



## ***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**

**August 30, 2019**

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

### Members:

James P. Clark, M.D., Chairperson  
Susan Stevens, Esq.  
Paul O'Connell, M.S., M.P.A.  
Michael J. Klemens, Ph.D.

### Assistant Attorney General:

Thomas C. Raine, Esq.

### Staff:

Jaime L. Shapiro, Executive Director

### Guests Present and/or Participating:

Aaron Nelson, ASH	Emily Line, ASU
Amanda Kolistro, ASH	Erin Cohen, Esq.
Annanicole Fine, ASU	Erica McFadden
Ashley Blum, Esq.	Gabriela Reyes, ASH
Breanna Orson, ASU	Hannah Phalen, ASU
Cameron Milkens, R.E.N.	Holly Gieszl, Esq.
Chester McFadden	Jake Plantz, ASU
Cole Arigoni, Mercy Care	Jennifer Gebhart, Esq.
Colm Bennet, ASH	Jessica Bullock, ASH
Courtney Bradford, La Frontera-EMPACT	John Johnson, La Frontera-EMPACT
Cynthia Hostetler, AHCCCS	Joseph Bloom, M.D., Banner Medical
Devan McFadden	Josephine Jones, Esq.
Emily Denne, ASU	Julio Cruz

Kristin Bresnik, S.T.A.R.  
Laura Smalarz, ASU  
Logan Busey, ASU  
Lorlie Cruz  
Manuel Gray, La Frontera-EMPACT  
Margaret “Peggy” Franklin  
Mark Moncada, Goodyear Police  
Megan Woods, AHCCCS  
Morgan Karrels, ASH  
Nora Greer, Esq.  
Samantha Bean, ASU  
Scott Kirkorsky, M.D., U of A  
Stacey Heard, Esq.  
Stefanie Jones-Campbell, Esq.  
Stephen Morris, M.D., ASH  
Steven Kwoh, M.D., ASH  
Stevie Willis, La Frontera-EMPACT  
Tammy Wray, Esq.  
Tess Neal, ASU  
Tracy Linkes

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:**

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

Walter McCarthy was present in person and through counsel, Tammy Wray. The statutory hearing was held from 1:06 p.m. to 1:57 p.m. pursuant to A.R.S. § 13-3994(H). The Arizona State Hospital (ASH) recommended conditional release to ASH, phase two, level four.

Tammy Wray urged the Board to approve level four privileges and reserved further comment until after other parties.

Josephine Jones argued that the State is asking the Board to take into careful consideration all of the information presented today. Ms. Jones noted the victim's concern for past dangerousness and contended that there should be a more robust and objective assessment of future risk of violent re-offending. Ms. Jones reminded the Board that, when the Board denied the requested 48-hour passes in February 2019, there was concern about the stability of the home in which he would be spending the 48 hours.

Peggy Franklin, Mr. McCarthy's sister, was sworn in and testified as to the success of many off-grounds passes she and Mr. McCarthy have enjoyed together. She did acknowledge that she and her husband are divorcing but did not see this to be an issue of concern regarding her brother's passes into the community.

Kristin Bresnik of S.T.A.R was sworn in and testified as to Mr. McCarthy's engagement in the activities available to him while he is on passes with S.T.A.R. staff. Ms. Bresnik stated that a decrease in supervision would allow Mr. McCarthy to continue to reintegrate him into the community.

Cameron Milkins of R.E.N. was sworn in and testified that he and Mr. McCarthy have worked together toward community release. He stated that Mr. McCarthy interacts appropriately with others and has a desire to give back to the community.

Dr. Klemens and Dr. Schneider discussed the possibility of extending the time frame of level four passes to 180 days, and Dr. Schneider said the treatment team would agree to that change. Dr. Schneider added that the treatment team has no concerns about the stability of Ms. Franklin's home, or any aspects of Ms. Franklin being a pass supervisor for 48 hours, and added that Ms. Franklin has been educated as to what to expect when Mr. McCarthy is well and unwell.

