

# [When necessary. the duty to warn has created](https://assignbuster.com/when-necessary-the-duty-to-warn-has-created/)

When You Are Seeking TherapyAbnormal Psychology 204 November 2, 1996Breach of Confidentiality: The legal Implications when You are seeking Therapy I. The need for confidentiality in therapy A. Establish trust B. A patients billof rights Thesis: The duty to warn has created an ethical dilemma forpsychological professionals. II. Therapists face a moral problem B. Requirement by law to breach confidentiality C. Exceptions for breachingconfidentiality D.

Prediction of violence E. Impact on client I. The futureoutlook for therapy A. Conflicting views between the legal and psychologicalprofessionsPeople are afraid to admit to themselves and others that they need to help toresolve their psychological problems. This is due to the social stigma whichsociety attaches to people, when they seek assistance from a mental healthprofessional.

Consequently it is very difficult for any person to establish atrusting relationship with their therapist, because they fear, that thetherapist might reveal their most personal information and emotions to others. Health professionals therefore created the patients bill of rights to installconfidence between clients and therapists. The patient has a right to everyconsideration of privacy concerning his own medical care program. Casediscussion, consultation, examination, and treatment are confidential and shouldbe conducted discreetly. Those not directly involved in his care must have thepermission of the patient to be present.

The patient has the right to expectthat all communications and records pertaining to his care should be treated asconfidential. ( Edge, 63 ) This bill of rights enables clients to disclose allpersonal information without fears. To fully confide in the therapist isessential to the success of the therapy. On the other hand, the therapist islegally obliged to breach this trust when necessary.

The duty to warn hascreated an ethical dilemma for psychological professionals. The duty to warn isbased on a court ruling in 1974. Tatiana Tarasoff was killed by Prosenjit Poddar. Prior to the killing Poddar had told his therapist that he would kill Tatianaupon her return from Brazil. The psychologist tried to have Poddar committed, but since the psychiatrist overseeing this case failed to take action, Poddarwas never committed nor was Tarasoff warned about Poddars intentions to kill her. This failure resulted in Tatianas death. The Supreme Court therefore ruled thatthe psychologist had a duty to warn people which could possibly become harmed (Bourne, 195-196 ). This policy, to warn endangered people, insures thattherapists must breach there confidentiality for specific reasons only.

Thesefew exceptions are: Harm Principle: “ When the practitioner can foresee a danger to an individual who is outside the patient/provider relationship, potentially caused by the patient, the harm principle provides the rationale for breaching confidentiality to warn the vulnerable individua” ( Edge, 63 ). “ When the client is a potential danger to himself or herself” ( Bourne, 487 ). “ If the client is a criminal defendant and uses insanity as a defense ( Bourne, 487 ) “ If the client is underage and the therapist believes that he or she is the victim of a crime (such as child abuse)” ( Bourne, 487 ).

The breach for a clients insanity defense would have been helpful in deciding afamous court case in 1843: the McNaghten’s case. McNaghten used the insanitydefense, when he was faced with the charge of killing Sir Robert Peele’s privatesecretary. A jury had to decide, if he was conscious of the act or if he wastemporary insane ( McCarty, 299-300 ). The jury clearly didn’t have theprofessional training to make a competent decision. How did they establish ifMcNaghten knew right from wrong at the time of the crime? Therefore they wereincompetent when deciding that he, indeed, was temporarily insane. Now thesedeterminations are made by qualified mental health professionals. Neverthelessother obstacles are still being encountered.

In the beginning the law providesclear guidelines when to breach confidentiality. The Harm Principle is one ofthe guidelines. But how can a therapist absolutely determine, that a clientpresents harm to another individual? To say that someone is dangerous is topredict future behavior. The rarer an event, the harder it is to predictaccurately.

Hence if dangerousness is defined as homicide or suicide, both ofwhich are rare events, the prediction of dangerousness will inevitably involvemany unjustified commitments as well as justified ones ( Alloy, 570 ). Thetherapist must predict the capacity for violence in the client. There are noguidelines to establish such a diagnose. All that is mandated by the opinionis that the therapist exercise that reasonable degree of skill, knowledge, andcare ordinarily possessed and exercised by members of their particularprofession under similar circumstances. Within the broad range of reasonablepractice and treatment in which professional opinion and judgment may differ, the therapist is free to exercise his or her own best judgment withoutliability; proof aided by hindsight, that he or she judged wrongly isinsufficient to establish negligence ( Annas, 198 ). The therapist is faced with an immense challenge. He has to rely onto himself orherself only. Only aided by his or her professional training to evaluate theclient and taught and /or self-learned ethics to depend on.

Adding the fact thatthe clients future rests on his judgment, the amount of pressure and stress canonly be imagined. As if this predicament isn’t already difficult enough for thetherapist, more obstructions have to be conquered to make a qualifieddetermination of the clients dangerousness. A therapists prediction is like amathematical equation with many known and unknown variables. There are fourunknown factors involved in the decision-making process: 1. Lack of correctivefeedback. When clients become committed to a mental facility, because they wereconsidered harmful, we cannot discover if this person would constitute a dangerto others if discharged.

