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No. 91387-1

SUPREME COURT
OF THE STATE OF WASHINGTON

BEVERLY VOLK, et al., *Appellants*,

v.

JAMES B. DEMEERLEER, et al., *Respondents*.

VOLK'S ANSWER TO AMICUS CURIAE BRIEF OF
WASHINGTON STATE PSYCHOLOGICAL ASSO.

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TABLE OF CONTENTS

I. IDENTITY OF PETITIONER/RESPONDENT.....1

II. ARGUMENT.....1

A. The Claims Of Ms. Volk Rest On Failure To Assess
And Treat Mr. DeMeerleer, Not The Duty To Warn Those
Harmed by Him, Nor On RCW 71.05.120.....1

B. Amicus Lobbies The Court Rather Than Argues Law
To Apply RCW 71.05.120 To All Mental Healthcare
Professionals’ Decisions Where The Statute Is And
Legislative Intent Was To The Contrary.....3

C. *Peterson* is *Stare Decisis*, and Should Remain So.....4

D. The Underlying Court Of Appeals Opinion Correctly
Applied Set Washington Law Which Charge In Text
Holds That A Healthcare Provider Owes A Duty Of Care
To Third Persons Foreseeably At Risk.....5

E. The Legislature Addressed *Peterson* Only Regarding
Mental Healthcare Professionals’ Decisions Concerning
Civil Commitments.....8

F. RCW 70.02.050 Does Not Prohibit Sharing DeMeerleer’s
Healthcare Information.....10

G. RCW 18.83 Does Not Prohibit Disclosure Of Healthcare
Information.....15

H. The Court Is Requested To Preserve And Promote
The Public Policy Of Protecting Innocent Third-Parties.....17

III. CONCLUSION.....19

TABLE OF AUTHORITIES

CASES

| | |
|---|-------------|
| <i>Doe v. Group Health Cooperative</i> , 85 Wash. App. 213, 220, 932 P.2d 178 (1997).. | 12, 13 |
| <i>Estate of Davis v. Dept. of Corrections</i> , 127 Wn. App. 833, 841 – 842, 113 P.3d 487 (2005)..... | 7, 8, 9, 10 |
| <i>Hawkins v. King County</i> , 24 Wn. App. 338, 343, 602 P.2d 361 (1979) | 13, 15 |
| <i>House v. Erwin</i> , 81 Wn.2d 345, 501 P.2d 1221 (1972). | 5 |
| <i>In re Stranger Creek</i> , 77 Wn.2d 649, 653, 466 P.2d 508 (1970)..... | 4 |
| <i>Kaiser v. Suburban Transp. Sys.</i> , 65 Wn. 2d 461, 462-463 (..... | 6, 7 |
| <i>Lipari v. Sears Roebuck & Co.</i> , 497 Fed. Supp. 185, 193 (D. Neb. 1980)..... | 7 |
| <i>Peterson v. State</i> , 100 Wn.2d 421, 671 P.2d 230 (1983)..... | 4, 6, 7, 17 |
| <i>Poletti v. Overlake Hospital Medical Ctr.</i> , 175 Wn. App. 828, 832, 303 P.3d 1079 (2013)..... | 9 |
| <i>State v. Hansen</i> , 122 Wn.2d 712, 720 – 721, 862 P.2d 117 (1993)..... | 15, 16 |
| <i>Tarasoff v. Regents of the University of California</i> , 17 Cal. 3d 425, 551 P.2d 334 (1976)..... | 7, 17, 18 |
| <i>Volk v. DeMeerleer</i> , 184 Wn. App. at 422 | 1, 9 |
| <i>Webb v. Neuroeduc. Inc., P.C.</i> , 121 Wn. App. 336, 346, 88 P.3d 417 (2004)..... | 6 |

