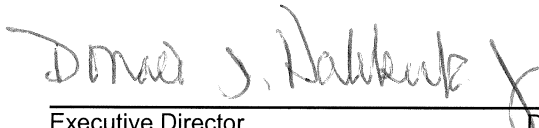

Chapter: **RECIPIENT RIGHTS**
Title: **DUTY TO WARN THIRD PARTIES**

Prior Approval Date: 8/28/02
Current Approval Date: 8/05/09

Approved by: BOARD ACTION

 8/5/09

Executive Director Date

I. Abstract

This policy establishes the standards of the Macomb County Community Mental Health (MCCMH) Board regarding Provider responsibility in response to a recipient's threat to harm a third party.

II. Application

This policy shall apply to all directly-operated and contract network providers of the MCCMH Board.

III. Policy

It is the policy of the MCCMH Board that all mental health practitioners employed by or contracted within the MCCMH provider network shall act in accordance with MCL 330.1946 (Exhibit A) when a recipient under their treatment communicates to them a threat of physical violence against a reasonably identifiable third person.

IV. Definitions

A. Mental Health Practitioner

A psychiatrist, psychologist, psychiatric social worker, licensed professional counselor, or a person under the supervision of same.

- B. Psychiatrist
A person licensed to practice medicine or osteopathic medicine, or a person under the supervision of a psychiatrist, while engaged in the examination, diagnosis, or treatment of a recipient for a mental condition.
- C. Psychologist
A person licensed under Part 182 of the Michigan Public Health Code to engage in the practice of psychology: a person with training and experience equivalent to that necessary for licensing as a psychologist; a person employed by a public agency as a psychologist; or a person under the supervision of a psychologist, while engaged in the examination, diagnosis, or treatment of a patient for a mental condition.
- D. Psychiatric Social Worker
A certified social worker, social worker, or social work technician, who has successfully completed a psychiatric social service practicum.
- E. Licensed Professional Counselor
A person licensed under Part 181 of the Michigan Public Health Code to engage in the practice of counseling.

V. Standards

- A. If a recipient communicates a threat of physical violence against a reasonably identifiable third person, and in the opinion of the treating mental health practitioner the recipient has the intent and capability to carry out the threat, the practitioner has a responsibility to report the threat.
- B. As mandated by the Michigan Mental Health Code, all psychiatrist, psychologists, certified social workers and licensed professionals counselor shall take immediate action as outlined in Section C., below. All other staff members shall immediately notify the Provider Director or Manager, the supervisor, or his/her designee so that a determination for further action can be made.
- C. The responsibility of a psychiatrist, psychologist, certified social worker and licensed professional counselor shall be fulfilled if he or she performs one or more of the following duties in a timely manner:
 - 1. Initiates hospitalization proceedings or hospitalizes the recipient pursuant to Chapter 4 or 4a of Michigan Mental Health Code;
 - 2. Makes a reasonable attempt to communicate the threat to the third person and communicates the threat to the local police department or county sheriff for the area where the third person resides or for the area where the recipient resides,

or the state police;

3. If the practitioner believes that the identifiable third person is 17 years of age or younger, then the practitioner must comply with the above subsection 2. and also contact the Department of Human Services (Children's Protective Services Unit) in the county where the minor resides and the minor's parent and inform him/her of the threat; and/or
 4. If the identifiable third person is believed by the practitioner to be incompetent (by other than age), the practitioner must comply with the above subsection 2. and also contact the identifiable third person's custodial parent, non-custodial parent or legal guardian, whomever is appropriately acting in the best interest of the third person.
- D. A mental health practitioner (i.e., psychiatrist, psychologist, certified social worker and professional counselor) who takes action as prescribed in Section C. shall notify the Provider Director, Manager, the supervisor, or his/her designee within 48 hours following his/her determination that said action should occur.
- E. All practitioners shall record the recipient's communication of physical violence against a third person and, when notification of third party or agencies has been made, documentation shall include the person or agency contacted and the date of contact on the Duty to Warn Record, MCCMH #168(Exhibit B.). All Providers should use appropriate releases of confidential information when taking action to warn third parties or agencies. Releases under these circumstances do not require recipient signature, but shall state to whom the information was released and the reason release is made.
- F. If the practitioner treating the recipient is part of a team providing care for the recipient in a hospital, the hospital shall designate a person responsible for communicating the treat of physical violence to the required persons/agencies.

VI. Procedures

- A. None.

MCCMH MCO Policy 9-810
DUTY TO WARN THIRD PARTIES
Date: 8/05/09

VII. References / Legal Authority

- A. MCL 330.1750
- B. MCL 330.1946
- C. MCL 339.1610
- D. MCL 333.18101(b)
- E. MCL 333.18201(a)
- F. MCL 333.18501(a)(b)(c)

VIII. Exhibits

- A. MCL 330.1946
- B. Duty to Warn Record, MCCMH #168

MCL 330.1946

Threat of physical violence against third person; duties.

