

# A Model for Management and Treatment of Insanity Acquittes

Psychiatric Security Review Board, State of Oregon

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In the mid 1970s, both the public and the mental health professions in Oregon were concerned about the threat to the public presented by persons found not guilty of crimes due to insanity who were released from psychiatric hospitals. In addition, the forensic unit of the state mental hospital was overcrowded with insanity acquittees, but there were few community programs to supervise or treat dangerous mentally ill offenders who might be released.

At the same time, increased attention to the rights of mentally ill patients in the 1960s and 1970s had led to due-process reforms that made it difficult to legally detain mentally ill persons. The state often used procedures for insanity acquittees similar to those used for civilly committed persons—short hospital stays with little or no community monitoring. Existing laws placed authority for disposition of insanity acquittees on the criminal courts, which often lacked the time, resources, or expertise to make informed judgments about an individual's clinical condition or dangerousness to others.

To address these problems, the state of Oregon in 1978 established the Psychiatric Security Review Board, an independent, interdisciplinary program for monitoring persons who are found guilty except for insanity and who are considered to present a substantial danger to others. In recognition of its commitment to improved integration of mental health services within the criminal justice system and its responsibility to community and societal values, the State of Oregon's Psychiatric Security Review Board

was selected to receive the 1994 Gold Achievement Award from the Hospital and Community Psychiatry Service of the American Psychiatric Association. The award is presented each year to recognize outstanding programs for mentally ill and developmentally disabled persons. It includes a \$10,000 prize made possible by a grant from Rorrig, a division of Pfizer Pharmaceuticals. The award was presented October 1 at the opening session of the 46th Institute on Hospital and Community Psychiatry in San Diego.

The primary purpose of the Psychiatric Security Review Board, which is the first program of its kind in the United States, is to protect society through the postadjudication management and treatment of insanity acquittees, almost all of whom are chronically mentally ill. The board assumes sole authority for determining whether persons assigned by the courts to its jurisdiction should be committed to the state hospital, granted conditional release or have conditional release revoked, or be discharged from the board's authority if they are no longer mentally ill and dangerous to others. Unless discharged early, an insanity acquittee remains under the board's jurisdiction for the maximum sentence that could have been received if the person had been convicted. The program's conditional release component provides a mechanism for reducing the number and length of costly inpatient stays.

The Psychiatric Security Review Board successfully bridges the mental health and criminal justice systems, while acting independently of

both systems. Persons come under the jurisdiction of the board through the courts and are treated and supervised by staff from the mental health system. About 65 new persons are placed under the board's jurisdiction each year. Currently the board is responsible for about 500 people, 180 of whom are on conditional release. In a study of criminal recidivism among 366 subjects who were conditionally released between 1978 and 1986, only 15 percent were rearrested while on conditional release.

Oregon's Psychiatric Security Review Board has received highly favorable attention from national organizations, including the endorsements of the American Psychiatric Association and the National Alliance for the Mentally Ill. Two other states—Connecticut and Utah—have established review boards that substantially replicate the Oregon program. The board's continued vitality during a period of budget constraints, legal assaults on mental health systems, and public opinion favoring abolishment of the insanity defense attests to the confidence it has inspired among defense and prosecuting attorneys, judges, mental health professionals, and the citizens of Oregon.

## Organization of the board

Oregon's Psychiatric Security Review Board functions independently of the court system and the Oregon Mental Health and Developmental Disability Services Division, although it closely coordinates its activities with the mental health division, which provides treatment to insanity acquittees.

The board effectively integrates the disciplines of law, psychiatry, psychology, and social work. By law, two of its five part-time members must be a psychiatrist and a psychologist experienced in the criminal justice system, one an experienced parole and probation officer, one an attorney experienced in criminal trial practice, and one a member of the general public. The psychiatrist and the psychologist cannot be employees of the state mental health division. The attorney cannot be a district attorney or public defender. The board members receive per diem expenses for their meetings.

Board members are appointed by the governor and confirmed by the state senate for four-year terms. The current members are George Saslow, M.D., Stephen Scherr, Ph.D., Kim Drake (parole and probation officer), Hilda Galaviz-Stoller, J.D., and Vern Faatz (public member).

