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ETHICS POTPOURI

DUTY TO PROTECT BY WARNING; RECORD KEEPING PRACTICES; AND TREATMENT OF MINORS

(JUNE 16,2026)

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Honeywell, Inc., 95 B.R. 768 (D.Colo.1989) (recoupment is an equitable doctrine, which one might expect to be broad; however, it should be narrowly construed.) Thus, the Superior Court's application of this doctrine to equitable distribution proceedings, which arose after the bankruptcy proceedings were finalized, was an improper attempt to frustrate the discharge in bankruptcy. See *In re Edwards*, 91 B.R. 95, 96 (Bankr.C.D.Cal. 1988) (the bankruptcy court refused to permit the state court to circumvent the effects of husband's bankruptcy discharge by ordering husband to pay as support to wife debts that were previously discharged; courts cannot find a way to make a discharged debt in effect nondischargeable).

Based on the foregoing, I would reverse the Superior Court's decision and order.

CASTILLE, J., joins this concurring opinion.

Ronald B. EMERICH, Administrator of the Estate of Teresa M. Hausler, Appellant,

v.

PHILADELPHIA CENTER FOR HUMAN DEVELOPMENT, INC. and Albert Einstein Medical Center, Appellees.

Ronald B. EMERICH, Administrator of the Estate of Teresa M. Hausler, Appellant,

v.

PHILADELPHIA CENTER FOR HUMAN DEVELOPMENT, INC., Albert Einstein Healthcare Foundation, Albert Einstein Medical Center, Harvey Friedrich, ACSW, Anthony J. Scuderi, M. Div., Cac and Hacan Ulus, Administratrix of the Estate of Ahmet Ulus, M.D., Appellees.

Supreme Court of Pennsylvania.

Argued Dec. 11, 1996.
Decided Nov. 25, 1998.
Reargument Denied Jan. 13, 1999.

Administratrix of estate of victim who was murdered by mental patient brought negligence action against mental health treatment center and mental health professionals that treated patient. The Court of Common Pleas, Philadelphia County, Civil Division, Nos. 9305–3216 and 9306–3480, Joseph D. O'Keefe, J., granted judgment on the pleadings in favor of defendants. Administratrix appealed. The Superior Court, Nos. 0884PHL95, 0885PHL95, and 0886PHL95, affirmed. Allocatur was granted. The Supreme Court, Nos. 52–54 Eastern District Appeal Docket 1996, Cappy, J., held that: (1) mental health professional has duty to warn third party of patient's threat to harm third party where specific and immediate threat of serious bodily injury has been conveyed by the patient to the professional regarding a specifically identified or readily identifiable victim; (2) mental health professional had duty to warn victim under facts of case; and (3) professional's statement to victim that she should not go to patient's apartment satisfied that duty.

Affirmed.

Flaherty, J., concurred and filed opinion.

Zappala, J., concurred and filed opinion in which Castille, J., joined.

Nigro and Newman, JJ., concurred and dissented and filed opinions.

1. Appeal and Error ⇐863

The standard of review of an appellate court in passing on a challenge to the sustaining of a judgment on the pleadings is limited; a judgment on the pleadings will be granted where, on the facts averred, the law says with certainty that no recovery is possible.

2. Pleading ⇐343

Principles applicable to a judgment on the pleadings are the same as the principles applicable to a preliminary objection in the nature of a demurrer.

3. Negligence ⇐2

Under common law, as a general rule, there is no duty to control the conduct of a

third party to protect another from harm; however, a judicial exception to the general rule has been recognized where a defendant stands in some special relationship with either the person whose conduct needs to be controlled or in a relationship with the intended victim of the conduct, which gives to the intended victim a right to protection.

4. Mental Health ⇐414(2)

Mental health professional's duty to warn third party whom the therapist knows to be threatened by his patient is subsumed in the broader concept of a duty to protect.

5. Mental Health ⇐414(2)

Mental health professional has a duty to warn a third party of potential harm by his patient, where a specific and immediate threat of serious bodily injury has been conveyed by the patient to the professional regarding a specifically identified or readily identifiable victim.

6. Mental Health ⇐414(2)

Where mental health professional has duty to warn third party of potential harm by his patient, the warning to the intended victim should be the least expansive based upon the circumstances.

7. Mental Health ⇐414(2)

Difficulty in predicting violent conduct, alone, did not preclude court from recognizing a duty on the part of a mental health professional to warn a third party of a patient's threats of harm.

8. Mental Health ⇐414(2)

While psychiatrist or psychologist-patient privilege did not explicitly recognize an exception to the prohibition against the disclosure of confidential information for situations involving immediate harm to member of the public, the regulations promulgated by the state board of psychology recognized such an exception, and, therefore, the privilege did not preclude court from recognizing a duty on the part of a mental health professional to warn a third party of a patient's threats of harm. 42 Pa.C.S.A. § 5944; 49 Pa. Code § 41.61.

9. Mental Health ⇐414(2)

Although Mental Health Procedures Act (MHPA) did not specifically allow disclosure of privileged communications where threat of serious harm to third party is at issue, MHPA's implementing regulations provided for nonconsensual release of confidential records in such a situation, and, therefore, MHPA did not preclude court from recognizing a duty on the part of a mental health professional to warn a third party of a patient's threats of harm. 50 P.S. § 7111; 55 Pa. Code § 5100.32(a)(9).

10. Mental Health ⇐414(2)

Mental health professional had duty to warn patient's former girlfriend of potential harm by patient, where patient stated during course of treatment that he was going to kill girlfriend if she went to his apartment to remove her clothes and professional knew of patient's history of violence.

11. Mental Health ⇐414(2)

Where mental health patient told mental health professional that he would kill his former girlfriend if she when to his apartment to remove her clothes, patient's subsequent assurances that he would not harm her did not preclude a finding that the mental health professional had a duty to warn the girlfriend of the threat.

12. Negligence ⇐136(14)

While the existence of a duty is a question of law, whether there has been a neglect of such duty is generally for the jury.

13. Negligence ⇐136(14)

The issue of whether an act or a failure to act constitutes negligence may be removed from consideration by a jury and decided as a matter of law when the case is free from doubt and there is no possibility that a reasonable jury could find negligence.

14. Mental Health ⇐414(2)

A mental health care professional's warning to third party of potential harm by patient must be reasonable under the particular circumstances.

15. Mental Health ⇐414(2)

Mental health professional satisfied his duty to warn patient's former girlfriend of potential harm by patient, where he told girlfriend not to go to patient's apartment to remove her clothes and girlfriend was aware of patient's history of violent propensities.

David W. Fischer, Philadelphia, for Ronald B. Emerich.

Paul A. Lauricella, Philadelphia, for Amicus, PA Trial Lawyers.

Joseph Goldberg, Deborah L. Doyle, Philadelphia, for Hacan Ulus.

Claire Neiger, for Albert Einstein Health Care Foundation, Harvey Freidrich and Albert Einstein Medical Center.

Peter S. Miller, Charles W. Craven, Philadelphia, for Phila. Center for Human Development and Anthony J. Scuderi.

Robert B. Hoffman, Harrisburg, for Amicus, Pa. Medical Soc.

Nory Miller, Washington, DC, for Amicus, Pa. Psych. Ass'n.

Before FLAHERTY, C.J., and ZAPPALA, CAPPY, CASTILLE, NIGRO and NEWMAN, JJ.

OPINION OF THE COURT

CAPPY, Justice.

We granted allocatur limited to the issues of one, whether a mental health professional has a duty to warn a third party of a patient's threat to harm the third party; two, if there is a duty to warn, the scope thereof; and finally, whether in this case a judgment on the pleadings was proper.

This admittedly tragic matter arises from the murder of Appellant's decedent, Teresa Hausler, by her former boyfriend, Gad Joseph ("Joseph"). At the time of the murder, Joseph was being treated for mental illness and drug problems. Appellant brought wrongful death and survival actions against Appellees. Judgment on the pleadings was granted in favor of Appellees by the trial court and was affirmed on appeal by the Superior Court.

[1, 2] A detailed recitation of the facts is necessary to analyze the complex and important issues before us. The factual allegations raised in Appellant's complaint, which we must accept as true, are as follows.[1]

Ms. Hausler and Joseph, girlfriend and boyfriend, were cohabitating in Philadelphia. For a substantial period of time, both Ms. Hausler and Joseph had been receiving mental health treatment at Appellee Philadelphia Center for Human Development (the "Center" or "PCHD"), which is owned and operated by Appellees Albert Einstein Healthcare Foundation and Albert Einstein Medical Center. Appellee Ahmet Ulus, now deceased, was a psychiatrist at the Center, Appellee Anthony Scuderi was a counselor at the Center, and Appellee Harvey Friedrich was the executive director of the Center.

Joseph was diagnosed as suffering from, among other illnesses, post-traumatic stress disorder, drug and alcohol problems, and explosive and schizo-affective personality disorders. He also had a history of physically and verbally abusing Ms. Hausler, as well as his former wife, and a history of other violent propensities. Joseph often threatened to murder Ms. Hausler and suffered from homicidal ideations.

1. The standard of review of an appellate court in passing on a challenge to the sustaining of a judgment on the pleadings pursuant to Pa.R.C.P. 1034, is limited. A judgment on the pleadings will be granted where, on the facts averred, the law says with certainty that no recovery is possible. *Bensalem Township School District v. Commonwealth*, 518 Pa. 581, 544 A.2d 1318 (1988). Principles applicable to a judgment on the pleadings are the same as the principles applicable to a preliminary objection in the nature of a demurrer, thus,

> All material facts set forth in the Complaint as well as all inferences reasonably deducible therefrom are admitted as true for the purpose of this review. The question presented by the demurrer is whether on the facts averred the law says with certainty that no recovery is possible. Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it. (Citations and brackets omitted).

Kyle v. McNamara & Criste, 506 Pa. 631, 634, 487 A.2d 814, 816 (1985). It is within the confines of this standard that we consider this matter.

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Several weeks prior to June 27, 1991, Ms. Hausler ended her relationship with Joseph, moved from their Philadelphia residence, and relocated to Reading, Pennsylvania. Angered by Ms. Hausler's decision to terminate their relationship, Joseph had indicated during several therapy sessions at the Center that he wanted to harm Ms. Hausler.

On the morning of June 27, 1991, at or about 9:25 a.m., Joseph telephoned his counselor, Mr. Scuderi, and advised him that he was going to kill Ms. Hausler. Mr. Scuderi immediately scheduled and carried out a therapy session with Joseph at 11:00 that morning. During the therapy session, Joseph told Mr. Scuderi that his irritation with Ms. Hausler was becoming worse because that day she was returning to their apartment to get her clothing, that he was under great stress, and that he was going to kill her if he found her removing her clothing from their residence.

Mr. Scuderi recommended that Joseph voluntarily commit himself to a psychiatric hospital. Joseph refused; however, he stated that he was in control and would not hurt Ms. Hausler. At 12:00 p.m., the therapy session ended, and, as stated in the complaint, Joseph was permitted to leave the Center "based solely upon his assurances that he would not harm" Ms. Hausler.

At 12:15 p.m., Mr. Scuderi received a telephone call from Ms. Hausler informing him that she was in Philadelphia en route to retrieve her clothing from their apartment located at 6924 Large Street. Ms. Hausler inquired as to Joseph's whereabouts. Mr. Scuderi instructed Ms. Hausler not to go to the apartment and to return to Reading.

In what ultimately became a fatal decision, Ms. Hausler ignored Mr. Scuderi's instructions and went to the residence where she was fatally shot by Joseph at or about 12:30 p.m. Five minutes later, Joseph telephoned Mr. Scuderi who in turn called the police at the instruction of Director Friedrich.[2]

Joseph was subsequently arrested and convicted of the murder of Ms. Hausler. Based upon these facts, Appellant filed two wrongful death and survival actions, alleging, *inter alia*, that Appellees negligently failed to properly warn Ms. Hausler, and others including her family, friends and the police, that Joseph presented a clear and present danger of harm to her.

The trial court granted judgment on the pleadings in favor of Appellees finding, *inter alia*, that the duty of a mental health professional to warn a third party had not yet been adopted in Pennsylvania, but that even if such a legal duty existed, Mr. Scuderi's personal warning discharged that duty. The Superior Court affirmed, reiterating that mental health care providers currently have no duty to warn a third party of a patient's violent propensities, and that even if such a duty existed, Appellant failed to establish a cause of action as his decedent was killed when she ignored Mr. Scuderi's warning not to go to Joseph's apartment.

Initially, we must determine if in this Commonwealth, a mental health care professional owes a duty to warn a third party of a patient's threat of harm to that third party, and if so, the scope of such a duty. While this precise issue is one of first impression for this court, it is an issue which has been considered by a number of state and federal courts and has been the subject of much commentary.[3] Supported by the wisdom of

2. Specifically, Appellant's Second Amended Civil Action Complaint alleges in relevant part:

> 22. At 12:00 P.M., the therapy session ended, and Gad Joseph was permitted to leave the defendant PCHD's facility based solely upon his assurances that he would not harm Teresa M. Hausler.
>
> 23. At 12:15 P.M., Teresa M. Hausler telephoned Scuderia [sic], informing him that she was in Philadelphia, en route to pick-up her clothing from 6924 Large Street, and inquiring as to the whereabouts of Gad Joseph; she was told not to go there but to return to Reading.
>
> 24. Teresa M. Hausler nevertheless went to 6924 Large Street to collect her clothing, and at or about 12:30 P.M., Gad Joseph arrived there as well, and he shot her six times in the head and abdomen, causing her to suffer fatal bodily injuries.

3. One commentator has noted that the issue has generated a "national debate and engendered what has been generally recognized as a virtual cottage industry of analysis." *The Duty of Mental Health Care Providers to Restrain Their Patients or Warn Third Parties*, 60 Mo. L.Rev. 749 (1995).

decisions from other jurisdictions, as well as by analogous decisions by this court and lower court case law in this Commonwealth, we determine that a mental health care professional, under certain limited circumstances, owes a duty to warn a third party of threats of harm against that third party. Nevertheless, we find that in this case, judgment on the pleadings was proper, and thus, we affirm the decision of the learned Superior Court, albeit, for different reasons.

[3] Under common law, as a general rule, there is no duty to control the conduct of a third party to protect another from harm. However, a judicial exception to the general rule has been recognized where a defendant stands in some special relationship with either the person whose conduct needs to be controlled or in a relationship with the intended victim of the conduct, which gives to the intended victim a right to protection. *See*, Restatement (Second) of Torts §315 (1965). Appellant argues that this exception, and thus, a duty, should be recognized in Pennsylvania.

Our analysis must begin with the California Supreme Court's landmark decision in *Tarasoff v. Regents of Univ. of California*, 17 Cal.3d 425, 131 Cal.Rptr. 14, 551 P.2d 334 (1976) which was the first case to find that a mental health professional may have a duty to protect others from possible harm by their patients. In *Tarasoff*, a lawsuit was filed against, among others, psychotherapists employed by the Regents of the University of California to recover for the death of the plaintiffs' daughter, Tatiana Tarasoff, who was killed by a psychiatric outpatient.

Two months prior to the killing, the patient had expressly informed his therapist that he was going to kill an unnamed girl (who was readily identifiable as the plaintiffs' daughter) when she returned home from spending the summer in Brazil. The therapist, with the concurrence of two colleagues, decided to commit the patient for observation. The campus police detained the patient at the oral and written request of the therapist, but released him after satisfying themselves that he was rational and exacting his promise to stay away from Ms. Tarasoff. The therapist's superior directed that no further action be taken to confine or otherwise restrain the patient. No one warned either Ms. Tarasoff or her parents of the patient's dangerousness.

After the patient murdered Ms. Tarasoff, her parents filed suit alleging, among other things, that the therapists involved had failed either to warn them of the threat to their daughter or to confine the patient.

