crime, is the principle foundation of drug courts. American drug courts were initially developed in the 1980s after a significant rise in drug-related offenses on the theory that addiction treatment, in lieu of punishment, would decrease recidivism. When offenders do not fulfill the requirements of the drug program, sanctions are applied. However, jurisdictions vary both in requirements for participation in drug court and termination procedures.

The Idaho Supreme Court in this case referred to the Fourteenth Amendment in this manner: "It is fundamental to our legal system that the State shall not deprive 'any person of life, liberty, or property, without due process of law' " (*Rogers*, p 883). The fact that participation in the program was voluntary did not diminish the participant's right to due process protection. Traditionally, the criteria set forth in the case of *Mathews v. Eldridge*, 424 U.S. 319 (1976), are used to balance the loss of an individual's liberty and governmental needs. Under *Mathews*, the court must consider: the private interest that will be affected by the official action, the risk of an erroneous deprivation of such interest through the procedures used, and the significance of the government's interest. This case highlights how a liberty interest and balancing considerations are parsed out.

Since the United States Supreme Court has not addressed the rights of individuals who enter diversionary programs as it has done with individuals on parole and probation, there is variability throughout the country in determining what process is due. The *Gagnon* court guaranteed certain hearings before permanent punitive actions for probationers. A key element to Mr. Rogers' case was that he had to plead guilty to enter the program, and therefore termination resulted in incarceration, a guaranteed loss of liberty. If he had been placed in the program before entering a plea, one could argue that he would not have been entitled to due process, since termination would not have resulted in a loss of liberty. In some other jurisdictions, though, those who enter diversionary programs before entering a plea receive the same due process as probationers or parolees.

The Idaho Supreme Court remanded the case to the drug court for a termination hearing without directly addressing what constitutes substantial and compelling evidence in the termination of a diversionary program. However, it was implied to be a less formal standard than would be required for determining guilt in a criminal proceeding. This was based on the United States Supreme Court's rulings in *Morrissey* and *Gagnon*, which stated that parolees and probationers require due process but not the same level of protection as for the initial finding of guilt. Due process protections are "restricted," since the individual has already been found guilty of a crime, and the government has a significant interest in protecting the public from a known criminal. For example, probation violations may be found by a preponderance of the evidence rather than beyond a reasonable doubt. In addition, based on the *Mathews v. Eldridge* balancing criteria the court indicated that the level of due process required for the termination "[was] to be flexible on the condition that the safeguards are provided." This ruling indicates that an individual who has pleaded guilty has a less significant personal interest than does the government in maintaining the law.

The Idaho Supreme Court also stated that their decision applies only to cases in which termination from a diversionary program is at stake. The court noted that many diversion programs are run in an informal manner and that "use of informal hearings and sanctions need not meet the procedural requirements articulated [for termination]" (*Rogers*, p 886), because sanctions do not directly result in a loss of liberty. In sum, *State v. Rogers* indicates that after defendants are required to plead guilty to enter drug diversion programs, they have a protected liberty interest in remaining in the program, and procedural due process is necessary to expel them, similar to the due process afforded to probationers and parolees.

Physicians' Duty to Prevent Harm to Nonpatients

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Physicians May Be Held Liable for Accidental Harm Done to Others by Their Patients in the Course of Treatment

In *Coombes v. Florio*, 877 N.E.2d 567 (Mass. 2007), the Supreme Judicial Court of Massachusetts considered whether physicians have a duty to parties put at risk by their patients in the course of treatment. Lyn-Ann Coombes sued Dr. Roland Florio for negligence when her son Kevin was killed by Dr. Florio's patient in an automobile accident.

Facts of the Case

In 2002, 10-year-old Kevin Coombes died after being struck by an automobile driven by David Sacca. Mr. Sacca was a 75-year-old man with numerous medical problems including asbestosis, chronic bronchitis, emphysema, high blood pressure, and metastatic lung cancer. He had never before been in an accident or received a traffic ticket.

Mr. Sacca was under the primary care of Dr. Florio, who coordinated his specialists and was responsible for his medication. Dr. Florio told him that it would be unsafe to drive during his treatment for cancer. Following his recommendations, Mr. Sacca did not drive again until the fall of 2001 when his cancer treatment concluded, and Dr. Florio said that he could drive. Dr. Florio's last visit with Mr. Sacca before the accident was on January 4, 2002.

On March 22, 2002, Mr. Sacca lost consciousness while driving and killed Kevin Coombes as he stood on a sidewalk. Mr. Sacca was taken to a hospital but left against medical advice. The cause of the accident was never determined. Mr. Sacca died four months later.

