

the Supreme Judicial Court of Massachusetts reinforces the importance of carefully considering the balance of governmental and individual interests when deciding whether a defendant should be involuntarily hospitalized for a competency to stand trial evaluation. Specifically, the court recognized that an appraisal of the least restrictive alternative is essential to appropriately balancing these disparate interests.

Although this is a ruling specific to the state of Massachusetts, the principles governing this decision are well established nationwide. This case serves as a reminder to all psychiatrists that involuntary commitment infringes on the rights of the individual and careful consideration needs to be given to the least restrictive alternative. Specific to forensic psychiatrists, this case recognizes that the forensic examiner's testimony may be essential in determining the least restrictive means of completing a competency to stand trial evaluation and the forensic examiner may be asked to directly opine on this problem.

## Inferring the Applicable Standard of Care in a Medical Expert Affidavit

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### Indiana Supreme Court Clarifies That, for Summary Judgment Purposes, the Applicable Standard of Care Can Be Inferred in a Medical Expert Affidavit

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**Key words:** medical malpractice; expert affidavit; standard of care; summary judgment; expert opinion

In *Korakis v. Mem'l Hosp. of S. Bend*, 225 N.E.3d 760 (Ind. 2024), the Indiana Supreme Court clarified a seeming contradiction in two of their previous cases, holding that, for summary judgment purposes, the applicable standard of care can be inferred from the content of a medical expert affidavit; the standard

does not have to be explicitly stated. The expert affidavit must still, however, “include a statement that the treatment . . . fell below’ the standard of care” to establish “genuine issues of material fact” and thus defeat a summary judgment motion (*Korakis*, p 764).

#### Facts of the Case

Penny Korakis was taken to Memorial Hospital of South Bend (Memorial Hospital) in August 2017 after a motor vehicle accident. She was evaluated by Dr. David Halperin, an emergency medicine physician. As she had upper left extremity pain, he obtained a set of x-rays; he diagnosed her with an acute soft tissue injury. She returned to Memorial Hospital a week later, where she was treated by a nurse practitioner. She received a second set of x-rays and was referred for outpatient care with Dr. Michael Messmer.

Dr. Messmer ordered additional x-rays and referred Ms. Korakis to physical therapy. Despite ongoing visits with Dr. Messmer, Ms. Korakis's elbow pain continued and even worsened. Dr. Messmer's staff, during an October phone call, provided Ms. Korakis several options: return to physical therapy, wait two additional weeks and obtain a magnetic resonance imaging (MRI), or see another doctor (Dr. John Kelbel) for a second opinion. Ms. Korakis saw Dr. Kelbel later that month. He noticed that her initial Memorial Hospital x-rays from August had showed an occult radial fracture in her left elbow and ordered an MRI of both the left elbow and right ankle; Ms. Korakis later returned to Dr. Messmer to discuss those results.

In 2019, Ms. Korakis alleged malpractice. In Indiana, medical malpractice claims are filed through the Indiana Department of Insurance; the review process begins with a four-person Medical Review Panel (Panel), consisting of three health care providers and one attorney (Ind. Code § 34-18-1-1 *et seq.* (2019)). In her proposed complaint, Ms. Korakis alleged that Memorial Hospital, Dr. Halperin, and Dr. Messmer had fallen below the standard of care when they “failed to identify and diagnose the true extent” of her injuries “which included broken bones” (*Korakis*, p 762). The Panel, after reviewing Ms. Korakis's proposed complaint, found that the cited evidence did not support a deviation from the standard of care.

Ms. Korakis nonetheless moved forward, filing suit, noting that she had ultimately needed corrective surgery and incurred both economic and noneconomic damages. The hospital and doctor defendants moved for summary judgment, citing the Panel opinion. Ms. Korakis, in her reply, argued that there was a genuine concern of material fact which prevented the court from granting summary judgment. In support of this, she submitted an expert affidavit from Dr. James Kemmler, who was an orthopedic specialist. Dr. Kemmler opined that: Ms. Korakis's elbow fracture had been visible on both sets of x-rays taken at Memorial Hospital; Dr. Halperin failed to identify the fracture during Ms. Korakis's initial emergency room visit; Dr. Messmer failed to order additional imaging of Ms. Korakis's elbow "when appropriate" and "should have done more testing" prior to referring her to physical therapy; and the resultant delay "likely worsened her condition." Dr. Kemmler stated that "accordingly" it was his opinion that Dr. Messmer's treatment of Ms. Korakis "fell below the standard of care" (*Korakis*, p 763).

The hospital and doctor defendants challenged the use of Dr. Kemmler's affidavit as an attempted means to defeat summary judgment, noting, among other things, that Dr. Kemmler had failed to explicitly "state what the appropriate standard of care is" (*Korakis*, p 763). The trial court granted summary judgment in favor of the defendant doctors and hospital. The Court of Appeals unanimously affirmed that grant of summary judgment. The case was then transferred, at Ms. Korakis's request, to the Indiana Supreme Court.

#### Ruling and Reasoning

The Indiana Supreme Court reviewed the lower court summary judgment decisions *de novo*. In order for the hospital and doctor defendants to be entitled to summary judgment, there could not have been a genuine concern of material fact. Furthermore, the prevailing defendants had to have been entitled to judgment as a matter of law. As the Panel had already opined that there was insufficient evidence to show that the defendants deviated from the standard of care, Ms. Korakis's expert affidavit thus had to make a contradictory finding to overcome the summary judgment motion. The challenge in this case was that the expert affidavit did not explicitly state what the applicable standard of care was.