The California Supreme Court, while recognizing the general rule that a person owes no duty to control the conduct of another, determined that there is an exception to this general rule where the defendant stands in a special relationship to either the person whose conduct needs to be controlled or in a relationship to the foreseeable victim of that conduct, citing Restatement (Second) of Torts §315–320. Applying that exception, the court found that the special relationship between the defendant therapists and the patient could support affirmative duties for the benefit of third persons. *Tarasoff* 17 Cal.3d at 436, 131 Cal.Rptr. at 23, 551 P.2d at 343.[4]

The court made an analogy to cases which have imposed a duty upon physicians to diagnose and warn about a patient's contagious disease and concluded that " 'by entering into a doctor-patient relationship the therapist becomes sufficiently involved to assume some

4. The court relied solely upon section 315 for its determination that a duty to protect should be imposed when the nature of the relationship deserves recognition as a special relationship. However, comment c to §315 states that special relationships between the actor and one whom the Restatement refers to as a "third person" requiring the actor to control "the third person's" conduct are described in §§316–19.

Although not specifically addressed by the court in *Tarasoff*, section 319, entitled "Duty to Those in Charge of Person Having Dangerous Propensities," notes a duty to control a third person who the actor knows or should know is likely to cause bodily harm to others if not controlled. "One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm." Restatement (Second) of Torts §319. Other courts which have adopted a *Tarasoff* type duty have analyzed the issue under either section 315 or 319.

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responsibility for the safety, not only of the patient himself, but also of any third person whom the doctor knows to be threatened by the patient.'" *Id.*, 17 Cal.3d at 437, 131 Cal.Rptr. at 24, 551 P.2d at 344, quoting Fleming & Maximov, *The Patient and His Victim: The Therapist's Dilemma*, 62 Cal. L.Rev. 1025, 1030 (1974).

The court also considered various public policy interests determining that the public interest in safety from violent assault outweighed countervailing interests of the confidentiality of patient therapist communications and the difficulty in predicting dangerousness. *Id.*, 17 Cal.3d at 437–43, 131 Cal.Rptr. at 24–28, 551 P.2d at 344–48.

[4] The California Supreme Court ultimately held:

> When a therapist 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.

17 Cal.3d at 431, 131 Cal.Rptr. at 20, 551 P.2d at 340.[5]

Following *Tarasoff*, the vast majority of courts that have considered the issue have concluded that the relationship between a mental health care professional and his patient constitutes a special relationship which imposes upon the professional an affirmative duty to protect a third party against harm. Thus, the concept of a duty to protect by warning, albeit limited in certain circumstances, has met with virtually universal approval. *See e.g., Naidu v. Laird*, 539 A.2d 1064 (Del.1988); *Bardoni v. Kim*, 151 Mich. App. 169, 390 N.W.2d 218 (1986); *Bradley v. Ray*, 904 S.W.2d 302 (Mo.Ct.App.1995); *Lipari v. Sears, Roebuck & Co.*, 497 F.Supp. 185 (D.Neb.1980); *McIntosh v. Milano*, 168 N.J.Super. 466, 403 A.2d 500 (1979); *Leedy v. Hartnett*, 510 F.Supp. 1125 (M.D.Pa.1981); *Peck v. Counseling Service of Addison Co., Inc.*, 146 Vt. 61, 499 A.2d 422 (Vt.1985); *Petersen v. Washington*, 100 Wash.2d 421, 671 P.2d 230 (1983); *Schuster v. Altenberg*, 144 Wis.2d 223, 424 N.W.2d 159 (1988). *Accord, Hamman v. County of Maricopa*, 161 Ariz. 58, 775 P.2d 1122 (1989); *Bradley Center, Inc. v. Wessner*, 161 Ga.App. 576, 287 S.E.2d 716, *aff'd*, 250 Ga. 199, 296 S.E.2d 693 (1982); *Perreira v. State*, 768 P.2d 1198 (Colo.1989); *Littleton v. Good Samaritan Hospital and Health Center*, 39 Ohio St.3d 86, 529 N.E.2d 449 (1988); *Limon v. Gonzaba*, 940 S.W.2d 236 (Tex.App.—San Antonio 1997). *But see, Boynton v. Burglass*, 590 So.2d 446 (Fla.Dist.Ct.App.1991).

[5] We believe that the *Tarasoff* decision and its progeny are consistent with, and supported by, Pennsylvania case law and properly recognize that pursuant to the special relationship between a mental health professional and his patient, the mental health professional has a duty to warn a third party of potential harm by his patient.

This court has not previously had the occasion to address whether a mental health professional has a common law duty to warn a third party of a patient's threat of harm. However, decisions by this court in analogous situations, certain lower court decisions dealing with this issue, and public policy support the recognition of a duty to warn.

The finding of a duty to protect by warning another of future harm by a patient is consistent with this court's prior case law regarding liability of a mental health professional to a third party for the negligent discharge of a patient under the Mental

5. It is critical to note that the *Tarasoff* court found a duty to *protect* a third party from a patient. We believe, and the court in *Tarasoff* made clear, that a duty to warn is subsumed in this broader concept of a duty to protect. Indeed, a warning was one alternative offered by the court in *Tarasoff* to discharge the duty to protect. "The discharge of this duty may require the therapist 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." *Tarasoff*, 17 Cal.3d at 431, 131 Cal.Rptr. at 20, 551 P.2d at 340.

However, consistent with our limited grant, we will only address the issue of protection in the context of a duty to warn the intended victim of danger. We leave for another day the related issue of whether some broader duty to protect should be recognized in this Commonwealth.

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Health Procedures Act ("MHPA").[6] In *Goryeb v. Commonwealth of Pennsylvania, Department of Public Welfare*, 525 Pa. 70, 78, 575 A.2d 545, 549 (1990), this court recognized that liability may attach for committing willful misconduct or gross negligence in discharging a patient under the MHPA. The court found that a person committing willful misconduct or gross negligence would be liable for that decision or any of its consequences and that the duty was owed to those who could foreseeably be affected by a wrongful discharge of the patient.

The court cited with approval section 319 of Restatement (Second) of Torts and *Vattimo v. Lower Bucks Hospital*, 502 Pa. 241, 258, 465 A.2d 1231, 1240 (1983)(concurring and dissenting opinion by then Justice, now former Chief Justice Nix)("Under well established precedent, if plaintiff produces sufficient evidence to demonstrate the mental condition of [the patient] warranted the duty asserted, the hospital would clearly be responsible for injury to the person or property of third parties where such injury resulted from the hospital's negligent failure to meet its responsibility."). *Accord, Sherk v. County of Dauphin*, 531 Pa. 515, 520, 614 A.2d 226, 228–9 (1992).[7] Thus, under the MHPA, this court has recognized liability for breach of a duty to a third party regarding potential harm to that third party by a mental health patient.

Further supporting the concept of a duty to warn, this court has already recognized the existence of a cause of action against a physician favoring a third person in the context of contagious disease, and, thus, has recognized certain legal duties on the part of a physician to protect another from future harm by a patient.

In *DiMarco v. Lynch Homes–Chester County, Inc.*, 525 Pa. 558, 583 A.2d 422 (1990), this court held that a physician may be liable to a non-patient third person who is injured because of his negligent treatment of a patient. In that case, a physician misinformed his patient, a blood technician who had been accidentally exposed to the communicable disease, hepatitis B, that if she remained symptom-free for six weeks she was not infected with the disease. While the patient was told to refrain from sexual relations for six weeks, she abstained from sex with her boyfriend for eight weeks. After eight weeks, when she was still symptom-free, the patient engaged in sexual relations. Both she and her partner were later diagnosed with hepatitis B. The patient's boyfriend brought an action against, inter alia, the patient's doctors alleging their negligence in not having warned the patient that having sexual relations within six months of exposure to hepatitis B could expose her sexual partner to the disease.

This court extended the physician's duty to encompass third parties whose health could be threatened by contact with the diseased patient.

> Such precautions are taken not to protect the health of the patient, whose well-being has already been compromised, rather such precautions are taken to safeguard the health of others. Thus, the duty of a physician in such circumstances extends to those "within the foreseeable orbit of risk of harm" (citation omitted).

DiMarco, 525 Pa. at 562, 583 A.2d at 424.

This court went on to state:

> If a third person is in that class of persons whose health is likely to be threatened by the patient, and if erroneous advice is given to that patient to the ultimate detriment of the third person, the third person has a cause of action against the physician, because the physician should recognize that the services rendered to the patient are

6. 50 P.S. §7101 et seq.

7. We note that the MHPA applies to "all involuntary treatment of mentally ill persons, whether inpatient or outpatient, and [to] all voluntary inpatient treatment of mentally ill persons." 50 P.S. §7103. Here it is unclear whether Joseph was being treated as an involuntary outpatient or a voluntary outpatient. However, given our decision today, Joseph's status is not critical for our resolution of this matter. We merely note that if Joseph was an involuntary outpatient, and, therefore, the MHPA would be applicable, Appellant may have the additional hurdle of the MHPA's immunity provision which permits liability only for willful misconduct or gross negligence. 50 P.S. §7114; *Albright v. Abington Memorial Hosp.*, 548 Pa. 268, 696 A.2d 1159 (1997).

necessary for the protection of the third person.

Id. at 563, 583 A.2d at 424–25.

Thus, this court found that the non-patient third party had stated a cause of action against the patient's physician for the breach of a duty owed to him. *Accord Troxel v. A.I. Dupont Institute, Ches–Penn Health Services, Inc.*, 450 Pa.Super. 71, 675 A.2d 314 (1996), *allocatur denied*, 546 Pa. 668, 685 A.2d 547 (1996).

Having found that a physician owes a duty to a non-patient third party, at least in the context of a contagious disease, we believe that there is no reason why an analogous duty to warn should not be recognized when the disease of the patient is a mental illness that may pose a potentially greater and more immediate risk of severe harm or death to others. *See, Peck*, 499 A.2d at 425.

The precise issue before us has been addressed by our lower courts on two previous occasions. In *Dunkle v. Food Service East, Inc.*, 400 Pa.Super. 58, 582 A.2d 1342 (1990), a patient was diagnosed as having schizophreniform disorder and was taking medication to treat the disorder. The patient's treating psychiatrist eventually discontinued the medication and discharged the patient. Several months later, the patient strangled his live-in girlfriend to death. The Superior Court was faced with the similar issue of whether the doctors and hospital owed a duty to the plaintiff's decedent. The Superior Court held, while acknowledging the validity of a *Tarasoff* type duty, "that a psychologist (or psychiatrist) owes no duty to warn or otherwise protect a non-patient where the patient has not threatened to inflict harm on a particular individual." *Dunkle*, 400 Pa.Super. at 68, 582 A.2d at 1347. Thus, the court declined to recognize a duty to protect a "non-identifiable (in advance of her death) and arguably non-foreseeable third party victim." *Dunkle*, 400 Pa.Super. at 64, 582 A.2d at 1345.

Three years later in *Leonard v. Latrobe Area Hospital*, 425 Pa.Super. 540, 625 A.2d 1228 (1993), the Superior Court reaffirmed its holding in *Dunkle*, and determined that the specific identity of an intended victim must be brought to a doctor's attention before a duty to warn arises. Thus, the lower courts in this Commonwealth which have addressed this issue have at least implicitly recognized, in some limited circumstances, the validity of a duty to warn.

Finally, sound principles of public policy support a duty to warn. It has been stated by this court that "[i]n determining the existence of a duty of care, it must be remembered that the concept of duty amounts to no more than 'the sum total of those considerations of policy which led the law to say that the particular plaintiff is entitled to protection' from the harm suffered." *Mazzagatti v. Everingham By Everingham*, 512 Pa. 266, 278, 516 A.2d 672, 678 (1986)(quoting *Sinn v. Burd*, 486 Pa. 146, 164, 404 A.2d 672, 681 (1979)). Thus, recognition of a duty is in essence one of policy considerations.

It is axiomatic that important policy considerations exist regarding the public's interest in safety from immediate and serious, if not deadly, harm. Countervailing policies regarding the treatment of mental health patients, specifically recognition of the difficulty in predicting violent behavior, the importance of confidential communications between therapist and patient, and the policy that patients be placed in the least restrictive environment must be acknowledged. We believe, however, that the societal interests in the protection of this Commonwealth's citizens from harm mandates the finding of a duty to warn. Simply stated, it is reasonable to impose a duty on a mental health professional to warn a third party of an immediate, known and serious risk of potentially lethal harm. This is especially so considering the very circumscribed instances in which we find such a duty to warn arises, which are more fully discussed below.

Perhaps as best stated in *Tarasoff*:

> Our current crowded and computerized society compels the interdependence of its members. In this risk-infested society we can hardly tolerate the further exposure to danger that would result from a concealed knowledge of the therapist that his patient was lethal. If the exercise of reasonable care to protect the threatened victim requires the therapist to warn the endan-

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gered party or those who can reasonably be expected to notify him, we see no sufficient societal interest that would protect and justify concealment. The containment of such a risk lies in the public interest.

Tarasoff, 17 Cal.3d at 442, 131 Cal.Rptr. at 27–28, 551 P.2d at 347–48.

After consideration of the above, we find that the special relationship between a mental health professional and his patient may, in certain circumstances, give rise to an affirmative duty to warn for the benefit of an intended victim. We find, in accord with *Tarasoff*, that a mental health professional who determines, or under the standards of the mental health profession, should have determined, that his patient presents a serious danger of violence to another, bears a duty to exercise reasonable care to protect by warning the intended victim against such danger.[8]

Mindful that the treatment of mental illness is not an exact science, we emphasize that we hold a mental health professional only to the standard of care of his profession, which takes into account the uncertainty of such treatment. Thus, we will not require a mental health professional to be liable for a patient's violent behavior because he fails to predict such behavior accurately.

[6] Moreover, recognizing the importance of the therapist-patient relationship, the warning to the intended victim should be the least expansive based upon the circumstances.

As stated by the court in *Tarasoff*,

> We realize that the open and confidential character of psychotherapeutic dialogue encourages patients to express threats of violence, few of which are ever executed. Certainly a therapist should not be encouraged routinely to reveal such threats; such disclosures could seriously disrupt the patient's relationship with his therapist and with the person threatened. To the contrary, the therapist's obligations to his patient require that he not disclose a confidence unless such disclosure is necessary to avert danger to others, and even then that he do so discreetly, and in a fashion that would preserve the privacy of his patient to the fullest extent compatible with the prevention of the threatened danger.

Tarasoff, 17 Cal.3d at 441, 131 Cal.Rptr. at 27, 551 P.2d at 347.

Having determined that a mental health professional has a duty to protect by warning a third party of potential harm, we must further consider under what circumstances such a duty arises. We are extremely sensitive to the conundrum a mental health care professional faces regarding the competing concerns of productive therapy, confidentiality and other aspects of the patient's well being, as well as an interest in public safety. In light of these valid concerns and the fact that the duty being recognized is an exception to the general rule that there is no duty to warn those endangered by another, we find that the circumstances in which a duty to warn a third party arises are extremely limited.

First, the predicate for a duty to warn is the existence of a specific and immediate threat of serious bodily injury that has been communicated to the professional. We believe that in 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, that 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. Strong reasons support the determination that the duty to warn must have some limits. We are cognizant of the fact that the nature of therapy encourages patients to profess threats of violence, few of which are acted

8. Again, because of the facts before us, and in light of our limited grant, we are not required to address the related issue of whether this duty to warn may be discharged by notifying relatives of the victim, other individuals close to the victim, or the police. Also, we do not address the similar issue of whether a broader duty to protect exists, other than in the context of a duty to warn, and what actions would discharge any such duty if it did exist.

upon. Public disclosure of every generalized threat would vitiate the therapist's efforts to build a trusting relationship necessary for progress. *Tarasoff; Thompson v. County of Alameda*, 27 Cal.3d 741, 167 Cal.Rptr. 70, 614 P.2d 728 (1980)(limiting *Tarasoff* to specifically foreseeable and identifiable victims). Moreover, as a practical matter, a mental health care professional would have great difficulty in warning the public at large of a threat against an unidentified person. Even if possible, warnings to the general public would "produce a cacophony of warnings that by reason of their sheer volume would add little to the effective protection of the public." *Thompson*, 27 Cal.3d at 754–55, 167 Cal. Rptr. at 81, 614 P.2d at 735.

