

Court Reverses BPQA Decision, Erases Punishment Given Dr. Eist

Hearing an appeal from Harold Eist, MD of the Maryland Board of Physician Quality Assurance's (BPQA) decision to reprimand and fine him for failure to cooperate with an investigation, Montgomery County Circuit Court Judge Michael D. Mason ruled that the BPQA's sanctions were based BPQA's erroneous interpretations of rulings in a prior case. Judge Mason lifted those sanctions, which included a \$5,000 fine and a report of the reprimand on the BPQA and National Physicians Registries.

Judge Mason upheld a previous ruling in Dr. Eist's favor by an administrative law judge. BPQA appealed that judge's decision to itself, overturned it, and fined and reprimanded Dr. Eist.

At issue was the question of whether or not BPQA has an absolute right to confidential medical records over the objections of a patient. In Dr. Eist's case, the BPQA issued a subpoena for records of a parent and two children following an accusation by the parent's spouse in the middle of a hotly contested divorce and custody proceeding that Dr. Eist was "overmedicating" the spouse causing the spouse to be "overly psychotic" (sic) and causing a deterioration in the condition of the children. The BPQA issued a subpoena to which Dr. Eist responded by informing BPQA that ethics demanded that he first seek permission of the adult patient and the children's attorney before releasing such information. Dr. Eist informed his adult patient's attorney and the attorney *ad litem* (guardian) for the children, that their clients' psychiatric records were being sought. Both attorneys wrote to the Board indicating they would not

waive their clients' privilege (Dr. Eist could not sent their records.) and that they had no complaints about their care. Further, the children's attorney also informed the Board that she felt the release of records "could be harmful to the children." Several months later, BPQA, with no further contact with the patients or Dr. Eist, then charged Dr. Eist with failure to cooperate. Judge Mason in his oral decision rejected BPQA's absolutist view that whenever it issues a subpoena for mental health records it can get them, even when the patient objects. Judge Mason ruled that, in each case, the need of the Board must be weighed against the need to preserve the confidentiality of the records.

The judge did not agree with Dr. Eist on all points, according the Al Belcuore, JD, Dr. Eist's attorney. Judge Mason did not agree that the Board needed to give notice to Dr. Eist's patients of its desire for their records, or that the Board needed to advise Dr. Eist and his patients of their right to contest the subpoena. He did not agree that the Board had to go to court to enforce its subpoena, as the subpoena said they would do, and seemed to place the obligation on the recipient of a BPQA subpoena to go to court or else be vulnerable to a charge of "failure to cooperate" with the Board's investigation. The ALJ, on the other hand, took the position that the Board's failure to notify the patients and advise them of remedies was a denial of due process and the patients' constitutional rights.

The Washington Psychiatric Society joined this case by filing amicus curiae (friend of the court) briefs with both the Administrative Law Judge and Circuit Court. WPS made clear in its

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brief that the principle of confidentiality is the cornerstone on which psychiatrist/patient relationships are built. Without the guaranteed sanctity of that relationship and the trust that it creates, patients may be unwilling to share their innermost thoughts and feeling with the psychiatrist, thereby hindering their care. Joining WPS in the brief, prepared by James Pyles, JD were the American Psychiatric Association, the American Association of Practicing Psychiatrists, the American Psychoanalytic Association, the Association of American Physicians and Surgeons, Inc., the Baltimore-Washington Psychoanalytic Society, the Maryland Psychiatric Society, and the National Coalition of Mental Health Professionals and Consumers, Inc. The Circuit Court brief is available in the Members Only Section of the WPS web site, www.dcpsych.org. Use your last name as your user name and your APA identification number as your password. ■

The President's Column

By Jeffrey S. Akman, M.D. President



This past year marked the passing of two of the Washington Psychiatric Society's leading psychiatrist-activists. Larry Sack, MD died

suddenly last month (see article on page 4). Jerry Wiener, MD died a year ago this month. Their untimely deaths should lead us to consider our own efforts on behalf of our profession, our patients and their families.

