

SCPA President's Letter

Laura J. Rames, MD

On September 26, 1988, Jamie Wilson, a nineteen-year old with schizophrenia, walked into the school cafeteria at a Greenwood elementary school and started shooting. Two eight-year-old girls died; seven other students and two teachers were injured. His trial was held soon thereafter, with the sole issue at hand the determination of appropriate punishment; he had earlier pled guilty but mentally ill. The judge found "...that the defendant at the time of the commission of the acts constituting the offenses had the capacity to distinguish right from wrong, or to recognize his acts as being wrong...but because of mental illness or defect, he lacked sufficient capacity to conform his conduct to the requirements of the law." Despite this acceptance of the plea "guilty but mentally ill", the judge sentenced him to death. Thus began a precedent-setting judgment in the South Carolina court system of which all psychiatrists and other mental health practitioners should be aware.

My initial involvement with this issue occurred in early July of this year, when John Connery, the former director of the Division of Community Mental Health Services, contacted me. He had been following the case since its inception, attending to its snail-paced movement through the byzantine courts of appeals. I had vaguely been aware of it after reading an article in the *Charleston Post and Courier* a month earlier, wondering how it was possible that someone determined to be unable to control his behavior due to mental illness could be sentenced to death. Mr. Connery contacted me as well as the presidents of the state psychological association and social work association to request letters of support addressed to the courts, if needed, to help prevent this from occurring.

Not being a forensic psychiatrist, I had some learning to do. An article in the *South Carolina Law Review*, "Killing the Non-willing: Atkins, The Volitionally Incapacitated, and the Death Penalty" [Vol. 55:93, pp 93-143] proved invaluable in bringing me up to date on SC law and this issue. It was frightening to recognize that South Carolina is perilously close to the dubious honor of coming in 'first' in all states - "...only South Carolina law affirmatively sanctions execution of a defendant for conduct he was unable to control." In addition, "...no state - including South Carolina - has by express legislative enactment rendered offenders who lacked sufficient capacity to conform their conduct to the requirements of law eligible for capital punishment, and except for the decision in Jamie Wilson's case, no court has ever construed the laws of any American state to permit such a result." In June of this year, the US Supreme Court refused to consider an appeal,

despite earlier deciding that mentally retarded inmates may not be put to death. Next, the case will be presented to the state Supreme Court in October or so. An execution date has not yet been set.

Given the absence of such cases previously, the American Psychiatric Association (APA) has had no reason to develop a position on the execution of the volitionally incapacitated. However, they have more globally endorsed a moratorium on capital punishment until which time "...capital punishment, if used at all, is administered fairly and impartially in accord with the basic requirements of due process." [American Psychiatric Association, Moratorium on Capital Punishment in the United States (approved October 2000), APA Document Ref. No. 200006, available at <http://www.psych.org>.] In the July 2004 meeting, the Executive Committee of the SCPA decided to write a letter to the appropriate appeals court and/or to the governor of South Carolina, if need be, to make known the APA's position on capital punishment especially as it pertains to mentally ill inmates. Capital punishment is a highly politicized topic, and this statement will avoid the general controversy of the area and instead focus on advocacy for mentally ill patients who are found to be unable to control behaviors due to their illnesses. Interestingly, the *Index-Journal* newspaper from the upstate conducted a web site poll asking people if they agreed with an early decision to remove Wilson from death row; eighty-eight percent of the 267 responses disagreed with the decision, giving us the message that many laypeople in this state might not agree with our position. We have some work ahead of us!

I would love to hear any of your comments regarding this issue. My address is Laura Rames, MD, 16 Fulton Street, Charleston, SC 29401 or e-mail lrames@pol.net.

MARK YOUR CALENDARS!!

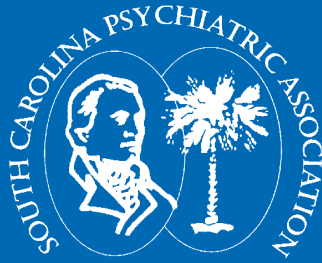
South Carolina Psychiatric Association
2005 Annual Meeting

February 11-13, 2005

Renaissance Hotel

Charleston, South Carolina

More details coming soon.



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APA Urges Caution, Research & Disclosure on Anti Depressants

Arlington, Va. - In oral and written testimony, the American Psychiatric Association (APA) said today at a Food and Drug Administration (FDA) hearing that caution, additional research and full disclosure are needed with respect to a group of antidepressants known as selective serotonin reuptake inhibitors, or SSRIs. The APA also said that, because a significant minority of children and adolescents with depression do not respond to an initial medication, it is important for physicians and patients to have access to a full range of medications to treat pediatric depression – an illness with significant long-term consequences, including an increased risk for suicide.

The FDA hearing was a joint session of two committees of the regulatory agency: its Psychopharmacologic Drugs Advisory Committee and the Pediatric Subcommittee of its Anti-Infective Drugs Advisory Committee. David Fassler, M.D., an APA trustee who is a practicing child and adolescent psychiatrist in Vermont, delivered oral testimony on behalf of the APA. The APA's director of research, Darrel A. Regier, M.D., M.P.H., analyzed all current, publicly available research on SSRIs, especially with respect to their use in treating pediatric depression, which is the basis for the written statement APA submitted to the FDA.

