

Western State Hospital
Staunton, Virginia
Local Human Rights Committee Meeting Minutes
Jeffrey's Building, Room 95 at 12:30
January 28, 2013

Present: Hal Meyers, Committee Chair, Kathy Belcher, Heidi Campbell, Donna Gum, Mark Schorsch, Rob Wade, Committee Members; Chuck Collins, WSH/Regional Advocate, Mark Seymour, WSH Advocate; Dana Traynham, VOPA Advocate; Ellen Harrison Liaison to WSH Director

Absent: Mahlon Webb, Committee Member

Guests: Mr. RS, Client; Mr. MW, Client; Tammy Kincaid, RN; Tiffany Hewitt, Citizen's Council

Mr. Meyers, Committee Chair, called the meeting of the Local Human Rights Committee to order on January 28, 2013. Mr. Meyers noted that a quorum of members was present. With a motion from Mr. Wade and a second by Ms. Campbell, the minutes from the November meeting were approved with changes. Mr. Collins noted that he will present only the HIPAA refresher today; the FOIA update will be presented at the February meeting. Ms. Harrison asked that the agenda be changed to reflect that John Beghtol will not be attending today, and she will speak on his behalf. Ms. Gum made a motion to approve the agenda with the requested changes. Ms. Belcher seconded the motion, and the agenda was approved by vote.

During the public comment time, Mr. S introduced himself to Ms. Traynham, indicating that he is attempting to have changes made in his medical record, and requested her assistance with that. Mr. W stated he feels his rights have been violated by his Treatment Team and WSH, that his complaints have not been resolved to his satisfaction, and that he would like to seek outside representation. He asked that he be allowed to present his case to the LHRC in a closed session. The committee agreed to begin closed session to hear Mr. W's concerns.

Upon a motion made by Ms. Gum, the committee went into closed session pursuant to Virginia Code §2.2-3711, a.15 and §2.2-3705.5 for the purpose of discussion of medical record / treatment plans.

Upon reconvening in open session, all members of the Local Human Rights Committee certified that to the best of each ones' 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.

Mr. Meyers requested that time be included in the February agenda for the committee to meet again with Mr. W as well as members of his Treatment Team.

Dr. Steve Johnson, from Ward C1/2, presented the current ward rules to the committee. Dr. Johnson apologized for not submitting responses to the LHRC's prepared questions and indicated he would respond to those verbally. He noted that the ward rules have not changed since they were approved by the LHRC last year. He indicated that staff on C1/2 considers the ward rules as guidelines that can be modified slightly based on the situation. Their goal is to assist the patients in their recovery, managing their symptoms, helping understand medications, etc., and they realize that patients may occasionally need additional guidance in understanding the ward rules. Regarding patient feedback in preparing the ward rules, patients are encouraged to review the rules during the holiday break when there are no groups in order to make any suggestions for changes prior to this meeting. The rules are posted and patients are

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Staunton, Virginia
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provided a copy if they request it. Dr. Johnson also advised patients of the upcoming LHRC meeting, during which ward rules would be reviewed and discussed and encouraged them to attend the meeting. Mr. Meyers asked Dr. Johnson to provide a brief overview of some of the characteristics of the patients residing in Ward C1/2. They are a long-term, all-male ward. Patients range in age from mid-twenties to early sixties. They have 25 patients, 8 of which are NGRI patients. Mr. Meyers asked Dr. Johnson if all patients on C1/2 are literate. Dr. Johnson replied that one or two are not, and they have several patients with intellectual disabilities. When patients arrive on the ward, regardless of their cognitive status or literacy level, the ward rules are reviewed with them and/or read to them. Patient Mr. H had a question regarding TRF (Temporary Restriction of Freedom). A patient is assigned TRF for 24 hours when they break one of the rules, such as possession of contraband, missing a roll call, calling 9-1-1, etc. Mr. H's concern is specific to how TRF affects visitation. His family travels a distance to come visit him; however, if a patient is on TRF, they are not allowed visitors. He disagrees with this part of the ward rules as it is unfair to the patient's family. Dr. Johnson replied that normally, when a patient is on TRF, they are allowed to meet with visitors in the Visitor Room, unless there is further cause for them to not receive visitors. Mr. H indicated that this had happened to him once, and his family had to return home without seeing him. Dr. Johnson stated that there may have been extenuating circumstances but that he was not familiar with that particular incident. He offered to research this incident and forward his findings to the LHRC. Ms. Belcher asked how TRF relates to the Level system. TRF does not affect the patient's ongoing privilege level. TRF is used for minor infractions, is usually limited to 24 hours, and the patient returns to their appointed privilege level at the conclusion of the TRF. Privilege levels are based on an individual patient's overall ability to function safely. Ms. Belcher asked that the levels and TRF be more clearly defined in the ward rules. She also noted that both military and imperial time are used throughout the document and suggested that all times be changed to the same time format. Mr. H also expressed concern that when on TRF, patients are not allowed to order out or get snack foods. He noted that other wards are allowed to order outside food, and he would like to have this part of the TRF policy changed. Dr. Johnson indicated he would bring this issue to the Treatment Team for further consideration. Mr. Meyers cautioned Dr. Johnson to consider, after moving to the new facility, that temporary solutions implemented immediately following the move should be reconsidered when writing the new ward rules. There being no further questions for Dr. Johnson, Mr. Wade made a motion to approve the C1/2 ward rules with the suggested changes. Ms. Campbell seconded the motion and the approval passed by vote.

