

MINUTES
State Mental Health, Mental Retardation
and Substance Abuse Services Board

May 4, 2007
Holiday Inn
Portsmouth, Virginia

Members Present: Victoria Huber Cochran, **Chair**; Daniel E. Karnes, **Vice-Chair**, Ruth G. Jarvis, Kathryn A. Smith; and Linda S. Bartlett

Members Absent: Cheryl Ivey Green, Catherine M. Hudgins, B. Hunt Gunter, and David B. Trinkle

Staff: Jane Hickey, Senior Assistant Attorney General and Chief, Office of the Attorney General
Kli Kinzie, Executive Secretary, Office of Human Rights and SHRC
Wendy Brown, Office of Planning and Development
Margaret Walsh, Director, Office of Human Rights
James S. Reinhard, M.D., Commissioner
Raymond Ratke, Chief Deputy
Ruth Anne Walker, Legislation and Public Relations

Others: Joyce Bozeman, State Human Rights Committee Member
Anthony Soytis, Virginia Association of Community Services Boards
Ray Bridge, Northern Virginia Mental Health Consumers Association and Member of the Mental Health Planning Council
Susan Warren, Chesterfield Community Services Board
Bill Yolton, Northern Virginia Mental Health Consumers Association, Governor's Commission on Reform, Co-Chair of for Virginians with Disabilities
Mary Beall, Northern Virginia Mental Health Consumers Association
Susan C. Ward, Vice President and General Counsel, Virginia Hospital and Healthcare Association
James Council, Psychiatric Solutions

At 10:08 a.m. Victoria Huber Cochran asked all to rise. Ms. Cochran said that as a member of the Blacksburg community she wanted to give all present a chance to remember the events and all of the victims of the tragedy at Virginia Tech on Monday, April 16, 2007. In thinking of that sadness she asked that those present take a moment to reflect on the wonderful work that our public mental health system has done in response to that tragedy - the tremendous effort, coordination, communication, help and outreach to the citizens of Blacksburg. The Chairman then called for a moment of silence.

Call to Order: Victoria Huber Cochran, Chairman, called the meeting to order at 10:10 a.m. A call for introduction of attendees took place prior to proceeding. Ms. Cochran thanked all for coming and said she is always pleased whenever individuals attend State Board meetings to speak about items of importance to the public.

Agenda: Ms. Huber Cochran reported that she would like to offer four additional items for the agenda to include after the public comment period: 1) Consideration of the Reappointment of Delores Archer to the State Human Rights Committee; 2) Mr. L. William Yolton's Comments on the Proposed Human Rights Regulations; 3) Consideration of a Letter of Support for a SAMHSA Grant to Reduce the Use of Seclusion and Restraint; and 4) Action on the Proposed Resolution Supporting a Tobacco-Free Environment.

Upon a Motion by Kathryn Smith and seconded by Ruth Jarvis, the Board unanimously approved the addition of the above stated items to the agenda.

With the approval of the amendments, Chairman Cochran called for a Motion to approve the amended agenda. A Motion was made by Daniel Karnes and seconded by Linda Bartlett to approve the amended May 4, 2007 agenda. The Motion passed by unanimous vote.

Minutes: Upon a Motion by Kathryn Smith and seconded by Linda Bartlett the Board unanimously approved the minutes of the April 2 and 3, 2007 meeting as submitted.

Public Comment: Ms. Huber Cochran invited members of the public to make comments. Ms. Cochran asked that individuals limit their comments to three minutes per speaker.

Ray Bridge, Vice President of the Northern Virginia Mental Health Consumers Association and Mental Health Planning Council, addressed the Board. The NVMHCA has been advocating on the local level since 1990. The Association has been involved in all revisions of the human rights regulations and has been instrumental in re-drafting the proposed regulations. Mr. Bridge reported that the Association is concerned about a change in the proposed human rights regulations. Specifically, in the current regulations people have the right to see their records. However, the draft proposed regulations have the addition of language stating that consumers are not entitled to see the psychotherapy notes that are a part of those records. Mr. Bridge hopes that this small but very important detail in the proposed regulations will be removed. On a positive note, as a member of the Mental Health Planning Council, Mr. Bridge strongly

endorses the application for the SAMHSA grant to reduce the use of seclusion and restraint.

