Hot topic discussion

The role of COERCION in Addiction MANAGEMENT

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Vanderbilt Behavioral Health

VANDERBILT UNIVERSITY MEDICAL CENTER

Faculty

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Disclosures

No faculty member has any relevant conflicts of interest

Learning Objectives

At the conclusion of this session participants will be able to:

1. Appreciate the role of coercion in addiction management
2. Understand the concept of decision-making capacity
3. Consider the possible role of coercion to initiate MOUD

There is Help

A Healthier Physician
is a Better Physician

DISCLOSURE

Dr. Baron is Board Certified: Anesthesiology, Psychiatry and Addiction Medicine

4/2010 – 1/2017 Tennessee Board of Medical Examiners.

6/2014 – 1/2017 Chair - Controlled Substance Monitoring Database Committee

- Dr. Baron will not discuss off label or investigational medication.
- Dr. Baron has not received commercial support for this lecture.

Financial and Managerial Relationships:

2017- Present	Medical Director: Tennessee Medical Foundation – PHP
2022- Present	President-Elect: Federation of State Physician Health Programs
2020 – Present	State Volunteer Medical Insurance Company
2018 – Present	Volunteer Medical Director: Nashville-Davidson County Drug Court and Women's Residential Recovery Court.
2006 – Present	Course instructor: Prescribing Controlled Drugs: Center for Professional Health- Dept of Internal Medicine, Vanderbilt
2004 – Present	Clinical Assistant Professor - Dept of Psychiatry Vanderbilt, School of Medicine.

OBJECTIVES

Become familiar with physician health and wellness, illness and impairment.

Describe the current state in physician health

Become familiar with the Physician Health Programs statistics.

PHP MODEL

- Illness vs. impairment: illness and impairment exist on a continuum with illness typically predating impairment, often by many years
- Confidentiality promotes early intervention
- Therapeutic alternative to discipline
- Protect patient safety through accountability
- Rehabilitate the professional for safe return to practice
- Chronic illness management/continuing care and health monitoring agreements
- Compliance documentation as evidence of ongoing safety to practice
- Execute statutory reporting requirements to licensing board when indicated
- Expertise with the healthcare profession (a safety sensitive occupation)

Physician Health Programs

- PHPs are a confidential resource for physicians, trainees and medical students suffering from potentially impairing conditions to get help.
- They facilitate the early **detection**, **intervention**, **evaluation**, **treatment**, **continuing care** and **monitoring** longitudinally over time.
- When confidentiality is ensured by a PHP, physicians with potentially impairing illnesses are much more likely to come forward and utilize a PHP earlier in the disease process, which reduces the likelihood of the illness progressing to impairment.

Organizing Framework

Wellness

Illness

Impairment

- Prevention driven
- Self-directed/autonomous
- Individual protections
- Confidentiality
- Lower risk

- Event driven
- Other-directed/compulsory
- Patient/public protections
- Transparency/accountability
- Higher risk

High Stakes

Concept: Therapeutic Alternative to Discipline

- Punishing ill physicians does not make them well or keep the public safe.
- The threat of punishment leads to:
  - Attempts to self treat
  - Curbside treatment
  - No treatment at all, sometimes death
  - Late intervention: Impairment leads to complaint and regulatory involvement

TMF-PHP Confidential Track

The confidential track allows for a therapeutic alternative to discipline, with the support of organized medicine.

The Physician or other HCP gets referred by self, spouse/SO, parent, sibling, medical practice, managing partner, lawyer, MEC, CMO, CWO (wellness), patient, or law enforcement.

They are evaluated, treated (if indicated), returned to work, and monitored without punitive action.

TMF-PHP Mandated Track

Physician/HP is referred, mandated by the respective Health Regulatory (Licensing) Board.

Physician is treated the same way as those in confidential track.

There can be an accompanying punitive action such as a Reprimand or Probation on license, which is reported to NPDB.

Health Regulatory Board - punitive approach increases stigma and resistance to getting help.

Tennessee Medical Foundation - Physician's Health Program

Appropriate referrals to the TMF-PHP:

- Addiction, addiction behavior, DUI…
  - Positive toxicology, pre-hire or for cause
- Distressed (disruptive) behavior
- Physician Burnout Syndrome
- Boundary violations
- Other behavioral health disorders

Tennessee Medical Foundation - Physician's Health Program

Our Charge:

- MD, DO, PA, DVM, DPM, OD, Chiro, surgical asst, X-ray operator, perfusionists, including students and residents
- Anyone else

Not Pharm, nurses, DDS.

