



# Texas Society of Psychiatric Physicians NEWSLETTER

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HIPAA's Privacy Rule:

## Privacy Disorder May Still Plague Independent Psychiatrists

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"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 this provision of the Hippocratic oath,<sup>1</sup> most HIPAArarians 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, LPCs, MSWs and psychologists alike. Despite leading the pack in data secrecy, psychiatrists are bedeviled with inputting the "Minimum Necessary" Rule, posting the Notice of Privacy Practices, obtaining clients' acknowledgements of the Notice (or documenting good faith efforts to get those acknowledgements), 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 pro-

moted 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<sup>2</sup> 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 befuddled the healthcare industry by passing the Texas Medical Records Privacy Act. Enacted as of 1 January 2002 into the Texas Health and Safety Code,<sup>3</sup> 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 decidedly narrow window of opportunity in which to rectify these foreboding provisions of this Act.

### Trump'er? Or Trump'ee?: the Exemption Provision of HIPAA's Privacy Rule

Under ordinary conflicts of laws analysis, federal law supercedes state legislation. There are certain instances, however, where the federal government statutorily recognizes 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.<sup>4</sup>

So, compare, then, the Privacy Rule to the Texas Medical Records Privacy Act. HIPAA's Privacy Rule applies to health plans, health care clearing houses and healthcare providers who transmit claim information in an electronic format.<sup>5</sup> The TMRPA, however, relates to a person<sup>6</sup> who:

"... for commercial, financial, or professional gain, ... or on a ... nonprofit or pro bono 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."<sup>7</sup>

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 Protected Health Information ("PHI") forms nearly **any part** of the data of the business. And just in case the "to whom does the Act apply?" query still lingers amongst the health care community, the Act specifically explains that the definition of a Covered Entity in Texas "... includes a Business Associate, health care payer, governmental unit, information or computer management entity, school, health research, health care facility, clinic, health care provider, or person who maintains an Internet site ..."<sup>8</sup> In short, while the *acquisition* of PHI is not a worry to federal rule makers, the state legislators made Covered Entities out of nearly everybody.

Unquestionably, then, the definition of "Covered Entity" in the TMRPA trumps HIPAA because so many more Texans are subject to the state Act. Therefore, until there is a change in the state law, the "Country Doctor Escape Route" is simply not available in Texas.

"However beautiful the strategy, you should occasionally look at the results."

Winston Churchill

Seemingly innocuous at first, the Texas law truly turned a molehill of good intentions into a mountain of dizzyingly complex administra-

tion annoyances. Under HIPAA's Privacy Rule, Covered Entities must muddle through their vendor relationships to secure Business Associate agreements.<sup>9</sup> Lucky 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 plagued 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<sup>10</sup> were blindsided with yet more pricey brouhaha, likely delay and resulting fears of non-compliance penalties.

### Can This Act be Saved?

Sensitive to the effect of the TMRPA on Texas Covered Entities, Senator Jane Nelson,<sup>11</sup> 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.

Senate Bill 330, described as "[r]elating to

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## Ray Inducted as President

Priscilla Ray, MD (left) receives the TSPP President's gavel from Sanford Kiser, MD during her induction ceremony as new TSPP 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.



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## Quick, Read This Message – Then Burn It

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 poundings at my office door. The noise was accompanied by shouts of “*Let me in! For God’s sake, let me in!*” The shrill tone of terror 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.

Upon seeing me, he staggered into my office, after first turning to survey the hallway outside, and then quickly closing the door behind him. As I stood looking at him in astonishment, he turned and moaned, “*Please, I need a drink, a strong drink. Do you have any whiskey?*”

“*Uh, no,*” I said, “*but I do have some Coca-cola.*”

He gave me a bewildered look. “*Coca-cola? Coca-cola? What is Coca-cola? Never mind. Anything, give me anything. I am dying of thirst. All the water I found was too contaminated to drink.*”

I had no idea what he meant, but as fast as my trembling legs could carry me, I ran down the hallway and extracted a can out of the vending machine. Upon return to my office, I was surprised at my involuntarily reaction of repeating his earlier behavior of pecking cautiously up and down the hallway before easing back through my office door. Quickly, I placed the soft drink into his shaking hands. Incredulously he looked up at me. “*What is this strange object?*” he said.

“*It’s a can,*” I said, “*a can of Coca-cola.*”

“*I don’t know what that means,*” he said.

“*Here,*” I said, as I popped the top for him.

“*There,*” I said, pointing to the opening in the top, “*you drink it through there.*”

Cautiously, he raised the can to his face, looked inside, and took a small sip. “*Oh! Oh! Ugh-b-b,*” he sputtered, as his face turned purple before he coughed, spewed, and spit on the floor. “*My gosh, this stuff is nasty. Do you people actually drink this filth? No, no. Never mind. Forget it. My body must have fluid, any kind of fluid.*” He chugged the contents of the can rapidly, as if trying to deny the possibility that even the tiniest amount could linger on his taste buds. He then collapsed onto the couch, gasping and exhausted, almost sobbing.

“*Who are you?*” I asked.

Between gasps he got out the words, “*I’m someone you likely know quite well. You probably know me as the Time Traveler.*”

The Time Traveler? I had no idea what he was talking about. I scratched my head and reached deeply into my memory. At first, nothing. Then, of course! Yes! The answer came to me. I shouted, “*You’re Arnold Svarzenegger! Oh my gosh, you’re Arnold Svarzenegger!*”

The Time Traveler gave me a puzzled look. “*I don’t know who that is,*” he said, “*My name is Herbert G. Wells. You probably know me as H.G. Wells.*”

“*H.G. Wells!! Are you trying to tell me that*

*you are the famous science fiction writer, H.G. Wells!*” I exclaimed.

“*Oh, my god,*” he groaned, as he slapped the palm of his hand onto his forehead, “*Of all things, a science fiction writer. They must have succeeded in diverting the time flow again, and altered my true identity.*”

“*The Who diverted the What?*” I asked.

