

DATE: January 30, 2013

To: Board Members

RE: Synopsis of Court Opinions 1981-2012

KNOTTS: Decided by the Court of Appeals on June 13, 2012. In this case, the client and his OSH treatment team were supporting an out of state conditional release and presented a summary of conditional release plan at his initial hearing. The Board found him appropriate for conditional release in Oregon only and ordered a community evaluation.

The court found the Board failed to specify what “necessary elements” were missing from petitioner’s summary of conditional release plan and adequately explain why it would have “little control” over petitioner when it denied his request to be conditionally released out of state.

EINSTEIN II: Decided by the Court of Appeals on February 18, 2009. In this case, both the treating psychiatrist and psychologist testified that the client suffered only from Substance Abuse diagnoses on Axis I. However, the board was not convinced by a preponderance of the evidence of this opinion given the totality of the record that included a diagnosis of Psychotic Disorder, NOS, on multiple previous occasions. The Board found client’s diagnosis was Psychotic Disorder, NOS in remission, given psychiatric and behavior history.

“As the Supreme Court explained in a previous case involving petitioner, evidence that is a year old or more does not automatically lack probative value. *Einstein*, 330 Or. at 128, 998 P.2d 654. Thus, PSRB was entitled to review the record as a whole, including the earlier diagnoses regarding the episodic nature of his disorder, the doctor’s more recent observation that petitioner’s psychotic symptoms were in remission, and petitioner’s continued mistrust and suspiciousness. That record permitted the board to draw the reasonable inference that a psychotic disorder persisted at the time of the hearing, albeit in remission. Conversely, PSRB was not compelled to find psychiatrist and psychologist testimony persuasive.”

THARP: Decided by the Supreme Court on April 14, 2005. The court reversed the decision of the PSRB and concluded that “The legislative history satisfies us that the legislature did not intend to incorporate substance dependency into the definition of “mental disease or defect” in ORS 161.295.” This case overrules *Hanson* and earlier cases addressing alcohol addiction and whether it’s a qualifying mental disease for jurisdiction purposes.

STATE v. CAVAN: Decided by the Supreme Court on September 30, 2004. The Court ruled that unlike the public courthouse, prisons [or institutions] are inherently dangerous places that the public, as a general matter, is unlikely to visit. Therefore it can be inferred that witnesses at PSRB hearings can decline to videotaped by press and that press can be barred from proceedings.

BEISWENGER II: Decided by the Court of Appeals on February 4, 2004. The court reversed and remanded the decision of the PSRB and concluded that the legislature intended the reference of “personality disorder” in ORS 161.295(2) to include sexual conduct disorders, alcohol

dependency, and drug dependency and that, as a result, those disorders do not constitute a "mental disease or defect" within the meaning of ORS 161.295(1).

ROMANOV: Decided by the Court of Appeals on January 23, 2002. The court reversed the Board's decision to extend the client's term of jurisdiction when it realized the trial court miscalculated the maximum sentence for the instant offense. "We do not read ORS 161.327(1) as authorizing the Board to determine that its jurisdiction is greater than that established in the trial court's order. Nothing in ORS 161.327(1) authorizes expressly the Board to extend the period that it exercises jurisdiction over a petitioner or to correct any errors that it perceives in the order. Similarly, we are not persuaded that the Board's actions were a 'necessary implication' of ORS 161.327(1); the text of that statute does not imply that, if the court errs in setting the period of jurisdiction, the Board can step in and rewrite the court's order. Rather, ORS 161.327(1) leaves the task of defining the extent of the Board's jurisdiction to the trial court, and any error in its order is subject to correction on direct appeal."

BEISWENGER I: Decided by the Court of Appeals on November 18, 1998. The Court of Appeals affirmed the decision of the PSRB, finding that petitioner is a substantial danger to others, but is nonetheless appropriate for conditional discharge when appropriate sources of supervision and treatment become available in the community. The petitioner was asking to be discharged from the jurisdiction of the board, claiming he is no longer a substantial danger to others. Petitioner noted particularly that neither of the doctors who testified at the hearing affirmatively stated that he would pose a substantial danger to others if released unsupervised. PSRB concluded that it had substantial evidence to support its finding of petitioner's dangerousness. The court agreed with the conclusion of the PSRB, but not with its reasoning. The court, in a rather confusing paragraph, states that the board does not have to rely on expert medical testimony because the case falls under ORS 161.346(1). Yet, the substantial evidence that the court relies on, is that of medical professionals who testified that petitioner required continued supervision and treatment, . . . to address "safety" issues arising out of his continued difficulties in dealing with substantial negative impulses and anger. They found substantial evidence and affirmed. It is unclear why they stressed that ORS 161.346(1) does not require expert medical testimony.

