

My Encounter with NY SAFE ACT Mental Health Law (MHL) 9.46

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I am writing to inform people not just about my experience, but about some steps they might take if they find themselves in the same situation. Provider and facility names have been left out of my story because they aren't relevant. The NY SAFE Act allows this to happen to anyone, anywhere in New York State.

The year 2020 was stressful for many of us. The pandemic has resulted in illness, death, travel restriction, lockdown, mask wearing, and other changes to our daily lives. Some have lost jobs, closed businesses, or been furloughed from work for months without pay. Others had to work extra hours, sometimes without preparation or adequate supplies. There was a presidential election. On top of all that, we each have personal responsibilities and events happening in our lives. All of this piles up, and we aren't alone in that experience. When people seek help in managing the effects of stress, depression, anxiety, etc., we expect health care facilities and providers to be safe and confidential in providing the necessary guidance. My experience with the NY SAFE Act MHL 9.46 shows that sometimes this is not the case.

I was pretty stressed in April of 2020 and sought guidance to manage the circumstances. The causes of my stress are not relevant. What is relevant is what happened when I did the right thing in seeking help to address the problem. My encounter with health care providers is summed up in the following letter that I sent to the facility in October.

I am writing to congratulate your department on accomplishing something that I thought was not possible. You have convinced me, a very health literate individual who has worked in both clinical practice and public health, that seeking mental health care from an institution such as yours is not in my best interest.

When I was feeling stressed and overwhelmed, I sought guidance from your facility. While there for less than three hours, I sat in a chair and told my story to staff who dropped by. There was no medication administered and the discharge direction was simply to follow up with my primary care physician within a week. Basically, no treatment was given or needed and I was fine to leave and drive myself home. Documentation related to that day supports that I was not a danger to myself or others, that there was no involuntary commitment, and there was no determination of mental deficiency or incompetence. In other words, mandatory reporting of my visit under Mental Health Law 9.46 of the NY SAFE Act or any other regulation was not required. In fact, I quite clearly stated to both the physician and the social worker that I had no thoughts, intentions, or plans to hurt myself or anyone else. However, five weeks after my visit I was informed by the (redacted) County Sheriff's Office that a petition was filed under the SAFE Act stating that I was a danger to myself or others. On securing a copy of my medical records, I see that false narrative was inserted based on fragments of conversation taken out of context, unfounded assumptions, and outright erroneous documentation. In spite of that and given that the medical record documents that I was not a risk to myself or others, filing a petition under the SAFE Act violates the Hippocratic Oath by causing me harm. This action increased

my stress level and imposed a financial burden as I had to retain an attorney to successfully defend me in this matter. It has prevented me from participating in activities, explained in the following paragraph, that are beneficial to my physical and mental health. In addition, because this is now a court record, my home and family are now a potential target for people who object to guns or want to take them illegally. Please note that in order to protect my home and family, years ago I filed paperwork with the Sheriff's Office requesting that information about my firearms permit not be publicly released. Filing an unfounded petition under Mental Health Law 9.46 has essentially undone that protection. The actions of your staff have also caused my medical records to be released to other authorities when it was not required by law or regulation.

If your providers had taken the time to actually listen rather than judge, this situation would not have happened. My family does a lot of hiking, fishing, and hunting. These are activities that bring us together so we can share the experiences of physical exercise, enjoyment of natural surroundings and fresh air, and legally secure free-range, hormone-free and antibiotic-free food. In other words, the activities that I engage in that involve guns are beneficial to both my physical and emotional wellbeing. Further, I comply with all regulations regarding guns. Note that in addition to a gun, I own kitchen knives, power tools, an automobile, and other items that could potentially be harmful. No action was taken to limit my access to these items because there was no indication that I might harm myself or others. Unfortunately, the care providers at your facility did not take the time to understand me or my lifestyle. Instead someone with a bias against or a fear of guns filed an unfounded petition under Mental Health Law 9.46. Please enlighten your staff with the knowledge that simply owning a gun does not mean that there is risk of harm to self or others, and that the New York State Psychiatric Association states the following on their website: "Regarding discharge, we conclude that there is no need to file a SAFE ACT report upon discharge because an individual should not, at discharge, present a risk of harm to self or others."

Unfortunately, the law grants providers immunity for filing "in good faith." After having gone to court to successfully prove that the petition filed was unfounded, I have little recourse but to share my story with others so they can avoid the same experience. Thank you for teaching me that mental health care facilities such as yours are not a safe place for gun owners to seek assistance. This situation highlights exactly why military and law enforcement personnel often avoid seeking mental health care, even when needed. This experience has advanced my education.

The director who received that letter called me two days after I mailed it. He was very nice, and was shocked and embarrassed that this happened. He has put my letter into the facility's internal complaint process. I do not know the outcome of that investigation yet.

