Telling secrets: Protecting therapists who report patients’ threats

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By RACHEL SAPIN Staff Writer, Updated: April 3, 2014 10:50 am

AURORA | Among the seemingly endless questions surrounding the deadly Aurora theater shooting by admitted gunman James Holmes, questions about mental health are surfacing again.

Not until Holmes’ trial plays out will the public know what Holmes’ told his University of Colorado therapist, and whether the therapist handled what, if anything, she knew ethically or even legally.

The question of whether a therapist is compelled to alert police and others if they deem a threat by a patient to be credible has long been answered. For decades, state laws and medical guidelines have been clear in directing therapists to get others to intervene if they believe a client is an imminent danger to themselves or others.

But some therapists say the situation in Colorado isn’t completely clear, and they have long been concerned that a therapist can be sued by a client claiming that an alert to police was a false and slanderous alarm.

So therapists have turned to Colorado state lawmakers, asking for clarity in state law, even before the high-profile Holmes case is spelled out in court.

As for that trial, it’s unclear whether Holmes’ therapist would have been protected under Colorado’s current duty-to-warn law had she reported him to cinema officials or even police, says Reo Leslie, founder and director of The Colorado School of Family Therapy.
That’s why he worked with mental health providers and lawmakers to draft House Bill 1271, which was passed unanimously by the Colorado House and Senate. The bill will allow mental health providers to report on threats against locations in addition to threats against specific groups or individuals and offer them immunity from potential civil lawsuits.

“If you’re my client and you tell me you’re going to shoot up a school or theater, I can now warn the location and contact law enforcement. The clarity of that provision did not exist in the law prior to what we envisioned,” he said.

Leslie said that Colorado’s law was nebulous. A therapist could be sued for telling authorities a patient fantasized about shooting up a mall or theater — even if the client later carried out the attacks.

“Our office is three miles from the Aurora theater. Some of the students at our school were impacted by the shooting,” he said.

Consider this as fodder for why the bill is needed. A patient tells his therapist that he’s had it with his job. He says he has fantasies about going into his office and killing first his boss, then everyone he’s angry with. He mentions that he knows where he can get a gun and ammunition. When he leaves, the therapist calls police and the man’s boss, telling them that the patient is considered a real threat at this point. The man leaves his therapist, does nothing more than get take-out lunch and go back to work, to find police and scared employers waiting for him. And he’s fired. Should he be able to sue his therapist for what at the time was venting and mind-play? He’s lost his job and will likely have trouble getting another one.

Proponents of House Bill 1271 say, no. The law must shield therapists from liability so they can protect the public.

Moe Keller, vice president for policy of the patient and family advocacy group Mental Health America of Colorado, said many of the provisions in Colorado’s duty to warn statute come from a 1976 court case, Tarasoff v. The Regents of the University of California.

That case resulted from a therapist failing to warn a Berkeley student, Tatiana Tarasoff, about a potential threat from fellow student Prosenjit Poddar. The Berkeley graduate student told the therapist he wanted to kill Tarasoff after she rejected his advances. Poddar followed through with his threat, brutally stabbing the young woman in front of her home after chasing her out of her kitchen with a pellet gun.

The California Supreme Court responded by imposing a legal duty on therapists to warn a person who may become a victim of the violent act of a patient. That set a precedent for states around the country to create their own duty to warn or duty to protect laws.
Colorado is not alone in focusing more attention on the language of its duty to warn statute. Following the shooting in Newton, Conn., New York changed its state law from permissive to mandatory for mental health professionals to report when they believe patients may pose a danger to themselves or others. That law still protects therapists from both civil and criminal liability for failure to report if they act “in good faith.” New York also allows law enforcement to remove firearms owned by patients reported to be dangerous, according to the National Conference of State Legislators.

To ensure that the bill doesn’t discriminate against specific groups, Keller worked with legislators to include what she calls “person-first” language, so that the bill does not identify individuals solely by their mental health diagnosis.

“Instead of saying something like ‘dangerously mentally-ill individuals,’ we asked for person-first language like, ‘a person who has a mental health issue,’” she said.

She says the vast majority of people with serious mental illnesses are not dangerous to society, and that people with a diagnosis of serious mental illness commit only about four percent of all violent crimes against others.

“Individuals who have mental illnesses are 11 times more likely to be a victim than a perpetrator,” she said.

Sen. Linda Newell, D-Aurora, co-sponsored the bill, and said the bill will still protect patient confidentiality while expanding provider rights to report violent threats. She said the bill only mandates providers to report “serious imminent threats” a patient makes.

The bill passed unanimously by the Colorado House and Senate.

“We put in a lot of work before the bill was heard in committee,” said Rep. Jovan Melton, who sponsored the measure. “We worked with social workers, psychiatrists, mental health professionals and we also worked with insurance companies. We had a lot of stakeholders come to the table and weigh in and get everyone to a place where we could get this through.”

Melton said it remains unclear whether this addition to Colorado’s duty to warn law would have prevented the Aurora theater tragedy.

“We don’t know all the details of what James Holmes talked to his therapist about. Even if he said, ‘I’m planning on shooting up Century 16 at this time and on this date,’ the current statute wasn’t enough for the therapist to make any type of warning. We can’t say (this bill) would have directly prevented it, but we wouldn’t have been able to do to anything without this law,” he said.

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