



# **Still Unglued: Behavioral Health Update 2017**

Eric J. Neiman  
November 3, 2017  
WSSHA Fall Conference

# Today's Topics

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- Trends and challenges
- Federal developments (21st Century Cures, veterans, legislation)
- State developments (legislation, state hospital morass, new psychiatric hospitals)
- Litigation update
- Duty to warn
- EMTALA

# Did you Know this About Washington?

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- 30/51 for overall mental health ranking
  - *Mental Health America (11/16)*
- 29/50 for national suicide rate
  - *America's Health Rankings (2016)*
- Drug overdose is state's leading cause of accidental death

2011	State
1	Maine
2	Maryland
3	Vermont
4	North Dakota
5	Connecticut
6	Massachusetts
7	New York
8	Wisconsin
9	Nebraska
10	North Carolina
11	New Jersey
12	Minnesota
13	Iowa
14	South Dakota
15	Pennsylvania
16	Illinois
17	Colorado
18	Rhode Island
19	Indiana
20	Delaware
21	District of Columbia
22	Kentucky
23	Hawaii
24	Alaska
25	Ohio
26	Florida
27	Virginia
28	West Virginia
29	Kansas
30	Georgia
31	Utah
32	New Hampshire
33	California
34	Texas
35	Wyoming
36	Louisiana
37	Missouri
38	Michigan
39	Tennessee
40	Oregon
41	Oklahoma
42	Mississippi
43	Washington
44	New Mexico
45	South Carolina
46	Montana
47	Arkansas
48	Alabama
49	Idaho
50	Nevada
51	Arizona

2014	State
1	Connecticut
2	Massachusetts
3	Vermont
4	South Dakota
5	Minnesota
6	New Jersey
7	Iowa
8	North Dakota
9	Pennsylvania
10	Maine
11	Delaware
12	New York
13	Alaska
14	Maryland
15	Illinois
16	Hawaii
17	Michigan
18	District of Columbia
19	Kentucky
20	New Hampshire
21	Kansas
22	New Mexico
23	California
24	Oklahoma
25	Colorado
26	Ohio
27	Nebraska
28	Florida
29	Wyoming
30	Washington
31	Missouri
32	Texas
33	North Carolina
34	Georgia
35	Wisconsin
36	Rhode Island
37	South Carolina
38	Virginia
39	Montana
40	Utah
41	Tennessee
42	Louisiana
43	West Virginia
44	Mississippi
45	Indiana
46	Alabama
47	Arkansas
48	Idaho
49	Oregon
50	Arizona
51	Nevada



Home > Policy > The State of Mental Health in America > Ranking the States



## Ranking the States

29	Kansas
30	Georgia
31	Utah
32	New Hampshire
33	California
34	Texas
35	Wyoming
36	Louisiana
37	Missouri
38	Michigan
39	Tennessee
40	Oregon
41	Oklahoma
42	Mississippi
43	Washington
44	New Mexico
45	South Carolina
46	Montana
47	Arkansas
48	Alabama
49	Idaho
50	Nevada
51	Arizona

29	Wyoming
30	Washington
31	Missouri
32	Texas
33	North Carolina
34	Georgia
35	Wisconsin
36	Rhode Island
37	South Carolina
38	Virginia
39	Montana
40	Utah
41	Tennessee
42	Louisiana
43	West Virginia
44	Mississippi
45	Indiana
46	Alabama
47	Arkansas
48	Idaho
49	Oregon
50	Arizona
51	Nevada



# History

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**Community  
Mental Health Act**



**1963**

**Involuntary  
Treatment Act**



**1973**

**Washington  
Mental Health  
Parity Act**



**2005**

# History

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**T.R. v. Quigley**



**December 2013**

**In the Matter of  
the Detention  
of D.W.**



**August 2014**

**Trueblood v.  
DSHS**



**April 2015**

[Local News](#) | [Local Politics](#) | [Microsoft](#) | [Northwest](#) | [Special Reports](#) | [Times Watchdog](#)

# ‘Boarding’ mentally ill becoming epidemic in state

Originally published October 5, 2013 at 7:00 pm | Updated April 2, 2015 at 8:20 pm

By [Brian M. Rosenthal](#)

## Share story

 Share

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Matthew Jones stripped off his clothes, kicked over a trash can and ran into Kirkland’s Juanita Beach Park. He wanted to swim across Lake Washington, find Bill Gates and kill him.

Police intercepted the distraught 35-year-old on a dock and brought him to nearby EvergreenHealth hospital, where officials classified him as dangerously mentally ill and ordered he be detained, against his will, to be treated.

Any threat to the wealthy Microsoft co-founder — and the community — was over. But Jones’ ordeal was just beginning.

On that spring night, all four of King County’s psychiatric-treatment facilities were full. So officials sent Jones to wait in Evergreen’s emergency department.

Untreated and unable to see his family, he languished for hours, and then days, in a small room. When his hallucinations grew especially vivid, the ER nurses tied him to a bed so he wouldn’t hurt himself.

