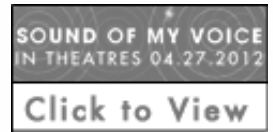


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At State-Run Homes, Abuse and Impunity

By DANNY HAKIM

Nearly 40 years after New York emptied its scandal-ridden warehouses for the developmentally disabled, the far-flung network of small group homes that replaced them operates with scant oversight and few consequences for employees who abuse the vulnerable population.

A New York Times investigation over the past year has found widespread problems in the more than 2,000 state-run homes. In hundreds of cases reviewed by The Times, employees who sexually abused, beat or taunted residents were rarely fired, even after repeated offenses, and in many cases, were simply transferred to other group homes run by the state.

And, despite a state law requiring that incidents in which a crime may have been committed be reported to law enforcement, such referrals are rare: State records show that of some 13,000 allegations of abuse in 2009 within state-operated and licensed homes, fewer than 5 percent were referred to law enforcement. The hundreds of files examined by The Times contained shocking examples of abuse of residents with conditions like Down syndrome, autism and cerebral palsy.

At a home upstate in Hudson Falls, two days before Christmas in 2006, an employee discovered her supervisor, Ricky W. Sousie, in the bedroom of a severely disabled, 54-year-old woman. Mr. Sousie, a stocky man with wispy hair, was standing between the woman's legs. His pants were around his ankles, his hand was on her knee and her diaper was pulled down.

The police were called, and semen was found on the victim. But the state did not seek to discipline Mr. Sousie. Instead, it transferred him to work at another home.

Roger Macomber, an employee at a group home in western New York, grabbed a woman in his care, threw her against a fence, and then flung her into a wall, according to a 2007 disciplinary report. He was then assigned to work at another group home.

Mr. Macomber, in fact, was transferred to different homes four times in the past decade for disciplinary reasons. It was not until last year, after he left a person unattended while he went into a store, that he was put on employment probation and eventually dismissed.

Over the past year, the state agency overseeing the homes, the Office for People With Developmental Disabilities, has repeatedly declined to make its top officials available for interviews. A spokesman, Herm Hill, said that the vast majority of the agency's employees were conscientious, and that its hands were often tied because of the disciplinary and arbitration rules involving the workers' union. Mr. Hill emphasized that the agency takes allegations of abuse "very seriously."

But this month, after learning of The Times's findings, Gov. Andrew M. Cuomo forced the resignations of Max E. Chmura, who led the agency, and Jane G. Lynch, the chief operating officer of the state's Commission on Quality of Care and Advocacy for Persons With Disabilities, which is charged with protecting people with developmental disabilities.

"It is a basic function of state government to protect the most vulnerable among us," Mr. Cuomo said in a statement.

The Cuomo administration said it would undertake immediate and comprehensive review of the agencies and their practices. Asked about the low rate of referral of allegations of abuse to law enforcement — for example, only a quarter of sexual abuse cases were reported — officials said they were reviewing flaws in their record-keeping.

But they have acknowledged that it had been the practice of the agency to handle most accusations of abuse internally, despite the office's lack of forensic capacity. It does not use a crime lab or standard evidence-gathering techniques, and its investigators generally lack law enforcement training; sometimes, they are simply the supervisors of the accused employees.

The Times reviewed 399 disciplinary cases involving 233 state workers who were

accused of one of seven serious offenses, including physical abuse and neglect, since 2008. In each of the cases examined, the agency had substantiated the charges, and the worker had been previously disciplined at least once.

In 25 percent of the cases involving physical, sexual or psychological abuse, the state employees were transferred to other homes.

The state initiated termination proceedings in 129 of the cases reviewed but succeeded in just 30 of them, in large part because the workers' union, the Civil Service Employees Association, aggressively resisted firings in almost every case. A few employees resigned, even though the state sought only suspensions.

In the remainder of the cases, employees accused of abuse — whether beating the disabled, using racial slurs or neglecting their care — either were suspended, were fined or had their vacation time reduced.

Most of the state-operated homes are in economically depressed areas upstate, and the jobs they provide — paying from \$29,000 to nearly \$62,000 with generous benefits — are sometimes among the few decent employment opportunities. The state has no educational requirements for the positions, which involve duties like administering drugs, driving residents to day activities, feeding them and preventing them from choking. Some of those hired have shown no previous interest or skill in caring for difficult populations.

“There are some people that don’t belong there; I know some myself,” said Robert Matuszewski of Buffalo, who was suspended and ordered to undergo psychiatric counseling for neglecting a resident and for referring to his female colleagues as “bitches.” “They make me look like a schoolboy.”

