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Legislative Document

No. 287

H.P. 211

House of Representatives, January 22, 2019

An Act To Impose on Mental Health Professionals a Duty To Warn and Protect

Reference to the Committee on Health Coverage, Insurance and Financial Services
suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative TEPLER of Topsham.
Cosponsored by Senator GRATWICK of Penobscot and
Representatives: BAILEY of Saco, BEEBE-CENTER of Rockland, GRAMLICH of Old
Orchard Beach, McCREIGHT of Harpswell, MORALES of South Portland, STOVER of
Boothbay.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 32 MRSA §2600-D** is enacted to read:

3 **§2600-D. Duty to warn and protect**

4 **1. Duty.** An osteopathic physician licensed under this chapter has a duty to warn of
5 or to take reasonable precautions to provide protection from a patient's violent behavior if
6 the osteopathic physician has a reasonable belief based on communications with the
7 patient that the patient is likely to engage in physical violence that poses a serious risk of
8 harm to self or others or that constitutes a serious threat of substantial damage to real
9 property. The duty imposed under this subsection may not be interpreted to require the
10 osteopathic physician to take any action that in the reasonable professional judgment of
11 the osteopathic physician would endanger the osteopathic physician or increase the threat
12 of danger to a potential victim.

13 **2. Discharge of duty.** An osteopathic physician subject to a duty to warn or provide
14 protection under subsection 1 may discharge that duty if the osteopathic physician makes
15 reasonable efforts to communicate the threat to a potential victim, notifies a law
16 enforcement agency or seeks involuntary hospitalization of the patient under Title 34-B,
17 chapter 3, subchapter 4, article 3.

18 **3. Immunity.** The decision of an osteopathic physician to take or not to take an
19 action authorized under this section may not be the basis for any civil or criminal liability
20 of the osteopathic physician.

21 **Sec. 2. 32 MRSA §3300-G** is enacted to read:

22 **§3300-G. Duty to warn and protect**

23 **1. Duty.** A physician licensed under this chapter has a duty to warn of or to take
24 reasonable precautions to provide protection from a patient's violent behavior if the
25 physician has a reasonable belief based on communications with the patient that the
26 patient is likely to engage in physical violence that poses a serious risk of harm to self or
27 others or that constitutes a serious threat of substantial damage to real property. The duty
28 imposed under this subsection may not be interpreted to require the physician to take any
29 action that in the reasonable professional judgment of the physician would endanger the
30 physician or increase the threat of danger to a potential victim.

31 **2. Discharge of duty.** A physician subject to a duty to warn or provide protection
32 under subsection 1 may discharge that duty if the physician makes reasonable efforts to
33 communicate the threat to a potential victim, notifies a law enforcement agency or seeks
34 involuntary hospitalization of the patient under Title 34-B, chapter 3, subchapter 4, article
35 3.

36 **3. Immunity.** The decision of a physician to take or not to take an action authorized
37 under this section may not be the basis for any civil or criminal liability of the physician.

38 **Sec. 3. 32 MRSA §3820** is enacted to read:

1 **§3820. Duty to warn and protect**

2 **1. Duty.** A licensee under this chapter has a duty to warn of or to take reasonable
3 precautions to provide protection from a patient's violent behavior if the licensee has a
4 reasonable belief based on communications with the patient that the patient is likely to
5 engage in physical violence that poses a serious risk of harm to self or others or that
6 constitutes a serious threat of substantial damage to real property. The duty imposed
7 under this subsection may not be interpreted to require the licensee to take any action that
8 in the reasonable professional judgment of the licensee would endanger the licensee or
9 increase the threat of danger to a potential victim.

10 **2. Discharge of duty.** A licensee subject to a duty to warn or provide protection
11 under subsection 1 may discharge that duty if the licensee makes reasonable efforts to
12 communicate the threat to a potential victim, notifies a law enforcement agency or seeks
13 involuntary hospitalization of the patient under Title 34-B, chapter 3, subchapter 4, article
14 3.

15 **3. Immunity.** The decision of a licensee to take or not to take an action authorized
16 under this section may not be the basis for any civil or criminal liability of the licensee.