MaryAnn Beall, Northern Virginia Mental Health Consumers Association, agreed with Mr. Bridge on the very important issue of records. At a time when the mortality rate of consumers is rising it is critical that consumers have complete access to the full range of their records. Ms. Beall also stated that consumer organizations have been very involved in the reduction of seclusion and restraint at Northern Virginia Mental Health Institute over the years. She reported that consumer organizations have formed the Center for Excellence with some of the money they have raised. Ms. Beall submitted a draft brochure for an upcoming conference at the Center for Excellence on “Recovery Partnerships: Building Bridges for Personal Safety”. The conference is being co-sponsored by George Mason University and is free to consumers and families. Chairman Cochran thanked Ms. Beall for her work on the conference and expressed her thanks to the people who are dedicated to putting funding to such good use.

L William Yolton reported that upon arrival his second concern has been satisfied - staff have restored the word “preferences” in what people should attend to in helping people develop individualized service plans. The main issue remaining is that the regulations redefine what is the Governing Board, which has essentially removed accountability at the level of the CSB. Currently the governing board is whoever hires and fires the staff, and whoever sets the budget. Mr. Yolton would like to leave the language as is and add that incidents must be reported to the CSB as well as the governing board. Mr. Yolton supported Ray Bridge’s comments on the importance of client access to all records including notes. Lastly, Mr. Yolton raised the issue of accountability of human rights staff. He praised the advocates for almost invariably going out of their way to help consumers. The coalition has urged several times in the legislative agenda that we increase the number of human rights advocates. Since 1991 the system has almost 20 times the number of people covered by the regulations but no significant increase in human rights staff. Mr. Yolton emphasized the need for more staffing to accommodate the department’s shift from consumer-focused care to consumer-driven care. He strongly urged the Board to support increased staffing.

Susan Ward, General Council with the Virginia Hospital Healthcare Association spoke on behalf of the private community hospitals and health systems in Virginia. The Virginia Hospital Healthcare Association was very involved throughout the development of the regulations. Ms. Ward commented that the collaborative process used for the development of the proposed regulations was very productive: it was a good representation of those affected by the regulations. She stated that the hospitals and health

systems in Virginia are very appreciative of the importance of human rights regulations and quality healthcare. Ms. Ward said that many if not most of their concerns have been addressed in the current draft of the regulations, but they have two remaining major issues. One of them relates to the informed consent requirement. Use of the term “informed” as applied in acute care hospitals has a different meaning than it does in the context of these regulations. In hospitals, legally obtaining informed consent means that the doctor who is giving the service should sit down with the consumer to discuss treatment and obtain consent. In acute care settings, especially where behavioral health is concerned, this is not always possible, and there is an urgent need to provide care and treatment to patients as quickly as possible. The second major concern they have is about the practices outlined in the regulations regarding LHRC involvement in decision making for patients who do not have decision making capacity or authorized representatives. The process described in the regulations for LHRC review involving consent and authorization is not as clear as they would like. Hospitals would like to see some explanation and assurance that other legal options are still available for obtaining consent from consumers who do not have capacity for decision-making. Ms. Ward said the Virginia Hospital Healthcare Association will be working with the department to pursue what options are available to them for obtaining necessary consent in acute care settings. Ms. Ward stated that they do want to be realistic and they understand that they may be limited in what changes they will see in the regulations. Ms. Ward added as a final statement that there should be adequate LHRC resources available because the population of patients and the number of providers has grown and currently there are not adequate resources available for the LHRCs to support all of the responsibilities outlined in the regulations. Ms. Ward provided a letter with more detailed explanation of their concerns.

Chairman Cochran thanked everyone for bringing comments forward and asked if there was anyone else who wished to speak. She expressed her gratitude for giving the Board the opportunity to hear the different perspectives of these issues, because it is of vital importance in making the system work.