Mr. O'Connell commented that, if the State has concerns about Mr. McCarthy's dangerousness in the community, the County Attorney's Office could obtain an independent evaluation.

Ms. Wray questioned Dr. Schneider as to why the State Hospital has not reassessed Mr. McCarthy's risk since the last risk assessment. Dr. Schneider explained that the last assessment evaluated Mr. McCarthy at a low risk in the context of level four privileges. Given that there have been no changes in Mr. McCarthy's clinical presentation; a new risk assessment is not clinically indicated.

Mr. Wray reminded the Board that in February of 2019, the Board instructed Mr. McCarthy to use the community resources he had been given to build up his support network. Since that time, Mr. McCarthy has done so and followed all rules on and off Hospital grounds, and has complied with every recommendation from his treatment team with a great attitude. As of mid-August, Mr. McCarthy has completed 135 off-grounds passes. Ms. Wray added that each evaluation or report submitted to the Board since 2012, whether it was submitted by ASH, or other experts, Mr. McCarthy has been evaluated to be at a low risk for dangerousness and in stable remission. Ms. Wray argued that Mr. McCarthy has a strong and well-informed support system in and out of ASH, he knows about his illness, takes care of himself, and therefore, is requesting that the Board approve level four.

A motion was made by James Clark, seconded by Susan Steven, and passed 3 – 1 that there be no status change for Walter McCarthy and that he continue on phase three, level three privileges. Dr. Clark stated that he based this motion on: 1) the nature of the crime; 2) concern for public safety and protection were Mr. McCarthy to be granted approval to spend 48 hours under supervision delegated or outsourced to family; 3) concern about the statement in his evaluation, "There have been times in which Mr. McCarthy has demonstrated challenges in working cooperatively with others."; and 4) concern for propensity to reoffend violently based on information in Dr. Joel Parker's March 30, 2010, insanity evaluation, page 33, items 60 A and B, which indicates a credible concern for a propensity to reoffend. There is not clear and convincing evidence that Mr. McCarthy is appropriate for a reduction in restrictions as would be the case with level four privileges.

*Michael Klemens opposed the motion. He noted that, while the crime was very heinous in nature, Mr. McCarthy has, over a period of years, been engaged in treatment. He also has a number of family and community supports that would be beneficial to him if he were transition out of the State Hospital. Additionally, a certain number of passes for an extended period of time, with more opportunity to interact with the community would give the Board a better overall picture of Mr. McCarthy.*

Ms. Wray asked that the Board to adjourn to executive session to ask Dr. Schneider clinical questions about how the Board's concerns were taken into consideration in the evaluation.

After discussion, a motion was made by Susan Stevens, seconded by James Clark, and passed 4 – 0 to recess into executive session at 1:33 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 1:56 p.m.

In open session, there was no further motion.

**Raphael Nyagong Wani – PSRB No. 08-06**

Raphael Wani was present in person and through counsel, Tammy Wray. The statutory hearing was held from 1:57 p.m. to 2:14 p.m. pursuant to A.R.S. §§ 13-3994(N) and 31-502(A)(5). ASH recommended continuation of the terms of conditional release to the community.

Dr. Klemens asked Stevie Willis if the treatment team has considered switching Mr. Wani to an injectable medication. Mr. Willis was sworn in and testified that the treatment team would like to switch to an injectable once Mr. Wani is discharged. Mr. Willis discussed plans for Mr. Wani's residence once he is discharged. Ms. Wray added that Mr. Wani's last employer is willing to hire him back and that he will not be working outside in the hot weather. Dr. Clark asked Mr. Wani if he understands the rationale for the medical medications he is prescribed and Mr. Wani affirmed that he does.

After discussion, a motion was made by Michael Klemens, seconded by Susan Stevens, and passed 4 – 0 that the terms of conditional release be continued for Raphael Wani, based on the evidence presented by the Arizona State Hospital, that Raphael Wani did not violate the terms of conditional release, and that his mental condition has not deteriorated, with the added provision that the outpatient treatment team observes medication administration a minimum of three times per week.

