

criminal case, an expert witness must not state an opinion about whether Ms. Diaz did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense" (*Diaz*, p 1731, citing Fed. R. Evid. 704(b)). The district court granted that, although the agent could not testify in absolute terms about whether all couriers knowingly transport drugs, his testimony that most couriers know they are transporting drugs was admissible. Ms. Diaz was found guilty.

On appeal, the defense again challenged the agent's testimony under Rule 704(b), and the Ninth Circuit Court of Appeals found that the rule prohibits only "an 'explicit opinion' on the defendant's state of mind" (*Diaz*, p 1731).

#### Ruling and Reasoning

The U.S. Supreme Court affirmed the Ninth Circuit finding that, because the expert did not state an opinion about whether Ms. Diaz had a particular mental state, the testimony did not violate Fed. R. Evid. 704(b).

The ruling clarified Fed. R. Evid. 704, which allows expert witnesses to offer opinions that address an ultimate issue (matters that the jury must resolve to decide the case), with the exception described in Rule 704(b). The exception was deemed applicable only to opinions about the defendant, leaving testimony about the mental states of a general group of people admissible. In this case, the expert's testimony left open the possibility that Ms. Diaz was not like most drug couriers and left the decision on the ultimate *mens rea* question to the jury. The Court also noted that Rule 704(b) does not apply in civil cases or affect lay witness testimony.

Justice Jackson wrote a concurring opinion, noting that the ruling is party agnostic and allows both the government and the defense to call experts offering opinions about general mental states of groups of people under Rule 704(b). She agreed that such evidence would not deprive the jury of its role in resolving ultimate issues, i.e., if the defendant had the requisite *mens rea*. Justice Jackson wrote that, in crafting Rule 704(b), "Congress . . . did not preclude experts from contextualizing a defendant's mental health condition, including by explaining the likelihood that those with a particular condition would have a particular mental state" (*Diaz*, p 1737).

#### Dissent

Justice Gorsuch, joined by Justices Sotomayor and Kagan, dissented, raising concern that prosecutors

could use this ruling to sway juries to convict using expert testimony that "most" people think a certain way by simply convincing the jury that the defendant is like most people. They raised concern that the ultimate question of a culpable *mens rea* must be decided by a jury and that allowing expert witnesses to testify on this shifts the burden from the prosecutor to the defendant. They argued that Fed. R. Evid. 704(b) prohibits not only definitive opinions about the defendant's mental state but rather any opinion.

#### Discussion

This ruling clarifies the limits of expert testimony under Fed. R. Evid. 704(b). Even when the mental state in question is an element of the crime charged or of a defense, general opinions about the mental state of most people in a given group are permissible under federal law so long as the testifier does not provide a definitive opinion about the defendant's mental state. This preserves a key role of psychiatric expert witnesses in providing opinions based on their expertise in mental disorders, which by their very nature speak to mental states.

The finding in *Diaz* is congruent with prior findings regarding the matter of expert testimony affecting ultimate issues in that it allows expert witnesses to testify on mental states to aid the jury, so long as that testimony is not so specific or directive that it reduces their latitude in addressing the ultimate issue.

## Medical Malpractice and Ordinary Negligence Cases Share Same Standard for Causation

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### Medical Malpractice Cases Do Not Require Plaintiffs to Meet a More Stringent Burden of Proof Than Ordinary Negligence to Establish Causation

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**Key words:** malpractice; negligence; establishing causation; summary judgment; wrongful death

In *Rygwall v. ACR Homes, Inc.*, 6 N.W.3d 416 (Minn. 2024), the Supreme Court of Minnesota considered whether the common law causation standard is higher in medical malpractice cases than other negligence cases. The court ruled that a medical malpractice plaintiff does not need to provide more detail to establish causation than in an ordinary negligence claim.

#### Facts of the Case

In *Rygwall v. ACR Homes, Inc.*, Judith Rygwall, acting on behalf of the estate of her deceased daughter, Amy Rygwall, filed a wrongful death suit against ACR Homes, the group home responsible for her daughter's care. Ms. Rygwall, who was nonverbal and had a history of seizures, aspirated food while at a day program on December 31, 2015. Although the seizure that led to aspiration was unwitnessed, she showed signs of respiratory distress, such as coughing, foaming at the mouth, raspy breathing, weakness, and a newly-observed pale complexion.

Staff at the day program contacted ACR Homes' residential coordinator to report Ms. Rygwall's symptoms. The residential coordinator concluded with the ACR nurse that Ms. Rygwall may have aspirated. Despite her signs of respiratory distress, ACR staff did not immediately call 911, per their protocol. Instead, ACR Homes staff transported Ms. Rygwall to an urgent care clinic that accepted her insurance. Before leaving, ACR staff spent several minutes searching for an in-network clinic, contributing to the delay in Ms. Rygwall's treatment.

During the drive, her condition worsened, and upon arrival at urgent care, her symptoms were severe enough to warrant immediate evaluation. ACR staff did not inform the clinic's staff about Ms. Rygwall's history of seizures and the concern for aspiration. While waiting for the physician, her condition further deteriorated, prompting her transfer to a hospital where she was diagnosed with acute respiratory distress syndrome (ARDS), septic shock, and aspiration pneumonia. By this time, over three hours had passed since ACR was first notified of Ms. Rygwall's condition. Despite receiving antibiotics and treatment, her condition continued to worsen, and she died on January 13, 2016.

