



## Restraining Orders in Healthcare: Effective, Ineffective or Dangerous?

by Sheridan Ryan, edited by Robert Martin, Senior Advisor, GDBA

Civil restraining orders<sup>1</sup> came into existence in the late 1970s and early 1980s. The expectation was that they would protect women from violence and improve the range of available legal responses to offenders.<sup>2</sup> Healthcare facilities are increasingly turning their attention to violence prevention strategies, including the use of restraining orders. Lessons can be learned from decades of restraining order use in domestic violence and stalking cases.



Victims of disorderly conduct, threats, or harassment are frequently advised to obtain a restraining order. That advice may come from law enforcement, victim advocates, employers, friends, family, newspaper advice columnists, or radio personalities. In the healthcare setting, where incidents of disruptive behavior are not uncommon, that same advice may come from risk managers, security personnel, or attorneys. As a matter of routine, police across the country provide victims with information on how to file for a restraining order, even though news stories recur of women who obtained restraining orders and were then killed by the subjects of those orders.

Numerous restraining order studies have been conducted. The Tactical Topography of Stalking Victimization and Management analyzed 32 studies and found an average violation rate of 40%, and across nine studies, found restraining orders are followed by escalation of violence or stalking about 21% of the time.<sup>3</sup>

Safety expert Robert Martin, former Los Angeles Police Department captain and founder of the LAPD's Threat Management Unit in 1989 – the first of its kind in the nation – says that the Threat Management Unit initially recommended restraining orders in all cases, but very quickly backed off from that position

when they became better educated. It is important to note that the only cases the TMU were handling at the time involved well-known public figures. Cases involving public figures are entirely different than cases involving interpersonal human aggression, which includes almost all of the cases encountered in the healthcare setting.

That initial recommendation, however, rapidly spread and became cemented in the nation's mindset; retracting it was "like trying to put the toothpaste back in the tube. It's still out there . . . there are still those who say to always get a

restraining order and there are those who say to never get one. It's generally accepted by now that there are

downsides to restraining orders, but 'go get a restraining order' is still a common piece of advice."<sup>4</sup> According to Martin, now Senior Advisor at Gavin de Becker & Associates,<sup>5</sup> when restraining orders first came into use there were no other laws available for stalking cases, as there are today. Hence, behavior previously covered only by a restraining order can be addressed independently of a restraining order. In other words, behavior that amounts to a violation of a restraining order is now also likely an enforceable offense on its own, whereas in the early years, police and prosecutors relied on civil restraining orders to provide legal authority to act in the absence of other statutes.

Individuals concerned about their safety want to be assured they're not going to end up in the percentage of cases in which violence escalated after obtaining a restraining order. But in what cases are restraining orders effective in deterring unwanted contact? In *The Gift of Fear*, Gavin de Becker writes: "Restraining orders are most effective on the reasonable person who has a limited emotional investment. **In other words, they work best on the person least likely to be violent anyway.**"<sup>6</sup> One category of such a person is the "naive pursuer" - people in this category are generally rational but unaware of the inappropriateness of their behavior.<sup>7</sup> Because the naive pursuer does not intend harm (and does not become angry when rejected), if an explicit statement to stop does not end the behavior, a restraining order could be an effective tool to stop

the unwanted behavior.<sup>8</sup> Even in this situation, if it's determined that a restraining order will deter the unwanted behavior, it's likely to be more effective if sought early rather than after months of harassment.<sup>9</sup>

By contrast, if the goal is to prevent a murder, the civil restraining order is probably the *wrong* strategy.<sup>10</sup> However, that is exactly the strategy commonly employed by healthcare facilities that may fail to recognize a restraining order is a rejection, and rejection is a common trigger to violence.<sup>11</sup> Further, restraining orders turn what was a very private rejection into a public one. Accordingly, the

introduction of any intervention - any of which could be perceived by a subject of concern as a rejection - first warrants thoughtful consideration.

