



COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO: 1881CV02603

WENDELL TANG, M.D.
as representative of the estate of LUKE TANG,

PLAINTIFF,

vs.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE,
CATHERINE SHAPIRO, CAITLIN CASEY, Ph.D.,
MELANIE NORTHROP, MSW, LICSW, & DAVID ABRAMSON, M.D.,

DEFENDANTS.

**DECISION AND ORDER ON THE MOTION FOR SUMMARY JUDGMENT OF THE
DEFENDANTS, PRESIDENT AND FELLOWS OF HARVARD COLLEGE,
CATHERINE SHAPIRO, AND CAITLIN CASEY, Ph.D.**

INTRODUCTION

The Plaintiff, Wendell Tang, M.D. (“Dr. Tang”) brings this action on behalf of the estate of his son, Luke Tang (“Luke”). Luke died by suicide on September 12, 2015, shortly after the commencement of his sophomore year at Harvard. The defendants, President and Fellows of Harvard College (“Harvard”), Catherine Shapiro (“Shapiro”), and Caitlin Casey, Ph.D. (“Casey”) (collectively referred to as “the Harvard defendants”) seek summary judgment on the following grounds:

1. That as a matter of law they did not breach the duty owed to Luke under the Supreme Judicial Court’s holding in *Dzung Duy Nguyen v. Massachusetts Inst. of Tech.*, 479 Mass. 436 (2018).

2. That they did not voluntarily assume any duty of care that would take the case outside the Court's holding in *Nguyen* regarding the limited duty owed by university or college employees who are not healthcare providers
3. That as a matter of law they did not engage in any conduct that would support a finding of gross negligence.

In consideration of the parties' memoranda of law with voluminous supporting exhibits and oral argument, and for the reasons that follow, the motions for summary judgment of the Harvard defendants are **ALLOWED**.

STATEMENT OF UNDISPUTED FACTS

All of the facts that follow, including quotations, are undisputed by the parties and come directly from the statement of undisputed facts filed with the motion for summary judgment of the Harvard defendants.

Luke enrolled in Harvard as first-year student in September 2014. When Luke filled out and signed the Initial Student Medical Questionnaire on June 14, 2014, he did not check the box for either anxiety disorder or depression. Luke's father, Dr. Tang completed the physician portion of the form. Dr. Tang is a physician and specializes in pathology. Dr. Tang stated on the form that Luke had no history of "[e]motional issues (e.g. depression, eating disorder)."

First-year students live in residence halls, most often in Harvard Yard, including Wigglesworth Hall, where Luke lived. The first-year experience at Harvard is overseen by a Dean of Freshmen, who resides on campus. Four freshmen Resident Deans (also called Yard Deans), who also reside on campus, report to the Dean of Freshmen. Each Dean is responsible for approximately one-quarter of the first-year class - a little more than 400 students. Yard Deans support students through significant academic or residential difficulties, serve as resources for

students as they navigate Harvard, and act as points of contact for faculty members who may have concerns about first-year students.

After their first year, students typically live in upper class Houses, like Lowell House. Houses have one or two Faculty Deans (called “House Masters” in the 2015-2016 academic year), who are faculty members who live in the House and oversee the life of the House. Each House also has a Resident Dean, who reports to the Faculty Deans and serves as the lead academic dean for the House, helping students with academic, social, and family concerns as they progress toward graduation. Resident Deans also live in the House.

Harvard University Health Services (“HUHS”) offers medical services to students at the University. HUHS offers mental health services to students who seek them through Counseling and Mental Health Services (“CAMHS”), including after hours and weekend urgent care services.

Harvard’s Emergency Procedures Handbook provides detailed information about responding to students in distress. The Emergency Procedures Handbook contains specific provisions addressed to Tutors, Proctors, and House and Yard Deans. The Emergency Procedures Handbook also contains instructions for Proctors, Tutors, and Yard and House Deans to follow if they have received information (from faculty or staff, HUHS, parents, students, or others) indicating that a student poses a threat to him- or herself or others, or there is other serious concern for the student’s well-being.

Harvard’s Resident Dean of Freshmen Manual also contains provisions describing the steps that the Freshmen Dean should follow to address urgent student psychiatric needs and directs Deans to the Emergency Procedures Handbook concerning connecting students to HUHS.

