CONFIDENTIALITY IN PRACTICE: A DEEPER DIVE

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envision hope

Objectives

- Understand Key Legal and Ethical Principles
- Identify Confidentiality Violations
- Apply Best Practices for Protecting Confidentiality
- Navigate Confidentiality Challenges Through Case Studies

Understand Key Legal and Ethical Principles

The Ethical Obligation to Maintain Client Confidentiality:

Definition: Client confidentiality is the ethical duty of professionals to protect sensitive information shared by clients, ensuring it is not disclosed without the client's consent, except in cases of legal or ethical exceptions.

Ethical Framework: Professionals must follow ethical guidelines from relevant associations to protect client privacy and trust. Breaching confidentiality can result in damaged trust, harm to the client, and legal repercussions for the professional.

Duty of Care: The ethical duty extends to not just protecting information but also ensuring that it's used only in ways that directly benefit the client's treatment or other professional obligations.

(AMA, 2021 APA 2017, NASW 2017)

APA Ethics Code & Confidentiality: Key Standards for Psychologists

- **Confidentiality = Primary Obligation**
  APA Ethics Code prioritizes the protection of client information across all contexts.
- **Standard 4.01 – Maintaining Confidentiality**
  Psychologists must take **reasonable precautions** to protect confidential information, regardless of the medium used (e.g., in-person, email, telehealth).
- **Standard 4.02 – Informed Consent & Limits**
  Clients must be informed of the **limits of confidentiality at the outset** of the professional relationship, especially when using **telehealth**.
- **Standard 4.05 – Disclosure**
  Disclosure of confidential information is only permitted **with informed consent** or when **legally required/permitted** (e.g., to protect the client or others from serious harm).

(APA, 2017, Legal Information Institute, Nevada Psychology Internship Consortium)

NASW Code of Ethics: Confidentiality in Social Work

- **Client Privacy is Paramount**
  Social workers have a duty to protect client information and only access what is necessary.
- **Standard 1.07(a) – Right to Privacy**
  Respect clients' privacy by **only soliciting private information** when it is **essential to services.**
- **Standard 1.07(c) – Protecting Confidentiality**
  Do **not disclose** client information unless it is **necessary to prevent serious, foreseeable, and imminent harm** to the client or others.
- **Standard 1.07(j) – Legal Protections**
  If ordered by a court to disclose confidential information **without client consent**, the social worker should **request modification or withdrawal** of the order if disclosure could **harm the client.**

(NASW, 2021)

ACA Code of Ethics: Confidentiality for Counselors

- **Confidentiality is a Core Value**
  Counselors are ethically and legally obligated to protect client information.
- **B.1.c – Respect for Confidentiality**
  Counselors must protect the confidentiality of **current and prospective clients** and only disclose with **informed consent** or a **clear legal/ethical justification**.
- **B.2.a – Exceptions to Confidentiality**
  Confidentiality **may be broken** when disclosure is required to prevent **serious, foreseeable harm** or to meet **legal mandates**.
- **Additional Duties**
  Counselors must:

  Explain **limits of confidentiality** during informed consent

  Use secure methods to **store and transmit client records**

PCB Code Of Ethics

- **Rule 5.7:** A certified professional or applicant shall not reveal confidential information obtained as the result of a professional relationship, without the prior written consent from the recipient of services, except as authorized or required by law nor shall they access confidential information for which they are not entitled or authorized to do so.
- **Rule 5.8:** The certified professional or applicant shall not permit publication of photographs, including social media, disclosure of client names or records, or the nature of services being provided without securing all requisite releases from the client, or parents or legal guardians of the clients.
- **Rule 5.11:** A certified professional or applicant shall adhere to all state (which vary from state to state) and/or federal regulations for providing distance services.
- **Rule 5.12:** A certified professional or applicant shall ensure that any electronic means used in the delivery of distance services comply with current regulatory standards including confidentiality.

(PCB clinical code 2023)

Impact of Confidentiality on Client Trust and Treatment Outcomes:

Trust: Requires professionals to protect client information and ensure it is used solely for the benefit of the client's treatment or professional obligations, maintaining their well-being.

Open Communication: They are more likely to share essential details, leading to more accurate diagnoses and effective treatment plans.

Positive Outcomes: Fosters greater client engagement, cooperation, and satisfaction with services, ensuring clients are open and share important details without privacy concerns.

(ACA, 2014, APA 2017, NASW 2017)

The Balance Between Confidentiality and Other Legal Duties

- **Legal Exceptions**: A risk of harm to the client or others (e.g., suicidal ideation, abuse, or a threat to public safety), professionals may be required by law to disclose information to relevant authorities.

