HIPAA's Privacy Rule: Privacy Disorder May Still Plague Independent Psychiatrists
Lisa A. Vance, The Law Offices of Lisa A. Vance, P.C.

“Suppose you were an idiot. And suppose you were a member of Congress. But I repeat myself.”
Mark Twain

HIPAA’s Privacy Rule and Mental Health

Unlike their brethren in the “physical” health community, mental health practitioners are seasoned veterans of the health data sanctity demanded by HIPAA’s Privacy Rule. While the rest of the medical industry is yet reeling from the impact of Big Brother’s efforts to legislate and enforce the provision of the Hippocratic oath, most HIPAArelarians acknowledge that within the mental health arena, patient information has always been kept close to the vest.

Thus, whilst the premise of the Privacy Rule is not lost upon mental health practitioners, its administrative requirements still harangue psychiatrists, LPGs, MSWs and psychologists alike. Despite leading the pack in data security, psychiatrists are bedeviled with inputting the “Minimum Necessary” Rule, posting the Notice of Privacy Practices, obtaining clients’ acknowledgments of the Notice (or documenting good faith efforts to get those acknowledgments), and all the rest of the gobbledygook mandated by the Privacy Rule. Unless, of course, mental health providers could somehow avoid the demanding and daunting requirements of this federal Act.

Can Texas “Country Doctors” Escape HIPAA?
The Association of American Physicians and Surgeons (“AAPS”), has vociferously promoted the “Country Doctor Escape Route” as an alternative to the frightening provisions of HIPAA’s Privacy Rule. AAPS contends that Covered Entities (i.e. those health care companies who must follow this law) filing paper claims don’t transmit electronic data and therefore may be able to “escape” HIPAA. If it weren’t for the definition of Covered Entity in the Texas Medical Records Privacy Act, Texans heeding AAPS’ advice might have breathed a sigh of HIPAArelief.

The Texas Medical Records Privacy Act

As if the administrative calamity thrust upon the medical community under the guise of federal medical data protection wasn’t enough, Texas lawmakers further bedevilled the healthcare industry by passing the Texas Medical Records Privacy Act. Enacted as of 1 January 2002 into the Texas Health and Safety Code, the Texas Medical Records Privacy Act (“TMRPA”) was initially heralded by Texas doctors as a victory for patients’ rights, as it was intended to protect medical data from the greedy fingers of shameless peddlers of healthcare products and services. While the Act did indeed triumph over the real (or perceived) data-for-commerce Boogeyman, less scrutinized provisions crept into the healthcare legislation under the guise of harmless definitional paragraphs. These “Trojan Horse” sections have a delayed compliance deadline of 1 September 2003. That presented the current legislature a decided narrow window of opportunity in which to rectify these foreboding provisions of this Act.

Trump’er? Or Trump’ee?: the Pre-Emption Provision of HIPAA’s Privacy Rule

Under ordinary conflicts of laws analysis, federal law supersedes state legislation. There are certain instances, however, where the federal government step aside to recognize the rights of states to determine how best to serve and protect their citizens. HIPAA’s Privacy Rule is one example. The Privacy Rule provides that any state law protecting data privacy “more stringently” than does HIPAA prevails over the federal Act.

So, compare, then, the Privacy Rule to the Texas Medical Records Privacy Act. HIPAA’s Privacy Rule applies to health plans, health care clearinghouses and healthcare providers who transmit claim information in an electronic format. The TMRPA, however, relates to a person:...

… for commercial, financial, or professional gain, … or on a … nonprofit or for profit basis; … engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information.”

Whether a Covered Entity transmits data electronically determines its obligation to follow HIPAA’s Privacy Rule. That function matters not at all, however, under the TMRPA’s definition of Covered Entity. The Texas law governs if any state law protecting data privacy “more stringently” than HIPAA applies.

Can This Act be Saved?

Sensitive to the effect of the TMRPA on Texas Covered Entities, Senator Jane Nelson, “a long-time supporter of sensible health care regulation, created legislation intended to remedy the ill effects of the existing state law. The result, Senate Bill 330, is touted as vanquishing the onerous impact of the definitional section of the TMRPA.

Ray Inducted as President

Priscilla Ray, MD (left) receives the TSSP President’s gavel from Sanford Kiser, MD during her induction ceremony as new TSSP President at the Executive Council meeting on April 6, 2003 in San Antonio. Dr. Ray, in private practice in Houston, will serve as President during FY 2003-2004. 

INSIDE...