“*The Time Troopers, the agents of The Conglomerate. They divert the channels that time flows through*” he said. “*They do that to rearrange the events of history.*”

At this point I was feeling bewildered. I carefully eyed the bottle of risperdone samples sitting on my desk, and wondered whether I could benefit from a few. To steady myself, I plopped into a chair and said, “*Can you please slow down and tell me what is going on here?*”

“*Yes, yes, of course. All this must be very 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.?*” I said.

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

“*Very well then,*” 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 apparently noticed that, as her patients were delving into the unconscious regions of their minds, they were entering into a region in which the sense of time, in the sense of a linear flow of events, did not exist. Instead, with her background in the physics and engineering of her time, she was able to establish a new level of understanding that expanded psychoanalytic discoveries to areas previously unimagined by Freud and the Post-Freudians.*”

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

“*No, no, I’m not,*” he said, “*Just bear 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 is not linear. Instead, at infinitesimally tiny junctures in the progression of events, the flow of time could, and in fact did, does, and will bifurcate, trifurcate, etc. into an infinite number of alternate time channels. She determined that time has the structure of an interwoven fabric, 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 whooper. Is there a possibility that you’ve been recently snorting, swallowing, inbating, drinking, or otherwise in-taking something that’s not been good for you?*”

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

“*There you go again,*” I retorted, “*Just exactly what, in this mirage of yours, is that Conglomerate thing and the Time Trooper whatyoumaycallit?*”

At that point, a sudden whooshing sound and a flash of a brilliant blue light came through the closed curtains of my office window.

“*Oh, my god, someone’s coming through the time channels,*” Herbie cried, as he leaped to the window, carefully peeking around the edge of the curtain.

As I quickly followed him, I nonchalantly took the time to place the bottle of risperdone into my pocket. At that point I was debating whether to slip them into something for Herbie, or whether to gulp them myself. I ran over to the window and stuck my head out between the curtains.

“*Great Scott, man! Are you a complete idiot! Don’t let them see you!*” Herbie shouted as he dragged me back into the room. “*Someone has landed a timecraft into the bushes out there! Don’t let them know you are here, especially with me. At this point we have no way of knowing whether the Time Troopers have found me or whether help is coming from the TSPG.*”

Again I was stunned. “*What is the TSPG?*” I asked.

Herbie’s face was illuminated suddenly by a look of deep relief. “*You don’t know what the TSPG is?*” he said. “*Then I must have come in time. Do you still have an organization known as the Texas Society of Psychiatric Physicians?*” he asked.

“*Why, yes, of course,*” I said. “*I’m a member of it myself, but what is the TSPG?*”

“*The TSPG is the greatest enemy that The Conglomerate and its Time Troopers will ever have. It stands for the Texas Society of Psychiatric Guerrillas.*”

As I stood there, looking at Herbie’s happy face, I could tell that my sense of reality was blurring really, really – and I do mean re-e-e-ally, re-e-e-ally – fast. For a split second, I think the thought passed through my mind that I wanted my mommy, and that I wanted her right now.

In spite of all that, I pulled myself together, suppressed an urge to whimper, and in my most mature and profound voice turned to my companion and said, “*Herbie, I don’t think I get this.*”

“*Very well,*” he said, “*I will summarize things for you as quickly and as briefly as possible. I am an actual Time Traveler. I do travel through time. I am a participant in an invisible and far-ranging battle which is underway even now. The battle ranges above, within, and throughout the dazzling array of potential channels through which time and events can flow. Our enemy is The Conglomerate. No one knows the exact nature or identity of The Conglomerate. As best as we have been able to determine, the Conglomerate arose in the late 20th century in your country, by means of passage of laws eliminating barriers for establishing a conglomeration of over-lapping ownership of banks, credit card companies, insurance carriers, managed care contractors, and movie theaters.*”

“*Herbie,*” I said, “*Are you sure you’re telling*



R. SANFORD KISER, MD

*me the brief version of this story?*”

“*Yes, please be quiet and listen. The conglomeration of ownership I have just described led naturally to an immediate and massive conglomeration of wealth, to an extent never before seen on the planet. The power of The Conglomerate began multiplying upon itself, to the point that its influence and its agents expanded into virtually every realm of human activity. It was only a matter of time before they came upon Dr. T’s amazing discovery. She and a group of colleagues were then in the early stages of developing a laboratory to extend her initial findings into the creation of devices for practical time travel. The Conglomerate immediately recognized the potential of her work. It mounted a sudden and brutal attack to destroy their laboratory and confiscate the time travel technology for its own evil ends. Dr. T somehow escaped. We believe that she has hidden in the time channels. The Conglomerate searches for her constantly and for the small band of her followers who were also successful in escaping.*”

In spite of myself, his story was starting to mesmerize me. “*How did they escape?*” I asked, “*Where did they escape to? How did they hide?*”

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 were desperate for help. When they found me, they quickly recognized me as a kindred spirit, and begged me for shelter. I immediately threw in my lot with them. As they worked to refine the timecrafts further, they began making time excursions to locate and rescue Dr. T. They also started traveling widely throughout the time channels to gain additional recruits with which to undermine The Conglomerate. They soon discovered that The Conglomerate, with its immense power, was progressively changing the flow of history, and that their plan was to revise history and turn the reality of Dr. T into a myth. That effort was an obvious prelude to then completely obliterating any knowledge of her existence. Their ultimate goal was to conceal time travel completely and thus appropriate its power exclusively to their own purposes. Without verification that Dr. T is real, their task becomes much easier to first discredit and then destroy any of her followers who might emerge to challenge them. With no Dr. T to confirm their story, it becomes all too easy to portray her colleagues as yet another example of a bunch of ‘crazy’ psychiatrists.*”

“*Yes, I’ve often been called that myself,*” I

# TSPP's Communications Seminar and Capitol Day

**T**SP 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 1½ 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 "introverted 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 mis-

representations toward mental illness and its treatment in the media. Joel Roberts really helped demonstrate practical strategies to become more media friendly."

