



Psychiatric Security Review Board

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ARIZONA STATE PSYCHIATRIC SECURITY REVIEW BOARD OPEN SESSION MINUTES

December 13, 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

Anna Ortiz, Esq. ☎
Arielle Caiazzo, ASH
Ashley Blum, Esq.
Barbara Downey LeBourdais
Brian Bohan, Esq.
Caleb Rodgers, ASH
Casey Strauss
Chandra Houston, Plan of AZ
Cullan Tidwell, ASH
Deanie Reh, Esq.
Dennis Zimmerman
Freddy Cortez

Gabriela Reyes, ASH
Jandely Eich, ASH
Jared Zimmerman
John W. Blischak, Esq.
Josephine Jones, Esq.
Julianna Vroman, ASH
Kaye Braunbeck
Kellybeth Barnes
Kristin Bresnik, S.T.A.R.
Matthew Reed, Esq.
Megan Woods, AHCCCS
Paolo Arriola, R.E.N.

Salia Cortez
Sarah Barreras, ASH
Sarah Swonder, La Frontera
Stacey Heard, Esq.

Stefanie Jones-Campbell, Esq.
Susana Rigou, ASH
Tammy Wray, Esq.
Telly Rivenburgh, Arizona Complete Health

☎ Participated Telephonically

Call To Order:

James Clark called the meeting to order at 1:01 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. This means that persons present during an executive session of the PSRB may not disclose any information regarding the executive session or discuss those proceedings with any person who was not also present at the executive session.”

Dr. Clark swore in individuals who anticipated testifying.

Statutory Hearings:

Jason Leo West – PSRB No. 18-02

Jason West was present in person and through counsel, Stefanie Jones-Campbell. The statutory hearing was held from 1:03 p.m. to 1:05 p.m. pursuant to A.R.S. § 13-3994(F). This was an initial hearing and there was no recommendation at that time.

Ms. Jones-Campbell stated that Mr. West has no objection to the contents of the report and is working toward recovery.

A motion was made by Susan Stevens, seconded by Paul O’Connell, and passed unanimously to deny conditional release for Jason West based on the evidence presented by the Arizona State Hospital’s treatment team, that Mr. West 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. Jason West shall remain committed to the Arizona State Hospital.

Henry Navarro Moreno – PSRB No. 18-01

Henry Moreno was present in person and through counsel, Anna Ortiz, who appeared telephonically. The statutory hearing was held from 1:06 p.m. to 1:09 p.m. pursuant to A.R.S. § 13-3994(F). This was an initial hearing and there was no recommendation at that time.

After discussion, a motion was made by Gwen Levitt, seconded by Susan Stevens, and passed unanimously to deny conditional release for Henry Moreno based on the evidence presented by the Arizona State Hospital’s treatment team, that Mr. Moreno 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. Henry Moreno shall remain committed to the Arizona State Hospital.

Barbara Downey LeBourdais – PSRB No. 99-17

Barbara Downey LeBourdais was present in person and through counsel, Stefanie Jones-Campbell. The statutory hearing was held from 1:10 p.m. to 1:52 p.m. pursuant to A.R.S. §§ 13-3994(M) and 31-502(B)(2),(4). The Chairman set this hearing to review the October conditional release monthly report.

A motion was made by James Clark, seconded by Susan Stevens, and passed unanimously to recess into executive session at 1:11 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 1:17 p.m.

In open session, Dr. Clark explained that the issue today is whether Ms. LeBourdais should care for small children which the Board did not allow when it was presented in May 2019.

Ms. Jones-Campbell argued that the Order issued following the May 2019 hearing did not preclude Ms. LeBourdais from having contact with children.

Dr. Klemens stated that during the May hearing, the Board openly discussed concern for Ms. LeBourdais caring for young children. The Board set a very high bar, given the nature of her index offense, regarding her caring independently for children and it appears that Ms. LeBourdais may have found a “loophole” by skipping the out-of-state travel and having the grandchildren come to Arizona.

Ms. Jones-Campbell argued that she does not see where her client violated an order of the Board. Ms. LeBourdais has been in the community since 2003 and has never been prohibited from having contact with small children, including raising her young son upon discharge from ASH.

