Today's objectives

What is the difference between privacy, privilege and confidentiality?

Why the need for confidentiality?

What is the SCOPE of confidentiality?

Issue 1: Maintain confidentiality

Issue 2: Discuss limits of confidentiality—when and how

Issue 3: Breaching confidentiality

Issue 4: Disclosures with consultation/collaboration

Issue 5: Who is the client who has confidential rights?

Issue 6: Minimizing Intrusions on Privacy

What can you do if confidentiality must be broken?

Why Informed Consent?

What are the 3 key elements of informed consent?

More about privileged …all tangled up with ethics…

• public has right to relevant evidence in court
  but protection afforded to certain types of relationships from
  forced disclosure in courts

• attorney-client, husband-wife, physician-patient, penitent-
  priest so far

• it is the client’s right to refuse to disclose privileged
  communications

• confidentiality for psychologists not enough to support in
  court and varies in states especially if not licensed

What is the difference between privacy, privilege and confidentiality?

Privacy versus Confidentiality

Basics

constitutional right

guaranteed by 4th amendment

Privilege is a legal standard

A clinical standard

Why the need for confidentiality?

• Privacy as an ethical issue: the freedom of individuals to choose
  for themselves the time and the circumstance under which and the
  extent to which their beliefs, behaviors, and opinions are to be
  share or withheld from others

• Stigma of mental illness keeps people quiet

• Often assumes trusting relationship and feel betrayed if broken

• Shared info can do more harm than good at times

• Increases our ability to do good with more information

• Increases public trust in our profession

What is the SCOPE of confidentiality?

Consultation

relevant info only
not enough to ID client

Records/data

who has access
safety
modern types (fax, computers, web)

Limitations

Law permitted or Mandated disclosures
Duty to warn
Fees

With others

Groups
Consultees
Organization (school)

Research

NASP AND APA CODES

Issue 1: Maintain confidentiality

APA 4.01 Maintaining Confidentiality

• Take reasonable precautions to protect all confidential
  • Recognize the extent and limits of confidentiality regulated by law or
    established by institutional rules or scientific relationship.

APA 2.05 Delegation of Work to Others

(e.g. employees, supervisors, assistants, other services e.g., interpreters)

Take reasonable steps to

(1) avoid delegating work to persons who have a multiple relationship that
  would likely lead to exploitation or loss of objectivity;
(2) authorize responsibilities that others can perform competently on the
    basis of their education, training, or experience
(3) ensure others perform services competently.

NASP: A 9 GENERAL. School psychologists respect the confidentiality of
  information obtained during their professional work.
Issue 2: Discuss limits of confidentiality--when and how

NASP: A 11: GENERAL
Inform children and other clients of the limits of confidentiality at the outset of establishing a professional relationship.

NASP: II C 2 PARENTS
Secure continuing parental involvement by a frank and prompt reporting to the parent of findings and progress that conforms to the limits of previously determined confidentiality.

NASP: B 2: STUDENTS
Explain important aspects of the relationships including reasons why services were requested, who will receive information about services provided, and possible outcomes.
In a clear manner that is appropriate to the child’s or other client’s age and ability to understand.

APA 4.02 Discussing the Limits of Confidentiality
(a) Discuss with persons (plus those legally incapable of giving informed consent and their legal representatives) and organizations
1. relevant limits of confidentiality
2. foreseeable uses of information generated through their psychological activities.
(b) occurs at the outset of the relationship if feasible and as new circumstances may warrant.
(c) Explain risks of services, products, or information via electronic transmission

Issue 3: Breaching confidentiality

NASP: A 9 : GENERAL
Information is revealed only with the informed consent of the child, or the child’s parent or legal guardian
Except in those situations in which failure to release information would result in clear danger to the child or others.

4.05 Disclosures
(a) disclose confidential information with the appropriate organization and/or client consent unless prohibited by law.
(b) disclose confidential information without the consent of the individual
When mandated by law
When 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;
(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.

Issue 4: Disclosures with consultation/ collaboration

NASP: II A 10: GENERAL
Discuss confidential information only for professional purposes and only with persons who have a legitimate need to know.

NASP: II B 4: STUDENTS
Recommendations for program changes or additional services will be discussed with appropriate individuals, including any alternatives that may be available.

