



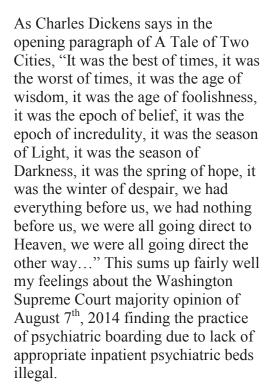


# frontlines

WASHINGTON ASSOCIATION FOR DESIGNATED MENTAL HEALTH PROFESSIONALS

#### Letter from President, Luke Waggoner





It is hard to imagine a better way to send our crisis system into crisis mode then to tell us that about 250 detained individuals cannot remain where they are but have nowhere else to go. What is sad to me is that it took a court case and a Supreme Court ruling to get any meaningful increase in psychiatric bed

capacity. Everyone, from the legislature to the DMHP in the local

ED, knew this was a problem and had known it for several years. But here we are and now new beds are being created. A future where we have enough beds to serve all detained individuals and the less restrictive treatment options in our home communities that we need is a future I support and so I feel hopeful. This will be my last letter to you all as President of the WADMHP. Due to changes in my life I will not pursue a second term when we hold elections in October. My experience as the treasurer and then president of the association has been very rewarding and I have learned so much from the other board members and you all in various settings. I believe the WADMHP has an important role in our state as a voice for DMHPs and I see a bright future ahead with your support. Thank you for your participation in our conferences and trainings!

Regards, Luke Waggoner



#### WHAT'S IN THIS ISSUE?

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Page 6: Voice of the DMHPs

Page 8 Detention Statewide Report

### THE BOARDING CASE: or Case Number 90110-4 of the Washington

#### By Robby Pellett

In re detention of: D.W., G.K., S.B., E.S., M.H., S.P., L.W., J.P., D.C., and M.P. has created important case law regarding involuntary treatment in Washington State.

As Designated Mental Health Professionals we are only too familiar with boarding of detained individuals here in Washington State. But some of us may not be aware that this is not just a Washington state phenomenon. The American Academy of Emergency Medicine has noted in their newsletters that the boarding of psychiatric patients is a problem occurring across the nation. The conditions which have led to the current explosion of boarding in Washington State are complex and varied, going back several decades.

There have been numerous workgroups convened across the state with various stakeholders trying to find a solution to the problem of boarding. There have been different recommendations such as increasing funding for outpatient mental health care, opening state hospital wards to emergent admissions or changing the Washington Administrative Codes to make it easier to board detained individuals in non-certified Evaluation and Treatment beds. The legislature and the governor have also tried to find more money for the Involuntary Treatment Act with varying degrees of success. But, as was predicted, there would eventually be a legal challenge to the practice of boarding.

The case began on February 12, 2013 when defense attorney Stan Opdyke, representing two respondents who were being boarded in emergency rooms, raised a motion to dismiss in the two cases. The Involuntary Commitment Court Commissioner Adams did not dismiss the cases but held the cases over for an evidentiary hearing on February 27, 2013, and invited the Department of Social and Health Services and several hospitals which were 'boarding' detained individuals to participate in the hearing in order to help the court better understand the situation. Eventually the case increased to include 10 respondents. Of note the

motion to dismiss was withdrawn and a review hearing was sought by the respondents. Interestingly, the heroic testimony of Pierce County DMHP supervisor Nate Hinricks, who at the February 27, 2013 hearing, stated "patients involuntary held in single bed certifications are getting less care then they would if they were in an evaluation and treatment center, it's actually a more restrictive environment".

Commissioner Adams wrote an order that the use of single bed certifications to avoid overcrowding of certified evaluation and treatment units was unlawful. Pierce County prosecutor Ken Nichols challenged that order and the case was brought before Pierce County Superior Court Judge Kathryn Nelson who threw out the orders by Commissioner Adams. With the benefit of new information Judge Nelson came to the same decision as Commissioner Adams. Pierce County prosecutor Ken Nichols and DSHS requested a delay in the ruling. One 6 month delay was granted so a search for a solution could be conducted. On December 10, 2013 with no offer to address the problem of boarding by the State or Pierce County, Judge Nelson entered the order that boarding was illegal.