STATUTES

| | |
|-------------------------|--------|
| RCW 5.60.060..... | 13 |
| RCW 70.05.120..... | 3 |
| RCW 71.05..... | 8 |
| RCW 71.05.010-020 | 8 |
| RCW 71.05.120..... | 9 |
| RCW 71.05.330(2)..... | 9 |
| RCW 71.05.340(1)..... | 9 |
| RPC 1.6 | 16, 17 |

REGULATIONS

| | |
|---------------------------|----|
| 45 CFR § 164.512(j) | 14 |
|---------------------------|----|

I. IDENTITY OF PETITIONER/RESPONDENT

Petitioners/Respondents Brian P. Winkler and Beverly R. Volk (“Ms. Volk”), as Guardian for Jack Alan Schiering, a minor, and as Personal Representative of the Estates of Phillip and Rebecca Schiering, deceased, and on behalf of all statutory claimants and beneficiaries (hereinafter “Volk” or “plaintiffs”), respectfully answer the brief of Amicus Curiae Washington State Psychological Association (WSPA).

II. ARGUMENT

A. The Claims Of Ms. Volk Rest On Failure To Assess And Treat Mr. DeMeerleer, Not The Duty To Warn Those Harmed by Him, Nor On RCW 71.05.120.

This is a medical negligence action based on claims of breach of the psychiatric standard of care by Dr. Ashby and, by agency, Spokane Psychiatric Clinic, in treating Dr. Ashby’s patient James B. DeMeerleer. Only competent medical testimony can frame issues of liability. Volk’s claims are on behalf of Rebecca Leigh Schiering, Phillip Lee Schiering and their estates; and survivors Jack Alan Schiering and Brian P. Winkler (hereinafter referred to as “victim” or “victims”). Volk’s medical expert, Dr. Knoll, testifies by way of Declaration. (CP 82-91) (Knoll Declaration pp. 1-10). **Dr. Knoll is a forensic psychiatrist, and is the only physician to provide testimony in this matter.** (CP 82-83) (Knoll Declaration pp. 1-2).

A careful review of Dr. Knoll's declaration demonstrates competent medical testimony sufficient to maintain a medical negligence action for, alternatively: (1) all resulting ultimate harm to the victims and the victim's estates; and (2) loss of chance of survival regarding the two victims who suffered demise; and loss of chance of a better outcome for the two victims who survived. Dr. Ashby's breach of the standard of care by failure to appropriately assess and treat DeMeerleer rendered DeMeerleer unable to achieve and maintain mental stability and normalcy, to the extent which would put violent behavior in check. The victims were Rebecca Schiering and her three sons, it was a single family unit with which DeMeerleer had a tempestuous relationship within the months leading up to this tragic occurrence. The victims were foreseeably at risk of harm from DeMeerleer, whose treatment was below the standard of care by Dr. Ashby from which the victim's claims are derived.

Volk's expert, Dr. Knoll, opines that had Dr. Ashby treated DeMeerleer at the standard of care, the incident probably would not have occurred. (CP 090) (Knoll Declaration p.10, LL. 7-15). This substantiates the traditional tort claims for ultimate harm. Further, if treatment within the standard of care proved inadequate, Dr. Ashby may have found it appropriate to warn the victims and/or civilly commit DeMeerleer. (CP 091) (Knoll

Declaration p. 9, LL. 1-5). At a minimum, Dr. Ashby's negligent treatment was causal of loss of chance of a better outcome (and survival) for DeMeerleer to maintain mental stability or normalcy, so that the incident would not have occurred. This resulted in loss of chance for the victims. (CP 091) (Knoll Declaration p. 10, LL. 6-10).

B. Amicus Lobbies The Court Rather Than Argues Law To Apply RCW 71.05.120 To All Mental Healthcare Professionals' Decisions Where The Statute Is And Legislative Intent Was To The Contrary.

The WSPA, laboriously argues clinical practice literature and legislative policy, rather than law. It references various studies found in literature in the context of its lobbying actions in relation to legislative treatment of RCW 71.05.120, circa 1987. As is discussed below, RCW 71.05.120 was specifically amended to grant immunity from civil liability to mental healthcare professionals, relating only to civil commitment decisions.

