Forensic Psychiatry:
A Comprehensive Residency Program at
Southern Illinois University School of Medicine

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The professions of law and psychiatry are currently interacting with significant intensity and frequency to the extent that involvement of the mental health professional in a wide ranging number of legal arenas has become an essential adjunct to the fair and equitable dispensation of justice. The psychiatrist may become involved in civil matters dealing with testamentary capacity, contractual competency, guardianship, personal injury, marriage and dissolution, child custody, and involuntary hospitalization. Psychiatric opinion testimony is also critical in criminal cases involving the mental state of the alleged offender from the standpoint of fitness for trial or criminal accountability at the time of commission of the alleged offense.¹

As society becomes more sophisticated, the psychological nuances of behavior and experience become increasingly significant to the extent that forensic medicine,² specifically forensic psychiatry, has become one of the most rapidly developing and expanding areas in both of the related disciplines.³ As a result, the practice of forensic psychiatry is emerging as a recognized subspecialty of psychiatry.⁴ And, with the establishment of the American Board of Forensic Psychiatry, it has become essential that standardized training programs in forensic psychiatry be developed throughout the country.⁵

In this regard, Robert Sadoff, M.D., a widely known author and educator who has conducted numerous surveys of teaching programs in the area of forensic psychiatry, has stressed the fact that more university centers should have greater input into forensic psychiatry.⁶ Unfortunately, physicians in training generally have insufficient exposure to forensic psychiatry to prepare themselves for the medico-legal problems which are encountered in an active forensic practice.⁷ One writer has noted that, despite the great importance of forensic medicine to physicians and psychiatrists, the available education and exposure during their professional schooling is grossly inadequate.⁸

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Another writer, in 1977, pointed out that, "Training programs in forensic psychiatry are almost nonexistent... but several are in the process of formation." Clearly, there is a growing need for standardized postgraduate and postresidency training programs in forensic psychiatry at medical schools and hospitals throughout the country. The importance of such programming certainly cannot be over-emphasized. It is essential, however, that such forensic psychiatry programming achieve a content balance between criminal and non-criminal considerations in forensic psychiatry. Moreover, it is advisable that forensic psychiatry residency programs be competency-based with established learning objectives, predetermined evaluation standards and goals, required independent reading and research assignments with suggested and additional bibliographic information for self-motivated expansion of study.

One such model forensic psychiatry residency program has been implemented at Southern Illinois University School of Medicine in Springfield, Illinois. Substantively, the program covers: civil commitment; patient rights and responsibilities following involuntary hospitalization; psychiatrist-patient confidentiality and privilege; psychiatric malpractice; the psychiatrist in the criminal process — insanity and fitness for trial; the psychiatrist as an expert witness; mental competency vs. capacity; and special legal considerations in child psychiatry. The program is competency-based and virtually self-contained in its articulation of precise learning goals and objectives, evaluation standards and required or optional reading assignments. Although the program emphasizes relevant State law considerations, an essential precondition for any successful residency-level training program, its substance and format will be of significant value to the interested educator in the development of similar forensic psychiatry training programs in other university and hospital settings. The Program is set forth as follows:

**Forensic Psychiatry Residency Seminar Program**

**Module 1**

**Illinois Mental Health Code: Commitment Procedures — Rights and Responsibilities**

**Rationale**

Legal provisions for civil commitment and treatment have been developed by society for the purpose of ameliorating social and personal harms by protecting society from dangerous persons or by protecting persons from themselves. Involvement of the psychiatrist in the civil commitment process is a diverse and multifaceted professional endeavor attendant to which there are numerous specific rights and responsibilities. It is the purpose of this module to familiarize the resident with significant substantive and procedural statutory provisions set forth in the 1979
Illinois Mental Health and Developmental Disabilities Code which have an impact on the nature and delivery of psychiatric patient care. In addition, the resident will be exposed to recent common law decisions within the State of Illinois which have established judicial precedent relative to the psychiatrist’s involvement in the civil commitment process.