Calendar of Meetings .......................... 8
Editors ........................................... 8
Executive Council Actions ..................... 5
Legislative Update .......................... 8
Quick, Read This Message - Then Burn It .......................... 2
Resignation .................................... 7
TSSP Communications Seminar and Capitol Day .......................... 5
World Federation for Mental Health ........ 7

continued on page 6

Seemingly innocuous at first, the Texas law truly turned a molehill of good intentions into a mountain of dizzyingly complex administrative premptations. Under HIPAA’s Privacy Rule, Covered Entities must muddle through their vendor relationships to secure Business Associate agreements. ‘Luckily for them, the federal rule would spare Business Associates the rigmarole facing HIPAA compliant providers. Under HIPAA, the entities that truly shepherd PHI bear the brunt of the Act’s demands.

The current Texas Act, however, imposes HIPAA’s privacy duties upon Business Associates. As a result, billing software companies, practice management consultants, accountants, etc. stand to be plunged with unanticipated obligations. To compensate for the costly and time-consuming pressures of data flow audits and compliance gap analyses, etc., such vendors would undoubtedly look to their healthcare clients to make up for these unexpected expenditures. Thus, the sole solace provided by HIPAA’s creators (i.e. the “long term” projection of administrative savings as a result of the Electronic Transactions Standards & Data Code Sets) is snatched away from Texas providers if the current version of the law were to remain in place. Thus, Texas healthcare providers already angry over the staggering costs of HIPAA implementation and compliance forecast by reputable researchers were blindsided with yet more privacy burdens, likely delay and resulting fears of non-compliance penalties.

"However beautiful the strategy, you should occasionally look at the results.”
Winston Churchill
I am scrawling this hasty note to you as fast as I can. Incredible events have been occurring in the past few hours, and I have discovered crucial information for you. You must learn about these things before time runs out. I pray that you will read this message in time.

Shortly after my last appointment this evening, my thoughts were interrupted by sudden, violent pounding at my office door. The noise was accompanied by shouts of “Let me out! For God’s sake, let me out!” The tone was so urgent, that I ran to the door and threw it open without thinking. An exhausted-looking man was leaning heavily on the doorframe. He was scruffy, dirty and disheveled. He smelled of sulfur. He was barely able to stand upright.

I had no idea what he meant, but as fast as my trembling legs could carry me, I ran down the hallway and extricated a can out of the vending machine. Upon return to my office, I was surprised at my insatiable reaction of repeating the previous scene and began to question my sense of reality. I could tell that my sense of reality was slowly returning. In spite of myself, his story was starting to mesmerize me. “How did they escape?” I asked. “Where did they go?”

Herbie continued. “They used their primitive timecrafts to land in England, in the late 18th century, where I was a young student at the time. I was studying biology, preparing to become a doctor or a scientist myself. They had succeeded in diverting the time flow through time. I am a participant in an invisible battle which is underway between The Conglomerate and its Time Troopers. The Conglomerate searches for her constantly and for the small band of her followers who were also successful in escaping. In spite of myself, he was starting to mesmerize me. ‘How did they escape?’ I asked. ‘Where did they go?’

He gave me a disgusted look. “Dr. T is, was, or will be, depending on where you are in the flow of the time channels, the nickname of a semi-mythical psychiatrist who was the first to discover that time travel is possible. She was the first to decipher that what her patients were describing to her in their explorations of the unconscious portions of the human mind was that time flow was not linear. Instead, at infinitesimally tiny junctures in the progression of events, the flow of time could, and in fact did, do, and will bifurcate, trifurcate, etc., into an infinite number of alternate time channels. She determined that time has the structure of an intersecting fiber, rather than the structure of a single straight line.”

“Ok, boy,” I said. “You are most definitely getting weird on me. This tale is a real whopper. Is there a possibility that you’ve been recently smoking, swallowing, inhaling, doing or otherwise in-taking something that’s not good for you?”

He gave me a disingenuous look. “That is exactly what The Conglomerate and their Time Troopers would have you say.”

I sat down at my desktop, and wondered whether I could benefit from a few. To steady myself, I plopped into a chair and said, “Can you provide the details down and tell me what is going on here?”

“Yes, of course. All this must be frightening to you. Let me explain this to you one step at a time. First, can you tell me whether you know the identity of the famous time-traveling psychiatrist, Dr. T?”

At that point I believe I must have had my mouth wide open with a completely stunned look on my face. “Uh, no. H.G. — by the way, may I call you H.G.?”

My friends usually call me Herbie, he said. “Oh, Herbie, I said. ‘Please do, down, you are definitely not making this easy to follow.’

“Well very well,” he said. “Dr. T is, was, or will be, depending on where you are in the flow of the time channels, the nickname of a semi-mythical psychiatrist who was the first to discover that time travel is possible. She was the first to decipher that what her patients were describing to her in their explorations of the unconscious portions of the human mind was that time flow was not linear. Instead, at infinitesimally tiny junctures in the progression of events, the flow of time could, and in fact did, do, and will bifurcate, trifurcate, etc., into an infinite number of alternate time channels. She determined that time has the structure of an intersecting fiber, rather than the structure of a single straight line.”

