US Civil Rights Commission
March 14, 2014

Good morning.

My name is Richard Elliott, I'm Professor of Medical Ethics at Mercer University School of Medicine, and I am grateful to be here today.

As we talk about the concerns, especially the uproar and confusion around patient dumping which led to this hearing, I'd like to note that the word "bedlam" (meaning uproar or confusion) derives from the name of the first English mental hospital, Bethlehem. Conditions were primitive in these early hospitals and patients were often chained, whipped, and were subjected to other forms of abuse, and it's been said that to understand the abuses of the civil rights of the mentally ill is to understand the history of psychiatry.

Modern psychiatry began around 1797 when chains were removed from the mentally ill in hospitals in Paris, and this "moral" approach to the treatment of the mentally ill, repeated throughout France and England, influenced a schoolteacher in America, Dorothea Dix. She wrote of the abominable conditions under which the mentally ill were kept in jails and poorhouses in America, and campaigned courageously to persuade state legislatures to build hospitals or asylums that could care more humanely for these patients.

Her efforts led to the construction of 32 public mental hospitals, some of which exist today. The population of mentally ill in these hospitals grew to over 500,000 in the United States by 1954 when the introduction of the first effective psychiatric medications meant that the severely mentally ill could be released from institutions and treated in the community. This led to another type of civil rights abuse, as the mentally ill were often released without access to adequate shelter, food, or medical and psychiatric care. Ultimately the age of deinstitutionalization became the age of "other institutionalization," and those discharged from hospitals often became homeless, and their ranks filled shelters and jails. Today there are more severely mentally ill in US jails and prisons than there are in hospitals.

I was recently on a radio show at KNPR in Las Vegas, and a worker at a local shelter described patients being discharged to her shelter still wearing hospital gowns, who were unable to bathe themselves or to take medication. There are reports of more than a thousand patients being given bus passes and sent to other states, with little or no attempt to ensure that basic services would be available on arrival. Such practices violate not only the civil rights of patients, they also violate trust in agencies charged with protecting the public.

I just came back from working in public clinics in Arizona, and while I did not witness or hear of actions on the scale of what happened in Nevada, I can testify that patients are commonly discharged with few or no records sent to clinic staff to advise them of the patients course of treatment and the degree to which patients conditions were stabilized. Patients show up after being discharged from a psychiatric hospital and I have little idea what happened in the hospital, whether there were any behaviors that might have been dangerous to themselves or others, or whether there were any medical concerns I need to be aware of as part of our treatment planning.

In addition to the dumping of mentally ill from mental hospitals into communities, there is another form of patient dumping, the dumping of patients from general medical hospital emergency rooms into public mental hospitals. I first became aware of this form of dumping in the late 1980s when I was medical director at a large public mental hospital. I was called about the "admission" of a patient who had been transferred from a general medical hospital 100 miles away. The patient had died of AIDS in the other hospital, but that hospital did not declare the patient dead - they simply transferred the "patient" to us so that the death would be recorded in our records, not theirs. We also received patients who had no mental illness, but simply needed expensive medical care and were indigent – patients, for example, who needed dialysis, who we would then have to send back to the transferring hospital for dialysis at our expense. Over the years I consulted to other public mental hospitals and found numerous instances where indigent patients with serious medical conditions were transferred to public mental hospitals which were poorly equipped to provide medical care to patients who had unstable diabetes, dangerously elevated blood

pressures, poorly controlled seizure disorders, or other serious medical conditions. I have personally reviewed cases where patients died as a result or improper transfers and discharges.

When I have asked why such cases happen despite the legal requirements of anti-dumping laws such as EMTALA, I have been told most often that "the judge ordered it."[1] Usually a local probate court judge is presented by hospital staff with limited facts, is not informed of the medical condition and is not told of the limited medical resources of a public mental hospital. Some transferring hospitals seem to believe they are immune from EMTALA's requirements if they can get a judicial order for commitment to another hospital based on such inadequate information.

Patient dumping, whether from psychiatric hospitals into the community, or from general hospitals into psychiatric hospitals, violates every principle of medical ethics. The principle of patient autonomy or patient choice is violated when patients are not informed of the conditions to which they will be discharged and their cooperation is not sought in making these decisions. The principle of beneficence is violated, as these decisions are made for the convenience of hospitals, not the benefit of patients. The principle of nonmaleficence, or not harming patients is severely violated when patients are discharged to conditions where their illnesses are likely to worsen. And the principle of social justice is violated when such discharges are imposed on the least fortunate, least empowered members of society.

So why is dumping going on?

Sometimes dumping happens because of misunderstandings. There may be limited understanding by general medical hospitals of the resources public mental hospitals have to treat medical conditions, and there may be misunderstandings by mental hospitals of the ability of community resources such as shelters to care for patients once discharged.

I am also aware that state officials sometimes feel constrained by the political influence of general hospital administrators and physicians, who find it financially advantageous to transfer medically ill patients to a public mental hospital.

I can't give a figure for the number of patients who are subjected each year to dumping. I believe a first step to addressing both kinds of dumping, from mental hospitals into the community or from emergency rooms into mental hospitals, would be to collect this information in such a manner that reduces bias from individuals responsible for such transfers and discharges.

Second, I think we need an effort in those areas where such transfers and discharges are especially problematic, to educate judiciary, hospitals, and physicians about the resources of public mental hospitals and clinics, and to the consequences of failing to follow the provisions of such laws as EMTALA. The goal should be to ensure transfers and discharges are done in a manner that protects the lives and rights of patients, as well as protecting the public.

Third, I believe we need legislation that speaks to the need to coordinate care of patients discharged from public mental hospitals to the community, with consequences for failing to coordinate such discharges, much as EMTALA seeks to protect patients being transferred from one hospital to another.

Finally, I hope we can vigorously enforce EMTALA in order to eliminate the medically dangerous transfer of patients into settings where adequate medical care is not available.

I am very much encouraged by your interest in the fate of the mentally ill who depend on us to protect their rights and their lives. It is my hope that, just as we are trying to protect the rights of the mentally ill in institutions, we can protect the rights of the mentally ill as they are discharged into the community, and that we can eliminate bedlam from our care of the mentally ill once and for all.

Thank you.

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[1] Elliott RL. Patient dumping, COBRA, and the public psychiatric hospital. Hospital and Community Psychiatry 1993; 44(2):155-158