

RIVERSIDE COUNTY
DEPARTMENT OF MENTAL HEALTH

POLICY: 202

SUBJECT: **TARASOFF - DUTY TO PROTECT**

REFERENCES: California Supreme Court Decision - 17 California 3rd 425 Supreme Court; California Civil Code Section 43.92; California Evidence Code Section 1010; California Family Code Section 6924; California Welfare and Institutions Code Sections 5328(r) and 5150; Riverside County Counsel Memorandum, June 29, 1993; Riverside County Counsel Memorandum, October 4, 2010; Health Insurance Portability and Accountability Act of 1998 (HIPAA) Privacy Rule 45 Code of Federal Regulations (CFR) Section 164.512(j); 42 CFR Part 2; Department of Health & Human Services Message to Our Nation's Health Care Providers, January 15, 2013; DMH Policy #298 "Protected Health Information - Minimum Necessary for Use and Disclosure"

EFFECTIVE DATE: January 1, 1994

REVISED DATE: September 9, 2013, August 7, 2013
and September 15, 2011

POLICY:

In accordance with court decisions and State law, it is the policy of the Riverside County Department of Mental Health (RCDMH) that when a psychotherapist determines, or pursuant to the standards of the profession should determine, that a patient presents serious danger of violence to another, the psychotherapist incurs an obligation to use reasonable care to protect the intended victim against such danger. California Civil Code Section 43.92 states that "There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is a psychotherapist as defined in Section 1010 of the California Evidence Code in failing to protect from a patient's threatened violent behavior or failing to predict and protect from a patient's violent behavior except if the patient has communicated to the psychotherapist

a serious threat of physical violence against a reasonable identifiable victim or victims.” Failure to do so exposes the therapist to the possibility of being found negligent in a court proceeding. Furthermore, the courts' criterion for reasonableness of a therapist's decision to protect an intended victim or take other preventative actions is "the standards of the profession" i.e. what would probably have been done by colleagues when presented with the same set of circumstances.

Subsequent laws have extended the “duty to protect” to include a consumer’s threats communicated to the professional staff person by a significant family member (Ewing vs. Goldstein, 2004, 120 Cal.App.4th 807). Therefore, a professional staff person must exercise the same reasonable care to protect an intended victim of violence in situations where serious threats are communicated by a family member.

The Department of Health and Human Services issued a message to the nation’s health care providers stating that the HIPAA Privacy Rule is balanced to ensure that a health care provider may disclose patient information, including information from mental health records, if necessary, to law enforcement, family members of the patient, or any other persons who may reasonably be able to prevent or lessen the risk of harm (see DHHS Message, Attachment A). If a mental health professional has a client who has made a credible threat to inflict serious bodily harm on one or more persons, HIPAA permits the mental health professional to alert the police, a parent or other family member, school administrators or campus police, and others who may be able to intervene to avert harm from the threat. Information disclosed will only be the minimum necessary to accomplish the intended purpose of protecting a potential victim.

The Department of Mental Health will implement and adhere to the stipulation heretofore referred to in the Civil Code, Welfare and Institutions Code, and Tarasoff decision regarding the duty to protect third parties at risk of injury or death from consumers within the public mental health system.

PROCEDURE:

Tarasoff establishes a formal duty to protect that will often involve making reasonable efforts to communicate the threat to the intended victim or victims and notifying law enforcement. RCDMH acknowledges that the case requires that the mental health professional exercise “reasonable degree of skill, knowledge, and care ordinarily possessed and exercised by members of [their profession] under similar circumstances” and therefore communicating the threat to the intended victim(s) may or may not be the prudent course of action.

Therefore, when a consumer or their significant family member communicates, to a RCDMH staff person, a threat of serious physical harm to one or more other persons, the staff person must seek consultation promptly with her/his immediate supervisor or the supervisor's designee. If no such person is available, in a timely fashion the staff person should attempt to contact the following people, in order of presentation, until consultation is secured: any Mental Health Services Supervisor, Manager/Administrator, Assistant Director, Deputy Director or Medical Director.

A. The consultation process will seek to answer the following questions:

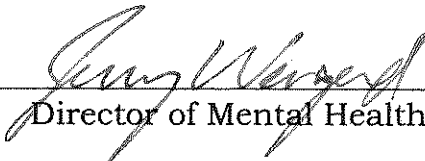
1. Is the threat, in fact, one of serious bodily harm?
2. Is the threat clear?
3. Is the danger assessed as serious?
4. Is there a specific victim or victims?