(ACA, 2014, APA 2017, NASW 2017)

- **Rule 6.1: When a condition of clear and imminent danger exists that a client may inflict serious bodily harm on another person or persons, a certified professional or applicant shall, consistent with federal and state confidentiality laws, take reasonable steps to warn any likely victims of the client's potential behavior.**

- **Rule 6.2: When a condition of clear and imminent danger exists that a client may inflict serious bodily self-harm, the certified professional or applicant shall, consistent with federal and state confidentiality laws, take reasonable steps to protect the client.**

Mandatory Reporting

1. Legally obligated to report specific information, like child or elder abuse or threats of harm, to protect individuals from potential harm.

2. Rule 6.3: All certified professionals and applicants are mandated reporters as defined by state and federal law.

3. Balancing Act: Professionals face the challenge of balancing confidentiality with the need to prevent harm, while also addressing conflicts with client autonomy by clearly explaining the limits of confidentiality.

(PCB clinical code 2023)

Relevant Laws and Regulations in Pennsylvania: HIPAA & Behavioral Health

Introduction to HIPAA

- The **Health Insurance Portability and Accountability Act** (HIPAA) was enacted in 1996.
- It establishes national standards for the protection of health information.
- HIPAA safeguards **Protected Health Information (PHI)** from unauthorized access or disclosure.

(CMS 2021, HHS 2022)

Applicability to Behavioral Health Professionals

(HHS 2020)

Minimum Necessary Standard

•Even when disclosure is permitted, providers must only share the **minimum necessary** information to fulfill the intended purpose.

•This **"need-to-know"** principle is fundamental to HIPAA and professional ethics.

Client Rights Under HIPAA

•Clients have the right to:

- **Access their own medical records**
- **Receive a Notice of Privacy Practices**

•Failure to comply can lead to penalties.

Extra Protections for Psychotherapy Notes

•HIPAA treats most health data equally **except psychotherapy notes**.

•These notes are kept separate from the medical record and **cannot be shared without explicit patient authorization** (with few exceptions).

•This honors the **uniquely sensitive nature** of therapeutic discussions.

Permitted Disclosures Without Authorization

HIPAA allows limited disclosures without patient permission:

•To prevent **serious and imminent harm** (duty to protect)

•When **required by law** (e.g., child abuse reporting)

Federal Law – 42 CFR Part 2 (Substance Use Records)

- **Federal regulations (42 CFR Part 2)** provide **additional confidentiality protections** for Substance Use Disorder (SUD) treatment records.
- Applies to **federally assisted programs** and covers **any records that identify a patient** as having a SUD in a treatment setting.
- Established by **42 U.S.C. §290dd-2**, this creates a **"double layer" of privacy** on top of HIPAA.
- Disclosure is tightly restricted and requires **specific written consent** from the patient.

(U.S. Department of Health & Human Services)

Stricter Consent Requirements Under 42 CFR Part 2

42 CFR Part 2 requires written patient consent for nearly all disclosures of SUD treatment information.

A generic medical release is not sufficient. The consent must include all 9 required elements to be valid:

(SAMHSA, 2020, U.S. Code of Federal Regulations. 2023)

The 9 Required Elements of Part 2 Consent:

1. **Name of the patient**

2. **Specific name(s) or title(s)** of the individual(s) or organization(s) permitted to disclose the information

3. **Specific name(s) or title(s)** of the individual(s) or organization(s) permitted to receive the information

4. **Description of the information** to be disclosed

5. **Purpose** of the disclosure

6. **Statement of the patient's right to revoke** consent at any time

7. **Date, event, or condition** upon which the consent will expire

8. **Signature of the patient** (or authorized representative)

9. **Date** of the patient's signature

(SAMHSA, 2020, U.S. Code of Federal Regulations. 2023)

Limited Exceptions to Consent Under 42 CFR Part 2

Disclosures Without Consent Are Very Limited

Medical Emergency

When the patient faces an **immediate threat** and consent **cannot** be obtained.

Disclosure must be documented and limited to the emergency situation.

Court Order

A judge may authorize disclosure, but **strict criteria and procedures** apply under §2.64.

The order must specify the **limited scope, purpose, and recipients**.

Qualified Audit or Program Evaluation

Only for evaluating program effectiveness, not for patient care or legal action.

Mandated Reporting of Child Abuse or Neglect

Part 2 permits disclosures required by **state law** in cases of suspected abuse.

