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DUTY TO WARN

Duty to warn is a concept of importance to any psychiatrist who treats a patient capable of committing an act of violence against another person. In 1976 the decision handed down in the landmark case *Tarasoff v. Regents of the University of California* changed the traditional rule that psychiatrists were not to be held responsible for the violent acts of their patients. In the *Tarasoff* case a psychologist at UC-Berkeley became convinced that his patient, Prosenjit Poddar, might try to kill Tatiana Tarasoff. He had the campus police detain Poddar so he could begin the process of civil commitment. The police, however, felt Poddar was rational and released him. Later, the psychiatrist who supervised the psychologist also decided there was no basis for commitment. Poddar terminated his treatment and two months later murdered Tatiana Tarasoff. Tarasoff's parents sued the psychologist, the psychiatrist, and the university, saying they had a responsibility to have done more, including warning Tatiana directly that she was in danger. The court found in their favor, concluding that a psychiatrist has a duty to warn identifiable victims, although not necessarily a duty to restrain, or commit, a patient who might pose a threat to identifiable or nonidentifiable victims.

Since *Tarasoff* there have been many court cases that have upheld its precedent, while others have gone even further, concluding that a therapist of a potentially violent patient is liable for harm done even to victims who might not have been identifiable in advance. Still other courts have refused to follow *Tarasoff*, as in *Hopewell v. Adebimpe*, where a psychiatrist was sued for breach of confidentiality for informing a patient's employer that she was feeling harassed at work and might hurt someone seriously if the harassment didn't stop. The court held the psychiatrist had an absolute obligation not to disclose confidential communications without the patient's written consent.

HOW TO MINIMIZE YOUR LIABILITY FOR A PATIENT'S VIOLENT ACTS

Because of the apparent lack of clarity about how the courts will rule in cases of duty to warn, psychiatrists should take a number of steps to minimize the risk that they'll be held liable for their patients' violent acts:

- **Obtain prior treatment records.** You'll have more information to work with and be better able to assess the seriousness of a patient's threat of violence.

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- **Document your decision-making process.** Having a record can help establish that you consulted all the relevant sources of information and considered all the relevant factors when deciding if the patient posed a threat that people needed to be warned about or protected from. Even if your decision turned out to be wrong, this documentation will show that your decision was a reasonable one.
 - **When in doubt as to whether to issue a warning or take other steps to prevent harm, arrange a consult with another clinician or an attorney (and document the consult).** Since your liability will be determined in reference to the standards of your profession, consulting another psychiatrist will provide extra protection. The fact that you consulted an attorney will show that due care was taken in your decision making.
 - **If it is determined there is a threat of violence to an identifiable person, all appropriate warnings should be made, even if you believe the potential victim is already aware of the danger.** It is also important to determine if others, such as parents and spouses, should be contacted as well.
 - **Upon discharging a patient who is known to have a potential for violence, you must be certain that any treatment plan developed is actually followed, and if not, decide whether the patient must be restrained again.** You must make some effort to follow up on this type of patient, even if it just means asking the outpatient therapist or community mental health center to contact you if the patient stops coming to appointments.