Breaking Confidentiality in Clients with AIDS:

An Ethical Dilemma

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Abstract
This paper reviews an ethical dilemma and discusses the best possible course of action. A mandated client reveals in a therapy session that he has been diagnosed with AIDS, but has not informed relevant third parties who are at risk of contracting the virus. The client presents with homicidal and suicidal tendencies, and expresses no intention of reporting his diagnosis to others impacted by it. Relevant ethical codes and principles are reviewed, as well as several courses of action in order to evaluate the best possible outcome. Through evaluating the positive and negative consequences of each option, the authors of this paper conclude that the counselor has an ethical obligation to report the client’s AIDS diagnosis to all at-risk third parties and the authorities in order to protect the client and these parties involved.
Breaking Confidentiality in Clients with AIDS: An Ethical Dilemma

Counselors working with clients who have been diagnosed with communicable diseases face unique ethical dilemmas when the client has not informed specific persons at risk of contracting the disease from them. A case was presented where a client was diagnosed with AIDS three years ago, but had not yet informed relevant third parties. Ethical codes and principles are reviewed, civil cases are considered, and pertinent experts are consulted in order to support the decision to break the client’s confidentiality. This decision will not only protect the client from harming himself, but it will also fulfill the counselor’s obligation to warn and protect potential victims.

Case Summary

The presenting case discusses the situation of Dominique, a twenty-eight year old male client who is attending mandatory counseling resulting from a drunken driving arrest. He must complete counseling to be eligible to play on the professional football team of which he is the star athlete. Dominique presented with moodiness and a decrease in caring for his physical appearance. During a session, Dominique revealed that he was diagnosed with AIDs three years ago, and has had difficulty dealing with life since the diagnosis. Dominique does not consistently take his medication because the side effects negatively impact his performance on his team. He is currently paying off the team doctor to not reveal his diagnosis to his teammates.

Dominique further revealed that he has been in a relationship with a female named Michelle for two weeks. While they have not yet become intimate, Dominique is considering taking the relationship to this level without informing Michelle of his diagnosis. He stated that he has not informed her because he fears she will reject him, and if she did reject him, he would kill
her. Dominique further reported that he has had a number of sexual encounters within the past three years and has not informed any of those sexual partners of his diagnosis. The day after Dominique’s third session, the counselor views the popular feed on her Instagram account; she finds that Dominique has posted several pictures of himself with guns and knives; in the notes section of his posts, he compares himself to Shakespeare’s Othello.

**Applying the Code of Ethics**

The presenting case has ethical issues the counselor must consider. The counselor must decide if she should keep Dominique’s confidentiality, or break it in order to protect his girlfriend Michelle and his teammates from contracting AIDS and to protect Dominique from his self-destructive path. Section B of the American Counseling Association’s Code of Ethics (2005) deals with confidentiality, privileged communication and privacy, which pertains to the ethical dilemma at hand. According to B.1, counselors are mandated to respect client’s privacy (B.1.b) and confidentiality (B.1.c), and ensure that the client is aware of the existing limitations (B.1.d) to the aforementioned rights. Next, B.2 defines the exceptions under which counselors might consider breaching client privacy and confidentiality. B.2.a requires counselors to break confidentiality when it is necessary to protect the client or identified others from foreseeable harm. Especially under B.2.b, counselors should inform identifiable third parties when their client has a contagious life-threatening disease that they may be at high-risk of contracting from the client. However, before a disclosure is made, the counselor must confirm their client’s diagnosis and assess the client’s intentionality regarding informing concerned third parties or inflicting potential harm against them. Finally, during the disclosure process, B.2.d. dictates that only essential information is revealed, the counselor should inform the client beforehand, and should involve the client in the disclosure decision-making process as much as possible.
Relevant Ethical Principles

Five of Kitchner’s (1984) ethical principles apply to Dominique’s case and are ranked in order of priority to this particular situation: nonmaleficence, autonomy, fidelity, beneficence, and justice.

Nonmaleficence

Nonmaleficence means that above all, the counselor should do no harm to the client and should refrain from any action that may cause harm (Granello & Young, 2012). In this case, the counselor may cause harm to the client through his risk of suicide, and to others who may be infected with the disease, if she does not break confidentiality.

Autonomy

Autonomy is the right and the freedom of clients to be able to make their own decisions (Granello & Young, 2012). If the counselor breaches confidentiality and informs Michelle and the team about Dominique’s AIDS diagnosis, she is taking away his autonomy. However, if clients are a danger to themselves or others, their autonomy should be challenged.

Fidelity

Fidelity is remaining loyal to the client, maintaining confidentiality, and fulfilling commitments to the client (Granello & Young, 2012). The counselor’s fidelity to Dominique would be broken if she chose to breach confidentiality; however, maintaining his confidentiality would continue to put his team and his girlfriend in extreme danger of contracting AIDS.

