

Legal Update

Dr. Harold Eist Wins Court Case

by Armin U. Kuder
Kuder, Smollar, & Friedman, PC

President-Elect Harold I. Eist's stand for confidentiality of patient records has been affirmed by the Maryland Court of Special Appeals. In a unanimous opinion, stating that the Maryland State Board of Physicians was wrong in its insistence upon an unfettered right to patient records, the Court affirmed patient's rights to privacy of mental health records in some of the strongest language yet to be used by the appellate court. The Board's attempt to sanction Dr. Eist, for an alleged failure to cooperate with an investigation, was overturned.

That a patient's rights to privacy of sensitive mental health information is not absolute was noted by the Court. There may be compelling governmental interests which require invasion of the patient's privacy, but the burden is on the governmental agency to establish the need for the invasion. The Board of Physicians at first declared that it had no such obligation. When it subsequently tried to meet this criterion, it could not do so.

The attempt to discipline Dr. Eist arose out of a bitterly contested divorce action in which Dr. Eist treated the wife and two children. The father complained to the Board that his wife and children were being overmedicated by Dr. Eist, which the Board called a "standard

of care issue". He also complained that Dr. Eist had berated and insulted him, which they called an "un-professional conduct" complaint. The Board demanded Dr. Eist's full record with no notification made to the patients involved. Dr. Eist would not provide the records without giving notice to the patients and seeking their consent while affording them the opportunity to object. In fact, objections were directed to the Board; and its investigators were advised of the patients' satisfaction with Dr. Eist, and of the availability of information in the divorce action. The Board took the position that it did not need to consider these communications. It claimed that the statutes authorizing it to obtain medical records conclusively established its right to the records without considering the circumstances, nor balancing the interests of patients. The Court of Special Appeals' decision leaves no doubt that the Board's position is not the law.

The Court went on to say that on the record before it, the Board would have had to conclude that the patients' interests, made known to the Board, rendered its subpoena for records inappropriate on the facts. Dr. Eist, therefore, could not be found to have failed to cooperate with a proper investigation.

The lengthy opinion comments on a number of incidental aspects of the case. It notes that the Board decided that the underlying complaint of inappropriate medicating, had no merit; but it kept secret the

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Medical/Chirurgical report exonerating Dr. Eist on this issue, while it prosecuted Dr. Eist on the record release issue. The Board said that it would have reported Dr. Eist's exoneration eventually: once it received his patients' records and after the patients withdrew their objections. The entire opinion can be found at <http://www.courts.md.us/opinions> (Click on Court of Special Appeals and the opinion appears as filed September 13, 2007).

Given the lengthy history of the case, in which the Board twice lost appeals in Circuit Court and now in the Court of Special Appeals, this may not be over. The Board could request the highest court in Maryland to accept the matter for review. In the opinion of legal counsel, the careful, detailed opinion of the Court of Special Appeals can easily bear scrutiny from the Court of Appeals, and an opinion of that Court would only further strengthen the privacy rights of Maryland's citizens. ■

The President's Column



By Michael J. Houston, M.D..

Over the last few months, the WPS Board of Directors has initiated significant changes in our operations and administration. While the changes occur, glitches are to be expected, but I am confident that WPS will become an even more efficient and effective organization. As we move forward, it seems appropriate to review successes that the society enjoys as well as areas that need our attention.

We are, fundamentally, a “grass-roots” organization, and our successes are the result of the efforts of our members. We are fortunate to have many dedicated individuals who volunteer their time to advance the mission of our society. Dr. Eliot Sorel, a past president of the society and current delegate to the APA's Assembly, has spent the last few months planning a series of leadership development seminars for residents. There are a number of members involved in this activity, including Drs. Hind Benjelloun, Lisa Catapano, Shanique Cartwright, Connie Dunlap, , Husseini K. Manji, Catherine May, Roger Peele, Kayla Pope, Maryam Razavi, Enrico Suardi, and Carol L. Tripitelli. Seminars will be held throughout the spring and will be open to residents from all the training programs in the area.

Our legislative affairs representatives in Maryland, Drs. Harvey Fernbach, Lou Kopolow, Harold Eist, and Roger Peele, meet throughout the year with our counterparts in the Maryland Psychiatric Society and our shared lobbyist. In Virginia, Dr. Eric Steckler works closely with the Virginia Medical Society to track

legislation and to plan strategic visits to Richmond. The activities in Maryland and Virginia heat up this time of year in anticipation of the legislative sessions that begin early in the New Year.