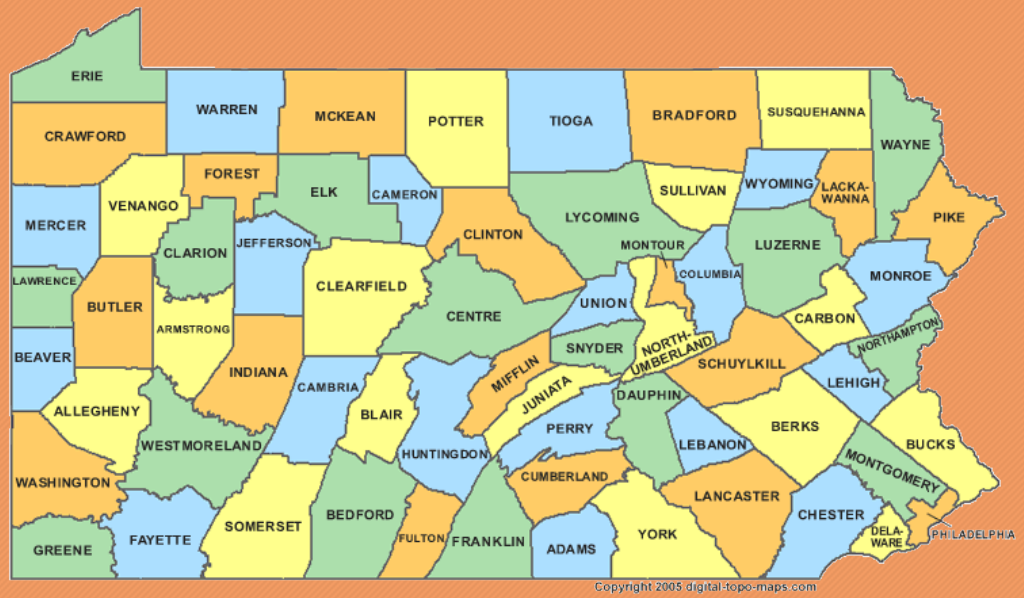
(Electronic Code of Federal Regulations, SAMHSA, 2020)

Penalties, Notice & Security Requirements under 42 CFR Part 2:

- **Legal Penalties for Violations:**
  Part 2 violations now carry **civil and criminal penalties** aligned with HIPAA — including substantial fines and potential **imprisonment for willful breaches**.
- **Mandatory Re-disclosure Notice:**
  Any disclosure made under Part 2 **must include** a written statement that **prohibits further disclosure** without specific consent.
- **Required Security Measures:**
  Programs must **lock and encrypt** SUD records, following safeguards comparable to the **HIPAA Security Rule** to prevent unauthorized access.

((Electronic Code of Federal Regulations [eCFR], 2024, Legal Information Institute, 2024 U.S. Department of Health & Human Services [HHS], 2024)

Pennsylvania Confidentiality Laws



(FindLaw., 2024)

Key Points – 50 P.S. §7111:

- Pennsylvania law provides strong protections for mental health treatment records.
- All records must be kept confidential and cannot be released without the person's written consent, except in very limited circumstances.

Permitted Exceptions Include:

1. To professionals directly providing treatment
2. To the county administrator (for oversight)
3. To a court in MHPA proceedings (e.g., involuntary commitment)
4. As required by federal law for federally-operated programs

- Privileged communications (between client and mental health professional) are strictly protected — even these exceptions do not override privilege without consent.
- MHPA reinforces ethical standards by generally forbidding disclosure outside the treatment team without consent.

Minor Consent & Confidentiality in Pennsylvania (Act 65 of 2020)

(National Center for Youth Law., 2023, Pennsylvania General Assembly. 2020)

- **Minors Aged 14+ can consent to outpatient mental health treatment on their own.**
- **Who Controls the Records?**
  - If the **minor consents**, the **minor controls** access to their records.
    ➤ Provider must get the **minor's permission** to share with parents/guardians.
  - If a **parent consents**, they have a right to information **necessary for informed consent** (e.g., diagnosis, treatment plan, risks).
    ➤ This doesn't mean access to **every therapy detail**.
- **Best Practice for Providers:**
  - Share general updates (e.g., symptoms, medications, progress).
  - Do **not disclose sensitive personal disclosures** unless needed for treatment decisions.

Pennsylvania Drug & Alcohol Confidentiality Law (Updated under Act 33 of 2022)

- Original Standard – 71 P.S. §1690.108:
  Pennsylvania's law historically mirrored 42 CFR Part 2, requiring patient consent for any disclosure of substance use disorder (SUD) treatment records.

- Recent Update – Act 33 of 2022:
  Now aligned with federal law, Pennsylvania no longer imposes stricter state-level limits beyond 42 CFR Part 2.

- Superseded Regulation – 4 Pa. Code §255.5:
  This regulation formerly restricted what could be shared, even with consent.
  ➤ It has now been repealed, enabling more flexibility consistent with federal rules.

- Bottom Line:
  ➤ Consent is still required, but PA has removed additional barriers to facilitate integrated care and maintain patient privacy.

