cember 2014. Available at: http://www.courts.ca.gov/documents/02-_ctac-20141205-materials-VRTsurveyandreport.pdf. Accessed December 7, 2017).

The Supreme Court of Florida ruled that the telepresence of the judicial officer in Baker Act hearings can occur only if agreed upon by all involved parties. Attorney Robert A. Young, who appeared on behalf of the petitioners, stated that there was concern for the unstable psychiatric patient who was unable to appreciate the video of the judge as being a part of the proceedings or who did not accept the hearings as being real because of the physical absence of a judge. Attorney Young reported that, after the Supreme Court of Florida ruling in *Doe*, Baker hearings have not used judicial officer telepresence, despite the option being available with the consent of all parties (Young RA: General Counsel, Tenth Judicial Circuit. Personal communication, December 8, 2017).

Society has witnessed a dramatic increase in the use of technology over the past decade. Individuals, especially younger individuals, are becoming more comfortable with the integration of innovative technology into almost every area of life. However, we must be mindful of the impact of new technologies and maintain our humanity and respect for the individual. New technologies have both beneficial and pernicious effects. To sort out the answer to questions about the effects of the use of telemedicine, telepsychiatry, and telelaw, including judicial telepresence, requires more research. This research can inform answers to the legal and ethics-related dilemmas that we must confront, including the appropriate use of telecommunication at involuntary hospitalization hearings.

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Lack of Written Consent for the Administration of Antipsychotics in Psychiatric Treatment Facilities

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The Seventh Circuit Reversed Summary Dismissal for a Psychiatrist Who Prescribed Antipsychotic Medication Over an Inmate's Objection, Allowing the Inmate to Pursue Claims That His Rights Were Violated Under Theories of Constitutional Due Process and Illinois Law

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In *Johnson v. Tinwalla* 855 F.3d 747 (7th Cir. 2017), the Seventh Circuit Court of Appeals considered whether there was a violation of the Fourteenth Amendment and Illinois law when Dr. Tinwalla, a psychiatrist, prescribed antipsychotic medication to Terry Johnson, an inmate, without consent and in the absence of imminent dangerousness. The district court dismissed the case on summary judgment in favor of Dr. Tinwalla. Mr. Johnson appealed. The Seventh Circuit reversed the judgment, stating that the district court erred in its dismissal and remanded the case for further proceedings.

Facts of the Case

Mr. Johnson was an inmate at the Rushville Treatment and Detention Facility, a state treatment facility in Illinois for sexually violent offenders. His psychiatrist at Rushville was Dr. Abdi Tinwalla. On June 23, 2015, during a follow-up appointment with Dr. Tinwalla, Mr. Johnson complained of increased irritability, hopelessness, and passive thoughts of assaulting a staff member. His psychiatric history was significant for erratic and aggressive behavior. Given the psychiatric history and current complaints, Dr. Tinwalla thought it was best to start Mr. Johnson on oral risperidone, an antipsychotic medication. At the appointment, Mr. Johnson signed a consent form for risperidone, but quickly withdrew consent by crossing out his signature on the form. On the same form, Dr. Tinwalla documented that Mr. Johnson had "refused consent after signing it" (*Tinwalla*, p 749). Dr. Tinwalla, however, proceeded to prescribe the medication, testifying that he had written the prescription so that Mr. Johnson could take it if he felt the need for it. Mr. Johnson alleged that he was never informed that risperidone had been ordered and to be dispensed by the nursing staff at the treatment facility.

The nurses at Rushville normally dispense medications in cups marked only with the patient's name. In Mr. Johnson's case, the nurse did not inform him of the addition of risperidone to his blood pressure, cholesterol, and gastrointestinal medications. Mr.

Johnson neither noticed the extra medication in the cup nor questioned the unmarked medications, assuming they were for his medical ailments. As a result, he unknowingly ingested risperidone from June 23, 2013, until August 4, 2013, when staff warned Mr. Johnson that if he missed his follow-up psychiatric appointments, the prescription for risperidone would be discontinued. Three days after this revelation, Mr. Johnson filed a lawsuit against Dr. Tinwalla and the facility in the United States District Court for the Central District of Illinois. He claimed that he was given psychotropic medication without his knowledge or consent in violation of Fourteenth Amendment due process clause and state law. When the district court granted summary judgment to Dr. Tinwalla, Mr. Johnson appealed.

Ruling and Reasoning

The United States Court of Appeals for the Seventh Circuit reversed the district's court's decision. The court reviewed Illinois state law governing administration of antipsychotic medications to an inmate. Illinois law parallels the standard promulgated in *Washington v. Harper*, 494 U.S. 210, 227 (1990): "[T]he Due Process Clause permits the State to treat a prison inmate who has a serious mental illness with antipsychotic drugs against his will, if the inmate is dangerous to himself or others and the treatment is in the inmate's medical interest." Illinois law states that psychotropic medication:

> . . . shall not be administered to any resident [involuntarily committed pursuant to the Sexually Violent Persons Commitment Act] against his or her will . . . unless . . . [a] psychiatrist [or other physician] has determined that: the resident [is mentally ill]; and the medication is in the medical interest of the resident; and the resident is either gravely disabled or poses a likelihood of serious harm to self or others [Ill. Admin. Code tit. 59, § 299.330(d)(1)(A)(i) (2000)].

The court said that Mr. Johnson did not know he was being given the medication because the psychiatrist did not tell him that the medication had been prescribed for him. Therefore, Mr. Johnson did not have the choice to refuse the medication.