**Luther Cesar Cruz – PSRB No. 17-03**

Luther Cruz was present in person and through counsel, Stefanie Jones-Campbell. The statutory hearing was held from 2:15 p.m. to 2:25 p.m. pursuant to A.R.S. § 13-3994(H). ASH recommended conditional release to ASH, phase one, levels one and two.

Ms. Cohen informed the Board that Dr. Holmes was not present but Dr. Bhatti could answer any questions the Board might have.

Lorlie Cruz, Mr. Cruz's mother, was sworn in and testified that Luther is her eldest son, and the family loves him unconditionally and has their support. She added that Mr. Cruz is a

good kid, was brought up in a good home, and did well as a child. Mrs. Cruz extended her gratitude to the inpatient treatment team.

Ms. Jones-Campbell stated that Mr. Cruz is in agreement with the recommendation and the family is looking forward to being involved in treatment planning.

A motion was made by James Clark, seconded by Susan Stevens, and passed 4 – 0 to recess into executive session at 2:18 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 2:23 p.m.

In open session, a motion was made by Susan Stevens and seconded by Michael Klemens to approve Luther Cruz for conditional release to Arizona State Hospital, phase one, levels one and two, and adopt the conditional release treatment plan, based on the evidence presented by the Arizona State Hospital's treatment team, that Mr. Cruz'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.

Since Mr. Cruz's family are the victims and clearly wish to have contact with him, Ms. Shapiro recommended an amended motion to strike the standard condition of release that restricts victim contact.

Ms. Stevens amended her motion to strike that provision, Paul O'Connell seconded the amended motion and it passed 4 – 0.

**Keith Lawrence Frazier – PSRB No. 17-11**

Keith Frazier was present in person and through counsel, Nora Greer. The statutory hearing was held from 2:26 p.m. to 2:29 p.m. pursuant to A.R.S. § 13-3994(F). This was an initial hearing and there was no recommendation at that time.

Dr. Bhatti provided that Mr. Frazier is making progress. Ms. Greer added that Mr. Frazier begun resolution and anger management groups.

Dr. Clark noted that it would be helpful if future report would note of the presence or absence of auditory hallucinations.

A motion was made by Paul O'Connell, seconded by Susan Stevens, and passed 4 – 0 to deny conditional release for Keith Frazier based on the evidence presented by the Arizona

State Hospital's treatment team, that Mr. Frazier 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. Keith Frazier 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 2:30 p.m. to 3:11 p.m. pursuant to A.R.S. § 13-3994(M). The Board considered whether the return to ASH on August 16, 2019, was justified.

Dr. Clark outlined Ms. Peters' motion to vacate the hearing and immediately release her based on insufficient notice and due process violations.

Ms. Blum asked if there was any documentation submitted by the reporting party not disclosed. Ms. Shapiro responded that after receiving her motion to vacate the hearing, she was directed by PSRB counsel to disclose her own hand-written notes taken during the phone call where concern about Ms. Peters was documented. Ms. Blum objected to any additional information being added today that was not previously disclosed to her.

A motion was made by James Clark, seconded by Susan Stevens, and passed 4 – 0 to recess into executive session at 2:32 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 2:41 p.m.

In open session, Dr. Clark offered Ms. Blum a continuance because the motion stated that she did not have enough time to prepare for the hearing.

Ms. Blum objected to a continuance and further stated that when she received notice of the hearing there was a single statement that the Board had received a verbal report that Ms. Peters showed signs of deterioration and that she may no longer be in stable remission, with no indication of whom, when, or how it was reported. Ms. Blum argued that there should have been a report generated or some other information stating the facts, and if she wanted to conduct an investigation she would not know who to interview or what questions to ask. Ms. Blum contended that this illustrates the insufficiency of notice which is unfair to Ms. Peters who was taken from her stable environment, activities, job, friends, and home. Ms. Blum concluded that if the Board is not going to release her client immediately, and continue with this violation against Ms. Peters, that she would prefer to move forward with today's hearing.

