
Interview: Bryant L. Welch



Managed care has devastated the U.S. mental health system

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EIR: I understand there was a "60 Minutes" segment on the question of managed care and psychology on Jan. 5.

Welch: Right. One of my clients was kind of the featured patient/victim in that, a woman named Lynne Mizel. I thought they did an excellent job.

EIR: Could you tell me about the litigation that you're involved in?

Welch: The fundamental flaw with managed care is that the managed-care company is pre-paid, and then they have to make decisions about how much of that money they want to pay in patient care and how much they want to keep in corporate profits. So, the incentives are just *overwhelmingly* in the direction of undertreating.

That's particularly pronounced in the mental health field, for a number of reasons. The mental health patients are less able to protect themselves and fight for themselves. It's harder for them to go in to their employers and protest at being denied mental health treatment.

EIR: Because they have to admit they're under care?

Welch: Yes. And the other thing is that mental health is more subjective, I think, than some of the other treatments. So, it's easier to come up with some squishy rationale of why the care isn't needed, and it's harder then to argue against that. So there are a number of reasons why mental health has just been devastated.

EIR: When you say devastated, what do you mean?

Welch: I'll give you an example of a client I have in Baltimore. It's a woman who's in her late 30s-early 40s. Her 13-

year-old son needed residential treatment. His father died when he was seven; he'd been seriously depressed. When these kids hit adolescence, that's when all hell breaks loose for them. They can start acting out, turning to drugs, or constant need for stimulation to kind of stave off the depressed feeling. So he was doing a lot of dangerous things—stealing her car late at night and joy-riding. This was a very sweet, good kid. But he just fell apart.

He needed hospitalization. He was a dead ringer for a kid that I treated about 20 years ago in North Carolina, and we had him in a residential facility for about 15 months. We totally turned his life around. When he started out, he was angry, he wouldn't talk to me. You stick with these kids and gradually they understand that, unlike other adults, you're not going to be someone who's left him, the way his father left him, in effect. So you develop trust with him and then you start working through some of the problems. This kid now is a very successful professional person.

The boy now, with the new managed-care system, they gave him two days of hospital care. They denied residential treatment. The only reason you ever put adolescents in residential treatment, is if they're out of control. What the managed-care company said is that we're not going to give this boy residential treatment, because he didn't cooperate with his outpatient treatment! When you use that rationale, you never use residential treatment. This is the kind of sophistry you see.

So, they let him out over the objection of his outpatient therapist and his mother and his psychiatrist. Five days later, he was dead. He took the mother's car late at night. To this day, she has nightmares. You can just imagine how devastated and wracked this woman is, with what she went through. She lost her husband seven years ago, and she's been working a full-time job with two young children, and thought she had good health insurance. The one time she really needs it, it's not only that they refused to cover; it's that what they're saying is, that it's not necessary.

EIR: Is this one of your suits?

Welch: Yes. This one will be filed in about six weeks. About a third of the people I represent are dead children.

EIR: How many is that?

Welch: We're talking about four or five. The numbers fluctuate with the caseload. A good other third are people with very serious suicide attempts. I've got one, who was going to be the lead story in "60 Minutes." She's a woman who had an eating disorder and she was in a general hospital, they wouldn't put her in a psych hospital. She did hang herself, and someone just by chance walked in and cut her down. The hospital discharged her a day and a half later, and said that it could be dealt with on an outpatient basis.

When the husband called me, he and his three kids, ranging from 6 to 15 in age, were doing a 24-hour vigil around the mother's bed at home, to make sure she didn't kill herself. He had, of course, totally stopped working to just attend to this. And he can't get the wife treatment. On that one, it had kind of a happy ending, because I called the "60 Minutes" people and said, this is one you can capture *in vivo*—you can go out there and watch it unfold. So, they just spent the day with the family. This company was Merit, one of the early managed-care companies.

EIR: Which is owned by Kohlberg Kravis Roberts.