(Commonwealth of Pennsylvania. 2022, National Center for Youth Law. 2023)

Mandated Reporting & Duty to Warn in Pennsylvania

Mandated Reporting – Child & Elder Abuse

- **All clinicians** are **mandated reporters** in PA.
- If **child abuse** is suspected, it **must be reported to ChildLine.**
- **Confidentiality is waived** for mandated reporting; this is **not considered a breach.**
- **Similar reporting duties** apply to suspected **elder abuse.**

(Pennsylvania Code & Bulletin. (2024).

Duty to Warn - Emerich v. Philadelphia Center (1998)

(Studicata., 2023 Pennsylvania Supreme Court., 1998)

- A courts recognize a duty to warn identifiable third parties.
- Applies when a patient makes a specific and immediate threat of serious bodily harm and is likely to carry it out. *(Emerich v. Philadelphia Center for Human Development, 554 Pa. 209 (1998)*
- Professionals may (and should) warn the victim or authorities.
  ➤ In these cases, protecting life overrides confidentiality.

Case Study – Duty to Warn in Pennsylvania

Case Scenario:

You are a licensed therapist in Pennsylvania working with a 19-year-old college student named Chris. During a recent session, Chris became visibly agitated while discussing his roommate, Alex. He says:“If he steals my stuff one more time, I swear I’ll stab him in his sleep. I already bought the knife.”Chris does not back down from the statement when questioned. He appears serious and refuses to contract for safety. You are unsure whether he intends to act, but the threat is specific, targeted, and involves a clear plan.

Discussion Questions:

1. Does this scenario meet the criteria for breaching confidentiality under the *Emerich* standard?
2. What steps should you take immediately to protect both parties?
3. Who can/should you notify, and what information can be shared legally?
4. How do you document this decision in your clinical record?

Answers:

1. Emerich Standard – Does It Apply YES

•The threat is **specific** ("stab him"), **immediate** ("next time"), and directed at a **clearly identifiable person** (Alex).

•The client has shown intent (purchased weapon) and refused to de-escalate.

•Under *Emerich*, you have a **duty to warn**.

2. Immediate Steps:

•Conduct a **threat assessment** and consult with clinical supervisor, if applicable.

•**Notify the intended victim (Alex)** or appropriate campus/public safety.

•**Consider emergency hospitalization** if imminent danger is assessed.

3. Notifications & Legal Sharing:

•You may legally share **only the information necessary to protect the third party**. ➤ For example: the nature of the threat, identity of the person at risk, and any credible risk factors.

•You are protected under Pennsylvania law when disclosing in **good faith** to prevent harm.

4. Documentation Tips:

•Record the threat **verbatim**.

•Include your clinical impressions, rationale for decision, actions taken, and any consultations.

•Clearly state the **legal basis** (*Emerich v. Philadelphia Center*) and the ethical justification for the breach.

Identify Confidentiality Violations:

What Constitutes a Breach

Unauthorized Disclosure - What It Is and Why It Matters

Definition :Unauthorized Disclosure = Any sharing of client-identifying information without: The client's written informed consent, or A valid legal or ethical exception

Examples of Unauthorized Disclosure:

Telling a friend or family member about a client's situation

Confirming someone is or was your client to an inquirer (even if well-meaning)

Discussing cases in hallways, elevators, or public spaces

Accidentally revealing identifying info on social media or during training

Important Ethical Standard:" Social workers should not discuss confidential information in any setting unless privacy can be ensured."— NASW Code of Ethics, Section 1.07(i)(National Association of Social Workers, 2021)

Key Takeaway: Even small slips — like confirming a client's name or diagnosis — can violate ethical codes and legal confidentiality protections.

(NASW, 2021)

Common Scenarios of Confidentiality Violations

1. Inadvertent Breaches: Talking in public spaces (elevators, hallways, cafeterias)Leaving detailed voicemails on wrong numbers Emailing or faxing client info to incorrect recipients forgetting to BCC multiple client emails

2. Technology Pitfalls: Texting or emailing clients from unencrypted or personal devices Posting subtle client info on social media (even without names)Losing unencrypted devices (e.g., laptop, USB) containing PHI

3. Internal Breaches“: Snooping” into client files without treatment relevance Example: Hospital employee criminally charged for unauthorized access

4. Failure to Obtain Consent: Sharing mental health records with another provider without written authorization Under PA law and 42 CFR Part 2, consent is typically required

5. Over-Disclosure: Sharing more information than necessary E.g., sending a full psychiatric evaluation when only eligibility proof is needed Violates the “minimum necessary” standard.

