**TARSOFF AND RISK ASSESSMENT BACKGROUND AND RESOURCES**

**Attachment A** **Risk Assessment Background**

Assessing risk of violence to others is complicated by the there are many types of violence with different characteristics. For example, some domestic terror incidents reveal, after the fact, meticulous planning, calculation, preparation, and attention to detail, and may have a "cold" emotional quality. On the other end of the spectrum are those intimate partner violence episodes that may be impulsive and have a "hot" emotional quality, with many different variations and combinations in between. There is no consistently observed profile of an individual that always predicts potential violence. Instead, it is important to consider many different factors and weigh risk factors against protective factors.

The following are general principles gleaned from research by the US Secret Service, the Department of Homeland Security, the National Threat Assessment Center, and the Centers for Disease Control. These are by no means exhaustive resources, but can help guide clinical assessment.

**General Principles**:

1. An individual's right to life and safety outweighs a client's right to privacy. As a result, when necessary to ensure safety, the law requires clinical staff to disclose confidential information to ensure the safety of others.
2. Always complete AND DOCUMENT a thorough risk assessment. If you do not document that you assessed risk, the assumption will be that you did not, and you lose immunity from liability. Failure to assess risk in a manner consistent with sound professional practice exposes you to liability and is a substandard level of care.
3. Consult with team members to be sure you aren't missing important information
4. The risk assessment must clearly document the factors you considered and what contributed to your decision to act or not act. The factors below are meant to help guide your risk assessment and

**Risk Assessment Factors:**

1. Assess motives and goals:
   - What is driving the threatening behavior? What is it meant to achieve or communicate?
   - Understanding motivation may provide opportunities to intervene to reduce risk or increase protective factors and may help clarify seriousness and imminence of the threat
   - Common motivations cited by the National Threat Assessment Center include:
     - To get help
     - To cause problems for someone else (i.e., a coworker, classmate, family)
     - To avenge a perceived wrong or injustice
     - To bring attention to a problem
     - As a means to end a perceived problem
     - As a means to consider (or commit) suicide (i.e., "suicide-by-cop")

2. Assess values that may increase risk – certain values may be associated with an increased risk of intimate partner violence, including:
   - Limiting beliefs about relationship roles and power
   - Attitudes justifying or accepting violence as a problem-solving strategy
   - Emotional dependence and insecurity
   - Other related factors that may be associated with violence include antisocial thinking or any believe that devalues, dehumanizes, or diminishes the worth of another

3. Assess concerning, unusual, or threatening communications:
   - Direct threats to an identifiable victim may occur in only a minority of instances
   - Indirect threats voiced to others (friends, family members, or to the treatment team) or on social media are more commonly observed
   - Ask collateral informants if they are concerned about client's statements or behaviors

4. Assess interest in weapons, school shooters, mass attacks, or other violence:
   - Important to contextualize this based on age, culture
   - Some post event data suggests an association with violence-themed social media posts, internet searches, and video games, but correlation is not causation
   - This may be more common in certain types of violence than in others

5. Assess recent stressful events (trauma, setbacks, challenges, or losses):
   - Material losses (possessions, finances, etc.)
   - Relationship losses (death, role changes, separations) in family and/or peer group
   - Status losses (changes in occupational or other role changes
   - Changes in self-perception/self-esteem
   - Relationship conflicts including bullying
   - Assess coping skills and status

6. Assess congruence in statements across settings:
   - Look for consistency in statements in a variety of contexts by asking collateral informants. When an individual says in one setting that he is doing well, but, for example, posts contradictory information, the risk for acting out may increase.
   - Concealment/hiding of risk behaviors or plans may be associated with increased risk

