

Why the Recent Finding Against Mental Health Giant UBH is Bigger Than it Looks

The decision released on March 5, 2019 against United Behavioral Health may at first blush appear to be merely a sharp rebuke of corporate negligence that led to systematic denials of mental health coverage for inpatient and outpatient services. In his decision, Chief Magistrate Judge Joseph C. Spero cited UBH's systematic re-framing of its obligation to fund mental health treatment, detailing the ways in which the company both subtly and explicitly restricted the scope of this obligation to focus more and more exclusively on symptom reduction and on managing acute mental health episodes, rather than on providing treatment for potentially ongoing human suffering. In his 106-page finding, Judge Spero traced the ways in which UBH moved the goalposts farther and farther from parity with medical treatments during its annual revisions of its Guidelines for determining medical necessity, finding that "financial incentives...have, in fact, infected the Guideline development process" [1].

Most obvious in light of this decision is that UBH was caught putting profits before people, formulating its own policies for determining medical necessity that justified its refusal to pay out to treat those who paid in. This is significant — it is reassuring to know that someone is walking the beat to ensure that people are getting the benefits promised them — but not surprising. Even before the advent of managed care, people have understood that private insurance companies exist at least in part to profit from human distress and they regulate benefit levels in order to make those profits. United Behavioral Health is a subsidiary of UnitedHealth Group, a for-profit insurance company so massive that it ranks, according to Forbes, as the 5th largest corporation in the US [2] (viz., "UnitedHealth Group says 2019 Revenues Will Eclipse \$240 Billion," [3]) (italics ours). A company doesn't show an 11-figure net income, holding some \$140 billion in assets,[4] without rationing its outflow, lawfully or not. Happily, but not surprisingly, this decision makes clear that UBH's rationing has indeed been unlawful.

More significant, however, is the fact that while the court's decision rested upon UBH's deliberate deviations from generally accepted standards of care in its Guidelines, the determination also articulated precisely what those "generally accepted standards of care" actually are. This is where something truly extraordinary happened. By rigorously holding the lens of medical necessity to questions of mental health necessity, Judge Spero has spotlighted the complicated interactions of professional organizations, research funders, training programs and policy makers that have resulted in the systematic undermining of what we should accept as our standard of care for mental health, to the point where the creation by UBH of its own Guidelines that in many respects reduced the definition of mental health treatment to that of crisis intervention were barely noticed by regulators until this decision came down.

As a result of this erosion and restriction of our views of what constitutes appropriate mental health care, most people, and indeed many practitioners, view psych hospitalizations as appropriate only for those who are an imminent danger to self or other, equate symptom remission with cure, and assume the need to demonstrate improvement in accordance with the expectations of protocols as a condition for service underwriting. Contrary to these prevailing views, Judge Spero reminded corporations, practitioners and patients alike that "effective treatment requires treatment of the individual's underlying condition and is not limited to alleviation of the individual's current symptoms." Further, this

ruling emphasizes that decisions regarding the intensity and level of restriction of appropriate services should be based not merely upon considerations of safety, but of treatment effectiveness, and this not merely in remediating symptoms, but in maintaining current levels of functioning, preventing deterioration, and resolving underlying sources of distress, in keeping with the criteria for optimal medical care.

Indeed, the concept of mental health yielded by the Judge's pronouncement has radical implications for mental health care as it is conceptualized, researched and practiced. By acknowledging that psychotherapeutic treatments of depth, insight and relationship can be considered as embodying the "generally accepted standard of care," Judge Spero's ruling may have pulled us from the brink of the abyss into which mental health services in Britain have fallen, in which a bean-counting managerialism has yielded corrupted science, widespread treatment failure, and a general dehumanization of social life, as described by Farhad Dalal in *CBT: The Cognitive Behavioural Tsunami* (Routledge, 2018). This threat has hovered closer than ever of late in light of the lack of separation between our professional organizations and insurers. For instance, a president of one state psychiatric society is also one of UBH's medical directors (whose testimony at trial was found to be not credible). Meanwhile, it should be of little surprise that the American Psychological Association's own Guidelines program strikingly resembles UBH's in both focus and conclusions, given that several UBH executives contributed to the formulation of the APA's Guidelines for the treatment of PTSD, obesity and depression, with more to come in the pipeline. The APA's decision to restrict the basis of their overviews of treatment effectiveness to studies that defined diagnosis by symptom checklist and equated short-term symptom remission with outcome has yielded Guidelines that uncannily resemble those issued by UBH, and which are now viewed as likely to constitute efforts to mitigate against the financial effects of parity. The attorneys for the plaintiffs, Meiram Bendat of Psych-Appeal and D. Brian Hufford of Zukerman Spaeder, along with their experts, Dr. Marc Fishman and Dr. Eric Plakun, as well as the plaintiffs themselves, have opened the doors to more equitable access to treatments that work. Now we shall see whether leadership in our own mental health system is willing to do the same.

[1] *Wit, et al., v. UBH, Alexander, et al., v UBH*, United States District Court, Northern District of California, 2019 [2] "UnitedHealth Group (UNH) Stock Price, Financials and News | Fortune 500". Fortune. Archived from the original on July 26, 2016.

[3] Forbes, 28 Nov 2018

[4] "UnitedHealth Group Reports 2017 Results". UnitedHealth Group. January 17, 2018