

Mental Disorders and Public Safety of the Community at Large—Does the Tarasoff Principle Apply in Singapore?

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Abstract

The Tarasoff Principle is a legal ruling arising out of the Tarasoff case in California, in which 2 therapists were found by a court to be negligent for not warning an intended victim of a threat to her by their mentally disordered patient, and she was subsequently killed. The 2 therapists were deemed to have an obligation to protect an intended victim of a patient who presented a serious danger of violence. The question is whether this would apply under Singapore law, and whether an act of disclosure to protect a victim would be a breach of confidentiality and the doctor-patient relationship.

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Introduction

In the course of their work, psychiatrists treat patients who, because of their mental disorders, may pose a danger to themselves and/or to others. What is the duty of the psychiatrist treating this patient? Does he have a duty to warn the likely victim of possible danger or even potential, non-identifiable victims in the community? And should the psychiatrist disclose information about the patient to the patient's employer and risk his patient being dismissed?

What is the Tarasoff Principle?

The Tarasoff principle arose from the Tarasoff case (Tarasoff v Regents of the University of California).^{1,2}

Poddar, a graduate student at the University of California who was being treated for a mental disorder, killed Tatiana Tarasoff some months after she rejected him. Prior to this, during therapy, he had revealed his fantasies of harming Ms Tarasoff. In a civil case brought by Ms Tarasoff's parents, his therapists were charged with being negligent in not informing Ms Tarasoff of Poddar's threats and of not confining him. The California High Court in 1974 ruled that there was a legal duty on the part of the psychotherapists to warn the intended victims.³ In 1976, the California

Supreme Court stated that psychotherapists had a duty to protect the intended victim: "(if) his patient presents a serious danger of violence to another, (the psychotherapist) incurs an obligation to use reasonable care to protect the intended victim against such danger..."⁴

The duty to protect doctrine is not new in Anglo-American law. In common law, there is no legal duty to warn another of danger or to prevent someone from harming a third party unless there is a special relationship between an actor and a third person such that the actor has a duty to control the other's actions, or the other person has a right to protection from the actor because of the existence of the special relationship (Section 315, Second Restatement of Torts).⁵

Traditionally, parties could not be held responsible for injuries arising from non-action (nonfeasance) on their part,⁶ but with the Tarasoff ruling, psychiatrists (and psychotherapists) were deemed to have a responsibility because of the "special relationship" with their patients.

Subsequently, from just an identifiable victim, the New Jersey court appeared to expand the duty of the psychotherapist to protect all parties that could reasonably be foreseen to be in danger.⁷

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In the States, one group of potential victims includes those of vehicle accidents caused by patients. In *Petersen v State* (1983), the court extended the therapist's duty to protect not just to identifiable victims, but also to others, regardless of whether they could be identified or not, if there was a risk that the patient's condition could endanger these persons.⁸

In Singapore, Does a Psychiatrist Have a Duty to Warn?

Suppose a situation arises whereby a Singapore psychiatrist is treating a patient who:

- 1) threatens to harm an identifiable third party, or
- 2) this patient works as a train driver, taxi driver or pilot and may, because of his disordered mind or suicidal intentions, or medications he is taking, be unfit to command his vehicle. Could the psychiatrist breach the doctor-patient relationship and warn someone, including the employer?

Under Singapore law, in general, doctors have a duty to disclose when statutorily required to do so, for example, under the Misuse of Drugs Acts,⁹ Infectious Diseases Act,¹⁰ or Medical Registration Act.¹¹ They also have to disclose information about patients if ordered to do so in court or to furnish police officers with reports in the course of an investigation under Section 58, Criminal Procedure Code.¹² Other than these situations, there is no law to compel doctors to disclose information about any patient to another. The Singapore Medical Council Ethical Code (1995),¹³ appears to be more concerned about breach of confidentiality than the contrary, and this (breach of confidentiality) is an offence that could lead to disciplinary action.

In a symposium on this subject entitled "Mental Disorders and Public Safety" in 1999 (unpublished data), it was noted that Singapore law, as it currently stands, does not compel a doctor to breach the doctor-patient relationship. Judicial Commissioner Choo, in the 1999 SMA Lecture,¹⁴ argued that there was a public duty to disclose if so required, although once a doctor had disclosed, he could lay himself open to a civil suit by the patient.

In *W v Egdel* (1989),¹⁵ Dr Egdel was sued for disclosing a negative report about his patient, thus breaching the doctor-patient relationship. The judge ruled that public interest in disclosure outweighed the patient's private interest in the maintenance of confidentiality.

Conclusion

How would a Singapore court rule if cases like *Tarasoff*

v Regents of the University of California and *W v Egdel* are to arise here? Arguably, the Singapore courts may perhaps be inclined to rule in favour of subordinating the doctor-patient relation to the duty which is cast on every good citizen to assist in the reporting and/or investigating of a potential crime. This submission is based on the fact that in the absence of local case law on a subject matter, Singapore courts often draw on the experiences of other legal jurisdictions like those in the UK and the USA. However, until there is such a case, it would probably be prudent for a psychiatrist who is caught in a dilemma between his duty to the public and his duty to his patient to seek the guidance of the Singapore Medical Council before taking any action.

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REFERENCES

1. Vandecreek L, Knapp S. *Tarasoff and Beyond: Legal and Clinical Considerations in the Treatment of Life-endangering Patients*. Sarasota, Florida: Professional Resource Press, 1993:2-4.
2. Simon R I, Sadoff R L. *Psychiatric Malpractice: Cases and Comments for Clinicians*. Washington, DC: American Psychiatric Press, 1992: 195-7.
3. *Tarasoff v Regents of University of California*. California Report 1976; 118:129.
4. *Tarasoff v Regents of University of California*. Pacific Report. Second Series 1976; 551:345-6.
5. American Law Institute. *Restatement of Torts*. 1966; 857.
6. Vandecreek L, Knapp S. *Tarasoff and Beyond: Legal and Clinical Considerations in the Treatment of Life-endangering Patients*. Sarasota, Florida: Professional Resource Press, 1993:7-8.
7. *McIntosh v Milano*. New Jersey Report 1979; 168:466.
8. Felthous A R. The duty to warn or protect to prevent automobile accidents. In: Simon R I, editor. *Review of Clinical Psychiatry and the Law*. Washington DC: American Psychiatric Association Press Inc, 1992:225-7.
9. *Misuse of Drugs Act*. Revised ed, 1998.
10. *Infectious Diseases Act*. Revised ed, 1985.
11. *Medical Registration Act*. Revised ed, 1998.
12. *Criminal Procedure Code*, 1985; 68:58.
13. Singapore Medical Council Ethical Code, 1995:7.
14. Choo H T. Confidence and confidentiality—Aspects of the law. SMA Lecture 1999. *Singapore Med J* 1999; 40:726-32.
15. *W v Egdel* (CA). *Med Law Review* 1990; 1:272-96.