



SCCC Clinical Training

January 10, 2019

Legal and Ethical Responsibilities (Mostly About):

- ✓ Confidentiality
- ✓ Boundaries
- ✓ Informed
Consent



Confidentiality

Broadly Defined:

- ★ A legal and ethical restriction on the therapist prohibiting any disclosure of individually identifiable information about a client, unless mandated or permitted by law

Confidentiality

- ✱ Revealing confidential information is against the law
- ✱ Revealing confidential information violates CAMFT ethical standards
- ✱ Failure to maintain confidentiality exposes a therapist to civil liability
- ✱ Failure to maintain confidentiality undermines the premise and basis of psychotherapy: clients' need to reveal the totality of their experience
- ✱ Confidentiality includes even the fact of a client's participation in therapy

Confidentiality

Client relatives

Fellow

counsel

What is said inside the boundaries of the therapeutic relationship must not be revealed to anyone outside the boundaries of the therapeutic relationship.



Anyone who has no legal right to know

Social

Confidentiality

What to say to third parties:

- ☀ “I’m sorry. The laws concerning client confidentiality do not permit me to even acknowledge whether anyone is or is not a client.”
- ☀ “I’m sorry, the laws regarding client confidentiality prohibit me from having conversations about anyone who may or may not be a client.”
- ☀ “I’m sorry. The law requires written permission from any client to allow me to speak to others about them.”

Confidentiality

With other counselors:

- ☀ Take care not to reveal “individually identifiable information”
- ☀ Consider: what is the purpose of the conversation? Is it in the best interests of the client? If not, can the conversation wait until you can talk to a supervisor?



Confidentiality

What to say to social workers:

- ☀ “No, even though that person said it was okay to talk to me, I need a release authorization before I can speak to you.”
- ☀ “I understand you want to speak to me ASAP, so I will get a release to make that possible and get back to you at that time.”



Common Confidentiality Violations

- ☀ Telephone:

- ☀ voice mail (do non-clients have access?)
- ☀ conversations with client parent, spouse, relative, social worker, etc.
- ☀ people in waiting room overhearing your conversation

- ☀ Mail (return address)

- ☀ Informal consultations

- ☀ Waiting room exchanges

- ☀ “Hallway therapy”

- ☀ therapy ends at the counseling room door



Common Confidentiality Violations

★ Supervision

- ★ A general exception to confidentiality exists within the supervision setting
- ★ Fellow supervisees are not entitled to share confidential information outside of supervision; don't share "individually identifiable information"
- ★ Best to discuss "shared clients" (e.g., one counselor is seeing the couple, another an individual who is part of the couple) with permission of clients



Other Common Violations of Client Confidentiality

- ★ Court-ordered clients do not lose the right to confidentiality because they are court-ordered
- ★ Letters on behalf of court-ordered clients
 - ★ Reveal only general *facts* of therapy
 - ★ Do not reveal specific *contents* of therapy
 - ★ Never send without written authorization
 - ★ Never send without supervisor or administrative approval



Other Common Violations of Client Confidentiality

Handling of records and case notes

- ☀ Don't leave them lying around the counselor's lounge
- ☀ Don't access or look at other counselor's case notes
- ☀ If you write notes on the computer next to room 14, **DELETE IT!! DO NOT LEAVE ANY TRACE OF THE NOTES ON THE COMPUTER FOR OTHERS TO SEE!**



Mandated Exceptions to Confidentiality

- ✱ Child abuse
- ✱ Dependent adult abuse
- ✱ Elder abuse
- ✱ Tarasoff (encouragement to break confidentiality)
- ✱ Patriot Act

Child Abuse Reporting

- ★ A therapist who has knowledge or a reasonable suspicion of child abuse, must report by phone immediately and in writing within 36 hours to a child protective agency including law enforcement, social services, etc., within the state of California
- ★ (800) 540-4000
- ★ Consult with your supervisor or clinical staff if you think something you learned from a client could possibly be child abuse

