

Article 26

**Minors' Rights to Confidentiality, When Parents Want to Know:
An Ethical Scenario**

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Abstract

This paper explores the ethical scenario related to confidentiality rights of a minor when his/her parents seek information from the counseling session, in this case related to exploration of sexuality. This paper examines all facets of this ethical dilemma by using Corey, Corey, and Callanan's (1998) decision-making model. By examining ethical codes, legal statutes, and precedents, consulting relevant literature, identifying all of the possible viable solutions, and weighing all of the consequences of these solutions, the counselor is able to make a well-informed, justified, ethical decision. Upon fully engaging all eight steps in this decision-making model, the counselor deems that she must act on what is in the client's best interest. In this case, the counselor decides to keep her client's confidentiality, as this is the course of action that is in the best interest of the client and results in the least amount of harm to the client.

You are a counselor working at a mental health agency in a small town, and you have a 15-year-old female client. Your client shares that she is beginning to explore her sexuality; she feels good about her explorations and is excited about them, but she does not reveal the details as to with whom and what she is exploring. She has indicated that she'd like to work on boundary issues as well as issues regarding communication with her family. The client's parents have expressed to you their religious and moral values,

and it becomes clear that they feel that any pre-marital sexual exploration is unacceptable and a threat to the immortal soul of their daughter. Your client's mother specifically asks you to report whether her daughter reveals any sexual exploration. In your personal life, you have a Facebook page with approximately 600 "friends," to include neighbors and colleagues, but you've read about the difficulties surrounding counseling, confidentiality, and social networking, so you've taken some steps to keep your personal and professional "virtual lives" separate. Despite those efforts, you see a Facebook posting by a neighbor's 18-year-old daughter. She alludes to having a sexual relationship with a friend. As you read this update, you realize that the "friend" that she is referring to is actually your client. You bring this ethical dilemma to your treatment team, but the team is divided on the best course of action and cannot come to a consensus.

Decision-Making Model

Corey, Corey, and Callanan's (1998) eight-step ethical decision-making model will be used to address the scenario of the counselor (to be called Consuela) as she develops the best course of action in the case of her 15-year-old client (Dora) and the knowledge obtained on Facebook regarding Dora's alleged 18-year-old girlfriend (Gabby). This decision-making model entails eight steps: (a) identifying the ethical dilemma, (b) identifying the attendant potential issues, (c) reviewing the codes of ethics, (d) reviewing pertinent laws, (e) consulting, (f) weighing options for action, (g) considering consequences of each option, and (h) ultimately deciding on an appropriate action.

The rationale for selecting this model is threefold. First, it incorporates the moral principles of counseling, particularly autonomy, beneficence, nonmaleficence, and justice (Cottone & Claus, 2000). Second, it is an integrative model that appears to be as comprehensive as possible in a field that lacks extensive research (Rogerson, Gottlieb, Handelsman, Knapp, & Youngren, 2011). Finally, since ethical decision making is inevitably influenced by values, context, and human fallibility, this model requires the counselor to isolate each step in her deliberation, thereby mitigating subjective impulses to the extent feasible (Rogerson et al., 2011).

Identifying the Ethical Dilemma and Potential Issues

Consuela's dilemma is whether or not she should tell Dora's parents about Dora's sexual exploration. She identifies six key intertwined potential issues: the client-counselor relationship, client welfare and rights, the nature of the client's sexual relationship, parental rights, Dora's and her parents' respective values and multicultural considerations, and how the information about Dora and Gabby's alleged relationship was discovered. The overarching concern throughout all of these issues is that of confidentiality and who has the ultimate right to Dora's information.

Reviewing Codes of Ethics, Pertinent Laws, Consultation

Consuela will research the ethical and legal implications of the six potential issues, as well as consult, thereby documenting her findings. She reviews the codes of

ethics of the American Counseling Association (ACA, 2005), American Mental Health Counselors Association (AMHCA, 2010), and the National Board for Certified Counselors (NBCC, 2005), which are in alignment in the areas pertinent to this case (thus ACA is cited throughout). She must “strive to resolve ethical dilemmas with direct and open communication among all parties involved” (ACA, 2005, H. Introduction).

