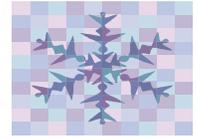


# The Coalition



www.wacoalition.org

Advocates for Ethical Mental Health Care

Fall-Winter 2006

## Editor's Corner

Peter N. Moore, Psy.D.

The Coalition held its **annual meeting** in November. The assembled membership were treated to two fine presentations. Sue Wiedenfeld gave a historical review of our organization's many accomplishments during its 11 year history. A summary of her talk appears on p.4

Judy Roberts, former board member and my predecessor as editor warned us that the digital age presents **new threats to confidentiality**. In fact, she informed us that at both the national and state levels, privacy protections have been weakened in the name of treatment efficiency and coordination. I summarize her sobering talk in this issue's lead article.

A final note: **Your editor will be leaving** his post and the Board. Stepping down from this position will give me time to pursue other interests. I remain nonetheless committed to the ideals and values of the Coalition. So, we **need a new Editor** ! I will stay on until one is found or next June, which ever comes first. Have a hankering to see your name in print and spread the good word? Now's your chance ! Call the Helpline or e-mail me at [pkt6533@hotmail.com](mailto:pkt6533@hotmail.com).

## Confidentiality Remains Under Threat: Judy Roberts Calls for Continued Vigilance

Peter Moore, Psy.D.

Some time ago a whirring hard drive awakened Judy Roberts in the middle of the night. Her daughter's computer had seemed to magically come to life. The next morning her daughter explained that the now defunct program Napster was searching her music files for a song someone had requested. Judy learned that in response to a Napster member's request for a particular song, Napster would access any of its member's previously inventoried computers, at any time of the day and night, to send that song to the requesting member. The software used a little piece of computer code called a "bot" to search the hard drive for music in question. Bots are used ubiquitously. This started Judy worrying about the security of mental health records in our digital age.

Judy, has made threats to confidentiality a major concern of hers. At the Coalition's recent annual meeting, she warned the members about erosion of record privacy and future threats that new technology bodes for the mental health profession.

Judy maintained that while HIPAA had the noble intent of making health insurance records portable from job to job (that is what the P stands for), it also began to push to shift our nation's health care records from paper to electronic. This allows transmittal of healthcare documentation instantaneously to literally "tens of thousands" of individuals throughout the country.

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### Who Ya Gonna Call !?!?!?!?

Coalition Helpline: 206-444-4304

Who's My Legislator: 1-800-448-4881 (State and Federal)

Legislative Hotline: 1-100-562-6000

The Clinton Administration's version of HIPAA required a client's specific consent for such disclosure of their healthcare records. But the Bush team eviscerated this provision when it replaced patient consent with "regulatory permission," and more recently our own state legislators followed suit. Thus, patient records can legally be shared in a wide variety of circumstances *without the patient's specific knowledge or consent*.

In some cases, this certainly makes sense. If emergency personnel need information about an unconscious patient, they can easily get it. However, Judy noted that a wide variety of people under the banner of "health care associates" have potential access to protected healthcare information. The "tens of thousands" of people who can potentially have legal access to records *without our consent* include insurance companies, the businesses with which they contract, pharmaceutical firms, accountants, lawyers and even law enforcement officers among others.

She told the story of a hospital staff member who called the police after finding some marijuana under the bed of a dialysis patient. This was done legally because HIPAA allows health care professional to contact the police if they have evidence of a crime. She said that, ironically, when we provide our clients with the requisite "Privacy Statement" we are really telling them all the legal ways their records are anything *but* private.

Certainly, complaints about breaches of privacy have been filed. In fact 20, 847 privacy complaints have been submitted. However, courts have not levied any civil penalties. Only 332 of the complaints have been referred for prosecution. Only two have been prosecuted: one in response to a complaint associated with an identity theft at Harborview. The explanation offered by a federal employee for why so few prosecutions is that "It is nearly impossible to violate the rules."

A more protective state statute trumps a federal law. Washington used to have a very strict privacy law in the Uniform Healthcare Information Act (UHCIA). Not any longer.

Judy reported that quietly, in the summer of 2005, the law was weakened without any testimony against the changes. Quoting from her Web site,( Judyroberts.com) :

Previously clients had some built-in control of the release of their healthcare information in that any authorizations they signed (with the exception of authorizations to third party payors), expired in 90 days, and did not include information regarding future healthcare services more than 90 days after the date they signed the authorization. With the changes to the UHCIA, this 90-day expiration no longer exists, nor does the limit on future healthcare services beyond 90 days.

Further:

a client may request an accounting of disclosures, this accounting is not required to include disclosures about a client made to anyone working within a treatment agency; to third party payors; to the clinician's attorney, accountant, or business consultant; to any staff the clinician might employ; to third party payors; to other treatment providers; to a consultant; or to someone to whom the clinician refers the client.