This limitation, in the mental health arena, is consistent with treatment of this consideration by the Pennsylvania decisions in *Dunkle* and *Leonard* and a number of other courts. *See e.g., Brady v. Hopper*, 570 F.Supp. 1333 (D.Colo.1983); *aff'd* 751 F.2d 329 (10th Cir.1984); *Fraser v. United States*, 236 Conn. 625, 674 A.2d 811 (1996); *Davis v. Yong–Oh Lhim*, 124 Mich.App. 291, 335 N.W.2d 481 (1983); *Cairl v. Minnesota*, 323 N.W.2d 20 (Minn.1982); *Leedy v. Hartnett*, 510 F.Supp. 1125 (M.D.Pa.1981). However, a few courts have held the duty is owed to all foreseeable victims. *Hamman v. County of Maricopa*, 161 Ariz. 58, 775 P.2d 1122 (1989); *Lipari v. Sears, Roebuck & Co.*, 497 F.Supp. 185 (D.Neb.1980); *McIntosh v. Milano*, 168 N.J.Super. 466, 403 A.2d 500 (1979); *Petersen v. Washington*, 100 Wash.2d 421, 671 P.2d 230 (1983); *Schuster v. Altenberg*, 144 Wis.2d 223, 424 N.W.2d 159 (1988).

Thus, drawing on the wisdom of prior analysis, and common sense, we believe that a duty to warn arises only where a specific and immediate threat of serious bodily injury has been conveyed by the patient to the professional regarding a specifically identified or readily identifiable victim.

[7] Appellees offer two primary arguments as to why this court should not recognize any duty to warn a third party of a patient's threats of harm. First, Appellees argue that a duty to warn should not be imposed on a mental health professional because such a professional is no better able than anyone else to predict violent behavior. Appellees offer various studies in support of its argument that purport to prove that dangerousness cannot be predicted.

While this court is cognizant of the difficulties predicting whether a patient may truly pose a danger to others, this argument rings hollow for a number of reasons. First, as noted above, the legislature has determined, and this court has already found, that liability may attach for negligently discharging a dangerous patient. *Goryeb*. Subsumed in finding such liability is a failure to recognize that the patient was dangerous.

Related thereto, determinations of "dangerousness" consistent with the MHPA must be undertaken by mental health professionals every day to involuntarily commit a patient. Specifically, the MHPA in its procedures for involuntary mental health treatment mandates a determination of whether an individual poses a clear and present danger of harm to others or to himself. 50 P.S. §7301. Obviously, some understanding and prediction of dangerousness is required in making this determination. To find that a determination of dangerousness is so uncertain to be no better than a coin toss, and thus, preclude liability, would raise "serious questions ... as to the entire present basis for commitment procedures." *McIntosh*, 168 N.J.Super. at 495, 403 A.2d at 514.

Moreover, we are unpersuaded that difficulty in predicting violent conduct alone should justify barring recovery in all situations. The standard of care for mental health professionals adequately takes into account the difficult nature of the problem facing them. *Tarasoff*, 17 Cal.3d at 436–37, 551 P.2d at 344–45, 131 Cal.Rptr. at 24–25; *Lipari*, 497 F.Supp. 185, 192 (D.Neb.1980); *McIntosh*, 168 N.J.Super. at 481–82, 403 A.2d at 507–08; *Peck*, 146 Vt. 61, 499 A.2d 422, 425 (Vt.1985).

Finally, while there may not be one hundred percent accuracy in predictions of dangerousness, a therapist "does have a basis for giving an opinion and a prognosis based on the history of the patient and the course of treatment." *McIntosh*, 168 N.J.Super. at 482, 403 A.2d at 508. We take note that

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mental health professionals are trained to detect, identify, evaluate and deal with threats and violent behavior, thus, setting themselves apart from others who are faced with the knowledge of threats of violence against a third party.

Thus, we reject Appellees' argument that a duty to warn should not be recognized because of some difficulty in determining violent behavior.

Appellees also argue that the strong policies underlying the protection of the therapist-patient privilege prohibit disclosure of confidential information, and, thus, preclude the finding of a duty to warn. This court is aware of the critical role that confidentiality plays in the relationship between therapist and patient, constituting, as one author has described, the "*sine qua non* of successful psychiatric treatment." *Commonwealth ex rel. Platt v. Platt*, 266 Pa.Super. 276, 304, 404 A.2d 410, 425 (1979)(concurring and dissenting opinion by Judge Spaeth). Nevertheless, we believe that the protection against disclosure of confidential information gained in the therapist-patient relationship does not bar the finding of a duty to warn.

[8] This Commonwealth's statute regarding the psychiatrist or psychologist-patient privilege does not explicitly recognize an exception where immediate harm to a member of the public is involved.[9]

However, and simply stated, regulations promulgated by the State Board of Psychology, which include, inter alia, a majority of members with license to practice psychology, recognize an exception in the case of a serious threat of harm to an identified or readily identifiable person. The relevant regulations, promulgated under the code of ethics, are entirely consistent with our opinion today. Set forth *in toto:*

> A psychologist may reveal the following information about a client:
>
> (1) Information received in confidence is revealed only after most careful deliberation and when there is a clear and imminent danger to an individual or to society, and then only to appropriate professional workers or public authorities. This Code of Ethics does not prohibit a psychologist from taking reasonable measures to prevent harm when a client has expressed a serious threat or intent to kill or seriously injure an identified or readily identifiable person or group of people and when the psychologist determines that the client is likely to carry out the threat or intent. Reasonable measures may include directly advising the potential victim of the threat or intent of the client. Because these measures should not be taken without careful consideration of clients and their situation, consultation with other mental health professionals should be sought whenever there is time to do so to validate the clinical impression that the threat or intent of harm is likely to be carried out.
>
> 49 Pa.Code §41.61.[10]

Thus, a duty to warn would not require a mental health professional to violate therapist-patient confidentiality. Rather, the therapist-patient privilege, as interpreted by the State Board of Psychology, embraces the concept. Therefore, the privilege clearly does not prohibit a duty to warn.

[9] Likewise, while under the MHPA limited exceptions exist regarding the disclosure

9. No psychiatrist or person who has been licensed under the Act of March 23, 1972 (P.L. 136, No.52), to practice psychology shall be, without the written consent of his client, examined in any civil or criminal matter as to any information acquired in the course of his professional services in behalf of such client. The confidential relations and communications between a psychologist or psychiatrist and his client shall be on the same basis as those provided or prescribed by law between an attorney and client.

42 Pa.C.S.A. §5944.

10. Similarly, the law regarding the confidentiality of information between an attorney and his client, referred to in the statute, permits the disclosure of confidential information without consent in the situation of a likelihood of death or substantial bodily harm. "A lawyer may reveal such information to the extent that the lawyer reasonably believes necessary ... to prevent the client from committing a criminal act that the lawyer believes is likely to result in death or substantial bodily harm or substantial injury to the financial interests or property of another." Pennsylvania Rule of Professional Conduct 1.6(c)(1).

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of privileged communications, none addresses a threat of serious harm to a third party.[11]

Again however, the MHPA's implementing regulations provide for nonconsensual release of confidential records "[i]n response to an emergency medical situation when release of information is necessary to prevent serious risk of bodily injury or death." 55 Pa.Code §5100.32(a)(9). While somewhat vague, these regulations have been interpreted to apply to threats of bodily injury or death to a third party. *Ms. B. v. Montgomery County Emergency Service, Inc.*, 799 F.Supp. 534 (E.D.Pa. 1992), *aff'd* 989 F.2d 488 (3d Cir.1993).

Indeed, the existence of a duty to warn is in accord with the limits on patient-therapist confidentiality recognized by the American Psychiatric Association and the American Medical Association. "When in the clinical judgment of the treating psychiatrist the risk of danger is deemed to be significant, the psychiatrist may reveal confidential information disclosed by the patient." *American Psychiatric Association. The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry*, (1995 ed.). "The obligation to safeguard patient confidences is subject to certain exceptions which are ethically and legally justified because of overriding social considerations. Where a patient threatens to inflict serious bodily harm to another person or to himself or herself and there is a reasonable probability that the patient may carry out the threat, the physician should take reasonable precautions for the protection of the intended victim, including notification of law enforcement authorities." *American Medical Association Principles of Medical Ethics* P 5.05, reprinted in Council on Ethical and Judicial Affairs of the American Medical Association, Code of Medical Ethics, Current Opinions with Annotations, at p. 72 (1994).

Based upon the above, it is clear 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. As succinctly stated by the court in *Tarasoff*, "The protective privilege ends where the public peril begins." *Tarasoff*, 17 Cal.3d at 441, 131 Cal.Rptr. at 27, 551 P.2d at 347.

In summary, we find that in Pennsylvania, based upon the special relationship between a mental health professional and his patient, when the patient has communicated to the 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.

[10] Finally we must decide whether judgment on the pleadings was proper in this case. Viewing the facts as averred in the complaint, with all reasonable inferences therefrom, it is clear that Joseph was a patient of Appellees and was being treated by Appellees for mental illness. Further, Joseph had a definite, established, long term and ongoing relationship with the Center, and with Mr. Scuderi in particular. Thus, sufficient facts were pled to support the existence of a special relationship between Appellees and Joseph, while Joseph was being treated as an outpatient, which is necessary

11. Section 111 of the MHPA provides in relevant part:

All documents concerning persons in treatment shall be kept confidential and, without the person's written consent, may not be released or their contents disclosed to anyone except:

(1) those engaged in providing treatment for the person;

(2) the county administrator, pursuant to section 110;

(3) a court in the course of legal proceedings authorized by this act; and

(4) pursuant to Federal rules, statutes and regulations governing disclosure of patient information where treatment is undertaken in a Federal agency.

In no event, however, shall privileged communications, whether written or oral, be disclosed to anyone without such written consent.

50 P.S. §7111.

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for the finding of a duty to warn.[12] *Accord, Tarasoff; McIntosh; Peck;* Restatement (Second) of Torts §§ 315, 319.[13]

[11] Moreover, the complaint alleges that in the course of his treatment, Joseph stated to Mr. Scuderi that if Ms. Hausler came to his apartment that day, he was going to kill her. Thus, Joseph communicated a specific and immediate threat of serious bodily harm against a specifically identified victim.[14] The complaint alleges that Mr. Scuderi knew or should have known that Joseph was a clear and present danger of harm to Ms. Hausler. Consistent with the decision rendered by the court today, and specifically, consistent with the limitations regarding when a duty to warn arises, the facts as stated in the complaint are sufficient to support a finding of the existence of a duty to warn.

Having determined that the facts set forth in the complaint are sufficient to support a finding of the existence of a duty to warn, we turn to consider whether the instructions given by Mr. Scuderi to Ms. Hausler discharged any such duty. Both lower courts in this matter found, and Appellees argue, that Mr. Scuderi discharged any duty to warn as a matter of law.

[12, 13] While the existence of a duty is a question of law, whether there has been a neglect of such duty is generally for the jury. However, the issue of whether an act or a failure to act constitutes negligence may be removed from consideration by a jury and decided as a matter of law when the case is free from doubt and there is no possibility that a reasonable jury could find negligence. *See Beck v. Stanley Co. of America*, 355 Pa. 608, 50 A.2d 306 (1947); *Bloom v. DuBois Regional Medical Center*, 409 Pa.Super. 83, 597 A.2d 671 (1991); *Johnson by Johnson v. Walker*, 376 Pa.Super. 302, 545 A.2d 947 (1988).

[14] Our determination as to whether Appellees breached any duty as a matter of law is really an inquiry as to whether the instruction given by Mr. Scuderi was adequate to discharge a duty to warn. A mental health care professional's warning must be reasonable under the particular circumstances. *See Tarasoff*, 17 Cal.3d at 439, 131 Cal.Rptr. at 25, 551 P.2d at 345. This consideration of the reasonableness of the warning under the circumstances is eminently sound as different warnings, depending upon the attendant circumstances in each case, may be given to maintain patient confidentiality, and, at the same time, to prevent serious bodily harm.

[15] Here, the facts as alleged in the complaint disclose that Joseph had physically and verbally abused Ms. Hausler in the past

12. Appellant offers that Appellees provided care to Ms. Hausler as well as Joseph; however, he fails to explain the significance of his assertion. Because the facts as to Ms. Hausler's treatment by Appellees are not clearly set forth by Appellant and because we find that a special relationship existed between Appellees and Joseph which gave rise to a duty to warn, we do not address the issue of whether there existed a special relationship between Appellees and Ms. Hausler which would also serve as the foundation for a duty to warn.

13. We are cognizant that some courts have found that mental health professionals lack sufficient control over outpatients to give rise to this special relationship. *See e.g., Nasser v. Parker*, 249 Va. 172, 455 S.E.2d 502 (1995); *Boynton v. Burglass*, 590 So.2d 446 (Fla.App.1991); *Hasenei v. United States*, 541 F.Supp. 999 (D.Md.1982). While a mental health professional may have less of an ability to "take charge" of a patient in an outpatient setting, this lesser degree of supervision does not justify a wholesale rejection of a duty to warn. The facts as pleaded in this case support the finding of a special relationship which serves as a foundation for the existence of a duty to warn. Restatement (Second) of Torts, §§ 315, 319. Again, as we only address a duty to warn, we do not address the issue of whether the mental health professional/outpatient relationship would translate into a relationship which would support a broader duty to protect or commit to inpatient treatment.

14. Even though Appellant has pled in his complaint that Joseph was permitted to leave the Center based solely upon his assurances that he would not harm Ms. Hausler, we do not believe that this fact would defeat his assertion of a duty to warn as a matter of law. The recantation of a threat would certainly be relevant to the issue of whether the mental health professional knew or should have known, pursuant to the standards of his profession, that the patient presented a serious danger of violence to a third party. However, we cannot say, in light of the standard for judgment on the pleadings, that an assurance that the patient would not harm a third party, as a matter of law, precludes the finding of a duty to warn.

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and had often threatened to murder her. Thus, Ms. Hausler knew of Joseph's history of violent propensities. It was Ms. Hausler who telephoned Mr. Scuderi on the date in question. She informed Mr. Scuderi that she was en route to pick up her clothing at their apartment and inquired as to the whereabouts of Joseph. A reasonable inference from her telephone call and inquiry as to the whereabouts of Joseph is that Ms. Hausler was concerned for her safety. Mr. Scuderi informed Ms. Hausler not to go to Joseph's residence and instructed her to return to her lodgment in Reading.

After consideration of the facts as pled regarding the circumstances surrounding the events of June 27, 1991, and after consideration of Mr. Scuderi's specific instructions designed to prevent the threatened harm, including the reasonable inferences that Ms. Hausler knew of Joseph's violent propensities and that she telephoned Mr. Scuderi in concern for her safety, we find that Mr. Scuderi's warning was reasonable as a matter of law. The warning was discreet and in accord with preserving the privacy of his patient to the maximum extent possible consistent with preventing the threatened harm to Ms. Hausler. Thus, Mr. Scuderi discharged any duty to warn.[15]

While this matter evokes great sympathy, we agree with the lower courts that after examining the complaint in this case, it is clear that on the facts averred, as a matter of law, recovery by Appellant is not possible. Thus, judgment on the pleadings was proper.

For the foregoing reasons, we affirm the judgment of the Superior Court.

Chief Justice FLAHERTY files a concurring opinion.

Justice ZAPPALA files a concurring opinion in which Justice CASTILLE joins.

Justices NIGRO and NEWMAN file concurring and dissenting opinions.

15. In his brief, Appellant makes the vague assertion that because of Ms. Hausler's mental illness she was somehow limited in her ability to comprehend Mr. Scuderi's instructions. However, Appellant fails to set forth in his complaint the required material facts regarding the nature or extent of Ms. Hausler's alleged illness or any facts which support the belief that Ms. Hausler lacked the capacity to appreciate the warning given by Mr. Scuderi. Pa.R.C.P. 1019(a). Thus, it is only appropriate for this court to determine the propriety of judgment on the pleadings on the basis of the facts actually pleaded in Appellant's complaint.

