

Testimony to the Senate Public Health and Welfare Committee on SB 116

March 8, 2005

Chairman Morrison and members of the committee, my name is Michael Donnelly. I am the Director of Policy and Outreach for the Disability Rights Center of Kansas, formerly Kansas Advocacy and Protective Services (KAPS). The Disability Rights Center of Kansas (DRC) is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As such, DRC is the officially designated protection and advocacy system for Kansans with disabilities. DRC is a private, 501(c)(3) nonprofit corporation, independent of both state government and disability service providers. As the federally designated protection and advocacy system for Kansans with disabilities our task is to assist persons with disabilities, regardless of age or disability, to live in the most integrated setting possible, and to ensure that they receive the appropriate medical care, support services and treatment in a safe and effective manner as promised by federal, state and local laws. That responsibility includes the responsibility to investigate allegations of abuse, neglect and exploitation in adult care homes, residential care facilities and other places where persons with disabilities reside and receive services.

SB 116 is one of several responses to the number of group homes and other residential placement services that serve people with disabilities in Kansas that have allowed licensure to lapse, or who have refused to be licensed. One such case that has gained national attention is the Kaufman case out of Newton Kansas. I have attached four newspaper articles to my testimony as a means of getting you background information on the case. Kansas Attorney General Phill Kline and the DRC have partnered to offer several pieces of legislation that we believe will reduce the likelihood of these kinds of cases in the future. SB 116 and the amendments we are offering today are important in closing the loopholes that made the Kaufman Case possible.

In short, the Kaufman House case is a situation where there was an unlicensed group home for persons with mental illness where the owner was providing the residential services, therapy for the residents, medication distribution and, in at least one instance, was the guardian of a resident.

SRS informed the Kaufmans in 1986 that their group homes were required to be licensed and the Kaufmans fought that order up to the Kansas Supreme Court. The Kansas Supreme Court ordered the Kaufman's to become licensed in 1991 and yet they continued operating without a license through most of 2004.

Kansas Attorney General Phill Kline contacted DRC in February 2004 to explore our ability to respond the claims and evidence of abuse at the Kaufman's group homes. General Kline was frustrated that despite all of the evidence that had been collected by multiple state agencies no one had taken action to close them down. He found several loopholes that allowed the Kaufmans to stay in business, and furthermore, found his hands were tied because the statute of limitations had run out on the various allegations of abuse. As a result of his referral DRC investigated the situation in Newton, contacted one "complaintant" who resided there, acted to move her ("Pam") out of the home to a safe place and petitioned to terminate Mr. Kaufman's guardianship over her.

The US Department of Justice then asked "Pam" to be there witness. The result was the execution of arrest and search warrants on October 26, 2004 with DRC attorneys and advocates on hand to protect the rights of the residents of the group homes. Since that time the Kaufmans have been indicted on more than 30 federal counts. The group homes are closed and all of the residents are now living in safe places.

Among the lessons that need to be learned from this very public case is that no person with disabilities should be left without protections just because they live in a group home of fewer than five (5) people. A second lesson is that the state needs to develop a more coordinated investigation and response system to act on reports of abuse neglect and exploitation, including, but not limited to the ability of the state to immediately shut down un-licensed, and un-monitored group homes and residential programs.

If enacted into law, SB 116 closes one loophole and provides the teeth that the state needs to close down unlicensed facilities. The loophole it does not close in its current form is what facilities and programs should be licensed. DRC proposes three amendments to SB 116 (attached) that we believe strengthen the states investigation and response system, and closes the loophole of licensure.

SB 116 Page 2, line 25: DRC recommends a new section #7 be added that clearly spells out the state's policy on licensing of group homes and residential programs for people with disabilities. Neither state law, nor regulations have one concise statement of policy that says the state takes seriously it's responsibility to ensure that residents of group homes, regardless of size are not subject to abuse, neglect and exploitation

SB 116 Page, Line 40: DRC recommends that it's federal investigatory and access authority to facilities and programs where people with disabilities receive services be placed in state statute. Although the protection and advocacy agency access authority is sprinkled through several other statutes, DRC would like to make it clear in this statute that all facilities serving persons with disabilities as described in K.S.A. 75-3307b are required to allow the protection and advocacy agency (DRC) access to its facilities, residents and records in order to carryout its investigative responsibilities. DRC thanks the Senate Public Health and Welfare Committee for adding some technical clean-ups while addressing the issues above. First, K.S.A. 75-3307b uses antiquated language in referring to persons with disabilities. Secondly, he Committee also allowed DRC to amend the one statute that refers to our organization with it's old name. We request that the legislature modify K.S.A. 65-5603 to refer to the protection and advocacy system for Kansas rather than its old name Kansas Advocacy & Protective Services.

Again, SB 116 is a giant step in the right direction. It gives the state the authority to close down those facilities who either do not meet licensing requirements or who refuse to become licensed. DRC recommends that the Kansas Legislature provide a clear statement of which programs and facilities are required to be licensed under SRS

regulations. And, that the state clarify the authority of the protection and advocacy system to access the programs and facilities serving Kansans with disabilities in order to carryout its mandates under federal law.