Behind the scenes, members of the Grievance Committee, chaired by Dr. David Fram and the Ethics Committee, chaired by Dr. Thomas Goldman, work diligently to thoughtfully and fairly investigate complaints that are brought against members. Each of the cases under review take many hours of phone calls and interviews. While rarely acknowledged publicly, we owe the many individuals involved in this work our collective thanks.

Years ago, there were many more active committees; but, over time, their number has dwindled. Board members have discussed the need to resuscitate some of these committees, which would include a development committee, a managed care committee, and a private practice committee, among others. In order to accomplish this task, we need you, the members of WPS, to give, not money, but time. If you have an interest in these areas or others, let us know. We are all busier now and it has become harder to find time away from the responsibilities of work and family. Still, I think you would find the work interesting, and the time spent with your colleagues would be rewarding. Feel free to call me at 202.966.2400 or email me at mhoustonmd@gmail.com if you have questions about volunteering or about any issues you feel are pertinent to WPS. ■

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CME Event

George Kolodner, MD will present a CME on “Treating Patients with Substance Use Disorders: What a Psychiatrist Needs to Know about New Medications and Co-Morbid Psychiatric Disorder.” This event will take place at Suburban Hospital, Bethesda, MD, on Saturday, December 1, 2007 from 8:15AM-11:45AM and will earn 2.5 CME credits. You can register by calling 202-595-9494 or by emailing to admin@wdcpsych.org. A brochure will be mailed soon. ■

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From Alma-Ata to the Millenium Development Declaration International Conference on Health for Development Rights, Facts, and Realities

Eliot Sorel, MD, DLFAPA

The World Health Organization and its Regional Office for the Americas, the Pan American Health Organization, organized the first in a series of global meetings on health for development, in Buenos Aires, Argentina from August 13-17, 2007. Health Ministers, Deputy Health Ministers, diplomats, other policymakers, technical advisors, civil society leaders and the public, participated in its deliberations held at the Argentinian Foreign Ministry and the Buenos Aires Convention Center.

Following the work done in plenary sessions and that done by the technical work groups, the assembled leaders from sixty countries, including Dr. Margaret Chan, Director General of the World Health Organization, and Dr. Mirta Roses, Director of the Pan American Health Organization, issued the historic Buenos Aires Declaration which set a global challenge for developing a strategy for equity based on primary care. It advocates providing basic health care packages for all citizens

and forging a solid and essential alliance between health and sustainable development.

Such primary care focused health care systems, that deliver basic health care for all citizens, will have an intrinsic value and also provide a foundation for promoting and protecting health and preventing illness. ■

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A Different Perspective

Samantha A. Shlakman, MD MPH

Residents like to complain. Maybe not everyone can agree about the socialization of health care, how DSM-V should be structured, or where psychoanalysis fits into “modern” psychiatry; but this is one thing that everyone can agree on- Residents like to criticize, whine, and sometimes even bellyache about call schedules, about studying for the PRITE exam, and about internal medicine rotations. We feel “put upon.” We feel taken advantage of. We are the huddled masses, paid little to do much, and deprived too cruelly of our sleep by a piercing sound through the night that appears to come from a very small black box that has ruled our lives for too many years. We get angry. We feel hostile. So why do we do it?

I am a Chief Resident. I know this hostility only too intimately, from both sides of the fence. I tell my residents, “it stinks”. Believe me, I remember what it was like to get that extra call, have to miss my friend’s birthday party because of a Grand Rounds, and sit in the ER at 2 AM with the only three patients left in the ER, all waiting for me. I don’t want to give you more call. I don’t like reminding you for the fifth time about handing in your rotation evaluation. And I hate repeatedly sending mass e-mails about conferences people haven’t signed up for. So then the question is, “why do we do it?” I think as we continue on in our careers, as in all life events, we gain a certain perspective. There are trade offs for any good thing in life. You trade sleep to help the newly diagnosed manic college student. You trade a dinner out with friends to see an extra outpatient in crisis. But this is what we love, right?

I co-taught a first year medical student class on physicians and patients, and their relationships to each other. One of our sessions focused on physician self care. Discussing with first year medical students the importance of taking care of our own needs as physicians, stimulated me to reclaim perspective. Although these are only four years of our lives, it is important to remember that this is our life. We do this work because we love it. We love the outcome. It’s just hard to see that forest for all those individual trees.