TMF-PHP Typical Referral Procedure

- Physician is referred to TMF by either track
- Demographic information is obtained
- The physician/HCP first meets with a case manager
- Collateral information and documentation is obtained
  - Evaluation and treatment records, disciplinary records, legal records, other PHP records, etc.
- Physician/HCP then meets with Medical Director
  - They can get referred for an external comprehensive evaluation
  - Other options include Treatment, CME, Psychological/Psychiatric help
- A "return to work" may be provided

Our Outcomes Speak for Themselves

Washington Physicians Health Program (WPHP)

- JAMA 2005
- 75% successful outcome- substance use monitoring
- Risk factors – opioid abuse, family history, dual diagnosis

Outcomes of a Monitoring Program - MAPHS

- J. Psychiatry Practice 2007
- 75% successful completion - behavioral health & substance use disorder monitoring contracts

Our Outcomes Speak for Themselves

"Blueprint" PHP Study: Mc Clellan et al. BMJ 2008; Dupont et al. J Subs Abuse Treatment 2009

- 16 PHPs, 904 physicians with SUD
- 78% successful completion without detected relapse
- Including those with relapse and further intervention, over 90% doing well at 7.2 years
- Single report of patient harm (over prescribing)

"Such programs seem to provide an appropriate combination of treatment, support, and sanctions to manage addiction among physicians effectively."

The PHP Model after 5 years.

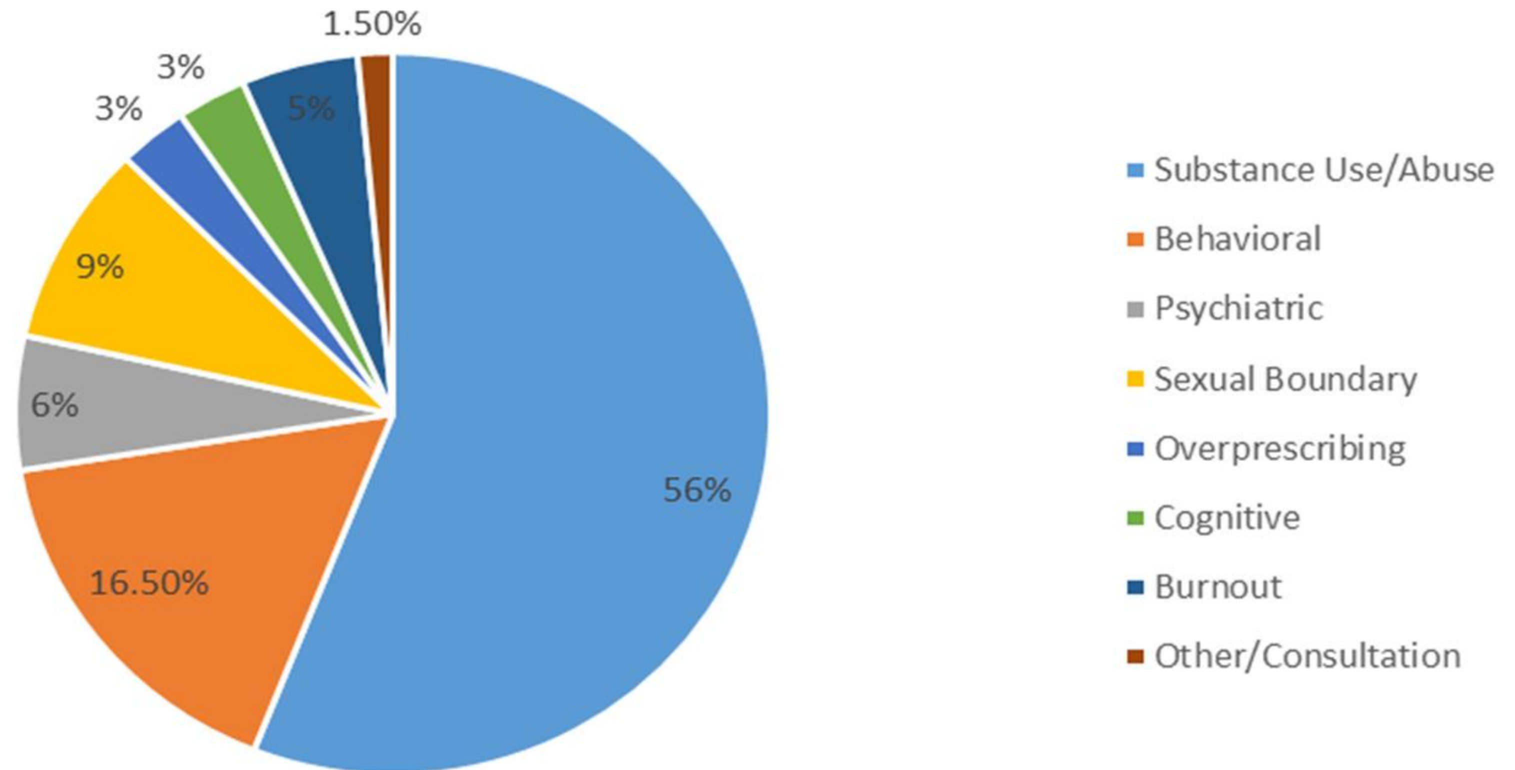
Essential components of physician health program monitoring for substance use disorder: A survey of participants 5 years post successful program completion: Merlo, L., Am J Addict. 2022;1–8.