FLAHERTY, Chief Justice, concurring.

Mr. Justice Cappy, on behalf of the court, has authored an excellent opinion, and I join it. I write to express my concern that this is yet another extension of liability in an already too litigious society. Here, in my view, the extension is justified by the circumstances presented, but I would go no further. Yes, one can reason in so many instances that an extension of liability is merely a small step flowing naturally and logically from the existing case law. Yet each seemingly small step, over time, leads to an ever proliferating number of small steps that add up to huge leaps in terms of extensions of liability. At some point it must stop and I would draw the line in this area of the law with what is expressed by the court in this case—no further.

ZAPPALA, Justice, concurring.

I agree that judgment on the pleadings in favor of these defendants was appropriate, and thus I concur in the result. However, I do not agree that we should impose a legal duty on mental health care professionals to warn a third party of a patient's threat of harm.

At the outset, I would suggest that the Opinion of the Court, notwithstanding its scholarly survey of cases from our own courts and other jurisdictions, might well be viewed as an extensive exercise in *obiter dictum*. Contrary to the assertion that "we must determine" this issue, Slip Opinion at 6, the ultimate resolution indicates that we need not decide the issue at all in order to resolve this case. The result is the same whether we recognize a duty or not; thus this case is simply a vehicle for expounding on what the law should be without necessity of referring to the facts at hand.

Even if it were necessary to decide the issue of a mental health professional's duty to

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warn a third party of threats by a patient in order to resolve this case, I would not join in recognizing such a duty. I disagree with the assertion that doing so is analogous to or consistent with cases such as *DiMarco v. Lynch Homes–Chester County, Inc.*, 525 Pa. 558, 583 A.2d 422 (Pa.1990). There, physicians advised a patient who had been exposed to hepatitis that if she had shown no symptoms within six weeks, she had not contracted the disease. The patient refrained from sexual relations for eight weeks. Approximately one month later, she was diagnosed with hepatitis B and a few months later her sexual partner was similarly diagnosed. The partner sued the physicians, alleging that they were negligent in not advising the patient to refrain from having sexual relations for six months. Although our Court held that the physicians in that case could be subject to liability to persons other than their patient, the duty, properly speaking, remained a duty regarding their treatment of the patient, i.e., to exercise reasonable care in the giving of medical advice to the patient. Harm to the third party was determined to be "within the foreseeable orbit of risk" of giving the patient erroneous advice, and thus the physicians were subject to liability for that harm. We did not hold that the physicians had a duty directly to the third party, which would be the more precise analogy to the holding here.

Likewise, I do not agree that finding a duty to protect by warning is consistent with cases such as *Goryeb v. Commonwealth, Department of Public Welfare*, 525 Pa. 70, 575 A.2d 545 (Pa.1990). In that case, a person who had been subjected to involuntary commitment at a state hospital was discharged within 120 hours, as required by the Mental Health Procedures Act where no certification for extended involuntary emergency treatment has been filed with the common pleas court. See 50 P.S. §§ 7302 and 7303. A week after his release, he shot his former girlfriend, her boyfriend, and another man, seriously wounding the first two and killing the last. He then shot and killed himself. In an action against the hospital and one of the doctors brought by or on behalf of the victims, we held that those involved in the decision could be liable for harm to a third party resulting from a decision to discharge a mental patient which was made through willful misconduct or gross negligence. Again, the duty involved a treatment decision with respect to the patient and the foreseeable consequences if that decision were made with less than due care.[1] It did not involve a direct duty to act with respect to third parties, only a duty to treat the patient in such a way as not to subject third parties to harm.

Finally, I fail to see the logical connection between the "special relationship" the mental health professional has with the patient and the duty to warn. Although such a relationship might make it more likely that a mental health professional would become aware of threats of harm than would other citizens, mere knowledge of the threats does not seem to be the basis for the imposition of the duty. What of other "special relationships" within which a person might feel free enough to reveal an intention to do harm? And how can the duty be limited to mental health patients and mental health professionals? If threats are specific and immediate and the person to whom the threats are revealed knows or reasonably should know that there is a serious risk of harm, why would not the duty extend to them as well? To be sure, what would be considered reasonable for a mental health professional to know might differ from what would be considered reasonable for someone without specialized training to know, but a difference in what is reasonable for particular parties does not impact on the question of whether a duty should be recognized in the first instance.

The majority, in essence, imposes a legal duty on mental health professionals to use their specialized training to intercede for the benefit of third parties and subjects them to liability for failing to do so. This represents a great leap from our common law tradition that legal liability does not attach for a fail-

1. I would also note that both the duty and the willful misconduct or gross negligence standard involved in *Goryeb*, represented a legislative judgment made law as part of the Mental Health Procedures Act, 50 P.S. § 7101 et seq. rather than an extension of the common law of negligence.

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ure to render aid. I regret that the majority has seemingly overlooked the possible consequences before making that leap.

Justice CASTILLE joins this Concurring Opinion.

NIGRO, Justice, concurring and dissenting.

I join the majority's decision that a mental health care professional owes a duty to warn a third party of a patient's threat of harm based upon the professional's special relationship with his patient. I further join the scope of the duty to warn as set forth by the majority to the extent the duty arises when a patient communicates a specific and immediate threat of serious bodily injury against a specifically identified or readily identifiable third party or third parties, and the professional determines or should determine that the patient presents a serious danger of harm.

I dissent, however, from the majority's conclusion that judgment on the pleadings is proper in this case. In *Bensalem Township School Dist. v. Commonwealth*, 518 Pa. 581, 586–87, 544 A.2d 1318, 1321 (1988), the Court discussed the use of a motion for judgment on the pleadings under Pennsylvania Rule of Civil Procedure 1034:

> A rule 1034 motion for judgment on the pleadings can be used as a motion to test whether such a cause of action as pleaded exists at law, and in that way 'is in the nature of a demurrer.' *Bata v. Central Pennsylvania [Central-Penn] National Bank of Philadelphia*, 423 Pa. 373, 378, 224 A.2d 174, 178 (1966). 'It [the motion] is limited to the pleadings themselves and no factual material outside the pleadings may be considered.' Goodrich Amran [sic], 2d ? 1035:1, p. 423[sic]. The issue in such a case is not whether the facts support the action, but whether there is such an action under the law.

Appellant's complaint states a cause of action for negligence. As the majority recognizes, the complaint alleges facts establishing a special relationship between Appellees and their patient, Gad Joseph. Appellant further alleges that Joseph communicated to his therapist, Anthony Scuderi, a threat of serious bodily harm to Teresa Hausler. Appellant avers that Appellees were negligent in failing to properly explain to Hausler that Joseph presented a clear and present danger of harm to her. Appellant further avers that this omission was a proximate cause of Hausler's injuries. Since Appellant has pled a cause of action that exists at law, under *Bensalem Township*, judgment on the pleadings is improper.

The majority acknowledges that the complaint states a cause of action for negligence but concludes that Scuderi was not negligent as a matter of law. In deciding that Scuderi gave Hausler an adequate warning, the majority draws inferences from the complaint and improperly views them in a light unfavorable to Appellant. Under the correct standard, the pleadings and the inferences therefrom are viewed in the light most favorable to the party opposing the motion for judgment on the pleadings. *Karns v. Tony Vitale Fireworks Corp.*, 436 Pa. 181, 184, 259 A.2d 687, 688 (1969). All of the opposing party's well-pleaded allegations are viewed as true but only those facts specifically admitted by him may be considered against him. *Id.*; *Sejpal v. Corson, Mitchell, Tomhave & McKinley, M.D.'s*, 445 Pa.Super. 427, 430, 665 A.2d 1198, 1199 (1995).

Viewing the pleadings and reasonable inferences therefrom in the light most favorable to Appellant, Appellant alleges no facts from which the Court can find that Hausler was warned of Joseph's immediate and specific threat of serious bodily harm. Appellant alleges only that Scuderi told Hausler not to go to the residence. Appellant does not allege that Scuderi explained why she should not go there or that Hausler understood that there was a risk of harm if she went.

The majority views Hausler's call to Scuderi in a light adverse to Appellant and infers that she called in concern for her safety. In fact, we have no idea why Hausler called Scuderi. If we view Hausler's call in a light favorable to Appellant as the law requires, we may infer that she simply preferred to pick up her belongings when Joseph was not home to avoid a confrontation. The majority

further views Joseph's prior abuse of Hausler in a light adverse to Appellant and based upon an inference that Hausler was aware of Joseph's violent tendencies, seems to conclude that Hausler understood that going to the residence presented a risk of serious harm. Again, based upon the pleadings, we do not know whether Hausler perceived such a risk. If we view the complaint in a light favorable to Appellant as the law requires, we may infer from the allegation that Hausler is a mentally ill patient that she did not comprehend a risk of harm.

While these inferences may be proven or disproven as the case proceeds, having only the pleadings before us, the Court is unable to conclude that Scuderi's warning was adequate. Judgment on the pleadings is thus improper. *See Pilotti v. Mobil Oil Corp.*, 388 Pa.Super. 514, 565 A.2d 1227 (1989)(judgment on the pleadings is warranted only in cases where the moving party's right to relief is certain). Since Appellant's complaint states a claim for negligence and Appellees' right to relief is uncertain, the Court should remand this case to the trial court for further proceedings.

NEWMAN, Justice, concurring and dissenting.

I join in the majority's decision recognizing a duty mandatory for mental health care professionals to warn a third party of a patient's specific threat of immediate and serious bodily harm to that person. Additionally, I agree with the majority's determination that such a duty arises when a patient communicates a serious, specific and immediate threat of bodily harm against an identified or identifiable third party.

I dissent, however, because I believe that the majority has incorrectly determined that, as a matter of law, the therapist, Anthony Scuderi, discharged his duty to warn Teresa Hausler of the danger posed to her by his patient with the vague admonition not to visit the apartment. Furthermore, I take exception to the qualification the majority places on the term "reasonable under the circumstances" when the majority states that the warning "should be the least expansive based upon the circumstances." In my view, the majority defers too greatly to the mental health care professional's interest in maintaining patient-psychotherapist confidentiality and, in this case, suggests too lenient a standard for discharging the duty to warn.

Having taken the step of establishing an affirmative duty on mental health care professionals to warn a third party of a specific threat by a patient of serious and immediate harm to that person, the majority stumbles by allowing that duty to be discharged, as a matter of law, by the very unspecific, imprecise statement of the therapist alleged here. "Reasonable under the circumstances" as the standard for discharge of the duty to warn must, of necessity, take into consideration the circumstances that give rise to the duty: the communication by the patient to the therapist of a specific and immediate threat of bodily harm to an identified or identifiable third person. To qualify this standard, as the majority does here, by sanctioning as "reasonable under the circumstances" a warning that is the "least expansive under the circumstances" fails to serve the purpose for creation of the duty in the first place: adequate notice to the person threatened.

We need not defer, as the majority does, to the professional's concern for his patient's privacy in determining whether a warning is sufficient as a matter of law to discharge the duty to warn. We have already found that the public concern for notice of dangerous behavior to the person imperiled outweighs the patient's privacy concerns when the therapist, in his considered judgment based on the standards of the mental health care profession, concludes that the patient has communicated a specific and immediate threat to do serious bodily harm to an identified or identifiable individual, thus triggering his duty to warn that individual. Why, then, do we return to discounted privacy concerns when we permit a mental health care professional to discharge his duty to warn with a "warning" that does not describe the threat involved? The duty to warn established, the paramount concern no longer is the protection of the patient's privacy but the urgent need to provide the person threatened with the information necessary to take appropriate action. *See Tarasoff*, 17 Cal.3d at 442

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551 P.2d at 347, 131 Cal.Rptr. at 27 (public policy favoring protection of the confidential character of patient-psychotherapist communications must yield to the extent to which disclosure is essential to avert danger to others).

I cannot agree with the majority's determination that the "warning" alleged adequately discharged, as a matter of law, Mr. Scuderi's duty to warn Ms. Hausler of the serious danger posed by his patient. Accordingly, I would reverse the trial court's entry of judgment on the pleadings and remand for further proceedings.

1

Carole A. FRIENDY, Petitioner,

v.

MACK TRUCKS, INC., CNA Insurance Company, Respondents.

Supreme Court of Pennsylvania.

Nov. 30, 1998.

Petition No. 201 M.D. Allocatur Docket 1998, for Allowance of Appeal from the Order of the Superior Court.

Prior report: Pa.Super., 714 A.2d 1091.

ORDER

PER CURIAM:

AND NOW, this 30th day of November, 1998, the Petition for Allowance of Appeal is GRANTED. The order of the Superior Court is hereby REVERSED. The case is remanded to the Court of Common Pleas of Lehigh County for further consideration in light of *Shick v. Shirey*, 552 Pa. 590, 716 A.2d 1231 (1998).

Jurisdiction relinquished.

2

Paul E. SHEARER and Jeanne Shearer, his wife, Respondents,

v.

Charles W. NAFTZINGER and Elizabeth Naftzinger, his wife, Petitioners.

Supreme Court of Pennsylvania.

Dec. 14, 1998.

Petition No. 535 M.D. Allocatur Docket 1998, for Allowance of Appeal from the Superior Court.

Richard W. Stewart, Lemoyne, for petitioner.

Prior report: Pa.Super., 714 A.2d 421.

ORDER

PER CURIAM:

AND NOW, this 14th day of December, 1998, the Petition for Allowance of Appeal is hereby GRANTED, limited to the following issue:

Whether the statute of limitations set forth at 42 Pa.C.S. § 5529 constitutes a defense in a proceeding to revive and continue the lien of a judgment?

It is further ordered that the appeal will be considered on the briefs.

[J-88-2019]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

LAURA L. MAAS, ADMINISTRATRIX OF THE ESTATE OF LISA CHRISTINE MAAS, DECEASED, Appellee v.	:	No. 7 WAP 2019 Appeal from the Order of the Superior Court entered June 29, 2018 at No. 185 WDA 2017, affirming the Order of the Court of Common Pleas of Allegheny County entered November 9, 2016 at No. GD-09-18900.
UPMC PRESBYTERIAN SHADYSIDE D/B/A WESTERN PSYCHIATRIC INSTITUTE AND CLINIC; WESTERN PSYCHIATRIC INSTITUTE & CLINIC; MICHELLE BARWELL, M.D.; AND WESTERN PSYCHIATRIC INSTITUTE & CLINIC ADULT COMMUNITY TREATMENT TEAM, Appellants	:	ARGUED: October 16, 2019

OPINION

JUSTICE DOUGHERTY **DECIDED: JULY 21, 2020**

We consider the duty of mental health treatment providers to warn individuals who may be the subject of their patient's threats. In the present appeal, the mental health patient lived in a forty-unit apartment building and repeatedly told his doctors and therapists he would kill an unnamed "neighbor." Tragically, he ultimately carried out his threat, killing an individual who lived in his building, a few doors away from his own apartment. In subsequent wrongful death litigation filed by the victim's mother, the

~~255 (a)~~ 19

providers argued they had no duty to warn anyone about their patient's threats because he never expressly identified a specific victim. The trial court rejected this argument and denied the providers' motion for summary judgment, allowing the case to proceed to trial. On appeal, the Superior Court agreed, and we now affirm.

I. Background

Prior to 2008, Terrance Andrews resided in a supported living facility under the supervision of and while receiving ongoing mental health treatment from appellants UPMC Presbyterian Shadyside d/b/a Western Psychiatric Institute and Clinic, Western Psychiatric Institute and Clinic ("WPIC"), the Western Psychiatric Institute and Clinic Adult Community Treatment Team ("CTT"), and Michelle Barwell, M.D. In January 2008, Andrews signed a one-year lease for an apartment on the fourth floor of Hampshire Hall in Pittsburgh.[1] This move was facilitated by appellants WPIC and CTT, who paid rent on Andrews's behalf out of his psychiatric disability benefits through a representative payee service. Andrews did not function well in the independent environment. His treatment notes indicate his living situation was a stressor, apparently due, in part, to his unpleasant interactions with Hampshire Hall neighbors and/or their guests. *See Maas v. UPMC Presbyterian Shadyside*, 192 A.3d 1139, 1142 (Pa. Super. 2018). Andrews repeatedly

[1] Hampshire Hall consists of forty individual apartments and approximately eighty residents in total. At all relevant times, approximately twenty persons including Andrews resided on the fourth floor.

