The Case of Dominique

Hannah P. Hill, Iris R. Konieczka, & Abigail S. Wengerd

Duquesne University
Selection of Decision Making Model

The counseling relationship, with its high value on confidentiality, creates a safe therapeutic environment for clients to share sensitive information. These disclosures often create ethical dilemmas as counselors must consider how to handle the information, what options exist, and the implications of different resolutions. When these situations arise, ethical decision making models provide a framework to structure a course of action and act in the best interest of all parties involved. The process of making ethical decisions does not always follow neatly in a linear, step by step fashion (Corey, Corey, & Callanhan, 2003). Despite the murky waters such dilemmas create, ethical codes, decision making models, and literature can help clear the water for counselors to make informed, moral decisions.

The case of Dominique requires taking multiple ethical concerns into consideration. The American Counseling Association (ACA) Code of Ethics indicates the importance of using a credible model when confronted with complex ethical dilemmas (ACA, 2005). Considering the aspects surrounding Dominique’s disclosure of his AIDS diagnosis, we decided to use the model for ethical dilemmas in HIV related psychotherapy as presented by Barret, Kitchener, and Burris in Ethics in HIV Related Psychotherapy (2001). The model outlines 8 steps for decision making: 1) review personal response to the case, 2) review the facts, 3) conceptualize an initial plan, 4) consult the ethics code and as well as five foundational principles, 5) examine the legal consequences of initial plan, 6) identify and assess options to refine initial plan, 7) choose a course of action, and 8) implement the course of action and evaluate the outcomes (Anderson & Baret, 2001). This model provides a framework of how to apply the ACA code of ethics to this particular case.
Identify Personal Response to Case

Reflecting on our personal feelings regarding this case, enables us to understand the personal biases we feel regarding Dominique. The implications of revealing his HIV diagnosis to his teammates causes us to empathize with him recognizing how difficult it must be to keep such information secret. It must be hard for him to decide between his own health and performance on the field. We have an overwhelming concern for Dominique with regards to hiding his diagnosis, taking medication holidays, and his lack of concern for his well-being.

Overall, our first impulse is to assess the lethality of the situation including the potential dangers that exist: a recent DUI arrest, health implications of “medication holidays”, paying off the team doctor, potential harm to his girlfriend, and potential harm to self. Thinking through these things increases potential concern about the implications of our ultimate decision. What is our liability if Michelle rejects his honest disclosure of his HIV status, and if Dominique follows through on his threat to kill her? What is our liability if he does not inform her before they are intimate—resulting in her contracting AIDS?

As women, tension exists as we find ourselves identifying with his girlfriend, Michelle. Our gut reaction is to warn Michelle of the potential risks of both Dominique’s HIV status, and his potential violent behavior towards her. Our personal bias to protect Michelle is based on desire for someone to warn us if we were in a relationship that presented these risks. If these feelings remain, it could impede our ability to act responsibly towards both Michelle and Dominique. Our presenting client, Dominique, lacks a strong support system and needs our support.

There is some judgment mixed with concern about Dominique’s irresponsible behaviors. It must be difficult to live with a diagnosis such as AIDS. It is in Dominique’s interest that we
seriously consider the implications of breaking confidence. Yet, our desire to protect Michelle still exists. We are going to have to keep all of these things in mind as we review the facts.

**Review the Facts of the Case**

Dominique indicates that he received an AIDS diagnosis 3 years ago, and currently takes “medication holidays” to avoid the side effects that affect his job performance. He is a star player on a professional football team who has come to counseling as part of a decision by his team after his arrest. As far as we can tell, his diagnosis remains a secret from everyone in his life in part by his paying off the football team doctor.

There is the presence of risk taking behavior as evidenced by his recent DUI arrest and previous sexual encounters, which place his partners at risk. He has threatened to kill his girlfriend if she rejects him, along with conceptualizing himself as Othello. Teammates noticed a decline in Dominique’s physical appearance along with moodiness. Dominique mentioned in previous sessions that his life is harder to deal with because of the disease. A lot of these “facts” come from self-reports; therefore, exploration to ensure that they are factual in nature is important.