When Dr. Klemens asked approximately how many hours per week the grandchildren were in Ms. LeBourdais' care, Ms. Jones-Campbell responded "on an as-needed basis". Ms. Jones-Campbell added that Ms. LeBourdais has babysat numerous children and there have been no issues. She also added that the children and grandchildren may return to Kansas.

Dr. Klemens stated the concern is full-time care of three young children under the age of seven. Board members and Ms. LeBourdais discussed recent employment and peer support training.

After discussion, a motion was made by James Clark, seconded by Susan Stevens, and passed unanimously to recess into executive session at 1:24 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 1:42 p.m.

In open session, Dr. Levitt asked who is currently living in Ms. LeBourdais' home. Ms. LeBourdais responded that her husband lives in the home and her brother is visiting. Dr. Levitt asked Ms. LeBourdais to explain what "on an as needed basis" means with regard to the amount of time she spends supervising her grandchildren. Ms. LeBourdais explained that her son is working, and while his girlfriend is applying for jobs and services she drops the kids off when she runs those errands, but she cannot provide a number of hours. Ms. Jones-Campbell pointed out that the time spent with her grandchildren is no different if Ms. LeBourdais went to Kansas to visit, which was approved several times by the Board in the past.

Ms. LeBourdais affirmed that overnight stays have occurred in supervising the grandchildren.

Dr. Clark stated the October report indicated stress in caring for the kids and asked Ms. LeBourdais to elaborate. Ms. LeBourdais stated she was referring to her son's situation and not providing childcare to the grandchildren. Ms. Jones-Campbell argued that Ms. LeBourdais did what any good person would do, which was to help her family when they needed it. Ms. LeBourdais added that caring for the kids is tiring but she is not overstressed.

Sarah Swonder was sworn in and testified that she has not observed any additional stress in Ms. LeBourdais. She added that opining as to the advisability of the care and supervision of minor children falls outside of her job scope.

A motion was made by James Clark, seconded by Susan Stevens, and passed unanimously to order the treatment team supervisor, Andrew Parker, D.O., to further evaluate and comment on Ms. LeBourdais' ability to manage the care and supervision of minor children, and to comment on her level of stress given what is going on within the family.

Tahum LeKeith Garland – PSRB No. 02-04

Tahum Garland was not present and his attorney, Tammy Wray, appeared on his behalf. The statutory hearing was held from 1:53 p.m. to 1:54 p.m. pursuant to A.R.S. § 31-502(A)(5) and (B)(4). Mr. Garland withdrew his request for out-of-state travel.

Ms. Wray waived Mr. Garland's presence and withdrew Mr. Garland's request for out-of-state travel.

A motion was made by James Clark, seconded by Susan Stevens, and passed unanimously to vacate the hearing.

Walter Gray McCarthy – PSRB No. 10-13

Walter McCarthy was present in person and through counsel, Tammy Wray. The statutory hearing was held from 1:55 p.m. to 3:23 p.m. pursuant to A.R.S. § 13-3994(H). The Arizona State Hospital recommended conditional release, phase two, level four.

Gwen Levitt recused herself from the matter for a conflict of interest.

Ms. Wray asked that the Board approve Dr. Schneider's third recommendation for level four for overnight passes off the Hospital grounds and provided an extensive argument. Since 2012, ten experts have evaluated Mr. McCarthy's symptoms to be in stable remission. In the nine years since Mr. McCarthy has been committed to ASH, there has not been one rule violation nor has he exhibited any type of dangerous behavior. Mr. McCarthy has completed almost 200 successful off-grounds passes, and has maintained his physical and mental health, and his sobriety. Ms. Wray identified and contested several of the reasons given by the Board in its August of 2019 motion to deny conditional release, level four. Finally, Ms. Wray requested that the Board discuss any issues that would prevent them from voting in favor of level four prior to a vote so she would have an opportunity to address them.

Dr. Klemens asked Mr. McCarthy to discuss the co-facilitation of therapy groups at S.T.A.R. and ASH. Mr. McCarthy described his successes in great detail.

Board members discussed his Global Positioning System (GPS) ankle monitor requirements, the surviving victim's statements, and the gruesomeness of the index crime.

Paolo Arriola from Recovery Empowerment Network (R.E.N.) was present and testified that Mr. McCarthy is a pleasure to work with.

