Responsibility of the Therapist for the Patients’ Actions (Tarasoff Rules): Position of the Psychiatrists

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ABSTRACT

Background and aims: Patient confidentiality and the therapist’s responsibility to society may present a challenge in the therapeutic relationship between the psychiatrist and the patient. We examined the attitudes of Israeli psychiatrists concerning the duty to warn and protect according to the Tarasoff Rule.

Methods: Questionnaires to examine psychiatrists’ opinions concerning the implementation of the Tarasoff Rule in Israel were sent to senior psychiatrists involved in forensic psychiatry for anonymous completion. Results: 108 (64%) questionnaires were returned. 61 (57%) replied that they encountered similar situations.

Conclusions: Thorough understanding of the Tarasoff Rule, clarification of the patient’s potential dangerousness, and timely deliberation of the issues will assist the therapist. Investigation of the medical consensus of senior physicians, as performed in our study, is also a point of reference for formulating an opinion.

BACKGROUND

The responsibility of the therapist for the actions of the patient is a historical dilemma. The patient-doctor relationship is unique and demands safeguarding medical confidentiality. The essence of the therapist’s commitment is to the patient (Hippocratic Oath), and in the past, society’s needs were not taken into account. However, the family was included in the circle of confidence, as they were concerned with the patient’s health and welfare. With time, the physician became society’s representative and society naturally expected that the physician would promote its interests.

It is easy to fulfill this duty when the interests coincide: Improved health of the patient also improves the health of society, but confidentiality and the responsibility to society may potentially clash in the therapeutic relationship with the patient (1).

The “Tarasoff Rule”(2) as discussed in the courts in the United States, is generally accepted by consensus among specialists in Israel. The Tarasoff case in California affected the obligations of the therapist and extended the borders of the catalyst for malpractice in the United States. Prosenjit Poddar, a University of California at Berkeley student, dated a co-ed, Tatiana Tarasoff, and after he realized that Tanya was dating other men, he had a severe mental breakdown, went for psychiatric care, and revealed his intentions to commit murder (3). The therapist notified campus security of Poddar’s intentions, the police then interviewed Poddar and decided that he did not represent an immediate danger (he denied wanting to harm anyone). However, he stopped psychiatric therapy and later, in 1969, Prosenjit Poddar killed Tatiana Tarasoff. Tarasoff’s parents filed a damages claim against the university and against the therapists.

In 1974 the Supreme Court of California ruled that the therapists were legally responsible for not hav-
ing warned the victim (4). Duty to warn refers to the responsibility of a counselor or therapist to breach confidentiality if an identifiable person is in clear danger. He must determine the degree of seriousness of the threat and notify the person in danger and others who are in a position to protect that person (5, 6).

In their second ruling (4), the court released the police from liability without explanation and more broadly formulated the duty of therapists, imposing a duty to use reasonable care to protect third parties against dangers posed by patients (7).

The case of Tarasoff v. Regents of the University of California (1976) imposed an affirmative duty on therapists to warn a potential victim of intended harm by the client, stating that the right to confidentiality ends when public peril begins.

The Tarasoff Rule thus creates a moral dilemma, between maintaining patient confidentiality and the obligation to maintain public safety. Quite often, the therapist cannot know there is indeed a real threat. There are no rules or guidelines to diagnose a threat, and each case is unique. The therapist’s role in therapy is to treat the patient.

There is no ideal solution for the dilemma of maintaining medical confidentiality versus the duty to warn and/or protect. Patient confidentiality is a legal responsibility, and breaching that responsibility is a criminal act, a civil wrong involving damages, and a catalyst for legal sanctions (8).

In the case of a patient who is in a psychotic state and threatens others, the conditions for a hospitalization order are fulfilled, and he/she will be hospitalized, and thus the danger will be averted. What happens when the individual is not psychotic?

In England (W. v. Egdell) (9) a psychiatrist was sued by a patient he had examined, for a private expert opinion, because the psychiatrist passed the information concerning his dangerousness to the supervisor of the hospital where he was hospitalized. The prosecution was denied because the duty to protect the public overrides the issue of confidentiality in such a case.

This issue is not unique for mental health, as general physicians are also faced with similar situations (10). It seems that there is an obligation to protect the third party when communicable diseases such as HIV (11, 12) are involved, and child abuse.

The family physician faces an even greater dilemma if the spouse is also his patient, or the child of the abusive parent (13).

It is easy to see the undesirable results of excessive intervention, and unnecessary warnings (14, 15). This may cause unnecessary harm to the patients – loss of license to carry a weapon, loss of employment, family relations, etc. There is a considerable difference between a person who is in the process of divorce and is angry with his wife, and threatens her (the wife is in danger) and one who raises the issue in treatment and as a result of therapy the threat is removed. “Unnecessary” notification to the police in this type of case could lead to a police complaint and the opening of a police record with all that it entails, while in fact, it becomes clear that the complaint was based on the expression of anger. In terms of public interest, it is preferable that individuals seek therapy and go on with their lives rather than proceed without emotional help. Thus, public interest is also in conflict: protection of society vs. the individual’s right to confidentiality, as a social interest.

It is often assumed that the duty to warn and the obligation to protect is the responsibility of the police. The therapist fulfills his responsibility by passing the information to the police; it is difficult to imagine how the therapist would have access to contact information for all potential victims.

The objective of this study was to examine the attitudes of psychiatrists concerning the duty to warn and protect according to the Tarasoff Rule.

METHODS

Questionnaires were sent by post to senior psychiatrists with an explanation of the survey and request to complete the forms anonymously in the return envelopes provided. The survey was performed among senior psychiatrists involved in forensic psychiatry, did not involve specific patient information, and responses were anonymous, thus Helsinki approval was not sought. Completion and return of the forms was considered consent to participate in the survey.

