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", the Case Manager as the "Co-Presenter" and the day of hearing has been redacted to show the month and year only.

Key Issues:

- This decision illustrates that under the 1st statutory criterion, serious symptoms of impairment need not be present at the time of the hearing in order for the "seriously impairs" requirement to be fulfilled.

Date of Hearing: June 2020

Re: R (the "Patient")

INTRODUCTION

The 43-year-old Applicant has been involuntarily detained under s. 22 of the *Mental Health Act* (the "*Act*") since July 20, 2019 and is currently being followed-up as an outpatient by the mental health case management team 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 continue. This was a unanimous decision of the Review Panel.

The Panel orally communicated this decision 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. No preliminary matters were raised. The review panel note was submitted late. The panel advised the Presenter of his obligation to submit it 24 hours before the hearing, and asked that he comply with this going forward.

Parties and Evidence

During the hearing, the Review Panel heard evidence from:

- The Applicant
- The Presenter
- The Co-Presenter

The following documents were admitted into evidence:

- Review Panel Note by the Presenter dated June 29, 2020

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 a mental health team at the Facility. Dr. X (the "Presenter") is the Applicant's treating psychiatrist, and XX (the "Co-Presenter") is the Applicant's case manager. 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 and deliberated in private. After deliberations were completed, the Review Panel called the advocate and Co-Presenter with its decision. The advocate conveyed the decision to the Applicant, and the Co-Presenter conveyed it to the Presenter.

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. The Applicant is diagnosed with schizoaffective disorder and has a history of polysubstance dependence. He was admitted to hospital in July 2019, after an alleged riot. He was found naked on public transit and was making bizarre comments to people like "wanting to blow up" people. In the emergency department, he made bizarre comments identifying himself as an inventor. He tested positive for amphetamines, and admits that he was non-compliant with his oral medications at the time. Although he was discharged on extended leave with daily witnessed ingestion (DWI) of his clozapine and divalproex at his place of residence, he wasn't home for his medication about once a week. He missed it two days in a row and was recalled to hospital on October 12, 2019 in order to safely restart the titration of his clozapine; he was also using recreational crystal methamphetamine. During the recall, both of his oral medications were converted to liquid formulation and he was started on Invega long acting depot. He's been relatively stable since his discharge in November 2019. The owners of his residence asked him to leave his housing due to unproven allegations that he did something to the property; in April 2020, with the help of a community worker, he found market housing which he shares with roommates. His father passed away earlier this year.

He has a fairly long history of mental health illness dating back to 2001. He was found not criminally responsible on account of mental disorder (NCRMD) in 2009 in relation to a charge of assaulting a police officer, and was at a forensic psychiatric facility from 2009 to 2014. He was discharged from the forensic hospital in February 2014 to a community transitional care program until January 2019 when he got an absolute discharge from the BC Review Board. For 10 years, from 2009 to January 2019, he was closely monitored through forensic psychiatric services and was noted to be stable while on clozapine and divalproex. He was a voluntary Applicant after he got the absolute discharge, and was referred to a suburban mental health team but didn't want to go there; he said he wanted to follow-up with his GP instead, but didn't do so and was admitted to a city hospital in March 2019. He was running down a busy city shopping street while naked after being non-compliant with his medication for about 2 weeks; in the process of being brought to hospital he attempted to assault a police officer. He told the panel it's a crime to wear clothes, and that the assault occurred in the context of a mild altercation.

The Applicant has previously worked and last worked part-time for a year while he was in forensics; this ended 2 years ago. He is currently in receipt of CPP benefits.

The advocate submitted that because the Applicant did not present with any symptoms at his last mental status examination on June 4, 2020, he does not meet the first criterion under the *Mental Health Act*. The panel rejects this argument based on the wording the Act. The first criterion requires that the Applicant have "a disorder of the mind… ", not that the Applicant exhibit current symptoms and this interpretation is consistent with s. 31 of the Act, which states that Applicants who are certified are deemed to consent to treatment. In 1999, the Act was amended to include

the prevention of the Applicant's substantial mental deterioration as part of the third criterion for involuntary status and also provided for the involuntary treatment of outpatient through extended leave. In order to give effect to these provisions, the better view is that if Applicants are seriously impaired when their illness is not treated, the "seriously impairs the person's ability" requirement in criterion one is satisfied even if the Applicant is not seriously impaired at the time of the review panel hearing or in this case 3.5 weeks before.

