



## ***Psychiatric Security Review Board***

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DOUGLAS A. DUCEY, GOVERNOR  
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[www.azdhs.gov/psrb](http://www.azdhs.gov/psrb)

# **ARIZONA STATE PSYCHIATRIC SECURITY REVIEW BOARD OPEN SESSION MINUTES**

**February 22, 2019**

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

### Members:

James P. Clark, M.D., Chairperson

Chandrika Shankar, M.D., Vice-Chairperson ☹ →

Susan Stevens, Esq. ✓

Paul O'Connell →

Michael J. Klemens, Ph.D.

☹ Arrived at 1:10 p.m.

✓ Arrived at 1:27 p.m.

→ Left at 3:49 p.m.

### 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

Alexis Tyer, ASH

Amado Salas

Ashley Blum, Esq.

Ashley Monea, ASH

Beth Dolobowsky, ASH

Caitlyn Scarlett, ASH

Cheryl Jones, ASH

Cole Arigoni, Mercy Care

Cynthia Hostetter, AHCCCS

Debbie Owens

Erin Cohen, Esq.

Gabriela Reyes, ASH

Hannah Garcia, ADHS

Heather Keeton, ASH

Jandely Eich, ASH

Jayne Blais, ASH

Jeff Storozuk

Jenni D. Strand, ASH  
John W. Blischak, Esq.,  
Josephine Jones, Esq., Maricopa County  
Attorney's Office  
Julie Jackson, ASH  
Kerry Owens  
Kristen Miller-Zahn  
Madison Gardner, ASH  
Melissa Korkes, ASH  
Mona Freeman, ASH  
Nancy Duong, ASH  
Nicole Dagmar, ASH  
Nicole Floyd, ASH

Nora Greer, Esq.  
Olivia Fortier  
Razelle Hernandez, ASH  
S.O. Morris, M.D.  
Stephen Jaffe, M.D., ASH  
Steve Bolte, M.A., ASH  
Steven L. Harvey, Esq. ☎  
Summer Schneider, Psy.D., ASH  
Susana Rigau, ASH  
Tammy Wray, Esq.  
Telly Rivenburgh, Arizona Complete Health  
Thomas Salow, ADHS

☎ Participated by Telephone

### **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.”

Dr. Clark swore in individuals who anticipated testifying.

### **Statutory Hearings:**

#### **Christopher Shane Fortier – PSRB No. 15-05A**

Christopher Fortier was present in person and through counsel, John W. Blischak. The statutory hearing was held from 1:07 p.m. to 1:14 p.m. pursuant to A.R.S. § 13-3994(H). The PSRB considered ASH's recommendation for conditional release to the Hospital, phase two, levels three and four.

Dr. Clark mentioned that two of the signees of the pass supervisor attestations were not listed as pass supervisors on the proposed conditional release plan, but no further clarification was made. Ms. Shapiro added that an additional attestation for Jeff Storozuk was sent the day of

the hearing and clarification was made that Mr. Storozuk goes by both Jeff and John. Additional clarification was made that attestation signee Kristin Miller-Zahn is the same person listed as the proposed pass supervisor, Kristen Fortier.

John Blischak stated that his client is requesting that the PSRB approve the recommendation.

A motion was made by Paul O'Connell, seconded by Michael Klemens, to approve Christopher Fortier for conditional release to Arizona State Hospital, phase two, levels three and four, and adopt the conditional release treatment plan, based on the evidence presented by the Arizona State Hospital's treatment team, that Christopher Fortier'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.

Ms. Shapiro asked the Board if they would consider amending the motion to reflect that the conditional release plan reflects the appropriate names of the pass supervisor, Jeff/John Storozuk.

Paul O'Connell amended his motion to amend the conditional release plan to reflect Jeff/John Storozuk, the amended motion was seconded by Michael Klemens, and it passed 4 – 0.

#### **Christopher Michael Gonzales – PSRB No. 16-05**

Christopher Gonzales was present with his attorney, Steven L. Harvey, who appeared telephonically. The statutory hearing was held from 1:15 p.m. to 1:42 p.m. pursuant to A.R.S. § 13-3994(J). The PSRB considered ASH's recommendation for expiration with no further action.