This is specifically in the context of decisions: (a) whether to recommend or determine involuntary detention or commitment, and release from same; and (b) treatment during periods of commitment. RCW 71.05.120. This was done, in whole or in part, in response to the *Peterson* case. **The legislature considered public policy and the clinical practice and liability concerns of mental healthcare professionals. The result was the limited immunity provisions of RCW 71.05.120.** The WSPA now argues that this court

should, *de jure*, expand coverage of the law by abrogation of *Peterson* as it applies to private mental healthcare treatment in which civil commitment is not at issue. The WSPA does this in an apparent attempt to misguide or beguile this court by assuming RCW 71.05.120 was implicitly adopted to cover all professional mental healthcare treatment acts or omissions. This court should reject this argument out of hand.

C. *Peterson is Stare Decisis, and Should Remain So.*

This court's decision in *Peterson v. State*, 100 Wn.2d 421, 671 P.2d 230 (1983), was made over 30 years ago. The law as stated in *Peterson* is well known and understood by the bench and bar. It should be well known and understood by this state's physicians. The *Peterson* decision is *Stare Decisis*. In that regard, this court has held:

“But as properly viewed, the doctrine retains vital importance. A basic function of any legal system is to provide rules by which people may guide their conduct in society. To fulfill this purpose, it is essential that the law be reasonably certain, consistent and predictable. In this respect, stare decisis serves an important and valid function. As we observed in *In re Stranger Creek*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970):

Stare decisis is a doctrine developed by courts to accomplish the requisite element of stability in court-made law, but is not an absolute impediment to change. Without the stabilizing effect of this doctrine, law could become subject to incautious action or the whims of current holders of judicial office. But we also recognize that stability should not be confused with perpetuity. If the law is to have a current relevance, courts must have and exert the capacity to

change a rule of law when reason so requires. The true doctrine of stare decisis is compatible with this function of the courts. **The doctrine requires a clear showing that an established rule is incorrect and harmful before it is abandoned.**”

House v. Erwin, 81 Wn.2d 345, 501 P.2d 1221 (1972).(emphasis added)

Amicus WSPA requests demise of the *Peterson* decision by presuming, and requesting this court to pronounce, that the 1987 amendments to RCW 71.05.120 abrogated it. **The burden the WSPA fails to meet is to substantiate that: (1) *Peterson’s application to matters such as this is incorrect; and (2) Peterson is responsible for any undue harm to the residents and physicians of the State of Washington.* The WSPA meets neither burden. *Peterson* should remain as *Stare Decisis* and the Court should reject WSPA’s argument.**

D. The Underlying Court Of Appeals Opinion Correctly Applied Set Washington Law Which Charge in Text Holds That A Healthcare Provider Owes A Duty Of Care To Third Persons Foreseeably At Risk.

There is no uncertainty in the law over a healthcare provider’s duty toward third persons in foreseeable risk of harm from a healthcare provider’s negligence in treatment of a patient. In fact, such a duty has clearly existed in Washington for half a century. See *Kaiser v. Suburban Transp. Sys.*, 65 Wn. 2d 461, 398 P.2d 14 (1965). In *Kaiser*, a bus driver lost consciousness due to the side effects of a drug which had been prescribed by his physician, and the

bus struck a telephone pole. One of the injured passengers on the bus commenced an action against the bus driver's physician, among others. *Kaiser*, 65 Wn. 2d 461, 462-463. Without citation to the Restatement of Torts, the court concluded there was sufficient evidence to submit the issue of the doctor's negligence to the jury.

