



MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES BULLETIN

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF PUBLIC WELFARE

DATE OF ISSUE

10/1/99

EFFECTIVE DATE

9/15/99

NUMBER

OMHSAS-99-09

SUBJECT

Emerich V. Philadelphia Center for Human
Development, 720 A.2d 1032 (Pa. 1998) (Duty
To Warn Third Parties – Tarasoff in Pennsylvania

BY


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SCOPE: State Mental Hospitals
County MH/MR Administrators
Community-Based Mental Health Providers

PURPOSE:

To convey to providers the circumstances under which they have a duty to warn third parties of threats by clients that are directed against third parties.

BACKGROUND:

On November 25, 1998, the Pennsylvania Supreme Court issued a decision in the Emerich case, which concerns whether mental health professionals in Pennsylvania have a (Tarasoff-like) duty to warn third parties of threats by patients that are directed against third parties. The decision indicates that under limited circumstances there is such a duty.

STATEMENT:

Since the California Supreme Court's 1976 decision in Tarasoff v. Regents of University of California, 551 P.2d 334 (Cal. 1976) – that in some circumstances psychotherapists have a duty to warn or otherwise protect third parties from patients who have threatened them – there has been uncertainty whether a similar duty existed in Pennsylvania, none definitively addressed the issue until the Pennsylvania Supreme Court's decision on November 25, 1998, in Emerich v. Philadelphia Center for Human Development, 720 A.2d 1032 (Pa. 1998), which adopted the rule of Tarasoff. More specifically, the Court found that in Pennsylvania,

when a patient has communicated to the [mental health] professional a specific and immediate threat of serious bodily injury against a specifically identified or readily identifiable third party and when the professional determines, or should determine under the standards of the mental health profession that his patient presents a serious danger of violence to the third party, then the professional bears a duty to exercise reasonable care to protect by warning the third party against such danger.

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

Bureau of Policy and Program Development (717) 772-7900

Id. at 1043. In the absence of a "specific and immediate threat", there is no duty to warn:

[I]n light of the relationship between a mental health professional and patient, a relationship in which often vague and imprecise threats are made by an agitated patient as a routine part of the relationship, . . . only in those situations in which a specific and immediate threat is communicated can a duty to warn be recognized.

Moreover, the duty to warn will only arise where the threat is made against a specifically identified or readily identifiable victim.

Id. at 1040.

The Court also determined that

the law regarding privileged communications between patient and mental health care professional is not violated by, and does not prohibit, a finding of a duty on the part of a mental health professional to warn an intended victim of a patient's threats of serious bodily harm.

Id. at 1043

The Court also noted the possibility that, but did not decide whether, the duty to protect the third party might sometimes be discharged by means other than warning the target of the threat. 720 A.2d at 1040 n.8. "Other means" might include involuntary commitment. In Emerich, as in Tarasoff, the patient was not in custody when the threat was made. If the patient is already in custody, the fact of custody itself may attenuate the severity or immediacy of the threat to such a degree that a warning may not be necessary. The Emerich court did not address that issue, however.

Mental health professionals and mental health facilities should discuss the implications of the Emerich decision with their lawyers, so that they can develop procedures that are consistent with it. A copy of the Emerich opinion is attached.

Attachment