At the time of the accident, Mr. Sacca had the following prescriptions from Dr. Florio: oxycodone, metolazone, prednisone, tamsulosin, potassium, paroxetine, oxazepam, and furosemide. Mr. Sacca reported neither side effects nor trouble driving anytime before the accident. Ms. Coombes sued Dr. Florio for negligence.

Ruling

A Massachusetts trial court granted summary judgment in favor of Dr. Florio finding that he owed "no duty of care to anyone other than his own patient." Ms. Coombes appealed, and the case was heard by the Supreme Judicial Court of Massachusetts. In a four-to-two decision, the court reversed and remanded the trial court decision for summary judgment for further proceedings.

Reasoning

In their discussion, the justices focused on three arguments made by Ms. Coombes. First, Dr. Florio was negligent under ordinary common law principles in prescribing medication to Mr. Sacca without warning him of side effects, and his negligence extended to Kevin Coombes because, in an automobile accident, foreseeable risk is not just to the patient but to third parties. Second, when Dr. Florio told Mr. Sacca that is was safe for him to drive, he assumed a future duty to warn him of the dangers of driving when he prescribed medication. Third, the special physician-patient relationship creates a duty of reasonable care toward all those who may be put at risk by the medical care provided.

Majority Decision

The majority agreed that Dr. Florio owed a duty of reasonable care to Kevin Coombes under ordinary negligence principles instead of malpractice, but they did not agree that there was an assumed duty or special relationship. In support, they referred to several nonmedical and medical cases in which parties were held liable for foreseeable consequences caused by the conduct of an intermediary. For example, a liquor store was found negligent for selling alcohol to a minor who later injured a bicyclist. A mother was found liable for a police officer's death when her son, who had a history of violence and psychiatric treatment, killed the officer with a gun that she had improperly stored. A doctor was held liable for a person's death in an automobile accident caused by his patient who was prescribed an eye patch for the treatment of an eye abrasion. In this case, the court ruled that "the general requirement [is] that when a doctor knows, or reasonably should know that his patient's ability to drive has been affected, he has a duty to the driving public as well as to the patient to warn his patient of that fact" (*Coombes*, p 572, quoting *Joy v. Eastern Me. Med. Ctr.*, 529 A.2d 1364 (Me. 1987)).

They found that an accident was foreseeable, given the number of drugs Dr. Florio had prescribed, Mr. Sacca's age, and Dr. Florio's telling Mr. Sacca that he could safely resume driving. The significant length of time between prescribing the medications and the accident and the fact that Mr. Sacca had been taking them without complaint are irrelevant, because the breach of duty occurred precisely when Dr. Florio failed to warn Mr. Sacca of dangerous side effects.

The majority concluded that this duty of reasonable care is good policy because doctors are already required to warn patients of adverse side effects of medication, and so nothing more is required of physicians. Furthermore, the benefits to the public are clear.

Dissent

The dissenting justices argued that the doctor's failure to warn Mr. Sacca did not extend any duty to the victim; therefore, summary judgment was correctly granted.

They identified two main factors in the discussion: the need for a patient to know and the autonomy of the physician to make judgments about treatment. Physicians are required "to inform their patients of the side effects they determine are necessary and relevant for patients to know in making an informed decision" (*Coombes*, pp 570–1). This was designed to protect patients and avoid judicial meddling in physician-patient relationships.

By extending a duty of reasonable care to third parties such as Kevin Coombes, physicians would no longer be able to use professional judgment because they would be bogged down by discussing every possible adverse side effect of treatment. Instead of being concerned about patients, they would be forced to deal with "an amorphous, but widespread, group of third parties whom a jury might one day determine to be 'foreseeable' plaintiffs" (*Coombes*, p 581). Furthermore, one cannot compare a physician's professional judgment with the unreasonably dangerous situations of a bar selling alcohol to a minor or a homeowner's failure to store a weapon properly. A physician's duty is to the patient first, not to third parties in the community with whom they have no relationship.

The justices also argued that by extending this duty, confidentiality would be threatened by third parties demanding to know what is discussed between doctors and their patients. It raises questions about how physicians should respond in such circumstances, considering that the duty may conflict with some statutes and professional codes of ethics.

Finally, they feared that it would dramatically increase already high health care costs by inviting a flood of litigation.

Discussion

This case has some similarities to prominent landmark cases studied in psychiatry and the law. In the famous case *Tarasoff v. The Regents of the University of California*, 551 P.2d 334 (Cal. 1976), a psychologist was sued (along with the university and the campus police) when his patient killed a person whom the patient had threatened. The trial court dismissed the case on summary judgment because doctors historically had had a duty to their patients only, not to third parties. The California Supreme Court overturned the lower court's decision by ruling that, in fact, a doctor does have a duty of reasonable care to third parties if there is a foreseeable danger from a patient.

