

Court must reconsider medical examiner's ask for lawsuit immunity

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Federal appeals judges said a Texas district court must reexamine a case in which a medical examiner is seeking immunity from a lawsuit accusing him of violating a man's federal civil rights, a civil lawsuit filed after prosecutors dropped criminal charges that the man murdered his wife.

Initially, the U.S. District Court for the Southern District of Texas denied Darshan R. Phatak, MD's request that the lawsuit against him not be allowed to go forward because qualified immunity protects him in his public service role, instead analogizing Dr. Phatak's case to one in which medical examiners did intentionally fabricate evidence. But the U.S. Court of Appeals for the 5th Circuit in New Orleans recently ruled that the lower court analysis in *Dean v Phatak* only cited allegations in the court pleadings instead of referencing evidence such as affidavits and depositions in its decision.

"In the absence of an identification of summary judgment evidence relied upon, we cannot affirm the denial of qualified immunity, and, in deference to the district court, we decline to search the record further," 5th Circuit Court judges wrote in their opinion. "That effort must be undertaken by the district court in the first instance—mindful that unless a rational juror could find that [Dr.] Phatak intentionally misstated his finding, he is entitled to qualified immunity. Negligence, even gross negligence is not sufficient."

The appeals court guided the lower court to look at and cite "depositions, documents, affidavits or declarations, stipulations, admissions or other materials in the record—upon which the dispute rests."

Case threatens physician immunity

Requiring the lower court to take another look at the case and reminding them of the parameters of qualified immunity is positive news for physicians who rely on those protections to do their jobs without fear of retribution.

The Litigation Center of the AMA and State Medical Societies, along with the National Association of Medical Examiners, College of American Pathologists, Texas Medical Association and Texas Society of Pathologists filed a friend-of-the-court brief when the case went to the 5th Circuit in 2017.

Organized medicine asked the court to apply qualified immunity in Dr. Phatak's case, saying it was "greatly concerned" the lower court's ruling would have a "significant chilling effect" on forensic pathologists and other government-employed physicians who traditionally have been shielded from lawsuits by immunity protections.

The amicus brief urged the 5th Circuit to uphold the protections, stressing that qualified immunity is important because it allows medical examiners and other publicly employed physicians—including those in prisons and publicly owned health care facilities—to fearlessly render medical opinions.

If no intentional actions, no case

Dr. Phatak was sued after he followed the standard of care while compiling an autopsy report for a woman who died from a gunshot wound. He concluded the woman died from a homicide after reviewing investigator reports and photos of the scene, looking at gunshot residue testing results and the woman's psychiatric history, and, among other things, talking to law enforcement about the case.

The woman's former husband, Noel T. Dean, was tried for the death in a trial that concluded with a hung jury. After Dr. Phatak's cross-examination in the second trial, the medical examiner's office changed the autopsy report conclusion to state that the cause of death was "undetermined."

Charges against Dean were dropped, and Dean sued Dr. Phatak and several other government officials and agencies for violation of his federal civil rights.

Dr. Phatak moved for summary judgment, saying he fulfilled his duties as a medical examiner in good faith. And the friend-of-the-court brief argues that if there were a misstep in Dr. Phatak's diagnosis, it would rise to no more than ordinary negligence, not a civil rights action.

Similar to what was noted in the amicus brief, the 5th Circuit justices advised the lower court to remember the bar that needs to be met to take away qualified immunity, underscoring that if there are not "facts upon which a reasonable jury could conclude that [Dr.] Phatak intentionally fabricated the report, the district court should grant [Dr.] Phatak's motion for summary judgment."