



Confidentiality concerns with minors

Question: I have a client who is a minor and whose parents are divorced. The mother has consented to treatment, but the father has not. The father has requested access to the records. According to the custodial agreement, the father does have access to all medical files for the minor. However, the majority of the minor's sessions address conflict with his father. Do I have to release the records to the father?

Answer: When working with minors, confidentiality can be a tricky situation. There are a number of ethical standards within the 2014 *ACA Code of Ethics* to consider, including A.1.a. (Primary Responsibility), A.2.a. (Informed Consent), A.2.d. (Inability to Give Consent), B.1.b. (Respect for Privacy), B.1.c. (Respect for Confidentiality), B.2.d. (Court-Ordered Disclosure, when dealing with legal concerns such as custody agreements), B.2.e. (Minimal Disclosure), B.5. (Clients Lacking Capacity to Give Informed Consent) and B.6.e. (Client Access).

Standard B.5. covers the counselor's responsibility to the client as well as to the parent or legal guardian:

B.5.a. (Responsibility to Clients): "When counseling minor clients or adult clients who lack the capacity to give voluntary, informed consent, counselors protect the confidentiality of information received — in any medium — in the counseling relationship as specified by federal and state laws, written policies and applicable ethical standards."

B.5.b. (Responsibility to Parents and Legal Guardians): "Counselors inform

parents and legal guardians about the role of counselors and the confidential nature of the counseling relationship, consistent with current legal and custodial arrangements. Counselors are sensitive to the cultural diversity of families and respect the inherent rights and responsibilities of parents/guardians regarding the welfare of their children/charges according to law. Counselors work to establish, as appropriate, collaborative relationships with parents/guardians to best serve clients."

Standard B.6.e. discusses client access to records and states that counselors can limit access to the client record if there is a concern that harm could come to the client from such access. The counselor would need to document the rationale for the limited access in such cases.

Therefore, the counselor has an ethical responsibility to protect the confidentiality of the client and the primary responsibility to respect the client's dignity and promote the client's welfare. The counselor may have a custodial agreement that grants access to both parents. However, the client's needs come first. If one or both of the parents accessing the file could harm the client, the counselor can limit that access. However, the counselor will want to discuss with the minor the risks and benefits of limiting access and work to prepare the client that access may be granted legally.

Research has shown that the therapeutic relationship contributes to 30 percent of client outcome. Therefore, it is vital to develop and maintain a positive and trusting therapeutic relationship

with clients. A large piece of relationship building begins in the informed consent process. The counselor needs to help parents understand the limitations and expectations of confidentiality that the counselor is establishing to benefit the minor client. Although a minor cannot grant consent, he or she can assent. Obtaining agreement from the minor client for the process of counseling is an essential factor in working successfully with these clients.



The questions addressed in this column are submitted by American Counseling Association members for educational purposes. As a reminder, a benefit of ACA membership is personal ethical consultation through the ACA Ethics Department at 800.347.6647 ext. 314 or ethics@counseling.org. ❖

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