

STATE HUMAN RIGHTS
COMMITTEE

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Joseph Lynch
Harrisonburg

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Hillsville

Jannie Robinson
Chesapeake

Frank Royal, Jr.
Richmond



COMMONWEALTH of VIRGINIA

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MINUTES

STATE HUMAN RIGHTS COMMITTEE

Friday, January 21, 2011
Williamsville Wellness, LLC
10515 Cabaniss Lane
Hanover, Virginia
23069

Administrative Session

Members Present

Christina Delzingaro, **Chair**, Randy Johnsey, **Vice-Chair**, T.C. Bullock, Penny Cameron, Donald Lyons, Joseph Lynch, Jannie Robinson

Members Excused

Carolyn DeVilbiss
Frank Royal

Staff

Margaret Walsh, State Human Rights Director
Kli Kinzie, Executive Secretary
Karen DeSousa, DBHDS Special Counsel
J Deb Lochart, Regional Human Rights Advocate, Region 2
Reginald T. Daye, Regional Human Rights Advocate, Region 5
Michael Curseen, Human Rights Manager, Region 4 and Central State Hospital
Beverly W. Garnes, Human Rights Manager, Region 4 and Southside Virginia Training Center

Others

Paul J. Buckley, Managing Attorney, VOPA
Elizabeth Fisher Nagji, Disability Rights Advocate, VOPA
Josephene Johnsey, Interested Person
Mark Stevens, Disability Rights Advocate, VOPA

Call to Order and Welcome

At 8:50 Christina Delzingaro, called the administrative meeting to order. A call for introductions took place prior to proceeding.

Approval of January 21, 2011 Agenda

At 8:53 upon a motion by Randy Johnsey and seconded by Don Lyons the SHRC unanimously approved the agenda for the January 21, 2011 SHRC meeting.

SHRC Goals

The SHRC tabled review of the Goals Worksheet.

Sub-Committees

Health Care Providers

At 8:56 Penny Cameron reported on activities of the Health Care Providers Sub-Committee. Ms. Cameron said that when considering whether applicants qualify as healthcare providers, the LHRCs surveyed are looking for experience in programs working with the populations served by their LHRCs.

Chair Delzingaro asked Karen DeSousa to look into the intent of the current meaning of healthcare provider in the Code of Virginia.

Margaret Walsh described the history of the Healthcare Provider mandate in the Code of Virginia and the subsequent development of the SHRC guidelines.

Communications

At 9:05 Christina Delzingaro announced that the Communications Sub-Committee will report at the next SHRC meeting.

LHRC Structure

At 9:14 Margaret Walsh informed the SHRC that John Pezzoli, Assistant Commissioner of Behavioral Health Services for DBHDS, plans to attend the March 4 SHRC meeting to discuss the department's response to recommendations of the LHRC Structure Sub-Committee.

Correspondence

At 9:15 the SHRC briefly discussed correspondence received since the December 10, 2010 SHRC meeting. The SHRC acknowledged receipt of a request from Piedmont Geriatric Hospital LHRC for extension of the submission time for objecting to an action plan.

BREAK

At 9:17 Christina Delzingaro called for a break until 9:25.

Regular Session

Members Present

Christina Delzingaro, **Chair**, Randy Johnsey, **Vice-Chair**, T.C. Bullock, Penny Cameron, Donald Lyons, Joseph Lynch, Jannie Robinson,

Members Excused

Carolyn DeVilbiss
Frank Royal

OHR Staff

Margaret Walsh, State Human Rights Director
Karen DeSousa, DBHDS Special Counsel
Kli Kinzie, Executive Secretary
Charles T. Collins, Regional Human Rights Advocate, Region 1
Michael Curseen, Human Rights Manager, Region 4 and Central State Hospital
Reginald T. Daye, Regional Human Rights Advocate, Region 5
Carrie Flowers, Human Rights Advocate
Beverly W. Garnes, Human Rights Manager, Region 4 and Southside Virginia Training Center
J Deb Lochart, Regional Human Rights Advocate, Region 2

