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DUTY TO WARN

Duty to warn is a concept of importance to any psychiatrist who treats a patient who may be capable of committing an act of violence against another person. In 1976 the decision 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. The psychologist 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 with the psychologist and two months later murdered Tatiana Tarasoff. Tarasoff's parents filed suit against the psychologist, the psychiatrist, and the university and asserted that they had a responsibility to have done more, including warning Tatiana directly that she was in danger. The court found in the parent's favor, concluding that there was 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 non-identifiable victims.

In the years 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. Other jurisdictions, however, do not follow *Tarasoff*.

HIPAA does permit disclosure for these purposes, but it is important to understand your individual state's laws and that you consult with your risk management professional. The majority of the jurisdictions follow one of three approaches for the obligations of a mental health provider to warn third parties: mandatory duty to warn, permissive duty to warn, or no duty to warn. It is important for you to be aware of the law within your state before you encounter such a situation. A map showing each state's duty to warn approach can be accessed on the National Council of State Legislatures website: <http://www.ncsl.org/research/health/mental-health-professionals-duty-to-warn.aspx>. However, a number of states have changed their laws along with access to firearms. Because of this, to obtain the most up to date information, it is important to contact your risk management or legal professional.

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 could 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.
- **Document your decision-making process.** Having a record is vital to establishing 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 the patient does not carry out harm against a third party, this documentation will show that your decision was reasonable.
- **When in doubt as to whether to issue a warning or take other steps to prevent harm, consult with an attorney, risk management professional, or another clinician (and document that 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 or risk management professional 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, and depending upon state law, 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 from an inpatient admission, you must be certain that any treatment plan developed is actually followed, and if not, decide whether the patient should be rehospitalized.** 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.