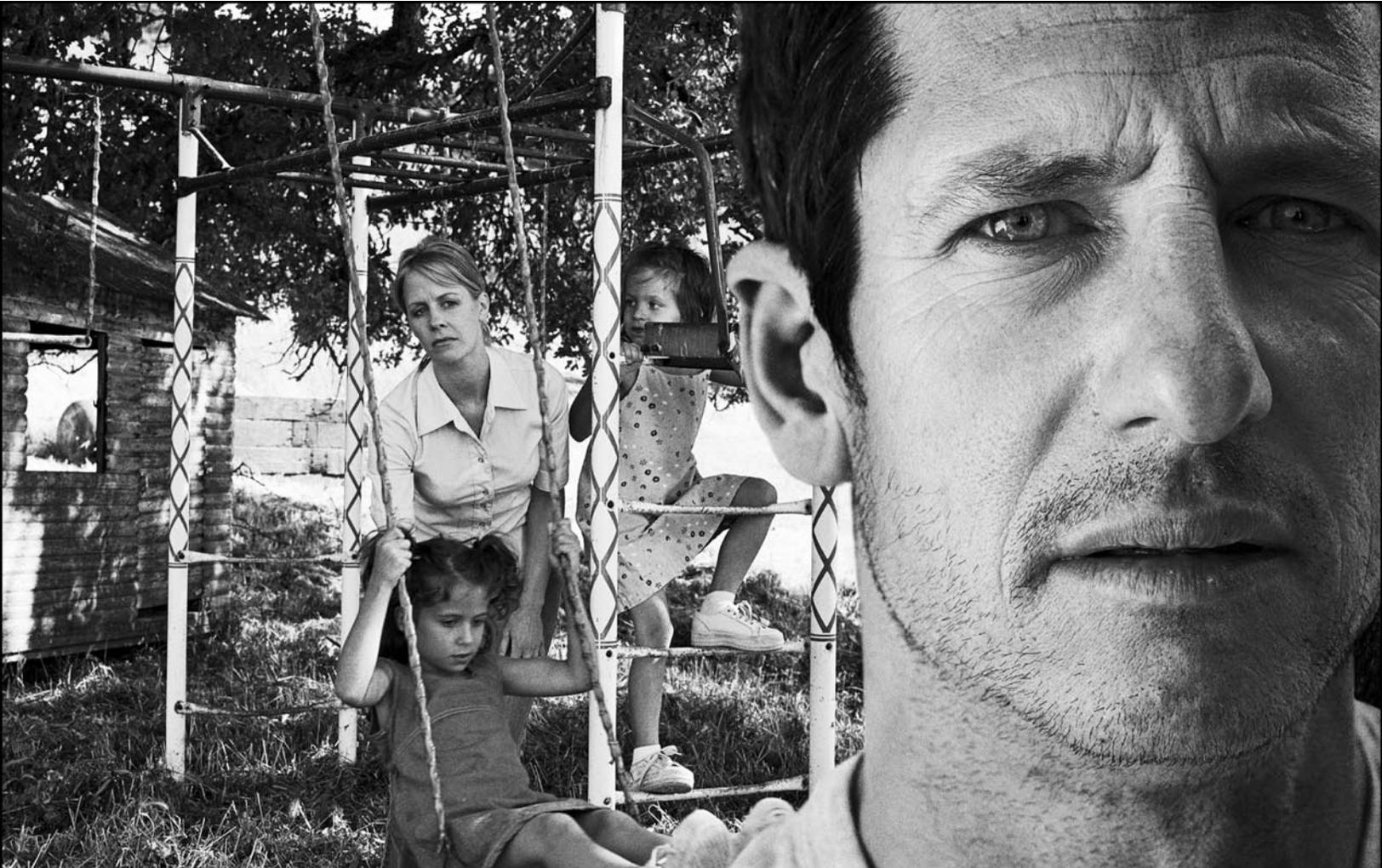
So, we do this job, this training, and we chose this life to help others. But we remember that the lives of our patients are not all that are precious: we have to care for our own lives in order to serve our patients. True happiness may not be accomplished through a dinner at the Four Seasons, a movie with your loved one, or a drink with a friend, but it sure makes those all-nighters in the ER, holidays rounding at the Veterans Hospital, or many months on internal medicine units a little easier to swallow. And, don’t forget, it’s a resident’s job to complain. That’s why they pay us the big bucks. ■

Nomination of WPS Officers in 2008

Dr. Richard Ratner, M. D. is the Chairman of the Nominating Committee that will submit a list of physicians who will run for WPS office in 2008.. He is asking that members who have recommendations submit them to him by calling 202-686-2200 or by emailing him at raratner@raratner.com.