**Learning Goals**

1. Using the 1979 Illinois Mental Health and Developmental Disabilities Code, explain the significant statutory procedures for hospitalization of mentally ill persons in the following situations:
   a. informal admission of adults
   b. voluntary admission of adults
   c. admission of minors
   d. emergency admission by certification
   e. admission by court order

2. Using the 1979 Illinois Mental Health and Developmental Disabilities Code, explain the significant statutory provisions which pertain to court hearings held for the purpose of hospitalizing mentally ill persons.

3. Using the 1979 Illinois Mental Health and Developmental Disabilities Code, explain the significant statutory procedures for discharge, restoration, and transfer of hospitalized patients.

4. Using the 1979 Illinois Mental Health and Developmental Disabilities Code, define and differentiate between the following legal terms:
   a. hospitalization
   b. mental retardation
   c. person subject to involuntary admission
   d. physician
   e. psychiatrist
   f. qualified examiner
   g. recipient of services
   h. responsible relative
   i. treatment

5. Using the Arons and Morse articles: (a) articulate at least two proposals for improving the current format of civil commitment laws; and (b) describe the various theories upon which it may be argued that civil commitment laws should not exist.

6. Define and describe the basis upon which the Supreme Court of Illinois has concluded that the appropriate standard of proof in an involuntary civil commitment proceeding is clear and convincing evidence. Further define why this standard is deemed to meet constitutional “due process” requirements. See, *In Re Stephenson*, 67 Ill. 2d 544 (1977)

7. Using the attached common law cases, be prepared to describe and discuss, by assignment, the testimony and evidence which supported a specific involuntary civil commitment and the basis upon which the commitment was upheld or reversed on appeal.
Evaluation
Final Seminar written evaluation
Assessment of Seminar participation
Assessment of assigned case discussion

Learning Activities
1. Seminar — Discussion
   a. Week One — Objectives 1-5
   b. Week Two — Objectives 6-7
2. Independent Study
   a. Required:
      1) 1979 Illinois Mental Health and Developmental Disabilities Code (Attached)
      5) In Re Stephenson, 67 Ill. 2d 544 (1977) (Attached)
      8) In Re Graham, 40 Ill. App. 3d 452 (1976) (Attached)
   b. Suggested:
      2) Feldman: Who decides admission — judge or physician. Legal Aspects of Medical Practice 6:8 (March, 1978)
      7) Owens: When is a voluntary commitment really voluntary. Am J Orthopsychiatry 47:104 (Jan, 1977)
Module 2
Hospitalized Patients:
Rights and Responsibilities After Commitment

Rationale
As the result of criticism by legal and non-legal commentators, concerned professionals and mental patients themselves, there has been an obvious trend toward greater patient rights in the hospital setting. This trend has been most significantly reflected in the area of psychiatric patient care. Recent case law and statutory enactments reflect increased awareness of the plight of the hospitalized mental patient and greater willingness by the courts and legislatures to deal directly with the complex issues attendant to the treatment and rehabilitation of such patients. It is the purpose of this module to familiarize the psychiatry resident with significant statutory provisions and judicial decisions having an impact on the delivery of psychiatric patient care in the hospital setting.

Learning Goals
1. Describe and discuss the development of the mental patient’s right to treatment in the hospital setting and, more specifically, be prepared to discuss and differentiate among the theories relied on by the courts in support of a right to treatment:
   a. statutory rights
   b. constitutional rights (due process, equal protection, cruel and unusual punishment)
   c. right to liberty
2. Describe and discuss the development of the mental patient’s right to refuse treatment in the hospital setting and, in the context of various treatment modes, differentiate among the theories upon which a right to refuse treatment has been based:
   a. constitutional rights (religion, right to free expression of ideas, cruel and unusual punishment, due process)
   b. informed consent
   c. right of privacy
   d. statutory rights
3. Using the 1979 Illinois Mental Health and Developmental Disabilities Code, define and discuss the significant statutory provisions which pertain to:
   a. adequate and humane care and services
   b. least restrictive environment
   c. services by spiritual means
   d. refusal of services
   e. electro-convulsive therapy, psychosurgery and unusual, hazardous or experimental services
4. Using the 1979 Illinois Mental Health and Developmental Disabilities Code, define and discuss the significant statutory provisions which
pertain to the concepts of restraint and seclusion of recipients of mental health and developmental disabilities services.

