Working with Suicidal Clients

0

MICHAEL GRIFFIN, JD, LCSW
CAMFT STAFF ATTORNEY

CAMFT

CONNECT
ENRICH
ACHIEVE

California Association of Marriage and Family Therapists

Workshop Topics

- Overview and case discussion
- Brief review: What is negligence?
- Brief review: What is the standard of care?
- The issue of “foreseeability”
- Identifying “risk factors” for suicide
- Protective measures
- Relevant exceptions to confidentiality
- Psychotherapist-Patient Privilege
- The treatment record
- Resources

CAMFT

Overview and case discussion

- *Bellah v. Greenson*,(1978)81 Cal. App.3d 614
- Case example of what is generally expected of therapist with a suicidal client. The parents of an adolescent client who committed suicide alleged that her psychiatrist failed to use reasonable care to prevent daughter's suicide and was negligent because he didn't disclose her high-risk behaviors.
- The Court held that Dr. Greenson had a duty to exercise reasonable care in his treatment of the girl and that he was expected to take "appropriate preventive measures" concerning her risk of suicide. The Court did not agree with plaintiff's contention that psychiatrist had duty to disclose confidential patient communications with girl's parents.

CAMFT

Overview and case discussion, cont'd

- The Court in *Bellah v. Greenson* held that it would be inappropriate to require a therapist to disclose confidential information. Such a requirement could harm the therapist-client relationship and potentially increase the risk of suicide. It would also be at odds with the fundamental privacy of a therapist-patient relationship.
- The court also rejected plaintiff's contention that *Tarasoff v. Regents of Univ. of Calif.* created a "duty to warn" under the circumstances found in Bellah.

CAMFT

Brief review: What is "negligence?"

- When a therapist is sued for negligence, the plaintiff must prove by a preponderance of the evidence that:
  - The therapist owed a duty of care to him or her.
  - The therapist breached his or her duty by failing to meet the applicable standard of care.
  - "But-for" the actions of the therapist, the client would not have been harmed.
  - The alleged harm to the client was foreseeable to the therapist as a possible consequence.

A legal duty is an obligation, recognized by the law, which requires a person to conform to certain standards of conduct. Black, H.C. (1990). *Black's Law Dictionary*, St. Paul MN: West

Courts have long recognized that a psychotherapist owes a duty to his or her client. If a client-therapist relationship existed at the time of the alleged wrongdoing, there was a duty of care owed to the client.

CAMFT

Brief review: What is the "standard of care?"

- The standard of Care is based upon the reasonable degree of skill, knowledge and care that would ordinarily be exercised by other therapists, when practicing under similar circumstances.
- The standard of care is commonly established by the opinion of an expert. In trial, an expert would provide his or her opinion as to what would be expected of a therapist who was exercising the reasonable degree of skill, knowledge and care that would ordinarily be exercised by therapists under similar circumstances.

CAMFT

Standard of care, cont'd

- The standard of Care is fact-driven
  - What would be reasonable and appropriate treatment with this client? As a general rule, a therapist is not limited to working according to one treatment approach.
- Relevant questions
  - Does the therapist have some rationale for his/her approach with the client?
  - Is progress occurring? If not, does the record say anything about why that is the case?

CAMFT

Calif. Civil Jury Instruction, Section 501. Standard of Care for Health Care Professionals

- **[A/An] [*insert type of medical practitioner*] is negligent if [he/she] fails to use the level of skill, knowledge, and care in diagnosis and treatment that other reasonably careful [*insert type of medical practitioners*] would use in the same or similar circumstances. This level of skill, knowledge, and care is sometimes referred to as "the standard of care."**
- **[You must determine the level of skill, knowledge, and care that other reasonably careful [*insert type of medical practitioners*] would use in the same or similar circumstances, based only on the testimony of the expert witnesses [including [*name of defendant*] who have testified in this case.]**

CAMFT

The issue of foreseeability

- A lawsuit against a therapist for malpractice is a negligence lawsuit. In any negligence lawsuit, it must be shown that the harm in question was actually foreseeable to the therapist as a possible consequence of his or her actions. A therapist cannot be expected to implement preventive measures in a case where the potential suicide of his or her client was not reasonably foreseeable.
- In a case involving the alleged negligent failure of a therapist to prevent his or her patient's suicide, a fundamental issue is whether or not the therapist was aware of facts from which he or she could have reasonably concluded that the client was likely to self-inflict harm in the absence of preventative measures.
- Of course, in order to be aware of such facts, a therapist must conduct a competent assessment of the client! (…exercising the degree of skill, knowledge and care that would ordinarily be exercised by other therapists when conducting such an assessment).

CAMFT

Identifying risk factors for suicide

- No therapist is expected to predict, with certainty, what his or her client will do in the future, nor is a therapist expected to control the actions of a client. **It is expected that the therapist will make reasonable efforts to evaluate the client in order to determine the client's risk of suicide.**
- The therapist is expected to make reasonable efforts to identify "risk factors" for suicide that may be present in a given case.
- "Risk factors" are those facts from which a therapist can reasonably conclude that his or her client is at risk of harming him or herself in the absence of preventative measures.
- When assessing the risk of suicide, there is no single list of questions which is perfectly suited for every person. One client may be forthcoming when asked whether he or she has any thoughts about suicide, while another may deny, or minimize his or her suicidal thoughts.

CAMFT

Identifying risk factors, cont'd

- A careful assessment provides valuable diagnostic information.
- However, no two clinicians are alike and every therapist will employ his or her own style or approach to gathering information about a client and arriving at a diagnosis and treatment plan.
- When the therapist suspects the possibility of suicide risk, he or she should directly ask the client whether he or she is experiencing any suicidal ideation, and if so, to describe it.
- It is important to inquire about any history of prior treatment, and the client's history of problems with depression, including any prior suicidal ideation or attempts.

