

Current Mental Health Treatment: Is It Rational? Is it Legal?

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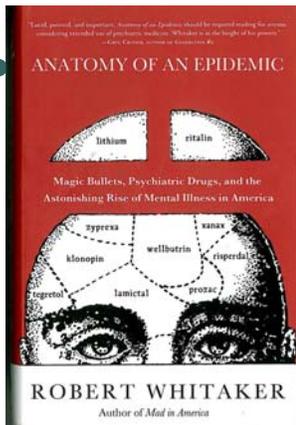
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Is Current Mental Health Treatment Rational?

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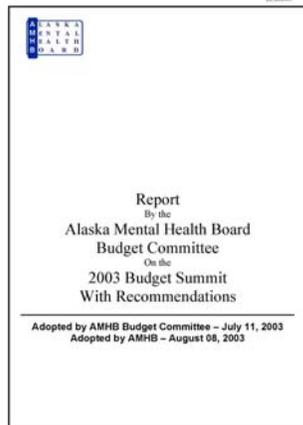
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3/3/2010



Just named 2010 best investigative journalism in book category by the Investigative Reporters and Editors Association

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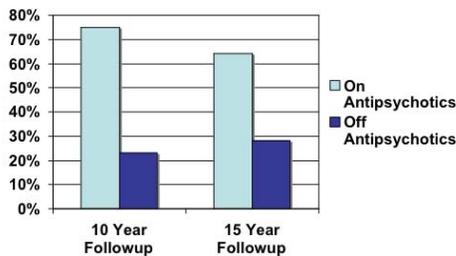
While Some People find the Drugs Helpful . . .

- 6-fold Increase in Mental Illness Disability Rate
- Cut the Recovery Rate At Least in Half
- Psychiatric Drugs Causing Massive Amount of Harm
- Life Spans Now 25 Years Shorter
- Hugely and Unnecessarily Expensive
- Huge Unnecessary Human Toll

Sources: Whitaker (2002 & 2010), NASMHPD (2006), Studies Posted on PsychRights.Org Scientific Research By Topic

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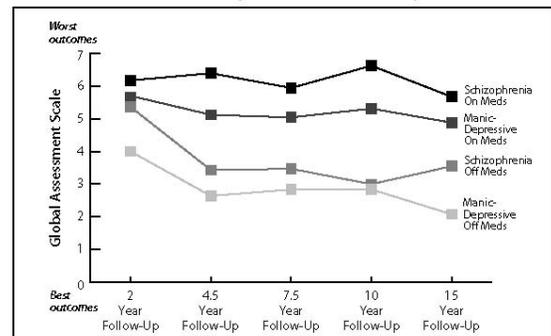
Psychotic Symptoms



The schizophrenia patients who stayed on antipsychotics long-term were much more likely to continue to suffer from psychotic symptoms. Source: Martin Harrow and Thomas Jobe. "Factors Involved in Outcome and Recovery in Schizophrenia Patients Not on Antipsychotic Medications: A 15-year Multifollow-up Study." *The Journal of Nervous and Mental Disease*, 195 (2007):406-414.

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15-Year Outcomes for Schizophrenia and Manic-Depressive Patients



In this graphic, the group labeled 'manic depressive' consisted of psychotic patients with bipolar illness, unipolar depression, and milder psychotic disorders. Source: Harrow, M. "Factors involved in outcome and recovery in schizophrenia patients not on antipsychotic medications." *The Journal of Nervous and Mental Disease*, 195 (2007):406-414.

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Antidepressants

- Not More Effective than Placebo Except for Most Depressed
- Increase Suicidality & Violence
- Addictive
- Lose “effectiveness” over time
- Cause Mania □ Bipolar Diagnoses
- Dramatically Worsening Outcomes

Sources: Pigott (2010), Fournier (2010), Whitaker (2010), Breggin (2008)

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Courtesy of Robert Whitaker
The Transformation of Bipolar Disorder in the Modern Era

	Pre-Lithium Bipolar	Medicated Bipolar Today
Prevalence	1 in 5,000 to 20,000	1 in 20 to 50
Good long-term functional outcomes	75% to 90%	33%
Symptom course	Time-limited acute episodes of mania and major depression with recovery to euthymia and a favorable functional adaptation between episodes	Slow or incomplete recovery from acute episodes, continued risk of recurrences, and sustained morbidity over time
Cognitive function	No impairment between episodes or long-term impairment	Impairment even between episodes; long-term impairment in many cognitive domains; impairment is similar to what is observed in medicated schizophrenia

This information is drawn from multiple sources. See in particular Huxley, N. “Disability and its treatment in bipolar disorder patients.” *Bipolar Disorders* 9 (2007): 183-96.