When CAMHS clinicians determine that a student requires inpatient psychiatric hospitalization, CAMHS has written procedures relating to the transfer of that student to an outside mental health facility. Harvard employs a full-time case manager, Melanie Northrop, who is a licensed clinical social worker, to track students who are hospitalized in a psychiatric facility. Ms. Northrop communicates with hospital and Harvard officials during a student's hospitalization. Specifically, Ms. Northrop's role was to "track the hospitalization, to be a clinical point of contact for the hospital team and for the college;" "to provide information to McLean;" "to understand the course of [the student's] hospitalization[;] and to discuss the disposition, whether or not [the student] was returning to the Harvard campus, and the discharge plan." As a general practice, Ms. Northrop would also meet with students discharged from McLean Hospital to review the student's treatment plan before the student was permitted to return to their dormitory.

On April 21, 2015, Luke spoke to Maureen Rezendes, Ph.D., a licensed psychologist at HUHS. According to a note Dr. Rezendes made in Luke's medical record, Luke told Dr. Rezendes that he contacted HUHS at the recommendation of friends. Luke stated that he had attempted suicide two weeks before. He did not think that he was depressed. He stated that his suicide attempt was not because of "an emotional reason". Rather, he reported that he had attempted suicide because he identified as "strongly Christian" and had "lost faith in God" Luke advised Dr. Rezendes that he had made another suicide attempt when he was thirteen.

Dr. Rezendes' note further states that Luke did "not report any current desire to kill himself." Luke declined to go to HUHS that day because of class but agreed to come for an appointment the following day.

Luke came to HUHS the next day and met with Joyce Marengi, LICSW, a licensed social worker employed by Harvard. Ms. Marengi's notes indicate that Luke told her that he had attempted suicide on April 11, 2015, via suffocation by taking over-the-counter medications and taping a bag around his head but woke up and returned to his room. Later that same day, Luke reported that he walked to the subway and considered jumping in front of a train. He said he had attempted suicide because over time, he had picked up "discrepancies [sic] around the Christian [sic] philosophy" and now felt "there is no intrinsic meaning or transcendent purpose." Luke described himself as being in a "kind of existential, kind of philosophical, spiritual crisis." Luke reported that he had chosen not to commit suicide because he thought of two friends from his Christian group and "how his suicide would impact them." Luke told Ms. Marengi that he "did not think about his family" and "describe[d] his family as not close." Luke also reported that he was still "thinking about dying" but said that he did not intend or plan to commit suicide.

Ms. Marengi concluded that Luke "needed an intensive evaluation in a secure setting" and arranged for his admission at McLean Hospital. Ms. Marengi called Dr. Tang to let him know that his son was being hospitalized at McLean because he "had made a serious suicide attempt two weeks before"; and that she believed Luke needed "an intensive evaluation in a safe setting."

Luke was admitted to McLean for evaluation in the hospital's short-term unit on April 22, 2015, and remained there until his discharge on April 29, 2015. At McLean, Luke met regularly with a social worker, Vanessa Cuthbert, and his treating psychiatrist, Jason Jones, M.D. Dr. Jones did not prescribe psychiatric medication to Luke during his admission. During his admission, Luke consistently denied being suicidal. Luke repeatedly expressed frustration to McLean staff about being hospitalized and expressed the desire to return to school.

Shortly after Luke's admission, McLean staff spoke by phone to Dr. Tang. Dr. Tang reported to McLean staff that Luke's interest in Christianity had become "obsessive" and that Luke had a history of being unable to comply with authority figures if those authority figures' logic did not match his.

During Luke's hospitalization at McLean, Harvard monitored his progress closely. Consistent with Harvard's practices, Ms. Northrop, as case manager, communicated regularly with McLean concerning Luke.

In 2015, Dean Catherine Shapiro was a Resident Dean of Freshmen at Harvard. Her duties included advising students on academic choice, helping students when they had medical issues, and supervising Proctors who lived in four student residences, including Wigglesworth Hall, where Luke lived. After learning from HUHS that Luke had been hospitalized at McLean, Dean Shapiro spoke by telephone with Dr. Tang, informing him that Luke was at McLean; identifying it as a psychiatric hospital; saying that the first step was for Luke to "get[] a good evaluation;" and informing Dr. Tang that Harvard would support Luke.

