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Commentary: Good Is Good Only At Its Appropriate Time

Michael Schneidman, MD

The Israeli concept of the institution of the District Psychiatrist is undoubtedly an interesting and effective idea which has proven its value. All of the compliments that it received for its 50th birthday are justified. Praise for performance is justified as well.

The concept was born in a young country burdened with diverse difficult problems at a time when the country was not able or ready to cope with the problems of those who deviated from the norm, including the mentally ill. At that time, the world at large also had no suitable coping method to offer. Responsibility for the entire issue was therefore passed to psychiatrists.

Contrary to other branches of medicine, psychiatry, an exceptional specialty, accepted the responsibility. The medical community tended to separate the mentally ill from all other patients in terms of organization of services and civil rights. During that era, the District Psychiatrist represented society for the patient while protecting society from the patient.

Four decades later, the world was a different place. Society had matured and conditions were changed. In 1991 the law was considerably amended to adapt to the new state of affairs.

Society in the modern world has become a welfare society, a society which is more sensitive to human rights. This sensitivity does not skip over those members of society who deviate from the norm. The weak have also won recognition of their rights and needs. Individuals with mental disorders have been released from the dark ages where they were renounced and avoided, and their concerns and needs have been brought to the fore, as modern society is often judged by how it cares for the weak.

The State of Israel matured rapidly and developed democratic, social and philosophical attitudes. Today's society acknowledges the equal rights of all citizens, and accepts responsibility for all strata of the population, including the mentally ill.

At the same time, psychiatry has taken great strides in neuroscience and understanding mental processes. Most importantly we have achieved the ability to successfully treat those in need of psychiatric care. Psychiatry is a field of modern medicine, scientifically, organizationally and legally.

There is no longer any reason to distinguish between mentally ill and physically ill patients — in terms of approach, respect of patient rights or organization of services. Indeed, there is no longer room to legally distinguish among patients' rights. There is no law for the treatment of orthopedic patients, because it was never necessary. There is a law for the treatment of the mentally ill, because the necessity once arose, but it is no longer necessary. Its era has expired, and the concept is outdated. There are no longer mentally-ill patients. There are individuals who cope with mental disorders (illness). The Israel Psychiatric Association has recommended that psy-

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chiatry can be managed according to the Law of Patient's Rights (following minor revisions) and in accordance with the penal code (following a minor amendment).

It should be noted that careful study of the proposed law reveals that there is no clause or intention to give hospital directors any authority, and any argument to the contrary is a fundamental error.

Thus the world has changed, psychiatry changed and the relationship between society and those who are different (including individuals with mental disorders), between society and psychiatry, and between psychiatrists and their patients has all changed. The relevant laws must also change to adapt to the new reality.

Patients do not belong to doctors, it is not the physicians' job to manage the lives of their patients and it is certainly not the physicians' job to deprive an individual of his/her freedom.

Physicians are supposed to compare their medical findings to the accepted norms and to determine deviancy and severity of the deviance. It is our duty to evaluate the outcomes of the deviances and to point out methods for improvement and treatment. The physician does not coerce an individual to receive treatment, except in emergency medical situations where the Law for Patients' Rights determines the solutions. In medical emergencies the approach remains paternalistic, rightfully so. Medical paternalism in emergency medical situations is justified, even in psychiatry. The proposed amendment to the Law for Patients' Rights by the Israel Psychiatric Association enables treatment without consent in emergency psychiatric situations. There is no objection to the fact that decisions regarding physical medical emergencies are in the hands of physicians. There is also no reason to appeal placing the decisions regarding psychiatric emergencies on the shoulders of psychiatrists. But that is the limit. There must be equality in society's treatment of sick individuals, regardless of the nature of the illness.

The decisions to deprive an individual of his independence (except in emergency situations) must be left to the courts. The legal system is that which society has authorized to make decisions regarding revoking freedom. In today's world, there is no reason that the situation should be any different for a person suffering from a mental disorder.

Some persons claim that the disorder deprives the patient of his freedom, and not the psychiatrist. Perhaps one could agree with that approach, but only in emergency situations. Otherwise this logic could lead to the conclusion that the "ordinary" criminal is guided by any given perversion which precludes his independence. An illness or disorder can be the cause for behavior that is not normative, can be a reason for an individual's inability to comprehend the meaning of his behavior, but the judgement decision remains in human hands. The persons who specialize in judgemental thought are not doctors, they are lawyers.

