

The court evaluated the legislative history of the statute of limitations and escape clause and noted that the court's interpretation was in line with the legislature's purpose for the escape clause. The court noted that the escape clause should be applied in "extraordinary circumstances" and should be construed "narrowly." Additionally, the court stated, "[T]he bar for establishing that the escape clause applies is high" (*Ingle*, p 913) and the petitioner bears the burden of proof.

The court concluded that a defendant's mental impairments can be considered when assessing applicability of the escape clause to the two-year limitations period for a post-conviction relief petition. The court stated, "[I]f a petitioner is incapable of taking the steps necessary to investigate whether a ground for relief exists, the ground is not reasonably available to the petitioner" (*Ingle*, p 911). The court noted that presence of "mental impairment" during the two-year limitation period, when severe in degree and duration, could render someone incapable of making a timely petition for post-conviction relief. Additionally, the court stated the escape clause applies in cases where "the person cannot reasonably take those necessary steps, even with available assistance" (*Ingle*, p 912).

The court also ruled that Mr. Ingle's allegation of mental impairments, if true, constituted evidence that he could not have reasonably raised his post-conviction claims within the two-year limitations period. Mr. Ingle alleged he was "intellectually disabled as a result of his diagnosed schizophrenia and his forced consumption of extremely powerful psychotropic medications" (*Ingle*, p 914). Mr. Ingle also alleged this disability substantially impaired his ability to understand his criminal case and if there were steps he could take to challenge his convictions. The court held that, if true, Mr. Ingle's allegations would be sufficient to establish that he "lacked the ability to take the necessary steps to initiate a postconviction case" (*Ingle*, p 914) within the scope of the escape clause.

Discussion

The decision in *Ingle* extends applicability of the escape clause in Oregon's post-conviction relief statute to individuals with severe mental impairments. It is plausible that forensic evaluators might be asked to opine on whether a petitioner had a severe mental impairment during the two-year limitation period and whether such impairment affected a petitioner's ability

to file a timely petition for post-conviction relief. In such cases, the forensic evaluator should evaluate for presence of psychiatric symptoms that are severe in both degree and duration. In the case of *Ingle*, the court noted that, if true, the petitioner's allegations of substantial impairment because of symptoms of schizophrenia and side effects of forced psychotropic medications would constitute severe mental impairment. When applicable, the forensic evaluator should also assess whether severe mental impairment affected the petitioner's capability to identify and reasonably raise the ground for relief and take the steps necessary to bring the ground for relief before a court within the limitations period.

Legal Test for Workers' Compensation

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Courts Must Consider Totality of Circumstances in Workers' Compensation Causation Determination

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In *Cramer v. Transitional Health Services of Wayne*, 512 Mich. 23 (Mich. 2023), the Michigan Supreme Court determined that a four-factor legal test used by Michigan courts to determine compensability under the Michigan Workers' Compensation Disability Act (WCDA), Mich. Comp. Laws § 418.101 *et seq.* (1976), was too restrictive and therefore unfair to claimants with preexisting mental conditions. The court substituted a new standard requiring judges to use a "totality of circumstances" test.

Facts of the Case

In 2012, Agnes Cramer, a dietary manager for nursing care facility Transitional Health Services of

Wayne, was standing on a ladder and wiping a light fixture with a damp rag when she sustained an electric shock. She fell off of the ladder, injuring her right shoulder. She went to the emergency department and was cleared to return to work two days later. But, on doing so, she felt dizzy and disoriented, left, and never returned to work after this. She presented to her primary care physician, now reporting having struck her head during the fall and having sustained a loss of consciousness. A concussion was diagnosed, and she was referred to a neurologist. Over time, new symptoms developed, including inability to walk and non-epileptic seizures. She attributed all of these to having been near-fatally “electrocuted” during the workplace incident. She began to have flashbacks when exposed to thunder and lightning, loud noises, or flashing lights. A neurologist and a psychologist both diagnosed conversion disorder and posttraumatic stress disorder (PTSD), each of which were opined to have been caused or significantly aggravated by the workplace accident.

Ms. Cramer petitioned for workers’ compensation benefits for both her physical and mental injuries. A hearing before a magistrate judge included testimony by Ms. Cramer and her treating clinicians. In contrast, a neuropsychologist retained by the defense opined that her conversion non-epileptic seizures were not attributable to her relatively minor workplace accident and that she had experienced preexisting “weaknesses in [her] personality” dating back to adolescence (*Cramer*, p 35). A neurologist retained by the defense reached a similar conclusion, diagnosing non-epileptic seizures, but expressing skepticism at Ms. Cramer’s “convenient” later self-reporting of symptoms that did not comport with contemporaneous medical records. Further, Ms. Cramer testified at the hearing to having been physically and emotionally abused by her first husband and, on having divorced him six years prior to her injury, rejected by her family, friends, and church community and also having lost custody of her children. No evidence was presented at the hearing that Ms. Cramer, prior to her workplace injury, had ever experienced neurologic or conversion symptoms.