- Virtually all PHP program components were rated as being at least “somewhat helpful” in promoting recovery, with the plurality of respondents rating almost all components as “extremely helpful.” The top-rated components were: signing a PHP monitoring agreement, participation in the PHP, formal SUD treatment, and attending 12-step meetings… Notably, 88% of respondents endorsed continued participation in 12-step fellowships… 85% of respondents reported they believed the total financial cost of PHP participation was “money well spent.”
- 97% of respondents reported that they currently considered themselves to be “in recovery

Tennessee Medical Foundation - Physician’s Health Program

Currently @ 225 Health Professionals under a Monitoring Agreement

Since 2002 the TMF-PHP has helped >2,600 Healthcare Professionals in TN



TN-PSQ

- An online mental health resource to address depression, burnout, and other mental health problems among Tennessee's licensed health professionals served by the Tennessee Medical Foundation - Physician's Health Program (TMF-PHP).
- Open to all Tennessee physicians, residents, interns, and medical students.
- Initiated by the TMF in partnership with the Board of Medical Examiners, the Tennessee Medical Association and State Volunteer Mutual Insurance Company.

TN-PSQ

- TN-PSQ is intended to help connect physicians with available mental health resources in their area.
- The TN-PSQ is a free, anonymous, confidential online mental health screening to provide referrals to appropriate mental health resources and optional interaction with a program therapist.
- This tool is completely driven by the user. This should alleviate some of the fears involved in asking for help with mental or emotional illness.

TN-PSQ UPDATE

As of October 5, 2022, we have had 533 health professionals access the TN-PSQ:

- 103 (19%) were Tier 1A (high/severe distress including SI)
- 186 (35%) were Tier 1B (high/severe distress w/NO SI)
- 219 (42%) were Tier 2 (moderate distress)
- 24 (4.5%) were Tier 3 (low to NO distress)
- 85% were not already receiving treatment or therapy for their mental health problem

TN-PSQ link:

https://tn.providerwellness.org

TMF TN-PSQ Page and FAQs:

https://e-tmf.org/tnpsq/

There are links on the TMF-PHP, TMA, BME, and SVMIC websites.

TMF-PHP History

1978 Tennessee Medical Association Board of Trustees established a committee for the purpose of offering professional assistance to physicians suffering from addiction.

1983 Part-time Medical Director hired.

1986 Full-time Medical Director hired. NJ only other state to have a FT Medical Director.

1992 TMA transferred oversight and management to the Tennessee Medical Foundation.

1997 Physician's Health Program replaces Impaired Physicians Program.

1999 Assistant Medical Directors hired for Johnson City, Memphis and Chattanooga.

TMF-PHP Medical Directors

1978-1983 Dr. Bill Anderson was first Medical Director; Volunteer/part-time. He laid the foundation for years to come.

1983-1986 Dr. David Dodd Medical Director (Surgeon), part-time.

1986-1997 Dr. Dodd became full-time Medical Director.

2002-2017 Dr. Roland Gray (Pediatrician); 2nd full-time Medical Director

2017-Present Dr. Baron (Psychiatrist/Addictionologist/Anesthesiologist).