(HHS, 2023, Info Risk Today, 2022, NASW, 2021, SAMHSA, 2024)

Signs & Consequences of Confidentiality Breaches

- Consequences for Clients
- Confidentiality breaches can lead to: Embarrassment or social stigma Harm to personal relationships or employment Loss of trust in providers Premature treatment termination due to perceived lack of safety
- Key Reminder: Even small, accidental disclosures can seriously impact a client's well-being, especially in behavioral health where stigma is high.

Recognizing a Breach

A breach occurs when **confidential client information is accessed, shared, or exposed without proper authorization.**

Common Warning Signs:

•A client reports others know about their treatment without consent

•Clinical documents found in public spaces (e.g., left on a printer tray)

•Audit logs reveal unauthorized access to client records

•A staff member realizes they **accidentally disclosed** sensitive information

(U.S. Department of Health & Human Services, 2023, Social Work Today, 2022)

Legal & Professional Consequences of Confidentiality Breaches

- 1. Ethical & Licensing Consequences
- Violating confidentiality can lead to:
- Ethics complaints to boards (APA, NASW,PCB, etc.)
- Sanctions or licensure loss for misconduct
- In PA, failure to report child abuse is a violation; however, sharing private info without cause is also considered misconduct

2. HIPAA Enforcement Penalties

Investigated by the Office for Civil Rights (OCR)

Penalties:

Training for minor issues

Fines up to $2 million+ for serious, willful violations

Criminal charges for misuse of PHI (e.g., snooping or selling info) Example: An employee who accessed 500+ records without cause faced up to 10 years in prison

3. Civil Liability & Legal Claims

Clients may sue for emotional distress, reputational harm, or job loss

Breach of confidentiality is a recognized tort in PA

Illegally obtained info may be inadmissible in court, and the professional may face malpractice or contempt claims

(HIPAA Journal, 2024, InfoRiskToday, 2023 PA Civil Law 2024))

Real-World Confidentiality Breaches – Lessons from the Field

- High-Profile Examples of Violations

1. **Psychologist Publishing Client Info**

- A psychologist wrote about a former client in a memoir, claiming to have de-identified the case.
- The client recognized herself, filed a lawsuit, and won a settlement.
- The psychologist was found to have violated ethical confidentiality standards.

2. **Group Therapy Email Breach** – Philadelphia

- A behavioral health clinic accidentally cc'd all clients in a group therapy roster email.
- This revealed each participant's identity to others in the group.
- Triggered a formal breach notification under HIPAA's Breach Notification Rule and harmed the clinic's reputation.

(APA Ethics Code, 2017, HHS, 2023)

Apply Best Practices for Protecting Confidentiality

Best Practices – Clinical Communication & Confidentiality

1. Informed Consent & Education: Clearly explain confidentiality and its limits at intake. Revisit as needed and provide a HIPAA Notice of Privacy Practices. For minors: clarify confidentiality boundaries with youth and parents

2. Obtain Proper Authorizations: Always use a valid, detailed Release of Information (ROI), For SUD info, ensure 42 CFR Part 2 compliance (e.g., named recipient, expiration, limited scope), In PA, if a minor consents, the minor controls the record.

3. Need-to-Know & Minimum Necessary: Only access or share info if you are directly involved in care, Limit disclosure to what is strictly necessary – never over-share.

4. Case Consultation Protections: Use composite or disguised info unless client consent is given, Follow APA 4.06 & NASW 1.07(f): only share ID info when necessary.

5. Avoid Informal Discussions: Never talk about clients in hallways, break rooms, or public spaces If approached by others (e.g., family):➤ “I can’t share information without written permission.”

(APA Ethics Code, 2017, NASW Code of Ethics, 2021, Cornell Law School. 2024)

Best Practices - Records Management

1. Secure Storage: Lock paper records in secure cabinets/offices, Always log out of client databases, Shred paper records; properly delete electronic files.

2. Encryption & Electronic Safeguards: Use encryption for texts/emails containing PHI, Avoid storing data on personal devices; enable remote wipe if used, Use secure agency messaging portals.

3. Transporting Information: Use locked briefcases or car trunks for physical files, Never leave laptops or client docs in cars overnight, For telehealth, verify privacy: no smart speakers or bystanders.

4. Access Controls: Limit access to only authorized personnel, Use individual logins and audit logs, Reinforce: “curiosity is not a reason to access records”

5. Breach Response Plan: Notify supervisor and privacy officer immediately, Attempt mitigation (e.g., recall emails), Follow HIPAA Breach Notification Rule, Inform client promptly and document everything.