It is well settled that, in a claim of negligent treatment, the plaintiff need not be the patient. *Webb v. Neuroeduc. Inc., P.C.*, 121 Wn. App. 336, 346, 88 P.3d 417 (2004). (Citing *Kaiser v. Suburban Transp. Sys., supra*). A non-patient can state a cause of action for negligent treatment by showing the injury resulted from the failure of a healthcare provider to follow the accepted standard of care. *Webb*, 121 Wn. App. at 346. In *Webb*, the plaintiff was the patient's father. He sued the defendant psychologist for negligently implanting and developing false memories of sexual abuse in his son. *Id.* at 339. One of the issues on appeal was whether the defendant owed the non-patient father a duty of care in a medical malpractice case. The court concluded the psychologist did owe a duty and reversed the trial court's summary judgment dismissal. *Id.* at 351.

In *Peterson v. State*, 100 Wn.2d 421, 671 P.2d 230 (1983), this Court determined a psychiatrist has a duty to protect against a third party's injuries caused by a patient. The court held the defendant psychiatrist "incurred a duty to take reasonable precautions to protect **anyone** who might foreseeably

be endangered by [his patients] drug related mental problems.” *Id.* at 428. (Emphasis added). The court explained: “In the present case, we follow the approach utilized in *Lipari v. Sears Roebuck & Co.*, 497 Fed. Supp. 185, 193 (D. Neb. 1980) and *Kaiser v. Suburban Transp. Sys., supra.*” *Peterson*, 100 Wn. 2d. at 428. Ms. Peterson was injured by the patient when a motor vehicle she was operating was struck by one operated by the patient, while apparently under the influence of drugs. Surely, if a random bus rider in *Kaiser* and a random driver in *Peterson* were foreseeable, the victims in this matter also were reasonably foreseeably at risk.

The issue presented in *Lipari* was the same as presented in *Peterson* and which exists in the case at bench. Specifically, whether a psychotherapist owes a duty of care to third persons injured by a patient. *Lipari*, 497 Fed. Supp. 185, 193 (D. Neb. 1980). *Lipari's* holding was based primarily on Restatement (Second) of Torts § 315 (1965) in which (a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relation exists between the actor and the other which gives rise to the other a right to protection. *Lipari*, 497 Fed. Supp. at 188. See also, *Tarasoff v. Regents of the University of California*, 17 Cal. 3d 425, 551 P.2d 334 (1976) (applying section 315).

In *Est. of Davis v. Dept. of Corrections*, 127 Wn. App. 833, 113 P.3d

487 (2005), the court recognized a cause of action pursuant to *Peterson*, *supra*. The court wrote:

“There is no general duty to protect others from the criminal acts of a third party. An exception to this rule exists, however, if there is a special relationship between the defendant and the victim or the defendant and the criminal. Such a duty is imposed only if there is a definite, established, and continuing relationship between the defendant and the third-party criminal actor.”

Estate of Davis v. Dept. of Corrections, 127 Wn. App. 833, 841 – 842, 113 P.3d 487 (2005). (Emphasis added).

In *Davis*, the court rejected the plaintiffs “special relationship” theory because the defendant saw the counselor only one time. *Id.* at 842. In the present case, DeMeerleer saw Dr. Ashby more than 50 times over a period of nine years. Dr. Ashby had a “special relationship” with DeMeerleer, upon which Ms. Volk has a cause of action.

E. The Legislature Addressed *Peterson* Only Regarding Mental Healthcare Professionals’ Decisions Concerning Civil Commitment.

A simple review of the legislative intent and definitions sections of RCW 71.05 confirms the chapter deals with civil commitment decisions concerning the severely mentally ill. See RCW 71.05.010-020. Any immunity of RCW 75.05.120 is limited to this function.

“(1) No officer of a public or private agency, nor the superintendent, professional person in charge, his or her professional designee, or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible

for detaining a person pursuant to this chapter, nor *any* county designated mental health professional, nor the State, a unit of local government, or an evaluation and treatment facility shall be civilly or criminally liable *for performing duties pursuant to this chapter with regard to the decision of whether to admit, discharge, release, administer anti-psychotic medications, or detain a person for evaluation and treatment*: PROVIDED, That such duties were performed in good faith and without gross negligence.

