Forced Administration of Antipsychotic Drugs to Civilly Committed Mental Patients in Nevada: A Remedy Without a Clear Statutory Authorization

The Honorable Chuck Weller*

I. The Issue

In 1949, neurologist Antonio Egas Moniz was awarded a Nobel Prize in physiology/medicine for his contributions toward the development of a treatment for mental illness whereby the prefrontal cortex is severed from the rest of the brain by surgical instrument. Six decades on, lobotomy is viewed as an unwarranted, drastic, and crude treatment. A similar progression in notions of acceptable physical intervention to aid the mentally ill may be underway.

Today, the forced administration of antipsychotic drugs to a mental patient when the patient is a danger to himself or others, or might be rendered competent to stand trial, is a process that is widely accepted by the mainstream medical community and the courts. Even the United States Supreme Court has addressed the issue, finding in *Washington v. Harper* that "there is little dispute in the psychiatric profession that proper use of [antipsychotic] drugs is one of the most effective means of treating and controlling a mental illness likely to cause violent behavior."[1] However, this acceptance reflects a current and, perhaps, temporary equilibrium among weighty medical and legal issues, including informed consent, competency, the right to refuse treatment, medical ethics, medical malpractice, *parens patriae*, due process and the right to privacy.

Patients who receive antipsychotic drugs may experience serious, adverse side effects. As Justice Stevens wrote in a concurring opinion in *Harper*:

> [T]hese drugs both 'alter the chemical balance in the patient's brain' and can cause irreversible and fatal side effects. . . . Prolixin acts 'at all levels of the central nervous system as well as on multiple organ systems.' It can induce catatonic-like states, alter electroencephalographic tracings, and cause swelling of the brain. Adverse reactions include drowsiness, excitement, restlessness, bizarre dreams, hypertension, nausea, vomiting, loss of appetite, salivation, dry mouth, perspiration, headache, constipation, blurred vision, impotency, eczema, jaundice, tremors, and muscle spasms. As with all psychotropic drugs, prolixin may cause tardive dyskinesia, an often irreversible syndrome of uncontrollable movements that can prevent a person from exercising basic functions such as driving an automobile, and neurolep-

* Judge Chuck Weller serves in the Second Judicial District Court, Family Division, Washoe County, Nevada.

[1] Washington v. Harper, 494 U.S. 210, 226 (1990).

> tic malignant syndrome, which is 30% fatal for those who suffer from it. The risk of side effects increases over time.[2]

The harsh consequences that antipsychotic drug therapy visits on some mental illness sufferers invites speculation that, one day, responsible people will look back on the involuntary administration of such drugs to these vulnerable patients with the same sense of horror that people today feel when they consider the era of lobotomy.[3] Such considerations underscore the obligation of legislatures and courts to ensure that the mentally ill are subjected to forced medication only when their constitutional due process rights have been protected.

II. THREE UNITED STATES SUPREME COURT DECISIONS LAY THE FOUNDATION

The United States Supreme Court has not directly addressed the forced administration of antipsychotic drugs to civilly committed mental patients. There are, however, two lines of United States Supreme Court cases relating to the involuntary administration of antipsychotic medications to mentally ill persons in other circumstances. One line involves the administration of medication to prisoners in an effort to modify their conduct in prison. The other line involves the administration of medication to pretrial detainees in serious criminal cases in an effort to render them competent to stand trial.

A. *The Prisoner Case:* Washington v. Harper

Walter Harper found himself in a Washington State prison in 1982, after his parole on a robbery conviction was revoked when he assaulted two nurses at a hospital.[4] Harper had a history of mental illness and was a diagnosed schizophrenic.[5] He treated his illness with antipsychotic medication and his care providers noted that his condition deteriorated to the point that he became violent when he did not take the drugs.[6] Eventually, Harper refused to continue taking his medication.[7] The State sought to medicate Harper against his will.[8] Harper filed a civil rights action challenging the prison policy that authorized forced medication.[9]

In *Washington v. Harper*, the Court ruled that the State was entitled to forcefully medicate Harper, only if his substantive and procedural due process rights under the Fourteenth Amendment were satisfied.[10] The Court framed the substantive issue as "what factual circumstances must exist before the State

