

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

court monitor, and began oversight of the DSHS's efforts to comply with the injunction.

Despite *Trueblood*, delays in providing competency services to criminal defendants continued. The DSHS's delays in complying with its statutory obligation is the basis for the petition for the writ of *mandamus* in this case. A writ of *mandamus* is a court order to a lower government official to perform acts required by law.

The case specifically concerns three groups of Spokane County defendants in felony criminal proceedings ordered to receive competency services from the DSHS. The first group is out-of-custody defendants ordered to undergo a competency evaluation by DSHS in the community. The second group is out-of-custody defendants who have been found incompetent to stand trial and await inpatient competency restoration services. The third group is defendants in pretrial custody awaiting inpatient competency restoration services; this group is subject to the *Trueblood* injunction and time limits. Because of delays in services for each of these groups, the prosecutor sought enforcement of statutory obligations, including timelines for services defined by the statute and *Trueblood* injunction. The DSHS argued that the court must dismiss the petition for lack of original jurisdiction. The case went directly to the Washington Supreme Court.

Rules and Reasoning

In this case, the Washington Supreme Court reviewed whether or not the court could issue a writ of *mandamus* to the Secretary of the DSHS. The DSHS argued that the court lacked jurisdiction because the Secretary is not considered a state officer according to the state's constitution, and therefore, a writ of *mandamus* would not be appropriate. The court agreed with DSHS, ruling that the DSHS Secretary is not a state officer and that an action with the state supreme court is not the proper avenue for relief.

In reaching its ruling, the court relied on *Ladenburg v. Henke*, 486 P.3d 866 (Wash. 2021), which outlined the four characteristics, or factors, that make a public official a state officer: the manner in which the official was appointed to the position, the source of the official's salary, whether the official is subject to impeachment, and the official's jurisdictional reach. In *Ladenburg*, the court established that state officers are "limited to those elected

officials whom the state controls" (*Ladenburg*, p 869). The DSHS Secretary is not an elected position. In *Ladenburg*, the court also noted that impeachment has been treated as the primary factor in determining whether a public official was a state officer. The DSHS Secretary is not subject to impeachment. Furthermore, the DSHS Secretary does not wield part of the state's sovereign power. The court reasoned that the DSHS Secretary's statutory duties are not comparable with the state's sovereign powers.

Because the Secretary is not elected, subject to impeachment, or granted a state sovereign power, the court ruled that the position is not a state officer under the Washington Constitution. The state supreme court dismissed the petition for writ of *mandamus*.

Justice Montoya-Lewis concurred with the majority opinion but wrote separately to emphasize the complexities involved for the court to address the underlying concerns raised by the plaintiff's writ of *mandamus* in this case. Justice Montoya-Lewis wrote about her personal experiences with writing orders for competency evaluations while a trial court judge and the ill effects on persons with mental illness who fail to receive timely services. She provided hypothetical scenarios, each without remedy in the appellate court. "While I agree with the majority that this writ has not been the appropriate vehicle for this case to be addressed by this court, I struggle to see how this issue ever reaches this court. . . [and] worry that this problem will continue to worsen" (*Meneses*, p 1020).

Discussion

The *Trueblood* litigation has been a topic of considerable attention in Washington and has led the state to invest in increased efforts to provide competency-related services. Although there have been notable improvements in wait times for evaluation services and competency restoration services, resources have remained strained. In 2023, the governor signed a bill to overhaul the competency system in effort to reduce the volume of referrals. As others have explored other measures to provide timely and high-quality forensic services, it is not surprising that the court system continues to be used as a vehicle to address change. Just as in the initial *Trueblood* litigation, the plaintiff in *Meneses* aimed to use litigation in an effort to improve the system. When such cases

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aim to effect systemic change, they are often referred to as impact litigation.

The concept of impact litigation has been used to effect change in health care in a number of settings. Although not successful in the *Meneses* case, it is useful

for forensic mental health clinicians to be familiar with landmark and recent cases that involve impact litigation. Forensic experts may be asked to participate in these cases by drafting declarations or otherwise serving as experts to provide education to the courts.