



# **LOCAL HUMAN RIGHTS COMMITTEE (LHRC) TRAINING**

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Virginia Department of Behavioral Health  
and Developmental Services  
Office of Human Rights - LHRC Training



# Welcome

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- Introduction of presenters
- Goal for the day:
  - To provide an overview of the human rights regulations as it relates to complaint and fair hearing process



# Complaint Process

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- A complaint is reported to either the human rights advocate or the director. The entity that receives the complaint reports it to the other entity within 24 hours.
- The director or designee will contact the individual regarding the complaint within 24 hours. (12VAC35-115-175.C.2)
- Within 10 working days, the director or designees will complete any investigation and provide the individual, their representatives, and the human rights advocate a letter outlining their findings and proposed action plan.
- The individual will be notified in writing of his right to, and the process for appealing, the director's decision or action plan to the LHRC.
- If the individual disagrees with director's decision or action plan, then they shall file an appeal to the LHRC within 10 working days.



# SHRC Guidance on LHRC Hearings

## General Guidance

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- Hearings held in accordance to 12VAC35-115-180, 190, and 200 are informal administrative hearings. The purpose of each hearing is to provide another opportunity for resolution of a complaint filed through one of the processes in the regulations.
- The hearing should be conducted in a manner that promotes open, respectful communication and sharing of information. As this is an informal administrative proceeding, court and legal rules do not apply.
- The chairperson of the local human rights committee is in charge of the proceedings and should ensure that the parties are heard and respected throughout the proceedings.

**In addition to the information provided in the regulations the following rules apply to all hearings:**

- Audio taping is not required. Either party may request and arrange for the proceedings to be recorded.
- The hearing is a fact finding. The parties are to present the facts of the case as they know them.
- Cross examination by the other party is discouraged. The LHRC may ask questions of either party.
- Witnesses may give testimony if they have first hand information regarding an aspect of the case. The names of witnesses should be provided to the parties 5 days before the hearing.



# SHRC Guidance on LHRC Hearings

## Structure of the Hearing

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- The chair will announce the purpose of the hearing. For example:  
*"The LHRC convenes today for the purpose of conducting a fact finding in accordance with 12 VAC 35-115-180 in the matter of VL vs. CSB."*
- The chair will welcome the parties and ask for introductions.
- The chair will ask the individual if the hearing is to be open or closed session. If closed the rules for going into executive session will be followed.
- The chair will explain the structure of the hearing to the parties.



# SHRC Guidance on LHRC Hearings

## Structure of the Hearing continued

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- Each party in turn, beginning with the individual, will be given 30 minutes to present the facts of the case including presentation of witnesses. *Remember that the LHRC will have received the background and documentation of the case prior to the hearing.*
  - LHRC members may ask questions of each party at the end of their presentation.
  - Each party will be given 10 minutes to provide additional information or clarify facts based upon the other parties presentation.
  - LHRC members may ask final questions.
- The chair will thank the parties and end the hearing.
- The chair will explain the time frame for the parties receipt of the decision.



# Provider Role Fact-Finding Hearing

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## ■ **Pre Hearing Tasks:**

- LHRC chair will forward a copy of the petition to the Director, Advocate, and the provider's governing body
- The Director shall submit a response and the entire written record of the complaint (CHRIS record) within 5 working days
- A date, time and place should be set for the hearing within 20 working days from when the petition was received.



# Fact-Finding Hearing

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- **Pre Hearing Tasks Continued**
  - Recording device (not a requirement)
  - Someone to run the recording device
  - Clerical person to mark exhibits, take minutes
  - Suitable room and space
  - Seating arrangement
  - Ensure parties have 5 working days' notice of the scheduled hearing.
  - An agenda





# Fact-Finding Hearing

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- **Things to Remember When Conducting a Hearing:**
  - These hearings are governed by the Code of Virginia §2.2-4019-Informal Fact Finding Proceedings
  - LHRC role is that of an Impartial Fact Finder
  - Hearing should be orderly, but not too formal.
  - Set a time limit for each party to present their entire case. (30 minutes each is recommended)
  - If an open hearing, there should be someone to take minutes.
  - The parties to the case are the individual and the program director
  - The Rights of the Parties
  - Model Agenda



# Fact-Finding Hearing

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## ■ Conducting the Fact-Finding Hearing

- Hearing should start on time
- Start Recorder (if applicable)
- State Date, Time & Place of the hearing for recording
- Explain Rights of the Individual to an Open or Closed Hearing
- If the hearing is to be a closed hearing, the following motion shall be made by a member of the LHRC:

“ I move that the LHRC go into executive session pursuant to the Code of Virginia, section 2.2-3711 (A) (15), for the protection of the privacy of individuals and their records in matters not related to public business, namely to conduct a hearing pursuant to the regulations.”