The committee discussed various points regarding ward rules in general. Mr. Meyers asked that everyone review the ward rules and prepare potential questions prior to meetings. He suggested that in the future, the agenda provide time prior to the arrival of Treatment Teams to allow the committee to discuss the ward rules and prepare questions for the team. The committee agreed that this would be the best approach and asked that future agendas be prepared in this manner.

Representing Ward A5, Dr. Jason Stout was in attendance to review ward rules and answer questions from the committee. The majority of changes this year were cosmetic; however, there was one major change on page 5, under Policies for Maintaining a Safe Environment. The change was in response to female patients' complaints of male patients coming to the female side of the ward, specifically in the evening hours. The new rule is that men are only allowed to go onto the Female side of the ward, and women to the Male side, for morning meetings or any special meetings held by the Treatment Team as a community. Ward activities are held in the basement cafeteria area to maintain the sense of privacy between the males and females. They can still visit in common areas and on grounds if they choose. The

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Local Human Rights Committee Meeting Minutes
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January 28, 2013

other change is regarding emergencies; just to remind residents that when emergencies occur, especially behavioral emergencies, that residents are to follow instructions provided by staff. He also included a statement to remind everyone that we will be moving to the new facility and modifying the ward rules later this year. Ms. Belcher asked if cell phones are allowed, and Dr. Stout replied that they do not allow cellular phones on Ward A5. Ms. Campbell commented that she likes these ward rules. The format is easy to follow and they are updated regularly with even minor changes. She believes the comment regarding emergencies is especially helpful. Mr. Meyers indicated that he would like to see a similar statement in all the ward rules following the move to the new facility and would like this statement to include information on fire alarms, building evacuations, etc.

Ms. Hewitt commented that the issue of cell phone usage has been brought to the attention of the Citizen's Council. Other wards allow the use of personal cell phones, with certain restrictions, so residents of Ward A5 have expressed concerns regarding their inability to have and use cell phones. Dr. Stout indicated that the reasons they don't allow cell phones are 1) the difficulty of staff managing the charging of distribution of cell phones, and 2) the fact that most cell phones now have cameras built into them, as well as data plans that allow uploading of images to the internet, which presents potential HIPAA violations. Ms. Harrison commented that WSH is one of the few facilities that allow cell phones on campus and that whether or not to allow them is at the discretion of the Treatment Team.

Ms. Hewitt also raised a concern that has been brought to her attention regarding caffeinated drinks on the ward. The ward rules prohibit residents from bringing caffeinated drinks on the ward; however, staff have been observed with caffeinated drinks. Dr. Stout indicated that staff are directed not to bring caffeinated beverages on the ward; however, it is possible not everyone is adhering to that directive. There are many residents on Ward A5 who have caffeine use disorders as well as tobacco use disorders, which is even more difficult to regulate, so they strive to stay on top of caffeine use. Mr. Meyers suggested that staff on Ward A5 be instructed to keep caffeinated beverages out of sight or use cups or containers that prevent patients from being aware of what they are drinking. No further questions were raised. Mr. Wade made a motion to approve the A5 ward rules, and Ms. Belcher seconded the motion. The committee voted to approve the ward rules.

Ms. Harrison asked for permission to address earlier concerns regarding the TRF policy. The level system included in the ward rules is designed to allow patients to gradually develop their ability to manage their behaviors, allowing for increased freedoms as they progress in their recovery. The TRF policy is used when a patient commits a minor infraction. TRF is used so that breaking a rule doesn't result in lost privilege levels because it doesn't change where they are in their recovery. Ms. Campbell expressed concern as to whether TRF could possibly be implemented in addition to a decreased privilege level, and who makes the decision for either. The implementation of TRF does not require a physician's order. Ms. Belcher noted that the type of offenses for which TRF is considered seems to go beyond minor infractions to serious incidents such as assault and rape.

