WHEN LAW ENFORCEMENT AND MEDICINE OVERLAP: THE COMMUNITY CARETAKER EXCEPTION AND THE RIGHT TO REFUSE MEDICAL TREATMENT

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I. INTRODUCTION

MODERN police officers have a difficult job, far more difficult than in any other era, because they are required to perform numerous simultaneous duties on reduced budgets with less manpower. These duties include foot patrol, vehicle patrol, responding to citizen reports, and a myriad of administrative assignments. For the most part, the police are concerned with enforcing the law, but that is not always the case. Often, law enforcement and non-law enforcement actions overlap. Police officers encounter disabled motorists almost on a daily basis. When they stop and activate the flashing lights on their patrol cars, are those officers taking law enforcement action or are they acting in some other capacity? In many cases, the courts view officers in those situations as community caretakers—interested only in a citizen's health or safety.[1] While the courts correctly characterize the initial contact between officer and civilian, these community caretaker encounters can—and often do—escalate into law enforcement situations, attendant with all the rules and regulations that normally apply. The most notable rule, affecting police-citizen encounters in the community caretaker arena, is the warrant requirement in the Fourth Amendment.[2] Sometimes, however, the warrant requirement is not the only constitutional safeguard implicated by a community caretaker encounter, as illustrated by the following hypothetical.

A police officer responds to the scene of an industrial explosion. He is the first responder to reach the accident. After arriving, the officer observes a person with numerous small cuts and minor burns. When the officer offers to assist, the

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1. The courts are not the only governmental officials who take this view. For instance, the community caretaker exception has been codified in Oregon. OR. REV. STAT. § 133.033 (2005).

2. The importance of the warrant requirement in Community Caretaker situations will be explained in section I, *infra*. The Fourth Amendment reads: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV.

victim indicates that he is ok and does not wish to be treated. Suddenly, what began as a simple caretaker situation now implicates the right to refuse medical treatment.[3] If the police officer insists that the victim be treated for his injuries and later discovers that the victim possesses contraband, what effect, if any, should the right to refuse medical treatment have on the reasonableness of the warrantless search?

This comment explores the constitutional crossroads outlined above. The second section explores the Fourth Amendment, its warrant requirement, and the background and rationale for the community caretaker exception. The third section deals with the history and application of the right to refuse medical treatment. The fourth section analyzes the interplay between the community caretaker exception and the right to refuse medical treatment in medically oriented caretaker encounters. Finally, the fifth section applies principles elicited from the analysis to various caretaker situations and proposes a solution for future medical caretaker cases.

II. THE FOURTH AMENDMENT

Ratified in 1791, the Fourth Amendment protects the people against unreasonable searches and seizures.[4] This protection is generally guaranteed by the warrant requirement in the second clause of the Amendment.[5] While the Framers expressly stated and clearly defined its purpose, they were silent as to how Fourth Amendment violations should be remedied.

Prior to 1961, two groups with differing viewpoints emerged in the world of Fourth Amendment remedies. One group argued that the courts must not allow the use of illegally-obtained evidence, while the other maintained that private legal actions were sufficient to redress violations.[6] The U.S. Supreme Court ended much of the legal debate in *Mapp v. Ohio*. In essence, the *Mapp* Court held that any evidence obtained in contravention of the Fourth Amendment warrant requirement must be excluded from any subsequent state or federal criminal proceeding.[7] Predictably, there was an uproar concerning the negative effect that the so-called exclusionary rule would have on the prosecution of otherwise guilty suspects.[8] Despite the apparent logic of some of those arguments, it is now clear that the exclusionary rule did not drastically alter the

3. Whether, and to what degree, such a right exists in American jurisprudence is discussed in Section II, *infra*. *See* Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261, 269-70 (1990).

4. U.S. CONST. amend. IV.

5. John F. Decker, *Emergency Circumstances, Police Responses, and Fourth Amendment Restrictions*, 89 J. CRIM. L. & CRIMINOLOGY 433, 435-37 (1999).

6. *See* Wolf v. Colorado, 338 U.S. 25, 31 (1949).

7. Mapp v. Ohio, 367 U.S. 643, 654-55 (1961).

8. Phyllis T. Bookspan, *Reworking the Warrant Requirement: Resuscitating the Fourth Amendment*, 44 VAND. L. REV. 473, 486-87 (1991).

ability of state or federal prosecutors to secure convictions.[9] Moreover, the Court has taken many opportunities to refine and restrict the effect of the rule.

Not long after deciding *Mapp*, the Court began to recognize exceptions to the exclusionary rule.[10] The focus of this comment is the community caretaker exception, which was created in 1973 in *Cady v. Dombrowski*. In *Cady*, the Court ruled that evidence obtained in a warrantless search is admissible[11] if discovered as a result of activities "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute";[12] thus was born the community caretaker exception. As previously mentioned, during many police-civilian encounters, the police act as community caretakers rather than law enforcement officers. The community caretaker exception, therefore, could potentially eliminate the need for a warrant in many of those situations.

A. The Warrant Requirement

The Fourth Amendment is comprised of two clauses—the Search and Seizure Clause and the Warrant Clause.[13] The first commands that no person shall be subject to unreasonable searches and seizures, while the second prohibits the issuance of warrants except upon probable cause.[14] The Supreme Court reads the warrant requirement to be the primary means of assuring that searches and seizures are not unreasonable[15] and made this clear in *Johnson v. United States*:

> Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers. . . . When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent.[16]

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9. *See*, *e.g.*, United States v. Leon, 468 U.S. 897, 908 (1984). Data suggested that somewhere between 0.6% and 2.35% of felony arrestees are released because of the loss of illegally seized evidence. *Id.* at 907 n.6 (citing Thomas Y. Davies, *A Hard Look at What We Know (And Still Need to Learn) About the "Costs" of the Exclusionary Rule: The NIJ Study and Other Studies of "Lost" Arrests*, 1983 AM. B. FOUND. RES. J. 611, 621).

10. *See*, *e.g.*, Alderman v. United States, 394 U.S. 165, 171-72 (1969) (holding that only the party whose Fourth Amendment rights were violated by an illegal search and seizure could invoke the exclusionary rule).

11. Cady v. Dombrowski, 413 U.S. 433, 446-47 (1973).

12. *Id.* at 441.

13. U.S. CONST. amend. IV.

14. *Id.*

15. Johnson v. United States, 333 U.S. 10, 13-14 (1948).

16. *Id.* at 14. *See also* Myron W. Orfield, Jr., *Deterrence, Perjury, and the Heater Factor: An Exclusionary Rule in the Chicago Criminal Courts*, 63 U. COLO. L. REV. 75, 82-83 (1992) (noting that police officers, lawyers, and judges all believe that there is no more effective remedy for violations of the Fourth Amendment).

As written, the Warrant Clause guards against the use of general warrants and writs of assistance—devices that were prevalent prior to 1789.[17] "The central objectionable feature of both warrants was that they provided no judicial check on the determination of the executing officials that the evidence available justified an intrusion into any particular home."[18] Because the Framers and the Court believed that law enforcement officials vested with too much discretion posed a threat to a free society,[19] the Court historically held that searches and seizures, absent a warrant, were *per se* unreasonable.[20] Problematically, however, the Fourth Amendment contains no express remedies. Faced with numerous challenges to warrantless searches and seizures, the Supreme Court eventually crafted a solution.

B. The Exclusionary Rule and the Fruit of the Poisonous Tree

In 1914, the Supreme Court solved the recurrent remedy problem by creating the exclusionary rule.[21] It determined that illegally-seized evidence would not be admissible in a criminal proceeding.[22] The need for, and wisdom of, the exclusionary rule have been debated since its creation. In fact, until 1961, even the Supreme Court held that exclusion only applied to federal prosecutions.[23] In *Mapp v. Ohio*, however, the Court determined that the exclusionary rule applied to the states through the Fourteenth Amendment.[24] In reaching this conclusion, the Court expressly rejected the efficacy of other remedies[25] and proclaimed that "[n]othing can destroy a government more quickly than [the] failure to observe its own laws."[26]

Along with the exclusionary rule came a companion doctrine called the fruit-of-the-poisonous-tree doctrine (hereinafter "fruits doctrine").[27] The idea behind the fruits doctrine had been around since 1920,[28] but it did not receive the name until 1963 when the Supreme Court decided *Wong Sun v. United States* and said that evidence discovered only because of police misconduct would be excluded

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17. Steagald v. United States, 451 U.S. 204, 220 (1981).

18. *Id.*

19. For instance, the *Steageld* Court specifically stated that it believed the Framers would not have condoned the instant search due to the use of unchecked police discretion. *Id.*

20. Katz v. United States, 389 U.S. 347, 357 (1967).

21. *See generally* Weeks v. United States, 232 U.S. 383 (1914).

22. *Id.* at 398.

23. *See*, *e.g.*, Wolf v. Colorado, 338 U.S. 25, 33 (1949). The two main arguments against its application to the states were: (1) the availability of civil actions; and (2) the efficacy of political pressure on those who would violate the rights of the People. *Id.* at 31.

24. 367 U.S. 643, 654-55 (1961).

25. *Id.* at 651-53.

26. *Id.* at 659.

27. *See* YALE KAMISAR ET AL., BASIC CRIMINAL PROCEDURE: CASES, COMMENTS AND QUESTIONS 906 (11th ed. West 2005) (1965).

