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WPA Position Statement on the Rights of Persons with Disabilities

The UN Committee on the Rights of Persons with Disabilities, which is charged with overseeing the implementation of the Convention on the Rights of Persons with Disabilities (CRPD), has issued a statement interpreting several provisions of the CRPD that are relevant to psychiatry. In their General Comment #1, the UN Committee indicated its belief that the CRPD precludes any non-consensual hospitalization or treatment, or the appointment of a substitute decision maker for an incapable person, under any circumstances whatsoever. It bases this belief on the view that “the existence of an impairment...must never be grounds for denying legal capacity.” Along with many commentators, the World Psychiatric Association (WPA) finds that interpretation of the CRPD to be unconvincing and potentially extremely harmful to persons with disabilities themselves.¹

The CRPD appropriately recognizes the importance of respect for the legal rights of persons with disabilities and provision of support to enable effective exercise of those rights. However, we note that although most people with mental disorders are not disabled, because of the presence of a severe mental disorder, some persons may lack the capacity to make meaningful decisions for themselves or may behave in ways that are severely harmful to themselves or others. For example, persons suffering from cognitive impairment associated with dementia may be vulnerable to exploitation by persons who take advantage of their limitations to deprive them of their savings. In general medical settings, the effects of an acute delirium may lead patients to refuse life-saving treatment. Severely depressed persons, as a result of the hopelessness that is a prominent feature of depression, may intend to take their own lives. In these and other cases, the impairment of decisional abilities leaves persons

with mental disorders vulnerable to exploitation by others and unable to protect their interests.

Responding to this reality, most states have established mechanisms for the determination of capacity and for decisions to be made on behalf of persons found to lack capacity. Those decisions may cover areas such as finances, living situations, medical treatment, and hospitalization. In addition, recognizing that persons with severe mental disorders, as result of those disorders, may pose a substantial risk of harm to themselves or others, legal mechanisms generally exist to permit hospitalization in such situations without the person's consent. When governmental action is taken to protect persons with impaired capacity, WPA supports the provision of stringent substantive and procedural protections of the sort found in modern mental health statutes. These include narrow criteria to determine incapacity and/or the need for hospitalization; and the rights to a hearing before a legal decision maker, to representation by legal counsel, to advance notice of a hearing, to testify on one's own behalf, to call witnesses, to appeal adverse findings to a higher court, and to periodic review. Non-consensual hospitalization of persons with mental disorders should be, and in modern laws is, authorized for limited periods of time, after which the person is entitled to re-evaluation and a re-hearing on the need for continued hospitalization.

The WPA believes strongly that non-consensual hospitalization and treatment and the use of substitute decision making have appropriate roles to play in protecting the interests of persons with severe mental disorders, when used in appropriate cases, with careful oversight and rigorous procedural protections. In addition, WPA strongly supports efforts to assist persons with decisional impairment to recover capacity, so that they can make their own decisions once more. Hence, the WPA asks the UN Committee to reconsider its interpretation of the CRPD, and recommends that subsequent amendments to the CRPD clarify the importance and legitimacy of protecting people with severe mental disorders when they lack the capacity to defend their interests or protect themselves.

¹ See, e.g., Freeman MC, Kolappa K, de Almeida JMC, et al: Reversing hard won victories in the name of human rights: a critique of the General Comment on Article 12 of the UN Convention on the Rights of Persons with Disabilities. *Lancet Psychiatry* 2:844–850, 2015; Appelbaum PS: Protecting the rights of persons with disabilities: an international convention and its problems. *Psychiatric Services* 67:366–368, 2016; Dawson J: A realistic approach to assessing mental health laws' compliance with the UNCRPD. *International Journal of Law and Psychiatry* 40:70–79, 2015; Helmchen H, Sartorius N (eds), *Ethics in Psychiatry, European Contributions*. Springer Vlg., Heidelberg, 2010, Callard F, et al. (eds), *Mental Illness, Discrimination and the Law*. Wiley-Blackwell, Chichester, London, 201