4.06 Consultations
When consulting with colleagues:
- do not disclose confidential information that reasonably could lead to the identification of a client/ organization
- unless they have obtained prior consent or the disclosure cannot be avoided
- disclose information only to the extent necessary to achieve the purposes of the consultation.

Issue 5: Who is the client who has confidential rights?

Working within a specific context:
- the child within the family within the schools

Who wants the treatment?
Who decides on treatment goals?
Who decides what should be “shared”?

Cases: pg. 18 from Koocher and case 3-11
Problems: case 2-3 and 2-4
4.04 Minimizing Intrusions on Privacy
(a) Include in written and oral reports and consultations, only information germane to the purpose for which the communication is made.

4.03 Recording
Obtain permission before recording the voices or images of individuals

NASP PARENTS III C 7.
• Discuss the parent and child rights regarding confidentiality maintenance of produced materials

REPORTING DATA AND CONFERENCE RESULTS IV D 1, 2, 4
• Ascertain that information reaches only authorized persons.
• Assist to establish procedures to safeguard confidentiality
• Comply with all laws, regulations, and policies pertaining to storage and disposal of records to maintain confidentiality

Use of Materials and Technology IV E 5.
• Maintain confidentiality with technical services and use

Risk Assessment:
No real legal grounding on any method but there are suggestions out there.

Questions for guidelines (Corey 1988):
1. Has client expressed some specific intention to commit violence, as transitory thoughts or expression of feelings?
   A) Has the client identified the kind of action he or she intends?
   B) Does the client have the ability to carry out the actions? (weapon, proximity?)
   C) Interest or history of past violence?
2. Has the client identified an intended victim and or plan of action?
3. Is the client unable to understand what he or she is doing and incapable of exercising self-control?
4. Is the client able to cognitively and physically able to carry out the plan?
5. Is client capable of collaborating with the therapist in maintaining control of his or her behavior?

When is duty to warn, protect, or report needed?

Three conditions:
1. Special client-therapist relationship exists
   responsible for client as well as other parties known to be threatened
2. Clear and imminent danger
3. Identifiable victim

Why duty to warn:
• recognize one person does not have duty to control another
• recognize the need to control client’s conduct at these times a foreseeable victim can be named

Case 2:
You are a family counselor in a mental health clinic and have been having weekly sessions with two parents and their adolescent juvenile offender who is about to be released from a detention center. In the past, he has known to be extremely dangerous and violent and had made generalized statements of hostility, but with no intended or identifiable victim.

1. Does the client express some specific intention to commit violence, as transitory thoughts or expression of feelings?
   A) Has the client identified the kind of action he or she intends?
   B) Does the client have the ability to carry out the actions? (weapon, proximity?)
2. Has the client identified an intended victim and or plan of action?
3. Is the client unable to understand what he or she is doing and incapable of exercising self-control? (history of past violence for example)
4. Is the client capable of collaborating with the therapist in maintaining control of his or her behavior?

Considerations with AIDS-related cases

Again, states laws vary here but have some rights to privacy but focus on appropriate behaviors (Health communicable disease requirement)

Biggest issue is when does it become “duty to warn”?

What do we do when duty to warn, protect, or report situations?

Need to show that you took reasonable professional actions accepted by your professional community

1. State/ write limits of confidentiality in advance
2. Plan ahead (emergency procedures in system, know state laws, ask supervisor, lawyer; police etc; numbers ready, who to call to commit to hospital)
3. Develop contingencies plan (Preplan what to do if weapon, threatens to hurt etc.)
4. Obtain professional liability insurance
5. Document any threats, if three conditions (relationship, identifiable, clear imminent danger) are not met
6. If three condition are met, implement procedure to warn
   a) Remind client of your ethical and legal obligation to warn
   b) Invite the client to participate if possible
   c) If possible, develop a plan with the client to surrender weapon
   d) Inform supervisor, your attorney, law enforcement, local psychiatric hospital and intended victim
   e) Keep the client secure
   f) Secure the commitment of the client for treatment
7. Consult with colleagues if needed
8. Keep records of all actions
What are your actions with a subpoena before giving information?

• Check state laws
• Assert communication privileges and seek guidance with judge
• Seek own counsel
• Inform client since waiver is the right of the client

A privilege status more likely given if demonstrated that your client-psychologist relationship meets these requirements:

1. Communication originated in the confidence that it would not be disclosed
2. Confidentiality essential to full and satisfactory maintenance of the client-psychologist relationship
3. The relationship must be one which, in the opinion of the community, should be sedulously fostered.
4. The injury to that relationship, caused by disclosure, would be greater than the benefit gained to the process of litigation

What can you do if confidentiality must be broken?