28. *See* Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920) ("The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all.").

as "the 'fruits' of the agents' unlawful entry."[29] The fruits doctrine holds inadmissible any evidence discovered by exploitation of a previous government action that a court determined to be illegal.[30] The *Wong Sun* Court found the doctrine necessary to protect the efficacy of the warrant requirement.[31]

After the Court decided *Katz v. United States*, in 1967, it seemed that the warrant preference would dominate. In *Katz*, the Court held that searches conducted without a warrant were "*per se* unreasonable under the Fourth Amendment—subject only to a *few* specifically established and well-delineated exceptions."[32] While never overruling *Katz*, the Court has moved away from its *per se* language and now proclaims that the "central requirement [of the Fourth Amendment] is one of reasonableness."[33] In retrospect, it is not surprising that exceptions began to cover the exclusionary rule landscape, given the fifty-year debate over its wisdom. One of the first exceptions appeared only two years after *Katz*, in *Alderman v. United States*, where the Supreme Court held that a person could not move to suppress evidence illegally seized from a third-party.[34] While *Alderman* is not traditionally viewed as an exception to the exclusionary rule,[35] it seems that the trend away from *per se* exclusion arose very quickly. Given the number and reach of the current exceptions, one might get the sense that warrants are the exception rather than the rule.[36]

Despite the fact that the Supreme Court recognizes exclusion as "the only effective deterrent to police misconduct in [criminal prosecutions],"[37] the Court also realizes that exclusion will not always deter police actions not aimed at the prosecution of a crime.[38] As a result, the courts now weigh the reasonableness of warrantless searches and seizures in each case.[39] This approach is considered especially appropriate where the search and seizure is not executed for a law enforcement purpose.[40] In fact, the reasonableness standard has even been extended to searches and seizures conducted by state officials not normally responsible for law enforcement. This extension can be found in the Court's

29. 371 U.S. 471, 484 (1963). The Court later used the phrase "fruit of the poisonous tree" when discussing possible independent sources for the evidence at issue. *Id.* at 488.

30. *Id*.

31. *See id.* at 484.

32. Katz v. United States, 389 U.S. 347, 357 (1967) (emphasis added).

33. Illinois v. McCarthur, 531 U.S. 326, 330 (2001) (internal quotations omitted).

34. 394 U.S. 165, 173 (1969).

35. It was based on standing rather than the applicability of the rule to the underlying facts. *See generally id.*

36. The rule is only *per se* in the sense that "the police must secure a warrant unless they can demonstrate that the case fits within one of a number of … exceptions." Debra Livingston, *Police, Community Caretaking, and the Fourth Amendment*, 1998 U. CHI. LEGAL F. 261, 267. *See also* Craig M. Bradley, *Two Models of the Fourth Amendment*, 83 MICH. L. REV. 1468, 1473 (1985) ("There are over twenty exceptions to the probable cause or the warrant requirement or both.").

37. Mapp v. Ohio, 367 U.S. 643, 655 (1961).

38. Terry v. Ohio, 392 U.S. 1, 14 (1968).

39. Scott E. Sundby, *Everyman's Fourth Amendment: Privacy or Mutual Trust Between Government and Citizen?*, 94 COLUM L. REV. 1751, 1757 (1994).

40. Livingston, *supra* note 36, at 291-92.

"special needs" cases, epitomized by *New Jersey v. T.L.O.*, which the Court decided in 1985.

New Jersey v. T.L.O. arose as a challenge to the exclusionary rule applied to searches and seizures conducted by school officials.[41] In 1980, school officials caught a fourteen-year-old high school freshman, T.L.O., smoking in a school bathroom.[42] T.L.O. was escorted to the principal's office and, after some questioning, the principal searched her purse.[43] During the search of T.L.O.'s purse, the principal discovered marijuana and drug paraphernalia.[44] The principal notified both T.L.O.'s parents and the police, and he turned the drug evidence over to the police.[45] The police later questioned T.L.O. and she confessed to selling marijuana on school property.[46] Using the confession and the evidence seized in the search, the State brought delinquency charges against T.L.O.[47] T.L.O. argued that the initial search violated the Fourth Amendment and moved to have the evidence and the confession suppressed.[48] The trial court overruled the motion to suppress and held T.L.O. delinquent, sentencing her to one year's probation.[49] The New Jersey appellate court agreed that the search did not violate the Fourth Amendment but vacated the judgment of delinquency and remanded on other grounds.[50] The New Jersey Supreme Court, agreeing with the lower courts, held that warrantless searches conducted by school officials do not violate the Fourth Amendment as long as the searches are reasonable.[51] However, it held the T.L.O. search unreasonable based on the facts of the case.[52]

Originally granting certiorari to determine whether the exclusionary rule applied to school officials, the Supreme Court decided to limit its holding to the reasonableness of the search in *T.L.O.*[53] The Court determined that the Fourth Amendment applied to public school officials as representatives of the State.[54] In weighing the individual and state interests, the Court did not decide what level of privacy interest public school students enjoy.[55] Rather, the Court assumed a legitimate expectation of privacy that must be balanced against the "substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds."[56] Relying on *Camara v. Municipal Court*,[57] the majority

41. 469 U.S. 325, 327 (1985).
42. *Id.* at 328.
43. *Id.*
44. *Id.*
45. *Id.* at 328-29.
46. *Id.* at 329.
47. *Id.*
48. *Id.*
49. New Jersey v. T.L.O., 469 U.S. 325, 330 (1985).
50. *Id.*
51. *Id.* at 330-31.
52. *Id.*
53. *Id.* at 332.
54. *Id.* at 333-37.
55. *Id.* at 338.
56. *Id.* at 339.

held that public school officials could legally search students based on reasonable suspicion of criminal activity or violation of school rules.[58] In his concurrence, Justice Blackmun cautioned that "[o]nly in those exceptional circumstances in which special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable, is a court entitled to substitute its balancing of interests for that of the Framers."[59]

The special needs rationale has been used to justify a number of other categories of searches conducted for purposes outside of law enforcement. "Thus, when … government employers search the offices of public employees … and probation officers search the homes of their probationers, the Supreme Court has emphasized the centrality of the reasonableness requirement in Fourth Amendment adjudication."[60] The special needs cases make it clear that criminal prosecutions do not always arise from traditional law enforcement encounters. This is particularly true of community caretaker encounters.

C. The Community Caretaker Exception[61]

In *Cady v. Dombrowski*, the Court created the community caretaker exception, which allows the use of evidence, seized without a warrant, if it was discovered by police officers acting outside their traditional law enforcement role.[62] On September 9, 1969, Chester Dombrowski was seriously injured in an automobile accident.[63] After a brief investigation, the police believed that Dombrowski was driving drunk at the time of the accident and arrested him.[64] Dombrowski was taken to the hospital and later lapsed into a coma.[65] Before falling unconscious, he informed the investigating officers that he worked for the Chicago Police Department.[66] Due to the unexplained coma, the doctor admitted Dombrowski to the hospital for overnight observation.[67] Officer Dombrowski's car was disabled and remained near the road after the accident, so the police towed it to a local

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57. *Camara* is another example of a "special needs" case in which the Court found warrantless building inspections reasonable because "the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search." Camara v. Municipal Court, 387 U.S 523, 532-33 (1967).

58. New Jersey v. T.L.O., 469 U.S. 325, 340-42 (1985).

59. *Id.* at 351 (Blackmun, J., concurring).

60. Livingston, *supra* note 36, at 291.

61. The purpose of this section is not to fully explore every aspect of the Community Caretaker Doctrine. It is simply offered as a background for comparing and analyzing the intersection of the community caretaker exception and the right to refuse medical treatment. For more thorough analyses of the Community Caretaker Doctrine, see generally Mary Elisabeth Naumann, *The Community Caretaker Doctrine: Yet Another Fourth Amendment Exception*, 26 AM. J. CRIM. L. 325 (1999); Livingston, *supra* note 36.

62. 413 U.S. 433, 441 (1973).

63. *Id.* at 435.

64. *Id.* at 436.

65. *Id.*

66. *Id.*

67. *Id.*

garage.[68] Because they believed that Chicago police officers were required to carry a gun at all times, and fearing that the gun was in Dombrowski's car, the local police searched for the weapon without a warrant.[69] Prosecutors used evidence discovered during the search of his car to convict Officer Dombrowski of a murder unrelated to the automobile accident.[70]

On appeal, the United States Court of Appeals for the Seventh Circuit determined that the warrantless search and seizure violated Officer Dombrowski's rights under the Fourth Amendment.[71] The Supreme Court reversed, holding that the "caretaker" search and seizure was reasonable[72] because it was "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."[73] Specifically, the search and seizure in *Cady* was held reasonable because it was aimed at ensuring the safety of the general public[74] rather than uncovering evidence related to the commission of a crime.[75]

While initially used to justify an inventory-type search aimed at protecting the public, the community caretaker exception now functions more as a general public welfare rule.[76] When the police act to protect the public in a manner outside their normal law enforcement function, the exception excuses many related warrantless searches and seizures.[77] The wide-ranging application of the exception would appear at odds with the language in *Katz* allowing only for "specifically established and well-delineated exceptions" to the warrant requirement.[78] As a result, community caretaker cases should be carefully analyzed to ensure that the warrant requirement is not subverted.

