

**FOCUS:  
MENTAL HEALTH LAW**



Carolyn Reinach Wolf and Jamie A. Rosen

Even before the COVID-19 pandemic, obtaining a graduate degree, especially a law degree, was extremely stressful and often isolating, requiring hours alone in the library and competing with classmates. Now the new challenges of remote learning, reduced opportunities for networking to secure summer or full-time employment, quarantining from friends and family, and the loss of outlets to reduce stress, have created the perfect storm for mental distress.

Major mental illness often emerges in young adulthood, the ages between 18 and 25, overlapping with the typical age of students who seek higher level degrees. This population also experiences high levels of depression, anxiety, substance use disorders, and suicidal thoughts.<sup>1</sup>

# Mental Health Services for Incoming Legal Professionals

The US Centers for Disease Control reported that suicidal ideation has increased amongst young adults based upon research and surveys completed in June 2020.<sup>2</sup> As recently as December 2020, Tommy Raskin, a second-year student at Harvard Law School, and the son of Maryland Congressman Jamie Raskin, died by suicide after experiencing depression.<sup>3</sup> These young adults are at high risk for mental health issues, now, more than ever, and they need support.

### Threat Assessment Teams

After the 2007 shooting at Virginia Tech, most institutions of higher education created multi-disciplinary Threat Assessment Teams with the goal of identifying at-risk students and intervening before a tragic incident occurs. In fact, in 2008, Virginia and Illinois were the first states to require that higher education institutions adopt policies creating threat assessment teams.<sup>4</sup>

Many of these teams, which now exist country-wide, have continued to operate, and meet virtually throughout 2020 and into 2021, adjusting their intervention plans and identifying new telehealth options for students in need of mental health services during the pandemic. It

is imperative that these teams service graduate students as well if they do not already do so.

In addition to working towards the prevention of violence on campus, these teams are also equipped to identify students in mental health distress, battling anxiety, depression, addiction, or any myriad of concerns that are only heightened during this global pandemic. The school or campus Threat Assessment Team, which may also be known as a Behavioral Intervention Team or Care Team, puts each piece of the puzzle together, collecting the information from the different silos—faculty, administrators, the counseling center, family, and peers.

For this system to work, faculty and staff must receive adequate training on the mental health issues affecting young adults. Namely, how to identify red-flag or at-risk behaviors in students, and how to report such concerns in accordance with school policies and protocols. The teams can then intervene timely and appropriately, collaborating with on-campus or off-campus resources and connecting the at-risk student to those services. The team can also monitor the student's progress to ensure that he or she is suitable to continue coursework.

### Counseling Centers and Telehealth

During this unprecedented time of remote learning, it is still the role of the counseling center to assist in fulfilling the mission of the college or university to retain students and help the students meet their academic goals. Many institutions have offered telehealth services during the pandemic.

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Carolyn Reinach Wolf is an Executive Partner in the law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf, & Carone, LLP and Director of the firm's unique Mental Health Law practice. She serves on the Lawyer Assistance Committee of the NCBA. She may be reached via email at [cwolf@abramslaw.com](mailto:cwolf@abramslaw.com).



Jamie A. Rosen is a Partner at Abrams, Fensterman, LLP where she practices Mental Health Law. She serves on the Board of Directors of the NCBA and was the founding Co-Chair of the NCBA Mental Health Law Committee. She may be reached via e-mail at [jrosen@abramslaw.com](mailto:jrosen@abramslaw.com).



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## Mental Health Services...

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Telehealth, telemedicine, or telepsychiatry describe the use of two-way communication technology to provide certain health care services.<sup>5</sup> During the pandemic, providers are encouraged to use telehealth methods to meet with and treat patients, including mental health services. In March 2020, the Office for Civil Rights (OCR) at the Department of Health and Human Services (HHS) announced that it will waive potential penalties for good faith use of telehealth methods during the national public health emergency.<sup>6</sup>

Further, many states have waived certain licensure requirements or renewal guidelines to allow healthcare providers to treat patients in other states via telehealth methods.<sup>7</sup> These legal waivers were essential in the beginning of the pandemic when many students returned home, out of state from their institutions, and continue to be useful in offering comprehensive mental health services to students to date.

To take advantage of the resources offered, students must know they exist. Counseling centers should ensure that their campus website clearly communicates the availability of resources to the student body. Campuses must continue to fight the stigma attached to seeking help, sending the message to students that even the most bright and successful students can benefit from mental health support.

### Lawyer Assistance Programs

Legal professionals are especially vulnerable to mental health issues and substance abuse disorders.<sup>8</sup> Law students, their employers for summer or school-year internships, and their schools must be aware of the mental health resources available to them through local Lawyer Assistance Programs.

