



Psychiatric Security Review Board

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JAMES P. CLARK, M.D., CHAIRMAN
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ARIZONA STATE PSYCHIATRIC SECURITY REVIEW BOARD OPEN SESSION MINUTES

October 25, 2019

**PSRB Hearing Room
2500 E. Van Buren St.
Phoenix, AZ 85008**

Members:

James P. Clark, M.D., Chairman
Michael J. Klemens, Ph.D., Vice-Chairman
Susan Stevens, Esq.
Paul O'Connell, M.S., M.P.A.
Gwen A. Levitt, D.O.

Assistant Attorney General:

Jeanne Galvin, Esq.

Staff:

Jaime L. Shapiro, Executive Director

Guests Present and/or Participating

Aaron Nelson, ASH
Allyson Wirth, Psy.D., ASH
Amanda Brimlow, Psy.D., ASH
Amber Myers ☎
Anita Hernandez ☎
Barb Jordan, ASH
Brent Thayer, ASH
Carolyn Keyser
Cole Arigoni, Mercy Care
David Joslyn, Psy.D., ASH
Diana J. Walayat, M.D., ASH
Dorothy Vaughn ☎

Gabriela Reyes, ASH
Garvin Baker, ASH
Han Nguyen, ASH
Holly R. Gieszl, Esq.
John W. Blischak, Esq.
Jordan Smith, Esq.
Joshua N. Mozell, Esq.
Julie Jackson, ASH
Karolyn Kaczorowski, Esq. ☎
Kathy Kattavilavong, ASH
Kaylena Skvarek, ASH
Lindsay Arendt, ASH

Lisa Christianson, Esq.
Madison Gardner, ASH
Manuel Gray, La Frontera-EMPACT
Megan Woods, AHCCCS
Michael Bernays, Esq.
Ray Hanna, Esq.
Ronald Keyser
Ryan Rogers, ASH

Stephen O. Morris, M.D., ASH
Steven Kwoh, M.D., ASH
Susana Rigau, ASH
Tammy Wray, Esq.
Taylor Allen
Telly Rivenburgh, AzCH
Tina Samsamshariat, M.D., ASH

☎ Participated Telephonically

Call To Order:

James Clark called the meeting to order at 1:04 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:

Blake Brown – PSRB No. 15-09

Blake Brown was present in person and through counsel, Raymond Hanna. The statutory hearing was held from 1:05 p.m. to 1:11 p.m. pursuant to A.R.S. § 13-3994(H). The Arizona State Hospital (ASH) recommended an addition to the list of approved pass supervisors.

Karolyn Kaczorowski, Yuma Deputy County Attorney, was teleconferenced into the hearing.

Dr. Clark stated that the approval of the new pass supervisor was approved by the Hospital’s Special Classification Committee (SCC) and a signed attestation has been submitted stating that the proposed pass supervisor has been educated on such responsibilities.

Erin Cohen, ASH’s attorney, informed the Board that Dr. Schneider is not present today due to an unforeseen circumstance.

Ronald Keyser, Mr. Brown's grandfather, testified that the family is very supportive.

Dr. Klemens asked how many level three passes have been completed, and Mr. Brown said he has completed approximately two passes per week for six months.

Mr. Keyser added that the family's visits with Mr. Brown have been great; he behaves appropriately and uses his coping skills. The family has known Mr. Woolridge for many years and he and Mr. Brown plan to golf together on passes, if approved.

A motion was made by Susan Stevens, seconded by Michael Klemens, and passed unanimously to approve the addition of Tyler Woolridge to the list of approved pass supervisors, based on the evidence presented by the Arizona State Hospital's treatment team that Blake Brown remains in stable remission and is not dangerous under the current conditional release treatment plan.

Jeffrey Harvey Kenna – PSRB No. 17-13

Jeffrey Kenna was present in person and through counsel, Michael Bernays. The statutory hearing was held from 1:12 p.m. to 1:20 p.m. pursuant to A.R.S. § 13-3994(H). This was an initial hearing continued from last month, and there was no recommendation at that time.

