



Psychiatric Security Review Board

2500 East Van Buren Street
Phoenix, Arizona 85008
PH: (602) 220-6037
FAX: (602) 220-6028

DOUGLAS A. DUCEY, GOVERNOR
JAMES P. CLARK, M.D., CHAIRPERSON
www.azdhs.gov/psrb

ARIZONA STATE PSYCHIATRIC SECURITY REVIEW BOARD OPEN SESSION MINUTES November 17, 2017

Members:

James P. Clark, M.D., Chairperson
Chandrika Shankar, M.D., Vice-Chairperson ☞
Susan Stevens, Esq.
Paul O'Connell ☞
Michael J. Klemens, Ph.D.

☞ Absent

Assistant Attorney General:

Thomas Raine, Esq., for the Psychiatric Security Review Board

Staff:

Jaime L. Shapiro, Executive Director

Guests Present and/or Participating:

Aaron Nelson, ASH	Cole Arigoni, Mercy Maricopa Integrated Care
Allyson Friestleben, ASH	Cyndi Froehlich, ASH
Amanda Keenhold, ASH	Danette Cox
Amanda Martin, Esq., Maricopa County Public Defender's Office	David Joslyn, ASH
Beth Dolobowsky, ASH	Dawood Mulla, M.D., ASH
Billie Jo Peters	Diane Austin
Bonnie Mancini	Diane Wagner, ASH
Brian Beckette, La Frontera-EMPACT	Dolores Chavez
Chaela Figueroa, La Frontera Center	Glenn R. Dennard
Cheryl Robinson	Jaimee Avery, ASH
Christine Carrow, ASH	Jandely Eich, ASH
	Johanna Lippert, N.P., ASH

Juli Warzynski, Esq., Maricopa Deputy
County Attorney
Julie Jackson, ASH
Justice Cox
Kristen Abouzahra, La Frontera Center
Laurie Shea, Arizona Health Care Cost
Containment System
Laurinda Cumming ☎
Lindsey Arendt, ASH
Manuel Gray, La Frontera-EMPACT
Margaret Franklin
Nicole Floyd, ASH
Nora Greer, Esq.
Peter Morey, Esq., Office of the Legal
Advocate

Peter Sherman
Rebecca Johnson, Esq. ☎
Rebecca Romero, ASH
Scott Norman, ASH
Sergio B. Chavez, M.D., ASH
Stacey Heard, Esq., Pinal County Deputy
Attorney
Stefanie Jones-Campbell, Esq., Pinal County
Deputy Public Defender
Summer Schneider, ASH
Tammy Wray, Esq., Maricopa County
Deputy Public Defender
Telly Rivenburgh, Cenpatico Integrated
Care

☎ Participated Telephonically

Call To Order:

James P. Clark called the meeting to order at 1:05 p.m. and read the Executive Session Confidentiality Statement:

“Minutes of and discussions made in executive session are required by law to be kept confidential and shall not be communicated to any person outside this meeting room, except to members of the Board, a person who is the subject of the discussion pursuant to Arizona Revised Statutes (A.R.S.) §38-431.03(A)(1), the auditor general in connection with an audit authorized by law and the attorney general.”

Dr. Clark swore in individuals who anticipated testifying.

Statutory Hearings:

Peter Rice Sherman – PSRB No. 10-03

Peter Sherman was present with his attorney, Stefanie Jones-Campbell. The statutory hearing was held from 1:09 p.m. to 1:51 p.m. pursuant to Arizona Revised Statutes (A.R.S.) § 13-3994(H). ASH recommended conditional release to the Hospital, phase two, level three and Mr. Sherman requested permission to travel out-of-state.

James Clark summarized Mr. Sherman’s appearances before the Board over the recent months. In August, Dr. Mulla recommended to the PSRB that Mr. Sherman skip phase three

of conditional release to the Hospital and be conditionally released to the community, which the PSRB granted. Prior to discharge, Mr. Sherman went on an off-grounds pass and violated the surveillance grid several times and failed to attend the AA meeting for which the pass was intended. Subsequently, Mr. Sherman's treatment team evaluated Mr. Sherman as doing well enough to resume phase two, level three privileges; however, the PSRB believed that phase one, level two was most appropriate. One issue is stable remission, which is not defined in statute. Some things the PSRB considers are whether or not the person has an absence of or a marked attenuation of symptoms, whether the person is involved, motivated and participatory in treatment, compliance with medications and conditions of release, meeting treatment goals, following rules, and exercising good judgment, with evidence.

