

Mandated for:

- County-Operated Programs
- Short-Doyle Contractors
- Institutes for Mental Disease
- Hospital Contractors
- Skilled Nursing Facilities
- Residential Care Facilities
- Fee-For-Service Contractors
- Other: _____

**SANTA CLARA COUNTY
BEHAVIORAL HEALTH SERVICES
DEPARTMENT
POLICIES & PROCEDURES MANUAL**

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Developed: _____ 05/22/93

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Behavioral Health Services Director

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SUBJECT: DUTY TO WARN AND PROTECT IDENTIFIABLE VICTIM(S) OF POTENTIAL THREAT OF SERIOUS PHYSICAL VIOLENCE COMMUNICATED BY A CLIENT OR A CLIENT'S FAMILY MEMBER TO A THERAPIST (TARASOFF)

REFERENCE: California Civil Code Section 43.92
Tarasoff v Regents of the University of California, 17 Cal.3d 425 (1976),
Cal Ewing vs. David Goldstein (2004), 120 Cal. App. 4th 807

POLICY:

The purpose of this policy is to provide guidelines to psychotherapists regarding their duty to warn of and to protect a reasonably identifiable victim(s) from a mental health client's serious threat of physical violence. This policy is also intended to advise non-licensed mental health staff about their responsibilities to report to management, information that they may receive regarding serious physical threats communicated by clients or family members.

A **psychotherapist** may disclose their client's protected health information to the victim and law enforcement if, in the opinion of the psychotherapist, the client or the client's family member has communicated to the psychotherapist that the client has made a serious threat of physical violence against a reasonably identifiable victim(s).

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POLICY (cont.)

The psychotherapist must use reasonable efforts to inform the victim and law enforcement and should disclose only that protected health information which is necessary to enable the potential victim to recognize the seriousness of the threat and to take proper precautions to protect him or herself.

“Psychotherapist” is defined in California Evidence Code Section 1010 as:

- (a) A person authorized to practice medicine in any state or nation who devotes a substantial portion of his or her time in the practice of psychiatry (or so an individual reasonably believes).
- (b) A California licensed psychologist.
- (c) A California licensed clinical social worker when he or she is engaged in applied psychotherapy of a nonmedical nature.
- (d) A person serving as a school psychologist who is credentialed by the state authorizing that service.
- (e) A California licensed marriage and family therapist.
- (f) A person registered as a psychological assistant who is under the supervision of a licensed psychiatrist, or a person registered as a marriage and family therapist intern who is under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry.

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POLICY (cont.)

- (g) A person registered as an associate clinical social worker who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist.
- (h) A person exempt from the psychology licensing law who is under the supervision of a licensed psychologist or board certified psychiatrist.
- (i) A psychological intern who is under the supervision of a licensed psychologist or board certified psychiatrist
- (j) A trainee fulfilling his or her supervised practicum that is supervised by a licensed psychologist, a board certified psychiatrist, a licensed clinical social worker, or a licensed marriage and family therapist.
- (k) A person licensed as a registered nurse, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing.
- (l) An advanced practice registered nurse who is certified as a clinical nurse specialist and who participates in expert clinical practice in the specialty of psychiatric-mental health nursing.

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POLICY (cont.)

- (m) A person rendering outpatient mental health treatment or counseling services to minors pursuant to Family Code section 6924. This includes psychiatrists, social workers, psychologists, and marriage and family therapists, as well as services rendered by a governmental agency, an entity having a contract with a governmental agency to provide the services, a runaway house, or a crisis resolution center
- (n) A person licensed as a professional clinical counselor.
- (o) A person registered as a clinical counselor intern under the supervision of a licensed professional clinical counselor, psychiatrist, psychologist, physician, clinical social worker or marriage and family therapist.
- (p) A clinical counselor trainee who is fulfilling his or her supervised practicum and is supervised by a licensed psychiatrist, psychologist, physician, clinical social worker or marriage and family therapist.

When in doubt as to who is considered a "family member", always consult with County Counsel.

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POLICY (cont.)

Mental Health staff members who are not psychotherapists, i.e., all other mental health staff members, have a responsibility to report to their supervisor or manager any information pertaining to serious threats of physical violence that may come to their attention from a client or family member. For example, clerical staff may receive such information in the course of interacting with a client/family member on the telephone in setting up an appointment or a non-licensed paraprofessional staff member may become aware of threats while providing case management services to a client/family member.