This ruling opened the door to several notorious cases in which physicians were held liable for third parties injured or killed by patients, even when there was no threat or identifiable victim (*Lipari v. Sears, Roebuck & Co.*, 497 F. Supp. 185 (D. Neb. 1980)). Since then, many state legislatures have passed statutes that limit the *Tarasoff* duty.

About half of state supreme courts have taken the position adopted by the Supreme Judicial Court of Massachusetts. This case presents a good discussion of conflicting public policies supporting confidentially and the duties physicians may have to third parties.

The majority referred to the duty mental health professionals have to protect third parties. They argued that since society has decided it is reasonable for mental health professionals to breach confidentially, it is reasonable for physicians to do the same. In fact, the social repercussions of doing so are likely to be lower with medical illnesses than with psychiatric illnesses. The dissenting justices were concerned that this would generate an unlimited number of potential third parties who could demand access to physician-patient communications.

They argued that it is best that physicians decide what is appropriate to discuss with their patients. Should physicians now focus less on their patients and more on protecting third parties? For example, should they tell every patient when prescribing a potentially sedating medication "Do not drive. Do not hold your grandchild. Do not carry grocery bags to your car?" They suggested that this intrudes on traditional notions of the physician-patient relationship and would force the physician to be "forever looking over his shoulder." Furthermore, they pointed out that the majority did not clarify what side effects must be included in such warnings and thus left the matter ambiguous.

The majority argued that the cost of imposing this duty is limited, because tort law already requires physicians to warn a patient of side effects, and the public benefits of doing so are great.

This case forces us to rethink our traditional notions of confidentially and the physician-patient relationship. Of interest, the majority suggests that if the public supports more traditional notions, then it is up to the legislature to pass laws upholding them.

Involuntary Medication to Restore Competence to Stand Trial: *Sell* Revisited

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The Fifth Circuit Court of Appeals Interprets and Applies Three of the Four *Sell* Criteria in Assessing the Involuntary Medication of a Defendant for Competency Restoration

Facts of the Case

Wayne Lee Palmer entered a Clerk of Court's office in Louisiana in October 2003 demanding to know why the *pro se* lawsuit he had filed was dismissed. He became irate and threatened to kill a court security officer who attempted to retrieve his visitor's badge. Authorities found a semi-automatic handgun in Mr. Palmer's back pocket when he was arrested.

Mr. Palmer was indicted on one count of threatening to murder a federal officer. He was found incompetent to stand trial, and he was committed to Butner Federal Medical Center for a psychiatric evaluation. He was found to have a delusional disorder and was referred for a civil commitment evaluation. Clinicians opined that Mr. Palmer's release would not endanger others. The indictment against him was dismissed in November 2004. One month later, he purchased a gun. On the purchase application, he falsely answered "no" to the question of whether he had ever been adjudicated mentally incompetent or committed to a mental institution.

On May 12, 2005, U.S. marshals found Mr. Palmer sitting in the driver's seat of a vehicle at Louisiana State University Law School. The marshals observed a gun in the front passenger seat and ordered him out of his car. He drove away but was later apprehended. Marshals also found a box of pistol ammunition.

Mr. Palmer was indicted on possession of a firearm by a person adjudicated mentally ill and possession of a firearm and ammunition by a person adjudicated mentally ill and committed to a mental institution. The court-appointed examiner opined that he was incompetent to stand trial because he did not have complete awareness of the charges against him and did not appreciate the seriousness of the charges. His diagnosis was schizophrenia, and it was opined that he presented a danger to the public. The report recommended that he be returned to Butner with an order for forced medication.

He was returned to Butner, where his evaluators recommended involuntary medication to render him competent to stand trial. A federal magistrate found him incompetent to stand trial and authorized involuntary medication to restore his competency. The United States District Court adopted the magistrate's findings.

Mr. Palmer appealed, claiming that in his case the U.S. District Court failed to assess properly the three factors described in *Sell v. United States*, 539 U.S. 166 (2003): that important governmental interests are at stake; that involuntary medication will further the government's interests; and that forced medication is necessary to further the government's interests. (Mr. Palmer did not dispute the fourth *Sell* criteria—that medication was medically appropriate.)

Ruling and Reasoning

The appellate court affirmed the district court's ruling. The court reasoned that important governmental interests were at stake because Mr. Palmer's crime was serious. Even though he may have received probation if convicted, he was eligible for a maximum sentence of 10 years in prison. Courts have held that crimes punishable by more than a 6-month sentence are serious. The court concluded that it was appropriate to consider the maximum penalty to determine if a crime is serious. Because Mr. Palmer threatened the life of a marshal and caused a disruption on the LSU campus, the court could decide on an upward departure from the sentencing guidelines.