In some cases, not even criminal convictions are disqualifying. Henry Marrero, an employee at a group home in Utica, was convicted of beating a 99-year-old man while moonlighting at a nursing home — slapping the man three times in the face and once on the stomach. He pleaded guilty to a misdemeanor and was barred from participating in federally financed health care programs. But he kept his state job working with the developmentally disabled.

Former regulators, employees within the system and advocates have grown increasingly

dismayed at what they say is the state's tolerance of abuse of the residents, whom the state refers to as "consumers" in its records.

"It's absolutely staggering and shocking," said Michael Carey, an outspoken voice for the developmentally disabled in New York. "There is massive systemic abuse and a failure to hold these individuals properly accountable."

Mr. Carey's autistic son, Jonathan, died in state care in 2007, in what was ruled a homicide at the hands of a state employee. His death led to the passage of Jonathan's Law, which required the state to begin disclosing incidents of abuse to parents.

What is especially troubling to advocates is not just that the group-home employees are often moved around, rather than fired, even after egregious incidents of abuse. It is also that, after they arrive at their new workplaces, they often abuse again.

While working at a group home in western New York, Dwayne K. Smith told a developmentally disabled woman in his care to dance "in a provocative manner," instructing her, according to state records, to "shake your booty and/or your boobs." Reports also said he told a man and woman in his care to kiss and embrace, which they did. Mr. Smith was then transferred to a nearby home, and not long after, he sexually harassed a co-worker, taunted two people in his care by repeatedly questioning their sexuality and served beer to another, state records showed.

Protection by the Union

The Civil Service Employees Association, one of the most powerful unions in Albany, makes no apologies for its vigorous defense of the group-home workers it represents.

But the union's approach — contesting just about every charge leveled at a worker — has contributed to a system in which firings of even the most abusive employees are rare. Most disciplinary measures represent a compromise between management and the union, often reached at the urging of an arbitrator chosen by both sides.

Ross D. Hanna, the director of contract administration for the association, likened the union's role to that of public defenders, saying it was required by state law to represent its members.

"If they're brought up on charges, we have an absolute duty to represent them," Mr.

Hanna said. “That’s our job.”

He added: “When we know the person is guilty, we try to convince the person to get out of it by resigning. But if the person decides to go forward, we have to do our best job.”

This disciplinary system has made it possible for employees like Mitchell T. Lovett, who worked in several different homes on Long Island, to rack up 10 offenses — including twice punching residents in the face — before losing his job, according to personnel records.

In 1988, three years after he was hired, Mr. Lovett was cited for neglect after a person in his care walked out of a group home at night; he had not conducted all of the required bed checks. Both were serious offenses for a population for which wandering off is a frequent problem.

The state sought an eight-week suspension, but after the union objected, Mr. Lovett was given a letter of reprimand.

Five years later, he received another letter of reprimand for 17 unauthorized absences. The next year, he was disciplined for a dozen unauthorized absences. In 1995, he was disciplined three times: he was late on 11 occasions, left his shift without authorization and failed to conduct any of the required checks of residents’ beds during a night shift.

In 1999, the state sought another eight-week suspension after Mr. Lovett spent up to three and a half hours a shift making personal phone calls. In an interview, Mr. Lovett explained that he had been going through a divorce. He was docked a week’s worth of accrued time and reimbursed the agency for his phone calls.

The state first tried to fire Mr. Lovett in 2000, when he was accused of physical abuse. Mr. Lovett said he caught a resident in the eye with his elbow while trying to subdue him.

The state characterized the matter differently. “You punched him in his left eye,” a disciplinary report said.

The union contested the charge; Mr. Lovett was sent to another home, one of three transfers for disciplinary reasons during his career.

A few years later, the state tried to fire him again when his driver's license was suspended — making it impossible for him to drive the residents to their daytime programs. But the firing was overturned during arbitration, and he received yet another letter of reprimand.

By 2009, Mr. Lovett was assigned to a group home in Lynbrook. During one of his shifts, he and another employee were preparing to bring residents home from an outing. One resident, a 60-year-old man with “severe developmental disabilities,” refused to leave, “throwing his arms and legs around,” according to two employees from another home who were witnesses. In the process, he knocked off Mr. Lovett's glasses.

Mr. Lovett punched the man in the left eye. Two witnesses were said to be “shocked” and reported the episode to their supervisors.

In the interview, Mr. Lovett said he had thrown no punches. He said he had been rubbing the man's back to calm him, and his actions were misinterpreted in the commotion.

An arbitrator did not believe him, and Mr. Lovett's firing was upheld.

