

Position Statement on a “Dangerous Patient” Exception to Psychotherapist-Patient Privilege in Criminal Court Proceedings

Approved by the Board of Trustees, December 2024

Approved by the Assembly, November 2024

“Policy documents are approved by the APA Assembly and Board of Trustees. ... These are ... position statements that define APA official policy on specific subjects.” – *APA Operations Manual*

Issue:

Psychiatrists may have a duty to warn/protect under state law when an acute danger exists to protect victims or prevent violence against another person or place (e.g., Tarasoff duty). This position statement does not concern such duty. Instead, this position relates to the possibility that psychiatrists may be asked to testify about the dangerousness of patients who are facing criminal charges. Although patients’ treatment-related communications with their psychiatrists are ordinarily covered by a psychotherapist-patient privilege under state and federal laws—i.e., they cannot be introduced in court proceedings without patients’ consent—some state courts have carved out a “dangerous patient” exception to this rule. Thus, psychiatrists in those jurisdictions may be compelled to testify about patients’ reports of previous violence and threats of violence, along with other indicators of potential future violence. In contrast to psychiatrists’ disclosures of threats aimed at protecting third parties (e.g., Tarasoff duty), this testimony is typically used to enhance the sentence imposed on the defendant. Abrogation of the privilege in these cases undermines the promise of confidentiality that is essential to effective psychiatric treatment and turns psychiatrists into an arm of the criminal justice system.

APA Position:

It is the position of the American Psychiatric Association that there should be no “dangerous patient” exception to federal or state psychotherapist-patient privileges in criminal proceedings.

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