Right to Refuse Treatment (continued from page 6)

Judge Tauro points out:

> The presumption that an involuntary mental patient is competent to handle his affairs is not a matter of judicial decree. Rather it is a statutory presumption created by the Massachusetts legislature, as is the procedure for challenging that presumption in the courts. If that statutory scheme is burdensome, redress and relief should be sought from the legislature.[35]

Conclusion

The force of this message is underscored by the fact that the *Rogers* case could have been decided for the plaintiffs entirely on the basis of state law and without reference to a constitutional right to refuse treatment. The statutory provision cited by Judge Tauro has been in force since 1971, before any of the actions in question allegedly occurred. Seen from this point of view, the injunction is simply a reminder to psychiatrists that state law governs their practice as it does that of other physicians. As is true elsewhere in medicine, unless an emergency threatening life or limb supervenes, patients are to be presumed competent to make treatment decisions for themselves unless a court has found them incompetent. If adjudicated incompetent, decisions to accept or refuse treatment lie within the province of the court-appointed guardian, not the physician. In the wake of increasing competition for resources from other mental health professionals, psychiatrists have been stating more forcefully in recent years that they are medical specialists; the *Rogers* decision constrains them to act the part.

References

1. PSYCHIATRIC NEWS 14(23): 1 (December 7, 1979).
2. THE BOSTON GLOBE, November 21, 1979, at 13.
3. *Rogers v. Okin*, 478 F. Supp. 134 (D. Mass. 1979).
4. M.G.L.A., c. 123, § 21.
5. *Supra* note 3, at 1377.
6. *Id.* at 1359, *citing* Massachusetts Department of Mental Health Regulations, § 221.02.
7. *Id.* at 1361, n. 12.
8. *Id.* at 1364.
9. *Id.*
10. *Id.* at 1365.
11. *Id.* at 1366, quoting 370 N.E.2d 417, 426 (Mass. 1977).
12. *Id.* at 1367.
13. *Id.* at 1370.
14. *Id.* at 1367.
15. *Id.* at 1382.
16. *Id.* at 1383.
17. *Id.* at 1385.
18. *Id.* at 1386.
19. Stone, A.A., *Recent Mental Health Litigation: A Critical Perspective*, AMERICAN JOURNAL OF PSYCHIATRY 134(3): 273, 276 (March 1977).
21. *Rennie v. Klein*, 462 F. Supp. 1131 (D. N.J. 1978).
22. *Id.* at 1144.
23. Civ. No. 73-19434-AW (Cir. Ct., Wayne County, Michigan, July 10, 1973) (unpublished opinion) *summarized at* 42 USLW 2063 (July 31, 1973).
24. *Supra* note 21, at 1144.
25. *Id.*
26. *Supra* note 3, at 1371.
27. *Rennie v. Klein*, 476 F. Supp. 1294 (N.J. 1979).
28. *Supra* note 21, at 1148.
29. *Supra* note 27, at 1315.
30. *Addington v. Texas*. 99 S.Ct. 1804 (1979).
31. STONE A.A., MENTAL HEALTH AND LAW: A SYSTEM IN TRANSITION (Aronson, Jason, Inc., New York) (1976). A similar proposal has been made for *parens patriae* commitments in an article which also endorses police power commitments. *See* Roth, L.H., *A Commitment Law for Patients, Doctors, and Lawyers*, AMERICAN JOURNAL OF PSYCHIATRY 136(9): 1121-27 (September 1979).
32. *Supra* note 1, at 12.
33. *Supra* note 30, at 1809.
34. M.G.L.A., c. 123, § 1.
35. *Supra* note 3, at 1363.

Correspondence

To the Editors:

Dr. Redfearn (*Licensing for Athletic Trainers: A Call for Action*, MEDICOLEGAL NEWS 7(4):10, Winter 1979) should be reminded that the sole justification for state licensure of *any* professional is to protect the public health and safety. Nowhere did he even attempt to address that issue.

He chose to cite as justifications for licensure status such professional self-serving reasons as:

- — the intensification of lobbying efforts by the private professional associations of athletic trainers (Shouldn't a wronged or harmed public be the interest group with standing?);
- — the decline in status of athletic trainers in the health care spectrum (What about the public right to state assurance that a health practitioner is competent?);
- — the submersion of athletic trainers to the politically and professionally potent athletic medicine professional (Where is the concern for the limb or life lost to incompetent care?);
- — the risk and lack of defense in malpractice litigation for the trainer and employer (Is state licensing meant to protect the patient or the practitioner?).

This is not to begrudge athletic trainers' licensure status, if warranted, under the state power to protect the public health and safety. Begrudged are those who proliferate and prostitute that power for the private ends of a profession.

Sincerely,
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