[Cite as *Yurkowski v. Univ. of Cincinnati,* 2016-Ohio-7351.]

SHARON YURKOWSKI, Admr., etc., et al. Plaintiffs v. UNIVERSITY OF CINCINNATI Defendant	Case No. 2007-04311 Judge Patrick M. McGrath DECISION

{¶1} This matter was held before the court on May 11-12, 2016, as an evidentiary hearing ordered by the Tenth District Court of Appeals (Tenth District) in its decision on plaintiffs' second appeal. The decision in this case was originally rendered on October 6, 2011, after which the case was appealed by plaintiffs to the Tenth District. This court's original decision was reversed and remanded on the basis that the standard to apply to Dr. James Curell's decision to release Peter was the ordinary care standard rather than the professional judgment rule, and the court was to determine "whether Dr. Curell's decision to release Peter from [the hospital] on March 22, 2005 fell below the applicable standard of care." *Yurkowski v. Univ. of Cincinnati*, 10th Dist. Franklin No. 11AP-974, 2013-Ohio-242, ¶ 31. On remand, this court ordered briefs from the parties and rendered a decision finding that Dr. Curell complied with the ordinary care standard as set forth in the Tenth District's decision. The decision was again appealed by plaintiffs and the Tenth District reversed and remanded this court's decision based on the fact that it did not hold an evidentiary hearing when deciding the standard of care issue. Accordingly, an evidentiary hearing was held pursuant to the Tenth District's directive.

{¶2} At the beginning of the hearing, plaintiff presented a motion for an immunity decision, a motion to add defendants, and a jury demand for the claims against the additional defendants. The court denied plaintiffs' motion on the basis that immunity has already been determined in the case and that the only directive from the Tenth District was to determine the narrow issue of whether Dr. Curell's decision to discharge Peter fell below the standard of care. At the end of plaintiffs' case in chief, defendant moved to dismiss the case on the grounds that plaintiffs failed to establish proximate cause and that their own expert, Dr. Robert Granacher, testified that he could not determine the proximate cause of Peter's suicide to a reasonable degree of medical certainty. The court also denied defendant's motion on the basis that the only question to be determined is if there was a breach of the standard of care. The parties filed simultaneous post-trial briefs on June 14, 2016. The following constitutes the court's findings of fact and conclusions of law.

{¶3} This case stems from the suicide of Peter Yurkowski (Peter). Peter's wife and two children have brought claims of wrongful death and loss of consortium, alleging that defendant, University of Cincinnati, was negligent in the discharge of Peter from University Hospital on March 22, 2005. More specifically, plaintiffs argue that Dr. Curell's decision to discharge Peter fell below the standard of care and proximately caused Peter's suicide. The Tenth District summarized the relevant facts as follows:

{¶4} "Peter struggled with mental health issues in his youth, culminating in a suicide attempt at age 18. He recovered from that episode and married Sharon in 1985. The couple subsequently had two children, Daniel and Cara. Peter received a doctorate in pharmacy and, in 1992, began working as a clinical pharmacist at University Hospital ('UH') in Cincinnati. In addition to his clinical duties at the hospital, Peter traveled extensively throughout the country lecturing on pharmacology-related topics. He also participated in various community activities.

{¶5} "Peter's mental health issues resurfaced in September 2000, when he became extremely anxious and began to suffer from psychosomatic illnesses that prevented him from traveling. Peter was admitted to the UH emergency room with symptoms of severe anxiety and depression. Because he did not want to be treated at the same hospital at which he was employed, he was subsequently transferred to Christ Hospital for inpatient treatment. He was released a few days later, but was again treated at Christ Hospital in December 2000.