5. Using the 1979 Illinois Mental Health and Developmental Disabilities Code, explain the significant statutory provisions which pertain to the rights of recipients of mental health and developmental disabilities services with regard to:
   a. oral and written communications
   b. use of personal property
   c. adjudicated incompetency
   d. use of money
   e. labor restrictions

**Evaluation**

Final Seminar written evaluation
Assessment of Seminar participation

**Learning Activities**

1. Seminar — Discussion
   a. Week One — Objectives 1-2
   b. Week Two — Objectives 3-5

2. Independent Study
   a. Required:
      1) 1979 Illinois Mental Health and Developmental Disabilities Code (Attached)
      3) Comment: Relief for the civilly committed: A constitutional right to treatment. Ky L J 63:469 (1975)
      8) *Winters v. Miller*, 446 F. 2d 65 (2d Cir. 1971) (Attached)
   b. Suggested:
      5) Hoffman and Foust: Least restrictive treatment of the mentally ill:


8) Plotkin: Limiting the therapeutic orgy: Mental patients' right to refuse treatment. NWUL Rev 72:461 (1977)


10) Note: Mental health: A model statute to regulate the administration of therapy within mental health facilities. Minn L Rev 61:841 (1977)

Module 3

The Psychiatrist-Patient Relationship: Confidentiality and Privilege

Rationale

Every mental health professional has the responsibility of safeguarding the confidentiality of matters relating to psychiatric treatment. Breach of this confidentiality may injure a patient's reputation in the community, adversely affect the patient's ability to obtain employment and, most importantly, destroy the trusting and therapeutic relationship between the mental health professional and his patient. There are times, however, when societal welfare demands that confidentiality be breached and intimate aspects of the psychiatrist-patient relationship be revealed. It is the purpose of this module to familiarize the psychiatry resident with significant statutory provisions and judicial decisions which are descriptive of, and have an impact on, confidentiality and the psychiatrist-patient privilege.

Learning Goals

1. Distinguish the concepts of confidentiality and privilege in the context of the psychiatrist-patient relationship.

2. Describe and discuss the following theories of recovery for breach of confidentiality, with specific focus on their availability, likelihood of success, and beneficial consequences:
   a. breach of contract
   b. breach of fiduciary duty
   c. invasion of the right of privacy
   d. malpractice

3. Using the 1979 Mental Health and Developmental Disabilities Confidentiality Act, define and differentiate among the following legal terms:
   a. confidential communication
   b. guardian
   c. personal nurse
d. recipient
e. record
f. therapist

4. Using the 1979 Mental Health and Developmental Disabilities Confidentiality Act, explain the significant statutory provisions which pertain to the disclosure of confidential communications and records.

5. Using the 1979 Mental Health and Developmental Disabilities Confidentiality Act, define and discuss the therapist-recipient privilege with particular emphasis on the circumstances justifying the exercise of the privilege to prevent disclosure of confidential communications and records.

**Evaluation**

Assessment of Seminar participation
Final Seminar written evaluation

**Learning Activities**

1. Seminar — Discussion
2. Independent Study
   a. Required:
      1) 1979 Illinois Mental Health and Developmental Disabilities Confidentiality Act (Attached)
   b. Suggested:
Module 4
Psychiatric Negligence and Malpractice

Rationale
Numerous recent cases highlight the current development of liability by psychotherapists and other mental health professionals to their patients and others. These cases suggest a trend toward increased liability of professionals in general and, more specifically, of the willingness of courts to view mental health professionals as charged with a special duty to safeguard their patients and the public against dangerous and volatile forces in their charge. It is the purpose of this module to familiarize the psychiatry resident with significant recent common law decisions having an impact on the nature and delivery of psychiatric patient care. Specifically this module will focus on the impact of these decisions in the context of psychiatric negligence and malpractice.