The Board felt that when Mr. Sherman violated conditional release, there was evidence that he was not in stable remission.

Stefanie Jones-Campbell stated that she and her client are in agreement with ASH's recommendation and to return Mr. Sherman to a lower level would be punitive.

Laxman Patel stated that Mr. Sherman is compliant with medications, has no symptoms, goes to groups and activities and he is in stable remission. Ms. Jones-Campbell stated that Mr. Sherman far exceeds treatment recommendations.

Louis Caputo stated that ASH objected to the November 3, 2017 PSRB order, where it states there was a lack of vetting pass supervisors and asked the PSRB where the parameters of stable remission come from. Dr. Clark repeated his previous list and added that a risk assessment evaluating the person to be at a low risk for violent re-offending is helpful when the PSRB evaluates stable remission.

Ms. Jones-Campbell said she agreed with Mr. Caputo's objection and added there was another attorney listed in error on the November 3rd order. She further explained that Mr. Sherman's violations were not egregious and argued that the Board should look at his time at ASH in its entirety.

Mr. Sherman stated that the reason he didn't attend the AA meeting was that he was running late.

Dr. Patel added that during the time he was preparing to leave Hospital grounds for the pass, Mr. Sherman informed staff that he planned to go to the VA to get an ID, but this stop was never added to the surveillance grid.

Dr. Clark commented that A.R.S. §31-502(A)(3) states that the PSRB “In conjunction with the secure state mental health facility and other appropriate community agencies or persons, devise a plan for the conditional release of a person pursuant to section 13-3994” and added that there is authority for the Board to put together a conditional release treatment plan. Mr. Caputo objected to Dr. Clark’s interpretation of the statute. Ms. Jones-Campbell also objected citing that the evidence before the Board is specific to the plan proposed by ASH. The objections were noted.

Stacey Heard from the Pinal County Attorney’s Office said the state believes that Mr. Sherman is entitled to appropriate therapeutic interventions.

A motion was made by James Clark, seconded by Susan Stevens and passed 3 – 0 to approve Peter Sherman for conditional release to Arizona State Hospital, phase one, level two, and adopt the conditional release treatment plan, with the following specifications: Mr. Sherman shall complete six (6) passes in ninety (90) days, based on the evidence presented by the Arizona State Hospital’s treatment team, that Mr. Sherman’s mental disease or defect is in stable remission and he is not dangerous if he remains a resident of the State Hospital and is compliant with the terms of conditional release and the treatment plan discussed today.

Mr. Caputo objected to the Board’s action.

Ms. Jones-Campbell informed the Board that Mr. Sherman’s father passed away and he would like to travel out-of-state to attend the funeral. Mr. Caputo said that ASH takes no position on the matter and added that ASH will not provide a person to monitor Mr. Sherman during the trip. Dr. Klemens asked if there were any family members to come to Arizona to fly with him and Ms. Jones-Campbell said there was not. Ms. Stevens asked if there was precedence and Jaime Shapiro said she could not find it while researching the issue.

A motion was made by James Clark, seconded by Susan Stevens and passed 3 – 0 to recess into executive session at 1:35 p.m. to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).

After consideration in executive session, the Board reconvened in open session at 1:42 p.m.

In open session, Telly Rivenburgh from Cenpatico Integrated Care suggested that since Mr. Sherman and his father are veterans, that a military volunteer might be identified to escort him. Ms. Rivenburgh also clarified that transportation to and from the airport would be provided by Cenpatico.

Mr. Raine asked Mr. Caputo what role ASH would accept, assuming the PSRB would approve the travel request. Mr. Caputo said it is his understanding that ASH will take no role. Extensive discussion was held around the available options and possible alternatives.

