



Psychiatric Security Review Board

150 N. 18th Ave., Suite 410
Phoenix, AZ 85007
Phone: 602-364-3061

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

February 28, 2020

**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. 🗑️

🗑️ Absent

Assistant Attorney General:

Jeanne Galvin, Esq.
Sarah Asta, Esq.

Staff:

Jaime L. Shapiro, Executive Director

Guests Present and/or Participating

Amado Salas
Ashley Blum, Esq.
Barbara LeBourdais
Chad Kasmar, Tucson Police Dept.
Cheryl Jones, ASH
Chester B. McLaughlin, Esq. ☎️
Cole Arigoni, Mercy Care
Daniel Langley, ASH
Danielle Tasielli, UHC

Dianne Harris
Greg McPhillips, Esq. ☎️
Heather Mah, Tucson Police Dept.
Helen Laughlin
James Johnson, Tucson Police Dept.
Jobe Dickinson
Jonah Docherty
Julianne Vroman
Kalerna Skvarek

Kathleen Gallick
Katrina Moreno
Keith Reinhardt
Kelly Price
Laura Udall, Esq.
Lisa Watson
Lupita Murillo, KVOA Tucson
Manuel Gray, La Frontera-EMPACT
Megan Woods, AHCCCS
Meredith Torres
Michael Sheedy, M.D., Valleywise
Monica A. Sheldon, Tucson Police Dept.
Monica Preto, Tucson Police Dept.
Mykel Schwartz
Neil Watson
Nick Laughlin
Nicol Green, Esq.
Nohemy Hite
Nora Greer, Esq.
Paul Birmingham, KVOA Tucson
Priyanga Radjasagarane, ASH

Raymond Hanna, Esq.
Reuben Murray
Rick Radinsky
Rick Unklesbay, Esq.
Robert A. Moriarty, AzCH
Ronald Keyser
Sandra Carr, Esq.
Sarah Swonder, ASH
Shawn Holewinski, Tucson Police Dept.
Stacey Heard, Esq.
Stefanie Jones-Campbell, Esq.
Susana Rigau
Tammy Wray, Esq.
Telly Rivenburgh, AzCH
Thomas Muindi
Timothy Harris
Tony Archibald, Tucson Police Dept.
Tory Schwartz, Pima Co. Sherriff's Office
Troy Perrin, Tucson Police Dept.
Wayne Phifer

☎ Participated Telephonically

Call To Order:

James 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. 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:

David Nicholas Delich – PSRB No. 12-09

David Delich was present in person and through counsel, Laura Udall. The statutory hearing was held from 1:07 p.m. to 1:28 p.m. pursuant to A.R.S. § 13-3994(H). This was a two-year hearing and there was no recommendation at that time.

Rick Unklesbay, Deputy Pima County Attorney, was present and pointed out that the victim's widow, Nohemy Hite was present with the Assistant Chief of the Tucson Police Department, Chad Kasmar, along with several law enforcement officers from the Tucson Police Department and the Pima County Sheriff's Office.

Mr. Unklesbay offered the Board a detailed account of the impact that the index crimes had on the city of Tucson. He explained that Mr. Delich began a cross-city shooting spree in Tucson during which he shot at two homes near his residence and then fled across northern Tucson shooting at people including numerous law enforcement officers who were in pursuit.

When Mr. Delich approached the Mount Lemmon area, he stopped his car in the road and waited with his rifle aimed at advancing officers. This is where Mr. Delich killed Tucson Police Officer Erik Hite with a single shot to the head. Eventually, Mr. Delich stopped his car and surrendered.

The interest in this case remains high in Pima County.

Mr. Unklesbay stated that he understood the PSRB had not seen a plea agreement like this one before and explained that Mr. Delich pleaded Guilty Except Insane to several counts of Aggravated Assault and Drive-by Shooting while pleading Guilty to the First Degree Murder of Officer Erik Hite. The plea agreement does not interfere with the Board's jurisdiction over Mr. Delich, but specifies that if Mr. Delich is found to no longer be dangerous and can be released, or if he is found to no longer need treatment and remains a danger, Mr. Delich shall be transferred to the Department of Corrections to serve his sentence for the murder. The plea intended to allow Mr. Delich to receive the treatment he needed and to hold him accountable for the murder.

