

**When Mental Health Professionals
Call Attorneys: a view from this
attorney's perspective**

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Introduction



Raised in Connecticut
B.A. Univ. of Vermont '64
Ph.D. (Clinical) Indiana U. '68
Internship (Columbia U.) '67-'68
USC: 12 years – 5 as Director of Clinical Training
Hospital Consultant – 27 yrs
Trauma therapist since 1980
Past President (2002) ISSTD

Themes for This Program

This 6-hour program discusses the types of questions that mental health professionals pose when they contact attorneys with requests regarding risk management, best practices, responses to threats, already-filed law suits and licensing board complaints.

The Most Frequent Calls:

- “Hi, I’ve got a problem with a family I’m working with. I’ve been trying to do family therapy, but they are breaking up and falling apart, and the (dad/mom) is making it all my fault. I don’t know what to do. I don’t feel like I should withdraw, the judge appointed me, and I don’t want to lose her confidence in me. I just don’t know what to do! Can you please help me?”

**“I have a patient/client
Who’s Suicidal and Says
That Suicide IS OK Here
In California, Is That True?
California’s (et al) laws regarding
Suicide**

**California’s Child Abuse/Neglect
Reporting Act
AB 1775 Melendez: This bill made
Downloading, streaming or accessing
through electronic or digital media,
material in which a child is engaged in
an obscene or sexual act a mandated
report under the Child Abuse and
neglect Reporting ACT (CANRA) on
5/22/14**

“Do I really have to report this, when it’s 2 adolescents sending naked photos of themselves?” CA’s recent child abuse reporting law.



“I’m seeing a Physically Handicapped Student Who Tells me that He’s Being Bullied At School. What do I do?”



www.mandatedreporterca.com



General Training and Training for “Social Workers”

California's Child Abuse/Neglect Reporting Act – Reporting downloading/viewing pornography

Don't forget to add this responsibility to any "informed consent" agreements that you use with patients.



California Becomes the 5th State to Have an End-of-Life Choice Statute

- What do these statutes have in common and
- What can we learn from the states that
 - Already have enacted them?

Oregon, Washington, Montana, Vermont
California Colorado

"I have a patient/client who has a gun"

Am I supposed to be doing anything about his/her being a danger to self or others?



New California Law Restricts Guns for Mentally Ill Individuals - From the Sacramento Bee

AB 1014 allows temporary restraining orders to prevent individuals who are suspected of having mental health issues or who are potentially violent from purchasing or possessing guns.

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- **Previously, individuals could be banned from buying firearms only if they are involuntarily committed to a mental health facility.**

- **Guns could be seized from individuals only if:
A licensed therapist notifies police that the individual is a risk to their own safety or the safety of others;
They have been convicted of a felony or a violent misdemeanor;
They are under a domestic violence restraining order; or
They have been determined to be mentally unstable.**

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- **January 1, 2016**

- **Gun Violence Restraining Order Law**

1. Section 8105 of the Welfare and Institutions Code:

- **(c) A licensed psychotherapist shall report to a local law enforcement agency, within 24 hours, in a manner prescribed by the Department of Justice, the identity of a person subject to the prohibition specified by subdivision (b) of Section 8100.**

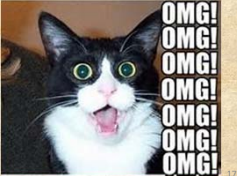
- **What is Section 8100?**

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- **Welfare and Institutions Code**
 - **Section 8100**
 - (b) (1) A person shall not have in his or her possession or under his or her custody or control, or purchase or receive, or attempt to purchase or receive, any firearms whatsoever or any other deadly weapon for a period of five years if, on or after January 1, 2014, he or she communicates to a licensed psychotherapist, as defined in subdivisions (a) to (e), inclusive, of Section 1010 of the Evidence Code, a serious threat of physical violence against a reasonably identifiable victim or victims.

Welfare and Institutions Code
Section 8100

- Don't forget to add this
- responsibility to any "Informed
- Consent" document you may
- use with patients.



California law provides immunity for liability to all psychotherapists.



Am I supposed to warn about someone I'm treating, who has periodic instances of wanting to take revenge on someone who was hurtful? I know that s/he has a gun!



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As of 2013, There is No Duty To Warn Under Tarasoff

- Status of Tarasoff in California has been an increasing problem for many years. Here's why:



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Increased Risk for Custody Evaluators

- AB 1843 (Jones/Gordon): Became law on 8/25/14
- In prior years, licensing boards had to close complaints against custody evaluators when one of the parties refused to sign a release of information. Per AB 1843, such releases are not necessary for boards to obtain all records.

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The Aging of Our Colleagues

- As the “Baby Boomers” age (and, especially when they don’t retire), we are seeing increasing cases of colleagues who are impacted by dementia and related disorders



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The Aging of Our Colleagues

- 1 Memory loss that disrupts daily life
- 2 Challenges in planning or solving problems
- 3 Difficulty completing familiar tasks at home, at work or at leisure
- 4 Confusion with time or place
- 5 Trouble understanding visual images and spatial relationships
- 6 New problems with words in speaking or writing
- 7 Misplacing things and losing the ability to retrace steps

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The Aging of Our Colleagues

We need our professional societies to develop and implement ways in which colleagues who suffer from dementive disorders can be engaged, supported, and assisted in withdrawal from practice, with dignity.