**Conceptualize an Initial Plan Based on Clinical Issues**

Overall, Dominique appears to be very much alone in his AIDS diagnosis. We have no information to conclude that he has disclosed his diagnosis with anyone else. His risky behaviors—medication holidays, previous sexual encounters, and threat to Michelle if she rejects him—give us an idea that he may be afraid of the implications associated with disclosing his HIV status. Our first response would be to find ways to help him cope better with his diagnosis. For three years, he has continued playing football, found ways to develop romantic relationships, and strategies to cope with the side effects of his medication. While we may not agree with...
some of his decisions, recognizing and building upon his current resilience has the potential of helping him to emotionally deal with his diagnosis. Recognizing his potential lack of a support system, we want to make sure we empathize with him in his feelings of loneliness.

Once we have strengthened the therapeutic alliance, we would discuss the requirements of his mandatory counseling by clarifying what he needs to do to move forward, the requirements of his employers, and his expectations for us as his counselor. Clarifying confidentiality, creating a safe space and identifying potential limits with regards to dangerousness is important moving forward with Dominique. By openly communicating and abiding by ethical standards, we can create a model for Dominique of the effort and commitment necessary to maintain a principled relationship (Herring, 2001). Dominique needs to understand what the limits are to our ability to maintain confidence with respect to some of the things he has shared with us.

At this time, we would want to assess the current threats and engage Dominique in the development of a safety plan to reduce the risk of harm to himself and to others. Because disclosing HIV status to a potential partner can have serious emotional consequences, we would offer to have Michelle come in with Dominique for a session so he could disclose to her his diagnosis (Alghanzo, Upton, & Cioe, 2011). An important component of this would be helping Dominique to create a support system of people with whom he can be honest about his AIDS diagnosis. It is our hope that Dominique would agree to a safety plan which would not require us to break confidentiality. At this point, we would reiterate that if we (Dominique and counselor) are not able to follow this plan, we may have to break confidentiality to ensure safety. Our ultimate focus would be to help Dominique be comfortable with his diagnosis, and create a healthy plan moving forward.
Consult the Ethics Code

This case challenges us to explore the harm of breaking confidence and the potential consequences of not breaking confidence. Involuntary disclosure can put Dominique at risk for significant losses in his life including Michelle, his teammates, family, and friends as well as the loss of the counseling relationship (Stanard & Hazler, 1995). Breaching confidence could stop the spread of AIDS by protecting Michelle from potentially contracting the virus, and also from the threat of death. By applying the ethics code and fundamental ethical principles, we hope to uncover a responsible, moral course of action. As American Counseling Association members, we would also be able to contact the ACA and receive a free ethics consultation from the ACA Ethics and Professional Standards Department either by email or phone (ACA, 2012).

ACA Ethics Code

According to the ACA code of ethics, the requirement that counselors keep information confidential “does not apply when disclosure is required to protect clients or others from serious and foreseeable harm or when legal requirements demand that confidential information must be revealed” (ACA, 2005, B.2.a, p7). Some important considerations are: the behaviors or threats which constitute “serious or foreseeable harm” and the predictability of violence (Costa & Altekruse, 1994). At this point, there has been no action on our part, as the counselor, to move forward on his threat to kill Michelle if she rejects him. That threat is contingent upon two things: 1) him sharing his diagnosis (which he is unsure if he will do), and 2) her rejection of him.

“With regards to clients disclosing a disease which is communicable and life threatening, counselors may be justified in disclosing information to identifiable third parties if they are known to be at demonstrable and high risk of contracting the disease” (ACA, 2005, B.2.b, p7).
In the case of the HIV scenario, breaching confidentiality is not based on threat of deliberate violence but by the harm done through irresponsibility; however the end result to the third party is the essentially the same (Huprich, Fuller, & Schneider, 2010). The ACA code gives some qualifications that should be met: “confirm that there is such a diagnosis, and assessing the intent of clients to inform third parties about their disease” (ACA, 2005, B.2.b, p7). At this point, we have not confirmed the diagnosis, and Dominique is considering moving forward in the relationship without telling Michelle. If we have confirmed the diagnosis, we still need to consider that trust is a cornerstone of the counseling relationship (ACA, 2005). The ACA code makes clear that “counselors do not share confidential information without client consent or without sound legal or ethical justification” (ACA, 2005, B.1.c., p7).

**Foundational Ethical Principles**

Due to Dominique’s desire to keep information private, autonomy becomes one of our primary considerations. Breaching his confidence by disclosing his AIDS status would compromise his ability to make his own choice (Alghanzo, Upton, & Cioe, 2011). Valuing his autonomy respects the fact that he does not want to disclose the information to anyone. Anderson and Barret (2001) remind us that just because individuals have a right to hold their own opinions and actions, does not mean that they have a right to engage in activities which threaten others. Dominique could violate Michelle’s autonomy by not informing her of his diagnosis before they are intimate.

