

Legal Hearings During Psychiatry Residency

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American general psychiatry residents are significantly involved in legal hearings related to mental health. Training to become a psychiatrist involves considerable exposure to medicolegal matters, and psychiatry residents frequently participate in high-stakes legal hearings concerning their patients. Although psychiatry residents are physicians, residents are also trainees who may lack full medical licensure, board certification, or basic preparation to testify in legal settings. Legal hearings are important educational experiences for psychiatrists-in-training, but these proceedings can upend traditional patient–doctor relationships and pose ethics challenges to trainees. In this article, I examine ways in which residency programs can prepare budding psychiatrists for legal testimony. This is an overlooked topic deserving more attention, since the participation of physicians in training in legal hearings carries profound implications for mental health care in the United States.

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Psychiatry residents are trainees in the practice of medicine, yet they often participate in legal hearings concerning psychiatric patients. These hearings can carry high stakes for patients, with resident testimony influencing judicial decisions on involuntary hospitalization, medication over objection, and conservatorship, among other matters. However, many psychiatry residents are just learning the basics of patient care and may not even be fully licensed when taking part in these legal proceedings. Participating in legal hearings can provide valuable experience for psychiatry residents, but the process can also be daunting and fraught with ethics-related pitfalls.

Mental health experts have long recognized the role of inexperienced psychiatrists in legal hearings. In 1958, Robert Stoller argued that psychiatry residents could benefit by participating in legal proceedings as part of their training.¹ The authors of a 1965 article pointed out that psychiatry residency provides “ample opportunity for practical work (e.g., treatment of offenders, giving testimony, consultations), research and observations through visits to courts,

jails, penitentiaries and other facilities” (Ref. 2, p 615). In 1980, Seymour Halleck devoted a section to the education of psychiatry residents in his book on the interface between psychiatry and the law:

As a rule, the resident will have to encounter legal issues early in his training. In most programs, the first-year resident deals with severely disturbed inpatients. He will soon find himself dealing with the issues of civil commitment, the patient’s right to refuse treatment, and the need to initiate incompetency proceedings for patients who refuse treatment . . . In some programs, residents may evaluate patients for competency to stand trial. In most programs, they testify in civil commitment hearings [Ref. 3, pp 281–3].

Historically, commitment hearings often served as “rubber stamps” for the recommendations of mental health professionals,⁴ but in more recent years, psychiatrists have found that testifying in legal settings can be a withering experience. In mental health proceedings, lawyers now frequently assume adversarial stances toward clinicians, demand extensive evidence that patients meet commitment criteria, and emphasize the role of voluntary treatment.^{4–6} Legal scholars have written books and designed training interventions to help lawyers pick apart the testimony of psychiatric experts.^{7,8}

Much has been written about the trepidation that mental health professionals may experience in legal hearings, and these fears can be especially acute for

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trainees.^{9–11} Lack of familiarity with legal proceedings, self-doubt as new physicians, and misunderstandings about the purposes of these hearings can all contribute to unease among psychiatry residents who are asked to testify. Examining the role of psychiatry residents in legal hearings not only can help characterize the workings of mental health law in the United States, but also can provide guidance for future residents entering this unfamiliar terrain.

Frequency of Resident Participation

The frequency of psychiatry resident participation in legal hearings has not been well studied. Data on this subject were included in a 1978 article examining whether training attorneys to challenge psychiatric expert testimony in civil commitment hearings might influence courtroom behaviors.⁸ Across the 47 commitment hearings that were studied, half of the psychiatric experts were residents. More recently, a survey published in 2014 asked training directors of U.S. psychiatry residency programs to score resident exposure to forensic topics on a 0 to 3 scale, with 0 indicating no exposure and 3 indicating extensive exposure.¹² Training directors gave a mean clinical experience score of 1.63 for courtroom testimony, suggesting that testifying is a relatively common activity among residents. A 2016 study of Canadian psychiatry residents surveyed over 140 psychiatry residents about their exposure to forensic topics.¹³ Nearly 25 percent of residents reported clinical experience in testifying to courts or tribunals.

