case reinforces the importance for expert witnesses to carefully formulate their opinions because the information provided must fall within required jurisdictional standards.

# Negligence on the Part of a University or College

**Aateqa Ismail, MD**
***Fellow in Forensic Psychiatry***

**Annie Steinberg, MD**
***Clinical Professor of Psychiatry***

***Department of Psychiatry***
***Perelman School of Medicine***
***University of Pennsylvania***
***Philadelphia, Pennsylvania***

### *University Administration Is Exempt From Duty to Take Action If a Student Does Not Pose an Acute Suicide Risk*

DOI:10.29158/JAAPL.3859L2-19

In *Nguyen v. MIT*, 96 N.E.3d 128 (Mass. 2018), the Supreme Judicial Court of Massachusetts considered a university's duty to protect a student from self-harm. In 2011, the plaintiff alleged that the defendants' negligence caused his son's 2009 suicide. In March 2016, the defendants were granted summary judgment, and the plaintiff filed a cross-motion for summary judgment, which was denied. The Supreme Judicial Court of Massachusetts granted the plaintiff's motion for direct appellate review and concluded that summary judgment was properly granted on the tort claims and that the workers' compensation claim was properly denied.

#### Facts of the Case

Dzung Duy Nguyen, the father of Han Duy Nguyen, brought a wrongful death action against Massachusetts Institute of Technology (MIT), MIT professors Birger Wernerfelt and Drazen Prelec, and MIT assistant dean David W. Randall for the on-campus suicide of his son on June 2, 2009. Han Nguyen, 25, was a graduate student living off-campus.

Mr. Nguyen had a history of depression since high school and two suicide attempts in college. In 2007, Mr. Nguyen reported test-taking difficulties to the PhD program coordinator, Sharon Cayley, who referred him to MIT's student disability services. The disability coordinator recommended test accommodations, but Mr. Nguyen declined to be identified as disabled. Ms. Cayley then referred him to MIT's mental health and counseling service, where he attended two sessions with a psychologist. He disclosed his history of suicide attempts, denied suicidal ideation, and reported seeing Dr. Worthington, a psychiatrist at Massachusetts General Hospital, thus rejecting MIT-based services.

Mr. Nguyen met with Mr. Randall in September 2007, and he disclosed the same information and again denied suicidal ideation. Mr. Randall "strongly encouraged" him to visit MIT's mental health services. The student said he was already seeing a psychologist, Dr. Bishop, but gave, and then revoked, permission to contact treatment providers.

Between July 2006 and May 2009, Mr. Nguyen was treated by nine mental health professionals with psychotherapy, pharmacotherapy, and electroconvulsive therapy. Over many suicide assessments, he was not considered imminently suicidal and was not overtly self-destructive.

On May 9, 2008, Professor Prelec learned that Mr. Nguyen was "out of it" and "despondent." Prelec met with him, reporting to Professor Wernerfelt that he was "sleep deprived." Aware of the student's exam anxiety, Wernerfelt recommended a less concentrated exam "to give him some confidence" (*Nguyen*, p 135). Mr. Nguyen tested poorly in January, but met with Prelec weekly during the spring of 2009, served as a teaching assistant that spring and fall 2009, and was offered a summer research assistant position in an MIT laboratory. On May 27, 2009, he sent an email to the project investigator (PI) expressing enthusiasm and indicating that he believed his budget to be unlimited, referring to MIT's "bottomless coffers." Wernerfelt read this message and suggested someone speak with Mr. Nguyen about sending more appropriate emails, offering to take the lead.

On June 2, 2009, Mr. Nguyen sent the PI a lengthy email, blind-copying Prelec, expressing that he felt insulted the PI had instructed him as he would an undergraduate. The PI reported to Prelec that the student had taken his comments out of context, misinterpreting his intentions, and Prelec forwarded the email to Wernerfelt. Two hours after sending his email, Nguyen arrived at a

laboratory building on MIT's campus, where his demeanor was described as "pretty normal" by a lab coordinator.

As planned, Wernerfelt contacted Mr. Nguyen. They spoke by phone for eight minutes, after which Wernerfelt emailed Prelec, stating, "I read [Nguyen] the riot act. Explained what is wrong about the e-mail. Told him that you or I would look over future e-mails he send[s] . . . I said that we know he is not out to offend anyone, but that he seems poor at navigating the academe. . . . He will call you about what to do" (*Nguyen*, p 138). After the call, Mr. Nguyen went to the roof of the building and jumped to his death. Later that afternoon, Wernerfelt received an email from a colleague stating, "I know you were worried about suicide, but you can feel positive that we tried very hard to help [Nguyen] (and especially you did so much to help him)" (*Nguyen*, p 138).

### Ruling and Reasoning

The Supreme Judicial Court of Massachusetts granted the plaintiff's motion for direct appellate review. The court concluded that summary judgment was properly granted for the defendants on the tort claims and that the Superior Court judge properly denied summary judgment on the workers' compensation claim. Their decision was based on the principles of a negligence claim, on whether the university had a special relationship with the deceased requiring a duty to prevent suicide, and whether workers' compensation should have been claimed by the defendant. MIT's mental health and student support offices were referrals, and there was no enforceable contract; and if there was, Mr. Nguyen had repeatedly rejected campus-based assistance.

Under Massachusetts case law, one has no duty to take action in a situation one has not created. In this case, no custodial relationship could be established. The age of *in loco parentis* had long passed (Mr. Nguyen was in graduate school), and the university's duty did not extend to all aspects of their lives. The court recognized the complex relationship between the university and its students, who desire autonomy but still require protection. The court concluded that the duty to intervene, by protecting a student from self-harm, presumes actual knowledge that a student's suicide attempt occurred while enrolled or just prior to matriculation, or if a student had stated suicidal intent. The court noted that non-clinicians are not expected to discern suicidal plans or intentions to commit suicide. If the university is made aware of the possibility of harm, initiating a suicide-prevention protocol would be required, and if an emergency situation exists, contacting police, fire, or emergency medical personnel is reasonable.

