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Med Mal Cases Arising From Suicide: Dispensing the Myths and Removing the Stigma

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In 2021, nearly 50,000 people in the United States died by suicide, according to the Centers for Disease Control and Prevention. That year, an estimated 12.3 million American adults seriously thought about suicide, 3.5 million planned a suicide attempt, and 1.7 million attempted suicide. As this epidemic grows, the enormous value of timely therapeutic intervention cannot be overstated. In fact, the belief by many lay people unfamiliar with the issue—namely, that if someone is intent on taking their life they will ultimately succeed—is soundly rebutted by the data. Studies and statistics have repeatedly demonstrated the effectiveness of appropriate intervention and care for suicide risk; in fact, the available data demonstrates that nine out of 10 people who demonstrate suicidality but receive appropriate intervention survive the moment of crisis and proceed to live their lives without dying by suicide at a later date.

A review of 90 studies that followed people who made a suicide attempt that resulted in medical care found that 70% of that population made no further attempts. Moreover, within that study group, only approximately 7% eventually died by suicide. Approximately 23% re-attempted, but nonfatally.

Clearly, proper treatment can dramatically affect the outcome of a mental health crisis involving suicidality, in the same fashion that

Courtesy photos

Bethany Nikitenko, left, and Mark W. Tanner, right, of Feldman Shepherd Wohlgelernter Tanner Weinstock Dodig.

timely methods are used to treat physical illness, and both the law as well as the attitudes of the average juror are finally catching up.

Ironically, wrongful death medical malpractice cases where a patient dies by suicide often present with stronger causation (given the low risk of recurrence) than many of the more conventional delay-in-diagnosis or improper-medical-treatment cases, where the outcome associated with appropriate care would have been far less certain. Compare the 90% long-term survival rate after a suicide attempt with cancer survivorship. In 2022, 69% of cancer survivors lived

5-plus years since their diagnosis; 47% lived 10-plus years since their diagnosis; and 18% lived 20+ years since their diagnosis, according to the National Cancer Institute.

This article provides a brief overview of the evolving view of suicide by Pennsylvania courts. It discusses the standard of care for clinicians in evaluating patients for suicide risk, the key components of a proper suicide risk assessment, and the significant impact that simple interventions can have for patients who have been identified as suicidal. It offers practice tips for litigating suicide-liability cases and encourages plaintiffs' medical malpractice attorneys to handle these cases with a fresh perspective moving forward.

The Evolving View of Suicide by Pennsylvania Courts

In Pennsylvania, there is limited case law on the duty to prevent suicide. For more than 30 years, defendants in suicide-liability cases have relied largely upon *McPeake v. Cannon,* 553 A.2d 439 (Pa. Super. 1989), for the proposition that suicide is generally not recognized as a legitimate basis for a wrongful death claim because "suicide constitutes an independent intervening act so extraordinary as not to have been reasonably foreseeable by the original tortfeasor." To this general proposition, the *McPeake* court noted that there are "limited exceptions," and then discussed three explicit exceptions for custodial/inpatient treatment, confinement at a correctional facility and workers' compensation scenarios. Notably, *McPeake* did not involve a claim against a healthcare provider; rather it was a claim asserted against a criminal defense attorney and thus the duty analysis was clearly distinguishable.

More recently, and in contrast, a claim against health care providers for failing to appropriately assess and treat a suicidal patient was examined by the Lackawanna County Court of Common Pleas in *Clifford v. Community Medical Center*, 2016 WL 4557518 (Lacka. C.C.P. 2016), where the court held that the rationale of *McPeake* requires the imposition of a duty of care in the setting of a suicide committed by a mental health patient who was being treated as a voluntary outpatient. The court emphasized that the defendant had been the decedent's treating psychiatrist, was involved during the critical points of her downfall, and was aware of a range of active depressive symptoms that were concerning for suicide. In another case that considered the relationship between two parties and whether the resultant harm was foreseeable to the defendant, the U.S. District Court for the Western District of Pennsylvania in *Sabo v. UPMC Altoona,* 386 F. Supp. 3d 530 (W.D. Pa. 2019), held that an employer had a duty to prevent the suicide of an employee who expressed suicidal thoughts when she was terminated. In so doing, the *Sabo* court rejected arguments based on *McPeake*, finding that the employer owed the employee a duty of reasonable care and that the employee's suicide attempt was foreseeable under the circumstances.

In addition, two lower courts have recognized that a tortfeasor's negligence in causing a motor vehicle accident can be the proximate cause of a suicide. In *Mackin v. Arthur J. McHale Heating & Air Conditioning,* 76 Pa. D.&C. 4th 544 (Lacka. C.C.P. 2005), the court held that a decedent's estate could pursue a wrongful death claim against a defendant driver arising out of the decedent's suicide after he became dependent on narcotic medications that were prescribed to address his injuries. In *Hudak-Bisset v. County of Lackawanna,* 37 Pa. D.&C. 5th 159 (Lacka. C.C.P. 2014), the court held that the estate of a bus accident victim who committed suicide due to pain and suffering could pursue a wrongful death claim. Here, the court noted that "a factual scenario can exist where a suicide may not be remote and unexpected."