The magistrate denied Ms. Cramer’s claim, opining that she had failed to meet her burden of proof that her employment had “contributed to or aggravated or accelerated” her mental injuries “in a significant” manner, as required by the Michigan state legislature in the WCDA (*Cramer*, p 35). In doing

so, the magistrate applied a four-factor test laid out over 20 years earlier in *Martin v. Pontiac Sch. Distr.*, 645 N.W.2d 665 (Mich. 2002) with regard to whether the occupational contributors were significant: the number of occupational and nonoccupational contributors, the relative amount of each contributor, the duration of each contributor, and the extent of permanent effect from each contributor.

In Ms. Cramer’s case, there were several longstanding, nonoccupational contributors but only a single occupational contributor of contested importance. None of the expert witnesses testifying on behalf of Ms. Cramer had established a hierarchy of importance with regard to the nonoccupational versus occupational stressors. The magistrate also determined that Ms. Cramer was physically disabled from her shoulder injury, but he denied wage-loss benefits because she had not submitted evidence of having made good-faith efforts to secure other employment.

Ms. Cramer appealed her case to the Michigan Compensation Appellate Commission, which reversed the magistrate’s denial of wage loss benefits for her shoulder injury but affirmed the magistrate’s denial of benefits for mental injuries, saying that the magistrate had properly applied the four *Martin* criteria. Ms. Cramer appealed to the Michigan Supreme Court. Ms. Cramer sought clarification as to whether the magistrate had properly applied the *Martin* test and also whether the *Martin* test itself was at odds with the principle that having a preexisting mental condition should not be a bar to being awarded workers’ compensation benefits.

Ruling and Reasoning

The Michigan Supreme Court vacated the magistrate’s findings, reversed the court of appeals judgment, and remanded the case. The court determined that *Martin*’s four-factor test, in place for over 20 years, was being routinely misapplied such that it required plaintiffs to meet a higher standard than what the state legislature had intended in the WCDA. The *Martin* test, originally intended to be a broad guide as to which factors should be considered in determining the extent to which a workplace injury had significantly contributed to a claimed disability, had “morphed into a straight-jacket” (*Cramer*, p 29).

The WCDA states that mental disabilities and conditions of the aging process (even cardiovascular

conditions and degenerative arthritis) remain compensable under workers' compensation if they were contributed to, aggravated by, or accelerated by employment "in a significant manner" (Mich. Comp. Laws § 418.301(2)). Magistrate judges understandably struggled to determine how best to determine whether a work-related injury was "significant" enough to be compensated. The Michigan Supreme Court had defined several tests over the years, ultimately settling on the *Martin* four-question test described above. But, in most cases, there often was a single, brief, work-related incident versus a myriad of preinjury and postinjury nonworkplace situational and temperamental factors.

Ms. Cramer's case offered one example of this dilemma. Her expert witnesses testified that her relatively minor work-related injury had "significantly" contributed to her having disabling PTSD and conversion disorder, but she also had several preexisting risk factors for these conditions, and her subjective perception of her injury did not comport with her actual injury. Further, her testifying doctors were unable to assign a relative weight to each factor. The court determined that, applying the *Martin* test, many magistrates over the years had simply added up the number of workplace factors and nonworkplace factors and asked which number was greater. This practice was inappropriate, given that there would almost always be more nonworkplace-related factors. Further, the WCDA's emphasis was simply on whether a work-related injury had affected an individual's mental or physical disability in "a significant manner," not in "the most significant manner" (*Cramer*, p 50).

The court clarified the standard, stemming from *Farrington v. Total Petroleum, Inc*, 501 N.W.2d 76 (Mich. 1993). Under the *Farrington* test, the claimant must show that the health injury was significantly caused or aggravated by employment, considering the totality of all occupational and nonoccupational factors. Occupational factors must include consideration of the temporal proximity of the health problem to the work experience, the physical stress to which the claimant was subjected, the conditions of employment, and the repeated return to work after each instance of a health problem. In applying this *Farrington* test, the four *Martin* factors may still be relevant in considering the totality of the circumstances, but only as part of the inquiry, not the whole inquiry. The court did not address whether

Ms. Cramer met her burden under the *Farrington* standard.

