Know the Law—Confidentiality, Mandated Reporting, and Duty to Warn

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In the realm of professional counseling, the sanctity of the therapeutic relationship relies heavily on the assurance of privacy. Confidentiality and privileged communication are not merely professional courtesies; they are the legal and ethical cornerstones that allow clients to share their most vulnerable experiences without fear of unwarranted exposure. However, these protections are not absolute. Counselors in South Carolina operate at a complex intersection where state statutes, case precedence, and ethical codes dictate when the "vault" of confidentiality must be opened to protect individuals or the public.

This paper explores the legal landscape of South Carolina, a state chosen for its specific statutory protections for Licensed Professional Counselors (LPCs) and its clear judicial stance on the "duty to warn." By synthesizing South Carolina Code of Laws with the American Counseling Association (ACA) Code of Ethics and the foundational work of Remley and Herlihy (2024), this research provides a roadmap for navigating the legal exceptions to confidentiality, mandated reporting requirements for abuse, and the evolving challenges of distance counseling and technological integration.

In South Carolina, a clear distinction exists between the ethical duty of confidentiality and the legal concept of privilege. While confidentiality is a broad ethical obligation to keep client information private, "privilege" is a statutory rule of evidence that limits the ability of the legal system to compel a professional to testify (Remley & Herlihy, 2024).

South Carolina law provides robust protection for the counseling relationship. Under S.C. Code Ann. § 40-75-190, communication between a licensed professional counselor, marriage and family therapist, or addiction counselor and their client is considered "privileged" in the same manner as the attorney-client privilege (South Carolina State House, n.d.). This means that a

counselor cannot be compelled to disclose information acquired during the course of professional services in any court of law or administrative proceeding unless specific exceptions apply. These exceptions include a written waiver from the client, a court order from a judge who determines the information is essential to the "interests of justice," or cases involving the counselor as a defendant in a malpractice suit (NCVLI, 2024).

Specific laws govern the disclosure of sensitive health information, particularly regarding HIV/AIDS and other communicable diseases. In South Carolina, the Department of Health and Environmental Control (DHEC) maintains strict confidentiality protocols. Generally, a counselor may not disclose a client's HIV status without specific, written consent. Unlike some states that provide "permissive" disclosure to at-risk third parties, South Carolina law emphasizes public health reporting through official channels. Counselors are encouraged to support clients in self-disclosure or work with public health officials rather than taking it upon themselves to warn third parties, as the legal protections for such medical data are stringent (SCDHHS, n.d.).

The "duty to warn" is perhaps the most ethically taxing exception to confidentiality. It requires counselors to balance their loyalty to the client against a legal obligation to prevent foreseeable violence against others. South Carolina's duty to warn is heavily influenced by the case of Sharpe v. South Carolina Department of Mental Health (1987). In this case, the court established that mental health professionals have a duty to protect identifiable third parties when a client makes a specific threat of physical violence (SCSBA, 2017). This precedence aligns with the national "Tarasoff" standard but clarifies that in South Carolina, the duty is triggered when there is a "foreseeable" victim and a clear threat.

According to S.C. Code Ann. § 19-11-95, the disclosure of mental health communications is permitted, and in many interpretations, required, to prevent a clear and

imminent danger to the client or others. In South Carolina, this is generally viewed as a legal requirement (must warn) rather than a mere permission. If a counselor determines that a client poses a serious threat of violence to a specific, identifiable person, they must take reasonable steps to protect that person, which typically involves notifying law enforcement and the intended victim (Remley & Herlihy, 2024). South Carolina law is uncompromising regarding the protection of those who cannot protect themselves. Counselors are designated as "mandated reporters," meaning they are legally obligated to report suspected maltreatment.