Consuela researches the Colorado Revised Statutes, given her residence in Colorado. She also looks for case law from Colorado and other states, noting the Supreme Court ruling regarding persuasive precedent and judicial interpretation of Article IV, Section I of the U.S. Constitution that case law from states other than hers will have a bearing on her decision-making process.

Consuela has already consulted her agency team about this dilemma, but the team is divided. Broadening her consultation, she researches pertinent professional publications.

Client-Counselor Relationship

The ACA code (2005) states that the “primary responsibility of counselors is to respect the dignity and to promote the welfare of clients” (A.1.a.), that counselors “recognize that trust is a cornerstone of the counseling relationship” (B. Introduction), “respect client rights to privacy” (B.1.b.), and “do not share confidential information without client consent or without sound legal or ethical justification” (B.1.c.). The exception is “when legal requirements demand that confidential information must be revealed” (ACA, 2005, B.2.a.).

First, Consuela must determine whether her primary client is Dora or Dora’s parents. It may seem obvious that Dora is the client, but since she is a minor, her parents may actually be the clients to whom Consuela is most obligated. In the case *In Re Daniel C.H.* (1990) the issue of psychotherapist-patient privilege when the client is a minor was raised. The statutes do not specifically address this issue, but case law indicates privilege lies with the minor as decided in *In Re Daniel C.H.* (1990). This leads Consuela to conclude that Dora, not her parents, is the party to whom she is most obligated.

Neither privacy nor confidentiality is an absolute right afforded to minors (Taylor & Adelman, 1989). Research concurs that minors who are able to give informed consent should be afforded the same confidentiality rights as adults (Belter & Grisso, 1984; Isaacs & Stone, 2001; Ledyard, 1998; Mitchell, Disque, & Robertson, 2002).

Research recommends that counselors contemplating breaking confidentiality of minor clients inform them of this and offer them the chance to tell their parents themselves (Lawrence & Robinson Kurpius, 2000; Mitchell et al., 2002). Also, steps need to be taken to repair any damage to the therapeutic relationship that may occur because of this breach (Taylor & Adelman, 1998). Consuela must think about the impact disclosure might have on the counseling relationship and how Dora might be harmed if Consuela discloses the confidential information to her parents.

Through the knowledge gained from Facebook, Consuela has unwittingly strayed into the gray area of dual relationships. Moleski and Kiselica (2005) point out that dual relationships can impede the client’s autonomy, which the counselor must honor and promote. Accessing information about a client, even mistakenly, can compromise the client’s autonomy and tip the balance of power in the therapist’s direction. A power shift

can also damage the therapeutic relationship if the client no longer feels safe and in control of what she is willing to share and work on. When Consuela addresses, in session, the information she learned from Facebook, Dora may share more about her sexuality than she is willing or psychologically able to at this time.

Consuela must bear in mind Dora's stage of development and how disclosure may hinder not only the therapeutic relationship, but Dora's concept of self. Consuela is reminded that "preadolescents and adolescents may have a heightened desire for privacy that is related to the confusion regarding self and others that is appropriate to their developmental stage of growth" (Remley & Herlihy, 2005, p. 194). Dora is in Erikson's stage of identity versus role confusion, in which adolescents construct their identity through defining who they are, what they value, and what directions they choose to go in life (Berk, 2004). Identity versus role confusion is the major psychological conflict for adolescents because they are searching for what is true about themselves in regard to many aspects of life, including sexual orientation, interpersonal relationships, career path, and cultural, moral, political, and religious ideals.

Client Welfare and Rights

Along with confidentiality, Dora's welfare and rights are paramount throughout the decision-making process. Because of Dora's age, Consuela should clarify the implications of her consent to counseling and ensure that Dora is sufficiently involved in the informed consent process. Both the ethical codes and the statutes address the necessity to provide disclosure statements at the beginning of therapy (ACA, 2005, B.1.d.; C.R.S., 12-43-214). Consuela would likely have given a disclosure statement to both Dora and her parents, and since informed consent is an ongoing process, it would behoove her and the counseling relationship to revisit confidentiality with all parties.

