

Assignment 4.1 – Know the Law

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I hope to be a counselor in the state of North Carolina. In order to practice ethically and legally, I will need to know the North Carolina laws and regulations (as well as my code of ethics) regarding privileged communication, confidentiality (and its exceptions), duty to warn and / or protect, and disclosure of abuse. The following is what my research of North Carolina law and ethics has uncovered.

ACA Code of Ethics

First and foremost, the ACA Code of Ethics has been codified into the North Carolina Administrative Code Chapter 53. 21 NCAC 53.0102 states, “The Board of Licensed Clinical Mental Health Counselors has adopted the American Counseling Association (ACA) Code of Ethics that are hereby incorporated by reference, including subsequent amendments and editions” (N.C. Board of Licensed Clinical Mental Health Counselors, 1984/2020). Therefore, in North Carolina, pursuant to the administrative code, counselors are legally obligated to follow the ACA Code of Ethics including any amendments thereto (ACA, 2014). This requirement will impact every decision I make as a counselor.

Privileged Communication

North Carolina grants all patients treated by mental health professionals a right to confidentiality (N.C. Clients’ Rights and Advance Instruction, 1955/2011). This right prevents the disclosure of information acquired in attending or treating a patient. Exceptions exist for patient consent, information regarding involuntary commitment proceedings, competency evaluations, information regarding the abuse and neglect of a child or adult (see below), information relevant to coordinating treatment, and other court compelled disclosures (N.C. Clients’ Rights and Advance Instruction, 1955/2011). Discretionary disclosure exists when the

professional believes there is imminent danger to the client or another individual or there is a likelihood of the commission of a felony or violent misdemeanor (N.C. Clients' Rights and Advance Instruction, 1955/2011).

NCGS Section 8-53.8 specifically addresses counselor privilege. This privilege covers information acquired in the practice of counseling and includes that information necessary to enable counselors to practice counseling. It states, "No person, duly licensed pursuant to Chapter 90, Article 24 [the Licensed Clinical Mental Health Counselors Act], of the General Statutes, shall be required to disclose any information which he or she may have acquired in rendering clinical mental health counseling services, and which information was necessary to enable him or her to render clinical mental health counseling services: Provided, that the presiding judge of a superior or district court may compel such disclosure, if in the court's opinion the same is necessary to a proper administration of justice and such disclosure is not prohibited by other statute or regulation" (N.C. Evidence Code, 1983/2019). In other words, counselors are not required to disclose any information obtained during counseling unless a judge orders that disclosure is necessary for the proper administration of justice. This is further clarified in the ACA Code of Ethics which explains that when court ordered to release privileged information, counselors should 1) seek to obtain their client's written consent to disclose the information or 2) take steps to stop the disclosure or have it limited as narrowly as possible (ACA, 2014, Section B.2.d.). There are other exceptions to privileged communication in North Carolina noted below.

Communicable Diseases

NCGS 130A-143 states that all information or records that identify a person who has or may have a reportable communicable disease are strictly confidential, are not public records, and

may be released only as provided by the statute (N.C. Public Health Code, 1973/1981). When information is subject to NCGS 130A-143, the general rule is that it may not be released without the written consent of the individual who is the subject of the information (N.C. Public Health Code, 1973/1981). However, there are exceptions to the general rule that allow release without written consent for specified purposes, including a couple of exceptions that allow 1) certain disclosures to law enforcement - including for the purpose of preventing or lessening a serious or imminent threat to the health or safety of a person or the public, 2) release pursuant to a court order or subpoena, 3) release made for statistical purposes in a way that no person can be identified, and 4) release necessary to protect the public health. By its terms, NCGS 130A-143 is not limited to health care providers or medical records: it states that it applies to “all information and records, whether publicly or privately maintained,” that identify an individual who has or may have a reportable communicable disease (N.C. Public Health Code, 1973/1981). This should be kept in mind because the law applies to counselors who may acquire confidential communicable disease information.

However, it is important to note that the ACA Code of Ethics states that counselors may be justified in disclosing a communicable and life threatening disease to identifiable third parties if the parties are known to be at serious and foreseeable risk of contracting the disease (ACA, 2014, Section B.2.c.). The ACA Code of Ethics also requires that counselors abide by relevant state laws concerning disclosure about disease status (ACA, 2014, Section B.2.c.). It is my opinion that in general, in North Carolina, counselors may be justified in disclosing contagious, life-threatening diseases to law enforcement to prevent or lessen a serious or imminent threat to the health or safety of a person or the public.

End-of-Life Decisions

North Carolina legislators introduced a death with dignity bill for the first time in 2015. That bill and others introduced in 2017, 2019, and 2021 failed to pass. Now in the 2023-2024 legislative session, the General Assembly is considering HB877, another bill related to aid in dying. This legislation would require the North Carolina Institute of Medicine to study the legalization of medical aid in dying in the state. The ACA Code of Ethics holds that counselors who provide services to terminally ill individuals who are considering committing suicide “have the option to maintain confidentiality depending on applicable laws and the specific circumstances of the situation” (ACA, 2014, Section B.2.b.). I will need to keep an eye on the North Carolina legislation on this topic.

Duty to Warn and/or Duty to Protect

In 1976, the California Supreme Court held that a clinician has an overriding legal duty to break confidentiality when a client makes a viable threat against a third party (*Tarasoff v. Regents of the University of California*, 1976). Since then, many states have codified this duty to warn. North Carolina’s statutes, however, are silent as to a clinician’s duty to warn or protect. It is, therefore, up to the North Carolina courts to determine when a clinician is required to break clinician-client confidentiality (as provided in North Carolina General Statutes 8-53.8, as discussed above) when a viable threat is made.

