

SB 1134 (Yee) – Persons of Unsound Mind: Psychotherapist Duty to Protect

Introduced February 21, 2012, Chaptered 7/17/12

This bill deletes from the immunity from monetary liability statute concerning a psychotherapist's "duty to warn and protect" of threatened violent behavior of a patient the phrase "duty to warn" thus keeping the term "duty to protect", as specified.

Under common law, persons generally owe no duty to control the conduct of another, or to warn anyone endangered by the conduct of another. An exception to that general rule applies to individuals who have a special relationship to the person whose conduct needs to be controlled or to the foreseeable victim of that conduct. (*Tarasoff v. Regents of University of Cal.* (1976) 17 Cal.3d 425, 435.) In *Tarasoff*, the California Supreme Court held that when a psychotherapist "determines, or pursuant to the standards of the profession should determine, that their patient presents a serious danger of violence to another, the psychotherapist incurs an obligation to use reasonable care to protect the intended victim against such danger." (17 Cal.3d 425, 431.) To discharge their duty, psychotherapists may be required 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.*) In 1985, AB 1133 (McAlister, Chapter 737, Statutes of 1985) codified both the psychotherapists' duty and one method to discharge that duty. Specifically, AB 1133 stated that a psychotherapist's duty to warn and protect shall be discharged upon "making reasonable efforts to communicate the patient's threat to the victim or victims and to a law enforcement agency." (Civil Code Section 43.92.) AB 733 (Nation, Chapter 136, Statutes of 2006) altered this immunity provision to clarify, by implication, that a psychotherapist may fulfill his or her duty by taking reasonable actions "other" than notifying a potential victim and law enforcement of a patient's threatened violent behavior.

This bill seeks to further clarify psychotherapists' duty under the above circumstance by changing the duty referred to by the statute from a "duty to warn and protect" to a "duty to protect."

This bill states that it is the intent of the Legislature that the amendments made by the act only change the name of the duty referenced in this section (CIV Section 43.92) from a duty to warn and protect to a duty to protect. Nothing in this section shall be construed to be a substantive change, and any duty of a psychotherapist shall not be modified as a result of changing the wording in this section. This bill states that it is the intent of the Legislature that a court interpret this section in a manner consistent with the interpretation of this section as it read prior to January 1, 2013.

Senate Bill No. 1134

CHAPTER 149

An act to amend Section 43.92 of the Civil Code, relating to liability.

[Approved by Governor July 17, 2012. Filed with
Secretary of State July 17, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1134, Yee. Persons of unsound mind: psychotherapist duty to protect.

Existing law provides that no monetary liability and no cause of action arises against a psychotherapist, as defined, for failing to warn and protect from a patient's threatened violent behavior except if the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims. Existing law also specifies that no monetary liability and no cause of action shall arise against a psychotherapist who, under those circumstances, discharges his or her duty to warn and protect by making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.

This bill would revise these provisions by removing any duty to warn. The bill would also express the intent of the Legislature that this bill changes only the name of the duty described above from a duty to warn and protect to a duty to protect.

The people of the State of California do enact as follows:

SECTION 1. Section 43.92 of the Civil Code is amended to read:

43.92. (a) There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is a psychotherapist as defined in Section 1010 of the Evidence Code in failing to protect from a patient's threatened violent behavior or failing to predict and protect from a patient's violent behavior except if the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims.

(b) There shall be no monetary liability on the part of, and no cause of action shall arise against, a psychotherapist who, under the limited circumstances specified in subdivision (a), discharges his or her duty to protect by making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.

(c) It is the intent of the Legislature that the amendments made by the act adding this subdivision only change the name of the duty referenced in this section from a duty to warn and protect to a duty to protect. Nothing in this section shall be construed to be a substantive change, and any duty of

a psychotherapist shall not be modified as a result of changing the wording in this section.

(d) It is the intent of the Legislature that a court interpret this section, as amended by the act adding this subdivision, in a manner consistent with the interpretation of this section as it read prior to January 1, 2013.

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