Steven Harvey was teleconferenced into the hearing. Dr. Clark stated that ASH declined a second time to submit a risk assessment to the Board which was completed in March of 2018, and asked ASH staff why that was the case. Ms. Cohen stated that the decision was made at an administrative level. Dr. Clark added that he would have found it extremely helpful to have the risk assessment report.

A motion was made by James Clark, seconded by Paul O'Connell, and passed 4 – 0 to recess into executive session at 1:17 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 1:27 p.m. In open session, Dr. Clark expressed his disappointment that the risk assessment was not submitted to the Board. He asked the treatment team members if there is any information contained in the risk assessment that might have an impact on today's decision. Dr. Holmes

stated that he summarized the risk assessment findings in a report to the Board and that there is nothing to add.

Mr. Harvey asked that the Board follow the recommendation.

A motion was made by James Clark, seconded by Chandrika Shankar, and passed 4 – 0 – 1 to recess into executive session at 1:31 p.m. to discuss confidential information pursuant to A.R.S. § 38-431.03(A)(2).

*Susan Stevens abstained from the vote.*

After discussion 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 order the Coconino County Attorney to initiate civil commitment proceedings for Christopher Gonzales pending the expiration of the PSRB's jurisdiction based on the evidence presented and that the Arizona State Hospital's treatment team be allowed to conditionally release Mr. Gonzales to the custody of an appropriate law-enforcement agency for transportation up to five days prior to the PSRB's jurisdiction expiration date.

Ms. Shapiro recommended an amended motion to include up to five "business" days for transportation. Dr. Clark amended his motion as such.

Ms. Cohen stated there had been some difficulty in the past getting law enforcement to transport an individual from ASH to the committing county, and suggested an alternative consideration for the RBHA to transport a patient. Ms. Shapiro stated that any issues with transport could be addressed as needed.

Dr. Clark called for a vote, the amended motion was seconded by Chandrika Shankar, and passed 4 – 0 – 1.

*Susan Stevens abstained from the vote.*

Gerald Venhaus was not present, and his attorney, Ashley Blum, waived his presence. The statutory hearing was held from 1:45 p.m. to 1:47 p.m. pursuant to A.R.S. § 13-3994(H). This was a two-year hearing and there was no recommendation at that time.

After a brief discussion, a motion was made by Susan Stevens, seconded by Paul O'Connell, and passed unanimously to deny conditional release for Gerald Venhaus, based on the evidence presented by the Arizona State Hospital's treatment team, that Mr. Venhaus 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. Gerald Venhaus shall remain committed to the Arizona State Hospital.

**Walter Gray McCarthy – PSRB No. 10-13**

Walter McCarthy was present with his attorney, Tammy Wray. The statutory hearing was held from 1:48 p.m. to 2:31 p.m. pursuant to A.R.S. § 13-3994(H). The PSRB considered ASH's recommendation for conditional release to ASH, phase two, level four.

Dr. Clark swore in Margaret "Peggy" Franklin, Mr. McCarthy's sister.

Dr. Clark stated there was a motion submitted by the defense to preclude and strike the victim's statements from the record.

Josephine Jones, Maricopa Deputy County Attorney, stated that the State opposes any advancement that would reduce restrictions on Mr. McCarthy and allow him to be off the Hospital grounds for up to 48 hours. Ms. Jones stated that progression should be more gradual, and the State maintains that the Board does not have adequate information that will ensure the public's safety while on an overnight pass and monitored by his sister. Ms. Jones pointed out that the record does not indicate that Ms. Franklin has met with the treatment team and knows the signs and symptoms of Mr. McCarthy's illness, nor does the record indicate a protocol she should follow if Mr. McCarthy's status changes while off the grounds of ASH under her supervision. Ms. Jones recognized that there is plenty of support from his treatment team, but there is not enough information in front of the Board today to ensure that public safety and protection are in place. The State urged the Board to deny the request.

Summer Schneider replied that Ms. Franklin has participated in treatment planning for Mr. McCarthy and further explained that some of the other proposed pass supervisors have been educated on ASH's and the PSRB's standard conditions. Dr. Schneider went on to inform the Board that the ASH treatment team have not yet been able to coordinate with some of the proposed pass supervisors because referrals have not yet been made.

Ms. Shapiro informed the Board members that, just prior to today's meeting, ASH submitted 48 pass supervisor attestations but some were illegible and only a couple had an agency listed. Dr. Schneider stated that ASH can address that.

