

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 “Case Presenter”, the Facility 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 references *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) in support of whether evidence was in “harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place in those conditions”.
- This decision references *McCorkell v. Riverview Hospital*, [1993] B.C.J. No 1518 (S.C.) that “protection” in s. 22 of the *Mental Health Act* goes beyond physical dangerousness and need not be evidenced by a physical blow; threats or delusions can also support a need for protection.

Date of Hearing: June 2020

INTRODUCTION

The 30-year-old Applicant has been involuntarily detained under s. 22 of the *Mental Health Act* (the “Act”) since March 15, 2020 and is currently being followed by the community health clinic “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 issues were raised.

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 24, 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. XX (the "Presenter") is the Applicant's treating psychiatrist, and has been treating her since July 2018. Ms. 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 Co-Presenter and the advocate with its decision. The Co-Presenter conveyed the decision to the Presenter, and the advocate conveyed it to the Applicant.

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 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 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 schizophrenia and substance use disorder. She was admitted from October 30 to November 11, 2017, and at that time was worried that “aliens from outer space” that were out to harm her; she reported hearing “alien voices chronically derogating her and trying to control her energies”. She believed her neighbours were “aliens” who threatened to kill her. [NOTE – many of the details of the Applicant’s history were edited out of this summary, for privacy reasons].

At the hearing, the Applicant agreed with her diagnosis, but disagreed with much of the information in the review panel note, e.g. that she during her last admission (March to April, 2020), she said there was an alien in her room that was hurting her and that she wanted to stop it by overdosing on opioids or jumping out a window. She told the panel she never said this. She said doctors and nurses wrote down what they thought she said or what they thought she was going to do, and not what she actually said. The panel considered whether the Applicant’s evidence was in “harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place in those conditions” *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) at 357, and found that it was not. The panel prefers the evidence from the Facility, which was based on reports of various health professionals made contemporarily with the events and in the normal course of their employment. Moreover, she believes the Presenter and Co-Presenter are trying to help her. Her statement about aliens is similar/consistent with her 2017 statements that aliens were threatening to kill her.

She’s been living in the same building for the last 3-4 years, which is staffed 24/7. Meals there are available for residents, and she is seen by housing staff at least once a day during mealtime. She’s been on methadone for about a year, which is delivered at her home by a pharmacy and administered by daily witnessed ingestion.

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 Abilify Maintena (300 mg injections administered every 4 weeks), as well as methadone which is administered by pharmacy at her housing by daily witnessed ingestion. The Presenter said she’s improved with antipsychotic medication in she is no longer thought disordered or agitated. When she was asked if she feels safe at her apartment now, she replied “yeah guess so”. He described her as being at baseline and said there’s almost an absence of any delusional ideas or hallucinations, and that they’re not influencing her behaviour in the community or at her housing. She’s pleasant and the Facility has relatively good rapport with her. She agrees that she’s improved, but attributes the improvement to the passage of time, i.e. growing out of issues such as hallucination and hearing voices, and overcoming them. She said she’s naturally getting better without medication, and although she still

hallucinates, they're less transparent now (e.g. 35% transparent versus 100% transparent); she said she continues to hear voices. Although her primary complaint regarding the medication is weight gain, she also complains about body pain when moving/walking, being unable to get out of bed in the morning due to stiffness and soreness, acid reflux, and depression. The Presenter said Abilify is less likely to cause weight gain compared to other antipsychotic medications, but is agreeable to changing her medication. She would like to be Ativan or Wellbutrin, which haven't caused her weight gain in the past, but the Presenter said that neither is indicated for schizophrenia and that she needs to be on an antipsychotic medication. He is willing to work with her on her medication and said all options are on the table, including oral medication; however, he feels she should be on extended leave and has concerns about her compliance; e.g. when her extended leave lapsed earlier this year, she discontinued treatment and was admitted in March 2020.

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 had 3 admissions since 2017, including 2 this year alone. The Presenter said that if she is decertified and stops her medication, there is a high likelihood that she will substantially deteriorate and require readmission. For example, when her medication was switched from injectable Abilify to oral Abilify in October 2019, she was readmitted on February 1, 2020. Likewise, when her extended leave lapsed after her February 2020 discharge from hospital, she discontinued treatment and was readmitted on March 16, 2020. The Presenter further said that her psychiatric admissions are getting longer and her symptoms more severe with the passage of time; e.g. her admission October 2017 admission was 12 days, her February 2020 admission was 2.5 weeks, and her March/April 2020 admission was 3.5 weeks. Moreover, she has a history of self-harm, e.g. she armed herself with a knife due to paranoia (2017), experienced severe self-neglect to the point of ripping out her hair and not eating/drinking (2020), and overdosed on opioids twice (2018). She recently said there was an alien in her room that was hurting her and that she wanted to stop this by "overdosing on opioids or jumping out of a window" (2020). As explained in *McCorkell v. Riverview Hospital*, [1993] B.C.J. No 1518 (S.C.), "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 can also 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. At the hearing, the Applicant said she'll discontinue her injectable Abilify but is willing to take oral Abilify and continue seeing the Facility. The panel wasn't persuaded that she would comply with oral Abilify as a voluntary Applicant, as she also said she wanted to get off Abilify and all drugs she gains weight on by getting off extended leave. After she switched from injectable to oral Abilify in October 2019, she became inconsistent with her medication, developed prominent psychotic symptoms and severe self-neglect and required readmission February 1, 2020. Although a large number of blister-packed medications were found in her room at the time of her admission, she said at the hearing that she "never one time" forgot to take her medication. When her extended leave lapsed in late February or early March 2020, she dropped out of treatment and was admitted on March 16, 2020. She told the

panel she doesn't believe her medication helps her and that she doesn't see a correlation between her improvement and the medication. Although she would prefer to be on Wellbutrin and/or Ativan, she said neither have helped her with her hallucinations or the voices she hears, and the Presenter said they aren't indicated for schizophrenia. Her advocate suggested this criterion would be met if she is on oral Abilify that is delivered daily to her to her home, along with her methadone, which is administered by daily witnessed ingestion. Although the Presenter is willing to work with her on her medication and said all options are on the table, he feels she should remain on extended leave as she was non-compliant the last time she was prescribed oral Abilify (October 2019 to January 2020), and when her extended leave lapsed.

On a positive note, the Applicant has abstained from substance use since February 2020. She's been on methadone for about a year, and says it's helped her stay away from substances. She said that before February 2020, the last time she abstained was "a long time ago, years ago". But she believes cocaine and crystal methamphetamine helps make her schizophrenia disappear, which the Presenter disagrees with; she last used these substances in January 2020. They agree however that ecstasy and acid make it worse; the last time she took these substances was when she was a teenager.

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.