A motion was made by Susan Stevens, seconded by James Clark and passed 3 – 0 to approve Peter Sherman for out-of-state travel to Washington from November 26th to November 30th, based on the evidence presented that he is in stable remission and not dangerous of he is compliant with the following terms: Mr. Sherman shall travel to and from the airport transported by Cenpatico; Mr. Sherman shall be accompanied by a trained volunteer or a family member the entire duration of the trip and; Mr. Sherman shall complete a daily check-in with ASH staff.

Walter Gray McCarthy – PSRB No. 10-13

Walter McCarthy was present with his attorney, Tammy Wray. The statutory hearing was held from 1:52 p.m. to 2:15 p.m. pursuant to A.R.S. § 13-3994(H). ASH recommended conditional release to the Hospital, phase one, level two.

Laurinda Cumming was teleconferenced into the hearing.

Tammy Wray stated that Mr. McCarthy has demonstrated his continued commitment to treatment and has done well on level one passes. Ms. Wray noted that there are three risk assessments in the record that evaluate Mr. McCarthy at a low risk for violent reoffending.

Laurinda Cumming testified that she has concern for anyone that may come in contact with Mr. McCarthy. She cited histories of violence toward women and animals and drug and alcohol dependence. Ms. Cumming stated that Mr. McCarthy is cunning and has shown no remorse for the premeditated murder of her father. She stated that Mr. McCarthy will violently reoffend and she attempted to diagnose Mr. McCarthy's mental disease. Dr. Clark interjected and asked Mr. Raine if Ms. Cumming's statements should focus on the impact the crimes had on her or should the Board give her wide latitude to make future predictions and diagnostic assessments. Ms. Raine cautioned the Board to disregard any statements that attempt to diagnose. Ms. Cumming shared that she is in fear for her life and the lives of the public. She stated that he is manipulating everyone around him and requested that the PSRB deny the request for increased privileges.

Juli Warzynski from the Maricopa County Attorney's Office stated that the State is concerned with Mr. McCarthy's propensity to reoffend and dangerousness based on past diagnoses and a history of violence. The State requested that any off-grounds privileges be denied.

Ms. Wray argued that the Board has heard testimony by and read reports of experts that have evaluated Mr. McCarthy to be at a low risk for violent reoffending, and Ms. Cumming has no relevant information with regard to Mr. McCarthy's current level of dangerousness.

Margaret "Peggy" Franklin, Mr. McCarthy's sister, was sworn in and testified that Mr. McCarthy was never abusive. She stated that she and her brother have weekly phone calls where he expresses remorse for the index crime. She shared that following rehabilitation, Mr. McCarthy never touched another drop of alcohol. Ms. Cumming stated that after the murder, alcohol was found hidden in her garage.

Jandely Eich, ASH Social Worker, mentioned that there was an error on the proposed conditional release plan and ASH is recommending that Mr. McCarthy complete eight passes over 120 days instead of 180. Other amendments were discussed.

A motion was made by James Clark, seconded by Susan Stevens and passed 3 – 0 to approve Walter McCarthy for conditional release to Arizona State Hospital, phase one, level two with the following amendments to the conditional release plan: Mr. McCarthy shall complete eight passes in 180 days; Mr. McCarthy will use public or Hospital approved methods of transportation and; change Rick to Walter for item III, and adopt the conditional release treatment plan as amended, based on the evidence presented by the Arizona State Hospital's treatment team, that Mr. McCarthy's mental disease or defect is in stable remission and he is not dangerous if he remains a resident of the State Hospital and is compliant with the terms of conditional release and the treatment plan amended today.

John Ernest Mancini – PSRB No. 07-10

John Mancini was present with his attorney, Peter Morey. The statutory hearing was held from 2:16 p.m. to 2:30 p.m. pursuant to A.R.S. § 13-3994(J). ASH recommended an evaluation for civil commitment upon expiration of the PSRB's jurisdiction on January 7, 2018.

Peter Morey stated that John Mancini objects to the recommendation in that he does not have a mental illness and is not a danger.

Ms. Warzynski said the Maricopa County Attorney's Office cannot order the Sherriff's office to transport Mr. Mancini. Cole Arigoni from Mercy Maricopa Integrated Care stated that the agency is happy to provide transport.

