COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT
CASE NO.: SJC-12329

DZUNG DUY NGUYEN, as Administrator of the Estate of HAN DUY NGUYEN
Plaintiff-Appellant,

v.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY, BIRGER WERNERFELT, DRAZEN PRELEC, and DAVID W. RANDALL
Defendants-Appellees

ON APPEAL FROM THE MIDDLESEX COUNTY SUPERIOR COURT

BRIEF OF DEFENDANTS-APPELLEES

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MASSACHUSETTS INSTITUTE OF TECHNOLOGY'S
CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 1:21 of the Rules of the Supreme Judicial Court, Defendant-Appellee Massachusetts Institute of Technology hereby states that it has no parent corporation, and that no publicly held corporation owns 10% or more of its stock.

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INTRODUCTION

This case is about a 25-year-old Ph.D. candidate, Han Nguyen ("Mr. Nguyen"), who took his own life in his third year at the Massachusetts Institute of Technology ("MIT"). Mr. Nguyen had been dealing with mental health issues for years before arriving at MIT. During his time at MIT he was under the care of nine different mental health professionals, none of whom were affiliated with MIT in any way, and none of whom were of the opinion that he presented an imminent risk of suicide. At the same time, Mr. Nguyen repeatedly declined to avail himself of support resources MIT offered to him because, as he explained in an email to MIT, he wanted to "keep the fact of [his] depression separate from [his] academic problems." Mr. Nguyen's father, the Plaintiff in this lawsuit, nonetheless seeks to impose legal liability on MIT, two of its professors, and a non-clinician student life dean ("Defendants") for his son's death. Plaintiff's theory is that Defendants have a general legal duty to prevent their students from taking their own lives. Such a duty is contrary to this Court's precedents, has no basis in law, and Judge Henry therefore was correct to grant summary judgment to Defendants.

The duty Plaintiff asks this Court to recognize would, for the first time in the Commonwealth's history, transform the relationship between faculty and their students, constraining professors' ability to offer academic and career guidance to students while interfering with students' lawful expectations of privacy. Plaintiff's proposed duty also would impose unreasonable demands on non-clinicians to do what Mr. Nguyen's own doctors could not do — predict and prevent a suicide. Every other state Supreme Court that has considered the relationship between universities and their students has held that there is no legal duty to prevent suicide. This Court should not be the first to recognize such a duty. It particularly should not do so on the facts of this case, in which Mr. Nguyen repeatedly turned down assistance from various MIT offices and instead affirmatively relied on treatment from non-MIT clinicians.

STATEMENT OF THE ISSUES PRESENTED

1. Whether the Superior Court correctly held that Defendants owed no legal duty to prevent Mr. Nguyen, an adult graduate student, from committing suicide.

2. Whether the Superior Court correctly dismissed Plaintiff's claims for punitive damages, conscious pain and suffering, and breach of contract.

3. Whether the Superior Court correctly denied Plaintiff's motion to amend his complaint, where the Plaintiff sought to impose liability on MIT's chancellor, who reports to MIT's president.

4. Whether summary judgment is proper on the alternate basis that Plaintiff's wrongful death claims are barred by the workers' compensation statute.

STATEMENT OF THE FACTS

I. THE PARTIES.

At the time of his death on June 2, 2009, Mr. Nguyen was a 25-year-old Ph.D. student in the marketing program at MIT's Sloan School of Management ("Sloan"). Record Appendix ("R.A.") Volume ("Vol.") IV at 110. Mr. Nguyen came to MIT after he graduated from Stanford University in June 2006, with a Bachelor's degree in Economics and a Master's degree in Psychology. Id.

Defendants Drazen Prelec and Birger Wernerfelt are members of the MIT Sloan faculty. Id. at 104-105, 107. Professor Prelec was Mr. Nguyen's graduate research advisor and Professor Wernerfelt was the head

of the Marketing Ph.D. program. Id. Defendant David Randall was an assistant student life dean in MIT's Student Support Services ("S^3") office. Id. at 108. S^3 provides academic and personal advice for students and acts as a hub of resources, referrals, and information. Id. As Plaintiff concedes, S^3 Staff "do not establish a clinician-patient relationship with students." Brief of the Plaintiff-Appellant ("Pltf. Br.") at 11 n.8.

II. MR. NGUYEN REVEALS "TEST-TAKING" ISSUES TO MIT, BUT DECLINES TO USE MIT SUPPORT RESOURCES.

In May 2007, at the end of his first academic year at MIT and two years before his death, Mr. Nguyen told Sharon Cayley, Program Coordinator for the Sloan Ph.D. program, that he had test-taking difficulties. R.A. Vol. IV at 152-153. Ms. Cayley referred Mr. Nguyen to MIT's Student Disabilities Services ("SDS") office. Id. After two brief visits to SDS, Mr. Nguyen told Ms. Cayley that SDS was of "no use" because it could only offer disability accommodations and he did not believe his problem was a disability. Id. at 153.

On June 25, 2007, Ms. Cayley referred Mr. Nguyen to MIT Medical's Mental Health and Counseling Service ("MIT Mental Health"). Id. at 154. On July 9, 2007,

Mr. Nguyen declared to Celene Barnes, a psychologist at MIT Mental Health: "I don't know why I was referred here. My issues have nothing to do with [Mental Health]." Id. Mr. Nguyen had two more consultations with Dr. Barnes but insisted his problems were related to test-taking and that he did not need treatment from her. Id. at 155-157. He assured her that he was receiving psychiatric treatment from an off-campus psychiatrist, who was unaffiliated with MIT, but refused to allow her to speak with that doctor. Id. at 157. At his meetings with Dr. Barnes, Mr. Nguyen noted two prior suicide attempts, but denied having any present suicidal ideation. Id. at 156. On September 18, 2007, Mr. Nguyen wrote to Dr. Barnes to tell her that he did not want her assistance any longer because he had "been able to make other arrangements for treatment." Id. at 157.

In September 2007, Mr. Nguyen also met with Assistant Dean Randall at S^3 to seek help with his test-taking anxiety. Id. at 158-159. Mr. Nguyen told Assistant Dean Randall that he had a history of depression and had attempted suicide in the past, but he reassured Assistant Dean Randall that he was not imminently suicidal. Id. Assistant Dean Randall

encouraged Mr. Nguyen to visit MIT Mental Health; Mr. Nguyen declined to do so, telling Assistant Dean Randall that his non-MIT psychiatrist was aware of his suicidal ideation. Id. at 159-160. Assistant Dean Randall invited Mr. Nguyen to schedule another appointment with him, but Mr. Nguyen did not respond. Id. at 161.

III. MR. NGUYEN'S MENTAL HEALTH HISTORY.

While Mr. Nguyen briefly consulted SDS, S^3, and MIT Mental Health in 2007 for his self-described "test-taking" difficulties, he had been struggling for years with more serious mental health issues for which he had been and was consulting outside professionals with no MIT affiliation. Prior to this litigation MIT was not aware of the full extent of Mr. Nguyen's mental health problems or of the off-campus treatment he was receiving.

Many years before he started at MIT, when he was a 15-year-old living with his parents, Mr. Nguyen was diagnosed with depression. Id. at 110. The first known suicide attempt by Mr. Nguyen occurred while he was attending Stanford. In his freshman year, his roommate found him standing on the edge of his bed with one end of a bathrobe tie around his neck. Id. at 111-112.

