

under Wyoming law, and in many other jurisdictions, such symptoms, when attributable primarily to self-induced intoxication, do not meet the criteria for insanity defenses. This statutory limitation is crucial for forensic evaluators to understand, as it determines whether defendants may meet criteria for an insanity versus a voluntary intoxication *mens rea* defense (e.g., negating specific intent to commit attempted second-degree murder because of self-induced intoxication).

Additionally, the Supreme Court of Wyoming's application of the *Blockburger* test in rejecting Mr. Bolen's double jeopardy claim provides further insight into how courts interpret the legislative intent behind criminal statutes. In Mr. Bolen's case, the court determined that attempted second-degree murder and aggravated assault, although arising from the same incident, constituted separate offenses because each charge required proof of different legal elements. For forensic experts involved in such cases, it is important to understand how multiple charges can arise from a single incident and how they may be asked to opine on whether voluntary intoxication created a diminished capacity to form a specific intent necessary for those separate charges.

The Supreme Court of Wyoming's ruling in *Bolen* reinforces the statutory exclusion of substance-induced mental states from insanity defenses consistent with all other states with insanity defenses and highlights the importance of thorough evaluations to determine the degree to which substance use and intoxication contributed to mental states during the commission of crimes. When forensic experts come to an opinion that the mental state in question is primarily attributable to voluntary intoxication, then they must be aware of the jurisdiction's *mens rea* defense laws and whether they permit the negation of specific intent elements based on mental states arising from voluntary intoxication.

Hospital Liability for Independent Contractors

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Hospitals Can Be Held Responsible for Nondelegable Duties Performed by Independent Contractors

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Key words: independent contractor; hospital; civil liability; nondelegable duties

In *Estate of Essex v. Grant County Pub. Hosp. Dist. No. 1*, 546 P.3d 407 (Wash. 2023), the Washington Supreme Court ruled that hospitals are responsible for nondelegable duties regardless of whether those duties are performed by its staff or independent doctors.

Facts of the Case

Cindy Essex went to Samaritan Hospital's emergency room for left shoulder pain that radiated to her abdomen. Dr. Christopher Davis, an independent contractor, evaluated Ms. Essex and learned that she had been experiencing shoulder pain, bloody stool, vomiting, and fever. Dr. Davis ordered pain medication, x-rays, and a computed tomography (CT) scan. Dr. Davis diagnosed Ms. Essex with gastric outlet obstruction and ordered a nasogastric tube (NG tube), which was recommended by Dr. Irene Cruite. Dr. Cruite was a radiologist and independent contractor at Samaritan Hospital like Dr. Davis. Ms. Essex reported feeling better after the NG tube insertion. Dr. Davis consulted a gastroenterologist and ordered Ms. Essex's transfer to Central Washington Hospital at the recommendation of the gastroenterologist. While awaiting transfer, Ms. Essex's pain increased, and nurses gave pain medication but apparently did not tell Dr. Davis about the recurring pain. Then, a nurse reported bruising on Ms. Essex's upper arms for the first time, which was almost five hours since she arrived at the emergency room. According to the records, it does not appear that this was reported to Dr. Davis.

Ms. Essex was transferred to Central Washington Hospital and continued to have severe lower back and abdomen pain. Nurses at Central Washington Hospital noted that Ms. Essex had redness on her inner arm and chest and also new raised areas on her skin. Dr. Stephen Wiest took over her care and reviewed her CT scans and identified "some soft-tissue changes" that Dr. Cruite had not reported.

Dr. Wiest ordered additional testing and was concerned for the possibility of necrotizing fasciitis. He ordered an additional CT scan that showed worsening soft-tissue swelling. Dr. Wiest called for examination by a surgeon.

After that, the doctors attempted debridement but concluded that her condition was nonsurvivable. Dr. Wiest moved Ms. Essex to comfort care, where she later died.

Ms. Essex's mother, Judy Essex, serving as the representative of Cindy Essex's estate, brought suit against Samaritan Healthcare, Dr. Davis, Dr. Cruite, and others with claims of medical negligence and wrongful death. The plaintiff asserted that the defendants owed Ms. Essex a duty of care, they breached that duty, and Ms. Essex died as a result. Judy Essex also claimed that Samaritan was liable under a theory of corporate negligence, and she moved for a partial summary judgment concerning Samaritan Hospital's vicarious liability for Dr. Davis, and Dr. Cruite's alleged negligence. The trial court denied this motion.

Samaritan also sought summary judgment and was successful in defeating claims of corporate negligence and various liability with respect to Samaritan's nurses. On appeal, the court ruled that "ostensible agency is the sole basis for holding a hospital vicariously liable for the negligence of nonemployee physicians" (*Essex*, p 410) and that summary judgment was appropriate on the claim of corporate negligence against Samaritan. Ostensible agency is when one is led to believe that one party is employed by another. Judy Essex appealed.

Ruling and Reasoning

The Washington Supreme Court reviewed the case *de novo* because it involved a review of summary judgment. The court began by discussing the hospital-patient relationship, which has evolved over time from house calls to private doctor's offices to hospitals granting privileges for doctors to use hospital facilities. In modern times, as in this case, patients can go to the emergency room without contacting their personal doctor and be treated by a nonemployee physician.

