



DEPARTMENT OF MENTAL HEALTH POLICY/PROCEDURE

SUBJECT DUTY TO WARN AND PROTECT THIRD PARTIES IN RESPONSE TO A CLIENT THREAT (Formerly referenced as "Tarasoff")	POLICY NO. 202.2	EFFECTIVE DATE 06/01/05	PAGE 1 of 4
APPROVED BY:  <div style="text-align: right;">Director</div>	SUPERSEDES 202.2	ORIGINAL ISSUE DATE 10/01/89	DISTRIBUTION LEVEL(S) 2

PURPOSE

- 1.1 To provide direction to Department of Mental Health (DMH) staff regarding the psychotherapist's mandated duty to warn.

BACKGROUND

- 2.1 Under Section 43.92 of the Civic Code, a psychotherapist has a duty to warn and attempt to protect any reasonably identifiable victim or victims of a serious threat communicated to the psychotherapist by a client. This section further states that if there exists a responsibility to warn and protect, "the duty shall be discharged by the psychotherapist, making reasonable efforts to communicate the threat to the victim or victims 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 or victims.
- 2.2 Additionally, Section 5328 of the Welfare and Institutions Code (W&I) states that when, in the opinion of the psychotherapist, a client presents a serious danger of violence to a reasonably foreseeable victim or victims, then the records and information obtained during the course of services delivered to clients under the W&I Code may be released to the person or persons potentially at risk and to law enforcement agencies for the protection of the person or persons at risk of danger. The type and scope of the information so released is left to the discretion of the psychotherapist, but it should be the minimum needed for the protection of the intended victim(s).
- 2.3 The "Tarasoff" decision requires a therapist to take precautions to protect third parties who may be the objects of serious threats made by clients during the course of therapy. In the decision, the California State Supreme Court stated, in part, the following:

"When the therapist determines, or pursuant to the standards of his profession should determine, that his client presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger. The discharge of this duty may require the therapist to take one or more of various steps, depending on the nature of the case. Thus, it may call for him to warn the



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intended victim or others likely to apprise the victim of the danger, to notify police, or to take whatever steps are reasonable necessary under the circumstances."

- 2.4 With respect to the psychotherapist-patient privilege, Section 1024 of the Evidence Code states that there is no evidentiary privilege if the psychotherapist has reasonable cause to believe that the patient is in such mental or emotional condition as to be dangerous to another and disclosure of the communication is necessary to prevent the threatened harm.
- 2.5 In 2004, the Court of Appeals expanded the therapist's duty to warn to include instances when a member of the client's immediate family advises the therapist, for purposes of advancing the client's treatment, that the client has communicated a serious threat of physical violence against a reasonable identifiable victim or victims.

POLICY

- 3.1 DMH must take actions to warn and protect reasonably identifiable potential victims of DMH clients consistent with applicable law, including provisions of the Civil Code, the Welfare and Institutions Code, and the requirements of the *Tarasoff* decision and recent 2004 Court of Appeals decisions. This policy applies to DMH providers.
- 3.2 Each Short-Doyle contractor must develop a policy relevant to the protection of third parties which is consistent with State law. The policy must include recourse to legal counsel should questions arise as to whether State law creates a duty to warn and protect in a particular case.
- 3.3 With the exception of specific reporting laws, such as Child Abuse, Dependent Adult Abuse and Elder Abuse, staff are not obligated by this policy or existing law to report crimes already committed which are revealed to the therapist during the course of treatment.

PROCEDURE

- 4.1 When a client, a member of the client's immediate family member, or other credible informant, whether during some initial contact or during the course of service, communicates to any staff of a DMH program that the client has made a serious threat of physical violence against a reasonably identifiable victim or victims, then actions pursuant to the Civic Code and *Tarasoff* decision must be implemented in order to protect the third party. Only the minimum amount of information necessary to protect the intended victim or victims shall be released.
 - 4.1.1 This exception to client confidentiality must be carried out with care and consideration, with the maintenance of the public safety and therapeutic relationship as objectives.



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- 4.2 The following steps are applicable to Los Angeles County Department of Mental Health employees when a client, a member of the client’s immediate family or other credible informant communicates to any staff a serious threat of physical violence against a reasonably identifiable victim or victims.
- 4.2.1 Non-Clinical Staff must immediately report any such communication to a clinical supervisor (or designee) for action as stated in 4.2.2 below.
- 4.2.2 Clinical Staff, bearing in mind the urgency of the danger, must do the following:
- 4.2.2.1 Review available past and present history and treatment of the client, and
 - 4.2.2.2 Discuss the information in 4.2.2.1 with the clinical supervisor (who shall notify the Program Head or designee of the facility) whether or not the client presents a serious danger to a reasonable identifiable foreseeable victim or victims.
 - 4.2.2.3 Should a question remain as to whether the communication made triggers a duty to warn and protect a third party, then the following must occur:
 - 4.2.2.3.1 A higher level of clinical supervision must be consulted.
 - 4.2.2.3.2 Should a question still remain, County Counsel must be consulted through the Clinical Risk Manager or by an Executive Staff member.
 - 4.2.2.4 If it is decided that the client does not present a serious danger to an identifiable/foreseeable victim or victims, then this fact must be documented, including the rationale.
 - 4.2.2.5 If it is decided that the client presents a serious danger to a reasonably identifiable/foreseeable victim or victims, the following three actions must be taken:
 1. **Institute involuntary hospitalization if the client has a mental disorder and can be located.** The receiving hospital must be



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- notified by the staff initiating the involuntary detention of the efforts to warn a potential victim. If unable to locate the client, notify local law enforcement of the need to locate the client.
2. **Make reasonable efforts to notify the intended victim or victims**, whether or not the client is hospitalized. Involuntary hospitalization of the client does not discharge the duty to warn and protect the victim or victims. Contact may be made through telephone, telegram, or visitation. Documentation in the client's chart is required. It must include specific efforts to contact the potential victim, times and dates of these attempts written in the progress notes, retaining a copies of written correspondence, and contact with family or friends with specific times and names noted in the progress notes.
 3. **Contact the local law enforcement agency having jurisdiction where the possible victim resides.** Record in the clinical record the name of the person to whom the report was made with the date, time, and content released. Involuntary hospitalization of the client does not discharge the duty to warn and protect which includes notifying law enforcement.

AUTHORITY

Ewing v. Goldstein (2004) 120 Cal. App. 4th 807
Ewing v. Northridge Hospital (2004) 120 Cal.App.4th 1289
 Civil Code, Section 43.92
 Welfare and Institutions Code, Section 5328
Tarasoff v. Regents of the University of California (1976) 17 Cal. 3rd 1425

REVIEW DATE

This policy shall be reviewed on or before June 2007.