

CONFIDENTIALITY IN PSYCHOTHERAPY

What a client tells a therapist has always been treated as private. Our society recognizes that this confidentiality is the foundation of the trust we must have for therapy to work. However, the situation is not so simple that I can promise you that everything you tell me will *never* be revealed to anyone else. It is more complicated because there are some times when the law requires me to tell others, and there are some other limitations on our confidentiality. We need to discuss all of these so that there are no misunderstandings and no incorrect assumptions and we are as clear as we can be about the limits of confidentiality. Because you can't unsay what you tell me, you must know about these rules at the beginning so that you don't tell me something you wish you had kept secret. These are important issues, so please read these pages carefully. Then we can then discuss any questions or concerns you might have.

What you tell me, since I am a Licensed Professional Counselor as well as a Licensed Addictions Counselor, is almost always confidential. Licensed counselors in this state are afforded privileged communications with specific exceptions which are also outlined in the professional ethics for my profession. I have listed below a few rare exceptions to our confidentiality:

ONE: There are laws written to protect persons from harm when, in a therapist's professional judgment, there is a danger to those persons from a client. Such instances would include:

a. If I come to believe that you are threatening serious harm to another person, I am required to try to protect the other person(s). In that case I would have to tell the intended victim (if identifiable), and the police, or perhaps seek your hospitalization. This is called a third-party duty to warn.

b. If you threaten or act in a way which is very likely to harm yourself in a serious way, I may have to seek hospitalization for you, or to call your family members or others who can help protect you. If such a situation does come up I will fully discuss the situation with you before I do anything, unless there is a very good reason not to. I work a lot with people who self-harm, and I rarely have to require hospitalization since most of the time the injury is not (and not intended to be) life-threatening.

c. In addition, my personal philosophy is such that I believe that an HIV+ person who, knowing their HIV status, chooses to engage in sexual contact (whether engaging in 'protected' or 'non-protected' sex) *without first divulging*

***their HIV status* falls under this paragraph as being considered to threaten the life and well-being of another person. It is also a felony in South Carolina. In such a case, I would assist you in contacting the Health Dept. to implement the Partner Notification process (which does not result in your identity being divulged to the party at risk). This is not a case where I would be directly responsible for notifying a person at risk of harm. This comes under something called *The Partner Notification Act*.**

d. In an emergency, where your life or health is in immediate danger, I may release, to another professional, information which would protect your life, without your permission if I cannot get it. If I do so, I will discuss this with you as soon as possible afterwards.

e. If I believe or suspect that a child, an elderly person, or a disabled person is being abused (or has been abused in the past 3 yrs) (by your neglect, assault, battery or sexual molestation), I must file a report with the appropriate state agency. I do not have any authority to investigate further into the situation to find out all the facts (The agency would investigate). This might involved the Dept. of Social Services/Adult Protective Services.

f. If you are in your third trimester of pregnancy (defined in SC as the beginning of your 24th week) and you are using illicit substances (illegal substances; substances for which you don't have a prescription) this would trigger a mandated report according to the *Whitner law*. This does *not* include alcohol.

g. Possession of child pornography is a federal crime. In March of 2019 a Greer, SC man was sentenced in federal court to 10 yrs in federal prison after pleading guilty to possession of child pornography. Since this is considered sexual exploitation of a child/children even though the victim may not be known and it may not involve actual physical interaction with a child, I would consider it a mandated reporting issue.

In any of the above situations, I would only reveal the least amount of information necessary to protect the other person and not tell everything you have told me. If any of these situations might be an issue for you, please let us discuss the legal aspects in detail and do this before you tell me any information on these topics.

TWO: In general, if you get involved in court proceedings, your records should be considered confidential; however, there are some situations where the judge may require me to testify because (s)he believes the court needs my information to make a good decision. If a court Order is issued, I would be required to give up this

information. This might include:

a. In child custody or adoption proceedings where your fitness as a parent is questioned or in doubt, and/or in cases where a Guardian ad Litem (GAL) has been assigned. NOTE: A GAL has a court order to access records.

b. Where your emotional, mental or psychological condition is important information needed for a court's decision.

c. During a malpractice case or a disciplinary board hearing against a therapist.

d. In a civil commitment hearing where you might be admitted to a psychiatric hospital.

e. If you use your mental condition as a defense in court.

f. When you are seeing me for court-ordered evaluations or treatment. In this case we would need to discuss confidentiality fully because you don't have to tell me what you don't want the court to know.

g. If you are filing a claim for Workman's Compensation. Your records may be required to be released *without your specific release* according to SC Section 42-15-95.

THREE: If your therapy is a *required* adjunct to treatment by a medical doctor prescribing methadone or suboxone, and you do not keep appointments as recommended, I would need to advise the referent of this circumstance.

FOUR: Past Crimes: There is usually no duty to report past crimes unless the crime falls under the reporting statute (child abuse) or unless future harm is being threatened against a third party.