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[2] *Id.* at 239-40 (Stevens, J., concurring in part and dissenting in part) (quoting PHYSICIAN'S DESK REFERENCE 1639-40 (43d ed. 1989)).
[3] For examples of jurists opposed to forced administration of antipsychotic drugs, see *id.* at 238-41 (Stevens, J., with whom Brennan, J. and Marshall, J. join, concurring in part and dissenting in part); Riggins v. State, 860 P.2d 705, 706 (Nev. 1993) (Springer, J., dissenting).
[4] *Harper*, 494 U.S. at 214.
[5] *Id.* at 213-15.
[6] *Id.*
[7] *Id.* at 214.
[8] *Id.*
[9] *Id.* at 217
[10] *Id.* at 220-22.

may administer antipsychotic drugs to the prisoner against his will," and the procedural issue as "whether the State's nonjudicial mechanisms used to determine the facts in a particular case are sufficient."[11]

On the substantive issue, the Court found that the prisoner has a liberty interest in avoiding the unwanted administration of antipsychotic medication.[12] The State has an interest in prison safety and security and an obligation to provide medical treatment consistent with the prisoner's medical needs.[13] Washington's policy requires that a psychiatrist make the substantive determination that an inmate suffers from a mental disorder; is gravely disabled or poses a likelihood of serious harm to himself, others or their property; and that the inmate should be treated with antipsychotic drugs ordered or approved by a psychiatrist.[14] The Court upheld this policy, ruling that "given the requirements of the prison environment, the Due Process Clause permits the State to treat a prison inmate who has a serious mental illness with antipsychotic drugs against his will, if the inmate is dangerous to himself or others and the treatment is in the inmate's medical interest."[15]

The Court also found that Washington had adopted a procedure that satisfied the prisoner's procedural due process rights.[16] That procedure entitles an inmate who refuses to voluntarily take the medication to a hearing.[17] The inmate is entitled to at least twenty-four hours notice of the hearing and may not be medicated during the notice period.[18] The notice must indicate the inmate's diagnosis, the basis for that diagnosis, and an explanation of the necessity for medication.[19] The hearing panel is composed of a psychiatrist, a psychologist, and the Associate Superintendent of the prison system's psychiatric facility.[20] None of the members may be, at the time of the hearing, involved in the inmate's diagnosis or treatment.[21] Before ordering involuntary medication, the hearing panel is required to find that the inmate suffers from a mental disorder and is gravely disabled or dangerous.[22] The Court specifically found that due process does not require that the prisoner to be involuntarily medicated also be found incompetent.[23]

The inmate has the right to appear at the hearing, to have the assistance of a lay adviser, to present witnesses and other evidence, and to cross-examine opposing witnesses.[24] Minutes are kept and the inmate is entitled to a copy of those minutes. The inmate may appeal an adverse decision to the Superinten-

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[11] *Id.* at 220.
[12] *Id.* at 221-22.
[13] *Id.* at 221-26.
[14] *Id.* at 226.
[15] *Id.* at 227.
[16] *Id.* at 236.
[17] *Id.* at 215-16.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.* at 215-16.
[23] *Id.* at 222.
[24] *Id.* at 216.

dent within twenty-four hours.[25] The inmate may seek judicial review of an adverse ruling by the Superintendent by petition or extraordinary writ.[26] If involuntary medication is administered, periodic reviews are required.[27]

B. The Competency to Stand Trial Cases: Riggins v. Nevada *and* United States v. Sell

David Riggins was arrested for murder in Las Vegas during 1987.[28] He had a history of psychosis and of being treated by antipsychotic drugs.[29] Riggins asked the trial court to order the suspension of his medication because the "drugs infringed upon his freedom and that the drugs' effect on his demeanor and mental state during trial would deny him due process."[30] The court denied Riggins's request.[31] He was medicated each day of his trial, following which he was convicted of murder and sentenced to death.[32]

In *Riggins v. Nevada*, the United States Supreme Court considered the forced administration of antipsychotic drugs to Riggins in an effort to render him competent to stand trial.[33] The Court reiterated that a prisoner detainee can be forcefully medicated in accordance with the procedures approved in *Washington v. Harper* upon findings "that treatment with antipsychotic medication was medically appropriate and, considering less intrusive alternatives, essential for the sake of Riggins' own safety or the safety of others."[34] Alternatively, the Court ruled that forced medication might be justified by a finding that the State "could not obtain an adjudication of Riggins' guilt or innocence by using less intrusive means."[35] The Court found that the record was insufficient to "support a conclusion that administration of antipsychotic medication was necessary to accomplish an essential state policy" and, accordingly, reversed and remanded for further proceedings.[36]

