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## ASK AN ATTORNEY

**Q**

*I am a 55 year-old board certified psychiatrist with a full practice. How does the New York State Secure Ammunition and Firearms Enforcement (SAFE) Act effect my practice?*

**A**

The mental health provisions of the SAFE Act, which went into effect on March 16, 2013, require that any patient deemed to be unfit to own a weapon be reported to the State. The changes apply to physicians, psychologists, registered nurses, and/or licensed clinical social workers providing mental health care, regardless of setting.

A mental health provider is to use professional judgment in determining if a patient is a threat to themselves or others. The website for the New York State Office of Mental Health recently posted an "Introduction for Mental Health Providers" to assist in applying the new rules.

Mental Hygiene Law Section 9.46 now requires a "mental health professional" to report a person who "is likely to engage in conduct that would result in serious harm to self or others" to the County Director of Community Service (DCS) or designee as soon as practicable. If DCS concludes that the individual is likely to engage in such conduct, it must submit an online form to the NYS Division of Criminal Justice Services (DCJS). DCJS then checks for firearm applications, permits or assault weapon registrations. DCJS and/or the State Police notify the appropriate county firearms licensing official, who must suspend or revoke the license. The official also informs local law enforcement, who are charged with removing the guns.

The statute now requires mental health professionals to report to the county DCS when, in their "reasonable professional judgment," a current mental health patient meets the "serious harm to self or others" standard. This is the same standard as "likelihood to result in serious harm" as defined in MHL Section 9.01 and means threats of, or attempts at, suicide/serious bodily harm to self, or homicidal/violent behavior towards others. This standard is necessary to justify the need for immediate intervention, which includes mental health arrest and transport to a psychiatric hospital for involuntary examination.

Once the reporting conditions are met, the mental health professional must report to the local DCS, or designee, information necessary for DCS/designee to determine if the concerns are substantiated. If so, DCS/designee must file the standard Section 9.46 form with DCJS, which collects demographic information without medical information/diagnosis. This information is available to a limited number of DCJS and State Police staff who are responsible for matching the individual with pending or active firearms licenses or assault weapons registrations.

However, reporting a patient is not required when, in the provider's reasonable professional judgment, doing so would endanger the provider or a potential victim. In addition, a mental health professional is not criminally or civilly liable if he or she uses "reasonable professional judgment" and acts in "good faith" when deciding to report.

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