



Q Why did he punch you
A A court has the back of it. I don't know

Source images: Whitney Curtis for ProPublica; document and photo from Illinois State Police file obtained by Capitol News Illinois and Lee Enterprises Midwest

It's High Time to Start Protecting the Vulnerable: a Deep Dive into the Epidemic of Mental Health Malpractice.

By Hailey Stankiewicz

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Source image: *The Independent*, written by Jay Watts, published 05 May 2018

Almost 1 billion people in the world suffer from some sort of mental health disorder. In the United States alone, it is estimated that one in five Americans have a diagnosable mental health disorder.¹ More specifically, a study from the CDC found that “1 in 25 Americans” live with a serious mental illness, “such as schizophrenia, bipolar disorder, or major depression.”² With these numbers in mind, it is clear that experiences with mental health illness hit much closer to home for the majority of Americans than often expected. While physical illnesses provide tangible symptoms, mental illnesses on the other hand can sometimes feel “invisible”, as the symptoms that arise from these disorders are not always easy to see. Regardless, suffering from a psychiatric illness lends people a unique vulnerability that has repeatedly been exploited by those who make promises to do the opposite.

Acknowledging the ubiquitous nature of mental health issues, we must consider the factors at play that have allowed for the pervasive history of neglect and abuse in caring for society’s most vulnerable to remain. Have there been sufficient institutional changes in how mental health facilities operate? What constitutes mental health malpractice within psychiatry? What are common forms of abuse and neglect? Why has mental health malpractice continued? Is there a way to protect mentally ill patients and ensure psychiatric malpractice does not occur? In answering these questions, it is necessary to deconstruct the harmful trope that there is strong oversight and regulatory power over psychiatric malpractice, or that instances of neglect are far and few between.

What has the history of psychiatric care looked like?

The history of psychiatric care within the United States has undergone a myriad of institutional changes to ensure the safety and protection of those suffering with mental health illnesses. In the 19th century, psychiatric hospitals were referred to as asylums. They were euphemized as “mad houses” or “insane asylums”; often these terms connoted the inhumane abuses that patients were subjected to during their stays, as many fell victim to being brutally beaten, chained to their beds, forced to take ice-cold baths, and held under extended use of mechanical reinforcements (straight jackets, leather wristlets, etc.). The lack of institutional oversight, which enabled these instances of abuse, had not been addressed until after Ronald Reagan signed the Lanterman-Patris-Short Act in 1967. This Act sought to “end the inappropriate, indefinite and involuntary commitment of persons with mental health disorders.” This act also hoped to eliminate overcrowding and understaffing which was also a factor in enabling the barbaric treatment of psychiatric patients.



Source image: *Excel Medical*, Published Oct 6, 2022 by Samuel

Less than two decades later, in 1980, President Reagan’s Mental Health Systems Act passed through the House of Representatives and worked to formally transform asylums into hospitals that prioritized establishing better psychotherapy treatment. While these efforts have improved the treatment available for those who suffer from mental health illness, many of the psychiatric hospitals in place today still lack much of the regulatory oversight necessary to eliminate abuse and medical malpractice. Thus, mental health facilities often present a duality: while they are uniquely charged with the responsibility to advocate for, protect, and help those suffering from psychiatric illnesses, many times they rather become modes of exacerbation for widespread instances of discrimination, marginalization, and ostracization. Namely, this is through unregulated instances of mental health malpractice.

What is mental health malpractice?

Mental health malpractice happens when a hospital, facility, doctor, physician, nurse, or other specialized healthcare provider or professional causes injury to a patient, through the negligence or omission of necessary care. Specifically, mental health malpractice refers to negligence within the psychiatric field of care. Thus, cases of mental health malpractice must require that a patient prove that there was some form of neglect or abuse within a standing doctor-patient relationship that had resulted in injury or harm to the one seeking help.

Mental health malpractice claims must also legally encompass a violation of the standard of care. In other words, there are certain legally recognized medical standards that are accepted and expected when one requires medical help. This is known as a standard of care. If these standards are viably not met, negligence can duly be established against the physician.

What are common types of mental health malpractice?