“Herbie,” I said. “You are starting to get weird on me.”

“No, no, I’m not,” he said. “Just hear me out. She was the first to decipher that what her patients were describing to her in their explorations of the unconscious portions of the human mind was that time flow was not linear. Instead, at infinitesimally tiny junctures in the progression of events, the flow of time could, and in fact did, do, and will bifurcate, trifurcate, etc., into an infinite number of alternate time channels. She determined that time has the structure of an intersecting fiber, rather than the structure of a single straight line.”

“Oh, boy,” I said. “You are most definitely getting weird on me. This tale is a real whopper. Is there a possibility that you’ve been recently smoking, swallowing, inhaling, doing or otherwise in-taking something that’s not good for you?”

He gave me a disingenuous look. “That is exactly what The Conglomerate and their Time Troopers would have you say.”

I sat down at my desktop, and wondered whether I could benefit from a few. To steady myself, I plopped into a chair and said, “Can you provide the details down and tell me what is going on here?”

“Yes, of course. All this must be frightening to you. Let me explain this to you one step at a time. First, can you tell me whether you know the identity of the famous time-traveling psychiatrist, Dr. T?”

At that point I believe I must have had my mouth wide open with a completely stunned look on my face. “Uh, no. H.G. — by the way, may I call you H.G.?”

My friends usually call me Herbie, he said. “Oh, Herbie,” I said. “Please do, down, you are definitely not making this easy to follow.”

“Well very well,” he said. “Dr. T is, was, or will be, depending on where you are in the flow of the time channels, the nickname of a semi-mythical psychiatrist who was the first to discover that time travel is possible. She was the first to decipher that what her patients were describing to her in their explorations of the unconscious portions of the human mind was that time flow was not linear. Instead, at infinitesimally tiny junctures in the progression of events, the flow of time could, and in fact did, do, and will bifurcate, trifurcate, etc., into an infinite number of alternate time channels. She determined that time has the structure of an intersecting fiber, rather than the structure of a single straight line.”

“Herbie,” I said. “You are starting to get weird on me.”

“No, no, I’m not,” he said. “Just hear me out. She was the first to decipher that what her patients were describing to her in their explorations of the unconscious portions of the human mind was that time flow was not linear. Instead, at infinitesimally tiny junctures in the progression of events, the flow of time could, and in fact did, do, and will bifurcate, trifurcate, etc., into an infinite number of alternate time channels. She determined that time has the structure of an intersecting fiber, rather than the structure of a single straight line.”

“Oh, boy,” I said. “You are most definitely getting weird on me. This tale is a real whopper. Is there a possibility that you’ve been recently smoking, swallowing, inhaling, doing or otherwise in-taking something that’s not good for you?”

He gave me a disingenuous look. “That is exactly what The Conglomerate and their Time Troopers would have you say.”
TSPP's Communications Seminar and Capitol Day

TSPP conducted a communications seminar and Capitol Day on February 23-24, 2003 for over 50 members, most of whom were residents.

The communications seminar, “Psychiatrists’ Excellence in the Media,” was conducted by Joel Roberts, radio talk show host from Los Angeles. The 1/2 day media program provided members with practical training and experience in delivering sharp, concise messages about psychiatry and psychiatric treatments. The seminar concentrated on sharpening psychiatry’s messages about legislative attempts by psychologists to gain prescribing privileges. Following the seminar, members converged on the Capitol to visit with legislators about issues of importance to patients and psychiatrists. Comments by the participants illustrate the value of the seminar:

“As a psychiatrist, I have a lot to say about the issues that effect mental health care. This seminar helped me say it clearly, concisely and in a way that the public can understand. As a result, I’m a better advocate for my colleagues and my patients.”

“Invaluable. I would not have felt as prepared or confident to carry our message to legislators without this training. I am not an extrovert, but I learned that one can be coached to make effective statements and become an ‘unintimidated activist.’”

“Amazing experience. It was the first time I was really introduced to the need to proactively represent the profession of psychiatry to the public, and the harmfulness of profound misrepresentations toward mental illness and its treatment in the media. Joel Roberts really helped demonstrate practical strategies to become more media friendly.”

“All the years of feeling overwhelmed by the problems in the mental health system and wondering how to get more involved, now I understand how simple it can be to start making a real difference. Joel taught us in a fun and entertaining way how much we already know and the steps to take to best use that knowledge. We all had a great weekend! I would highly recommend these conferences to all residents, as it was a quick and easy way to get involved.”

