

# SERIOUS THREAT OF VIOLENCE AND THE TARASOFF DUTY TO PROTECT

Mark Marvin, PhD  
and  
Patricia Riley, Esq.

December 20016

# Learning Outcomes

- Discuss the rationale for revising CRF's current policy on Tarasoff Reporting
- Recite the differences between the Tarasoff Case Law versus the Tarasoff Statute
- Explain the three principles of responding to Tarasoff Case Law and the Tarasoff Statute
- Describe the CRF procedure involving six-steps to follow whenever a situation arises that may involve the Tarasoff duty to protect
- Explain the legal and ethical implications of SB 127, which requires that the police be notified within 24 hours of the time the clinician learns of the threat

# The importance of learning from history...

- ❑ Obsessive rumination about killing Tatiana & statements, *“If I can’t have her, no one will...She has wronged me, she has to be punished.”*
- ❑ Diagnosis
- ❑ Although Dr. Moore warned UCB police that his client could appear quite rational, police said they told the client to stay away from Tatiana because he “changed his attitude.”
- ❑ Dr. Moore continued to attempt to persuade his client to be hospitalized.
- ❑ The client then dropped Dr. Moore, and killed Tatiana two-months later.

# Duty Described in Tarasoff Case Law

- “[w]hen a clinician determines, or pursuant to the standards of his profession should determine, that his patient 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 clinician to take one or more of various steps, depending upon the nature of the case. Thus it may call for him 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.”

# Duty Described in Civil Code Section 43.92-

- “a) There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is a psychotherapist as defined in section 1010 of the Evidence Code in failing to protect from a patient’s threatened violent behavior or failing to predict and protect from a patient’s violent behavior except where the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims.
- b) There shall be no monetary liability on the part of, and no cause of action shall arise against, a psychotherapist, who, under the limited circumstances specified subdivision (a), discharges his or her duty to protect by making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.”

# Differences Between Case Law and Statute

## □ CASE LAW

The duty to protect is triggered when the clinician “*determines* that a patient presents a serious danger of violence to another.” An actual threat of violence is unnecessary

## □ STATUTE

The duty to protect is triggered when the client (or family member) *communicates* to the clinician a “serious threat of physical violence.”

# Differences Between Case Law and Statute

## □ CASE LAW

**Potential victims** = “*intended victims*”

## □ STATUTE

**Potential victims** = “*reasonably identifiable victims*”

# Differences Between Case law and Statute

## □ CASE LAW

**Discharging the duty to protect:** It may require the counselor to *take one or more various steps, depending upon factors of the case.*

## □ STATUTE

**Discharging the duty to protect:** making reasonable efforts to communicate such threats to the *identifiable victim(s) and to a law enforcement agency.*



# Compliance With Both Case Law and Statute

- In order to be fully compliant with both the Tarasoff case law and the Tarasoff statute, CRF clinicians will follow these three principles:

# Principle 1

- 1. If a client communicates to a clinician, or a family member of the client tells the clinician that the client told the family member that the client intends to engage in a serious threat of physical violence against a reasonably identifiable victim or victims, and the clinician reasonably believes the client is likely to commit such violence after assessing for it, the clinician can discharge the duty to protect by immediately making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency, which will establish immunity from liability under the *Tarasoff* statute, if the client actually harms such victims.

# Principle 2

- 2. If a client communicates to a clinician, or a family member of the client tells a clinician that the client told the family member that the client intends to engage in a serious threat of physical violence against a reasonably identifiable victim or victims, and the clinician, after assessing for it, reasonably believes the client is likely to commit such violence, the clinician can also discharge the duty to protect by hospitalizing the client. This action, however, does not establish immunity from liability under the *Tarasoff* statute, but would be a reasonable measure to discharge the duty to protect under *Tarasoff* case law. Instead of having immunity from liability, the clinician's defense would be that they met the standard of care by doing something reasonable under the circumstances to protect the intended victim.

# Principle 3

- 3. If a client does not communicate a serious threat of violence, but after assessment the clinician determines that the client presents a serious danger of violence to another person, the clinician can discharge the duty to protect by warning the reasonably identifiable victim or others likely to apprise the victim of the danger, by immediately notifying the police, or by taking whatever other steps are reasonably necessary under the circumstances, including hospitalization of the client, to discharge the duty to protect under *Tarasoff* case law.

# 3 Critical Points to Remember:

- 1. Not every threat (e.g., tough talk; jesting) has to result in Tarasoff response, but every threat has to be assessed.
- 2. We are not expected to be perfect in predicting; rather, we are expected to be reasonably competent in assessing for what could happen. Competence comes from our education, training, and experience.
- 3. It is essential to immediately document the assessment and response process, as well as rationale.

# Six Step Procedure to Determine if Duty to Protect has been Triggered, and, if so, How to Fulfill that Duty

(Go to page 3, Step 1 of Policy 825)

- Step 1 Is there a clear threat of harm?
- Step 2 Is the threat serious and actual?
- Step 3 Are there reasonably identifiable victims?
- Step 4 Is the threat imminent?
- Step 5 Is the victim a public official?
- Step 6 What needs to be done to fulfill the duty to protect?



# Lets Practice-- Tarasoff Vignettes