



Vermont Mental Health Counselors Association

VTMHCA

The Voice for Mental Health Counselors in Vermont

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To: The Senate Judiciary Committee
Re: S.3

The Vermont Mental Health Counselors Association would like to express its support for S.3 regarding the Duty to Warn. Our understanding is that passage of S3 would return Vermont to its previous “Duty to Warn,” already present in Vermont case law.

We agree with dissenting Judges Reiber and Skoglund in their Supreme Court Docket # 2014-396 as follows:

“The Court’s May 6, 2016 decision imposes on mental health care providers a “duty of care to provide sufficient information” to a patient’s “caretakers” so those individuals can “fully assume their caretaker responsibilities to assist [the patient] and protect against any harmful conduct in which he might engage. . . .” The ambiguous scope of this new duty creates the very real risk that providers—facing uncertain liabilities and potentially conflicting legal obligations—will err on the side of providing treatment in more restrictive settings and making more requests for involuntary treatment. The ruling thus has immediate and potentially far reaching consequences for Vermont’s system of care. It may also deter family members and others from helping to care for those with mental illness. . . . The Court should vacate the opinion and reconsider its decision to adopt this novel duty of care.”

In addition:

Confidentiality

- Confidentiality in mental health counseling is one of the major cornerstones of treatment. With a trusted professional, clients/patients are able to provide information that is necessary to provide optimal treatment.
- Confidentiality belongs to the client/patient.
- All mental health professionals (apart from psychiatrists), are governed by the Board of Allied Mental Health Practitioners, in the Office of Professional Regulation under the Vermont Secretary of State (psychologists, licensed clinical social workers, licensed clinical mental health counselors, drug and alcohol counselors, marriage and family therapists). Collectively, this group is often referred to as “therapists”.
- All disciplines of providers abide by ethics that dictate when confidentiality may or must be broken - when a life is in danger, or harm may come to property. These ethics guide our behavior and decision making; should one act outside of ethical guidelines, his/her clinical license to practice may be impacted.
- In addition, all providers are also subject to all Federal (HIPPA) and state laws (*Tarasoff &*

Peck) relevant to our field in regards to how information is released.

Clarification of the Law

We see the *Kulogoski* decision as confusing “when and how” confidentiality may/must be broken, with “who is responsible” for a client and his/her behavior. The decision also creates new duties to “train” and “inform” caregivers (which is now undefined).

The *Kuligoski* decision is also counter to previous case laws determining a duty to warn when there is a “zone of danger” or an “identifiable” victim (see dissenting opinions of Judges Reiber and Skoglund).

Access to Care

The inpatient mental health system in Vermont is currently over-taxed and cannot support longer, confined stays. The *Kuligoski* decision, as it stands, may impact patients' access to care, as few mental Health professionals will be willing to take on complicated cases where there could be the potential for violent behavior. *Kuligoski* may lead to longer confinement in restrictive inpatient settings, and is contrary to the goal of treating patients in the least restrictive environment possible.

For these reasons, we support the passage of S3.

Respectfully submitted,
VTMHCA Legislative Committee

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