The board has four staff positions—an executive director, two administrative assistants, and a secretary. Mary Claire Buckley, J.D., an attorney with mental health law experience in both civil and criminal commitments, serves as executive director. Staff duties include working with the staff of Oregon State Hospital in Salem, which provides inpatient services for persons under the board's jurisdiction; with members of the bar; with staff of community mental health agencies; and with victims and families of insanity acquittees.

The board operates on a biennial budget, with funds appropriated by the Oregon state legislature. Current funding, approved through mid-1995, for administrative costs associated with operation of the board is about \$630,000 for the two-year period. The Oregon Mental Health and Developmental Disability Services Division provides the funds for community care of insanity acquittees on conditional release. The division contracts with public and private agencies to provide a range of mental health services.

The basic cost for community supervision of an insanity acquittee is about \$5,000 per year. The cost for acquittees who need enhanced out-

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## The 1994 H&CP Achievement Award Winners

The American Psychiatric Association honored five outstanding mental health programs in an awards presentation on October 1 at the opening session of the 46th Institute on Hospital and Community Psychiatry in San Diego. The Psychiatric Security Review Board of the State of Oregon received the Gold Award and a \$10,000 prize made possible by a grant from Roerig, a division of Pfizer Pharmaceuticals.

Four programs received certificates of significant achievement. They are the Alternative Family Program of Gulf Coast Community Care

patient services is about \$9,000 per year and for the few who need extensive residential placement services, about \$33,000 per year. These totals compare with an annual cost of \$60,130 for inpatient care.

### Population served

Since the 1970s, the clinical characteristics of insanity acquittees have become increasingly homogeneous due to adoption of more restrictive definitions of the insanity defense. For example, in 1983 Oregon eliminated the insanity defense for people with a sole diagnosis of personality disorder. Most persons involved in a successful insanity defense have a diagnosis of a chronic mental illness, primarily schizophrenia or other psychosis, and have extensive past experience with both the mental health and the criminal justice systems. The persons for whom the board is responsible are often the sickest patients in the population of chronically mentally ill persons.

In a sample of 758 persons assigned to the jurisdiction of the Psychiatric Security Review Board between 1978 and 1986, almost 90 percent were men, and half were between the ages of 20 and 30. Most were white, in keeping with the ethnic distribution of Oregon's population. They were generally unemployed or underemployed and either lived alone, with family, or in protected settings.

More than three-quarters of the

in Clearwater, Florida, the Emory Autism Resource Center in Atlanta, Evolving Consumer Households of the Massachusetts Mental Health Center in Boston, and Independence Center in St. Louis.

The winning programs were chosen from among 52 applicants by the 1994 H&CP Achievement Awards board, which was chaired by Don R. Lipsett, M.D., of Cambridge, Massachusetts. The awards have been presented annually since 1949. Descriptions of this year's winning programs are included in this issue, beginning on page 1127.

group had a previous state hospital stay. The group as a whole had a mean of 3.1 prior psychiatric hospitalizations, 59 percent of them involuntary. Psychosis accounted for 72 percent of diagnoses—60 percent of the group had a diagnosis of schizophrenia, and 7 percent had bipolar disorder. Eleven percent had a personality disorder, 8 percent had mental retardation, and 5 percent had organic mental disorders. Substance abuse disorders accounted for only 3 percent of primary diagnoses, but 27 percent of the group had substance abuse problems.

The group had extensive involvement with the criminal justice system—a mean of 5.5 police contacts per person—before being assigned to the board's jurisdiction. Seventy-seven percent of the sample had previously been charged with criminal offenses. Seventy-three percent were assigned to the board's jurisdiction after charges involving felonies, and 27 percent after misdemeanors. The most frequently occurring felonies were assaults, burglaries, and unauthorized use of motor vehicles. Harassment was the most frequently occurring misdemeanor. Cases resulting in death of another—murder or manslaughter—accounted for 4 percent of the crimes.

### How the board operates

**Board powers.** The Psychiatric Security Review Board was created by 1977 legislation—Oregon Revised

Statutes, Sections 161.319–161.351, 161.385–161.395 (1977)—which transferred legal responsibility for insanity acquittees from the trial courts to the board as of January 1, 1978. The statute specifies that the primary concern of the board is protection of the public and gives the board sole authority for determining the placement of persons assigned to its jurisdiction.

