to such a degree that a jury could reasonably find liability. "Accordingly, a question of material fact exists regarding whether Washoe County maintained an unconstitutional, unofficial policy. Summary judgment on this claim is inappropriate" (*Kirkpatrick*, p 797). The court also ruled that there was enough evidence to suggest a direct causal link (a requirement of a 42 U.S.C. § 1983 claim against a municipality) between the lack of policies in Washoe County and the Fourth Amendment violations by the social workers, giving further reason for them to remand this portion of the ruling.

Discussion

This case provides important guidance for forensic psychiatrists who are in the role of advising municipalities or are involved in the analysis of custody disputes. It clearly lays out that warrantless removal of children must be undertaken only in cases of very clear imminent danger. If a social worker has removed a child or children without attempting to get a warrant first, or if a municipality fails to train its social workers on the necessity to do so, they are likely to be exposed to Fourth and Fourteenth Amendment challenges. In addition, in the Ninth Circuit, they can no longer rely on qualified immunity based on the second prong of the analysis of whether the right was clearly established at the time of the violation. That a warrant is necessary in nonexigent circumstances is now beyond debate.

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Considerations Related to Psychologist–Patient Privilege in Requests for Reverse-Transfer Hearings

Christina N. Massey, PhD
Fellow in Forensic Psychology

Lauren C. Miller, PhD, ABPP
Assistant Professor of Psychiatry

Law and Psychiatry Program
Department of Psychiatry
University of Massachusetts Medical School
Worcester, MA

The Colorado Supreme Court Ruled That a Trial Court Does Not Have Authority to Compel a Juvenile to Produce Mental Health Records or Undergo a State-Administered Psychological Assessment When the Juvenile Requests a Reverse-Transfer Hearing to Have His Legal Case Heard in Juvenile Versus Adult Criminal Court

In *People v. Johnson*, 381 P.3d 316 (Colo. 2016), the Colorado Supreme Court found error in a previous decision that allowed the district attorney to compel a juvenile defendant to produce privileged mental health records and submit to a state-administered psychological assessment after the juvenile requested a reverse-transfer hearing (to have her case transferred from adult court to juvenile court). The court decided that the reverse-transfer statute allowed the trial court to consider only existing mental health records that are made available by the defendant, and the defendant can only make such privileged records available by waiving the psychologist–patient privilege, either explicitly or implicitly. In this case, it was determined that the juvenile did not make such a waiver, and she could not be forced to do so or participate in a new psychological assessment, the results of which would not be privileged. In the decision, the Colorado Supreme Court discussed the importance of the psychologist–patient privilege and remanded the case to the trial court with a ruling to show cause as to why its original ruling should not be vacated in light of this new decision.

Facts of the Case

The juvenile defendant, Sienna Johnson, was charged with two counts of conspiracy to commit first-degree murder. The district attorney's criminal complaint stated that Ms. Johnson should be tried as an adult. In response, Ms. Johnson made a request pursuant to the Colo. Rev. Stat. Ann. § 19-2-517(3) (2010), for a reverse-transfer hearing to have her case transferred to juvenile court. The request was granted, and the district attorney argued that the trial court was required to evaluate Ms. Johnson's mental health based on § 19-2-517(3)(b)(VI). The district attorney filed a motion to request records pertaining to Ms. Johnson's mental health and to request a court-ordered mental health evaluation. In response, Ms. Johnson claimed that she did not waive her psychologist–patient privilege and therefore should not be compelled to produce any records regarding her mental health. She also asserted that, under the

reverse-transfer statute, the trial court could not order her to undergo a mental health assessment.

The trial court ruled against Ms. Johnson, finding that a juvenile waives all privilege when requesting a reverse-transfer hearing and, as a result, must provide mental health records to the prosecution and the court. In addition, the request for a reverse-transfer hearing gives the trial court additional authority to order a mental health evaluation conducted by a state doctor. This mental health evaluation may be ordered, even if the juvenile does not plan to submit into evidence anything related to her mental health during the hearing. After the decision, Ms. Johnson petitioned the Colorado Supreme Court, stating again that the reverse-transfer statute did not permit the trial court to compel her to produce her mental health records or to undergo a mental health evaluation.

Ruling and Reasoning

The Colorado Supreme Court ruled that the reverse-transfer statute did not, in fact, give the trial court authority to compel Ms. Johnson to provide mental health records to the court and prosecution or to undergo a mental health evaluation. The Colorado Supreme Court determined that the trial court erred in its decision and that the case should be remanded to the trial court with a ruling to show cause as to why the trial court's original decision should not be vacated.

With respect to ordering Ms. Johnson to produce existing mental health records, the Colorado Supreme Court agreed with Ms. Johnson's claim that she did not waive her privilege and therefore, should not have had to produce privileged records. Under Colorado law, mental health records are protected by the psychologist–patient privilege, and the treatment provider therefore should not release any information unless the patient expressly waives the privilege or it is implied that the privilege has been waived. This latter circumstance can occur if the defendant introduces some type of physical impairment or mental disorder as an affirmative defense or as the basis of a potential claim. For example, when an insanity defense is asserted, the defendant then waives privilege regarding any communications made during a subsequent evaluation. However, confidentiality and the psychologist–patient privilege are important aspects of mental health treatment; therefore, it is not enough simply to determine whether information about an individual's mental health would be relevant in order for the privilege to be waived. The statute states that the court may review mental health records that are "made available" to both the defense attorney and the prosecution. If the juvenile decides not to make these records available, the court cannot then, under this statute, order the defendant to waive privilege and produce records. Furthermore, the reverse-transfer statute specifies 11 factors that the court should take into account when making a decision. Mental health is just one of those factors.

