

Protecting Confidentiality Rights:

An Ethical Practice Model

(Adapted for Use with Assessment Clients)

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I. PREPARE

- A. Understand Client's 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 You Will Limit Confidentiality Voluntarily (e.g., Personal/Agency Policies)
- 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 PROSPECTIVE EXAMINEES THE TRUTH (Inform Their Consent to Participate)

- A. Inform Prospective Assessment Clients About Involvement of Third Parties + Implications
- B. Inform Prospective Assessment Clients About Limits of Confidentiality
 - 1. Foreseeable uses of the information to be gathered
 - 2. Potential voluntary disclosures (e.g., by personal or agency policy; by third party contract, etc..)
 - 3. Potential "involuntary" disclosures (e.g., legally-required reports; subpoenas, etc.) [See IV, below]
- C. Explain Roles, Contracts, or Potential Conflicts of Interest That Might Affect Confidentiality
- D. Clarify Who "Owns" the Assessment Report and Who May Authorize Its Disclosure
- D. Inform & Obtain Permission Before Recording Voices or Images
- E. Obtain, from Prospective Examinee, Consent to Participate, Understanding These Conditions

III. OBTAIN INFORMED CONSENT BEFORE DISCLOSING ANYTHING VOLUNTARILY

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

IV. RESPOND ETHICALLY TO LEGALLY-IMPOSED DISCLOSURE SITUATIONS

- A. Notify Subject if Pending Legal Requirement for a Disclosure Without Subject's Consent
- B. Respond According to Plan (from Step 1,E above)
 - 1. Laws requiring psychologists to initiate disclosures (e.g., reporting laws)
 - 2. Laws giving others access to information without client consent
 - 3. Exceptions to psychologist–client privilege in court cases
 - 4. Laws allowing others to re-disclose information that psychologists disclose
- 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 Staff
- C. Monitor Note Taking and Record Keeping Practices
- E. Anticipate Legal Demands; Empower Subjects to Act Protectively in Their Own Behalf
- F. Protect Subject Identity in Presentations, Research, Consultations

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, Institution
- D. Educate Attorneys, Judges, Consumers & The Public; Lobby for Legislative Protections

(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).