The court relied on historical legislation, including the DPA and MPA, which guided the court on how to categorize and address Dr. Mena's situation. The court determined that the hearing officer and district court inappropriately extrapolated available legislation. In this case, the Board of Medicine and district court took a more punitive stance, and their disciplinary approach was overturned. Absent due process and a finding of misconduct, remediation and supervision were the approaches suggested by the legislature and enforced by the Idaho Supreme Court.

The *Mena* decision highlights the potential for blurred boundaries between physician misconduct unrelated to mental illness and disability or poor conduct that has roots in mental illness and substance use. This case exemplifies that differentiating the details of physician deficiencies can be a complicated task. In conducting evaluations of impaired physicians, forensic psychiatrists may consider the court's interest in understanding the root cause of a physician's behavior.

Disclosures of financial or other potential conflicts of interest: None.

Criteria for Increasing Involuntary Medication Dosage for a Committed Insanity Acquittee

Jonathan Dunlop MD, JD
Resident Physician

Debra A. Pinals MD
Clinical Professor of Psychiatry
Director of the Program in Psychiatry, Law, and Ethics

Department of Psychiatry
University of Michigan Health System
Ann Arbor, MI

Involuntary Increase in Dose of Antipsychotic Medication for a Stable Patient Does Not Satisfy Requirements of Deterioration Test for Forcible Medication

In *People v. Marquardt*, 364 P.3d 499 (Colo. 2016), the Supreme Court of Colorado affirmed the reversal by the court of appeals of the decision of the Tenth Judicial District pertaining to a patient who was committed for treatment as not guilty by reason of insanity. After appellate review, the Supreme Court of Colorado affirmed the reversal of the original court order granting the state of Colorado's petition ordering the patient who had voluntarily accepted a lower dose of antipsychotic medication to submit to an increase in the dose over the patient's objection. The reversal hinged on the Colorado Supreme Court's determination that psychiatric deterioration must be demonstrated by specific indicia to allow for involuntary administration of increased doses of an antipsychotic medication.

Facts of the Case

In 2013, Larry Marquardt was committed to treatment at the Colorado Mental Health Institute at Pueblo after being found not guilty by reason of insanity of attempted murder and assault with a deadly weapon. His diagnosis was schizoaffective disorder, bipolar type, and he voluntarily consented to treatment with asenapine at a dose of 10 mg daily, but he refused to consent to a higher dose out of concern for side effects, particularly tardive dyskinesia. The state petitioned the court to allow a gradual increase in the dose of asenapine to 25 mg daily over Mr. Marquardt's objection, because of his treating psychiatrist's determination that the lower dose of asenapine was incompletely treating his symptoms. His psychiatrist, Dr. Howard Fisher, testified at the trial court hearing that, at Mr. Marquardt's current dose of asenapine, his hallucinations were well controlled, but he continued to have paranoid delusions and poor insight into his need for treatment with antipsychotic medications. Per Dr. Fisher's testimony, Mr. Marquardt was participating in treatment and had not had any acute behavioral events requiring restraints or emergency medications, but he was unlikely to improve enough to allow for discharge from the facility without an increase in the dosage of his antipsychotic medication. Notably, Dr. Fisher testified that he could not say that Mr. Marquardt's condition would worsen from its current severity.

The trial court applied the test of forcible medication established in *People v. Medina*, 705 P.2d 961 (Colo. 1985), which requires (among other elements) a physician or facility to show by clear and convincing evidence that "treatment by antipsychotic medication is necessary to prevent a significant and likely long-term deterioration in the patient's mental condition" (*Medina*, p 973). The trial court found that although Mr. Marquardt's clinical status was not actively deteriorating, the fact that he would not improve and would therefore never be released from the facility satisfied this element of de-

terioration. The trial court found that the state had additionally satisfied the other elements of the *Medina* test and ordered Mr. Marquardt to comply with the increased dose of asenapine.

