

**FINAL MINUTES
PSYCHIATRIC SECURITY REVIEW BOARD
ADMINISTRATIVE MEETING
ADULT PANEL
DECEMBER 29TH, 2021**

An administrative meeting of the Psychiatric Security Review Board Adult Panel was convened on Wednesday, December 29th, 2021, at 8:39am a.m. via Microsoft Teams and teleconference. Board members, PSRB staff, and members of the public present via Teams and phone were:

Adult Panel- Scott Reichlin, M.D. (Chair, psychiatrist member), Pamela Buchanan, Psy.D. (psychologist member), Julie Duke (public member), Tisha Elmer, P.P.O. (probation member), and Anne Nichol, J.D. (attorney member).

PSRB Staff- Executive Director Alison Bort, J.D., PhD., Deputy Director Mandy Standiford, Hearings Officer Christine Forbes, Executive Support Specialist Justin Hendrick (taking minutes), Paralegal Maria McCormack, and Office Specialist Brady Lambert.

Public Present- Harris Matarazzo, Defense Attorney for PSRB clients.

Dr. Reichlin opened to public comment.

Harris Matarazzo addressed the Board with concerns related to OAR 859.050.0100, the rule related to remote hearings and referenced his Dec 20th, 2021, letter. Mr. Matarazzo renewed his opposition to this change based on his opinion that in person hearings better allow for credibility determinations and to pick up on body language. He further shared his opinion that holding hearings remotely further marginalizes clients and weakens a client's understanding of who the Board is and what the Board expects of them. Mr. Matarazzo also expressed concern that if a client wanted an in-person hearing, they must explain why, and that if the reason was based on something related to their mental health, that it might be contrary to share that with the Board given the issues before the Board. Mr. Matarazzo concludes with a request that the Board not adopt that rule.

Dr. Reichlin opened to further public comments: No further comments were heard.

Dr. Reichlin turned the meeting to Bort introduced new PSRB staff.

Dr. Bort introduced Maria McCormack as new paralegal and Brady Lambert as new Office Support Specialist, and shared information about their roles/duties within the agency. Dr. Bort also announced that a new staff person would be starting shortly in the Administrative 2-Specialist position. This will lead to the agency being fully staffed.

Dr. Reichlin moved to the next agenda topic regarding the Oregon Administrative Rules

Dr. Bort summarized that the proposed rule changes were initially introduced to the Board at the Board's last public meeting of November 17, 2021. Dr. Bort recognized Mr. Matarazzo's concerns but reported that she had not received a copy of the letter that he referred to during the public comments. Dr. Bort clarified that she was aware of the concerns that Mr. Matarazzo shared at the recent public meeting that was conducted but was not aware of this concern. Dr. Bort referred the Board to the section of the rules related to remote hearings. Mr. Matarazzo reported he submitted the letter to Ms. Standiford, and that Ms. Standiford acknowledged its receipt on December 23, 2022. Dr. Bort clarified that such a letter would have been taken into consideration by Ms. Standiford, but not necessarily forwarded to the Board unless requested. Ms. Nichol suggested that Mr. Matarazzo's letter be forwarded to the Board for further consideration.

Dr. Bort emailed the final version of the memorandum that was created in support of the Board's decision to transition to remote hearings (a draft version had been provided to the Board at the November 17, 2022, meeting). Mr. Matarazzo's office emailed a copy of his letter to Dr. Bort, and Dr. Bort sent it to the Board. Dr. Bort highlighted the contents of the memo in support of moving to remote hearings, clarifying what sorts of measures would be in place to address the concerns that Mr. Matarazzo raised. Highlights include:

- Established precedent for holding remote hearings before Covid
- PSRB not statutorily required to hold meetings in person
- Addressed the concerns of the quality of remote hearings stating that the PSRB had created a Remote Hearings Guide to further address due process issues.
- Consensus from stakeholders indicates that holding hearing remotely results in less stress on clients.
- Decreased stress to victims who do not have to be in the same room as a client to appear.
- Financial considerations related to travel and hotel accommodations for witnesses and clients who do not reside in Portland or Salem areas.
- Reduced burden on Oregon State Hospital resources.
- Allow greater access for the public to attend hearings.
- Built in exception for appearing in person.

Dr. Reichlin opened to the Board for further discussion. No additional discussion regarding holding hearings remotely was heard.

