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

Benjamin C. Brown, MD
Fellow in Forensic Psychiatry

Johnathan M. Heller, MD, MBA
Program Director, Forensic Psychiatry Fellowship Training Program

Department of Behavioral Health
Walter Reed National Military Medical Center
Bethesda, Maryland

Due Process Rights to Self-Representation in Criminal Cases Do Not Apply to Involuntary Mental Health Commitment Proceedings

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Key words: civil commitment; self-representation; due process; serious mental impairment; expert witness

Disclaimer: The views expressed in this article are those of the author(s) and do not necessarily reflect the official policy of the Department of Defense or the U.S. Government.

In the Matter of V.H., 996 N.W.2d 530 (Iowa 2023), the Supreme Court of Iowa affirmed a ruling on appeal from the Iowa District Court for Johnson County denying a committed patient's motion to represent himself in an involuntary civil commitment proceeding.

Facts of the Case

V.H., identified as a 22-year-old male, was incarcerated at the Iowa Medical and Classification Center (IMCC) in Coralville, Iowa in May 2019 following convictions on two counts of assault causing injury to peace officers and three counts of first-degree harassment. He began serving consecutive prison sentences amounting to eight years for his convictions when prison staff began recording instances of his impulsive and aggressive conduct, such as banging his head, damaging property, harassing female staff, and attempting to ingest metal objects. On certain occasions, he was placed in restraints after threatening self-harm and physically resisting officers. An IMCC psychiatrist diagnosed V.H. with bipolar I disorder, impulse control disorder, and antisocial personality disorder, submitting reports supporting continued commitment over the next two years.

In March 2022, V.H. submitted a handwritten letter moving to terminate his commitment and demanding the opportunity to independently cross-examine his treating psychiatrist after his continued commitment was confirmed by the district court. On April 4, the judicial hospitalization referee held a hearing in which V.H. was represented by a court-appointed attorney. The referee ordered that V.H. remain committed to IMCC, based on the report and testimony from the psychiatrist who noted that V.H. had multiple recent instances of headbanging, fighting with staff, suicidal ideation, and at times he required placement in physical restraints for his own safety. V. H.'s appointed counsel then filed a notice of appeal on behalf of V.H. to the district court as well as a motion to allow him to proceed *pro se*, citing his right to self-representation under the Sixth and Fourteenth Amendments of the U.S. Constitution. The district court set a hearing for the following month, and V.H.'s behavior worsened. Subsequent reports from his psychiatrist noted that V.H. repeatedly refused medications, continued to strike his head resulting in bleeding, and fought another inmate. Each such instance prompted injected medications.

In May 2022, the district court heard V.H.'s appeal and denied his motion to proceed *pro se*, citing Iowa Code section 229.9, which requires representation by counsel at all proceedings related to a civil commitment. Further, the court stated the Sixth Amendment did not apply to civil commitment proceedings and the requirement for legal representation did not offend Fourteenth Amendment due process rights. The psychiatrist testified that V.H.'s civil commitment remained necessary based on danger to himself and others. V.H., through his attorney, was allowed to make a statement and cross-examine the psychiatrist. Despite argument that Iowa failed to establish dangerousness in his case, the district court found that V.H.'s recent headbanging, which resulted in bleeding, was sufficient evidence of dangerousness, and affirmed his continued commitment.

V.H. subsequently appealed the district court's decision, contending the court erred in denying his fundamental right to self-representation under the Sixth and Fourteenth Amendments. He also argued the court's decision to support his involuntary hospitalization based on his recent headbanging behavior as evidence of dangerousness was flawed. The state responded that V.H.'s headbanging had resulted in injuries in the past, which caused him to bleed, and that "even in the criminal process, the right to represent oneself is not absolute and a Judge has the ability to determine if a defendant is capable of conducting their own defense" (*Matter of V.H*, p 536). In an appellate reply brief, V.H. reasserted his right to self-

representation, adding a novel reference to Article I, Section 10 of the Iowa Constitution.