(Electronic Code of Federal Regulations. 2024, HHS 2021, NASW, 2023)

Best Practices – Ethical Decision-Making in Confidentiality

Core Ethical Practices for Confidentiality Challenges

1. Consultation & Supervision

- Seek **supervision or legal consultation** in ethically complex situations
- Avoid oversharing client details during consultation
- Ethical codes encourage supervision
- Use an **internal chain of command** (e.g., clinical supervisor, privacy officer)

(APA, 2017, NASW, 2021, Kipnis, K., & King, N. 1989)

Best Practices – Ethical Decision-Making in Confidentiality

2. Use an Ethical Decision-Making Framework

- Identify **stakeholders**
- Review relevant **laws and ethical codes**
- Generate and evaluate possible actions
- Document your process
- Example Model: **Dialectical Principlism** (weighs duties to client vs. public safety)

(APA, 2017, NASW, 2021, Kipnis, K., & King, N. 1989)

Ethical Model - Dialectical Principlism

What It Is: A structured ethical model that helps practitioners weigh conflicting duties in complex cases—especially when confidentiality is in tension with other obligations (e.g., protecting others from harm).

Four Core Ethical Principles: Autonomy – Respecting the client's right to make informed choices Beneficence – Promoting the client's well-being Nonmaleficence – Avoiding harm Justice – Acting fairly and lawfully

How It Works: Identify which principles are in conflict (e.g., autonomy vs. nonmaleficence) Consider contextual factors (laws, setting, client vulnerability, societal risks) Engage in reflective dialogue (consult with colleagues, ethics codes, legal counsel) Choose the action that minimizes harm and honors core duties

Document the reasoning process

(Kipnis, K., & King, N. M. P. 1989)

Example: You learn a client with SUD intends to drive while impaired.
Steps 1 & 2

1. Identify the Ethical Dilemma

- **Conflict:** Client's right to confidentiality vs. your duty to prevent foreseeable harm to others.
- **Question:** Should you breach confidentiality to warn someone or intervene?

2. Gather Relevant Information

- Legal: **42 CFR Part 2** + **HIPAA** + **state duty to warn laws**
- Ethical: Review codes (e.g., **APA**, **NASW**, **ACA**)
- Client status: Impaired, may cause imminent harm

(Kipnis, K., & King, N. M. P. ,1989)

Steps 3 & 4

3. Identify Stakeholders

•The **client**

•Potential **victims** (public, pedestrians, passengers)

•**You** as the provider (duty, liability, ethics)

•Possibly **law enforcement or family**

4. Consider Core Ethical Principles

Autonomy: Client's right to privacy

Nonmaleficence: Preventing harm to others→ You may determine that breaching confidentiality is ethically justified if risk is serious and imminent.

Beneficence – Promoting client and community safety

Justice – Acting fairly under the law and ethical code

(Kipnis, K., & King, N. M. P. ,1989)

Steps 5 & 6

5. Explore Possible Actions

- Do nothing (protect confidentiality)
- Try to **persuade the client** to wait, call a ride
- **Breach confidentiality** under ethical/legal exceptions
- Call a supervisor or legal counsel

6. Consult & Reflect

- Consult a **supervisor**, **ethics board**, or **privacy officer**
- Review state laws on duty to warn and emergency exceptions
- Apply the **principle that best minimizes harm** (Kipnis, K., & King, N. M. P. ,1989)

Steps 7 & 8

7. Decide and Act

•If risk is **imminent and serious**, you document the rationale and **notify appropriate party** (e.g., crisis team, police, emergency contact)

•Offer client further support afterward

8. Document the Decision-Making Process

•What info was shared, with whom, and why

•Ethical and legal basis

•Supervisory consultation

•Client reaction and follow-up plan

(Kipnis, K., & King, N. M. P. ,1989)

Best Practices – Ethical Decision-Making in Confidentiality

3. Document Everything

- Clearly note:
  - What was disclosed
  - To whom
  - Why (cite law/ethics code)
  - Client consent or refusal
- Good documentation protects you legally and ethically

(APA, 2017, NASW, 2021, Kipnis, K., & King, N. 1989)

Best Practices – Ethical Decision-Making in Confidentiality

4, **Client-Centered Confidentiality**

•Integrate confidentiality into **treatment planning**

•Ask clients regularly who they are comfortable involving

•Let clients guide disclosures when legally appropriate

5. **Build a Culture of Confidentiality**

•Conduct regular staff training

•Display visual reminders

•Gently correct informal breaches (e.g., hallway conversations)

(APA, 2017, NASW, 2021, Kipnis, K., & King, N. 1989)

Navigating Confidentiality Challenges Through Case Studies

Case Scenario 1:

You are a therapist working with a 14-year-old girl named "Jane" who has been struggling with depression, anxiety, and relationship issues. During a therapy session, Jane discloses to you that her ex-boyfriend, with whom she was in a consensual romantic relationship, had taken explicit photos of her and the two of them had shared these images through Snapchat while they were together. Jane reveals that after their breakup, her ex-boyfriend sent the explicit images to several other students at her school, leading to a police investigation. Jane mentions that law enforcement is already involved in the matter.

