relationship between clinical and legal definitions of intellectual disability and questions of whether states should be compelled to rely on professional definitions or whether they can craft their own classifications. Most states have defined intellectual disability according to the three-prong test from the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV): substantial limitations in intellectual functioning, substantial limitations in adaptive behavior, and evidence of the condition before the age of 18.

Several states, including Florida, Georgia, Mississippi, and Texas, have set their own standards. These standards have effectively excluded all but those with the most severe disabilities from the protections afforded by *Atkins* and have become the basis of appeal by death row inmates seeking relief under an *Atkins* claim.

Georgia set the standard of proof of intellectual disability at beyond a reasonable doubt. Therefore, those who do not have profound intellectual disability would be at risk of execution because of their inability to satisfy Georgia's standard of proof. In *Hill v. Humphrey*, 662 F.3d 1335(11th Cir. 2011), the U.S. Court of Appeals for the Eleventh Circuit *en banc* majority reasoned that AEDPA demands deference to prior decisions of a state *habeas* court, and therefore the Georgia State Supreme Court's decision affirming the state's reasonable-doubt standard remains in place.

Florida set a bright-line standard IQ of 70, holding that any defendant with an IQ over 70 is eligible for the death penalty, regardless of the severity of his limitations and ignoring the scientific consensus that IQ scores represent a range of intellectual functioning, with standard deviation, rather than a definite determination of intellectual functioning. Florida's scheme was ultimately heard by the Supreme Court in *Hall v. Florida, 134 S. Ct. 1986* (2014). The Court held that Florida's determination process was unconstitutional, as it created an intolerable risk of executing a citizen with intellectual disability.

The Texas process of determining intellectual disability via the anecdotal *Briseno* criteria grants the courts wide latitude in determining intellectual disability. Under those criteria, a person can be excluded from being categorized as having an intellectual disability based on nonscientific factors. As it stands, the *Matamoros* decision affirmed the court's freedom to make its own determination of fact based on its own analysis of the defendant's behavior, ignoring scientific evidence and expert opinions.

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Privileged Communication Between a Patient and Clinician

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Statements Made to a Clinician During the Course of Treatment Are Not Privileged if the Imminent-Harm Exception Applies

In *Walden Behavioral Care v. K.I.*, 27 N.E.3d 1244 (Mass. 2015), the Supreme Judicial Court of Massachusetts affirmed the holding of the lower courts that the clinician–patient privilege is overcome by the imminent-harm exception and that the court-ordered examination exception to clinician–patient privilege is not applicable to this case.

Facts of the Case

In August 2012, K.I., a patient diagnosed with schizophrenia, was reportedly experiencing auditory hallucinations that were commanding him to kill himself. He was emergently admitted to Walden Behavioral Care, a psychiatric treatment facility in Massachusetts. K.I. was subsequently committed to the facility for a three-day evaluation period, during which he was examined and treated by psychiatrist David Brendel, who filed a petition for K.I.'s continued commitment pursuant to Mass. Gen. Laws ch. 123, § 7,8 (2012), which states that a superintendent of a facility may petition for commitment and retention of any patient at said facility if the superintendent has determined that failure to hospitalize would create a likelihood of serious harm as a result of mental illness.

K.I. stated that he was never informed that his communications with his treating psychiatrist may be admissible in legal proceedings. He filed a motion to exclude Dr. Brendel's testimony, maintaining that

his statements were protected by clinician–patient privilege. Two exceptions to this privilege outlined in the statute were raised in this case. The first exception, Mass. Gen. Laws ch. 233, § 20B(*a*)(2012), states that privilege shall not apply if a clinician, in the course of his diagnosis or treatment of the patient, determines that the patient is in need of hospitalization for mental illness or that there is a threat of an imminent, dangerous act of the patient against himself or another person. The second exception, Mass. Gen. Laws ch. 233, § 20B(*b*)(2012), states that privilege shall not apply if a judge finds that a patient, after having been informed that the communications would not be privileged, has made statements to the clinician during the course of a court-ordered examination that were relevant to the patient's mental illness.

K.I. asserted that the only exception that may be applicable to his case was the latter exception regarding court-ordered examinations. He argued that, because he had not been warned about the nonconfidential nature of his conversations with Dr. Brendel, the doctor's testimony should be excluded. The judge of the district court denied the motions, determining that the privilege was overcome by the first exception regarding imminent harm.

During the commitment hearing, Dr. Brendel testified that K.I. had made statements that he was hearing voices telling him to kill himself with an overdose of oxycodone. K.I. also indicated that he had access to oxycodone and that he intended to kill himself in this manner after discharge from the hospital. Dr. Brendel therefore testified that K.I. posed an imminent and serious risk of harming himself because of his mental illness if discharged from the hospital. The district court judge ordered K.I. to be committed to Walden Behavioral Care for six months. After two appeals, the original judgment by the district court was upheld.

Ruling and Reasoning

The Supreme Judicial Court ruled that two conditions must be met in applying the imminent-harm exception to clinician–patient privilege. First, a clinician must have determined, in the course of treatment, that a patient is in need of hospitalization for a mental illness or that a patient poses a threat of imminent danger to himself or another person. Second, the disclosure of the clinician must be for the purpose of placing or retaining the patient in a hospital for treatment of the mental illness. Because Dr. Brendel determined that K.I. posed a risk of imminent harm to himself if discharged, and because his purpose for disclosing K.I.'s statements was for retaining him in the hospital, the court determined that the imminent-harm exception applied to K.I.'s case.

