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LAW AND THE
MENTAL HEALTH SYSTEM
CIVIL AND CRIMINAL ASPECTS

Fifth Edition



Christopher Slobogin, Arti Rai, Ralph Reisner

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**LAW AND THE
MENTAL HEALTH
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Fifth Edition

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To Danute

— *Ralph Reisner*

To Cindy

— *Christopher Slobogin*

To Stuart, Sophia and Anna

— *Arti Rai*

*

Preface

This fifth edition of *Law and the Mental Health System* continues to pursue the objectives of the first four editions. First, we want to give the student a clear picture of past, present and possible future legal doctrine, as well as some feel for the most significant clinical and empirical literature, relating to three major topics: the delivery of mental health services, the regulation of the mental health professions, and the relationship between society and people with mental disability. Second, in each of these areas, we try to provide insights into how and to what degree the legal system can be used to implement desired social objectives. Third, this book attempts to sensitize the student to the (often very different) perspectives of the mental health professions on these issues.

The book continues to be divided into three parts, all of which have been significantly updated in this edition with new legal, empirical and critical material. Part I, "Mental Health Treatment and the Patient-Therapist Relationship," focuses primarily on the patient-therapist relationship and in that context examines the role of the legal system in promoting the quality of services, the protection of patient autonomy and privacy, and similar values. Chapter One provides important background information concerning the nature and characteristics of mental disorders, the diagnostic process, the modalities of mental health treatment, the mental health professions, and the economics of mental health care; the chapter thus serves as an important backdrop not only to the chapters in Part I but also to the other chapters of the book. The remaining chapters in Part I explore administrative licensing and regulation (Chapter Two), the application of malpractice law (Chapter Three), informed consent doctrine (Chapter Four), and confidentiality (Chapter Five).

Part II, "Deprivations of Liberty and Property," switches the focus to state intervention into the lives of people with mental disability. Chapter Six examines the preliminary issue of the extent to which the mental health professions are able to identify disability and its consequences. The next three chapters provide materials on laws affecting mentally disabled individuals who are charged with or convicted of crime (Chapter Seven), who are thought to be in need of hospitalization (Chapter Eight) and who are believed to be incompetent to exercise control over their property or person (Chapter Nine). Chapter Ten ends Part II with an exploration of issues that arise in treating persons with mental disability who have been the subject of state intervention.

Part III, "Benefits Eligibility and Legal Protection Against Discrimination," examines a number of laws meant to benefit all people with mental disability, whether or not the state has acted to deprive them of liberty or property. Chapter Eleven looks at federal benefit programs connected with education and social security. Chapter Twelve discusses laws that attempt to prevent discrimination against people with mental disability, including the Americans with Disabilities Act.

For their help on the book, the authors wish to acknowledge several individuals. As in the instance of earlier editions, Ralph Reisner was the beneficiary of help, counsel and advice from many quarters. In particular, he is deeply indebted to Lee Wong, a recent graduate of the University of California-San Diego, who in her last two years at the university assisted him on various projects. Her skill, dedication, and enthusiasm in all endeavors related to the revision of this book were invaluable. Hopefully, her involvement in the project will also prove to be of some benefit to her in her future career as a physician. Particular thanks are also due to Dr. John R. Kelsoe of the Department of Psychiatry, University of California at San Diego, for his invaluable help and review of the section in Chapter One pertaining to organic therapies. His extraordinary knowledge of the field helped the author sift through a complex and rapidly changing area of law. For help on the fifth edition, Professor Reisner is also deeply indebted to Cindy Ly, a recent graduate of the University of California, San Diego, who in her last two years at the university assisted him in various writing projects including the updating and revisions of the chapters in this book for which he was responsible. Her skill, dedication, and enthusiasm were invaluable. Ralph Reisner also wishes to extend his thanks to Dr. Paula Johnson, Senior Deputy Director, State Affairs; Department of Government Relations, American Psychiatric Association for providing invaluable information on the state of current legislation. Also, he is grateful to Barbara Holthaus Esq. and Priscilla Lozano Esq. of the Office of General Counsel, University of Texas System, for their help in clarifying some of the perplexing issues associated with the Virginia Tech shooting case that are treated in Chapters 3 and 5. Finally Professor Reisner expresses his gratitude and appreciation to his wife Danute, for the encouragement and support that she has graciously and unstintingly provided over the many years that he has been involved in this writing project.

For their comments on earlier versions of Part II of the book, Professor Slobogin continues to be indebted to a number of individuals: Professor Richard Bonnie of the University of Virginia Law School; Professor Nancy Ehrenreich of Denver Law School; Professor Gary Melton of the University of South Carolina; Professor John Monahan of the University of Virginia Law School; Professor Stephen Morse, University of Pennsylvania Law School; Professor Michael Perlin of New York Law School; John Petri-la, University of South Florida; Professor Elyn Saks of the University of Southern California; Professor Elizabeth Scott of the University of Virginia Law School; and Professor David Wexler of Arizona Law School.

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