The case was appealed by DSHS and the Pierce County Prosecutor to the Washington State Court of Appeals who consolidated the 10 cases into one case and transferred the case to the Washington State Supreme Court in January 2014. The Supreme Court set a date for the hearing of June 26, 2014. Pierce County Prosecutor Ken Nichols represented the DMHPs although there was nothing in any of the court documents that indicated that the DMHPs had done anything wrong in the act of detaining the individual respondents or in seeking a petition for 14 days of further involuntary treatment. Of significant note is that after the initial motion to dismiss at the February 2013 hearing, the respondents dropped the motion to dismiss. The focus of the respondents' case was the lack of treatment.



In the DSHS briefs to the Supreme court, it's stated the ITA court is a court of limited jurisdiction and, only through the Administrative Procedures Act could a question of the legality of Single Bed Certification as described in WAC388-865-0526 be adjudicated. Of note in the DSHS brief it is stated only the Regional Support Network or its agent can apply for a Single Bed rooms until treatment is available". Certification from the Department of Social and Health Services. Also mentioned in the brief is the Regional Support Networks are responsible for providing 90% of Evaluation and Treatment Services needed within the County. Again there was no mention of any wrong doing on the part of individual DMHPs.

In the brief offered by the Pierce County Prosecutor, he painted a graphic picture that if the Supreme Court found for the Respondents, then dangerously mentally ill people would be released by court to return to the streets to harm themselves or others. Towards the end of his brief he contends if the Supreme Court found for the Respondents, then DMHPs will begin detaining individuals not on the legal grounds but on the availability of Evaluation and Treatment beds.

The Respondents brief indicates the lack of access to adequate treatment is a violation of RCW 71.05, and other state and federal laws. The Respondents do not question the use of the Single Bed Certification process to certify a medical bed when a detained person has a pressing medical need requiring medical treatment not available at the Evaluation and Treatment facility. DMHPs old enough to experience pre-boarding days may remember the use of the Single Bed Certification for just such situations. The Respondents contend the Involuntary Treatment Act courts provide for

adjudication of the legality of the detention and is responsible for the protection of the individual's rights within the involuntary treatment process. The brief concludes saying "the problem is inadequate funding of mental health care in this state. And the solution is not confining persons with mental illness in emergency

In addition to the briefs from the main litigants there were supportive briefs from 11 different organizations including Disability Rights of Washington, Washington Council of Emergency Nurse Association, and the labor union SEIU.

On June 26, 2014 the Washington State Supreme Court heard oral arguments on this case. Jay Geck represented DSHS, Ken Nickols represented Pierce Co and the DMHPs, and Jennifer Sweigert represented the Respondents. It was surprising to find out several of the Supreme Court Justices had been commissioners in ITA courts in the past.

The testimony was brisk as the Justices asked direct questions challenging the individual attorneys. The court challenged DSHS and Pierce Co, asking who should protect the rights of the detained individuals. The Court challenged the attorney for the Respondents, asking what would be the solution. Ms Sweigert, replied RSNs can buy beds from other RSNs but missed the opportunity to place the responsibility directly on the State who is constitutionally, per Article XIII of the State's constitution, responsible for providing the services necessary to meet the needs of individuals with mentally illness.

.....Continued on page 5

#### LETTER SENT TO RESPOND TO "PYSHCIATIC BOARDING" COURT DECISION



Washington Association of Designated Mental Health Professionals P.O Box 5371 Bellingham, WA 98227

Governor Inslee Secretary Quigley

Dear Sirs,

I am writing this letter on behalf of the Washington Association of Designated Mental Health Professionals (WADMHP) in an effort to obtain State direction relating to the Supreme Court ruling of August 7, 2014 and to request immediate state action on this matter.

As you know DMHPs in Washington State are mental health professionals who are judicially authorized with responsibility to evaluate individuals for determination of involuntary civil commitment under RCW 71.05 and 71.34. The Supreme Court ruling of August 7th results in conflict within the commitment laws. A DMHP must evaluate a person for civil commitment when requested to do so as outlined in RCW 71.05/71.34. Further, if the legal criteria are present and no less restrictive alternative is available, a DMHP must commit the Respondent. Nothing in RCW 71.05 or 71.34 allows for a DMHP to not fulfill this part of their duties. These duties have very significant safety implications for the respondent and/or for the general public.

When it has been determined that an individual meets the commitment criteria, a DMHP seeks placement for the Respondent who is involuntarily detained. The decision to detain or not under RCW 71.05/71.34 is made without regard to availability of resource or inpatient beds. Nor does the law contemplate this option. Further, the DMHP protocols specifically prohibit DMHPs from making detention decisions based on availability of resources.

