The second point argued by Mr. Thompson was that Dr. Patton, in her testimony, agreed with the statement that "had Ms. Ellis been hospitalized, the likelihood of her committing suicide would have been lessened," and thus Dr. Patton's own testimony provided sufficient proof of proximate causation (*Thompson*, p 1139). The court disagreed, stating that Dr. Patton's testimony indicated that continued hospitalization would have made it less likely, but not impossible, for Ms. Ellis to commit suicide. Therefore, Dr. Patton's testimony could not be construed to establish proximate causation between the decision to discharge Ms. Ellis from the hospital and her death.

The third point argued by Mr. Thompson was that expert testimony was not necessary to establish proximate causation, because the facts were simple and obvious enough for a layperson to determine, without the assistance of an expert, whether Dr. Patton's actions caused Ms. Ellis' death. The court disagreed, stating that the issue of proximate causation was not obvious and that discharging a patient from the hospital following a suicide attempt is a complex medical decision. In this case, it was "one of a number of decisions that [Dr. Patton] made about the appropriate medical care of [Ms. Ellis'] illness"; therefore, the jury could not be expected to use "common knowledge and experience" to determine the reasonableness of these actions, and expert testimony was required (*Thompson*, p 1141).

Discussion

This case raises an interesting point related to the semantics of expert witness testimony in malpractice cases. The majority opinion in this case relied heavily on the interpretation of Dr. Strahl's testimony that "it was highly probable that Ms. Ellis might do something to herself" (*Thompson*, p 1135) as the probability of a possibility of suicide, which the court did not equate with proximate causation. This seems to put a great deal of importance on the particular words chosen by Dr. Strahl during his testimony—far more importance than he probably realized when he spoke them on the witness stand. As Justice Murdock points out in his concurring opinion, the majority decision "imposes upon both Dr. Strahl and the jury a standard of precision in the oral use of the English language" that may not be "appropriate or required as a matter of law in this case" (*Thompson*, p 1143). As an expert witness for the plaintiff, Dr. Strahl was clearly trying to make the point that Dr. Patton's actions fell below the standard of care and caused the patient's death, but his words were ultimately used by the court to reach the opposite conclusion.

Another interesting aspect of the case is that, during his testimony, Dr. Strahl was prevented from answering a direct question about whether, in his opinion, Dr. Patton's actions were the proximate cause of Ms. Ellis' death. Counsel for Dr. Patton objected on the grounds that the testimony "invade[d] the province of the jury" (*Thompson*, p 1137). When a similar question regarding whether Ms. Ellis' release from the hospital led directly to her death was asked, Dr. Strahl was again prevented from answering after the court sustained an objection by Dr. Patton's counsel. Just as the reasoning in this decision highlights the importance of expert witnesses' choosing their words carefully, it also highlights the importance of attorneys' asking questions in a way that allows experts to offer a meaningful opinion while stopping just short of reaching the ultimate issue. In this case, the reader may wonder whether there was a way for the attorney to have phrased the questions differently to convey Dr. Strahl's opinion and still avoid "invading the province of the jury."

Finally, this case raises a noteworthy point about the standard of care for follow-up of patients who are discharged from psychiatric hospitals. Dr. Patton was sued by Mr. Thompson even though she had formulated an excellent discharge plan for Ms. Ellis, and another mental health professional had intervened between the discharge and Ms. Ellis' death. Although this suit was unsuccessful, it raises the question of whether a standard of care has been established for follow-up of patients after they are discharged from the hospital. Practice guidelines such as those issued by the American Psychiatric Association do not specifically address the topic, and so it remains an interesting "gray area" for future legal and scientific inquiry.

Physician's Duty to Treat Despite Religious Objection

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The Right of Free Speech and Exercise of Religion Do Not Exempt Physicians From an Act Ensuring That Patients Receive Full and Equal Access to Medical Treatment Regardless of Sexual Orientation

In *North Coast Women's Care Medical Group, Inc. v. San Diego County Superior Court*, 44 Cal. 4th 1145 (Cal. 2008), the California Supreme Court considered whether a physician's claim of religious objection when refusing to perform an infertility procedure on a lesbian woman was protected by First and Fourteenth Amendment rights and the California constitutional rights to free speech and free exercise of religion.

Facts of the Case

In 1999, Guadalupe Benitez, the plaintiff, was referred to North Coast Women's Care Medical Group for fertility treatment after several unsuccessful efforts at pregnancy through intravaginal self-insemination using sperm from a sperm bank. Ms. Benitez and her partner, Joanne Clarke, met with Dr. Christine Brody, an obstetrician and gynecologist employed by North Coast. During their initial meeting, Dr. Brody said that if intrauterine insemination (IUI) became necessary, her religious beliefs would preclude her from performing the procedure.