Regarding the issue of minors consenting to counseling, Consuela again turns to the statutes. A minor who is "fifteen years of age or older, whether with or without the consent of a parent or legal guardian, may consent to receive mental health services" (C.R.S., 27-65-103). This confirms that Dora is legally able to receive mental health services without her parents' consent. Further, when determining at what age an individual is capable of giving informed consent, research supports that 14- to 15-year-olds are cognitively mature enough to make adult decisions (Belter & Grisso, 1984; Ledyard, 1998; Mitchell et al., 2002), thus are able to provide informed consent, and in turn should be afforded full confidentiality (Belter & Grisso, 1984).

Nature of Client's Sexual Relationship

The third potential issue is whether Dora's presumed relationship with Gabby does exist, and if so, is healthy, legal, and not abusive. Gabby's Facebook post "alludes to having a sexual relationship with a friend," and Consuela "realizes" that the friend is Dora. However, Consuela cannot be certain that Gabby's allusion is fact, that the relationship is indeed sexual, or that it is definitely with Dora. The only way to verify this is to discuss it directly with Dora. Consuela must reflect on Dora's welfare as she considers approaching Dora about her possible relationship with Gabby, information that Consuela has unbeknownst to Dora. If she decides to probe for more information from

Dora about her relationship with Gabby, she will be guided ethically by the statement that the counselor should “solicit private information from clients only when it is beneficial to the counseling process” (ACA, 2005, B.1.b.).

If the relationship is abusive, “disclosure is required to protect clients... from serious and foreseeable harm” (ACA, 2005, B.2.a.), and legally she is obligated to report if she has “reasonable cause to know or suspect that a child has been subjected to abuse or neglect” (C.R.S., 9-3-304). Also, Dora potentially is engaging in sexual acts with Gabby, three years her senior, so Consuela must determine the legality of the relationship. According to the statutes, to constitute sexual assault or a sexual offense against a child, the victim must be less than 15, and the actor must be at least four years older than the victim (C.R.S., 18-3-402, 18-3-411). Thus, if Dora and Gabby are sexually involved, they are engaging in consensual relations and are not breaking the law, as Dora is at an age of consent.

Dora’s mother has specifically asked Consuela to tell her about Dora’s sexual exploration, so Consuela researches the legal rights to privacy for minors. She references *Aid for Women v. Foulston* (2006), a case in Kansas in which many organizations, including the American Psychiatric Association, fought the Kansas attorney general’s mandate to report any sexual activity by a minor under the age of sixteen. However, the court decided that minors possess a constitutional right to privacy (*Aid for Women v. Foulston*, 2006).

Consuela must also consider the possibility that Dora is engaged in a lesbian relationship. If Dora confirms this, Consuela must consider the implications—in particular the possible harm to her client—of revealing to Dora’s mother this added dimension of Dora’s sexual exploration. In *Sterling v. Borough of Minersville* (2000), in which a police officer threatened to disclose the sexual orientation of an 18-year-old to his family, the court concluded that sexual orientation is an “intimate aspect of his personality entitled to privacy protection” (p. 196). Both the state appellate court and the state supreme court concur that sexual orientation should be “safeguarded against unwarranted disclosure” (*Sterling v. Borough of Minersville*, 2000, p. 196). Sadly, the 18-year-old killed himself in order to avoid the disclosure of his sexuality to his family.

In another case, *Nguon v. Wolf* (2007), the court ruled that the forfeiting of a minor’s right to privacy in one context (school) does not imply that they have forfeited it in all contexts (*Nguon v. Wolf*, 2007). By implication, then, even though Dora may be open about her relationship with Gabby in some contexts, she has not given up her right to privacy in other contexts (e.g., with her parents).

