

MINUTES
STATE HUMAN RIGHTS COMMITTEE

Friday, September 10, 2010
New River Valley CSB, Montgomery Center
700 University City Blvd
Blacksburg, Virginia 24060

Administrative Session

- Members Present** Donald Lyons, T.C. Bullock, Penny Cameron, Carolyn DeVilbiss, Joseph Lynch, Jannie Robinson
- Members Excused** Christina Delzingaro, **Chair**, Randy Johnsey, **Vice-Chair**, Frank Royal
- Staff** Margaret Walsh, State Human Rights Director
Kli Kinzie, Executive Secretary
Karen DeSousa, DBHDS Special Counsel
Nancy C. Neese, Regional Human Rights Advocate, Region 3
BJ McKnight, Human Rights Advocate, SWVTC
Deb Jones, Human Rights Human Rights Advocate, SWVMHI
- Others** Dr. Yannis Stivachtis, Chairman, New River Valley LHRC and Director of International Studies at Virginia Tech
- Election of Chair Pro Tem** *At 8:12 a.m. Jannie Robinson moved to elect Donald Lyons as Chair pro tem for the September 10, 2010 State Human Rights Committee meeting. The motion passed unanimously.*
- Call to Order and Welcome** *At 8:13 Donald Lyons, Chair pro tem, called the meeting to order. A call for introductions took place prior to proceeding.*
- Approval of September 10, 2010 Agenda** *At 8:15 Carolyn DeVilbiss stated that attending LHRC meetings is one of the ways the SHRC works to enhance communications between LHRCs and the SHRC. Ms. DeVilbiss proposed that LHRC meeting attendance reporting should appear regularly on SHRC meeting agendas during Regular Session just above LHRC Membership.*

Upon a motion by Carolyn DeVilbiss and seconded by Jannie Robinson the SHRC unanimously voted to add LHRC meeting attendance reporting as a regular item on SHRC meeting agendas, including the September 10, 2010, agenda.

At 8:17 Margaret Walsh reported that the appeals of W.D. and J.M. were cancelled per the clients' requests.

Upon a motion by Joe Lynch and seconded by T.C. Bullock the appeals of W.D. and J.M. were removed from the September 10, 2010 agenda. The motion passed unanimously

Upon a motion by Joe Lynch and seconded by Jannie Robinson the SHRC unanimously voted to schedule the appeal of G.R. for 10:00 a.m.

Correspondence

At 8:20 Don Lyons opened discussion about Eastern State Hospital's (ESH) Response to Public Comments made by Mark Stevens, Disability Rights Advocate, Virginia Office for Protection and Advocacy, during the public comment period on June 11, 2010.

Joe Lynch commented that there had been no formal request by ESH for a Variance to address restrictiveness of environment.

The SHRC will send a letter to Dr. Maxcine Maxfield, Acting Director of ESH asking that staff be available to discuss issues with the SHRC at the October 29, 2010, SHRC meeting at ESH.

Joe Lynch noted that Mark Stevens of VOPA and the ESH LHRC should be copied on all correspondence relative to this issue.

At 8:27 the SHRC reviewed correspondence from Piedmont Geriatric Hospital LHRC regarding an extension of the timeframe for holding a hearing.

No action required.

At 8:28 the SHRC discussed LHRC affiliation for Virginia Center for Behavioral Rehabilitation. It has been difficult to find an LHRC willing to serve the facility. Dr. Stephen Herrick, former Facility Director for VCBR, consulted with Margaret Walsh and then sent a letter to Central State Hospital (CSH) LHRC requesting that they serve as the local committee for VCBR. Christina Delzingaro and Margaret Walsh attended a meeting of CSH LHRC and formally asked the LHRC to serve VCBR. The LHRC listened respectfully, asked questions regarding workload and length of time they would need to act as LHRC, then declined the request.

Margaret Walsh noted that of all the LHRCs in current existence, the CSH LHRC best understands the issues relevant to VCBR's population.