A motion was made by James Clark, seconded by Susan Stevens, and passed 4 – 0 to recess into executive session at 1:21 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 1:26 p.m.

In open session, a motion was made by Susan Stevens, seconded by Paul O'Connell, and passed 4 – 0 to deny conditional release for David Delich based on the evidence presented by the Arizona State Hospital's treatment team, that Mr. Delich 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. David Delich shall remain committed in the Arizona State Hospital.

Sharon Sue Campbell – PSRB No. 18-04

Sharon Campbell was present in person and through counsel, Nora Greer. The statutory hearing was held from 1:28 p.m. to 1:34 p.m. pursuant to A.R.S. § 13-3994(F). ASH recommended phase one, levels one and two of conditional release.

Nora Greer stated that the one-time off-grounds pass that the Board granted to Ms. Campbell in 2019 to allow her to visit her dying father was a success. She added that Ms. Campbell's sentence expires this summer and conditional release would better prepare her for her upcoming discharge.

A motion was made by Michael Klemens, seconded by Paul O'Connell, and passed 4 – 0 to approve Sharon Campbell for conditional release to Arizona State Hospital, phase one, levels one and two, and to adopt the conditional release treatment plan, based on the evidence presented by the Arizona State Hospital's treatment team, that Ms. Campbell'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.

Michael Lynn Steele – PSRB No. 09-08

Michael Steele was not present and his attorney, John W. Blischak, waived his presence. The statutory hearing was held from 1:35 p.m. to 1:36 p.m. pursuant to A.R.S. § 13-3994(H). This was a two-year hearing and there was no recommendation.

Mr. Blischak stated that Mr. Steele is declining to attend for reasons outlined in the report and waived his presence. Mr. Steele is asking to remain at ASH.

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

Charles Robert VahnMiddlestate aka Edmark – PSRB No. 00-17

Charles Edmark was present in person and thorough counsel, John W. Blischak. The statutory hearing was held from 1:37 p.m. to 1:42 p.m. pursuant to A.R.S. § 13-3994(H). This was a two-year hearing continued from November and there was no recommendation.

Mr. Blischak asked for a continuance for an independent evaluation. Dr. Klemens pointed out that the matter was continued from November for that purpose and asked what happened. Mr. Blischak stated he had not had the chance to request to have Mr. Edmark evaluated.

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

Garrett Taylor Sanders – PSRB No. 00-17

Garrett Sanders was present in person and thorough counsel, Tammy Wray. The statutory hearing was held from 1:43 p.m. to 1:51 p.m. pursuant to A.R.S. § 13-3994(H). The PSRB considered modifying a standard condition of release.

Dr. Clark explained that Mr. Sanders was granted levels one and two of conditional release last month. Board staff added that one victim wishes to have contact with Mr. Sanders and another does not, and it’s on today’s agenda so the Board could consider specifying that in the conditional release order.

Tammy Wray stated that, as she understands it, one victim is no longer a victim because that person was the victim for count 3, and the sentence for count 3 has expired.

Josephine Jones from the Maricopa County Attorney’s Office wanted to clarify on the record that it was not her understanding that one victim only wanted contact at family gatherings. She further agrees that one victim can no longer be considered a victim for the reason Ms. Wray cited.

Ms. Wray argued that if the active victim chose to visit Mr. Sanders at ASH, it would not be a violation of the conditional release order because he would not be “out” on conditional release.

After discussion, a motion was made by Michael Klemens, seconded by Susan Stevens, and passed 4 – 0 for no status change.

Wayne Charles Phifer – PSRB No. 09-09

Wayne Phifer was present in person and through counsel, Chester B. McLaughlin, who appeared telephonically. The statutory hearing was held from 1:52 p.m. to 2:09 p.m. pursuant to A.R.S. §§ 13-3994(M) and 31-502(B)(2),(4). The Board considered the December 2019 conditional release report.