Welch: You got it. It was bad before, and what KKR is doing is bleeding it. My understanding is that the peer reviewers, who were never terrific to begin with, and were making maybe \$50,000 a year in New York, have now been replaced by \$28,000 a year clerks. And \$28,000 in New York City is not attracting a high level of professional expertise.

What happened is, when "60 Minutes" filmed it, they then called Merit, and since that time, Merit just completely backed off and has now been paying everything.

EIR: There does seem to be a pattern, that at the point that you threaten suit, these companies tend to pay up. Has that been your experience?

Welch: Increasingly. What the managed-care companies used to say, was they didn't want to find themselves on "60 Minutes." I've found that the more I get clients in the media, the more I can then pick up the phone and jawbone around other clients, like the Baltimore case I told you about got some media attention. She was on "Nightline." That was Greenspring HMO. I then had another complaint that was fairly similar to Greenspring, so I wrote them a letter and said that I was dealing with the deceased client and I hoped that we could avoid this, and they immediately gave her the residential treatment she was asking for.

EIR: Are managed-care companies attempting to exempt themselves from any responsibility, and putting it only on the doctors' shoulders?

Welch: There are two ways in which they've done that. Early on, they argued that they were just insurance companies and that they made no treatment decisions. Traditionally, with the way insurance worked, that's what the courts

had held. Increasingly now, courts will hold managed-care companies liable for what happens, under a variety of theories.

Some of the insurance bad-faith laws say that if an insurance company turns down your claim "in bad faith"—in other words just to make it more difficult for you to collect, to force you to go to court to collect—then you can sue them, not only for the amount of money they owe you, but for punitive damages. Those laws have been designed to discourage insurance companies from denying claims across the board.

The insurance bad-faith laws have been a pretty powerful weapon against the insurance industry. In some cases, we've been able to use those laws against the managed-care companies, and in addition, we have been able to show that a lot of the HMOs, where they have doctors and provide services, are guilty of malpractice. So those have been the two standard weapons.

EIR: What about the use of the Employee Retirement and Income Security Act law?

Welch: ERISA has just played havoc with those two fundamental protections. ERISA was passed in 1974 and it was a very innocuous, pro-consumer law that was really designed to regulate large, private pension plans, because in the '60s, some of them went belly-up. The federal government stepped in to set up reporting requirements and so on. What big business and big labor said is, look, if you're going to set up federal regulations, then you really ought to stop regulating us from the state level as well, because we've got 50 different sets of regulations that we've got to meet. If you take General Motors, we've got plants in 20 states, we've got to have 20 different employee welfare plans. That's all well and good. That was kind of a *quid pro quo*.

So, what they did, was put a phrase in there that said that state laws that were regulating these private, self-funded employee benefit plans were preempted; that the states couldn't regulate them. Then, what happened is that everyone, to get out of state regulation, switched their health plan away from traditional insurance and became some type of self-funded plan, using the insurance companies to administer the plans, but not to be laying off all the risk on them.

Then ERISA got interpreted to mean that you could not sue those plans for malpractice; you couldn't sue them for insurance bad faith. It got so bad that there was a case in Louisiana, the *Corcoran* case in the Fifth Circuit, where they denied a woman care and her fetus died: clear negligence. The interpretation of ERISA was that she couldn't sue them under any of the state theories that I just described. All she was allowed to do under ERISA was to sue for the value of the services—in this case it was an ultrasound—that had been denied her. So she'd get \$168 for the death of her child!

ERISA affects all the private, self-insured plans, which

is better than half the population. That has been a huge problem. Keep in mind that public employees—school teachers, police, state and county employees, federal employees—have not been vulnerable to ERISA.

I just filed a motion on an ERISA case, basically arguing that ERISA should not apply—this was in the Mizel case that was on “60 Minutes.” I was flabbergasted when the other side just capitulated on it.

ERISA is slowly eroding. The Supreme Court in 1995, in the Travelers case, said this thing is crazy. Congress did not mean to preempt all state regulation of health care, and we’re going to greatly restrict ERISA. Since that time, what’s happened is, the federal circuit courts have said there are two kinds of things that go wrong here. One is benefit denials and the other is malpractice.

