

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:

- A good example of why the 4th criterion for statutory detention was not satisfied in the case

Date of Hearing: April 2020

Location of Hearing: Telephone conference

Patient, Advocate, Presenter and Panel all participated by teleconference

INTRODUCTION

The Applicant has been involuntarily detained under s. 22 of the *Mental Health Act* (the “Act”) since April 10, 2017 at the Hospital (the “Facility”).

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.

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 not continue. This was a unanimous decision of the Review Panel.

At the end of the hearing, the Panel orally communicated this decision to the Applicant and explained that reasons would follow. These are the reasons for the determination.

HEARING

Preliminary Matters

The process and purpose of this hearing was explained to the Applicant.

Parties and Evidence

During the hearing, the Review Panel heard evidence from:

- The Applicant
- The Presenter
- H

The following documents were admitted into evidence:

- Case Note dated April 3, 2020

The Applicant was represented by Mr. Mossop. The Applicant provided evidence and Mr. Mossop 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 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.

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. After deliberations were completed, the Review Panel contacted the parties and informed them of its decision.

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.

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 Patient'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 patient?

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 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.

Both the Applicant and the Presenter agreed that the Applicant suffers from a mental illness. By way of background the Applicant is a 40-year-old single male who lives and works with his elderly father. He supports himself with persons with disability allowance, supplemented by some income from working with his father. He has a diagnosis of bipolar disorder with manic and psychotic episodes as well as cannabis use disorder. The Applicant testified that he suffers from bipolar disorder, which is characterized by mood swings. He advised that early signs of decompensation, for him, include being quick to anger, having trouble settling down and increased anxiety. He also stated that his mood fluctuating up and down is another signifier that he is getting ill.

The Applicant has lived with this illness since 2003, for most of his adult life. In the past, he has required intervention from police and emergency care due to mental breakdown. Forensic history will be reviewed below. When he is having a breakdown, his symptoms include agitation, irritation, aggression and paranoid thoughts.

We find that 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.

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.

The Applicant has been under the care of the Presenter for about 1 ½ years. Prior to this, he was followed by a forensic outpatient team. Even though the Applicant and his father both asserted that the Applicant was taking his daily oral medication, the Applicant had a relapse. He was witnessed yelling and screaming from the balcony of his father's apartment, where he resides. The police attended and he was hospitalized in February 2017 and again in April 2017. In his meetings with the forensic outpatient team he was observed to be oppositional, agitated, irritable with underlying anger and hostility. Upon transfer to his present care team in Fall of 2018, a review of Pharamanet revealed that his oral prescription had not been filled for months.

In his first meeting with the Presenter, the Applicant was so agitated and aggressive that they had to move to a safety room from the Presenter's office and the case worker had to sit in. This was a period when the Applicant was noncompliant with medication. The Presenter therefore initiated a regime of daily witnessed ingestion of the oral medication, in addition to the once monthly depot medication. When this regiment started, the pharmacy almost refused to continue as the Applicant was so agitated at the initial period. Fortunately, as his compliance increased, his affect normalized

and the pharmacy agreed to continue this service.

The Presenter has been decreasing the frequency with which the Applicant must attend the pharmacy. Currently, the Applicant has been upgraded to attending at the pharmacy once weekly to pick up the medication. The Applicant sees the team once a month for the injection and once every 2 months to see the psychiatrist. He has been attending appointments fairly regularly, at times with encouragement.

He has been offered various services and programs including occupational or vocational assessments but he has declined.

We find the Applicant requires care 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)

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

The Applicant has a very concerning forensic and criminal history that presents a substantial risk to the public. These incidents have been in the context of mental decompensation. In 2003, the Applicant was put on probation for assaulting a welfare officer and shoplifting. He was seen twice at a city hospital for agitation and anger. In 2013, he was brought to hospital by police after having an altercation with a sibling. Reports suggest there has been a chronic history of problems with anger and impulsivity. Collateral from family in hospital records indicate that he was self-absorbed, had no control of his emotions, lacks empathy with an explosive temper and was estranged from two of his brothers. Now that his medication and overall condition have been well managed for 1.5 years, he reports that his relationship with his brothers has improved substantially.

In 2014, the Applicant assaulted 4 random people on the train, unprovoked. The victims included an elderly person and women. In 2016, he was sentenced to a period of probation and that is when he was referred to a forensic outpatient clinic. During his time being followed by the forensic team, he was clearly not taking the medication as prescribed. He decompensated and was hospitalized twice in the span of 3 months in the first quarter of 2017.

Recently, there have been no reports of violence and all evidence supports the assertion that the Applicant has been compliant with medication. The Presenter warns that should the Applicant cease taking the medication there is a serious risk of harm to others and mental and physical deterioration. The Applicant acknowledges this fact as well. Particularly, the Applicant articulated that when he is off the medication he becomes aggressive towards others including random assaults on others. As well, he lacks motivation and misses many days of work. He advised that currently he is attending his father's office daily, and this was not the case previously when he was ill and untreated.

After his convictions, the Applicant attended and completed an anger management course. He advised that he learned how to spot when his anger was getting out of control. He was able to

clearly articulate the benefits from the program and his mental health treatment.

We find that 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

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 not satisfied based on the following evidence.

The Applicant has had significant mental health interventions in the last 4 years. The Applicant admits that in the past he believed that he did not need his medication. At the hearing, the Applicant testified that the medication has helped him to stabilize his mood and that he is willing to take the medication and continue to see the mental health team if discharged. He testified that he suffered from bipolar disorder and that it was characterized by mood swings. He acknowledged that if did not take his medications as prescribed, he would end up back in the hospital. The Applicant further admits that his mental illness played a role in his assault convictions.

The Applicant was able to articulate the first signs of mental decompensation for himself, particularly an increase in anxiety and irritability. He stated that he has abstained from marijuana use for 2 years now. His father, with whom he resides, has historically called the medical team when the Applicant decompensates. However, his father also told the previous doctor that the Applicant was compliant with his daily medications when this was clearly not the case. The Applicant advises that now that he is on the medications he is sleeping better, does not feel angry and his mood has stabilized. There is evidence that he has been compliant with medication in recent times, including the Presenter's observation that this is the best she has seen him and a major improvement from when he started in her care.

Though the evidence is clear that the Applicant satisfies the first three criteria, there is a lack of evidence suggesting the Applicant's desire to cease medication. Though we heed the Presenter's evidence on the risks to the Applicant and public on decompensation, we find his testimony credible, that he accepts his illness and the necessity and benefits of the medication. We therefore find that he can suitably be admitted as a voluntary Applicant.

CONCLUSION

The Review Panel concluded, on a balance of probabilities, that not 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 not be continued.

Digitally signed by the Review Panel Chair in April 2020.

Beth Kibur

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