

## Psychiatric Malpractice and the Standard of Care

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### Failure to Obtain Informed Consent When Prescribing an Antidepressant is a Triable Jury Question

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**Key words:** SSRI; suicide risk; mental health services; informed consent; foreseeability

In *Mattson v. Idaho Department of Health and Welfare*, 529 P.3d 731 (Idaho 2023), the Idaho Supreme Court reversed summary judgment in favor of the Idaho Department of Health and Welfare and its employee that conferred immunity from liability for alleged medical malpractice and failure to obtain informed consent before prescribing a selective serotonin reuptake inhibitor (SSRI).

#### Facts of the Case

On April 14, 2018, Terri Mattson started outpatient mental health treatment at the Idaho Department of Health and Welfare. On April 24, during her first appointment at the Department with a licensed professional counselor, Ms. Mattson reported symptoms of depression, anxiety, and alcohol relapse four months prior. Ms. Mattson informed the counselor of attempting suicide twice in the past but denied contemporaneous suicidal ideation. Her husband, however, reported that she had past and present suicidal thoughts. The counselor diagnosed Ms. Mattson with recurrent, severe major depressive disorder (MDD), assessed her risk of suicide as “moderate,” and recommended outpatient psychiatric pharmacological management, psychotherapy, and substance use treatment. Over the next three weeks, Ms. Mattson had three in-person and one phone

appointment with her counselor. She reported worsening symptoms of depression, anxiety, and escalation of alcohol use that led to the loss of her employment.

On May 16, Ms. Mattson had her first and only appointment with a certified physician assistant (PA) for a psychiatric evaluation. She reported to the PA a history of over twenty years of depression and substance use. She denied current suicidality but stated that her symptoms included thoughts of suicide. The PA diagnosed Ms. Mattson with MDD and initiated fluoxetine that was dispensed by a nurse from a sample drawer. The PA scheduled a follow up appointment for two weeks later. Two days later, Ms. Mattson complained to her counselor about experiencing adverse effects from fluoxetine and no antidepressant effect. The counselor told Ms. Mattson that fluoxetine needed time to “build up in the body” (*Mattson*, p 736) and encouraged her to continue pharmacotherapy. On May 30, Ms. Mattson had her medication management follow-up appointment. She met with a nurse, to whom she reported increased anxiety and headaches since starting fluoxetine. The nurse recommended continuation of fluoxetine.

On June 21, the day of her next appointment at the clinic, Ms. Mattson retrieved a gun from her gun cabinet, bought a bottle of alcohol and consumed it on her way to the clinic. In the Department’s parking lot, she shot herself in the head. Ms. Mattson survived but suffered extensive head injuries with subsequent severe memory and behavioral impairments.

Later in 2018, Ms. Mattson and her husband sued the Idaho Department of Health and Welfare and its employee, a certified PA (the defendants), for medical malpractice and failure to obtain informed consent for fluoxetine. At deposition, several facts were disputed, including the duration of Ms. Mattson’s only appointment with the PA and the amount of information disclosed about fluoxetine. Ms. Mattson testified that she never received any written materials about fluoxetine, including the FDA’s “black box” warnings and manufacturer materials typically attached to a prescription bottle. She also testified that she was never warned by the PA that fluoxetine could increase her risk of suicide. Had she known this, she would have never consented to taking it.

The defendants moved for a summary judgment on both claims. In their argument, they relied on Idaho Tort Claims Act (ITCA), which states that

government employees are liable for negligent and wrongful acts or omissions that happen within the course and scope of their employment if a private person would be liable for such acts. The ITCA also identifies limitations on governmental liability, stating that if a facility and its employees act “without malice or criminal intent, and without reckless, willful, and wanton conduct” (Idaho Code § 604A (2017)), they are immune from liability for any claims which, among others, arise out of injury “by or to a person receiving services from a mental health center, hospital, or similar facility” (Idaho Code Ann. § 6-904(A)(2) (2017)).

The defendants argued, first, that they were entitled to a summary judgment because they met the standard of care in treating Ms. Mattson and, second, that they were entitled to immunity under the ITCA because Ms. Mattson was injured while she was receiving services from a mental health center.

In response, the Mattsons argued that summary judgment was inappropriate because: first, the ITCA did not apply to claims brought by persons receiving noncustodial outpatient mental health services; and second, there was a triable jury question of whether the reckless, willful, and wanton conduct exception to immunity applied given evidence of the standard of care breach and causation for a malpractice trial. Each party supported its contentions with expert witness opinions.

The First Judicial District Court granted summary judgment in favor of the defendants on two grounds. First, the court interpreted the tort claims law to confer immunity from liability to the defendants because Ms. Mattson was injured while receiving services from a “mental health center.” Second, applying the standard of foreseeability, the court held that the defendants acted “in good faith” as no reasonable person could foresee that Ms. Mattson would obtain a firearm, consume alcohol, and shoot herself. Therefore, the defendants were immune from liability as their acts or omissions did not rise to the level of “reckless, willful, and wanton conduct” (*Mattson*, p 737). The Mattsons appealed the summary judgment on both grounds.

#### Rulings and Reasoning

The Idaho Supreme Court reviewed the district court’s summary judgment *de novo*. The court affirmed in part, reversed in part, and remanded the case for further proceedings.

