




Psychiatric Security Review Board

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ARIZONA STATE PSYCHIATRIC SECURITY REVIEW BOARD OPEN SESSION MINUTES February 23, 2018

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	David Joslyn, ASH
Alisa Lee, ASH	Dawood Mulla, M.D., ASH
Allyson Friestleben, ASH	Deborah Styer, ASH
Anna Branson, Arizona Center for Disability Law	Diane Wagner, ASH
Ashley Blum, Esq., Maricopa County Deputy Public Defender	Donna L. Robinson, Ph.D.
Audrey G. Tadj	Holly R. Gieszl, Esq.
Beverly Denny	Jack Potts, M.D.
Brian Beckett, La Frontera-EMPACT	Jeff Storeruck
Cole Arigoni, Mercy Maricopa Integrated Care	Jermeka Hamm, ASH
	Jessica Lamar, ASH
	John W. Blischak, Esq.
	Joseph Sinkovich

Joseph T. Stewart, Esq.
Joshua N. Mozell, Esq.
Juli Warzynski, Esq., Maricopa Deputy
County Attorney
Kendra Gort, ASH
Kennedy C. Klagge, Esq., Yavapai County
Public Defender
Laurie Goldstein

Manuel Gray, La Frontera-EMPACT
Nancy Barto, Arizona State Senate
Rick Molina, Community Bridges, Inc.
Sergio B. Chavez, M.D., ASH
Tammy Wray, Esq., Maricopa County
Deputy Public Defender
Telly Rivenburgh, Cenpatico
William Winrow

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:

Joe Curtis O’Cain – PSRB No. 12-01

Joe O’Cain was present with his attorney, John W. Blischak. The statutory hearing was held from 1:06 p.m. to 1:25 p.m. pursuant to Arizona Revised Statutes (A.R.S.) § 13-3994(H). ASH recommended conditional release to the Hospital, phase two, levels three and four.

John W. Blischak stated that Mr. O’Cain wanted to have a friend, Beverly Denny, to be placed on the list of pass supervisors. Dr. Schneider stated that the treatment team made the request to the Special Classification Committee (SCC), which the SCC did not approve. Dr. Clark said the PSRB places great weight on ASH staff recommendations.

Dr. Clark asked who the pass supervisor was when Mr. O’Cain returned from an off-grounds pass with a box-cutter. Dr. Schneider said the issue was addressed at the clinical level and resolved.

A motion was made by James Clark, seconded by Paul O’Connell and passed unanimously to recess into executive session at 1:14 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 1:20 p.m.

In open session, a motion was made by Susan Stevens, seconded by Paul O'Connell and passed 4 – 0 to approve Joe O'Cain 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 Mr. O'Cain'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 presented today.

Beverly Denny read from a prepared statement in testimony on behalf of Mr. O'Cain's request for her to be an off-grounds pass supervisor.

Gary Willard Schlee – PSRB No. 12-10

Gary Schlee was present with his attorney, Kennedy C. Klagge. The statutory hearing was held from 1:29 p.m. to 1:31 p.m. pursuant to A.R.S. § 13-3994(H). ASH recommended conditional release to the Hospital, phase two, level three.

After discussion, a motion was made by Michael Klemens, seconded by Susan Stevens and passed 4 – 0 to approve Gary Schlee 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 Mr. Schlee'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 presented today.

Rickey Farrell Russell – PSRB No. 09-05

Rickey Russell was not present and his attorney, Joseph T. Stewart, asked the Board to waive his presence. The statutory hearing was held from 1:32 p.m. to 1:44 p.m. pursuant to A.R.S. § 13-3994(H). There was no recommendation at that time.

Joseph T. Stewart requested that the Board continue the hearing because he had not had a chance to review the file nor confer with his client and needed more time to prepare.

A motion was made by James Clark, seconded by Susan Stevens and passed unanimously to recess into executive session at 1:37 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, a motion was made by James Clark to grant a one-time continuance for 60 days. Mr. Stewart argued that there was no basis for a one-time continuance.

The motion was seconded by Susan Stevens and passed 4 – 0.

The Board took a break from 1:45 p.m. to 1:47 p.m.

Joseph Sinkovich – PSRB No. 98-09

Joseph Sinkovich was present with his attorney, Tammy Wray. The statutory hearing was held from 1:48 p.m. to 1:54 p.m. pursuant to A.R.S. § 13-3994(H). This was a two-year hearing and Mr. Sinkovich requested permission to travel out-of-state.

Tammy Wray clarified Mr. Sinkovich's request to travel 60 days over the course of 24 months. Brian Beckette clarified that there was an error in the report and Mr. Sinkovich is not court-ordered for treatment.

