

CONFIDENTIALITY IN PSYCHOTHERAPY

What a client tells a therapist has always been treated as private. Our society recognizes that this confidentiality is the foundation of trust we must have for therapy to be effective. However, the situation is not so simple that I can promise you everything you tell me will never be revealed to anyone else. It becomes complicated because there are instances when the law requires me to tell others, as well as some other limitations on our confidentiality. We need to discuss these hypothetical scenarios so there are no misunderstandings and no incorrect assumptions. It is my goal as your therapist for us both to be as clear as we can be about the limits of confidentiality. Because you can't unsay what you have told, you must know about these rules at the beginning of treatment so you don't disclose something you wish you had kept secret. These are important issues, so please read these pages carefully. We can then discuss any questions or concerns you might have.

As you know, what you tell me as a professional therapist is almost always confidential. That is, my professional ethics prevent me from telling anyone else what you told me (unless you give me permission, in writing, to tell them). Furthermore, the law prevents me from telling anyone else. These rules are the way our society recognizes and supports the privacy of what we talk about. However, there are a few rare exceptions to our confidentiality that I will now describe.

A. There are some legal and ethical rules I must obey which say that I must not keep some information confidential.

1. There are laws written to protect persons from harm when, in a therapist's professional judgment, there is a danger to those persons from a client.

a. If I come to believe that you are threatening serious harm to another person, I am required to try to protect the other person or persons. In that case I may have to tell the intended victim, and the police, or perhaps seek your hospitalization. Similarly, if you threaten or act in a way which is very likely to harm yourself, I may have to seek hospitalization for you, or to call your family members or others who can help protect you. If such a situation does come up I will fully discuss the situation with you before I do anything, unless there is a very good reason not to. In addition, my personal philosophy is such that I believe that an HIV+ person who, knowing their HIV status, chooses to engage in sexual contact (whether engaging in 'protected' or 'non-protected' sex) without first divulging their HIV status falls under this paragraph as being considered to threaten the life and well-being of another person. It is also a felony in South Carolina. If necessary, I will assist you in contacting the Health Dept. to implement the partner notification process (which does not result in your identity being divulged to the party at risk).

b. In an emergency, where your life or health is in immediate danger, I may release to another professional information which would protect your life, without your permission if I cannot get it. If I do so, I will discuss this with you as soon as possible afterwards.

c. If I believe or suspect that a child, an elderly person, or a disabled person is being abused (by your neglect, assault, battery or sexual molestation), I must file a report with the appropriate state agency. I do not have any authority to investigate further into the situation (The agency would investigate).

d. In these situations, I would only reveal the least amount of information necessary to protect the other person and not disclose everything you have told me.

e. If any of these situations might be an issue for you, please let us discuss the legal aspects in detail and do this before you tell me any information on these topics.

B. In general, if you get involved in court proceedings, your records should be considered confidential; however, there are some situations where the judge may require me to testify because the judge believes the

court needs my information to make a good decision:

1. In child custody or adoption proceedings where your suitability as a parent is questioned or in doubt, and/or in cases where a Guardian ad Litem has been assigned.

2. Where your emotional, mental or psychological condition is important information needed for a court's decision.

3. During a malpractice case or a disciplinary board hearing against a therapist.

4. In a civil commitment hearing where you might be admitted to a psychiatric hospital.

5. When you are seeing me for court-ordered evaluations or treatment. In this case we would need to discuss confidentiality fully because you don't have to tell me what you don't want the court to know.

C. There are a few other points about your confidentiality you must know about:

1. I may sometimes consult (talk) about your treatment with other professionals, like therapists. I do not reveal your name, and the other professional is also legally bound to maintain the confidentiality of your information. Similarly, when I am out of town or unavailable, another professional therapist will respond to phone calls to my office and I may need to give him or her some information about my clients, like you.

2. I am required to keep treatment records called medical records, which include progress notes. You are entitled to review, with me, these records (see exceptions noted by HIPAA regulations).

