

A mental health review board in action

A quick glance at some cases reviewed by the Western Cape review board shows just how the new constitutionally aligned legislation is beginning to impact – and exposes glaring weaknesses in the judicial and penal system.

An application for involuntary care on behalf of a drug user (the Mental Health Act categorises patients under 'voluntary care', 'assisted care' and 'involuntary care') came before the board for routine assessment. Its members picked up in the documentation that he was suffering from seemingly inexplicable 'bedsores'. They asked social workers at the relevant hospital for an explanation, given that he was fully ambulant, and set up interviews with the patient and his mother. What emerged was horrific abuse by the man's estranged stepfather who had tied him to a bare metal bed frame for a month, periodically beating him and denying him adequate food or access to a toilet. This was after the patient was briefly admitted to and discharged from a day hospital near his home, where he presented with psychotic symptoms. Police were summoned to the home after complaints of domestic violence, but not informed of the abuse – and did nothing further. The man's desperate family (his mother was too afraid to enforce a protection order she had against the stepfather who also abused her), contacted the Department of Social Development. Social workers referred the patient to another day hospital for 72 hours of observation, after which he was transferred to the district hospital for ongoing care, treatment and rehabilitation. Concerned mental healthcare practitioners there quizzed the social workers about the injuries, but the official report remains silent as to why more holistic remedial action was only taken once the review board became involved. Board interviews with all role players (except the stepfather, who was formally cautioned) resulted in the Health Department agreeing to monitor the patient's health on discharge and subsequent enforcement of the protection order. The victim, now an outpatient, has since complied with psychiatric treatment and suffered no

relapses, is attending care/support groups and has only occasionally suffered substance abuse relapses (he is reportedly 'motivated to manage this problem').

Mother stigmatised

A second case that was cited involved a female involuntary in-patient found to be 'delusional and grandiose with impaired insight and judgement', who was picked up at a major public transport terminal concourse in March last year with her two minor children. A month later she appealed her categorisation and voiced concern about the custody of her children after she was admitted to a tertiary hospital. The board found that her legal rights were being violated by a lawyer who, while ostensibly representing her, was acting for her ex-husband to obtain temporary custody of their children. It met with her and obtained an independent psychiatrist's evaluation and re-assessment which resulted in her appeal being upheld and her being designated more suitable for voluntary care, treatment and rehabilitation. The woman was also referred to Legal Aid for help with her legal challenges and continued to receive psychiatric care as a voluntary patient while getting social work help to resolve some of her 'immediate social problems'.

The board found that her legal rights were being violated by a lawyer who, while ostensibly representing her, was acting for her ex-husband to obtain temporary custody of their children.

Ramifications of fetal alcohol syndrome?

A third case was reported to the Western Cape review board by staffers at a school for children with learning disabilities which a 16-year-old serving a 5-year jail sentence for rape attended. They questioned the legal procedure adopted in the boy's conviction and sentencing, asserting that he must have been mentally impaired at the time of the offence and that the court had not taken account of this. (No enquiry into his criminal responsibility was ordered.)

The boy came from a poverty-stricken farm background where alcohol abuse was the norm; he had two siblings, also with learning disabilities, all suspected to be due to fetal alcohol syndrome. The board referred the case to the Legal Aid Board

to file an application for leave to appeal the conviction and sentence and prompted Correctional Services to begin an application for parole (and to finally admit that his jail accommodation was 'inappropriate'). Correctional Services said it was incapable of dealing with a person with his special needs – but his domestic circumstances were also unsuitable. This left any magistrate asked to grant bail (pending the review) with a dilemma. The likelihood was that the teenager would remain in prison until the appeal because he was 'too high functioning' for admission to a psychiatric hospital.

The tertiary hospital's Child and Mental Health Services found that the boy was 'intellectually disabled to a significant degree, probably within the mild to moderate range' and unable to act on his appreciation of wrongfulness at the time of the alleged offence 'owing to intoxication and limited understanding of the situation at hand'. He was also 'less able than most' to assess the possible consequences of his behaviour. The board recommended intensive psychosocial rehabilitation, appropriate to his level of ability, with 'individualised social skills training' and a sexual offender rehabilitation programme suitable for his level of intellectual functioning. Should he be paroled, it should be under strict supervision, with a supervised job opportunity the ideal. Ongoing follow-up by the Intellectual Disability Services and Community Mental Health Services was 'appropriate and necessary'.

The board recommended that the Department of Correctional services consider the need for separate and dedicated facilities for prisoners of all ages who are intellectually disabled.

The board recommended that the Department of Correctional services consider the need for separate and dedicated facilities for prisoners of all ages who are intellectually disabled, 'both as a measure to ensure their greater physical safety and a means to provide appropriate and individualised psychosocial rehabilitation, thus reducing the chances of recidivism'.

Chris Bateman
chrisb@hmpg.co.za