

When necessary, the
duty to warn has
created



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When You Are Seeking Therapy
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People are afraid to admit to themselves and others that they need to help to resolve their psychological problems. This is due to the social stigma which society attaches to people, when they seek assistance from a mental health professional.

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

The patient has the right to expect that all communications and records pertaining to his care should be treated as confidential. (Edge, 63) This bill

of rights enables clients to disclose all personal information without fears. To fully confide in the therapist is essential to the success of the therapy. On the other hand, the therapist is legally obliged to breach this trust when necessary.

The duty to warn has created an ethical dilemma for psychological professionals. The duty to warn is based 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 Tatiana upon her return from Brazil. The psychologist tried to have Poddar committed, but since the psychiatrist overseeing this case failed to take action, Poddar was never committed nor was Tarasoff warned about Poddar's intentions to kill her. This failure resulted in Tatiana's death. The Supreme Court therefore ruled that the psychologist had a duty to warn people which could possibly become harmed (Bourne, 195-196). This policy, to warn endangered people, insures that therapists must breach their confidentiality for specific reasons only.

These few 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 individual" (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 client's insanity defense would have been helpful in deciding a famous court case in 1843: the M'Naghten's case. M'Naghten used the insanity defense, when he was faced with the charge of killing Sir Robert Peel's private secretary. A jury had to decide, if he was conscious of the act or if he was temporarily insane (McCarty, 299-300). The jury clearly didn't have the professional training to make a competent decision. How did they establish if M'Naghten knew right from wrong at the time of the crime? Therefore they were incompetent when deciding that he, indeed, was temporarily insane. Now these determinations are made by qualified mental health professionals. Nevertheless other obstacles are still being encountered.

In the beginning the law provides clear guidelines when to breach confidentiality. The Harm Principle is one of the guidelines. But how can a therapist absolutely determine, that a client presents harm to another individual? To say that someone is dangerous is to predict future behavior. The rarer an event, the harder it is to predict accurately.

Hence if dangerousness is defined as homicide or suicide, both of which are rare events, the prediction of dangerousness will inevitably involve many unjustified commitments as well as justified ones (Alloy, 570). The therapist must predict the capacity for violence in the client. There are no guidelines to establish such a diagnosis. All that is mandated by the opinion is that the therapist exercise that reasonable degree of skill, knowledge, and care ordinarily possessed and exercised by members of their particular profession under similar circumstances. Within the broad range of reasonable practice and treatment in which professional opinion and judgment may differ, the <https://assignbuster.com/when-necessary-the-duty-to-warn-has-created/>

therapist is free to exercise his or her own best judgment without liability; proof aided by hindsight, that he or she judged wrongly is insufficient to establish negligence (Annas, 198). The therapist is faced with an immense challenge. He has to rely onto himself or herself only. Only aided by his or her professional training to evaluate the client and taught and /or self-learned ethics to depend on.

Adding the fact that the client's future rests on his judgment, the amount of pressure and stress can only be imagined. As if this predicament isn't already difficult enough for the therapist, more obstructions have to be conquered to make a qualified determination of the client's dangerousness. A therapist's prediction is like a mathematical equation with many known and unknown variables. There are four unknown factors involved in the decision-making process: 1. Lack of corrective feedback. When clients become committed to a mental facility, because they were considered harmful, we cannot discover if this person would constitute a danger to others if discharged.

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

The only concrete indication for forecasting a client's violence is a prior record of encountered violence, which might be questionable. 4. Powerlessness of the subject. Until not long ago, wrongfully accused and then committed individuals had few rights to fight this wrongful decision (Alloy, 571-572).

“ All of these factors encourage mental health professionals to err in the direction of overpredicting dangerousness. Do they in fact do so? Studies of predictions of dangerousness have yielded far more false positives than false negatives” (Alloy, 572). When a therapist makes an erroneous decision based on these factors, he cannot be held liable, since he or she cannot know how truthful all evidence represents a client's state of mind. However should a therapist be punished for making too many incorrect warnings, because he or she is in constant distress about his or her legal liability? and therefore to protect themselves against liability imposed by a duty to disclose, therapists are likely to make many warnings (Annas, 197-198). The dictated responsibility to protect the public by blowing the whistle on their clients can lead a therapist to view differently how to conduct their therapy sessions with clients. How non-judgmental can a therapist remain, when ordered by our legal system, to choose the well-being of the public over his or her client's well-being ? What impact will this have on the client's behavior? Gaining and upholding a client's trust is a most difficult task for the therapist. Especially because a client never completely loses his or her fear that a therapist might disclose certain or all personal information to a third party. When the client becomes aware of the fact, that the therapist is legally obligated to disclose certain case information in order to prosecute or commit the client if necessary, commonly the client will not seek therapy or abandon current therapy to avoid possible negative consequences.

These warnings are likely to cause their patients to terminate treatment and possibly act out their aggressive impulses(Annas, 198). Seldomly will distressed individuals regain their mental health without professional help.

Since they do not wish to receive assistance, due to the possibility of legal repercussions, they often follow a detrimental path. Finding themselves unable to resist their urges, they act out their aggressiveness. The targeted person gets harmed, or even worse, killed.

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

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

Their image of responsibility in our society makes them prime candidates for converting their moral duties into 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 created an ethical dilemma for psychological professionals.

The courts force them to act contradicting to their professional beliefs and ethics. Therapists reason that when they must serve the public they cannot successfully treat their clients. Or how can they treat an individual at all, if the person won't consider entering therapy do to the possibly grim consequences ? Highly advanced communication devices erode our personal privacy more every day. Now the court system seems to follow this trend. Therapists are trying to fight these developments and question the true motives of the court system. More research has to be conducted to find better alternatives.

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

This economic principle also applies to psychology. References Alloy, L. B.

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