The following questionnaire was used:

The Tarasoff Rule is well known in the United States. According to the Tarasoff Rule, if a patient in therapy threatens to harm another individual the therapists must warn the potential victim. To the best of our knowledge, the Tarasoff Rule was never discussed in the courts in Israel. We would appreciate if you could note your position, for the purposes of this survey:

Do you recall a similar case in your practice, and how did you respond?
Contacted the District Psychiatrist
Contacted the police
Contacted the person threatened
All of the above
A different combination, please describe
Other, please describe

Please related to the following case:
David, age 32, in the process of divorce, was in private psychotherapy, once a week. He was in a reactive depressive crises. He was very angry with his wife, who in his words “destroyed my life, disrupts my relationship with my daughters and demands very high alimony.” After a calm period in therapy and development of a therapeutic relationship, he arrived in a stormy state, and described how his wife did not allow him to meet with his daughters on the holiday, in contradiction to the agreement between them and told him that he will never see his daughters again.

During the session, he angrily told the therapist that he will kill her, and finally left the session before it was over, claiming that the therapist also does not understand him.

Contact the District Psychiatrist
Contact the Police
Contact the person threatened
Contact the person in therapy
All of the above
A different combination, please describe
Other, please describe

STUDY SAMPLE:
The questionnaire was sent to 170 specialists in psychiatry with at least five years experience in the field, and active in the field of forensic psychiatry.

RESULTS
108 (64%) questionnaires were returned.

In response to the first question: 61 (57%) replied that they had encountered this type of dilemma in their practice. Their methods for dealing with the issues included: contacting the regional psychiatrists for consultation or hospitalization orders 43/61 (70.49%), contacting the police 38/61 (62.29%), contacting the potential victim 31/61 (50.81%), other responses 15/61 (24.59%) (15%). Many responders gave combined responses, indicating that they made two or more contacts, thus 61 respondents provided a total of 127 responses.

Concerning the case presented: the following replies were received:

Of the 108 responders, 60 reported that they would have contacted the potential victim (55.55%), contacted the police 48 (44.44%), and involved the District Psychiatrist 25 (23.14%), reported to the welfare department 4 (3.70%), discussed with the patient 45 (41.66%), other 15 (13.88%). Most responders would have made more than one contact, thus a total of 197 responses were received.

DISCUSSION
Physicians have long been aware of the dilemma between maintaining patient confidentiality and the duty to protect society. With the help of the law, ethics and a system of checks and balances there is usually an appropriate balance. Patients generally do not avoid coming for treatment for fear of lack of medical discretion, and physicians do not generally breach confidentiality.

The Tarasoff Rule takes the dilemma one step forward, to where the treating physician deliberates between maintaining confidentiality and the duty to report to the authorities, and/or additional persons, i.e., the potential victim, family, or others.

The second Tarasoff ruling places the therapist in a more difficult situation (16).

In our study, we found awareness of the issue, and most physicians had even encountered cases involving the “Tarasoff dilemma” (64%), which do not include

<table>
<thead>
<tr>
<th>Contact</th>
<th>Police N (%)</th>
<th>District Psychiatrist N (%)</th>
<th>Potential Victim N (%)</th>
<th>Social Services N (%)</th>
<th>Patient in therapy N (%)</th>
<th>Other N (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Had patients that threatened to harm a 3rd party N=61 Total responses = 127</td>
<td>38 (62.29%)</td>
<td>43 (70.49%)</td>
<td>19 (31.14%)</td>
<td>-</td>
<td>-</td>
<td>15 (24.59%)</td>
</tr>
<tr>
<td>Responders to hypothetical case N=108 Total responses = 197</td>
<td>48 (44.44%)</td>
<td>25 (23.14%)</td>
<td>60 (55.55%)</td>
<td>4 (3.70%)</td>
<td>45 (41.66%)</td>
<td>15 (13.88%)</td>
</tr>
</tbody>
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Responders were allowed more than one response thus the answers do not total 100%.
all cases that involved the duty to report, which has become routine for physicians.

It should be noted that in Israel, the Tarasoff Rule has never been discussed in court, though the position of the State is that this rule applies to therapists either by expecting them to warn the third party, or those close to the third party or by contacting the police (17).

The dilemma presented in our study involved psychotherapy with a non-psychotic patient. Some responses concerned notifying the potential victims, and others contacted the District Psychiatrists.

This indicates a change; in the past, in times of danger, the therapists contacted the police, and it seems there has been a shift in awareness regarding the duty to warn the potential victim.

It is difficult to understand the message from the original Tarasoff case, according to which the therapist was at fault, though he passed detailed information on to the police, who certainly had the wherewithal to prevent a tragedy, and they were obligated to investigate the matter with the victim. Perhaps the message is that society passes responsibility to the caregiver, since s/he may know when to operate outside of the treatment room.

In actual fact, we are not dealing with an all encompassing breach of patient confidentiality, and implementation of the rule is done sparingly (18).

In addition, the therapist cannot always be confident that warning will cause less harm than not warning (19).

The therapist is obligated to evaluate all aspects of his patients’ condition, including a careful evaluation of potential risk, in routine examinations, especially during the first patient interview (20).

The dilemma of the Tarasoff Rule has no easy solution, but deeper understanding of the rule, clarification of the patient’s potential dangerousness, and timely deliberation of the issues will assist the therapist.

Investigation of the medical consensus of senior physicians, as performed in our study, is also a point of reference for formalizing an opinion.

References
2. Tarasoff v Regents of University of California, 17 Cal.3d 425; 551 P.2d 334; 131 Cal. Rptr. 14 [1976].