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Anticonvulsants Misbranded as Mood Stabilizers

- Can Cause:
 - Hostility, Aggression, Depression & Confusion
 - Liver Failure
 - Fatal pancreatitis
 - Severe & lethal skin disorders
- May Cause
 - Mild cognitive impairment with chronic use

Source: Brain Disabling Treatments in Psychiatry, Breggin, Springer, 2008

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Stimulants

- No convincing evidence of short or long term improvement in cognitive ability or academic performance
- Brain Damage
- Cardiovascular Harm, including cardiac arrest
- Stunts Growth
- Mania, psychosis, hallucinations
- Agitation
- Aggression
- Insomnia
- Depression, suicide
- Headaches
- Stomach aches
- Obsessive Compulsive Behaviors
- Quadruples Cocaine Abuse Rate
- Many more

Source: Brain Disabling Treatments in Psychiatry, Breggin, Springer, 2008

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Benzodiazepines

- Effective for only a few weeks
- Highly Addictive
 - Some People Simply Can Not Get Off Them
- Can cause mania
- Can cause violence

Source: Brain Disabling Treatments in Psychiatry, Breggin, Springer, 2008

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Medicaid, SSDI & SSI – We Get What We Pay For

- Medicaid Requires People to Be Poor
- SSDI Requires People to Be Certified Permanently Disabled & Poor
- SSI Requires People to be Disabled & Poor (as relevant here)

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2003 Budget Summit Report Employment Findings

- Only 1% of Community Mental Health Center clients are receiving employment services from the Community Mental Health Center.
- Less than 1% of people go from SSDI to Employment
- Less than 10% of people on SSI are gainfully employed.

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Psychiatric Drugging of Children

- 1 in 23 on stimulants (3.5 million)
 - No long term benefit; short term benefit mainly for adults
- 1 in 40 on antidepressants
 - Prozac Boys Study: 23% developed manic like symptoms; 19% more drug induced hostility
 - Pediatric Bipolar Rate soars
 - From close to none in 1995 to 800,000 by 2003
 - Then come the neuroleptics & anticonvulsants misbranded as mood stabilizers.
- Many Now on Neuroleptics, even six month olds.
- Child MH Disability Rate Soars from Essentially Zero in 1987 to 600,000 by 2007.

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People Diagnosed With Serious Mental Illness Can Recover

- Myth: Once a Schizophrenic always a schizophrenic.
 - Reality: **Half to two thirds of patients, including very chronic cases can recover.**
- Myth: Patients must be on Medication all their lives.
 - Reality: **A small percentage at most may need medication indefinitely.**

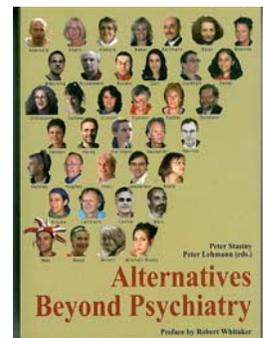
Empirical Correction of Seven Myths About Schizophrenia with Implications for Treatment (Harding 1994)

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Solutions Are Many (Adults)

- Hearing Voices Network Approach
 - Strange or Unusual Beliefs ("delusions")
- Psychosocial Approaches
 - Soteria
 - Open Dialogue
 - Peer Directed



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Hearing Voices Network:

- Question is not "what is wrong with you?" but "what happened to you?"
- Help People Deal with Voices
- Similar Approach for "Delusions"

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Five-Year Outcomes for First-Episode Psychotic Patients in Finnish Western Lapland Treated with Open-Dialogue Therapy

Patients (N=75)	
Schizophrenia (N=30)	
Other psychotic disorders (N=45)	
Antipsychotic use	
Never exposed to antipsychotics	67%
Occasional use during five years	33%
Ongoing use at end of five years	20%
Psychotic symptoms	
Never relapsed during five years	67%
Asymptomatic at five-year followup	79%
Functional outcomes at five years	
Working or in school	73%
Unemployed	7%
On disability	20%

Source: Seikkula, J. "Five-year experience of first-episode non-affective psychosis in open-dialogue approach." *Psychotherapy Research* 16 (2006):214-28.

