trist be held responsible for not discovering and reporting the subterfuge? If courts choose to hold psychiatrists responsible in this manner, could the psychiatrist receive consequences such as expulsion from court panels, medical board sanctions, fines, malpractice suits, or criminal penalties because the perceived error in judgment was found to contribute to obstruction of justice?

U.S. v. Batista has made the evaluation of competency to stand trial a source of potential criminal exposure, at least in the Third Circuit. Psychiatrists should be aware of how they must change their informed consent to reflect this, and how the information they gather can be used for purposes other than determining competence. They should also be concerned about the possible consequences of failing to discover that a defendant is feigning mental illness.

Immunity for Professional Review Committees

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Health Care Quality Improvement Act Provides Immunity for Professional Review Activities

In *Wojewski v. Rapid City Reg'l Hosp.*, 730 N.W.2d 626 (S.D. 2005), the Health Care Quality Improvement Act was found to provide immunity to doctors who participated in a meeting that reviewed Dr. Wojewski's actions and the question of whether his bipolar disorder rendered him unable to perform surgery on a particular day.

Facts of the Case

Dr. Paul Wojewski was a cardiothoracic surgeon at Rapid City Regional Hospital (RCRH). He experienced a few manic episodes that required inpatient hospitalization during 1996. The diagnosis was bipolar disorder, and he took a leave of absence from the hospital. He asked RCRH to reinstate him, and he was reinstated with conditions until a review of psychiatric records was completed. Then, the conditions were removed. Dr. Wojewski had another manic episode in June 2003 and took a voluntary leave of absence due to "difficulties." When he returned, RCRH gave him privileges with the condition that he inform them of any changes in his mental health. RCRH appointed Dr. Oury, a surgeon, to monitor him.

Upon Dr. Wojewski's returning to work, some people noticed that he was acting strangely. A meeting was held on the morning of August 19, 2003, to decide whether his surgical privileges should be continued. He had a surgery scheduled that morning and it was decided during this meeting that he could continue with the scheduled procedure. Dr. Oury watched Dr. Wojewski during the procedure that morning. During the surgery, Dr. Wojewski had a manic episode and was escorted from the room by security. His hospital privileges were suspended.

Dr. Wojewski asked for a fair-hearing panel, and a four-day hearing was conducted in which he was represented by counsel. The panel found that his privileges should not be reinstated because of the threat of future relapses of his bipolar disorder. The findings of the panel were reviewed and upheld by an appellate review committee and by RCRH's board of trustees. Dr. Wojewski sued the RCRH and two of the doctors who were at the August 19 meeting on six counts stemming from that meeting. The hospital asked for a dismissal because of immunity given to those in the meeting, or for a summary judgment. The trial court granted RCRH's motion to dismiss because of immunity and also found summary judgment as an alternative ground. Dr. Wojewski appealed and brought six issues forward, most of which had to do with challenging the immunity provided to the meeting on August 19, 2003, by the Health Care Quality Improvement Act. Dr. Wojewski died in a car accident, but his estate replaced him in his case.

Ruling and Reasoning

The Supreme Court of South Dakota affirmed the trial court's judgment. The court held that the review actions that took place during the August 19, 2003, meeting were protected by immunity afforded by the Health Care Quality Improvement Act (HCQIA). They reasoned that the Act was passed "to improve the quality of medical care by encouraging physicians to identify and discipline physicians who are incompetent or who engage in unprofessional behavior" (*Wojewski*, 730 N.W.2d, p 629).

For an activity to be covered by immunity, it must meet the meaning of a "professional review action." Such action is defined in the Act as

> . . . an action or recommendation of a professional review body which is taken or made in the conduct of professional review activity, which is based on the competence or professional conduct of an individual physician (which conduct affects or could affect adversely the health or welfare of a patient or patients), and which affects (or may affect) adversely the clinical privileges, or membership in a professional society, of the physician. Such term includes a formal decision of a professional review body not to take an action or make a recommendation described in the previous sentence and also *includes professional review activities relating to a professional review action* [*Wojewski*, 730 N.W.2d, p 632; emphasis in original].

Dr. Wojewski claimed that the August 19 meeting was not a professional review committee or activity and should not be given immunity. He conceded that the later action taken to suspend his privileges was covered. He said that the group at the meeting was an *ad hoc* group, not a professional review body. The HCQIA grants immunity to the following individuals: "(A) the professional review body, (B) any person acting as a member or staff to the body, (C) any person under a contract or other formal agreement with the body, and (D) *any person who participates with or assists the body with respect to the action* . . ." (*Wojewski*, 730 N.W.2d, p 632; emphasis in original). It is not required by the statute that the group be formal, only that it follow the definition.

The court found that the group that met that morning was "not a powerless group, or an impromptu discussion. This group was meeting to make a decision about Wojewski's surgical privileges" (*Wojewski*, 730 N.W.2d, p 634).

The Supreme Court of South Dakota affirmed the trial court's decision and reasoned as follows:

> Any other interpretation than today's decision would frustrate the congressional intent behind the HCQIA. It was designed to facilitate peer review of potentially incompetent doctors to improve health care and protect patients. Taking Wojewski's argument to its logical consequence, no doctors would ever meet to discuss whether they should stop a surgeon from conducting surgery because they would be liable for their discussion and any subsequent decision [*Wojewski*, 730 N.W.2d, p 635].

Discussion

The decision of the Supreme Court of South Dakota strengthens the immunity provided "professional review committees" or "activities." It allows the monitoring of physicians and their activities without fear of legal action as a result of the monitoring. How could it be wrong to monitor and thereby be able to improve medical care? Would we not all do better if we received some feedback?

Although it is true that monitoring and quality improvement can lead to better health care, there can also be a downside to blanket immunity provided to these proceedings. The Act loosely defines what it takes to be covered by immunity. It defines those who are protected by immunity as, "any person who participates with or assists the body with respect to the action." It requires little to participate or assist in an action against a physician and thereby be covered by immunity, in accordance with the stipulations of the Act, which set a low bar for immunity. There should be more control over what constitutes a professional review body. For example, a physician who is not a mental health professional should not be making decisions about the mental health of another doctor. Further, a nonsurgeon should not decide whether a surgeon's skills are adequate. The committees should have appropriate participants to judge the subject they are reviewing.

Although it may be of concern that these "professional review" bodies are loosely defined and immune to legal remedies, quality improvement and monitoring is at least an attempt at improving health care. It would be difficult to convince anyone to participate on a professional review committee if he or she could be legally responsible for adverse decisions or poor outcomes. There may be no clear answer for whether we should allow "unmonitored" monitoring, but until a better solution for ensuring quality in medical care is found, it may be the best option we have.

Methamphetamine-Induced Psychosis and Diminished Capacity to Form Intent to Kill: Ultimate Issue in Expert Testimony

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