginia Training Center and spoke about some of the changes taking place at the training center since the SHRC last visited the facility.

Kirby Wright thanked Dr. Shrewsberry for his hospitality.

Temporary Variance for Poplar Springs Hospital

Margaret Walsh reported that a temporary Variance was granted to Poplar Springs Hospital in accordance with §12 VAC 35-115-220-(I) of the human rights regulations for the use of video surveillance in the bedrooms of the SAY Program (formally known as Daybreak Program). The Variance is granted until March 31, 2010 to provide Poplar Springs Hospital time to pursue a Variance through the regular process as stated in §12 VAC 35-115-220 , as well as to explore other options for ensuring the safety of the residents at the SAY Program.

Break

At 9:18 a.m. Chairman Wright called for a ten minute break.

Agenda

Upon a motion the Committee unanimously approved the agenda.

Regular Meeting

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

Members Excused Delores Archer, Frank Royal

Human Rights Staff Margaret Walsh, State Human Rights Director
Kli Kinzie, Executive Secretary
Michael Curseen, Human Rights Manager, Central State Hospital
Reginald T. Daye, Regional Human Rights Advocate
Carrie Flowers, Human Rights Advocate, CSH Forensics, and Hiram Davis Medical Center
Beverly W. Garnes, Human Rights Manager, Southside Virginia Training Center
Deb Lochart, Regional Human Rights Advocate
M. Ansley Perkins, Human Rights Advocate, Central State Hospital
Stewart Prost, Human Rights Advocate, Southeastern Virginia Training Center

Other Staff Karen DeSousa, DMHMRSAS Special Counsel

Others David DeVilbiss, interested Person
Tony Foy, Program Supervisor, Virginia Beach Department of Human Services
Vonda Harrison, Director of Performance Improvement and Risk Management of the PSI, The Pines Residential Treatment Center
Arin Haw, Disability Rights Advocate, Va Office for Protection and Advocacy
Josephine Johnsey, Interested Person
Amy Karkane, Clinician, Virginia Beach Department of Human Services
Elizabeth Nagji - Disability Rights Advocate, Va Office for Protection and Advocacy
Shawnell Whitehead, Director of Clinical Services, The Pines Residential Treatment Center
Thelma Wright, Interested Person

Present via Teleconference W.S.I., Complainant
Roanna Deal, Human Rights Advocate
David Lyon, facility Director, Southern Virginia Mental Health Institute

Call to Order Kirby Wright called the meeting to order at 9:30 a.m. A call for introductions took place prior to proceeding.

Chairman Wright called for a moment of silent remembrance of Mr. C.C. who passed away on October 19, 2010. The SHRC has been following

Mr. C.'s case and his passing is the cause of great sadness among the members of the Committee.

Minutes

Upon a motion by Randy Johnsey and seconded by Donald Lyons and Jannie Robinson the SHRC unanimously approved the minutes of the September 4, 2010 meeting as amended.

**Variance Notification
Keystone Newport
News Youth Center**

Reginald T. Daye, Regional Advocate for Region 5, presented the Keystone Newport News Youth Center's notification of its intention not to reapply for variance to Section 12 VAC 35-115-110, Time Out provision of the human rights regulations. The variance allowed Keystone Newport News Youth Center to utilize its structured living protocol.

Mr. Daye indicated that the program's variance expires on October 24, 2009.

**Variance
PSI The Pines RTC**

Reginald T. Daye, Regional Advocate for Region 5, introduced Ms. Shawnell Whitehead, Director of Clinical Services and Ms. Vonda Harrison, Director of Performance Improvement and Risk Management of the PSI The Pines Residential Treatment Center. Ms. Harrison provided a brief overview of The Pines Residential Treatment Center and the population for whom the variance and point level system would impact.

Mr. Daye indicated that The Pines Residential Treatment Center is seeking a variance to sections 12 VAC 35-115-100, Item A1g, Restrictions on Freedoms of Every Day Life, and 12 VAC 35-115-50, Item C7, Dignity, of the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded or Operated by the Department of Behavioral Health and Developmental Services*.

Upon a motion by Carolyn DeVilbiss and seconded by Randy Johnsey the SHRC unanimously approved, for a two-year period with annual status report, The Pines Residential Treatment Center variance request and point-level system as submitted.

**Variance Report
C.C. - Western State
Hospital**

Kirby Wright announced the review of Western State Hospital's Variance Report for Mr. C.C. Mr. Wright again acknowledged the passing of Mr. C.C., then polled members and ascertained that there would be no discussion requiring the committee to convene in closed session.