Despite insisting to a Stanford psychiatrist that he had not been attempting suicide and was only trying to adjust his neck, Mr. Nguyen agreed to notify his parents. Id. at 112-114. Mr. Nguyen's mother told the Stanford psychiatrist that she believed Mr. Nguyen's explanation. Id. at 114. His father testified that he "had completely forgotten" about this incident "probably because I was not too concerned about it" and "you don't remember unimportant things." Id. at 115.

Mr. Nguyen subsequently decided to seek treatment at Stanford University Hospital. He saw several psychiatrists and therapists at Stanford, and told one of his providers that "his parents were upset that he has been receiving treatment for depression for over a year, and is not 'better' yet." Id. at 116-120.

Mr. Nguyen continued to seek mental health treatment when he moved to Massachusetts. He saw at least nine different mental health professionals during this period, none of whom had any MIT affiliation. On July 7, 2006 (two months before enrolling at MIT), Mr. Nguyen began treatment with Dr. John J. Worthington III, a psychiatrist at Massachusetts General Hospital ("MGH"). Id. at 120-

123. Shortly thereafter, Mr. Nguyen asked to be admitted to McLean Hospital so that he could get "fixed up" before starting at MIT. Id. at 120-121. Mr. Nguyen also requested electroconvulsive therapy ("ECT") to treat his depression and was referred to Dr. Charles Welch at MGH. Id. at 122-123. Mr. Nguyen received six rounds of ECT at MGH in August and September 2006, immediately prior to starting at MIT, and Mr. Nguyen's father (and sometimes his mother) accompanied Mr. Nguyen to each ECT appointment. Id. at 110, 122-123.

From July 7, 2006, to November 6, 2008, Mr. Nguyen received treatment from Dr. Worthington on a total of 43 occasions. Id. at 120-121. In addition, Mr. Nguyen started undergoing therapy with Carol Murphy, a social worker at MGH, in September 2006. Id. at 124. Mr. Nguyen was scheduled for 16 sessions with Ms. Murphy, but he terminated his treatment after 12 sessions, telling her that their "time together has not resulted in a single inch of progress." Id. at 124-126. Mr. Nguyen's next therapist was Dr. Stephen Bishop, whom he saw for several months beginning in October 2007. Id. at 126-127.

From April 2008 to March 2009, Mr. Nguyen sought treatment with Dr. Anjali Ahn, a doctor at Sleep HealthCenters. Id. at 130-131. Dr. Ahn was concerned about Mr. Nguyen's tendency to use medications with alcohol to fall asleep, and had several conversations with him about her concerns. Id. at 130-132. Mr. Nguyen also saw Dr. Stephen Amira, a psychologist with Sleep HealthCenters, beginning in August 2008. Id. at 133. On February 3, 2009, however, Mr. Nguyen cancelled all remaining appointments with Dr. Amira. Id. at 135.

In addition, Mr. Nguyen sought psychological testing from several providers. In November 2008, he met twice with Dr. Marcel Fajnzylber. Id. at 136. Dr. Fajnzylber issued a report in which he diagnosed Mr. Nguyen with major depression and post-traumatic stress disorder. Id. Mr. Nguyen expressed disagreement with the "value judgments and Freudian references" in the report and stated that if he needed more testing, he would look elsewhere. Id. at 139-140.

In the fall of 2008, Mr. Nguyen "fired" Dr. Worthington, whom he viewed as "too autocratic." Id. at 140. Mr. Nguyen started treatment with another psychiatrist, Dr. Michael Marcus, but did not allow

Dr. Marcus to speak with Dr. Amira or Dr. Ahn. Id. at 141-142. Several months later, in March 2009, Mr. Nguyen began therapy with Dr. Jeffrey Fortgang, with whom he had six visits. Id. at 144-145. Dr. Fortgang concluded that he "probably was not going to be [Mr. Nguyen's] therapist in an ongoing way . . . [b]ecause from the beginning . . . [Mr. Nguyen] didn't like the kinds of therapy [Dr. Fortgang] did." Id. at 145-146.

Mr. Nguyen made it clear to his providers that he needed to be in control of his own treatment. As Mr. Nguyen told Dr. Worthington: "I need you to consider me as part of the team when it comes to my own treatment. . . . After all, I am a PhD student at one of the world's top universities. Please, give me a little credit here." Id. at 129. Mr. Nguyen routinely did not follow his doctors' instructions, and would often request additional prescriptions, higher dosages, or different medications. Id. at 127-129, 132.

None of the nine non-MIT mental health professionals Mr. Nguyen saw during his time at MIT ever noted, in their records of their 95 in-person visits with Mr. Nguyen, any concern that he was at imminent risk of committing suicide. See, e.g., id. at

121, 124-126, 133, 138, 141-146. Dr. Fortgang, who saw Mr. Nguyen five days before his death, noted that Mr. Nguyen "did not say anything that sounded imminently suicidal or hopeless." Id. at 146. Similarly, Dr. Marcus, Mr. Nguyen's treating psychiatrist at the time of his death, noted that Mr. Nguyen "gave no evidence that he was giving up." Id. at 143. Mr. Nguyen denied to all of his providers that he was experiencing any suicidal ideation. Each set of Dr. Worthington's appointment notes states that Mr. Nguyen "denied suicidal ideation." Id. at 121. Mr. Nguyen told Ms. Murphy that he had no suicidal intent or plan. Id. at 124-125. Mr. Nguyen "denied . . . having any suicidal thoughts" at his first appointment with Dr. Amira, and told Dr. Fajnzylber that he was not suicidal. Id. at 133, 138. At his first visit with Dr. Fortgang, Mr. Nguyen denied any current suicidal ideation. Id. at 144. And Dr. Marcus, who treated Mr. Nguyen until his death, testified that at each appointment, "we discussed whether he had any self-destructive thoughts, and he was not having any suicidal thoughts." Id. at 142-143. Indeed, Plaintiff's expert witness in this litigation opined that Mr. Nguyen had taken steps shortly before his death, such as renewing

his lease, "that make it plain that he did not plan to or intend to imminently commit suicide in the period before his death." Id. Vol. VIII at 298.

Mr. Nguyen provided almost no information concerning this extensive treatment history to MIT. In September 2007, Mr. Nguyen gave permission for Assistant Dean Randall to speak with Dr. Worthington, but he quickly revoked it, emailing: "I'd like to keep the fact of my depression separate from my academic problems." Id. Vol. IV at 160. Assistant Dean Randall nonetheless contacted Dr. Worthington about Mr. Nguyen on September 27, 2007. Id. Dr. Worthington only listened and told Assistant Dean Randall that he could not share any information. Id. It is undisputed that Mr. Nguyen never gave permission to any of his medical providers to speak with anyone at MIT between September 2007 and his death in June 2009. Id. at 163.

Mr. Nguyen's parents, on the other hand, were well aware of their son's extensive treatment history. Id. at 114-115, 121-123, 141, 147-149. They never contacted his doctors, however, because Mr. Nguyen did not allow them to do so. Id. at 149-151. They respected his wishes because he was an adult and "[t]here's no way that he would let us contact the

doctor." Id. at 150-151. Nor did they contact anyone at MIT, for the same reason: "Because he's an adult and it's his decision to make. I cannot force him to do it." Id. at 151. Mr. Nguyen's parents also did not suggest that he seek care from MIT Mental Health "[b]ecause he started getting help" and they "d[id]n't see the point of doing that." Id.

