

OBU Counseling Issues 2018  
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**Keith-Spiegel and Koocher Model**

A more pragmatic approach, emphasizing evaluations of possible choices and potential outcomes emerging from those choices.

1. Describe the Parameters
  - a. Identify circumstances which have been presented.
  - b. Consider elements of situation by careful assessment and identification of the whole picture.
  - c. Opens the opportunity to consider the complete context instead of the situation in isolation.
2. Define the Potential Issues
  - a. Broad and comprehensive examination of possible issues emerging from the assessment.
3. Consult Legal and Ethical Guidelines
  - a. Knowledge and awareness of legal precedents, practice traditions, specific instructions, codes of ethics, and related applications of these factors are essential.
  - b. Example: Duty to protect—only thinking of to whom you should disclose misses the complexity of balancing public protection, client welfare, legal precedent, and ethical tradition.
4. Evaluate the Rights, Responsibilities and Welfare for all.
  - a. Must be careful not to take on responsibilities that should fall to client
5. Generate alternate decisions
  - a. Engage in brainstorming possible solutions for the dilemma. Don't forget to consider timing.
6. Enumerate the consequences of each decision.
  - a. Consider potential aftermath of a decision.
7. Estimate probability for outcomes of each decision
  - a. Concerns both pleasant and unpleasant consequences associated with the dilemma.
  - b. Since probability for possible outcomes may rely on actions taken by others, (parents, external agencies, other therapists), factor the ability and willingness of others to act in concert with the actions of the therapist.
8. Make the decision
  - a. A decision to defer on an action is a deliberate decision within this model.

Case: A stepfather's adoption of his wife's daughter terminated the court-ordered rights of the paternal grandparents. The grandparents had a very close relationship with the child. The child is your client. The grandparents then sued to continue visitation with their grandchild.

The court held that adoption severed the child's previous familial relationships with all members of the natural father's family. Hence, the natural paternal grandparents were no longer considered the child's relatives. As a counselor, you are torn because you believe it is in the child's best interest to continue the relationship with their paternal grandparents. What can you, as a counselor, legally do?



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1, Parameters

1, Parameters

2. Potential Issues

2. Potential Issues

3. Legal & Ethical Guidelines

3. Legal & Ethical Guidelines

4. Evaluate rights, responsibilities, welfare for all

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5. Alternative decisions

5. Alternative decisions

## Principles for Family Secrets

### Family Secrets (Karpel)

1. Shared family secrets known to and kept by all members
2. Internal family secrets known to and kept by some family members
3. Individual secrets known to and kept by individual members

### Family Secret Topics

1. Taboo topics—actions that could embarrass or liable the perpetrator (extramarital affairs, illegalities, addiction)
2. Rule violations –breaking accepted norms of conduct related to behavior (sexual activity, drinking, etc.)
3. Conventional secrets—conversational topics that may be more reflective of social discretion and privacy: academic success, health, conflicts, religion, etc.

### Two Opposing Positions on Maintaining Confidentiality

1. Therapist treats each partner or family member's confidences as though that person were an individual client. Information obtained in private session, call, written material is not divulged to other members.

Therapist might arrange session with members' permission to actively encourage "sharing" of secret to better understand what is occurring within the family system.

2. Therapist discourages sharing information that might lead to, or maintain, an alliance between therapist and one member. Generally conducts only conjoint sessions

Intermediate position between two options. Therapist reserves right to decide what is for the greatest benefit of couple/family

Creates greater responsibility for therapist

No set of clear rules

Learning "after the fact" that decision to disclose was unwise typically is not offset with even the best of intentions

Can result in abrupt, premature termination of therapy.

Can result in souring toward future psychotherapeutic assistance of any kind

Legally often therapist is held directly responsible for directing the flow, or lack thereof, of sensitive information disclosed—creating potential legal consideration.

In this position, the therapist can require a waiver of confidentiality restrictions by family members as a stipulation for initiating a therapy relationship.