After discussion, a motion was made by James Clark, seconded by Paul O'Connell and passed 4 – 0 to approve Mr. Sinkovich to travel out-of-state for a total of 60 days over the next 24 month period, with specific approval from the outpatient treatment team.

Julian Lockhart – PSRB No. 07-06

Julian Lockhart was present with his attorney, Tammy Wray. The statutory hearing was held from 1:55 p.m. to 1:57 p.m. pursuant to A.R.S. § 13-3994(J). The PSRB's jurisdiction expires April 4, 2018.

Rick Molina from Community Bridges was present and shared that Mr. Lockhart is always compliant with treatment and receptive to recommendations and thus, there was no recommendation for civil commitment.

A motion was made by Susan Stevens, seconded by Paul O'Connell and passed 4 – 0 to allow its jurisdiction over Julian Lockhart to expire without ordering the County Attorney to initiate civil commitment proceedings based on the evidence presented and to allow the Arizona State Hospital's treatment team to conditionally release Mr. Lockhart to a residential setting in the community up to five days prior to the PSRB's jurisdiction expiration date.

Ms. Wray added that Mr. Lockhart has done well over the last five years in the community.

Tahum Lekeith Garland – PSRB No. 02-04

Tahum Garland was present with his attorney, Tammy Wray. The statutory hearing was held from 1:58 p.m. to 2:14 p.m. pursuant to A.R.S. §§ 13-3994(N) and 31-502(A)(5). The Board considered whether to reinstate, modify or revoke conditional release; ASH recommended a modification to his previous conditional release plan.

After discussion, a motion was made by James Clark, seconded by Susan Stevens and passed 4 – 0 to recess into executive session at 2:01 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 2:07 p.m.

In open session, Ms. Wray said Mr. Garland was in the community for seven years and has always been cooperative and compliant. Mr. Garland is the person who identified that he needed to return to ASH.

Audrey Garland Tadj Reinholz, surviving victim, addressed the Board and discussed the effects of the index crime on her and her family.

A motion was made by James Clark, seconded by Susan Stevens and passed 4 – 0 to approve Tahum Garland for conditional release to the community, and adopt the conditional release treatment plan, based on the evidence presented by the Arizona State Hospital's Treatment Team, that Mr. Garland's mental disease or defect is in stable remission and he is not dangerous if he resides in the facility specified in the conditional release treatment plan and remains compliant with the terms of conditional release and the treatment plan presented today.

Reuben James Murray – PSRB No. 06-21

Reuben Murray was present with his attorney, Ashley Blum. The statutory hearing was held from 2:15 p.m. to 2:20 p.m. pursuant to A.R.S. §§ 13-3994(N) and 31-502(A)(5). The Board considered whether to reinstate, modify or revoke conditional release; ASH recommended revocation of conditional release.

Ashley Blum shared that Mr. Murray contests the basis of the order of protection which was a factor in his return to ASH, was compliant with treatment prior to his return to ASH, he self-surrendered to ASH upon the Board's order to return to ASH, and has made strides in his treatment since his return.

A motion was made by Susan Stevens, seconded by Paul O'Connell and passed 4 – 0 to revoke Conditional Release for Reuben Murray based on the evidence presented by the ASH treatment team that Mr. Murray's mental condition has deteriorated/decompensated and is no longer in stable remission requiring that he remain at the Arizona State Hospital for further evaluation and treatment.

Jill Fraley Manahan – PSRB No. 09-10

Jill Manahan was present with her attorneys, Holly Gieszl and Joshua Mozell. The statutory hearing was held from 2:21 p.m. to 5:26 p.m. pursuant to A.R.S. §§ 13-3994(H) and 31-502(A)(5). The Board considered whether to reinstate, modify or revoke conditional release; ASH recommended revocation of conditional release.

A motion was made by James Clark, seconded by Susan Stevens and passed 4 – 0 to recess into executive session at 2:22 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 2:27 p.m.

In open session, Dr. Clark summarized the last year of the case. Dr. Clark, Mr. Caputo, Joshua Mozell, Holly Gieszl, and Mr. Raine participated in extensive argument as to which party has the burden of proof. Ms. Geiszl presented an argument asserting that Ms. Manahan did not receive due process and thus, asked the Board to make that determination, to deny ASH's recommendation for revocation, to reinstate Ms. Manahan's privileges, and return her to the Community Reintegration Unit (CRU).

Mr. Raine advised that the PSRB is not empowered to decide on due process but rather the sentencing court.

Dr. Clark noted the severity of the index crime and that a high bar is set to be assured that conditional release is warranted. Dr. Clark added that he took into account a long history of rule violations on off-grounds passes with apparent good functioning punctuated by episodes, and his concern is that this pattern is again playing out in the present situation. Dr. Klemens shared that he continues to question ASH's reports that the Board was assured the evidence about the apparent rule violation was forthcoming, but never materialized.

