

Journal article reviews: Confidentiality for Postmortem Client and Text Messaging in Private

Practice

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### Abstract

The importance of confidentiality has encouraged me to read more resources in order to gain a deeper knowledge on Ethical and Legal Issues in Counseling. Recently, I reviewed two journal articles that discuss confidentiality in the postmortem context and text messaging in private practice of counseling. In this article, I summarize those two articles' main points, identify the strengths and drawbacks, reflect the significant essences for my future work, and analyze the relevant Code of Ethics of American Counseling Association for both articles' topics.

*Keywords:* Ethics, Postmortem, Text Messaging, Private Practice, Confidentiality

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**Summary and Critical analysis of articles' main points (pros and cons)**

There are two journal articles that I have reviewed to acquire a better understanding of confidentiality in counseling services: (1) Postmortem Confidentiality: An Ethical Issue and Text messaging and private practice: Ethical challenges (Bradley, Hendricks, & Kabell, 2011) and (2) Guidelines for developing personal best practices (Sude, 2013)

**Article 1.** The first article mainly discusses the expectation of confidentiality of the deceased client. According to the informed consent, counselors need to keep client's confidentiality under any circumstances. However, when the client has intention to harm him or herself or others, counselor receives subpoenas, and court hearings are needed for other legal necessities, the counselor can make a report. In this article, a case simulation was used to depict the dilemmatic situation for a counselor before deciding to release or keeping the counseling recordings. According to the American Counseling Association (ACA) Code of Ethics, although a client is dead, the counselor should protect the confidentiality as what the legal requirement and setting policies imply.

This article provides a clear explanation together with a fictional vignette story about a daughter who wants her deceased parents' counseling records. Through this example, the author dissects the process of how confidentiality influences counselor's decision making, how informed consent affects counselor's decision making, what the counselor's ethical and legal responsibility, and what the counselor should do under that situation. To address those points, Ethical and Legal responsibilities based on Code of Ethics from ACA and the International Association of Marriage and family Counselors (IAMFC) was involved as the reference. As a

result, it is understood that the protection of client's confidentiality should be the highest priority after the client dies.

However, this article does not discuss the mechanism of keeping, reporting, or releasing counseling recordings with a deceased client. Counselors may have a quandary in processing the request of an heir to release the counseling recordings but it seems that the mechanism is not explained in the article. In addition, this Code of Ethics can prevent the family from managing the dead client's properties and other possibilities which may or may not influence the prosperity and safety of his or her children and close family members.

**Article 2.** The main point of the second article is that the growing of technology enables counselors and clients to meet virtually such as through internet connection and cell phones, especially text messaging. To use text messaging (TM), both counselors and clients need to be vigilant of the potential risks of confidentiality. A counselor-client conversation text in the cell phone may be read by others and breaking confidentiality or worsening the client's condition. In addition, the administrative aspect of using text messaging for private practices was addressed as well.

This article has limpidly discussed the possibilities of using cell phone technology for therapeutic communication, administration in private practice, and its confidentiality risks. Through the text-based communication, a client can have a counseling service without a face to face (FTF) meeting with a counselor at any time. Furthermore, this article also provides examples of how to document the text-based communication records with a client for billing which will be beneficial for counselors in private practices.

However, the author did not address deeply about the possibility of text messaging is being exposed by professional cell phone operator. The operator may know the counselor and

client conversations through the cell phone service system. Moreover, cell phone surveillance rumors became hot issues in the states recently. It is not even safe to talk or text through cell phones which potentially triggers other confidentiality concerns. In addition, cell phone disposal is risky because any activity done on the cell phones is recorded in the memory chips. Just in case when the cell phone or the memory chip is activated or recovered, the text messages may appear. I believe that destroying the cell phone, mainly the memory chip, is better. Beyond these drawbacks, the author did not include the exact Code of Ethics addressing the confidentiality in using electronic devices for counseling services.

### **Relevance of the issues presented to the student's future work**

Considering confidentiality is one of main counseling services' concerns in my home country, I decided to review journal articles about confidentiality. I believe that confidentiality is an essential factor for counselor to build trust in people who are living in communal societies in Indonesia.

