SPEAKER NOTES

Laws We Need to Know: Understanding Rules and Programs for Persons with Mental Illness

Summarized by Thomas T. Thomas

This new book was written by **Baron L. Miller** (www.baronmillerlaw.com), a San Francisco attorney, long-time NAMI member, friend of NAMI, and an advocate who has an adult daughter with schizophrenia. He has practiced law in San Francisco continuously since 1973 and is a frequent writer and lecturer on legal issues faced by family members of mentally ill persons. He has been advising and assisting clients and other attorneys on these issues for decades.

"The idea behind this book," he said, "is to enable those who assist persons with serious mental illness to better understand rules and laws that are so complex. And to help high-functioning consumers as well."

Miller said it took him about five years to write the book, but that was just gathering the information, writing, and rewriting. But really, the effort went back thirty years to when his daughter had her first break with reality and he "entered this world" of serious mental illness.

For the first thirteen years of her life, his daughter was bright and cheerful. Then she became antisocial and irrational; she got help from her school and outsiders, who assured Miller this was just a teenage phase. But she slowly deteriorated, and by age fifteen she had wild delusions and hallucinations, was hospitalized, and diagnosed with schizophrenia. "The doctors said the illness fell into three categories: she would stay the same, get better, or get worse. Hers got worse."

Miller's response was to become knowledgeable about mental illness and laws relating to it. This became the focus of his legal practice. He also gives advice to other lawyers and to family members without charging or asking for a retainer. "Our burdens lighten when we help someone with similar problems."

It became apparent to him that it would be useful for other family members and for high-functioning consumers to have a written resource on these laws. The result was this book, which has chapters on:

1. **Communicating with Authorities and Institutions,** including requirements and exceptions for incapacity, emergencies, types of authorization.
2. **Hospitalization,** including voluntary and involuntary holds and Lanterman-Petris-Short Act (LPS) conservatorship.
3. **Arrests and Criminal Justice,** including treatment of mental illness during incarceration.
4. **Restraining Orders** and the actions needed to obtain one.
5. **Government Programs and Benefits,** including Social Security Supplemental Security Income (SSI) and Disability Insurance (SSDI).
6. **Liability of Supporters,** including tort and contractual liability and

government reimbursement rights.

7. **Estate Planning,** with power of attorney, special needs trusts (SNTs), and conservatorships.
8. **ABLE [Achieving a Better Life Experience] Accounts,** to save money for disability expenses.
9. **Protecting Assets and Preserving Public Benefits After a Windfall,** including options for giving away or spending down the windfall.
10. **Authority to Act for a Consumer,** including various types of conservatorship.
11. **Consumers' Financial Obligations,** including contracts and how to avoid undue influence and fraud.
12. **Rights and Obligations Related to Housing and Employment,** including the right to be free of invidious discrimination.
13. **Strategies for Dealing with Recalcitrant Authorities,** such as giving personal information to induce them to care, showing interest in what they do, informing them of your legal and moral rights, and trying to get third-party help.

Miller said he really cares about the chapter on housing and employment because it clarifies the concept of bigotry for other causes. He also noted that the book, while it cites California law, has wider application: most of the laws and programs regarding persons with mental illness are federal, and California law in this area is generally representative of the laws in other states.

He noted that, while laws and programs for government assistance and protection are valuable, they are often complex and sometimes too much for most of us to understand; so understanding is the purpose of the book. But it is not an exhaustive listing or explanation of all laws and regulations pertaining to persons with mental illness and their supporters. The book is not intended to replace a social worker or lawyer when required—but it may reduce the number of times such help is needed.

Miller said that, for a parent dealing with someone in authority who may be disinclined to give assistance, the best thing to say may be: "My child needs help. She is innocent, she is vulnerable, and she can't help herself. So, I am trying to help her."

He quoted from his Afterword: "Some wise person once remarked that a major difference between those who succeed and those who don't is persistence. … When we are caring for a consumer [of mental health services], there is no one in this world displaying a greater mixture of courage and decency than we are. Whether we are acting due to love, or due to a sense of duty, or to a combination of them, we are doing things no rational person would ever voluntarily choose to do if a reasonable alternative existed."

Q. How active are the laws pertaining to mental illness, and do they change a lot?

Miller said he would like to see changes, which are needed, but he does not expect much to change. But he cited the recent move in Alameda County to "decarcerate" prisoners in Santa Rita Jail being held on mental health issues and recent housing programs.

Generally, however, the electorate and the law views mental illness as "somebody else's problem." He said people are now beginning to advocate for change, but he doesn't know if it will come anytime soon.

Q. What are the chances of the LPS law being modified?

LPS needs modification, but what might change or when, Miller has no idea. "Changes meet resistance and cost money," he said. "With the economy in such a weird place, it's hard to be optimistic about change."

Q. Please discuss fiduciaries and custodial financial accounts.

In planning your estate, you need to establish a trust for your family member with mental illness, and the person who operates it is a fiduciary, handling the money belonging to someone else. Professional trusteeship is usually offered by a bank or other financial institution, but it can be costly. Alternatives are the Planned Lifetime Assistance Network (PLAN) and the Proxy Parent Foundation. These are non-profit organizations that can offer investment vehicles and personal services. They will charge you, but not as much as a bank for trustee services.

Q. If my dependent is not a trusting person, does Proxy Parent have a way to deal with him?

They can have someone local who has a relationship with the beneficiary work with him. You can also have a sibling or relative who has an interest in the person become a "trust protector" to make sure the fiduciary is acting appropriately. Note that many fiduciaries are trained and licensed in business and accounting, but not in mental health issues. Some are self-educated in this area, but it's not a requirement.

Q. What means are there to give someone else authority to direct an individual's psychiatric care?

This is a complicated issue. A person with mental illness can give someone else a power of attorney in both financial and medical affairs, and depending on the wording it would allow you to select a psychiatrist and direct treatment. But the person can readily revoke such power.

When an agent is needed and there is no power of attorney in place, a court proceeding can establish a probate conservatorship, but the beneficiary can refuse it. The only way to compel the person, other than in a criminal case, is with an LPS conservatorship, which can only be sought by the county and places the beneficiary in a locked facility.

Q. How do you talk to the system? How do you express your rights and needs?

The reasons for resistance among people in authority are always varied: There may be no signed authorization in place, or the treatment professionals think talking to you is a waste of time, or they are just having a bad day. You have to find the cause and try to address it. In the meantime, try to maintain control of your emotions, especially when you're asking politely for something and not getting it.

Q. If my child is resistant to treatment, what about mandatory medication—as opposed to just letting him live on the street?

We really need to change the law in this regard. It's absurd to allow people with impaired cognitive ability to make treatment decisions for themselves. Libertarian sentiments aside, it should be a right to be taken care of when you can't take care of yourself.