Shapiro spoke at length with Luke by telephone on April 27, 2015. While Luke was hospitalized, Shapiro also consulted with Ms. Northrop and with Dean of Freshmen Tom Dingman about whether, if Luke received medical clearance to leave McLean, Harvard should place Luke on a "care contract"—an agreement, based on an individualized assessment, that conditioned a student's continued enrollment and residence at Harvard on their agreement to follow the recommendations of a designated treatment team. Ms. Northrop and Dean Dingman both believed a care contract was advisable.

Shapiro met with Luke in person at McLean on April 28, 2015. Shapiro told Luke that if he returned to campus, he should expect that Harvard would require him to sign a care contract

that conditioned his continued enrollment and residence on his agreement to seek counseling. Shapiro described it as a firm expectation of Harvard. Luke was “unenthusiastic” about counseling because he felt like he was fine, and the problem had been resolved. But he “ultimately agreed to seek . . . outside therapy . . . [u]nderstanding that was likely to be a condition of Harvard allowing him to return to enrollment and residence.” Luke likewise told McLean staff that a referral to a therapist was “bureaucratic and unnecessary since [he had] support from [his] friends” but agreed to see a psychotherapist when informed of its “direct connection” to his ability to return to live at Harvard.

Before Luke was discharged, McLean identified a pastoral counselor from Cambridge, Rev. Larry Mynatt (who is not affiliated with Harvard), who agreed to provide therapy to Luke. McLean scheduled an appointment for Luke to see Rev. Mynatt on May 4, 2015. Ms. Cuthbert, the McLean social worker, informed Ms. Northrop that she had spoken to Rev. Mynatt about Luke and that McLean staff “felt he would be, potentially, a good match.”

McLean discharged Luke on April 29, 2015. Dr. Jones’s discharge summary states that, throughout his hospitalization, Luke “was very eager to be discharged and return to school as soon as possible” and that Luke “said very consistently that he was no longer suicidal” and “that his thoughts regarding suicide had changed dramatically about a week prior to admission.” Dr. Jones also reported that Luke had not reported “significant signs and symptoms of major depression,” and Dr. Jones did not recommend an antidepressant during Luke’s hospital stay or after discharge. Dr. Jones recommended that Luke enroll in outpatient therapy after discharge.

After Luke’s discharge and Harvard’s determination that he could return to campus, it was Ms. Northrop’s role to meet with Luke, to “provide access to resources,” “discuss his discharge plan, and to be a point of contact” for Harvard. Following Luke’s discharge, Ms.

Northrop met with Luke on three occasions: April 29, 2015; May 8, 2015; and May 15, 2015.

Shapiro likewise met with Luke three times: on May 1, 2015; May 5, 2015; and May 14, 2015.

In Luke's first meeting with Ms. Northrop (April 29, 2015), Luke told Ms. Northrop that he was planning to leave Harvard on May 17 for a weeklong retreat in New Hampshire; to go from that retreat directly to China for the summer; and to return directly from China to Cambridge at the end of the summer without seeing his parents.

Shapiro met with Luke on May 1, 2015. By that date, Harvard had made an individualized assessment concerning Luke's circumstances and concluded that Luke should be placed on a "care contract." Shapiro consulted with Ms. Northrop and with Dean Dingman about placing Luke on a care contract and about the contract's terms. Shapiro drafted the care contract from a template. Shapiro also sent a draft of the care contract to Ms. Northrop for her review and approval, and Ms. Northrop approved the language in it. The care contract was in effect when Luke was enrolled and in residence at Harvard.

In Luke's second meeting with Ms. Northrop on May 8, 2015, Luke again denied active suicidal ideation. He reported that he had seen Rev. Mynatt of May 4, 2015, but "did not feel he connected with" him and had not scheduled a follow-up appointment. Ms. Northrup reminded Luke that that he had agreed with Harvard to be in a counseling relationship. Luke also told Ms. Northrup that he had not discussed issues relating to therapy with his parents because "we do not have a close relationship, we don't talk much about things." Ms. Northrop advised Luke that if he wanted to change therapists or get one through CAMHS, that he could contact her, and she would assist him.

Shapiro met again with Luke on May 5, 2015, and May 14, 2015. Luke told Shapiro that he had met with Rev. Mynatt. Shapiro told Luke that she thought it would be helpful for Luke to

return home to New Orleans to give himself “a little time off” and, if he went to China, to have therapy while he was there. In these meetings with Shapiro, Luke said he “didn’t see the need for psychotherapy and was not convinced that psychotherapy was consistent with his religious approach, his religious convictions and religious practice.”