“This was by far the most valuable educational experience on patient advocacy and influencing public policy that I have had in all my training. I sincerely wish every psychiatrist in the state/country could have this experience.”

“Makes me excited to talk to members of the media to communicate about our profession and mental illness.”

“This is my first year of Psychiatric Residency and my first experience with TSPP. Coming into the seminar, I had very little understanding of the issue regarding psychologists prescription writing and I certainly had no way of delivering opposition to the matter with any impact. Joel's course gave me both the information and the skills necessary to approach legislators effectively. I also learned the importance of positive media presence among psychiatrists and how I might, myself, be part of that process. Joel does great work.”

Executive Council Actions...

The Executive Council met in San Antonio on April 6, 2003 and approved the following measures:

- Upon the recommendation of the Committee, the Council approved the operating budget for FY 2003-04.
- Upon recommendation of the Budget Committee, approved due waivers and membership classification changes of five members.
- Upon recommendation of the Budget Committee and endorsed by the Membership Committee and the Strategic Planning and Coordinating Committee, the Executive Council approved the following resolution:
  
  Whereas, TSPP membership totals continue to decline, and
  
  Whereas, a number of non-members have expressed a desire to join TSPP but find that also paying APA dues is not feasible; and,
  
  Whereas, a number of members have expressed a concern that TSPP membership may have to be dropped since paying APA dues is no longer feasible,

  Be it Resolved, that TSPP will undertake a survey of all psychiatrists and psychiatry trainees in Texas: 1) to determine the extent of this problem; and 2) to begin to study the feasibility of de-linking membership in TSPP and membership in APA.

- Upon recommendation of the Committee, the Executive Council approved the following nominations for TSPP awards:
  
  Distinguished Service Award - Arthur J. Farley, MD, Houston/Austin
  
  Distinguished Service Award - Edgar P. Nace, MD, Dallas
  
  Psychiatric Excellence - Parviz Malek-Ahmadi, MD, Lubbock

- Upon recommendation of the Professional Practices Committee, the Executive Council approved, subject to Newsletter publication and review by members, two practice guidelines: Guidelines of Practice for Office-based Treatment of Cannabis Withdrawal and Guidelines of Practice for GHB Treatment Withdrawal.

- In Executive Session, the Council considered ethics cases referred from the Ethics Committee.

Executive Session

Upon recommendation of the Professional Practices Committee, the Executive Council approved a request to sunset the Committee. It will continue to monitor the content of both publications.

“Amazing experience. It was the first time I have felt involved in media for public information. Joel’s seminar was so valuable, especially for myself. As a resident, we are thrust into a position of responsibility and we are viewed differently than we have been as students. It was very beneficial to learn how to present myself better as a physician.”

“Focused my ability to present information concisely and hopefully effectively. Encouraged my involvement in media for public information on mental health issues.”

“Excellent presentation, as it was at the TSPP Leadership Retreat in August. This media training workshop gave me new skills and insights into how to improve psychiatrists’ overall images with the public in addition to presenting the issues against psychologists gaining prescribing privileges. It was very entertaining as well as inspirational. I believe it is a must for other psychiatric societies dealing with similar issues as well as those just working to present a more real and accurate picture of our profession. His presentation would also be excellent for psychiatric consumer groups.”

“An important wake-up call coupled with empowering information. Excellent training and materials enhanced by Joel’s humor and sensitivity to the different temperaments. Socratic method encouraged critical thinking. Interactive mode built camaraderie. Joel and assistant Heidi encouraged all groups, especially important with residents. Practical advice for dealing with the media, lay legislators, and public still valuable. Hope he can train psychiatrists in Dallas, Houston and Austin in the near future. Well worth the time and expense to come.”

Following the communications seminar, members went to the Texas Capitol and visited with legislators about issues of importance to psychiatrists and patients, including the psychologist prescribing initiative. The following page continues on page 7.
Before I could blubber out my incredulous bestowal that I had just been introduced to the author of the famous book 1984, Herbie continued, "George is a psychiatrist from Houston, which I believe has become, at this time, a significant city in your particular city in Texas. He will, or has been—such is life!—I hope you will excuse me. With time travel, the proper choice of verb tense can be terrible at times. In any case, I will describe his birth year as occurring in 2024. He has been conducting some extensive and dangerous surveying operations for the past four and half centuries. Some of your preliminary excursions into the early 21st century have found indications that some type of profound and unique time channel fluxes are converging throughout this time period in the region of Texas. 

"Yes, you can say that again, Herbie," said George. His distinctive twang left no doubt that he was a native Texan. "But what I have to report is nothing nice. If the time fluxes stay in their channel that we have identified, some terrible things are going to happen."