Under the South Carolina Children's Code (Title 63, Chapter 7), any professional who has "reason to believe" that a child's physical or mental health has been or may be adversely affected by abuse or neglect must report (S.C. Code Ann. § 63-7-310). A "child" is any person under the age of 18. "Abuse" includes physical, sexual, or mental injury, while "neglect" involves the failure to provide adequate food, clothing, shelter, or medical care (SCDSS, 2023). The report must be made immediately by telephone or in person to the Department of Social Services (DSS) or local law enforcement in the county where the child resides. Within 24 hours of the initial report, a written follow-up must be submitted. This report should include the child's name, age, and location, the nature and extent of the injuries, and any evidence of previous abuse (USC, 2023).

The Omnibus Adult Protection Act extends similar protections to "vulnerable adults." This includes any person aged 18 or older who has a physical or mental condition that substantially impairs them from adequately providing for their own care or protection (DDSN, n.d.). The reporting procedure mirrors that of child abuse, but reports are directed to the Adult Protective Services (APS) division of DSS or the Long Term Care Ombudsman if the abuse occurs in a facility.

South Carolina counselors must adhere to the ACA Code of Ethics (2014) as part of their licensure requirements. The state's legal mandates generally align with these ethical standards, but they occasionally create practical friction. Section B.2.a (Serious and Foreseeable Harm) of the ACA Code states that the general requirement for confidentiality does not apply when disclosure is necessary to protect clients or identified others from "serious and foreseeable harm" (ACA, 2014). This directly supports South Carolina's duty to warn laws. Furthermore, Section B.2.e requires counselors to disclose information when "legally required," which encompasses South Carolina's mandated reporting statutes for child and elder abuse.

As technology becomes more integrated into practice, South Carolina counselors must also follow the NBCC Policy for Distance Counseling. This policy emphasizes that counselors must be licensed in the state where the client is located and must understand the specific laws of that jurisdiction (NBCC, n.d.). If a South Carolina counselor treats a client in a state where the duty to warn is "permissive" (may warn) rather than "mandatory" (must warn), they face a significant ethical dilemma. Counselors must use encrypted platforms and establish clear "emergency procedures" as part of the informed consent process to manage these cross-jurisdictional risks (Remley and Herlihy, Chapter 10).

From the perspective of a citizen, I find South Carolina's laws reassuring. The "reason to believe" standard for reporting abuse ensures that the safety of children and vulnerable adults is prioritized over professional hesitation. However, as a client, these laws can be intimidating. The knowledge that a counselor must report certain information could lead to "defensive" communication, where a client omits details for fear of legal intervention. This highlights the absolute necessity of the Informed Consent process.

As a counselor, I see the Sharpe v. SC Dept of Mental Health precedence as a protective shield for both the public and the practitioner. It provides a clear legal "floor" for when confidentiality must be broken. However, a major concern is the "reason to believe" threshold in abuse reporting. Counselors often struggle with "false positives", reporting situations that, upon investigation, do not constitute abuse, which can permanently damage the therapeutic alliance (Remley and Herlihy, 2024).

To navigate these challenges, I would rely heavily on the tools provided by Remley and Herlihy (2024). Using Appendix 5 (Guidelines for Counseling Case Notes) ensures that my clinical reasoning for reporting (or not reporting) a threat is documented with "factual and objective" detail, which is vital if my records are ever subpoenaed (Chapter 6). Additionally, using the Client Permission Form to Record (Appendix 4) for supervision purposes is an ethical safeguard; it allows a supervisor to review the nuances of a client's threat, providing a second layer of clinical judgment before a "duty to warn" is triggered.

Counseling in South Carolina is a high-stakes endeavor that requires a deep mastery of both the law and the ACA Code of Ethics. The state provides strong protections for privileged communication via S.C. Code § 40-75-190, but it balances this privilege with mandatory requirements to report abuse and warn of foreseeable violence. The primary takeaway for South Carolina practitioners is that confidentiality is not a "shield" to hide behind, but a professional trust that is contingent upon the safety of the community. By utilizing rigorous documentation standards and maintaining a transparent informed consent process, counselors can fulfill their legal obligations while maintaining the ethical integrity of the therapeutic relationship (Remley and Herlihy, 2024). Ultimately, the law in South Carolina serves as a reminder that the counselor's first duty is to life and safety, followed closely by the preservation of privacy.

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