



North Carolina Board of Licensed Professional Counselors

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NCBLPC Professional Brief

Content Area: Confidentiality – HIV/AIDS

Brief Overview/Description:

The ACA Code of Ethics have been codified into law in NC and is the guide for ethical conduct of LPCs. One of the codes related to Life Threatening and Contagious Diseases has special implications. While HIV/AIDS is not specifically mentioned in this code, the historical context of the date it was authored (2005) implies it was a driving factor for the code. This code seeks to preserve the autonomy of the client's information, while also ensuring that beneficence toward greater society is also upheld. It is not difficult to see other ethical principles of justice (or fairness) toward others as well as veracity (truthfulness) embedded within this specific code.

However, there are certain legal precedents and expectations that may compete with the permission to break confidentiality that this standard provides. Specifically, North Carolina has criminalized the failure of an individual to notify their sex partners of communicable diseases, including (but not limited to) HIV ([N.C. Gen. Stat. § 130A-25](#)). Despite this, LPCs are not listed among the mandated reporters under this public health law. Instead, physicians, school principals, day care and restaurant operators, laboratories and health departments are required to report (N.C. Gen. Stat. 130A-135-140). This allows flexibility, but may also lead to uncertainty as to whether breaching confidentiality under these circumstances is justifiable and beyond legal reproach. Similar to issues related to duty to warn, we *may* disclose this information without the client's consent if they refuse to do so (which would be a crime in NC) and we believe in good faith that imminent harm may result to another if we do not breach confidentiality.

Resources:

<http://www.ncbar.org/media/75105/aids.pdf>

Key Legal Factors:

Including these circumstances of communicable diseases in our Professional Disclosure Statements and entering into this agreement contractually with our clients can educate clients, protect ourselves, and mitigate any ethical or legal dilemmas within the counseling relationship. Both counselors and their clients must be aware of the expectations and circumstances under which a counselor may breach confidentiality in order to protect the public and fulfill their ethical obligations.

Real Issues to Consider:

Times have changed in regards to the medical treatment of HIV/AIDS. With more advanced understanding of the disease and invention of more effective medications, those with HIV live long, productive, and healthy lives compared to 2005 and prior. Since we are counseling and not medical professionals, how can we determine imminence of risk or even confirm or educate about this diagnosis? Although we must understand our responsibilities as counselors under these circumstances, we must also be cautious to avoid practicing law or medicine by offering this type of advice to our clients.

Catch 22:

In informing clients of the possibility and circumstances under which you as a counselor may disclose to others of their HIV or other communicable disease status, care must be taken to ensure that we are in no way removing or infringing upon their

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right to privacy or feelings of autonomy. Furthermore, clients may withhold disclosure if they are concerned over re-disclosure or the limits of their confidentiality.

LPCAs, LPCs, and LPCSs must constantly balance the client's legal right to disclose in a counseling relationship under the confidence that the information is privileged information with the ethical obligation to ensure justice, beneficence, and veracity is maintained for other citizens of NC as well.

Summary Statement:

Although similar to a perceived "duty to protect", working with clients who have communicable diseases has special considerations. LPCAs, LPCs, and LPCSs may be justified in breaching confidentiality, but not without engaging in other steps first. A professional counselor must initiate a discussion of this topic at intake via the Professional Disclosure Statement on the policies and practices if a client were to disclose communicable diseases and behaviors that put others at risks. Furthermore, advising the client about their legal and ethical responsibilities, coordinating care with other medical and legal professionals, and working to balance the needs of the clients with the needs of the community are among the essential actions a counselor must take to ensure they are conducting their practice according to the standards of ethics. Similar to issues related to duty to warn, we *may* disclose this information without the client's consent if they refuse to do so (which would be a crime in NC) and we believe in good faith that imminent harm may result to another if we do not breach confidentiality.

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