

LESSONS FROM SUICIDE MALPRACTICE CASES IN UTAH:

IT'S NOT WHAT YOU THINK

Suicide Prevention Summit

Utah Department of Public Health

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Susan Stefan, J.D.

SUICIDE CASELAW, JURY VERDICTS AND SETTLEMENTS

(Not including jail and prison suicide litigation)

Bowman v. Kalm, 179 P.3d 754 (2008), psychiatrist prescribes 30 days of pills, next day patient who psychiatrist knew or should have known both abused drug prescriptions and was made clumsy by them takes 13 of them pulls dresser down on her which asphyxiates her. Generally, expert testimony is necessary for proximate cause. There is a “common sense” exception, and this case may fit into that. Reversing summary judgment.

Busch v. Reynolds, 1995 UT Verdicts and Settlements LEXIS 378 (Salt Lake County) defendant terminated woman who had been in therapy with him; she made occasional anonymous contacts by phone or letter; he met with her to request she desist; she threatened suicide. Defendant called security but she fled and shot herself in the chest. Case voluntarily dismissed.

Bybee v. Abdullah, 189 P.3d 40 (Utah 2008)(claim that physician with no training or expertise in treating depression prescribed antidepressants and increased the dosage without reevaluating the patient and his response to the medication caused patient's suicide; case centered around whether a patient's agreement to forego litigation for arbitration bound his survivors; the Utah Supreme Court found that non-parties were not bound by arbitration agreements)

Davis v. Central Utah Counseling Center, 2006 UT 52 (2006)(plaintiffs in case involving 19 year old's suicide while receiving treatment from CUCC did not comply with notice requirements of the Immunity Act because they did not serve the proper persons within one year; case was dismissed)

Doe v. Hospital, confid settlement, 2011, woman on suicide watch q15 min hangs herself with bedsheet in room that is supposed to be sanitized. Rigor mortis shows she was dead for hours, nurses admit they just looked through windows in patient's door and she had piled pillows on the bed to make it look as though she was in bed.

Elder v. University Neuropsychiatric Institute, Salt Lake County 3rd Jud. District 2009 Jury Verdicts LEXIS 219151 (failure to properly treat or monitor suicidal patient, defendants' verdict).

Farrow v. Health Services, 604 P.2d 474 (Utah 1979)(rejecting the argument that intentionality of suicide means no liability for psychiatrist; psychiatrists as specialists have higher duty of care to prevent suicide when they are on notice that the patient is suicidal than neurosurgeons)

James v. Weber County Mental Health, 1990 Utah Verdicts and Settlements LEXIS 486 Weber County 2nd District Court (James was committed by Second Judicial Court to the Mental Health Unit of McKay Dee Hospital Mental Health Unit, which discharged him several hours later, after which he killed himself. "Defendants argued that decedent's mental illness was not treatable.") Case settled for 190k.

Layton v. Musso, 2001, man separates from wife, calls doc and complains of depression, discharged after four days, calls doc twice, on 10th and 16th, doc arranges for appointment on the 20th and increases Paxil over the phone. Man kills himself on day of appointment, 85k settlement to wife who was estranged.

Oliver v. Davis County Mental Health, 1989 Davis County 2nd District Court, tried Jan. 25, 1989, (Debbie Oliver suffered from depression, sought treatment from defendants, was hospitalized until Jan. 16, 1986, shot herself Feb. 5, 1986, defendants charged with releasing her from care without properly treating and alleviating her suicidal tendencies; comparative negligence Gary Oliver 35% Debbie Oliver 35% Davis County 18% Dr. Ghicadus 17% no recovery because combined negligence of defendants did not exceed negligence of decedent)

Pelland v. Wasatch Canyons Hospital, 2009 Jury Verdicts LEXIS 183929, suicide of plaintiff's husband due to improper psychiatric care, verdict for defendants

Platts v. Parents Helping Parents, 947 P.2d 658 (1997)Utah Supreme Court, in case involving suicide of teenager attending treatment program for troubled youth, "health care providers" "others rendering similar care and services relating to or arising out of health needs of persons."

