

Medical Whistleblower's Canary Notes

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Copies of UN law enforcement, criminal justice and human rights standards can

be obtained from :

Office of the High
Commissioner for Human
Rights, CH-1211

Geneva 10, Switzerland

([http://www.un.org/cgi](http://www.un.org/cgi-bin/treaty_2.pl)

[-bin/treaty_2.pl](http://www.un.org/cgi-bin/treaty_2.pl)

or

E-mail to: treaty@un.org)

UN Declaration—Rights of Disabled People

The Declaration of the Rights of Disabled Persons was adopted by the United Nations in 1975. It defines 'disabled person' to mean 'any person unable to ensure by himself or herself, wholly or partly, the necessities of normal individual and/or social life, as a result of deficiency, whether congenital or not, in his or her physical or mental capacities'. This definition includes people with a mental illness, whether or not they also have other disabilities. The Declaration recognizes that people with disabilities are entitled to:

- The inherent right to respect for their human dignity; The same fundamental human rights as other citizens, whatever the origin nature and seriousness of their handicaps and disabilities, including the right to a decent life - as normal and full as possible;
- The right to legal safeguards against abuse of any limitation of rights made necessary by the severity of a person's handicap, including regular review and the right of appeal;
- The right to any necessary treatment, rehabilitation, education, training and other services to help develop their skills and capabilities to the maximum;
- The right to economic and social security and the right, according to their capabilities, to secure and retain productive employment and to join trade unions;
- The right to have their needs considered in economic and social planning; The right to family life, the right to participate in all social, recreational and creative activities and the right not to be subjected to more restrictive conditions of residence than necessary;
- The right to protection against exploitation or discriminatory, abusive or degrading treatment;
- The right to qualified legal assistance to protect their rights, and to have their condition taken fully into account in any legal proceedings.

UN Principles for the Protection of Persons with Mental Illness

Durable Power of Attorney for Health Care Manual: An Advocacy Tool for Mental Health Consumer Empowerment and Patient Choice, (1994) Available from Protection and Advocacy Inc., Sacramento CA.

Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care were adopted by the UN General Assembly in 1991. The Mental Illness Principles focus mainly on human rights in relation to the mental health system but they also say:

- Every person with mental illness has the same rights as every other person, including the rights in the International Covenant on Civil and Political Rights and the rights recognized in the Declaration on the Rights of Disabled Persons;
- Every person with a mental illness has the right to live and work, as far as possible, in the community;
- People being treated for a mental illness must be accorded the right to recognition as a person before the law.
- All persons have the right to the best available health care, which shall be part of the health and social care system and that;
- Every patient shall have the right to receive such health and social care as is appropriate according to his or her health needs, and is entitled to care and treatment in accordance with the same standards as other ill persons.



Currently the American courts and medical profession recognize five essential tenets of informed consent:

- 1) The patient must be competent (in the case of minors, the competency of parents or legal guardian would apply)
- 2) Consent must be voluntary and not coerced.
- 3) Sufficient information must be disclosed.
- 4) The information must be understood and evaluated in terms of the patient's (or guardian's) own values
- 5) Consent should entail conscious or explicit permission.

The UN Principles reaffirm that individuals who have experienced mental illness have the right to protection from economic or sexual exploitation or physical abuse, sexual abuse or degrading treatment. These principles in relation to mental health care, deal with abuses and the means to prevent them, as well as recognizing the right of everyone in the community to have access to mental health care when necessary. The Principles emphasize that people with mental illness should not be stigmatized or disadvantaged in the care available because of the nature of the illness. There should not be a lower standard for mental health care than for the rest of the health system. They require that mental health facilities be inspected by competent authorities often enough to ensure that conditions, treatment and care of patients comply with the Principles. The Principles emphasize the concept of 'least restrictive alternative' in relation to treatment; the right to be treated and cared for, as far as possible, in the community in a way suitable to the individual's cultural background; special protection for children; and directing treatment towards enhancing personal autonomy, including respect for patients' rights to privacy and opportunities for education and vocational training. There are detailed requirements for informed consent.

Attorney Jim Gottstein of Anchorage Alaska runs the **Law Project for Psychiatric Rights** see his website <http://psychrights.org/>

Mental Health Advance Directives

In most states in the USA, the law declares that an individual with capacity has the ability to control decisions relating to his or her own health care (including mental health). Most states recognize some form of Health Advance Directive which can be an essential tool for an individual to express his or her choices at a time when the effects of illness have not deprived him or her of the power to express his or her instructions or preferences. Consequently, many state legislatures have affirmed that, pursuant to other provisions of law, a validly executed mental health advance directive is to be respected by agents, guardians, and other surrogate decision makers, health care providers, professional persons, and health care facilities. A "Mental Health Advance Directive" or "Directive" means a written document in which the principal makes a declaration of instructions or preferences or appoints an agent to make decisions on behalf of the principal regarding the principal's mental health treatment. Some mental illnesses cause individuals to fluctuate between capacity and incapacity. Early treatment may prevent an individual from becoming so ill that involuntary treatment is necessary; and mentally ill individuals need some method of expressing their instructions and preferences for treatment and providing advance consent to or refusal of treatment. A properly executed Advance Directive also helps prevent illegal coercion of a mentally ill patient to treatment he/she would not have consented to if not incapacitated. Additional Legal Information on Mental Health Advance Directives can be found at: **National Resource Center on Psychiatric Advance Directives (NRC-PAD)** is continuing to provide new information for consumers, family members, clinicians, and policy makers interested in PADs.

<http://www.psychrights.org>

<http://www.nrc-pad.org/> <http://www.brazelon.org>

Mental Health Managed Care and Medical Privacy

Health care ethics call for great respect for patient privacy and confidentiality. Privacy is especially important in mental health since patients talk about sensitive and personal topics such as being a victim of physical or sexual abuse, drug and alcohol use and family problems. Managed care disrespects privacy. True privacy and confidentiality means sharing sensitive, personal information with a single trusted professional chosen by the patient. Managed care however requires sharing private information with several people who are not chosen by the patient, such as gatekeepers and utilization reviewers who then store the information in files accessible to thousands of employees. True privacy and confidentiality means protecting information so that it cannot be seen by anyone not involved in treatment. Managed care usually only protects information to the extent of federal and state law which, in the case of insurance records, is very little protection and records are available to even employers. In true patient privacy and confidentiality patients have the freedom to control, without coercion who can see their personal and confidential records. In managed care patients are forced to giveaway up all privacy to receive benefits.



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Supporting the Emotional Health of All Whistleblowers and their Friends, Supporters and Families.

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Privacy Principles

There are concerns and complaints regarding the provisions in HIPPA that allow the release of patient information without patient consent. Privacy and confidentiality of medical data is all but abolished in this age of computers and modern technology which can lead to rapid transmission of sensitive data to many persons/entities with little possibility of retraction or deletion of data at a later time.

Privacy Principles:

- 1) Recognize that patients own their health data.
- 2) Give patients control over who can access their personally identifiable health information across electronic health information networks.
- 3) Give patients the right to opt-in and opt-out of electronic systems.
- 4) Give patients the right to segment sensitive information.
- 5) Require audit trails of every disclosure of patient information and allow patients to review those disclosures.
- 6) Require that patients be notified of suspected or actual privacy breaches.
- 7) Deny employers access to employees' medical records.
- 8) Preserve stronger privacy protections in state laws.



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