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 is currently on Invega (paliperidone) injections and liquid divalproex. Since his discharge from hospital in November 2019, he has had ongoing issues with compliance with his clozapine and divalproex acid, despite being on the DWI program. The pharmacy reported that he wasn't home and missed multiple days when they tried to give him his oral medications. This tended to be worse during the weekends. Given the serious risks associated with stopping and starting clozapine, and his overall unreliability in taking oral medication via DWI by his pharmacy at his home, his clozapine was discontinued in June 2020. The Facility began tapering down the clozapine on June 4, 2020 and he's been off it since June 25. The dose of his Invega injection was also increased on June 4 from 100 mg to 150 mg, which is the maximum dose; he's only had one injection so far on this higher dose. Since his July 2019 admission, he's improved in that he's not exhibited any bizarre or aggressive behaviour, hasn't had any incidences with the police, and was able to deal with the death of his father. He told the panel he feels stable and really good right now. He doesn't have any side effects from the injection, but feels the clozapine made him feel sedated. But when the Presenter pointed out that the clozapine helped him with his sleep because he wasn't sleeping before, he acknowledged sleeping very good since being on it. The Presenter plans to observe him to see if the current medication regimen is effective and whether he continues to remain well on the long acting injection. He's only been off clozapine for 4 days, and on the higher dose of the injection since June 4. He was stable on clozapine and divalproex acid when he was at forensics for 10 years. The Facility also plans to help him find work and help him maintain his current independent living situation. If decertified, he'd like to get out of BC and go to live in another province or in another country.

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 had 2 admissions in 2019 (March, July), not including a recall in October 2019. He has a history of medication non-compliance, leading to relapse of his mental health, including psychosis, increased agitation, bizarre behaviour, and significant aggressive behaviour towards others. Following his absolute discharge from the B.C. Review Board in January 2019, he was admitted to hospital in March 2019 and July 2019, both in the context of medication non-compliance. He assaulted a police officer in 2009 which led to an assault charge and 10 years in forensics, and attempted to assault a police officer in March 2019. He's also been tasered when he's decompensated. The police brought him to hospital twice in 2019 after he was found naked in public, and on one of these occasions he said he wanted to blow up people. As explained in *McCorkell v. Riverview Hospital*, [1993] B.C.J. No 1518, "protection" in section 22 of the *Mental Health Act* goes beyond physical dangerousness and need not

be evidenced by a physical blow; threats or delusions alone can be evidence of a need for protection.

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. The Applicant said at the hearing that if he is decertified, he will discontinue both of his medications (the Invega injections and the divalproex liquid) and will not follow-up with the Facility. As the Presenter explained, his insight into his medical disorder and need for treatment is superficial. The Applicant asked for a review panel because he feels he's ready for discharge; he said he's stable now and that "we should take advantage of it". He attributes his stability from 2009 to January 2019 to being comfortable in the environment and close to his place of residence; he said he was hospitalized last July because he was in a part of the city just prior and out of his element. He believes he'll be successful without treatment if he spends a lot of time at home and maintains day-to-day activities (e.g. cutting the lawn). He also has a history of non-compliance both as a voluntary and involuntary Applicant. For example, he was non-compliant as a voluntary Applicant just prior to his March and July 2020 admissions. When he was placed on extended leave following his July 2020 hospitalization he was recalled in October 2019 when he missed it two days, and afterwards he continued to be non-compliant on a weekly basis. In June 2020, the Presenter decided to discontinue his clozapine due to the risks of stopping and starting it, and switched him to divalproex liquid. When the Applicant was asked at the hearing if he agreed with his diagnosis, he said he wouldn't call it a mental illness because he's not suicidal and that last time he didn't feel well was years ago when he was at a forensic psychiatric hospital; when asked about his symptoms at that time, he said he just felt dread of being institutionalized. He declined a referral to a suburban mental health team following his absolute discharge and said he'd follow-up with his GP; however, he wasn't able to and was readmitted on March 2019. On a positive note, it appears he hasn't used substances since last October.

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 June 2020.

Lisa Wong

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