Learning Goals
1. Explain the basic elements upon which a psychiatric malpractice or negligence claim may be predicated.
2. Define and differentiate between the nature and scope of psychiatric malpractice in the following contexts:
   a. diagnosis
   b. shock therapy and informed consent
   c. drug therapy
   d. miscellaneous somatic treatment
   e. suicide
   f. injuries to third parties
   g. privilege and breach of confidentiality
   h. duty to warn
   i. commitment
   j. psychotherapy

Evaluation
Assessment of Seminar participation
Final Seminar written evaluation
Learning Activities
1. Seminar Discussion
2. Independent Study
   a. Required:
      2) Tarasoff v. Regents of University of California, 551 P.2d 334 (1976) (Attached)
      4) Fernandez v. Baruch, 244 A.2d 109 (N.J. 1968) (Attached)
      5) Harris v. Harris County Hospital, 557 S.W. 2d 353 (Tex. Civ. App. 1977) (Attached)
      7) North Miami General Hospital v. Gilbert, 360 So. 2d 426 (Fla. App. 1978) (Attached)
   b. Suggested:
      4) Poltz: Psychiatrist’s duty to the public: Protection from dangerous patients. U Ill Law Forum 1103 (1976)

Module 5
The Psychiatrist and the Criminal Process:
Insanity and Fitness for Trial

Rationale
Involvement of the psychiatrist in the criminal judicial process is a significant aspect of forensic psychiatry deserving considerable attention
and study. The determination of criminal responsibility is quite separate from the determination of an individual’s ability to stand trial. In the latter instance, one is concerned with a defendant’s mental condition at the time of pretrial examination, particularly with regard to the defendant’s capability of understanding the nature of the charges made against him as well as his ability to assist in his own defense. In the former instance one is concerned with the mental condition of the defendant at the time of the alleged offense, thereby permitting a legal determination of the existence of criminal responsibility for the conduct in question. It is the purpose of this module to familiarize the resident with significant substantive and procedural statutory provisions set forth in the Illinois Criminal Code relative to the involvement of the psychiatrist in the process of determining fitness to stand trial, and sanity at the time of the commission of a criminal offense. In addition, the resident will be exposed to a summary of the origins, development, and future of the insanity defense within and without the State of Illinois. The resident will be further exposed to recent common law decisions within the State of Illinois which have established judicial precedent relative to the psychiatrist’s involvement in the criminal judicial process.

**Learning Goals**

1. Explain the origins and development of the insanity defense giving specific descriptions of the following rules and/or tests:
   a. M’Naghten Rule
   b. Irresistible-Impulse Test
   c. Durham Test or Product Rule
   d. American Law Institute Test

2. Describe the nature and scope of the insanity defense as it is used within the State of Illinois using the *Thompson* article. Describe the problems encountered by defendants who assert the insanity defense. Describe further the author’s proposal for future changes in the use of the insanity defense.

3. Explain the significant Illinois statutory provisions relative to: determination of fitness to stand trial, assertion of the insanity defense, proceedings after acquittal by reason of insanity, and court appointment of an examining psychiatrist.

4. Using the *Ringer and McCormack* article, articulate a proposal favoring elimination of the insanity defense as a bar to criminal conviction. Describe further the author’s arguments in opposition to the assertion of mental incapacity as a bar to standing trial.

5. Using the attached common law cases, be prepared to describe and discuss, by assignment, the effectiveness of specific psychiatric testimony in support of, or in opposition to, the insanity defense.

6. Using the attached common law cases, be prepared to describe and discuss, by assignment, the effectiveness of specific psychiatric testimony in support of, or in opposition to, the issue of fitness to stand trial.
Evaluation
Final Seminar written evaluation
Assessment of Seminar participation
Assessment of assigned case discussion

