

MINUTES
Psychiatric Security Review Board
Administrative Meeting
Adult Panel
December 1, 2016
Approved March 22, 2017

An administrative meeting of the Psychiatric Security Review Board was convened on December 1, 2016 at in the PSRB board room on the fourth floor of 610 SW Alder Street, and called to order at 6:31 p.m. by Chair Elena Balduzzi, Psy.D. Board members present were Kate Lieber, J.D., John Swetnam, Trish Elmer, P.P.O., Scott Reichlin, M.D., and Dr. Balduzzi. Executive Director Juliet Britton and Deputy Director Sid Moore were present representing PSRB staff. Harris Matarazzo, attorney at law, and other members of the public in attendance. Mr. Moore served as note-taker for the meeting, exclusive of the executive session, which took place at the end of the public portion of the meeting.

1. Public Comment

The Board began with a public comment period. The only name appearing on the list of commenters was Mr. Matarazzo's. Mr. Matarazzo spoke on the topic of PSRB's proposed restorative justice program, delivering the report of the restorative justice (R.J.) work group.

Mr. Matarazzo stated the following: that the restorative justice committee had been selected, shown a film and given a presentation on restorative justice from Ms. Britton and Ms. Shankle. Mr. Matarazzo stated that no consensus was reached among the committee members whether to proceed and if so, with what specific proposal. Mr. Matarazzo then reported that, in a second meeting, there was a call for volunteers, but that no volunteers came forward at that time. Mr. Matarazzo stated that at a third meeting, a group from PSU was present and met with the committee. At that meeting, Lynn and Charmaine, in addition to Mr. Matarazzo, agreed to explore the R.J. concept.

Mr. Matarazzo stated that he'd had a little involvement in R.J., but said it is a victim's needs program promoting recovery for the offender and the victims of the offense. Mr. Matarazzo stated that his first question about a potential R.J. program surrounds the question of jurisdiction. Assuming PSRB has jurisdiction, are there things that can be done to protect patients from misuse of information that might be gained during the R.J. process?

According to the research into this topic by his office, conducted using the firm's own time and money, Mr. Matarazzo reports that there appears to be no R.J. model similar to the one currently contemplated, but that this is not unexpected given the absence of other PSRB programs elsewhere in the country. Nevertheless, the United States Department of Justice, the United Nations, mental health courts (which use the therapeutic model), scholarly review, local and national staffs, and concerned individuals have looked at this R.J. model, though Mr. Matarazzo stated that its usefulness is unknown for now.

In order to establish a solid R.J. program, reports Mr. Matarazzo, several requirements should be present: the capacity to conduct the interactions; confidentiality protocols; participation by the parties (whose involvement must be voluntary); no harm to the parties, which would include re-victimizing the perpetrator in addition to the victim.

Mr. Matarazzo further stated that an R.J. program must establish a mental health competency standard before clients could engage. The committee's recommendation is that the competency standard be higher than that required for the original adjudication, which would produce more meaningful outcomes and a higher likelihood of recovery for the patient.

The committee asked itself what entity would make the decision as to whether the patient was competent to participate in R.J., with Ms. Shankle expressing that she did not like the idea of that entity being the Oregon State Hospital. In addition to these answers, the committee would

also want to know how the evaluation process would look, and whether there would be an appeals process.

Problems:

Mr. Matarazzo stated that the committee had identified several potential problems associated with an R.J. program: specifically:

- Confidentiality—who/what entities would have access to R.J. records? Records access could be a problem for the Board as the R.J. process progresses. According to Mr. Matarazzo, solving this problem was not the province of the committee;
- Leaks of information to victims;
- Current law allows for victim impact statements; it would be difficult to keep R.J. discussions out of them;
- If the Board were to have custody of these records, there would have to be division between the Board and Board staff.
- The program must be voluntary and non-coercive for both parties. The agreement to engage in—or not—the process should not affect the patient's privileges.
- It's important that the decision making body (for R.J. eligibility) be unbiased, consistent, and objective; because the committee and the Board wouldn't want to give the impression that R.J. was a requirement for them to get privileges (including CR, etc.);
- Appropriate screening: PSRB would be working with providers, etc., so the screening process would need to be rigorous.

