

MINUTES
Psychiatric Security Review Board
Administrative Meeting
Adult Panel
March 3, 2016
Approved September 22, 2016

An administrative meeting of the Psychiatric Security Review Board was convened on March 3, 2016 at 6:05 p.m. in the fourth floor conference room of 620 S.W. 5th Avenue, Portland, Oregon 97205. Board members present were Jenna Morrison, P.P.O., Chair; Elena Balduzzi, Psy.D.; Acting Chair; Scott Reichlin, M.D. and John Swetnam. PSRB staff present in person included Executive Director Juliet Britton, J.D.; Sid Moore, Deputy Director and Jane Bigler, Executive Secretary, as note taker. Also present by phone was Ronelle Shankle, DOJ-Crime Victim Services Division and Harris Matarazzo, J.D., appointed PSRB indigent client defense counsel. Board member Kate Lieber, J.D. was excused.

At 6:05 p.m., Chair Morrison called the meeting to order.

The Board began with an opportunity for public comment and there was none.

Next, the Board reviewed the Administrative Meeting minutes from December 1, 2015. Chair Morrison asked if there were any corrections to be made. Dr. Balduzzi noted two corrections needed on page 2, a third of the way down in the first paragraph, there should be a “d” at the end of the word “Boar” and the acronym for the Board of Parole and Post-Prison Supervision should contain a third “P.” Mr. Swetnam moved to accept the minutes with the proposed changes and Dr. Balduzzi seconded the motion. The motion passed unanimously.

Chair Morrison then requested that Ms. Britton provide her Executive Director Updates. Ms. Britton began with the results of the 2016 Legislative Session which included a Bill that would have allowed mental health providers to notify the State police of new clients with a mental health diagnosis so that they could temporarily add these clients to the NICS database, for

30 days, in order to expand mental health prohibitions for the purchase of a firearm. However, it did not go any further than that.

The next update surrounded the topic of possible Legislative Concepts for the 2017 Session. Ms. Britton noted that one thing to consider is that agencies will be required to pay more towards PERS for employees. She further indicated that the deadline to submit is on April 15, 2016, but to keep in mind that it would have to go through the Department of Administrative Services (DAS) first. Ms. Britton then noted the following concept ideas, including some from community providers:

- Discontinue providing hearing notices and orders with results to the judge from the instant offense. The District Attorneys would continue to be notified.
- Possible substitution for the term “mental disease or defect.”
- Create a clearer definition for the term “mental disease or defect.”
- Consider creating rules and/or statutes surrounding Restorative Justice. The committee began a year ago, but there has been some resistance due to the concern that the documents created would somehow become part of the client’s permanent record.

On the last suggested concept regarding Restorative Justice, Ms. Britton asked Mr. Matarazzo if there were any other updates. Mr. Matarazzo noted that he has been working with Assistant Attorney General Lynn Larsen in regards to the committee. Mr. Matarazzo indicated that he does not think restorative justice is a bad idea, but he does have concerns about his clients’ rights and he doesn’t believe that the Board has the authority to create that type of program. Mr. Swetnam asked for a definition/purpose of restorative justice. Ms. Britton gave a quick overview of the program, the victim would be the one to initiate and there is a third party to facilitate a dialogue. Mr. Swetnam then opined that he would agree that there would be some clients he could see it working for and others that it wouldn’t. Ms. Britton indicated that there

would have to be some sort of screening process for both victims and clients. Dr. Balduzzi added that the anticipated result could include empathy, reconciliation and remorse and when it works, it can be very good for both parties.

Discussion then moved to the reclassification of the Executive Director. At the urging of the Department of Administrative Services, Chair Morrison approved for a meeting to be requested in order for Ms. Britton and a Board member to respond to any questions there may be regarding the reclassification. The old classifications were indicated by a level of 1 to 7, Ms. Britton's current classification is a 4 or a 5. Under the new classification system, Ms. Britton's classification would be equivalent to a level D (in the Principal Executive/Manager classification). For comparison sake, others in similar positions are classified at E or F, such as the director of the Parole Board. As further example, DEQ's HR Manager is a level E and our Legislative Fiscal Officer is an F. With consideration given the depth of responsibility, Chair Morrison recommends that Dr. Balduzzi, Ms. Lieber or herself to be designated to participate in the meeting as they have had the most experience of the 5 members.

The next item on the agenda was to discuss the issue of and possible Board action of the following:

- A) Delegate authority to community case managers to allow them to approve overnight, in-state travel. Ms. Britton noted that case managers already have the authority to approve same day, out-of-county travel and that she must approve any overnight, out-of-county travel. Ms. Britton further indicated that the reason behind the current rules is because there had been concern that some case managers had been approving for clients to stay with their significant others for long periods of time and the clients were not meeting some of the conditions of their release due to these types of passes being granted. Discussion continued around the length, distance, and purpose of these types of passes. Ultimately, the Board stated that case managers may approve a

multiple day pass, up to two weeks, as long as the client has pass privileges to support that type and length of pass and the case manager submits a notification for it with specific information regarding the pass.