A lack of consent is the most common reason for a mental health malpractice claim, as it can be challenging to navigate when patients can be deemed as unable to care for themselves. Patients are required by law to have consent for the medication and treatment they receive however, this line can become extremely blurred when a patient's state of mind or reality is altered. Regardless, forcibly prescribing medication inherently contradicts the standard of care that physicians are legally required to oblige by. Misdiagnosis within mental health care is also a critical issue that lends to instances of malpractice. Ultimately, failing to properly diagnose a condition or illness can cause harm to a patient and can lead to incorrect and potentially fatal unsuitable prescriptions.

The following includes a non-exhaustive list of examples that qualify as mental health malpractice:

- Unnecessary use of restraints
- Improper or overuse of isolation
- Physical, emotional, sexual, or verbal abuse
- Engagement in a sexual relationship(s) with a patient
- Placement of false memories or facts in a patients mind
- Failure to prescribe proper dosages
- Failure to obtain documents containing a patient's medical history
- Failure to obtain informed consent
- Failure to uphold confidentiality
- Failure to prescribe necessary or urgent medications



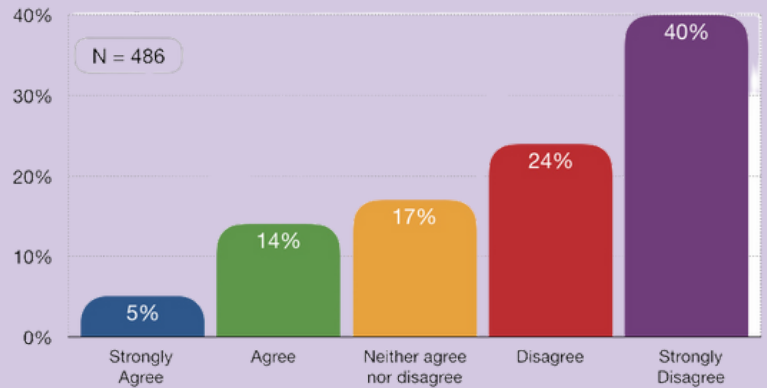
Source image: *The Levin Firm on Medical Malpractice* published January 31, 2021

Are psychiatrists less likely to perform malpractice?

While psychiatrists are not exempt from the possibility of being sued for claims of medical malpractice, they are rarely ever brought to court. Psychiatrists make up approximately 4% of all physicians, yet they only account for 1% of malpractice claims within the United States. Furthermore, only a staggering 2-3% of all psychiatrists within the United States face a malpractice claim, compared to the 19% of neurosurgeons, and 7% of all physicians. Pointing to the fact that this discrepancy is simply because there are fewer instances of malpractice within psychiatry compared to other forms of health care, is a grave fallacy. Rather, instances of mental health malpractice are often more complex in nature, and more difficult to unveil in litigation.

It is also much more complicated to ensure proper accountability measures in mental health institutions. However, the fact that psychiatrists are statistically less likely to be held liable for forms of medical malpractice compared to other healthcare professionals is only one reason, among a myriad of other facilitating factors regarding the continuation of abuse in mental health facilities today.

Were You Satisfied With the Conduct of the Psych Ward Doctors?

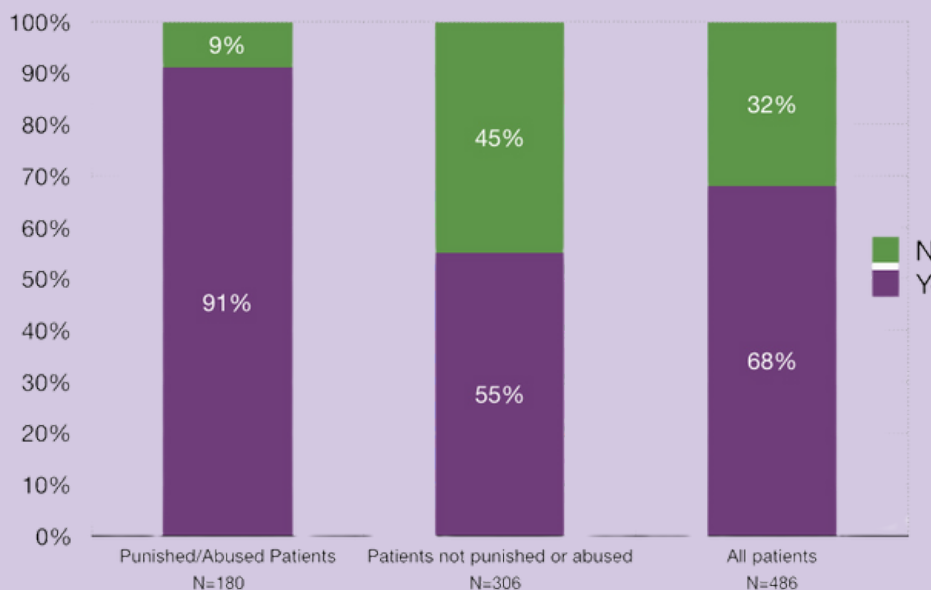


Source image: Table from *Mad in America*, data collected by Michael Simonson, published December 9, 2018

Have people come forward about the abuse they experience?