Joseph Lynch suggested sending a letter to thank Western State Hospital staff for working diligently on C.C.'s behalf to provide quality and safe care and for their efforts in fulfilling the SHRC's request for extensive

information. Christina Delzingaro acknowledged the work of the Legal Aid Justice Center in their steadfast support of C.C. and his family. Carolyn DeVilbiss acknowledged the extraordinary work of the whole system in finding new ways and innovations in accommodating C.C. and his family. We thank Commissioner Reinhard for his leadership and guidance in bringing C.C.'s move from Western State Hospital to Northern Virginia Mental Health Institute to fruition and for his leadership of the various facilities in cooperating and coordinating the treatment of C.C.

Special thanks the members of the Western State Hospital Local Human Rights Committee for its efforts on Mr. C.'s behalf. The SHRC also acknowledges the guidance and counsel provided by the Office of the Attorney General throughout the case. We express our appreciation to the staff at Northern Virginia Mental Health Institute for the compassionate care provided to Mr. Chumil and his family over the past few weeks. We believe that each of these individuals and groups was unwavering in dedication and commitment to providing the best care to Mr. Chumil and support to his family.

Upon a motion by Joseph Lynch and seconded by Jannie Robinson record notes receiving the Variance Report from Western State Hospital.

**Variance
Virginia Beach
Department of
Human Services**

Reginald T. Daye, Regional Advocate for Region 5, introduced Ms. Amy Karkane, Clinician, and Mr. Tony Foy, Program Supervisor of the Virginia Beach Department of Human Services. Mr. Foy provided a brief overview of the Virginia Beach Department of Human Services Crisis Stabilization Program and the population for whom the variance and program rules would impact.

Mr. Daye indicated that the Virginia Beach Department of Human Services is seeking a variance to section of 12 VAC 35-115-50, Items C7 and C8, Dignity of the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded or Operated by the Department of Behavioral Health and Developmental Services.*

Upon a motion by Joseph Lynch and seconded by Christina Delzingaro the SHRC unanimously approved, for a two year period with an annual status report, the Virginia Beach Department of Human Services variance request and program rules as submitted.

**Annual Report
Region 4**

Michael Curseen, Regional Manager, Beverly Garnes, Regional Manager, Carrie Flowers, Advocate, and M. Ansley Perkins, Advocate, presented the annual report for region 4. Staff touched on some highlights and gave an overview of systemic issues in the region.

An issue of note is the continued practice of extracting multiple teeth of clients at Southside Virginia Training Center (SVTC) by the dentist at Hiram Davis Medical Center. The SHRC acknowledges the facility's efforts to balance the right to refuse treatment with the painful results of bad oral hygiene. A letter will be sent requesting a report on the recent investigation into the dental services at SVTC including any plans of correction. Also, the SHRC will request a status report on the dental and medical services at all state facilities. The committee is particularly interested in how the Department ensures quality dental and medical care that meets the community standard of care.

The SHRC is also concerned about the interplay between human rights and the safety concerns of individuals under forensic status (NGRI) monitored by the Forensic Review Panel (FRP). There is an apparent restriction of rights of individuals under forensic status, particularly the use of medication over objection, restrictions of privileges for refusing to take medication and other types of restrictions imposed as part of the forensic privileging process. Commissioner Reinhard approved a continuation of an exemption to the human rights regulations for the use of the FRP process on July 12, 2009. The SHRC is concerned that some of the restrictive practices currently utilized at some state facilities go beyond the intent of the exemption and may in fact violate the rights of the individuals. The Committee will request an opportunity to discuss the above issues with central office forensic staff and state facility forensic staff.

**Appeal
W.S.I. v. SVMHI**

This case came before the State Human Rights Committee (SHRC) on October 23, 2009, on appeal of the decision of the Southern Virginia Mental Health Institute (SVMHI) Local Human Rights Committee (LHRC) following a fact finding hearing that took place on September 16, 2009. Ms. Roanna Deal, human rights advocate, assisted W.S.I. with the presentation of the case. Mr. David Lyon, Director of SVMHI, presented the case for SVMHI. At the request of W.S.I. the hearing was held in open session. Members present were Kirby Wright, Christina Delzingaro, Donald Lyons, Joseph Lynch, Randy Johnsey, Jannie Robinson, and Carolyn M. DeVilbiss. W.S.I., Ms. Roanna Deal and Mr. David Lyon were present via teleconference.

It is noted that W.S.I. came forward to appeal on the LHRC's decision, not the facility director's action plan.

W.S.I. disputes that he had a complete and thorough competency evaluation with Sylvia McFarland/Dr. Patel and Dr. Clark nor Dr. Rowell. W.S.I. does not believe that they spent enough time with him, nor did their questions accurately assess for his capacity to make

informed decisions.

