



Psychology

Confidential Information
Leveled Assessment ____/4

Name:
Section:
Score: ____/5

Directions: Read over the standards for Disclosing Confidential Information below and then answer the series of thought questions dealing with situational examples.

Disclosing confidential information

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Among the most frequent calls to the APA Ethics Office are those asking how the Ethics Code applies to mandatory disclosures of information, such as child abuse reporting or when a client threatens to harm a third party in a jurisdiction with a duty to protect or warn. A helpful tool for responding in such situations can be thinking of legal, clinical, ethical and risk management as four bins (see February "[Ethically Speaking](#)" column.) The psychologist will identify in what bin a particular question belongs and then explore how the bins work together.

Understanding the Ethics Code

The starting point for any psychologist considering whether to disclose confidential information is APA Ethical Standard 4.05, Disclosures. It states:

(a) Psychologists may disclose confidential information with the appropriate consent of the organizational client, the individual client/patient or another legally authorized person on behalf of the client/patient unless prohibited by law.

(b) Psychologists disclose confidential information without the consent of the individual only as mandated by law, or where permitted by law for a valid purpose such as to (1) provide needed professional services; (2) obtain appropriate professional consultations; (3) protect the client/patient, psychologist, or others from harm; or (4) obtain payment for services from a client/patient, in which instance disclosure is limited to the minimum that is necessary to achieve the purpose. (See also Standard 6.04e, Fees and Financial Arrangements.)

Standard 4.05 opens three doors for disclosing confidential information: client consent, legal mandate and legal permission. At least one of these doors must be open before a psychologist is permitted to disclose confidential information. Two statutes illustrate the interaction among the legal, clinical, ethical and risk management bins. In Massachusetts, psychologists have a duty to take reasonable precautions to warn or protect a third party threatened by his or her client. According to Massachusetts General Laws, chapter 123, section 36B, this duty arises when:

(a) the patient has communicated to the licensed mental health professional an explicit threat to kill or inflict serious bodily injury upon a reasonably identified victim or victims and the patient has the apparent intent and ability to carry out the threat...; or (b) the patient has a history of physical violence which is known to the licensed mental health professional and the licensed mental health professional has a reasonable basis to believe that there is a clear and present danger that the patient will attempt to kill or inflict serious bodily injury against a reasonably identified victim or victims.

When either of the conditions in clause (a) or (b) are met, the psychologist's duty to "warn or protect" the intended victim of the client's harm may entail a disclosure of information. In both clauses, whether the psychologist has a legal duty will rest upon a clinical judgment regarding the client's "intent and ability" and/or whether there is "reasonable basis to believe that there is a clear and present danger." For this reason, when a psychologist contacts APA's Ethics Office and asks whether there is a duty to warn or protect, the office response may be that the psychologist should speak with both a mental health law attorney and a psychologist with expertise in risk assessment to determine whether the psychologist has a legal duty to disclose.

There is an inextricable link between the legal and clinical bins insofar the legal duty is triggered by a clinical assessment. The statute deepens this link in the next clause by exempting a psychologist from a legal duty to warn or protect in certain circumstances:

Nothing in this paragraph shall be construed to require a mental health professional to take any action which, in the exercise of reasonable professional judgment, would endanger such mental health professional or increase the danger to potential victim or victims.

The phrase "reasonable professional judgment" falls squarely in the clinical bin. Once again, the psychologist's clinical assessment has legal implications.

The statute's following clause falls into the risk management bin:

Whenever a licensed mental health professional takes reasonable precautions ... no cause of action by the patient shall lie against the licensed mental health professional for disclosure of otherwise confidential communications.

Note that the legal, ethical, clinical and risk management bins bring us full circle in reading the statute. Ethical standard 4.05 allows for a psychologist to disclose confidential information when he or she is legally mandated to warn or protect a third party. The legal duty is based upon a clinical assessment; a clinical assessment may also exempt a psychologist from the legal duty. Finally, in the risk management bin, when the psychologist takes appropriate action in accordance with the statute to fulfill the legal duty, the psychologist will not be exposed to liability for a disclosure of confidential information.

Child abuse reporting

The four-bin analysis may also be applied to mandatory child abuse reporting. The Ethics Office receives many calls from psychologists asking whether information they have received, often having to do with abuse that took place in the distant past, requires a mandatory report. Although psychologists may provide good reasons for why suspected child abuse in the distant past should not require a mandatory report — especially for adult survivors of incest who come for treatment — the question nonetheless belongs in the legal bin. For this reason, the Ethics Office will refer this psychologist to an attorney specializing in mental health law or to a supervisor at child protective services in the relevant jurisdiction.

There are multiple variations on this theme: when the psychologist learns of the abuse in a non-professional setting, such as a Sunday afternoon in the park; when the abuse took place in a separate jurisdiction; or when the alleged abuser no longer has access to children. Any guidance offered by the Ethics Office must include an explanation that these questions are legal questions that lie outside the purview of APA's Ethics Office.

If the psychologist determines that the information triggers a mandatory child abuse report, Ethical Standard 4.05 allows the disclosure because the legal mandate door is open. Like the Massachusetts duty to warn/protect statute, most child abuse reporting laws have a clause that helps the psychologist in the risk management bin against a claim for breach of confidentiality. The California penal code, for example, has the following language: *No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article, and this immunity shall apply even if the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect outside of his or her professional capacity or outside the scope of his or her employment.*

This broad clause offers a high degree of protection to a psychologist who discloses confidential information pursuant to a child abuse reporting statute. Following up on the legal, ethical and risk management bins, the psychologist will consider in the clinical bin the most appropriate way to make the disclosure while meeting the requirements of the child abuse reporting law.

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Thought Questions:

1. Summarize what it means that Psychologist are legally mandated reports?

2. List and summarize the situations when it is ok to disclose patient information without their permission. (The Four Bins)
 - a.
 - b.
 - c.
 - d.
3. What resources are available to psychologists to help them decide whether or not to disclose patient's information?
4. What type of legal protections are in place to protect psychologists who rightfully disclose patient information without their knowledge? What legal implications are there if a psychologists wrongfully discloses information without the patient's information?
5. What specific responsibilities do psychologists have when dealing with children?

Situational Examples

Directions: For each of the examples determine what the psychologists should do and explain your reasoning.

1. After conducting an experiment a patient asks that his results not be released, he already signed a legal release.
2. A patient with a documented emotional behavior and a history of harmful behavior jokes during a session that he wants to hurt his social worker (who he will not see for a couple days).

