Mental Illness and Treating Dangerous Patients

written by Richard Leslie | July 5, 2022

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NOTE: The following article was first published on the CPH Insurance's website in April 2018. It is republished here, a mere four years later, because the recent mass shootings in Buffalo NY and Uvalde TX have brought some of the very same issues and discussions forward. The article appears below with additions and amendments. The importance of this subject matter to mental health practitioners, patients, and the public cannot be overstated – thus the republication at this time.

MENTAL ILLNESS AND TREATING DANGEROUS PATIENTS

It seems that each time there is a mass shooting, followed by an outcry for gun control legislation (and improvements to school safety), there is also a discussion about the "mentally ill" and whether limitations should be placed upon their ability to legally own or possess guns (for example, state "red flag laws"). Media coverage is filled with references to the "mentally ill" without clearly defining what specifically is meant by the term "mentally ill." Persons who have been adjudicated a danger to self or others in an involuntary commitment proceeding must be reported by certain entities/persons to NICS (the FBI's National Instant Criminal Background Check System).Those "mentally ill" persons are therefore not entitled to buy or possess guns. But, after all of the media discussion following the 2018 Parkland, Florida school shooting (and now the Buffalo and Uvalde shootings), what would be the result of a poll question that asked the public "should a mentally disordered or mentally ill patient be allowed to buy or possess a gun?"

Mental health practitioners understand that people who are being treated for mental and emotional problems span a wide spectrum – the overwhelming majority posing no threat or likelihood of committing acts of violence toward self or others. For the many practitioners who deal with patients who seek reimbursement from insurance companies and managed care plans of various types, the diagnosis and treatment of a mental disorder is generally required in order to be entitled to reimbursement by the insurer or other payer – whether private or governmental. Practitioners of various licensures believe that the pressure to specify diagnoses for patients early in the therapeutic process has transformed their practices (and professions) unnecessarily toward the sickness, illness, or medical model. Prior to the reality of widespread reimbursement for mental health treatment, there was no need to quickly identify and specify a DSM diagnosis, if at all – depending upon the treatment philosophy

(e.g., family systems therapy, narrative therapy, etc.) of the particular practitioner.

This reality sometimes raises the question of whether practitioners in private practice should explore with patients the pros and cons of the patient paying “out of pocket” rather than relying on the health insurance company’s reimbursement. Such a discussion would necessarily include the topics of privacy, confidentiality, the amount of coverage, and the nuanced explanation that in order for reimbursement to occur, it will be necessary to designate a particular mental disorder that is being treated. Such a discussion must be done with care, since a careless job might lead a patient to later allege, among other things, that the practitioner talked the patient out of utilizing coverage for the practitioner’s convenience – to the economic detriment of the patient. Some practitioners have shaped their practices to avoid patients who depend upon insurance reimbursement, thus eliminating oversight and review and the need to quickly specify a mental disorder. Such selectivity of clientele is not always possible or desired, and is dependent upon many factors, including the patient’s financial condition.

A thorny issue for psychotherapists of all licensures is how to deal with dangerous patient situations once the practitioner has determined that a patient poses a serious and imminent danger of physical violence against a readily identifiable other (or a determination of dangerousness based upon a similar standard). Once that determination is made, the practitioner must act in a manner that is consistent with state law (statutory and case law). I have previously written about the dangerous patient issue and the so-called “duty to warn” in California, first established in the famed Tarasoff decision by the California Supreme Court. The actual duty enunciated in the landmark 1976 decision was that the therapist must use reasonable care to protect the intended victim against the danger of violence – it did not create an actual “duty to warn.” The Court stated that the discharge of this duty may call for the therapist to warn the intended victim or others likely to apprise the victim of the danger, to notify the police, or to take whatever other steps are reasonably necessary under the circumstances. It is critical to know whether your state of practice has enacted a law that provides for immunity from liability for practitioners under circumstances regarding the nature and degree of the patient’s dangerousness and under the conditions enumerated in the statute (e.g., what actions must be taken by the practitioner in order to gain immunity from liability).

The content of a warning made by a mental health practitioner to an intended victim can become an issue. Generally, I have advised that the warning be clear and concise – and that the practitioner reveal only that amount of information necessary to accomplish the purpose. My concern was to protect confidentiality in accordance with the sentiments expressed by the Court in the Tarasoff decision. In a 1991 California Appellate Court decision involving the Menendez brothers, accused of killing their parents, the Court ruled that the content of a “Tarasoff warning” may include any of the patient’s statements to the therapist that the therapist reasonably believes are necessary to disclose to the victim in order to convince the victim of the extent and seriousness of the danger. In that case, one of the brothers admitted to the murder during a therapy session, and that information was later disclosed by the therapist when making the warning.

In some cases, a patient may inform the mental health practitioner that a particular person is

threatening violence against the patient or a third party. Psychotherapists sometimes think that the usual duty or right to take certain actions applies to such situations. Since the patient is not threatening harm to others, it is the patient who must decide on the appropriate course of action for the patient to take. The practitioner may discuss various options that the patient could pursue, but the dangerous patient exception to confidentiality relates to situations where the patient is the one who presents the danger of violence to others (or to self).