



COUNTY OF MONTEREY HEALTH DEPARTMENT

Elsa Jimenez, Director of Health

Administration
Behavioral Health

Clinic Services
Emergency Medical Services
Environmental Health/Animal Services

Public Health
Public Administrator/Public Guardian

Recipient of The California Endowment's 2017 Arnold X. Perkins Award for Outstanding Health Equity Practice

Policy Number	306
Policy Title	Duty to Warn (Tarasoff)
References	Code of Federal Regulations, Title 45, Section 164.512(j) [45 CFR 164.512(j)] California Civil Code Section 43.92 California Civil Code 56.10 Welfare and Institutions Code 5328(r) California Evidence Code 1010 California Evidence Code 1024 Tarasoff v. Regents of the University of California (1976) 17 Cal.3d 425 Ewing v. Goldstein (2004) 120 Cal.App.4th 807.
Form	Letter To Warn – Attachment 1
Effective	February 25, 1991 Revised: August 13, 1997 Revised: April 1, 2009 Revised: August 28, 2014 Revised: September 9, 2015

Policy

It is the policy of Monterey County Behavioral Health to implement the Tarasoff “duty to warn” by notifying a reasonably identifiable victim or victims and law enforcement whenever a serious threat is made by a client of the County to staff of Monterey County Behavioral Health.

A. Who Must Warn

Monterey County Behavioral Health staff members that fall into any of the categories defined as “psychotherapist” by Evidence Code 1010 are required by law to warn potential victim(s) and law enforcement when there is a serious threat of harm against that victim(s). Currently, California Evidence Code defines “psychotherapist” to include:

- Psychiatrist
- Physician who holds him/herself out as a psychiatrist, psychologist
- Licensed clinical psychologist
- Psychological assistant or intern
- Supervised person exempt from psychology licensing law under California Business & Professions Code 4996.23
- Licensed Clinical Social Worker (LCSW)
- Registered, supervised Associate Clinical Social Worker (ASW)
- Licensed Marriage and Family Therapist (LMFT)
- Registered, supervised Marriage and Family Therapy Intern (MFTI)
- Licensed Professional Clinical Counselor (LPCC)
- Registered, supervised Professional Clinical Counselor Intern (PCCI)

- Certain trainees
- Registered nurse with master's degree in psychiatric mental health nursing who is listed as a psychiatric mental health nurse by the California Board of Nursing
- Person providing mental health treatment or counseling pursuant to California Family Code 6924

If an employee, volunteer, or contractor working at Monterey County Behavioral Health who does not fall within the category of "psychotherapist" as defined above, hears a serious threat communicated by a client, that employee, volunteer or contractor should immediately notify their supervisor through the chain of command so that the client's provider can be immediately notified and made aware of the threat.

B. How and When to Warn

When a client communicates a serious threat to staff who fall within the definition of "psychotherapist" (see section A), the duty to warn is triggered. The fact that the client who communicates the serious threat is in jail or in a hospital setting (voluntary or involuntary) does not change the duty to warn. Nor does the fact that the threat is "contingent" on something else happening (e.g., "if I can't have her, no one will"). The law also recognizes that someone who is close to the client can communicate a serious threat that the client has made to that person.

If staff learn of a threat from a third party, i.e., a threat that is not directly communicated to them by the client, they should consult with their supervisor using the chain of command to determine whether the "Ewing" exception applies (in that case a California Appellate Court held that a client's threat communicated to the psychotherapist by the client's father was sufficient to trigger the "duty to warn"). Generally, if the threat matches concerns that the provider already has about the client, or seems plausible and serious, given the provider's knowledge about the client, efforts should be made to contact the client. If that is not possible, steps may be taken to initiate the warning. This "third party" communicated-threat situation should be handled in collaboration with supervisory staff whenever possible, and on a case by case basis only.

"Serious threat" means that:

- 1) The person means to do it (and is not just fantasizing, or venting, for example); and
- 2) The threat, if carried out, will likely result in bodily harm to a human being(s).

Once the duty to warn is triggered, staff should not delay in notifying the victim and law enforcement immediately by telephone. The call to law enforcement must be made within 24 hours. Staff should include the following information when communicating a "warning:" name of the potential perpetrator, name or description of intended victim(s), content of the threat, date and time that the threat was made, name of the staff and their contact information and agency.

