



OFFICE OF THE STATE ATTORNEY

FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY



DAVID ARONBERG
STATE ATTORNEY

Sober Home Task Force (Proviso) Meeting Minutes
Sober Homes Task Force Tip Line 1-844-324-5463

Meeting Date: July 12, 2016

Meeting Location: WPB Police Community Room
600 Banyan Blvd, West Palm Beach, FL 33401

Welcome/Introductions

Al Johnson opened the first Proviso Group meeting at 2:10 pm

Proviso Group

Dr. Karen Dodge
Mark Fontaine
Julie Hogan
Jeffrey Lynne
Shanon Materio
Dr. Rachel Needle
Captain Houston Park
Terrill Pyburn
Michael Weiner

Absent Members

Valerie Allen
John Lehman
Neal McGarry

The State Attorney's Office

Dave Aronberg
Justin Chapman
Mike Edmondson
William Ferris
Al Johnson
Ted Padich
Mary Ann Senatore
Kari Williams

Attendees informed by Mr. Johnson that meeting minutes are being taken
and the meetings are audio-recorded
Public attendees made their introductions as well

Scope And Purpose Of The Task Force:

Mr. Johnson provided a comprehensive overview of the mission of the Task Force, which includes addressing substance abuse, treatment and recovery and, ultimately, fostering the protection of vulnerable consumers and elevating the standards and practices of the recovery industry.

He acknowledged Palm Beach County (PBC) does have a large drug "attraction", but this is by no means just a county problem, it is both a statewide and national problem. To underscore the magnitude of the problem, Mr. Johnson cited there were 195 overdoses in Delray Beach in 2015, including all overdoses from aspirin to heroin. During the first 6 months of 2016, Delray Beach reported 242 cases of heroin overdoses alone.

Mr. Johnson explained the Proviso Group is comprised of persons or entities actually mentioned in the legislature in their Proviso establishing this group.
He then defined Ted Padich's role as an Investigator with the State Attorney's Office and explained the tip line as a reporting mechanism. Tip line cards were distributed prior to the meeting.

“Sunshine Law” Overview:

Mr. Johnson highlighted the importance of the Sunshine Law and its implications for this Task Force. As an example, he cautioned the group not to use “reply all” in the use of email, regarding what is coming or will be coming before the Task Force.

Mr. Johnson introduced State Attorney Dave Aronberg who extended his heartfelt gratitude to everyone present. Mr. Aronberg explained that for years, this problem has been growing and, as a result, people went to Tallahassee for a legislative fix. Tallahassee indicated this is a PBC problem, not a statewide problem and in addition, the Americans with Disabilities Act (ADA) and Fair Housing Act (FHA) might limit actions taken.

Two years ago, legislation sponsored by Senator Jeff Clemens and Representative Bill Hager was passed, creating a voluntary certification process, which is a step in the right direction.

A House Committee recommended that Mr. Aronberg’s office should handle this crisis and perhaps follow the same model he used in addressing the pill mill epidemic. In order for this to happen, Mr. Aronberg indicated the need for funding. Requested funding was for \$250,000, through many efforts, \$275,000 was appropriated.

Mr. Aronberg reinforced there is now legislative vesting in this problem and believes since there is money invested the legislature will listen to the recommendations and changes that come from this Task Force.

Mr. Aronberg emphasized we have the money; we have the brainpower, now is the time to get to work! Mr. Aronberg advised there is a mandate to report back Governor Scott and the legislature by January 1, 2017

Discussion

Mr. Johnson emphasized the aim of the Task Force is not to get rid of the drug addicts or to shut down legitimate Recovery Residences. The focus of the Task Force is to eliminate the bad players and bad practices, and not be a zoning or code enforcement Task Force.

Mr. Johnson recognized there are issues within the municipalities with regard to ADA and FHA and the belief is the task force can go far without violating any federal laws.

He went on to explain the important role the Grand Jury will play in this undertaking, especially given that the Grand Jury is secret, people must testify under oath, opening some avenues not presented in the task force.

Mr. Johnson explained it is necessary to look at what degree of oversight is needed to regulate the commerce nature of the problem, and the need to clarify and correct all the misinformation when it comes to Recovery Residences and the commerce involved.

Marketing Issues/Solutions:

Mr. Johnson opened the discussion by asking if HB1123 introduced last year is sufficient.

Mr. Fontaine raised serious concerns about truth in advertising when it comes to the marketing of certain treatment programs. Recognizing that these are very difficult issues to look at, this is part of what resulted in what was showing up in the Bill last year.

Mr. Lynne commented on why the Legislature did not move on the Bill, indicating there is only so much time in the legislative session and there were no negative comments on the Bill.

Mr. Fontaine disagreed with Mr. Lynne, asserting the House would not hear the Bill because it felt it was a local issue, referring back to Mr. Aronberg’s earlier comments.

