

## College can be held liable for student's suicide

Ruling seen as expansion of law beyond 'Nguyen'

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Harvard University can be held liable for its employees' alleged failure to take adequate steps to prevent a student's suicide, a Superior Court judge has decided.



David W. Heinlein  
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Following a suicide attempt the spring of his freshman year, Luke Tang signed a contract with Harvard agreeing to participate actively in treatment as a condition of continued enrollment.

However, Tang apparently underwent no counseling from the time he left campus for the summer until he committed suicide in September, several weeks after he returned.

His father, plaintiff Wendell Tang, sued the school and several of its employees on behalf of his son's estate, alleging that by implementing the contract, the defendants took on a special relationship with

the younger Tang that created a duty to take reasonable measures to protect him from hurting himself. Harvard breached the duty by failing to ensure the student complied with the contract's terms, according to the plaintiff.

The defendants argued that under the Supreme Judicial Court's 2018 decision in *Nguyen v. Massachusetts Inst. of Tech.*, a school satisfies its duty by initiating its suicide prevention protocol, arranging for clinical care in the absence of such a protocol, or, when care is refused, alerting the student's emergency contact. *Nguyen* had recognized a university's duty to take reasonable measures to prevent a student's suicide when the university has actual knowledge of a student's prior attempt or an intention to commit suicide.

Judge Michael D. Ricciuti disagreed with the defendants' argument in *Tang*.

"[W]hile *Nguyen* establishes and defines a university's circumscribed duty in a case such as this, it does not insulate a university from potential liability for failing to properly discharge the limited duties it imposes," Ricciuti wrote, denying the defendants' motion to dismiss. "Put simply, Harvard's argument ... reduces *Nguyen* to a check-box, and that once a university checks one of the three boxes — a protocol, or if there is none, clinical care, or if that is refused, reaching an emergency contact — its duty ends regardless of how well or how poorly the university fulfills its duty. That interpretation cannot be correct."

The 10-page decision is *Tang v. President and Fellows of Harvard College, et al.*, Lawyers Weekly No. 12-029-19. The full text of the ruling can be found at [masslawyersweekly.com](http://masslawyersweekly.com).

### 'Good interpretation'

Plaintiff's counsel David W. Heinlein of Framingham hailed *Tang* as an important decision.

"After *Nguyen*, there was some uncertainty about how that decision might be applied in cases going forward," Heinlein said. "This ruling points out that a defendant can't comply with a duty that arises under *Nguyen* by 'checking off boxes,' as the court phrased it. It allows families like the Tang family to go forward with cases and evaluate whether a suicide prevention protocol which has been implemented was a reasonable policy to begin with



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and whether it's implemented reasonably."

Heinlein said the *Tang* ruling was also significant in that, unlike the student in *Nguyen*, Tang signed a contract as a condition of his continued enrollment, which the judge determined could serve as a basis for a voluntary assumption of a duty by the school.

"That's an expansion of the law even beyond *Nguyen*, in my opinion," he said.

Quincy attorney David A. DeLuca, who is not involved in the case, said he agreed with Ricciuti's ruling.

"*Nguyen* establishes a new standard of care and duty under a special relationship theory, and it's clear that inherent in that [colleges and universities can] respond to the expressed threats of suicide or intention of suicide with protocols, but the implementation must be reasonable," said DeLuca, who settled a wrongful death action in 2006 on behalf of the family of Elizabeth Shin, an MIT student who allegedly committed suicide in her dorm room. The university did not concede liability in that case, and Shin's family released a statement at the time of settlement stating they understood that Shin's death was likely accidental.

Neither Martin F. Murphy of Boston, who represents Harvard, nor William J. Dailey III of Boston, who represents the individual defendants, responded to requests for comment.

But Alan D. Rose Sr., a Boston attorney who counsels colleges and universities, said he had predicted *Nguyen* would lead to more litigation in this area and that *Tang* reflects that.