HANSON: The Court of Appeals affirmed the decision of the PSRB on September 30, 1998. Mr. Hanson requested discharge from Oregon State Hospital. The Board denied that request, but found that he was eligible for conditional release but that he could not be released because of the lack of proper facilities. PSRB found that petitioner suffered from alcohol abuse, that alcohol abuse is a mental disease or defect for purposes of ORS 161.341(4)(a), and that without adequate supervision, he would continue to present a danger to others. Petitioner challenged those findings, first on the ground that alcohol abuse is not a mental disease or defect and second on the ground that the board's determination was not supported by substantial evidence. Petitioner argues specifically that alcohol abuse falls within both the exclusions in ORS 161.295(2), which limits the verdict of "guilty except for insanity", it states that "the terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, nor do they include any abnormality constituting solely a personality disorder." The court concludes that alcohol abuse is not solely a personality disorder, as it is excluded from the DSM-IV's list of personality disorders. The court goes on to say that the defining feature of alcohol abuse is the maladaptive use of alcohol. That behavior is not a

“personality trait” in the sense that, for example, emotionality or detachment are. The fact that alcohol abuse is defined and described in terms significantly different from those used to describe personality disorders suggests strongly that it is not such a disorder under the DSM-IV. The court also finds that alcohol abuse is not “manifested only by repeated criminal or otherwise antisocial conduct.” Again, they use the maladaptive use of alcohol language, and go on to say that “while such excessive drinking by an adult is clearly unhealthy, it is neither *per se* criminal nor invariably antisocial.” The court also includes that alcohol abuse fails this definition because of the “only” language, “manifested only by repeated” The court relied on DSM-IV that states ill effects on social and interpersonal aspects of their life. The court notes that this behavior is at least partly a mental or psychological difficulty bringing it out of the exclusion. The court makes short shrift of petitioner’s argument that the decision lacked substantial evidence, citing the many exhibits and expert testimony. Affirmed.

It is worth noting that the dissent cites the legislative history as its basis to conclude that alcohol abuse was not intended to be included within the meaning of “mental disease or defect.”

STRECKER II: The Court of Appeals affirmed the order of the PSRB on May 27, 1998. Following a hearing in 1996, the PSRB issued an order in which it determined that its jurisdiction over petitioner was for 40 years, the maximum term of imprisonment that he could have received for the crimes of rape and sodomy at the time he committed those acts. Petitioner argued that the PSRB “is not empowered, nor did the legislature intend for it, to make sentencing decisions.” The court finds the argument misdirected, in that the PSRB is not making sentencing decisions, but is rather referencing the maximum sentence provided for by the statute at the time of the commission of the offense. The issue is whether the PSRB correctly determined the maximum sentences that petitioner could have received under the applicable statute, had he been found guilty of those offenses. At that time, the crimes of rape in the first degree and sodomy in the first degree were both subject to 20-year maximum sentences. On a theory that his sentences were potentially to be run concurrently, petitioner argued that the Board could only give him a 20-year maximum sentence. The court found that separate sentences were permissible for rape and sodomy offenses arising out of the same criminal episode, therefore consecutive 20-year sentences were appropriate. Affirmed.

EINSTEIN: The Court of Appeals reversed and remanded the decision of the PSRB in an opinion dated April 22, 1998. Mr. Einstein had requested to be discharged from conditional release on the ground that he is no longer affected by mental disease or defect. The Board relied solely on petitioner’s medical record to determine that he suffers from a mental disease that is in remission. The most recent document that diagnosed petitioner with a mental disease was a report dated almost a year before the hearing date. The court held that these records were inadequate to discuss Mr. Einstein’s current mental state. The court noted that once petitioner offered evidence at the hearing that established that he no longer suffers from the disease, the state had the burden to overcome that evidence to show that petitioner still suffers from a mental disease that is in remission. They failed to do so, because they relied on medical reports that could have easily been outdated. Because the medical records did not suffice to demonstrate petitioner’s current medical status, PSRB’s finding that petitioner’s disease was in remission was not supported by substantial evidence. The order was reversed and remanded for reconsideration.