Dr. Klemens voiced his concern that all of the individuals employed by the agencies proposed as pass supervisors would not read the pertinent documentation, and that he believes the recommendation is too broad. Ms. Wray explained that not each of the proposed agencies would end up supervising Mr. McCarthy off the grounds of ASH, but only after the referrals are made is when the inpatient treatment team would complete outreach in order to educate pass supervisors.

Dr. Klemens stated his concern is that the process appears to be happening in a backwards fashion and he believes it makes more sense to identify the one or two agencies Mr. McCarthy will work with, and then make the recommendation to the Board, rather than a broad approach. Extensive discussion ensued.

Ms. Wray argued that Mr. McCarthy has never exhibited concerning behavior while on a pass. Ms. Wray stated that Mr. McCarthy has been clinically stable and his medications have not been changed since 2012, has not violated any rules at ASH, has taken care of his physical health, completed a thorough Wellness Recovery Action Plan (WRAP), and that there is no indication that any of that will change.

Ms. Franklin testified that she has supervised her brother on ten passes. For each pass, he has used that time constructively. Ms. Franklin described how they spent their time during the off-grounds passes, and requested that the Board approve the 48 hour passes.

A motion was made by James Clark, seconded by Chandrika Shankar, and passed unanimously to recess into executive session at 2:15 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 2:22 p.m.

In open session, Dr. Clark stated that there is a motion from the defense to strike statements made by surviving victim. Dr. Clark stated that the victim was traumatized by witnessing a very horrific crime, and he would grant her great latitude in her expressions of concern to the Board. Dr. Clark stated that he has tried to limit her comments to the impact of a victim but sometimes she has "psychologized" Mr. McCarthy. Ultimately, he concluded, there is no mechanism to strike victims' statements and believes that the Board knows where the victim is coming from.

A motion was made by James Clark, seconded by Susan Stevens, and passed unanimously to deny the request to preclude and strike the victim's statements before this Board.

A motion was made by James Clark, seconded by Susan Stevens, and passed unanimously to deny advancement to phase two, level four, for Walter McCarthy, based on the nature of the crime, concern for public safety and protection, and that the Board does not have clear and convincing evidence that progression to 48-hour passes in the community is appropriate at this time.

After discussion, a motion was made by James Clark, seconded by Susan Stevens, and passed unanimously to amend the conditional release treatment plan to strike Austin Franklin from the list of pass supervisors, and add the six proposed social service agencies to the list of approved pass supervisors, with the understanding that ASH staff would be able to come back to the Board within several months to report on which agencies are being utilized, based on the evidence presented that Walter McCarthy remains in stable remission and not dangerous if he follows the treatment plan amended today.

Ms. Wray asked for the Board's guidance as to what they may want to see to give evidence of that community protection is in place. Dr. Clark replied that Mr. McCarthy is doing well in terms of making use of his time in the structured environment of the State Hospital, and the Board feels that needs to continue.

**Melissa Ann Nyberg – PSRB No. 16-06**

Melissa Nyberg was present with her attorney, Nora Greer. The statutory hearing was held from 2:32 p.m. to 2:55 p.m. pursuant to A.R.S. § 13-3994(H). The PSRB considered ASH's recommendation for conditional release to the community.

Nora Greer stated that Ms. Nyberg's commitment to the PSRB will end in January of 2020, and during her short time under the Board's jurisdiction she has done well. Ms. Greer added that Ms. Nyberg's mother is willing to move to Arizona to be with Ms. Nyberg if the Board should approve the recommendation. The treatment team clarified that Ms. Nyberg completed her WRAP plan.

A motion was made by James Clark, seconded by Susan Stevens, and passed unanimously to recess into executive session at 2:36 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 2:48 p.m.

In open session, a motion was made by James Clark to deny conditional release for Melissa Nyberg based on the evidence presented by the Arizona State Hospital's treatment team, that Ms. Nyberg did not prove by clear and convincing evidence that she no longer suffers from a mental disease or defect, that the mental disease or defect is in stable remission and that she is no longer dangerous. Melissa Nyberg shall remain committed to the Arizona State Hospital. He added that the Board recognizes that Ms. Nyberg is making significant positive progress and the Board would like to have the treatment team come back to consider a progression of privileges.