"Oh, my god, George," said Herbie, "What have you found?"

"Well," said George, "In the current flux of events, The Conglomerate is pretty well lacking control. They are getting into everything, and they especially are trying to snatch the psychics, as another way of undoing Dr. T."

"What are they doing?" asked Herbie.

"Well, first they are real sneaky in concealing the fact that they are working to control things behind the scenes. They are cleverly manipulating language, so that people think everything is normal, when in fact it is not. More and more, The Conglomerate twists words and phrases around so that they sound like they say one thing when they actually mean the exact opposite."

"That sounds ridiculous," I said.

"I should think so, George," said Herbie. "First of all, Lyons and ur temples begin to realize that words are contradicting facts, but The Conglomerate, with all the media power at its disposal, starts brainwashing people into ignoring the goofy nature of their stuff. And believe me, The Conglomerate can come up with some moronic slogans to placate the masses that sound like real doomsday things—things like "War is Peace, Freedom is Slavery," and "Ignorance is Strength." They have this term 'Doublethink' to describe a way of simultaneously believing both the slogans and the facts, even though they contradict each other. They have so much power that they even have a section of The Time Troopers, called the 'Thought Police,' to make sure that everybody talks using 'Newspeak—a crazy, consolidated, upside-down, inside-out way of simultaneously believing both the slo-

"Oh, my god," said George. Herbie leaned from under the desk, to the doorway and pulled him inside, almost hugging him. He said, "George! George! Thank god it is you! Herbie spattered, clearly attempting to suppress shouts of joy.

"Yes, Herbie, it is wonderful to see that you escaped and are still alive," said George. "Our new time sensors were finally able to locate you. Did you get our message?"

"Yes, I did," said Herbie. "Please sit down and tell me what you have been able to discover."

"George crossed the room and sat down. He was tall, angular, distinguished looking man dressed in unusual clothing, of a strange cut that almost resembled coveralls. He had obviously not seen me. Apparently my choice of a hiding place was pretty good after all. "I go up," I went, clearly my throat loudly in an effort to subdue and politely announce my presence from the socially awkward position underneath his desk.

"Oh, my god," I said. "I am sorry," Herbie said, as he hurried over to assist me in extracting me from his body by its tight confines. "Please, let me introduce you to my good friend, George Orwell."

continued from Page 2
The televisions act like huge televisions that can't be turned off, sending out propaganda programs, while whistling and listening at the same time.

"That will be ghastly," said Herbie. "It is a Doublethink. To even contemplate the falsity that perverts the culture a grand transmission called ‘thoughtcrime.’ Citizens disappear into the Ministry of Love, if even a minor facial expression betrays a fleeting doubt of Doublethink or a transient unconcern about Newspeak. In Newspeak, variance, a violation of the use of the facial muscles is called a ‘facenew.’ Facecrime and similar acts of disobedience do not simply result in the disappearance or the execution of the criminal. Instead the citizen becomes a thing to be described and not to be known by anyone who has not already existed and no one who is afraid of the one who has known. The things you described are outlandish. With none of those things, I have learned of the activities of The Conglomerate. In New York, people are considered to be bad news for you. You probably need to sit down before I tell you – you too, Herbie.

As they sat, I continued, George, I think that The Conglomerate might have confiscated your book and changed it around a little bit. In your time, you are famous as the author of a book called 1984. That book contains the same exact material that you just described.

The book is considered to be a work of science fiction. You are renowned as an excellent, although perhaps eccentric English author who creates books containing stories of intelligent facecrime.

At first George just stared at me. Then he said, "That is the most preposterous thing that I have ever heard. It was about to launch an advertising campaign to try to sell something called the ‘New’ that you just described. They have conditioned people not to believe their life is perfect, safe, and wonderful, despite all evidence to the contrary. In Newspeak, those people are considered to be ‘incrementalists,’ or they are in fact creations of Newspeak and self-serving revisionists of history and the future and meet our friend Aldous Huxley, the Morlocks came from!"

"Yes, I said. "But that is the time channels. Otherwise the entire future of The Conglomerate is proven! Don’t let them catch you or they will utter a story of any of those terms?"

"That will be ghastly," said Herbie. "It is the thought that medication pre-prescribed is valid, in spite of the ‘right to prescribe’ slogan is valid, in spite of the opposite of what they say, and you believe them while not believing them, all the while not noticing that you hold opposite things to be true."

"The Conglomerate always has and always will operate deviously and invisibly in the back-ground, seeking to exploit and manipulate the masses of the mind and the general public."

"Oh, my god," said Herbie. "Surely they can’t do that."