IV. MR. NGUYEN'S ACADEMIC DIFFICULTIES.

Mr. Nguyen struggled academically at MIT. Id. at 164. In May 2008, approximately one year after Mr. Nguyen reported "test taking" difficulties, an administrative assistant informed a Sloan professor that he thought Mr. Nguyen looked "despondent." Id. at 164-165. That professor told Professor Prelec, Mr. Nguyen's advisor, who then met with Mr. Nguyen. Id. at 164-167. Mr. Nguyen assured Professor Prelec that he was seeing a psychiatrist at MGH for sleep problems and taking prescription medication to help him sleep. Id. at 166-167. It is undisputed that Mr. Nguyen never shared with either Professor Prelec or Professor Wernerfelt any other details about his mental health issues or treatment, nor did he ever disclose to them that he was suicidal or had attempted suicide in the past. Id. at 168-169.

Based on Mr. Nguyen's reported sleep difficulties and test-taking anxiety, Professors Prelec and Wernerfelt and the rest of the marketing group faculty discussed how they might help Mr. Nguyen succeed academically. Id. at 173-175. They changed his general exam schedule to provide more flexibility and allowed him additional time to rest between exam questions. Id. at 173. They also allowed Mr. Nguyen to take his exam at a later date. Id. at 174-175.

Despite these academic accommodations, Mr. Nguyen's performance on his general exam was marginal. Id. at 175. Professor Wernerfelt took the lead during a faculty meeting convened following Mr. Nguyen's exam, where he advocated for the faculty to pass Mr. Nguyen on his exam. Id. at 175-176, 341. In the course of doing so, Professor Wernerfelt stated that the faculty might have "blood on their hands" if they failed him. Id. at 176. Professor Wernfelt explained at his deposition that by this statement, he meant that Mr. Nguyen might hurt "himself or others" (emphasis added). Id. at 176, 297.[1] At the time he made

[1] Plaintiff's brief asserts that Professor Wernerfelt "warned of Han's 'serious risk of suicide,'" as if that is a quote from the meeting. Pltf. Br. at 16 &

that statement in January 2009, Professor Wernerfelt knew about Mr. Nguyen's self-described test-taking difficulties and insomnia, but there is no evidence that he knew of Mr. Nguyen's depression or any prior suicide attempts or the details of his mental health treatment. Id. at 152-154, 167-169.

The faculty agreed to pass Mr. Nguyen, while also agreeing to encourage him to seek a Master's degree instead of a Ph.D. Id. at 176. Professor Wernerfelt conveyed this message to Mr. Nguyen in January 2009. Id. at 178. Professor Prelec met with Mr. Nguyen "[a]t least once a week" during the spring of 2009, and noticed that he "seemed better" and "seemed to be having less sleep problems." Id. Mr. Nguyen also served as a Teaching Assistant for a visiting professor, Mark Ritson, during the spring of 2009. Id. At the end of that semester, Professor Ritson offered Mr. Nguyen another Teaching Assistant position for the fall of 2009, which Mr. Nguyen accepted. Id.

V. MR. NGUYEN'S SUICIDE.

In the spring of 2009, Mr. Nguyen was seeking employment for the summer. Professor Prelec tried to

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n.10. There is no evidence that Professor Wernerfelt ever used that phrase.

help and arranged for Mr. Nguyen to connect with Dr. Trey Hedden in MIT's Department of Brain and Cognitive Sciences ("BCS") in order to apply for a summer research position in that department. Id. at 179. Dr. Hedden agreed to hire Mr. Nguyen if funding for a position could be arranged. Id. Vol. I at 137-139. On May 27, 2009, Mr. Nguyen sent an email to Dr. Hedden (copying Professor Prelec) asking why it was taking so long to arrange funding when the head of the laboratory supposedly had "bottomless coffers." Id. Vol. IV at 179-180. Professor Prelec forwarded the email to Professor Wernerfelt, worried that Mr. Nguyen might offend Dr. Hedden or others at BCS. Id.

Despite that communication, Dr. Hedden hired Mr. Nguyen on June 1, 2009. Id. at 180. At 7:17 am the next morning, the day of his death, Mr. Nguyen sent an email to Dr. Hedden, again copying Professor Prelec, accusing Dr. Hedden of "insulting" and "threaten[ing]" him and demanding that he be treated with more respect. Id. at 181. After reading this email, Dr. Hedden spoke with Professor Prelec about his concerns with Mr. Nguyen, stating that he thought it would be difficult to work with him. Id. at 182.

Professor Prelec was worried that Mr. Nguyen would lose his job, so he quickly emailed Professor Wernerfelt asking him to speak with Mr. Nguyen. Id. On that day, Mr. Nguyen was working on a research project at MIT. Id. at 183. He had arrived at the laboratory around 9 a.m. and was acting "pretty normal." Id. Later that morning, Professor Wernerfelt called Mr. Nguyen. Id. Shortly after his call with Mr. Nguyen ended, Professor Wernerfelt wrote Professor Prelec the following:

> I read him the riot act
> Explained what is wrong about the e-mail
> Told him that you or I would look over future e-mails he send [sic] to the BCS people
> I said that we know that he is not out to offend anyone but that he seems poor at navigating the academe
> Said that this is an example of why we all recommended that he take a MS and go out to get a job
> I talked about some papers he could turn into MS thesis and volunteered to supervise it
> Said that he made you look bad vs BCS and that some patching up was necessary

Id. at 184. The email concluded with the statement that Mr. Nguyen "will call [Professor Prelec] about what to do." Id.

After the call ended, Mr. Nguyen went up to the roof of the building in which he was working and

jumped to his death. Id. at 185. This lawsuit by Plaintiff followed.

SUMMARY OF THE ARGUMENT

Mr. Nguyen's suicide was a tragedy. That does not warrant a legal conclusion that MIT or any individual associated with MIT had a legal duty to prevent it.

Massachusetts law is clear: There is no general duty to prevent another from committing suicide. Neither of the two narrow grounds that this Court has recognized for imposing liability for suicide applies here: Defendants did not have Mr. Nguyen in custody, nor did they act in breach of a pre-existing duty and thereby cause an uncontrollable suicidal impulse. Infra at 21-23; Slaven v. Salem, 386 Mass. 885, 886-887 (1982). Plaintiff principally relies on Mullins v. Pine Manor College, 389 Mass. 47 (1983), but that is a case about negligence in providing campus security to an undergraduate student required to live in an on-campus dormitory. Infra at 27-29. Pine Manor says nothing about a legal duty to prevent students from inflicting harm on themselves. Id. Unlike the situation in Pine Manor, in which students relied on the college to provide security against intruders, Mr. Nguyen refused MIT's offers to provide resources;

instead, he relied entirely on professionals unaffiliated with MIT for his mental health care. Infra at 29-31.

The Superior Court's ruling was consistent with this Court's precedent and with decisions in other jurisdictions, which have concluded that universities and their professors and administrators are not responsible for students' suicides. Infra at 35-36. Public policy mandates a similar conclusion. The ultimate effect of the duty Plaintiff seeks to impose would be to minimize the resources universities and their faculty and staff offer to students who are having difficulties, lest such voluntary efforts give rise to a risk of tort liability. Infra at 39-44.