Ms. Cohen stated that there was a change to Ms. Kenna's medications.

A motion was made by James Clark, seconded by Susan Stevens, and passed unanimously to recess into executive session at 1:13 p.m. to discuss confidential information pursuant to A.R.S. § 38-431.03(A)(2).

After discussion in executive session, the Board reconvened in open session at 1:19 p.m.

In open session, Mr. Bernays apologized that he missed attending last month's hearing because he was not aware that he had been re-appointed by the court to continue to represent Mr. Kenna before the Board. He represented Mr. Kenna for the GEI adjudication and that Mr. Kenna is doing extremely well, by comparison.

A motion was made by Michael Klemens, seconded by Susan Stevens, and passed unanimously to deny conditional release for Jeffrey Kenna, based on the evidence presented by the Arizona State Hospital's treatment team, that Mr. Kenna 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. Jeffrey Kenna shall remain committed in the Arizona State Hospital.

Bradley Lannon Ware – PSRB No. 12-03

Bradley Ware was present in person and through counsel, John W. Blischak. The statutory hearing was held from 1:21 p.m. to 1:49 p.m. pursuant to A.R.S. § 13-3994(H). ASH recommended conditional release to ASH, phase one, levels one and two.

Amber Myers, victim, was teleconferenced into the hearing. Mr. Blischak stated that Mr. Ware is doing exceptionally well.

Mr. Ware read from a prepared statement wherein he expressed remorse and asked for forgiveness from the surviving victims. He outlined his treatment plan which included education, substance abuse prevention, and medication compliance. He asked the Board to grant him conditional release.

Mr. Blischak added that Mr. Ware is motivated, has not violated any rules of the Hospital, has had negative urine drug screen (UDS) analyses for seven years, has completed Resolution Group, demonstrates leadership skills as the Forensic Café manager, and has completed more than one thousand hours of various recovery groups.

Ms. Myers asked the Board to deny conditional release and expressed her belief that Mr. Ware would re-offend.

A motion was made by James Clark, seconded by Susan Stevens, and passed unanimously to recess into executive session at 1:31 p.m. to discuss confidential information pursuant to A.R.S. § 38-431.03(A)(2).

After discussion in executive session, the Board reconvened in open session at 1:46 p.m.

In open session, Mr. Blischak asked the Board to continue the hearing to allow Dr. Walayat to amend her report.

A motion was made by James Clark, seconded by Susan Stevens, and passed unanimously to continue the hearing to November 15th so an amended report and a CR plan could be submitted.

Cynthia A. Hernandez – PSRB No. 10-10

Cynthia Hernandez was present in person and through counsel, Tammy Wray. The statutory hearing was held from 1:50 p.m. to 2:26 p.m. pursuant to A.R.S. § 13-3994(H). ASH recommended conditional release to the community.

Anita Hernandez, Ms. Hernandez's mother, was teleconferenced into the hearing.

Ms. Cohen stated that Dr. Schneider was not present; however Dr. Joslyn and Dr. Patel were present to answer any questions.

Ms. Wray remarked that Ms. Hernandez has been stable since 2013. She has been medication-compliant, a leader on the unit, and has completed peer support training. Ms. Hernandez has had personal challenges and ASH staff has seen her coping well.

Lisa Christianson, mitigation specialist, was sworn in and testified as to Ms. Hernandez's astounding progress and that she has much to contribute to the community.

Taylor Allen, Ms. Hernandez's sponsor, was sworn in and testified that Ms. Hernandez is about halfway through the twelve steps, and is doing very well.

A motion was made by James Clark, seconded by Susan Stevens, and passed unanimously to recess into executive session at 1:56 p.m. to discuss confidential information pursuant to A.R.S. § 38-431.03(A)(2).

After discussion in executive session, the Board reconvened in open session at 2:17 p.m.

