



To compassionately serve our diverse community of Hoosiers by dismantling long-standing persistent inequity through deliberate human services system improvement.

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Mental Health Treatment Access



WHAT IS MENTAL HEALTH LAW?

1. Constitutional Law:

- 5th and 14th Amendment Liberty: involuntary commitment (IC 12-26)
- 4th Amendment Privacy: confidentiality of mental health records (IC 16-39-2 and -3) (HIPAA) (42 CFR Part 2)
- 1st Amendment Thought and Communication: patient's rights (IC 12-27-3-1) and involuntary medication v. right to refuse medication (IC 12-27-5-2)
- 14th Amendment Freedom from Unreasonable Risk of Harm and Treatment in Accordance with the Standards of Professional Practice: patients' rights (IC 12-27-2-1) (*Youngberg v. Romeo* (457 US 307)(1982))
- 14th Amendment and ADA: Treatment in the Least Restrictive Environment (*Olmstead v. LC* (527 US 581)(1999))
- 10th Amendment Police Powers to Protect the Safety of Citizens (v. *Parens Patriae* (Common Law) Duty to Protect Vulnerable Citizens)

2. Probate Law:

- Probate Court with exclusive jurisdiction over civil commitment (IC 12-26); guardianship (IC 29); health care representatives (IC 16-36); direct orders to treat (IC 16-36-1-8)
- Powers of Attorney and Advance Directives



3. Tort Law:

- Untreated mental illness often results in premature mortality and serious injuries to third parties
- High risk of professional malpractice due to difficulties in diagnosing and in prescribing potentially harmful medications

4. Criminal Law:

- Individuals with untreated mental illness are often criminally charged when acting out their symptoms
- Criminal prosecution involves restoration to competency (“ICST”)(IC 35-36-3) and the insanity defense (“NGRI”)(IC 35-36-2-4)



COMMON SOURCES OF PROVIDER'S LIABILITIES



PATIENTS' RIGHTS-----→PROVIDERS' LIABILITIES

1. **Confidentiality of mental health records---→Breach of confidentiality** (defamation; civil and criminal penalties)
2. **Due process in deprivation of liberty-----→Violations of due process** (Section 1983 civil rights suits; attorneys fees)
3. **Freedom from Unreasonable Risk of Harm----→Breach of duty of safety in confinement** (personal injury and wrongful death suits)
4. **Treatment in Accordance with the Standards of Professional Practice---→ Breach of Standards of Professional Practice (Professional Malpractice: Errors in diagnosis; Errors in prescribing; Errors in medication administration)** (licensure sanctions; suits under the Medical Malpractice Act (IC 34-18); suits under the Tort Claims Act (IC 34-13-3))
5. **Treatment in the Least Restrictive Environment---→Breach of Right to Least Restrictive Environment** (ADA Complaints to OCR; *Olmstead* lawsuits)



SOCIETY'S RIGHTS-----→PROVIDERS' LIABILITIES

- 1. Citizens' rights to safety-----→Providers' breach of duty to warn or protect third parties from dangerous acts of patients** (*Tarasoff v. Regents of U of CA* (Cal. 1976); IC 34-13-16)
- 2. Citizens' rights to safety---→Providers' breach of duties around safe management of dangerous patients** (suits for negligent supervision and negligent or premature discharge)
- 3. Citizens' rights to safety---→Providers' breach of duty to commit when commitment criteria is present** (suits for negligence in professional practice)



WHY IS ACCESS TO MENTAL HEALTH TREATMENT SO DIFFICULT?

1. FEDERAL UNDERFUNDING

- Mental illness treatment as a state responsibility (Institutions for Mental Disease (IMD) Medicaid exemption) resulting in a dearth of services
- Psychiatric units as loss centers in general hospitals
- Deinstitutionalization became constitutional justification for closing costly state institutions wherein state dollars could not leverage federal dollars



2. PROVIDER SHORTAGES

- Less lucrative than other specialties
- High risk of personal injury from aggressive patients
- High risk of liability to third parties for acts of dangerous patients
- High risk of liability to patients from harmful effects of psychotropic medications (Tardive Dyskinesia)
- Indiana's single medical school
- Patients as unsympathetic persons to garner public funding for treatment



3. LITIGATION DEMANDS

- Complex and expensive litigation is necessary to balance competing rights of constitutional magnitude (rights of society v. rights of individuals; rights of individuals (right to treatment) v. rights of individuals (right to refuse treatment))
- Legal challenges associated with obtaining and enforcing civil commitment and forced medication orders



4. CHALLENGES OF ANOSOGNOSIA

- The illness of not knowing one has an illness
- Treatment non-compliance because lack of insight; uncomfortable side-effects; don't feel like themselves and sometimes enjoy their symptoms
- Attempt to manage symptoms with illegal substances, which often exacerbate their illnesses, as well as subject them to criminal charges and the loss of future opportunities associated with criminal histories
- A problem much more complex than merely making treatment more accessible or even eradicating poverty and social injustice

