

PSYCHIATRIC FACILITIES REVIEW BOARD

ANNUAL REPORT APRIL 1, 2001 - MARCH 31, 2002

The Psychiatric Facilities Review Board is appointed under the mental health provisions of the *Hospitals Act of Nova Scotia*. Its primary responsibilities are to review the decision of the treating psychiatrist that a person in a psychiatric facility should be held under 'formal' status and that a person is not capable of consenting to treatment. A person is held under formal status if a psychiatrist has certified that the person (a) suffers from a psychiatric disorder and (b) is a danger either to their own safety or to the safety of others. The board is also authorized to review competency to administer a patient's estate, where necessary, and to make recommendations as to the treatment, care or placement of a patient.

These responsibilities and powers are formidable, since they can operate to deprive the individual of the right to make decisions concerning oneself, and authorize detention and treatment against one's wishes even in situations in which no criminal act has been committed. Outside the areas of criminal law and child protection, this power to interfere with individual autonomy is unprecedented. Therefore the Board carries a weighty onus to ensure to the extent possible that its decisions, both in terms of substance and of procedure, are reached in judicious manner within the context of the utmost respect for the rights of the individual whose interests are at stake.

This Annual Report is presented in three parts. Part I presents the statistics as of the Board's operation in the period from April 1, 2001 to March 31, 2002. Part II is an analysis of trends indicated by the statistics. In Part III we bring to the attention of the Legislature issues of note, in particular a serious concern regarding lack of availability of community resources for persons with mental disorder.

PART 1 - STATISTICS

During its twenty-third year of operation, April 1, 2001 to March 31, 2002, the Board held 32 reviews under sections 64 and 65 of the Hospitals Act. Of these, 10 were automatic reviews under section 64 and 22 were requested reviews under section 65. Of the 10 automatic reviews, all 10 patients retained their formal status. Of the 22 requested reviews, 19 were retained as formal patients (^{86%}~~91%~~) and 3 had their status changed to that of informal patients (^{14%}~~96%~~).

The Board received 53 requests for review under the section 65 of the Hospitals Act. Fifty requests were received from patients and three from hospitals. Of the 53 patients submitted a request, 25 were made informal prior to review and 6 requests were withdrawn.

PART 2 - TRENDS

A. Automatic Reviews

Under the Hospital Act, section 64, the Board is required to review the status of each patient held under formal status every six months for the first two years and once per year thereafter. This must be done regardless of whether the patient has requested a hearing or not.

In the period April 1, 2001 to March 31, 2002 ten automatic reviews were scheduled which is the same number as in the previous period April 1, 2000 to March 31, 2001. This represents a slight reduction from the twelve automatic reviews held in the period April 1, 1999 to March 31, 2000. In our last report, we drew attention to this significant percentage increase in automatic hearing over the past several years as compared with earlier years such as 1998-99 in which 4 hearing were held and 1997-98 in which 3 hearing were held. We noted that these statistics indicated longer periods of hospitalization for more severely ill patients. With 10

automatic reviews again this year, the trend identified in the last year's report continues.

B. Requested Reviews

Non-automatic reviews are commenced primarily by requests from patients although, on occasion, requests come from hospitals as well, as was the case this year. The number of patient requests dropped this year from 65 (last year) to 53, representing a decrease of 18.4%. There does not appear to be any particular reason for this reduction.

Hearings were held in 32 cases, representing a follow through percentage of 60% compared with last year's follow through average of 52%. The increase is partially accounted for by the fact of the number of withdrawn requests dropped from 13 last year to 6 this year. This may reflect a new policy instituted last year by the board of requiring patients to complete a written statement giving their reasons for wanting to withdraw their request for a hearing. This policy grew out of a concern for the growing number of withdrawals and the desire on the Board's part to make sure that such withdrawals were not the result of any undue influence being exerted upon the patients to withdraw their requests.

A patient's status was changed from formal to informal by the Board in only three instances following reviews. This represents 9% of the reviews held. This is considerably below the number made informal last year (21%) but closer to the results in 1998-99 (14%). One explanation for the lower percentage is the Hospitals are providing the Board with much more complete and comprehensive medical reports about a patient's condition and supporting the medical conclusions that the patient should remain under formal status. The Board has tried in recent years to inform hospital administrators of the type of information that such be included in the medical reports pertaining to patients, and, particularly, drawing attention to the need to provide medical information

relevant to the issue of dangerousness. Hospitals and doctors have responded with the result that the Board is now provided with much more extensive and useful medical and non-medical information.

The total number of reviews held in the period April 1, 2001 to March 31, 2002, including both requested and automatic reviews was 32. This can be compared with figures from previous years such as: 43 in 2000-01, 37 in 1999-2000, 35 in 1998-99 and 23 in 1997-98. Considering the reduction in the number of requests by patients for the period April 1, 2001 to March 31, 2002 (50) as compared with 65 for the previous year, it is not surprising that the number of reviews held in 2001 and 2002 was lower.