Dr. Clark explained that this hearing was set due to a significant job change reported in the December 2019 report. He added that Mr. Phifer had previously worked for Goodwill Industries and was on a management trajectory, and then changed jobs to full-time video game streaming. Dr. Clark added that after reading the report, he directed Board staff to query the clinical team for their opinion. The response stated that weekly home visits were “not a bad idea” and thusly, this hearing was called for discussion.

Mr. Phifer stated that he was experiencing stress on the job at Goodwill and changed jobs to preserve his mental health. He gave the Board a brief explanation of the nature of video game streaming and added that his day is very structured and he engages in daily exercise and prayer, as well as weekly community meetings and golf.

Thomas Muindi, Mr. Phifer’s case manager was sworn in and testified that the treatment team has no concerns about Mr. Phifer’s stability.

After discussion, a motion was made by James Clark and seconded by Susan Stevens to amend the terms of conditional release to include random, weekly home visits for twelve months.

After further discussion, Dr. Clark added to his motion that Mr. Phifer remains stable and not dangerous and he shall provide a written record of his community meeting attendance to be submitted with the monthly conditional release reports. Paul O’Connell seconded the amended motion and it passed 4 – 0.

Daniel Dee Lambert – PSRB No. 18-08

Daniel Lambert was present in person and through counsel, Sandra Carr. The statutory hearing was held from 2:10 p.m. to 2:13 p.m. pursuant to A.R.S. 13-3994(F). This was an initial hearing and there was no recommendation.

Greg McPhillips from the Mohave County Attorney's Office was called into the hearing.

Sandra Carr stated that Mr. Lambert has come a long way since his admission and he hopes to work his way toward conditional release in time for his next hearing.

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

Barbara Downey LeBourdais – PSRB No. 99-17

Barbara LeBourdais was present in person and through counsel, Stefanie Jones-Campbell. The statutory hearing was held from 2:14 p.m. to 2:33 p.m. pursuant to A.R.S. §§ 13-3994(M) and 31-502(B)(2),(4). This hearing was continued from December 2019 for more information.

Dr. Clark explained that Ms. LeBourdais' treating provider wrote the Board conveying that he did not feel qualified to assess or evaluate Ms. LeBourdais' ability to manage the care of minor children and recommended that an independent psychological evaluation be conducted.

Stefanie Jones-Campbell stated that Dr. Parker has indicated that her client is stable and doing well. Ms. Jones-Campbell does not understand the basis for an independent psychological evaluation.

Dr. Clark commended Ms. LeBourdais for her compliance and stability in the community. His concern is in regard to approving her to supervise minor children now or in the future. He believes that, because the Board that is tasked with public safety and protection, the Board would be delinquent if they did not seek an evaluation to obtain an opinion on the safety of minor children in her care.

Ms. Jones-Campbell argued that Ms. LeBourdais raised her nine-year-old son when she was discharged from ASH in 2003 and is concerned about the basis for such an evaluation when her client has a stable twenty-year history.

Dr. Klemens added that caring for one nine-year-old child is very different than caring for three children who are less than seven years of age and could lead to additional stress for her.

Dr. Clark added that the Board granted out-of-state travel for Ms. LeBourdais to visit her grandchildren and denied the request for her to return to Arizona with the grandchildren over last summer. He questions whether there was some “exploiting of a loophole” by having the children return to Arizona and then assuming care and supervision of them.

Ms. Jones-Campbell argued that there is nothing in the records that indicate a change in conditional release is warranted.

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 discussion in executive session, the Board reconvened in open session at 2:28 p.m.

In open session, Ms. LeBourdais described that her grandchildren visit often, but she does not babysit often and agreed to notify the Board if that changes. When queried, Ms. LeBourdais added that she hopes to acquire a forensic peer support certificate soon.

A motion was made by James Clark that there is to be no status change and, if there is a substantial increase in supervision of the grandchildren, that Ms. LeBourdais and the clinical team notify the Board. There was no second for this motion.

After further discussion, a motion was made by Susan Stevens, seconded by Paul O’Connell, and passed 4 – 0 that there be no status change for Barbara LeBourdais based on the evidence presented that Ms. LeBourdais remains in stable remission and not dangerous.

