

Immunity From Liability

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In the [April 2005](#) (Volume 2) issue of the Avoiding Liability Bulletin I wrote about a huge problem in the state of California with respect to the issue of the dangerous patient and the duty of a therapist. In large measure, the problem has likely been solved because of the passage of legislation that I worked on in conjunction with the sponsor of the bill, the [California Association of Marriage and Family Therapists](#). The legislation affects California psychotherapists only, and its effect is to establish a “safe harbor” for psychotherapists who take certain actions when their patients communicate threats of imminent and serious physical violence against readily identifiable others.

Prior to passage of this bill, some within the California judiciary (and others) interpreted the existing section of law as the creation of a new (post-Tarasoff decision) duty, which if not followed in every case where a patient communicates to his or therapist a serious threat of physical violence against a reasonably identifiable victim, will result in automatic liability for the therapist. More specifically, if the therapist did not make reasonable efforts to communicate the threat to the intended victim and to a law enforcement agency, liability would automatically attach. Thus, therapists who hospitalized a patient – no matter how reasonable the action and no matter what transpires at the hospital and upon discharge – would incur automatic liability if the patient later carried out the threat. This situation has hopefully been rectified (effective January 1, 2007) by the newly passed legislation, which makes clear that the two requirements specified above are for the purpose of gaining immunity from liability.

If a therapist takes other action, like hospitalizing a patient, he or she should not be automatically liable, but rather, should be liable only if it is determined that such action was negligent. Although there would not be immunity, a judge or jury would have to determine if the therapist’s actions were reasonable under the circumstances.

Does your state provide immunity from liability if specific actions are taken? And, if those specific actions are not taken, what is the possible consequence? Check now, before being faced with a dangerous patient situation requiring quick action. Before any action is taken, however, one must know when the duty or the right to warn or break confidentiality is “triggered.” As with other areas of law covered in this Bulletin, state laws vary – so be careful!

