

ETHICS AND LAW IN SOCIAL
WORK PRACTICE: 2018 Update

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Distinctions Between Ethics and Law

- Ethics – basis of moral and professional decision making.
- Law – creates rights, obligations, and remedies.

Confidentiality and
Privilege

- Distinctions:
 - Confidentiality refers to information which is not intended or authorized to be disclosed to a third party.
 - Privilege refers to an evidence rule that a person cannot be compelled to present evidence.



NASW on Confidentiality

- National Association of Social Workers Code of Ethics:
 - "Social workers should protect the confidentiality of all information obtained in the course of professional service, except for compelling professional reasons . . .
 - does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or other identifiable person or
 - when laws regulations require disclosure without a client's consent. In all instances, social workers should disclose the least amount of confidential information necessary to achieve the desired purpose . . ."

Revisions Social Workers Should . . .

- **1.07 Privacy and Confidentiality**
- (m) . . . take reasonable steps to protect the confidentiality of electronic communications, including information provided to clients or third parties. Social workers should use applicable safeguards (such as encryption, firewalls, and passwords) when using electronic communications such as e-mail, online posts, online chat sessions, mobile communication, and text messages
- (n) . . . develop and disclose policies and procedures for notifying clients of any breach of confidential information in a timely manner(a) In the event of unauthorized access to client records or information, including any unauthorized access to the social worker's electronic communication or storage systems, social workers should inform clients of such disclosures, consistent with applicable laws and professional standards.
- (o) In the event of unauthorized access to client records or information, including any unauthorized access to the social worker's electronic communication or storage systems, social workers should inform clients of such disclosures, consistent with applicable laws and professional standards.

Social Workers Should:

- (p) . . . develop and inform clients about their policies, consistent with prevailing social work ethical standards, on the use of electronic technology, including Internet-based search engines, to gather information about clients.
- (q) Social workers should avoid searching or gathering client information electronically unless there are compelling professional reasons, and when appropriate, with the client's informed consent.
- (r) . . . avoid posting any identifying or confidential information about clients on professional websites or other forms of social media

Revisions

Social Workers Should . . .

- (s) . . . transfer or dispose of clients' records in a manner that protects clients' confidentiality and is consistent with applicable laws governing records and social work licensure.
- (t) . . . take reasonable precautions to protect client confidentiality in the event of the social worker's termination of practice, incapacitation, or death.
- (u) . . . not disclose identifying information when discussing clients for teaching or training purposes unless the client has consented to disclosure of confidential information.
- (v) . . . not disclose identifying information when discussing clients with consultants unless the client has consented to disclosure of confidential information or there is a compelling need for such disclosure.
- (w) . . . protect the confidentiality of deceased clients consistent with the preceding standards.

NJ Licensure on Confidentiality

- 13:44G 12-3 "A social worker . . . shall not be required to disclose any confidential information that the social worker may have acquired from a client from a client or patient while performing social work services for the client or patient unless:
 - o Disclosure is required by other State law;
 - o Failure to disclose the information presents a clear and present danger to the health and safety of an individual.

NJ Licensure on Confidentiality

- o The social worker is a party defendant to a civil, criminal or disciplinary action arising from the social work services provided, in which case a waiver of the privilege accorded by this section shall be limited to that action;

NJ Licensure on Confidentiality

- o The patient or client is a defendant in a criminal proceeding and the use of the privilege would violate the defendant's right to a compulsory process or the right to present testimony and witnesses on that person's behalf; or
- o A patient or client agrees to waive the privilege accorded by this section, and, in circumstances where more than one person in a family is receiving social work services, each such family member agrees to the waiver. Absent a waiver from each family member, a social worker shall not disclose any information received from any family member

Confidentiality and Disclosure

- What needs to be disclosed?
- Why?
- How much information should be shared?
- Who needs to know?
- Get informed consent in writing.
- Are there laws mandating disclosure?
 - o 2004 reporting requirement youth suicide.

Minors and Confidentiality

- Social Workers must try to maintain confidentiality.
 - o Code doesn't differentiate
- Parent, Guardian or Court can waive.
- Best Interests and developmental level.
- If over 14, may have to consent as well.

