



Psychiatric Security Review Board

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ARIZONA STATE PSYCHIATRIC SECURITY REVIEW BOARD OPEN SESSION MINUTES

July 26, 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.
↗ Absent

Assistant Attorney General:

Thomas C. Raine, Esq.

Staff:

Jaime L. Shapiro, Executive Director

Guests Present and/or Participating:

Ashley Blum, Esq.	Manuel Gray, La Frontera-EMPACT
Audrey Reinholz	Nora Greer, Esq.
Caitlin Scarlett, ASH	Oluseyi Garland
Cole Arigoni, Mercy Care	Shana Feinberg, MIHS
Cynthia Hostetler, AHCCCS	Shanna Betzing, ASH
Diane Wagner, ASH	Shannon King, ASH
Hani Barghout	Steven Kwoh, M.D., ASH
Hilary J. Lako	Stevie Willis, La Frontera-EMPACT
Jennifer Gebhart, Esq.	Tahum Garland
Joe O'Cain	Tammy Wray, Esq.
Josephine Jones, Esq.	Telly Rivenburgh, AzCH
Madison Gardner, ASH	Tycora Garland

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:

Raphael Nyagong Wani – PSRB No. 08-06

Raphael Wani was present in person and through counsel, Tammy Wray. The statutory hearing was held from 1:05 p.m. to 1:40 p.m. pursuant to A.R.S. § 13-3994(N). The PSRB considered whether Mr. Wani’s return to ASH was justified.

Tammy Wray began by submitting a copy of Mr. Wani’s medication discharge instructions from his recent MIHS emergency department (ED) visit. She noted that the Board’s limited purpose today was to determine if the Board’s decision was justified after Mr. Wani reported to his attending psychiatrist that he had stopped his medical and psychiatric medications for approximately a week and a half. She stated that Mr. Wani is asking to be released back into the community and his request is supported by the circumstances of his readmission. Ms. Wray added that Mr. Wani was stabilized years ago in ASH and is committed to taking his medications as directed.

Ms. Wray explained that Mr. Wani went to the ED twice for overexposure to the summer heat and left unsure of how to administer his medications. He attempted to contact his clinical team for assistance and when he could not, he resolved to address it with his psychiatrist on June 28th.

Ms. Wray directed the Board members to the June 30th ASH admission treatment plan which notes him to be clinically stable and at no risk of harm or AWOL.

Ms. Wray detailed the events leading to his readmission to ASH which involved working outside in the extreme heat after loss of his regular job, two trips to the ED for heat-related illness, and the MIHS physician’s concern that the heat-related illness was due, in part, to

Mr. Wani's medication regimen. Mr. Wani was confused by the medication instructions with which he was discharged.

Jennifer Gebhart, Mitigation Specialist Supervisor from the Maricopa County Public Defender's Office, was sworn in and testified that she attended Mr. Wani's readmission staffing at ASH on July 3rd where she observed Mr. Wani to be cooperative, logical, and asymptomatic.

Ms. Wray argued that Mr. Wani's return to ASH was not appropriate because the issues could have, and should have, been treated in the community, and requested that the Board rescind the readmission order and discharge Mr. Wani.

A motion was made by James Clark, seconded by Michael Klemens, and passed 3 – 0 to recess into executive session at 1:21 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 1:40 p.m.

In open session, Hilary Lako, Elder of the Sudanese Community, was sworn in and testified as to Mr. Wani's history, including how hard he worked to provide for his family prior to the index crime and the culture shock experienced when he and his family moved from Sudan to Arizona.

A motion was made by James Clark that the PSRB finds that Raphael Wani's return to the Arizona State Hospital was justified, based on the evidence presented that there was reasonable cause to believe that Mr. Wani's mental health had deteriorated to the point that he failed to comply with his conditional release, and that he remain at ASH for evaluation and treatment, pending a hearing within 90 days to consider whether conditional release should be reinstated, modified, or revoked.

After discussion, it was decided that Mr. Wani's matter would be re-set for August 30th.

Dr. Clark amended his motion that Mr. Wani remains at ASH for evaluation and treatment, pending a hearing at the next regularly scheduled hearing to consider whether conditional release should be reinstated, modified, or revoked. The motion was seconded by Paul O'Connell and it passed 3 – 0.

Emmanuel Wayne Harris – PSRB No. 05-07

Emmanuel Harris was not present in person and his counsel, Nora Greer, waived his presence. The statutory hearing was held from 1:46 p.m. to 1:48 p.m. pursuant to A.R.S. § 13-3994(H). This was a two-year hearing and there was no recommendation at that time.

Ms. Greer stated that Mr. Harris refused her attempt to visit him, and apologized to Mr. Harris and the Board because a personal situation prevented her from making it to ASH as early as she wished.

A motion was made by Paul O’Connell, seconded by Michael Klemens, and passed 3 – 0 to deny conditional release for Emmanuel Harris based on the evidence presented by the Arizona State Hospital’s treatment team, that Mr. Harris 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. Emmanuel Harris shall remain committed to the Arizona State Hospital.

Matthew Mooney – PSRB No. 01-10

Matthew Mooney was present in person and through counsel, John W. Blischak. The statutory hearing was held from 1:49 p.m. to 2:04 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 discussion, a motion was made by James Clark, seconded by Michael Klemens, and passed 3 – 0 to recess into executive session at 1:50 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 2:01 p.m.