Mr. Matarazzo also discussed “other things to think about,” including:

- Possible use of alternative or existing programs. He also stated that OSH seems like it would be a useful resource because:
- It's familiar with PSRB patients;
- Procedures and other resources for interacting with PSRB patients already exist at OSH;
- Infrastructure already exists at OSH;
- OSH staff are less likely to harm the patient than other staffs;
- OSH is a neutral entity, and less susceptible to influence from victims, lawyers, etc.
- One committee member thought the hospital was too biased to do this, but Mr. Matarazzo stated that this was that one person's opinion, not a consensus view;
- An R.J. program is already in place at the Department of Corrections. The issues encountered there would not be new;
- OSH has graduated many forensic providers;
- Possible Teaching institution involvement. Mr. Matarazzo says he talked about such a program to a former dean at Pacific;
- A not-for-profit community might be in a place to take on this type of action, depending on the community.

Timing:

- Most often, a male patient with one or more children with a woman who has found a new partner and wants to take their children out of state. When R.J. can be done in this situation is something to consider.

What can be done?

- Possibly, limiting the program’s application to those patients already on CR, potentially reducing the chance of information misuse;
- Victims' advocates and patients’ attorneys are allowed in this type of process in many cases;
- One case was a success story. In that case, the patient knew the victim’s family, and those involved behaved consistently with the way they presented themselves originally;
- Another case represented a complete misuse of the system because the patient’s inability to meet with his son during R.J. was used as evidence in a hearing.

Mr. Swetnam then asked: “Often, when listening to testimony, I hear people saying good things about the patients, which sometimes looks like restorative justice,” and asked Mr. Matarazzo whether he had any suggestions about how to keep that from happening with R.J.(?) Dr. Reichlin then wondered whether this wasn’t already part of the milieu, to which Mr. Matarazzo said yes, but he indicated that it is important to be cautious in using the information.

2. Review and Possible Adoption of Administrative Meeting Minutes from September

After a brief discussion, Ms. Lieber moved—and Ms. Elmer seconded—approval of the September meeting minutes. The motion to approve carried unanimously.

3. Executive Director Update

During her executive director update, Ms. Britton discussed the Board’s restorative justice initiative, indicating that she had reached out to the R.J. committee in response to the Board's September request. At that time, the committee had no formal recommendations, though there were some items from the conversation that will be addressed legislatively. In addition, Pacific University has indicated that it is prepared to take on the R.J. program.

Ms. Britton reported that the committee heard from a PSU R.J. director, and that the Department of Corrections also has R.J. personnel. Corrections staff recommends that the Board move forward with the R.J. concept.

Continuing on the topic of R.J., with respect to PSRB statistics, Ms. Lieber asked what percentage of victims are family members of patients. Ms. Britton indicated that that number is 30%. Mr. Swetnam then asked whether that number can be expected to increase.

Mr. Swetnam next asked how an R.J. case would be initiated. Ms. Britton responded that in the case of corrections, the case would be brought to the deputy's office, but only for notification purposes. Ms. Britton then discussed providers, saying there are a few reasons to go with an outside provider. For example, running the R.J. program through an outside provider can insulate the program from public records requests, and it is more therapeutic to have an entity other than the same board under whose jurisdiction the patient finds him/herself conducting the R.J. process. Ms. Britton indicated that the Board could choose to invite Leo Bobadilla, Director of the Forensic Track program in Pacific University's School of Graduate Psychology, to come to the next Board meeting to discuss the program. Mr. Swetnam indicated that he would also be in support of inviting Dr. Bobadilla to the meeting.