The situation was complicated when ovulation-inducing medication (prescribed by Dr. Brody) and intravaginal self-insemination with sperm from a sperm bank failed. According to Ms. Benitez, Dr. Brody advised her to try IUI, which she decided to do after further attempts at self-insemination with fresh sperm donated by a friend did not result in pregnancy. When Ms. Benitez requested IUI with fresh sperm, Dr. Brody told her that using the sperm might delay the procedure while the clinic investigated whether fresh sperm donated by a friend rather than a husband would be covered under the state tissue bank license and federal guidelines. To avoid the delay, Ms. Benitez decided to use sperm from a sperm bank. She called in her decision to the clinic; however, Dr. Brody was on vacation, and Dr. Fenton took over Ms. Benitez's care. He was not aware of Ms. Benitez's decision to forgo using fresh sperm. Because he was the only physician at the clinic licensed to prepare fresh sperm for IUI and because he shared the same religious objections as Dr. Brody to performing IUI on Ms. Benitez, he referred her to another clinic. She ultimately became pregnant after *in vitro* fertilization but incurred the cost herself, since her insurance did not cover services by the new physician.

In August 2001, Ms. Benitez sued North Coast and Drs. Brody and Fenton, seeking damages and injunctive relief on several theories, notably sexual orientation discrimination in violation of California's Unruh Civil Rights Act, Cal. Civ. Code § 51 (Deering 2000). At the time, the act stated:

> All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, or medical condition are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

Facts were disputed on two points: first, Ms. Benitez asserted that Dr. Brody had informed her that she was the only physician in the practice with a religious objection to IUI for Ms. Benitez. However, Dr. Brody maintained that she told Ms. Benitez that another physician shared her religious beliefs and that there were two other physicians who had no objection to performing the procedure. The second dispute is more substantive. Dr. Brody maintained that she had a religious objection to "active participation in medically causing the pregnancy of *any unmarried* woman" (*North Coast*, p 1151, emphasis in original), making her objection based on marital status and not sexual orientation, as Ms. Benitez asserted in her suit. Notably, at the time Ms. Benitez was a patient of the clinic at North Coast in 1999 and 2000, the period relevant in the case, the act did not list sexual orientation as a prohibited basis for discrimination, but reviewing courts had described it as prohibiting discrimination according to sexual orientation since before 1999. The California legislature explicitly added the prohibition of discrimination based on sexual orientation or marital status in an amendment to the Act in 2005.

The physicians proposed various affirmative defenses that included the assertion that their rights to free speech and the free exercise of religion, as guaranteed by the United States and California constitutions exempted them from complying with the antidiscrimination act. Ms. Benitez motioned for summary adjudication on this defense and prevailed. The physicians then motioned for a writ of mandate. The court of appeals granted the petition, because it believed that the trial court had failed to dispose completely of the affirmative defense as established in the Code of Civil Procedure section 437c(f)(1)

(2000). Ms. Benitez petitioned the California Supreme Court for review.

Ruling and Reasoning

The California Supreme Court reversed the decision of the Court of Appeal Fourth Appellate District, Division One. The supreme court ruled that the trial court in granting the summary judgment had properly disposed of the contention that the physicians were exempt from complying with the Unruh Civil Rights Act, which prohibits discrimination based on sexual orientation, in accordance with the rights of free speech and free exercise of religion. The supreme court disagreed with the court of appeal's conclusion that the trial court's ruling prevented the physicians from later asserting at trial that their religious objection was based on marital status rather than sexual orientation.

The court based its ruling regarding the First Amendment free-exercise claim proposed by the defendants on *Employment Div., Dept. of Human Res. of Oregon v. Smith*, 494 U.S. 872 (1990), in which the U.S. Supreme Court held that an individual is not exempt from complying with a "valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)" (*Smith*, p 879, citing *United States v. Lee*, 455 U.S. 252, 263 (1982)). In applying the *Smith* test, the California Supreme Court ruled that the Unruh Civil Rights Act is a valid and neutral law of general applicability and that the rights to free speech and free exercise of religion do not exempt an individual from the obligation to act in accordance with this law, even if it had the "incidental" effect of burdening a particular religion or practice.

The physicians argued that the decision in *Smith* had language on "hybrid rights" that exempted one from the obligation of following a law if the motivation for not complying included not only the right to free exercise of religion but also other constitutional protections. Thus, they argued that they had hybrid rights, as their religious motivation in not complying with the act involved not only their right to free speech, but also their right to free exercise of religion. The supreme court denied this claim, stating that "simple obedience to a law that does not require one to convey a verbal or symbolic message" is not speech (*North Coast*, p 1157).

Under the California Constitution, "[f]ree exercise and enjoyment of religion, without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State" (Cal. Const., art. I, § 4). Although the *Smith* test did not pertain to a state constitution, the standard of strict scrutiny used in a California case was applied. It determined that "a law could not be applied in a manner that substantially burdened a religious belief or practice unless the state showed that the law represented the least restrictive means of achieving a compelling interest" (*Catholic Charities of Sacramento, Inc. v. Superior Court*, 32 Cal. 4th 527, 562 (Cal. 2004)). North Coast urged the court to adopt another standard and contended that they were not compromising the peace or safety of the state. However, the supreme court concluded that there was no less restrictive means for the state's compelling interest in ensuring full and equal access to medical treatment, irrespective of sexual orientation.