Dr. Eric Steckler Wins Fellowship

Dr. Eric Steckler, Chair of the Northern Virginia Chapter, was one of twenty physicians from the State of Virginia chosen to participate in the 2nd Annual Claude Moore Leadership Fellowship. This is a continuing educational experience designed to create a network of physician leaders who will advance healthcare in Virginia. Each doctor will create an outreach project to promote healthcare and to highlight the medical profession’s commitment to improve community resources. ■



Open Access: for the patients, for the people

All too often, people who depend on public assistance are denied access to newer, safer, and more effective treatments for mental illness. This inability to obtain the treatment they need can trigger a pattern of deterioration — becoming unemployed, being hospitalized, imprisoned, and often ending up homeless. This destructive cycle is costly for taxpayers and devastating to the families of people with mental illness.

That's why Eli Lilly and Company continues to support open and unrestricted access to all available treatments for mental illness.

Scientific advances have resulted in medications that are effective in delaying relapse¹, provide more effective symptom control, have fewer side effects, and offer longer-term treatment than in the past.

Give them access to the treatments they need, and give them hope for taking their lives back.

1 Fenton WS, Blyler CR, Heinssen RK. Determinants of medication compliance in schizophrenia: empirical and clinical findings. *Schizophr Bull.* 1997;234:637-651.

OBITUARIES

Alex Kelly, M.D.

Dr. Alex Kelly has died. He was born in Augusta, Georgia, and attended Augusta Junior College and the Medical College of Georgia. Dr. Kelly was a scholar: valedictorian of his high school class, first in his medical school class, and a member of Alpha Omega Alpha honor medical fraternity.

Upon completing residency training in Internal Medicine in 1941, he began active duty as a 1st Lieutenant in the Army Medical Corps. Dr. Kelly was deployed to the Philippines, shortly before it was occupied by the Japanese. In April, 1942, he was captured in the field at Bataan. He suffered and witnessed great suffering on the Bataan Death March.

Dr. Kelly was in prison camps in O'Donnell, Cabanatuan, Yokohama and Nugata until his liberation at the end of World War II.

His prison camp experiences strongly contributed to Dr. Kelly's post-war decision to become a psychiatrist. His residency training was at Johns Hopkins Hospital. He practiced psychiatry in Washington, joining the psychiatric staff of the Washington Veterans Administration Hospital in 1976. Dr. Kelly was active in the Washington Psychiatric Society, serving as our President from 1975 to 1976. He was also temporary chief of the psychiatric service of the Veterans Administration Hospital in 1985.

In his retirement, Dr. Kelly was an enthusiastic golfer and a member of the Kenwood Golf and Country Club. He was a Life Fellow of the American Psychiatric Association.

Dr. Kelly is survived by three sons: Alex R. Kelly III of Alexandria, VA, Dr. William K. Kelly and David S. Kelly, of Bethesda, MD, a sister, Mrs. Anne Smith of Augusta, GA, a brother, Dr. Gene Kelly of Macon, GA, and six grandchildren. A memorial service and interment will take place at Arlington National Cemetery on December 10, 2007. In lieu of flowers, memorial donations may be made to the charity of your choice in his name.

Herman Arnold Meyersburg, M.D.

Dr. Herman Arnold Meyersburg, training and supervising psychoanalyst, was mentor to generations of analysts and an example of selfless application of his profession to the community in which he lived. He died on September 12, 2007 in the Hebrew Home, Rockville, Maryland at the age of 94.

Born in the Bronx in 1913, his brilliance was manifest early. He completed high school at age 15 and New York University at age 19. He married Elsie Rosenberg in 1937 and graduated from the New York University School of Medicine in 1938. Arnold settled in the DC area and, in 1954, completed studies at the Washington Psychoanalytic Institute. He had a thriving, diverse psychiatric/psychoanalytic practice

for 62 years in an unmarked home office in Kensington until fading memory forced his retirement in 2000.

Arnold worked with most mental health institutions in the area, including the National Institute of Mental Health. In the late 1960's, while working with a Head Start program in the low-income sections of Ken-Gar, he noted the lack of medical care available to his patients and co-founded Montgomery County Mobile Medical Services. For thirty years, Arnold provided care and directed this organization; he received the National Center for Voluntary Action Award for this work. Mobile Med has provided physicians and nurses to thousands of Montgomery County low income residents for nearly forty years.

The same spirit that infused Arnold's volunteer service overflowed and pervaded his role as a great teacher and inspiring mentor to generations of psychoanalysts and other mental health professionals. To us he was brilliant, special, gentle, empathic, loving, caring and more. All this made him one of the most widely-known mental health professionals in the Washington area.

His son Richard, who provided details for this article, added that his Dad was an inveterate gadgeteer, photographer and prize-winning gardener. His survivors include four children, two daughters-in law, six grandchildren and two great grandchildren.

Afaf Mourad Mahfouz, Ph.D. ■

Chapter Reports

Northern Virginia

By Eric Steckler, M. D.

