Social Workers’ Duty to Warn

Can North Carolina Mental Health Providers Disclose Confidential Information?

There are more Licensed Clinical Social Workers in North Carolina than any other master’s level mental health professional. The Surgeon General of the United States has noted that “the majority of mental health care in the United States is provided by clinical social workers.” An integral part of the therapeutic relationship is confidentiality, creating rapport that is essential to effective work with clients. Confidentiality is required of social workers in the National Association Social Workers (NASW) Code of Ethics in section 1.07, Privacy and Confidentiality. The NASW Code of Ethics states that social workers keeping information confidential “does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or other identifiable person” (NASW, 2008).

According to the North Carolina Social Work Certification and Licensure Board under the North Carolina Administrative Code, Title 21, Chapter 63, Certification Board for Social Work, Section .0507(b) Confidentiality and Record Keeping:

Social workers shall reveal confidential information to others only with the informed consent of the client, except in those circumstances in which not to do so would violate other laws or would result in clear and imminent danger to the client or others. Unless specifically contraindicated by such situations, clients shall be informed and written consent shall be obtained from clients, or their legally authorized representative, before confidential information is revealed.

History

In the seminal case, Tarasoff v. Regents of the University of California, 551 P.2d 334 (1976), the court ruled that public policy “favors disclosure of confidential information when it is necessary to avert serious harm to others even though there is a risk of unnecessary or improper disclosure at times” (Morgan & Polowy).

The North Carolina case, Currie v. United States, addressed the Tarasoff ruling in the state after a patient of the Durham Veterans Administration Hospital attacked the IBM offices in North Carolina's Research Triangle Park armed with bombs and a .45 caliber semi-automatic rifle. Currie claimed that negligence of the Veterans Administration psychotherapists in failing to commit the patient was responsible for her husband’s death (Hobart). In her lawsuit against the government, Currie urged that in some circumstances the Tarasoff duty can require a doctor to seek his patient’s involuntary commitment (Hobart).

The United States District Court for the Middle District found that North Carolina would recognize the Tarasoff duty to warn. It also found that in some cases could require a psychotherapist to initiate commitment proceedings. The court stated that commitment “could not be breached by simple negligence” as long as a competent therapist exercised their best judgment they would be protected from any liability for the patient’s acts (Hobart).

The HIPAA medical privacy regulations support the concept that professionals should freely exercise their discretion if disclosure of confidential information is necessary to protect the client or others from serious physical harm. The NASW Code of Ethics likewise permits disclosure of client communications in order to prevent serious, foreseeable, and imminent harm to the client or another identified individual (Morgan & Polowy).
North Carolina Ruling

North Carolina has clarified through court decisions that the duty to warn may not be sufficient in some instances and the therapist may have a duty to take whatever action is necessary to avert the threatened harm, including committing the patient to inpatient hospitalization (Morgan & Polowy).

In summary, North Carolina does not have a Tarasoff-like duty to warn (either established by statute or through case law), but North Carolina case law does impose a duty to protect third parties where a patient-client is under the clinician’s control in a mental health capacity (Mobley & Naughton). A social worker’s duty to warn will not always be clear in North Carolina. If possible, social workers should always seek supervision or consultation before breaking confidentiality.

Although there is not clear answer to ethical screenings, Dr. Frederic Reamer developed a checklist based on the NASW Code of Ethics when evaluating a clinician’s duty to warn:

Social Worker should:

1. Have evidence that the client poses a threat of violence to a third party
2. Have evidence that the violent act is foreseeable – that is, sufficient evidence to suggest that the violent act is likely to occur
3. Have reasonable evidence to suggest that the violent act is impending or likely to occur relatively soon
4. A number of court decisions, but not all, require that a clinician be able to identify the potential victim. (Reamer).

Although these criteria are fairly straightforward, social workers should be aware that both clinicians and lawyers disagree about their application and ‘goodness of fit’ in individual cases. Most agree that a social worker whose client makes a clear threat to violently harm an identifiable third party within the next day or so has a duty to take steps to protect the potential victim, which may entail disclosing confidential information without the client’s consent (Reamer).

Resources for NASW Members:

NASW members with legal questions can seek a consult through NASWs Legal Consultation line Monday-Thursday 11am-4:30pm at (202) 408-8600 ext. 592. One of NASWs legal staffers will assist the member with their questions and refer the call to an attorney as needed.

Peer Ethical Consultation Line: Free service for NASW-NC members. To access the Peer Ethical Consultation service, call 919-828-9650, extension 300 or 800-280-6207, extension 300. To help consultants respond to you most quickly, please email your question to naswncethics@gmail.com.

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References:


