

Protecting Patients' Confidentiality Rights: An Annotated Version of the Ethical Practice Model*

Showing How **State Laws & Regulations** and **Federal HIPAA Regulations** Fit Into the Ethical Model

STEP 1: PREPARE

1. Understand Patients' Rights and Your Ethical Responsibilities in Behalf of Those Rights
2. *Learn laws Affecting Confidentiality in Your Setting*
State Laws, Regulations, and Court Cases
Federal Laws & Regulations and Court Cases (incl. HIPAA if applicable)
3. Clarify Your Own Personal Ethical Position About Confidentiality and Its Limits
Decide when you will disclose patient information "voluntarily"
Plan your response to each law that can require you to disclose "involuntarily"
4. Find Reliable Ethics Consultants and *Legal Consultants* and Use Them As Needed
5. Devise Informed Consent Forms That Reflect Your *Actual* Policies and Intentions
HIPAA "Notice of Privacy Practices" (if applicable)
Personalized bulleted list of "limits of confidentiality" in your setting
6. Prepare to Discuss Confidentiality and Its Limits with Patients in Understandable Language

STEP 2: TELL PROSPECTIVE PATIENTS THE TRUTH (Inform Their Consent)

1. **Inform** Prospective Patients about Potential Limits of Confidentiality That Will Apply to All Patients
Limits imposed voluntarily; *Limits imposed by laws*
2. Explain Any Roles or Potential Conflicts Of Interest That Might Affect Confidentiality
3. Obtain Informed Patient's *Consent* about These Potential Limits of Confidentiality
Obtain patient's *consent* to accept these as a condition of receiving services
Document this informed consent process.
4. Reopen the Conversation If Patient's Circumstances, Laws, or Your Intentions Change

STEP 3: OBTAIN "TRULY INFORMED CONSENT" BEFORE DISCLOSING VOLUNTARILY

1. **Respect the Rule:** Disclose Information without Patient Consent Only if *Legally Unavoidable*
2. *Inform* Patient Adequately About the Nature and Implications Of the Proposed Disclosure
3. Obtain and Document the Patient's Signed Consent Before Disclosing the Information

STEP 4: RESPOND ETHICALLY TO LEGAL DEMANDS FOR INFORMATION

1. *Notify Patient of Pending Legal Requirement to Disclose Info Without Patient's Consent*
2. *Respond Ethically to Legal Obligations (According To Plan Devised In STEP 1, Item 3b)*
3. *Limit Disclosure to the Extent Legally Possible*

STEP 5: AVOID PREVENTABLE BREACHES OF CONFIDENTIALITY

1. *Establish and Maintain Protective Policies and Procedures in Office, Institution, or Agency*
2. Avoid Making Unethical Exceptions to the Confidentiality Rule
3. Avoid "Informal" Discussions, "Unofficial" Disclosures, Casual Conversations about patients
4. Monitor Record Keeping Practices
5. Conduct Ethics-Based Staff Training; (+ *Conduct HIPAA-Compliant Staff Training if Required*)
6. Avoid Dual Roles that Create Conflicts of Interest in Courtroom and Elsewhere
7. *Anticipate Legal Demands, Empower Patients to Act Protectively in Their Own Behalf*
8. *Do not confuse laws that permit me to disclose with laws that legally require disclosure.*
9. Prepare a "Professional Will" to Protect Confidentiality In Event of Your Illness or Death.

STEP 6: TALK ABOUT CONFIDENTIALITY: EDUCATE EACH OTHER & OTHERS

1. Go Public: Refuse to Keep Confidentiality Problems a Secret.
2. Model Ethical Practices: Confront Others' Unethical Practices.
3. Teach Ethical Practices to Employees, Students, Supervisees, Agency Administrators
4. Educate Attorneys, Judges, and the Public About Importance of Confidentiality in Therapy
5. *Explore Possibilities for Legislative Change Toward More Protective Confidentiality Laws*
6. Develop Multidisciplinary Training, Continuing Education, and Consultation

[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).]