Taylor and Adelman (1989) suggest:

1. Explain the reason for disclosure
2. Explain the likely repercussions in and outside the student-psychologist relationship, and
3. Discuss how to proceed in a manner that will minimize negative consequences and maximize potential benefits

Confidentiality issue #2: Confidentiality differences between child and adult clients

In legal arena

- If under 18, parents make all privacy-related legal decisions for child
- Ethically mandated to discuss limits of confidentiality with child and parents with reasonable discussion of nature and extent of material to be shared and reasons for sharing it

Deciding on boundaries of limitations before making limitations clear:

1. Age
2. Maturity
3. Self-referral or referral by others
4. Reason for referral
5. Parameters that you might share confidences with others to benefit the child or mandated by law and ethics

Informing client of potential breaches of confidentiality:

1. Duty to warn, protect, or report due to harm to self or others including communicable diseases
   - Drugs and prohibited acts (Utah law)
2. Legal mandates (child, sexual, and elderly abuse)
3. Client complaints and litigation against counselors or others
4. Court ordered psychological examination
5. Court orders and subpoena verses privileged communication
6. Restricted consultation with colleagues
7. Involved relevant professionals
8. Handling of produced materials/records
9. Limitations with group therapy
10. Shared information with supervisors
11. Limitations of minors
   - Pregnancy and abortion extent shared with parent or teachers

Most ethical dilemmas I have faced revolved around custody-divorce problems. While our district has clear policies, I sometimes feel uncomfortable when I receive phone inquiries from angry, upset, non-custodial parents. Teachers who are less informed sometimes share information inappropriately which results in problems for me. Underlying all of these legal issues is the child who has, at times, shared strong feelings for and/or against one parent. Again, this poses further dilemmas for me as I try to work in the best interest of the child.

(Use decision making next page)
STEP 1: To view an ethical dilemma?

STEP 2: Are there any alternative courses of action?

STEP 3a: What do codes apply and what do they indicate?

STEP 2b: Are they any laws and what do they indicate?

STEP 3b: Are there ethical conflicts? (Common sense, personal values, external conflicts)

STEP 3c: Evaluate alternatives by first...

STEP 3d: Should I consult with supervisor and respected colleagues? Welfel pg. 41

STEP 3e: Deliberate and decide on plan

- Eliminate if inconsistent with client's and significant others' values and beliefs
- Inconsistent with relevant ethical guidelines
- There are no resources or support
- Don’t pass ethical principle tests
- Can’t predict a consequence.

Choice 1: What are the best- and worse-case scenarios? Will anyone be harmed?

Choice 2: What are the best- and worse-case scenarios? Will anyone be harmed?

STEP 4: Inform supervisor, implement and document actions

STEP 5: Reflect on the experience. Did it work? Should I modify or do something else? Welfel pg. 44

STEP 6: What are some alternative courses of action?

Why Informed Consent?

Rationale:
- Respecting individual’s rights to self-determine whether to share private thoughts, behaviors and beliefs with others
- Right to manage own life
- Treat as an equal

Inform: When, with who, and what

TO PARENT and child or client:

**NASP GENERAL III 3**
- Parents and children are to be fully informed in advance
- About all relevant aspects of school psychological services
- Incluing into account language and cultural differences, cognitive capabilities, developmental level, and age so that it may be understood by the child and parent

**COMPETENCE II 2 and 3 (to client)**
- Accurately declare competence levels, education, training, and experience
- Do not use affiliations with persons, associations, or institutions to imply a level of professional competence that exceeds that which has actually been achieved

**REPORTING DATA AND CONFERENCE RESULTS IV D 2**
- Communicate findings and recommendations in language readily understood by the intended recipient. These communications describe potential consequences associated with the proposals.