The court determined that Ms. Mattson’s negligence claims fell within the purview of the tort claims law. The court disagreed with Ms. Mattson’s assertion that the ITCA’s mental health center, hospital, or similar facility clause did not apply to patients injured while receiving noncustodial outpatient mental health services. The court, however, held that even when the government and its employees qualify for immunity under the tort claim law, immunity from liability is not conferred when the degree of negligence amounts to reckless, willful, and wanton conduct. Based on Ms. Mattson’s expert witness testimony, the court concluded that sufficient facts were alleged to create a triable jury question on this exception to immunity. The court also held that the district court had misapplied the concept of foreseeability and improperly drew a “good faith” inference in favor of the defendants. The court clarified that the specific kind of harm, suicide, must be foreseeable, not the specific mechanisms of harm.

#### Discussion

Mental health professionals owe a variety of legal obligations to their patients. To protect patients and treaters, clinicians are expected to follow guidelines that establish the norms of acceptable therapeutic behavior, the standard of care. Mental health professionals fulfill their legal duties when they render medical treatments in compliance with that standard. Failure to comply may result in legal liability and medical malpractice litigation.

The majority of psychiatric malpractice cases are related to attempted or completed patient suicide, usually in the context of inadequate assessment, treatment, monitoring, or consent to treatment. In any malpractice action, four elements must be proven: duty to the patient that begins when the patient-doctor relationship is established, dereliction of that duty, damages, and direct causation. To establish a dereliction of duty, a plaintiff must prove that the treaters’ actions fell below the standard of care.

Ms. Mattson’s case highlights several important elements of psychiatric malpractice lawsuits. First, the court emphasized that in cases where facts are disputed, the reviewing court must make all reasonable inferences in favor of the party resisting the motion for summary judgment. Second, based on expert witness testimony, the Idaho Supreme Court identified a number of actions that sufficiently raised the question of whether the PA fell below the standard of

care, creating a triable jury question. They include the failure to provide adequate treatment and necessary information; monitor medication response; assess suicide risk; and consider added risk of comorbid substance use and clinically relevant information related to prior treatment response and suicidality. Third, in the cases of disputed liability, a reasonable-person standard is used to determine whether the alleged breach of the standard of care rises to the level of reckless. The plaintiff does not need to prove the degree or egregiousness of the breach.

Ms. Mattson’s case draws attention to the contemporary challenges of providing psychiatric care, including the fragmentation of mental health services, delegation of psychotropic prescribing or monitoring to nonphysicians, and predominant use of pharmacotherapy in treatment of depression.

## Right of Individuals to Sue to Enforce the Federal Nursing Home Reform Act

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### Plaintiffs May File Civil Rights Claims to Enforce the Federal Nursing Home Reform Act

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In *Health & Hospital Corporation of Marion County v. Talevski*, 143 S. Ct. 1444 (2023), the U.S. Supreme Court reaffirmed that plaintiffs may sue under 42 U.S.C. §1983 (2012) to enforce rights created under federal spending clause legislation, such as the Federal Nursing Home Reform Act (FNHRA).

#### Facts of the Case

In 2016, Gorgi Talevski was placed in the Valparaiso Care and Rehabilitation (VCR) nursing

home because of dementia. After entering the nursing home, his functioning declined. For instance, he became unable to eat independently and began losing the ability to speak in English, although he retained the ability to speak Macedonian, his native language. Mr. Talevski’s family then learned that VCR “was chemically restraining Mr. Talevski with six powerful psychotropic medications” (*Health & Hosp. Corp.*, p 1451). With the assistance of an outside neurologist, Mr. Talevski’s medication was tapered and his functioning reportedly improved.

VCR asserted that Mr. Talevski was harassing female residents, and subsequently transferred him three times to a psychiatric hospital situated 90 minutes away. During the third admission to the psychiatric hospital, VCR attempted “to force his permanent transfer to a dementia facility” (*Health & Hosp. Corp.*, p 1451). The Talevskis subsequently filed a complaint with the Indiana State Department of Health protesting the attempted transfer. While the complaint was pending, Mr. Talevski was moved to another facility. An administrative law judge nullified VCR’s attempted discharge of Mr. Talevski. Despite the judge’s decision, VCR continued to refuse Mr. Talevski’s readmission.

In 2019, Mr. Talevski’s wife, Ivanka Talevski, filed a § 1983 lawsuit on his behalf against VCR, American Senior Communities LLC, and Health and Hospital Corporation of Marion County (collectively referred to as HHC) asserting that they violated Mr. Talevski’s rights under FNHRA. FNHRA was enacted in 1987 pursuant to Congress’s spending clause powers and established a set of quality standards that nursing facilities must meet to receive Medicaid funds.

The lawsuit asserted that VCR failed to meet two FNHRA provisions in its care of Mr. Talevski. First, FNHRA mandates that nursing facilities “protect and promote” each resident’s interest in being free from “any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident’s medical symptoms” (42 U.S.C. § 1396r (c)(1)(A)(ii) (2012)). Second, FNHRA establishes a set of conditions that nursing facilities must meet before discharging or transferring a resident. One such condition is advance notice of a transfer or discharge. Ms. Talevski argued that VCR’s treatment of Mr. Talevski with psychotropic medications and repeated transfer attempts violated these two FNHRA provisions.