Joe Lynch suggested sending a thank you letter to PGH LHRC for

their past service as LHRC for VCBR. The SHRC truly appreciates their dedication to the human rights system. Penny Cameron suggested asking the members of PGH LHRC to provide some training and orientation to the next LHRC for VCBR.

At 8:41 the SHRC considered a request from VOPA for SHRC review. The request states that the Department failed to insure that patients of ESH are receiving services in the least restrictive conditions.

Margaret Walsh said that from a human rights perspective clients should not have greater restrictions placed on them because of what space is available during construction or re-modeling. The Committee discussed consideration of the rights of individuals whenever changes to facilities are being planned and speculated on alternatives for placement. Ms. Walsh pointed out that although patient's do have a right to the least restrictive alternative appropriate to the individual, there is no right to be served by any particular facility.

Upon a motion by Joe Lynch and seconded by Jannie Robinson and T.C. Bullock the SHRC unanimously voted to send a letter to Central State Hospital asking about their plan to deal with the human rights issue of least restrictive setting when individuals are ready for civil transfer.

At 8:52 the SHRC acknowledged a letter from Wall Residences concerning discontinuation of a Variance.

At 8:53 the SHRC reviewed SVMHI's patient funds accounts policy. Following discussion the SHRC asked Margaret Walsh to send a letter to Commissioner Stewart regarding adding language relative to hours and amount of money to the departmental instruction for funds tracking.

Break

At 9:05 Don Lyons called for a 5 minute break.

9:10

Regular Session

Members Present

Donald Lyons, **Chair pro tem**; Thomas Bullock, Penny Cameron, Carolyn DeVilbiss, Joseph Lynch, Jannie Robinson

Members Excused

Christina Delzingaro, **Chair**, Randy Johnsey, **Vice-Chair**, Frank Royal

Staff

Margaret Walsh, State Human Rights Director
Kli Kinzie, Executive Secretary

Karen DeSousa, DBHDS Special Counsel
Nancy C. Neese, Regional Human Rights Advocate, Region 3
BJ McKnight, Human Rights Advocate, SWVTC
Deb Jones, Human Rights Human Rights Advocate, SWVMHI

Others

Kerri Beasley Edwards, Administrative Support for New River Valley
CSB LHRC
Dr. Harvey Barker, Executive Director, New River Valley Community
Services
Dr. Yannis Stivachtis, Chairman, New River Valley LHRC and
Director of International Studies at Virginia Tech

Present via PolyCom

D.T., Consumer and Petitioner
Roanna Deal, Human Rights Advocate, Southern Virginia Mental
Health Institute
David Lyon, Facility Director, Southern Virginia Mental Health
Institute
Naomi Gibson, Abuse Investigator and Ombudsman
G.R., Consumer and Petitioner
Walter “Buddy” Small, Human Rights Advocate, Piedmont Geriatric
Hospital and Virginia Center for Behavioral Rehabilitation
Dr. Dennis Mario, Clinical Director, Virginia Center for Behavioral
Rehabilitation
Cheryl Young, Quality Assurance and Resident Complaint
Coordinator, Virginia Center for Behavioral Rehabilitation

**Call to Order and
Introductions**

*At 9:10 Donald Lyons called the September 10, 2010, SHRC meeting
to order. A call for introductions took place prior to proceeding.*

Minutes

At 9:13 the SHRC reviewed the minutes of the July 9, 2010, SHRC
meeting.

*Upon a motion by T.C. Bullock and seconded by Carolyn DeVilbiss
the SHRC unanimously approved the minutes of the July 9, 2010,
SHRC meeting.*

Welcome

At 9:14 Nancy C. Neese, Regional Human Rights Advocate for
Region 3, welcomed the SHRC to Blacksburg and briefly described
the region, geographically and otherwise.

Nancy C. Neese introduced Dr. Harvey Barker, Executive Director of
New River Valley (NRV) Community Services, and Dr. Yannis
Stivachtis, Chairman of NRV LHRC and Director of International
Studies at Virginia Tech.