Ms. Northrop met with Luke for the third and final time near the end of the school year on May 15, 2015. Luke reported that he was in good spirits and denied suicidal ideation. As of the end of the 2015 school year, Shapiro and Northrop were both aware that Luke intended to spend the summer in China before returning to Harvard for his sophomore year.

Luke completed his first year at Harvard with a 3.918 GPA, having earned 6 A and 2 A-minus grades in his eight courses, which included honors linear algebra, mathematics and special relativity, electrodynamics, and two religion courses. During the school year, Luke taught Bible study for children at Memorial Church, and did volunteer work teaching at a local high school. He served as the education co-chair of the Harvard Undergraduate Math Association, participated actively in the Asian American Christian Fellowship, tutored at the Boston Community Corrections Center, and served as a host for prospective students visiting Harvard’s campus.

Luke returned to the Boston area from China on August 25, 2015. On August 27, 2015, before Lowell house opened, Luke took an aptitude test at an organization in Boston that specializes in those tests. Luke accepted an invitation for a Presidential Scholars reception to be held in Boston on September 18, 2015. On September 6, 2015, Luke booked a ticket for a flight to Vietnam over Harvard’s 2015-2016 holiday break. On September 8, 2015, Luke volunteered to make the arrangements for a Harvard University Math Association dinner to be held later in the month. On Thursday, September 10, 2015, Luke booked a room for the math dinner.

Luke was assigned to live in Lowell House for his sophomore year. Casey was the Resident Dean of Lowell House for the 2015-2016 academic year. Casey had served in that position since the 2012-2013 academic year. As Resident Dean, she lived in Lowell House. Before coming to Harvard, Casey was a teaching fellow at Yale University, where she was trained about Yale's mental health system and how to help students who might be having mental issues. In 2012, she received training on mental health and mental health awareness, given by Kathy LaPierre, M.D., who was the head of CAMHS.

During the summers between academic years, the freshmen Resident Deans meet with the Resident Deans of upper-class houses to discuss the first-year students who will be moving to the upper-class houses. In this meeting, called a handoff meeting, the freshmen Resident Deans let the Resident Deans of upper-class houses know about academic, physical, and mental health concerns facing students joining the upper-class houses. In May 2015, the freshmen Resident Deans met with Casey to discuss the students who would be coming to Lowell House in the fall. Casey learned that Luke was on a care contract and later saw and reviewed Luke's care contract when first-year students' files were transferred to Lowell House at the end of July.

Over the summer, Casey arranged for Luke to "live in an entryway that abutted [her] own apartment so that [she] could keep an eye on him." Before the school year began Casey also alerted the Lowell House senior staff that Luke had a history of mental health concerns, that he "was a student on [her] radar," and that she "wanted them to keep an eye out on him."

Harvard sophomores are assigned sophomore advisors "who are their first point of contact academically." Sophomores are required to attend mandatory meetings with their sophomore advisor in the first week of school; Casey assigned herself as Luke's sophomore advisor so that Luke would have to meet with her. On August 31, 2015, Casey wrote to Luke to

introduce herself as his dean and sophomore advisor and asked him to meet. Casey and Luke agreed to meet on Wednesday, September 2, 2015.

Casey met with Luke on Wednesday, September 2, 2015. Casey testified about that meeting as follows at her deposition:

“In that meeting, I reminded Luke of his obligation to receive mental health treatment. I encouraged him to be proactive and also laid out the possible consequences if he wasn’t. I asked him if he felt he was in danger or if he felt suicidal. He said no. I asked him to tell me about his previous mental health episodes, and . . . we talked about them.”

Luke was “adamant that [his] suicide attempt was an aberration.” He told Casey that his suicide attempt was “an experiment that he now realized was silly and not where he was and not where he wanted to be.” Luke further stated that at the time of his suicide attempt, he was having a crisis of faith and told Casey that “what had seemed [then] like a reasonable answer to a crisis of faith, now seemed not a reasonable answer to a crisis of faith.” Casey told Luke that if did not obtain counseling he would not be allowed to stay in Lowell House and could possibly lose his place in the college. Luke assured Casey that “he was making a connection at CAMHS to find a treater and that he understood that that was his obligation.”