OSBORN: The Supreme Court of Oregon reversed the decision of the Court of Appeals, vacated the PSRB's order, and remanded the case to the PSRB for reconsideration on March 27, 1997. *Osborn v. PSRB*, 325 Or 135, 934 P2d 391 (1997). The Court of Appeals had affirmed the PSRB's order on June 21, 1995; that order continued commitment of Mr. Osborn at Oregon State Hospital; *Osborn v. PSRB*, 135 Or App 94, 96, 898 P2d 789 (1995). The main question that the Court wrestles with is whether the "mental disease or defect" found at the time of the hearing (subsequent to retention of Jurisdiction) must, under the statute, be the same "mental disease or defect" identified at the time of initial placement. Specifically, they attempt to determine why the legislature used a different modifier or omitted the modifier before the phrase "mental disease or defect" in each of the three paragraphs of ORS 161.346(1). The Court answers the question by concluding that the text and context of ORS 161.346(1) show that the PSRB may continue jurisdiction over a person who is affected by a mental disease or defect, even if the diagnosis at the time of the PSRB hearing differs from the initial diagnosis. The Court finds secondly that PSRB lawfully delegated its power to the American Psychiatric Association when it adopted a rule defining a mental disease or defect in part by reference to the "current" DSM, which was the DSM-III. Petitioner's third argument is that pedophilia cannot constitute a mental disease or defect sufficient for PSRB jurisdiction, because it falls within the ORS 161.295(2) exclusion for abnormalities "manifested only by repeated criminal or antisocial conduct, but also includes mental or psychological features, it is not subject to the exclusion. Petitioner's fourth argument was that the PSRB lacked substantial evidence to find that he suffers from a mental disease or defect. The Court agreed, finding that the Board used the criteria of the DSM-III-R to make its decision, as opposed to the DSM-III, that was in existence when petitioner was initially placed. The Court remanded the case to the PSRB for reconsideration to determine whether petitioner met the diagnostic criteria for pedophilia that are set forth in the DSM-III.

DREW: The Supreme Court of Oregon reversed the decision of the Court of Appeals on February 1, 1996. The Court of Appeals had affirmed the PSRB's order without opinion. *Drew v. Psychiatric Security Review Board*, 127 Or App 753, 875 P2d 546 (1994). The Court here vacated the order of the PSRB, and remanded it to the Board for further consideration. Petitioner's petition for review was allowed by the Court to assess her claim that PSRB's order to continue commitment at Oregon State Hospital was not supported by substantial evidence. The PSRB presented three interrelated arguments, each attempting to persuade the Court that it should afford PSRB deference. One of the arguments involved the fact that the PSRB is comprised of members with significant expertise. The Court countered that argument by using a Court of Appeals decision that addressed the question, "the agency may use its expertise to evaluate and understand evidence, but it is quite another thing to allow it to use its special knowledge as a substitute for evidence presented at the hearing." *Rolfe v. Psychiatric Security Review Board*, 53 Or App 941, 951, 633 P2d 846 *rev den* 292 Or 334, 644 P2d 1127 (1981). The Court found that the Board did not connect its decision to the evidence in the record that might have supported it. The agency must demonstrate the reasoning that leads the agency from the facts that it has found to the conclusions that it draws from those facts. *Home Plate, Inc. v. OLCC*, 20 Or App 188, 530 P2d 862 (1975). The Court found that the agency's failure to connect permissibly its facts and its holding is fatal to the agency's order, and found that the order must be vacated and the case remanded.

RIOS II: The Supreme Court of Oregon reversed the decision of the Court of Appeals and vacated the order of the PSRB, remanding the case to the Board for reconsideration. The Board had denied Mr. Rios' request for discharge or conditional release and ordered that he remain under the PSRB's jurisdiction. The Court of Appeals affirmed that order. *Rios v. PSRB*, 135 OR App 265, 898 P2d 799 (1995). Mr. Rios raised three arguments (three that are becoming repetitive in these cases). First, he argued that pedophilia does not constitute mental disease or defect within the statutory meaning, second he asserts that he no longer suffers from the same condition for which he was placed under the PSRB's jurisdiction initially, and third he argues that the record does not contain substantial evidence to support the Board's finding that he suffers from a mental disease or defect. The first two arguments did not work based on *Osborn*. The third argument of lack of substantial evidence was what caused the reversal, in that it was unclear whether the diagnosing psychiatrist used the correct edition of the Diagnostic and Statistical Manual. The case was remanded to the Board for reconsideration, to be viewed within the parameters of the DSM-III, the applicable manual.