Additional latitude for disclosure includes a new permission that a health care provider, facility, or third-party payor may disclose a client's health care information for its own operations or the operations of another health care provider/facility/third party payor without the client's authorization if the other entity had a "relationship" with the client/patient.

Clinicians should be aware that *these changes are in addition* (emphasis added) to the section of the UHCIA that already included permission for a health care provider or clinician to disclose health care information about a client/patient without the client/patient's authorization, to someone the clinician believes is providing healthcare to the client/patient; and/or to anyone who requires that information for health care education or

planning, quality assurance, peer review, or administrative, legal, financial, actuarial services to or on behalf of the health care provider; or to any person if the provider believes this disclosure will minimize or avoid an imminent danger to any individual; or to immediate family members or any other individual with whom the client/patient has a close personal relationship (unless the client/patient has told the provider to not make such a disclosure).”

Judy maintained that clients’ records are potentially much more of an open book to many more people. Further, legally, clients’ do not need to be told to whom and when their records were released in a wide variety of situations. If clients ask for a disclosure statement, the release of their records in many circumstances does *not* have to be documented. In essence, the clinicians’ integrity becomes the last bastion of privacy.

**Security:** Judy warned the gathered that a bill, that had been pending in Congress called the Health Information Technology Act (HITP) also had sought to reduce protection for mental health records. Under HIPAA, clinicians are required to provide safeguards for electronically stored protected health care information. Meanwhile reports continue of ever more breeches of supposedly secure information. However, the proposed law would not have required health care providers to notify patients that their data had been compromised. While the bill did not pass during this session, Judy predicted that some version of it will eventually become law.

Judy noted that the bill was modeled after the VA system. The VA does not segregate mental health from medical records. Consequently, if a HITP clone does pass all barriers that provide a fire wall for mental health records would be breached and a patient *cannot* opt out of such a provision. According the Russ Neumann, Ph.D. of the American Psychological Association, patient privacy would be sacrificed for efficiency.

While HITP died, those of us who bill insurance will soon need a National Provider Identifier (NPI, see previous *The Coalition*). Eventually this database of health professionals will allow insurers to track how caregivers are providing treatment. Further, medicine at least, is moving to evidenced based practice. So, for example, Judy predicted that physicians’ practice habits will be checked using their NPI and flagged if they do not conform with evidenced based practice. As mental health records are merged with medical records, therapists may come under similar scrutiny.

But we do not have to wait for the future. Judy reported a chilling story in the November 11<sup>th</sup> issue of the *Boston Globe*. Blue Cross of Massachusetts asked its members receiving eight sessions of mental health treatment to complete a 58-item questionnaire inquiring about their mood, sleep, level of suicidality, and sexual health among other topics. Participation, the respondents were told was voluntary. However, payment for sessions was contingent upon completion of the survey.

Earlier this year, the Wisconsin legislature passed a law that let physicians more easily incorporate mental health records into an electronic database and for physicians to access those records to help determine compatibility of prescription treatment for medical and mental health issues.

The web version of the Puget Sound Business Journal just reported on December 4<sup>th</sup> that the Health Information Infrastructure Advisory Board (HIIAB) recommended that “the state create health record banks that would allow hospitals to electronically share information about patients. Our Legislature may consider the HIIAB’s recommendations when it convenes in January.

So, just like to “bot” that was snooping around her daughter’s computer, insurance companies and the government may be mining our patients’ records ostensibly to coordinate and make treatment more efficient if not to ensure that professionals are compliant with treatment standards. This may give providers many advantages, reduce costs, and may even save lives. However, those of us concerned about privacy and security will have to be ever more vigilant that confidentiality is not sacrificed to the god of efficiency.

## Coalition History Reviewed:

### President Sue Wiedenfeld's Lists Coalitions Accomplishments and Directions for the Future

At last November's Coalition annual meeting, President Sue Wiedenfeld gave a history lesson. She reviewed the many struggles and accomplishments our organization has experienced in its ongoing fight to protect confidentiality and choice in mental health care.

**1994**—Several mental health practitioners became very concerned about the evolution of Managed Care and formed two groups, **one the precursor to the Coalition** and the other, founded by Ken King and Laura Groshong, **the Consortium of mental health practitioners**. Both were multidisciplinary efforts to make a difference in protecting the values that underlie effective psychotherapy.

These **two merged** in **1995** as the Coalition and began the work that continues today. That year there were testimonials all over the state on the need for adequate protection of client rights and the elements of effective psychotherapy. Coalition meetings were well attended as people looked for ways to cope and survive in an evolving managed care environment.