In open session, Juli Warzynski, Maricopa Deputy County Attorney, stated the State takes no position.

A motion was made by James Clark to grant conditional release to the community to Cynthia Hernandez, and to adopt the conditional release treatment plan, as amended as follows: the taking of her medication from bubble-packs shall be directly observed; that record of weekly attendance to community meetings shall be submitted in writing with the monthly conditional release report; and that she shall not have any contact with the victims.

After discussion, Dr. Clark amended his motion approve Cynthia Hernandez for conditional release to the community, and adopt the conditional release treatment plan as amended as follows: Ms. Hernandez's medications shall be observed a minimum of once per day and

provided to her in bubble-packs; Ms. Hernandez is not precluded from contacting her mother; and the record of her attendance to weekly to community meetings shall be submitted in writing with the monthly conditional release report. The approval of conditional release is based on the evidence presented by the Arizona State Hospital's treatment team, that Ms. Hernandez's mental disease or defect is in stable remission and she is not dangerous if she resides in the residential facility specified in the conditional release treatment plan and remains compliant with the terms of conditional release and the treatment plan approved today.

Dr. Clark remarked that best practices in this situation argue for a Hospital-based transition to a long-acting injectable medication, which would obviate any concern for medication observations or bubble-packs. Dr. Clark stated that he believes that Ms. Hernandez being recommended for discharge is appropriate, and she should be commended for the effort she has put into getting well. Dr. Schneider's report documents how hard Ms. Hernandez has worked. His concern is that the Hospital has been a "safe harbor" in which she has been provided with structure, support, and supervision.

The motion was seconded by Paul O'Connell and passed 4 – 1.

Michael Klemens opposed.

Barry Thomas Jordan – PSRB No. 14-02

Barry Jordan was present in person and through counsel, Ashley Blum. The statutory hearing was held from 2:27 p.m. to 2:39 p.m. pursuant to A.R.S. § 13-3994(H). This was a two-year hearing and there was no recommendation.

Barbara Jordan, Mr. Jordan's mother, stated that she and her son fully acknowledge the tragic automobile accident that brought him to ASH six years ago. She speaks with her son daily and visits him often and has seen a dramatic change in him, and that is owed to the treatment he receives at ASH. Mrs. Jordan looks forward to the day when her son can reach privilege levels.

Ms. Blum provided that Mr. Jordan has been stable and compliant with treatment since January and is working actively toward conditional release.

Dr. Klemens asked what major rule violations have occurred in the last six months, as mentioned in the report. Dr. Walayat stated that she would explain the details when she is

recommending levels. Dr. Clark remarked that it is the Board's contention to know rule violations whether or not privileges are recommended.

A motion was made by James Clark, seconded by Susan Stevens, and passed unanimously to recess into executive session at 2:31 p.m. to discuss confidential information pursuant to A.R.S. § 38-431.03(A)(2).

After discussion in executive session, the Board reconvened in open session at 2:38 p.m.

In open session, a motion was made by Paul O'Connell, seconded by Gwen Levitt, and passed unanimously 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 in the Arizona State Hospital.

The Board took a break from 2:40 p.m. to 2:42 p.m.

Jill Fraley Manahan – PSRB No. 09-10

Jill Manahan was present in person and through counsel, Holly Gieszl and Joshua Mozell. The statutory hearings were held from 2:43 p.m. to 4:12 p.m. pursuant to A.R.S. §§ 13-3994(N) and 31-502(A)(5). The first was a re-hearing of the April 2018 revocation of conditional release.

Dr. Clark summarized that Ms. Manahan appealed the Board's April 2018 decision to revoke her conditional release to the Superior Court. ASH also had a separate July 2019 recommendation for revocation of conditional release. The rehearing of the April 2018 decision was remanded back to the Board by Superior Court Judge Douglas Gerlach on the basis of insufficient notice to prepare and a 14th Amendment due process violation.