D. Analyzing Community Caretaker Encounters

Community caretaker cases should be analyzed using the two-step reasonableness approach followed by the Supreme Court in *Terry v. Ohio*. In that test, a stop and search is broken into its individual components—the stop[79]

68. The garage was not operated by the police. *Id.*
69. *Id.* at 437.
70. *Id.* at 438-39.
71. *Id.* at 449.
72. Cady v. Dombrowski, 413 U.S. 433, 441-43 (1973).
73. *Id.* at 441.
74. *Id.* at 447.
75. *Id.* at 441.
76. *See generally* Naumann, *supra* note 61.
77. *Id.* at 33-40.
78. Katz v. United States, 389 U.S. 347, 357 (1967).
79. The term stop will be used because it helps to differentiate between two different seizures that occur in many community caretaker cases—the seizure of the person and the later seizure of evidence.

and the search.[80] To admit evidence discovered during a stop and search, the court must find that each step was reasonable under the Fourth Amendment.[81]

In *Terry*, the Court allowed an investigatory stop and search because the officer had reasonable, articulable suspicion that a crime was afoot.[82] The Court first determined that the stop was reasonable because the officer observed behavior consistent with criminal activity. Once it determined that the stop was reasonable, the Court independently reviewed the search for weapons,[83] which it also found to be reasonable.[84] Since each part of the encounter was independently reasonable, the Court found that the evidence discovered in the encounter was admissible against the defendant.[85]

In reaching its decision in *Cady*, the Court did not clearly indicate that it employed the two-step test from *Terry*. However, the opinion points toward such an approach. The *Cady* Court began by quickly disposing with the seizure of Officer Dombrowski's vehicle,[86] focusing most of its attention on the subsequent search.[87] However cursory the two-step analysis appears in *Cady*, it was, and still is, the appropriate framework for evaluating community caretaker encounters. Each part of a community caretaker encounter must be examined to determine whether the police acted reasonably. As this procedure forces the police to independently justify each part of a community caretaker stop and search, it serves to protect the principles of the warrant requirement.[88]

Like most search and seizure cases, community caretaker cases should be analyzed linearly beginning with the first action in time.[89] The stop will usually be analyzed first, because it almost always occurs first in time. A stop constitutes a Fourth Amendment seizure if it is a restraint on a person's liberty.[90] However, a warrantless stop will be excused if the government can show that the facts satisfy a recognized exception to the warrant requirement.[91] After validating the

80. Terry v. Ohio, 392 U.S. 1, 19-20 (1968).

81. *Id.*

82. *Id.* at 30.

83. *Id*. at 23.

84. *Id.* at 30.

85. *Id.* at 30-31.

86. Cady v. Dombrowski, 413 U.S. 433, 442-43 (1973).

87. *Id*.

88. Because such a large number of police-citizen encounters might implicate the community caretaker exception, it should be carefully scrutinized. This scrutiny is even more important where it appears that the exception is being used pretextually. The U.S. Supreme Court made it clear that the exception was only to be used where the police were acting completely outside of their role as law enforcement officers, therefore, pretext must not be allowed. *Cady*, 413 U.S. at 441. A multi-step analysis helps to root out pretext by separating police actions and motivations into distinct units.

89. This makes the analysis simpler, as earlier actions generally give rise to facts that affect actions later in the encounter.

90. *See* United States v. Clay, 640 F.2d 157, 159 (8th Cir. 1981).

91. *See, e.g.*, Elisabeth R. Calcaterra & Natalie G. Mitchell, Note, *Subtracting Race from the "Reasonable Calculus": An End to Racial Profiling?* United States v. Montero-Camargo, *208 F.3d 1122 (9th Cir. 2000), cert. denied sub nom.*, 6 MICH. J. RACE & L. 339, 342-43 (2001) (discussing the automobile and "stop and frisk" exceptions to the warrant requirement).

stop, the court must determine the reasonableness of the subsequent search.[92] As with the stop, the search must be conducted pursuant to a warrant or come within a valid exception to be found reasonable.[93]

One important aspect of many community caretaker encounters, at least those that are litigated, is that they involve a third action—the seizure of evidence of criminal activity.[94] Initially, this does not seem unusual, but recall the reason warrantless caretaker stops and searches are allowed: The original intrusion by the police officer was made pursuant to some goal "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."[95] Police officers, in a true community caretaker encounter, inadvertently uncover evidence of a crime.[96] Therefore, the seizure of such evidence must come under an additional exception to the warrant requirement.[97]

E. *Evidence Seized in Plain View*

Although not explicitly stated in most cases, it appears that the seizure of evidence during a community caretaker encounter is excused by the plain view exception[98] to exclusion. Under this exception, the original stop must have been valid, putting the officer legally in the place from which he viewed the evidence.[99] Further, the incriminating character of the evidence must have been immediately apparent at the time it was seized.[100] If the police fail to satisfy either of the elements, any resulting evidence should be suppressed.[101]

Until 1990, courts required the police to satisfy a third element—the discovery of contraband had to be inadvertent.[102] However, the Supreme Court eliminated that element of plain view in *Horton v. California*. Justice Stevens, writing for the Court, held that inadvertent discovery was unreasonably subjective and

92. Illinois v. McArthur, 531 U.S. 326, 330 (2001) (holding that the main requirement of the Fourth Amendment is reasonableness).

93. *See* Kevin Royer, *The* Mooney *Blues: Homelessness and Constitutional Security from Unreasonable Searches*, 72 B.U. L. REV. 443, 448 n.39 (1992).

94. *E.g.*, State v. Page, 103 P.3d 454, 456 (Idaho 2004); People v. Davis, 497 N.W.2d 910, 914-15 (Mich. 1993); Lancaster v. State, 43 P.3d 80, 105 (Wyo. 2002).

95. Cady v. Dombrowski, 413 U.S. 433, 441 (1973).

96. This should always be true unless the caretaker stop was initiated as a pretext for law enforcement activity. However, pretextual use of the community caretaker exception should not be allowed in caretaker stops, as discussed *infra*.

97. *See, e.g.*, Sally Anne Moore, Comment, *Demise of the Probable Cause Requirement in Seizures of Inanimate Objects—*United States v. Place *and* United States v. Martell, 51 U. CIN. L. REV. 405, 423 n.108 (1982).

98. Coolidge v. New Hampshire, 403 U.S. 443, 460-62 (1971) ("It is well established that under certain circumstances the police may seize evidence in *plain view* without a warrant.") (emphasis added).

99. *Id.* at 465-66.

100. *Id.* at 466.

101. *See, e.g.*, State v. Kelsey, 592 S.W.2d 509, 512-14 (Mont. Ct. App. 1979) (holding that the police were not legally in position to view the evidence, therefore it was excluded).

102. *Coolidge*, 403 U.S. at 469.

would unduly hamper legitimate law enforcement.[103] He reasoned that "[t]he fact that an officer is interested in … evidence and fully expects to find it in the course of a search should not invalidate its seizure if the search is confined in area and duration by the terms of a warrant or a valid exception to the warrant requirement."[104] This is plausible reasoning given the facts in *Horton*,[105] but it is problematic in community caretaker situations.[106]

F. *Does the Police Action Fall Under the Community Caretaker Exception?*

The non-investigatory aspect of *Cady* appears key to the holding, but lower courts have repeatedly allowed the admission of evidence, relying on the community caretaker exception in spite of facts that indicate a law enforcement purpose.[107] In most such cases, there exists some level of exigency, itself an exception to the exclusionary rule.[108] However, in many of those cases, the level of exigency was insufficient to trigger the exception.[109] Still, the courts often entangle the exigency exception with the community caretaker exception.[110]

1. *Proper Use of the Community Caretaker Exception*

In 1999, Mary Elisabeth Naumann outlined three categories of valid caretaker activities: (1) emergency aid, (2) automobile impoundment/inventory, and

103. Horton v. California, 496 U.S. 128, 138-39 (1990).

104. *Id.* at 138.

105. The police were acting pursuant to a search warrant that did not include the gun at issue (the judge denied its inclusion in the warrant), but they had reason to believe that it would be present during the search. *Id.* at 130-31. The gun was observed, in plain view, during the search. *Id.* at 131.

106. As previously stated, community caretaker encounters must be initiated with a purpose totally divorced from law enforcement. If the officer acts with the knowledge that he is likely to uncover evidence of a crime, the exception should not apply.

107. *See, e.g.*, People v. Ray, 981 P.2d 928, 938-39 (Cal. 1999) (holding an officer could validly search an apartment, under the community caretaker exception, based on evidence of a past or ongoing burglary because persons or property might be in danger); State v. Van Ornum, 610 N.W.2d 513 (Wis. Ct. App. 2000) (holding that under the community caretaker exception, the stop could validly have been designed to assist a motorist or to investigate unusual activity in a high crime area); United States v. Stafford, 416 F.3d 1068, 1074 (9th Cir. 2005) (holding that police were validly acting as community caretakers when they searched an apartment in response to a report of a dead body covered with blood and feces in a room littered with needles).

108. In *Warden v. Hayden*, 387 U.S. 294, 298-99 (1967), the Court held that a warrantless search for an armed suspect was valid because the police had reason to believe that waiting would endanger the police and the public. Further, the Court held that exclusion, based on the fact that the evidence seized was not an instrumentality, fruit, or contraband, was improper. *Id.* at 309-10.

