Authority Lost: The DSM-5’s Fall From Legal Grace

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DSM-5’s Disavowal by NIMH

In a few weeks, the American Psychiatric Association will release its new edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). This volume will tweak several current diagnostic categories, from autism spectrum disorders to mood disorders. While many of these changes have been contentious, the final product involves mostly modest alterations of the previous edition, based on new insights emerging from research since 1990 when DSM-IV was published. Sometimes this research recommended new categories.

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Why reject the DSM project?

Insel:

“The unlike our definitions of ischemic heart disease, lymphoma, or AIDS, the DSM diagnoses are based on a consensus about clusters of clinical symptoms, not any objective laboratory measure.”
Uncover NIMH value system

**objective laboratory measure**

- Scientists in labs are better able to diagnose psychiatric illnesses.

**clinical consensus about symptoms**

- Care providers who interact with patients are not able to accurately diagnose.
Rhetorical studies of the DSM

- Kirk and Kutchins (1992)
- McCarthy and Gerring (1994)
- Berkenkotter (2001)

... and many others.
Rhetorical power of the DSM

DSM-III ©1980

Psychiatric Language & Thought

Paradigm Shift

DSM-Based Clinical "Schema"
Lawyers fell in love with the DSM

DSM diagnoses have infiltrated everything lawyers do, starting with how they become lawyers.
12. Do you have, or have you ever had, an emotional disturbance, mental illness, drug or alcohol abuse problem or physical impairment that would impair your ability to practice law in Wyoming?
   - Yes
   - No

13. Since attaining the age of 18 or within the last 10 years, whichever period is shorter, have you been admitted to a hospital or other facility, or had out-patient treatment, for the treatment of bipolar disorder, major depressive disorder, or any psychotic disorder?
   - Yes
   - No

If yes, please provide dates, places of treatment, and names of healthcare professionals providing such treatment as an attachment.

from Wyoming State Bar Application of 2014
The DSM-IV-TR

“Cautionary Statement”

The purpose of DSM-IV is to provide clear descriptions of diagnostic categories in order to enable clinicians and investigators to diagnose, communicate about, study, and treat people with various mental disorders. It is to be understood that inclusion here, for clinical and research purposes, of a diagnostic category such as Pathological Gambling or Pedophilia does not imply that the condition meets legal or other non-medical criteria for what constitutes mental disease, mental disorder, or mental disability. The clinical and scientific considerations involved in categorization of these conditions as mental disorders may not be wholly relevant to legal judgments, for example, that take into account such issues as individual responsibility, disability determination, and competency.
DSM became a “Health Law Text”

§ 1. Use of the manual
§ 2. DSM-IV-TR classification
§ 3. Multiaxial assessment
§ 4. Disorders usually first diagnosed in infancy, childhood, or adolescence
§ 5. Delirium, dementia, and amnestic and other cognitive disorders
§ 6. Mental disorders due to a general medical condition
§ 7. Substance-related disorders
§ 8. Schizophrenia and other psychotic disorders
§ 9. Mood disorders
**Social Security Disability “Listing”**

| A. Introduction. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s), consideration of the degree of limitation such impairment(s) may impose on your ability to work, and consideration of whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. The listings for mental disorders are arranged in nine diagnostic categories: Organic mental disorders (12.02); schizophrenic, paranoid and other psychotic disorders (12.03); affective disorders (12.04); intellectual disability (12.05); anxiety-related disorders (12.06); somatoform disorders (12.07); personality disorders (12.08); substance addiction disorders (12.09); and autistic disorder and other pervasive developmental disorders (12.10). Each listing, except 12.05 and 12.09, consists of a statement describing the disorder(s) addressed by the listing, paragraph A criteria (a set of medical findings), |
With the DSM-5, the APA stopped resisting lawyers. Lawyers really liked the DSM, so here’s what the APA did:
“Cautionary Statement for Forensic Use of DSM-5”

DOI: 10.1176/appi.books.9780890425596.744053

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How did *this* happen to the DSM-5?

Rejected by Scientists  ➔  Rejected by Lawyers

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The DSM-5’s Legal Implications

- Civil Commitment
- Employment Law
- Criminal Law
- Insurance Law
- Education Law
- Disability Law

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Hass’s Critique

DSM-5

ADA 2008
Fish’s Critique

DSM-5  ACA

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