Other DBHDS Staff

Janet Lung, Director, Child and Family Services
Russell Payne, Community Support Specialist, Behavioral Health

Others

Paul J. Buckley, Managing Attorney, VOPA
Valerie Burton, APS Social Worker-Loudoun County, NVTC LHRC
Rebecca Currin, Disability Rights Advocate, VOPA
Phyllis M. Eaton, PhD, RN, PMH-CNS, B.C., Director of Nursing, Virginia Beach Psychiatric Center
Elizabeth Fisher Nagji, Disability Rights Advocate, VOPA
Dana Gillentine, Risk Manager, The Pines, Crawford Campus
Vonda Harrison, Director PI/RM, The Pines Residential Treatment Center
Josephene Johnsey, Interested Person
Colleen Miller, Executive Director, VOPA
Fran Neaves, Director Performance Improvement and Risk Management, Virginia Beach Psychiatric Center
Mark Stevens, Disability Rights Advocate, VOPA

Present via Telecom

C.S., Patient, Piedmont Geriatric Hospital
Dr. Stephen M. Herrick Director, Piedmont Geriatric Hospital
Walter G. Small, Human Rights Advocate, Piedmont Geriatric Hospital and Virginia Center for Behavioral Rehabilitation
Joan Elizabeth "Beth" Lee, Human Rights Advocate, Region 6
Dr. Stephen M. Herrick Director, Piedmont Geriatric Hospital

Call to Order and Introductions

At 9:26 Christina Delzingaro called the January 21, 2011, SHRC meeting to order. A call for introductions took place prior to proceeding.

Welcome

At 9:28 Mr. Bob Cabaniss, Executive Director of Williamsville Wellness LLC welcomed the SHRC and briefly described the program and services offered.

Tour

At 9:32 the SHRC and others in attendance took a tour of Williamsville Wellness.

Reconvene

The meeting reconvened at 9:51.

Minutes:
December 10, 2010

At 9:51 the SHRC reviewed the draft minutes of the December 10, 2010 SHRC meeting.

Upon a motion the SHRC unanimously approved the minutes of the December 10, 2010 SHRC meeting as revised.

Public Comment

At 9:52 Christina Delzingaro called for Public Comments. There were no public comments.

**Correspondence
Review (continued)**

At 9:52 Margaret Walsh talked about some of the feedback the human rights office has received in response to the recommendations of the Sub-Committee on LHRC Structure.

**LHRC Structure
(continued)**

At 9:54 Christina Delzingaro announced that the Sub-Committee for LHRC Structure needs to get together again. The Sub-Committee is in the process of gathering information from the human rights advocates. After review and evaluation of information gathered the sub-committee will develop a process for determining the viability of LHRCs with vacancies in mandated positions. The sub-committee will also consider how the SHRC can provide help and support to those LHRCs lacking in membership.

The Sub-Committee for LHRC Structure will participate in review and revision of the human rights regulations.

**Healthcare
Providers**

At 10:00 Joe Lynch reported on activities of the Healthcare Providers Sub-Committee. Before continuing with evaluation of whether certain professions qualify as healthcare providers, the sub-committee wants to be clear on the role healthcare providers are intended to play as members of LHRCs. The sub-committee will be prepared with some definitions by the March 4 meeting.

LHRC Attendance

At 10:02 the SHRC acknowledged a written report (below) from Carolyn DeVilbiss concerning issues raised at the January 6, 2011 meeting of the Northern Virginia Training Center LHRC.

"I attended at the request of the LHRC Chair Peter Black, in order to hear some concerns of Committee members and to share them with the SHRC. Present were most of the committee members as well as Regional Advocate Deb Lochart and the NVTC Facility Director Mark

Diorio.

"The Committee has prepared a statement of their concerns which they have forwarded to [Christina Delzingaro] for consideration by the SHRC. They also plan to send a representative to the January 21 SHRC meeting to attend the discussion with Ms. Miller of VOPA, and are hopeful that she will address the questions they have attached.