109. *See, e.g.*, Cady v. Dombrowski, 413 U.S. 433, 454 (1973) (Brennan, J., dissenting) (stating that even though the police believed that a gun was present, their actions did not indicate that it was an immediate danger to the public).

110. *See* Naumann, *supra* note 61, at 350.

(3) public servant.[111] The emergency aid category allows police to act when they "reasonably believe [that] someone needs immediate attention."[112] The public servant category is generally applied when an officer approaches a person, in a vehicle or on foot, who appears to be lost, ill, or otherwise in need of non-law enforcement assistance.[113] Finally, the automobile impoundment/inventory category is the category originally sanctioned by the Supreme Court.[114] It allows the impoundment and inventory search of vehicles under certain circumstances.[115] Naumann argued that to guard against overreaching by the police, who are generally "engaged in the often competitive exercise of ferreting out crime,"[116] uniformity is needed in the application of the community caretaker exception.[117] However, the courts do not apply the community caretaker exception uniformly, particularly in cases involving the public servant category.

Contrast, for example, two cases involving motorists "in distress." In *State v. Lovegren*, the Supreme Court of Montana upheld a drunk-driving conviction based on evidence elicited from a community caretaker encounter.[118] In *Lovegren*, the police observed the defendant's vehicle parked on the side of the road with the motor running.[119] When the officer approached the vehicle, he observed the defendant apparently asleep in the driver's seat.[120] Concerned for the defendant's safety, the officer opened the driver's door, which suddenly woke the defendant.[121] The defendant immediately, without questioning, stated that he had been drinking.[122] The Montana Supreme Court found that the statement and other resulting evidence were admissible via the community caretaker exception because the officer, acting on specific, articulable facts, was only attempting to protect the defendant's welfare when he opened the car door.[123] That set of facts and the resulting reasoning falls squarely within the community caretaker exception.

In contrast, a similar case from Wisconsin illustrates the dilemma created by inconsistent application of the community caretaker exception. In *State v. Pulver*, the Wisconsin Court of Appeals allowed the use of the community caretaker exception despite the possibility of a law enforcement purpose. In *Pulver*, the police observed a man apparently asleep in the driver's seat of a

111. *Id*. at 330. Naumann's article has been positively cited by numerous courts since its publication, and most have adopted one or all of her findings in relation to community caretaker categories.

112. *Id*. at 331.

113. *Id*. at 339.

114. The automobile category *is* the community caretaker exception as created in *Cady*. Cady v. Dombrowski, 413 U.S. 433, 441-43 (1973).

115. Naumann, *supra* note 61, at 334.

116. Johnson v. United States, 333 U.S. 10, 14 (1948).

117. Naumann, *supra* note 61, at 365-66.

118. State v. Lovegren, 51 P.3d 471, 476 (Mont. 2002).

119. *Id.* at 471-72.

120. *Id.* at 472.

121. *Id.*

122. *Id.*

123. *Id.* at 476.

parked vehicle.[124] In response, the officer parked her patrol car and approached the vehicle.[125] The officer knocked on the driver's window, which the defendant opened.[126] Through the open window, the officer smelled the odor of alcohol and observed an open beer can in the vehicle.[127] The Wisconsin Court of Appeals upheld the use of the evidence, partly based on the community caretaker exception.[128] However, in writing its decision, the court said: "Pulver may have been ill or injured, in which case he may have needed police assistance; or he may have been intoxicated, in which case the public had an interest in preventing his operation of a motor vehicle."[129] The latter statement suggests that the court would allow the use of the community caretaker exception even where the police had a law enforcement purpose.

2. *Community Caretaker Encounter or Pretext for a Law Enforcement Purpose?*

What was originally designed by the Supreme Court to be an exclusionary exception allowing purely non-investigative stops and searches now seems to invite pretext. That concept is squarely at odds with the Court's pronouncement that caretaker activities should be "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."[130] The United States Court of Appeals for the Fourth Circuit recognized this in *United States v. Johnson*, stating that community caretaking could not be used as "'a subterfuge for criminal investigations.'"[131] However, many lower courts allow what appear to be pretextual caretaker stops and searches.[132]

When it was written, the exception excused warrantless searches and seizures only where the police were unconcerned with crime and the use of community caretaker encounters as a pretext might not be stopped by uniform application of

124. State v. Pulver, No. 93-1117-CR, 1993 Wisc. App. LEXIS 1437, at *4 (Wis. Ct. App. Nov. 11, 1993).

125. *Id.* at *5, *8.

126. *Id.*

127. *Id.* at *9.

128. *Id*.

129. *Id.* at *5.

130. Cady v. Dombrowski, 413 U.S. 433, 441 (1973).

131. United States v. Johnson, 410 F.3d 137, 145 (3d Cir. 2005) (quoting *South Dakota v. Opperman*, 428 U.S. 364, 370 n.5 (1976)). The Seventh Circuit also recognizes that emergency and exigency are two separate doctrines. *See* Sheik-Abdi v. McClellan, 37 F.3d 1240, 1244 (7th Cir. 1994).

132. *See* People v. Ray, 981 P.2d 928, 938-39 (1999) (holding an officer could validly search an apartment, under the community caretaker exception, based on evidence of a past or ongoing burglary because persons or property might be in danger); State v. Van Ornum, No. 99-2641-CR, 2000 WI App. LEXIS 162, at *2-4 (Wis. Ct. App. Feb. 23, 2000) (holding that under the community caretaker exception, a stop could validly have been designed to assist a motorist or to investigate unusual activity in a high crime area); United States v. Stafford, 416 F.3d 1068, 1074 (9th Cir. 2005) (holding that police were validly acting as community caretakers when they searched an apartment in response to a report of a dead body covered with blood and feces in a room littered with needles).

a broad rule. For instance, a rule could be crafted to uniformly allow the continued use of pretextual stops. Unfortunately, many courts have taken this direction.

3. *The Expanding Community Caretaker Exception*

The entanglement of law enforcement and caretaking is not the only area where the edges of the community caretaker exception blur. Where *Cady* was concerned only with the caretaker search and seizure of a car,[133] the exception now encompasses the search and seizure of evidence from houses and persons.[134] Unlike pretextual stops, there are valid reasons for generally extending the community caretaker exception to homes and people. For instance, the police are sometimes called to check on the well-being of elderly citizens. In those cases, there is often no probable cause to believe a crime has been committed.[135] Therefore, it would be impractical or impossible to obtain a warrant, thereby implicating the exclusionary rule.[136] In many cases, then, the police would be discouraged, albeit in a small way, from entering the citizen's home to investigate.[137]

Yet, not everyone is eager or willing to interact with the police. Refer back to the situation involving a citizen who appeared to be in need of medical attention. Consider that he might decline to accept medical assistance. In that case, if the officer insists that the citizen submit to treatment, another legal doctrine is implicated.

III. THE RIGHT TO REFUSE MEDICAL TREATMENT

At least thirteen states recognize a *constitutional* right to refuse medical treatment.[138] Most of the pertinent cases cite to *Cruzan v. Director, Missouri*

133. *See generally Cady*, 413 U.S. at 433.

134. *See, e.g.*, United States v. Rohrig, 98 F.3d 1506, 1523 (6th Cir. 1996) (holding that warrantless entry into home was allowed under the community caretaker exception); *Ray*, 981 P.2d at 938 (finding that the police could validly enter an apartment, without a warrant, pursuant to a community caretaker goal); United States v. Garner, 416 F.3d 1208, 1214 (10th Cir. 2005) (holding that police could validly hold a person and require him to submit to medical examination pursuant to a community caretaker goal). Interestingly, all three cases also seem to allow law enforcement interests to enter the community caretaker analysis.

135. Livingston, *supra* note 36, at 291-92.

136. This is based upon the Fourth Amendment's language allowing warrants only upon probable cause. U.S. CONST. amend. IV.

137. *See, e.g.*, *Ray*, 981 P.2d at 939. "When the officer's conduct is objectively reasonable, 'excluding the evidence will not further the ends of the exclusionary rule in any appreciable way; for it is painfully apparent that … the officer is acting as a reasonable officer would and should act in similar circumstances. Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty.'" *Id.* (quoting Stone v. Powell, 428 U.S. 465, 539-40 (1976)).

138. *See, e.g.*, Rasmussen v. Fleming, 741 P.2d 674, 682 (Ariz. 1987) (finding a federal right); Bouvia v. Superior Court, 179 Cal. App. 3d 1127, 1137 (Cal. 1986) (finding a federal right under U.S. CONST. amend. XIV and a state right under CAL. CONST. art. I, § 1); McConnell v. Beverly

Dep't of Health, in which the Supreme Court said: "The principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions."[139] A review of Supreme Court precedents in this area indicates that the *Cruzan* Court intended to recognize such a constitutional right.

