

must yield." Kaczynski also argued that access to the full record would reveal whether there were notes at all and would, by their length and content, indicate whether Kobrin had seen his patients as often or for as long a session as he billed Medicaid for.

Griffith and the psychiatric society, whose brief was written by Washington attorneys Joel Klein and Richard Taran on behalf of the APA, argued that the Medicaid law does not require disclosure of full psychiatric records; if it did, they said, Medicaid patients would be consigned to second-class care. They also successfully challenged the presumption that there is any necessary connection between the extent of note-taking and services rendered. Note-taking is known to vary greatly from doctor to doctor, just as therapy sessions vary from those in which a lot is said to those that consist mainly of repetition or even silence. The court was persuaded that the notes would not be of substantive value to the state in this investigation—particularly because neither the necessity for or the quality of care is at issue here.

Any decision favoring wholesale disclosure of the records would also adversely affect the very nature of the doctor-patient relationship and interfere with psychotherapy itself. Fear of disclosure could inhibit patients from talking freely with their doctors, they noted. Furthermore, the likelihood of disclosure would affect note-taking itself. Quoting a U.S. District Court decision in a case in Hawaii, they pointed out that "Psychiatrists may be disinclined to record in their files extremely personal, sensitive confidences of a patient if they know those files may be reviewed and copied by state officials at any time. The threat of searches may therefore decrease the likelihood that the very information most valuable to another treating psychiatrist, a history of the patient's emotional and mental problems, will be available."

There is anecdotal evidence that fear of searches by government agencies or insurance companies is taking its toll on note-taking. "I don't put sensitive material in the file and I teach medical students not to include anything that would be embarrassing to either the patient or the doctor," one psychiatrist reports. And he is not alone.

In the Kobrin case, the Supreme Judicial Court, in its effort to balance the competing rights of the patient to privacy with those of the state, said that any invasion of the patient's rights must "be no broader than necessary for effective oversight of the Medicaid program." In

reaching a narrow definition of just what those rights are, the court also decided to leave it to judges to decide case-by-case what should be revealed and what kept confidential. Although the court appears to be protecting privacy by its ruling that "The psychiatrist's records of patient conversations shall be withheld," the scope of its definition of what may be released is sufficient to compromise the idea of privacy.

The court does, however, suggest a new approach to note-taking in the interest of maintaining confidentiality. Psychiatrists could, for example, be required to keep two sets of notes with

substantive accounts of therapy sessions in one file and those that document that care was in fact provided in another.

The issues raised by this case and by others are "terribly disturbing," says APA president Nadelson. "We need to consider what we really need to know before we agree that the courts or insurance companies get confidential information," she declares. "This problem has been around a long time but we've taken another step down the road. It's very important that society continues to be sensitive to what we may be sacrificing in terms of some major civil rights to privacy."—**BARBARA J. CULLITON**

Problems Plague ASAT Program

The Defense Department's antisatellite (ASAT) weapons program, long a topic of political controversy, now faces a bevy of technical troubles. According to a recent internal Air Force audit, the ASAT weapon, as well as a special target vehicle created for ASAT tests, both suffer from defects, some of them serious. As a result, the likelihood that the next ASAT test will be fully successful is less than 50 percent, and nothing can be done beforehand to alter this projection.

The audit, which was disclosed in a 15 June report by the General Accounting Office (GAO), was ordered by Air Force Under Secretary Edward Aldridge, Jr., because of the program's persistent cost overruns and schedule delays. In the last year, for example, the official cost estimate for development and procurement of 15 ASAT weapons has increased by \$190 million and the schedule for initial operation has slipped by 1 year. Further delays are expected, the GAO said.

Of the two tests conducted to date, only one—involving a simple launch toward a point in space—has been judged fully successful by the Air Force. In the second, the ASAT apparently failed to maneuver properly so that its homing mechanism could acquire and track a star. Several weeks ago, the third test, which was initially scheduled for late July, was indefinitely postponed so that the ASAT and two target vehicles could be returned to the factory. The ASAT needed a new, stronger "structural element," which the Defense Department declines to identify. The target vehicles had dead or malfunctioning communications receivers, which may require 2 to 3 months to repair.

According to the GAO, the audit identified 30 technical concerns "that needed to be resolved" before the third test flight is conducted, including several that carry a high level of risk. It also pinpointed additional problems that will require resolution after the flight, and concluded that component tests and engineering analyses needed substantial improvement.

In the face of all the problems, a spokesman for the Defense Department went out of his way on 12 July to assert that there were "no plans to scrap the program." Contrary to widespread rumors that the Air Force is increasingly unenthusiastic about the program and wants to kill it, Aldridge's motivation in ordering the review was primarily to "reestablish and maintain confidence" in it, the spokesman explained.

Even if the technical uncertainties are resolved, however, Congress may have soured on the program, now expected to cost at least \$4.1 billion, more than twice the amount estimated in 1978, when it was initiated. In the House of Representatives, there is strong sentiment on political grounds alone in favor of banning any ASAT tests against objects in space so long as the Soviet Union continues to observe a similar, self-imposed proscription. Final congressional action is expected later this summer.

—**R. JEFFREY SMITH**