Sec. 946. (1) If a patient communicates to a mental health professional who is treating the patient a threat of physical violence against a reasonably identifiable third person and the recipient has the apparent intent and ability to carry out that threat in the foreseeable future, the mental health professional has a duty to take action as prescribed in subsection (2). Except as provided in this section, a mental health professional does not have a duty to warn a third person of a threat as described in this subsection or to protect the third person.

(2) A mental health professional has discharged the duty created under subsection (1) if the mental health professional, subsequent to the threat, does 1 or more of the following in a timely manner: (a) Hospitalizes the patient or initiates proceedings to hospitalize the patient under chapter 4 or 4a.

(b) Makes a reasonable attempt to communicate the threat to the third person and communicates the threat to the local police department or county sheriff for the area where the third person resides or for the area where the patient resides, or to the state police.

(c) If the mental health professional has reason to believe that the third person who is threatened is a minor or is incompetent by other than age, takes the steps set forth in subdivision (b) and communicates the threat to the department of social services in the county where the minor resides and to the third person's custodial parent, noncustodial parent, or legal guardian, whoever is appropriate in the best interests of the third person.

(3) If a patient described in subsection (1) is being treated through team treatment in a hospital, and if the individual in charge of the patient's treatment decides to discharge the duty created in subsection (1) by a means described in subsection (2)(b) or (c), the hospital shall designate an individual to communicate the threat to the necessary persons.

(4) A mental health professional who determines in good faith that a particular situation presents a duty under this section and who complies with the duty does not violate section 750. A psychiatrist who determines in good faith that a particular situation presents a duty under this section and who complies with the duty does not violate the physician-patient privilege established under section 2157 of the revised judiciary act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.2157 of the Michigan Compiled Laws. A psychologist who determines in good faith that a particular situation presents a duty under this section and who complies with the duty does not violate section 18237 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.18237 of the Michigan Compiled Laws. A certified social worker, social worker, or social worker technician who determines in good faith that a particular situation presents a duty under this section and who complies with the duty does not violate section 1610 of the occupational code, Act No. 299 of the Public Acts of 1980, being section 339.1610 of the Michigan Compiled Laws. A licensed professional counselor who determines in good faith that a particular situation presents a duty under this section and who complies with the duty does not violate section 18117 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.18117 of the Michigan Compiled Laws. A marriage and family therapist who determines in good faith that a particular situation presents a duty under this section and who complies with the duty does not violate section 1509 of the occupational code, Act No. 299 of the Public Acts of 1980, being section 339.1509 of the Michigan Compiled Laws. A music therapist who determines in good faith that a particular situation presents a duty under this section and who complies with this duty does not violate section 4.11 of the professional code of ethics of the national association for music therapy, inc., or the clinical relationships section of the code of ethics of the certification board for music therapists.

(5) This section does not affect a duty a mental health professional may have under any other section of law.

History: Add. 1989, Act 123, Eff. Sept. 1, 1989 ;--Am. 1994, Act 259, Imd. Eff. July 5, 1994 ;--Am. 1995, Act 290, Eff. Mar. 28, 1996.

MACOMB COUNTY COMMUNITY MENTAL HEALTH DUTY TO WARN RECORD

Pursuant to Public Acts: 123, 101, 102 of 1989
(complete opposite side of this form)

Date: _____

Recipient Information/Person Communicating threat

Name: _____ MCCMH Case #: _____

Street Address: _____ Telephone: () _____

City / State / Zip: _____

Driver's Lic. #: _____ Soc. Security #: _____

Date of Birth: _____ Sex: _____ Height: _____ Weight: _____

Skin Color: _____ Hair Color: _____ Eye Color: _____

If threat is immediate, description of clothing worn: _____

"Reasonably Identifiable third person"/who is subject of threat

Name: _____ Telephone #: () _____

Street Address: _____

City / State / Zip: _____

Other descriptions (age, sex, relation to recipient): _____

Threat information

Specific violence threatened; words used: _____

Intent and ability: _____

Clinician's Response to threat:

1. a. Has recipient been hospitalized? ___ Yes ___ No

b. Recipient not hospitalized because: _____

If 1.a is no, steps 2 and 3 must be completed. If threatened person is a minor, or otherwise incompetent, use Alternate 2A and 3A below.

2. Clinician attempts to communicate threat to third person: _____

3. Communication to local police department, sheriff or state police: [Include date(s), time(s), name(s)]: _____

Alternates 2A and 3A:

2A. Communication to FIA. In county where minor lives: [include date(s), time(s), name(s)]: _____

3A. Communication to custodial parent, non-custodial parent, legal guardian or person in local parentis: _____

Clinician's Signature	Date	Supervisor's Signature	Date
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NOTE: This form should be retained permanently in the recipient's chart with a copy sent to the MCCMH Office of Recipient Rights.

Office of Recipient Rights use only: Appropriate actions taken?: ___ Yes ___ No

Additional information needed or actions taken?: ___ Yes ___ No

Date Reviewed	R.R. Director Signature
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