To counterbalance these stipulations, the law provided substantial legal safeguards to persons under the board's jurisdiction, including rights to periodic hearings, legal representation at all hearings, cross-examination, subpoena power, independent professional evaluation before hearings, and appeal of the board's decisions to the Oregon appellate courts.

A key innovation is development of a well-supervised conditional release for insanity acquittees that covers both the individual's readiness for release and the availability of supervision and treatment in the community. The system allows for protection of the civil liberty interests of insanity acquittees by developing treatment in the least restrictive setting that is appropriate for each acquittee. The board may promptly revoke conditional release if it receives reports that the individual has violated the release conditions or that the individual's mental status has deteriorated. However, once a person is discharged from the board's jurisdiction, neither the trial court nor the board has any continuing authority over that person.

The board is a state agency administratively located within the Department of Administrative Services. Because authority over insanity acquittees is centralized in the board, which has specialized knowledge of the patient population and the care available for them, the state's interest in consistent application of rules and resources can be more easily accommodated than when decisions are made by a diverse group of trial court judges.

***Commitment to the board's jurisdiction.*** Insanity defense cases in Oregon use a standard to define insanity that is based on the American Law Institute test. In 1983 the state

changed the name of the plea used for insanity defense cases from "not responsible due to mental disease or defect" to "guilty except for insanity." A successful insanity defense initiates the Psychiatric Security Review Board's procedures for managing insanity acquittees.

After a finding of guilty except for insanity, the trial judge decides if the evidence shows that the defendant continues to be affected by a mental

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**Most persons involved in a successful insanity defense have a diagnosis of a chronic mental illness and extensive past experience with both the mental health and the criminal justice systems.**

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disease or defect and if the person presents a substantial danger to others. If the answer to either question is no, the state's jurisdiction terminates and the defendant is discharged; however, this outcome is relatively rare. The vast majority are not set free but are subject to management by the Psychiatric Security Review Board, which includes the probability of confinement and close supervision for an extended period of time.

The trial court judge determines the maximum length of this period based on the sentence the individual would have received if found criminally responsible for the offense. This time period is known in Oregon as the "insanity sentence," which ranges from year for a misdemeanor to a lifetime for murder. The court may assign individuals with multiple charges to the board's jurisdiction for longer periods reflecting consecutive sentencing.

The trial judge also determines whether there is a victim of the defendant's crime and whether the victim wishes to be notified if the board decides that the insanity acquittee will be conditionally released or dis-

charged or if the acquittee escapes from supervision. If so, the board must make reasonable efforts to notify the victim of these events. Finally, the trial court judge determines whether the insanity acquittee will be initially placed in the forensic unit of the state hospital or in the community on conditional release.

***Hearings.*** Insanity acquittees serve their "insanity sentence" within the mental health system either in the state hospital or in the community in a monitored conditional release program. The Oregon statutes require the Psychiatric Security Review Board to conduct periodic hearings for each individual it supervises. Each person is eligible for a hearing every six months. Insanity acquittees, hospital staff, and staff of community monitoring agencies may also request hearings. The board conducts about 300 full hearings each year.

Hearings are held once a week at Oregon State Hospital. Relaxed rules of evidence provide a less stringent burden of proof than in civil commitment hearings and allow board members to consider proceedings of the acquittee's trial, information submitted by interested parties, and the acquittee's entire psychiatric and criminal history.

During the days before the hearings, the board's staff compiles and provides to board members documents about the case, which may consist of several hundred pages. Over the last five years, the board has become more efficient in conducting hearings by employing a case summary coordinator to computerize records and then to index them for board members.

At least three board members must be present for a hearing. The state is represented by an assistant attorney general or local district attorney. The insanity acquittee has a right to legal counsel, and indigent persons are provided counsel without cost. Psychiatrists, social workers, and psychologists from the state hospital staff testify regarding the acquittee's mental health status and progress. The acquittee is present and can subpoena and cross-examine witnesses. All hearings are recorded,

and the transcript constitutes the record if the person decides to appeal the board's decision to the appellate court.

The burden of proof on all issues is by a preponderance of the evidence. The state bears the burden of persuasion in all hearings except those held to consider an acquittee's application for change of status, in which the person must prove his or her suitability for release or discharge.

