

2006

Mark Robinson and Lori Robinson v. Mount Logan Clinic : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

William J. Hansen; Karra J. Porter; Christensen & Jensen; Attorneys for Appellants.

Elliot J. Williams; Dennis C. Ferguson; Robert C. Keller; Williams & Hunt; Attorneys for Defendant/Appellee.

Recommended Citation

Reply Brief, *Mark Robinson and Lori Robinson v. Mount Logan Clinic*, No. 20061168 (Utah Court of Appeals, 2006).
https://digitalcommons.law.byu.edu/byu_ca2/7048

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

7
105. Dec 4, 2007

IN THE UTAH SUPREME COURT

MARK ROBINSON and LORI
ROBINSON,
Husband and wife,

Plaintiffs / Appellants,

vs.

MOUNT LOGAN CLINIC, LLC.,

Defendants / Appellees.

Case No. 20061168

APPEAL FROM AN ORDER
HONORABLE GORDON J. LOW
FIRST JUDICIAL DISTRICT COURT IN AND FOR
CACHE COUNTY, STATE OF UTAH

REPLY BRIEF OF APPELLANTS

William J. Hansen, 1353
Karra J. Porter, 5223
CHRISTENSEN & JENSEN, P.C.
Attorneys for Appellants
15 West South Temple, Suite 800
Salt Lake City, Utah 84101

Elliott J. Williams
Dennis C. Ferguson
Robert C. Keller
WILLIAMS & HUNT
Attorneys for Defendants
257 East 200 South, Suite 500
PO Box 45678
Salt Lake City UT 84145-5678

UTAH APPELLATE COURTS
MAY 29 2007

IN THE UTAH SUPREME COURT

MARK ROBINSON and LORI
ROBINSON,
Husband and wife,

Plaintiffs / Appellants,

vs.

MOUNT LOGAN CLINIC, LLC.,

Defendants / Appellees.

Case No. 20061168

APPEAL FROM AN ORDER
HONORABLE GORDON J. LOW
FIRST JUDICIAL DISTRICT COURT IN AND FOR
CACHE COUNTY, STATE OF UTAH

REPLY BRIEF OF APPELLANTS

William J. Hansen, 1353
Karra J. Porter, 5223
CHRISTENSEN & JENSEN, P.C.
Attorneys for Appellants
15 West South Temple, Suite 800
Salt Lake City, Utah 84101

Elliott J. Williams
Dennis C. Ferguson
Robert C. Keller
WILLIAMS & HUNT
Attorneys for Defendants
257 East 200 South, Suite 500
PO Box 45678
Salt Lake City UT 84145-5678

TABLE OF CONTENTS

ARGUMENT 1

CONCLUSION 10

ADDENDUM

TABLE OF AUTHORITIES

Cases

<i>Alvarez v. Jacmar Pacific Pizza Corp.</i> , 122 Cal.Rptr.2d 890, 100 Cal.App.4th 1190 (2002)	7
<i>Boon v. Rivera</i> , 96 Cal.Rptr.2d 276, 80 Cal.App.4th 1322 (2000)	7
<i>Dunnington v. Silva</i> , 916 So.2d 1166 (La. App. 2005)	4
<i>Ewing v. Goldstein</i> , 15 Cal.Rptr.3d 864, 120 Cal.App.4th 807	3
<i>Garcia v. Superior Court</i> , 50 Cal.3d 728, 268 Cal.Rptr. 779, 789 P.2d 960 (1990).....	7, 8
<i>Gilger v. Hernandez</i> , 2000 UT 23, ¶ 20, 997 P.3d 305	7
<i>Halverson v. Pikes Peak Family Counseling and Mental Health Center</i> , 795 P.2d 1352	4
<i>Jorgensen v. Issa</i> , 739 P.2d 80 (Utah App. 1987)	9
<i>Powell v. Catholic Medical Center</i> , 145 N. H. 7, 749 A.2d 301 (2000)	4, 5
<i>Tarasoff v. Regents of the University of California</i> , 17 Cal.3d 425, 131 Cal.Rptr. 14, 551 P.2d 334 (1976).....	2, 3
<i>Wilson v. Valley Mental Health</i> , 969 P.2d 416 (Utah 1998)	5, 6