Now, this becomes very convoluted. If you’re denied benefits, you can’t sue under state law. If, on the other hand, you’re the victim of malpractice, you can sue the doctor, the hospital, and the managed-care company, because it’s their agents who commit the malpractice. So that’s been a huge opening in the ERISA law, and that’s what I’m doing in a number of cases. Where the hospital or the doctor commits malpractice, you can sue the managed-care company under a theory of vicarious liability.

I believe that we’re going to see further erosion. The Department of Labor has been terrific on this issue.

EIR: Yes, I saw Secretary of Labor Robert Reich speaking on this.

Welch: He’s arguing, I think correctly, that ERISA shouldn’t protect the managed-care companies anyway, no matter what they do, that they are not the plan itself; they’re just someone who’s providing services to the plan. So why should they be protected by ERISA? I think this is precisely the correct rationale, and I wouldn’t be surprised that when it gets to the Supreme Court again, we have a decision like that. Because the Supreme Court in the Travelers case voted 9-0. There’s a little bit of a states’ rights issue involved in this as well. It also unclogs some of the federal docket. So there are a number of reasons why the Supreme Court would continue to restrict ERISA.

EIR: What is happening to the health-care professionals like yourself?

Welch: There’s a lot of pressure placed on providers. It used to be they would hound them to death with utilization review. But now what they do is what they call “provider profiling.” They keep a record of how many times different therapists see patients. And if you are above the average, you’re kicked off their panel. If you think of that statistically, what happens is, your average keeps going down.

The incredible thing about it, to illustrate how clever these people are: They then go out and sell that to employers, who say, we just take the most efficient providers, because

these people are able to do the work in a shorter period of time!

In fact, clinically, what’s going on with that, is when people go to a therapist and then don’t go back, generally what it means is that something didn’t click well with the therapist. It may be the therapist was a goof or what have you, but what they’re really doing is filtering out those therapists who aren’t able to establish a therapeutic alliance with the patient to work on their problems, and selling them as more efficient, knowing that, in fact, people aren’t going to use them much, because they go in, and meet them and go, “Yuck!”

EIR: And the managed-care companies want them to be used.

Welch: The companies are told that these are the more efficient providers. They do this in a shorter period of time! If you’re a production manager, that sounds reasonable. But these people who run these companies generally are mental health professionals, and they know that what’s really going on, is that these are people that patients just don’t go back to see.

When I practiced, it was not at all unusual for me to see people for two or three years, a couple of times a week. You can dramatically turn a person’s life around in that time. It’s tremendous what you *can* do. But now, we’re talking about an average of two to three psychotherapy visits. What they’re doing is providing the smallest amount of treatment, where they can still say they offer “mental health care,” but it’s worthless.

EIR: Our cover story on managed care was titled “Managed Care Is a Crime against Humanity.” Mr. LaRouche, who’s the founder of *EIR*, says we’re descending into a Nazi-like society with this kind of treatment. The question is, once it’s clear to the policymakers where we are, what are we going to tell them to do?

Welch: There are a number of things that can be done. To me, the fundamental thing is that you cannot have a safe system of health care where the decision-maker makes money when they deny care and loses money when they provide it. As a mental health professional, I’m certainly willing to have somebody oversee my utilization of private insurance dollars or federal health benefit dollars, but it ought to be somebody who does not have a financial incentive one way or the other. If we want to say that organized medicine was overutilizing, fine. There are biases when people can generate work for themselves and some third party will pay it. I can see that.

EIR: That was the rationale for bringing in managed care.

Welch: Right. But now, what we’ve done is we’ve just applied the same rationale in the opposite direction, where the incentives are for these business people to make a lot

of money. If you want to use a managed-care system, then you've got to have people who are making these decisions who truly are financially unconnected to the outcome of their decision.

I worry about liability. I don't know if you folks have focussed on the tort reform. It's something that the public does not understand. I think it's very important that these companies be held liable when they hurt people. If they deny care, the insurance bad-faith laws are very important, because you have a solitary individual trying to go up against an insurance company. You've got to have that equalizer, which is what the bad-faith laws are.