"After 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."



Paul Carlson, MD (left) banters with Joel Roberts.

"Allows us to speak to legislators in a language they will respond to. This was exceedingly helpful. Had we not had this seminar, and proceeded to speak with legislators, we would have perpetuated the same stereotypes of psychiatric physicians and been just as ineffective. This is especially true in my case because I'm known to be overly blunt and I probably would have done more harm than good if my attitudes had not been properly directed because I spoke to all four legislators and I'm just an intern."

"I thought the training was so valuable, especially for myself. As a resident, we are thrust into a position of responsibility and we are viewed differently than we had 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 pre-

scribing 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 quite 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

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## EXECUTIVE COUNCIL ACTIONS...

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

- ★ Upon the recommendation of the Budget Committee, the Council approved the operating budget for FY 2003-04.
- ★ The Executive Council, upon recommendation of the Budget Committee, approved dues waivers and membership classification changes of five members.
- ★ Upon the 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.
- ★ The Fellowship Committee's recommendation was approved involving four applications for Applications for Distinguished Fellowship be submitted to APA for consideration.
- ★ The Council approved a recommendation from the MIT Section that an officer position of Immediate Past Chair be established for the MIT section.
- ★ Upon recommendation of the MIT Section, the Council endorsed a recommendation to establish a program at the 2003 Annual Convention addressing practice management and development.
- ★ Upon recommendation of the Newsletter and Website Committee, the Council approved a request to sunset the Committee, but continue the role of the Newsletter Editorial Board which will continue to monitor the content of both publications.
- ★ Upon the recommendation of the Nominating Committee, the Executive Council and Executive Committee 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.



Joel Roberts receives a blow from Joseph Castiglioni, MD (right)



Conway McDonald, MD and Martha Leatherman, MD on the hot seat with Joel Roberts.

said.

Herbie gave me an odd look that seemed to say 'I can understand why' before continuing his story. "As I began my training in time travel, I made a terrible error in the setting of the time travel machine controls in one of my first training sessions. Unknowingly, I propelled myself far, far into the future, much farther than anyone had ever gone before. I accidentally launched myself into a section of the time channels in which no one had yet determined the proper safety and security parameters. I ended up in the year 802701.

"Yes, I know," I said, "Let me guess. You ended up at a time in the future in which you found yourself among a kind and gentle, peace-loving people called the Eloi. They lived in a state of pastoral joy, without problems of any kind. They lounged away their time each day, as if in paradise, pursuing idle and trivial pleasures. Food, clothing, and all other needs magically appeared for them daily, seemingly out of nowhere. Everything was perfect, except for one wee small problem. They were terrified by the approach of nightfall. For some unexplained reason, every night a few of them would disappear, never to be seen again. During the time of your visit, you discovered that the key to that mystery lay in the fact that, under the ground, hidden in vast caverns unknown and unsuspected by the happy Eloi, lived a dark race of carnivorous, cannibalistic humanoids called the Morlocks. It was the Morlocks who, with their massive underground machines, generated the goods mysteriously supplied for the comforts of the Eloi. The purpose of the apparent gifts of the Morlocks was to fatten up the Eloi, selected morsels of which they would abduct at night to be consumed for the Morlock meals of the following day."

It was now Herbie's turn to stare in amazement. "Yes, all of that is true," he said, "But, how did you know?"

"Easy," I said. "I read about it in your famous science fiction novel, *The Time Machine*."

Again Herbie groaned. "So that is where that science fiction writer notion came from," he said. "No, no, absolutely not. I have never written science fiction in my entire life. The real, true, and actual thing which happened to terminate my trip to the year 802701 was that my unexpected presence there was somehow detected by The Conglomerate. Immediately after I discovered the true situation, as you have just described it, I found myself surrounded out of nowhere by a squad of Time Troopers. Only by the slimmest of margins and the best of luck, was I able to escape and return to my home time in the late 19th century. I immediately wrote down my experiences as a non-fiction travelogue, in which I also revealed the existence of The Conglomerate and Dr. T's timecraft machines. As you can imagine, the publication of the travelogue produced an immense public outcry. Foolishly, I had utterly failed to realize the major temporal tidal wave phenomenon that such an event would create in the flow of time. My actions were thus readily detected by the Time Troopers, and before I knew it, they were attempting to abduct me again. Fortunately my colleagues by that point had perfected the timecraft even further, and I was able to elude their clutches, even though the Time Troopers had me trapped in my flat, completely surrounded."

"What did you do then?" I asked. (By this time, I was beginning to believe his story. Nobody could make up a tale loaded with this much nonsense.)

"In the urgent circumstances of my departure, I rapidly spun the time dials on my machine backwards. I reasoned that the Time Troopers would assume that the direction of my escape would be back to the future, and that by going in the other direction, I could best escape them."

"And did it work?" I asked.

"All too well," he said, "I found myself in a totally unfamiliar landscape. The ground was barren. The air was filled with a thick haze of sulfurous fog. I saw no life. The water was absolutely undrinkable. It tasted like the sulfur of the fog which it seemed to produce. I stayed as long as I could possibly endure, hoping that the Time Troopers would eventually give up. While I was there, I received a message on the timecraft communicator from my colleagues informing me that I must return to Texas in the early 21st century to join up with them for some type of major campaign. The message cautioned that I must use great care in my return to elude the Time Troopers. The message said my friends had determined that a series of critical and concentrated events were converging in the time flow channels at that point. Apparently if we succeed in making some type of concentrated effort at this point in time and space, we may be able to overthrow the evil actions of The Conglomerate.

"Wow," I said, "so that is how you got here."