RIOS I: The Court of Appeals affirmed the PSRB decision on June 28, 1995, denying Mr. Rios' request for conditional release, and ordering his continued commitment. Mr. Rios argues that the Board's finding is erroneous because it is not supported by substantial evidence and because as a matter of law, "the illnesses cited by the Board are excluded from ORS 161.295(2). * * *". Those illnesses were pedophilia, history of alcohol abuse and dependence, and polysubstance abuse as well as personality disorder with antisocial and paranoid features. As the court has held before in *Osborn v. PSRB*, pedophilia is a mental disease that manifests itself in ways other than criminal or antisocial conduct. Thus, they held that pedophilia as defined by DSM-III-R, is not precluded from being a mental disease under ORS 161.295(2). As they found that one of his diagnoses constituted a mental disease they found it unnecessary to address the other diagnoses. As to Mr. Rios contention that the Board lacked substantial evidence because he did not suffer from the same mental disease or defect that originally brought him under the jurisdiction of the Board, the court relied on its previous decision in *Osborn*, holding that PSRB's jurisdiction may continue even though the committed person suffers from a mental disease or defect that is different from his or her original diagnosis upon initial placement under the jurisdiction of the Board. The court found that there was substantial evidence in the record that petitioner presently suffers from a "mental disease or defect."

OSBORN: Decided by the Court of Appeals on June 21, 1995. The court affirmed the decision of the PSRB, which denied Mr. Osborn's request for discharge and ordered his continued commitment at Oregon State Hospital. Petitioner argued primarily that PSRB erred because he no longer suffers from the condition responsible for his placement under PSRB's jurisdiction. The court states that PSRB's interpretation of the statute is a plausible one. PSRB argues that the emphasized phrases in ORS 161.341(4)(a) and ORS 161.346(1) indicate that the legislature intended that PSRB retain authority if the person continues to suffer from any mental disease or defect, and argues further that "the three subsections of ORS 161.346(1) are intended to be read in sequence, and use of the phrase 'the mental disease or defect' in the final section constitutes merely a reference to the previous phrases, 'no mental disease or defect,' found in ORS 161.346(1)(a), and 'a mental disease or defect,' found in ORS 161.346(1)(b)." The Court also looks at the legislative history to determine that the legislature intended PSRB to retain jurisdiction over an individual who continues to suffer from any mental disease or defect that

causes the person to be a substantial danger to others, regardless of whether it is the same disease or defect that resulted in the adjudication under ORS 161.295. *Marks v. McKenzie High School Fact-Finding Team*, 319 Or 451, 457, 878 P2d 417 (1994). Petitioner also argues that “pedophilia” does not meet the legal definition of a “mental disease.” He argues that ORS 161.295(1) excludes from the definition of “mental disease or defect” an abnormality that manifests itself “only” through criminal or antisocial conduct. The court states that a diagnosis of “pedophilia” as a sexual disorder under DSM-III-R requires more than a manifestation of criminal or antisocial conduct. It also requires “recurrent intense sexual urges and sexually arousing fantasies” over a period of at least six months. . . . accordingly they find that the petitioner is wrong when he argues that his diagnosed condition is not a mental disease under ORS 161.295(2) as a matter of law. The court lightly addressed his other two arguments that – PSRB lacked substantial evidence to find that he suffers from a mental disease or defect, and that the PSRB unlawfully delegated its authority when it adopted OAR 859-10-005, and found them both without merit.

MENZL: The Supreme Court of Oregon reversed the decision of the Court of Appeals, which had affirmed the PSRB’s order without opinion on May 3, 1995. *Menzl v. PSRB*, 134 Or App 217, 893 P2d 580 (1995). PSRB had retained jurisdiction over petitioner because it found that petitioner is affected by a mental disease or defect, and that when active it would render him a substantial danger to others. They also found that petitioner was a proper subject for conditional release, but that the supervision and treatment necessary for his conditional release were not then available, but when they became available he could be conditionally released. Petitioner argued that he did not suffer from a mental disease or defect because polysubstance abuse is not a mental disease or defect. The Court found that the doctors who examined Mr. Menzl relied on the DSM-III-R in diagnosing him, when they should have used the DSM-III. Much like the analysis in *Osborn*, the Court remanded the case to PSRB, so that it could evaluate the issue by using the criteria in DSM-III, as opposed to DSM-III-R.