Bonnie Mancini was present and read from a prepared statement that contended that, for her safety and that her child, that Mr. Mancini should civilly committed. She discussed her

participation in providing critical information to the Special Weapons and Tactics (SWAT) Team in the apprehension of Mr. Mancini during the course of the index crime, a history of violence against women, emotional and physical abuse, high turn-over and conflict with employment, auditory hallucinations, frequent firings of legal counsel and blatant disregard and non-compliance for societal standards and norms. Ms. Mancini further discussed a history of subverting and using the legal system to his advantage and is currently in 16 years of arrears with his child support. She requested that the PSRB order that Mr. Mancini be evaluated for civil commitment finding him unfit, unsafe and a detriment to the public at large. Ms. Mancini also read from a prepared statement written by her minor son.

Mr. Mancini began to describe that he was the whistleblower who exposed the fraud at Halliburton, and at which point Dr. Clark interjected and said that that matter is not before the Board today. Mr. Mancini stated that he was misled into a plea for guilty except insane. Dr. Clark asked for a motion.

A motion was made by Susan Stevens, seconded by Michael Klemens and passed 3 – 0 to order the Maricopa County Attorney to initiate civil commitment proceedings for John Mancini pending the expiration of the PSRB's jurisdiction based on the evidence presented and that the Arizona State Hospital's treatment team be allowed to conditionally release Mr. Mancini to the custody of the Maricopa County Regional Behavioral Health Authority (RBHA) for transportation up to five days prior to the PSRB's jurisdiction expiration date.

Dr. Clark shared that he would like a particular report to be transmitted to the evaluating agency and Ms. Warzynski assured that the entire record would be transmitted.

Vicky Dulcine Gee – PSRB No. 08-10

Vicky Gee was present with her attorney, Tammy Wray. The statutory hearing was held from 2:31 p.m. to 2:59 p.m. pursuant to A.R.S. § 13-3994(H). ASH recommended conditional release to the Hospital, phase two, levels three and four.

Ms. Wray stated that Ms. Gee is active in her recovery and treatment, she is compliant with medications and has had no rule violations since her admission to ASH and requests that the Board approve ASH's recommendation.

Danette Cox was sworn in and testified that Ms. Gee is compliant because she is in a secure facility and she believes that there is no remission possible for a mental disease. Ms. Cox said that her family is made to feel like the "bad guys". Her daughter was a minor when the crimes occurred and she lives in fear and suffers from depression due to the crime. Ms. Cox implored the Board to move Ms. Gee though the levels very slowly.

Justice Cox was sworn in and testified that she was eleven years old when she witnessed her grandparents' shooting and continues to suffer from nightmares and lives in fear.

Ms. Warzynski detailed the index crimes, admissions Ms. Gee made to arresting officers, her restoration to competency and sentence. Ms. Warzynski detailed Ms. Gee's history of hallucinations, delusions, homelessness, drug abuse and psychiatric hospitalizations. Ms. Warzynski argued that Ms. Gee does well when in a secure facility but does not do well when she does not have 24 hour care, and therefore, Ms. Gee should remain in a secure facility.

Dr. Klemens asked why there were no family members listed as pass supervisors. Ms. Wray stated that Ms. Gee's mother is elderly and, while her sons are supportive, they are close with their father. Ms. Wray agreed that Ms. Gee has a long history of mental health concerns; however, the record shows that Ms. Gee finally responded to medication adjustments.

A motion was made by James Clark, seconded by Susan Stevens and passed 3 – 0 to recess into executive session at 2:52 p.m. to discuss confidential information pursuant to A.R.S. § 38-431.03(A)(2).

After consideration in executive session, the Board reconvened in open session at 2:58 p.m.

In open session, a motion was made by James Clark, seconded by Michael Klemens and passed 3 – 0 to approve Vicky Gee for conditional release to Arizona State Hospital, phase two, level three, and adopt the conditional release treatment plan, based on the evidence presented by the Arizona State Hospital's treatment team, that Ms. Gee's mental disease or defect is in stable remission and she is not dangerous if she remains a resident of the State Hospital and is compliant with the terms of conditional release and the treatment plan amended today.

Barry Thomas Jordan – PSRB No. 14-02

Barry Jordan was present with his attorney, Tammy Wray. The statutory hearing was held from 3:00 p.m. to 3:03 p.m. pursuant to A.R.S. § 13-3994(H). This was a two-year hearing and there was no recommendation at that time.