You Are Not A Mandated Reporter 24/7

- ★ A therapist is only a mandated reporter of information learned in his or her professional capacity or within his or her scope of employment
- ★ A therapist who learns in his or her personal life of a child who has been abused has no mandate to report the abuse

Partial or Limited Information

- ★ Therapists are mandated to report whenever they know or suspect a child, anywhere, has been abused, by anyone
- ★ It is not up to a mandated reporter to gather or ascertain all the facts. If there is reasonable suspicion, report and let CPS determine what to do with any “missing” information
- ★ Not having all necessary information (e.g., names or locations of abusers or victims) does not relieve a mandated reporter of the reporting responsibility

Reporters, Not Investigators

- ★ California psychotherapists are not investigators of child abuse
- ★ In L.A. County, that job belongs to the Department of Children and Family Services or to law enforcement
- ★ No therapist is required to ask clients questions solely for the purpose of determining whether or not there is a reporting responsibility
- ★ In asking such questions, the therapist is to be guided only by his/her clinical judgment and the welfare of the client

No “Historical” Reports

- ★ There is no mandate to report child abuse upon discovering that a person 18 or older was abused as a child
- ★ If an adult reports having been abused as a child and the therapist has a reasonable suspicion the abuser has victimized others now under 18, the therapist must report
- ★ CANRA does not mandate a report if an alleged perpetrator has “access to children.” The mandate requires knowledge or reasonable suspicion

Out of State Reports

- ✱ Knowledge or reasonable suspicion that a child under the age of 18 has been abused must be reported even if the abuse occurred out of state and even if the abuser or victim is out of state
- ✱ However, that report must be filed in California
- ✱ Reporting to another state violates confidentiality, since the law neither requires or permits such a disclosure
- ✱ Not reporting in California fails to fulfill your mandate to report the abuse

Confidentiality After Reporting

- ★ Once a report has been filed, the exception to confidentiality generally ends
- ★ A 2011 law permits (but does not require) reporters to cooperate with follow-up investigators of reported child abuse without a release authorization
- ★ If law enforcement, probation officers, DCFS workers, etc., request (or demand) further information, you are not required to provide it; best practices would be to cooperate with follow-up investigations only if it is in the client's best interests for you to do so...get consultation!

Should I or Shouldn't I Report?

- ✱ Failure to report known or suspected child abuse can result in:
 - ✱ Criminal charges – up to 6 months in jail and a fine of up to \$1000
 - ✱ Action against your license by the BBS
 - ✱ Civil liability for emotional damages of any subsequent abuse to which a child may be exposed
- ✱ On the other hand, therapists who are mistaken or overzealous in reporting child abuse are protected:
 - ✱ Mandated reporters have **absolute immunity** from legal action arising from filing a child abuse report

Physical Abuse

- ★ “Physical injury or death inflicted by other than accidental means by another person.”
- ★ Examples include:
 - Mild (a bruise, welt, scratch, cut, scar)
 - Moderate (numerous bruises, minor burns, single fractures)
 - Severe (large burn, central nervous system injury, abdominal injury, multiple fractures, life-threatening abuse.
 - Physical abuse does not include injuries which occurred during a mutual affray between minors.

Unlawful Corporal Punishment

- ★ Willful infliction upon any child cruel or inhuman corporal punishment or injury resulting in a wound or external or internal injury, whether of a minor or serious nature, caused by physical force.”
- ★ Gonzalez v. Santa Clara County (2014): “parental privilege to impose reasonable physical discipline upon a child must be incorporated into definitions of what constitutes the willful harming or injuring of a child and unlawful corporal punishment”
- ★ Gonzalez established three considerations in determining whether corporal punishment of a child by a parent or guardian falls within the “parental privilege” or if it constitutes “criminal

Unlawful Corporal Punishment: A New Understanding

- ★ 1) Was the corporal punishment motivated by a sincere wish to teach appropriate behavior or to discipline misbehavior?
 - ★ Or was it intended to terrorize, intimidate, bully, or see a child naked?
- ★ 2) Was corporal punishment as a discipline warranted by the misbehavior?
 - ★ Corporal punishment should only be used to correct serious and/or repeated misbehaviors

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Unlawful Corporal Punishment: A New Understanding

- ★ 3) Was the corporal punishment “reasonable in kind and degree”?
 - ★ Considering the age of the child
 - ★ Considering the part of the body subject to corporal punishment
 - ★ Considering the instrument used to inflict the punishment
 - ★ Considering the damage inflicted, i.e., temporary or “accidental” bruising versus severe, lasting, or substantial bruising

Unjustifiable Punishment or Willful Cruelty

- ✱ Causing or permitting a child to suffer unjustifiable physical pain or mental suffering
- ✱ Therapists are not mandated to report emotional abuse (but may if they choose)
- ✱ However, if mental suffering occurs, this would be mandated
- ✱ Mental suffering: evidence of “untoward” symptoms (e.g., depression or anxiety)
- ✱ Willfully causing or permitting the person or health of a child to be placed in a situation such that his or her person or health is endangered.

Neglect

- ✱ Negligent treatment or maltreatment of a child by a person responsible for the child's welfare that indicate harm or threatened harm to the child
- ✱ Not providing for a child's basic physical or emotional well-being
- ✱ Allowing a child to be exposed to danger (guns, drugs, child left alone in a parked car or bathtub, drunk driving with a child in the car, etc.)

Child Sexual Abuse: Defined

★ Sexual assault

- ★ Rape, statutory rape, lewd/lascivious acts upon a child
- ★ Penetration of the vagina or anal opening
- ★ Any oral/anal or oral/genital contact
- ★ Intentional touching of genitals or intimate parts for purposes of sexual arousal or gratification
- ★ Masturbation in the presence of a child


★ Sexual exploitation

- ★ Accessing matter depicting a minor engaged in obscene acts. As of 2015, this includes “knowingly downloading, streaming, or accessing (child pornography) through electronic or digital media . . .”
- ★ Facilitating engagement of a child in prostitution or performance involving obscene sexual conduct

Reporting Consensual Sexual Activity Involving Minors

- ☀ Consensual sex involving minors is generally not reportable
- ☀ There are, however, several exceptions to this

Consensual Sex Between Minors

This age group is generally exempt from mandated reports arising from consensual sex	<u>AGE</u> 17 & 16	This age group can have consensual intercourse or sexual activity with anyone from age 14 to 114
No intercourse with anyone age 21 or older	15 & 14	No sexual activity with anyone 10 years (or more) older
No sexual contact of any kind with any person 14 or older	13 & 	No exploitation of the sexual naivete of any child under 14, even by another under 14

Reporting Consensual Sexual Activity Involving Minors

- ★ Consensual sexual activity involving minors *must be* reported if:
 - ★ Sexual *intercourse* occurs between a minor under 16 and an adult 21 or older
 - ★ Thus there is no mandate to report if a 16 or 17-year-old is having sex with anyone older, no matter how much older that person may be

Reporting Consensual Sexual Activity Involving Minors

- ✱ Consensual sexual activity involving minors *must be* reported *if*:
 - ✱ Sexual *activity* occurs between a minor 14 or 15 and an adult at least 10 years older
- ✱ No mandate to report sexual *intercourse* between minors 14, 15, 16, 17, 18, 19, 20
- ✱ No mandate to report sexual *activity* unless there is a 10-year age difference

Reporting Consensual Sexual Activity Involving Minors

☀ Consensual sexual activity involving minors *is* reportable *if*:

- ☀ Consensual sexual contact occurs between minors under 14 and persons 14 or older
- ☀ Consider ages, maturity, the sexual activity and the nature of the relationship
- ☀ Consult with your supervisor and DCFS

Reporting Consensual Sexual Activity Involving Minors

- ★ There is a mandate to report consensual sexual activity involving minors under the age of 13 only *if*:
 - ★ It involves a sexually mature older child (12 or 13) with a younger, less mature child where in which the younger child's sexual naiveté has been exploited