# 21<sup>st</sup> Century Cures Act



- A “Christmas Miracle” - Sen. Alexander (R- Tenn.)
- Seen by some as a gift to Big Pharma
- Bipartisan, sweeping approval within House and Senate



# 21<sup>st</sup> Century Cures Act

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- \$1 billion available to states for opioid abuse prevention and treatment programs
  - April 2017, Secretary Tom Price announced \$485 million in grants for States and territories
- \$1.6 billion for brain diseases, including Alzheimer's

# 21<sup>st</sup> Century Cures Act

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- Strengthen leadership and accountability
  - Administrator of SAMHSA is now the Assistant Secretary for Mental Health and Substance Use
  - SAMHSA will have a Chief Medical Officer
  - Serious Mental Illness Committee
  - SAMHSA is to publish a strategic plan
- Substance abuse is now called a substance use disorder (SUD)

# Veterans

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- Suicide initiatives
  - 20 suicides per day, prevention is top clinical priority
- Expansion of emergency mental health services to OTH veterans
  - Effective 7/5/17
- Telemental health services (since 2003)
- RxP (since 1999)

# Veterans



# US surgeon general sends warning letter to all doctors on opioid epidemic

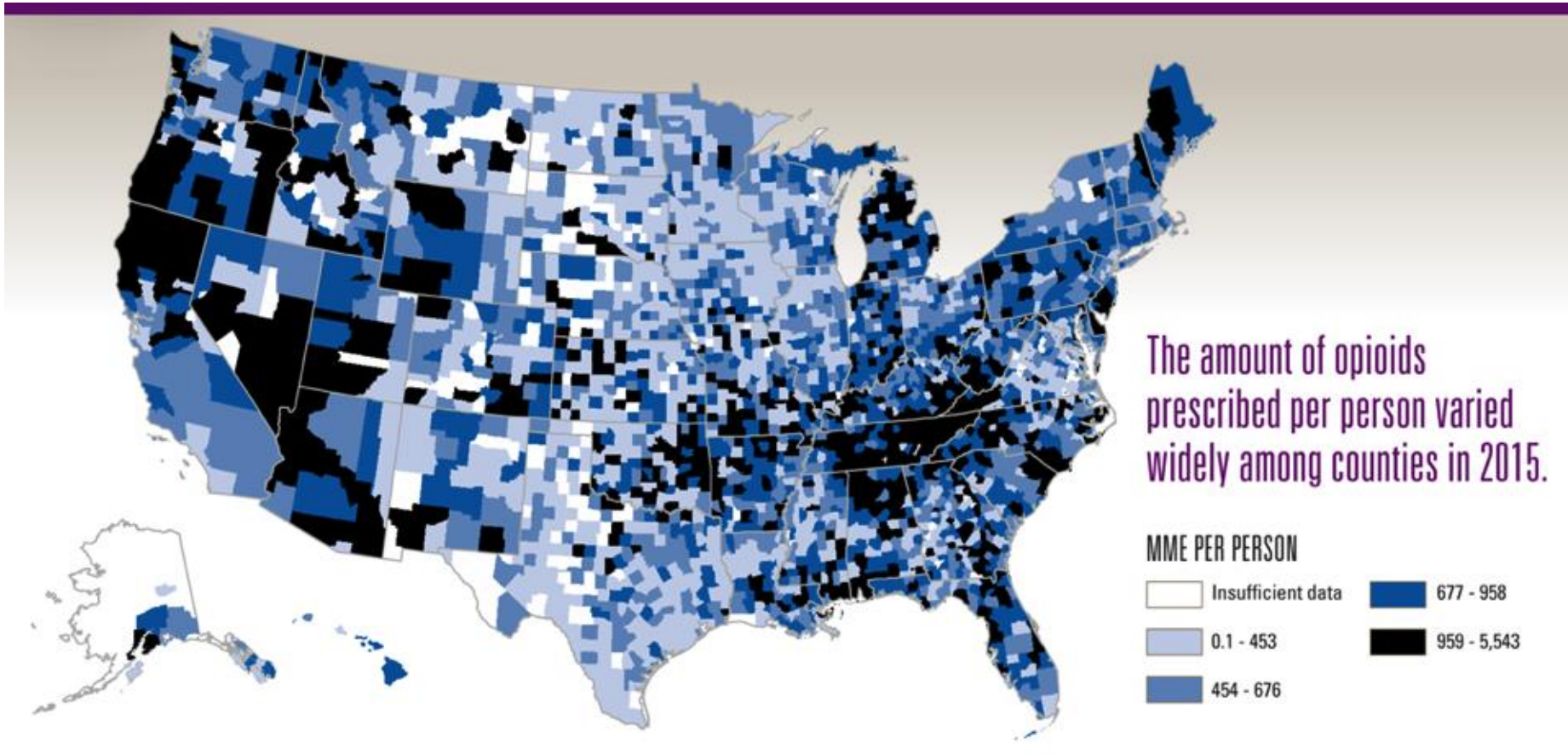


By Elizabeth Cohen, Senior Medical Correspondent

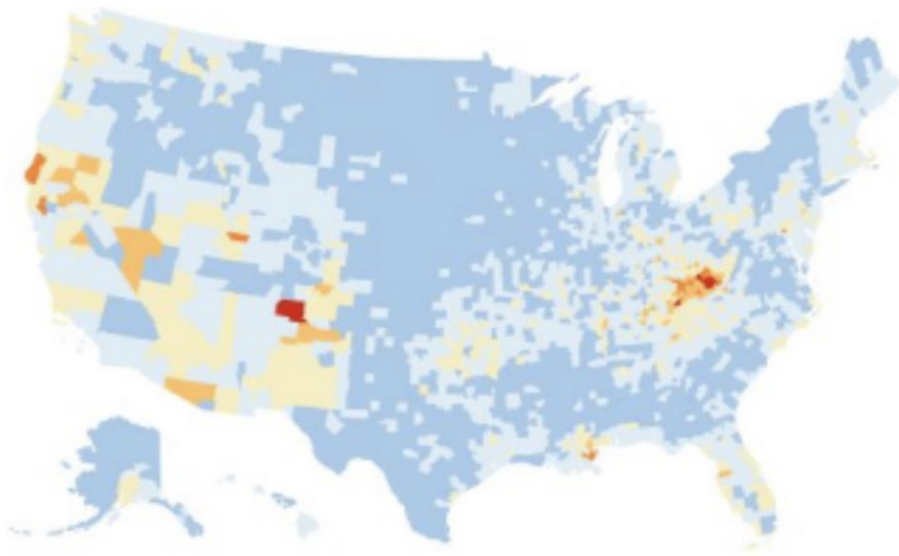
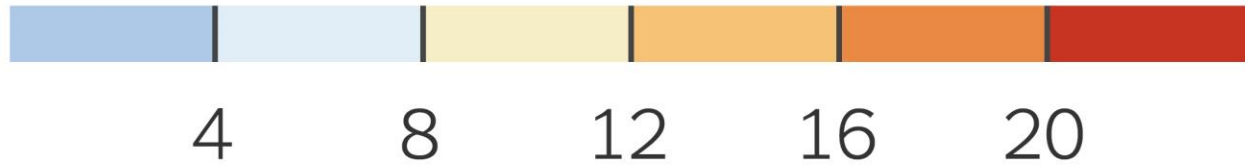
Updated 11:43 AM ET, Thu August 25, 2016