For Further Information

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Tennessee Lawyers Assistance Program

Questions About Decision-Making Capacity in Addiction Cases

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A Puzzling Anomaly: Decision-Making Capacity and Research on Addiction

L.C. Charland, PhD.
The Oxford Handbook of Research Ethics
2018

- Illuminates questions regarding patient decision-making capacity in some addiction cases.
- The anomaly: decision-making capacity research has been conducted as to depression, schizophrenia, and anorexia, <u>but none for addiction</u>.
- Questions arise regarding the decision-making capacity of MOUD patients, etc.

Capacity and Consent in Harm Reduction Models

L.C. Charland, PhD.
The Oxford Handbook of Research Ethics
2018

"It is worth noting that sometimes, paradoxically, harm reduction practitioners report that they see their clients both as autonomous and competent to make decisions, and as helpless and in thrall to the power of drugs."

Illicit Drug Dealer's Viewpoint on Capacity

L.C. Charland, PhD.
The Oxford Handbook of Research Ethics
2018

"Drug Dealers choose to view their clients as vulnerable rather than fully autonomous."

"Drug Dealers capitalize on facts about the decision-making capacity of drug users that many addiction researchers and philosophical commentators appear determined to overlook or deny."

Capacity and Consent in Harm Reduction Models

L.C. Charland, PhD.
The Oxford Handbook of Research Ethics
2018

“Choice does not in itself imply capacity.”

“Free will does not settle the question.”

Capacity cannot be assumed or presumed in addiction cases.

The Opioid Crisis and Capacity

L.C. Charland, PhD.
The Oxford Handbook of Research Ethics
2018

Aside from MOUD, is it not also valid to question the decision-making capacity and autonomy of patients who were, upon medical advice, prescribed opioid pain medication and became addicted in the first place?

"We may wish and probably should endeavor to treat persons with severe addictions as if they were fully autonomous agents, but that does not make them so."

The Puzzling Tension: Vulnerable or Capable?

L.C. Charland, PhD.
The Oxford Handbook of Research Ethics
2018

“There may be a tension in the manner in which society and the harm reduction community choose to view vulnerability in addiction”

Query: can a person with a severe substance use disorder concurrently be deemed:

1) Severely impaired and incapable of protecting themselves such that society must step in; and
2) Fully capable with intact capacity to exercise autonomy in addiction treatment decision-making?

The Bottom Line:

L.C. Charland, PhD.
The Oxford Handbook of Research Ethics
2018

“There are sound, evidence-based reasons to doubt and investigate capacity in some cases of severe, chronic addiction that have not been sufficiently discussed in the relevant literature. We should be mindful that standards to assess decision-making capacity are historically and socially conditioned and therefore not immutable.”

THANK YOU!