Charles Sell was once a dentist.[37] In 1997, he was charged with submitting fictitious insurance claims to Medicaid for payment.[38] The court sent him for medical examination to determine his competency to stand trial.[39] Sell had a long history of mental illness,[40] and a psychiatric evaluation determined him to be incompetent to stand trial.[41] The medical staff recommended that Sell

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[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] Riggins v. Nevada, 504 U.S. 127, 129 (1992).
[29] *Id.*
[30] *Id.* at 130.
[31] *Id.* at 131.
[32] *Id.* at 131.
[33] *Id.* at 129.
[34] *Id.* at 135.
[35] *Id.*
[36] *Id.* at 138.
[37] Sell v. United States, 539 U.S. 166, 169 (2003).
[38] *Id.* at 170.
[39] *Id.* at 171.
[40] *Id.* at 169.
[41] *Id.* at 171.

take antipsychotic medication.[42] Sell refused.[43] The medical staff asked the court for permission to administer antipsychotic drugs involuntarily.[44]

In *United States v. Sell*, the Court addressed the focused question of whether the government may administer antipsychotic drugs to a pretrial detainee, against his will, solely to render him competent to stand trial for nonviolent offenses.[45] The Court ruled that the Fifth Amendment Due Process Clause requires four findings before medication can be forced in such circumstances: (1) "*important* governmental interests are at stake"; (2) "administration of the drugs is substantially likely to render the defendant competent to stand trial" and "administration of the drugs is substantially unlikely to have side effects that will interfere significantly with the defendant's ability to assist counsel in conducting a trial defense"; (3) "any alternative, less intrusive treatments are unlikely to achieve substantially the same results"; and (4) "administration of the drugs is *medically appropriate*, i.e., in the patient's best medical interest in light of his medical condition."[46]

The *Sell* court also reaffirmed the holding in *Washington v. Harper*, in accordance with which forced medication is permissible when the safety of the mentally ill individual or others is at issue and appropriate substantive and procedural due process requirements are met.[47]

III. *Washington v. Harper* Governs Forced Administration of Antipsychotic Drugs upon Civilly Committed Mental Patients

Although none of these cases involved a civilly committed mental patient, it is clear that the standard to be applied in determining whether it is permissible to force administration of antipsychotic drugs upon a civilly committed mental patient is described in *Washington v. Harper*: "For another thing, courts typically address involuntary medical treatment as a civil matter, and justify it on these alternative, *Harper*-type grounds . . . If a court authorizes medication on these alternative grounds, the need to consider authorization on trial competence grounds will likely disappear."[48]

Courts that have addressed the issue have applied the *Washington v. Harper* standard to the involuntary administration of medication to patients confined in psychiatric facilities:

> The governmental interests in running a state mental hospital are similar in material aspects to that of running a prison. Administrators have a vital interest in ensuring the safety of their staff, other patients, and of course in ensuring the patients' own safety. Thus, we apply the *Harper* standard to this case.[49]

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[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.* at 169.
[46] *Id.* at 180-81.
[47] *Id.* at 178.
[48] *Id.* at 182-83.
[49] Morgan v. Rabun, 128 F.3d 694, 697 (8th Cir. 1997); *see also* Jurasek v. Utah State Hosp., 158 F.3d 506, 511 (10th Cir. 1998) (applying *Harper* standards to civilly committed,

Mental Health America (MHA), a national organization dedicated to helping people with disabling mental illnesses, endorses *Washington v. Harper* as a standard for assessing policies for the involuntary administration of medication as follows:

> **Qualified Right to Refuse Treatment.** There are a growing number of effective treatments for mental health conditions, including psychotropic medications. However, all medications pose some risks and many pose quite serious risks to the health of the persons who take them, particularly when medications are taken for extended periods to treat chronic illnesses. For this reason and because of its commitment to the autonomy and dignity of persons with mental health conditions, MHA strongly agrees with the judgment of the United States Supreme Court that all persons, even persons lawfully convicted and serving a sentence of imprisonment, have a right to refuse medication and that medication may not be imposed involuntarily unless rigorous standards and procedures are met.[50]

IV. What Nevada Source Authorizes the State to Administer Medication to Patients Against Their Will?

Clear statutory authority exists for the determination of when it is appropriate to involuntarily treat a criminal defendant to cause him to attain competency to stand trial or receive pronouncement of judgment.[51] In contrast, it is difficult to locate a statutory authorization for the forced administration of drugs to a civilly committed mental health patient. Nevada's statutory scheme that governs the involuntary, civil admission of a patient into a mental health facility, NRS Chapters 433 and 433A, include no clear grant of authority for forced administration of medication. No explanation of this omission and contrast appears in the legislative history of these chapters.