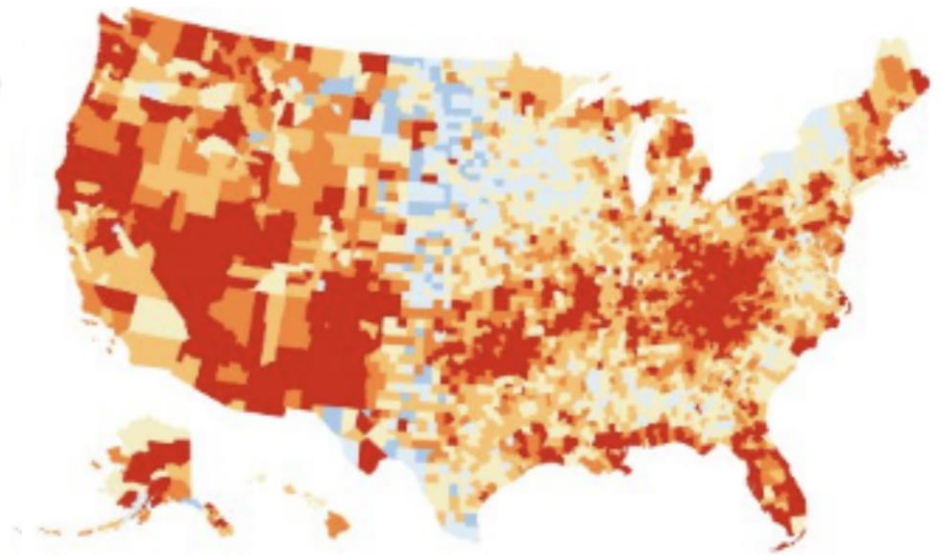
# CDC: Where You Live Matters



# Overdose deaths per 100,000



1999



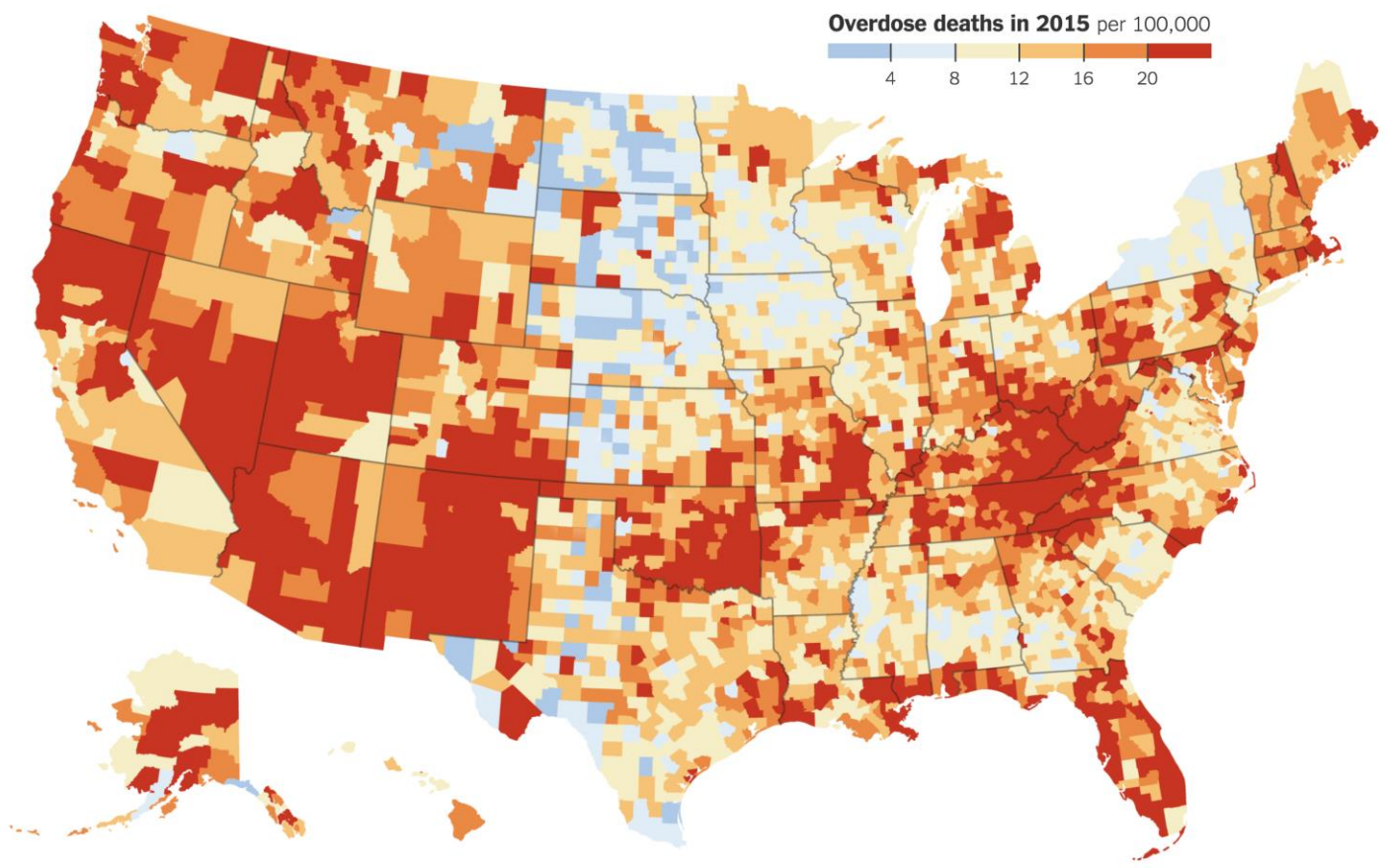
2015

POLITICS

# Trump Declares Opioid Crisis a 'Health Emergency' but Requests No Funds

By JULIE HIRSCHFELD DAVIS OCT. 26, 2017

Facebook Twitter Email Share Bookmark 913





# 2017 Legislation

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- HB 1713 (2016) Integrates ITA and substance use disorder treatment (4/18)
- HB 1427 (2017) Response to opioid crisis
- HB 1547 (2017) Psych beds exempt from CON until 6/19
- SB 5435 (2017) Expanded disclosure of mental health PHI
- SB 5800 Duty to warn (did not pass)
- Budget

# 2017 Legislative Funding – Two Views

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**The legislature has continued to rebuild our mental health care system.** Additional funding was added to key community services and the legislature opened the option of offering long-term acute psychiatric care in communities — an alternative to the state’s mental health hospitals. Also, new investments and changes were made to help complex patients who are ready for discharge from hospitals find services in the community.

# 2017 Legislative Funding – Two Views

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## **New Washington mental health budget ‘doesn’t look promising,’ disability group says**

POSTED 4:03 PM, JUNE 30, 2017, BY ASSOCIATED PRESS

“While we don’t know exactly how the allocated money will be spent, we do know it is nowhere near what the governor said he needed.”

[Local News](#) | [Local Politics](#) | [Microsoft](#) | [Northwest](#) | [Special Reports](#) | [Times Watchdog](#)

