EXPERT WITNESS REPORT OF DR. BHUSHAN SHREERAM AGHARKAR, F.A.P.A., M.D., 2016 Expert Reports & Affidavits LEXIS 91

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA, BATON ROUGE DIVISION

Case 3:15-cv-00236-SDD-EWD

June 8, 2016

Reporter
2016 Expert Reports & Affidavits LEXIS 91 *

Dominick Perniciaro, III v. Hampton "Steve" Lea, M.D., et al.

Expert Name: Dr. Bhushan Shreeram Agharkar, , M.D., , F.A.P.A.

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Counsel

[*1] Laura Thornton, Esq., New Orleans.

Text

Re: Mr. Dominick Perniciaro

DOB: [TEXT REDACTED IN ORIGINAL SOURCE]

Dear Ms. Thornton:

Enclosed is my report concerning the psychiatric evaluation of Mr. Dominick Perniciaro, performed on May 16, 2016. This evaluation was performed pursuant to your request, in order to assess Mr. Perniciaro's psychiatric difficulties, the effect of physical trauma upon his mental condition, and treatment recommendations. The opinions **[*2]** expressed in my report represent my professional opinion to a reasonable degree of psychiatric certainty, based upon my training and experience, clinical interview with Mr. Perniciaro, and review of relevant records provided by you.

A copy of this report is being sent only to you.

Summary of Qualifications

My name is Bhushan S. Agharkar, M.D. I have been licensed to practice medicine in Georgia since 2002. I am a psychiatrist in private practice with Comprehensive Psychiatric Services of Atlanta. I am an Assistant Professor of Psychiatry at Morehouse School of Medicine and a Clinical Assistant Professor with the Emory University School of Medicine. I earned my Doctor of Medicine degree from the State University of New York Health Science Center at Syracuse, completed my residency at Emory University School of Medicine Department of Psychiatry and Behavioral Sciences where I was Chief Resident, as well as a Forensic Psychiatry Fellowship. I hold dual board

certification as a Diplomate of Adult Psychiatry (AP) and Forensic Psychiatry (FP) of the American Board of Psychiatry and Neurology (ABPN). I am also a Distinguished Fellow of the American Psychiatric Association. **[*3]** My curriculum vita is attached.

Sources of Information:

I was retained by counsel for Dominick Perniciaro to conduct a psychiatric evaluation of Mr. Perniciaro. I conducted a face-to-face clinical interview of Mr. Perniciaro at Eastern Louisiana Mental Health Hospital (ELMHS) on May 16, 2016, for approximately 1.5 hours. I have also reviewed voluminous documentary evidence in this case, attached as an index.

Notification of Non-Confidentiality:

At the outset of the evaluation, I informed Mr. Perniciaro that I was conducting a psychiatric evaluation, that it was not confidential, that anything he told me I might be asked to testify about in court, and that a copy of this report would be sent only to you. Mr. Perniciaro stated that he understood these conditions and agreed to proceed. He also consented to having his medical records reviewed as part of this evaluation.

History of Presenting Problem:

Mr. Perniciaro is a 31-year-old Caucasian male currently housed at ELMHS following an NGRI adjudication. Documentary evidence indicates he has been diagnosed with a psychotic condition for at least the past eleven years. He was first admitted to ELMHS in August **[*4]** 2013 after being found incompetent to stand trial. During that hospital admission, Mr. Perniciaro was violent and assaultive to staff and other patients. Medical records indicated his violence was "in response either to paranoid delusions or command hallucinations." He was finally discharged to the jail in March 2014 after being restored to competence.

The next month, Mr. Perniciaro was re-admitted to ELMHS after again being found incompetent to stand trial. He was attacked by another patient that month in an unprovoked attack and suffered a non-displaced jaw fracture. In May 2014, while under close observation of staff, Mr. Perniciaro was again assaulted by a patient and suffered a "scratch to ridge of nose and left frontal of head." There are numerous instances during this hospitalization where Mr. Perniciaro either attempted to, or did successfully, attack guards, staff, and patients. In October 2014, Mr. Perniciaro's father filed a consumer complaint alleging, "Dominick's left shoulder appears to have been broke and left to heal in a deformed manner - previously when Dominick jaw was broken and eye socket fractured at the facility by a patient I was told this was a retaliation. **[*5]** I also was told that this patients were separated after there were incidents. Why were these two men not in separate units. Dominick also had black and blue marks on his leg that were investigated at a different time." In December 2014, Mr. Perniciaro was deemed restored to competence and discharged back to the jail. In April 2015, he was found NGRI and returned to ELMHS shortly thereafter, where he has remained since.