17 **Sec. 4. 32 MRSA §6207-C** is enacted to read:

18 **§6207-C. Duty to warn and protect**

19 **1. Duty.** A certified alcohol and drug counselor or a licensed alcohol and drug
20 counselor has a duty to warn of or to take reasonable precautions to provide protection
21 from a client's violent behavior if the counselor has a reasonable belief based on
22 communications with the client that the client is likely to engage in physical violence that
23 poses a serious risk of harm to self or others or that constitutes a serious threat of
24 substantial damage to real property. The duty imposed under this subsection may not be
25 interpreted to require the counselor to take any action that in the reasonable professional
26 judgment of the counselor would endanger the counselor or increase the threat of danger
27 to a potential victim.

28 **2. Discharge of duty.** A certified alcohol and drug counselor or a licensed alcohol
29 and drug counselor subject to a duty to warn or provide protection under subsection 1
30 may discharge that duty if the counselor makes reasonable efforts to communicate the
31 threat to a potential victim, notifies a law enforcement agency or seeks involuntary
32 hospitalization of the client under Title 34-B, chapter 3, subchapter 4, article 3.

33 **3. Immunity.** The decision of a certified alcohol and drug counselor or a licensed
34 alcohol and drug counselor to take or not to take an action authorized under this section
35 may not be the basis for any civil or criminal liability of the counselor.

36 **Sec. 5. 32 MRSA §7006** is enacted to read:

37 **§7006. Duty to warn and protect**

38 **1. Duty.** A licensee under this chapter has a duty to warn of or to take reasonable
39 precautions to provide protection from a client's violent behavior if the licensee has a

1 reasonable belief based on communications with the client that the client is likely to
2 engage in physical violence that poses a serious risk of harm to self or others or that
3 constitutes a serious threat of substantial damage to real property. The duty imposed
4 under this subsection may not be interpreted to require the licensee to take any action that
5 in the reasonable professional judgment of the licensee would endanger the licensee or
6 increase the threat of danger to a potential victim.

7 **2. Discharge of duty.** A licensee subject to a duty to warn or provide protection
8 under subsection 1 may discharge that duty if the licensee makes reasonable efforts to
9 communicate the threat to a potential victim, notifies a law enforcement agency or seeks
10 involuntary hospitalization of the client under Title 34-B, chapter 3, subchapter 4, article
11 3.

12 **3. Immunity.** The decision of a licensee to take or not to take an action authorized
13 under this section may not be the basis for any civil or criminal liability of the licensee.

14 **Sec. 6. 32 MRSA §13866** is enacted to read:

15 **§13866. Duty to warn and protect**

16 **1. Duty.** A licensee under this chapter has a duty to warn of or to take reasonable
17 precautions to provide protection from a client's violent behavior if the licensee has a
18 reasonable belief based on communications with the client that the client is likely to
19 engage in physical violence that poses a serious risk of harm to self or others or that
20 constitutes a serious threat of substantial damage to real property. The duty imposed
21 under this subsection may not be interpreted to require the licensee to take any action that
22 in the reasonable professional judgment of the licensee would endanger the licensee or
23 increase the threat of danger to a potential victim.

24 **2. Discharge of duty.** A licensee subject to a duty to warn or provide protection
25 under subsection 1 may discharge that duty if the licensee makes reasonable efforts to
26 communicate the threat to a potential victim, notifies a law enforcement agency or seeks
27 involuntary hospitalization of the client under Title 34-B, chapter 3, subchapter 4, article
28 3.

29 **3. Immunity.** The decision of a licensee to take or not to take an action authorized
30 under this section may not be the basis for any civil or criminal liability of the licensee.

31 **SUMMARY**

32 This bill imposes on certain mental health professionals a duty to warn and protect if
33 a patient or client is likely to engage in physical violence that poses a serious risk of harm
34 to self or others or that constitutes a serious threat of substantial damage to real property.
35 The duty to warn and protect applies to osteopathic physicians, physicians, psychologists,
36 alcohol and drug counselors, social workers and counseling professionals.