Under such a corrupted power imbalance, it can be difficult to quantify the pervasiveness of psychiatric malpractice that occurs in these hospitals. Further, victims of mental health malpractice rarely come forward because of the perception that no one will believe them. Oftentimes discredited as paranoid, deceptive, or dramatic, patients who have psychotic disorders rarely get justice even when they do come forward. However, it is integral to highlight real-life examples of medical malpractice in order to accurately shed light on just how ubiquitous the issue is today.

Would You Consider Your Psych Ward Experience Traumatic?



Source image: Table from *Mad in America*, data collected by Michael Simonson, published December 9, 2018

Paris Hilton: Sexual Abuse during Her Psychiatric Stay

Paris Hilton is one but many victims of mental health malpractice. In a saddening interview with the New York Times, she explains that she remembers often being woken up in the middle of the night with other young girls, and forced into “medical exams” by staff members who are unqualified and untrained. This experience is not uncommon. She, bravely, recalls that “they would lay us on the table and put their fingers inside of us, and I don’t know what they were doing... but they definitely were not doctors. It was really scary, and something I blocked out for many years.”



Source image: *Today*, published by Gina Vivinetto, photo by Rick Bowmer AP News on January 22,

“From the moment I woke up until I went to bed, it was all-day ²⁰²¹ screaming in my face, yelling at me, continuous torture. The staff would say terrible things. They were constantly making me feel bad about myself and bully me. I think it was their goal to break us down. And they were physically abusive, hitting and strangling us. They wanted to instill fear in the kids so we’d be too scared to disobey them.”

Paris Hilton’s experience is one but many instances of malpractice and abuse that occurs within our mental health facilities. It is clear that her experience is not few and far between. For instance, in her documentary, "This is Paris" she brings to light the widespread horrors that were inflicted upon multiple patients she stayed with. Specifically, four other of Hilton’s classmates had explained they were also routinely force-fed medication, and also held down by restraints.



Source image: *New York Times*, published by Alexander Stockton on October 11, 2022

Jacob Masters: A Tragic In-Patient Death and No Accountability

The case of Jacob Masters is yet another tragic instance of abuse. After being taken to a mental health facility in South Los Angeles by the Redondo Beach police on October 27, 2017, he was admitted into Kedren Psychiatric Hospital under an involuntary hold that directly ended his life. With little to no oversight in the care of their patients, Kedren Hospital has displayed egregiously dangerous practices and grave forms of misconduct. Instances of violence by employees is extremely common in this facility, as staff members have reportedly choked and strangled patients.

There have also been an overwhelming amount of complaints at this facility regarding the lack of monitoring over patient to patient interactions. This is what led to young Jacob Master's tragic death, as the assailant who murdered him had not undergone a single psychiatric evaluation following their admittance. If an evaluation had occurred, Jacob might still be here. Even after an inspection around Jacob's death found a multitude of safety issues that "put patients in 'immediate jeopardy' of harm or death," Kedren Hospital's attorney still claimed that "everything was done properly."

Despite clear evidence that Kedren Psychiatric Hospital employed grave instances of abuse, the Hospital's lawyer maintains his intention to deny all of the allegations. With an overwhelming lack of compassion and humanity, the Hospital's lawyer wrote in an email "Every case has two sides." However, it is indisputable that what happened to Jacob Masters constitutes clear medical malpractice. To make matters worse, his death is not a rarity, evident as the Los Angeles Times denotes "The California Department of State Hospitals, which runs five such facilities across the state for people ordered into treatment by a court, reported more than 3,500 incidents of patient-on-patient violence in 2017 and an additional 3,300 involving staff."



Source image: *Los Angeles Times*, published by Lucas Manfield, Oct 9, 2019, photo provided by Melody Burkholder

“The one place he thought would keep him safe turned out to be the one place on the planet where he was not,” said Jacob's mother.