The union declined to discuss Mr. Lovett's case, saying it was against their policy to talk publicly about personnel matters. In a statement last week, the agency said that it “often faces significant obstacles” in “securing removal of some employees who may have committed abuses,” and said that it would review its procedures. Mr. Lovett, 49, said he had been unfairly disciplined in some cases, and blamed stress and deficient training in others. He said that as a father of five, he almost always worked another job, including selling real estate or insurance.

“It's a lack of training,” he said, “and they allow you to do certain things a certain way for a long time, then the rules change, and people get caught up in doing things that everybody's doing. So when in Rome, you do as the Romans, you know?”

“The job is really stressful,” he added. “You have residents that you work with that are attacking you, they have hepatitis, they have things that can be transferred. They bite you, they hit you, they verbally abuse you. It's almost like working in a prison.”

Few Consequences

One obstacle complicates any effort to take action against employees accused of abusing those in their care: The victims often cannot talk or have extreme cognitive impairment. Local law enforcement officials point to this to explain a lack of prosecution of cases.

But another factor seems to be at work. In many cases, the developmentally disabled do not have families actively involved in their lives, and, hence, no advocates to assure that state officials and the police take the mistreatment seriously.

The case involving Mr. Sousie is especially illustrative.

Five years ago, Mr. Sousie, then 47, was working at the home in Hudson Falls, about 50 miles north of Albany. After a co-worker saw him alone and standing between the legs of the severely disabled woman, who was lying on her back, the police were alerted. The victim was taken to the hospital, where a rape kit was administered, and Mr. Sousie was placed on administrative leave.

The victim was “unable to communicate,” the police report said, and had no relatives in regular contact.

The inquiry by the Hudson Falls police foundered. It took the department nearly 10 months to get a DNA report on the seminal fluid from the state police laboratory. But during that time, officers never obtained a specimen of Mr. Sousie’s DNA for comparison.

The case then sat dormant for nearly a year and a half, during which time Mr. Sousie was allowed to return to work at a different home. The Washington County district attorney, Kevin C. Kortright, and the Hudson Falls police chief, Randy Diamond, said DNA technology was not sufficiently advanced in 2007 to make progress in the case, even though it was in widespread use at the time.

Finally, in 2009, an enterprising police detective took up the case, and a court order was obtained to get a DNA sample from Mr. Sousie. A case was brought against him in county court, including a felony sodomy charge, only to be dismissed after a judge ruled that the district attorney’s office withheld evidence from the defense.

Mr. Sousie was convicted of endangering an incompetent person, a misdemeanor in Hudson Falls, and spent less than a year in jail. Law enforcement officials had trouble

explaining the delays and errors in the case and blamed the victim's inability to communicate.

“Certainly, if you had somebody who could communicate better, it would be an easier investigation,” Chief Diamond said. “That’s the biggest hurdle in this case.”

Mr. Kortright likened it to “the rape of a 3-year-old,” adding, “It’s a hard road without a confession by the defendant.”

While the prosecution was plagued with problems, the state’s response was even more puzzling.

After any episode that warrants discipline, the state is supposed to serve the employee involved a notice of discipline, a formal listing of accusations, but none was issued in this case, despite the presence of a witness and of physical evidence. The office did not conduct more than a perfunctory inquiry. Mr. Hill, the agency spokesman, declined to discuss the matter.

Mr. Sousie, in an interview, denied that he had been involved in a sexual assault.

“I was tucking in my shirt, and I got accused of raping a client, that’s what happened,” he said. When it was pointed out that his lawyer had, as a defense, argued that Mr. Sousie had been masturbating — hence the presence of physical evidence — he conceded, “That’s the defense that we used, yes,” but declined to elaborate.

The state had reacted more aggressively when Mr. Sousie, back in 1992, assaulted a co-worker. In that case, state records said, Mr. Sousie punched the other employee in the face. “Then you threw him onto the floor, and while straddling him, you yelled profanities at him.”

Explaining what had happened, Mr. Sousie said, “My wife and a co-worker were getting to know each other at work, and that didn’t sit too well.”

The state moved to fire Mr. Sousie, but instead reached a settlement with the union. He was placed on probation for two years, had 80 hours of back pay withheld, lost six days of leave time and was ordered to undergo counseling. But he remained on the job.

If the Hudson Falls detective had not revived the sexual assault case and sent him to

jail, of course, Mr. Sousie would, presumably, still be employed.

In the interview, Mr. Sousie, who was released from the county lockup last year, said he was now looking for work and looking forward to collecting his state pension.

“Today’s another day, you know,” he said. “I’m waiting till I get old enough to draw my retirement.”