Inform: When, with who, and what

TO PARENT

**PARENT II 1 and III 1, 2 and 5**
- In advance or as soon as possible in case of emergencies or drop in self referral
- Explain all services in clear understandable manner
- Discuss recommendations and plans for assisting their children
- Explain alternatives associated with each set of plans, which show respect for the ethnic/cultural values of the family
- Inform about sources of help available at school and in the community
- Explain and agree on service provision by interns, practicum students in advance

Inform: When, with who, and what

**APA 3.10 Informed Consent**

(a) For providing assessment, therapy, counseling, or consulting services
- Obtain the informed consent
- Using language that is reasonably understandable

(b) For persons who are legally incapable of giving informed consent,
- Provide an appropriate explanation,
- Seek the individual’s assent,
- Consider such persons’ preferences and best interests, and
to obtain appropriate permission from a legally authorized person, if such substitute consent is permitted or required by law. When consent by a legally authorized person is not permitted or required by law, psychologists take reasonable steps to protect the individual’s rights and welfare.
- When psychological services are court ordered or mandated, inform the individual of the nature of the anticipated services, including if services are court ordered or mandated any limits of confidentiality.
- Appropriately document written or oral consent, permission, and assent.
APA 3.11 Psychological Services Delivered To/ Through Organizations
Provide information beforehand to clients and those directly affected by the services about
1. the nature and objectives of the services,
2. the intended recipients,
3. which of the individuals are clients,
4. the relationship the psychologist will have with each person and the organization,
5. the probable uses of services provided and information obtained,
6. who will have access to the information, and
7. limits of confidentiality.
As soon as feasible, provide information about the results and conclusions of such services to appropriate persons.
If will be precluded by law or by organizational roles from providing such information to particular individuals or groups, they so inform those individuals or groups at the outset of the service.

What experts say are 3 key elements of informed consent

1. **Knowing relevant information**
   Need information to make informed choices including:
   
   - Nature and scope of services offered
   - Assessment to be used, purpose and likely outcomes
   - Treatment goals and procedures
   - Expected duration
   - Any foreseeable side effects, risks or discomforts
   - Costs if any
   - Benefits
   - Possible consequences/outcomes with or without treatment
   - Alternative treatments/services
   - Confidentiality issues
   - Your qualifications
   
   *See handout of possible informational questions*

   **When?**
   Most do this at end of first interview except for crisis situations
   Pus ongoing reminders
   
   **How should information about treatment and alternatives be presented?**
   Verbal, written or taped? Establish a contract?

   **To who?**
   Both parent for sure and child assent at their level
   
   **Whose goals should be included? Parent or child’s?**
   Consider both with consideration of parent and child’s individual rights

   **Factors affecting child’s ability:**
   
   **Assessment of ability:**
   Starts in middle school
   
   - a) Simple expression of preference relative to alternative treatment choices
   - b) A rational decision making process is followed
   - c) The choice is seen as one a "reasonable" person might make
   - d) Ability to understand information offered and nature of consequences
   - e) Time perspective with respect to present and future
   - f) Concept manipulation (based on just own experience, perspective of others, or hypothetical reasoning?)

   **Need 3 key elements: (continued)**
   
   1. **Knowing**
   2. **Competent in understanding and reasoning**
   
   Three issues when making decisions for children
   
   a. **Legally competent?**
   - In schools, permission for psychological services rests with parents of minor child
   - Child is given adult rights when turn 18.
   - Legally “mature minor” child is considered competent to make decisions if:
     - Married, in military, OR financially independent & living on own
   - State differences in competency with certain types of medical treatments (contraception, venereal disease, abortion, drug and alcohol problems)
   - Cognitive ability not taken into consideration with legal

   b. **Ethically competent?**
   - Child’s developmental ability to make competent decisions
   
   Generally presumed cannot
   
   Some authors suggest:
   - Informed consent with both parent and child or
   - Assent (parent consent and child preference)

   Should we solicit consent if child’s refusal is not honored?
   Difference between right to consent and right to be informed about services
CASE: (USE ethical decision making model)
Bruce is a psychologist who specializes in counseling people who suffer from post traumatic stress disorder. His reputation in the field is so good that people come from long distances to obtain his services. At the initial stage of counseling Bruce explains many aspects of informed consent. He purposefully avoids discussion of potential treatment approaches because he believes such discussion would be counterproductive to effective therapy. Instead, Bruce asks clients to waive their right to information about the specific treatment procedures to be used. When a colleague questioned whether omitting this aspect of informed consent was ethical, Bruce asserted that he believed he was in full compliance with the code of ethics because clients willingly waived their right to that information. Bruce added that outcome data for his clients shows overwhelming success with this approach.