Statutes

Cal. Civil Code § 43.92	3
N. H. Rev. Stat. Ann. § 329:31	4

Other Authorities

100 Cal.Rptr.4th	7
Allison L. Almason, "Personal Liability Implications of the Duty to Ward are Hard Pills to Swallow: From Tarasoff to Hutchinson v. Patel and Beyond," <i>13J. Contemp. Health. L. & Pol'y</i> 471 (Spring 1997)	3
Michael R. Gerske, "Statutes Limiting Mental Health Professionals' Liability for the Violent Acts of their Patients," 64 <i>Ind. L. J.</i> 391, 392 n.5 (Spring 1988/1989)	3, 5

ARGUMENT¹

As stated in the principal briefs, Utah Code Ann. § 78-14a-102 (1) provides:

A therapist has no duty to warn or take precautions to provide protection from any violent behavior of his client or patient, except when that client or patient communicated to the therapist an actual threat of physical violence against a clearly identified or reasonably identifiable victim. That duty shall be discharged if the therapist makes reasonable efforts to communicate the threat to the victim, and notifies a law enforcement officer or agency of the threat.

The sole issue presented in this appeal is whether the statute, which precludes the imposition of a duty “to warn or take precautions to provide protection from” the violent behavior of a client except under certain circumstances, also eliminates a therapist’s duty of reasonable care when she undertakes an affirmative act.

Appellants discussed at length in their initial brief the material difference between seeking to impose liability for a failure to act and seeking to impose liability for negligently performing an affirmative act. (*See* Brief of Appellants, pp. 11-13.) By its terms, Section 78-14a-102(1) applies only to the former; it precludes the imposition of an affirmative duty of a therapist to act, except under specific circumstances. Nowhere does it address, let alone eliminate, a therapist’s duty to act reasonably when she *does* act.

The Clinic implicitly recognizes this distinction, arguing that affirmatively misrepresenting a fact is really just a failure “to ensure the completeness and accuracy of

¹ The Clinic begins its brief with a summary of facts from the plaintiffs’ complaint. On appeal from a motion to dismiss, the appellants are entitled to have the matter decided based on all allegations in the complaint, along with reasonable inferences therefrom. Accordingly, the dispositive facts are those set forth in the Robinsons’ opening brief.

information. . . . “[T]he ‘essence and substance’ of Plaintiffs’ claim here is that Ms. Harris should have taken precautions to protect Plaintiffs which she did not take, ‘ascertaining whether the patient was carrying a concealed weapon,’ and responding accurately to the dispatcher’s question.” (Brief of Appellee, pp. 4, 6-7.)

The Clinic’s theory would eviscerate the long line of Utah authority distinguishing nonfeasance and misfeasance. Performing an affirmative act unreasonably would simply be recharacterized as a “failure to act” reasonably. The Clinic’s argument is like saying that driving one’s car into a pedestrian is really a failure to act because it involves a failure to apply one’s brakes. The argument does not pass the common-sense test.

The wording of Section 78-14a-102(1) is unambiguous, and does not address or limit liability for acts of affirmative negligence. Because the statutory language is plain, the inquiry should go no further. Appellants note, however, that a memorandum in the legislative history file appears to make clear that the statute was intended solely to address claims of nonfeasance. *See* Addendum Exh. A hereto.²

According to the Legislative Memorandum, Section 78-14a-102 was enacted in response to a California Supreme Court decision, *Tarasoff v. Regents of the University of California*, 17 Cal.3d 425, 131 Cal.Rptr. 14, 551 P.2d 334 (1976). *See also* Michael R. Gerske, “Statutes Limiting Mental Health Professionals’ Liability for the Violent Acts of

² The bill was originally proposed in 1987 by Rep. Irby Arrington, but was not passed until 1988. The memorandum was prepared for the 1987 session, but because the 1988 bill was “identical,” it is instructive as to legislative intent with respect to that bill as well.

their Patients,” 64 *Ind. L. J.* 391, 392 n.5 (Spring 1988/1989) (identifying Utah as one of ten states enacting legislation to counteract *Tarasoff*). In *Tarasoff*, the California Supreme Court held that a “special relationship” existed between a therapist and a third-party victim if the therapist knew “or should have known” that his patient posed a threat to the third party. Accordingly, the court held, a duty to warn the victim existed.