A. *The Origins of the Right to Refuse*

An individual's right to self-determination, particularly when it involves his body, has long been recognized at common law.[140] In fact, the Supreme Court entertained the idea of a right to refuse medical treatment as early as 1891 in *Union Pacific Railroad Company v. Botsford*. Although the Court did not expressly create a right to refuse medical treatment, it recognized that "[n]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law."[141] Justice Cardozo reiterated this idea in 1914 while he was on the Court of Appeals of the State of New York. In *Schloendorff v. Society of New York Hospital*, he wrote that "every human being … has a right to determine what shall be done with his own body; and a surgeon who performs an operation without … consent commits an assault."[142]

By 1942, courts began to recognize that there might be a liberty interest in the right to refuse medical treatment.[143] While not officially recognizing such an interest, the Supreme Court in *Skinner v. Oklahoma* planted the seeds. In

Enters.-Conn., Inc., 553 A.2d 596, 601 (Conn. 1989) (finding a federal right); *In re* Tavel, 661 A.2d 1061, 1069-70 (Del. 1995) (recognizing the federal right); Satz v. Perlmutter, 379 So. 2d 359, 360 (Fla. 1980) (finding a state right under FLA. CONST. art. V, § 3(b)(3)); Polk County Sheriff v. Iowa Dist. Court, 594 N.W.2d 421, 426 (Iowa 1999) (recognizing a federal right); Woods v. Commonwealth, 142 S.W.3d 24, 32 (Ky. 2004) (recognizing a federal right); People v. Kevorkian, 527 N.W.2d 714, 732 (Mich. 1994) (finding a federal right); Cruzan v. Harmon, 760 S.W.2d 408, 434 (Mont. 1988) (finding a federal right under U.S. CONST. amend. XIV and a state right under MONT. CONST. art. I, § 2); State v. Pelham, 824 A.2d 1082, 1087 (N.J. 2003) (recognizing both a state and federal right); Steele v. Hamilton County Cmty. Mental Health Bd., 736 N.E.2d 10, 11-12 (Ohio 2000) (finding a federal right under U.S. CONST. amend. XIV and a state right under OHIO CONST. art. I, § 1); Commonwealth v. Nixon, 718 A.2d 311, 313 (Pa. 1998) (finding a "constitutional" right to refuse medical treatment); *In re* Guardianship of L.W., 482 N.W.2d 60, 63 (Wis. 1992) (finding a federal right under U.S. CONST. amend. XIV and a state right under WIS. CONST. art. I, § 1).

139. Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261, 278 (1990).

140. *See* Kristin M. Lomond, Note, *An Adult Patient's Right to Refuse Medical Treatment for Religious Reasons: The Limitations Imposed by Parenthood*, 31 U. LOUISVILLE J. FAM. L. 665, 670-71 (1993).

141. Union Pacific R.R. Co. v. Botsford, 141 U.S. 250, 251 (1891).

142. Schloendorff v. Soc'y of N.Y. Hosp., 105 N.E. 92, 93 (1914).

143. *See* Skinner v. Oklahoma, 316 U.S. 535, 546 (1942) (Jackson, J., concurring) ("There are limits to the extent to which a legislatively represented majority may conduct biological experiments at the expense of the dignity and personality and natural powers of a minority ….").

Skinner, the Court invalidated a law mandating sterilization of certain repeat criminal offenders.[144] In his concurrence, Chief Justice Stone stated:

> The real question we have to consider is not one of equal protection, but whether the wholesale condemnation of a class to such an invasion of personal liberty, without opportunity to any individual to show that his is not the type of case which would justify resort to it, satisfies the demands of due process.[145]

Other courts reiterated Chief Justice Stone's sentiment in subsequent cases.

For instance, in *Poe v. Ullman*, Justice Harlan dissented and would have struck down a Connecticut statute that made the use of contraceptive drugs illegal.[146] He repeatedly referred to *Skinner*, implicitly arguing that individuals have the right to determine the course of their own medical treatment.[147] In *Roe v. Wade*, the Court echoed this thought when it determined that the Constitution protected a woman's right to an abortion.[148]

In the past twenty-five years, the Supreme Court has repeatedly recognized that individuals possess a significant liberty interest in deciding the course of their medical treatment.[149] However, prior to *Cruzan*, the Court had not recognized a constitutional right to *refuse* medical treatment. It is difficult to understand how the right to determine the course of one's own medical treatment could effectively function absent the right to refuse unwanted procedures. Perhaps in response to this dilemma, many states provided statutory protection to the right to refuse,[150] and some have provided the right to refuse life-sustaining treatment.[151] According to the *Cruzan* Court, given the status of the law, it was logical to recognize the right to refuse medical treatment.[152] After *Cruzan*, courts

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144. *Id.* at 541.

145. *Id.* at 544 (Stone, C.J., dissenting).

146. Poe v. Ullman, 367 U.S. 497, 554-55 (1961).

147. *Id.* at 539-55.

148. Roe v. Wade, 410 U.S. 113, 153 (1973). While the majority in *Roe* determined that *Skinner* stood for the proposition that there was a fundamental privacy right to procreation, it arguably encompasses the right to determine medical treatment because *Skinner* involved the use of contraception. *See id.* at 152.

149. *See, e.g.*, Vacco v. Quill, 521 U.S. 793, 807 (1997); Planned Parenthood v. Casey, 505 U.S. 833, 927 (1992); Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261, 269 (1990); Washington v. Harper, 494 U.S. 210, 221-22 (1990); Vitek v. Jones, 445 U.S. 480, 494 (1980).

150. *See* S. Elizabeth Wilborn Malloy, *Beyond Misguided Paternalism: Resuscitating the Right to Refuse Medical Treatment*, 33 WAKE FOREST L. REV. 1035, 1053-54 (1998).

151. *See, e.g.*, John Nicholas Suhr, Jr., Note, Cruzan v. Director, Missouri Department of Health: *A Clear and Convincing Call for Comprehensive Legislation to Protect Incompetent Patients' Rights*, 40 AM. U. L. REV. 1477, 1487-95 (1991).

152. In exploring the history of the right to refuse treatment, the Court discusses the doctrine of informed consent, which provides the basis of civil liability against doctors who perform medical procedures without such consent. In that discussion, the majority says that "the logical corollary of the [informed consent] doctrine is that the patient generally possesses the right … to refuse treatment." *Cruzan*, 497 U.S. at 270. Later in the opinion, the majority also says that, at least in regard to competent persons, "[i]t cannot be disputed that the Due Process Clause protects … an interest in refusing life-sustaining treatment." *Id.* at 281. *See also* RESTATEMENT (SECOND) OF TORTS § 13 (1965).

and scholars tend to agree on the existence of a constitutional right to refuse even life-sustaining medical treatment.[153] However, they also agree that the right is not absolute and, in cases where the government is involved, a court must balance the individual's interests against those of the state.[154]

B. Balancing the State Interests Against Those of the Individual

Before *Cruzan*, many state courts ruled that the right to refuse treatment implicated a fundamental privacy interest.[155] However, the Supreme Court in *Cruzan* specifically analyzed the right to refuse medical treatment as a liberty interest under the Due Process Clause of the Fourteenth Amendment.[156] More importantly, the Court did not afford the right to refuse medical treatment the protection of a fundamental right.[157]

Although the analysis in *Cruzan* is somewhat unclear, it appears that the Court endorsed the rational basis test.[158] Therefore, to override an individual's refusal, the state need only prove that it acted pursuant to a legitimate interest that outweighs the individual's liberty interest.[159]

States typically characterize their interests as one or more of the following: (1) preservation of health or life; (2) prevention of suicide; (3) preservation of the integrity of the medical profession; and (4) protection of innocent third parties.[160] These interests were discussed by the Florida District Court of Appeals in *Satz v. Perlmutter*,[161] and courts generally recognize those interests as legitimate,[162] but

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153. For example, the idea has been adopted in the most recent edition of *American Jurisprudence*. 22A AM. JUR. 2D *Death* § 441 (2004).

154. *See generally* Arlene McCarthy, *Prisoner's Right to Die or Refuse Medical Treatment*, 66 A.L.R. 5TH 111 (2003).

155. *Cruzan*, 497 U.S. at 279.

156. *Id.* This follows naturally from the Court's decisions in cases like *Vitek v. Jones*, where the Court held that "[m]any of the restrictions on the prisoner's freedom of action[,] … by themselves[,] might not constitute the deprivation of a liberty interest retained by a prisoner." *Vitek*, 445 U.S. at 494.

157. Thomas C. Marks, Jr., *Elder Law Across the Curriculum: Elder Law in Federal and Florida Constitutional Law Classes*, 30 STETSON L. REV. 1293, 1300 (2001). Note that Justice Brennan, in his dissent, argued that the right to refuse life-sustaining treatment must be fundamental, as it was deeply rooted in the history and tradition of the country. *Cruzan*, 497 U.S. at 305.

158. Marks, *supra* note 157, at 1301.

159. Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261, 279 (1990) ("Whether [an individual's] constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests.") (quoting Youngsberg v. Romeo, 457 U.S. 307, 321 (1982)).

160. *See, e.g.*, State v. McAfee, 385 S.E.2d 651, 652 (Ga. 1989).

161. Satz v. Perlmutter, 362 So. 2d 160, 162-64 (Fla. Dist. Ct. App. 1978). "There can be no doubt that the state does have an interest in preserving life, but we [agree that] … 'there is a substantial distinction in the state's insistence that human life be saved where the affliction is curable, as opposed to the state interest where, as here, the issue is not whether, but when, for how long and at what cost to the individual (his) life may be briefly extended.'" *Id.* at 162 (quoting Superintendent of Belchertown v. Saikewicz, Mass., 370 N.E.2d 417 (Mass. 1977)). "Classically, [the protection of third parties] is exemplified in the case *Application of the Pres. and Dir. of Georgetown College, Inc.*, where the patient, by refusing treatment, is said to be abandoning his

they are typically applied in a civil context. In community caretaker cases, the issue is whether those interests hold up where the government's main concern is related to law enforcement.