Presset v. Castleview Hospital, verdict of 544,747, suicidal patient hangs himself in hospital with nurse's call cord

Kent Reach (or Roach) v. Wasatch Canyon Center for Counseling, 2009, verdict for defendant, man treated for bipolar disorder kills himself, Doug Jacobs for defendant,

Schleger v. State, 427 P.3d 300 (2018)(decedent killed herself in the hospital by strangling herself with her shoelaces; plaintiffs are barred because they could not meet the time constraints of both the Utah Health Care Malpractice Act and the Governmental Immunity Act in a timely fashion.

Shipley v. Julien, Utah District Court Second Judicial District, 2010 (Kurt Shipley kills himself seventeen days after beginning to take Lexapro; initially prescribed by Nurse Practitioner Christensen; on April 27 Shipley feels much worse and sees Dr. Julien, who explicitly asks about suicide. Shipley says 'he had a good stout spirit and would never do that' and Dr. Julien did not pursue the issue further; Shipley killed himself two days later; Christensen, Julien and the medical practice named as defendants)(mixed settlement)

Sweitzer v. Intermountain Healthcare, 2020 Jury Verdicts LEXIS129128 (alcohol withdrawal results in suicide—no information on outcome of case)

Tanner v. IHC Hospitals, dba McKay Dee and Delanie Thorne, 1994 Utah Jury Verdicts and Settlements 235, Weber County 2nd District Court (woman overdoses after argument with her husband, who calls hospital's Poison Control trying to find out whether a certain number of pills would kill her; hospital tried in vain to get his contact information and told him to bring wife to

hospital to get her stomach pumped. Meanwhile, woman went to sleep in their truck and died overnight. Case settled for approx.. 20,500.)

Toomey v. University of Utah hospital, settlement “more than a nuisance” (Dec. 1998)(Nathan Toomey, a 17 year old youth, was admitted to the Child and Adolescent Psychiatric Program at Primary Children's Hospital on February 13, 1997. Dr. Joseph Yau, Toomey's doctor during his hospitalization, discharged Toomey on February 15, 1997, diagnosing "a moderate risk of suicide." Toomey was discovered in his basement on February 24, 1997, dead from a drug overdose. His family alleged that there was no psychological testing done during Toomey's abbreviated stay at the hospital. They alleged further that Yau promised he would find a counselor for Toomey in the Bountiful area, but did not follow through. Toomey's mother claimed that she called Yau several times in the days following her son's discharge as his condition deteriorated. She alleged that she left messages asking that Yau refer her and her son to an appropriate therapist, and that Yau never called back.)

Whittaker v. University of Utah, Salt Lake County 3rd Dist., 2009 (failure to completely assess suicidality, verdict for defendant)

Winn v. University Hospital, 1997 Third District Court Salt Lake County, very small settlement after suicidal man released from hospital because of damaging information given by ex-wife to defense, legal issue; The parties also disputed whether a doctor could be forced to divulge information from the Plaintiff's ex-wife which the doctor argued was obtained in the course of a doctor-patient relationship and was therefore confidential. The court ordered disclosure of this information.

OTHER CASES

B.R. ex. rel. Jeffs v. West, 275 P.3d 754 (Utah 2012)(nurse practitioner liable for prescribing six medications to man who killed his wife, Concerta, Valium, Doxapin, Paxil, pregnenolone, and testosterone; duty owed by health care practitioners to non-patient third parties as a result of provider's negligence exists in cases alleging affirmative misconduct; requiring special relationship, such as custodial relationship, only in cases involving allegations of non-feasance or failure to act, unless the defendant is a state entity, in which case no affirmative duty absent custodial relationship)

Note: In 2016, the Utah legislature codified this holding into law, if the health care practitioner acts with “knowing and reckless indifference” toward the third party.