Tarasoff “created an exception to the general rule under the common law, which states that a person does not have an affirmative duty to act to protect others even if action by a particular person is necessary to prevent harm.” Allison L. Almason, “Personal Liability Implications of the Duty to Warn are Hard Pills to Swallow: From *Tarasoff* to *Hutchinson v. Patel* and Beyond,” 13 *J. Contemp. Health. L. & Pol’y* 471, 474 (Spring 1997) (noting that *Tarasoff* creates “liability for nonfeasance” by finding the existence of a “special relationship”).

The Legislative Memorandum stated (with underlining in the original), “This bill, and similar statutes in other states is designed to define a therapist’s duty to warn and take precautions, when a threat has been made, and to reasonably limit his liability if he fulfills that duty.” The Memorandum attached a copy of California’s post-*Tarasoff* statute, Cal. Civil Code § 43.92, which contained wording similar to that enacted in Utah. *Id.*

What California’s statute (and Utah’s Section 78-14a-102) accomplished was the preclusion of any alleged duty to warn where a therapist merely “should have known” of a threat, but does not have actual knowledge. See *Ewing v. Goldstein*, 15 Cal.Rptr.3d 864, 120 Cal.App.4th 807 (discussing history of California’s post-*Tarasoff* statute; stating

that “Section 43.92 . . . eliminates the ‘should have determined’ component and provides immunity to therapists for failure to warn, except where the plaintiff can show that the patient actually communicated to his therapist a serious threat of physical violence against an identifiable victim”).

In addition to California’s law, the Legislative Memorandum noted that similar statutes had been enacted in Colorado, New Hampshire, Kentucky, and Louisiana. Consistent with their origins, courts in those jurisdictions characterize their versions of Utah Code Ann. § 78-14a-102 as “duty to warn” statutes. *See, e.g., Halverson v. Pikes Peak Family Counseling and Mental Health Center*, 795 P.2d 1352, 1353 (Colo. App. 1990) (characterizing § 13-21-117, C.R.S. (as “grant[ing] immunity from liability to health care providers for their failure to warn others of a patient’s dangerous propensities or his generalized threats of violence against unspecified persons”); *Dunnington v. Silva*, 916 So.2d 1166, 1168 -69 (La. App. 2005) (characterizing LSA-R.S. 9:2800.2 as a “duty to warn” statute); *Powell v. Catholic Medical Center*, 145 N. H. 7, 749 A.2d 301 (2000) (stating, with regard to N. H. Rev. Stat. Ann. § 329:31, that “[t]he subject matter embraced by RSA 329:31 is limited to a physician’s duty to warn of a client’s violent behavior when the client has communicated a serious threat of physical violence against a clearly identified or reasonably identifiable victim”).

Section 78-14a-102(1) is a duty-to-warn statute. This is not a duty-to-warn case. The statute simply does not apply. Ironically, however, it does lend indirect support to the Robinsons’ contention that the legislature did not intend to immunize the negligent

performance of an existing duty. In the final sentence of Section 78-14a-102(1), the statute provides that, when a duty to warn has arisen, the therapist is required to act reasonably in fulfilling it. Utah Code Ann. § 78-14a-102(1) (therapist must make “reasonable efforts” to warn upon receipt of specific threat). The same principle applies here: A duty, once it has arisen, must be performed non-negligently.³

In arguing that Section 78-14a-102(1) should immunize alleged affirmative negligence, the Clinic cites *Wilson v. Valley Mental Health*, 969 P.2d 416 (Utah 1998). In that case, the plaintiffs sued Valley Mental Health, alleging that the clinic owed their daughter and grandson a duty to warn and/or protect them from the violent actions of a patient whom it misdiagnosed as non-threatening. “They argue that because Valley

