Massachusetts Mental Health Center

Harvard Medical School

Program in Psychiatry and the Law

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Description of the Program in Psychiatry and the Law

APPENDIX "A"

Description of the Program in Psychiatry and the Law (PIPATL)

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The Program in Psychiatry and the Law (hereafter, "the Program) was founded in 1979 by Paul Appelbaum, M.D. (now Secretary of the American Psychiatric Association) during his third year of residency as Chief Resident in Legal Psychiatry. After expiration of a three year grant from the National Institute of Mental Health that started the Program, the Massachusetts Mental Health Center elected to continue the Program on an unfunded basis ever since then. For the past 18 years, the Program has been under the co-directorship of Thomas G. Gutheil, M.D., Professor of Psychiatry at the Harvard Medical School and as a staff member of the Massachusetts Mental Health Center; and Harold Bursztajn, Associate Professor of Psychiatry at the Harvard Medical School and as a private practice clinician. The Program is active to date and nearing the end of its second decade of active functioning.

The Program has three current functions or aspects. First, the Program is a clinical consultation service with several manifestations of its own. The Program performs annual risk management conferences for the benefit of the local and national mental health (and general medical-surgical) community to improve methods of practice, both to protect patient welfare and to decrease the risk of practitioner liability. Members of the Program also travel nationally to lecture on medically and legally complex issues or risk management principles as well. The present Amicus brief is an outgrowth of this consultative function.

The second function of the Program is that of a clinical research unit. The Program is proud of having performed a number of studies in medicolegal areas that are unprecedented in either the clinical or forensic field. To cite a number of examples, the Program performed the first study in history of how judges make the actual commitment decision in vivo, using a group of six Massachusetts judges as an example. The preparation of articles reviewing these studies, and also contributing more theoretical material, has been one of the areas of intense activity in the Program, with a program-wide publication rate averaging six papers a year for the last decade —

it is one of the most productive units at the Massachusetts Mental Health Center.

Third, the Program is a "think tank" in which some 25 professionals certified in all the mental health disciplines (psychiatry, psychology, social work), and others in fields such as law, criminology, journalism, philosophy, and ethics, as well as undergraduate and post-graduate students, gather weekly at the Massachusetts Mental Health Center. Discussion during these meetings involves the brainstorming of ideas and concepts related to the interface of psychiatry and law; discussion, analysis and elaboration of legal cases and lawsuits that have been decided in the mental health area; presentation of professional publications for group review and commentary; discussion and resolution by the group of ethical dilemmas encountered by Program members and presented to the group as an "ethics laboratory"; and the selection, design, implementation and analysis of ongoing research.

In addition, Program members, members of the larger Harvard community and individuals anywhere within the medical system have attended the Program meetings and presented thorny ethical and/or medicolegal dilemmas for recommendations as to their resolution. For example, a psychiatrist at a local hospital presented the case of his wife, an anesthesiologist at the same hospital, who had been deprived of due process in an assessment and disposition of a problem of alleged chemical dependence. As a result of presentation of this issue to the Program, relevant suggestions were offered that considerably aided the restoration of consultee and his wife to reasonable, just and ethical management of their difficulties.

In specific ways, the Program provides a model for other kinds of agencies and institutions. First, the "think tank" maintains an open door policy in that anyone is welcome to join, listen, contribute, participate in research or network with other members. We have had persons from undergraduates to clinicians from distant countries such as China, Korea, Japan and Great Britain attend and present their ideas or research for discussion by the group. Concomitant with the open door policy is an egalitarian principle of operation by which everyone is welcome to contribute, be they full professor or undergraduate student. Since the "think tank" usually operates on an "ad hoc" unplanned agenda based on current developments in the mental health and legal fields or current issues involving its members, this means that participants have an equal voice in their views, thoughts and suggestions and input into the brainstorming that goes on.

At a deeper level, the Program serves as an ethics laboratory in which complicated decision making and areas of ethical ambiguity can be illuminated. Examples include a situation in which one member was debating whether it was ethical to accept a role of an expert witness on the defense side in a case of acknowledged physician sexual misconduct. The ethical dissuasion and exploration in this area consumed a number of meetings of the Program.