Dr. Clark stated that he does not think that Ms. Peters will be released today and the Board will go ahead with the hearing today. He explained that, after Board staff received a call at 3:00 p.m. on Friday, August 16<sup>th</sup>, Board staff phoned him to report that the treatment team who supervises Ms. Peters' care had concerns about Ms. Peters' stability. Dr. Clark added that the Board trusts the outpatient treatment staff that has responsibly monitored people in the community over a period of many years and they communicated that they believed the safest course of action was to return Ms. Peters back to ASH, given what they were observing. Dr. Clark stated that he received information that Ms. Peters was not doing well and may no longer be in stable remission, and ordered her return.

Ms. Blum again objected to any additional information provided today that was not provided to her in writing prior to the hearing.

Dr. Clark noted Ms. Blum's objection. Ms. Blum argued that the Board is improperly confining her client. Dr. Clark disagreed and explained that Cole Arigoni is a trustworthy individual who commonly reports on the status of patients verbally, which the Board considers valid. Ms. Blum argued that she would like to interview Mr. Arigoni as to his qualifications and that Ms. Peters' should have been referred to the treatment team.

A motion was made by James Clark, seconded by Susan Stevens, and passed 4 – 0 to recess into executive session at 2:48 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 3:01 p.m.

In open session, a motion was made by James Clark, seconded by Paul O'Connell, and passed 4 – 0 that the PSRB finds that there was reasonable cause to return Billie Joe Peters to ASH, and that a hearing is set for next month to decide whether to continue, modify or revoke conditional release.

After the vote Ms. Peters' sister, Tracy Linkes, was sworn in and testified that she disagrees with Ms. Peters' return to ASH. She participated telephonically at the staffing on the 16<sup>th</sup> and at no time was concern about Ms. Peters' presentation discussed. She assessed Ms. Peters' as stable and believes the staffing issue should have been handled differently.

Ms. Peters stated that during the staffing on August 16<sup>th</sup>, she asked to be moved to a 16-hour residence. She added that Dr. Clark does not need to worry about her relapsing because she could have gone to a 16-hour residence to take her medications, and she urged the Board to



release her today because the staffing issue has been resolved. Dr. Clark told her that the Board will wait until September when it has a report from the inpatient treatment team.

**King Justice Allah – PSRB No. 17-12**

King Allah was present in person and through counsel, Ashley Blum. The statutory hearing was held from 3:12 p.m. to 3:30 p.m. pursuant to A.R.S. § 13-3994(F). This was an initial hearing and there was no recommendation at that time.

Ms. Blum stated that Mr. Allah's family and civil attorney were present.

A motion was made by James Clark recess into executive session to discuss confidential information and then decided to have Ms. Gieszl testify first.

Holly Gieszl was sworn in and testified that a defendant in a civil rights lawsuit against the law enforcement officers who shot Mr. Allah had written a letter to the Board dated today. She stated that the letter raises a number of issues and she immediately phoned Chief Deputy Justin Hughes' attorney to let him know his client sent a letter and that Officer Moncada was present at the hearing. She added that if Officer Moncada testified that she would enter a notice of appearance as co-counsel and question him. Ms. Gieszl stated that this is troubling because this letter was dated today, and was in response to a subpoena not provided to defense counsel. Ms. Gieszl contended that there are factual issues in the letter.

Dr. Clark asked who subpoenaed the letter, and Ms. Gieszl stated she assumed the Board did. Board staff then clarified that Deputy Hughes had received a notice of hearing, and not a subpoena.

At that time, Mr. Raine stated that the civil suit is separate from today's hearing and the issue is stable remission and dangerousness, so Ms. Gieszl should limit her comments as such.

Ms. Gieszl stated the letter is an egregious attempt by a law enforcement officer, who is a defendant in a lawsuit, alleging federal constitutional rights violations for the sole purpose of intimidating Mr. Allah into dismissing his law suit.

Dr. Clark remarked to Ms. Gieszl that her involvement in a civil suit has no impact on whether Mr. Allah is in stable remission and dangerous.