Waning Oversight

In 1972, the Willowbrook scandal brought nationwide attention to the conditions of the developmentally disabled in state care. While Willowbrook had long been troubled — Senator Robert F. Kennedy called it a “snake pit” in 1965 — it was footage by Geraldo Rivera, then a young television reporter, that resonated.

The images of disabled children were searing. “Untended, some smeared with their own feces, many of the children were unclothed and all were simply left to sit in the ward all day,” The Times wrote at the time. “The only sound picked up by the technicians was something of an eerie communal wail.”

Prodded by the federal courts, Gov. Hugh L. Carey began a huge overhaul of the state’s system of care, and turned to Clarence Sundram, a young lawyer, to help lead the way. Mr. Sundram, a 28-year-old immigrant from India, helped conceive of the Commission on Quality of Care, which would provide the first independent oversight of how people with developmental disabilities were treated.

“We really had no capacity to investigate,” Mr. Sundram said in an interview. Existing investigative agencies, he added, “didn’t particularly understand the mental health system, so they tended to write these very sensationalist reports that weren’t particularly helpful in terms of, how do you fix this problem.”

Mr. Sundram ran the commission for two decades, bringing an outspokenness and assertiveness to the new agency.

He was sometimes confrontational and made frequent use of the bully pulpit, demanding that the news media pay attention to this population. Mr. Sundram took on broad problems, like the use of physical restraint and seclusion, and the need to report serious episodes to law enforcement.

His approach did not always sit well with commissioners at the state's Office of Mental Health and the Office for People With Developmental Disabilities, who felt Mr. Sundram was always inviting more scrutiny of their problems.

But there is no doubt that after Mr. Sundram left in 1998, the attention he brought to the issue all but disappeared and the agency's public profile collapsed.

These days, the commission is more likely to play down allegations of abuse than to root them out. And its resources are limited: in 2009, it investigated less than two percent of allegations of abuse or neglect of the disabled by employees.

The commission also appears to operate under a media blackout: Jane G. Lynch never spoke to a reporter during her nearly three-year tenure, her staff members said, and declined to comment for this article.

When you stop speaking out publicly, Mr. Sundram said, "nobody has any idea what the hell you are doing." Given the competing demands for attention, he said, the public will simply move on.

Governor Cuomo has asked Mr. Sundram to return to Albany to help overhaul the agency.

A Variety of Offenses

The hundreds of files examined by The Times provided a disturbing inventory of offenses committed by employees — few of which ever got them fired.

Kenyetta Williams, an employee at a group home on Long Island, left a resident "soiled with feces and urine and suffering from a broken leg" on her bedroom floor for more than an hour, the records stated. Ms. Williams was suspended. In a brief interview last week, she said she was taking care of too many residents and covering for an absent co-worker at the time.

It was her 13th disciplinary write-up since 1994. Another employee, in the Finger Lakes region, was fined \$375 after allowing a person in her care to sit in a van in her own feces for five and a half hours.

In 2009, the state recommended firing Charles Weimer, an employee in western New York who told a resident, “Why don’t you get a Brillo pad and scrape the black off you?” Mr. Weimer, who had previously been written up for abuse, sleeping on duty, medication errors and neglect, was reassigned, and was only later fired for violating his probation.

Michelle Penharlow, another employee in western New York, “picked up a knife” and pointed the blade and shook it at a resident, according to a 2008 discipline report, and kicked a resident “in or about the buttocks.” The state called for her firing, but she was suspended and transferred to another home instead. The next year, after being written up for 10 different incidents of verbal abuse, neglect and mistreatment, she was fired.

Because the more than 2,000 state-run group homes are scattered in communities statewide, little supervision is provided on-site, and it is often up to staff members to turn in their colleagues when one misbehaves. Typically, four to eight developmentally disabled residents live together in what are known as Individual Residential Alternatives; they are sometimes cared for by as few as two employees.

There is no question the jobs are stressful: Some residents can be violent themselves, and others see the world as a small child does.

Some of the employees disciplined for abuse blame their co-workers for their troubles.

Roger Macomber, the employee in western New York, faced charges including flinging a disabled woman across a room into a wall and destroying notes describing unexplained bruises on a person in his care.

He said that he had been turned in by a trainee who did not understand that aggressive residents could not be handled with kid gloves. He said he argued with the trainee before she made her accusations: “I called her a liar, I called her paranoid, I called her stupid,” Mr. Macomber said. “Because of that, she brought up all these different incidents that she had seen.”

A Whistle-Blower Thwarted

Despite the agency’s tendency to return offending employees to work, there is one disciplinary matter it has taken seriously — punishing a whistle-blower named Jeffrey

Monsour.

