

Minnesota Board of Psychology
2829 University Avenue SE, Suite 320
Minneapolis, Minnesota 55414

Emergency Special Meeting of the Minnesota Board of Psychology Administrative Committee
February 2, 2016

Members Present: S. Fischer (Board Chair); A. Versland (Secretary); R. David (Vice Chair)

Members Absent: None

Others Present: A. Barnes, Executive Director of the Board of Psychology, D. Kessler, Minnesota Psychological Association, L. Campero, Assistant Executive Director of the Board of Psychology

Executive Director, A. Barnes called the public session of the meeting to order at approximately 8:42 am. The Committee was convened for a special emergency meeting because the circumstances would not permit the public body to wait three days to give notice of the special meeting given an impending legal deadline.

Notice was provided via e-mail to all public members of the body, the Minnesota Psychological Association, and other identified interested individuals, including all Executive Directors of the Health-Related Licensing Boards (HLBs), Board of Psychology staff, the Office of the Attorney General by notice to the Assistant Attorneys General designated to provide services to the Board, and the media, including KSTP and the Star Tribune on February 1, 2016.

PUBLIC SESSION

A. The Background

The Committee received a summary from Executive Director, A. Barnes on the legal status of a case previously in front of the Minnesota Court of Appeals who ultimately issued an opinion finding that the statutory immunity provided to licensees who make a good faith report under Minnesota Statutes 148.975, Duty to Warn, does not extend to unlicensed mental health practitioners/supervisees who act under the authority of their supervisors. The Committee was advised of the decision of the Minnesota Supreme Court to review the matter, including the Duty to Warn issue.

B. Decision to Participate Amicus Curiae in a Matter Pending Before the Minnesota Supreme Court

A. Versland moved, seconded by R. David, to make a request to the Minnesota Office of the Attorney General to file a Motion on behalf of the Board with the Minnesota Supreme Court to allow the Board to participate in the matter by submitting an amicus curiae brief on the issues related to the Duty to Warn and the Board's concerns regarding public protection.

Roll Call Vote: S. Fischer: aye, A. Verland: aye, R. David: aye. Motion carried.

The Committee made the following findings:

- The Minnesota Board of Psychology has a statutory duty to, “educate the public about the requirements for licensing psychologists...and about the rules of conduct...” which the Committee found to include educating the Minnesota Supreme Court.
- A supervisee who engages in the practice of psychology under Minn. Stat. 148.925, subd. 6 who follows all statutory and administrative rule requirements for practicing under supervision, who makes a Duty to Warn report under Minn. Stat. 148.975 should be entitled to the protections of immunity under Minn. Stat. 148.975, subd. 4, which states, “good faith compliance with the duty to warn shall not constitute a breach of confidence, and shall not result in monetary liability or a cause of action against the licensee.”
- The Minnesota Board of Psychology protects the public through licensure, regulation, and education, to promote access to safe, competent and ethical psychological services.
- There is substantial risk that under the MN Court of Appeals decision that a supervisee preparing for Licensed Psychologist (LP) licensure under proper legal supervision, and authorized to fully practice psychology under Minn. Stat. 148.925, subd. 6, would be deprived of protections that were enacted by the Minnesota Legislature to facilitate the execution of the duty to warn.
- A provider authorized to fully practice as a supervisee under the Psychology Practice Act, and to provide psychological services must be assured that when exercising those responsibilities in good faith, they will not be intimidated or silenced by fear of litigation or monetary damages/liability from making their good faith report, which is in the best interests of the public. To find otherwise exposes both supervisees and supervisors to risk, liability, and fear.
- Supervisees and supervisors may be deterred from making a good faith report under Duty to Warn based on this decision which would negatively impact public safety in Minnesota for those who the Legislature intended to be protected through Duty to Warn.

- The stop gap within the supervisor-supervisee relationship is the legal responsibilities conferred on the supervisor who is legally obligated to assume all clinical responsibility for the actions of the supervisee. See, Minn. R. 7200.2000, subp. 2, D., (stating, “In complying with Minnesota Statutes, section 148.925, the primary supervisor shall retain supervisory responsibility for all supervised professional experience. Supervisory sessions with the primary supervisor shall include discussions that incorporate the applicable ethical and practice standards of psychology.”)
- There is a “direct link between this and public safety,” as we are “talking about whether someone has immunity to make a report intended to keep the public safe.”
- Public protection is “paramount,” and training sites are impacted.
- Individuals may opt to not pursue a career in mental health services, to provide supervision, or to take such a risk during a time when mental health services are critical to the State of Minnesota citizens.
- Filing an amicus curiae motion is “consistent with our mission, the court system cannot be expected to know about the practice of psychology as we do...it fits well without our mission, and our expertise as the Board of Psychology.”
- The Board may not be fulfilling its role and responsibilities if it did not file a brief to educate the courts about why these protections for executing a Duty to Warn are critical.

C. Coordinating Efforts with the Minnesota Psychological Association

S. Fischer moved, seconded by R. David, to grant the authority to the Executive Director to contact the Minnesota Psychological Association’s legal representative and to engage in discussions regarding shared interests, joint efforts, and any actions related to the Board’s desire to file a motion as amicus curiae.

Roll call vote: S. Fischer: aye, R. David: aye, A. Versland: aye. Motion carried.

The Committee adjourned at approximately 9:14 am.

Respectfully Submitted,

Scott A. Fischer, Ph.D., LP

SCOTT A. FISCHER, PH.D., LP
ADMINISTRATIVE COMMITTEE CHAIR