“It cost him his life,” she said. “And it cost me my son.”

What has allowed this abuse to continue?

The ultimate reason why negligence and abuse are so common within psychiatric facilities yet rarely become actionable in law is because of the **position of power** that psychiatrists hold over their patients. Because mental health care professionals are adept with the ability to “prescribe medication, order involuntary commitment, and provide therapy” they are granted an enormous amount of power over the treatment of their patients. **This power can often be abused when coupled with the innate vulnerabilities that patients who experience altered realities are subjected to.** This is extremely common among patients diagnosed with schizophrenia, bipolar mania, and other forms of unspecified psychotic disorders.

Patients with psychotic disorders can be forced into taking medication they do not want nor need, be coerced into involuntary commitments against their wills, and be subjected to harmful forms of restraint. Evidence was found that “**the presence of a psychotic disorder increased odds of lack of privacy and adequate nutrition and coercive measures.**” More often than not, these instances of abuse are discredited and invalidated as practitioners deflect blame and point to the victim’s paranoia as a root cause for claims of negligence. The deflection of blame by psychiatrists makes regulatory oversight extremely difficult to navigate. Thus, these forms of power and manipulation tactics have strategically enabled the continuation of abuse within psychiatric facilities.

What can be done to stop it?

STEP 1. REWRITE OVERSIMPLIFIED MENTAL HEALTH MALPRACTICE REGULATORY LAWS AND STATUTES

It is clear that our current mental health system has **minimal accountability** and **slim oversight**. In order to ensure the quality of care for those suffering from mental health disorders meets better standards, changes must be made. For one, **reevaluating the way that the laws delineate what exactly constitutes permissible, equitable, and humane care is an important first step.** There are currently no specific rules or laws on how mental health facilities are required to provide care to their patients.

For example, there are currently no set guidelines by which mental health professionals are required to employ tactics of physical restraint or seclusion. Despite this, psychiatric patients are routinely “subject to extreme and illegal restraints as a punishment rather than for their own health or protection and for non-threatening behaviors, such as verbally provoking staff”. A call to action is urgent: we must rewrite the oversimplified regulatory laws and statutes that are found within medical malpractice.

However, the implementation of more specific guidelines for mental health medical practice is only a slim first step. The best method for ensuring action in reevaluating the way psychiatric patients receive treatment is to **advocate for a community-based approach to mental health care**. While there have been bills passed to work towards this implementation, they have all faltered in action. For example, Kennedy's Community Mental Health Act of 1963 attempted to do this, by building around 1500 of these community mental health centers across the nation, providing "community education, inpatient and outpatient facilities, emergency response and partial hospitalization programs."

Because long-term funding was not authorized within the scope of this legislation to help sustain these community clinics, the initial grants ran out. The responsibility of financing these newer clinics was then pushed onto the state. This caused a widespread issue as many states decided to opt out of funding new community-based care facilities and decided to allocate funding on other priorities, "such as cutting taxes or shoring up pensions."

STEP 2.

LOBBY THE US CONGRESS TO PASS A BILL AUTHORIZING THE USE OF FUNDS FOR COMMUNITY BASED MENTAL HEALTH CARE

Thus, **a second step to a solution is clear**. To ensure that people suffering from mental health illnesses are provided the care they need, without risk of falling victim to malpractice: **the US Congress must pass a bill authorizing and appropriating funds towards the construction, staffing, and longevity of new, community based mental health care clinics**. In fact, Congress had attempted to do so in the 1980s through a bill that would have doubled the original funding allocated under Kennedy. However, Ronald Reagan repealed the bill a year after his predecessor Carter signed it into law.

While the passage of the legislation as a solution to the current epidemic of mental health malpractice may seem like a daunting solution, it is important to begin at the local level. Through grassroots efforts of organizing and lobbying, activists can apply pressure on their local district representatives. Being the voice to advocate for vulnerable communities is imperative in crises such as this, where the rights of marginalized people are being exploited. Because current mental health facilities prioritize medicating without long-term solutions, it is integral to invest in ways to rectify instances of abuse through deep-rooted efforts.



Source image: Commonwealth Fund, Published by Josh LaRosa and Rachel Nuzum, August 9, 2022. Picture taken on June 24, 2022 sourced by Somodevilla via Getty Images

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