Blake Brown – PSRB No. 99-17

Blake Brown was present in person and through counsel, Raymond Hanna. The statutory hearing was held from 2:34 p.m. to 2:36 p.m. pursuant to A.R.S. § 13-3994(H). ASH recommended phase two, level three of conditional release.

Raymond Hanna urged the Board to follow ASH’s recommendation.

Mr. Brown’s grandfather, Ronald Keyser, was present and testified that Blake continues to do well on conditional release. He golfed recently in a charity golf tournament where he made

new friends and attended an Arabian horse exhibition with success. Blake continues to respond well to his grandparents and the family wishes to express their strong support of him.

A motion was made by Michael Klemens, seconded by Paul O'Connell, and passed 4 – 0 to approve Blake Brown for conditional release to Arizona State Hospital, phase two, level four and adopt the conditional release treatment plan, based on the evidence presented by the Arizona State Hospital's treatment team, that Mr. Brown'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.

Reuben James Murray – PSRB No. 06-21

Reuben Murray was present in person and through counsel, Ashley Blum. The statutory hearing was held from 2:40 p.m. to 2:44 p.m. pursuant to A.R.S. § 13-3994(H). This two-year hearing was continued from January and there was no recommendation.

Mr. Murray asked the Board to continue the hearing so he can request a change of counsel.

A motion was made by Susan Stevens, seconded by Michael Klemens, and passed 4 – 0 to continue the hearing 60 days to allow for new counsel to be appointed.

Amado Salas – PSRB No. 02-06

Amado Salas was present in person and through counsel, Tammy Wray. The statutory hearing was held from 2:45 p.m. to 3:10 p.m. pursuant to A.R.S. §§ 31-502(A)(5) and (B)(4). The outpatient treatment team recommended a change of address.

Ms. Wray provided that Mr. Salas wishes to move out of his mother's home and in with his girlfriend. Ms. Wray stated that she verified with the case manager that the attending practitioner is in support of the move.

Manuel Gray was sworn in and testified that the outpatient treatment team is in support of the move.

Dr. Clark stated that at the time the Board granted independent living with family, the family was heavily involved and invested in the care of Mr. Salas, and he wonders if this represents a significant change in supervision.

Ms. Wray argued that Mr. Salas has been independent for a year and administers his own medications.

Josephine Jones from the Maricopa County Attorney's Office first disclosed that her husband was noted as a responding officer in the police reports from the index offense and that she had never had any discussion with him about this case. The State notes that this recommendation represents a change in supervision over Mr. Salas going from a supportive family environment. There is no information in the materials that Mr. Salas' significant other can provide a stable and supportive environment.

Ms. Wray stated that Mr. Salas's girlfriend knows that he is under PSRB jurisdiction, has a mental illness for which he sees a clinical team and takes medication on a regular basis. She argued that there has never been a requirement in the past for a roommate to be educated in the capacity that is being suggested.

Dr. Clark noted that one of his concerns is that there have been two returns to ASH for non-compliance in the past. Josiah Nwaokwa's letter was fairly brief and contains no information about whether the girlfriend has been educated on signs and symptoms indicating relapse, etc. It might be helpful if the treatment team document that they had given approval to this new living situation.

Ms. Wray argued that she does not believe an outpatient treatment team is in the habit of evaluating outside relationships. Dr. Clark pointed out that there have been situations where someone with whom a patient is living is a recovering alcoholic and the Board has asked the team to assess the stability of the home.

After discussion, a motion was made by James Clark to approve Amado Salas for independent living and a change of address, and for the treatment team to conduct weekly, random home visits for the next six months. The motion died for lack of a second.

A motion was made by Susan Stevens, seconded by Michael Klemens, and passed 4 – 0 to recess into executive session at 3:02 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 3:05 p.m.

The Board took a break from 3:05 p.m. to 3:09 p.m.

In open session, a motion was made by Michael Klemens, seconded by Susan Stevens, and passed 4 – 0 to grant independent living and a change of address to Amado Salas, and for the

outpatient treatment team to conduct one random, weekly home visit for the first three months, based on the evidence presented that Mr. Salas remains in stable remission and is not dangerous.

Discussion and Possible Action Related to:

Approval of the 2019 Annual Report:

Board members discussed the draft and made amendments.

