

Tarasoff and the Duty to Warn and Protect

In the famous Tarasoff case that came out of California, a student at a university, after a failed relationship, told his psychologist his intention to harm the woman (Tarasoff). The psychologist told campus police who investigated, they found him to be rational and he stated he would not bother her. Later he killed her. Her parents sued saying that if their daughter had know of the threat, she would have stayed away from him, and hence protect herself. After multiple court cases the California Supreme Court issued a decision that required therapist to take steps to protect/warn third parties to avert danger from the violent tendency of their patients. In its second ruling, the California Supreme Court changed its language from requiring that warnings be given to requiring that therapists take appropriate steps to protect individuals from their clients.

Status of Duty to Warn or Protect in Illinois

Tarasoff is case law in California, it has no legal baring in Illinois. Under the Mental Health and Developmental Disabilities Confidentiality Act, there are requirements that all mental health records and communications be confidential. However, as in the case in CFR 42 Part 2, there are some exceptions in the Act. This Act went into effect beginning in, about four years after the Tarasoff decision in California and contains an exception allowing counselors/therapists to release protected healthcare information to protect third parties. Specifically it states “protect the recipient or other person against a clear, imminent risk of serious physical or mental injury or disease or death being inflicted upon the recipient or by the recipient on himself or another.” In a revision done in 1990, the Act was amended, adding a provision that allows counselor/therapists to disclose protected healthcare information in order to warn/protect a identified person “against whom a recipient has made a specific threat of violence where there exists a therapist-recipient relationship or a special recipient-individual relationship.” However, In 1990, the Illinois legislature also amended the full Mental Health and Developmental Disabilities Code and seems to create a duty to warn or protect certain third parties. The Mental Health Code applies to physicians, clinical psychologists, and qualified examiners. It is unclear if CADC’s fit this category. Basically the code stated there is no requirement for the duty to warn or protect unless a recipient has communicated a serious threat of physical violence against reasonably identifiable victim(s). Any duty the professional may have will be discharged if the professional makes a reasonable effort to communicate the threat to the victim AND to law enforcement OR by a reasonable effort to obtain hospitalization of the recipient.”

In an article written by Elizabeth Cunningham and J.Richard Ciccone titled “Illinois Supreme Court Finds No Duty to Warn” and published in the April 2011 Journal of the American Academy of Psychiatry Law stated the Court did not consider either the Mental Health Act or Mental Health Confidentiality Act in their decision. As a result of the conflicting legislation and the Courts not clarifying the matter that: “The legal standard of the practitioner's duty to warn is a moving target and often lacks clarity. Clinicians would be well served by coupling good clinical judgment with awareness of the statutes and case law relevant in the jurisdiction in which they practice.”

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“The Tedrick case is very significant for social workers because it establishes the standard by which the duty to warn or protect will be judged in Illinois. In Illinois, it appears that there is no duty by a therapist to warn or protect a third party unless the third party happens to be in a direct therapeutic relationship with the therapist. In other words, the person who is injured must also be a patient of the therapist. Because the “special relationship” between a plaintiff third party and a mental health recipient is so narrowly defined, it is unlikely that liability for failing to warn or protect will be imposed for this reason. Rather than worrying about being sued for failure to warn and protect, social workers can focus on carefully assessing their clients’ mental health. When necessary, they can use their professional discretion and disclose client information to assure the safety of others.”

In my opinion, each professional counselor has to make their own decision based upon the unique situations, events and persons involved in a case. The decision to use the permissive exception in the Confidentiality Code in Illinois should not be taken lightly, not should a perceived risk to third parties. If confronted with a choice, I can only imagine a very, very few times when some form of consultation with a supervisor or co-worker would not be possible. Your agency will have a medical director, licensed practitioner like a LCSW or LCPC, clinical director or executive director that you should consult with. A guiding principle, but not an absolute is the “who do you sleep with rule.” I sleep with me, and I enjoy a good night sleep. When faced with a legal or ethical dilemma, I ask myself which action is most likely to allow me to get a good night sleep.