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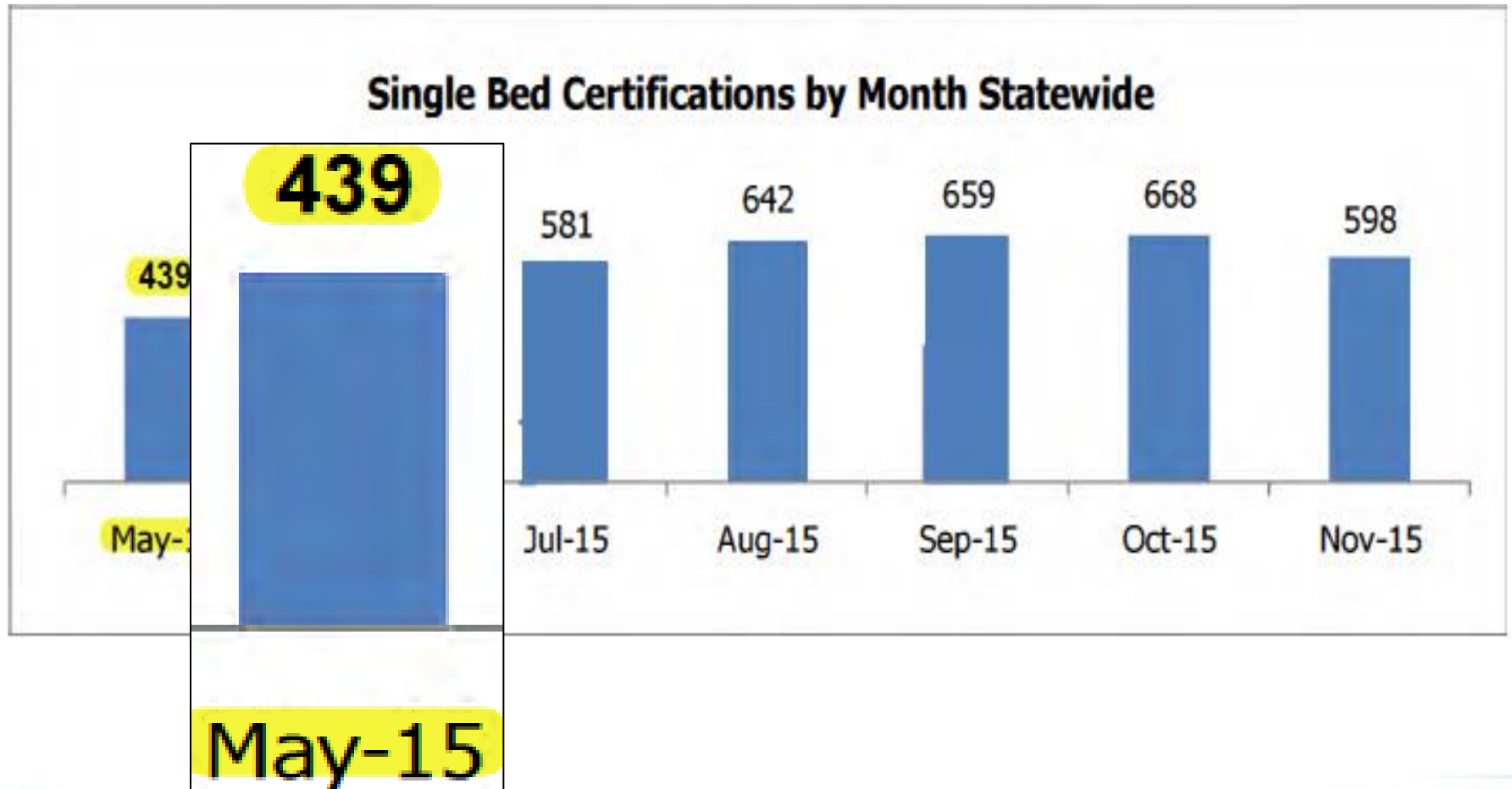
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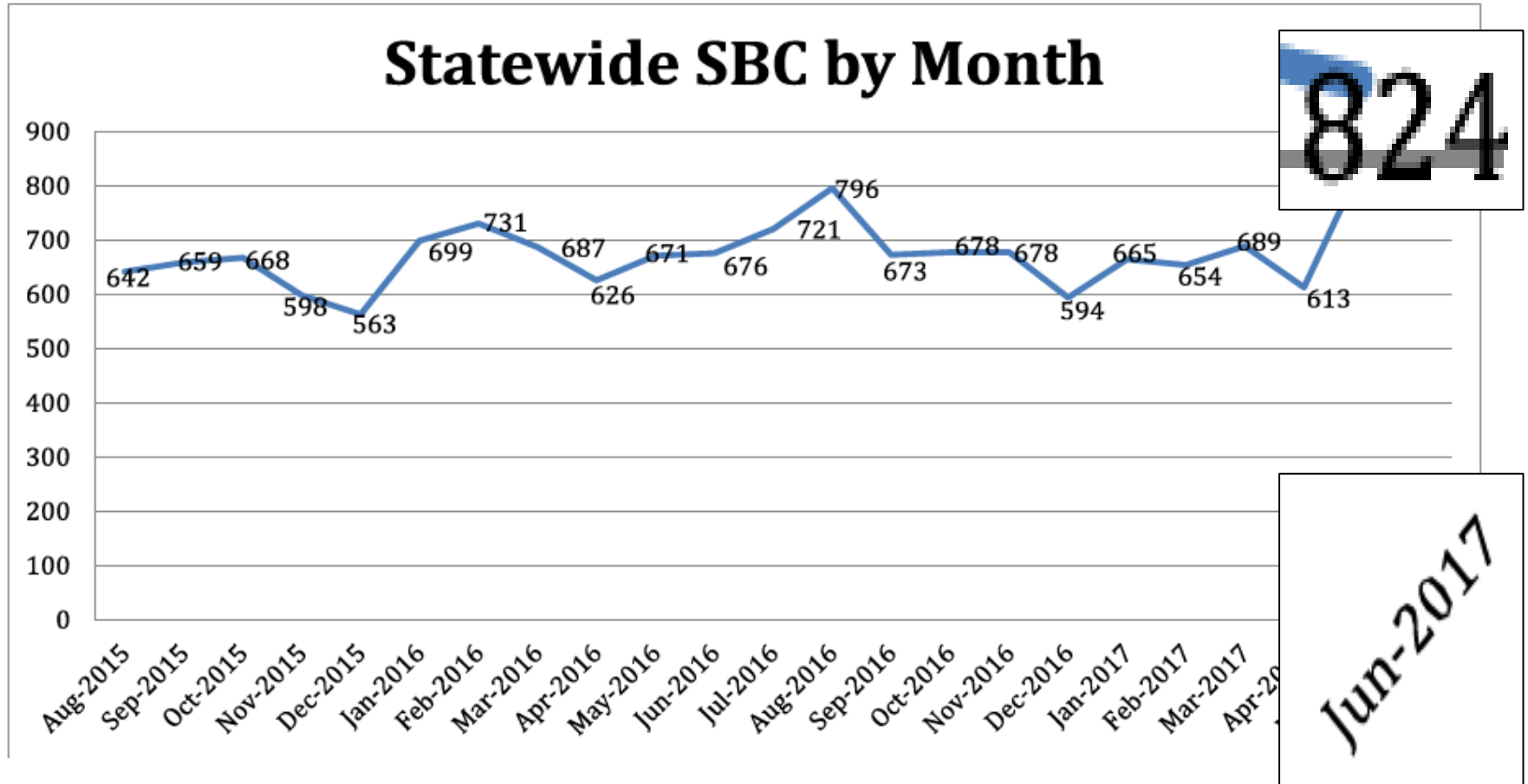
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Untreated and unable to see his family, he languished for hours, and then days, in a small room. When his hallucinations grew especially vivid, the ER nurses tied him to a bed so he wouldn’t hurt himself.

# Single Bed Certification Quarterly Update – January 2016



# Single Bed Certification Quarterly Update – July 2017



# The Certificate of Need Program

October 2017



Publication Number 346-093

For more information or additional  
copies of this report contact:

Health Systems Quality Assurance  
Office of the Assistant Secretary  
P.O. Box 47850  
Olympia, WA 98504-7850  
360-236-4612

John Wiesman, DrPH, MPH  
Secretary of Health

For people with disabilities, this document is available on request in other formats. To submit a request, please call 1-800-525-0127 (TDD/TTY call 711).