All three board members must vote unanimously for a decision to be made at the hearing. If a consensus decision cannot be reached, the case file and transcript of the hearing are referred to the two board members who were not present and three of the five members must concur. At the conclusion of the hearing, the board's chair or acting chair gives the insanity acquittee and the attorney written notification advising of the right to appeal an adverse decision within 60 days from the date an order is signed. The board must provide a written order within 15 days of the hearing.

The board also conducts administrative hearings in which an insanity acquittee's conditional release or treatment plan is reviewed or modified. The acquittee does not have to be present for such hearings.

**Hospitalization, conditional release, and discharge.** Hospital care for insanity acquittees is provided at the Oregon State Hospital forensic unit in Salem. Almost 325 of the 700 beds at the state hospital are devoted to patients under the board's jurisdiction. The patient's treatment plan is developed by hospital staff, but major alterations in the plan, such as off-campus passes, must be approved by the Psychiatric Security Review Board.

Some patients who are assigned to the board's jurisdiction cannot be released into the community under any foreseeable conditions. But for others, conditional release is a reasonable prospect, provided they are closely monitored and supervised by mental health programs in the community. Community programs for insanity acquittees have been influenced by many of the major reforms that took place in community mental health in

general in the late 1970s and early 1980s, particularly a refocusing on the needs of chronic mentally ill patients who were being discharged from state mental hospitals. In 1981 Oregon legislation recognized chronic mentally ill people as the population with the highest priority for public mental health services and reorganized community mental health programs to emphasize support services for them. Within this reorganization, a separate component for community services for released insanity acquittees was created.

The patient, the patient's attorney, or hospital staff members may file a request for conditional release. A patient may request a hearing for the board to consider conditional release every six months. The board then has 60 days within which to set that hearing. Hospital staff may submit a request for conditional release of a patient at any time. Those hearings are set as soon as possible.

At the board's request, a community program conducts a thorough evaluation of each insanity acquittee being considered for release. State law prohibits conditional release until the community program, in cooperation with the board, develops a plan to provide adequate supervision and treatment. The conditional release plan constitutes an agreement among the board, the Mental Health and Developmental Disability Services Division, the community program, and the insanity acquittee. The plan includes provisions for living arrangements, mental health aftercare, and case management.

The plan may specify that the acquittee reside in a specific group home and not change residence without approval of the case manager. He or she may be required to take medication under observation of group home staff, to attend a day treatment program, and to submit to drug screening and medical monitoring. The plan may also stipulate additional conditions; for example, the person may be prohibited from driving, using alcohol or other drugs, or contacting certain persons.

The board designates a particular person, usually the case manager, to monitor the insanity acquittee's pro-

gress and make reports to the board monthly or at any time the conditions of the release are violated or the acquittee's mental status changes. In addition, any police contact with the conditionally released person, even if he or she is a victim of a crime, is immediately reported to the board via the law enforcement data system computer. The community program usually reports to the board by telephone if a problem arises requiring prompt board action. On receipt of such a report, the board or its chairperson may immediately issue a written order revoking conditional release. This order constitutes a sufficient warrant for the police to take the person into custody. The person may not be jailed, but must be transported to the state hospital.

The entire process from report to rehospitalization may be accomplished within a few hours. The board must then hold a hearing within 20 days to decide if the person should remain committed to the hospital, return to conditional release, or be discharged. Data on persons under the board's jurisdiction before 1986 showed that although more than half of those on conditional release had their release revoked within a year, only a few revocations were due to new criminal charges. Most occurred because of violations of conditions of release such as a requirement to take medication or refrain from using alcohol or because of deteriorating mental health.

Persons may be discharged from the board's jurisdiction while in the hospital or on conditional release. At any hearing, the board must discharge a person found to be no longer affected by mental disorder or no longer presenting a substantial danger to others. Thus both criteria—mental disease or defect and dangerousness—must be met for the board to retain jurisdiction. A person is automatically discharged after having been under the board's jurisdiction for the duration of the "insanity sentence." At the end of the insanity sentence, the state has the option of instituting civil commitment procedures to retain custody of a person believed to meet criteria for civil commitment.