"It's not as easy as that," he said. "When I attempted to set the time dials on my machine again, I discovered that the acrid, acidic atmosphere had corroded my timecraft badly. I could not read all the settings, and I could barely move some of the dials. As best as I could, I tried to follow the instructions that I had received, but I could not fully understand the meaning of the last part of the message. It instructed me to be absolutely certain to return to the early part of the 21st century — before an organization known as the Texas Society of Psychiatric Physicians had converted itself into a covert and immensely powerful anti-Conglomerate fighting force known as the TSPG — the Texas Society of Psychiatric Guerrillas."

"Herbie," I said, "I have no clue about this TSPG thing. We have some members that are pretty tough customers, and many of our committees are as mean as a junk yard dog, but in no way have I heard anything about creating an ad hoc guerrilla operations committee. Anyway, let's get back to this thing you said about your having never written a science fiction novel. Are you sure all your cookies are in the cookie jar? H.G. Wells — if in fact you are H.G. Wells — is known, along with Jules Verne, as the fathers of science fiction."

"Oh, my god," he said, "don't tell me The Conglomerate has done the same thing to Jules!"

"Oh boy, oh boy" I said, "I don't think I want to even begin to ask you what you mean by that 'Jules' comment. Let's stay with the idea of you being H.G. Wells. The H.G. Wells that I know about wrote some of the most masterful science fiction novels of all time — *The Invisible Man*, *The War of the Worlds*, *The Island of Dr. Moreau*, *The First Men on the Moon*. If you are in fact that H.G. Wells, are

you sure that you never wrote those books — possibly when you were absent-minded or something?"

"Those are fascinating titles. I must read them sometime," Herbie mused, "but, no, I never wrote them. Most likely they are the products of an operative of The Conglomerate, attempting to cover up the true circumstances of the publication of my travelogue, *The Time Machine*. They sound like attempts to alter historical facts by portraying me as a science fiction writer, so as to disguise my true identity as a member of the anti-Conglomerate fighting force. I simply don't have the imagination in me to be a science fiction writer."

Our conversation was suddenly interrupted by the sound of footsteps coming down the hall to my office. "Are you expecting anyone?" Herbie whispered in a low, frightened voice.

"No, this place is deserted at this hour," I said.

"Then, quickly, we must conceal ourselves," he said. "We have no idea of the identity of the time channel landers. They could well be a squad of Time Troopers trying to locate me. Where can we hide?"

I was bumfuzzled and frightened. I had never before considered my office as a hide-and-go-seek facility. It took me a moment to think of an answer. "Quick! Under the desk!" I exclaimed. We crawled rapidly into the tight confines underneath my desk.

With our arrival there, I suddenly realized that I had brilliantly selected the most likely place that Time Troopers would look to locate hidden fugitives. As we huddled together, we scarcely dared to draw any breath. We waited excruciatingly for the footsteps to go away, but instead they came down the hallway, approaching the office door, closer and closer. I opened my mouth to inform Herbie that I had perhaps made a bad decision, but he immediately clamped my jaw shut with his hand. His face had turned as white as a death shroud. A tap came at the door. Herbie placed his forefinger immediately in front of his lips to indicate silence. We waited. The tap came again. Once. Twice. Again. Louder. Then finally a voice called out in a loud whisper. "Herbie. Herbie. Let me in. It's George."

With a bound of incredible vigor, Herbie leaped from under the desk, dashed to the door, and opened it. He grabbed the man standing in the doorway and pulled him inside, almost hugging him.

"George! George! Thank god it is you!" Herbie spluttered, 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 a 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. "Uh-ugh." I went, clearly my throat loudly in an effort to subtly and politely announce my presence from the socially awkward position underneath my desk.

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

Before I could blubber out my incredulous bewilderment 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 Texas. He was, will be, or has been — drat it! — 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 2042. He has been conducting some extensive and dangerous scouting operations for us back and forth throughout this section of the time channels. Some of our preliminary excursions into the early 21st century have found indications that some type of profound and unique time channel flows are converging throughout this time period in the region of Texas."

"Yep, 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 nothin' nice. If the time flow stays in the channel that we have now, some terrible things are going to happen."

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

"Well," said George, "In the current flow of events, The Conglomerate is pretty well taking control. They are getting into everything, and they especially are trying to undo the psychiatrists, 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 to sound like they say one thing when they actually mean the exact opposite.

"That sounds ridiculous," I said.

"It sure does," said George. "At first, folks with brains 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 mottoes to placate the masses that sound like real doozies — 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, convoluted, upside-down, inside-out way of talking and thinking that goes along with Doublethink. Then, if all that doesn't pull the wool over peoples' eyes, The Conglomerate sends out their Time Troopers to change historical facts around to suit them.

"I had no idea that it could get that bad," said Herbie.

"That's not all," said George. "They manage to take over the government. They have a ministry for lies and propaganda that they call the 'Ministry of Truth.' They call their agency for detention and torture the 'Ministry of Love.' With Newspeak and Doublethink, words mean the opposite, and no one detects it. In fact no one even dares to notice it, since The Conglomerate spies on everybody using telecreens installed into the walls of the homes.

The telescreens act like huge televisions that can't be turned off, sending out propaganda programs, while watching and listening at the same time."

"That will be ghastly," said Herbie.

"It is," said George, "to even contemplate the falsity that pervades the culture is a grave transgression called 'thoughtcrime.' Citizens disappear into the Ministry of Love, if even a minor facial expression betrays a fleeting doubt of Doublethink or a transient uncertainty about Newspeak. In Newspeak parlance, a violation of the use of the facial muscles is called a 'facecrime.' 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 that Newspeak calls an 'unperson,' someone who has never existed. The only people who are safe are those who totally believe that their life is perfect, safe, and wonderful, despite all evidence to the contrary. In Newspeak, those people are considered to be 'goodthinkful.' If they conform completely to the lifestyle and beliefs required by The Conglomerate, citizens can avoid the dreadful dangers of individuality inherent in the Newspeak crime of 'ownlife'.

"What can we do to stop these terrible things?" asked Herbie.

