

Social, Moral and Legal Liability of Protective Custody/Civil Commitment of the Mentally Ill in Oklahoma

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Medical & Legal Issues

- Protect the community from dangerous individuals.
- Protect the impaired individuals from harming themselves, others, or property.
- Do so within the context of laws, regulations, good medical practice and tradition.

Medical & Legal Interventions

- **Involuntary detention – 72-hour hold.**
 - In a general medical facility.
 - In a free-standing psychiatric hospital.

- **Court-ordered involuntary commitment**
 - In a general medical facility.
 - In a free-standing psychiatric hospital.

Medical Issues

- When is a psychiatric condition not a medical condition?
 - COPD hypoxia and cerebral anoxia.
 - Behavioral changes from traumatic brain injuries.
 - Drug abuse – i.e., methamphetamine psychosis.
 - Alcohol-related problems – Wernicke's encephalopathy (delirium) and Korsakov's psychosis. [no ability to retain new information].
 - Dementia from strokes.
 - Alzheimer's dementia.

An involuntary detention – (72-hour hold) or a Court-ordered involuntary commitment can be due to an underlying psychiatric condition which may be in the presence of a concomitant general medical condition which includes neurological conditions.

[Both procedures require the involvement of a third party and a licensed health care practitioner]

The degree of contribution of the altered mental state from the psychiatric and/or medical condition often cannot be clinically determined.

Weber NS, Cowan DN, Millikan AM, Niebuhr DW: Psychiatric and General Medical Conditions comorbid with Schizophrenia in the National Hospital Discharge Survey, *Psychiatr Serv* 60:1059-1067, 2009.

Disruptive behaviors in a medical environment

- The most common reason for 'soft restraints' in a general medical hospital results from psychotic / disruptive behaviors, an altered mental state – delirium. Delirium is a temporary condition which is usually due to a general medical condition, licit medicine or illicit substance.
- However, a permanent altered mental state such as dementia, can and does result from organic disease progression, whether a psychiatric or general medical disease.

Delirium and Dementia are medical and psychiatric conditions that are embodied in the International Classification of Diseases (ICD) System used in the United States and further defined and explained in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

International Classification of Diseases, 10th Edition, 1994.

Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, Text Revision, 2000.

Schizophrenia, mental retardation, and other psychiatric conditions are diagnoses that are embodied in the International Classification of Diseases (ICD) System used in the United States and further defined and explained in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

International Classification of Diseases, 10th Edition, 1994.

Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, Text Revision, 2000.

- Common clinical precursors of dementia include:
 - Alcoholism and/or drug abuse
 - Arteriosclerosis
 - Depression
 - Mental retardation
 - Traumatic brain injuries from
 - Military Combat
 - Automobile accidents
 - Industrial accidents

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- Court-ordered involuntary commitment generally occurs after involuntary detention. It is initiated if the patient remains a danger to himself or herself after the period of involuntary detention and will not or cannot voluntarily admit himself or herself for further mental health treatment.
- The independent mental health provider submits the petition to the appropriate judicial court.

Oklahoma Mental Health Law

[Title 43A § 1-101ff]

- § 1-103 13 a. "Person requiring treatment" means:
 - (1) a person who because of a mental illness of the person represents a risk of harm to self or others, or
 - (2) a person who is a drug- or alcohol-dependent person and who as a result of dependency represents a risk of harm to self or others.

§ 103 13 b. Unless a person also meets the criteria established in subparagraph a of this paragraph, person requiring treatment shall not mean:

- (1) a person whose mental processes have been weakened or impaired by reason of advanced years,
- (2) a mentally retarded or developmentally disabled person as defined in Title 10 of the Oklahoma Statutes,
- (3) a person with seizure disorder, or
- (4) a person with a traumatic brain injury;

§43A-1-104. Public policy.

The Oklahoma Legislature hereby declares that the public policy of this state is to assure adequate treatment of persons alleged to be in need of mental health treatment or treatment for drug or alcohol abuse, to establish behavioral standards for determination of dangerousness of persons in need of such treatment,

§ 1-104. Public policy (continued)

to allow for the use of the least restrictive alternative in the determination of the method of treatment, to provide orderly and reliable procedures for commitment of persons alleged to be in need of treatment consistent with due process of law, and to protect the rights of consumers hospitalized pursuant to law.

THUS, there appears to be a conflict with the narrow statutory definition of mental illness in § 1-103 and the definitions of mental illness that are used by mental health clinicians and are found in the generally accepted authoritative ICD and DSM manuals.

Statements of public policy within mental health law appears to be more inclusive in its intent to protect individuals and society.

Case 1

- A middle-aged female shot two police officers because of fixed delusions, which persist even with psychotropic medications. She has a history of schizoaffective disorder
- Does not require 1/1 on a psychiatric unit
- Indigent, no disability income, no insurance
- Family refuses any responsibility
- Not charged with a crime as long as held in acute psychiatric facility

Case 2

- Middle aged male held in observation area of general hospital ER for 2 months.
- He was refused admission to psychiatric inpatient unit on the basis that he has dementia secondary to tertiary syphilis which cannot be controlled with medication. He has a history of schizophrenia.
- Family abandoned patient at ER. Family gave up rights to his disability income.
- Patient has Medicaid but all nursing home facilities refuse to admit him because of his intermittent screaming and periodic aggression toward others.
- Requires 1/1 on a psychiatric unit for fall risk as well as to prevent harm to others.

Case 3

- Older male combat veteran who is on federal disability and has Medicare.
- Inpatient in an acute psychiatric unit for months
- Guardian sister prefers he stay in psychiatric unit rather than in nursing home.
- Nursing homes refuse on the basis that he is demented, secondary to traumatic brain injury and constant screaming.
- Concurrent diagnosis of paranoid schizophrenic psychosis.
- Requires 1/1 on a psychiatric unit for fall risk, head banging, and aggression to others.

Consequences of the statute's apparent attempt to separate mental illness from the practice of medicine

Shifting liability issues from inappropriately detaining individuals who are allegedly mentally ill, against their will, to not protecting those mentally ill with concomitant general mental illnesses, especially those with neurological conditions such as stroke, dementia or traumatic brain injuries, is not good medicine nor good for the community at large.

Consequences of this apparent attempt to separate mental illness from the rest of medicine

Shifting liability issues occur because there are no longer being State facilities to provide care for the medically ill whose behavior cannot be controlled because of deteriorative brain disease and where, regardless of financial resources, private facilities decline admission because these patients are too labor intensive.

Consequences of this apparent attempt to separate mental illness from the rest of medicine

Now, the State is also declaring these individuals too labor intensive to be placed in their facilities to the detriment of the patients and the community.

Consequences of this apparent attempt to separate mental illness from the rest of medicine

Attempts at cost containment, by altering the statutes and regulations, may result in more mortality and morbidity among Oklahoma residents and visitors.

Attempts at cost containment, by altering the statutes and regulations, may result in increased medical care costs.

Consequences of this apparent attempt to separate mental illness from the rest of medicine

Failure to contain behaviors in psychotically disruptive and dangerous individuals who are physically ill and who require long-term labor-intensive medical interventions within any health care facility, including the State Mental Health facilities.

Consequences of this apparent attempt to
separate mental illness
from the rest of medicine

Regardless of the shifting liability issues, the
judicial courts ultimately must address the
individual and community safety issues.









GOOD
GRIEF!