

PUBLIC HEALTH

Violent Medical Disputes as a Focal Public Health Issue

Incidents of violence against hospital personnel, some resulting in fatalities,¹ galvanized top leadership to declare “no tolerance” for this increasing problem in China during the annual legislative meetings in March 2014.² Medical professionals have linked ineffective medical dispute resolution mechanisms, among other factors, to this problem.³ Yet pressure from protests or the threat of protest in medical disputes have resulted in legal processes and government decisionmaking that give priority to “stability maintenance” over strengthening legal norms and public trust in hospitals and the courts, according to a U.S. scholar.⁴

Problems in Implementation of the PRC Mental Health Law

Implementation of the PRC Mental Health Law (MHL) during its first year was marred by reports of Chinese government officials forcibly committing petitioners to psychiatric facilities,⁵ despite the MHL’s prohibition of such action.⁶ The Chinese government did not respond to a written question from a UN Committee as to “whether the 2012 Mental Health Law forbids involuntary psychiatric commitment for persons who do not suffer from any mental illness” prior to the review in May 2014 of China’s compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR) under its provision on the right to health.⁷ Forcibly committing individuals without mental illness to psychiatric facilities (*bei jingshenbing*) in China due to family⁸ or employment disputes,⁹ or as a public security tool against petitioners,¹⁰ Falun Gong practitioners,¹¹ and political dissidents¹² has been well documented in the past. The International Covenant on Civil and Political Rights and the Convention on the Rights of Persons with Disabilities prohibit arbitrary detention.¹³ In May, the UN Working Group on Arbitrary Detention censured China in an opinion on the case of Xing Shiku, a petitioner from Heilongjiang province, whom authorities have kept in a psychiatric facility for more than seven years, concluding that Xing’s detention violated Articles 9 and 19 of the Universal Declaration of Human Rights.¹⁴

Domestic Chinese reports during this reporting year featured cases in which persons with mental illness or those who had been involuntarily committed had uneven access¹⁵ to legal protections and remedies provided for in the MHL.¹⁶ In the case of Wu Chunxia, a domestic violence survivor from Henan province whom public security officials forcibly committed to a psychiatric facility for 132 days in 2008 for petitioning,¹⁷ the Henan Province High People’s Court upheld a lower court’s decision in May 2014 that found the public security bureau’s actions in 2008 violated the law.¹⁸ In another case, a court in Liaoning province initially rejected an administrative appeal by Liu Gang, a pig farmer who had been involuntarily committed in Shandong province twice—once in 2008 and again in 2009—for petitioning.¹⁹ Liu reportedly received 400,000 yuan (US\$64,868) in late July from a court-mediated agreement.²⁰ In a case described as the first under the MHL,²¹ a plaintiff in Shanghai municipality alleged a psychiatric facility had

deprived him of his personal freedom for more than 10 years because his brother refused to authorize his discharge and the facility would not release him on his own recognizance.²² A district court in Shanghai did not permit the lawsuit to be filed in May 2013 on the basis that the plaintiff “lack[ed] competence in civil matters” but allowed filing seven months later.²³ A domestic Chinese human rights organization reported that the case went to trial on July 28, 2014.²⁴

Article 24 of the MHL stipulates implementation of a nationwide “surveillance network” that includes a “reporting system for severe mental health disorders”²⁵ purportedly to provide “better medical treatment and help prevent [those with severe mental health disorders] from harming others.”²⁶ An exposé in October 2013, however, described problems with a local effort to identify individuals with severe mental illness that predated passage of the MHL. In its 2012 mental health work plan, the public health bureau in Zhengzhou city in Henan directed government health workers to register individuals with severe mental disorders using a quota of two persons per 1,000 living in residential districts.²⁷ Failure to meet the quota, according to the plan, would impact performance reviews of community health centers.²⁸ Amid widespread criticism of Zhengzhou’s use of a quota,²⁹ a spokesperson from the National Health and Family Planning Commission stressed statistical indicators are applicable only to provinces and province-level municipalities.³⁰

Public Health Advocacy and Health-Based Discrimination

HARASSMENT OF PUBLIC HEALTH ADVOCATES AND ORGANIZATIONS

The Commission observed reports of harassment and detention of public health advocates and organizations during this reporting year, including:

- On January 15, 2014, public security officials reportedly arrested Akbar Imin—a former employee of the health advocacy NGO Beijing Aizhixing Institute—on suspicion of “endangering state security.”³¹ Imin conducted outreach on HIV/AIDS prevention and harm reduction among the Uyghur community in Beijing municipality and Yunnan province.³² International observers suggested that his ethnicity might be a factor in his detention.³³
- Prominent health and rights advocate Hu Jia asserted that public security officials in Beijing kept him under “soft detention” (*ruanjin*) at home from January 17 through June 8, 2014.³⁴ Hu also reported that “plainclothes personnel” assaulted him on the street in mid-July after he met with a foreign filmmaker regarding the late activist Cao Shunli.³⁵ Hu faced government harassment and imprisonment in the past in connection with his HIV/AIDS advocacy,³⁶ though media outlets linked his recent detention to “stability maintenance” in the lead up to the 25th anniversary of the 1989 Tiananmen protests.³⁷
- Officials prevented HIV/AIDS advocates from leaving China to participate in international conferences in November 2013³⁸ and July 2014.³⁹

- In May 2014, a court in Ruzhou city, Henan province, sentenced five persons living with HIV/AIDS to suspended prison terms that ranged from one year and six months to three years on a charge related to their petitioning in November 2013 for improved medical treatment and financial subsidies.⁴⁰
- Beijing Aizhixing Institute reported that it closed its Beijing office in October 2013 due to “funding and the political environment, among other factors.”⁴¹
- In July 2014, public security officials arrested Chang Boyang, a human rights lawyer and the co-founder of the NGO Zhengzhou Yirenping, and later charged him with “illegal business operations.”⁴² Authorities also reportedly raided Zhengzhou Yirenping’s office twice in July, closed its organizational bank account, and required staff to list foreign donors.⁴³

ACCESS TO EDUCATION FOR PERSONS WITH DISABILITIES

The Chinese government continued administrative efforts to improve the right to education for persons with disabilities, such as a plan to raise the percentage of elementary school-age children with visual, hearing, and intellectual disabilities receiving compulsory education⁴⁴ from current official estimates of 71.9 percent to more than 90 percent by 2016.⁴⁵ The Ministry of Education (MOE) issued guidelines in March⁴⁶ which included a provision that localities make the college-entrance exam (*gaokao*)⁴⁷—the key channel for determining whether and where students receive a college education in China⁴⁸—available in a format accessible to visually impaired students.⁴⁹ Yet an advocate noted that the MOE did not adequately consider reasonable accommodations to facilitate test-taking, which resulted in difficulties for at least one blind test-taker.⁵⁰ Physical examinations required for university enrollment, moreover, continue to be a basis to “deny enrollment in certain subjects if the applicants have certain disabilities.”⁵¹ In August 2014, for example, a microblog user publicized the case of a student from Fujian province whose college rescinded her admission for failing the physical exam.⁵² Following considerable criticism in social media, Xinhua reported education officials in Fujian facilitated the student’s admission into another college.⁵³

EMPLOYMENT DISCRIMINATION

Health-based employment discrimination is prohibited under Chinese law,⁵⁴ yet the Civil Servant Recruitment Physical Examination Standards⁵⁵ continued to be the basis to reject persons with a range of health conditions from employment in government service in this reporting year.⁵⁶ An NGO report released in March 2014 pointed out that these standards are not in compliance with Chinese law or China’s international obligations, and close to 200 million people may be discriminated against as a result.⁵⁷ The UN Committee that reviewed China’s compliance with the International Convention on Economic, Social and Cultural Rights expressed concern in May that the Chinese government is not meeting its own goal of reserving 1.5 percent of positions for persons with disabilities.⁵⁸

Notes to Section II—Public Health

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³ Therese Hesketh et al., “Violence Against Doctors in China,” BMJ, 7 September 12; Cong Dai et al., “Re: Violence Against Doctors in China,” BMJ, 1 November 13; Zhou Tian, “Doctor-Patient Conflicts Multiply, Path of New Health Care Reforms Raises Controversy (1)” [Yihuan chongtu duofa xin yigai lujing re zhengyi (shang)], Caixin, 15 March 14.