Upon a motion made by Ms. Gum, the committee went into closed session pursuant to Virginia Code §2.2-3711, a.15 and §2.2-3705.5 for the purpose of discussion of medical record / treatment plans.

Upon reconvening in open session, all members of the Local Human Rights Committee certified that to the best of each ones' knowledge, only public business matters lawfully exempt

Western State Hospital
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Local Human Rights Committee Meeting Minutes
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January 28, 2013

from statutory open meeting requirements, and only public business matters identified in the motion to convene the closed session were discussed in closed session.

Mr. Collins requested that Ms. Gum provide a legislative update for matters under consideration by the current General Assembly (GA) that relate to behavioral health. Ms. Gum previously sent by email information that may be of interest to the committee to allow them the opportunity to address any concerns with their legislators. One issue before the GA is regarding DAP funding. Residents continue to be on the Extraordinary Barriers List due to the lack of sufficient DAP funding, so any legislation that affects the funding is of concern. The Governor's budget proposal recommends \$750,000 in DAP funding, which would only support 15 individuals. Ms. Gum obtained statistics regarding individuals who could have been discharged if DAP funding was available: From July through December 2012, there were approximately 10 to 20 people per month for WSH only. The state average for 2011 was about 70 individuals. Ms. Gum wrote a lengthy letter to the members of the House committees on Health, Welfare and Institutions and Finance and Appropriations and the Health and Education and Finance committees of the Senate. All four of our local legislators are on one of those committees. Another issue in Virginia is Supportive Housing. If more funds could be allocated for supportive housing, more people would have the opportunity to return to the community. The third issue, which Ms. Gum has not yet written to the GA about, and doesn't affect residents at WSH, is House Bill 2287, Mental Health First Aid, which allows that by 2014 the CSBs will train all educators and teachers on mental health issues, including symptoms, treatment, basic understanding, eating disorders, etc. This bill has passed the subcommittee and will be presented to the Education Committee soon. The GA website has been improved to allow for easier tracking of budget amendments. Ms. Gum encouraged anyone with legislative questions to contact her.

Mr. Meyers advised the committee that he and Ms. Harrison had corresponded during the previous week regarding video recording at WSH. He specifically referred to the filming last year by a French film crew, who were obtaining footage for a television documentary on mental health care in the United States. There were residents at WSH who did not wish to be filmed but felt their photos were taken without their permission. Mr. Meyers had asked Ms. Harrison to meet with John Beghtol, Community Relations Director at WSH, to ascertain what could be done to resolve this issue. The primary issue is that photographs and/or video cannot be taken of a person against their permission or without their permission, to be used in public. The two residents who made complaints regarding the perception of being filmed were provided information about the filming process by the Treatment Team; however, Mr. Meyers feels this did not address or alleviate their concerns. He reiterated that this could have been avoided if no images were taken prior to receiving consent from all individuals in the camera's view. He noted that this is also a violation of HIPAA. He is concerned that television programs can be downloaded, manipulated and posted on YouTube.com. Individuals should not be subject to that level of exposure without their consent.

WSH supports and believes firmly that individuals should not be photographed against their will or without giving express consent. And while there is no evidence to support the perception that patients have been filmed for public distribution without their consent, the hospital felt that this occurrence has created an opportunity to revisit their policy regarding the media on campus, specifically, how does WSH protect patients further than they already do while the media is on grounds escorted by Mr. Beghtol? As a result, changes have been made to Hospital Instruction (HI) Number 2515. On page 2, a paragraph has been added to address how photography or video equipment will be handled on the WSH campus and

Western State Hospital
Staunton, Virginia
Local Human Rights Committee Meeting Minutes
Jeffrey's Building, Room 95 at 12:30
January 28, 2013

how WSH staff will advise residents of when filming is and is not being conducted. Ms. Harrison asked the committee to review the updated HI and provide feedback. Mr. Meyers suggested that the committee take the HI with them to review and provide feedback at the February 25th meeting. Ms. Gum expressed continued concern with the disposition of the footage taken. WSH has formally rescinded permission for the footage to be used. However, the committee feels that, due to the fact that the footage has been taken to another country, WSH needs to take additional steps to ensure the privacy of its residents.

Mr. Meyers continued to express concern over the additional interest that will be generated when the hospital moves to the new state-of-the-art facility later this year. There are specifically some physical areas of the facility that will present a greater potential for difficulties in the use of photography and video equipment.

Mr. Collins suggested that, in the interest of time, he postpone the HIPAA presentation until next month's meeting. Mr. Meyers agreed.

