

Court case threatens physician-patient confidentiality

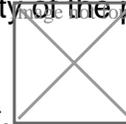
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What if patients no longer felt safe sharing personal—yet crucial—information with their physicians? A case to be heard by the Washington Supreme Court threatens the integrity of the patient-physician

relationship, potentially raising new obstacles to communication and trust.



In *Volk v. DeMeerleer*, a treating psychiatrist was charged with liability for his patient's homicidal actions in 2010. A lower court decided that the psychiatrist could not have identified the actual victims as targets because the patient had communicated no threats against them during his treatment.

An appeals court then examined the duty of a mental health professional to protect a third party when an outpatient occasionally expresses homicidal ideas without identifying the ultimate target. The majority reversed the trial court and ruled that mental health professionals who treat voluntary outpatients may owe a duty to protect “all foreseeable victims, not only those reasonably identifiable victims who were actually threatened by the patient.”

However, a state law designed to protect doctor-patient confidentiality provides that mental health professionals owe a duty to third parties only when a patient has “communicated an actual threat of physical violence against a reasonably identifiable victim or victims.”

The Litigation Center of the AMA and State Medical Societies joined six other health care associations in Washington in an amicus brief opposing the court of appeals decision. “Therapy is not effective if patients stay away or do not open up when they do seek treatment,” the brief said.

An important part of mental health treatment is that patients feel that they can trust their physicians. This is especially important when a patient needs to communicate something that would embarrass himself or herself if shared publicly. When patients do not feel they can be honest with their physicians, such distrust interferes with the therapeutic relationship.

“This case illustrates the difficulties in treating patients who have combinations of serious problems, are not under the ‘control’ of the psychiatrist and do not meet the criteria for involuntary commitment,” the brief said. “Any diminution in patient confidentiality, as the [court of appeals] decision ... would do, will jeopardize the chances for continued and successful mental health treatment and will cause some practitioners to cease serving such patients.”

Without reasonable boundaries on legal liability for physicians in connection with psychiatric care, patients may refuse to seek mental health treatment, and physicians may decline to treat patients with severe mental illnesses. If patients and physicians do not feel that they are working together in treatment, proper care cannot be administered because it requires honesty and confidentiality—the building blocks of trust.

Read about other cases in which the AMA Litigation Center is involved that are related to confidentiality, patient privacy and the patient-physician relationship.