

**vermont
psychiatric
survivors**

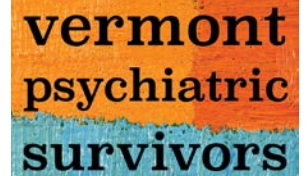
S.3 – An Act Relating to Mental Health Professionals' Duty to Warn

**Wilda L. White, Executive Director
Vermont Psychiatric Survivors, Inc.
Senate Committee on Judiciary
February 7, 2017**

About Wilda White

- Executive Director, Vermont Psychiatric Survivors since July 2015
- Attorney licensed to practice in NY, CA and MA
- Psychiatric Survivor
- Working in coalition with others concerned about adverse impacts of *Kuligoski* decision

Subject of Today's Testimony

The logo for Vermont Psychiatric Survivors is a square with a textured, painterly appearance. The top half is orange and the bottom half is blue. The text "vermont psychiatric survivors" is written in a lowercase, sans-serif font, with "vermont" on the top line, "psychiatric" on the middle line, and "survivors" on the bottom line.

vermont
psychiatric
survivors

- Impact of *Kuligoski* on patients and clients
- Impact on caregivers
- Proposed statutory language drafted by coalition

About Patients and Clients

- About 10% of Vermonters (62,751) received mental health services in 2014
- Mental health patients are, in general, over-surveilled for dangerousness
- Desire to be seen as an individual, for who you are, by health care provider

Patient/Client Impacts

- With uncertain duty to warn, mental health professionals may practice defensively because of liability concerns
- Increases risk of false positives (i.e., incorrect assessment of dangerousness)
- False positives, more so than breach of confidentiality, disrupt therapeutic alliance, causing patients to end relationship, forgo treatment

Application of *Kuligoski* Duty

- Caregiver is actively engaging with the patient's provider in connection with the patient's care or treatment plan
- Provider substantially relies on that caregiver's ongoing participation
- Caregiver is himself or herself within the zone of danger of the patient's violent propensities

Example of Caregiver Actively Engaging

- Mental health provider asks “caregiver” to remind patient to take medication
- Mental health provider asks “caregiver” to monitor patient/client for reaction to medication
- Mental health provider asks “caregiver” to assess patient/client’s mood

Impact on Caregivers

- Blamed by doctor and patient/client
- Sued by third-party
- Wracked with guilt
- Families torn apart
- Caregivers decline to cooperate or be helpful
- Clients/Patients lose critical support

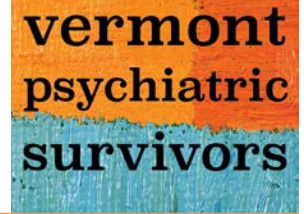
Proposed Statutory Language

- Proposes to place language in new 18 VSA 1881 Confidentiality/HIPPA standard rather than Mental Health/Involuntary Treatment statute
- Creates no new statutory duty; reiterates common law duty
- Clarifies there is no liability for failing to train, warn, notify caregivers

Goals of Proposed Language

- Limit perpetuation of discrimination and stigma against people with mental health diagnoses
- Avoid singling out mental health patients; applies to all patients
- Clarify that the common law *Peck* duty still applies
- Clarify common law duty in light of HIPPA (“imminent”)

Contact Information

The logo for Vermont Psychiatric Survivors is a square with a textured background. The top half is orange and the bottom half is blue. The text "vermont psychiatric survivors" is written in a lowercase, sans-serif font, with "vermont" on the orange background and "psychiatric survivors" on the blue background.

vermont
psychiatric
survivors

Wilda L. White, Executive Director
Vermont Psychiatric Survivors, Inc.
128 Merchants Row, Suite 606
Rutland, VT 05701-5912
T: (802) 775-6834
F: (802) 775-6823
wilda@vermontpsychiatricsurvivors.org
www.vermontpsychiatricsurvivors.org