# The Certificate of Need Program

PSYCHIATRIC HOSPITAL - REGULAR REVIEW							
Fiscal Year	Applications Reviewed	Applications Approved	Applications Denied - Failed (210-230)	Applications Denied - (240)	Reasons for Denial	Beds Requested	Beds Approved
2013	2	2	0	0	N/A	245	245
2014	3	2	1	1	1 - Need 1 - Financial Feasibility 1 - Cost Containment	164	84
2015	0	0	0	0	N/A	0	0
2016	2	1	1	1	1 - Financial Feasibility 1 - Cost Containment	150	65
<b>TOTALS</b>	7	5	2	2		559	394

PSYCHIATRIC HOSPITAL – CONCURRENT REVIEW							
Fiscal Year	Applications Reviewed	Applications Approved	Applications Denied - Failed (210-230)	Applications Denied - (240)	Reasons for Denial	Beds Requested	Beds Approved
2015	7	3	1	4	1 - Financial Feasibility 4 - Cost Containment	682	264
2016	1	1	0	0	N/A	72	72
<b>TOTALS</b>	8	4	1	4		754	336



# The Certificate of Need Program

## PSYCHIATRIC HOSPITAL – CONCURRENT REVIEW

Fiscal Year	Applications Reviewed	Applications Approved	Applications Denied - Failed (210-230)	Applications Denied - (240)	Reasons for Denial	Beds Requested	Beds Approved
2015	7	3	1	4	1- Financial Feasibility	682	264
2016	1	1					
<b>TOTALS</b>	<b>8</b>	<b>4</b>					

Fiscal Year	Applications Reviewed	Applications Approved
<b>2015</b>	<b>7</b>	<b>3</b>
<b>2016</b>	<b>1</b>	<b>1</b>
<b>TOTALS</b>	<b>8</b>	<b>4</b>

# The Certificate of Need Program

PSYCHIATRIC HOSPITAL - REGULAR REVIEW						Beds Approved	Beds Approved
Fiscal Year	Applications Reviewed	Applications Approved	Applications Denied - Failed (210-230)	Applications Denied - (240)	Reasons for Denial		
						245	
2013	2	2	0	0	N/A		245
2014	3	2	1	1	1 - Need 1 - Financial Feasibility 1 - Cost Containment	84	84
2015	0	0	0	0	N/A	0	0
2016	2	1	1	1	1 - Financial Feasibility 1 - Cost Containment	65	65
<b>TOTALS</b>	7	5	2	2		<b>394</b>	394

PSYCHIATRIC HOSPITAL - CONCURRENT REVIEW						Beds Approved	Beds Approved
Fiscal Year	Applications Reviewed	Applications Approved	Applications Denied - Failed (210-230)	Applications Denied - (240)	Reasons for Denial		
						264	
2015	7	3	1	4	1 - Financial Feasibility 4 - Cost Containment		264
2016	1	1	0	0	N/A	72	72
<b>TOTALS</b>	8	4	1	4		<b>336</b>	336



Spokane 100 ★

★ Tacoma 120

★ Lacey 75

Vancouver 72



# Litigation Update

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**The Seattle Times**

## **Washington state AG Bob Ferguson, Seattle sue OxyContin maker over opioid deaths**

*Originally published September 28, 2017 at 10:07 am | Updated September 28, 2017 at 8:03 pm*

# Litigation Update

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**THE BELLINGHAM HERALD**

**Bellingham mom sues PeaceHealth,  
saying it refused to cover transgender  
care for her son**

OCTOBER 05, 2017 2:15 PM

# Missouri Court of Appeals Decision



**In the Missouri Court of Appeals  
Eastern District  
DIVISION ONE**

BRIAN KOON and MICHELLE KOON,	)	ED104987
	)	
Respondents,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	
	)	Hon. Michael W. Noble
HENRY D. WALDEN, MD and SAINT	)	
LOUIS UNIVERSITY,	)	
	)	Filed:
Appellants.	)	October 24, 2017

Dr. Henry Walden and St. Louis University (collectively “Defendants”) appeal from the multi-million dollar judgment entered after a jury trial on claims that they had overprescribed opioids to Brian Koon and caused him to become addicted, resulting in damages to him and his wife (collectively “Plaintiffs”). On appeal, Defendants challenge the denial of a mistrial during voir dire, the admission of certain evidence, the punitive damage instruction and the submissibility of all of the claims against them. We affirm.

The evidence at trial showed the following. Opioids—drugs such as oxycodone, oxycontin and hydrocodone—are a class of prescription pain relievers derived from synthetic versions of opium. All opioids have a similar effect on the brain. Opioids work by binding to receptors in the brain that control the perception of pain. They do so in generally the same way that heroin does and produce the same euphoric effects. There are serious risks associated with opioids, including

# Missouri Court of Appeals Decision

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prescribed to its patients. SLU's representative at trial said SLU saw no reason to monitor opioids any differently than other medications. A one-page policy from 1998 is the only standard SLU has in place for prescribing controlled substances, and it merely specifies what needs to be on the prescriptions and how records thereof must be maintained. SLU was aware of the risks associated

The jury returned a verdict in Plaintiffs' favor on their claims for compensatory damages,

assessing 67% of the fault to Defendants and 33% to Koon. Judgment was entered, awarding

Koon \$938,000 and his wife \$804,000 in compensatory damages. Judgment was also entered on the jury's verdict finding Defendants liable for punitive damages in the amount of \$15,000,000.

This appeal follows.

known that this conduct created a high degree of probability of injury and thereby showed complete indifference to or conscious disregard for the safety of others. They were also instructed to assess a percentage of fault to Koon if they believed he either failed to provide information to Dr. Walden, failed to weigh the risks and benefits, failed to follow Dr. Walden's instructions for opioid use or failed to follow instructions for weaning off the medications.

The jury returned a verdict in Plaintiffs' favor on their claims for compensatory damages, assessing 67% of the fault to Defendants and 33% to Koon. Judgment was entered, awarding Koon \$938,000 and his wife \$804,000 in compensatory damages. Judgment was also entered on

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

F.A., by and through his parents and guardians, P.A. and F.A., individually, on behalf of similarly situated individuals, and on behalf of THE NEIMAN MARCUS GROUP LLC HEALTH AND WELFARE BENEFIT PLAN,

Plaintiff,

v.