"In essence, the Committee members are raising questions about whether VOPA can truly advocate impartially for NVTC residents when VOPA has taken such a strong stance on behalf of community placements for persons with intellectual disabilities. VOPA helped found the VAC (Virginia Alliance for Community), a partnership with groups whose position appears to be that the very existence of training centers is a threat to the human rights of persons with intellectual disabilities.

"The Committee members remind us that for many persons the training centers are "home" for persons who have a right to treatment in the most clinically appropriate environment. They ask if VOPA will advocate equally for persons whose choice is to reside in the training center. Is the time and focus spent on community programming detracting from VOPA advocacy for persons residing in the training centers? Is the diversion of funding from the training centers threatening the very existence of the facilities that meet the needs of many residents so well?"

NVTC LHRC is asking if VOPA is endorsing a position with such a clear bias that it jeopardizes their neutrality in being able to truly represent the human rights of the residents of NVTC and other training centers. They ask if clients should be made aware of VOPA's strong position when participating in investigations or engaging in advocacy activities.

Colleen Miller, Executive Director of VOPA, will speak later in the meeting.

Christina Delzingaro encouraged all SHRC members to attend LHRC meetings to, among other things, get a sense for how LHRCs feel about the proposed changes to LHRC structure.

Variance: The Pines Residential Treatment Center

At 10:03 Reginald T. Daye, Regional Advocate, introduced Vonda Harrison, Director of Performance Improvement and Risk Management of The Pines Residential Treatment Center, and Dana Gillentine, Risk Manager for The Pines Crawford Campus. Ms.

Harrison and Ms. Gillentine described the program as a facility for at-risk children and adolescents.

The Pines RTC is seeking a variance to 12 VAC 35-115-110, C 16, Seclusion, Restraint and Time Out, for use of its Structured Living Protocol (SLP). The SLP is described as a therapeutic intervention, to be implemented when all other less restrictive interventions have failed. The previous variance was approved by the SHRC on July 13, 2007 and expired on July 13, 2010. Upon expiration of the approved variance, the program ceased to utilize its SLP.

Mr. Daye summarized the process for implementation of the proposed variance. In order to use the SLP more than two times within a six month period, the following must take place: 1) The program's Critical Consultation Committee must first recommend continued treatment at the Pines, then 2) LHRC approval must be obtained prior to its continued implementation. The policy also states that the use of the SLP "shall not go sequentially beyond 15 days".

Upon a motion by Joseph Lynch and seconded by Randy Johnsey, the SHRC unanimously approved The Pines Residential Treatment Center Crawford Campus' request for a variance to section 12 VAC 35-115-110, C 16, Seclusion, Restraint and Time Out, 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, which will allow the use of the program's Structured Living Protocol. The variance is approved for a period of 2 years with the following requirement: The Pines RTC must submit to the SHRC, on the anniversary of the approval, a written status report on the continued need for the variance and the effectiveness of the SLP.

**Appropriate Services
for Youth (SHRC
Goal)**

At 10:19 Margaret Walsh introduced Ms. Janet Lung, Director of Child and Family Services, DBHDS. Ms. Lung comes to the meeting upon invitation from the SHRC in fulfilling its goal to monitor and help insure appropriate services to youth served by the department.

Ms. Lung thanked the SHRC for its interest and gave a brief history of her office. She then provided an update on the many departmental activities currently underway addressing mental health services for children and adolescents. The 2010 General Assembly required DBHDS to develop a comprehensive plan for children's behavioral health services, both inpatient and community-based, as close to children's homes as possible. A priority of the office is to expand the array and capacity of services to assure a consistent base level of

services for children and families statewide.

Christina Delzingaro thanked Janet Lung for coming to talk with the SHRC.