The Advocates' Report: As a result of the DOJ settlement, the number of licensing specialists in Virginia has doubled to a total of 31. Ms. Gum noted that a bill has been brought before the GA to place a moratorium on the closing of training centers. The next priority for the Office of Human Rights is the Comprehensive Human Rights Information System (CHRIS). This system is used to collect data in incidences of abuse, neglect, allegations, serious injuries, deaths and human rights complaints. Another aspect of the DOJ settlement is that CHRIS will apply to community providers. The Community Services Boards will represent the first phase of implementation, and will utilize a complimentary system called the Delta Portal to access the department's website. This is in the early phase and information continues to become available. The third priority for the Office of Human Rights this year is the revision of the Human Rights Regulations. The current regulations were promulgated in May 2007. The basic rights are not expected to change; however, the roles of different groups and individuals, specifically the Local Human Rights Committee, do have the potential to change.

Mr. Collins handled 13 cases during January that were not on the Complaints Report. All appear that they will be resolved without involving the LHRC with the exception of the case heard earlier in this meeting.

Ms. Dana Traynham, who is replacing Ms. Haw as Western State Hospital's VOPA Representative, introduced herself to the committee. Ms. Traynham began working at VOPA in 2000. She has covered WSH twice in the past, and she is an attorney with the agency. VOPA is undergoing a transition from a state agency to being a private non-profit group. They hope to have completed the transition by October 1, 2013. She doesn't foresee this affecting what they do for their clients. The name will be changed to disAbility Legal Rights Center (Ms. Traynham isn't certain about the name). Ms. Traynham may not be representing WSH for very long. The transition from a state agency is generating considerable employee turnover, so she may be moved to another area and someone else assigned to WSH.

Regarding the Complaint Report, Complaint #15, during election years, are patients being given adequate time to decide whether or not to vote, and given resources to vote? WSH policy dictates that patients are asked upon admission whether they want to register to vote. Ms. Traynham indicated that VOPA goes to the various facilities in September and October each year to meet with patients and discuss voting options, the issues and how they can be restored to competency so they can vote. In this case, the individual appears to have waited too late to submit an absentee ballot by mail prior to the deadline. Ms.

Western State Hospital
Staunton, Virginia
Local Human Rights Committee Meeting Minutes
Jeffrey's Building, Room 95 at 12:30
January 28, 2013

Gum asked whether treatment teams are aware of the absentee balloting process so they are able to assist patients. Ms. Harrison indicated the Social Work Department handles assisting patients through the voting process. Ms. Campbell asked about Complaint #25, and how this individual came to be at the wrong facility. Mr. Seymour indicated he knows this individual well. He does have significant medical issues, for which he has been receiving care, and is, in fact, now in the medical unit at WSH. From reviewing his medical record, Mr. Seymour believes that he is receiving appropriate care for these issues and that placing him in an acute care hospital, such as Augusta Health, would not work well given his mental health. Regarding Complaint #5, Ms. Belcher recognizes that WSH has no control over how patient belongings are handled prior to their arrival here; however, she would like to know more about the inventory system WSH uses when a patient is transferring from one ward to another within the hospital. Ms. Harrison indicated that when a patient arrives, everything in their possession is inventoried. Personal items that aren't needed on the ward are placed in Patient Property where they are stored until the patient requests the box or they are discharged. When a patient transfers to a new ward, if their clothing is washed in the laundry, it is all sent to the laundry and re-labeled, to identify the new ward, at the time of the move. If patients launder their own clothing, this is not necessary. All other personal items are tracked on an inventory sheet. There are occasions when a patient will bring something back from Walmart and it won't get added to the inventory sheet. Mr. Wade asked for clarification on Complaint #14. Mr. Seymour replied that this individual has appeared on this report multiple times and has previously made complaints regarding having access to or some method of paying her monthly bills at home. The hospital doesn't have access to these things; however, it has been determined that these things are being taken care of for her by a friend or family member.

Mr. Meyers noted that in the Extraordinary Barriers List, the most common barrier has moved from available housing to available funding.

Internal Forensic Privilege Committee (IFPC) Minutes: The question was raised as to how a civil patient's privilege level becomes managed by the IFPC. Ms. Harrison responded that generally when someone presents behaviors that are extremely high risk, the Treatment Team will submit their case to the Behavioral Management Committee (BMC) for review. The BMC has the option to recommend that the IFPC manage privileging while the individual is at WSH. Mr. Collins noted that an individual's rights cannot be restricted without adequate cause, which must be based on either safety or therapeutic concerns or both.

Ms. Gum reported on Community Connections: The theme for May Mental Health Month is going to be Stand Up for Mental Health. The graphics department at Blue Ridge Community College will be designing the billboard again this year. She will be preparing the application for the United Way Campaign.

The next meeting will be held February 25, 2013, at 12:30 p.m.

With no further business to discuss, the meeting was adjourned.

APPROVED:

Hal Meyers, Chair

Glenda D. Sheffer, LHRC Secretary