



Massachusetts Court Interprets Mental Health Professional "Duty to Warn" Statute, Dismissing Wrongful Death Suit against Mental Health Providers

A Massachusetts court recently interpreted the Massachusetts mental health professional "duty to warn" statute (M.G.L. 123, § 36B) (Duty to Warn Statute) for the first time since its enactment in 1989 in the case of *Eileen F. Shea, Executrix vs. Caritas Carney Hospital, Inc. & Others*. The case involved a wrongful death suit brought by the estate of Richard Sheehan (plaintiff), who was murdered along with his wife by his mentally ill stepson, Jason Potter, against, among others, the mental health professionals who treated and evaluated Potter shortly before the murders. The Superior Court dismissed the suit, determining that the conduct of the defendant licensed mental health professionals was governed by the Duty to Warn Statute rather than the common law standard of negligence.

The facts of the case as laid out in the decision are as follows. Potter suffered from a long history of mental illness. A few days after being released from jail for violating a restraining order that his ex-girlfriend had sought after Potter allegedly threatened to stab her, Potter was voluntarily admitted to Carney Hospital. Potter was treated at the hospital by the defendant psychiatrist. Potter requested that he be released from the hospital and was discharged two days after his admission. While the psychiatrist's discharge summary noted that Potter was discharged against medical advice, he determined that Potter was not a danger to himself or others. The day after Potter was discharged from the hospital, Potter and his mother met with an independent licensed clinical social worker (one of the defendants), who had begun therapy sessions with Potter four years earlier. During this session, Potter was specifically asked if he would harm his ex-girlfriend. Potter responded that he would not hurt her or anyone else. The social worker claimed that he was aware of tension between Potter and his stepfather but that he was not aware of any incidents of physical aggressiveness. The social worker referred Potter to the Boston Emergency Services Team (BEST) for further evaluation. During this evaluation, in response to a question about the restraining order asked by the BEST social worker (one of the defendants), Potter stated that he "would not hurt a fly" and again denied any suicidal or homicidal ideations. The BEST social worker concluded that Potter had poor insight, but fair judgment and impulse control, and did not need to be hospitalized. After this evaluation, Potter returned to the home he shared with his mother and stepfather and, subsequently, stabbed them both to death. He was later found not guilty by reason of insanity.

In concluding that the conduct of the licensed mental health professionals is governed by the Duty to Warn Statute, rather than the common law standard of negligence, the court focused on the specific language of the Duty to Warn Statute, which states that a licensed mental health professional has no duty to warn or in any other way protect a potential victim of such professional's patient, and no cause of action will be imposed against such professional for failure to warn or in any other way protect a potential victim of the professional's patient, unless

one of the following occurs:

(1) The patient has communicated to the licensed mental health professional an explicit threat to kill or inflict serious bodily injury upon a reasonably identified victim or victims, the patient has the apparent intent and ability to carry out the threat, and the licensed mental health professional fails to take reasonable precautions.¹

(2) The patient has a history of physical violence that is known to the licensed mental health professional, the licensed mental health professional has a reasonable basis to believe that t is a clear and present danger that the patient will attempt to kill or inflict serious bodily injury against a reasonably identified victim or victims, and the licensed mental health professional fails to take reasonable precautions.

The defendant mental health professionals argued, in a motion for summary judgment, that the plaintiff could not show that the mental health professionals knew Potter was violent and posed a danger to his mother and stepfather. The court agreed, concluding that (1) t were no facts showing that Potter communicated an explicit threat to kill or inflict serious bodily injury upon a reasonably identified victim, and (2) the plaintiff did not establish that t was a reasonable basis for the psychiatrist or the mental health professionals to believe that t was a clear and present danger that Potter would attempt to kill or inflict serious bodily injury against a reasonably identified victim. The defendant mental health professionals were thus found not liable for Richard Sheehan's death.

This case has significant implications for licensed mental health professionals in Massachusetts. The court determined that the Duty to Warn Statute supplanted the duties that the defendant psychiatrist and social workers may have had under the Massachusetts common law of negligence. As such, licensed mental health professionals are now provided with a high level of protection against malpractice suits for damages brought by the victims of mental health patients when the duties created by the Duty to Warn Statute are met by the mental health professionals.

[1] "Reasonable precautions" are defined in M.G.L. 123, §1.

Robinson & Cole partner Steven P. Perlmutter represented the BEST social worker in this case. If you have any questions about this case or about the duties of mental health professionals, please feel free to contact any member of Robinson & Cole's Health Law Group.

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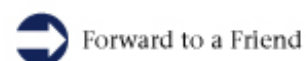
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