LETTERS TO THE EDITORS

The new Brazilian law for the inclusion of persons with disability and its effects on patients with serious mental illness

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On January 2, 2016, a new law for the inclusion of persons with disability (Law no. 13,146/2015) took effect in Brazil.[1] Designed to be a breakthrough toward guaranteeing rights for as many as 45 million people living in the country (23.9% of the Brazilian population),[2] it defines a person with disability as someone with any long-term physical, mental, intellectual, or sensory impediment (Article 2)[1] and is in line with the 2006 United Nations convention on the subject.

It is interesting to note that Article 114 of the Law profoundly changes[1] one of the main legal grounds for expert examination in forensic psychiatry, the Brazilian Civil Code.[3] Having prevailed in the Brazilian legal order for at least a century,[4] the concept of absolute curatorship in mental health evolved from a nonspecific, purely biological criterion ("insane of all kinds") (Article 5, item II, 1916)[4] to a more specific, biopsychological one in 2002 ("those suffering from mental illness or mental disability, who lack the necessary discernment to perform [civil] acts") (Article 3, item II).[3] From now on, what can be deducted from the wording of the new 2015 law is that there will be no more legal provision for the absolute curatorship of adult citizens under any circumstances.

An important hallmark of this new law is that it reassures the right of persons with disability to exercise legal capacity on equal terms with others, stating positively that they are fully eligible for marriage and family planning, for example (Article 6).[1] Nonetheless, it still recognizes the possibility of a specific, relative curatorship for this population, as an extraordinary protective act, proportional to individual needs, lasting no longer than a critical period (Article 84),[1] and limited to estate and business issues (Article 85).[1] Moreover, a new instrument – supported decision making – was introduced as an alternative to curatorship (Article 116).[1] This instrument allows the individual to designate two trusted persons, who must be approved by a judge, to advise him or her on the execution of civil acts.

The advances in civil rights entailed by this new legislation are unequivocal and absolutely desirable. However, an important question that emerges is whether the heading "disability" currently includes the legal definition of "mental illness." Technically, the latter term was used to cover serious mental disorders, including psychotic and dementia syndromes. The spirit of the Civil Code was to explicitly separate mental illness from "mental disability" (intellectual disability or mental retardation), foreseeing the possibility of absolute curatorship for both (Article 3, item II).[3] The current Civil Code does not mention "mental illness" at any point, repeals absolute curatorship entirely, and admits explicitly the possibility of relative curatorship in mental health issues only for those with alcohol or drug addiction (Article 4, item II),[3] those unable to express their wishes (Article 4, item III),[3] and those with "mental or intellectual disability" (Article 1769, item I).[3] If the current Brazilian legal order now admits serious mental illness as a "disability," as can be extrapolated from the aforementioned definition of disability in Law no. 13,146 (Article 2),[1] these patients still remain to some extent represented by the Civil Code, and are now covered by an important and modern piece of legislation. Otherwise, if the understanding remains that mental illness and mental disability are different entities, people with serious mental illness are now vulnerable from a civil law standpoint and have been left to fend for themselves as far as inclusion is concerned.

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Disclosure

The author reports no conflicts of interest.

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