Beneficence

Beneficence is when the counselor is proactive in helping the client and preventing harm (Granello & Young, 2012). By this token, the counselor should breach confidentiality to let the
proper parties know about his diagnosis and to take proactive measures to reduce Dominique’s suicide risk.

**Justice**

Justice involves treating all clients equally; if a client is not treated the same as other clients, there must be a justifiable rationale behind those actions (Granello & Young, 2012). The counselor is ethically and legally required to keep all clients’ confidentiality; however, if a client is a danger to himself or others, or if there is abuse involved, the counselor is required to break that confidentiality. It can be argued that in Dominique’s case, he is a danger to himself through his reckless behavior and suicidal tendency, and a danger to others who are at risk of contracting the disease from him.

**Expert Consultation**

The following experts in the field of counseling were consulted in regards to the case and their responses are summarized below:

Elizabeth Dawn, Ph.D., LMHC, strongly suggested that the counselor breaks confidentiality and informs the client’s team, and more importantly their partner, about the AIDS diagnosis. She said that AIDS is a highly contagious and life threatening disease and under ACA Code of Ethics (2005) B.2.b., it’s the counselor’s responsibility to protect identifiable third parties from foreseeable harm.

Matthew Perry, LMHC, NCC, MAC, expressed his concerns for the client’s personal safety as well as his partner’s. He identified the client as suicidal and homicidal and suggested that his diagnosis and intentions of harm be disclosed to the authorities. Perry believed that the client should be baker-acted, to ensure medical supervision and to prevent any harm to self or others.
Christopher Isham, Ph.D., CCMHC, NCC, voiced his concerns for the high chances of contractibility of AIDS within the team members. He stressed the fact that football is a high contact sport, which makes players increasingly vulnerable to being in contact with other player’s bodily fluids. In this case, such transmission would lead to spreading AIDS and placing everyone in danger. Therefore Dr. Isham suggested disclosing the client’s information and breaking confidentiality.

Saba Ali, Ph.D., LPC, NCC, said that ACA Code of Ethics clearly states that confidentiality be voided when the client carries a contagious life-threatening diseases and is a danger to self and others. Therefore it will be in the best interest of the client and others if they were informed about his diagnosis. Dr. Ali believed that the client needs to withdraw from the team altogether because it is unethical to place other players’ lives in jeopardy. Furthermore, the client seems to avoid medication to improve his game performance, which places his own life in danger.

Steve Jones, LMHC, believed it would be best to draw up an action plan with the client that includes self disclosure about his diagnosis. He said that the client has the autonomy to make his own decisions and the counselor’s role should be one of a facilitator and not a dictator. In case the client is non-compliant, Jones suggested that the counselor breaks confidentiality and informs identified third parties, team members and girlfriend, about the client’s AIDS diagnosis. All five counselors agreed upon disclosing the client’s information in order to uphold ethical code B.2.b. and protect the client and identifiable third parties from harm.

The ACA ethics department was also consulted in regards to the matter. The department emphasized reminding the client of limitations to confidentiality according to B.1.d., and encouraging him towards being a part of the self-disclosure process. In case of non-compliancy,
the ethics department referenced codes under section B.2. and counselors’ duties to inform, warn and protect, clients and other at-risk parties.

**Review of Relevant Literature**

Literature discussing confidentiality and AIDS patients supports the notion that health care professionals (including counselors) have a duty to warn and protect at-risk third parties. Most states classify AIDS as a communicable disease; therefore, health care professionals are required to encourage their patients to inform at-risk third parties of their diagnosis. If the health care professional has reasonable cause to believe the infected individual is not going to inform specific persons in danger of contracting the disease from them, then the professional has a duty to warn those people (Ensor, 1987; Gostin & Curran, 1987; Hermann & Gagliano, 1989).

Within mental health professionals, there are a number of factors considered when they determine whether or not to break client confidentiality because of an AIDS diagnosis. Totten, Georgina, & Douglas (1990) explored whether clinicians applied the Tarasoff factors of dangerousness and identifiability of the victim to clients with AIDS when determining if they should breach confidentiality. Their results indicated that the higher the levels of both factors, the more likely the counselor was the break confidentiality and reveal the client’s AIDS diagnosis to specific persons in danger of contracting the disease.