C. State Law Enforcement Interests in Medical Procedures

Generally speaking, courts analyze compulsory medical procedures differently, depending on whether they are supported by law enforcement or non-law enforcement interests.[163] In the civil context, government interests weigh against the due process liberty interest of the individual.[164] However, in the criminal context, government interests are typically weighed against an individual's privacy interest under the Fourth Amendment.[165] In a typical case, the government wants to use the medical procedure to uncover evidence of a crime.[166] For that reason, the Fourth Amendment is paramount.

The seminal case allowing the discovery of evidence by compulsory medical examination is *Schmerber v. California*. The police arrested Schmerber at a hospital following an automobile accident.[167] At the direction of the arresting officer, and over Schmerber's objections, medical personnel drew his blood to determine its blood alcohol content.[168] The test revealed a prohibited level, and the State used the results to convict him of driving under the influence.[169] The Supreme Court affirmed his conviction.[170] In its analysis, the Court said: "The interests in human dignity and privacy which the Fourth Amendment protects forbid … intrusions [into the body] on the mere chance that the desired evidence [will be found]."[171] The Court further reasoned that "[i]n the absence of a clear indication that … such evidence will be found, these fundamental human interests require law officers to suffer the risk that such evidence will disappear."[172]

minor child, which abandonment the state as *parens patriae* sought to prevent." *Id.* (internal citation omitted). Suicide generally requires that the individual induce the cause of his death. *See id.* at 162-63. In analyzing the state interest in the protection of medical ethics, the court said: "It is not necessary to deny a right of self-determination to a patient in order to recognize the interests of doctors, hospitals, and medical personnel in attendance on the patient. Also, if the doctrines of informed consent and right of privacy have as their foundations the right to bodily integrity … and control of one's own fate, then those rights are superior to the institutional considerations." *Id.* at 163-64 (relying on *Saikewicz*, 370 N.E.2d at 426-27).

162. *Id.* A quick search on either LexisNexis or Westlaw shows that the states have decided hundreds of cases involving the right to refuse medical treatment.

163. Compare the analyses in *Schmerber v. California*, 384 U.S. 757 (1966) and *Winston v. Lee*, 470 U.S. 753 (1985) with *Cruzan* or *McAfee*.

164. Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261, 279 (1990).

165. *See, e.g.*, *Schmerber*, 384 U.S. at 768; *Winston*, 470 U.S. at 763.

166. *See, e.g., Schmerber*, 384 U.S. at 770.

167. *Id.* at 758.

168. *Id.*

169. *Id.* at 759.

170. *Id.*

171. *Id.* at 769-70.

172. *Id*. at 770.

Applying the aforementioned rule, the Court determined that Schmerber's blood test was reasonable under the Fourth Amendment[173] because blood tests are: (1) commonplace, as they are used for everything from marriage licenses to military service; (2) relatively non-invasive and safe; and (3) highly effective in garnering probative evidence.[174] The Court summarized its opinion by saying, "the Constitution does not forbid the States['] minor intrusions into an individual's body under stringently limited conditions."[175]

Reaching the opposite conclusion in *Winston v. Lee*, the Court again relied heavily on the invasiveness of the procedure and the value of the potential evidence.[176] It stated that, even with probable cause, if a surgical procedure threatened the life or health of the individual, it might be unreasonable under the Fourth Amendment.[177] The Court further indicated that the potential danger of the procedure was "crucial" to the reasonableness inquiry[178] and reiterated that the invasiveness of the procedure and its effectiveness in discovering evidence were factors in determining reasonableness.[179] Applying those factors, the *Winston* Court held that the surgical probing of the defendant's chest cavity was unreasonable because it was potentially dangerous, highly invasive, and the evidentiary need was low.[180] Throughout the opinion, the Court referred to *Schmerber*, explicitly affirming that its balancing test should be used in similar cases.[181]

The same reasoning is used throughout the cases that have dealt with medical procedures conducted at the behest of law enforcement officers.[182] The courts, in those cases, did not address the right to refuse medical treatment, which might be explained in two ways. First, the courts did not recognize the right prior to *Cruzan*. Second, the parties seem not to have argued the point.[183] The lack of attention leaves open the question of how the right to refuse medical treatment applies to law enforcement encounters with one exception. The right to refuse medical treatment has been addressed in relation to medical procedures compelled by corrections officers.

In *Washington v. Harper*, the Supreme Court recognized that even prisoners have a liberty interest in avoiding the administration of medication.[184] In *Harper*, the defendant sought damages and injunctive relief because various doctors

173. Schmerber v. California, 384 U.S. 757, 770-71 (1967).
174. *Id.* at 771.
175. *Id*. at 772.
176. Winston v. Lee, 470 U.S. 753, 764-66 (1985).
177. *Id*. at 761.
178. *Id.*
179. *Id*. at 762-63.
180. *Id*. at 763-66.
181. *See generally id.*
182. *E.g.*, Nelson v. City of Irvine, 143 F.3d 1196, 1208 (9th Cir. 1998); *In re* Shabazz, 200 F. Supp. 2d 578, 585 (D.S.C. 2002); United States v. Goodridge, 945 F. Supp. 371, 374 (D. Mass. 1996).
183. This may be due to the fact that they did not believe the right existed.
184. Washington v. Harper, 494 U.S. 210, 221 (1990).

working for the Washington state corrections system forcibly administered medications against his will.[185] Reversing the Washington State Supreme Court, which held that the government must show a compelling interest in order to override an inmate's refusal,[186] the Supreme Court determined that prison officials need only provide a rational connection between the administration of antipsychotic drugs and a legitimate governmental interest.[187] The Court further held that corrections officials have strong interests in providing appropriate medical care and protecting inmate safety, particularly when the individual has been diagnosed with a serious mental illness and poses a high risk of violence.[188]

The rationale in *Harper* might be useful for some community caretaker encounters, but certainly not for all. In fact, it is highly unlikely that many community caretaker encounters could embrace the reasoning in *Harper* because, unlike prison officials, the police are not likely to have detailed medical information or criminal histories in those situations. As a result, the courts must create a new framework, applying the right to refuse medical treatment in community caretaker encounters.

IV. A PROPOSAL FOR APPLYING THE RIGHT TO REFUSE MEDICAL TREATMENT TO COMMUNITY CARETAKER ENCOUNTERS

While the right to refuse medical treatment could affect a wide variety of police activities, this article focuses on the effect that right has on community caretaker encounters. Caretaker encounters arise in a variety of ways and in a variety of settings. Two examples were used at the outset of this article: (1) the officer checking on a motorist; and (2) the officer responding to the scene of an industrial accident. In either case, if the officer offers medical assistance, the right to refuse medical treatment demands attention when determining whether the officer acted reasonably.[189]

There is almost no evidence that the courts have applied the right to refuse medical treatment in law enforcement cases outside of penal institutions. Review of dozens of cases indicates that courts have only analyzed medical searches and seizures conducted for law enforcement purposes under the Fourth Amendment. However, as the *Cady* Court pointed out, community caretaker encounters bypass the warrant requirement because they arise from concerns "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."[190] For that reason, if a stop and search occurs, the analysis should take on a different character based on the facts of each case. The analysis must still take place under the Fourth Amendment. However, the state's interests

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185. *Id.* at 217.
186. *Id.* at 218.
187. *Id.* at 224-25.
188. *Id.* at 225-26.
189. There will be no discussion of an individual who, in no way, attempts to refuse medical assistance. It is assumed that, in those cases, the right was waived and the standard *Schmerber*- or *Skinner*-type analysis is appropriate.
190. Cady v. Dombrowski, 413 U.S. 433, 441 (1973).

cannot begin with the law enforcement concerns normally offered in search and seizure cases. Moreover, the individual should assert not only his Fourth Amendment privacy interest, but also the Fourteenth Amendment liberty interest recognized by *Cruzan*.

A typical community caretaker encounter involving some form of medical treatment should be analyzed in three steps; (1) the stop; (2) the search; and (3) the seizure of evidence. The analysis should begin with the first action in time, and each step should be analyzed individually, relying on the Supreme Court's Fourth Amendment framework.[191] In most cases, the analysis will begin when the police stop an individual.