### Ethical Considerations in selecting a position about secrets

1. Distinguish between secrecy and privacy

Trauma episode in one's childhood is privacy

Extramarital affair is secrecy. Details of previous love relationships are private, not secret.

Withholding fact a child is adopted involves a deception that might violate a child's right to a complete self-definition and identity.

2. Therapists must pay attention to their personal values/professional values not to impose a predetermined agenda that may not yield expected outcome for client welfare.

Accountability with discretion. Therapist would share/withhold information based on clinical judgment involving:

A. consideration of the relevance of the material for the person unaware of it.

B. An attempt to perceive the situation as much as possible from the perspective of the person who is unaware.

C. Sensitivity to timing and consequences for person who is unaware

D. Warning: although keeping secrets may be a well-intentioned attempt to protect the unaware member, this stance carries significant risk. Secret information may be unexpectedly revealed, resulting in negative consequences for the individuals, relationship, and therapy

Recommends discussing dangers posed by special confidences with couple/family in initial session and ask them to agree on direction therapy will take.

### Final considerations

Make sure clients understand the nature of counseling and inherent risks

Make accurate assessments of boundaries within the family

Be prepared to assess the impact of disclosure of the system.

## 1. Case: Secret Affair

Mrs. T is a 35-year old, childless, married woman. She comes self-referred to an outpatient mental health clinic requesting an appointment for herself. She complains of some anxiety and depression, which she attributes to long-standing marital problems and desires marital therapy eventually. She reveals that she has carried on a secret three-year affair with her husband's married brother. She is inflexible in her request for marital therapy, her insistence that the affair never be revealed to her husband, and her refusal to give it up. There are no indications of suicidal or homicidal ideation or intent.

## 2. Case: Criminal Liability

Melissa J. is a novice therapist employed by a community-funded child guidance clinic. Cindy is a 15-year old client whom Melissa has been seeing because of family conflicts. Cindy's parents were recently divorced, and she was having problems coping with their breakup. Neither parent was willing to participate in therapy with their daughter, seeing her concerns as "things she needs to work out on her own."

Cindy confides to Melissa that she and her boyfriend had stolen a car during the past weekend. They still have the car. Having no one else to turn to, Cindy asks Melissa's help in returning the car to the owner without involving the police.

### Legal/Ethical Guidelines

A. some areas can cause a therapist to incur criminal liability.

1. reporting known crimes
2. contributing to the delinquency of a minor
3. being an accessory to a crime before or after the fact.

#### 1. Reporting Known Crimes

Private citizens have no legal duty to report crimes they know about

Persons cannot attempt to conceal criminal activity, assist a criminal in avoiding prosecution, or refuse to answer questions regarding crimes.

They do not have to tell anyone about crimes they have observed or know about

Based on the same principle, therapists

Generally do not have to report criminal activities that clients report in therapy sessions

Do have to take action to prevent harm if they determine clients are a danger to themselves or others

Are prohibited from purposefully concealing crimes from authorities or assisting clients in avoiding being discovered or arrested.

When a privileged communication statute protects the relationship with the client, but a legal exception exists to privilege, therapist would be required to repeat to authorities information they learned from a client related to *criminal activities*.

#### 2. Contributing to the Delinquency of a Minor

Each state defines the meaning of "minor" for purposes of its own laws. (In LA it is 17 and under, AK age of majority is 18)

Each state has its own laws concerning what constitutes contributing to the delinquency of a minor.

Generally cited purposes of such laws are to protect minors from the negative influence of adults who might lead them astray, and to prevent conduct that would lead to delinquency.

Case examples of therapists found facing a charge of contributing to the delinquency of a minor (Fischer and Sorenson, 1985).

1. Therapist who chaperoned a school sponsored weekend trip and helped students procure beer and wine
2. Therapist who chaperoned a Friday evening party and was aware that several teens were smoking marijuana and did nothing about it.

For a person to be guilty of a crime, there must be a concurrence of an act and an intent.

The law generally requires *mens rea* (guilty intent) for an act to be a crime.