The sexual identity development process for teens who are questioning their heterosexuality presents a myriad of challenges, including lack of social support, lack of information regarding homosexuality and bisexuality, and fear of rejection from parents and peers (Fontaine & Hammond, 1996; Riley, 2010). It is “estimated that 10%... of adolescents between the ages of 10 and 20 in the United States are lesbian, gay, or bisexual and/or are questioning their sexual identity” (Kivel & Kleiber, 2000, p. 216). Questioning teens in rural areas face additional challenges their urban peers may not. Social isolation is especially prevalent in rural areas for questioning teens (Fontaine & Hammond, 1996). One study found that teens who were lesbian, gay, bisexual, transgendered, or questioning (LGBTQ) and lived in a rural area were more likely to engage in sexual relations and substance abuse (Poon & Saewyc, 2009). Another study

found that LGBTQ teens had higher rates of suicide, sexually transmitted diseases, and skipping school (Riley, 2010). These elevated risk factors point to potential harm to Dora if Consuela does not disclose information regarding Dora's sexual activity to her parents. If Consuela believes that not disclosing would cause more harm than good, she is ethically bound to disclose this information.

However, other factors need to be considered as well. When teens, especially LGBTQ, are developing their sexual identity they go through a coming-out process that begins with denial and moves toward increasing acceptance until they are ready to come out to the people of their choosing (Fontaine & Hammond, 1996). If forced to disclose too early in the process, they face the risk of an identity foreclosure, which can result in psychological harm, isolation from and/or severance of the relationship with parents, and eviction from their homes (Fontaine & Hammond, 1996; Riley, 2010). These are all reasons Consuela may want to consider keeping Dora's confidences regarding her sexual exploration.

Parental Rights

Although Dora is her primary client, Consuela is nonetheless obliged to consider the parents' rights to information about their daughter. Dora's mother has specifically requested that Consuela tell her if she discovers that Dora is sexually active. Consuela must determine whether the parents are entitled to this information. Dora's parents are primary influences in Dora's life, and it is imperative that they be considered and honored in the decision-making process. The ACA code advises Consuela to inform Dora's parents about the nature of counseling, the importance of confidentiality and divulging only what is necessary, and doing what is in the best interest of the client while working to establish a "collaborative" relationship amongst all parties (2005, B.5.b.; B.2.d.).

Legally, "the professional person rendering mental health services to a minor may, with or without consent of the minor, advise the parent or legal guardian of the minor of the services given or needed" (C.R.S., 27-65-103). However, the professional "shall not disclose, without the consent of the client, any confidential communications made by the client, or advice given thereon, in the course of professional employment" (C.R.S., 12-43-218). Since legally Consuela's client is Dora, her confidential information is protected under this section of the law. In *In Re Daniel C.H.* (1990), the court acknowledged that the parent-child relationship alone is not sufficient grounds for a parent to demand confidential information covered by therapist-patient privilege. However, in *In Re Mark L* (2001), a parent's rights to some counseling information were protected. It was established that "circumscribed information" could be given to parents to keep them abreast of the therapeutic process (*In Re Mark L*, 2001, p. 584).

In summary, case law and statutes are clear that Consuela may discuss with Dora's parents circumscribed information regarding the counseling process, but she may not discuss confidential details about the content of any of the sessions without Dora's explicit consent.

From her literature review, Consuela discovers that the research maintains that when parents request information regarding their child's counseling sessions, the child's best interest is a "central issue" to breaching confidentiality (Mitchell et al., 2002). She

must consider Dora's age, developmental stage, relationship with her parents, whether disclosure would help or harm Dora, and whether or not disclosing would harm her (Ledyard, 1998). If a counselor believes information that a minor client discloses could put her in "clear and imminent" danger, then breaching confidentiality is warranted (Mitchell et al., 2002).