Game Changer

In 2021, the Pennsylvania Superior Court embraced the evolving and enlightened thinking that had emerged in medical malpractice suicide-liability cases. In *Estate of Henry v. Colangelo,* No. 1579 M.D.A. 2020, 2021 WL 3737050 (Pa. Super. Ct. 2021), the court affirmed an order overruling preliminary objections by a psychiatrist and physiatrist, who, along with an unqualified layperson, undertook the responsibility of providing medical treatment to a patient who succumbed to suicide. While the suit is presently in litigation, it is alleged that the patient reported alarming symptoms to his doctors including depression, anxiety, impaired concentration, ruminations, poor sleep, anergia, inability to function, inability to work and being overwhelmed, along with thoughts of self-harm and suicidal ideations. The doctors performed no suicide assessment, did not involve the family, and took no steps to have the patient's firearms secured or removed from the patient's home.

The opinion effectively limits the impact of *McPeake,* with the court recognizing: "Just as there are standards of care relevant to patients presenting with chest pain, there are standards of care that medical professionals apply when patients present with thoughts of self-harm or suicide." The court rejected the defendants' arguments, stating that it would be contrary to public policy to provide blanket immunity, regardless of the facts, where a physician fails to adhere to the standard of care when treating a patient reporting suicidal ideations.

Suicide Risk Assessment

Randomized clinical trials have affirmed the significant impact of simple interventions like lethal means counseling, safety planning, and targeted treatment for reducing post-intervention risk for a suicide attempt between 50 to 70%. But interventions will not work if a patient is not first identified as suicidal. To that end, it is critical that practitioners conduct a proper suicide risk assessment, as patients at risk do not always present stating "I am going to kill myself." A proper risk assessment is required in order to identify those truly at risk.

The American Psychiatric Association's practice guidelines for "Assessing and Treating Suicidal Behaviors" recommend that a suicide risk assessment include:

- A thorough psychiatric evaluation.
- A specific inquiry about suicidal thoughts, plans and behaviors
- The establishment of a multiaxial diagnosis.
- An estimate of suicide risk.

While the guidelines are extensive, it is worth noting that the American Psychiatric Association recommends that clinicians examine the patient's family and psychiatric history. Clinicians should speak with collateral sources such as family members and friends as well as other clinicians involved in the patient's care. Any acute changes from the patient's baseline should be taken seriously.

Even if a patient denies suicidality, the standard of care requires that any concerning actions should raise a red flag and result in a suicide risk assessment.

Finally, while many factors contribute to suicide, it should be emphasized that about 27,000 of 50,000 suicides were carried out by gun in 2022, according to the Centers for Disease Control and Prevention (CDC). Other data points from the CDC include:

- Adults ages 35-64 account for 46.8% of all suicides in the United States, and suicide is the eighth leading cause of death for this age group.
- Adults aged 75 and older have one of the highest suicide rates (20.3 per 100,000). Men aged 75 and older have the highest rate (42.2 per 100,000) compared to other age groups. Non-Hispanic white men have the highest suicide

rate compared to other racial/ethnic men in this age group (50.1 per 100,000).

- Youth and young adults ages 10-24 account for 15% of all suicides, with a rate of 11 per 100,000. Suicide is the second leading cause of death for this age group.
- In 2021, more than a quarter (26.3%) of high school students identifying as lesbian, gay or bisexual reported attempting suicide in the prior 12 months. This rate was five times higher than the rate reported among heterosexual students (5.2%).
- Veterans account for about 13.9% of suicides among adults in the United States.

Theories of Liability

Theories of liability in medical malpractice cases arising from suicide include:

- Failure to take appropriate action to prevent suicide in cases where a patient's suicide was foreseeable.
- Failure to perform a proper suicide-risk assessment.
- Failure to devise a reasonable differential diagnosis for the patient's presentation.
- Failure to formulate and implement an appropriate treatment plan.
- Failure to prescribe appropriate medication at proper dosage.
- Failure to monitor and reassess the patient's psychiatric status and response to treatment and to modify the treatment plan as needed.
- Failure to refer a patient to an appropriate mental health professional.

Unfortunately, our firm has seen a number of cases where people who have died by suicide expressly stated their suicidal ideations to healthcare practitioners, including mental health practitioners, only to receive substandard treatment and care.

Required Experts

While required experts will vary depending upon the specialties of the defendant doctors and the facts and circumstances of each case, experts generally may include:

- Psychiatrists
- Psychologists
- Specialists in addiction medicine (Note that alcohol and substance use disorders are factors associated with increased risk for suicide, according to the American Psychiatric Association.)
- Forensic economists

Final Thoughts

It is a common defense tactic to "blame the patient" in medical malpractice cases, and nowhere is this more true than in suicide-liability cases. For decades, the law in Pennsylvania encouraged victim-blaming with its view that suicide was such an extraordinary act that, with limited exceptions, even mental healthcare professionals might be shielded from legal liability.

Fortunately, the *Estate of Henry* case has cast aside this outdated thinking. When a potential client comes to you with a wrongful death medical malpractice case arising from suicide, we encourage you to dispense the myths and remove the stigma, and to evaluate the case with the same analysis as any other medical malpractice case.

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