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complained to appellants about his housing circumstances and asked to be returned to a supported living environment with caregivers on-site.[2]

Specifically, for a period of five months after moving into Hampshire Hall, Andrews frequently expressed to appellants suicidal and homicidal ideation, complaining about his "neighbors" and others, including threats to kill a "neighbor" who had been knocking at his door in the middle of the night. *Id.* He reportedly had several verbal run-ins with various neighbors, one of which resulted in his next-door neighbor's boyfriend hitting him with a baseball bat. On May 9, 2008, he again reported homicidal ideation against a "neighbor" to staff at WPIC's Department of Emergency Care, and a plan to stab the "neighbor" with scissors, but he was allowed to leave. Within 24 hours, Andrews returned to the Department of Emergency Care and expressed homicidal ideation against an unnamed "next-door" neighbor, and a brief voluntary hospitalization ensued. *Id.* Following discharge, on May 15, 2008, he again described a plan "to kill the next-door neighbor and everyone." *Id.* Andrews did not identify any neighbor by name and appellants took no measures to warn any residents of Hampshire Hall regarding these threats.[3]

On May 25, 2008, Andrews again sought an in-patient admission at WPIC, asserting he had not been taking his medication for three weeks, was hearing voices, and

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[2] On more than one occasion, in response to these requests, Andrews was told his return to supported living would be arranged, but it was not.

[3] Employees of both CTT and WPIC testified during discovery depositions that their practice was to ask any patient expressing homicidal ideation whether the patient could identify their purported target by name, but that Andrews did not name any specific person. *See* Deposition of William F. Brown, 1/30/15 at 71, 75; Deposition of Jonathan Hamlin, 5/24/16 at 17-18.

was having suicidal and homicidal thoughts. A case manager at that facility dissuaded him from seeking admission, and sent him home to his apartment with medication for agitation and a promise to secure him placement in a personal care home within 36 hours. Four days later, on May 29, 2008, Andrews murdered Lisa Maas, a nineteen-year-old Pennsylvania Culinary Institute student, by stabbing her to death with scissors in her apartment located five doors away from Andrews's own apartment on the fourth floor of Hampshire Hall. Andrews was arrested at the scene, telling officers, "Take me to jail. I did it[;]" and offered, "I told [a psychiatrist] to put me in Western Psych. I told them the medication wasn't working. I told people I was going to kill someone." Complaint, 8/23/12, at 12, ¶44-45; Police Report of Officer George Satler, 5/30/08 at 1. A jury subsequently convicted Andrews of murder and the trial court sentenced him to life imprisonment.

A.

Appellee Laura Mass, the victim's mother and administratrix of her estate, filed a wrongful death and survival action against appellants and others.[4] Among other things, the complaint alleged: "At the time of his discharge from Mercy Behavioral on May 13, 2008, Mr. Andrews presented clear and present danger to all Hampshire Hall tenants, particularly those who resided on the same floor as Mr. Andrews." Complaint, 3/4/11, at 6 ¶24. The complaint additionally alleged appellants were negligent in "failing to recognize the likelihood that Mr. Andrews was a danger to people living in his apartment complex, in particular, to those people living on his floor;" *id.* at 8 ¶31(j), and in failing to

[4] Delta Management, the owner of Hampshire Hall, was dismissed on a demurrer, and appellee discontinued her claims against Mercy Behavioral Health and Nadeem Ahmed, M.D.

warn those residents. *Id.* at ¶31(l) (asserting negligence "in failing to warn . . . Hampshire Hall tenants of the danger created by Mr. Andrews").

Following discovery, appellants filed a motion for summary judgment on the basis of *Emerich v. Phila. Ctr. for Human Dev., Inc.*, 720 A.2d 1032 (Pa. 1998). *Emerich* stands for the proposition that "under certain limited circumstances[,]" a mental health professional "owes a duty to warn a third party of harm against that third party." 720 A.2d at 1036. The *Emerich* Court held "the circumstances in which a duty to warn a third party arises are extremely limited." *Id.* at 1040. The patient must communicate a "specific and immediate threat" against "a specifically identified or readily identifiable victim." *Id.* Appellants asserted, and the parties do not dispute, Andrews never specifically named the decedent as the object of his homicidal ideation. Thus, appellants sought summary judgment because the allegedly amorphous, non-immediate threat against an unidentifiable "neighbor" or "neighbors" did not create a duty to warn. The trial court denied summary judgment, concluding there was "evidence in this case from which a jury could reasonably conclude the tenants residing on Andrews'[s] floor in Hampshire Hall were a readily identifiable group of people to whom [appellants] owed a duty to warn." Trial Court Op., 5/23/17 at 10-11. The trial court certified its order as involving a controlling question of law upon which there is a substantial difference of opinion pursuant to 42 Pa.C.S. §702, and the Superior Court granted an interlocutory appeal.

B.

The Superior Court determined appellee's complaint "made the requisite *prima facie* showing of a duty under *Emerich*." *Maas*, 192 A.3d at 1149. The panel recognized *Emerich* involved a threat to a specifically identified individual, and acknowledged "Mr.

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Andrews expressly communicated threats to kill his 'neighbor' but did not identify, by name or description, the specific neighbor." *Id.* at 1148. Nevertheless, the panel recognized Andrews "threatened to kill an unidentified individual who was a member of an identifiable group of approximately twenty people." *Id.* Thus, the Superior Court framed the controlling question as whether appellants "had a duty to warn the potential targets, *i.e.*, the fourth floor tenants of Hampshire Hall who were Mr. Andrews's neighbors." *Id.*

Next, the panel noted *Emerich* relied on the seminal case of *Tarasoff v. Regents of Univ. of California*, 551 P.2d 334 (Cal. 1976). In *Tarasoff*, the patient did not expressly identify his threatened victim, but his therapist could "readily" identify who she was from the context of the threat; in litigation following her murder, the California Supreme Court held the therapist's failure to warn her breached a duty to use reasonable care to protect a third party from harm. 551 P.2d at 341. The Superior Court acknowledged the *Tarasoff* duty was subsequently limited in *Thompson v. County of Alameda*, 614 P.2d 728 (Cal. 1980), where the California Supreme Court determined there was no duty to warn a "large amorphous public group" in a particular neighborhood. *Maas*, 192 A.3d at 1145, *citing Thompson*, 614 P.2d at 738.[5] Nevertheless, the panel concluded, "[u]nlike the threat to

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[5] In *Thompson*, the plaintiffs, husband and wife and their minor son, lived a few doors from the residence of the mother of an incarcerated juvenile offender (James) who had "extremely dangerous and violent propensities" toward young children. *Thompson*, 614 P.2d at 730. James told staff at the juvenile facility "he would, if released, take the life of a young child residing in the neighborhood[,]" although he gave no indication of which young child he intended to victimize. *Id.* Within 24 hours of his release on temporary leave to his mother's home, he murdered plaintiff's son. The California Supreme Court declined to find a duty to warn, in part because "plaintiff's decedent was not a known, identifiable victim, but rather a member of a large amorphous public group of potential targets." *Id.* at 738.

all of the 'young children in the neighborhood' in *Thompson*, which we agree was a large and amorphous public group, the threat herein was directed at a member of a small, distinct, and identifiable group." *Maas*, 192 A.3d at 1148.

Noting the victim in *Tarasoff* was not named, but was readily identifiable, the panel reasoned "the duty to warn exists where the target is identifiable, not just identified by name, and that mental health professionals must use reasonable efforts to identify the victim. To give any other interpretation to our Supreme Court's holding in *Emerich* would negate the meaning of the 'readily identifiable' language entirely." *Id.* at 1147. The Superior Court further reasoned "[t]he duty to warn recognized in *Emerich* may extend to individuals who are readily identifiable because they are members of a group." *Id.* at 1147-48. The panel found support for this position "in the Code of Ethics of Pennsylvania's State Board of Psychology, section 41.61, which was relied upon by the *Emerich* Court in defining the duty. That provision states that psychologists should take 'reasonable measures to prevent harm when a client has expressed a serious threat or intent to kill or seriously injure an identified or **readily identifiable person or group of people** and when the psychologist determines that the client is likely to carry out the threat or intent.'" *Maas*, 192 A.3d at 1146, *quoting* 49 Pa.Code §41.61 (emphasis supplied by Superior Court).

The Superior Court further explained:

> We are persuaded by the analysis of then-Judge, now-Justice Wecht, when he overruled Mercy Behavioral Health's preliminary objection in the nature of a demurrer at an earlier stage of this litigation. He acknowledged that he found "no case law stating that the 'readily identifiable' third party can be a group, but also none to say it cannot be." Memorandum, 7/19/11, at 3. He went on to hypothesize that if a patient threatened to kill people in his workplace, "[t]hat would be a readily identifiable group whose members would be in serious danger[,]" and "[a]rguably, a mental health provider would have a duty to warn."

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Id. In his view, the facts alleged herein did not present a "bigger leap." *Id.*

Maas, 192 A.3d at 1148.[6]

The Superior Court determined the identities of Andrews's fourth-floor neighbors could be easily identified and the group was small enough that advising them about his threats would not "'produce a cacophony of warnings'" by their volume, unlike the prospect of warning an entire "'amorphous'" neighborhood. *Id.*, *quoting Thompson*, 614 P.2d at 735. Thus, the panel found "the facts herein to be more akin to *Emerich* and *Tarasoff*, where a duty to warn was imposed." *Id.* The Superior Court determined, in essence, appellants had a duty to warn the residents of the fourth floor of the apartment building, including the victim, about the threats. The panel affirmed the trial court's order denying appellants' motion for summary judgment, concluding appellee made a "*prima facie* showing of a duty under *Emerich*," and that whether appellants breached that duty was a question of fact for the jury. *Id.* at 1149.

C.

Appellants filed a petition for allowance of appeal and we granted discretionary review of the following issue:

> Can an "identifiable third party" for purposes of a mental health professional's duty to warn third parties consist of a group of unnamed neighbors under *Emerich* [ ], which limits a mental health professional's duty to warn to specific, imminent threats of serious bodily injury made against specifically identified or readily identifiable third parties?

Maas v. UPMC Presbyterian Shadyside, 202 A.3d 46 (Pa. 2019) (*per curiam*).

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[6] Justice Wecht, as an Allegheny County Court of Common Pleas jurist, overruled the preliminary objections to the complaint of Mercy Behavioral Health, concluding although the question of the scope of duty was a close one, it was a question to be decided by a jury, and not by the court as a matter of law. As noted *supra* at 4 n.4, Mercy Behavioral Health is no longer a party to this action.

II. Arguments

Appellants maintain the *Emerich* Court determined mental health professionals may be liable for violent acts of their patients only in the narrowest of circumstances where there is a specific and immediate threat against an identified or readily identifiable third party. They argue the Superior Court in this case expanded a mental health professional's duty to require a warning to a merely foreseeable victim. Appellants argue such expansion is unwarranted because a mental health provider's duty to warn under *Emerich* expressly requires the existence of a specific victim. *See Emerich*, 720 A.2d at 1037 n.5 ("we will only address the issue of protection in the context of a duty to warn the intended victim of danger"). Appellants concede that to be "readily identifiable," the victim need not be identified by name, and it is possible for a group of individuals to be readily identifiable. In appellants' view, however, the patient making threats must describe the victim(s) of his or her homicidal ideations with sufficient specificity to allow for identification and practical dissemination of a warning. They emphasize the victim must be easily ascertainable from the context of the patient's threat, and the threat must not be capable of multiple interpretations. *See* Brief for Appellants at 36 (providing that "[b]ased on commonly-accepted definitions, the term 'identifiable' connotes that the individual is capable of being determined and distinguished from other individuals who may fit the same description").

Applying that construct to this case, Appellants maintain that while Andrews episodically voiced threats of violence against his "neighbor," he never made any specific, imminent threat against Lisa Maas by name or personal description, and did not reveal homicidal ideations specifically relating to the collective group of tenants residing on the fourth floor of Hampshire Hall. According to appellants, when the Superior Court panel

recognized a duty here it improperly engaged in an analysis based on hindsight, reasoning that because Andrews made threats against his neighbor and Lisa Maas was his neighbor, she was a member of the class to whom a duty to warn was owed. They argue this reasoning is overly simplistic, and follows a "zone of danger" and "foreseeable victim" approach recognized only in a minority of jurisdictions, which the *Emerich* Court expressly rejected in favor of the "readily identifiable victim" construct. Brief for Appellants at 34-35.

Appellants posit that absent *post hoc* knowledge Andrews murdered Lisa Maas in her apartment down the hall from his residence, there was no way for a mental health professional to deduce prospectively that his homicidal ideations against his "neighbors" denoted only those individuals who resided on the fourth floor of Hampshire Hall. Appellants claim "neighbors" could have included any number of persons, including residents of the fourth floor, residents of other floors in the building, individuals who lived in apartment buildings adjacent to Hampshire Hall, or persons living on the same block in South Oakland.[7] Accordingly, Appellants conclude no practical method existed to discharge the duty to warn, as the mental health professional would have had to disseminate the warning to the public at large residing in close proximity to Hampshire Hall in the South Oakland area of Pittsburgh for it to be effective.

Appellants further maintain that Andrews's threat of violence against his "neighbor" is akin to the threat against "young children residing in the neighborhood" in *Thompson*, and, likewise, does not reveal a known, identifiable victim to whom a duty to warn is owed. *See Thompson*, 614 P.2d at 737 (threat of violence against "young children residing in the neighborhood" did not reveal a known, identifiable victim, but rather a member of a

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[7] Appellants acknowledge Andrews expressed a desire to kill his "next-door" neighbor, arguably a readily identifiable individual, but note that Lisa Maas did not fit that description, as her apartment was five doors away.

large amorphous public group of potential targets to whom no duty to warn was owed). Appellants posit, "a member or members of a large amorphous public group, which is capable of multiple interpretations, is not an identifiable victim." Brief for Appellants at 42. Appellants additionally argue, "[t]o be identifiable, an individual must be capable of being identified by description, location or context — when a 'moment's reflection will reveal the victim's identity.'" *Id.*, *quoting Tarasoff*, 551 P.2d at 345 n.11. Thus, appellants insist, "[b]y imposing a rule that requires a warning issued to all members of a larger class of individuals, the Superior Court has rendered *Emerich's* readily identifiable limitation meaningless." *Id.*[8]

Appellants additionally highlight public policy considerations that militate against a broad interpretation of *Emerich*'s "readily identifiable" terminology. They contend confidentiality is the *sine qua non* of effective psychotherapy and public disclosure of every generalized threat would jeopardize the patient-therapist relationship. Appellants claim a broad duty to warn may fundamentally alter the nature of therapy as the therapist may focus more on the patient's dangerousness than on the treatment of his mental health needs. Additionally, appellants assert expanding the duty to warn to encompass vague threats of violence would result in the issuance of false warnings to a larger group

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[8] Appellants further cite pre-*Emerich* Superior Court decisions, which declined to impose a duty to warn absent the specification of an identifiable victim. *See* Brief for Appellants at 27-30 (citing *Dunkle v. Food Service East*, 582 A.2d 1342, 1347 (Pa. Super. 1990) ("a psychologist (or psychiatrist) owes no duty to warn or otherwise protect a non-patient where the patient has not threatened to inflict harm upon a particular individual"); *Leonard v. Latrobe Area Hospital*, 625 A.2d 1228, 1232 (Pa. Super. 1993) ("the specific identity of an intended victim[ ] must be brought to the attention of the physician before it can be held that a physician has a duty to warn the intended victim"). Although the Superior Court's decisions in *Dunkle* and *Leonard* predated this Court's decision in *Emerich*, those intermediate appellate court decisions relied on *Tarasoff*, as did this Court in *Emerich*.