A study conducted by Isaacs and Stone (2001) reviewed situations in which counselors would breach confidentiality of their minor clients to their parents. Less than 25% of the counselors interviewed would breach confidentiality if a minor stated they had sexual intercourse when their client was 14 years old (Isaacs & Stone, 2001). This percentage was reduced to only 7% when the client's age was 17 (Isaacs & Stone, 2001). Further, this study concluded that only 11% of counselors surveyed would breach a minor's confidentiality if directly asked to do so by parents (Isaacs & Stone, 2001).

Clearly, Consuela must determine to what extent information should be divulged to Dora's parents. Also, she must ascertain whether withholding information regarding Dora's sexuality would put her in serious harm. Again, the costs and benefits to the client, Dora, must be carefully weighed in deciding what, if anything, to disclose to the parents.

Values and Multicultural Considerations

Consuela is ethically bound to respect the moral and spiritual values of all parties. Dora's parents have made clear their views. If Dora is in a lesbian relationship, this may compound their concern. Consuela does not know what Dora's religious beliefs are (although she can justifiably infer that they do not exactly coincide with her parents' beliefs). She may opt to help Dora articulate her own beliefs and how they might differ from those of her parents, particularly since Dora's stated goals for therapy include addressing boundary issues and communication with her family.

The ACA code reminds counselors to be "sensitive to the cultural diversity of families" (2005; B.5.b.) and not to "condone or engage in discrimination based on culture,... religion/spirituality,... [or] sexual orientation" (C.5). The primary concern for Consuela is whether Dora and her parents hold similar values and beliefs, and if they do not, how she honors the diversity within the family. "The values, needs, and motives of family members will necessarily differ and even conflict at times. Psychotherapists must recognize that such competing interests present conflicts that require thoughtful attempts at reconciliation" (Koocher, 2008, p. 609). With this potential conflict in mind, the AMHCA code may have bearing if Consuela decides to work with Dora to challenge her parents: "Counselors may encourage clients to challenge familial... and societal obstacles to their growth and development and they may advocate on their clients' behalf" (2010, F.2.b.). Ethically, Consuela is in the difficult position of wanting to honor values differences while also working to allow Dora the freedom to grow and develop without obstacles.

Legally, Consuela understands that the First Amendment to the United States Constitution protects citizens' rights to freedom of religion. This right extends to Dora, should she choose to differ from the religious beliefs of her parents. Consuela has an ethical obligation to consider Dora's parents' religious beliefs as they affect Dora, but

Consuela cannot legally or ethically attempt to persuade Dora to align with the religious preferences of her parents.

The Facebook Issue

Consuela has numerous angles to consider regarding the sixth and final potential issue, Facebook. She may be obligated to talk with Dora about Gabby's posting, and such conversation could have an effect (beneficial or detrimental) on the therapeutic process. She should be concerned about the possibility that Gabby's post could spread rapidly, potentially outing Dora and creating a new set of issues. And she must further examine the ethical considerations of maintaining a Facebook page as a counselor. She has a responsibility to mitigate "small-world hazards" of social networking exacerbated by the fact that she lives and works in a small town (Taylor, McMinn, Bufford, & Chang, 2010, p. 154).

While social networks such as Facebook have rapidly permeated our society, the legal and ethical aspects of working with such networks in a professional setting have not been well documented. Consuela may find justification for consulting Dora about the truth of Gabby's posting here: "assist clients in determining the validity and reliability of information found on the World Wide Web" (ACA, 2005, A.12.h.8.). It is important for counselors to examine the impact such technology can have on their vocation, but currently Consuela cannot locate any legal cases or ethical codes that set a precedent for dealing with information gained from a social networking site without a client's knowledge.

Birky and Collins (2011) suggest that counselors discuss with clients the use of online social networking and the effects it may have on the therapeutic relationship. Both client and counselor should understand the implications of and vulnerabilities created by use of the Internet and social networking sites as counselor's and client's paths may inadvertently collide. As Birky and Collins point out, when a therapist chooses to engage in Facebook, he/she "bears the responsibility of proving that clients' benefits are not harmed" (p. 199). It is then Consuela's ethical duty to determine whether her Facebook use is potentially harmful to her clients.