3. If you use your health insurance to pay a part of my fees, I have to give the insurance company some information about our therapy. Insurance companies are now guided by HIPAA regulations and should only receive a Designated Record Set (DRS) which includes your name, social security number, dates of first/last sessions and number of sessions, billing code, test results (if any), a symptoms and functionality checklist, and your provisional diagnosis (along with my fees/billing). It is against the law for insurers to release any information about our office visits to anyone else without your written permission (given only by signing a Release Form). While I believe the insurance company will act ethically and legally, I cannot control who sees this information at the insurer's office or in any office where you work. You cannot be required to release more information just to get coverage or reimbursement.

4. If you have been referred (sent) to me by your employer or your employers Employee Assistance Program, I may have to give them the DRS information as regulated by HIPAA as well. If this is your situation, let us fully discuss this before we talk further.

5. If your account with me is overdue (unpaid) and we have not arranged a payment plan, I can use legal means to obtain payment. The only information I would give to the court, a collection agency or a lawyer would be your name, address, the dates we met for professional services, and the amount due to me.

6. Children in treatment who are under the age of about 12 have little legal right to keep what they tell me from their parents if the parents ask me. Between 12 and 18, however, as the person becomes more able to understand and choose, he or she assumes legal rights. If this is your case, please understand that while most of the specific things you tell me will be treated as confidential because that would assist with your treatment, your parents or guardian do have the right to general information on some important life issues and on how our therapy is progressing so they can make well-informed decisions about therapy. I may also have to tell them some information which concerns other family members if you tell it to me.

7. If you choose to disclose something your spouse or partner does not know I cannot ethically agree to keep it from him or her if it would harm him or her to be uninformed. I will work with you to decide on the best long term way to handle situations like this.

8. In cases where I treat several members of a family (parents and children or other relatives) the confidentiality situation can become very complicated because I would have a mixture of responsibilities to different members. At the start we must clarify the purpose of our treatment and my role in regard to your family or families. Only with this clarity can we figure out any limitations on confidentiality which might exist.

a. If you or your spouse has a custody agreement or court custody hearing, I will need to know about it.

b. My rule is that you must agree that if counseling does not resolve the marital difficulties and you seek a divorce you **will not** request my testimony for either side. I realize it is still possible that the court may still order me to testify.

c. We must also specify which members of the family must sign to release the common record I create in the therapy or therapies.

9. If you are in group therapy, other group members that are not therapists are not compelled by the same ethical and legal rules. In general, you cannot be sure that they will keep confidential what you say in the group. Although the intent to keep confidentiality would be stressed at the onset, there is no legal or ethical guarantee.

10. Any information which you share outside of therapy, voluntarily and publicly, will not be considered protected or confidential by a court.

11. I will not record our therapy sessions on audiotape or videotape without your written permission.

12. If you want me send information about our therapy to someone else, you must sign an Authorization for Release of Records form. I have such forms which you can review should you so desire.

As you can see, the laws and rules on confidentiality are complicated; however, you should now have enough information to enter treatment well informed. Also, while complications dealt with here rarely come up in my practice, please bear in mind that I am not able to give you legal advice. If you have special or unusual concerns and need more specific advice, I strongly suggest that you talk to an attorney to protect your interests legally.

HIPAA NOTICE OF PRIVACY PRACTICES

I. THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

II. IT IS MY LEGAL DUTY TO SAFEGUARD YOUR PROTECTED HEALTH INFORMATION (PHI).

By law I am required to insure that your PHI is kept private. The PHI constitutes information created or noted by me that can be used to identify you. It contains data about your past, present, or future health or condition, the provision of health care services to you, or the payment for such health care. I am required to provide you with this Notice about my privacy procedures. This Notice must explain when, why, and how I would use and/or disclose your PHI. Use of PHI means when I share, apply, utilize, examine, or analyze information within my practice; PHI is disclosed when I release, transfer, give, or otherwise reveal it to a third party outside my practice. With some exceptions, I may not use or disclose more of your PHI than is necessary to accomplish the purpose for which the use or disclosure is made; however, I am always legally required to follow the privacy practices described in this Notice.