We have been preparing for Virginia state elections: all delegates and senators are standing for re-election. Chapter members are independents who will support candidates from either party if they have an understanding of the needs of our patients and if they care about the practice conditions of our clinicians. On this basis, we favor incumbents Jay O'Brian and Jeanmarie Devolites Davis for their understanding of the needs of private practitioners. We also support challengers, such as Janet Oleszek, for her commitment to protecting the privacy of psychiatric records.

The Chapter has provided feedback about Northern Virginia commitment proceedings to Attorney General Robert McDonnell, Delegate Mark Sickles, and Richard Bonney, who are deliberating about mental health law reform.

In December, we will host the 3rd annual holiday party for members in training throughout the Metropolitan area. They will have an opportunity to interact with senior psychiatrists who can encourage them to enter private practice and who can teach them about the mechanics of running such a practice.

Maryland Suburban

By Louis Kopolow, M. D.

The Suburban Maryland Psychiatric Society and the Maryland Psychiatric Society held a phonathon on October 7th to enlist member support for our political action committee. The SMPS held a legislative reception at the Bethesda Marriott on October 30th: all Montgomery County and Prince Georges County state legislatures were invited along with members of WPS.

Our legislative initiatives for the next year include the protection of the privacy of psychiatric records.

We are also working to prevent major managed care companies from delaying payment of claims. Any psychiatrists who are experiencing delays or receiving unusual rejections by UBH, MAMSI, Optimum Choice, or MDIPA should contact me at 301-963-0060x14. An additional issue will be the low insurance reimbursement for psychiatric services in Maryland, which is in the top quarter of states for cost of living but in the bottom quarter for insurance reimbursement. The fourth legislative initiative will be the education of legislators on the significance of the difference between medical training and non-medical graduate training in preparing practitioners to prescribe medications safely and effectively.

We will prepare a new Directory of Maryland Psychiatrists, hold a Legislative Reception in Annapolis in February, 2008; and plan an educational program in March, 2008. ■

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District of Columbia

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The clinician-teacher role offers the opportunity to teach forensic fellows or general psychiatry residents, medical students, and other trainees; to provide clinical leadership for multidisciplinary staff at the unit or team level; and to develop a defined area of scholarship ans/or clinical research. Faculty have protected time for teaching and research. **There is no night call.**

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Notes from the Bureaucracy

By Harold I. Eist, MD, DLFAPA

Pay Less for the Best?

In Massachusetts, doctors are being rated by bureaucrats and placed in a tier. A class system is being forced upon physicians: those with the highest number occupy the lowest class. Tier one is evidently the “best” and tier 3 the “worst”, after which, I assume, the doc just falls off the edge of the earth.

Patients have to pay higher co-pays for going to doctors who are considered worse. I’m not a bureaucrat, so I don’t understand why going to a worse doctor would not be penalty enough.

If all the hokum we hear about the free market in healthcare is true, patients should be willing to pay more for better doctors. Patients know well that they have to pay more for quality: this is the case with everything else in life. Who would believe that better is cheaper?

It never is in the marketplace.

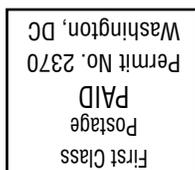
The whole thing is crazy making, even more than most of the confusing, upside down, and backwards things we hear on a daily basis from the insurance companies, who trumpet over and over, like our government, that they are here to help us.

There is something more bizarre than usual about this insurance propaganda- beyond the fact that it is contagious and appears to be spreading. The only way bureaucrats can create tiers is if they develop “standards”. The only way they can apply and administer the standards is by checking menus in an “evidence-based cookbook.” The “me-too-er’s” jump on this “evidence-based” bandwagon; but we know that medicine is too complex to be practiced out of cookbooks.

An admirable and experienced colleague had monitored a patient annually for years. As fate would have it, the patient’s hemoglobin never varied, not one whit. Some

years ago, at an annual examine, the hemoglobin had dropped slightly; but it was still within the normal range. The stool test for occult blood was not definitive and a sigmoidoscopic examination was ordered. This patient had colon cancer but survived because he got prompt and effective treatment. No bureaucrat would allow an “expensive” test on the basis of a normal hemoglobin. My colleague would have been pushed down the ladder into tier 3. If he had appealed this action, the company would point to standards that directed waiting and respected the desperate need of the insurance company to make money on the float.

Bureaucrats, practicing medicine via cookbooks and manipulating access of patients to their tier 1 “best” doctors, will increase the living hell they have already created. It is far past time for the house of medicine to raise royal hell to keep our patients and ourselves from sinking into even lower depths of hell. ■



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