Ruling and Reasoning

The Supreme Court of Iowa determined that V.H. failed to preserve the matter of a right to self-representation under the Iowa Constitution. Next, the court affirmed both the denial of V.H.'s Sixth and Fourteenth Amendment claims to self-representation at Chapter 229 proceedings and his continued commitment.

Prior to an appellate reply brief, V.H. had only claimed a federal right to self-representation, without mentioning Iowa's state constitution. The court reiterated its holding in *Meier v. Senecaut III*, 641 N.W.2d 532 (Iowa 2002), that appellate matters should have generally been raised and decided by a district court. Thus, V.H.'s failure to assert error under the Iowa Constitution in district court forfeited this matter.

The court reviewed Iowa §229.9 (2022), stating in part, "The respondent's attorney shall represent the respondent at all stages of the proceedings, and shall attend the hospital hearing." The court noted there is no provision that would permit V.H. to waive his right to counsel. Additionally, the court recognized a circularity problem in which the validity of a committed person's waiver of the right to counsel could later be challenged and require a rehearing if a court believes a "respondent so severely impaired as to necessitate an involuntary mental health commitment" (*Matter of V.H*, p 533).

The court was not persuaded by V.H.'s reliance on federal case law recognizing a right to self-representation under the Sixth Amendment in criminal cases, specifically *Faretta v. California*, 422 U.S. 806 (1975). Writing for the court, Judge Waterman noted that this right of the criminally accused had never been extended to individuals in civil commitment proceedings. In *United States v. O' Laughlin*, 934 F.3d 840 (8th Cir. 2019), the U.S. Court of Appeals for the Eighth Circuit affirmed the rejection of the respondent's motion to proceed *pro se* while contesting civil commitment, citing *Addington v. Texas*, 441 U.S. 418 (1979): "Civil commitment involves a loss of liberty, to be sure. But rather than imposing a punitive sentence upon criminal conviction, the civil commitment process provides for release once the individual is no longer a danger to others" (p 428). Rejecting a Fourteenth Amendment claim, the court cited Iowa Code Section 229's explicit mandate of counsel representation in civil commitment hearings as satisfying substantive due process.

The Iowa Supreme Court similarly parried other state courts' upholding self-representation in commitment proceedings (see, e.g., *In re Det. of J.S.*, 159 P.3d 435 (Wash. Ct. App. 2007); In re Jesse M., 170 P.3d 683 (Ariz. 2007)), as those rulings turned on distinct state constitutions and explicit statutory construction.

Given that V.H.'s headbanging and suicidal ideation presented a danger to himself and met civil commitment requirements as evidenced by a "recent overt act, attempt, or threat" (*In re Mohr*, 383 N. W.2d 539, 542 (Iowa 1986)), the court affirmed the district court's ruling, satisfied that Iowa had met its burden to commit the respondent.

Discussion

Since *Washington v. Glucksberg*, 521 U.S. 702 (1997), courts assess whether declared or claimed rights are "objectively deeply rooted in the Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed" (*Glucksberg*, p 721). Courts have generally supported a defendant's right to self-representation in criminal cases, echoing the U.S. Supreme Court in *Faretta.* Even in criminal cases, the right to self-representation is not absolute, as defendants must be mentally competent to defend themselves, as the Court held in *Faretta* and *Indiana v. Edwards*, 554 U.S. 164 (2008). Recognizing due process requirements at commitment proceedings of prisoners (despite their inherently constrained rights) in *Vitek v. Jones*, 445 U.S. 480 (1980), the U.S. Supreme Court equally found that civil commitment as a nonpunitive measure does not imply all criminal due process protections. *In the Matter of V.H.* illustrates the rival interests of respecting autonomy via self-representation while preserving the integrity of the judicial process.