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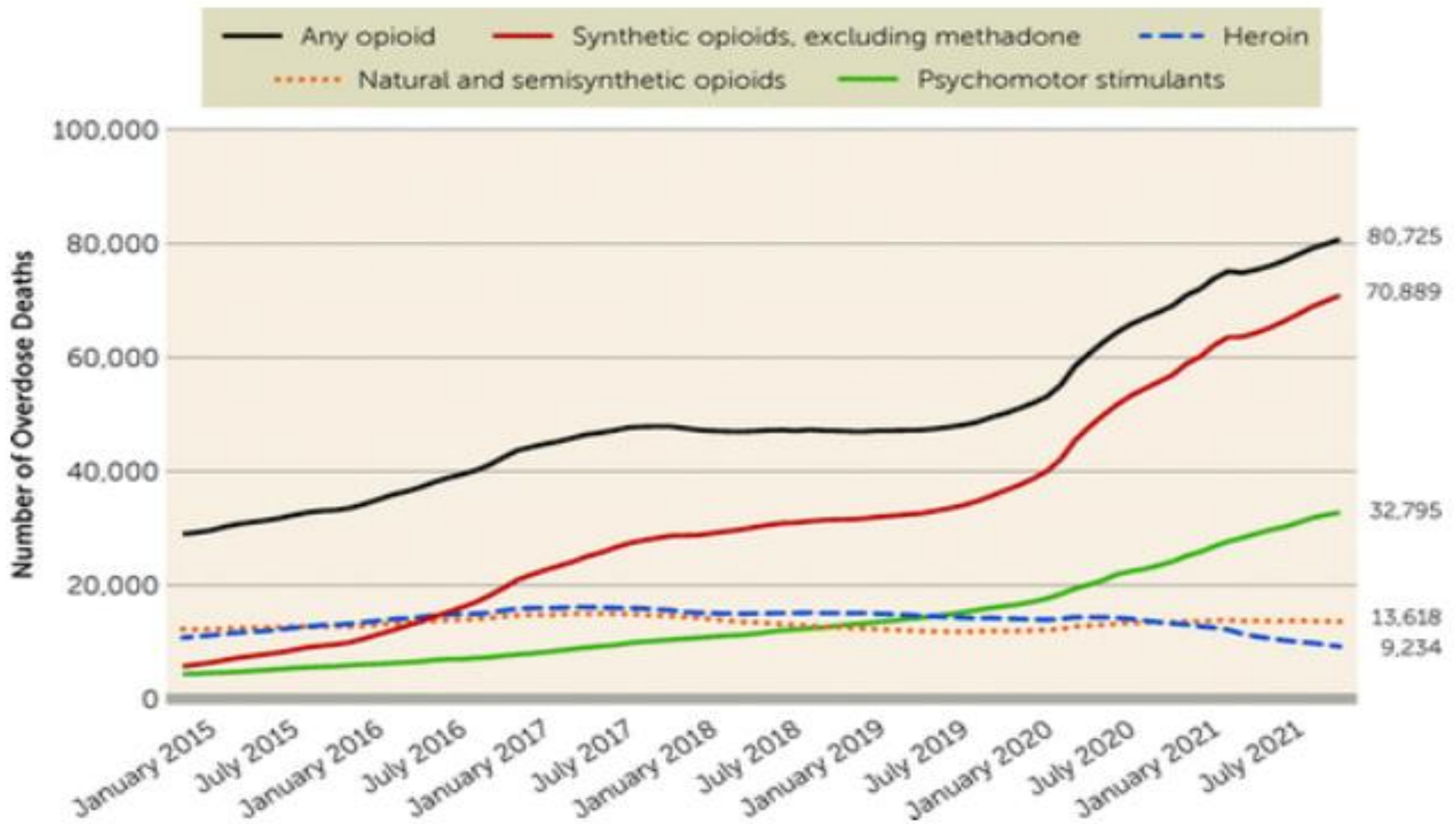

Bergeria CL, Strain EC. Opioid Use Disorder: Pernicious and Persistent.
Am J Psychiatry. 2022 Oct;179(10):708-714. doi: 10.1176/appi.ajp.20220699. PMID: 36181330.

MEDICAL INQUIRIES

AND

OBSERVATIONS,

UPON

THE DISEASES OF THE MIND.

BY BENJAMIN RUSH, M. D.
Professor of the Institutes and Practice of Medicine, and of Clinical Practice, in the University of Pennsylvania.

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186645.

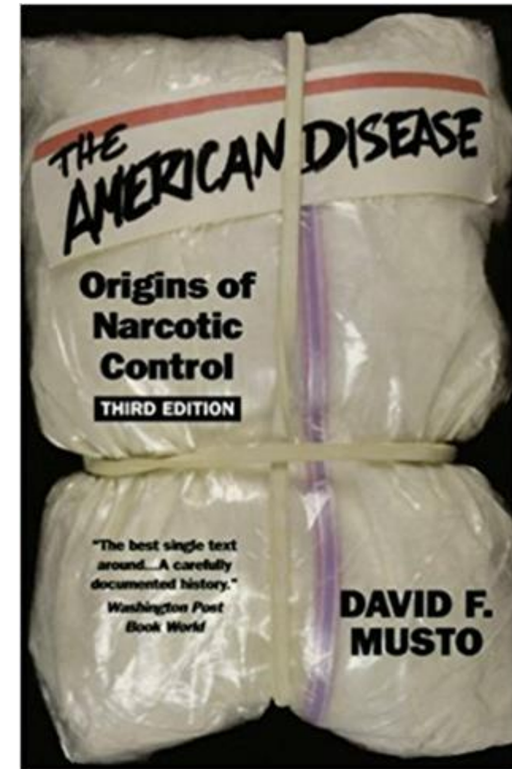
PHILADELPHIA:
PUBLISHED BY KIMBER & RICHARDSON,
NO. 237, MARKET STREET.
Merritt, Printer, No. 9, Watkin's Alley.
1812.