The SJC laid out the circumstances giving rise to a duty so specifically that it gave plaintiffs' lawyers a roadmap for surviving a Rule 12(b)(6) motion to dismiss, Rose said.

"It's clear from Judge Ricciuti's opinion in this case that the plaintiff has pleaded what he needed to plead," said Rose, who authored an amicus brief in *Nguyen*. "That means there's likely to be much more discovery than there otherwise would be — production of documents, depositions and so forth."

Still, Rose cautioned, it does not mean plaintiffs ultimately will be more successful.

"I can tell you that all colleges and universities are aware of the SJC's *Nguyen* standard," Rose said. "They all either have adopted or are in the process of adopting suicide protocols, not just to meet the SJC's standards, but because they want to try and prevent student suicides to the extent possible."

### Tragic death

In April 2015, Tang attempted suicide in his Harvard dormitory. The university subsequently transferred him to McLean Hospital in Belmont.

Tang remained at McLean for about a week.

When Tang was discharged, he met with defendant Melanie Northrop, a mental health clinician at Harvard.

Tang apparently told Northrop he planned on leaving in mid-May for a weeklong retreat in China. Northrop told Tang he would need to talk to his therapist about a support plan during that time and that he would be expected to continue his treatment after returning to school.

In early May 2015, Tang entered a contract prepared by Northrop, freshmen dean Catherine Shapiro and Harvard clinician David Abramson, under which Tang agreed to follow the recommendations of his treatment team, including attending sessions regularly and participating actively in his treatment.

A week later, Northrop learned Tang met with a member of his treatment team but declined a follow-up. She told him he was "essentially not in treatment" and reminded him that he was expected to be. Tang asked for a new therapist, and Northrop apparently explained that with five business days remaining before he left campus, it might be hard to find someone, but that it was still important he be engaged in treatment.

Tang met with Northrop again on May 15, and Northrop urged him to follow up with his house dean upon his return in September.

She also reported Shapiro's concern that Tang had no plan for ongoing therapy over the summer and that Shapiro intended to contact his parents.

Tang returned to Harvard in August 2015 and committed suicide in his dorm on Sept. 12. His father filed a wrongful death complaint against the university, Northrop, Shapiro and Abramson in 2018, and the defendants moved to dismiss.

### Motion denied

Ricciuti rejected Harvard's argument that all *Nguyen* required of Harvard was a showing that it initiated its suicide prevention protocol, arranged for clinical care in the absence of a protocol, or, if such care was rejected, alerted Tang's emergency contact.

While *Nguyen* allows universities to satisfy their duty by initiating their suicide prevention protocol, "inherent in any such response is that the protocol is appropriate," the judge said.

If that were not the case, he continued, "all that a university would have to do to avoid liability ... is to draft something — anything — it can label a 'protocol' and 'initiate' it under appropriate circumstances ... and thereby not only completely eliminate liability, but foreclose any discovery concerning the appropriateness of the protocol or even any questions about whether it was properly followed."

Additionally, the judge noted, the complaint claims Harvard failed to initiate a suicide prevention protocol.

"[R]ead generously [this] means that there was a protocol in place but that it was not triggered, which would potentially describe a violation of *Nguyen* even if Harvard offered in-patient mental care, as it allegedly did," he wrote.

Accordingly, Ricciuti found, the defendants' motion to dismiss should be denied.

### Tang v. President and Fellows of Harvard College, et al.

**THE ISSUE** Could Harvard University face liability for its employees' alleged failure to take adequate steps to prevent a student's suicide?

**DECISION** Yes (Middlesex Superior Court)

**LAWYERS** David W. Heinlein of Heinlein, Beeler, Mingace & Heineman, Framingham (plaintiff)  
Rachel C. Kaluski Hutchinson, Martin F. Murphy and Madeleine Rodriguez, of Foley Hoag, Boston; William J. Dailey III of Sloane & Walsh, Boston (defense)