DISABILITY RIGHTS VERMONT

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May 20, 2013

Frederick W. Engstrom, MD
Chief Medical Officer
Retreat Healthcare
P.O. Box 803
Brattleboro, VT 05302

Re: DRVT Concern with Retreat Involuntary Medication Practices

Dear Dr. Engstrom,

On behalf of DRVT I am writing to document concerns about recent involuntary medication practices at the Retreat. As you know, Act 79 of the 2012 Legislature requires that people "in the custody of the commissioner of mental health and who receive treatment in an acute inpatient hospital, intensive residential recovery facility, or a secure residential facility shall be afforded at least the same rights and protections as those individuals cared for at the former Vermont State Hospital (VSH)." A review of Retreat's Emergency Involuntary Medication procedures indicates that they are not in compliance with Act 79's mandate.

DRVT asserts that the following provision of the Retreat's Policy for Emergency Involuntary Psychiatric Medication (B)(2) is not consistent with the rights of former VSH patients and is therefore unlawful pursuant to Act 79: "The physician shall personally examine the patient if time permits. If not,

the charge nurse or nurse supervisor or other nurse leader examines the patient and discusses the situation with the physician."

The Retreat's policy omits the following important aspect of prior VSH Emergency Involuntary Procedure Policy 11.16.2006 (2):"The physician shall personally examine the patient." As you can see, VSH patients were afforded the protection of having a physician personally examine them **before** the patient was subjected to involuntary emergency medication. Currently, under the Retreat policy noted above and based on the cases we have reviewed, patients at the Retreat do not have similar safeguards in place.

DRVT is also concerned with the Retreat's policy of employing two or more uses of force to address a behavioral emergency despite an initial use of force mitigating imminent danger of serious harm to self or others. This practice is contrary to the VSH Emergency Involuntary Procedure Policy, effective November 11, 2006, stating "[T]he only basis for emergency involuntary administration of medication, seclusion, or restraints is in the legitimate exercise of the State's authority to control an emergency and prevent serious bodily harm to patients and/or others. When necessary, these measures shall be utilized in the least intrusive and restrictive manner and for the least amount of time consistent with the need to protect the patient and others consistent with good medical practice. **These measures shall not be unnecessarily used in combination**." (emphasis added)

A recent review of one patient's records noted that in at least twelve instances uses of force in combination occurred when not necessary to prevent imminent serious harm. Examples included the individual being in seclusion, no longer posing an imminent threat to self or others, but being subjected to emergency involuntary medications. See VSH Emergency Involuntary Policy Procedure eff. 11.16.2006, "Some patients seriously object to taking psychotropic medication. Many patients are particularly concerned about the adverse effects of psychotropic medications. Such effects include permanent muscular disorders, diminished spontaneity, blurred vision, palpitations, diarrhea or constipation, low blood pressure and fatigue. Consequently, the patient and staff must weigh the possible benefits against the risks of treatment with psychotropic medication." Recognizing this concern, based on best practices, and in response to litigation on this topic, VSH policies noted above required an assessment of the necessity of additional uses of force against a patient and a finding that the currently employed IEP was not sufficient to mitigate the imminent threat of serious harm to patient or others. Such assessments are not in evidence with the uses of force in combination that DRVT has recently reviewed at

the Retreat and therefore patients at the Retreat do not appear to have the benefit of this added protection that existed at VSH.

DRVT has also recently investigated several complaints about the unnecessary use of forced medication and identified that the Retreat is asserting the right to force medicate these patients with "standard treatment" medications pursuant to CMS standard A-0160 § 482.13 (e)(1)(i)(B) andCMS Interpretive Guidelines for 482.13 (e)(1)(i)(B), without the need to satisfy the generally accepted criteria for a legitimate use of forced medications (i.e. the presence of an emergency, no less restrictive alternatives and documentation requirements). DRVT asserts that patients at VSH were protected against the use of forced medications without the protections of the EIP rules. However, under the current Retreat practice, patients are subject to being restrained and forced medicated with "standard treatment" medications without the protections noted above, another apparent violation of Act 79's mandate.

In addition to being a violation of Act 79, this "standard treatment" exception apparently being relied upon by Retreat staff in order to avoid IEP rules appears to violate 18 V.S.A. §1852 (the Patient's Bill of Rights), giving a patient the right to refuse treatment, unless there is an emergency. If a Retreat patient has capacity to consent, their right to refuse should not be overridden unless there is an emergency. If such a patient lacks capacity, the Retreat should be acting to obtain a legal decision-maker for that patient prior to administering involuntary medications without an actual emergency. The current practice of involuntary medication without consent and without the presence of a bona fide emergency is onerous to the patients affected who have complained to DRVT and appears to be contrary to the intent of Act 79 and patients rights noted above.

DRVT asserts that a person subjected to an emergency involuntary procedure while an involuntary patient at Retreat Healthcare and under the care and custody of the commissioner of the Department of Mental Health has a right to the protections afforded similar patients at the now defunct VSH. However our monitoring and investigations at the Retreat demonstrate that the Retreat is failing to comply with the above-noted important aspects of Act 79, resulting in harm to patients. We look forward to working with you and Retreat staff to assure that your patients receive the benefits and protections intended by the Legislature's passage of Act 79. Please respond in writing at your earliest convenience regarding your analysis of DRVT's concerns and how these concerns can be promptly and efficiently resolved. I look forward to hearing from you and to our continued collaborations to benefit our mutual constituencies.

Respectfully,

Sherri Silvas
Advocate/Paralegal

Cc: Rob Simpson, Retreat HealthCare CEO
Sue Perry, RN, Nurse Surveyor, Complaint Coordinator, Vermont Division of Licensing & Protection
Mary Moulton, Commissioner of Mental Health
Craig Miskovich, Counsel for Retreat