⁴ Benjamin L. Liebman, “Malpractice Mobs: Medical Dispute Resolution in China,” Columbia Law Review, Vol. 113(1), January 2013, 187, 243, 247.

⁵ Civil Rights and Livelihood Watch (CRLW), “2013 Year-End Report on Mental Health and Human Rights in China (Forcibly Committed)” [2013 nian zhongguo jingshen jiankang yu renquan (bei jingshenbing) nianzhong baogao], 13 February 14, sec. 2. For more information on some of the cases of forcible commitment (*bei jingshenbing*) that CRLW reported in its 2013 year-end report, see the following records in the Commission’s Political Prisoner Database: 2014-00121 on Zhang Haiyan; 2013-00088 on Peng Lanlan; 2014-00086 on Zhang Zhi; 2014-00094 on Gu Xianghong; 2014-00243 on Fan Miaozhen; 2014-00225 on Fang Daoming; and 2014-00226 on Tang Xuecheng. Other forcible commitment cases reported during this reporting year are covered in Rights Defense Network, “Chongqing Citizen Liu Wei Forcibly Sent to Psychiatric Hospital for Going to Beijing Before ‘June Fourth’” [Chongqing gongmin liu wei yin “liu si” qian dao jing bei song jingshenbing yuan], 12 June 14. For more information on Liu Wei, see the Commission’s Political Prisoner Database record 2014-00184. Rights Defense Network, “Beijing Democracy Rights Defender Zhang Wenhe Forcibly Committed to Psychiatric Hospital for 4th Time” [Beijing minzhu weiquan renshi zhang wenhe di sici guanru jingshenbing yuan], 4 April 14; Chinese Human Rights Defenders, “[CHRB]: Six Months After Mental Health Law Took Effect, Involuntary Psychiatric Commitment Continues (11/8–13, 2013),” 14 November 13.

⁶ PRC Mental Health Law [Zhonghua renmin gongheguo jingshen weisheng fa], passed 26 October 12, effective 1 May 13, arts. 27, 30, 75(5), 78(1); Michael R. Phillips et al., “China’s New Mental Health Law: Reframing Involuntary Treatment,” American Journal of Psychiatry, 1 June 13.

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⁹ Sharon LaFraniere and Dan Levin, “Assertive Chinese Held in Mental Wards,” New York Times, 11 November 10; Jiang Gewei, “Woman Forcibly Committed to Psychiatric Hospital for 70 Days of Treatment Due to Conflict With Colleagues” [Nuzi yin yu tongshi jufen bei song zhi jingshenbing yuan zhenzhi 70 tian], Legal Weekly, reprinted in Sina, 30 March 13; Wang Dianxue, “Third Review of Mental Health Law Draft Being ‘Forcibly Committed to Psychiatric Facility’ Is Focus of Attention” [Jingshen weisheng fa caoan sanshen “bei jingshenbing” cheng guangzhu jiaodian], Southern Metropolitan Daily, 24 October 12.

¹⁰ Sharon LaFraniere and Dan Levin, “Assertive Chinese Held in Mental Wards,” New York Times, 11 November 10; Civil Rights and Livelihood Watch, “2013 Year-End Report on Mental Health and Human Rights in China (Forcibly Committed)” [2013 nian zhongguo jingshen jiankang yu renquan (bei jingshenbing) nianzhong baogao], 13 February 14, sec. 2; Chinese Human Rights Defenders, “The Darkest Corners’: Abuses of Involuntary Psychiatric Commitment in China,” 6 August 12. See also CECC, 2009 Annual Report, 10 October 09, 240.

¹¹ Human Rights Watch, “Dangerous Meditation: China’s Campaign Against Falungong,” January 2002; Human Rights Watch, “Dangerous Minds: Political Psychiatry in China Today and Its Origins in the Mao Era,” August 2002, 160–76.

¹² Human Rights Watch, “Dangerous Minds: Political Psychiatry in China Today and Its Origins in the Mao Era,” August 2002, 2–23.

¹³ International Covenant on Civil and Political Rights, adopted by UN General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 23 March 76, art 9(1); Convention on the Rights of Persons with Disabilities, adopted by UN General Assembly resolution 61/106 of 13 December 06, entry into force 3 May 08, arts. 12, 14. See also Tina Minkowitz, “Why Do So Few People Know That CRPD Prohibits Forced Psychiatry?” Mad in America (blog), 14 October 12.