Dissent

The dissent argued that there was no evidence that *Martin* was, in fact, routinely being misapplied by magistrates. It also said that the *Martin* test had always allowed for consideration of all (or even more) of the factors in the court's newly proposed *Farrington* test.

Discussion

This case highlights the complexity and uncertainty inherent in performing disability evaluations. Treating psychiatric clinicians routinely are called on to perform disability assessments, and such assessments are even more difficult in the context of the workers' compensation system, given that the latter also requires a determination as to whether a claimant's mental disability has been "significantly caused or aggravated" by workplace factors.

In Ms. Cramer's case, a relatively minor workplace injury was opined by her treating clinicians to have significantly contributed to the development of PTSD and non-epileptic seizures. But her case also included various other preinjury predisposing factors and postinjury perpetuating factors. The prior *Martin* standard had never specified how much weight should be assigned to any specific factor nor instructed magistrates simply to add up the total number of workplace factors and weigh these against the total number of nonworkplace factors, even if that is what some magistrates might have been doing. It remains to be seen whether the new, more nonspecific *Farrington* standard will prove to be any more relevant or useful in formulating complex mental disability cases.

As noted above, the court provided some guidance as to which occupational factors should be considered using the "totality" standard (*Cramer*, p 87). But, as noted in the dissent opinion, "in most mental disability cases, the *Farrington* factors will still be viewed as peripheral, at best supplementing the *Martin* factors because, like in this case, the *Farrington* factors are not highly relevant" (*Cramer*, p 88).

In this context, clinicians asked to participate in workers' compensation proceedings should remain mindful of the standards of causation being employed by their jurisdiction. They also should attempt to

specify the relative contributory roles of workplace versus nonworkplace factors.

Limitations on Federal Removal of Malpractice Claims

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Eighth Circuit Rejects Immunity from State Law Malpractice Claims Based on the Public Readiness and Emergency Preparedness (PREP) Act Because of Lack of Federal Question or Preemption

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In *Cagle v. NHC Health Care-Maryland Heights, LLC*, 78 F.4th 1061 (8th Cir. 2023), the U.S. Court of Appeals for the Eighth Circuit affirmed the ruling of the Eastern District Court of Missouri, remanding a nursing facility malpractice case stemming from a coronavirus disease 2019 (COVID-19)-related death to state court.

Facts of the Case

In November 2021, Zane Cagle, the son of a deceased patient filed suit alleging wrongful death, negligence *per se*, and lost chance of survival after his father's COVID-related death in a nursing facility. The defendants included the facility, three corporate owners, and various staff at NHC HealthCare-Maryland Heights, LLC.

The NHC entities removed the case to federal court before all defendants were served, arguing for

federal venue because of diversity of citizenship, complete preemption under PREP, and necessity of deciding a federal question. The defendants, moreover, invoked the “federal officer removal” doctrine, which exempts federal officers in performance of official duties from state-level torts (28 U.S.C. § 1442 (a)(1)) (2013).

The federal district court rejected each asserted basis for federal jurisdiction.

Ruling and Reasoning

The Eighth Circuit affirmed the ruling of the district court that the case did not meet the requirements for removal to federal court, whether based on diversity of citizenship or federal question. For federal jurisdiction based on citizenship diversity, “parties must be completely diverse: no plaintiff can be a citizen of the same State as any defendant” (*Cagle*, p 1065). The Eighth Circuit found that Mr. Cagle and some defendants were domiciled in Missouri, undermining the claim of citizenship diversity.

The Eighth Circuit rejected the defendant's argument that federal jurisdiction was proper because the complaint presented a federal question, reasoning that no federal question existed on the face of the complaint and that the “potential availability of a federal defense does not create federal question jurisdiction” (*Cagle*, p 1066, citing *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1 (1983), p 10).

The court also discussed the two exceptions to the requirement that a federal question be stated on the face of the complaint: “when the state law claims ‘(1) are completely preempted by federal law or (2) necessarily raise a substantial, disputed federal question’” (*Cagle*, p 1066, quoting *Minnesota v. Am. Petrol. Inst.*, 63 F.4th 703 (8th Cir. 2023), p 709). The court determined that the first exception did not apply, as Congress did not provide explicit immunity under PREP for the exclusive cause of action, here the plaintiff's claim of negligence as opposed to willful misconduct. Applying a test known as the *Grable* doctrine, the court also rejected the applicability of the second exception, noting that no federal question was a necessary element of any of Mr. Cagle's state law claims (*Cagle*, p 1067, citing *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005)). The court reiterated an intended assertion of immunity to state law claims created by PREP or other federal law does not, without more, engender an original federal question.