(2) This section does not relieve any person from giving their required notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the duty to warn or to take reasonable precautions to provide protection from violent behavior where the patient has communicated an actual threat of physical violence against a reasonably identifiable victim or victims. The duty to warn or to take reasonable precautions to provide protection from violent behavior is discharged if reasonable efforts are made to communicate the threat to the victim or victims or to law enforcement personnel.”

RCW 71.05.120 (Emphasis added).

In 1987, and in a limited response to *Petersen*, the Washington legislature amended RCW 71.050120 to the current status, represented above.

See *Volk v. DeMeerleer*, 184 Wn. App. at 422. The act applies to *involuntary* detention and commitment decisions and *in-patient* mental healthcare and treatment for both voluntary and involuntary patients. *Poletti v. Overlake Hospital Medical Ctr.*, 175 Wn. App. 828, 832, 303 P.3d 1079 (2013).

Est. of Davis v. Dept. of Corrections, 117 Wn. App. 833, 113 P.3d 487 (2005), does not compel a different result. In *Davis*, the defendant was

under community supervision for taking a motor vehicle without permission and for a violation of his community service sentence resulting from that offense. His community service mandated that he submit to a psychological anger control evaluation and comply with the resulting treatment requirements. He faced up to 111 days of additional confinement for failure to comply. *Davis*, 127 Wn. App. at 837. This court determined that any of the plaintiffs' allegations with respect to the defendants' failure to detain the plaintiff implicated the Involuntary Treatment Act and the immunity set forth in RCW 71.05.120. *Id.* at 840 – 841. Therefore, the trial court's summary judgment was affirmed.

As demonstrated above, a healthcare provider's duty to non-patients is well established in Washington. This duty has existed for half a century. WSPA's assertion of uncertainty in the law and the application of immunity to the facts of this case are, at best, misplaced.

F. RCW 70.02.050 Does Not Prohibit Sharing DeMeerleer's Healthcare Information.

Volk's claims are based on Dr. Ashby's failure to assess and treat. Therefore, disclosure of DeMeerleer's healthcare information is not an element of liability in this matter. Any disclosure is only a hypothetical, tangential consideration. Dr. Knoll testifies that if Dr. Ashby had treated DeMeerleer within the standard of care, more probably than not, no

dangerous, exigent behavior of DeMeerleer would have occurred. However, if it did, Dr. Ashby would have had the ability to warn those at risk, and/or civilly commit DeMeerleer. (CP 090-Knoll Dec. p. 9, LL. 7-15).

RCW 70.02.050 provides in relevant part:

“(1) *A healthcare provide or healthcare facility may disclose healthcare information about a patient without the patient’s authorization to the extent a recipient **needs to know** the information, if the disclosure is ...*

(d) *to any person if the healthcare provider or healthcare facility **reasonably believes** that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual, however, there is **no obligation** under this chapter on the part of the provider or facility to so disclose;*

(e) *to immediate family members of the patient, including a patient’s state registered domestic partner, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the healthcare provider or healthcare facility in writing not to make the disclosure;*

...

(2) *A healthcare provider **shall disclose healthcare information** about a patient without the patient’s authorization if the disclosure is: ...*

(b) *to federal, state or local law enforcement authorities to the extent the healthcare provider is required by law;”*

RCW 70.02.050(1) and (2) (Emphasis added).

Disclosure of healthcare information based upon the “needs to know” portion of RCW 70.02.050(1) is a jury question. *Doe v. Group Health Cooperative*, 85 Wash. App. 213, 220, 932 P.2d 178 (1997), *overruled on other grounds*, 136 Wn.2d 195, 961 P.2d 333 (1998). In the present case, amicus curiae contend a psychologist or psychiatrist is under no obligation to disclose healthcare information of a patient to a third party. Although disclosure is not an element of Ms. Volk’s claims against Dr. Ashby, recall that Volk’s expert Dr. Knoll offers the only opinion evidence in this matter regarding standard of care. Recall also that his opinion includes a potential future need for disclosure, had Dr. Ashby continued treatment of DeMeerleer within the standard of care, and it proved inadequate. Surely Dr. Knoll would not have addressed this possibility in this manner if disclosure under exigent circumstances was outside the standard of care due to confidentiality concerns. Recall also that Dr. Knoll is an expert in the field of forensic psychiatry. (CP 082-083) (Knoll Dec. p. 1 – p. 2).