*i.e.* if pedestrian is hit by an out-of-control car because of tire blowout, the driver has not committed a crime. If proven that the driver intentionally sought to run down the pedestrian, a crime was committed.

In cases involving delinquency, individual states differ with regard to proof of guilty intent. Some states require proof of guilty intent, and others do not.

### 3. Accessory to a Crime

If clients discuss either a plan to commit a crime or a crime they have already committed The therapist's duty to warn probable victims of a dangerous crime supercedes any claim of confidentiality or privilege.

Less clear when client seeks therapist's help after crime has been committed.

Crimes can be against property. Client might confide a plan to destroy a building.

Mere knowledge that a crime will occur, if there is no special duty to prevent it, does not incur guilt.

If therapist accompanies client to scene of crime with knowledge it likely will be committed, or assisted client in getting away after committing a crime, the therapist would be culpable in the eyes of the law.

Any person who aids in the commission of a crime (even if not present when it takes place) may be as guilty as the instigator or may be charged as an accessory before the fact.

An accessory after the fact is generally a person who, knowing that a crime was committed, receives, relieves, comforts, or assists the perpetrator or somehow aids the perpetrator in escaping arrest or punishment.

A crime must have been committed

The accessory must know that the perpetrator committed the crime

The accessory must harbor or protect the perpetrator

If, during a session, the therapist:

Learns that the client committed a crime, and if

The therapist helps the client hide or otherwise offers protection from law enforcement authorities

Or assists the client in escaping detection

The therapist may be guilty of being an accessory to a crime after the fact.

In Louisiana:

Important whether crime is a felony or misdemeanor.

Law does not identify an accessory to the commission of a misdemeanor.

### **3. Case: Competency**

A marriage and family therapist had given court testimony contradicting the testimony of a second marriage and family therapist in a child custody action brought by one parent against another. The therapist hired by the father was upset and very concerned about the ethical implications of the testimony of the mother's therapist. The concerns emanated from the fact that the therapist hired by the mother had seen the child alone during actual therapy sessions, communicated with the mother only very briefly before and After those sessions, and had never met with the father, yet testimony was given relative to the entire family's functioning. In contrast, the therapist hired by the father had seen the entire family together in therapy for several months.

### **4. Case: Insurance Fraud**

During their initial session with a newly licensed therapist in private practice, a couple asks the therapist if her services are covered by their health insurance. The therapist requests that they bring a copy of their policy manual to the next session for her to review. The couple forgets to bring the policy manual not only at the next session, but also at the following session. It is only after the fourth session that the therapist is able to review the policy's provisions, which allow individual psychotherapy on an outpatient basis for a maximum of 20 sessions within one calendar year.

The manual specifically states that marital therapy is not covered. One of the couple's primary stressors is financial problems. The therapist submits a claim for reimbursement for individual psychotherapy and is reimbursed by the insurance company for the alleged services.

### **Legal/Ethical Guidelines**

A. Third part reimbursement involves an individual (or his or her employer) who has purchased an

insurance policy to cover specific medical or psychiatric conditions. By accepting third-party reimbursement, providers agree to provide whatever documentation an insurance company deems necessary to substantiate treatment.

B. Intentionally reporting to an insurance company that a condition was present and/or was treated when in fact either the condition was not present or the treatment noted was not actually administered is considered fraud. Abuse of health insurance through fraudulent claims is prohibited by law. Uncovering such fraudulent actions could result in an insurance company filing civil suit for recovery of funds misspent, as well as the insurance company

Requesting that criminal action be brought by appropriate legal authorities. Furthermore, the relevant state licensing board might be contacted and sanctions could be imposed on a therapist's license of practice, or the license possibly could be revoked entirely.

The law identifies five elements as necessary to be present for fraud to have occurred

1. there is concealment or false representation of a material fact
2. this concealment or false representation is reasonably calculated to deceive
3. there is an intent to deceive
4. there is, in fact, deception
5. the deception results in damage to the injured party.