Confidentiality: Ethical and Legal Issues

Chapter 6
Psychology 475
Professional Ethics in Addictions Counseling
Listen to the audio lecture while viewing these slides

Confidentiality

Privileged Communication
- Privilege: client’s right to prevent a counselor from revealing confidential communications in a legal proceeding.
  - Does not apply to: group, couples, marital, family, child, and adolescent counseling sessions.

Privacy
- Privacy refers to the constitutional right of an individual to decide the time, place, manner, and extent of sharing oneself with others.

Privacy Issues with Telecommunication Devices
- Do not acknowledge that clients are receiving services to unknown callers.
- Verify that you are actually talking to the intended person.

More Privacy Issues with Telecommunication Devices
- Be aware that there is no way to prevent your conversation from being recorded or monitored by an unintended person.
- Be professional, brief, and careful in talking about confidential information over the telephone.
More Privacy Issues with Telecommunication Devices

- Avoid making any comments that you wouldn’t want your client to hear or that you would not want to repeat in a legal proceeding.

Exceptions to Confidentiality and Privileged Communication

- Client consent
- Reimbursement or legal rules require disclosure
- Clerical assistants handle confidential information

Exceptional Circumstances continued

- Counselor consults with experts or peers
- Counselor is working under supervision

Exceptional Circumstances continued

- Mental health professionals request information and the client gives consent to share
- Other professionals are involved in a treatment team
Legally Mandated Exceptions

- Disclosure is court ordered
- Client files a complaint against the counselor

Legally Mandated Exceptions continued

- Client claims psychological damage in a lawsuit
- Civil commitment proceedings are initiated

Duty to Protect Potential Victims

- Bednar (1991) counselors must:
  1. Identify clients who are likely to do physical harm to others
  2. Protect others from clients judged as potentially dangerous
  3. Treat clients who are dangerous

Counselors should also

- Take careful case histories
- Advise clients of the limits of confidentiality
- Keep accurate notes of threats and other client statements

Counselors should also

- Seek consultation
- Record steps taken to protect others

Liability can happen if the counselor

- Failed to diagnose or predict dangerousness
- Failed to warn potential victims of violent behavior
Counselor Liability continued

- Failed to commit dangerous individuals
- Prematurely discharge dangerous clients from a hospital

The Tarasoff Case

- Moore called the campus police and stated he felt Poddar was dangerous
- Campus police took Poddar into custody for questioning but released him because he appeared "rational" and promised to stay away from Tarasoff

The Tarasoff Case continued

- Poddar was never confined to a facility
- Moore followed up his phone call with a letter requesting the assistance of the Chief of Campus Police

The Tarasoff Case continued

- Later, Moore’s supervisor asked that the letter be returned, and that the letter and case notes be destroyed
- Supervisor asked that no further action be taken

The Tarasoff Case continued

- Tarasoff and family were never made aware of the threats
- Shortly after Tarasoff returned from Brazil, Poddar killed her

The Tarasoff Case continued

- California Supreme Court in 1976 ruled that a failure to warn an intended victim was professionally irresponsible.
The Tarasoff Case continued

- The courts ruling requires that counselor’s breach confidentiality incases where the general welfare and safety of others is involved.

Interventions that can be taken to protect others

- Reassess client
- Medication changes
- Referral
- Hospitalization

More protective interventions

- Warning potential victims
- Calling the police
- Informing the state child protection agency

Note

- Negligence lies in the practitioner’s failure to warn a third party of imminent danger, not in failing to predict any violence that may be committed.

Guidelines for Dealing with Dangerous Clients

- Generally the duty to warn is indicated when these three conditions are present

1. A special relationship exists between the client and counselor
2. A reasonable prediction of harmful conduct is made
3. A potential victim can be identified
Duty to Protect Suicidal Clients

Guidelines for Assessing Suicidal Behavior

• Take the cry for help seriously.
• Take direct verbal warning very seriously.
• Pay attention to previous suicide attempts.

Assessing Suicidal Behavior continued

• Know signs of depression.
• Be alert for feelings of hopelessness and helplessness.
• Explore stressors of loss and separation.

Assessing Suicidal Behavior continued

• Monitor severe anxiety and panic attacks.
• Determine if there is a plan.
• Determine if there is severe alcohol or drug abuse.

Assessing Suicidal Behavior continued

• Be alert if they are giving away prized possessions.
• Determine if they have had previous psychiatric treatment.
• Assess their support system.

Protecting Children from Harm
Confidentiality and HIV/AIDS Related Issues

Duty to warn and protect may arise when:
- HIV client continues to have unprotected sex
- Continues to share needles

This dilemma can be resolved by:
- Referring to a legal precedent
- State statues
- Professional codes of ethics

Keep in mind:
- All limits of confidentiality should be discussed with the client at the onset of treatment.
- Counselors should be aware of state laws regarding their professional interactions with HIV positive clients.

More to keep in mind:
- Seek crisis intervention training on this issue.
- If client continues to practice unsafe sex or to inform partners, then counselor needs to determine what course of action to take.

More to keep in mind:
- Consult with knowledgeable peers or attorney's.
- If it is determined that the counselor must breach confidentiality, inform the client.
- Safeguard the client's privacy as much as possible.
More to keep in mind

- Clear and imminent danger must exist.
- There must be an identifiable victim.