The Superior Court also properly denied Plaintiff's motion to amend his complaint to add Chancellor Phillip Clay as a defendant. Infra at 44-47. Chancellor Clay never met Mr. Nguyen and had no personal responsibility for treating him. Infra at 45. Plaintiff therefore sought to hold Chancellor Clay liable based only on his general supervisory role. Infra at 45-47. Such a basis for liability would be in direct contravention of Lyon v. Morphew, 424 Mass. 828, 831 (1997). Id.

Finally, the judgment below can be affirmed on the alternate basis that Plaintiff's only remedy lay in worker's compensation. Infra at 47-49. The facts demonstrated that Mr. Nguyen was an MIT employee at the time of his death, and the conversation that occurred just before his death was related to his employment. Id.

ARGUMENT

I. STANDARD OF REVIEW.

In evaluating the Superior Court's grant of summary judgment, this Court applies de novo review, and "may affirm the judgment on any ground supported by the record." Roman v. Trustees of Tufts College, 461 Mass. 707, 711 (2012) (affirming grant of summary judgment). A moving party satisfies its burden on summary judgment by demonstrating that the nonmoving party "has no reasonable expectation of proving an essential element of the case." Cabot Corp. v. AVX Corp., 448 Mass. 629, 637 (2007) (affirming summary judgment).

This Court reviews the Superior Court's denial of Plaintiff's motion for leave to amend his complaint for abuse of discretion. See Murphy v. I.S.K.Con. of New England, Inc., 409 Mass. 842, 864 (1991). The

trial judge has "broad discretion" to deny a motion to amend (id.), and may do so whenever "there are good reasons for denying the motion," including when the "proposed amendment would have been futile." See Mathis v. Mass. Elec. Co., 409 Mass. 256, 264-265 (1991).

II. THE SUPERIOR COURT PROPERLY HELD THAT DEFENDANTS OWED NO DUTY TO PREVENT MR. NGUYEN FROM COMMITTING SUICIDE.

Mr. Nguyen's suicide was a tragedy. That does not mean MIT or its employees should be held legally liable for it. Massachusetts law is and always has been clear that there is no liability for another's suicide, with very narrow exceptions that are not presented here. Plaintiff's arguments that one of the existing exceptions should be applied in this case, or that this Court should be the first state Supreme Court in the country to recognize a general duty to prevent suicides, are each without merit.

A. There Is No General Duty To Prevent Another From Committing Suicide.

Under this Court's precedent, there is no general duty to prevent another from committing suicide. Liability for another's suicide exists only when (1) "[o]ne who is required by law to take or voluntarily

takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection" and "knew, or had reason to know, of [the decedent's] suicidal tendency" or (2) "as a consequence of a physical impact, death results from an uncontrollable impulse, or is accomplished in delirium or frenzy." Slaven, 386 Mass. at 886-887 (emphasis added), quoting Daniels v. N.Y., New Haven & Hartford R.R., 183 Mass. 393, 399-400 (1903). Accord Nelson v. Mass. Transp. Auth., 55 Mass. App. Ct. 433, 435-436 (2002) (finding no duty to prevent decedent from jumping off bridge).

Plaintiff does not argue that this is a custody case, and the "uncontrollable impulse" exception does not apply here either. Plaintiff argues that Professor Wernerfelt caused Mr. Nguyen to have an uncontrollable impulse to commit suicide by reading him the "riot act." Pltf. Br. at 22. The uncontrollable impulse cases, however, involve a breach of an already-existing duty that results in a physical impact causing decedent to suffer "mental derangement," and merely hold that a suicide is not an intervening cause

under those very limited conditions.[2] As this Court has explained, each of the courts in these cases "had first concluded that the defendants' actions were negligent," and then found liability "only because it first found a duty to the plaintiff and then found a breach of that duty." Slaven, 386 Mass. at 887.

Extending the "uncontrollable impulse" exception to sweep in suicides allegedly resulting from conversations that do not breach some preexisting duty would have profound consequences in all areas of life. The relationship between professors and their students, for example, necessarily entails a give and take, including the delivery of criticism and sometimes frank advice. Nothing in precedent imposes a duty on professors to refrain from delivering such messages to those who might be suffering from mental illness, and the Court should not use this case to

[2] See Slaven, 386 Mass. at 887; see also Freyermuth v. Lutfy, 376 Mass. 612, 619-620 (1978) (decedent's "mental derangement" was result of an accident caused by the defendant's negligence, and "mental derangement" rendered him "incapable of resisting the impulse to destroy herself"); Daniels, 183 Mass. at 399-400 ("[L]iability of a defendant for a death by suicide exists only when the death is the result of an uncontrollable impulse, or is accomplished in delirium or frenzy caused by the collision" [emphasis added]). Mr. Nguyen's decision to commit suicide was not caused by any "physical impact," nor is there evidence that his suicide was "accomplished in delirium or frenzy."

create such a duty.[3] More broadly, courts and juries should not be in the business of evaluating how family members and friends interact with the millions of Americans who suffer from depression, so as to make hindsight judgments whether someone speaking in the "wrong tone" unintentionally caused one of the 40,000 suicides that occur each year.

Plaintiff relies on one criminal case, and on wrongful death cases involving the infliction of emotional distress, to suggest that precedent supports recognizing a duty here. Pltf. Br. at 30; id. at 23 n.17. But the criminal case is wholly inapplicable, and in the civil cases the infliction of emotional distress leading to suicide was intentional, not merely negligent.[4] There is no claim that Professor

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[3] Delaney v. Reynolds, 63 Mass. App. Ct. 239 (2005), similarly involves an analysis of causation, not whether a duty should be imposed in the first place. There, the question was whether the defendant's negligent failure to properly secure his loaded firearm caused the plaintiff's injury. Id. at 244.

[4] In the criminal case, this Court ruled that defendant's "admonishments, pressure, and instructions" to her boyfriend to commit suicide met the standard for an involuntary manslaughter charge, requiring "intentional conduct . . . involv[ing] a high degree of likelihood that substantial harm will result to another." Com. v. Carter, 474 Mass. 624, 630-631, 636 (2016), quoting Commonwealth v. Pugh, 462 Mass. 482, 496 (2012). In North Shore Pharmacy Servs., Inc. v. Breslin Assocs. Consulting LLC, No. 02-11760-

Wernerfelt intended to cause Mr. Nguyen harm. To the contrary: Professor Wernerfelt and other faculty members had earlier acted to help Mr. Nguyen pass his general exam, and the final conversation between Professor Wernerfelt and Mr. Nguyen included advice on how Mr. Nguyen could repair his relationship with his supervisor and future steps he could take for his career. Supra at 14, 17. Moreover, as a matter of law nothing in that final conversation was "extreme and outrageous," i.e., conduct that "go[es] beyond all possible bounds of decency, and [is] regarded as atrocious, and utterly intolerable in a civilized community," as required in intentional or reckless infliction of emotional distress cases. Polay v. McMahon, 468 Mass. 379, 385-386 (2014), quoting Roman, 461 Mass. at 718.

NG, 2004 WL 6001505, at *3-5 (D. Mass. June 22, 2004), the court allowed a wrongful death claim based on the intentional infliction of emotional distress leading to suicide to go forward, while making clear that a claim based on mere negligence would not be allowed. The crucial distinction between an intentional tort and mere negligence in cases of suicide also was explained by the Rhode Island Supreme Court in Clift v. Narragansett Television L.P., 688 A.2d 805 (R.I. 1996), and by the New Hampshire Supreme Court in Mayer v. Hampton, 497 A.2d 1206 (N.H. 1985).

