

## 4 LEGAL ISSUES

*This section provides information you need to know, as well as steps you may need to take, regarding two important legal matters: patient record-keeping and duty to protect. The sidebar on page 12 guides you to online sources of information about additional legal topics.*

### Steps to Understanding Your Duty to Protect

**W**hat needs to happen if you work with a client who threatens serious physical harm against another person and you believe the client intends to commit the violence? Knowing the answer to this question is vital since you as a practitioner must be prepared to meet the requirements you face under the legal mandate known as “duty to protect.”

“Duty to protect” is an exception to the general rule that communications between a client and psychologist in the context of a professional relationship are confidential, and a practicing psychologist is responsible for maintaining that confidentiality.

Understanding duty to protect (also known as “duty to warn”) and taking the necessary steps in situations that may entail this duty can help shield you from legal problems while protecting others from possible danger.

#### What to Do

Taking the following steps should help prepare you to meet your professional obligations:

**Learn the provisions of relevant state law.** This includes decisions made by courts known as case law as well as statutes. If your state has a duty to protect statute, it is important for you to know the details and to check regularly for possible statutory changes.

**Know when duty to protect applies.** Certain elements of duty to protect statutes are common across jurisdictions. For example, to trigger a duty to protect, the communication generally must take place as part of the professional relationship between you and your client. Another commonality among these laws is that they focus on the client’s potential for violence. If a client talks about other

people who are violent, the treating psychologist typically does not have a duty to protect.

Other aspects vary from one statute to another. Some may indicate, for example, that the duty to protect arises only when there is an identifiable victim and the intended violence is imminent. Other statutes may apply to a more general threat not limited to a specific person or persons — for example, when a client says he intends to set off an explosive device in a public place.

#### **Be prepared to take the steps required by law.**

These vary from reporting to the police and/or the intended victim to taking additional steps to

prevent the violence, such as hospitalizing the client.

**Consult with other practitioners who are well-informed about duty to protect and take additional steps to gain relevant information.** Certain aspects of duty to protect may be



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perplexing. For example, when is an intended violent act considered “imminent?” How do you evaluate if a client intends to follow through on threats or is just blowing off steam? To help you consider such questions and take appropriate steps in response to clinical encounters, it may be useful to consult with another psychologist or other health professional with expertise in this area, especially if you have little or no prior experience of your own. Documentation of such consultation along with the rationale for decisions about the steps you take can be important if any legal actions occur.

Additional steps that may be helpful to take include reviewing the current literature about duty to protect, considering risk management workshops on the topic, and asking your malpractice insurance carrier representative for information. Tapping such sources of knowledge can help you stay abreast of relevant state law.

**Learn what duty may exist even if your state has no relevant statute or case law.** Psychologists can not reasonably assume they have no duty to protect if their state lacks a statute or relevant court decisions. The duty also may arise from

“common law,” which involves legal concepts that are not necessarily encoded but that may apply if a case were brought to trial.

If your state has no statute or case law, speak with an attorney or other knowledgeable individuals to find out what the standard of practice is in your state and the likelihood that a duty to protect would be imposed in a particular situation. Factors that may have a bearing on your professional obligations include any applicable common law and what surrounding states do regarding duty to protect. ●

### ONLINE RESOURCES

Here’s where to find information online about selected legal and ethical matters of interest to practicing psychologists.

#### **Responding to a Subpoena –**

*Strategies for Private Practitioners Coping With Subpoenas or Compelled Testimony for Client Records or Test Data* by the APA Committee on Legal Issues. Available soon on APApractice.org.

#### **A Matter of Law –**

This series of articles from the *PracticeUpdate* e-newsletter about how various laws affect practicing psychologists can be found on APApractice.org in the “E-Newsletter” section.

#### **APA Ethics Code –**

*Ethical Principles of Psychologists and Code of Conduct*, revised in 2002, is available at:

<http://www.apa.org/ethics/code2002.html>

#### **Psychology Board Disciplinary Procedures –**

*Understanding Licensing Board Disciplinary Procedures* by the Committee for the Advancement of Professional Practice/Board of Professional Affairs Task Force on Understanding Licensing Board Disciplinary Procedures. Available on APApractice.org in the “HIPAA and Regulatory Issues” section.