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## Pa. Justice Questions Scope Of Mental Health Liability Waiver

By **Matt Fair**

Law360, Philadelphia (September 11, 2019, 9:07 PM EDT) -- A Pennsylvania Supreme Court justice cast doubt during a hearing Wednesday over whether a Philadelphia-area rehabilitation center could rely on a statute limiting the liability of mental health care providers to avoid claims over the death of a patient.

Justice Kevin Dougherty noted that Andrew Johnson, who died from cardiac arrhythmia during a stint at a CRC Health Group Inc. facility, had not been seeking treatment for mental health problems when he checked into rehab. And a psychiatric evaluation that was ordered after an episode of hallucination was not enough to bring the center under the ambit of the state's Mental Health Procedures Act, the justice suggested.

"We have an individual who came in because he needed to get off pills," he said. "It wasn't get off the pills and receive mental health treatment."

The appeal comes after a **July 2018 ruling** by the Pennsylvania Superior Court that found CRC could avoid medical malpractice claims under the MHPA because the facility's purported failure to notice symptoms of cardiac arrest came after Johnson was ordered to undergo a psychiatric evaluation for erratic behavior and hallucinations.

Johnson died following a 10-day stay at CRC's Bowling Green-Brandywine facility, where he'd been admitted for addiction to prescription painkillers that he started taking after an ATV accident.

According to court records, however, Johnson was brought to the emergency room on the fourth day of his stay at Bowling Green-Brandywine, after reporting that he couldn't move, couldn't see and "didn't feel right."

He was hospitalized again the following day after making comments indicating he was hallucinating.

A subsequent psychiatric evaluation ordered by a Bowling Green-Brandywine doctor resulted in Johnson being diagnosed with mood and anxiety disorder, and being placed on medication to treat bipolar disorder.

That night, staff at Bowling Green-Brandywine declined to transport him to the emergency room, and he was subsequently found unresponsive on the floor of his room and later died.

Johnson's mother and father, Melissa Dean and Clifton Johnson, filed suit against the facility on his behalf in the Chester County Court of Common Pleas five years ago, only to see their case thrown in the middle of trial in March 2017.

Anthony Brichta, an attorney with Buckley Brion McGuire & Morris LLP, told the justices during arguments Wednesday that questions about Johnson's mental health were ancillary to the treatment he'd actually sought from Bowling Green-Brandywine.

"There's nothing that indicated he needed or would've received mental health care if he hadn't presented for substance abuse treatment," he said.

He added that he believed the Superior Court's ruling in the case would give health care providers an easy out for avoiding malpractice claims any time there are any questions about a patient's mental health.

"The standard that the Superior Court used is vague and too broad," he said. "It's hard to envision scenarios that wouldn't fall under this decision."

Suzanne Utke, an attorney with Weber Gallagher Simpson Stapleton Fires & Newby LLC who represents one of the doctors targeted in the case, said that Johnson's mental health issues were far from incidental.

"He was a mental health patient before he ever came to Bowling Green," she said, noting that he'd reported on an intake form that he suffered from ADHD and bipolar disorder.

But Justice Dougherty pushed back, noting that, notwithstanding the self-reporting of preexisting conditions, the intake forms did not indicate that Johnson was seeking treatment for any mental illness.

Sarah Baker, an attorney with Bonner Kiernan Trebach & Crociata LLP who represents another doctor defendant, said that it was important for the justices to recognize the growing confluence of addiction treatment and mental health services.

"The provision of mental health care is moving more and more into facilities like Bowling Green," she said.

The justices took the case under advisement.

Dean is represented by Patrick Mintzer and Anthony Brichta of Buckley Brion McGuire & Morris LLP.

The defendants are represented by Sarah Baker and Ava Plakins of Bonner Kiernan Trebach & Crociata LLP, Michael McGilvery of Young & McGilvery PC, Daniel Rucket, Carl Buchholz and Angela Heim of Rawle & Henderson LLP, Gary Samms and Mark Hermanovich of Obermayer Rebmann Maxwell & Hippel LLP, and Suzanne Utke of Weber Gallagher Simpson Stapleton Fires & Newby LLC.

The case is *Melissa Dean v. Bowling Green-Brandywine*, case number 26 MAP 2019, before the Pennsylvania Supreme Court.

--Editing by Gemma Horowitz.