

Confidentiality in Marital and Family Counseling

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Confidentiality in Marital and Family Counseling 2

The human and social expense of divorce has even more draw the attention of government to the role of marital and family counseling in our society. The value and importance of mediation has been given solid recognition as an indispensable tool in divorce proceedings, to ensure the welfare of couple, children, and the society in general. However, the delicate nature of private information and personal reputation also requires some form of protection that would ensure the confidentiality of communication exchange in marital and family counseling.

Family mediation is a method in which a neutral intermediary aid couples considering separation or divorce to help with the preparations that have to be done in the future. The civil law on the other hand provide solutions for resolving arguments between private individuals, including those disputes about properties, child and family proceedings, and the protection of interests of individuals such as “privacy, personal reputation, and confidentiality” (Jenkins 1997).

In therapy, confidentiality is a fundamental principle, beneficial on both trust and ethical grounds. Confidentiality makes it possible for a newly found relationship to rapidly develop trust and promote clients autonomy and self-determination based on ethics guiding principle. On the other hand, confidentiality in a legal perspective is a matter of privilege and public interest based on the concept of justice and equality. It is a belief based on trust (Jenkins 1997). The law therefore prohibits the person who received this information in confidence to use it for his or her own personal and inequitable advantage. Counseling centers and professionals must ensure that the information given in confidence by their client remains confidential, and they can only disclose them in circumstances allowed by law (Stewart 2005) (Dunbabin 2001). A therapist can only break client confidentiality under extreme circumstances in order to prevent harm to a third party such as child abuse, suicide or suspected terrorism (Jenkins 1997). According to

Zuckerman (2003), the laws of the states prevent a counselor from disclosing any information unless with written permission from the client. However, the law also requires a counselor to tell others about it if the client or other persons are in danger. This is applicable in situations when a counselor is fully convinced that the client will cause serious injury to another person or the threat will likely to hurt the client himself. This can also happen in an emergency where the client's "life or health is in danger" (Zuckerman 2003, p.1) and a written consent are obviously unobtainable from the client. Considering the gravity of the issue, the counselor can freely disclose only the required details to the police or to the client's relatives to prevent further damage or to a doctor who will give the client medical attention. In any case, the counselor is only allowed to give the specific and relevant information required to save the client or a person. Any other information known to him irrelevant to the situation should stay confidential (Jenkins 1997).

In a less threatening circumstances, the principle of *privilege* is use to prevent and protect client-therapist disclosures. *Privilege* is at present held by professionals (doctors, lawyers, social workers) in almost half of the U.S. states. If the client becomes involved in a court case, the client's *privilege* can prevent the counselor from testifying in court. On the other hand, privilege cannot protect the client in cases like child custody where parent's fitness in rearing their children is important. In a situation when emotional and mental stability is important for the court's decision, and other circumstances requiring psychiatric evaluation (Jenkins 1997).

Confidentiality in psychotherapy is a concept of vital importance and fundamental to marital counseling. It is an "ethical obligation" (Dunbabin 2001) that is very important to uphold strict impartiality between couples who perhaps is encountering intense conflict with each other. It will help build client's trust rapidly particularly those desperately seeking attention, friendly

advice, and support. Alternatively, the law also provides its own perspective of confidentiality in marital counseling. From the legal standpoint, marital counseling appears to be more in case law rather than statute, since it has a degree of “privilege” that requires therapeutic actions. The same *privilege* protecting the therapist or counselors from being required to disclose confidential materials to the court (Jenkins 1997). The 1996 Supreme Court Ruling on the confidentiality of psychotherapy clearly states the importance of privilege to client-therapist relation (Flight 2004).

Since the legal interpretation of confidentiality is based on equity, the court and the counselor may break it using “inequity” as an argument. However, this is unethical and would cause so much damage to the client-counselor relation and to the reputation of the entire counseling institution. The clash between ethical values and public interest is always inevitable, and therefore maintaining confidentiality is difficult (Jenkins 1997). This is the reason why majority of counseling centers and professionals are distributing handouts about the limitations of confidentiality they can provide with their clients. Furthermore, they also require clients to sign a written consent before counseling to ensure that both parties fully understand the confidentiality limitations. The written consent will be valid until it is withdrawn or if there is a sudden change of circumstances (Dunbabin 2001). Federal Courts have recognized confidentiality of marital and family counseling privileges for years as disclosures will cause damaged reputation within the community, severe emotional distress, affect employment opportunities, and possible infringement of other people’s privacy. In relation to this, at least three courts have held that when members of the family participated in counseling, their records may not be disclosed without the permission of the patient (Flight 2004). The court decided in favor of confidentiality since many cases involving disclosures actually resulted in chaos.

Confidentiality in Marital and Family Counseling 5

Confidentiality in marital and family counseling is essential to the well-being of the people involved. The ethical and professional relation between client and counselor must be built on trust in order for the mediation to work. Disclosures will actually destroy that trust and harm the good relationship between the public and the social institution who are supposed to care for them. To prevent such socially destructive situation, the law must always consider and maintain the balance between ethics and public interest.

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