"For one thing," said George, "Right before I left from the year 2084 to search for you, I succeeded in publishing a book revealing the true operations of The Conglomerate, which I entitled 'The Truth of Our Life in 2084.'"

"Uh, George," I said, "I think I might have some 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 my 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 storylines of interesting fantasies and parables.

At first George just stared at me. Then he said, "That is the most preposterous thing that I have ever heard." He was about to launch an explosive-filled description of my complete and obvious stupidity, when Herbie interrupted him and started describing his earlier conversation with me, in which he had learned of the activities of The Conglomerate in altering his own identity, as well as the true nature of his writings.

"It makes sense, George," Herbie said, "By moving the time of your book back by a hundred years, The Conglomerate is able to use it for their own purposes. With none of those events actually happening by the year 1984, people will be lulled into a sense of false security. The dangers you described are made to appear trite and imaginary. People will be even more ready to dismiss any similar events as silly, paranoid delusions. Even more than before, they will ignore the activities of The Conglomerate."

"Really, George," I said, "you must admit that the things you described are outlandish. No sane or rational person would ever believe that such bizarre events could actually ever occur."

For a moment George gave me a strange and somber look. Then he said, "Those things are happening to you now. You are already partic-

ipating in Doublethink and Newspeak, and already you have unknowingly been rendered deaf, blind, and dumb to the true facts of your existence."

"Wh – what do you mean?" I asked.

"Do you ever call a company on the telephone, and first hear a recorded message that says, 'This conversation may be recorded for quality control purposes,'" George asked.

"Well, yes, I do," I said.

"Do you really believe that is the true reason that they record the telephone conversation?" George asked.

"To be honest, I've never thought about it," I said.

"Exactly," said George, "The Conglomerate has made sure you haven't thought about it, because they have conditioned you not to think too deeply about anything if you call one of their companies. The recording of the conversation has nothing, absolutely nothing to do with quality control for the customer. It has everything to do with protecting them from a lawsuit from you. The words mean 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."

My tongue felt paralyzed. I could think of no response.

George continued, "Are you starting to see advertisements for flat panel televisions that fit up against the wall? Do you have computers that can both send and automatically receive information? Have you seen commercials for anything called WebTV that combines televisions and computers into one unit?"

"Yes, I believe all that is true," I said.

"Then you witnessing the birth of the telescreens, and you don't even recognize what you are seeing," George said. "Furthermore, Doublethink and Newspeak are with you now. You live with them everyday. Have you heard of terms such as 'media spin' or 'politically correct' — ways of speaking which create or imply completely different meanings from the words which are spoken?"

"Yes," I said quietly.

"Then you are listening to an early version of Newspeak. You are now living in the beginnings of events that will become 1984 or 2084 or whatever you want to call it, and you are participating in the illusion that you are not." George responded. "Even more important is the fact that psychiatry is the greatest danger that The Conglomerate faces for the destruction of the power which that illusion provides them. The greatest threat they face is that Dr. T and her followers will remove that veil of deceit and expose them for what they are — masters of delusion, abusers of word and fact, and self-serving revisionists of history and the flow of time.

"I think I am starting to understand," I said.

"You are likely aware of a current barrage of terms and concepts that seem benign, but they are in fact creations of Newspeak and Doublethink. The Conglomerate has launched them for the purpose of enfeebling psychiatry and medicine in order to destroy Dr. T."

George said.

"Like what?" I asked.

"The list is almost endless," said George. "Common ones include terms such as chiropractic physician, health maintenance organization, employee assistance program, preferred providers organization, utilization

review, mental health parity, non-profit, and managed care. None of those phrases mean what they seem to say. Most of them mean the opposite, or they hold a meaning entirely different from the words that comprise them. Have you ever reflected upon the true meaning of any of those terms?"

"N -, no, I haven't," I said.

"Then think deeply about their meaning now," George said. "And you might escape the clutches of the Doublethink and Newspeak which already grip you. In the immediate years ahead, crucial events will be created by the flow of time in its present channels. In order to attack Dr. T by attacking psychiatry, The Conglomerate will increase attack the foundations of psychiatry by using those terms and slogans to assault the very practice of medicine. They will gradually demean the significance of physicians in healthcare. Eventually they will succeed in portraying physicians as the criminals who are responsible for causing increasingly higher costs for medical care, when in fact the true culprits are their agents who are working in the various corporations controlled by The Conglomerate."

"Surely they can't do that," I said.

"With the alteration of history by the Time Troopers, and the use of Doublespeak and Newspeak, they most 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 show down with the Texas Society of Psychiatric Physicians. In TSPG they are increasingly encountering a fearsome group of psychiatrists, wielding 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 TSPG 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, TSPG will retreat into the wilderness of the mountains of the Big Bend and northern Mexico and transform itself into a band of truth fighters known as the Texas Society of Psychiatric Guerrillas. An underground railroad will develop, through which patients from all over the world will smuggle themselves into the TSPG camps, 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. "The 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 'right to prescribe' slogan is valid, in spite of the overwhelming facts which dispute it. The small group of poor, foolish psychologists 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 careen out of control, and the right to pre-

scribe will be demanded as a birthright by social workers, pharmacists, LVN's, and then LPC's. Soon thereafter The Conglomerate will convince the masses that medication prescribing can be accomplished safely and effectively by check-out clerks at their pharmacies."

"Great Scott," I said "They must be going mad."

"They will go worse than mad," said George. "The Conglomerate will reserve for themselves the medications that they consider particularly potent or unique. New medications will emerge from the recombinant DNA technology being developed now in your own time. Those medications will be administered to the members of The Conglomerate by untrained, ignorant, non-physician prescribers. The result will be that slowly, imperceptibly, but inexorably the very genetic structure of Conglomerate members will be altered until they are transformed into the bideous creatures known as the Morlocks."

"Oh, my god," said Herbie. "So that is where the Morlocks came from!"