Dr. Bort proceeded to focus on the rule changes that were of concern in Mr. Matarazzo's letter. Dr. Bort reviewed the changes to the rules related to tolling time when an individual absconds from treatment in the community and due process measures that are included to contest the calculation of time that is added to a commitment when a person takes unauthorized leave (OAR 859.030.0010(9)). Mr. Matarazzo noted later in the meeting that the version of the rules available at the Board meeting did not include the change that had been proposed by Mr. Matarazzo at a recent public meeting, which is that this issued could be raised at any hearing, rather than the previous version that it could only be raised at the hearing following the unauthorized leave. Dr. Bort proposed that the Board vote on the proposed language rather than the language in the written version before them. Dr. Bort clarified that the final rule would allow for the client to contest this calculation at *any* full hearing before the Board. Ms. Elmer asked if there is a reason that this had to be raised/addressed at a full hearing. Dr. Bort opens this for

discussion. Dr. Reichlin states there would be a set of legal arguments presented by both sides, and that this would require a full hearing. Ms. Elmer acknowledges this is a good point. Dr. Bort brought up that such a request could be made administratively with the caveat that either party could request it become a full hearing. Dr. Bort requests to defer to Mr. Matarazzo for further comment, which the Board allows. Mr. Matarazzo responds that this is an issue of first impression for him, and that given questions could up, he'd think a full hearing would be proper, noting that this issue will likely be rare in any case. He reserved to change his thoughts on this with more consideration. Dr. Bort suggested for now, the Board would hear the issue during full hearings only, and that they could further consider hearing this issue administratively as we get more experience with this new rule. No further comment was heard on this.

Dr. Bort highlighted the change to the rules that the Board is to be notified if the hearing is to be a discharge request. Dr. Bort explained that the rationale for this change is to ensure that such hearings are afforded sufficient time on the docket and that all hearings that are scheduled on any given day can be heard. Dr. Bort added that notice also provides the parties and the Board to prepare and tailor their questions in accordance with the issues that will be contested. Dr. Bort raised that Mr. Matarazzo is opposed to this rule because the statutory scheme generally requires the PSRB to consider the issue of jurisdiction at every hearing. Dr. Bort clarified that the rule does not automatically result in the Board postponing a hearing where a last-minute discharge is requested, but rather allows a motion to be made for a continuance. Dr. Reichlin asks if there is any standard laid out to denying or granting requests for in person hearings. Dr. Bort responded that a letter is to be submitted by the attorney with reason for requiring in person hearing and that further policy would need to be developed. Dr. Bort explained that there would need to be some discussion as to where the in-person hearing would take place. Dr. Bort further explained that it was recently announced that most GEI clients would be residing at the state hospital's Junction City campus, and that travel to that campus would not be reasonable for the Board (i.e., pre-pandemic, no hearings were ever held in person at Junction City).

Rounding out the discussion on rule changes, Ms. Nichol states that Harris' letter raised legitimate concerns for remote hearings, but that the memo from PSRB provided a strong, countervailing point of view as does the Remote Hearings best practices. Ms. Nichol also added the importance that the Board follow the best practices and be open to adapting and improving them over time as concerns arise.

Dr. Reichlin proposes the Board take a vote on the rules package

Dr. Reichlin called each Board member for their vote, and the panel unanimous voted to approve the rule changes in their entirety.

Dr. Bort clarified that new rules would not go into effect until the Juvenile Panel votes at their January 10th administrative meeting.

Dr. Reichlin moved the meeting to the next topic of Planning for Upcoming Initial Hearings

Dr. Bort provided an overview regarding the impact the Oregon State Hospital's pause on admissions due to Covid-19 has had on newly adjudicated GEI clients. Dr. Bort explained that the federal case referred to as *Mink*, requires OSH to admit and assist clients within 7 days, and so OSH had been prioritizing those admissions. The inadvertent result was that newly

adjudicated GEI clients were remaining in jail. However, OSH is expecting to proceed with admitting those cases, and due to the backlog, the Board will have large dockets of initial hearings (90 days following admission) in the coming months. Therefore, the topic for the Board to discuss was for the Board to brainstorm managing lengthier dockets in the coming months.