The Soteria Project

Study

First-episode schizophrenia patients treated conventionally in a hospital setting with drugs versus treatment in the Soteria House, which was staffed by non-professionals and involved no immediate use of antipsychotic medications. Results are from 1971-1983 cohorts, with 97 patients treated conventionally and 82 patients treated in Soteria House .

Results

- At end of six weeks, psychopathology reduced comparably in both groups.
- At end of two years:
 - Soteria patients had better psychopathology scores
 - Soteria patients had fewer hospital readmissions
 - Soteria patients had higher occupational levels
 - Soteria patients were more often living independently or with peers

Antipsychotic Use in Soteria Patients

76% did not use antipsychotic drugs during first six weeks
 42% did not use any antipsychotic during two-year study
 Only 19 % regularly maintained on drugs during follow-up period

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J Nerv Ment Dis 1999; 187:142-149
J Nerv Ment Dis 2003; 191: 219-229

The Long-Term Benefit of Exercise for Depression

Treatment During First Four Months	Percentage of Patients in Remission at End of Four Months	Percentage of Remitted Patients Who Relapsed in Six-Month Followup	Percentage of Patients Depressed at End of Ten Months
Zoloft alone	69%	38%	52%
Zoloft plus exercise therapy	66%	31%	55%
Exercise therapy alone	60%	8%	30%

In this study by Duke researchers, older patients with depression were treated for 16 weeks in one of three ways, and then followed for another six months. Patients treated with exercise alone had the lowest rates of relapse during the following six months, and as a group, they were much less likely to be suffering from depressive symptoms at the end of 10 months. Source: Babyak, M. "Exercise treatment for major depression." *Psychosomatic Medicine* 62 (2000):633-8, 100-11.

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Solutions Are Many (Children & Youth)

- CriticalThinkRx.Org Module 8: Evidence-Based Psychosocial Interventions for Childhood Problems
 - Help Parents
 - Help Children & Youth Deal with Their Emotional Problems
 - Help Children Become Successful

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2003 Budget Summit Report Recommendations

- Funding Should Be More Explicitly Tied to Desired Results
- Medicaid/SSDI/SSI Should Be Re-Tooled as Possible to Achieve Desired Results
- The Planning Committee Should Review Whether the Current Level of Reliance on Psychiatric Medications is leading to Desired Results.

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Is Current Mental Health Treatment Rational?

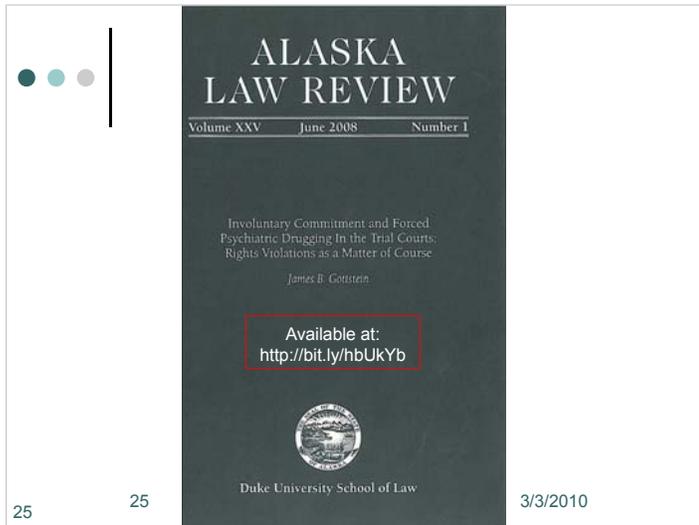
- Certainly Rational From Drug Companies Perspective
- Certainly Irrational From a Public Policy Perspective
- Could Be Considered Rational From Mental Illness Industry Job Security Perspective
- Certainly Irrational From Patients' Best Interests Perspective

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Is Current Mental Health Treatment Legal?

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Constitutional Principles – Substantive Due Process

- To Justify Deprivation of Fundamental Rights Substantive Due Process Requires:
 - Compelling State Interest
 - Least Restrictive/Intrusive Alternative
- Involuntary Commitment is a deprivation of a fundamental right under both the US and Alaska Constitutions
- Forced Drugging is probably a deprivation of a fundamental right under US Constitution and is under the Alaska Constitution.