State laws in the United States vary in their language as to which types of clinicians may participate in mental health proceedings. For example, psychiatrists are generally permitted to initiate proceedings for involuntary psychiatric hospitalization, though some states may add terminology such as “licensed physician” or “board-certified psychiatrist” that may affect whether residents can participate in aspects of the commitment process.¹⁴

Whether psychiatry residents are allowed to participate in legal hearings depends not only on location, but also on the nature of the legal proceedings at hand. To see psychiatry residents partaking in civil commitment hearings as treating physicians would not be unusual. However, it would be far less common to see psychiatry residents testifying as expert witnesses in situations such as malpractice litigation or contested criminal insanity cases, where judicial authorities might expect more qualified experts.

Nonetheless, the everyday functioning of some U.S. mental health care systems may rely on the involvement of psychiatry residents in legal hearings. In California, psychiatric patients may be involuntarily hospitalized for an initial 72 hours and, if deemed to still meet commitment criteria at the end of this period, they may be placed on an additional 14-day commitment thereafter.^{15,16} This 14-day commitment triggers a certification review hearing within 4 days.¹⁷ The frequency of hearings can overwhelm the number of available mental health professionals, and psychiatry residents routinely present at these hearings on behalf of hospitals. Psychiatric facilities in Los Angeles County alone schedule over 2,800 hearings each month.¹⁸

In years past, the Accreditation Council for Graduate Medical Education (ACGME) requirements for psychiatry residency training in the United States stated: “Where feasible, giving testimony in court is highly desirable” (Ref. 19, p 21) as part of residents’ forensic experiences. However, the 2017 ACGME program requirements for training in general psychiatry do not include this language.²⁰ The current program requirements state that residents should become knowledgeable in the “legal aspects of psychiatric practice” (Ref. 20, p 14) and have exposure to forensic psychiatry, including “experience evaluating patients’ potential to harm themselves or others, appropriateness for commitment, decisional capacity, disability, and competency” (Ref. 20, p 20).

Although testifying in legal proceedings may not be an explicit requirement for psychiatry training in the United States, the available data suggest that it is fairly common for residents to do so. Further study is needed to clarify the prevalence of psychiatry resident participation in legal hearings nationwide.

Poorly Prepared for a Powerful Position

To obtain a medical license, psychiatry residents must fulfill stringent requirements, including passing written and oral national board examinations, undergoing background checks, matching into a residency program, completing clinical rotations, and filling out licensing applications. However, there are few standardized requirements, if any, that psychiatry residents must fulfill to testify in legal hearings related to mental health, other than having evaluated or treated the relevant patient at some point as a physician.

Some scholars have pointed out that mental health professionals generally receive limited training on how to deal with legal proceedings.^{21,22} Psychiatry residents are physicians with the least amount of training who often care for the sickest psychiatric inpatients, and they may experience this mismatch between expertise and expectations in the extreme.^{3,23} In 2004, Catherine Lewis noted that “most residents participate in probate court commitment hearings before they have received any training in how to testify” (Ref. 24, p 45). A recent text on psychiatric ethics noted that residents who may not understand the nuances of mental health law are still asked to participate in legal proceedings “from the first week of residency, when they may be required to appear in court for a patient’s involuntary commitment hearing” (Ref. 25, p 287).

Legal proceedings involving psychiatry residents can have profound implications for patient care. For example, civil commitment hearings may determine whether a patient remains involuntarily hospitalized for days, weeks, or months. Judges may decide whether a psychiatric patient should be medicated over objection, which could entail forcible injections with psychotropic drugs. Other matters that may be at stake for patients in these legal proceedings include guardianship, the ability to retain basic rights such as voting or driving a vehicle, and competency to stand trial. If psychiatry residents do not understand relevant legal proceedings or cannot adequately sustain petitions for involuntary treatment, these deficiencies can fail not only patients who need psychiatric care, but also the broader public that relies on a functioning mental health system.