THE NEIMAN MARCUS GROUP LLC  
HEALTH AND WELFARE BENEFIT PLAN;  
and THE NEIMAN MARCUS GROUP LLC,

Defendants.

NO. 2:17-cv-1571

COMPLAINT  
(CLASS ACTION)

[REDACTED]

20 and F.A. and resides in King County, Washington. F.A. is a beneficiary, as defined by  
21 ERISA § 3(8), 29 U.S.C. § 1002(8), of The Neiman Marcus Group LLC Health and Welfare  
22 Benefit Plan. F.A.'s coverage is through P.A.'s employment with The Neiman Marcus  
23 Group LLC.

2. *The Neiman Marcus Group LLC Health and Welfare Benefit Plan.*

24 The Neiman Marcus Group LLC Health and Welfare Benefit Plan ("Plan") is an  
25 employee welfare benefit plan under the Employment Retirement Security of Act of 1974  
26



1 ("ERISA"). The Plan provides health benefits for The Neiman Marcus Group LLC  
2 employees and their dependents such as F.A.

3 3. *The Neiman Marcus Group LLC.* Defendant The Neiman Marcus  
4 Group LLC. ("Neiman") is the "Plan Sponsor" and "Plan Administrator" and is a named  
5 fiduciary under ERISA.

### 13 III. NATURE OF THE CASE

14 7. **F.A. seeks to end Defendants' standard practice of insurance**  
15 **discrimination against F.A. and other enrollees with developmental mental health**  
16 **conditions, including but not limited to autism spectrum disorder ("ASD").**

### 13 III. NATURE OF THE CASE

14 7. F.A. seeks to end Defendants' standard practice of insurance  
15 discrimination against F.A. and other enrollees with developmental mental health  
16 conditions, including but not limited to autism spectrum disorder ("ASD").  
17 Neurodevelopmental therapies ("NDT") (speech, occupational and physical therapies to  
18 treat developmental mental health conditions) and early and intensive provision of  
19 medically necessary Applied Behavior Analysis ("ABA") therapy can dramatically  
20 improve the health and life-long well-being of enrollees with developmental mental  
21 health conditions, including ASD. Defendants, however, exclude all coverage of  
22 medically necessary NDT and ABA services to treat developmental mental health  
23 conditions like ASD. Plaintiff seeks to enforce the Federal Mental Health Parity Act and  
24 the applicable provisions of the Affordable Care Act, though ERISA and the terms of the  
25 Plan, to end such discriminatory practices.

# State Hospital Update

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**The Seattle Times**

## **Western State Hospital in trouble with federal officials**

Originally published October 11, 2015

**October 11, 2015**

# State Hospital Update

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## Delays, Extensions As Western State Hospital Struggles To Get Back On Track

By AUSTIN JENKINS • OCT 5, 2017

OCT 5, 2017

# History

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**T.R. v. Quigley**



**December 2013**

**In the Matter of  
the Detention  
of D.W.**



**August 2014**

**Trueblood v.  
DSHS**



**April 2015**

# UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CASSIE CORDELL TRUEBLOOD, et al.,

Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT  
OF SOCIAL AND HEALTH SERVICES, et  
al.,

Defendants.

**JUDGMENT IN A CIVIL CASE**

CASE NUMBER: C14-1178 MJP

— **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

## THE COURT HAS ORDERED THAT

Defendants are ordered to cease violating the constitutional rights of Plaintiffs and class members by providing timely competency evaluation and restoration services, and a permanent injunction is entered by the Court.

Dated April 2, 2015.

William M. McCool  
Clerk of Court

s/Mary Duett  
Deputy Clerk

# UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CASSIE CORDELL TRUEBLOOD, et al.,

Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT  
OF SOCIAL AND HEALTH SERVICES, et  
al.,

JUDGMENT IN A CIVIL CASE

CASE NUMBER: C14-1178 MJP

**Fines: \$34,266,000**

**Attorney Fees: \$2,376,120.60**

THE COURT HAS ORDERED THAT

Defendants are ordered to cease violating the constitutional rights of Plaintiffs and class members by providing timely competency evaluation and restoration services, and a permanent injunction is entered by the Court.

Dated April 2, 2015.

William M. McCool  
Clerk of Court

s/Mary Duett  
Deputy Clerk

# *Volk v. DeMeerleer*, 187 Wn.2d 241, 386 P.3d 254 (2016).

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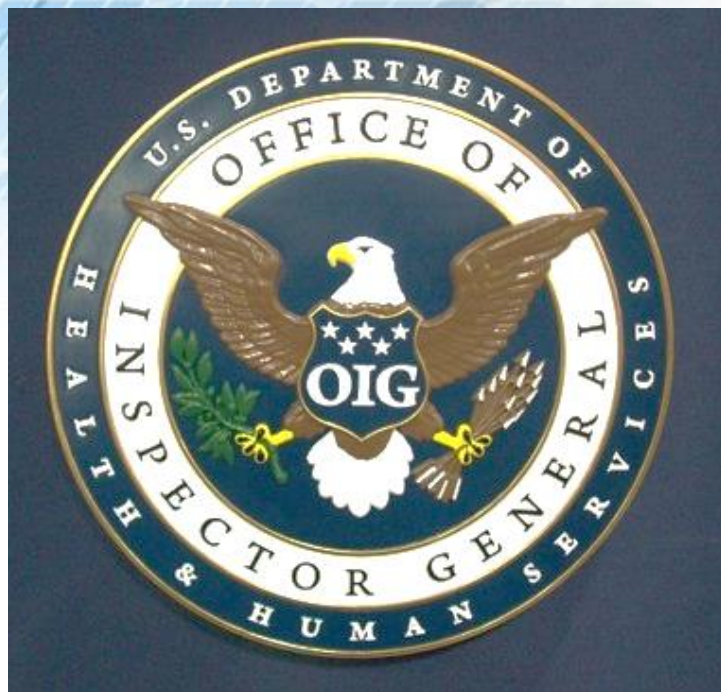
- Washington Supreme Court case.
- Double murder-suicide in July 2010.
  - Patient had received outpatient treatment for mental health issues with the same psychiatrist for years.
  - Patient killed his former girlfriend and one of her children, and attacked another of her children with a knife.
  - Patient had last seen his psychiatrist three months before the killings.
    - He reported having suicidal thoughts when depressed, but had not expressed a specific intention to harm anyone.

