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Article 37

The Confidentiality of a Confession: A Counseling Intern's Ethical Dilemma

Erin G. Constable, Tara B. Kreider, Tom F. Smith, & Zachary R. Taylor

Constable, Erin G., MA, is a graduate of Eastern Mennonite's University's Masters in Counseling program and is certified in Advanced Trauma Treatment.

Kreider, Tara B., MA, is a graduate from Eastern Mennonite University's Masters of Arts in Counseling program.

Smith, Tom F., MA, is a graduate of Eastern Mennonite University's Masters of Arts in Counseling program.

Taylor, Zachary R., MA, works as a mental health case manager and crisis pre-screener at Northwestern Community Services Board, Woodstock, VA.

Due to the complex nature of the counseling profession, counselors often face ethical dilemmas. The responsible counselor will utilize an ethical decision-making model to guide them toward an ethical resolution. While such models are indispensible to counselors facing these situations, a counselor's final decision often carries consequences far beyond office doors. Ultimately, virtuous counselors need to accept the uncertainties inherent in moral decision-making (Cohen & Cohen, 1999).

This article explores the case of James, an intern at a university's counseling center (see Appendix). It is there he learns that his client, Lisa, a 21-year old Latina student, possibly contributed to the death of her mother's partner who had been physically and sexually abusing her when she was 7 years old. In complex situations such as this, the American Counseling Association's (ACA) Ethics Committee recommends that counselors explore professionally accepted decision-making models and choose the model most applicable to their situation (Kocet, 2006). According to Welfel (2010), the failure to do so presents an ethical problem in itself, given the greater risk to the public when a professional relies on his or her intuitions alone. For this case we have chosen Welfel's (2010) ethical decision-making model because it incorporates the standards and ethical principles of the counseling profession, promotes analysis that is grounded in the overarching moral vision of the profession, and emphasizes counselor reflection in the decision making process. Such reflection increases a counselor's competence to make future ethical decisions, deepens their sense of ethical sensitivity, increases their competence to make future decisions, and can safeguard future clients from harm. Also, given James' limited experiences with diversity, we have chosen elements of Garcia, Cartwright, Winston, and Borzuchowska's (2003) Transcultural Integrated Decision-

Making Model to enrich James' cultural awareness throughout the decision-making process.

Step One: Developing Ethical Sensitivity

The foundation upon which an ethical decision is made rests on the counselor's ability to recognize an ethical dilemma when one occurs. Several studies (Fleck-Henderson, 1995; Neukrug, Milliken, & Walden, 2001; Welfel, 2010) suggest that many counselors lack the ability to identify ethical dilemmas. It is clear that ethical sensitivity is a skill that must be developed and for this reason counselors must work to attune their minds to notice ethical dilemmas rather than simply assume they will recognize one when it happens. Without ethical sensitivity, a counselor risks arriving at an unethical conclusion, and ultimately jeopardizes the well-being of clients.

Becoming an ethically sensitive counselor is a life-long process. It requires counselors to know and understand how their work is affected by their background and their personal moral and ethical values. The Transcultural Integrative Decision-Making Model (Garcia et al., 2003) facilitates counselors' awareness of their attitudes and emotional reactions toward people of different cultural groups and the understanding of concepts such as role socialization and acculturation. Finally, ethically sensitive counselors cultivate their own ethical sensitivity throughout their career by engaging in continuing education, supervision, consultation with other professionals, and self-reflection to raise awareness of how their personal and professional experiences shape the core of their ethical identity.

The current situation puts James' ethical sensitivity to the test. The case study illustrates that he is aware of his lack of multicultural experience and that he is concerned about what to do with Lisa's report. Clearly James has become aware that he may have encountered an ethical dilemma, which will launch him into the ethical decision-making process.

Step Two: Identify Relevant Facts and Stakeholders

When James has become sensitive to the dilemma at hand, he must do the foundational work of identifying and organizing all the information he has about the case, including its cultural and social dimensions. He must then determine if all the information he needs to know is available to him, and if not, how he will acquire it. Without careful consideration of the facts, all reasoning that follows may be undermined, which could lead to an unsatisfactory ethical conclusion (Welfel, 2010). Furthermore, according to Treppa (1998), ethical dilemmas do not occur apart from the rest of reality. James must understand himself and Lisa within the entirety of their contexts, including the socio-cultural factors of the present situation. Not only is socio-cultural sensitivity essential for effective therapy, but it is also a moral imperative for mental health services and responsible decision-making.