If the answer to all four questions is "Yes" the following actions must be taken by the responsible Department of Mental Health staff:

- a. If the consumer is diagnosed with a mental disorder and it is determined that he/she meets the criteria for danger to self, danger to others or grave disability under W&I Code 5150, and his/her whereabouts are known, involuntary hospitalization should be instituted as appropriate. The receiving facility should be notified by the responsible staff person of the efforts to protect the potential victim. Such efforts should continue until the plan to protect is carried through.
- b. If the consumer is in the hospital when the threat is communicated, the inpatient staff member should initiate the necessary notification to the intended victim(s) and law enforcement.
- c. Contact with the potential victim or victims can be made via telephone, telegram, personal visit or, as a last resort, letter. Documentation in the consumer's chart should include:
 - 1) Specific efforts made to contact victims
 - 2) Dates and times of efforts

- 3) Names of friends and family members contacted in an attempt to contact the potential victim(s)
 - 4) Content of information released to people contacted
- d. Staff will contact local law enforcement agencies having jurisdiction where the potential victim resides and/or works, and record in the clinical record the name of the officer to whom the report was made, the date, time, and content of what was released to the law enforcement agency.
 - e. If through consultation the professional staff person determines that it is not reasonable or prudent to contact the intended victim and/or notify law enforcement, then an alternative course of action to protect the intended victim must be agreed upon in consultation. This course of action must be followed and documentation of this must include the rationale for not informing the intended victim and/or law enforcement.

In all instances only the information necessary to carry out the plan of protection should be released. Unrelated information about the client should remain protected from unnecessary disclosure. Where the threat of serious bodily harm or the identity of the potential victim is vague, effort should be made to determine whether the consumer will retract the threat or make it clear. If the consumer remains vague, consultation in the order given above should be obtained. In any case, responsible staff should document the threat, consultation(s) and rationale(s) for decisions made in each instance.

Approved by:  Date: 7-10-13
Director of Mental Health

Attachments

Department of Health & Human Services (DHHS) Message to Our Nation's Health Care Providers, January 15, 2013, Attachment A
Tarasoff Decision Chart, Attachment B



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

January 15, 2013

Message to Our Nation's Health Care Providers:

In light of recent tragic and horrific events in our nation, including the mass shootings in Newtown, CT, and Aurora, CO, I wanted to take this opportunity to ensure that you are aware of your ability under the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule to disclose necessary information about a patient to law enforcement, family members of the patient, or other persons, when you believe the patient presents a serious danger to himself or other people.

The HIPAA Privacy Rule protects the privacy of patients' health information but is balanced to ensure that appropriate uses and disclosures of the information still may be made when necessary to treat a patient, to protect the nation's public health, and for other critical purposes, such as when a provider seeks to warn or report that persons may be at risk of harm because of a patient. When a health care provider believes in good faith that such a warning is necessary to prevent or lessen a serious and imminent threat to the health or safety of the patient or others, the Privacy Rule allows the provider, consistent with applicable law and standards of ethical conduct, to alert those persons whom the provider believes are reasonably able to prevent or lessen the threat. Further, the provider is presumed to have had a good faith belief when his or her belief is based upon the provider's actual knowledge (i.e., based on the provider's own interaction with the patient) or in reliance on a credible representation by a person with apparent knowledge or authority (i.e., based on a credible report from a family member of the patient or other person). These provisions may be found in the Privacy Rule at 45 CFR § 164.512(j).

Under these provisions, a health care provider may disclose patient information, including information from mental health records, if necessary, to law enforcement, family members of the patient, or any other persons who may reasonably be able to prevent or lessen the risk of harm. If a mental health professional has a patient who has made a credible threat to inflict serious and imminent bodily harm on one or more persons, HIPAA permits the mental health professional to alert the police, a parent or other family member, school administrators or campus police, and others who may be able to intervene to avert harm from the threat.

In addition to professional ethical standards, most states have laws and/or court decisions which address, and in many instances require, disclosure of patient information to prevent or lessen the risk of harm. Providers should consult the laws applicable to their profession in the states where they practice, as well as 42 CFR Part 2 under federal law (governing the disclosure of substance abuse treatment records) to understand their duties and authority in situations where they have information indicating a threat to public safety.

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We at the Office for Civil Rights understand that health care providers may at times have information about a patient that indicates a serious and imminent threat to health or safety. At those times, providers play an important role in protecting the safety of their patients and the broader community. I hope this letter is helpful in making clear that the HIPAA Privacy Rule does not prevent providers from sharing this information to fulfill their legal and ethical duties to warn or as otherwise necessary to prevent or lessen the risk of harm, consistent with applicable law and ethical standards.



Leon Rodriguez

Riverside County Department of Mental Health

TARASOFF DECISION CHART