A motion was made by Susan Stevens, seconded by Michael Klemens and passed 4 – 0 to recess into executive session at 2:57 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 4:29 p.m.

In open session, Juli Warzynski reminded the Board that Ms. Manahan committed murder, a crime of which Ms. Manahan indicates she does not believe she is guilty. Ms. Warzynski pointed out that both defense experts' diagnoses are opposed to one another, and that Dr. Potts' statements in his report are those of an advocate rather than that of an expert. Ms. Warzynski pointed out that a report indicated sobriety since 2005, but another report shows that Ms. Manahan took another patient's medications in 2014 and refused to take a urine drug screen at the time, which indicates manipulative behavior and a belief that the rules do not apply to her. Ms. Warzynski stated that Ms. Manahan is not in stable remission and is dangerous and asked the Board to revoke her privileges.

Dr. Clark clarified that there was a person in the community who allegedly received unwanted contact from Ms. Manahan and contacted the Board's previous Chairperson for assistance, who then reached out to Board staff who made the current Chairperson aware and directed staff to pass the information along to ASH.

Mr. Caputo stated that ASH's position is that Dr. Potts' report carries low credibility because it contains no clinical opinions, and further argued that Dr. Robinson's report has similarities. Ms. Gieszl argued the defense's position again.

The PSRB took a break from 4:53 p.m. to 4:56 p.m.

Laurie Goldstein was sworn in and testified that she is a member of the ASH Human Rights Committee (HRC) and found Ms. Manahan to be articulate and a diligent advocate for herself. Ms. Goldstein shared that she was surprised when Ms. Manahan's privileges were suspended by ASH. Ms. Gieszl argued the defense's position again.

A motion was made by James Clark to revoke conditional release for Jill Manahan based on the evidence presented by the ASH treatment team that Ms. Manahan violated the terms of her conditional release and that Ms. Manahan remain at the Arizona State Hospital for further evaluation and treatment.

After discussion, Susan Stevens seconded the motion. Dr. Klemens and Ms. Stevens expressed disappointment that ASH did not submit a risk assessment when the Board requested it. Mr. Caputo stated that ASH submits a risk assessment when privileges are being requested. Further argument ensued among Mr. Caputo, Ms. Gieszl and Ms. Warzynski.

Dr. Clark called for a vote and it failed 2 – 2.

Michael Klemens and Paul O’Connell were opposed.

A motion was made by Michael Klemens, seconded by Paul O’Connell and failed 2 – 2 that Ms. Manahan did not violate the terms of conditional release and that her mental condition had not deteriorated, and the PSRB modify her conditional release to phase one, level one.

James Clark and Susan Stevens were opposed.

A motion was made by James Clark, seconded by Paul O’Connell and passed 4 – 0 to recess into executive session at 5:12 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 5:20 p.m.

In open session, a motion was made by Michael Klemens, seconded by Paul O’Connell to approve Jill Manahan for conditional release to Arizona State Hospital, phase one, level one, and adopt the standard conditional release treatment plan based on the evidence presented that Ms. Manahan’s mental disease or defect is in stable remission and she is not dangerous at this time.

Mr. Raine asked the Board to adopt a conditional release plan and Board staff read Ms. Manahan’s previous conditions of release for phase one, level one, into the record.

Dr. Klemens amended his motion to add that Ms. Manahan complete ten (10) passes within 120 days. Paul O’Connell seconded the amendment. Mr. Caputo objected and argument ensued. After discussion, the motion passed 3 – 1.

James Clark was opposed.

After discussion, a motion was made by Michael Klemens, seconded by Susan Stevens and passed 4 – 0 to adopt the standard conditions of release for Ms. Manahan.

Discussion, Amendment and Approval of Minutes:

Open session minutes from the January 26, 2018, meeting:

Executive session minutes from the January 26, 2018, meeting:

Open session minutes from the February 6, 2018, meeting:

After discussion, a motion was made by James Clark, seconded by Paul O'Connell and passed 4 – 0 to approve the open session minutes, as written.

Discussion, Consideration and Possible Action Related to:

Board Member Compensation Draft Billing Policy:

A motion was made by James Clark, seconded by Paul O'Connell and passed 4 – 0 to direct Ms. Shapiro to expand one area of the draft policy and that the Chairperson finalizes the policy.

ASH Training/Education of Pass Supervisors:

There was written response in the Board's materials from Mr. Caputo stating that if there are questions regarding approved other persons, then those should appropriately be addressed at a hearing for that patient, but the Hospital does not plan to present on this issue generally at a future meeting. The Board believed that it would be prudent to ask about the vetting of each pass supervisor presented to the Board to gain a better understanding of the process.

An Update on the Board's Sunset Review:

This item was deferred.

Adjournment:

The Board meeting was adjourned at 5:35 p.m.