

DRAFT – MINUTES
Psychiatric Security Review Board
Administrative Meeting
Adult Panel
Friday, March 13, 2020

Psychiatric Security Review Board Executive Director Alison Bort, Ph.D. convened an emergency administrative meeting of the PSRB’s adult panel on Friday, March 13, 2020 at 3:30 p.m. in the Psychiatric Security Review Board’s conference room at 610 SW Alder Street, Portland, Oregon, 97205. Board members present (all over the telephone) were:

- Scott Reichlin, M.D. (by phone), Chair;
- Trisha Elmer, P.P.O.;
- Anne Nichol, J.D.;
- Pamela Buchanan, Psy.D.; and
- John Swetnam, public member.

PSRB staff present in person included Alison Bort, J.D., Ph.D., Executive Director; and Sid Moore, J.D., who also served as note taker.

Dr. Bort convened the meeting, indicating that she called an emergency Board meeting in order to share and to continue to plan the Psychiatric Security Review Board’s planning and response to the COVID-19 emergency, and that this was to be the meeting’s only agenda item.

Dr. Bort outlined two issues for the emergency meeting: hearings; and how to monitor PSRB clients in the community during under social distancing protocols.

The first topic was logistics surrounding hearings. Dr. Bort indicated that at this time, the PSRB is curbing all Oregon State Hospital hearings. For the foreseeable future, these hearings will take place at the PSRB office. She indicated that the Attorney General's office has asked whether the Board can hold hearings telephonically, meaning clients at OSH could appear via video and other involved parties could attend by telephone. Mr. Swetnam stated that he assumed the Board itself would be physically at the office during hearings, even if the patients were not.

Dr. Bort responded by stating the agency's goals with respect to COVID 19: 1) to slow the virus' spread; and 2) to protect those in vulnerable populations, such as the elderly and the immunocompromised. She indicated that the PSRB is trying to balance these considerations with being a state agency that must provide service. Options for managing the virus include social distancing (i.e. observing a three foot radius from others and other such measures), along with meeting remotely.

Mr. Swetnam raised the question of whether those without land lines could use the PSRB conference line. Dr. Bort acknowledged this, but also stated that Mr. Swetnam and anyone else who wanted to (but who was not sick) could appear in person. She further stated that each person should think about balancing personal needs with agency needs.

Ms. Nichol asked whether choosing to appear by phone in order to support those in high-risk groups is permissible and said she would do so if it were permissible. Dr. Bort indicated that she was asking the attorneys their opinions on due process under these circumstances.

Dr. Buchanan indicated that she had no concerns about appearing by phone. Dr. Reichlin added that he'd had a meeting recently during which all involved appeared by phone, and that this was due to a specific set of circumstances. He went on to state that such an approach might not work as well for more complex hearings or for the overall long term, but that telephonic hearings represent a good short-term solution to the problems associated with COVID 19.

Ms. Nichol asked whether there is a way to hold hearings via video conference—using a tool such as Zoom, as suggested by Dr. Bort—and said it is more difficult to make good decisions when the Board members cannot see each other and/or the client.

Dr. Bort raised an issue that she and Dr. Reichlin had discussed: ensuring that the Board's methods of communication were used such that the Board did not find itself in a public meeting inadvertently. Dr. Bort reminded the Board members that they should be careful about electronic communication methods for the same reason.

Dr. Bort suggested that perhaps Board members who choose to attend hearings in person should be the acting chair that day. Mr. Swetnam agreed, adding that it is easier to chair when one is in the room. Dr. Reichlin added that such an approach would feel more normative to all participants, particularly the patients. After discussing advantages and drawbacks, the Board decided the acting chair would be a Board member who appeared in person at the hearing. Ms. Elmer indicated that she appreciates the ability to appear telephonically, but that she could appear in person if needed, since having at least one person present would be helpful.

Dr. Bort then shifted the discussion to complex cases, indicating that she was asking the attorneys about continuances, and stating that the Board might like to be fairly limited in granting continuances without proper justification because to grant too many simply pushes long hearing days out a few weeks or months. She then asked for the Board's opinion as to whether there are any general types of hearings they should continue as at this time.

Ms. Nichol indicated that supervisor requests for discharge can be the most difficult cases to assess over the phone because part of the Board's reading of the person is to see them. For that reason, she would want at least one Board member present to assist. She then asked whether there some hearings that can be handled administratively rather than at full hearings. Dr. Reichlin indicated that generally, on those kinds of hearings, the state might not have an objection to the patient's or supervisor's request at the end of the hearing, but that they might want to hear testimony before deciding whether they have objections.

