HEALTH CARE UNHINGED
Treating Mental Health in California

State Bar of California, Business Law Section
Health Law Committee

DATE: January 8, 2016
TIME: 9:00 AM
PLACE: Los Angeles, CA

PRESENTER: Craig B. Garner

This Program Offers 0.5 hours of MCLE Participatory Credit
INTRODUCTION

“‘Crazy’ is a term of art; ‘Insane’ is a term of law. Remember that, and you will save yourself a lot of trouble.” -- Hunter S. Thompson
THE AGE OF THE ASYLUM

- In the twentieth century, the network of care facilities in the United States expanded from a mere 149 hospitals in 1873 to 6,665 by 1913.

- Included among these were a growing number of specialized institutions that catered to specific conditions that had only recently been diagnosed as illnesses.

- The burgeoning science of psychiatry and advances in the treatment of addiction were at the forefront of such change, creating a demand for stand-alone structures often based in rural settings.
MENTAL HEALTH IN CALIFORNIA

- California’s first state-run psychiatric hospital, Stockton State Hospital, opened in 1853.

- For the next 50 years, municipalities in California shifted the financial burden for psychiatric treatment to state institutions.

- Wealthy patients received treatment in secluded, private facilities.

- By 1959, California’s 14 state hospitals cared for a population of 37,500 (one doctor for every 300 patients).
CAMARILLO STATE MENTAL HOSPITAL

- As just one example, Camarillo State Mental Hospital treated illnesses previously thought to be untreatable between 1936 and 1997.

- “Camarillo Brillo” by Frank Zappa: She had that | Camarillo brillo | Flamin’ out along her head | I mean her Mendocino bean-o.

- “Hotel California” by the Eagles: Mirrors on the ceiling | The pink champagne on ice | And she said “we are all just prisoners here, of our own device.”
THORAZINE TO THE RESCUE

- California’s inability to effectively and humanely treat these mental health patients necessitated change.

- New antipsychotic and anti-depression medication in the 1950s started to replace previous treatments like the lobotomy.

- The introduction of chlorpromazine (Thorazine) and other related medications created opportunities for community-based treatment.
THE LOBOTOMY

- As early as 1890, German scientist Friederich Golz surgically removed the temporal lobe in dogs to make a canine calmer.

- By 1940, Dr. Walter Freeman convinced the world that the “icepick lobotomy” method worked, resulting in more than 18,000 lobotomies in the U.S. between 1939 and 1951.

- By the 1970s, many U.S. states had banned the procedure.

- The Soviet Union outlawed the lobotomy in 1940 because, according to Stalin, it turned “an insane person into an idiot.”
LEGISLATING MENTAL HEALTH

“Madness is rare in individuals – but in groups, political parties, nations, and eras it’s the rule.” -- Friedrich Nietzsche
THE SHORT-DOYLE ACT

- In 1957 Congress passed the Short-Doyle Act, modifying funding responsibility and the provision of mental health care.

- Mental illness could be treated with medication in the community, thereby increasing availability and encouraging individuals to voluntarily seek treatment.

- The Short-Doyle Act provided 50% matching state funds to cities or counties for most mental health programs.

- In 1963 California increased its match for local Short-Doyle programs to 75% and broadened the scope for eligibility.
THE LANTERMAN-PETRIS-SHORT ACT

- The 1968 law required a judicial hearing be held to determine whether a person could be involuntarily hospitalized, thereby reducing dramatically the frequency of such events.

- Required all counties in California with populations over 100,000 to establish mental health programs (with the state funding match for local programs increased to 90%).

- Promotion of this trend to community-based care resulted in the closing of nine state hospitals.

- Between 1957 and 1984, the California state hospital population dropped 84%.
MEDICAL

Medicaid was health insurance coverage for the “deserving” poor, including women, their children, the blind, the disabled and the impoverished elderly.

Medicaid reimbursements for mental health services covered psychiatric hospitalization, care in a nursing facility, and other services from psychologists and psychiatrists.

California created “Medi-Cal” during its 1965 Second Extraordinary Session “in order to establish a program of basic and extended health care services for recipients of public assistance and for medically indigent persons.”
MEDI-CAL, CONTINUED

- Mental health coverage was initially a small part of Medi-Cal, although this changed as the number of deinstitutionalized patients increased.

- Federal programs typically resulted in the “pauperization” of the mentally ill, so clinics had incentives to provide cost-effective mental health care.

- Starting in 1971, counties could receive federal matching funds for some services Short-Doyle programs provided to Medi-Cal patients.