The court also noted that Mr. Johnson could have a viable claim against Dr. Tinwalla on the basis that Dr. Tinwalla was deliberately indifferent to Mr. Johnson's right to refuse risperidone. Because Dr. Tinwalla was a physician at Rushville, he must have known that the medications were given to the inmates unlabeled. Further, because Dr. Tinwalla was Mr. Johnson's treating psychiatrist, with access to the patient's medical record, he must also have known that Mr. Johnson was taking multiple medications. The appellate court concluded that Dr. Tinwalla's failure to inform Mr. Johnson of the prescription, despite what he knew, could be construed as deliberate indifference, a matter for the trial court.

Finally, the court said that a jury could reasonably find that Dr. Tinwalla committed medical battery. Under Illinois law, medical battery requires "only that the defendant have committed an intentional, unconsented to, act resulting in offensive contact with the plaintiff's body" (*Tinwall*a, p 751, citing *Sekerez v. Rush University Medical Center*, 954 N.E.2d 383, 394 (Ill. App. Ct. 2011)). The court's reasoning is that, although Dr. Tinwalla did not physically touch Mr. Johnson, it could be established that Dr. Tinwalla intended Mr. Johnson to come into contact with a foreign substance (risperidone) in a manner that would be considered offensive by Mr. Johnson. The Seventh Circuit reversed and remanded the matter to the district court for proceedings consistent with the analysis in this opinion.

Discussion

Mr. Johnson believed his constitutional right to due process was violated because the defendants had not informed him of the antipsychotic medication prescription after he withdrew consent. However, testimony from both the psychiatrist and the nurse persuaded the district court to dismiss the case because Mr. Johnson knew all along that he was being prescribed the antipsychotic. The trial court, in granting summary judgment to the defendants, said that Mr. Johnson retained the option to refuse the medication.

We understand from the appellate ruling that there are limited circumstances for administration of antipsychotic medication to an inmate over objection. The practical question becomes: how may a psychiatrist write an order and how may a nurse dispense a medication when there is ambiguity as to whether the patient will consent to or refuse medication on a day-to-day basis? In this case, the patient and psychiatrist did not come to terms on the consent for oral risperidone. To avoid future litigation in similar situations, mental health facilities may need to have clearer policies and procedures for informed consent and documentation. It is important to define who the responsible parties are in obtaining consent and for checking its documentation before administration of any medication in situations where there is no imminent risk.

Addendum

The case was remanded to the District Court for the Central District of Illinois (*Johnson v. Tinwalla*, 2017 U.S. Dist. LEXIS 185422 (Nov. 8, 2017)). There, the inmate plaintiff was provided counsel and moved for summary dismissal on his initial claims and in light of the Seventh Circuit's ruling. The district court denied Mr. Johnson's motion for summary judgment against Dr. Tinwalla. The court cited evidence contrary to what had been presented previously, including that Mr. Johnson did know he was taking risperidone during the relevant times. Dr. Tinwalla explained later in a deposition that he had told Mr. Johnson, after he had crossed out his signature on the consent form, that he was going to prescribe the medication so that Mr. Johnson had access to it. In addition, the nurse who processed the prescription testified that her standard practice included informing the patients of a new prescription. The court said that a reasonable jury could conclude that Dr. Tinwalla did not violate Mr. Johnson's rights, defeating Mr. Johnson's motion for summary judgment.

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

Delegation of Physician Responsibility in Obtaining Informed Consent

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State Supreme Court Overrules Prior Law Suggesting That Physicians May Rely on Subordinates to Carry Out Informed Consent Duty

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In *Shinal v. Toms*, 162 A.3d 429 (Pa.2017), the Supreme Court of Pennsylvania overturned a lower court's decision to uphold prior Pennsylvania case law that permitted disclosures by qualified individuals other than the treating physician to obtain a patient's informed consent for treatment. In reaching its decision, the Pennsylvania Supreme Court rejected the defendant's assertion that disclosures by a physician's subordinate to a patient regarding treatment satisfies the duty of informed consent. The court emphasized that the physician–patient relationship demands direct communication between physician and patient to obtain valid informed consent.

Facts of the Case

In 2007, Megan Shinal was diagnosed with a recurrence of a nonmalignant brain tumor, which had been partially resected in the past, but later developed into a mass compromising her eyesight and carotid artery. On November 26, 2007, Mrs. Shinal met with Dr. Steven Toms, a neurosurgeon, for an initial 20-minute consultation regarding the tumor. According to Dr. Toms' testimony regarding that consultation, he and Mrs. Shinal discussed her goals and expectations in life, and the risks of different surgical approaches, including possible damage to the carotid artery and the optic nerve. According to Dr. Toms, Mrs. Shinal stated that she "wanted to be there for her child" (*Shinal*, p 433), which Dr. Toms understood to mean that "she wanted me to push forward if I got in a situation where I thought I could [remove all of the tumor] with a reasonable risk" (*Shinal*, p 433).

Dr. Toms testified that he reviewed with Mrs. Shinal the alternatives, risks, and benefits of total versus subtotal resection and he shared his opinion that, although a less aggressive surgical approach was safer in the short term, it would likely result in the tumor growing back. Dr. Toms also testified that he informed Mrs. Shinal that total resection would deliver the highest chance for long-term survival. At the conclusion of the visit, Mrs. Shinal decided to undergo surgery, but did not decide on the surgical approach.

On December 19, 2007, Mrs. Shinal spoke with Dr. Toms' physician assistant (PA) and asked about postsurgical scarring, whether postsurgical radiation treatment would be necessary, and about the date of surgery. Medical records indicated that Dr. Toms' PA also answered Mrs. Shinal's questions about the craniotomy incision. On January 17, 2008, Mrs. Shinal met Dr. Toms' PA at the neurosurgery clinic,