With the alteration of history by the Time Troopers, and the use of Doublespeak and Newspeak, they must certainly can and will. At least they think they can, until the flow of events in their present channels eventually causes them to reach a showdown with the Texas Society of Psychiatric Physicians. In SPF they are increasingly encountering a fearsome group of psychiatrists, waging a war of truth and plain facts as a cudgel to threaten the very foundation of their existence. It will soon become apparent to The Conglomerate that they will only be able to defeat SPF by completing the criminalization of medicine. The Conglomerate will eventually succeed in passing laws, forbidding the practice of medicine, and all physicians, including psychiatrists, will be hunted down like packs of rabid animals. With the disappearance of the practice of medicine, SPF will retrace into the ground railroad will develop, through which patients from all over the world will smuggle themselves into the SPF camp, seeking an exotic form of psychiatric treatment known as talking psychotherapy."

"I can’t imagine how that will be possible," I said.

"The process is beginning in your present time," said George. "This Conglomerate is introducing a new slogan from Newspeak, called ‘the right to prescribe.’ With it they are exploiting a small group of naive psychologists to advance the idea that the prescribing of medications is a God-given, inalienable right and that it is a trivial process which does not require education or training in a medical school or a residency training program. With Doublethink, the Conglomerate will be able to convince policy makers that their silly ‘right to prescribe’ slogan is valid, in spite of the overwhelming facts which indicate it. The small group of poor, foolish psychiatrists who will utterly fail to realize that The Conglomerate is using them as a pawn to attack psychiatry and Dr. T. Quite rapidly the entire process will wear out of control, and the right to pre-
HIPAA's Privacy Rule: Privacy Disorder May Still Plague Independent Psychiatrists

continued from Page 1

access to certain private medical information,103 repeats Section 181.101 of the TMRPA. Section 181.101 is entitled “Compliance With Federal Regulations.” This provision states that a “covered entity shall comply with the Health Insurance Portability and Accountability Act and Privacy Standards relating to: (1) an individual’s access to the individual’s protected health information, (2) amendment of protected health information, (3) uses and disclosures of protected health information, including requirements relating to consent, and (4) notice of privacy practices for protected health information.”104 Enrolled on 1 April 2003, Senate Bill 350 is likely to be signed by Gov. Rick Perry in the near future.

Senator Nelson’s office staff has informed numerous physicians across the state105 that enactment of Senate Bill 350 abolishes the need for paper-submitting Covered Entities to adhere to the Privacy Rule. Unquestionably, that’s the goal of this highly respected legislator.

Good intentions aside, that aim may not be achieved with this Bill.

The most logical course of action would have been to eliminate the state definition of “Covered Entity,” for that would have resulted in the state’s adoption of the federal definition.11 For a variety of reasons, mostly linked to marketing restraints, that did not occur. We are left with, then, is an action by a state legislature intending to do away with a federal requirement.

No state has the power to vacate a federal law. Whether the state says so or not, Covered Entities must comply with the federal law, just as all Texans must follow federal income tax regulations and federal Social Security rules, etc. The real issue is whether the state definition of Covered Entity will be applied in investigations of supposed violations of the right to privacy that Texans have in their Protected Health Information. Does the “more stringent” definition of Covered Entities in the TMRPA still subject mental health professionals to HIPAA regardless of how they transmit health data?

No federal agency has the right to enforce a state law.

The “stakeholders” of S.B. 350 argue that the “Covered Entity” definition of the TMRPA is limited to the state Act. The Texas Attorney General would likely be the agency enforcing any violation of this state law. According to the “stakeholders,” HHS Office for Civil Rights (the federal Agency responsible for administering HIPAA’s Privacy Rule)116 could not impose the TMRPA’s “Covered Entity” definition in its privacy investigation in our state because the feds have no right to administer a state law. With this argument, it may be left to the Attorney General to decide whether the state “Covered Entity” definition means that vast numbers of Texans are viable targets for Privacy Rule violation prosecution.117

Conclusion

Everyone in the health care field should agree... it is not sensible to require that the current definition of “Covered Entity” in Texas apply to the Privacy Rule obligations in Texas. But how do we get there from here? It is not clear whether the Attorney General has even yet had an opportunity to offer his opinion.

There is a bit of time yet remaining to seek clarification of the legislative intent behind the law. A “shell” bill, Senate Bill 1130, has been introduced by Senator Nelson, apparently to remedy any issues still festering with the state’s Privacy Act. And, there is yet the chance to submit draft language to elected representatives. Mental Health professionals would be wise to implore their legislators to clear up this potential bugaboo rather than await an Attorney General’s interpretation that may not be what most would want.

