

Fourth Civil No. EO28313

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO**

ALAN W. LEVY, Ph.D.

Petitioner,

**SUPERIOR COURT OF CALIFORNIA FOR
THE COUNTY OF SAN BERNARDINO,**

Respondent.

FERDINAND E. EDELHOFER, Ph.D.

Real Party in Interest.

**SAN BERNARDINO SUPERIOR COURT CASE NO. SCV 11539
HONORABLE CHRISTOPHER J. WARNER**

**BRIEF *AMICUS CURIAE* OF THE
AMERICAN PSYCHOLOGICAL ASSOCIATION
AND THE CALIFORNIA PSYCHOLOGICAL ASSOCIATION
IN SUPPORT OF NEITHER PARTY**

William J. Koenig
(Bar No. 125322)
KOENIG CAPRILE & BERK
1520 River Park Drive
Sacramento, California 95815
Telephone: (916) 568-3288
Facsimile: (916) 568-3292

Nicole G. Berner (Bar No. 187415)
Nory Miller
JENNER & BLOCK
601 Thirteenth Street N.W.
Washington, D.C. 20005
Telephone: (202) 639-6000
Facsimile: (202) 639-6066

Attorneys for Amici Curiae

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INTEREST OF AMICI CURIAE

The American Psychological Association (“APA”), a voluntary, nonprofit, scientific and professional organization founded in 1892, is the major association of psychologists in the United States, with more than 155,000 members and affiliates. The California Psychological Association (“CPA”), a state affiliate of APA, has a membership of more than 5,000 licensed psychologists in California. APA and CPA members in clinical practice treat hundreds of thousands of patients each year. APA and CPA members therefore have a substantial interest in the legal rules governing the relationship between patients and psychotherapists, and in ensuring that the rules adopted foster the patient-psychotherapist relationship rather than threaten it.

STATEMENT OF ISSUES

1. Whether psychotherapists owe a general duty of care to third parties, or whether psychotherapists owe a general duty of care to their patients’ former therapists with whom they have no contractual relationship.

ARGUMENT

Amici Curiae submit this brief because they and their members are concerned about the deleterious effects on patient-psychotherapist relationships that could result if this Court adopts the rule proposed by petitioner. *Amici Curiae* urge this Court to reject petitioner’s argument that

psychotherapists – in addition to the duty of care therapists owe their patients with respect to what they say and do during therapy sessions – also owe conflicting duties of care to third parties for the same actions. *Amici Curiae* support the decision below that, as a matter of law, a psychotherapist owes a duty of care only to the patient, and not to the patient's prior therapist.

Psychotherapy requires a relationship between therapist and patient based on trust. The therapist's legal duty of care to the patient is consistent with fostering effective psychotherapist-patient relationships. However, imposing a legal duty of care toward third parties will often be harmful to that relationship, especially when the third party is in a potentially adversarial position to the patient, as here. Because conflicting duties of care pose great risks to successful psychotherapy, such a duty should not be imposed absent a truly compelling need. California has determined that the risk of grievous bodily harm or death to a third party is such a compelling need.^{1/}

But there is no compelling need to protect third parties from being sued or from broken relationships. These are ordinary risks for which the law has rarely imposed liability even on those who directly and intentionally

^{1/} See *Tarasoff v. Regents of University of California*, 17 Cal. 3d 425 (1976).

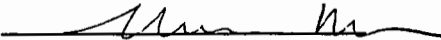
cause whatever harm ensues. Thus, it would be highly incongruous to impose liability on a therapist for indirectly and negligently causing such harm. To do so when such a duty of care to third parties would interfere with the therapists' ability to fulfill their duty of care to their patients is particularly ill-advised.

Amici Curiae believe that *Trear v. Sills*, 69 Cal. App. 4th 1341 (1999), reached the right conclusion. That court recognized the danger of requiring therapists to serve two, often adversarial, masters and determined that imposing a duty of care to third parties posed unreasonable risks to therapists' primary responsibility to care for their patients. That court also recognized that its decision was consistent with the legal rules governing lawyers. Lawyers are held to a duty of care to their clients, but regardless of the advice they provide their clients, are under no duty to refrain from negligently causing their clients to impose legal costs on their adversaries or to sever relationships. 69 Cal. App. 4th at 1352.

Amici Curiae urge this Court to maintain the primacy of psychotherapists' duty of care to their patients and, therefore, to deny the petition and reject any legal rule governing psychotherapists that would impose a conflicting duty of care to third parties generally or to their patients' prior therapists.

Respectfully submitted,

December 4, 2000

By: 

William J. Koenig
(Bar No. 125322)
KOENIG CAPRILE & BERK
1520 River Park Drive
Sacramento, California 95815
Telephone: (916) 568-3288
Facsimile: (916) 568-3292

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