A motion was made by James Clark, seconded Paul O’Connell, and passed 4 – 0 to approve the draft report as amended.

Staff request to change the July 31 meeting to July 24th:

The Board changed the July meeting to the 24th.

Legal advice pursuant to A.R.S. § 38-431.03(A)(3) regarding including certain crime scene images or other related evidence in the Board’s materials; Legislative Update: SB1053, HB2320, HB2735, HB2319:

A motion was made by James Clark, seconded by Paul O’Connell, and passed 4 – 0 recess into executive session at 3:19 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 3:35 p.m.

Whether to include certain crime scene images or other related evidence in the Board’s materials:

In open session, Dr. Klemens noted that the Board acts in an independent and non-prejudicial manner when considering all evidence, including crime scene photographs.

A motion was made by Michael Klemens, seconded by Susan Stevens, and passed 4 – 0 that, moving forward, crime scene photographs shall not be included in the Board’s materials, based on the understanding that the case law previously presented in this matter are related to the effect of crime scene photographs on juries, rather than judges.

Legislative Update: SB1053, HB2320, HB2735, HB2319:

Dr. Clark explained that there was a House Republican Caucus Committee meeting during which the Chairman recommended that the Committee support passage of Representative

Barto's HB2320 and HB 2735. There was a comment during the Committee meeting that the PSRB had received a "bad audit report" and that, going forward, the Board might not be able to fulfill its duties and follow all the new rules in HB 2320.

Chairman John Allen commented that there is a "resistant strain" on the Board which creates a "bureaucratic problem." He went on to add that "we cannot seem to make any inroads (with the Board). They get bad audits that show that they're really having a hard time carrying out their duties and this is peoples' liberties and other things."

Dr. Clark stated his opinion that the Board is, in fact, doing a good job and did not receive a "bad audit" from the Auditor General. The audit did identify a number of things that the Board and its Executive Director have already done substantial work on, including: putting in place a template that ASH staff are now using for their psychiatric reports to ensure that the Board gets the needed information to inform its decisions; investigating how to automate Board processes by consulting with the State's IT services; establishing definitions for key terms not defined in the GEI statute (13-3994) such as what is meant by "stable remission", "dangerousness" and "propensity to reoffend"; establishing guidelines for when a Risk Assessment is indicated; and finally, establishing a "Setting Hearings" Policy. The Board has also made clear its intention to ask the Legislature to grant the Board authority and responsibility for providing its own administrative support, including have an Executive Director who serves at the pleasure of the Board; and the ability to enter into contracts and agreements with other state agencies, to better clarify each agency's roles and responsibilities.

If HB2320 and HB 2735 come before the Senate Judiciary Committee, Dr. Clark will attend to present the Board's views. He encouraged other Board members to also attend, if possible.

Mr. O'Connell added that he attended another agency's legislative review and the topic of the PSRB's audit was discussed and was referred to as a "derogatory" audit report. Mr. O'Connell believes that the audit was helpful and instructs the Board in how to move forward, but was certainly not derogatory of the Board.

Ms. Stevens commented that it is unfortunate that it sounds like someone is pushing an agenda to make it appear like the audit is negative and that PSRB is not fulfilling its duties.

A motion was made by Susan Stevens to direct staff to draft a document compiling all the Board's concerns. Discussion ensued.

Susan Stevens amended her motion to direct staff to compile the Board's concerns in a document, send it to Ms. Galvin for a procedural review. The motion was seconded by Paul O'Connell, and passed 4 – 0.

Holly Gieszl was present and asked if the Board was taking any public comment on this topic. Dr. Clark allowed it.

Ms. Gieszl stated that she and Tammy Wray work in the stakeholder meetings and she has not heard anybody refer to the audit as derogatory, nor has she heard any negative or inappropriate comments about the Board. She added that the PSRB is “fatally flawed” in that ASH is able to disregard a Board order, along with any number of things.

Discussion, Amendment, and Approval of Minutes:

Open and executive session minutes from the January 31, 2020, meeting:

This was deferred.

Identification of Future Agenda Items:

- Legislative Update.

Adjournment:

The Board meeting adjourned 4:00 p.m.