Relevant Facts

James must consider his suburban background and his admittedly limited exposure to diversity as essential information (Arredondo et al., 1996). James must also

look at his level of racial identity development and worldview, and ask himself what parts of his own experience, particularly his high level of privilege as a Caucasian male, might cloud his thinking and limit his awareness of and ability to empathize with Lisa's experience as a Latina female (Leuwerke, 2005; Richardson & Molinaro, 1996). Furthermore, James ought to examine his overall multicultural counseling competencies to determine which attitudes, knowledge, and skills need further attention and development (Arredondo et al., 1996; Garcia et al., 2003; Leuwerke, 2005). Consideration of how his immediate context at a university counseling center might narrow or expand his options may be useful as well.

James also needs to evaluate the quality and quantity of information he has regarding Lisa's socio-cultural context and her worldview. If James concludes that he needs more information, he must gather this information from her and/or through other avenues without compromising her confidentiality (Welfel, 2010). Additionally, James needs to discover if Lisa has experiences with individualized or institutionalized oppression or prejudice that might shape her relationship with him (Chung & Bemak, 2002). With this in mind, James also needs to ascertain his level of rapport with Lisa and consider what he might need to do to develop her trust (Sue & Sue, 2003).

James must evaluate how complete his understanding is of Lisa's experience and must identify what he has yet to learn by asking himself a series of questions. To start, how sure can James be about whether or not Lisa was indeed responsible for the death of her mother's partner? What are the relevant legal and ethical requirements of mental health professionals whose clients disclose childhood abuse and possible involvement in a person's death? How does being a counselor-in-training affect his ethical and legal responsibilities in this case? Does the nearly 15-year distance from Lisa's disclosure affect James' responsibilities? What is Lisa's current emotional and mental state? What are Lisa's wishes about the confidentiality of her disclosures? And how do Lisa's hopes to become a lawyer impact James' sensitivities? Furthermore, James needs to learn about Lisa's ethical thinking in regards to counseling and how might he link her values, beliefs, and assumptions to the ethical principles and standards of the counseling profession (Hillerbrand & Stone, 1986). Similarly, James must consider the contextual and gender differences between him and Lisa that might impact the decision-making process. Additionally, James could ask, in what ways are he and Lisa similar, and how might these factors influence the process? For example, how could the fact that they are close in age make a difference?

Relevant Stakeholders

James must be sensitive to how the impact of his response to this situation will affect others (Welfel, 2010). Specifically, James must consider the stakeholders involved in his situation based on the cultural values of the client (Garcia et al., 2003). A stakeholder is defined as a person or a group of people who are connected to the client who may be helped or harmed by a counselor's actions (Garcia et al., 2003; Treppa, 1998). Though James and Lisa will be the primary people impacted by James' actions, other stakeholders in this case include, but are not limited to, the university, James' supervisor(s), Lisa's mother, and other family members she might have.

Step Three: Central Issues of the Dilemma and Available Options

From the information gathered on all the relevant facts and stakeholders, James can hone in on the fundamental issues of the ethical dilemma. Here James must ensure that cultural information is incorporated into his considerations of the dilemma. Quick reference to the ACA codes will reveal that James must not break Lisa's confidentiality to disclose her childhood abuse, given the absence of her abuser and no known imminent threat of abuse in the present (ACA, 2005, Section B.2.a). Therefore, the central dilemma in this case is whether or not James needs to disclose Lisa's likely involvement in the death of her abuser. As James works through this dilemma, the main issue contributing to his dilemma is the question of whether or not there are legal requirements to disclose this kind of information. Also, given the cultural differences between James and Lisa, another issue contributing to the dilemma is the question of whether or not their values and assumptions about confidentiality conflict with one another's and/or with those of the profession. The concerns of this case intersect personal, professional, and legal standards that James must consider.

