

MINUTES
Psychiatric Security Review Board
Joint Administrative Meeting
Adult and Juvenile Panels
June 18, 2013
Approved September, 5 2013

An administrative meeting was convened on June 18, 2013 at 6:33 p.m. in the fourth floor conference room of the Psychiatric Security Review Board offices, 610 S.W. Alder, Suite 420, Portland, Oregon. Adult panel board members present were Elena Balduzzi, Psy.D., Bennett Garner, M.D., Kate Lieber, J.D., Jenna Morrison, P.P.O. and Judy Uherbelau, J.D. Juvenile panel board members present were Ray Burleigh, M.Ed., Eric Johnson, Ph.D., and Charmaine Roberts, J.C.C. Attending via telephone for the juvenile panel were Susana Alba, J.D., and Robert McKelvey, M.D. Also present were the PSRB's Acting Executive Director, Juliet Follansbee, J.D. and Research Analyst, Shelley Banfe as note taker. Guests at the meeting included Lisa Umscheid, J.D., general counsel for the Board; a community provider; Harris Matarazzo, J.D., indigent defense counsel; a former PSRB client; and two members of the press.

The meeting was called to order by Kate Lieber, Adult Panel Chair. Pursuant to the first agenda item, Chair Lieber requested a motion from one of the adult panel members to reelect Ms. Lieber as chairperson for the adult panel. Jenna Morrison so moved; Elena Balduzzi seconded. The motion was carried by vote with no one opposed and no abstentions. Ms. Lieber accepted her reelection as chair and moved on to the reelection of Eric Johnson as juvenile panel chairperson. Robert McKelvey made the motion; Charmaine Roberts seconded. The motion was carried by vote with no opposition, and no abstentions.

The Board then broke for an executive session pursuant to ORS 192.660(2)(f), to discuss an attorney-client privileged document exempt by law from public inspection. Chair Lieber noted that the Board's Department of Justice counsel in this matter, Lisa Umscheid and representatives from the news

media would be allowed to stay in the room while guests and staff were requested to leave. Ms. Lieber noted for the record that while members of the media were allowed to be present during executive session, they could report only on the general topic as previously announced, not on the specifics of the conversation that occurred during the session.

Open session resumed at 6:48 p.m. Chair Lieber asked for a motion on agenda item number two and Eric Johnson moved, pursuant to OAR 859-020-0015, to accept the resignation of Executive Director Mary Claire Buckley, J.D., according to the terms of her separation agreement with the State. Jenna Morrison seconded the motion and it passed unanimously.

General Counsel Lisa Umscheid left the meeting at 6:50 p.m.

The panels then addressed agenda item number three. Chair Lieber moved to appoint Juliet Follansbee Interim Executive Director of the PSRB, with all the rights and responsibilities the Board had given to the previous Executive Director. Eric Johnson seconded the motion. The motion passed by vote with no opposition and no abstentions. Panel members congratulated Ms. Follansbee on her new position and Ms. Lieber turned the meeting over to Ms. Follansbee for agenda item number four, an update on the 2013-15 budget.

Interim Executive Director Follansbee reported that the budget had passed out of the Ways and Means Sub-committee and all that remained was the Governor's signature. Two things of note included the decrease in general fund dollars due to the return of 1 FTE that had never been filled; and that there would continue to be Gun Relief grant money available into the next biennium but that it was set to expire on September 30, 2013. Ms. Follansbee then reminded the panel that in the past, one-year extensions have been granted and she anticipates the same will happen this year. Ms. Follansbee noted there were no policy option packages in the requested budget and that the two bills of interest to the Board currently being considered would have minimal financial impact if signed into law.

An update on House Bill 2549, regarding the rating of persons required to register as sex offenders and the relief or reclassification hearings to be conducted by the Board, was then requested. Ms. Follansbee related that the bill had yet to move out of the House, and was therefore unlikely to pass this session. Dr. Garner further asked about Senate Bill 421, involving persons found unable to aid and assist. Ms. Follansbee reported that this bill did seem to be moving towards enrollment, but that recent amendments had reduced the Board's responsibilities in the matter such that current estimates put required hearings at under 10 for the biennium. Chair Lieber thanked Ms. Follansbee for the update then proposed a break in the meeting so that the juvenile panel could be excused.

Open session reconvened at 6:59 p.m.

The adult-panel-only portion of the meeting began with a review of the minutes from the panel's February 19, 2013 meeting. Chair Lieber asked panel members if everyone had looked at the minutes and if anyone had comments or concerns. None were forthcoming and Judy Uherbelau offered a motion to accept the minutes as written. Elena Balduzzi seconded the motion and it passed unanimously.

Ms. Follansbee then addressed the sixth item on the agenda, permanent rulemaking action regarding Oregon Administrative Rule 859-070-0010 and 859-070-0015, which was initiated by the Board at their previous meeting. She reviewed that while the Board has always had the authority to conditionally release clients with Department of Corrections' detainers to DOC custody, the proposed modification to the rule would add language to clarify what will be required by the Board to approve such a release and exempt DOC from the requirement of reporting monthly on a client's progress to the Board. She noted that the temporary rule was put in place following the Board's last administrative meeting and in the interim, a public hearing was held, and the comment period closed without response. Ms. Follansbee then indicated that the staff recommendation to the panel was to adopt the proposed rule which would become effective upon filing. Dr. Balduzzi questioned whether there would be a minimum requirement for reporting from DOC, to which Ms. Follansbee related that currently documents

regarding any mental health treatment are requested at such time as a hearing is set on behalf of the client and that would continue to be staff practice. Bennett Garner then moved to repeal the temporary OAR and adopt the permanent rule as proposed. Jenna Morrison seconded the motion and it passed by vote with no further discussion, opposition or abstention.