Ms. Cohen suggested that it might make sense for the Board to hear the July 2019 recommendation for revocation first due to the passage of time and that the treatment team from April 2018 is no longer employed at ASH. She explained that if the Board chose to revoke based on the July 2019 evidence, the April 2018 issue may be moot. Dr. Clark said he wanted to hear the facts of both revocation recommendations, especially since the Superior Court ordered the Board to re-hear the April 2018 matter.

Ms. Gieszl argued that Johanna Lippert, Ms. Manahan's previous treatment supervisor, should have been subpoenaed for this hearing because, absent Ms. Lippert, the Board does not have clear and convincing evidence that Ms. Manahan violated the terms of her conditional release. Ms. Gieszl argued that the March 2018 urine drug screen (UDS) sample was not tested until two days after it was collected and that a positive UDS result is not valid until a confirmatory test is completed. She contended that the March 10, 2018 UDS yielded a false positive because the following day the confirmatory test was negative. Ms. Gieszl argued that Steven Dingle's March 20, 2018, email to PSRB staff stated that there were two positive UDSs, however, ASH submitted only one for the evidentiary record, thereby demonstrating a lack of supporting evidence. Based on this, Ms. Gieszl requested that the Board grant Ms. Manahan conditional release.

Dr. Clark asked Ms. Gieszl if she would concede that there was a valid positive UDS for a medication not prescribed to Ms. Manahan. Ms. Gieszl stated that she would not, nor would any physician.

Dr. Klemens remarked that Ms. Gieszl left off the third statement in Dr. Dingle's email and asked her to read it for the record, which Ms. Gieszl obliged: "Upon being shown the lab tests, Ms. Manahan acknowledged that she has used opiates since her PSRB hearing, and that as an addict, she has relapsed. She states she knows how to get them in the hospital, and will not discuss how she came to be in possession of them." Ms. Gieszl presented a line of questioning to Ms. Manahan about this statement and Ms. Manahan testified that she had not used, nor had she admitted to using, non-prescribed medications. Ms. Gieszl again argued that there is a clear lack of clear and convincing evidence.

A motion was made by Michael Klemens to recess into executive session and Ms. Gieszl objected arguing that the County Attorney should not present argument before the defense could rest. Discussion ensued.

Juli Warzynski, Maricopa Deputy County Attorney, argued that the PSRB is expected to rely on reports from ASH, and that an individual does not have to be present to testify as to their written report in order for evidence to be clear and convincing. She argued that the State has grave concerns regarding Ms. Manahan lesser restrictions that allow her to be off the grounds of ASH. Argument ensued.

Dr. Clark asked for a second to the motion, it was seconded by Paul O'Connell and passed unanimously. The Board recessed into executive session at 3:01 p.m. to obtain legal advice pursuant to A.R.S. 38-431.03(A)(3).

After discussion in executive session, the Board reconvened in open session at 3:15 p.m.

In open session, Dr. Clark stated that the Board is inclined to hear the facts of both cases together, and for the record, called both items together.

Jill Fraley Manahan – PSRB No. 09-10 and Jill Fraley Manahan – PSRB No. 09-10

Jill Manahan was present in person and through counsel, Holly Gieszl and Joshua Mozell. These statutory hearings were held from 2:43 p.m. to 4:12 p.m. pursuant to A.R.S. §§ 13-3994(N) and 31-502(A)(5). This was a re-hearing for the April 2018 revocation of conditional release and ASH had a separate July 2019 recommendation for revocation of conditional release.

Ms. Gieszl objected to consolidating the matters for evidentiary and appeal purposes. The matters were consolidated over her objection.

Stephen Morris, Ms. Manahan's treatment supervisor, was sworn in. Dr. Clark asked Dr. Morris what the reason was for requiring Ms. Manahan to complete a UDS in March of 2018. Ms. Gieszl interjected to ask Dr. Morris why Ms. Manahan was moved from the Community Reintegration Unit (CRU).

