

Position Statement 62: Mental Health America's Role in Litigation

Policy Position And Call For Action

Litigation has played an important role in the recognition, expansion, and enforcement of rights of people with behavioral health conditions. Mental Health America (MHA) and its affiliates across the country have been involved in many such efforts. While MHA and most affiliates lack the means to initiate a significant litigation docket, Mental Health America recognizes the importance of employing litigation as a vehicle to pursue social justice and urges affiliates to join with advocacy organizations like the U.S. Department of Justice, the Bazelon Center for Mental Health Law and the mental health protection and advocacy centers in supporting mental health and substance use law reform efforts and advocacy of the rights of vulnerable people. MHA will support amicus curiae briefs pursuant to the process set forth in this position statement and may represent a party or sue as a party in particularly significant cases. MHA will review amicus briefs to be submitted by affiliates upon request and may join in them. Policy issues will be resolved as set forth in Position Statement 61.

Background

MHA is committed to protection of the rights of children and adults with mental health and substance use conditions. Unfortunately, policies designed to ensure essential human rights often fail because of lack of enforcement. As a result, people in recovery, families, and advocates have increasingly had to turn to the courts for justice when other avenues have been tried and failed. While litigation can be expensive and time-consuming, it can be a very effective tool. Thus, while recognizing the varying capacities of affiliates to employ this tool, MHA supports the use of litigation as an appropriate vehicle to promote and safeguard rights.

1. As resources and available expertise allow, MHA's General Counsel will review, or have an appropriate volunteer review, and "sign-on," to amicus curiae briefs when significant mental health issues are litigated. The Chair of the MHA board will make the final decision of whether or not to sign on to a brief, after getting the advice of the reviewer, the President/CEO, and, if time allows, the Vice Chair for Policy. The standards for approval shall be consistency with MHA policies and persuasiveness of the brief.
2. Affiliates are asked to notify MHA about important mental health litigation in their state to facilitate communication and the provision of technical assistance. MHA will notify state or local affiliates when filing briefs in their service area. Upon request, MHA will review affiliate briefs on substantive issues. MHA will consider joining in affiliate briefs when deemed appropriate by the Chair of the MHA board in accordance with this policy.
3. MHA General Counsel and other staff will provide position statements, research and technical support for litigation efforts undertaken by affiliates. This assistance will include linking the affiliate with other contacts that have direct experience in the topic area.
4. Mental Health America General Counsel and other staff will facilitate broad consultative relationships with available legal resources.
5. Mental Health America staff will consult with mental health coalitions concerning the use of litigation as a healthcare reform tool.

Effective Period

The Mental Health America (MHA) Board of Directors approved this policy on September 8, 2018. It is reviewed as required by the Mental Health America (MHA) Public Policy Committee.

Expiration: December 31, 2023