The WADMHP urges the State to seek immediate relief from this decision by petitioning the Court for a time-limited stay on this matter. This would give the State an opportunity to implement a plan that includes immediately increasing inpatient psychiatric resources in order to comply with this ruling.

In addition, Washington State/ DSHS is requested to provide written interpretations and determinations on this matter. The legislature and DSHS have repeatedly stated a goal of uniform application of the ITA statues throughout the state. However, as of this writing no specific State direction has been provided in writing and DMHP offices across the state are being directed differently by the county prosecutors, their own legal counsel, or the RSNs. In many cases they have not had any communication. In order for a uniform response to be achieved the State must take an active role in defining the steps and actions to be taken by stakeholders including CMHCs, hospitals, and DMHPs (as well as others) in carrying out their duties under the statutes with regard to this decision.

Relative to this Washington State Supreme Court ruling "In The Matter of Detention of DW" there is only one solution that will allow this ruling to be carried out, which is to immediately make more inpatient psychiatric beds available, which can be accomplished in a variety of ways. Available beds in which to place individuals when no less restrictive alternative exists is the safest, most effective solution. Unfortunately this problem cannot be solved with additional outpatient resources. The State Supreme Court in their ruling cites previous rulings by the Court that have held the State must provide for inpatient beds. RCW 71.05.170 is specific to this point stating the state hospitals must accept a Respondent if a 72 hour petition is presented to them and no other beds are available.

For the safety of individuals who are detained and for the safety of the general public, the State's response and direction on this ruling cannot be to release a person who has been determined to be dangerous to themselves or others to the streets without treatment when no inpatient psychiatric bed is found.

Thank you for your time and consideration.

Signed on behalf of Washington Association of Designated Mental Health Professionals

#### <u>Time for Elections....</u> Become Part of the WADMHP Board

The following positions are up for re-election:

President
1st Vice President
Treasurer

Elections will be held at beginning of Lunch meeting on Thursday October 16th at Fall Conference

Email <u>wadmhp@gmail.com</u> if you are interested in being put on the list for running and which position

#### BOARDING CASE-CONTINUED FROM PAGE 3....

The hearing has been characterized as Procedure vs Rights in the print media.

Surprisingly the court made an uncharacteristically speedy decision. On August 7, 2014 the court by a unanimous decision found for the Respondents. The written opinion can be found on the Washington Courts website at <a href="http://www.courts.wa.gov/opinions/index.cfm?">http://www.courts.wa.gov/opinions/index.cfm?</a> fa=opinions.showOpinion&filename=901104MAJ

Now the real work begins. The Court has given the state until the end of August to address the lack of Certified Evaluation and Treatment beds. It is important as we move forward to remember that DMHPs are not responsibl for the lack of resources. This is the responsibility of the State. We DMHPs will continue to make detention decision according to the ITA law. We must allow the State to find solutions for the lack of certified evaluation and treatment beds. We cannot do it for them.

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## WADMHP Executive Committee