The Colorado Supreme Court offered a similar argument regarding ordering Ms. Johnson to submit to a mental health evaluation. Privilege is the paramount point here, as well. Just as a juvenile has the right to maintain the psychologist–patient privilege and decline to release previous records to the court, the juvenile defendant has an interest in declining to participate in a court-ordered mental health assessment, the results of which would not be protected by any privilege. In terms of language, the Colorado Supreme Court states that there is nothing specific in the reverse-transfer statute that grants authority to order a mental health assessment. The court notes that when the power to order this type of assessment is granted, the law is explicit. In this case, the statute does not explicitly grant the power to order a new assessment and specifies only that the court may review existing assessments if they are made available.

Discussion

The ruling in *Johnson* highlights the importance of confidentiality and privilege in legal matters related to mental health. The decision drew on the previous case of the *People v. Sisneros*, 55 P.3d 797 (Colo. 2002), which delineated the importance of upholding the psychologist–patient privilege, unless it is either explicitly or implicitly waived. In quoting *Sisneros*, the Colorado Supreme Court noted that the decision of whether the defendant waives privilege deserves significant weight, given that confidentiality is paramount to the psychologist–patient relationship. If a patient does not have sufficient confidence that the information she shares in the course of an evaluation or treatment will be kept private, the patient may be far less inclined to reveal important information or even seek treatment at all. From the perspective of the psychologist, if patients

do not feel that they can be honest, the information gathered during an assessment or a treatment session may lack accuracy and reliability, which can lead to ineffective diagnosis and treatment. In extreme cases, if the reliability of the patient's account is significantly compromised, the treatment strategy that is chosen may be so ineffective that it may, in fact, result in a worsening of symptoms and an unintended poor prognosis. An earlier Colorado case, *Clark v. District Court*, 668 P.2d 3 (Colo. 1983), similarly emphasized the importance of the psychologist–patient privilege, not only equating it to the physician-patient privilege, but also asserting that confidentiality itself within the psychologist–patient relationship contributes to more effective assessment and treatment. *Clark* also established that the privilege applies not only to information provided during oral testimony but also to information requested during pretrial discovery.

Although not discussed in *Johnson*, on the federal level, *Jaffee v. Redmond*, 518 U.S. 1 (1996), set an important precedent related to the *Johnson* decision. In *Jaffee*, the Supreme Court of the United States established the psychotherapist–patient privilege as a legally recognized privilege under Fed. R. of Evid. 501 (1975) and further ruled that the privilege applies to communications between a psychologist and patient and also to the notes that a psychologist may take during sessions. During the same year that *Jaffee* was decided, the Health Insurance Portability and Accountability Act (HIPAA; Pub. L. No. 104-191(1996)) was enacted by the federal government. The Act covers many aspects of health care, but it places a great deal of emphasis on privacy and highlights the importance of confidentiality in health care transactions.

One exception to the evidentiary privilege protecting psychologist–patient communications is in the case of dangerous patients where warnings to third parties are necessary for public protection, as was the case in *Tarasoff v. Regents of University of California*, 551 P.2d 334 (Cal. 1976). However, even in such circumstances, this case highlighted the fact that confidentiality is not only a hallmark of the psychologist–patient relationship but that breaches of this confidentiality should be construed narrowly and not be made lightly.

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Funding of Mental Health Institutes

Elizabeth Hunt, PhD
Fellow in Forensic Psychology

Albert J. Grudzinskas, Jr, JD
Clinical Associate Professor

Law and Psychiatry Program
Department of Psychiatry
University of Massachusetts Medical School
Worcester, MA

Governor's Item Veto of Appropriations for Mental Health Institutes Did Not Exceed Constitutional Authority

In *Homan v. Branstad*, 887 N.W.2d 153 (Iowa 2016), the president of the public employee union and members of the general assembly brought suit against Governor Terry Branstad and Charles Palmer, the Director of Human Services, regarding closure of two mental health facilities in Iowa. They challenged the governor's item veto of appropriations for these institutes, claiming that he had exceeded the scope of constitutional and statutory authority. The district court granted the defendant's motion for summary judgment and dismissed the petition. The plaintiffs subsequently appealed, and the Supreme Court of Iowa affirmed the judgment of the district court in dismissing the petition.

Facts of the Case

During its 2015 session, the Iowa general assembly passed two bills intended to appropriate money from the state general fund for the operation of two mental health institutes operated by the state. Although the governor signed the bills, he vetoed the appropriations intended to fund the two institutes, because he did not feel it was in the best interests of patients, taxpayers, or the mental health system to continue operating them. The president of a public employee union and 20 state legislators brought suit against the governor and the director of human services, alleging that the actions taken by them exceeded the scope of their state constitutional and statutory authority. They further asserted that the governor's actions violated Iowa Code, §§ 226.1 and 218.1 (2015), arguing that it mandates the existence of the two mental health institutes and their continued operation under the authority and control of the director of human services. The plaintiffs mainly sought (1) a temporary or permanent injunction bar-