

**VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY (VOPA)**

**PROTECTION AND ADVOCACY FOR INDIVIDUALS  
WITH MENTAL ILLNESS (PAIMI)  
ADVISORY COUNCIL MEETING**

**VOPA Office – Richmond, VA**

**FINAL MINUTES  
May 14, 2009**

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| <b>Members Present</b>   | Elaine Caudill, Steven Hornstein, Van Johnson, Mike Newcomb (Vice-Chair), Yvette Lane, Ali Parker, CW Tillman (Chair)  |
| <b>Members Absent</b>  | Kathy Harkey, Sandra Musselwhite, Edwina Shore   |
| <b>Guests Present</b>  | None   |
| <b>Staff Present</b>   | Sherry Confer (Deputy Director), Kim Mendella (Executive Assistant)<br><br><i>For portions:</i> Colleen Miller (Executive Director), Dana Traynham (VOPA Staff Attorney)   |
| <b>Call to Order /<br/>Welcome /<br/>Introductions</b>           | CW Tillman called the meeting to order and asked everyone at the meeting to introduce themselves.  |
| <b>Public Comment</b>  | No public comment was offered.   |
| <b>Staff Presentation –<br/>Alternatives to<br/>Guardianship</b> | Dana Traynham, VOPA Staff Attorney, presented to the PAIMI Advisory Council about Legislative Changes to Virginia's Guardianship laws. Ms. Traynham began by stating that there have been several significant changes to the alternative decision making process made by the 2009 Virginia General Assembly. These changes were signed into law March 27, 2009 and will be effective July 1, 2009. One important thing that has not changed is that "Capacity is Presumed." That is: "every adult shall be presumed to be capable of making an informed decision unless he is determined to be incapable of making an informed decision..." The age of majority in the Commonwealth of Virginia is 18. Ms. Traynham stated that there are alternatives to full guardianship such as Advanced Directives, Living Wills, and Power of Attorneys. |

Ms. Traynham moved the discussion to more detail about Advance Directives as a result of changes to the Health Care Decisions Act. Advance Directives protect the person in crisis as it allows the person keep their independence as much as possible. Advanced Directives are written by the person when he or she has capacity to make decision and come into effect when the person no longer has capacity.

Ms. Traynham talked about the suggested form contained in the law. The reading level for the suggested form is very high and therefore may be very difficult to understand. The form is set-up as an “opt-out” system to allow people completing the form to strike out anything they may not want the agent to have decision making authority about. Council members had an issue with the crossing out of items on the form as people may overlook important life-implicating information. Council members would prefer to have a check-box form where the person opts for what authority the agent could have.

### **Executive Director's Update**

Colleen Miller, VOPA Executive Director, directed the PAIMI Advisory Council to the Progress on Objectives report in the PAIMI Advisory Council packet. Ms. Miller stated that abuse and neglect investigations are major objectives for VOPA. Currently VOPA is evaluating whether the Department of Mental Health Mental Retardation and Substance Abuse Services (DHMRSAS) operates a system that protects consumers from harm. For example: whether the Department investigates allegations of abuse and neglect, does any follow-up of closed investigations, or develops corrective action plans. Currently there are two death investigations that may be published soon. VOPA will also develop an e-mail alert distribution list where subscribers will receive an e-mail stating that an investigation or other information is available on the VOPA website to read. Steven Hornstein was glad to see that VOPA is publishing the investigation reports again. He knows about investigations in the past that were never published. When he inquired, the response was that VOPA was negotiating the investigated entity. Ms. Miller responded that VOPA is always looking for strategies to get the highest effectiveness of the work VOPA does. Before, VOPA published every investigation. Danville Community Service Board (CSB) sued VOPA to stop publishing these reports. VOPA won the case and received a lot of positive publicity. With this publicity, VOPA was able to use this leverage with providers to obtain desirable results.

Mr. Hornstein mentioned that he recently read about a National Alliance on Mental Illness (NAMI) publication titled "Grading the States." Mr. Hornstein stated that Virginia does not publicize the number of restraint hours and asked whether VOPA could get involved with making facilities report these numbers. Ms. Miller responded by stating that not reporting numbers is not the worst thing. Different facilities report on different things and may even have different names for the same restraint technique. VOPA collects lots of seclusion and restraint data from various facilities but there is no method of comparing facilities. VOPA wants some consistency first before the numbers are reported as currently the numbers are not reliable.

Mr. Hornstien then asked about where Virginia as a whole stands on reducing seclusion, restraint, and forced injections. Ms. Miller stated that several facilities have received Federal grant money for restraint reduction. The Commonwealth Center for Children and Adolescents (CCCA) received such a grant a year and a half ago. Progress has been hampered as the facility was under the assumption that the facility was going to close.