FIVE: There are a few other points about your confidentiality you must know about:

a. I sometimes consult with other professionals/therapists about therapy cases. In such cases I do not reveal a client's name, and the other professional is also legally bound to maintain the confidentiality of such information. Similarly, when I am out of town or unavailable, another professional therapist may respond to phone calls to my office and I may need to give him or her limited information about my clients to effect such coverage.

b. I am required to keep treatment records (medical records), which include progress notes. You are entitled to review, with me, these records (see exceptions noted by HIPAA regulations).

c. If you use your health insurance to pay a part of my fees, I have to give the insurance company some information about our therapy. Insurance companies are guided by HIPAA regulations and should only receive a Designated Record Set (DRS) which includes your name, social security number, dates of first/last sessions and number of sessions, billing code, test results (if any), a symptoms and functionality checklist, and your provisional diagnosis (along with my fees/billing). It is against the law for insurers to release any information about our office visits to anyone else without your written permission (given only by signing a Release Form). While I believe the insurance company will act ethically and legally, I cannot control who sees this information at the insurer's office or in any office where you work. Note: If progress/case notes are requested, you will be notified, as this is not normal procedure.

d. If you have been referred (sent) to me by your employer or your employer's Employee Assistance Program, they may require some additional information beyond the DRS information described above. If this is your situation, let us fully discuss this before we talk further.

e. If your account with me is overdue (unpaid) and we have not arranged a payment plan, I can use legal means to get paid. The only information I would give to the court, a collection agency or a lawyer would be your name, address, the dates we met for professional services, and the amount due to me.

f. Children in treatment who are under the age of 18 technically do not confidentiality in SC, but they do have a reasonable right to privacy. In SC, parents/legal guardians (whether custodial or non-custodial) have a right to review their child's records, unless there is a court order preventing this, or unless the therapist fears for the child's well-being if released.

g. If you are participating in couples therapy with me and you choose to tell me something your spouse does not know, I cannot ethically agree to keep it from him or her, especially if it would harm him or her not to know. I will work with you to decide on the best way to handle situations like this. If you are working on your relationship, it would not be acceptable for me to know information each of you does not know, and it would be difficult for each of you to trust me if you wonder if I am harboring a secret.

h. In cases where I treat several members of a family (parents and children or other relatives) the confidentiality situation can become very complicated because I would have a mixture of responsibilities to different members. At the start we must clarify the purpose of our treatment and my role in regard to your family or families. Only with this clarity can we figure out any limitations on confidentiality which might exist. It is generally recommended to have different therapists so as to avoid this confusion.

i. If you and/or your spouse have a custody agreement, or a court custody hearing, it would be advisable for you to let me know about it.

j. My rule is that you must agree that if counseling does not resolve the marital difficulties and you seek a divorce you will not request my testimony for either side. After all, the intent of couples work is to allow full disclosure between the parties to work on the relationship and not to seek or use information gleaned from the therapy process against them.

k. If you are in group therapy the other members are not therapists and do not have the same ethical and legal rules. In general, you cannot be sure that they will keep confidential what you say in the group, although the intent to keep confidentiality would be stressed at the outset.

l. Any information which you share outside of therapy, voluntarily and publicly, will not be considered protected or confidential by a court.

m. I will not record our therapy sessions on audiotape or videotape without your written permission.

SIX: You have also received a HIPAA Notice of Privacy Practices either in written or electronic form. By signing this document, you acknowledge receipt and agreement with the terms of this document.

SEVEN: It may become useful during the course of treatment to communicate by phone, email, text message (e.g. "SMS"), fax or other electronic methods of communication. Be informed that these methods, in their typical form, are not confidential means of communication. If you use these methods to communicate with me, there is a reasonable chance that a third party may be able to intercept and eavesdrop on those messages. The kinds of parties that may intercept these messages include, but are not limited to:

- People in your home or other environments who can access your phone, computer, or other devices that you use to read and write messages**

- **Your employer, if you use your work email to communicate with me**
- **Third parties on the Internet such as server administrators and others who monitor Internet traffic**

If there are people in your life that you don't want accessing these communications, please talk with me about ways to keep these kinds of communications safe and confidential. There are ways to encrypt communications. Otherwise, by signing this document, you agree that you are knowledgeable of these limitations and agree to the risks of using this type of communication.

EIGHT: If you want me send information about our therapy to someone else, you must sign a Release of Records form. I have such forms which you can review should you so desire.

As you can see, the laws and rules on confidentiality are complicated; however, you should now have enough information to enter treatment well informed. Also, while complications not dealt with here rarely come up in my practice, please bear in mind that I am not able to give you legal advice. If you have special or unusual concerns and need more specific advice, I strongly suggest that you talk to an attorney to protect your interests legally.

The signatures here attest to the fact that we each have read, discussed, understand and agree to abide by the points presented above.

Client's Signature

Date: _____

Therapist's Signature