.

You, as a mandated reporter, must now navigate your legal obligations under Pennsylvania law, including issues of mandated reporting, confidentiality, and the potential involvement of drug and alcohol treatment confidentiality.

Mandated Reporting Law (CPSL – 23 Pa. C.S. § 6301 et seq.):

- Therapists are **mandated reporters** of child abuse.
- Child abuse includes **non-accidental injury, sexual abuse, exploitation** of a child under 18.
- **Distributing explicit images** of a minor without consent = **sexual exploitation**, even if the minor originally sent them.

Application to Jane’s Case:

- Jane is under 18; explicit photos were **shared without her consent** by an ex-boyfriend.
- This constitutes **sexual exploitation** under PA law.
- You are **required to report** to ChildLine or law enforcement.

Reporting Steps:

1. **Assess Jane’s safety**
2. **Make a report** to ChildLine or police
3. **Document** disclosure details—age, image nature, parties involved
4. **Do not delay reporting due to lack of consent**—reporting is mandatory

Confidentiality and Drug & Alcohol Considerations

Confidentiality vs. Legal Duty:

- **Confidentiality (HIPAA, PA MHPA)** is critical—but not absolute.
- **Mandated reporting overrides** confidentiality in abuse cases.
- You must still report even if Jane wishes to keep it private.

Mental Health & SUD Records:

- MH treatment records protected by **Mental Health Procedures Act – 50 P.S. § 7111**
- SUD records protected by **42 CFR Part 2**
- However, **mandated reporting and safety threats override** these protections
- Jane's situation = **legal obligation > confidentiality**

Balancing Act:

- Be transparent with Jane about limits of confidentiality
- Explain why you must report and how you'll support her
- Build trust through clarity, not secrecy

(HHS, 2021 42 CFR part 2, 50 P.S. § 7111 - Mental Health Procedures Act)

Ethics and Therapeutic Support

Ethical Responsibilities:

- Therapists have a **duty to protect** vulnerable clients
- Jane's situation involves **emotional trauma, risk to safety**, and **loss of control**
- Support extends beyond reporting—it includes **emotional care, psychoeducation, and safety planning**

Clinical Support Strategies:

1. **Normalize and validate** Jane's experience
2. Provide **psychoeducation** about sexting and legal risks
3. Assist with **emotional regulation and shame processing**
4. Develop a **safety plan** (school, home, social)
5. **Collaborate with legal and school personnel** as needed

Building Resilience:

- Reinforce her **strength in speaking up**
- Maintain ongoing support **through legal and recovery processes**

(APA, 2017)

Case Scenario 2:

Andre is a thirty-year-old client who has been attending therapy for anger management. In a heated session, Andre says, *“I’m going to make my former boss pay for what he did. I know where he lives and one day I’m just gonna set things right with my gun.”* He then details a plan to go to the boss’s house. He asks you not to tell anyone, then leaves the session abruptly. You are aware that Andre’s former boss, John, fired him a month ago. Andre has no known history of violence, but this threat seems specific. You’re extremely concerned it’s credible

Can you break confidentiality to protect the third party?

What are your legal and ethical obligations?

Duty to Warn vs. Client Confidentiality

Ethical and Legal Considerations

Relevant Ethics Codes:

•**ACA Code B.2.a:** Permits disclosure to prevent *"serious and foreseeable harm."*

•**NASW Code 1.07(c):** Allows disclosure to *"avert serious and foreseeable harm to an identified person."*

Pennsylvania Law – *Emerich v. Philadelphia Center for Human Development (1998)*:

•Clinicians have a **duty to warn identifiable victims** when a client makes a *specific and immediate threat of serious bodily harm*.

•Key Principle: **When safety is at risk, breaching confidentiality is not unethical—it is ethically and legally required.**

(ACA, 2014, NASW, 2021, APA, 2017)

Action Steps to Consider

•**Who to warn?** The identified victim (former boss), law enforcement, or both.

•**How to warn?** Limit disclosure to **essential info** only: client's name, nature of threat, and necessary protective details.

•**Document**: Clearly log threat, consultations, and actions taken.

•**Aftermath with Client**: In Andre's next session, explain **why confidentiality was breached** (safety), and work to **repair the therapeutic alliance**.

Case Scenario 3:

Maria is a 16-year-old client seeing you (a licensed social worker) for therapy, self-referred for anxiety and family issues. She consented to treatment herself under PA law. In sessions, Maria reveals she is questioning her sexual orientation and has a girlfriend, but she is afraid to tell her parents due to their strict beliefs. She also discusses some depression and occasional thoughts of self-harm (no active plan or intent). Maria's mother knows she's in counseling and occasionally asks how it's going, but Maria has not allowed you to share details. One day, Maria's mother calls you, upset: *"I feel like I'm being kept in the dark. I want to know what's going on with my daughter in therapy. Is she okay? What is she telling you?"*

How do you handle the mother's request while respecting Maria's confidentiality?