Larry, as a former WPS President, APA Assembly rep and former President of the American Association of Practicing Psychiatrists, battled valiantly against the forces that would restrict access to treatment for those with mental illness. His sustained efforts against managed care and in support of full parity between insurance coverage for mental health care and for physical health care, in many ways, defined the WPS. Jerry, as former President of the APA and the American Academy of Child and Adolescent Psychiatry, was a vocal advocate on behalf of children and the availability of psychiatric services for children and adolescents, an energetic voice within academic psychiatry, and more recently, an outspoken critic of prescription privileges for psychologists.

Recently the APA and President Bush's New Freedom Commission on Mental Health issued two separate reports that validate the efforts and the activism of Larry Sack and Jerry Wiener. The APA's landmark document "A Vision for the Mental Health System" was prepared by an APA Task Force that included two WPS members, Roger Peele, MD and Darrel Regier, MD and was chaired by former WPS member Steven Sharfstein, MD.

Both the APA and the President's Commission paint a disturbing picture that accurately reflects the concerns raised by Larry, Jerry and

the WPS. In its Interim Report to President Bush, the Commission declared that "the mental health delivery system is fragmented and in disarray...lead[ing] to increasing and costly disability, homelessness, school failure and incarcerations. The report described the extent of unmet needs and barriers to care, including:

- Fragmentation and gaps in care for children,
- Fragmentation and gaps in care for adults with serious mental illnesses,
- High unemployment and disability for people with serious mental illnesses,
- Lack of care for older adults with mental illnesses, and
- Lack of national priority for mental health and suicide prevention."

In its report, the APA advocates twelve bedrock principles for a vision for our nation's mental health system. The President's Commission lists six goals and nineteen recommendations to "transform" the mental health system. When considered along with the Surgeon General's Report on Mental Health (1999), psychiatrists, patients and their families have our most well-articulated, compelling platform for activism in history. (See website addresses below to access these documents.)

Larry Sack and Jerry Wiener embraced advocacy and activism as core values of their physicianhood. Each believed that their individual efforts were amplified and enhanced by their membership and involvement in the WPS and the APA. I'm sure that Larry and Jerry would be amused to see the APA and President Bush agreeing on at least one thing—now is the time to join the fight to improve the sorry state of affairs in the mental health delivery system. ■



THE WASHINGTON PSYCHIATRIC SOCIETY News

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ETHICS NOTICE

Oparaguo Udebiuwa, M.D., of Davidsonville, MD, resigned from the American Psychiatric Association and from the Washington Psychiatric Society during the course of an ethics investigation. APA's "Procedures for Handling Complaints of Unethical Conduct" requires that resignations that occur during the course of an ethics investigation be reported in WPSNews and Psychiatric News

APA Network Expands Clinical Science

By Daniel Hicks, MD, DFAPA, Chair WPS CME Committee

The American Psychiatric Association's American Psychiatric Institute for Research and Education's (APIRE) Practice Research Network (PRN) is a research initiative comprised of a nationwide network of psychiatrists who cooperate to collect data and conduct research studies on a variety of clinical and health services delivery issues. APA established PRN in 1993 to strengthen the science base in psychiatry by collaborating with a select group of practicing clinicians in conducting practice-relevant research. PRN research studies have produced informative findings on the current practice of psychiatry, which allow for characterizing patients, treatments, and the systems of care used in psychiatry. PRN also plays a vital role in gathering policy-relevant data.

The ultimate objective of PRN in expanding the clinical science base is to bring about improvements in psychiatric care and to benefit psychiatric patients. Because PRN includes a large number of psychiatrists practicing across the full range of treatment settings, this research infrastructure can be used to study an extensive range of issues. The principal research aims of PRN include 1. Gathering data on specific clinical issues and the decisions facing psychiatrists in order to address gaps in the current research base; 2. Systematically assessing the effectiveness of different treatments and combinations of treatments for specific patient groups. This includes patients who are commonly excluded from clinical trials such as children, the elderly, and patients with comorbid conditions; 3.