Ms. Wray noted that the report indicates that Mr. Jordan's mental illness is in stable remission, there are no rule violations and continues to work on some treatment issues.

A motion was made by Susan Stevens, seconded by Michael Klemens and passed 3 – 0 to deny conditional release for Barry Jordan based on the evidence presented by the Arizona

State Hospital's treatment team, that Mr. Jordan did not prove by clear and convincing evidence that he no longer suffers from a mental disease or defect, that the mental disease or defect is in stable remission and that he is no longer dangerous. Barry Jordan shall remain committed to the Arizona State Hospital.

Dr. Clark noted that there was no action needed on Mr. Jordan's Notice and Request.

Reuben James Murray – PSRB No. 06-21

Reuben Murray was present with his attorney, Tammy Wray. The statutory hearing was held from 3:04 p.m. to 3:09 p.m. pursuant to A.R.S. §§ 13-3994(H) and (M) and 31-502(A)(5).

Mr. Caputo clarified that ASH is recommending revocation of conditional release. Mr. Murray stated that he is requesting a new attorney. Ms. Wray stated that she and Mr. Murray have not had an opportunity to discuss the report or the issue of new counsel, and therefore, Mr. Murray is requesting that the Board continue the matter. Discussion was held about the length of the continuance.

After discussion, a motion was made by Susan Stevens to continue the matter for 30 days. Dr. Clark asked if Ms. Stevens would accept an amendment to her motion for 90 days. After discussion, Ms. Stevens accepted the amendment, Michael Klemens seconded and the motion passed 3 – 0.

Billie Jo Peters – PSRB No. 03-09

Billie Jo Peters was present with her attorney, Tammy Wray. The statutory hearing was held from 1:29 p.m. to 1:59 p.m. pursuant to A.R.S. § 13-3994(H). The PSRB set this hearing to review Ms. Peters' progress over the last six months and the outpatient treatment team recommended a reduction in staffings from once per week to one per month.

Ms. Wray said that the treatment team's recommendation has changed due to issues occurring at Ms. Peters' residential facility. Her treatment team has applied for Ms. Peters to move another sixteen hour facility; however one may not be available right away. The outpatient treatment team is requesting that Ms. Peters be allowed to move to either a Temporary Living Placement (TLP), a respite or to her sister's home until a residence is identified.

A motion was made by James Clark, seconded by Susan Stevens and passed 3 – 0 to recess into executive session at 3:14 p.m. to discuss confidential information pursuant to A.R.S. § 38-431.03(A)(2).

After consideration in executive session, the Board reconvened in open session at 3:29 p.m.

In open session, a motion was made by Michael Klemens to approve the treatment team's recommendation to permit Billie Jo Peters to move to a Temporary Living Placement (TLP) until a similar level of care residence, which is a 16 hour flex care plus, becomes available. Until such time as a new residence is available, Ms. Peters shall return to the Board each month to review the status. Dr. Clark asked Dr. Klemens to amend his motion to include that the PSRB orders MMIC to expedite the transfer to the new residence as urgently as possible. Dr. Clark accepted the amendment. Ms. Wray asked if it was the Board's intention to limit to a TLP. Cole Arigoni stated that a TLP would be very limiting and explained why. It was clarified that a respite would be a hotel. Dr. Klemens stated he understands that a TLP would be limiting but feels that is most appropriate considering Ms. Peters' current level of care. Susan Stevens seconded the motion and it passed 3 – 0.

It was clarified that the request for a reduction in staffing and in-state travel was withdrawn.

Dolores Ruby Chavez – PSRB No. 01-12

Dolores Chavez was present with her attorney, Rebecca Johnson, was present telephonically. The statutory hearing was held from 3:35 p.m. to 3:46 p.m. pursuant to A.R.S. § 13-3994(H). This was a two year hearing and Ms. Chavez's outpatient treatment team recommended a reduction in case management services.

Ms. Shapiro explained the amendments to Ms. Chavez conditional release order. Mr. Raine stated that the recommended changes are in line with standard language in conditional release orders. Ms. Johnson stated that she had no objections to the proposed changes.

