

The Ever-Evolving Duty to Protect in California

Editor:

In a recently published paper in the *Journal*,^{1,2} we stated that California legislation now permits flexibility regarding warning a potential victim and notifying the police to satisfy the duty to protect. However, legislation designed to keep mental patients who trigger the Tarasoff duty to protect from possessing guns now mandates notification of the police in these situations, while retaining flexibility on whether to warn potential victims. Some version of this requirement has been present for several years, yet is virtually unnoticed. Revisions have included requiring psychotherapists to report such situations to the police.

Under recent legislation, California Welfare and Institutions Code § 8105(c) (2014) became effective on January 1, 2014. It supplements § 8100(b). Together, they require psychotherapists to report the patient's identity to police within 24 hours, anytime a patient meets the duty-to-protect criteria. The sections mandate a report to prevent the patient from possessing guns regardless of how the duty to protect is satisfied. It remains unclear, though, whether police notification is necessary for a threat initially considered serious but subsequently assessed to represent transient anger. Involuntary hospitalization for danger already precludes inpatients from future gun possession, but a literal reading of the statute may require police notification nonetheless. Communicating a threat to the police could lead to a more thorough attempt to remove guns.

Warning is not a requirement and was eliminated from all relevant statutes, to resolve any ambiguity about a duty to warn in California; the duty is only to protect the victim. However, immunity is granted when the duty to protect is satisfied by both notifying the police and warning the potential victim. Thus, psychotherapists should notify the police and warn the potential victim most of the time.

California Civil Code § 43.92 (2013) clarified that if psychotherapists believe warning the potential victim would increase the danger and another action would be more protective, the option remains not to warn. Standard professional liability criteria would apply with

plaintiffs who want to prove the alternative actions negligent.

Although police reports are required for gun purposes, the most risk likely occurs in the context of warning a potential victim and thus inflaming the conflict. Police may mistakenly think that they should warn the potential victim whenever they are notified, to complete the other half of the requirement for psychotherapist immunity. Therefore, if psychotherapists determine that warning the potential victim will increase the danger, efforts should be made to discourage police from contacting potential victims. In most situations, however, the psychotherapist is likely to conclude that warning the potential victim would create no serious problem.

The new gun legislation does not alter the fact that the California duty is to protect as opposed to warn potential victims. The police now must be notified for gun prohibition purposes, but warning the potential victim remains only the way to achieve immunity from liability for the duty to protect. Warning potential victims is still neither required nor is it necessarily the best way to protect potential victims.

References

1. Weinstock R, Bonnici D, Seroussi A, *et al*: No duty to warn in California: now solely and unambiguously a duty to protect. *J Am Acad Psychiatry Law* 42:101–8, 2014
2. Weinstock R, Bonnici D, Seroussi A, *et al*: Letter. *J Am Acad Psychiatry Law* 42:533, 2014

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DSM-5 and Substance Use Disorders

Editor:

Although Drs. Michael Norko and Lawrence Fitch provide an interesting review of the changes in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)¹ for substance use disorders (SUDs),² I disagree with some of their assessments and conclusions about the diagnosis of addiction.