We need to ensure that our actions are most beneficial to Dominique. When exploring beneficence, a balance must be struck between acting in the best interest of an individual client versus the welfare of others and society as a whole (Anderson & Barrett, 2001; Alghanzo et al, 2011; Kitchener, 1984; Standard & Hazler, 1995). Based on the fragile relationships with people
in his life, it is important to ensure that we do not violate his trust or autonomy by breaking confidence. At this point, there is still the potential that Dominique might be able to collaborate with us, as the counselor, to maintain control of his behavior (Costa & Altekruse, 1994).

The best course of action is one which will minimize the harm and maximize the benefits for all individuals (Huprich et al, 2010). The ethical principal of doing no harm fits with much of what we have considered with beneficence. There must be a balance between the harm which might occur to Dominique if we break confidence, and also the harm to Michelle if we do not break confidence. All things considered, Kitchener (1984) suggests that if we must choose between harming someone and benefiting them or someone else, the stronger obligation would be to avoid harm.

Fidelity forces us to consider the power that trust and loyalty have within the counseling relationship. Along with the issues regarding breaking confidence, it is important for us to consider the implications of sharing with Dominique that we have seen his photo on Instagram. The photo would be considered public information, based on the fact that he has posted it on the public page with the purpose of being accessed by anyone (Frankish & Harris, 2012). Kaplan, Wade, Conteh, & Martz (2011) remind us that clients want to be in control of their disclosures, and that visiting their social media sites may be seen as a violation of trust. While the photo showed up on the public feed, this is still an important consideration with regards to fidelity. If we directly bring it up while in a session, Dominique could find this to be a violation of trust which would impede the therapeutic relationship. If the therapeutic relationship is broken, the opportunity to influence behavior change in the future is eliminated (DiMarco & Zoline, 2004).

The last consideration with regards to justice is if we are treating Dominique fairly. Based upon the fact that he is a star professional football player, we want to make sure that is not
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impacting how we treat Dominique as our client. It also means considering the discrimination which he might face if he were to disclose his AIDS status to his teammates (Standard & Hazler, 1995). The impact of sharing his diagnosis with Michelle could also affect his ability to keep this information out of the public eye. Remembering that Dominique’s image is important to his livelihood, it is important that we treat him fairly and understand the issues that are most relevant to his situation.

Identify the Legal Issues

The legal issues involve concern for a lawsuit with regards to Dominique’s AIDS diagnosis and if his threats to harm Michelle are serious. Welfel (2010) reminds us that courts can often apply the duty to warn not just to situations where the counselor knows about an imminent threat, but also to the times when a therapist should have known about the danger. In order to understand what applies to us, we will look to the law in the state where we live. In Pennsylvania, there is no written law governing the duty to warn or duty to protect. The issue was addressed by the Supreme Court of Pennsylvania in a 1998 decision of Emerich v. Philadelphia Center for Human Development giving importance to the duty to warn for mental health professionals. This is not necessarily true of all states, and a responsible practitioner must be aware of the law in their state.

In Emerich v. Philadelphia Center for Human Development (1998), Justice Cappy wrote as part of the majority opinion that “when the patient has communicated to the professional a specific and immediate threat of serious bodily injury against a specifically identified or readily identifiable third party, and when the professional determines that his patient presents a serious danger of violence to the third party, then the professional bears a duty to exercise reasonable care to protect by warning the third party against such danger.” This case sets up a duty to warn
within the commonwealth of Pennsylvania, but does not explicitly define the duty to protect. The court indicated that “a duty to warn is subsumed in this broader context of a duty to protect... we leave for another day the related issue of whether some broader duty to protect should be recognized in this Commonwealth” (Emerich v. Philadelphia Center for Human Development, 1998). The court also indicated that a third party should be warned of “an immediate, known, and serious risk of potentially lethal harm.” (Emerich v. Philadelphia Center for Human Development, 1998).

The next question becomes how the national and state law regarding confidentiality of records might apply to HIV. Act 148 in Pennsylvania applies confidentiality to HIV related information with some permissible disclosures without consent including partner notification (AIDS Law Project of Pennsylvania, 2011). It also sets up an obligation for health care, social service providers, and clinical labs to report the names of people with HIV/AIDS to the local health department, who are required to keep HIV records confidential (AIDS Law Project of Pennsylvania, 2011). This law limits our ability to follow through on a duty to warn Michelle of Dominique’s HIV status, if we felt it necessary, although it does give us the opportunity to contact the health department if we wanted to take some action.