Studying the impact of changes in the organization, delivery and financing of care on access, quality and outcomes of psychiatric treatment.

PRN studies are developed and implemented in close collaboration with PRN members. The PRN collects *core data* to track changes in psychiatric practice and systematically provide data on the characteristics of psychiatric patients and the treatments they receive. In addition, PRN members are offered the opportunity to participate in *specific studies* examining a critical clinical or policy issue. Initial findings from PRN have been valuable in assessing the complexity and severity of psychiatric patients; the range of treatments that are used; and the financing mechanisms used to pay for psychiatric services.

Continued on page 4

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IN MEMORIAM

Lawrence Sack, MD

Past President of WPS and the Society's representative in the APA Assembly since 1985, Larry Sack, MD died suddenly of cardiac arrest on August 5, 2003. He was 69. Dr. Sack passed away while on vacation with his family in Martha's Vineyard. Dr. Sack was a psychoanalyst in Washington. He was a founding member and president of the American Association of Practicing Psychiatrists. He advocated fiercely on behalf of his colleagues and patients to ensure access to care and more comprehensive coverage of mental illnesses in the managed care environment. A graduate of Harvard University and Harvard Medical School, Dr. Sack completed his psychiatry residency at the Menninger Foundation in Topeka, KS. In 1977 he graduated from the Baltimore-Washington Institute for Psychoanalysis. He came to Washington in 1966 and spent two years in the Public Health Service before entering private practice.

Described by APA colleagues in the Assembly as "the happy warrior" and one whose commitment to the causes he believed in was unshakable, Dr. Sack is survived by his wife, Sallyann, children Robert Sack, MD of Bethesda, Elizabeth Felber of Hastings-on-Hudson, NY and Kathryn Solomon, MD of Riverdale, NY, and seven grandchildren.

Robert Gillman, MD

Robert Gillman, MD, 84, a psychiatrist and psychoanalyst in private practice in Washington for 50 years died July 1, 2003 at Massachusetts General Hospital after a stroke. Born in Cleveland and raised in New York, Dr. Gillman was a graduate of Yale University and did graduate work in piano at the Juilliard School in New York. In 1950 he graduated from the George Washington University Medical School. He completed his psychiatry residency at Sheppard Pratt Hospital in Baltimore.

Dr. Gillman, a Chevy Chase resident, was director of the Arlington Community Mental Health Center from 1953-57. He maintained his private practice until his death. He held teaching positions at Walter Reed, Catholic University, and George Washington University Medical School. He also worked at the Baltimore-Washington Psychoanalytic Institute as a teaching, supervising and training analyst.

He is survived by four children, Daniel Gillman of Baltimore, Matthew Gillman, MD of Jamaica Plain, MA, Jane Gillman of Austin and David Gillman of Cambridge, MA, a brother and seven grandchildren.

Hugh Mullan, MD

Hugh Mullan, MD, 91, a Washington psychiatrist and early practitioner of group therapy died of congestive heart failure on March 22, 2003 at his home in Washington. Trained as a Freudian psychiatrist, he began practicing group therapy in New York in the 1950s. In the early 1970s he directed the Area C Mental Health Services at DC General Hospital. From 1973 until his retirement in 1986, he was in private practice in Kalorama. He also taught group therapy at Georgetown University where he was a clinical professor of psychiatry and at the Washington School of Psychiatry. In the late 1970s Dr. Mullan was an attending psychiatrist at St. Elizabeths.

Born in New York City, Dr. Mullan graduated from the U.S. Naval Academy and from the Cornell University Medical School. He interned at the U.S. Marine Hospital on Staten Island and served as a medical officer in the Army Air Force during World War II. After the war, he trained in analytical psychiatry at the New York Psychiatric Institute and with Dr. Karen Horney.

