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June 11, 2012

A.J. Ruben, Esquire  
Disability Rights Vermont, Inc.  
141 Main Street  
Suite 7  
Montpelier, VT 05602

Re: Investigation of the APS Response to Reports of Neglect Regarding John Doe

Dear Mr. Ruben:

Our attorneys provided me with a copy of DRVT's report containing results of its investigation of the APS response to allegations of neglect regarding John Doe. My understanding is that DRVT generally provides such reports to the facilities or agencies involved before publishing them and requests that the agency or facility review the report and provide a response to the findings and conclusions. Thank you for the opportunity to do so in this case.

The report identifies DRVT's concern with the alleged lack of compliance with APS' statutory obligations, the result of which DRVT asserts prolonged John Doe's suffering, as well as with the quality of the work associated with the APS investigations. In particular, the report concludes that "APS failed to commence an investigation within 48 hours of the reports of neglect, failed to provide adequate protective services based on evidence of neglect identified during the pendency of the investigations, failed to maintain records that adequately demonstrated the reasons for these failures or that these failures were identified and would be remedied, and failed to substantiate clear neglect by a caregiver, contrary to APS' statutory duty." Given the Department of Disabilities, Aging and Independent Living's commitment to ensuring that abuse, neglect, and exploitation of vulnerable adults will not be tolerated and that reports alleging such conduct will be addressed

promptly and investigated thoroughly, the facts presented in your report, if true, are disturbing.

Upon receiving the results of DRVT's investigation, I consulted with the Department's staff, which has now reviewed the contents of the relevant case files and DRVT's timeline of events, in an effort to determine the accuracy of DRVT's findings and to evaluate the quality and appropriateness of the Department's actions. Having completed our review, we have concluded that we are unable to respond to many of the specific concerns listed in the report. For example, we are unable to match your detailed timeline with our records. The dates do not match up, and there is no way to account for that, owing in large part to the fact that information was entered by hand by different people at different times under irregular supervision. While we can speculate as to why this was so, we cannot make a determination with any specificity. In addition, I am reminded that many of those involved with John Doe are no longer working for us and in much of 2011 there was significant turnover in our investigative staff, and, in the early part of that calendar year, we had only four investigators.

Despite the challenges in definitively verifying or explaining the alleged conduct, I want to acknowledge that the issues you have raised in the report, e.g., the accuracy of records, the timeliness of responses, and compliance with APS' statutory obligations, are of grave importance to us. As such, we have put into place specific changes so that the problems identified in your report should not occur today. The most significant changes relevant to DRVT's stated concerns are as follows:

- The dates of intake and screening are electronically set by the new Harmony database. When a new intake is opened, the current date and time is added to the form and cannot be changed. Similarly, Harmony automatically inputs dates upon assignment, thereby removing the potential for human error and alerting supervisors to pending cases which require assignment or additional information.
- The Director of the Division of Licensing and Protection (DLP) and the acting Program Chief of APS conduct weekly reviews of intakes and case assignments. Supervision and discussion around the screening and assignment of cases are done on a daily basis.
- A permanent APS Program Chief has been hired, and she will begin working this month.
- APS now has two permanent program (intake/screening) specialists; on the dates of the intakes in question there was not a consistent program specialist.




- The investigative team is fully staffed.
- The training of APS staff and the caliber of investigator have greatly improved. A training schedule for new investigators now includes classroom training, shadowing in the field, being shadowed in the field, and Harmony training. The current team of APS investigators is by far the best I have seen.

I note that you place some emphasis on the decision-making regarding the petition for guardianship. Without commenting on the appropriateness, need or desirability in this case, I do feel compelled to remind ourselves that the appointment of a guardian is not necessarily benign, protective or benevolent. Recognition of this fact clearly informed reform of Vermont's guardianship law in 2008. The decision to give an adult the legal status of a minor child carries risk, and must only be used when all other remedies to support autonomous decision-making have been exhausted.

We are confident that the implemented changes detailed above will help improve the quality of APS investigations into allegations of abuse, neglect, and exploitation of vulnerable adults. We appreciate the input from all of our community partners, and we hope that DRVT will continue to work with the Department to ensure the continued protection of Vermont's vulnerable adult population.

Sincerely,

  
Susan Wehry, M.D.  
Commissioner, DAIL