

The E-rosion of Confidentiality

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Many of us have colleagues to whom we regularly make referrals. But when we need to seek care for someone who isn't the right fit for a known colleague, we often turn to listservs and email. Such referral requests are inviting both subtle and blatant breakdowns to confidentiality, the cornerstone of our ethical responsibilities.

One example is how referral requests are written. There have been a number of helpful articles on how to write such emails by describing the clinician you're seeking rather than the client the referral is for (Behnke, 2007; CPA, 2013; Donner, 2007; Rosenberg & Nye, 2011). This is an excellent way to protect the identity of the person seeking care while emphasizing the expertise you seek.

However, a newer and more severe breakdown in confidentiality is the forwarding of emails from clients seeking referrals to individual clinicians or to public listservs. Some of these emails have included the client's full name, email address, phone numbers, and previous diagnoses. Given that confidentiality is our primary obligation, these disclosures are concerning:

4.01 Maintaining Confidentiality

Psychologists have a primary obligation and take reasonable precautions to protect confidential information obtained through or stored in any medium... (APA, 2010).

When I have sought to address such messages with colleagues, I have received some explanations including that the client gave consent to forward the email to a listserv. In other cases, people have noted that the person had never been a psychotherapy patient, and therefore, there was no obligation to provide confidentiality. These are compelling responses because they call attention to the gray and conflictual aspects of professional ethics.

The first case raises questions of client autonomy and self-determination as well as our need to weigh beneficence versus harm. These are aspects of the aspirational General Principles of the ethics code. What should a clinician do if a client gives consent to release PHI to hundreds of clinicians? It is notable that aspirational principles do not have the same weight as the enforceable standard identifying confidentiality as our primary duty. We might also consider that clients may give us permission to do many things that are at odds with our professional roles and duties, such as meeting socially outside of the office. Client consent does not release us from professional du-



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ties. A conservative clinician will likely believe that confidentiality always comes first, whereas a clinician who believes in a client's autonomy or self-determination, or someone looking exclusively at Standard 4.05, Disclosures, might allow for a client to release this duty.

The second case invites us to consider whether we owe a duty of confidentiality to someone who has not become a psychotherapy client – or, rather, when does the psychotherapy relationship begin? (Bucky & Caudill, 2018). Another way to examine this question is to ask whether a person contacting us for care or referrals might have a reasonable expectation of confidentiality (Fridhandler, 2015). Another consideration is what it might be like for a client to get several dozen emails from clinicians soliciting business. It is atypical for psychologists to email potential clients to make bids for establishing care. If one is going to take on the task of seeking referrals for a client, it seems appropriate for them to take on the work of gathering the referrals and passing them on directly.

It is clear that the ease of forwarding an email to hundreds of colleagues and the time savings in not having to be the go-between in making referrals can allow for the wearing away of confidentiality on both a small and a mass scale. We need to protect our profession from such erosions to confidentiality. We should be teaching trainees and experienced clinicians how to avoid unnecessary and preventable intrusions to privacy on email. We also need to consider how such casual disclosures can affect clients', colleagues' and the public's perceptions about how seriously we take our professional responsibilities. ■

Complete references for this article can be found at www.cpapsych.org – select *The California Psychologist* from the Professional Resources menu.