

**SEX OFFENDER MANAGEMENT BOARD (SOMB)  
MINUTES**

**Friday, May 18, 2018**

**SOMB Members**

**SOMB Guests**

Allison Boyd  
Amanda Gall  
Angel Weant  
Carl Blake  
Jeff Shay  
Jesse Hansen  
Jessica Meza  
John Odenheimer  
Kandy Moore  
Korey Elger  
Leonard Woodson III  
Marcelo Kopcow  
Mark Waller  
Mary Baydarian  
Missy Gursky  
Norma Aguilar-Dave  
Richard Bednarski  
Rick May  
Robin Singer  
Sharon Holbrook  
Steve Moreno  
Tom Leversee

Debra Baty	Becky Lowe
Marsha Brewer	Dena McClung
Jeff Carpenter	Rick Ostring
Tami Floyd	Gale Page
Jeremy Holman	Lauren Rivas-Jacquez
Laurie Kepros	Mark Scanga
Melissa Kraker	Jacque Sumida
Christopher Thomas	Tami Floyd
Susan Walker	Gary Reser
Amira Minazzi	Roger Kincade
Robert Kay	Selena Jameson
Jeff Geist	Dale Jenkins

**Absent SOMB Members:** Brie Franklin and Jeff Jenks

**Staff:** Chris Lobanov-Rostovsky, Raechel Alderete, Michelle Geng, Marina Borysov, and Kelly Hume

**SOMB Meeting Begins: 9:00**

**INTRODUCTIONS:**

New Board members, Mark Waller and Steve Moreno, Urban and Rural County Commissioners respectively, were introduced. Introductions were made by all in attendance.

**FUTURE AGENDA ITEMS:**

None

**ANNOUNCEMENTS:**

Chris Lobanov-Rostovsky announced the new SOMB Treatment Provider representative, Taber Powers, has been appointed. Taber is a rural treatment provider and works in Durango. Taber will attend his first SOMB meeting in July.

The June SOMB meeting is canceled in order for the staff to prepare for the upcoming SOMB Conference in July. The July SOMB Meeting will occur in Breckenridge on the first day of the conference, July 11, 2018. SOMB members are welcome to attend the SOMB Conference at no charge, and may contact Marina for further information.

Judge Marcelo Kopcow's chairmanship term is set to expire. At the last Sunset Review, the SOMB was given the ability to choose and vote for the SOMB Chair. The Board needs to consider whether they would like to have Judge Kopcow continue as Chair. Motion by John Odenheimer to reappoint Judge Kopcow for another term as Chair of the SOMB.

**Motion to reappoint Judge Kopcow as the SOMB Chair: John Odenheimer; Korey Elger 2<sup>nd</sup> (Question #1)**

**19 Approve                      0 Oppose                      0 Abstain                      Motion Passes**

**ANNOUNCEMENTS AND MINUTES**

Korey Elger announced that May is Foster Care Month and please visit [co4kids.org](http://co4kids.org) for further information.

Marina Borysov announced that SOMB Members must submit their expense reports for fiscal year end. Regarding the SOMB Conference, half of the registration spots are full. The SOMB has five scholarship spots that cover the conference fee. If interested, please contact Marina. Marina requested additional nominations for both the Senator Norma Anderson Victim Excellence award and the Gary Burgin Sex Offender Management or Treatment Leadership award. Raechel advised the SOMB about the national experts who will be presenting at the conference.

**Motion to approve the April minutes:**

**19 Approve                      0 Oppose                      0 Abstain                      Motion Passes**

**APPROVE AGENDA:**

Approved

**ARC COMPLAINT PROCESS AND STATISTICS (Presentation) Carl Blake**

Carl Blake provided a review of the Application Review (ARC) process. The ARC is tasked with approving and delisting providers per Statute. ARC meets twice per month for three hours and consists of staff and SOMB members. ARC members conduct independent reviews of each item and then review decisions as a group to approve or discuss further. Work product is also reviewed including treatment plans and psychosexual evaluations using appropriate assessment tools. The Standards and Guidelines are reviewed throughout this process. The decision making options for the ARC are to approve the provider, request additional information, approve the provider with guidance for improvement, or deny the provider in which the provider can appeal to the Board.