At 10:40 a.m. the Chair called for a break and reconvened at 10:50 a.m.

Victoria Huber Cochran called the Board’s attention to the three items added to the agenda.

SHRC Reappointment:

The Board reviewed a request for reappointment of Ms. Delores E. Archer to the State Human Rights Committee. The Board reviewed a letter of

recommendation, a membership application and resume submitted by the SHRC. If appointed Ms. Archer will serve a term of July 1, 2007 to June 30, 2010.

Upon a Motion by Ruth Jarvis and seconded by Daniel Karnes the Board unanimously reappointed Delores E. Archer to the State Human Rights Committee.

SAMHSA Grant to Reduce the Use of Seclusion and Restraint:

Chairman Cochran asked the Board for approval of the letter of support for SAMHSA grant to reduce the use of seclusion and restraint.

Upon a Motion by Daniel Karnes and seconded by Linda Bartlett the Board unanimously supports the letter of support for a SAMHSA Grant to Reduce the Use of Seclusion and Restraint. With this motion, the Board's support is officially noted for the record.

Resolution for a Tobacco-Free Environment

Ms. Cochran reminded the Board that during the April 2007 meeting they discussed the issue of supporting a tobacco-free environment at DMHMRSAS facilities and asked staff to develop a Resolution for the Board's signature. Copies of a proposed Resolution were provided for the Board. Chairman Cochran asked members to take a moment to review the Resolution. Ruth Ann Walker said that some of the language came from Governor Kaine's Executive Order 41 and challenge to Virginians to live healthier lifestyles, and other language came from Commissioner Reinhard's message to Facility Directors to promote a tobacco-free environment. Dr. Reinhard commented on the on-going discussions of the practical implementation of tobacco-free policies on facility grounds for staff.

Upon a Motion by Kathryn Smith and seconded by Ruth Jarvis the Board unanimously approved the Resolution Supporting a Tobacco-Free Environment.

Report of the Policy Development and Evaluation Committee

Chairman Cochran asked Wendy Brown, Policy Analyst if she had anything to report on behalf of the committee. Ms. Brown had nothing to report at this time but suggested that the committee get together and decide when to meet. Ms. Cochran asked Daniel Karnes to insure that the committee decides on a meeting date before the close of the May 4 Board meeting.

Report of the Planning and Budget Committee

The Board tabled the report of the Planning and Budget Committee until Charline Davidson, Director of the Office of Planning and Development, is present.

Resolution Recognizing Joyce Bozeman, State Human Rights Committee

Ms. Cochran stated that it is a pleasure to offer praise to individuals for the work they do for consumers within the facilities and within the system. Ms. Cochran invited Commissioner Reinhard to come forward to present Dr. Joyce Bozeman, State Human Rights Committee member, with a Resolution for her work as a member of the SHRC. Dr. Bozeman served for two consecutive terms from July 1, 2001 to June 30, 2004 and July 1, 2004 to June 30, 2007.

Regulatory Review: Adoption of the 12 VAC 35-115-10 et seq., Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.

Ms. Cochran turned the floor over to Margaret Walsh, Director of Human Rights, and asked Ms. Walsh to put her presentation in context and to report on her point of view. The proposed regulations were provided at the April 3, 2007 Board meeting in Staunton. The Board decided to postpone its adoption of the final regulations until this meeting to provide additional time for the Board and the public to consider the final revisions. Ms. Walsh thanked the Board for allowing the opportunity to hear additional comments from all those affected by the regulations. Ms. Walsh submitted two papers; one paper highlighted the changes the Board requested when it met in April, the other detailed minor editorial changes Ms. Walsh and Jane Hickey, Senior Assistant Attorney General, are submitting as a result of communications since the time of the April Board meeting. Also submitted was language incorporating changes in statute that will go into effect on July 1, 2007 involving reporting to law enforcement.

Ms. Hickey reported that during the last Session of the General Assembly, § 32.1-177.1; A3 of the Code of Virginia was amended to allow law enforcement access to protected health information in limited circumstances. The requested change to the regulations will stipulate when and in what circumstances law enforcement will have the access to health information.