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⁵² Meng Zhaoli and Mi Yingting, “Internet News of ‘Disabled Female Student With College Exam Score of 549 Enrollment Revoked,’ School Says Not Convenient To Reveal Details of Physical Exam” [Wangchuan “canji nusheng gaokao 549 fen bei tuidang” xiaofang cheng bubian pilu tijian xijie], Xinhua, 4 August 14; Lin Changsheng, “Follow-Up on Disabled Student From Zhangzhou Whose College Revoked Her Admission, Education Controversy Triggered by ‘Failed Physical Exam’” [Zhangzhou canji kaosheng bei gaoxiao tuidang zhuzong: “tijian bu hege” yinfa de jiaoyu fenzheng], People’s Daily, reprinted in NetEase, 5 August 14.

⁵³ Jiang Liming, “Fujian Provincial Examination Institute Facilitates Disabled Student Liu Wanling’s Admission Into Xiamen University’s Jiageng Institute” [Fujian sheng kaoshiyuan xietiao xiada jiageng xueyuan luqu canji kaosheng liu wanling], Xinhua, 6 August 14.

⁵⁴ See, e.g., PRC Law on the Protection of Persons with Disabilities [Zhonghua renmin gongheguo canjiren baozhang fa], passed 28 December 90, amended 24 April 08, effective 1 July 08, arts. 3, 30–40; PRC Employment Promotion Law [Zhonghua renmin gongheguo juyue cujin fa], passed 30 August 07, effective 1 January 08, arts. 3, 29, 30; State Council, Regulations on the Treatment and Control of HIV/AIDS [Aizibing fangzhi tiaoli], issued 29 January 06, effective 1 March 06, art. 3; State Council, Regulations on the Employment of Persons with Disabilities [Canjiren juyue tiaoli], issued 25 February 07, effective 1 May 07, arts. 3, 8.

⁵⁵ Ministry of Human Resources and Ministry of Health, Civil Servant Recruitment Physical Examination Standards (Trial) [Gongwuyuan luyong tijian tongyong biao zhun (shixing)], 17 January 05, reprinted in National Public Servant Net, 15 September 10. See Wan Jing, “Teacher Eligibility Standards in Many Places Permit Discrimination Against Persons with Disabilities, Disabled Persons Apply for Open Information” [Duodi jiaoshi tijian biao zhun cun canzhang qishi, canzhang renshi shenqing gongkai yijiu], Legal Daily, reprinted in Eastday, 5 December 13. According to Legal Daily, at least 20 provinces have physical eligibility standards for teachers that discriminate against persons with disabilities.

⁵⁶ “Second Instance Trial for First Case in Jiangsu of AIDS Employment Discrimination” [Jiangsu shouli aizi juyue qishi an ershen], China Jiangsu Net, 19 November 13; Zhao Han, “Top Scholar in Civil Service Exam Sues Human Resources Bureau for Refusing To Hire Visually Impaired Person” [Gongwuyuan kaoshi zhuangyuan zhuanggao rensheju julü shizhang ren], Caixin, 26 May 14; Ye Yu, “Attention to International Persons With Disability Day, A Disabled Person Who Has Taught for 17 Years Not Able To Get Teacher Certificate” [Guoji canjiren ritiebie guanzhu, cong jiao 17 nian canjiren kaobulai jiaoshizheng], Eastern Daily, 3 December 13.

⁵⁷ Zhang Wei, “Civil Services Physical Examination Standards Are Suspected of Being Illegal, Directly Discriminate Against Close to 200 Million” [Gongwuyuan luyong tijian biao zhun bei zhi shexian weifa, zhijie qishi renchun jin 2 yi], Legal Daily, 26 March 14.

⁵⁸ UN GAOR, Committee on Economic, Social and Cultural Rights, Concluding Observations on the Second Periodic Report of China, Including Hong Kong, China and Macao, China, adopted at Its 52nd Session, 13 June 14, para. 18. The 1.5 percent minimum hiring quota for persons with disabilities is stipulated in State Council, Regulations on the Employment of Persons with Disabilities [Canjiren juyue tiaoli], issued 25 February 07, effective 1 May 07, arts. 3, 8.