7. Assess Emotional/Developmental/Mental Illness factors: Clearly, presence of mental illness does NOT predict violence. There is ample research to show that individuals with mental illness are more likely to be victims than perpetrators of violence. Here are key factors to assess:
   - Hopelessness, desperation, or despair – more important than any specific diagnosis as a predictive factor of violence, these factors appear consistently in research about violence!
   - Change from baseline – more important than mere presence of SMI as a predictive factor of violence
   - Psychosis – mixed evidence in the literature about psychosis as a contributing factor. Some evidence suggests that command hallucinations and paranoid ideation are mildly predictive, especially when the client has a history of acting on delusional thinking or complying with a command hallucination (versus resisting or ignoring). When psychotic symptoms are suggestive of increased risk, it is most likely to occur when an exacerbation of symptoms results in poorer overall coping with stressors and a reduced ability to utilize coping mechanisms or protective factors (i.e., when more isolated due to internal preoccupation or when not medication adherent).
   - Impulsivity – mixed evidence, likely because of the huge variety of violent behavior. Some violence is meticulously planned while some is highly impulsive. This factor is important to assess, but also to contextualize. High levels of impulsivity may increase the risk of some violent behaviors.
   - Angry Outbursts – similar to impulsivity in terms of predictive power and implication for risk assessment. Some violence is cold and calculated.

- Capacity for planning – for some types of violent behavior, the ability to plan and follow through with actions increases the risk and must be clearly assessed/documented. As with many other factors in this category, the ability to plan and carry out a threat is more important than a specific diagnosis.
- Role of Trauma – most trauma survivors do not perpetrate abuse, but many perpetrators were themselves victims. It is important to assess the role of trauma in a risk assessment without blaming the victim or creating blind spots in the assessment that might underestimate risk. An empathetic exploration here may create opportunities for treatment of trauma and prevention of violent behavior.

8. Assess Substance Use/Substance Use Disorder: Like mental health concerns described above, the mere presence of substance use or a substance use disorder does not predict violence.
    - Change from baseline is more important than mere presence of SUD as a predictive factor of violence.
    - Some evidence suggests that when substance use is associated with an increase risk in violent behavior it is because substance use may disinhibit behavioral controls, result in poorer overall coping or an increase in risk factors (i.e., loss of job, family, or status), and/or in reduce availability of positive supports (i.e., when sober supports are absent to due to individual's use).

9. Assess access to weapons (not just guns) and resources (means)
    - Access and means increase risk and are key factors in determining whether a threat is "serious" and "imminent"

10. Assess evidence of planning:
    - Evaluate the presence of a plan. Developmental and situational factors may influence whether increased detail predicts greater risk of imminent violence.
    - Evaluate the likelihood of carrying out the plan. Ask about barriers or what would prevent implementing the plan.

11. Assess prior history of violence
    - Past violence to solve problems may be the strongest predictor of future violence, but it is not foolproof
    - Ask about history of using prosocial alternatives
    - Ask about history of attack-related behavior, including any menacing, harassing, and/or stalking-type behavior – is the current threat part of an escalating pattern of behavior

Resources:
ENHANCING SCHOOL SAFETY USING A THREAT ASSESSMENT MODEL
An Operational Guide for Preventing Targeted School Violence
US Dept. of Homeland Security, US Secret Service, National Threat Assessment Center: July 2018
https://www.dhs.gov/sites/default/files/publications/18_0711_USSS_NTAC-Enhancing-School-Safety-Guide.pdfhttps://www.dhs.gov/sites/default/files/publications/18_0711_USSS_NTAC-Enhancing-School-Safety-Guide.pdf

Risk Factors for Intimate Partner Violence Perpetration
https://www.cdc.gov/violenceprevention/intimatepartnerviolence/index.html

COUNTY OF SAN LUIS OBISPO
BEHAVIORAL HEALTH
Health Information Unit
(805) 781-4724 Tel (805) 781-4271 Fax

# TARASOFF WARNING LETTER

Date: ________________________________

To:

NAME: ________________________________

ADDRESS: ________________________________

________________________________

We are authorized by law to inform you that ________________________________ (person making threat)

has made a serious threat to harm you. During an evaluation on ____________________ (date of evaluation)

the person listed above made the following threat (describe threat made):

________________________________________________________________

________________________________________________________________

________________________________ (name of law enforcement agency) was notified of this threat on ____________________ (date notified).

Officer/Deputy____________________ (officer's/deputy's name) Badge/Id #____________________ (officer's/deputy's badge #) took the call.

The phone number for the above listed officer is____________________ (law enforcement agency phone #) and the case

number or log number assigned is ________________________________ (case number or log number)

If the person named above is being detained by San Luis Obispo County Jail, Juvenile Services Center, or the Psychiatric Health Facility and you wish to be informed when they are released, please contact the facility directly at the phone numbers listed below.