These programs, available on a county and state level, are committed to helping members of the legal community stay healthy and productive, especially during these challenging times. For example, according to the website for the Nassau County Bar Association,

The Nassau County Bar Association Lawyer Assistance Program provides a range of services to lawyers, judges, law students, and their immediate family members who are struggling with alcohol or drug abuse, depression, anxiety, stress, as well as other addictions and mental health issues.

LAP services are free and strictly confidential via Section 499 of

the Judiciary Law and the Rules of Professional Conduct. These services include peer support, crisis intervention, evaluation, referrals, professional supportive counseling, outreach, education, prevention, and wellness programs.

### Legal Interventions

In cases where a student is in serious mental distress, exhibiting signs of a mental illness or related mental health issue, there are certain legal interventions to consider. About one-third of young adults might experience a mental health issue that is severe enough to impact their work performance and education.<sup>9</sup> The individual might require inpatient care and psychiatric treatment in a hospital setting.

A family member, friend or other person with direct knowledge of the symptoms and behaviors can apply to the court for a Mental Hygiene Warrant.<sup>10</sup> Hospitalization would allow for a psychiatrist or other physician to evaluate any mental health or medical issues, establish a diagnosis, and recommend a plan to treat the acute symptoms. Once stable and discharged from the hospital, the goal would be to return to school at an improved level of functioning.

Non-compliance with psychiatric treatment in the community may be a contributing factor to experiencing these acute psychiatric symptoms, thoughts or attempts at self-harm or other dangerous behaviors. If the individual has a history of non-compliance with outpatient psychiatric treatment, the hospital or a concerned individual in the community can make a referral for Assisted Outpatient Treatment (AOT) in the county where the individual resides.<sup>11</sup>

Known as “Kendra’s Law” in New York, AOT is court-ordered psychiatric treatment and supervision in the community with the goal of preventing “a relapse or deterioration” in the individual’s psychiatric condition.<sup>12</sup> One of the benefits of AOT is that this program provides for case management services, either an Intensive Case Manager (ICM) or an Assertive Community Treatment (ACT) Team to coordinate the individual’s psychiatric care in the community.<sup>13</sup>

This Team is directed by Court Order to meet with the individual in the community (or virtually, by phone or video-conference), usually four to six times per month, follow the plan for the administration of psychiatric medication and monitor medication compliance. The AOT program can also provide alcohol or substance abuse counseling.

### Conclusion

The COVID-19 pandemic has truly

challenged our legal community and the future members of our profession. Graduate students are often juggling many roles and responsibilities, each one having been significantly impacted by COVID: completing their own coursework, conducting research with faculty or peers, managing their households and family life, and in some cases, also maintaining some form of employment or internship.

The hope is that these students will serve as future members of law firms, employees of the court system, and leaders in government, either local, state, or federal. We owe it to them to provide the mental health support they need now to succeed during this pandemic and develop the necessary coping skills to endure the long-lasting effects of these mental health issues.

1. Dana Alkhouri, *Pandemic’s mental health burden heaviest among young adults*, ABC News, (Feb. 21, 2021),

available at <https://abcn.ws/3rVoFaP>.  
 2. Ryan Prior, *1 in 4 young people are reporting suicidal thoughts. Here’s how to help*, CNN, (Aug. 15, 2020), available at <https://cnn.it/30QMdSf>.  
 3. Emmy M. Cho and Alexandra Topic, *Harvard Remembers Tommy Raskin, an ‘Extraordinary Young Person’ with a ‘Perfect Heart’ And ‘Dazzling Radiant Mind’*, (Jan. 18, 2021) available at <https://bit.ly/3trUTuC>.  
 4. Va. Code Ann. § 23.1-805 (Formerly cited as VA ST § 23-9.2:10); 110 Ill. Comp. Stat. Ann. 12/20.  
 5. *What is telehealth?*, U.S., Department of Health and Human Services (HHS), available at <https://bit.ly/2P2LZoA>.  
 6. *OCR Issues Guidance on Telehealth Remote Communications Following Its Notification of Enforcement Discretion*, (Mar. 20, 2020), available at <https://bit.ly/30QSPA5>. Health care providers may, in good faith, provide telehealth services to patients using remote communication technologies, even if the application, such as FaceTime or Skype, does not fully comply with HIPAA rules. *Id.*  
 7. *Telehealth guidance by state during COVID-19*, APA, (updated Feb. 1, 2021), available at <https://bit.ly/30U8Cy9>.  
 8. Lawyer Assistance Program, Nassau County Bar Association, available at <https://bit.ly/3vzH3bp>.  
 9. Alkhouri, *supra* n.1.  
 10. Mental Hyg. Law § 9.43.  
 11. Mental Hyg. Law § 9.60.  
 12. *Id.* § 9.60(a), (c)(6).  
 13. *Id.* § 9.60(a)(1).

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