Ms. Britton next asked whether the Board was interested in having a restorative justice representative from the Department of Corrections come in to speak. Dr. Balduzzi said she is not opposed to hearing from DOC, but that her interest is mostly in identifying the model DOC is using.

Ms. Lieber then asked whether Clackamas County Parole and Probation has a restorative justice program, to which Dr. Balduzzi replied that individual counties probably work on

restorative justice inside the community. Ms. Lieber then added that OSH recommends using restorative justice.

4. Discussion of Issues and Possible Board Action

Ms. Britton then asked the Board about any problems/issues it has for staff. Ms. Lieber discussed the issue of victims addressing patients directly during hearings, suggesting that staff consider adopting a policy of telling victims on the record and before they begin their statements that the purpose of the victim impact statement is for the victim to be able to address the Board, not the patient. She also indicated that staff should talk to the victims' advocate and make sure the PSRB's language is consistent with theirs.

Ms. Britton stated that victims have the right to be heard, to which Ms. Lieber responded that there is room for interpretation on that point. Generally, Ms. Lieber said, allowing the victim to address the patient is more harmful than helpful, but that some victims address the patient anyway because there are no consequences for doing so.

Dr. Reichlin opined that, coming from the Board, some victims will see an admonition to speak only to the Board as overly protective of the patient, especially since it comes at a time that is more emotionally difficult for the victim. He suggested wording it more positively: "You're here to address the Board," for example.

Mr. Swetnam asked whether the language could be, "we're giving you a certain number of minutes to address the Board." Ms. Lieber said no, because victims are already nervous coming before the Board.

Dr. Reichlin wondered whether the victims' advocate has objections to placing limits on victims' statements. Ms. Britton responded that the victims' advocate might have objections, and

that she (Ms. Britton) could ask the VA about it. Ms. Britton speculated that the victim's advocate probably would have no problem with it.

Dr. Balduzzi then stated that it often helps victims if they understand that the patient's illness was responsible for the harm to them, and that many victims are less interested in addressing the Board than they are in saying something to the patient. Dr. Reichlin stated that it feels to him as though victims are telling the Board what they want done.

Ms. Lieber said that the question currently before the Board is whether it should "pre-load" the question into its hearings script. Dr. Reichlin said that the statement should not go into the script, but said the Board should talk to the victim advocate to be sure that it is acceptable to say to victims. Ms. Britton stated her opinion that Rebecca, currently DOJ's victims' advocate, would be happy to implement something like this. Ms. Lieber stated that she thought that since Ms. Shankle left, it feels like the office has been "sliding." Ms. Britton commented that this is due to a lack of resources. Rebecca Shaw is a manager, not the VA staff, so she does "double duty" as the manager and as the advocate. Ms. Lieber suggested that the Board revisit this issue later, after Ms. Britton has had a chance to speak to Rebecca.

Board Access

The Board next discussed their ability to have remote access to their materials. Dr. Reichlin, Ms. Lieber, and Mr. Swetnam were all having problems with SugarSync, while Dr. Balduzzi has had few problems with DocMall.

The Board did indicate that having the documents for their next hearings arrive on Friday just as everyone leaves the office can contribute to this problem, in that this can mean no one is available to help with computer problems should they arise. Mr. Swetnam then indicated that he can come to the office and get a flash drive, if necessary.

Ms. Lieber reported that upload has taken a long time on her current laptop. Ms. Britton indicated that she will follow up on getting a new PC for Ms. Lieber.

5. Dates for Administrative Meetings in 2017

The Board next discussed dates for its 2017 administrative meetings, and decided they would take place in March, June, September, and December 2017. In addition, the Board decided that these meetings would take place during the workday.

The public portion of the meeting adjourned at approximately 8:30 p.m.

6. Executive Session

As a member of the staff, Mr. Moore left the meeting to allow the Board to adjourn to executive session.