



North Carolina Board of Licensed Professional Counselors

P.O. Box 1369 • Garner, North Carolina 27529-1369

Phone (919) 661-0820

www.NCBLPC.org

Fax (919) 779-5642

NCBLPC Professional Brief

Content Area: Confidentiality

Brief Overview/Description:

Protecting the confidentiality of clients' information is a key component of the counseling profession's Code of Ethics and Standards of Practice (ACA, 2005). From this perspective, confidentiality is a right of all clients under the principles of *autonomy* (the belief in the client's ability to make their own choices), *beneficence* (serving the best interest of the client) and *fidelity* (loyalty to the counseling relationship). Clients also have legal rights to confidentiality through federal and state law. North Carolina law also provides counselor privilege ([NCGS § 8-53.8](#)), which gives LPCs the right to protect client confidentiality - but there are important exceptions. **Sometimes the law requires disclosure.** A therapeutic relationship with a client involves clear and on-going explanations about confidentiality rights and limits. Informed consent is also part of an ethical counseling relationship.

Confidentiality education should begin at the first session of the counseling relationship and utilize the LPC's Professional Disclosure Statement. Professional Disclosure Statements must have a written description of confidentiality responsibilities and exceptions. As the counseling relationship develops and situations arise that suggest a legal need for disclosure, the counselor should provide further explanation and reminders about confidentiality rights and limits. Special confidentiality issues and limits arise with the use of group counseling, family and couples counseling, and other counseling that involves more than one person; a client needs to understand these issues before beginning counseling of these types. A breach of confidentiality may be required when there is:

- child or elder abuse or neglect,
- danger to the client or identified others,
- danger of contagion of life-threatening diseases,
- a court order for disclosure,
- involvement of a DSS worker or *guardian ad litem*, and
- a request for information from the parent of a minor child.

For LPCAs, obtaining a client's consent to share session information (verbal reports, written notes, or recordings of sessions) with their supervisor is needed for those disclosures to be proper and legal according to the counselor privilege statute, the LPC Act, and the ACA Code of Ethics. Other implications arise when working with clients on end-of-life issues or if a client initiates a complaint or litigation against a counselor.

To break confidentiality, counselors may

1. obtain a written release of information from the client,
2. avert the need for disclosure by ensuring that the client reports required information to third parties or agencies,
3. ask the court to reconsider the court order because of harm to the counseling relationship, or
4. disclose required information but keep the shared information to a minimum.

When disclosure cannot be avoided, the LPC must comply with the law.

The information contained herein is an overview of North Carolina laws, federal laws, and regulations. It is not intended to be a comprehensive list of all laws or regulations that govern the practice of counseling. The material is not to be taken as legal advice. Any interpretation of a statute or regulation expressed in the materials is created for educational purposes only. The NCBLPC does not issue advisory opinions, and the materials are not to be construed as such.

Resources:

§122C-52 Right to confidentiality; §90-343 Disclosure; § 8-53.8 Counselor privilege; § 122C-3.11 Definition of dangerousness; § 108A-101-103 Reporting of abuse; § 50-13.2 Parent access to records; § 7B-601 and 7B-302 GAL and DSS access to records; 21 NCAC 53.0102 Ethical standards; § 90-343 Professional Disclosure Statement; ACA Code of Ethics A.2.b, B.1.d, B.4.a, B.4.b, B.2.a-d, B.3.a-f, B.4 a-b.

Key Legal Factors:

Except in situations where disclosure is legally required, breaking confidentiality is unethical, per the ACA Code of Ethics, and illegal because the NC licensure law legislates adherence to the ACA Code. As the licensing and renewal processes require signing an agreement to abide by the ACA Code, breaking confidentiality could also be considered a breach of contract. Disclosures allowed and required by law are not unethical. LPCs must be informed about laws and changes in laws that affect counselor privilege.

Real Issues to Consider:

When disclosure is required by law and a client refuses to provide written permission, the counselor must comply with the law even if it is harmful to the counseling relationship. Regular attention to client education about confidentiality limits may prevent a negative outcome when disclosure is required. If the client is aware that certain information must be disclosed and shares the information anyway, the LPC should consider whether the client wanted the information disclosed.

The limits of confidentiality shift when dealing with other issues that are dire, but less defined. The ACA Code of Ethics accommodates disclosures for life threatening or contagious diseases (B.2.b), as well as during end-of-life issues (A.9.) However, the ethical justifications for these disclosures must be carefully weighed against the legal requirements to maintain confidentiality.

In the age of technology, confidentiality can be more easily or inadvertently compromised. More common practices such as emailing with clients, use of voicemail, managing a professional website, or using Facebook or other social networking sites all have far-reaching implications and increased risk for breaching confidentiality. These practices are best limited with clear functions and parameters established with clients in advance of their use, if they cannot be avoided altogether.

Catch 22:

The counselor risks a civil suit or a complaint if disclosure occurs and arrest or contempt of court charges if disclosure is withheld. The client may be angry and distrustful because of the disclosure but, on the other hand, how can you trust a counselor who fails to comply with the law?

A duty to breach confidentiality in the instance when a client makes credible threats to others is different than a duty to warn the intended victim. In North Carolina, there is no legal duty to warn according to the critical case of [Gregory v. Kilbride](#). In other words, there is no General Statute nor case precedent that would compel or require a counselor to warn an intended victim of a threat made by one of their clients. However, there is a legal responsibility to protect others from harm. This legal responsibility to protect others requires a breach of confidentiality to other mental health providers or legal authorities in the process of intervening on the potential of violence. Taking steps to warn an intended victim is not required by NC law - and in fact is a breach of privileged communication - but is justifiable according to our ethical codes.

Summary Statement:

Confidentiality is the cornerstone of a therapeutic relationship, but because of its complexities, it is the source for many complaints against counselors both nationally and within the state of NC. Without confidentiality, counselors cannot conduct their practices and provide interventions to their fullest extent, but the responsibilities that come with privileged communication are large and, at times, may be burdensome. Thorough informed consent and confidentiality education can provide some relief from this burden and engage clients in sharing the responsibility for protecting their own privacy.

The information contained herein is an overview of North Carolina laws, federal laws, and regulations. It is not intended to be a comprehensive list of all laws or regulations that govern the practice of counseling. The material is not to be taken as legal advice. Any interpretation of a statute or regulation expressed in the materials is created for educational purposes only. The NCBLPC does not issue advisory opinions, and the materials are not to be construed as such.

Informed consent is an event at the onset of counseling as well as an ongoing process as the need arises. All counseling professionals must balance both their clients' legal and ethical rights to have their confidentiality protected with requirements that counselors have to third parties, whether legal representatives of the court, other care providers, family members, or members of society. Ensuring a comprehensive review of confidentiality and its limits at the beginning of counseling establishes a contract under which counselors may protect themselves from lawsuits and their clients from intrusions of their privacy.

The information contained herein is an overview of North Carolina laws, federal laws, and regulations. It is not intended to be a comprehensive list of all laws or regulations that govern the practice of counseling. The material is not to be taken as legal advice. Any interpretation of a statute or regulation expressed in the materials is created for educational purposes only. The NCBLPC does not issue advisory opinions, and the materials are not to be construed as such.