A. The Stop

In a community caretaker situation, as with most law enforcement activities, the stop sets the tone for the entire encounter. Right from the beginning, the police must establish their purpose for the encounter. In caretaker stops, the police must be acting pursuant to some interest outside of their typical law enforcement role. When reviewing police actions, courts generally condone caretaker stops.[192] This tendency is born of practicality. Since society expects police officers to stop and offer assistance, the courts show deference to officers faced with caretaker situations. However, this idea does not reduce the stop analysis to mere ceremony. The stop should receive as much attention as any other portion of this analysis; but, the courts should and do recognize that most police officers initiate caretaker encounters out of genuine concern for public safety and welfare rather than as a pretext to law enforcement.[193]

Once a stop has been validated for any reason, the court can move on to analyzing the next police action, which is generally a search of some kind. However, before moving to the search, it is important to recognize the effect of relying on the caretaker rationale. By finding any particular stop valid as a community caretaker activity, the court stamps the police action as non-law enforcement. This is important because it sets the template of state interests that can be used for the next step—the search. Further, instead of relying on *Schmerber* or *Winston*, the court must use a different approach when analyzing the search.[194]

191. Courts should not engage in reasoning that blurs the line between each step. For instance, the reasonableness of a motor vehicle stop should be analyzed before analyzing the reasonableness of the subsequent search of the driver. Blending the analyses of the two steps encourages the use of backwards reasoning. For instance, because a driver was found to have a prohibited blood alcohol content, it would be easy to lend more weight to the officer's explanation for the stop. Such blurring only serves to dilute the protection of the Fourth Amendment and calls resulting decisions into question.

192. The most prevalent exception to this general approval is where the police conducted the caretaker stop as a pretext for law enforcement activities. *See, e.g.*, United States v. Gillespie, 332 F. Supp. 2d 923, 929 (W.D. Va. 2004); State v. Ryon, 108 P.3d 1032, 1042-43 (N.M. 2005); State v. Nikolsky, No. 02-813, 2004 Iowa App. LEXIS 131, at *18 (Iowa Ct. App. Jan. 28, 2004).

193. Livingston, *supra* note 36, at 274.

194. This issue is discussed in sections II(B) and II(C), *infra*.

B. The Search

Of the three steps in a caretaker analysis, the search will be most affected by a valid refusal of medical treatment. This is because the treatment generally *is* the "search" for Fourth Amendment purposes.[195] For instance, it is often necessary to take a medical history prior to administering treatment; the search is the gathering of information. In the Fourth Amendment realm, a search should not be conducted absent a warrant or a valid exception.

The community caretaker exception generally excuses the treatment/search, but the right to refuse medical treatment complicates the analysis. Since a competent individual can refuse medical attention, courts must look for a valid refusal[196] before passing on the reasonableness of the search. It is in this situation that the current *Schmerber* and *Winston* framework is inadequate and inappropriate.

Under *Schmerber* and *Winston*, the analysis focuses only on the individual's Fourth Amendment privacy concerns and the law enforcement goals of the state.[197] But, in a community caretaker situation, the police cannot conduct the search with a law enforcement goal in mind,[198] and the analysis should not include the state's goal in securing evidence. Most cases involving state-compelled medical treatment for non-law enforcement purposes advance one or more of the four goals detailed in *State v. McAfee*: (1) preservation of health or life; (2) prevention of suicide; (3) preservation of the integrity of the medical profession; and (4) protection of innocent third parties.[199] Compare those goals to the *Cruzan* holding, where the Supreme Court indicated that the Constitution protects the right to refuse even *life-sustaining* medical treatment.[200] It would seem that the right to refuse medical treatment would trump any of the state's interests normally offered in civil cases, the most important of which is arguably

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195. Winston v. Lee, 470 U.S. 753, 766 (1985) (finding that a surgical procedure was a search); Ferguson v. City of Charleston, 532 U.S. 67, 84-85 (2001) (finding that drug testing was a search); Jones v. McKenzie, 833 F.2d 335, 338 (D.C. Cir. 1987), *vacated sub nom.* Jenkins v. Jones, 490 U.S. 1001 (1989) (finding that drawing urine was a "search").

196. The term valid is used to differentiate between effective and ineffective refusals.

> A valid refusal of treatment is an informed refusal of treatment given by either a competent adult person or a factually competent minor; or a refusal pursuant to a valid advance directive, whether in the form of a "living will" or a durable power of attorney for health care, or given by some other legally recognized substitute decision-maker, when such a refusal is within the scope of the authority of this decision-maker.

Margaret A. Somerville, *The Song of Death: The Lyrics of Euthanasia*, 9 J. CONTEMP. HEALTH L. & POL'Y 1, 5 n.9 (1993).

197. Schmerber v. California, 384 U.S. 757, 766-70 (1967); *Winston*, 470 U.S. at 760-61.

198. Although there are myriad situations in which a caretaker stop could turn into a law enforcement encounter prior to the search, for the purposes of this discussion it is assumed that the searches are being conducted pursuant to a community caretaker goal.

199. State v. McAfee, 385 S.E.2d 651, 652 (Ga. 1989).

200. Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261, 281 (1990). In finding a right to refuse life-sustaining medical treatment, the *Cruzan* Court referred to the same state interests found in *McAfee*. *Id.* at 271.

the protection of human life.[201] Therefore, in the face of a valid refusal, a reviewing court should exclude any evidence discovered as a result of subsequent treatment unless the state can show that its interests are more important than the individual's Fourth Amendment privacy interest and his Fourteenth Amendment liberty interest in avoiding unwanted treatment.[202]

The previous analysis is appropriate where the courts faithfully apply the community caretaker exception. For courts that condone potential law enforcement purposes when analyzing community caretaker encounters, the search analysis must be handled differently. In those cases, the court must balance both the individual's substantive right of privacy and his procedural right to refuse treatment against the state's dual interests, both law enforcement and non-law enforcement.[203] The law enforcement analysis would be similar to the one employed in *Schmerber* and *Winston*. However, unlike *Schmerber*, *Winston*, and their progeny, community caretaker cases generally lack sufficient facts to show probable cause, a concept key to the reasonableness of the searches in those cases.[204] Without probable cause, the state's law enforcement interests are irrelevant, leaving the non law-enforcement interests discussed in section II(B). As discussed in the previous subsection, it appears that the individual's liberty interest overrides all the interests normally offered by the state.

It may sound as though the purpose of this comment is to invalidate *all* community caretaker searches involving medical treatment. Certainly, there are many situations where the right to refuse treatment, coupled with the warrant preference, should control. However, there are a multitude of situations where the state might prevail in the balancing.[205] In these situations, it will often be necessary to analyze a third step in the process—the seizure of evidence.

C. The Seizure of Evidence

Most litigated community caretaker encounters result from the seizure of evidence used at a criminal trial.[206] Further, when the courts validate those seizures, they often do so pursuant to the plain view doctrine.[207] The plain view exception to warrants depends almost entirely on the first two steps of the

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201. *See id.* While the prevention of suicide is likely an overriding state concern, it also raises questions of competency of the patient, bringing the validity of the refusal into question.

202. *See* Vacco v. Quill, 521 U.S. 793, 809 (1997).

203. This concept is completely improper under the community caretaker exception since the related, warrantless police actions are supposed to be conducted pursuant to a purpose completely divorced from law enforcement. The courts that allow this type of intermingling invite pretextual stops. Nevertheless, the framework for such an analysis is provided to minimize the impact on the rights of the individual.

204. Schmerber v. California, 384 U.S. 757, 768-72 (1966); Winston v. Lee, 470 U.S. 753, 760-63 (1985).

205. Examples include lack of a valid refusal, emergency situations where consent is impractical, and attempted suicide, which as mentioned above, would probably invalidate any attempted refusal.

206. *E.g.*, United States v. Stafford, 416 F.3d 1068, 1071 (2005).

207. *E.g.*, *id.* at 1074.

community caretaker analysis. If either of the first two steps in the community caretaker analysis is invalidated, this third step is all but a nullity. On the other hand, if the first two steps of the caretaker analysis are both held reasonable, the seizure of evidence is also likely to be held reasonable.

For evidence to be validly seized under the plain view doctrine, the state must prove three elements. First, the initial intrusion by the police must have been legal. Second, the police must have legally been in the place from which they viewed the evidence. Finally, the evidence must be immediately recognizable as contraband.[208]

The first two steps of the community caretaker analysis also implicitly address the first two plain view factors. The initial intrusion by the police is most often going to be the community caretaker *stop*. If the stop is validated, the police legally intruded on the individual's privacy rights. Next, whether the police were legally in the place from which they viewed the seized evidence will be based on the reasonableness of the community caretaker *search*. As previously stated, in medical community caretaker cases, the search will generally be directly related to some form of treatment. Therefore, if the court finds that the citizen/patient validly refused treatment, the state will have to prove an overriding interest. If the individual has a stronger interest, the police should have left him alone. As a result, any evidence subsequently discovered cannot be validated by plain view since the police were not legally in position to view such evidence. Unlike the first two elements of plain view, the third element has no direct connection to the community caretaker analysis.

Under the third element of plain view, the evidence must be immediately recognizable as contraband. Since a very large percentage of community caretaker encounters seem to result in drunk driving or possession charges, this requirement will ordinarily be satisfied as drugs and alcohol are readily identifiable. In other cases, the courts naturally rely on common sense and precedent to determine whether a given item was readily identifiable as contraband.

D. The Big Picture

The reasonableness of a community caretaker search for medical purposes and the resulting seizure of evidence are inextricably intertwined. Both hinge on the validity of the individual's refusal of medical treatment. If the individual can show that he validly refused treatment, absent an overriding state interest, he should prevail in a motion to suppress evidence discovered only by exploitation of that treatment. If, however, his refusal is unclear or absent, or the state shows that the individual was not competent to refuse treatment, the right to refuse will have no effect on the calculus. Therefore, it is clear that both the state and the individual should focus much attention on facts related to the refusal and the courts should carefully review those facts.