Ms. Miller asked the PAIMI Advisory Council members to look at the Litigation Report and asked if there were any questions. Mike Newcomb asked if PAIMI cases "Client vs. Eastern State Hospital" and "Client vs. Norfolk CSB" was the same case. Ms. Miller stated in fact that both cases involved the same client on the "waiting to be discharge list" at Eastern State Hospital to be discharged to the Norfolk CSB catchment area. The finding in the first case insisted that failure to discharge is not neglect. VOPA disagrees as it is analogous to false imprisonment. The finding in the second case found the Norfolk CSB in violation of "Restriction of Freedom of Everyday Life." With conflicting findings, VOPA has appealed these cases to the State Human Rights Committee (SHRC).

Mr. Hornstein remembered that a few years ago, VOPA sued DMHMRSAS to obtain the names of consumers waiting to be discharged in mental health hospitals. He wanted to know if VOPA could sue the CSBs to make them provide housing to consumers waiting to be discharged. Ms. Miller replied that when VOPA obtained the names on the discharged list, VOPA asked the individuals what is keeping them from of living in the community. Questions included: is it a lack of housing, a lack

of therapy, lack of jobs, what is missing in the community? VOPA shared these findings with the DMHMRSAS who said that they work on fixing those issues. VOPA will not commit to a lawsuit at this time as there are many other issues VOPA is working on currently. VOPA is, however, looking at a step back, all the people in jails who cannot get transferred to mental health hospitals because the mental health hospitals are not moving people out. There are a lot of people who are court ordered to the custody of DMHMRSAS who are in jail because of the backlog in the mental health hospitals. VOPA says one problem is due to the current limited use of the Auxiliary Grant that supplements the housing costs for beneficiaries of Social Security that stipulates the Auxiliary grant can only be used in Assisted Living Facilities (ALF). Many people leaving the mental health hospital cannot live in an ALF for a number of reasons. VOPA has worked with NAMI and the legislature to free up the money for Auxiliary Grants to be used elsewhere. The State has agreed to a pilot program to allow for some portability of the Auxiliary Grant but only for people who have lived in an ALF for at least six months. This will not help the backlog of individuals currently in mental health hospitals who cannot move to an ALF.

Ms. Miller directed the Council's attention to the case of W.J. vs. SVMHI as a great example of working on one case to achieve systemic change. The case went all the way to the State Human Rights Committee (SHRC) after going back and forth in the local Human Rights Committee (LHRC) for years. The LHRC found some violations in the discharge plan so the facility then drafted a plan. However, VOPA found that plan to be very inadequate. As a result VOPA took the case to the SHRC and SHRC ordered a list of changes to the facility as well as asking VOPA to attend some of its meetings to advise SHRC what is and is not working with the human rights system. The SHRC even ordered the director of the facility to write a personal letter of apology to the consumer.

Just before breaking for lunch, Mr. Tillman made an announcement that every year VOPA has to complete a Federal Program Performance Report (PPR) on each of the grants VOPA receives. For the last fiscal year 2008, VOPA's PAIMI PPR was chosen as one on eight exemplary reports. Mr. Tillman thanked Ms. Miller and her staff for this achievement.

**Board of Director's**

Mr. Tillman gave the Governing Board report to the Council.

## **Report**

The Board met in April. There was a training about issues affecting people with brain injury. The Executive Committee made decision on the Executive Director's job description as well as completed the annual evaluation of Ms. Miller's performance as Executive Director. The Finance Committee clarified language about the mileage reimbursement rate.

Ms. Miller added that as a result of the Council Relations and Public Policy Committee, the Board agreed to have the Board minutes in each of the Councils' packets and the Councils minutes included in the Board packets.

## **Governing Board Committee Reports**

Council Relations and Public Policy Committee – Mr. Tillman stated that the committee discussed the "Job description" for Council members and that this was a work in progress. Mr. Tillman drafted the PAIMI Advisory Council member "job description" and this will be discussed further in the "Other Business" section of the meeting. The Committee also submitted the first reading of the proposed changes to the council member appointment process to the Board.

Finance Committee – Ali Parker talked about the changes to the mileage reimbursement policy.

Public Awareness and Goals Committee – Ms. Miller stated that the Board adopted the Goal Statements for FY10 and discussed ways to obtain public comment. Ms. Miller said that Clyde Mathews, VOPA Managing Attorney for the Resource Advocacy Unit, will be working with the PAIMI Advisory Council after the lunch break to discuss Focus Areas for next year.

Mr. Tillman added that Pat Meyer was elected as Chair of the Governing Board and her term will begin June 1, 2009. Bill Fuller was elected as Vice-Chair.

