



Psychiatric Security Review Board

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ARIZONA STATE PSYCHIATRIC SECURITY REVIEW BOARD OPEN SESSION MINUTES

September 27, 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 Levitt, D.O. ☞
☞ Absent

Assistant Attorney General:

Seth Hargraves, Esq.

Staff:

Jaime L. Shapiro, Executive Director

Guests Present and/or Participating:

Allyson Wirth, ASH	Holly Gieszl, Esq.
Anna Ortiz, Esq. ☞	Jacob Perez
Anna Yoder, ASH	Jeff Storosky
Ashley Blum, Esq.	Jenna Schoen, ASH
Cole Arigoni, Mercy Care	John W. Blischak, Esq.
Colin Barrett, ASH	Jonnah Docherty, ASH
Cynthia Hostetler, AHCCCS	Juli Warzynski, Esq.
Danielle Tassielli, United Health Care	Julie Jackson, ASH
David Joslyn, ASH	Kalena Skvarek, ASH
Gavin Baker, ASH	Louis Tapia ☞
Hailey Bentley, ASH	Madison Gardner, ASH

Martha Barco
Nora Greer, Esq.
Patrick Zinicola, Esq. ☎
Peyton Morris, ASH
Ronald Wood, Esq. ☎
Santiago Peña, ASH
Stacey Heard, Esq.
Stefanie Jones-Campbell, Esq.

Stephen O. Morris, M.D., ASH
Steven Kwoh, M.D., ASH
Stevie Willis, La Frontera-EMPACT
Susana Rigau, ASH
Tammy Wray, Esq.
Telly Rivenburgh, Arizona Complete Health
Terry Sutton, Esq.
Valerie Minten, ASH

☎ Participated Telephonically

Call To Order:

James Clark called the meeting to order at 1:03 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:

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

Jill Manahan was absent and her attorney, Holly Gieszl, was present. These statutory hearings were held from 1:06 p.m. to 1:13 p.m. pursuant to A.R.S. §§ 13-3994(H) and 31-502(A)(5). The Arizona State Hospital (ASH) recommended revocation of conditional release to ASH.

Holly Gieszl explained that Ms. Manahan is not present because of the motion to continue both the matters based on a request for records. Ms. Gieszl clarified that while she received the materials for today’s hearings on September 13th, she did not pick up on the significance of the records until yesterday afternoon.

Dr. Clark asked Erin Cohen, if the Board were to continue these matters; would Johanna Lippert or Steven Dingle be present at the October hearing, since they figure into the re-hearing? Ms. Cohen stated that Ms. Lippert is retired and she has no information as to

whether Steven Dingle would be present. Ms. Cohen asked that, from the Hospital's perspective, the record is made clear as to what records Ms. Manahan is requesting. Ms. Cohen also pointed out that the PSRB's attorney had asked Ms. Gieszl to obtain a signed Authorization to Use and Disclose Protected Health Information (AUD), which to her knowledge was not submitted.

Ms. Gieszl responded that the AUD was not signed because it is inappropriately broad and the Board does not need to know about Ms. Manahan's medical issues that do not relate to the issues before the Board. Ms. Gieszl stated, for the record, that Ms. Manahan will produce every medical record that is pertinent to the issues before the Board.

Ms. Cohen added that ASH does not take an official position on the motion to continue the hearings.

Juli Warzynski from the Maricopa County Attorney's Office was present and stated that the State takes no position on the motion to continue, however, the State disagrees that the decision of relevancy of records falls to defense counsel; it is the decision of the Arizona State Hospital which has the burden of proof.

A motion was made by Susan Stevens, seconded by Paul O'Connell, and passed 4 – 0 to continue both of Ms. Manahan's hearings to October 25, 2019.

James Marshall Longe – PSRB No. 10-12

James Longe was present in person and through counsel, Stefanie Jones-Campbell. The statutory hearing was held from 1:14 p.m. to 1:18 p.m. pursuant to A.R.S. § 13-3994(H). This was a two-year hearing and there was no recommendation at that time.

Stefanie Jones-Campbell stated that Mr. Longe has no objection to the report.

Mr. Longe read from a prepared statement which described his attendance at several groups such as AA and SMART Recovery. He is gaining insight and coping skills and the groups are allowing him to maintain sobriety and manage behaviors.