Discussion

The California Supreme Court's decision in this case has important implications for physicians deciding to enter private practice, including those specializing in psychiatry. As psychiatrists, the fiduciary relationship formed with patients is fundamental to the therapeutic process. This relationship should be based on trust and the belief that the physician will act in the patient's best interest, unburdened by personal beliefs that conflict with the patient's choice and autonomy. However, moral convictions, experiences, or religious beliefs can influence physicians, especially in psychiatry where the relationship is the primary medium of care. Intensifying the problem are the needs of patients who have been victims of stigmatization and shame for beliefs and actions that may run counter to the values of the psychiatrist—for example, lesbian, gay, bisexual, or transgender patients. They would benefit from a psychotherapeutic environment that is objective, tolerant, and sensitive to these and other matters that may arise during treatment. In fact, the American Psychiatric Association (APA) resource document on Religious/Spiritual Commitments and Psychiatric Practice (2006) specifically notes that "[p]sychiatrists should not impose their own religious/spiritual, antireligious/spiritual, or other values, beliefs and world views on their patients, nor substitute such commitments or reli-

gious/spiritual ritual for professionally accepted diagnostic methods or therapeutic practice."

Consider a psychiatrist who offers treatment specializing in couples' therapy but, similar to the allegations in this case, has a religious objection to homosexual relationships. If practicing in California, solo or sharing the office with another psychiatrist of similar belief, the psychiatrist could be held liable if a gay couple seeking therapy is instead referred to another physician. The ruling by the California Supreme Court in this case could compel the psychiatrist to treat the couple despite religious objection. If the psychiatrist holds homosexual relationships to be immoral, would the psychiatrist offer a gay couple adequate treatment? Although the referral of this couple to a psychiatrist without these beliefs might be in the best interest of the patients, both the California Supreme Court and the American Psychiatric Association envision a professional practice in which such a referral would be unnecessary.

Ruling on Social Security Benefits

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The Legal Standard for Ruling on Social Security Benefits Is Delineated by Federal Statutes, Including Use of a "Special Technique"

In *Kohler v. Astrue*, 546 F.3d 260 (2nd Cir. 2008), the U.S. Court of Appeals for the Second Circuit considered the decision by the U.S. District Court for the Northern District of New York, in which the district court affirmed the Social Security Administration's denial of Social Security Disability Insurance (SSDI) and Supplemental Security Insurance (SSI) benefits to the plaintiff.

Facts of the Case

Kathy Kohler had a history of treatment of bipolar disorder since 1992 (or earlier). In that year, she was hospitalized for mania twice in about a month and improved with medications both times. Four years later, she moved to rural, upstate New York, where she received outpatient treatment at North Star Behavioral Health Services. Dr. Naveen Achar was her treating physician of record, but the clinician with whom she had the most frequent contact was Lorna Jewell, APRN. In 1998, Ms. Kohler was hospitalized for a week with lithium toxicity. In 2001, she had a manic episode but was not hospitalized. During an evaluation two weeks later, Ms. Jewell thought Ms. Kohler was "approaching hypomania," possibly triggered by emotional stress.

Ms. Kohler's work history had declined markedly after 1991. She went from working 30 hours a week as a house cleaner between 1982 and 1991 to five hours a week as a babysitter from 1996 to 2005, when the case was heard. She had not held steady, long-term employment since 1991.

Ms. Kohler's first application for SSDI and SSI benefits in March 2002 was initially denied, but the decision was vacated and remanded by the district court on technical grounds in October 2004. The administrative law judge (ALJ) again denied Ms. Kohler's application at a second hearing in February 2005, and the district court upheld the decision in November 2006. Ms. Kohler then appealed to the U.S. Court of Appeals for the Second Circuit.

Three mental health professionals evaluated Ms. Kohler regarding her capacity to work. In June 2002, Dr. Terri Bruni, a state agency psychologist, found that Ms. Kohler had "moderate" limitation for difficulties in maintaining social functioning. She also found Ms. Kohler to be "moderately limited" in:

> . . . (1) ability to maintain attention and concentration for extended periods, (2) ability to complete a normal workday and work week without interruptions from psychologically-based symptoms, and to perform at a consistent pace without an unreasonable number and length of rest periods, and (3) ability to interact appropriately with the general public [*Kohler*, p 264].

Dr. Brett Hartman, a psychologist, and Dr. Achar evaluated her within a period of two weeks in October 2003. Each concluded Ms. Kohler had no to mild limitations in all areas of functioning evaluated, although Dr. Hartman noted that Ms. Kohler "would appear to have mild to moderate problems performing a variety of complex tasks independently given her mild intellectual deficits" (*Kohler*, p 263). All three professionals agreed Ms. Kohler had bipolar disorder with episodes of mania and depression.