

FINAL MINUTES  
Psychiatric Security Review Board  
Administrative Meeting  
Joint Panel  
June 10, 2020

An administrative meeting of the Psychiatric Security Review Board was convened on Wednesday, June 10, 2020 at 8:30 a.m. via zoom in the Psychiatric Security Review Board's conference room at 610 SW Alder Street, Portland, Oregon, 97205. Board members present via phone were:

- Adult Panel – Scott Reichlin, M.D. (Chair); Trisha Elmer, P.P.O.; Anne Nichol, J.D.; and John Swetnam; and Pamela Buchanan, Psy.D.
  
- Juvenile Panel –; Bennett Garner, M.D.; Kathryn Kuenzi, P.P.O. ; and Catherine Miller, Ph.D.

PSRB Staff present via zoom included Alison Bort, J.D., PhD., Executive Director; Megan Carpenter, Executive Director, as note taker;

Dr. Reichlin called the joint meeting to order at 8:39am, Wednesday, June 10, 2020. There are no public members present and the next item is approving minutes.

- Joint Panel December 11<sup>th</sup> Meeting
- Emergency Adult Panel Meeting March 13<sup>th</sup> Minutes
- Adult Panel Meeting March 18<sup>th</sup> Minutes

Dr. Reichlin noted the following changes:

- Today's agenda stated it was an "Adult" panel meeting; however, today's meeting is a "Joint" panel meeting.
- Meeting minutes on March 18<sup>th</sup> had referred to a December date.
- Clarification of members who met by phone on March 18<sup>th</sup>.
- Advised spell check in the March 18<sup>th</sup> minutes.

No other changes were noted. There was a motion to adopt or approve all three of those, Bennet moved to adopt, Trish Seconded the motion. The Board members unanimously adopted these meeting minutes

Dr. Reichlin, moved to the next agenda item, Executive Director Updates. Dr. Bort began by welcoming Megan Carpenter, the new Executive Support Specialist. Dr. Bort explained that she had opened the position to competitive recruitment; however, in light of COVID-19; Ms. Carpenter's excellent work as a temporary employee; that Ms. Carpenter was a competitive applicant in the recruitment process; and given the immediate need to fill this position, Dr. Bort directly appointed Ms. Carpenter to the position.

Dr. Bort next discussed the topic of board reappointment. Ms. Elmer is approaching the end of her first term on the Board as of June 30, 2020. Because of COVID-19, the Senate hearings have been suspended. Dr. Bort will be reaching out to the policy analyst to ensure there

are no issues with Ms. Elmer's continued participation on the Board. Dr. Bort was previously told that this would not be an issue, but will confirm and follow up with Ms. Elmer. Dr. Reichlin extended his thanks to Ms. Elmer for extending her appointment for 4 more years and Mr. Moore echoed the thanks as well.

Dr. Bort next addressed that this meeting would be Dr. Garner's last. Dr. Garner is starting a new position with Comagin, the new contractor who will provide utilization review in the state of Oregon (previously, the contract was held by Kepro). Dr. Garner shared he will begin this position in two weeks. He expanded that the new work will involve utilization review of SRTF and hospital levels of care and person-centered plan development. Dr. Miller, Ms. Kuenzi and Dr. Reichlin expressed their gratitude and appreciation of Dr. Garner's participation on the Juvenile Board, and previous participation on the Adult Board. Dr. Garner will officially end his term on its natural date, June 30, 2020.

Dr. Bort next discussed updates related to the agency's reopening plan. Regarding reopening, Dr. Bort explained the agency will be following the guidance that has been established for the enterprise (i.e. all State agencies). Currently, this means maintaining all of our COVID-19 practices, including holding hearings remotely and staff teleworking to the largest extent possible. This is expected to remain in place until at least June 30<sup>th</sup>. Dr. Bort expects additional guidance within the next week or two. Given Multnomah County has not yet entered Phase I, there may be a difference between commencing in person hearings in Salem vs. at the Portland office. Dr. Bort noted that reopening will still require a number of safe practices such as social distancing and wearing masks. Dr. Bort opened the discussion up to the Board members to express any concerns/considerations/suggestions related to commencing in person hearings at OSH Salem Campus.