B. A Duty To Prevent Suicide Cannot Be Grounded In Mere Foreseeability.

Plaintiff next argues that under general tort law principles, if Defendants reasonably could foresee that Mr. Nguyen might commit suicide then they had a legal duty to prevent it. Pltf. Br. at 25-30. This Court, however, repeatedly has rejected imposing a duty to protect another from self-inflicted harm based on foreseeability alone. For example, in Panagakos v. Walsh, 434 Mass. 353 (2001), this Court reaffirmed its prior holdings that "[a]n adult but underage drinker's voluntary consumption of alcohol 'forecloses the existence of any duty owed to him'" by the person supplying the alcohol (id. at 355, quoting Hamilton v. Ganias, 417 Mass. 666, 668 (1994)), even if the host "would or should realize that [providing the alcohol] 'create[s] an unreasonable risk of causing physical harm' to that drinker." Id. at 356-357, quoting Restatement (Second) of Torts § 321 (1965). Ultimately, the "adult drinker [is] responsible for his own conduct." Id. at 357.[5]

Judge Henry, in any case, correctly found that

[5] Plaintiff relies on Irwin v. Ware, 392 Mass. 745 (1984), but that case involved the duty owed to parties injured by an intoxicated driver, not the driver himself.

Plaintiff would not be able to demonstrate that Mr. Nguyen's suicide was foreseeable to Defendants – one professor's months-old "blood on their hands" comment, made in an entirely different context and without any knowledge of Mr. Nguyen's mental health history, was not enough. R.A. Vol. IX at 156-160. There is no evidence that Mr. Nguyen had threatened suicide to anyone during his years at MIT, let alone to anyone at MIT. Defendants indisputably were not aware of all the information Mr. Nguyen communicated to his non-MIT treating doctors. Id. Vol. IV at 166-172. Even with that information, all of Mr. Nguyen's mental health providers, and his own expert witness in this case, agreed that Mr. Nguyen was not at imminent risk of suicide. Id. at 121, 124-126, 133, 138, 141-146; Id. Vol. VIII at 298; supra at 10-12. Mr. Nguyen's parents (including Plaintiff) indisputably knew more about Mr. Nguyen's mental health condition than Defendants did, yet they also did not foresee Mr. Nguyen's suicide. Supra at 12-13; R.A. Vol. IV at 152.

C. Pine Manor Does Not Create A Duty To Prevent Suicide.

Because precedent does not support his claim, Plaintiff asks the Court to extend Pine Manor to cover

student suicides. According to Plaintiff, Pine Manor stands for the sweeping proposition that universities and "responsible administrators" have a "special relationship" with students and a corresponding "duty to protect students from foreseeable harm," Pltf. Br. at 36, including self-inflicted harm, id. at 36-43. The reasoning and holding of Pine Manor, however, do not establish a "special relationship" encompassing a general duty to prevent adult university students from committing suicide.

In Pine Manor, the college was responsible for providing security against off-campus intruders, and an intruder broke into plaintiff's dormitory and raped her. In finding that colleges can have a duty to protect against criminal acts by third parties, the Court emphasized that only the college, and not individual students, "is in the position to take those steps which are necessary to ensure the safety of its students." Pine Manor, 389 Mass. at 51. As the Court explained:

> No student has the ability to design and implement a security system, hire and supervise security guards, provide security at the entrance of dormitories, install proper locks, and establish a system of announcement for authorized visitors. Resident students typically live in a

> particular room for a mere nine months and, as a consequence, lack the incentive and capacity to take corrective measures. College regulations may also bar the installation of additional locks or chains. Some students may not have been exposed previously to living in a residence hall or in a metropolitan area and may not be fully conscious of the dangers that are present. Thus, the college must take the responsibility on itself if anything is to be done at all.

(Emphasis added; footnotes omitted.) Id. at 51-52. Based on these facts, the Court concluded that a duty to protect against intruders could rest either on "existing social values and customs" (id. at 50-51, quoting Schofield v. Merrill, 386 Mass. 244, 247 (1982)) or on "students' reliance" on the voluntarily assumed undertaking. Id. at 52-54.

The circumstances of this case are very different. While not required to do so, MIT offers many resources to its students (including MIT Mental Health, S^3, and SDS), while respecting its students' decisions whether, when, and how to use these resources. Unlike Pine Manor College, which required students to live on campus and rely on the school's security measures, MIT does not require students to seek mental health treatment at MIT rather than with doctors of the students' own choosing, nor does MIT

mandate a particular course of treatment.

There is no evidence that MIT students are unable to arrange their own mental health treatment and therefore must rely on MIT for treatment. Mental health is not an issue over which "the college must take the responsibility on itself if anything is to be done at all." Id. at 52. The undisputed facts in this case, for example, demonstrate that Mr. Nguyen had been dealing with mental health issues for years, well before he arrived at MIT. Supra at 6-8. He obtained treatment from nine different non-MIT mental health professionals during his years in Massachusetts. Supra at 8-11. Mr. Nguyen was also in regular communication with his parents about his mental health treatment, including his medications and his choice of providers. Supra at 12-13; R.A. Vol. IV at 141, 147-149. On the other hand, Mr. Nguyen never relied on MIT, its professors, or any of its staff for mental health care. He only went to MIT Mental Health and S[3] a handful of times, almost two years before his death, and the only help he sought was for test-taking. Supra at 4-6, 12. He turned down MIT mental health and counseling resources, explaining "[m]y issues have nothing to do with MH [mental health]," and "I'd like

to keep the fact of my depression separate from my academic problems." Supra at 5, 12. There is no evidence that he ever sought mental health assistance from his professors, who did not even know about his mental health history.[6]

Time and again, Massachusetts courts have ruled that Pine Manor does not create a duty where, as here, there is no reliance by students on the college for protection or assistance. See Kavanagh v. Trustees of Boston Univ., 440 Mass. 195, 202-203 (2003) (student athlete from another school "did not depend on the university" for protection, and university did not "affect [his] ability or motive to protect himself"); Brody v. Wheaton College, No. 08-P-997, 2009 WL 1011051, at *2 (Mass. App. Ct. Apr. 16, 2009) (no duty under Pine Manor where decedent, a driver who died in a drunk driving accident, was "not alleged to have

[6] Plaintiff attempts to create a dispute of fact by claiming that the Superior Court took a "defendant-friendly view of the conflicting evidence, blaming [Mr. Nguyen] for this lack of follow through." Pltf. Br. at 13 n.9. But there is no conflicting evidence. It is undisputed that Mr. Nguyen did not go to MIT Mental Health or S[3] for almost two years before his death. R.A. Vol. IV at 157, 161. It is also undisputed that he did not seek mental health treatment at MIT. Id. at 152-155, 157-158, 160-161. And it is undisputed that Mr. Nguyen sought treatment from nine different outside mental health providers when he was at MIT. Id. at 121, 124-126, 133, 138, 141-146.

relied on [the college's] alcohol policy for protection"). To find a duty for universities to prevent students from committing suicide would be akin to finding that the college in Pine Manor had a duty to protect students from criminal acts even if students were permitted to choose — and did choose — off-campus housing with their own security arrangements. Such a finding is not supported by the logic or holding of Pine Manor.