What can you legally and ethically disclose?

Minor Confidentiality vs. Parental Rights

Legal Context – Pennsylvania Law

•Under **PA Act 65**, minors **age 14 and up** may consent to **outpatient mental health treatment**.

•If Maria **initiated treatment at 16**, **she holds the confidentiality privilege** to her records.

•Without her consent, you **cannot share therapy content** with her mother—unless there's an imminent risk.

Ethical Standards – NASW 1.07(f)

•Social workers should establish **clear agreements on confidentiality** when working with minors and families.

•If this wasn't done at intake, now is the time to clarify roles and expectations.

Best Practice

Encourage Maria to allow limited, general communication with her mother if she's comfortable:

"Maria is safe and receiving support for normal adolescent challenges."

Do not disclose sensitive details (e.g., sexual orientation) without Maria's explicit permission.

Limits of Confidentiality

•Only breach confidentiality if there is **imminent danger** (e.g., suicidal behavior with a plan).

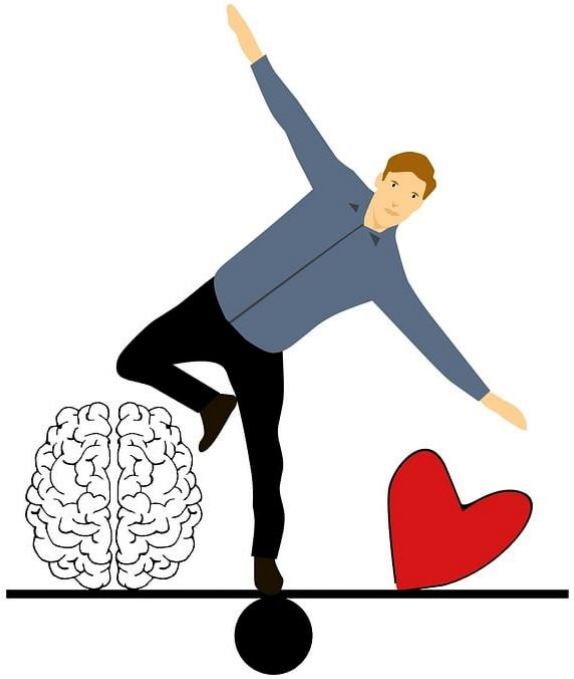
•In this case, Maria's disclosures **do not meet that threshold**.

(Youth Law Center. 2023, PA General Assembly. 2004, ,NASW, 2021)

Balancing Law and Family

Explain the law respectfully to the mother:

“Maria has legal rights to privacy in her care. I always encourage teens to involve their parents, and I’m helping her navigate that safely.”



Case Scenario 4 :

A community mental health clinic has recently started using an electronic health record (EHR) system. One of the clinicians, Sam, sometimes works from home. One evening, Sam downloads several client evaluation reports onto a personal laptop to work on treatment plans. The files are not encrypted. That laptop gets stolen from Sam's car. Separately, at the same clinic, a receptionist inadvertently sent an appointment reminder email CC'ing multiple clients at once, instead of BCC, revealing all the recipients' email addresses to each other.

What should the clinic do in each case?

What best practices were overlooked, and what are the ethical/legal implications?

HIPAA Breaches and Ethical Responses

1. Lost/Stolen Laptop – Sam's Case

•Unencrypted laptop with client reports = **likely HIPAA breach.**

•**Breach Notification Rule** requires:
➤ Notify affected clients **without unreasonable delay** (within 60 days).
➤ Report to **HHS** if multiple clients are impacted.

•**NASW 1.07(o):** Must inform clients if unauthorized access occurs.

Best Practices Moving Forward:

•Encrypt devices

•Use remote wipe capabilities

•Train staff on secure PHI handling

2. Email Blunder – Receptionist's Case

•CC'ing clients exposed identities (minimal info breach).

•**Treat as a security incident** and evaluate if notification is needed.

•Staff must use **BCC or patient portals** for mass communications.

System Improvements:

•Default BCC settings or

•Use HIPAA-compliant mass email solutions

(HHS, 2022, NASW. 2021)

Ethical and Legal Takeaways

Transparency required: Inform clients promptly about breaches.

- **Prevent future errors:**
  - ➤ Stronger policies
  - ➤ Encryption requirements
  - ➤ Culture of immediate error reporting
- **Opportunity to Build Trust:**
  - ➤ Honest communication
  - ➤ Swift remediation (e.g., apologies, corrective actions)

Questions???

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