After discussion, a motion was made by Susan Stevens, seconded by Michael Klemens, and passed 4 – 0 to deny conditional release for James Longe based on the evidence presented by the Arizona State Hospital's treatment team, that Mr. Longe 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. James Longe shall remain committed to the Arizona State Hospital.

Kyle Andre Jackson – PSRB No. 14-10

Kyle Jackson was present in person and through counsel, John W. Blischak. The statutory hearing was held from 1:19 p.m. to 1:23 p.m. pursuant to A.R.S. §§ 13-3994(H) and 31-502(A)(5). ASH recommended revocation of conditional release.

Kyle Jackson stated that he is not a dangerous person and contested parts of the mental health report. Dr. Jaffe clarified that the rule violation described in the report occurred in June 2019. Ms. Stevens added that it would be helpful if the report indicated when an individual's forensic privileges were curtailed.

Dr. Clark asked Dr. Jaffe if any alternative pharmacotherapy was being considered and Dr. Jaffe stated that Mr. Jackson has been presented with several options and is not willing to try many medications.

A motion was made by James Clark, seconded by Susan Stevens, and passed 4 – 0 to revoke Conditional Release for Kyle Jackson based on the evidence presented by the Arizona State Hospital's treatment team that Mr. Jackson's mental disease or defect has deteriorated and he is no longer in stable remission, and that he failed to prove by clear and convincing evidence that he is no longer dangerous. Kyle Jackson shall at the Arizona State Hospital for further evaluation and treatment.

Roy Stephen Chastain – PSRB No. 11-12

Roy Chastain was present in person and through counsel, Ronald Wood, who appeared telephonically. The statutory hearing was held from 1:24 p.m. to 1:37 p.m. pursuant to A.R.S. § 13-3994(H). This was a two-year hearing and there was no recommendation at that time.

Ronald Wood and Patrick Zinicola were teleconferenced into the hearing. Mr. Wood stated that while his client may wish to be conditionally released, there is nothing in the report to support that. Akram Bhatti, Mr. Chastain's doctor, was not present to answer the Board's questions.

Dr. Klemens pointed out that it would have been helpful if Dr. Bhatti's report included whether Mr. Chastain's sexually inappropriate behavior was verbal or physical. On that note,

Dr. Clark added that the report lacked information regarding Mr. Chastain's two prior convictions for murder, which would speak to a possible propensity to reoffend issue.

A motion was made by Paul O'Connell, seconded by Susan Stevens, and passed 4 – 0 to deny conditional release for Roy Chastain based on the evidence presented by the Arizona State Hospital's treatment team that Mr. Chastain 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. Roy Chastain shall remain committed to the Arizona State Hospital.

Billie Jo Peters – PSRB No. 03-09

Billie Jo Peters was present in person and through counsel, Ashley Blum. The statutory hearing was held from 1:30 p.m. to 1:37 p.m. pursuant to A.R.S. §§ 13-3994(M) and 31-502(A)(5). ASH recommended continuation of the terms of conditional release to the community.

Ashley Blum stated that Ms. Peters would like to be discharged to a sixteen-hour residential facility. Cole Arigoni added that an application for a sixteen-hour flex care plus residential facility could be submitted if the inpatient and outpatient treatment teams were in agreement. ASH staff clarified that the SCC did not review the recommendation.

Dr. Klemens asked if there was a way that the outpatient provider could be made aware of ASH's decision during her recent re-hospitalization, to discontinue certain medications that had been prescribed to her as an outpatient. Discussion was held and a "doc-to-doc" phone call was favored.

A motion was made by James Clark, seconded by Susan Stevens, and passed 4 – 0 that Billie Jo Peters did not violate the terms of conditional release and that her mental condition is not deteriorated, and that she is conditionally released from the Arizona State Hospital under the treatment plan previously ordered by the PSRB, with consideration given to placing her in a sixteen-hour flex care plus residential setting, with a strong recommendation for a "doc-to-doc" to take place regarding her discharge medications.

Jeffrey Harvey Kenna – PSRB No. 17-13

Jeffrey Kenna was present in person and his attorney, was not present. The statutory hearing was held from 1:38 p.m. to 1:42 p.m. pursuant to A.R.S. § 13-3994(F). This was an initial hearing and there was no request at that time.