Accordingly, whether a psychologist or psychiatrist **reasonably believes** disclosure would have avoided or minimized imminent danger depends entirely on the facts of each individual matter or case. The same is true as to whether the psychiatrist is legally obligated to make such a disclosure. Even if there was an issue in the instant matter as to whether

Dr. Ashby had reason to believe disclosure was necessary, or was obligated to do so, it would be a jury question and not appropriately disposed of by summary judgment. *Doe v. Group Health Cooperative*, 85 Wash. App. at 220.

Moreover, by statute, various professionals, clergy, therapists, counselors, and the like, have only limited confidentiality privileges with clients and penitents which shield them from being compelled to testify. See RCW 5.60.060. Conversely, by common law, attorneys and doctors have a duty to disclose what might be otherwise protected information, or warn third parties and entities in certain exigent circumstances. As to attorneys:

Turning then to the Hawkinses' theory of a common-law duty to warn or disclose, we note common-law support for the precept that **attorneys must, upon learning that a client plans an assault or other violent crime, warn foreseeable victims.** See *Tarasoff v. Regents of Univ. of Cal.*, supra; *State ex rel. Sowers v. Olwell*, 64 Wn.2d 828, 394 P.2d 681, 16 A.L.R.3d 1021 (1964); *Dike v. Dike*, 75 Wn.2d 1, 448 P.2d 490 (1968).

Hawkins v. King County, 24 Wn. App. 338, 343, 602 P.2d 361 (1979).

The U.S. Department of Health and Human Services (“HHS”), Office of the Secretary, through the Director of Civil Rights, enforces the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). The Privacy Rule standards address the use and disclosure of individuals’ health information (called “protected health

information”) by organizations subject to the Privacy Rule called “covered entities.” Covered entities are, generally: Doctors, Clinics, Psychologists; Dentists; Chiropractors; Nursing Homes; Pharmacies; Company Sponsored and Self Insured Health Plans; Health Insurance Companies; HMOs; and Government Agencies, Plans, and Healthcare Entities (Medicare; Medicaid; Tricare; Veterans Administration; etc.).

Due to the unfortunate multiple occurrences of mass murders in which persons purportedly under the care and treatment of the mental healthcare professionals by way of counseling, therapy, and/or treatment with psychotropic drugs, the Director of Civil Rights issued an open letter to our nation’s healthcare providers (covered entities). On January 15, 2013 this letter addressed the HIPPA privacy and security mandates versus disclosure of protected information in exigent circumstances. This letter stated in part:

“When a healthcare provider believes in good faith that such a warning is necessary to prevent or lessen a serious and imminent threat to the health or safety of the patient or others, the Privacy Rule allows the provider, consistent with applicable law and standards of ethical conduct, to alert those persons whom the provider believes are reasonably able to prevent or lessen the threat. Further, the provider is presumed to have had a good faith belief when his or her belief is based upon the provider’s actual knowledge (i.e., based on the provider’s own interaction with the patient) or in reliance on a credible representation by a person with apparent knowledge or authority (i.e., based on a credible report from a family member of the patient or other person). These provisions may be found in the Privacy Rule at 45 CFR § 164.512(j).”

This letter and 45 CFR § 164.512(j) are appended to Volk's Answer to the amicus brief of the Washington State Medical Association, filed herein.

G. RCW 18.83 Does Not Prohibit Disclosure Of Healthcare Information.

RCW 18.83.110 provides:

“Confidential communications between a client and a psychologist shall be privileged against compulsory disclosure **to the same extent and subject to the same conditions as confidential communications between attorney and client**, but this exception is subject to the limitations under RCW 70.96A.140 and 71.05.360(8) and (9).”

