



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

*Professor of Law, University of Miami School of Law, Coral Gables, Florida, P.O. Box 248087, 33124-8087, U.S.A.

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 Inge 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

J Dewey



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 **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 **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. *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.

Refusing Care Elyn R. Saks, 2024-05-31 It has been said that how a society treats its least well off members speaks volumes about its humanity. If so, our treatment of the mentally ill suggests that American society is inhumane, swinging between overintervention and utter neglect. We sometimes force extreme treatments on those who do not want them and at other times discharge mentally ill patients who do want treatment without providing adequate resources for their care in the community. Focusing on overinterventionist approaches, *Refusing Care* explores when if ever the mentally ill should be treated against their will. Basing her analysis on case and empirical studies, Elyn R. Saks explores dilemmas raised by forced treatment in three contexts: civil commitment, forced hospitalization for noncriminals, medication and seclusion and restraints. Saks argues that the best way to solve each of these dilemmas is paradoxically to be both more protective of individual autonomy and more paternalistic than current law calls for. For instance, while Saks advocates relaxing the standards for first commitment after a psychotic episode, she also would prohibit extreme mechanical restraints such as tying someone spread eagled to a bed. Finally, because of the often extreme prejudice against the mentally ill in American society, Saks proposes standards that as much as possible should apply equally to non-mentally ill and mentally ill people alike. Mental health professionals, lawyers, disability rights activists and anyone who wants to learn more about the way the mentally ill are treated and ought to be treated in the United States should read *Refusing Care*.

Psychiatric Mental Health Nursing Patricia O'Brien, 2008-08-15 *Psychiatric Nursing* provides a focused, thorough introduction to psychiatric mental health nursing, including nursing assessment and intervention of the most common mental disorders as classified in the DSM-IV. This text guides nurses in managing special populations, clarifying neurobiologic theories and conducting psychiatric nursing.

evaluations Additionally Psychiatric Nursing presents the latest on psychotropic drugs addresses legal and ethical concerns within psychiatric nursing and discusses complementary and alternative therapies Perfect for undergraduate courses the text features Learning Objectives Key Terms Critical Thinking Questions Case Studies Clinical Examples Care Plans Diagnostic Criteria Patient and Family Education Internet Resources Implications for Evidence Based Practice Client Teaching Guides

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 Youth Violence and Delinquency Frank P. Williams, Marilyn D. McShane, 2007-05-30 Juvenile crime and violence has always piqued the public's interest Indeed each generation of Americans tends to define the youth crime problem as more serious than any previous generation Even though juvenile homicides have been decreasing since the mid 1990s the media is still quick to provide dramatic examples of juvenile monsters who are terrorizing their communities Shootings at school gang banging and trafficking drugs school bullies and charging juveniles as adults are subjects that have recently received wide media coverage This three volume set on the nature incidence consequences and treatment of youth crime and violence will help readers understand the true nature of youth crime and violence from a variety of perspectives Each volume covers a different area and experts write on topics ranging from sex offending to fire starting from gangs to guns from juvenile probation to charging youths as adults from mandatory mental health treatment to police in school settings and more What drives a teenager to steal To kill Why does youth crime and violence occur Why are youths such vulnerable targets What can be done to stop youth offenders and what can be done to help youthful victims How does the criminal justice system respond What do communities do to punish and protect youths What can schools do to intervene All these questions and more are answered in this set on this timely and important topic Our youth are our most precious commodity and protecting vulnerable children as well as helping offenders is of paramount importance for steering them toward safe and productive lives These volumes help readers better understand the causes and consequences of youth violence and crime and consider ways to address the problems *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 **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

Mental Health Services: A Public Health Perspective Bruce Lubotsky Levin MD,Kevin D. Hennessy,John Petrila JD, LLM,2010-07-30 This revised and expanded third edition text utilizes a public health framework and the latest epidemiological treatment and service systems research to promote a comprehensive understanding of the organization financing and delivery of mental health and substance abuse services in the United States Written by national experts in the field this timely work will provide policymakers administrators clinicians and public health and behavioral health graduate students with the knowledge base needed to manage and transform mental health service systems both nationally and locally The book is unique in providing a public health framework of the most significant issues facing mental health policy makers administrators planners and practitioners It combines issues e g evaluation law ethnicity that extend across different age groups treatment settings and disorders with issues that are population and disorder specific The publication of this book is timely for those involved with the debate over national health care reform legislation and provides important and timely information on populations at risk for mental disorders services and systems issues for those responsible for implementing policies and programs resulting from this reform effort *Principles and Practice of Forensic Psychiatry, 2Ed* Richard Rosner,2003-02-28 The second edition of this award winning textbook has been thoroughly revised and updated throughout Building on the success of the first edition the book continues to address the History and Practice of Forensic Psychiatry Legal Regulation of the Practice of Psychiatry Psychiatry in relation to Civil Law Criminal Law and Family Law Important sections such as Special Issues in Forensic Psychiatry Law and the Legal System and Landmark Cases in Mental Health Law

are included Designed to meet the needs of practitioners of forensic psychiatry for residents in forensic psychiatry and those preparing for the specialty examination in Forensic Psychiatry of the American Board of Psychiatry and Neurology this volume will also answer the many questions faced by mental health professionals mental health administrators correctional health professionals and correctional health administrators attorneys judges probation and parole officers and administrators all of whom at one time or another require a substantive presentation of the entire field of forensic psychiatry in the USA

