



CONNECTICUT
LEGAL
RIGHTS
PROJECT, INC.

TESTIMONY OF KATHLEEN FLAHERTY, ESQ.
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PUBLIC HEALTH COMMITTEE PUBLIC HEARING
NOVEMBER 13, 2017

REGARDING THE OPERATIONAL PRACTICES AND PROCEDURES OF THE
DEPARTMENT OF MENTAL HEALTH & ADDICTION SERVICES WHITING FORENSIC
DIVISION OF THE CONNECTICUT VALLEY HOSPITAL.

Senator Gerratana, Senator Somers, Representative Steinberg, and distinguished members of the
Public Health Committee:

Good afternoon. My name is Kathy Flaherty and I'm the Executive Director of Connecticut
Legal Rights Project (CLRP), a statewide non-profit agency that provides legal services to low
income adults with serious mental health conditions. CLRP was established in 1990 pursuant to a
Consent Order which mandated that the state provide funding for CLRP to protect the civil rights
of DMHAS clients who are hospitalized, as well as those clients who are living in the
community. I'm also the Vice Chair of the Keep the Promise Coalition (KTP). KTP is a
coalition of advocates (people living with mental health conditions, family members, mental
health professionals and interested community members) with a vision of a state in which people
with mental health conditions are able to live successfully in the community because they have
access to housing and other community-based supports and services that are recovery oriented,
person-driven and holistic in their approach to wellness.

I am not only an advocate, I am also a client. I am a person living in recovery from a diagnosis
of bipolar disorder, and someone who has spent time on the other side of the locked door of a
psychiatric inpatient facility as a person receiving services. I have had the opportunity to observe
and participate in the psychiatric system for the better part of three decades.

The most important role I can serve during this hearing is to set some historical context, and then
to listen to what other individuals have to say.

Connecticut Legal Rights Project was established as the result of a settlement of a class action
lawsuit brought on behalf of "all present and future indigent patients of inpatient facilities funded

or operated by the Connecticut Department of Mental Health who are or will be in need of legal assistance regarding their admission, treatment, environmental conditions, discharge, and other hospital-related rights under state or federal law or policy.” CLRP’s purpose is “to ensure that clients of the DMH and especially patients of its inpatient facilities have effective access to the system of justice by providing them with independent advocates and attorneys to protect and enforce their rights and entitlements.”

Some of you may be asking the question, even if you have not voiced it publicly, how can these incidents have occurred, especially if there is an organization set up and funded to protect people’s legal rights? I have spent the days and weeks since I learned of these allegations asking myself the same question. It pains me to think that the incidents caught and preserved on tape happened only days after I testified at the Appropriations Committee hearing about the Governor’s proposed budget which cut our funding back to consent decree levels that “you are putting us back in the hospitals, which is where we started, and you put a bunch of angry disability rights lawyers in the hospital, and I’m putting the department on notice, they better make sure they do everything right because we are going to make sure that they respect and protect our clients’ rights when they are in the hospital.”

How can something like this have been allowed to happen? Why did it take a whistleblower contacting the press for it to get attention? Sadly, this unfortunate incident came to light in the only way it could have. DMHAS does have a grievance procedure, which states that

Formal grievance proceedings are available for any mental health consumer complaint which states that a staff member or an agency has (1) Violated a right of the consumer provided by statute, regulation, or directive of DMHAS; (2) Treated a consumer in an arbitrary or unreasonable manner; (3) Denied, involuntarily reduced or terminated services or failed to provide services authorized by a treatment plan due to negligence, discrimination or other improper reason; (4) Engaged in coercion to improperly limit a consumer’s choice; (5) Unreasonably failed to intervene to protect one consumer whose rights are jeopardized by the actions of another consumer in a setting controlled by the Agency or Department; or (6) Failed to treat a consumer in a humane and dignified manner as required by Connecticut General Statutes, Section 17a-542.

However, the grievance procedure comes to a dead stop if the complaint alleges a work rule violation:

If at any time during the inquiry, the Officer has reason to believe that a violation of a DMHAS work rule (for DMHAS facilities), an agency personnel policy or a criminal statute has occurred, he or she will immediately initiate a referral to the appropriate authority. The Officer will assist in any other investigation, as requested, and will report to the grievant on its status. Pending a resolution of such referred grievance, the Office

will defer further action. However, if a portion of the grievance is resolvable without interfering with any other investigation, the Officer will proceed on that portion.

It has been our experience that if the matter complained about in a grievance is determined to be a work rule violation, it disappears into a black hole of an HR investigation and the grievant is rarely apprised of the outcome of that investigation.