Rule of Thumb

- Absent valid consent, do not release confidential information without Court Order
- Document the facts

Privilege

- Premise that all evidence is admissible.
- Our system of jurisprudence is based on fact finding and truth seeking.
- All Evidence is admissible unless it is irrelevant, prejudicial or privileged.



Professor Wigmore on Privilege

- The communications must originate in a confidence that they will not be disclosed.
- This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.
- The community must support the relationship between a client and a social worker and strongly believe in the necessity of that connection.
- The damage done to the relationship between a social worker and a client if there was no confidentiality must be greater than the benefit of free disclosure in the court process.



ISSUES RELATED TO PRIVILEGE

- Is there a protected relationship
- Who holds the privilege?
- Who can waive the privilege
- How is privilege waived?
- What are the exceptions?
- What is the legislative intent?

N.J.R.E. 534. Mental Health Service Provider- Patient Privilege (NEW)

- Went into effect July 1, 2016
- "Mental-health service provider" means a person authorized or reasonably believed by the patient to be authorized to engage in the diagnosis or treatment of a mental or emotional condition, and is specifically intended to include:

Applies to

- Psychologists, Psychiatrists/Physicians, Marriage and Family Therapists, Social Workers, Certified Alcohol and Drug Counselors, Nurses, Professional counselors, associate counselors, rehabilitation counselors, psychoanalysts, midwives, Physician's Assistants, Pharmacists

Definitions

- Victim Counselors: Still are guided by Victim Counselor Privilege N.J.S.A. 2A:84A-22.14c

Definitions

- "Patient" means an individual, who undergoes diagnosis or treatment with or by a mental-health service provider for the purpose of diagnosis or treatment related to that patient's condition of mental or emotional health, including addiction to legal or illegal substances, whether referred to as client, person in therapy, or some other equivalent term in the context of the relationship.

Definitions

- "Confidential communications" means such information transmitted between a mental-health service provider and patient in the course of treatment of, or related to, that individual's condition of mental or emotional health, including information obtained by an examination of the patient, that is transmitted in confidence, and is not intended to be disclosed to third persons, other than:

Definitions

- those present to further the interest of the patient in the diagnosis or treatment;
- those reasonably necessary for the transmission of the information, including the entity through which the mental-health service provider practices; and
- persons who are participating in the diagnosis or treatment of the patient under the direction of a mental-health service

Definitions

- provider, including authorized members of the patient's family, the patient's guardian, the patient's conservator, and/or the patient's personal representative.

Definitions

- "Diagnosis or treatment" shall include consultation, screening, interview, examination, assessment, evaluation, diagnosis or treatment.

General Rule of Privilege

- A patient has a privilege to refuse to disclose in a proceeding, and to prevent any other person from disclosing confidential communications as defined in subsection (a)(1).

Who holds the Privilege?

- The privilege under this rule may be claimed by the patient, the patient's guardian or conservator, the personal representative of a deceased patient, or if authorized by the patient, a member or members of the patient's family. The person who was the mental-health service provider at the time of the communication is presumed to have authority to claim the privilege,

Who Holds The Privilege?

but only on behalf of the patient or deceased patient

- The mental-health service provider shall claim the privilege unless otherwise instructed by the patient or, as applicable, members of the patient's family, the patient's guardian or conservator, or the personal representative of a deceased patient.

There is no privilege under this rule for a communication

- (1) Relevant to an issue of the patient's condition in a proceeding to commit the patient or otherwise place the patient under the control of another or others because of alleged incapacity;
- (2) Relevant to an issue in a proceeding in which the patient seeks to establish his competence, or in a criminal matter where the defendant's competence to stand trial is put at issue;

No privilege

- (3) Relevant to an issue in a proceeding to recover damages on account of conduct of the patient which constitutes a crime;
- (4) Upon an issue as to the validity of a will of the patient;
- (5) Relevant to an issue in a proceeding between parties claiming by testate or intestate succession from a deceased patient;

No privilege

- (6) Made in the course of any investigation or examination, whether ordered by the court or compelled pursuant to Court Rule of the physical, mental, or emotional condition of the patient, whether a party or a witness, with respect to the particular purpose for which the examination is ordered, unless the court orders otherwise, and

No privilege

provided that a copy of the order is served upon the patient prior to the communication, indicating among other things that such communications may not be privileged in subsequent commitment proceedings;

