

## Johnson, Harriet

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**Subject:** FW: Public Records Request  
**Attachments:** 0059\_001.pdf; VSEA 12-11 VSH public records request (missing WCMH K).pdf

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**From:** Johnson, Harriet  
**Sent:** Thursday, December 22, 2011 5:19 PM  
**To:** 'mcasey@vsea.org'  
**Cc:** Clasen, Michael  
**Subject:** Public Records Request

Mr. Casey – please find the attached response to your public records request from Deputy Secretary of Administration Michael Clasen.

Harriet Johnson | Agency of Administration  
109 State Street | Montpelier, VT 05609-0201  
ph: 802.828.3322 | fax: 802.828.3320

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State of Vermont  
Agency of Administration  
Office of the Secretary  
Pavilion Office Building  
109 State Street  
Montpelier, VT 05609-0201  
[www.adm.state.vt.us](http://www.adm.state.vt.us)

[phone] 802-828-3322  
[fax] 802-828-3320

*Jeb Spaulding, Secretary*

December 22, 2011

Michael Casey  
General Counsel  
Vermont State Employees' Association, Inc.  
P.O. Box 518  
Montpelier, VT 05602

**Delivered by E-mail**

**Re: Public Records Request**

Dear Mr. Casey:

I am writing to respond to your December 8, 2011 letter to Secretary Spaulding. You discussed the potential "privatization" of mental health services, and requested the following public records: "I am also requesting that you make available for inspection copies of any and all documents, including electronic correspondence (email), since August 28, 2011, that pertain in any manner to entering into agreements with any entity to provide services similar to those previously provided by the Vermont State Hospital."

First, please know that we understand how Tropical Storm Irene is impacting our State Hospital employees. Irene created many challenges, and the State is proud of the dedication and commitment so many of our employees exhibited in its aftermath. Given the need to provide immediate and ongoing clinical care to a vulnerable population, the flooding substantially affected our State Hospital employees.

The State is striving to rebuild, and to create a system of care that best serves many unique interests. The State cares about its employees, and continues to explore options commensurate with our future success. Please rest assured, the State has not entered into any "privatization" contracts. Moreover, if the State decides to execute a "privatization" contract as defined by 3 V.S.A. § 341 et seq., the State will satisfy its statutory obligations.

Second, most of the records you request are exempt from disclosure. The State was required to find immediate placements for our patients; as a result, the State shared proposals and had discussions with many hospitals and vendors. To date, there are only two signed agreements that are arguably responsive to your request. Please find the agreements and remaining responsive public documents attached.<sup>1</sup>

<sup>1</sup> The November 29, 2011 letter from the Brattleboro Retreat references "an agreement with the State." While the State has been and continues to work with the facility, the State does not have an executed agreement with the Brattleboro Retreat. In addition, the State entered into an agreement with Washington County Mental Health. We will forward that contract once I receive it.

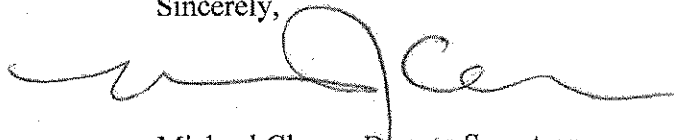
Michael Casey  
December 22, 2011  
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The State has additional responsive documents, but I do not believe they are public records. Pursuant to 1 V.S.A. § 318(a)(2), I certify that I consider the additional records you request exempt from disclosure. Most notably, the State does not have additional executed agreements, and I believe documents related to contract negotiations exempt from disclosure. *See* 1 V.S.A. § 317 (c)(15). The State cannot effectively negotiate contracts that are in the best interests of taxpayers, if the underlying negotiations are public. In addition, you request documents that are protected by the executive, attorney-client, and work product privileges. *See* 1 V.S.A. § 317 (c)(1), (c)(3), (c)(4). If you disagree with my decision, you may appeal to Secretary Spaulding.