Mr. Monsour, a 50-year-old from upstate New York, went to work for the agency in 1999, after a career helping to run family restaurants ended with his father's retirement. He was partly inspired by his family's experience caring for his aunt, who had Down syndrome.

Mr. Monsour found his work as a developmental aide — the agency's primary caretaker position — rewarding, though it was not without challenges. In 2004, he was asked to conduct a fire drill at a group home in Glens Falls when a young man with Down syndrome refused to evacuate.

"He sat on the floor and wouldn't leave," Mr. Monsour recalled. "So I wrote up that he could not evacuate."

He was told by regional managers to conduct another drill. Again, the resident refused to leave, and became upset when Mr. Monsour tried to help. Supervisors arranged a third drill using another escape route, but the resident would only edge down the stairs on his bottom, blocking the exit for everyone else.

"After that point, the management there was ruthless to me," Mr. Monsour said. "They were mad I brought the issue up and just didn't sign the slip and say he could get out in two minutes and 30 seconds like everybody else, or three minutes. You know, he couldn't get out — what do you want me to do?"

Mr. Monsour believes the episode cost him a promotion, but he was undeterred and did something unusual. He filed a Freedom of Information Law request, seeking records of fire drills, and later confronted Mr. Chmura — then a top deputy — with records suggesting that drills were being falsified.

In some cases, disabled clients were said to have evacuated from their beds at night in less than three minutes, a breakneck pace a veteran worker like Mr. Monsour found unlikely.

In 2009, when a fire at a home in the Adirondacks killed four residents, an investigation showed that the home's fire drill reports were "substantially inaccurate," and "contained serious irregularities which called into question the veracity of the drills."

Mr. Monsour e-mailed Mr. Chmura, chiding him that “my concerns fell on deaf ears.” Mr. Chmura responded, assuring Mr. Monsour that the agency reviewed his claims.

Mr. Monsour kept sending out Freedom of Information Law requests, obtaining records showing, among other reports, long absences from work for top officials in the Albany area and stark inconsistencies in the discipline of workers. He was shocked to see some workers had returned to work after physical abuse.

He was also increasingly uncomfortable with what he saw as his union’s complicity and ran an unsuccessful campaign for president of his local in 2009.

The Civil Service Employees Association “is right there in bed with them,” he said, adding, “when you’re getting interrogated, they know there was just a case settled where somebody did something severe, and they got a mild penalty, and they’re not telling you this.”

As Mr. Monsour’s information-seeking continued, the agency began frequently bringing him in for questioning. In one evaluation, he was called “not a team player” because he called 911 after a resident wandered off, running through traffic. The agency later redacted the reference from his evaluation.

In another episode, supervisors at the agency filed a special disciplinary report used to document workplace violence, saying Mr. Monsour became overly upset when informed of a disciplinary action against him. The report was rejected as insufficient by another agency official.

In 2007, Mr. Monsour was interrogated at length after he allowed a resident, who was being visited by his mother, to share some of the eggplant parmesan served to him by the staff at the group home with her.

The interrogation was taped by agency officials and by Mr. Monsour, but agency officials later told him in writing that he could not release the tape to the media. They sent Mr. Monsour a second letter warning that he could not even release a transcript redacted to protect patient confidentiality.

Mr. Monsour believes a large part of the problem is that supervisors do not spend enough time in homes beyond weekday work hours, underscoring the challenge in

managing such a sprawling network of residences.

“You can’t manage all these group homes from a telephone,” he said, adding, “there are a lot of good developmental aides who are put in bad situations by management.”

Mr. Monsour wrote to Gov. David A. Paterson’s office last year and the attorney general’s office, requesting an investigation of the Office for People With Developmental Disabilities. Along with his letter, Mr. Monsour included the disciplinary files he had obtained through Freedom of Information Law requests. The governor’s office never responded, and the attorney general’s office, then run by Mr. Cuomo, referred the matter back to Mr. Monsour’s superiors.

“I didn’t even get a call from an investigator,” he said, adding, “I was thrown under the bus.”

Mr. Monsour’s efforts appear to have had little effect on the culture inside the agency.

Employees across the capital region, the area where Mr. Monsour works, were recently warned to keep quiet about episodes inside the group homes. One handout distributed by management bluntly directed employees not to mention reports of abuse in daily progress notes kept on residents. Doing so, the handout warned, could make them subject to subpoena.

“DON’T report in your notes that an Incident Report was filled out,” the instructions said, adding: “IF IT ISN’T DOCUMENTED, IT WASN’T DONE.”

Russ Buettner and Alain Delaqu  rie contributed reporting.

If you have information about abuse occurring in homes for the mentally disabled that you would like to share with The Times, e-mail tips@nytimes.com.



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