Professional Psychology: Research and Practice
1989, Vol. 20, No. 2, 000-000

0735-7028/89/$00.75

Reframing the Confidentiality Dilemma to Work in Children's Best Interests

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Dilemmas arise in work with minors because of limits on keeping information private and because confidentiality can limit helping. In coping with such dilemmas, it is necessary to go beyond minimally meeting reporting requirements or deciding when it is in the client's best interests to breach confidences. Specifically, we suggest that the focus should be on how to empower clients to take the lead in sharing information when this is indicated and how to minimize negative consequences that may result from such sharing.

The changing nature of assurances of confidentiality in counseling and therapy has made the topic a confusing one for many interveners. This has been particularly the case in counseling with children and adolescents because of inevitable interactions with parents and other concerned professionals such as the youngsters' teachers. Increasingly, interveners have been alerted, through litigation and legislation, that they have a social responsibility to report endangering and specific illegal acts. The increased reporting requirements naturally have raised concerns about the negative impact on the counseling relationship (American Psychiatric Association, 1979; Corey, Corey, & Callanan, 1984; Everstine et al., 1980; Jagim, Wittman, & Noll, 1978; Kobocow, McGuire, & Blau, 1983; Messenger & McGuire, 1981; Remley, 1985; Sheeley & Herlihy, 1987; Weinapple & Perr, 1981).

With the preponderance of counseling for minors that is now paid for by third parties such as school districts (under the Education for All Handicapped Children Act, Pub. L. 94-142) and insurance companies, issues and practices that arise in ensuring and maintaining client confidentiality and privileged communication have become even more complex and controversial. For example, in one study of community mental health professionals, McGuire (1974) reported majority support for giving minors the same confidentiality guarantees as adults; in contrast, studies of school counselors indicate, especially at the elementary school level, a sense of responsibility to release information to parents (Wagner, 1978, 1981).

In reaction to what they see as an erosion of the commitment to confidentiality, some interveners communicate only what they are compelled by law to share. Others offer only gross generalities (sometimes keeping two sets of files: one containing only that information that they are required to report and the other containing detailed counseling notes). Some professionals have become so overwhelmed by the complexity of the issues and with legal reporting requirements that they have turned the concept of confidentiality inside out. For example, a counselor involved with a drug prevention program recently stated, "I explained confidentiality, that if he told me anything about the possibility of hurting himself or anyone else or about taking an illegal substance, I would have to tell others, including his parents and the authorities." Concern for reporting so dominated the counselor's thinking that concerns about protecting privacy and establishing trust were not addressed.

There is clearly a dilemma. On the one hand, an intervener must avoid undermining the concepts of confidentiality and privileged communication; on the other hand, he or she must give appropriate information to others who share concern and responsibility for a minor's welfare. It is tempting to resolve the dilemma by reasserting that all counseling information should be confidential and privileged. Such a position, however, colludes with a tendency for some professionals to lose sight of the fact that failure to share germane information can seriously hamper an intervener's efforts to help a youngster.

In our work with minors, we find that concerns about the limits on confidentiality are best approached through reframing the problem and focusing on how to facilitate an *appropriate* sharing of information. To clarify the point, we first underscore the dilemma in the following discussion by highlighting limits on keeping information private and how confidentiality can limit helping. Then we illustrate how we cope with such limitations through attempts to enhance motivational readiness for sharing, to empower clients with the ongoing motivation and skills to share information when appropriate, and to minimize negative consequences that arise when information shared in private must be divulged.

Limits on Confidentiality

Confidentiality is an ethical concern. The fundamental intent is to protect a client's right to privacy by ensuring that matters

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disclosed to a professional will not be relayed to others without the informed consent of the client. In discussing confidentiality, therapists also hope to encourage communication. Thus the concept may be presented as follows:

> I know it may be hard to talk about things that upset and worry you. To make it easier, I want you to know that most of what we talk about is private—just between the two of us. For instance, if you are feeling very sad or scared, it may help just to talk about how you feel. It will be safe for you to tell me about such feelings because I won't tell anyone what you said. Sometimes people feel very guilty about something they did and feel they can't tell anyone about it. We can talk about such things without anyone else knowing. Do you understand that it's OK to talk about most things here?

Neither privacy nor confidentiality, however, are absolute rights, especially in the case of minors. There are fundamental exceptions, some involving ethical considerations and some involving legalities.

Privileged communication is a legal concept. It addresses legal rights protecting clients from having their disclosures to certain professionals revealed during legal proceedings without their informed consent. For example, 20 states fully or partly protect communications between school counselors and their pupil clients (Sheeley & Herlihy, 1987). Legal determinations regarding who is the client (e.g., whether minors or their parents hold the "privilege") and limitations on clients' rights to privileged communication are the bases for legal exceptions to maintaining confidentiality.