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High-frequency complaints against clinicians – licensing boards and lawsuits and recent developments in California law 2009-20016

1. Commission of a Crime (56)
2. Gross Negligence/Incompetence (54)
3. Drugs/Alcohol (33)
4. Sex with Patients (27)
5. Poor Record-Keeping

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Commission of a Crime (56)

What Kind of Crime Do You Think is The Most Frequent?



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**Commission of a Crime (56)
(Driving Under the Influence)**



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Gross Negligence/Incompetence) (54)

Thought s/he knew what s/he was doing,
but didn't.

Failure to follow the standards of care, per
The Board's Expert Witness



Drug/ETOH Use (33)



Sex With Patients/Clients (27)



Malpractice Suits

Great News X 2!!!!

Bless the 1970s legislature, the 2001 legislature
And the people of CA!!!

1. Why lawyers won't take cases against us!

1. Statutes of limitation:

- a. Law suits
- b. Board actions



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Suicidality

- No-harm contracts: bad news for clinicians who deal with possibly suicidal patients,



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<https://kspope.com/suicide/index.php>

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- Pope, K, & Vasquez, M. (2016) Ethics in psychotherapy and counseling: a practical guide. 5th Edition. The chapter on suicidality is posted and downloadable without cost!

- Intro
- Evaluating Suicidal Risk: 22 factors
- 10 Steps to reduce risk
- Avoidable pitfalls
- Difficult scenarios & questions
- Related studies



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<https://kspope.com/suicide/index.php>

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Some formal assessment approaches to be aware of:

1. Beck's scale for suicidal ideation
2. Linehan's Reasons For Living Inventory
3. Cole's self-administered adaptation of Linehan's structured interview, called the Suicidal Behaviors Questionnaire

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Problems Related to Marital Separation/Strain/Dissolution/Custody

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- Regardless of whether you see:
- The family
- One or more children
- The married couple
- Some combination thereof
- It's critical to have access to information about how "the system" is supposed to work, what role(s) you might have, etc.

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Practicing In A Small Community

The major issue: being known and discussed by patients....and others, or even having a patient who wants to date your child!!



The Approach

- “If we run into each other sometimes, I’ll smile & nod my head, and continue about my business. What I ask of you is to please not blurt out: “Oh, here goes (name), my therapist!”



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But Remember:

- People are going to be talking about you in the community, regardless of how nicely and appropriately handle the agreement between you and your patients/clients, if you do run into them some times.



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And keep in mind...

- That they will respect you more by raising boundary issues and how you handle them.



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Improper Insurance Billing

Billing for sessions that didn't occur.
Billing for 50 minute sessions when the actual sessions were much shorter. Using incorrect diagnoses.



“Coaching”

Guess what members of licensing boards LOVE to hear about?

Yep – that a licensee represents himself/herself as a “coach” and moves psychotherapy patients into his/her coaching practice, or uses specific professional techniques with coaching clients. Don't forget written policy statements...

“A lawyer called me and said...”



When a lawyer calls/writes to you:

1. Ask to be sent any documents in letter format...
2. Indicate that you will contact an attorney of your own...
3. If you don't know a lawyer you can work with, contact your professional societies and ask for recommendations...

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"I have a patient/client who owes me a whole lot of money!"

- Patients/Clients who do not pay for services:
The approach I employ in my psychology practice is to be clear that I expect to be paid at each session. If three sessions go by without payment, there is no fourth session, and I will refer to an agency to which to transfer the patient/client.

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"I just got a letter that says I'm being sued."

- Lawsuits against mental health professionals are infrequent. Do you know why? It's not just because we are highly professional in our work and supportive enough of our patients/clients, such that suits are rare.
- The truth is that (e.g., in California), lawyers are limited in the percentage of any monies they win against a mental health professional – it's not worth a lawyer's time and energy!

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"I just got a letter from my licensing board..."

Licensing boards receive complaints about licensees with considerable frequency. It's more than important that you call an attorney to assist you with a licensing board complaint!

You want to engage an attorney who is called an "administrative lawyer," because attorneys who do not specialize in administrative law may not represent you as well as a specialist. Licensing board actions are among the most distressing events we might face, because our licensing status is not just about what we do. It's about who we are!

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Licensing Board Actions

There is typically a sufficiently long time to respond to a board complaint to discuss it with your lawyer and draft a response. It is also frequent that the board will take as much as several months to respond you your response, as they are very busy people. Your goal is to stop the progress of the investigation by your response to the allegations. You might also wish to contact a colleague who the board uses as an expert witness on board cases, so you can get information from a colleague who knows what's important to the board and how best to respond to the letter.

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Board Complaints

- Once your attorney (and, hopefully, your colleague) work with you on the response and send it to the board, it may take several months before you hear from them. The hope is that it will end upon the board's initial review (most complaints end at that point). If it goes further, given that the board has the power to override a supportive finding by an "Administrative Law Judge," the most frequent advice from administrative lawyers is to negotiate a discipline that is limited in scope and time, and to make plans for dealing with the board's probationary terms.

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Board Complaints

- Once your cases is resolved, the resolution often involves restrictions on your practice, financial demands (e.g., fines, as well as legal costs), restrictions on aspects of practice, requirements for personal psychotherapy, a “probation monitor,” etc. It is fundamentally an exercise in shame management. The good news is that it does come to an end and practice can be restored thereafter.

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Thanks for Playing



**Looking forward to
Meeting, Greeting
& Working together**

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