

## ***Kuligoski Decision & Mental Health Professional's Duty to Protect Third Persons***

Senate Health and Welfare; 1.13.2017

In the summer/fall of 2016, the Vermont Supreme Court took up *Kuligoski v. Brattleboro Retreat* and in so doing considered the duty mental health professionals have to third persons to whom their patient poses a risk of harm.

### Duty to Control the Conduct of Third Persons

- Restatement (Second) of Torts § 315 dictates that “[t]here is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless:
  - a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person’s conduct, or
  - a special relation exists between the actor and the other which gives to the other a right to protection.”

### *Tarasoff v. Regents of University of California* (1976)

- The California Supreme Court in *Tarasoff*, 17 Cal.3d 425 (1976) held that the special relationship between a psychotherapist and a patient imposes on the therapist a duty to act reasonably to protect the foreseeable victims of the patient.
- Duty imposes a liability when the mental health professional determined or should have determined (under applicable professional standards) that his/her patient posed a serious risk to another and the mental health professional failed to use reasonable care to protect the intended victim from risk.

### Issue of First Impression in Vermont (1985)

- The Vermont Supreme Court in *Peck v. Counseling Service of Addison County, Inc.*, 146 Vt. 61 (1985) held that “a mental health professional who knows or, based upon the standards of the mental health profession, should know that his or her patient poses a serious risk of danger to an *identifiable* victim has a duty to exercise reasonable care to protect him or her from danger.” [Emphasis added.]

### *Kuligoski v. Brattleboro Retreat* (2016)

- Patient was discharged from the Brattleboro Retreat into his parent’s care; his aftercare treatment plan included regular outpatient visits to the Northeast Kingdom Human Services. After terminating his use of medication, patient accompanied his father to an apartment building, where he assaulted Mr. Kuligoski who had been working on the furnace.
- The *Kuligoski* Court held that a psychiatric hospital and designated agency (i.e. mental health professionals) had a duty to inform parents caring for a recently discharged patient of the patient’s risk of harm to himself and others and to provide information on managing the patient’s ongoing treatment.
  - The Court found that because parents were caregivers in patient’s discharge plan and because they were in the zone of danger (due to their proximity to the patient), the hospital and designated agency had duty to provide sufficient information to allow them to successfully carry out their duties.