A motion was made by James Clark, seconded by Susan Stevens and passed 3 – 0 to approve the proposed changes as drafted.

Ms. Johnson stated that Ms. Chavez continues to do well in the community and urged the Board to accept the recommendation for a reduction in case management services. Chaela Figueroa, Ms. Chavez's case manager, clarified the recommendation. Ms. Figueroa stated that Ms. Chavez demonstrates enthusiasm and is participatory in treatment. It was clarified that Ms. Chavez would sign the required waiver of extradition and emergency contacts today.

A motion was made by James Clark, seconded by Susan Stevens and passed 3 – 0 to approve the treatment team's recommendation for a reduction in case management phone contact from weekly face-to-face contact to bi-weekly face-to-face contact with her case manager alternated with a bi-weekly phone contact.

The Board took a break from 3:47 p.m. to 3:51 p.m.

Melissa Ann Nyberg – PSRB No. 16-06

Melissa Nyberg was present with her attorney, Nora Greer. The statutory hearing was held from 3:52 p.m. to 3:54 p.m. pursuant to A.R.S. § 13-3994(H). ASH recommended conditional release to the Hospital, phase one, levels one and two.

Nora Greer stated that this is Ms. Nyberg's initial appearance and looks forward to moving through the levels.

A motion was made by James Clark, seconded by Susan Stevens and passed 3 – 0 to approve Melissa Ann Nyberg for conditional release to Arizona State Hospital, phase one, levels one and two, and adopt the conditional release treatment plan, based on the evidence presented by the Arizona State Hospital's treatment team, that Ms. Nyberg's mental disease or defect is in stable remission and she is not dangerous if she remains a resident of the State Hospital and is compliant with the terms of conditional release and the treatment plan presented today

Isaac Bonelli – PSRB No. 03-01

Isaac Bonelli was present with his attorney, Nora Greer. The statutory hearing was held from 3:55 p.m. to 4:03 p.m. pursuant to A.R.S. § 13-3994(J). ASH recommended expiration of PSRB jurisdiction on December 13, 2017 without further action.

Ms. Greer stated that Ms. Bonelli had previously made a case for his release from ASH and has no objection to the recommendation. Discussion was held about Mr. Bonelli's federal probation and who would notify his probation officer that he was being released from confinement. Ms. Greer clarified that Mr. Bonelli is required to contact the federal probation office prior to close of business on December 14th.

A motion was made by Michael Klemens, seconded by Susan Stevens and passed 3 – 0 that the PSRB allow its jurisdiction over Isaac Bonelli expire without ordering the Pima County Attorney to initiate civil commitment proceedings based on the evidence presented.

Discussion, Consideration and Possible Action Related to:

Approval of the 2018 Calendar:

After discussion, a motion was made by James Clark, seconded by Susan Stevens and passed 3 – 0 to approve the 2018 calendar, as discussed.

Auditor General's Findings of the Boards and Commissions Per Diem Audit:

Dr. Clark summarized that the report findings seem to be focused on the time Board members review materials. Mr. Raine said he would obtain another Board's per diem policy and share it with the Board. The Board members discussed how they review packets. Discussion ensued among Board members and staff about statute revision, drafting policy, and packet preparation.

Variation in the Records Submitted to the PSRB:

This item was deferred to December in hope that Steven Dingle, ASH's Chief Medical Officer, would be available to discuss it.

Legal Advice from the Board's Attorney Regarding the Executive Director's Role:

This item was deferred to future meeting.

Discussion, Amendment and Approval of Minutes:

Open session minutes from the October 27, 2017, meeting:

A motion was made by James Clark, seconded by Michael Klemens and passed 3 – 0 to approve the open session minutes, as amended.

Executive session minutes from the October 27, 2017, meeting:

A motion was made by James Clark, seconded by Susan Stevens and passed 3 – 0 to approve the executive session minutes, as amended.

Identification of Future Agenda Items:

Dr. Klemens stated that he would like see the pamphlets Dr. Patel mentioned in a previous meeting and Mr. Raine said he would follow up with Mr. Caputo.

Adjournment:

The Board meeting was adjourned at 4:28 p.m.