

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

NICHOLAS JUDSON RINNE,  
*Petitioner,*

*v.*

PSYCHIATRIC SECURITY REVIEW BOARD,  
*Respondent.*

Psychiatric Security Review Board  
991597; A160482

Argued and submitted February 5, 2018.

Harris S. Matarazzo argued the cause and filed the reply brief for petitioner. On the opening brief was Susan D. Isaacs.

Joanna L. Jenkins, Assistant Attorney General, argued the cause for respondent. Also on the brief were Ellen F. Rosenblum, Attorney General, and Benjamin Gutman, Solicitor General.

Before Hadlock, Presiding Judge, and DeHoog, Judge, and Aoyagi, Judge.

PER CURIAM

Reversed and remanded.

## PER CURIAM

Petitioner appeals, requesting that we reverse and remand an order of the Psychiatric Security Review Board (PSRB) denying his 2015 request for discharge from PSRB jurisdiction and continuing his commitment to the Oregon State Hospital. We recently reversed and remanded a PSRB order denying petitioner's 2017 request for discharge. *Rinne v. PSRB*, 297 Or App 549, 443 P3d 731 (2019) (*Rinne II*). As he did in *Rinne II*, petitioner argues that PSRB's determination that he remains subject to PSRB jurisdiction is not supported by substantial evidence. For largely the same reasons we expressed in *Rinne II*, we agree with petitioner. As a result, we reverse and remand PSRB's order asserting continuing jurisdiction over petitioner.

Although the two orders are based on similar records,<sup>1</sup> PSRB's 2015 order is not identical to its 2017 order. We conclude, however, that the differences are not material and thus do not cure the deficiencies that we identified in *Rinne II*. For example, the 2015 order finds additional qualifying diagnoses and risks of danger beyond those identified in the 2017 order, but—like the 2017 order—the 2015 order fails to demonstrate a relationship between petitioner's diagnoses and his risk of dangerousness. More specifically, as in *Rinne II*, there is no evidence that any of petitioner's qualifying diagnoses *cause* him to be a substantial danger to others, and PSRB's findings of fact here do not even purport to find that nexus.<sup>2</sup> Nevertheless, PSRB concluded that petitioner's qualifying mental disease or defect “renders him” a substantial danger to others.

As we noted in *Rinne II*, it is evident that PSRB equates its determination that petitioner's qualifying disorder “renders” him dangerous with a determination that the two are causally related. But there are no findings from

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<sup>1</sup> The record before PSRB in *Rinne II* included the record from this case, as well as post-2015 materials. Different testimony was presented at each hearing, but, based on our review, the 2015 testimony did not differ substantively from that presented in 2017.

<sup>2</sup> Instead, PSRB found that the state had sustained its burden of proving that petitioner “continues to be affected by a mental disease or defect *and* continues to be a substantial danger to others \*\*\*.” (Emphasis added.)

which the conclusion that such a nexus exists could logically follow. Moreover, even if PSRB's findings *could* support that conclusion, the 2015 order, like the order we considered in *Rinne II*, fails to adequately explain PSRB's reasoning; that is, it does not explain how the facts of petitioner's diagnoses and dangerousness could lead to a conclusion that there exists a causal nexus between the two. In its briefing on appeal, PSRB attempts to supply that reasoning, but, as we did in *Rinne II*, we reject such an attempt. "[I]t is PSRB's obligation to provide its reasoning in its order; we will not speculate as to what PSRB's reasoning might have been, nor can we rely on reasoning PSRB might belatedly provide in its briefing on appeal." 297 Or App at 563. Thus, we conclude that PSRB's 2015 order is not supported by substantial evidence or reason and, accordingly, reverse and remand. See ORS 183.482(8)(c) ("The court shall set aside or remand the order if the court finds that the order is not supported by substantial evidence in the record.").

Reversed and remanded.