McNamara v. Honeyman:
Massachusetts Protects Psychiatrist

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One of the greatest problems encountered by State Hospitals is the difficulty they have attracting well-trained psychiatrists to work with the chronically mentally ill. In particular, the potential liability that attends to working with this population has been a concern of many. Until Honeyman, the leading case in Massachusetts was Florio v. Kennedy (2). Florio held that if a physician were a "public employee" he/she would be held immune from liability under the Tort Claims Act (3).

In Honeyman, the court went well beyond the Florio standard and indeed may now be on the cutting edge in this regard. Here, the Supreme Judicial Court (Massachusetts's highest court) ruled that "For purposes of the Massachusetts Tort Claims Act, it is not material whether the conduct of an employee constitutes gross negligence or merely simply negligence (1).

The Case:

In 1980, Karen McNamara, then 20 years old, hanged herself while an inpatient at Northampton State Hospital. She died about three months later as a result of her injuries. The plaintiffs claimed that Dr. Honeyman (who at the time was employed by the Department of Psychiatry, University of Massachusetts Medical Center) was grossly negligent when he discontinued around the clock one-on-one observation and instead ordered checks every fifteen minutes.

A jury found Honeyman grossly negligent, found the Commonwealth liable for negligence and found both liable for McNamara's conscious pain and suffering and for a violation of her Federal civil rights. The jury awarded $1.7 million, including $190,000 in punitive damages against Honeyman.

The trial judge after hearing motion for amending the judgment, new trial and judgment not withstanding the verdict, entered a judgment of $100,00 against the Commonwealth on the claim. The judge ruled there was insufficient evidence to find Honeyman grossly negligent and entered judgment not withstanding the verdict in favor of Honeyman and the Commonwealth on the Federal civil rights and conscious pain issues. The Supreme Judicial Court granted petition for direct appellate review. The judgment was affirmed.

Supreme Judicial Court Opinion:

Massachusetts General Laws 258(2) extends immunity from personal liability to public employees who are acting within the scope of their duties. If a defendant is a public employee and his conduct constitutes simple negligence, M.G.L. 258(2) clearly applies. The question of whether M.G.L. 258(2) immunizes an employee from gross negligence has not been answered by our cases to date (1).

In reaching its conclusion the court looked first to the issue of employment status. Honeyman clearly was a public employee as developed in Florio (2). The University is an agency of the Commonwealth. Honeyman had no control over the selection of patients he was to treat and his salary came from the University and was not based on the number of individual cases he treated. The University regulated his hours and decided on which ward he would work. The judge correctly left the jury's decision that Honeyman was a State employee undisturbed.

Because Honeyman was a public employee, the Commonwealth is liable for his negligent conduct. Therefore, the Supreme Judicial Court must look to the treatment of McNamara to decide if the treatment was negligent. The trial judge ruled that the evidence supported a finding of negligence but not gross negligence as was the decision of the jury. The S.J.C. agrees with the trial court.

Here, the case takes the usual and expected course of a tort claim. The court addressed the issue of Honeyman's decision to change the observation of the status. However, particularly as brought out in the dissent, a focal issue addressed had primarily to do with the record keeping and the documentation in the chart. Honeyman inserted a note in the record after the hanging and dated it the previous day. This, more than his decision may have been the basis for his negligence and deviation from the standard of care.

In an important footnote, the judge instructed the jury that it could infer from the absence of a note in the team book that no team meeting occurred; absence of entry into records of regularly conducted activity is admissible to prove non-occurrence of the event.

Dissent:

The dissent argument is rather straight forward. The judges did not feel that Honeyman's decision to change the patient's status was negligent. More importantly, the dissenting judges argue (as did plaintiff's expert) that Honeyman's record keeping fell below standard. Although the patient committed suicide after her observation status was decreased, the conclusion that insufficient record keeping (on which plaintiff's expert focused) was the direct cause of the damages is unwarranted.

Comment:

Immunity from gross negligence is a sensitive issue. Although it lends great protection to the psychiatrist acting as a public employee, it is still imperative to render the best care and to maintain the highest standards. To allow such a decision as Honeyman to make us complacent in our work would be nothing short of a tragedy. Staffing State Hospitals, at least in Massachusetts could become easier as surely this immunity is attractive.

The case also reminds us of the critical importance of accurate, legible, timely record keeping. It is quite possible that better record keeping could have kept this case from ever reaching the judicial system despite the suicide. Part of our work as physicians includes charting what we do and when we meet. These activities, or lack thereof, may certainly be the basis for a suit.

References:

1. Luciette C. McNamara & another vs. David Honeyman & another, 406 Mass. 43

2. Pauline Florio v. James Kennedy, 464 N.E. 2d 1373

3. Massachusetts Tort Claim Act, M.G.L. 258.