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than necessary in the hopes that the right individual is apprised of the purported danger. This is in conflict, they contend, with this Court's pronouncement in *Emerich* that, "[e]ven if possible, warnings to the general public would produce a cacophony of warnings that by reason of their sheer volume would add little to the effective protection of the public." *Emerich*, 720 A.2d at 1041 (internal citation and quotation omitted). Appellants submit the additional exposure to liability will force mental health professionals to practice defensive medicine through the over-commitment of patients into institutions in contravention of *Emerich*'s requirement that "patients be placed in the least restrictive environment[.]" Brief for Appellants at 51 (citing *Emerich*, 720 A.2d at 1039; 50 P.S. §7102 ("in every case, the least restrictions consistent with adequate treatment shall be employed")).[9]

In response, appellee maintains the Superior Court's decision fits squarely within the *Emerich* test, and, therefore, the denial of appellants' motion for summary judgment

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[9] The American Medical Association, Pennsylvania Medical Society, and Pennsylvania Psychiatric Society have filed a Brief of *Amicus Curie* in support of appellants. Therein, they contend the legal framework for treating patients with mental illnesses has developed over decades to balance carefully the rights of the mentally ill with the need to protect the public. In the view of *amici*, the Superior Court's decision to lower liability standards would interfere with the General Assembly's well-crafted regulatory scheme, which seeks the least restrictive means for treating mentally ill patients, ensures patient confidentiality, and insulates from liability mental health providers' determinations as to whether a patient should be integrated into society or admitted to a mental health facility. *See* 50 P.S. §§ 7107, 7111, and 7114. They further contend that any legal duty to interrogate a patient to determine who the patient's threatened victim is and whether the patient has the intent and plan to carry out his homicidal ideations, is contrary to this Court's pronouncement in *Emerich* and would prove unworkable. Finally, *amici* assert, incentivizing mental health professionals to put liability concerns over patient care would reduce overall safety by increasing costs and causing some mental health professionals to relocate to jurisdictions with more favorable medical negligence laws.

was proper. Appellee refutes appellants' contention the Superior Court improperly expanded *Emerich*'s duty to warn to include "foreseeable victims" in addition to readily identifiable ones. In defining "readily identifiable," appellee submits the Superior Court properly held "the duty to warn exists where the target is identifiable, not just identified by name[.]" *Maas*, 192 A.3d at 1147. She maintains a "readily identifiable" third party is a party the mental health professional can identify, name, or recognize.

Applying that construct here, appellee contends the twenty individuals who resided on the same floor as Andrews were readily identifiable as a small and distinct group who were targeted by his repeated threats. She emphasizes the history of the extensive relationship between Andrews and appellants, including his repeatedly expressed desire to be removed from Hampshire Hall and the nature of the threats he communicated, which included specific threats to "his neighbor," his "next-door neighbor," "the neighbor who knocks on [his] door in the middle of the night," the "next-door neighbor with whom he had a physical altercation," and the "next-door neighbor's boyfriend." Brief for Appellee at 32. Appellee argues these threats were sufficiently clear to identify the subject of Andrews's homicidal ideations as the Hampshire Hall neighbors who lived in close proximity to him and with whom he interacted, rather than a general threat to the public at large. Appellee argues the Superior Court's holding is limited to the facts of this case and did not expand the duties imposed upon mental health professionals under *Emerich*.[10]

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[10] Appellee recognizes that while the evidence of record arguably would "support a finding that all residents of Hampshire Hall should have been warned," the Superior Court's decision extending the duty to warn the fourth-floor neighbors only refutes appellants' "position that the Superior Court has effectively abandoned *Emerich's* restrictive

Appellee further asserts the feasibility of issuing a warning under a particular factual scenario has no bearing on the determination of whether the target of the patient's threat was readily identifiable, and this Court's allowance of appeal was limited to the latter inquiry not the former. Moreover, appellee submits the Superior Court expressly discerned from the record that a mental health professional could, as a practical matter, have disseminated a warning here. Brief for Appellee at 31-32 (citing *Maas*, 192 A.3d at 1148) (finding that "[p]ractically speaking, the identities of Mr. Andrews's fourth floor neighbors could be readily ascertained from the building management in order to communicate a reasonable warning" and that "the proximity of their apartments to Mr. Andrews's apartment made it possible to warn these individuals even without knowing their names"). Thus, she concludes, there would be no "cacophony of warnings", as suggested by appellants. Appellee submits the Superior Court correctly held "mental health professionals must use reasonable efforts to identify the victim." *Maas*, 192 A.3d at 1147. Appellee explains, "[t]here is no dispute that, by their own admissions, [appellants] were obligated and had a duty to conduct a proper homicidal ideation assessment of every threat Andrews made against a potential third party victim, including threats he was making against his neighbors, and properly inquire about the identity of these intended victims." Brief for Appellee at 33.

In their reply brief, appellants reiterate, *inter alia*, that to recognize a duty to warn based upon homicidal ideations against a "neighbor" would fracture the mental health professional's therapeutic relationship with the patient, nullify the patient's right to privacy,

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approach and adopted a new duty to warn all foreseeable victims." Brief for Appellee at 25 n.5.

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and invite retributive ligation. Appellants assert that, in an urban setting, the term "neighbor" is so vague, indefinite, and imprecise that it conflicts directly with the precision and specificity demanded by *Emerich*. Appellants strongly contest what they view as appellees' suggestion that a mental health professional has a legal duty to "interrogate" a patient to determine the subject of his homicidal ideations. They characterize such a duty as "so at odds with *Emerich* as to be preposterous." Reply Brief for Appellants at 1.[11] Finally, appellants maintain, contrary to appellee's assertions, it would be absurd for this Court to recognize a duty, in any context, without consideration of whether it is feasible for the defendant to discharge the duty.

III. Analysis

We begin by noting our standard of review. Summary judgment is appropriate in cases "where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Nicolaou v. Martin*, 195 A.3d 880, 891 (Pa. 2018) (citing Pa.R.Civ.P. 1035.2(1)). When considering a motion for summary judgment, the trial court must take all facts of record and reasonable inferences therefrom in a light most favorable to the non-moving party and must resolve all doubts as to the existence of a genuine issue of material fact against the moving party. *Id.* Moreover, the existence of a duty is a question of law, while the issue of whether the defendant breached that duty is generally for the fact-finder. *Emerich*, 720 A.2d at 1044. We are presently concerned with the nature of the duty owed to Lisa Maas, if any, which is a legal question over which our

[11] As discussed *infra*, we reject appellants' contention the Superior Court created a "duty to interrogate" mental health patients who express homicidal ideation, a question that is not directly implicated in this appeal in any event.

255 (o) 33

standard of review is *de novo*, and our scope of review is plenary. *Seebold v. Prison Health Services, Inc.*, 57 A.3d 1232, 1243 (Pa. 2012).

As an initial matter, we reject appellants' assertion the Superior Court improperly held, where a potential victim is not identified by name, the mental health professional has a duty to "interrogate" the patient in an effort to discover the victim's identity. *See* Brief for Appellants at 23, 41 n.8. Appellants' assertion is apparently grounded in an expansive reading of a single sentence in the Superior Court's opinion: "[w]e find that the duty to warn exists where the target is identifiable, not just identified by name, and that mental health professionals must use reasonable efforts to identify the victim." *Maas*, 192 A.3d at 1147. The panel never opined "interrogation" is required, only that reasonable efforts at identification be made. Moreover, the sole legal issue before the Superior Court was whether the trial court misapplied the law when it refused to dismiss appellee's wrongful death action on summary judgment, and "improperly imposed on mental health care providers a duty to warn about vague, non-specific, and non-imminent expressions of homicidal ideations[.]" *Id.* at 1144 (internal quotation omitted).

Notably, the ancillary factual question regarding the nature of any effort appellants employed (or did not employ) to identify whom Andrews was threatening is not before this Court. Instead, for purposes of determining if appellants had a duty to warn Lisa Maas, we consider whether a "moment's reflection" by appellants would have sufficed to readily identify Andrews's unnamed neighbor-victim as a Hampshire Hall resident, and whether imposing a duty to warn under such circumstances is warranted. *See, e.g., Tarasoff*, 551 P.2d at 345 n.11 ("[Therapists and their *amicus*] also argue that warnings must be given only in those cases in which the therapist knows the identity of the victim. We recognize

255 (A) 34

that in some cases it would be unreasonable to require the therapist to interrogate his patient to discover the victim's identity, or to conduct an independent investigation. But there may also be cases in which a moment's reflection will reveal the victim's identity. The matter thus is one which depends upon the circumstances of each case, and should not be governed by any hard and fast rule.").

Emerich is this Court's seminal case setting forth a mental health professional's duty to warn third parties. The facts underlying *Emerich* were that, in the space of thirty minutes, a psychiatric patient (Joseph) told his therapist he was going to kill his former girlfriend, identified by Joseph and known to the therapist as Teresa Hausler. The therapist immediately advised Hausler to stay away from Joseph, without specifically telling her he planned to kill her. Hausler ignored the therapist's warning to stay away and Joseph shot her to death. Ultimately, the *Emerich* Court determined the therapist had a duty to warn Hausler, satisfied the duty by telling her to stay away, and affirmed the dismissal of the case on summary judgment. *Emerich*, 720 A.2d at 1045. The Court summarized its holding as follows:

> [I]n Pennsylvania, based upon the special relationship between a mental health professional and his patient, when the patient has communicated to the 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.

Id. at 1043.

The *Emerich* Court began its legal analysis by observing the general common-law rule stating there is no duty to control the conduct of a third party to protect another from

harm. *Emerich*, 720 A.2d at 1036. *Emerich* recognized an exception to that rule: "where a defendant stands in some special relationship with either the person whose conduct needs to be controlled or in a relationship with the intended victim of the conduct, which gives to the intended victim a right to protection." *Id.* (*citing* Restatement (Second) of Torts § 315 (1965)). Relying in part on *Tarasoff*, the *Emerich* Court concluded the special relationship between a patient and mental health professional may, in limited circumstances, give rise to an affirmative duty to warn a third party of potential harm caused by his patient. *Id.* at 1037.

In *Tarasoff*, as we have noted, the patient did not expressly identify his threatened victim by name, but from the context of the threat, the therapist could "readily identify" who she was. *Emerich*, 720 A.2d at 1036.[12] The *Emerich* Court explained *Tarasoff* recognized a duty to "protect" a readily identifiable third party from the violent acts of a patient, and that "a duty to warn is subsumed in this broader concept of a duty to protect." *Emerich*, 720 A.2d at 1037 n.5. "'The discharge of this duty may require the therapist to take one or more of various steps, depending on 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.'" *Id.*, *quoting Tarasoff*, 551 P.2d at 340. The *Emerich* Court addressed the issue of duty only "in the context of a duty to warn[,]" and left for another day whether "some broader duty to protect" should be recognized. *Id.* Specifically regarding the duty to warn, the *Emerich* Court stated: "We find, in accord with *Tarasoff*, that a mental health professional who determines, or under the standards of the mental health profession,

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[12] The opinion did not specify how or why the unnamed victim was readily identifiable.

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should have determined, that his patient presents a serious danger of violence to another, bears a duty to exercise reasonable care to protect by warning the intended victim against such danger." *Emerich*, 720 A.2d at 1040.

Notably, the *Emerich* Court further held "the circumstances in which a duty to warn a third party arises are extremely limited." *Id.* at 1040. Before the therapist's duty is triggered, the patient must communicate a "specific and immediate threat" against "a specifically identified or readily identifiable victim." *Id.* The Court did not define what factors might coalesce to ascertain, or aid in determining, whether or when an unnamed victim is readily identifiable, but the Court offered parenthetically that *Thompson* subsequently "limited" the holding in *Tarasoff* to "identifiable victims[.]" *Id.* at 1041, *citing Thompson*, 614 P.2d 728. As we have summarized, in *Thompson*, the California Supreme Court held there was no duty to warn the "public at large" of threats to unidentified persons in a particular neighborhood. The *Thompson* court declined to recognize a duty to warn, in part because "plaintiffs' decedent was not a known, identifiable victim, but rather a member of [a] large amorphous public group of potential targets." *Thompson*, 614 P.2d at 738. The *Emerich* Court noted, "as a practical matter, a mental health care professional would have great difficulty in warning the public at large of a threat against an unidentified person. Even if possible, warnings to the general public would 'produce a cacophony of warnings that by reason of their sheer volume would add little to the effective protection of the public.'" *Id.* at 1041, *quoting Thompson*, 614 P.2d at 735.

In the present case, appellants concede there is a duty to warn "readily identifiable" potential victims. Appellants also allow that a victim need not be identified by name to be

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"readily identifiable," and victims might be readily identifiable by membership in an enumerated and identifiable "group" of individuals. Appellants' core contention, then, is that the "neighbors" against whom Andrews articulated murderous threats were not an enumerated and readily identifiable group of Hampshire Hall residents, but instead, consisted of a large, amorphous, unidentifiable group of the public at large. The plausibility of this argument is strained as it entirely disregards the undisputed factual context in which the threats were made.

The record easily supports the trial court's conclusion that living in Hampshire Hall was a "stressor" for Andrews. *See* Trial Court Op., 5/23/17 at 9 ("There is evidence that Andrews'[s] primary stressor was [appellants'] removing him from an assisted living arrangement in a personal care home and relocating him to Hampshire Hall in early January of 2008."). It is also undisputed that, during the period when Andrews repeatedly sought transfer out of Hampshire Hall and back to a supported living facility, he repeatedly told appellants he would kill his "neighbors." Moreover, viewing the summary judgment record in the light most favorable to appellee as the non-moving party, *see Nicolaou*, 195 A.3d at 891, it is clear that appellants might have surmised, on "a moment's reflection," *see Tarasoff*, 551 P.2d at 345 n.11, that Andrews was targeting residents of his apartment building specifically, and particularly those on his floor with whom he interacted or had greater opportunity to interact. Indeed, Andrews referred on multiple occasions to "next-door neighbors," and a "neighbor" who knocked on his door in the "middle of the night." Under the undisputed facts of the current record, it cannot reasonably be said that when Andrews threatened to kill a "neighbor," he was uttering an ambiguous threat against an

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"amorphous group" of the public at large, residing in the urban South Oakland section of Pittsburgh generally, rather than one of his neighbors residing in Hampshire Hall.

The *Emerich* Court, when defining the duty to warn, relied in part upon Section 41.61 of the Code of Ethics of Pennsylvania's State Board of Psychology, which provides that psychologists should take "reasonable measures to prevent harm when a client has expressed a serious threat or intent to kill or seriously injure an identified or readily identifiable person or **group** of people[.]" *Emerich*, 720 A.2d at 1042, *quoting* 49 Pa.Code §41.61 (emphasis added). The trial court and the Superior Court thus properly determined the duty to warn applies not only when a specific threat is made against a single readily identifiable individual, but also when the potential targets are readily identifiable because they are members of a specific and identified group — in this case, "neighbors" residing in the patient's apartment building. In these circumstances, the potential targets are not a large amorphous group of the public in general, but a smaller, finite, and relatively homogenous group united by a common circumstance. Surely, Lisa Maas was a member of such a group relative to Andrews, and described in the complaint as "all Hampshire Hall tenants, particularly those who resided on the same floor as Mr. Andrews." Complaint, 3/4/11, at 6 ¶24.

IV. Conclusion

Accordingly, we conclude the trial court did not err when it denied appellants' motion for summary judgment. Moreover, the Superior Court correctly determined that the legal principles set forth in *Emerich* indicate appellants had a duty to warn "readily identifiable" victims, and the present record supports a finding that Lisa Maas, who was

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a neighbor who resided on the same floor of Hampshire Hall as Andrews, was just such a "readily identifiable" victim. We therefore affirm the order of the Superior Court.

