

Tarasoff's Duty to Warn and Protect with Interstate Therapy



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Introduction

- Tarasoff I and II were landmark legal cases resulting from a psychiatrist's former patient killing a fellow university student after verbalizing threats in therapy months before (Simone & Fulero, 2005).
- The resulting duty to warn and protect requirements can be difficult for mental health professionals (MHP) to navigate interstate, especially because there are no overarching federal regulations (Johnson et al., 2014).
- Studies have shown that MHPs erroneously thought they were informed about their state's duty to warn legislation and case law and used unstructured judgment to apply the rules (Conlon et al., 2019; Glueckauf et al., 2018; Henderson, 2015; Pabian et al., 2009).

State Duty to Warn Requirements

- Each state has unique, evolving duty to warn requirements fitting into one of three categories:
 - (1) Mandated
 - (2) Common law by precedent
 - (3) State-permitted breach of confidentiality with a threat (Johnson et al., 2019)
- Each category elicits a different level of risk for practitioners, sometimes resulting in successful lawsuits against MHPs (Johnson et al., 2014; Soulier et al., 2010).

Legal Risks

- Legal and ethical risk has been associated with Tarasoff duty to warn from inception because when MHPs report dangerous patients or inform potential victims, they have to breach patient confidentiality.

Legal Risks *continued*

- Some of the risks as related to duty to warn are contingent on the patient's state of domicile:
 - ❖ States with case law present more risk than states with statutes because of inconsistent judicial interpretations.
 - ❖ States with neither statutes nor legal precedent pose the highest risk because MHPs have no specified immunity protection (Johnson et al., 2014).
- Although not specific to duty to warn, MHPs must be aware of and abide by laws related to practicing across state lines.

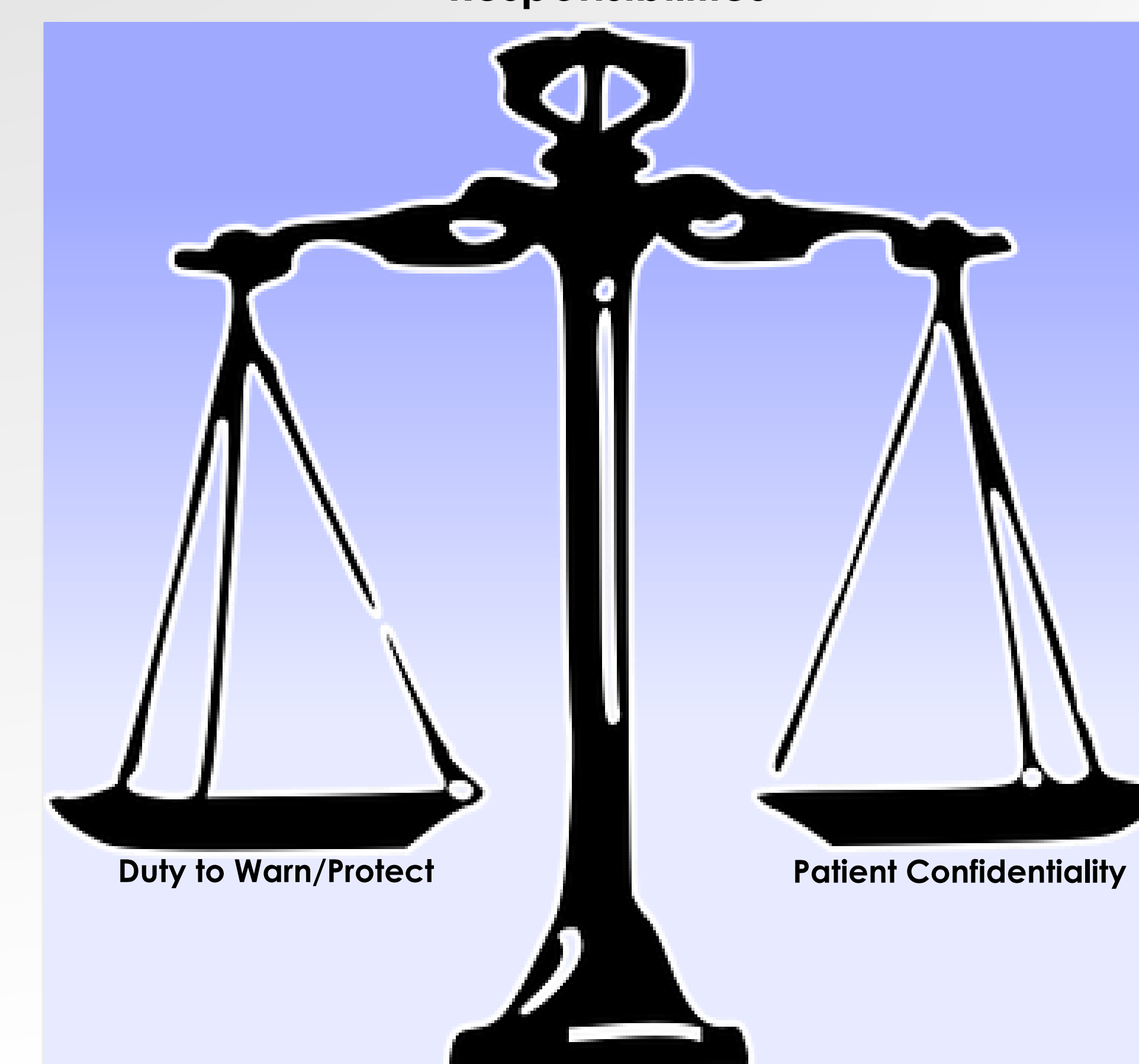
Discussion

- Unique risks associated with online patients includes ascertaining:
 - ❖ Patient's suitability for distanced treatment, which can be accomplished with pre-assessment paperwork and interviewing (Khan et al., 2021)
 - ❖ Patient's identity and actual location, which can be confirmed with a copy of a current driver's license or state ID
- Thus, a client in crisis can receive treatment, and MHPs can review the applicable state laws for duty to warn requirements.
- Additionally, a MHP who might need to breach confidentiality should keep detailed documentation including:
 - ❖ Detailed records of practitioner reasoning for decision to breach
 - ❖ Written record of specific threatening statements by the patient (Walcott et al., 2001)
 - ❖ A second opinion for a patient who has non-specific victims (Burgess et al., 2015)

Recommendations

- Given the risk factors, there is a need for MHPs to reduce their legal and ethical risk.
- Coordinating all of the necessary steps suggests a procedural model would be advantageous for online MHPs.
- MHPs treating patients with AIDS regarding duty to warn/protect situations have a decision-making model as a resource (Chenneville & Gabbidon, 2020).
- The procedural model for online MHPs would include:
 - ❖ A flowchart overview
 - ❖ A comprehensive list of state internet links regarding the current duty to warn regulations
 - ❖ Required tests and questionnaires for potential patients
 - ❖ Templates for recording extensive information in a duty to warn situation

Mental Health Professionals' Legal & Ethical Responsibilities



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