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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Gender Dysphoria Is a Protected Condition Under the Americans With Disabilities Act and the Rehabilitation Act

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In *Williams v. Kincaid*, 45 F.4th 759 (4th Cir. 2022), the U.S. Court of Appeals for the Fourth Circuit reversed a district court's dismissal of a transgender woman's claims that her treatment while incarcerated constituted a violation of the Americans with Disabilities Act (ADA) (42 U.S.C. § 1983 (1996)) and the Rehabilitation Act (29 U.S.C. §701 (2014)). The court further concluded that a policy of housing incarcerated individuals based solely on their genitalia constitutes gross negligence.

Facts of the Case

Kesha Williams, a transgender woman, was incarcerated at Fairfax County Adult Detention Center. Prior to incarceration, she was legally considered to be a woman in her home state, and her driver's license reflected her legal status as a woman. She was initially classified and housed as a female inmate. For 15 years prior to her incarceration, she had been receiving hormone therapy for gender dysphoria, but because she had not had transfeminine bottom surgery, she retained male genitalia. Upon disclosing this information to the prison nurse, Ms. Williams was reclassified as male and was transferred to men's housing in compliance with the prison policy that "'[m]ale inmates shall be classified as such if they have male genitals' and '[f]emale inmates shall be classified as such if they have female genitals'" (*Williams*, p 764).

While incarcerated, Ms. Williams' hormone therapy was delayed and she was persistently subjected to harassment by prison staff, who routinely referred to her as a man. Her requests for private showers and for body searches to be conducted by female deputies were denied. During one search of Ms. Williams' housing unit, Deputy Garcia, a male prison staff member, conducted a "highly aggressive" body search that left Ms. Williams with several days of pain and bruising to her breast.

After her release, Ms. Williams sued Sheriff Kincaid of Fairfax County, the prison nurse, and Deputy Garcia, alleging violations of the ADA, the Rehabilitation Act, the Constitution, and Virginia common law. She additionally alleged gross negligence on the basis of the sheriff's housing policy and the deputy's aggressive body search. The district court dismissed these claims, reasoning that gender dysphoria was not protected under the ADA as it fell under the exemption of "gender identity disorders not resulting from physical impairments" (*Williams*, p 765). The court also dismissed the claims of gross negligence, stating that a policy to house transgender inmates based solely on genitalia demonstrated some degree of care, even if it was inadequate. It further ruled that the statute of limitations had passed for allegations against the deputy. Ms. Williams appealed.

Ruling and Reasoning

The U.S. Court of Appeals for the Fourth Circuit reversed the district court's dismissal of Ms. Williams' § 1983, ADA, Rehabilitation Act, Constitution, state common law, and gross negligence claims, and remanded the case back to the district court for further proceedings.

The court first considered Ms. Williams' claim that the ADA's exclusion for gender identity disorders not resulting from physical impairments does not apply to gender dysphoria. The court referred to *Bostock v. Clayton County,* 140 S. Ct. 1731 (2020), to consider the language "at the time of the statute's adoption" (*Williams*, p 766). In 1990, the year the ADA was signed, the Diagnostic and Statistical Manual of Mental Disorders (DSM-III-R) was the primary psychiatric reference text and defined gender identity disorder as "an incongruence between assigned sex (i.e., the sex that is recorded on the birth certificate) and gender identity" (DSM-III-R, p 71). The court highlighted that the diagnosis of gender identity disorder was removed from the DSM-5 and replaced with "gender dysphoria," which requires "clinically significant distress."

The court emphasized that the DSM's shift from the diagnosis of gender identity disorder to gender dysphoria reflects evolving medical understanding. Specifically, DSM no longer defines being transgender as an illness. Rather, only the subset of transgender individuals with requisite levels of distress can be diagnosed with gender dysphoria. Therefore, the court ruled, gender identity disorder is an "obsolete diagnosis" and no longer applies to transgender individuals.

Ms. Williams further argued that regardless of whether gender dysphoria qualifies as a "gender identity disorder," her diagnosis was a result of physical impairments, and was therefore not exempt from ADA protections. She argued that whereas hormone therapy, an intervention that produces physical changes to the body, may be a treatment for gender dysphoria, her specific case of gender dysphoria requires hormone therapy for alleviation of distress. The court considered this argument plausible, additionally citing the Equal Employment Opportunity Commission's definition of "physical impairments," as it is not clearly defined in the ADA.

Because the court considered Ms. Williams to already have made two plausible arguments of ADA violations, and that the lower court had erred in its dismissal, it determined that her allegations of constitutional violations would not and should not be considered at this time. The court noted, however, that if a court ruled that gender dysphoria and gender identity disorder were both excluded from ADA protections, then such an exclusion would discriminate against transgender individuals as a class, and potential violation of the Equal Protection Clause of the Fourteenth Amendment would need to be considered. The court referenced the historical hostility toward transgender individuals as a significant reason why the gender identity exclusion was crafted in the first place.

Finally, the court looked at the dismissal of Ms. Williams' claims of gross negligence by Sheriff Kincaid and Deputy Garcia. The court began by noting "the standard for gross negligence in Virginia is one of indifference, not inadequacy" (*Williams*, p 178, citing *Elliot v. Carter*, 791 S.E.2d 730 (Va. 2016)).

