

care, creating a triable jury question. They include the failure to provide adequate treatment and necessary information; monitor medication response; assess suicide risk; and consider added risk of comorbid substance use and clinically relevant information related to prior treatment response and suicidality. Third, in the cases of disputed liability, a reasonable-person standard is used to determine whether the alleged breach of the standard of care rises to the level of reckless. The plaintiff does not need to prove the degree or egregiousness of the breach.

Ms. Mattson’s case draws attention to the contemporary challenges of providing psychiatric care, including the fragmentation of mental health services, delegation of psychotropic prescribing or monitoring to nonphysicians, and predominant use of pharmacotherapy in treatment of depression.

Right of Individuals to Sue to Enforce the Federal Nursing Home Reform Act

Melissa Lavoie, MD

Fellow in Forensic Psychiatry

Paul Bryant, MD

Assistant Professor

Law and Psychiatry Division

Department of Psychiatry

Yale University School of Medicine

New Haven, Connecticut

Plaintiffs May File Civil Rights Claims to Enforce the Federal Nursing Home Reform Act

DOI:10.29158/JAAPL.230122L1-23

Key words: regulation; spending power; civil rights; nursing facility; remedies

In *Health & Hospital Corporation of Marion County v. Talevski*, 143 S. Ct. 1444 (2023), the U.S. Supreme Court reaffirmed that plaintiffs may sue under 42 U.S.C. §1983 (2012) to enforce rights created under federal spending clause legislation, such as the Federal Nursing Home Reform Act (FNHRA).

Facts of the Case

In 2016, Gorgi Talevski was placed in the Valparaiso Care and Rehabilitation (VCR) nursing

home because of dementia. After entering the nursing home, his functioning declined. For instance, he became unable to eat independently and began losing the ability to speak in English, although he retained the ability to speak Macedonian, his native language. Mr. Talevski’s family then learned that VCR “was chemically restraining Mr. Talevski with six powerful psychotropic medications” (*Health & Hosp. Corp.*, p 1451). With the assistance of an outside neurologist, Mr. Talevski’s medication was tapered and his functioning reportedly improved.

VCR asserted that Mr. Talevski was harassing female residents, and subsequently transferred him three times to a psychiatric hospital situated 90 minutes away. During the third admission to the psychiatric hospital, VCR attempted “to force his permanent transfer to a dementia facility” (*Health & Hosp. Corp.*, p 1451). The Talevskis subsequently filed a complaint with the Indiana State Department of Health protesting the attempted transfer. While the complaint was pending, Mr. Talevski was moved to another facility. An administrative law judge nullified VCR’s attempted discharge of Mr. Talevski. Despite the judge’s decision, VCR continued to refuse Mr. Talevski’s readmission.

In 2019, Mr. Talevski’s wife, Ivanka Talevski, filed a § 1983 lawsuit on his behalf against VCR, American Senior Communities LLC, and Health and Hospital Corporation of Marion County (collectively referred to as HHC) asserting that they violated Mr. Talevski’s rights under FNHRA. FNHRA was enacted in 1987 pursuant to Congress’s spending clause powers and established a set of quality standards that nursing facilities must meet to receive Medicaid funds.

The lawsuit asserted that VCR failed to meet two FNHRA provisions in its care of Mr. Talevski. First, FNHRA mandates that nursing facilities “protect and promote” each resident’s interest in being free from “any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident’s medical symptoms” (42 U.S.C. § 1396r (c)(1)(A)(ii) (2012)). Second, FNHRA establishes a set of conditions that nursing facilities must meet before discharging or transferring a resident. One such condition is advance notice of a transfer or discharge. Ms. Talevski argued that VCR’s treatment of Mr. Talevski with psychotropic medications and repeated transfer attempts violated these two FNHRA provisions.