Justices Todd and Mundy join the opinion.

Justice Baer files a dissenting opinion in which Chief Justice Saylor joins.

Justice Donohue and Wecht did not participate in the consideration or decision of this case.

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LEGAL COLUMN

Pennsylvania Recognizes an Affirmative Duty to Warn Third Party Victims

By Allan M. Tepper, J.D., Psy.D., PPA Legal Consultation Plan
and
Samuel Knapp, Ed.D., Professional Affairs Officer.

Since the 1976 *Tarasoff* decision, a national debate has existed regarding whether, and under what circumstances, a therapist owes a duty of care to a third party victim. Over the years, a large number of courts have held that such a duty of care does not exist. Recently, pursuant to *Emerich v. Philadelphia Center for Human Development*, the Pennsylvania Supreme Court held that a mental health professional who determines, or under the standards of the mental health profession should have determined, that the patient presents a serious danger of violence to another, has a duty to exercise reasonable care to protect by warning the intended victim against such danger. An analysis of this affirmative obligation will be presented in the following paragraphs.

Factual Background

In *Emerich*, the Pennsylvania Supreme Court outlined the legal underpinnings and parameters of a mental health professional's affirmative duty to warn an intended victim. In this respect, the *Emerich* decision contains limited historical and clinical information regarding the particular facts and circumstances surrounding this particular case.

Gad Joseph and his girlfriend, Theresa Hausler, were outpatients at the same mental health treatment center. Joseph suffered from past drug, alcohol, personality, and affective disorders, had a history of physical and verbal abuse directed against his former wife and Hausler, and had voiced homicidal ideation directed toward Hausler and others.

In May or June of 1991, Hausler terminated her relationship with Joseph. Following this breakup, Joseph stated on a number of occasions to his non-psychologist mental health counselor that he wanted to harm Hausler.

On June 27, 1991, at approximately 9:25 a.m., Joseph telephoned his counselor and advised his counselor that he was going to kill Hausler. The counselor immediately scheduled and conducted an 11:00 a.m. therapy session with Joseph. During this session, Joseph told his counselor that he was under great stress, and his anger was escalating on that day because Hausler was returning to their apartment to collect her clothing. Joseph told his counselor that he was going to kill Hausler if he found her removing clothing from their residence.

The counselor recommended that Joseph undergo a voluntary civil commitment. Joseph refused. Joseph assured the counselor that he would not harm Hausler. At 12:00 noon, Joseph left the counselor's office.

At 12:15 p.m., Hausler telephoned the counselor, stating that she was en route to the apartment and inquiring as to the whereabouts of Joseph. Hausler was instructed by the counselor not to go to the apartment and, instead, to return to her new residence in Reading, Pennsylvania. Following this conversation, Hausler went to the apartment. At approximately 12:30 p.m., Joseph killed Hausler by shooting her six times in the head and abdomen. Following this killing, Hausler's estate brought a civil action alleging, in part, that Joseph's mental health counselor had a duty to warn Hausler of the threat of harm, and that the counselor inadequately had discharged this duty of care.

Duty to Warn Third Party Victims

Following a discussion of *Tarasoff v. Regents of the University of California, et al.* and its progeny, the Pennsylvania Supreme Court held in *Emerich* that a mental health professional has a duty to warn a third party of potential harm by the professional's patient. In reaching this decision, the Court compared and contrasted a *Tarasoff* "duty to protect" standard with a "duty to warn" standard. Under this analysis, the Court stated that a duty to protect standard is a broader concept in which a warning is one of several alternative means by which the therapist can discharge his duty to protect. Under a duty to warn standard, however, some type of warning is required to discharge the therapist's duty of care.

It is important to note that throughout the Court's review and analysis of this issue, there is an extremely strong suggestion that the promulgated "duty to protect by warning" standard requires that the victim himself or herself be notified by the treating professional of the intended harm. Nonetheless, a footnote to the majority opinion leaves open this issue by stating "[a] gain, because of the facts before us, and in light of our limited grant, we are not required to address the related issue of whether this duty to warn may be discharged by notifying relatives of the victim, other individuals close to the victim, or the police. Also, we do not address the similar issue of whether a broader duty to protect exists, other than in the context of a duty to warn, and what actions would discharge any such duty if it did exist."

Circumstances Giving Rise to a Duty to Protect by Warning

Having determined that a mental health professional may have a duty to warn a third party of a patient's threat to harm the third party, the Court next considered the circumstances giving rise to this affirmative duty of care.

In addressing this issue, the Court stated that the first predicate for a duty to warn is the existence of a specific and immediate threat of serious bodily injury that has been communicated to the

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treating professional. Second, the duty to warn will arise only when the threat is made against a specifically identified or readily identifiable victim. If either of these two conditions is absent, no affirmative duty to warn exists.

Timing and Discharge of the Duty to Warn

Having decided that a mental health professional has a duty to protect by warning in situations where the patient has communicated to the therapist a specific and immediate threat of serious bodily injury against an identified or readily identifiable victim, the Court next turned to the manner and means by which the mental health professional is required to discharge this duty of care. Unfortunately, this analysis by the Court provides little concrete guidance for the practicing psychologists.

Under *Emerich*, a mental health professional is required to exercise reasonable care to protect by warning when the professional determines, or should determine under the standards of the mental health profession, that the patient presents a serious danger of violence to a third party. Although the Court recognized the difficulties associated with the prediction of future dangerous behavior, the Court stated somewhat vaguely that the standard of care for mental health professionals adequately takes into account the difficult nature of the problem facing them. The Court did cite the history of the patient and the course of treatment as two variables underlying the prediction of future dangerous behavior. Nonetheless, little additional guidance is provided to define the standards by which mental health professionals are to determine that a patient presents a serious danger of violence to a third party.

The Court was equally vague as to what type of warning is required. Basically, the Court stated that the warning must be reasonable under the particular circumstances. This requirement is clouded further by the Court's confidentiality admonition that the warning to the intended victim should be the least expansive based upon the circumstances. Thus, the exact type and content of the required warning remains unclear.

In *Emerich*, the Court held that the warning given by Joseph's counselor was reasonable as a matter of law. It is recommended that all psychologists read and retain the *Emerich* decision for future reference.

However, extreme caution must be exercised in relying upon the limited factual pattern outlined in *Emerich*. In *Emerich*, the Court inferred that the victim knew of Joseph's violent propensities, and that the victim telephoned Joseph's counselor in concern for her own safety. In this respect, the Court held that the instruction by the counselor to the victim for the victim not to go to the apartment and for the victim to return to her own residence was reasonable under the circumstances. In other situations, however, such a narrow warning might not be deemed adequate to have discharged the required duty of care.

Summary

In *Emerich v. Philadelphia Center for Human Development*, the Pennsylvania Supreme Court held that based upon the special relationship between a mental health professional and his or her patient, when the patient has communicated to the 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 or her 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 a danger. In this decision, the Court strongly implies that the victim himself or herself must receive the warning directly from the treating professional. Although other protective measures may be necessary or helpful to avert danger, a warning to the intended victim is required. The exact circumstances under which this duty arises, and the exact means by which this duty is to be discharged, will be determined on a case-by-case basis. Thus, although future case law may provide clearer legal guidelines, practicing psychologists today must continue to handle these matters in a reasoned, common-sense fashion. As in many other gray areas of the law, a well-reasoned, well-documented, objective, and logical approach to a problem often will help deflect future claims of negligence or wrongdoing.

REFERENCES

Emerich v. Philadelphia Center for Human Development. Slip Opinion #J-253-96 (Pa. Sup. Ct., Dec. 11, 1996).

Tarasoff v. Regents of the University of California, et. al. 551 P. 2d 334 (1976).

United They Stand

(continued from page 9)

our behalf on legislative matters in six states, and gained access to a major ERISA plan that previously prohibited our members from participation. Additionally, we are in the midst of collecting outcome data, the life blood for change in the system.

Our aim in this effort is to change the way in which managed care operates. To do this, we must educate the AFL-CIO about its power in this arena. Historically, unions have brought companies to bankruptcy over an increase in wages, but they have passed through increases in medical coverage. The power of the union to bargain for wages is the same power with which it can negotiate medical coverage. We are asking the AFL-CIO to refuse to purchase medical coverage that does not utilize union physicians, or prevents our members from rendering quality care. This is one way the largest private purchaser of medical coverage in the country can apply market forces. We believe managed care organizations cannot afford to lose the premium dollar paid by organized labor.

Let me close with a reference to my opening conclusion. Doctors will unionize. In the beginning, I thought the problems I was seeing were specifically related to podiatry. They are not. Physicians in virtually every specialty are experiencing the same problems, and managed care is using our licenses to make money and avoid responsibility for its own role within the health care system.

There are 650,000 providers in this country who deliver medical services. If we can join together and exert our presence through an alliance with the purchasers of the coverage, we can effect a change. The more members we have, the more effective the movement can be.

Duty to Protect by Warning: When Does the Duty Arise?

By Allan M. Tepper, J.D., Psy.D., PPA Legal Consultation Plan
and
Samuel Knapp, Ed.D., Professional Affairs Officer

In *Emerich v. the Philadelphia Center for Human Development*, the Pennsylvania Supreme Court held that under certain circumstances, a mental health professional has a duty to protect by warning a potential third-party victim (see Tepper and Knapp, 1999). This article will focus upon the facts and circumstances giving rise to this affirmative obligation.

In *Emerich*, The Pennsylvania Supreme Court attempted to balance the needs of a patient with the protection of potential third-party victims. In this regard, the Court stated that a balance must be struck between a mental health professional's obligation to provide confidential treatment to one's patient and the professional's responsibility to thwart future violence.

In attempting to strike a balance between these sometimes competing responsibilities, the Court held that under limited circumstances, a duty of care may arise between a mental health professional and an outside third party. More specifically, the Court found that when the patient has communicated to the 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 (*Emerich v. Philadelphia Center for Human Development*, page 1043; emphasis ours).

Professional obligations

The first requirement giving rise to this duty by warning is the existence of a specific and immediate threat of serious bodily injury made against an identified or readily identifiable victim. Unfortunately, what constitutes "a specific and immediate threat" of serious bodily injury is not well defined in the body of the Court's decision. That is, the element involves a temporal component which can be affected by internal and external factors. "I feel like killing my spouse," "If my spouse leaves me, I will kill her," and "I have to end this abuse from by boss" are examples of situations in which the mental health professional must render a judgment as to whether the verbalized threat is of an immediate nature.

If the mental health professional concludes that the patient has communicated a specific and immediate threat, the mental health professional then is obligated to assess whether the patient presents a serious danger of violence to the third party. Once again, what constitutes a "serious danger of violence" is not well defined in the body of the Court's decision. This assessment, in essence, involves the prediction of dangerous behavior.

There is no simple or failsafe method of predicting future dangerous behavior. Overall, past violent behavior is correlated highly with future violent behavior. In this regard, a detailed history may be required to help determine whether the patient presents a serious danger of violence. Often, in traditional therapy situations, the therapist allows the clinical material to unfold, rather than spending the initial contact hours gathering a detailed personal history. Nonetheless, if a patient voices a specific and immediat threat of serious bodily injury directed toward another, this typ of detailed history may be necessary to assess whether the patien presents a serious danger of violence.

A review of prior treatment records and interviews witl outside individuals who are familiar with the patient are additiona means of obtaining clinical data to help determine whether th patient presents a serious danger of violence (McNiel, D., Binder R., and Fulton, F., 1998; Monahan, J. 1993). Once again, such adjunct sources of information often are not utilized immediately in more traditional psychotherapy situations. In addition, depending upon the immediacy of the threat of serious bodily injury, the mental health professional may not have adequate time to gather and review such outside materials prior to having to decide whether or not to warn the intended victim. Nonetheless, such background records and third-party interviews traditionally are additional sources of information upon which mental health professionals rely when determining whether a patient presents a serious danger of violence to a third party.

The Pennsylvania Supreme Court in *Emerich* acknowledged the difficulty inherent in predicting future violent behavior. Nonetheless, when addressing this topic, the Court stated "We are unpersuaded that difficulty in predicting violent conduct alone should justify barring recovery in all situations." (p.1041) The Court stated further that "The standard of care for mental health professionals adequately takes into account the difficult nature of the problem facing them." (p.1041) In this regard, a careful, thoughtful, and clinically sound assessment must be conducted in the appropriate cases to determine whether the patient presents a serious danger of violence to a third party. Future liability may attach if such an assessment is not conducted in an adequate manner.

References

Emerich v. Philadelphia Center for Human Development, 720 A 2d 1032 (Pa. 1998).

McNeil, D., Binder, R., & Fulton, F. (1998). Management of threats of violence under California's duty-to-protect statute. *American Journal of Psychiatry, 155*, 1097-1101.

Monahan, J. (1993). Limiting therapist exposure to Tarasoff liability; Guidelines for risk containment. *American Psychologist, 48*, 242-250.

Tepper, A., Knapp, S. (1998). Pennsylvania recognizes an affirmative duty to warn third-party victims. *Pennsylvania Psychologist, 59* (2), pp. 8, 29.

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PART VI
CHILDREN AND MINORS

Chapter

Enactment. Unless otherwise noted, Part VI was added October 30, 1985, P.L.264, No.66, effective in 90 days.

CHAPTER 51
GENERAL PROVISIONS

Sec.

Enactment. Chapter 51 was added December 19, 1990, P.L.1240, No.206, effective in 90 days.

§ 5101. Attainment of full age.

(a) Age for entering into contracts.--Any individual 18 years of age and older shall have the right to enter into binding and legally enforceable contracts and the defense of minority shall not be available to such individuals.

(b) Age for suing and being sued.--Except where otherwise provided or prescribed by law, an individual 18 years of age and older shall be deemed an adult and may sue and be sued as such.

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CHAPTER 53
CHILD CUSTODY

Sec.

Enactment. Chapter 53 was added November 23, 2010, P.L.1106, No.112, effective in 60 days.

Prior Provisions. Former Chapter 53, which related to custody, was added October 30, 1985, P.L.264, No.66, and repealed November 23, 2010, P.L.1106, No.112, effective in 60 days.

Proceedings under Former Chapter 53. Section 4 of Act 112 of 2010 provided that a proceeding under the provisions of former Chapter 53 which was commenced before the effective date of section 4 shall be governed by the law in effect at the time the proceeding was initiated.

Cross References. Chapter 53 is referred to in sections 3901, 5429, 5603, 5612, 5613, 5622, 6108 of this title; section 9121 of Title 18 (Crimes and Offenses).

§ 5321. Scope of chapter.

This chapter applies to disputes relating to child custody matters.

§ 5322. Definitions.

(a) This chapter.--The following words and phrases when used in this chapter shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Abuse." As defined in section 6102 (relating to definitions).

"Adult." An individual 18 years of age or older.

"Agency." Any organization, society, institution, court facility or other entity which provides for the care of a child. The term does not include a county children and youth social service agency.

"Child." An unemancipated individual under 18 years of age.

"Legal custody." The right to make major decisions on behalf of the child, including, but not limited to, medical, religious and educational decisions.

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"Parental duties." Includes meeting the physical, emotional and social needs of the child.

"Partial physical custody." The right to assume physical custody of the child for less than a majority of the time.

"Physical custody." The actual physical possession and control of a child.

"Primary physical custody." The right to assume physical custody of the child for the majority of time.

"Relocation." A change in a residence of the child which significantly impairs the ability of a nonrelocating party to exercise custodial rights.

"Shared legal custody." The right of more than one individual to legal custody of the child.

"Shared physical custody." The right of more than one individual to assume physical custody of the child, each having significant periods of physical custodial time with the child.

"Sole legal custody." The right of one individual to exclusive legal custody of the child.

"Sole physical custody." The right of one individual to exclusive physical custody of the child.

"Supervised physical custody." Custodial time during which an agency or an adult designated by the court or agreed upon by the parties monitors the interaction between the child and the individual with those rights.