Jane Hickey also reported that the General Assembly adopted the definition of Psychotherapy Notes during the last Session. The definition does not include progress notes, and the language does not prohibit the service provider from bestowing access to psychotherapy notes to the client.

Margaret Walsh stated that the current regulations are permissive. It is the proposed revised regulations that prohibit consumers from access to their psychotherapy notes.

Upon a Motion by Ruth Jarvis and seconded by Kathryn Smith the Board unanimously accepted the editorial changes.

Upon a Motion by Kathryn Smith and seconded by Linda Bartlett the Board unanimously accepted the changes incorporating changes in statute regarding reporting to law enforcement.

Chairman Cochran asked for a Motion regarding the language and definition of Governing Body. Margaret Walsh stated that the department is not recommending a change. The Board tabled further discussion of this issue.

Chairman Cochran asked for a Motion regarding Informed Consent as it applies to acute care settings. Ms. Walsh stated that the department is not recommending a change. The Board tabled further discussion of this issue.

Upon a Motion by Daniel Karnes and seconded by Ruth Jarvis the Board unanimously amended the proposed regulations to leave out the language that excludes access to Psychotherapy Notes, thereby allowing clients access to the notes.

Chairman Cochran asked whether members wished to further discuss the definition of Governing Body and the use of Informed Consent as it applies to acute care settings. Margaret Walsh and Jane Hickey described a situation in which the definition of Governing Body adversely affected the process by which complaints are reported and to whom. Chairman Cochran cautioned the Board about making any overarching changes based on one particular incident. The Board decided to leave the language regarding Governing Body as is.

Chairman Cochran asked for discussion regarding the use of the term Informed Consent as it applies to acute care settings. Hearing none, the Board decided to leave the language regarding Informed Consent as is.

Upon a motion by Kathryn Smith and seconded by Ruth Jarvis the Board unanimously accepted the regulations with the above three noted changes.

The human rights regulations will be submitted to the Secretary and the Governor for Executive Branch approval prior to being published in the Virginia Register for a 30-day final adoption period.

Board Liaison Reports

Ruth Jarvis reported that she met with Portsmouth Behavioral Health Services. She also attended a Citizens Forum at Norfolk Community Services Board, which was an excellent program. Ms. Cochran thanked Ms. Jarvis for her active role in participating in community events.

Daniel Karnes reported that he contacted the region for which he acts as liaison. Mr. Karnes would like the Board to discuss liaison activities at the upcoming Board Retreat.

Linda Bartlett attended the Middle Peninsula Community Services Board meeting. The CSB is starting a more intensive outpatient program for substance abusers. Ms. Bartlett also attended a meeting at the new substance abuse program.

Victoria Cochran reported that she plans to ask Catherine Hudgins to serve as representative to the Mental Health Council.

Ms. Cochran commented again on the wonderful work done in the New River Valley with the cooperation of the area's private providers, the Red Cross, etc., in response to the incidents at Virginia Tech. Ms. Cochran emphasized that it was not just mental health providers: it was community members with special training in disaster response, consumers and family members reaching out and supporting the victims of the tragedy, the students and staff of Virginia Tech, and the community members in Blacksburg. She has never been prouder of the people who work in the mental health field that reach out to the community and who are there every day.

Commissioner's Report

Commissioner Reinhard extended a personal complement to Ms. Cochran as a member of Blacksburg. The department appreciates her support and response. Dr. Reinhard underscored the response of department staff. Ray Ratke led staff on the grounds of Virginia Tech and assisted Dr. Reinhard in responding to a multitude of media in answering some very difficult questions. Mr. Ratke was joined by Frank Tetrick and a number of coordinators in New River Valley in responding to the immediate needs

of those impacted by the tragedy. Bill Armistead, the department's Disaster Recovery Coordinator, did a wonderful job and continues to do that kind of work. Dr. Reinhard said that this is a time that may make or break our system. He stressed the need to continue the course of making sure we keep the department's service system in the mainstream and not allow it to be marginalized and stigmatized. This is a critical time in our system for rallying together and not allowing incidents to distract us from transforming the system. Comments and a presentation given at the May 2, 2007 meeting of the VACSB on "High Hurdle Training for a Transformed System" will be available on the department's web site. Dr. Reinhard thanked the Board for help in supporting the department through this difficult time.