Board staff attempted to phone Mr. Kenna's attorney with no success.

After discussion, a motion was made by Susan Stevens, seconded by Paul O'Connell, and passed 4 – 0 to continue the hearing to October 25, 2019, since Mr. Kenna's attorney did not appear, and the record reflects that notice was issued on September 11, 2019.

Jacob Felix Perez – PSRB No. 17-15

Jacob Perez was present in person and through counsel, Anna Ortiz, who appeared telephonically. The statutory hearing was held from 1:45 p.m. to 1:58 p.m. pursuant to A.R.S. § 13-3994(F). This was an initial hearing and there was no request at that time.

Anna Ortiz was teleconferenced into the hearing. Ms. Ortiz stated that Mr. Perez does well when he is taking his medication and has a guardian through the Gila County Public Fiduciary. If Mr. Perez was to be released to his guardian, he would be provided with adequate housing and necessary services, and Ms. Ortiz would like to see him back in the community. Dr. Clark pointed out that the State Hospital is not making that type of recommendation today.

It was clarified that a risk assessment was conducted and is expected to be finalized within a month. Dr. Clark pointed out to Dr. Walayat that the mental health report did not comment on the presence or absence of auditory hallucinations.

After discussion, a motion was made by Michael Klemens, seconded by Susan Stevens, and passed 4 – 0 to deny conditional release for Jacob Perez based on the evidence presented by the Arizona State Hospital's treatment team, that Mr. Perez 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. Jacob Perez shall remain committed to the Arizona State Hospital.

Tahum LeKeith Garland – PSRB No. 02-06

Tahum Garland was present in person and through counsel, Tammy Wray. The statutory hearing was held from 1:59 p.m. to 2:03 p.m. pursuant to A.R.S. § 31-502(A)(5) and (B)(4). The outpatient treatment team recommended that Mr. Garland be allowed to travel out-of-State.

Ms. Wray commented that the dates of travel have changed to October 11, 2019 through October 14, 2019, otherwise all the other information provided remains the same. Dr. Clark pointed out that there are several months of monthly reports in the record that show that he is doing well, but the request for travel is a one-sentence letter from the provider that lacks

recommendations regarding contact with the treatment team, medications, or a urine drug screen (UDS) upon return. Stevie Willis was present and he and the Board members discussed those provisions.

A motion was made by Susan Stevens, seconded by Paul O'Connell, and passed 4 – 0 to grant Tahum Garland out-of-State travel from October 11 through October 14th, traveling with his mother and sister and staying with his brother, based on the information presented that Mr. Garland continues to be in stable remission and not dangerous.

Dr. Clark proposed an amendment to the motion that covers daily phone contact with the treatment team, that Mr. Garland is provided a medication bubble pack, and submission of a UDS within 24 hours of Mr. Garland's return to Arizona.

Ms. Stevens accepted the amendment, it was seconded by Paul O'Connell, and passed 4 – 0.

Louis Hurtado Tapia – PSRB No. 10-11

Louis Tapia was present telephonically and through counsel, Nora Greer. The statutory hearing was held from 2:04 p.m. to 2:12 p.m. pursuant to A.R.S. § 31-502(A)(5) and (B)(4). The outpatient treatment team recommended a reduction in frequency of psychiatry appointments and reduction of required community meetings.

Louis Tapia was teleconferenced into the hearing. Nora Greer stated that Mr. Tapia continues to do extremely well and has gained independence over the years. The treatment team is recommending once-per-week community meetings and a reduction in psychiatry appointments from monthly to quarterly.

Telly Rivenburgh was present and discussed with the Board Mr. Tapia's regular involvement in the community, volunteering his services every Saturday to include feeding and handing out water bottles to the homeless population.

Mr. Tapia discussed how he spends his free time which encompasses weekly church attendance, community services, and community meetings. He and Dr. Clark discussed his trip to Mexico this year to visit his grandparents. The visit went very well.

A motion was made by Michael Klemens, seconded by Susan Stevens, and passed 4 – 0 to grant a reduction in psychiatry appointments from monthly to quarterly, and reduce the required community meetings from twice-weekly to once-weekly, based on evidence that Louis Tapia continues to be in stable remission and not dangerous.

