

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 Parties as the “Applicant”, the Treating Physician as “the Doctor”, and the day of the 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: December 2020

INTRODUCTION

The Applicant has been involuntarily detained under s. 22 of the *Mental Health Act* (the “Act”) since October 22, 2020 and is currently on extended leave from the hospital (the “Facility”).

The Applicant has been detained based on the assessments of two physicians 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.

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

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.

At the end of the hearing, the Review Panel reserved its decision. The parties left the hearing video conference, and the Review Panel deliberated in private. After deliberations were completed, the Review Panel contacted the parties and informed them of its decision.

HEARING

Preliminary Matters

No preliminary matters were raised.

The process, purpose and possible outcomes of the hearing was explained to the Applicant.

Parties and Evidence

During the hearing, the Review Panel heard evidence from:

- The Applicant
- The Doctor

The following documents were admitted into evidence:

- Copy of a document titled “Review Panel Note for [Applicant]” (the “Report”)

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.

At the time of the hearing, the Applicant was under the care of an outpatient mental health team. The case 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.

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.

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

EVIDENCE

1. The Doctor read the Form 4’s dated October 2020 and the latest Form 6 into evidence.
2. The first Form 4 was said to indicate; “Paranoid and perceptual disturbance. History of aggressive behavior [illegible] while in ED. No insight. Physical risk.”
3. The second Form 4 was said to indicate; “Applicant has persecutorial delusions and labile mood. Believes [grandparent] he lives with is behind [illegible] knife [illegible]. No insight. Requires [illegible]. Not suitable for voluntary status. Needs risk assessment in hospital.”
4. The latest Form 6 was said to indicate; “History of traumatic brain injury with personality change and aggression. Numerous presentations for bizarre behavior and psychotic symptoms. No insight into illness. Has history of medication noncompliance. Needs ongoing monitoring for safety and to prevent deterioration.”
5. The Doctor stated that the Applicant’s current diagnoses include ADHD, anti-social personality disorder, conduct disorder, and substance use disorder, and psychosis NOS. She stated that the Applicant had been certified due to his psychosis NOS and his traumatic brain injury (“TBI”.)
6. The Report states that in 2016, the Applicant was injured in a motor vehicle accident. This resulted in a TBI causing significant cognitive difficulties and also exacerbated premorbid personality difficulties that

resulted in increased irritability, impulsivity and aggression. The Applicant was diagnosed with ADHD around the same time. [NOTE – many of the details of the Applicant’s history were edited out of this summary, for privacy reasons].

7. The Report indicates that in 2017, the Applicant presented to hospital with bizarre behaviour in the context of substance use, erratic driving and worsening mood lability. In 2018, he presented to hospital with possible hallucinations. In August 2019, he presented to the Facility. The Applicant was brought in by the police after he jumped out of a moving vehicle following an argument with a family member. When police arrived on scene the Applicant pulled a knife out of his pocket. Weeks later he was admitted for a medical emergency related to a physical health condition.
8. The Report states that the Applicant presented to the Facility in September 2019 when he was brought in by police. The Applicant had been at a local store where he was yelling and screaming. He also damaged property and when asked to leave he pulled a knife. He was subsequently arrested for assault with a weapon and mischief. He made bizarre comments that people were out to get him and said that he spoke to an international dignitary on live streaming. Collateral from his mother reported prominent symptoms associated with his TBI. He also presented as angry, irritable, volatile and agitated at home. She stated that he presented as paranoid in the past and often stated that he felt people were looking at him. He was in hospital for about 2 weeks.
9. The Report states that following his release the Applicant was non-compliant with psychiatric medication. At home he presented with ongoing behavioural difficulties, and his mother said he was angry, irritable, and agitated. At home he damaged property and put his fist through a wall on one occasion. The Applicant’s behaviour caused significant problems with the neighbours resulting in noise and swearing complaints. In spring, the Applicant had moved to his grandparent’s property as it was larger and further away from neighbours. The Applicant was readmitted on October 23, 2020. The Applicant called the ambulance himself and on the day of his admission the Applicant thought that he was suffering symptoms of his physical health condition, but this was not the case. The Applicant presented as paranoid, referring to electricity in his veins, and comments about somebody wanting to kill him. The Applicant was commenced on a depot antipsychotic, and discharged on extended leave on November 3, 2020. The dose was subsequently increased as he was still irritable and verbally aggressive and threatening to mental health staff.
10. The Doctor provided testimony and referred to the Report. The Doctor stated that the Applicant had previous psychiatric issues, ADHD and drug use all of which were exacerbated by his TBI. She said that the Applicant had become more aggressive, but had improved since being given his depot. She said that due to a lack of insight the Applicant needed to continue on the depot.
11. The advocate for the Applicant had some questions for the Doctor. When asked, the Doctor said she saw the Applicant in mid-November 2020 and again when he came in to get his depot and she had to intervene to deescalate his threatening behaviour. She confirmed that the Applicant still had some psychotic symptoms including mild paranoia. When asked what triggered the psychosis the Doctor replied, drug use, the TBI and stress. The Doctor was asked if the Applicant would have been certified if