He is survived by his wife Mariquita Paez MacManus of Washington, three children Fitzhugh Mullan, MD of Bethesda, Anthony Mullan of Washington and Mariquita Gabriela Mullan, MD of Brookline, MA, and five grandchildren.

John Henry Bouma, MD

Jack Bouma, MD a psychiatrist in private practice for 27 years prior to retirement in 1989 died February 17, 2003 at his home in Kensington of cardiovascular disease. He was 84. Dr. Bouma, from 1957-62 was chief of psychiatry for the Central Intelligence Agency. He supervised a staff doing treatment, screening and research.

Born in Edgerton, MN, Dr. Bouma served as a Navy hospital corpsman at a field hospital in western China during World War II. He received the Bronze Star. After the war, he graduated from the University of Minnesota and its medical school. From 1954-57 he studied at the Menninger School of Psychiatry in Topeka, KS.

Dr. Bouma's survivors include his wife, Adriana Laura de Haan Bouma of Kensington, five children, four brothers, two sisters and 11 grandchildren. ■

Clinical Science continued from page 3

PRN data have recently been used to illuminate policy-relevant issues to psychiatrists. For example, data from the PRN Study of Psychiatric Patients and Treatments (SPPT) indicate that the significant financial disincentives for psychotherapy inherent in current fee structures are a major factor for psychiatrists and other mental health providers in reducing their ability to offer the full range of evidence-based treatments - particularly those involving psychosocial treatment components. Psychiatrists earn approximately 36% less if they provide one outpatient individual psychotherapy with medical evaluation and management instead of three medication management visits.

In addition, the APIRE PRN 1999 Study of Psychiatric Patients and Treatments indicates that one third of psychiatric patients are currently not working due to a mental or physical disability, with patients with schizophrenia (67%), substance use disorders (43%), and major depression (24%) among the most work-impaired.

Currently, the PRN, in collaboration with the American Academy of Family Physicians and the American College of Physicians, is examining implementation of a new measure of depression, the Patient Health Questionnaire (PHQ-9), in routine practice settings. The PHQ-9 is a 9-item patient reported depression severity and clinical management tool for patients with Major Depression Disorder. There is evidence that the PHQ-9 can be useful for psychiatrists, particularly given their increasing time constraints, in improving the management and treatment of patients with depression.

Psychiatrists interested in joining or learning more about PRN may email apaprnrn@psych.org or call PRN central office staff at 800-713-7123. ■

News from the Region

District To Break Ground on New Hospital at St. Es

By Steven Steury, MD, DFAPA,
Chief Clinical Officer, DC Dept. of
Mental Health

The Department of Mental Health is now two years old. Significant changes have been made in providing care to our patients in the public mental health system. Most visible are new facilities that provide attractive settings for both patients and clinical staff. Ground breaking for the new Saint Elizabeths is scheduled for 2004. Other facility improvements within the Department include new community facilities at 35 K St., NE and Howard Rd., SE. An \$8 million renovation of the Spring Road community facility is planned, and a new multicultural facility above the 14th and U Street Metro station is under construction.

As patients have exercised their right to leave state hospitals to live in the community, new and different rehabilitation services have become necessary to promote their recovery. The Department is working to develop these community-based services. But even after these new services are in place, the need for psychiatrists - well trained, dedicated community psychiatrists will not change. Best clinical practice is based on an accurate diagnosis and appropriate medications. Mental health systems cannot function without committed psychiatrists. We encourage the WPS to support actively psychiatrists who work in public psychiatry and to stimulate the interest and training of residents.

Despite the work of many highly trained and committed clinicians that have diligently served the mentally ill, the District has a long history of dysfunction in the delivery of mental health services. It is the system that must change. It must move from a hospital with office based providers to a community based system. I encourage WPS to support the Department's efforts to provide better services by:

- Advocating for the Department at budget hearings

- Continuing to advocate for patients in the public system
- Promoting participation of public psychiatrists in WPS activities
- Encouraging psychiatrists to work in the public system
- Promoting training in public psychiatry in local residency programs
- Including topics in public psychiatry in WPS meetings; inviting national experts to discuss best practices in community treatment of persons with severe and persistent mental illness, and children and youth with serious emotional disturbances.
- Invite the DMH Director, and the Mental Health Commissioners of Maryland and Virginia to inform the membership of the challenges and accomplishments of the public systems in the metropolitan area.