The Program has innovated in several areas. One of the most significant ones in terms of the Program's functioning has been the inclusion of medical writers as part of the medicolegal "think tank" and research team. We have sought inclusion of capable writers with extensive editorial experience (for example, at one point we had as our official writer the former senior manuscript editor of the New England Journal of Medicine) who become, over time, steeped in the basic reasoning and conceptual underpinnings of the Program and its philosophy. This, in turn, has had, as one it its key results, the high productivity earlier described. The likelihood of successful publication is thus massively increased with the use of these writers as part of the "team.

A second innovation is the introduction of theories of human moral development into the medicolegal context. Moral development includes such issues as the capacity to take the perspective of another person — a factor highly significant in terms of therapeutic empathy and the maintenance of a clinical-therapeutic alliance. The fusion of this novel theme with pre-existing medical and legal issues and conflicts has led to an elaboration of questions of informed consent in a risk management sense, the likelihood of being sued, i.e., which doctors are likely to be sued and which are not, and similar useful investigations.

In the more theoretical realm, the Program's publications have included a large number of "firsts." Examples include the following:

1. The first study of overt drug refusal in contrast to previous studies on noncompliance and drug misuse (note that the original three categories of refusers defined for the first time in the study have since been employed and replicated in the professional literature nationwide) (1);
2. the first paper on countertransference utilization of legalistic arguments as an avoidance of serious engagement in work with chronically or severely mentally ill persons (2);
3. the first study of how judges make the commitment decisions assessed during the actual

decision (3);

4. the first article on the relationship between medicolegal issues and conflicts and the problems of borderline patients who are empirically involved in a significant percentage of litigations in psychiatry (4,5);

5. the first comprehensive article in either the psychiatric or legal literature summarizing and comparing civil and criminal judicial perceptions of the role of antipsychotic medications (6);

6. the first article addressing the response to a "Tarasoff" situation by having the actual patient warn the putative victim (this article has been extremely widely cited in the Tarasoff literature) (7);

7. the first article offering a systematic approach to the use of competence assessment to inform caretakers about a patient's suicidal or homicidal potential and as a preventative to liability in the event of a bad outcome (8);

8. the first article to address the sharing of uncertainty in the informed consent process in a manner which supports the therapeutic alliance (9);

9. the first article on forensic psychiatry for a general medical audience regarding managed health care as a malpractice risk;

10. the first article regarding going beyond autonomy to authenticity in respect to advanced directives under managed health care;

11. the first article on the use of the informed consent process in managed care as liability prevention;

12. the first article in a journal of clinical ethics focused on lessons to be learned from heroic doctors who tended to victims of the Holocaust;

13. the first article comparing doctors' and judges' perceptions of medication risk;

14. the first article in a mainstream psychiatric journal defining the conflicts between fact and expert witnesses (10). This last article received the highest award in the forensic field given jointly by the American Psychiatric Association and American Academy of Psychiatry and Law for the outstanding contribution to the forensic psychiatric literature.

The effects of the Program in terms of its impact on the profession and the literature is captured by a number of facts beyond the wide citation of the Program's work and high

publication rate. Specifically, the three textbooks that emerged from the Program have had a national impact. First is Medical Choices, Medical Chances (11) which represents a decision analytic study of medical decision making and the specific role of uncertainty in influencing that process. This book is recognized as a classic of decision analysis. Second, the Program's first ten years are effectively summarized in the textbook, Decision Making in Psychiatry and Law (12), which has essentially sold out of its first printing. The book traces the vicissitudes of a case of a lawsuit brought after a patient's suicide. Finally, The Clinical Handbook of Psychiatry and the Law received the 1982 Manfred S. Guttmacher Award for outstanding contributions to the forensic psychiatric literature and is the quintessential text for forensic training program and forensic fellowship Board review courses for forensic certification and the like (12).

The Program has had essentially no funding almost since its inception and has survived by volunteer donations of time, the scrounging of resources and direct out-of-pocket payments by various members of the Program. Limited funding at certain points has been available from the Milton Fund and the Dare Institute, but the total numbers are extremely small. Hence, the Program's significant contributions and remarkable productivity have been entirely a result of egalitarian participation, high morale, great personal interest and investment by the members of the Program and use of skilled individuals to perform the tasks.

A list of the most significant publications of the Program is appended.

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