Dr. Reichlin explained that he participated in a meeting with Dr. Bort, board staff, Mr. Matarazzo and Kristin Boyd, AAG to address upcoming large dockets and summarized the main points. In addition, the Board had further discussion, all of which is summarized here (not necessarily chronologically):

- Increased docket days and eliminate “bye” weeks. This appears to be the most reasonable solution and the Board staff plan to move forward holding hearings weekly as needed to schedule hearings on time. Dr. Bort pointed out that a day was added in January and in February, and that she would add a day to the March if needed. Dr. Bort noted that she anticipated that we would need a bye week occasionally, noting that in 2019, the Board held 6 months of hearings without any bye weeks, and there was a detrimental impact on staff wellness and morale. Dr. Bort believed a three month stretch without a bye week could be achieved reasonably.
- Having two AGG’s to split docket day. This will assist the AAGs; however, does not resolve Board members and staff, who don’t have such relief available.
- Extend hearings to later in the evening, up to 8:00 p.m. This solution is not viable due to the human resources problems it would create for Board staff. In addition, there were concerns related to decision fatigue for hearings that would be scheduled later in the day. The Board’s business hours generally will end at 5:00 p.m.
- Getting notice of posture of cases allows attorneys and the Board to tailor their questions to the issues that matter. Ms. Nichol reinforced that the more information about posture prior to the hearing, the more efficient the Board can be with hearings. Mr. Matarazzo shared there is some difficulty with providing the Board information because of the timing of when exhibits are sent out and that client can change their minds. Ms. Nichol acknowledged that she understood that, but that a head’s up on Friday can really assist with scheduling and help avoid setting over clients at the end of the day.
- Making the record available earlier. Ms. Forbes, PSRB Hearings Officer, clarified that the exhibit files are uploaded the Thursday prior to a hearing, except exhibits that are submitted to the Board late. Mr. Matarazzo clarified that making the exhibits available earlier was something the AAG’s office had requested. In addition, he asked the Board to consider that the scheduling of hearings is done months in advance, so what a person will be requesting at the time of hearing can vary. Dr. Bort suggested OSH or the community make records available to Mr. Matarazzo earlier than when the Board receives them so that he did not have to rely on the Board’s process to know what his clients might be requesting at their hearing. Dr. Bort confirmed that Mr. Matarazzo has requested that the Board not seek out any posture or requests from treatment providers, and that the Board fully respects and adheres to that request. Dr. Reichlin stated that the long-standing standard of practice, as Ms. Forbes explained, was to issue the Board’s exhibits the Thursday prior to a hearing and that this practice seemed to be a reasonable timeframe.

- Dr. Reichlin shared the importance of the Board’s responsibility of managing the docket and ensuring that hearings are running on time and ending at a reasonable time, which he established was 5:00 p.m.
- Ms. Elmer shared her position that given the reality of longer dockets, the Board should be prepared for hearings to go past 5:00, that they have in the past and it is not great, but that it’s possible to occur given the situation. She reminded the Board of their practice to make remarks at the outset of a long docket day of the importance of keeping the questioning relevant and to avoid repeating questions where answers were already established in previous testimony or on the record.

At the conclusion of the discussion, Dr. Reichlin proposed that the Board draft a letter to Mr. Matarazzo outlining the desire to have the posture of cases (“client’s position”) provided to the Board by the Monday prior to the hearing. Dr. Reichlin requested the concurrence of the Board members and indicated that Board members were nodding their heads in the affirmative.

Dr. Reichlin turned the meeting over to Dr. Bort to discuss Annual Trainings

Dr. Bort summarized the three Board trainings due by December 31, 2022, both available in the Board member’s Workday accounts. Dr. Bort stated she would follow up by the end of the week with anyone who has not completed those. She further provided instruction on how the Board members could verify whether they had completed the training. Dr. Bort stated that the Overview of Boards and Commissions may also be in the queue for those Board members who were recently approved for a first or second term, but that only new Board members were required to take that training. For second term Board members, that training is optional.

Dr. Bort requested Board members review the Best Practice Memo and asks that board complete survey monkey link that was sent out by December 31st, 2021. Dr. Bort confirms she will double check with Shelley Banfe about which Board members may still need to complete this. Dr. Bort clarified that Ms. Duke will not have to do this because it covered a period prior to her becoming a Board member. Dr. Bort reported that the survey for 2021 would be available and sent out to the Board in 2022.

Having exhausted the discussion of Remote Hearings earlier in the meeting, Dr. Bort suggested turning the meeting back over to Dr. Reichlin for public comments. Dr. Reichlin confirmed that there would be a training on Microsoft Teams for today’s Board panel immediately following the public meeting.

At 10:15 Dr. Reichlin opens to public comment. No comments are made.

Dr. Reichlin adjourned the meeting.

Meeting adjourned 10:15am.

