

# Law Report

LEGAL NEWSLETTER

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## IS PSYCHIATRY JUNK SCIENCE?

### *Rulings by United States Supreme Court Create Basis for Challenge to Psychiatry's Validity*

It has become perhaps too easy to poke fun at psychiatry. There is absurdity in Mental Health's straight-faced labeling of common behaviors as mental illness. The most recent revision of the American Psychiatric Association's (APA) Diagnostic and Statistical Manual for Mental Disorders, Fourth Edition (DSM IV) has designated as diagnosable mental "disease" certain coffee drinking ("caffeine intoxication," no. 305.90), snoring ("breathing-related sleep disorder," no. 780.59), low scores in addition, subtraction, multiplication ("mathematics disorder," no. 315.1), and childhood fidgeting ("attention deficit/hyperactivity disorder," no. 314.01). After no doubt intensive study in the 90s, at least one group of Wisconsin psychological pioneers also found that excessive nose picking is a mental disorder.

Since the end of World War II, psychiatry has presumed expertise over explaining and resolving anti-social behavior, creating a lucrative government pipeline to fund its crusade. Politicians have become cheerleaders for pharmaceutical companies promising instant relief from emotional difficulties through the newest pill. Federal and state legislators call for still more trust (and money) in psychiatric authority, supposedly poised to deliver cathartic resolution to civilization's ills in just a few extra years.

Yet, despite the many billions of tax dollars invested in psychiatric research and treatment, we

have witnessed not the promised improvement of societal conditions, but an emerging Brave New World in which the prevalence of crime, drug abuse, and illiteracy are skyrocketing. For several years now, more individuals have been incarcerated in U.S. prisons than are enrolled in U.S. colleges and universities.

As its critics charge, psychiatry's remarkable failures to deliver its promised solutions to human behavior signal that the subject is no more than an ideology of "normalcy" masquerading as serious science. Perhaps no better example is the manner in which editions of DSM are constructed.

***Psychiatry's failures to deliver its promised solutions to human behavior show it is no more than an ideology of "normalcy" masquerading as serious science.***

After more than 40 years of marketing, DSM is now widely regarded as the secular gospel on sane, "normal" behavior and on insane, "abnormal" behavior. As if the product of scientific research method, DSM IV's neatly numbered diagnostic categories are commonly utilized in court testimony, mental disability discrimination claims, and insurance billing. Yet, so-called mental illnesses are identified and added to DSM not by scientific process by

consensus vote of panels of psychiatrists. As one psychologist observed of the process for a DSM-III-R work group: "The low level of intellectual effort was shocking. Diagnoses were developed by majority vote on the level we would choose a restaurant. You feel like Italian, I feel like Chinese, so let's go to a cafeteria. Then it's typed into the computer. It may reflect on our naivete, but it was our belief that there would be an attempt to look at things scientifically." Paula Caplan, Ph.D., *They Say You're Crazy* (New York: Addison-Wesley Publishing Co., 1995), p. 90, quoting psychologist Rene Garfinkel.

In 1993, the federal court standard for acceptance of scientific expert testimony was significantly altered by the Supreme Court in a manner that should bode ill for these pseudo-scientific foundations of psychiatry. *Daubert v. Merrill Dow Pharmaceuticals* (1993) 509 *United States Reports* (U.S.) 579. For some seventy years prior to *Daubert*, judges recognized expert testimony on a scientific technique as competent evidence if that technique was "generally accepted as reliable in the relevant scientific community." So long as psychiatric testimony only had to pass a test of "general acceptance" to be recognized as valid, practitioners called to court to justify their actions could be comfortable with the labeling and diagnoses of DSM since, after all, this APA-published volume was widely recognized by their colleagues as legitimate.

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## THE IMPORTANCE OF WRITTEN EMPLOYEE POLICIES AND AGREEMENTS

### *Why Would Any Business Need Standardized Employment Policies and Forms?*

On the notion that an ounce of prevention is worth a pound of cure, we are encouraging our clients to become well educated and to implement forms and policies that will greatly improve a company's legal protection in employment screening, hiring, training, terminations, and other related issues.

We have developed – and periodically revised to match the changing law – a "soup-to-nuts" employee handbook and a package of the following basic hire-to-fire forms and policies. The forms and policies include:

- employment application and form job description (including releases that acknowledge an employer's use of pre-employment

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However, in reviewing whether expert testimony linking a certain prescription drug to birth defects could be accepted as competent evidence, the Supreme Court in *Daubert* found that the Federal Rules of Evidence now require more than just “general acceptance” of the scientific views expressed. The current law requires expert testimony must be “scientific... knowledge. The adjective ‘scientific’ implies a grounding in the methods and procedures of science. Similarly the word ‘knowledge’ connotes more than subjective belief or unsupported speculation. The term ‘applies to any body of known facts or to any body of ideas inferred from such facts or accepted as truth on good grounds.’” 509 U.S. at 598-590.

The term “junk science” has since been utilized for supposed expert views that must be rejected as lacking proper scientific foundations. In an observation that may prove prophetic for the entirety of “modern-day” psychiatry, U.S. Supreme Court

Justice Stevens recently commented: “[a]n example of ‘junk science’ that should be excluded under *Daubert* as too unreliable would be the testimony of a phrenologist who would purport to prove a defendant’s future dangerousness based on the contours of the defendants’ skull.” *General Electric Company v. Joiner* (1997) *Stevens, J., dissenting*, 522 U.S. 136 at 153, note 6.

***So-called mental illnesses are added to DSM not by scientific process but by consensus vote of panels of psychiatrists.***

Certainly, people can experience severe emotional difficulties that reduce or even arrest their ability to live. Certainly, such people need and can benefit from honestly framed and effective mental health care. However, it is at best a disservice – if not a betrayal of the public, and a fraud on insurers –

for psychiatry to present itself as the answer to all personal and societal upheaval when its standards are unscientific and arbitrary and when its results – in terms of measurable society-wide improvement in the quality of life proportional to the billions of dollars entrusted – are non-existent.

Phrenology is the “practice of studying character and mental capacity from the conformation of the skull” (*The American Heritage Dictionary of the English Language* (1976 ed.)). One hundred fifty years after phrenology was widely accepted as “science” by the psychiatrists and the lay persons of the day, a Justice of the U.S. Supreme Court is comfortable in denouncing its obvious lack of systematic rigor. With *Daubert* now requiring actual scientific justification for asserted expertise, it will hopefully take far less time to judicially place DSM IV, psychiatry’s current set of standards, in its appropriate context: unsupported assertions of abnormalcy that belong on the trash heap of a bygone era. ■

### EMPLOYMENT POLICIES Continued from page 1

ment tests, notwithstanding the Americans with Disabilities Act and California’s constitutional privacy protections);

- pre-employment procedures policy (properly positioning the above tests as aimed at job-related qualities rather than physical or mental disabilities);

- employment agreement (including confidentiality/non-disclosure of company trade secrets and mandatory mediation in the event and/or arbitration in the event of a dispute); and

- termination policy, checklist and standard release (to be applied with troublesome employees for greater protection against later, frivolous suits).

The handbook is normally available on hardcopy and on disk for a \$300 service fee. The forms/policies are available for a \$150 service fee. However, to assist businesses in getting started, we are offering a discounted price of \$400 for both if ordered and paid for prior to September 30, 2005. We look forward to hearing from you soon! ■