

Dangerous Patients and the “Tarasoff Duty”

written by Richard Leslie | May 24, 2016

Avoiding Liability Bulletin - April 2005

... Wow - what a problem exists in California! Therapists are in somewhat of a precarious situation for a number of reasons related to a) the famed “Tarasoff” decision and subsequent court decisions interpreting the duty, and b) the statute that sought to give immunity to therapists under specified circumstances related to threatened harm by the patient against reasonably identifiable victims.

It seems as though some are now questioning whether or not a therapist may safely comply with his or her duty when the patient threatens imminent harm against another by taking reasonable steps to protect the intended victim, such as hospitalizing the patient. There are some who maintain that under specified circumstances, the therapist, in essence, does not have the option to hospitalize but must make a reasonable attempt to warn the intended victim and to notify a law enforcement agency. Failure to do both, they maintain, makes the therapist liable, regardless of how reasonable the hospitalization may have been. This, in my view, is quite troublesome.

Such a rigid approach is not in the best interests of the patient (continued treatment, privacy), nor is it consistent with the principles enunciated in the Tarasoff decision, which called for action that preserved confidentiality to the extent consistent with protection of the victim from the threatened harm. Involuntary hospitalization, for example, is usually such an action.

As this confusing situation now gets debated in the California Legislature, it’s anyone’s guess as to how the confusion will be resolved. Opinions will likely differ on how it should be resolved. The Tarasoff decision, and the duty created thereby, is well known and well respected nationwide, even though each state may treat the subject matter a little bit differently. If there is a duty (as opposed to a right), what is the duty in your state and when, precisely, is it triggered? If you cannot readily answer that question, you should be concerned. This can be a tricky area of the law. Best to get the answer now, when things are calm!