Chair Lieber requested that Interim Executive Director Follansbee report to the panel regarding agenda item number seven, attendance by telephone of community case managers at Hospital Request for Conditional Release Hearings. Ms. Follansbee noted that she had received multiple comments from community providers regarding the strain in-person attendance at such hearings places on manpower and that appearing by phone could potentially reduce the time spent by case managers from as much as half a day to half an hour. The discussion which followed focused on the fact that while the prospective case managers need to hear what is said during Hospital Request for Conditional Release Hearings, to date they had not been called to testify with any frequency, likely because they were not yet the case manager for the client, and therefore had very little to add to the discussion. Consensus was that because community psychiatrists have been successfully appearing via telephone, it was worth letting the case managers do so as well on an experimental basis.

Ms. Follansbee then requested clarification from the panel members regarding attendance of the psychologist who authored the client's Violence Risk Assessment at conditional release hearings. According to Ms. Follansbee, the question arose out of a meeting between herself, Oregon State Hospital and Oregon Health Authority staff regarding bringing SHRP and PSRB Conditional Release Hearings into closer alignment and that SHRP never calls psychologists at their hearings. Dr. Garner opined that the Board should hear from a psychologist at every PSRB hearing, given the risks associated with Tier 1 clients. Dr. Balduzzi then noted that so long as the author was still an employee of Oregon State Hospital, he or she would be the Board's first choice but that someone familiar with the case, or as a last resort, the Chief of Psychiatry could appoint a psychologist to testify instead, and that it can be left

to the psychology department to determine who is best able to do so. Dr. Balduzzi further noted that testimony from a psychologist would be particularly important in cases where conditions suggested by the Violence Risk Assessment were not addressed in the conditional release plan or levels of supervision proposed by the plan differed from those initially recommended by the evaluator. Ms. Morrison stated that it should also be a psychologist speaking to the risk posed to the community if the client were to reoffend.

Ms. Follansbee questioned whether the Board would like to formalize the new Hospital Request for Conditional Release Hearings process with a policy and Ms. Morrison suggested that at the very least a template would be helpful to inform hearing participants not only of the Board's purpose in holding these hearings but to streamline the hearing and to ensure that all important elements are addressed at each one, regardless of panel, attending Assistant Attorney General, or persons testifying.

Chair Lieber requested additional discussion as to the Board's purpose in holding such hearings and asked Interim Executive Director Follansbee to explain how hospital and community communication occurred in the past. Ms. Follansbee summarized the previous conditional release process as follows: Prior to Oregon State Hospital switching to the Avatar system of record keeping, all medical reports were forwarded to the Board at the time they were created. When the Board then requested the evaluation of a client by a community provider all the current, as well as prior, mental health records were provided for the community to review. Evaluations were conducted as placements in the community became available and within a fairly short amount of time after receiving an evaluation accepting a client for placement, the Board would administratively review the plan, and order conditional release. Chair Lieber then noted that the Board began addressing these matters at full hearings pursuant to the recommendation of the Columbia County incident work group.

Dr. Garner raised the issue of psychologists attending this type of hearing as well as psychiatrists in terms of cost to the community of the Board requiring multiple professionals to block out several

hours of their day to be available to testify by phone and whether it would suffice to have written documentation from the hospital and community psychiatrists confirming clinician to clinician communication and documenting that all issues of concern to the Board had been addressed to the satisfaction of both parties. It was noted that this might remedy the current problem of psychiatrists participating in the hearings without having any particular knowledge of the client, which Ms. Follansbee pointed out was likely an artifact of most community providers not including the potential treating psychiatrist in the conditional release evaluation process. Dr. Balduzzi added that developing a standard list of questions to help identify perhaps three issues intrinsically important to a given individual which the Board could then ensure was passed from hospital to community could be useful, and might mean in some cases testimony from a psychiatrist was more important than the psychologist as the former typically speaks to mental health issues, while the latter speaks to risk management.

Indigent Defense Counsel Matarazzo noted that so far in his experience trying to combine a legal hearing with a discussion of treatment issues is not working well. Discussion followed which noted that readiness for conditional release does need to be established in most cases, and it might be helpful if the State could let the Board know if they had issues with the conditional release plan before the day of the hearing. It was further posited that once the legal arguments were done, it should perhaps be up to the Board, not the attorneys, to facilitate the conversation regarding risk between the hospital and community.

Chair Lieber then drew the conversation to a close by summarizing that it appears the problem the Board is trying to solve with these hearings is facilitating the community talking to the hospital about the level of risk a client presents in order to prevent future harm. As such, she noted the joint legal and treatment-issue hearings should continue while a template or checklist was developed and that additional experience would likely assist in refining the hearing's purpose and increasing its value. Prior to the next Board meeting, Ms. Lieber requested that Dr. Balduzzi and Dr. Garner work to draft a

template for the panel to review and that Ms. Follansbee dig into the recommendations of the Columbia County work group.

Chair Lieber then indicated that the Board would break once more for executive session and again noted for the record that representatives from the news media would be allowed to stay in the room but could not report on any issues discussed except the topic as previously announced.

At 8:22 p.m. Chair Lieber called the meeting back into open session. Bennett Garner moved to allow the release of the names of all clients under the jurisdiction of the PSRB to Statesman Journal reporter Hannah Hoffman per her public records request. Jenna Morrison seconded the motion which passed with one abstention.

The meeting was adjourned at 8:25 p.m.