It seems intuitive that psychiatry residents may be less prepared to participate in legal hearings compared with seasoned psychiatrists.^{8,26} Objective data reinforce concerns that psychiatry residents may not be ready to testify in legal proceedings. Surveys suggest that psychiatrists in training often lack basic understanding of mental health laws, which may underlie variability in the execution of these procedures.^{27–33} A 2010 survey of psychiatry residents in North Carolina found that 30 percent gave incorrect answers about the commitment criteria around mental illness and dangerousness.²⁸ In the 2016 study of Canadian psychiatry residents, 74 percent of residents felt intimidated by the idea of testifying in court.¹³

In light of these concerns, some have proposed limiting the role of psychiatry residents in legal proceedings. Halleck supported “excusing first-year residents from participating in the commitment process” because he felt “they do not have enough experience in diagnosing and treating mental illness to exercise good judgment in initiating or sustaining a commitment petition” (Ref. 3, p 282). Many published a scathing critique of psychiatry residents’ participation in civil commitment proceedings, arguing that “the most difficult, problematic, and complex psychiatric procedures should be in the domain of the expert, not the trainee” and that “patients should not be coercively subjected to any such procedures carried out by trainees, supervised or not” (Ref. 22, p 50).

The notion of residents testifying in legal settings has also generated controversy outside of psychiatry. In 2016, emergency physicians published commentaries in the journal *Academic Emergency Medicine* about whether residents should serve as expert witnesses, particularly in relation to medical malpractice consulting. One emergency physician expressed skepticism at this idea and commented that “a resident would not be qualified to testify according to standards of emergency medicine professional societies” (Ref. 34, p 1080). Another emergency physician felt that serving as an expert witness could be “a valuable experience for a resident” (Ref. 35, p 1177), but cautioned residents about the risks of testifying, including the intensity of cross-examination and the public availability of legal records.

Psychiatry residents generally do not receive consulting payments for participating in legal hearings, but rather testify as part of their clinical responsibilities for their patients. Further, although residents may have less training than attending psychiatrists, they should not be entirely precluded from participating in legal proceedings. For instance, practicing psychiatrists also frequently demonstrate limited understanding of mental health laws,^{36–38} and this may lead one to conclude that only board-certified forensic psychiatrists should serve as psychiatric expert witnesses. However, it would be impractical to expect such highly specialized credentials of every physician testifying in common mental health proceedings.

Barring psychiatry residents from participating in legal hearings will not better prepare these physicians for clinical practice; trainees cannot be expected to

gain expertise without experience. Instead, helping budding psychiatrists understand the interface between mental health and the law can ready them for future legal hearings and enable them to provide better care to their patients.

A Different Patient–Doctor Relationship

After spending years in medical school learning about the nuances of patient care, psychiatry residents involved in legal hearings may find themselves in a role unlike the standard patient–doctor relationship. Rather than rounding on patients at the bedside, psychiatry residents may instead be sitting in legal proceedings where involuntarily hospitalized patients may stare back at them with looks of betrayal.

Early on, psychiatry residents who participate in legal hearings learn that these proceedings can be stressful experiences. Residents can be tasked with difficult duties, like proving patients' inability to care for themselves as a result of mental illness. Testimony may require residents to recount potentially embarrassing information about patients, such as homicidal statements shouted at staff or evidence of disorganized behaviors, in front of the patients themselves and an audience of legal professionals. Residents may face cross-examination by attorneys or pointed questions from judges, which may challenge residents' expertise, familiarity with patients, and clinical decision-making. Patients sometimes bristle at the inherent paternalism involved in these legal hearings, and adversarial struggles over autonomy can elicit complicated transference and countertransference in the patient–doctor relationship.^{26,39,40}

Psychiatry residents may be unsure about their roles in these legal proceedings. Lawyers and psychiatrists' frequently offer conflicting views of patients' needs, raising competing notions of who is truly advocating for patients' best interests.^{6,41} In addition, when residents testify in legal hearings, they often do so on matters related to patients whom they are treating. Here, residents can find themselves entangled in situations of "dual agency"; the function of a treating psychiatrist, who owes a duty to the patient, may become muddled with the function of the testifying psychiatrist, who owes a duty to the judicial system.⁴² These mixed roles can pull residents in different directions and engender conflicts of interest during legal proceedings.

