The Wisconsin Supreme Court also affirmed the Wisconsin Court of Appeals decision that the 12-month statutory limitation for achieving a defendant's competency is not subject to tolling in the pretrial context. The court based its decision on §971.14(5)(a) of the state code, which declares that if a defendant is not competent but would likely become competent within a statutory timeframe, "it shall suspend the proceedings and commit the defendant to the custody of the department for treatment for a period not to exceed 12 months." The court stated that the legislature has decided that 12 months was the maximum time during which to "determine whether there is a substantial probability that a defendant will attain competency in the foreseeable future" (*Green*, p 783). The court concluded that the plain meaning of the 12-month treatment limit does not permit tolling of its limit on confinement for pretrial treatment to achieve competency.

Discussion

The outcomes in *Green* set new legal precedent in Wisconsin for pretrial proceedings regarding involuntary medication orders and tolling of statutory limitations for restoration of competency to stand trial.

Tolling is a legal principle defined as a pause of the running of a period of time set forth by a statute of limitations. In *Green,* the state argued that the 12-month commitment term should be tolled, that is, paused, throughout the appeals process which was granted by the circuit court. But, both the Wisconsin Court of Appeals and the Wisconsin Supreme Court disagreed with the lower court decision. Generally, statutory tolling is permitted, but only in certain circumstances. The Wisconsin Supreme Court relied on interpretation of the Wis. Stat. §971.14(5)(a) in its decision. That statute states that the pretrial proceedings will be suspended, and the defendant will be committed to the custody of the mental health department for treatment for a period not to exceed 12 months if the defendant is not competent but would likely become competent within the statutory timeframe. The court made a clear distinction that although the defendant is in custody for purposes of treatment, the total amount of time that the defendant has spent in custody must not exceed 12 months, even if the defendant has spent a portion of that statutory timeframe in an appeals process and not receiving treatment for restoration of competency to stand trial. This has potential implications for treatment providers in considering the relevant timeframe for which the person can be subject to treatment.

In *Sell*, the U.S. Supreme Court reviewed the constitutionality of involuntary antipsychotic medication orders to mentally ill criminal defendants to restore their competency to stand trial by local jurisdictions. The Court established four specific criteria that must be met by clear and convincing evidence to medicate a pretrial defendant over objection to restore competency. These criteria, known as the *Sell* factors, are: the government has an important interest in proceeding to trial; involuntary medication will significantly further the governmental interest; involuntary medication is necessary to further the governmental interest; and involuntary medication is medically appropriate.

In *Green*, the Wisconsin Supreme Court applied the *Sell* factors and found that they were met by clear and convincing evidence. The court emphasized that at the pretrial point in criminal proceedings, the government has an important interest in proceeding to trial, which is not similarly existent in the postconviction process. The court weighed the urgency of the pretrial process versus Mr. Green's constitutionally protected liberty interest of avoiding unwanted administration of antipsychotic drugs. The court determined that the proposed involuntary medications were medically appropriate and were necessary to further the government's interest. This is another example of the application of *Sell,* similar to what other states have required to meet the criteria, during the pretrial process as it pertains to restoration of competency and administration of involuntary medications.

Involuntary Medication Despite Power of Attorney Treatment Refusal

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Health Care Agent's Refusal of Psychotropics Does Not Preclude Involuntary Medication Administration

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In *In re Craig H.*, 2022 IL 126256 (Ill. 2022), the Illinois Supreme Court affirmed that the Illinois Mental Health Code acts as a narrow exception to a health care agent's otherwise broad medical decision-making authority under the Powers of Attorney Law. A health care agent's medication refusal does not preclude the state from petitioning for involuntary medication administration. Specifically, the statutory language demonstrates a clear legislative intent to allow for involuntary medication petitions in circumstances when a health care agent refuses treatment on a patient's behalf.

Facts of the Case

Schizoaffective disorder, bipolar type was diagnosed in Mr. H. at age 25 and he intermittently received treatment throughout adulthood. At age 49, he appointed his mother, Mrs. Teresa H., as his health care agent under the Illinois Powers of Attorney Law. In 2016, after a burglary charge, Mr. H. was hospitalized for competency restoration at McFarland Mental Health Center in Springfield, Illinois. Both Mr. H. and Mrs. H. consistently refused medications throughout his hospitalization. Mrs. H. told physicians that psychotropic medications made her son look like a "man without a head," "a zombie," and caused brain damage. After two years, Mr. H.'s psychiatrist at McFarland, Dr. Aura Eberhardt, filed an involuntary medication administration petition. Mr. H. subsequently filed for petition dismissal, stating his health care agent's treatment refusal superseded the trial court's authority to order involuntary psychiatric medications. The trial court denied Mr. H.'s dismissal motion and authorized proceeding to an involuntary treatment petition hearing.

At the petition hearing, Dr. Eberhardt testified that schizoaffective disorder was diagnosed in Mr. H., and he had been experiencing hallucinations, paranoia, psychomotor agitation, and insomnia. Throughout his hospitalization, he had displayed disorganized behaviors such as collecting urine in his room and urinating on floors. Dr. Eberhardt reported Mr. H. also had demonstrated impaired impulse control with hypersexual and aggressive behaviors. He had attempted to sniff and kiss female peers and staff, made threats to harm people, and assaulted his peers on two occasions. In the five months prior to the petition, Mr. H. required emergency medication 10 times because of dangerous behaviors. Dr. Eberhardt testified that Mr. H. had not demonstrated insight into his mental illness, and therefore lacked capacity to make medical treatment decisions. Dr. Eberhardt reported Mrs. H. remained concerned about psychotropic side effects and would not consent for "any type" of medication.

