"counsel was ignorant of the GBMI-plea procedures prescribed by Pennsylvania law" and "failed to assure that this procedure was followed and failed to verify that the plea documents reflected the plea his client sought to enter" (*Velazquez*, p 161, relying on *Hinton v. Alabama*, 571 U.S. 263 (2014)). Consequently, Mr. Velazquez was prevented from taking advantage of the statutory GBMI process.

Discussion

Velazquez largely addresses questions of legal procedure. As a result, it primarily affects the practice of law rather than the practice of forensic psychiatry. For psychiatrists in the Third Circuit, this case highlights the unique procedural requirements of GBMI in Pennsylvania. For psychiatrists anywhere who are involved in these sorts of cases, it illuminates the potential complexity of laws that involve mental health and sentencing outcomes. Attorneys who have little experience with mental health law, or who have experience but do not practice within this realm regularly, may encounter difficulty in guiding their clients through this legal framework.

Given that these attorneys can understandably struggle with these points, and errors can, as in *Velazquez*, result in a *habeas* petition, they may seek assistance in navigating the laws of their jurisdiction. Because forensic psychiatrists specialize in the intersection between psychiatry and mental health law, consultation may be sought because of their familiarity with these laws. Therefore, knowledge of the basic legal procedures for insanity, GBMI, and similar criminal matters in a forensic psychiatrist's jurisdiction not only can prevent errors in the psychiatrist's own work, but also can be helpful to attorneys who seek guidance from a forensic psychiatrist.

Jail Physician Liability in Detainee's Death by Suicide

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Jail Physician Entitled to Qualified Immunity Where There Is Lack of Evidence That Detainee Showed a Strong Likelihood of Suicide

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Key words: qualified immunity; jail; suicide; deliberate indifference

In *Baker-Schneider v. Napoleon*, 769 F. App'x 189 (6th Cir. 2019), the U.S. Court of Appeals for the Sixth Circuit in an unpublished opinion reversed the district court's decision to deny qualified immunity to a jail physician, Rubab Huq, M.D., who evaluated a pretrial detainee prior to his dying by suicide. The court considered whether Dr. Huq acted with deliberate indifference to the detainee's mental health needs by releasing him into the general population without first treating his mental illness. The Sixth Circuit held that Dr. Huq was entitled to qualified immunity because the detainee did not show a likelihood of attempting to die by suicide, nor did Dr. Huq disregard that risk.

Facts of the Case

On November 6, 2014, Michael Schneider was arraigned for a misdemeanor domestic violence charge and ordered to be held without bond until his pretrial hearing. The next day, Mr. Schneider was transported to a detention center; shortly after his arrival, he underwent routine screening. Mr. Schneider reported several acute and chronic physical medical conditions to a medical assistant as well as symptoms of heroin withdrawal, including diarrhea and hearing voices. Mr. Schneider also disclosed mental health conditions including bipolar disorder, a history of cutting, and a history of a suicide attempt, although further details (e.g., the date of his suicide attempts) are unknown. Mr. Schneider did not report having current thoughts of suicide. The medical assistant entered the history obtained into an online form and noted that Mr. Schneider was not crying or acting unusual, nor did he show signs of depression, shame, or anxiety. There were visible cuts on his hands, and Mr. Schneider indicated these injuries had been self-inflicted. The medical assistant referred Mr.

Schneider for follow-up with a psychiatrist, which would happen at a later date.

Later that day, Mr. Schneider met with a registered nurse in the medical clinic where they discussed his medical history in further detail. He reported taking hydrocodone for pain but did not recall the names of his other medications or his pharmacy. Next, Mr. Schneider saw the medical doctor on duty at the clinic, Dr. Huq, who palpated his rib and ordered a chest x-ray and blood sugar monitoring for his diabetes. Dr. Huq noted Mr. Schneider cried intermittently throughout the exam and reported skin crawling and diarrhea. Mr. Schneider was placed on a heroin withdrawal regimen and received initial doses of medications for his withdrawal symptoms that afternoon in the clinic. After this intake screening was completed, Mr. Schneider was placed in the general jail population.

The following day, November 8, 2014, Mr. Schneider returned to the medical clinic to have his blood sugar tested. The nurse who performed this testing did not notice any concerning behavior or statements and testified that if suicidal thoughts had been mentioned by the inmate, this would have been documented and action would have been taken. In the early afternoon, a corrections officer observed someone sitting in the shower without the water running and Mr. Schneider was discovered hanging from a sheet, approximately 24 hours following his examination with Dr. Huq. Resuscitation was initiated, and Mr. Schneider was transferred to a hospital, where he died three days later.

At the time of Dr. Huq's exam, she had the assessment from the nurse in the clinic but only online access to the assessment from the medical assistant's initial intake evaluation. She testified that, at the time of her evaluation, she was not aware of his mental health history, including that he had been psychiatrically hospitalized, had taken medication, and had previously attempted suicide. She reported that she had followed protocol by inquiring about his mental health, but Mr. Schneider did not report anything to her during the examination. Dr. Huq testified that even if she had reviewed his responses to the intake evaluation, her management of Mr. Schneider would not have changed.