Virginia Psychiatrists Create Political Action Committee

By Cal Whitehead, PSV/NoVa
Chapter Lobbyist

The Boards of the Psychiatric Society of Virginia and the Northern Virginia Chapter of the Washington Psychiatric Society have authorized the formation of the first ever Political Action Committee (PAC) for Virginia psychiatry, PsychMD PAC. PsychMD PAC will raise money from Virginia psychiatrists to fund General Assembly and statewide candidates who have positions that promote better mental health care delivery. The decision to form PsychMD PAC demonstrates proactive recognition that success in a crowded field of public interests requires increased access to the elected officials who make decisions on health care policies.

The initial funding goal of the PAC is \$7500. Members who pledge \$250 before year's end will

become "Founding Members" of PsychMD PAC. With the General Assembly elections coming in November now is the time to help our organizations speak on your behalf.

Maryland Mental Hygiene Administration Implements new "Gray Zone" Patient Requirements

By Gerald Gallucci, MD, Chair MPS
Public Psychiatry Committee

The Maryland Mental Hygiene Administration (MHA) has implemented new benefits and eligibility criteria for "gray zone" patients. The following information is from the MHA document, "Public Mental Health System - Uninsured Benefits Guide - Effective 7/1/03." The entire document is on the MHA website at www.dhmh.state.md.us/mha.

Provider eligibility - Psychiatrists must be in the Maryland Public Mental Health System (PMHS) network, be licensed, and have an active Maryland Medicaid number.

Patient eligibility - Patients must have a PMHS psychiatric diagnosis, meet medical necessity and:

- Be receiving Maryland Pharmacy Assistance, or
- Be receiving SSDI for mental health reasons, or
- Be homeless within the state of Maryland,
- Be newly released from prison/jail/ Dept. of Corrections facility (within 3 months),
- Be discharged (within 3 months) from a Maryland-based psychiatric hospital or
- Receiving service as required by order of a Conditional Release.

Exceptions may be granted based on urgent need by MHA or CSAs.

Psychiatrists treating new patients who meet the above criteria after July 1 must contact MHP to register the new patients and request authorizations in accordance with the benefits package. In addition, under this benefits guide, providers must maintain income verifications of all consumers receiving services, which is subject to retrospective audit reviews. ■

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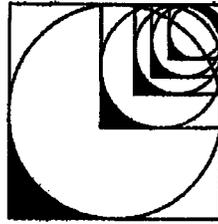
Suburban Hospital Names Dr. Negro Medical Director

Suburban Hospital has appointed Paulo J. Negro, Jr., MD, PhD as the hospital's new Medical Director of Behavioral Health Services. The appointment took effect on September 2, 2003. This position is now a full-time position that has been enhanced with the incorporation of a relationship with the Division of Intramural Research Programs, National Institute of Mental Health whereby 50% of Dr. Negro's time will be devoted to NIMH intramural based research activities.

Dr. Negro earned both his Medical Degree and Ph.D. at the University of Sao Paulo Medical School, Brazil. He completed his Residency in Psychiatry at the Institute of Psychiatry, University of Sao Paulo Medical School, Brazil and The University of Texas Health Science Center at San Antonio, Texas.

Dr. Negro has held faculty positions at St. Elizabeths Hospital, Washington, D.C. and the Department of Psychiatry, University of Maryland Medical School, Baltimore, MD. His certifications include Board Certification in Adult Psychiatry, APA Certification in Administrative Psychiatry and American Society of Addiction Medicine. He is a member of the American Psychiatric Association and the Maryland Psychiatric Society.

