

**Mental Health Review
Board Mental Health Act**
(section 25, R.S.B.C. 1996, c.
288)

**REASONS FOR DETERMINATION THAT ILLUSTRATE INTERESTING LEGAL ANALYSIS OF SUBSTANTIVE
ISSUES AND/OR PROCEDURAL ISSUES**

To protect the confidentiality of the parties these reasons have been altered to refer to the Patient as the “Applicant”, the Treating Physician as the “Presenter” and the day of hearing has been redacted to show the month and year only.

Key Issues:

- Useful analysis of the definition of “treatment” in section 2 of the Act.
- Interesting analysis of the evidence as not meeting the need for “care, supervision and control” requirement, as well as the evidence failing to prove criterion 4 had been met.
- Helpful comments about case note disclosure.

Date of Hearing: May 2020

Location of Hearing: the Hospital (Advocate and Panel by telephone)

INTRODUCTION

1. The Applicant has been involuntarily detained under s. 22 of the *Mental Health Act* (the “Act”) since 27 April 2020 at the hospital (the “Facility”).
2. The Applicant has been detained based on the assessments of two doctors who each filed a Form 4 Certificate. The Applicant has applied for a Review Panel hearing to determine whether the Applicant’s detention should continue.
3. As mandated by s. 25(2) of the *Act*, the purpose of this Review Panel hearing was to determine whether the Applicant’s detention should continue because the four criteria set out in s. 22(3)(a)(ii) and (c) of the *Act* continue to describe the Applicant’s condition. All four criteria must be met to continue the Applicant’s detention.

DETERMINATION

4. The Hearing was held in private and the Review Panel determined that the detention of the Applicant should not continue. This was a unanimous decision of the Review Panel.
5. The Panel orally communicated this decision and explained that reasons would follow. These are the reasons for the determination.

HEARING

Preliminary Matters

6. The process and purpose of this hearing was explained to the Applicant.
7. At the outset of the hearing, one preliminary matter was raised. The Applicant made an application that the document provided by the Presenter should not be admitted as a Case Note. The Presenter was given an opportunity to respond. The Review Panel deliberated in private on this preliminary issue and decided that the document should not be admitted as a Case Note in this hearing. The Review Panel gave brief reasons during the hearing and indicated that the full reasons would be contained within the written decision.

Submissions of the parties

8. The Advocate raised two concerns with the purported Case Note: 1) it was disclosed late and 2) it did not follow the *Practice Direction – Case Note*. The Advocate submitted the document was disclosed outside the 24 hours as required as it was only provided approximately 45 minutes before the hearing. The Advocate noted the time stamp on the document that indicated it was printed by Dr. XX on 15 May 2020 (four days before the hearing), so further questioned why it was not disclosed at that time. The Advocate also submitted the document was not recent as it was prepared on 27 April 2020 on the date of the Applicant's admission, was not prepared by the treating physician, did not address the four criteria in sections 22(3)(a)(ii) and (c) of the Act, and did not contain the minimum required information referenced in the *Practice Direction – Case Note*.
9. The Presenter, Dr. XX, was provided an opportunity to respond. The Presenter stated that he did not have enough time to prepare a Case Note. He understood the Applicant had withdrawn the hearing, and only learned late on 15 May 2020 that the hearing was in fact proceeding. He stated that even if he had time to prepare a Case Note on that day, it would not have been transcribed in time for the disclosure deadline.

Analysis and decision on preliminary issue

10. The *Practice Direction – Case Note* effective 31 January 2020 sets out instructions for Presenters when preparing a Case Note for a Review Panel hearing. The purpose of the Case Note is important. It allows Applicants to know the evidence that will be presented at their hearing and gives them an opportunity to challenge that evidence. A Case Note is central to ensuring that Applicants have a fair hearing on issues concerning their liberty and security of person.
11. The Presenter did not provide a reasonable explanation as to why the Case Note was not prepared and disclosed in accordance with the *Practice Direction – Case Note*. While the Presenter undoubtedly has multiple competing duties, providing information to an Applicant who is challenging their ongoing involuntary detention must be treated seriously.
12. Most importantly, the document provided as a Case Note lacked much of the required information directed by the *Practice Direction – Case Note*. It did not contain a diagnosis. It did not contain the Applicant's current treatment plan. It did not describe the Applicant's current level of functioning. It did not address any of the four criteria the Review Panel considers pursuant to sections 22(3)(a)(ii) and (c) of the Act. It was prepared more than three weeks prior to the hearing and so was not recent. It was not prepared by the Presenter.

