

Protecting Confidentiality Rights: An Ethical Practice Model

Adapted for Use in Agency & Multidisciplinary Settings

Mary Alice Fisher, Ph.D.

I. PREPARE

- A. Understand Clients' Rights and Your Ethical Responsibilities in Behalf of Those Rights
 - Rights of Agency/Organization That Hired You or Contracted for Your Services
 - Rights of Persons to Whom You Provide Therapy, Supervision, or Consultation
 - Rights of Others?
- B. Learn the State and Federal Laws that Can Affect Your Ability to Protect Confidentiality
- C. Learn the Agency/Organizational Policies that Can Affect Your Ability to Protect Confidentiality
- D. Clarify Your Personal Ethical Position About Confidentiality and its Limits in This Setting
 - Decide When/How You Will Limit Confidentiality Voluntarily
- E. Develop Plan for Ethical Response to Laws & Policies That Require You To Disclose "Involuntarily"
- F. Choose Reliable Ethics Consultants and Legal Consultants and Use as Needed
- G. Devise Informed Consent Forms that Reflect Your Real Intentions
- H. Prepare to Discuss Confidentiality and Its Limits in Understandable Language

II. TELL PROSPECTIVE CLIENTS THE TRUTH (Inform Their Consent)

- A. Inform All Prospective Clients and Consultees About Limits of Confidentiality
- B. Inform About Access to Information by Others in Setting (Other Staff; Supervisors, Teams, etc.)
- C. Inform About Foreseeable Uses & Potential for Future Disclosures of the Information to be Gathered
- D. Inform about Factors That Might Influence Willingness to Participate (e.g., Risks/Benefits)
- E. Inform About Right to Decline to Participate & Consequences of Declining/Withdrawing
- F. Explain Any Roles or Potential Conflicts of Interest That Might Affect Confidentiality
- G. Obtain Consent From Informed Examinee (or Guardian) to Participate Under These Conditions

III. OBTAIN INFORMED CONSENT BEFORE DISCLOSING ANYTHING VOLUNTARILY

- A. Respect the Rule: Disclose Without Consent Only if Legally Unavoidable
- B. Inform About Content and Implications of a Potential Disclosure Before Disclosing
- C. Obtain and Document Consent Before Disclosing

IV. RESPOND ETHICALLY IN LEGALLY-IMPOSED DISCLOSURE SITUATIONS

- A. Notify of any Pending Legal Demand for a Disclosure Without Subject's Consent
- B. Respond According to Plan, Consistent with Policies in the Setting (from Step 1,E above)
- C. Limit Disclosure of Confidential Information to the Extent Legally Possible

V. AVOID PREVENTABLE BREACHES OF CONFIDENTIALITY

- A. Avoid Making Unethical Exceptions to the Confidentiality Rule
- B. Establish and Maintain Protective Policies and Procedures; Train Staff & Technical Assistants
- C. Monitor Note Taking, Report Writing, and Record Keeping Practices
- E. Anticipate Legal Demands
- F. Protect Client Identity in Presentations, Consultations

VI. TALK ABOUT CONFIDENTIALITY

- A. Model Ethical Assessment Practices
- B. Confront Others' Unethical Practices
- C. Lobby for Protective Policies
- D. Provide Peer Consultation About Confidentiality Ethics in Organizational Settings
- E. Teach Ethical Practices to Students, Supervisees, Employees, Agency, Institution

(Adapted from the Model first introduced in the article, "Protecting Confidentiality Rights: The Need for an Ethical Practice Model" (Fisher, 2008), and elaborated in the Oxford University Press book, *The Ethics of Conditional Confidentiality* (Fisher, 2013) and further elaborated in the APA book, *Confidentiality Limits in Psychotherapy* (Fisher, 2016).