Please also understand that I respond for the Agency of Administration. While I expect a broader governmental review would result in a similar analysis, the Agency did not attempt to identify every conceivable document from all departments that any employee may have written that is arguably responsive to your request. We did spend a considerable amount of time responding to your request, and I believe, provide the public information you solicit.

Please feel free to contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Michael Clasen', with a stylized flourish at the end.

Michael Clasen, Deputy Secretary  
Agency of Administration



*In alliance with  
The University of Vermont*

RECEIVED

DEC 08 2011

DMH - LEGAL

*Office of the General Counsel*

*Spencer.Knapp@vtmednet.org*

*802-847-6847 (Phone)*

*802-847-5677 (Fax)*

December 1, 2011

Rebecca Heintz, Deputy Commissioner  
Vermont Department of Mental Health  
Agency of Human Services  
26 Terrace Street  
Montpelier, VT 05609-1001

Re: VSH Employees Assigned to Fletcher Allen

Dear Rebecca:

We appreciate the State's willingness to assign VSH employees to work with psychiatric patients at Fletcher Allen on a "volunteer" basis. This has been very helpful in addressing our increased staffing needs as a result of the additional psychiatric patients we have admitted following the evacuation of VSH on August 29. However, there have also been challenges in managing two different work forces on our inpatient psychiatric units. We believe these challenges can best be addressed with some written guidelines, as we've discussed with you.

The purpose of this letter is to follow up on our recent discussions and to outline the guidelines under which we will be able to accept VSH employees who volunteer to work in our facilities. The guidelines are as follows:

**Guidelines for VSH Employees Assigned  
To Provide Psychiatric Services at Fletcher Allen**

**1. General**

- A. The State shall assign to Fletcher Allen, with its consent, qualified VSH Employees who meet Fletcher Allen's requirements and are willing and able, within the scope of their qualifications and licensure, to provide inpatient psychiatric services to patients of Fletcher Allen.
- B. The guidelines shall not govern or apply to Fletcher Allen-employed psychiatrists who have been contracted to work at VSH and may be re-assigned by the State to work at Fletcher Allen; such arrangements shall be governed by the existing agreements between the State and Fletcher Allen.

- C. Fletcher Allen and the State are both Equal Opportunity Employers. Neither of us will discriminate in the placement of personnel on the basis of race, creed, color, national origin, sex, age, disability, citizenship or veteran status or any other prohibited status.

## 2. Allocation of Responsibilities

- A. The State is and shall remain the employer of any VSH Employee who may be assigned to work at Fletcher Allen. As such, the State shall have and retain exclusive responsibility and authority for all matters relating to the employment of the VSH Employee, except for those matters assigned to Fletcher Allen in subparagraph B below. The State's responsibility and authority shall include matters relating to the scope of employment, days and hours of work, compensation, benefits, and any other matter that is the subject of a collective bargaining agreement between the State and VSH Employees. The State shall provide Fletcher Allen reasonable advance notice of the days and hours VSH Employees are scheduled to work at Fletcher Allen. In addition, the State shall be responsible for payment of wages, withholding federal and state income taxes, paying Federal Social Security taxes, maintaining unemployment insurance and maintaining worker's compensation in an amount and under such terms as required by applicable laws for all VSH Employees assigned to Fletcher Allen. In addition, the State shall comply with all federal laws, regulations and procedures regarding legal status to work and reside in the United States, including completion of required Immigration and Naturalization forms upon hire.
- B. Fletcher Allen shall not be deemed the employer of any VSH Employee for any purpose and shall have no responsibility or liability for any matter related to the employment of a VSH Employee. However, in order to facilitate the safe and efficient management of inpatient psychiatric services in its hospital facilities, Fletcher Allen shall determine and establish the following matters relating to services performed at Fletcher Allen and shall communicate such matters as provided in sub-paragraph C below:
- (i) The specific work assignments given to individual VSH Employees during their scheduled shifts at Fletcher Allen, including the location and duration of those assignments, which may change during any scheduled work period as determined by Fletcher Allen to meet the needs of the psychiatric patients in the hospital. Accordingly, VSH Employees may be required to "float" to provide appropriate psychiatric services to patients on units other than Shepardson 6, as needed. All such assignments shall be within the qualifications, skills and licensure of the VSH Employee;
  - (ii) Fletcher Allen shall provide orientation to VSH Employees on employment policies, rules, protocols and directives applicable to work within Fletcher Allen's facilities and with patients of Fletcher Allen (collectively "Fletcher Allen Policies") and the State shall be responsible for ensuring that VSH Employees adhere to Fletcher Allen's Policies while they are providing services at Fletcher Allen.