{¶6} "In January 2001, Peter had another psychiatric episode. Due to a shortage of beds at Christ Hospital, he was admitted to UH for inpatient treatment with Dr. James Curell. Dr. Curell, an associate professor of clinical psychiatry at the university and an attending psychiatrist on the inpatient adult psychiatry unit at UH, knew Peter professionally and was aware that he had been diagnosed at Christ Hospital with major depression and panic disorder. Dr. Curell adjusted the medications Peter had been prescribed at Christ Hospital and urged him to curtail his lecturing and community activities in order to relieve stress. Peter responded well to the adjustments, and thereafter saw Dr. Curell only on an outpatient basis for the next two and one-half years. Early in this period, Dr. Curell diagnosed Peter with bipolar 2 disorder; however, he subsequently abandoned that diagnosis and confirmed that Peter suffered from major depression and panic disorder.

{¶7} "In June 2004, Peter began a series of inpatient hospitalizations and outpatient treatment due to his worsening psychiatric state and multiple suicide attempts. In total, Peter was admitted to UH for inpatient psychiatric treatment ten times between June 2004 and February 2005. Medical records from each admission include detailed evaluations, diagnoses, progress notes, treatment plans, and discharge summaries from Dr. Curell and his psychiatric treatment team. Peter's treatment regimen included a combination of various mood-stabilizing, anti-anxiety, and anti-

depressant medications, group and individual psychotherapy sessions, and electroconvulsive therapy.

{¶8} "In early February 2005, Dr. Curell sought a second opinion regarding Peter's treatment from psychiatrist Dr. Paul Keck, an expert in bipolar disorders and related psychopharmacology. After meeting with Peter and reviewing his medical and psychiatric history, Dr. Keck concurred with Dr. Curell's diagnosis of major depression and panic disorder and agreed that Peter did not suffer from bipolar 2 disorder. While Dr. Keck recommended adjustments to some of Peter's medications, including the addition of lithium, he did not recommend involuntary commitment to a mental health facility. Peter was subsequently discharged from UH.

{¶9} "One day after his discharge, Peter obtained a bottle of lithium from the UH pharmacy and ingested a significant quantity of the drug. Following medical treatment related to the overdose, Peter was transferred to the UH inpatient psychiatric unit. In mid-February 2005, Peter reported to Dr. Curell that his wife was planning to divorce him, and that he would not be permitted to return to the marital home upon his release from UH.

{¶10} "Peter remained in the inpatient psychiatric unit until March 22, 2005. During this period, Peter often expressed suicidal thoughts, and Dr. Curell contemplated transferring him to Summit Behavioral Health ('Summit'), a state psychiatric hospital, for long-term inpatient psychiatric treatment. However, in late February 2005, Peter began to improve, and Dr. Curell authorized him to leave UH for one day in order to secure a place to live upon his release. Upon his return to UH, Peter reported that he had located an apartment.

{¶11} "On March 1, 2005, Peter was served with divorce papers, and by March 4, 2005, had 'decompensated' to the point where Dr. Curell believed Peter to be 'acutely dangerous' to himself. (Tr. 155). Dr. Curell ordered that Peter be placed in restraints and adjusted his medication in the hope of preventing another psychiatric episode. At

this point, Dr. Curell was convinced Peter should be transferred to Summit; his progress notes in early-to-mid March indicate that transfer was imminent. However, by March 18, 2005, Peter exhibited significant improvement. According to Dr. Curell, Peter denied suicidal ideation, completed paperwork related to his divorce, discussed returning to work, and requested that he be discharged to his apartment rather than to Summit. At this point, Dr. Curell, although 'still suspicious' and 'worried because of [Peter's] up-and-down pattern,' concluded that Peter would not benefit from long-term inpatient treatment at Summit. (Tr. 161.). Indeed, Dr. Curell believed that involuntary commitment would be so devastating to Peter's self-esteem that he wouldn't ever recover.

{¶12} "Dr. Curell candidly discussed with Peter his reservations about discharging him from inpatient treatment. He ultimately concluded that Peter's best chance at recovery was to return to employment and begin living independently. Dr. Curell discharged Peter on March 22, 2005, with the proviso that Peter contact him immediately upon experiencing anxiety or suicidal ideation. Dr. Curell's progress notes from that day indicate that Peter was engaged with the staff, had no anxiety issues or suicidal ideation, and was planning to return to work the next week.