**Course of Action**

**Potential Courses of Action**

One potential course of action, in hopes of working through Dominique’s struggles within the counseling setting, would be to continue counseling Dominique without informing any outside parties of the potential safety concerns. In this scenario the desired outcome would be that through talking with Dominique and implementing counseling
techniques, Dominique would be encouraged to take better care of his own health, see value in himself and others, and work towards finding ways of coping with his diagnoses without endangering himself or those around him. Some potential pros to this approach would include maintaining client confidentiality, trust, and loyalty, as well as respecting the client’s right to make decisions, in terms of how and when he would choose to disclose the details of his own diagnoses. Potential cons to this approach would occur in the case that the client did not decide to disclose of his diagnoses at all and continued to risk infecting his teammates and potential sexual partners. More importantly, this approach would not be taking into consideration the counselors duty to warn and would be ignoring the important implications of the decision in the Tarasoff v. Regents of the University of California case which held that if a therapist should determine “that a patient poses a serious danger of violence to others, he bears duty to exercise reasonable care to protect the foreseeable victim of the danger”. Therefore this is not an appropriate or thorough enough option as it fails to warn a potential victim of serious foreseeable danger.

A second potential course of action would be to contact and alert only Dominique’s girlfriend, Michelle, about the potential threat to her life caused by a possible contraction of the AIDS virus and/or a potential homicide attempt. The desired outcome in this scenario would be that Michelle would end the relationship with Dominique and seek the appropriate avenues for protection against him should he decide to come after her. In this case, the counselor would have to track down Michelle without Dominique’s knowledge and breach client confidentiality in explaining to her that Dominique has the AIDS virus and has also threatened to murder her if she decides to leave him. Pros associated with this scenario include honoring the counselor’s duty to warn and protecting the life of a possible victim. Cons associated with this scenario may arise
depending upon Michelle’s reaction to the disclosure of Dominique’s diagnoses. There is no way to be sure how she will react and whether she will seek protection or confront him, possibly escalating an already dangerous situation. If Michelle chooses to confront him herself Dominique may take her life or his own before there is time for further intervention. Therefore, because this scenario could pose further danger for Michelle and Dominique and does not involve any steps to protect the client himself this is not a thorough enough option.

A third potential course of action would be to tell only the football team of the AIDS diagnoses and the medication “holidays” that Dominique is taking. The desired outcome from this scenario would be that the team would be able to take the necessary precautions in order to prevent spreading of the AIDS virus to other team members, and arrange for Dominique to get the proper treatment that he needs so that his felt career obligations are not endangering his own life. Pros to this scenario include maintaining the health of the other team members and possibly preventing Dominique from further harming his own health in order to keep up with the demands of the game. Cons could arise in this scenario if the team drops Dominique and he feels he is left with less to live for, only pushing him further towards reckless acts such as homicide and suicide. This option also fails to warn a potential victim of a threat of serious violence as it does not involve informing Michelle of a possible attempt on her life. Because this scenario is not in keeping with a counselor’s duty to warn and does not serve to protect Michelle or Dominique from potential harm this is not an appropriate or thorough option.

A fourth potential course of action would be to confront Dominique about the threat to Michelle’s life, the threat to the safety of the team members, and the concern for his own safety and well-being. In this scenario, the counselor would inform Dominique of the need to disclose his diagnoses and to seek more intensive treatment for his homicidal and possibly suicidal
thoughts. The desired outcome of this scenario would include Dominique cooperating with the counselor in order to create a plan to disclose his diagnoses to Michelle and the team and possibly checking himself into a treatment facility that can better assist him in constructively coping with his situation and what will follow the disclosure. Pros to this scenario include again the ability to maintain confidentiality, trust, loyalty, with the client. However if the client is uncooperative and feels threatened by the counselors implications of a possible breaching of confidentiality this may result in an emergency situation for the counselor in which all of the above would need to be breached in order to prevent harm to the client, Michelle, and the counselor. In this scenario the counselor is also again failing to warn potential victims of a serious threat therefore this is not an appropriate or thorough enough option.

A fifth potential course of action would be to alert Michelle, the team, and the authorities. In this scenario, the counselor would warn Michelle of the possible dangers she was facing, alert the team of the player’s diagnosis, and alert the authorities of the potential threat to Michelle’s life, the possible suicide risk with Dominique, and the inaction of Dominique’s doctor to report his AIDS diagnosis. The desired outcome of this scenario would be that Michelle would be protected from a potential attempt on her life, she and the team would both be protected from contracting the AIDS virus, Dominique’s doctor would be held accountable for not reporting the AIDs diagnosis to the team, and Dominique would receive the assessment and help that he needs to prevent him from doing harm to himself or others. The benefits in this scenario include warning all potential victims, in keeping with the Tarasoff case, and ensuring that their protection is followed through with by the proper resources.
Course of Action

This fifth potential scenario best ensures the safety of Michelle and the other team members and Dominique’s immediate physical well-being. Because it includes contacting the authorities, this scenario is also the best for preventing immediate harm to the client himself. Cons associated with this scenario include breaking client confidentiality and taking away the client’s autonomy, or freedom to make his own decisions. However, it can be argued in this case that the client is no longer making competent and rational choices in contemplating the harming of himself and others and the duty to break confidentiality when there is a potential threat to the client’s self or others should have been previously discussed with the client during an initial counseling meeting. Because this scenario is the best at preventing immediate harm to all parties involved, it is the best option given the circumstances.