There are times when professionals would prefer to maintain confidences but cannot do so legally or ethically. Examples include instances when clients indicate an intention to harm themselves or someone else and when they have been abused. As a result of legislation, litigation, and ethical deliberations, professional guidelines call on interveners to breach the confidence and tell appropriate public authorities when there is a "clear danger to the person or to others" (American Psychological Association, 1981, p. 636). In this vein, but perhaps going a step further, the ethical guidelines for school counselors call for reporting instances when information provided by clients indicates circumstances likely to have a negative effect on others; that is, without revealing the identity of the client, the counselor is expected to report such circumstances "to the appropriate responsible authority" (American Association for Counseling and Development, 1981, p. 4). However, it is left to individual counselors to decide which circumstances are "likely" and what constitutes a "negative effect" that is serious enough to require reporting.

In order to adequately inform minors of exceptions to the promise of privacy, therapists must add a statement about exceptions, such as this:

> Although most of what we talk about is private, there are three kinds of problems you might tell me about that we would have to talk about with other people. If I find out that someone has been seriously hurting or abusing you, I would have to tell the police about it. If you tell me you have made a plan to seriously hurt yourself, I would have to let your parents know. If you tell me you have made a plan to seriously hurt someone else, I would have to warn that person. I would not be able to keep these problems just between you and me because the law says I can't. Do you understand that it's OK to talk about most things here but that these are three things we must talk about with other people?

Because youngsters may feel a bit overwhelmed about the exceptions to privacy and the serious problems described, they may simply nod their acquiescence or indicate that they are unsure about how to respond. To soften the impact, therapists may add statements, such as this:

> Fortunately, most of what we talk over is private. If you want to talk about any of the three problems that must be shared with others, we'll also talk about the best way for us to talk about the problem with others. I want to be sure I'm doing the best I can to help you.

States vary in the degree to which their laws specify limitations on privileged communication between counseling professionals and minor clients. Some protect only disclosures about problems related to alcohol and other drugs. Others give broad protection, specifying a few exceptions such as reporting child abuse and crime or potential criminal activity. As far as professional psychology is concerned, however, the bottom line is that "a gradual and continuous weakening has occurred in the confidentiality privilege" (Everstine et al., 1980, p. 836).

Undoubtedly, breaking confidentiality in any case can interfere with the trust between client and professional and make it difficult to help the client. Prevailing standards, however, stress that this concern is outweighed by the responsibility of the intervener to prevent various threats. In particular, matters such as suicide and assault on others (including physical and sexual abuse), which initially were defined as legal exceptions to privileged communications, have become established limits on confidentiality. As a result, the ethical task of informing prospective clients about all the exceptions and limits related to confidentiality has made the processes of ensuring privacy and building trust almost paradoxical.

Existing limits on confidentiality clearly reflect circumstances in which the society sees its interests as paramount and requires counselors to disclose what they learn even though the interveners believe it may hinder their efforts to help the client. The issues related to such limits are complex, controversial, and beyond the scope of this article. For our purposes, we can simply acknowledge that society always is likely to impose some limitations on privileged communication and that counselors always will find such limits troublesome.

Confidentiality as a Limitation on Helping

Concerns about protecting a client's right to privacy and exceptions to this right have been discussed thoroughly in the literature. Less attention has been paid to the fact that there are times when keeping information confidential can seriously hamper an intervener's efforts to help a client. The complexity of the ethical issues need not concern us here. We can simply take it as axiomatic that there will be times when interveners find it in the best interest of a minor client for others to know something that he or she has disclosed.

In its ethical guidelines on confidentiality, the American Psychological Association recognizes that there are instances when information obtained in clinical or counseling relationships should be shared with others. In doing so, the guidelines stress that such sharing should occur "only with persons clearly concerned with the case" (APA, 1981, p. 636). Given that teachers

and parents are clearly connected and see themselves as also working in a minor's best interests, some interveners feel it appropriate—even essential—to discuss information with them. In other words, there are times when an intervener sees keeping a specific confidence shared by a minor client as working against the youngster's best interests and will evaluate the costs of not communicating the information to others as outweighing the potential benefits of maintaining the minor's privacy.

On a practical level, this concern arises whenever parents threaten to withdraw their child because of dissatisfaction about too little access to the information passing between their child and the intervener. It seems clear that the best interests of the child cannot be served if an intervener's unrelenting stance regarding confidentiality results in the child's no longer having access to counseling or to other important resources. In other instances, interveners find that some minors misuse the confidential nature of the counseling relationship by making it secretive and yet another weapon in their conflict with parents and other authority figures, thereby further alienating support systems that the intervener may find are essential links in the helping process.