## **Working Lunch**

Sherry Confer handed out a list of current FY09 Goals and Focus Areas to the PAIMI Advisory Council members. While the members ate lunch, members were asked to review the list and choose five focus areas that they would like to discuss in further detail during the meeting's work session.

## **Work Session – Annual Input into VOPA Work – Focus Areas**

Mr. Mathews said that VOPA is in the early part of the process of establishing Goals, Focus Area and Objectives for FY10. Ms. Confer noted that she tallied the handouts passed at lunch and there was a consensus from the PAIMI Advisory

Council members on what to discuss. These include:

- Physical abuse in juvenile facilities
- Appropriate and timely discharge plans in State Mental Health Facilities
- Consumer driven alternatives for guardianship
- Services and supports to enable individuals to move into the community
- Services and supports to enable individuals to remain in the community

Mr. Mathews stated that the Goals have already been approved by the Board and the list of Focus Areas handed out by Ms. Confer during lunch should not limit today's discussion.

### **Physical abuse in juvenile facilities**

Ms. Caudill asserted that VOPA should protect those who cannot protect themselves. Ms. Confer said that last year VOPA had an objective about trauma informed care as seclusion and restraint can exacerbate symptoms for people with a history of trauma. There is a trend in the Critical Incident Reports that VOPA receives from mental health hospitals of an increasing number of young women who are cutting themselves. As a result of this self-mutilating behavior, these women are put into seclusion or restrained. Cutting is a symptom of an underlying problem and VOPA wants to know if the facilities are providing adequate treatment before the facility resorts to seclusion and restraint. Council members inquired if the focus area could be expended to include all forms of abuse, not just physical. Ms. Confer said that VOPA has to be careful with peer on peer incidents to not representing one VOPA client against another VOPA client. VOPA can ask if the facility provide the appropriate safeguards, supervision, etc. to prevent the incident from occurring. Mr. Hornstein spoke about a juvenile facility in Portsmouth where he believed the children detained are not getting fresh air. Mr. Hornstein wanted VOPA to investigate as he believes there are no walk group and mental health hospitals are like prisons. Ms. Parker said that it might be a privacy issue as mental health hospitals administrators may not want members of the public to know who are in the facility.

### **Appropriate and timely discharge plans in State Mental Health Facilities**

Ms. Caudill brought up an example from the Litigation Report where she could not believe that family members have

precedence over the entire professional treatment staff with regards to discharge. Mr. Mathews said with that particular case, it was the court that was the barrier to discharge. For the last several years the professional staff have been advocating for discharge. Mr. Tillman wanted to know if there are any numbers to show the cost of treatment in the community versus the cost of treatment in the facility. Mr. Mathews stated that there are many studies and reports to the General Assembly that prove that community treatment is cheaper. It is overcoming the special interests and political pressures that is the problem. Ms. Confer said that from the discussion for that morning it appeared that the PAIMI Advisory Council encourages VOPA to go to the State Human Rights Committee and say whatever needs to be said and to make it happen. It is unreasonable for someone to sit in a mental health hospital for two years when everyone says this person is ready to leave and make the Human Rights system work the way it is supposed to. Ms. Caudill recommended making politicians knowledgeable and we should call our elected representatives about the problems. Ms. Confer said that VOPA has to be careful to not lobby. What VOPA can do is educate policy makers and this is what Ms. Miller does every year at the General Assembly. Ms. Lane wanted to know about family members and friends who could advocate and support children in facilities. Ms. Confer stated that her understanding is that a lot of children in Psychiatric Residential Treatment Facility (PRTFs) have had some Social Services (SS) involvement and often SS has become the guardian of those children. SS is like any social service delivery system that is strapped for resources and therefore prioritizes cases. SS would argue that a PRTF is a safe place and the child is receiving services and treatment. Therefore, SS would focus efforts to helping children who are not safe and in need of services. The PAIMI Advisory Council would like a component of VOPA's staff working in PRTFs to engage family members in the discharge process.

### **Consumer driven alternatives for guardianship**

Mr. Tillman wants to see a move away from restrictive guardianship practices to one that is empowering to the consumer. The PAIMI Advisory Council believes that the WRAP plans (Wellness Recovery Action Plan) are critical starting point and an opportunity to talk about Advance Directives. The Council would like VOPA to partner with the Coalition of Peer Specialists to work together training consumers about Advance Directives. Mr. Newcomb states

that peer specialist are the experts as they have been through the system themselves so there is credibility. Mr. Newcomb continues by saying that there is arrogance in the medical community that treats the consumer as a number or a case and therefore does not honor you as an individual. Mr. Newcomb wants some legal ramifications for medical staff who do not honor the WRAP plan.