Plaintiff relies on the Superior Court's unreported decision in Shin v. Massachusetts Institute of Technology, No. 02-0403, 2005 WL 1869101 (Mass. Super. Ct. June 27, 2005) (McEvoy, J.), to argue for the creation of a "special relationship" resulting in a duty to prevent suicide under Pine Manor. Pltf. Br. at 38-40. But Shin, a single Superior Court decision, does not reflect the law of the Commonwealth. That court erroneously read Pine Manor as holding that colleges have a broad "duty to exercise care to protect the well-being of their resident students." Shin, 2005 WL 1869101, at *12. As explained above, however, Pine Manor's holding was not so broadly stated. In addition, the facts of this case are very different from those of Shin. For example, Ms. Shin

received mental health treatment from clinical professionals at MIT, which Mr. Nguyen never did. Id. at *2-4. Ms. Shin also had threatened to commit suicide in the months leading up to her death — including on the day of her suicide — and the non-clinical defendants in Shin (the dormitory housemaster and Counseling and Support Services Dean) were in touch with her treating clinicians about her care. Id. at *2-5. Even if a duty of care could be found to exist under the precise facts of Shin, that would not support extending a general duty to prevent suicide by all students, including those, such as Mr. Nguyen, who did not rely on their university for care.

In addition to Pine Manor and Shin, Plaintiff relies on Section 40 of the Restatement (Third) of Torts, but like Pine Manor the Restatement does not recognize a "special relationship" that imposes a duty on schools to protect students from all harm. Rather, Section 40 only recognizes that the "core of the duty" between schools and their students "derives from the temporary custody that a school has of its students, the school's control over the school premises, and the school's functioning in place of parents" (emphases added). Restatement (Third) of Torts, § 40, cmt. 1

(2012). None of those factors are present in the context of an adult university student with responsibility for his own mental health care.

Finally, Plaintiff's related argument under a "voluntarily assumed duty" theory must fail for the same reasons. A voluntarily assumed duty can lead to liability only if a "failure to exercise [due] care increases the risk of . . . harm," or "the harm is suffered because of the other's reliance upon the undertaking." Pine Manor, 389 Mass. at 53 (emphases added). Here, there is no evidence that Mr. Nguyen even consulted MIT Mental Health and S[3] for nearly two years before his death, let alone relied on them, and no evidence that MIT's offer of mental health services and other support services to Mr. Nguyen increased his risk of suicide. Thus, that MIT may have chosen to voluntarily offer services to its students does not create a legal duty of care, especially to students who refuse those services. And there is no evidence that the professors or Assistant Dean Randall offered Mr. Nguyen mental health care at all, or that he sought or relied on such help from them.

D. Other Jurisdictions Have Held That There Is No Legal Duty To Prevent Student Suicides.

Consistent with the Massachusetts legal principles discussed above, courts in other States have held that universities, their faculty, and their non-clinical employees have no legal duty to prevent students from committing suicide. Plaintiff does not cite the decisions, but two other state Supreme Courts have considered whether such parties have a duty to prevent the suicide of adult students not in their custody, and both have rejected imposing such a duty. See Jain v. Iowa, 617 N.W.2d 293, 299-300 (Iowa 2000); Bogust v. Iverson, 102 N.W.2d 228, 230 (Wis. 1960); see also Sacchetti v. Gallaudet Univ., 181 F. Supp. 3d 107, 121-122 (D.D.C. 2016).[7] As the Supreme Court of Wisconsin explained, "[t]o hold that a teacher who has had no training, education, or experience in medical fields is required to recognize in a student a

[7] Plaintiff (at 42-43 & n.42) cites Hickey v. Zekula, 439 Mich. 408 (1992), but that was a custody case. In Miller v. Bd. of Governors of Fairmount State Univ., No. 15-0390, 2016 WL 2969662, at *4 n.5 (W. Va. May 20, 2016), West Virginia's Supreme Court of Appeals elided the question of duty, finding there was no breach in any event. Other cases involve university clinical employees with a professional duty of care. E.g., Klein v. Solomon, 713 A.2d 764, 766 (R.I. 1998); Hoeffner v. The Citadel, 429 S.E.2d 190, 192 (S.C. 1993).

condition, the diagnosis of which is in a specialized and technical medical field, would require a duty beyond reason." Bogust, 102 N.W.2d at 230.

The Supreme Court of Iowa's decision in Jain, a case in which non-clinical university staff saw the decedent taking preparatory steps to commit suicide in the days before his death and were told by his girlfriend that he intended to kill himself, is instructive. There, as here, there was no evidence that the decedent "relied, to his detriment, on the services gratuitously offered by [university] personnel"; instead, as here, the evidence was that "he failed to follow up on recommended counseling or [to] seek the guidance of his parents, as he assured the staff he would do." Jain, 617 N.W.2d at 299-300. In Jain, as here, "no action by university personnel prevented [decedent] from taking advantage of the help and encouragement being offered, nor did they do anything to prevent him from seeking help on his own." Id. at 299. Because "[n]o affirmative action by the defendant's employees . . . increased [the] risk of self-harm," the court concluded that no duty existed to prevent it. Id. This Court should reach the same result.

Three other state Supreme Courts have considered whether schools have a legal duty to prevent children from committing suicide, and two (neither of which Plaintiff acknowledges) have held that there is no such duty. See Rogers v. Christina Sch. Dist., 73 A.3d 1, 10 (Del. 2013) (high school did not have duty to prevent child's suicide); Mikell v. Sch. Admin. Unit No. 33, 158 N.H. 723, 733 (2009) (guidance counselor and middle school did not have duty to prevent child's suicide at home). Plaintiff does cite the third case, Eisel v. Bd. of Educ. of Montgomery County, 324 Md. 376 (1991), which held that a school had a duty to inform the parents of a thirteen-year-old child that she had threatened suicide so that the parents could exercise control over her. Eisel did not hold that the school was itself required to prevent the suicide, and a duty to notify parents so that they may exercise control over their minor child has no application to an adult university student.

Plaintiff cites two trial court decisions involving an adult student's suicide (Pltf. Br. at 42-43 n.41), but they involved far different facts.[8] In

[8] Many of the cases on which Plaintiff relies in this section of his brief have nothing to do with suicide

Schieszler v. Ferrum College, 236 F. Supp. 2d 602, 609 (W.D. Va. 2002), the federal district court noted that "it is unlikely that Virginia would conclude that a special relationship exists as a matter of law between colleges and universities and their students." Nonetheless, it went on to conclude, in merely denying a motion to dismiss, that Virginia law "might find" such a relationship where decedent lived in an on-campus dormitory (in remote Ferrum, Virginia), earlier had been found with self-inflicted bruises, and in the days before his death had told others that he "intended to kill himself" (a statement of which defendants were aware). Id. And in Leary v. Wesleyan Univ., No. CV055003943, 2009 WL 865679, at *5 (Conn. Super. Ct. Mar. 10, 2009), decedent committed suicide after university officers took him to the university

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or other intentional self-harm. E.g., Doe v. Yale Univ., 252 Conn. 641 (2000) (medical resident contracted HIV while working in university hospital); Furek v. Univ. of Del., 594 A.2d 506 (Del. 1991) (lye poured on blindfolded student during hazing ritual); Turner v. Rush Med. College, 537 N.E.2d 890 (Ill. App. Ct. 1989) (plaintiff injured during run as part of professor's "experiment"); McClure v. Fairfield Univ., No. CV000159028, 2003 WL 21524786 (Conn. Super. Ct. June 19, 2003) (plaintiff was struck by drunk driver); Stehn v. Bernarr MacFadden Founds., Inc., 434 F.2d 811 (6th Cir. 1970) (high school student injured in wrestling match); Delbridge v. Maricopa County Community College Dist., 893 P.2d 55 (Ariz. Ct. App. 1994) (pre-apprentice lineman fell from pole).

hospital, causing the trial court to conclude (in denying a motion for summary judgment) that there were open questions as to whether decedent was in the university's custody and whether the officers increased the risk of harm. Neither case provides support for a broad duty to prevent suicide that would extend to the very different facts of this case.

