

SUBJECTIVE KNOWLEDGE: IT MIGHT BE WHAT A JURY INFERS YOU KNEW

Prepared by:
Bide Akande
Heyl, Royster, Voelker & Allen, P.C.

LORMAN[®]

April 2017

Subjective Knowledge: It Might Be What a Jury Infers You Knew, ©2017 Lorman Education Services. All Rights Reserved.

INTRODUCING

Lorman's New Approach to Continuing Education

ALL-ACCESS PASS

The All-Access Pass grants you **UNLIMITED** access to Lorman's ever-growing library of training resources:

- ☑ Unlimited Live Webinars - 120 live webinars added every month
- ☑ Unlimited OnDemand and MP3 Downloads - Over 1,500 courses available
- ☑ Videos - More than 700 available
- ☑ Slide Decks - More than 1700 available
- ☑ White Papers
- ☑ Reports
- ☑ Articles
- ☑ ... and much more!

Join the thousands of other pass-holders that have already trusted us for their professional development by choosing the All-Access Pass.



Get Your All-Access Pass Today!

SAVE 20%

Learn more: www.lorman.com/pass/?s=special20

Use Discount Code Q7014393 and Priority Code 18536 to receive the 20% AAP discount.

*Discount cannot be combined with any other discounts.

Subjective Knowledge: It Might Be What a Jury Infers You Knew

By: Bide Akande

How bad does an inmate's care have to be to create a reasonable inference that a doctor was aware of, and disregarded, a substantial risk of harm? This was the issue considered by the Seventh Circuit Court of Appeals in their August 23, 2016 *en banc* decision in *Petties v. Carter*, No14-2674 (2016). In *Petties*, the plaintiff brought a Section 1983 claim for deliberate indifference against two doctors at Stateville Correctional Facility regarding treatment associated with a ruptured Achilles tendon. *Id.* at 1-4. All agreed that the plaintiff's Achilles tendon rupture constituted an objectively serious condition, but there was a dispute concerning whether defendants acted with deliberate indifference in responding to the rupture. The *en banc* court aimed to clarify when a doctor's rationale for his or her treatment decisions supports a triable issue of fact as to whether that doctor acted with deliberate indifference under the Eighth Amendment. To constitute a triable issue, plaintiff had to provide evidence that defendants *actually* knew of and disregarded a substantial risk of harm to the plaintiff. *Id.* at 6-7 (citing *Farmer v. Brennan*, 511 U.S. 825, 844 (1994)) (emphasis added).

In their motions for summary judgment, defendants submitted testimony that they alleged presumably and definitively established their subjective beliefs concerning both the nature of plaintiff's injury

as well as **the** reasonable care and treatment for the condition. Rejecting the defendants' assertion that only they could testify competently regarding their actual knowledge, the Seventh Circuit Court of Appeals found a triable issue of fact regarding the issue of the defendant physicians' subjective knowledge.

To reach this conclusion, the court examined case precedent to point out examples of actions and medical decisions that were found to constitute deliberate indifference. Evaluating the facts of the case through the filter of these examples, the court reasoned that a jury could infer that the first of two treating physicians (here called "Dr. One") subjectively knew that:

1. Plaintiff's condition required immobilization to properly heal and prevent further damage; and
2. failure to immobilize the Achilles rupture would prolong pain and impede recovery.

These elements could be inferred from Dr. One's general testimony regarding how to treat an Achilles tendon rupture. *Id.* at 13-14. From this circumstantial evidence, the court held that a jury could also reasonably conclude that Dr. One knowingly caused plaintiff substantial harm. *Id.* The court also held that plaintiff provided a triable issue of fact as to whether the second treating physician ("Dr. Two") was deliberately indifferent by presenting evidence that Dr. Two refused to order physical therapy treatment in accordance with the specialist's order. *Id.* at 17-18.

In presenting its holding, the court stated that "even if a doctor denies knowing that he was exposing plaintiff to a substantial risk of serious harm, evidence from which a reasonable jury could infer a doctor knew

he was providing deficient treatment is sufficient to survive summary judgment." *Id.* at 2. In its holding, the court emphasized that they have repeatedly rejected the notion that "the provision of some care" automatically meant that a doctor's medical treatment met the basic standards of the Eighth Amendment. *Id.* at 12. Instead, the context surrounding a doctor's medical treatment decisions can potentially override his or her claimed ignorance of the risks arising from that decision. *Id.*

When a doctor says he did not realize his treatment decisions (or lack thereof) could cause serious harm to a plaintiff, a jury is entitled to weigh that explanation against certain clues that the doctor *did* know.... [W]here evidence exists that the defendants knew better than to make the medical decisions that they did, a jury should decide whether or not the defendants were actually ignorant to risk of the harm that they caused. *Id.* at 12-13.

The dissent argued that precedent established in the case of *Estelle v. Gamble* shielded doctors from liability so long as those doctors provide palliative care to prisoners; however, the majority rejected this argument. Instead, the majority established that *Estelle* explicitly held that a violation of the Eighth Amendment can be established whether "the indifference is manifested by prison doctors *in their response to the prisoner's needs* or by prison guards in intentionally denying or delaying access to medical care *or* intentionally interfering with the treatment once prescribed." *Petties*, No. 14-2674 at 5 (citing *Estelle*, 429 U.S. 97, 104-05) (emphasis added). "*Regardless of how evidenced*, deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983." *Petties*, No. 14-2674 at 5 (citing *Estelle*, 429 U.S. 97, 104-05) (emphasis added). The majority

opinion stated that the dissent collapsed “these distinct avenues to proving deliberate indifference into one” to argue, incorrectly, that *any* response by a physician, so long as it is not harmful, satisfies the Eighth Amendment. *Petties*, No. 14-2674 at 5-6. The majority opinion also rejected the dissent’s characterization of plaintiff’s claims as a challenge to the quality of his medical care. *Id.* at 13. Instead, the majority determined that plaintiff argued that his doctors’ treatment decisions and the resulting harmful consequences supported an assertion that the defendants deliberately refused to provide care they knew that plaintiff required. *Id.*

This holding clarifies that §1983 defendants cannot defeat a claim on summary judgment by simply pointing out that the plaintiff received some form of medical treatment. To avoid the result of the *Petties* case, medical providers should be prepared to articulate a reasonable rationale for how their treatment decisions are consistent with accepted professional standards and/or be able to provide a medically justifiable basis for deviating from them. Thus, defendants must be cautious when receiving specific instructions from a specialist that is simultaneously treating the same inmate/patient and be aware of existing treatment protocols. Evidence of delaying treatment or pursuing easier and less efficacious forms of treatment that might exacerbate plaintiff’s pain/medical condition can also establish a departure from minimally competent medical judgment. See *Id.*, 9-11. Even if a doctor denies knowing that he was exposing a plaintiff to a substantial risk of serious harm, evidence from which a reasonable jury could infer a doctor knew he was providing deficient treatment can be sufficient to survive a motion for summary judgment.