- Changes in 1988 and 1993 expanded the scope of coverage.
PROPOSITION 13

- When Proposition 13 capped property taxes in 1978, counties became more dependent on the State. At the same time, however, county responsibility for mental health care continued to surge.
- Programs for which counties needed to spend more than its 10% required match were closed while California implemented significant cuts in mental health funding.
CALIFORNIA REALIGNMENT AND PROPOSITION 63

- The 1990 Bronzan-McCorquodale Act shifted control of mental health, social and health service programs to the counties while creating a stable revenue stream, in part, from taxes and vehicle registration fees.

- The California Realignment Act had limited success due to the scope of California’s dysfunctional mental health system.

- Proposition 63 (the 2005 Mental Health Services Act) brought additional changes to California’s mental health system, but still failed to create a long-term solution.
MENTAL HEALTH BOARDS AND COMMISSIONS

- California Welfare & Institutions Code Section 5604.2 authorizes MHBCs to engage in various oversight activities.

- Board membership should reflect the ethnic diversity of the client population in the county.

- Charged with using performance indicator data to communicate its findings to the State.
MENTAL HEALTH PARITY

“When dealing with the insane, the best method is to pretend to be sane.” -- Hermann Hesse
MENTAL HEALTH TODAY

- Approximately one in five Americans experience mental illness.

- As of 2014, six percent of the population was living with a severe mental illness like schizophrenia, major depression or bipolar disorder.

- Mental health illness costs approximately $193.2 billion in lost earning annually.

- Two-thirds of the individuals with “potentially diagnosable disorders avoid treatment due to costs.”
MENTAL HEALTH TODAY, CONTINUED

- Mental health is subjective, just as diagnosis of schizophrenia relies on a spectrum, psychotic examples range from hallucinations to speech impediments, and bipolar affective disorder by definition alternates between periods of elevated mood and depression.

- The International Statistical Classification of Diseases and Related Health Problems (ICD-10) contains more than 14,400 different physical health concerns, and the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) hovers close to 300 disorders from which to choose.
2000 STATE ETHNIC COMPOSITION

- White: 47%
- Hispanic: 32%
- Black: 11%
- Asian: 7%
- Other: 3%
2050 STATE ETHNIC COMPOSITION

- White: 52%
- Hispanic: 26%
- Black: 13%
- Asian: 4%
- Other: 5%
RESTRAINTS BY THE NUMBERS

- 5150 (California Welfare and Institutions Code § 5150): Applies to involuntary psychiatric holds lasting three days.

- 5250: Applies to involuntary holds lasting up to 14 days.

- 5270: Applies to involuntary holds lasting up to 30 days.

- After 30 days, gravely disabled persons may require a conservatorship hearing (§ 5270.55).

- The maximum time for involuntary detention under Sections 5150, 5250 and 5270 is 47 days.
THE MENTAL HEALTH PARITY ACT OF 1996

- First federal parity law passed by Congress.

- Provided parity with respect to lifetime and annual limits for mental health benefits.

- Only covered mental illness and not substance abuse or chemical dependency.

- Did not require insurance plans to offer mental health benefits.
CALIFORNIA MENTAL HEALTH PARITY

- The California legislature passed its own mental health parity laws in 1999.

- The legislature found that coverage limitations resulted in inadequate treatment of mental illness, causing “untold suffering” for people with treatable conditions.

- The legislature also found that the lack of mental health insurance resulted in increased expenses for local and state governments.
CALIFORNIA MENTAL HEALTH PARITY, CONTINUED

- CMHPA prohibited “discrimination against people with biologically based mental illnesses, dispel[ed] unsound distinctions between mental and physical illnesses, and require[d] equitable coverage to prevent adverse risk selection.”

- Provides the same coverage irrespective of age.

- Benefits include (1) outpatient services, (2) inpatient hospital services, (3) partial hospital services and (4) prescription drugs.

- Does not mention residential treatment.
MHPAEA

- The 2008 Paul Wellstone and Pete Domenici Mental Health Party and Addiction Equity Act (MHPAEA) became effective January 2010.

- MHPAEA prohibits financial requirements and treatment limitations for mental health and substance abuse benefits in group health plans from being more restrictive than those placed on medical and surgical benefits.

- MHPAEA applies to health plans provided by employers with more than 50 employees and individual plans purchased through a Health Care Exchange.
MHPAEA, CONTINUED

- Does not apply to Medicare or Medicaid.

- A qualified health plan must include at least ten essential health benefits, although certain states require more.