³ Another reason why it makes little sense to apply Section 78-14a-102 in this case is that accurately reporting whether a person has a weapon or not, or that it is unknown whether the person has a weapon, does not involve the application of medical training or skill. The fact that the employee making the phone call happens to be a therapist rather than the receptionist is largely fortuitous. The New Hampshire Supreme Court made a similar observation in *Powell, supra*. After concluding that a duty to warn existed under its statute, the court rejected the defendant’s argument that his compliance with that duty should be measured by a “reasonable professional” standard, rather than a “reasonable person” standard. Once a duty of reasonable care existed, the court said, it was “an ordinary duty of care case. It is only fortuitous that one of the defendants is a physician. Specialized training and experience do not excuse a physician from exercising the reasonable care of an ordinary person.” 749 A.2d at 306. *See also* Geske, 64 *Ind. L. J.* at 417-418 (“The task of warning or taking precautions against a person’s violent behavior presupposed no particular professional skill or training. . . . Any person faced with a threat which triggers the statutory duty could be expected to choose a reasonable response to the threat to protect an identifiable person. . . . Requiring a professional to choose reasonably among alternative warnings or precautions to protect reasonably identifiable persons depending on the circumstances demands no more from the professional than the reasonable care required of all persons in carrying out their legal duties.”)

Mental Helth failed to treat Kilgrow it failed to discover the threat to Jayleen and the children,” the Court summarized. “Therefore, a duty to Jayleen and her children exists under the common law because Valley Mental Health should have known of the threat Kilgrow posed.” *Id.* at 419.

The Wilsons’ claims were barred by Section 78-14a-102(1), the Court held, because the statute eliminated the common law extension of a duty to warn in situations where a therapist merely “should have known” of a danger. “[U]nder our case law a duty may . . . exist where a therapist ‘should have known’ of the danger to a clearly identified or reasonably identifiable victim,” the *Wilson* court explained. “That is, our case law may allow the imposition of a duty where, because of the defendant’s negligent treatment, a threat to a reasonably identifiable victim is not discovered.” *Id.* at 420.

The statute, by contrast, narrowed the circumstances under which such a duty could be imposed. “[T]he statute requires actual knowledge of a threat to a reasonably identifiable victim,” the Court wrote. “There is no liability under the statute where the claim is that a therapist ‘should have known’ of the threat to a clearly identified or reasonably identifiable victim.” *Id.*

It was uncontroverted in *Wilson* that the patient had not communicated a specific threat, the Court noted. Under the statute, therefore, no duty to warn the daughter or grandson existed, and the plaintiff could not impose such a duty by arguing that a “special relationship” existed between the parties. *Wilson* has no bearing on the Robinsons’ claim in this case.

The Clinic also argues that *Boon v. Rivera*, 96 Cal.Rptr.2d 276, 80 Cal.App.4th 1322 (2000), which recognized a common law duty of reasonable care when requesting the services of law enforcement, is distinguishable. The Clinic states that *Boon* focused on the existence of a specific threat to an identifiable party. That portion of the court's analysis, however, related to the plaintiff's "special relationship" argument, which the court said was irrelevant to claims of affirmative negligence. 80 Cal.App.4th at 1332. *See also Gilger v. Hernandez*, 2000 UT 23, ¶ 20, 997 P.3d 305 ("An act of misfeasance may constitute actionable negligence without reliance on a special relationship to impose an affirmative duty to act."). The Clinic does not dispute the separate holding in *Boon* that, under the common law, a person has a duty not to negligently misrepresent material facts to law enforcement.

The Clinic also notes that the California Court of Appeal declined to apply *Boon* in *Alvarez v. Jacmar Pacific Pizza Corp.*, 122 Cal.Rptr.2d 890, 100 Cal.App.4th 1190 (2002). In *Alvarez*, the defendant called 911 and "did not provide information to the police which may have been pertinent to their deciding how to handle the situation." *Id.* Thus, the defendant's alleged negligence was not saying something. In that context, the Court of Appeal correctly distinguished *Boon* and another California Supreme Court decision, *Garcia v. Superior Court*, 50 Cal.3d 728, 268 Cal.Rptr. 779, 789 P.2d 960 (1990), because those cases involved allegations of affirmative acts rather than nonfeasance – the very distinction argued by appellants in this case. *See id.*, 100 Cal.Rptr.4th at 1213.