Kristin Bresnik from Stand Together And Recover (S.T.A.R.) was present and testified that Mr. McCarthy shows initiative, is working to establish SMART Recovery groups at other S.T.A.R. centers, and is helpful to his peers.

Josephine Jones from the Maricopa County Attorney's Office was present and argued that it is the State's position that there is not enough evidence to show that public safety will be protected if Mr. McCarthy is granted overnight passes, and that his personality disorder diagnosis is not being addressed objectively. Finally, Ms. Jones argued that, in order for the Board to meet its paramount objective of public safety and protection, an assessment of risk should be conducted in the context of the proposed 48-hour passes by an objective, non-treating clinician.

Dr. Clark pointed out that Summer Schneider, the current treatment supervisor, supervised the 2018 risk assessment. Dr. Clark then asked Dr. Schneider if she has any difficulty serving as his treatment team supervisor after having previously supervised his level of risk for violent reoffending assessment. Dr. Schneider said when she conducted the risk assessment she was not in a role of providing treatment to Mr. McCarthy.

A motion was made by Susan Stevens, seconded by Paul O'Connell, and passed 4 – 0 – 1 to recess into executive session at 2:33 p.m. to discuss confidential information pursuant to A.R.S. § 38-431.03(A)(2).

Dr. Levitt recused.

After discussion in executive session, the Board reconvened in open session at 2:44 p.m.

In open session, Ms. Wray discussed her client's objection to the graphic images of the crime scene in the Board's materials. Ms. Wray read from State v. Steele 120 Ariz. 462 (1978), wherein the Arizona Supreme Court contemplates that the admission of gruesome

photographic and other materials for no other purpose other than to inflame the passions of the fact-finder. This can lead to a decision based not on proven facts but on the prejudicial nature of the gruesome materials. Ms. Wray argued that the Board is bound to the standards of the Rules of Administrative Procedure and thus, should exclude the photographic evidence.

Ms. Wray argued that the nature or cruelty of an index crime committed by a GEI person is inapplicable because the very basis for GEI adjudication removes the defendant's knowledge of the cruel nature of it. Ms. Wray disagreed with the State's position that evidence about Mr. McCarthy working cooperatively with others is lacking. Finally, Ms. Wray concluded that Mr. McCarthy is asking that the Board approve level four because he has followed every treatment requirement imposed by ASH and the Board and manages his illness well.

A motion was made by James Clark that there be no status change for Walter McCarthy and that he remains stable and not dangerous under the current treatment plan, which is phase two, level three. Dr. Clark stated his opinion that he places great weight in Dr. Joel Parker's March 30, 2010 GEI evaluation, page 33, items 60 A. and B., which he believes is important in terms of the propensity to reoffend. Dr. Clark explained that his major concerns are related to propensity to reoffend and public safety and protection, as well as the serious nature of the crime which sets a high bar regarding risk.

Ms. Stevens seconded the motion, and it passed 3 – 1 – 1.

Dr. Klemens opposed and Dr. Levitt recused.

A motion was made by Michael Klemens to approve Walter McCarthy for conditional release to Arizona State Hospital, phase two, level four, and adopt the conditional release treatment plan with the following modifications: a minimum of 30 passes over a period of 180 days, and that overnight passes are limited to 24 hours, 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 as modified.

Extensive discussion ensued about the opposing motions.

A motion was made by Paul O'Connell, seconded by James Clark, and passed 4 – 0 – 1 to recess into executive session at 3:01 p.m. to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).

Dr. Levitt recused.

The Board took a break from 3:01 p.m. to 3:03 p.m.

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

In open session, Ms. Cohen informed the Board that Dr. Schneider wished to make a clarification that necessitates an executive session to discuss confidential information.

A motion was made by James Clark, seconded by Susan Stevens, and passed 4 – 0 – 1 to recess into executive session at 3:16 p.m. to discuss confidential information pursuant to A.R.S. § 38-431.03(A)(2).

Dr. Levitt recused.

After discussion in executive session, the Board reconvened in open session at 3:19 p.m.

In open session, a motion was made by Michael Klemens, seconded by Paul O’Connell, and passed 3 – 1 – 1 to reconsider its position on Walter McCarthy’s status.

