Neil S. Kaye, MD, and Bob Sadoff, MD will answer questions from members related to practical issues in the real world of Forensic Psychiatry. Please send your question to nskaye@aol.com.

This information is advisory only for educational purposes. The authors claim no legal expertise and should not be held responsible for any action taken in response to this educational advice. Readers should always consult their attorneys for legal advice. For this special column, additional input was solicited from Paul Appelbaum, MD, Lisa DeLeonardo, PsyD, Thomas Gutheil, MD, Jacqueline Melonas, RN, MS, JD, Thomas Reed JD, Richard Galperin, JD, Richard Rosner, MD, and Robert Weinstock, MD.

Q. My patient is a 25-year old woman who is being abused by her husband. One night, after being beaten she called. I advised her to leave and to call the police. She refused. She is not being physically prevented from leaving; she just isn't emotionally ready to take that step, despite acknowledging cognitively that it is necessary, reasonable, and the correct thing to do.

Do I have any duty to take any action?

A. This is a common scenario, and one worthy of thought in advance of having to actually field such a call in the real world. It is a good example of the type of "consultation" questions psychiatrists ask of their forensic colleagues. Dr.'s Sadoff and Kaye have decided to co-author the response for this question based on our own experience and the comments we received from other experts.

On the surface, this sounds like a pretty typical battered wife case. The medical-legal question appears to be a rather simple question of breaching confidentiality. Confidentiality is the physician's duty to keep secret what is disclosed to them secret. Psychiatry has long held that confidentiality is a critical element of the doctor-patient relationship and a necessity for treatment. In the modern age of the Internet, social networking, and reality TV, some have begun to question this assertion, yet it does remain a cornerstone of the profession and part of the AMA and APA Ethical Codes.

Reluctance to leave an abuser is quite common. People frequently are in abusive relationships and refuse to get out of them, often feeling helpless to do so. Ordinarily, they have a right to stay. Therapeutically we try to give them the courage to leave. Sometimes we succeed, but often we do not.

Generally, you discharge your duty to the patient by doing what was already done: giving her the best advice you can about getting out of the situation. But if she's not willing to take it, you probably don't have a duty to go further. Indeed, doing so could be counterproductive. If she is not ready to turn against her abuser, she will likely deny to the police that she was beaten and refuse to testify against her husband. They will let him go, and he will beat her again in revenge

for telling you about the abuse. And, since you too have now betrayed her, she won't return to treatment, cutting her links with perhaps the only person who can someday help her leave. So, to continue to work to get her to the point where she can leave on her own is not unreasonable.

Most clinicians and experts alike agree that reporting would be a breach of confidentiality. However, it is also clear that the likelihood of being sued is essentially zero and that even if you were sued, the plaintiff's chance of winning is similarly almost zero. Although clinicians worry about breach of confidentiality suits, they are among the rarest in all of medicine. Most experts agree that the defense of "doing the right thing" and "trying to save a life and to protect a person" is a pretty hard defense for a plaintiff to crack in a malpractice case.

However, a significant minority of experts viewed the situation and answer differently and felt that intervention and breaching confidentiality was appropriate in some circumstances. These are discussed below:

It would be relevant if you thought she was committable according to the laws of your state. If so, you could call the police to initiate an involuntary hospitalization. Tarasoff could also be invoked and allow reporting if you believed the woman was trying to get herself killed as a way out of the abuse. This would be akin to "suicide by cop" and would represent and unusual use of the duty to protect doctrine.

It is also possible that your calling the police might get her to leave him, although based on the current literature, this appears to be less likely. Calling the police does help to create a record, which could be helpful in future litigation should she ask for a restraining order; pressing charges can be part of that process, if/when she decides to leave.

One must always consider the patient's welfare as well as other variables. If reporting is not a mandatory requirement, the therapist's duty is to act in the best interest of the patient. If the threat to the patient is real, apparent, and the patient takes no action to protect herself, the therapist-patient relationship requires the therapist to protect the patient from imminent harm. In this instance, imminent harm, including potential homicide cannot be ruled out and so breaching confidentiality is appropriate and justified.

So, there is no unequivocal "right answer" to the scenario you have presented.

Our research did find some interesting laws. Some, but not all States have case law and/or regulations that address this issue. Pennsylvania requires a therapist to report confirmed incidents of domestic violence (1). Maryland is the only state we found that has addressed this in detail (2). Their regulations, as promulgated by DHSS are worth considering:

Intimate Partner Abuse & Sexual Assault –To protect patient confidentiality, Maryland does not have mandatory reporting laws for domestic violence or sexual assault. You may not report suspected or confirmed domestic violence or sexual assault unless the adult victim consents or if disclosure is required or authorized by state law as follows:
• The case involves abuse of a child or vulnerable adult, report to Child Protective Service, Adult Protective Service or law enforcement.
• A health care provider must report to law enforcement if he or she treats a person for an injury caused by:
• a gunshot or moving vessel of any type.
• an auto accident or a lethal weapon only in the following counties: Allegany, Anne Arundel, Charles, Kent, Montgomery, Prince George's, Somerset, Talbot and Wicomico.

The Maryland regulations raise the possibility of consulting with Adult Protective Services in the state that would have jurisdiction for your patient to see whether or not they feel that a woman in a life-threatening situation who refuses to leave (along with all the typically accompanying cognitive distortions and rationalizations for staying) would meet their definition of an "impaired" or "vulnerable" adult and thus require reporting and intervention by APS.

As always, there are 50 different sets of State laws as well as Federal law. You should certainly be aware of your own State's laws and regulations regarding this issue.

A search of both the medical literature and case law failed to turn up even a single case where a clinician has ever been sued over either of these scenarios. If you did call the police, it is very unlikely that a breach of confidentiality claim could succeed, given the defense that she was in danger and you were acting to save her. An exception might (and we emphasize might) be, if the husband killed her as a result of your intervention, but we believe this would be very defensible.

1. 18 Pa. Cons. Stat. 5106
2. http://www.healthymaryland.org/documents/66090_DomVio_D_Confid.pdf