# *Volk v. DeMeerleer* – Holding

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- The Washington Supreme Court ruled that a psychiatrist could be liable for homicides and other violent acts committed by a patient, even though he had never identified the victims as targets of violence.
  - The relationship between a mental health professional and a patient creates a duty to “take reasonable precautions to protect *anyone* who might foreseeably be endangered by” the patient’s condition.
  - Whether the patient’s “actions were foreseeable...is a question of fact that should have been resolved by a jury.”





# EMTALA

# EMTALA

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- “In the case of psychiatric emergencies, an individual expressing suicidal or homicidal thoughts or gestures, if determined dangerous to self or others, would be considered to have an EMC.”
- EMTALA Interpretive Guidelines, § 489.24(d)(1)(i), Appendix V of State Operations Manual.

# AnMed Health, South Carolina

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- OIG claimed that in 36 incidents, patients presented to AnMed ED with unstable psychiatric emergency medical conditions.
- Patients not examined or treated by on-call psychiatrists.
- Patients not placed in empty beds in psych unit.
- Instead, patients were involuntarily committed in AnMed ED for 6 – 38 days each.



June 23, 2017

# AnMed Health, South Carolina

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**\$1,295,000**

# AnMed Health, South Carolina

Activity Detail			
Case Number:	Activity Date:	Additional Cases:	Related Cases:
B-17-30034-9	06/23/2017		
<b>Distribution:</b>		<b>State &amp; District:</b>	<b>ASAC:</b>
For OIG Reporting Purposes		SC	
<b>Case Agent(s):</b>		<b>Case Attorney(s):</b>	
		Sands, Sandra (202) 619-3567	
<b>Other Component(s):</b>		<b>Other Component Personnel:</b>	
<b>Other HHS Entities:</b>		<b>Other Entity Personnel:</b>	
<b>DOJ Attorney(s):</b>		<b>Other Agency(s):</b>	
		Other	

This is the largest settlement under EMTALA in the 30 years of our enforcement of this statute. AnMed was cooperative in this investigation, engaged in substantial corrective action and is increasing its hospital inpatient beds for psychiatric patients from 15 -34 by the end of this year.

Event Narrative
<p>Effective 6/23/2017, the Office of the Inspector General entered into a settlement agreement with AnMed Health (AnMed), a 533-bed hospital in Anderson, South Carolina. AnMed agreed to pay a penalty of \$1,295,000.00 to resolve its potential liability under EMTALA.</p> <p>A.M., a 32-year old female, presented to AnMed's emergency department (ED) via law enforcement on 7/6/2012 with psychosis and homicidal ideation and was involuntarily committed. A.M. did not receive psychiatric examination or treatment by available AnMed psychiatrists and was not admitted to the psychiatric unit for stabilizing treatment. Instead, A.M. was kept in the ED for 38 days and at one point was seen by a psychiatrist from another facility that was familiar with her condition. He then prescribed a variety of medications for agitation. A.M. eventually reached her baseline and her involuntary commitment was decertified and she was discharged home.</p> <p>Despite availability of on-call psychiatrists and beds in its psychiatric unit, during the period of 4/1/2012 through 7/21/2013, AnMed kept 35 individuals in its ED pursuant to a longstanding policy of not admitting involuntary patients to its psychiatric unit. AnMed's policies further provided that if an individual should be involuntarily committed and did not have financial resources, the attending physician could write an order for the local mental health center to evaluate the patient for commitment to the state mental health system after the patient is medically stable. These 35 individuals were kept in AnMed's ED for 6-38 days each until they were discharged or transferred to another medical facility. These individuals ranged in age from young adults to elderly adults. Most of them were suicidal and/or homicidal and suffered from depression, schizophrenia, bipolar disorder, drug abuse, psychosis, personality disorders and other serious psychiatric disorders.</p>
<p><b>Other Aspects of Interest to Case</b></p> <p>This is the largest settlement under EMTALA in the 30 years of our enforcement of this statute. AnMed was cooperative in this investigation, engaged in substantial corrective action and is increasing its hospital inpatient beds for psychiatric patients from 15 -34 by the end of this year.</p>
<p><b>Summary Code</b></p> <p>Patient Dumping</p>
<p><b>Summary</b></p>

# EMTALA Resources

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- State Operations Manual, Appendix V – Interpretive Guidelines
  - [https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107ap\\_v\\_emerg.pdf](https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107ap_v_emerg.pdf)
- Patient Dumping, US Commission on Civil Rights (September 2014)
  - [http://www.usccr.gov/pubs/2014PATDUMPOSD\\_9282014-1.pdf](http://www.usccr.gov/pubs/2014PATDUMPOSD_9282014-1.pdf)
- HHS OIG
  - <https://oig.hhs.gov/fraud/enforcement/cmp/index.asp>

# Questions?

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# LEWIS BRISBOIS BISGAARD & SMITH LLP

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