

Duty to Warn – Mental Health Professional

Case Presentation - California

Tarasoff v. Regents of Univ. of California¹ was the first case to find that a mental health professional may have a duty to protect others from possible harm by their patients. In Tarasoff, a lawsuit was filed against, among others, psychotherapists employed by the Regents of the University of California to recover for the death of the plaintiffs' daughter, Tatiana Tarasoff, who was killed by a psychiatric outpatient. Two months prior to the killing, the patient had expressly informed his therapist that he was going to kill an unnamed girl (who was readily identifiable as the plaintiffs' daughter) when she returned home from spending the summer in Brazil.

The therapist, with the concurrence of two colleagues, decided to commit the patient for observation. The campus police detained the patient at the oral and written request of the therapist, but released him after satisfying the police that he was rational and exacting his promise to stay away from Ms. Tarasoff. The therapist's superior (boss) directed that no further action be taken to confine or otherwise restrain the patient. No one warned either Ms. Tarasoff or her parents of the patient's dangerousness.

Upon her return from Brazil, Ms. Tarasoff was killed by the patient. After the patient murdered Ms. Tarasoff, her parents filed suit alleging, among other things, that the therapists involved had failed either to warn them of the threat to their daughter or to confine the patient.

The California Supreme Court, while recognizing the general rule that a person owes no duty to control the conduct of another, determined that there is an exception to this general rule where the defendant stands in a special relationship to either the person whose conduct needs to be controlled or in a relationship to the foreseeable victim of that conduct. The court made an analogy to cases which have imposed a duty upon physicians to diagnose and warn about a patient's contagious disease and concluded that by entering into a doctor-patient relationship the therapist becomes sufficiently involved to assume some responsibility for the safety, not only of the patient himself, but also of any third person whom the doctor knows to be threatened by the patient.

The court also considered various public policy interests determining that the public interest in safety from violent assault outweighed countervailing interests of the confidentiality of patient therapist communications and the difficulty in predicting dangerousness. The California Supreme Court held: When a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger.

¹ *Tarasoff v. Regents of Univ. of California*, 17 Cal.3d 425, 131 Cal.Rptr. 14, 551 P.2d 334 (1976)

Case Presentation #6b

On June 27, 1991, at 9:25 a.m., Gad Joseph telephoned his mental health counselor to tell him that he was going to kill his ex-girlfriend, Teresa Hausler. The counselor immediately had him come in for therapy, which began at 11:00 a.m. and ended at noon, that same day. Gad promised his counselor that he would not hurt Teresa. Fifteen minutes later, Teresa telephoned the counselor to tell him that she was going to Gad's apartment to pick up her clothing. The counselor advised her not to go to the apartment but to return to her new home in Reading. Teresa ignored the counselor's advice and continued onto Gad's apartment. At 12:30 p.m. Gad arrived and, in a fit of rage, fatally shot Teresa six times in the head and abdomen.

Subsequently, Teresa Hausler's family filed a lawsuit against the mental health counselor and his employer, Albert Einstein Medical Center in Philadelphia, alleging failure to warn Teresa.² At that time, the law in Pennsylvania was unclear regarding what duty a medical professional owed to a third party, who is not the patient.

The plaintiff cited the infamous case of *Tarasoff v. Regents of the University of California (1976)*, which was the first case in the country where a court held that a mental health professional may have a duty to protect others from possible harm by a patient. The facts of *Tarasoff* were eerily similar to the facts in the Teresa Hausler case.

In 1998, because of the actions of Gad and Teresa, the Supreme Court of Pennsylvania expressly adopted *Tarasoff* as law.

Oklahoma Law

In In 1990, the Supreme Court of Oklahoma adopted in the case of *Wofford v. Eastern State Hospital*³, the "Tarasoff Doctrine". The Court stated that a duty to warn arises if (1) a special relationship exists between the physician and the patient that imposes a duty upon the physician to control the patient's conduct, or (2) a special relationship exists between the physician and the other injured non-patient which gives to the non-patient a right to protection. The psychotherapist/patient relationship has been found to be a sufficient basis for imposing a duty on the therapist and the hospital for the benefit of persons foreseeably injured by a released patient.

² *Emerich, Administrator Of The Estate Of Teresa M. Hausler, V. Philadelphia Center For Human Development, Inc., Albert Einstein Healthcare Foundation, Albert Einstein Medical Center, et al*, 450 Pa.Super. 71, 675 A.2d 314. (1996)

³ *Wofford v. Eastern State Hospital*, OK 77, 795 P.2d 516 (1990)