Dr Barker thanked the SHRC for coming and expressed his thanks that this committee truly does travel throughout the state and comes to the far southwest. He also thanked the SHRC members for their work in providing services and protecting rights of consumers. Dr. Barker thanked Ms. Neese and her staff, and he thanked Ms. Kerri Edwards, Administrative Support for New River Valley CSB LHRC.

Dr. Yannis Stivachtis, Chairman of New River Valley LHRC and Director of International Studies at Virginia Tech, thanked the committee for coming to Blacksburg and thanked them for the work they do on behalf of consumers. Dr. Stivachtis encouraged the SHRC to try to pressure providers to fill vacant human rights staff positions.

Public Comment

At 9:22 Donald Lyons called for Public Comments. There were no public comments.

Appeal (Polycom)
SVMHI : D.T.

At 9:38 the SHRC moved to another room to hear the Appeal of SVMHI and D.T. via PolyCom. A call for introductions took place before proceeding.

This case comes before the SHRC via PolyCom on appeal of the decision of the Southern Virginia Mental Health Institute (SVMHI) LHRC following a fact finding hearing that took place on July 22, 2010. Ms. Roanna Deal, Human Rights Advocate, assisted D.T. with the presentation of the case. Mr. David Lyon, Facility Director, SVMHI, presented the case for SVMHI. At the request of J.M. on behalf of D.T. the hearing was held in closed session. Members present were Donald Lyons, Joseph Lynch, Jannie Robinson, Penny Cameron, Thomas C. Bullock and Carolyn M. DeVilbiss. Also present were Karen DeSousa, DBHDS Special Counsel, Margaret Walsh, State Human Rights Director, and Kli Kinzie, Executive Secretary.

D.T. is appealing a portion of the Director's Action Plan.

Upon a motion by Joe Lynch and seconded by Jannie Robinson the SHRC convened in Executive Session pursuant to Virginia Code, 2.2-3711 A (4& 15), for the purpose of discussion of information excluded from the Freedom of Information Act.

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

Executive Session were discussed in the Executive Session.

Upon a motion by Joe Lynch and seconded by Jannie Robinson the SHRC unanimously voted to support the Commissioner's action plan, recognizing that not all of JW's concerns were addressed but that there have been increased efforts from all parties to develop and create this plan. The Committee would like SVMHI to report back in six months to report on progress with the implementation of written policies and procedures. As well, the Committee will send an invitation to the Virginia Office of Protection and Advocacy (VOPA) inviting them to provide comment on how the human rights system is working at state facilities.

By unanimous vote the SHRC upholds the decision and all recommendations of the SVMHI Local Human Rights Committee and the Director's Action plan in response to those findings and recommendations.

Donald Lyons thanked all parties for their time and consideration in coming before the SHRC.

Letter from Loudoun
County LHRC

At 10:00 the SHRC considered a letter from Loudoun County LHRC regarding the appointment of a member to the LHRC. The SHRC considered language defining Health Care Provider as it applies to fulfilling the Virginia Code's requirement that Health Care Providers serve on LHRCs.

Margaret Walsh suggested the committee revisit the SHRC developed document which provides guidance on who meets the qualifications of Health Care Provider and consider any needed revisions.

Upon a motion by Joe Lynch and seconded by T.C. Bullock the SHRC formed a sub-committee to develop language regarding qualifications of a Health Care Provider as it applies to LHRC membership. Jannie Robinson, Penny Cameron, Frank Royal and T.C. Bullock were appointed to the Health Care Provider Committee.

Margaret Walsh will send a letter in response to the Loudoun County LHRC.

Appeal (Polycom)
VCBR : G.R.

At 10:20 Donald Lyons announced the Appeal of VCBR and G.R. This appeal was conducted via PolyCom. A call for introductions took place before proceeding.