A motion was made by James Clark, seconded by Gwen Levitt, and passed unanimously to recess into executive session at 3:20 p.m. to discuss confidential information pursuant to A.R.S. § 38-431.03(A)(2).

After discussion in executive session, the Board reconvened in open session at 3:59 p.m.

In open session, Dr. Clark commented that the Board cannot revoke conditional release twice, and the Board is inclined to consider the facts of both matters to make a decision.

Juli Warzynski commented that Ms. Manahan is still appealing the GEI conviction and does not believe she is guilty. Ms. Galvin opined that this information is irrelevant.

Ms. Manahan testified that she has no idea why the Hospital and the PSRB have taken her levels away. She exceeds her treatment plan goals and feels like she is being punished for not being able to recollect the events of the index crime. She has not used illicit drugs, has lost family members, and has no hope that her treatment team will recommend her for levels. She asked the that Board allow her to stay on level one.

A motion was made by James Clark to revoke conditional release for Jill Manahan based on the evidence presented by the Arizona State Hospital's treatment team that Ms. Manahan violated the terms of conditional release, and that Ms. Manahan remain at the Arizona State Hospital for evaluation and treatment. Specifically, Ms. Manahan violated II. E., which states, "Ms. Manahan shall not use or possess any illegal drugs, toxic vapors, alcohol, non-prescribed drugs, or medication not prescribed or approved by the attending practitioner." This provision was violated by using a substance not prescribed to her, and evidence that she was sniffing an inhalant.

Ms. Galvin asked if there were any other grounds for revocation.

Dr. Clark added to his motion the following violations for the bases for revocation of conditional release:

- On March 5, 2018, a urine drug screen analysis for Ms. Manahan yielded a positive result for opioids not prescribed;
- On March 14, 2018, a urine drug screen analysis for Ms. Manahan yielded a positive result for opiates not prescribed;
- On June 19, 2018, Ms. Manahan was witnessed sniffing an inhalant by ASH treatment staff;
- On April 29, 2018, Ms. Manahan was discovered pretending to engage in a lewd act with a male peer;
- On December 17, 2018, Ms. Manahan was discovered entering a restroom with a male peer;
- On July 9, 2019, a urine drug screen analysis for Ms. Manahan yielded a positive result for opioids not prescribed;

Ms. Galvin asked the other Board members if they wished to add any other grounds. Mr. O'Connell added the following:

- On March 20, 2018, there was an e-mail communication from the Chief Medical Officer of ASH to the PSRB stating that Ms. Manahan acknowledged that she had used substances not prescribed to her;
- The testimony of Stephen O. Morris, M.D., stating Ms. Manahan's acknowledgement that she used substances not prescribed;

Dr. Klemens adding the following:

- The July 24, 2019, written report of Stephen O. Morris, M.D., and his testimony stating Ms. Manahan's mental disease or defect is not in stable remission.

Ms. Galvin asked for a second if there were no other grounds to be added. Susan Stevens seconded the motion and it passed unanimously by way of a roll call:

- Paul O'Connell voted aye.
- James Clark voted aye.
- Susan Stevens voted aye.
- Gwen Levitt voted aye.
- Michael Klemens voted aye.

Discussion and Possible Action Related to:

Review and approval of the 2020 regular meeting schedule:

After discussion, a motion was made by James Clark, seconded by Gwen Levitt, and passed unanimously to approve the 2020 regular meeting schedule as discussed.

Discussion, Amendment and Approval of Minutes:

Open session minutes from the September 27, 2019, meeting:

After discussion, a motion was made by James Clark, seconded by Susan Stevens and passed 4 – 0 to approve the September 27, 2019, open session minutes, as amended.

Gwen Levitt abstained.

Identification of Future Agenda Items:

- Supporting documents from the outpatient treatment team regarding returns to ASH.
- Verbal update from the Chairman regarding the Committee of Reference hearing.

Adjournment:

The Board meeting adjourned 4:19 p.m.