Luke Waggoner
President
509-524-2920
president@wadmhp.org

Tiffany Buchanan

First Vice President

360-754-1338

1stvicepresident@wadmhp.org

Wendy Sisk
Second Vice President
360-457-0431
2ndvicepresident@wadmhp.org

Jessica Shook
Treasurer
253-697-8400
treasurer@wadmhp.org

Beth Keating
Secretary/ Frontlines Editor
360-754-1338
secretary@wadmhp.org

Robby Pellett
President Emeritus
206-263-9200
robbypellett@hotmail.com

Ian Harrel
President Emeritus
360-528-2590
presidentemeritus@wadmhp.org

		IR Data from RSNs			Data from Provide	
County	Investigations	Detentions	% of Inv to Det	Investigations	Detentions	% of Inv to De
Adams	12	6	50%	97	7	7%
Asotin	253	30	12%	255	28	11%
Benton	444	295	66%	451	299	66%
Chelan	709	143	20%	694 – Data in- cludes Douglas County	130	19%
Clallam	360	99	28%	370	109	29%
Clark	1188	308	26%	3,889	371	10%
Columbia	50	3	6%	19	1	5%
Cowlitz	468	268	57%	351	203	58%
Douglas	0	0	0%	See Chelan	See Chelan	See Chelan
Ferry	1	1	100%	County 1	County 3	County 300%
Franklin	132	86	65%	151	107	71%
Garfield	10	1	10%	11	1	9%
Grant	47	46	98%	145	61	42%
Grays-Harbor	119	110	92%	387	108	28%
Island	299	100	33%	298	100	34%
Jefferson	118	59	50%	137	80	58%
King	6232	3666	59%	6,206	3,684	59%
Kitsap	1019	399	39%	1,020	400	39%
Kittitas	65	65	100%	673	64	10%
Klickitat	18	17	94%	253	15	6%
Lewis	235	67	29%	176	63	36%
Lincoln	0	0	0%	11	2	18%
Mason	101	14	14%	101	14	14%
Okanogan	98	98	100%	277	104	38%
Pacific	53	18	34%	73	14	19%
Pend Oreille	72	12	17%	87	24	28%
Pierce	1679	723	43%	1,565	726	46%
San Juan	64	20	31%	62	19	31%
Skagit	889	325	37%	875	323	37%
Skamania	4	0	0%	5	5	100%
Snohomish	2018	850	42%	2,035	774	38%
Spokane	1721	1443	84%	3,211	1,165	36%
Stevens	9	6	67%	Not Reported	17	Unknown
Thurston	759	175	23%	870	348	40%
Wahkiakum	7	5	71%	6	6	100%
Walla Walla	622	73	12%	652	79	12%
Whatcom	1107	335	30%	1,252	446	36%
Whitman	24	9	38%	Not Reported	24	Unknown
Yakima	434	434	100%	2,820	441	16%
Unknown	15	11	73%	N/A	N/A	N/A

# DETEN DA

For many year published d Investiga Detentions, heard comm providers th did not ma internal dat you will see data, one set that DSHS h submissions ? to their RSNs to the state set of data w by DSHS dir providers. E 2012 we are only the dat to DSHS by important t DBHR will o work with RS stakeholders ITA data r



# TA

rs, we have

lata on ITA tions and and we often ents from at the data tch their a. For 2013 two sets of is the data as based on oy providers and then on . The second as collected ectly from or 2011 and e providing a submitted RSNs. It is o note that continue to Ns and other to address eporting.



	DBHR Data from RSNs - 2011			DBHR Data from RSNs - 2012				
County	Investigations	Detentions	% of Inv to Det	Investigations	Detentions	% of Inv to Det		
Adams	45	17	38%	46	21	46%		
Asotin	147	16	11%	231	22 10%			
Benton	273	193	71%	310	214	69%		
Chelan	899	98	11%	922	153	17%		
Clallam	271	66	24%	281	88	31%		
Clark	910	251	28%	970	242	25%		
Columbia	68	7	10%	73	5	7%		
Cowlitz	471	279	59%	526	277	53%		
Douglas	1	0	0%	2	1	50%		
Ferry	11	4	36%	0	0	0%		
Franklin	95	67	71%	120	85	71%		
Garfield	25	0	0%	14	1	7%		
Grant	113	51	45%	116	52	45%		
Grays-Harbor	65	48	74%	146	98	67%		
Island	306	103	34%	326	106	33%		
Jefferson	78	35	45%	83	42	51%		
King	6224	3259	52%	6381	3343	52%		
Kitsap	894	359	40%	962	364	38%		
Kittitas	80	80	100%	71	71	100%		
Klickitat	32	32	100%	30	30	100%		
Lewis	343	35	10%	355	47	13%		
Lincoln	9	3	33%	0	0	0%		
Mason	101	14	14%	141	33	23%		
Okanogan	192	187	97%	164	139	85%		
Pacific	50	6	12%	27	16	59%		
Pend Oreille	42	8	19%	83	20	24%		
Pierce	1627	650	40%	1491	648	43%		
San Juan	34	11	32%	44	8	18%		
Skagit	760	330	43%	853	327	38%		
Skamania	0	0	0%	0	0	0%		
Snohomish	2113	816	39%	1957	830	42%		
Spokane	1766	1517	86%	1249	1079	86%		
Stevens	32	19	59%	3	1	33%		
Thurston	1044	259	25%	1054	216	20%		
Wahkiakum	3	2	67%	5	3	60%		
Walla Walla	604	47	8%	606	63	10%		
Whatcom	1059	497	47%	910	444	49%		
Whitman	11	8	73%	6	5	83%		
Yakima	480	480	100%	513	513	100%		
Unknown	11	1	9%	26	8	31%		

### **VOICE OF THE DMHPs**

What are your thoughts on the WA Supreme Court's decision that "The ITA does not authorize psychiatric boarding as a method to avoid overcrowding certified evaluation and treatment facilities?"