The court's decision in *Matter of V.H*. has some parallels with *Edwards*, particularly that *pro se* defenses may fail to uphold the interests of a mentally incapacitated defendant who "runs the risk of undermining his or her dignity and autonomy by presenting the case ineffectively as a result of the underlying mental illness" (*In re G.G.*, 165 A.3d 1075 (Vt. 2017), p 1088). Additionally, courts have been cautious to

broaden constitutional protections to ". . . the process afforded to respondents in civil commitment proceedings," which are "the subject of a 'considered legislative response'" (*In re S.M.*, 403 P.3d 324 (Mont. 2017), p 327 n.1). As the Supreme Court of Iowa noted in *Matter of V.H.*, individuals facing commitment require safeguards from unfair treatment in legal proceedings, but such protections do not extend to waiver of statutorily mandated counsel.

Social Security Administration Disability Listings and Role of the Treating Physician Rule

Katrina L. Wachter, MD
Fellow in Forensic Psychiatry

Johnathan M. Heller, MD, MBA
Program Director, Forensic Psychiatry Fellowship Training Program

Department of Behavioral Health
Walter Reed National Military Medical Center
Bethesda, Maryland

Application of Updated Social Security Administration Listings to Pending Disability Claims Is Not Impermissibly Retroactive

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In *Cox v. Kijakazi*, 77 F.4th 983 (D.C. 7th Cir. 2023), Angela Cox and the Social Security Administration (SSA) cross-appealed matters related to retroactivity of updated SSA listings applied to pending benefits claims and the evidentiary weight given under the treating physician rule of the Social Security Act, 42 U.S.C. §301, *et seq* (1981). Ms. Cox's supplemental security income (SSI) claim denial by an administrative law judge (ALJ) due to updated SSA listings was overturned by a federal court finding impermissible retroactivity. The Seventh Circuit Court of Appeals held that the application of updated SSA listings to pending claims for supplemental security income (SSI) benefits is not formally retroactive, but the ALJ's failure to give controlling weight to a treating physician's opinion constituted reversible error.

Facts of the Case

Ms. Angela Cox, a claimant with cognitive and mental health disorders, sought supplemental security income (SSI) benefits over the course of nearly a decade. Her initial application in May 2014 was rejected, echoed in subsequent administrative denials, leading to an ALJ hearing in January 2018. Contemporaneously, new Social Security Administration (SSA) listings were published in 2017.

Ms. Cox's claims of disability were rooted in several impairments, including learning, intellectual, depressive, and anxiety disorders. Ms. Cox's treating physician provided a nuanced assessment of her condition, highlighting significant cognitive limitations and mental health problems limiting her ability to work. Despite this clinical assessment, the ALJ only gave "partial weight" to the physician's opinion, choosing instead to rely on parts of the record that seemed to contradict the comprehensive assessment provided by the treating physician. Ultimately, the ALJ denied her request for benefits based on incomplete deference to the treating physician's medical opinion and finding that Ms. Cox's impairments did not align with the newer 2017 SSA listings.

On appeal, the U.S. District Court for the District of Columbia overturned on grounds that the application of new SSA listing criteria was impermissibly retroactive. The district court ordered the Social Security Administration to reconsider Ms. Cox's case under the 2014 listings in effect at the time of her "initial application" per 20 C.F.R. § 404.614 (2017) while rejecting her other challenges to the agency's decision. Ms. Cox appealed the district court's finding that the ALJ correctly applied the treating physician rule, whereas the Social Security Administration appealed the district court's ruling on retroactivity.

Ruling and Reasoning

The District of Columbia Circuit Court of Appeals reversed the lower court's decision in part, holding that application of new SSA listing criteria was not retroactive. This conclusion was supported by *Bowen v. Georgetown Univ. Hosp*., 488 U.S. 204 (1988) and *Vartelas v. Holder*, 566 U.S. 257 (2012), each holding that laws and regulations are presumed