

A student had weekly sessions with a psychotherapist. During every session, the student would tell the psychotherapist that he was convinced that his roommate was impersonating him and slowly trying to take over his life. For the past several weeks, the student had become more and more agitated when speaking about the roommate, and at their most recent session, the student told the psychotherapist about his plans to kill the roommate. The student explained to her that he had not quite figured out how he was going to carry out his plan, but that he planned to kill the roommate before the upcoming winter break.

A statute in the jurisdiction imposes an affirmative duty to act "for the protection of another whom the individual has found in peril."

Is the psychotherapist under a legal duty to warn the roommate?

- A. No, because the psychotherapist has no affirmative duty to act.
- B. No, because the student's threats of future harm do not put the roommate in imminent danger.
- C. Yes, because the student has made credible threats of physical violence against the roommate.
- D. Yes, because under the statute, the psychotherapist has an affirmative duty to act.

## Explanation:

### Affirmative duty to act

<b>Assumption of duty</b>	Defendant who voluntarily aids or rescues another has duty to use reasonable care when rendering aid or performing rescue
<b>Creation of risk</b>	Defendant whose conduct creates foreseeable risk of harm or places another in peril has duty to exercise reasonable care to prevent further harm by rendering care or aid
<b>By contract</b>	Duty to use care when performing contractual obligations
<b>By authority</b>	Duty to exercise reasonable control over third party whom defendant has actual ability & authority to control  Examples: parent over child, custodian over person in custody, employer over employee, mental-health professional over patient
<b>By relationship</b>	Duty to protect, aid, or assist plaintiff with whom defendant shares unique relationship  Examples: business proprietor with patron, common carrier with passenger, innkeeper with guest, employer with employee, parent with child
<b>By statute</b>	Statute imposes obligation to act for another's protection
<b>Land possessor</b>	Duty to mitigate risks posed by natural or artificial conditions on land

A person generally has no duty to control another unless the parties share a special relationship. **Mental-health professionals** share a special relationship with their **patients**, so they have a duty to use reasonable care to identify dangerous patients and mitigate the risks they pose to others. So when a patient makes a **credible threat of physical violence** against an **ascertainable victim**, the mental-health professional has a **duty to warn** the would-be victim or take other steps to mitigate the risk posed by the patient (eg, notify law enforcement).\*

Here, the student told the psychotherapist that he planned to kill his roommate before the upcoming winter break. This was a credible threat of physical violence, especially since the student had become increasingly agitated when speaking to the psychotherapist about the roommate over the past several weeks. And because of the psychotherapist's special relationship with the student, she has a legal duty to warn the roommate of the student's plan (**Choice A**).

\*Whether a threat of physical violence is credible is determined by the objective standard of a reasonable mental-health professional in the same circumstance.

**(Choice B)** Threats of future harm do not put others in apprehension of imminent danger and therefore cannot support a claim for [assault](#). But imminence is irrelevant in determining whether a mental-health professional's duty to warn has attached.

**(Choice D)** The psychotherapist's duty to warn the roommate arises from the psychotherapist's special relationship with the student who poses a risk of harm to the roommate—not from the jurisdiction's statute. Additionally, it is unclear whether the statute would even apply here since the psychotherapist did not necessarily "find the roommate in peril."

**Educational objective:**

A special relationship exists between mental-health professionals and their patients. Therefore, if a patient makes a credible threat of physical violence against an ascertainable victim, the mental-health professional must warn the would-be victim of the risk posed by the patient or take other steps to mitigate that risk.

**References**

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 41 (Am. Law Inst. 2010) (duty to third parties based on special relationship with person posing risks).