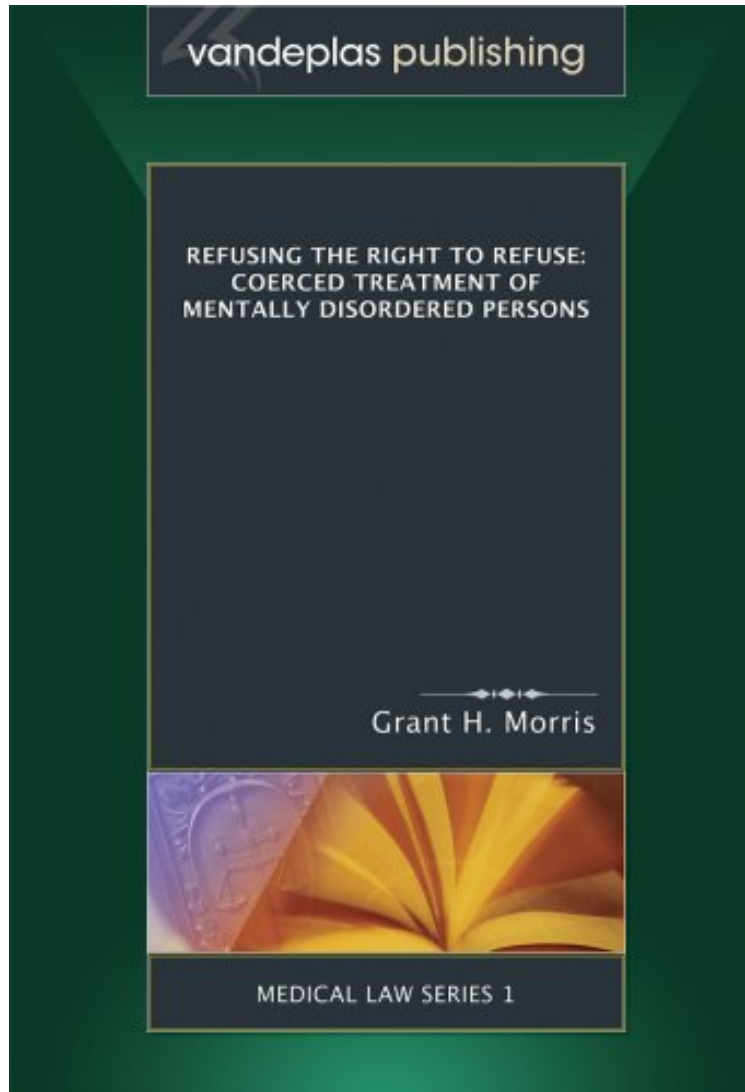


## Refusing the Right to Refuse: Coerced Treatment of Mentally Disordered Persons (Medical Law)

*Grant H. Morris*

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**Grant H. Morris : Refusing the Right to Refuse: Coerced Treatment of Mentally Disordered Persons (Medical Law)** before purchasing it in order to gauge whether or not it would be worth my time, and all praised Refusing the Right to Refuse: Coerced Treatment of Mentally Disordered Persons (Medical Law):

Under the doctrine of informed consent, if a person is competent to understand the risks, benefits, and alternatives to

proposed treatment, that person is allowed to decide whether to accept or reject the proposed treatment. Informed consent is not required if the person is incompetent or if an emergency arises that necessitates treatment to save the person's life. Nevertheless, various devices are used to deny mentally disordered persons their right to refuse treatment even when they are competent decision makers and even when no emergency exists. For example, some courts substitute a limited due process model for a full due process model, allowing doctors to decide whether the proposed treatment is appropriate, rather than requiring a court's determination of the patient's competence to withhold consent. Some states substitute the decision to involuntarily commit the patient, or a decision to appoint a guardian or conservator to assist the patient, for the requirement that the patient be incompetent to make treatment decisions. In some states, the limited emergency exception to the requirement of informed consent has been expanded to allow involuntary treatment of dangerous patients without requiring that an emergency exists. In some states, the requirement of voluntary and informed consent has been replaced by uninformed or coerced assent. For example, if the patient does not object to the treatment, some courts have allowed doctors to medicate the patient without informing the patient of the risks, benefits, and alternatives to that medication and obtaining the patient's informed consent to its administration. Outpatient commitment laws have been enacted such as Kendra's Law in New York through which courts order mentally disordered persons to accept medication, even though such persons are not subject to involuntary civil commitment. These various devices so erode the competent patient's right to autonomous medical decision making that the right of

About the Author Grant H. Morris is a Professor of Law at the University of San Diego, School of Law, and served as its Acting Dean on three separate occasions. He is also a Clinical Professor in the Department of Psychiatry at the University of California, San Diego School of Medicine. Professor Morris organized and was the first Chairperson of the Law and Psychiatry Section of the Association of American Law Schools and is currently Chairperson of the Atascadero State Hospital Advisory Board. Professor Morris has written or contributed to more than a dozen books and more than forty law review articles dealing with issues in the interface of psychiatry and the law.