The court acknowledged that its previous cases had created a perceived conflict as to whether, for summary judgment purposes, a medical expert affidavit had to "expressly state the applicable standard of care" (*Korakis*, p 761). The court clarified this conflict, holding that, when assessing the sufficiency of a medical expert affidavit for summary judgment, "the applicable standard of care may [instead] be inferred, provided the affidavit contains substantively sufficient information" (*Korakis*, p 764). The affidavit must still, to raise a genuine concern of material fact to defeat summary judgment, explicitly state that the treatment "'fell below' the standard of care" (*Korakis*, p 764).

The court summarily affirmed the grant of summary judgment for the hospital and emergency medicine physician (Dr. Halperin). It did this without providing a substantive explanation. Then, using its clarified test, the court reversed the summary judgment that had been granted in favor of Dr. Messmer. The court supported this ruling by noting that Dr. Kemmler's expert affidavit, in which he opined that Dr. Messmer fell below the standard of care, had provided sufficient information to infer the applicable standard of care, at least as to Dr. Messmer. The court cited two pertinent factors: Dr. Kemmler was qualified to render an expert opinion about the medical standard of care and Dr. Kemmler had reviewed relevant records and then provided "a detailed qualified judgment about the care Dr. Messmer provided" (*Korakis*, p 766).

#### Discussion

This case acts as a reminder that, when psychiatrists step into the role of an expert witness, they are being asked to answer a "specific psycholegal question"; their opinion is generally being used to "advance a legal requirement" (AAPL Practice Guideline for the Forensic Assessment, *J Am Acad Psychiatry Law*. 2015;43(2):s3-s53). Thus, although our opinions are based on clinical knowledge, their legal relevance hinges on framing our opinion in the applicable legal context. The legal context of a case is made up of many variables, including the procedural stance, relevant legal criteria, and applicable case law. In the above case, the court's interpretation of the sufficiency of the medical expert affidavit was related to its procedural stage: summary judgment. Summary judgment can only be granted when there are no genuine disputes as to any material facts. In opposing the defendants' summary judgment request, the clarity of the plaintiff expert's

proffered standard of care, and language used to express that opinion, thus became crucial.

Another interesting aspect of this case is the court's reasoning in allowing the opined standard of care to be inferred, rather than explicitly stated. The court placed an emphasis on the fact that the affidavit had "substantively sufficient information," citing the expert's recited qualifications (being a "qualified expert") and "detailed qualified judgment" ("medical judgment"). On this latter point, the court referenced the expert's enumerated record review as salient.

As forensic psychiatrists, we are trained to convey our credentials and expertise as a means of supporting our ability to offer an opinion and strengthening the perceived validity of our offered opinion. This case showcases the other ways our credentials, experience, and thoroughness can become impactful. The court used these data points when interpreting its legal standard, allowing the standard of care to be inferred in a medical expert affidavit for summary judgment rather than explicitly stated. It did this, in part, because the expert had the appropriate credentials and offered detailed medical judgment (which had been recorded in a way that preserved visibility in the appellate record).

Of note, although the court was flexible in allowing the standard of care to be inferred in a medical expert affidavit in the summary judgment context, they remained firm in requiring a statement opining that treatment fell below that standard. This is a reminder that certain areas of law have rigid stylistic requirements. As legal experts, we must be aware of these requirements in the jurisdiction we are working in. Otherwise, our opinions can fail to serve their intended purpose or even be found inadmissible.

## Appellate Standards under AEDPA

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## The Ninth Circuit Denies Federal Habeas Petition Finding That the Supreme Court of California Applied the Correct Legal Standards in AEDPA Case

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**Key words:** Antiterrorism and Effective Death Penalty Act (AEDPA); juvenile confession; ineffective counsel; waiving *Miranda* rights; *habeas corpus*

In *Lewis v. Andes*, 95 F.4th 1166 (9th Cir. 2024), the Ninth Circuit Court of Appeals upheld the district court's finding that the Supreme Court of California (SCC) was correct in concluding that Raymond Anthony Lewis's juvenile confession was voluntary and that he knowingly and intelligently waived his *Miranda* rights, consistent with clearly established federal law. Furthermore, the Ninth Circuit denied Mr. Lewis's petition for *habeas* relief, finding that he had failed to establish that his counsel was ineffective during the penalty stage or that admission of his confession was unconstitutional.

### Facts of the Case

On the evening of June 6, 1988, Sandra Simms used cocaine with Mr. Lewis and his girlfriend, Michelle Boggs, at a Fresno, California boardinghouse. Ms. Simms then gave Mr. Lewis money to procure more drugs but became concerned that he had stolen it and went searching for him. She found Mr. Lewis with an associate, Paul Pridgeon, and she accompanied them to Mr. Pridgeon's apartment. While walking down an alley, Mr. Lewis struck Ms. Simms in the head with a wooden two-by-four, knocking her to the ground. He then struck her six more times, fatally strangling her, and took money from her bra.

A passing motorist discovered Ms. Simms's body that evening and alerted the Fresno Police Department, who found Ms. Simms's body. The next day, Mr. Pridgeon accompanied officers to the murder site, where they found the two-by-four with traces of blood. Mr. Lewis was discovered at the boardinghouse and arrested. Blood from his shoes "matched Simms's blood and that of approximately 2 percent of the population" (*Lewis*, p 1172).

At trial, defense experts testified that Mr. Pridgeon's mental illness, substance use, and mild intellectual disability impaired his ability to "perceive and recollect" Ms. Simms's murder, which resulted in confabulation. Mr. Pridgeon's trial testimony was also