Although Mr. Perniciaro initially refused to meet with me on May 16, 2016, after his attorney spoke with him and explained who I was, he agreed to our evaluation. He explained that the guards have "tricked him" before so he was initially unsure about meeting with me. Mr. Perniciaro presents as a very disorganized and chronic Schizophrenic, with an extremely restricted range of affect and appeared somewhat drowsy and slowed secondary to antipsychotic medication. He implored me to convey that he wished to be put back on Haldol Decanoate as he felt better while taking that medication. Further, he was convinced that the nurses "mess with him" and are, in fact, giving him ecstasy and cocaine instead of his psychiatric medications. History gathering is a challenge when **[*6]** speaking with Mr. Perniciaro as he tends to get confused easily, becomes disorganized, and appeared to be responding to internal stimuli at times. It quickly became apparent that he could not keep timelines straight and would often confuse when events actually occurred in his life. Additionally, many historical events were colored and distorted by his prominent paranoid delusional beliefs. He reported being raped repeatedly by guards, staff, and other inmates while at the ELMHS facility. In fact, he believes one of the female nurses at ELMHS raped his father and this is the same nurse that is giving him ecstasy pills in lieu of his medication. He is convinced that various guards and staff conspire to harm him.

Mr. Perniciaro's thought disorganization and disinhibition make him a more vulnerable target to others because he may make inappropriate, possibly offensive, statements to those around him. For example, he told me that white people are "closer to God" and that he has shared this belief with staff at ELMHS who are African-American. Mr. Perniciaro did not appreciate how these types of statements might contribute to ill feelings toward him. According to the medical records, **[*7]** Dr. Roberts has expressed that staff have reported that Mr. Perniciaro "uses his mental illness as a reason to be assaultive" and is "fully aware of what he's doing."

While he denies psychotic symptoms when directly asked, Mr. Perniciaro clearly experiences them. He described hearing his friend's voice talking to him when no one else is around, that it is intermittent in frequency, and seems to originate outside his head. He discussed ideas of reference, in that he gets special messages from the television meant only for him. He would, at times, become distracted as though listening to someone else and would respond back with "Shut up," and "You're a crack whore."

Mr. Perniciaro was reticent to discuss the attack that occurred in the latter part of 2014 while at ELMHS where an inmate broke his jaw. This attack occurred while Mr. Perniciaro was asleep. It appears his paranoia has only worsened since this incident. He reported poor sleep since this event because he is constantly fearful of being assaulted and/or raped while he is sleeping. He stated that he does not like to bring up the problems with his medications nor the various assaults that have occurred because "I don't **[*8]** want to cause trouble." Additionally, while convalescing from his jaw fracture, Mr. Perniciaro experienced a psychiatric decompensation possibly due to not receiving his medications properly since he was unable to swallow pills, according to Dr. Nicholl's deposition testimony.

Brief History:

Past Medical History

Mr. Perniciaro has sustained a separated shoulder and a broken jaw since housed at ELMHS.

Past Psychiatric History

Mr. Perniciaro has a long history of psychotic mental illness. He has been found incompetent to stand trial multiple times and adjudicated NGRI. He reported attempting suicide three times in the past. He has tried numerous psychiatric medications including Haldol, Navane, Haldol Decanoate, Invega, Valproic Acid, Klonopin, Zyprexa, Clozaril, and Cogentin. At the time of our interview, Mr. Perniciaro was prescribed Klonopin 1mg by mouth three times a day, Cogentin 1mg by mouth twice daily, Clonidine 0.1mg by mouth every day, Vistaril 50mg by mouth twice daily, Zyprexa 20mg by mouth at bedtime and Depakene 250mg by mouth three times a day.

Formal mental status examination:

Mr. Perniciaro was a 31-year-old Caucasian man of average height **[*9]** and build, dressed in hospital attire. His grooming appeared slightly disheveled. He was calm and had reasonable eye contact with his examiner throughout the interview. His speech was low in volume at times. He was oriented to person, place, time and situation. He endorsed an "all-right" mood overall. His affect was flat. He denied auditory and visual hallucinations during our interviews though he was clearly responding to internal stimuli as described earlier. He denied any homicidal or suicidal thoughts or attempts in the recent past. His thoughts were often disorganized and loose in their associations. There was evidence of paranoid delusions, as described earlier.

Assessment:

Mr. Perniciaro is a 31-year-old Caucasian male who has been adjudicated NGRI. A psychiatric assessment was requested to ascertain if he was suffering from any psychiatric conditions, the effects of his past assault, and treatment recommendations, if applicable. Based on my clinical interview and review of collateral information, it is my opinion, to a reasonable degree of psychiatric certainty, that Mr. Perniciaro suffers from Schizoaffective Disorder. This diagnosis is consistent with the diagnoses **[*10]** in his medical records.