{¶13} "Peter attended outpatient treatment sessions with Dr. Curell on March 25, April 4 and 13, 2005. Dr. Curell's progress notes from those sessions indicate that, although Peter was sad about his impending divorce and remained 'at risk,' he had no depressive episodes or acute sundial thoughts, had a bright and hopeful affect, had returned to work and moved into his apartment, and was taking his medications as prescribed. (Tr. 179.)

{¶14} "Sharon and the children remained in close contact with Peter following his discharge. According to Sharon, Peter was sad about living apart from the family, but was not anxious or agitated and did not exhibit any suicidal behavior. On April 17, 2005, Sharon and Peter celebrated their daughter's birthday together and made plans to attend an event later in the week. The next day, Peter committed suicide by

ingesting a lethal overdose of olanzapine, a prescription medication, and diphenhydramine, an over-the-counter antihistamine." *Yurkowski v. Univ. of Cincinnati*, 10th Dist. Franklin No. 11AP-974, 2013-Ohio-242, at ¶¶ 2-12.

{¶15} The only question before the court is whether Dr. Curell's decision to release Peter from UH on March 22, 2005 fell below the the applicable standard of care. In order to prevail on a claim of medical malpractice, plaintiffs must first prove: 1) the standard of care recognized by the medical community; 2) the failure of defendant to meet the requisite standard of care; and 3) a direct causal connection between the medically negligent act and the injury sustained. *Bruni v. Tatsumi*, 46 Ohio St.2d 127 (1976). The appropriate standard of care must be proven by expert testimony. *Id*., at 130. That expert testimony must explain what a medical professional of ordinary skill, care, and diligence in the same medical specialty would do in similar circumstances. *Id*. In this case, the experts agreed that the standard of care in determining whether to discharge a patient is to make a suicide assessment and weigh the positive and negative factors.

{¶16} Plaintiffs presented the expert testimony of Dr. Granacher, a semi-retired psychiatrist who works part-time at a community mental health clinic. His last affiliation with a hospital with a similar inpatient psychiatric unit as UH was in 2002. Dr. Granacher testified that Dr. Curell's decision to release Peter and his treatment plan fell below the standard of care. First, Dr. Granacher testified that Dr. Curell failed to make an adequate suicide assessment of Peter before releasing him, an opinion he supports by the fact that there is no documentation of a risk assessment. Dr. Granacher also testified that Peter's risk factors outweighed the factors in his favor. More specifically, Dr. Granacher pointed to Peter's diagnosis, pharmaceutical background, history of suicide and the increased frequency of attempts, and impending divorce. Dr. Granacher opined that Peter also suffered from bipolar disorder which increased the likelihood that Peter would commit suicide. In addition, Dr. Granacher felt

that Peter was incompetent to manage his own health, safety, and welfare. Dr. Granacher supported this by pointing to Peter's Global Assessment of Functioning (GAF) score, which Dr. Granacher considered to be severely impaired. Dr. Granacher believed that Dr. Curell should not have left Peter with the responsibility to reach out if he needed help and also that Dr. Curell should not have trusted Peter's accounts of how he was doing. Concerning Peter's treatment plan, Dr. Granacher was critical of the medication prescribed by Dr. Curell. Specifically, Dr. Granacher testified that Peter should have been placed on lithium or clozapine because they have been shown to reduce the risk of suicide and would have treated Peter's bipolar disorder. Dr. Granacher also stated that Peter should not have been given a two-week supply and an additional prescription of his medication at discharge.

{¶17} In rebuttal, defendant presented the testimony of Dr. Curell and Dr. Mark Schechter. Dr. Curell testified that the standard of care to release patients is whether the patients are at imminent risk to hurt themselves. Dr. Curell also testified that although Peter would always remain at risk for suicide after being discharged, Peter was not at imminent risk to hurt himself and that he believed that Peter had improved dramatically and had begun to focus on his future. More specifically, Peter had been given a pass to leave the hospital and search for an apartment. Even though there was a risk in granting the pass, Peter found an apartment and returned to the facility. Furthermore, Peter had discussed going back to work as a pharmacist. Dr. Curell stated that at every moment with Peter, he was assessing for suicide and that the week before his release, Peter was stable, was participating in activities, had a plan, was hopeful, and had a brighter affect. Peter's improvement was noted by others on the psychiatric team as well. Dr. Curell testified that although there was no documentation of a suicide assessment on the day of Peter's release, he did conduct one but just did not complete the paperwork.

