

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 Case Presenter as the “Doctor” and the day of hearing has been redacted to show the month and year only.

Key Issues:

- Sample of typical decision of the Mental Health Review Board

Date of Hearing: November 2019

Location of Hearing: In-Person

Case Presenter for the Facility: (“Doctor”)

Patient: (“Applicant”)

INTRODUCTION

[1] The Applicant has been involuntarily detained under s. 22 of the *Mental Health Act* (the “*Act*”) since February 2, 2018 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 been further detained under a Form 6 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 continue. This was a unanimous decision of the Review Panel.

[5] At the end of the hearing, the Panel orally communicated this decision to the Applicant and gave the Applicant a copy of the Determination in which it was 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.

Parties and Evidence

[7] During the hearing, the Review Panel heard evidence from:

- The Doctor
- The Applicant

[8] The following documents were admitted into evidence:

- Case Note – Exhibit 1

[9] The Applicant was represented by an advocate. 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.

[10] At the time of the hearing, the Applicant was under the care of a mental health team at the Facility. The Presenter (the "Doctor") is the Applicant's treating psychiatrist. The Doctor provided evidence in support of the position that the Applicant continues to meet all the criteria for certification.

[11] At the end of the hearing, the Review Panel reserved its decision. The parties left the hearing room, and the Review Panel deliberated in private. Once deliberations were completed, the Review Panel invited the Applicant back into the hearing room for its decision.

[12] The Review Panel considered all oral testimony, the exhibit 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.

[13] While the Review Panel considered all evidence presented at the hearing, only that information necessary for a decision has been summarized below.

LEGAL TEST

[14] The Review Panel considered whether the following four criteria under s. 22(3)(a)(ii) and (c) of the *Act* continue to describe the Applicant's condition:

1. 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?
2. Does the Patient require treatment in or through a designated facility?
3. 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?
4. Can the Patient be suitably admitted as a voluntary Applicant?

[15] 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*. The Review Panel applied this legal test on a balance of probabilities.

ANALYSIS

[16] *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)*

The Review Panel found that this criterion was satisfied based on the following evidence.

[17] This 20 year old Applicant has been diagnosed as suffering from schizoaffective

disorder bipolar type, cannabis use disorder and antisocial personality traits. The present period of detention started on February 2, 2018 when the police brought him to the hospital. He had called the police claiming that his father planned to kill his mother but according to the police, there is no risk to the mother whatsoever. At the time of admission, he had no insight into his illness and was exhibiting poor judgment. He has been on extended leave since his discharge from hospital.

[18] He had been discharged from hospital on September 5, 2019 and was readmitted on September 14 after quickly deteriorating. He maintained several delusional beliefs namely that he had cancer and that his father was a member of a terrorist organization. He had threatened his family with a weapon.

[19] Despite being warned about the deleterious effect of cannabis use on his mental state and his agreement to abstain, the Applicant has continued to use cannabis and has even attended recent outpatient appointments while intoxicated with cannabis.

[20] The Applicant did not challenge the Doctor's opinion that he suffers from a disorder of the mind that has seriously impaired his ability to relate to his environment and others. He stated to the Review Panel that most of the time that he is unwell, he feels depressed and about 20% of the time, he feels manic. This would be entirely consistent with the diagnosis of schizoaffective disorder.

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

The Review Panel found that this criterion was satisfied based on the following evidence.

[22] The Applicant has resisted the diagnosis of schizoaffective disorder and has preferred PTSD and depression. The treatments for PTSD are not appropriate to deal with his psychotic symptoms. When he has been unwell, he has been disruptive and has demonstrated a propensity for violence. Many of his hospital admissions were due to noncompliance with medications.

[23] It was accepted that the Applicant needs treatment and given that the Applicant has been noncompliant with treatment and disagrees with the diagnosis, treatment must be in or through a designated facility to ensure stability and adequate functioning in the community.

[24] 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)*

The Review Panel found that this criterion was satisfied based on the following evidence.

[25] Over the last 6 years, the Applicant has had more than 10 hospital admissions and many of the admissions were precipitated by noncompliance with medications. During his many treatments, there were numerous reports of violence including damage to property, threats against his family and altercations with security staff in the hospital. During his most recent admission in September 2019, he was physically aggressive towards security staff at the hospital on several occasions.

[26] As stated previously, the Applicant was discharged from hospital on September 5, 2019 and substantially deteriorated within a period of 9 days causing him to be readmitted to hospital on September 14, 2019. This demonstrates a rapid deterioration that resulted in his being readmitted to the hospital. That risk of substantial deterioration continues to exist.

[27] The Review Panel is satisfied that the Applicant represents a threat towards others and needs treatment in or through a designated facility to prevent a substantial mental deterioration.

[28] Criterion # 4: *The Patient cannot suitably be admitted as a voluntary Patient (s. 22(3)(c)(iii) of the Act)*

The Review Panel found that this criterion was satisfied based on the following evidence.

[29] The Applicant has a history of non-adherence to medications and this pattern is likely rooted in his belief that he only suffers from PTSD and depression rather than schizoaffective disorder. He has expressed a desire to change medications and his dislike for his antipsychotic treatment.

[30] Even though he has been repeatedly advised that continued cannabis use interferes

with his mental state, he has continued to use cannabis even while he was in the hospital. He appears unable to avoid cannabis use. The Applicant stated to the Review Panel that he plans on stopping cannabis use when he starts school in January 2020 but that statement is an indication that he intends to continue using cannabis and wants to postpone stopping its use until some future date.

[31] The Applicant cancelled his last outpatient appointment on short notice stating that he did not feel it was necessary to attend weekly appointments with the team. This demonstrates a lack of commitment in following a treatment plan.

[32] Given all of these circumstances, the Applicant has demonstrated a reluctance to adhere to the treatment plan and continues to ignore the advice to cease using cannabis. His compliance with medications has been poor over the years, which has resulted in many hospital admissions. He has continued to request that his antipsychotic medications be reduced or discontinued in favour of oral medications.

[33] The Review Panel has concluded that based on the evidence, the Applicant would be unlikely to comply with a treatment plan and would likely suffer a substantial deterioration. He is therefore not suitable as a voluntary Applicant.

CONCLUSION

[34] The Review Panel concluded, on a balance of probabilities, that all of the criteria set out in s. 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 be continued.

Digitally signed by the Review Panel Chair in November 2019.

Roger J.A. Cardinal

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