Another aspect of mental health proceedings that may be difficult for psychiatry residents is reckoning with the limitations of the relevant legal frameworks. Testifying residents must operate within legal confines, such as state commitment statutes, which may seem to be at odds with the best clinical interests of individual patients. The legal frameworks set up for high-stakes decisions over psychiatric care can also seem inadequate at times. As an example, a study of adult civil commitment hearings from May 2007 in Virginia found that 57 percent of these hearings lasted 15 minutes or less.⁴³

Legal hearings can also be ethics minefields for testifying psychiatrists.^{9,44,45} The seductions of serving as a psychiatric expert can make clinicians vulnerable to ethics infractions, such as overstating expertise, referring to dubious jargon, or misrepresenting subjective opinions as objective medical facts.⁴⁵ Expert witnesses face many temptations, including fears about "losing" hearings, developing newfound narcissism, and the lure of argumentativeness.⁹ Psychiatry residents who have minimal experience with legal hearings may be more likely to fall into these ethics traps without proper training and supervision.

Finally, psychiatry residents participating in legal proceedings will have to grapple with assuming a highly controversial role. Although the public may trust physicians to act on behalf of patients' best interests, many legal aspects of psychiatric care, including involuntary commitment, medication over objection, and mental health conservatorships, remain contentious.^{46–49} Critics have expressed doubts over the usefulness of psychiatric expert testimony, which may undercut residents' confidence when participating in legal hearings.^{50–53} In addition, trainees' understanding of their role in legal proceedings may be heavily influenced by popular culture, including stereotyped portrayals of psychiatrists in forensic settings.⁵⁴

The Need for Formal Teaching

Because psychiatry residents participate in high-stakes legal hearings despite poor preparation, residents clearly need more formal education around these procedures. As Many wrote in his 1983 paper, "no person in training should perform a professional role for which he or she is ill-prepared" (Ref. 22, p 51). Evidence that practicing psychiatrists may also misunderstand legal frameworks around mental health care reinforces the need for formal teaching on these aspects of practice.^{36–38}

For decades, mental health professionals have called on psychiatry residency programs to enhance education relating to forensic topics, and surveys have found that psychiatry residents are frequently interested in this kind of teaching.^{13,55-59} While recent research suggests psychiatry residency programs in the United States generally provide some form of forensic training to their residents, the teaching can differ enormously between programs and may not adequately prepare residents for future legal hearings.¹²

In the past 20 years, several psychiatrists have proposed frameworks for educating general psychiatry residents about forensic psychiatry, often emphasizing the teaching of content related to legal hearings.^{23,24,56} In a 2001 paper, Schouten²³ argued that civil commitment, the right to refuse treatment, and an introduction to the legal system are core forensic topics that psychiatry residents should learn about in their first year of clinical training. In 2004, Lewis categorized basic law, civil commitment, and the right to refuse treatment as “strongly recommended” topics for psychiatry resident training, with testifying and the role of the expert witness categorized as “recommended” topics.²⁴

Last year, Elizabeth Ford and colleagues⁵⁵ offered one of the most comprehensive approaches yet to teaching general psychiatry residents about forensic topics, proposing a model curriculum broken down into different topics by year, by modality, and by suggested faculty involvement. The authors acknowledged that psychiatry trainees must learn early on about a variety of topics, from psychopharmacology to psychotherapy, but maintained the importance of strong forensic training throughout psychiatry residency. The model curriculum includes numerous suggestions, such as didactics about the history of civil commitment, experiences attending legal hearings, participation in mock trials, and field trips to judicial facilities, that could improve the competency of psychiatry residents tasked with testifying.

