

Question:

I just spoke to a patient who has a plan to kill someone. What should I do?

Answer:

The concept of “duty to warn” or “duty to protect” refers to healthcare providers’ responsibility to disclose information about a patient who is potentially violent or dangerous.

HIPAA regulations support “duty to warn” by permitting disclosure of certain limited information based on a reasonable belief that use or disclosure of the protected health information is necessary to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public, if disclosure is consistent with state law.¹

In such situations, consider the following four-step algorithm.

1. Do you believe the individual poses a serious and imminent threat to the health or safety of a person or the public and has the ability to carry out the threat?
2. Are you basing this good faith belief on reliable information?
3. Do you believe that disclosing this threat (to the victim or law enforcement) will reasonably prevent or lessen the threat of harm?
4. If the answers to the above questions are “yes,” warn the victim and/or law enforcement and document this four-step algorithm in the patient’s medical record.

Your state’s mental health regulations also might include a provision for involuntarily admitting the patient to a mental health facility.

Resources:

- American Psychological Association: Disclosing Confidential Information — <http://www.apa.org/monitor/2014/04/disclosing-information.aspx>
- *Journal of the American Academy of Psychiatry and the Law*: Warning a Potential Victim of a Person's Dangerousness: Clinician's Duty or Victim's Right? — <http://www.jaapl.org/content/34/3/338.long>
- Medscape: Healthcare Providers’ Duty to Warn — <http://www.medscape.com/viewarticle/450324>

- National Conference of State Legislatures: Mental Health Professionals' Duty to Protect/Warn — <http://www.ncsl.org/research/health/mental-health-professionals-duty-to-warn.aspx>
- *The New Social Worker: Duty to Warn, Duty to Protect* — http://www.socialworker.com/feature-articles/ethics-articles/Duty_to_Warn,_Duty_to_Protect/
- The Society for the Advancement of Psychotherapy: Confidentiality and its Exceptions: The Case of Duty to Warn — <http://societyforpsychotherapy.org/confidentiality-and-its-exceptions-the-case-of-duty-to-warn/>

¹ HIPAA Privacy and Security Rule, 45 C.F.R. § 164.512 (amended as of June 7, 2013).

This document should not be construed as medical or legal advice. Because the facts applicable to your situation may vary, or the laws applicable in your jurisdiction may differ, please contact your attorney or other professional advisors if you have any questions related to your legal or medical obligations or rights, state or federal laws, contract interpretation, or other legal questions.

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