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H.P. 844

House of Representatives, March 26, 2013

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

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative EVANGELOS of Friendship.
Cosponsored by Senator PATRICK of Oxford and
Representatives: DORNEY of Norridgewock, FREDETTE of Newport, MARKS of Pittston,
PRINGLE of Windham, SHORT of Pittsfield, STUCKEY of Portland, VOLK of Scarborough,
WELSH of Rockport.

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

2 **Sec. 1. 32 MRSA §3300-D** is enacted to read:

3 **§3300-D. Duty to warn and protect**

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

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

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

19 **Sec. 2. 32 MRSA §3820** is enacted to read:

20 **§3820. Duty to warn and protect**

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

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

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

36 **Sec. 3. 32 MRSA §6207-B** is enacted to read:

1 **§6207-B. Duty to warn and protect**

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

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

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

19 **Sec. 4. 32 MRSA §7006** is enacted to read:

20 **§7006. Duty to warn and protect**

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

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

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

36 **Sec. 5. 32 MRSA §13866** is enacted to read:

37 **§13866. 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 SUMMARY

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