This case came before the SHRC on appeal of the decision of the

Piedmont Geriatric Hospital (PGH) LHRC following a fact finding hearing that took place on July 29, 2010. Mr. Walter Small, Human Rights Advocate, assisted G.R. with the presentation of the case. Dr. Mario Dennis and Ms. Cheryl Young presented the case for Virginia Center for Behavioral Rehabilitation (VCBR). At the request of the Complainant the hearing was held in open session. Members present were Donald Lyons, Joseph Lynch, Jannie Robinson, Penny Cameron, Thomas C. Bullock and Carolyn M. DeVilbiss. Also present were Karen DeSousa, DBHDS Special Counsel, Margaret Walsh, State Human Rights Director, and Kli Kinzie, Executive Secretary.

Issues on Appeal

1. G.R. disagrees with the PGH LHRC finding of no violation of 12 VAC 35-115-60 (B) (5) Services. G.R. contends his treatment plan was not developed for him within the required timeframe and he was not permitted to participate in the development of the plan.
2. G.R. disagrees with the PGH LHRC finding no violation of 12 VAC 35-115-50 (C) (6) Dignity. G.R. alleges that VCBR unfairly opened his mail and unfairly confiscated items from his mail.
3. G.R. disagrees with the PGH LHRC finding no violation of 12 VAC 35-115-100 (A), (1), (a), Restrictions on freedoms of everyday life. G.R. contends that VCBR violated his rights by not allowing him ample access to the VCBR law library.
4. G.R. contends in his petition and/or statements to the SHRC that he was denied his right to complain and receive a fair hearing. He contends that the PGH LHRC hearing procedures were inadequate. He contends that the committee failed to accurately understand and apply policy and regulation and failed to reference regulation or policy. He also contends that the LHRC failed to provide him with the opportunity to fully present witnesses or witness statements. G.R. also contends that the following complaints were not considered by the LHRC:
 - a. Failure to provide jobs
 - b. Detainment on Behavioral Unit
 - c. Confiscation of photos with children in them
 - d. Denial of Islamic Services and discrimination
 - e. Restrictions of magazines, movies and muse
 - f. Sanctions imposed for fighting
 - g. Failure to protect from retaliation.
 - h. Failure to provide healthy diet

Upon a motion by Joseph Lynch and seconded by Jannie Robinson the

SHRC unanimously upholds the decision and all recommendations of the PHG Local Human Rights Committee regarding complaints 1, 2 and 3.

Upon a motion by Joseph Lynch and seconded by Jannie Robinson the SHRC unanimously determines that a procedural error occurred when the LHRC failed to address G.R.'s petitions of appeal regarding the following complaints:

- 1. G.R. alleges a violation of sections 12 VAC 35-115-50 (C) (4), Dignity,... "Right to practice a religion and participate in religious services..." and 12 VAC 35-115-(B) (1) (A) regarding prohibition of discrimination based on religion and race. Specifically, G.R. contends that VCRB has failed to provide an opportunity for Muslim residents to congregate in observance of Friday prayer and has done so for Christian and Jewish residents. G.R. further contends that this discrimination is racially and ethically motivated by targeting blacks who have been civilly committed.*
- 2. Alleged violation of section 12 VAC 35-115-50 (A), (B) and (C) (2) Dignity... "right to receive nutritionally adequate, varied and appetizing meals..." Specifically G.R. contends that VCBR fails to provide an adequate amount of nutrition, juice and fails to provide a daily healthy diet. He contends that the alternative or substitute of a "fruit for juices and cake for bread" is inadequate.*

This decision shall serve as notice to the parties that the SHRC will hear the above complaints on appeal at its meeting on October 29, 2010. The parties are to prepare for a hearing on the matter and submit all required documentation to the SHRC by October 12, 2010.

Donald Lyons thanked all parties to the appeal for coming before the SHRC to present this case. The SHRC also thanks the PGH LHRC for its time, effort, and careful consideration in conducting the LHRC hearing.

**Attendance at
LHRC Meetings**

Carolyn DeVilbiss reported that Christina Delzingaro and Margaret Walsh attended a CSH LHRC Meeting and discussed affiliation with VCBR. On October 27, 2010, Penny Cameron and Carolyn DeVilbiss will attend an LHRC meeting.