Garcia further illustrates the point. In that case, the supreme court upheld a negligence cause of action against a parole officer who falsely told a potential victim that a released criminal posed no threat to her. The court rejected the defendant's argument that he owed no duty to inform the victim of a parolee's dangerousness. "Ordinarily, of course, law enforcement personnel have no duty to volunteer information about released criminals under their supervision," the court agreed. "Nevertheless, the absence of a duty to speak does not entitle one to speak falsely. . . . [W]e conclude that Ybarra, having chosen to communicate information about Johnson to Morales, had a duty to use reasonable care in doing so." *Id.*, 789 P.2d at 964.

The Clinic next argues that, "Although Plaintiffs characterize Ms. Harris' statement that the patient did not have a gun as an 'affirmative misrepresentation,' they cannot allege she actually knew that the patient had concealed a gun on his person." (Brief of Appellee, p. 9.) That is similar to the claim in *Garcia*. No allegation was made there that the parole officer actually knew that a threat existed and lied about it. In this case, even under the Clinic's theory, the reasonable – the accurate – response would have been, "I don't know," rather than a positive assurance that the patient did not have a weapon. To a law enforcement officer (or anyone, really), there is a material difference between being told there is a *possibility of a weapon* and being told there is *no weapon*.

Finally, the Clinic argues that it would be "poor policy" to require a defendant to act reasonably when providing information to law enforcement. (Brief of Appellee, p. 11.) "Rather, public policy is served when therapists needing assistance in potentially

dangerous situations are encouraged to summon aid from police who are trained to deal with such situations, regardless of how the call for assistance might be characterized after the fact,” appellee argues. *Id.*

It must be remembered that all the Robinsons are asking, and all that other courts require, is reasonableness under the circumstances. How can it be good public policy to allow *unreasonable* behavior when making statements upon which law enforcement will rely? Rather, appellants submit that the public policy arguments in this case cut in their favor. Shouldn’t the courts adopt a position that prevents law enforcement officers from being unnecessarily placed in harm’s way by requiring that reasonably accurate information be provided to them?


With respect to “how the call for assistance might be characterized after the fact,” that is a question for the factfinder. A jury will consider the individual circumstances of each particular case, including any extenuating circumstances cited by the defendant. *See, e.g., Jorgensen v. Issa*, 739 P.2d 80 (Utah App. 1987) (upholding jury finding of 50 percent comparative fault even though the plaintiff was confronted with an emergency created by the defendant) (“The jury, pursuant to those instructions, apparently found that under the circumstances appellant was negligent in failing to *reasonably* keep his vehicle under control and/or maintain a *reasonably* safe speed. The finding of negligence took into account, as part of the circumstances, that appellant was suddenly confronted with defendant's vehicle straddling the center line.”). (Emphasis in original.)

CONCLUSION

The trial court erred in applying Utah Code Ann. § 78-14a-102(1) to claims based upon affirmative misconduct. Plaintiffs respectfully request the Court to reverse the trial court's judgment and remand the case for trial.

RESPECTFULLY SUBMITTED this 29th day of May, 2007.

CHRISTENSEN & JENSEN, P.C.




William J. Hansen
Karra J. Porter
Attorneys for Appellants

CERTIFICATE OF SERVICE

This is to certify that on the 29th day of May, 2007, two true and correct copies of the foregoing **REPLY BRIEF OF APPELLANTS** were mailed, first-class postage prepaid, to:

Elliott J. Williams
Dennis C. Ferguson
Robert C. Keller
WILLIAMS & HUNT
Attorneys for Defendants
257 East 200 South, Suite 500
PO Box 45678
Salt Lake City UT 84145-5678

CHRISTENSEN & JENSEN, P.C.



William J. Hansen
Karra J. Porter
Attorneys for Appellants

ADDENDUM

Legislative History file material

STATE OF UTAH

OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL

EDWARD V. STRONG

Director

TAYLOR

General Counsel

MEMORANDUM

TO: Representative Irby N. Arrington

FROM: Janetha W. Hancock, Associate General Counsel

SUBJECT: H.B. 192 Background

DATE: February 16, 1987

The reason for this bill, and similar statutes in at least five other states (California, Colorado, New Hampshire, Kentucky, and Illinois) is to

limit the liability of therapists for the violent acts of a client.

The case of Parasoff v. Regents of the University

of California Supreme Court held, under general

principles, that a therapist was liable in damages for the death of

his client. In that case, the client had made

threats - the therapist (who was employed by

the University) notified

the state's civil commitment procedure

and the client's therapy had ended.