On September 9, 2015, Casey exchanged emails with Luke. Luke wrote requesting that Casey approve the classes he had selected for the semester. Casey approved, but wrote:

“I want to remind you of two things. First, [I] think this is an incredibly difficult schedule and I want you to be aware of the deadlines for dropping and withdrawing. Second, you signed a care contract last term that continues to be in place. You must be seen regularly (it doesn’t have to be every week, but regularly) at [sic] someone at CAMHS. This is something you agreed to last year and I need to make sure that you understand the same rules apply this year. I understand that you feel that what happened last year was an aberration and definitely not something that you fear will be repeated and I respect that but for my peace of mind, I’d ask that you give up 45 minutes twice a month to talk to someone at CAMHS

as well. I'd like to sign an updated contract when you decide who you'd like to see this year."

On September 11, 2015, Dr. Tang called one of Luke's friends because he had not spoken to Luke since Luke's return from China on August 25, 2015. That night, Luke's friends found his computer in the Lowell House dining room and brought it to his room. In Luke's room, his friends found several notes suggesting that Luke intended to end his life.

Harvard Police, Luke's friends, and Casey searched for Luke. At 10:45 a.m. on September 12, 2015, Casey found Luke dead, hanging in a storage room in the basement of Lowell House.

Luke consistently denied being suicidal to Northrop and Shapiro following his discharge from McLean on April 29, 2015, through the end of the 2015 school year. Luke did not tell Casey that he was actively suicidal at any point before his death. Luke did not disclose any further suicide attempts to Ms. Northrop, Shapiro, or Casey at any point between his discharge from McLean on April 29, 2015, and his death on September 12, 2015.

Between the time Luke was discharged from McLean and the time of his death, Luke did not do or say anything that made his parents concerned that he might take his own life. Dr. Tang thought Luke had "already put this depression behind him."

DISCUSSION

In *Dzung Duy Nguyen v. Massachusetts Inst. of Tech.*, 479 Mass. 436 (2018), the Supreme Judicial Court addressed in detail the nature and extent to which a university owes a duty of care to guard against a student's suicide. The court concluded that a university has a special relationship with a student and a corresponding duty to take reasonable measures to prevent his or her suicide in circumstances where a university has actual knowledge of a

student's suicide attempt that occurred while enrolled at the university or recently before matriculation, or of a student's stated plans or intentions to commit suicide.

The Court defined such reasonable preventative measures as follows:

“Reasonable measures by the university to satisfy a triggered duty will include initiating its suicide prevention protocol if the university has developed such a protocol. In the absence of such a protocol, reasonable measures will require the university employee who learns of a student's suicide attempt or stated plans or intentions to commit suicide to contact the appropriate officials at the university empowered to assist the student in obtaining clinical care from medical professionals, or if the student refuses such care, to notify the student's emergency contact. In emergency situations, reasonable measures obviously would include contacting police, fire, or emergency medical personnel. **By taking the reasonable measures under the circumstances presented, a university satisfies its duty**” (Emphasis added; footnotes omitted). *Id.* at 456-457.¹

Nguyen also makes clear that the duty imposed upon a university under these circumstances is both limited in scope and time-bound:

“We stress that the duty here, at least for non-clinicians, is limited. It is created only by actual knowledge of a student's suicide attempt that occurred while enrolled at the university or recently before matriculation, or of a student's stated plans or intentions to commit suicide. **It is also limited to initiating the university's suicide prevention protocol, arranging for clinical care by trained medical professionals or, if such care is refused, alerting the student's emergency contact. Finally, the duty is time-bound. Medical professionals may, for example, conclude that the student is no longer a suicide risk and no further care or counselling is required**” (Emphasis added; footnote omitted). *Id.* at 457.²

¹ The limited duty owed by university employees under *Nguyen* does not apply to healthcare professionals. The Court left untouched the traditional duty of care owed by a university-employed healthcare professional who renders professional services to a student who may be at risk of suicide. *Nguyen*, 479 Mass. at 457 n.20

² In ruling on the Rule 12(b)(6) motion to dismiss of the Harvard defendants, this court (Ricciuti, J.) correctly noted that a university could still fail to satisfy its limited duty under *Nguyen* if its suicide prevention protocol was clearly inadequate or if there were issues of fact as to whether the university properly followed it. The court now has the benefit of a complete summary judgment record which addresses these issues.

The Court made clear in *Nguyen* that a university and its non-healthcare employees do not owe a generalized duty to students as a whole to prevent suicides. Rather the duty owed by a university is to the finite group of students who have either actually attempted suicide while enrolled at the university or close to matriculation as well as students who have stated specific plans or intentions to commit suicide. Further, the limited duty is satisfied by intervening in acute or emergency settings to arrange for clinical care by trained professional or by alerting an emergency contact if the student refuses such care.