K.I. argued that during the course of treatment of a patient who has been involuntarily committed, a clinician's role shifts, and further examinations of the patient will no longer be solely for the purposes of treatment but will also be to determine whether an involuntary commitment petition should be made. As a result of this, K.I. asserted that a *Lamb* warning (a notification by a physician, before evaluation, that the patient's participation is voluntary and that any communications may be disclosed in court proceedings) should have been performed before his examinations while involuntarily hospitalized on a temporary basis. He stated that the second exception, regarding court-ordered examinations, should apply to his case and the information he gave to the clinician should be privileged as a result of not receiving the *Lamb* warning. The court determined that K.I.'s examinations were not court ordered and were not conducted in anticipation of a future proceeding. They determined that Dr. Brendel was examining K.I. for the purposes of "care and treatment." Therefore, the exception provided by Mass Gen. Laws ch. 233, § 20B(*b*) was not applicable, and there was no requirement for a *Lamb* warning before Dr. Brendel's evaluations.

Discussion

Physician–patient privilege is a concept that was developed to protect communications between a patient and his or her physician. It prevents the use of information ascertained during therapeutic interactions from being used against the patient in court. There are certain exceptions to privilege, including child abuse cases, duty-to-warn cases, and civil commitment hearings. The rules and exceptions related to privilege vary from state to state. Of note, *Jaffee v. Redmond*, 518 U.S. 1 (1996), is the United States Supreme Court case that established clinician–patient privilege within the Federal Rules of Evidence.

In this case, the Massachusetts Legislature created the imminent-harm exception to the privilege statute in an effort to protect the patient and others who may be at risk as a result of the patient's mental illness.

Therefore, the notion that the legislature's intent was for the exception not to apply in circumstances where a person is temporarily involuntarily committed for this very reason seems counterintuitive.

Another question that comes to light in this case is one of ethics. K.I. posits that his doctor acted as both a treatment provider and a forensic evaluator during the period in which he was temporarily involuntarily committed. Having a physician serve in dual roles may lead to multiple negative consequences. It can cause harm to the therapeutic relationship. Transference, an essential process for psychotherapy, can be disrupted when a patient feels that his trust may be violated. Furthermore, a patient, whether consciously or subconsciously, may disclose personal information in a different light if it is known that the communication can be used in future legal proceedings. On the other hand, the provider may develop an unconscious bias based on his perception of the patient, which hinders his ability to provide an objective opinion for forensic purposes.

K.I.'s case also raises the matter of proper consent for psychiatric evaluations. In 1981, the U.S. Supreme Court weighed in on this debate. In *Estelle v. Smith*, 451 U.S. 454 (1981), a psychiatrist performed a court-ordered competency evaluation for Mr. Smith. The psychiatrist later used the information he obtained to testify about Mr. Smith's dangerousness during the sentencing phase of his trial, and Mr. Smith was subsequently sentenced to death. The U.S. Supreme Court noted that Mr. Smith was not informed of the nature and purpose of the evaluation, and this omission violated his Fifth Amendment right to avoid self-incrimination. The psychiatrist's testimony was excluded, and the death sentence was vacated. The main difference in this case is the nature of the evaluation. Dr. Brendel's evaluations of K.I. were performed for the purposes of treatment and the determination of risk and thus were not mandated by the court. Therefore, the *Lamb* warning was deemed not applicable.

All of these points present challenges to the clinician who must constantly monitor and maintain the delicate balance between confidentiality and safety. Although it is to be avoided when possible, certain occasions require the clinician to serve as both a treatment provider and an evaluator. Fortunately, the Supreme Judicial Court has attempted to make this situation more manageable for the clinician by not requiring a patient to give informed consent for a forensic evaluation at the initiation of a temporary involuntary civil admission.

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Prosecutorial Misconduct and Violation of the *Brady* Rule in a Case Involving Intellectual Disability

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The Sixth Circuit Court of Appeals Upholds Ruling to Vacate a Life Sentence for a Defendant with an Intellectual Disability

In *Gumm v. Mitchell*, 775 F.3d 345 (6th Cir. 2014), the Sixth Circuit Court of Appeals upheld the ruling of the U.S. District Court for the Southern District of Ohio at Cincinnati, vacating a death sentence imposed on a defendant with an intellectual disability. The defendant, Darryl Gumm filed a writ of *habeas corpus* on four claims to the federal district court. He contended that the state violated the *Brady* Rule by failing to disclose exculpatory evidence, that he received an unfair trial because of improper admission of incendiary prior bad acts, that admission of a psychiatric report violated the Sixth Amendment's Confrontation Clause and that prosecutorial misconduct caused a denial of due process.

Facts of the Case

On May 12, 1992, the body of 10-year-old Aaron Raines was found by the police in the basement of an abandoned building in the lower Price Hill section of Cincinnati. Betty Gumm, a friend of the Raines family and Mr. Gumm's sister through adoption, learned that her brother had been in the neighborhood on the day of Aaron's murder. She called the local "crime stoppers" number. Cincinnati police interviewed Mr. Gumm and after extensive questioning in which he changed his statement several times, Mr. Gumm eventually confessed involvement in the murder of Aaron Raines.