Hallmarks of Procedural Due Process

Meaningful Notice, and Meaningful Opportunity to Be Heard, by a Neutral Decision Maker

Hamdi v. Rumsfeld (2004)
542 U.S. 507, 124 S.Ct. 2633

Involuntary Commitment Permissible Under US Constitution When:

1. Confinement takes place pursuant to proper procedures and evidentiary standards,
2. Finding of "dangerousness either to one's self or to others," and
3. Proof of dangerousness is "coupled ... with the proof of some additional factor, such as a 'mental illness' or 'mental abnormality.'

Kansas v. Crane, 534 U.S. 407, 409-10, 122 S.Ct. 867, 869 (2002).

- Being unable to take care of oneself can constitute danger to self if "incapable of surviving safely in freedom." *Cooper v. Oklahoma*, 517 U.S. 348, 116 S.Ct. 1373, 1383 (1996).

Forced Drugging under US Constitution: *Sell*

Court Must Conclude:

1. Important governmental interests are at stake,
2. Will significantly further those state interests - substantially unlikely to have side effects that will interfere significantly (with achieving state interest),
3. Necessary to further those interests. The court must find that any alternative, less intrusive treatments are unlikely to achieve substantially the same results, and
4. Medically appropriate, i.e., in the patient's best medical interest in light of his medical condition, considered on drug-by-drug basis.

Sell v. United States, 539 U.S. 166, 177-8, 123 S.Ct. 2174, 2183 (2003) (Competence to Stand Trial Case).

Alaska Statutes

- Provide every reasonable opportunity to accept voluntary treatment before involvement with the judicial system.
- *Ex Parte*
- "POA" – Police Officer Application
- 30 Day Commitment
- 90 Day Commitment
- 180 Day Commitments
- Involuntary Medication

AS 47.30.655 Purpose of major revision.

Balance Rights & State's Interests; Principles

1. Every reasonable opportunity to accept voluntary treatment before involvement with the judicial system;
2. Least restrictive alternative environment consistent with treatment needs;
3. Treatment occur as promptly as possible as close to the individual's home as possible;
4. System of mental health community facilities and supports be available;
5. Patients be informed of their rights and be informed of and allowed to participate in their treatment program as much as possible;
6. Persons who are mentally ill but not dangerous to others be committed only if there is a reasonable expectation of improving their mental condition.

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AS 47.30.700 (*Ex Parté*)

- *Ex Parté* petition must
 - allege person presents a likelihood of serious harm to self or others or is gravely disabled as a result of mental illness
 - specify the factual information on which that belief is based including the names and addresses of all persons known to the petitioner who have knowledge of those facts through personal observation.
 - Ignored in practice, at least in Anchorage

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Ex Parté Continued

- Judge Must Conduct or Direct Screening Investigation – whether person mentally ill and, as a result, gravely disabled or present likelihood of serious harm to self or others.
 - Ignored, at Least in Anchorage
- Within 48 hours of Screening Investigation Completion Court, may, without notice (*ex parté*), direct peace officer take person into custody and deliver to nearest appropriate facility for emergency examination or treatment.
- No Explicit Exigency Requirement, but Inherent in *ex parte* justification.
 - No Exigency Determination, at Least in Anchorage

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Definition of Gravely Disabled (AS 47.30.915(7))

- (7) "gravely disabled" means a condition in which a person as a result of mental illness
- (A) is in danger of physical harm arising from such complete neglect of basic needs for food, clothing, shelter, or personal safety as to render serious accident, illness, or death highly probable if care by another is not taken; or
- (B) will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is associated with significant impairment of judgment, reason, or behavior causing a substantial deterioration of the person's previous ability to function independently.
- "B" Prong held Unconstitutional in *Wetherhorn*.
 - Confinement Constitutionally Justified Only if Person "cannot survive safely in freedom."

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AS 47.30.705 Emergency detention for evaluation (Called "POA" – "Police Officer Application")

- Police Officer, Physician, or Clinical Psychologist having probable cause to believe person is mentally ill and likely to cause serious harm to self or others of such immediate nature that no time for *ex parte* may cause person to be taken into custody and transported to nearest evaluation facility.
 - Serious Harm And No Time Requirements Ignored, At Least In Anchorage By Doctors And Clinicians

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AS 47.30.710 Examination.