Physicians were trained to help a person who is suffering, to show empathy and partnership with the patient. Considerations of social justice are not medical judgements. Right and wrong are issues that lawyers learn to deal with and discuss. In all situations where an individual is not diagnosed with a severe psychotic state which can be dangerous, the discussion focuses on evidence and proof regarding the existence of behavior which is not normative, and is unacceptable. Physicians are not specialists in this field. Fundamentally, it is a legal discussion. In these situations the District Psychiatrist is a type of judge who makes a decision with no representation by either side, with no participation of specialists in discussions regarding evidence — no lawyers. This alone is a strange process — a type of case with no court proceedings, with a ruler who is not a judge.

There are two types of thought processes, "how to help" and "who is right," which contradict each other. The patient is always right because he expresses his thoughts and emotions. We must understand and guide him. We must not judge, justify or punish him.

The proposal for legal amendment is held back by a power play typical of our society. There is no doubt that its time has come and that the delay is temporary.

It would be a pity if the initiative of the psychiatrists will not be put into practice and if in the long run society will impose the change following an incident or constraint. Clearly, the change will come.

The role of the District Psychiatrist after the legal amendment will not be cancelled. His role is most significant in the field of supervision, quality control, maintaining the standard of care and service

planning. Close supervision of compulsory hospitalization following emergency situations is also a role of utmost significance, which will remain in the hands of the District Psychiatrist.

The proposed legal amendment not only does not abandon the role of the District Psychiatrist, and does not limit it, but rather provides it with substantial content. In the era of the application of insurers' (health funds) responsibility for psychiatric care, the role of the District Psychiatrist is especially important, but not for giving hospitalization orders in situations that are not medical emergencies. This legal amendment will ensure that the 50-year-old concept of the District Psychiatrist will finally achieve recognition as a crucial function in society, not in the past but in the present and the future.

Authors' Response

Moshe Kalian, MD, and Eliezer Witztum, MD

We absolutely agree with reservations expressed in the commentary by Drew and Funk regarding the role of courts as the sole authority to inspect involuntary treatment. One should add that apart from the danger of becoming a "rubber stamp," the other pole of the pendulum sets danger for overemphasizing judicial and procedural matters in cases of individuals deprived of effective faculties, thus creating a "sham trial" and exposing those in need to dangers such as "dying with their rights on" (2, 3). One should note that from its very beginning the Israeli mental health law adopted the concept of a District Psychiatric Committee — a quasi-judicial authority, to rule on whether persons can be admitted or treated against their will. However, as could be understood from our previous statement, we slightly disagree with the commentators, on grounds of practicality and accessibility. Apart from the mentioned criticism, courts as well as committees are incapable of providing adequate solutions in cases of immediate emergency. We believe that the District Psychiatric Committee has a crucial role in non-urgent cases, as well as the continuation of involuntary hospitalization and treatment once the immediate emergency situation has been resolved.

In accordance with recommendations by WHO, we note with satisfaction that mental health facilities in the community, as well as hospitals, are regularly inspected by a multi-professional staff under the auspices of the DP in collaboration with the District Health Office. These include a psychiatrist, a nurse, a social worker, a pharmacist, a dietician, an occupational therapist and an environmental health inspector. Protocols and procedures are published by the Ministry to guide both service providers and their inspectors, and there are major advances in criteria for licensure.

Concerning Schneidman's commentary, we are a bit worried by the post-modernistic relativistic approach expressed in the headline of his commentary. We still believe that some basic human concepts are valuable beyond time and fashions. We do not oppose changes; however, to abolish mental health legislation as a distinct entity would be to throw out the baby along with the bathwater. Utilizing his concretizations, it is true that neither in the past nor in the present specific laws for the rights of orthopedic patients were required. Yet, specific populations still require specific legislation that protects their rights. One can view and hear the voice of mental patients' organizations, and mental patients' families' alliances. There are no such political organizations formed by orthopedic patients. Furthermore, contrary to views expressed by Schneidman, one cannot ignore that special specific legislation was required in order to shift funds towards the rehabilitation of the mentally disabled in the community. Other special legislation was required just recently in order to shift funds for legal advocacy of compulsory hospitalized mentally ill, either in criminal or civil procedures. Another law still in preparation relates to restricting rules of interrogating people who belong