North Carolina courts have rejected a *Tarasoff*-styled duty to warn (*Tarasoff v. Regents of the University of California*, 1976). The Federal District Court for North Carolina held that even if a clinician had a duty to warn third parties about the danger posed by a patient-client, such a duty would not arise where the victim already knew the danger (*Moye v. United States*, 1990). *Gregory v. Kilbride* (2002) was even more explicit in flatly rejecting a *Tarasoff*-styled duty to warn in holding that a doctor had no duty to warn a victim of a violent patient’s release. This

decision was affirmed by the North Carolina Court of Appeals. Therefore, there is no duty to warn under the law in North Carolina.

However, North Carolina does recognize a duty to protect, though this duty is different in quality from the duty to protect envisioned in *Tarasoff*. (*Tarasoff v. Regents of the University of California*, 1976). North Carolina holds clinicians and other mental health professionals liable only when the patient-client is under the clinician's control. In *Pangburn v. Saad* (1985), the North Carolina Court of Appeals held that so long as a clinician has some control over a patient-client, the clinician owes a duty to foreseeable potential victims. The U.S. Court of Appeals, Fourth Circuit, affirmed a *Pangburn* duty to protect when the patient-client is under a clinician's control but also held that a clinician has no duty to commit (*Currie v. US*, 1985). The *Pangburn* decision was affirmed again by the North Carolina Court of Appeals in 1995 (*Davis v. North Carolina Department of Human Resources*, 1995). In *Davis*, the Court of Appeals held that where a person is involuntarily committed for a mental illness, the institution has a duty to exercise control, and thus has a duty to protect third parties from harm caused by the patient-client. In other words, North Carolina case law does impose a mandatory duty to protect third parties where a patient-client is under the clinician's control in a mental health capacity.

The ACA Code of Ethics requires that a counselor disclose serious and foreseeable harm (ACA, 2014, Section B.2.a.). In other words, our ethical code prioritizes the safety and protection of others over the preservation of a violent client's confidentiality. There is a disconnect between what is expected legally in North Carolina and what the ACA ethical codes require. I would argue that the ACA Code of Ethics (which is codified in North Carolina) requires a duty to warn which North Carolina courts do not require.

Reporting Abuse and Neglect of Disabled or Elder Adults

Domestic abuse, neglect, and exploitation of disabled or elder adults is a criminal offense in North Carolina (N.C. Criminal Law Code, 1995/2005). Any person having reasonable cause to believe that a disabled adult is in need of protective services shall report such information to the director of the county department of social services in the county in which the person resides or is present. A disabled adult shall mean “any person 18 years of age or over or any lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated due to an intellectual disability, cerebral palsy, epilepsy or autism; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances” (N.C. Social Services Code, 1973/1981). The report can be made orally or in writing and should include 1) the name and address of the disabled adult, 2) the name and address of the caretaker, 3) the age of the disabled adult, 4) the nature and extent of the injury or condition resulting from abuse or neglect, and 5) other pertinent information (N.C. Social Services Code, 1973/1981).

Reporting Abuse and Neglect of Minors

North Carolina law requires any person with cause to suspect that a juvenile under 18 is abused, neglected, or dependent to make a report (N.C. Juvenile Code, 1979/2016). This is called universal mandated reporting. Some states require only certain professionals to make reports, but in North Carolina the duty to report extends to everyone. Any person or institution who has cause to suspect that a juvenile who is under the age of 18 and is not married, emancipated, or a member of the U.S. Armed Forces, is abused, neglected, or dependent must make a report to the county department of social services (N.C. Juvenile Code, 1979/2016). The report may be made orally, in person, by telephone, or in writing (N.C. Juvenile Code,

1979/2016). A reporter must give the following information (to the extent that he or she knows the information): 1) Name, address, and age of the child; 2) Name and address of the child's parent, guardian, or caretaker; 3) Names and ages of other children under age 18 in the same home; 4) Present whereabouts of the child if not at the home address; 5) Nature and extent of any injury or condition resulting from the abuse, neglect, or dependency; and 6) Any other information the reporter believes may be useful in establishing the need for protective services or court intervention (N.C. Juvenile Code, 1979/2016). An abused juvenile is defined as any juvenile less than 18 years of age (i) who is found to be a minor victim of human trafficking under N.C.G.S. 14-43.15 or (ii) whose parent, guardian, custodian, or caretaker inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means. A dependent juvenile is a juvenile in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement. Finally, a neglected juvenile is any juvenile less than 18 years of age (i) who is found to be a minor victim of human trafficking under N.C.G.S. 14-43.15 or (ii) whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline (N.C. Juvenile Code, 1979/2016).

The ACA Code of Ethics states, "The general requirement that counselors keep information confidential does not apply when disclosure is required to protect clients or identified others from serious and foreseeable harm or when legal requirements demand that confidential information must be revealed" (ACA, 2014, Section B.2.a.). In the cases of child abuse and elder abuse, the legal requirements of North Carolina demand that confidential information be revealed which is consistent with the ACA Code of Ethics.

The law, just like the ACA Code of Ethics, is never black and white. That is why we have lawyers and judges to interpret the law, and their interpretations are constantly changing. It is essential that counselors keep up with their Code of Ethics as well as the laws and regulations of their state.

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