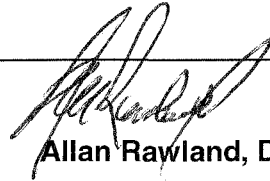


**County of San Bernardino
Department of Behavioral Health**

Duty to Warn and Protect Third Parties in Response to a Client Threat (Tarasoff) Policy

Effective Date 07/01/85
Revision Date 11/17/06



Allan Rawland, Director

Policy The Department of Behavioral Health (DBH) must take actions to warn and protect reasonably identifiable potential victims of DBH clients, consistent with State law. With the exception of specific reporting laws, such as Child Abuse, Dependent Adult Abuse and Elder Abuse, staff is not obligated by this policy or existing law to report crimes already committed which are revealed to the therapist during the course of treatment.

Applicable Law

- Tarasoff v. Regents of the University of California, 17 Cal. 3d 425 (1976)
- Welfare and Institution Code 5328
- Welfare and Institution Code 8105 (c)
- Civil Code 43.92
- Evidence Code Section 1010
- Evidence Code 1024
- HIPAA Privacy Regulations [145 C.F.R. Section 164.512 (j)(l)(I)]
- Ewing v. Goldstein (2004) 120 Cal. App. 4th 807, 815-16

Background Under Section 43.92 of the Civil Code, a psychotherapist has a duty to warn and attempt to protect any reasonably identifiable victim (s) of a serious threat communicated to the psychotherapist by a client. This section further states that if there exists a responsibility to warn and protect, “the duty shall be discharged by the psychotherapist, making reasonable efforts to communicate the threat to the victim(s) and to a law enforcement agency.” Under this statute, psychotherapists are legally liable only if a threat has been communicated (in any form) and if it is against a “reasonably identifiable” victim(s).

In Ewing v. Goldstein court decision, the court expanded the definition of Civil Code § 43.92 to include family members as persons covered within the statute who, upon communication to a therapist of a serious threat of physical violence against a reasonably identifiable victim, would trigger a duty to warn.

Section 5328 of the Welfare and Institutions Code (W&I) states that when, in the opinion of the psychotherapist, a client presents a serious danger of violence to a reasonably foreseeable victim(s), then the records and information obtained during the course of services delivered to clients under

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the W&I Code may be released to the person(s) potentially at risk and to law enforcement agencies for the protection of the person(s) at risk or danger. The type and scope of the information released is left to the discretion of the psychotherapist, but **it should be the minimum needed for the protection of the intended victim(s)**

Important Note Situations in which a County psychotherapist may have a duty to warn a potential victim often involve difficult decisions, and in appropriate cases, the psychotherapist should seek legal advice from County Counsel regarding these matters. This must be initiated through the office of the DBH Director/Deputy Director. Contract Agencies should seek legal advise through their own legal counsel.

- Definitions**
- **Psychotherapist:** A licensed physician, psychologist, social worker, marriage and family therapist or mental health professional engaged in the treatment of DBH clients.
 - **Intended Victim:** The person(s) or third party (includes DBH employees) the client has made the threat toward who can be identified by a first and last name, by relation or relationship to the client (such as wife, roommate, and partner) or title (my lawyer, the judge), or by any other means available.
 - **Threat:** A verbalization or other communication by a client about a serious threat of physical violence toward an intended victim(s).
 - **Warning:** A written and/or verbal communication by a psychotherapist to an intended victim about a client's serious threat of physical violence.
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