Ms. Gieszl went on to discuss the civil lawsuit and read a statement from the victim impact statement aloud. Ms. Gieszl contended that the Board should strike the victim impact statement from the record. Dr. Clark responded that the PSRB is allowed to review statements from victims. Ms. Gieszl argued that the letter was not submitted as a victim impact statement, but is rather a complaint about a civil lawsuit against him. Dr. Clark disagreed. Ms. Gieszl continued to urge the Board to disregard the victim impact statement. At that time, Officer Mark Moncada was sworn in and testified that Justin Hughes is not named as a defendant in the civil lawsuit against law enforcement.

A motion was made by James Clark, seconded by Susan Stevens, and passed 4 – 0 to recess into executive session at 3:21 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 3:27 p.m.

In open session, Ms. Blum stated that Mr. Allah and his treatment team are working out strategies to move forward.

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

*The Board took a break from 3:31 p.m. to 3:33 p.m.*

**Discussion and Possible Action Related to:**

Scott E. Kirkorsky, M.D. and Joseph D. Bloom, M.D. will discuss their paper on Arizona's Post-Insanity Defense Procedures:

Scott Kirkorsky explained that he and Dr. Bloom wrote a paper on the GEI verdict in Arizona and the mechanism by which the PSRB can transfer an individual to the Department of Corrections. Dr. Bloom gave the background of the insanity defense in Arizona and explained that the main point in the paper is when the statute changed in 2007, Arizona went from a *Not Guilty by Reason of Insanity* defense to a *Guilty But Mentally Ill* model, which is unique and of interest to a national audience. Extensive discussion ensued.

Staff request to omit CRC Reports from patient packets unless specifically requested:

Board staff explained the challenges with the amount of paper the reports produce. Extensive discussion ensued and the Board concluded that staff should continue to work on this and place the item on the September agenda.

Authorization to Use and Disclose Protected Health Information to the PSRB:

Board staff explained that there have been instances where the Hospital or outpatient providers were concerned about sharing certain medical records due to HIPAA constraints. Board staff created an *Authorization to Use and Disclose* release form to ensure that patients were giving permission for PSRB to review those materials. Mr. Raine added the intent was not for the Board to receive all medical records, but in certain instances, providers have not been comfortable submitting documents relevant to an issue before the Board. The Board concluded that staff should continue to work on the issue.

Executive session for legal advice pursuant to A.R.S. § 38-431.03(A)(3) regarding the PSRB's interpretation of A.R.S. § 13-3994(I):

This item was deferred.

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

This item was deferred.

Nomination and election for Vice-Chair to fulfill term until January 2020:

A motion was made by James Clark, seconded by Susan Stevens, and passed 4 – 0 to nominate Michael Klemens as Vice-Chairman.

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Executive session for legal advice pursuant to A.R.S. § 38-431.03(A)(3) regarding July 10, 2019 oral argument and resulting order entry of Case No. LC2018-000217-001 DT:

A motion was made by James Clark, seconded by Susan Stevens, and passed 4 – 0 to recess into executive session at 4:15 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 4:19 p.m.

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

Open session minutes from the May 31, 2019, meeting:

A motion was made by James Clark, seconded by Susan Stevens and passed 3 – 0 to approve the May 31, 2019, open session minutes, as amended.

*Paul O'Connell abstained.*

Open session minutes from the July 26, 2019, meeting:

A motion was made by James Clark, seconded by Michael Klemens, and passed 3 – 0 to approve the June 28, 2019, open session minutes, as amended.

*Susan Stevens abstained.*

Executive session minutes from the July 26, 2019, meeting:

A motion was made by James Clark, seconded by Michael Klemens, and passed 3 – 0 to approve the July 26, 2019, executive session minutes, as amended.

*Susan Stevens abstained.*

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

A motion was made by James Clark, seconded by Susan Stevens, and passed 4 – 0 to approve the August 30, 2019, open session minutes, as amended.

**Identification of Future Agenda Items:**

- Supporting documents from outpatient treatment teams regarding returns to ASH.

**Adjournment:**

The Board meeting was adjourned 4:23 p.m.