RCW 18.83.110(Emphasis added).

RCW 18.83.110 does not preclude Dr. Ashby's disclosure of DeMeerleer's healthcare information. See *Hawkins v. King County, supra*, at 343. See also, *State v. Hansen*, 122 Wn.2d 712, 862 P.2d 117 (1993). In *Hansen*, the defendant (Michael Hansen) was convicted of a felony and sentenced to prison. After his release, he telephoned attorney Chris Yotz. In that conversation, Yotz declined to represent Hansen. Subsequently, Hansen told Yotz: “I am going to get a gun and blow them all away, the prosecutor, the judge and the public defender.” *Id.* at 714 – 715.

Mr. Yotz then warned the judge, prosecutor and public defender of Hansen's threat. *Id.* at 715. Hansen was subsequently convicted of intimidating a judge. One of the issues on appeal was whether Hansen had a

reasonable belief that he was engaged in a confidential and privileged conversation with Yotz when he made the threat. *Id.* at 719. The court concluded that no attorney-client relationship existed. *Id.* at 719 – 720. Even so, the court wrote:

“If an attorney-client relationship could have been found to exist when Hansen made the threat against the judge, the prosecutor, and the public defender, the privilege would still not apply. The attorney-client privilege is not applicable to a client’s remarks concerning the furtherance of a crime, fraud, **or to conversations regarding the contemplation of a future crime.** ... Under the rules of professional conduct, an attorney is permitted to reveal information concerning a client’s intent to commit a crime. “A lawyer may reveal ... confidences or secrets to the extent the lawyer reasonably believes necessary ... to prevent the client from committing a crime.”

RPC 1.6(b)(1). *State v. Hansen*, 122 Wn.2d 712, 720 – 721, 862 P.2d 117 (1993) (emphasis added)

The court also observed the model rules of professional conduct, 1.6(b)(1) provide, “a lawyer may reveal such information to the extent the lawyer reasonably believes necessary: to prevent the client from committing a criminal act that the lawyer believes is likely to result in eminent death or substantial bodily harm ...” *Id.* at 721 n. 3.

RPC 1.6 provides:

“Rule 1.6. Confidentiality of Information.

...

(b) A lawyer, to the extent the lawyer reasonably believes necessary:

(1) shall reveal information relating to the representation of a client to prevent reasonably certain death or substantial bodily harm;

(2) may reveal information relating to the representation of a client to prevent the client from committing a crime.

RPC 1.6(b)(1) and (2)

WSPA's contention that a psychologist or psychiatrist is prohibited by RCW 18.83.110 from disclosing confidential communications is incorrect. As demonstrated above, he or she *may* reveal confidential communications to prevent a patient from committing a crime and *shall* reveal information to prevent reasonably certain death or substantial bodily harm. Pursuant to the plain language of RCW 18.83.110, RPC 1.6(b)(1)(2), *Hawkins v. King County, supra*, and *State v. Hansen, supra*, the confidential communications privilege is not an impediment to disclosure of confidential communications.

H. The Court Is Requested To Preserve And Promote The Public Policy Of Protecting Innocent Third-Parties.

This court, in *Peterson*, relied heavily on *Tarasoff v. Regents of Univ. of Calif.*, 17 Cal. 3d 425, 438, 551 P.2d 334 (1976). The *Tarasoff* court clearly addresses public policy issues:

“The role of the psychiatrist, who is indeed a practitioner of medicine, and that of the psychologist who performs an allied function, are like that of the physician who must conform to the standards of the profession and who must often make diagnoses and predictions based upon such evaluations.

Thus, the judgment of the therapist in diagnosing emotional disorders and in predicting whether a patient presents a serious danger of violence is comparable to the judgment which doctors and professionals must regularly render under accepted rules of responsibility. . . . We do not require that the therapist, in making that determination, render a perfect performance; the therapist need only exercise that reasonable degree of skill, knowledge, and care ordinarily possessed and exercised by members of [that professional specialty] under similar circumstances.”