LHRC Membership

At 11:15 the SHRC reviewed applications for appointments to Local Human Rights Committees.

Acknowledgement of Resignations

The SHRC acknowledges the following resignations and thanks these individuals for their service:

- David Mattoon, Falls Church LHRC
- Stonewall Odom, Crater LHRC
- Susie Kemp, SVTC LHR
- Jeanette Ralph, James City Regional LHRC

Nancy C. Neese asked on behalf of Mark Seymour and Chuck Collins about the SHRC's response to the Loudoun County LHRC letter regarding Health Care Providers.

The SHRC has appointed a committee for consideration of the definition of Health Care Provider and will communicate with the Loudoun County LHRC.

At 11:18 upon a motion by Joseph Lynch and seconded by Jannie Robinson 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.

Upon a motion by Joseph Lynch and seconded by T.C. Bullock the SHRC unanimously made the following appointments.

Region 2

- Fredericksburg Area LHRC
 - Reappoint: Ms. V. Lynn DelaMer
- Prince William LHRC
 - Appoint: Col. Linda A. Beard

Region 4

- Central Area LHRC
 - Appoint: Ms. Carol Gittman, Mr. Edward W. Barlow, Jr.
- Crater LHRC
 - Appoint: Ms. Mary Wallace
- Tuckahoe LHRC
 - Reappoint: Ms. Monica Lucas

Region 5

- James City Regional LHRC
 - Appoint: Ms. Lisa Thatcher
- Virginia Beach Area LHRC
 - Appoint: Ms. Linda Dahl-Prince

Eastern State Hospital
Appoint: Ms. Robin B. Bristow
Southeast Alliance LHRC
Appoint: Ms. Monica Larkin

Region 6

Piedmont Community Services LHRC
Appoint: Ms. Gail Ross, Ms. Rhonda Stone
Southside Community Services LHRC
Reappt: Ms. Barbara Kittrell
Appoint: Ms. Mona Rainey

Other Business
Human Rights System
Reform Sub-
Committee

At 11:22 Carolyn DeVilbiss reported that she, Christina Delzingaro and Margaret Walsh met and discussed possible changes to the human rights system. Recommendations will be reported to Commissioner Stewart when ready.

Margaret Walsh reported that the dialog has begun regarding revision of the human rights regulation. Changes to the human rights system should be incorporated into the new regulation.

Margaret Walsh reported that the sub-committee has been looking at what authority the SHRC has over the LHRC affiliation agreements and in what options there are in using the fees collected by the LHRC offices. Providers can look closely at their affiliation agreements and recommend how the money can be used. Nancy C. Neese reported that some of the money is being used to supplement income for LHRC administrative support at the programs. Ms. Walsh said the money can also be used for food for working meetings and travel for LHRC members.

Carolyn DeVilbiss asked about researching some of the human rights programs for other states. Margaret Walsh reported on what she has learned about the structure and management of human rights programs in other states.

On October 1, 2010, the HR System Reform Committee will meet from 1:00 to 3:00 and will report to the full SHRC during the October 29, 2010, SHRC meeting in Williamsburg.

Other

At 11:45 Carolyn DeVilbiss said there needs to be a forum for discussing the details of some issues openly while maintaining the privacy of closed session.

Communications

Joseph Lynch reported that he and Randy Johnsey are concerned about where the SHRC is going with the newsletter and whether it is an

effective a vehicle for communicating with the LHRCs. Carolyn DeVilbiss asked the advocates present for their opinions. Nancy C. Neese said she prints the newsletter and distributes it during LHRC meetings. Margaret Walsh suggested including a survey in the next newsletter asking if the newsletter is meaningful and helpful and how it might be improved.

Adjournment

Upon a motion by Joseph Lynch and seconded by T.C. Bullock the meeting adjourned at 12:05. The next meeting will be held on October 29, 2010, at Eastern State Hospital.

Respectfully Submitted:

Donald Lyons, Chair pro tem

Kli Kinzie, Secretary