E. Public Policy Considerations Counsel Against Recognizing A Duty To Prevent Suicide.

The duty that Plaintiff asks this Court to recognize is not only unprecedented, it also is contrary to existing social values and customs and public policy. It would result in a number of unintended consequences that would be harmful to students and would fundamentally alter the relationship between universities and their students. These public policy concerns are further reason not to recognize the new duty Plaintiff proposes. E.g., Cremins v. Clancy, 415 Mass. 289, 292 (1993) (whether a duty exists is determined "by reference to existing social values and customs and appropriate social policy").

Plaintiff is asking this Court to take an unprecedented step by recognizing a duty where no

other State has done so. Based on the arguments in his brief, Plaintiff wants this new branch of tort law to govern:

- what mental health programs universities must provide and how much they should be funded;[9]
- how universities can and should communicate with students, including whether and how individual professors can provide criticism or other feedback regarding students' performance in class or as teaching or research assistants;[10]
- what role parents should play in students' lives, including whether universities must notify parents if there is any concern about a student, even a 25-year-old graduate student;[11] and
- what universities must do to ensure that students feel liked and supported, including whether and when letters of recommendation must be provided or unmerited passing grades granted in order to avoid a student harming himself.[12]

The Court should not empower courts and juries to intrude into such a wide variety of touch points in

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[9] Pltf. Br. at 33 (duty of care could be used to police what policies schools employ and ensure that schools "properly fund such services").

[10] Id. at 29-30 (arguing that Professor Wernerfelt breached his alleged duty by reading Mr. Nguyen the "riot act").

[11] Id. at 33 n.29 (suggesting that Defendants were required to communicate their non-expert concerns over Mr. Nguyen to his parents).

[12] Id. at 17, 29 (suggesting that Professors Wernerfelt and Prelec may have breached their alleged duties by failing to provide adequate "support" to Mr. Nguyen's desire to become a professor); id. at 18 (condemning Professor Prelec's decision not to submit a letter of recommendation for Mr. Nguyen).

the relationships between Massachusetts universities and their nearly 350,000 students, Pltf. Br. at 3, in order to assign legal liability when an adult student takes his own life. The duty that Plaintiff seeks would transform academic relationships and severely restrict academic freedoms — e.g., an academic department's decision whether to grant a degree, or provide a letter of recommendation, or what grade to assign a paper or exam.

Indeed, although this case concerns suicide, Plaintiff's proposed duty "to protect students from foreseeable harm" (Pltf. Br. at 36) presumably would extend to every type of non-fatal self-harm that any students might intentionally or recklessly inflict upon themselves. Outside of custody situations, courts and juries should not be tasked with deciding whether a university is taking sufficient steps or spending enough money to stop "foreseeable" self-destructive behavior by adult students. See Doe v. Emerson College, 153 F. Supp. 3d 506, 514 (D. Mass. 2015) ("Massachusetts does not impose a legal duty on colleges or administrators to supervise the social activities of adult students," and it would be "impractical and unrealistic" to do so). This Court

has long recognized the "general decline of the theory that a college stands in loco parentis to its students." Pine Manor, 389 Mass. at 52. Indeed, not even parents owe such a duty to their adult children. See Alioto v. Marnell, 402 Mass. 36, 38-39 (1988) (parents do not have a legal duty "to supervise and control their emancipated adult child"); Bash v. Clark Univ., No. 200600745, 2007 WL 1418528, at *3 (Mass. Super. Ct. Apr. 5, 2007) ("Plaintiff, Daniel Bash, and his wife, Emily Bash's status as parents, without more, does not impose a duty on them to protect and supervise their adult daughter living on a college campus.").

Additionally, imposing a duty on universities to monitor and address the mental health of their adult students ignores the rights of adults to choose where they will and will not get their mental health treatment. Plaintiff's proposed duty would force colleges and universities to disregard that choice and insert themselves into an adult student's mental health decision-making, even after that student has expressly declined help (as Mr. Nguyen did). See, e.g., Jain, 617 N.W.2d at 298 (federal Family Educational Rights and Privacy Act generally prohibits

disclosure of student records); see also Dyer, Is There a Duty?: Limiting College and University Liability for Student Suicide, 106 Mich. L. Rev. 1379, 1395-1396 (2008) ("Imposing a duty of care on nonclinicians could force resident advisors, deans, and other administrators to monitor students' behavior in a manner inconsistent with the current trend of recognizing and expanding students' privacy rights."). Plaintiff's contention that MIT should have notified Mr. Nguyen's parents of, among other things, the details of Mr. Nguyen's visit to MIT Mental Health, Pltf. Br. at 33 n.29, also potentially would violate state and federal privacy law. See, e.g., G.L. c. 112 § 129A (prohibiting disclosure of patient information); G.L. c. 214 § 1B ("A person shall have a right against unreasonable, substantial or serious interference with his privacy"); 42 U.S.C. § 1320d-6 (2012) (offense to "disclose[] individually identifiable health information to another person").

Plaintiff's proposed duty would create incentives for both students and universities that could result in students struggling with depression and mental illness receiving less care, not more care. It could push students with mental health problems who value

their privacy into the shadows, where they are even less likely to receive support from their university. Professors might avoid meeting with troubled students or expressing concern about them, and administrators may be incentivized to disengage from any student suspected to be at risk of intentional self-harm, for fear of incurring personal liability if the student commits suicide months or years later.

In summary, the law properly imposes liability for another's suicide in only very limited circumstances that do not exist here. Public policy supports remaining true to that rule, not departing from it in the manner Plaintiff seeks in this case.

III. THE SUPERIOR COURT PROPERLY DENIED PLAINTIFF'S MOTION TO AMEND.

Plaintiff further appeals the denial of his motion to amend the complaint to add Chancellor Clay as a defendant. The Superior Court, however, did not abuse its discretion in denying that motion.

A motion for leave to amend a complaint to add a claim is properly denied where the amendment would be futile. See Mathis, 409 Mass. at 265; Bobick v. Fid. & Guar. Co., 439 Mass. 652, 664 (2003) (upholding denial of motion to amend where "plaintiff's proposed

amendment would have been futile"). That was the case here.

Plaintiff's proposed amended complaint sought to impose liability on Chancellor Clay – a direct report to MIT's president – because he allegedly was "charged" with and "responsible for" implementing the recommendations of the MIT Mental Health Task Force. R.A. Vol. III at 151, 158-159.[13] Such allegations would be futile in imposing liability on the Chancellor. First, for the same reasons that MIT did not owe a duty to prevent Mr. Nguyen from committing suicide, Chancellor Clay — whatever his responsibilities within MIT – did not either. See Chase v. Cadle Co., No. 09-P-1358, 2010 WL 3929416, at *3 (Mass. App. Ct. Oct. 8, 2010) (upholding denial of motion to amend seeking to add new parties who "stood in the same posture" as the existing parties such that claims against the new parties would be futile).