The main question that the court discussed was whether ostensible agency is the only theory under which a hospital can be vicariously liable for negligence of nonemployee doctors providing emergency care. Judy Essex contended that a hospital can be liable based on breach of nondelegable duty (a duty that cannot legally be delegated), negligent performance of an inherent function,

and delegation under agency law (legal principle that governs whether a principal can delegate to another person, an agent), in addition to ostensible agency.

Judy Essex argued that licensing statutes and regulations create a nondelegable duty to emergency room patients, and the court agreed. Determining these nondelegable duties can be established through statutes and regulations. For example, a statute can create a nondelegable duty of providing safeguards and precautions for the safety of others. The court relied on *Adamski v. Tacoma Gen. Hosp.*, 579 P.2d 970 (Wash. Ct. App. 1978), where the court had observed that existing regulations might impose a nondelegable duty on hospitals when providing emergency care to the public. Samaritan argued that *Adamski* was not applicable because regulations had since been amended, but the court determined the principles still apply. The court also pointed to the state statute on hospital licensing and regulation, which requires minimum standards in hospitals for safe and adequate care for individuals. The Department of Health is responsible for establishing these standards and has regulations regarding patients who receive emergency services. According to the court, these regulations create a nondelegable duty for hospitals providing emergency care services through nonemployee doctors. The court ruled that, although hospitals may delegate performance of duties to nonemployee doctors, the ultimate duty and the potential vicarious liability for failure to meet that duty remains with the hospital.

Judy Essex also argued that Samaritan was liable under agency law principles of delegation. Samaritan responded that Washington courts have not applied this theory in these circumstances. The court declined to reach this question and opted to wait for a case that more squarely addresses the interplay between the non-delegation theory, ostensible agency, and this agency theory. Judy Essex also argued that *Adamski* established inherent function as an independent basis for vicarious liability, but the court concluded that inherent function was not an independent basis for vicarious liability. The court decided to wait for another case that more directly addresses the question of whether or not the performance of an inherent function may be a relevant factor in determining whether a duty can be delegated.

Finally, the court dismissed Judy Essex's claim of corporate negligence because they could not

find that Samaritan Hospital’s corporate negligence was a proximate cause of Ms. Essex’s death. The court described that corporate negligence claims require the existence of a duty owed to the complaining party, a breach of that duty, a resulting injury, and proximate cause between the breach and the injury. The court referenced the Wash. Rev. Code. § 7.70.040 (2021), which sets out elements of medical malpractice and specifies that proximate causation is a required element. The Washington Supreme Court reversed the decision of the court of appeals and remanded the case back to the trial court.

Discussion

The *Essex* case is important because it clarifies whether hospitals may be liable for acts and omissions of independent contractors. As pointed out in the case, patients go to the emergency room to seek medical services and are not in the position to untangle the contractual relationships that exist between the hospital and physicians who work at the facility.

Psychiatrists and other mental health providers may work as independent contractors for hospitals. For many providers, working as an independent contractor allows for increased flexibility and autonomy. For hospitals, independent contractors can fill potential gaps in staff to provide more comprehensive services or access for their patients. It is useful for psychiatrists working in these settings to recognize that the hospital may remain responsible for nondelegable duties, which is the case for emergency services in Washington following *Essex*. This topic may also present for forensic psychiatrists who are asked to evaluate cases of malpractice or wrongful death stemming from the act or omissions of independent contractors.

Suit to Propel Compliance with Competency Services

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Suit Against Health and Human Services Secretary to Enforce Statutory Duties Related to Competence to Stand Trial

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In *Spokane County v. Meneses*, 546 P.3d 1012 (Wash. 2024), the Washington Supreme Court considered a petition for writ of *mandamus* against the Secretary of the Department of Social and Health Services (DSHS) to enforce statutory duties related to competence to stand trial services. The court dismissed the case because the Secretary is not a state officer.

Facts of the Case

The Spokane County Prosecuting Attorney, Lawrence Haskell, sought a writ of *mandamus* against Jilma Meneses, the Secretary of the Washington DSHS, directing her to comply with statutory duties under Chapter 10.77 of the Revised Code of Washington, which regulates the legal process for competence to stand trial and insanity evaluations and commitments. The prosecutor sought to enforce competency services in criminal proceedings in a timely manner.

In Washington, the statutory duty to provide competency to stand trial services is governed by Wash. Rev. Code. § 10.77.060 (2023). The DSHS, through its Behavioral Health Administration, is tasked with providing competency-related services. Throughout the state, demand for competency services has grown significantly over the past decade. According to the case, the DSHS has been unable to meet this increased demand, leading to significant delays for defendants waiting for competency services. Previously, a class action in *Trueblood v. Wash. State Dep’t of Soc. & Health Servs.*, 101 F. Supp. 3d 1010 (W.D. Wash. 2015), was filed, challenging the DSHS’s delays in providing competency services to defendants in pretrial custody as unconstitutional. Finding that the delays violated class members’ due process rights, the court in *Trueblood* issued a permanent injunction against the DSHS, which set strict time limits for providing competency services to defendants in pretrial custody, appointed a special