Next, to avoid limiting James' possible outcomes, he must think through all his available options, beginning with an expansive list and leaving evaluation and elimination for later (Welfel, 2010). First, however, James must make sure that the options reflect Lisa's worldview as much or more than they reflect his (Garcia et al., 2003). James' possibilities include (a) maintaining confidentiality and telling no one, allowing Lisa to decide what she wants to do next, (b) informing only his supervisor but otherwise maintaining confidentiality, (c) calling the police to report Lisa's suspected involvement in the death of her mother's partner, (d) encouraging Lisa to tell the police herself what she told him, and (f) waiting for a few more sessions to see what more information he might learn before proceeding. Further exploration and consultation may reveal more alternatives for James to consider, but this initial list serves to further explore the ethical dimensions of the dilemma and to develop some of the possible ways he could respond. Throughout this step, James must pay attention to his gut sense, noting which options feel better than others, and which ones feel less appealing or uncomfortable. James may want to consult with other trusted colleagues and with Lisa before moving on to ensure he has not overlooked vital facts or possible options (Welfel, 2010). Documentation of these considerations is also essential (Welfel, 2010).

Step Four: Refer to Professional Standards, Relevant Laws, and Regulations

Reference to the ethical standards, relevant laws, and institutional policies and procedures can help clarify and narrow James' options and assist him in his work with Lisa. As a counseling student, James is professionally committed to following the set of standards and moral objectives set forth in the ACA *Code of Ethics* (2005) throughout the course of his training and career. However, in confronting the uncertainty inherent in his current and future ethical dilemmas, James would be wise to consult the professional wisdom and guidance contained in other ethical codes, such as the American Psychological Association (APA) *Ethical Principles of Psychologists and Code of Conduct* (2002), and the American Mental Health Counselors Association (AMHCA) *Code of Ethics* (2000). In James' immediate environment as a student intern at a

university counseling center, James must look into the protocol required, if any, requiring counselor disclosure of a student's potential involvement in a crime.

The consulted professional codes agree that James' primary responsibility is to Lisa (ACA, 2005, Standard A.1.a; AMHCA, 2000, Principle 1.A; APA, 2002, Principle A). This primary responsibility is built upon client-clinician trust between James and Lisa. Client trust is earned by building appropriate, collaborative, and confidential working relationships (ACA, 2005, Standard B. Introduction). James must examine the ethical codes and state laws to see if Lisa's past actions warrant breaking confidentiality and the counselor-client trust.

Confidentiality

Since "trust is a cornerstone of the counseling relationship" (ACA, 2005, Standard B. Introduction) and "confidentiality belongs to the clients" (AMHCA, 2000, Principle C.3), James would need strong reasons to disclose without Lisa's consent. According to ACA *Code of Ethics* (2005) counselors are required to break confidentiality only "to protect clients or identified others from serious and foreseeable harm or when legal requirements demand that confidential information must be revealed" (Standard B.2.a). AMHCA's (2000) ethics code states, "the protection of life, as in the case of suicidal or homicidal clients, exceeds the requirements of confidentiality" (Principle 3.C).

James must also decide if there is a conflict between the codes and his state's legal code. If there is a disagreement, the ACA (2005) ethics code urges James to commit to the ethical codes and actively work to bring the conflict towards a resolution (ACA, 2005, Standard H.1.b). In the Commonwealth of Virginia, mental health service providers are required to break confidentiality if there is evidence of child or vulnerable elder abuse or if the client communicates an explicit, immediate, and serious danger to self or to identified others (Virginia Code § 54.1-2400.1). The ethics and legal codes require that James ascertain whether Lisa constitutes an immediate risk to herself or others.

Cultural Competency

The ACA (2005) and AMHCA (2000) ethics codes ask that counselors be able to respect diversity and work with a wide variety of individuals (ACA, Preamble; AMHCA, Principle 2.E). Counselors must also be able to clearly communicate to all their clients, regardless of race or culture (ACA, 2005, Standard A.2.c). The client's confidentiality and right to privacy is in danger if the counselor is unable to communicate in a cross-culturally sensitive manner (ACA, 2005, Standard B.1.a). According to the codes, counselors must ensure that they work competently across cultures with their clients (ACA, 2005, Standard A.2.c; AMHCA, 2000, Principle 1.E.). Since the ethics codes direct counselors to serve their clients within the boundaries of competence, counselors with multicultural competency issues must learn the necessary skills and knowledge needed, before working with diverse clients (ACA, 2005, Standard C.2.a; AMHCA, 2000, Principle 7.C).

