

Assignment 3.1: Know the Law—Confidentiality, Mandated Reporting, and Duty to Warn

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Know the Law—Confidentiality, Mandated Reporting, and Duty to Warn

The state of Florida has laws and regulations that oversee and govern mental health counselors. The Florida Department of Health (DOH), through the Florida Board of Clinical Work, Marriage & Family Therapy, and Mental Health Counseling, are responsible for the licensing and oversight of mental health professionals in the state. They enforce the laws and oversee the regulation of rules, conduct inquiries, and disciplinary hearings, and establish the rules of conduct for mental health counselors in the state of Florida. The sections included in these laws and regulations are pertain to privileged communication and confidentiality, suspected abuse or neglect, and the duty of the counselor to warn individuals who may be in harm's way, will all be covered in this paper. These three separate sections within the law and their discussion within the ACA code of ethics have incredibly strong impacts on the counseling profession and must be understood by the counselor regarding how they are handled within the specific state in which they practice. I have chosen the state of Florida, because this is where I currently reside, am in internship, and plan to practice as a licensed clinician when all necessary prerequisites are completed.

The therapeutic alliance between a therapist and their patient is an essential component of counseling for all clients. Patients who can successfully form a therapeutic alliance with their counselor have been observed to have better motivation, coping strategies, and social support (Meier et al., 2005). For the therapeutic alliance to be strong, trust must be formed within the relationship. A key factor in the trust between the counselor and client is the confidentiality of all information which is shared by the client. This confidential bond must be understood and accepted by both through written informed consent, which will lay out the parameters to be expected as to when confidentiality will be held and when it may be breached. The informed

consent given to each patient states that everything that is discussed is voluntarily expressed by the client, is confidential, and will not be shared without written consent, except as provided by the Florida law. In the state of Florida, statute 491.047 discusses confidentiality and privileged communication between a person that is licensed as a clinical mental health counselor, and the fact that confidentiality may be waived under the following conditions: evidence of possible abuse or neglect of a minor or dependent adult, evidence of possible danger to the client or identified others, a court order for disclosure, involvement of a DCF worker or guardian ad litem, or a request for information from the parent of a minor.

The counselor also has the responsibility to breach confidentiality and a duty to warn a third party when information is disclosed by a client with respect to another individual in which the client is planning to take action that poses a serious, imminent threat to themselves or others. In many states the “duty to warn” is not always explicit within the state statutes and laws and has been set by a precedent that is the result of a previous trial outcome within the state. The first and most notable of these cases creating this practice of cases setting precedent is the Tarasoff decision in California, which stated that the mental health professional has a duty to “take protective actions if a client poses a clear and immediate danger to themselves or others.” The Tarasoff precedent has been adopted in the state of Florida. The Florida Supreme Court inevitably held that “mental health professionals have a limited duty to warn or take other necessary precautions when a patient presents a threat of imminent serious physical harm to a readily identifiable third party.” This decision establishes the duty to warn principle in Florida, which may include warning the potential victim, notifying law enforcement, or taking other steps to ensure the safety of all involved.

According to the American Counseling Association, “counselors facilitate client growth and development in ways that foster the interest and welfare of clients...trust is the cornerstone of the counseling relationship (ACA, Section A).” The primary responsibility of counselors is to “promote the welfare of clients (ACA, Section A.1.a).” Beneficence and nonmaleficence help to ensure and guide counselors in a way in which they are protecting both the client’s welfare and the welfare of others, as to ensure they “above all, do no harm.” Therefore, in Florida, mental health professionals are mandatory reporters, which helps protect any persons under the age of 18 (minors) as well as any other person over 18 whose ability to provide for themselves is impaired due to mental, physical, or cognitive impairment (these all constitute someone who is then considered a vulnerable adult). If any person knows or suspects child abuse, neglect, or abandonment, Florida Statute § 39.201 states that every adult is a mandatory reporter. Also, Florida Statute § 415.1034 discusses the mandatory reporting for mental health professionals for vulnerable adults where abuse, neglect, or exploitation is suspected. I believe that the use of the phrase “suspected or suspicion of abuse” is key within the state of Florida, as this creates a much broader circumstance in which a mandatory reporter needs to inform a third party. It also gives the reporter far more freedom and an abundance of flexibility of judgment that in the event abuse is happening, they can feel empowered to report it, without direct knowledge that abuse is taking place. This can open the door regarding liability for not reporting, while also protecting the counselor for reporting suspected abuse when it is later proven that none exists. According to the statute in the event there is “reasonable cause to suspect” that child abuse in any form has occurred, a person must immediately report the abuse to the central abuse hotline. The hotline, which is mandated by Florida Statute § 39.10,1 can be accessed through telephonic means (1-800-96-ABUSE (800-962-2873), online at: <https://reportabuse.myflfamilies.com>, or by fax (1-

800-914-0004). When reporting the specific description of what was witnessed or what has contributed to the risk of harm, including who was involved, what, when, where, and why it happened, along with any reported injuries sustained along and any other pertinent information will be asked of the reporter. The confidentiality of the reporter is kept taken seriously, and they are also protected from liability under this specific statute. As discussed earlier, while confidentiality of clients is of utmost importance for the therapeutic alliance and trust of any counseling relationship, the duty to report abuse supersedes confidentiality in the case of child abuse or neglect, or the suspected abuse or neglect of a vulnerable adult.

In the state of Florida, there are clear and protective guidelines to ensure the safety of both the client and anywhere the client may speak of while working with a counselor regardless of any confidentiality agreement that may exist. This safety and protection are shown within the confidentiality statutes, which ensure the protection (at all costs) the safety of the client and those the client may have a desire or active plan to harm. The duty to maintain confidentiality and trust of a client is paramount, but may be breached in certain circumstances, which include the duty to warn another person who the client may express a desire to harm, and the duty to report suspected abuse or neglect by anyone known or unknown to the client(s). I think that all the information covered by Florida statutes create a counseling environment tries to ensure mental health professionals are there to protect any persons they may have insight into, thus helping individuals and the profession. I believe that these laws give the credence and respect necessary for the profession to thrive and do what is intended to do, which is protect clients (and the community at large) and “above all, do no harm.”

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