Health makes clear that Maryland's administrative process for authorizing involuntary medication is not only compatible with the *Sell* decision but actually encouraged by it.

The outcome in this case will likely be appreciated by psychiatrists who treat patients in competency restoration programs. As Norko *et al.* noted (Norko MA, Cotterell MS, Hollis T. The Connecticut experience with *Sell* legislation. J Am Acad Psychiatry Law. 2020; 48:473–483), alternative pathways to involuntary medication such as probate court proceedings are much less cumbersome than *Sell* hearings in criminal court. In a study comparing Connecticut's two pathways to involuntary medication, the probate court pathway was found to be more efficient because of its weekly hearings and the judges' familiarity with mental illness and psychiatric medication (*Norko*, p 482). It took significantly longer to schedule an involuntary medication hearing in the criminal court, where such matters are rarely heard and judges have less experience making decisions about medical care.

Given those facts, most psychiatrists would prefer to have the option of pursuing involuntary medication in a civil setting. Limiting the options for involuntary medication to the criminal court would leave patients suffering with their psychiatric symptoms and without beneficial treatment for a longer period. This is concerning from a provider's perspective because, for many serious mental illnesses, any lag in initiating treatment can significantly worsen the patient's long-term prognosis. Although the decision in *Johnson* was not based primarily on the court's desire to restore the defendant's health quickly, the end result will likely have a positive impact on the physical well-being of patients in Maryland's competency restoration programs.

Court-Ordered Disclosure of Mental Health Records Without a Patient's Consent

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Circuit Court Did Not Apply the Correct Legal Standard When Considering Whether to Order the Release of Confidential Mental Health Records

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Key words: disclosure; confidentiality; mental health records; balancing test; *in camera* review

In *St. Luke Inst., Inc. v. Jones,* 241 A.3d 886 (Md. 2020), the Maryland Court of Appeals considered the judgment of the Maryland Court of Special Appeals that reversed the order of the Circuit Court for Prince George's County. This order directed St. Luke Institute to produce a deceased patient's mental health records under seal.

Facts of the Case

The plaintiffs in a civil case in Massachusetts alleged they were sexually abused by Brother Edward Anthony Holmes while residing in a children's group home that employed Brother Holmes. Their claims alleged negligent hiring and supervision against the Roman Catholic Archbishop of Boston and the Congregation of Sacred Hearts, entities associated with the group home.

Andre Jones, the lead plaintiff, asserted that documents in discovery in the Massachusetts civil case noted Brother Holmes underwent psychotherapy at St. Luke Institute (SLI), a Catholic mental health treatment center located in Maryland, in the early 1990s, and there were two psychiatric evaluation reports resulting from that care. The documents that were obtained in discovery highlighted and summarized a "caution" from the 1993 SLI evaluation report stating, "[T]here are no reported signs that [Brother Holmes] has been sexually inappropriate. However, we would caution Brother Holmes and his order: there are many signs of risk that should not lightly be dismissed" (*St. Luke Inst.,* p 890). The report also noted Brother Holmes had "not worked through his experience of being molested as a child" (*St. Luke Inst.,* p 890). After Mr. Jones learned of these evaluations, he requested that the reports and associated records be produced by the defendants in the Massachusetts case, as he contended that "what was known about Holmes' propensity to sexually abuse

minors in his care and when that was known is a central issue in the case" (*St. Luke Inst.,* p 892). The defendants' (the Roman Catholic Archbishop of Boston and the Congregation of Sacred Hearts) copies of the reports had been destroyed, so Mr. Jones tried to obtain the records from SLI by filing a motion for the records to be produced. The Massachusetts court entered an order granting the motion but acknowledged that SLI was in Maryland and could only be compelled by the appropriate authority in Maryland.

Mr. Jones filed a motion for a Maryland court order to produce Brother Holmes' records. SLI filed a memorandum in opposition, arguing that the Maryland circuit court would need to examine pleadings in the Massachusetts case to properly determine whether the matter of Brother Holmes' mental condition had been raised and whether such evidence was relevant. The circuit court granted the motion to produce the records, noting there was a compelling state interest in obtaining the records, whereas Brother Holmes could not be injured by releasing the records as he was deceased and had previously admitted to rape and sexual assault of minors. SLI filed an appeal to the Maryland Court of Special Appeals.

The court of special appeals reversed the circuit court's decision and remanded the case for additional proceedings. Believing that SLI was asserting Brother Holmes' patient-therapist privilege, the court of special appeals rejected any assertion that the records could not be disclosed on the basis of privilege, noting that although Maryland recognizes a patient-therapist privilege, "the privilege belongs to the patient to assert, not to the psychiatrist or psychologist" (*St. Luke Inst.,* p 894). The court declined to address SLI's arguments with respect to Brother Holmes' privacy interest in the records because the court concluded that SLI lacked the requisite standing to advance the argument on his behalf.

The court of appeals granted *certiorari* to consider SLI's assertions that the court of special appeals erred by analyzing the discovery request under a privilege statute and by holding that SLI had no standing to raise Brother Holmes' privacy interests.

