according to the U.S. Department of Housing and Urban Development (de Sousa T, Andrichik A, Prestera E, *et al.* The 2023 Annual Homelessness Assessment Report (AHAR) to Congress. Washington, DC: The U.S. Department of Housing and Urban Development; 2023, p 10). Furthermore, studies have shown that over two-thirds of homeless individuals have a current mental health disorder (Barry R, Anderson J, Tran L, *et al.* Prevalence of mental health disorders among individuals experiencing homelessness . . . JAMA Psychiatry. 2024;81(7):691–9). Any law affecting homeless individuals will have downstream effects on a large percentage of the population of individuals treated and evaluated by psychiatrists.

The holding in this case allows cities and other municipalities to impose sanctions on homeless individuals without an indoor place to sleep. Regardless of one's view on the legal reasoning offered by the Court or the dissent, the holding is likely to result in additional burdens placed on already struggling homeless individuals. In its application to a complex problem like homelessness, this relatively narrow U.S. Supreme Court holding answers one question but leaves many more unanswered in its wake.

The Use of Medical Records in Life Insurance Litigation

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Court Considers Whether Physician-Patient Privilege Can Be Waived During Discovery and as Part of Revoking a Life Insurance Policy

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Key words: physician-patient privilege; medical record; life insurance; confidentiality; contracts

In *Frohn v. Globe Life and Accident Insurance Company*, 99 F.4th 882 (6th Cir. 2024), the U.S. Court of Appeals for the Sixth Circuit reviewed whether the district court had erred in allowing medical records obtained during discovery, rescinding a life insurance policy based on contrary information found in those records, and publishing an order without redactions of medical information.

Facts of the Case

In January 2018, Karen Frohn applied for a life insurance policy for her husband, Greg Frohn, from Globe Life and Accident Insurance. The application asked about medical history, including whether Mr. Frohn was "currently disabled due to illness," if he had been "diagnosed or treated for. . . any disease or disorder of the heart, brain, or liver or. . . mental or nervous disorder, chronic obstructive lung disease, drug or alcohol abuse, or hospitalized for diabetes" in the last three years, or if he had "any chronic illness or condition which requires periodic medical care or may require future surgery" (*Frohn*, p 887). Ms. Frohn answered "yes" to the question about disability but answered "no" to other questions. A Globe representative called Ms. Frohn to discuss the application, at which time Ms. Frohn noted her husband suffered from neck and back pain and that she had applied for social security disability benefits on behalf of her husband. Based on the added information, the representative changed only the answer concerning chronic illness to "yes" and issued a "Sub-Standard A" life insurance policy. The policy became effective February 2018, and Ms. Frohn was named beneficiary. The policy included a two-year contestable period, and Globe indicated medical records would not be necessary to process claims.

Mr. Frohn died in September 2018, and Ms. Frohn submitted a claim. Because the claim occurred during the contestable period, Globe notified her it would be requesting additional medical information, including an "Authorization for Release of Health Information," and a "Physician's Statement" (*Frohn*, p 888). Ms. Frohn signed the release of information and worked to expedite the production of medical records. Mr. Frohn's primary care provider, Dr. Budke, completed the physician's statement, noting he had treated Mr. Frohn "since 2009 for hypertension, cervical spine stenosis, alcohol abuse, and depression" (*Frohn*, p 888). Globe subsequently denied the claim, explaining that records "indicate[d] prior medical conditions which include[d] but may not be limited to a history of alcohol abuse

with abnormal liver function tests, hypertension, neurological stiff person syndrome" (*Frohn*, p 888).

In August 2019, Ms. Frohn sued Globe, alleging breach of contract by requiring her to release records and for wrongfully denying her claim. To support its defense, Globe requested additional records and Ms. Frohn moved for a protective order. She claimed that her husband's records were protected by physician-patient privilege, she had not authorized a valid release, and if she had, she was revoking the authorization. The district court granted in part, and denied in part, the motion as to Mr. Frohn's medical information, noting any discovery as to his records and physician deposition be limited to the relevant and specific time.

Globe moved for summary judgment, and the district court granted in part on the grounds that Ms. Frohn had voluntarily waived the physician-patient privilege. Ms. Frohn requested that information about Mr. Frohn's medical history be redacted from the published opinion and order, but the district court found that those details were crucial to the court's holding and published the opinion without redactions. Ms. Frohn then appealed to the Sixth Circuit Court of Appeals.

Ruling and Reasoning

The court of appeals sought to determine if Ms. Frohn had voluntarily waived the physician-patient privilege, if the district court erred by denying her motion for a protective order, if Globe wrongfully rescinded the policy, and if the district court erred in publishing the summary judgment without redactions.

The first two questions considered waiving physician-patient privilege. Under Ohio law, physician-patient privilege includes any "communication. . . to diagnose, treat, or act for a patient" and can be waived if the patient is deceased and the spouse of the deceased patient gives express consent (Ohio Rev. Code Ann. § 2317.02(B)(5)(a), (B)(2)(a)(ii) (2017)). Further, "a patient's consent to the release of medical information is valid and waives the physician-patient privilege if the release is voluntary, express, and reasonably specific in identifying to whom the information is to be delivered" (*Med. Mut. of Ohio v. Schlotterer,* 909 N.E.2d 1237 (Ohio 2009), p 1239). Ms. Frohn disputed the voluntariness of her signing the waiver, noting she felt compelled to waive privileges to have her claim processed. But Globe's own policy language indicated she was not required to provide medical records despite the request to do so. In Ohio, it is presumed that any contracts signed are read and understood by both parties (*Preferred Capital, Inc. v. Power Eng'g Group, Inc.,* 860 N.E.2d 741 (Ohio 2007)). Therefore, she was assumed to have understood the policy. The appellate court found Ms. Frohn was not able to demonstrate any duress or coercion that would negate the willingness of her actions.

