

Report on Patient Privacy Volume 19, Number 8. August 07, 2019 Judge Upholds \$1M Award for Psychiatrist’s Warning of Possible Shooting; Appeal Begins

By Theresa Defino

Although mental health professionals and others have a “duty to warn” when they suspect a patient may be at risk of causing harm, a jury decided that a psychiatrist erred when she informed a veteran’s boss and the local police that he had thought about shooting the man in the head, a federal judge has ruled. But acknowledging that some of his rulings in the case followed “scant precedent,” North District of California Judge William Orrick is allowing an appeal of the verdict, which included a \$1 million judgement against the psychiatrist, despite her attorneys missing a crucial filing deadline.

The veteran, Ronald Turner of Eureka, California, won a \$2.75 million award in March, after his attorney convinced a jury that his thought of killing his boss did not pose a serious enough threat to warrant violating his privacy. After the psychiatrist, Tracie Rivera, M.D., informed Turner’s boss, he lost his job, has been shunned by former friends and coworkers, and lost his faith in the medical system. Orrick reduced the total award to \$1 million, citing caps set on noneconomic damages by California malpractice law.

In his July 19 ruling, Orrick noted Rivera could herself suffer more than monetarily should she lose on appeal. “An adverse final judgment may well affect her future employment and career,” he wrote.

The case is significant to providers and privacy officials nationwide as it pits the duty to provide a so-called “Tasaroff” warning to protect patients and the public against the privacy rights of patients. Depending on the final outcome, the case may either have a chilling effect on others’ warnings or serve to encourage them. Some in the mental health field have previously warned that patients won’t share confidences if they believe their privacy, particularly crucial in mental health settings, could be threatened.

Tanya Tasaroff, also a California resident, was murdered in 1969 by her former boyfriend. In a case that went to the California Supreme Court (twice), the University of California was found to have a duty to warn her of the threat against her life that the former boyfriend had admitted to his psychologist (who worked at UC hospital). The rulings sparked laws nationwide that are inconsistent in how they define what type of threat should be communicated and to whom, among other differences. HIPAA also contains provisions that apply in such cases (“HIPAA and ‘Duty to Warn,’” *RPP* 19, no. 8).

Case Is Unusual

Nancy Delaney, who represents Rivera, told *RPP* the psychiatrist had a clear obligation to make the disclosures that she did and said the case needs further clarity.

“As the trial judge acknowledged, there are significant legal issues with ramifications for all California practitioners that need to be resolved,” Delaney said. “We believe that these will ultimately be resolved in the spirit of the original Tasaroff decision—that reporting was appropriate.”

Fred Norton, Turner’s attorney, did not respond to *RPP*’s requests for comment. Following the jury verdict in March, he posted news of what he called a “just and pleasing result” on his firm’s blog (see

<http://bit.ly/2KAJzHZ>). He has not addressed the case since.

From the start, the case has been marked by a number of unusual features. Firstly, it is one of only a few where a provider has fallen into jeopardy for reporting a patient; typically the greater worry comes from failing to report.

In 2014, Turner filed the suit himself and got the litigation all the way to a jury trial; the court assigned Norton as pro bono counsel just two months before the trial began. It proceeded in federal court, which was not bound by the shorter statute of limitations that bind state courts.

While most of the trial focused on whether Rivera's actions were warranted, some testimony related to Rivera's employment status with a firm that provides temporary assignments for physicians. Turner was treated at facilities operated by Veterans Affairs (VA), which was also originally named in the suit. HIPAA was never mentioned during the trial, which hinged on whether Rivera had committed medical malpractice or professional negligence.

According to hundreds of pages of trial transcripts reviewed by RPP, Rivera appeared to hurt her defense when she revealed during testimony that other medical "notes" on the case existed but that she wasn't sure where they were. Orrick instructed the jury that Rivera could have purposely withheld them if their content would have weakened her defense, but Delaney argued that was not the case and that the medical record that was available was complete and demonstrated all the steps Rivera had taken before making her disclosure. He also ruled against Rivera and did not allow Delaney to inform the jury that, as a result of Rivera's warning, Turner's boss had obtained a restraining order against him.

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