Chapter X On Derangements in the Will

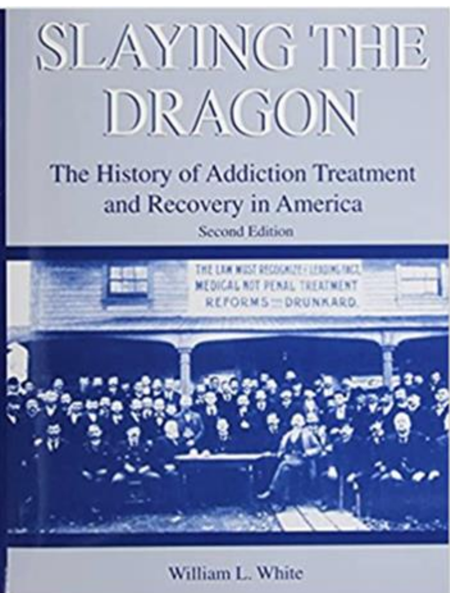
'For a more particular account of this moral disease in the will … I have selected those two symptoms of this disease, **murder and theft** (for they are not vices) from its other morbid effects, in order to rescue persons affected with them from the arm of the law, and to render them the subjects of the kind and lenient hand of medicine.

'But there are several other ways, in which this disease in the will discovers itself, that are not cognizable by law. I shall describe but two of them. These are, **lying and drinking**.'

The Harrison Tax Act 1915-19



"Administrative interpretations of the Harrison Act removed the judgment of "good-faith medical practice" from the medical community, turning the evaluation of medical practices over to an adversarial legal system and a jury of citizens who knew little about medicine and even less about addiction."



White, W. (2014). The early criminalization of narcotic addiction. Posted at www.williamwhitepapers.com.

Male Incarceration Rates of Sentenced Prisoners Under State and Federal Jurisdiction per 100,000 Population, 1925–2018

1,000
800
600
400
200
0

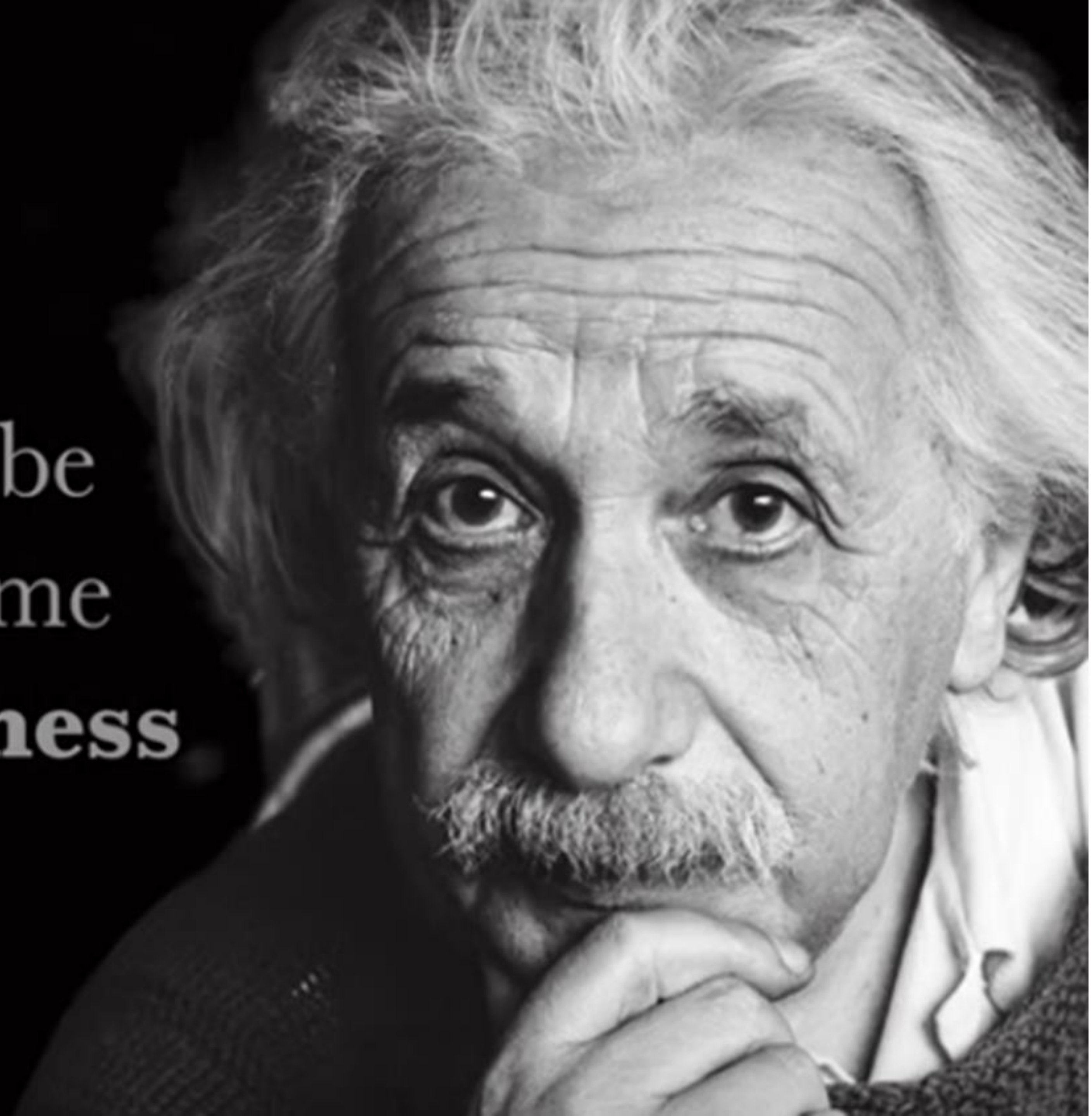
President Nixon Declared a "War on Drugs" in 1971 and the US Male Incarceration Rate Increased Almost 5X Over the Next 40 Years