- (iii) Subject to Fletcher Allen's discretion and the availability of qualified staff, VSH Employees may accompany a patient for judicial procedures when a sheriff is not required.
- C. To facilitate communications between Fletcher Allen and the State on these matters, the State shall designate a manager who shall be accessible to Fletcher Allen managers for such communications (the "State's Manager"). An individual shall be designated as the State's Manager at all times, shall be available by phone or email in the event of an emergency, and shall be on-site at Fletcher Allen on a full-time basis. The State's Manager shall also be responsible for informing Fletcher Allen of any contractual rights the VSH employees may have under their collective bargaining agreement which could affect their ability to work at Fletcher Allen. Likewise, Fletcher Allen shall identify a manager who shall be responsible for facilitating communications from the State.

### 3. Qualifications and Screening of VSH Employees

- A. All VSH Employees assigned by the State shall be appropriately licensed and screened in accordance with policies and procedures consistent with the most recent edition of the *Comprehensive Accreditation Manual for Hospitals: The Official Handbook* published by The Joint Commission.
- B. The State hereby warrants and certifies that each VSH Employee assigned to Fletcher Allen is duly licensed and qualified to perform the services assigned and no VSH Employee assigned to Fletcher Allen has been convicted of a criminal offense related to health care, has been listed by a federal agency as ineligible for federal program participation, or has been excluded, debarred, suspended, or is otherwise ineligible to participate in federal programs. The State further warrants and certifies that, on a quarterly basis, it screens each of its VSH Employees against the Department of Health and Human Services' Office of Inspector General's List of Excluded Individuals/Entities. If any VSH employee becomes excluded from participation in federal or state health care programs or appears on the above-mentioned list, the State shall immediately notify Fletcher Allen.
- C. Any VSH Employee who is a registered nurse shall, during the first working shift of their assignment, successfully pass the Fletcher Allen medication test with a score of at least 80% and complete both mandatory and unit-based competencies consistent with Fletcher Allen Policies.
- D. The State will ensure that all VSH Employees assigned to Fletcher Allen are physically-able to perform the essential functions of their jobs, have been tested for rubella, chicken pox, measles, mumps and tuberculosis, and have submitted proof of routine immunizations; evidence of positive titer for varicella or evidence of vaccination for varicella, and evidence of Hepatitis B vaccination. To effectuate the foregoing, within 90 days after the date of this letter, the State will: (i) ensure that all VSH Employees receive any required laboratory testing, which Fletcher Allen will

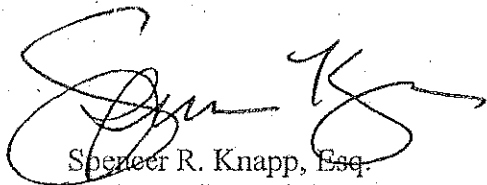
make available to the State at no cost; (ii) offer the VSH Employees any needed vaccinations, which Fletcher Allen will make available to the State at its cost, without any markup; and (iii) maintain documentation of the tests provided to the VSH Employees, the vaccinations received by the VSH Employees, and any refusals of any of the VSH Employees to receive any of the vaccinations. Unless an outbreak occurs of a communicable disease for which a VSH Employee is not properly immunized, Fletcher Allen will not prohibit VSH Employees from working due to their failure to be up to date on any needed vaccinations.