The Court pointed out that this limited duty reflects consideration of a number of complex and competing considerations and seeks to **“impose realistic duties and responsibilities”** on universities in this context (Emphasis added). *Id.* The Court ultimately concluded that this limited duty respects the privacy and autonomy of adult students in most circumstances, **“relying in all but emergency situations on the student’s own capacity and desire to seek professional help to address his or her mental health issues”** (Emphasis added). *Id.*

Although summary judgment is not typically granted on the issue of breach of duty, *Nguyen* is the rare negligence case which sets forth not just the specific limited duty owed but also the manner in which that limited duty is satisfied.

THE CLAIMS AGAINST HARVARD

Applying the foregoing standard to the undisputed facts of this case I find that Harvard owed a limited duty of care to Luke by virtue of his disclosure on April 21, 2015, to a psychologist at HUHS that he had attempted suicide on campus two weeks earlier. The limited duty of care set forth in *Nguyen* was triggered by Luke’s acknowledged suicide attempt on campus which had occurred just two weeks earlier.

I further find that Harvard satisfied its limited duty as a matter of law where it is undisputed that upon receiving this information from Luke, Dr. Rezendes, the HUHS psychologist to whom Luke made this disclosure, confirmed that Luke denied any active plan to commit suicide. Dr. Rezendes also asked Luke to come in to be seen on that same day and when he declined to do so, arranged for him to be seen the following day.

Luke was seen by a licensed social worker at HUHS the following day who after speaking to him, concluded that he needed an intensive evaluation in a secure setting and arranged for him to be admitted to McLean Hospital, a mental health facility close to the Harvard campus. The HUHS social worker, Joyce Marengi, also notified Luke's father that Luke had made a serious suicide attempt two weeks prior and that he had been admitted to McLean for further evaluation. These actions satisfied the requirement under *Nguyen* of "arranging for clinical care by trained medical professionals." Ms. Marengi also contacted "the student's emergency contact" (his father) even though Luke had not "refused" care. Each of these actions are precisely what the Court in *Nguyen* described as the "reasonable measures" by which "a university satisfies its duty."³ *Id.* at 457.

The Court made clear in *Nguyen* that this limited duty "respects the privacy and autonomy of adult students in most circumstances, relying in all but emergency situations on the student's own capacity and desire and desire to seek help to address his or her own mental health issues." *Id.* It is undisputed here that Luke was advised at discharge from his acute admission to

³ Dr. Tang argues that there is an issue of fact as to whether Harvard even had a formal suicide prevention protocol in 2015 based upon conflicting deposition testimony from different Harvard representatives on this issue. Any dispute on this issue appears to be largely semantic and is ultimately moot where it is clear that Harvard promptly arranged for clinical care for Luke from trained mental health professionals and notified his father of Luke's suicide attempt in accordance with the limited duty imposed by *Nguyen*. Since there is no factual dispute as to whether Harvard did the things that are reasonably necessary in the absence of a formal suicide protocol, whether Harvard's policy is officially denoted a suicide policy is of no consequence.

McLean to continue with outpatient therapy. It is also undisputed that Harvard made efforts to get Luke to follow this recommendation, including requiring him to enter a “care contract” but that Luke was at least somewhat resistant to pursuing outpatient counseling as was his right as an adult who was permitted to make autonomous decisions regarding his own healthcare. Luke did get counseling though and reaffirmed his ongoing willingness to do so at his final meeting with Casey on September 2, 2015.

The Court further emphasized in *Nguyen* that the limited duty of a university in this context is time-bound. It is undisputed that as of April 29, 2015, Luke’s treating psychiatrist at McLean deemed him safe for discharge to the community with a recommendation for outpatient follow-up. There is no evidence in the summary judgment record that Luke made any further suicide attempt while enrolled at Harvard from April 11, 2015, up until his death on September 12, 2015. He continually denied that he was suicidal to Ms. Northrop, Shapiro, and Casey from the time of his discharge from McLean until the time of his death.

Similarly, there is nothing in the summary judgment record to indicate that any agent, servant or employee of Harvard was notified that Luke was planning to commit suicide at any time after his attempt in April of 2015 up until his death on September 12, 2015. Accordingly, Harvard had no newly triggered duty to undertake the measures required by *Nguyen* following Luke’s discharge from McLean up until his death.

