Commander's Log

LEGAL UPDATES FOR MARYLAND CORRECTIONAL OFFICERS

July 2015

QUESTION: **Do inmates have a right to be screened correctly for suicidal tendencies?**

ANSWER: **No. There is no absolute right requiring detainees to be given psychological screenings. Inmates have a clearly established right to adequate medical care, but that right does not include compulsory screenings for suicidal tendencies.**

CASE: ***Stanley Taylor, et al. v. Karen Barkes, et al.,* Supreme Court of the United States**
Decided June 1, 2015

The Pre-Trial Detainee's Incarceration, Mental Health Screening, and Suicide

Christopher Barkes, "a troubled man with a long history of mental health and substance abuse problems," was arrested on November 3, 2004, for violating his probation. Barkes was taken to the Howard R. Young Correctional Institution in Wilmington, Delaware. As part of Barkes's intake, a nurse who worked for the contractor providing healthcare at the Institution conducted a medical evaluation. The evaluation included a mental health screening designed in part to assess whether an inmate was suicidal. The nurse employed a suicide screening form based on a model form developed by the National Commission on Correctional Health Care (NCCHC) in 1997. The form listed 17 suicide risk factors. If the inmate's responses and nurse's observations indicated that at least eight were present, or if certain serious risk factors were present, the nurse would notify a physician and initiate suicide prevention measures.

Barkes disclosed that he had a history of psychiatric treatment and was on medication. He also disclosed that he had attempted suicide in 2003. And he indicated that he was not currently thinking about killing himself. Because only two risk factors were apparent, the nurse gave Barkes a "routine" referral to mental health services and did not initiate any special suicide prevention measures.

Barkes was placed in a cell by himself. Despite what he had told the nurse, that evening he called his wife and told her that he "can't live this way anymore" and was going to kill himself. Barkes's wife did not inform anyone at the Institution of this call. The next morning, correctional officers observed Barkes awake and behaving normally at 10:45, 10:50, and 11:00 a.m.

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At 11:35, however, an officer arrived to deliver lunch and discovered that Barkes had hanged himself with a sheet.

The Lawsuit, the Response, and Rulings of the Lower Courts:

Barkes's wife and children brought suit under 42 U.S.C. §1983 against various entities and individuals connected with the Institution, who they claimed violated Barkes's civil rights in failing to prevent his suicide. Among those sued were Stanley Taylor, the Commissioner of the Delaware Department of Correction, and Raphael Williams, the Institution's warden. Although it was undisputed that neither Taylor nor Williams had interacted with Barkes or knew of his condition before his death, the plaintiffs alleged that they had violated Barkes's constitutional right to be free from cruel and unusual punishment. They did so, according to the plaintiffs, by failing to supervise and monitor the private contractor that provided the medical treatment—including the intake screening—at the Institution. Taylor and Williams, through their attorneys, moved for summary judgment, contending that they were entitled to qualified immunity from suit and liability. The federal trial court denied their motion and the Court of Appeals for the Third Circuit affirmed. In deciding the qualified immunity issue, the appellate court first decided that it was clearly established at the time of Barkes's death that an incarcerated individual had an Eighth Amendment "right to the proper implementation of adequate suicide prevention protocols." The court then concluded that there were sufficient factual disputes (relating to the supervision of the medical contractor) to allow the case to proceed to the next phase. One dispute concerned the fact that the screening process did not comply with the NCCHC's latest standards, as required by the contract. Those standards called for a revised screening form and for screening by a qualified mental health professional, not a nurse. There was also evidence that the contractor did not have access to Barkes's probation records (which would have shed light on his mental health history, including other suicide attempts), and that the contractor had been short-staffing to increase profits.

The Supreme Court's Decision

The Supreme Court reversed the decisions of the lower courts, finding that there had been no violation of clearly established law by Taylor and Williams, and that, as such, both were entitled to qualified immunity. Qualified immunity shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct. The Supreme Court said that no decision issued by it had ever established a "right to the proper implementation of adequate suicide prevention protocols." In fact, no decision of the Supreme Court had even discussed suicide screening or prevention protocols. To the contrary, the weight of authority from other courts suggested that, at the time of Barkes's death, such a right did not exist. In other words, what judicial authority there was, indicated that the right to medical care for serious medical needs did not encompass the right to be screened correctly for suicidal tendencies.

NOTE: Obviously, the best correctional practice is to provide mental health screenings for all persons committed to custody, and to aggressively screen for suicidal tendencies. In light of this opinion, make sure that your institutional mental health screening protocols meet current standards and that proper oversight and supervision is provided to ensure compliance.

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