

Nebraska Disaster Behavioral
Health Conference
7.29.16



Ethics of Reporting
to Mitigate Violence

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Disclaimer

*Please note that the views expressed today are the
author's alone and not intended to represent the
opinions of the Nebraska Department of
Correctional Services or the State of Nebraska.*

Ethics of Reporting

- 1) Historical Basis for Ethics
- 2) Professional Codes of Conduct
- 3) Landmark case in confidentiality
- 4) One set of strategies to ethical challenges
- 5) Case Illustrations

Ludy Benjamin, Ph.D.

Texas A & M



"Does the world seem to be getting a saner and safer place?"

<http://people.tamu.edu/~lbenjamin/>

American Psychological Association

General Ethical Principles:

- A) Beneficence and Nonmalficence
- B) Fidelity and Responsibility
- C) Integrity
- D) Justice
- E) Respect for People's Rights and Dignity

<http://www.apa.org/ethics/code/>

American Psychological Association

4.02 Discussing the Limits of Confidentiality

(a) Psychologists discuss with persons (including, to the extent feasible, persons who are legally incapable of giving informed consent and their legal representatives) and organizations with whom they establish a scientific or professional relationship (1) the relevant limits of confidentiality and (2) the foreseeable uses of the information generated through their psychological activities. (See also Standard 3.10, Informed Consent.)

(b) Unless it is not feasible or is contraindicated, the discussion of confidentiality occurs at the outset of the relationship and thereafter as new circumstances may warrant.

(c) Psychologists who offer services, products, or information via electronic transmission inform clients/patients of the risks to privacy and limits of confidentiality.

<http://www.apa.org/ethics/code/>

American Psychological Association

4.05 Disclosures

(3) protect the client/patient, psychologist, or others from harm

<http://www.apa.org/ethics/code/>

American Counseling Association

B.2.a. Danger and Legal Requirements

The general requirement that counselors keep information confidential does not apply when disclosure is required to protect clients or identified others from serious and foreseeable harm or when legal requirements demand that confidential information must be revealed.

<https://www.counseling.org/resources/aca-confidential-ethics.pdf>

National Association of Social Workers

1.07 Privacy and Confidentiality

The general expectation that social workers will keep information confidential does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or other identifiable person.

<https://www.socialworkers.org/omb/code/default.asp>

Steps for resolving ethical dilemmas (NASW)

- 1) Consult professional ethical code
- 2) Review state laws or consult counsel
- 3) Seek Supervision
- 4) Consult professional organization
- 5) Document steps you've taken and why
- 6) Process what you have learned

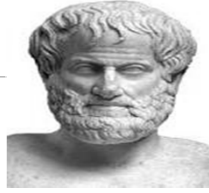
Barry Schwartz, Ph.D.

Swarthmore College



https://www.youtube.com/watch?v=355_1q8a

Aristotle: Practical Wisdom



“The moral will to do the right thing

+

The moral skill to know what to do”

NDCS Discharge Review Team

Multi-disciplinary team charged with
reviewing high-risk inmates at discharge

Psychologists, Social Workers, Re-entry
Specialists, Investigator, Attorney & others

Our job is to both ensure that inmates can
successfully discharge while protecting
public safety.

NDCS DRT Outcomes

- 1) Mental Health Board Commitment
- 2) Notification of Local Law Enforcement
- 3) Tarasoff Warning
- 4) Referral for further evaluation/services

DRT Outcomes

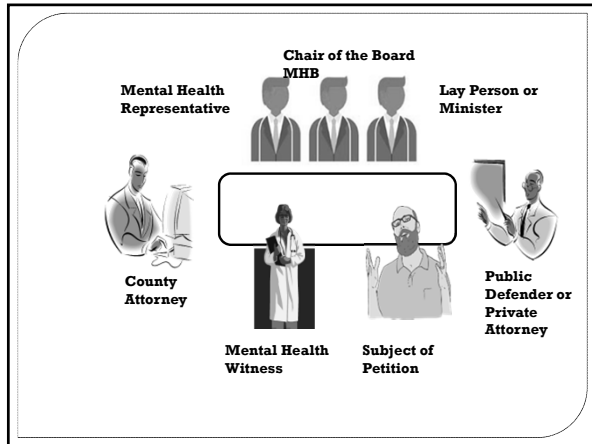
- 1) **Mental Health Board Commitment**
"only for mentally ill and dangerous"
- 2) **Notification of Local Law Enforcement**
- 3) **Tarasoff Warning**
- 4) **Referral for further evaluation/services**

Nebraska Mental Health Commitment Act (Nebraska §71-901)

- Mentally Ill -
 - Major Mental Illness
 - Mental Illness with Functional Impairment
- Dangerous -
 - Risk of harm to others
 - Risk of harm to self
 - Active- Suicidal
 - Passive- Gross Neglect or Gravely Disabled

MHB Commitment Requires:

- 1) **Mental Illness:** severe or substantial impairment of a persons' thought processes... substantially interferes with person's ability to meet the ordinary demands of living or interferes with the safety or well-being of others.
- 2) **Dangerousness:** Magnitude, Imminence, Likelihood and Frequency or risk to self or others.
- 3) The person will **not voluntarily seek treatment**, or the Board needs to ensure that treatment is secured due to the person's risk to self/others



Outcomes of the MHB Hearing

- 1) Board can withdraw the petition or not enter an order
- 2) Board can continue the case for up to 90 days (pending)
 - Allows for Subject to seek independent evaluation or demonstrate compliance
- 3) Subject can stipulate ("No contest – I agree with the Board")
- 4) Board can order outpatient or inpatient (25% of all cases)
 - (inpatient commitments are to the custody of NDHHS, which determines placement)

Case Study #1

Randy

38 y/o who kicked man to death
MMI, religiously-obsessed
Directed by God to his daughter

Our hands are tied...



