

Counseling, Confidentiality, and the Pastor

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[Presented to the Milwaukee Metro Conference, September 18, 2000]

Introduction

I. Definitions

- A. Confidentiality—refers to the ethical and legal duty to protect client information against every other source outside the judicial arena
- B. Privileged Communication—these statutes are designed to protect confidential communications from disclosure in court and other legal proceedings.
 - 1. Attorney privilege states that legal counsel **must** not reveal information about the client which he/she does not wish revealed in or outside a court of law.
 - 2. Clergy/penitent privilege states that a cleric **may** not have to reveal information about a client when heard in a ministerial role especially if the client was seeking absolution through the formal rite of confession.

II. The Foundations for Confidential Communications

A. God's Law

The Eighth Commandment

You shall not give false testimony against your neighbor.

What does this mean?

We should fear and love God that we do not tell lies about our neighbor, betray him or give him a bad name, but defend him, speak well of him and take his words and actions in the kindest possible way.

Proverbs 25:19—"Do not betray another man's confidence."

Proverbs 11:13—"A gossip betrays a confidence, but a trustworthy man keeps a secret."

B. Man's Law—The Bill of Rights

"The fundamental and legal right to privacy."

C. "The Law of Practicality"—essential to therapy

III. Exceptions to Confidentiality Communications

- A. Client consent to disclosure.
- B. Child and elders abuse reporting.
- C. Danger to self or others.
- D. Emergencies
- E. Judicial order and court action. (Remember rules even for clergy are **NOT** absolute.)

IV. Practice and Policy Recommendations

- A. Develop clear organizational policies for confidentiality. (Written)
- B. Explain confidentiality and clarify its limits at the start of counseling. (Written and oral)
- C. **Always** favor confidentiality over disclosure.
- D. **Always** seek client waiver.
 - 1. Even in mandatory disclosure situations.
 - 2. Even when pursuing public ministry. (Using examples in sermons.)
- E. **Always** assert privilege to courts and lawyers.
- F. Contract for confidentiality in the gray zones.

Conclusion

Source: *Law for the Christian Counselor – A Guidebook for Clinicians and Pastors*, by George Ohlschlager, M.S.W., J.D. and Peter Mosgofian, M.A., Word Pub., 1992.

Pastoral Counseling Services Agreement

This agreement for pastoral counseling services between [your church or practice's name] and clients) shall govern all professional relations between the parties. It is agreed that any disputes or modifications of agreement shall be negotiated directly between the parties; if negotiations are not satisfactory, then the parties *agree to mediate any differences with a mutually acceptable third-party mediator, considering first either the Executive Director or Associate Director of the practice.*

A. THE PASTOR COUNSELOR is _____. He or she is an Ordained Minister and Pastoral Counselor, not a California licensed therapist.

B. PASTORAL COUNSELING AT [your church or practice's name] is confidential, supervised counseling by one trained and experienced in both pastoral and counseling ministry. Pastoral counseling will be limited to 12 sessions overall with an evaluation at the end of this program of counseling. Counseling shall be terminated or referral for further treatment may be made at this time, whichever is in the client's best interest.

C. FEES AND INSURANCE POLICY

Client fees are to be determined at the first session. Full or partial payment shall be made at the end of each session by the client. Clients understand that a Pastoral Counselor will not be able to receive insurance reimbursement under most policies—clients are responsible to bill their own insurance if they believe a Pastoral Counselor is covered. We will not extend credit or schedule appointments beyond three unpaid sessions until payment is made. *Clients are fully responsible for the payment of all fees.*

D. CANCELLATION POLICY

We agree to and ask that clients maintain responsible relations regarding appointment times. Any appointment *cancelled after 6 PM the day before the appointment or that the client does not show will be charged to the client at (1) half the fee rate for the first incident and (2) the full fee rate for any incidents thereafter.* Most insurance companies will not reimburse you for this charge.

E. CONFIDENTIALITY POLICY

All therapeutic communications, records, and contacts with professional and support staff will be held in strict confidence. Information may be released, in accordance with state law, only when (1) the client signs a written release of information indicating informed consent to such release; (2) the client expresses serious intent to harm himself/herself or someone else; (3) there is evidence or reasonable suspicion of abuse against a minor child, elder person (sixty-five years or older), or dependent adult; or (4) a subpoena or other court order is received directing the disclosure of information. It is our policy to assert either (a) privileged communication in the event of #4 or (b) the right to consult with clients, if at all possible barring an emergency, before mandated disclosure in the event of #2 or #3. Although we cannot guarantee it, we will endeavor to apprise clients of all mandated disclosures.

Clients with any concerns or questions about this policy agree to raise them with their counselor at the earliest possible time to resolve them in the client's best interest.

F. WORK AGREEMENT

It is agreed that the client shall make a good-faith effort at personal growth and engage in the counseling process as an important priority at this time in his or her life. Client gain is most important in pastoral counseling. Suspension, termination, or referral shall be discussed between counselor and client for a pattern of behavior that reveals disinterest or lack of commitment to counseling or for any unresolved conflict or impasse between counselor and client.

[Your practice's name] and client further agree that the following needs or problem issues will be addressed in both counseling sessions and in client homework, with future revisions possible as need arises:

G. FEE AGREEMENT

The agreed fee *per 50 minute session* is _____ for the basic fee rate. If the fee scale is elected, fill in the first two categories below:

- monthly family gross income _____
- number in family _____
- fee scale per session _____

Service Agreement:

We, the undersigned pastoral counselor and client, have read, discussed together and fully understand this agreement and the stated policies. We agree to honor these policies, including the commitment to negotiate and mediate as stated above, and will respect one another's views and differences in their outworking. We have also agreed to an initial definition of counseling work and to the fee to be paid by the client.

Client Signature _____ Date _____

Counselor Signature _____ Date _____

Consent for Release of Information

I, _____, do consent and authorize [your practice's name] and staff member _____ to: (check off and fill in the blanks)

- release all records of my (or my dependent's) counseling or other work done by [your practice's name] to _____
(except for the records of _____)

- obtain all records of my (or my dependent's) counseling or other work done by _____
(person or organization)
(except for the records of _____).

These records are to be sent to [your practice's name and address], in care of staff member _____ and _____
(person or organization)

for the best interests of my (or my dependent's) goals in counseling or other work.

This consent is valid and is to be acted on upon receipt of this form regarding the records of:

(client or patient)

This consent will terminate without express written revocation by the client named herein on or when

_____.

Client/Guardian Signature _____ Date _____

Client Address _____

Client Birth Date _____ Client Social Security Number _____

Signature of Staff Member _____ Date _____

Note: Federal regulations require ALL blanks to be filled in, including date, event, or condition that terminates consent for release of confidential client information.

Authorization to Treat Minor Children

I, _____, give my permission to
(name of parent or guardian)

_____ to see my son/daughter
(staff counselor)

_____ for treatment or counseling,
(name of minor child)

with and/or without me being present in the same session. I/we understand that we are the holder of confidential privilege—the right to withhold disclosure of private counseling information about my child. However, in the interest of developing a trust relationship between the counselor and my/our child(ren), I/we give the counselor permission to reveal or withhold information that in his/her clinical judgment is necessary to best help and protect my/our child(ren). The only exception to this discretion would be in the case of

Parent/Guardian signature _____ Date _____

Therapist/Witness _____ Date _____