Step Five: Search the Ethics Scholarship

James' fifth step is to consult the professional literature as it pertains to his ethical dilemma. A review of the literature provides more specific and concrete thinking about

confidentiality, conflicts in the ethics codes and laws, and diversity than can possibly be covered in the ethical codes alone (Barnett & Johnson, 2008; Donner, VandeCreek, Gonsiorek, & Fisher, 2008; Jain & Roberts, 2009; Nagy, 2000; Pipes, Blevins, & Kluck, 2008; Smith-Bell & Winslade, 1994). If James is familiar with the growing body of literature that pertains to his particular dilemma, he can better justify his decision to superiors, clients, and even legal bodies should the need arise. In James' ethical dilemma, confidentiality and its limits take center stage. The requirements relating to when confidentiality should be breached has been discussed extensively in the counseling literature. One specific source James ought to review is Fisher's (2008a, 2008b) decision-making model(s), which is designed to specifically address dilemmas related to confidentiality. It would also befit James to review the multicultural aspect of his situation, for which a significant amount of literature exists as well (Constantine, Hage, Kindaichi, & Bryant, 2007; Corey, Corey, & Callanan, 2007; Johannes & Erwin, 2004; Richardson & Molinaro, 1996). Many of these cited discussions also provide extensive bibliographies from which James can further specify his research of the literature.

Step Six: Apply Ethical Principles to the Situation

In this sixth step James must apply the fundamental ethical, or moral, principles developed by Kitchener (1984) to his decision-making process that support the relevant ethical codes to the situation at hand. These five ethical principles of respect for autonomy, nonmaleficence, beneficence, justice, and fidelity provide counselors a framework for examining their work with their clients. Respect for autonomy is respect for a client's choice, freedom, and dignity; nonmaleficence is *the charge* to do no harm to clients; beneficence is the responsibility to do good as a counselor; justice demands fair treatment to the client; and fidelity is the counselor's faithfulness to commitments, honesty, and loyalty (Welfel, 2010).

Althougth Welfel (2010) supports Kitchener's (1984) ethical principles, a number of authors believe that virtue ethics are important as well (Cohen & Cohen, 1999; Corey et al., 2007; Jordan & Meara, 1990; Remley & Herlihy, 2001). The difference between virtue ethics and ethical principles according to Jordan and Meara (1990) is instead of focusing only on what actions to take, virtue ethics require counselors to ponder, "who shall I be?" (p. 107). The virtue ethics are prudence, integrity, respectfulness, trustworthiness, and compassion. Prudence is a counselor's practical wisdom; integrity is the characteristic of honesty and consistency of character; respectfulness denotes a feeling of esteem for a client and regard for their wishes; trustworthiness is the characteristic of being dependable, loyal, and congruent; and compassion is sorrow over another's distress and the desire to alleviate their pain (Cohen & Cohen, 1999). When James applies these ethical principles and virtue ethics to the current situation with Lisa, he may gain additional clarity about the ethics of each of the options he generated in Step Three.

Step Seven: Consult with Supervisor and Respected Colleagues

Engaging in supervision and consultation is an important step for all counselors to take (ACA Code, 2005, Standard C.2.e) as consultation with supervisors and respected

colleagues provides a counselor with an objective perspective. Consultation can also alleviate feelings of isolation, knowing that there are others who are willing to extend their insight, experience, and compassion (Welfel, 2010). Since James is an intern, he is required to consult with his supervisor at the first chance he gets, and the information he receives during that consultation, as long as it is ethically sound, ought to be weighed more heavily than insight gleaned from other sources.

Although Welfel (2010) includes this as step seven in her ethical decision-making model, this step can be taken at any time throughout the decision-making process. Overall this step allows the counselor to summarize what insight they have gained so far in the process. It also allows them to process through their choices and receive feedback on what the most ethical choice is. If James does not feel as though his supervisor and/or other colleagues provided enough assistance, particularly regarding the multicultural elements of this case, he can also contact the ACA Ethics Committee, state licensing board, and/or state professional agency (Welfel 2010).

Step Eight: Deliberate and Decide

After carefully working through Welfel's (2010) model, the counselor sorts through all gathered information in order to make a decision, and prepares for implementation. The counselor needs to consider virtue ethics, moral principles, as well as personal values that will affect the decision-making process (Cohen & Cohen, 1999). This step, which may be a difficult one at times, is an important step because it connects all of the pieces together. James will need to work through this step by himself, recognizing his moral responsibility to the profession and to his client is of utmost importance (Welfel, 2010). It is critical for James to come to a decision that he is satisfied with as a professional and will be able to defend to his peers and superiors if ever required to do so, knowing that he carries the full weight of the responsibility for his choice.