Mr. Johnson indicated that terms need to be clearly defined, since there is considerable confusion throughout the industry. It is not only the marketing but also brokering statutes.

Mr. Johnson made reference to 65D, which has treatment modalities and attaches a residential component or PHP-Partial Hospitalization Payment. It is not indicated that the provider pays but there is a statute that says it cannot.

The provider is responsible for the patient having a decent place to live, and to get the treatment he/she needs. One of the things that this Task Force should do is figure out the commerce, making it work for everyone. The Task force may want to look at making suggestions to DCF (Department of Children and Families) for providers and possibly in the statutes.

Mr. Lynne raised the question of what defines a marketer in this context. Is the marketer a true marketer or a patient delivery service person? How can marketers be compensated without violating the Patient Brokering laws? He indicated that marketers could not be just patient delivery service people. They have to be employees actually doing marketing.

Mr. Lynne raised the question about the role of licensed interventionists. Is their job to actually do intake and determine placement? The profession has been tainted by the concept of the marketer.

Mr. Fontaine stated a marketer is, in the pure sense of the market place, the instrument for selling the treatment agency to potential clients, systems, unions and to others that might use that treatment agency.

Dr. Dodge suggested each subset of Prevention, Education, Intervention needs to be well defined, which would contribute to professionalizing and legitimizing the situation.

Dr. Needle emphasized if there is a license or certification, the owners need to be certified understanding that substance abuse is a mental health issue and also need to be ethical, legitimate, and held to reasonable standards.

Mr. Johnson's recommendation is to come up with a way to legitimize, and to give clarity, as opposed to what people are actually doing to stay in business. The business model requires it, but they cannot stay in business as a provider if the patient has no place to live.

a. Licensing And Regulation Of Recovery Residences Used As A *Vital Part Of Ongoing Treatment Programs (This Is The Commerce Idea)*

Dr. Needle stated that the public needs clarity as to what is a Sober Home.

Mr. Johnson defined a classic sober home as a bunch of adults on the back end of treatment, in maintenance, needing to go to a Narcotics Anonymous (NA) meeting once a month. These patients are not in active addiction (these homes are not part of the model/commerce). The commerce happens when the providers are faced with two choices to either let the patient go back home/live under the bridge *or* treat those patients and provide them with residence. There is an economic nexus there between those homes, treatment, and addiction.

Mr. Johnson pointed out that there are Recovery Residences already being monitored by the state or by the federal government due to use of funds from the regional funds Department of Children and Families (DCF) contracts out. Those homes are not the problem. These homes are regulated and monitored; not all the others are monitored.

Mr. Johnson defined the crux of the commerce as being sober home rent and board which needs to be addressed by resulting legislation. He emphasized sober homes *must* be certified and licensed with emphasis on best practices.

Group discussion continued with agreement that whatever the Task Force does it has to be patient-centered. Mr. Johnson continued the conversation by saying it is in the best interest of the patient to put them in a residence that is livable and that helps sobriety. If a provider has a relationship or maybe no relationship, but wants to provide a good home for the patient, the business model is-the money obtained for the treatment.

Dr Dodge indicated that there are no regulations for standards of interventions or providers of interventions at each level of care such as PHP, IOP, EIOP, OP, Sober Skills or After Care.

Mr. Weiner questioned is there a way to loosen the commerce between the homes and providers. He asked if the providers could be put in a position, that if they are not going to be able to work in the fashion with the sober homes, they must assure themselves that the sober home meets the standards set. Can the burden be put on provider to self-report?

Mr. Johnson questioned who will regulate and what standards would be used for the recovery residences?

Dr. Dodge commented that the insurance markets are the regulators. This is how they make their money. In Utilization Review (UR) and compliance, the insurance companies relate it to the level of care. Each level of care requires specific items that need to be met which is how the market adjustment is going to occur.

Dr. Needle indicated there needs to be clarity if it is legal to pay for someone's housing when they come out of detox if they do not have a job yet. Therefore, if we say it is *not* illegal, perhaps more providers of IOP would then be comfortable to have their own housing. There is fear about this because the law is so unclear.

Mr. Fontaine stated we need to better define the connection between the treatment and the housing they are using. This is how accountability is made. For example, a facility did not comply the standards of what certified housing is, they could lose their certification, such as complaints from the residents.

Mr. Lynne pointed out that housing component with treatment is not covered, by insurance but we need to recognize there is no treatment without a house

Mr. Fontaine explained how a recovery residence means a residential dwelling unit or any other form of group housing that is offered or advertised through any means including oral, written, electronic, or printed means by any person or entity as a residence to provide a peer supported alcohol or drug free-living environment. This definition depicts the issue around commerce or marketing. This is an important distinction citing the example of I am a recovery residence, vs. I am a place where 4 people in recovery are living, its advertising saying I'm one of these.