Mr. Perniciaro's psychotic symptoms include paranoid delusions, auditory hallucinations, and disorganized thought processes. He also gives a history of mood disturbances concomitant with psychosis. His history and severity of mental illness has been well documented by treating physicians at ELMHS as well as by other evaluators in the court process. His paranoia has resulted in his attacking staff and believing himself to constantly be under threat at the ELMHS facility. Unfortunately, his being attacked by another inmate, particularly while sleeping, gives his paranoid delusional beliefs some basis in reality. In addition to decompensating while he was recovering, the effects of the assault have had longer-lasting effects. Mr. Perniciaro discussed that a major reason he does not sleep well at night, and in fact often keeps himself up at night, is that he fears being assaulted. While there is certainly a paranoid flavor to this concern, the fact that he was actually assaulted at night gives him legitimate reason to be fearful. Further, while he believes the guards/staff have molested and raped him at night, which I do not believe is reality-based, my understanding **[*11]** is that during the assault in which his jaw was broken, a guard was stationed outside his room. For someone to be able to get into his room implies either the guard was complicit in the attack, was not paying attention as he should have been, or was not actually outside of Mr. Perniciaro's room at the time of the assault. For Mr. Perniciaro, this would only confirm his mistrust of the guards is well-founded.

As Dr. Roberts commented on in both his deposition testimony and the medical records, staff at ELMHS consider Mr. Perniciaro's violence volitional and not always borne of mental illness, in part because there has been planning and subterfuge involved in some of these incidents. To the extent staff feel negatively toward Mr. Perniciaro, this would feed into his perceptions that they are not to be trusted and do not have his best interests at heart. In fact, paranoid delusions and planning behaviors are not mutually exclusive. My clinical training and experience, along with the forensic literature on assessing violence risk in the context of delusional beliefs, supports the concept that paranoid patients can act in a purposeful manner in the service of their delusion. Mr. Perniciaro **[*12]** has expressed that ELMHS staff do not take his complaints seriously. For example, he sustained an injury to his shoulder while at ELMHS. Despite complaining of pain, Mr. Perniciaro believes this has been inadequately treated and attended to. To the extent that staff may not recognize or believe Mr. Perniciaro's complaints of pain, this would again feed into his perceptions that his needs will not be met at the ELMHS facility and worsen his paranoia.

Lastly, with regard to psychiatric treatment options, it appears Mr. Perniciaro has been treated with a wide range of medications. Based on deposition testimony reviewed, as well as the medical records, his physicians feel he did best while taking Clozaril. While Mr. Perniciaro is resistant to taking this medication due to experiencing sialorrhea as an apparent side effect, perhaps this could be revisited with him as he was also taking a great deal of other antipsychotic medication at the time which may have magnified this side effect. Another option might be to consider Loxitane, an atypical antipsychotic which has structural similarities to Clozaril without the attendant risk of neutropenia. Additionally, treatment with other mood **[*13]** stabilizing agents such as Tegretol or Lamictal may prove beneficial in conjunction with his antipsychotic regimen but one would have to weigh the risk of possible non-compliance with the benefits of taking this. Finally, given Mr. Perniciaro's extensive medication treatment history and his refractory psychotic symptoms, electroconvulsive therapy (ECT), if available, may prove useful in controlling his severe and persistent psychotic mental illness.

Given the severity of paranoia toward guards and staff at ELMHS, inpatient psychiatric hospitalization may prove beneficial if it were an option. A structured, treatment-focused hospital free from the usual penitentiary environment could reduce Mr. Perniciaro's perception of punitive guards "out to get him" and decrease his paranoia. Reduction in paranoid symptomatology would then allow him to participate more fully in the treatment process, attend groups, etc., and increase his chances at recovery.

Part of the therapeutic milieu of any inpatient setting is the safety and security of the environment. While under the care of a locked psychiatric facility, a patient can reasonably expect that his safety will be assured. Mr. Perniciaro **[*14]** has been assaulted multiple times at the ELMHS facility, even while under close staff supervision, indicating that security is not being adequately addressed. This will only worsen Mr. Perniciaro's condition and paranoia, risking future psychotic decompensation.

I considered the possibility that Mr. Perniciaro malingered his impairments but in my opinion, he did not. Given the forthright and open manner in which he answered questions, his description of mental health symptoms not commonly known to laypeople, his clearly responding to internal stimuli during our interview, his exhibition of

thought disorganization, and the consistency between his presentation in our examination and his medical records, I do not believe Mr. Perniciaro to be malingering.

If you have any questions about this report, I would be happy to answer them. Please feel free to telephone me at 404.939.6636.

Sincerely,

/s/ [Signature]

Bhushan S. Agharkar, M.D., D.F.A.P.A.
Distinguished Fellow, American Psychiatric Association
Diplomate, American Board of Psychiatry and Neurology, with Added Qualifications in Forensic Psychiatry

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