- (7) Relevant to an issue in a proceeding in which the condition of the patient is an element or factor of the claim or defense of the patient or of any party claiming

No privilege

- through or under the patient or claiming as a beneficiary of the patient through a contract to which the patient is or was a party or under which the patient is or was insured;
- (8) If the court finds that any person, while a holder of the privilege, has caused the mental-health service provider to testify in any proceeding to any matter of which the mental-health service provider gained knowledge through the communication;

No privilege

- (9) In the course of mental health services sought or obtained in aid of the commission of a crime or fraud, provided that this exception is subject to the protections found in N.J.R.E. 501 and N.J.R.E. 509 and is not intended to modify or limit them;

No privilege

- (1.0) Relevant to an issue in a proceeding against the mental-health service provider arising from the mental-health services provided, in which case the waiver shall be limited to that proceeding.
- (1.1) Relevant to a proceeding concerning an application to purchase, own, sell, transfer, possess or carry a firearm, including but not limited to, applications concerning the return of a firearm in a DV matter.

Disclosure Pursuant to Statutory Duty to Report to a Public Official or Office.

- Nothing in this rule shall prevent a court from compelling disclosure of a statement by a mental-health service provider, patient or other third party to a public official when such statement is made in compliance with a statutory duty to report to a public official or information required to be recorded in a public office that was in fact recorded in a

- public office, including but not limited to reports of child or elder abuse or neglect or the abuse or neglect of disabled or incompetent persons, unless the statute requiring the report of record specifically provides that the statement or information shall not be disclosed .

Court and Constitution

- Nothing in this rule shall prevent a court from compelling disclosure where:
 - the patient has expressly or implicitly waived the privilege or authorized disclosure; or
 - exercise of the privilege would violate a constitutional right.
- Note: Court can always pierce a privilege for good cause

Jaffee v. Redmond

518 U.S. 1 (1996)

- United States Supreme Court extended privileged communication to clinical social workers
- Recognized clinical social workers as licensed professionals with authority to diagnose and treat mental disorders

Liability

- Runyon v. Smith, 163 N.J. 439, (2000)
 - psychologist breached the psychologist-patient privilege when she testified against patient at hearing regarding temporary restraining order that patient had obtained against estranged husband, and patient was entitled to seek damages for the unauthorized divulgence.

Relationships with Clients

- o Dual Relationships
- o Intimate relationships
- o Out of Office Contact
- o Business Relationships



Relationships New Code

- (e) Social workers should avoid communication with clients using technology (such as social networking sites, online chat, e-mail, text messages, telephone, and video) for personal or non-work-related purposes.
- (f) Social workers should be aware that posting personal information on professional Web sites or other media might cause boundary confusion, inappropriate dual relationships, or harm to clients.
- (g) Social workers should be aware that personal affiliations may increase the likelihood that clients may discover the social worker's presence on Web sites, social media, and other forms of technology. Social workers should be aware that involvement in electronic communication with groups based on race, ethnicity, language, sexual orientation, gender identity or expression, mental or physical ability, religion, immigration status, and other personal affiliations may affect their ability to work effectively with particular clients.
- (h) Social workers should avoid accepting requests from or engaging in personal relationships with clients on social networking sites or other electronic media to prevent boundary confusion, inappropriate dual relationships, or harm to clients.

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Prohibitions include Electronic Communications

- 1.09 Sexual Relationships
- 1.11 Sexual Harassment
- 1.12 Derogatory Statements
- 2.06 Sexual relationships Supervisors
- 2.07 Sexual Harassment
- 3.02(d) Dual Relationships in Supervision



Boys and Girls Club Keystone Law

- Minor over the age of 16 can consent to behavioral health care services for the treatment of mental illness or emotional disorders,
- Under the supervision of . . . certified social worker, licensed clinical social worker, licensed social worker . . .
- Treatment for behavioral health care services for mental illness or emotional disorders that is consented to by a minor shall be considered confidential information

DOCUMENTATION CYA

- Notes
- Letters
- Phone calls
- If it ain't in writing, it didn't happen.



CONCLUSION

- Supervision.
- Obtain legal advice
- Is there a protected relationship?
- Is there a duty?
- Assert the privilege except as required by law.
 - Child Abuse.
 - Imminent harm to a clearly identifiable person.