With regards to the photo posted on Instagram, Dominique has not communicated this information directly to us in a counseling session. It showed up on the popular feed which is not a component of the special relationship that exists between a client and counselor. We are really not sure about our liability with this information. Because of his star status on a professional football team, there is more likelihood of running across information concerning our client on social media or in the news. Even if our informed consent includes a statement that we will not be friends or actively seek out information on our client on social media, this creates a sticky
situation. Since we are not legal experts, we would definitely consult with an attorney regarding our particular liabilities and legal duties.

**Identify and Assess the Options**

After reviewing the ACA Code of Ethics, evaluating foundational ethical principles, and learning about federal and state laws, we are adequately prepared to evaluate our initial plan. As we assess our options, discussing with a supervisor and/or colleagues would be important. Our initial plan seems overall to be in line with the ethical code and foundational ethical principles. Currently, Dominique is not in an intimate relationship with Michelle which gives us time to assist him in developing a plan to tell her about his AIDS diagnosis. The threat of her becoming infected with HIV does not seem to be immediate or imminent at this time. This course of action is contingent upon our ability to trust Dominique regarding his relationship with her.

In order to confirm his diagnosis, understand his disease, and the medications he is taking, we would ask him to sign a release allowing us to talk with his doctor. The ability to consult with his doctor allows us to better understand Dominique. Even with a confirmation of the diagnosis, we would hesitate to break confidence and disclose Dominique’s HIV/AIDS status based on the state and federal laws protecting that information. Because of Dominique’s fame, we do not see any positive outcome to contact the local health department.

Another major concern is how to deal with the Instagram photo. Because the information was not given to us during a counseling session and clients have control over what information they bring up in sessions, we do not feel that it is appropriate for us to bring up this information directly. We may want to talk about the potential difficulties with Dominique being a high profile client with respect to our access to information through news or social media outlets.
Making sure that he understands that we might see or hear things about him based on his public profile as a professional athlete, we ask for his help to determine how to navigate this concern.

Right now there are issues such as depression, anger, and denial, which are affecting Dominique’s situation. Sherr & Davey (1991) help us to understand that during the course of HIV many patients experience fluctuating moods which can vary from mild to severe depression. Our energies might be best served helping Dominique reduce any anxiety he is experiencing, help him mobilize out of potential depression, and deal with any suicidal thoughts he may be experiencing (Sherr & Davey, 1991). He would not have come to counseling if it were not a mandatory requirement related to his DUI. It is important to maintain trust in the hopes of helping Dominique with some of the thoughts, struggles, and difficulties he is experiencing.

Our plan includes discussion with Dominique to ensure we are empathetic to the complexities of his keeping his diagnosis a secret. We would ask him to clarify his expectations for us, and even some ideas he may have for how we can help him. Acknowledging our concern for Michelle and potential other sexual partners, we would want to create a plan for how he can communicate with them his diagnosis. It would be helpful to find out more information about whether or not he has communicated with any previous sexual partners and how his disclosure impacted his relationships. We would open a dialogue regarding our communication with his doctor in terms of how it can be helpful to him, and hopefully resulting in his signing a release form. Ultimately, we hope to help Dominique deal with any anxiety or depression he is experiencing, including the possibility of creating a danger plan. Having reached a decision, we would make sure that we talk with our supervisor and document the decision along with our rationale.
Choose a Course of Action and Share it with Client

The next time Dominique comes in, we would work through our action plan making sure he understands our reasoning. Our overarching goal would be to make sure that Dominique is empowered and becomes an ally with us in his treatment plan (Anderson & Barret, 2001). Knowing that things do not work out in real life as they do on paper, we would want to be prepared for the concerns, confusion, or anger which Dominique may express. Having worked through the decision making model, we feel as prepared as possible to handle his concerns. After meeting with Dominique, we would document how the conversation went updating the appropriate case notes.

Implement Course of Action

After communicating with Dominique, we would want to evaluate our course of action. This would be a starting point followed by monitoring our choices and consultation with colleagues. We would continue to consult literature to help us validate our choice, and keep current with laws to know what we might need to consider in the future. The personalized nature of decision making makes it important to be responsible by consulting with colleagues, maintaining current standards, and most importantly the willingness to engage in a continual honest process of self-examination (Tavydas, 1987).
References