This case has set a broad precedent for liability

to clients. As a result, therapists are "under

an obligation to warn and take precautions, and

to limit his liability if he fulfill that duty.

§ 43.8

CIVIL CODE

This section shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1990, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1990, pursuant to Section 9411 of the Government Code, Section 43.8 of the Civil Code, as amended by Section 2 of Chapter 1041 of the Statutes of 1983, shall have the same force and effect as if this temporary provision had not been enacted.

(Amended by Stats.1982, ch. 234, p. 767, § 3, urgency, eff. June 2, 1982; Stats.1982, c. 705, p. 2863, § 2; Stats.1983, c. 1081, p. —, § 2; Stats.1984, c. 615, p. —, § 4.)

For text of section operative Jan. 1, 1990, see § 43.8, post.

1984 Amendment. Inserted, near the end of the first sentence of the first paragraph, "or law" following "the healing or veterinary arts"; and added the second paragraph.

§ 43.8. Immunity from liability for communication on evaluation of practitioner of healing or veterinary arts.

Text of section operative Jan. 1, 1990.

In addition to the privilege afforded by Section 47, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of such person to any hospital, hospital medical staff, veterinary hospital staff, professional society, medical, dental, podiatric school, or veterinary school, professional licensing board or division, committee or panel of such licensing board, peer review committee, quality assurance committees established in compliance with Sections 4070 and 5624 of the Welfare and Institutions Code, or underwriting committee described in Section 43.7 when such communication is intended to aid in the evaluation of the qualifications, fitness, character, or insurability of a practitioner of the healing or veterinary arts and does not represent as true any matter not reasonably believed to be true. The immunities afforded by this section and by Section 43.7 shall not affect the availability of any absolute privilege which may be afforded by Section 47.

(Amended by Stats.1982, c. 234, p. 767, § 3, urgency, eff. June 2, 1982; Stats.1982, c. 705, p. 2863, § 2; Stats.1983, c. 1081, p. —, § 2.)

For text of section operative until Jan. 1, 1990, see § 43.8, ante.

1982 Amendment.

Chapter 234 inserted "quality assurance committees established in compliance with Sections 4070 and 5624 of the Welfare and Institutions Code" in the list of organizations to whom communications may be imparted.

Legislative findings concerning Stats.1982, c. 234, see note under § 43.7.

Chapter 705 amended Chapter 234 by adding references to veterinary hospital staff, veterinary schools and practitioners of the veterinary arts.

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9405.

1988 Amendment. Inserted a comma following "hospital staff"; and inserted "podiatric school."

Law Review Commentaries

California supreme court survey a review of decisions: July 1982-November 1982. (1983) 10 Pepperdine L.Rev. 835.

Notes of Decisions

1. In general

Neither § 43.7 providing for immunity for liability for members of professional society or staff and hospital governing boards nor this section extends protection to private persons communicating to patients with respect to quality of medical or dental care they have received; therefore, those sections did not grant immunity to dental insurance corporation or its director for defamatory statements made by director in letter written to oral surgeon's patients explaining reasons for denial of patients' claims. *Slaughter v. Friedman* (1982) 185 Cal.Rptr. 244, 649 P.2d 886, 32 C.3d 149.

§ 43.92. Psychotherapists; duty to warn of threatened violent behavior of patient; immunity from monetary liability

(a) There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is a psychotherapist as defined in Section 1010 of the Evidence Code in failing to warn of and protect from a patient's threatened violent behavior or failing to predict and warn of and protect from a patient's violent behavior except where the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims.

Underline indicates changes or additions by amendment

CIVIL CODE

repealed, unless
not date. If that
tion 8611 of the
after 1981 of the
on had not been

c. 705, p. 2863,

ed the second para-

r of healing arts

bility on the part
of the communica-
staff, veterinary
school, profession-
review committee,
4 of the Welfare
th communication
insurability of a
any matter not
ion 43.7 shall not
47.

c. 705, p. 2863,

unity for liability for
and hospital govern-
protection to private
subject to quality of
ved; therefore, those
cial insurance corpo-
statements made by
on's policies explain-
claim. *Blaugher v.*
99 F.2d 884, 32 C.2d

atient: Immunity

shall arise against.
Code in failing to
and warn of and
mentated to the
liable victim or

by amendment

CIVIL CODE

§ 43.97

(b) If there is a duty to warn and protect under the limited circumstances specified above, the duty shall be discharged by the psychotherapist making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.