- Mental Health Board Commitment is only available if the inmate is both "mentally ill" and "dangerous"
- This probably represents less than 1% of our discharging inmates
- Under current laws, we cannot commit or detain inmates who are we believe may be dangerous but do not meet criteria for an active Major Mental Illness (MMI)
- While some inmates may carry a diagnosis of MMI, we have to prove to the Board that they are actively having symptoms – the bar is quite high

DRT Outcomes

- 1) Mental Health Board Commitment
- 2) Notification of Local Law Enforcement
- 3) Tarasoff Warning
- 4) Referral for further evaluation/services

Notification of Local Law Enforcement

If we believe the inmate is dangerous but does not meet MHB Criteria

Investigative Services staff will notify local law enforcement in the community where the inmate is discharging

Local law enforcement will alert community/monitor as appropriate

Again, this is targeted for only 1-2% of discharging inmates

Case Study #2

Darnell

31 year-old Gang involved
Violent history, no MMI

DRT Outcomes

- 1) Mental Health Board Commitment
- 2) Notification of Local Law Enforcement
- 3) Tarasoff Warning
- 4) Referral for further evaluation/services

Tarasoff: Duty to warn and protect



Under Tarasoff standard, if our client threatens an identifiable target, we must:

Warn the intended victim "My client, Joe Smith, said he plans to kill you and I believe he's serious."

Protect the intended victim by whatever means necessary, including:

- notify law enforcement of the threat
- request Emergency Protective Custody of client
- advise the target to take protective measures


Tarasoff v. Board of Regents of the University of California (1976)



Prosenjit Poddar Tatiana Tarasoff

<http://www.gutenberg.org/cache/epub/12448/12448-h/images/tarasoff.jpg> <http://www.gutenberg.org/cache/epub/12448/12448-h/images/tarasoff.jpg>

Tarasoff Precedent

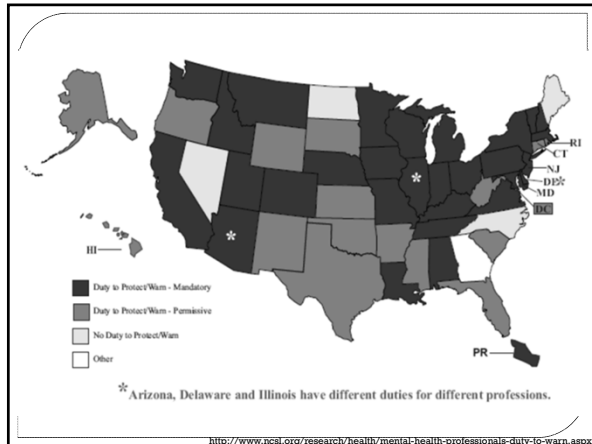


Lawrence Moore, Ph.D.
1935-2013

<http://www.legacy.com/obituaries/dgate/obituary.aspx?pid=164558404>

**"The protective privilege
ends
where the public peril
begins."**

-Justice Matthew O. Tobriner



Case Study #3

Richard

**43, State and Federal AFI's
Veteran and Marksman
Repeatedly threatened doctor**

Richard says:

"I will hunt you and your family down and spill their blood – I know how to find you."

"Let's see how the police do against someone with my military training."

"I will bomb the Legislature and be an active shooter at the mall."

Survey of 639 psychologists

Almost one in every 5 psychologists reported having been physically attacked by at least one client.

Over 80% of the psychologists reported having been afraid that a client would attack them

Over half reported having had fantasies that a client would attack

Over one out of 4 had summoned the police or security personnel for protection from a client.

<http://kspope.com/stalking.php>

DRT Outcomes

- 1) Mental Health Board Commitment
- 2) Notification of Local Law Enforcement
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- 4) Referral for further evaluation/services

Further evaluation or services

- ◉ Ask staff psychologist to complete further psychological evaluation (to determine the presence of major mental illness)
- ◉ Ask staff psychologist to conduct specific risk assessments (e.g. HCR-20, PCL, etc.) to assess risk factors for dangerousness
- ◉ Consult with, or refer to, Reentry or Social Work to strengthen the discharge plan to improve re-entry or increase community safety

Case Study #4

Jimmy

34 y/o, 4th time in prison all for
harassing the same victim
Letter threatening to kill our staff

Jimmy writes out:

"On the day I get out of prison I, Jimmy Jones, do vow on the life of my kids that I will go home, retrieve my guns and shoot and kill the following persons. Which I do not have to wait around their workplaces, I can and will find them at home. ... You guys have pushed me enough and now it is my turn. Pay back is mine and I will collect with your life and your blood.

Jimmy Jones #55555