Ruling and Reasoning

The Sixth Circuit considered whether Dr. Huq violated Mr. Schneider's constitutional rights. The U.S. Supreme Court prohibited the deliberate indifference to serious medical needs of prisoners under the Eighth Amendment in *Estelle v. Gamble*, 429 U. S. 97 (1976). The Fourteenth Amendment's due process clause affords these protections to pretrial detainees, like Mr. Schneider. Psychological needs, especially when prisoners are suicidal, were previously established as sufficiently serious in *Comstock v. McCrary*, 273 F.3d 693 (6th Cir. 2001). Deliberate indifference claims have both an objective component and a subjective component. Here, the Sixth Circuit considered the subjective component, i.e., whether Dr. Huq had enough facts to infer substantial risk to the detainee and, if she did infer a risk, whether that risk was disregarded. The court also noted that *Comstock* established that negligence alone would not rise to the level of a constitutional violation, but the prison official would have needed to disregard a known risk recklessly.

Dr. Huq's qualified immunity defense was denied by the district court because "reasonable minds" could differ in interpreting Dr. Huq's failure to log into the computer to review Mr. Schneider's initial intake form to be deliberate indifference. Relying on *Gray v. City of Detroit*, 399 F.3d 612 (6th Cir. 2005), the Sixth Circuit focused on the information Dr. Huq possessed when she examined Mr. Schneider, without considering what information she theoretically had access to, stating that her liability should not be based on "collective knowledge." The court also noted the higher bar in establishing liability in cases of suicide, in which it would have to be shown that the decedent "showed a strong likelihood that he would attempt to take his own life" (*Baker-Schneider*, p 193, citing *Barber v. City of Salem*, 953 F.2d 232 (6th Cir. 1992)).

The Sixth Circuit considered the care Dr. Huq provided, such as conducting a physical examination, ordering imaging and laboratory testing, and prescribing medications for opioid withdrawal symptoms, and whether Mr. Schneider showed Dr. Huq a "strong likelihood he would commit suicide" (*Schneider*, p 193), and whether that risk was disregarded recklessly. The court said there was insufficient evidence to support the notion that Dr. Huq was aware of Mr. Schneider's mental illness or that he may have been suicidal. Dr. Huq testified that Mr. Schneider made no report of suicidal ideation, his history of suicide attempts, his diagnosis of bipolar disorder, or history of self-harm when she

inquired about his mental health during her exam. The only atypical aspect of Mr. Schneider's exam was that he was intermittently crying, but this could have been attributed to his opioid withdrawal or awareness that he would be spending the next 11 days in the detention center. In other words, the court did not find that Mr. Schneider's intermittent crying was enough to suggest a strong likelihood that he would attempt suicide. Ultimately, the Sixth Circuit ruled that Dr. Huq was entitled to qualified immunity because there was no evidence to show that Dr. Huq was aware of a strong likelihood of Mr. Schneider's suicidality, or that she disregarded that risk.

Discussion

In this case, the Sixth Circuit found that a jail physician did not act with deliberate indifference after she evaluated a pretrial detainee who later died by suicide because her clinical decision-making relied on her own examination and she had no indication the detainee was at risk for suicide. While there was information of Mr. Schneider's mental health history in an electronic format that Dr. Huq did not review, Dr. Huq performed her own exam, inquired about his mental health condition, and based her clinical decision-making on these findings. The court emphasized a higher standard of establishing liability in cases of suicide as they held the evidence would need to show a "strong likelihood" an inmate intended to attempt suicide for a clinician to be held liable, as described in *Barber*.

Predicting and preventing suicide presents challenges in all settings, and the court appeared to acknowledge this by indicating that a completed suicide does not necessarily imply negligence, but that significant indicators would need to be present to show deliberate indifference. The court reasoned that Mr. Schneider's intermittent tearfulness during the exam was not enough for Dr. Huq to infer a strong likelihood he would commit suicide, as it was in the setting of opioid withdrawal and being denied bond.

Baker-Schneider also highlights a challenge that many clinicians in all clinical environments encounter regarding the review of information in an electronic medical record. This case and *Gray* both support the notion that clinicians are liable for their decisions based on their own exam and the information they currently have, not necessarily information possibly available to them. The critical distinction between collective knowledge and an individual's knowledge limits the amount of information for which an individual can be liable. In many cases, it would be unreasonable to expect a clinician to review an entire medical record, and in this case the court limited the physician's scope of information to that which the physician had at the time of her examination. Notably, the court did not speak to what the physician should have known.

Employment Action Under the Americans With Disabilities Act

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Inconsistent Claims of Disability Provide Evidence to Defeat Allegation of Wrongful Termination Under the Americans With Disabilities Act

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Key words: Americans with Disabilities Act; employment; wrongful termination; inconsistent claims

In *Pena v. Honeywell Int'l Inc.,* 923 F.3d 18 (1st Cir. 2019), the First Circuit Court of Appeals affirmed a district court's grant of summary judgment in favor of an employer in an action brought under the Americans with Disabilities Act (ADA), 42 U.S.C. § 1210 (1990), where the employee had inconsistences between her application for Social Security Disability Income (SSDI) and her claims in the legal case.