Dr. Tang contends that the limited duty articulated in *Nguyen* “continues until one of two things occurs: the student no longer needs clinical care according to a properly qualified medical professional or the student graduates”. This argument runs counter to the rationale underlying the Court’s decision in *Nguyen* and also ignores the undisputed facts of this case.

The Court in *Nguyen* made clear that the limited duty owed by a university reflected a number of complex and competing considerations including respecting the privacy and autonomy of an adult student in most circumstances and “**relying in all but emergency situations on the student’s own capacity and desire to seek professional help**” (Emphasis added). 479 Mass. at 457. This limited duty is based on the Court’s recognition that non-clinicians such as Shapiro and Casey are poorly situated to probe or discern suicidal intentions that are not expressly evident. See *id.* The position advanced by Dr. Tang would essentially require non-clinicians like Shapiro and Casey to identify acute suicidal intentions even where the student expressly denies being suicidal.

Further, it would impose an ongoing duty on a university to monitor a student and determine what course of care if any was needed to guard against a possible suicide at some future date. This is directly contrary to the Court’s stated goal of respecting the privacy, autonomy, and desire of an adult student to seek help for mental health issues.⁴

This argument further ignores the fact that Dr. Jones discharged Luke from McLean back to the community after a one-week inpatient admission in which Luke persistently denied that he was still suicidal. Dr. Jones did not seek to involuntarily commit Luke under G.L. c. 123, § 8 based on a determination that he was an immediate risk of harm to himself. He recommended that Luke undertake outpatient therapy. Consistent with this recommendation, and in an effort to keep Luke engaged in outpatient mental health treatment with a provider of his choosing, Harvard made this ongoing treatment a condition of him remaining enrolled at Harvard. The College was under no legal duty to require this of Luke having already satisfied the limited duty imposed upon it by *Nguyen*.

⁴ The Court further acknowledged in *Nguyen* that the modern university relationship is no longer in loco parentis but rather provides for the students’ independence and self-determination. *Id.* at 457-458.

THE CLAIMS AGAINST SHAPIRO AND CASEY

The claims against Shapiro and Casey in their individual capacities as employees of Harvard fail for the same reasons as the claims asserted against Harvard as an institution. As detailed above, Harvard, through HUHS had already intervened as required by *Nguyen* and arranged for Luke's admission to McLean by the time that Shapiro became involved with Luke. She was fully aware that the interventions required by *Nguyen* had already been undertaken by the time she became involved. Shapiro actually met with Luke while he was at McLean and remained in regular contact with him up until he left campus for China at the end of the 2015 school year. Luke consistently denied that he was suicidal to Shapiro and there is no evidence anywhere in the summary judgment record that Luke ever told her or anyone else that he was again planning to commit suicide.

It is equally undisputed that Shapiro undertook efforts to get Luke into outpatient therapy following his discharge from McLean. Although Luke was somewhat resistant to these efforts he did in fact enter into outpatient counseling.

The same is true with respect to Casey. Although she, like Shapiro, communicated with Luke regularly regarding his "care contract", including the requirement that he remain in therapy, Casey never received any information from Luke or anyone else that triggered a new limited duty to intervene under the *Nguyen* standard.

DR. TANG'S VOLUNTARY DUTY ARGUMENTS

Dr. Tang argues that even aside from the limited duty imposed by *Nguyen*, the Harvard defendants voluntarily assumed a duty of care to Luke for which Harvard and Shapiro can be held liable to Dr. Tang. Dr. Tang does not contend that Casey voluntarily assumed a duty to

Luke and declines to pursue this theory of liability against her. See Dr. Tang's opposition memorandum of law, at 19, n.22.

Massachusetts law recognizes the voluntary duty formulation set forth in the Restatement (Second) of Torts § 323 which provides as follows:

“One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

- (a) his failure to exercise such care increases the risk of such harm, or
- (b) the harm is suffered because of the other's reliance upon the undertaking.”

The foregoing standard was recognized by the Supreme Judicial Court in *Mullins v. Pine Manor College*, 389 Mass. 47, 53 (1983). Dr. Tang relies heavily on *Mullins* in support of his argument that Harvard and Shapiro voluntarily assumed a duty to Luke so as to take the claims against them outside the limited duty imposed by *Nguyen*. The voluntary duty that the Court found was assumed by the college in *Mullins* arose from the widely accepted notion that all colleges will undertake security measures designed to protect students from possible criminal acts by third parties. See 389 Mass. at 52-53. The Court noted that adequate campus security “is an indispensable part of the bundle of services which colleges . . . afford their students.” *Id.* at 53. Indeed, prospective students and parents alike expect that campus security measures such as secure access to dormitories are an intrinsic duty and service provide by all colleges.

