



The Right to Refuse Mental Health Treatment:

A Therapeutic Jurisprudence Analysis

Bruce J. Winick*

Introduction

The controversy concerning the recognition and definition of a right to refuse mental health treatment has largely ignored the question of whether such recognition would be therapeutically beneficial or detrimental to the patient. Would such recognition lead to refusal of needed treatment so that patients will "rot with their rights on," as some have suggested?¹ Will allowing offenders the choice whether to participate in correctional rehabilitation programs increase recidivism? Will patients forced to accept mental health treatment over objection improve and come, in time, to thank their doctor, retrospectively approving beneficial treatment they never would have accepted voluntarily?² On the

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Preliminary versions of this article were presented at meetings of the International Academy of Law and Mental Health and the American Psychology-Law Society, and I appreciate the comments of colleagues at these meetings. I also appreciate the research assistance of Ingey Golden and Karen Kaminsky. This article, in a somewhat revised form, will appear as a chapter in my forthcoming book, *THE RIGHT TO REFUSE MENTAL HEALTH TREATMENT: A CONSTITUTIONAL AND THERAPEUTIC JURISPRUDENCE ANALYSIS*.

¹See, e.g., Appelbaum & Gutheil, *The Boston State Hospital Case: "Involuntary Mind Control," the Constitution, and the "Right to Rot,"* 137 AM. J. PSYCHIATRY 720 (1980); Gutheil, *In Search of True Freedom: Drug Refusal, Involuntary Medication, and "Rotting with Your Rights On,"* 137 AM. J. PSYCHIATRY 327 (1980) (editorial).

²See, e.g., A. STONE, *MENTAL HEALTH LAW: A SYSTEM IN TRANSITION* 69-70 (1975) (describing this reaction as the "thank-you" theory); D. WEXLER, *MENTAL HEALTH LAW* 45-48 (1981) (analyzing the "thank you" theory in context of narcotics abusers); Gove & Fain, *A Comparison of Voluntary and Committed Psychiatric Patients*, 34 ARCH. GEN. PSYCHIATRY 669, 673 (1977); Kane, Quirk, Rifkin, Wegner, Rosenberg & Borenstein, *Attitudinal Changes of Involuntarily Committed Patients Following Treatment*, 40 ARCH. GEN. PSYCHIATRY 374, 376 (1983); Schwartz, Vingiano & Beziganian-Perez, *Autonomy and the Right to Refuse Treatment: Patients' Attitudes After Involuntary Medication*, 39 HOSP. & COMMUNITY PSYCHIATRY 1049 (1988) (empirical study showing that medication refusers treated over objection, if rehospitalized, would assent to drug treatment); but see Beck & Golowka, *A Study of Enforced Treatment in Relation to Stone's "Thank You" Theory*, 6 BERKE. CAL. & L. 337, 302 (1988) (empirical study of involuntarily hospitalized patients showing no evidence to support "thank you" theory in 62% of cases).

Right To Refuse Mental Health Treatment

Janet L. Davies, Ellen Hastings Janosik



Right To Refuse Mental Health Treatment:

The Right to Refuse Mental Health Treatment Bruce J. Winick, 1997-01-01 The Right to Refuse Mental Health Treatment is the most comprehensive analysis in print of the legal issues raised by involuntary treatment Under our legal system the state has the right to impose mental health treatment on certain people treatment that includes everything from psychotropic medication to shock therapy to psychosurgery This book provides a systematic analysis of the mental health treatment techniques and the constitutional issues implicated by involuntary treatment **Risk Management in Health Care Institutions** Florence Kavalier, Allen D. Spiegel, 2003 Risk management for health care institutions involves the protection of the assets of the organizations agencies and individual providers from liability A strategic approach can result in significant cost savings Risk Management in Health Care Institutions A Strategic Approach offers governing boards chief executive officers administrators and health profession students the opportunity to organize and devise a successful risk management program Experts in risk management have contributed comprehensive up to date syntheses of relevant topics to assist with practical risk management strategies **Mental Health Practice and the Law** Ronald Schouten, 2017-03-31 Mental health professionals more than any other clinicians encounter legal issues on a regular basis This is a book for anyone in the field at any stage in their training or practice who has ever found themselves scratching their head in confusion or dreading that they will expose themselves to liability as they navigate the complexities at the interface of law and mental health Written by established experts and the rising stars of the next generation the 16 chapters in this book offer readers a basic understanding of legal principles encountered in clinical practice as well as practical advice on how to manage situations at the interface of law and clinical practice Using case examples and clear language this book helps clinicians understand the underlying principles behind the legal requirements of clinical care It aims to enhance the reader's knowledge of legal issues and ability to deliver good clinical care when those issues are encountered This book is unique in that it is first and foremost for mental health clinicians in training and those already in practice While it is not a textbook for lawyers or forensic clinicians forensic specialists and other professionals who encounter mental health issues in their work such as law enforcement professionals will benefit from its practical and clear discussion of legal and mental health issues **Legal Issues in Mental Health Care** B.A. Weiner, R. Wettstein, 2013-06-29 I OVERVIEW Legal Issues in Mental Health Care is aimed at the mental health clinician who provides services on either an inpatient or an outpatient basis It is written for psychiatrists psychologists social workers nurses and other therapists to help them understand and manage legal issues in their daily practice The issues covered apply to therapists who work for an agency or hospital as well as those who work independently The book is meant to serve as a handbook but it also provides a quick resource as legal questions arise which are related to the obligations of the therapist It addresses the legal issues that confront the clinician It is not aimed at the clinician who specializes in forensic mental health issues because the information provided does not reach that level of detail