(Added by Stats.1985, c. 737, p. —, § 1.)

§ 43.95. Immunity from liability of professional society, etc., for referral services or telephone information library; duty to disclose disciplinary actions

(a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society or any nonprofit corporation authorized by such society to operate a referral service, or their agents, employees, or members, for referring any member of the public to any professional member of such society or service, or for acts of negligence or conduct constituting unprofessional conduct committed by a professional to whom a member of the public was referred, so long as any of the foregoing persons or entities has acted without malice, and the referral was made at no cost added to the initial referral fee as part of a public service referral system organized under the auspices of the professional society. Further, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society for providing a telephone information library available for use by the general public without charge, nor against any nonprofit corporation authorized by such society for providing a telephone information library available for use by the general public without charge. "Professional society" includes legal, psychological, architectural, medical, dental, dietetic, accounting, optometric, podiatric, pharmaceutical, chiropractic, veterinary, licensed marriage, family, and child counseling, licensed clinical social work, and engineering organizations having as members at least a majority of the eligible persons or licensees in the area served by the particular society, or organizations with referral services which have been authorized by the State Bar of California and operated in accordance with its Minimum Standards for a Lawyer Referral Service in California, and organizations which have been established to provide free assistance or representation to needy patients or clients.

(b) This section shall not apply whenever the professional society, while making a referral to a professional member of such society, fails to disclose the nature of any disciplinary action of which it has actual knowledge taken by a state licensing agency against that professional member. However, there shall be no duty to disclose a disciplinary action in either of the following cases:

(1) Where a disciplinary proceeding results in no disciplinary action being taken against professional to whom a member of the public was referred.

(2) Where a period of three years has elapsed since the professional to whom a member of the public was referred has satisfied any terms, conditions, or sanctions imposed upon such professional as disciplinary action; except that if the professional is an attorney, there shall be no time limit on the duty to disclose.

(Amended by Stats.1983, c. 289, p. —, § 2; Stats.1986, c. 437, § 1; Stats.1986, c. 1274, § 4.6.)

1983 Amendments. Inserted "dietetic" in the list of organizations in the last sentence of subd. (a); and added "persons or" preceding "licensees" in the last sentence of subd. (a).

1986 Legislation.

The 1986 amendment included medical, veterinary, licensed marriage, family, and child counseling, and licensed clinical social work organizations as professional societies in subd. (a).

Amendment of this section by § 2 of Stats.1983, c. 411, failed to become operative under the provisions of § 4 of that Act.

Amendment of this section by § 4 of Stats.1986, c. 669, failed to become operative under the provisions of § 4 of that Act.

Amendment of this section by §§ 4, 4.2 and 4.4 of Stats.1986, c. 1274, failed to become operative under the provisions of § 4 of that Act.

§ 43.97. Medical staff or membership privilege denied or restriction: immunity from liability; unsupported or intentional injury exceptions

(a) There shall be no monetary liability on the part of, and no cause of action for damages, other than economic or pecuniary damages, shall arise against a hospital for any action taken upon the recommendation of its medical staff, or against any other person or organization for any action taken, or restriction imposed, which is required to be reported pursuant to Section 604 of the Business and Professions Code, provided that the action or restriction is reported in accordance with Section 605 of the Business and Professions Code. This section shall not apply to an action

Arbitration * * * indicate deletions by amendment

FOR OFFICE USE ONLY:

Title

Limitations

Office Of Legislative Research and Gen

REQUEST FOR LEGISLATION

19

88

General

SESSION

Date

6/1/87

Requested for:

Senator

Representative

Irby Ammons

Committee

Received by

JWH

DRAFTING INFORMATION:

S.B. ☐

S.R. ☐

See attached ☐

Same as or similar to previous legislation

Wants bill identical to

has already been introduced

filed into going into



STATE OF UTAH

OFFICE OF LEGISLATIVE RESEARCH

LEGISLATIVE RESEARCH

Date: 8/1/84

H. B. No. 2

Title: Limitation of Practice Act

Joint Rule 23.16 requires the Legislative General Counsel to review bills with the approval of the sponsor, to make those changes necessary to remove any ambiguities; and (c) avoid constitutional conflicts.