Regarding the complaint process, providers are dually regulated by the SOMB and the Department of Regulatory Agency (DORA). The SOMB sends complaint information to DORA and receives complaint information from DORA. The SOMB staff conducts the initial screen of the complaint. The SOMB does not always have the same finding as DORA as they are different, independent bodies. The SOMB reviews whether there has been a violation of the SOMB Standards and Guidelines, whereas DORA reviews whether there is a violation of the ethical code of conduct for the mental health profession. During this process, the ARC may need to determine if the client is within the purview of the SOMB. The ARC also receives a large number of complaints against agencies, and the SOMB does not have purview over agencies. If the ARC does not have evidence that the Standards and Guidelines have been violated, then the ARC cannot make a finding on the complaint. As part of the review, the provider is given an opportunity to respond to the complaint and the ARC may also require an investigation. All information is reviewed at length before a decision is made. Options for complaint resolution are to dismiss the complaint, resolve through mutual agreement of both parties, or find the complaint valid and issue sanctions.

Carl then reviewed the results of a review complaint data compiled from 2015-2017 of both founded and unfounded complaints. The results included 59 provider complaints, of which 76% (45) were under the purview of the SOMB. For the remaining 24% (14), the SOMB may not have had purview of the providers or some findings were not issued until after the disposition with DORA as the complaint was only in DORA's purview.

88% (52) of complaints reviewed have been filed against a Treatment Provider, while 12% (7) were filed against a Polygraph Examiner. Offenders have filed the most complaints (56% - 33), while offender family members, the ARC and DORA have filed 3% (2). The ARC does not pursue anonymous complaints as they cannot follow up with further information that is needed to determine if the Standards and Guidelines have been violated. DORA, on the other hand, does take anonymous complaints. The ARC requested additional information on 54% (32) of these complaints and 81% (48) were deemed unfounded, with 5 of those being unfounded after the DORA resolution. If DORA is handling the matter and ordered a stipulation, the ARC also requires the provider to adhere to the stipulation, which may include a practice monitor, supervision, training, etc. Kelly Hume will prepare a written summary of the review and it will be posted on the SOMB website.

### **Board Discussion:**

Judge Marcelo Kopcow asked how the complaint is resolved (e.g., telephone or face-to-face). Carl explained complaints are generally resolved through email, phone calls, or letters that are sent to the provider. This usually takes the form for a request for additional documentation. Carl reminded the SOMB that when providers are responding to a complaint, confidentiality no longer exists. If a client files a complaint, the provider can share any information on that client and a release is not needed. Carl noted that providers have also attended ARC meetings to discuss the complaint in person. If there is a mutual agreement and both parties agree, ARC members and the staff will often have a face-to-face meeting with both parties.

Chris Lobanov-Rostovsky added that providers and complainants are notified of the results through written documentation. Providers usually want more information on the process and how the decision was made. The ARC is available to discuss the process with the provider. The ARC has been addressing complaints more informally through meetings, and trying to work with the provider and complainant rather than through a formal appeal process.

Judge Sharon Holbrook asked about anonymous complaints. The rationale for the SOMB not taking anonymous complaints was reviewed.

Carl also noted that all complaints are reviewed by the ARC in executive session.

Laurie Kepros reminded those in attendance that the ARC does complete Standards Compliance Reviews on providers either for cause or at random. All providers are subject to Standards Compliance Reviews.

Tom asked how many standards compliance reviews have been completed. All providers are notified when randomly selected. At this time, there have only been a handful as they take quite a bit of time and with limited staff resources. The "For Cause" compliance reviews have been more of a priority.