According to Taylor et al. (2010), discovery from a Facebook post about Dora's relationship with Gabby could be considered unintentional disclosure. Such unintentional self-disclosures on the Internet could be considered "everyday life hazards," where both client and counselor are going through their daily routines and an accidental disclosure or transfer of information occurs (p. 154). The authors mention that these hazards are generally considered unavoidable, but advise that the counselor address them with the client as soon as possible. When bringing up the Facebook post with Dora, it would be wise for Consuela to talk with her about how private information on the Internet, including posts by others, could get to her parents, school, and friends.

Through her consultation of the literature, Consuela comes to the personal realization that she needs to rethink her social networking because it is affecting her professional life, making a small town smaller. Although she just as easily could have heard this information at the supermarket, Consuela wants to try to limit "small-world hazards" as much as possible" (Taylor et al., 2010, p. 154). She documents the

precautions she has already taken but understands that more may need to be done to maintain her own confidentiality as well as her clients' confidentiality.

Options

Remley and Herlihy (2005) lay out specific steps for a counselor to follow in the event that a minor does not want to disclose and the parents are asking for information. Consuela goes through each step to understand the possible outcome of disclosing information to Dora's parents and, if so, how. First, she would want to see if Dora is willing to disclose to her parents the content of her counseling sessions, particularly her sexual explorations. If Dora does not want to disclose, then Consuela would need to have a conversation with Dora's parents about whether Dora's best interests are served by sharing information. She should also remind Dora's parents about the nature of the counseling relationship and the therapeutic process and reassure them that they will be notified if Dora is in danger. If they still demand information, Consuela will assume the role of mediator during a joint session between Dora and her parents. It is the hope that Dora will disclose enough information during the joint session to satisfy her parents, or that her parents change their minds about wanting the information. If that does not happen, and Consuela feels ethically obligated, she will inform Dora beforehand that she is going to disclose the information to her parents. If Consuela believes that she does not ethically or legally need to disclose the information, she will either ignore or refuse the request of Dora's parents and maintain Dora's confidentiality.

Consequences

If disclosure is to occur, whether it is Dora or Consuela disclosing to Dora's parents, the following consequences may occur. Dora may experience identity disruption and foreclosure if she is in fact homosexual, as she may be disclosing or coming out too soon (Fontaine & Hammond, 1996; Riley, 2010). Premature disclosure could also disrupt Dora's autonomy as a client. Although the parents' wishes may be honored, cultural and religious implications may create isolation from her peers and her parents and potential eviction from the home. Discrimination in the form of physical and/or psychological harm is also a very real possibility. If Consuela becomes the informer she may lose Dora's trust, thus compromising the therapeutic relationship. If Consuela discloses against Dora's wishes, Dora may pursue legal action.

If the decision is to not disclose, the consequences are just as numerous. Although the parents' wishes are not honored, the therapeutic relationship remains a safe environment for Dora's exploration and her boundaries are maintained. Within the trust and safety of the therapeutic relationship, Dora may be able to discover more about how her cultural and religious background affects her current functioning. By giving Dora the option to keep her confidentiality, Consuela returns the locus of control to Dora. Consuela may incite legal action from Dora's parents if they do not get the information they desire.

Actions

Consuela's decision hinges upon the crucial issues of how she can best serve her client in this pivotal developmental stage and the potential to do harm if she breaches confidentiality. Dora may or may not be certain of her sexual orientation, which is not atypical of teenagers. Consuela should give Dora the safety and time to continue her exploration, as Consuela has established that no apparent danger exists.

Consuela will tell Dora that her parents are requesting information and that she can assist her in disclosing should she ever be ready. Depending on the course of counseling, Consuela can revisit whether to disclose later.

Thus, in the interest of her client's welfare, Consuela chooses not to disclose to Dora's parents. However, after obtaining Dora's consent, she will continue the informed consent process with Dora's parents and talk with them about the therapy process, her methods, and the benefits of confidentiality for their daughter. This keeps the parents involved as partners in Dora's mental health and serves Dora's goals of working on boundary issues and communication with her family.

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