As to whether Mr. Randall had a duty to prevent Mr. Nguyen's suicide, the court ruled that he had no special relationship with Mr. Nguyen, thus no duty to take action in these circumstances. Mr. Nguyen consistently refused help from MIT mental health services, though offered many times, and Mr. Randall was aware that he had outside providers. The court stated that Mr. Nguyen had the right to privacy, autonomy, and self-determination. He never reported imminent suicidal thoughts or intents, which would have required further action.

With regard to Professors Wernerfelt and Prelec, neither had knowledge of Mr. Nguyen's plans or intention to commit suicide. Neither were trained clinicians, nor did they have a duty to take action. Mr. Nguyen attributed his academic problems to insomnia and test-taking, not mental health problems, and prior suicide attempts long antedated Mr. Nguyen's enrollment at MIT.

The Supreme Judicial Court agreed with the Superior Court that there was conflicting information presented as to whether Nguyen was an MIT employee (the plaintiff claimed he was not), ruling that the facts were "undeveloped," thus precluding a ruling on this issue.

### Discussion

Negligence claims require evidence that a defendant owed the plaintiff a duty of reasonable care, that the defendant breached this duty, that damage resulted, and that there was a causal relationship between the breach of duty and the damage. Most university students are legally of majority age, with rights to privacy, autonomy, and self-determination. Many, however, remain financially dependent on their parents or guardians and are still young, vulnerable, and immature. The primary mission of the university is academic but may include fostering community involvement and student life on campus. University professors and deans are neither clinicians nor trained to assess depression or suicidal thoughts or plans. Universities should have suicide protocols, and if a student has expressed suicidal intent or made a suicide attempt, appropriate university officials, the

student's emergency contact, and local emergency personnel should be contacted.

In *Nguyen*, the court established that the university does not have a duty to anticipate intervention if the student has not expressed suicidal intention or plans, or the student has not had a recent suicide attempt, generally within 12 months prior to matriculation. The court did not find that the university voluntarily assumed duty of care, nor was there evidence that the school's mental health services increased the student's risk of suicide. Nonetheless, this ruling encourages universities to establish suicide protocols to protect the welfare of its students.

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

# Admissibility of Paraphilia NOS as Evidence of a Mental Abnormality under *Frye*

**Sarah Henry, PhD**
***Fellow in Forensic Psychology***

**Jacqueline Means, PsyD**
***Forensic Postdoctoral Fellowship Director***
***Office of Forensic Mental Health Services***

**Jennifer Piel, JD, MD**
***Assistant Professor***

***Western State Hospital Forensic Psychology Program***
***Department of Psychiatry and Behavioral Sciences***
***University of Washington***
***Seattle, Washington***

### *Trial Court Did Not Err in Admitting Testimony on Paraphilia NOS or Allowing Expert to Describe Appellant's Persistent Sexual Interest in Pubescent-Age Females*

DOI:10.29158/JAAPL.003860-19

In *State v. Black*, 422 P.3d 881 (Wash. 2018), the Supreme Court of Washington considered whether expert testimony on paraphilia NOS (not otherwise specified), persistent sexual interest in pubescent-aged females, was properly admitted at trial. In Washington, admissibility of scientific testimony is guided by the standard articulated in *Frye v. United States*, 293 F. 1013 (1923). The appellant argued that evidence of this diagnosis was not admissible because it is synonymous with hebephilia, which is not a generally accepted diagnosis in the relevant scientific community and is thus inadmissible under the *Frye* standard. The court ruled that the trial court did not abuse its discretion in admitting the expert testimony on paraphilia NOS.

#### Facts of the Case

In 2011, the state filed a petition for civil commitment of Mark Black as a sexually violent predator (SVP) prior to his scheduled release from prison. To secure a civil commitment under Washington's SVP statute, the state bears the burden to prove beyond a reasonable doubt that the individual "has been convicted of or charged with a crime of sexual violence and suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility" (Wash. Rev. Code § 71.09.020(18) (2015)). The state relied on an evaluation of Mr. Black conducted by Dr. Dale Arnold, who provided diagnoses of sexual sadism; paraphilia NOS (i.e., diagnosis reserved for those whose paraphilic foci do not fall within the descriptions of the eight enumerated paraphilias), persistent sexual interest in pubescent aged females, nonexclusive; and personality disorder NOS with antisocial and narcissistic characteristics. These conditions were recognized in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, which was in effect at the time of Mr. Black's evaluation and trial. Dr. Arnold opined that, due to these diagnoses, Mr. Black was likely to perpetuate acts of sexual violence toward others if not confined to a facility. Mr. Black presented expert testimony from Dr. Joseph Plaud, who testified that Mr. Black's presentation "doesn't represent fundamentally disordered sexual arousal" (*Black*, p 883). Relying on the argument that the scientific community had not resolved the debate as to the validity of the diagnosis of paraphilia NOS, Dr. Plaud indicated Mr. Black did not suffer from a mental abnormality upon which to base a civil commitment.

Prior to the civil commitment trial, a *Frye* hearing was held, and Mr. Black moved to exclude evidence pertaining to hebephilia and paraphilia NOS. Mr. Black argued that hebephilia, or the "generally unaccepted diagnosis that is broadly defined as paraphilic attraction to adolescents up to ages 16 or 17," (*Black*, p 886) is not admissible pursuant to *Frye*. As a result of the *Frye* hearing, the court excluded evidence of hebephilia from being presented; however, Dr. Arnold's testimony regarding paraphilia NOS was al-