Dr. Bort then moved on to the meeting's second agenda item: the extent to which PSRB clients can be managed safely in the community under the current situation. This is tied to the question of possible conditional releases, which involve the client getting used to a new Case Manager and staff, especially given health-related workforce challenges. Dr. Bort recommended that the Board defer to providers' judgment on treatment and method of outreach, with the goal of not be compromising safety, an approach the Board adopted by assent.

Mr. Swetnam then asked what would happen if a provider said they could not maintain the client safely in the community. Dr. Bort indicated that the PSRB would ask the provider in question what

level of care would allow the provider to manage the client safely, recognizing the possibility that at some point, a step-up or a revocation might become necessary. Dr. Bort further stated that providers have some flexibility in this regard, and that they can always call the agency if they experience a workforce crisis.

Dr. Bort noted that the providers' ability to lift restrictions is not for items like out-of-county trips, for example. Ms. Nichol pointed out the need for flexibility, but stated that the Board would need to document any possible changes in provider discretion due to the current emergency would need to be documented for our records to make sure that reasons are clear to future readers.

Ms. Elmer stated that the Parole Board's progress reports note when changes happen due to COVID 19, and Ms. Nichol suggested the PSRB generate a form that indicates when variances were due to the virus. Dr. Bort acknowledged that a form—or at least some language—is feasible.

Mr. Swetnam asked whether case managers should send incident reports identifying any variances they have granted because of the current crisis. Dr. Bort indicated that this would not be necessary unless there was a significant request. Otherwise, such notes would go into the case manager's monthly report.

Dr. Reichlin mentioned the possibility of distinguishing between treatment changes and security changes, stating that the Board will do everything it can to ensure that security remains the same, even if treatment changes become necessary.

On the topic of managing new requests for client moves, Ms. Nichol indicated that, given the uncertainty over how the COVID 19 crisis might progress, there is a similar uncertainty associated with staffing over the next couple of weeks. Since things likely will change every day over that period, she raised the question on the possibility that an OSH client asks for conditional release before the Board or the providers are able to predict community staffing levels. For this reason and due to other statutory requirements, the question was whether the Board should consider prioritizing, for example, initial and revocation hearings over new conditional release requests.

Dr. Reichlin then pointed out that the Board's ability to predict the course of the crisis and/or staffing levels associated with it is limited. He added that when the Board continues hearings, it is difficult to figure out how to reschedule them or juggle the calendar, so he prefers not to make any predictive decisions about continuing hearings beyond the social distancing aspects.

The Board discussed its current practice of issuing continuances based on individual circumstances rather than on what it anticipates the crisis' progression might be. Continuing this approach would mean that the Board will go on with hearings and consider continuing them if there are potential community issues that must be solved.

Dr. Bort also mentioned the potential impact on victims and suggested that unless a victim objects and insists on delivering his or her victim impact statement in person, we should encourage them to appear telephonically or via video.

Dr. Bort asked whether there was agreement that the Board will go on with hearings on an individual basis and continue them if there are potential issues in the community. Dr. Reichlin added that by committing to the individualized approach, during the hearing, the Board could potentially find out, for example, the client's treatment team is less supportive than they had been when they had asked for the hearing. Dr. Reichlin stated that he wants these decisions to be individualized, rather than blanket determinations based on speculation as to what staffing problems could arise.

Ms. Nichol pointed out that schools and activities have been canceled, so some are having trouble figuring out how to manage their lives, and for that reason, having inpatient request conditional release hearings March 18 (and, possibly March 25th) would be a challenge. She stated that down the road, there will be more opportunities to look at these situations on a case-by-case basis

Dr. Reichlin then stated that there are, essentially, two questions before the Board: should it have conditional release hearings soon generally; and should it hear this particular case based on the special circumstances?

Dr. Reichlin then moved that the Board not make a blanket statement that it would not hear inpatient conditional release requests. Mr. Swetnam seconded the motion. When put to a vote, the motion passed four to one, with Ms. Nichol voting "nay."

Ms. Nichol added that her opposition to the motion was based on her belief that the Board should put conditional release hearings on hold for the time being. She indicated however, that she does

not want someone to be denied their conditional release because of her lack of confidence regarding staffing levels. During staff shortages, she said, providers should be willing and able to share their contingency plans.

Dr. Bort then indicated that in her opinion, there was no need to vote on the more specific question of the particular March 18 hearing because she plans to seek legal advice prior to that hearing day.

Next, emphasizing that security should not be compromised, but treatment could change, the Board agreed by assent that providers must document any changes they make to their treatment plans due to COVID-19. If they have any questions, they should call the PSRB office for updated information and suggestions.

Mr. Swetnam and Ms. Elmer indicated that they plan to attend the March 18 administrative meeting in person. For that day's hearings, Dr. Reichlin is the third sitting member, and Ms. Nichol is the alternate.

With the Board's emergency business concluded, the meeting adjourned at 4:20.