The law authorizes the court to order the involuntary admission of a mentally ill person for the "most appropriate course or treatment."[52] The term "most appropriate course of treatment" is not defined. It can be argued that the fact that a court commits a person for the "most appropriate course of treatment" implies that the court has jurisdiction to order the involuntary medication of a patient following an involuntary admission.

The law also provides, "The rights of a client enumerated in this chapter must not be denied except to protect the client's health and safety or to protect the health and safety of others, or both."[53] The exception stated in this statute might be construed as an oblique authorization to deny a patient the right to refuse medication.

There is no published Nevada Supreme Court decision, Administrative Code section, or Attorney General Opinion that specifically discusses the forced administration of drugs to civilly committed mental patients. The only

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mentally ill patients); Noble v. Schmitt, 87 F.3d 157, 161-62 (6th Cir. 1996) (applying *Harper* to involuntarily committed mental patients).

[50] *Position Statement 22: Involuntary Mental Health Treatment*, Mental Health Am. (Mar. 5, 2010), http://www.nmha.org/go/position-statements/p-36.

[51] Nev. Rev. Stat. § 178.3981-.4715 (2009).

[52] *Id.* § 433A.310(1)(b).

[53] *Id.* § 433.534(1).

clear authorities on the subject are the Patients' Bill of Rights[54] and the Division of Mental Health and Developmental Services Policy #SP3.1—Involuntary Administration of Medication.[55]

A. Nevada's Patients' Bill of Rights

States may grant greater substantive and procedural right to a mental health patient facing involuntary medication than does federal law and, if so, state law controls.[56] Nevada's Patients' Bill of Rights appears to create greater due process rights than required by federal law by prohibiting the application of any treatment to any mental health patient without prior express, informed, written consent. The law states:

> (a) Before instituting a plan of care [or] treatment . . . express and informed consent must be obtained in writing from:
> (1) The client if he or she is 18 years of age or over or legally emancipated and competent to give that consent, and from the client's legal guardian, if any;
> (2) The parent or guardian of a client under 18 years of age and not legally emancipated; or
> (3) The legal guardian of a client of any age who has been adjudicated mentally incompetent;
> (b) An informed consent requires that the person whose consent is sought be adequately informed as to:
> (1) The nature and consequences of the procedure;
> (2) The reasonable risks, benefits and purposes of the procedure; and
> (3) Alternative procedures available.[57]

This statute appears to say plainly that no medication can be administered except upon the informed consent of a patient or guardian. A limited exception to this general rule exists for emergency medical treatment "if within a reasonable degree of medical certainty, delay in the initiation of emergency medical care or treatment would endanger the health of the client."[58] Such emergency treatment is limited to no more than forty-eight hours and is, accordingly, inapplicable to most cases in which forced medication may be appropriate.[59] Courts in other states that have enacted similar patients' bill of rights have found that a judicial determination of incompetence is required prior to the involuntary administration of antipsychotic drugs.[60]

A patients' bill of rights may also carry other implications. Nevada case authority establishes that failure to comply with a patients' bill of rights creates

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[54] *Id.* § 433.456-.536.

[55] DIV. OF MENTAL HEALTH & DEVELOPMENTAL SERVS., NEV. DEP'T OF HEALTH & HUMAN SERVS., POLICY NO. SP-3.1, INVOLUNTARY ADMINISTRATION OF MEDICATION (2010), *available at* http://mhds.nv.gov/index.php?option=com_docman&task=cat_view&gid=36&Itemid=230.

[56] Mills v. Rogers, 457 U.S. 291, 300 (1982).

[57] NEV. REV. STAT. § 433.484(1)(a)-(b).

[58] *Id.* § 433.484(1)(d).

[59] "The administration of psychotropic drugs under these circumstances shall not extend beyond a period of forty-eight consecutive hours without the consumer's consent or the committee and administrative review as detailed in this policy." DIV. OF MENTAL HEALTH & DEVELOPMENTAL SERVS., *supra* note 55, at 1.

[60] *See, e.g.*, Riese v. St. Mary's Hosp. & Med. Ctr., 271 Cal. Rptr. 199, 209 (Cal. Ct. App. 1987); Doe v. Hunter, 667 A.2d 90, 93 (Conn. Super. Ct. 1995).

a private cause of action.[61] A patients' bill of rights that establishes a private cause of action may be construed as a waiver of the state's sovereign immunity in relation to violations by a government operated facility.[62] Mandamus may be a procedure available to a mental health patient seeking to require the executive branch to fulfill its obligations under a patients' bill of rights.[63] The absence of an exception to Nevada's informed consent requirement applicable to the involuntary administration of antipsychotic drugs opens the courts to such claims.