Castillo v. Eli Lilly, undisclosed settlement, Prozac made decedent violent and suicidal, suit only against pharmaceutical company

Eslinger v. Kmart, 2002, 1.5 million verdict, 1.5 million punitives for selling mentally ill man gun he used to kill himself, verdict thrown out for jury misconduct, new trial, confidential settlement

Franco v. Church of Jesus Christ of the Latter Day Saints, 21 P.3d 198 (Utah 2001)(action for clergy malpractice in pastoral counseling precluded by First Amendment protection of freedom of religion)

Harper v. Roundy, 2008 UT App. 267 (Ut.App. 2008)(case for misdiagnosis and wrongful involuntary civil commitment had to be dismissed because no notice of claim was served on agency)

Harryman v. Community Psychiatric Centers of Utah, Salt Lake County 3rd Dist. Ct, 1993 Utah Jury Verdicts and Settlements LEXIS 81, patient admitted to hospital after threatening suicide. When family visited, he was unshaven, and family was given a disposable razor so patient could shave. The family did not return the razor and the hospital failed to retrieve it. Patient found in a pool of blood; claims against both hospital (for not retrieving the razor) and the patient's doctor (for not putting him on suicide watch). Claim against doctor found not meritorious; claim against hospital meritorious; settlement 35k.

Higgins v. Salt Lake County, 855 P.2d 231 (Utah 1993)(outpatient stabs girl, no duty to prevent harm to unknown third parties)

Intermountain Healthcare v. Optum Health, 2015 UTAPP 284 (Ut. App. 2015)(setting aside judgment that healthcare organization was entitled to only three of eighteen days of payment for health care of a suicidal Medicaid payment)

J.R. v. Utah and Utah State Hospital, Weber County 2nd District Court, 1999 Utah Jury Verdicts and Settlements LEXIS 1467(institutionalized woman in relationship including hugging and kissing, with a psychiatric technician, who urged her to leave her husband; the technician met the husband and told him marriage was bad for the wife; hospital knew about the relationship and at first permitted them to continue seeing each other across a table; tech moves to California but keeps calling; woman eventually attempted suicide.) Case settled for 50k

Kallas v. Pfizer, 2005 (Zoloft caused suicide of 15 year old girl, inadequate warnings) undisclosed settlement

Neilson v. Eli Lilly (2002) (Prozac poses risk of suicidal and impulsive behavior; alleged that Eli Lilly failed to properly test drug, warn of negative side effects, and oversold the drug to doctors) undisclosed settlement

Rollins v. Peterson, 813 P.2d 1156 (Utah 1991(no duty to third party injured by patient who caused a car accident when facility failed to prevent patient from going AWOL and not adequately instituting its own AWOL procedures to recover him)

Scott v. Wingate Wilderness Therapy, No. 4:2018cv00002 (D.Utah March 14, 2019)(dismissing case against wilderness based therapy program because program is a 'health care provider' subject to Health Care Malpractice Act and statute of limitations and plaintiff did not comply with presuit obligations —on appeal at Tenth Circuit)

Shipley v. Forest Labs (plaintiff's husband kills himself under the influence of Lexapro—see Shipley v. Julien, above)

State v. Lopez, 2018 UT 5 (2018) (no threshold showing that the theory of fluid vulnerability of suicide was reliable method to evaluate the risk of suicide)

Vega v. Jordan Valley Medical Center 449 P.3d 31 (Utah 2019) bans requirement of certificate of merit if prelitigation panel declares lawsuit to lack merit. Previously, could not be filed without certificate from Division of Occupational and Professional Licensing if prelitigation panel declared

without merit. very important, guts prohibition on filing cases prior to prelitigation review declares major portions of Utah Health Care Malpractice Act unconstitutional. Only 90 day notice requirement remains. Two years limitation, four years repose, two years after person discovers or should have discovered injury, but no more than four years after the injury itself

Walker v. Orem 2007 (“ suicide by cop”) verdict for defense

Wickens v. Lemperle, 2020 Jury Verdicts 24054 , Dist. Ct. 3rd Jud. Dist. 2020 (failure to diagnose toxic reaction to Risperdal) unknown outcome

Wilson v. Wasatch violence against third parties

Licensing Actions

WestRidge Academy (2020)(no disciplinary action after young woman killed herself in bathroom; male staff member violated rule to watch people on suicide watch using the toilet)