

Who is Readily Identifiable for Mental Health Pros?

PUBLISHED ON

August 11, 2020

A case working its way through the Pennsylvania court system could have a profound impact on how mental health professionals assess and respond to threats made by patients during therapy sessions.

Pennsylvania law imposes a duty on mental health professionals to warn a about a threat from a patient "only where a specific and immediate threat of serious bodily injury has been conveyed by the patient to the professional regarding a specifically identified or readily identifiable victim." That standard was established more than 20 years ago and applied in a case in which threats to a patient's ex-girlfriend were at issue.

The Pennsylvania Supreme Court's recent ruling in [*Maas vs. UPMC Presbyterian Shadyside et al.*](#) suggests that the definition of a "readily identifiable" victim is not as narrow as previously thought.

The *Maas* case stems from the 2008 murder of a young woman by a psychiatric patient at an apartment building where both were living, along with approximately 80 other residents. For the five months that the patient lived there, he made various complaints to his mental health providers about his "neighbors," which included threats and homicidal ideations, but did not identify any specific targets by name. According to the opinion, the mental health providers did not take any action to warn the other residents of the apartment building about these threats prior to the 2008 murder. The mother of the murdered woman filed suit against the mental health professionals who were treating the patient on the grounds that some warning should have been provided to residents of the apartment building.

UPMC and the other defendants sought dismissal of the action prior to trial, arguing that the young woman was not a "readily identifiable" victim because the patient lived in an apartment building and made generalized threats about his "neighbors."

The trial court denied the request to dismiss the case, but allowed the defendants to immediately appeal that decision, which eventually made it to the state's highest court.

In a 3-2 decision, the Pennsylvania Supreme Court rejected the contention that the threats against "neighbors" were too vague to make the ultimate victim readily identifiable. Rather, the court declared that the threats were against "members of a specific and identified group," which was sufficient to trigger some sort of duty on the part of the mental health providers to the murdered woman. Whether the mental health providers failed to act reasonably in light of this duty is a question that the jury will need to decide at a future trial.

The dissenting justices agreed that a threat against a specific group could give rise to a duty to warn potential victims, but argued that threats against unnamed "neighbors" by a resident of an apartment building are not specific enough. The justices also warned that the majority opinion will increase the number of times that mental health professionals have to divulge confidential patient information, and potentially to larger

audiences, which may provide some protections to the public, but will also erode the trust between patients and mental health providers and "paralyze a sector of society that performs a valuable service to those in need of mental health care."

This warning from the dissent gets to heart of the problem that the *Maas* decision presents for mental health providers. Trust and confidentiality is of paramount importance to patient relationships, but decisions like *Maas* force mental health providers to be constantly thinking about whether otherwise confidential patient statements need to be disclosed to potentially large numbers of third parties. Of course providers also face considerable risks if they elect to divulge these confidential client communications. *Maas* seems to mandate that mental health providers have some duty to investigate and assess how "specific" a patient's threats are and how "readily identifiable" the target group is. What the law requires a provider do beyond that will remain to be seen as lower courts grapple with the holding of *Maas* in future cases.

If anyone has any questions on the future ramifications of the case, please [Peter Faben](#), [Luke Weber](#) or any member of the [Health Care Industry Group](#).

:



Peter J. Faben

Partner

Tel: (717) 208-8844

Email: pfaben@barley.com



Luke T. Weber

Partner

Tel: (717) 399-1513

Email: lweber@barley.com