B) Definition of “secure perimeter” for secure residential treatment facilities (SRTF).

This discussion is the result of a recent absconsion from an SRTF where the client was able to jump the fence to escape. Inquiry of all the SRTFs in the state has concluded that most of the SRTFs have locked doors/windows and a low fence (non-electric). Some members indicated they understood that the fences were higher at secure facilities and possibly even ‘non-climbable.’ However, the only facility with a higher, non-climbable fence is Pendleton Cottage and it is a state-operated facility. Mr. Swetnam questioned whether OSH staff and treating doctors realize that the security at these facilities is not similar to that at OSH. The outcome of this discussion was that at the SRTFs where there is not a high fence, the definition of “secure perimeter” would be the facility itself and would not include the yard areas. Yard privileges will have to be decided on a case by case basis. Case managers for these SRTFs will need to submit a request for administrative review.

Mr. Moore then moved to the topic of the Oregon Administrative Rules and permanent rulemaking needing Board Action:

- i) Proposed Amendments to OAR 859-010-0005(11), changing the current references of “DSM IV-TR” to “DSM 5.” This amendment was made a temporary rule at the last meeting and now needs to be made permanent. Dr. Balduzzi moved to make this a permanent rule, Mr. Swetnam seconded the motion and the motion passed unanimously with the remaining members.
- ii) Proposed Amendment to OAR 859-200-0070, Certification Process for Civil Commitment. Change is to subsection 7. This would allow the Board to take

action by administrative review versus a full hearing. Following a brief discussion, Mr. Swetnam moved to accept the proposed change, Dr. Balduzzi seconded the motion and the motion passed unanimously with the remaining members.

iii) Proposed Adoption of OAR 859-400-0001 to 859-100-0045, Sex Offender Classification/Reclassification/Relief. The proposed change is to expand the allowed registrant response time to 20 days. Dr. Balduzzi noted that the Parole Board currently has it as 60 days. However, considering that the Board must classify sex offenders within 30 days, 20 days is more feasible. Dr. Balduzzi moved to adopt this change, Mr. Swetnam seconded the motion and the motion passed unanimously.

iv) Proposed PSRB rules overhaul to update current policies/practices:

a. Amendments to Division 20, Organization of the Adult Panel, update to remove the statutory language as it is repetitive. Dr. Reichlin asked if there were substantive changes. Mr. Moore indicated they were specific to the Executive Director's powers and duties. Mr. Swetnam moved to accept the amendments, Chair Morrison seconded the motion and the motion passed unanimously.

b. Amendments to Division 30, Responsibilities of the Adult Panel, regarding length of jurisdiction. Sentencing for the Board is no longer "to the extent that the law allows." The judge is allowed to have discretion. Mr. Swetnam moved to accept the changes to Division 30, Dr. Balduzzi seconded the motion and the motion passed unanimously.

c. Amendments to Division 40, Adult Panel Administrative Meetings. Changes were made for consistency and to address the new language added to the

Public Meetings Law, this also made for the creation of Division 45. Mr. Swetnam moved to accept the changes made to Division 40, Dr. Reichlin seconded the motion and the motion passed unanimously.

- d. Adoption of Division 45, Public Records. This topic was moved to Executive Session as the discussion will include attorney/client privileged information from the Board's General Counsel. Following the Executive Session, the meeting reconvened and members discussed the concerns submitted by some of the Rules Advisory Committee (RAC) members and possible solutions. Chair Morrison noted for the record that the Board has considered the concerns raised by RAC members. However, Mr. Swetnam then moved to adopt Division 45 as written, Dr. Reichlin seconded the motion and the motion passed unanimously.
- e. Amendments to Division 50, Hearings. The ORS is disorganized under this topic, the change to this rule will lay it out in a more organized manner. The major change is the use of the term "client" vs. "patient." Board advocates/stakeholders do not like the suggestion of a change to "consumer" but do like the suggestion of "patient" as "client" may be perceived as "client/attorney privilege." Mr. Swetnam moved to remove the term "client" and replace it with "patient," Dr. Reichlin seconded the motion and the motion passed unanimously with the remaining members.
- v) Ms. Britton then moved to rulemaking issues that need Board action. First, there was the review and possible adoption of a temporary rule to update the current references of "DSM-IV" to "DSM-5." Virtually all mental health providers now use DSM-5. The members indicated they had no questions. Dr. Reichlin moved

to adopt the temporary rule and Mr. Swetnam seconded the motion. The motion passed unanimously.

Next, the Board moved to agenda Item 6, a review of the current Conditional Release Hearings Policy and possible modification allowing for flexibility under certain circumstances. This includes a simple amendment to allow for an administrative review of a conditional release plan. The Board's discussion resulted in the decision to maintain the policy as it is currently written.

Lastly, Chair Morrison discussed the plan for the Executive Director's annual performance evaluation. Chair Morrison noted that a survey will be distributed to various Board members, staff, community members and various other stakeholders. This matter will be discussed further once the results of the survey have been received.

The meeting was adjourned at 8:15 p.m.