Mr. Marquardt appealed the ruling and argued to the court of appeals that the trial court had misapplied the elements of the *Medina* test to his case. The court of appeals reversed the trial court, holding that the deterioration standard had been applied incorrectly and that this element of the *Medina* test was not meant to be used "solely to improve or expedite a patient's participation in treatment or likelihood of release" (*Marquard*t, p 502). The decision of the court of appeals included a separate opinion by Judge Casebolt, who argued that the majority decision had interpreted the deterioration standard too restrictively and included additional considerations discussed in *Medina* as a "full test of deterioration," elements of which are further discussed below. The Supreme Court of Colorado granted the state's petition for writ of *certiorari* to review the findings of the court of appeals and to answer "whether an individual . . . can avoid a *Medina* medication order by voluntarily accepting a sub-therapeutic dose" (*Marquardt*, p 506).

Ruling and Reasoning

The Supreme Court of Colorado first affirmed that *Medina* was the appropriate test to be applied to the question of involuntarily increasing the dose of a patient's antipsychotic medication over a patient's objection. The court held that the same principles apply to the decision to order administration of a greater dose of a medication as apply to the decision to forcibly administer antipsychotic medication at all. The court noted that the *Medina* test effectively balances these principles, namely the patient's right to bodily integrity and the state's interests in effective treatment and protection of other patients and the public.

The court then held that the trial court had misapplied the deterioration element of the *Medina* test to Mr. Marquardt's case "by relying on evidence that [Mr.] Marquardt was not improving on the lower dose, rather than finding that he was deteriorating" (*Marquardt*, p 504). In their rejection of two arguments offered by the state in support of Mr. Marquardt's risk of deterioration, the court first stated that "an abstract, future possibility" of deterioration was insufficient to support a medication order under *Medina*, in that to do so would "render (the) right to bodily integrity illusory" (*Marquardt*, p 504). To support this conclusion, the court relied on reasoning present in the original *Medina* opinion, which found the speculative possibility of future violence based on a history of past violence to be insufficient to support forced medication because of the likelihood of serious harm to self or others, an element of the *Medina* test distinct from the deterioration element. In addition, the court discussed the state's argument that a patient's lack of improvement on a lower medication dose may be considered by the trial court under the considerations of the full-deterioration test, as referenced by Judge Casebolt above. Specifically, the relevant considerations are "(1) the nature and gravity of the patient's illness, (2) the extent to which medication is essential to effective treatment, (3) the prognosis without treatment, and (4) whether the failure to medicate will be more harmful to the patient than any risks posed by the medication" (*Marquardt*, p 505). The court found that these considerations must be viewed through the lens of the primary goal of the test, which is the prevention of deterioration. The court noted a clear distinction between effective treatment to preserve stability and prevent deterioration and effective treatment to obtain improvement. The court applied similar reasoning as to the nature and gravity of illness in a stable patient, describing stability as "an achievement" in a patient with severe mental illness, and went on to refer to Mr. Marquardt's prognosis as favorable, given his current stability. Accordingly, the court determined the state had failed to satisfy the full deterioration test and affirmed the decision of the court of appeals.

Discussion

The decision in *Marquardt* appears to have potential ramifications for treatment providers under its jurisdiction, as it allows a patient to accept a lower dose of antipsychotic medication voluntarily and to refuse a higher dose, provided the lower dose is enough to achieve "stability," defined as "neither improving nor deteriorating" (*Marquardt*, p 504). In addition, per other elements of the *Medina* test, this stable state would have to be such that the patient does not pose sufficient likelihood of harm to self or others in the institution. Although the ultimate determination of "stability" rested with the court, the opinion of the court repeatedly emphasized the testimony of Dr. Fisher and the findings of the trial court regarding Mr. Marquardt's likelihood of deterioration, highlighting the need for a testifying psy-

chiatrist seeking such a court order to be prepared to speak about the question of stability, in accordance with *Marquardt* and *Medina*.

