

Virtual Mentor

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FROM THE EDITOR

To Treat, Advocate, and Protect

Physicians are trained to ask two key questions of patients with mental illness: Do you have plans to harm yourself? Have you thought about hurting anyone else? An affirmative answer compels the doctor to play a protective role, sometimes keeping a patient in the hospital against his will to prevent self-harm or violence. In one sense, the physician is preventing the terrible consequence of a disease process. But suicide and homicide are also crimes, so in another sense the physician is stopping her patient from breaking the law.

This is just one example of the many situations in which physicians—particularly primary care doctors and psychiatrists—must balance competing responsibilities: putting the patient’s interests first and alerting others to possible harms that a patient may (or may not) inflict. Treatment decisions, too, become ethically complex when a patient is compelled by law to agree to the plan. People with mental illness, especially those who have broken laws, often find their autonomy, privacy, and right to refuse treatment curtailed. Physicians must understand their legal and moral obligations to such patients. The October issue of *Virtual Mentor* examines the ethical issues that arise at this intersection of mental health and the justice system.

Two clinical cases address the conundrum a physician faces with a potentially dangerous patient. In the first, a doctor contemplates whether or not to commit a patient who abuses alcohol to inpatient treatment against his will. Jeffrey C. Eisen, MD, MBA, provides commentary on the complex process of involuntary commitment for substance abuse. In the second case, a physician suspects that his patient with pedophilic fantasies may be a threat to a specific child. Fabian M. Saleh, MD, and H. Martin Malin, PhD, MA, LMFT, discuss the challenging question of when to report a patient to the authorities.

Two other pieces explore further the duty to protect. In his policy forum piece, Corey Rayburn Yung, JD, looks at the situation of those convicted of sex crimes in the justice system. To keep them from reoffending, many are held indefinitely under civil commitment laws. Yung critiques the murky legal and medical reasoning behind such policies. In his piece on the history of deinstitutionalization, Daniel Yohanna, MD, asks whether our desire to respect patient autonomy has left those who are most severely mentally ill without protection and argues that there may still be a place for mental asylums.

Two articles examine the conflicts of interest that arise when physicians are asked to submit legal testimony. Charles Dike, MD, discusses the dilemma of a psychiatrist who is asked to provide expert opinion for his patient’s worker’s compensation

application. In their law and medicine piece, Susan Buratto, MD, and Stephen H. Dinwiddie, MD, explain the critical distinction between being a treating physician and being a testifying physician. In both pieces, a physician's duty to advocate for patients comes in conflict with the duty to provide an objective, professional opinion for use by the justice system.

A third clinical ethics case explores another example of the use of a physician's expert opinion: a pediatrician offering public commentary on the psyche of a young man accused of murder. In his commentary, John Henning Schumann, MD, examines the responsibilities and restraints physicians must exercise when commenting in the public sphere.

Another set of articles explores notions of culpability of those with mental illness who have committed crimes. Daniel Yohanna, MD, and Maxwell R. Rovner, JD, MD, discuss a journal article on the use of posttraumatic stress disorder (PTSD) as a criminal defense. Eric Trupin, PhD, and his coauthors, Sarah Cusworth Walker, PhD, Hathaway Burden, and Mary Helen Roberts, look at the effectiveness of courts that divert young offenders with mental disorders to treatment centers rather than to jails.

While diagnosing a patient can be the important first step toward treatment, it can also burden that patient with a label and its associated connotations. In no area of medicine is this truer than in mental health, where a diagnosis can permanently stigmatize a patient. Carl Bell, MD, examines efforts to update the concept of personality disorders for the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*. How we conceptualize an illness is critically important to how we explain and treat it, he writes. Labels can have even broader implications in how individuals with a mental illness are treated by the legal system. In an op-ed, Howard Zonana, MD, explains how registries of patients with mental disorders often violate their rights without effectively protecting the public. In his medicine and society piece, Michael L. Perlin, JD, exposes society's—and the law's—discrimination against those who are labeled insane.

Treatment is, of course, the goal of medicine. Fred Friedman, JD, challenges us to be ambitious and collaborative in our treatment goals for those with mental illness. Health and justice can only be reached, he argues, by working in a true partnership with patients.

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