"Dear Colleagues,

Sometimes the medicine is bitter, and there is no honey that makes it go down easier. As burdensome as the Supreme Court's decision may be that "using single bed certification to avoid overcrowding certified E & T facilities" is unlawful, it may in the long run provide for the best interests of persons who are in need inpatient treatment.

However, when performing an investigation, the bottom line is: DMHPs ought not make either the use of single bed certification or boarding their issue. The DMHP's investigation and determination as to whether or not the respondent meets the criteria of RCW 71.05 for inpatient treatment has not been changed by the Supreme Court decision.

Therefore, DMHPs need to continue doing their investigations with expertise, and make their determination as to whether or not the respondent meets the criteria of the law, not with the wonderment about the availability of a bed in an E & T facility or boarding in the local hospital until one is available. When the criteria for detention are met, and the decision to hospitalize the respondent is made, the disposition of the case is no longer in the hands of the DMHP. If an E & T facility is not available, it is not the responsibility of the DMHP, but rather that of the Department of Social and Health Services and legislators to make sure that a detained individual receives the appropriate standard of inpatient care.

It may rip at our hearts to see a respondent who needs inpatient care turned out onto the streets because a psychiatric bed in unavailable, but that ought not affect either our professional work or our commitment to assure that mentally ill persons receive the highest standard of care by us. What happens after we have made our determination is out of our hands.

It is my experience that DMHPs are conscience, and take their responsibilities seriously. The availability of a inpatient psychiatric bed for a detained person is not the responsibility of the individual DMHP. The WADMHP may, on the other hand, have a role in advocating for appropriate psychiatric services."

Scott Kuhle, DMHP, Whitman County

While I agree with the idea that psychiatric boarding is not ideal, and that clearly the state needs more psychiatric beds, I do not agree with the way this was put into law. In my opinion, it was short sighted. Dangerous patients can now be released into the community, putting themselves and others at risk of serious bodily harm. I think the state should have been given a reasonable time period in which to open up more bed space before putting this law into effect. The governor's stay has not changed our commissioners' rulings that a boarded patient must be released, even after meeting criteria for a 14 day hold.

Leila Hill, DMHP Snohomish County, 6 years

<sup>\*\*\*</sup>Look for this section in future issues. Questions will be posted on Facebook on the Washington Association for DMHPs page.

#### DMHP WORD SEARCH ED. 3

G	R	Α	Ν	Т	Н	U	R	S	Т	0	Ν	Е
S	Α	Ν	J	U	Α	Ν	S	Т	Т	R	M	W
N	Ν	1	L	K	Ν	Α	R	F	0	Α	K	Ο
Α	С	Ν	Α	L	Ε	Н	С	В	1	I	С	K
М	0	L	G	G	Α	Ν	R	Ν	Т	X	L	Α
Т	W	Е	S	Е	G	Α	Α	Т	Т	L	Α	Ν
1	L	W	K	G	Н	M	1	K	Z	W	R	0
Н	1	1	Α	S	Α	Т	Q	X	0	D	K	G
W	Т	S	Υ	K	Α	R	W	Р	I	Р	R	Α
Н	Z	Α	S	S	Α	S	Ο	Т	1	Ν	S	Ν
В	R	Α	L	L	Α	W	Α	L	L	Α	W	K
G	Р	Ε	Ν	D	0	R	E	1	L	L	Ε	Ε
J	Ε	F	F	Е	R	S	Ο	Ν	Ο	S	Α	M

#### WA State Counties Part 2

ASOTIN
CHELAN
CHELAN
KITTITAS
CLARK
LEWIS
COWLITZ
MASON
FRANKLIN
OKANOGAN
GRANT
PENDOREILLE
GRAYS HARBOR
SAN JUAN

SKAMANIA SPOKANE THURSTON WALLA WALLA WHITMAN

\*answers on page 5

### 2014 FALL CONFERENCE at SUN MOUNTAIN LODGE

Practical Mental Health Risk Assessment: A Framework for the Real World

#### with Joshua Jones, MD

In this interactive presentation, the theoretical concept of "risk" will be deconstructed and then applied to common mental health situations. A framework for conceptualizing risk in individual encounters will be constructed using evidence-based risk factors.

PARTICIPANTS WILL BE GUIDED IN USING THIS FRAMEWORK AS THEIR OWN "RISK ASSESSMENT TOOL," AND IN USING THIS FRAMEWORK TO CONCEPTUALIZE ASSESSMENTS OF DANGER TO SELF, DANGER TO OTHERS, AND GRAVE DISABILITY.