- Examine Person Brought in under POA or *Ex Parté* within 24 hours.
- If reason to believe (1) mentally ill & gravely disabled or likelihood of serious harm to self or others and (2) in need of treatment, file for *Ex Parté* if not already one.
 - Query: What is exigency at this point justifying no notice?
- Hearing must be held within 72 Hours of arrival at facility (not counting weekends and holidays) on whether further confinement for up to 30 days justified. (AS 47.30.715)

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30-Day Commitment AS 47.30.725 – .735

- Mentally ill and as a result is likely to cause serious harm to self or others or is gravely disabled
 - Serious harm or unable to survive rarely present
- Clear and Convincing Evidence Required
 - Predictions of Harm Do Not Meet This Requirement
- Right to Be Free of Medication (but exceptions)
 - Never invoked, at least in Anchorage, except PsychRights cases
- No Less Restrictive Alternative Has Accepted Patient.
 - Constitution requires least restrictive alternative.
- Right to counsel
 - Lackluster, at best, defense by Public Defender Agency is a violation of this right and lawyers' ethical obligations

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30-Day Commitment (Continued)

Petition Must Include (AS 47.30.730):

- Gravely Disabled Person's Condition Could be Improved
 - Drug Treatment Worsens Outcomes
- Not Accepted Voluntary Treatment
 - Can't condition Least Restrictive Alternative In this Way
- List Prospective Witnesses.
 - Often ignored. *But see Wetherhorn v. API*, 156 P.3d 371 (2007)
- List the facts and specific behavior of the respondent supporting the allegation.
 - Never done, at least in Anchorage. *But see Wetherhorn*

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30-Day Commitment (Continued)

- No Right to Jury Trial
- Setting Least Likely to be Harmful
 - PsychRights Asserts real Courtroom in Most Cases
- Elect Open or Closed Hearing
 - Never followed, at least in Anchorage, except PsychRights Cases
- Rules of Evidence and Civil Procedure Applied so as to Provide for the Informal but Efficient Presentation of Evidence.
- Right to Remain Silent (but may be used against)

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90-Day Commitment (AS 47.30.740 -- .755)

Same as 30-Day except:

- Right to Jury Trial
 - Never done, at least in Anchorage, except for PsychRights cases. Violation of Lawyer's ethical responsibilities.
- Must Allege Serious Bodily Harm or continued Gravely Disabled
- 30 Day Findings of Fact May Not Be Rebutted, except for Newly Discovered Evidence
- Going Voluntary Same as Commitment
- Right to Independent Expert
 - Virtually never done, at least in Anchorage, except in PsychRights cases
- Civil Rules & Evidence?

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180-Day Commitments (AS 47.30.770)

- Follows 90-Day
- Successive 180 Days
- 30, 90 & 180 Day Facts May Not be Rebutted Except for Newly Discovered Evidence
- Again, at least in Anchorage, jury trials virtually never chosen in spite of clear ethical obligation for lawyer to recommend. People not told they have right.

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Involuntary Outpatient Commitment-Early Release (AS 47.30.770)

- Allowed if inpatient not necessary for safety and mental condition would improve
- Can only be ordered returned to facility if the provider determines person can no longer be treated on an outpatient basis because likely to cause harm to self or others or is gravely disabled
 - Being illegally used when people ordered back to facility for not taking drugs.

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Psychotropic Medication (AS 47.30.836 -- .839)

- Must Be Competent to Give or Withhold Informed Consent (AS. 47.30.836)
 - Doc Testified If Gave Consent Competent, If Withheld Incompetent
- Informed Consent Defined in AS 47.30.837
- Need Court Order If Not Competent Unless Emergency (AS 47.30.838)

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Emergency Medication AS.47.30.838

- Only allowed to preserve life or prevent significant physical harm
- Documented in medical record: must include explanation of alternative responses that were considered or attempted by the staff and why those responses were not sufficient
- No more than three crisis periods without the patient's informed consent or court approval

Requirements totally ignored, at least at API

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Involuntary Medication – Non Emergency (AS 47.30.839)

- Court Visitor Appointed to
 - Administer Capacity Assessment Instrument
 - Assist Court in
 - Investigating Competence
 - Determine Previously Expressed Wishes.
- Hospital Must Follow Advance Directive Unless can Prove Incompetent When Made (AS 47.30.839).
 - API Not Equipped to Deal With Right to Withhold Consent.
- May Force Drug if Not Competent to Withhold Consent
 - Statute Says Hospital Can Drug any Way it Wants
 - Ruled Unconstitutional in *Myers v. API* (2006)