CAMFT

Identifying risk factors, cont'd

- When evaluating a client, it is important to consider any preexisting risk for suicide, including the client's history of depression and suicidal behavior.
- Previous suicide attempts are associated with an increased risk for suicide, especially when there is a history of two or more attempts.
- There is evidence that clients face an elevated risk for suicide during the first year following an admission for inpatient psychiatric treatment, especially during the first few months after discharge.
- The presence of a major mood disorder is a significant risk factor for suicide. Borderline personality disorder and antisocial personality disorder are also associated with an increased risk of suicide
- Numerous studies have reported that a client's experience of hopelessness is a substantial risk factor for suicide.

CAMFT

Identifying risk factors, cont'd

- A history of alcohol or drug abuse is associated with an increased risk of suicide.
- A history of impulsive behavior is associated with an increased risk of suicide.
- The availability of a support system for the client is a key consideration in assessing suicide risk and treatment planning.
- If the client has a history of psychiatric hospitalization, it is advisable to obtain copies of the treatment records. If the client has not been evaluated by a psychiatrist, it may be prudent to recommend such an evaluation. If the client has been evaluated by a psychiatrist, it is usually advisable for the clinician to consult with that professional

CAMFT

Protective measures

- *Jacoves v. United Merchandising Corp.* (1992) 9 Cal.App.4th 88
- "If those who are caring for and treating mentally disturbed patients know of facts from which they could reasonably conclude that the patient would be likely to self-inflict harm in the absence of preventative measures, then those caretakers must use reasonable care under the circumstances to prevent such harm from occurring." (9 Cal.App.4th at p. 105)
- If a therapist becomes aware that his or her client is at risk of committing suicide, courts have generally held that he or she has a duty to take "reasonable" or "appropriate" steps to attempt to prevent the client's suicide. What may be considered as "reasonable," depends on the facts and circumstances of the case. There is not a list of actions or interventions which can be uniformly applied in all circumstances with all clients. A therapist should strive to implement a course of action, which he or she considers to be reasonable and appropriate for his or her client, at that point in time.

CAMFT

Protective measures, cont'd

- Facilitating the client's hospitalization
- Consulting with the client's psychiatrist
- Arranging for the client to be evaluated by a psychiatrist
- Asking the client to agree to a no-self harm agreement
- Attempting to increase the degree of social support available to the client
- Involving a friend or family member in the client's treatment
- Increasing the intensity of the treatment, i.e., such as increasing the number of sessions, or the amount of overall contact with the client.

CAMFT

Relevant exceptions to confidentiality

- *Civil Code*, Section 56.10.
- (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).
- (19) The information may be disclosed, consistent with applicable law and standards of ethical conduct, by a psychotherapist, as defined in Section 1010 of the *Evidence* Code, if the psychotherapist, in good faith, believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

CAMFT

Relevant exceptions to confidentiality, cont'd

- Civil Code, Section 56.10.
- (c) A provider of health care or a health care service plan may disclose medical information as follows:
- (1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient.

CAMFT

Psychotherapist-Patient Privilege

- *Evidence Code*, Section 1024 provides that there is no privilege 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.

CAMFT

The treatment record

- *Business and Professions Code*, § 4982(v) The failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered is unprofessional conduct.
- CAMFT *Code of Ethics*, § 3.3 Clinical Records: Marriage and family therapists create and maintain patient records, whether written, taped, computerized, or stored in any other medium, consistent with sound clinical practice.

CAMFT

The treatment record, cont'd.

- In cases where there is a risk of suicide, it is advisable for the therapist to consistently and thoroughly document his or her treatment efforts and corresponding clinical rationale, including the client's degree of cooperation with any recommendations given.
- Develop good habits in documenting the services that you provide. Document your assessment and the related treatment plan.
- Utilize progress notes to document your interventions and the exercise of your clinical judgment.

CAMFT

Resources

Bryan, Craig, J., & Rudd, M. David, "Advances in the Assessment of Suicide Risk," Journal of Clinical Psychology in Session, Vol. 62(2), 185-200 (2006) (Published online by Wiley Inter-Science)

See Generally, Raue, Patrick, J., Ph.D, Brown, Ellen, L., Meyers, Barnett, S., Schulberg, Herbert, C., Ph.D, Bruce, Martha, L., Ph.D, MPH, "Does every allusion to possible suicide require the same response?" The Journal of Family Practice, Vol. 55, No.7, July, (2006); Overholser, James, C., Ph.D, "Treatment of Suicidal Patients: A Risk- Benefit Analysis," Behavioral Sciences and the Law, Vol. 13, 81-92 (1995)(Published online by Wiley InterScience); Maltsberger, John, T, "Calculated Risk Taking In the Treatment of Suicidal Patients: Ethical and Legal Problems," Death Studies, 18:439-452 (1994)(Taylor & Francis); Kaplan, Margaret, L., Asnis, Gregory, M., Sanderson, William, C, Keswani, Lata, De Lecuona, Juan, M, & Joseph, Sunny, "Suicide Assessment: Clinical Interview vs. Self-Report," Journal of Clinical Psychology, March, 1994, Vol. 50, No.2.

The EBSCO database (Psychology and Behavioral Sciences Collection) is available to CAMFT members via the CAMFT website at www.camft.org.

CAMFT

Mike Griffin
Staff Attorney

IF YOU HAVE QUESTIONS ABOUT THIS TOPIC OR ANY OTHER LEGAL, OR ETHICAL QUESTIONS, PLEASE CALL CAMFT AT OUR TOLL-FREE NUMBER:

858-292-2638

CAMFT

CONNECT
ENRICH
ACHIEVE

California Association of Marriage and Family Therapists