



# Risky Business

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## What does the School Shooting Case of *Cleveland v. Taft Union High School* Mean for Threat Assessment Teams in Healthcare?

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In this California high school shooting case<sup>1</sup>, a surviving victim brought suit against Taft Union High School District (District) for negligence. The shooter, a 16-year-old student, had a history of threatening to shoot fellow students and blow up the school. On multiple occasions during 2012-2013, concerned students and staff reported those incidents to administration. On February 27, 2012, the assistant principal initiated a “threat assessment.” On January 10, 2013, at school at the start of their first period science class, the shooter shot student Bowe Cleveland in the stomach.

Each side presented an expert witness who testified to the effectiveness of the District’s threat assessment. The jury found the District 54% liable for the victim’s injuries inflicted by the shooter, which resulted in a judgment holding the District liable for

approximately \$2 million. The District appealed.

Ultimately, the Court of Appeals affirmed the judgment of the trial court.

Because it had not been previously addressed in a published decision in California, the Court of Appeals also published the part of the opinion addressing District’s contention that all members of its threat assessment team (TAT) are shielded from liability by governmental immunity. (Published opinions are mandatory authority for the court and the lower courts in its jurisdiction to follow. By contrast, unpublished opinions are not binding authority, but can be argued as persuasive authority.)

The Appellate Court concluded that the activities of the TAT members were properly characterized as

administrative (rather than as a mental examination) and therefore fell outside of the scope of the relevant governmental immunity law.

The unpublished part of the opinion addressed District’s contention that there was no substantial evidence of a causal link between the victim’s injuries and the negligent conduct of a District administrator in failing to report a conversation about other school employees who were afraid of the shooter and had created escape plans for themselves. The Court of Appeals concluded substantial evidence existed to support the jury’s finding that the district supervisor’s failure to report information was a substantial factor in causing the victim’s injuries. The Court of Appeals also opined that the TAT

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# School Shooting, *continued*

failed to communicate information in many instances which similarly was a substantial factor in causing *Bowe Cleveland's* injuries. It's this part of the opinion that is of particular interest to those in healthcare, as it's become common practice in schools and healthcare facilities alike, based on findings that targeted violence is often preceded by observable behaviors of concern, to form TATs to try to prevent acts of targeted violence.

## Threat Assessment Teams

After the Virginia Tech mass shooting on April 16, 2007, several in-depth reviews were conducted. The reviews found that Virginia Tech had multiple layers of safety in place at the time of the mass shooting: (1) armed and accredited campus law enforcement; (2) comprehensive workplace violence prevention policies; (3) on-campus mental health services for students and employees; (4) Safety Awareness Programming; (5) a multidisciplinary Crisis Intervention Team; and (6) ongoing enhancement of emergency preparedness. Yet despite all those efforts, the attack still occurred. At that time, Virginia Tech did not have a threat assessment team. Without the ability to put all the information together regarding the subject of concern, individual staff members did not have sufficient information to act upon and possibly prevent the attack.

Accordingly, it was recommended that "Virginia Tech and other institutions of higher learning should have a threat assessment

team" to facilitate effective communication regarding safety concerns.<sup>2</sup> Over time, TATs in schools of all grade levels have now become the standard and are becoming standard in the healthcare sector as well.

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The Court of Appeals noted that the trial court identified at least three ways in which the TAT breached the standard of care: (1) the school resource officer was not a core member of the TAT; (2) the TAT failed to communicate amongst themselves; (3) the threat assessment was not carried out by the TAT collectively.

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In *Cleveland v. Taft*, the plaintiff's expert testified that if the TAT had operated within the standard of care, it was more likely than not that the shooting would have been prevented.<sup>3</sup> The Court of Appeals noted that the trial court identified at least three ways in which the TAT breached the standard of care: (1) the school resource officer was not a core member of the TAT; (2) the TAT failed to communicate amongst themselves; (3) the threat assessment was not carried out by the TAT collectively.<sup>4</sup>

The opinion makes scant reference to any training the TAT members may have received.<sup>5</sup>

## An Emphasis on Privacy

As employers, schools and

healthcare facilities alike emphasize to their employees the importance of maintaining privacy, with job termination a possible consequence of violating student or patient privacy. That's not surprising, because the consequences to the employer of privacy violations can be serious, including loss of federal funding or monetary fines. Hence, the Family Educational Rights and Privacy Act<sup>6</sup> (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) are often viewed by employees as a barrier to sharing information about students or patients, which can lead to lack of communication in safety situations.

Indeed, in healthcare, HIPAA is commonly perceived as a law that protects patient privacy and one that prevents the sharing of information; there's often little understanding of permitted exceptions. For example, it's not widely understood that HIPAA expressly defers to the professional judgment of healthcare professionals in making determinations about the nature and severity of a threat to the health or safety posed by a patient, meaning that healthcare providers may disclose the necessary protected health information to *anyone who is in a position to prevent or lessen the threatened harm*, including family, friends, caregivers, and law enforcement, without a patient's permission.<sup>7</sup> In short, in such situations, it's *safety first*.

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# School Shooting, *continued*

## **Threat Assessment and Management Training**

To have a school or healthcare TAT that communicates effectively, it's important that staff undergo training to be able to conduct threat assessments according to industry guidelines<sup>8</sup> and implement appropriate threat management strategies. Simply forming a committee and calling it a TAT is not sufficient.