#### Wednesday, October 15, 2013

7:30 pm Hospitality Reception

#### Thursday, October 16, 2013

07:30 am Registration and Breakfast

08:30 am Opening Remarks

08:45 am Risk Assessment

10:30 am Break

10:45 am Risk Assessment

12:00 pm Lunch & Business Meeting

1:30 pm Risk Assessment

2:30 pm Break

2:45 pm Risk Assessment

4:30 pm Adjournment

#### Friday, October 17, 2013

07:30 am Breakfast & Registration

08:30 am Opening Remarks

08:45 am Legislative Update and Review of

the DMHP Protocols

10:30 am Break

11:00 am Roundtable: Boarding and the Supreme Court

Decision

12:00 pm Conference Adjourns

Joshua Jones, M.D., is the Medical Director of Peninsula Behavioral Health, and is Board Certified as a Diplomat of the American Board of Psychiatry and Neurology in General and Forensic Psychiatry. Dr. Jones, born and raised in Washington State, is a graduate of the University of Puget Sound and the University of Washington School of Medicine. In 2008, he served as Attending Psychiatrist to the U.S. Army's 1835th Medical Detachment in Camp Taji, Iraq. Dr. Jones is a Clinical Instructor in the University of Washington Family Medicine Department and Clinical Assistant Professor of Psychiatry at the University of Rochester School of Medicine and Dentistry. Dr. Jones has extensive experience in risk assessment, and has served as Monroe (N.Y.) County's psychiatric officer for evaluating outpatient commitments under New York State's Assisted Outpatient Treatment act. He also was the Supervising Psychiatric for Unity Health's Sexual Behavior Clinic and the Medical Director for the Alexander Assessment and Treatment Group, a private outpatient sex offender and sexual behavior treatment program. Dr. Jones has co-authored several journal articles and book chapters on general and forensic psychiatric practice. He and his family live in Port Angeles, WA.

Join us on the Friday to review recent legislative changes, receive an update on the coming changes to the DMHP Protocols and join in a Roundtable discussion regarding the August 2014 Supreme Court Ruling on Boarding and how this is impact our practice and our communities.

#### Carolyn Williamson Scholarship

The Washington Association of Designated Mental Health Professionals is very proud to be able to offer this Scholarship.

Carolyn was passionate about seeking justice for the mentally ill. From 1995 until she retired in 2007 she served as the Pierce County Deputy Prosecuting Attorney in charge of handling civil commitment hearings. She also represented the petitions of DMHP's from across the state for patients sent to Western State Hospital on a 72 hour hold for many years. She was involved in a number of cases which were eventually brought to the State Supreme Court and that became a part of case law for involuntary commitment.

The Williamson family in honor of Carolyn's long time dedication to and support for DMHPs solicited funds to create this fund. The Scholarship Fund will offer a \$160 gift to one DMHP to attend the Fall Conference each year.

To be considered for this gift a Supervisor needs to submit the name of a DMHP who will be attending the Fall Conference for the first time, by September 15 to the WADMHP president Luke Waggoner by email at president@wadmhp.org. The WADMHP board will pick the winning DMHP and will inform the DMHP's supervisor by September 22. At the Fall conference the winning DMHP will be acknowledged at the lunch meeting on Thursday October 16.

## REGISTRATION FORM FALL CONFERENCE 2014

#### Washington Association of Designated Mental Health Professionals

#### October 16-17, 2014 Sun Mountain Lodge, Winthrop, WA

Name:	SKINNE KINDERSE MUNICIPALITY
Address:	WINE RELEASE STATE
City:	State: Zip:
Home Phone: ()	Work phone: ()
Employer:	STATE OF THE RESERVE
Position Title:	County:
Email Address:	
	re Newsletter and Conference information.
No, please never contact r	ne unough eman.
Registration fee:	
Make check payable to WADMHP  Please note: Check or cash only- througous  Credit card only- online	gh mail WADMHP Tax Identification Number: 91-1997711
Ma	il registration form to:

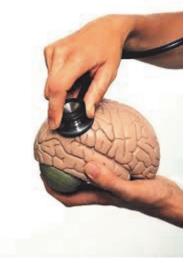
WADMHP, PO Box 5371, Bellingham, WA 98227

Or contact Kincaid Davidson at (360) 676-5162

Or Register Online at WADMHP.ORG!!

# frontlines







BELLINGHAM, WA 98227 PO BOX 5371