When I worked as a school counselor, I faced a reality that students did not trust in their school counselors. They were afraid that telling something secret will endanger them at school because their school counselors will tell their stories or concerns to other teachers or people in school. Consequently, they remained silent when referred to school counselor or meeting the counselor just to meet his or her obligation. Beyond my personal experience, I am interested in investigating how counselor build and maintain their trust to clients particularly in a better counseling service system such as in the United States. Although counseling scholars in Indonesia still work on developing a better system, particularly in school settings, knowing the deeper and more advanced system is important for further improvements. For example, text

messaging has been under regulation in America, but in Indonesia has not been addressed as an essential issue.

In addition, personally I want to be a trustworthy counselor either in providing service for both Indonesian and people from other nations. It is such challenging situation for an international student in counseling to learn cultural background, ethics, and legal aspect in the host culture where I am studying. This experience is not merely counseling science, but it constitutes a cultural interaction in the counseling session in the United States settings. As a result, I acquire both academic and cultural experience which will be useful for my future work as a faculty member in a counseling department in my home country.

#### **Code of ethics specific violation under review**

The Codes of Ethics alluded in the both articles are both about confidentiality. However, they both have different case context and concern. The first article was discussing confidentiality for deceased client and how it impacts on counselor decision making to keep or release it, while the second article primarily addresses the use of text messages in counseling private practice.

It is clearly defined in the article that the confidentiality issue of the deceased client is in the ACA Code of Ethics in section B.3.f:

*Counselors protect the confidentiality of deceased clients consistent with legal requirement and agency or setting policies (ACA Code of Ethics, 2005).*

Counselors who release counseling recordings after the client deceased will be considered violation to the Code of Ethics of section B.3.f.. In addition, B.1.c. Respect for Confidentiality also encompasses the issue. It is stated that:

*Counselors do not share confidential information without client consent or without sound legal or ethical justification (ACA Code of Ethics, 2005).*

According to the Code of Ethics content, to release the counseling recordings, a counselor needs a confirm agreement from the client or lawful and ethical justification. It means that even for deceased client, the counselor is still obligated to hold that standard.

The second article mainly discusses text messaging in the counseling private practice. Basically, the Code of Ethics is about the same but the electronic communication-based confidentiality codes were not explicitly addressed. Both counselor and client can keep the text messaging confidential, but the confidentiality can break without their knowledge. For example, other people can access their cell phones, the mobile service professionals can have access on it, and leaking networks by which the data on the cell phone can be read by other people.

However, A.12.g. Technology and Informed Consent seems applicable to address the points in the second article. It is stated that:

*As part of the process of establishing informed consent, counselors do the following:*

- 1. Address issues related to the difficulty of electronically transmitted communications.*
- 2. Inform clients of all colleagues, supervisors, and employees, such as Informational Technology (IT) administrators, who might have authorized or unauthorized access to electronic transmissions.*
- 3. Urge clients to be aware of all authorized or unauthorized users including family members and fellow employees who have access to any technology clients may use in the counseling process.*
- 4. Inform clients of pertinent legal rights and limitations governing the practice of a professional over state lines or international boundaries.*
- 5. Use encrypted Websites and e-mail communications to help ensure confidentiality when possible.*

6. *When the use of encryption is not possible, counselors notify clients of this fact and limit electronic transmissions to general communications that are not client specific.*
7. *Inform clients and for how long archival storage of transaction records are maintained.*
8. *Discuss the possibility of technology failure and alternate methods of service delivery.*
9. *Inform clients of emergency procedures, such as calling 911 or a local crisis hotline, when the counselor is not available.*
10. *Discuss time zone differences, local customs, and cultural or language differences that might impact service delivery.*
11. *Inform clients when technology-assisted distance counseling service are not covered by insurance.*

In addition, B.3.e. Transmitting Confidential Information also augments the related Code of Ethics. It is stated that:

*Counselors take precautions to ensure the confidentiality of information transmitted through the use of computers, electronic mail, facsimile machines, telephones, voicemail, answering machines, and other electronic or computer technology (ACA Code of Ethics, 2005).*

These two Code of Ethics, A.12.g., and B.3.e., may be included in the paper to provide clearer information about which ACA codes applicable to address the text messaging counseling services. Through these codes, counselor and client can anticipate the risk of breaking confidentiality and avoid legal issues that may appear during or after counseling sessions. By having agreement and clear understanding for both the counselor and client, counseling can be more comfortable and lawfully permitted.

## References

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