4. **Confidentiality.** The State understands the fiduciary and confidential nature of medical information, medical records and the subject matter that the State and VSH Employees may, from time to time, encounter in the normal conduct of the services described in this contract. The State agrees to keep strictly confidential and hold in trust all confidential information, and not to disclose or reveal such information to any third party, except within the restrictions of this Agreement. The State shall ensure that each VSH Employee who performs services under this Agreement is aware of this confidentiality requirement and agrees to maintain the confidentiality of this information. The State will comply with any and all confidentiality requirements as set forth by Fletcher Allen Policies or as required by law.
5. **Insurance.** The State will procure and maintain in effect during the term of this Agreement appropriate insurance coverage in amounts and with coverages that are reasonable and shall furnish, at the Fletcher Allen's request, certificate(s) of insurance evidencing professional liability insurance for each VSH Employee assigned under this Agreement. Fletcher Allen acknowledges that the State's obligation for Worker's Compensation is addressed in 29 VSA section 1408.

I hope you will find these guidelines to be acceptable. We will assume and understand that your continued assignment of VSH employees to us after the date of this letter indicates your acceptance and agreement to these guidelines.

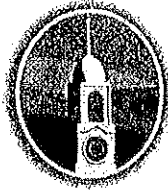
Thank you, and we look forward to continuing to work with you.

Very truly yours,



Spencer R. Knapp, Esq.  
Sr. VP & General Counsel

cc: Patricia L. Rickard, Assistant Attorney General



# Brattleboro Retreat

November 29, 2011

To Vermont Emergency Services Directors:

As you are aware, the Brattleboro Retreat has entered into an agreement with the state to provide 15 replacement beds for the Vermont State Hospital on the Tyler 4 unit. When this unit has bed availability, any EE may be presented for admission without receiving a rejection from the other Designated Hospitals.

The Retreat recognizes that there will be periods when the number of patients in need of involuntary treatment exceeds the number of replacement beds on Tyler 4. In these circumstances the Retreat Admissions Department should be contacted to discuss capacity and capability of the other adult units to accept additional involuntary patients.

If the Retreat has the capacity to treat involuntary patients beyond the 15 on Tyler 4, the Retreat's Admissions Department coordinators will ask that the QMHP/Crisis Screener get rejections from all other Designated Hospitals before we accept the patient. The rejection, and the reason for the rejection, must be documented and faxed to the Retreat with the usual and customary paperwork. This is consistent with the practice formerly employed by the VSH Admissions Department and is not intended to delay admissions but rather to track when and why we are exceeding our 15 bed capacity.

Please note that this requirement is necessary only when Tyler 4 is full and when the Retreat Admissions Department has agreed to accept an EE on another adult unit.

As always, please feel free to contact me with any questions or concerns.

Sincerely,

Kirk J. Woodring, LICSW, CGP  
Senior Director  
Access, Evaluation, Ambulatory and Security Services.



PETER SHUMLIN  
Governor



State of Vermont  
**OFFICE OF THE GOVERNOR**

**Post Irene: Strengthening Mental Health Services for Vermonters**

**Pre-Irene:** 54 state-operated beds (25-30 used for acute intensive care, the remainder were for patients awaiting discharge)

**Cost:** \$22.5 million operating from General Fund budget annually.

**Long term plan:**

- 15 bed state managed facility in central Vermont (Fletcher Allen will provide 7 to 10 intensive inpatient beds while this facility is being constructed and staffed)
- 14 beds at Brattleboro Retreat
- 6 at Rutland Regional Medical Center
- Up to 5 beds secure residential on campus of Windsor Correctional Facility

**Cost:** \$26.6 million in capital expenses (insurance policy/FEMA may cover some or all)

**Additional community services:**

- Step down beds (transitional beds as people move off acute care)
- Improved emergency services
- Improved individualized services
- Housing vouchers and peer services (people who have been patients who now are willing to run services for others – hotline, beds any number of supports)

**Cost:** \$16 million gross; \$7 million General Fund; the remainder is federal matching funds

**Total number of beds under this Post Irene plan: 70**