Guidelines for Resolving the Dilemma

Thinking in terms of what would be most beneficial and least damaging to an intervener's efforts to help the client, we have found it best to approach problems related to confidentiality by reframing them. In particular, we have come to focus less on how to avoid breaching confidences and more on how to establish the type of working relationship in which clients take the lead in sharing information when this is indicated. To accomplish this, we stress processes for enhancing youngsters' motivational readiness and empowering them with the ongoing motivation and skills to share information that can help them to solve problems that they are experiencing. In addition, we emphasize steps to minimize the negative consequences of divulging confidences.

Enhancing Motivational Readiness for Sharing

Informing youngsters about reporting requirements can compound negative attitudes toward participating in the intervention (e.g., see Adelman & Taylor, 1986). Thus there may be a need for systematic efforts to enhance motivation to participate. The problem, of course, is a bit paradoxical: that is, how to elicit sufficient participation to allow the therapist to demonstrate that participation is worthwhile.

One strategy involves demonstrating to the youngster that there is an intrinsic payoff for taking the risk of disclosing very personal thoughts and feelings to the therapist. We start with the assumption, born of experience, that the first sessions with most youngsters allow sufficient access to encourage attendance for a couple of sessions. In other words, we know that skilled therapists use a range of nonthreatening activities to help establish enough rapport that most youngsters are willing to return at least for a second session. The following ideas for enhancing motivational readiness build on this initial rapport.

Available theory and research (e.g., see Deci & Ryan, 1985) suggest that the way to begin in efforts to enhance motivational readiness to disclose is to focus on eliciting and identifying an area in which the youngster expresses a personal interest. These include areas of strength, success, or problems, reactions to being referred, and so forth. Sometimes the area is clear. For instance, some youngsters, perhaps in an effort to feel more in control of the situation, lead the intervener away from the referral problem to talk about some other matter. In such cases, we initially follow their lead. Almost inevitably, once youngsters start talking about their lives, they share some complaint or problem. Among those youngsters who do not try to control the situation are those who act surprised about being referred for counseling. In these cases, we begin by sharing in a nonjudgmental way the concerns expressed by parents or teachers and then try to mobilize the youngster to share her or his perspective (often they are very motivated to rebut what others have said). We find that youngsters who do not try to take control or are not reactive often respond best initially to the structure of a question-and-answer format exploring areas of personal concern (e.g., survey or interview instruments such as the Children's Depression Inventory). Such instruments provide a useful framework to identify openly an area of concern that can be discussed to some extent.

By identifying a problem that the youngster expresses a personal desire to resolve and probably can resolve with some help, the intervener then is in a position to validate feelings and encourage exploration of cause and correction: for example, "You feel as if your teacher doesn't listen and treats you unfairly. I'll bet if we thought a bit about it, we could come up with some ways to make things better for you. Tell me what you've tried or would like to try, and then we'll figure out what to do."

Once it is established that there is a mutual objective to be accomplished, the focus shifts to strategies for maintaining the youngster's motivation in working toward a solution. This, of course, involves ensuring that the youngster experiences a sense of satisfaction related to working with the therapist. From a motivational perspective, such satisfaction can accrue from processes that include (a) the type of options and choices that enhance feelings of self-determination (e.g., perceived control) and (b) the type of support, guidance, skill development, and feedback that enhance feelings of competence (e.g., self-efficacy).

Several problems may have to be worked through before a youngster will disclose something perceived as risky. It is hoped that when the risk is taken, the matter is one that can be kept private. Whenever a matter that must be shared is raised, we suggest use of strategies that enable clients to take the lead in sharing the information with others.

Enabling Clients to Share Information

We view empowerment, in this context, as the enhancement of motivation and skills for sharing information, when appropriate. Such a focus is a defining characteristic and a primary aim of a helping relationship. That is, a fundamental concern of an intervener in offering a helping relationship is to act in the best interests of the client, as defined by the client, through an informed agreement about ongoing client participation in decision making about means and ends. The ultimate intent is to enable clients to independently pursue their best interests (Swift

& Levin, 1987). To accomplish this, intervention focuses on ways to enhance a client's ongoing motivation and skills for autonomous functioning.

In contrast, intervention designed as a socialization process gives primary consideration to the society's best interests. The individual's consent and decision making are not necessarily sought, and empowerment of the individual is pursued only if it is consonant with the socialization agenda (Adelman & Taylor, 1985).

Fortunately, the interests of the individual and the society often are in harmony. However, instances in which confidentiality has been limited by law are indicative of circumstances in which individual and societal interests conflict and society's interests have predominated.

