MEDICAL-MORAL DILEMMA:
The Psychiatrist's Duty to Warn
(THIRD OF A SERIES)

CASE: In October, 1969, a graduate student at the University of California killed with a butcher knife Tanya Tarasoff, a girl who had rejected his suit of marriage. The student, Prosenjit Poddar, underwent a severe emotional crisis at Tanya's rejection and sought psychiatric help from a University psychologist, telling him that he was going to kill Tanya. The counselor believed Poddar, informed the campus police, and requested that Poddar be committed. Poddar was briefly detained by the police but was released, and at the order of the counselor's superior Poddar was not committed and Tanya was not warned. After the killing the girl's parents brought suit against the counselor, his superior, the police, and the University of California for having failed to alert them of the danger.

In a 1976 decision (Tarasoff v. Regents of U. California 551 P. 2 & 334), the California Supreme Court ruled 5-2 that a counsel who believes that his patient is a danger to another person has a duty to warn that person. The Court also ruled 4-3 that if the counselor should have predicted the danger, he has a professional duty to take reasonable care to protect the potential victim. Prescinding from the legal considerations upon which the decision was based, should the counselor be viewed as having the moral responsibility to warn? (This case is discussed by George J. Annas in "Confidentiality and the Duty to Warn," Hastings Center Report, December, 1976, pp. 6-8.) Annas' discussion provides the basis for the present comments.

NEGATIVE: Those who oppose saying that the counselor has a professional responsibility to warn the potential victim rely on two arguments. The first is that predictions concerning who is likely to engage in acts of violence are notoriously unreliable and that we lack both a theoretical framework and a statistical basis that would permit us to make realistic estimates of the extent to which a patient constitutes a threat to another. In the absence of reliable indicators, the counselor is tempted to commit all his potentially violent patients, leading to a significant increase in unnecessary civil commitments and a decrease in the freedom of the mentally disturbed. A second argument appeals to the fact that disclosure would constitute a violation of the professional's duty to maintain confidentiality, that such a violation would seriously weaken the integrity of the doctor/patient relationship, and that prospective patients would therefore either be deterred from seeking treatment or would be less than perfectly candid with their therapist.

AFFIRMATIVE: Those who believe that the therapist has a responsibility to warn reply to these arguments, first, by maintaining that the counselor need not be infallible in order to justify the requirement to warn: all that is necessary is that he display reasonable expertise and care in determining the degree of risk his patient poses for others. In reply to the second argument it is pointed out that there are a number of instances

(Concluded on page two)
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(Continued from page one)

in which the physician has a responsibility to notify officials of information obtained within the clinical setting: e.g., contagious diseases, epilepsy, gunshot wounds, battered children. Requirements such as these are not seen as violations of the doctor/patient relationship because that relationship is itself defined at least partially in terms of patient expectations and because the requirements of the law have a significant effect in the structuring of those expectations.

RESOLUTION: These arguments and counter-arguments force us to confront two vital choices. The first of these concerns the question of who is to bear the burdens associated with social living. A policy of nondisclosure places the burden on the innocent and unsuspecting potential victim, whereas a policy of disclosure places the burden on the possibly harmless patient. The choice in favor either of the innocent, or of the weak and ill, over the other cannot be a happy solution.

A second choice concerns the conflicting roles of the physician, protector and advocate of his patient versus servant of the public good. The rise of the importance of medicine has seen a corresponding increase in the significance of the latter role, but there are good reasons for thinking that in the long-run society is best served by the physician who best serves his own patient’s well-being. The restrictions on professional confidentiality indicate that there are precedents favoring the duty to warn and that the affirmative position may have the weight of argument on its side. But the strength of the negative position shows that the costs associated with such a policy must not be overlooked or underestimated.

Clear, too, is the traditional teaching of the Church in this area well expressed by the following quotation from Pope Pius XII:

"Another of the duties which derive from the Eighth Commandment is the observance of the professional secret, which must serve and serves the good of the individual and even more of society. In this sector, too, there can arise conflicts between the public and private interests, or between different elements and aspects pertaining to the common good. In these conflicts it will often be very difficult indeed to measure and weigh justly the pros and cons for speaking out or keeping silent. In such a dilemma, the conscientious doctor seeks his norm in the basic tenets of Christian ethics, which will help him to pick the right course. These norms, in fact, while they clearly affirm the obligation on the physician to preserve the professional secret, above all in the interest of the common good, do not concede to this an absolute value. For that very common good would suffer were the professional secret placed at the service of crime or injustice." ( Allocution to the Italian Medical-biological union of St. Luke, Nov. 12, 1944, quoted in The Human Body, Boston: Daughters of St. Paul, 1969, p. 63.)

The “basic tenets of Christian ethics” to which Pope Pius refers includes the appreciation that the revelation of a professional secret should be the last alternative when, in effect, the patient in the actual circumstance no longer retains the right to his or her secret. (See, for example, Chas. J. McFadden, Medical Ethics, 6th Edition, pp. 406-410.)

The potential “danger” which could also arise is that if the researchers give evidence they cannot regulate themselves, there is the possibility that the bureaucracy would enter into research and interfere with the proper exercise of that activity. Research can be threatening to institutions and to misplaced authority. Equally reprehensible is the researcher who acts irresponsibly: selects only data which fits his theory; speaks out beyond what the evidence will bear; and tends to deny in practice the humanity and the rights of his human subjects, be they patients or volunteer subjects. A salutary approach which respects the dignity of the human person is the suggestion made by Paul Ramsey that the human subject in research is a “co-investigator” with the appropriate rights and privileges.

From The Editor's Memo Pad:

Science, in its October 28th issue of 1977, reports that the State University of New York at Albany has been charged with massive violations of federal and state regulations which require that all research on humans be approved by Institutional Ethics Committee before any experimentation begins. As it turned out, not only the Institutional Ethics Committee had not reviewed the experiments but further the proper informed consent had not been obtained from the participants. One of the experiments involved 45 women who were subjected to electric shocks from a machine which was later found to be malfunctioning and could have had administered a lethal shock. Another problem was that many of the experimental subjects were actually graduate students who were subjected to a degree of coercion in that they had either to consent to participate in this project or to write a term paper which would require considerable effort. Violation of these subject rights, if sustained by proper procedures, could result in a fine of perhaps $100,000 or more, and could also jeopardize a number of other projects.

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Page Two

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