We're hearing a lot about frivolous lawsuits and tort reform and the McDonald's case, where the woman drove through McDonald's, spilled her coffee, and collected \$2 million. The advocates of tort reform are saying you shouldn't be allowed to sue, look at these ridiculous verdicts. The McDonald's case didn't happen the way people describe it. The woman got about \$10,000 in damages. She was severely scalded in her genitals and it really did a lot of damage. The jury heard document after document, where McDonald's officials were acknowledging that people were going to get burned, but they said if it's going to be more expensive for us to fix it than it is to just pay off a few of these minor lawsuits, screw 'em. There was just this arrogant contempt.

So the jury hit them for the \$2 million to say, we don't like this! To me, that's an awfully important mechanism to have, that people have to have the opportunity to hold business accountable that way.

Then there are some really fundamental free-market things that I think could be done. You put people in a situation where they always have some financial stake themselves in their health-care consumption. That could be a somewhat higher deductible, and it could be that at every point along the way, depending upon your income and your ability to pay, you have to be paying some part of your medical consumption. Until you get to catastrophic, where people don't consume catastrophic medical resources on a discretionary basis.

EIR: So some of the aspects of managed care, you would stay with?

Welch: I'm not eager to do it. I personally do not believe the insurance industry is contributing anything to society now! I know that's an extreme statement. I would be inclined just to turn them into public service corporations and be done with them. I just see them as gouging, in terms of profits and reserves, but most importantly, they're very poorly equipped to provide the safety net which is supposed to be their whole purpose. Because they have incentives to deny people's claims. So, I would come down more on the side of some type of public health-care system. It's better than the private one that we have now with managed care. So, if we can't afford the old system, then that's the direction that I would go.

Starving Bulgarians fight for existence

by Konstantin George

A mass strike process featuring daily demonstrations throughout every major city in Bulgaria, including the capital, Sofia, has been under way in that oft-forgotten Balkan country, since Jan. 8. It is a mass uprising against the catastrophic International Monetary Fund (IMF) "reform" policies, undertaken by a population that is utterly desperate, many facing outright starvation, and thus with nothing to lose. The tragedy of Bulgaria is not only that of its people's unspeakable misery, the worst of any population anywhere in the former socialist bloc. The deeper tragedy lies in the country's political leadership, be it the ruling former Communist Party, now the Bulgarian Socialist Party (BSP), or the opposition, led by the Union of Democratic Forces (SDS), which is exploiting the mass strikes to engineer its return to power. Both the BSP and the SDS are publicly committed to implementing the next phase of the IMF's plan for Bulgaria, thus ensuring that the crisis will get worse.

Given Bulgarians' extreme desperation, the protests have been remarkably peaceful. The one occasion of violence, when "demonstrators" stormed the parliament on Jan. 10, was carried out by several dozen agents provocateurs using the larger number of unsuspecting protesters for protective coloration. It was a crude, almost ludicrous attempt by the ex-Communist "businessmen nomenklatura" who dominate the BSP, to discredit the mass movement.

Bulgaria is staring at a crisis of existence. In a country of 8.5 million, hundreds of thousands are close to starving, and survive, barely, only through a meager daily food ration provided by state soup kitchens. The average monthly wage for a family is between \$16 and \$20. A loaf of bread costs 50¢. To simply provide a family with one loaf of bread a day for a month requires \$15. The large majority of Bulgaria's 1 million pensioners earn far less than this average, and most stay alive thanks only to the soup and crusts of bread they receive every day at the state kitchens.

A key index of the profound damage to Bulgaria caused by seven years of IMF measures is the emigration rate. Last year, fully 10% of Bulgaria's actively employed population left, most of them younger men and women, from the best-educated and skilled sections of the country's workforce. Recent polls showed that 28% of Bulgarians declared they wanted to emigrate. If this continues for another year or two, Bulgaria will die through depopulation.