Hopefully we’ll end up with, if not sensible privacy protection, at least a law merely as ludicrous as HIPAA.
World Federation for Mental Health
James C. Swinney

All way around the World in the southern hemisphere was not a place I would have imagined, during the last days of summer in 2002, that I would be in 2003. Replacing winter for summer in February has always been one of my dreams. I did just that when I arrived in the beautiful city of Melbourne, Australia for the World Federation for Mental Health (WFMF) Biennial Congress. One of the things I wanted to learn from the Congress was how continuous care was given to the mentally ill from hospitalization to their functioning in the community in a way that was meaningful to them. I expected to learn information for my quest through presentations at the Congress.

Much to my surprise, I had a much richer experience in store for me. The first morning there was a meeting of all the consumers from around the world who were attending the Congress. Filling the room during the large meeting were consumers from Australia, Africa, Asia, Europe, South America, and North America. Australia had the largest attendance with the United States having the next largest. Meetings of the world consumers were scheduled each day of the Congress for us to keep in touch with each other and conduct our necessary business. Consumers have a board representative on the Board of the World Federation of Mental Health that gives us a voice in how the Federation addresses itself to the problems and possible solutions to world mental health. I found in these meetings, conducted by our board representative, a growing reliance of individuals with mental illness to trust themselves to be a larger part of other groups working for mental health. From my observations, individuals with mental illness, on the road to recovery, first become an active part of their own treatment then go on, using their experiences, to help with the treatment of others with mental illness.

over fifty consumers in those meetings were all at the point of helping others with mental illness. The different ideas shared in those meetings as they spread beyond the Congress will, even when met by resistance in different places and at different times, become a part of the solutions to world mental health.

I was surprised to find out during the Congress how little organized direct consumer support is included in the treatment of persons with mental illness. I, in my quest, was looking for the Holy Grail, not for the Gordian Knot. I wanted to find new ways that gaps of care could be filled in the United States. I did find examples from different parts of the world that I can relay to others, but organized direct consumer support for individuals battling with recovery from mental illness is an area that needs much work around the world. I found that organized direct family support has a stronger position than organized direct consumer support. I can only write from my own observation that touched a small part of the Congress, but I do believe that they have some validity. The consumers are working hard to advocate for persons with mental illness. Treatment is changing because of that advocacy. People with mental illnesses are helping others not as far along on the road to recovery as they.

I attended a presentation about an organized consumer run support group in Melbourne, Australia that was meeting at regular intervals. They are having facilitated sessions, supplying educational information, and working one on one with mentally ill people to aid in their recovery. The group is about to open two more groups in the local area. A copy of their brochure looked much like one from a local chapter of the Depression Bi-Polar Support Alliance. I also talked with a dedicated individual from the interior of Australia who was serving small communities with great distances between them. There were not enough people in any one community to get the useful dialogue that groups of ten to fifteen meeting together brings about. She was not able to keep for herself a reliable computer to carry on her work efficiently. Working on getting computers to be placed in the different towns where maybe better contact with those in need could be achieved is one of her priorities. It seems to me that consumer advocacy is slowly evolving to include the direct consumer care system for those with mental illness. In parts of the world the needs for traditional mental health care is so great that consumers have to devote their efforts to advocating for traditional mental health care instead of themselves becoming part of mental health care through local support groups.

A very refreshing presentation was given by mental health services in New Zealand. The program of services reviewed is something that should be included in the treaty, something to the effect, that the rest of the country might follow at a later date. The presenters were developing the outcomes from the project so it could be presented to the government for consideration in the future. I plan to follow the project’s progress over time to find out how the benefits can be presented in the United States.

Some experiences make a lasting impression on a person’s life. All the knowledge I gained at the Congress, the personal experiences with others, the encouragement I got to continue on as an advocate, and the wonderful hospitality of the Australians—not only in the Congress, but also on the streets, and anywhere that I met them—were all such experiences. I would like to thank all that had a part in enriching my life through my attendance at the World Federation for Mental Health Biennial Congress 2003.

BIENNIAL CONGRESS 2003
TSPP’s Communications Seminar and Capitol Day
continued from Page 3
were reflections of members following their legislative visits:

‘There are few people speaking up for the interests of people with mental illness and even fewer for the interests of psychiatrists. For the sake of our patients and our profession, we can’t afford to be silent. I’m working to do my part to inform our lawmakers about the realities of what we do everyday. It didn’t hurt… it was even fun!’

‘Very interesting and an extreme learning curve. Well worth it. Felt as though I was part of a process and that my presence truly had an effect. Plan to do more.’

‘It revealed worlds about how the legislative process works and it allowed us to demonstrate our commitment to the safe and effective treatment of the medically ill. I believe it really helped us to drive our points home more personally.’

‘This experience has taken the mystery out of how to communicate with our legislators and psychologists prescribing, in addition to how they saw their issues on positions. It was also fun to be at the Capitol and see where Texas laws are made.’