{¶18} Dr. Curell also testified that psychiatric patients are supposed to be treated in the least restrictive setting available and that the average stay of patients in the psychiatric unit at UH is seven to eight days. Peter stayed for six weeks, from February 8, 2005 to March 22, 2005. Dr. Curell testified that Peter could have entered a long term inpatient facility like Summit, but the facility was only for those with severe mental illness and that Peter was likely not eligible to go to Summit because he would not have met the acuity level. With regard to the assertion by Dr. Granacher that Peter suffered from bipolar disorder, Dr. Curell testified that he reached out to Dr. Keck, a renowned authority on bipolar disorder, to perform a consult on Peter. Dr. Keck also concluded that Peter was not bipolar, but suffered from severe depression with anxiety.

{¶19} Dr. Schechter is a board-certified psychiatrist who serves as chair of the North Shore Medical Center psychiatry department and teaches at Harvard Medical School on suicide risk assessment and risk management psychotherapy. He testified that he does not think that Dr. Curell breached the standard of care, and also agreed with Dr. Curell that the criteria for discharge was whether the patient's condition had stabilized or remitted, or the acuity lessened to the point where 24/7 observation was no longer required, and whether the patient's care can be continued on an outpatient basis. Dr. Schechter also did not think that Peter was qualified to enter Summit. Furthermore, Dr. Schechter stated that just because Peter's GAF score was low and that Peter was always going to have certain risk factors, his clinical risk factors of anxiety, insomnia, agitation, and hopelessness had greatly improved prior to his release. With regard to Peter's treatment plan after his release, Dr. Schechter stated that although lithium can theoretically decrease suicide risk, no double-blind study had shown that it actually reduces suicidality, and that there is no evidence to support that clozapine would decrease suicide risk in severely depressed but otherwise non-psychotic patients. Moreover, Peter had attempted suicide with lithium in the past, so prescribing lithium again was ill-advised.

{¶20} Based on the foregoing, the court finds the testimony of Dr. Curell and Dr. Schechter to be more persuasive than Dr. Granacher. The court further finds that plaintiffs have failed to prove by a preponderance of the evidence that Dr. Curell's release of Peter on March 22, 2005 fell below the standard of care. Although the court acknowledges the tragic nature of this case, it finds that Dr. Curell performed a suicide assessment prior to Peter's release and weighed the risks of discharging Peter during his last inpatient stay at UH. The court also finds that Dr. Curell, who had a long history and relationship with Peter, was aware of Peter's tendencies and used his knowledge to properly evaluate whether or not to allow Peter's discharge.

{¶21} Assuming, however, that Dr. Curell did breach his duty, the court finds that plaintiffs have failed to establish proximate cause by a preponderance of the evidence. Plaintiffs' own expert testified that he was not able to identify the proximate cause of Peter's death. Dr. Granacher testified that only Peter could answer the proximate cause question, and that at some point, Peter could have stopped his medications and killed himself. Accordingly, plaintiffs' medical malpractice claim also fails on the proximate cause issue. Judgment shall be rendered in favor of defendant.

PATRICK M. MCGRATH
Judge

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{¶22} On November 15, 2013, this court issued a judgment in favor of defendant. On April 21, 2015, the Tenth District Court of Appeals reversed the judgment of this court and remanded the case for further proceedings.

{¶23} In accordance with the opinion of the Tenth District, this court finds that based upon the evidence, and for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

cc:

Mitchell W. Allen
P.O. Box 227
Mason, Ohio 45040

Anne Berry Strait
Assistant Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

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