Ms. Talevski filed her lawsuit under § 1983, a statute enacted by Congress as part of a package of legislation intended to curb state-sanctioned vigilantism and violence during the Reconstruction Era. Section 1983 allows individuals to sue state actors for violating their civil rights. Since its inception, it has been used to address abuses by state officials and provide remedies for individuals when the enforcement mechanisms offered by the state are inadequate.

HHC argued that § 1983 contains an implicit exception for laws, such as FNHRA, that Congress enacts via its spending power. It claimed that by requiring states to comply with certain requirements in exchange for receiving federal funding, spending clause legislation creates a contract between the federal government and the states. HHC asserted that when § 1983 was enacted in the 1870s, third parties were not allowed to sue to enforce a contract and reasoned that this should preclude lawsuits like Ms. Talevski's.

The district court granted HHC's motion to dismiss the lawsuit, reasoning that individuals cannot use §1983 to enforce FNHRA provisions. The Court of Appeals for the Seventh Circuit reversed the lower court's decision. In response, HHC appealed to the U.S. Supreme Court.

Ruling and Reasoning

The U.S. Supreme Court affirmed the Seventh Circuit's decision and held that plaintiffs may sue under § 1983 to enforce spending clause legislation such as FNHRA. The majority opinion, authored by Justice Jackson and joined by Chief Justice Roberts and Justices Sotomayor, Kagan, Gorsuch, Kavanaugh, and Barrett, invoked the Court's long-standing position that spending clause legislation may, but does not always, create § 1983-enforceable rights. The Court disagreed with HHC's claim that §1983 contains an implicit carve-out for spending clause legislation.

The Court held that Ms. Talevski had standing under § 1983 to file a lawsuit against HHC for violating her husband's civil rights. To do so, it assessed whether the statute is phrased in terms of "rights-creating", individual-centric language" (*Health & Hosp. Corp.*, p 1457). It found that the FNHRA regulations in question meet that standard, and, as a result, do create rights that plaintiffs may sue to enforce under § 1983. The Court addressed only Ms. Talevski's standing to sue; it did not comment on the merit of her claims against HHC.

In Justice Barrett's concurring opinion, which Chief Justice Roberts joined, she highlighted that not all spending clause legislation creates § 1983-enforceable rights. In Justice Gorsuch's concurring opinion, he questioned whether allowing plaintiffs to sue under § 1983 to enforce spending clause legislation might allow for federal overreach in state affairs but noted that HHC did not fully develop that concern in its argument.

Dissent

Justice Thomas' dissent expanded on the question raised by Justice Gorsuch in his concurrence, arguing that making spending clause legislation §1983-enforceable would violate the court's anti-commandeering doctrine, which prohibits the federal government from using state resources to enforce federal laws. Justice Alito's dissent, joined by Justice Thomas, argued that FNHRA had already established a grievance process for nursing facility residents that should preclude § 1983 lawsuits.

Discussion

Although courts have traditionally upheld the right of enrollees to enforce Medicaid provisions under § 1983, recent rulings from lower courts prior to *Health & Hosp. Corp.* have called that precedent into question. For instance, the Fifth Circuit Court in 2020 ruled that Medicaid patients did not have the right to challenge Texas' exclusion of Planned Parenthood from the state Medicaid program (*Planned Parenthood of Greater Tex. Family Planning & Preventative Health Servs. v. Kauffman*, 981 F.3d 347 (5th Cir. 2020)). The U.S. Supreme Court disagreed, reaffirming that individuals may file § 1983 claims to enforce rights created under federal spending clause legislation.

Overturing that precedent would have stripped beneficiaries of Medicaid and other federally-funded programs of the opportunity to pursue legal action through § 1983. Instead, they would have been forced to rely on under-resourced regulatory enforcement mechanisms with limited ability to remedy ongoing harms. The Talevskis' experience highlights the drawbacks of relying on agency enforcement alone to address FNHRA violations. Mr. Talevski's family pursued the Indiana State Department of Health's formal complaint process, but even when an administrative law judge directed the nursing facility to readmit him, the facility disregarded the decision and refused to do so.