Dr. Eberhardt petitioned for treatment previously effective for Mr. H., including risperidone, lithium, lorazepam, and benztropine. Mr. H. had improved and been able to live in a nursing home for several years on this regimen. Dr. Eberhardt testified regarding the risks and benefits of these medications and opined that the proposed treatment benefits outweighed side effect risks. Dr. Eberhardt opined that, if treated, Mr. H. might regain capacity and be able to return to assisted living. Dr. Eberhardt testified that there were no less restrictive treatment alternatives and stated without treatment Mr. H.'s illness severity would indefinitely confine him to a hospital setting. After hearing the evidence, the trial court granted the petition for involuntary psychotropic medication administration for up to 90 days.

Mr. H. appealed again, arguing the trial court's involuntary medication order violated his right to appoint a health care agent to make treatment decisions. While the order's expiration mooted this appeal, the Illinois appellate court granted review under two exceptions: that the question is one of public interest and that it is capable of repetition yet evading review. The appellate court observed that under 405 Ill. Comp. Stat. 5/2–102(a–5) (2018), involuntary medication may be administered under § 2-107.1 involuntary treatment petition provisions or under the Powers of Attorney Law. Therefore, under Mental Health Code provisions, a health care agent's treatment refusal did not preclude involuntary medication treatment. As the Mental Health Code applied more specifically to the case, the appellate court held that it was controlling over the broad health care decision-making ability granted by the Powers of Attorney Law. The appellate court commented on the state's *parens patriae* interest in caring for persons incapacitated by mental illness as well as its penological interest in restoring their fitness to

stand trial. Ultimately, the appellate court affirmed the trial court's order for involuntary treatment. Mr. H. appealed this ruling.

Ruling and Reasoning

The Illinois Supreme Court allowed Mr. H.'s petition for leave to appeal and examined whether Mr. H. had been inappropriately administered involuntary medication under § 2-107.1 of the Mental Health Code. Although the 90-day involuntary treatment order had expired before the appeal, the court agreed to review the case under the same mootness exceptions cited by the apellate court.

Mr. H. did not dispute that the procedural protocol had been appropriately followed. Rather, he contended that the Powers of Attorney Law broadly provided his agent authority to make all medical decisions, including the right to refuse psychotropic medications on his behalf. As he had delegated his decision-making authority to his agent, and his agent declined treatment on his behalf, there was no basis by which an involuntary medication order could be filed in the first place. Mr. H. concluded that the trial court erred in denying his motion to dismiss the state's petition seeking involuntary treatment.

The Illinois Supreme Court stated that as the statute contained the disjunctive "or," it indicated two independent alternatives. Involuntary treatment may be administered either with the consent of the health care agent appointed under the Powers of Attorney Law or involuntarily under § 2-107.1 of the Mental Health Code. The court also observed that § 2-107.1 refers to health care power of attorney repeatedly, requires attachment of an existing and available power of attorney to the petition, and provides for notice of the proceedings to the health care agent. Therefore, the Illinois Supreme Court concluded that all of these provisions would be "nonsensical" if the existence of the power of attorney required dismissal of the petition.

The Illinois Supreme Court also stated that, when there are multiple statutes relating to the same subject, the presumption is that they are intended to be consistent and harmonious. If they appear to conflict, then they should be construed in harmony if reasonably possible. If it is not possible, then more recently enacted statutes supersede earlier ones and more specific statutes supersede general ones.

Regarding the Powers of Attorney Law and the Mental Health Code statutes relevant to this case, the statutes could be interpreted in harmony. Specifically, the language of § 2-107.1 demonstrates a clear legislative intent for the Mental Health Code to act as a narrow exception to the health care agent's authority to make health care decisions. Furthermore, the Illinois Supreme Court stated that even if the statutes could not be construed in harmony, the Mental Health Code would still apply as it is the more recent and more specific provision.

Discussion

The Illinois Supreme Court affirmed the order for involuntary treatment and commented on the state's *parens patriae* interest to care for persons incapacitated by mental illness. An appointed power of attorney for health care is entrusted to make medical decisions based on an incapacitated person's values and wishes. In Illinois, the right to appoint a health care agent is provided with confidence that other parties will value the agent's authority. But a health care agent's refusal to consent to treatment does not prohibit the court from granting an involuntary psychotropic medication petition. In *In re Craig H.,* the Illinois Supreme Court held that the state Mental Health Code reflects the Illinois legislature's intent to allow for treatment over a valid agent's refusal in a narrow set of circumstances.

It is important for physicians to be aware of the involuntary medication laws and procedures in their jurisdiction. It is not uncommon for clinicians to face a situation wherein a patient's power of attorney agent refuses to consent to psychotropic medications. Even when there is such a refusal, there may be legal provisions which allow psychiatrists to petition for involuntary treatment.

ADA Protection of Transgender Rights

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