"Yes, Herbie," said George, "The Conglomerate always has and always will operate deviously and invisibly in the background, seeking to exploit and manipulate the naive and trusting nature of the common human. As Morlocks, they will find it natural to conceal their bideous transformation by withdrawing into the underground caverns which you discovered. They will continue to exploit the childlike complacency of those who remain human on the earth's surface, a people who will be known as the Eloi. The Morlocks will eventually explicitly satisfy cannibalistic appetites that were once subtle, but which will become genetically altered to reveal their true character."

"Everything makes so much sense now," said Herbie, "I understand why this section of the time channels is so very critical. We must do everything we can at this juncture to halt the perversion of truth and reality by Doublethink and Newspeak. We absolutely must move the flow of events into different time channels. Otherwise the entire future of the entire human race will be stripped of hope, meaning, and value. What can we do now?"

"We must travel a few years into the future and meet our friend Aldous Huxley, who is assisting TSPG in their guerrilla truth operations," said George. "Aldous, TSPG, and our other Time Travelers are assembling resources that we can use to return to this point in time to reveal the true dangers of The Conglomerate."

"Excuse me," I said. "Would that be the same Aldous Huxley who wrote the book Braze New World?"

At that point, my two companions turned to me and in one voice in unison asked, "How did you know that?" Before I could answer, the darkness of the night outside my curtains exploded in volleys of one crashing blue flame after another.

"It's the Time Troopers!" George yelled to me and Herbie. "Quick, follow me! My time-craft is concealed in the bushes out back! We can use it to escape to the TSPG base camp! Don't let them catch you or they will use the time channels and Doublethink to alter your identity and your memory! If necessary, they will turn you into an unperson!"

As they dashed out the door in front of me,

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I was dazed by an overwhelming series of blinding blue flashes in the hallway outside. I fell back into my office onto the floor. The shouts of the pursuing Time Troopers seemed to follow the cries of my friends down the hallway into the distance. I don't know whether they escaped. I can still hear commands being called out by Time Trooper officers.

I have retreated to the hiding place underneath my desk. I don't know whether the Time Troopers will look for me here, but in the meantime, I am desperately writing this message to you, describing the events I have just witnessed. If by some means you do receive this message, destroy it immediately after you read it. Should the Time Troopers discover that you have learned the truth, I hate to think what they might do to you. Burn my message, and then go on about your business. Pretend that you know nothing.

An odd thought has come to me as I write this message and reflect on the stories of Herbie and George and their search for Dr. T. The thought hit me out of nowhere that T stands for truth. Truth has a persistent pattern of standing timeless, traveling through the ages, despite all efforts to suppress or change it. Psychiatrists heal their patients by assisting them in a search for an understanding of the

truth. Could it be...? But no, no, it seems like a silly idea. I was about to dismiss the thought out of hand, but then I considered further what I had just heard about political spin evolving into Newspeak and complacency laying the foundations for Doublethink. Could truth be evading us right now, and we don't even know it?

Oh my goodness, I hear heavy footsteps approaching! They are coming to get me! I have no weapons to defend myself. I have searched through my pockets, but the only thing I can find to use as a weapon is the bottle of risperdone. When the Time Troopers come through the door, my only hope is to throw the risperdone pills at them. I know that throwing pills at a problem isn't much, but my only hope is that the Time Troopers will slip and fall on them, like little ball bearings. Perhaps their curiosity will get the better of them, and they will stop to swallow a few. If they swallow enough, they might pass out from an overdose. I know that I am sounding crazy, but I am becoming hysterical.

Before they came, I beg you to act. Join the cause this message describes. If you grasp the significance of what I write, you will understand that the present section of our time flow is critical. Talk to your legislators, your

patients, your friends, and your colleagues. Talk to them, not once, but again and again as events flow down the channels of upcoming years. Every time you talk to them, each time you exert an effort to find and communicate truth, you will divert the channel through which future events will pass.


Prevent the veil of complacency from obscuring your vision of the true nature of our life, as it has been obscured for me. Events of some type will inexorably flow into some given time channels, but you can make a difference regarding the path of that flow. Move the time channels to a better place. For the sake of everything you hold dear, move the time channels. Become a soldier speaking the unvarnished truth.

Understand that 2084 is coming. Become a rebel against Newspeak and Doublethink. Fight back against The Conglomerate. Do not let the message of Doublethink become a part of you. Do not, I repeat, do not be goodthinkful. Listen with a third ear to Newspeak, as you do to the unconscious. Hear it for what it is. Dare to develop a distinctive ownlife lifestyle. Commit many thoughtcrimes. Do not succumb to a life of complacent and redolent ease.

Look at yourself in the mirror. What do you see? If you ignore this message, what you see

will probably appear normal. The reflection that looks back at you will seem familiar and pleasant, but what you think you see is an illusion. What you actually observe in the mirror could well be the beginnings of an Eloi. If we do not act to move the time channels now, and act to move them well, we will turn into a race of Eloi psychiatrists – meek, placid, easy-going, passive – fattened for the kill. Our present life and editor comforts might seem too dear to exert undue effort to influence the flow of events, but, my friend, if you surrender your true identity now, you are preparing your children of the future for the feast of the Morlocks.

**Printers' note:** Does anybody know what happened to the editors of this newsletter? We can't find them. We printed the newsletter for them anyway, and we need to be paid.

**Time Troopers' note:** We hope that you have enjoyed this light little fluff of science fiction presented by us for your amusement and entertainment. We are sure that you realize that nothing in it is true, nothing in it is a matter of concern. Return to your homes and practices. All is well. All is fine. Everything is being taken care of.  Happy goodthinking.

HIPAA's Privacy Rule: Privacy Disorder May Still Plague Independent Psychiatrists

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access to certain private medical information,"<sup>12</sup> repeals Section 181.101<sup>13</sup> of the TMRPA.<sup>14</sup> 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."<sup>15</sup> Enrolled on 1 April 2003,<sup>16</sup> Senate Bill 330 is likely to be signed by Gov. Rick Perry in the near future.