Learning Activities
1. Seminar — Discussion
   a. Week One — Objectives 1-4
   b. Week Two — Objectives 5-6
2. Independent Study
   a. Required:
      4) Illinois Revised Statutes (1977) Ch. 38 § §115-6, 1005-2-1 et seq., and statutory definition of insanity (Attached)
      6) Daniel M'Naghten's Case, 10 Cl. & F. 200, 8 Eng Rep 718 (1843) (Summary — Attached)
      7) People v. Ward, 61 Ill. 2d 559 (1975) (Attached)
      8) People v. Diezman, 44 Ill. App. 3d 829 (1976) (Attached)
      9) People v. Lechner, 35 Ill. App. 3d 1033 (1976) (Attached)
     10) People v. Young, 60 Ill. App. 3d 351 (1978) (Attached)
   b. Suggested:
      3) German: Punishing the not guilty: Hospitalization of persons acquitted by reason of insanity. Psychiatry Q 49(3):238 (Fall, 1977)
Module 6
The Psychiatrist as an Expert Witness: Forensic Expert Witness Activity

Rationale
The professions of law and psychiatry currently interact with greater intensity and frequency than ever before. The opinion of the psychiatrist may be sought in widely ranging legal areas. The psychiatrist may become concerned with civil cases involving personal injuries, wills, contracts, deeds, annulments, divorce, guardianship, and commitment to mental institutions. The psychiatrist’s opinion is also crucial in criminal cases involving the alleged offender’s mental state at the time of trial and at the time of the commission of the alleged offense. In order for the psychiatrist to work effectively in the legal arena, he must be aware of the rules of the judicial game, the players and their roles, and special procedures relating to the role of the psychiatrist as an expert witness. It is, accordingly, the purpose of this module to familiarize the psychiatry resident with significant medical-legal considerations relative to psychiatric expert testimony and consultation. These considerations shall include, inter alia: psychiatric testimony in the civil setting, psychiatric testimony in the criminal setting, preparation of psychiatric reports for the court, and the psychiatrist as an expert witness.

Learning Goals
1. Describe the significant aspects of the psychiatrist’s involvement as an expert witness in the trial process including:
   a. pretrial preparation
   b. direct examination
   c. hypothetical question
   d. cross examination
2. Define and differentiate between the nature and scope of the psychiatric expert witness activity in the criminal and in the civil settings.
3. Describe and discuss the significant attributes of a psychiatric report written for an attorney or the court in a pretrial or trial context.
4. Be prepared to describe and discuss significant aspects of the verbatim transcript of psychiatric testimony (direct and cross examination) set forth in the Twardy article.
Evaluation
Assessment of Seminar participation
Final Seminar written evaluation

Learning Activities
1. Seminar Discussion
2. Independent Study
   a. Required:
   b. Suggested:
      2) Bergstresser: Handling the psychiatric witness. Trial 13:32 (July, 1977)
      3) Fosdal: Contributions and limitations of psychiatric testimony. Wis B Bull 50:31 (1977)

Module 7
Mental Competency vs. Capacity — An Analysis of Substantive and Procedural Law

Rationale
The objectives of laws governing the area of competency are not only to afford protection to society, but also to secure the welfare of the incompetent individual. The substantial curtailment of personal liberty and freedom of choice involved when an individual is deemed incompetent to manage his personal affairs, or a decedent is determined
to have lacked testamentary capacity, demands that strict substantive
criteria and procedural protections be adopted to guide such decision-
making processes. Through judicial decisions and statutory enactments,
society has attempted to balance its own interests against the interests of
the individual in personal liberty and freedom of choice. It is the purpose
of this module to familiarize the psychiatry resident with significant
statutory provisions and judicial decisions which pertain to and are
descriptive of the substantive and procedural aspects of competency and
testamentary capacity.

Learning Goals
1. Define and differentiate between the legal term “subject to involuntary
   admission” and “disabled person.” Further, discuss the nature of a
   recipient’s right not to be presumed incompetent, using the 1979
   Mental Health and Developmental Disabilities Code.
2. Using Ill. Rev. Stat. 1977, Ch. 110½, §11-1 et seq., as amended,
   explain the procedures relative to the appointment of a guardian for a
disabled person.
3. Discuss the impact of the appointment of a guardian for a disabled
   person on the delivery of psychiatric health care.
4. Define and differentiate between competency and testamentary
   capacity using the attached statutory provisions and common law
decisions.
5. Using Pendarvis v. Gibb, 328 Ill. 282 (1927) and the attached
   transcript of testimony from the Coffin case, describe and discuss the
   nature of psychiatric testimony and evidence and its use in determining
   testamentary capacity.