Reporting Oral or Anal Sex Involving Minors

- ★ On April 11, 2013, the BBS issued a legal opinion citing multiple court interpretations that have, over the years, confirmed that minors can lawfully engage in consensual sex with other minors of like age, without the necessity of a mandatory child abuse report
- ★ The BBS counsel's opinion then concluded: lawful consensual sex between minors of like age includes oral copulation and sodomy and does not, in and of itself, require a mandatory report



Reporting Child Abuse

- ★ If you believe you may have a child abuse reporting situation:

**Consult with your
supervisor or clinical
staff!**

Reporting Elder/Dependent Adult Abuse

- ★ “Any mandated reporter who . . . has observed or has knowledge of an incident that reasonably appears to be abuse . . . or is told by an elder or dependent adult that he or she has experienced behavior constituting abuse . . . or reasonably suspects abuse shall report by phone immediately and by written report sent within 2 working days.”

What is an Elder?

- ★ Anyone 65 years or older
- AND
- ★ Residing in the state of California
 - ★ There is no mandate to report if the elder is not residing in California.

Who is a Dependent Adult?

- ✴ Any person residing in California, between the ages of 18-64, who has:
- ✴ Physical or mental limitations which:
 - ✴ Restrict the ability to carry out normal activities of daily living
 - ✴ Protect their own rights
 - ✴ Threaten the capacity to live independently
- ✴ There is no mandate to report if the person is not residing in California.

Reportable Dependent Adult and Elder Abuse

- ☀ Physical abuse (includes use of physical or chemical restraints, assault, battery, sexual abuse)
- ☀ Abandonment (desertion)
- ☀ Isolation
- ☀ Neglect (includes self-neglect)
- ☀ Financial abuse



Reportable Dependent Adult and Elder Abuse

- ★ If you feel you may have an elder or dependent adult abuse situation:

Consult with your
supervisor or clinical
staff!

Permitted Exception: Suicide

- ★ Therapists are obligated by court decisions (case law, legal precedents) to take reasonable steps to ensure the safety of a suicidal client
- ★ Reasonable steps must reflect, the average degree of skill, care, and diligence exercised in assessment, diagnosis, and treatment by other therapists of similar experience in similar circumstances

Suicide Protocol

★ Reasonable steps:

- ★ Good therapy: helping the client make a better choice
- ★ Safety plan
- ★ Increased contact
- ★ Medical or psychiatric referrals
- ★ Suicide prevention hotline referral
- ★ Suicide watch
- ★ Voluntary hospitalization
- ★ Involuntary hospitalization

Suicidal Clients

- ★ If you believe your client is a suicidal risk and feel you need help, consult with your supervisor or clinical staff!
- ★ After managing a suicidal client, consult with your supervisor or clinical staff to debrief and assure a standard of care
- ★ Document thoroughly the actions you took, the client's response, and your line of thought as to why the actions you took appear to be reasonable steps to ensure the client's safety.

Permitted Exception: Tarasoff Duty

★ You have a Tarasoff duty to protect the public from harm when:

- ★ Your client . . .
- ★ Or a client family member, friend, or any credible third party
- ★ Communicates to you . . .
- ★ Your client's serious, imminent intent . . .
- ★ To do physical violence . . .
- ★ To a reasonably identifiable other

Permitted Exception: Tarasoff Duty

- ✱ In such circumstances, the therapist with a Tarasoff duty to protect can:
 - ✱ Help the client to reconsider his or her options and choices
 - ✱ Contract with the client to do no harm
 - ✱ Help the client to decide to hospitalize him or herself
 - ✱ Initiate an involuntary hospitalization
 - ✱ Notify the police
 - ✱ Warn the intended victim

Tarasoff “Duty to Warn”

- ★ If there is a Tarasoff duty, making reasonable attempts to notify the police and to warn the intended victim provides the therapist with a “veil of immunity” from any subsequent harm arising from the clients behavior.

Tarasoff Immunity Statute, Civil Code Section 43.92

Now This: Tarasoff? Report!

