



Duty To Protect Policy

Effective Date 07/01/1985
Revised Date 02/24/2026

Signed by:
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Policy It is the Policy of the Department of Behavioral Health (DBH) to ensure action is taken to protect potential victims, whom are reasonably identifiable, when serious intent to harm is communicated by DBH members to a DBH service provider/psychotherapist in accordance with the requirements of *Tarasoff v. Regents of the University of California* decision and subsequent case law, Civil Code §43.92, California Evidence Code §1010, §1014 and §1024.

When a DBH member or their family member communicates a serious threat of physical violence against a reasonably identifiable victim(s) to any service provider defined as a “psychotherapist” under California Evidence Code §1010, appropriate actions must be taken to protect the intended victim(s). This includes making reasonable efforts to notify the intended victim(s), inform the applicable law enforcement agency, and complete all associated documentation. If verbal notification was not completed, written communication must be provided to the intended victim(s) and law enforcement, and all communicated threats must be documented in the member’s medical record by the service provider.

Purpose The purpose of this policy is to outline DBH service provider/psychotherapist responsibilities in protecting reasonably identifiable victim(s) of a serious threat of physical violence communicated to a service provider/psychotherapist by a DBH member or their family and ensures those DBH service providers who meet the definition of "psychotherapist" understand and adhere to reporting requirements.

Purpose **Member:** An individual who may receive, is receiving, or has received benefits or services under a program administered by or under the supervision and direction of the Department, and with respect to whom the Department has received identifying information or individual protected health information.

Family Member: Any individual related by blood or affinity whose close association with the employee is equivalent to a family relationship.

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Duty To Protect Policy, Continued

Intended Victim(s): The person(s) or entity (may include DBH employee or business/organization) the member has made a threat toward who can be identified by a first and last name, by relation or relationship to the member (e.g., partner or spouse, roommate, sibling, etc.) or title (e.g., “my lawyer”, “the judge”, “my landlord”), or by any other means available.

Psychotherapist: In accordance with California Evidence Code §1010, a psychotherapist is "a person who is, or is reasonably believed by the member to be, a psychiatrist, licensed psychologist, licensed clinical social worker, licensed marriage and family therapist, psychiatric nurse, or a person who is registered as a psychological assistant, associate clinical social worker, marriage and family therapist intern, psychological intern, or clinical counselor intern or trainee who is under the supervision of the appropriate licensed psychotherapist as defined above, or a professional clinical counselor who holds a valid California license.

Serious Threat: A verbalization or other communication by a member/member that a service provider assesses to be a threat of violence toward an intended victim(s), and (1) the person means to do it (not a fantasy, or venting, for example); and (2) the threat, if carried out, will likely result in bodily harm to a human being(s).

Tarasoff Rule: In 1985, the California legislature codified the Tarasoff Rule. California law now provides that a psychotherapist has a duty to protect a third party only if the therapist actually believed or predicted that the patient posed a serious risk of inflicting serious bodily injury upon a reasonably identifiable victim.

Warning: A written and/or verbal communication by a psychotherapist to an intended victim about a member/member’s serious threat of physical violence.

Background

Under Section 43.92 of the Civil Code, a psychotherapist has a duty to attempt to protect any reasonably identifiable victim(s) of a serious threat communicated to the psychotherapist by a member. If there exists a responsibility to 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).

Duty To Protect Policy, Continued

Background, continued

In Ewing v. Goldstein court decision, the court expanded the definition of Civil Code § 43.92 to include the following:

- If a member's family communicates a serious threat of physical violence against a reasonably identifiable victim to a psychotherapist, the duty to protect response would be activated.
 - Updated the term of duty *from* a "duty to warn and protect" to a "**duty to protect**".
 - No monetary liability shall be imposed, and no cause of action shall arise, against any psychotherapist for failing to protect a reasonably identifiable victim or victims.
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Related Policy or Procedure

County of San Bernardino Policy Manual:

- Violence and Threats in or Procedure the Workplace - Zero Tolerance Policy (No. 13-07)

DBH Standard Practice Manual and Departmental Forms:

- Legal Opinion from County Counsel (BOP3010)
 - Authorization and Designation Pursuant to the Lanterman-Petris-Short (LPS) Act (CLP0818)
 - Threats Against Federal or State Officials Policy (SFT7014)
 - Threats and Assault on DBH Staff Procedure (SFT7015-1)
 - Unusual Occurrence Incident Report (QM053)
 - Duty to Protect Intended Victim Letter (CLP063)
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Reference(s)

- [Civil Code 43.92, §56.10](#)
 - [Evidence Code §1010, §1014, §1024](#)
 - Ewing v. Goldstein (2004) 120 Cal. App. 4th 807, 815-16
 - Tarasoff v. Regents of the University of California, 17 Cal. 3d 425 (1976)
 - HIPAA Privacy Regulations [[45 C.F.R. § 164.512 \(j\)\(1\)\(I\)](#)]
 - California [Welfare and Institution Code § 5328\(18\), § 8105 \(c\)](#)
 - Confidentiality of Substance Use Disorder Patient Records [[42 CFR pt 2 \(2024\)](#)]
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