Threat assessment and management for the prevention of targeted violence is an area in which teachers, principals, guidance counselors, and healthcare staff did not learn about in the fields of study which they undertook to be prepared to work in education and healthcare. TAT members should be provided with the education and training necessary to be adequately prepared to make decisions in these situations that can have life or death consequences; merely providing team members with reading material on the subject matter is arguably not enough (no matter how excellent that material may be). When people whose background and training is not in violence prevention are called upon to assess and make recommendations about violently-inclined situations *in addition* to fulfilling their full-time job duties, it could take years for them to become confident in that role, depending upon their level of training and the extent of their experience managing such situations including those of a high level of concern (do they handle one a year? one a week?).

TAT members need to be knowledgeable in the subject matter, interested (after all, for many, it's not what they went to school for) and have the time and resources to commit to an effective team. The TAT should be familiar with practice standards and have the ability to consult with a professional Threat Manager when a situation is beyond the TAT's scope. But first, in order to recognize a situation is beyond its scope, the TAT needs a sufficient knowledge base of this specialty subject matter and practice area.

## **Weapons Screening— A New Era**

On July 12, 2023, orthopedic surgeon Benjamin Mauck, MD, was shot and killed by a patient in an exam room. On June 1, 2022, a patient bought an assault-style rifle, entered St. Francis Health System and opened fire, killing his orthopedic surgeon, Dr. Preston Phillips, along with another physician, a receptionist and a patient. A mental health professional is killed by a patient at a rate of approximately one murder per year.<sup>9</sup> In a media report about the murder of Dr. Mauck, the reporter incredulously asked how the patient could have managed to make it back to an exam room with a gun.<sup>10</sup> Anyone who works in healthcare knows how – he simply walked in.

Despite the rise in shootings, at most healthcare facilities, there is very little or nothing to prevent a patient with a gun from freely walking into an exam room. However, as airports learned

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back in the early 1970s,<sup>11</sup> there is an effective barrier available – and today's weapons screening systems are affordable, reliable, and easy to use. Most patients enter a healthcare facility from one of 2-4 main entrances, with multiple other doors badge access for employees. Adding weapons screening to those main patient entrances is now do-able. During the COVID-19 pandemic, somehow our healthcare facilities were able to control these main entrances and not allow entry by patients and visitors who had temperatures; no longer can it be argued that weapons screening is too time-consuming, expensive, or that there isn't sufficient security staff.

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# School Shooting, *continued*

keep weapons out of healthcare. Our healthcare providers and staff deserve the comfort afforded by knowing that their patients are not carrying in weapons. Expecting TATs to prevent workplace shootings without the organization employing weapons screening is unrealistic – today, we need both trained TATs and weapons screening, in addition to other layers of workplace violence prevention measures.

## Conclusion

This case, although not binding in Wisconsin, is a useful reminder of the potential limits of state law immunity and the diligence required when conducting threat assessments. Ever-increasing gun violence has resulted in educators and healthcare staff having to add the role of threat assessor and manager to their duties. The stakes are high, so it's critical the people who step up to take on these additional roles are provided with the education, training, and resources necessary to best ensure decisions made are well-founded and based upon industry

guidelines.<sup>12</sup> Additionally, weapons screening has now become a necessary workplace violence prevention and threat management tool to help keep weapons out of healthcare.

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1. [Bowe Cleveland v. Taft Union High School District](#), 76 Cal. App. 5th 776 (2022).
2. VA Tech Review Panel at p. 19, "Virginia Tech and other institutions of higher learning should have a threat assessment team..." See also 2012 U.S. Dept of Defense Task Force Report (Analysis of Targeted Violence) citing threat assessment teams as an effective means of prevention by improving information sharing. See also 2002 U.S. Secret Service and U.S. Department of Education, [Threat Assessment in Schools](#).
3. [Cleveland v. Taft Union](#) at pp. 14, 44.
4. [Cleveland v. Taft Union](#) at p. 44.
5. [Cleveland v. Taft Union](#) at p. 11 ("One of the resources relied upon by (the school psychologist) in conducting the threat assessment was a publication...").
6. 20 U.S.C. § 1232g; 34 CFR Part 99
7. 45 CFR §164.512(j)(4)
8. [Risk Assessment Guideline Elements for Violence: Considerations for Assessing the Risk of Future Violent Behavior](#), Association of Threat Assessment Professionals, (2006).
9. Michael B. Knable, DO, [Homicides of Physicians and Mental Health Workers by Patients](#), Schizophrenia Bulletin (April 2018) ("The most common method of homicide was gunshot.").
10. Crime Stories with Nancy Grace, [Prominent Surgeon Murdered by Patient IN EXAM ROOM: WHY?](#) (August 2, 2023).
11. Phoebe Judge, CRIMINAL podcast episode 100 (noting that before employing weapons screening, the FAA made various recommendations to passengers, including the idea that all passengers wear boxing gloves so no one would be able to hold a gun; of course, "the obvious solution was to just screen passengers with a metal detector.").
12. Healthcare TAT members should also verify insurance coverage for their TAT work, which may vary greatly from their main role (e.g., as a psychiatrist whose job treating patients is covered by a medical malpractice policy).