- ✱ In the wake of the 2014 Isla Vista rampage, the CA legislature tightened the laws around mentally unstable people and weapons
- ✱ W&I Code 8105 requires a licensed psychotherapist to report to local law enforcement within 24 hours the identity of a person subject to W&I 8100
- ✱ W&I Code 8100 is a patient who communicates to the psychotherapist a serious threat of physical violence against reasonably identifiable victims
- ✱ The intent of the laws is to disarm dangerous, mentally unstable persons and to prevent them from possessing weapons for five years

Now This: Tarasoff? Report!

- ✱ Under Tarasoff, a therapist whose patient communicates a serious threat of physical violence to a reasonably identifiable other has options that do not break confidentiality
- ✱ Under W&I Codes 8100 and 8105, a therapist whose patient communicates a serious threat of physical violence to a reasonably identifiable other, the therapist must report to local law enforcement within 24 hours
- ✱ A therapist who relies on Tarasoff and 43.92 (Tarasoff immunity statute) and does not report to police violates W&I Codes 8100 & 8105, and conceivably would not have done what was “reasonable under the circumstances” by following what the law demands, thus also falling short of Tarasoff’s duty to protect

Tarasoff “Duty to Warn”

- ★ If you believe your client is a serious threat to a reasonably identifiable other and feel you need help, consult with your supervisor or clinical staff!
- ★ After managing a Tarasoff situation, consult with your supervisor or staff to debrief and assure a standard of care
- ★ Document your actions, the client’s response, and your line of thought as to why the actions you took were reasonable steps to prevent the threatened harm.

Permitted Exception: Evidence Code 1024

- ★ “There is no privilege under this article if the psychotherapist has reasonable cause to believe that the patient is in such mental or emotional condition as to be dangerous to himself or to the person or property of another and that disclosure of the communication is necessary to prevent the threatened danger.”

Permitted Exception: Evidence Code 1024

- ✱ This permits therapists to break confidentiality of the client is imminently dangerous, even if unintentionally, to the public at large
 - ✱ Clients who are heavily intoxicated and intend to drive
 - ✱ Clients whose mental condition makes them dangerous to others
 - ✱ Clients who intend to destroy property that could result in harm to others

Permitted Exception: Evidence Code 1024

- ✱ In an situation in which believe you should break confidentiality, consult with clinical staff or your supervisor
- ✱ Do not break confidentiality unless the anticipated danger is imminent (i.e., you have no further opportunity to work with the client)
- ✱ Do not break confidentiality unless a threat to property could reasonably lead to harm to the client or others

Release Authorizations

- ★ In order to speak to any 3rd party to the therapy, clients must authorize the release of confidential information
- ★ There is no such thing as verbal authorization to release confidential information
- ★ The Center has authorization forms behind the front desk with all the other forms

Release Authorizations

- ★ A client who signs a valid release authorization permits you to talk to a specified person about the client for a purpose to which the client has agreed
- ★ Without the client's signature on a valid release authorization, even acknowledging a client's participation in therapy breaks confidentiality
- ★ A valid release authorization originating with someone else (e.g., social worker) may be relied upon as sufficient, but it must be a properly executed release

Release Authorizations

- ★ “In order for me to discuss anyone who might be my client, I would have to have a release authorization signed by that client, and until then I would be unable to have such a conversation.”
- ★ “I appreciate your concern, but the laws of confidentiality do not permit me to have such a conversation with you at this time. Should those circumstances change, I will contact you.”

Minors and Confidentiality

- ☀ All clients have a right to confidentiality
- ☀ Therefore, minors who are clients also have the right to confidentiality
- ☀ However, in general the law says that parents have a right to gain information about the treatment their child has received and about the child's well-being.
- ☀ Clarify upfront with minors and their parents how confidentiality will work

Minors and Confidentiality

- ★ Parents of minor clients should be told:
 - ★ They can expect occasional updates about the general progress of therapy
 - ★ They will be told of anything they can do that would be helpful to therapy
 - ★ They understand you will not be a conduit of information from child to parent
- ★ However, it should be made clear that if a therapist has serious concerns about a child's dangerous or life-threatening behavior, the parents will be notified

Minors and Confidentiality

- ★ If you believe your minor client is a engaging in behavior that makes him or her dangerous to themselves and believe that it may be important to notify the parents:

Consult with your
supervisor or clinical
staff!