Consider the case of Katherine Brazeau.<sup>12</sup> Since 2015, Brazeau had been seeing "Therapist Doe" until she was dismissed for non-compliance in February 2018. Among other conditions, Brazeau had borderline personality disorder, of which a common trait is a high sensitivity to rejection. Brazeau received the thirty-day notice of termination of treatment and responded by threatening Therapist Doe. In response, Therapist Doe obtained a temporary restraining order against Brazeau prohibiting her from contact. Brazeau responded by mounting a campaign of harassment, repeatedly texting and emailing Therapist Doe. Therapist Doe then obtained a permanent restraining order on April 13, 2018. At that hearing, both Therapist Doe and Brazeau were present; at one point Brazeau commented to Therapist Doe that she would go after her license. Therapist Doe reported that interaction to police after leaving the courthouse.

On May 30, 2018, a police detective followed up with Therapist Doe about the interaction from April 13. The detective then telephoned Brazeau and warned her to abide by the protective order.<sup>13</sup> The very next day, May 31, 2018, Brazeau entered Therapist Doe's office with a knife and attacked her.<sup>14</sup>

The management strategies chosen to deal with Brazeau - termination letter, temporary restraining order, permanent restraining order, police warning - are interventions commonly proposed in healthcare and if implemented, may have the desired effect.

*continued on next page*

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Other times, the behavior worsens but does not escalate to a serious act of targeted violence as with Brazeau on May 31, 2018. The question is - under what circumstances are these types of interventions likely to improve rather than worsen a situation?<sup>15</sup> To avoid inadvertently escalating even one situation to violence, those in the position of recommending such interventions should have the knowledge to recognize the potential for escalation that could be introduced.

Indeed, those knowledgeable in violence prevention carefully consider several factors about the situation and the subject of concern before employing the restraining order as a management strategy. Those factors include mental illness, concomitant life stressors, a history of violence, unusual behavior patterns, social support systems in place, and the subject of concern's relationship with the target of the unwanted behavior. Consideration is also given to whether or not the restraining order's utility - the ability to arrest and prosecute for violations of the order - serves the goal of victim safety. Applying for a restraining order and prosecuting violations of the order involve court appearances with the defendant, thereby requiring contact with the subject of the no-contact order. This irony demonstrates the limitations of government with respect to ensuring individuals' safety.

The effect of the legal process on the subject of the order is important information for future victim safety decision-making;<sup>16</sup> indeed, Martin advises having an inconspicuous observer at court hearings for this purpose. In addition, the long-term effect on the individual should be considered; for example, an employer is unlikely to hire a job applicant with a restraining order history, thus setting the stage for a future scenario in which the victim is blamed for any future employment rejections. With the recognition that a restraining order is a (public and humiliating) rejection, a long-term threat management strategy that piles rejection on top of rejection can be

avoided. Today, the LAPD Threat Management Unit considers restraining orders a management tool to be used only in appropriate cases, and only with diligent reporting of violations in addition to quick response by police.<sup>17</sup> In effect, obtaining a restraining order is just the beginning, not the end, of one strategy in an overall management plan.

Cases considered obviously inappropriate for restraining orders are those in which the individual to be restrained has a past violent history or severe mental health illness.<sup>18</sup> Trivial violations could constitute boundary probing and a test of police response, and if so, it is important that even minor violations of the restraining order are reported and quickly responded to; otherwise, the subject of concern may be further emboldened.<sup>19</sup> Because it is unrealistic to expect over-burdened police responding to a vast array of situations to be experts in the assessment of threatening situations, the LAPD Threat Management Unit encourages police departments to replicate its model by establishing specialized threat management units within their larger departments.<sup>20</sup>

Healthcare systems are familiar with checklists for improving quality of care, but no checklist can be created to safely manage threatening situations because each situation contains its own unique set of facts and circumstances and is influenced by countless variables.<sup>21</sup> The context of the threatening situation, including the behavior, background, and motivation of the subject of concern is critical to the assessment of dangerousness. Especially when information is lacking, safety authorities such as Martin advise it is often wiser to begin with a management plan that does not risk escalating unwanted behavior.

In deciding whether a restraining order is a wise strategy to pursue for the purpose of keeping a disorderly patient or threatening visitor away from health care staff, there are many factors to consider. (See **Appendix A**, The Restraining Order Worksheet.)

**The question is – under what circumstances are restraining orders, termination letters, or police warnings likely to improve rather than worsen the situation?**

## Those knowledgeable in violence prevention carefully consider several factors before employing the restraining order as a management strategy.