B. Division of Mental Health and Developmental Services Policy #SP-3.1—Involuntary Administration of Medication

For more than a decade before 2010, Nevada's Division of Mental Health and Developmental Services operated under an internal policy designated as Policy #2.004 on the involuntary administration of medication. That policy included procedural protections to ensure that decisions to forcefully medicate were neither arbitrary nor erroneous, that such decisions were made by independent medical professionals, and that patients were provided with reasonable notice.[64] That policy, however, did not afford patients all of the rights approved in *Washington v. Harper*, including such fundamental rights as the right of a patient to appear and present witnesses at hearings. The Commission on Mental Health and Developmental Services addressed this omission on August 30, 2010, when the Commission drafted and the Administrator approved Policy #SP-3.1.[65] This new policy closely follows the requirements of *Washington v. Harper* and marks a substantial advance in the protection of patient rights. At the same time, the Division prepared forms for use by mental health institutions to ensure that a patient's due process rights are satisfied during the process of authorizing involuntary medication.

At the present time, however, Policy #SP-3.1 exists only as a statement of the practice of the Division of Mental Health and Developmental Services. It is anticipated that later in 2011, the Division will attempt to have the policy made a part of the Nevada Administrative Code.[66] It is also significant that this policy, by its terms, is inapplicable to private mental health institutions. Still, such institutions remain obligated to provide services to their patients in a legal manner, and it would be good practice for any such institution to consider the adoption of the Division's policy and forms.

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[61] *See, e.g.*, Smith v. Cotter, 810 P.2d 1204, 1207 (Nev. 1991).

[62] *See, e.g.*, Mahoney v. Lensink, 569 A.2d 518, 522-26 (Conn. 1990). *But see* Tex. Dep't of Mental Health & Mental Retardation v. Lee, 38 S.W.3d 862, 864-65 (Tex. App. 2001).

[63] *See, e.g.*, E. H. v. Matin, 284 S.E.2d 232, 237 (W. Va. 1981).

[64] DIV. OF MENTAL HEALTH & DEVELOPMENTAL SERVS., NEV. DEP'T OF HEALTH & HUMAN SERVS., POLICY NO. 2.004, INVOLUNTARY ADMINISTRATION OF MEDICATION (2007), *available at* http://mhds.nv.gov/index.php?option=com_docman&task=cat_view&gid=36&Itemid=230.

[65] DIV. OF MENTAL HEALTH & DEVELOPMENTAL SERVS., *supra* note 55, at 1-2, 6.

[66] Although not yet a part of the administrative code, the Division is applying the policy in all State-operated mental health institutions.

V. WHICH COURTS SHOULD BE INVOLVED?

The family courts of Washoe and Clark counties have adjudicated the forced administration of drugs to mental health patients since these courts were created in 1991. A recent decision of the Nevada Supreme Court, *Landreth v. Malik*, calls into question the jurisdiction of the family courts to make such adjudications.[67] *Landreth* holds that "the family court's jurisdiction is limited to the types of proceedings specified by the Legislature in NRS 3.223."[68] That statute states that family courts have original, exclusive jurisdiction in any proceeding "[b]rought pursuant to NRS 433A.200 to 433A.330, inclusive, for an involuntary court-ordered admission to a mental health facility."[69]

It is far from clear that an adjudication of a mental health facility's petition for authority to administer medication to a patient against his will is a proceeding specified by the legislature in NRS 3.223. Any judgment issued by a family court on a matter not specified by NRS 3.223 is void, not merely voidable.[70] Family courts may have pendant jurisdiction to adjudicate the forced administration of medication in those cases in which a determination of the issue is necessary for the resolution of a proceeding brought for an involuntary court-ordered admission.[71] When civil commitment is not at issue, the family court's jurisdiction to adjudicate involuntary medication is uncertain. As a practical matter, family courts decide these questions in the jurisdictions where they exist.