HODGIN: Decided by the Court of Appeals on April 27, 1994. The court affirmed the decision of the PSRB, which denied petitioner’s request to be discharged or conditionally released. The court had previously reversed and remanded the case to the PSRB because it lacked substantial evidence. Petitioner assigned error to the PSRB’s determination that he is affected by a mental disease or defect. Petitioner argued that, on remand, PSRB did not consider any new evidence; rather, it simply re-worded its finding by incorporating different facts from the same record. PSRB conceded that no new evidence was presented at the hearing on remand, however its findings were supported by substantial evidence because its findings on remand relied on evidence that it did not expressly rely on its initial order. The court found that at the initial hearing, the evidence that PSRB relied on to determine whether petitioner suffered from a mental disease or defect was equivocal testimony from three experts. At the hearing on remand, PSRB expressly found that petitioner had displayed signs of grandiosity one hour before the hearing, that evidence, combined with the diagnosis of bipolar disorder in 1985 and in 1990, supported an inference that petitioner’s bipolar disorder continued to exist at the time of the hearing. PSRB may base its findings on the trial court’s findings from the original commitment hearing and any additional information then received. The court found that there was substantial evidence to support the findings in the amended order.

STEWART: Per Curiam decision by the Court of Appeals on December 29, 1993. The court affirmed the PSRB's decision denying Mr. Stewart's conditional release. The petitioner was released on March 11, 1992, about two weeks after the order was entered. He pointed to no collateral consequences at the time resulting from his continued confinement after the February, 1992 order. The court found that his petition was moot. The court expressly did not decide petitioner's claim that his condition does not constitute a mental disease.

BAHRENFUS II: Decided by the Court of Appeals on November 3, 1993. The court affirmed the PSRB's decision to maintain Mr. Bahrenfus at Oregon State Hospital. Mr. Bahrenfus requested condition release if discharge was not granted. Mr. Bahrenfus argued first that substantial evidence does not support PSRB's finding that he suffers from a mental disease or defect. He argued that Dr. Russell testified that Petitioner not longer suffered from a mental disease. The Board pointed to the fact that Russell also testified that his mental disorder was in remission. Under ORS 161.327(3), someone with a mental disorder in remission has a mental disorder if the disease may, with reasonable medical probability, become active and render the person dangerous to others. Petitioner next assigned error to the finding that he presents a substantial danger to others. The Board relied on the testimony of Goodman and Russell as to dangerousness. In order to find petitioner appropriate for condition release, the Board must first decide if they can be adequately controlled in the community. If the answer is "no", PSRB need not address the second question of whether necessary supervision and treatment are available. The Court found that PSRB's conclusion that petitioner cannot be adequately controlled in the community was support by substantial evidence.

CRAMER: Decided by the Court of Appeals on August 4, 1993. The Court affirmed the PSRB decision to maintain Mr. Cramer under it's jurisdiction in Oregon State Hospital. Mr. Cramer argued that poly substance abuse and alcohol abuse are not mental diseases or defects. Rather, they are personality disorders. The Court did not decide this decision but said they would not entertain the argument for the first time on appeal. The Court held that Mr. Cramer did not raise the Board's classification of polysubstance and alcohol abuse at the hearing. Harris plans to appeal to the Oregon Supreme Court.

BAHRENFUS I: Decided by the Court of Appeals May 19, 1993. Opinion vacated the Board's November 18, 1992 decision; remanded for proceedings consistent with this opinion. The decision indicates that when a client asks for an independent evaluation the Board needs to articulate the reasons for denial of such a request. A blanket denial is insufficient. Attorneys in the Appellate Division are exploring the possibility of requesting reconsideration by the Court. If reconsideration is not pursued, the Board will need to administratively review the request for an outside psychiatric evaluation in Mr. Bahrenfus' case.

BRUMNETT: The Oregon Supreme Court issued its opinion *Brumnett v. P.S.R.B.* on February 19, 1993. Unfortunately, the Court didn't reach the issue of whether "alcohol abuse" is a mental disease or defect as defined by Oregon statutes relative to the PSRB. Rather, the Court found that the case was moot because while review was pending Mr. Brumnett had been discharged at a subsequent hearing.