The Legislative General Counsel or his designated representative provides information outlining the considerations on which the bill is based.

☒ yes ☐ no

1. The bill contains a "single subject" and its title as required by the Utah Constitution.

☒ yes ☐ no

2. The bill meets all the form requirements prescribed by the Utah Constitution.

☐ no
conflicts

3. The bill does not have state or federal constitutional conflicts. (Judgments regarding constitutionality address only constitutional problems and do not represent a detailed review of policy.)

☒

Explanation: Possible, but not certain, that the bill may be unconstitutional. The bill is a limitation on the practice of the medical profession. It is a bill of limitation.

4. The following information summarizes if applicable, its effect on governmental agencies and existing statutes and case law.

This bill is a limitation on the practice of the medical profession. It is a bill of limitation. It is a bill of limitation. It is a bill of limitation.

Office of Legislative Research

INTRODUCED COPY

THIS ACT AFFECTS

Be it enacted by the

1) a Psychiatr

Title

H. R. No. 2

Section 2. Section 78-14-102, Code of Alabama, 1901, is amended to read:

78-14-102. (1) A therapist has no duty to take any precautions to provide protection from the actions of his client or patient, except when that client or patient threatens the therapist an actual threat of physical harm to an identified or reasonably identifiable victim. A therapist is discharged if the therapist makes reasonable efforts to avert the threat to the victim, and notifies a law enforcement agency of the threat.

(2) No cause of action arises against a therapist on the basis of trust or privilege, or for disclosure of confidential information on a therapist's communication of information to a third party in an effort to discharge his duty in accordance with Subsection (1).

(3) This section does not limit or affect a therapist's duty to report child abuse or neglect in accordance with Section 62A-4-30.

(LIMITATION OF THERAPISTS' LIABILITY)

1988

GENERAL SESSION

SUBSTITUTE

H. B. No. 2

By _____

AN ACT RELATING TO LIABILITY OF THERAPISTS; LIMITING THERAPISTS' LIABILITY FOR VIOLENT ACTS OF CLIENTS; AND DEFINING THERAPISTS TO HARM AND TAKE PROTECTIVE ACTION.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:

78-14-101, UTAH CODE ANNOTATED 1953

78-14-102, UTAH CODE ANNOTATED 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 78-14-101, Utah Code Annotated 1953, is

repealed.

Section 2. As used in this chapter, "therapist" means:

(a) a psychiatrist licensed to practice medicine under Chapter

11, Title 32, the Utah Medical Practice Act;

(b) a psychologist licensed to practice psychology under chapter

11, Title 32;

(c) a marriage and family therapist licensed to practice

marriage therapy under Chapter 39, Title 32; and

(4) A social worker licensed to practice social work under Title 26, Chapter 2, Section 26-2-102, Utah Code Annotated 1953, is authorized to read:

35. Title 26.

Section 26-2-102, Utah Code Annotated 1953, is authorized to read:

to read:

26-2-102. (1) A therapist has no duty to warn or take precautionary steps to provide protection from any violent behavior of his or her patient, unless that client or patient communicates to the therapist an actual threat of physical violence against a clearly identified, reasonably identifiable victim. That duty shall be discharged if the therapist makes reasonable efforts to communicate the threat to the victim and notifies a law enforcement officer or agency.

(2) No cause of action arises against a therapist for an invasion of privacy, or for disclosure of confidential information, or for communication of information to a third party, if the therapist discharges his duty in accordance with subsection (1).

(3) This section does not limit or affect a therapist's duty to report child abuse or neglect in accordance with Section 62A-4-503.

January 15, 1954

Representative Leby Arrington proposes the following amendments to SUBBILIN
H. R. A. LIMITATION OF THERAPISTS' LIABILITY

1. Page 1, Line 78: After "Title 58;" delete "and"

2. Page 2, Line 1: After "Title 58" insert "and"

(5) a psychiatric and mental health nurse specialist ~~defined~~
to practice advanced psychiatric nursing under Chapter 25
Title 58"