



Ohio Administrative Code Rule 5122-3-12 Duty to protect.

Effective: August 5, 2011

(A) The purpose of this policy is to implement the duty to protect requirements per section 2305.51 of the Revised Code.

(B) This policy shall apply to all mental health professionals employed or contracted by Ohio department of mental health hospitals.

(C) Definitions:

(1) "Independently-licensed mental health professional" means psychiatrists, psychologists, social workers, counselors and clinical nurse specialists licensed to independently provide mental health services.

(2) "Knowledgeable person" means any person who has reason to believe that a patient has the intent and ability to carry out an explicit threat of inflicting imminent and serious physical harm to a clearly identifiable potential victim(s), who is either an immediate family member of the patient, an employee of the hospital, or an individual who, otherwise, personally knows the patient.

(3) "Mental health professional" means any individual who is licensed, certified or registered under the Revised Code, or otherwise authorized in this state, to provide mental health services.

(D) Procedures:

(1) Any mental health professional to whom an explicit threat of serious physical harm to another person or persons or identifiable structure is made, or who is made aware by a knowledgeable person of an explicit threat made by a patient, will initiate the duty to protect process.

(2) Any explicit threat by a patient shall be promptly communicated by the mental health professional who heard the threat or was made aware of the threat, to a registered nurse or



psychiatrist on the patient's treatment team. The treatment team shall determine, based on the patient's history and current condition, whether the threat represents a credible danger to others.

(a) If the treatment team does not consider the threat to be a credible danger to others, this decision and the reason for this determination shall be documented in the medical record.

(b) If the treatment team considers the threat to be a credible danger, the threat shall be reported promptly by the treatment team to the chief clinical officer or designee of the hospital.

(3) The chief clinical officer or designee of the hospital shall assign an independently-licensed mental health professional to conduct a face-to-face evaluation with the patient as soon as possible after receiving notification of the threat, but no longer than two working days, in order to give a second opinion risk assessment of the threat.

(4) If the independently-licensed mental health professional determines that the threat does not meet the threshold requiring discharge of the duty to protect (e.g., threat is not imminent), this assessment should be documented on a form authorized by the regional psychiatric hospital (RPH) or in a progress note in the medical record.

(a) Each RPH shall establish policies and procedures that assure patient re-evaluation occurs prior to the patient being discharged or receiving unsupervised movement, including placing a "Duty to Protect" sticker on the patient's chart and adding a "Duty to Protect" problem on the treatment plan. (See Appendix 1 [DMH-0040a] for "Duty to Protect Tracking Form" which may be used by the RPH to monitor procedure compliance).

(b) The independently-licensed mental health professional shall record, in a progress note or indicate on a RPH form, that the patient does not have either the intent or ability to carry out the threat and record the reason(s) for this conclusion.

(c) Other clinical recommendations may be considered for this patient and should be documented as appropriate in the medical record.

(5) If the independently-licensed mental health professional determines that there is an explicit threat



of imminent and serious physical harm and there is reason to believe the patient has the intent and ability to carry out the threat, the independently-licensed mental health professional completing the RPH form or documenting this assessment in a progress note in the medical record, must address each of the relevant options to discharge the duty to protect in section 2305.51 of the Revised Code and indicate the reason(s) each was, or was not, chosen.

(a) Since the patient in these instances is already hospitalized, the relevant options for further action under section 2305.51 of the Revised Code for discharging the duty to protect are as follows:

(i) Establishing and undertaking a treatment plan that is reasonably calculated to eliminate the possibility that the patient will carry out the threat (having performed this second opinion risk assessment consultation); and

(ii) Communicating to a law enforcement agency either where the victim or patient resides and, if feasible, communicating with the potential victim(s) and/or guardian(s) about the threat;

(b) If the option chosen by the independently-licensed mental health professional is to warn the potential victim(s) and appropriate law enforcement agency, the independently-licensed mental health professional shall notify the chief clinical officer (or designee) who will designate the person to give the warning;

(i) The information about who was warned, what information was shared, and the time of the warning shall be documented on the RPH form (Appendix 2 [DMH-0040]) or in the progress note in the medical record; and

(ii) Information shared should be restricted to the name and the description of the patient, the nature of the threat, and the name of potential victim(s) and/or potential structure threatened.

(6) Progress notes in the medical record should reflect any contacts with consultants, chief clinical officer (or designee), or the patient's treatment team as appropriate.

(7) The RPH authorized form, or a copy of the progress notes about the threat should be filed in the legal section of the medical record. A copy should be forwarded to the legal assurance administrator



of the hospital.

(8) If the threat is considered to be serious but not imminent, and the independently-licensed mental health professional believes the threat should be re-evaluated closer to unsupervised movement, conditional release or discharge of the patient, the independently-licensed mental health professional will contact the treatment team social worker who will affix or cause to be affixed, a prominent sticker on the front of the patient's medical record noting a "Duty to Protect" and add a "Duty to Protect" problem to the treatment plan.

(9) When a "Duty to Protect" sticker is affixed to the medical record and a problem is added to the treatment plan, prior to unsupervised movement, conditional release or discharge, the treatment team social worker will notify the chief clinical officer (or designee) who will assign an independently-licensed mental health professional to conduct a face-to-face re-evaluation of the presence or absence of the threat, and if present, the credibility of the threat.

(10) If a patient with a "Duty to Protect" problem goes AWOL from a RPH, the treatment team (or on evenings, weekends, and holidays, the nurse manager) shall promptly give a recommendation to the chief clinical officer regarding warning law enforcement and, if feasible, potential victims in the community.

(11) In all re-evaluations, the independently-licensed mental health professional should locate the original RPH form or progress notes about the threat in the medical record or in the file of the legal assurance administrator.

(a) After the face-to-face re-evaluation, a new RPH authorized form or medical record progress note shall be completed and filed in the legal section of the medical record with a copy to the legal assurance administrator.

(i) If no active serious threat is present, this should be noted on the RPH form or in a progress note and no further formal action is necessary;

(ii) If an active, serious, and imminent threat remains, this should be documented on the RPH form or in a progress note and the actions identified in paragraphs (D)(5) to (D)(7) of this rule should be



AUTHENTICATED,
OHIO LEGISLATIVE SERVICE
COMMISSION
DOCUMENT #227683

followed. In addition, the independently-licensed mental health professional shall promptly notify the treatment team for appropriate action regarding the pending unsupervised movement, conditional release, or discharge.