As recognized in *Nguyen*, universities typically have a generalized suicide prevention protocol to manage acute situations by securing emergency medical services for a student who has attempted suicide or has stated an intention to do so. Most colleges and universities also offer some type of counseling services to students who wish to avail themselves of these services.

The voluntary duty that Dr. Tang argues that Harvard assumed here is something else altogether. Dr. Tang argues that simply requiring Luke to remain in outpatient therapy with a therapist of his choosing after a suicide attempt gives rise to a broader duty to prevent his suicide at some future date. Colleges or universities do not generally voluntarily agree to secure or provide ongoing, individualized mental health services for an indefinite period of time in an effort to safeguard specific students who have attempted suicide in the past. A voluntary duty of the type Dr. Tang advocates for in this case is not grounded in the typical expectations of a college or university to its students.

In the present case, the “care contract” that Luke was required to enter into, was in the form of a letter stating that he would be required to be engaged in outpatient therapy as had been recommended by Dr. Jones when he discharged Luke from McLean, as a condition of remaining enrolled at Harvard. Harvard did not agree to “render services” to Luke under the “care contract”. Rather it set ground rules that Luke would need to follow in order to remain enrolled at the college. Harvard did not agree that it would personally provide the required outpatient therapy services through HUHS / CAMHS. Rather, Luke was given the names of potential therapists as a resource but was free to select his own mental health provider from the surrounding community. He also scheduled and attended the sessions without any direct involvement from Harvard. Harvard did ask to receive copies of notes from the therapist or even summary reports of Luke’s progress.

Colleges routinely set rules or requirements upon individual students upon which their continued enrollment is conditioned, including maintaining a particular grade point average for students who are struggling academically, or avoiding further infractions for students with a history of disciplinary issues. Requiring Luke to see an outpatient therapist on a regular basis

following a suicide attempt falls far short of voluntarily assuming a duty to safeguard Luke from any future suicide attempt for an indefinite period of time. See generally *Thorsen v. Mandell*, 402 Mass. 744, 748 (1988) (Interpreting the so called “good Samaritan” principles set forth in § 323 of the Restatement (Second) and concluding that the YMCA’s creation of rules for use of facilities did not constitute an agreement to “render any services” to the plaintiff).⁵

The position advocated for by Dr. Tang could also have serious policy implications. If such a voluntary duty is imposed upon any college or university that requires a student to get outpatient therapy after a suicide attempt, then one of two things is likely to happen. First, colleges or universities may conclude that it is better for them to simply refuse to allow the student at issue to remain enrolled after a suicide attempt on campus. In the alternative, institutions may cease making any efforts to get students like Luke into ongoing therapy for fear of liability in the event that the student commits suicide at some future date. Both of these likely consequences of imposing a voluntary duty under these circumstances would be potentially harmful to students that may be at risk of suicide.

DR. TANG’S GROSS NEGLIGENCE CLAIMS

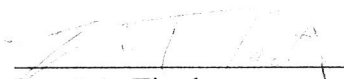
Where the Court finds that the Harvard defendants satisfied their duty as a matter of law under *Nguyen* and that Harvard and Shapiro did not voluntarily assume a duty to Luke, summary judgment must also enter for the Harvard defendants on Dr. Tang’s gross negligence claims. *Nguyen*, 479 Mass. at 461.

⁵ Where I find that Harvard and Shapiro did not voluntarily assume a duty to Luke, I do not reach the issue of whether the alleged conduct of these defendants increased the risk of harm to Luke or whether he relied upon the “services” allegedly provided to him. The Court notes though that Luke indicated on multiple occasions per the summary judgment record that he was resistant to therapy and “didn’t see the need for psychotherapy” and felt that the “care contract” was “bureaucratic and unnecessary”.

ORDER

For all of the reasons stated herein, the Motions for summary judgment of Harvard, Shapiro, and Casey are **ALLOWED** and Counts I-VI of Dr. Tang's complaint are dismissed.

SO ORDERED,



Brent A. Tingle
Justice of the Superior Court

DATED: December 20, 2022