VERMONT PSYCHOLOGICAL ASSOCIATION
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The Board of Directors of the Vermont Psychological Association has approved the following formal position statement regarding S.3 Kuglioski and Duty to Protect on January 26, 2017.

The Vermont Psychological Association (VPA) stands behind all ethical principles and standards of practice. Standard 4 of the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct – Privacy and Confidentiality –to which all psychologists aspire, clearly states in subsection:

4.05 Disclosures
(b) Psychologists disclose confidential information without the consent of the individual only as mandated by law, or where permitted by law for a valid purpose such as to (1) provide needed professional services; (2) obtain appropriate professional consultations; (3) ***protect the client/patient, psychologist, or others from harm;*** or (4) obtain payment for services from a client/patient, in which instance disclosure is limited to the minimum that is necessary to achieve the purpose.

*While the VPA understands and supports the desire to reduce the frequency of harm to patients and the public, the VPA **does not** support the decision of the VT Supreme Court in the Kuglioski vs. Brattleboro Retreat and NEKHS decision. Patients already face significant challenges in gaining access to and receiving high quality and effective psychological services delivered in a safe and confidential environment. The threat of disclosure of confidential information when expressing emotional suffering will discourage help-seeking behavior and undermine treatment once it has begun.*

The VPA supports the State of Vermont Agency of Human Services motion in the Kuglioski decision reiterated here:

"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 farreaching 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."

The VPA supports the effort to adopt language aligned with the previous "Duty to Protect" standard arising from Tarasoff v. Regents of University of California (1976) which requires mental health professionals to break confidentiality in the event of a patient threat to harm themselves or others. In 1985, the Vermont Supreme Court adopted the Tarasoff standard in a case called Peck vs. The Counseling Services of Addison County and decided that "a mental health professional who knows. . . 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 that danger" by informing the identified victim or law enforcement of the risk. This was the law in Vermont from 1986 - 2016 and is understood by patients, caregivers and providers.

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This new standard requires disclosure at a threshold so low that it may cause more harm than the harm it is intended to prevent. The VPA understands that violence does occur and that people seeking mental health treatment are to be assessed at each session for risk of harms to themselves or others. However, it is impossible to predict a specific act of violence because such acts typically occur when someone is emotionally elevated or under the influence of alcohol or drugs, neither of which may be true during a clinical session. The same person may be emotionally guarded, and even stable and insightful during sessions, thus concealing any plans to commit a violent act. If a patient explicitly states an intent to harm someone else, the relative risk for acting on that plan is still significantly influenced by many life circumstances and clinical factors, all of which a clinician is trained to observe, assess and report when necessary. The issues embedded in this struggle to prevent harms to both for victims and potential negligence on the part of mental health providers, are complex and deserve more thorough consideration.

In summary, Tarasoff and Peck already require that professionals act to protect not only clients but others as well when there is an imminent risk of harm. Professionals already understand that when necessary, appropriate protective action may entail notifying patient caregivers. However, that action should not by itself be mandated, but should be considered in context of other information as there may be occasions when contacting caregivers may place the client or intended victim at further risk of harm. VPA conducts frequent trainings on ethical and legal responsibilities attended by many mental health professionals The Board and Ethics Committee of the Vermont Psychological Association would be pleased to discuss this issue in further detail upon request.

Respectfully Submitted,

The Board of Directors of The Vermont Psychological Association