For example, even if mental health issues and risk of escalating violence can be ruled out with confidence, consideration still should be given to the feasibility that a violation of the restraining order will be noticed and reported. Given the fact that medical facilities are designed to be open and accommodating to the public, not to keep people out, it may be unlikely that a person not allowed to be on the property will be readily identified as being in violation of a restraining order, thereby calling into question its choice as a management tool in the first place.

Literature supports the conclusion that restraining orders can lead to an increased risk of violence and demonstrates the need for careful consideration of risk factors before employing the restraining order as a behavior management tool.<sup>22,23,24</sup> Because healthcare staff cannot reasonably be expected to have the time or expertise needed in such cases, healthcare facilities would benefit from forming and training threat management teams to knowledgeably assess and advise staff in situations that may be inclined toward future violence.

<sup>1</sup>Depending on the jurisdiction, civil restraining orders may be referred to as "injunctions," "no contact orders," "protection orders," or "stay-away orders."

<sup>2</sup>For a history of restraining order legislation in the United States, see Jeffrey Fagan, "The Criminalization of Domestic Violence: Promises and Limits," a presentation at the 1995 Conference on Criminal Justice Research and Evaluation, in *National Institute of Justice Research Report*, pp. 3-10.

<sup>3</sup>Brian H. Spitzberg, "The Tactical Topography of Stalking Victimization and Management," *TRAUMA, VIOLENCE, & ABUSE*, Vol. 3, No. 4, October 2002, 261-288.

<sup>4</sup>Robert J. Martin, as interviewed by the author (videoclip of interview shown at a presentation May 2, 2014, to WI Society for Healthcare Risk Management, Threat Assessment & Management: Keeping Providers Safe & Avoiding Missteps).

<sup>5</sup>Gavin de Becker & Associates is a firm that protects people who are at risk, advises on the assessment and management of situations that might escalate to violence, and develops strategies for improving safety and privacy.

<sup>6</sup>Gavin de Becker, *The Gift of Fear*, New York: Dell Publishing (1997), p. 198 (emphasis added).

<sup>7</sup>de Becker at 216.

<sup>8</sup>de Becker at 216.

<sup>9</sup>de Becker at 215-16.

<sup>10</sup>de Becker at 200.

<sup>11</sup>de Becker at 142-43; RAGE-V 2006 (ATAP).

<sup>12</sup>Orange County District Attorney Office's report to the Office of the District Attorney, Orange County, CA, February 28, 2019.

<sup>13</sup>It is unclear from the OCDA's report (supra) whether or not there were additional violations between April 13 and May 30, 2018.

<sup>14</sup>Law enforcement responded to the scene of the attack during which Brazeau died. Therapist Doe survived the attack.

<sup>15</sup>de Becker at 198.

<sup>16</sup>Benitez, McNeil and Binder, "Do Protection Orders Protect?" *Journal of the American Academy of Psychiatry and the Law* 38:3:376-385 at 385 (September 2010).

<sup>17</sup>Jeffrey Dunn, "The Los Angeles Police Department Threat Management Unit." In *International Handbook of Threat Assessment*, edited by J. Reid Meloy and Jens Hoffmann, Ch. 19, New York: Oxford University Press, 2014.

<sup>18</sup>Dunn at 295.

<sup>19</sup>Dunn at 295-96.

<sup>20</sup>Dunn at 297.

<sup>21</sup>Dunn at 297.

<sup>22</sup>Spitzberg, *The Tactical Topography of Stalking Victimization and Management* at 278.

<sup>23</sup>Molly Chaudhuri and Kathleen Daly (1992), "Do Restraining Orders Help?" in *Domestic Violence: The changing criminal justice response*, edited by E.S. Buzawa & C.G. Buzawa, Chapter 12, p. 245.

<sup>24</sup>Benitez at 385.

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# Restraining Order Worksheet

Robert Martin & Sheridan Ryan

A restraining order is an intrusive intervention.

Proceed with care.

What follows is a non-exhaustive list of considerations to help you provide a more informed answer to the question: “Is the recommendation I’m about to make one that will move us closer to or further away from the goal of safety?”