### **Audience Discussion:**

Dale Jenkins stated that if treatment providers and evaluators are registered through DORA, clients can access that information. That information is available to consumers that there has been a founded complaint. She suggested that the SOMB also list this information on the SOMB website. Dale stated polygraph examiners are not licensed with DORA, so this information is not available to consumers and feels people should know that a complaint has been filed. Dale also asked when someone has been delisted, how quickly is the public notified?

Carl responded stating DORA does not publish all findings, only a subset and certain conditions are identified. When a provider is delisted, the head of the agency is notified. For example, he is notified for the Division of

Youth Services. If agencies have a contract, the contract is terminated immediately. DORA does not publicize providers in private practice due to the mental health practice insurance requirement. Chris also added that the provider has a 30-day appeal period before the action of being delisted.

**SEX TRAFFICKING WHITE PAPER (Decision Item) Handout provided**

This White Paper, if approved, will be added as an Appendix to the Standards. Michelle Geng provided an overview of the white paper.

Korey Elger stated that in 2014 legislation was passed to assist in identifying victims of sex trafficking. In the past, Child Welfare did not have the findings as these cases were considered a 3<sup>rd</sup> party and left the decision to law enforcement. This legislation now allows Child Welfare to have the findings and has provided a \$2.4 million grant to hire a Child Trafficking Specialist in Child Welfare. This individual helps develop a tool to identify who may be a victim and determine treatment. Korey reviewed this White Paper with her stakeholders and provided some language that she is suggesting be included. Michelle stated this information will be added in the footnotes section. Korey also provided the SOMB with the contact information for Sarah Nedelman, Child Trafficking Specialist. Michelle reminded the Board that this document is regarding Male Sex Traffickers. A White Paper regarding females may be done at a later time.

Allison Boyd made a motion to approve the White Paper. Jeff Shay 2<sup>nd</sup> the motion.

**Motion to approve the Sex Trafficking White Paper: Allison Boyd, Jeff Shay 2<sup>nd</sup> (Question #3)**

**20 Approve                      0 Oppose                      0 Abstain                      Motion Passes**

**VARIANCE REQUEST (Decision Item) Mike Kehl and Elise Edelberg (Handout provided)**

Mike Kehl and Elise Edelberg presented the Variance to the SOMB. This client was found guilty by a jury trial. This client filed an appeal but was ordered to participate in treatment. The client has medical issues and resides in a halfway house. The client is not willing to discuss the offense based on the appeal. Based on this, Elise stated the client is not required to have a sexual history polygraph and will only be having maintenance polygraphs. This client has not been granted use immunity.

Amanda Gall asked how long this individual will be under supervision. Elise indicated he received a 10-year sentence to SOISP with up to two years in community corrections.

Amanda Gall asked if anyone requested the District Attorney to offer Use Immunity. Elise stated not that she is aware of any such request.

Amanda Gall asked if the client is refusing to answer questions. Elise stated he is not refusing, but his attorney has advised him not to speak about the instant offense. Elise reported the client is being cooperative but due to his unwillingness to talk about the instant offense, the recommendation is not to have sexual history polygraph exams.

Amanda Gall asked what kind of maintenance polygraph questions will be asked and based on the research that these offenders also have hands on victims, how will the Community Supervision Team (CST) handle this issue? Elise responded that the questions will include contact with anyone under the 18, and use of electronic devices. Elise reported this client is primarily at the community corrections facility. Mike Kehl added maintenance polygraphs are time limited and primarily for the last 3-6 months.

Allison Boyd asked if there is an identified victim in this case. Elise responded no.

Allison Boyd asked if at the time of sentencing, was the Court aware that the client would not be discussing the offense and appealing the case? Elise responded that during the hearing, the attorney stated that the client would be filing an appeal.

Allison asked why the CST would not have the client still complete a sexual history behavior packet while not addressing the instant offense section. Allison stated that she would prefer the CST use this packet as part of the variance process.