VOPA

At 10:55 Christina Delzingaro thanked Ms. Colleen Miller, Executive Director, Virginia Office for Protection and Advocacy, for coming to the meeting. Ms. Miller comes to the meeting at the invitation of the SHRC in seeking answers to questions arising from communications with the Northern Virginia Training Center (NVTC) LHRC regarding whether VOPA can bring objectivity to abuse/neglect investigations at NVTC and other training centers. The LHRC is concerned that VOPA investigations may not be impartial and may not reserve priority for protecting the civil rights of the clients residing at NVTC while pursuing its commitment to cut funding for training centers.

Colleen Miller reviewed the responsibilities and authority of VOPA in an effort to address some of the concerns about the appearance of a conflict of interest in individuals' rights protections arising from VOPA's commitment to cut training center funding while supporting the shift to community based programs.

Christina Delzingaro asked about VOPA's purpose in attending LHRC meetings. Ms. Miller responded that VOPA is concerned that some LHRCs are not acting within their authority. Upon evaluation of LHRC activities and scope of authority VOPA will issue a report of their findings. Ms. Miller offered to share the report with the SHRC when it is issued. SHRC members acknowledged that they would like to receive the report.

Margaret Walsh said that the Office of Human Rights and the SHRC have been looking at the scope and authority of LHRCs and are in the process of developing a new LHRC system.

Joseph Lynch asked that the SHRC have a chance to respond to findings of investigations before litigation begins. Ms. Miller responded that VOPA does and will issue reports of findings available for review.

Christina Delzingaro asked about particular concerns of VOPA. Colleen Miller responded that timely discharge is a priority. Ms. Delzingaro asked how the SHRC and VOPA can work together on common goals. Ms. Miller suggested that the two meet more regularly.

Margaret Walsh stated that individuals are ultimately served best when there is an internal and an external program or process of rights protection.

Appeal: CS v PGH
(teleconference)

At 11:50 the SHRC heard the Appeal of C.S. vs Piedmont Geriatric Hospital. 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 November 8, 2010. C.S. presented her case with support from Walter G. Small, Human Rights Advocate. Dr. Steven Herrick, Facility Director for PGH, presented the case for the hospital. At the request of C.S., the hearing was held in open session. SHRC members present were Christina Delzingaro, Chair, Randy Johnsey, Vice-Chair, Donald Lyons, Joseph Lynch, Jannie Robinson, Penny Cameron and Thomas C. Bullock.

Parties to the complaint gave their statements.

On November 8, 2010, the PGH LHRC heard C.S.'s formal complaint alleging that PGH violated her rights under the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services*.

On January 21, 2011, C.S. presented her appeal to the SHRC because she does not feel the Director's Action Plan in response to the LHRC's findings and recommendations adequately resolves her complaints. Specifically,

- C.S. disagrees that her complaint regarding 12 VAC 35-115-170, Complaint resolution process, has been resolved.
- C. S. disagrees that her complaint regarding 12 VAC 35-115-90, Access to and amendment of services record has been adequately resolved.

C.S. asks the SHRC to obtain her records from Miami, provide her copies of any abuse investigation reports related to her, and to ensure that what she believes to be a "fraudulent" statement is removed from her medical record.

Upon a motion by Joseph Lynch and seconded by T.C. Bullock the SHRC unanimously upholds Piedmont Geriatric Hospital Local Human Rights Committee's findings and all recommendations and opines that the Director's Action Plan adequately addresses the violations.

The SHRC is not in a position to obtain C.S.'s out-of-state medical records.

The provider's investigation did not reveal that the record contained an error. Therefore, neither the SHRC nor the provider has the legal right to change the services record. C.S.'s sole recourse is to submit a statement of disagreement for filing in the record.

The SHRC commends both parties for the clear, concise, and professional manner in which this complex case was presented during the hearing.

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

Ready for Discharge and Transfer (SHRC Goal)

At 12:15 Russell Payne, Community Support Specialist provided an update on extraordinary barriers to discharge. Mr. Payne reported that there are 130 people who are clinically ready for discharge at the facilities and summarized the current report on barriers to discharge. Finding available nursing home beds continues to be a problem.