What you will hear today about the culture of Whiting Forensic Division is nothing new in the State of Connecticut and its Department of Mental Health and Addiction Services. These are words from the report issued to then-Governor John Dempsey in May of 1970:

- “This report describes a number of factors which contribute to the development and maintenance of a system which inherently must result in violations and limitations of both human and civil rights.”
- “Transactions across boundaries between Fairfield Hills Hospital and the community are not only not promoted or encouraged, but rather prevented. . . . There is . . . such confusion and capriciousness. . . . as to suspect a planned non-policy to insulate the facility from scrutiny.”
- “The findings indicate that community participation and collaboration is avoided, that this represents a policy however negatively manifested, that it results in reinforcement of isolation, preservation of authority, and absence of opportunity for that continuing process of evaluation which is a requisite to the viability of a psychiatric facility. The policy and its administration at all levels is an anachronism in present day psychiatry.”
- “The avoidance of clearly understood and agreed upon policies readily permits over-centralization of authority, arbitrariness in management, isolation of hospital from community, of department from department, of discipline from discipline, of one employee group from another, with deleterious results in all aspects of patient care.”
- “Our information forces the conclusion that not only are positive efforts to promote a therapeutic climate difficult to identify, but that factors promoting the development of an anti-therapeutic climate are unmistakable and appear to be promoted for the enhancement of central authority.”
- “The inevitable consequence [of promotion of power at the cost of collaborative enterprise and optimum patient care] is abuse of power at lower levels, caution in delegation of responsibility, discouragement of innovation and creative participation, and concern for privilege and self-protection rather than patients.”
- “Again the picture emerges of control from the top of sufficient degree as to influence the staff to behave in a fashion fostering administrative practices which create a life within the institution [with a climate] characterized by authoritarianism, loneliness, alienation and depersonalization.”
- “The Task Force respectfully submits this report in the expectation that it will be viewed not only as a study of many of the aspects of the operation of Fairfield Hills Hospital but

also as a presentation of some problems which may be generic to all the State Hospitals in Connecticut and to the administrative structure of the Department of Mental Health.”

Governor William O’Neill appointed a Blue Ribbon Task Force on Mental Health Policy for the purpose of developing “programs and policies to improve the overall mental health services in Connecticut.” Their 1983 interim report represents the result of a comprehensive fact-finding effort. They note that

“In mental health the resource most basic to quality care is staffing. Even with the present overcrowding of hospital wards, the problem in the Department of Mental Health is not just hospital space but rather that crowded wards are minimally staffed... The minimally staffed wards in Department of Mental Health facilities make it difficult for tense and overworked staff to provide more than custodial care and minimal therapeutic intervention. The minimal staffing makes for inflexibility of scheduling so that if a staff member reports ill, someone else must work a double shift, adding to a tendency to “burn out” and adopt a custodial attitude. ... A decision by the Joint Commission to decertify Connecticut Valley Hospital was largely due to a shortage of nursing personnel and psychiatrists. The decision was successfully appealed on the allocation of funds to provide more personnel.” [Emphasis in original]

Governor John Rowland appointed his own Blue Ribbon Task Force in 2000. Governor Malloy appointed an Advisory Commission following the tragic shooting at Sandy Hook in 2012. Connecticut has a history of creating task forces which issue thoughtful reports including concrete recommendations for change. Then these reports are put on a shelf to gather dust.

It is time to put an end to that approach. We do not need another task force to study the issue. We need this state to implement recommendations for change which have been repeatedly made in the past. Virtually all of those reports talk about the need to adequately fund community-based care. We need to examine what that “care” is and whether it is helping or harming the people the system is supposed to serve. Many of us who have been through the system as recipients of care have felt that our voices may not always have been heard by the professionals treating us – that is why so many of us embrace the concept of alternative ways of healing and the strength we find in the support of our peers.

We should re-examine the laws that restrict the liberty of people with mental health conditions and infringe on their legal rights to make choices about the treatment they receive. Most people rail against interference of the government in their private life – except when it comes to those of us who live with mental health conditions.

We need to make sure that culturally competent staff members are provided the resources and training they need to do their jobs in a manner that respects the rights of the individuals they serve. We need to provide tools for effective management and supervision, and make sure that management actually uses those tools to supervise front-line staff. Sustained allegations of abuse of a patient in a psychiatric facility should mean the inability to work in any position providing service to clients with mental health conditions.

References:

Doe v. Hogan, Civ. No. H88-239 (EBB), Consent Order dated October 19, 1989 (available on request)

Commissioner's Current Policy on Grievances, available at <http://www.ct.gov/dmhas/cwp/view.asp?q=335180>

Report of the Task Force to review the administrative and professional programs of Fairfield Hills Hospitals, transmitted by the State of Connecticut Department of Mental Health to Governor John Dempsey on May 15, 1970 (available on request)

Interim Report, Governor's Blue Ribbon Task Force on Mental Health Policy, April 1983 (available on request and included in state archives: <https://ctstatelibrary.org/RG021.html>)

Report, The Governor's Blue Ribbon Commission on Mental Health, July 2000, available at <http://www.ct.gov/dmhas/lib/dmhas/publications/brcreport.pdf>

Final Report of the Governor's Sandy Hook Advisory Commission, March 6, 2015, available at http://portal.ct.gov/-/media/Office-of-the-Governor/Sandy-Hook-Advisory-Commission/SHAC_Final_Report_3-6-2015.pdf?la=en