Obtaining Parental Consent to Treat a Minor

- ✱ By law, consent may be granted by only one parent if
 - ✱ The parents are in an intact marriage
 - ✱ The parents have never been married
 - ✱ The parent has sole legal custody
- ✱ In all other cases, both parents must sign consent
- ✱ Center policy: the signatures of both parents is necessary to treat a minor

Obtaining Parental Consent to Treat a Minor

- ✱ Adoptive parents have the same rights to consent as biological parents
- ✱ Guardians may sign
- ✱ Step-parents may not authorize treatment
- ✱ Foster children: we must see the paperwork regarding legal guardianship

Obtaining Parental Consent to Treat a Minor

☀️ Caregiver's Authorization Affidavit

- When no parent is available because the child is being informally raised by a grandparent, aunt, uncle, cousin, older sibling in the absence of a parent
- Should also be used when a parent claims the other parent is deceased or the whereabouts is unknown

Professional Boundaries

- ★ Appropriate boundaries will be maintained by:
 - ✱ Ending sessions on time
 - ✱ Having sessions only at SCCC
 - ✱ Brief, limited, infrequent telephone calls outside of sessions
 - ✱ Not allowing frequent scheduling changes, double sessions, twice-a-week sessions, phone sessions, etc. without consulting your supervisor
 - ✱ No personal interaction outside of the professional therapeutic setting

Unethical Dual Relationship?

- ✱ Accepting gifts?
- ✱ Accepting invitations to weddings, showers, bar mitzvahs, etc?
- ✱ Invitations to patient's plays or performances?
- ✱ Belonging to the same gym or church
- ✱ Children who go to the same school?
- ✱ Non-sexual post therapy relationships?
- ✱ What do I do if I see my client in public (scream and run the other way?)
- ✱ Discuss in supervision before engaging in any of these potential dual relationships)

Professional Therapy Never Includes Sex

- ★ What is your legal responsibility if a client describes sexual contact with another therapist?
 - ★ A therapist must—by law--give the client the pamphlet: *Professional Therapy Never Includes Sex*
 - ★ The therapist is also required to discuss the brochure with the client
 - ★ Copies are available at the front desk

Therapist Sex with a Patient

- ✱ Therapist sex with patients is prohibited by ethical standard as well as by law
- ✱ That the client initiated the sexual contact does not mitigate the crime
- ✱ That the therapist believed the sexual activity was necessary or helpful to the treatment is not an admissible defense against the crime

Working with a client who is seeing another therapist

- ✦ If a client is receiving psychotherapy with another therapist (psychiatrist, psychologist, MFT, LCSW), treatment should only be provided with the knowledge or agreement of the other therapist and provide a significantly different approach to therapy; or upon termination of the other therapeutic relationship.

Fees

- ✱ The law requires, and professional ethical standards emphasize, that fees:
 - ✱ Must be set prior to the commencement of treatment.
 - ✱ This is a priority. The consumer (client) must know before receiving services (therapy) what the services cost.

Informed Consent

- ☀ Clients have a right to know what they're getting, what they're not going to get, what choices they have, what to expect from their therapist, etc.
- ☀ Clients are dependent upon the therapist for information concerning their treatment
- ☀ Therapists have an affirmative duty to provide this information to clients, even if they don't ask

Informed Consent: Ingredients

- ★ The fee (prior to provision of services)
- ★ Your pre-licensed status and that you are practicing under supervision
- ★ The limits of confidentiality
- ★ Your availability between sessions and in emergencies
- ★ If unpaid fees amount to two sessions, the Center has a right to terminate treatment
- ★ Their case will be discussed in supervision
- ★ At the appropriate time and context: your education, experience, training
- ★ That they may be asked permission to have a session observed or videotaped (and that they may refuse permit it)