Please note that I reserve the right to change the terms of this Notice and my privacy policies at any time. Any changes will apply to PHI already on file with me. Before I make any important changes to my policies, I will immediately change this Notice and post a new copy of it in my office. You may also request a copy of this Notice from me, or you can view a copy of it in my office, which is located at 3969C Southeastern Way, West Columbia SC, 29169.

III. HOW I WILL USE AND DISCLOSE YOUR PHI.

I will use and disclose your PHI for many different reasons. Some of the uses or disclosures will require your prior written authorization; others, however, will not. Below you will find the different categories of my uses and disclosures, with some examples.

A. Uses and Disclosures Related to Treatment, Payment, or Health Care Operations Do Not Require Your Prior Written Consent. I may use and disclose your PHI without your consent for the following reasons:

- 1. For treatment.** I may disclose your PHI to physicians, psychiatrists, psychologists, and other licensed health care providers who provide you with health care services or are otherwise involved in your care. Example: If a psychiatrist is treating you, I may disclose your PHI to her/him in order to coordinate your care.
- 2. For health care operations.** I may disclose your PHI to facilitate the efficient and correct operation of my practice. Examples: Quality control - I might use your PHI in the evaluation of the quality of health care services that you have received or to evaluate the performance of the health care professionals who provided you with these services. I may also provide your PHI to my attorneys, accountants, consultants, and others to make sure that I am in compliance with applicable laws.
- 3. To obtain payment for treatment.** I may use and disclose your PHI to bill and collect payment for the treatment and services I provided you. Example: I might send your PHI to your insurance company or health plan in order to get payment for the health care services that I have provided to you. I could also provide your PHI to business associates, such as billing companies, claims processing companies, and others that process health care claims for my office.
- 4. Other disclosures.** Examples: Your consent isn't required if you need emergency treatment provided that I attempt to get your consent after treatment is rendered. In the event that I try to get your consent but you are unable to communicate with me (for example, if you are unconscious or in severe pain) but I think that you would consent to such treatment if you could, I may disclose your PHI.

B. Certain Other Uses and Disclosures Do Not Require Your Consent. I may use and/or disclose your PHI without your consent or authorization for the following reasons:

- When disclosure is required by federal, state, or local law; judicial, board, or administrative proceedings; or, law enforcement.** Example: I may make a disclosure to the appropriate officials when a law requires me to report information to government agencies, law enforcement personnel and/or in an administrative proceeding.
- To avoid harm.** I may provide PHI to law enforcement personnel or persons able to prevent or mitigate a serious threat to the health or safety of a person or the public.
- If disclosure is compelled or permitted by the fact that you are in such mental or emotional condition as to be dangerous to yourself or the person or property of others, and if I determine that disclosure is necessary to prevent the threatened danger.**
- If disclosure is mandated by the Child Abuse and Neglect Reporting law.** For example, if I have a reasonable suspicion of child abuse or neglect or if I have a reasonable suspicion of elder abuse or dependent adult abuse.
- If disclosure is compelled or permitted by the fact that you tell me of a serious/imminent threat of physical violence by you against a reasonably identifiable victim or victims.**
- For Workers' Compensation purposes.** I may provide PHI in order to comply with Workers' Compensation laws.
- If disclosure is required or permitted to a health oversight agency for oversight activities authorized by law.** Example: When compelled by U.S. Secretary of Health and Human Services to investigate or assess my compliance with HIPAA regulations.
- If disclosure is otherwise specifically required by law.**

C. Certain Uses and Disclosures Require You to Have the Opportunity to Object.

- 1. Disclosures to family, friends, or others.** I may provide your PHI to a family member, friend, or other individual who you indicate is involved in your care or responsible for the payment for your health care, unless you object in whole or in part. Retroactive consent may be obtained in emergency situations.

D. Other Uses and Disclosures Require Your Prior Written Authorization. In any other situation not described in Sections IIIA, IIIB, and IIIC above, I will request your written authorization before using or disclosing any of your PHI. Even if you have signed an authorization to disclose your PHI, you may later revoke that authorization, in writing, to stop any future uses and disclosures (assuming that I haven't taken any action subsequent to the original authorization) of your PHI by me.