Judith Rygwall argued that ACR Homes' failure to provide immediate emergency care caused Ms. Rygwall's condition to worsen, ultimately leading to her death. The district court granted summary judgment for

ACR Homes, and this decision was affirmed by the court of appeals. Judith Rygwall then appealed to the Minnesota Supreme Court.

#### Ruling and Reasoning

The Minnesota Supreme Court reversed the lower courts' decisions, ruling that summary judgment in favor of ACR Homes was inappropriate because of a genuine concern of material fact. Summary judgment is granted when one party asks the court to decide in their favor without a full trial, usually because there is no dispute over key facts that could affect the outcome of the case. The central question was whether ACR Homes' failure to seek more immediate emergency care after Ms. Rygwall exhibited signs of respiratory distress substantially caused her death.

The court clarified that the burden of proof for causation in medical malpractice cases is not higher than in other negligence cases, citing Minn. Stat. § 145.682 (2002), which governs expert affidavits in such cases. The plaintiff had offered opinions of two experts. Importantly, the court found that Dr. Jacob Keeperman's affidavit provided the necessary evidence for causation, detailing how and why earlier intervention could have prevented Ms. Rygwall's death. The court emphasized that plaintiffs in medical malpractice cases must show that the defendant's actions were more likely than not a substantial factor in causing the harm, as outlined in *Walton v. Jones*, 286 N.W.2d 710 (Minn. 1979). The court stated that an expert affidavit must include several details, including the specific details of the expert's testimony, including the applicable standard of care, the acts or omissions that allegedly violate the standard of care, and the chain of causation between the violation and the plaintiff's damages.

Dr. Keeperman, the plaintiff's medical expert, argued that, if staff had acted immediately with rapid evaluation and treatment, then Ms. Rygwall's condition would not have deteriorated to ARDS, septic shock, multisystem organ failure, and death. The court emphasized that Dr. Keeperman's affidavit was clear and thorough enough to meet the standard of proof, which allows the jury, composed of laypeople, to determine causation without needing specialized medical knowledge. The court found that Judith Rygwall met her burden of raising a genuine concern of material fact regarding whether Ms. Rygwall would have received antibiotics if emergency care had been sought earlier. The court further noted that a jury

could reasonably conclude, without speculation, that prompt treatment could have prevented the extent of her deterioration.

The Minnesota Supreme Court reversed the court of appeals' decision and remanded the case to the district court for further proceedings.

#### Discussion

The ruling in *Rygwall* has crucial implications for forensic psychiatrists and psychiatric practice. The Minnesota Supreme Court's decision underscores that the standard of care in group homes and similar facilities may include a prompt response to medical emergencies, especially when caring for patients with complex conditions like nonverbal status or seizure risks. This might extend to psychiatric conditions like catatonia and negative symptoms of schizophrenia. This case serves as a reminder of the legal duty to follow medical protocols and the potential consequences of failing to do so.

A key point from this ruling is the state supreme court's clarification of the essential components to establish causation. In this case, the court affirmed that a well-constructed affidavit, such as Dr. Keeperman's, can be used as evidence of causation in complex medical situations, making it understandable to a jury of laypeople. For forensic psychiatrists, this emphasizes the need for expert testimony to explain the "how" and "why" of causation in an accessible and clear manner. This clarity is vital in cases involving psychiatric patients, where nuances in medical care can be more difficult to interpret.

Furthermore, the court's ruling reinforces the role of the trier of facts in assessing causation in medical negligence cases. By sending the case back to the district court, the state supreme court indicated that the lower court can weigh complex medical facts, provided they are presented in a comprehensible manner. This is especially relevant in psychiatric care, where medical decisions often involve complex risk assessments (e.g., how well a patient with catatonia might demonstrate distress). For forensic psychiatrists serving as experts, it is crucial to bridge the gap between specialized knowledge and lay understanding, ensuring that complex medical-legal concerns are communicated effectively. Interestingly, in this case, Ms. Rygwall's care was delayed because staff accessed the internet to seek out nearby facilities that accept her insurance rather than calling 911. In the future, technology, including artificial intelligence (AI), may further expand access to health care information,

potentially empowering providers to make informed decisions. But this must be weighed against the risk of delaying urgent in-person care, underscoring the importance of striking a balance between information seeking and immediate medical intervention.

Overall, *Rygwall* is a reminder for care facilities to act promptly in emergencies, especially for vulnerable populations. It should also remind forensic psychiatrists of their role in advocating for the importance of clear expert testimony in medical malpractice cases. This ruling may lead to changes in protocol and heightened legal vigilance within psychiatric care settings, whether in state psychiatric hospitals, long-term care facilities, or prisons.

## Definition of Medical Records

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## Video Footage of a Patient Encounter Can be Considered Medical Records Under PAIMI Act

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**Key words:** HIPAA; patient privacy; PAIMI Act; medical records

In *Disability Rights Texas v. Hollis*, 103 F.4th 1058 (5th Cir. 2024), Houston Behavioral Healthcare Hospital refused to produce video records for a protection and advocacy (P&A) organization investigation on the basis that it needed to protect the confidentiality of other patients and the video did not constitute a medical record. The United Protection for Individuals with Mental Illness (PAIMI) Act and disclosure was not in violation of the Health Insurance Portability and Accountability Act (HIPAA) under the "as required by law" exception.

#### Facts of the Case

In August 2021, patient G.S. was involuntarily detained in the Psychiatric Intensive Care Unit at