After discussion, a motion was made by James Clark, seconded by Susan Stevens, and passed unanimously to deny conditional release to the community based on the evidence presented by the Arizona State Hospital's treatment team that Ms. Nyberg remains in stable remission and not dangerous if she continues to reside in the Arizona State Hospital on the current levels of conditional release.

Dr. Clark applauded the progress made by Ms. Nyberg. Ms. Stevens encouraged the Hospital treatment team to return to the Board with a recommendation for progression through the levels of conditional release.

**Discussion and Possible Action Related to:**

Joseph Sinkovich: Whether to report patient's statements to law enforcement:

Ms. Shapiro outlined her memo to the Board. Mr. O'Connell informed the other Board members that the Department of Corrections Inspector General advised that the Board may wish to report to the FBI, who would decide whether to report to the Secret Service.

Ashley Blum, Joseph Sinkovich's attorney, was present and opined that a duty to report is not outlined in the Board's enabling statutes and a duty to warn or report only exists for the providers providing treatment to Ms. Sinkovich. Dr. Clark pointed out that the Board's statutory mandate is to protect the public, and that the information was reported to the Board's staff and not a treatment provider. Ms. Blum argued that the Board would exceed its power if it reported a possible threat.

Executive Session for legal advice pursuant to A.R.S. § 38-431.03(A)(2) regarding Joseph Sinkovich: Whether to report patient's statements to law enforcement:

Executive Session for legal advice pursuant to A.R.S. § 38-431.03(A)(2) regarding requests for hearings from outpatient treatment teams:



A motion was made by Susan Stevens, seconded by Paul O'Connell, and passed unanimously to recess into executive session at 3:04 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 3:21 p.m.

Joseph Sinkovich: Whether to report patient's statements to law enforcement:

In open session, Ms. Blum informed the Board of their duty to maintain confidential records and argued that this is a clinical issue and not a safety issue.

Dr. Clark proposed a hypothetical scenario to Ms. Blum where a threat to another's life was made by an individual under their jurisdiction, would that be something the Board should report? Ms. Blum said she did not know and advised seeking the legal advice of counsel. Extensive discussion ensued.

A motion was made by Michael Klemens, seconded by Paul O'Connell, and passed unanimously to recommend that the Board's Executive Director report Joseph Sinkovich's comments to an appropriate law enforcement agency.

Requests for hearings from outpatient treatment teams:

Ms. Shapiro clarified to the audience that no changes would be made.

Sunset Review recommendation implementation:

Dr. Clark informed the other Board members that he had drafted letters to a few select legislators to request to meet with them about the audit report recommendations. In his letters, he requested that their offices contact Board staff to schedule such meetings. The Board's Executive Director was subsequently cautioned by ADHS staff and told not to have any contact with legislators, and that any contact with the legislature should go through the Director of Boards and Commissions and/or Dr. Clark directly. Dr. Clark added that he reviewed the PSRB's Executive Director's job description which describes interacting with other governmental agencies specific to a Sunset Review. Dr. Clark wants to clarify this issue by meeting with ADHS. Ms. Stevens added that it is appropriate to reach out to the Governor's Board and Commissions staff as a part of this process. Discussion ensued among Board members and staff regarding what the Board can do to implement audit recommendations aside from legislation, and which next steps to take.

**Discussion, Amendment and Approval of Minutes:**

Open session minutes from the January 25, 2019, meeting:

After discussion, a motion was made by James Clark, seconded by Susan Stevens, and passed unanimously to approve the open session minutes from the January 25, 2015, meeting, as amended.

Executive session minutes from the January 25, 2019, meeting:

After discussion, a motion was made by James Clark, seconded by Michael Klemens, and passed unanimously to approve the executive session minutes from the January 25, 2019, meeting, as amended.

*The Board adjourned from 3:49 p.m. to 3:55 p.m.*

Sunset Review recommendation implementation:

Board members reconvened at 3:55 p.m. with Board members James Clark, Susan Stevens, and Michael Klemens present.

A motion was made by James Clark, seconded by Susan Stevens, and passed 3 – 0 to approve and send the draft letter to the Director of ADHS.

**Adjournment:**

The Board meeting was adjourned 3:58 p.m.