(b) Other law.--In a statutory provision other than in this chapter, when the term "visitation" is used in reference to child custody, the term may be construed to mean:

(1) partial physical custody;
(2) shared physical custody; or
(3) supervised physical custody.

§ 5323. Award of custody.

(a) Types of award.--After considering the factors set forth in section 5328 (relating to factors to consider when awarding custody), the court may award any of the following types of custody if it is in the best interest of the child:

(1) Shared physical custody.
(2) Primary physical custody.
(3) Partial physical custody.
(4) Sole physical custody.
(5) Supervised physical custody.
(6) Shared legal custody.
(7) Sole legal custody.

(b) Interim award.--The court may issue an interim award of custody to a party who has standing under section 5324 (relating to standing for any form of physical custody or legal custody) or 5325 (relating to standing for partial physical custody and supervised physical custody) in the manner prescribed by the Pennsylvania Rules of Civil Procedure governing special relief in custody matters.

(c) Notice.--Any custody order shall include notice of a party's obligations under section 5337 (relating to relocation).

(d) Reasons for award.--The court shall delineate the reasons for its decision on the record in open court or in a written opinion or order.

(e) Safety conditions.--After considering the factors under section 5328(a)(2), if the court finds that there is an ongoing risk of harm to the child or an abused party and awards any form of custody to a party who committed the abuse or who has a household member who committed the abuse, the court shall include in the custody order safety conditions designed to protect the child or the abused party.

(f) Enforcement.--In awarding custody, the court shall specify the terms and conditions of the award in sufficient detail to

ALLOWING MINORS TO CONSENT TO MEDICAL CARE - MENTAL HEALTH TREATMENT AND RELEASE OF MEDICAL RECORDS

Act of Jul. 23, 2020, P.L. 647, No. 65 **Cl. 35**

Session of 2020
No. 2020-65

HB 672

AN ACT

Amending the act of February 13, 1970 (P.L.19, No.10), entitled "An act enabling certain minors to consent to medical, dental and health services, declaring consent unnecessary under certain circumstances," further providing for mental health treatment and for release of medical records.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 1.1 and 1.2 of the act of February 13, 1970 (P.L.19, No.10), entitled "An act enabling certain minors to consent to medical, dental and health services, declaring consent unnecessary under certain circumstances," are amended to read:

Section 1.1. Mental Health Treatment.--(a) [The following shall apply to consent for outpatient treatment:

(1) Any minor who is fourteen years of age or older may consent on his or her own behalf to outpatient mental health examination and treatment, and the minor's parent's or legal guardian's consent shall not be necessary.

(2) A parent or legal guardian of a minor less than eighteen years of age may consent to voluntary outpatient mental health examination or treatment on behalf of the minor, and the minor's consent shall not be necessary.

(3) A minor may not abrogate consent provided by a parent or legal guardian on the minor's behalf, nor may a parent or legal guardian abrogate consent given by the minor on his or her own behalf.

(b) The following shall apply to consent for inpatient treatment:

(1) A minor's parent or legal guardian may consent to voluntary inpatient treatment pursuant to Article II of the act of July 9, 1976 (P.L.817, No.143), known as the "Mental Health Procedures Act," on behalf of a minor less than eighteen years of age on the recommendation of a physician who has examined the minor. The minor's consent shall not be necessary.

(2) Nothing in this section shall be construed as restricting or altering a minor's existing rights, including, but not limited to, those enumerated under the "Mental Health Procedures Act," to consent to voluntary inpatient mental health treatment on his or her own behalf at fourteen years of age or older.

(3) Nothing in this section shall be construed as restricting or altering a parent or legal guardian's existing rights to object

to a minor's voluntary treatment provided pursuant to the minor's consent on his or her own behalf.

(4) A minor may not abrogate consent provided by a parent or legal guardian on the minor's behalf, nor may a parent or legal guardian abrogate consent given by the minor on his or her own behalf.

(5) A parent or legal guardian who has provided consent to inpatient treatment under paragraph (1) may revoke that consent, which revocation shall be effective unless the minor who is fourteen to eighteen years of age has provided consent for continued inpatient treatment.

(6) A minor who is fourteen to eighteen years of age who has provided consent to inpatient treatment may revoke that consent, which revocation shall be effective unless the parent or legal guardian to the minor has provided for continued treatment under paragraph (1).

(7) At the time of admission, the director of the admitting facility or his designee shall provide the minor with an explanation of the nature of the mental health treatment in which he may be involved together with a statement of his rights, including the right to object to treatment by filing a petition with the court. If the minor wishes to exercise this right, the director of the facility or his designee shall provide a form for the minor to provide notice of the request for modification or withdrawal from treatment. The director of the facility or his designee shall file the signed petition with the court.

(8) Any minor fourteen years of age or older and under eighteen years of age who has been confined for inpatient treatment on the consent of a parent or legal guardian and who objects to continued inpatient treatment may file a petition in the court of common pleas requesting a withdrawal from or modification of treatment. The court shall promptly appoint an attorney for such minor person and schedule a hearing to be held within seventy-two hours following the filing of the petition, unless continued upon the request of the attorney for the minor, by a judge or mental health review officer who shall determine whether or not the voluntary mental health treatment is in the best interest of the minor. For inpatient treatment to continue against the minor's wishes, the court must find all of the following by clear and convincing evidence:

(i) that the minor has a diagnosed mental disorder;

(ii) that the disorder is treatable;

(iii) that the disorder can be treated in the particular facility where the treatment is taking place; and

(iv) that the proposed inpatient treatment setting represents the least restrictive alternative that is medically appropriate.

(9) A minor ordered to undergo treatment due to a determination under paragraph (8) shall remain and receive inpatient treatment at the treatment setting designated by the court for a period of up to twenty days. The minor shall be discharged whenever the attending physician determines that the minor no longer is in need of treatment, consent to treatment has been revoked under paragraph (5) or at the end of the time period of the order, whichever occurs first. If the attending physician

determines continued inpatient treatment will be necessary at the end of the time period of the order and the minor does not consent to continued inpatient treatment prior to the end of the time period of the order, the court shall conduct a review hearing in accordance with this subsection to determine whether to:

(i) release the minor; or

(ii) make a subsequent order for inpatient mental health treatment for a period not to exceed sixty days subject to discharge of the minor whenever the attending physician determines that the minor no longer is in need of treatment, or if consent has been revoked under paragraph (5).

(10) The procedure for a sixty-day period of treatment under paragraph (9)(ii) shall be repeated until the court determines to release the minor or the minor is discharged in accordance with paragraph (9).

(11) Nothing in this subsection shall prevent a nonconsenting parent who has legal custody rights of a minor child to object to the consent given by the other parent to inpatient treatment under paragraph (1) by filing a petition in a court of common pleas in the county where the child resides. The court shall hold a hearing on the objection within seventy-two hours of the filing of the petition.

(c) Nothing in subsections (a) and (b) is intended to restrict the rights of a minor who satisfies the conditions of section 1.

(d) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Court of common pleas" means the court of common pleas in the county where the subject of the proceeding is being treated.

"Facility" means any mental health establishment, hospital, clinic, institution, center, day-care center, base service unit, community mental health center, or part thereof, that provides for the diagnosis, treatment, care or rehabilitation of mentally ill persons.

"Inpatient treatment" means all mental health treatment that requires full-time or part-time residence in a facility that provides mental health treatment.

"Mental health treatment" means a course of treatment, including evaluation, diagnosis, therapy and rehabilitation, designed and administered to alleviate an individual's pain and distress and to maximize the probability of recovery from mental illness. The term also includes care and other services which supplement treatment and aid or promote recovery.] **The following shall apply to consent for voluntary inpatient and outpatient mental health treatment:**

(1) A parent or legal guardian of a minor less than eighteen years of age may consent to voluntary inpatient mental health treatment under Article II of the act of July 9, 1976 (P.L.817, No.143), known as the "Mental Health Procedures Act," if inpatient mental health treatment is determined to be necessary by a physician, licensed clinical psychologist or other mental health professional or outpatient mental health treatment on behalf of the minor, and the minor's consent shall not be necessary. An initial determination that inpatient mental health treatment of a minor is necessary under this paragraph shall be independent of

the requirements of section 205 of the "Mental Health Procedures Act."

(2) A minor who is fourteen years of age or older may consent on the minor's own behalf to voluntary inpatient mental health treatment as provided under Article II of the "Mental Health Procedures Act" or outpatient mental health treatment, and the minor's parent's or legal guardian's consent shall not be necessary.

(3) A minor or another parent or legal guardian may not abrogate consent provided by a parent or legal guardian on the minor's behalf to voluntary inpatient or outpatient mental health treatment under paragraph (1), nor may a parent or legal guardian abrogate consent given by the minor on the minor's own behalf.

(4) A parent or legal guardian who has provided consent to voluntary inpatient or outpatient mental health treatment under paragraph (1) may revoke that consent, which revocation shall be effective unless the minor who is fourteen to eighteen years of age has provided consent for continued voluntary inpatient or outpatient mental health treatment.

(5) A minor who is fourteen to eighteen years of age who has provided consent to voluntary inpatient or outpatient mental health treatment may revoke that consent, which revocation shall be effective unless the parent or legal guardian to the minor has provided for continued treatment under paragraph (1).

(6) At the time of admission, the director of the admitting facility or a designee of the director shall provide the minor with an explanation of the nature of the mental health treatment in which the minor may be involved together with a statement of the minor's rights, including the right to object to treatment by filing a petition with the court. If the minor wishes to exercise this right at any time, the director of the facility or a designee of the director shall provide a form for the minor to provide notice of the request for modification or withdrawal from treatment. The director of the facility or a designee of the director shall file the signed petition with the court.

(7) When a petition is filed on behalf of a minor fourteen years of age or older and under eighteen years of age who has been confined for inpatient treatment on the consent of a parent or legal guardian and who objects to continued inpatient treatment by requesting a withdrawal from or modification of treatment, the court shall promptly appoint an attorney for the minor and schedule a hearing to be held within seventy-two hours following the filing of the petition, unless continued upon the request of the attorney for the minor, by a judge or mental health review officer who shall determine whether or not the voluntary mental health treatment is in the best interest of the minor. For inpatient treatment to continue against the minor's wishes, the court must find all of the following by clear and convincing evidence:

(i) that the minor has a diagnosed mental disorder;

(ii) that the disorder is treatable;

(iii) that the disorder can be treated in the particular facility where the treatment is taking place; and

(iv) that the proposed inpatient treatment setting represents the least restrictive alternative that is medically appropriate.

(8) A minor ordered to undergo treatment due to a determination under paragraph (7) shall remain and receive inpatient treatment at the treatment setting designated by the court for a period of up to twenty days. The minor shall be discharged whenever the attending physician determines that the minor no longer is in need of treatment, consent to treatment has been revoked under paragraph (4) or at the end of the time period of the order, whichever occurs first. If the attending physician determines continued inpatient treatment will be necessary at the end of the time period of the order and the minor does not consent to continued inpatient treatment prior to the end of the time period of the order, the court shall conduct a review hearing in accordance with this subsection to determine whether to:

(i) release the minor; or

(ii) make a subsequent order for inpatient mental health treatment for a period not to exceed sixty days subject to discharge of the minor whenever the attending physician determines that the minor no longer is in need of treatment, or if consent has been revoked under paragraph (4).

(9) The procedure for a sixty-day period of treatment under paragraph (8)(ii) shall be repeated until the court determines to release the minor or the minor is discharged in accordance with paragraph (8).

(10) Nothing in this subsection shall prevent a nonconsenting parent who has legal custody rights of a minor child to object to the consent given by the other parent to inpatient treatment under paragraph (1) by filing a petition in a court of common pleas in the county where the minor resides. The court shall hold a hearing on the objection within seventy-two hours of the filing of the petition.

(b) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Facility" means any mental health establishment, hospital, clinic, institution, center, day-care center, base service unit, community mental health center, or part thereof, that provides for the diagnosis, treatment, care or rehabilitation of persons with mental illness.

"Inpatient treatment" means all mental health treatment that requires full-time or part-time residence in a facility that provides mental health treatment.

"Mental health treatment" means a course of treatment, including evaluation, diagnosis, therapy and rehabilitation, designed and administered to alleviate an individual's pain and distress and to maximize the probability of recovery from mental illness. The term also includes care and other services which supplement treatment and aid or promote recovery.

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Section 1.2. Release of Medical Records.--(a) [When a parent or legal guardian has consented to treatment of a minor fourteen years of age or older under section 1.1(a)(2) or (b)(1), the following shall apply to release of the minor's medical records and information:

(1) The parent or legal guardian may consent to release of the minor's medical records and information, including records of prior mental health treatment for which the parent or legal guardian had provided consent, to the minor's current mental health treatment provider.

(2) If deemed pertinent by the minor's current mental health treatment provider, the release of information under this subsection may include a minor's mental health records and information from prior mental health treatment for which the minor had provided consent to treatment.

(3) The parent or legal guardian may consent to the release of the minor's mental health records and information to the primary care provider if, in the judgment of the minor's current mental health treatment provider, such release would not be detrimental to the minor.

(b) Release of mental health records and information under subsection (a) shall be limited to release directly from one provider of mental health treatment to another or from the provider of mental health treatment to the primary care provider.

(c) The parent or legal guardian who is providing consent to mental health treatment of a minor fourteen years of age or older under section 1.1(a)(2) or (b)(1) shall have the right to information necessary for providing consent to the minor's mental health treatment, including symptoms and conditions to be treated, medications and other treatments to be provided, risks and benefits and expected results.

(d) Except to the extent set forth in subsection (a), (b) or (c), the minor shall control the release of the minor's mental health treatment records and information to the extent allowed by law. When a minor has provided consent to outpatient mental health treatment under section 1.1(a)(1), subject to subsection (a)(2), the minor shall control the records of treatment to the same extent as the minor would control the records of inpatient care or involuntary outpatient care under the act of July 9, 1976 (P.L.817, No.143), known as the "Mental Health Procedures Act," and its regulations.

(e) Consent to release of mental health records for all purposes and in all circumstances other than those provided for in this section shall be subject to the provisions of the "Mental Health Procedures Act" and other applicable Federal and State statutes and regulations.] **When a parent or legal guardian has consented to voluntary inpatient or outpatient mental health treatment of a minor under section 1.1, the following shall apply to release of the minor's medical records and information:**

(1) The parent or legal guardian may consent to release of the minor's medical records and information, including records of prior mental health treatment for which the parent or legal guardian had provided consent, to the minor's current mental health treatment provider.

(2) If deemed pertinent by the minor's current mental health treatment provider, the release of information under this subsection may include a minor's mental health records and information from prior mental health treatment for which the minor had provided consent to treatment.

(3) The parent or legal guardian may consent to the release of the minor's mental health records and information to the primary care provider if, in the judgment of the minor's current mental health treatment provider, the release would not be detrimental to the minor.

(b) Release of mental health records and information under subsection (a) shall be limited to release directly from one provider of mental health treatment to another or from the provider of mental health treatment to the primary care provider.

(c) The parent or legal guardian who is providing consent to voluntary inpatient or outpatient mental health treatment of a minor under section 1.1 shall have the right to information necessary for providing consent to the minor's mental health treatment, including symptoms and conditions to be treated, medications and other treatments to be provided, risks and benefits and expected results.

(d) Except to the extent provided under subsection (a), (b) or (c), the minor shall control the release of the minor's mental health treatment records and information to the extent allowed by law. When a minor has provided consent to outpatient mental health treatment under section 1.1, subject to subsection (a)(2), the minor shall control the records of treatment to the same extent as the minor would control the records of inpatient care or involuntary outpatient care under the act of July 9, 1976 (P.L.817, No.143), known as the "Mental Health Procedures Act," and its regulations.

(e) Consent to release of mental health records for all purposes and in all circumstances other than those provided for in this section shall be subject to the provisions of the "Mental Health Procedures Act" and other applicable Federal and State statutes and regulations.

Section 2. This act shall take effect in 60 days.

APPROVED--The 23rd day of July, A.D. 2020.

TOM WOLF

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