### **Services and supports to enable individuals to move into the community**

Ms. Parker stated that the largest barrier for individuals to move back or stay in the community is transportation, especially in rural communities. Transportation is tied to timely discharge plans. Often discharge plans have the consumer signing up for Social Security, attending this clubhouse, and living in that ALF. Often what is missing in these plans is how the consumer travels from the ALF to the clubhouse. Discharge plans need to be individualized and logistics of travel to be determined in advance.

Mr. Mathews asked if there were any big issues that currently not addressed by VOPA. Mr. Newcomb stated we need to stop statically warehousing people. Mr. Newcomb recapped an earlier discussion where Ms. Miller talked about people who are in jail who are in the custody of DMHMRSAS waiting to be transferred to mental health hospital for treatment. Mr. Newcomb asked "could you imagine how much disruption occurs in jail by people who are angry because they know they have a mental illness and are not getting the treatment they need, and then you have people in hospitals that are waiting to be discharge but are waiting placement?" Mr. Newcomb said that frustration due to the lack of control is often viewed as a sign of mental illness when it is an appropriate response to the situation. Lots of issues can be solved if we can get the whole system moving so people know that they are moving towards better health and independence.

### **Review of February 2009 Meeting Minutes**

Mr. Tillman directed the Council members to the minutes from the last meeting in February. Ms. Parker noted one typo on page 14. Mr. Tillman asked if there was a motion to accept the minutes. Ms. Parker made a MOTION to accept the minutes as amended. Ms. Caudill SECONDED the MOTION to accept the minutes. The MOTION carried unanimously.

### **Other Business**

- **Mike**

Mr. Newcomb talked about the day long training he attended

- Newcomb's report on the NDRN Conference** in Baltimore hosted by the National Disability Rights Network (NDRN). NDRN is a national association for Protection and Advocacy systems which VOPA is a member of. The PAIMI Institute portion of the conference examined where the PAIMI Advisory Council fits into the Protection and Advocacy (P&A) system. The PAIMI Advisory Council serves as the community link with regard to the VOPA priority setting and PPRs. The PAIMI Advisory Council is also mandated by the Federal Government in the PAIMI Act signed in 1986. Mr. Newcomb then discussed the benefits for members on the PAIMI Advisory Council such as learning how to advocate for yourself, mental wellness advocacy opportunities with other advocacy groups, public speaking experience, cultivating contacts, and learning to become a leader.
- **Council Member Job Description** Mr. Tillman passed out the draft PAIMI Advisory Council member "job description" to the Council members. The draft incorporated requirements from the Federal PAIMI regulations and PAIMI Advisory Council By-Laws. Mr. Tillman asked the members to e-mail suggestions and comments to Ms. Mendella by May 29, 2009. Mr. Tillman directed the council to the Council membership matrix. This matrix includes requirements from the PAIMI regulations to determine composition to include consumers, family members, and service providers; as well as information from the By-Laws concerning race and geographic representation. This matrix will be helpful for recruitment proposes.
  - **Meeting Structure** Mr. Tillman wanted to brainstorm ideas about the current meeting structure. Mr. Tillman wanted to ensure that the bulk of the meeting focused on what the PAIMI regulations instruct the Council to do: "provide independent advice and recommendations to the system." Mr. Tillman proposed making the work session longer and extend the meeting. Council members as a whole like the current meeting format and did not want to remove any portion of the meeting. Members also did not want to extend the meeting. Ms. Mendella stated that she writes detailed notes throughout the meeting and comments made outside the work session such as during the training portion or the Executive Director's report are recorded. The entire meeting can be considered the work session as these comments and advice are used in the PPRs and priority setting with VOPA's Goals, Focus Areas and Objectives. Mr. Newcomb suggested that the packet indicate any recent changes with regards to the Progress on Objectives Report and Litigation Report. Ms. Confer confirmed

that VOPA staff will make the packets more informative based on the recommendations of the Council. Such as if the Councils have any questions that they need to send the questions in advance so VOPA staff will have time to research and respond before the next packet is distributed. Another suggestion is to have the Progress on Objectives Report and the Litigation Report only contain PAIMI cases.

- **Travel Voucher** Mr. Tillman reminded the Council to submit their travel reimbursement vouchers to Ms. Mendella.

Ms. Caudill made a MOTION to adjourn the meeting at 3:00 p.m. Ms. Parker SECONDED the MOTION. The MOTION carried unanimously.

*Final minutes*

08/13/2009

Date

**Virginia Office for Protection and Advocacy  
Mission Statement**

Through zealous and effective advocacy and legal representation, to: protect and advance legal, human, and civil rights of persons with disabilities; combat and prevent abuse, neglect, and discrimination; and promote independence, choice, and self determination by persons with disabilities.