

State Representative Says State Facility Appears to be Operating “Illegally”

Russell J. Hatton • Matthew Feeney • Joshua Gardner • Daniel A. Wilson

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Supervised by facility staff, House Representative Steve Sandell¹ visited four residents at a state facility on Friday after reports of abuse and maltreatment. Accompanying the lawmaker was Madeline Ranum, an attorney from Mitchell Hamline School of Law and Carrie Briones, the Human Services Program Director at the Minnesota Department of Human Services (DHS).

The visitors wasted no time proclaiming their purpose for coming. During introductions, Representative Sandell began making a comment, yet corrected himself mid-sentence: “This facility *seems* to be...” He then paused to make an unequivocal statement: “This facility *is* punitive.” he exclaimed. “This needs to be fixed.”

The trio met with residents Russell J. Hatton, Matthew Feeney, Joshua Gardner and Daniel A. Wilson.

Gardner focused on recent violations reported in a *Duluth News Tribune* article.² He explained that facility staff have ignored the directives of the Minnesota Department of Health. For instance, they continue to use pepper spray on the residents and prohibit residents from making private phone calls to report abuse and maltreatment. Gardner also spoke about the detainment of over 60 residents who were initially confined as children but remain detained decades later. Gardner grieved that there is no Clear Path Home and facility staff do not follow their own policies in regard

to progression through the “program.” The “discharge process” provided by statute should take only months to complete. However, it takes years and even then rarely results in release.

In every instance that a resident files a petition for discharge, facility administrators and staff argue that the resident is a “risk” to the public due to “severe mental illness.” However, according to recently leaked documents, they are lying. Wilson presented these documents which prove what administration has known for decades: that the “vast majority” of residents are not mentally ill.³ The documents also prove that administration is knowingly breaking the law by operating under a permanent “variance” that changes the qualifications of staff.⁴ According to state statute and DHS rules, residents are entitled to psychiatric evaluations.⁵

³ Variance Request Application for Rule 9515.3030, Subp. 2

⁴ Minn. Stat. §245A.04 Subd 9. In addition, the variance violates the terms of the license granted by the Minnesota Department of Health. See license under commissioner number 389829

⁵ **Minn. Stat. 253B.03 Rights of Patients, Subd. 5. Periodic assessment:** “A patient has the right to periodic medical assessment, including assessment of the medical necessity of continuing care and, if the treatment facility declines to provide continuing care, the right to receive specific written reasons why continuing care is declined at the time of the assessment. The treatment facility shall assess the physical and mental condition of every patient as frequently as necessary, but not less often than annually...” **Administrative Rule 9515.3030, subpart 2. Psychiatric evaluation.** A psychiatrist must evaluate each person within

¹ 53B: Woodbury/Cottage Grove

² “Minnesota S.O. Program Found in Violation of State Requirements” by Laura Butterbrodt (Mar. 2, 2022) *Duluth News Tribune*

However, because of the variance, hundreds of residents have not been assessed for decades, making it impossible for them to be released. Representative Sandell stated that the variance appears to be “illegal.” Wilson assured him it is illegal and there are more illegal variances that are currently in effect. This particular variance, however, is how the state illegally incarcerates over 700 non-mentally ill men and women in prison-style facilities until they are dead. To drive the point home, Wilson presented a trial testimony by Jannine Hébert, the Clinical Director of the facility. Hébert testified in federal court that she made a “conscious decision” to delete the Medical Model because she knows the residents are “not sick.”⁶ She accomplished this by using illegal variances.

Hatton contends that immediate termination of the variance would mean the employment of qualified staff – namely psychiatrists – who follow the standards of the American Psychiatric Association. Hatton explained that when the variance is terminated, it will replace the current staff with qualified psychiatrists who will assess the mental health of the residents based on an individual’s *current* presentation of *severe* mental illnesses.⁷ Currently, the variance dismisses this requirement. Hatton has been detained to the facility for over 15 years. Throughout that time, he has been a witness to those who suffer from real mental illness, as well as the vast majority who do not. Hatton provided his studies and stories that are a culmination of over 15 years of personal experience inside the facility. Hatton left the meeting with conviction that the visitors will address these human rights violations.

Feeney explained that staff oppose independent experts who opine that Feeney does not belong in this facility. Feeney stressed the practice of opposing independent experts is

the status quo for the facility. DHS official Carrie Briones was especially concerned that Feeney is not the only resident to experience this kind of repression. Feeney then moved on to solidify his main point by presenting a stack of grievances 8 inches high, asserting:

Even if you brought resolution to these grievances, it would not matter. These grievances are *symptoms* of a systemic problem. Executive Director, Nancy Johnston told me that if I want to go home, I should “stop worrying about changing external rules” and focus on changing myself. I suggested that Ms. Johnston might have proffered that same advice to Rosa Parks. At the very least, Ms. Johnston needs to be terminated for dereliction of duty and failure to perform. Radical reform has been accomplished in other states. Just look at what happened in Massachusetts. We can do the same here in Minnesota.

The United States should be an example for how to treat vulnerable populations. However, these violations bear an eerie resemblance to times in history – both domestic and foreign – when governments illegally detained their citizens. Fortunately, it seems there are still some state officials advocating not only for the mentally ill who are entitled to proper mental health services but also to the non-mentally ill who are entitled to release. ●

three working days after the person is admitted and reevaluate each person at least annually.

⁶ Testimony of Jannine Hébert, before the Honorable Donovan W. Frank, *Karsjens v Jesson*, Case No. 11-CV-3659 (DWF/JJK), March 5, 2015, pp. 4001, 4002

⁷ DSM-5, p. 22