Second, under Massachusetts law, "[o]fficers and employees of a corporation do not incur personal liability for torts committed by their employer merely

[13] Plaintiff did not propose to allege any facts that would have established a duty owed by Chancellor Clay to Mr. Nguyen, specifically, as there was no allegation that Chancellor Clay ever met Mr. Nguyen or knew that he was at risk of suicide.

by virtue of the position they hold in the corporation." Lyon, 424 Mass. at 831. The allegations in Plaintiff's proposed amended complaint would have established, at most, the type of "general supervisory role" that this Court already has rejected as the basis of any individual liability. See id. at 833 (chief operating officer's "general supervisory role" was "not enough to support a finding that she personally participated in acts causing harm to the plaintiff").

Plaintiff's reliance on Pine Manor to support the imposition of a duty on Chancellor Clay (Pltf. Br. at 53-54 & n.52) is misplaced, even beyond Pine Manor's inability to support a claim against MIT itself. The defendant in Pine Manor did not merely have a "general supervisory role." Instead, he designed the security system at issue. Pine Manor, 389 Mass. at 56-57. Here, however, there were no non-conclusory allegations that would have established that Chancellor Clay (who had oversight responsibility for all graduate and undergraduate education at MIT) designed or implemented faculty training or any of the other task force recommendations. Rather, Plaintiff simply asserts that Chancellor Clay "endorsed" the task force

report and was "charged" with and "responsible for" implementation of the recommendations. R.A. Vol. III at 150-151, 158-159. That is not enough to state a claim.

IV. PLAINTIFF'S WRONGFUL DEATH CLAIMS ARE BARRED BY THE WORKERS' COMPENSATION STATUTE.

Earlier in the case, Defendants moved for summary judgment on the basis that Plaintiff's claims were barred by the workers' compensation statute, as Mr. Nguyen was employed by MIT in a summer research position when he died, and Plaintiff alleged that Mr. Nguyen's death was caused by a conversation with Professor Wernerfelt about Mr. Nguyen's email to his work supervisor. R.A. Vol. I at 139-143, 269. The Superior Court erred in denying this motion, and this Court may affirm the judgment on that basis.

First, the Superior Court erred in finding that Mr. Nguyen's employment status was disputed, as there were no material facts in dispute and employment status is a question of law. See Sawtelle v. Mystic Valley Gas Co., 1 Mass. App. Ct. 672, 677 (1974). The spring semester had ended and Mr. Nguyen was not registered for classes on June 2, 2009, the date of his death. R.A. Vol. I at 126. He had secured a summer

research position with another MIT department on June 1, 2009, which was confirmed by the testimony of Dr. Hedden, Mr. Nguyen's supervisor, as well as an email written by Dr. Hedden stating that Mr. Nguyen was "on-board." Id. at 139-141. Arrangements were being made on June 1 for Mr. Nguyen to have his own workspace and access to the tools and resources that he needed; he was given an account and password to access the laboratory computers and database; and he was added to the mailing list for the laboratory group. Id. at 142-143. These undisputed facts establish that his employment had begun on June 1, 2009. Cf. 29 C.F.R. § 785.27 (2017) (training activities constitute "working time" under the Fair Labor Standards Act).

Second, the undisputed facts demonstrated that Dr. Hedden had the right to control Mr. Nguyen's work, thus making Mr. Nguyen an employee rather than an independent contractor. See Brigham's Case, 348 Mass. 140, 142 (1964) ("[t]he essence of the distinction" between an employee and independent contractor "is the right to control"). Indeed, Mr. Nguyen wrote an email to Dr. Hedden in which he expressed his understanding of (and displeasure with) Dr. Hedden's right to control and supervise his work. R.A. Vol. I at 144.

Finally, whether Mr. Nguyen was being paid to work at the time he died does not affect his employment status. An injury can be work-related even if it was sustained while the employee was not working. See Mendes v. Ng, 400 Mass. 131, 134 (1987) (employee injured before starting workday suffered a compensable work-related injury); Swasey's Case, 8 Mass. App. Ct. 489, 493-494 (1979) (employee's injury while driving home was work-related).

V. SUMMARY JUDGMENT WAS PROPER ON PLAINTIFF'S OTHER CLAIMS.

Even if this Court concludes that Plaintiff's negligence claim could survive summary judgment, summary judgment on the remainder of Plaintiff's claims was proper. There was no evidence of conscious pain and suffering (Counts II, V, VIII, and XII), as Mr. Nguyen died within "seconds," with no evidence of breathing, movement, or a pulse after his fall.[14] R.A. Vol. IV at 185. There was no evidence of the Defendants' "evil motive or [] reckless indifference to the rights" of Mr. Nguyen (see Dartt v. Browning-Ferris Indus., Inc. 427 Mass. 1, 17 (1998)), or that

[14] The passage of time between the telephone call and Mr. Nguyen's suicide cannot be considered in assessing conscious pain and suffering. See Gage v. Westfield, 26 Mass. App. Ct. 681, 696 (1988).

they acted with "the want of even scant care," as necessary for an award of punitive damages (Counts III, IV, IX, and XIII). See Aleo v. SLB Toys USA, Inc., 466 Mass. 398, 410 (2013), quoting Altman v. Aronson, 231 Mass. 588, 591–592 (1919). Finally, Plaintiff's breach of contract claim is precluded by the wrongful death statute, Mass. Gen. Laws c. 229, which "provides the exclusive action" for recovery of damages related to death. Hallett v. Wrentham, 398 Mass. 550, 556 (1986); see also Owen v. Meserve, 381 Mass. 273 (1980). The Superior Court also properly held that there was no breach of any enforceable contract, as Plaintiff's contract claim relies solely on an offer letter that included health insurance and a reference to a student guide, and nowhere contained any promise to coordinate Mr. Nguyen's mental health treatment or prevent him from intentionally inflicting self-harm. R.A. Vol. IX at 163-165.

CONCLUSION

For the foregoing reasons, the Defendants respectfully request that the Court affirm the Superior Court's grant of summary judgment.

Respectfully submitted,

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Dated: August 31, 2017

MASS. RULE APP. P. 16(k) CERTIFICATE OF COMPLIANCE

Pursuant to Mass. Rule App. P. 16(k), I, Kevin P. Martin, hereby certify that the foregoing Brief of Defendants-Appellees complies with the rules of court that pertain to the filing of briefs, including but not limited to: Mass. Rule App. P. 16(a)(6) (findings or memorandum of decision); Mass. Rule App. P. 16(e) (references to the record); Mass. Rule App. P. 16(f) (reproduction of statutes, rules, regulations); Mass. Rule App. P. 16(h) (length of briefs); Mass. Rule App. P. 18 (appendix to the briefs); and Mass. Rule App. P. 20 (form of briefs, appendices, and other papers).

Dated: August 31, 2017

KPM

Kevin P. Martin

CERTIFICATE OF SERVICE

I, Kevin P. Martin, hereby certify that two copies of the foregoing have been served upon counsel of record by Federal Express on this 31st day of August, 2017:

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