For the first time last year, the Board had access to statistics showing the total number of times formal status is invoked at any of the Psychiatric institution throughout the province. In 2001-2002 there were 387 formalizations, in 2000-2001 there were 358 formalization, 1999-2000, 381; in 1998-99, 353; in 1997-98, 387. When these statistics are matched with those of number of reviews in a given year, oddly, there is no discernable correlation. One can surmise that the number of times formalization is invoked does not correspond with the length of term of each formalization. It may also be that a greater percentage of patients held under formal status now request review.

The Act provides for a maximum period of one month from the date of request to the date of hearing. In this year, the average number of days from the date a request for hearing was received to the date the hearing was conducted was 13.5. The comparable figure for 2000-2001 was 14.8 while for 1998-99 it was 15.0 and in 1997-98 it was 16.2 days on average.

It should be noted that the Hospitals Act provides that the Board has 14 days within which to issue its decision following a hearing. We routinely do so with reasons, within three to four working days.

C. Psychosurgery

As in the previous nineteen years, there were no hearings held to determine whether there had been compliance with the requirements for psychosurgery.

PART 3- COMMENTS

- (a) Lack of Community Resources: The Board stressed in last year's annual report and in previous reports the *lack of available resources in the community for placement of severely mentally ill patients to reduce the need of hospitalization.* Recommendations in previous Government commissioned reviews of mental health services such as Drs. Roger Bland and Brian Dufton who released their report May 31, 2000, and which was referred to in the previous annual report, recommended the Department of Health develop a housing program for those with severe mental illness, as well as small regional intensive care residences.

The previous annual report also indicated an independent review was conducted for the Nova Scotia Department of Community Services, by Dr. Michael Kendrick whose report was released in February 2001. This report addressed the need for a community based option system for persons with mental disorders and noted a lack of Provincial investment in such a program due to the unfortunate jurisdictional split in community services between the Department of Community Services and the Department of Health. This report also recommended within two years the development of a single community system to serve persons with mental disorders. The Department of Health has indicated to this Board that a review of Community Support including Housing is presently being conducted by the Department of Community Services and recommendations will be presented to the

Government within the next 9-12 months.

The Board in its previous report was concerned about two long term patients who have been institutionalized for their entire adult lives. To date, there has been no special facilities to house these two patients, and the Board encourages the Government to find funds to create a long term care facility where these two patients can receive high quality personalized care while maintaining their formal status.

- (b) Appointments to the Board: The Province has taken steps to implement a process to ensure the qualifications of person's appointed to the Board are based on expertise in the area and free of political interference. As indicated in the last report, the Province appeared interested in high turnovers generally on agencies, boards, and commissions to provide for a large number of the public to serve; however, it is important to have expertise and continuity which can only be obtained from long time service on the Board, and this should be the preferred method of tenure to this Board.
- (c) Community Treatment Orders: These orders provide for the compulsory treatment of psychiatric patients in the community provided they comply with conditions in the order or certificate. It appears many psychiatric facilities throughout the Province, permit formal patients to be released under supervision for a few days. At the present time, the Board does not see any necessity to grant such orders/certificates. Once a patient is released in the community they are deformedalized and should not be under release conditions.
- (d) Provision of Legal Representation at Hearing: At the present time, patients are advised of their right to counsel but most patients wish to have the hearing conducted

without representation by legal counsel. Those who wish to have legal counsel present, and who can afford to do so, may hire a private practitioner for that purpose. Those who can not afford to employ a private practitioner and who qualify for legal aid, may request legal representation from either Nova Scotia Legal Aid or Dalhousie Legal Aid. However, legal representation is not always available due to many factors such as lack of sufficient notice or lack of sufficient lawyers. It appears that approximately 15% of the patients coming before the review Board during the period April 1, 2001 to March 31st 2002 were represented by counsel. Our statistics do not indicate how many patients requested legal representation but could not obtain it. Patients with representation are advised by the Board that the hearing will be adjourned to accommodate counsel if they are unavailable for the hearing date. The Department of Health will be inquiring as to the availability of legal aid lawyers to provide assistance to patients.

Conclusion

In this Report, the Psychiatric Facilities Review Board has advised the Legislature of an increase in the number of automatic and requested reviews in the last three years as compared to the previous two. We have attempted to alert those concerned of a serious problem with the lack of resources available in the community, particularly in the area of housing for those with severe mental illness. This problem has been flagged as major not only by the Board in three consecutive annual reports but also in two separate reviews commissioned by the present government. With yet a third review underway, we can only hope that such intensive study will lead to concrete action in the near future.