As these articles indicate, different types of formal teaching may be useful in preparing residents for legal hearings. Required didactics is one way to achieve this aim. Educational sessions may include lectures, seminars, or problem-based learning modules to help residents understand their roles in mental health proceedings.^{13,58} Psychiatry faculty may be well suited to provide this kind of teaching, but residents would

be likely to benefit by learning from patients, attorneys, judges, and other legal stakeholders as well.^{55,59}

Learning through practical experiences is another key way to ready psychiatry residents for legal hearings. Multiple psychiatrists have advocated using mock trials (i.e., educational experiences where trainees participate in simulated legal proceedings) to prepare residents for real-world legal procedures.^{55,60-62} Some have encouraged the development of clinical rotations in correctional settings to help educate psychiatry residents about forensic topics.⁵⁷ These kinds of practical experiences could be incorporated into a stepwise approach to training, such as allowing beginning residents to observe legal hearings first, then to join in mock trials, to take part in hearings under supervision of more senior clinicians, and, finally, to participate in hearings independently.^{22,55,59}

It is important to remember that the goal of these kinds of formal teaching is not to add more educational burdens to residents' lives or necessarily to recruit forensic psychiatrists; instead, this teaching should serve to train psychiatrists to feel more prepared to participate in legal hearings and to perform in a more competent manner when tasked with doing so.

Developers of training programs where psychiatry residents routinely partake in legal proceedings may wish to develop minimum standards of competence that are to be expected of trainees, either by the time of the resident's first testimony or, at least, by the time of graduation from residency.⁶³ These standards may include familiarity with basic medical content, pertinent mental health laws, the function of legal hearings in psychiatric care, and the responsibilities of the testifying psychiatrist. Ideally, demonstrating competency in legal testimony would be incorporated into psychiatry residency milestones required by the ACGME.²⁰

The Role of Informal Teaching

Formal teaching in psychiatry residency programs can help prepare trainees for legal hearings; however, such structured teaching may not always be possible. There are many competing demands for residents' limited time, including patient care, research, and other educational topics. Residency programs may not have educational frameworks, such as mock trials or rotations in correctional settings, set up to facilitate teaching about testifying.

Whether or not residency programs are able to establish formal instruction about legal hearings, in-

formal teaching can also play a role. Mentorship is one opportunity. Outside of structured didactics, psychiatry residents can learn a great deal from senior clinicians with experience testifying in legal settings.⁶⁴ For example, a 2010 study found that general psychiatry residents scored significantly higher on the forensic sections of their training examinations in the years after the establishment of a forensic psychiatry fellowship program.⁶⁵ The authors attributed these improved scores to several factors, including “interaction with interested and available subspecialty fellows and faculty” (Ref. 65, p 227).

Self-driven learning can also help psychiatry residents before legal testimony. Residents would benefit from reading pertinent statutes, such as state laws governing civil commitment and medication over objection, not only for delivering appropriate patient care but also to prepare for future legal proceedings. Because state and federal laws can be dense and challenging to understand at times, residents may also refer to relevant literature, including books and academic papers that provide tips for navigating legal hearings.^{9,11,66,67} A 2009 article, for instance, provides a checklist for mental health professionals to go through before testifying in civil commitment cases and a list of questions that may arise in these cases.⁶⁸

Conclusions

Participating in legal hearings is a tenuous, and yet vital, part of residency training in psychiatry. Often tasked with caring for the most ill psychiatric patients, psychiatry residents may find themselves testifying about weighty legal matters pertaining to their patients. However, residents may receive little training before participating in these legal procedures. This combination of inexperienced physicians with high-stakes legal proceedings deserves more scrutiny, as legal hearings related to psychiatric care can have significant effects on patients, providers, and the functioning of the U.S. mental health system.

Historical data suggest residents widely participate in legal hearings, but comprehensive studies in this area are lacking. Better understanding of the responsibilities that residents assume in legal hearings can help tailor structured teaching around these roles, and residency programs should ideally incorporate teaching these forensic skills into their didactic curricula. Residency programs may also encourage informal education about legal hearings through fac-

ulty mentorship and self-directed learning, among other approaches.

Regardless of the educational methods used, residency programs should seek to train psychiatrists who embody minimum standards of competence in legal hearings, which might include fluency with relevant medical content, knowledge of the pertinent laws, and familiarity with the nature of the legal proceedings at hand.

When asked about what he felt psychiatry residents should learn about court and testifying, Judge Evan Goodman, an early advocate for mental health courts in the country, once replied:

That they shouldn't be afraid of courts, that court can be part of the therapeutic process and how they can be therapeutic in court (Ref. 69, p 176).

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