

An Ethical Practice Model for Protecting Confidentiality Rights

I. PREPARE

- A.** Understand Clients' Rights and Your Ethical Responsibilities in Behalf of Those Rights
- B.** Learn the Laws that Can Affect Your Ability to Protect Confidential Information
- C.** Clarify Your Personal Ethical Position About Confidentiality and its Legal Limits
- D.** Decide When/How You Will Limit Confidentiality Voluntarily
- E.** Develop Plan for Ethical Response to Laws 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 CLIENTS THE TRUTH “UP FRONT” (Inform Their Consent)

- A.** Inform Prospective Clients About the Limits You Intend to Impose on Confidentiality
- B.** Explain Any Roles or Potential Conflicts of Interest That Might Affect Confidentiality
- C.** Obtain Informed Client's Consent to Accept Limits as a Condition of Receiving Services
- D.** Reopen the Conversation If/When Patient's Circumstances (Or Your Intentions) Change

III. OBTAIN TRULY INFORMED CONSENT TO DISCLOSE VOLUNTARILY

- A.** Respect the Rule: Disclose Without Client Consent Only if Legally Unavoidable
- B.** Inform Client Adequately About Content and Implications of Potential Disclosures
- C.** Obtain and Document the Client's Consent Before Disclosing

IV. RESPOND ETHICALLY TO LEGALLY-IMPOSED DISCLOSURE SITUATIONS

- A.** Notify Client Of Pending Legal Requirement for a Disclosure Without Client's Consent
- B.** Respond According to Plan (from Step 1,E above)
- C.** Limit Disclosure of Confidential Information to the Extent Legally Possible

V. AVOID THE “AVOIDABLE” BREACHES OF CONFIDENTIALITY

- A.** Avoid Making Unethical Exceptions to the Confidentiality Rule
- B.** Establish and Maintain Protective Policies and Procedures; Train Non-Clinical Staff
- C.** Monitor Note Taking and Record Keeping Practices
- D.** Avoid Dual Roles that Create Conflicts of Interest in Courtroom and Elsewhere
- E.** Anticipate Legal Demands; Empower Clients to Act Protectively in Their Own Behalf
- F.** Protect Client Identity in Presentations, Research, Consultations
- G.** Prepare a Professional Will to Protect Client Confidentiality In Event of Illness or Death

VI. TALK ABOUT CONFIDENTIALITY

- A.** Model Ethical Practices; Confront Others' Unethical Practices
- B.** Provide Peer Consultation About Confidentiality Ethics
- C.** Teach Ethical Practices to Students, Supervisees, Employees, Agency
- D.** Educate Attorneys, Judges, Consumers and the Public

(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).