THE HUTCHINSON NEWS

online edition

Possible abuse apparent in 2001 Tapes showing sexual acts used in effort to suspend Newton group home license

By Jason Probst and Jessica Self

State officials knew of possible criminal acts at a Newton group home as early as 2001, when a former assistant with the Kansas Attorney General's office drafted an order to suspend Arlan Kaufman's license to practice social work. Allegations of physical and sexual abuse at the group home, operated by Kaufman, 68, and his wife,

Linda, 61, stemmed from the graphic images found on 30 videotapes seized from the Kaufman home in 2001. Those tapes were used as evidence by the Kansas Behavioral Sciences Regulatory Board, the agency that oversees licensed social workers, to suspend Arlan Kaufman's license in 2001.

According to the agency's emergency order to suspend Kaufman's license:

- * While videotaping a client, Kaufman encouraged the client to perform a sexual act that the client said resulted in an infection in his genitalia when he previously performed the act.
- * Kaufman "encouraged three of his clients to engage in nude swimming in a farm pond that could possibly contain sewage runoff from pastured cattle.
- * "A female client who is diagnosed with Schizophrenia, Disorganized, Chronic, is living in the same home as a male client who is experiencing difficulties in the sexual area, such as public exhibitionism, and approaching males indiscriminately to engage in homosexual activity. (Kaufman) criticized the female client for not wanting to observe the male client urinating," the emergency order stated.
- * During a "group therapy session," a male client shaved the pubic hair from a female client, and then the female client shaved the male client's hair. This was performed in the presence of, and encouraged by, the respondent (Kaufman)."

Upon reviewing the findings, the KBSRB filed an emergency order to suspend Kaufman's license and began proceedings for revocation, investigator Roger Scurlock said. After many continuances and delays by Kaufman's attorney, the agency never had the chance to revoke the license because the order expired on Sept. 30, 2002, before a hearing could be initiated.

However, after the KBSRB suspended Kaufman's license in 2001, Scurlock said the agency notified the Hutchinson office of the Department of Social and Rehabilitation Services and the Office of the Inspector General with the Department of Health and Human Services.

An assistant with the Kansas Attorney General's office, Alan Varner, was working as the litigation counsel for the KBSRB and drafted the emergency order to suspend Kaufman's license. Varner is no longer with the Attorney General's office, spokesman Whitney Watson said.

"I have no idea who he is," Watson said. Attempts to reach Varner, who worked under former Attorney General Carla Stovall, were unsuccessful.

He left no record of his involvement in the case, Watson said. "The only record we have is the investigation given to us this year," he said. "That is when we became involved." The Attorney General's office received information about the case in May 2004 after the Kansas State Board of Nursing suspended Linda Kaufman's nursing license. The office was not able to pursue charges then because the statute of limitations had expired on any possible criminal action stemming from the 2001 investigation that produced the videotapes, Watson said.

Despite the KBSRB's efforts to inform other agencies, officials were left with few options in the investigation of the group home because of a lack of complaints from residents. State officials and advocacy groups said authorities had difficulty balancing the civil rights of the mentally ill with the need to protect them from a potentially dangerous environment.

"We strive for people with disabilities to be treated with respect," said Rocky Nichols, with Kansas Advocacy and Protective Services, an agency that deals with mentally ill Kansans.

"They have a right not to be abused or neglected. But at the same time we have to protect their civil and legal rights."

Officials said that people with mental illnesses, unless deemed incompetent by a court, retain the right of self-determination - meaning they can refuse help from medical, social or law enforcement agencies. Regardless of efforts by several state agencies, the investigation required the cooperation of the alleged victims to be successful, state officials said.

Wichita Eagle

Posted on Thu, Oct. 28, 2004

Timeline

State records obtained by The Eagle show that officials knew that Arlan and Linda Kaufman might have been breaking the law for years before their arrest on Tuesday.

1976: Arlan Kaufman, who has a doctoral degree in social work, and his wife, Linda, a registered nurse, open Kaufman House as housing for college students. It is later turned into residential treatment for adults with short-term or chronic mental or emotional problems.

1986: The Kansas Department of Social and Rehabilitation Services informs the Kaufmans that the two houses they operate must be licensed by the state as a residential care facility. The Kaufmans appeal that ruling.

1991: The Kansas Supreme Court upholds the ruling, stating that Kaufman House must be licensed by SRS. The Kaufmans do not pursue state licensing, and there is no evidence the state tried to make them get one.

Nov. 8, 1999: Butler County sheriff's deputies find people working nude at a farm near Potwin that is owned by Arlan Kaufman. The people are residents of Kaufman House.

Aug. 9, 2001: The Kansas Behavioral Sciences Regulatory Board suspends Arlan Kaufman's license as a clinical social worker, citing graphic videotaped evidence of sexual abuse and endangerment of adults in the couple's care.

Feb. 18, 2004: The Kansas State Board of Nursing suspends the nursing license of Linda Kaufman, citing similar evidence contained on 30 videotapes seized from her bedroom.

May 19, 2004: A Harvey County district judge orders Newton police and Kansas Advocacy and Protective Services to remove a 58-year-old woman from Kaufman House following allegations that her guardian, Arlan Kaufman, sexually abused her.

Oct. 26, 2004: The Kaufmans are arrested by FBI agents, and their two group homes in Newton are closed.

Oct. 27, 2004: Arlan and Linda Kaufman appear in federal court on charges that they forced mentally ill people into involuntary servitude. They are ordered held without bond until a Nov. 3 court hearing.

11/4/2004

http://www.kansas.com/mld/kansas/news/local/crime_courts/10033884.htm?template=cont...