Rick Bednarski made a motion to approve the variance with CST discretion to use the sexual history packet, second by Rick May.

Allison requested that the variance form be reviewed as information may need to be updated. Judge Kopcow suggests this as a future agenda item.

**Motion to approve Variance: Richard Bednarski, Rick May 2<sup>nd</sup> (Question #4)**

**16 Approve                      4 Oppose                      1 Abstain                      Motion Passes**

**SEX OFFENDER SURCHARGE ALLOCATION (Decision Item)**

Chris reported this request typically comes in August, but this is not a routine request. The Joint Budget Committee approved the development of a data collection system utilizing \$200,000 to be allocated from the Sex Offender Surcharge. The impacted agencies agreed to this amount so as not to unduly deplete the balance. Jesse Hansen made a motion to approve, 2<sup>nd</sup> by Rick Bednarski.

**Motion to approve Sex Offender Surcharge Allocation: Richard Bednarski, Rick May 2<sup>nd</sup> (Question #5)**

**21 Approve                      0 Oppose                      0 Abstain                      Motion Passes**

**LEGISLATIVE UPDATE (Presentation)**

Gabby Reed provided an update on SB 18-026, SB 18-017, and HB 18-1198 that will require training for Boards. Joe Thome also mentioned that the Governor's Office is tracking outcomes, and the Division of Criminal Justice alone has 22 different Boards and task forces. With this bill the Department will be discussing whether the Boards are being prepared with the best information on best practice, statutory obligation, and areas of oversight. The department will be asking Board members to assist with the design and implementation of this bill.

Carl Blake wanted to inform the SOMB that the mental illness in the criminal justice system task force may be proposing legislation regarding juvenile registration and having it used only as tool for law enforcement. The SOMB approved a White Paper in August 2017 with recommendations. This task force will meet again in August.

Gabby next updated the SOMB regarding HB 18-1427, which would have defined Conflict of Interest for the SOMB. This bill could have potentially impacted 6 SOMB members as well as the Community Corrections representative, Victim representative based on grants for victim services, and possibly the law enforcement representative. If signed by the Governor, this bill would become effective 9/1/2019.

Carl stated this bill appeared very broad with vague language, so there may be some confusion and the SOMB may need some additional direction on this. Judge Kopcow stated that if, or when, the bill is signed, the SOMB would receive more direction on how this would impact the SOMB.

Tom Leversee stated the individuals who would be removed by the bill are the experts in the field that are committed to the research and best practices. The SOMB has eliminated the no known cure model, added a

young adult modification protocol, increased the knowledge and application of risk, need and responsivity and has done some really great things.

Joe Thome stated he is very impressed with the SOMB and the SOMB working so hard to having a balanced approach with every decision that is made. Joe stated the Department appreciates the SOMB and the manner which the Board balances victims and offenders, and the Division of Criminal Justice (DCJ) will continue to provide the resources necessary.

John Odenheimer asked if the Governor is receiving any guidance with his decision. Gabby stated that, yes, the Governor has his own policy advisors and has a deadline to either sign or veto the bill by June 8, 2018.

Carl Blake stated he has taken offense to the negative comments and testimony against the SOMB. He stated the SOMB consists of high-level professionals with a high level of integrity and professionalism.

Missy Gursky stated she too is disappointed with the false information being provided, and the good things the SOMB has accomplished were never mentioned or discussed during the hearings.

Allison Boyd has concerns that this bill is primarily to eliminate the Sex Offender Management Board Standards and Guidelines, which then will cause great concern for victim and community safety. Allison asked what happens if the Governor decides to take no action. Gabby explained that if he chooses to take no action, the bill would become law after the 30-day clock.

Judge Kopcow stated if the bill is enacted, the SOMB will need to begin discussing the impact and implementation of this bill.

**SOMB Meeting adjourned 12:09pm.**