In every instance where a serious threat of physical violence comes to the attention of a non-psychotherapist mental health staff member, he/she must immediately inform his/her supervisor or manager. The manager or supervisor must act on this information by bringing it to the immediate attention of the Division Director who will consult with senior management and County Counsel regarding appropriate action.

PROCEDURE:

<u>Responsible Party</u>	<u>Action</u>
Therapist	<ol style="list-style-type: none">1. If you receive a communication from the client, determine whether the communication conveys a credible serious threat of physical violence. If so, go to step 3.2. If you receive the communication from a family member, do the following:<ol style="list-style-type: none">(i) Determine the nature of the relationship between the family member and the client for purposes of verifying they fall within the definition of family members (consult County Counsel if you have a question);

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PROCEDURE (cont.)

Responsible Party

Action

Therapist

- (ii) Determine whether the family member made the communication in furtherance of the client's treatment;
- (iii) Determine whether the communication conveys a credible serious threat of physical violence.

If you conclude they are a family member and if you are assured that both (ii) and (iii) are met, go to step 3.

3. Evaluate whether this threat is directed against a reasonably identifiable victim(s). If so, then go to step 4. If not, then document your file accordingly.
4. As soon as is practically possible, take all reasonable steps to warn the potential victim(s) and law enforcement of the threat. *Please note that what constitutes a reasonable effort depends on the facts of a particular case. For example, if an irate client threatens on the phone to go home and kill his wife, you may not just write a letter and put it in the mail. Call the police immediately and request urgent assistance. You may consult with County Counsel for advice regarding the most appropriate response in a given case*
5. Reasonable steps include the following: Attempting to reach the victim and law enforcement by telephone; if no telephone number is available, then notifying law enforcement and providing as much information as known about the victim; driving to the victim's residence if known in certain situations where time is critical to notify the victim and it is recommended that you notify law enforcement and request their assistance if notifying a victim in person. Follow up all communications with a written letter as described below.

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PROCEDURE (cont.)

Responsible Party

Action

Therapist

6. **WARNING:** Any verbal warning must be followed up with a written warning. A warning should include the following information:
 - You have a therapeutic relationship with Mr./Ms. X;
 - This person has communicated a serious threat of physical violence to the intended victim(s);
 - Describe the threat;
 - You are required by law to warn potential victim(s); and the victim(s) should take steps for his/her/their protection.
 - Do not make any promises or indicate that you can take steps to protect the victim. The message should be that you cannot protect them and that the onus is on them to protect themselves.
 - Disclose only that information necessary for the potential victim to recognize the seriousness of the threat and take proper actions to protect him or herself.

7. **Notifying Client:** Use your clinical judgment in deciding when you are going to inform the client of the issuance of a Tarasoff warning. For instance, you may consider it prudent to inform the client after you have informed the potential victim(s). In a rare case you may decide that a victim(s) safety would be jeopardized by the client's knowledge of the issuance of the warning.

8. If the client poses a serious threat of harm, a 72-hour hold may be appropriate. However, the imposition of a hold is not a substitute for a Tarasoff warning.

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PROCEDURE (Cont.)

<u>Responsible Party</u>	<u>Action</u>
Therapist	<p>9. Document each and every step taken in the clinical record in dated, signed progress notes. Document the reason for the therapist's decision that it is likely that the patient will carry out his or her threats, along with the information that led to that decision. Bring the incident to the attention of your supervisor and/or manager at the earliest appropriate time.</p> <p>10. Finally, you are encouraged to consult with a supervisor/manager and the County Counsel in the process of handling the Tarasoff warning. However, contacting a number of persons, such as the Division Director, or the Medical Director, may take up valuable time, which could be better utilized in warning the potential victim(s). The procedures are not intended to be so cumbersome that they stand in the way of a quick and efficient response.</p>
Staff Member (Non-Psychotherapist)	<p>If you receive a communication from a client or family member regarding a possible threat of serious physical violence, you must report this information in detail to your supervisor and/or manager.</p>
Supervisor/Manager	<p>Interviews staff member to get as much detail regarding possible threat of serious physical violence and immediately reports information to Division Director.</p>
Division Director	<p>Consults with senior management and County Counsel to determine what appropriate action is necessary. If threat is imminent, should take immediate action. Informs Deputy Behavioral Health Services Director and/or Behavioral Health Service Director as soon as possible</p>