Ruling and Reasoning

Concerning the first question, the Maryland Court of Appeals ruled the circuit court did not apply the correct legal standard when considering whether to order the release of confidential mental health records. Regarding the second question, the court held that a health care provider has standing to raise a patient's objections to disclosure under the Confidentiality Act (Md. Code Ann., Health-Gen. § 4-307 (k) (2017)). The court of appeals affirmed the judgment of the court of special appeals and remanded the case to the circuit court for further proceedings.

The court of appeals ruled that the circuit court should have examined the records to make a relevancy determination and outlined a framework for determining if mental health records should be disclosed. The court determined Brother Holmes' privacy interests were subject to a statutory balancing test; the relevance of the records and need for disclosure should be weighed against the patient's privacy interests. The court acknowledged additional limitations on the disclosure of mental health records, noting that a subpoena was sufficient for other types of medical records, but a court order was necessary to obtain mental health records.

The court of appeals also laid out guidelines for the *in camera* review of the records the circuit court should have undertaken. It stated that only relevant information from records should be disclosed and directed the circuit court to ascertain if the records "lead the movant to discovery of usable evidence" (*St. Luke Inst.,* p 906). The court of appeals directed the circuit court to be "cognizant of the fact that it is not an advocate" (*St. Luke Inst.*, p 903), and its goal is to exclude only information that "has absolutely no possible relevance to the case" (*St. Luke Inst.,* p 903).

The court of appeals found that SLI did have standing to object to the disclosure of Brother Holmes' medical records. It determined that under the Confidentiality Act a "health care provider, a recipient, or person in interest" (*St. Luke Inst*., p 908) is able to raise such a claim, which "ensures that the patient's rights are protected even if the patient is unable to assert the right" (*St. Luke Inst.,* p 909).

Discussion

St. Luke Inst. illustrates the limits of confidentiality protections for mental health records. While this was a complicated case involving multiple parties with different vested interests in disclosure versus nondisclosure, for mental health providers it is important to consider the limits on confidentiality and the implications for the doctor-patient relationship. As discussed in the U.S. Supreme Court decision in

Jaffee v. Redmond, 518 U.S. 1 (1996), effective psychotherapy "depends upon an atmosphere of confidence and trust in which the patient is willing to make a frank and complete disclosure of facts, emotions, memories, and fears" (*Redmond*, p 10). Even the smallest chance of disclosure could be detrimental to the treatment relationship and, therefore, to the patient's benefit from treatment.

Destroying records as soon as statutorily permissible is one potential solution for providers seeking to protect patient privacy and thereby preserve the integrity of the therapeutic relationship. A patient's records, however, have the potential to improve the quality of care the patient receives in the future by providing important information that could remain unknown to a provider if records are destroyed. For example, a patient could have had an adverse reaction to a medication in the past but be unable to recall the name of the medication when seeking treatment in the future. Having the patient's records could spare the patient unnecessary harm.

Given the stigma associated with mental illness and psychiatric treatment, another factor that must be considered is the introduction of implicit bias when an individual's mental health records are disclosed, particularly when they are ultimately introduced into evidence. Having a mental illness, or even receiving psychotherapy, can influence how individuals are perceived. Such records often contain psychiatric jargon that lay people may misinterpret or perceive as negative. It is unclear if the court's balancing test would effectively take this into account when deciding on whether such records should be disclosed. Based on the decision in this case, in order for records to be excluded, the court would have to determine that they have "no possible relevance to the case" (*St. Luke Inst.,* p 903). While such a broad standard for disclosure seems to possess face validity in serving the public interest in its search for truth and justice, it may underestimate the impact implicit biases have on overall court proceedings. In addition to considering the relevance of the records, courts may want to consider the potential for stigma to be introduced. While courts may be accustomed to reading about illness, lay people and juries may not and may draw conclusions from the mere existence of mental health records. Thus, going forward it will be important for psychiatrists to continue to describe this phenomenon, and work to further understand and characterize its impact on the legal system.

Psychiatric History as a Factor in Sentencing

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Courts Must Consider Evidence of Psychiatric History in Sentencing, but Have Broad Discretion in Determining the Value of Such Evidence

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Key words: sentencing; mitigation; judicial discretion; culpability; risk assessment

In *United States v. Lopez-Delgado*, 974 F.3d 1 (1st Cir. 2020), Humberto Lopez-Delgado challenged his sentence for possession of a machine gun, arguing that the U.S. District Court for Puerto Rico abused its discretion in deviating from the sentencing guidelines by, *inter alia*, failing to adequately consider his difficult childhood and mischaracterizing his mental health history. The First Circuit Court of Appeals affirmed the sentence because, although the deviation from the guidelines was significant, it was defensible based on the lower court's balancing of mitigating and aggravating factors, including the risk of danger to the community.

Facts of the Case

On June 7, 2016, police arrested Humberto Lopez-Delgado (Mr. Lopez) outside of the Luis Llorens Torres Public Housing Project in San Juan, Puerto Rico, on suspicion of involvement in a homicide. In a search incident to the arrest, police found a loaded Glock pistol that had been modified to shoot automatically. In police interviews subsequent to the arrest, Mr. Lopez reported using the Glock for protection, allegedly adding that he had killed a man named Sica. Police verified that a man named Sica had in fact been shot at the Luis Llorens Housing Project, although he had survived the shooting.

After a federal grand jury indicted Mr. Lopez, his counsel raised the question of competence to stand trial. After two evaluations by a psychologist for the