Christina Delzingaro asked Mr. Payne to address the delay in transfers at Eastern State Hospital. Flow thru or transfer from unit to unit has been a problem at state facilities including Eastern State Hospital, especially since the department is attempting to downsize as focus moves away from facilities and toward community supports. Jack Wood, the new facility director at ESH, is working on it.

Mark Stevens, VOPA Disability Rights Advocate, reported that there have been two transfers from ESH in the past seven days.

Russell Payne commented that the department is missing a tie-in piece in terms of options for guardianship when seeking placement.

Joseph Lynch commented that it is very problematic that human rights are being violated because of the funding issue.

Christina Delzingaro thanked Russell Payne for attending the meeting to talk with the SHRC

BREAK

At 12:50 Chair Delzingaro called for a break for lunch.

Variance: Virginia Beach Psychiatric Center

At 1:03 Reginald T. Daye, Regional Advocate, introduced Fran Neaves, Director PI/RM, Director Performance Improvement/Risk Manager, Virginia Beach Psychiatric Center, and Phyllis M. Eaton, Director of Nursing, Virginia Beach Psychiatric Center.

Virginia Beach Psychiatric Center is seeking a variance to 12 VAC 35-

115-110, C 16, Seclusion, Restraint and Time Out, to allow the program to continue to utilize its Structured Living Policy (SLP).

Dr. Phyllis Eaton described the program as a free standing, 100 bed, structured acute care facility.

Mr. Daye reported that the variance was originally approved by the SHRC in June, 1995, as part of the program's human rights policies. Dr. Eaton explained that the purpose of Structured Living is to work with the patient who demonstrates sustained inability to participate safely and constructively with the mainstream milieu. The program did not utilize the SLP in 2009, and utilized it only twice in 2010. Staff have found it to be a valuable intervention that keeps patients from harming themselves or others.

Upon a motion by Joseph Lynch and seconded by Randy Johnsey, the SHRC unanimously approved The Virginia Beach Psychiatric Center's request for a variance to 12 VAC 35-115-110, C 16, Seclusion, Restraint and Time Out, 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, which will allow the program to continue to utilize its Structured Living Policy. The variance is approved for a period of 2 years with the following requirement: Virginia Beach Psychiatric Center must submit to the SHRC, on the anniversary of the approval, a written status report on the continued need for the variance and the effectiveness of the SLP.

LHRC Membership

At 1:14 upon a motion by Randy Johnsey 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 Randy Johnsey and seconded by Penny Cameron the SHRC unanimously acknowledges the following resignation and makes the following appointments.

Resignation

Ms. Peggy Phibbs resigned from the Southwestern Virginia Mental Health Local Human Rights Committee.

Appointments:

- Region 1 Western State Hospital LHRC
 Appoint: Mr. Mark Schorsch
Region Ten CSB LHRC
 Appoint: Mr. Kenneth Moore
- Region 2 Prince William LHRC
 Reappoint: Ms. Carol J. Stair
Arlington LHRC
 Appoint: Mr. Edward Williams
- Region 3 SWVMHI LHRC
 Appoint: Mrs. JoAnn Johns
- Region 4 Hanover LHRC
 Appoint: Mr. Edward W. Barlow, Jr., Ms. Shaheese Wright-Hall
- Region 5 Portsmouth Regional LHRC
 Appoint: Mr. Jerry Murray
James City Regional LHRC
 Appoint: Richard L. Cottingham
- Region 6 Piedmont Geriatric Hospital LHRC
 Appoint: Mr. Charles H. Beale, III - appt

The record notes that Ms. Wendy Rodriguez has withdrawn her application to Metro Richmond LHRC.

Adjournment

At 1:45 upon a motion by Jannie Robinson and seconded by Donald Lyons the January 21, 2011 SHRC meeting adjourned.

The next SHRC meeting will be held on March 4, 2011, at Region Ten CSB in Charlottesville.

Respectfully Submitted:



Christina Delzingaro, Chair



KH Kinzie, Secretary