Case Manager:	Date:
Name of person seeking protection (“Target”):	
Name of person causing safety concerns (“Pursuer”):	
Description of situation:	

Consider all items in each section:	Make notes in this column:
<p><b>1. Regarding the Restraining Order itself:</b>                  This worksheet contemplates orders issued by a <u>civil</u> court ordering a person to refrain from certain conduct and/or stay away from certain persons or places. The term “restraining order” (RO) is used but in some jurisdictions, a civil restraining order may be referred to by other nomenclature. Laws surrounding such orders vary by state. <b>This Worksheet is intended to facilitate thoughtful contemplation by those in a position of recommending whether or not a RO would be a wise strategy to pursue in a particular situation.</b></p>	
<input type="checkbox"/> What is the <i>purpose</i> of the RO?	
<input type="checkbox"/> Is the RO intended to restrain <i>current</i> or <i>future</i> behavior?	
<input type="checkbox"/> Is it likely the RO will be granted? Why or why not?	

Appendix A

<input type="checkbox"/> Has a RO successfully been used with this Pursuer previously? Under what circumstances?	
<input type="checkbox"/> Where is the likely <i>place</i> the RO will be served and <i>who</i> will serve it? Is there a plan for getting feedback from the process server regarding behavior and statements made? What?	
<input type="checkbox"/> Is there a plan for monitoring court and administrative hearings? (e.g., discreet observation to assess behavior and statements made) What?	
<input type="checkbox"/> Is there a plan if concerning statements or behaviors are observed <i>before / during / immediately after</i> any hearings? What?	
<input type="checkbox"/> Is it likely that even minor violations of the RO will be reported and quickly responded to?	
<input type="checkbox"/> Is there a basis to believe the RO is likely to increase safety rather than escalate the situation? What is that basis?	
<input type="checkbox"/> Is there a basis to believe a RO is likely to escalate the situation? (e.g., Pursuer's motivation is to avenge rejection)	
<input type="checkbox"/> Will long-term monitoring be in place? (e.g., the Pursuer could attribute the inability to get a job to the RO; is there a plan that would likely detect such an occurrence? What?)	
<b>2. Regarding the Target:</b>	
<input type="checkbox"/> Are there actions that can be taken to avoid an encounter with the Pursuer? What?	
<b>3. Regarding the Pursuer:</b> Are any of the below items <i>known</i> or <i>suspected</i> to apply to the Pursuer?:	
<input type="checkbox"/> Mental illness or paranoia?	
<input type="checkbox"/> Feelings of alienation (not belonging/outsider?)	
<input type="checkbox"/> Feelings of suffering or unhappiness?	

Appendix A

<input type="checkbox"/> Anger at the Target?									
<input type="checkbox"/> History of acting out violently when rejected?									
<input type="checkbox"/> Prior episodes of rejections? (e.g., fired, doctor-patient relationship terminated, divorce (or end of any personal relationship))									
<input type="checkbox"/> High level of emotional investment in relationship (real or perceived) with the Target?									
<input type="checkbox"/> Perception that rules don't apply to the Pursuer?									
<input type="checkbox"/> Exceptionally "brittle" personality? (easily offended, unable to withstand minor social slights)									
<input type="checkbox"/> Prior episode(s) of similar behavior? When? How resolved?									
<p><b>4. Legal Alternatives</b>            Note: If it's determined that an intrusive intervention is reasonably likely to enhance the Target's safety, consideration should be given to any applicable criminal charges (as opposed to a civil RO) because with criminal charges, it's the <i>State</i> bringing the legal action against the Pursuer (rather than the <i>Target</i> doing so).</p> <p><b>Has the Pursuer violated <i>criminal</i> laws:</b></p>									
<input type="checkbox"/> Stalking <input type="checkbox"/> Harassment <input type="checkbox"/> Unlawful use of a computerized communication system <input type="checkbox"/> Unlawful use of a telephone <input type="checkbox"/> Trespass <input type="checkbox"/> Other									
<p><b>5. Follow Up</b>            Note date of next review here:</p>									
<b>Reviewed by:</b>	<table border="1"> <thead> <tr> <th>Risk</th> <th>Security</th> <th>Legal</th> <th>TAT</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </tbody> </table>	Risk	Security	Legal	TAT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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