



Oregon

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TO: Sen. Floyd Prozanski, Chair
Sen. Kim Thatcher, Vice-Chair
Senate Judiciary Committee
State of Oregon

FR: Alison Bort, JD, PhD
Executive Director
Psychiatric Security Review Board (PSRB)

RE: Testimony for January 30, 2019 Hearing on SB 373

Good morning Chair Prozanski, Vice-Chair Thatcher, and members of the committee. I am Alison Bort, Executive Director of the PSRB. The PSRB does not take a position on Senate Bill 373. However, since this bill specifically applies to our agency, I am here today to provide technical information about our current practices and also to answer any questions members of this Committee have to assist in your decision making.

Prior to March 2017, the PSRB had believed itself to be an agency that was bound by the privacy protections of medical records under HIPAA and related laws. This changed following a case that resulted in an order from the Attorney General's office and a subsequent, clarifying letter dated March 15, 2017. I believe members have access to this letter, which is posted online in the catalog of public records exemptions. That order and subsequent letter required the PSRB to disclose several records, including medical records, of an individual who had previously been under the PSRB's jurisdiction.

When I began my position with the Board as the new Executive Director in June 2018, I learned we had received a request for 63 exhibit files of individuals who had previously been under PSRB jurisdiction, and since, had discharged. I was told by the requestor that the Attorney General's letter supported that we turn the records over in full. I familiarized myself with the Attorney General's letter and sought out additional consultation, including legal consultation, to clarify the scope and interpretation of the opinion. After consultation, our agency took the position that the AG's letter supported an exception to release medical records, but that the exception was limited and narrowly tailored to situations that shared the unique facts that were present in the originating case. Subsequently, I worked with the requestor to narrow the original records request of 63 clients and further developed the analysis we now apply to requests of this nature.

For your consideration, I have submitted our agency's first response to this type of records request in which we applied this analysis. While we take no position on SB 373, we believe this document will provide the Committee with an overview of the impact these types of requests have on our staff and funding resources. For instance, inherent in applying this analysis, is the risk of over-disclosing what might be interpreted by another reviewer as private, medical information, which carries an increased risk of legal action.

Our analysis for each of these responses requires a full review of the individual's exhibit file to complete a comparative analysis to the originating case to determine whether the disclosure of information in a personal, medical or similar file would constitute an unreasonable invasion of privacy. Further, if it would constitute an unreasonable invasion of privacy, we analyze whether the public interest requires disclosure by clear and convincing evidence. If it would, then we complete a line by line analysis of each requested record to ensure that the necessary redactions are made. In addition, we cite each public records exception with the information that was redacted.

The cost of these analyses to date has been approximately \$16,000 of legal fees to come up with a legally sound analysis and complete two test cases. For the remaining cases that I have reviewed, it has taken between 6-16 hours per case, depending on the length of the file and the facts of the case. From my experience, this type of records request requires a person with specialty skills because of the level of detail and specialized skill necessary to ensure the agency is striking the balance between providing the public with information while protecting the privacy interests of third parties and individuals under the PSRB.

Lastly, we wanted to provide members of this Committee with information about other records readily available to the public, including Board orders, conditional release monthly reports, and audio recordings of Board hearings (up to 5 years post-hearing). In addition, all of our hearings are open to the public.

To conclude, our agency takes no position on this bill. Do Committee Members have any questions for me?