

Duty to Warn Third Parties

Fact Sheet

- A duty to a third party usually arises when something about the patient indicates or should indicate to the practitioner that there is a significant chance that some other individual third party outside the patient-physician relationship may be harmed and that one or more third parties are in a foreseeable zone of harm.
- Areas that may give rise to a duty to third party outside the practitioner-patient relationship include:
 - Violent patients or individuals who have the potential to harm others
 - Duty to the driving public
 - Duty to warn about prescription medications
 - Duty to warn about HIV and other communicable diseases
- In general, duty to the driving public cases involve patients who are discharged from a physician's office or emergency department with some impairment in vision or motor activity. The patient then causes injury to a third party, typically in a motor vehicle accident. The injured third party then brings a lawsuit against the healthcare practitioner for negligent discharge or failure to warn about the danger of driving in the compromised condition. Cases typically involve:
 - Impaired vision
 - Hypoglycemia
 - Seizure disorder
 - Altered consciousness from street drugs, alcohol, or parenteral narcotics given in the ED or office
- In everyday practice, the healthcare practitioner has the difficult task of diagnosing and managing contagious diseases. When a patient presents with a communicable disease, the healthcare practitioner's immediate obligation is to attend to that individual's needs. However, the practitioner must also consider the extent to which the communicable disease may spread and who subsequently may be affected. Healthcare practitioners have been found liable to third parties for:
 - Failure to diagnose a communicable disease, with subsequent spread to a third party
 - Failure to warn a patient regarding the risk of passing the infection
 - Failure to inform a third party of the contagious nature of the disease
 - Negligently advising a third party that there was no danger of infection
 - Failure to prevent the spread of the disease to a third party

- A healthcare practitioner may have a duty to warn a potential third party victim of a violent crime. This duty may arise when a patient has expressed a threat to a particular individual or when the practitioner believes a patient may be a danger to a foreseeable group of individuals. When to communicate and to whom a practitioner should communicate varies state by state. When this situation arises, get help from administration or the hospital attorney.
- Third party law is a growing body of law, and the type of “third party threats” continues to grow over the years. They include such areas as:
 - Environmental exposures such as carbon monoxide and warning others who may be in danger
 - Warnings related to a patient with known drug-resistant TB
 - Warnings to family members of a patient with a known genetic predisposition to a deadly disease
- Disclosures related to potential third party dangers raises significant privacy issues. Be aware of the disclosure requirements in your state, including required disclosures for seizure disorders, communicable diseases and other clinical conditions. Violations of privacy and privacy laws (e.g., HIPAA) can lead to serious consequences. Get assistance from administration or counsel when evaluating the need to make a disclosure outside of the patient-physician relationship.
- The following is a summary of several strategies to warn and prevent third parties from harm:
 - Document thoroughly all verbal and written warnings provided to patients and families.
 - Use discharge instruction systems that have built-in warnings.
 - Warn patients with some impairment in vision or motor activity to not operate a motorized vehicle.
 - Warn patients who have been given pain medications, sedatives or hypnotics to not drive or operate machinery.
 - Observe patients with abnormal mental status (e.g., alcohol intoxication) before discharge, and determine that patients have normal mental status prior to allowing them to drive or operate machinery.
 - For patients with abnormal mental status (e.g., sedation or intoxication) who insist on discharge and driving, the practitioner may have a duty to restrain or notify law enforcement.
 - Become aware of state-specific laws regarding reporting of communicable diseases and certain conditions such as seizures.
 - Warn patients with communicable diseases about the dangers of transmission to others.
 - Warn patients of the risks and adverse effects of prescribed medications.
 - For patients who threaten harm, document thoroughly the type, seriousness, imminence, and likelihood of the threat; also document the evaluation, assessment, choice of intervention, and rationale for interventions taken, alternatives considered, and the reason they may have been rejected.