Senator Nelson's office staff has informed numerous physicians across the state<sup>17</sup> that enactment of Senate Bill 330 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 meaning. 18 For a variety of reasons, mostly linked to marketing restraints, that did not occur. What 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 issue that remains, however, 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. 330<sup>18</sup> argue<sup>19</sup> 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)<sup>21</sup> 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.<sup>22</sup>


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 1136, 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 seek.

Hopefully we'll end up with, if not sensible privacy protection, at least a law merely as ludicrous as HIPAA. 

*An earlier version of this article was first printed in a monthly publication of the Bexar County Medical Society*

1 "What I may see or hear in the course of the treatment or even outside of the treatment in regard to the life of men, which on no account one must spread abroad, I will keep to myself, holding such things shameful to be spoken about." See [http://www.pbs.org/nova/doctors/oath\\_classical.html](http://www.pbs.org/nova/doctors/oath_classical.html) (visited 1 April 2003).

2 Most of the information covered by the electronic transmission portion of the Covered Entity definition in the federal Act relate to claims data.

3 Act of 27 May 2001, 77th Leg., R.S., § 1, Title 2, (codified at TEX. HEALTH & SAFETY CODE Ann. §1, Title 2, Subtitle 1, Chapter 181)

4 45 C.F.R. § 160.203 (B)

5 45 C.F.R. § 160.102 (A) (3)

6 meant in the individual as well as the corporate sense

7 Act of 27 May 2001, 77th Leg., R.S., § 1, Title 2, (codified at TEX. HEALTH & SAFETY CODE Ann. §1, Title 2, Subtitle 1, Chapter 181) § 181.001 (b) (1) (A)

8 Act of 27 May 2001, 77th Leg., R.S., § 1, Title 2, (codified at TEX. HEALTH & SAFETY CODE Ann. §1, Title 2, Subtitle 1, Chapter 181) § 181.001 (b) (1) (A)

9 45 C.F.R. § 164.502 (c) provides that PHI may be disclosed to Business Associates if the Covered Entity documents through a written contract that the Covered Entity has obtained satisfactory assurance that the Business Associate will appropriately safeguard the information.

10 Cochran, Jay, Research Fellow, Regulatory Studies Program, Mercatus Center George Mason University, Public Interest Comment Addendum on The Department of Health and Human Services' Standards for Privacy of Individually Identifiable Health Information; available at [www.mercatus.org/research/rpscharr.htm](http://www.mercatus.org/research/rpscharr.htm) (visited 13 November 2002) by searching for author's name to locate the Study)

11 Senator Nelson is the author of the Texas Medical Records Privacy Act.

12 See <http://www.capitol.state.tx.us/cgi-bin/dh2www/lo/billhist/billhist.d2w/report?LEG=78&SESS=R&CHAMBER=S&BILLYTYPE=B&BILLSUFFIX=00330&SORT=Asc> (visited 1 April 2003)

13 S.B. 330 also repeals Section 181.102. However, inasmuch as Section 181.102 pertains to information for research, it is not addressed in this article.

14 See <http://www.capitol.state.tx.us/cgi-bin/lo/textframe.cmd?LEG=78&SESS=R&CHAMBER=S&BILLYTYPE=B&BILLSUFFIX=00330&VERSION=5&TYPE=B> (visited 1 April 2003)

15 See <http://www.capitol.state.tx.us/cgi-bin/lo/textframe.cmd?LEG=77&SESS=R&CHAMBER=S&BILLYTYPE=B&BILLSUFFIX=00011&VERSION=5&TYPE=B> (visited 1 April 2003)

16 See <http://www.capitol.state.tx.us/cgi-bin/dh2www/lo/billhist/billhist.d2w/report?LEG=78&SESS=R&CHAMBER=S&BILLYTYPE=B&BILLSUFFIX=00330&SORT=Asc> (visited 1 April 2003)

17 Emails supporting these communications are available from the author.

18 Under the federal law, "Covered Entities" are defined (generally) as health plans, health care clearing houses and health care providers who submit certain information electronically. The TMRPA's definitional section (§181.001) clearly indicates that unless otherwise defined (and Covered Entity is, of course, on the list of defined terms) all terms used in the TMRPA shall have the same meaning as in the federal law.

19 In a telephone conversation with the author, Yvonne Barton of the Texas Medical Association identified the "stakeholders" to S.B. 330 as the TMA, several pharmaceutical companies and a hospital.

20 Lee Spangler, Assistant General Counsel for Texas Medical Association and Director of Medical Ethics, presented the "stakeholders" perspective as presented to the author.

21 The Office for Civil Rights (OCR) is the Departmental component responsible for implementing and enforcing the privacy regulation. See <http://www.hhs.gov/ocr/hipaa/bkgnd.html> (visited 1 April 2003).

22 While one could argue that the state Attorney General could not enforce a federal law, a vexsome query lingers. With the repeal of Section 181.101, the TMRPA is reduced to a anti-marketing bill. If the Attorney General alone shall police adherence to the Texas Medical Records Privacy Act, would the Attorney General link the state law to the federal law to interpret its authority?

# World Federation for Mental Health

James C. Swinney

Half 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 (WFMH) 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. The

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 consumers 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 observations 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 facilitator 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 Bipolar 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 was for the Mauri Indians in New Zealand. In much the same fashion as treaties signed with the American Indians in the eighteen hundreds in the United States, the Mauri Indians signed a treaty with the New Zealand government in 1840. The Mauri Indians have always had a strong sense of their community and had included in the treaty, something to the effect, that interactions with anyone in their tribe had to take the whole community into effect. The description of the program reminds me of my paraphrase "It takes the whole village to care for a mentally ill person". The mental health service in New Zealand has developed a program for the Mauri Indians that involves the tribal council, school system, religious sector, family, friends and consumers. It seems that if anyone new can be found that hasn't been thought of before they are included in the care program. The people making the presentation included a Mauri Indian who is part of the



JAMES C. SWINNEY, MD

health services. The original Indian signers of the treaty knew what was important, and the New Zealand government was willing to honor its word even after all these years. I talked with the presenters of the program about the Mauri Indian project being used for a model 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.