1930 1940 1950 1960 1970 1980 1990 2000 2010 2020

Source: Bureau of Justice Statistics

"You have to plug the holes...
...before you can bail the boat!"

“No **problem** can be **solved** from the same level of **consciousness** that **created** it.”



Nora Volkow, MD, Director,
National Institute on Drug Abuse

(annual report to principal investigators in the Clinical Trials Network, Rockville, Maryland, November 2, 2021)

To end the addiction crisis, bring addiction out of the shadows

"As a society, we still keep addiction in the shadows, regarding it as something shameful, reflecting lack of character, weakness of will, or even conscious wrongdoing, not a medical issue."

Repeated naloxone resuscitations

Resuscitate and release

Naloxone Antagonism

Opioid HUNGER

Cerebral Anoxia

Responder frustration

Demand for potent opioids

PLUG THE HOLES!

1. Substance Use Disorder IS a DSM-5 TR psychiatric illness
2. Naloxone antagonism
3. 72-hour involuntary hospitalization for evaluation / MOUD
4. ASAM levels of treatment
5. Court oversight of community treatment orders

5. Contingency management: housing, jobs

72-hour involuntary evaluation - Title 33, Chapter 6, Part 4, Tennessee Code Annotated

B In my professional opinion, based on the examination and the information provided, I certify that this person is subject to involuntary care and treatment under Title 33, Chapter 6, Part 4, Tennessee Code Annotated because, as shown by the following facts and reasoning, the person:

1. has a mental illness or serious emotional disturbance as defined in Tenn. Code Ann. § 33-1-101(16) and (20), (**list known mental illness or serious emotional disturbance history and current signs/symptoms**):
   Mental illness is a psychiatric disorder, alcohol dependence or drug dependence; does not include intellectual and/or developmental disabilities. ***Serious emotional disturbance*** is a condition in a **child** who at any time during the past year has had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet psychiatric diagnostic criteria, that results in functional impairment which substantially interferes with or limits the child's role or functioning in family, school, or community activities and includes any mental disorder, regardless of whether it is of biological etiology.