‘Excellent. Realized after Joel’s training how to be effective and witty, which made visits a pleasure and an education. Could see the importance of having groups of psychiatrists enter legislators’ offices. Every psychiatrist in TSPP needs to be trained and to come to the Legislature. Meeting with legislators and staff at the Capitol is critical. Legislative aides are quite personable and smart. Ready to come again.’

The two-day program was funded by a grant from Eli Lilly & Company.

James C. Swinney, MD

APRIL / MAY 2003
TSPP NEWSLETTER
Legislative Update

Once again, TSPP is heavily involved with the Texas Legislature, monitoring 284 bills that could impact patients and the practice of psychiatry. For example, TSPP is actively working to protect the physician-patient relationship, to ensure access to psychiatric care for patients, to advocate for funding for public mental health services, and to promote malpractice reform, to mention a few areas of involvement.

As expected, the Texas Psychological Association filed their “prescribing bill.” However, the bill, HB 3451 by Representative Rick Noriega of Houston, was not filed until the final hours of the last day allowed for the filing of bills. According to reports from the Capitol, TPA approached many legislators to file their bill, but found little interest.

HB 3451, if enacted, would allow a psychologist bearing a “prescriptive authority certificate,” to “issue a prescription drug order, to administer or dispense a prescription drug, and to order tests to monitor the use of prescription drugs.”

Sounds like the practice of medicine!

To receive a “prescriptive authority certificate,” to “issue a prescription drug order, to administer or dispense a prescription drug, and to order tests to monitor the use of prescription drugs.”

WHY PSYCHOLOGISTS’ PRESCRIBING IS NOT GOOD MEDICINE AND POSES A THREAT TO PATIENT SAFETY

• Psychiatrists often refer patients to psychologists for psychological testing and talk therapy.

• Any psychologist who wishes to prescribe medications should receive the education and training needed to safely prescribe medications—medical school and medical residency training. Many psychologists currently licensed to practice medicine were first trained as psychologists prior to entering medical school. We welcome psychologists who wish to apply for medical school—but our state could use more psychiatrists.

• Access to psychiatric care will be improved when there is no discrimination in healthcare plans or managed care practices and there is adequate funding for public mental health services. The number of psychiatrists in Texas is not the “access problem.” Nor is geographic distribution necessarily a problem. Physicians are located in all but 20 counties. There are more psychiatrists in Texas than psychologists licensed to provide clinical care and psychiatrists are located in 17 more counties than psychologists.

• Psychiatrists’ prescribing will increase costs to the State and to patients. For example, 1) new procedures and oversight will be needed by State agencies to administer prescriptive authority for non-physician psychologists; 2) more prescribers means more prescriptions being written, impacting a state budget already burdened by the escalating cost of medications; and 3) malpractice premiums will increase and will be passed on to patients.

• Is safety of Texans assured by psychologists taking a 300 hour correspondence course on prescribing, treating up to 100 patients and taking written, impacting a state budget already burdened by the escalating cost of medications; and 3) malpractice premiums will increase and will be passed on to patients.

• Any psychologist who wishes to prescribe medications should receive the education and training needed to safely prescribe medications—medical school and medical residency training. Many psychologists currently licensed to practice medicine were first trained as psychologists prior to entering medical school. We welcome psychologists who wish to apply for medical school—but our state could use more psychiatrists.

• Psychiatrists often refer patients to psychologists for psychological testing and talk therapy.

• Access to psychiatric care will be improved when there is no discrimination in healthcare plans or managed care practices and there is adequate funding for public mental health services. The number of psychiatrists in Texas is not the “access problem.” Nor is geographic distribution necessarily a problem. Physicians are located in all but 20 counties. There are more psychiatrists in Texas than psychologists licensed to provide clinical care and psychiatrists are located in 17 more counties than psychologists.

• Psychiatrists’ prescribing will increase costs to the State and to patients. For example, 1) new procedures and oversight will be needed by State agencies to administer prescriptive authority for non-physician psychologists; 2) more prescribers means more prescriptions being written, impacting a state budget already burdened by the escalating cost of medications; and 3) malpractice premiums will increase and will be passed on to patients.

• Is safety of Texans assured by psychologists taking a 300 hour correspondence course on prescribing, treating up to 100 patients and taking written, impacting a state budget already burdened by the escalating cost of medications; and 3) malpractice premiums will increase and will be passed on to patients.

• Any psychologist who wishes to prescribe medications should receive the education and training needed to safely prescribe medications—medical school and medical residency training. Many psychologists currently licensed to practice medicine were first trained as psychologists prior to entering medical school. We welcome psychologists who wish to apply for medical school—but our state could use more psychiatrists.