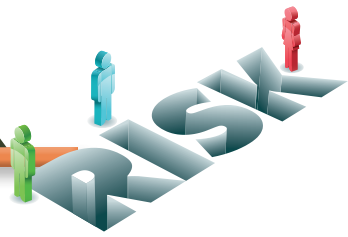

State court's ruling could influence future duty-to-warn decisions

Question: I read about a new court case in the state of Washington that significantly expands the duty to warn and/or protect for mental health professionals. Will this affect me as a licensed counselor?

Answer: You likely are referring to the case of *Volk v. DeMeerleer*, a decision of the Washington Supreme Court that was published at the end of 2016. Before discussing the case, let's review some of the background history leading up to this decision, which may aid in understanding what this case may — or may not — mean for you as a practicing counselor.

Most counselors have read about the *Tarasoff v. Regents of the University of California* case decided by the California Supreme Court in the mid-1970s. The court in that case ruled that a therapist who knows or should have known that a patient poses a "serious danger of violence to others" yet does not take reasonable care to protect the intended victim or notify the local police may be held liable for the ensuing harm.

Following the *Tarasoff* decision, many similar lawsuits were filed against mental health professionals and facilities across the United States. Some courts refused to impose liability on the mental health professional or entity; many others found liability, especially in cases in which the patient or client made a specific threat against a specific identifiable victim and communicated that threat to the therapist. In many states, legislation was passed that provided immunity, or at least a limited scope of liability, for mental health professionals who took certain actions (such as warning the potential victims, notifying the police or taking other steps as specified in the statutes).

One of the most troubling cases following *Tarasoff* was *Petersen v. State*, which came out of Washington state in 1983. This case held that a psychiatrist on staff at a state hospital had a duty to anyone who might be reasonably endangered by a patient's drug-related mental health problems. The ruling was very broad. The basic facts of that case were that the psychiatrist discharged a patient shortly before the end of an involuntary commitment. The patient later ran a red light while driving when he was high on PCP, killing the victim. Following the court decision, the Washington Legislature passed a statute providing immunity to mental health professionals in the context of a patient's involuntary commitment, unless the patient identified a specific victim or unless the mental health provider was grossly negligent or acted in bad faith.

Turning back to the *Volk v. DeMeerleer* case, the facts involve a psychiatrist named Howard Ashby who treated a patient, Jan DeMeerleer, for bipolar disorder and depression for several years. Based on the court record, it appears that the patient did not come to treatment consistently. Additionally, the patient had gone off of his medication before the time of the incident that led to the lawsuit against the psychiatrist and the Spokane clinic where he worked. DeMeerleer shot and killed his ex-girlfriend and her young son before killing himself. Another son was stabbed but survived, and a third son was physically unharmed.

The estate of the victims sued Ashby and the clinic, claiming liability because the psychiatrist failed to warn the victims. A lower court decided that Ashby was not liable based on facts that came out at trial. Namely, DeMeerleer had occasionally related homicidal fantasies but had made no specific threats against the victims during his treatment relationship with Ashby.

A Washington appeals court reversed the lower court's decision in 2014, noting that psychiatrists could be required to warn/protect all foreseeable victims rather than just specifically identifiable victims. The appellate court decided that the matter should be remanded so that a trial court jury could decide whether the fatal assault was indeed foreseeable. The appellate court also expressed concern over applying the state's immunity statute outside of the context of involuntary commitment. The case was sent to the Washington Supreme Court, which issued its decision on December 22.

The Washington Supreme Court held that Ashby and DeMeerleer shared a "special relationship" that required the psychiatrist to act with reasonable care, consistent with standards of the mental health profession, to protect foreseeable victims of the patient. The state's high court arrived at this decision even though the patient had not communicated to the psychiatrist any specific homicidal or violent threats against a third party. The patient had expressed suicidal ideation. The state Supreme Court reversed the trial court's grant of the defendants' motion for summary judgment and decided a jury should decide whether, as a matter of fact, the injury to the victims was foreseeable.

Whether this case affects you as a licensed counselor depends on whether you practice in the state of Washington because the court's decision is not binding in other states. However, the ruling sets a very broad precedent in the state of Washington and could possibly affect future decisions in other states disposed to expansive interpretations of the duty to warn/protect.