

Law and Ethics: Questions to Ponder

written by Richard Leslie | May 24, 2016

Avoiding Liability Bulletin - April 2016

Suppose that a therapist or counselor is treating a patient who is a staunch Second Amendment advocate, who during the course of treatment tells the clinician about his lawful possession of, and interest in, firearms. Suppose further that the practitioner is a strong gun control advocate. At some point in the treatment, matters get real serious. The patient is both depressed and angry about what is happening on his job and has on two occasions hinted at possible violence. There comes a time when the practitioner believes that the patient presents a serious and imminent danger of violence against the patient's supervisor at work and other employees. No specific threat has been articulated by the patient.

Suppose further that the practitioner is a "covered entity" (under HIPAA) and is aware of the recent change to HIPAA regulations allowing, for example, the reporting (by a court or public institution) to the FBI's National Instant Criminal Background Check System (NICS) of those who have been involuntarily committed and thereafter adjudicated an imminent and serious danger of violence to others. The practitioner is thinking about informing the patient that if he voluntarily commits himself for evaluation and treatment, no report to NICS would likely be made, thus preserving the patient's right to own, possess, or purchase guns. Because of his own beliefs regarding gun control, the practitioner decides not to inform the patient of this distinction (nuance) in the federal regulations regarding voluntary vs. involuntary commitments. An involuntary commitment is initiated, and when there is an adjudication that results in a period of treatment, the patient's name is sent to NICS and his right to own or possess guns is thereby compromised. This suits the practitioner's belief system quite well.

Are the practitioner's actions supportable? Are they lawful? Are they ethical?