The Fourth Circuit disagreed with the district court's reasoning that prison housing based solely on genitalia constitutes some, albeit inadequate, care. It noted that Sheriff Kincaid employed additional policies that directed inmates to be housed according to a variety of factors, including safety and security needs. But Sheriff Kincaid also directed inmates to be housed solely on genitalia, overriding any additional factors that might have been considered. The court determined that the practical outcome of this policy is in violation of the Prison Rape Elimination Act (28 C.F.R. § 115 (2003)), which requires housing of transgender and intersex inmates be considered on a "case-by-case basis." The court also cited the increased rates of sexual assault and violence toward transgender inmates in male prisons. The court agreed with Ms. Williams that having a policy in direct violation of federal law and which knowingly puts her at increased risk of harm could cross the line from inadequacy to gross negligence.

Regarding the allegation of gross negligence on behalf of Deputy Garcia, the court noted that he did not attempt to comply with a prison policy that would have only allowed him to search Ms. Williams if her gender were uncertain. He was fully aware that Ms. Williams was a woman. Combined with his use of force, the court determined that there was sufficient evidence that he did not display any degree of care, reversing the district court's dismissal of gross negligence against the deputy.

Dissent

The dissent did not agree with the majority's position that gender dysphoria was distinct from gender identity disorder, calling the change in nomenclature a mere "linguistic drift." The dissent further noted that even if gender dysphoria is distinct from gender identity disorder, the ADA must be interpreted as intended at the time of its crafting, and the gender dysphoria which afflicts Ms. Williams would have been considered a gender identity disorder at that time. Finally, the dissent noted that Congress modified the ADA in 2008 and, in doing so, retained the gender identity disorder exclusion. Therefore, it said, the 1990 conceptualization of this exclusion should guide interpretation.

Discussion

This ruling by the Fourth Circuit highlights the differences between gender identity disorder and gender dysphoria in the context of changing medical understanding of transgender individuals, as well as the historical animosity toward transgender individuals that contributed to exceptions to ADA protections. The court considered the diagnosis of gender identity disorder to be "obsolete" and considered Ms. Williams to have at least two plausible claims that treatment for gender dysphoria is protected under the ADA.

The court recognized the need for prompt provision of gender-affirming care to those experiencing gender dysphoria and noted that correctional policies of housing inmates based solely on genitalia amounts to gross negligence. This ruling reaffirms the importance of case-by-case consideration to housing individuals with gender dysphoria and

provides an impetus for widespread updates to correctional housing policy.

Notably, the court repeatedly cited its own opinion in *Grimm v. Gloucester County School Board*, 972 F.3d 586 (4th Cir. 2020), which mandated accommodations for transgender individuals in a public school setting. Taken together, these rulings mark continued progress toward equal protections for transgender individuals in public institutions.

While the dissent argued that the court should not allow societal attitudes or medical organizations to influence interpretation of statutes, the majority's arguments about gender dysphoria and its physical basis raise questions about whether the gender identity disorder exemption to ADA protections is ever legally applicable, even if this exemption was retained by Congress in 2008. This result highlights how scientific positions and the law can collide.

Psychiatric Evaluation to Assess Competency for Self-Representation

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Psychiatric Evaluation to Assess Competency for Self-Representation Is Not Mandatory Before a Defendant Proceeds *Pro Se*

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In *United States v. Garrett,* 42 F.4th 114 (2d Cir. 2022), the Second Circuit Court of Appeals held that the district court did not err when, after a *Faretta* hearing, it allowed Paul Rivera (a.k.a. Michael Garrett) to proceed *pro se* without first ordering a psychiatric evaluation to assess his competency for self-representation.

Facts of the Case

Paul Rivera was arrested in January 2012 after a traffic stop in Pennsylvania when approximately 170 grams of cocaine and 7.5 grams of heroin were seized. During his 14-month incarceration in Pennsylvania, the Federal Bureau of Investigation began investigating Mr. Rivera and the activities of a criminal organization known as "Together Forever" (TF), which he co-founded in the 1980s. TF engaged in drug trafficking, forced prostitution, and gang violence. On March 11, 2013, a federal grand jury indicted and charged Mr. Rivera and a co-defendant with narcotics trafficking, sex trafficking, money laundering, witness tampering, and murder.

During the federal proceedings, Mr. Rivera cycled through seven attorneys before requesting to proceed *pro se*. The district court disqualified Mr. Rivera's first attorney, Steve Zissou, over a nonwaivable conflict of interest. Mr. Zissou objected, predicting that this would make it "extremely difficult for successor counsel" because Mr. Rivera was a "very difficult and sophisticated client . . . extremely distrusting of courts and lawyers . . . and likely suffering from some form of undiagnosed psychological instability" (*Garrett*, p 116).

Within two weeks of the district court appointing new counsel, Mr. Rivera replaced him with a privately retained attorney. After just over one month, the attorney withdrew because of a conflict, and the court appointed Martin Goldberg. Approximately four months later, the court appointed new counsel again after Mr. Rivera and Mr. Goldberg expressed concerns about their relationship. Mr. Goldberg explained that part of the problem stemmed from Mr. Rivera being "enamored" with prior counsel, Mr. Zissou.

In October 2013, the grand jury returned a superseding indictment with additional charges, including murder in aid of racketeering, a death-penalty-eligible offense. The court appointed an additional attorney, David Stern, to assist with the capital charge. After the government dropped the death penalty, the court determined that Mr. Rivera required only one lawyer, and he proceeded with Mr. Stern. Mr. Rivera requested to replace him after one month. The court granted this request in July 2014, appointing Donald DuBoulay and warning Mr. Rivera that he would be the last counsel appointed for him.

In April 2015, Mr. Rivera requested to proceed *pro se* because of disagreement with Mr. DuBoulay's legal strategy. Subsequently, the district court held a