Supreme Court Raises Bar for Convicting Doctors of Controlled Substances Act Violations

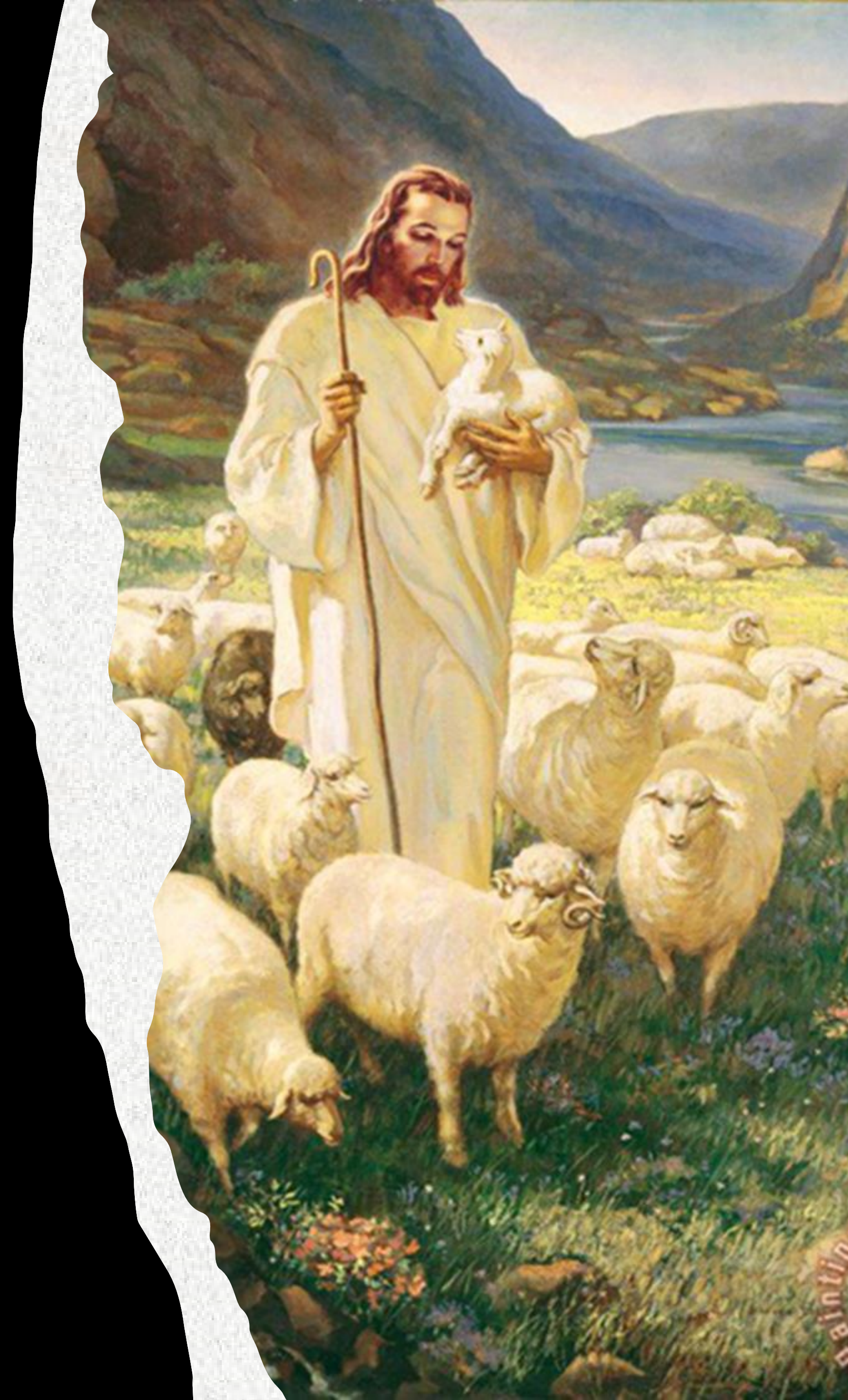
A.W. Latner' JD
9/6/2022

- Criminal law requires conscious wrongdoing vs. civil negligence
- Federal jurisdiction under the CSA begins when a doctor abandons the subjective belief of practicing medicine and becomes a mere drug dealer. Disputes over medical practice are adjudicated under state law.
- Once a physician has claimed his/her actions were authorized it is the burden of the government to prove that the physician knew they were not.

Addiction Stigmatized

or

Managed by Community



"The drug addict is a sick man both physically and mentally, and should be studied and treated as a sick man and not as one always willfully delinquent."

Brown LP Am J Public Health 5:4 323-33 April 1915

"It is our duty to show these patients the same consideration that we have for those suffering from other kinds of sickness."

Butler WP AMERICAN MEDICINE January – December 1922

Vanderbilt Behavioral Health