## 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

their staff. Knowing how simple it is to make direct human contact gives me more energy to continue discussing these important issues with the people in positions to make a difference."

"Very exciting and rewarding. I would like to do this on a regular basis."

"Realizing power of physicians to support helpful legislation and combat bad bills."

"It was very rewarding to be actively involved in the political arena regarding an issue of such importance to Psychiatrists and to patients. Because of this experience, I believe I'll be more in-tune with future issues and more able to represent my specialty."

"Events like this raise awareness for psychiatrists in all levels of training of the precarious position our field is in."

"I thought this issue [psychologists prescribing] would be important and on the minds of the Legislature. However, they seemed unaware of the issue. I am thrilled we touched base with them before the psychologists did. One of the legislative staffers said: "Why would someone introduce this bill? Who would think that people should prescribe without medical training? I don't think this will be an issue."

"Educational for me. Hope it impacts the legislative process favorably."

"It was very impressive to meet with the legislators and to learn of their views regarding

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 pithy, 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 powerful, as well as personable and smart. Ready to come again."

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



Alison Jones, MD, Joseph Castiglioni, MD, and George Santos, MD participate on a radio talk show hosted by Joel Roberts (left to right).

## RESIGNATION

Guruswami K. Ravichandran, MD of Houston, Texas, resigned from the American Psychiatric Association and from the Texas Society of Psychiatric Physicians during the course of an ethics investigation. APAS "Procedures for Handling Complaints of Unethical Conduct" requires that resignations that occur during the course of an ethics investigation be reported in *Psychiatric News*."

# 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" from the Texas State Board of Examiners of Psychologists, a psychologist would have to document that he/she is a provider of health services as determined by the American Psychological Association, complete a postdoctoral training program that at minimum satisfies the training recommendations of the American Psychological Association, and pass an

examination administered by Texas State Board of Examiners of Psychologists. It is very curious that an out-of-state trade association will be determining Texas licensing practice standards.

To "protect the public," the bill requires a

psychologist holding a prescriptive authority certificate to "consult with a patient's treating physician within a reasonable time after the psychologist issues a prescription drug order for or administers or dispenses a prescription drug to the patient." A very curious

requirement for someone who supposedly can independently prescribe medications "safely."

The bill has been referred to the House Public Health Committee.



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

- Psychologists play an important role in the treatment of mental illnesses. 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 psychiatrists currently licenced to practice medicine were first trained as psychologists prior to entering medical school. We welcome psychologists who wish to apply for medical school—our state could use more psychiatrists.
- We, and others (eg, all medical specialty associations, mental health advocacy organizations, most psychologists, and our patients etc), oppose the legislative initiative of psychologists to prescribe medications, not because this is a turf issue as asserted by psychologists, but instead, because of safety and quality of care concerns.
- 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.
- Psychologists' 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 an exam established and administered by their national trade organization? Or, does Texas want to maintain its high standards of medical education and training which includes over 7,000 hours of medical school, treating thousands of patients in residency with close medical supervision in clinical settings, and taking examinations administered by prominent national and state scientific/medical organizations?

## CALENDAR OF MEETINGS

### AUGUST

2-3 **TSPP Leadership Conference**  
Hyatt Hill Country Resort, San Antonio, TX – Reservations 800-233-1234  
Program Contact: Debbie Sundberg, 512-478-0605

### NOVEMBER

7-9 **TSPP Annual Convention and Scientific Program**  
Omni Hotel, Four Riverway, Houston, TX – Reservations 713-871-8181

7 TSPP Committee Meetings  
Convention Welcome Reception

8 TSPP Scientific Program, "Psychiatry Today"  
TSPP and TPPER Annual Meetings  
TSPP Awards Banquet

9 TSPP Scientific Program, "Psychiatry Today"

### TSPP Scientific Program — Psychiatry Today

#### Accreditation

The Texas Society of Psychiatric Physicians designates this educational activity for a maximum of nine (9) category I credits toward the AMA Physician's Recognition Award. Each physician should claim only those credits that he/she actually spent in the activity.

The presentation "Use of Physician Extenders in Psychiatric Practice Settings" has been designated by the Texas Society of Psychiatric Physicians for 1 hour of education in medical ethics and/or professional responsibility.

The Texas Society of Psychiatric Physicians is accredited by the Texas Medical Association to provide continuing medical education for physicians.

#### Saturday, November 8

9:00 am - 10:00 am *Update: Affective Disorders - State of the Art*, Lauren B. Marangell, MD

10:30 am - 11:30 am *Mood Disorders in Women*, Lucy J. Puryear, MD

11:30 am - 12:30 pm *Emergency Psychiatry Today*, Avrim B. Fishkind, MD

12:30 pm - 2:00 pm TSPP/TPPER Annual Business Meeting Luncheon

2:00 pm - 4:00 pm *Development of Severe Personality Disorders in Children & Adolescents*, Efrain Bleiberg, MD

4:00 pm - 5:00 pm Resident Paper Competition Winner's Paper

6:30 pm Annual Awards Banquet

#### Sunday, November 9

9:00 am - 10:00 am *Spirituality and Psychiatry*, James W. Lomax, II, MD

10:20 am - 11:20 am *Child & Adolescent Psychopharmacology of Mood & Anxiety Disorders*, Graham Emslie, MD

11:20 am - 12:20 pm *Use of Physician Extenders in Psychiatric Practice Settings*, John B. Larrimer, Atty, Bd Certified in Healthcare Law

## TSPP MEMBER INFORMATION UPDATE

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ADDRESS _____			
CITY _____	STATE _____	ZIP _____	
TELEPHONE _____	FAX _____	E-MAIL _____	

Send your update information to:

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