- SLO County Jail: (805) 781-4600
- Juvenile Services Center: (805) 781-5352
- Psychiatric Health Facility: (805) 781-4712

If you have any questions, please contact me at:________________________________ (phone number)

Name/Title:________________________________ (name and title of person mailing or emailing letter)

CC: ________________________________ (copy of letter sent to)

**Attachment C: Sample Warning Letter**

COUNTY OF SAN LUIS OBISPO
BEHAVIORAL HEALTH
Health Information Unit
(805) 781-4724 Tel (805) 781-4271 Fax

## TARASOFF WARNING LETTER

Date: 04/09/19

To: Stefani Mannicotti
4712 Pacific Coast Highway
Malibu, Ca 90263

We are authorized by law to inform you that Jackson Cooper has made a serious threat to harm you. During an evaluation on 04/08/19, Mr. Cooper stated that he planned to "break into (your) home, sexually assault (you), and then choke (you) to death with my bare hands."

The San Luis Obispo Police Department and the Los Angeles County Sheriff's Department were notified of this threat on 04/08/19. Officer Krupke (SLOPD) and Deputy Vance Badge/Id 24601 & 10451 took the call.

The phone number for the above listed officer is 805- 543-3131 & 213-229-1700 and the case number or log number assigned is 112284 & 71818

If the person named above is being detained by San Luis Obispo County Jail, Juvenile Services Center, or the Psychiatric Health Facility and you wish to be informed when they are released, please contact the facility directly at the phone numbers listed below.

- SLO County Jail: (805) 781-4600
- Juvenile Services Center: (805) 781-5352
- Psychiatric Health Facility: (805) 781-4712

If you have any questions, please contact me at: 805-501-2316

Name/Title: Jaclyn A. Miller, Behavioral Health Clinician III, County of San Luis Obispo
CC: San Luis Obispo Police Department (Case # 112284 & LA County Sheriff (Case # 71818)

**Attachment E Law Enforcement Fax**

COUNTY OF SAN LUIS OBISPO
HEALTH AGENCY/BEHAVIORAL HEALTH DEPARTMENT

**Health Information Unit**

**(805) 781-4724 Tel** **(805) 781-4271 Fax**

# TARASOFF NOTIFICATION

**TO:**

| | Law Enforcement Office | Fax # | Phone # |
|---|---|---|---|
| ☐ | Arroyo Grande | 473-2198 | 473-5100 |
| ☐ | Atascadero | 461-3702 | 461-5051 |
| ☐ | Cal Poly Campus PD | 756-5051 | 756-7410 |
| ☐ | Grover Beach | 473-4517 | 473-4511 |
| ☐ | Morro Bay | 772-2224 | 772-6225 |
| ☐ | Paso Robles | 227-1013 | 237-6464 |
| ☐ | Pismo Beach | 773-3505 | 773-2208 |
| ✓ | San Luis Obispo PD | 543-8108 | 781-7312 |
| ☐ | San Luis Obispo Sheriff | 781-1234 | 781-4550 |
| ☐ | | | |

**FROM:** San Luis Obispo Behavioral Health Dept

**NAME:** Jaclyn A. Miller, LMFT

**PAGES:** 1

**DATE:** 04/08/19 **TIME:** 2:24 pm

**RE:** Tarasoff Warning & Notification

**PATIENT:** Jackson Cooper

**This is a written follow up to the verbal Tarasoff Warning given to:**

( Officer / Deputy) Krupke Badge # 24601 Report # 112284
*(circle one)* *(name)*

On 04/08/19 at 1:32 pm AM / PM BY Jaclyn A, Miller, LMFT
*(date)* *(time)* *(circle)* *staff member giving report (please print)*

Person making threat: Jackson Maine Patient ID # 624051

Residing at: 9340 Flora Lane San Luis Obispo, Ca Phone # 805-951-4538

Threats made: Patient threatened to break into the home of Stefani Germanotta (4712 Pacific Coast Highway Malibu, Ca 90263),sexually assault her, and choke her to death with his bare hands.