The court's opinion in *Marquardt*, though relevant to a limited jurisdiction, presents several areas of potential impact on practice. On the one hand, it could serve to deter pursuit of more aggressive treatment for a patient by providers, as it imposes a potentially significant obstacle to obtaining a court order should there be sufficient concern that the patient might be found "stable" by the court. Alternatively, the holding in *Marquardt* may incentivize psychiatrists to take a more aggressive stance toward medication titration within the bounds of safety and tolerability, to prevent a situation wherein a significantly impaired but "stable" individual exhibits a plateau in response to treatment but refuses further titration of antipsychotic medication. This case highlights the importance of ongoing discussion among clinicians about providing the best possible psychiatric care in forensic settings where judicial decision-making about criteria for psychiatric dosing must be taken into account.

Disclosures of financial or other potential conflicts of interest: None.

Defendant's Competence to Participate in a Sexually Violent Offender Commitment Hearing

Brian Kristoff, MD
Resident in Psychiatry

Jacqueline Landess, MD, JD
Fellow in Forensic Psychiatry

Richard Martinez, MD, MH
Robert D. Miller Professor of Psychiatry and Law
Director, Psychiatric Forensic Services

Division of Forensic Psychiatry
Department of Psychiatry
University of Colorado Denver School of Medicine
Colorado Office of Behavioral Health
Denver, CO

Kansas Supreme Court Rules That Due Process Does Not Require a Defendant to be Competent in a Sexually Violent Predator Hearing Because It Is a Civil Proceeding

In 2007, Paul Sykes neared completion of his sentence for burglary and aggravated sexual battery when the state petitioned to adjudicate and commit him as a sexually violent predator (SVP) under Kan. Stat. Ann. § 59-29a01 *et seq*. (2006). Several evaluators opined that Mr. Sykes was incompetent to proceed, presumably because of deficits related to schizophrenia. Despite his incompetency, Mr. Sykes was ultimately adjudicated an SVP and civilly committed. In *In re Sykes*, 367 P.3d 1244 (Kan. 2016), the Kansas Supreme Court affirmed the decisions of the district court and the court of appeals in ruling that due process did not require that Mr. Sykes be competent during an SVP proceeding, since SVP hearings are civil, not criminal.

Facts of the Case

In 1987, Mr. Sykes was convicted of burglary and aggravated sexual battery for breaking into a home and striking two females with his pants unzipped and penis exposed. Before the expiration of his sentence in 2007, the state of Kansas petitioned to adjudicate him an SVP.

The district court ordered an evaluation at Larned State Hospital, in which the examiners determined Mr. Sykes to be incompetent to stand trial and ordered involuntary civil commitment proceedings, as he was unlikely to become competent in the foreseeable future. In 2011, after further evaluations of his competence to stand trial, the county district court found Mr. Sykes incompetent to stand trial in a criminal proceeding. As a matter of first impression, the court determined that incompetence to answer criminal charges is legally distinct from answering a civil complaint. Thus, Mr. Sykes was ordered to proceed to trial to address his commitment as an SVP.

Mr. Sykes filed a motion for interlocutory appeal, arguing that his due process rights would be violated if he were to proceed to trial while incompetent. This appeal was granted by the district court but the court of appeals declined to authorize it. Against the advice of his attorney, Mr. Sykes requested a jury trial. He then requested a bench trial at the urging of his attorney. The court asked Mr. Sykes if he understood what he was doing, to which he responded that he did not.

Testimony from multiple witnesses was introduced at trial, including that of the 1987 sexual battery victims and of multiple psychological experts. Psychologists testified that Mr. Sykes met criteria for schizophrenia, antisocial personality disorder, narcissistic personality disorder, substance abuse, and borderline intellectual functioning. Additional testimony highlighted that he had committed lewd acts while confined, was not forthcoming about his