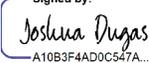




# Duty to Protect Procedure

**Effective Date** 07/01/1985  
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Signed by:  
  
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Joshua Dugas, MBA, REHS, Acting Director

**Purpose** This procedure provides step-by-step instructions for Department of Behavioral Health (DBH) service providers/psychotherapists to complete their mandated duty to protect any reasonably identifiable victim(s) when a member or their family communicates a serious intent to cause physical harm, 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.

**Threat Assessment** The following steps are to be followed by DBH service provider/psychotherapist when warranted as specified herein and in accordance with Duty to Protect Policy (CLP08019):

Step	Action
1	<ul style="list-style-type: none"> <li>If a DBH member communicates an intent to cause physical harm against a reasonably identifiable victim(s) to a DBH service provider/psychotherapist, the service provider must assess the seriousness and intent of the communication to determine if it warrants duty to protect notification to potential victim(s) and local law enforcement.</li> <li>No one other than the service provider can make the determination of appropriateness to conduct reporting, as the service provider is responsible for the necessary action(s), if/as warranted.</li> </ul>
2	<ul style="list-style-type: none"> <li>The service provider will review available history and treatment information of the DBH member to determine the level of risk, and other clinical factors as appropriate.</li> <li>The service provider will consult their direct supervisor, keeping in mind the potential urgency of danger and circumstances relating to each situation.</li> </ul>
3	<p>If/when the communication is received from a member's family:</p> <ul style="list-style-type: none"> <li>The service provider must determine the nature of the relationship between the family member and the DBH member to verify that the individual meets the definition of a family member.</li> <li>Determine whether the family member made the communication in furtherance of the DBH member's treatment, and</li> </ul>

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## Duty to Protect Procedure, Continued

### Threat Assessment, continued

Step	Action
3, continued	<ul style="list-style-type: none"> <li>Determine whether the communication conveys a credible-serious threat of physical violence.</li> </ul>
4	<p>If there are hesitations with regards to the appropriateness of duty to protect reporting, the following shall occur:</p> <ul style="list-style-type: none"> <li>A higher level of leadership, including and up-to Deputy Director (when relevant) or Associate Medical Director and Assistant Medical Director (when relevant), shall be consulted.</li> <li>If there is still inability to determine appropriateness of reporting, staff may request County Counsel advisement by contacting their Deputy Director and/or Associate Medical Director/Assistant Medical Director support staff to arrange consultation.</li> <li>County Counsel consultation may be completed by DBH Director, Assistant Director(s), Chief Psychiatric Medical Director, Assistant Medical Director(s), and Chief Compliance Officer/Privacy Officer.</li> </ul> <p><b>Note:</b> The service provider/psychotherapist who received the threatening communication must ultimately decide if duty to protect communication is warranted (even if consultation with higher leadership and/or Counsel occurs). Contract Agencies should seek legal advice through their own legal counsel.</p>
5	<p>If it is decided the DBH member <b>does not</b> present a serious danger to a reasonably identifiable victim(s), then rationale for this decision shall be documented in the member's medical record.</p> <p><b>Note:</b> Service providers should continue to remain mindful and monitor the level of risk of harm through ongoing assessment, safety planning and interventions that may be appropriate.</p>

### Serious and Credible Threats

If it is determined the DBH member **does** present a serious danger to reasonably identifiable victim(s), the following actions shall be taken as soon as practicably possible:

Step	Action
1	<ul style="list-style-type: none"> <li>Initiate an evaluation of involuntary detention in accordance with the <b>Authorization and Designation Pursuant to the Lanterman-Petris-Short (LPS) Act Policy (CLP0818)</b> if the member is present or can be located (and it is determined to be warranted under "danger to others" criteria).</li> <li>If the DBH member is not present and cannot be located, contact local law enforcement for verbal notification/reporting. Document all efforts in the member/member's medical record.</li> </ul>

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## Duty to Protect Procedure, Continued