13. Since the document was deficient in nearly all criteria required of a Case Note and was disclosed late without reasonable explanation, the Review Panel granted the Applicant's application that the document not be admitted as a Case Note.

Parties and Evidence

14. During the hearing, the Review Panel heard evidence from:
 - a. The Applicant; and
 - b. The Presenter, Dr. XX.
15. No documents were admitted into evidence.
16. The Applicant was represented by an advocate, B. The Applicant provided evidence and the Applicant's advocate made submissions in support of the position that the Applicant no longer meets all the criteria for certification.
17. At the time of the hearing, the Applicant was under the care of a mental health team at the Facility. Dr. XX (the "Presenter") is the Applicant's treating psychiatrist. The Presenter provided evidence in support of the position that the Applicant continues to meet all the criteria for certification.
18. At the end of the hearing, the Review Panel reserved its decision and deliberated in private. After deliberations were completed, the Review Panel called the parties with their decision.
19. The Review Panel considered all oral testimony and submissions of the parties. The Review Panel considered all reasonably available evidence concerning the Applicant's history of mental disorder, including hospitalization for treatment and compliance with treatment plans following hospitalization.
20. While the Review Panel considered all evidence presented at the hearing, only that information necessary for a decision has been summarized below.

LEGAL TEST

21. The Review Panel considered whether the following four criteria under s. 22(3)(a)(ii) and (c) of the *Act* continue to describe the patient's condition:
 - a. Does the patient suffer from a disorder of the mind that requires treatment and seriously impairs their ability to react appropriately to their environment or to associate with others?
 - b. Does the patient require treatment in or through a designated facility?
 - c. Does the patient require care, supervision and control in or through a designated facility to prevent their substantial mental or physical deterioration or for their own protection or the protection of others?

- d. Can the patient be suitably admitted as a voluntary patient?
22. The Review Panel also assessed the risk that the Applicant, if discharged, and as a result of mental disorder, will fail to follow the treatment the Applicant's treating psychiatrist considers necessary to minimize the possibility that the Applicant will again be detained under s. 22 of the Act.
23. The Review Panel applied this legal test on a balance of probabilities.

ANALYSIS

Criterion # 1: The patient has a disorder of the mind that requires treatment and seriously impairs the patient's ability to react appropriately to their environment or to associate with others (s. 22(3)(a)(ii) and s. 1 of the Act)

24. The Review Panel found that this criterion was satisfied based on the following evidence.
25. The Applicant is diagnosed with Psychotic Disorder (not yet diagnosed). This diagnosis was not contradicted by other psychiatric or psychological opinion evidence.
26. According to Dr. XX, the cause of the onset of the Applicant's psychotic symptoms remain unclear. The Applicant had lost a significant amount of weight in the months leading up to her admission, so much of the Facility's investigations have focussed on finding a cause for that concern. The Applicant has also undergone other testing to determine if her psychotic symptoms were a result of a physical health condition. The Presenter stated that further assessment is necessary to try to determine a cause of the onset of the Applicant's psychotic symptoms.
27. The Review Panel determined that when unwell the symptoms of the Applicant's disorder of the mind seriously impair her ability to react appropriately with her environment or associate with others based on the evidence summarized below.
28. The Presenter stated that when the Applicant was admitted to hospital on 27 April 2020, she was delusional. The Applicant was brought to hospital by a mobile crisis response team (the "team"). The Applicant had called the police about disturbances from her neighbours. The Presenter stated this was the second call the team had received in April 2020. During this second visit, the team noted that the Applicant's home was unclean and she was acting unusually and not making sense. There apparently was cat feces on the floor and the applicant apparently changed her menstrual product in front of team members. She was complaining that neighbours were throwing condoms at her. The Presenter stated that on admission to hospital, she was expressing paranoid and disorganized ideas.
29. The Review Panel therefore determined that the Applicant has a disorder of the mind that requires treatment and seriously impairs her ability to react appropriately to her environment or to associate with others.
30. The Review Panel is aware that the Applicant also has a working diagnosis of Intellectual Disability,

which is currently under investigation. The Presenter stated that if confirmed, the Applicant's Intellectual Disability would be addressed through community-based programs and supports. The Review Panel is aware of the definition of "treatment" in section 1 of the Act¹ and finds that this definition excludes the Applicant's Intellectual Disability from being a disorder of the mind that requires treatment for the purposes of certification.

