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.

Finally, the Eighth Circuit rejected the argument that the federal officer removal doctrine applied, reasoning that neither the designation of NHC as "critical infrastructure" nor the fact that health care operations are the subject of extensive federal regulation were sufficient to establish that it acted "under a federal officer" during the COVID-19 pandemic.

Discussion

The questions decided in *Cagle* are of great consequence to medical institutions and health care professionals. The American Medical Association (AMA) participated as *amicus* in the case, supporting the defendants' argument that Congressional intent in passage of the PREP Act was to provide federal preemption and exclusive federal remedy for similar cases. The AMA reasoned that Congress meant to shield medical entities in cases such as *Cagle* by providing the explicit protections under PREP related to the manufacture, distribution, and allocation of federally designated countermeasures, given the need for a swift and uniform response to combat the COVID-19 pandemic. The court disagreed.

Ultimately, the court saw *Cagle* as a state medical malpractice case lacking a controlling federal aspect despite certain federal protections extended to those supporting the emergency response to the COVID-19 pandemic. In malpractice claims arising in nondiverse citizenship cases, state law and jurisdiction are the default, with exceptions found in case law demonstrating this presumption.

It may be useful to note that preemption of state law by federal law is determined by the two-pronged *Davila* test, established by the U.S. Supreme Court in *Aetna Health Inc. v. Davila*, 542 U.S. 200 (2004). Under the *Davila* test, complete preemption exists if the claim could have been brought under the Employee Retirement Income Security Act of 1974 (ERISA) and where there is no other independent legal duty implicated by a defendant's actions.

The *Davila* test was applied in *Reiten v. CIGNA Health & Life Ins. Co.*, No. CV 20-2330 FMO 2020 WL 1862462 (C.D. Cal. 2020). There, Dr. Partick Reiten, a surgeon in California, asserted a claim of *quantum meruit*, stating that CIGNA failed to fully compensate him for rendering medically necessary care. CIGNA attempted to remove the case to federal court, arguing preemption of Dr. Reiten's state law claims by ERISA, a federal law that sets minimum standards for health plans and would theoretically have allowed Dr. Reiten to seek federal relief. CIGNA failed to meet the burden for preemption under ERISA based on both prongs of the *Davila* test, as the plaintiff was not a participant in an ERISA plan and California courts identified an independent legal duty of implied contracts between emergency medical providers and insurers, like Dr. Reiten and CIGNA.

Although PREP and ERISA do not categorically preempt state law claims, some federal laws relevant to medical care do. Instructively, a well-known example is the Emergency Medical Treatment and Active Labor Act (EMTALA) of 1986, 42 U.S.C. § 1395dd (2020), originally enacted by Congress to address refusal of care to uninsured patients in emergency departments. In EMTALA, Congress explicitly communicated its intent for certain state malpractice claims to be resolved in federal court when tension arises between EMTALA and state laws: "The provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section" (42 U.S.C. § 1395dd(f)).

As with the COVID-19 response and other emergency medical care, mental health has become a focus of Congressional and public attention in recent years. In 2020, for instance, the White House proposed over $127 billion in spending and new regulation for behavioral health and substance use services as part of a strategy to address the United States's "unprecedented mental health crisis." Psychiatrists unfamiliar with the limitations of federal jurisdiction reflected in *Cagle* and *Reiten* might erroneously presume that any malpractice claims brought against them are entitled to litigation in federal court predicated on wide-ranging federal health care regulation. Unless Congress explicitly states its intent to preempt state law, federal jurisdiction should not be assumed when state law claims are brought against a practitioner or institution. Forensic psychiatrists should similarly be aware of these holdings, informing work in policy development and advocacy roles.

Limits of Constitutional Protections in Civil Commitment Proceedings

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