If the victim is a minor or dependent adult, the warning should be made to the appropriate guardian of the child or dependent adult, depending upon the circumstances (e.g., if the child is away from home at camp, the camp director may need to be notified if the parent cannot be reached).

If the potential victim(s) is a large group, individual notification is best when possible, but could also be done by someone else who is in a better position to do it; for example, if the threat is against "people I

71 work with" the chain of command needs to be notified, but the provider should also notify, or seek
72 reassurances that each individual employee who works with the client is also notified. Similarly, if the
73 threat is against "the family next door" it would be important that the head of the household assure the
74 provider that everyone in the family has been appropriately warned.
75

76 The phone call should be followed up with a letter, *sent first class regular mail*, that specifically reiterates
77 the threat, the date and time it was made, and the law enforcement case number if one has been
78 assigned. Contact information of staff and the agency should also be provided to the victim.
79

80 If it is not possible to specifically name the victim or locate him or her, it is important that law enforcement
81 be informed that the victim has not yet been notified and that their assistance is needed in finding and
82 warning the victim.
83

84 C. Documentation

85 It is essential to document any decision to warn, or a decision to not warn despite a communicated
86 threat. Since a Tarasoff situation always will involve a clinical "judgment call" it is important to specifically
87 document the facts that led to the conclusion that a threat was communicated and serious; or, if the
88 decision is made not to warn, document why the threat was not serious. Efforts to contact the victim and
89 to notify law enforcement should also be documented in the client's chart. A copy of the warning letter
90 should be included in the record, as well as the name of the law enforcement officer who took the report,
91 the badge number of the officer and any case number assigned by law enforcement. A Special or
92 Unusual Incident Report should be completed per MCBH policy.
93

94 D. Confidentiality

95 Both HIPAA, under its exception permitting uses and disclosures to avert a serious threat to health or
96 safety, and California law, permitting appropriate disclosures when a patient presents a serious danger of
97 violence to a reasonably foreseeable victim or victims, make "duty to warn" disclosures to law
98 enforcement and to victims an exception to confidentiality.
99

100 E. Notification of Client

101 Neither HIPAA nor California law requires a healthcare provider to notify a client when a Tarasoff warning
102 is contemplated, or when it is done. A clinician may determine that notification of their client is
103 appropriate in some cases, and may choose to notify their client on a case by case basis.

104 Documentation in the client's chart regarding Tarasoff may be redacted prior to providing access to the
105 chart if the provider believes that access could result in serious physical harm to the client or some other
106 person.



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Date:

Recipient's Name:

Street Address:

City, State, Zip:

To:

In compliance with State laws, Monterey County Behavioral Health is informing you of a serious threat made against you by one of our mental health clients. The client's name is:

Client's Name:

The client indicated the following:

Content of the threat:

Date and time of threat: _____ at _____

In addition to informing you, we will also notify local law enforcement in both your area of residence and the area of residence of the person who made the serious threats against you.

For additional questions or concerns, contact me at:

Staff Contact Number:

Sincerely,

Staff Signature:

Staff Name/Title:

Date:

Supervisor/Manager Signature:

Supervisor/Manager Name:

Date:



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Fecha:

Nombre del Destinatario:

Street Address:

Ciudad, Estado, Codigo Postal:

Para:

En cumplimiento de las leyes del estado, el programa de Salud Mental del Condado de Monterey le está informando de una amenaza hecha contra usted por uno de nuestros clientes de salud mental.

Nombre del cliente:

El cliente indico lo siguiente:

Contenido de la amenaza:

Fecha y hora de la amenaza: at

Además de darle este informe, se le notificará también a las autoridades locales en su área de residencia y la área de residencia de la persona que hizo amenazas graves contra usted.

Para más preguntas o preocupaciones, póngase en contacto con conmigo:

Numero de telefono del personal:

Atentamente,

Firma del personal

Nombre del personal y titulo:

Fecha:

Firma del Supervisor o Gerente:

Nombre del Supervisor o Gerente:

Fecha:

Cc: Kathryn Eckert, MBA, Director, Monterey County Behavioral Health (MCBH)

Lindsey O'Leary, LMFT, Services Manager, MCBH Quality Improvement

Policy Number 306-Duty To Warn Potential Victims (Tarasoff)