GARCIA: On December 10, 1992, a Psychiatric Security Review Board decision was overturned. *In the Matter of Crosby Garcia*, the court stated that the Board could not rely on exhibits prepared nine months to one year prior to the hearing as a basis for its finding regarding a mental disease or defect in the case of live testimony by a physician or a psychologist that the client does not suffer from a mental disease or defect at the time of the hearing.

STRECKER I: On November 25, 1992, the Court of Appeals decided *In the Matter of Donald Strecker* which reverses and remands the Board's decision to continue Mr. Strecker's commitment at Oregon State Hospital. The Court ordered the Board to reconsider this and act in a manner not inconsistent with the opinion. Mr. Strecker had several diagnoses when he came under the Board's jurisdiction. At his most recent hearing he was found to have a borderline personality disorder. The Board petitioned the Court for reconsideration. Reconsideration was allowed and the original Board opinion affirmed on May 12, 1993.

HODGIN: Decided by the Court of Appeals on June 24, 1992, the court found that the Board did not have substantial evidence to make its finding that Mr. Hodgin suffered from a mental disease or defect. The finding was made by the Board at an initial hearing. It is significant that at the hearing Dr. Meyer testified that Mr. Hodgin possibly suffered from a mental disease or defect. There was additional evidence to support the Board's finding. However, the court found that it did not meet the test of "substantial evidence." This case harkens back to the *Martin* decision.

The Court order the case remanded for proceedings not inconsistent with the opinion. We rewrote the order which is up on appeal again.

MARTIN: Decided October, 1991; the Court of Appeals affirmed the Board's decision. The Supreme Court reversed, holding that the Board lacked substantial evidence for a finding that Mr. Martin suffered from a mental disease or defect.

ORS 183.482(8)(c) provides that the court:

“shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding.”

Dr. Meyer testified at the hearing that Mr. Martin suffered from a paranoid personality disorder and that a paranoid personality disorder can deteriorate into a psychotic state. There was a possibility that Mr. Martin had experienced some psychotic decompensation in the past but Dr. Meyer was not sure Mr. Martin had actually decompensated and gotten psychotic.

On page ten of the opinion the Court said, “PSRB's finding in this case is not supported if the evidence shows only that at the time of the hearing petitioner suffered from a personality disorder accompanied by a past or future possibility of decompensation to a mental disease or defect.” (Underlining added by the Court.) The Court went on to

distinguish deterioration from remission. The Court also emphasized that the Board needs to focus on the diagnosis at the time of the hearing.

LOVETTE: Decided July, 1990, by the Court of Appeals; affirmed Board decision to maintain jurisdiction. In the opinion, the court noted that the statute requires a two step process for deciding the issue of conditional release. First, the Board must address the question of whether the client can be adequately controlled and treated in the community. If the question is answered in the affirmative then the second question is whether there is supervision and treatment in the community. If the answer to the first question is in the negative then the inquiry ends there from a legal standpoint.

BALDWIN: In *Baldwin*, a case which the Court upheld the Board's decision, decided June 28, 1989, the Court stated that the person under the Board's jurisdiction, in order to be discharged, must no longer be affected by the condition that made them dangerous, that is the mental disease or defect that originally caused the placement under the Board.

ROLFE: In *Rolfe*, the Court of Appeal remanded the case back to the Board on September 28, 1981. The court found error after the psychiatrist member concluded that petitioner continued to be affected by a personality disorder and was still dangerous if not supervised despite the evidence in the record which supported the exact opposite.

The Court stated that "as previously noted, ORS 183.450(4) directs that '(a)gencies may utilize their experience, technical competence and specialized knowledge in the evaluation of the evidence presented to them.' It is one thing, however, to say that an agency may employ its experience and expertise to evaluate and understand evidence and quite another to allow it to use its special knowledge as a substitute for evidence presented at a hearing. A fundamental premise of administrative law is that the quality and efficiency of the regulatory process will be enhanced by delegating authority to experienced, expert administrators. Just as fundamental, however, is the principle that fact finding in contested cases is governed exclusively by the record of the hearing. In this case, PSRB has not merely evaluated evidence but has supplied evidence derived from personal knowledge to support its decision. This procedure ignores the requirement that only officially noticed facts and evidence offered and made part of the record may be considered in the determination of the case."