Recommendation

After working through the ethical decision making model, we conclude that James has no good reason to break Lisa's right to confidentiality in this case. After a review of the professional standards and codes, James would only be required to break confidentiality when there is "serious and foreseeable harm" (ACA, 2005, Standard B.2.a) or when legal requirements demand it. This code also does not conflict with any Virginia laws. The ethical scholarship also gives no indication that reports of past abuse or unsubstantiated memories of a minor's involvement in someone's death are grounds for breaking a client's confidentiality. We do recommend that James engage in an in-depth discussion of Lisa's reports to ensure he, in fact, has all the relevant information and to be always listening for more substantial information that might indicate Lisa poses "serious and foreseeable harm" (ACA 2005, Standard, B.2.a) to herself or others. We also recommend that James seriously examine his multicultural competencies as he engages in this discussion with Lisa, taking special note of any cultural variables that might hinder the implementation of his final decision (Garcia et al., 2003). Finally, we encourage James to continue to develop his ability and sensitivity toward clients of diverse cultures throughout his training and in the future.

Step Nine: Inform Supervisor, Implement and Document Actions

Once James arrives at his decision, he then moves into step nine which requires him to implement and document the decision, as well as inform his supervisor and client of his decision. This step requires James to have "ethical courage" (Welfel, 2010, p. 53) to follow through with his decision, even when faced with resistance. In order to build up the necessary courage, James may choose to discuss with colleagues and/or review the relevant literature and codes again before implementation. Upon completion of the required tasks James will then need to document his decision, how it was implemented, the conversations that he had with his client and supervisor, and his rationale for doing all of this in appropriate files and case notes should he later be challenged about the case (Welfel, 2010).

Step Ten: Reflect on the Experience

Once the dust has settled, it's important for a counselor to reflect upon their decision. Reflection allows a counselor to see where they would have handled the situation differently, which is helpful for the next time they are faced with a similar situation. Most importantly it increases ethical sensitivity for the next time an ethical dilemma occurs (Welfel, 2010).

Through this last step of Welfel's (2010) model, James will be able to see who he has become. Working through this ethical dilemma has been a difficult, but rewarding, process. James is now in a position to think more clearly about ethics and ethical dilemmas in the future, which will strengthen his own practice and the credibility of the counseling profession as a whole. At this stage he will want to ask himself a series of questions: How were his feelings changed or challenged by the situation? How will this process affect him and his clients in the future? Does he need to learn more about ethics? Is there anything that he would improve on or have done differently? The answers to these questions and this overall reflection process will be crucial to James' continued journey as a counselor (Welfel, 2010).

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Appendix

Case Scenario for Masters Level Students
ACA 2009 Graduate Student Ethics Competition

James is a community counseling student who is interning with the College Counseling Center at the local university. James is a 25 year-old Caucasian male, who attended a private high school in the suburbs. He admits that one of his challenges is that he has not experienced much diversity in his relationships. He recently began working with Lisa, a 21 year-old Latina female who presented with symptoms associated with depression including decreased motivation, loss of appetite and overall dissatisfaction. James has met with Lisa three times, with the first two times being focused on her recent break-up with her boyfriend and the resulting academic difficulties. She was very concerned that her career dream of becoming a lawyer may be in jeopardy.

In their previous session, Lisa casually mentioned that she began to experience depressive symptoms as a child when her mother's partner began to physically abuse her at the age of 5½ years. Lisa told her mother about the abuse, but she did not intervene. Shortly after the physical abuse began, the man began to also sexually abuse her. Once again, Lisa reported this to her mother and also to a teacher at her school, but nothing was ever done. Lisa reported that when she was 7, she placed an unknown prescription medication of her mother's into this man's alcoholic drink. Later that same day, the man experienced a stroke and was rushed to the hospital where he later died. Lisa also reported learning that her mother's partner's stroke and subsequent death were related to the combination of prescription medication and alcohol. The client has never told anyone other than James that she had placed medication in this man's drink.

What are the ethical/legal implications associated with working with this client? What should the counselor-in-training do?