Criterion # 2: The patient requires treatment in or through a designated facility (s. 22(3)(c)(i) of the Act)

31. The Review Panel found that this criterion was not satisfied based on the following evidence.
32. The Applicant's current treatment plan includes antipsychotic medication (paliperidone by injection), other medication for health conditions (ferrous gluconate and ascorbic acid), and ongoing testing and assessment to rule out or determine the cause of the Applicant's psychotic symptoms and weight loss. The Presenter stated that the Applicant's mental health has improved since her admission to hospital at the end of April 2020. The Applicant's disorder of the mind is therefore amenable to treatment.
33. The Applicant stated she would continue with her treatment plan as an outpatient. She confirmed she would report to the hospital or a clinic to receive antipsychotic medication. She stated she would also come to the hospital for further testing if the need to do so was explained to her.
34. The Presenter presented no evidence that the Applicant could not continue the treatment plan as an outpatient.
35. The Review Panel therefore determined that the Applicant does not require treatment in or through a designated facility.

Criterion # 3: The patient requires care, supervision and control in or through a designated facility to prevent their substantial mental or physical deterioration or for their own protection or for the protection of others (s. 22(3)(c)(ii) of the Act)

36. The Review Panel found that this criterion was not satisfied based on the following evidence.
37. This is the Applicant's first admission to hospital for treatment of psychiatric symptoms. The Presenter stated the Applicant received treatment for ADHD as a child and young adult, but he is still awaiting records to confirm.
38. The Applicant has lived in the city since 1999. She has lived with her mother or on her own for the entirety of that time. She has two cats, who are currently being taken care of by her brother. The Applicant has her own apartment and has taken care of all her activities of daily living up until she was admitted to hospital.

¹ 1. In this Act:

...

"treatment" means safe and effective psychiatric treatment and includes any procedure necessarily related to the provision of psychiatric treatment.

39. When questioned whether the Applicant would experience substantial mental or physical deterioration if she was not receiving care, supervision, and control in or through a designated facility, The Presenter did not provide evidence to substantiate this requirement of continued involuntary detention. He stated he did not know if any deterioration would occur because he had not yet determined the cause for the Applicant's psychotic symptoms.
40. The Review Panel therefore concludes that the Applicant does not requires care, supervision, and control in or through a designated facility to prevent her substantial mental and physical deterioration.
41. The Presenter did not believe that the Applicant requires care, supervision, and control through the Facility for her own protection or the protection of others. The Applicant does not have a history of self-harm or suicide. The Applicant does not have a history of violence towards others. The Review Panel therefore does not conclude that the Applicant requires care, supervision and control for her own protection or for the protection of others.

Criterion # 4: The patient cannot suitably be admitted as a voluntary patient (s. 22(3)(c)(iii) of the Act)

42. The Review Panel found that this criterion was not satisfied based on the following evidence.
43. The Applicant stated she would continue with her treatment plan as a voluntary patient. She confirmed she would report to the hospital or a clinic to receive antipsychotic medication. She stated she would also come to the hospital for further testing if the need to do so was explained to her.
44. The Presenter confirmed there has been no issues with the Applicant's compliance while she has been in hospital. He also confirmed there have been no issues with managing the Applicant.
45. The Review Panel finds that the Applicant would continue with her recommended treatment plan if she were a voluntary Applicant. The Applicant is therefore suitable as a voluntary Applicant.

CONCLUSION

46. The Review Panel concluded, on a balance of probabilities, that not all of the criteria set out in section 22(3)(a)(ii) and (c) of the *Act* continue to describe the Applicant's condition. Having reached that conclusion, and pursuant to s. 25(4.1) of the *Act*, the Applicant's involuntary detention must not be continued.

Digitally signed by the Review Panel Chair in May 2020.

Tess Acton

The Panel members acknowledge that these Reasons reflect their decision and have authorized the above Panel Chair to sign on their behalf.