The Board took a break from 2:13 p.m. to 2:17 p.m.

Discussion and Possible Action Related to:

Supporting documents from outpatient treatment teams regarding potential returns to ASH:

The Board discussed what supporting document would suffice when there is a potential return to ASH. Board staff explained that typically, the Board receives a verbal report when a GEI person may potentially require confinement, and offered to build a form that an outpatient treatment team member could follow up with.

Holly Gieszl opined that such a report should come from a clinician and not a “utilization management” or “insurance person”. Dr. Clark stated that the Board can take input from anyone who has supervision over a person under their jurisdiction, as stated in A.R.S. § 13-3994(N). Discussion ensued and the Board directed staff to build a draft form and present it in a future meeting.

Potential amendments to A.R.S. §§ 13-502, 13-3993, 13-3994, 31-501, and 31-502:

Discussion ensued among Board members, staff, Tammy Wray, Holly Gieszl, as to how the Board might obtain an entire criminal history of a person under PSRB jurisdiction. No action was taken.

Verbal update re staff request to omit CRC Reports from patient packets unless specifically requested:

Board staff reminded the Board that they decided not to omit the reports from the Board’s materials. However, Board staff decided to eliminate the paper copies from the patient files at the Board offices, but they will remain in electronic form.

Verbal update re Authorization to Use and Disclose Protected Health Information (AUD) to the PSRB:

Board staff stated that the AUD has not been issued to each patient. Dr. Klemens shared his concern regarding the legal ramifications if a patient was not well enough to understand the form.

Tammy Wray and Holly Gieszl opined that it would be unlawful to send the AUD to a person under its jurisdiction without their attorney present. Ms. Gieszl stated that it would create a “horrendous boundary problem” and conflict of interest for a psychiatrist to give a patient a form that relates to their potential release, and is a reportable action to the applicable regulatory board.

Dr. Clark asked Seth Hargraves if he could provide a legal opinion, and Mr. Hargraves stated that he was not prepared to advise legally on background issues.

The Board deferred any action to a future meeting.

Review of ASH's comments and approval of draft PSRB policies:

Mental Health Reports

Definitions

Risk Assessments

Setting Hearings

Board staff stated that the comments in the margins are ASH's final opinions on the Board's draft policies.

A motion was made by James Clark to approve the draft policies. He stated that the Board has made an effort to take into account ASH's suggestions. He indicated that moving forward on the draft policies is what the Board needs to accomplish its goal in responding to the Auditor general's Report. The motion died for lack of a second and discussion ensued.

Mental Health Reports

Dr. Klemens stated that a typical mental health status exam would not include information about insight into the index offense, and suggested that this particular item be remunerated so it should not be a subsection of the comprehensive mental health status exam.

Holly Gieszl opined that the Board cannot take action because the draft policies were not distributed to the public. Dr. Clark stated that his understanding is that a public comment period is not required for internal policy documents. Mr. Hargraves opined that the Board's materials are not required to be made available to the public before every meeting but are subject to a public records request.

Definitions

After extensive discussion, a motion was made by James Clark to retain item 35.F. "Evidence of Remorse". The motion died for lack of second.

A motion was made by James Clark, seconded by Michael Klemens, and passed 4 – 0 to strike item 35.F. "Evidence of Remorse".

After extensive discussion, a motion was made by Paul O'Connell, seconded by James Clark, and passed 4 – 0 to adopt the Definitions policy, as amended.

Mental Health Reports

Risk Assessments

Setting Hearings

These policies were deferred to a future meeting.

Identification of Future Agenda Items:

Tammy Wray asked if she could place an item on a future meeting agenda. Seth Hargraves advised that this particular agenda item is reserved for Board members and staff. Board staff stated that Ms. Wray emailed her about an issue whereby the monthly reports were being sent to her without the corresponding psych note and Ms. Wray wanted the Board to address it. The Board placed it on a future agenda.

Discussion, Amendment and Approval of Minutes:

Open and executive session minutes from the August 30, 2019, meeting:

A motion was made by James Clark, seconded by Paul O'Connell, and passed 4 – 0 to approve the August 30, 2019, minutes, as amended.

Adjournment:

The Board meeting was adjourned 3:31 p.m.