Evaluation
Final Seminar written evaluation
Assessment of Seminar participation

Learning Activities
1. Seminar — Discussion
2. Independent Study
   a. Required:
      1) 1979 Illinois Mental Health and Developmental Disabilities
         Code (Attached)
      2) Ill. Rev. Stat. 1977, Ch. 110½, §4-1 (Attached)
      3) Ill. Rev. Stat. 1977, Ch. 110½, §11-1 et seq., as amended
         (Attached)
      5) Pendarvis v. Gibb, 328 Ill. 282 (1927) (Attached)
      6) Transcript: Testimony of Dr. Henry A. Davidson (In re Estate of
         Coffin)
      7) In re Estate of Coffin, 246 A.2d 489 (1968)
   b. Suggested:
Module 8

Child Psychiatry — Consideration of Special Legal Problems

Rationale

The relationship between a psychiatrist and a minor patient involves a variety of peculiar problems not found in the usual psychiatrist-patient relationship. A child enters the psychiatrist-patient relationship in ways different than an adult and, once there, may not always be afforded the same rights as an adult. However, this disparity between the rights of adults and children is being challenged in courts throughout the country and the trend is toward narrowing the gap between the rights of adults and children and recognizing the unique problems children present in the context of the psychiatrist-patient relationship. It is the purpose of this module to familiarize the psychiatry resident with significant statutory provisions and judicial decisions having an impact on the admission of minors to mental health facilities, the minor's right to treatment and right to refuse treatment, the minor as an outpatient, and the psychiatrist-patient-parent triad.

Learning Goals

1. Define and discuss the legal principles relative to the voluntary commitment of minors by their parents, using *Bartley v. Kremens*, 402 F. Supp. 1039 (1975) and other significant common law decisions. Further, describe recent developments in the common law arena with regard to review of *Parham v. J.L.* by the United States Supreme Court...
and discuss its implications for the due process rights of minors who are voluntarily committed by their parents.


3. Describe and discuss the minor’s right to treatment and right to refuse treatment in the hospital setting from a common law and statutory perspective and, more specifically, be prepared to compare the rights of adults and minors with regard to the nature and scope of protections afforded.

4. Using the 1979 Illinois Mental Health and Developmental Disabilities Code, explain the significant statutory provisions which pertain to the minor’s right to obtain outpatient psychiatric services.

5. Describe and discuss the unique problems attendant to the psychiatrist-patient relationship relative to the conflict of interest between the minor/patient and his parents in the following areas:
   a. confidentiality
   b. discontinuance of treatment

**Evaluation**
Final Seminar written evaluation
Assessment of Seminar participation

**Learning Activities**
1. Seminar — Discussion
2. Independent Study
   a. Required:
      1) 1979 Illinois Mental Health and Developmental Disabilities Code (Attached)
      4) Parham v. J.L., 47 LW 3257 (Attached)
      5) Nelson v. Heyne, 491 F. 2d 352 (7th Cir. 1974) (Attached in part)
   b. Suggested:
      5) Shensky: Minors’ rights to psychiatric outpatient treatment


7) Note: Due process limitations on parental rights to commit children to mental institutions. U Colo L Rev 48:235 (1977)

The program as set forth has been abridged for publication purposes and does not include lengthy additional bibliographic data which is in fact provided to SIU Psychiatry Residents. This information may be obtained from the authors upon request.

References

1. Roberts L: Some observations on the problems of the forensic psychiatrist. in Allen et al.: Readings in Law and Psychiatry. 208 (1975)

4. Shensky R, supra, note 2 at 41
5. Wylie L: Survey looks at medical forensic training. Psychiatric News 31 (Feb 2, 1979)
6. Id.
8. Hirsh HL, supra, note 3 at 3
10. Sadoff R, et al., supra, note 9 at 67
11. Id. at 71; Wylie L, supra, note 5 at 31