By **1996** it was clear that we needed to get involved in **legislative action** if we were to effect some of our beliefs on a broader scale. We hired Laura Groshong and began laying groundwork for future relationships with legislators. We developed a **relationship with Insurance Commissioner Deborah Senn** and enlisted her support in regulating aspects of insurance company practices, which did not respect ethical psychotherapy.

In **1997** the Coalition **developed a bill** with Senator Darlene Fairley to allow enrollees to continue seeing a clinician after benefits had been exhausted, which had previously been prohibited. In addition, this year the Coalition took the lead with other mental health groups to negotiate changes in the **auditing practices** of Regence Blue Shield to restrict their auditing to insurance covered cases, an important issue in privacy and confidentiality.

In **1998** a bill passed to this effect which limited the practices of all insurance companies regarding auditing. This same year the **Coalition played a key role in establishing an insurance Task Force** with Deborah Senn to address 90 complaints about mental health insurance.

In **1999** the Coalition began working with the Washington Coalition of Mental Health Insurance Parity to work to achieve **mental health parity** in Washington. The Insurance Commissioners Mental Health Task Force compiled **a list of requisite disclosure questions** on mental health benefits for Insurance companies to protect consumers from deceptive advertising. That is, a mandate for insurance companies to have answers to **11 key questions** which would allow folks to evaluate their policies. This is the year that the Coalition was part of the challenge to changes in Regence's new contract, resulting in a revision of their contract to address those concerns (though not perfectly).

In **2000**, besides working on mental health parity and the mental health benefit of the basic health plan, the Coalition joined with other mental health groups to begin the process of forming a multidisciplinary **Political Action Committee**. In addition, the Coalition took a lead role in

developing the sunrise report for a bill for licensure for Certified Mental Health Groups. We also, in association with the Washington State Labor Council held a **Patient Bill of Rights Conference**.

By **2001**, a senate bill passed providing licensure for certified mental health groups and mental health parity failed to pass. About this time, at an annual meeting an interest was expressed for support for those who wished to practice outside managed care so we **began our Brown Bag Lunch series** supporting practice outside managed care. These were informative and encouraging lunches for folks trying to practice outside the confines of managed care companies. The discussions were lively and addressed all of what the Coalition values.

In **2002** the Coalition was part of a group which reviewed and **objected to a bill on the involuntary Commitment of children**, which was subsequently defeated after Coalition and others testified. That year board member Jane Palmer created a **provider satisfaction survey** (of Coalition mental health providers) that evaluated insurance and managed care companies on many issues of quality and satisfaction with aspects of the health plan.. Jane and I **presented these findings to several insurance companies Magellan, Regence** that summer. The survey provided tangible support for many of our concerns ..After our meeting with Regence, two of our board members were **invited to serve on the Behavioral Health Advisory Panel**.

By **2003**, our **PAC was functioning** and having impressive percentages of our endorsed candidates winning their races, most gratifying!! That year it was 90%. We continued Rotary Club **talks and outreach** to educate folks about mental health issues.

By **2004**, as you know, our efforts paid off and a **mental health parity bill passed**. This is also the year we **developed our Strategic plan** as an organization and our beautiful new brochure.

In **2005**, The Coalition is one of 5 groups on a **Joint Executive Legislative Mental Health Task Force** which will review the entire mental health delivery system and how it can be more responsive to public mental health needs. We also **published our first Coalition Directory** thanks to the efforts of Lee Holt.

**2006**: Because of its representation on the Regence MH Advisory Board, the Coalition learns of Regence's interest in developing **mental health outcome measures**. Sue Wiedenfeld, Laura Groshong, and Peter Moore **meet with Regence Behavioral Health administrators** to learn of their plans and provide feedback.

MH-PAC scores a **98% success rate** at the state level in the off year elections.

Sue outlined the Coalition's directions for the months and years ahead. They include increasing our consumer membership, providing greater education to consumers of our services about the risks of using insurance, having a greater presence on the Web, increasing e-mail alerts to members, monitoring threats to privacy and confidentiality in the increasingly digital era, and helping practitioners feel empowered as they face the ever present threats to their practices from the insurance industry.

Sue and the Board welcome your feedback and energy. We invite your comments. We appreciate whatever time you have to work on small, time limited projects or to add your energy to the Board.

**The Board Thanks You for Your Continued Support of the Coalition's Agenda**

The Coalition of Mental Health  
Professionals and Consumers  
PO Box 30087  
Seattle, WA 98103

**Join or Renew Your Commitment to Protect Mental Health Care**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Fax: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

E-mail \_\_\_\_\_

Member: \$65

Student: \$15

Consumer: Free

Organization: \$124

Willing to help with specific tasks: YES \_\_\_\_\_

OK to publish information in a directory ? YES \_\_\_\_\_

NO \_\_\_\_\_