W.S.I. contends that the lack of specific documentation from the above mentioned professionals does not support the conclusion that he lacks capacity to make informed decisions.

W.S.I. contends that Dr. Rowell, a contract psychiatrist for the facility, provided an assessment of W.S.I, while employed by the facility, thus not providing as objective of an opinion as a professional who is not employed by the facility.

W.S.I therefore requests that SVMHI provide an independent evaluation at the facility's expense to assess his capacity to consent to treatment.

Upon a motion by Joseph Lynch and seconded by Carolyn DeVilbiss and Donald Lyons the SHRC upholds the decision and all recommendations of the SVMHI LHRC by a vote of 5-2.

The SHRC has no additional recommendations in this case.

The SHRC thanks the SVMHI LHRC for its time, effort, and careful consideration in conducting the hearing.

The decision in this case has broad relevancy and should be shared throughout the system in the hopes that all capacity evaluations will be carefully and thoroughly documented.

LHRC Membership *Upon a motion by Christina Delzingaro and seconded by Donald Lyons the SHRC convened in closed session pursuant to Virginia Code §2.2-3711(1) for the purpose of discussion and consideration of appointments to and removals from Local Human Rights Committees.*

Upon reconvening in open session, the State Human Rights Committee 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 closed session.

The SHRC acknowledged the resignation letter of Thomas E. Becker from Chesapeake Local Human Rights Committee.

On behalf of the Portsmouth Regional Local Human Rights Committee Reginald T. Daye, Regional Advocate for Region 5, presented a request to remove Mr. Mark A. Scott from membership on the committee due to his lack of attendance.

The SHRC reviewed a request for the removal of Ms. Mary Ann Boyd

from the Southern Virginia Mental Health Institute Local Human Rights Committee.

Upon a motion by Christina Delzingaro and seconded by Donald Lyons the SHRC removed Mr. Mark A. Scott from Portsmouth Regional Local Human Rights Committee and Ms. Mary Ann Boyd from the Southern Virginia Mental Health Institute Local Human Rights Committee.

Upon a motion made by Christina Delzingaro and seconded by Donald Lyons the SHRC unanimously made the following appointments:

- Region 1
Valley LHRC
Appoint: Ms. Patricia Gore
Western State Hospital LHRC
Appoint: Ms. Stephanie Sault, Mr. Robert Wade
- Region 2
Arlington LHRC
Appoint: Ms. Alicia Guajardo
- Region 4
Metro Richmond LHRC
Appoint: Ms. Jennifer Spangler
- Region 5
Eastern State Hospital LHRC
Appoint: Ms. Alice Callahan
Portsmouth Regional LHRC
Appoint: Mr. Harry Lee Moore
Genesis LHRC
Appoint: Ms. Althea Wynn
- Region 6
Central Virginia Community Services LHRC
Appoint: Mr. Kelly G. Sandbridge
Piedmont Geriatric Hospital LHRC
Appoint: Ms. Beatrice Evans Wedner, Ms. Patricia Fyfe-Horne, Ms. Joanna Perrotta Garofalo
Danville-Pittsylvania County Regional LHRC
Appoint: Ms. Karen Wilkerson
- Region 4
Upon a motion by Christina Delzingaro and seconded by Jannie Robinson the SHRC unanimously made the following appointments:
Metropolitan LHRC
Appoint: Mr. Edward Gerhard, Ms. Dawn F. Wadiak, Mr. Desmond Robinson, Mr. George F. Miller, Mr. Anthony K. Weah

The record notes that Ms. Samara Gracia is not appointed at this time in order to insure proper composition of the LHRC. The two remaining vacancies must be filled by consumers.

- Region 5
Upon a motion by Christina Delzingaro and seconded by Carolyn DeVilbiss, the SHRC made the following appointment with one abstention.
Hampton Roads Regional LHRC
Appoint: Dr. Beverly Withers

Other Business

Margaret Walsh informed the Committee that Stephen M. Herrick, Ph.D., is now Facility Director for Piedmont Geriatric Hospital and Virginia Center for Behavioral Rehabilitation. This leadership will orient VCBR in a mental health direction.

Joseph Lynch reported that a program in his area, which is licensed by the Department of Education, has a mental health component but no licensing from the Department. Mr. Lynch has discussed this with Mark Seymour, human rights advocate, who is looking into the issue. The program is Medicaid funded. If they are Medicaid Waiver funded, they must be licensed by the Department.

Adjournment

There being no further business, the meeting adjourned. The next meeting will be held on December 4, 2009, in Richmond.

Respectfully Submitted:

Kirby Wright, Chair

Kli Kinzie, Secretary