For the most part, clinicians and counselors try to act in the best interests of their clients and look for honest confirmation from clients that they are doing so. Of course, some clients, especially young ones, initially lack the ability to understand and communicate in ways that allow for informed agreements and shared decision making. In such cases, the commitment to empower clients calls for efforts to increase their level of understanding, communication skills, and ability to participate in decision making (Taylor & Adelman, 1986).

All of this has direct implications for the problem of divulging information when the intervener views this as in the client's best interests. In a helping process, the first responsibility of the intervener is to determine whether the client agrees that information should be shared. If the client does not agree, the intervener must be prepared to help the client to explore (in a developmentally appropriate way) the costs and benefits involved (Kaser-Boyd, Adelman, & Taylor, 1985). This may take some time to accomplish, especially insofar as the point is not to convince or seduce but to facilitate comprehension (e.g., understanding of the positive impact that sharing would have on relationships with significant others). In the end, the individual still may not agree, and the ethics of the situation may dictate that the intervener break confidentiality without consent.

If the client sees it in his or her interest to have others informed of certain matters, then discussion shifts to how this will be accomplished. Again, in keeping with a commitment to enabling the client to pursue his or her interests, the client should be in control of what information is shared and, if feasible, should be the one who does the sharing.

An example may help to illustrate the point:

> A 9-year-boy who had been referred because of misbehavior at school and at home told the therapist that he was unhappy because his mother was a volunteer aide in his classroom. He not only felt embarrassed by the situation; he also believed that she was there to catch him misbehaving and that her presence interfered with his relationship with classmates. He was very angry about all this but felt that he could not tell his mother because it would hurt her and make her angry and probably would result in other bad things' happening to him. It seemed clear that the mother's presence in the classroom was exacerbating the youngster's problems and that it probably would be helpful if she was made aware of this. Therefore, after exploring the youngster's feelings and thoughts about the situation, the matter of sharing with his mother was broached. The pros and cons were explored, as were ways in which the therapist could support the youngster if he chose to explain to his mother why he would like her to stop coming to his class. The youngster decided to ask his mother to join in the next session and, in the presence of the therapist, took the risk of sharing his feelings and needs.

Ideally, helping and socialization come together as the clinician or counselor helps a youngster understand the value of relating positively to significant others (e.g., parents, teachers) with respect to sharing feelings, expressing needs, and working toward agreements.

Minimizing Negative Consequences of Disclosure

Whatever the benefits, divulging confidences can be expected to have costs (e.g., for the client and for others). Ethically and practically, the intervener must take steps to minimize these costs. For example, part of the problem may be reduced if, when the therapist explains to the client the need for relating what has been learned, the client agrees that the case falls within the previously discussed limits on confidentiality, such as harm to self or others. The costs to the individual also may be reduced significantly in instances in which it is feasible to share the information without revealing the source's identity.

In general, when legal or ethical considerations compel an intervener to divulge confidences, three steps must be taken to minimize the repercussions: (a) an explanation to the client of the reason for disclosure, (b) an exploration of the likely repercussions in and outside of the counseling situation, and (c) a discussion of how to proceed so that negative consequences are minimized and any potential benefits are maximized.

For example, in explaining reasons, one might begin by saying,

> What you have shared today is very important. I know you're not ready to talk about this with your parents, but it is the kind of thing that I told you at the beginning that I am required to tell them.

One might begin an exploration of repercussions for the helping relationship by stating,

> I know that if I do so, you will be upset with me and it will be hard for you to trust me anymore. I feel caught in this situation. I'd like us to be able to work something out to make this all come out as good as we can make it.

With respect to how to proceed, often it is feasible simply to encourage the client to take actions in keeping with his or her best interests or to give consent to allow the counselor to do so:

> This may work best for you if you tell them rather than me. Or, if you don't feel ready to handle this, we both could sit down with your parents while I tell them.

Concluding Comments

Responsible professionals want to avoid both surrendering the confidentiality surrounding counseling relationships and overreacting to necessary limitations on confidences. In trying to combat encroachments on privileged communication, counselors recognize that the assurance of confidentiality and legal privilege are meant to protect a client's privacy and help establish an atmosphere of safety and trust. At the same time, it is important to remember that such assurances are not meant to encourage youngsters to avoid sharing important information with significant others. Such sharing often is essential to the

youngster's personal growth. Indeed, it is by learning how to communicate with others about private and personal matters that youngsters can increase their sense of competence, personal control, and interpersonal relatedness, as well as their motivation and ability to solve problems.

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Received April 4, 1988
Revision received July 8, 1988
Accepted September 15, 1988 ■