

[J-253-96]

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

RONALD B. EMERICH, : Nos. 52, 53, and 54 Eastern
Administrator of the Estate of : District Appeal Docket 1996
Teresa M. Hausler, :
 :
Appellant : Appeal from the orders of the
 : Superior Court, entered January
v. : 19, 1996, at Nos. 884PHL95,
 : 885PHL95, and 886PHL95,
 : affirming the order of the
PHILADELPHIA CENTER FOR HUMAN : Court of Common Pleas of
DEVELOPMENT, INC. AND ALBERT : Philadelphia County, Civil
EINSTEIN MEDICAL CENTER : Division, entered December 8,
 : 1994, at Nos. 9305-3216 and
Appellees : 9306-3480
 :
and :
 :
RONALD B. EMERICH, :
Administrator of the Estate of :
Teresa M. Hausler, : ARGUED: December 11, 1996
 :
Appellant :
 :
v. :
 :
PHILADELPHIA CENTER FOR HUMAN :
DEVELOPMENT, INC., ALBERT :
EINSTEIN HEALTHCARE MEDICAL :
CENTER, HARVEY FRIEDRICH, :
ACSW, ANTHONY J. SCUDERI, :
M. DIV., CAC AND HACAN ULUS, :
ADMINISTRATRIX OF THE ESTATE :
OF AHMET ULUS, M.D., :
 :
Appellees :

CONCURRING AND DISSENTING OPINION

MADAME JUSTICE NEWMAN

DECIDED: November 25, 1998

I join in the majority's decision recognizing a duty mandatory for mental health care professionals to warn a third party of a patient's specific threat of immediate and serious

bodily harm to that person. Additionally, I agree with the majority's determination that such a duty arises when a patient communicates a serious, specific and immediate threat of bodily harm against an identified or identifiable third party.

I dissent, however, because I believe that the majority has incorrectly determined that, as a matter of law, the therapist, Anthony Scuderi, discharged his duty to warn Teresa Hausler of the danger posed to her by his patient with the vague admonition not to visit the apartment. Furthermore, I take exception to the qualification the majority places on the term "reasonable under the circumstances" when the majority states that the warning "should be the least expansive based upon the circumstances." In my view, the majority defers too greatly to the mental health care professional's interest in maintaining patient-psychotherapist confidentiality and, in this case, suggests too lenient a standard for discharging the duty to warn.

Having taken the step of establishing an affirmative duty on mental health care professionals to warn a third party of a specific threat by a patient of serious and immediate harm to that person, the majority stumbles by allowing that duty to be discharged, as a matter of law, by the very unspecific, imprecise statement of the therapist alleged here. "Reasonable under the circumstances" as the standard for discharge of the duty to warn must, of necessity, take into consideration the circumstances that give rise to the duty: the communication by the patient to the therapist of a specific and immediate threat of bodily harm to an

identified or identifiable third person. To qualify this standard, as the majority does here, by sanctioning as "reasonable under the circumstances" a warning that is the "least expansive under the circumstances" fails to serve the purpose for creation of the duty in the first place: adequate notice to the person threatened.

We need not defer, as the majority does, to the professional's concern for his patient's privacy in determining whether a warning is sufficient as a matter of law to discharge the duty to warn. We have already found that the public concern for notice of dangerous behavior to the person imperiled outweighs the patient's privacy concerns when the therapist, in his considered judgment based on the standards of the mental health care profession, concludes that the patient has communicated a specific and immediate threat to do serious bodily harm to an identified or identifiable individual, thus triggering his duty to warn that individual. Why, then, do we return to discounted privacy concerns when we permit a mental health care professional to discharge his duty to warn with a "warning" that does not describe the threat involved? The duty to warn established, the paramount concern no longer is the protection of the patient's privacy but the urgent need to provide the person threatened with the information necessary to take appropriate action. See Tarasoff, 17 Cal.3d at 442, 551 P.2d at 347, 131 Cal.Rptr. at 27 (public policy favoring protection of the confidential character of patient-psychotherapist communications must yield to the extent to which disclosure is essential to avert danger to others).

I cannot agree with the majority's determination that the "warning" alleged adequately discharged, as a matter of law, Mr. Scuderi's duty to warn Ms. Hausler of the serious danger posed by his patient. Accordingly, I would reverse the trial court's entry of judgment on the pleadings and remand for further proceedings.