

Losing Your Rights: Complications of Misdiagnosis

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Violation of civil rights, forced treatment, and commitment under the guise of psychiatric care occurred in two cases involving women who became “patients” in nonmedical situations in different states. They were both violently victimized and at some point in their cases acted on their own behalf. One case will be described herein.

In both cases the victims were denounced in court as malingerers after a misdiagnosis of psychosis and dangerousness was used to justify police action, incarceration, restraint, and forced injections of psychotropic drugs to incapacitate these women.

In addition, my role as a forensic psychiatrist and expert witness in each of these cases was markedly handicapped by the court’s prosecutorial favoritism and prejudicial attitude against such “mentally ill” persons.

The specific effect of the many injustices in these two very similar cases was to negate the freedom of these women and the overall effect was to discredit psychiatry while justifying the powers of courts and police.

The current level of antipsychiatric bias and the role of a psychiatrist in the legal system is shown to be as great as ever.

Case Summary

AZ was, at the time of my psychiatric examination, a middle-aged physician who had become a child advocate for those in need of care by the

County and Child Protective Services. I found her to be a very bright woman affected by several medical illnesses since childhood.

AZ’s motivation in her medical life was combined with a strong identification with the injustices experienced by the poor, blacks, and especially children with illnesses that no other doctors wanted to treat. Thus, she took on the task of challenging the “system,” which consisted of hospitals and the political bureaucracy at the county and state levels.

Not only did AZ gain attention for her treatment of those with unusual or exotic disorders whom others would not accept as patients, she also made house calls, often provided treatment without payment, and was available to parents with concerns at all hours of the day and night. She drew a lot of attention for these reasons alone. Then, when she proceeded to act on her desire to treat some of her patients in a hospital setting without going through the proper, but intolerable, administrative admission procedures, the hospital balked at allowing her to function outside of their prescribed structure and suspended her from practicing there.

AZ’s unconventional medical practice style, wherein she also enabled her staff to provide for her impoverished clinic children psychotherapy that was not covered by insurance, led to her being regarded unfavorably by her own hospital administration.

She once treated a sexually abused child who was in some way related to a city government official, who apparently felt threatened by the matter. This official later became a member of a known law firm, and it is believed that he sparked a broader legal community antipathy toward her.

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While in a hospital emergency room for treatment of a personal medical problem, AZ was deemed delusional because she spoke of details of a case that involved a political figure. She was then inappropriately forced into restraints and, despite her protestations, was injected with Haldol and Ativan. The experience was so stressful that she developed post-traumatic stress disorder.

AZ then began a series of administrative attempts to gain reprimands toward the emergency room doctor. She later sought psychiatric treatment.

After she had undergone several months of care, the emergency room episode led to her hospital's demanding that she be evaluated by a forensic psychiatrist to determine her competency to practice medicine. In my opinion, the report authored by the examining psychiatrist was quite pejorative, and it characterized AZ's complaints, allegations of defamation, and reports of attacks on her person as "histrionic descriptions." The forensic psychiatrist's conclusions were that AZ was psychotic and had a personality disorder (with histrionic features). I did not find these conclusions to be supported by the facts or by my own observations of her over many hours.

This biased report, however, led to her losing face, and she could gain no credibility in court, in subsequent emergency room visits, or with law enforcement officers or the police department. Political ramifications developed into a personal antagonism toward her by some major political figures.

The patient felt forced by bias and finances to defend herself in court without legal assistance. Not only did she provide her own defense in a very professional manner, but she also felt it necessary to initiate actions against those whom she saw as adversaries in her campaign to practice better medicine. What started as actions on behalf of those patients who were the primary victims of a dysfunctional medical system then became a protracted defense of her mental state and an attack on those whom she saw as guilty of malpractice or violation of her civil rights.

The courts saw AZ as an irritant and treated her as if she were an escapee from a psychiatric unit, despite her logical, coherent, and accurate legal arguments. They tried to avoid her political charges by referring to her as delusional when, in my opinion, she had never had any true symptoms of a psychosis.

The fact that AZ suffered emotional reactions of anxiety and depression that resulted from her medical illnesses as well as from the abuse by the emergency room doctor, the hospital administration, the police who arrested her, the jail guards who watched over her, and the court personnel who rejected her was used to relegate her to the not-to-be-taken-seriously psychiatric patient category.

AZ was also victimized by the police action and incarceration, which sometimes did not allow for her to receive emergency medical treatment. Her medication was occasionally withheld, and at times they did not recognize her right to refuse treatment when she asserted that certain drugs were contraindicated by her medical condition and/or her other medications.

Finally, when I was asked to be a witness for AZ, to testify about her mental competency, the court would not allow her to have such a witness. This was the ultimate censure and denial of her legal as well as civil rights.

Discussion

"Psychiatry has been criticized for ethical abuses in every sphere of its activity."¹ This is especially so with its ability summarily to cancel a person's freedom through its power to commit that person against his or her will. At the base of this power is the psychiatric act of diagnosing, which may have immediate as well as lifelong consequences.²

The women in the two cases in which I consulted, each in somewhat different initial circumstances but both asking for help in some form, were incorrectly diagnosed as psychotic and thereafter mistreated. They were both abused physically and rendered helpless by neuroleptic medications. Then when they complained about their maltreatment they were regarded as psychotic or malingering and their complaints were not acknowledged as being valid.

Neither woman was psychotic, malingering about the abusive consequences, or otherwise not entitled to the right to refuse treatment or the right to resist abuse.

Labeling them as mentally ill led to their being apprehended by the police who treated both of them as if they were criminals, rather than patients, as those in charge assumed the women's protestations were evidence that they needed to be restrained and tranquilized. The courts in turn disregarded their

complaints because of the diagnosis of psychosis, and thus the abuse continued from one venue to another.

In each case, these women sought restitution of their good names and their rights and compensation for the abuse suffered. Both attempted to do so without the use of lawyers.

AZ's victimization appeared to be the result of her being considered psychotic and her fighting a system that was undermined by politics and politicians. This power was vested in AZ's hospital board of directors as well as city and state officials. It is thus not surprising that the courts in turn were influenced adversely against her.

Because she would not just accept the adverse rulings, in attempting to make things right, she irritated and alienated all those whom she was asking to correct the system. There was no give on her part, and she was not tolerated; her message went unanswered, and she was repeatedly sent to jail, made miserable

while there, and forced to suffer numerous exacerbations of her many medical conditions.

Psychiatry should not be taken lightly as a critical specialty in the medical field, nor should it be used as a weapon by physicians or the legal or political system against individuals who are different, sound strange, or are nonconforming. Accurate diagnosis with thoughtfulness as to the many consequences arising from the diagnosis is a requirement of all physicians and must represent the standard of care.

The ethics we need to operate a reliable and safe society depend on rectifying the kinds of abuses to which these two physicians were subjected.

References

1. Rutkowski R, Gordon T: The crisis in psychiatry and the protection of the civil rights of mentally ill patients. *Psychiatry Pol* 28:301-12, 1994
2. Reich W: Psychiatric diagnosis as an ethical problem, in *Psychiatric Ethics* (ed 3). Edited by Bloch S, Chodoff P, Green SA. New York: Oxford University Press, 1999, pp 193-224