

# MENTAL HEALTH REVIEW BOARD

## PRACTICE DIRECTION 98/2

This Practice Direction replaces No.87/1

In accordance with the provisions of clause 4(1)(b) of Schedule 2 to the Mental Health Act 1986 (as amended) (the Act) the following Practice Direction is made for the assistance of authorised psychiatrists, staff at mental health services, patients appearing before the Board, their representatives and Board members.

### 1. SERVICE OF NOTICES ON PATIENTS

The Board's executive officer will send to each authorised psychiatrist Notices of Hearing for personal service upon each inpatient appearing before the Board. This will be done by way of fax to the medical records administrator. The Notice should be served on the patient as soon as possible after it is received.

These Notices will be accompanied by "STATEMENT OF SERVICE" and Instructions for Service. The Statement of Service should be completed by the person who gave the Notice to the patient and should be presented to the Board on the day of the hearing.



If the patient cannot be served with the Notice because the patient has been discharged on a community treatment order, the mental health service must notify the Board immediately.

If the Board is aware that a patient is subject to a community treatment order it will send the Notice of Hearing directly to the patient.

### 2. INTERPRETERS AND LEGAL REPRESENTATIVES

If an interpreter is required the Board's executive officer should be notified as soon as possible.

If the authorised psychiatrist or his/her representative is advised that the patient will be legally represented at the hearing the Board's executive officer should be notified as soon as possible.

### 3. WRITTEN MATERIAL PLACED BEFORE THE BOARD

3.1 The Board will require access to relevant materials from each patient's file that contains the following administrative documents. These will include the originals of:

- the Request for Admission (Schedule 1);
- the Recommendation for Admission (Schedule 2);
- the PSY1 form, if one was completed following an examination by the authorised psychiatrist, pursuant to section 12(2);
- any community treatment order and extension or revocation of such order.

3.2 The Board will require access to the patient's clinical file(s). This includes (where applicable) the most recent or current out-patient file.

3.3. The Board requires three copies of a "Report on Continued Detention", in the form of the annexure to this Practice Direction, prepared by the medical practitioner responsible for the treatment of each patient appearing before the Board.

#### **4. PATIENT ACCESS TO WRITTEN MATERIALS PLACED BEFORE THE BOARD**

The rules of procedural fairness require that each party must be given an opportunity to inspect the written materials which are placed before the Board. These procedural fairness requirements are also set out in section 26(7) of the Act which provides that "the patient or a person representing the patient is entitled to inspect or otherwise have access to any documents to be given to the Board in connection with the hearing at least 24 hours before the commencement of the hearing".

The only exception is where the Board, following an application by the authorised psychiatrist or his/her representative, orders that the patient be denied access to any specified document or part of a document included in those documents. The grounds for such an order are set out in section 26(8) of the Act.

If such an application is proposed, notice should be faxed to the Board's executive officer prior to the day of the hearing. The Board will determine this application on the day of the hearing in the absence of the patient. In the meantime the patient should be given access to the remaining parts of the file and should be told that the application for non-disclosure will be made.

#### **5. PATIENT ACCESS TO REPORT ON CONTINUED DETENTION**

The Report on Continued Detention should be given to the patient preferably one or more days prior to the hearing. Where there is any doubt about the patient's capacity to read and/or understand the Report, an attempt should be made to read and explain it to them. When such doubt exists as a consequence of the patient's lack of understanding of the English language, an interpreter in the patient's language should be used.

If the patient is subject to a community treatment order and it is inadvisable for medical reasons that the Report should be read by the patient alone, arrangements should be made to read it to the patient in advance of the hearing.

#### **6. ORAL EVIDENCE TO THE BOARD**

The Board will require the attendance of a medical practitioner responsible for, or involved in, the treatment of each patient appearing before the Board. As the authorised psychiatrist is a party to each appeal or review coming before the Board the medical practitioner attending will be viewed as the representative of the authorised psychiatrist. Whilst it is not necessary that the medical practitioner appearing before the Board be a qualified psychiatrist the Board may, in some cases, feel it necessary to call for the attendance of the authorised psychiatrist or his/her delegate, or to adjourn so that the attendance of the authorised psychiatrist or his/her delegate may be arranged. If it is not possible for a medical practitioner responsible for, or involved in, the treatment of a patient to appear before the Board on the scheduled hearing date the Board's executive officer should be notified as soon as possible.

The attendance of other persons such as case managers and nurses who have a knowledge of the patient can also assist the Board and should be arranged where relevant.

#### **7. CANCELLED HEARINGS**

The authorised psychiatrist or his/her representative is requested to notify the executive officer of the Board by telephone when a hearing is to be adjourned or cancelled. If the reason is that the patient has not been notified of the hearing because they have been discharged from hospital on a community treatment order, a copy of the community treatment order should be faxed to the Board. If the reason is that the patient has ceased to be an involuntary patient, a note of the cessation of involuntary status should be made on the Notice of Hearing that was sent to the authorised psychiatrist or the patient. This note should be signed, by or on behalf of the authorised psychiatrist, dated and returned to the Board. If an appeal is to be withdrawn, written confirmation should be obtained from the patient and faxed to the Board.

## 8. TIMES OF HEARINGS

Although most hearings are originally listed for 10.00 a.m., any person attending the hearing should contact the medical records administrator to find out an approximate time for the hearing.

Julian Gardner  
President  
10 March 1998

David A.S.Crofts  
23 Brisbane Street  
Berwick 3806  
email : [dasc1961@netscape.net](mailto:dasc1961@netscape.net)  
DOB : 23/2/1961

Mr Jan Szuba  
Executive Officer  
Mental Health Review Board  
Level 30, Marland House  
570 Bourke Street  
Melbourne 3000

Dear Sir,

I refer to your correspondence dated November 7, 2005.

It seems despite your best efforts to refuse to do as I ask, you have satisfied my request.

I will append your covering letter to my next Centrelink pension review form as a supporting document.

It's not often that the Executive Officer of the MHRB contradicts himself in one paragraph and I am sure Centrelink will be suitably amused.

Regards,

David Crofts.

7 November 2005

Mr David Crofts  
23 Brisbane Street  
BERWICK VIC 3806

Dear Mr Crofts

I refer to your correspondence of 7 November 2005 requesting confirmation of your status, as at 11 June 2004, as a person appearing to be mentally ill.

While I note the comments you have made, and as I advised in my correspondence of 28 April 2005, the *Mental Health Act 1986* (the Act) does not allow the Board to issue opinions of the nature that you have requested. However, I have attached to this letter the statement of reasons prepared by the Board in relation to your last Mental Health Review Board hearing. In particular, I suggest you turn to page 4 of the decision, which deals with the issue of whether you appeared to be mentally ill at the time of the Board hearing, on 11 June 2004. You will see that the Board determined that this criterion was met at that time.

In light of the above, you may wish to provide Centrelink with a copy of the Board's statement of reasons highlighting the relevant issues.

I trust this is of some assistance to you.

Yours sincerely



JAN SZUBA (Mr)  
**EXECUTIVE OFFICER**  
(JM)