Although FNHRA does create specific regulatory processes to address violations, § 1983 lawsuits can bring about more immediate and targeted relief while also providing financial compensation to harmed plaintiffs. As the AARP, *et al. amici curiae* brief points out in supporting the Talevskis, many states have backlogs of uninvestigated nursing facility complaints, so it is often difficult for agencies to address possible rights violations in a timely manner (Available from: https://www.supremecourt.gov/DocketPDF/21/21-806/238626/20220923113017947_21-806%20Amici%20Brief%20AARP%20Final.pdf. Accessed August 30, 2023).

Section 1983 action can lead to injunctive relief; that is, courts may require a nursing facility to immediately address a possible FNHRA violation even prior to issuing a final judgment in the case. Private lawsuits can also provide financial compensation to plaintiffs who have experienced harm. On the other hand, the primary mechanism for the federal government to enforce violations of FNHRA or other spending clause legislation is through withholding federal funding, which in practice could make it more challenging for states to become compliant and result in a reduction of services to vulnerable individuals (Shen W S. Courts split on whether private individuals can sue to challenge states' Medicaid defunding decisions: considerations for Congress (Part II of II). Congressional Research Service. 2019 July 3. Available from: <https://sgp.fas.org/crs/misc/LSB10321.pdf>. Accessed August 30, 2023).

Health & Hosp. Corp. focused on FNHRA provisions, but its holding extends to the Medicaid Act more broadly, as well as other federal spending clause legislation, such as the federal Supplemental Nutrition Assistance Program (SNAP) or the Children's Health Insurance Program (CHIP). The decision in *Health & Hosp. Corp.* preserves a crucial mechanism for beneficiaries of federally funded programs to enforce their rights.

Legal Foreseeability and Suicidal and Homicidal Risks

Luca Pauselli, MD
Fellow in Forensic Psychiatry

Traci Cipriano, JD, PhD
Assistant Clinical Professor of Psychiatry

Law and Psychiatry Division
Department of Psychiatry
Yale University School of Medicine
New Haven, Connecticut

Mental Health Providers Owe Duty of Care in Case of Patient Suicide

DOI:10.29158/JAAPL.230122L2-23

Key words: professional liability; wrongful death; foreseeability; risk assessment; duty of care; mental health stigma

In *Smits v. Park Nicollet Health Servs.*, 979 N.W.2d 436 (Minn. 2022), the Supreme Court of Minnesota held that a health care provider owed a duty of reasonable care to a patient who died by suicide, and that a medical provider does not assume a duty of care to the family of a patient unless there is evidence indicating the providers should have foreseen their medical advice would influence the family's actions.

Facts of the Case

Smits involves a familicide-suicide that occurred in 2015. Brian Short, a 45-year-old married man with three children, sought treatment for anxiety and depression from several providers at Park Nicollet Health Services (PNHS), a medical group in Minnesota. Despite receiving treatment, Mr. Short murdered his wife and three children before taking his own life.

Mr. Short initially visited a PNHS urgent care clinic on June 16, 2015, where he complained of tightness in his chest, difficulty sleeping, and work-related stress. He was evaluated by a physician assistant, who diagnosed him with anxiety and prescribed alprazolam. Two days later, he saw his primary care physician (PCP), also at a PNHS clinic, who prescribed the antidepressant sertraline to address low mood and weight loss. On June 27, Mr. Short presented at PNHS urgent care with worsening sleep difficulties and was prescribed lorazepam and zolpidem. On July 6, he saw his PCP again and reported continued anxiety, occasional panic attacks, and continued unintentional weight loss. His PCP increased sertraline to 100 mg, stopped zolpidem, started trazodone, and referred him for psychotherapy. On July 15, Mr. Short saw an advanced practice registered nurse (APRN) who administered the Patient Health Questionnaire-9 (PHQ-9). He scored 23 of 27 and received a diagnosis of "major depression, single episode, severe, without psychosis" (*Smits*, p 442). For