Ms. Frohn then argued she had revoked the waiver and the district court had erred in denying her motion for a protective order. She cited 45 C.F.R. § 164.508(b)(5) (2013) to demonstrate her right to revoke authorization. The court subsequently referenced 45 C.F.R. § 164.512(e)(1) (2024), which allows protected health information to be disclosed "in response to an order of a court. . . or to a subpoena, discovery request, or other lawful process." Further, Globe's Authorization for Release form outlines that, although she has the right to revoke her waiver, "any such 'revocation is not effective to the extent that. . . [Globe] has a legal right to contest a claim under an insurance policy or to contest the policy itself'" (*Frohn*, p 892).

Regarding Globe's rightfulness in rescinding its policy, the court relied on state statute and *Jenkins v. Metro. Life Ins. Co.,* 173 N.E.2d 122 (Ohio 1961). An insurer can revoke a policy if it is "clearly proved that such answer is willingly false, that it was fraudulently made" and "but for such answer the policy would not have been issued" (Ohio Rev. Code Ann. § 3911.06 (1953)). To that end, Globe asserted Ms. Frohn provided false answers to questions about liver function abnormalities and depression. Dr. Budke testified that he diagnosed Mr. Frohn with a liver function abnormality and coded it as "disorder of the liver" (*Frohn*, p 895). Additionally, medical records revealed that Dr. Budke diagnosed Mr. Frohn with depression and prescribed the antidepressant duloxetine. Ms. Frohn countered that she made an honest mistake, citing beliefs that liver function abnormality did not equate to a liver disorder and that depression was not a mental disorder. The courts concluded Ms. Frohn had been aware of her husband's conditions and answered the questions willfully and fraudulently. Ohio law supported that Globe need demonstrate only that "but for such answer, the policy would not have been issued" (Ohio Rev. Code Ann. § 3911.06). Through underwriter testimony, Globe established the same policy would not have been issued had truthful answers been provided.

Finally, the appellate court reviewed whether the district court erred in publishing the summary judgment without redactions. Ms. Frohn's only argument in opposition was that she did not waive the privilege voluntarily. But because Ms. Frohn's voluntariness had already been established, the appellate court affirmed the district court's judgment regarding the necessity of publishing without redactions.

Discussion

In this ruling, the Sixth Circuit highlighted key legal boundaries and exceptions to physician-patient confidentiality. Although medical records and communications between a patient and physician are privileged, there are exceptions, including the voluntary waiver of privilege by the deceased's spouse, as allowed under Ohio law. Records may also be compelled to be released under certain legal frameworks, such as court orders or discovery requests. The court referenced 45 C.F.R. § 164.512(e)(1), which allows the release of protected health information for legal proceedings, demonstrating a key exception to confidentiality rules.

The decision underscores the potential consequences of inaccuracies in medical disclosures. The court determined that incomplete or false medical history provided by Ms. Frohn was material to the issuance of the life insurance policy and justified its rescission. This emphasizes the importance of precise documentation by physicians, including psychiatrists, as inaccuracies can have significant legal and financial consequences for plaintiffs.

Forensic psychiatrists and physicians in general benefit from understanding that there are exceptions to the physician-patient privilege and that future litigation events may compel records to become public. Consideration of such eventualities should be made, or at least understood, when documenting, communicating, and retaining patient information.

New Mental Health Evidence in Federal *Habeas* Proceedings

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Supreme Court Overturns the Ninth Circuit's Writ of *Habeas Corpus* Based on Newly Presented Psychiatric Evidence

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Key words: capital punishment; *habeas corpus*; mitigation; ineffective assistance of counsel; forensic psychiatry

In *Thornell v. Jones*, 144 S. Ct. 1302 (2024), the U.S. Supreme Court reversed the Ninth Circuit's earlier grant of a writ of *habeas corpus* in the case of an Arizona man sentenced to death for multiple murders. Although the Ninth Circuit found the psychiatric evidence presented at a lower court evidentiary hearing to be persuasive, the Supreme Court did its own analysis and found the newly presented evidence to be cumulative to that presented at trial and unavailing in light of the aggravating circumstances of the crime.

Facts of the Case

Danny Lee Jones was convicted in Arizona of the 1992 murder of his social acquaintance Robert Weaver, the murder of Mr. Weaver's seven-year-old daughter, and the attempted murder of Mr. Weaver's grandmother via bludgeoning with a baseball bat. The putative motive for the crime was theft of Mr. Weaver's gun collection, valued at $2,000.

As part of the sentencing process (after finding Mr. Jones guilty), the trial court held an aggravation-mitigation hearing to determine whether capital punishment would be imposed. The trial court found four aggravating circumstances: the murder was done for pecuniary gain; the defendant committed the murder in an "especially heinous, cruel, or depraved manner;" convictions for multiple homicides; and one of the victims was under 15 years of age" (*State v. Jones*, 917 P.2d 200 (Ariz. 1996), p 207).

In favor of mitigation, the trial court identified four factors in Mr. Jones's favor: "[he] suffers from long-term substance abuse; at the time of the offense, [he] was under the influence of alcohol and drugs;[he] had a chaotic and abusive childhood; and [his] substance abuse problem may have been caused by genetic factors and aggravated by head trauma" (*State v. Jones*, p 207–8).