IV. WHAT RIGHTS YOU HAVE REGARDING YOUR PHI

These are your rights with respect to your PHI:

A. The Right to See and Get Copies of Your PHI. In general, you have the right to see your PHI that is in my possession, or to get copies of it; however, you must request it in writing. If I do not have your PHI, but I know who does, I will advise you

how you can get it. You will receive a response from me within 30 days of my receiving your written request. Under certain circumstances, I may feel I must deny your request, but if I do, I will give you, in writing, the reasons for the denial. I will also explain your right to have my denial reviewed.

If you ask for copies of your PHI, I will charge you not more than \$.25 per page. I may see fit to provide you with a summary or explanation of the PHI, but only if you agree to it, as well as to the cost, in advance.

B. The Right to Request Limits on Uses and Disclosures of Your PHI. You have the right to ask that I limit how I use and disclose your PHI. While I will consider your request, I am not legally bound to agree. If I do agree to your request, I will put those limits in writing and abide by them except in emergency situations. You do not have the right to limit the uses and disclosures that I am legally required or permitted to make.

C. The Right to Choose How I Send Your PHI to You. It is your right to ask that your PHI be sent to you at an alternate address (for example, sending information to your work address rather than your home address) or by an alternate method (for example, via email instead of by regular mail). I am obliged to agree to your request providing that I can give you the PHI, in the format you requested, without undue inconvenience.

D. The Right to Get a List of the Disclosures I Have Made. You are entitled to a list of disclosures of your PHI that I have made. The list will not include uses or disclosures to which you have already consented, i.e., those for treatment, payment, or health care operations, sent directly to you, or to your family; neither will the list include disclosures made for national security purposes, to corrections or law enforcement personnel, or disclosures made before April 15, 2003. After April 15, 2003, disclosure records will be held for six years. I will respond to your request for an accounting of disclosures within 60 days of receiving your request. The list I give you will include disclosures made in the previous six years (the first six year period being 2003-2009) unless you indicate a shorter period. The list will include the date of the disclosure, to whom PHI was disclosed (including their address, if known), a description of the information disclosed, and the reason for the disclosure. I will provide the list to you at no cost, unless you make more than one request in the same year, in which case I will charge you a reasonable sum based on a set fee for each additional request.

E. The Right to Amend Your PHI. If you believe that there is some error in your PHI or that important information has been omitted, it is your right to request that I correct the existing information or add the missing information. Your request and the reason for the request must be made in writing. You will receive a response within 60 days of my receipt of your request. I may deny your request, in writing, if I find that: the PHI is (a) correct and complete, (b) forbidden to be disclosed, (c) not part of my records, or (d) written by someone other than me. My denial must be in writing and must state the reasons for the denial. It must also explain your right to file a written statement objecting to the denial. If you do not file a written objection, you still have the right to ask that your request and my denial be attached to any future disclosures of your PHI. If I approve your request, I will make the change(s) to your PHI. Additionally, I will tell you that the changes have been made, and I will advise all others who need to know about the change(s) to your PHI.

F. The Right to Get This Notice by Email You have the right to get this notice by email. You have the right to request a paper copy of it, as well.

V. HOW TO COMPLAIN ABOUT MY PRIVACY PRACTICES

If, in your opinion, I may have violated your privacy rights, or if you object to a decision I made about access to your PHI, you are entitled to file a complaint with the person listed in Section VI below. You may also send a written complaint to the Secretary of the Department of Health and Human Services at 200 Independence Avenue S.W. Washington, D.C. 20201. If you file a complaint about my privacy practices, I will take no retaliatory action against you.

VI. PERSON TO CONTACT FOR INFORMATION ABOUT THIS NOTICE OR TO COMPLAIN ABOUT MY PRIVACY PRACTICES

If you have any questions about this notice or any complaints about my privacy practices, or would like to know how to file a complaint with the Secretary of the Department of Health and Human Services, please contact me at: Jennifer Miller, 3969C Southeastern Way, West Columbia SC, 29169

The signatures here attest to the fact that we each have read, discussed, understand and agree to abide by the points presented above.

Client's Signature

Therapist's Signature

Date: _____