208. *See* Coolidge v. New Hampshire, 403 U.S. 443, 465-66 (1971).

Faithful application of the law requires that the right to refuse medical treatment invalidate many medical community caretaker searches and seizures conducted over a valid refusal. Certainly, the state has a strong interest in the health and safety of its citizens, but even rational basis review requires that the state act to further a *legitimate* interest. As previously mentioned, those interests cannot include law enforcement if the community caretaker exception is applied as intended. So, the state must support its position with interests similar to those enumerated by the State of Georgia: the preservation of health or life; prevention of suicide; preservation of the integrity of the medical profession; and protection of innocent third parties. The question is whether they are sufficient.

Certainly the state does not have a stronger interest than the individual's own interest in his health—especially now that the Supreme Court has held that a person can refuse life-sustaining treatment.[209] The state might have a valid argument in cases involving suicide because the "victim" may not have the requisite state of mind to validly refuse treatment. But, the majority of medical caretaker cases are likely to be much more benign. Moreover, refusal does not implicate the integrity of the medical profession as doctors must already gain patient consent, when possible, before performing all procedures. Finally, as a matter of law, the state might argue that a sick or injured individual is a danger to the public, but good policy favors the individual. Requiring individuals to undergo unwanted medical procedures to protect the public invites mandatory medical procedures of all types, ranging from the mundane to the outrageous. Whether the treatment is vaccination or castration, the concept runs afoul of many constitutional safeguards, including the right to refuse medical treatment. Therefore, the protection of third parties should only apply when the danger to the public is extreme. The state might offer other interests to support community caretaker searches and seizures, but no defendant has asserted his right to refuse medical treatment in such a case—yet. The question remains as to how the courts will balance the equation.

V. APPLYING THE FRAMEWORK

Since the right to refuse medical treatment has never been applied to a community caretaker encounter, the interplay must be illustrated through hypothetical encounters. Take, for example, *United States v. Garner* from the United States Court of Appeals for the Tenth Circuit.[210] In *Garner*, the police stopped the defendant after they received a call about a man laying unconscious in an open field.[211] When the police arrived, Garner attempted to walk away, but the police told him to return to be examined by medical personnel.[212] Due to the defendant's erratic behavior during his medical examination, the police ran a

209. Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261, 281 (1990).

210. United States v. Garner, 416 F.3d 1208 (10th Cir. 2005). This is, of course, not a hypothetical case. However, the application of the right to refuse medical treatment to the facts is hypothetical, since it was not addressed by the court.

211. *Id.* at 1211.

212. *Id.*

criminal background check and discovered outstanding warrants in Garner's name.[213] Later, the police searched him, which led to the discovery of a firearm and criminal tools.[214] The police then turned the information over to the federal government, who prosecuted Garner for unlawful possession of a firearm. At trial, Garner moved to suppress all evidence discovered after the initial detention.[215] The court denied the motion, in part because the police officers offered a valid reason for stopping the defendant—to investigate whether he needed medical attention.[216] It seems apparent that this encounter began as a community caretaker stop;[217] however, the court never considered the potential effect of the right to refuse medical treatment.[218]

Even if the parties had addressed the right to refuse medical treatment in *Garner*, the result would likely have been the same. There is no evidence that Garner expressly refused treatment. While he could have argued that he did not feel free to refuse the order of a police officer, absent the use of force or coercion by the police, most courts are likely to find that argument unconvincing.[219] As a result, the analysis should track the holding in *Garner*, and the evidence should be admitted. However, if Garner had expressly refused medical treatment, the evidence should have been suppressed because the government's asserted interest was Garner's health and safety.

If Garner had validly refused treatment, the court should have applied the basic framework discussed in section IV of this comment. First, the court would consider whether the stop was reasonable. In Garner's case, the police were called to the scene of an unconscious man. When they arrived, Garner stood up and walked away, but the police had not yet assessed his condition. At the very least, the police would have had a legitimate interest in asking Garner if he was okay. However, further medical treatment would have required consent or some exception that excuses the absence of consent. Therefore, if Garner refused further assistance, the police should have discontinued their exchange with him. If they forced treatment and discovered incriminating evidence as a result, the government would have failed in the second step of the community caretaker analysis—the search.

Garner's encounter was stamped community caretaker in the first step; the stop was purportedly based on concern for his safety. Therefore, in the second step, the government had to support the need for treatment with interests divorced

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.* at 1214.

217. The court also determined that the officer had reasonable suspicion to believe the defendant was in violation of the Utah public intoxication statute, which would seem to undercut the community caretaker rationale previously established. *Id.* at 1212.

218. *See generally id.*

219. It is unlikely that a court will consider walking away from the police to be a valid refusal. This concept parallels the Supreme Court's *Miranda* jurisprudence, which requires a suspect to "unambiguously" assert his rights. *See, e.g.*, Davis v. United States, 512 U.S. 452, 459 (1994) (holding that if a suspect fails to unambiguously request counsel, the police may continue questioning without violating *Miranda*).

from law enforcement. Its best argument, on these facts, would have been the protection of health and life. But, if Garner validly refused treatment, the governmental interest would have been trumped, and the treatment could not have continued. If the treatment was unreasonable, so was the resulting seizure of evidence, and it should have been suppressed. The same reasoning holds true in factually similar situations.

Imagine that the police observe a parked vehicle. When they approach, they find a person vomiting on the sidewalk next to the car. He appears dizzy and unsteady on his feet. When the police offer medical assistance, the individual validly refuses; but, they persist in an attempt to be helpful. After some time and questioning have passed, the police begin to believe that the individual is intoxicated, smelling the odor of alcohol. When they ask if he drove to the spot where they found him, the individual admits that he did.

In this case, the initial stop seems reasonable. As in *Garner*, the police were concerned about a citizen in distress. However, once the individual refused assistance, the police unreasonably continued to question him about his condition and, later, his driving. Unless the police could show that the individual was so intoxicated that he did not understand his situation, continued questioning, without at least reasonable suspicion of a crime, exceeds the purpose of the stop—to render medical aid.

The previous situation also details one of the situations most likely to give rise to pretextual caretaker stops. The police, without probable cause of drunken driving, might approach the situation in what appears to be a community caretaker stance. The courts should be careful to determine whether law enforcement concerns arose before or during the caretaker stop. If the law enforcement purpose appeared prior to the initial contact, the community caretaker exception should not be allowed, eliminating the need to discuss the right to refuse medical treatment.

The first two hypothetical situations deal with pedestrians and motorists, but the community caretaker exception applies in the home as well. For instance, the police sometimes respond to calls asking them to check on the status of an elderly individual. Once the police arrive at the home and cannot make contact with the individual, how should they proceed? Generally, they should be allowed to make a warrantless entry to determine the individual's status. Upon entry, if the police discover the individual is unconscious and not breathing, they should normally render medical assistance. However, if they discover that the individual is wearing a Do Not Resuscitate alert bracelet,[220] treatment should stop. What if they do not stop and manage to revive the individual? What if the individual regains consciousness and, in response to questioning, tells the police that he attempted suicide? In a subsequent prosecution, that admission should be inadmissible because the police continued treatment beyond a valid refusal with no other evidence of suicide.

In the previous situations, the individual's liberty interest always outweighed the state's or government's interests based on the holding in *Cruzan*. More

220. It is assumed that a medical alert bracelet constitutes valid refusal.

complicated situations might arise, however, that elevate the state's interests above the individual's. Refer back to the unsteady motorist vomiting on the side of the road but assume that the police faithfully obey his refusal. If he attempts to enter the vehicle to drive away, the police might be justified in requiring him to submit to medical treatment to determine his ability to safely operate a motor vehicle. A driver without full control of his motor and visual skills poses a much higher danger to the public, which creates a more compelling reason for the police to ignore his refusal.

VI. CONCLUSION

Community caretaker encounters put an unusual twist on the standard police stop and search. Since the police perform the initial stops for purposes outside of law enforcement, the state must support the reasonableness with interests other than the collection of evidence or crime prevention. The analysis is only made more unusual by the addition of the right to refuse medical treatment. When the police encounter an individual, apparently in need of medical treatment, and he refuses assistance, his constitutional interests also change. Where an individual challenging a search and seizure normally asserts only his fundamental privacy interest, the right to refuse medical treatment also implicates a due process liberty interest.

The courts have yet to address how the right to refuse medical treatment applies to the reasonableness of a community caretaker search and seizure. Whether this is by design or because the issue has not been raised by the parties is unclear. In future medically-related community caretaker cases, the parties should address the right to refuse medical treatment and the courts should analyze its impact.

As stated above, when an individual executes a valid refusal, police assistance normally should cease in order to avoid a constitutional violation. This result will protect both the Fourth and Fourteenth Amendment interests of the individual, while not unduly hampering legitimate police action. While the police can justifiably stop to check on the well-being of an individual, once that individual explicitly refuses assistance, reasonableness requires the police to support further interaction on other grounds, possibly probable cause. However, scrupulous application of community caretaker principles requires that the law enforcement interest arise subsequent to the initial caretaker stop.

On the whole, the police undertake to fulfill their community caretaker duties for legitimate reasons and, for that reason, the courts should strive to encourage those activities. Nevertheless, where the facts of a case indicate that the community caretaker concern was medically-oriented, the courts should also recognize and respect the right of the individual to refuse assistance from the police or anyone else.