- i. Appropriate Regulatory Entity**
 - ii. Appropriate Licensing Entity**
 - iii. Health And Safety vs. ADA/FHA**
- b. Chapter **65D-30** and its interplay with the **Patient Brokering Statute.** (§ 817.505, Fla. Stat. (2016))

Mr. Chapman posed the question as to how marketing is done, which led to a discussion of marketing practices as well as patient brokering. The group agreed that the language of 65D referenced with just the plain language of the brokering statute is unclear.

Dr. Dodge raised the question of whether DCF is the right agency to govern addiction treatment. Group discussion led to alternative recommendations such as the State Health Department, Agency for Health Care Administration (AHCA) Centers for Medicare and Medicaid (CMS). She said, DCF is the wrong place but even if we do not switch who oversees this, the regulations need to be changed to ensure these treatment centers are actually providing treatment with good, ethical, legitimate treatment.

Mr. Lynne indicated that it would be a positive for PBC to become a Center of Excellence in drug treatment.

Dr. Dodge then discussed types of drugs to treat addiction.

Mr. Fontaine stated there are already laws on the books that can put every bad actor in jail right now. We do not need new laws, but we lack adequate resources for enforcement. What this Task Force could possibly do is if we can take the existing laws and show a clear path for the good actors and providers with possible rewards. This might put the bad actors out of business.

Mr. Johnson then stated that treatment needs to up its game, and as we move further and speak to DCF, we can include some of these recommendations. The economic model is what is driving the horrible actors. Within the next 11 months, this Task Force needs to foster clarity as to what needs to come first to propose legislation, especially regarding rent payment/room and board.

Adequacy Of DCF Funding To Regulate Recovery Industry

Mr. Lynne commented there is a statute that says the money that is collected by DCF for application fees is supposed to go to the funds specifically earmarked for substance abuse and mental health, but it stays within the subcomponent of DCF and no one is doing anything about it.

Mr. Fontaine then stated the need for modernizing the statute or modernizing the rule for medication-assisted treatment. He then continued by saying AHCA licenses inpatient mental health, in hospitals, but does not always license outpatient. DCF licenses all substance abuse services, so there is some distinction there.

Mr. Chapman interjected that an unlicensed treatment provider is guilty of a first-degree misdemeanor. Indicating that Sober Homes can be run without certification, but all have to be licensed. He then made the comparison with licensure of Assisted Living Facilities (ALF), which is guilty of Felony charges for every day running without a license.

The group then discussed 65D-30 with comments regarding language clarity and possible rewrites that might generate from this Task Force. Mr. Fontaine summed up this discussion by stating licensing is potentially the connection of the commerce between the treatment center and the sober home so that there would be a standard for that sober home because its covered under the person's license.

Commissioner Materio raised the question regarding standards regulated by municipalities. If we were able to come up with some sort of regulation that oversees the relationship, with a fully funded agency to enforce that regulation, then the municipalities would not have to step in. If there are regional branches of the said agency, for example the Health Department, who would be doing the inspections and making sure there is compliance being achieved and enforced. Unfortunately, the municipalities feel they do have to step in because there is no oversight at a larger level.

Captain Park addressed the issue of sober homes and users. If we stop the viscous cycle of users and bad homes. If we had better homes, we are more apt to get better treatment. He indicated the need of better intervention from the medical facilities to include the ED. PBC is looking at reversal centers when patients are brought into the ED. Consensus is for intervention at the ED level to include referrals to treatment centers.

Dr. Dodge offered examples of collection of ED data, such as DAWN: Drug Abuse Warning Network-and SBIRT: Screening, Brief Intervention, and Referral to Treatment-Federal Program.

Member Comments

- Request for List of Acronyms
- Applicable funding sources to be explored
- Question about legislative representation at the meetings
- Self-policing potentially being the focus-would whistle blowing be appropriate

Public Comments

Mr. Johnson opened the meeting to public comments, which included

- Providers need to be held accountable-proper conditions
- For this board to figure out where to start-a whistle blower is needed
- Whistle blower-not to be retaliated against
- Sober Homes Task Force is not targeting those that come forward
- Fire Rescue-overdosed victims, concern about safe discharge
- Patients leaving AMA
- Possibility of keeping patients in the hospital for treatment
- Sober Home resident rights/squatter’s rights/renter’s rights
- Civil issue cannot be evicted because the resident gets mail there
- Eviction process not effective for using residents

Closing Remarks

July 12: Proviso Group

July 14: Main Group

Mr. Johnson adjourned the meeting at 4:45 pm

Next Meeting	Date	Location
Task Force Proviso Group	August 8, 2016	Police Community Room
Task Force Main Group	August 9, 2016	Police Community Room

Minutes taken by: Mary Ann Senatore July 12, 2016

Approved by: Al Johnson