INVoluntary COMMITMENTS—
A REPORT FROM THE MENTal HEALTH COMMITTEE

By David H. Rosen*

The Mental Health Committee of the San Francisco Medical Society met with Ms. Estella Dooley of the San Francisco Public Defender’s Office on two occasions this summer to discuss involuntary commitments.

Under the Lanterman-Petris-Short (LPS) Act, the public defenders are required to visit every patient involuntarily detained for seventy-two hours and to advise the patient of his/her legal rights. They are required to take to court any patient who demands a hearing. If the physician does not appear for the hearing, the patient must be released. Patients considered demonstrably dangerous must be reevaluated at ninety-day intervals. The LPS Act also requires the public defenders to take patients into court if they complain about the care they are receiving or about their placement. A new requirement of Ms. Dooley’s office is to supervise the protocol for continued treatment of patients and to guarantee that there is an individualized treatment plan for each patient. The LPS Act stresses the patients’ rights to liberty, treatment, and appropriate placement.

The members of the Mental Health Committee expressed concern about the implementation of the Lanterman-Petris-Short Act by attorneys in the Public Defender’s Office. Ms. Dooley stated that she will try to resolve all complaints about individual case management by her office. She invited the SFMS to contact her with any such complaints or with disputes over the policies of the Public Defender’s Office. Members of the Society may contact Ms. Estella Dooley, Public Defender’s Office, 850 Bryant, San Francisco, CA 94103; phone: 553-1653 or 553-1526; or Ms. Susan B. Waters, SFMS executive director, for assistance in handling any problems with the Public Defender’s Office.

The Mental Health Committee believes that the Lanterman-Petris-Short Act needs amendment in three areas:

1. The patient’s medical history is not permissible in court hearings. This concept is contrary to medical treatment. The patient’s medical history is of paramount importance in evaluating the patient’s current status and need for care.

2. The definition of danger to self or others is interpreted to mean “imminently destructive.” Involuntary detention may be denied a patient who does not appear violent, but who will almost certainly suffer or cause himself or herself injury or death if not treated. An example of this situation is a patient with anorexia nervosa who refuses nourishment and is not imminently self-destructive, but will eventually die from malnutrition.

3. The suicidal patient does not receive adequate protection because of the emphasis on personal liberty, which overshadows the need for treatment.

Ms. Dooley made the following comments regarding the proposed amendments to the LPS Act:

“Technically, a patient’s past history is not allowable in court since the theory behind the involuntary treatment provisions of LPS is that the person should be permitted to be at liberty through any functional period and should only be forced into treatment when his mental disorder becomes so intense as to create a survival dysfunction. The rationale behind the three-day/fourteen-day treatment periods was that most chronically mentally ill persons begin to respond to treatment for acute psychotic episodes within that period of time and could or would be voluntary patients, or eligible for release thereafter. Since it is the consensus of medical opinion that voluntary patients respond more effectively than involuntary patients, it was hoped that by encouraging the chronic patient to accept treatment voluntarily during the acute phases of his illness, he would be more willing to return for follow-up treatment as an outpatient, or to subject himself to inpatient treatment when he first became aware of losing control. For the patient who repeatedly returns to the treat-

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ment facility over a period of time, and is assured that he will be released when he is improved, involuntary detention may frequently discourage his seeking medical assistance at the first sign of disorientation or disablement.

"The framers of the act further found that many mental patients are chronically ill, but also are often in remission. The emphasis therefore was placed on the condition of the patient at the time of the hearing on the petition for conservatorship for the alleged gravely disabled person or the postcertification hearing for the dangerous person.

"Further, it had been determined that the truly suicidal person frequently committed suicide whether in or out of institutions and therefore detention for danger to self or suicidal behavior was limited to thirty-one days. It should be noted that suicide is not illegal in California as it is in some other jurisdictions.

"The definition for danger to self is interpreted as suicidal behavior. The involuntary patient who is endangering his life by refusing to eat or the anorexic nervosa person properly falls in the category of "gravely disabled" since the delusional behavior does create a survival dysfunction.

"For the person whose mental condition prompts him to a "fetishistic" pattern of eating, which may be causing mild malnutrition but is not creating a survival dysfunction, it should be noted that in 1977 the conservatorship provisions of the probate code were amended to provide for grave disability for the mentally or physically disordered who could not properly provide for their basic needs for food, clothing and/or shelter. The only prohibition under this code is that the person cannot be forced into mental health treatment against his will. It was intended that LPS conservatorships be limited to those mentally disordered persons who needed mental health treatment and whose mental conditions were so grave as to be imminently dangerous, or postcertification of the dangerous mentally ill.

"There is further a legal axiom that decrees that specific statutes take precedence over general statutes. Therefore, if a mentally disordered patient is demonstrably dangerous, the form of detention applied for should be under the dangerous sections of the code. The Medical Society could be of inestimable help in attempting to obtain legislation extending the incarceration for danger from its present ninety-day period to a one-year provision. This would be of great service to the general public as well as to the many nondangerous mentally ill persons who are held under conservatorships or otherwise. The stigma attached to mental illness in the public eye derives greatly from the feeling that all mentally ill people are dangerous. As long as the conservatorship section is used to hold people who should properly be held under postcertification proceedings, the psychiatric-legal profession may be deemed to be partially responsible for feeding the public image of mentally disordered persons being considered as dangerous. The unfortunate side of this is that it prevents people, particularly in the lower socioeconomic groups, from seeking psychiatric help at the first indication of mental problems when help might be more effective.

"Additionally, I cannot recommend too strongly a careful reading of "The Dilemma of Mental Commitments in California—A Background Document," the report of the California Legislature's Assembly Interim Committee on Ways and Means, Subcommittee on Mental Health Services, published and obtainable from the Legislature in Sacramento at a minimal cost. This publication more fully explains the legislative thinking behind the LPS Act."

Ms. Dooley is compiling statistics which she will share with the SFMS. The Mental Health Committee will review these statistics when they are available and will send a copy of this report to Mr. Byron Chell, chief counsel of the Department of Mental Health. Mr. Chell is in charge of hearings currently reviewing the LPS statutes.