2. Differential consequences to the predictor. Wrongfully discharged individuals which are discovered to be harmful (falsenegatives) cause extremely negative publicity. Wrongfully committed harmlessindividuals (false positives) don’t cause that kind of publicity. 3. Unreliability of the criterion.

The only concrete indication for forecasting aclients violence is a prior record of encountered violence, which might bequestionable. 4. Powerlessness of the subject. Until not long ago, wrongfullyaccused and then committed individuals had few rights to fight this wrongfuldecision ( Alloy, 571-572 ).

“ All of these factors encourage mental health professionals to err in thedirection of overpredicting dangerousness. Do they in fact do so? Studies ofpredictions of dangerousness have yielded far more false positives than falsenegatives” ( Alloy, 572 ). When a therapist makes an erroneous decision based onthese factors, he cannot be held liable, since he or she cannot know howtruthful all evidence represents a clients state of mind. However should atherapist be punished for making too many incorrect warnings, because he or sheis in constant distress about his or her legal liability? and therefore toprotect themselves against liability imposed by a duty to disclose, therapistsare likely to make many warnings ( Annas, 197-198 ). The dictatedresponsibility to protect the public by blowing the whistle on their clientscan lead a therapist to view differently how to conduct their therapy sessionswith clients. How non-judgmental can a therapist remain, when ordered by ourlegal system, to choose the well-being of the public over his or her clientswell-being ? What impact will this have on the clients behavior? Gaining andupholding a clients trust is a most difficult task for the therapist. Especiallybecause a client never completely loses his or her fear that a therapist mightdisclose certain or all personal information to a third party. When the clientbecomes aware of the fact, that the therapist is legally obligated to disclosecertain case information in order to prosecute or commit the client if necessary, commonly the client will not seek therapy or abandon current therapy to avoidpossible negative consequences.

These warnings are likely to cause theirpatients to terminate treatment and possibly act out their aggressive impulses( Annas, 198 ). Seldomly will distressed individuals regain their mental health withoutprofessional help. Since they do not wish to receive assistance, due to thepossibility of legal repercussions, they often follow a detrimental path. Finding themselves unable to resist their urges, they act out theiraggressiveness. The targeted person gets harmed, or even worse, killed.

Therapists therefore argue that a sharp increase in involuntary commitments andpreventable crimes will be the secondary, long-term result of the imposed dutyto warn. Conflicting views between the legal and psychological professions havealways existed. This is due to the nature of these opposite professions. Thelegal community restricts their views to verifiable, concrete, thereforeempirical evidence only.

The psychological community however cannot be thatrigid. Mental health professionals deal with facts (reality), but they also haveto deal with their clients emotions, beliefs and irrational beliefs. Empathy andtrustworthiness play an important role when counseling clients. Courts andmental health professionals have something in common, they both try to protectthe welfare of others. Legal practitioners look out for the well-being of thegeneral population. This next statement perfectly reflects their view: Hospitals and the medical sciences, like other public institutions andprofessions, are charged with the public interest.

Their image of responsibilityin our society makes them prime candidates for converting their moral dutiesinto legal ones. Noblesse Oblige ( Annas, 199 ). Mental health practitioners however focus on the well-being of the individual. To protect and serve the general population as commanded by the courts createdan ethical dilemma for psychological professionals.

The courts force them to actcontradicting to their professional beliefs and ethics. Therapists reason thatwhen they must serve the public they cannot successfully treat their clients. Orhow can they treat an individual at all, if the person won’t consider enteringtherapy do to the possibly grim consequences ? Highly advanced communicationdevises erode our personal privacy more every day. Now the court system seems tofollow this trend. Therapists are trying to fight these developments andquestion the true motives of the court system. More research has to be conductedto find better alternatives.

Maybe this ethical dilemma can be resolved in thefuture, maybe more ethical dilemmas will surface. We are all individuals andshould be treated with our own individual interests in mind. Maybe we shouldindulge in more economic thinking, to fuse the well-being of the individual withthe well-being of the general population and thereby eliminating the ethicaldilemma. Economic theory can verify, that when individuals act in their own bestself-interest, the population as a whole will benefit from it, too.

Thiseconomic principle also applies to psychology. ReferencesAlloy, L. B.

, Acocella, J., Bootzin, R. R. ( 1996 ) .

Abnormal psychology . USA: McGraw-Hill . Annas, G. J.

( 1988 ) . Judging medicine . New Jersey: Humana Press . Bourne, L.

E., Jr., Ekstrand, B. R. ( 1985 ) . Psychology: Itsprinciples and meaningsUSA: Holt, Rinehart and Winston . Edge, R.

S., Groves, J. R. ( 1994 ) . Theethics of health care .

USA: Delmar Publishing . McCarty, D. G. ( 1967 ) . Psychology and the law .

New Jersey: Prentice-HallBreach of Confidentiality: The legal Implications when You are seeking Therapy I. The need for confidentiality in therapy A. Establish trust B. A patients billof rights Thesis: The duty to warn has created an ethical dilemma forpsychological professionals.

II. Therapists face a moral problem B. Requirement by law to breach confidentiality C.

Exceptions for breachingconfidentiality D. Prediction of violenceCategory: Science