or sophistication Nor is it aimed at the scholar because our goal is to provide practical information in a clear and concise format We have not addressed the wide array of laws protecting the mentally disabled from discrimination most notably the Americans with Disabilities Act 1990 and the Fair Housing Act Most states also have laws that prohibit discrimination in employment services and housing These issues are beyond the scope of this book because we are addressing the legal issues that arise in providing care rather than the rights of mentally disabled persons

11 ORGANIZATION OF THE BOOK

The book consists of eleven chapters and a Glossary of Legal Terms

Rethinking Rights-Based Mental Health Laws

Bernadette McSherry, Penny Weller, 2010-08-16 Mental health laws exist in many countries to regulate the involuntary detention and treatment of individuals with serious mental illnesses Rights based legalism is a term used to describe mental health laws that refer to the rights of individuals with mental illnesses somewhere in their provisions The advent of the United Nations Convention on the Rights of Persons with Disabilities makes it timely to rethink the way in which the rights of individuals to autonomy and liberty are balanced against state interests in protecting individuals from harm to self or others This collection addresses some of the current issues and problems arising from rights based mental health laws The chapters have been grouped in five parts as follows

- Historical Foundations
- The International Human Rights Framework and the United Nations Convention on the Rights of Persons with Disabilities
- Gaps Between Law and Practice
- Review Processes and the Role of Tribunals
- Access to Mental Health Services

Many of the chapters in this collection emphasise the importance of moving away from the limitations of a negative rights approach to mental health laws towards more positive rights of social participation While the law may not always be the best way through which to alleviate social and personal predicaments legislation is paramount for the functioning of the mental health system The aim of this collection is to encourage the enactment of legal provisions governing treatment detention and care that are workable and conform to international human rights documents

The Risk Manager's Desk Reference Barbara J. Youngberg, 1998 The Risk Manager's Desk Reference Second Edition is the definitive guide to ensure quality in your organization and save thousands of dollars in costly lawsuits It puts at your fingertips the information you need on integrating quality assurance and risk management understanding risk management in a managed care environment and program development With this book you learn how to integrate patient support services and facilitate physician participation This handy reference offers concise information on your most challenging concerns and various ethical issues

Mental Health and Psychiatric Nursing Janet L. Davies, Ellen Hastings Janosik, 1991

Clinical Psychiatry and the Law Robert I. Simon, 2003-07-01 Updates to this edition Clinical and legal issues in the use of clozapine in treatment of schizophrenia Clinical information and new cases involving tardive dyskinesia Changes in civil and criminal law regarding right to refuse treatment An update of clinical guidelines and legal regulations of ECT An update on suicide risk assessment and new legal cases involving suicide An update on violence risk assessment and new legal cases involving the duty to protect endangered third parties New statutes and criminal sanctions regarding sexual misconduct New statutes

limiting the liability of therapists toward third parties who are injured or killed by patients Changes in the relationship between psychiatrists and nonmedical therapists Regulatory developments regarding physician impairment Numerous tables and an updated glossary of legal terms New section on common terms and abbreviations in legal citations

Contemporary Debates in Bioethics Arthur L. Caplan, Robert Arp, 2013-09-10 Contemporary Debates in Bioethics features a timely collection of highly readable debate style arguments contributed by many of today's top bioethics scholars focusing on core bioethical concerns of the twenty first century Written in an engaging debate style format for accessibility to non specialists Features general introductions to each topic that precede scholarly debates Presents the latest cutting edge thoughts on relevant bioethics ideas arguments and debates *Essentials of Psychiatric Mental Health Nursing - Revised Reprint - E-Book* Elizabeth M. Varcarolis, 2014-01-10 NEW Chapter on stress identifies symptoms and triggers of stressors NEW Selected Concept boxes include pertinent information at the beginning of every chapter NEW Cultural Considerations sections reinforce the principles of culturally competent care NEW Additional discussions of QSEN are incorporated in the Nursing Process and QSEN chapter NEW Opening unit pages include photos and information about the most important contributions of psychiatric mental health nursing pioneers NEW Updated Table of Contents improves content flow and eliminates redundancy

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