Mr. Swetnam shared his overall preference to hold hearings in-person. He went on to describe his experience in appearing via telephone pre-Covid-19, noting the pros and cons, and concluding that while it is not preferred, it has been adequate. Ms. Nichol shared that social distancing interventions could be difficult to implement with in person hearings. For example, meeting in a small deliberations room. However, she concurred with Mr. Swetnam and suggested a goal toward having at least one Board member appear in person once reopening begins. Mr. Swetnam agreed with this suggestion, speculating that this was likely more impactful for clients than just hearing them on the phone. Ms. Nichol concurred, noting the benefits of clients being able to see that the Board members are listening to what is being presented. Board members indicated general agreement with this goal. Dr. Bort noted that hearings from Junction City have been video-based hearings since before Covid-19.

Dr. Bort next presented the general plan with regards to telework. The agency is approaching this in three phases. The current phase, as previously described, involves staff teleworking to the largest extent possible. Dr. Bort noted that this has been working very well. Staff are meeting the demands of their workload, deadlines are being met. Dr. Bort extended appreciation to the JPSRB, who had given up their computer devices to enable staff to work remotely. Dr. Bort noted the likelihood that JPSRB members would likely use their personal devices (as they had previously) to review the records for the June and July hearings. The

amount of work to reconfigure the computers back to the members (and then subsequently back to staff) would be expensive and also significantly interrupt workflow.

Dr. Bort went on to describe the second phase of teleworking, which would involve increased in-office work with a variety of social distancing interventions in place. The third phase would be what “normal” might look like after the pandemic. Dr. Bort noted that the success with current telework practices lend themselves to increased telework permanently. However, state leadership will be providing additional guidance on the minimum expectations regarding telework that the agency will follow.

Dr. Bort moved onto the topic of new GEI client admissions to the state hospital. Dr. Bort provided an overview of OSH’s admission policy when COVID-19 began—essentially, all admissions were suspended with the exception of the aid and assist population as well as PSRB revocations. The aid and assist population was prioritized with respect the *Mink* order, which essentially required the hospital to admit aid and assist patients within 7 days of a court order. In the beginning of May, Dr. Bort reached out to OHA and OSH leadership to inquire about the plan to admit newly adjudicated GEI clients, some of whom had been waiting in jail since March. Dr. Bort had also expressed concern related to coordinating initial hearings. Notably, the number of new GEI adjudications since March has been above average.

Dr. Bort shared that the outcome of these discussions was successful. As of the time of this Board meeting, of the 27 individuals who had been on the waitlist, at least 14 had been admitted the Oregon State Hospital. It is anticipated that all GEI clients on the waitlist will be admitted by the end of June/early July. Dr. Bort noted that this is dependent on the number of new aid and assist cases that are ordered to the hospital, maintaining zero positive COVID-19 patients admitted, and ongoing discharges from OSH. One factor that assisted with increased admissions was the opening of a new admissions unit on June 1<sup>st</sup>. Another is the reduction in the amount of time required to stay on the quarantine unit from 14 to 12 days. OSH is reporting they can now admit approximately 19-30 new patients per week. In addition, Dr. Bort worked with community providers to identify whether any of the individuals on the waitlist could potentially be court conditionally released, and had success with one case. For those clients who remain on the waitlist, OSH is reviewing acuity and consulting on whether any particular cases should be expedited base on mental health stability. Dr. Bort and Ms. Moeller have been consulting with Chief of Psychiatry, Sara Walker, at OSH on case processing to schedule initial hearings and expedite cases where conditional release is a possibility.

At this time, Laura Moeller, PSRB staff called and was accepted into the zoom videoconference. Ms. Moeller reported that there were individuals from the public who were not able to call into the meeting. Dr. Bort checked and noted that no one had been in the “waiting room,” with the exception of Ms. Moeller, who was admitted without issue. Dr. Bort disabled the “waiting room” feature to determine whether that would rectify the problem.

Dr. Reichlin asked whether the hospital opened up a new unit. Dr. Bort clarified that it was a new *admissions* unit. With the onset of COVID-19, there had only been two admissions units, which were quarantined, which significantly limited the number of admissions. Dr. Bort noted that there are 3 but there used to be 2. They used to be limited 20 people a week, but can

now admit between 19-30 new patients. Dr. Bort reiterated that while OSH has amped up admissions, there are concerns that discharges are not occurring. This creates a bottleneck because those patients on the quarantine unit cannot move onto a regular unit unless there is bed space. OSH Deputy Director, Derek Wehr joined yesterday's statewide provider meeting Dr. Bort facilitates monthly with these updates.

Dr. Bort shared one additional OSH-related change. Dr. Sethi, supervising psychiatrist of the risk review panel, would be changing positions at OSH. This decision was prompted by the prospect of OSH cutting that particular position during their budget reduction exercise. At this time, it does not appear likely that the position will be cut; however, Dr. Sethi has officially left the position. Dr. Bort shared there were other psychiatrists who have expressed interest in taking this position.