In choosing the fifth scenario, the client will likely feel betrayed by the counselor for breaching confidentiality. This is likely to sever the counseling relationship between the two parties. Because of the high profile nature of the client, there is also a high chance of media coverage and a great deal of negative attention revolving around the case, possibly the team, the counselor, and particularly the client himself. The client will be put at a risk of losing his relationship with Michelle and his professional career. However, this course of action will help stabilize his medicinal treatments and decrease his risk of suicide. It will have positive implications for the team and Michelle in that they can take proactive, preventative measures to ensure they do not contract the disease. The counselor will likely receive media attention for revealing this information about the client; as this is a high profile case, the counselor should be prepared for both positive and negative feedback from the public.

Evaluating the Course of Action
The chosen course of actions has new ethical implications for the counselor and the client. The counselor has decided to breach confidentiality; however, this action is justified due to Dominique’s danger to himself and to others. The counselor is acting in accordance with the ethical principle of nonmaleficence because she is preventing harm to both Dominique, Michelle, and the team. While the counselor is taking away Dominique’s autonomy, she is doing so for the sake of protecting others at a risk of contracting the AIDS virus. In terms of the principle of fidelity, the counselor is breaching this by breaking confidentiality to report Dominique’s diagnosis. However, the counselor is maintaining the principle of beneficence by acting in the best interest of the client and taking a proactive approach to prevent harm to others. The counselor is maintaining her sense of justice with Dominique because, while she should maintain confidentiality with all clients, she has a duty to break that privileged communication with both the client and others are in danger.

**Applying the Four Tests**

**Test of Justice:** Given the client’s public status, it could actually be more detrimental to the counselor’s professional reputation to breach the confidentiality of the client. Because of the client’s publicity, the counselor is more likely to receive widespread negative attention for this decision than with most other clients. For example, if this decision has negative implications for the team, the counselor could suffer negative feedback from upset fans. Therefore, as a counselor, making the decision to come forward with this information in order to warn and protect a potential victim in this case, would imply that this counselor would be just as likely to do so with any other, less high-profile, client.

**Test of Publicity:** It is highly likely that this particular case will appear in the media and that the counselor’s name and actions will be reported. As a counselor whose primary duty is to
prevent harm to the client and others, the counselor would be willing to stand by the decision to prevent a homicide and suicide, thereby protecting the health and safety of Dominique, Michelle, and the team.

**Test of Universality:** Because this course of action is in keeping with the outcomes of previous legal cases, serves to protect all those involved, and is not a choice based upon the interests or biases of the counselor, it could be recommended to another counselor in the same situation.

**Test of Moral Traces:** The decision to alert the parties involved may have more negative implications for the counselor than positive in terms of public image and reputation. It can be said that the counselor is risking their own self interest in order to protect the other parties involved due to the potential negative feedback associated with any detriment that this decision may cause for the team.

**Implementation and Follow-Up**

The counselor would begin by contacting Michelle and informing her of the verbal threat against her life and of Dominique’s AIDS diagnosis. The counselor would then contact the local authorities to inform them of Dominique’s doctor’s malpractice, Dominique’s potential threat to Michelle, and of the potential threat he poses to himself. Finally, the counselor would contact the team to inform them of their risk of contracting AIDS from Dominique and of the team doctor’s malpractice. Because the counseling is mandated and tied in with the legal agenda, Dominique would most likely be unwilling to continue therapy with the present counselor. Furthermore, with the new legal implications resulting from this course of action, Dominique’s mental health treatment may need to be modified. Ideally, the client would be referred to a program with a more intensive, in-patient treatment plan because of his homicidal and suicidal tendencies. The
counselor would additionally recommend Dominique attending an AIDS support group to help him cope with this diagnosis and make healthier life choices. The counselor would document the step-by-step process in making this decision, to include detailed documents of the various reports made to third parties. This information would be kept in Dominique’s client file, which is stored electronically and secured.

Conclusion

This paper reviewed a case involving a client with a communicable disease who reported to his counselor his unwillingness to inform affected third parties of his diagnosis. After reviewing pertinent literature, ethical codes and principles, and consulting with other professionals in this area of expertise, the authors of the paper concluded that the best course of action would be to break the client’s confidentiality. While the counselor has an ethical obligation to maintain a client’s confidentiality, preventing harm to the client and warning and protecting others take precedent over this privilege. Through breaking this client’s confidentiality, the counselor takes a proactive approach in preventing his teammates and his girlfriend from contracting the disease, and reducing the client’s risk of suicide through more intensive treatment. Through referrals to appropriate interventions and follow-up care, this decision will empower the client to develop more adaptive coping skills and make healthier life decisions.
References


