

AMENDED IN SENATE JUNE 5, 2006

AMENDED IN ASSEMBLY MAY 10, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 733

Introduced by Assembly Member Nation

February 17, 2005

An act to amend Section 43.92 of the Civil Code, relating to personal rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 733, as amended, Nation. Psychotherapists: duty to warn.

Existing law provides that no monetary liability and no cause of action shall arise against a psychotherapist, as defined, for failing to warn and protect from a patient's threatened violent behavior except where the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims. *Existing law also specifies that if there is a duty to warn and protect under the limited circumstances specified above, that duty is discharged by the psychotherapist making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.*

~~This bill would revise that provision to specify that it applies where the patient himself or herself has communicated the threat to the psychotherapist. The bill would also encourage a therapist, if a patient's threat has been communicated to the therapist by a third party, to contact the patient to the extent that the therapist reasonably believes is necessary to assess whether the patient poses a serious threat of physical violence against a reasonably identifiable victim or~~

victims. The bill would specify that the amendments apply only to actions filed on or after January 1, 2006.

This bill would revise that latter provision to instead specify that there is no monetary liability and no cause of action shall arise against a psychotherapist who, under the limited circumstances described above, discharges his or her duty to warn and protect by making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. ~~Section 43.92 of the Civil Code is amended to~~
2 ~~read:~~

3 ~~43.92. (a) There shall be no monetary liability on the part of,~~
4 ~~and no cause of action shall arise against, any person who is a~~
5 ~~psychotherapist as defined in Section 1010 of the Evidence Code~~
6 ~~in failing to warn of and protect from a patient's threatened~~
7 ~~violent behavior or failing to predict and warn of and protect~~
8 ~~from a patient's violent behavior except where the patient~~
9 ~~himself or herself has communicated to the psychotherapist a~~
10 ~~serious threat of physical violence against a reasonably~~
11 ~~identifiable victim or victims.~~

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

17 ~~(c) Notwithstanding subdivision (a), if a patient's threat has~~
18 ~~been communicated to the therapist by a third party, the therapist~~
19 ~~is encouraged, but not required, to contact the patient to the~~
20 ~~extent that the therapist reasonably believes is necessary to assess~~
21 ~~whether the patient poses a serious threat of physical violence~~
22 ~~against a reasonably identifiable victim or victims.~~

23 ~~(d) The amendments made to this section by the act adding~~
24 ~~this subdivision shall apply only to actions filed on or after~~
25 ~~January 1, 2006.~~

26 SECTION 1. *Section 43.92 of the Civil Code is amended to*
27 *read:*

1 43.92. (a) There shall be no monetary liability on the part of,
2 and no cause of action shall arise against, any person who is a
3 psychotherapist as defined in Section 1010 of the Evidence Code
4 in failing to warn of and protect from a patient's threatened
5 violent behavior or failing to predict and warn of and protect
6 from a patient's violent behavior except where the patient has
7 communicated to the psychotherapist a serious threat of physical
8 violence against a reasonably identifiable victim or victims.

9 ~~(b) If there is a duty to warn and protect under the limited~~
10 ~~circumstances specified above, the duty shall be discharged by~~
11 ~~the psychotherapist making reasonable efforts to communicate~~
12 ~~the threat to the victim or victims and to a law enforcement~~
13 ~~agency.~~ *There shall be no monetary liability on the part of, and*
14 *no cause of action shall arise against, a psychotherapist who,*
15 *under the limited circumstances specified above, discharges his*
16 *or her duty to warn and protect by making reasonable efforts to*
17 *communicate the threat to the victim or victims and to a law*
18 *enforcement agency.*