

MENTAL HEALTH REVIEW BOARD
PRACTICE DIRECTION - 98/3
OBSERVERS AT BOARD HEARINGS

In accordance with the provisions of clause 4(1)(b) of Schedule 2 to the Mental Health Act 1986 (the Act) the following Practice Direction is made in relation to the attendance of observers at hearings of the Board.

As stated in section 33(1) of the Act, proceedings of the Board are closed to the public. However, the Board does have the power to allow members of the public to attend. This Practice Direction relates only to the attendance of observers and does not limit the exercise of the Board's powers under section 33(2) to direct that particular proceedings or any part of the proceedings are to be open to members of the public. This direction may be given if the Board is satisfied that it would be in the best interests of the patient or in the public interest.

1. Observers

Observers will be limited to persons with a legitimate purpose. As a general rule this will include persons engaged in training, persons engaged in relevant education and persons with a particular interest in the operations of the Board, for example, those engaged in similar operations from other States or countries.

2. Prior arrangements

Arrangements for the attendance of an observer should preferably be made in advance of a hearing. The Board's Executive Officer should be contacted for this purpose.

Persons wishing to observe hearings as part of a research project must first, in addition to any other requirements, obtain approval from the President of the Board both for their attendance and for the research.

3. Approval by the Board

A Division of the Board may, subject to compliance with this Practice Direction, decide that a person or persons may attend a particular hearing or hearings as an observer.

4. Patient's consent

When a patient is attending the hearing, the attendance of an observer shall be subject to the consent of that patient. The Division of the Board shall satisfy itself that the consent is voluntary, genuine and informed. Before giving their consent, the patient shall be advised:

- that they can refuse to give their consent;
- that there is no need to give any reason for such refusal;
- that refusal will in no way impact on the outcome of the review or appeal;
- the name of the observer and why they wish to observe, for example, for purposes of training, education etc.;
- that that person is there to observe the work of the Board and not the patient themselves.

The patient's consent shall be sought in the absence of the observer before the hearing commences. It is preferable for a member to speak to the patient outside the hearing room before they enter the hearing room.

5. The Decision-making

An observer shall not remain in the hearing room while the Board is discussing its decision. They may be present when the oral decision is given.

6. Written material

An observer shall not be given access to any of the written material considered by the Board.

7. Confidentiality

The presiding member shall ensure that each observer (other than a member of the clinical team) has signed a Secrecy Declaration as to confidentiality and has explained to them the importance of keeping the proceedings strictly confidential.

8. The Conduct of observers

The presiding member shall explain to each observer:

- that during the hearing they must not take notes, must not speak, and must avoid any form of non verbal communication including facial and body movements; and
- that while outside the hearing room they should avoid discussing the hearing with the patient.

9. Number of observers

Normally only one person at a time will be allowed to observe hearings. In special circumstances more than one may be approved by the Board provided that the hearing room is large enough to accommodate more than one observer without physically intruding upon the patient and others present at the hearing.

10. Members and Board staff as observers

The consent of a patient need not be obtained in relation to the attendance of a member of the Board or a member of the staff of the Board as an observer. However, the presiding member should introduce that person and should explain to the patient that the observer is a member or staff member of the Board but is not taking part in the hearing nor in the decision-making. Paragraphs 5, 6 7 and 8 shall not apply to members or staff members who are observers.

Julian Gardner
President
10 March 1998