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Myers v. API

138 P.3d 238 (2006)

- To Be Constitutional Forced Drugging In Non-Emergency, State Must Prove by Clear & Convincing Evidence:
 - Drugging in Best Interests
 - No Less Intrusive Alternative Available
- Cannot Honestly Do So

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Bigley v. API

208 P. 3d 168 (2009)

- Available means Feasible
 - If Less Intrusive Alternative Feasible Have to Provide or Let Person Go
- Petition Must Provide:
 - facts underlying the petition, including the nature of and reasons for the proposed treatment
 - symptoms and diagnosis; the medication to be used; the method of administration; the likely dosage; possible side effects, risks and expected benefits; and the risks and benefits of alternative treatments and nontreatment.

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Voluntary Aspiration Unfulfilled

- No Notice Before Picked Up, Handcuffed & Dragged In.
- Involuntary Is Easiest for Hospital (Path of Least Resistance)
 - Know No Legal Defense
 - Know Don't Have To Gain Patient's Trust
- You Can Sign In But Not Out
- Truly Voluntary Truly Rare

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Most Drugging of Children & Youth in State Custody Unconstitutional

- State obligated to protect children & youth in custody from harm.

Deshaney v. Winnebago County, 489 U.S. 189, 109 S.Ct. 998 (1989):

"[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs-e.g., food, clothing, shelter, medical care, and reasonable safety-it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause."

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Also Illegal Under State Statutes

- State Has A Duty To Care For Children & Youth In Custody, Including:
 - Meet Emotional, Mental, And Social Needs
 - Protect, Nurture, Train, And Provide Discipline

AS 47.10.084(a) and AS 47.12.150(a)

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Majority of Psychiatric Drugging of Children & Youth Is Medicaid Fraud

- Medicaid coverage for outpatient drugs limited to "medically accepted indications"
 - Off-label covered only if "supported" by one of 3 specified compendia
 - See, "Medically Accepted Indications Chart for Children & Youth"
<http://bit.ly/b50HrH>

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Is Current Mental Health Treatment Legal?

No

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Suggested Reading

- *Anatomy of an Epidemic*, by Robert Whitaker (2010).
- *Mad in America: Bad Science, Bad Medicine and the Enduring Mistreatment of the Mentally Ill*, by Robert Whitaker (2001).
- *Bipolar Children: Cutting-Edge controversy, Insights, and Research*, Sharna Olfman, Editor (Praeger 2007).
- *Alternatives Beyond Psychiatry*, Peter Lehman & Peter Stastny, MD, Editors (2007).
- *Agnes's Jacket: A Psychologist's Search for the Meaning of Madness*, by Gail Hornstein, PhD, Rodale Books, 2009.
- *Drug Induced Dementia*, Grace E. Jackson, MD, Author House, 2009.
- *A Fight to Be: A Psychologist's Experience from Both Sides of the Locked Door*, Ronald Bassman, Ph.D. (2007)
- *Rethinking Psychiatric Drugs: A Guide to Informed Consent*, by Grace E. Jackson, MD, (2005)
- *Brain Disabling Treatments in Psychiatry: Drugs, Electroshock, and the Role of the FDA*, Ed. 2 (2008) by Peter Breggin, MD.

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Suggested Reading (cont.)

- *Community Mental Health: A Practical Guide* (1994) by Loren Mosher and Lorenzo Burti
- *Soteria: Through Madness to Deliverance*, by Loren Mosher and Voyce Hendrix with Deborah Fort (2004)
- *Psychotherapy of Schizophrenia: The Treatment of Choice* (Jason Aronson, 1996), by Bertram P. Karon and Gary R. Vandenbos
- *Schizophrenia: A Scientific Delusion*, by Mary Boyle, Ph.D. (2002)
- *Let Them Eat Prozac*, by David Healy, MD. (2006).
- *Creating Mental Illness*, by Allan V. Horwitz (2002).
- *Commonsense Rebellion* by Bruce E. Levine (2001)
- *Blaming the Brain : The Truth About Drugs and Mental Health* (1998) by Elliot Valenstein.
- *Escape From Psychiatry*, by Clover (1999)
- *How to Become a Schizophrenic: The Case Against Biological Psychiatry*, 3d Ed., by John Modrow (2003)
- Other books at <http://psychrights.org/Market/storefront.htm>

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