he was not on drugs and she replied that there was still psychosis when the Applicant was not on drugs. She confirmed that the Applicant was taking medication for his physical health condition willingly, but did not want to take his depot. The Doctor was asked if the Applicant was using drugs prior to admission and she said the Applicant used cannabis daily and that the urine drugs screen on admission was positive for cannabis. She was asked if cannabis could trigger psychosis and she replied that it could but that it would clear quickly if there was no underlying psychosis. She added that the Applicant had been in hospital for a long time and still had psychosis. She said that the Applicant's TBI affected his mood, memory and patience.

12. The panel had some questions for the Doctor. The Doctor confirmed that for the October 23, 2020 admission the Applicant's neighbours had called the police. The Doctor was asked about the Applicant being verbally aggressive and threatening when given his depot. The Doctor stated that she was concerned for her safety. She said that the Applicant wanted to call the police, and she and her team needed to deescalate the situation. She said she personally felt threatened. The Doctor confirmed that substance use can trigger/induce psychosis which could lead to violence. The Doctor confirmed that the Applicant was now living with his mother and grandparent. When asked to comment on risks the Doctor stated that the main concern was risk to others, there was a risk to the Applicant's mother and grandparent, and there was also prior self-injurious behavior. She added that the Applicant continued to use drugs which will put him at a higher risk of psychosis. The Doctor stated that the charges for assault when the Applicant had a knife were stayed.
13. Upon questioning by his advocate, the Applicant provided testimony. He started by saying that he wanted the panel to conclude that he had a rough night. The Applicant stated that he had never assaulted or threatened anyone and had never threatened anyone with a knife. He said that he planned on taking his medication for his physical health condition. He said that he believed that he had been psychotic in the past but that it was due to drugs.
14. The Panel had some questions for the Applicant. When asked why he asked for a review panel he stated that he had a bad night on drugs and now was caught up in a system he did not belong in. He was asked about taking the depot and he stated that it didn't change him in "any way, shape or form." He said that if he was decertified that he would not take the depot and that the only way he would take it is if he was forced. When asked about the two incidents with knives he said that he did not normally carry a knife, but he had been working on something and that a knife was a tool not a weapon. The Applicant stated that he did not like his grandparent and that the grandparent was invasive. The Applicant admitted that he had used a hallucinogenic party drug and that it was the only drug he used. He said that he did not plan on taking it again as it caused psychosis. He said that if he stopped taking his depot it would be "indifferent" and that the intended effects had not occurred and in fact it had done the opposite.
15. The Doctor did not make a closing statement preferring instead to rely on her panel note.
16. The advocate for the Applicant made a closing statement. He said that the Applicant had engaged in no violent or threatening activity and that the Applicant's direct testimony should be considered more important than hearsay. He said the Applicant was willing to take medication for his physical health

condition. He said that the Applicant acknowledged that he had been psychotic in the past but believed it was due to drugs, and he planned to stay away from further drug use in the future.

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.

LEGAL TEST

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 Applicant 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 Applicant require treatment in or through a designated facility?
3. Does the Applicant 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 Applicant be suitably admitted as a voluntary Applicant?

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

Criterion # 1: The Applicant has a disorder of the mind that requires treatment and seriously impairs the Applicant'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.

The Doctor stated that the Applicant's current diagnoses include ADHD, anti-social personality disorder, conduct disorder, substance use disorder, and psychosis NOS. She stated that the Applicant had been certified due to his psychosis NOS and his TBI.

