

SAN MATEO COUNTY HEALTH SYSTEM
BEHAVIORAL HEALTH AND RECOVERY SERVICES

DATE: September 8, 1993

BHRS POLICY: 93-08

SUBJECT: Duty to Protect and Duty to Warn Potential Victims (Tarasoff vs. Regents of the University of California)

AUTHORITY: California Civil Code 43.92; W & I Code Section 5328 (r); CA DMH Legal Section, Special Order no.: 721.01; Evidence Code, Section 1010
CA Evidence Code

AMENDED: December 8, 2004; March 13, 2013; June 27, 2018 (Amended and Attachment removed.)

PURPOSE:

To comply with the California Supreme Court ruling, Tarasoff vs. Regents of the University of California (1976) and subsequent case law requiring mental health professionals to take appropriate actions to protect the foreseeable victim of a client's serious threat of physical violence.

NOTE: The 2013 Tarasoff legislation clarified language in the act from the "duty to warn and protect" to solely read the "duty to protect". California Civil Code states that the amended language is not a "substantive change" in the duty, and that courts should continue to interpret the law as they did prior to the enactment of the 2013 amendment.

DEFINITIONS

Psychotherapist: A person who is, or it is reasonable for a client to believe to be, a licensed physician, psychologist, social worker, school psychologist, licensed marriage and family therapist, registered psychological assistant under supervision, or a professional in pre-licensed status in one of these disciplines: psychology, Marriage and Family Therapist, Clinical Social Worker, Registered Clinical Counselor under supervision, or an advanced practice Registered Nurse with a Master's degree in psychiatric mental health nursing.

Reasonably Identifiable Intended Victim(s) and/or Entity: The person(s) or third party the client has made the serious threat of physical violence towards, who can be identified by a first and last name, by relation or relationship to the patient (such as wife, roommate, partner) or title ("my lawyer" or, "the judge"), or specified entity/location (such as "the mall" or "HSA") or by any other means available.

Protect: The duty to protect and duty to warn is met by a written and/or verbal communication by a psychotherapist to a reasonably identifiable intended victim(s) and/or entity and to a law enforcement agency regarding a patient's serious threat of physical violence.

Threat: A threat is a verbalization or other communication to a psychotherapist by a client or by a credible third party regarding a serious threat of physical violence towards a reasonably identifiable victim(s) and/or entity.

PROCEDURE:

In the event of an emergency, appropriate action is to be taken immediately and notification of the supervisor is to occur as soon as possible.

Communication of Threat

- If any BHRS staff becomes aware of serious threats to a reasonably identifiable victim(s) and/or entity, they will seek immediate consultation with their supervisor, and determine duty to protect and warn.
- All serious threats of physical violence to a reasonably identifiable victim(s) and/or entity that are communicated to a staff member must be immediately evaluated and reported to the staff member's supervisor.
- Additionally, if a staff member is told about a threat that was communicated by the client to a credible third party, the staff member must immediately evaluate and report to their supervisor.
- Examples of a credible third party or reliable person are: family member, close acquaintance, member of the clinical team, psychiatrist, director, manager, staff, or school personnel. (This list is not exhaustive.)

Consultation

- Staff will seek immediate consultation with their supervisor to decide if a "Duty to Protect and Warn" situation exists. Consultation can also include any members of the clinical team, director or manager.
- Consultation can include the BHRS Director, Medical Director, Program Manager, or Quality Management to clarify as needed.

Duty to Protect and Warn

- If it is determined a "Duty to Protect and Warn" situation exists, the clinical staff member or supervisor shall **immediately make every effort to contact the intended victim(s) and/or entity and the appropriate law enforcement agency. All attempts will be promptly documented.**
- "Duty to Protect and Warn" requirements remain in effect even when the client has been transported, under a 5150 hold, to a psychiatric facility for evaluation.
- If the client making credible threats and/or the potential victim is conserved, alert the deputy guardian(s). If the client is a minor, notify parents/guardians.

- Alert the threatened individual(s) in person if possible. Let the law enforcement agency know immediately if you are unable to determine a contact number or address for the threatened victim(s) and/or entity.
- If you are unable to complete the notification, ensure that a member of your team and/or supervisor will follow through with the “Duty to Protect and Warn” situation.
- If it is determined that there is no “Duty to Protect and Warn”, the staff member will continue to assess the situation for an indefinite amount of time to monitor for possible “Duty to Protect and Warn” situations, including: creating a safety plan, increasing the frequency of appointments, increasing daily monitoring of potential risks, and consulting with supervisor.

Documentation

- Document all information in progress notes and quote the client (or credible third party) directly in the chart. This documentation must include all actions taken regarding the warning, including who was warned, when, and how the warning was accomplished.
- If necessary, use Avatar to send a notification to PES by completing an Urgent Care Bundle.
- A Critical Incident Report shall be completed and sent to Quality Management.

Approved: Signature on File

Robert Cabaj, MD

BHRS Medical Director

Approved: Signature on File

David A. Young, PhD MPH

BHRS Director