Ewing v. Goldstein decision summary

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Bram Fridhandler, Ph.D.

The California Supreme Court, by deciding not to review a lower court decision, has created a new source of liability for California psychologists.

The decision arose from a lawsuit against David Goldstein, Ph.D., a licensed MFT. In 2001, Dr. Goldstein's patient, a former police officer whom he had been treating for four years, became depressed over the fact that his former girlfriend had a new boyfriend, Keith Ewing. In June, two days after a session, Dr. Goldstein had a phone contact with the patient that raised sufficient concern that he asked the patient's permission to speak to his father, which the patient granted. That evening, after the patient spoke to his parents of his depression and his thoughts of causing harm to the new boyfriend, the patient's father called Dr. Goldstein, who made arrangements for the patient to be admitted to a nearby inpatient psychiatry unit.

The next day, the inpatient psychiatrist told the patient's father that he was planning to discharge the patient that same day. Alarmed, the father called Dr. Goldstein, who contacted the psychiatrist and urged him to re-consider. The psychiatrist stated that because the patient was not suicidal, he was going to follow through on the plan to discharge him that day. The following day, the patient murdered Keith Ewing and killed himself.

Ewing's parents filed lawsuits against both the psychiatrist and Dr. Goldstein. However, their suit against Dr. Goldstein was dismissed under the protection of Civil Code 43.92, because the only specific indication that he had had of the patient's dangerousness came through the father's report, not directly from the patient. The Ewings appealed this dismissal to the Second District Court of Appeals, in Los Angeles.

The appeals court agreed that their lawsuit against Dr. Goldstein should not have been dismissed. They reasoned that the Legislature did not intend to shield a therapist from suit in such a situation because, for the sake of public safety, it would want a therapist to consider a communication "from a family member to the patient's therapist, made for the purpose of advancing the patient's therapy" in deciding whether a Tarasoff warning is needed.

Because the California Supreme Court has declined to review this decision, legal authorities have stated that the Ewing v. Goldstein decision is now law in California. That is, a therapist may now be held liable for failing to make a Tarasoff warning based on a communication from a patient's family member.

Unfortunately, this raises ambiguities that will take time (and perhaps more court cases) to resolve. The decision does not, for example, relieve us of the legal responsibility to use clinical judgment in assessing the seriousness of a patient threat before issuing a Tarasoff warning. That is, we can still be sued for unwarranted breach of confidentiality if we issue a warning without a clinically reasonable basis. In fact, the decision may give us the additional task of determining whether the communication has been made "for the purpose of advancing the patient's therapy." This puts us in the difficult legal (not to mention clinical) situation of needing

to assess the reliability and motivation of a family member's communication without inappropriately violating the patient's confidentiality.

Many therapists, including myself, accept communications from third parties, but tell these third parties (1) that they cannot reveal whether they are providing services to the patient, and (2) that their policy is to share such communications with a patient, both to preserve the necessary openness of the therapy relationship and to pursue the safety issues raised by the communication. In some situations this raises problems, of course, such as when the third party is afraid of retaliation. However, it often works smoothly, and when it does, it helps to preserve the viability of therapy while still bringing in potentially critical information. It also, of course, allows the therapist to assess dangerousness based on direct information from the patient, which is arguably much better information than reports from third parties. (Notably, the only apparent obstacle to this approach in the Ewing v. Goldstein case was that Dr. Goldstein did not speak to his patient in the two days between the father's report and the murder-suicide.)

The November 30, 2004 issue of the California Psychological Association's Progress Notes carried a statement from CPA's attorney on the import of the decision, and The California Psychologist has also included an attorney's summary. In addition, Michael Donner, Ph.D. and I have recently published a piece, in March/April 2005 issue of The California Psychologist, arguing that therapists should not be misled into excessive breaches of confidentiality in the wake of the Ewing decision.

UPDATE (March 2007): Professional organizations, including CPA, attempted to roll back the Ewing decision in the California Legislature. However, legislative realities prevented this, and the changes in the Tarasoff statute, Civil Code 43.92, effective 1/1/2007, did not alter the impact of the Ewing decision with regard to the role of communications from family members.

The views expressed here are the author's and not necessarily those of the San Francisco Psychological Association. This article is not intended to replace the advice of an attorney.