The Applicant presented to Facility in August 2019. The Applicant was brought in by police after he jumped out of a moving vehicle following an argument with a family member. When police arrived on scene the Applicant pulled a knife out of his pocket. The Report states that the Applicant presented to the Facility in September 2019 when he was brought in by police. The Applicant had been at a local store where he was yelling and screaming. He also damaged property and when asked to leave he pulled a knife. He was subsequently arrested for assault with a weapon and mischief. He made bizarre comments to the police, including that people were out to get him and he also said that he spoke to an international dignitary on live streaming. Collateral from his mother reported prominent symptoms associated with his TBI. He also presented as angry, irritable, volatile and agitated at home. She stated that he presented as paranoid in

the past and often stated that he felt people were looking at him. The Report states that following his release the Applicant was non-compliant with psychiatric medication. At home he presented with ongoing behavioural difficulties and his mother said he was angry, irritable, and agitated. At home he damaged property and put his fist through a wall on one occasion. The Applicant's behaviour caused significant problems with the neighbours resulting in noise and swearing complaints and the police being called. The Applicant was readmitted on October 23, 2020. The Applicant called the ambulance himself and on the day of his admission, he thought that he was experiencing symptoms of his physical health condition, but this was not the case. The Applicant presented as paranoid, referring to electricity in his veins, and comments about somebody wanting to kill him.

As such the panel found that the Applicant does have a disorder of the mind for the purposes of the Act that requires treatment and seriously impairs the Applicant's ability to react appropriately to his environment or to associate with others.

Criterion # 2: The Applicant 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.

The Applicant has a mental disorder that requires medication. The Applicant requires medication to be prescribed, medications to be dispensed and injections to be administered. Close monitoring of the medication will also be required due to the Applicant's TBI. The Applicant will also be monitored for any side effects and signs of deterioration.

Based on the foregoing the panel determined that the Applicant requires treatment in or through a designated facility.

Criterion # 3: The Applicant 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.

In his closing statement the advocate for the Applicant submitted that the direct evidence of the Applicant should be preferred over hearsay evidence obtained in reports. With respect to the aggression of the Applicant, which the Applicant denied in his direct testimony it was noted that the Doctor provided direct testimony. The Doctor was asked about the Applicant being verbally aggressive and threatening when being given his second depot. The Doctor stated that she was concerned for her safety. She said that she personally felt threatened. Given her comments, and the notes in the Report, the fact that the Applicant had pulled a knife twice (once in the presence of police) and had been charged with assault the Applicant's statements that he had never assaulted or threatened anyone, and had never threatened anyone with a knife were not believable.

As noted *supra*, when asked to comment on risks the Doctor stated that the main concern was risk to others, there was a risk to the Applicant's mother and grandparent, and there was also prior self-injurious

behavior. She added that the Applicant continued to use drugs which will put him at a higher risk of psychosis.

The Panel was of the opinion, given his aggressive and bizarre actions at the store, and the fact that he had a knife on him on two occasions, and chose to show it when acting in an angry and threatening state, that the Applicant was a danger to others. The Applicant also put himself in danger by jumping out of a moving car, and he could have been in danger pulling the knife out in front of police. The Applicant said that the knife was a tool and not a weapon, yet he chose to pull it out, and not use it as a tool twice when confronted. This led the panel to believe that the Applicant was also a danger to himself. Although the Applicant stated he would stop doing drugs he was still using cannabis on a daily basis. He said he was going to stop using the hallucinogenic party drug which the panel found unlikely given his substance abuse disorder. The Doctor confirmed that substance use can trigger/induce psychosis which could lead to violence.

For these reasons the panel determined that the Applicant requires care, supervision and control in or through a designated facility to prevent his substantial mental or physical deterioration or for his own protection or for the protection of others.

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

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

The Applicant has a mental disorder that requires medication.

The Applicant stated that if given the choice that he would not take the antipsychotic depot medication and said that it did not help him in “any way shape or form.” The Applicant stated that if he stopped taking his depot it would be “indifferent” and that the intended effects had not occurred and in fact it had done the opposite.

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.

In coming to its conclusion, the panel also noted the Applicant’s prior history of noncompliance.

Given the above it was the determination of the panel that the Applicant would likely not voluntarily follow the treatment plan, including taking his antipsychotic medication, the treating psychiatrist considers necessary, if he was made a voluntary Applicant.

As such the panel determined that the Applicant cannot suitably be admitted as a voluntary Applicant.

CONCLUSION

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 December 2020.

Robyn Durling

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