VI. WHAT IS THE ROLE OF THE COURT?

Washington v. Harper holds that an administrative hearing conducted in accordance with the requirements of procedural due process is sufficient for the involuntary administration of medication.[72] Due process requires no mandatory judicial involvement before medication is administered.[73] The decision states:

> Notwithstanding the risks that are involved, we conclude that an inmate's interests are adequately protected, and perhaps better served, by allowing the decision to medicate to be made by medical professionals rather than a judge. . . .[74]
>
> A State may conclude with good reason that a judicial hearing will not be as effective, as continuous, or as probing as administrative review using medical decisionmakers. We hold that due process requires no more.[75]

The National Alliance on Mental Illness, in its policy *Involuntary Commitment and Court-Ordered Treatment* states:

> Involuntary commitment and court-ordered treatment decisions must be made expeditiously and simultaneously in a single hearing so that individuals can receive treat-

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[67] Landreth v. Malik, 221 P.3d 1265, 1268 (Nev. 2009), *reh'g granted* (July 22, 2010).
[68] *Id.*
[69] NEV. REV. STAT. § 3.223(1)(i) (2009).
[70] *Landreth*, 221 P.3d at 1269.
[71] *Id*. (discussing Barelli v. Barelli, 944 P.2d 246 (Nev. 1997)).
[72] Washington v. Harper, 494 U.S. 210, 232-33 (1990).
[73] *Id.* at 228-33.
[74] *Id.* at 231.
[75] *Id.* at 233.

> ment in a timely manner. The role of courts should be limited to review to ensure that procedures used in making these determinations comply with individual rights and due process requirements, and not to make medical decisions. . . . Responsibility for determining court-ordered treatment should always be vested with medical professionals, who, in conjunction with the individual, family, and other interested parties, must develop a plan for treatment.[76]

The court's role, if judicial review occurs, is to ensure that the patient's substantive and procedural due process rights are met.

To ensure the patient's substantive due process rights, the court must conclude that the psychiatrist who recommends forced medication has determined that the patient is a danger to himself or others. It is not the court's role to determine whether the patient is a danger to himself or others. Instead, the court is responsible to make certain that the psychiatrist exercised professional judgment in deciding that the patient is dangerous.[77] This requires a limited examination to determine there is a basis upon which the psychiatrist rendered his opinion.[78] A presumption exists that the decision made by the professional is correct.[79]

To ensure the patient's procedural due process rights, the court must determine that procedures adopted in Division of Mental Health and Developmental Services Policy #SP-3.1 have been followed.[80] Such deference, while required, might be fairly tempered in accordance with Justice White's observation in *Barefoot v. Estelle*: "Neither petitioner nor the [American Psychiatric] Association suggests that psychiatrists are always wrong with respect to future dangerousness, only most of the time."[81]

VII. Conclusion

U.S. constitutional due process requirements for the involuntary administration of antipsychotic medications to civilly committed, mentally ill patients are fairly well settled. Nevada likely added additional requirements by enactment of its patients' bill of rights. Division of Mental Health and Developmental Services Policy #SP-3.1 appears to satisfy constitutional requirements. However, there is no clear authorization for the adoption of such a policy in Nevada law. Nor do the requirements of the patient's bill of rights admit any exception for the involuntary medication of civilly committed mental health

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[76] *Involuntary Commitment and Court-Ordered Treatment*, Nat'l Alliance on Mental Illness (Oct. 7, 1995), http://www.nami.org/Content/ContentGroups/Policy/Updates/Involuntary_Commitment_And_Court-Ordered_Treatment.htm (emphasis added).

[77] Youngberg v. Romeo, 457 U.S. 307, 321 (1982); Morgan v. Rabun, 128 F.3d 694, 697-98 (8th Cir. 1997).

[78] *Morgan*, 128 F.3d at 697-98.

[79] *Youngberg*, 457 U.S. at 323.

[80] *In re* Miller, 705 N.E.2d 144, 150 (Ill. App. Ct. 1998) ("[P]rocedural safeguards are not mere technicalities which may be routinely disregarded . . . they are essential tools to protect the liberty interests of persons alleged to be mentally ill."); *see also In re* Richard C., 769 N.E.2d 1071, 1075-76 (Ill. App. Ct. 2002) (involuntary administration of drugs prohibited where patient was not provided with written information about proposed drugs, as required by law); *In re* Nancy M., 739 N.E.2d 607, 614 (Ill. App. Ct. 2000) (due process denied by failure of verdict form to distinguish among three proposed medications).

[81] Barefoot v. Estelle, 463 U.S. 880, 901 (1983).

patients. The role of the courts and the identity of the court with subject matter jurisdiction are also uncertain under existing law. Legislation is necessary to address these issues in order to provide protection for the rights of this vulnerable group.