He and his wife, Paula Palladino-Negro, MD and daughter, Isabella, reside in Rockville. ■



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Letters-to-the-Editor



We are writing in response to the lead article of the July 2003 WPSNews (“Physicians Largely Satisfied with Magellan”),

The article indicates that 11 of the 18 psychiatrists who responded to the survey had no complaints. This seems a small sample to provide the basis for such a definitive-sounding headline. Moreover, one respondent who did voice complaints included a concern that a “three page OTR (Outpatient Treatment Report) was required before the second visit; then must wait for approval.” (Item 4b). The article did not mention the Mental Health Information Act of DC. This law, written in part by WPS and APA Past President Harold Eist, MD and WPS Counsel Armin Kuder, JD, exists to protect the confidentiality of mental health treatments.

It is important that WPS members be aware of this Law,

which represents an important resource that they can turn to when insurance companies demand confidential information about a mental health treatment.

The Mental Health Information Act of DC strictly limits the type of information that a psychiatrist may disclose about his/her patient, even with a valid authorization form. Disclosures are limited to the following:

1. Administrative data
2. Diagnostic information
3. Status (whether voluntary or involuntary)
4. Prognosis, limited to estimated duration of treatment
5. Reason for admission or continuing treatment.

Furthermore, this Law has now become one of the major points of reference for the American Psychiatric Association’s Minimum Necessary Guidelines, which is the official policy of APA in regard to what kinds of information may be prop-

erly disclosed to third party payers. Thus the psychiatrist can cite the fact that APA, his/her national professional association, has issued these guidelines as to what information may be disclosed to third party payers for claims review. This becomes particularly germane because the HHS HIPAA Privacy Rule indicates that professional judgment as to the minimum necessary information for a particular activity, like claims review, is the maximum allowable information that may be disclosed to a third party.

Thus, the HIPAA Privacy Rule may also be cited when any more than this minimum information is demanded by third party payers. Therefore, WPS members can cite local law (for members practicing in DC), plus specific APA guidelines in conjunction with the HIPAA Privacy Rule, to protect patient confidentiality.

These documents can be cited in addition to professional and ethical standards to protect patient confidentiality. These professional standards, of confidentiality as an essential foundation to the practice

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of psychotherapy, have been explicitly recognized in the 1996 United States Supreme Court *Jaffee v. Redmond* case, which established a psychotherapist-patient privilege in federal courts on a par with the attorney-client privilege. These professional standards have also been explicitly acknowledged in the 1999 Surgeon General's Report on Mental Health, as well as in the HIPPA Privacy Rule.

It is essential that practicing psychiatrists be aware of the powerful resources that they can turn to, when attempting to protect patient confidentiality. It is my understanding that WPS and APA are on record as being committed to helping members in these difficult situations. All too often, members can feel alone and powerless to resist demands by insurance companies,

who act as though they would be only too happy to deny payment if patients and their therapists do not comply with their demands.

One of the great values of belonging to professional societies like WPS and APA is the availability of professional support in such situations. WPS News needs to take a leading role in keeping members informed of these resources.

Barry J. Landau, MD
Elizabeth K. Hersh, MD

(Dr Landau chairs the WPS Legislative Subcommittee on Regulatory and Confidentiality Issues. He and Dr. Hersh co-chair the DC Coalition on Confidentiality)

To the Editor:

As a former editor of the WPS Newsletter of many years duration and then co-editor with Dr. Judith Nowak for an equal number of

years, probably totaling 20 years in all, I wish to express my admiration to you for your superb work in putting out a clear, informative document. The great respect I hold for you and Dr. Dee does not extend to Magellan. Please allow me to disagree with the title of the lead article in the July 2003 "Washington Psychiatric Society News." The article does not support the proposition that those polled are largely satisfied with Magellan. Only 12 of 29 are taking Magellan patients and only 11 said they had no problems. Given the problems that were articulated in the article the 11 who said they had none would seem to exhibit remarkable tolerance for and endurance of difficulties rather than satisfaction.

Harold I Eist MD
Past President, WPS ■

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