become reluctant to discuss and collaborate in settings where their role is not clearly defined.

This sentiment was reflected in the *amicus* brief from the Minnesota Hospital Association, the Minnesota Medical Association, and the American Medical Association, who noted the importance of defining provider liability. The brief states that all independent practitioners are "tasked with making their own independent treatment decisions and exercising their own medical judgment regarding their patients. To then hold physicians not involved in providing direct patient care responsible for the independent decision-making of another provider would be at odds with both the letter and the spirit of [the statute]" (Brief of *amicus curiae* Minnesota Hospital Association, Minnesota Medical Association, and American Medical Association, as *Amici Curiae* supporting respondents, p 2, available at: https://www.mnmed.org/getattachment/advocacy/protecting-the-medical-legal-environment/MMA-in-the-Courts/Warren-Dinter-Amicus.pdf.aspx?lang=en-US, accessed February 8, 2020).

This ruling addresses practical concerns for providers and institutions operating within complex care models. In situations where providers are asked to opine on a patient without personally examining the patient, providers should clarify the nature and potential impact of the advice with whomever is consulting them. This clarification should be explicitly documented to mitigate liability and to address differences in professional judgment between providers. Finally, by highlighting the potential impact of providers in a gatekeeper position, the ruling emphasizes that even greater care may be required when there is no direct physician–patient contact.

Civil Detainees' Rights to In-Custody Care

Hassan Naqvi, MD
Forensic Psychiatry Fellow

Madelon Baranoski, PhD
Professor of Psychiatry

Law and Psychiatry Division
Department of Psychiatry
Yale University School of Medicine
New Haven, Connecticut

Failure to Provide Discharge Planning Violates Civil Detainees' Rights to In-Custody Care

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In *Charles v. Orange County*, 925 F.3d 73 (2d Cir. 2019), the plaintiffs appealed a Southern District of New York decision to dismiss all claims against the Orange County detention facility that alleged constitutional violations for failing to provide discharge planning for the plaintiffs upon release. The Second Circuit Court of Appeals ruled that the plaintiffs had stated a plausible claim for relief under the Fourteenth Amendment for deliberate indifference to their serious medical needs.

Facts of the Case

The unrelated Plaintiffs Michelet Charles and Carol Small are lawful, permanent U.S. residents who had serious mental illness. Both were arrested by the Immigration and Customs Enforcement Agency (ICE) and held as civil immigration detainees in a detention facility in Orange County, New York.

Mr. Charles, a 55-year-old man, was arrested in July 2014 and detained for about a year. He had schizoaffective disorder and a history of hallucinations, delusions, and mood instability when not taking his medications. He was seen by a psychiatrist at Orange County's Detention Facility once every three weeks. His health care insurance expired while he was in custody and could not be renewed.

On July 22, 2015, Mr. Charles was brought to New York City for an immigration court proceeding. The court ordered that Mr. Charles be released from custody. Mr. Charles was released directly from the court with only his identification. The detention center provided him with no records about his treatment while confined, no list or supply of his current medications, no list of outside referrals, nor any plan for care after release. When Mr. Charles returned to the detention facility to obtain his medications, he was told he could not be given medications after release. The ICE deportation officer did not respond to inquiries from Mr. Charles's immigration attorney. Without access to his psychotropic medication and counseling, Mr. Charles quickly decompensated, showing signs of disorganization, paranoia, and mania. On August 4, 2015, his family called 911 and he was admitted to an inpatient psychiatric unit. He was discharged after two months.

Ms. Small, a 45-year-old woman, was detained in May 2015. A month later she began experiencing

hallucinations and delusions, and was diagnosed with schizophrenia. In September she was transferred to a community inpatient psychiatric unit. A month later she returned to the detention facility and continued treatment with daily psychotropic medication. On January 11, 2016, an immigration judge ordered Ms. Small's release. On January 19, 2016, she was released from the detention facility in the evening with $80 cash. She was not given a list or supply of her medications, nor did she receive a list of outside referrals. Ms. Small moved to a shelter with the help of a social worker unaffiliated with the detention facility. On January 21, 2016, she used a list of medications she had herself written to obtain psychotropic medications from an emergency room.

On July 12, 2016, Mr. Charles and Ms. Small filed a complaint declaring a violation of their Fourteenth Amendment rights by the defendants (Orange County, Orange County Sherriff's Department, Orange County Department of Mental Health, and the Department of Mental Health's clinical directors). The plaintiffs claimed that "substantive due process requires that civil detainees be afforded adequate medical care during their detention" (*Charles*, p 80), that discharge planning is an essential part of mental health care, and that failure to provide discharge planning amounts to deliberate indifference to the risk of serious health consequences. The defendants argued that there is no established substantive due process right to the postrelease measures inherent in discharge plans. They argued that "the government's duty of care ends the instant the inmate walks through the prison gates and into the civilian world, because that is when the inmate's ability to secure medication or care on his own behalf is restored" (*Charles*, p 80).

In September 2017, the District Court for the Southern District of New York granted the defendants' motions to dismiss the case. The district court recognized that correctional facilities are required under the Fourteenth Amendment to provide medical care to civil detainees. Moreover, the court found that the defendants did not provide Mr. Charles and Ms. Small with necessary medical treatment after they were released. The Fourteenth Amendment, however, does not apply to postcustody medical care, and so the district court ruled that the plaintiffs failed to state a claim upon which relief can be granted.