When I received a call from the Sheriff's Office on June 6, 2020, the Deputy told me an Order to Show Cause would come in the mail and to turn in any guns that I owned. I called a lawyer and I made arrangements with the Sheriff's Deputy to comply with the Order to Show Cause. A few days later the Order to Show Cause arrived in the mail. I

requested, paid for, waited for, then read copies of my medical records. I contacted my trusted health care providers and asked them to document whether they felt the alleged problem existed. All of these medical records were shared with my attorney and the judge. The court hearing was on July 17, 2020. I bought myself a new outfit and made a matching mask to wear. I wanted to go in feeling great and present a good image. The County Court Judge's Conclusion of Law is dated July 20, 2020 and states the following. (The capitals and bold type are actually in the original document.)

"The Court has broad discretion in determining when to revoke and/or suspend a pistol permit. The evidentiary requirement is minimal and so long as the decision is not arbitrary, capricious or an abuse of discretion, it is entitled to deference."

"Accordingly, it is the judgment of this Court that Respondent's pistol permit is hereby **REINSTATED effective immediately.**"

Basically, the MHL 9.46 report was completely unfounded. I got my permit back, but it now bears a "scarlet letter." The permit number has a suffix of "REIN" to show that it was reinstated. If I am asked to show my permit to a game warden, forest ranger, police officer, etc., will they see this as a red flag against me? Probably. So, I carry the Court decision with my permit.

After reading and rereading my medical records, I realized what occurred was professional misconduct. The medical records documented one thing and according to the Order to Show Cause, the NY SAFE ACT report said the opposite. So, one of those reports was a false report. Also, other documentation in the medical record was blatantly incorrect. I filed professional misconduct complaints with the New York State Education Department, Office of Professional Discipline (<http://www.op.nysed.gov/opd/complain.htm>) and the New York State Department of Health, Office of Professional Medical Conduct (<https://www.health.ny.gov/professionals/doctors/conduct/>). What constitutes professional misconduct can be found online (<http://www.op.nysed.gov/title8/part29.htm>, https://www.health.ny.gov/professionals/office-based_surgery/law/6530.htm). Given that the SAFE Act report was unfounded, Federal HIPAA regulation was violated by releasing my medical information without my consent. The United States Department of Health and Human Services (HHS), Office of Civil Rights (OCR) handles HIPAA violation complaints, but they have to be filed within 6 months of the event (<https://www.hhs.gov/hipaa/filing-a-complaint/index.html>). I filed and OCR closed the case without investigating twice. I was finally able speak to an OCR Regional Manager who suggested that I file the complaint in the format of who, what, where, when, how, and be sure to include the reference number from the first filing because that was within the 6-month limit. The results of those three complaints are still pending. I was not able to find a lawyer who wanted to take the professional misconduct cases because this wasn't "catastrophic."

What happens to information reported in the online NY SAFE ACT form (<https://nysafe.omh.ny.gov/>) should be transparent. Where does it go? Who has seen it? What was the purpose of each person's review of the report? Where is the information stored? How long is the information stored? Is the court's decision stored with the original allegation? I have contacted the New York State Office of NICS

Appeals and SAFE ACT, and the Office of Mental Health Public Information Officer. They responded, but they have not answered my questions. I have spoken with my County Director of Community Services. He was very nice and explained that his role was to verify that the report was filed by a mandated reporter and that it contained text indicating a valid reason to file the report. It is not his role to verify the truth of that reason. He does not store the information and was not certain where the report comes from or where it goes to after he completes his part. I have a call out to the County Sheriff's Office to ask the same questions about the information. I am waiting for a call back. My concern is this – I do not want the false statements made to cause me harm in the future. It is unclear how to get a false allegation under the NY SAFE Act removed from systems or have the court decision attached to it.

It has been many months since I saw the provider that filed the false report and the issues are still not fully resolved. I may never be compensated for the harm done or the thousands of dollars it cost to defend myself, but I can share my story. I hope this will help others in their fight against false reporting under the MHL 9.46.

If someone files a NY SAFE Act MHL 9.46 report against you, here are some steps to consider, in whatever order works best for your situation:

1. Do not be embarrassed or ashamed for seeking help. Most likely it was the right thing to do.
2. Stand up against false allegations
3. Call a lawyer
4. Comply with the Order to Show Cause
5. Get copies of your medical records
6. Get input from trusted health care providers
7. Keep records of all communications
8. Keep copies of all documents
9. Show up for the court hearing
10. Carry a copy of the Court Hearing Conclusion of Law with your reinstated permit
11. Review professional misconduct definitions online
12. If indicated, file professional misconduct complaints with the appropriate offices
13. If indicated, file a HIPAA violation complaint with the HHS OCR, in a format that they understand
14. Ask questions until you get answers
15. If you are comfortable, share your story to help others – Do you have any tips to add to this list?