Washington has long held a healthcare provider’s duty of care extends to third parties. This duty is based upon the Restatement (Second) of Torts § 315 (*Peterson, Lipari, and Davis*) or when the provider breaches the standard of care (*Kaiser and Webb*). The arguments advanced by the amicus curiae are not new. Indeed, its concerns and concerted action are chronicled throughout its brief. These arguments do not justify turning established Washington tort law on its head.

The public interest in safety from violent assault is paramount to the public interest in protecting confidential communications between a patient and his or her mental healthcare professional. Again, *Tarasoff* phrased it best:

“If the exercise of reasonable care to protect the threatened victim requires the therapist to warn the endangered party or those who can reasonably be expected to notify him, we see no sufficient societal interest that would protect and justify concealment. . . . We conclude that the public policy favoring protection of the confidential character of patient-psychotherapist communications must yield to the extent to which disclosure is essential to avert danger to others. The

protective privilege ends where the public peril begins.”

Tarasoff v. Regents of Univ. of Calif., 17 Cal. 3d 425, 442,
551 P.2d 334 (1976).

Washington’s public policy can and should continue to promote the protection of innocent third parties. Moreover, there is no compelling reason to exclude mental healthcare professionals from the same negligence standard of care principles applicable to other mental healthcare professionals in Washington.

III. CONCLUSION

Volk’s claims rest on existing Washington tort law. This includes Dr. Ashby’s liability for DeMeerleer’s harm to foreseeable victims where there is competent evidence that Dr. Ashby’s breach of the applicable standard of care in treating DeMeerleer was causal. Further, Volk claims that if Dr. Ashby treated DeMeerleer within the standard of care, and had such treatment been unsuccessful to the extent DeMeerleer might harm the victims, Dr. Ashby could have, within the law and standard of care, warned the victims and/or civilly committed DeMeerleer. Therefore, but for the negligence of Dr. Ashby in treatment of DeMeerleer, it is unlikely that the ultimate harms suffered by Rebecca Leigh Schiering, Philip Lee Schiering, Jack Alan Schiering, and Brian P. Winkler would have occurred. At minimum, but for Dr. Ashby’s negligence, there would have been a

substantial likelihood harm to them would have been prevented. Thus, Rebecca Leigh Schiering and Philip Lee Schiering lost chance of survival, while Jack Alan Schiering, and Brian P. Winkler lost chance of a better outcome. Finally, public policy supports (if not requires) protection of innocent third parties who are at foreseeable risk of harm by a mental healthcare professional's patient. This duty may be fulfilled by a mental healthcare professional's treatment of a patient within the standard of care. Where treatment within the standard of care is insufficient to reasonably obviate risk of a patient harming a third party who is foreseeably at risk and known to the mental healthcare professional, the professional may choose, if not be compelled to warn the third party and/or seek detainment or involuntary commitment of the patient. For these reasons, the court is requested to reject WSPA's arguments and confirm Volk's causes of action. Issues of fact as to valid causes of action exist under Washington law exist.

RESPECTFULLY SUBMITTED this 9th day of November, 2015.

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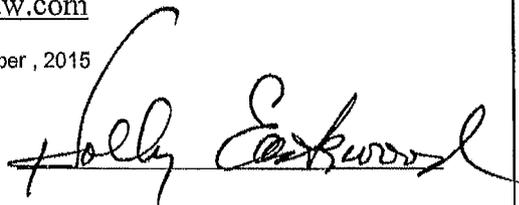
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Dated this 9th day of November , 2015



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Please see attached for filing:

1. Volk's Answer to Washington State Psychological Association Amicus Curiae Brief;
2. Volk's Answer and Concurrence to Washington State Association for Justice; and
3. Volk's Answer and Concurrence to Victim Support Services – The National Alliance on Mental Illness (NAMI) Amicus Curiae Brief.

Thank you.

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