At this time, attorney, Harris Matarazzo joined the call. He requested a summary of what had occurred at the meeting thus far. Dr. Bort reported she will have a draft of the meeting minutes disseminated by the end of the week.

Dr. Bort turned the topic of the agency budget. Dr. Bort reminded the board members that all state agencies were directed to propose an 8.5% budget reduction. Board members were previously informed that this reduction could impact the stipend received for the preparation day. Dr. Bort first provided the potential good news that agency directors have been informed that the legislature does not seem likely to go in the direction of reducing agency budgets this year. If they do take funding away, it is most likely to be focused on agency surpluses/vacancy savings and not to impact staffing positions and salaries.

Dr. Bort shared that she had further investigated the history of the prep day stipend, reviewing past administrative meeting minutes and budget documents. Dr. Bort shared that this review revealed approximately 10 instances where the Board had previously discussed requesting additional funding from the legislature to support the prep day in the past 15 years. Dr. Bort added that the agency had submitted a policy option package for three budget cycles since 2006. This included the 2007-09; 2009-11; and the 2015-17 cycles. Each time, the request had been denied by the legislature. Dr. Bort hypothesized that, given the clear language of the statute, Juliet Britton, the Board's former executive director, had statutory authority to pay Board members for a prep day. From Dr. Bort's analysis, the majority of this funding stemmed from savings accumulated by the reduction of JPSRB hearings.

Dr. Bort summarized, in light of this examination, that the agency would be forced to cut the funding for the additional prep day stipend in the event of a forced budget reduction because it was never budgeted in the first place. Dr. Bort went on to review the potential outcomes the agency is facing this biennium. First, she provided information on the "salary pot," which plays a role in these outcomes. Dr. Bort reminded members that the salary pot was awarded for AY 19; however, with the legislators' walk out in the 2020 session and unknowns about 2021, the Board may not receive this additional funding. This funding was anticipated to cover required increases in staff salaries due to COLA increases and changes to compensation plans (e.g. paralegals pay increase, creating a new top step for all positions).

Dr. Bort went on to share potential scenarios. She first presented the worst-case scenario would be if the agency had to take the 8.5% reduction and did not receive any funding from the salary pot. This would result in a minimal number of hearing dates and no chance for the Board to be paid for a prep day. This scenario appears to be highly unlikely given the current information being shared by state leadership.

Dr. Bort next shared the most likely scenario: that the agency would not be required to give up the 8.5% reduction and would not receive the salary pot. Dr. Bort reported she is confident that this scenario would provide a sufficient number of hearing days and support a prep day stipend for Board members.

Lastly, Dr. Bort shared the best case, but not likely scenario: that the agency would not be required to give up the 8.5% reduction and would receive the salary pot. This would result in sufficient funding for hearings, Board prep day stipends, and perhaps even some of the technology improvements that the agency has been considering.

Dr. Bort then shared her plan to propose a policy option package (POP) to secure the funding necessary to pay Board members a prep day stipend in the future. Dr. Bort noted that the agency had considered submitting legislative concepts to change the statute; however, the deadline has passed for that this cycle. Therefore, Dr. Bort proposed submitting another POP. Dr. Bort reviewed the information supporting this request:

- 1- ORS
- 2- Lack of administrative meetings to conduct business outside of hearings
- 3- Include billable hours.
  - a. Psychiatrist- 260-330 or 150 if employed by mental health agency
  - b. Attorney
  - c. Psych in private practice- 130 per hour
- 4- Recruitment issues

Dr. Bort opened the discussion to the Board members for additional input. Dr. Buchanan shared her perspective on billable hours for psychologists providing work to the indigent community, noting private pay was likely higher. Dr. Reichlin believed the rate that was proposed was in line with what he would expect. Dr. Garner agreed, adding that when he was on the adult panel, he made 25% of what he would have made working in the hospital. Ms. Nichol reported that an attorney at a large or corporate law firm could earn 650/hour, but noted that we may want to focus on what an attorney in the criminal justice field would earn.

Ms. Nichol also added that the POP should attempt to capture all the work that the Board is doing outside of hearing days. This might include reviewing orders or signing revocation orders.

Dr. Bort expanded on a few details. For instance, historically, 2-year hearings could be waived, but following an opinion by the Attorney General, the Board had to hear these cases in full hearings. Notably, some of the full hearings can be relatively short; however, Board members are still expected to review the entire file because a jurisdictional discharge could be requested at any time.