Psychiatric Mental Health Nursing Made Easy: A Beginner's Guide Patty Edwin Steel , Psychiatric Mental Health Nursing Made Easy A Step by Step Guide by Patty Edwin Steel is your essential resource for mastering the complexities of psychiatric mental health nursing Designed for both beginners and experienced nurses this comprehensive guide offers clear practical insights into understanding and treating mental health disorders Inside this book you ll find detailed explanations of common mental health conditions such as anxiety depression bipolar disorder and schizophrenia Learn effective therapeutic communication techniques how to conduct thorough assessments and diagnoses and the latest in psychopharmacology and psychotherapy Patty Edwin Steel draws on her extensive experience to provide real life examples and practical advice ensuring you can apply what you learn directly to your practice Special sections on caring for children adolescents and elderly patients as well as tips for maintaining cultural competence make this guide indispensable for today s diverse healthcare environment Discover strategies for preventing burnout and managing stress and find support through professional networks and further reading Psychiatric Mental Health Nursing Made Easy empowers you to deliver compassionate high quality care while advancing your professional growth Whether you re a nursing student or a seasoned professional this book is your ultimate guide to excelling in psychiatric mental health nursing Equip yourself with the knowledge and skills needed to make a profound difference in the lives of those you care for Keywords Psychiatric Mental Health Nursing mental health disorders therapeutic communication psychopharmacology psychotherapy nursing care plans Patty Edwin Steel nursing education burnout prevention stress management cultural competence nursing guide

Liberation by Oppression Thomas Szasz, 2017-09-29 Originally called mad doctoring psychiatry began in the seventeenth century with the establishing of madhouses and the legal empowering of doctors to incarcerate persons denominated as insane Until the end of the nineteenth century every relationship between psychiatrist and patient was based on domination and coercion as between master and slave Psychiatry its emblem the state mental hospital was a part of the public sphere the sphere of coercion The advent of private psychotherapy at the end of the nineteenth century split psychiatry in two some patients continued to be the involuntary inmates of state hospitals others became the voluntary patients of privately practicing psychotherapists Psychotherapy was officially defined as a type of medical treatment but actually was a secular medical version of the cure of souls Relationships between therapist and patient Thomas Szasz argues was based on cooperation and contract as is relationships between employer and employee or between clergyman and parishioner

Psychotherapy its emblem the therapist's office was a part of the private sphere the contract Through most of the twentieth century psychiatry was a house divided half slave and half free During the past few decades psychiatry became united again all relations between psychiatrists and patients regardless of the nature of the interaction between them are now based on actual or potential coercion This situation is the result of two major reforms that deprive therapist and patient alike of the freedom to contract with one another Therapists now have a double duty they must protect all mental patients involuntary and voluntary hospitalized or outpatient incompetent or competent from themselves They must also protect the public from all patients Persons designated as mental patients may be exempted from responsibility for the deleterious consequences of their own behavior if it is attributed to mental illness

Law, Psychology, and Justice Christopher R. Williams, Bruce A. Arrigo, 2002-01-01 A provocative critique of the relationship between the legal system and psychology that uses chaos theory to offer a more humane alternative

Mental Health and Social Problems Nina Rovinelli Heller, Alex Gitterman, 2010-11 Mental Health and Social Problems is a textbook for social work students and practitioners It explores the complicated relationship between mental conditions and societal issues as well as examining risk and protective factors for the prevalence course adaptation to and recovery from mental illness The introductory chapter presents bio psycho social and life modeled approaches to helping individuals and families with mental illness The book is divided into two parts Part I addresses specific social problems such as poverty oppression racism war violence and homelessness identifying the factors which contribute to vulnerabilities and risks for the development of mental health problems including the barriers to accessing quality services Part II presents the most current empirical findings and practice knowledge about prevalence diagnosis assessment and intervention options for a range of common mental health problems including personality conditions eating conditions and affective conditions Focusing throughout upon mental health issues for children adolescents adults and older adults each chapter includes case studies and web resources This practical book is ideal for social work students who specialize in mental health

Punishing the Mentally Ill Bruce A. Arrigo, 2012-02-01 A powerful sophisticated and original critique on how the disciplines of law and psychiatry behave and on how the mental health and justice systems operate Punishing the Mentally Ill reveals where how and why the identity and humanity of persons with psychiatric disorders are consciously and unconsciously denied Author Bruce A. Arrigo contends that despite periodic and well intentioned efforts at reform the current law psychiatry system functions to punish the mentally ill for being different The book synthesizes a wide range of mainstream and critical literature in sociology law philosophy history psychology and psychoanalysis to establish a new theory of punishment at the law psychiatry divide To situate the analysis enduring psycholegal issues are explored including the meaning of mental illness definitions and predictions of dangerousness the ethics of advocacy the right to community based treatment the logic of forensic courtroom verdicts transcarceration and the execution of mentally disordered offenders among others Punishing the Mentally Ill shows that current mental disability law research programming and policy are

seriously flawed and that wholesale reform is necessary if the goals of citizen justice social well being and humanism are to be realized Handbook of Treatment for Eating Disorders David M. Garner,Paul E. Garfinkel,1997-04-18 Updated to reflect recent DSM categorizations this edition includes coverage of binge eating disorder and examines pharmacological as well as psychotherapeutic approaches to treating eating disorders

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