- California mandates “chemical dependency services” must be consistent with MHPAEA, including inpatient detoxification, outpatient evaluation and treatment for chemical dependency, transitional residential recovery services or chemical dependency treatment in a residential recovery setting.
LAC DEPARTMENT OF MENTAL HEALTH

“Los Angeles is seven suburbs in search of a city.” – Alfred Hitchcock
CALIFORNIA DEPARTMENT OF MENTAL HEALTH

- Oversees State’s public health mental system.
- Employs 10,000 people in its Sacramento headquarters and throughout the five state hospitals.
- Evaluates public mental health programs.
- Provides leadership for county mental health programs.
- Develops regulations and oversees county plans.
LOS ANGELES COUNTY DMH

- California has 58 counties, although in the interest of time this presentation will focus on the LACDMH.

- The LACDMH is the largest county-operated mental health department in the U.S.

- Each year, the County contracts with more than 1,000 organizations and individual practitioners.

- LACDMH provides multiple manuals and directories online to providers (http://dmh.lacounty.gov/wps/portal/dmh/admin_tools/prov_manuals).
LACDMH ONLINE PROVIDER RESOURCES

- Guide to Claiming Prevention and Early Intervention & Evidence-Based Practice Services
- Guidelines for Claiming Funded Programs
- Medi-Cal Fee for Service Inpatient Hospital Provider Manual
- Short-Doyle Medi-Cal Organizational Provider’s Manual
- A Guide to Procedure Codes for Claiming Mental Health Services
HIPAA AND MENTAL HEALTH

“The secret of being a bore . . . is to tell everything.” --Voltaire
ADDED PROTECTIONS UNDER HIPAA

- Psychotherapy notes receive special protections under the HIPAA Privacy Rule.

- Section 164.510(b)(3) of the HIPAA Privacy Rule permits a health care provider, when a patient is not present or is unable to agree or object to a disclosure due to incapacity or emergency circumstances, to determine whether disclosing a patient’s information to the patient’s family, friends, or other persons is in the best interests of the patient.
HIPAA AND EMTALA

- A health care provider’s “duty to warn” generally is derived by standards of ethical conduct and state laws/court decisions.

- HIPAA permits a provider to notify a patient’s family members of a serious and imminent threat to the health and safety of the patient or others if those family members are in a position to lessen or avert the threat.

- Moses v. Providence Hospital and Medical Centers, Inc.: Sixth Circuit decision held that the EMTALA obligation to stabilize and emergency medical condition survives inpatient admission. Also expands right to sue to include anyone who is injured as a “direct result” of the violation.
SUBSTANCE ABUSE

“An alcoholic is someone you don’t like, who drinks as much as you do.” -- Dylan Thomas
ILLICIT DRUG USE

➢ In 2013, an estimated 24.6 million Americans (9.4% of the population) aged 12 or older had used an illicit drug in the past month.

➢ Marijuana is the most used drug, with approximately 19.8 million current users in the United States (7.5% of the population aged 12 or older).

➢ Most people use drugs for the first time when they are teenagers.

➢ Drug use is increasing among people in their fifties and early sixties.
SAMHSA AND MHSUDS

- The Substance Abuse and Mental Health Services Administration (SAMHSA) is a branch of the U.S. D.H.H.S.

- SAMHSA is charged with improving quality and availability of prevention, treatment and rehabilitation services.

- Department of Health Care Services’ (DHCS) Mental Health and Substance Abuse Services (MHSUDS) – Partners & Stakeholders webpage: http://www.dhcs.ca.gov/provgovpart/Pages/MH-SUD_Partners-Stakeholders.aspx

- MHSUDS is committed to ensuring the best possible planning, delivery and monitoring.
PROPOSITION 36

- California Proposition 36, the Substance Abuse and Crime Prevention Act of 2000, allows qualifying defendants convicted of non-violent drug possession offenses to receive a probationary sentence in lieu of incarceration.

- As a condition of probation defendants are required to participate in and complete a licensed and/or certified community drug treatment program.

- If the defendant fails to complete this program or violates any other term or condition of their probation, then probation can be revoked.
WHO BENEFITS?
Craig B. Garner
Garner Health Law Corporation

Craig is an attorney and health care consultant, specializing in issues pertaining to modern American health care and the ways it should be managed in its current climate of reform.

Craig’s law practice focuses on health care mergers and acquisitions, regulatory compliance and counseling for providers. Craig is also an adjunct professor of law at Pepperdine University School of Law, where he teaches courses on Hospital Law and the Affordable Care Act.

Between 2002 and 2011, Craig was the Chief Executive Officer of Coast Plaza Hospital in Norwalk, California. Craig is also a Fellow Designate with the American College of Healthcare Executives and Chair of the State Bar of California, Business Law Section, Health Law Committee.

Additional information can be found at www.garnerhealth.com.
Thank You

Craig B. Garner
Garner Health Law Corporation
1299 Ocean Avenue, Suite 450
Santa Monica, CA 90401
(310) 458-1560
craig@garnerhealth.com
www.garnerhealth.com