



Therapy...Therapists Help Ensure Reasonable and Proactive Yields



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In an effort to review the past and apply it to the present (and future), please consider the following.

Over the course of at least eight professional visits, a client who was a graduate student confided to a psychologist on multiple occasions his intent to kill his former girlfriend when she returned home from spending the summer outside the country. The client did not reference his former girlfriend by name, but apparently her identity was known. The client and girlfriend had gone on several dates, and eventually the relationship ended on her request. The client fell into an emotional crisis resulting in his consultations with the psychologist, a state employee in a state medical center. The psychologist advised the client that if the threats continued, the psychologist would seek to have him hospitalized. After this warning, the treatments ceased.

The psychologist consulted with a supervisor, a psychiatrist, and they jointly wrote a letter to the college campus police. Three police officers took the client into custody. He denied making any death threats and also said that he would stay away from his former girlfriend. The police, satisfied by his rational behavior, released him.

The psychiatrist asked that the letter to the police be returned and then ordered its destruction along with all therapy notes related to the client.

The client continued to stalk his former girlfriend (victim) and eventually confronted her in her home. He followed through on his threats and killed her. Thereafter, he called the police and was arrested and charged with murder. The client was convicted of second-degree murder and sentenced to prison. He served five years in prison and was released upon a successful appeal of his conviction.

After the client's release from prison, the victim's parents (Plaintiffs) each filed a separate civil lawsuit against the therapists, the university, and the police officers (collectively referred to as Defendants). The Plaintiffs alleged four counts, of which the court dismissed two. The two that were not dismissed are summarized as follows:

- The Defendants failed to “detain a dangerous patient” under California law.
- The Defendants failed to warn the Plaintiffs of impending danger. (The Plaintiffs acknowledged the therapists’

notification to the police but argued that the therapists failed to exercise reasonable care to protect the victim by not notifying them of the threats.)

The Defendants filed procedural motions to dismiss the case, arguing multiple defenses including immunity based on the fact that the Defendants were state employees and that there was no duty to warn obligation on the part of the therapists. The lower court granted the motions of the Defendants and dismissed the case. The Plaintiffs appealed the matter to the California Supreme Court.

The Supreme Court quickly disposed of the police officer defendants, as the Plaintiffs pleaded no special relationship between the victim and the police that would impose a duty. Thus, the police officers were dismissed from the litigation. The court also disposed of the allegations addressing negligence on the part of the therapists in failing to confine the client under state law. California law affords public entities and their employees absolute immunity in determining whether or not to confine a person for mental illness. The court next turned its attention to the duty to warn counts propounded by the Plaintiffs. It noted that under some circumstances, the special relationship between a party and the person whose conduct needs to be controlled or a foreseeable person who could reasonably be a victim of such conduct may establish a duty of care. Thus, the issue was narrowed to the duty of the therapist defendants to warn third parties.

In the current case, the Plaintiffs did not assert a special relationship

between the victim and the therapists. They did assert a special relationship between the client and the therapists, however, akin to a patient and doctor or psychotherapist relationship. The court cited previous case law recognizing a duty to warn that involved a special relationship between the defendant and both the client and the victim. The court, however, determined that the imposition of a duty should not be constricted to such situations. Noting cases from other jurisdictions, the court determined that a single relationship between a doctor and patient is sufficient to support a “duty to exercise reasonable care to protect others against dangers emanating from the patient’s illness.” For example, a doctor may be liable to persons infected by a patient if the doctor negligently fails to diagnose a disease or, having diagnosed the illness, fails to warn the patient’s family members.

Based upon numerous cases cited throughout multiple jurisdictions, the court concluded that “there now seems to be sufficient authority to support the conclusion that by entering into a doctor-patient relationship the therapist becomes sufficiently involved to assume some responsibility for the safety, not only of the patient himself, but also of any third person whom the doctor knows to be threatened by the patient.” Amicus curie filings by the American Psychiatric Association and others argued that the unpredictability of violent acts and the fact that predictions are more often wrong than right dictates a narrow holding that does not encompass such third parties. In rejecting these arguments, the court held that the “risk that

unnecessary warnings may be given is a reasonable price to pay for the lives of possible victims that may be saved.”

Addressing the necessity of candid discussions and the need for confidentiality and privilege, the court weighed the protections of health care professionals against the public interest in safety against violent assaults. It noted that the California legislature has already undertaken the difficult task of balancing the countervailing concerns. Indeed, specific evidentiary codes cite an exception to the psychotherapist-patient privilege when the therapist has “reasonable cause to believe that a patient is in such mental or emotional condition as to be dangerous to himself or to the person or property of another and that disclosure of the communication is necessary to prevent the threatened danger.”

Having now recognized a duty to warn, the court reviewed the application of immunity principles under the circumstances. As public employees, the therapists fall under the statutes that provide that a public employee is not liable for an injury resulting from his act or omission where the act was the result of the exercise of discretion. Noting that virtually every act of a public employee involves some element of discretion, the court cited previous case law that differentiated between discretionary policy decisions, which enjoy immunity, and ministerial administrative acts that do not. Following such previous judicial rulings, the court held that a duty to warn under these circumstances was “at the lowest ministerial rung of an official action” and that the therapists were not entitled to immunity.

As a result, the court concluded that the Plaintiffs could amend their complaint and allege a cause of action against the therapists to assert that the client “presented a serious danger of violence to the [victim], or pursuant to the standards of the profession should have so determined, but nevertheless failed to exercise reasonable care to protect her from that danger.”

Since this 1976 ruling, the California legislature has amended state law to require that all therapists have a duty to protect intended victims through direct warnings, notification to law enforcement, or taking whatever steps might be needed to prevent harm. Many other states have also enacted laws that address the duty to warn (or as noted by California, the duty to protect), leading to an ongoing debate about client confidentiality and relevant duties to others.

Readers are encouraged to understand the implications of these potentially countervailing interests and apply applicable law to such important decisions.

Tarasoff v. Regents of University of California, 17 Cal. 3d 425, 551 P. 2d 334 (CA 1976)