“Every suicide is a tragedy, and any increased risk of suicidal thoughts or behaviors, no matter how small, must be taken very seriously,” said Dr. Fassler. He added that, based on the data currently available, “Most clinicians believe, and I would concur, that for children and adolescents who suffer from depression, the potential benefit of these medications far outweighs the risk.”

Dr. Regier concurred: “Rigorous research has demonstrated that, when accurately diagnosed, childhood and adolescent depression is highly amenable to effective and appropriate treatments.”

He pointed to the federally funded Treatment for Adolescents with Depression Study (TADS) results, which found in part that patients responded positively to a combination treatment – an SSRI (fluoxetine) plus Cognitive-Behavioral Therapy, a form of talk therapy – at a rate of 71 percent – double the 35 percent response rate for patients on placebo.

“Even in the case of the most effective combination treatment in TADS, 30 percent of patients did not improve, underscoring the need for a range of medications and psychotherapeutic interventions that are responsive to the unique characteristics of individual patients,” said Dr. Regier. “Further research is urgently needed to address treatment resistant depression.”

The APA made several recommendations to policymakers in its statements:

- The development of a public clinical trials registry. The APA and the American Academy of Child and Adolescent Psychiatry secured the American Medical Association's support for the concept, which affects all of medicine and would help physicians and parents make fully informed decisions about treatment options.
- The continuation of current FDA warnings with respect to SSRIs – warnings that are appropriate and consistent with the scientific data.
- And, the intensification of research into the safety and efficacy of SSRIs through additional large-scale studies.

The American Psychiatric Association is a national medical specialty society, founded in 1844, whose more than 35,000 physician members specialize in the diagnosis, treatment and prevention of mental illnesses including substance use disorders. For more information, visit the APA Web site at www.psych.org

To see the full text of Dr. Fassler's oral statement, follow this link:

http://psych.org/advocacy_policy/reg_comments/fdapsychopharma.pdf

To see the full text of the written statement coordinated by Dr. Regier, follow this link:

http://psych.org/advocacy_policy/reg_comments/fdapsychopharmatestimony.pdf

Dealing with Patients who Threaten Violence: the South Carolina Psychiatrist's Duty

Richard Frierson, M.D.

In its famous case *Tarasoff v. Regents of the University of California* (1976), the California Supreme Court declared that “once a therapist does in fact determine, or under applicable professional standards reasonable should have determined, that a patient poses a serious danger of violence to others, he bears a *duty to exercise reasonable care to protect* the foreseeable victim of that danger”.¹ Since that landmark decision, 27 states have adopted a *Tarasoff* duty through legislation or case law, ten states have rejected the clinician’s “duty to protect” someone other than the patient, citing confidentiality in the treatment relationship as paramount, and 13 states remain undecided. What about South Carolina?

In *Bishop v. South Carolina Department of Mental Health* (1998), the South Carolina Supreme Court held that when a clinician or hospital has “custody and control” of a patient, a “special relationship” is established, and the clinician incurs a duty to warn (and possibly protect) a threatened third party.² It remains unclear what exactly is meant by “custody and control”. In *Bishop*, the patient had been detained on emergency admission papers and was awaiting a commitment hearing when both probate court designated examiners opined that the patient was not mentally ill and the probate court ordered the patient released. Therefore, the *Bishop* decision may apply to all patients in the inpatient setting. It is less clear whether a duty to protect arises in the outpatient setting. I am sure none of us would like to be the test case. Amazingly, in the *Bishop* decision the court held that the threat did not have to be made while the patient is in the custody of the hospital, but the duty to protect arose if the hospital had knowledge of a previously communicated threat, such as a threat that is reported on emergency hospitalization petitions. Also, the “damages” were no more than green felt tip magic marker markings on a child’s abdomen!

As practicing psychiatrists, we need to know the case law and/or statutory law in our jurisdiction. I would encourage all South Carolina psychiatrists to take time and read the *Bishop* decision. It can be downloaded from the S.C. Judicial Department website: <http://www.judicial.state.sc.us/>. (Click under “Opinions and Orders”, then “Published Orders”, then “Supreme Court 1998”, then “June”.) The opinion was filed June 8, 1998. Happy reading!

¹ *Tarasoff v. The Regents of the University of California*, 551 P2d. 334 (Cal. 1976)

² *Bishop v. South Carolina Department of Mental Health*, 502 S.E.2d 78 (S.C. 1998)

Coastal Chapter Meeting Calendar

January 11, 2005	Kathleen Brady, M.D., Ph.D. - <i>“Physical Aspects of Depression: Pain”</i>
February 8, 2005	David Bachman, M.D. - <i>“NMDA Receptor in Alzheimer’s”</i>
March 8, 2005	Mark Rappaport, M.D. - <i>“Phobias”</i>
April 12, 2005 CME	Gordon Robinson, M.D. - <i>“Review of SSRI Similarities and Differences”</i>
May 10, 2005	“GABA”
June 14, 2004	Doug Jones, M.D. - <i>“Psychiatric Disorders and the Endocrine System”</i>
July 12, 2005	James Jefferson, M.D. - <i>“Management of Depressive Disorders: Convenience Tolerability and Long Term Use”</i>
August 19, 2005 CME	Kathleen Brady, M.D., Ph.D. - <i>“Substance Abuse in Bipolar Disorder”</i>
September 13, 2005	Seth Cohen, M.D. - <i>“Atypical Antipsychotics”</i>
October 11, 2005	Diane Thompson, M.D. - <i>“Depression in Cancer Patients”</i>



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