**Serious and Credible Threats**  
continued

Step	Action
2	<ul style="list-style-type: none"> <li>• Make reasonable efforts to notify the intended victim(s) whether or not the DBH member is placed on an involuntary hold or cannot be located.</li> <li>• If it is determined the intended victim(s) is/are in immediate or imminent danger, the service provider will immediately notify the reasonably identifiable victim(s) verbally by telephone and send a <b>Duty to Warn Intended Victim Letter</b> (CLP063) by <b>certified mail delivery</b>.</li> <li>• If notifying a group of intended victims or facility/organization (e.g., identified school, facility, or government building), directly contact management personnel for said facility/organization (e.g., school principal, administrator, building manager, etc.).</li> </ul>
3	If the service provider is unable to contact and/or verbally notify the intended victim(s), or if the service provider is not able to speak with the intended victim(s), inform law enforcement that intended victims were not notified.
4	If the threat involves staff, or Federal or State Officials, procedures in accordance with <b>Threats and Assault on DBH Staff</b> (SFT7015), or <b>Threats Against Federal or State Officials Policy</b> (SFT7014) shall also be followed.
5	The service provider will report the threat by telephone to the local law enforcement agency with jurisdiction in the area of intended victim(s) (if known) <i>and</i> the area in which the member resides <b>within 24 hours</b> of discovery.
6	<p>The service provider will complete an <b>Unusual Occurrence Incident Report</b> (QM053) within <b>24 hours of receipt</b> of the threat of violence and notify the following individuals:</p> <ul style="list-style-type: none"> <li>• Designated Supervisor;</li> <li>• Program Manager I/II/III;</li> <li>• Disaster &amp; Safety;</li> <li>• Deputy Director;</li> <li>• Assistant Directors;</li> <li>• Director;</li> <li>• Chief Psychiatric Medical Director;</li> <li>• Assistant Medical Directors;</li> <li>• Chief Compliance Officer/Privacy Officer.</li> </ul>

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## Duty to Protect Procedure, Continued

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### Serious and Credible Threats, continued

Send a ***Duty to Protect Intended Victim Letter*** (CLP063) by certified mail to the intended victim(s) and local law enforcement, in English and/or their preferred language (if known), no later than **36 hours after the threat** disclosure, unless otherwise directed. Copies of the *signed and issued* Notification Letter(s), as well as receipt of certified mail delivery, must be provided to the following individuals:

- Director;
- Chief Psychiatric Medical Director;
- Deputy Director;
- Chief Compliance Officer/Privacy Officer.

**Note:** Compliance will ensure County Counsel's receives a copy of issued letters.

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### Exceptions to Confidentiality

Protected Health Information (PHI) disclosure is allowed under HIPAA exception 45 CFR § 164.512(j) permitting uses and disclosures to avert a serious threat to health or safety, California Civil Code 56.10(c)(19) permitting appropriate disclosures to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat and Welfare and Institution Code § 5328(18) which allows for the release of information when a member poses a serious danger of violence to a reasonably identifiable victim.

Only the minimum necessary information to protect the intended victim(s) shall be released. This exception to a member's confidentiality should be carried out with care and consideration of Tarasoff reporting obligations (utilizing the "*minimum necessary*" rule in all circumstances).

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### Victim Responses

If an intended victim(s) contacts the psychotherapist/service provider following the issuance of the *Duty to Protect Intended Victim Letter*, the service provider/psychotherapist may respond/communicate to accomplish reasonable effort(s) to protect the intended victim(s), keeping in mind *minimum necessary* standard in which minimal information is to be provided in order to accomplish successful reporting of intended harm. Confidential information regarding the member's diagnosis, treatment history, or other PHI shall not be disclosed.

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## Duty to Protect Procedure, Continued

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### Related Policy or Procedure

#### 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. 4<sup>th</sup> 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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Date

Intended Victim's Name

Address

City, State Zip

**RE:** Communicated Intent to Harm (Client's Name)

Dear (Victim's Name),

The purpose of this letter is to inform you that on (Date) (Client's Name) communicated a serious threat/intent to harm you or cause physical violence. This is being communicated to you in accordance with Tarasoff reporting requirements, Civil Code §43.92 and Evidence Code §1024.

I am informing you that (Client's Name) indicated (Enter in plain language the communicated intended harm/threat of physical violence). At the present time, (Client's Name) could be dangerous and we are hereby informing you of this circumstance.

If I may be of any assistance in this matter, please feel free to contact me at (909) (writer's direct clinic phone number).

Sincerely,

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(Professional Care Provider's Signature)

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(Professional Care Provider's Printed Name)

cc: DBH Director

Medical Director/Chief Psychiatric Officer

DBH Deputy Director

Chief Compliance Officer;

County Counsel;

Chief of Police, County Sheriff, and/or Law Enforcement; in the jurisdiction where the intended victim(s) resides