

# 08.11.20

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## Pennsylvania Supreme Court Addresses the Duty of Mental Healthcare Providers to Warn Others Regarding Patient Threat to Harm “Neighbor”

On July 21, 2020, the Supreme Court of Pennsylvania issued an opinion in *Maas v. UPMC Presbyterian Shadyside*, No. 7 WAP 2019 (Pa. July 21, 2020) on the extent to which mental health professionals must warn third parties against whom a patient makes threats of serious bodily injury. The decision in *Maas v. UPMC* held neighbors of a patient are considered identifiable third parties when a patient makes threats to harm their neighbor without specifically naming which of the neighbors they intend to harm.

This case stems from a psychiatric patient who resided at a supported living facility under the supervision of and while receiving ongoing mental health treatment from defendants. The defendants eventually facilitated the patient's move into an apartment building where the patient frequently expressed repeated threats to kill a "neighbor." The patient also disclosed a plan to stab a "neighbor" with scissors or "to kill the next-door neighbor and everyone." On May 25, 2008, the patient again claimed he was having homicidal thoughts, and the facility's case manager sent him home with medication. Just four days later, the patient murdered his neighbor living five doors down from his apartment with scissors. The patient never identified any neighbor by name. The victim's estate pursued a wrongful death and survival action against the defendants who moved for summary judgment arguing mental health professionals only owe a duty to warn specifically or readily identified persons. The trial court denied the motion, and the Superior Court of Pennsylvania later affirmed.

On July 21, 2020, the Supreme Court of Pennsylvania also affirmed. Justice Kevin M. Dougherty authored the Supreme Court's majority opinion and relied upon the decision in *Emerich v. Phila. Ctr. for Human Dev., Inc.*, 720 A.2d 1032 (Pa. 1998). *Emerich* is the seminal case setting forth a mental health professional's duty to warn third parties. In *Emerich*, a psychiatric patient told his therapist he would kill his former girlfriend, whose identity was confirmed by the patient and known to the therapist. The therapist immediately advised the former girlfriend to stay away from the patient, without explicitly telling her he planned to kill her. The former girlfriend ignored this warning, and the patient later shot her to death. The *Emerich* Court held a medical provider's duty is triggered when the patient communicates a "specific and immediate threat" against "a specifically identified or readily identifiable victim." The court ultimately determined the therapist had a duty to warn the former girlfriend, and this duty was satisfied by the therapist.

Pursuant to *Emerich*, the defendants argued the patient making the threats must describe the victim he intends to harm with sufficient specificity to allow identification and practical dissemination of a warning. Applying this view, the defendants argued the patient never voiced any specific threat to the victim by name or description and did not specifically reveal homicidal ideations of residents living on his floor. In response, the plaintiff argued the twenty individuals who resided on the same floor as the patient were readily identifiable as a small and distinct group.

Justice Dougherty rejected the defendants' argument concluding it could not reasonably be that when the patient threatened to kill a "neighbor," he was merely uttering an ambiguous threat against an "amorphous group" of the public at large. Overall, the duty can be triggered not only when a specific threat is made against a single readily identifiable individual, but also when the potential targets are readily identifiable because they are members of a particular and identified group — in this case, "neighbors" in the patient's apartment building.

Comment: Mental health treatment providers should be mindful of this recent decision in their ongoing treatment of individuals who express homicidal ideations. The recent ruling makes clear the duty to warn of

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a mental health treatment provider can be triggered even when a patient makes a threat against an unnamed individual so long as the individual is readily identifiable due to being a member of a specific and identified group.

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