Intented Victim: Stefani Germanotta Email: sjagerman@att.net

Residing at: 4712 Pacific Coast Highway Malibu, Ca 90263 Phone # 310- 875-0328

Intended victim notified by (phone / in person)? YES / NO If yes: Date/Time 04/08/19 1:06 pm
*(circle one)*

Email letter sent to the intended victim? YES / NO If yes: Date/Time 04/08/19 1:13 pm

Certified letter mailed to intended victim? YES / NO Copy of the letter attached? YES / NO

If intended victim has not been notified please explain why:

N/A

Additional notes:

**CONFIDENTIAL PATIENT INFORMATION – NOT TO BE FORWARDED**

This information has been disclosed to you from records that are **confidential** and protected by **state confidentiality law** that protects mental health records (See California Welfare and Institutions Code Section 5328). Information subject to release in accordance with Federal Privacy Act of 1974 (Public Law 93-597). This information has been disclosed to you from records protected by **Federal confidentiality rules** (42 CFR, Part 2, Section 2.32). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient. Total pages included:

**Attachment F: Codes and Case Law Background Information**

DUTY TO PROTECT:
The court ruling in Tarasoff v. Regents of the University of California confirmed that treatment professionals, when made aware of a serious threat of imminent harm, incur a duty toward the reasonably identifiable potential victim or victims of these threats.

"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. 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."

Notification of the intended victim and law enforcement is the minimum action necessary to meet the "reasonable" care standard. Other additional actions might include involuntary hospitalization, for example, but hospitalization or incarceration of the person making the threat does not replace notification of the intended victim and law enforcement.

Originally, the duty to protect was only triggered when a client communicated a threat to the therapist. In Ewing v. Goldstein, the court ruled that treatment professionals are required to take action to protect reasonably identifiable victims when a client's family members or credible third parties report that the client made a serious threat of imminent harm.

Thompson v. County of Alameda added two conditions under which a Tarasoff warning applies: 1) The intended victim(s) must be reasonably identifiable and 2) The peril must be foreseeable.

Menendez v. Superior Court of Los Angeles allows psychotherapist making Tarasoff warnings to include statements made by the client in order to convey the seriousness of the threat to the intended victim(s).

Jablonski v. US made psychotherapists responsible for reviewing all current and previous treatment records in determining the seriousness of a threat. The ruling also includes the responsibility of the psychotherapist to thoroughly document the risk assessment performed in the client's record and communicate with other treatment providers responsible for and assuming care to ensure continuity of care.

People v. Wharton determined that the content of the Tarasoff warning and the communication that led the psychotherapist to determine that the client was dangerous are admissible in court.

Mavroudis v. Superior Court of San Mateo ruled that imminence is necessary for a Tarasoff duty to exist: "The therapist's duty is further limited by his patient's interest in privacy. The (therapist's) duty to preserve the privacy of his patient requires that he not disclose a confidence of his patient unless such disclosure is necessary to avert danger to others. An assessment of the necessity of the disclosure which gives rise to the therapist's duty must take into account the imminence of the danger posed by the patient. If the patient does not pose an imminent threat of serious danger to a readily identifiable victim, a disclosure of the patient's confidence would not be necessary to avert the threatened danger and the therapist would be under no duty to make such a disclosure."

And this: “The therapist need not render a perfect performance but merely exercise "'that reasonable degree of skill, knowledge, and care ordinarily possessed and exercised by members of [that professional specialty] under similar circumstances.”

LIABILITY:
California Civil Code 43.92 focuses on when a provider is potentially liable for failure to protect and immune from liability for taking protective action. California Civil Code §43.92 states:

(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.”

Hedlund v. Superior Court of Orange County expanded therapist’s liability to include harm to foreseeable bystanders if the therapist does not fulfill Tarasoff responsibility.

EXCEPTION TO CONFIDENTIALITY:
HIPAA (CFR, Title 45, §164.512 (j)) and California law allow information to be disclosed as necessary to a reasonably foreseeable intended victim and to law enforcement without client authorization. Welfare & Institutions Code §5328(18) states:
“When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies and county child welfare agencies as the psychotherapist determines is needed for the protection of that person or persons.”

Evidence Code 1024: “There is no privilege under this article if the psychotherapist has reasonable cause to believe that the patient is in such mental or emotional condition as to be dangerous to himself or to the person or property of another and that disclosure of the communication is necessary to prevent the threatened danger.”