Ruling and Reasoning

The plaintiffs argued that the district court applied an incorrect legal standard because the "deprivation of care" occurred during detention. The Second Circuit agreed with the plaintiffs, stating that although discharge planning is fundamentally different from other types of care because its purpose is to prevent postrelease harm, it is an essential part of mental health care and must occur prior to release. The court referenced policies from the American Psychiatric Association (APA) and The National Commission on Correctional Health Care (NCCHC) in stating that discharge planning should occur before an inmate's release.

The Second Circuit relied upon *Estelle v. Gamble*, 429 U.S. 97 (1976), in which the Supreme Court held prisoners must be provided medical care to protect their Eighth Amendment rights. These protections were extended to persons without a formal adjudication of guilt, such as civil detainees, under *Youngberg v. Romeo*, 457 U.S. 307 (1982) and *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239 (1983) under the Fourteenth Amendment. The circuit court reasoned that the plaintiffs were deprived of medical care and a Fourteenth Amendment claim could be made if they had a serious medical need for discharge planning and the defendants acted with deliberate indifference to those needs.

To determine whether the plaintiffs had "sufficiently serious needs" to require discharge planning, the Second Circuit considered whether a reasonable doctor or patient would have found their illness worthy of treatment, citing the APA assertion that "timely and effective discharge planning is essential to continuity of care and an integral part of adequate mental health treatment" (*Charles*, p 88). The court identified Mr. Charles's two-month hospitalization and Ms. Small's extreme emotional and psychological distress as indications of the seriousness of their illnesses.

In considering the claim of deliberate indifference, the court said that the plaintiffs must show that the detention facility "recklessly failed to act with reasonable care to mitigate the risk that the condition posed to the pretrial detainee even though the defendant-official knew, or *should have known*, that the condition posed an excessive risk to the plaintiff's health or safety" (*Charles*, p 87, quoting *Darnell v. Pineiro*, 849 F.3d 17 (2d Cir. 2017), p 35 (emphasis in original)). The court again referred to the APA and NCCHC to determine that the defendant clinic directors, as

mental health professionals, should have known about the need for discharge planning. In addition, the court cited written policies by both ICE and Orange County which suggest that the jail should have known the plaintiffs needed discharge planning. For these reasons, the Second Circuit Court vacated the district court's opinion and remanded for proceedings consistent with the opinion. The Second Circuit ruled, therefore, that if proven true by the finder of fact, the allegations are sufficient to establish deliberate indifference to the plaintiffs' medical needs.

Discussion

This case highlights the special relationship established between the state and detainee when liberty is limited by civil detention. The right to medical care for prisoners found guilty by a court is protected under the Eighth Amendment. These protections were extended to certain persons without a formal adjudication of guilt, such as civil detainees, through the Fourteenth Amendment. The question at the core of this case is whether discharge planning is part of in-custody medical care for psychiatric patients. The Ninth Circuit's decision in *Wakefield v. Thompson*, 177 F.3d 1160 (9th Cir. 1999) held that prisoners must be given a sufficient supply of medication upon release so they can consult a doctor for refills. Several questions remain unanswered. What other aspects of discharge planning are required? How long must one be detained to require discharge planning? What aspects of discharge planning should be prepared at the time of detention to mitigate the risk of unforeseeable release?

These questions are shaped by the unique circumstances raised by immigration detention, particularly at a time when immigration detention is under scrutiny. The number of detainees, the trauma many have suffered before and during detention, unpredictable releases and deportations, and undiagnosed psychiatric conditions are only some of the circumstances confronting the delivery of standard clinical practice. These challenges are reminiscent of those in the criminal courts that gave rise to criminal justice and mental health partnerships, diversionary programs, and incorporation of mental health services within the courts. Forensic psychiatrists are well-positioned to address these concerns in individual cases and in guiding policy and program development. As societal circumstances create new challenges in the courts and in forensic practice, we should remain cognizant of the unique needs of persons struggling with mental disorders.

Mental Health Treatment on Supervised Release

Madeline Stenersen, MS
Fellow in Forensic Psychology

Paul A. Bryant, MD
Assistant Professor of Psychiatry

Law and Psychiatry Division
Department of Psychiatry
Yale University School of Medicine
New Haven, Connecticut

Courts Must Provide Substantial Justification When Ordering Mental Health Treatment as a Condition of Supervised Release

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In *United States v. Bree*, 927 F.3d 856 (5th Cir. 2019), the Fifth Circuit Court of Appeals modified a district court's sentence by striking down the mental health special condition of probation. This decision was made after the Fifth Circuit deemed that the mental health condition was unsupported by the plaintiff's history. The court gave substantial consideration to the question of relevancy of previous substance use and mental health records in the determination of special requirements of probation following release from incarceration.

Facts of the Case

In October 2017, Kelvin Lewis Bree was stopped at the Sarita checkpoint on the United States–Mexico border by a Border Patrol agent. After the agent's canine detected several bundles of cocaine and marijuana hidden in Mr. Bree's possession, he was charged with two counts of drug possession with the intent to distribute. While one charge was later waived, Mr. Bree pleaded guilty to the other count and was sentenced by the district court to 70 months of incarceration and four years of supervised release. As part of his supervised release, the district court imposed two special conditions: Mr. Bree would be required to complete substance abuse treatment and undergo mental health treatment while under the supervision of a probation officer "because of Bree's substance problems" (*Bree*, p 858). The mental