### Research on outcomes

The Psychiatric Security Review Board monitors its own performance as well as that of the insanity acquittees it supervises. Quality improvement mechanisms include a full financial audit done by the Secretary of State's audit division every four years and an internal quarterly review using a productivity matrix developed by the board's staff. Performance measures (and their averages since 1992) include percentage of hearings held within statutory time limits (85.7 percent), percentage of conditional releases maintained per month (95.7 percent), and percentage of revocations based on new felonies (1.7 percent).

The board's centralized record keeping system has provided opportunities for extensive research on the characteristics of the forensic population and on service outcomes. Joseph Bloom, M.D., professor and chairman of the department of psychiatry at Oregon Health Sciences University, and his colleagues Douglas A. Bigelow, Ph.D., Bentson H. McFarland, M.D., Ph.D., Jeffrey Rogers, J.D., and Mary H. Williams, M.S., J.D., have studied various aspects of the Psychiatric Security Review Board's operation since its inception. A study funded by the National Institute of Mental Health developed in-depth information about a cohort of 758 persons assigned to the board's jurisdiction between 1978 and 1986, including data on their management while under the board's jurisdiction and on their involvement with the mental health and criminal justice systems after discharge.

The results showed that the system tended to use conditional release conservatively, in keeping with its mandate to protect the public; 68 percent of the study sample spent their entire insanity sentence or the entire study period in the hospital. Women were more likely than men to be conditionally released, as were subjects with fewer past contacts with the mental health and criminal justice systems and less serious crimes leading to board jurisdiction. Subjects whose conditional release

was revoked tended to be younger, to have more extensive histories of substance abuse and of contact with the mental health and criminal justice systems, and to have spent more time in the hospital before conditional release. Follow-up an average of 53 months after subjects were discharged from the board's jurisdiction showed a significant decrease in the number of criminal justice contacts per year compared with the period before subjects became the board's responsibility. Among subjects who were arrested after discharge from the board's jurisdiction, there was an overall decrease in the number of felonies and an increase in the number of misdemeanors, compared with the period before board jurisdiction.

### Plans for the future

The Psychiatric Security Review Board intends to continue to seek ways to increase its efficiency without jeopardizing its effectiveness. Current plans include training in administrative law procedure for board members and advanced training in

computer technology for staff.

Staff of the Psychiatric Security Review Board also plan to increase efforts to fight state budget cuts that may threaten the board's existence. Adequate funding for the program beyond 1995 is not assured, as the final phase of a state initiative limiting the use of property tax revenue for government operations will go into effect that year. Staff plan to work with community organizations such as the Friends of Forensic, consisting of people with relatives and friends under supervision of the board, and the National Alliance for the Mentally Ill to mobilize support for continuing the board's mission of protecting public safety while promoting cost-effective supervision and treatment of mentally ill persons who commit crimes.

*For more information, contact Mary Claire Buckley, J.D., Executive Director, Psychiatric Security Review Board, 620 Southwest Fifth, Number 907, Portland, Oregon 97204; telephone, 503-229-5596.*

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## Applications for 1995 Achievement Awards

The Hospital and Community Psychiatry Service of the American Psychiatric Association is now accepting applications for the 1995 Achievement Awards. The awards will be presented at the Institute on Psychiatric Services (the new name for the Institute on Hospital and Community Psychiatry), to be held October 6-10, 1995, in Boston. The deadline for receipt of applications is January 6, 1995.

The American Psychiatric Association presents the awards each year to recognize programs that have made an outstanding contribution to the mental health field, that provide a model for other programs, and that have met challenges presented by limited financial or staff resources or other significant obstacles.

The winner of the first prize, the Gold Award, receives a \$10,000 grant from Roerig, a division of Pfizer Pharmaceuticals. If more than

one program is chosen as a Gold Award winner, the programs share the grant. The winner of the Gold Award also receives a plaque, and the winners of Significant Achievement Awards receive certificates.

Applicants should submit six copies (including the original) of a completed application form and a program description. Each program that applies will be visited by a representative of the local district branch of the American Psychiatric Association. The site visitor's evaluation will assist the Achievement Awards board in selecting the winning programs.

Ricardo P. Mendoza, M.D., of Torrance, California, is chair of the 1995 Achievement Awards board. To receive an application form or additional information, write Achievement Awards, APA, 1400 K Street, N.W., Washington, D.C. 20005, or telephone 202-682-6174.

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