In open session, Dr. Clark asked Mr. Mooney why he is not willing to advance his privilege level. Mr. Mooney stated that he was under the impression that if he was ever discharged he would go to prison but his psychiatrist educated him and he no longer holds this belief.

Dr. Clark pointed out that Mr. Mooney’s mental health reports indicates he has not violated any Hospital rule violations, but the report also indicates that he is non-compliant with treatment recommendations. Dr. Clark commented that during last month’s Board meeting, a discussion was held which indicated that non-compliance with programming is considered an “infraction” and thus, seems to represent a rule violation. Ms. Cohen stated she would share this with ASH administration.

A motion was made by Michael Klemens, seconded by Paul O'Connell, and passed 3 – 0 to deny conditional release for Matthew Mooney based on the evidence presented by the Arizona State Hospital's treatment team, that Mr. Mooney 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. Matthew Mooney shall remain committed to the Arizona State Hospital.

Joe Curtis O'Cain – PSRB No. 12-01

Joe O'Cain was present in person and through counsel, John W. Blischak. The statutory hearing was held from 2:05 p.m. to 2:07 p.m. pursuant to A.R.S. § 13-3994(H). ASH recommended modification to the list of approved pass supervisors.

After discussion, a motion was made by James Clark to approve the addition of Amar Saghir to the list of approved pass supervisors, based on the evidence presented that Mr. O'Cain remains in stable remission and not dangerous if he remains on conditional release to ASH, phase three, levels five and six.

Ms. Shapiro recommended an amendment to Dr. Clark's motion.

James Clark amended his motion to include that the PSRB adopt the conditional release treatment plan presented today. The amended motion was seconded by Michael Klemens and passed 3 – 0.

Tahum Lekeith Garland – PSRB No. 10-07

Tahum Garland was present in person and through counsel, Tammy Wray. The statutory hearing was held from 2:08 p.m. to 2:32 p.m. pursuant to A.R.S. § 31-502(A)(5) and (B)(4). The outpatient treatment team recommended independent medication administration.

Ms. Wray pointed out to the Board that his sisters are here in support of Mr. Garland, and requested that she reserve further comments until after the upcoming testimony from the victim.

Audrey Reinholz, the victim's grandmother, testified that this crime split the family apart. Her grandson would have been 21 years old this year and she will continue to fight for him. Mrs. Reinholz requested that the Board keep Mr. Garland on a lifetime of supervision.

Ms. Wray reviewed Mr. Garland's long history of compliance with treatment directives and negative urine analyses for 20 years. She noted that he has extensive family support and that, if granted independent medication administration, he would be able to take night classes.

Ms. Wray argued that nightly medication monitoring is not clinically indicated for Mr. Garland and thus, is a waste of resources. Ms. Wray added that the victim's opinions have nothing to do with whether Mr. Garland is ready for medication independence. Ms. Wray recounted Dr. Clark's comments from the March 2019 hearing when he noted the reasons why he voted against medication independence and disputed those factors.

Dr. Clark added that in March he was not in favor of transferring medication observation to family members and that Mr. Garland had a severe relapse with marked symptomatology in 2017. Extensive discussion ensued.

A motion was made by Michael Klemens, seconded by Paul O'Connell, and passed 3 – 0 to approve Tatum Garland for semi-independent oral medication administration which includes observations by the outpatient treatment team a minimum of three times per week, based on the evidence presented that Mr. Garland remains in stable remission and not dangerous.

Discussion and Possible Action Related to:

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 Michael Klemens, seconded by Paul O'Connell, and passed 3 – 0 to recess into executive session at 2:33 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 2:52 p.m.

In open session, the Board took a break from 2:53 p.m. to 2:54 p.m.

Review and approval of the Board's draft response to the Committee of Reference of five additional sunset factors:

After discussion, a motion was made by James Clark, seconded by Michael Klemens, and passed 3 – 0 to approve and submit the letter, as amended.

Review and approval of letter regarding rule violations at ASH:

After discussion, a motion was made by James Clark, seconded by Michael Klemens, and passed 3 – 0 to approve and submit the letter, as amended.

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

Dr. Clark began by explaining this is a daunting task and Ms. Shapiro stated that she could provide an alternative to the Board's materials which would be a bullet-point document listing the statutory issues the Board may wish to address.

Board members and staff discussed some specific proposed amendments. The Board concluded that a bullet-point document would be helpful and wanted this item added to the next agenda.

Discussion, Amendment and Approval of Minutes:

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

Mr. Raine advised the Board that the rule of impossibility can be invoked to adopt the executive session minutes from the May 31st meeting, due to the perpetual lack of quorum after Dr. Shankar's resignation.

A motion was made by James Clark, seconded by Paul O'Connell, and passed 3 – 0 to invoke the rule of impossibility and approve the May 31, 2019, executive session minutes, as amended.

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

The Board deferred the May 31, 2019, open session minutes to August.

Open session minutes from the June 28, 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.

Executive session minutes from the June 28, 2019, meeting:

A motion was made by James Clark, seconded by Paul O'Connell, and passed 3 – 0 to approve the June 28, 2019, executive session minutes, as amended.

Identification of Future Agenda Items:

- The Manahan Appeal
- Potential Legislative Amendments
- The Board's interpretation of A.R.S. § 13-3994(I)

Adjournment:

The Board meeting was adjourned 3:38 p.m.