With support indicated by all Board members to submit a POP, Dr. Bort provided an updated regarding the PSRB legislative workgroup. Dr. Bort shared the next meeting was set on June 26<sup>th</sup> and would focus on early discharges (calendar was provided to Board members with the agenda items). Dr. Reichlin confirmed that it was still okay for Board members to observe these meetings. Dr. Bort clarified the meetings are open to the public, including Board members; however, they could not participate. If Board members heard something at those meetings that was of concern, Dr. Bort could represent it on their behalf.

Dr. Reichlin requested the best method for participating. Dr. Bort recommended Board members email Megan (and could cc her), and Megan would send out the link for these meetings.

This completed the Executive Director updates, and Dr. Reichlin moved the meeting on to decision making and OARs. Dr. Bort explained that this was primarily to discuss how a review of the agency's OARs could be reviewed more regularly. Dr. Bort turned the discussion to Deputy Moore. Deputy Moore described his current approach to reviewing and updating the OARs, noting that typically an issue is identified, and then he rectifies it. With additional Board input, Deputy Moore could work more proactively and regularly with the advisory committee.

Mr. Swetnam had been muted and wanted to contribute to the topic of the PSRB workgroup. He shared that he had a positive experience listening to the stakeholders discuss the definition of qualifying mental disorder and the challenges that arise in the hospital setting when a client has a comorbid personality disorder. He expressed that listening in to the workgroup had great benefit.

Dr. Reichlin returned to the current topic of OARs, asking whether the group should begin brainstorming at this meeting. Dr. Bort opined that there was not sufficient time to begin that endeavor, but if Board members agreed that a review of the rules would be beneficial at administrative meetings, to begin taking note of OARs between now and the next meeting. Dr. Bort explained the plan would be to leave ample time for discussion at the next meeting. Board members were encouraged to send Dr. Bort and Deputy Moore any ideas they had leading up to the next Board meeting

Dr. Reichlin moved to the next topic, JPSRB. Dr. Bort re-introduced the topic of sunseting the JPSRB that was started last summer.

At this time, the Board noted that attorney, Tyler Neish, joined the meeting.

Dr. Bort explained that the representative from OCDLA who is participating in the PSRB legislative workgroup is still collecting information about why the JPSRB is minimally used. Dr. Bort has been given assurances that the agency could hold off on recruiting new JPSRB members (to fill the attorney and psychiatrist positions) while we examine whether the JPSRB panel should be eliminated. Dr. Bort noted there is an OAR that permits any JPSRB individual who reaches age 18 to transfer to the adult board; however, it is not clear that the agency has ever actually used this mechanism.

Ms. Kuenzi voiced her opinion that it is important to wait for the survey before making any changes. Dr. Garner expressed his experience with one patient he believed would benefit from JPSRB, but who did not seem to have any advocate discussing this option with him. Ms. Kuenzi was curious as to whether the recent changes in the law (Senate Bill 1008) might result in an uptick in REI adjudications. Dr. Bort shared that to date, she had heard the opposite—now that juveniles would no longer be mandated into the adult system, they would have other options in the juvenile system. However, Mr. Neish, who was granted permission to share additional information reported that there have been some discussions that REI adjudications may be more seriously considered in the near future.

Dr. Reichlin asked if someone could further explain what the changes to the law were. Ms. Nichol explained that previously, certain crimes committed by juveniles were automatically transferred to the adult court. The new law provides courts to take a second look.

Dr. Reichlin asked additional logistical questions related to the JPSRB which were explained by various participants in the meeting.

Dr. Reichlin moved to the topic of Board training. Dr. Bort reminded members of trainings that would be due in the upcoming months. Dr. Bort also shared that there would be another document following this meeting with information about how to patch their devices. Lastly, Dr. Bort shared that a link to the Best Practice Survey would be sent out. Dr. Bort reminded members that a memo was provided with the Board Packet, providing a summary to help Board members answer those questions.

Lastly, the Board addressed scheduling of next meetings. The Board is already meeting for a joint panel training on September 17, 2020. An administrative meeting will likely be scheduled that same day. In addition, Dr. Bort will have Megan reach out to schedule a December Board meeting. Dr. Bort recommended this also be a joint meeting given we will likely be proposing legislative concepts in the February session.

Dr. Reichlin opened the meeting to public comment. Mr. Matarazzo shared his hope to get a copy of the draft minutes. Dr. Bort reiterated she would send them out by the end of the week.

Meeting adjourned at 10:16am.