VACSB Report

Anthony Soytis, First Vice Chair, Virginia Association of Community Services Boards and Board Chair of Hampton- Newport News CSB reported for the VACSB. Mr. Soytis stated that the VACSB recently held a successful educational conference. Two priority issues of focus are jail-based services and the provision of services to the elderly.

On behalf of Mary Ann Bergeron, Executive Director, Mr. Soytis reported on a number of items. In regards to public policy issues, the VACSB and partnership advocacy has had effective results especially in the area of substance abuse. The VACSB Substance Use Disorder Grass Roots Initiative has progressed for three years which has led to some very good funding from the Legislature. Concerning budget successes the VACSB has 160 additional MR Waiver slots, which brings the total for July of 2007 to 399. They have had a 15% increase in MR and DOD waiver rates for federally defined Northern Virginia. The Medicaid general funds match for services for substance use disorders being processed will be on-line for July 1, 2007. Emergency regulations will be developed and over the next 12 months can be refined and amended for the permanent regulations. They have received \$2.4 million for general funds for services for substance use disorders, and nine juvenile detention centers have been authorized and funded with \$900 thousand dollars. A report is due from the HHR Secretary's Office on portability of auxiliary grants on December 1, 2007. They are expanding the review of MR Waiver to include a study of all service needs for people with mental retardation. A report on youth at risk of custody relinquishment is due on November 1, 2007. JLARC will study the economic and societal costs of substance use disorder and the Behavioral Health Care Subcommittee will study mechanisms for housing for individuals with serious mental illness.

The VACSB will co-sponsor two days of education in June that will offer practical information on accessing services. The VACSB website also

provides educational courses. The VACSB will hold conferences and training in October of 2007, and in January and May of 2008.

Mr. Soytis also announced that the VACSB has been working for over a year on behavioral health support for the Virginia Guard and Reserve and this service has now expanded to the active military force in support of the veterans of Iraq and their families.

Ms. Cochran thanked Mr. Soytis and commented that the educational conference scheduled for June is an excellent conference.

Legislative Report

Ruth Anne Walker, Legislation and Public Relations, reported that she will forward an updated list of Legislative studies to the Board, which includes on-going studies and some new items. For the Board's information, the list includes a listing of central office contacts and agency heads of particular interest to the Board.

Staff Update

The next meeting will be the Board Retreat on August 19 – 21, 2007. Jewel Booker is investigating a location for the Retreat, which will be either in the Southside Danville area or Northern Virginia. Ms. Walker thanked Kli Kinzie and Margaret Walsh for support with the May 4 meeting. She commented that this is the first meeting without Martha Mead.

Ms. Walker also reported that she was out of the country during the tragedy at Virginia Tech. While she was away Margaret Anne Lane, Planning Analyst with the Office of Substance Abuse, assisted Dr. Reinhard and Ray Ratke in dealing with the media. Ms. Lane has a lot of press experience and Ms. Walker thanked her for her help. Ms. Walker also thanked the Commissioner's support staff who are always so helpful.

Kay Smith commented that she was in Dallas, Texas, during the incident and the outpouring of sympathy to her as a Virginian was wonderful. Ms. Walker added that she was in Sicily, Italy, at the time and people there were also aware of the tragedy in Virginia.

Chairman Cochran asked each of the members of the Board to give some thought to the areas they would like to focus on during the Retreat. Ms. Cochran asked Ms. Walker to send out an e-mail asking for the Board's input. Ms. Walker said that central office staff will begin intensive Retreat planning in June.

Adjournment

There being no further business the meeting adjourned at 12:32 p.m.
Victoria Huber Cochran thanked everyone for attending.

Victoria Huber Cochran, Chair

Kli Kinzie, Executive Secretary