Dr. Clark opposed and Dr. Levitt recused.

A motion was made by Michael Klemens, seconded by Paul O’Connell, and passed 3 – 1 – 1 to approve Walter McCarthy for conditional release to Arizona State Hospital, phase two, level four, and adopt the conditional release treatment plan with the following modifications:

- A total minimum of 30 passes over 180 days;
- Overnight passes are limited to 24 hours; and
- Overnight passes are limited to no more than two times per month.

This is 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 as modified.

Paul O’Connell seconded the motion and it passed 3 – 1 – 1,

Dr. Clark opposed and Dr. Levitt recused.

Rick William Stevenson – PSRB No. 95-06

Rick Stevenson was present in person and through counsel, Tammy Wray. The statutory hearing was held from 3:24 p.m. to 3:25 p.m. pursuant to A.R.S. § 13-3994(H). The Arizona State Hospital recommended a modification to the list of approved pass supervisors.

After discussion, a motion was made by Michael Klemens, seconded by Paul O’Connell, and passed unanimously to approve the recommended modification to the list of approved pass supervisors, based on the evidence presented that Rick Stevenson’s mental disease or defect remains in stable remission and he is not dangerous.

Kelly Louise Blake – PSRB No. 01-10

Kelly Blake was present in person and through counsel, Tammy Wray. The statutory hearing was held from 3:26 p.m. to 3:30 p.m. pursuant to A.R.S. § 13-3994(H). The Arizona State Hospital recommended a modification to the list of approved pass supervisors.

Ms. Wray explained that they are asking for the entire staff of Plan of AZ to be approved as a pass supervisor.

Josephine Jones from the Maricopa County Attorney’s Office stated that the letter submitted by Plan of AZ was very helpful in assessing an individual’s progress in the community.

A motion was made by Gwen Levitt, seconded by Michael Klemens, and passed unanimously to approve the recommended modification to the list of approved pass supervisors, based on the evidence presented that Kelly Blake’s mental disease or defect remains in stable remission and she is not dangerous.

Robert Earl Bible, III – PSRB No. 13-07

Robert Bible was present in person and through counsel, John W. Blischak. The statutory hearing was held from 3:31 p.m. to 3:48 p.m. pursuant to A.R.S. § 13-3994(H). The Arizona State Hospital recommended conditional release to the community.

John Blischak stated that Mr. Bible plans to live in Tucson and is asking that the Board approves the recommendation.

Dr. Clark asked Dr. Schneider to explain the basis for the atypical language in the proposed conditional release plan that obviates the need for Mr. Bible to appear before the Board before stepping down from a 24-hour residential facility.

Dr. Schneider responded that the team feels strongly that Mr. Bible is appropriate for a less restrictive environment, such as a 12-hour residential setting. However, the team recognizes that Tucson is a new city to Mr. Bible and will need time to acclimate.

A motion was made by James Clark, seconded by Susan Stevens, and passed unanimously to recess into executive session at 3:33 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 3:43 p.m.

In open session, a motion was made by Paul O'Connell that the PSRB approve Robert Bible 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. Bible'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.

Dr. Clark asked Mr. O'Connell if he would amend the motion to include the submission of written documentation of attendance at the required community meetings with the monthly report. Mr. O'Connell agreed.

Discussion was held about how to amend the language that negates the Board's ability to step Mr. Bible down from a 24-hour residential facility. Board staff recommended striking the last two sentences of the first paragraph of the proposed conditional release plan starting with "after" and ending with "writing". Mr. O'Connell amended his motion as such.

Ms. Stevens added to the motion that each medication dose shall be directly observed and Mr. O'Connell accepted.

Gwen Levitt seconded the motion and it passed unanimously.

Discussion, Amendment and Approval of Minutes:

Open and executive session minutes from the November 15, 2019, meeting:

After discussion, a motion was made by James Clark, seconded by Susan Stevens and passed unanimously to approve the November 15, 2019, open and executive session minutes, as amended.

Identification of Future Agenda Items:

- Dr. Klemens added discussion regarding inclusion of crime scene photos in the Board's materials to the February 2020 meeting agenda.
- Dr. Clark added review of the conditional release monthly reports.

Adjournment:

The Board meeting adjourned 3:52 p.m.