-The motion should be seconded by another member and voted on by the committee.

-When the motion carries, the room should be cleared of everyone, except for the parties and their representatives.



## Fact-Finding Hearing continued

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### **If the hearing is to be open, then the Chair of the committee shall read the following statement:**

"May it be noted for the record that the LHRC is concerned with the preservation of an individual's privacy and confidentiality of medical records. For this reason we wish to assure at this time that the right to a closed hearing pursuant to the Code of Virginia, section 2.2-3711 (A) (15), has been thoroughly reviewed with the complainant and the subject of the record, "Name of the Individual", and that he/she is authorizing the disclosure of information that would otherwise be exempt from public dissemination"

- The hearing is now open to the public.



# Fact-Finding Hearing

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- **Conducting the Fact-Finding Hearing-Receipt of Evidence**
  - State the rights of the parties
  - Have everyone introduce themselves for the record
  - State the order of presentation. The person who files the petition will go first
  - State that the LHRC will ask questions.
  - Explain how will the decision will be handled.
  - State the purpose of hearing, date and time of petition, and state the issues.



# Fact-Finding Hearing

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- **Conducting the Fact-Finding Hearing Receipt of Evidence –Continued:**
  - Opening Statements
  - Testimony of Witnesses (direct all questions to the LHRC rather than the other party)
  - Documentary Evidence
  - Closing Statements
  - Let the parties know what will happen next. When can they expect a finding, etc.



# Fact-Finding Hearing

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- **Conducting the Fact-Finding Hearing-Deliberations:**
  - Done in Executive (closed session)
  - An opinion is the result of the deliberations.
  - Once deliberations conclude, the committee should go into open session.
  - The written decision should be issued within 10 working days of the conclusion of the hearing.
  - Within five (5) working days of receiving the LHRC's findings and recommendations, the director shall give the individual, individual's chosen representative, human rights advocate, provider's governing body and LHRC a written action plan to address the aforementioned.



# Drafting an LHRC Opinion

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- **To:** Name of individual and family member (if applicable); Program Director
- **From:** Name of LHRC chairperson
- **Date:** (date of the opinion)
- **Subject:** Findings and Recommendations of the (name of) LHRC in response to a request for hearing by (name of individual).
- **Statement of Case:** Information about original complaint. Include date of original complaint and LHRC hearing. List those present for each party and the LHRC members.

*-For example: This case came before the local human rights committee on March 01, 2017 as an appeal by V.L. of the decision of ESH, following a complaint filed on February 01, 2017. Mr. Bob Sam, Human Rights Advocate presented the case on behalf of V.L. Mr. John Doe, Director represented ESH. LHRC members present were...*



# Drafting an LHRC Opinion continued

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- **Background:** What is the complaint and for whom it was filed.
  - For example: VL filed a formal human rights complaint against ESH alleging her rights were violated under section 12 VAC 35-115-50 of the Rules and Regulations. List all regulations alleged to have been violated and the specific issue of each alleged violation. VL specifically contends that on February 01, 2017, nurse Jones verbally abused her by saying she was rude and inconsiderate.
- **Issues on Appeal:** What and why VL is appealing the case.
  - For example: VL disagrees with the ESH finding of no violation of 12 VAC 35-115-50 (should be the same as the statement and relief requested in the petition).
- **Summary of information presented:** List of verbal (who spoke) and documented information shared during the hearing and in the petition.





# Drafting an LHRC Opinion continued

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- **Findings of Fact:** The LHRC should make a finding of fact on each matter before it. Each finding should be supported by evidence. The LHRC should then make a decision about whether the finding of fact is a violation of the regulations.
  - Finding #1:** On February 01, 2017, nurse Jones stated that VL was being rude and inconsiderate.*
    - Evidence to support finding #1:*
      - February 01 2017 nursing notes.*
      - February 01, 2017 video tape*
      - Verbal information shared by both parties*
- **Conclusion:** *By a vote of 4-1 the LHRC finds no violation of 12 VC 35-115-Dignity as alleged in this complaint.*
- **Recommendations:** *In consideration of these findings the committee recommends:*



**QUESTIONS ?**

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